

IN THE CIRCUIT COURT OF LAFAYETTE COUNTY, MISSISSIPPI

SHELDON TIMOTHY HERRINGTON, JR.

PETITIONER

VS.

CIVIL CAUSE: 122-455

JOEY EAST, SHERIFF,
LAFAYETTE COUNTY, MISSISSIPPI
in his official capacity, only

PETITION FOR WRIT OF HABEAS CORPUS

COMES NOW, the Defendant, Timothy Herrington, hereinafter "Petitioner" or "Mr. Herrington," by and through his attorney of record, M. Kevin Horan, and files this his *Petition for Writ of Habeas Corpus*, and in support would show unto the Court as follows to wit:

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Petitioner is now in the custody of Sheriff Joey East and the Lafayette County Sheriff's Department. Petitioner is being held at the Lafayette County Detention Center in Oxford, Mississippi. "The writ of habeas corpus shall extend to all cases of illegal confinement or detention by which any person is deprived of his liberty"¹

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Mr. Herrington has been held without bail since his arrest on July 22, 2022, on the suspicion of his involvement in the disappearance of Jimmy "Jay" Lee that occurred in Lafayette County, Mississippi, on or about July 8, 2022. Subsequent to his arrest for murder, Mr. Herrington appeared before the Circuit Court of Lafayette County on August 9, 2022, for a hearing on the State's Motion to Hold Defendant Without Bail and a contemporaneous preliminary hearing. At the conclusion of the hearing, Mr. Herrington was denied bail.

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¹Miss. Code Ann. Section 11-43-1.

LAFAYETTE COUNTY
FILED

OCT 03 2022

JEFF BUSBY
CIRCUIT CLERK
BY Stump D.C.

At the hearing on this matter, Detective Ryan Baker, the only substantive witness called by the State, testified as to the efforts that the Oxford Police Department (hereinafter “OPD”) and other agencies have gone through in their investigation into this matter. During the course of the hearing Detective Baker described how they were able to track both Jay Lee’s and Timothy Herrington’s movements on the early morning July 8, 2022, via social networking applications and surveillance footage.²

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According to Detective Baker, Mr. Herrington was developed as a suspect through the investigation by OPD. Authorities made arrangements to interview him July 22, 2022, and executed a search warrant on his apartment.³ It was during this search that the State collected information that they believe was sufficient to charge Mr. Herrington with First Degree Murder. According to Detective Baker, during the course of the search of Mr. Herrington’s apartment “cadaver dogs” were deployed to conduct an “open air sniff” of Mr. Herrington’s apartment.⁴ Detective Baker testified that the “cadaver dogs” alerted in Mr. Herrington’s apartment and that the significance of said alert was that the dogs detected the presence of a dead body.⁵ However, on cross examination Detective Baker was unable to recount the specifics about the supposed qualifications of either the “cadaver dogs” or their handlers.⁶ He could not comment on whether the dog was trained as a search and rescue dogs or if was verified to actually be able to detect human remains.⁷ Further, he admitted that there was no confession or admission and no physical or direct evidence to present at the time that implicated Mr. Herrington with any involvement in Jay Lee’s disappearance. Upon information and belief at this time, Jay Lee has not been found

²Preliminary Hearing and Bond Hearing Transcript, August 9, 2022, at 23-24.

³*Id* at 44-48.

⁴*Id* at 48.

⁵*Id*.

⁶*Id* at 84.

⁷*Id*.

and there is no direct evidence that a homicide, or any other crime for that matter, has occurred. Essentially Detective Baker summed up the evidence in this case as being reliant on unproven searches performed by alleged “cadaver dogs,” communication via social media, video evidence of Mr. Herrington in various places on the morning of July 8, 2022, and the fact that Jay Lee is still missing.⁸ Consequently, at this time the case against Mr. Herrington is purely circumstantial.

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As of today’s date, Mr. Herrington has been held in custody for approximately Sixty-Nine (69) days since the time of his arrest. The Lafayette County Grand Jury recently convened, subsequent to the date of the bond and preliminary hearings, and failed to indict Mr. Herrington for murder, or any other crime, in connection with Jay Lee’s disappearance. Again, no bail has been set pursuant to Article 3, Section 29 of the Mississippi Constitution which requires that “. . . all persons shall, before conviction, be bailable by sufficient sureties, except for capital offenses (a) when the proof is evident or presumption great; or (b) when the person has previously been convicted of a capital offense or any other offense punishable by imprisonment for a maximum of twenty (20) years or more.” Mr. Herrington has no prior convictions, and it appears that there is no evident proof or substantial presumption that Mr. Herrington committed the alleged offense as indicated by the lack of an indictment in this matter and the State’s apparent failure to pursue prosecution to procure said indictment.

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During oral argument as to Mr. Herrington’s bond, the State argued that proof was evident and the presumption great that Mr. Herrington murdered Jay Lee *despite* the fact that they still have not produced evidence of any crime or any evidence that Jay Lee is dead besides the fact that he has not been heard from.⁹ The State further argued that the Defendant was a flight risk because he is well traveled, had recently flown internationally, and was intending to move to Dallas (he had recently graduated from The University of Mississippi and was preparing to make

⁸*Id* at 85.

⁹*Id* at 125.

his next post graduate plans) as evidence that he was a flight risk.¹⁰ As argued by Defense counsel at the hearing denial of bail when the proof is evident and the presumption is great is only proper when “the inference of guilt naturally to be drawn therefrom is strong, clear, and convincing to an unbiased judgment and excludes all reasonable probability of any other conclusion.”¹¹ Essentially, the *Huff* Court is saying that if there is any reasonable doubt, or other possible explanations exist that would allow a finder of fact to come to other conclusions besides the Defendant being guilty of the exact crime as charged, then the presumption is *not* great and the proof is *not* evident. As there is clearly reasonable doubt in this case due to the lack of *any* physical evidence and the questionable validity of potentially scientifically flawed, and/or potentially legally inadmissible circumstantial evidence, the Court should have considered the factors enumerated in Rule 8.2 of the Mississippi Rules of Criminal Procedure in order to determine conditions of bail.¹² However, the Court ignored the factors of Rule 8.2, erroneously

¹⁰*Id.*

¹¹*Id.* at 126; (quoting *Huff v. Edwards*, 241 So. 2d 654, 656, 1970 Miss. LEXIS 1352, *5-6).

¹²(1) the age, background and family ties, relationships and circumstances of the defendant;
(2) the defendant’s reputation, character, and health;
(3) the defendant’s prior criminal record, including prior releases on recognizance or on unsecured or secured appearance bonds, and other pending cases;
(4) the identity of responsible members of the community who will vouch for the defendant’s reliability;
(5) violence or lack of violence in the alleged commission of the offense;
(6) the nature of the offense charged, the apparent probability of conviction, and the likely sentence, insofar as these factors are relevant to the risk of nonappearance;
(7) the type of weapon used (e.g., knife, pistol, shotgun, sawed-off shotgun, assault or automatic weapon, explosive device, etc.);
(8) threats made against victims or witnesses;
(9) the value of property taken during the alleged commission of the offense;
(10) whether the property allegedly taken was recovered or not, and damage or lack of damage to the property allegedly taken;
(11) residence of the defendant, including consideration of real property ownership, and length of residence in the defendant’s domicile;
(12) in cases where the defendant is charged with a drug offense, evidence of selling or distribution activity that should indicate a substantial increase in the amount of bond;

determined that the proof is evident and the presumption great that Mr. Herrington committed the crime as charged, and denied him bail. There was no discussion on the record from the Court as to conditions of bail that would be appropriate to secure Mr. Herrington's presence in this matter despite Defense Counsel's offer to voluntarily surrender Mr. Herrington's passport, subject himself to ankle monitoring, or agree to check ins with the Sheriff's Department.¹³ Further, the Court ignored the provided letters of support submitted on Mr. Herrington's behalf, ignored the testimony of prominent citizens of Grenada County, and denied bond in a manner inconsistent with other Murder cases in this district where much more substantial evidence exists, including actual admissions and confessions.

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Consequently, petitioner is further being denied his constitutional rights of personal liberty guaranteed by Article 1, Section 9 of the United States Constitution. Therefore, his right of personal liberty guaranteed to him by Article 1, Section 9 of the United States Constitution has been violated. Since Petitioner's right of personal liberty afforded to him by both the Constitution of the State of Mississippi and the United States Constitution has been violated and his right to bail before conviction have been violated and denied, he is being wrongfully detained.

WHEREFORE PREMISES CONSIDERED, Defendant Timothy Herrington prays that:

(A) process be issued to the Sheriff of Lafayette County, Mississippi, in his official capacity, only;

(13) consideration of the defendant's employment status and history, the location of defendant's employment (e.g., whether employed in the county where the alleged offense occurred), and the defendant's financial condition;

(14) sentence enhancements, if any, included in the charging document; and

(15) any other fact or circumstance bearing on the risk of nonappearance or on the danger to others or to the public. MRCrP 8.2.

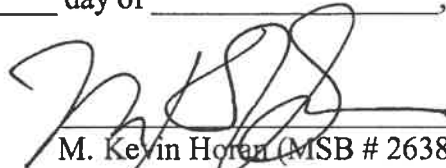
¹³*Id* at 130.

(B) this Court will issue a Writ of Habeas Corpus, allowing for his release on a reasonable bail¹⁴;

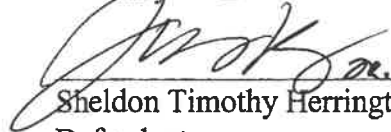
(C) this matter be set for hearing;

(D) discovery be permitted, and not limited, in this matter pursuant to Rule 26 of the Mississippi Rules of Civil Procedure, or for any additional relief as this Court may see fit.

RESPECTFULLY SUBMITTED on _____ day of _____, 20__.



M. Kevin Horan (MSB # 2638)
Attorney for Defendant



Sheldon Timothy Herrington, Jr.
Defendant


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STATE OF MISSISSIPPI
COUNTY OF GRENADA

Personally appeared before me, the undersigned notary public in and for the jurisdiction aforesaid, the within named M. Kevin Horan, who having been by me first duly sworn stated on

¹⁴“Where the application is by or on behalf of one detained on a criminal charge, the judge or chancellor, on granting the writ, may, in his discretion, require a bail bond by or on behalf of the person detained, conditioned that he shall not escape by the way. . . .” Miss. Code Ann. § 11-43-13.

his oath that he represents the Petitioner herein in connection with the foregoing Petition for Writ of Habeas Corpus, and that in his capacity as attorney for Petitioner and on his behalf, based on information and belief, the matters and things set forth in said petition are true and correct as therein stated.


M. Kevin Horan

Witness my signature and official seal of office this the 30th day of September, 2022




Notary Public