

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT
HINDS COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

PLAINTIFF

VS.

FILED

CAUSE NO. 16-1-018

PARISH, WAYNE MITCHELL

JAN 04 2017

DEFENDANT

ZACK WALLACE, CIRCUIT CLERK

~~MOTION TO SET BOND~~

COMES NOW, the Defendant, PARISH, WAYNE MITCHELL, by and through undersigned counsel of record, pursuant to the Fifth, Eighth and Fourteenth Amendments to the United States Constitution and Article 3, Section 29 of the Mississippi State Constitution, and moves this Court to set bond in this matter. In support thereof, Mr. Parish would show the following:

I. Applicable Law

In pertinent part, Article 3, Section 29 of the Mississippi Constitution provides:

(1) Excessive bail shall not be required, and 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 offense punishable by imprisonment for a maximum of twenty (20) years or more.

Article 3, Section 29 has been interpreted to provide a “non-discretionary right to bail before conviction for all offenses, except those offenses punishable by death when the proof of guilt is evident or the presumption of guilt is great.” *Lee v. Lawson*, 375 So.2d 1019, 1020 (Miss. 1979); *Ex Parte Dennis*, 334 So.2d 369 (Miss. 1976); *Royalty v. State*,

235 So.2d 718 (Miss. 1970); *Resolute Ins. Co. v. State*, 233 So.2d 788 (Miss. 1970). “Bail is a fundamental, constitutionally protected right.” *Resolute Ins. Co.*, 233 So.2d 788 (Miss. 1970).

The purpose of bail is to secure the presence of the accused at trial, not necessarily to expedite the judicial process. *Clay v. State*, 757 So.2d 236, 241 (Miss. 2000) (citing *Lee*, 375 So.2d at 1021). “The constitutional right to bail before conviction ... has been so fundamental that it is favored by the public policy of this state.” *Clay*, 757 So.2d at 241. To that end, Article 3, Section 29 further provides that “[i]n any case where bail is denied before conviction, the judge shall place in the record his reasons for denying bail. Where excessive bail is required, it is considered tantamount to a denial of bail which is in direct contradiction to Article 3, Section 29 of the Mississippi Constitution. *Clay*, 757 So.2d at 241. (Trial Judge abused her discretion in setting excessive bail beyond the means of an indigent defendant without the appropriate rationale).

The muddled exception within Section 29(1), “. . . when the proof is evident or presumption great...,” found plain expression in *Huff v. Edwards*: Before a person can be denied bail the court must find that there is proof beyond a reasonable doubt that the defendant guilty. Miss. Const. of 1890 Art. 3 § 29; *Huff v. Edwards*, 241 So.2d 654 (Miss. 1970). Generally, if a reasonable doubt or well-founded doubt of guilt can be entertained, then proof of guilt is not evident nor the presumption great and the reasonable doubt standard Mr. Parish is not require exclusion of every reasonable hypothesis of guilt. *Huff*, 241 So.2d 654 (Record providing support for finding that petitioner had motive and intent but which was silent on any connection between

petitioner and the murderer, did not warrant denial of bail on theory that proof was evident or presumption great).

It has long been recognized that “[u]nless the right to bail before trial is preserved, the presumption of innocence, secured only after centuries of struggle, would lose its meaning.” *Stack v. Boyle*, 342 U.S. 1, 72 (1951). Bail set at figure higher than an amount reasonably calculated to secure the presence of the accused at trial is “excessive under the Eighth Amendment.” *Id.* Further, with respect to the Fifth Amendment’s Due Process Clause ---applicable to the states via the Fourteenth Amendment’s Due Process Clause--- where an accused is being detained without bond (or a bond so excessive it cannot be made) on the ground that he is a danger to the community, the Fourteenth Amendment prohibits the deprivation of his liberty without due process of law.

The following factors should be considered as guidelines when determining the amount of bail:

- 1) The Defendant’s length of residence in the community;
- 2) Employment status,, history, and financial condition;
- 3) Family ties and relationships;
- 4) Reputation, character, and mental conditions;
- 5) Prior criminal record, including any record of prior release on recognizance or on bail;
- 6) The identity of responsible members of the community who would vouch for defendant’s reliability;
- 7) Nature of the offense charged, the apparent probability of conviction, and the likely sentence and,
- 8) other factors indicating the defendant’s ties to the community or bearing on the risk of

willful failure to appear. *Clay*, 757 So.2d at 240 (citing *Lee v. Lawson*, 375 So.2d at 1024).

II. Lee v. Lawson Factors Applied

1) Defendant's length of residence in the community:

- Mr. Parish currently resides in Crystal Springs in Copiah County where he owns a home for the five (5) years. He is a resident of the State of Mississippi for the last thirty-five (35) years.

2) Employment status, history, and financial conditions

- For 28 years, Mr. Parish is a co-owner of Performance Oil Equipment. Performance Oil Equipment is located at 920 E. McDowell Rd. Jackson, Mississippi 39204, in Hinds County, Mississippi. Mr. Parish expects to resume his position immediately upon release.

3) Family ties and relationships:

- Mr. Parish has a son and a daughter—both are adults living in Louisiana. Mr. Parish has 12 grandchildren. Further, Mr. Parish maintains a strong and meaningful relationship with his children and grandchildren.

4) Reputation, character, and mental condition:

- Mr. Parish's continued residency in Copiah County coupled with a sound record of mental health, further bolsters a reputation founded on hard work ethic as well as deep commitment to his job, his friends, and his employees.

5) Prior criminal record, including any record of prior release on recognizance or on bail:

- Mr. Parish has no criminal records other than in his youth, he was charged with driving under the influence.

6) The identity of responsible members of the community who would vouch for defendant's reliability:

- As previously noted, Mr. Parish enjoys the support of immediate family members and extended family members in the community who can vouch for his reliability.
- Business Partner Jimmy Ratcliff, who co-owns Petroleum Oil Equipment and has worked with Mr. Parish for over 28 years.
- Employees of Petroleum Oil Equipment.
- Other Business Owners in the Community.

7) Nature of the offense charged, the apparent probability of conviction, and the likely sentence:

- Although Murder is a serious offense, the nature of the offense is not dispositive in consideration of a bond.
- A video exists, although parts were blocked from view, but it was apparent what was taking place.
- The deceased youth, a 17-year-old boy, repeatedly tried to break into an employee's vehicle at Petroleum Oil. Mr. Parish asked the youth to just

run and leave the premises. The youth did not leave. Both Mr. Parish and the deceased tussled with the youth grabbing onto Mr. Parish. Both were holding onto the gun when it went off. From the video it appears clear that Mr. Parish had an opportunity to shoot the deceased, but he did not do so, rather the deceased ran at Mr. Parish and grabbed the gun where a struggle ensued and the deceased was shot. All of this is on video.

- It is unknown, who actually pulled the trigger.
- Upon information and belief, at the time of the incident, the youth had two warrants out for his arrest. In one incident, he was involved in police chase. Further, on the morning of the incident, the youth was involved in a house burglary and almost shot by the homeowner.

8) Mr. Parish has a recognizable defense of self-defense.

WHEREFORE, PREMISES CONSIDERED and pursuant to the Fifth, Eighth, and Fourteenth Amendments to the United States Constitution and Section 29 of the Mississippi State Constitution, Mr. Parish respectfully moves this honorable Court to set a condition of release commensurate with both the competency of the state's proof of guilt and Mr. Parish 's constitutionally protected right to release.

This the 4th day of January, 2017.

**RESPECTFULLY SUBMITTED,
PARISH, WAYNE MITCHELL, DEFENDANT**

BY: 
AMMIE T. NGUYEN

PREPARED BY:

Ammie T. Nguyen (MB #104936)
KHALAF & NGUYEN, PLLC
Post Office Box 320067
Flowood, Mississippi 39232
Tel: (601) 288-6763
Fax: 1(844) 350-8299
Ammie@601attorney.com

Mérrida (Buddy) Coxwell (MB #7782)
COXWELL & ASSOCIATES, PLLC
Post Office Box 1337
Jackson, Mississippi 39215-1337
Tel: (601) 948-1600
Fax: (601) 948-7097
Merridac@coxwelllaw.com

CERTIFICATE OF SERVICE

I, Ammie T. Nguyen, Attorney for the Defendant in the above-styled referenced matter, do certify that I have on this day mailed by United States mail, postage prepaid, and by electronic mail delivery, a true and correct copy of the foregoing *Motion to Set Bond* to the following:

Via Electronic Mail: Wkidd@co.hinds.ms.us
Honorable Judge Winston Kidd
Hinds County Circuit Court Judge
407 E. Pascagoula St.
Jackson, MS 39205

Via Electronic Mail: Swashington@co.hinds.ms.us
Honorable ADA Shaunte Washington
Hinds County District Attorney's Office
Post Office Box 22747
Jackson MS 39225

THIS, the 4th day of January, 2017.


AMMIE T. NGUYEN

PREPARED BY:

Ammie T. Nguyen (MB #104936)
KHALAF & NGUYEN, PLLC
Post Office Box 320067
Flowood, Mississippi 39232
Tel: (601) 288-6763
Fax: 1(844) 350-8299
Ammie@601attorney.com

Mérrida (Buddy) Coxwell (MB #7782)
COXWELL & ASSOCIATES, PLLC
Post Office Box 1337
Jackson, Mississippi 39215-1337
Tel: (601) 948-1600
Fax: (601) 948-7097
Merridac@coxwelllaw.com

CERTIFICATE OF SERVICE

I, Ammie T. Nguyen, Attorney for the Defendant in the above-styled referenced matter, do certify that I have on this day mailed by United States mail, postage prepaid, and by electronic mail delivery, a true and correct copy of the foregoing *Motion to Set Bond* to the following:

Via Electronic Mail: Wkidd@co.hinds.ms.us
Honorable Judge Winston Kidd
Hinds County Circuit Court Judge
407 E. Pascagoula St.
Jackson, MS 39205

Hinds County District Attorney's Office
Post Office Box 22747
Jackson MS 39225

THIS, the 4th day of January, 2017.


AMMIE T. NGUYEN