

EX PARTE DESIREE SHAW

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IN THE DISTRICT COURT
159/217TH JUDICIAL DISTRICT
ANGELINA COUNTY, TEXAS

AFFIDAVIT OF CLYDE M. HERRINGTON

STATE OF TEXAS
COUNTY OF ANGELINA

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BEFORE ME, the undersigned authority, personally appeared CLYDE M. HERRINGTON, who was sworn by me and deposed as follows:

"My name is CLYDE M. HERRINGTON. I am over the age of 18 and of sound mind and I am not disqualified from making this affidavit. I have personal knowledge of the facts asserted below and am competent to testify to those facts."

"I am District Attorney for Angelina County, Texas. I have been District Attorney since January of 1990. Desiree Shaw has made many allegations in her affidavit in support of her Writ of Habeas Corpus that are patently false. I wish to address some of those allegations.

First of all her defense attorney, John Heath, is a board certified criminal defense attorney who practices law primarily in Nacogdoches, a nearby town. Mr. Heath is one of the premier criminal defense attorneys in our area. I have dealt with him on many cases. I have tried at least one jury trial against him. He is a very capable, ethical attorney. He came to my office on a number of occasions and spent time reviewing our case file. An appointment was made and Mr. Heath examined each and every photograph, audio tape, offense report, witness statement and all the physical evidence, offense reports, etc.

Ms. Shaw also complains about the handling of the 1993 offense where she shot a pistol to threaten her ex-husband's wife. Her daughters have signed affidavits saying that the original statements given to the Sheriff's Office were false. She attributes her prosecution to the political power of her ex-husband who was at the time a county commissioner. Ms. Shaw's ex-husband, Clayton Richardson, never tried to influence me in any way to be unfair to Ms. Shaw. In fact, he was afraid that if I did too much to Desiree Shaw that his daughters would be angry at him. Also, I never made the statement "that I have a commissioner breathing down my neck."

Mrs. Richardson did want Ms. Shaw prosecuted. By firing a pistol at the time of the confrontation, Ms. Shaw scared Mrs. Richardson and a number of children who were present, very badly.

Regardless of the witness's statements, there is an item of physical evidence that is extremely compelling. A nine millimeter shell casing was recovered at the end of the Richardson's driveway where the shot was fired. Ms. Shaw's attorney prior to Mr. Heath turned over a 9 mm Ruger automatic pistol to the Sheriff's office rather than to have them execute a search warrant. The shell casing was tested and was found to have been fired by the pistol recovered from Mr. and Mrs. Shaw by the Tyler DPS Lab. The pistol was registered to Mr. Eddie Royce Shaw, Ms. Shaw's then present husband she was later convicted of killing with the exact same gun.

I reduced the charge from aggravated assault, which was the charges filed by the Sheriff's office, to reckless conduct. I felt this was appropriate because Ms. Shaw fired in the air over the Richardson vehicle and did not appear to be trying to shoot anyone.

Mr. Heath was well aware of this prior offense. He was the attorney who handled the case in court and notice was provided to him in his 404(b) request.

In her writ of habeas corpus, Desiree Shaw also claims that the state hid evidence regarding the deceased having taken vicodin. She also refers to a different alcohol level in the system of the deceased. Both of these issues are addressed in the toxicology report which is attached to Dr. James Bruce's affidavit. The blood alcohol level of the deceased was 0.01 grams per 100 milliliters of blood just as Dr. Bruce testified. The vitreous alcohol level was 0.06. This was the alcohol level in the deceased's eye fluid.

I called and talked to Glenn Harrison, Supervisor of the toxicology section of the Texas Department of Public Safety Laboratory in Austin, Texas. Mr. Harrison performed the testing on the blood sample in question. Tests for drugs in the deceased were in fact performed on both the blood and urine. If vicodin (hydrocodone) were present, it would have shown up as an opiate. No levels of drugs or medication were detected in the victim's blood or urine of any kind.

I also checked with Mr. John Heath who faxed me a copy of the toxicology report which he was provided by my office prior to trial along with the autopsy report. To my knowledge there is no evidence in the possession of my office or of law enforcement that Royce Shaw was taking vicodin. If anyone other than Mr. Shaw himself would have known, it would have been the defendant Desiree Shaw, who was married to and living with the victim.

The murder case against Ms. Shaw was prosecuted by my office and was handled by the police in a regular and professional manner. I have never to my knowledge set out to prosecute anyone including Desiree Shaw who was not guilty. I feel that the jury in Mrs. Shaw's case did exactly what was dictated by the law, the facts and the requirement for justice.

SIGNED this 15th day of April, 2003."



CLYDE M. HERRINGTON, Affiant

SWORN TO AND SUBSCRIBED before me by CLYDE M. HERRINGTON, on this the ~~15th~~ day of April, 2003.



Marilyn Manzini
Notary Public, State of Texas

(Seal)