

This is the case of:

THE STATE OF MARYLAND

VS.

JOHN HERBERT SMITH

Mr. Smith is part of Garrett County's history because he was the first person to commit murder in this county since it was formed in 1872. He was also the first person to be executed by hanging in the County.

The murder occurred on May 15, 1883, when Garrett County was only eleven (11) years old, and the offense was committed near Elkins, better known as Gorman.

Mr. Smith was a black man about 40 years old, who was born in Harrisonburg, and was sold as a slave on two different occasions in the State of Virginia. At a certain age he was allowed to leave his slave owner to live an independent life. He left home against the advice of his mother, and later he regretted ignoring her advice.

Mr. Smith appeared to be a hard worker. He was employed on the railroad in Harrisonburg, and had worked in Washington, D.C. and Baltimore for the water department. On one occasion while travelling from Washington to Alexandria, VA., he was robbed of his money, and he immediately returned to Washington, where he obtained employment lighting lamps. In 1875, he obtained employment with the Chesapeake and Ohio Railroad, and in 1881, he went to Piedmont, and in 1882, he moved to Elkins (Gorman) and obtained employment as a foreman on railroad construction.

The victim was Josiah Harden. For quite sometime the Republican newspaper referred to him as Josiah Harding. He was about 55 years old, white, married with five children, a native of Garrett County and resided in the Gorman area. He served in the confederate army and was self-employed as a shoemaker, and he was a former resident of Accident.

Mr. Harden was known to have some legal problems. He had been in jail on a charge of attempting to negotiate a forged check and escaped from jail, but he was not considered a vicious person.

Mr. Smith and Mr. Harden appeared to be friends. Smith was a frequent visitor at the Harden residence, and Harden was beginning to question why Smith was visiting his home. Later, many people believed that Mrs. Harden and her mother had encouraged Smith's visits.

On the day of the murder, which was May 15, 1883, Mr. Smith had been drinking and making threats against various people. He had told someone that he was going to leave Elkins (Gorman) the next day, but before leaving he would do something that would make the people of Elkins remember that day forever. Smith went looking for Harden. At a saloon, he approached and looked very closely at Benjamin Miller, then said, "You are not the SOB that I'm looking for". He made it quite clear that he was looking for Harden.

Upon leaving Elkins, Smith went to the Harden residence, arriving between 6:00 and 7:00 P.M., and remained there until 8:00 P.M., holding conversation with various family members. He paid Harden five cents for repairing his boots, and while there, he made a statement to Harden's son, Robert, "Your father don't like me very much". He also stated that he had a present for every member of the family, and he was going away, but would return in 30 minutes to hand out the gifts.

It appeared that Smith wanted to give a present to every member of the Harden family. He inquired as to whether Harden's oldest son and son-in-law would be home later in the evening. He was assured that these gentlemen would not be home. He continued to promise gifts, stating that he had a nice instrument in his pocket, which makes nice music, but he would not have as much fun as he expected since the Harden relatives were away.

Smith continued to be friendly and he asked Harden to have a drink of whiskey, but Harden refused by saying, "It was bed time and he wanted to go to bed". Smith encouraged him to go to bed, but Harden, using his manners, felt it wouldn't be polite to go to bed with Smith visiting his home. So, Smith left and went on his way.

About thirty minutes later, Mr. Harden was sitting with his back toward a window and his nine year old daughter was sleeping in the same room. Mrs. Harden and two other children were sitting beside Mr. Harden. Without warning, someone shot two times through the window, striking Mr. Harden. He jumped up, shook his hand, felt his shoulder and said, "Don't do that Smith. Don't do that anymore. That's enough of that". Harden feeling that his family may be in danger told them to run upstairs, and he started toward the door to confront Smith. Smith, breaking open the door met Harden and a scuffle took place. Smith fired three more shots, striking Harden in the back and neck. He was shot five times.

The family members remained upstairs, and feared for their personal safety. Mr. Harden, dying from the wounds was unable to protect his home and family. Smith realizing that he had things under his control, ran upstairs, grabbed Mrs. Harden and forced her into the woods where he raped her. Robert Harden, age 15, attempted to protect his mother, struck Smith on the head with a gun, but Smith pointed a gun at Robert and he ran back into the house.

upon Mrs. Harden's return to the house, she found her husband had died from gunshots fired by Smith.

To seek assistance she and the children hurried to a neighbors home to report the crime and to get help. Word soon spread through the community of Smith's crimes.

Several people, including law enforcement officials went to Smith's residence to arrest him for murder. They ordered him to come out of the house and he acknowledged their request and promised to come out. After waiting for a reasonable amount of time, Smith failed to come out, so several people went inside to get him. However, they were surprised to learn that Smith was not there. He had escaped by way of the chimney, and they were unable to locate him.

A discussion centered around where Smith might be hiding. The officers were aware that he had a history of criminal activity. Several months prior to the murder he had broken into a saloon and stole money and a revolver. He had stolen \$35.00 from a drunk, and later they learned that on the evening of the murder, he had stolen a check from an elderly woman who owned a confectionery store.

Smith could not be located, but the investigation continued. Authorities wasted no time in having an inquest by jury, which was conducted by Justice of the Peace Gonder, with J. Browning being the jury foreman.

The jury found Smith to be responsible for Harden's death, but he was still a fugitive and his whereabouts were unknown by officials.

On May 19, 1883, four days after the murder, Col. John Veitch, State's Attorney for Garrett County, received a dispatch from Winchester, VA., advising that a colored man had been arrested there who answered the description of Smith. However, the person denied being Smith, saying his name was Jackson. In order to establish the identity of Smith/Jackson, the State's Attorney ask Jeremiah Browning of Elkins who knew the murderer very well to go to Virginia.

Upon Browning's arrival in Winchester, he identified the arrested person as Smith. Smith denied knowing Browning and also denied ever being at Elkins.

Due to the positive identification, the State's Attorney requisitioned Smith's return by making application to Governor William Hamilton.

The murder investigation was continuing, and several days after the murder several state witnesses were brought before the Justice of the Peace. They included, Mrs. Harden, widow of the murdered

man, Robert Harden, son, age 15, Alice Harden, daughter, a Mrs. Lee and two black men who lived in the same house with Smith.

Justice Gonder required Mrs. Harden and Robert Harden to post \$300.00 bail each or go to jail until the hearing in September. Mrs. Lee was allowed to go home and ordered to appear before the September term of the Grand Jury. The two black men were ordered held on \$150.00 each. Alice Harden, age 9, had no place to stay since her father was dead and her mother and brother were committed to jail in default of bail. Justice Gonder permitted Little Alice to stay in jail with her mother and brother.

On June 5, 1883, the requisition of John Herbert Smith was received by the State's Attorney from Governor Hamilton. Sheriff Jamison did not go after Smith for four days because the jail had only one compartment and the Sheriff didn't want Smith and the witnesses together. To solve the problem, arrangements were made with the Sheriff of Allegany County to accept three witnesses, including Mrs. Harden, Robert Harden, and Mitchell Russell, who lived with Smith.

The Sheriff and State's Attorney were quite proud that witness arrangement would not cost the County tax payers any money. The Sheriff of Allegany County received 40 cents per day for boarding a prisoner and the Sheriff of Garrett County received 50 cents. As a result, Garrett County would save 10 cents per day per witness, which would more than pay for their transportation to and from Cumberland.

Enroute to Virginia, the Sheriff took the three witnesses to Cumberland, and he went to Richmond where Smith was being held.

Smith was indicted by the Grand Jury on September 12, 1883, and had a trial by Jury beginning September 18, 1883, and ended on September 21, 1883.

At the jury trial, Mrs. Harden and her two children gave testimony of events that had occurred on the night of the murder.

Smith denied the murder charge and he had been busy trying to establish an alibi. He had told Mitchell Russell that he had heard several shots fired at or near the Harden house. That he had heard the children crying and saw two men running away from Harden's house. Mr. Russell also testified that Smith had threatened to kill Harden last Spring because Harden had cheated him during a boot transaction. Smith was trying to encourage other black people in the community to lie and say they were at his house on the night of the murder playing cards and dancing, but they refused to lie for him.

After eluding police on the night of the murder, Smith encouraged other black people to take crowbars and pick handles and beat up those persons who were trying to arrest him, but the black people refused to fight his battles.

Smith had told a friend that he had killed Harden, and his only regret was that he hadn't killed Mrs. Harden because he felt no one was left who could tell the story.

In jail, another prisoner had given Smith a knife. He planned to have a successful escape from jail. To assist in the escape, he would cut the Sheriff's throat. But a prisoner who was aware of the plans informed the State's Attorney, who in turn notified the Sheriff. The Sheriff disarmed Smith. Smith wanted to escape from jail to avoid trial because he didn't want anyone making a circus out of him in Court.

Smith did not take the witness stand in his own defense, and only two witnesses were called to testify to attempt to disprove some testimony offered by the State.

The State's Attorney, Col. John Veitch, argued before the jury for 2½ hours for a conviction of first degree murder.

The two defense attorneys, Mr. H. Wheeler McCombs and Mr. T.J. Peddicord argued for three hours for an acquittal. They were competent trial attorneys and did everything possible for their client.

Mr. Peddicord, one of the defense attorney's was a relative of Chief Judge Fred A. Thayer, Circuit Court for Garrett County Maryland.

The jury arrived at their verdict in thirty minutes: Guilty of first degree murder.

After the guilty verdict was announced, Smith said, "The circus is over, next we will have a concert".

The sentencing was held on September 24, 1883. Judge Alvey ask Smith if he had anything to say. He said, "He did not receive justice and wanted a new trial. If he were guilty he would have confessed it and not gone through a trial".

If he could have gotten his witnesses it would have been different. But his witnesses were all poor and scattered working on railroads and if they would have attended the trial they would have been discharged. Smith felt the state witnesses had lied. That he didn't use bad words, that he was neither a thief, robber nor a cut throat, and it would be no more than right for the Court to order a new trial.

After Smith had taken his seat, Judge Alvey proceeded to deliver the sentence, commented upon the nature, circumstances and enormity of his crime. That Smith had but a short time to live and would soon meet his God. The Judge told Smith to obtain services of a minister, and urged him to lose no time in preparing for death, then pronounced the death sentence by hanging upon Smith.

As the Sheriff was removing Smith from the Court room, he said to the Judge, "You may hang the body but you can't hang the soul. You will be judged yourself some day". And at the State's Attorney he said, "The devil will get that States Attorney sure and certain".

On October 4, 1883, Mr. Smith escaped from the County jail. He had complained of being ill and when the jailer, James Cropp, went into the jail, Smith attacked Mr. Cropp with a bucket, and the jailer stabbed Smith on the breast with a knife during the escape process. Smith was in leg shackles at the time, but after overpowering the jailer, Smith escaped and found a hatchet on the back porch of the Sheriff's residence, and was able to cut the chain attached to the shackles. The Sheriff was downtown, and as soon as he returned, Captain Wardwell of the Garrett Guards was notified of the escape and his unit remained out all night looking for Smith. The next morning, Smith returned to the jail to surrender. He had been stabbed while escaping and he was suffering in pain, and he thought he had been seriously injured.

Dr. Bartlett examined the wound and found it not to be serious.

The death warrant fixing the date of the execution was set for Friday, November 16, 1883.

A lot of planning went into preparing for Smith's execution.

The Sheriff sought the legal advice of the Attorney General; a letter dated October 13, 1883, he made the following observations:

- The Sheriff had the authority to command as many male residents of the county as necessary to prevent Smith's escape.
- The Sheriff had the power to protect Smith until he was executed.
- The Sheriff had the power to execute Smith in the County jail if he had the space. If the jail didn't have proper space, he could enclose a yard adjoining the jail, sufficient in size to contain the scaffold and those attending, which is allowed by law, with a strong fence, high enough to

exclude the execution from outside view, and to have the fence guarded upon the outside.

To comply with the advice of the Attorney General, Sheriff Jamison had made arrangements for the Garrett Guards to be present, and built a 16 feet high fence to prevent the public from viewing the execution.

On the evening prior to the execution, Smith ate a hearty supper and was visited by Rev. Benjamin Ison of the Methodist Church of Oakland.

Smith talked freely, but felt he was an innocent man. He realized this was his last night on earth and he said he trusted in the Lord, and that he expected to go to heaven. The minister and Smith sang songs. His favorite songs were: Beulah Land, Home Over There and Rock of Ages.

The next morning - the day of the execution, Smith ate a hearty breakfast, and the Rev. Ison returned for a visit. During the visit, Smith admitted to murdering Mr. Harden. He said that he had nothing against Harden, but blamed liquor for the killing, and he had been encouraged to do it.

The Garrett Guards along with 350 people were present for the execution. Only certain people were allowed to witness the execution, such as, relatives, ministers, Sheriff, etc.

The scaffold was erected by P.A. Chisholm, who had never seen a similar structure. It was well designed and substantially built, and someone remarked that it worked like a charm. The platform was eight feet from the ground.

Smith was given an opportunity to make a statement before his death. He said, "Farewell to everybody. God bless you all. It's very hard when a man comes to die like this, but it's no difference what the death is, so the soul is ready to live with God. I am ready to die, I weep, not because I am to die, but because of the deed for which I am accused. I don't deny it. I done it -- I, John Herbert Smith. But, I was persuaded to do it, and was under the influence of liquor at the time. I have prayed God to forgive me and hope my fellow men have forgiven me". Then he said to the Sheriff, "I'm ready". Again, he said, "Goodbye and God Bless you". He expressed hope that someone would take care of his wife. It was later determined that he wasn't married, just living in a common law relationship.

Smith observed a man in front of him sobbing. He said, "Don't weep, my friend, it's all for the better".

Mr. Smith requested that one of his attorneys, McCombs be present

during the execution. The other attorney, Mr. Peddicord, was a member of the Garrett Guards and was assigned outside the jail to assist in making certain that Smith did not escape.

After the execution, Smith was buried nearby.

This ends the case of the State of Maryland vs. John Herbert Smith, Garrett County's first murderer.

Wayne Wilt
November 1989

Murder occurred on	May 15, 1883
Apprehended in Winchester, VA	May 19, 1883
Requisition from Governor Hamilton	June 5, 1883
Sheriff goes to Richmond for Smith	June 9, 1883
Witnesses to Allegany County Jail	June 9, 1883
Trial by Jury	September 18, 1883
Trial Ended (Guilty)	September 21, 1883
Sentencing	September 24, 1883
Escape from jail	October 4, 1883
Surrendered	October 5, 1883
Letter to Sheriff from Attorney General	October 13, 1883
Execution	November 16, 1883

From crime to execution - six months.