

IN THE TENNESSEE BOARD OF PARDONS AND PAROLES

In re: PHILIP WORKMAN

Death Sentence

Execution Date: April 6, 2000

POSITION STATEMENT

We cannot execute a man when (1) there exists "conscientious doubt" about whether the condemned is innocent of capital murder; and (2) we know that the only witness who testified about how the killing occurred committed perjury.

1. If The Bullet That Killed Memphis Police Lieutenant Ronald Oliver Did Not Come From Philip Workman's Gun, Workman Is Innocent Of Capital Murder

While Philip Workman was robbing a Memphis Wendy's Restaurant, an employee tripped a silent alarm. Memphis Police Officers Ronald Oliver, Aubrey Stoddard, and Stephen Parker responded. When Workman walked out of the Wendy's, Oliver approached him. Workman attempted to run, and Oliver died from a through and through gunshot wound to his chest.

Under Tennessee law, for Workman to be guilty of felony-murder, a capital offense, the bullet that killed Oliver must have come from Workman's gun or from the gun of another acting in concert with him. State v. Farmer, 296 S.W.2d 879, 883 (Tenn. 1956); Woodruff v. State, 51 S.W.2d 843, 845 (Tenn. 1932); State v. Severs, 759 S.W.2d 935, 938 (Tenn.Crim.App. 1988). Because there is no evidence that Workman had an accomplice, if the bullet that killed Oliver did not come from his gun, Workman is innocent of capital murder.

2. To Establish That Workman Committed Capital Murder And Should Be Executed, The State Presented Harold Davis's Testimony

At Workman's trial, only Harold Davis claimed to know who shot Oliver and how he was

shot.

Davis claimed that after he parked his car on the vacant Wendy's parking lot, he saw a white male leave the Wendy's building. Davis then testified in detail to events he supposedly witnessed thereafter:

A I heard the policeman tell (the white male) to hold it, and they started struggling. Then this other policeman came up and started struggling with them. When he - I saw the other policeman who came in on the other side, he got shot and spun away and I saw a gun and I saw a white male shoot the policeman who fell back and drew his revolver and started shooting. I saw the white male running away shooting back.

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Q [C]ould you describe to us in the greatest detail that you can what happened between Lieutenant Oliver and the shooter?

A Well, I saw the police officer trying to grab the arm that had the gun, but he didn't quite get a hold of it ....

Q Where was the pistol at when the shooter shot Lieutenant Oliver?

A It was in his hand.

Q Where was his hand at in relation to Lieutenant Oliver's body?

A I guess it was around chest height or stomach height.

Q How far was the muzzle, the end of the pistol where the bullet comes out, from the body of Lieutenant Oliver?

A No more than two or three feet at the most.

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Q How far was your car parked from where these people - where the struggle began?

A No more than ten feet at the most.<sup>1</sup>

To emphasize Davis's testimony, the prosecution had him step down from the witness

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<sup>1</sup> TR 655-56, 664 (Davis Testimony) (Appendix filed in support of Workman's Request For Hearing ("App.") at 001-002, 006).

stand and act out the events he supposedly saw.<sup>2</sup>

At closing argument, the prosecution relied on Davis's testimony to have the jury find not only that Workman shot Oliver, but that Workman did so in a cold, calculating, manner.

Harold Davis had pulled up to get something to eat and was getting out of his car and he virtually saw the whole thing. And what did Mr. Davis say in regards to the tussle that he saw take place? Mr. Stoddard gets shot and spins away, Lieutenant Oliver and the defendant.

Was it a thing where they were wrestling over this pistol? No. Was it a thing where the Lieutenant was trying to get the pistol away and there's an accidental discharge. No.

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<sup>2</sup> TR 656-57 (Davis Testimony) (App. at 002-003).

[From] approximately two feet away is what I believe Mr. Davis said and a shot was fired. **He coolly and deliberately pulled this trigger and sent the bullet down this barrel and into the body of that man right there.**<sup>3</sup>

The jury credited Davis's testimony and sentenced Workman to death.

3. Harold Davis Committed Perjury

3.1 Vivian Porter Swears That Harold Davis Was With Her The Night Oliver Was Shot

On September 24, 1999, Vivian Porter told counsel representing Workman that the night Oliver was shot, Davis was with her in a car near the Wendy's Restaurant. Ms. Porter stated that a policeman pulled that car over, and before he could approach Ms. Porter and Davis, he got another call and sped off. Ms. Porter and Davis then caught their breath and drove past the Wendy's Restaurant where the crime scene had been roped off and numerous police cars were parked. Ms. Porter swears that neither she nor Davis went onto the Wendy's parking lot and neither saw what had just happened there. It was only later that night they learned through news reports that a police officer had been killed.<sup>4</sup>

3.2 **Davis Has Twice Recanted His Testimony That He Saw Workman Shoot Oliver**

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<sup>3</sup> TR 1056-57 (Prosecution Closing Argument-emphasis added) (App. at 007-008).

<sup>4</sup> 9/24/99 Affidavit of Vivian Porter (original filed in Tennessee Supreme Court) (App. at 009).

After obtaining Ms. Porter's statement, counsel tracked down Davis at a Motel 6 in Phoenix, Arizona. When informed of Workman's pending execution, Davis admitted that he did not see Workman, or anyone else, shoot Oliver.<sup>5</sup> He claimed that as he drove past the Wendy's Restaurant, he saw a struggle through his rearview mirror. He stated that while he heard shots fired, he did not see who fired the shots or if those shots hit anybody.

A month and a half later, counsel learned that Davis was incarcerated on petty charges in an Arizona county jail. Counsel located Davis and confronted him with inconsistencies in his previous statement. Davis now claimed that he heard gunfire as he drove to a friend's home in the vicinity of the Wendy's Restaurant. Davis again stated that while he heard gunfire, he did not see who fired the shots or if those shots hit anybody.<sup>6</sup>

### **3.3 Police Documents Confirm What Porter And Davis Now Tell Us: Davis Was Not Present At The Scene Of The Oliver Shooting**

Workman acknowledges that the statements by Vivian Porter and Harold Davis are inconsistent. While Porter swears that Davis was with her, Davis says he was driving near the Wendy's Restaurant when he heard gunfire. The Porter and Davis statements are consistent, however, on the core fact that Davis was not present at the Oliver shooting. This core fact is confirmed by evidence that while Davis testified that he remained at the scene of the Oliver

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<sup>5</sup> 10/26/99 Tennessean Article (App. at 010-012).

<sup>6</sup> 11/29/99 Tennessean Article (attached Appendix (App.2") at 147).

shooting as a “bunch” of police officers arrived:<sup>7</sup>

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<sup>7</sup> TR 662 (Davis Testimony) (App. at 004).

- a every civilian and police eyewitness to events before, during, and immediately after the Oliver shooting did not see Davis or any car that could have belonged to him;<sup>8</sup>
- b. contemporaneous police reports listing witnesses to events surrounding the shooting do not mention Davis;<sup>9</sup>
- c. the crime scene diagram reflects that no vehicle was parked on the Wendy's lot in the place where Davis claimed he parked his car;<sup>10</sup> and
- d. Davis did not attend a lineup held upon Workman's capture which every available witness attended.<sup>11</sup>

Statements from police officers, statements from disinterested eye-witnesses, and police documents confirm what Vivian Porter and Harold Davis now tell us: Davis was not present at the Oliver shooting.

### **3.4 New Scientific Evidence Confirms That Harold Davis Could Not Have Seen Workman Shoot Oliver**

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<sup>8</sup> Joint Appendix filed in the United States Court of Appeals for the Sixth Circuit ("J.A.") at 1066 (Steve Craig Declaration) (App. at 013); 1074 (Kerry Kill Declaration) (App. at 016); 1069 (Garvin Null Declaration) (App. at 017); 1459 (Parker Testimony) (App. at 018); 1490 (Stoddard Testimony) (App. at 019); 1408B (T. L. Cobb Testimony) (App. at 020).

<sup>9</sup> J.A. at 961-71 (Supplementary Offense Reports) (App. at 021-031).

<sup>10</sup> J.A. at 973-74 (Crime Scene Diagram) (App. at 032-033).

<sup>11</sup> J.A. at 976-77 (Line Up Report) (App. at 034-035).

As a member of the Los Angeles County Coroner's Office, Dr. Cyril Wecht investigated the Robert F. Kennedy assassination, the Sharon Tate/LaBianca murders, and the Symbionese Liberation Army.<sup>12</sup> As a member of the United States Select Committee on Assassinations, he investigated the shootings of John F. Kennedy, Robert Kennedy, and Dr. Martin Luther King.<sup>13</sup> Since 1973 Dr. Wecht has served as the Chairman of Pathology for a large Pittsburgh, Pennsylvania, hospital, and has been its Chief Pathologist.<sup>14</sup>

Dr. Wecht reviewed evidence that .45 caliber hollow-point bullets were in Workman's gun the night of the incident and that Oliver died from a through-and-through shot that left an exit wound slightly smaller than the entry wound. On April 5, 1999, Dr. Wecht issued a report ("Wecht Report") which provided the following opinion:

based on the path that the bullet took, the fact that the bullet exited the body, and the fact that Mr. Workman was using a .45 caliber pistol loaded with aluminum jacketed, hollow-point bullets, I do not believe that it was Mr. Workman's gun that fired the shot that fatally wounded Officer Oliver.<sup>15</sup>

4. No Court Has Taken Evidence On Whether Workman Is Innocent Of Capital Murder And His Conviction And Death Sentence Are A Product Of Perjury

At Workman's trial, his attorneys presented no evidence that the fatal bullet could not have come from Workman's gun, and he was therefore innocent of capital murder. They presented no evidence that Harold Davis was not present at the scene of the Oliver shooting.

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<sup>12</sup> Curriculum Vitae (App. at 060).

<sup>13</sup> Id.

<sup>14</sup> Curriculum Vitae (App. at 049).

<sup>15</sup> Wecht Report at 7 (App. at 044).



Rather, they informed Workman that the jury was going to find him guilty of felony-murder and they would fight for Workman's life at the sentencing hearing. Remarkably, when the jury convicted Workman of first-degree murder as expected, the attorneys presented no evidence at that hearing.

In a 1991 State post-conviction proceeding, Workman began asserting that he did not fire the bullet that killed Oliver, and Davis lied at his trial. Because Workman made these assertions in a second attempt at obtaining post-conviction relief, the trial court held that procedural rules precluded it from holding an evidentiary hearing.<sup>16</sup> Tennessee's Court of Criminal Appeals affirmed the trial court's denial of a hearing, and the Tennessee and United States Supreme Courts denied Workman's requests for discretionary appeals.<sup>17</sup>

In 1994, Workman filed a federal habeas corpus petition reiterating his contentions that he did not fire the fatal bullet and Davis lied when he claimed that he saw Workman shoot Oliver. The United States District Court for the Western District of Tennessee denied relief without holding an evidentiary hearing, and the United States Court of Appeals for the Sixth Circuit affirmed.<sup>18</sup> While the Sixth Circuit had "no doubt" that if one of Workman's bullets had emerged intact from Oliver's body the exit wound would have been larger than the entry wound, it speculated that the fatal bullet may have fragmented.<sup>19</sup> On rehearing, Workman pointed out

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<sup>16</sup> 3/20/92 Findings of Fact and Conclusion of Law and Order (App. at 093-096).

<sup>17</sup> Workman v. State, 868 S.W.2d 705 (Tenn.Crim.App. 1993), perm. app. denied 11/29/93, cert. denied, 510 U.S. 1171 (1994).

<sup>18</sup> Workman v. Bell, 160 F.3d 276 (6th Cir. 1998) (App. at 097-109).

<sup>19</sup> Id., 160 F.3d at 284-85 (App. at 100).

that everyone, even the State's pathologist at trial, agrees that the fatal bullet left Oliver's body intact. The Court responded by expressing no opinion on whether Workman is innocent of felony-murder and recommending that Workman seek Clemency from Tennessee's Governor.<sup>20</sup> The United States Supreme Court denied Workman's request for a discretionary appeal.<sup>21</sup>

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<sup>20</sup> 5/10/99 Order (App. at 036-037).

<sup>21</sup> Workman v. Bell, 120 S.Ct. 573 (1999).

After the Sixth Circuit affirmed the trial court's order denying Workman an evidentiary hearing, Workman obtained (1) the Wecht Report; (2) the Vivian Porter statement; and (3) statements from Davis that he did not see Workman, or anyone else, shoot Oliver. While Workman now had compelling new evidence, the only vehicle he had left to present that evidence was a response he filed in the Tennessee Supreme Court asking that Court to refrain from setting an execution date. The Court ruled that it could not consider Workman's evidence, and it set an April 6, 2000, execution date.<sup>22</sup>

5. The Victim's Daughter, Five Trial Jurors, A Tennessee Supreme Court Justice, And Tennessee's Largest Newspaper Agree: Workman Should Not Be Executed

Lieutenant Oliver left behind a daughter, Paula Dodillet. Ms. Dodillet was eleven years old when her father died. She regrets not having him around as she grew, and she regrets that her son will not get to know Lieutenant Oliver as a grandfather. Yet, even with these misgivings, Ms. Dodillet is troubled by the doubts that surround the process that condemned Workman to die. She does not want to see Workman executed - she asks that Governor Sundquist commute Workman's death sentence.<sup>23</sup>

This past summer, counsel for Workman spoke with eight of the original twelve jurors who served on Workman's jury. Counsel showed them expert reports, including the Wecht Report, which concludes that the bullet that killed Lieutenant Oliver did not come from Workman's gun. Seven of the eight jurors agreed that these reports raise doubt about whether Workman shot Oliver. Five of them went further - they signed sworn statements that had the

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<sup>22</sup> 1/3/00 Order (App. at 110-13).

<sup>23</sup> Exhibit 1 to Request For Hearing (Videotape of Paula Dodillet Statement).

expert reports been presented at Workman's trial, they would not have convicted Workman of first-degree murder.<sup>24</sup> Four of them now specifically ask that Governor Sundquist commute Workman's death sentence.<sup>25</sup>

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<sup>24</sup> 6/10/99 Affidavit of Wardie Parks (App. at 114-15); 6/10/99 Affidavit of Annie Meeks (App. at 116-17); 6/14/99 Affidavit of Larry Townsel (App. at 118-19); 6/23/99 Affidavit of Linda Springfield (App. at 120-21); 9/25/99 Declaration of Cynthia Kay Taylor Marshall (App. at 122-23).

<sup>25</sup> Letter to the Honorable Don Sunquist (App. at 141).

In a Response to the State's motion asking the Tennessee Supreme Court to set an execution date, Workman submitted the Wecht Report, the statement of Harold Davis, that he committed perjury at Workman's trial, and the statement of Vivian Porter that Davis was with her the night of the Oliver shooting. While the Tennessee Supreme Court set an April 6, 2000, date, one Justice was clearly disturbed by what he saw. In a dissenting opinion Justice Birch wrote that it was his duty to recommend that Governor Sundquist grant Workman clemency.<sup>26</sup>

Three days after the Tennessee Supreme Court set Workman's April 6, 2000, execution date, Tennessee's largest newspaper, The Tennessean, ran its editorial "A Sentence Of Life For Philip Workman." The Tennessean noted that even though the Court set an execution date, one Justice recommended that Governor Sundquist grant Workman clemency, another had grave misgivings that Workman deserved the death penalty, and another believed that he should refrain from recommending clemency because a law that allows for such a recommendation is outdated. The Tennessean concluded

The result is a jumbled picture .... Too many questions remain about the Workman case. Too many doubts remain about precisely what happened during the crime. It makes no sense to follow through on an April 6 execution date given what is known and unknown about the case.

The Supreme Court's hands were tied, but the governor's are not. **As a matter of law and morality, Workman's sentence should be commuted to a life term.**<sup>27</sup>

6. Under Less Compelling Circumstances, One Of Tennessee's Greatest Governors

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<sup>26</sup> 1/3/00 Separate Order Concurring In Part And Dissenting In Part (App. at 142-44).

<sup>27</sup> 1/6/00 Editorial (App. at 145-46) (emphasis added).

### Commuted Two Death Sentences

In 1924, Governor Austin Peay considered a commutation request by Joe Bailey. Bailey and another, Williams, were involved in the shooting death of a police officer. While the Tennessee Supreme Court found that the record established that Bailey fired the fatal shot, Governor Peay noted that a possibility remained that Williams, not Bailey, may have fired the fatal shot. In the words of Governor Peay, "While that conscientious doubt exists I cannot permit the life of this man to be taken." Governor Peay accordingly commuted Bailey's death sentence to life imprisonment.<sup>28</sup>

Three years later, Governor Peay considered the commutation request of Paul Reckard. Governor Peay granted that request because ten of the original trial jurors asked him to do so. In the words of Governor Peay

The Governor feels constrained to follow the course indicated by the trial jurors who were responsible for imposing the extreme penalty and commute his sentence to that of life imprisonment ....<sup>29</sup>

In Workman's case there is "conscientious doubt" about whether Workman fired the fatal shot. Such doubt alone moved Governor Peay to spare a condemned man's life. In Workman's case, a group of the original trial jurors request that Governor Sundquist commute Workman's death sentence. Such a request alone moved Governor Peay to commute another death sentence. Yet in Workman's case there is more. The only witness who claimed to have seen who shot Oliver and how he was shot committed perjury. And the victim's daughter, a Tennessee

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<sup>28</sup> 5/27/24 Commutation (App.2 at 155).

<sup>29</sup> 5/19/27 Commutation (App.2 at 156).

Supreme Court Justice, and Tennessee's largest newspaper ask that Governor Sundquist commute Workman's sentence. The Board and Governor Sundquist should follow Austin Peay's lead by recognizing that under these circumstances, it cannot permit Workman's life to be taken.

7. Conclusion

Governor Sunquist bears the burden of deciding whether Philip Workman will live or die. There is no margin for error. Because there exists the possibility that Workman is innocent of capital murder, and because Harold Davis committed perjury at Workman's trial, the Governor should commute Workman's death sentence. That is the only way to ensure that history will not record Tennessee's first execution in forty years as a catastrophic mistake.

Respectfully submitted,

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### CERTIFICATE OF SERVICE

I certify that on February 28, 2000, I

transmitted by facsimile a copy of the foregoing to John Campbell, Esq., at 901.545.3937;  
and

placed in the United States mail, first class postage prepaid, a copy of the foregoing  
addressed to John W. Campbell, Assistant District Attorney, 201 Poplar Avenue, Suite  
301, 38103.

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