

EXECUTION DATE: 1/31/01 1:00 a.m.

No. 00-7620

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2000

PHILIP RAY WORKMAN,
Petitioner,
v.
RICKY BELL, Warden,
Respondent

**ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

**REPLY TO
RESPONDENT'S BRIEF IN OPPOSITION**

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INTRODUCTION

Seven (7) circuit judges believe Philip Workman can establish that he is innocent of capital murder. The State's attempt to discount these opinions mischaracterizes Workman's claims and the evidence that supports them.

THE SOLE "WITNESS" TO THE OLIVER SHOOTING COMMITTED PERJURY

The State characterizes as "incredible" Philip Workman's assertion that Harold Davis saw nothing.¹ The only thing the State cites, however, to support its claim that Davis saw the Oliver shooting is Davis's perjured testimony.² Lies do not establish truth. Vivian Porter's sworn statement,³ sworn statements from disinterested eyewitnesses at the scene,⁴ and contemporaneous police reports⁵ establish the truth - Davis was not there.

POLICE OFFICERS OTHER THAN OLIVER FIRED WEAPONS

While Officers Stoddard and Parker claimed at trial that they did not fire

¹ Respondent's Brief In Opposition, No. 00-7621, at 21-22, 23.

² See Respondent's Brief In Opposition, No. 00-7621, at 3; No. 00-7620 at 2.

³ Appendix filed in support of No. 00-5367 (App.) at 27 (9/24/99 Affidavit of Vivian Porter).

⁴ Joint Appendix filed in No. 96-6652 (J.A.) at 1066 (Steve Craig Declaration); 1069 (Garvin Null Declaration); 1074 (Kerry Kill Declaration); 1459 (Police Officer Parker Trial Testimony); 1490 (Police Officer Stoddard Trial testimony).

⁵ J.A. at 961-71 (Police Reports).

weapons, (1) the original police report states that “officers” (plural) fired weapons, and it specifically names Parker as a shooter;⁶ (2) a disinterested witness at the scene swears that Parker fired a shotgun;⁷ and (3) while Oliver fired a pistol, shotgun pellets were removed from Workman’s buttocks.⁸

WORKMAN NEVER SAID HE SHOT OLIVER

The trial transcript belies the State’s claim that “petitioner himself admitted during his trial testimony that he shot Lt. Oliver.”⁹ At trial, Workman acknowledged firing his gun twice. He testified that he did not know whether the first shot hit anybody.¹⁰ Workman testified that he fired the second shot toward an unknown person *who first shot at him*.¹¹ Oliver, however, did not fire a shot until *after* he himself was shot.¹² Workman’s testimony is thus in no way an admission that he shot Oliver. Rather, it is evidence that Officer Stoddard fired a shot at Workman that hit Oliver.

⁶ J.A. at 960 (Original Police Report)

⁷ J.A. at 1066 at ¶5 (Steve Craig Declaration).

⁸ J.A. at 957 (Emergency Room Treatment Records).

⁹ Respondent’s Brief In Opposition, No. 00-7621, at 22.

¹⁰ J.A. at 1515 (Workman Testimony).

¹¹ Id.

¹² T.R. 1057 (Prosecutor’s Closing Argument)(attached).

WORKMAN SUBPOENAED THE OLIVER X-RAY

Remarkably, the State proposes that Workman “has previously shown little interest” for the Oliver x-ray,¹³ and that “the ... x-ray could have been discovered previously by petitioner had he only inquired.”¹⁴ Workman expressed an interest in the x-ray, and he inquired of it, *by serving a subpoena* specifically commanding the production of any x-ray taken of Oliver’s body.

CONCLUSION

Newly discovered evidence establishes that (1) Workman did not shoot Oliver; and (2) the only witness who claimed to see Workman do so saw no such thing. Because executing Workman under these circumstances would be intolerable, this Court must intervene.

Respectfully submitted,

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¹³ Respondent’s Brief In Opposition, No. 00-7621, at 23;

¹⁴ Id. at 17.

CERTIFICATE OF SERVICE

I certify that on January 22, 2001, I hand-delivered a copy of the foregoing
to:

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