

IN THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE

STATE OF TENNESSEE,

v.

No. B81209

PHILIP R. WORKMAN

Defendant.

AFFIDAVIT OF ROBERT L. HUTTON

Comes now your Affiant, and does declare under oath as follows:

1. My name is Robert Louis Hutton. I am an adult resident citizen of Memphis Shelby County Tennessee, and I am a licensed practicing attorney.

2. On March 28, 2001, I filed a Petition for Writ of Error Coram Nobis in the Criminal Court of Shelby County, seeking relief for Mr. Philip Workman.

3. On March 30, 2001, the Supreme Court of Tennessee reversed this Court's denial of a Petition for Writ of Error Coram Nobis.

4. A Petition for Rehearing in the Tennessee Supreme Court was timely filed by certified mail return receipt requested on Monday April 9, 2001.

5. This Court conducted a scheduling conference on Monday April 9, 2001, at which time over defense objection, the court set the hearing on the Petition for Writ of Error Coram Nobis for Monday April 23, 2001.

6. There is absolutely no way I can adequately prepare to represent Mr. Workman in a Petition for Writ of Error Coram Nobis in the 13 days the court has given me to prepare.

7. I have currently pending a case styled Little v. Shelby County, Docket Number 96-2520, in the United States District Court for the Western District of Tennessee, Western Division. A hearing is currently scheduled for Friday April 20, 2001, before the Honorable Jon Phipps McCalla with respect to that case. Simply put, Little involves an order granting injunctive relief for the class of inmates in the Shelby County Jail, entered due to the failure of the Shelby County Sheriff, and the County to protect inmates from physical and sexual

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assault. By order dated December 22, 2000, the Honorable Jon Phipps McCalla found the County and Sheriff in contempt of court. A hearing is set for April 20 to determine how to remedy the contempt.

8. In all likelihood, the hearing in Federal Court will continue until Monday April 23, 2001, making it impossible for me to be present on April 23. However, even if the hearing does not continue until April 23, I will need to spend a substantial amount of time reviewing voluminous documents, and taking depositions in order to prepare for the case. The County's remedial plan was not filed until Monday April 9, and the trial court has granted me leave to take depositions of the County's experts in preparing for the hearing.

9. Obviously if I am preparing for the Shelby County Jail hearing, I cannot be preparing for a hearing on Mr. Workman's Petition for Writ of Error Coram Nobis.

10. Additionally, I have a brief due in the Tennessee Supreme Court in the Capital Case of State of Tennessee v. Richard Austin, which is due April 28. This will require a substantial amount of preparation as well.

11. Simply put, with my other commitments as an attorney, there is simply no way I can properly prepare for a hearing with less than two weeks notice. Furthermore, to go forward with such short notice would in essence constitute malpractice.

12. It would be humanly impossible to locate witnesses, their whereabouts and commitments being presently unknown and secure their attendance by the April 23 date. It is common knowledge that forensic and ballistics experts must coordinate their previous commitments with this matter in order to ensure their opportunity to review materials and make arrangements to come to Memphis on the date or dates they will be called, all of which requires some reasonable calculation of the time to be consumed by the hearing. Additionally, Dr. Cyril Wecht and Dr. Werner Spitz were both contacted today, neither of which would be available the week of April 23, due to prior commitments.

13. Mr. Harold Davis, a critical witness is believed to currently be residing outside the State of Tennessee. In order to secure his attendance, I will have to file a "Petition to Secure Attendance of Out of State Witness," pursuant to T.C.A. §40-17-201 once Mr. Davis is located. Litigation would need to be commenced in the state where Mr. Davis is

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found to secure his attendance. There is in my professional judgment no way this can be accomplished by Monday April 23. Additionally, subpoenas would need to be issued to be served by the Sheriff's Department upon various other witnesses. Typically the Sheriff's Department requests 30 days to serve subpoenas. Consequently there is insufficient time to secure critical witnesses and prepare a defense for Mr. Workman.

Further affiant saith not.

Robert L. Hutton  
ROBERT L. HUTTON

Sworn to and subscribed before me this the 10<sup>th</sup> day of April, 2001.



Denise M. Cohen  
Notary Public