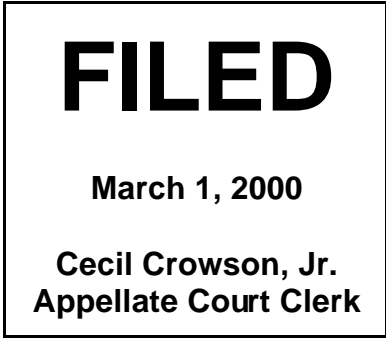


IN THE SUPREME COURT OF TENNESSEE
AT JACKSON¹



STATE OF TENNESSEE,)
Appellee,)
V.) W1998-00679-SC-DDT-DD
FARRIS MORRIS, Jr.,) **EXPEDITED ACTION REQUESTED**
Appellant,)

PHILIP R. WORKMAN’S MOTION TO INTERVENE

Petitioner, a death sentenced inmate scheduled to be executed on April 6, 2000, respectfully moves this honorable Court to intervene as a party in the case of State v. Farris Morris (Sup. Ct. No. W1998-00679-SC-DDT-DD) pursuant to Tennessee Rules of Appellate Procedure 19 (e). This Court recently requested briefing in that case on, *inter alia*, the issue of whether electrocution constitutes cruel and unusual punishment. *See* attached Order dated January 10, 2000 at Appendix A1.

Petitioner was presented with and refused to sign a waiver form that would allow him to be executed by means of lethal injection. *See* Waiver at Appendix A2. He refused to sign the waiver, because he felt that doing so would violate his sincerely held religious beliefs. *See* Workman Affidavit at Appendix A3. Petitioner seeks only to intervene with regards to that issue on the grounds that his scheduled execution by means of electrocution establishes that he has an

¹This case is currently docketed in Jackson. However, counsel for the movant is filing this motion in Nashville pursuant to an order of this Court to file all future pleadings on behalf of Mr. Workman with the Clerk’s Office in Nashville.

undeniable interest in the outcome of that litigation.

Petitioner further requests that this Court allow him to become a party to the action and permit him to submit a brief on the issue of whether electrocution violates the prohibition against cruel and unusual punishments and be heard on the issue in oral argument for the case.

Respectfully submitted on this _____ day of March 2000,

Marjorie A. Bristol, BPR# 19998
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460 James Robertson Pkwy.
Nashville, TN 37243
(615) 741-9331
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CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing motion was served by prepaid postage U.S. Mail on this _____ day of _____ 2000 to Attorney General Paul G. Summers, 425 Fifth Ave. N, 2nd FL, Nashville, TN 37243.

Marjorie A. Bristol

IN THE SUPREME COURT OF TENNESSEE
AT JACKSON

STATE OF TENNESSEE,)	
Appellee,)	
)	
V.)	W1998-00679-SC-DDT-DD
)	<i>EXPEDITED ACTION REQUESTED</i>
FARRIS MORRIS, Jr.,)	
Appellant,)	

**MEMORANDUM OF LAW IN SUPPORT OF
PHILIP R. WORKMAN'S MOTION TO INTERVENE**

I. INTRODUCTION

Philip Workman is currently scheduled to be executed on April 6, 2000. On March 1, 2000, he was presented with a form on which to Elect the Method of his Execution by the Tennessee Department of Corrections (TDOC). Form dated March 1, 2000 at Appendix A2. This form would have allowed Mr. Workman to “elect”, pursuant to Tenn. Code Ann. § 40-23-114, the method to be used by the State of Tennessee to execute him—either electrocution or lethal injection.

Mr. Workman refused to sign the form allowing him to elect his method of execution, because he adheres to sincerely held religious beliefs which preclude him from participating in the taking of a human life and felt that signing the form would be participating in and sanctioning the process of taking a human life. Workman Affidavit at Appendix A3. Since Mr. Workman refused to opt for execution by lethal injection, he is now set to be executed by electrocution. Tenn. Code Ann. § 40-23-114.

On January 10, 2000, this Court entered an order in State v. Morris requesting briefing on, *inter alia*, the issue of electrocution and whether it is a cruel and unusual

punishment. (Sup. Ct. No. W1998-00679-SC-DDT-DD) at Appendix A1. That case is currently docketed for oral argument in April after briefing is complete. *Id.* Mr. Workman is now moving this Court to allow him to intervene in that case on the electrocution issue since he, above all others, has a substantial interest in the outcome of the litigation and should be allowed to brief the issue for the Court and be heard in argument to protect that interest. He is also asking that this Court grant him a stay of execution pending the resolution of this issue.

II. PHILIP WORKMAN IS NOW SCHEDULED TO BE EXECUTED BY ELECTROCUTION AFTER REFUSING TO ELECT BETWEEN LETHAL INJECTION AND ELECTROCUTION BECAUSE OF HIS SINCERELY HELD RELIGIOUS BELIEFS

Philip Workman was convicted of first-degree felony-murder and sentenced to die in 1981. Mr. Workman was convicted of killing Lt. Ronald Oliver, a Memphis Police Officer following a robbery of a Wendy's Restaurant.

During his time on death row, Mr. Workman has experienced a sincere spiritual transformation. He is now a devout Christian and a member of the Seventh Day Adventist faith. Workman Affidavit at Appendix A3 and Sullivan Affidavit at Appendix A4. Mr. Workman's religious beliefs include the tenet that all life is sacred and should be preserved. Appendices A3 & A4.

The law governing the method of execution used in Tennessee changed in January 1999 allowing Mr. Workman to opt for execution by lethal injection instead of electrocution. Tenn. Code Ann. § 40-23-114. Mr. Workman knew under the law that he would be required to make an affirmative choice if he wanted to be executed by lethal injection, the supposed more humane way to die of the two.

He began to pray about and reflect upon the decision, discussing it at length with the pastor of his church. Appendices A3 & A4. He wanted to act in a way that would reflect his sincerely held religious beliefs. Appendix A3. He, thus, decided not to sign the form allowing him to be executed by means of lethal injection. Appendix A2. His refusal to sign the waiver form was solely the product of his expression of his religious convictions. Appendices A2 & A3. He is, therefore, set to be executed on April 6, 2000 by means of electrocution.

II. LAW AND ARGUMENT

Tennessee Rule of Appellate Procedure 19 (e) provides that this court may allow “[p]arties [to] be added or dropped . . . on such terms as are just.” Here, justice demands that Mr. Workman be allowed to join in the litigation in the Morris case to protect his interest in the outcome.

A. Mr. Workman has an undeniable and overwhelming interest in the Court’s decision concerning electrocution and should be allowed to intervene in order to avoid a gross miscarriage of justice.

It would be an unforgivable miscarriage of justice for this Court to allow Mr. Workman to be electrocuted on April 6 and turn around less than a week later and declare that means of execution unconstitutional.² Accordingly, Mr. Workman should be allowed to intervene as a party in the Morris case and receive a stay of execution until this matter is resolved.

Mr. Morris’ attorneys will brief this Court on the issue of whether electrocution is

² State v. Morris is currently set for oral argument on the Court’s April docket in Jackson. Order dated February 11, 2000 at Appendix A5. Counsel for the movant spoke with the Clerk’s office in Jackson and was informed that the Court would be in Jackson on April 11, 12, and 13.

still viable as a constitutionally permissible means of execution or whether it violates both the state or federal prohibitions against cruel and unusual punishments. Mr. Morris is presenting these issues on direct appeal. He is years away from execution. Mr. Workman is scheduled to be executed by electrocution on April 6, just a matter of days after this Court is set to hold oral argument on the issue of electrocution in Mr. Morris' case.

Mr. Workman should be allowed to intervene in order to protect his interest in the litigation. Mr. Workman's interest in the litigation of this issue is both more paramount and immediate than Mr. Morris'. Mr. Workman's execution is imminent. His interest in fully litigating the matter is far more dire than that of Mr. Morris. To deny Mr. Workman the opportunity to be heard on the issue would be unconscionable.

B. If allowed to intervene, Mr. Workman will show that more than enough evidence exists to compel this Court to appoint a Special Master to hold an evidentiary hearing on the issue of whether electrocution is cruel and unusual punishment.

Were this Court to allow Mr. Workman to intervene, he would join Mr. Morris' position that this Court should appoint a Special Master to hear evidence and make factual findings concerning electrocution as a means of execution and Tennessee's electric chair in particular. During the course of such a hearing, Mr. Workman is fully prepared to present evidence demonstrating, but not limited to, the following:

1. Fred A. Leuchter designed and installed Tennessee's electric chair in 1989.

Appendix A6, 283.

2. In April 1994, Michael S. Morse, Ph.D., examined Tennessee's electrocution system and found that it did not deliver an adequate current for conducting a proper execution or have the ability to do so. Appendix A6, 230-34.

3. Dr. Morse recommended that certain changes be made to ensure that the system functioned properly during an execution, including eliminating all contact of the electrodes with skin, replacing the electrical box at the base of the chair, and modifying the electrical system. Appendix A6, 230-34.

4. Dr. Morse also made some suggestions that were not implemented, including changing the system from using electrodes on both legs to just using one electrode on one leg and installing a chart recorder to accurately measure the current and voltage delivered to the chair. Appendix A6, 230-34.

5. Jay Wiechert, a professional engineer from Arkansas, was hired to implement the changes called for by Mr. Morse. When Mr. Wiechert tested the electric chair in April 1994, the system failed to deliver enough electricity to the chair adequate to conduct an execution. Appendix A6, 278.

6. Mr. Wiechert then made additional recommendations for correcting the problems with the electrocution system, including moving the power supply so that the executioner can view the ammeter, adding a disconnect switch as a safety precaution, and replacing the ammeter. Appendix A6, 270-71.

7. By 1996, the following changes to the electrocution system had been completed: the components for the system were consolidated in the Executioner's Room, the circuit breaker was eliminated to allow enough power to flow to the chair, the current regulation circuitry was changed to allow more amperes to flow to the chair, and the automatic timing cycle was adjusted. Appendix A6, 270-71.

8. Sometime before 1996, Fred Leuchter and Associates sold the rights to their execution technology to JVM Industries, Inc. JVM Industries, Inc. assumed all guarantees

to Leuchter's previous designs and installations, including the Tennessee electrocution system. Appendix A6, 259-60.

9. JVM Industries, Inc. informed Tennessee officials that the modifications made by Mr. Wiechert could result in tissue cooking or a brain dead, but living, person at the conclusion of an execution. JVM Industries, Inc. also disavowed any further obligation to guarantee the equipment as altered. Appendix A6, 259-60.

10. Dr. Morse and Mr. Wiechert have also consulted with Florida officials concerning the electrocution system there. Appendix A7

11. Florida's electrocution system has resulted in several recent botched executions.

12. When Jesse Tafero was electrocuted in Florida in 1990, smoke and flames rose from his head after the first jolt of electricity was delivered. Another jolt was then delivered and resulted in more smoke and flames. Still Mr. Tafero was alive and may have been conscious. He did not die until a third jolt of electricity was administered. Provenzano v. Moore, 744 So. 2d 423, 431(Fla. 1999).

13. Pedro Medina's execution in 1997 was eerily similar. Smoke and flames were once again observed. His whole head and face were burned and charred. *Id.* at 431-32.

14. During the execution of Allen Lee Davis, also in Florida earlier this year, blood poured from his nose and out of the mask creating a pool on his chest, and his head, face and leg were charred. *Id.* at 432-34 (Appendix A8 contains a copy of the opinion printed from the Fla. Sup. Ct. web page, which included photographs of Mr. Davis post-execution and actual prints of the photographs taken that day).

15. As a result of these botched electrocutions, the United States Supreme Court

granted certiorari to examine the Florida electrocution system and determine whether it violates the Eighth Amendment's prohibition of cruel and unusual punishment. Bryan v. Moore, 120 S.Ct. 394 (1999). Florida subsequently changed its law regarding the method of execution employed to "lethal injection, unless [the condemned] affirmatively elects death by electrocution," and the Court dismissed the case. Bryan v. Moore, 120 S.Ct. 1003 (2000).³

16. The Georgia Supreme Court also recently agreed to hear the issue. Rhonda Cook, "Georgia Electric Chair to Get Day in Court," *Atlanta Constitution*, Feb. 25, 2000, at F4.

17. Witness accounts of executions by electrocution have told of flames bursting from the condemned's head, smoke emanating from the body, and condemned surviving multiple jolts of current. *See* witness accounts in Appendix B⁴.

18. Autopsies of persons executed by means of electrocution consistently show charring of the skin on the scalp and legs where the electrodes attach. Appendix B.

19. Dr. John P. Wikswo, a professor of physics at Vanderbilt University, has examined both the Florida and Tennessee electrocution systems and has opined that the Tennessee electrocution system will be plagued by similar problems as the Florida system has been producing. Appendix at A7.

20. Dr. Wikswo concludes that electrocution as a means of execution has the

³The U.S. Supreme Court also recently granted a stay of execution in order to hear the issue from a case in Alabama, then later dismissed it. In Re Tarver, 120 S.Ct. 1005 (2000); 2000 WL 156942 (US).

⁴Appendix B is a certified and complete copy of the appendices attached to the Motion for New Trial and/or Judgment of Acquittal in the case of State v. Hodges (No. 01S01-95-5-CR-00080).

potential to be **excruciatingly painful**; does not render the person immediately incapable of feeling that pain; does not reliably result in cardiac arrest needed to cause death; death is, therefore, primarily caused by suffocation caused by the paralysis of the respiratory muscles and the thermal heating of the brain; death is not instantaneous; and the exact level of current and duration varies greatly from person to person, and the amount for any given individual is indeterminable. Appendix at A8.

III. CONCLUSION

For the reasons described above and for the sake of justice, Mr. Workman asks this Court to allow him to intervene in the Morris case as a party, to brief the Court on the issue, and be heard in oral argument.

Respectfully submitted on this _____ day of March 2000,

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