

PHILIP R. WORKMAN,

Petitioner-Appellant,

v.

No. 96-6652

RICKY BELL, Warden,

Respondent-Appellee.

IN RE: PHILIP R. WORKMAN,

No. 00-5367

Movant.

**RESPONSE TO MOTION TO STRIKE SECOND
DECLARATION OF DR. KRIS SPERRY**

At the Clemency hearing, Dr. Kris Sperry testified that he was not 90 to 95 percent sure that Lieutenant Ronald Oliver was killed by a .38 caliber bullet as opposed to a .45 caliber bullet. Dr. Sperry did state, however, that it was more probable than not that Oliver was killed by a .38 caliber bullet. Courts recognize that the phrase "to a reasonable degree of medical certainty" means just that - more probable than not. See, e.g., In re Twining, 894 P.2d 1331, 1336-37 (Wash. App. 1995); Dellenbach v. Robinson, 642 N.E.2d 638, 648 (Ohio App.

1993): Ross Laboratories v. Barbour, 412 S.E.2d 205, 208 (Va. App. 1991). So
does Dr. Sperry. See Exhibit I, attached, 5/5/2000 Declaration of Dr. Kris
Sperry.

Respondent's Motion To Strike and Request For Sanctions should be
denied.

Respectfully submitted.

CM Minton

Christopher M. Minton
OFFICE OF THE POST-
CONVICTION DEFENDER
460 James Robertson Parkway
Nashville, Tennessee 37243
(615) 253-1986

CERTIFICATE OF SERVICE

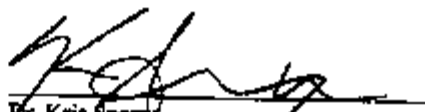
I certify that on May 8, 2000, I hand-delivered a copy of the foregoing to:

Gordon W. Smith
Deputy State Attorney General
ATTORNEY GENERAL'S OFFICE
500 Charlotte Avenue
Nashville, Tennessee 37243-0493

CM Minton _____

DECLARATION OF DR. KRIS SPERRY

1. I am the Chief Medical Examiner for the State of Georgia.
2. I use the phrase "to a reasonable degree of medical certainty" to express the concept that it is more likely than not that a specified event occurred.
3. I will not testify at a murder trial unless I am 90 to 95 percent sure that the medical evidence establishes that a specified event occurred. This internal standard is far above the "reasonable degree of medical certainty" standard.
4. I will testify at a civil trial that a specified event occurred if I believe to a reasonable degree of medical certainty, i.e., more probably than not, that the event occurred.
5. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



Dr. Kris Sperry
5/5/2000

Date