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WILLIAM R. KEY, CLERK
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IN THE CRIMINAL COURT OF TENNESSEE
FOR THE THIRTIETH JUDICIAL DISTRICT
AT MEMPHIS, TENNESSEE
DIVISION III

PHILIP R. WORKMAN Defendant	)	
vs.	)	**No. B-81209**
STATE OF TENNESSEE	)	

ORDER DENYING DEFENDANT'S
PETITION FOR WRIT OF ERROR CORAM NOBIS

This cause came to be heard upon petition of the defendant for writ of error coram nobis. Having considered the testimony presented at the hearing on this matter and after reviewing the transcripts from the original trial, this court is of the opinion that the defendant has failed to demonstrate that the alleged newly discovered evidence warrants a new trial in this matter. Therefore, the defendant's Petition for Writ of Error Coram Nobis is hereby, DENIED.

I. BACKGROUND

A. Procedural History

In 1982, the defendant, Philip R. Workman, was convicted by a Shelby County jury of murder in the first degree in the perpetration of a robbery. After finding the defendant guilty of the murder

of Memphis Police Lieutenant Ronald Oliver, the jury sentenced Workman to death. Following his conviction, the defendant alleged various errors on both direct and post-conviction review. Upon review of the defendant's claims, the appellate courts denied the requested relief. See State v. Workman, 667 S.W.2d 44 (Tenn. 1984) (direct appeal); and Workman v. State, 868 S.W.2d 705 (Tenn. Crim. App. 1993), perm. to app. denied, (Tenn. 1993) (post-conviction review).

Subsequently, the defendant filed a Petition for Writ of Error Coram Nobis in this court alleging that newly discovered evidence, unavailable to him at the time of trial and never before presented in a state court proceeding, may have affected the jury's verdict, and thus, entitled him to a new trial. In his Petition for Writ of Error Coram Nobis the defendant specifically alleges that prosecution witness, Harold Davis, perjured himself at the original trial when he testified that he had witnessed the defendant shoot the victim, Lieutenant Ronald Oliver. The defendant contends Davis has since recanted his trial testimony. The defendant's petition also alleges that one Vivian Porter corroborates Mr. Davis's recantation through an affidavit in which she states that she was with Davis on the night in question, and the two did not stop at the Wendy's restaurant where the robbery and shooting occured. The defendant's petition further alleges that expert forensic analysis reveals that the bullet that killed Lieutenant Oliver did not come from the defendant's weapon. In support of this assertion, the defendant avers that expert analysis demonstrates that the wound ballistics associated with Oliver's injury are not consistent with the type of ammunition recovered at the scene. The defendant further contends the state failed to produce an x-ray taken of Lieutenant Oliver, and argues that this evidence was essential in proving his theory that the fatal shot did not come from his weapon.

After reviewing the defendant's petition, this court held the petition was barred by the one-year statute of limitations. See Tenn. Code Ann. § 40-26-105; State v. Mixon, 983 S.W.2d 661, 669-71 (Tenn. 1999). The Court of Criminal Appeals affirmed this court's dismissal of the petition. However, on appeal, the Tennessee Supreme Court held that due process required that the defendant be afforded a full hearing to establish his claims. See Workman v. State, 41 S.W.3d 100 (Tenn. 2001). The Tennessee Supreme Court remanded the case to this court for a hearing, and held that at the hearing "the defendant will have the opportunity to establish that newly discovered evidence may have resulted in a different judgment if the evidence had been admitted at the previous trial." See Workman v. State, 44 S.W.3d 100, 104 (Tenn. 2001) (citing Tenn. Code Ann. § 40-26-105). The Court further held that, if the defendant were able to make such a showing, and additionally demonstrated "he 'was without fault' in failing to present the newly discovered evidence at the appropriate time, he will be entitled to a new trial." Id.

In accordance with the Tennessee Supreme Court's mandate, this court heard testimony regarding the defendant's allegations on August 13 to August 16; October 16; and November 5, 2001.

B. Coram Nobis Hearing

On August 13 to August 16, 2001, the defendant presented the testimony of Harold Davis, an eye-witness from the defendant's original trial, and testimony from Vivian Porter, a friend of Davis's, whose testimony the defendant offered as corroboration for Davis's alleged recantation. On

October 16, 2001, the defendant presented further testimony from Dr. Cyril Wecht, an expert in forensic pathology. Dr. Wecht testified that the .45 caliber bullet, shot from the defendant's weapon, which was recovered at the scene, did not cause the victim's injuries.[1]

At the close of the defendant's proof, the state argued that the defendant failed to meet its burden of proof as outlined in the Tennessee statute governing writs of error coram nobis. Therefore, the state elected to refrain from offering any proof at the hearing on this matter. See Tenn Code Ann. § 40-26-105 (stating that the defendant bears the burden of demonstrating that a new trial is warranted based upon newly discovered evidence.)

II. Writ of Error Coram Nobis

A. Generally

The writ of error coram nobis provides for a method of review in cases where there is no other remedy. The purpose of the writ is to review, correct, or vacate a judgment in the same court

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[1]This court continuously informed the parties that for purposes of developing an appellate record it would allow the parties to introduce evidence which might otherwise fall beyond the bounds of the Tennessee Rules of Criminal Procedure and the Tennessee Rules of Evidence. However, the court further instructed the parties that, upon its review of the evidence presented, the court would not consider such testimony and evidence in reaching a decision on the issue of whether the defendant should receive a new trial.

The record from the hearing clearly demonstrates this court's rulings. However, for purposes of this order, this court merely reiterates that is has not considered evidence which it feels is beyond the bounds of the governing Rules of Procedure and Rules of Evidence.

Specifically, at the hearing on this matter, the court allowed the defendant to offer the testimony on one Wardie Parks simply as an offer of proof for potential appellate review and ruled that such testimony would not be considered by this court in reaching a decision in this matter. Parks, a member of the jury at the defendant's original trial, testified that had he heard the testimony of Dr. Wecht and Harold Davis, he would not have convicted the defendant of felony murder. This court found that such testimony was not properly admissible at a hearing on petition for writ of error coram nobis. Thus, the court has not considered this testimony in reaching its decision. [See Coram Nobis Transcript for November 5, 2001, page 18].

in which it was rendered, due to factual error. Relief may be granted so long as such error does not appear in the record; would affect the validity and regularity of the proceedings; was unknown at the time of trial to the party seeking relief without fault on his part; was unknown to the trial court; was not ruled upon by the court; and if known may have prevented rendition of the judgment. See generally 18 Am. Jur.2d *Coram Nobis* § 10, 629-30(1985). It is not the purpose of coram nobis to reweigh the evidence presented at the trial or to consider the merits of the original controversy. Id.

Generally, relief will not be granted to correct an issue of fact which has been adjudicated, even though wrongly determined. However, coram nobis may be granted when the record discloses errors of fact of such fundamental character as to render the proceeding itself irregular and invalid, or to compel "action to achieve justice." The facts in question must be of such a vital nature that, had they been known to the trial court, they conclusively would have prevented rendition of the judgment. See 18 Am. Jur.2d *Coram Nobis* §10, 631 (1985).

In Tennessee, the writ of error coram nobis was recognized under the common law. In 1858, the Tennessee General Assembly enacted a statute codifying the procedure for seeking the writ of error coram nobis, and expanded the grounds for relief upon which the writ could be based. See State v. Mixon, 983 S.W.2d 661, 667-668 (Tenn. 1999). In 1955, the legislature extended the writ to criminal proceedings. However, the relief extended only to "error dehors the record and to matters that were not or could not have been litigated on the trial of the case, on a motion for new trial, on appeal in the nature of a writ of error, or in a habeas corpus proceeding." Tenn. Code Ann. § 40-26-105.

Thus, a criminal defendant may, under very particular circumstances, file for a writ of error coram nobis. See Tenn. Code Ann. § 40-26-105. However, the Tennessee courts have clearly held that this remedy is available only when a hidden or unknown issue was neither able to be addressed nor addressed at trial, and may have resulted in a different judgment. Id.; State v. Hart, 911 S.W.2d 371, 374 (Tenn. Crim. App. 1995).

B. Newly Discovered Evidence

A petition for writ of error coram nobis in a criminal case, which seeks relief on the ground of subsequently or newly discovered evidence, will not succeed unless the defendant is successful in demonstrating: (1) why the admissibility of the newly discovered evidence may have resulted in a different judgment if the evidence had been admitted at the previous trial; and (2) the petitioner "was without fault in failing to present" the newly discovered evidence at the appropriate time. Teague v. State, 722 S.W.2d 915 (Tenn. Crim. App. 1988), cert. denied, 493 U.S. 874, 110 S. Ct. 210, 107 L.Ed.2d 163 (1989), overruled on other grounds; Owens v. State, 908 S.W.2d 923 (1995); State v. Mixon, 983 S.W.2d 661 (Tenn. 1999); Jeffery Scott Miles v. State, 2000 WL 2647 (Tenn. Crim. App. filed January 4, 2000, at Knoxville).

The defendant has the burden of showing he and his counsel exercised reasonable diligence in attempting to discover the evidence, and that neither the defendant nor his counsel had knowledge of the alleged newly discovered evidence prior to trial. State v. Nichols, 877 S.W.2d 722, 737 (Tenn. 1994); State v. Caldwell, 977 S.W.2d 110, 117 (Tenn. Crim. App. 1997). In addition, there

must be a showing of materiality of the testimony, and the defendant must establish by a reasonable probability the facts upon which he relies for relief. See 18 Am. Jur.2d *Coram Nobis* §38, 664 (1985).

Finally, after hearing the evidence, the trial court must determine whether the result of the trial would likely be changed if the evidence had been admitted. Nichols, 877 S.W.2d at 737; State v. Singleton, 853 S.W.2d 490, 496 (Tenn. 1993). The granting or refusal of a new trial on the basis of newly discovered evidence rests within the sound discretion of the trial court. State v. Walker, 910 S.W.2d 381, 395 (Tenn. 1995); Caldwell, 977 S.W.2d at 117. In determining whether or not to grant a new trial, the trial court should consider the entire record of the original trial, as well as the proof elicited at the hearing on the defendant's petition. See 18 Am. Jur.2d *Coram Nobis* §38, 665 (1985). Where it appears that the undiscovered evidence is of such a conclusive character that if it had been introduced the jury might have reached a different result, and there is a strong probability of a miscarriage of justice, then the writ should be granted. See State v. Singleton, 853 S.W.2d 490, 496 (Tenn. 1993).

III. Defendant's Allegations

A. False and Recanted Testimony

(1) Standard

Several jurisdictions have held that a writ of error coram nobis does not lie for false testimony at the trial or to determine whether any witness testified falsely at trial, or to set aside a judgment of

conviction on the ground that it was based on perjured testimony. People v. Hodge, 147 Cal. App.2d 591, 305 P.2d 957; Ex Parte Welles, 53 So.2d 708 (Fla.); Cappock v. Reed, 178 N.W. 382 (Iowa); Merrifield v. Commonwealth, 283 S.W.2d 214 (Ky); Bernard v. State, 65 A.2d 297 (Md); Hawk v. State, 39 N.W.2d 561; Houston v. State, 96 N.W.2d 343 (Wis.); Rowe v. State, 489 S.W.2d 322 (Tenn. 1973). However, following the Tennessee Supreme Court's decision in Rowe v. State, 498 S.W.2d 322, 325-26 (Tenn. 1973) (holding that the writ of error coram nobis would not lie for recanted testimony because it related to a matter that had been litigated at the original trial), the Tennessee General Assembly amended this state's statute to specifically provide that:

> [u]pon a showing by the defendant that the defendant was without fault in failing to present certain evidence at the proper time, a writ of error coram nobis will lie for subsequently or newly discovered evidence relating to matters which were litigated at the trial if the judge determines that such evidence may have resulted in a different judgment had it been presented at the trial. Tenn. Code Ann. § 40-26-105; See also State v. Mixon, 983 S.W.2d 661, 673 fn16 (Tenn. 1999).

Subsequently, the Tennessee Supreme Court placed certain prerequisites on the granting of a new trial based upon newly discovered recanted testimony. The trial court must be reasonably well satisfied that (1) the testimony given by the material witness was false and the new testimony is true; (2) the defendant was reasonably diligent in discovering the new evidence, or was surprised by the false testimony, or was unable to know of the falsity of the testimony until after the trial; and (3) the jury might have reached a different conclusion. State v. Mixon, 983 S.W.2d 661, 673, n17 (Tenn. 1999). Thus, it is not enough to merely show that a prosecution witness has subsequently made contradictory statements or that he is willing to swear that his testimony at the trial was false.

(2) Testimony of Harold Davis

At the coram nobis hearing, the defendant offered the testimony of Harold Davis,[2] who was a prosecution witness at defendant's original trial. At the original trial, Davis testified that he was in the parking lot of the Wendy's restaurant when the victim was shot.[3] Davis stated that he witnessed the victim and the defendant struggling just outside the entrance to the restaurant.[4] He then testified that another officer approached Workman and Lieutenant Oliver; shots were fired; the second officer fell to the ground; and the defendant then shot Oliver.[5] Additionally, Davis testified that he had previously identified the defendant as the shooter from a photographic line-up conducted by the Memphis Police Department.[6] However, at trial, Davis was unable to make a conclusive in-court identification of the defendant.[7] Following direct examination, Davis was extensively cross-examined by defense counsel, and admitted that his earlier statement to the police provided a somewhat different version of events than those he testified to on direct.[8]

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[2]Even though Davis was a defense witness for purposes of the coram nobis proceeding, the witness was located by the State and brought to the jurisdiction by the State of Tennessee from the state of Florida, where he was incarcerated.

[3](T.E. p. 655)

[4]Id.

[5](T.E. p. 655-56)

[6](T.E. p. 658-59)

[7](T.E. p. 658)

[8](T.E. p. 664-66)

At the coram nobis hearing, Davis initially stated that he did not see the defendant shoot the victim, and claimed that his trial testimony was false.[9] Davis further acknowledged that he was contacted by defense counsel in 1999 regarding his testimony at the defendant's original trial.[10] At that time, Davis gave a video-taped statement indicating that his trial testimony was not true.[11] However, on cross-examination, Davis indicated that he had an extensive history of drug abuse and testified that he was on drugs when he gave the 1999 video-taped statement.[12] He further stated that he believed he would be arrested and sent to jail in Tennessee if he did not cooperate with defense counsel.[13] Specifically, Davis stated on cross-examination, in regard to the 1999 video-taped statement, that he wanted defense counsel to leave; and therefore, he told defense counsel what they wanted to hear.[14] Moreover, Davis stated that his persistent drug abuse had "affected [his] mind," and at one point stated that "my mind is not fully there when it comes to remembering."[15] He further

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[9] See Coram Nobis Transcript for August 13, 2001, at page 139-40.

[10] See Coram Nobis Transcript for August 13, 2001, at page 241-42.

[11] See Coram Nobis Transcript for August 13, 2001, at page 149

[12] See Coram Nobis Transcript for August 13, 2001, at pages 146; and 251.

[13] See Coram Nobis Transcript for August 13, 2001, at pages 146; 281; and 306.

[14] See Coram Nobis Transcript for August 13, 2001, at page 295.

[15] See Coram Nobis Transcript for August 13, 2001, at page 195.

indicated that his drug abuse had led to medical problems which also affected his memory.[16] Finally, during the state's cross-examination, the witness admitted that he simply could not say whether his trial testimony was true or not true because he cannot remember and can no longer separate "fact from fiction," with regard to the events surrounding the shooting of Lieutenant Ronald Oliver.[17]

Nevertheless, on re-direct examination Davis once again stated that he did not see the defendant shoot Oliver.[18] However, upon further cross-examination, the state asked the witness the following question: "[y]ou don't know what happened in 1981, and when you testified that you don't know whether you lied or not because you can't remember that's the facts, that's the truth." To which, Davis replied, "yes, sir."[19]

While this court does not dispute the materiality of Harold Davis's testimony at the defendant's original trial, this court is unable, based upon the testimony provided by this witness at

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[16]After the conclusion of the first day of Davis's testimony he was returned to the Germantown jail, where he was being housed during his return to Tennessee, through cooperation with Florida authorities. Sometime during the evening the witness suffered from high blood pressure and was taken to Germantown Methodist Hospital for treatment by a physician. At that time, several tests were apparently conducted, including a scan of the witness's brain. [See Coram Nobis Transcript for August 13, 2001, at page 405]. The next day the witness returned to court for further questioning. After several hours of questioning it was brought to the attention of the court that the witness's treating physicians had reviewed the medical tests conducted the previous day and had considerable concerns with regard to the health of Mr. Davis. [See Id.] Therefore, the witness was returned to Germantown Methodist Hospital, where he received additional treatment. The next day, Davis testified that health care professionals had determined that over a period of several years he had suffered from several mild strokes and most likely his current condition was either a symptom of previous strokes or a series of similar mild strokes. [See Coram Nobis Transcript, August 16, 2001, at 6-7]. He was given medication and released and returned to court the following day for the conclusion of his testimony.

[17]See Coram Nobis Transcript for August 13, 2001, at pages 195; and 316.

[18]See Coram Nobis Transcript for August 13, 2001, at pages 345; and 351.

[19]See Coram Nobis Transcript for August 16, 2001, at page 16.

the coram nobis hearing, to conclude that Davis's trial testimony was false, and that his current testimony is true. See State v. Mixon, 983 S.W.2d 661 (Tenn. 1999). Thus, even though this court finds the defendant exercised reasonable diligence in procuring the purported "new evidence" offered by Davis, this court is not satisfied that the defendant has demonstrated that the current statements of Davis may have caused the jury to reach a different conclusion. Id. The present testimony of Harold Davis simply does not amount to a recantation of his original trial testimony, and his comments at the coram nobis hearing were neither clear nor persuasive.

Davis repeatedly alluded to his drug use and decreased mental capacity.[20] Moreover, this court witnessed first hand Davis's persistent health complications, which he admitted affected his ability to recall the events in question.[21] The only definitive statement made by Harold Davis was that he did not clearly remember the events surrounding the death of Lieutenant Ronald Oliver, a fact which he repeated several times throughout his testimony.[22] In his own words, Davis simply was unable, with respect to the events surrounding Oliver's death, to separate "fact from fiction."[23]

The appellate courts of this state have held that a new trial will not be granted based upon newly discovered evidence:

> where it appears that the purported new evidence can have no other effect than to

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[20]See Coram Nobis Transcript for August 13, 2001, at pages 179; and 195.

[21]See Coram Nobis Transcript for August 13, 2001, at pages 405-07; and August 16, 2001, at pages 6-9.

[22]See Coram Nobis Transcript for August 13, 2001, at pages 185, 195, 316-17; and August 16, 2001, at page 10-11.

[23]See Coram Nobis Transcript for August 13, 2001, at page 195; and August 16, 2001, at pages 10-11.

> discredit or contradict the testimony of a witness at the original trial, unless the testimony of the witness was so important and the new evidence so strong and convincing that a different result would necessarily follow. See State v. Rogers, 703 S.W.2d 166 (Tenn. Crim. App. 1985).

This court finds that the only purpose in offering the current testimony of Harold Davis is to discredit his trial testimony, and further concludes that the evidence elicited on the issue of his recantation is far from convincing. At the original trial, the witness was cross-examined regarding his previous statements to police which appeared to contradict portions of his trial testimony; however, the jury still chose to accredit the testimony of Harold Davis.[24] Thus, this court finds that Davis's current contradictory statements would have little if any impact upon the jury's consideration of Davis's original testimony.

Likewise, this court is not persuaded to order a new trial based upon the testimony of Vivian Porter. At the coram nobis hearing, Porter testified that she was with Harold Davis on the night of the shooting, and claimed the two of them never entered the Wendy's parking lot.[25] Conversely, Davis testified at the hearing that he was not with Porter on the night in question.[26] After evaluating both witnesses's statements, this court finds that Porter's testimony merely serves to contradict Davis's trial testimony; and, thus, should be given little weight by this court, especially in light of the fact that Davis testified at the coram nobis hearing that he was not with Porter on the night in question.

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[24](T.E. p. 664-66)

[25]See Coram Nobis Transcript for August 16, 2001, at page 41.

[26]See Coram Nobis Transcript for August 13, 2001, at page 265.

For these reasons, this court finds that the testimony presented on the issue of Harold Davis's alleged recantation does not necessitate the granting of a new trial.

B. Expert Forensic Testimony

Next, the defendant contends that the testimony of Dr. Cyril Wecht, an expert in forensic pathology, establishes that he is not responsible for the death of Lieutenant Ronald Oliver. Thus, the defendant contends a new trial is required. Because the Tennessee Supreme Court's mandate clearly indicates that a finding that the defendant did not fire the fatal shot would preclude a finding of guilt by the trier of fact as to the charge of felony murder, this court has closely examined both the testimony presented at trial as well as the subsequent testimony given by Dr. Wecht at the coram nobis proceeding.

It is the understanding of this court that the Tennessee Supreme Court has predetermined that the defendant could not be convicted of felony murder if the new evidence revealed that the fatal shot was not discharged from his weapon. See Workman v. State, 41 S.W.3d 100, 103 (Tenn. 2001) (citing with approval State v. Severs, 759 S.W.2d 935, 938 (Tenn. Crim. App. 1988) (holding that a felony murder conviction cannot be sustained where the killing was committed by the intended victim in an attempt to thwart the unlawful act; rather than by the defendant or co-defendant in pursuance of the unlawful act.)) However, it appears to this court, under the current Tennessee standard, that the critical inquiry is not whether the defendant actually shot the victim, but whether

the intent to commit the robbery existed prior to or concurrent with the commission of the act causing the death of the victim. See State v. Buggs, 995 S.W.2d 102 (Tenn. 1999). In essence, to sustain a conviction of first-degree murder, the killing must have been "in pursuance of, rather than collateral to, the unlawful act described by the statute." State v. Severs, 759 S.W.2d 935, 938 (Tenn. Crim. App. 1988) (citing Farmer v. State, 296 S.W.2d 879 (Tenn. 1956)). Regardless, this court need not address this issue.

Even though the Tennessee Supreme Court found that the defendant should be granted a full hearing based upon the proposition that new evidence showing the defendant did not fire the fatal shot would warrant a new trial, their ruling does not negate this court's role in first determining whether the proposed evidence meets the criteria for "newly discovered evidence" as outlined in Tenn. Code Ann. § 40-26-105. Before reaching a decision as to whether a different judgment may have resulted had the jury been presented with the new evidence, this court first must determine that the defendant was without fault in failing to present this evidence at the proper time. Only then does this court move on to the critical inquiry as to wether the new evidence may have altered the original judgment.

Initially, this court questions whether or not the testimony presented by Dr. Wecht is appropriate for consideration as newly discovered evidence. It appears the Supreme Court concluded that the defendant's claim of "new evidence" with regard to the issue of whose bullet caused the fatal injury, was based upon the state's failure to provide defendant with an x-ray of the victim until "long after the conclusion of the state post-conviction proceedings." See Workman v. State, 41 S.W.3d

at 103. Likewise, the defendant's original petition alleges that the x-ray is in fact the "new evidence" upon which the defendant now bases his claim. However, it appears to this court that the evidence presented by Dr. Wecht could have been obtained by the defendant prior to trial. During his testimony at the hearing on this matter, Dr. Wecht stated that the bullet and autopsy reports that he examined were available prior to trial, and further indicated that he did not need the x-ray of the victim to render his opinion.[27] In fact, Dr. Wecht stated that he had reached his conclusions and issued a report on his findings several months before he even received the x-ray of the victim.[28] Dr. Wecht admitted that the x-ray did not affect his opinion and was merely corroborative of his observations with regard to the fragmentation of the bullet.[29]

Nevertheless, the Supreme Court has mandated this court review the proposed "new evidence," and specifically concluded that "the delay in obtaining this evidence is not attributable to the fault of Workman or his attorneys." See Workman v. State, 41 S.W.3d at 103. Thus, the court will review the opinions of Dr. Wecht in that light. Consequently, with regard to the present claim, this court is only required to make a finding as to whether the new evidence may have resulted in a different judgment, had it been presented at the original trial.

Despite the Supreme Court's comments with regard to the potential effect of the new evidence upon the operation of the felony murder rule, after careful examination of the evidence

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[27] See Coram Nobis Transcript for October 16, 2001, at page 137.

[28] See Id.

[29] See Id.

presented at the original trial and the testimony of Dr. Wecht at the coram nobis proceeding, this court concludes that the defendant has failed to demonstrate that a different judgment may have resulted had the jury been presented with Dr. Wecht's opinions.

(1) Trial Testimony

Testimony at the original trial and at the coram nobis hearing revealed that, on the night in question, the defendant was in possession of a .45 caliber semi- automatic handgun[30] and both Officers Stoddard and Oliver were in possession of .38 caliber revolvers.[31] Testimony further revealed that a .45 caliber, aluminum jacketed, lead core, hollow point bullet was found by an employee of the adjoining business near the location where Oliver was shot.[32] According to trial testimony, the bullet was not recovered until the day after the shooting, and was then immediately turned over to the Memphis Police Department.[33] Ballistics testing on the bullet indicated it was fired from the defendant's weapon.[34]

Also, at the original trial, Officer Stoddard, who assisted Lieutenant Oliver in attempting to

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[30](T.E. p. 933)

[31]See Coram Nobis Transcript for October 16, 2001, at page 85.

[32](T.E. p. 913)

[33](T.E. p. 913-14)

[34](T.E. p. 942)

apprehend the defendant, indicated that he was never able to fire a shot from his weapon.[35] Furthermore, Officer Parker, who arrived on the scene just prior to the shooting, testified that he did not fire his weapon until after Oliver had been shot.[36] Both officers testified that after the defendant shot Oliver, the officer fell back toward the ground.[37] However, both witnesses indicated that Oliver was able to fire multiple rounds from his .38 caliber revolver before finally hitting the ground.[38] This fact was corroborated by the state's medical examiner who testified that, even though Oliver would have lost consciousness shortly after receiving the fatal shot, he could have fired all six rounds of ammunition in his weapon before hitting the ground.[39] This testimony also tends to explain the statements of the responding officers, who testified that they heard multiple gun shots from two separate weapons.[40]

Additionally, testimony from Officer Godwin indicated that the defendant's weapon was found in the open position, indicating that all the ammunition had been fired, and the weapon contained no remaining live rounds of ammunition.[41] A crime scene investigator and Federal Bureau of Investigation Agent, Gerald Wilkes, indicated that the clip on the defendant's would hold up to

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[35]See generally (T.E. p. 633-36)

[36](T.E. p. 674-676)

[37](T.E. p. 674)

[38](T.E. p. 635; 673-74)

[39](T.E. p. 513)

[40](T.E. p. 674; 727; and 771)

[41](T.E. p. 708-99)

seven rounds of .45 caliber ammunition.[42] The witness also testified that the officers on the scene recovered three spent .45 caliber cartridge cases; one fired bullet; a metal fragment; and one ejected live round of ammunition.[43] Tests conducted on the fired bullet and cartridges revealed that they were shot from the victim's weapon.[44]

With regard to the characteristics of .45 caliber bullets, Agent Wilkes testified that a .45 caliber aluminum jacketed bullet has a very soft lead core.[45] He explained that if such a bullet were fired into the human body, he would expect to see more mutilation to the bullet than was present in the recovered .45 caliber bullet.[46] Additionally, Wilkes testified that he found no human blood or tissue on the recovered bullet.[47] However, Wilkes testified that he could not exclude the possibility that the bullet ricocheted off a hard surface.[48]

Finally, in addition to the medical and forensic testimony presented at trial, the defendant testified that he remembers shooting his weapon and stated "I had my hand around the gun and I guess it was pointed at the officers."[49]

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[42](T.E. p. 937)

[43](T.E. p. 933)

[44](T.E. p. 941-42; and 947-48)

[45](T.E. p. 940)

[46](T.E. p. 959)

[47](T.E. p. 960)

[48](T.E. p. 940)

[49](T.E. p. 1028)

(2) Dr. Cyril Wecht's Testimony

At the hearing on this matter, Dr. Cyril Wecht testified that he had examined the autopsy report prepared by Dr. Bell, the state's medical examiner; the trial testimony of Dr. Bell; an x-ray taken of the victim; and the .45 caliber bullet fired from the defendant's gun, which was recovered at the scene.[50] Dr. Wecht testified that it was his opinion that the bullet recovered from the scene was not the bullet that killed Lieutenant Ronald Oliver.[51] Dr. Wecht based his conclusion on the fact that the recovered bullet was essentially intact with no deformation or mushrooming, and the fact that the bullet exited the body cavity without leaving any metal fragments.[52] Dr. Wecht explained that based upon his experience with this type of ammunition it was atypical for .45 caliber ammunition to exit the body when as, in the instant case, it strikes a significant bone, such as a rib.[53] He indicated that in his experience such a trajectory would cause fragmentation of the missile.[54] Additionally, Dr. Wecht testified that the wound ballistics associated with Lieutenant Oliver's injuries were inconsistent with a .45 caliber aluminum jacketed weapon. Specifically, the witness indicated that it was unlikely that such a missile would create an entrance wound that was considerably larger than the exit wound.[55]

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[50]See Coram Nobis Transcript for October 16, 2001, at pages 14-15.

[51]See Coram Nobis Transcript for October 16, 2001, at page 18.

[52]See Coram Nobis Transcript for October 16, 2001, at pages 18; 21-23.

[53]See Coram Nobis Transcript for October 16, 2001, at pages 20-21.

[54]See Id.

[55]See Coram Nobis Transcript for October 16, 2001, at pages 21-23.

(2) Dr. Cyril Wecht's Testimony

At the hearing on this matter, Dr. Cyril Wecht testified that he had examined the autopsy report prepared by Dr. Bell, the state's medical examiner; the trial testimony of Dr. Bell; an x-ray taken of the victim; and the .45 caliber bullet fired from the defendant's gun, which was recovered at the scene.[50] Dr. Wecht testified that it was his opinion that the bullet recovered from the scene was not the bullet that killed Lieutenant Ronald Oliver.[51] Dr. Wecht based his conclusion on the fact that the recovered bullet was essentially intact with no deformation or mushrooming, and the fact that the bullet exited the body cavity without leaving any metal fragments.[52] Dr. Wecht explained that based upon his experience with this type of ammunition it was atypical for .45 caliber ammunition to exit the body when as, in the instant case, it strikes a significant bone, such as a rib.[53] He indicated that in his experience such a trajectory would cause fragmentation of the missile.[54] Additionally, Dr. Wecht testified that the wound ballistics associated with Lieutenant Oliver's injuries were inconsistent with a .45 caliber aluminum jacketed weapon. Specifically, the witness indicated that it was unlikely that such a missile would create an entrance wound that was considerably larger than the exit wound.[55]

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[50]See Coram Nobis Transcript for October 16, 2001, at pages 14-15.

[51]See Coram Nobis Transcript for October 16, 2001, at page 18.

[52]See Coram Nobis Transcript for October 16, 2001, at pages 18; 21-23.

[53]See Coram Nobis Transcript for October 16, 2001, at pages 20-21.

[54]See Id.

[55]See Coram Nobis Transcript for October 16, 2001, at pages 21-23.

However, on cross-examination, Dr. Wecht admitted that he could not conclusively exclude the possibility that a .45 caliber bullet caused the fatal wound, and further indicated that it was possible for a .45 caliber, hollow point bullet to create a smaller exit than entrance wound.[56] Dr. Wecht also testified that when comparing the characteristics of the .38 caliber hollow point, semi jacketed ammunition used by the officers on the scene with that of the .45 caliber, hollow point, aluminum jacketed bullet, the .38 caliber, bullet would be less likely than the .45 caliber, hollow point bullet to expand inside the body cavity.[57] However, he stated that it is a typical response of the .38 caliber ammunition to expand upon impact with the human body.[58] The witness further stated that it was likely that both the .38 caliber bullet and the .45 caliber bullet would expand after striking a bone, such as a rib.[59] Finally, Dr. Wecht testified that, like the .45 caliber bullet, a .38 caliber bullet would also tend to create a larger exit wound than entrance wound, and further stated it was possible for a .45 caliber, hollow point bullet to create a smaller exit wound than entrance wound.[60]

In analyzing the above testimony both from the trial and the coram nobis hearing, this court finds that the jury essentially heard, through the testimony of Agent Wilkes, the same information provided by Dr. Wecht. Primarily, Dr. Wecht testified that the bullet recovered at the scene was not responsible for the victim's injuries, based upon the lack of deformation of the bullet and the size of

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[56]See Coram Nobis Transcript for October 16, 2001, at pages 31-32; and 115-116.

[57]See Coram Nobis Transcript for October 16, 2001, at page 97.

[58]See Coram Nobis Transcript for October 16, 2001, at page 95.

[59]See Id.

[60]See Coram Nobis Transcript for October 16, 2001, at pages 110-11.

the exit and entrance wounds.[61] However, Wecht stated he could not conclusively exclude the recovered bullet as the cause.[62] Similarly, Agent Wilkes testified at the original trial that had the recovered bullet traversed the officer's body, he would have expected to see more deformation than was present.[63] However, like Agent Wilkes, Dr. Wecht stated he could not conclusively state that the bullet was not the missile responsible for Lieutenant Oliver's death.[64] This court is unable to see any significant difference between the testimony of these two witnesses.

Furthermore, even if the jury accepted the testimony of Dr. Wecht, they still could have concluded the defendant delivered the fatal shot. Both Officers Parker and Stoddard testified that they were unable to fire their weapons until after the victim had been shot.[65] Thus, the trial testimony indicates the only weapons fired prior to the fatal shot were those of Workman and Oliver. Moreover, the testimony at trial also revealed that the defendant fired at least four shots and possibly fired as many as six live rounds of ammunition during the altercation with the officers. Thus, the jury could have reasonably concluded that, even though the bullet that was recovered at the scene may not be responsible for Oliver's injuries, the fatal shot may still have come from the defendant's weapon. This court can find no testimony, including that of Dr. Wecht, which affirmatively rules out the possibility that one of the other three to five bullets shot by Workman caused the fatal injuries. Finally, in

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[61]See Coram Nobis Transcript for October 16, 2001, at page 18; and 23

[62]See Coram Nobis Transcript for October 16, 2001, at pages 31-32.

[63](T.E. p. 959)

[64](T.E. p. 940)

[65]See generally (T.E. p. 635-37; and 673-75)

addition, the jury would have still heard the defendant's admission that he fired his weapon and that he indeed pointed the weapon at the victim.

Thus, considering that the jury heard similar proof at the original trial; the strength of the evidence presented at the original trial; and the inconclusiveness of Dr. Wecht's testimony, this court cannot reasonably conclude that the admissibility of the evidence elicited by Dr. Wecht's testimony may have resulted in different judgment at the original trial.

Furthermore, as previously indicated, this court, likewise, concludes that the testimony of Harold Davis and Vivian Porter also fail to support the defendant's assertion that a different judgment may have resulted had the trial court been allowed to hear their testimony. Thus, this court finds a new trial is not warranted based upon either the alleged recanted testimony of Davis, or the alleged newly discovered forensic evidence presented by Dr. Wecht.

It is therefore ADJUDGED, ORDERED and DECREED that the defendant's Petition for Writ of Error Coram Nobis is hereby, DENIED.

Judge, John P. Colton, Jr.
Division III.
1-7-2002