

EXECUTION DATE: 3/30/01 1:00 a.m.

No. \_\_\_\_\_

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

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PHILIP RAY WORKMAN,  
*Petitioner,*

v.

RICKY BELL, Warden,  
*Respondent*

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

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PETITION FOR WRIT OF CERTIORARI

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MAR 29 '01 08:53AM FPD NASHVILLE

P.6/27

**CAPITAL CASE**  
**Execution Date: 3/30/01 at 1:00 a.m.**

**QUESTIONS PRESENTED**

Has Workman made a *prima facie* showing that fraud corrupted the prior proceedings to such an extent that the proceedings should be reopened?

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RICKY HELL, Warden,  
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PETITION FOR WRIT OF HABEAS CORPUS

Philip Ray Workman respectfully requests that this Court grant certiorari to review the decision of the United States Court of Appeals for the Sixth Circuit.

CITATIONS TO OPINIONS

Philip Workman requested that the United States Court of Appeals for the Sixth Circuit reopen his previous habeas corpus proceeding. A panel denied this request (*Workman v. Bell*, No. 96-6652, 00-5267, Appendix A), less than a majority of the judges voted to grant rehearing en banc (*Workman v. Bell*, No. 96-6652, 00-5267, Appendix B), and the panel subsequently denied rehearing. (*Id.*)

JURISDICTION

On March 23, 2001, a Sixth Circuit panel announced its denial of Workman's Motion To Reopen. On March 28, 2001, the court announced its denial of Workman's requests for rehearing and rehearing en banc. This Court has jurisdiction to review this case by writ of certiorari pursuant to 28 U.S.C. §§ 1254(1), 1651(a); and Supreme Court Rule 13.3.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. Amend. VIII: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

U.S. Const. Amend. XIV: "[No] State [shall] deprive any person of life, liberty, or property, without due process of law...."

INTRODUCTION

Only twice has evidence been presented on whether Philip Workman shot Memphis Police Lieutenant Ronald Oliver - once at trial and once at the recent clemency hearing.

We now know, beyond any doubt, that at trial the State's key witness committed perjury. Upon discovering that perjury and additional previously unavailable evidence that Workman did not shoot Oliver, Workman requested that the United States Court of Appeals for the Sixth Circuit reopen the proceedings. Respondent's counsel represented that clemency was available to hear Workman's new evidence, and an equally divided en banc court denied Workman's request.

At the same time that Respondent's counsel told the Sixth Circuit that Workman could seek clemency, counsel was apparently engaged in manufacturing false evidence that no police officer, other than Oliver, fired a weapon the night Oliver died. At the clemency hearing, the State's attorney presented that evidence along with fabricated expert "scientific" evidence which established, according to the expert, a 100% certainty that Workman shot Oliver. The Board of Pardon and Parole (Pardon Board) voted 6-0 to recommend that the Governor not commute Workman's death sentence, and on March 27, 2001, Governor Sundquist denied Workman's commutation request.

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This Court should grant certiorari to stop an execution based on fraud.

I WE NOW KNOW, BEYOND ANY DOUBT, THAT FRAUD CORRUPTED THE TRIAL AT WHICH WORKMAN WAS SENTENCED TO DIE

At Workman's trial, Harold Davis was the only person who claimed to have seen Workman shoot Lieutenant Oliver. He told the jury that from two to three feet away, Workman shot Oliver in the chest. At closing the prosecution told Workman's jury that Davis's testimony established that Workman coolly and deliberately shot Oliver. The jury agreed, and it sentenced Workman to death.

During State post-conviction proceedings, Workman alleged that he did not shoot Oliver, Davis lied when he claimed that he saw Workman shoot Oliver, and because Workman did not shoot Oliver, he was innocent of first-degree murder. Tennessee's courts denied Workman a hearing on these claims, and the federal courts did likewise.

On September 24, 2000, after the Sixth Circuit affirmed the District Court's denial of habeas relief, Vivian Porter swore that Davis was with her the night of the incident, and they were not at the scene of the Oliver shooting. In the months that followed, Davis twice recanted his trial testimony and the State produced an x-ray that Workman had subpoenaed in 1995 during habeas proceedings (but was not produced) establishing that the fatal bullet did not fragment, and it therefore did not come from Workman's gun.

II FRAUD CORRUPTED THE FEDERAL HABEAS PROCEEDINGS AND THE CLEMENCY PROCESS

Based on the recently produced x-ray, Porter's sworn statement, and Davis's recantations, Workman moved the Sixth Circuit to reopen the original habeas proceedings. Respondent's counsel assured the court that Tennessee's clemency process was available to consider

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Workman's newly discovered evidence of innocence. After the en banc court equally divided 7-7 and this Court denied certiorari, Workman initiated clemency proceedings.<sup>1</sup> This would be the second and last time evidence would be presented on the propriety of a death sentence for Workman. Contrary to their assurances that clemency would hear Workman's claim of innocence, Respondent's counsel apparently manufactured false evidence, and the State presented false evidence, on the key issue - who shot Lieutenant Oliver.

**A Respondent's Counsel Assured The Federal Court That The Clemency Process Was Available To Hear Workman's Claim Of Innocence**

In the original habeas proceeding, Workman asserted claims tied to a showing that a fellow police officer, not Workman, shot Lieutenant Oliver, and under Tennessee law Workman is therefore innocent of capital murder.<sup>2</sup> In denying Workman's Motion For Rehearing, the original panel expressed no view on whether Workman's claims established his innocence. It told Workman,

"The traditional remedy for claims of innocence based on new evidence, discovered too late in the day to file a new trial motion, has been executive clemency." *Harris v. Collins*, 509 U.S. 390, 417 (1993). Under Tennessee law, the governor may grant clemency, see Tenn. Code Ann. § 40-27-101, so Workman may present evidence to the governor that the fatal shot must have

<sup>1</sup> Tennessee's Constitution grants the Governor authority to grant pardons, reprieves, and, by implication, commutations. Tenn. Const. Art. III, § 6. To assist him in exercising this power, the Governor appoints persons to the seven-member Parole Board. The Parole Board formally accepts an inmate's application for clemency, performs an independent investigation into the facts of the offense, and, if it chooses, holds a hearing. During these proceedings, the State is represented by the District Attorney General's Office for the Judicial District in which the conviction occurred. See T.C.A. § 8-7-103. At the conclusion of any hearing, Parole Board members give their non-binding recommendations to the Governor. The Governor considers the recommendation and then makes his decision.

<sup>2</sup> See *State v. Sevens*, 759 S.W.2d 955, 958 (Tenn. Crim. App. 1988).

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came from someone else's gun.<sup>3</sup>

Responding to Workman's original request that the Sixth Circuit recall the original panel's mandate or authorize a second habeas proceeding, Respondent's counsel reminded the Sixth Circuit of that refusal and represented that Tennessee's clemency process would provide Workman an opportunity to argue claims of innocence.<sup>4</sup> As the next section demonstrates, counsel's assurances were nothing more than an illusion designed to get Workman out of federal court and onto a garney.

**B Respondent's Counsel Was Involved In Taking And Presenting False Sworn Statements That No Other Police Officer Fired A Weapon**

In the habeas proceedings, Workman asserted that Lieutenant Oliver was shot by a fellow officer at the scene - either Officer Anthony Stokford or Officer Stephen Farber - and under Tennessee law Workman was therefore innocent of capital murder. Evidence indicates that Respondent's counsel was involved in manufacturing false evidence for the clemency hearing that no other policeman fired his weapon the night Lieutenant Oliver died.

On February 25, 2000, recused Parole Board Member Ray Maples<sup>5</sup> contacted the attorney who would present the clemency case against Workman, Assistant District Attorney (ADA) John Campbell, *ex parte* with suggestions for investigation. Specifically, Maples suggested that ADA

<sup>3</sup> 5/10/99 Order, Appendix attached to Workman's Memorandum In Support Of Motion To Reopen And To Appoint A Special Master, filed in the Sixth Circuit, (App.) at 2.

<sup>4</sup> 2/6/00 Response Of Respondent-Appellee To Petitioner's Motion To Reopen, No. 96-6622, at 17; 3/7/00 Response In Opposition To Petitioner's Motion For Leave To File A Second Habeas Corpus Petition, No. 00-5347, at 17.

<sup>5</sup> At Workman's request, Maples recused himself because he was a former Memphis Policeman.

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Campbell investigated what time Memphis Police Lieutenant Clyde Keenan and his "Shoot Team" arrived at the scene and when examinations were made of the guns possessed by the other officers at the scene.<sup>6</sup>

ADA Campbell forwarded Maples's suggestions to Assistant Attorney General (AAG) Pruden in Nashville. AAG Pruden assigned AAG Whalen the tasks of reviewing the file to ascertain whether it contained any material addressing Maples's questions and then contacting ADA Campbell with his findings.<sup>7</sup> AAG Pruden wrote ADA Campbell, "I was just thinking that this would be good if there is nothing in the file. Then we could get an affidavit from this person."<sup>8</sup>

On March 9, 2000, apparently satisfied that "there is nothing in the file", ADA Campbell obtained a sworn statement from Keenan at the State Attorney General's Office in Nashville. In that statement, Keenan swore that the night of the Oliver shooting, he was the Commander of the "Shoot Team," a group of officers that perform an investigation any time there was a police use of deadly force. Keenan claimed that his and fellow police officer Rick Wilson were immediately at the scene of the shooting. Keenan proclaimed: "We were probably on the scene between a minute and a minute and a half after the time that we heard the officer was down."<sup>9</sup> Keenan made further claims about what he supposedly saw when he arrived:

<sup>6</sup> 2/25/00 Communication From John Campbell To Glenn Pruden, App. at 13.

<sup>7</sup> 2/25/00 Communication From Glenn Pruden To John Campbell, App. at 13.

<sup>8</sup> *Id.*

<sup>9</sup> Transcript of 3/9/00 Sworn Statement, Appendix attached to Workman's 3/21/01 Supplemental Memorandum To Motion To Reopen And To Appoint A Special Master, filed in the Sixth Circuit, (App2) at 6.

The first thing that we'd found was two officers down. Both of them were known to me. One of the officers was a former partner of mine by the name of Remmie Oliver. ... The other police officer, Officer Stoddard (sic), was an officer I was familiar with. He was down also. Stoddard (sic) had been hit in the arm. Oliver had been hit somewhere in the torso; was badly injured. And at that particular point, we went to try to aid him in any way we could awaiting the arrival of the paramedic crew. ... Officer Parker was ... standing actually between Lt. Oliver and Officer Stoddard (sic).<sup>10</sup>

Keenan continued that he went to Oliver's aid, and, after placing him in an ambulance, he began checking the weapons of the other officers that were at the scene:

[W]e needed to ... make sure that any weapons that were there on the scene were not any danger to anybody. So we actually check officers' weapons at that particular point. ... So the first thing that I did, the first weapon that I actually checked was Officer Parker's weapon, his service revolver. ... There was no indication at all that that weapon had been fired.<sup>11</sup>

ADA Campbell then asked: "What about Officer Stoddard (sic)? Was his weapon checked also?"<sup>12</sup> Keenan responded:

His weapon was checked, and his was a little bit different situation. It was in his holster, and his weapon really ended up being checked at the hospital. So once he got to the hospital, both his weapon and the weapon for Lt. Oliver were secured. Lt. Oliver's had been fired. Stoddard's had not been fired.<sup>13</sup>

The State submitted Keenan's sworn statement at an April 3, 2000, clemency hearing held by a Policy Advisor to the Governor, Justin Wilson.<sup>14</sup> Because this Court granted rehearing on the day after the Wilson hearing, the Governor withheld his decision on whether to

<sup>10</sup> *Id.* at 6-7.

<sup>11</sup> *Id.* at 8-13.

<sup>12</sup> *Id.* at 13.

<sup>13</sup> *Id.* at 13-14.

<sup>14</sup> Transcript of 4/3/00 Clemency Proceedings, App2 at 21-22.

continue Workman's death sentence.

In the fall of 2000, after this Court announced it was equally divided on whether to order a hearing, the Governor announced that Workman would have a second opportunity to present evidence on his claims, this time directly to the Parole Board. A hearing was scheduled for January 25, 2001. In preparation for that proceeding, Attorney General Summers contacted ADA Campbell to "recommend highly that you call Clyde Keenan to testify at the hearing."<sup>12</sup>

At the January 25, 2001, hearing, Keenan reiterated the substance of his prior statement, emphasizing that he was the first officer on the scene - arriving within one minute of hearing the call "shots fired."<sup>13</sup> Keenan also added that (1) he sent police officer Gary Hall from the crime scene to the hospital to check Stoddard's weapon,<sup>14</sup> and (2) to check a gun to ascertain whether it was fired, one must examine it within a couple of hours of the incident.<sup>15</sup>

Memphis Police Radio Dispatch Log Cards (Dispatch Cards), a transcript of police radio transmissions (Radio Transcript), and other police documents reveal that Clyde Keenan's sworn statements are false.

Time entries on the back of the Dispatch Cards record that the call "shots fired" went out at 22:35 (10:35 p.m.).<sup>16</sup> The Dispatch Cards reveal that, contrary to Keenan's sworn statement

<sup>12</sup> 1/3/01 Communication From Summers To Campbell, App. at 25.

<sup>13</sup> Transcript of 1/25/01 Clemency Hearing, App2 at 29, 42.

<sup>14</sup> *Id.* at 40-41.

<sup>15</sup> *Id.* at 35.

<sup>16</sup> Dispatch Card, App2 at 62.

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and hearing testimony, Keenan (#1012)<sup>17</sup> did not arrive at the scene until 22:41 (10:41 p.m.), six minutes after the "shots fired" call.<sup>18</sup> The Dispatch Cards further reveal that Keenan was not, as he claimed, the first officer on the scene - numerous officers arrived before him.<sup>19</sup> Indeed, Officer Hayes (#106) had charge of the crime scene prior to Keenan's arrival.<sup>20</sup> And most telling, is that while Keenan claimed that he saw Stoddard lying on the ground with an arm wound, the Dispatch Cards and the Radio Transcript reveal that at the time Keenan actually arrived at the scene, Stoddard had already left for the hospital.

Police documents demonstrate that when Officer Barry Larkin (#146)<sup>21</sup> arrived at the scene, he put Stoddard in his patrol car and left for the hospital.<sup>22</sup> The Radio Transcript reveals that Larkin (#146) left the scene with Stoddard minutes before Keenan (#1012) arrived at the scene.<sup>23</sup> The Dispatch Cards confirm that Larkin (#146) left to transport Stoddard to the hospital.

<sup>17</sup> For purposes of radio communication, each Memphis Police Officer is assigned a number. At the January 25, 2001, hearing, Keenan stated that as Commander of the Shoot Team, he sent Officer Ball to the hospital to check Stoddard's weapon. Transcript of 1/25/01 Clemency Hearing, App2 at 29, 42. We therefore know that the number assigned to Keenan is 1012. See Radio Transcript, App2 at 55 (1012 radio: "Advise Sgt. Ball from my unit on the scene to proceed immediately to John Gaston Hospital..."; 8/6/81 Police Report of Gary Ball, App2 at 66 (Lt. Keenan instructs Ball to go to the hospital)).

<sup>18</sup> Dispatch Card, App2 at 62.

<sup>19</sup> *Id.*

<sup>20</sup> Arrest Reports, App2 at 62, 64.

<sup>21</sup> See Officer Rostre, App2 at 66.

<sup>22</sup> 8/6/81 Statement of Otis W. Stewart, App2 at 63.

<sup>23</sup> Radio Transcript, App2 at 48.

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at 22:39 (10:39 p.m.), and Keenan did not arrive at the scene until two minutes later.<sup>27</sup>

Police documents further demonstrate that Keenan fabricated his claim that he immediately sent Officer Ball to the hospital to check Stoddard's weapon, and Stoddard's weapon was therefore secured as soon as Stoddard reached the hospital.

As noted earlier, the logs show "shots fired" at 22:35 (10:35 p.m.).<sup>28</sup> While Keenan did thereafter send Ball to the hospital, he did so *an hour and a half later*<sup>29</sup> – and then not to have Stoddard's weapon checked but to *see if Ball could get a statement from Workman* who police were transporting to the hospital where Stoddard was being treated.<sup>30</sup> Ball went to the hospital and did as instructed; he attempted to talk to Workman.<sup>31</sup>

Ball first saw Stoddard's weapon *two hours later*, at 2:00 a.m., which was three and a half hours after the shooting.<sup>32</sup> And even then, Ball did not obtain Stoddard's weapon through a search sined at securing it – officers who had taken custody of Oliver's and Stoddard's possessions approached him with the gun.<sup>33</sup> Keenan's story that he immediately sent Ball to the hospital to check Stoddard's weapon is simply false.

<sup>27</sup> Dispatch Card, App2 at 67.

<sup>28</sup> Dispatch Card, App2 at 62.

<sup>29</sup> See 9/6/91 Police Report, App2 at 68 (Workman arrested at approximately 1:45 midnight; at that point Keenan directs Ball to go to the hospital).

<sup>30</sup> *Id.*, App2 at 68.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*, App2 at 69.

<sup>33</sup> *Id.*

C The State Presented Dr. O. C. Smith's Fabricated Testimony That Scientific Evidence Establishes That Workman Shot Oliver

To counter Workman's expert evidence that the mortal wound to Oliver was inconsistent with wounds caused by Workman's ammunition, the State presented the Shelby County Medical Examiner, Dr. O. C. Smith. Based on a supposedly sophisticated scientific test, Smith stated that he was 100% certain that Workman shot Oliver.<sup>34</sup> Because the State provided Workman no notice of Dr. Smith's testimony, and because the Forensic Board denied Workman the opportunity to cross-examine Smith, Workman was unable to challenge Smith's assertions. A subsequent investigation, however, reveals the utter unreliability of Smith's testimony.

Because Workman fired aluminum-jacketed hollow-point bullets the night of Oliver's death, Dr. Smith stated that he decided to "investigate" whether Oliver's mortal wound contained aluminum residues. Smith testified that in an effort to establish this fact, he had soft tissue samples of Lieutenant Oliver's mortal wound tested for metals under a scanning electron microscope with energy dispersive x-rays (SEM-EDX). He claimed that (1) before the test he was able to see under a microscope metallic fragments in the tissue samples;<sup>35</sup> (2) the test demonstrated these metallic fragments were aluminum;<sup>36</sup> and (3) when a similar test was run on a pig's foot which Dr. Smith shot with an aluminum-jacketed bullet, a similar positive reading for aluminum occurred.<sup>37</sup> Based on these tests, Smith confidently asserted that he was 100% certain

<sup>34</sup> *Id.*, App. at 45-46.

<sup>35</sup> *Id.*, App. at 41.

<sup>36</sup> *Id.*, App. at 42.

<sup>37</sup> *Id.*, App. at 35.



that Workman shot Oliver.<sup>39</sup>

Smith failed to tell the Parole Board, however, that he had his tissue samples tested earlier and those tests failed to show the aluminum which he claimed was present.<sup>40</sup> This initial test is apparently accurate because bullets do not leave residues in soft human tissue.

Dr. Werner Spitz, author of the leading pathology treatise *Medical Investigation of Death*, declares that (1) in his forty-eight years as a pathologist he has never heard of metal fragments from a bullet being left in soft human tissue; (2) he has never tested for trace metals in soft human tissue; and (3) he is not aware of any other pathologist who has ever performed such a test.<sup>41</sup> The "test" supporting Dr. Smith's 100% certainty is, accordingly, no test at all. More troubling, however, is the fact that Smith left out vital details invalidating the results he obtained, details which indicate that his claims about Workman's guilt are simply not true.

Smith told the Parole Board that he used as a control a pig's foot he shot with an aluminum-jacketed bullet. Dr. Smith testified that the pig's foot tested positive for aluminum, and this fact establishes that when an aluminum-jacketed bullet travels through soft tissue it leaves aluminum residue.<sup>42</sup> The lab technician who actually performed the test on the pig's foot, however, declares that it did not test positive for aluminum.<sup>43</sup>

While Dr. Smith had stated that he could see metal fragments in the tissue sample with

<sup>39</sup> *Id.*, App. at 45.

<sup>40</sup> 3/14/01 Affidavit of Lou Boykins, App. at 69 ¶5.

<sup>41</sup> 3/9/01 Declaration of Werner U. Spitz, M.D., App. at 67.

<sup>42</sup> Transcript of In Re: Philip R. Workman, App. at 39.

<sup>43</sup> 3/14/01 Affidavit of Lou Boykins, App. at 71 ¶3; 3/15/01 Declaration of Dr. Aaron Packett, App. at 74 ¶3c; 76 ¶e.

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his naked eye,<sup>44</sup> when the lab technician put the tissue sample under the electron microscope, she did not see any such claimed aluminum fragments.<sup>45</sup> Dr. Aaron Packett, an expert in SEM-EDX, declares that if such fragments actually were in the sample, as Smith claimed, under the electron microscope they would have "lit up like a neon sign on a dark night."<sup>46</sup> Accordingly, "It is unfathomable to explain how metallic granules could be seen by Dr. Smith with his naked eye, and then not detected with the electron microscope ...." The lab technician's inspection of the tissue sample under the electron microscope thus eliminates any possibility that the tissue sample contained aluminum fragments. Dr. Smith left out this critical detail in his testimony before the Parole Board.

Finally, Dr. Packett declares that under the protocol used by the lab technician to test the tissue samples, background interference could be responsible for any positive aluminum reading.<sup>47</sup> The supposed presence of aluminum could therefore be nothing more than a false positive from the aluminum in the microscope itself.

Based on SEM-EDX testing, Dr. Smith testified that Lieutenant Oliver's mortal wound contained aluminum residue, and he was therefore 100% certain that Workman shot Oliver. The only thing anyone can say with 100% certainty, however, is that Dr. Smith's claims were wholly misleading, if not simply false.

<sup>44</sup> 3/14/01 Affidavit of Lou Boykins, App. at 71 ¶4.

<sup>45</sup> 3/15/01 Declaration of Dr. Aaron Packett, App. at 74 ¶3c.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*, App. at 75 ¶7.

<sup>48</sup> *Id.*, App. at 74 ¶¶4-6.

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III THE STATE'S CURRENT ACTIONS CAST DOUBT ON ITS PRIOR DENIALS OF WRONGDOING

In Workman's initial habeas proceeding, Workman alleged that the prosecution knowingly presented Harold Davis's false testimony that he saw Workman shoot Oliver. We now know, beyond any doubt, that Davis's testimony was false. Respondent's counsel, however, repeatedly told the federal courts that Workman was not entitled to relief based on Davis's false testimony because Workman could not establish that the prosecution knew Davis's testimony was false.

[The evidence] does [not] present a genuine issue of fact that any state witness testified falsely at the trial or that the prosecution knew that any testimony was false.<sup>48</sup>

[The evidence] does [not] present a genuine issue of fact that Davis testified falsely or that the prosecution deliberately deceived the court and jurors with respect to Harold Davis.<sup>49</sup>

None of the evidence Workman offered creates a genuine issue of fact that the prosecution withheld evidence or knowingly allowed false evidence to be presented.<sup>50</sup>

Nor does it present a genuine issue of fact that any state witness testified falsely or that the prosecution knowingly produced false testimony.<sup>51</sup>

In reliance upon these assertions of lack of knowledge, the Sixth Circuit denied relief. *Workman v. Bell*, 173 F.3d 759, 768 (6th Cir. 1999).

Then, after the prior appeal concluded, Workman learned that during the prior habeas proceeding, Dr. Smith's Office withheld an x-ray showing that the fatal bullet did not come from

<sup>48</sup> Final Sixth Circuit Brief of Respondent-Appellee, *Workman v. Bell*, No. 96-6652, p. 13.

<sup>49</sup> *Id.*, pp. 15-16.

<sup>50</sup> *Id.*, p. 16.

<sup>51</sup> *Id.*, p. 18.

Workman's gun. Workman thus moved to reopen the proceedings, and once again, Respondent's counsel denied any knowledge of the deliberate withholding of the evidence. Yet again, based upon the claims of ignorance, federal courts denied relief as seven judges stated that "nothing in this record demonstrates that the Attorney General knew of the X-ray at the district court proceeding." *Workman v. Bell*, 227 F.3d 331, 341 (6th Cir. 2000) (en banc) (Opinion of Siler, J.).

And now we have Respondent's counsel apparently involved in presenting the fabricated testimonies of Keenan and Smith — the very person who claimed that the Oliver x-ray was not intentionally withheld.

IV THIS COURT CAN ESTABLISH (1) THAT A CIRCUIT COURT CAN REOPEN A CLOSED PROCEEDING WHEN IT APPEARS THAT FRAUD Tainted THAT PROCEEDING; AND (2) STANDARDS TO GUIDE THAT DETERMINATION

In *Calderon v. Thompson*, this Court considered the circumstances under which a Circuit Court can recall its mandate. In establishing standards to guide the exercise of such power, this Court stated

[W]e should be clear about the circumstances we address in this case. This ... is not a case of fraud upon the court, calling into question the very legitimacy of the judgment.

*Calderon v. Thompson*, 523 U.S. 538, 557 (1998). By making this statement, this Court left open whether a litigant who can establish fraud in a closed proceeding is entitled to reopen that proceeding without satisfying the standards *Calderon v. Thompson* set. This case presents an opportunity to resolve this question and establish applicable standards for cases asserting fraud.

As this Court recognizes,

tampering with the administration of justice ... involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and

safeguard the public.

*Hartz-Adas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 246 (1944). Such is the case here.

At trial the State presented Harold Davis's false testimony that he saw Workman shoot Oliver. During the habeas proceedings, the State (1) failed to produce the Oliver x-ray establishing that the fatal bullet did not fragment, and therefore did not come from Workman's gun; and (2) represented that Tennessee's clemency process would consider Workman's claim of innocence. At that time, counsel was apparently involved in manufacturing false evidence, and at the clemency hearing State's counsel presented false evidence. By granting certiorari, this Court can resolve the question left open in *Calderon* and establish standards for resolving allegations that fraud in a closed proceeding entitles the Circuit Court to reopen that proceeding.

CONCLUSION

False testimony that Workman shot Oliver garnered Workman a death sentence. When Workman discovered proof establishing this reality and that he was innocent of capital murder, Respondent's counsel assured the federal courts that Tennessee's clemency process would consider Workman's evidence. At that time, Respondent's counsel apparently was involved in manufacturing false evidence ensuring that Workman's evidence of innocence would fall on deaf ears. At the clemency hearing, State's counsel presented that false evidence in conjunction with false evidence that "science" established with 100% certainty that Workman shot Oliver. This Court should grant certiorari to stop an execution based on fraud.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on March 29, 2001, I faxed a copy of the foregoing to Gordon W. Smith,  
Deputy State Attorney General, at 615-741-2699.

*C. B. EMMITT*