

IN THE SUPREME COURT OF TENNESSEE  
AT JACKSON

**STATE OF TENNESSEE v. PHILIP R. WORKMAN**

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No. W2002-00300-SC-R11-CD - Filed May 19, 2003

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**OPINION OF JUSTICE BIRCH RESPECTING THE DENIAL  
OF THE APPLICATION FOR PERMISSION TO APPEAL**

Indeed, it is a bit out of the ordinary to record one's views concerning the denial of an application for review under Rule 11 of the Tennessee Rules of Appellate Procedure, but the gravity of this case and the strength of my conviction concerning this case drive my response.

I would grant Philip R. Workman's application for permission to appeal because it raises, in my view, several valid issues. Accordingly, I elect to list those reasons as a matter of record.

I would grant review of Workman's application in order to clarify the factors to be considered in determining whether newly discovered evidence "may have resulted in a different judgment" if presented at trial. See Tenn. Code Ann. § 40-26-105. The analysis to be applied by a trial court in determining the possible effect of new evidence upon the original verdict, is an important question of law which must be resolved to insure that coram nobis relief is appropriately administered.

I would grant review in this case also because under any analysis, the newly-discovered proof that an "eyewitness" no longer claimed to have seen Workman shoot the officer, and that the wound causing death was inconsistent with the type of wound which would have been caused by a bullet matching Workman's gun, mandates a conclusion that the evidence "may have resulted in a different judgment." Such evidence renders the lower court's denial of coram nobis relief an abuse of discretion.

Furthermore, I would grant review in this case to determine whether Rule 606(b) of the Tennessee Rules of Evidence, which prohibits a juror from testifying as to any matter occurring during the course of deliberations or as to reasons for assenting to the verdict, also prohibits a juror from testifying as to matters unrelated to the original deliberations and verdict. I would find that testimony concerning whether newly discovered evidence changed a juror's opinion as to the appropriate verdict, is not barred by Rule 606(b) and is admissible at a coram nobis hearing.

Finally, I would grant review in this case because this Court is under a statutory obligation to perform a proportionality review based upon all the evidence in a death penalty case. Thus, the introduction of new evidence warrants a renewed consideration of whether the death penalty is proportional.

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ADOLPHO A. BIRCH, JR.