

NOV 14 2001

IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

PHILIP R. WORKMAN,	)	
	)	
Petitioner-Appellant,	)	
	)	
v.	)	No. 96-6652
	)	
RICKY BELL, Warden,	)	
	)	
Respondent-Appellee.	)	
	)	
In re: PHILIP R. WORKMAN,	)	
	)	No. 00-5367
Movant.	)	
	)	

DEATH PENALTY HABEAS CORPUS PROCEEDING  
EXECUTION DATE: 3/30/01 1:00 a.m.

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SUPPLEMENTAL MEMORANDUM TO  
MOTION TO REOPEN AND TO APPOINT A SPECIAL MASTER

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The recently obtained electronic communications between DA Campbell and the Attorney General's Office indicate that Respondent's counsel may have manufactured false evidence from Clyde Keenan for presentation during the clemency proceedings. This false evidence went to the core issue in this case: whether Stoddard or another police officer, not Workman, shot Oliver.<sup>1</sup>

1 A COMMUNICATION FROM RECUSED PAROLE BOARD MEMBER RAY MAPLES PROMPTS DA CAMPBELL AND AAG FRUDEN TO SOLICIT TESTIMONY THAT AN IMMEDIATE CHECK OF STODDARD'S AND PARKER'S GUNS DEMONSTRATED THAT THEY HAD NOT BEEN FIRED

A Recused Board Member Maples Suggests Leads That The District Attorney Should Follow In Opposing Clemency

On February 2, 2000, Parole Board Member Ray Maples purported to recuse himself from the clemency process. On February 25, 2000, though, Maples (a lifetime Memphis Policeman who served with Oliver and Keenan) contacted DA Campbell *ex parte* with suggestions for investigation. Specifically, Maples suggested that DA Campbell investigate what time Keenan and his "Shoot Team" arrived at the scene and who checked Stoddard's and Parker's guns.<sup>2</sup>

<sup>1</sup> Counsel first recognized the significance of documents discussed below the afternoon of March 20, 2001, after performing a detailed comparison of the recently discovered electronic communications *vis a vis* documents counsel previously obtained. Counsel contacted the Sixth Circuit Case Manager who informed that counsel should fax by close of business March 21, 2001, any additional matters that counsel wanted this Court to consider.

<sup>2</sup> Appendix filed with Workman's March 19, 2001, Memorandum In Support Of Motion To Recuse And To Appoint A Special Master (App.) at 13.

DA Campbell forwarded Maples's suggestions to AAG Pruden in Nashville who immediately responded:

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>3</sup>

B Clyde Keenan's New Sworn Statement About Checking Guns The Night Of The Shooting

Court files and the files of the Memphis Police reveal no document concerning Keenan's arrival at the scene or the checking of weapons at the scene. On March 9, 2000, apparently satisfied that "there is nothing in the file" about these critical matters, DA Campbell obtained a sworn statement from Keenan at the State Attorney General's Office in Nashville. Keenan's statement was false.

Keenan swore that the night of the Oliver shooting, he was the Commander of the "Shoot Team," a group of officers that performed an investigation any time there was a police use of deadly force. Keenan claimed that he 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." Keenan further made claims about what he supposedly saw when he arrived:

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<sup>3</sup> *Id.* (emphasis added).

<sup>4</sup> Transcript of 3/9/00 Sworn Statement, attached Appendix (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 Ronnie Oliver ... The other police officer, Officer Stodderd (sic), was an officer I was familiar with. He was down also. Stodderd (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 crews ... Officer Parker was ... standing actually between Lt. Oliver and Officer Stodderd (sic).<sup>5</sup>

Keenan told a story about seeing Stodderd and Oliver wounded on the ground, going to Oliver's aid, and then checking weapons after Lieutenant Oliver was placed in an ambulance:

[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>6</sup>

DA Campbell then asked: "What about Officer Stodderd (sic)? Was his weapon checked also?"<sup>7</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.

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<sup>5</sup> *Id.* at 6-7.

<sup>6</sup> *Id.* at 8-13.

<sup>7</sup> *Id.* at 13.

Stoddard's had not been fired.<sup>8</sup>

At the April 3, 2000, hearing before Governor's designee Justice Wilson, DA Campbell entered Keenan's sworn statement, on videotape, as an exhibit for the Governor's consideration on the question of clemency.<sup>9</sup> The obvious purpose behind the statement was to claim that Keenan was immediately on the scene, oversaw a prompt check of the officers' guns, and that check precluded the possibility that Lieutenant Oliver was killed by "friendly fire."

#### C Keenan Gives A Second Statement Before The Parole Board

Because this Court granted a stay of execution to conduct further proceedings, the Governor did not resolve Workman's clemency request. 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 directly to the Parole Board. A hearing was scheduled for January 25, 2001. In preparation for that proceeding, State Attorney General Paul Summers contacted DA Campbell to "recommend highly that you call Clyde Keenan to testify at the hearing."<sup>10</sup>

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<sup>8</sup> Id. at 12-14.

<sup>9</sup> Transcript of 4/3/00 Clemency Proceeding, App2 at 21-22.

<sup>10</sup> 1/3/01 Communication From Summers To Campbell, App. at 23.

At the January 25, 2001, hearing, Keenan reiterated the substance of his prior statements, emphasizing that he was the first officer on the scene - arriving within one minute of hearing the call "shots fired."<sup>11</sup> Keenan also added that (1) he sent police officer Gary Ball from the crime scene to the hospital to check Stoddard's weapon;<sup>12</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>13</sup>

II DOCUMENTS WORKMAN OBTAINED FROM A SOURCE OTHER THAN THE MEMPHIS POLICE DEPARTMENT REVEAL THAT KEENAN'S TESTIMONY IS FALSE

While "there is nothing in the file" of the Memphis Police Department respecting the time Keenan arrived at the crime scene and the activities he undertook upon his arrival (a fact which AAG Pruden characterized as "good") the truth is that there *is* something in the District Attorney's file: Memphis Police Radio Dispatch Log Cards (Dispatch Cards) and a transcript of police radio transmissions (Radio Transcript). Those documents contradict Keenan's claims about his activities the night of the shooting.

Time entries on the back of the Dispatch Cards record that the call "shots

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<sup>11</sup> Transcript of 1/25/01 Clemency Hearing, App'x at 29, 42

<sup>12</sup> *Id.* at 40-41.

<sup>13</sup> *Id.* at 35.

fired" went out at 22:35 (10:35 p.m.).<sup>14</sup> The Dispatch Cards reveal that, *contrary to Keenan's sworn statement and hearing testimony*, Keenan (#1012)<sup>15</sup> did not arrive at the scene until 22:41 (10:41 p.m.), six minutes after the "shots fired" call.<sup>16</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>17</sup> Indeed, Officer Hayes (#106) had charge of the crime scene prior to Keenan's arrival.<sup>18</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>19</sup>

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<sup>14</sup> Dispatch Card, App2 at 62.

<sup>15</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 39, 42. We therefore know that the number assigned to Keenan is 1012. See Radio Transcript, App2 at 55 (10:12 radio: "Advise Sgt. Ball from my unit on the scene to proceed immediately to John Gaston Hospital ...; 8/5/83 Police Report of Gary Ball, App2 at 68 (i.e. Keenan instructs Ball to go to the hospital)).

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

<sup>17</sup> *Id.*

<sup>18</sup> Arrest Reports, App2 at 63, 64.

<sup>19</sup> See Officer Roster, App2 at 66.

arrived at the scene, he put Stoddard in his patrol car and left for the hospital.<sup>20</sup> The Radio Transcript reveals that Larkin (#146) left the scene with Stoddard minutes before Keenan (#1012) arrived at the scene.<sup>21</sup> The Dispatch Cards confirm that Larkin (#146) left to transport Stoddard to the hospital at 22:39 (10:39 p.m.), and Keenan did not arrive at the scene until two minutes later.<sup>22</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>23</sup> While Keenan did thereafter send Ball to the hospital, he did so an hour and a half later<sup>24</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

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<sup>20</sup> 8/6/91 Statement of Chris W. Stewart, App2 at 65.

<sup>21</sup> Radio Transcript, App2 at 48.

<sup>22</sup> Dispatch Card, App2 at 62.

<sup>23</sup> Dispatch Card, App2 at 62.

<sup>24</sup> See 8/6/91 Police Report, App2 at 68 (Workman arrested at approximately midnight – at that point Keenan directs Ball to go to the hospital).



where Stoddard was being treated.<sup>25</sup> Ball went to the hospital and did as instructed; he attempted to talk to Workman.<sup>26</sup>

However, it is clear that it was not until two hours later, at 2:00 a.m. -- three and a half hours after the shooting -- that Ball first saw Stoddard's weapon.<sup>27</sup> And even then, he did not search for it personally to secure it as evidence: officers who had taken custody of Oliver's and Stoddard's possessions "approached" him with the gun.<sup>28</sup> Koenan's story that he immediately sent Ball to the hospital to check Stoddard's weapon is simply false.

### III CONCLUSION

It appears that at the time Respondent's counsel told this Court that clemency proceedings were available to address Workman's claim of innocence, counsel and other state agents were creating false evidence about the critical issue in Workman's case. If so, clemency was not an opportunity for Workman to have his claims of innocence heard. Rather, it was an opportunity for Respondent's counsel and the District Attorney to present false evidence to the Parole Board in

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<sup>25</sup> *Id.*, App2 at 68.

<sup>26</sup> *Id.*

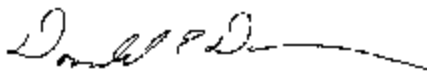
<sup>27</sup> *Id.*, App2 at 69.

<sup>28</sup> *Id.*

an effort to undermine Workman's plea for clemency, and, with that false evidence, convince the people of Tennessee that Workman's execution should proceed.

This Court should reopen this case and appoint a Special Master to investigate whether Respondent's counsel perpetrated a fraud by corrupting the clemency process.

Respectfully submitted,



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