

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

<b>PHILIP R. WORKMAN,</b>	)	
	)	
<b>Petitioner-Appellant,</b>	)	
	)	
<b>v.</b>	)	<b>No. 96-6652</b>
	)	
<b>RICKY BELL, Warden,</b>	)	
	)	
<b>Respondent-Appellee.</b>	)	
<b>IN RE: PHILIP R. WORKMAN,</b>	)	
	)	<b>No. 00-5367</b>
<b>Movant.</b>	)	

**MOTION TO STRIKE SECOND DECLARATION FROM  
DR. KRIS SPERRY**

On 3 April 2000, Workman filed a motion requesting this Court consider a second declaration of Dr. Kris Sperry, executed on 1 April 2000. In his second declaration, Dr. Sperry states (1) that the chest x-ray depicted at Exhibit 1 to his 4 March 2000 declaration establishes that the bullet that killed Lt. Oliver did not fragment in the victim's body, but emerged from his body intact, and (2) because of this, he believes to a reasonable degree of medical certainty that the bullet that killed Lt. Oliver was not a .45 caliber Silver-Tip hollow-point bullet.<sup>1</sup>

The same day that Workman filed Dr. Sperry's 1 April 2000 declaration, Dr. Sperry

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<sup>1</sup>Dr. Sperry's 4 March 2000 declaration is appended to Workman's Memorandum in Support of his Motion to Reopen. It is interesting to note that, when given the opportunity to state that the chest x-ray established that the bullet that killed Lt. Oliver did not fragment inside his body, but emerged intact, Dr. Sperry declined to do so. Instead, he edited the declaration to state that the autopsy report and photographs established these facts.

presented a directly contradictory account of his medical opinion at Workman's state clemency hearing. Dr. Sperry stated, "Well, I can't sit here and tell you today that absolutely it was not the .45 Silvertip." He went on to state that, based upon the standard he required to provide expert testimony in a murder trial, "I could not tell you specifically that it was or wasn't a .45 or a .38 that caused [Lt. Oliver's wounds]. In other words, *if I was asked the question, do I have an opinion as to what bullet it was, I could not tell you because I could not meet that level of certainty.*" See Exhibit 1, *In re: Philip R. Workman, Clemency Proceeding Before the Honorable Don Sundquist, Governor of the State of Tennessee*, April 3, 2000, testimony of Dr. Kris Lee Sperry, pp. 82-83 (emphasis supplied). He merely opined that he thought "it more probable than not" that the bullet was a .38 caliber and not a .45 caliber.

Nearly four weeks have passed since Workman asked this Court to consider Dr. Sperry's 1 April 2000 declaration as evidence in the two matters currently pending. Yet, to date, he has failed to inform the Court that Dr. Sperry's 1 April 2000 declaration is false and misleading, and that Dr. Sperry made diametrically opposite representations as to his medical assessment of the evidence to the Governor of Tennessee.

As this Court has stated:

Fraud upon the court should . . . embrace only that species of fraud which does or attempts to, subvert the integrity of the court itself, *or is a fraud perpetrated by officers of the court* so that the judicial machinery cannot perform in the usual manner its impartial task of judging cases that are presented for adjudication. . . . (emphasis added)

*Demjanjuk v. Petrovsky*, 10 F.3d 338, 352 (6th Cir. 1993) citing 7 Moore's Federal Practice and Procedure ¶60.33; *see also Fierro v. Johnson*, 197 F.3d 147, 153 (5th Cir. 1999), *petition for certiorari filed*. Ironically, it is Workman who seeks to advance his cause before this Court through

a false declaration.

### **CONCLUSION**

Based upon the foregoing, respondent requests that Dr. Sperry's 1 April 2000 declaration be stricken and that the Court impose such other sanctions as it deems appropriate.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and exact copy of the foregoing has been forwarded by first class mail, postage paid, to Christopher S. Minton, Office of the Post-Conviction Defender, 460 James Robertson Parkway, Nashville, Tennessee 37243 on this the \_\_\_\_ day of May, 2000.

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GLENN R. PRUDEN  
Senior Counsel