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**MAR 24 2009**

**ATTORNEY GENERAL  
OFFICE**

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

<p>In re: <b>PHILIP R. WORKMAN,</b>           Movant.</p>	<p>) ) ) ) ) )</p>	<p>Death Penalty Habeas Corpus Case           No.   <b>EXECUTION SCHEDULED FOR</b>  <b>4/6/2000, 1 a.m.</b></p>
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**PETITIONER PHILIP RAY WORKMAN'S  
MOTION TO SUPPLEMENT THE RECORD**

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Christopher M. Minton  
 Office of the Post-Conviction Defender  
 460 James Robertson Parkway  
 Nashville, Tennessee 37243  
 (615) 253-1986

Counsel for Philip Ray Workman

Petitioner Philip Ray Workman respectfully requests permission to supplement the record with a videotape containing two interviews of Harold Davis. In support thereof, Mr. Workman shows:

1. On March 24, 2000, Mr. Workman filed in this Court (1) a Motion For Declaration That 28 U.S.C. § 2244 Does Not Apply To Specified Claims; and (2) a Motion For Leave To File A Second Habeas Corpus Petition.

2. In the motions, Mr. Workman asserts that the only witness who claimed to see Mr. Workman shoot Memphis Police Officer Ronald Oliver, Harold Davis, has now twice recanted his testimony. Mr. Workman also asserts that Mr. Davis has now stated that he committed perjury at Mr. Workman's trial because authorities coerced him into testifying falsely.

3. In support of the allegations in Paragraph 2, Mr. Workman filed a videotape containing video recordings of the two interviews in which Davis recants his testimony. The attached documents are transcripts of those interviews.

4. To properly consider the issues Mr. Workman raises in his motions, this Court must review the videotape.

WHEREFORE, Mr. Workman respectfully requests that this Court

1. Grant him leave to supplement the record with the videotape he proffers to support the motions currently before this Court; and

2. Grant such other relief as this Court deems just.

Respectfully submitted,

*Christopher M. Minton*

Christopher M. Minton  
OFFICE OF THE POST-CONVICTION  
DEFENDER

460 James Robertson Parkway  
Nashville, Tennessee 37243  
(615) 253-1986

CERTIFICATE OF SERVICE

I certify that on 3-24-2010, I hand-delivered a copy of the foregoing to:

Gordon W. Smith  
Deputy State Attorney General  
ATTORNEY GENERAL'S OFFICE  
500 Charlotte Avenue  
Nashville, Tennessee 37243-0493

*Christopher M. Minton*

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Transcript of interview with Harold Davis, conducted at Motel 6, Van Buren Ave., Phoenix, AZ, October 1, 1999, 10:00 A.M.

HD: Harold Davis, witness  
CM: Chris Minton, attorney  
JD: Jefferson Dorsey, attorney

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HD: My name's Harold Davis.

JD: Where are you at, Harold?

HD: I'm at, uh, where am I? I'm at, I'm in Phoenix, Arizona.

JD: You know what the date is today?

HD: Today's October the first, 1999.

JD: What we'd like you to do is just talk about the events back in Memphis.

HD: Okay.

JD: Do you remember that?

HD: Yeah, I remember that. I was in Memphis on vacation from, uh, Washington and, uh, I just came from Tacoma, Washington. And, uh, I was out with my friend, Cletus, out in Frazier.

JD: In Memphis?

HD: In Memphis, Tennessee. And I left there on my way back to my father's house, uh, at that time, and I'd been drinking, and, uh, smoking some weed at that time. So this cop pulls ahead of me, I went to Wendy's to get something to eat 'cause I had the munchies and...

JD: You say the cop was in front of you?

HD: Right.

JD: Okay.

HD: And, uh, and I pulled off to the side and I looked out my rearview mirror and I saw the cop start struggling with the guy, and another cop drove up, and, uh, I saw, uh, another cop pull away, and other cop kinda pulling the guy's hand, saw the other cop fall back and pull his gun, and that's when I started taking off, and the other cops, heard sirens, and lights coming and as I

was pulling off I looked through my rear view mirror and I heard shots and that's when I took off.

JD: Okay. Now, you said that you pulled over, or you kept driving, or what?

HD: I pull...

JD: When you first got to Wendy's.

HD: When I pulled over, I pulled over, I was somewhere to the side where I could see in my rear view, you know, I was trying to wait for the cops to go into the store, into the Wendy's. And, uh...

JD: Because you'd been drinking?

HD: Right, and smoking some pot. And that's when the guy came out, and I saw this, start struggling, I saw this other cop car went in, and it was packed...

CM: Did you see Philip Workman shoot the police officer?

HD: No I didn't.

JD: Now, did you ever get out of your car?

HD: No.

JD: No?

HD: No.

JD: Okay. And when you saw this start to go down you said that you took off?

HD: Right, to go back to Cletus' house.

JD: Okay. What happened the next morning?

HD: I was at the suites of Ramada, on Elvis Presley, and I read about it in the paper and, uh, saw the guy's picture and, uh, I talked to an old girlfriend about it, and she told me I should call and let them know what had happened, and suppose it'd been your father, and so forth, and I called and told them I was in the vicinity when it happened, and a policeman came and got me, and took me downtown.

JD: Okay. And when he took you downtown, uh, did he show you any pictures or anything?

HD: Yes.

JD: Okay. And you selected one of the photographs.

HD: Right.

JD: How did you select it?

HD: I don't remember exactly, I, uh, all I remember is they had an array of pictures. Most of the pictures were, like, good looking guys, you know, straight, clean cut, and, uh, they had one guy that was in the paper, right in the middle and grungy and everything so it was kind of easy, kind of, you know....

CM: So you had seen Philip's picture in the paper?

HD: Right.

CM: Prior to selecting the photograph?

HD: Right.

JD: Now, you made a statement to the police?

HD: Yes.

JD: Did they help you at all, with your statement?

HD: Pretty much so, you know, they, uh, problem they corrected it, you know, they...

JD: They corrected you?

HD: Right.

JD: Now, after that, what's your next involvement with the police?

HD: I was, I was working for the railroad, and I started working for them and I got a call from them and they wanted me to come down for the trial. And I told them I really didn't want to be involved anymore, you know, and I said, you know, I said 'what I have to say?' and they pretty much told me, you know, that I could come down and they would pick me up, or I could get arrested as a hostile witness and they could stick me in jail until the trial was over with, whatever...

JD: So they threatened to arrest you if you didn't come?

HD: Yeah, yeah.

JD: Okay. Did they take care of you when you came back?

HD: Yeah.

JD: How?

HD: They put me up in a hotel, uh, it was the Sheraton downtown and, uh, they gave me money every day, or every other day, or something like that, uh, in the form of a check and, uh, I cashed it at Union Planters Bank and, uh, took care of my food and so forth.

JD: Okay. Let me just back up to a couple of points.

HD: Okay.

JD: You saw this stuff go down through your rear window...

HD: Right.

JD: ...through your rear view mirror, I mean?

HD: Right.

JD: Okay. You didn't see Philip Workman shoot a police officer?

HD: No. I never did. No.

JD: And you left when you saw that stuff go down?

HD: Right.

JD: And you were on the road when you, when all this happened?

HD: Right.

JD: You weren't in the parking lot?

HD: No. I was right there in the vicinity. I was right there where I could see through my rear view mirror, and as I was pulling out, you know, I heard all the sirens coming and everything, and I just wanted to get out the area and, uh, Clerus' house was like, you know, right going back towards the left, and as I was getting out the area cops was coming from everywhere.

CM: Prior to your testimony did, uh, you go over the substance of your testimony with the prosecutor?

HD: I didn't understand you.

CM: I'm sorry. Prior to your testimony did you talk to the prosecution about your testimony and what it would be?

HD: Oh yes.

CM: Okay. And did they, in any way, suggest what you should say?

HD: Sure

CM: What did they suggest?

HD: I don't remember exactly, you know, it's been a long time, but they, you know, they pretty much said, you know, well, say this and say that and, you know.

JD: You've made, this is obviously different than your testimony. Are you telling us the truth, now?

HD: Yes. I, I believe I told the truth the first time, I mean, other than, I mean, uh, I never said that I saw the guy, I never said that I saw the guy shoot the policeman. I never said that.

CM: Okay, thank you, Harold.



TRANSCRIPT OF 11/20/99 DAVIS INTERVIEW

JD = Jefferson Dorsey, Workman's Clemency Counsel

HD = Harold Davis

JD: Okay, we were just talking with Harold. We were asking him whether there was something inside of you or something that was making it hard for you to tell us everything that happened. Can you tell me about that?

HD: Well, \_\_\_\_\_ I was in the area and like I said I was behind the cops and I drove up in there and I turned around and drove back to Cletus' and that's when I heard all the shots and heard all the sirens and everything. I saw in my rearview mirror, when I saw the cop car drove up in there that's when I made the left-hand turn and turned back to Cletus'. And the next morning when I got back to the hotel, that's when I found out the cop had got killed. And I called up and when the detective came up and told him I was there in the area and he came and took me down to the police station. And shoved me in the car I didn't see you or anything. I heard the shots. I was right behind the cop when he drove up in there but I turned around - \_\_\_\_\_ and saw the weed and drinking and I didn't want to be in that type position. And that they basically told me what happened. How it happened. When it happened. Saying things and would you be willing to say this - this is what happened - da, da, da. And, I said I didn't see all that. They said, well, this is what you're going to say. I'll tell you what... They said, this is what... we're gonna say that you, cause you're gonna be the eye witness and they even had me sign statements and more or less a threat if I didn't do it y'know. Then they talked about me coming back from Washington. I didn't want to come. And that's when they told me well, you come and be here and we can put you up, or you'll be a hostile witness and put you in jail. And so that's when I came on back. And, like, I was... I kept telling the prosecutor I really don't feel good about that and late one night the, somebody, a white guy, a big white guy came and knocked on my door and he said he had a message for me. And that if I changed my testimony in any way that people are not allowed to tell about could disappear like I could and y'know to change my testimony.

JD: You're still scared, right? You still have children in Memphis?

HD: Yeah. That's why I've been traveling and all these years. That's why I started doing drugs as hard I started doing it. Got into cocaine. Cause I was hoping if, it wouldn't come to what it came to - and now that it's come, it's either like people, that I love a lot, I don't want Phil to die but \_\_\_\_\_ but I don't want to die and I don't want people that they said... that the guy said that they probably wouldn't kill me but they would kill and hurt the people that I love. And there was nothing I could do about it. No matter what. And that nobody could protect me, y'know, the government, nobody, nobody could protect my family, my children. \_\_\_\_\_ the day I told the truth.

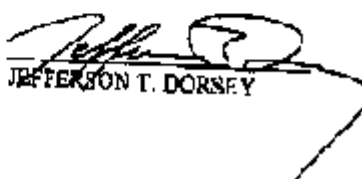
JD: How are you able to talk us now?

HTJ: Just \_\_\_\_\_ the last 18-something years, this has been ongoing in my mind. I figure I've tried to kill myself from drug-wise, drinking-wise, doing things that I don't normally do. You know, crime-wise, just make myself look so bad. Y'know. No matter what I said, it wouldn't mean anything. And, in the process I've ruined my life. I've made my family distrust me and hate me. I don't feel they hate me but that's why I've stayed away from my family all these years. I know I've been in trouble, I'm for any thing. But what's going \_\_\_\_\_ I've been traveling so much and meet up with \_\_\_\_\_ and I've tried to go back to Memphis and stay and all the memories come back and I just have to go. I can't stay because I feel like if all this came down if you guys couldn't find me but when you guys found me it was like. Well, you caught up with me and I've tried to drug myself to death. Kept trying to leave and disappear but I couldn't. And, my mom, y'know, she was calling me up. \_\_\_\_\_ It was hard but I couldn't tell her why. Y'know, you can't tell her the truth. She knows you lied but you can't tell her why. I told my father but he said just don't say anything. But I know if he was alive he'd told me to do the right thing. And even though I'm doing the right thing, I still don't know if it's right. Cause I'm scared.

JD: Okay. Well, you are doing the right thing. We're going to do everything in our power to make sure that you're doing the right thing \_\_\_\_\_ prosecution. Maybe this is your chance to stop running. To stop killing yourself.

CERTIFICATE OF SERVICE

I hereby certify that an exact copy of the foregoing Motion has been provided either by hand-delivery or by U.S. Mail, postage pre-paid, to the Criminal Justice Division, Office of the State Attorney General, 421 Fifth Ave. North, Cordell Hull Bldg, 2nd Floor, Nashville, Tennessee 37243-0491, on this the 2<sup>nd</sup> day of Nov., 2000.

  
JEFFERSON T. DORSEY


STATE OF TENNESSEE )  
                          ) ss  
COUNTY OF DAVIDSON )

**AFFIDAVIT**

I, JEFFERSON T. DORSEY, after having been duly sworn, aver and say as follows:

- 1 I represent PHILIP WORKMAN in his clemency process.
- 2 The records in his divers appeals are essential to the Appellant's Application for Commutation.
- 3 Any averments appearing in the attached Motion based on matters not appearing in the record are true to the best of my knowledge and belief.

FURTHER THE AFFIANT SAITH NOT.

  
JEFFERSON T. DORSEY

Sworn to and subscribed before me on this the 24 day of March, 2000.

  
NOTARY PUBLIC

My Commission Expires: Nov. 29, 2003