

UA 12/00

Death penUSA (Tennessee) Philip Ray Workman, white, aged 45

Philip Workman is scheduled to be executed in Tennessee on 6 April 2000. There are serious doubts about whether he is guilty of the crime for which he has been sentenced to die. Tennessee has not carried out an execution since 1960.

Workman was convicted of the first-degree murder of a police officer, Lieutenant Ronald Oliver, during an after-hours robbery of a Wendy's fast food restaurant in Memphis, Tennessee, on 5 August 1981. Ronald Oliver and two other officers, Aubrey Stoddard and Steven Parker, were the first to arrive at the scene. As Workman fled, shots were fired and Lt Oliver was killed by a single bullet. Stoddard was hit in the right arm.

At the 1982 trial Workman testified that he fell as he ran across the car park, attempted to surrender, and was struck on the head by an officer. Workman stated that he fired his gun twice, once in the air, and then at a person who had fired at him. Officers Stoddard and Parker testified that they had not fired their weapons, but that they had not seen Workman shoot Oliver. The prosecution presented testimony from an alleged eyewitness, Harold Davis, who stated that he had parked his car in the restaurant car park and was three metres away when he saw Workman shoot Oliver. He said that he stayed as "a bunch" of police officers arrived. The defence lawyers accepted the police version, conducted no forensic or ballistics analysis and did not investigate Davis. At the sentencing phase of the trial, they presented no mitigating evidence, for example of the physical abuse Workman had suffered as a child, and his drug addiction as an adult.

While Workman has never denied responsibility for creating the situation in which Oliver was killed, evidence has emerged since trial that discredits the testimony of Stoddard, Parker and Davis, and raises the possibility that the fatal shot may have been fired by a fellow police officer rather than by Workman. This evidence has never been heard in open court:

1. Harold Davis has retracted his testimony. In November 1999, he stated that police coerced him, under threat of physical harm, to lie about what he had seen. He now states that he was not in the car park at the time of the shooting, a claim backed up by a former girlfriend. Other evidence supports Davis's recantation: no reporters, police or members of the public who were witnesses recalled seeing Davis or his car, which was allegedly in the middle of an otherwise vacant car park.
2. A witness, a member of the public, who did not testify at the trial due to illness, signed a statement in 1995 that he had a clear view of the car park and that he had not seen Davis, but had seen Officer Parker fire his shotgun at Workman. Hospital records indicate that Workman was treated for a shotgun wound after capture. The jury were told that the only shots fired at the scene came from Workman's and Oliver's revolvers. Stoddard's and Parker's revolvers were not examined in the investigation of the crime.
3. Two ballistics experts have stated that the fatal bullet could not have come from Workman's gun. They state that the type of bullets he was using expand on entering a human body, and, if they exit, leave a bigger exit wound than the entry wound. The exit wound on Lt Oliver was half the size of the entry wound. In 1998, the Sixth Circuit Court of Appeals said that there was "no

doubt" that the fatal bullet could not have come from Workman's gun if it had left Oliver's body whole. Although all the evidence, uncontested, indicates that the bullet did exit whole, the Court nonetheless speculated that the bullet may have fragmented.

Setting Workman's execution date, the state Supreme Court noted that it was powerless to consider the new evidence. Two of the judges expressed concern about the case. Justice Birch said that due to "extenuating circumstances", the Governor should commute Workman's sentence. Justice Drowata, suggesting that Workman's death sentence is disproportionate, said: "...the circumstances of this case are by no means as egregious as most of the death penalty cases I have reviewed [and] are less egregious than many of the life sentences I have reviewed... The date set for execution... affords the Governor sufficient time to carefully consider any executive clemency application that may be filed..."

Workman's appeal lawyers have recently obtained affidavits from five of the eight trial jurors who say that they would not have voted for death if they had known of the issues discovered since trial. Lt Oliver's daughter has given a statement opposing the execution; his ex-wife also opposes the death sentence being carried out.

Since 1973, 84 people have been released from US death rows after evidence of their innocence emerged. Recurring factors contributing to wrongful convictions include inadequate defence representation, misconduct by police and prosecutors, and the use of unreliable testimony and physical evidence.

RECOMMENDED ACTION: Please telephone or send e-mail/faxes/express/airmail letters in your own words, in English or your own language:

- expressing sympathy for the family and friends of Lieutenant Ronald Oliver, and stating that you do not condone violent crime;
- expressing deep concern that Philip Ray Workman is scheduled for execution, despite serious concerns about his guilt which have not been the subject of an evidentiary hearing;
- noting expert testimony that the fatal bullet could not have come from Workman's gun, and witness testimony indicating that it was not only Lt Oliver's and Workman's guns which were fired at the scene;
- noting that Harold Davis has recanted his eyewitness testimony, and noting that other evidence supports his recantation;
- noting the views of Justices Drowata and Birch;
- noting that several jurors have signed affidavits that they would not have voted for death if they had been presented with the new evidence;
- noting that 84 death row prisoners have been found to have been wrongfully convicted in the USA since 1973;
- urging the Governor to grant clemency to Philip Workman.

APPEALS TO:

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COPIES TO: diplomatic representatives of the USA accredited to your country.

You may write letters (no more than 250 words) to one of the following:

Letters to the Editor, *The Tennessean*, 1100 Broadway, Nashville, TN 37203, USA. **Fax: +1 615 259 8093. E-mail: jgibson@tennessean.com**

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PLEASE SEND APPEALS IMMEDIATELY. It is not clear when Governor Sundquist will make his decision on clemency, but he could so at any time.