



**2. PETITION TO VACATE OR SET ASIDE  
JUDGMENT AND SENTENCE**

Now comes the Petitioner, David G. Thorne, to petition this Honorable Court for post-conviction relief pursuant to Ohio Revise Code Section 2953.21. The reasons for the petition are that there were denials and/or infringements of petitioner's rights as to render the judgment and/or conviction void and/or violable under the Ohio and/or the Constitution of the United States. Petitioner requests an oral evidentiary hearing.

**3. JURISDICTIONAL FACTS**

1. Petitioner David G. Thorne was indicted on September 15, 1999, for alleged complicity to aggravated murder with the specification that he committed complicity to aggravated murder for hire to cause the death of Yvonne Layne on March 31, 1999.

2. Counsel was retained and represented Petitioner throughout the proceedings.

3. A trial on the charges against Petitioner began on January 18, 2000.

4. On January 25, 2000, the jury returned a verdict of guilty of both the primary charge and the specification.

5. A sentencing hearing was held on January 27, 2000.

6. After a day and a half of deliberations, the Court found the jury deadlocked and unable to reach a unanimous decision on the appropriate sentence.

7. On February 2, 2000, a Motion to Appoint Counsel for Appeal was filed. Appellate counsel was subsequently appointed.

8. On February 3, 2000, the Court declared a mistrial on the sentencing phase and sentenced Petitioner to life imprisonment without eligibility of parole.

9. Appointed counsel timely filed a notice of appeal on behalf of petitioner in the Fifth District Court of Appeals.

10. The trial transcript was filed with the Court of Appeals on May 15, 2000.

11. A direct appeal was filed on August 3, 2000. The judgment of the Stark County Court of Common Pleas was affirmed on November 20, 2000.

#### **4. STATEMENT OF FACTS**

12. Yvonne Layne was found dead in her home at 916 Devine St. in Alliance at approximately 12:30 p.m. on April 1, 1999, by her mother, Tawnia Layne. (T. Vol. III, p. 812.) The first investigator arrived within five minutes. (T. Vol. III, p. 871.) The police chief arrived later with a civilian "observer" who was permitted to enter the crime scene. (T. Vol. III, pp. 893-994.) The coroner's investigator did not arrive until 1:22 p.m. (T. Vol. III, p. 912.) Two crime lab investigators arrived at 1:50 p.m. Several important determinations recommended by the U.S. Department of Justice's *National Guidelines for Death Investigation* were not made. Most important, no attempt apparently was made to record the scene temperature or body temperature to aid in the determination of time of death and no record was made of lividity to determine if the body had been moved after death. In addition, evidence was possibly contaminated when the victim's body was covered with a blanket before it was examined for hair, fibers, blood and other potentially important physical evidence. Among the items was a utility knife blade found resting against the

back knee area of the victim. No explanation for this knife's presence in such a crucial location was ever made by investigators or Joseph Wilkes, the admitted killer for hire.

13. An autopsy later revealed that Yvonne Layne died as a result of a gaping eight-inch laceration of the neck. The laceration was very deep and completely severed the left internal and external carotid arteries. It also severed the left jugular vein and partially transected the trachea. (T. Vol. III, p. 1082-1083.)

14. While at the crime scene at 5:10 p.m. the day Layne's body was found, Detective Lloyd Sampson was approached by neighbor George Hale. Hale related that, while he was walking past Layne's residence between 9:30 and 10 that morning, he saw a white male in his mid- to late 20s who was about 5 feet 9 inches tall and weighed about 180 pounds exit the residence with a garbage bag and walk around the west side of the house. The existence of this potentially important witness was not known to the Petitioner until Detective Sampson's report was obtained by a post-conviction investigator in late October 2000 in response to a public records request for all documents relating to the investigation of Yvonne Layne's murder. Sampson's brief summary of Hale's statement was never made available to defense counsel before Petitioner's trial. When Hale was located and interviewed at his new address, it was learned that Sampson's brief summary, which he wrote in July 1999, did not tell the whole story of the police department's contact with Wade. According to the attached affidavit signed by Wade on December 29, police unsuccessfully attempted to have Wade hypnotized and had him look through a book of mug shots. Wade did not see a photo of the man he saw exiting Layne's house the morning after the murder in the book. In December 2000, Wade says in his affidavit, he was shown photos of Joseph

Wilkes and David G. Thorne, and neither looked like the man he saw leaving 916 Devine Street. Wilkes also relates in his affidavit that his reward for coming forward with such important information was to find himself and his girlfriend's brother treated as suspects and to be harassed. Finally, Wade states that police told him that they did not want him to testify at any murder trial that might result from their investigation.

15. On April 2, 1999, detectives interviewed Tawnia Layne, Yvonne Layne's mother. In answers to their questions, Mrs. Layne told the detectives that her daughter's most recent boyfriend was Frederick "Eric" Cameron IV, the father of three of Yvonne Layne's five children. Tawnia Layne said that Cameron was in prison and that she did not know if Yvonne was still seeing him or not. "I think she was trying to, to get back together with David [Thorne]," the father of her 2-year-old son Brandon, Tawnia Layne said. Mrs. Layne also said that the father of her fifth and oldest child was Jeff Stout. Mrs. Layne told the detectives that Yvonne had complained about being physically abused by Eric Cameron in the past. She said that Yvonne had told her that Cameron had kicked her unconscious in one incident and broken her arm in another.

16. When asked if she could think of anyone else she thought would want to hurt Yvonne, Mrs. Layne said that "several" names came to mind. "Any of Eric's family I don't trust. Any of Eric's friends I don't trust," Mrs. Layne said.

17. Mrs. Layne also mentioned a former friend of Yvonne's, Pam Knepp. She said Knepp had stolen Yvonne's purse about a year before. Police were later told that Yvonne subsequently had beaten up Knepp in retaliation.

18. Mrs. Layne also mentioned the name of a former Alliance police officer, Quintin

Artis. Mrs. Layne said Yvonne had been afraid of Artis since he had come into her house on the pretext of returning her drivers license, which he had confiscated during a traffic stop. Mrs. Layne said Artis then began making sexual advances toward Yvonne, and that he stopped only when a friend of Eric Cameron's mother walked into the house.

19. When Mrs. Layne was asked her opinion of Petitioner David Thorne, she replied, "I don't think he would hurt Yvonne." She said Yvonne had never said anything about Thorne hurting her. Mrs. Layne also indicated that Yvonne and Thorne had apparently become close again since Thorne's paternity of Brandon had been determined and he had begun picking the child up for weekend visitation. "I think she was trying to . . . get back together with David," Mrs. Layne said. Mrs. Layne also stated that Thorne recently had spent at least one night with Yvonne. (At trial, Sherman Layne, Yvonne's father, testified that Petitioner had resumed a romantic relationship with Yvonne.)

20. Detectives then asked if she knew anybody who drove a cream-colored pickup with a red pinstripe or a white van with ladders on top. She said she did not know of anyone who drove a pickup matching that description, but that the van matched the description of one driven by Frederick Cameron III, Eric's father. Mrs. Layne said the elder Cameron had been visiting Yvonne regularly since Eric's incarceration. "She didn't trust him, either," Mrs. Layne said.

21. The next significant person detectives met with was Petitioner David Thorne. Petitioner Thorne voluntarily agreed to come to the Alliance Police Department when he was contacted on April 2, 1999. Petitioner Thorne claims in an affidavit to be submitted as soon as he has it notarized at the Southern Ohio Correctional Facility, that he fully intended to speak with

the detectives when he arrived. While Thorne was en route to the police station, however, his concerned grandparents — with whom Thorne had lived most of his life in their home in Atwater, Ohio — contacted attorney William Lentz for advice. According to an Alliance Police Department report, detectives received a fax from attorney Robert W. Berger, Lentz's associate, at 11:25 a.m. The fax stated that Lentz was Thorne's attorney, that Lentz would be out of town until April 5, 1999, and that police were to instruct Thorne not to make any statements to police until then.

22. Petitioner Thorne was advised of Berger's instructions when he arrived at the police station at 11:38 a.m. Petitioner Thorne was surprised by the news of Berger's instructions but reluctantly followed them. Police statements indicate that the fact that Thorne exercised his constitutional rights both irritated them and aroused their suspicions of Thorne.

23. A July 20, 1999, report prepared by Detective Lloyd Sampson reflects how these attitudes were further exacerbated when attorney Lentz contacted detectives after returning to the area. "Lentz advised that if we were willing to give his client IMMUNITY, he would be willing to arrange an interview," Sampson wrote. Petitioner Thorne contends in his affidavit that Lentz set this condition without his knowledge or consent.

24. Sampson indicated his feelings about the condition Lentz communicated to police during an interview with Terry Clarr on April 19, 1999, in which Clarr told police that he was with Petitioner Thorne in Independence, Ohio, at the time of Yvonne Layne's murder. "When something of this magnitude happens, and you . . . refuse to talk to the police, it kind of sends up a red flag to us," a transcript of the interview quotes Sampson as saying.

25. On April 5, 1999, detectives took a taped statement from Frederick Cameron III, the father of Yvonne's most recent boyfriend. In his statement, Cameron stated that Yvonne Layne usually left her front door unlocked. Cameron became the second of several people who told detectives that former police officer Quintin Artis had entered Yvonne's home and made sexual advances toward her shortly after taking her drivers license during a traffic stop on September 25, 1998. "That policeman kept coming around . . . even when he was off duty," Cameron said. At another point during his statement Cameron said he did not know for sure if Artis ever entered Yvonne's house again. He added, however, that Yvonne had told him "that she'd seen him driving up and down the street, and uh, she said that . . . he asked some questions, sexually type, you know." Despite the statements by two of the people closest to Yvonne Layne, there is no indication in any records turned over to Petitioner Thorne's defense attorneys or obtained through a recent public records request that Artis was ever questioned or investigated for possible involvement in Yvonne Layne's murder. Cameron said that the only other person that he knew to come to Layne's home was Petitioner Thorne to pick up his son Brandon. When he was asked if Yvonne ever mentioned if she had any trouble with Petitioner Thorne or that she was afraid of him, Cameron said: "Uh, no. She never acted that way." Cameron admitted that his son Eric had a temper and that Yvonne often called police when he became angry with her.

26. On April 6, 1999, Petitioner Thorne's sister, Gina Gatian, voluntarily called police to report her concern about statements made to her by Amy Davis, Petitioner Thorne's girlfriend, two weeks before Yvonne Layne's murder. In a subsequent taped statement, Gatian told detectives that Amy Davis had "made several comments in regards to Yvonne . . . as far as wishing



that she were dead, and that it would be a lot easier when my . . . brother got custody of [Brandon] if Yvonne was, was not there.” Gatian said that Amy Davis’ negative comments about Yvonne began after Petitioner had learned that he was Brandon’s father and that he was going to be paying child support. On Page 4 of her statement — which was missing in the copy given to defense counsel and filed into the Court record, Gatian went on to say that, while Petitioner and her husband, Doug Gatian, were out buying materials for a remodeling project they were working on at the Gatian home, Amy Davis asked her if she knew how much it cost to bump somebody off. Gatian said that when Davis made the statement, “It sounded as though she already had the answer.” In answer to a question, Gatian said that Petitioner did not seem to be afraid of Amy Davis, “but he spoke with family members in regards to . . . that if he ever broke up with her that he would be in fear of my grandparents or their house.” Asked how Petitioner got along with Yvonne, Gatian said Petitioner had “a very good relationship” with her. Gatian also said in response to a question that Amy Davis was a “very controlling” person, but that she did not have enough control over Petitioner to convince him to murder someone.

27. Despite these statements, there is little evidence that police investigated that Amy Davis could have been involved in Yvonne Layne’s murder without Petitioner’s knowledge. Police reports indicate that Davis, who refused to consent to an interview by detectives, was viewed only from the perspective that she may have somehow assisted the Petitioner in arranging for Yvonne Layne’s murder.

28. On April 9, detectives taped a statement given by Eric Cameron’s mother, Linda McLaughlin, and her husband, John McLaughlin. The McLaughlins provided information at this

time that a friend, John Marsh, had been told by Doug Williams that Yvonne may have been killed by a former friend of Eric's by the name of Shannon Morales. When the detectives investigated Shannon Morales' whereabouts the night of the murder, however, it was learned that he was in an Indiana jail.

29. Investigators did not achieve what they considered a major breakthrough until they were informed by the mother of Rose Mohr that her daughter and boyfriend, Chris Campbell, had been told the night of the murder by Joseph Wilkes that he had been hired to kill a woman in Alliance.

30. In a July 12 statement, Rose Mohr, said that she and Campbell had a conversation with Campbell's friend Joseph Wilkes at the Carnation Mall in Alliance shortly after they had gotten off work at 8 p.m. Mohr, who did not know Wilkes, quoted the 18-year-old drifter as saying he was in Alliance because "he had a job to do, and that some guy was paying him to stay at the Comfort Inn." Mohr said Wilkes tried to change the subject but that Campbell "kept trying to get it out of him, what he was there for. "And he said, 'Well, some guy paid me to kill some girl in Alliance,'" Mohr said. She said Wilkes went on to say he had been paid some money in advance and would be paid more once "the job was done."

31. On July 12, 1999, detectives also took a taped statement from Campbell. Campbell told the detectives that Wilkes told him that he had been hired to commit the murder by his girlfriend. He said Wilkes then showed them a knife he had just bought to use in the murder. Campbell said the conversation then drifted to small talk, during which Wilkes referred to his "trainer" in the martial art of shootfighting. Campbell said he did not know the trainer's name,

but at trial identified him as Petitioner Thorne.

32. On July 14, Wilkes gave detectives a statement in which he admitted that he had killed Yvonne Layne with a knife he had bought at KMart. Wilkes said he had been paid to do so by David Thorne. Wilkes' statement was internally inconsistent in several respects. On Page 2, for example, Wilkes said that Thorne had talked to him "for years" about how he wanted Yvonne "out of his life [so] that he could have his little boy," even though Thorne didn't know that the little boy was his until shortly before the murder. On Page 4, Wilkes changed the time frame to "a month before [the murder] happened." On the same page, Wilkes referred to himself as "Joe," suggesting that he may have been reading from a prepared statement. On Page 6, Wilkes made the perplexing statement that, as Yvonne fell to the floor after he had slit her throat, "I walked down by her and said, 'I never did it.'"

33. On July 15, Wilkes gave a second statement that was inconsistent in several respects with his first statement. In this statement, for example, Wilkes said that, before the murder, Thorne "had me go get . . . gloves and a knife, and I got the baseball gloves, and waited until later on to get the knife." In his prior statement, however, Wilkes said Thorne sent him to buy "a knife and some baseball gloves" at the same time.

34. Wilkes later gave two statements to prosecutors that contradicted his two statements to police. In a summary filed on November 9, Wilkes returned to his original claim that Thorne started saying he wanted Yvonne out of his life "about a year and a half ago" rather than just a month before Yvonne's murder. In an interview summary filed on on January 12, 2000, Wilkes changed his story on how many times he had been to Yvonne's before the murder. In his original

statement, Wilkes said he had been to the house only once. In his January 12 statement, however, Wilkes is quoting as saying he recalled being at the victim's house on three prior occasions.

35. Detectives said that Wilkes was not pressured into making the statements he gave to them. But a report filed by Detective John Leech on August 3, 1999, that either was not turned over to the Petitioner's defense attorneys or was ignored by them paints a different picture. Leech states that Wilkes was uncooperative when he was first questioned but that his attitude changed when "I leaned forward and told him to knock off the bullshit. I told Wilkes that it was no coincidence or magic that brought him and I together. I said, 'You and David Thorne are responsible for Yvonne Layne's death.' Wilkes denied the allegation. I asked him to be quiet while I told him why Thorne did not want to talk with him. I showed Wilkes' Thorne's phone records and told him that we knew he had called Thorne. I explained that he (Wilkes) had talked about the murder with other people and now, David Thorne was running scared. I informed Wilkes that Thorne had contacted an attorney, Bill Lentz, who told us that Thorne would talk if he was given immunity. I explained my conclusion that Thorne was willing to give up Wilkes as the murderer if he could walk away without any charges. I asked Wilkes what he had to say about that. He sat quiet and stunned." Leech said that he then told Wilkes about all the evidence they had against him. He says he then "informed Wilkes that Layne's murder was a capital crime and he could receive the death penalty. I asked him if he was going to sit there, not saying anything on his own behalf, while Thorne made deals to give him up."

36. On September 18, which was after the arrest of Wilkes and Petitioner Thorne, Brent and Karen Enoch were interviewed. The Enochs were questioned because they had given Wilkes

a home just before the murder at the request of their daughter Summer. These statements seemed to corroborate and add to Wilkes' statement. Summer Enoch, however, gave a statement that was not fully consistent with her parents' statements. At trial, possibly the most damaging thing Karen Enoch testified to was that Petitioner Thorne stopped by the Enoch house to see Wilkes. When she told him Wilkes was not there, Karen Enoch said, Petitioner Thorne asked her to tell Wilkes not to call his home because his telephone might be tapped and he did not want to have the Enochs or Wilkes drawn into the investigation. The implication was that Petitioner Thorne was afraid that any telephone call from Wilkes might incriminate them. (T. Vol. VI, p. 1529.) Several affidavits attached to this petition, however, indicate that Petitioner Thorne and his grandparents told many other friends and family members who were never implicated in the case the same thing after they were advised by attorney Lentz that their phone might be tapped.

37. On July 21, 1999, Detective Sampson wrote a concluding report that showed the detectives' biased approach toward the investigation from the point that Petitioner Thorne's attorney informed them that his client would not to give a statement unless he was granted immunity. The report states, in part, that: "The only person who had any motive [to have Yvonne Layne killed] was David Thorne." Sampson went on to state that, when he came to the police station: "Thorne showed no emotion. He showed no remorse."

### **FIRST CLAIM FOR RELIEF**

38. Petitioner hereby incorporates the previous paragraphs of this petition as if fully rewritten.

39. Petitioner's conviction is voidable because his counsel's performance was deficient in several respects. The trial record does not contain adequate evidence regarding this issue, however, the Petitioner wishes to pursue in this proceeding. State v. Cooperrider (1983) 4 Ohio St. 3d 226.

40. Petitioner's original attorney greatly prejudiced police against Petitioner by stating that Petitioner would not give a statement without a grant of immunity. In addition to viewing this demand, which was given without the knowledge or consent of Petitioner, as a "red flag," detectives misrepresented this condition to Joseph Wilkes as an attempt by Thorne to make a deal in return for a statement against Wilkes.

41. Despite being paid a retainer of \$100,000, counsel later retained by Petitioner failed to conduct a thorough independent investigation of the Layne murder case. Had counsel done so, they would have learned that:

A) Yvonne Layne had been harassed by Alliance Police Officer Quintin Artis after he ticketed her for driving on a suspended license in September 1998. Layne had told family members and friends that she was afraid that Artis was going to hurt her. Artis reportedly was fired during this period for involvement in an unrelated scandal.

B) Wilkes possibly had developed an independent relationship with Yvonne Layne after meeting her through Petitioner Thorne. Wilkes may even have moved into her home for a while — as he did those of many other people he met — before she threw him out. This may have given Wilkes his own motive to kill Yvonne.

C) Summer Enoch's statement about Joseph Wilkes and David Thorne was inconsistent

with those of her parents.

D) Norma Wilson, Layne's next-door neighbor, says that Layne expressed fear of Officer Artis to her. She also would have told the defense, had she been interviewed, that Layne told her that she was thinking of "dumping" boyfriend Eric Cameron for David Thorne, of whom, Wilson says, Layne spoke highly.

E) Evidence existed that Thorne's girlfriend, Amy Davis, made statements about wanting to have Layne out of the picture. Counsel even declined to talk with Petitioner Thorne's sister about Amy Davis' statements to her that she wished Yvonne were dead and her question about how much it might cost to have someone bumped off.

F) Wilkes has a history of trying to have sexual relations with his friends' girlfriends. As pointed out to counsel by their own psychologist, Wilkes would have considered a chance to ingratiate himself with a girlfriend of the person he seemingly admired the most, Petitioner Thorne, a great achievement.

G) Petitioner had credible alibis for two of the times he supposedly visited or transported Wilkes after Layne's murder. While being held in jail without bond, Petitioner wrote in pencil detailed timeliness for March 31, 1999, and April 1, 1999, that showed he could not have been with Joseph Wilkes at the times on those two days that Wilkes testified to.

H) Substantial evidence existed that Wilkes' claim that Thorne was his trainer was a figment of his fertile imagination.

42. According to affidavits and other evidence, Petitioner's lead counsel, Jeffrey Haupt, had an alcohol problem before, during and after Petitioner's trial. Counsel Haupt arrived at court

each morning during Petitioner's trial with the smell of alcohol on his breath. On at least one occasion, Haupt wore the same clothes he had worn the day before, and they looked like he had slept in them. According to Melinda Elkins, whose husband, Clarence Elkins, was represented by Haupt a short time before Petitioner's trial, Haupt exhibited the same evidence of a drinking problem at that time. Mrs. Elkins also states that she was later told by Larry St. Jean, Haupt's legal assistant at the time, that he had quit his job with Haupt because of Haupt's substance-abuse problems. St. Jean partially confirmed this in a conversation with Petitioner's post-conviction investigator. On February 26, less than a month after Petitioner's sentencing hearing concluded, Haupt was charged with DUI and speeding. On February 29, Haupt later pled guilty to the charges and his driving license was suspended until August 23, 2000.

43. Counsel for Petitioner was ineffective for failing to obtain expert witness testimony on blood spatter and other forensic evidence that may have brought into question whether Yvonne Layne's murder occurred as represented by the state.

44. Counsel for Petitioner was ineffective for failing to pursue a suggestion by the clinical and forensic psychologist retained for mitigation purposes that Joseph Wilkes' July 14 statement, during which he lapses into the third person, is what "often occurs in the context of giving false rather than true accounts of something [and] is the kind of error that can signal that he's working from a memorized script."

45. Counsel for Petitioner failed to seek independent identification of a bloody footprint found at the murder scene to see if it matched any Nike brand of shoe, which Wilkes was said to be wearing the night of the crime. Counsel did not even attempt to determine if the bloody



shoeprint was the same size as one that would have been made by Wilkes.

46. After having it pointed out by the Petitioner and others, counsel failed to ask for the record to reflect that one of the prosecutors was directing derogatory gestures and facial expressions at the Petitioner that could have been noticed by jurors. Counsel also failed to ask the Court to instruct the witness to stop this prejudicial behavior and to instruct the jury to disregard the prosecutor's actions.

47. After having it pointed out by the Petitioner and others, counsel failed to ask for the record to reflect that one of the key prosecution witnesses was making flirtatious glances at a juror and receiving them in return. Counsel also failed to ask the Court to instruct the witness and juror to stop this prejudicial behavior. Nor did counsel ask the Court to query the other jurors if they had noticed these flirtatious glances or whether the juror to whom they were directed had made any positive remarks about the witness that might be deemed prejudicial.

48. Counsel made ill-advised and belated requests for forensic testing of the blood found at the crime scene. First, on December 20, 1999, lead attorney Jeffrey Haupt took the highly unusual step of asking the Canton-Stark County Crime Lab to, among other things, have "the knife found in the storm sewer . . . analyzed [sic] and determine all necessary and seriological [sic] data." Counsel Haupt made this request knowing full well that time was running out for having any such tests done for the defense before trial. Although independent testing of physical evidence is a crucial element of an effective defense, Haupt asked the county crime lab to conduct the tests even while acknowledging that "most of your work is for the prosecutor." When Haupt's request was declined, he then filed an eleventh-hour request for a continuance of the trial only 10

days before it was scheduled to begin so that the defense could have evidence retested. The Court overruled the motion because, it noted, the evidence had been in the possession of the defense for "a significant period of time."

49. While the state presented eighteen witnesses, the defense only called three — and two of them were originally called by the state. Counsel presented this limited defense of the Petitioner even though several other defense witnesses with important rebuttal information had been subpoenaed and many more could have been subpoenaed and were eager to testify on behalf of the defendant. Many other potential witnesses whose testimony would have benefited Petitioner's defense were brought to the attention of counsel, but they were never even interviewed. The Petitioner also repeatedly told counsel that he wanted to testify in his own defense. Counsel talked Petitioner out of exercising this right at the last moment when they told him that they had not had time to properly prepare for his examination.

50. Petitioner was prejudiced by these violations of his state and federal constitutional rights in that counsel's actions fell below a minimal standard of competency and there is a reasonable probability that, but for the deficient performance of counsel, there would have been a coherent investigation and presentation resulting in acquittal.

51. As a result of these actions, Petitioner's rights, as secured by the following provisions of the United States Constitution, were violated: (1) the prohibition against cruel and unusual punishment guaranteed by the Eighth Amendment; (2) substantive due process and other unenumerated rights guaranteed by the Ninth Amendment; (3) the due process and equal protection clause of the Fourteenth Amendment; (4) the right to trial by an impartial jury and the right to

effective assistance guaranteed by the Sixth Amendment; (5) the guarantee of procedural and substantive due process protected by the Fifth Amendment; (6) the freedom to petition the government for redress of wrongs as provided for in the First Amendment.

52. Petitioner's same rights were violated as guaranteed by sections 1, 2, 3, 5, 7, 10, 16, and 20 of Article I of the Ohio Constitution.

53. Petitioner requires discovery as provided by the Ohio Rules of Civil Procedure in order to fully develop and pursue this claim. Denial of the request for discovery as it is related to this claim would amount to denial of substantive and procedural due process as guaranteed by the aforementioned state and federal constitutional provisions.

#### **SECOND CLAIM FOR RELIEF**

54. Petitioner hereby incorporates the previous paragraphs of this petition as if fully rewritten.

55. Petitioner's conviction is voidable because the State of Ohio and the Stark County Prosecutor's Office knowingly allowed false or misleading testimony in the Petitioner's case. The false and misleading testimony includes, but is not limited to, the testimony of Detective Sampson's testimony that only Petitioner Thorne's and Eric Cameron's names were originally mentioned as possible suspects by those who knew Yvonne Layne. Testimony about which knife was used to make bloody swipe marks on a couch pillowcase in Yvonne Layne's home was also false or misleading. On April 1, 1992, Dennis M. Florea, a criminalist at the Canton-Stark County Crime Laboratory, determined that the impressions are "consistent with and could have been made by" a kitchen knife found in a field near Yvonne Layne's home that was likewise

found to be consistent with a set of knives she owned. On October 5, 1999, however, Florea determined that the swipe marks also could have been made by a much-smaller knife Wilkes said he used to commit the crime. During Thorne's trial, Florea went even further and said that the impression found on that pillowcase was more consistent with Wilkes' knife than with the kitchen knife. Florea's testimony contradicted that of criminalist Jennifer Bloink that the bloody swipes "appear to be somewhat narrow with the end tapering to a point." The kitchen knife blade tapered to just such a point, but the knife allegedly used by Wilkes did not.

56. As a result of these actions, Petitioner's rights, as secured by the following provisions of the United States Constitution, were violated: (1) the prohibition against cruel and unusual punishment guaranteed the Eighth Amendment; (2) substantive due process and other unenumerated rights guaranteed by the Ninth Amendment; (3) the due process and equal protection clause of the Fourteenth Amendment; (4) the right to trial by an impartial jury and the right to effective assistance guaranteed by the Sixth Amendment; (5) the guarantee of procedural and substantive due process protected by the Fifth Amendment; (6) the freedom to petition the government for redress of wrongs as provided for in the First Amendment.

57. Petitioner's same rights were violated as guaranteed by sections 1, 2, 3, 5, 7, 10, 16, and 20 of Article I of the Ohio Constitution.

58. Petitioner requires discovery as provided by the Ohio Rules of Civil Procedure in order to fully develop and pursue this claim. Denial of the request for discovery as it is related to this claim would amount to denial of substantive and procedural due process as guaranteed by the aforementioned state and federal constitutional provisions.

### **THIRD CLAIM FOR RELIEF**

59. Petitioner hereby incorporates the previous paragraphs of this petition as if fully rewritten.

60. Petitioner's conviction is voidable because the State of Ohio, through the Stark County Prosecutor's Office and the Alliance Police Department, concealed, suppressed and failed to disclose relevant exculpatory evidence. This includes, but is not limited to, the State of Ohio's failure to disclose the statements of a material exculpatory witness, George Hale.

61. Petitioner was prejudiced by this violation of his state and federal due process rights in that there is a reasonable probability that if the information described above had been disclosed to defense counsel or the Petitioner, the result of the proceedings would have been different.

62. As a result of these actions, Petitioner's rights, as secured by the following provisions of the United States Constitution, were violated: (1) the prohibition against cruel and unusual punishment guaranteed the Eighth Amendment; (2) substantive due process and other unenumerated rights guaranteed by the Ninth Amendment; (3) the due process and equal protection clause of the Fourteenth Amendment; (4) the right to trial by an impartial jury and the right to effective assistance guaranteed by the Sixth Amendment; (5) the guarantee of procedural and substantive due process protected by the Fifth Amendment; (6) the freedom to petition the government for redress of wrongs as provided for in the First Amendment.

63. Petitioner's same rights were violated as guaranteed by sections 1, 2, 3, 5, 7, 10, 16, and 20 of Article I of the Ohio Constitution.

64. Petitioner requires discovery as provided by the Ohio Rules of Civil Procedure in

order to fully develop and pursue this claim. Denial of the request for discovery as it is related to this claim would amount to denial of substantive and procedural due process as guaranteed by the aforementioned state and federal constitutional provisions.

65. In Brady v. Maryland, 373 U.S. 83 (1963), the U.S. Supreme Court held that the State's suppression of exculpatory evidence at trial violated the Due Process Clause of the Fourteenth Amendment. To prevail on a Brady claim, a petitioner must plead and prove:

- (a) The prosecution suppressed evidence.
- (b) The evidence was favorable to the defendant, either as to guilt or punishment.
- (c) The evidence was material to the issue of guilt or punishment. Evidence is material if there is a reasonable probability (sufficient to undermine confidence in the outcome) that had the evidence been disclosed, the result of the proceeding would have been different.

United States v. Bagley, 473 U.S. 667, 682 (1985); Giglio v. United States, 405 U.S. 150 (1972); Brady v. Maryland, 373 U.S. 83 (1963); Campbell v. Reed, 594 F.2d 4 (4th Cir. 1979). United States v. Augurs, 427 U.S. 97.

66. A Brady violation occurs regardless of whether the prosecutor knew of the evidence. Kyles v. Whitney, 514 U.S. 419, 432-443 (1995) (prosecution has "affirmative duty to disclose evidence favorable to the defendant;" state has the "burden" and is "assigned the responsibility" to discover and disclose; "the government simply cannot avoid responsibility;" responsibility is on state because "disclosure will serve to justify trust in the prosecutor"). The record as a whole must be examined to determine whether a constitutional violation occurred. See id. at 436

("suppressed evidence [must be] considered collectively, not item-by-item," to determine whether the trial "result[ed] in a verdict worthy of confidence"); Gilday v. Callahan, 59 F.3d 257, 272 (1st Cir. 1991); Banks v. Reynolds, 54 F.3d 1508, 1515 (10th Cir. 1995); Felker v. Thomas, 52 F.3d 907, 911, (11th Cir. 1995).

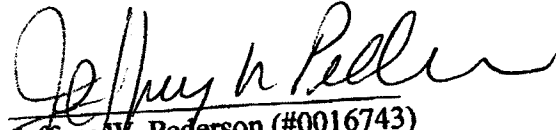
67. When the State fails to disclose the statement of a material exculpatory witness, even when the name of the the witness is mentioned in a police report, "the Defense cannot be said to have received anything approaching meaningful discovery." State v. Aldridge, 120 Ohio App.3d 1221, N.E.2d 697.

### **DEMAND FOR RELIEF**

**WHEREFORE**, Petitioner requests the following relief:

- A) That the Court grant Petitioner the benefit of all of the Rules of Civil Procedure and give him the opportunity to conduct discovery to further develop and support his claims for relief prior to disposition of the merits of the claims;
- B) That this Court grant Petitioner an evidentiary hearing pursuant to Ohio Revised Section 2953.21;
- C) As to paragraphs 1 through 67, declare that the convictions and sentences are void or voidable and that the Petitioner either be granted a new trial or a judgment of acquittal;
- D) For such other and further relief as the Court may deem just and proper.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Jeffrey W. Pederson".

Jeffrey W. Pederson (#0016743)  
Attorney for Defendant/Petitioner  
3305 Beechwood Ave  
Cleveland Heights, OH 44118  
Phone: (216) 932-3077



# ALLIANCE POLICE DEPARTMENT

## Narrative Supplement

Incident Number

AL 9903469

PAGE 1 of 2

### Investigation:

04-01-99 at 1232 hrs., Detective Mucklo and I responded to 916 Devine St. after hearing HQ dispatch patrol units to said address on a possible homicide. I had called HQ on our cellular telephone and advised Sgt. G. Mathews that we had heard the radio traffic and were heading to the scene.

Approximately 1240 hrs., Det. Mucklo and I arrived on the scene, 916 Devine St. Alliance, Ohio 44601. Upon our arrival we met with Chief L. Dordea, Lt. J. Helaney, Patrol Officer R. Miller, Patrol Officer R. Peti and Part-Time Patrol Officer S. Blake. Also at the scene with Chief Dordea was a civilian observer, Beth Newman. *Who is she?*

As Detective Mucklo and I entered the residence and proceeded to the second floor. We observed the victim, later identified as Yvonne C. Layne, laying on the floor of the living room face down. The victim was covered with dried blood and there was a large pool of blood under the victim's face, neck and chest area. Several photographs, both Polaroid and 35 MM, were taken of the scene, the interior and exterior of the residence.

Det. John Leech (Alliance P.D.), The Stark County Coroner's Office and the Stark County Crime Lab were called to the scene for assistance. Coroner's Investigator Bill Dishong and Crime Lab Investigators Dennis Florea and Jennifer Bloink arrived on the scene a short time later.

As we were calling for assistance, the children of the victim were being taken out of the residence by the patrol officers on scene.

The scene was "dusted" for finger prints by Florea and Mucklo. Items that were dusted were the television, the dresser on which the television sat, the double sliding glass doors, the kitchen counter, the entry door to the residence, the exterior security light and mirror on living room wall behind the couch.

Items taken by the crime lab for finger print examination were: one blood stained light brown bed sheet collected from the couch, one blood stained pillow case collected from the couch pillow at the end of the couch near the kitchen, one blood stained and cut light brown pillow case collected from the end of couch near the stairs, two empty Coca Cola cans from the kitchen trash can, one blood stained green drinking glass collected from the kitchen table, two packs of Swisher Sweets cigars collected from the kitchen, one open pack of Marlboro

REPORTING OFFICER

MOVING OFFICER

BADGE

DATE

BADGE

DATE

DET. R. Simpson

228

07-19-99

Capt J Brown

208

7-19-99

AFFIDAVIT OF GEORGE HALE

STATE OF OHIO  
COUNTY OF STARK, SS:

I, George Hale, have personal knowledge of the following information, and depose and state under oath as follows:

1. I was walking on Devine Street in Alliance on April 1<sup>st</sup>, 1999, at approximately 5:10 p.m. I stopped, having noticed officers at the residence of 916 Devine.
2. Realizing that a crime was being investigated, I gave a statement to officers about something I had witnessed earlier that day.
3. I told them that I had been walking by the residence some time between 9:30 and 10:00 a.m., and that the sound of puppies crying drew my attention to the house. I witnessed a white male, about 5'9" tall, and 180 pounds, exit the residence, carrying a garbage bag. The man then walked around the west side of the house. He was wearing blue jeans and a short sleeve shirt. He appeared to be in his mid to late twenties.
4. After giving my statement, I was asked by detectives to be hypnotized. I agreed. I went to the hypnotist, but after attempts to hypnotize me were unsuccessful, I left.
5. I was shown a photo (mug shot) book, and asked if I could pick out a photo of the man I saw leaving the residence. I did not see his photo in the book.
6. The detectives were making statements to me implying that they thought I could be a suspect. They asked ~~me~~ for an alibi *CONCERNING ME, GH*  
*SHERI WEISS' MOTHER GH*
7. The detectives then started asking questions of my girlfriends' brother, implying that he was a suspect.
8. I was contacted by the detectives *NUMEROUS TIMES. GH*  
~~every day for~~ ~~days~~. I feel that I was being harassed.
9. I was not asked to testify in the trial of David G. Thorne. I was shown a photo of David G. Thorne in December of 2000. It was not the man I saw leaving the residence at 916 Devine St.

10. I was shown a photo of Joseph I. Wilkes, the confessed murderer, in December of 2000. It was not the man I saw leaving the residence at 916 Devine St.

11. THE POLICE DETECTIVES TOLD ME AFTER THE FAILED HYPNOSIS, BUT DURING THE HARASSMENT PERIOD, THAT THEY DID NOT WANT ME TO GO TO COURT OR TO TAKE THE WITNESS STAND. I DID NOT UNDERSTAND WHY THEY SAID THAT. GH

Further I sayeth naught.

George Hale  
George Hale

Sworn and subscribed in my presence this 29<sup>th</sup> day of DECEMBER, 2000.

Michael R. Durkin  
Notary Public MICHAEL R. DURKIN  
MY COMM. EXPIRES 3/27/05

# ALLIANCE POLICE DEPARTMENT

## Narrative Supplement

2 of 2

Incident Number

AL 9903469

*First time this is mentioned at all!*

cigarettes and a plastic disposable lighter collected from the kitchen table, one UB-2 utility knife blade collected from living room/resting against the back left knee area of the victim, three unopened Durex Ultimate Feeling condom packs collected from upstairs bedroom, one torn open Lifestyles condom package collected from the upstairs bedroom, one opened box of Durex Ultimate Feeling condoms containing two unopened condoms, one Penthouse magazine dated October 1997 and one Penthouse magazine dated November 1997. Refer to crime lab reports for analysis results.

Other items collected at the scene by the Crime Lab were: Blood scrapings collected from the floor at the top of the stairs, three cotton swabs with suspected blood collected from the wall behind the couch, one pair of red underwear collected from the table top in the upstairs bed room, one blood stained light brown bed sheet collected from the living room couch and two sections of hardwood flooring bearing blood stained footwear impressions collected from the living room.

Other items collected at the scene by the Alliance Police Department were: three light brown couch cushions with various cuts and blood stains collected from the living room, five black plastic handled stainless steel knives and six wood handled stainless steel knives collected from the kitchen and one empty Coca Cola can collected from the upstairs bedroom banister.

1710 hrs., while at the scene, George Hale W/M, DOB 11-20-78, SSN 271-76-4877, of 1522 S. Wade Ave. came walking by and stopped to speak with Officers. Hale advised that he was walking by the residence some time between 0930 and 1000 hrs. He advised that he heard some puppies crying, which drew his attention to 916 Devine St. He advised he saw a W/M about 5'09", about 180 lbs., in his mid to late 20's, wearing blue jeans and a short sleeve shirt, with medium length hair, exit the residence carrying a garbage bag. He stated that the W/M walked around the west end of the house. He said that it did not look like anything out of the ordinary and he kept walking.

Patrol Officer Ralph Peti took measurements of the crime scene and drew crime scene sketch.

*Have we found this Guy yet?*

REPORTING OFFICER <i>DET. A. Sammons</i>	BADGE <i>229</i>	DATE <i>07-19-99</i>
MOVING OFFICER <i>Capt J. Brun</i>	BADGE <i>208</i>	DATE <i>7-19-99</i>