IN THE COURT OF COMMON PLEAS
STARK COUNTY, OHIO

STATE OF OHIO	:	**CASE NO. 1999 CR 0873**
Plaintiff,	:	
	:	
v.	:	**JUDGE REINBOLD**
	:	
DAVID G. THORNE,	:	**SECOND AMENDED POST-CONVICTION PETITION**
Defendant.	:	**Evidentiary Hearing Requested**

1. CASE HISTORY

Trial:

Charge—
Complicity to Aggravated Murder with
a for hire death penalty specification

Disposition--
Defendant was found guilty

Date Sentenced: January 27, 2000
Names of Attorneys: Jeffrey Haupt and George Keith
The conviction was the result of a Jury Trial.
The length of the trial was eight days.

Appeal to the Court of Appeals
Number or citation: 2000 CA 00067
Disposition: Conviction affirmed
Name of Attorney: Michael R. Puterbaugh

Appeal to the Ohio Supreme Court
Disposition: Case pending
Name of Attorney: Jeffrey W. Pederson

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 Revised Code Section 2953.21. The reasons for the petition are that there were denials and/or infringements of Petitioners rights as to render the judgement and/or conviction void and/or voidable under the Ohio and/or the Constitution of the United States. Petitioner requests an oral evidentiary hearing. The affidavits attached to the original petition and first amended petition are hereby incorporated by reference into this second amended petition.

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 file a notice of appeal on behalf of Petitioner in the Fifth District Court of Appeals.

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

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

STATEMENT OF FACTS

12. Yvonne Layne was found dead in her home at 916 Devine Street 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 *National Guideline 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, pp. 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 10:00 that morning, he saw a white male, in his mid to late 20's, who was about 5'9" 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 Hale. According to the attached affidavit signed by Hale on December 29th, 2000, police unsuccessfully attempted to have Hale hypnotized, and had him look through a book of mug shots. Hale did not see a photo in the book of the man he saw exiting Layne's

house the morning after the murder. In December 2000, Hale 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. Hale 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 harassed. Finally, Hale 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 answer to their questions, Mrs. Layne told the detectives that her daughter's most recent boyfriend was Frederick "Erick" 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 get back together with David {Thorne}," the father of her two-year-old son Brandon, Tawnia Layne said. Mrs. Layne also said that the father of Yvonne's fifth, and oldest child was Jeff Stout. Mrs. Layne told the detectives that Yvonne had complained about being physically abused by Erick 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 Erick's family I don't trust. Any of Erick'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, Quentin Artis. Mrs. Layne said Yvonne had been afraid of Artis since he had come into her house on the pretext of returning her driver's 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 Erick 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, Erick's father.

Mrs. Layne said the elder Cameron had been visiting Yvonne regularly since Erick'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 live 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 instruction's, 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 advise 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 Claar on April 19, 1999, in which Claar 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 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 Quentin Artis had entered Yvonne's home, and made sexual advances towards her shortly after taking her driver's 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 Erick 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 regard 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 missed being 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 to family members in regards to...that if he ever broke up with her,

that he would be in fear for 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 Petitioners 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 Erick Cameron's mother, Linda McLaughlin, and her husband, John McLaughlin. The McLaughlin's 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 Erick'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'd been hired to ki¥Á□G□ □□□□□¿□□□□□□□□□□□□□□□□ □□

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>□□□□□□□>□□□8□□□v□□□□□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 shoot fighting. Campbell said he did not know the trainer's name, but at the 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 K-Mart. 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 had 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, 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 file on Novermber 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 that just a month before Yvonne's murder. In an interview summary filed 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 quoted as saying he recalled being at the victims' 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 Petitioners 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 to him. I showed Wilkes Thorne's phone records and told him 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 that 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 Petitioners Thorne's attorney informed them that his client would not 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 paragraph 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 this in this proceeding. State v. Cooperrider (1983) 4 Ohio St. 3d226.

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 $100,000.00, 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 Quentin 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 awhile—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 Erick 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 decline to talk with Petitioner Thorne's sister about Amy Davis' statements to her that she wished Yvonne were dead, and about 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 timelines 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.

(sic) and determined all necessary and serilogical (sic) data." Counsel Haupt made this request knowing full well that time was running out for having any such test 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 test, even while acknowledging that "most of your work if for the prosecutor." When Haupt's request was declined, he then filed an eleventh-hour request for a continuance of the trial only ten days before it was scheduled to begin, so that the defense could have evidence re-tested. 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 the 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 onbehalf 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 and 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. Petitioners 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 that states that only Petitioner Thorne's and Erick Camerson'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 pillow case in Yvonne Layne's home was also false or misleading. On April 1, 1999, Dennis M. Florea, a criminalist at the Canton-Stark County 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 that 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 by the Eight 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 a 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. Petitioners conviction is voidable because the State of Ohio, through the Stark County Prosecutors 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 statement 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, Petitioners 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 a redress of wrongs as provide for in the First Amendment;

63. Petitioners same rights were violated as guaranteed by Sections 1, 2, 3, 5, 7, 10, 16, and 20 or 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 for the request for discovery as it is related to this claim would amount to denial of substantive and proceduraldue process as guaranteed by the aforementioned state and federal constitutional provisions.

65. In Brady v. Maryland , 373 U.S. 83 (1963), U.S. Supreme Court held that the States 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. U.S., 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. Augers, 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 trail "result{ed} in a verdict worthy of confidence"); Gilday v. Callahan, 59 F.3d257, 272 (1st Cir. 1991); Banks v. Reynolds, 54F.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 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 1-67, declare that the convictions and sentences are void or voidable and that the petitioner either be granted a new trial or a judgement of acquittal;

D) For such other and further relief as the Court may deem just and proper.

Respectfully submitted,

Jeffrey W. Pederson