

FILED IN OFFICE

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ORIGINAL

Am 8-8-02

IN THE SUPERIOR COURT OF FLOYD COUNTY

ROME, GEORGIA

THE STATE OF GEORGIA,

VS

JOSEPH SAMUEL WATKINS,

Defendant

)

) 01-CR-16707-JFLWJM

) Murder

) MOTION FOR NEW TRIAL

APPEARANCES:

FOR THE STATE:

FOR THE DEFENDANT:

Fred Simpson, Esq.
D.A.'S Office
Rome, GA

Bobby Lee Cook, Jr., Branch
Connelly, and Rex Abernathy,
Esqs.
Summerville, GA

May 15, 2002

BE IT REMEMBERED, the above-entitled case came on for hearing on this date before the HON. WALTER J. MATTHEWS, Judge of said court when all parties announced ready.

The following proceedings were held and evidence introduced, to wit:

Evidence was heard in a motion for new trial.

Brenda G. Watson
Court Reporter
3 Government Plaza, Ste 212
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01204-1

65P.

1 THE COURT: This is the motion for new trial as
2 amended in the case of the State of Georgia against
3 Joseph Samuel Watkins. Mr. Cook, are you ready to
4 proceed on behalf of --

5 MR. COOK: Yes, Your Honor, we are ready to
6 proceed.

7 THE COURT: Mr. Simpson, are you ready?

8 MR. SIMPSON: Yes, Your Honor, but I do have --
9 okay. We're ready.

10 THE COURT: All right, Mr. Cook.

11 MR. COOK: Your Honor, if I may I would like to
12 make just one or two preliminary inquiries. I'm sure
13 the Court has looked at and read the amendment to the
14 motion for a new trial, which includes two specific
15 grounds. One is referred to as the Brady violation and
16 the second ground referred to as the perjury of Yvonne
17 Agan or the Yvonne Agan problem.

18 Certain exhibits have been attached to the amended
19 motion, numbered A through H respectfully. The two
20 transcripts or portions of the transcript of the
21 Watkins' trial is attached and portions of the
22 transcript in the Free trial are attached as exhibits G
23 and H. These relate to the testimony of Yvonne Agan.

24 I would ask the Court to take judicial cognizance
25 and judicial notice of the fact that those transcripts

1 are, in fact, copies of those portions of the
2 transcripts from those two trials. I take that there's
3 no question about that?

4 MR. SIMPSON: No. No objection. We can stipulate
5 to that.

6 THE COURT: The rest except for Exhibit E --

7 MR. COOK: Sir?

8 THE COURT: Excuse me. Several of these are
9 excerpts from the record and they'll certainly --
10 additionally they're fine. I think you've got a
11 memorandum and a couple of sworn statements that are
12 not --

13 MR. COOK: Oh, I agree. I'm referring just to G
14 and H at this time.

15 THE COURT: All right. Then they're accepted then
16 as tendered.

17 MR. COOK: All the other exhibits, some of the
18 exhibits, A, B, C, D, E, -- A, B, C and D are portions
19 of what will be in the record itself, of which the
20 Court, I will ask to take judicial cognizance or
21 judicial notice of.

22 THE COURT: There's no problem with that.

23 MR. COOK: E, attached E is a sworn statement of
24 James Earl Hudgins.

25 THE COURT: No, James Arnold Hudgins is F. I have

1 it as F.

2 MR. COOK: Yeah, it is F. That is correct.

3 THE COURT: E is a memorandum.

4 MR. COOK: That is correct. E is a memorandum from

5 Mr. Cox to Mr. Abernathy and I take it that that is a

6 true and correct copy of that. We can so stipulate to

7 that, can we not?

8 MR. SIMPSON: Agreed.

9 MR. COOK: So the only thing -- everything is

10 stipulated to as being true and correct with the

11 exception of Exhibit F, which is the sworn statement of

12 Mr. Hudgins.

13 THE COURT: Correct.

14 MR. COOK: And I might be able to short circuit the

15 -- this thing considerably if the Court could inquire or

16 I could inquire of distinguished counsel for the State

17 whether or not they agree or will concede that Mr.

18 Hudgins came to the district attorney's office prior to

19 the trial of Watkins and reported what is stated in

20 Exhibit F.

21 MR. SIMPSON: I don't know that I can stipulate as

22 a fact that he came in. I know certainly within the

23 deposition and statements that he says he came there. I

24 would say this. I would expect -- Your Honor, I expect

25 to put up some witnesses.

1 I would expect Mr. Goldin to say that he does not
2 know whether or not it was before or after trial.

3 MR. COOK: Okay.

4 MR. SIMPSON: Did that -- but anyway.

5 MR. COOK: Okay. Then I will call only one witness
6 and that would be Mr. Hudgins insofar as it relates to
7 this proceeding.

8 MR. SIMPSON: That's fine.

9 THE COURT: Is there any other preliminary matters?

10 MR. COOK: That's the only one that I can think of,
11 Your Honor.

12 THE COURT: All right.

13 MR. COOK: Mr. Hudgins.

14 *****

15 JAMES ARNOLD HUDGINS

16 a witness called on and on behalf of the Defendant, after
17 first being duly sworn, was examined and testified as
18 follows:

19 DIRECT EXAMINATION

20 BY MR. COOK:

21 Q Mr. Hudgins, if you will, speak up loudly and
22 clearly where I can hear you as well as counsel for the State
23 and the Court and ourselves over here. All right?

24 A Yes, sir.

25 Q What is your full name?

1 National Guard with him -- for failing to yield the right of
2 way and he finally committed suicide.

3 Q You're in better shape than I am. What did Mr.
4 Goldin say to you when you told him that?

5 A Mr. Goldin didn't tell me nothing.

6 Q And there's no question but what you told him this?

7 A I'll take a lie detector test if y'all want me.

8 Q Now did you also --

9 THE COURT: Mr. Cook, will you grab that microphone
10 right there and just sort of move it. I have a feeling
11 it -- I don't know which one is causing this problem and
12 I don't know enough about this sound system to --

13 MR. COOK: I don't think I need that anyway.

14 THE COURT: Well, the court reporter does.

15 MR. COOK: Oh.

16 Q Did you at a later time talk to Mr. Cox?

17 A Yes, I did and Ms. Colston.

18 Q And who?

19 A Tami Colston.

20 Q And that was, I believe, after the trial?

21 A Right, the last day Tami was district attorney.

22 Q And after Joseph Samuel Watkins had been convicted?

23 A Right.

24 Q And approximately how long after the trial was
25 that?

1 A I don't remember exactly how long after the trial
2 it was. I just know I couldn't sleep because of what was
3 going on and there wasn't nothing being done about it. And I
4 came up and I talked to Tami the last day she was in office
5 and she faxed y'all about it.

6 Q And Cox was there, Steve Cox?

7 A And Cox was there. Steve was there.

8 Q And what did you tell them?

9 A I told them the same thing I've told the Court here
10 today.

11 Q Did you tell them basically the same thing as you
12 had told Mr. --

13 A Goldin, yes, sir.

14 Q -- Goldin? Are you related to anyone in this case?

15 A No, sir, I'm not. I don't even know these
16 families.

17 Q Had you ever known me before or --

18 A No, sir, I don't.

19 Q -- Mr. Connelly or Mr. Abernathy or Mr. O'Dell or
20 anyone connected with this case?

21 A No, sir, I don't. I don't. I really don't. I
22 don't -- there's one person in this courtroom that I know and
23 he's the deputy sheriff back there from Polk County.

24 Q All right. Do you know Mr. Sutton there now?

25 A I know him now. I didn't know him then.

1 Q Didn't know him at the time?

2 A No, sir.

3 MR. COOK: You may examine the witness.

4 MR. SIMPSON: Thank you, Mr. Cook.

5 *****

6 CROSS-EXAMINATION

7 BY MR. SIMPSON:

8 Q Mr. Hudgins, if you would explain to us the
9 circumstances behind Mr. Boyd saying that he did this?

10 A Well, I just explained it to you.

11 Q Well, would you do it again, please, sir?

12 A I explained to you that he had done away with some
13 guineas of mine and he claimed he got saved and when he
14 claimed he got saved, being a licensed minister, if you get
15 saved, truly get save, God will forgive you; I can forgive
16 you for anything you've done to me. And I went up there. He
17 had his baby in his arms and I told him, I said, Joey, if you
18 truly got saved, I can forgive you for doing away with my
19 guineas.

20 I didn't do away with them; I killed them. And I killed
21 that boy down on the highway the other evening.

22 Q So just out of the blue he admits, confesses to
23 killing Isaac Dawkins?

24 A Right. That's exactly right.

25 Q But he said Joey Dawkins?

1 A Yeah.

2 Q Did he tell you what it was about?

3 A He said he was dating his wife.

4 Q Okay. Now Mr. Boyd told you that directly?

5 A That's right.

6 Q Mr. Hudgins, did you ever tell Investigator Sutton
7 over here that Boyd's wife told him who had done it?

8 A I told Mr. Sutton that Boyd told me that his wife
9 told him.

10 Q Well, let me ask you to look at a statement you
11 made back in --

12 MR. COOK: Now wait just a minute.

13 A Yeah, wait just a minute.

14 MR. COOK: Wait just a minute. I object to you
15 making reference to the fact that that's a statement
16 that he made. You hand me what purports to be, I
17 suppose, a transcription of a tape recording that I have
18 not been afforded with and I gave you everything in
19 advance two or three weeks and I object to that unless
20 I've had an opportunity to check with the tape recording
21 and to determine its accuracy before you refer to it
22 that it's a statement that he made.

23 This is highly irregular. I gave you the courtesy
24 of getting a month's advance on everything that I had
25 and now you drop this on me here.

1 MR. SIMPSON: Mr. Cook --
2 MR. COOK: And I don't --
3 MR. SIMPSON: If I may?
4 MR. COOK: You may but I don't like it. It's not
5 fair and I object to it.
6 MR. SIMPSON: Your Honor, in responding I sent Mr.
7 Cook a letter saying that the district attorney's office
8 had an open file policy. I asked him due to the volume
9 of the case to send one of its investigators to our
10 office to look at it before this and I've had no contact
11 from Mr. Cook's office since then.
12 THE COURT: I need to let you go ahead and proceed.
13 This is a motion for new trial hearing, not the trial of
14 the case.
15 MR. SIMPSON: Yes, sir.
16 THE COURT: And I need to hear what's -- I need to
17 hear from all of you.
18 A Now before you show me something, I've got --
19 THE COURT: No, sir. No, Mr. Hudgins.
20 A Sir.
21 THE COURT: You just answer the questions that are
22 put to you.
23 A I've got a 40/60 vision, sir.
24 THE COURT: Okay.
25 Q [By Mr. Simpson] Okay, Mr. Hudgins. This portion

1 right here -- it's on page two, Mr. Cook.

2 MR. COOK: That's exactly what I'm objecting to,
3 Your Honor.

4 THE COURT: And what's that?

5 MR. COOK: He's handing him what purports to be a
6 statement that he has made and there's no evidence that
7 this statement has been made by him under these
8 circumstances. It's a tape recording that I have not
9 seen and he hands me a transcript that I have not seen.

10 THE COURT: Well, you need to establish when and
11 where this was --

12 MR. SIMPSON: I'm trying to.

13 THE COURT: No, you need to ask him beforehand.

14 MR. SIMPSON: All right, Judge.

15 Q [By Mr. Simpson]: Mr. Hudgins, did you back in
16 August go to the police department and talk to Stanley Sutton
17 over here?

18 A Yes, I did.

19 Q And did he take a statement from you?

20 A He took a statement from me. Can I say something?

21 Q Yes, sir.

22 A Before he took a statement, before he recorded
23 anything, the first thing that came out of his mouth, you're
24 in serious trouble and I know your mother. She lives in
25 Lindale.

1 said, how do you know?

2 She told me so. That Mr. Boyd --

3 A No, sir, I did not say she told me so.

4 Q I'm asking you to look at that and see, she told me
5 so?

6 A No, sir, I didn't say that.

7 Q So if Sgt. Sutton testifies and says that you say
8 that -- said that, that's not true?

9 A No, it's not.

10 Q Mr. Hudgins, you have had other information
11 concerning other murders too; have you not?

12 A I have -- I talked to him about other murders that
13 had happened and I had a little information on it. Yes, I
14 did.

15 Q Tell us about one in Carrollton.

16 A I talked to detectives down there about that.

17 Q What did you tell them?

18 A I told them that a Holsey boy had told me he killed
19 that coed down there.

20 Q All right. What happened in that case?

21 A There ain't -- as far as I know, there ain't
22 nothing happened.

23 Q All right. Did you have some information
24 concerning the killing of Frank Lott several years ago?

25 A Yes, sir, and I brought a drawing up here that was

1 put out in 1974. They basically laughed at it. The man that
2 killed Frank Lott was working at Coca-Cola Bottling at the
3 time and living in Aragon, Georgia.

4 Q So what happened on that?

5 A A year -- a year or two ago they tried him and
6 turned him loose.

7 Q Ever had any other cases where you'd given
8 information to the police?

9 A No, I've asked about some.

10 Q What kind of cases?

11 A I asked about the case at the post office, the
12 Men's Den out here and the guy that was burned up out there
13 on Huffaker Road.

14 Q Well, why were you asking about those?

15 A Because I'm interested in why the job ain't being
16 done to close them.

17 Q Well, have you tried to investigate them?

18 A That's not my job. I'm not paid by Floyd County.

19 Q Well, why are you concerned with them?

20 A Why am I concerned about them?

21 Q Yes, sir.

22 A I am a good citizen of the United States. I took
23 an oath in 1954 to uphold the laws of the United States
24 government and the State of Georgia, sir.

25 Q Mr. Hudgins, do you know why or do you have an idea

1 why Mr. Boyd would have told you this?

2 A I'm assuming that he was feeling guilty.

3 Q After killing your guineas?

4 A No, if he truly got saved, born again by God, I'm
5 assuming he felt guilty.

6 Q But why would he tell you this?

7 A Because I had went up there and told him I would
8 forgive him for the things that he had done to me.

9 MR. SIMPSON: That's all I have, Your Honor.

10 THE COURT: Mr. Cook, any other questions?

11 MR. COOK: No.

12 THE COURT: Step down, Mr. Hudgins. Any other
13 testimony?

14 MR. COOK: That's the only evidence that we have on
15 the motion.

16 THE COURT: All right. Thank you, Mr. Cook. Mr.
17 Simpson.

18 MR. SIMPSON: Your Honor, if I might for the record
19 if we could step back for a minute to establish a time
20 line here. The death of Isaac Dawkins took place on
21 January the 11th of the year 2000. The Joseph Samuel
22 Watkins trial occurred on or about July the 2nd of 2001.
23 The Mark Free trial --

24 THE COURT: That was the date of the verdict, I
25 think, was July 2nd.

1 MR. SIMPSON: Yes, sir, that's what I mean, on or
2 about. I'm not sure of the date of the actual beginning
3 of the trial but the verdict would have been on 7-22.

4 THE COURT: 7-2?

5 MR. SIMPSON: 7-2, excuse me, Your Honor.

6 THE COURT: Right.

7 MR. SIMPSON: The Mark Free would have ended in a
8 not guilty on February the 22nd of 2002 and let me go
9 ahead and state --

10 THE COURT: Let me back up. I think Mr. Watkins --
11 I think the sentence was signed on the 2nd of July.
12 Yeah.

13 MR. SIMPSON: All right. I --

14 THE COURT: I'm not so sure but -- and I don't
15 recall. Did I sentence him the day the verdict came in
16 or was it later?

17 MR. ABERNATHY: I think you sentenced him the day
18 of the verdict.

19 THE COURT: The transcript will show all that. I'm
20 just trying to --

21 MR. ABERNATHY: Right. I think the trial did start
22 in late June.

23 THE COURT: Right. It was a several day trial and
24 concluded with a verdict and sentence on July 2nd;
25 correct?

1 MR. ABERNATHY: Correct.

2 THE COURT: Okay.

3 MR. SIMPSON: That Ms. Colston's last day in office
4 when Mr. Hudgins came in was July the 18th.

5 THE COURT: That's the date of Mr. Cox's memorandum
6 sent to Mr. Abernathy.

7 MR. SIMPSON: Yes, sir.

8 THE COURT: Is that right, Mr. Cook?

9 MR. COOK: I have no idea of what Ms. Colston's
10 last day in office was.

11 THE COURT: Well, Mr. Hudgins said that he talked
12 to her on the last -- what he remembered as being her
13 last --

14 MR. COOK: That's right. That's right.

15 THE COURT: -- and this memorandum is the 18th,
16 so --

17 MR. COOK: That's right.

18 THE COURT: So that's what --

19 MR. COOK: If that's consistent. I don't know other
20 than what he said.

21 THE COURT: Okay.

22 MR. SIMPSON: Insofar as Yvonne Agan, the issue
23 there is concerned, I would state to the Court that I am
24 aware and I have asked and there is no existence of any
25 agreement between Ms. Agan and the State concerning her

1 testimony in either of these cases.

2 I will also state for the record that Yvonne Agan
3 was tried on her pending charges on April -- and found
4 not guilty on April the 5th of this year.

5 THE COURT: Correct.

6 MR. SIMPSON: And with that, Your Honor, that's all
7 I have by way of the record. At this time I would ask
8 to call some witnesses.

9 THE COURT: Proceed.

10 MR. SIMPSON: We call John Harkins to the stand.

11 *****

12 JOHN HARKINS

13 was called as a witness by and on behalf of the State, and
14 after first being duly sworn, was examined and testified as
15 follows:

16 DIRECT EXAMINATION

17 BY MR. SIMPSON:

18 Q Tell us your name, please.

19 A John Harkins. Excuse me, John Harkins.

20 Q And what's your occupation?

21 A I'm the chief investigator with the district
22 attorney's office here in Rome.

23 Q All right. In connection with your duties as chief
24 investigator for the DA's office, were you involved with the
25 prosecution of the case of The State versus Joseph Samuel

1 Watkins?

2 A Yes.

3 Q In what capacity?

4 A I aided Ms. Colston.

5 Q Okay. Ms. Colston was the prosecutor in the case?

6 A Correct.

7 Q During the course of preparing for trial, did the
8 State have an open file policy concerning that case?

9 A Yes.

10 Q Are you aware of whether or not Mr. Abernathy came
11 in to view the file?

12 A I believe Mr. Abernathy and Mr. O'Dell had come in
13 there several times.

14 Q And as far as you were aware, was he able to have
15 access to our complete file, the DA's file?

16 A As far as I can remember, yes. I don't know of any
17 day they were denied any access to the file.

18 MR. SIMPSON: That's all I have, Your Honor.

19 THE COURT: Mr. Cook.

20 *****

21 CROSS-EXAMINATION

22 BY MR. COOK:

23 Q Did you ever talk to Mr. Hudgins?

24 A No, sir, I've never seen him before until --

25 Q You've never seen him before?

1 A Until --

2 Q Have you inspected the file in this case?

3 A I was fairly familiar with it, yes, sir.

4 Q Is there anything in the file about the fact that
5 Mr. Hudgins went to Hal Goldin and reported what he has just
6 testified to?

7 A No, sir.

8 Q So if Mr. Abernathy had inspected the file, that
9 wouldn't have been in it; would it?

10 A I don't remember anything that was in there about
11 Mr. Hudgins. I never saw Mr. Hudgins before until he came up
12 here and talked to Ms. Colston and Mr. Cox.

13 Q Okay. That's all I have.

14 MR. SIMPSON: That's all we have of this witness,
15 Your Honor.

16 THE COURT: Okay.

17 MR. SIMPSON: We'll call Hal Goldin.

18 MR. COOK: Hi, Hal.

19 *****

20 HAL GOLDIN

21 was called as a witness by and on behalf of the State, and
22 after first being duly sworn, was examined and testified as
23 follows:

24 DIRECT EXAMINATION

25 BY MR. SIMPSON:

1 Q Tell us your name, please.

2 A Hal Goldin.

3 Q And what's your occupation?

4 A Assistant district attorney.

5 Q Okay. And how long have you been so employed, Mr.
6 Goldin?

7 A Four years.

8 Q Mr. Goldin, do you know Mr. Hudgins, James Hudgins?

9 A Yes, I do.

10 Q How long have you known him?

11 A I've known his family for many years. I've known
12 Mr. Hudgins personally probably for about five years.

13 Q All right. Now what were the circumstances of him
14 coming to you and telling you this about Joseph Boyd?

15 A One day he appeared in my office, which was on the
16 second floor of the courthouse. He came by, I believe to
17 discuss the impending split of the Tallapoosa Circuit and the
18 possibility that there would be an election or an appointment
19 made in the judicial circuit for district attorney.

20 I reside down in the Tallapoosa Circuit and he had heard
21 my name mentioned as a possible candidate. He came by to
22 talk to me about that and to tell me what he knew about the
23 office.

24 During the course of the conversation, he at some point
25 and I don't remember the specifics, he mentioned that he had

1 some problems with a neighbor about some chickens or guineas.
2 And during the course of some conversation with this
3 neighbor, this neighbor had made a statement that he had
4 killed a boy down on the highway and that was basically the
5 gist.

6 Q Did he ever mention Isaac Dawkins' name to you?

7 A I don't remember if that name was brought up
8 specifically or not.

9 Q Do you know when this conversation took place and
10 let me phrase that in context of before or after the trial of
11 Joseph Watkins?

12 A I don't remember if it was before or after. It was
13 in close proximity to the trial.

14 Q And as a result of him relating this information to
15 you, what did you tell him?

16 A I inquired of him to find out if he had reported
17 this to the police. He assured me he had already been to the
18 police department and it was being dealt with. At that point
19 we continued our conversation about the original matter.

20 Q Now as far as you yourself is concerned -- are
21 concerned, did you have any involvement with Watkins'
22 prosecution?

23 A No, sir.

24 Q How many assistant DAs are employed in the Rome
25 circuit?

1 A There's nine assistants and then the elected DA.

2 Q And you had no involvement with the case itself?

3 A No, sir.

4 Q While Mr. Hudgins has talked to you either then or
5 on other occasions, has he told you about other murders
6 taking place?

7 A Yes, he had mentioned that he had been involved in
8 giving information in other murder cases. I think the only
9 one I specifically remember him alluding to by name was the
10 murder of the sheriff down in Polk County.

11 MR. SIMPSON: That's all I have, Your Honor.

12 THE COURT: Mr. Cook.

13 *****

14 CROSS-EXAMINATION

15 BY MR. COOK:

16 Q Very briefly. Good morning, Hal.

17 A Good morning.

18 Q Hal, when you talked to Mr. Hudgins on this
19 occasion, as I understand it, you have no recollection as to
20 whether it was before the trial or after the trial?

21 A No, sir, I do not.

22 Q And as I understand it, you do not remember the
23 name of the person that he reported that this man Boyd had
24 killed?

25 A I don't remember that.

1 Q One way or the other?

2 A No, sir.

3 Q Did you make any report of this to anyone?

4 A No, sir.

5 Q And no report was made either in writing or
6 otherwise?

7 A No, sir.

8 Q Nothing further.

9 MR. SIMPSON: Nothing further. That's all I have,
10 Your Honor.

11 THE COURT: Step down, please.

12 MR. SIMPSON: Jim Moser, Your Honor.

13 MR. COOK: Can I concede and stipulate that Mr.
14 Goldin was not involved directly in the Watkins' murder
15 trial? However, that makes no difference on the --

16 MR. SIMPSON: I understand. I just wanted to, for
17 his sake I just wanted the Court to understand that.

18 MR. COOK: No question about that.

19 *****

20 JIM MOSER

21 was called as a witness by and on behalf of the State, and
22 after have having been first duly sworn, was examined and
23 testified as follows:

24 DIRECT EXAMINATION

25 BY MR. SIMPSON:

1 Q Tell us your name, please.
2 A My name is Jim Moser.
3 Q And what's your occupation?
4 A I work for the City of Rome Police Department.
5 Q And how long have you been so employed?
6 A Since January of '86.
7 Q You're currently assigned to the investigation
8 division; are you not?
9 A Yes.
10 Q And were you so assigned back in January of the
11 year 2000?
12 A Yes.
13 Q On January the 11th, were you assigned to
14 investigate the death of Isaac Dawkins?
15 A I was on call that night when that occurred, yes.
16 Q All right. Now to lead us up through that, you
17 checked out a number of leads; did you not?
18 A Yes.
19 Q Were you yourself ever able to make an arrest in
20 this case?
21 A No.
22 Q What happened insofar as the County Police
23 involvement in this?
24 A I don't know.
25 Q Okay. You were out of it at some point?

1 A Yes.

2 Q All right. During the course of your
3 investigation, did you talk to a Mr. James Hudgins?

4 A Yes.

5 Q All right. When was that?

6 A Approximately, the best I recall, April of 2000.

7 Q All right. And what did he tell you?

8 A He told me that he felt that a guy named Joseph
9 Boyd shot, what he said, the boy on the highway.

10 Q He felt that Joseph Boyd had done it?

11 A Yes.

12 Q He used those words?

13 A No, I can't say that he used those words.

14 Q All right. Did he ever come out and say that Mr.
15 Boyd told him he had done it?

16 A To me, no.

17 Q All right. Why did he feel that Mr. Joseph Boyd
18 had done it?

19 A He relayed that Mr. Boyd -- it was not uncommon for
20 him to be shooting up at his house and something to the
21 effect of he believed, whichever one he used, that Isaac
22 Dawkins was seeing Mr. Boyd's ex-wife. I believe her name is
23 Crystal.

24 Q How far is Mr. Boyd's house from the area where
25 Isaac Dawkins was shot?

1 A Well, you have to go -- if you went by the old Coke
2 plant there on 27, probably a mile and a half, between a mile
3 and two miles.

4 Q In your opinion would it be possible for someone to
5 fire a gun at Boyd's house and hit someone on U.S. 27 at that
6 spot?

7 A Not from where Mr. Dawkins was shot, no, not in my
8 opinion.

9 Q But he thought that Mr. Boyd did it because he was
10 shooting at his house or shooting around his house.

11 A Well, he mentioned Mr. Boyd had shot in the past,
12 yes.

13 Q And as a result of getting this information, what
14 did you do?

15 A I didn't do -- well, I talked to Crystal Boyd and I
16 talked to Stephen Boyd.

17 Q Now who are they?

18 A Crystal Boyd is the ex-wife, I assume ex-wife of
19 Joseph Boyd. Stephen Boyd was the son of Joseph Boyd and I
20 talked to a Jay Barnett and a couple of other people involved
21 in this incident.

22 Q All right. And who is Jay Barnett?

23 A Jay Barnett was Isaac Dawkins' friend.

24 Q In talking to all of them -- well, first of all let
25 me ask you, what did Crystal say?

1 A She denied ever knowing Isaac Dawkins, denied ever
2 having, of course, a relationship with him and stated she had
3 not been in Rome since November of '99 and didn't believe
4 that Joseph Boyd was a violent person.

5 Q What did Stephen Boyd tell you?

6 A He stated that is was not uncommon for them to
7 shoot, him and his dad to shoot up at their house and that he
8 was not familiar with the name Isaac Dawkins, didn't know
9 him, didn't see him, had not seen him in the past so was not
10 familiar with him.

11 Q What did Jay Barnett and some of Isaac's other
12 friends tell you?

13 A Never heard of Crystal Boyd, never heard of any
14 relationship from Isaac Dawkins concerning Crystal Boyd.

15 Q All right.

16 A No affiliation.

17 Q All right. Could you establish any connection
18 between Joseph Boyd and Isaac Dawkins?

19 A No.

20 MR. SIMPSON: That's all I have at this time, Your
21 Honor.

22 *****

23 CROSS-EXAMINATION

24 BY MR. COOK:

25 Q Good morning, Mr. Moser.

1 A Good morning.

2 Q You are a City detective; right?

3 A Yes, sir.

4 Q And you were working on this case, on this murder
5 case?

6 A Yes, sir.

7 Q And how long did you work on this murder case?

8 A I worked from January the 11th on and off until
9 November of, I believe it was 2000, once the County Police
10 made the arrest.

11 Q And so were you the number one person that was
12 assigned to it? Would you characterize it in that way?

13 A I reckon so, yes, sir.

14 Q And you kept a file on this case, of course?

15 A I did so.

16 Q And when Mr. Hudgins came to you, he was the same
17 Mr. Hudgins that testified in this case; right?

18 A I don't know if he testified but I recognize him in
19 the back, yes, sir.

20 Q Well, you saw him testify; didn't you? Have you
21 been in the courtroom?

22 A No, sir.

23 Q All right. What's his full name?

24 A James Hudgins is what I --

25 Q And you saw him back here in the courtroom?

1 A Yes.

2 Q And did you write down anything that he told you?

3 A A couple of sentences, yes, sir, regarding --

4 Q A couple of what?

5 A Sentences, plus or minus.

6 Q A couple of sentences?

7 A Yes, sir.

8 Q Do you have those sentences with you?

9 A I don't have them on my person, no, sir.

10 Q And what did you do with them?

11 A They were in my file.

12 Q Did you ever turn them over to anybody?

13 A What happens on our file or our case --

14 Q My question: did you ever turn it over to anybody?

15 A I'll answer yes, sir, my supervisor.

16 Q What?

17 A My supervisor.

18 Q Who did you turn it over to?

19 A That would have been Lt. Burnett.

20 Q Do you know what he did with it?

21 A She did with it, no, sir.

22 Q You don't know? And what were those two or three

23 sentences that you put in? Could you get those for us?

24 A Yes, sir.

25 Q Would you do that?

1 MR. SIMPSON: Mr. Cook, if you'll permit me. Did
2 you leave your stuff back here?

3 MR. MOSER: My file is by Mr. John there.

4 MR. COOK: May I just -- if you're going to go --

5 MR. SIMPSON: Yes.

6 MR. COOK: Good, I'll wait on you. May I wait,
7 please?

8 THE COURT: They're just right here. They're in
9 the courtroom. He just doesn't have them with him.

10 Q [By Mr. Cook]: He handed you a lot of stuff. Is
11 that your file?

12 A Yes.

13 Q All right. Get me those two or three sentences
14 that you were talking about.

15 A [Witness complies.]

16 Q May I see them?

17 A Yes.

18 Q Would you read that?

19 A It says, heard shots off "x", which is time for me,
20 from area of Joe and Stephen Boyd since one --

21 Q Heard what?

22 A Shots off -- that's my abbreviation for time, from
23 area of Joe and Stephen Boyd's. Since 1-11 heard on -- one-
24 time shot.

25 Q Well, did you write down anything where he told you

1 that he felt that Boyd had shot Dawkins?

2 A No, sir, I did not.

3 Q Did you not consider that important?

4 A Yes, sir.

5 Q But you didn't write it down?

6 A That's correct.

7 Q And you didn't report it to anybody?

8 A Well, I followed up on what I --

9 Q My question is: you didn't report it to anybody?

10 A No, sir.

11 Q You kept it to yourself?

12 A At that time.

13 Q And you were the chief investigator in this case
14 and Mr. Hudgins told you not in those exact words but to the
15 effect that Boyd had shot the boy Dawkins?

16 A In what he believed.

17 Q Yeah.

18 A Yes, sir.

19 Q And you made no note of that? Consider it
20 important but didn't write it down?

21 A That's correct.

22 Q And didn't report to a single living soul?

23 A Well, I can't tell you that --

24 Q Isn't that correct?

25 A I cannot tell you if I ever reported -- never

1 reported it later. I don't recall, no, sir.

2 Q Well, if you ever reported it later, you've got all
3 the file that he handed you, see if you can find it?

4 A Well, I would not have written it down as to whom I
5 told what.

6 Q You would not have written it down to whom I told
7 what?

8 A That's correct.

9 Q Is that the way -- is that the general way that you
10 do business in investigating --

11 MR. SIMPSON: Objection, Your Honor. That's being
12 argumentative.

13 MR. COOK: I'm not being argumentative. Can I
14 finish my question?

15 Q Is that the general way that you operate, your
16 general modis operandi in investigating a murder case if a
17 citizen comes in and tells you that they believe that so-and-
18 so shot the deceased, that you don't make any entry about it
19 and don't tell anybody about it?

20 MR. SIMPSON: Same objection, Your Honor.

21 THE COURT: I'll let him answer the question.

22 A Well, my entry part, yes, I did not write it down.
23 I cannot tell you that I did not tell my supervisor as to
24 what maybe Mr. Hudgins told. I did not relay in writing or
25 verbally every time something is said, no, sir.

1 Q But there's no record -- no record exists as to
2 what Mr. Hudgins told you concerning the fact that he
3 believed that Boyd or whatever the words were -- that Boyd
4 had shot the deceased Dawkins?

5 A Written record, correct.

6 Q Pardon?

7 A Written record, correct.

8 Q Did you ever talk to anybody in the district
9 attorney's office about it?

10 A Not that I recall, no.

11 Q Did you ever tell them about Mr. Hudgins coming to
12 see you?

13 A Not that I recall, no.

14 Q And that was before the trial; wasn't it?

15 A Yes, sir.

16 Q And you didn't consider that important; did you?

17 A I couldn't corroborate it, no, sir.

18 Q What?

19 A I could not corroborate it.

20 Q I didn't ask you whether you could corroborate it
21 or not.

22 A Well, I don't know --

23 Q I asked you whether you considered it important
24 enough?

25 A I don't have an opinion on that. I don't have an

1 answer on that. No, sir.

2 Q You don't have an opinion?

3 A No, sir.

4 MR. COOK: Well, you can come down, Detective
5 Moser.

6 MR. SIMPSON: Not quite yet.

7 *****

8 REDIRECT EXAMINATION

9 BY MR. SIMPSON:

10 Q Mr. Moser, did you in your own mind dismiss Joseph
11 Boyd as a suspect in this case?

12 A Upon not being able to corroborate what Mr. Hudgins
13 said, yes.

14 Q Did Mr. Hudgins ever tell you directly that Joseph
15 Boyd had confessed to the crime?

16 A No.

17 MR. SIMPSON: That's all I have, Your Honor.

18 *****

19 RECROSS-EXAMINATION

20 BY MR. COOK:

21 Q And even if he had, you wouldn't have put that
22 down; would you? You wouldn't have recorded that; would you?

23 A That's an unfair question. I can't answer that.

24 THE COURT: That's speculation because he says it
25 didn't happen.

MR. COOK: All right.

THE COURT: Any other questions?

MR. COOK: I have nothing further from Detective

THE COURT: Well, I do. What did -- what did Mr. [redacted] tell you, if any, as to how Mr. Boyd had accomplished this act?

A. That's correct.

THE WITNESS: Well, he said that he just shoots quite often from his house and that on January the 11th, he heard one shot and he could not, that I recall, specify as to the time of day.

THE COURT: That who shoots from whose house?

THE WITNESS: Mr. Boyd shoots from his house. Mr. Boyd and Mr. Hudgins live -- at the time lived in a close proximity of each other, I believe by apartment-wise.

THE COURT: And tell me where they lived.

THE WITNESS: 2250 Cave Spring Road.

THE COURT: Was that in the vicinity of this shooting?

THE WITNESS: Between a mile and two miles from the accident scene, yes.

THE COURT: And did you ever investigate what kind of automobile or vehicle Mr. Boyd drove?

1 THE WITNESS: I don't recall, no, sir.

2 THE COURT: Okay. But what you're telling Mr.
3 Hudgins says is that he thought the shots were fired
4 from the vicinity of his residence, a mile and a half or
5 two miles from where the shooting occurred?

6 THE WITNESS: Yes.

7 THE COURT: All right. Any other questions?

8 MR. SIMPSON: No, Your Honor.

9 THE COURT: Thank you. Step down, Detective. Mr.
10 Simpson?

11 MR. SIMPSON: We call Joseph Boyd.

12 THE COURT: Joseph Boyd. Come up. Come all the
13 way around over here, Mr. Boyd.

14 *****

15 JOSEPH BOYD

16 was called as a witness by and on behalf of the State, and
17 after having been first duly sworn, was examined and
18 testified as follows:

19 DIRECT EXAMINATION

20 BY MR. SIMPSON:

21 Q Would you tell us your name, please?

22 A My name is Joseph John Boyd.

23 THE COURT: Pull that down and point it at you.

24 A My name is Joseph John Boyd.

25 Q Okay. Mr. Boyd, first of all let me ask you: why

1 are you in custody?

2 A Child support.

3 Q Do you know James Hudgins?

4 A Yes, sir.

5 Q How do you know him?

6 A That's my neighbor.

7 Q All right. What kind of relationship do you have
8 with Mr. Hudgins?

9 A A fairly good relationship.

10 MR. COOK: If he would be kind enough to speak up
11 loud and clear so I can hear you.

12 Q Speak up some.

13 A It's a fairly good relationship with Mr. Hudgins.

14 He -- he's kind of getting old and senile but he's mad at me.

15 Q Why is he mad at you?

16 A For shooting his guineas.

17 Q All right. Did you do that?

18 A Yes, sir, and I went down there and he accused a
19 bunch of other people for that and I offered to replace his
20 guineas and he won't forgive me for it. I went down there
21 and apologized many a times and I'm still going to go down
22 there and apologize for that matter.

23 Q All right. Mr. Boyd, did you ever tell Mr. Hudgins
24 that you had shot the boy down on the highway?

25 A No, sir.

1 Q Do you know -- did you know an Isaac Dawkins?

2 A No, sir.

3 Q Did your wife know Isaac Dawkins?

4 A As far as my knowledge, I don't think so.

5 MR. COOK: I object to that as being -- asking for
6 a conclusion of this witness.

7 MR. SIMPSON: I asked if he's aware, Your Honor.

8 THE COURT: Well, he can ask only to the extent
9 he's aware.

10 Q Are you aware if she knew him?

11 A I don't have really any idea.

12 Q Well, let me ask you this. Were you jealous of
13 Isaac Dawkins for dating your wife?

14 A I don't even know Isaac.

15 Q Okay. You don't know if Isaac Dawkins -- did Isaac
16 Dawkins date your wife?

17 A I don't even know that.

18 Q You don't know the name?

19 A No, sir. I don't even know if she knew it.

20 Q Okay. Did you have anything to do with the death
21 of Isaac Dawkins?

22 A No, sir.

23 Q Do you know anything about it other than what was
24 in the papers?

25 A No, sir. All I know is he left the college and he

1 got shot.

2 Q Do you have occasion to shoot guns around your
3 house?

4 A Yes, sir.

5 Q How far is your house from let's say the Coca-Cola
6 plant where -- about where the shooting took place?

7 A Maybe a mile, something like that.

8 Q Are there hills around there?

9 A Yes, sir.

10 MR. SIMPSON: That's all I have, Your Honor.

11 *****

12 CROSS-EXAMINATION

13 BY MR. COOK:

14 Q Good morning, Mr. Boyd. I'm Bobby Lee Cook and I
15 represent Watkins. I have just a few questions. Are you in
16 jail?

17 A Yes, sir.

18 Q What for?

19 A Child support.

20 Q What?

21 A Child support.

22 Q And is that child support as a result of the wife
23 that we're talking about here?

24 A Yes, ma'am [sic].

25 Q What is her name?

1 A Her name is Christa L. Boyd.
2 Q How long have you been in jail?
3 A Since Thursday.
4 Q I'm sorry.
5 A Since Thursday.
6 Q Since Thursday? How much are you behind?
7 A Around 6,000. I'm working now and I've got \$252 a
8 week coming out of my check and they --
9 Q Are you and your wife divorced?
10 A Yes, sir.
11 Q And when did that divorce take place?
12 A Approximately three years ago.
13 Q Three years ago?
14 A Yeah, in November.
15 Q That would have been November of when?
16 A Three years ago, about November it will be three
17 years ago.
18 Q Of 1999?
19 A Yes, sir, something like that.
20 Q Of 1999?
21 A Yes, sir.
22 Q So you and your wife were divorced a little bit
23 before this boy was killed?
24 A I reckon. I don't know exactly when he was killed.
25 Q And you don't know whether your wife was dating

1 Isaac Dawkins or not?

2 A No, sir.

3 Q You don't know; do you?

4 A No, sir.

5 Q One way or the other?

6 A No, sir.

7 Q And you and Mr. Hudgins you say have had a little
8 problem?

9 A Well --

10 Q That he doesn't like you?

11 A Well, he -- he's coming around. His wife -- he'll
12 go to sleep and his wife comes up and apologizes for his
13 actions but -- and the only reason I went -- like I say, went
14 down there and told him because he's done accused a bunch of
15 other people of doing this and doing that. And I went down
16 and told him, I said, Mr. Hudgins, I said, I done that and I
17 told you.

18 See what it is the reason I got rid of these guineas is
19 I had some roosters. I had them on tie cords and his guineas
20 would come up there and I kept telling him about it.

21 Q Did you shoot his guineas?

22 A Yes, sir.

23 Q You shot his guineas?

24 A Yes, sir.

25 Q How many guineas did you shoot?

1 A Four or five.

2 Q And you told him that?

3 A Yes, sir.

4 Q And you told him you were saved?

5 A Yes, sir.

6 Q Did you tell him that?

7 A Yes, sir. I went down there and --

8 Q You told him you were saved?

9 A Yes, sir.

10 Q When he said to this Court that you told him that

11 he -- you said he was saved, that's a correct statement;

12 right?

13 A Yes, sir.

14 Q And when he told this Court that you said that --

15 admitted that you were shooting his guineas, that's a correct

16 statement; wasn't it?

17 A Yes, sir.

18 Q But you deny that you said anything about killing

19 Dawkins?

20 A Yes, sir. I deny it because I don't know anything

21 about Mr. Dawkins.

22 Q You don't know anything about that?

23 A No, sir.

24 Q Do you remember having any conversation with Mr.

25 Hudgins about that?

1 A No, sir.

2 Q Mentioning it at the time?

3 A No, sir.

4 Q You just don't remember one way or the other?

5 A Yes, sir, I remember real -- that I didn't say

6 anything about that. I don't know where he comes up with

7 this at or not. He's just mad, I guess and he's accused a

8 lot of people for a lot things.

9 Q He was mad but when he accused you of shooting your

10 guineas, that was the truth; wasn't it?

11 A Yes, sir.

12 Q And why did --

13 A No, I mean, he didn't know. He just -- he accused

14 a bunch of other people and I went down there and confronted

15 him about that I done it because he was accusing this and my

16 neighbor and my other neighbor down there and my other

17 neighbor and --

18 Q How many did you shoot?

19 MR. SIMPSON: Your Honor, that's been asked and

20 answered.

21 MR. COOK: I haven't asked him how many.

22 THE COURT: Yes, sir, he said --

23 A Four or five.

24 Q Four or five? Where were they when you shot them?

25 A In my yard.

1 Q In your yard. I have nothing further, Mr. Boyd.
2 Do you have any other -- been convicted of anything?

3 A No, sir.

4 MR. SIMPSON: Objection, Your Honor.

5 THE COURT: All right. Step down, Mr. Boyd.

6 MR. SIMPSON: Your Honor, we'll call Stanley Sutton
7 to the stand, please.

8 *****

9 **STANLEY SUTTON**

10 a witness called by and on behalf of the State, and after
11 being first duly sworn, was examined and testified as
12 follows:

13 **DIRECT EXAMINATION**

14 **BY MR. SIMPSON:**

15 Q Tell us your name, please.

16 A My name is Stanley Sutton.

17 Q Move up. please. And what's your occupation?

18 A Investigator with the Floyd County Police
19 Department.

20 Q And you were the lead investigator for the County's
21 involvement in the Dawkins' case?

22 A That's correct.

23 Q When did you become aware of Mr. Hudgins and this
24 information he has concerning Mr. Boyd?

25 A During the July -- of the trial of Joey Watkins --

1 the day Tami Colston had talked to me concerning Mr. Hudgins
2 going to Hal Goldin and talking to him concerning -- about
3 the neighbor, Joseph Boyd.

4 Q Now was this before or after the trial that you
5 found out that?

6 A It was at the end of the trial, around I'd say the
7 latter part of the trial that we talked about it.

8 Q All right. Now as a result of getting this
9 information from Ms. Colston, did you interview Mr. Hudgins?

10 A I did.

11 Q All right. What were the circumstances behind
12 that?

13 A Well, I went to his residence, which he lives off
14 Sims Avenue and set up a time to interview him and I told him
15 I would come by and pick him up. And he said, no that he was
16 insistent that he'll come up to the police station. He came
17 up in August of 2001 and we did the interview and like I
18 said, I was nice and polite to him.

19 Q Did you ever threaten him?

20 A I never threatened him in one way, shape or form I
21 recall.

22 Q Well, how did you act towards him?

23 A I was completely showing him my utmost respect. I
24 was nice to him, polite to him and wasn't out of the way,
25 wasn't rude to him or nothing and was never disrespectful.

1 Q Did you threaten his mother?

2 A No, I don't even know them. This is the first time
3 I ever had an opportunity to meet Mr. Hudgins, the first I
4 ever met him, didn't know his mother, didn't know anything
5 about him or his mother or anything about Mr. Hudgins at all.

6 THE COURT: Where's -- oh, there's Mr. Cook.

7 *****

8 CROSS-EXAMINATION

9 BY MR. COOK:

10 Q Mr. Sutton, when did you interview Mr. Hudgins?

11 A It was in August, sir.

12 Q After the trial?

13 A That's correct.

14 Q After the Watkins' trial?

15 A That's correct.

16 Q When did you learn that Mr. Hudgins had been to Mr.
17 Goldin, Hal Goldin, and had said --

18 MR. COOK: Just a minute, let me finish.

19 Q -- and had reported -- had reported that he had had
20 a conversation with Mr. Boyd and Boyd said that he killed
21 Dawkins?

22 A This is in July. I want to say at the end of the
23 trial.

24 Q Pardon?

25 A The end of the trial, the end of the Joey Watkins'

1 trial that Tami told me that supposedly Mr. Hudgins had went
2 to Hal Goldin.

3 Q Who told you that?

4 A Tami Colston and I believe John Harkins was
5 present.

6 Q That's the first time that you had heard that?

7 A That is correct.

8 Q You had not heard it prior to the trial?

9 A No, sir.

10 Q That's all.

11 THE COURT: Any other questions?

12 MR. SIMPSON: That's all I have, Your Honor.

13 THE COURT: Step down, Sgt. Sutton.

14 SGT. SUTTON: Thank you.

15 MR. SIMPSON: That's all I have in the way of
16 witnesses, Your Honor.

17 THE COURT: All right. Mr. Cook, any further
18 witnesses?

19 MR. COOK: No, sir.

20 THE COURT: All right. Is there anything further,
21 Counsel?

22 MR. COOK: I'd like to be heard from.

23 MR. SIMPSON: So would the State but nothing else
24 by way of evidence, Your Honor.

25 THE COURT: All right. Testimony is concluded then

1 her to lie. We're talking about an offense that took
2 place in January, her first testimony occurring in July
3 of 01 and then her second testimony occurring, I
4 believe, six months, seven months after in February of
5 02 and people being people, there's room for
6 contradictions between different times and we take that
7 position.

8 I would also like to point out insofar as Mr.
9 Hudgins is concerned and, you know, this gets into trial
10 strategy and so forth but I do need to remark upon the
11 fact that Mr. Hudgins was not called to testify at the
12 Free trial and counsel was certainly aware of that at
13 that time and that involved the same circumstances.

14 That's all I have, Your Honor.

15 MR. COOK: Thank you, Your Honor. I'm not going to
16 be very long. I would like to address, if I may, the
17 Yvonne Agan, what I refer to as ground number two of the
18 Yvonne Agan prong in my first argument.

19 I did not try either --

20 THE COURT: I think I need to ask a question at
21 this point and then I'll let you have free rein.

22 MR. COOK: Sure.

23 THE COURT: At what point in time did the defense
24 become aware of -- the defense became aware of Mr.
25 Hudgins' statement by virtue of this memorandum in July

1 of 01; is that correct?

2 MR. COOK: That's the first time I'm aware of it.

3 MR. SIMPSON: That's correct, Judge.

4 THE COURT: Okay. That's fine. Thank you. I
5 thought that was right but I wanted to make sure.

6 MR. COOK: That's the first time. I was not --
7 as the Court knows, I was not counsel of record in
8 either --

9 THE COURT: Mr. Abernathy in your office was.

10 MR. COOK: -- case but my colleague and partner,
11 Mr. Abernathy, was. In the first trial the Yvonne Agan
12 testimony was in my opinion from having read the record
13 in this case and not having been present in the trial,
14 one of the areas that was indeed in my opinion
15 catastrophic to the defendant's case, she testified
16 unequivocally as follows and I'd just like to run over
17 it briefly.

18 Question by the district attorney: When he left,
19 did he tell you what happened after he put it in reverse
20 and left the driveway?

21 Answer: He said, I could hear them shooting at me,
22 Vonne, and he reached up and grabbed me and he said,
23 Vonne, I know they were shooting at me.

24 I said, are you sure?

25 He said, I am positive. I heard it. He said, that

1 is all he knew, to come here and I didn't want to bring
2 them straight here because I knew you were here a lot by
3 yourself.

4 She tells the jury and the Court that she is --
5 that what he said; that he was positive that they were
6 shooting at him. There was a conviction in the Watkins'
7 trial.

8 In the second trial in which there was an acquittal
9 based upon the same general factual evidentiary
10 background to the record I have read, the district
11 attorney asked the question of Yvonne Agan: Another
12 thing Mr. Abernathy asked you was about Isaac saying
13 something about someone shooting at him. Did he tell
14 you that too?

15 Answer: He told me he thought they were shooting at
16 him but he said, I don't know if I was hearing right or
17 not. Maybe they weren't. Maybe they were just throwing
18 things at me but said, Vonne, it sounds like they are
19 but I can't swear to it.

20 There is a total absolute contradiction between
21 trial one and trial two with reference to the part of
22 her testimony that is critical or that was critical to
23 the State's case.

24 Call it -- I characterize it as perjury. It
25 doesn't make any difference actually how I characterize

1 it. It on its face, each instance is a contradiction to
2 the other.

3 I suggest to the Court that in light especially of
4 the acquittal in case two, if a jury had had this same
5 testimony in case one, that there is a strong
6 probability, a strong probability that a verdict of not
7 guilty would have been returned in the first case. I'm
8 not a prophet and, of course, you know and I know that
9 all you can deal with is probabilities and not absolutes
10 in this business.

11 I address that issue first because frankly I think
12 it is one of the critical issues in this case and
13 probably in my opinion the most defining one.

14 I'll refer the Court to an old case. Sometimes old
15 cases speak with more eloquence than new cases. It's
16 the case of McDaniel versus The State, 74 Georgia
17 Appeals, page 5 where the gist of that case is as
18 follows: The Court said the real ultimate criteria by
19 which the merit of such testimony, referring to newly
20 discovered evidence, should be measured is the
21 probability of a different result and when that
22 probability appears, the ends of justice require that
23 new trial be granted.

24 I'm not going to stand here and tell you that I
25 know as much about the evidence in these two cases as

1 the importance of these contradictions or discrepancies
2 or whatever -- however you wish to characterize them to
3 the Court but in my opinion, having done this for a
4 little while, this is one case that more so than any
5 that I have seen in many years that jumps out at me to
6 where the ends of justice certainly in my honest opinion
7 require that a new trial be granted.

8 I am aware that the grant -- that the first grant
9 of a new trial is a matter of which adjusts itself to
10 the wise discretion of the trial judge and I am also
11 aware that there would be no reversal unless it was
12 clearly erroneous. So my argument here is one that
13 addresses itself to the wise discretion and the wisdom
14 of the Court that heard both of these cases.

15 I will now briefly address what I refer to as the
16 Brady violation. I don't want to lecture to this Court
17 on the importance of Brady except to say that in all
18 modesty that I've had a little bit of experience in the
19 area and in one of the most extraordinary, unusual
20 miscarriage of justice that's ever happened in this
21 state in what is referred to as the old Matthews cases
22 in Cobb County which went all the way from the lower
23 court to our State Supreme Court and it affirmed and
24 ultimately after an 18-day evidentiary hearing before a
25 very conservative judge, Judge Moye, the convictions

1 were set aside and invalidated upon serious
2 Constitutional grounds, which spoke to the proposition
3 of Brady.

4 It is the uncontradicted evidence before this Court
5 that Mr. Hudgins reported what he said that he reported
6 to Mr. Goldin. It is the uncontradicted evidence that
7 that was not revealed to the defense in this case prior
8 to the trial.

9 Whether or not at this point in time what Mr.
10 Hudgins had revealed would have been admissible or not
11 admissible, whether or not what he revealed was
12 considered to be important or unimportant, whether or
13 not it was concerned at the time as to whether they
14 checked it out later after the trial and found out that
15 they didn't believe it, that's not the test in this
16 case.

17 There was a Constitutional obligation within the
18 meaning of Brady and within the meaning especially of
19 the last case that the Supreme Court has addressed on
20 the Brady issue, Kyles v Whitley, to have reported that
21 to the defendant.

22 Kyles v Whitley, and I have a copy of every
23 decision that the Supreme Court of the United States has
24 addressed on the Brady question, starting with Brady
25 versus Maryland, Agurs, the Agurs case, Bagley versus

1 the United States and lastly Kyles v Whitley. The
2 Supreme Court of the United States in Kyles v Whitley
3 has held in no uncertain terms that anything that is
4 within the bosom of anyone within the investigating
5 agency, within their knowledge or anything in the
6 district attorney's office or anything in the sheriff's
7 office with reference to this case, it is indeed Brady
8 material if it is exculpatory and there's no question
9 about that. And if the Court wishes, I will hand you
10 copies of those decisions and especially the Kyles'
11 decision.

12 It is unimportant, it is quite unimportant as to
13 whether or not Mr. Simpson or Mr. Sutton or whomever
14 heard this placed any credence or any stock in it. That
15 is not the important thing. The fact even that what he
16 said might have been inadmissible as a matter of law is
17 unimportant because it was said in Giles v Maryland, a
18 very similar Brady case, reported in 87 Supreme Court at
19 page 792, which follows the Brady decision by three
20 years in a concurrent concurrence -- concurring opinion
21 by Justice Forbes on page 809, where he said, the
22 dissenters asserted that the majority erroneously
23 substituted its appraisal or the weight to be attached
24 to the suppressed evidence for a jury's possible
25 evaluation and that it erred in applying this stringent

1 -- too stringent a test of admissibility.

2 I do not agree that the State may be excused from
3 its duty to disclose material facts known to it prior to
4 trial solely because of a conclusion that they would not
5 be admissible at trial. The State's obligations is not
6 to convict but to see that so far as possible truth
7 emerges.

8 I'm troubled also not only by the nondisclosure but
9 I'm troubled with the fact that no effort was made and
10 it too is the uncontradicted evidence to place anything
11 in the file and they say there was an open file policy
12 where you can come and look at everything that's in it
13 but yet there's nothing in it with reference to the fact
14 that Mr. Hudgins made that direction. I am troubled
15 indeed.

16 As Kyles v Whitley points out in the body of the
17 opinion, the good faith or the bad faith of the
18 prosecution is irrelevant. It is what has occurred. But
19 let me hit this point and then I'm going to -- I'm going
20 to rest. If this had been reported at least we would
21 have had the opportunity to have checked it out. We
22 could have followed it out. It may have been at that
23 point in time, even Mr. Boyd might have said, well, I
24 take the Fifth Amendment. I mean, I'm not suggesting
25 that he would or that he wouldn't. Let's assume that he

1 did. Then it could very well be admissible under the
2 necessity exception to the hearsay. He would be
3 unavailable if he took the Fifth Amendment. Then the
4 next question would be for the Court to determine
5 whether or not under the circumstances there was a
6 reasonable indicia of trustworthiness for it to be
7 admissible under the hearsay exception. But all of that
8 has been short circuited and we have not had that
9 opportunity. Fair is fair and what has happened here
10 for whatever reason that it has happened is it just
11 turns logic upside down.

12 We feel that under the facts of this case that it
13 is in the interest of justice and interest of fairness
14 for this young man to be awarded a new trial by this
15 Court. Thank you for your kindness and I'm sorry about
16 Your Honor's loss. I didn't know about it until today.

17 THE COURT: Thank you, Mr. Cook. All right,
18 Counsel. Thank you. I've received the motion and the
19 evidence and I'll be ruling on this shortly.

20 MR. SIMPSON: Thank you, Judge.

21 MR. COOK: Thank you, Your Honor.

22 *****

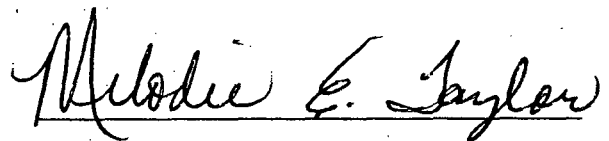
C E R T I F I C A T E

STATE OF GEORGIA)

COUNTY OF FLOYD)

The foregoing transcript of the proceedings was taken by me as a certified court reporter for the State of Georgia and reduced to typewriting by me or under my direction, and I hereby certify that it is a true and correct transcript of said proceedings.

This May 21, 2002.



Melodie E. Taylor, CCR #B-1057