



3.

After a trial by jury in the Superior Court of Floyd County, the Petitioner was convicted on July 2, 2001, of felony murder in the death of one Isaac Dawkins, possession of a firearm during the commission of a crime and stalking. However, he was acquitted of malice murder. The Petitioner was sentenced on the same date by Judge Walter J. Matthews.

4.

The Petitioner was co-indicted with one Mark Free, who was tried separately by a jury in the Superior Court of Floyd County. Although much of the evidence presented against the Petitioner was also presented against the co-defendant, Free was acquitted of all charges on February 22, 2002.

5.

The Petitioner took an appeal to the Georgia Supreme Court which affirmed his conviction and sentence on May 19, 2003. [See *Watkins vs. State*, 276 Ga. 578 (2003)]

6.

Isaac Dawkins died as the result of a gunshot wound on January 11, 2000. The bullet that killed Dawkins struck him in the head after passing through the rear window of his pickup truck as he was traveling north on U.S. Highway 27 in Floyd County, Georgia.

7.

The State contended that the Petitioner and his co-defendant shot and killed Dawkins because of a jealous obsession that Petitioner allegedly had with a young woman who was supposedly dated at one time or another by both the Petitioner and Dawkins.

8.

The Petitioner contended that at the time Dawkins was shot, he (the Petitioner) was using a cellular telephone while driving toward Cedartown, Georgia from Rome, Georgia, and that because

of the locations of the cellular telephone company's relay towers and because of his own cell phone records, it was scientifically and geographically impossible for him to have killed Dawkins.

9.

The Petitioner retained the services of a retired Georgia State Trooper to establish the exact whereabouts of the Petitioner at the precise moment when Dawkins was killed. This witness and his testimony were the most crucial evidence to establish the Petitioner's innocence. This witness was sequestered and prepared to testify on behalf of the Petitioner throughout the Petitioner's trial.

10.

For reasons that are presently unknown to the Petitioner and over the strenuous objections of the Petitioner, lead trial counsel Rex Abernathy inexplicably failed and refused to call this most critical witness to testify.

11.

By failing to call the aforementioned witness, the Petitioner was denied the effective assistance of counsel and his fundamental right to a fair trial in violation of the Sixth and Fourteenth Amendments to the U.S. Constitution and Paragraphs I and XIV of the Bill of Rights of the Georgia Constitution.

12.

The aforementioned witness's testimony not offered at the Petitioner's trial were offered by another witness during the severed trial of co-defendant Mark Free. An informal survey of several of the jurors who voted to acquit Free disclosed that it was primarily the testimony of the said witness which convinced them that Free was not guilty.

13.

During the Petitioner's trial, the State produced as a witness one Barry Mullinax, a "jailhouse

snitch,” who testified that he personally observed the Petitioner shoot Dawkins. Notwithstanding the fact that the State knew the testimony of Mullinax was false and manufactured, it nevertheless called Mullinax to testify in its case in chief. In a sworn statement given to the Petitioner’s habeas counsel on November 7, 2003, the day he was released from prison, Mullinax fully recanted his trial testimony. During his sworn statement, Mullinax explained that he was recanting because “I couldn’t forgive myself until I actually had the chance to see” the Petitioner’s father, Johnny Watkins, “face to face and tell him...I’m sorry. I’m sorry that I’m one of the reasons why your son got time for something he didn’t do.”

14.

Moreover, during the course of his sworn statement, Mullinax stated that Det. Stanley Sutton of the Floyd County Police Department visited him while he was incarcerated and gave him a “script” to memorize about what he (Mullinax) was supposed to say in court during the Petitioner’s trial. Sutton was the police officer in charge of investigating the death of Dawkins. During a preliminary hearing convened at the request of the Petitioner and his co-defendant, Sutton pleaded the Fifth Amendment when asked whether he had conducted illegal electronic surveillance to gather “evidence” in the prosecution of the Petitioner and his co-defendant.

15.

During his sworn statement, Mullinax said Sutton threatened him and members of his family with dire but unspecified consequences if he refused to cooperate with Sutton and testify as directed during the Petitioner’s trial.

16.

During his sworn statement, Mullinax identified three other persons whom he said told him that a man other than the Petitioner and his co-defendant had confessed to them that it was this other

man who actually killed Dawkins. In his sworn statement, Mullinax identified the other man by name.

17.

During the Petitioner's trial, the State called one Billy Pasley as a witness. Pasley testified that during the summer of 2000, he supposedly had a conversation with the Petitioner and co-defendant at a filling station in Rome, Georgia. The gist of the alleged conversation was that the co-defendant and the Petitioner had "taken care of" a dog owned by the deceased. As a result of this testimony, the court permitted highly emotional and prejudicial testimony that the Petitioner and the co-defendant had allegedly dis-interred the deceased's dog and placed its remains on the deceased's grave. The State knew that this testimony was false because it knew that the co-defendant had been in jail from approximately February of 2000 through November of 2000, and that it would have been impossible for Pasley to have had such a conversation with the Petitioner and the co-defendant. By introducing said testimony, the Petitioner was denied the due process of law as guaranteed by the Fifth, Sixth and Fourteenth Amendments to the U.S. Constitution and Paragraphs I and XI of the Bill of Rights of the Georgia Constitution. Moreover, the State's use of such "evidence" was done in bad faith and constituted prosecutorial misconduct

18.

During the course of the Petitioner's trial, the State informed the court and the Petitioner of its intent to introduce evidence of "prior similar transactions" and "bad acts" between the Petitioner and Dawkins, the deceased. Specifically, the State, over the Petitioner's objection, introduced "bad acts" of the Petitioner during a barbecue. The State assured the court that the incident involved the Petitioner and the deceased. However, the testimony actually presented at trial showed that the deceased was not involved in any way in the alleged incident. But as a result of the introduction of

said testimony, unfavorable and highly prejudicial character evidence was introduced against the Petitioner when it should have been excluded altogether. Lead counsel Rex Abernathy failed to move for a mistrial, failed to request a curative instruction and failed to raise the issue in the Petitioner's Motion for New Trial. Moreover, the Petitioner's appellate counsel, L. Branch S. Connelly, an associate of lead counsel, failed to address the issue on appeal. Thus, the Petitioner's fundamental right to a fair trial, his right to the effective assistance of counsel, his right to a fair and meaningful presentation of all relevant appellate issues and his right to the due process of law as guaranteed by the Fifth, Sixth and Fourteenth Amendments to the U.S. Constitution, as well as by Paragraphs I, XI and XIV of the Bill of Rights of the Georgia Constitution, were denied because of the admission of this testimony and by the failure of counsel to protect his rights. Moreover, the State's use of such "evidence" was done in bad faith and constituted prosecutorial misconduct.

19.

During the Petitioner's trial, one Corey Jacobs, a nephew of the aforementioned Det. Stanley Sutton of the Floyd County Police Department, testified that he personally overheard the Petitioner and his co-defendant "bragging" at The Home Depot in Rome, Georgia that they had killed Dawkins. Again, this statement supposedly occurred at a time when the co-defendant was in custody. The State knew that this testimony was false because it knew that the co-defendant had been in jail from February of 2000 until November of 2000. Thus, it was impossible for Jacobs to have overheard this alleged "bragging" by the Petitioner and the co-defendant at the time and place alleged. As a result of this prosecutorial misconduct, the Petitioner was denied the due process of law as guaranteed by the Fifth, Sixth and Fourteenth Amendments to the U.S. Constitution, as well as Paragraphs I and XI of the Bill of Rights of the Georgia Constitution.

20.

Prior to and during the trial of the Petitioner, the lead prosecutor and elected District Attorney of the Rome Judicial Circuit, Tandra Colston, was lobbying then-Gov. Roy Barnes, members of the Floyd County legislative delegation and others for an appointment to a newly created judgeship in the said circuit. Ms. Colston, who was subsequently appointed to the judgeship, was being actively supported in her lobbying efforts with then-Gov. Roy Barnes by Bobby Lee Cook, a founding member of the law firm of Cook & Connelly, which employs both the Petitioner's lead trial and appellate counsel. Under these circumstances, the acceptance of employment in the Petitioner's case, at the very least, raised the appearance of impropriety and constituted a conflict of interest. As a result of this conduct, the Petitioner was denied the due process of law and the effective assistance of counsel as guaranteed by the Fifth, Sixth and Fourteenth Amendments to the U.S. Constitution, as well as Paragraphs I and XI of the Bill of Rights of the Georgia Constitution.

21.

Throughout the investigation of the Petitioner and the death of Dawkins, the aforementioned Det. Stanley Sutton engaged in multiple acts of unethical and illegal misconduct, including, but not limited to, the use of fear, intimidation, threats, lies, duress, misrepresentations and promises of one favor or another to evoke false statements and perjurious testimony from numerous witnesses and prospective witnesses. Said misconduct, at the very least, caused the Petitioner to be denied the due process of law as guaranteed by the Fifth, Sixth and Fourteenth Amendments to the U.S. Constitution, as well as Paragraphs I and XI of the Bill of Rights of the Georgia Constitution.

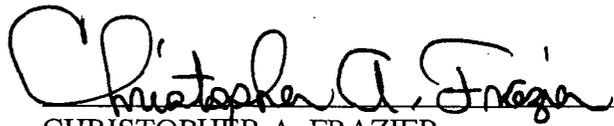
22.

Inadmissible hearsay testimony, attributed to the alleged victim by Yvonne Agan and others, was impermissibly admitted at trial in violation of *Crawford vs. Washington*, decided March 8, by

the United States Supreme Court.

WHEREFORE, the Petitioner moves this court for an order convening a hearing to inquire into the merits of this Petition and for entry of an order granting his prayer for a Writ of Habeas Corpus.

Respectfully submitted:

A handwritten signature in black ink that reads "Christopher A. Frazier". The signature is written in a cursive style with a large initial "C".

CHRISTOPHER A. FRAZIER

Attorney for Petitioner

Georgia Bar No. 274625

The Frazier Law Firm, LLC  
P.O. Box 8345  
Savannah, GA 31412-8345  
(912) 897-7799

STATE OF GEORGIA

COUNTY OF CHATHAM

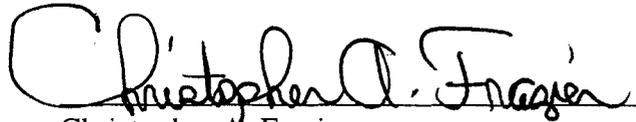
CERTIFICATE OF SERVICE

This is to certify that I have, before filing, served the foregoing Petition for Writ of Habeas Corpus upon the State of Georgia and Petitioner by placing a copy in the United States mail, in a properly addressed envelope with sufficient postage attached to the following:

Mr. Thurbert Baker  
Attorney General  
40 Capitol Sq., S.W.  
Atlanta, GA 30334-1300;

Mr. Joseph Watkins  
GDC # 1086941  
Phillips State Prison  
4898 West Rock Quarry Rd.  
Buford, GA 30519

This 6<sup>th</sup> ay of April, 2004.



Christopher A. Frazier  
Attorney for Petitioner

IN THE SUPERIOR COURT OF GWINNETT COUNTY

STATE OF GEORGIA

Joseph S. Watkins

GDC # 1086941

CIVIL ACTION  
NUMBER 04-A-04773-2

PLAINTIFF

VS.

Michelle Martin, Warden  
Phillips State Prison

DEFENDANT

SUMMONS

TO THE ABOVE NAMED DEFENDANT:

You are hereby summoned and required to file with the Clerk of Said Court and serve upon the Plaintiff's attorney, whose name and address is:

Christopher A. Frazier  
Attorney at Law  
8001 U.S. Highway 80 East  
Unit 301  
Savannah, GA 31410

an answer to the complaint which is herewith served upon you, within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Tom Lawler  
Clerk of Superior Court

By: \_\_\_\_\_  
Deputy Clerk

01072 ←

Instructions: Attach addendum sheet for additional parties if needed, make notation on this sheet if addendum sheet is used.

IN THE SUPERIOR COURT OF GWINNETT  
STATE OF GEORGIA

Joseph S. Watkins,  
Petitioner  
GDC #1086941  
Inmate Number

Civil Action No. 04-A-04773-2

Michelle Martin, vs.  
Warden  
Phillips State Prison,  
Respondent  
(Name of Institution where you are now located)

Habeas Corpus

**APPLICATION FOR WRIT OF HABEAS CORPUS**

**PART I: BACKGROUND INFORMATION ON YOUR CONVICTION**

1. Name, county, and court which entered the judgment of conviction under attack :  
Floyd County Superior Court

2. Date of conviction : July 2, 2001

3. Length of sentence(s) : life plus five

4. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?  Yes  No

5. Name of offense(s). List all counts : malice murder, felony murder, possession of firearm in commission of crime and stalking

6. What was your plea? Please check one :

- Guilty
- Guilty but mentally ill
- Nolo contendere
- Not guilty

If you entered a guilty plea to one count or indictment, and a not guilty or nolo contendere plea to another count or indictment, give details : N/A

7. Kind of trial. Please check one :

- Jury
- Judge only

8. Did you testify at the trial?  Yes  No

9. Did you appeal from the conviction?  Yes  No

10. If you did appeal, answer the following :

Name of appellate court to which you appealed : Georgia Supreme Court

Result of appeal : conviction affirmed

Date of result : May 19, 2003

11. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this conviction in any state or federal court?  
 Yes  No

12. If your answer to 11 was "Yes", give the following information : (Note: if more than three petitions, please use a separate sheet of paper and use the same format to list them.)

A. Name of court and case number : \_\_\_\_\_

What kind of case or action was this? \_\_\_\_\_

All grounds raised (attach extra sheet of paper if necessary) : \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Did a judge hear the case?  Yes  No Did witnesses testify?  Yes  No

Name of Judge : \_\_\_\_\_

Result : \_\_\_\_\_

Date of result : \_\_\_\_\_

B. As to any second petition, application or motion, give the same information.

Name of court and case number : \_\_\_\_\_

What kind of case or action was this? \_\_\_\_\_

All grounds raised (attach extra sheet of paper if necessary) : \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Did a judge hear the case?  Yes  No Did witnesses testify?  Yes  No

Name of Judge : \_\_\_\_\_

Result : \_\_\_\_\_

Date of result : \_\_\_\_\_

C. As to any third petition, application or motion, give the same information.

Name of court and case number : \_\_\_\_\_

What kind of case or action was this? \_\_\_\_\_

All grounds raised (attach extra sheet of paper if necessary) : \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Did a judge hear the case?  Yes  No Did witnesses testify?  Yes  No

Name of Judge : \_\_\_\_\_

Result : \_\_\_\_\_

Date of result : \_\_\_\_\_

D. Did you appeal to the Georgia Supreme Court or the Georgia Court of Appeals from the result taken on any petition, application or motion listed above?

First petition, application or motion :  Yes  No

Second petition, application or motion:  Yes  No

Third petition, application or motion:  Yes  No

E. If you did not appeal from the denial of relief on any petition, application or motion, explain briefly why you did not : \_\_\_\_\_  
\_\_\_\_\_

F. If you appealed to the highest state court having jurisdiction, did you file a petition for certiorari in the United States Supreme Court to review the denial of your petition by the Georgia Supreme Court or the Georgia Court of Appeals?  Yes  No

13. Do you have any petition or appeal now pending in any court, either state or federal, as to the conviction under attack?  Yes  No

14. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein :

At preliminary hearing : Rex Abernathy, P.O. Box 370, Summerville,  
GA 30741

At arraignment and plea : Patti Keawn, P.O. Box 370, Summerville,  
GA 30747

At trial : Rex Abernathy, P.O. Box 370, Summerville, GA  
30747

At sentencing : Rex Abernathy, P.O. Box 370, Summerville, GA  
30747

On appeal : L. Branch S. Connelly, P.O. Box 370, Summerville,  
GA 30747

In any post-conviction proceeding : \_\_\_\_\_

On appeal from any adverse ruling in a post-conviction proceeding : \_\_\_\_\_

15. Do you have any other sentence, either state or federal, to serve after you complete the sentence imposed by the conviction under attack?  Yes  No

If so, give the name and location of the court(s) which imposed any other sentence : \_\_\_\_\_  
\_\_\_\_\_

And give the date and length of any other sentence to be served :

Have you filed, or do you contemplate filing, any petition attacking the judgment(s) which imposed any other sentence?  Yes  No

**PART II: STATEMENT OF YOUR CLAIMS**

State concisely every ground on which you now claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

GROUND ONE: ineffective assistance of counsel (See  
accompanying Petition for details.)

SUPPORTING FACTS. (Tell your story *briefly* without citing cases or law) :  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2.

GROUND TWO: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SUPPORTING FACTS. (Tell your story *briefly* without citing cases or law) :  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3.

GROUND THREE: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SUPPORTING FACTS. (Tell your story *briefly* without citing cases or law) :  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4.

GROUND FOUR: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SUPPORTING FACTS. (Tell your story *briefly* without citing cases or law) :  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**PART III: OTHER CLAIMS NOT PRESENTED TO A COURT BEFORE THIS**

If any of the grounds listed in PART II were not previously presented in any other court, state or federal, state *briefly* what grounds were not so presented, and give your reasons for not presenting them:

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Wherefore, petitioner prays that the Court grant relief to which the petitioner may be entitled in this proceeding.

Christopher J. Inger

4/16/04  
Date

P.O. Box 8315

Savannah, GA 31412-8315

Signature and Address of Petitioner's  
Attorney (if any attorney)

I declare ( or certify, verify, or state) under penalty of perjury that the foregoing statements made in this Application for Writ of Habeas Corpus are true and correct.

Executed on \_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Petitioner

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public or Other Person Authorized to Administer Oaths

**Please note that under O.C.G.A. §9-14-45 service of a petition of habeas corpus shall be made upon the person having custody of the petitioner. If you are being detained under the custody of the Georgia Department of Corrections, an additional copy of the petition must be served on the Attorney General of Georgia. If you are being detained under the custody of some authority other than the Georgia Department of Corrections, an additional copy of the petition must be served upon the district attorney of the county in which the petition is filed. Service upon the Attorney General or the district attorney may be had by mailing a copy of the petition and a proper certificate of service.**

IN THE SUPERIOR COURT OF GWINNETT COUNTY

STATE OF GEORGIA

JOSEPH S. WATKINS,	)	
GDCID-1086941	)	CIVIL ACTION FILE
	)	
Petitioner,	)	NO. 04-A-04773-2
	)	
v.	)	
	)	HABEAS CORPUS
MICHELLE MARTIN, Warden,	)	
	)	
Respondent.	)	

**RESPONDENT'S RETURN AND ANSWER**

COMES NOW Michelle Martin, Warden, Respondent in the above-styled action, by and through counsel, Thurbert E. Baker, Attorney General for the State of Georgia, and makes this her return and answer to the instant petition for habeas corpus relief by respectfully showing the Court as follows:

1.

Respondent shows that Petitioner was convicted in the Superior Court of Floyd County of felony murder, aggravated assault, possession of a firearm during the commission of a felony and stalking on July 2, 2001. Petitioner was sentenced to life imprisonment for felony murder, five years consecutive on the possession charge and twelve months on the stalking charge. Respondent further shows that Petitioner appealed his conviction to the Supreme Court of Georgia where his conviction

was affirmed on May 19, 2003. Watkins vs. The State, 276 Ga. 578 (2003).

2.

Respondent denies paragraphs 11, 18 and 20 of the petition wherein Petitioner alleges he was denied his right to a fair trial, his right to effective assistance of counsel, and his right to due process of the law. Respondent denies Petitioner's claim of prosecutorial misconduct. Respondent is without knowledge or information sufficient at this time to form a belief as to the truth of the remaining averments contained in paragraphs 11, 18 and 20 of the petition.

3.

Respondent denies paragraphs 17 and 19 of the petition wherein Petitioner alleges he was denied due process of law because of prosecutorial misconduct. Respondent is without knowledge or information sufficient at this time to form a belief as to the truth of the remaining averments contained in paragraphs 17 and 19 of the petition.

4.

Respondent denies paragraph 21 of the petition wherein Petitioner again alleges he was denied due process of the law. Respondent is without knowledge or information sufficient at this time to form a belief as to the truth of the remaining averments contained in paragraph 21 of the petition.

5.

Respondent is without knowledge or information sufficient at this time to form a belief as to the truth of the averments contained in paragraph 22 of the petition.

6.

Respondent denies each and every allegation made by the Petitioner not herein admitted, controverted or specifically denied.

7.

Respondent denies that the Petitioner is entitled to any of the relief sought by means of his Application for Writ of Habeas Corpus.

WHEREFORE, for all the above and foregoing reasons, Respondent prays that the Petitioner's Application for Writ of Habeas Corpus relief be denied and that Petitioner be remanded to the custody of the Respondent/Warden for the completion of the service of his lawful sentence.

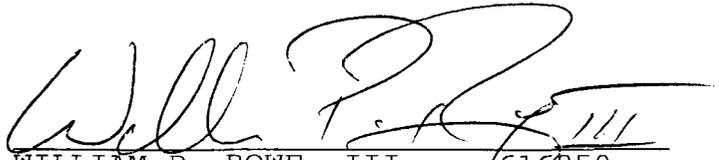
Respectfully submitted,

THURBERT E. BAKER                      033887  
Attorney General

MARY BETH WESTMORELAND              750150  
Deputy Attorney General

(SIGNATURE APPEARS ON FOLLOWING PAGE)

PAULA K. SMITH 662160  
Senior Assistant Attorney General

  
WILLIAM P. ROWE, III 616850  
Special Assistant Attorney General

Please serve:

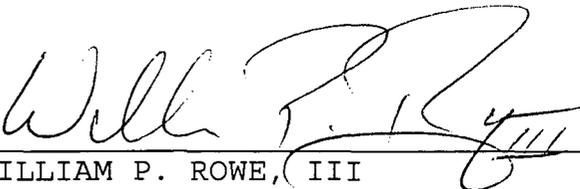
William P. Rowe, III  
P.O. Box 1155  
Ellijay, GA 30540  
(706) 698-7500

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Respondent's Return and Answer was served by mailing same, first class, postage prepaid, this 7 day of June, 2004, to:

Christopher A. Frazier, Esquire  
Attorney for Petitioner  
P.O. Box 8345  
Savannah, GA 31412-8345

Joseph S. Watkins  
GDCID-1086941  
Phillips Correctional Institution  
2989 West Rock Quarry Road  
Buford, GA 30519

  
WILLIAM P. ROWE, III

P.O. Box 1155  
Ellijay, GA 30540  
(706) 698-7500