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IN THE SUPERIOR COURT OF FLOYD COUNTY
STATE OF GEORGIA

STATE OF GEORGIA,

v.

JOSEPH SAMUEL WATKINS,

Defendant

ED WATKINS
11:2p
JUL - 3 2001
[Signature]
CLERK

CRIMINAL INDICTMENT
No. 01CR16707-2

MOTION FOR NEW TRIAL

Defendant moves this Honorable Court to set aside the verdict rendered and the sentence entered on July 2, 2001, and to grant a new trial on the following grounds:

1. The Defendant should be acquitted and discharged due to the State's failure to prove guilt beyond a reasonable doubt; and,
2. The Court committed an error of law warranting a new trial; and,
3. The verdict is contrary to law and the principles of justice and equity.

A transcript of the trial will be filed prior to the hearing of this Motion. Movant respectfully requests the Honorable Court to allow adequate time to receive and review the trial transcripts before requesting a hearing date.

WHEREUPON the Defendant prays that his grounds for a new trial be inquired of by the Court and that a new trial be granted.

This 3rd day of July, 2001.

Respectfully submitted,

COOK & CONNELLY
P. O. Box 370
Summerville, GA 30747
(706) 857-3421

[Signature]
REX B. ABERNATHY
Georgia Bar No. 000581
Attorney for Defendant

- 100 -

01201-1 20

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a true and correct copy of the foregoing Motion for New Trial upon the State by handing a copy of same to Ms. Tami Colston, Rome Judicial Circuit District Attorney, or her lawful assistant.

This 3rd day of July, 2001.



REX B. ABERNATHY

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FILED IN OFFICE

IN THE SUPERIOR COURT OF FLOYD COUNTY

1:30 pm

STATE OF GEORGIA

APR 05 2002

[Signature]
CLERK

STATE OF GEORGIA

vs.

CR. INDICTMENT NO. 01CR16707-2

JOSEPH SAMUEL WATKINS,

DEFENDANT

AMENDMENT TO MOTION FOR NEW TRIAL

Now comes the Defendant in the above-stated case and he hereby amends his original motion for a new trial by adding additional grounds thereto that are not contained in his original motion, as follows:

GROUND ONE:

THE BRADY VIOLATION

1. On January 26, 2001, the Grand Jury of Floyd County returned two indictments, one of which charged JOSEPH SAMUEL WATKINS with malice murder and felony murder of Isaac Dawkins and other offenses; and the other charged TIMOTHY MARK FREE also with the malice murder and felony murder of Isaac Dawkins and other offenses. These two indictments were identical in every respect except for the name of the Defendants.

A copy of the WATKINS indictment is attached hereunto and made a part hereof as Exhibit A. A copy of the FREE indictment is attached hereunto and made a part hereof as Exhibit B.

2. On March 1, 2001, counsel for WATKINS filed a comprehensive Brady Motion and a Motion for Complete and Reciprocal Discovery. A copy of the Brady Motion is attached hereunto and made a part hereof as Exhibit C. A copy of the other discovery Motion is attached hereunto and made a part hereof as Exhibit D.

3. Watkins was tried by the Court and a Jury in June, 2001, and convicted of all counts in the indictment except as to the malice murder count. He was sentenced to life imprisonment and an additional number of years.

4. After the conviction and sentencing of Watkins defense counsel received a memorandum from C. Stephen Cox, Assistant District Attorney for the Rome Judicial Circuit. A copy of that memorandum is attached hereunto and made a part hereof as Exhibit E.

5. The aforesaid memorandum of Mr. Cox related in substance that a Mr. Hudgins had come to his office and had spoken with him and the District Attorney on July 18, 2001, and had related to them certain information that they had received from a Mr. James Hudgins relative to the murder of Dawkins that would obviously constitute Brady material. In this memorandum no reference was made to the fact that this same information had been imparted to another member of the District Attorney's staff and a Detective prior to the trial of Watkins.

6. The memorandum of Mr. Cox failed to reveal that the same Mr. Hudgins had visited the District Attorney's office prior to the trial of Watkins and had related to the Assistant District Attorney the same information that he had given to the District Attorney and Mr. Cox after the trial. In this connection see a copy of the sworn statement of James Arnold Hudgins dated July 30, 2001, a copy of which is annexed hereunto and made a part hereof as Exhibit F. As the sworn statement of Mr. Hudgins indicates, he had also given this same information prior to the trial of Watkins to members of the Rome Police Department.

7. Defendant shows that there has been a knowing suppression of exculpatory evidence that constitutes an egregious violation of the rule announced by the United States Supreme Court in Brady v. Maryland, all of which has deprived the Defendant of a fair trial in contravention of the due process clause of the 14th Amendment to the United States Constitution and of Article I, Section I, Paragraph I of the Georgia Constitution.

8. Defendant requests the Court to conduct an evidentiary hearing on this issue and to direct the District Attorney to produce all of the investigative files prepared by the District Attorney or any of its agents or employees, Detective Moser, Stanley Sutton, and all other law enforcements who in any way participated in the investigation or handling of said case.

GROUND TWO:

THE PERJURY OF YVONNE AGAN

9. The Watkins trial was tried prior to the Free trial, and a copy of the testimony of Yvonne Agan in the Watkins trial is annexed hereunto and made a part hereof as Exhibit G.

10. Yvonne Agan was a critical witness for the State and the District Attorney questioned Yvonne Agan and she replied as follows:

Q When he left — did he tell you what happened after he put it in reverse and left the driveway?

A He said, I could hear them shooting at me, Vonne, and he reached up and grabbed me. And he said, Vonne, I know they were shooting at me.

I said, are you sure? He said, I am positive. I heard it. He said that is all he knew to come here, and I didn't want to bring them straight here because I knew you were here a lot by yourself.

See Transcript, p. 1148.

11. In the above answer given by Yvonne Agan she was referring to what Isaac Dawkins had allegedly told her, referring to Defendant Watkins and Defendant Free.

12. Free was tried after Watkins had been convicted and, again, the State called Yvonne Agan as a witness in the Free case. A copy of Yvonne Agan's testimony in the Free case is annexed hereunto and made a part hereof as Exhibit H.

13. In the Free case, Yvonne Agan testified in response to a question asked by the State as follows:

Q Another thing Mr. Abernathy asked you was about Isaac saying something about someone shooting at him. Did he tell you that too?

A He told me he thought they were shooting at him, but he said, I don't know if I was hearing right or not. Maybe they weren't. Maybe they were just throwing things at me, but said, Von, it sounds like they are. But I can't swear to it.

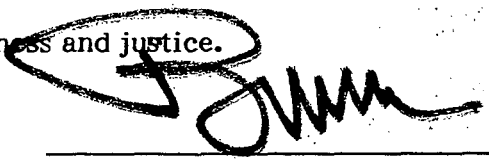
See p. 22 of Transcript

14. As it is vividly clear, the testimony of Yvonne Agan at the Free trial, as set forth in the official transcript, was totally and completely contradictory to what she had testified to in the Watkins trial.


WHEREFORE, Defendant prays that these grounds be inquired into and that a new trial be granted in the interest of fairness and justice.

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BOBBY LEE COOK
Georgia Bar No. 182100



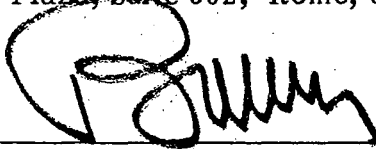
D. BRANCH S. CONNELLY
Georgia Bar No. 181825

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I have served the State of Georgia with the above and foregoing Amendment to Motion for New Trial by mailing a copy of same to Mr. C. Stephen Cox, Assistant District Attorney, Rome Judicial Circuit, 3 Government Plaza, Suite 302, Rome, GA 30161.

This 3rd day of April, 2002.



Counsel for Defendant

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IN THE SUPERIOR COURT OF FLOYD COUNTY

STATE OF GEORGIA

STATE of GEORGIA FILED IN OFFICE 01CR16707-JFLWJM

v.

4:30 pm FEB 13 2002

JOSEPH S. WATKINS

[Signature]
CLERK

ORDER

Upon motion made by the State, IT IS HEREBY ORDERED that the Court Reporter release to the Chief Assistant District Attorney, such evidence and audio tapes tendered by the State in the trial of the above styled case, as needed, for use in the trial of State v. Timothy M. Free, 01CR16706JFLWJM. Any released evidence not tendered in the trial of Timothy M. Free, shall be returned to the Court Reporter.

SO ORDERED, this 13th day of February, 2002.

[Signature]

Judge Walter J. Matthews
Superior Court, Floyd County

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FILED IN OFFICE

3:55 PM

JUL 25 2002

IN THE SUPERIOR COURT.
COUNTY OF FLOYD, STATE OF GEORGIA

[Signature]
CLERK

STATE OF GEORGIA,

vs.

CRIMINAL NO. 01CR16707-JFLWJM

JOSEPH SAMUEL WATKINS.

**ORDER ON MOTION FOR
NEW TRIAL AS AMENDED**

The facts of the case, briefly stated, are that on January 11, 2000, the victim, Isaac Dawkins, after attending a night class at Floyd College, was proceeding north, towards Rome on Highway 27/411. A witness saw a blue car approach the victim's compact pickup from the rear, saw flashes (at the time he did not equate these flashes with gunfire), and then saw the pickup veer sharply to the left, cross the median, cross the southbound lanes of travel, run a guardrail, flip and come to rest in a stand of trees beside the highway. (T. 286, et seq.). The blue car left the scene, could not be identified, no tag number was taken, and no occupants could be described. Thinking only that a tragic accident had occurred, emergency personnel were called, the victim was extracted from his truck, and was taken to Floyd Medical Center. It was there that a bullet in his brain was shown by a CT scan, (T. 358, et seq.) and police were first aware that a crime had occurred.

After a long investigation, this Defendant came under suspicion because of his animosity toward Mr. Dawkins (described later) and because witnesses came forward who could describe Defendant's own statements regarding his involvement.

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Defendant, without dispute, was near the scene of the killing. Witnesses (Defendant did not testify) testified that Defendant said he passed by the victim's wrecked vehicle shortly after emergency personnel arrived. Cell phone records established the location of Defendant's cell phone before and after the time of the homicide, within the geographic coverage provided by specific cell tower zones. The State established the location of the phone, at a time during which the killing occurred, in a zone which included the place of the killing. (T. 561, 584, et seq.) Other trial evidence will be set forth hereafter, as necessary, in discussion of the grounds for the Motion for New Trial.

Joseph Samuel Watkins, this Defendant, and his friend Timothy Mark Free (Case No. 01CR16706-JFLWJM) were charged in separate but identical indictments with murder and other crimes surrounding the death of Isaac Dawkins on January 11, 2000. This Defendant was tried first and was convicted of both Malice Murder and Felony Murder, Aggravated Assault, Possession of a Firearm During the Commission of a Crime, and Stalking. He was sentenced on July 2, 2001.

On July 3, 2001, a Motion for New Trial was filed, which was amended on April 5, 2002.

Between sentencing this Defendant and the time of the amended Motion for New Trial, in February, 2002, the trial of Defendant's friend, Mr. Free, was conducted. Mr. Free was acquitted of all charges. Both Defendants were represented by the same trial counsel; both trials were presented to a jury before the undersigned, as trial judge. This is noted because of the fact that the amended Motion for New Trial refers to proceedings in the Free trial. Other than the statements of this Defendant presented in this case, there was no direct evidence of the guilt of either Defendant,

save certain statements of this Defendant presented in this case. The circumstantial evidence was substantially different in each case as to Mr. Watkins and Mr. Free. The Court makes note of this, even though there is no reason that Mr. Free's acquittal in any legal sense calls into question Mr. Watkins' guilt. "Any party to a crime. . . may be. . . convicted, and punished. . . although the person claimed to have directly committed the crime. . . has been acquitted". O.C.G.A. § 16-2-21.

I.

The Court will first consider the general grounds raised in the Motion for New Trial. The Court has reviewed the Motion, argument of counsel, and has reviewed the transcript of this Defendant's trial. The Court finds no basis to grant a new trial on either of the general grounds enumerated. The Court finds there was sufficient evidence for a jury to conclude that Mr. Watkins was guilty of the offenses charged, beyond a reasonable doubt; the verdict is not contrary to principles of justice or equity. Further, the allegation of general grounds including allegations of errors of law by the Court, except as may be subordinate to the grounds raised in the amended Motion, is not supported by argument or authority. The Motion for New Trial on general grounds is DENIED.

II.

The Court considers the amended grounds as follows:

A.

This Defendant alleges that the State withheld the testimony of a material, exculpatory witness from the Defendant. An individual by the name of James Hudgins testified that prior to trial he had spoken to an investigating officer, Detective Moser, of

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the Rome City Police Department and an Assistant District Attorney. His testimony at this motion hearing was that an individual named Joseph John Boyd admitted firing the shot that killed the victim in this case, Mr. Dawkins. Mr. Boyd then testified and denied either firing the shot or telling Mr. Hudgins anything of the sort. It is uncontradicted that the site from which Mr. Hudgins claims Mr. Boyd told him the fatal shot was fired by Mr. Boyd was over one mile in distance, and over hilly terrain, from the place where objective evidence showed the fatal shot was fired.

Detective Moser agrees that Mr. Hudgins did speak to him. He testified that he looked into Mr. Hudgins' claims, but he could not substantiate any part of what Mr. Hudgins said. Therefore, he found nothing credible as to this story and made no notes or report to the District Attorney.

Mr. Hudgins did talk about his same allegations to Assistant District Attorney Golden, a conversation which Mr. Hudgins says took place before this Defendant's trial. Mr. Golden does not remember whether he saw Mr. Hudgins just before, during or immediately after trial. Mr. Golden had no part in prosecuting this Defendant and did not communicate this conversation to the District Attorney. Mr. Hudgins later talked to Assistant District Attorney Cox, about two weeks after trial. Mr. Cox relayed the information about Mr. Hudgins' allegations to defense counsel by a memo dated July 18, 2001.

This Defendant alleges and urges that a Brady violation has occurred. Defendant says that he has shown the State failed to disclose exculpatory evidence. The State disagrees and points out that Mr. Hudgins' veracity is in question because while he claimed to be unusually well informed with inside information on a number of

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other high profile homicides over a widespread area of Northwest Georgia, Mr. Hudgins has no reason to have personal knowledge of a number of separate crimes. The State calls Mr. Hudgins' testimony unverified, lacking any corroboration, and directly contrary to the uncontradicted direct evidence as to where and how the crime was committed.

The Court also notes that at the time of co-defendant's trial in February, 2002, Mr. Hudgins' testimony was well known to the same counsel who tried this Defendant's case. His testimony, if believable at all regarding this Defendant's innocence, would have also served to exculpate co-defendant Mr. Free. Trial counsel did not call Mr. Hudgins to testify in the Free case, leaving the distinct impression that defense counsel determined his testimony would not be helpful to the defense in this case.

The Court has gone through this analysis because to receive relief because of a Brady violation, the Defendant must show: (1) the State possessed information favorable to Defendant, (2) Defendant did not have the evidence, nor could he obtain it with due diligence, (3) the prosecution suppressed the evidence, and (4) a reasonable probability exists that the outcome of the trial would have been different if the evidence had been disclosed. Tessmer v. State, 273 Ga. 220 (2000).

Defendant has failed to show (1) and (4) above. The Court, after review of all of the evidence on the Motion for New Trial, as amended, and at trial, finds that the evidence to be presented by Mr. Hudgins was not favorable to Defendant. Had it been favorable to Mr. Watkins, surely the same trial counsel would have found it favorable to Mr. Free and used it at his trial. They did not do so and the reason is readily apparent to the Court. The version of what happened, which Mr. Hudgins said

was told him by Mr. Boyd, is devoid of credibility when stacked up against the known, (uncontested) objective evidence. The Court finds no reasonable probability that had Mr. Hudgins' testimony been presented to the jury in this case, the result of this trial would have changed. In fact, had Defendant presented Mr. Hudgins' testimony as credible, the likelihood is that a jury would have discounted the credibility of any other theory advanced by Defendant.

B.

As a second ground for new trial Defendant points to the testimony of witness Yvonne Agan. Defendant says that Ms. Agan gave differing versions of her testimony at the two trials and that the differences are so severe as to have constituted perjury, warranting a new trial.

Ms. Agan was allowed to testify in this case, under the necessity exception to the hearsay rule. See: Chapel v. State, 270 Ga. 151 (1998). She testified about an incident in December, 1999, about one month before this murder, in which the deceased victim came to her home late at night, scared. She was allowed to testify under the necessity rule as to what she was told by the victim as to what he said this Defendant had done to him that night.

The problem noted by Defendant is that in the trial of this Defendant, Ms. Agan testified that the deceased told her that he had been chased by this Defendant in his car and that he knew the Defendant was shooting at him. (T. 1148).

This Defendant then points to the same Ms. Agan's testimony in Mr. Free's trial in February, 2002, where she at one point testified the victim told her he was being chased by Mr. Watkins, and later, on redirect examination said the victim told her

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he thought Mr. Watkins was shooting at him, but she said he then told her that he might have heard shots, but maybe they (Watkins) were just throwing things, that he couldn't swear it was shots. Defendant claims Ms. Agan committed perjury and he is entitled to a new trial. Defendant presented only the transcripts of Ms. Agan's two trial testimonies. He did not present an affidavit from her, nor did he call her as a witness to attempt to clarify her testimony.

Defendant's Amended Motion based on possible conflicts as to Ms. Agan's testimony in two different trials is not sustainable for several reasons. First, when a State's witness recants her testimony, the same is not grounds for a new trial. "The law is settled that a post-trial declaration by a State's witness. . . that [her] former testimony was false is not a ground for a new trial." Drake v. State, 248 Ga. 891 (1982); Sharp v. State, 196 Ga. App. 848 (1990). To paraphrase the holding in Sharp, supra, there is no error in refusing to take Ms. Agan's second version of the same incident and thereby cast doubt on the correctness of the verdict. Sharp, at 849.

Additionally, it is always correct to say that a Defendant is not entitled to a new trial simply to impeach a witness. Young v. State, supra. Here, a new trial would simply allow Defendant the opportunity to attempt to impeach Ms. Agan. A new trial should not be granted simply to allow that result.

Finally, Mr. Watkins seeks to have the Court construe this second testimony as newly discovered evidence, a discrepancy in what was told Ms. Agan by the victim, which warrants a new trial. [The Court is not sure this, in fact, meets the test for newly discovered evidence, or whether this is truly only newly discoverable evidence, Davis v. State, 221 Ga. App. 375, 378 (1996) which does not warrant

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consideration as a basis for a new trial.] The standards for a Defendant to meet on a motion for new trial based upon newly discovered evidence are set forth in Young v. State, 269 Ga. 490 (1998) at fn. 5. The first ground for consideration by the Court is whether Defendant has established the evidence from Ms. Agan's testimony to be so material that it would probably have produced an acquittal. If the evidence is not such as to warrant such conclusion, the Motion for New Trial should be denied. Young v. State, id.

Ms. Agan's testimony was only a small part of an overall picture of the relationship between this Defendant and the victim, Mr. Dawkins, shown by the testimony of a number of witnesses who testified consistently as to an ongoing series of what can only be called incidents of stalking and physical confrontations between this Defendant and the victim. These witnesses testified to these confrontations as having been initiated by this Defendant, Watkins, in an apparent effort to get back at the victim who had dated Watkins' ex-girlfriend. These witnesses included (now police officer) Jay Barnett (T. 80, et seq.) who testified Watkins followed, threatened and tried to draw Dawkins into a fight; Tiffany Sledge (T. 115, et seq.) who testified Watkins threatened to kill the "S.O.B.", Isaac Dawkins; Paul Allen (T. 133, et seq.) Watkins said he would "get" Dawkins; Clay Burkhalter (T. 173, et seq.) Watkins wanted to "whip" Dawkins; Brad Nolan (T. 185, et seq.) if Watkins caught Dawkins somewhere he wouldn't get in trouble, he would fight Dawkins; Adam Elrod (T. 907, et seq.) said that Defendant had threatened to kill the victim, Mr. Dawkins, and testified to many confrontations initiated by Defendant; Josh Flemister (T. 974, et seq.) testified about Defendant's intent to do

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harm to Mr. Dawkins, including the statement that Defendant's main goal every day was to find Mr. Dawkins (T. 976, et seq.).

Aside from mere threats, there was evidence which the jury was given which showed the Defendant had in fact said he killed the victim, Isaac Dawkins. Winford Ellis (T. 655, et seq.) told police that this Defendant told him he had killed the victim. Ellis retracted this at trial. Cory Jacobs (T. 754, et seq.) heard Defendant boast he had shot the victim, and Adam Elrod (T. 907, et seq.) who said Defendant had threatened to kill the victim.

The Court notes whose testimony is not before the Court as to this Motion: the witness, Ms. Agan, whose two sworn testimonies appear inconsistent on their face. A Defendant who urges newly discovered evidence is required to present an affidavit of the witness to the newly discovered evidence, or account for its absence. Carter v. State, 273 Ga. 428 (2001). The Court knows Ms. Agan was available. Shortly after the hearing on this motion she appeared in Court to defend herself against pending charges alluded to in her testimony. (And, she was acquitted).

When questioned in the Free case (the second trial) about the point in question – whether or not the victim told her he was being shot at – her equivocation still leave the distinct impression that her best recollection is that is exactly what Mr. Dawkins said. Nevertheless, that statement is cumulative of all of the other testimony establishing that Defendant in fact threatened to kill Mr. Dawkins on several occasions and had engaged in a repeated number of vehicular stalking incidents over a period of time leading up to this killing, including a number of occasions when the Defendant followed or chased the victim as he drove his vehicle. The killing, observed by the sole

witness, Mr. Wayne Benson, (A-280) precisely matched this aspect of Defendant's mode of conduct.

Taken as a whole, the Court concludes that had Ms. Agan testified in this trial, as she did in the Free trial, the testimony as delivered in the Free trial would not have changed the verdict in this case.

Therefore, for each of the foregoing reasons, the Motion for New Trial, as amended, is DENIED.

This 25th day of July, 2002.



J.S.C., R.J.C.

c: Mr. Fred R. Simpson, Chief Assistant District Attorney
Mr. Bobby Lee Cook, Attorney for Defendant
Mr. Branch S. Connelly, Attorney for Defendant
Mr. Rex B. Abernathy, Attorney for Defendant