





To his dismay, petitioner did not have the privilege of actually witnessing the murders of Felicia and Reginald at the hands of his cohorts. Unfortunately, he was looking for a good burial site when his friends decided that they could not wait for his return and ordered Felicia and Reginald into a garbage can, where they were to spend the last moments of their lives before being repeatedly shot to death.

For his crimes, on June 14, 1996, a jury convicted petitioner, Anthony Brown, of two counts of first degree murder, aggravated vehicular hijacking, aggravated criminal sexual assault, and armed robbery in case #94CR-4431. On October 16, 1996, the Honorable Vincent M. Gaughan sentenced him to death for the murders of Reginald Wilson and Felicia Lewis and imposed a sentence of 30 years for the charge of aggravated criminal sexual assault, and thirty years for the aggravated vehicular hijacking. The armed robbery charge merged with the aggravated vehicular hijacking charge. Petitioner appealed his conviction to the Illinois Supreme Court in case # 82186. The Illinois Supreme Court affirmed petitioner's convictions and sentence on November 10, 1998. People v. Brown, 185 Ill.2d 229, 705 N.E.2d 809 (1998). The Illinois Supreme Court denied a petition for rehearing on February 1, 1999. People v. Brown, 1999 Ill. LEXIS 655. The petitioner's petition for a writ of certiorari was denied by the United States Supreme Court on June 24, 1999. Brown v. Illinois, 527 U.S. 1041, 119 S.Ct. 2405, 144 L.Ed.2d 804 (1999).

Petitioner subsequently filed a petition for post-conviction relief which was denied, and which is presently on appeal before the Illinois Supreme Court, case # 89435.

## II

### FACTS OF THE CASE

#### The Crime

In the late evening hours of January 12, 1994, petitioner, Anthony Brown was driving his car, a gray Chevy Caprice, accompanied by friends Zarice Johnson, Stanley Hamelin, Scott Chambers, and Carl Williams, when Hamlin suggested that they "go out and find somebody to jack." Petitioner's reply to this suggestion was "Cool," and the group set out to do just that. They drove around, looking to catch someone at a light or at a gas station, approach them, and take their vehicle.

Petitioner got on to the Dan Ryan expressway at 39th Street, drove south, and exited at 95th Street. Petitioner drove to 115th Street where the group stopped to observe a white Suburban that looked like "easy prey" because it did not appear to have too many people in it. Upon closer observation, however, they noticed that there were, in fact, a number of people in the truck and so, "decided not to bother it." Petitioner drove off.

Petitioner drove north to 79th Street, where he exited the expressway and drove into the Shell gas station at 79th and the Dan Ryan. Petitioner gave Hamelin two dollars to put gas in his car. When Hamelin got out of the car without closing the car door, petitioner became upset, stating, "if anybody walked past, they could clearly see the pistol that was sitting in the front seat."

Petitioner, who had a nine millimeter handgun in the front seat, then reached over and closed the door.

After Hamelin put gas into the tank he got back in the car. Petitioner, exasperated at not being able to find any suitable cars to hijack, said, "ain't shit out here. I am fitting to go home." Before leaving, however, Hamelin and Chambers said, "Damn, look at them rims." Petitioner, Johnson, and the other men in petitioner's car, turned and looked at a black truck pulling into the Shell gas station.

The truck, a Chevy Blazer, belonged to twenty-three year old Reginald Wilson, who had, unfortunately, pulled into the gas station with his girlfriend, twenty-one year old Felicia Lewis, and his friend and former college basketball teammate Steven Fitch, so that Steven could use the rest room. Steven jumped out of the Blazer and walked around the gas station to use the rest room.

At this point, petitioner pulled over in his Caprice. While petitioner remained in his car with Johnson, Hamelin took the gun from petitioner and, accompanied by Chambers and Williams approached the Blazer and its occupants, Reginald and Felicia. Chambers walked to the driver's side of the truck while Hamelin walked to the passenger side of the truck.

Upon returning from the rest room, Steven saw Hamelin admitting another person into the back of Reginald's Blazer. As he approached the Blazer, Hamelin looked at Steven and asked, "What the fuck are you looking at?" Steven looked into the Blazer and saw another man, not Reginald, in the driver's seat. Steven walked quickly back to the gas station, but the door was locked and he could not get in. As he tried to get into the building, Steven saw Reginald's Blazer begin to drive off. Steven ran across the street to the El station and called the police. The police arrived and looked for Reginald's Blazer, but to no avail.

In the meantime, the Blazer, which left the gas station, followed behind petitioner's car. Petitioner got back on the Dan Ryan and headed northbound. Petitioner was agitated because he thought that the others had succeeded only in stealing the Blazer and not in capturing any victims to rob. Petitioner, who thought that Steven was the sole occupant of the Blazer saw him leave the gas station after his encounter with Hamelin.

At about 71st Street, petitioner pulled his Caprice over to the side of the expressway in order to retrieve his "damned gun from them." The Blazer pulled up in front of the Caprice on the shoulder of the Dan Ryan. Petitioner got out of the Caprice and went to the driver's side window of the Blazer, where he stood for a couple of minutes. Upon returning to the Caprice, he continued driving north on the Dan Ryan, and reported to Johnson that there were victims in the

car, a man and a pretty woman. Petitioner asked Johnson if he knew a place where they could take the victims. Johnson thought for a moment, first replied that he did not know of any place, and then suggested they take the victims to the Ida B. Wells housing complex, where Johnson, petitioner, and the rest of the group resided. Petitioner replied, "Hell, no. Why would we want to take them to the neighborhood?"

Petitioner then exited the Dan Ryan at 43rd Street, drove to 47th Street and Vincennes and pulled into a parking lot. Petitioner exited his car and waved the Blazer into the parking lot. The Blazer pulled up and parked a car length away from petitioner's Caprice. Hamelin and Williams got out of the Blazer, stood between the two vehicles and talked to petitioner. Petitioner asked Hamelin and Williams if there was any merchandise or loot. After Hamelin boasted about how loudly he played the stereo, and Williams bragged about the portable CD player, petitioner asked if there was any money. Hamelin and Williams did not answer, and petitioner returned to the driver's seat of his Caprice.

A moment later, Hamelin returned to the Caprice and handed petitioner a "bundle of money," which petitioner promptly put in his pocket. Petitioner asked Hamelin if there was any loot, and Hamelin reached in his pocket, withdrew a ring and showed it to petitioner.

Petitioner then laughed, and said he was going to "make the bitch suck [his] dick." Petitioner exited his Caprice and walked to the passenger side of the Blazer. Petitioner opened the door and ordered Felicia out. Petitioner called out to Johnson to get into the front seat of the Caprice. Johnson moved from the back seat to the front passenger seat. Hamelin handed Johnson the Kenwood stereo from Reginald's Blazer as well as Steven's portable CD player.

Petitioner walked Felicia back to the Caprice and made her climb into the back seat. Petitioner climbed in after her. Johnson saw that Felicia was wearing a blue jogging suit with some designs on it. Once in the back seat, petitioner asked Felicia about her boyfriend and how long they knew each other. Felicia told petitioner that she met Reginald two weeks ago and that he worked for the CTA. Petitioner asked Felicia if she had any money. She answered, "no."

Petitioner then told Felicia that she was going "to suck [his] dick." Felicia remained silent as petitioner unbuttoned his clothes, and pulled down his pants and boxer shorts. Johnson watched as petitioner put his penis into Felicia's mouth. After a few minutes of forcing Felicia to perform fellatio on him, petitioner then ordered Felicia to turn around, take off her coat, and pull down her pants. Petitioner then forced Felicia onto her knees and made her bend over.

Felicia cried. Johnson told her to stop crying and just cooperate with petitioner. Felicia said she was having her period, and had just had a baby in November. Petitioner told Felicia she was lying. Felicia said she was wearing a pad on her and petitioner reached down to check. Unmoved, petitioner nevertheless forced Felicia to have intercourse with him.

As petitioner was sexually assaulting Felicia in the back seat, Williams came to the Caprice and got into the driver's seat. Williams turned around, saw petitioner assaulting Felicia, and laughed out loud. Petitioner told Williams to stop laughing and turn around. Williams said they were supposed to be "taking care of business." Williams added, "If it was up to me, I'd just smoke her and get it over with." After several more minutes of forcing Felicia to engage in intercourse with him, petitioner ordered Felicia to perform oral sex on him again.

Petitioner sexually assaulted Felicia for half an hour. When he finished, petitioner pulled his clothes back on, got out of the car and ordered Felicia out of the car. Petitioner walked Felicia back to the Blazer, where she got back in.

Petitioner then told Hamelin that he was going to drive around and find a spot where they could take Felicia and Reginald and kill them. Petitioner "specifically ordered" Hamelin to stay in the truck until petitioner found a spot to "take the victims and kill them." Petitioner, Williams and Johnson then drove off in petitioner's Caprice to look for such a place. A few minutes later, petitioner returned and parked his car down the street from the parking lot where they had left Hamelin, Chambers and the victims in the Blazer. Petitioner and Williams got out of the Caprice, walked down the street and stood across the street from the Blazer.

In the meantime, instead of waiting for petitioner to return, Hamelin and Chambers

made Reginald and Felicia get out of the truck, walked them to a dumpster and made them climb in. Chambers then shot Reginald once in the head. Felicia screamed and put her arms up to shield her head. Chambers shot Felicia twice in the head. As Hamelin and Chambers walked away from the dumpster, Hamelin told Chambers that he was "bogus" for shooting Felicia twice and Reginald only once. In response to this criticism, Chambers walked back to the dumpster and shot Reginald in the head again.

When Petitioner, Williams, and Johnson returned to the Caprice, petitioner became upset because he did not "understand why they killed the victims right there and left them sitting up in the truck." Petitioner told Johnson to drive him home, which Johnson did. Outside petitioner's apartment, petitioner instructed Williams to put the stereo and CD player into the trunk of petitioner's car. Petitioner, Williams and Johnson then went looking for Hamelin and Chambers. When they finally found Hamelin and Chambers outside of Hamelin's sister's apartment, petitioner was angry, and asked Hamelin and Chambers why they shot the victims in the truck. Hamelin told petitioner, Johnson and Williams that they did not kill Reginald and Felicia in the truck but that they made Reginald and Felicia get out of the truck, walk to a dumpster, and after making them climb in, killed them..

Petitioner, Hamelin, Chambers, Williams and Johnson then went to Hamelin's sister's apartment where they sat down at the kitchen table to divide the proceeds of the robberies. Johnson noticed that petitioner had blood on his hands and pointed it out to petitioner. Petitioner laughed and went to the sink and washed his hands. Petitioner then counted the money and parceled it out to Hamelin, Chambers and Williams. Though Hamelin objected to Johnson receiving any of the money, petitioner gave Johnson thirty-five dollars.

Later, petitioner, Johnson, Hamelin and Chambers returned to where Hamelin and Chambers had left the Blazer. The men rifled through the Blazer, taking Reginald's CDs, cassette tapes and a large stereo speaker.

Early the next morning, petitioner and Johnson, in petitioner's Caprice, and Hamelin

and Chambers, following in Reginald's Blazer, drove to Sauk Village. They parked next to a McDonald's. After talking for a while about the events of the prior evening, Hamelin and Chambers got back into the Blazer and drove off. A few minutes later, the Blazer came speeding back toward the McDonald's with police cars in pursuit. Petitioner and Johnson watched as Hamelin and Chambers jumped out of the truck and attempted to escape from the police on foot, but were captured. Petitioner and Johnson drove back to Chicago.

Hamelin and Chambers were arrested by Sauk Village police officers. Mark DiSanto, one of the arresting officers, looked at the Blazer. He saw that the radio had been removed and various papers were scattered about the truck. Officer DiSanto attempted to locate the owner of the Blazer, and was informed that the vehicle had been reported stolen the night before, and that the owner was missing. Officer DiSanto contacted the Chicago police department.

In the meantime, at approximately noon that day, Clemon Cunningham went to a garbage dumpster behind his apartment building in the 4800 block of South Vincennes, in Chicago, Illinois, to throw out his garbage. Before he tossed his garbage into the dumpster, Mr. Cunningham looked inside. There, crouched in the dumpster, were the frozen bodies of Reginald and Felicia. Blood ran down from each of the victim's heads. Mr. Cunningham left and telephoned police.

Police arrived at the scene shortly after Mr. Cunningham's report. It was cold and snowing heavily when Chicago Police Detective Edward Winstead, who was assigned to investigate the homicides, arrived at the alley behind the apartment building at 4847 South Vincennes. Detective Winstead and Chicago Police Forensic Investigator James Hogan examined the dumpster. In addition to the bodies of the two victims, there were two nine- millimeter cartridge cases on the male victim's chest. Another two cartridge cases were recovered from the dumpster. All four cartridges recovered were nine-millimeter Winchester cartridges.

Detective Winstead and other officers gently tipped the dumpster on its side to remove the bodies. Felicia's frozen body was dressed in a multi-colored jacket and she had a white bra

entwined in her hands. When her body was removed from the dumpster, a picture identification card fell to the ground. Reginald's body bore no wallet or form of identification.

Detective Winstead and his partner, Detective James Redmond, went to Felicia Lewis' residence and spoke to her mother. After speaking to Felicia's mother, Detectives Winstead and Redmond went to the Sauk Village Police Station. There, they met Steven Fitch. Steven had been contacted by the Sauk Village Police earlier that morning and recounted the events of the prior evening.. Reginald's family members also went to the Sauk Village Police Department.

Detectives Winstead and Redmond transported Hamelin and Chambers to Area One. Later that evening, Steven Fitch went to Area One and viewed a line-up. Steven identified Hamelin as the man he saw standing at the passenger side door of Reginald's Blazer before it drove out of the Shell gas station.

Detectives Winstead, Redmond, and several other detectives continued to investigate Reginald and Felicia's murders. At approximately 11:30 p.m., Detective Winstead went to petitioner's residence, but petitioner was not at home. Detective Winstead was about to drive away from petitioner's residence when he noticed a gray Chevy Caprice driving down the street. A passenger in Detective Winstead's squad car identified the car as belonging to petitioner, and further identified the person driving it as petitioner. Detective Winstead and several other detectives stopped the Caprice. Petitioner and Johnson, who was one several passengers in petitioner's car at the time, were arrested and transported to Area One. At the time of his arrest, petitioner had in his possession five hundred dollars in cash.

Several hours later, at approximately 4:00 a.m., Detectives Kenneth Boudreau and John Halloran went to the interview room where petitioner was being held and informed petitioner that they wanted him to remove his boxer shorts. Petitioner undressed and surrendered his boxer shorts. Petitioner's boxer shorts were submitted to the crime lab.

Both Reginald's Blazer and petitioner's Chevy Caprice were examined by Forensic Investigators from the Chicago Police Department crime lab. Evidence was gathered from both

vehicles, and both were dusted for fingerprints. Steven's portable CD player, Reginald's adaptor, as well as CDs and tapes, were recovered from the glove compartment of petitioner's Caprice. Reginald's Kenwood car stereo was found in the trunk of petitioner's Caprice. Various items, including a Panasonic CD player case, an instruction manual for a Kenwood radio and a CTA check stub, were recovered from the Blazer.

Pamela Fish, an expert in forensic biology and a supervisor at the Chicago Police Crime Lab, performed tests on the rear seat of petitioner's car. A stain on the rear seat tested positive for the presence of human blood. Because of the small size of the sample, Ms. Fish could not perform any further testing or determine the blood type of the stain. Ms. Fish could, however, determine that the stain was a "smear type stain," that is, put there by a secondary source, such as a person's hand, and not directly dropped onto the seat.

Ms. Fish also examined petitioner's boxer shorts. On the inside right panel of petitioner's shorts there was a nickel-size smear type stain. Tests performed by Ms. Fish determined that the stain was a mix of human blood and semen. Ms. Fish determined that both Felicia and petitioner had type O blood. In an attempt to identify the blood stain as belonging either to Felicia or petitioner, Ms. Fish performed DNA tests looking for genetic markers. While Ms. Fish was able to isolate genetic markers for Felicia and petitioner from samples of their blood, the amount of DNA in the sample taken from petitioner's underwear was very small, and she was not able to isolate genetic markers in the stain to compare to Felicia or petitioner. Ms. Fish explained that environmental insults such as body heat and humidity degrade the quality of DNA and make obtaining results difficult.

The medical examiner who conducted the autopsies of the victims determined that both victims died of multiple gunshot wounds. Reginald suffered two gunshot wounds to his head. Both gunshot wounds were through and through wounds that penetrated the skull, passed through the brain and exited the skull on the other side. In addition, the male victim suffered a gunshot wound to his upper chest and left arm. The gunshot wound to the arm had an atypical shape,

indicating that it passed through an object, such as the victim's head, into his arm. The medical examiner recovered two bullets from Reginald's body, one in the left chest and one from the elbow of the left arm.

Felicia Lewis also suffered two gunshot wounds to her head. One bullet wound to Felicia's head penetrated her skull, passed through her brain and lodged in her jaw, where it was recovered by the medical examiner. Felicia was also shot in the face, with the bullet penetrating the bones of her face, the major structures of her neck, including the blood vessels and airway, and lodging in the soft tissues of her neck, where it was recovered by the medical examiner. In addition to the wounds Felicia suffered to her head, she also sustained through and through gunshot wounds to her arms. Both wounds to her arms were consistent with Felicia shielding herself from the gunfire. In addition, the medical examiner recovered a sanitary napkin in its customary place from Felicia's clothing.

Based on the foregoing evidence, the jury found petitioner guilty of first degree murder of Reginald Wilson and Felicia Lewis, aggravated vehicular hijacking, aggravated criminal sexual assault and armed robbery.

### **Sentencing**

Petitioner waived a jury for the death eligibility and penalty phases of trial. The trial court took judicial notice of petitioner's two first-degree murder convictions and petitioner's birth certificate establishing that he was twenty-two years old when he committed the crimes. Petitioner asked that he be permitted the "right of allocution" during the sentencing phase, which the trial court denied. The trial court found petitioner eligible for the death penalty.

Evidence presented at the second stage of the sentencing hearing revealed a pattern of escalating criminal activity. As a juvenile, petitioner was arrested at the Museum of Science and Industry for pick pocketing. Petitioner was again arrested for pick pocketing in September of 1988, at the Holiday Inn Center at 300 East Ohio. In June of 1993, petitioner was arrested when a

vehicle in which he was a passenger was stopped by police and petitioner removed a loaded .38 semi-automatic handgun from his waistband and attempted to hide it on the floor of the car with his feet. For that offense, petitioner was convicted of unlawful use of a weapon.

During his incarceration at Cook County Jail prior to trial, petitioner interrupted Correctional Officer Eric T. Stokes, when Officer Stokes was instructing another inmate to remove his civilian clothing and put on DOC attire. Petitioner told the inmate to ignore Officer Stokes, and told Officer Stokes to take himself "off the catwalk," and threatened, "we run this, not you." When Officer Stokes told petitioner to stop interfering or he would be removed from the tier, petitioner said, "You want me off this tier, come take me off this tier. I will beat the shit out of you." As a consequence, petitioner received a disciplinary ticket, was removed from the tier and given ten days in isolation.

Petitioner's violent proclivities were also aptly established by proof of an incident which occurred just five months prior to the murder of Reginald Wilson and Felicia Lewis. Raven Davis testified that she was eleven years old in August of 1993 and lived with her grandparents and four younger brothers in the Ida B. Wells neighborhood. On August 31, 1993, Raven's grandmother took Raven and three of her younger brothers to the shoe store. There, she saw petitioner and one Larry McGee, both of whom she knew from living in Ida B. Wells. At the shoe store, Raven's grandmother bought shoes for the children, paying with four hundred dollars in cash. Raven, her grandmother and her brothers then went to Raven's aunt's house. As Raven sat on the porch with her cousins, petitioner, McGee and two women known to Raven as Robin and Tameka, repeatedly drove past the house. Later that evening, Raven, her brothers and grandmother returned to their apartment.

That night, as the family slept, Raven was awakened by the sound of voices that she knew did not belong to anyone in her family. Raven lifted her head to see who it was and saw a man whom she knew as Troy standing in the apartment with a gun in his hand. Raven also saw McGee when he came to Raven, pulled her ponytail and placed a gun against the head of Raven's

six-year-old brother. McGee told Raven to put her head down or he would shoot her little brother. Raven put her head down, and McGee left the room.

Tameka, whom Raven knew because she was friends with Tameka's cousin, then came into the room and ordered Raven to get up. Tameka led Raven to her grandparent's room, where she saw petitioner, McGee and Robin throwing things all over the room. Petitioner had a gun in his hand, kept asking, "Where the money at?" Petitioner also had her grandparents' VCR in his hands. Raven's grandparents were in their bed, hiding their heads under the covers.

Tameka then put a pillowcase over Raven's head and she and Robin walked Raven down the hallway to the bathroom. Once in the bathroom, Tameka asked if Raven knew who she was, to which Raven repeatedly insisted she did not. Tameka snatched the pillow case off Raven's head and said she knew that Raven knew her. Tameka then took a knife, grabbed Raven and slashed Raven's throat. Then Robin and Tameka repeatedly pushed Raven's head into the half-filled bathtub. Raven fought and struggled with the women and was able to jump out of the tub.

McGee came to the bathroom with a gun and told Robin, "kill her, kill her." Robin took the gun from McGee and set it on the sink. Tameka grabbed the gun and started shooting, firing at least ten times. Raven was struck in the finger, face, arm and back. Tameka and Robin then ran out of the bathroom, and Raven heard a lot of commotion and the footsteps of people running out of the apartment. Raven went to tell her grandmother that she had been shot. Her grandfather tried to call for an ambulance, but the phone line had been cut. Raven's grandmother wrapped her in a sheet and walked her to a nearby fast food restaurant, where the security guard called an ambulance. Raven was hospitalized for two weeks and underwent surgery for her injuries.

In January of 1994, Raven viewed a line up. She identified petitioner as one of the assailants who came into her home. In two separate lineups, Raven identified Troy and McGee.

Victim impact statements were made by Felicia's sister, Crystal Lewis, Reginald's

mother, Francita Williams, and Reginald's aunt, Mary Tinsley. Crystal called the day she learned of Felicia's death her family's "personal hell day." She stated that Felicia had just completed her term in the Army, where she studied to be a practical nurse. Four days before she was murdered, Felicia learned that she had passed her State Boards. Crystal related that Felicia had given birth to a baby boy on November 9th, and only had two months to spend with him before her life was taken away. Crystal spoke of how she was raising Felicia's baby and of the pain and suffering she felt when she thought of her sister's last night. Recalling that her sister's pleas for mercy "fell on deaf ears," Crystal expressed her opinion that "people like that, themselves, don't deserve to live another day because they simply don't appreciate life and how precious it is."

Francita Williams wrote that Reginald was a boy scout, involved in neighborhood activities, and completed college with hopes of being a basketball star and working with children. Ms. Williams wrote of how she and her family were devastated by Reginald's murder. Williams asked the trial judge "to no longer waste our taxes [sic] dollars on a person with no respect for law or life." Ms. Williams asked the trial judge to "impose the stiffest penalty," or the death penalty, on petitioner.

Mary Tinsley wrote that Reginald was a loving father and a smart person, who, because of his promising athletic abilities, brought excitement to his family's life. Ms. Tinsley wrote that her prayer for "justice would be that this person who planned and maliciously traumatized and killed our loved ones, Reggie and Felicia, be put to death."

After arguments by counsel, the trial court imposed a sentence of death. (R. 1327-1345) In imposing sentence, the trial court stated,

I have reviewed the evidence from trial. I have reviewed the evidence presented in the sentencing phase, both in aggravation and mitigation. I have heard the arguments of the attorneys. I have also reviewed the statutory mitigating factors and non-statutory mitigating factors that are applicable to this case. This should never be a decision taken lightly. When it comes to somebody's time in life as it does, I think they should move on; but at this time, I can find no mitigating factors that are present to preclude the imposition of death on Mr. Anthony Brown. So there will be a sentence of death.

(R. 1362-1363)

**Review By The Illinois Supreme Court**

The Illinois Supreme Court considered the propriety of petitioner's convictions and sentences in People v. Brown, 185 Ill.2d 229, 705 N.E.2d 809 (1998). In so doing, it affirmed petitioner's convictions and sentences.

### III

#### REASONS FOR DENYING THE PETITION

**THE NON-EXISTENCE OF THE NEW ILLINOIS SUPREME COURT RULES, A CAPITAL LITIGATION TRUST FUND, AND, THE RECOMMENDATIONS OF THE GOVERNOR'S COMMISSION ON CAPITAL PUNISHMENT AT THE TIME OF PETITIONER'S TRIAL IN NO WAY RENDERS HIS CONVICTION AND SENTENCE UNFAIR OR UNJUST AND DOES NOT SUPPORT THE GRANTING OF CLEMENCY IN THIS CASE.**

#### General Overview

Petitioner asserts that he is entitled to clemency because he did not receive the benefit of the changes to the Illinois capital sentencing system which have recently been adopted, proposed or enacted. (Pet. pp. 3, 18) By relying upon a laundry list of new Supreme Court Rules, statutes and proposals from the Governor's Commission on Capital Punishment which were not available at the time of his trial, petitioner claims that his trial was, by definition, fundamentally unfair. Such claim is meritless, however, the Illinois Supreme Court has expressly rejected the claim "that every capital trial has been unreliable and that all appellate review has been haphazard" (People v. Hickey, \_\_\_ Ill. 2d \_\_\_, 2001 Ill. LEXIS 1080 at \*57 (No. 87286 September 27, 2001)). Rather, the Court held that the additional safeguards included in its rules governing capital cases are not retroactively applicable because they "function solely as devices to further protect those rights given to petitioners by the federal and state constitutions" and that "[a] violation of procedures designed to secure constitutional rights should not be equated with a denial of those constitutional rights." Id. at \*63, 64.

Thus, the fact that the Court, the General Assembly and the Governor's Commission have endeavored to improve the process does not mean that an injustice would result simply

because the recent changes were not applied retroactively to petitioner's case. Instead, a true injustice would only result if it were reflexively determined that petitioner's trial was fundamentally unfair without any examination of the proceedings themselves.

### **Rule 416(E) / The Taking of Discovery Depositions**

Petitioner asserts that he is entitled to clemency because Rule 416(E), providing for the taking of discovery depositions was not applicable to his proceeding. As mentioned previously, the Illinois Supreme Court has clearly held that the amendments to its rules are not retroactively applicable. Hickey, 2001 Ill. LEXIS 1080 at \*65.

Additionally, the substance of petitioner's claim offers nothing other than the observation that such rule would have been "of immeasurable benefit in preparing to cross-examine the State's star witness, Zarice Johnson..." (Pet. p. 21) Such claim ignores, in its entirety, the fact that the defense counsel had everything he needed to vigorously cross-examine Zarice Johnson, and availed himself of the opportunity. Defense counsel knew of, and expertly cross-examined Zarice Johnson on the fact that, in exchange for his testimony, Johnson received a thirty-five year sentence for his involvement in these murders. Moreover, counsel had the 52 page court-reported statement of Zarice Johnson, taken at the time of his arrest. 1 Petitioner's claim, in this regard, amounts to nothing more than mere speculation and does not establish prejudice from non-existence of this rule at the time of his trial.

### **Supreme Court Rule 714 - Minimum Qualifications for Attorneys Seeking to Represent Capital Defendants**

Again, this Rule is not retroactively applicable. Hickey, 2001 Ill. LEXIS 1080 at \*65. Additionally, petitioner's claim of resulting prejudice from the lack of an attorney so qualified is disingenuous where such argument requires mental gymnastics in order to substantiate his claim. Rather than offering even one specific example of how Mr. Kurz lacked the knowledge, experience, or ability to represent a capital defendant, petitioner alleges that his previously rejected claim of ineffective assistance of counsel substantiates his claim.

In point of fact, petitioner was ably represented by Jerry Kurz, of the firm of Hall & Kurz , specializing in criminal defense.

Moreover, the entire record from this case reveals the work of nothing less than a zealous advocate. Defense counsel moved to quash petitioner's arrest and suppress his statements to police and skillfully represented him at a hearing on those motions. He also conducted extensive pre-trial discovery. Mr. Kurz filed several motions in limine: (1) to exclude the results of serological and chemical tests, (2) to prohibit the prosecution from impeaching petitioner with prior convictions; (3) to preclude the prosecution from "Witherspooning" the jury; (4) to declare the Death Penalty Statute unconstitutional; (5) to bar Zarice Johnson from testifying about statements made by any of the co-defendants; (6) to prevent trial spectators from wearing buttons, apparently in support of the victims; (7) to preclude the People from commenting during opening statement that Reginald Wilson's last words were, "Take the money, don't harm us." Many of these motions were granted.

Additionally, Mr. Kurz skillfully represented defendant at trial. He made a forceful opening statement, vigorously cross-examined the People's witnesses, including, most notably, Zarice Johnson. At the conclusion of Johnson's testimony, Mr. Kurz moved to strike his

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<sup>1</sup> See Attached Exhibit B

testimony. After the prosecution concluded its' case-in-chief, Mr. Kurz moved for a directed finding. He presented petitioner's case, calling two police officers to establish the lack of fingerprint or other trace evidence.

During the course of the trial, Mr. Kurz also made numerous objections, many of which were sustained by the trial judge. He participated in a jury instruction conference, during which he objected to several instructions tendered by the People. He objected to many of the exhibits that the People sought to tender to the jury. Finally, he made a forceful closing argument.

Moreover, the Illinois Supreme Court has previously considered and rejected whether Mr. Kurz rendered ineffective assistance of counsel on an unrelated basis in People v. Brown, 165 Ill.2d at 255-256. In this regard, it should also be pointed out that petitioner was represented by Assistant State Appellate Defender Steven Clarke on direct appeal – undisputedly, one of the finest appellate attorneys in Illinois, specializing in capital cases.

Essentially, petitioner argues that was denied effective assistance of counsel because: (1) he is, allegedly, mentally retarded, (2) the sentencing judge did not know this, (3) had the sentencing judge known this, it would have “saved his life” (Pet. p. 20) because: (a) of the United States Supreme Court's ruling in Atkins v. Virginia, 122 S.Ct. 2242 (2002), and (b) Hamelin and petitioner would have then been regarded by the court as “similarly situated” (Pet. p. 19), and Hamelin did not receive the death penalty, again, allegedly, because he was mentally retarded.

In response, as will be discussed in more detail herein, respondent notes that: (1) petitioner has not established that he is mentally retarded, (2) the petitioner and Hamelin were not, and are not, similarly situated, and, (3) Judge Gaughan, the same judge who sentenced petitioner in the first instance heard, considered, and rejected this claim when brought before it in petitioner's petition for post-conviction relief.

### **Adequate Funding – Capital Litigation Trust Fund**

Petitioner generally asserts that he is entitled to clemency because he was denied the “benefit of the funding and resources made available to capital defendants through the Capital Litigation Trust Fund...” (Pet. p. 3, 35) This claim is mystifying where, in point of fact, petitioner originally retained private counsel, Richard Kagan to represent him. Mr. Kagan, who suffered a heart attack, later informed petitioner that he could not continue to represent him. Without any showing of indigency, the trial court decided that since the Public Defender’s Office was representing three of the five defendants, and outside private counsel would be appointed free of charge. Far from indicating any type of deprivation, the record in this case suggests no lack of resources, where, additionally, in response to trial counsel’s request, the trial court ordered the appointment of a mitigation expert and ordered that such expert, Dr. George W. Savarese, be given access to defendant while at the Department of Corrections.

In addition to not offering a single example of how he lacked adequate funding to either investigate this case, and/or to retain necessary expert witnesses it should be noted that despite the creation of the Capital Litigation Trust Fund, there is no indication that any capital petitioner in Illinois, particularly those prosecuted in Cook County has ever been deprived of the necessary funds to investigate or retain appropriate experts. Rather, courts have denied various requests that have been deemed unreasonable or unnecessary, the same standard which applies for funds under the Capital Litigation Trust Fund. 725 ILCS 124/15(c). Also, the Cook County Public Defender has significant resources available for capital litigation. Therefore, the mere fact that the Capital Litigation Trust Fund was not created until 2000 is irrelevant.

## **Governor's Commission on Capital Punishment Recommendations**

As a general matter, the recommendations of the Governor's Commission on Capital Punishment provide no greater justification for granting executive clemency than the new Supreme Court Rules, where, at present, they are just that – recommendations, and where, as is true with respect to the new Rules, wholesale retroactive application would result in a true injustice.

Accordingly, Petitioner's reliance on Recommendations #8, 29, 30, and 69 should be rejected outright where Petitioner fails to provide this Board with any inkling of how such recommendations would have had any actual impact on his trial, sentencing hearing, or its ultimate outcome. Petitioner asks this Board to engage in wholesale speculation as to what might have been in the absence of a scintilla of evidence to support his claim. (See, Pet. p.34, regarding Recommendation 8 where petitioner simply concludes that, "This would have applied to the interview of Zarice Johnson").

Petitioner also materially misrepresents the facts of this case when, with respect to Recommendation 69, he claims that "there was little or no direct evidence to corroborate Zarice Johnson's accomplice testimony." (Pet. p. 34) The Illinois Supreme Court rejected this characterization outright:

The record shows that Johnson's testimony was corroborated in many important respects...  
185 Ill.2d at 248.

We believe that the record in this case contains sufficient corroboration of Johnson's testimony and that the lack of corroboration noted by the defendant is not significant here. Testimony adduced at trial demonstrates why the prosecution could not corroborate certain details in Johnson's narration.  
185 Ill.2d 250.

Given the detailed nature of Johnson's account of the offenses and the substantial corroboration of his testimony – including the discovery in the defendant's car of a number of items taken from the Blazer – we do not believe that the absence of the

additional corroboration noted by the defendant is sufficient to undermine Johnson's testimony implicating the defendant in these crimes.  
185 Ill.2d at 250.

### **Governor's Commission on Capital Punishment Recommendation 68**

Petitioner claims that Recommendation #68, in conjunction with the United States Supreme Court's holding in Atkins v. Virginia, 122 S.Ct. 2242 (2002), warrants the granting of executive clemency in this case, because he is mentally retarded and, therefore, the imposition of the death sentence violates the Eighth Amendment's prohibition against cruel and unusual punishment. Although the Court in Atkins noted that mental retardation is characterized as having a significantly sub-average general intellectual functioning and significant limitations in adaptive functioning in at least two skill areas with the onset prior to age 18 (122 S.Ct. at 2245 n.3), the Court expressly stated that it was not adopting a definition of mental retardation and left it to the various states to adopt a definition of mental retardation and delineate procedures for determining whether or not a particular petitioner is mentally retarded. Id. at 2249-50. Because Illinois has not yet adopted a definition of mental retardation nor has it crafted the appropriate procedures, petitioner's claim is premature and should not be considered by the board at this time.

The impropriety of this Board considering this claim is further buttressed by the petitioner's Petition, which bears the following flaws. First, it presumes that the cutoff I.Q. is 75, where there are differing opinions as to what the precise indicator of mental retardation is. DSMIV uses the demarcation line of 70 while B. Saddock & V. Saddock, in their Comprehensive Textbook of Psychiatry, use 70 to 75 as the cutoff score. Atkins, 2002 U.S. LEXIS 4648 \*9-10. In a case such as this, where petitioner says that his I.Q. is at most 75, and perhaps even less than that, the as yet unannounced standard supports the People's position that this claim is premature.

Next, even if one scrutinizes the so-called “evidence” of mental retardation, there is none to be found. Dr. Kurt A. Moehle, the only person to administer an IQ test of any kind, diagnosed petitioner as possessing a “Borderline IQ”, with a full scale I.Q. of 75, a verbal I.Q. of 77, and a performance I.Q. of 75. (R.C. P.C. 256) Moehle, who administered the WAIS-R, rather than the WAIS-III, because he was “much more familiar with test administration of the WAIS-R than the WAIS-III” then speculated that administration of the WAIS-III might result in a score 2.9 points lower, based on group statistics. Moehle warned that “Results for individuals may vary.” (R.C. P.C. 254) Moehle does not find mental retardation and no further tests beyond those administered by him were then or subsequently performed.

Moreover, George Savarese, a licensed clinical social worker who acted as a mitigation specialist pursuant to defense counsel’s request, testified that he was able to diagnose mental illness and disorders based on DSMIV classifications. He was qualified as an expert witness. Savarese, who found a plethora of “life stressors” in petitioner’s upbringing of petitioner not only did not find any indication of mental retardation, but, in point of fact, testified that defendant had no history of mental illness, no diagnostic disorders, and was never in a learning disabled class.

Petitioner’s further claim that his mental retardation is evidenced by his limitations in adaptive functioning was specifically addressed by the trial court: “And it’s my opinion that the facts in this case show that Mr. Brown did have adaptive skills.” (P.C. R. 118) In ruling on the Petition for Post-Conviction Relief, the court reiterated this belief, relying on both the facts from the instant case as well as his conduct during the incident involving Raven Davis.

The claim of mental retardation is further undermined by an absence of any legitimate evidence to show its onset before age eighteen. The newly-spurned claim found in petitioner’s mother’s affidavit (and supported by his sister) contradicts her plain testimony at sentencing that

petitioner did “fairly well” in school, and that while in sixth grade he said he wanted to become a doctor to “save lives.” According to her, this attitude never changed. The defendant was not a problem, did not talk back, did not strike other children, and got along fine with his brothers and sister. He was great with his daughter – he played with her, fed her, diapered her, and would keep her for the weekend. Defendant went as far as the tenth grade and quit going to school because people kept taking things from him and bothering him.

Likewise, Petitioner’s uncle testified to how much petitioner loved school, had goals, and wanted to be someone. Neither school records nor any other supporting documentation exists to show the onset of mental retardation by age eighteen.

### **Governor’s Commission on Capital Punishment Recommendation 70**

Petitioner claims that his sentence would have been vacated as unconstitutionally excessive and disproportionate to that of Stanley Hamelin under this Recommendation had it been considered by the Illinois Supreme Court on direct appeal. In point of fact, this argument is presently before the Illinois Supreme Court in petitioner’s post-conviction appeal. Incredulously, petitioner asks this Board to find fault with the Illinois Supreme Court for failing to consider an argument which it now does not want it to consider.

The Illinois Supreme Court has demonstrated that it will address comparative sentencing arguments whenever they are raised by petitioners in capital cases (see, People v. Emerson, 189 Ill. 2d 436, 727 N.E.2d 302 (2000); People v. Palmer, 162 Ill. 2d 465, 491, 643 N.E.2d 797 (1994)) and will vacate a death sentence if it determines that it is excessive in light of the facts of the case and the petitioner’s background (see, People v. Smith, 177 Ill. 2d 53, 685 N.E.2d 880 (1997); People v. Blackwell, 171 Ill. 2d 338, 665 N.E.2d 782 (1996)), it is clear that the only reason the

Illinois Supreme Court did not review petitioner's sentence in such a manner on direct appeal is because he did not ask the Court to do so.

Moreover, petitioner's sentence was neither disproportionate nor excessive. First and foremost, as a matter of Illinois law, Stanley Hamelin and petitioner were not "similarly situated" where Hamelin pled guilty and petitioner did not. People v. Caballero, 179 Ill.2d 205, 217, 688 N.E.2d 658 (1997). The spin that petitioner attempts to place on Caballero runs contrary to its clear mandate and finds no support in Illinois law. Nor should petitioner's claim that he was somehow punished for exercising his constitutional right to plead not guilty and force the State to prove his guilt beyond a reasonable doubt at trial be given any credence based on the record from the post-conviction appeal where the following discussion occurred:

Mr. Berg (defense counsel): ... I would like to note, Judge, that the State does argue in their reply that one of the reasons that Mr. Hamlin would not have entered his plea prior to October of '95 was on the advise of counsel. And I think that's significant because here the State in Hamlin's case they think it's okay that he relied on his right to counsel, his, the protections that are afforded him under our legal system, but at the same time the State seems to fault Mr. Brown and justify the difference in sentence because Mr. Brown went to trial, because Mr. Brown did not enter a blind plea such as Mr. Hamlin.

The Court: We all know right off the bat that it would be wrong for anybody to be penalized for exercising his constitutional right to a bench trial or a jury trial. And that certainly won't be considered by me.

Mr. Berg: Thank you, Judge ...  
(Report of Proceedings from Post-Conviction pp. 114-115)

Next, petitioner's assertion that he was no more culpable than Hamelin belies the evidence presented at trial. Petitioner's attempt to minimize his role in these horrendous crimes asks this Board to turn a blind eye to the fact that he led the commission of these criminal acts. It was petitioner who took Hamelin's suggestion and made it a reality by providing a means of

transportation in the first place. It was petitioner who grew frustrated with the fact that a fitting victim had not presented himself soon enough. It was petitioner who provided a weapon for committing the offense. It was petitioner who the others followed in Reginald's car. It was petitioner who the others followed to 47<sup>th</sup> and Vincennes. It was petitioner who collected the stolen money and property from his co-defendants, and later parceled it out to his satisfaction.

It was petitioner, and petitioner alone, who decided to make Felicia suffer the additional, intervening criminal act of being sexually assaulted. Petitioner's suggestion that Hamelin was similarly situated because "no evidence was presented to suggest that Hamelin ever tried to stop it or discourage it" (Pet. p. 28), and because he was also convicted of aggravated criminal sexual assault "just like Mr. Brown" (Pet. p. 28) attempts to again, deny the fact that petitioner was the ringleader. It was defendant who, over the course of half an hour, sexually assaulted Felicia, orally, vaginally, and orally again despite the fact that she cried, told him that she had her period, and had just had a baby.

Petitioner also tacitly implies that there was not substantial evidence that he actually sexually assaulted Felicia. The Illinois Supreme Court, when presented on direct appeal with the issue of whether his guilt was established beyond a reasonable doubt noted the evidence that corroborated Johnson's testimony. In so doing, it rejected the very "evidence" again raised before this Board: "It should also be noted that the only evidence of a sexual assault was the testimony of Zarice Johnson. The crime lab found no semen on the vaginal, oral and rectal swabs taken from Ms. Lewis. And, the medical examiner testified that the results of his examination of Ms. Lewis genital region revealed no evidence of trauma or injury. (Pet. p. 28). Of particular note, the Illinois Supreme Court referred to the sanitary napkin found in Felicia's clothing, a bloodstain on the back

seat of the Caprice where Johnson said the sexual assault occurred, and the bloodstain matching the victim's type blood in petitioner's underwear. 185 Ill.2d at 247.

Without recounting it in detail, Petitioner has, as set forth in his own petition, a substantial criminal background. Moreover, the testimony of Raven Davis concerning the home invasion which occurred only five months before this case (Statement of Facts, supra) was compelling. Finally, what petitioner characterizes as "only a single incident with Cook County Department of Corrections Officer Eric Stokes" (Pet. p. 29) consisted of the following. While Correctional Officer Eric T. Stokes was instructing another inmate to remove his civilian clothing and put on DOC attire, petitioner told the inmate to ignore Officer Stokes, and told Officer Stokes to take himself "off the catwalk," and threatened, "we run this, not you." When Officer Stokes told petitioner to stop interfering or he would be removed from the tier, petitioner said, "You want me off this tier, come take me off this tier. I will beat the shit out of you."

Petitioner's conclusory allegation that "unlike Stanley Hamelin Mr. Brown's intellectual functioning level is consistent with someone suffering from mental retardation" (Pet. p. 29) is made in the absence of any supporting evidence. Furthermore, petitioner's allegation that Hamelin's full-scale I.Q. was 75 (Pet. p. 29) is misleading where Hamelin's lowest I.Q. was his verbal I.Q. of 71. The law is clear that the lowest I.Q. is the controlling one. Despite this score, Hamelin was found to fall in the borderline range of intellectual ability, not the mentally retarded range.

### **Governor's Commission on Capital Punishment Recommendation 72**

Petitioner alleges that clemency is appropriate because he was denied the opportunity to make a statement in allocution at his sentencing hearing. This issue was raised and rejected on direct appeal where petitioner argued that Hamelin was allowed to speak in allocution and

subsequently received a natural life sentence as opposed to death. People v. Brown, 185 Ill.2d at 259-260.

As the Illinois Supreme Court stated long ago, “an unsworn statement to the sentencing jury [to be] consider[ed] along with testimony given under oath and the arguments of counsel would at the least confuse the jurors, and might also impair their ability to weigh the aggravating and mitigating factors.” People v. Gaines, 988 Ill. 2d 342, 380, 430 N.E.2d 1046 (1981). Moreover, petitioner was free to testify under oath at his sentencing hearing to explain why he should not be sentenced to death, but chose instead to rely upon his witnesses in mitigation and his attorney’s closing argument. Therefore, he was given every opportunity to present himself to the trier of fact before he was sentenced.

## **CONCLUSION**

For all these reasons, the People of the State of Illinois respectfully request that this Board and Governor Ryan deny executive clemency to Anthony Brown.

Respectfully submitted,

RICHARD A DEVINE  
State's Attorney of Cook County

**ANITA ALVAREZ**  
**MICHELLE KATZ**

**Dear Anita,**

**This is a revised version of the original. I will interoffice mail you a hard copy of the response along with a floppy disk if you need to make any changes or additions.**

**I will be in the office from 6:00 a.m. until 2:00 p.m. today & tomorrow, and then will be back in the office next Tuesday (Sunday & Monday are Yom Kippur).**

**I hope that this helps.**

**Thanks,**

**Michelle**