

OCTOBER 2002 SESSION
PRISONER REVIEW BOARD
STATE OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)	
)	Docket No. \
vs.)	
)	
CHARLES MCLAURIN,)	Inmate No. N-94252
)	
)	

SUBMITTED TO THE HONORABLE GEORGE RYAN, GOVERNOR
OF THE STATE OF ILLINOIS

**PEOPLE'S RESPONSE IN OPPOSITION TO PETITION
FOR EXECUTIVE CLEMENCY**

**HEARING REQUESTED
(If Petition Is Considered)**

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Of Counsel

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**PEOPLE’S OBJECTION TO UNTIMELINESS
OF MCLAURIN’S CLEMENCY PETITION**

The People strenuously object to McLaurin’s late and untimely filing of his clemency petition. The Prisoner Review Board very clearly set a time frame in which his petition was due. That date was August 26, 2002. Without any justification for his delay, McLaurin filed his petition on September 19, 2002. Due to this untimely filing, the People have not had an adequate amount of time to review, prepare and respond to his petition.

Additionally, it must be noted that McLaurin signed his verification and consent affidavit on August 22, 2002, obviously without having read his petition since the petition was not filed on September 19, 2002. This is a clear violation of the Prisoner Review Board’s Rules. As such, McLaurin’s petition must be rejected. Assuming, however, this Board’s and the Governor’s review of this petition despite these violations, the People respectfully respond to and strongly oppose McLaurin’s petition.

I

HISTORY OF THE CASE

After being paroled from prison for robbing and shooting an 82 year old man, petitioner, Charles McLaurin, then increased his level of ferociousness when, in this case, he tied a naked 17-year old Jarrell Edwards to a chair with his hands behind his back, repeatedly sliced into Jarrell's chest, face and neck with a pearl-handled straight razor, watching him squirm and ooze blood from his chest. Ignoring Jarrell's pleas to let him live, McLaurin then doused Jarrell with gas and set him on fire. In the last moments of his life, Jarrell's voice box, windpipe and lungs filled up with the smoke he inhaled from his own burning body until his skin charred and split and he finally died of carbon monoxide intoxication. Shortly thereafter, firefighters determined that Jarrell had been severely burned, was not breathing and could not be resuscitated.

McLaurin was indicted for first degree murder, first degree murder based upon a felony, home invasion, aggravated arson, possession of a stolen motor vehicle and residential burglary. McLaurin decided to represent himself and the counsel that had represented McLaurin for the previous two years was appointed as stand-by counsel. When testifying on his own behalf, McLaurin never denied that he committed the murder. After a jury trial before the Honorable Paul J. Nealis, McLaurin was found guilty of all charges. McLaurin waived a jury and chose to have appointed counsel represent him during his sentencing hearing. The court found McLaurin death eligible. After listening to evidence in aggravation and mitigation, the court sentenced McLaurin to death for the first degree murder, 60 years' incarceration for the home invasion, 30 years' incarceration for the aggravated arson, 15 years' for the residential burglary and seven years' incarceration for possession of a stolen motor vehicle, all sentences to run concurrently.

II

FACTS OF THE CASE

The People's Case-In-Chief

On August 15, 1992, Delshea Ingram, McLaurin's common-law wife, lived in Sauk Village with defendant, his sister, Carolyn, Carolyn's three children, Carolyn's boyfriend, Latisha Lewis and Latisha's boyfriend. On that date, Delshea took Carolyn's three children to a park about a block and a half away. At the park, the victim, seventeen-year-old Jarrell Edwards, walked up and flirted with Delshea. Jarrell's parents were out of town and he invited Delshea to a party he was having that night. Delshea never told him that she was married.

Later that night, about 9:00 p.m., Delshea told Carolyn that she had to buy cigarettes. Rather than go to the store, Delshea walked to Jarrell's house, which was approximately a block and a half away from her home on Peterson. When Delshea arrived at Jarrell's house, no one was home. As Delshea started walking back, Jarrell drove up in a two-door blue Oldsmobile or Chevy. Jarrell got out of his car, unlocked the garage door, walked back to the car and grabbed a bag from the back seat. Jarrell and Delshea then walked up to the porch.

The phone rang and Jarrell went inside for a few minutes. When he returned, Jarrell and Delshea talked on the porch for about fifteen or twenty minutes. Delshea asked Jarrell for a glass of water and then, about ten minutes later, asked if she could use his bathroom. Jarrell took her inside. Delshea returned to the porch and they talked for about ten minutes more.

Delshea left and McLaurin was home when she returned. Later that night, a young man rang the doorbell and asked for McLaurin. This man, McLaurin and Delshea sat in the kitchen and planned the robbery of Jarrell Edwards. The three devised a plan: Delshea was to enter Jarrell's house and leave the door unlocked allowing McLaurin and the other man to enter the home and begin the crime. McLaurin dressed in black pants, black sandals, black socks and a black starter jacket. Delshea started walking about fifteen minutes after the two men left in a car. She rang

Jarrell's doorbell about midnight and he let her in.

The phone rang and Jarrell answered it. After he hung up, Delshea and Jarrell went into his bedroom and, sitting on Jarrell's bed, talked and flirted for fifteen to twenty minutes. To stall for time, Delshea asked to use the bathroom.

About five to ten minutes later, Delshea opened the bathroom door and turned off the light. When she stepped into the hallway, Jarrell's bedroom light and the basement light went out. Delshea heard McLaurin call to her from Jarrell's bedroom, "Dee, get out of the house." Delshea walked toward the steps to leave the house, but the other man grabbed her and led her back to Jarrell's bedroom.

Jarrell sat in a wooden chair, naked, with his hands tied behind his back and a scarf wrapped around his mouth. After the lights were turned on, McLaurin stood in front of the victim, and asked him if he would go to the police. Delshea thought that Jarrell misunderstood the question, because he responded, "yes." After that answer, McLaurin reached into his pocket and pulled out a straight razor. McLaurin swung the razor several times, slicing Jarrell's chest. Jarrell squirmed and blood oozed from his chest. McLaurin removed the scarf from Jarrell's mouth and asked the victim if he had any last words. Jarrell pleaded, "Whatever you want, I'll give you. Don't kill me. Please just don't kill me."

McLaurin ignored this plea and instead reached for a gasoline can that was placed in a corner. Delshea had not seen the can when she was in the room with Jarrell earlier. Wearing surgical gloves, McLaurin doused Jarrell with gas, took a match out of his pocket, lit it, and set Jarrell on fire.

At approximately 3:00 a.m., the Sauk Village Fire Department responded to a call of a fire. Firefighter Keith Damm was told by the police that a person might be inside. Mr. Damm and firefighter Russ Daley entered the house through the attached garage. They entered the basement and proceeded upstairs. Intense flames were at the top of the stairs, at the kitchen level. They

quickly extinguished those flames and searched through every room. Visibility was about one to one and a half feet.

Firefighter Daley entered a bedroom and found the victim lying down. The firefighters determined by touch the head, neck, shoulders and back of the victim. Debris and furniture lay scattered about his body. The victim's body was stuck to the floor; either the floor had burned to the victim or he had burned to the carpet. The firefighters crawled on their knees and carried Jarrell out of the room to see if he was alive. Out in the hallway, they determined that the victim was not breathing, that his burns were severe and that he could not be resuscitated. The victim was unclothed, except for a piece of cloth wrapped around his head.

Edward Myers, an expert in the cause and origin of fires employed by the Sauk Village Fire Department, also arrived at the scene at 3:07 a.m. on August 16, 1992. Approximately five minutes later, he received word that a victim had been found. Mr. Myers saw that the male, black victim was severely burned on the back, torso, legs and head area. The victim wore no clothes. Some type of "bandanna headdress" wound around his face. Firefighter Myers described the victim's burns: "The back torso of the body was like when you would burn a piece of bacon on a stove. It was very black, dark, bumpy."

The fire was brought under control at approximately 3:40 a.m. At that point, Myers walked in to do a "cause and origin." A pot had melted into the carpet on the first floor landing. At the top of the stairs lay a pair of latex gloves. There was moderate to medium smoke throughout the lower level; the upstairs sustained severe to heavy smoke and heat damage. In the northeast bedroom where the victim was found, they picked up clothing that smelled of gasoline.

That bedroom was "totally destroyed." The doorway leading into the bedroom was consumed in the fire. Immediately inside the doorway was heavy charring (defined as the resulting rough bumps that occur when wood is placed in fire) and burning all the way down to the floor.

A gasoline can sat on the left side of the bedroom. The can was damaged from the fire. A distinct flammable liquid was spilled on the floor. A large area of blood-soaked carpeting lay approximately three feet into the room. The burn pattern formed out of the bedroom and led down the hallway, indicative of a flammable liquid poured on the floor and then ignited.

At trial, Firefighter Myers examined pictures taken of the burned house. One picture showed the living and dining room and the medium heat damage which had started to melt a fan. Myers pointed out that the nails were protruding and that it took a heat of around nine hundred to a thousand degrees for the nails in the plasterboard to start popping out.

The severe damage, the burn patterns and the charring indicated to Mr. Myers that a “very fast fire,” indicative of a gasoline pour, was the cause. It was Myers opinion that "persons unknown entered the dwelling, poured a flammable liquid on the victim and the north[east] bedroom flooring, and spread it down the hallway and ignited it.”

The autopsy confirmed that Jarrell suffered a number of slashes across his upper chest and abdomen. One incised wound measured ten inches in length, another measured four to five inches. On the victim’s chin, a “very deep” incision extended from the right to the left side of the chin. A slash wound measuring about two inches was on the victim’s left cheek. On the right side of the victim’s neck, there was an incised wound which measured approximately three inches long and about a quarter of an inch deep.

Jarrell was alive when he was set ablaze. Testifying at trial, Dr. Edmond Donoghue stressed that the slashes occurred before the fire was started. Jarrell had inhaled smoke into his voice box, windpipe and lungs. Blood tests also proved that the victim was alive when the fire started. Nearly a quarter of Jarrell’s hemoglobin was bound to carbon monoxide. Further, a low level of cyanide, a by-product of burned plastic, was found in his blood.

One hundred percent of the victim’s body was burned. Not only were the burns third degree, the skin was charred and split. The entire thickness of the skin was burned. The burns on

the victim were consistent with burns resulting from gasoline poured over a body and then set on fire. Samples of cloth and carpet that were later analyzed contained gasoline. Jarrell Edwards died of carbon monoxide intoxication due to inhalation of smoke and soot sustained as a result of a house fire.

Two vcrs, two thirteen-inch tvs, some jewelry, all of Jarrell's clothes, a 12-gauge shotgun and the family car, a 1987 Chevy Celebrity, were stolen from the Edwards. The weather stripping in the window of the Chevy had fallen down. The victim's mother, Janie Edwards, had attempted to wrap the stripping around the door, but it still hung down. An opened bible lay on the dashboard.

Later that morning, between 8:30 and 9:00 a.m., Officer Donna Bankston with the Ford Heights Police Department, stopped at a red light at Route 30 and Woodlawn, and saw a two-door blue Chevy Celebrity. Officer Bankston faced eastbound and the Chevy faced westbound. The driver's side of the Chevy faced Officer Bankston's driver's side. What caught Officer Bankston's attention was the car's obstructed window. Weather stripping hung from the driver's side window. The driver, later identified in court as McLaurin, appeared to be very nervous. Officer Bankston considered pulling McLaurin over, but decided against it.

About a half block later, the officer heard over the radio dispatch that the Sauk Village Police Department was looking for a blue two-door Chevy Celebrity with a male black driver. She activated her lights, made a U-turn and looked for McLaurin. Officer Bankston could not see McLaurin on Route 30, so she pulled off the highway and wove in and out of different blocks attempting to locate McLaurin. Approximately thirty minutes later, she found the car parked at 1400 Lincoln Highway in a parking lot. No one was in the car. There was an opened book on the dashboard, and weather stripping hung on the outside. Officer Bankston called the Sauk Village Police.

Officer Bankston later drove to the Sauk Village Police Department and viewed a five-

photo lineup. She identified McLaurin as the driver of the car. The victim's mother, Janie Edwards, identified the car as her own. A certified copy of registration, verifying that the car was registered to Janie Edwards and Rodchester Rogers at 21608 Jeffrey Street was entered into evidence.

Between ten and eleven the morning of the crimes, back at Carolyn's house, Delshea saw McLaurin sleeping on the front room couch. When he awoke, she told him that his hair was singed. McLaurin told Delshea that if anyone found out what happened to Jarrell, McLaurin would kill Delshea, her three children and her mother. McLaurin then went into the bathroom and cut his hair.

The tvs and vcrs were discovered by Carla McLaurin's children on her porch on August 17th. Carla called a friend, Venita Hollins, and asked her if she wanted to buy a tv. Venita agreed to buy one but when Carla attempted to leave her house but when Carla returned home later that night, the tvs and vcrs were gone.

Two days later, McLaurin's mother called a family meeting at McLaurin's sister, Carla's house. Because they "were running," McLaurin and Delshea moved to Minneapolis. McLaurin's mother paid for their bus tickets. McLaurin used the alias, James Antonio Thorp and Delshea went by Delshea Ingram Thorp the entire time they were in Minneapolis.

At trial, Delshea admitted that she had given differing statements to the police, the Assistant State's Attorney in Minneapolis and the grand jury. She was "scared" and was protecting herself. Delshea had an agreement with the State's Attorney's Office: in exchange for her truthful testimony and a guilty plea to first degree murder, Delshea would receive a sentence of twenty years' imprisonment.

McLaurin's Case-In-Chief

McLaurin presented nineteen witnesses with one witness testifying twice. McLaurin also testified on his own behalf. Officer William Crafton, McLaurin's first witness, was employed

by the Sauk Village Police Department. On August 16, 1992, Officer Crafton received information regarding a 1987 blue Chevy Celebrity. He responded to the location, and secured the vehicle until a tow truck arrived. Officer Bankston was one of the officers present and she gave him information. Officer Bankston told Officer Crafton that she saw the car heading westbound on Route 30 at a high rate of speed. Officer Bankston remembered the book on the dashboard and the hanging weather stripping on the driver's side. Bankston said that the driver was a male black. Officer Bankston did not tell Officer Crafton that the driver was staring at her nervously.

On August 19, 1992, Officer Crafton showed Officer Bankston a five-photo array of male blacks. At trial, McLaurin showed Officer Crafton six photographs. One of the photos was of McLaurin. The face in McLaurin's picture was partially cut off. Officer Crafton testified on cross-examination that McLaurin gave him one photograph too many on direct examination. The extra photo was the one of McLaurin with McLaurin's head cut off. None of the photographs that Officer Crafton showed to Officer Bankston were cut.

Detective Crafton collected evidence at the crime scene. He collected the gas can, two picture frames, a Bic lighter, an ashtray and a knife from a rack in the kitchen.

James Wallace, an inmate incarcerated since May 8, 1995 and a five time convicted felon, testified next. Mr. Wallace testified that on November 16, 1995, the previous day, he spoke with Delshea Ingram. Ms. Ingram told Mr. Wallace that some "guy fondled her kid" and then she told Mr. Wallace that she killed this man. Mr. Wallace testified that there were only four females in the bus and that there were rows of male inmates in the back of the bus. Ms. Ingram did not admit that she was testifying against another male inmate or that she was cooperating with the law enforcement authorities.

Jabari Henderson testified that he was the victim's best friend. The day Jarrell was murdered, Jabari and he hung out. The last time Jabari saw Jarrell was when Jabari dropped Jarrell off at Jarrell's house about 10:40 p.m. Jarrell was to meet up with two girls later that night.

After Jabari dropped off Jarrell, he went home

Sometime between 12:00 and 12:30 that night, Jabari received a phone call. Jabari answered the phone, but since he had just awoken, he was not certain if the caller was Jarrell. The caller queried Jabari about his address and said, "they are here," possibly referring to the two girls who were to pick him up. The caller told Jabari to get dressed and wait for him. Jabari waited fifteen minutes, then went back to bed.

Officer Brian Lesniak with the Sauk Village Police Department testified that around 3:04 a.m., on August 16, 1992, he was on patrol and smelled smoke. He arrived at 21608 Jeffrey, saw smoke, radioed the dispatcher and told them to notify the fire department. Officer Lesniak picked up the latex gloves and the white cooking pan that were on the stairs.

Officer Timothy Holevis, a crime scene technician with the Sauk Village Police Department, testified that he was given information from Officer Lesniak regarding a white vehicle with a red eagle on the trunk. On August 18, 1992, Officer Holevis, Officer Crafton, and two other officers went to Carla McLaurin's house to look for stolen property. They had learned that two small tvs and vcrs had been found on her back porch.

On August 18th, Kirk Bills lived with Carla McLaurin in Chicago Heights. Carla was the mother of his children. On that date, the police came to the apartment because Kirk and Carla had two tvs and two vcrs on their back porch. They gave the police permission to search their home. Kirk and Carla then went to the police station. On August 16th or 17th, Kirk purchased a 1988 gray Olds Royal. A day or so later it was stolen.

An investigator with the State's Attorney's Office, Jack Howard, testified that he accompanied an Assistant State's Attorney with the State of Indiana to interview Delshea Ingram. Assistant State's Attorney Milan and Howard escorted Delshea Ingram back to Markham, Illinois. Delshea wrote one statement and gave it to the Assistant State's Attorney, who read it and asked her why her statement was inconsistent with other statements that she had made to

other agencies. Delshea then asked for a pen and wrote another statement. Again, Assistant State's Attorney Milan pointed out inconsistencies in her second statement. Delshea then stated that she did not want to speak with Assistant State's Attorney Milan anymore, rather she asked to speak with Assistant State's Attorney Mary Mallo. In every statement, Delshea implicated McLaurin. Her inconsistencies revolved around her part in the murder.

McLaurin's sister, Carolyn McLaurin, was next called as a defense witness. She testified that on August 16th, Delshea Ingram was sick. Carolyn testified that she thought Delshea "lives in a fantasy world." On cross-examination, Carolyn was asked whether she was under the influence of drugs or alcohol. Later, the court, sua sponte and outside the presence of the jury, put his observations regarding this witness on the record:

My observations of this witness were that she appeared to me, to be slurring her words and nodding her head and her eyes were droopy. I don't know. I have never seen this woman before.

There was just reason and good cause for the State's Attorney to make those inquiries so that the jury could either learn that she had had some medication or had possibly used some well medication or drugs, whatever they were prescription or otherwise or had be [sic] drinking. The witness laid that to rest. And said that she had not. And I think that the questions were proper in that vein to put to rest any questions that the jurors may have. I am sure they made the same observations that I did.

Carolyn's boyfriend, Timothy McClendon, testified that he knew Delshea as "DeeDee." He had known her for a few months in August of 1992. McLaurin's sisters did not like Delshea.

Both Natasha Hunter and Tamara Hunter were called to testify. On August 15th both women were at the Glenwood Roller Rink. About 1:00 a.m., the victim called, asked to speak with Natasha and then came by later. Natasha decided against going out with Jarrell and instead went back into her house. Jarrell was driving a 1987 blue Chevy Celebrity.

Another of McLaurin's sister's, Carla McLaurin was called. Carla had previously

testified as a prosecution witness. After brief questioning, the court chastised McLaurin:

This witness was called 11-16-95, all this testimony was put into the record on that dates [sic] you had and [sic] opportunities to cross-examine the witness at that time, if you have some relevant material that you wish to ask her...that you did not cover you may proceed...I am not letting you [go] over the same thing that has been [gone] over before.

McLaurin's next witness, Officer Bankston also had testified for the People. Again, after McLaurin questioned this witness, the court stressed that it was not going to let McLaurin ask the same questions repeatedly.

The People stipulated to the next witness' expertise in the field of fingerprint identification. Mary McCarthy testified that she received a total of 28 latent lifts. Of the 28, 15 were suitable for comparison. Comparisons with the suitable prints and McLaurin's prints did not reveal any identification. Heat of the fire would cause any latent print residue to evaporate quicker than it ordinarily would.

Donald Hitchcock, a fire investigator for the State of Illinois, Fire Marshall's Office and Arson Division, testified that he arrived at the scene at 4:45 a.m. The major point of origin was in the northeast bedroom. That entire room saw extensive heat, smoke and fire damage. Mr. Hitchcock found no gasoline odor because "that would have burned off." With the jury out, the court admonished McLaurin for repeatedly asking the same questions.

McLaurin next called his wife, Delshea Ingram. Delshea admitted to giving differing statements. She testified that the People offered her twenty years. Delshea would not be willing to perjure herself. Delshea and McLaurin married on July 16, 1992; McLaurin paid someone outside of the building to marry them. McLaurin used the name "James Antonio Thorpe." Delshea contacted the police nearly five months after the murder. She waited, and then did not tell them everything because she was afraid that McLaurin would "do something" to her kids and her mother, as defendant "promised."

Delshea gave a written summarized statement to Assistant State's Attorney Mary Mallo. In that statement, Delshea said that she saw McLaurin take a pearl-handled straight razor from his jacket pocket and slash Jarrell's chest. Jarrell was screaming. McLaurin took a can of gas and poured it on Jarrell. In that statement, Delshea said that she thought the other guy was taking stuff out of the house while McLaurin was pouring the gas on Jarrell.

In Minneapolis, Delshea told the police that McLaurin killed Jarrell Edwards. Delshea was protecting herself when she spoke to the police. Delshea told Assistant State's Attorney Kevin Kulling in Minneapolis, the grand jury in Illinois and Assistant State's Attorney Bob Milan that defendant killed Jarrell. She continued to protect herself. Delshea admitted to being present in the house. Delshea told the whole truth to Assistant State's Attorney Mary Mallo.

McLaurin chose to testify. McLaurin's testimony took the form of a long monologue. He testified that he never left his home with Delshea the night of the murder. McLaurin also testified that he struck Delshea because Delshea and McLaurin's sister, Carla, had gone on a double date. McLaurin demonstrated how he hit Delshea: in a backhanded motion, McLaurin held his right hand up and moved it across his chest. McLaurin then locked Delshea out of their bedroom. McLaurin used an alias in Minneapolis because he was trying to keep people from Altgeld from knowing him.

McLaurin talked at length about a friend named Gerald Johnson. Delshea and Johnson had a "dispute" over McLaurin's birthday party. Delshea threw McLaurin a party. When McLaurin came home, he saw that Delshea had been drinking. McLaurin testified about Johnson: "I wouldn't call him an alcoholic, but he's the type of individual where when he drinks and his personality changes." Both Delshea and Johnson got drunk at McLaurin's party. Delshea had her hands flying around; McLaurin saw that Johnson was going to grab Delshea. McLaurin was "stunned." Johnson staggered back, and when he drew his hand back, McLaurin grabbed him and slammed him to the floor to keep Johnson from hitting Delshea.

When Delshea left McLaurin, he first called the police and filed a missing person's report. He then called the Greyhound Bus station under the guise of being a police officer. The following day, on the 14th of January, McLaurin went to the Minnesota Police Department to check the status of the missing person's report. A police officer ran a computer check on McLaurin and McLaurin told him that his name was James Thorpe.

McLaurin testified that he became "frustrated" when the police officer did not want him to leave. Shortly thereafter, the officer introduced McLaurin to an Assistant State's Attorney from Illinois. The Assistant State's Attorney questioned McLaurin about his family. McLaurin denied being Charles McLaurin. McLaurin was asked if he had five sisters; McLaurin responded that he had five brothers. Approximately fifteen to twenty minutes later, Detective Crafton entered the room and told McLaurin that they had a warrant for his arrest.

After McLaurin's testimony, the prosecutor asked the court to admit McLaurin's three certified statements of convictions. The court stated that if it did allow them in, only the case, the case number and the date of the conviction, without mention of sentence, would be admitted. McLaurin then objected to the first charge being admitted, a 1989 charge of armed robbery and aggravated battery. McLaurin objected on the grounds that the statement listed the charges before they were nolle prossed.

The court held that it would allow all of the statements to be published to the jury. It would not allow the sentences to be published. McLaurin rested.

Rebuttal

Nineteen-year-old Lavell Dion Cherry testified that he knew the victim. The last time that he saw Jarrell was on August 14th. Jarrell was driving a blue Chevy Celebrity. Cherry went over and talked with Jarrell.

Janie Edwards, the victim's mother, was recalled to testify about the security of her home. Ms. Edwards had two front doors, one a security door and one an entrance door. The

security door could not be locked from the inside, only from the outside with a key. Three latches locked the door from the inside. Her key chain, which held the keys to her entrance door, the security door, the garage door and to her Chevy Celebrity, was never recovered.

The court entered one certified copy of conviction for McLaurin that on October 12, 1983, McLaurin pled guilty to possession of a stolen motor vehicle; one certified copy of conviction for McLaurin that on October 30, 1984, McLaurin pled guilty to burglary and one certified copy of conviction that McLaurin pled guilty to armed robbery and aggravated battery on August 31, 1989.

The Verdict

McLaurin was found guilty of possession of a stolen motor vehicle, home invasion, residential burglary, aggravated arson, first degree murder based upon a felony and first degree murder.

THE SENTENCING HEARING

Outside of the presence of the jury, the court asked the People if they were seeking a death penalty hearing. The prosecutor responded, "Yes." McLaurin stated that he wanted to have his hearing before the court. The court then admonished McLaurin that he had a right to a jury and if he chose to waive that right, he would have to sign a jury waiver. The court extensively discussed the two phases of a death penalty hearing and what aggravating and mitigating factors were. McLaurin stated that he understood. McLaurin then stated that he wanted to present his case before the jury. The court dismissed the jury for the evening.

The following day, November 29, 1995, outside the presence of the jury, McLaurin told the court that he had read through some documents, and to his knowledge, he was eligible for the death penalty. McLaurin then stated that he wanted to waive his jury for the sentencing. The court again explained the two phases, and asked McLaurin if he still wanted to proceed pro se;

McLaurin replied, "Not at this stage, no."

The court queried, "Are you asking that an attorney represent you?" and McLaurin stated, "Yes." The court then appointed the Public Defender's Office to represent McLaurin. The court noted that stand-by counsel, Mr. Rago from the Public Defender's Office, was present throughout the proceedings. McLaurin then executed a jury waiver. The court fully admonished McLaurin about his waiver and then found that there was a knowing, intelligent jury waiver of the sentencing hearing. McLaurin indicated that he had adequate time to confer with his attorney about his waiver. McLaurin understood that if even one juror felt that there was sufficient mitigation to preclude the imposition of the death penalty, it would not be imposed.

On February 3, 1996, the hearing began. Certified copies of McLaurin's convictions, together with his birth certificate proving that his date of birth was December 8, 1965, were entered into evidence. The court found that McLaurin had attained the age of 18 or better on the date of the crimes, that Jarrell Edwards was killed by McLaurin in the commission of another felony, and that McLaurin was found guilty of home invasion, residential burglary, aggravated arson, first degree murder and first degree murder based on the felony murder doctrine. The court further found that McLaurin committed a cold, calculated, and premeditated murder and that McLaurin inflicted torture, "extreme physical pain," on the victim. The court found McLaurin death eligible.

In aggravation, the People presented testimony that on December 16, 1994, McLaurin peeled a column of a 1977 Chevrolet Camaro, and, when confronted by a Michigan State Trooper, gave a false name. McLaurin pled guilty to possession of stolen property with value in excess of \$100 and disguise with intent to intimidate. McLaurin was sentenced to 180 days in jail.

On May 17, 1983, McLaurin was arrested after attempting to elude a police officer and ramming into another car. McLaurin pled guilty to possession of a stolen motor vehicle and sentenced to two years' probation and \$200 restitution.

McLaurin was discovered by an officer with the Calumet City Police underneath the dashboard of a car on July 10, 1984. Next to McLaurin were a screwdriver, a pair of glasses and a briefcase. The briefcase belonged to another victim whose car was in front of the car McLaurin was in. McLaurin was arrested and admitted entering the victim's car and taking items out. McLaurin was convicted of burglary and sentenced to 24 months' probation.

On September 18, 1988, McLaurin shot an 82-year-old man and stole \$82.00 from this man's pocket while an accomplice held the man from behind. McLaurin was convicted of armed robbery and aggravated battery. He was sentenced to seven years' incarceration for the armed robbery and five for the aggravated battery. The victim was hospitalized for three weeks. The victim impact statement of Janie Edwards, the mother of the victim, was read into evidence.

McLaurin's first witness in mitigation was Sharon McCary who testified that in 1985, when her baby was young, defendant helped her tend the baby. She thought that McLaurin was giving, caring and reached out to others.

McLaurin's maternal aunt, Geraldine Patterson, testified that although McLaurin's mother would disappear for weeks at a time, McLaurin's extended family tried to help and support McLaurin as a child. Ms. Patterson, her brother and her aunt wanted McLaurin to do better. They sent him to a private school in Mississippi. McLaurin's grandmother showed McLaurin "deep love and affection" for McLaurin's first 16 years of life. His extended family spent as much time as they could with him. They were a close family. Ms. Patterson's brother, Lester, took "particular care" for McLaurin. McLaurin was shown "great love and care" from the day he was born.

Linda Sobotka, a sentencing advocate for the Public Defender's Office, testified that she talked with McLaurin four to five times, two to three hours each time. She spoke with McLaurin's mother and father. She looked at school documents and other records. She requested that Dr. Heinrich come speak with McLaurin. Ms. Sobotka was not hired to do assessments, her

job was to make referrals to other experts. Her report asked the court to sentence McLaurin to a “term short of execution.” She never read the trial transcripts in order to prepare her report. She did not know that McLaurin had threatened Delshea.

Finally, Dr. Lawrence Heinrich, a licensed clinical psychologist and certified school psychologist testified that he had examined McLaurin to determine if there were any psychological issues that should be considered for mitigation. Dr. Heinrich administered a series of tests on McLaurin. It was Dr. Heinrich’s opinion that McLaurin suffered from a “cognitive processing learning disability.” Dr. Heinrich thought that McLaurin had difficulty sustaining an analytic line of reasoning. McLaurin was not as smart as he thought he was. According to Dr. Heinrich, this impacted upon McLaurin’s capabilities at trial.

McLaurin did very well on the tests in nonverbal areas and well in certain verbal tasks. McLaurin’s ability to spell was very good and he had good verbal skills. McLaurin related to the doctor in a reasonably pleasant and cooperative manner. He was oriented as to person, place and time. His thinking was logical and coherent. There were no evident breaks in his reality testing. McLaurin denied hallucinating and showed no overt delusions. His affect and mood were generally appropriate to his present situation and the topics discussed. McLaurin denied any major health problems, except for migraines, since 1988.

In forming his opinion, Dr. Heinrich had not read the entire trial transcripts, rather he only looked at a portion of the proceedings on August 9, 1995 and on November 15, 1995. Dr. Heinrich did not read defendant’s cross-examination of Delshea. In Dr. Heinrich’s opinion regarding the transcripts that he did read, McLaurin did not ask logical or consistent follow-up questions. Dr. Heinrich acknowledged that he was not a lawyer.

The Court's Ruling

After listening to arguments, and to McLaurin speak in allocution, the court prefaced its ruling with a discussion of matters it considered. The court considered the factors presented in

aggravation and mitigation and the facts of the case. The judge stated, "I have seen hundreds of murder cases," then ruled:

This case is one of the more horrible, horrible cases that I have ever seen. I have looked hard to find -- And the responsibility is awesome. I've looked hard to find a factor sufficient to preclude the imposition of the death penalty. And there are none.

This court finds that there are no factors sufficient to preclude the imposition of the death penalty in this case.

The court then sentenced defendant to death.

III

REASONS FOR DENYING THE PETITION

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. 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 (as well as that of every other capital defendant in Illinois) was by definition fundamentally unfair. 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 defendants 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. It is telling, however, that petitioner has not even attempted to demonstrate how the recent changes would have

affected the outcome of the proceedings.

Petitioner also argues that the decision to seek the death penalty in his case was arbitrary because the assistant state's attorney initially offered him a sixty-year prison sentence if he pled guilty but later sought the death penalty when petitioner rejected the offer. Petitioner claims his sentence should be reduced because the State's Attorney's decision to seek death was made without uniform protocols to guide his discretion and was not approved by a state-wide review committee. However, "[i]t has long been recognized by th[e Illinois Supreme C]ourt that the State's Attorney is endowed with the exclusive discretion to decide which of several charges shall be brought, or whether to prosecute at all. A prosecutor's discretion extends to decisions about whether or not the death penalty should be sought." People v. Jamison, 197 Ill. 2d 135, 161-62, 756 N.E.2d 788 (2001). Therefore, any attempt to mandate such a review would constitute an impermissible restriction on the independence of the various State's Attorneys under the Illinois Constitution.

Additionally, the assistant state's attorney in this case explained that he offered petitioner sixty years provided that his supervisor approved the offer after reviewing the evidence in the case and the applicable sentencing laws. Since petitioner rejected the offer, the death penalty, for which petitioner was eligible based on the crimes he committed, was then sought. The trial court ruled that there was not vindictiveness on the part of the assistant state's attorney and that the death penalty was, by law, available punishment based on the evidence. The Illinois Supreme Court agreed with the trial court's ruling and stated:

Unless we are willing to say that a prosecutor may never seek a penalty greater than that offered in plea discussions, defendant's argument here must fail, for his election to stand trial was made with a complete understanding of the

hazards...[McLaurin] knew death was a possibility when he elected to stand trial...[McLaurin] *pro se* filed on July 14, 1995, a ‘Motion In Limine—Exclusion of references to possible release of defendant if given sentence less than death.’...[McLaurin] listed as ground in support of the motion, *inter alia*, that he is ‘being charged with a serious offense that could result in the death penalty.’ Nor is there in the record any indication of a purpose to punish defendant for exercising his right to a jury trial or prosecutorial vindictiveness of any kind. As did the court in *Lewis*, we conclude that there is no merit to the defendant’s contention.

Additionally, petitioner does not allege, much less argue, that the decision to seek death in his case was the result of an abuse of discretion. Accordingly, his claim must be rejected.

Illinois Supreme Court Rule 416

Petitioner argues that he did not receive pretrial discovery in the form of depositions. Petitioner does not state who he would have deposed or why. He also fails to demonstrate how conducting depositions would have changed the outcome of his case. More importantly, however, petitioner ignores the fact that he was able to extensively cross-examine all of the People’s witnesses while they were under oath at his trial. He also had the opportunity to speak with all the witnesses prior to his trial but chose not to do so. Since petitioner has failed to show how this rule would have changed the outcome of his case, his claim must be rejected.

Commission Recommendation No. 8

Petitioner next states that he challenged the testimony of his codefendant and wife, who earlier had been questioned by police and whose interview had not been electronically recorded. That is a statement and not any legitimate allegation. Petitioner does not argue that he was in any way prejudiced by the same. Neither does he establish how the outcome of his trial and sentencing hearing would have been different in any way. Ultimately, petitioner’s statement is not even a

complaint and, logically, cannot be addressed.

Petitioner also states that the discussions between the State and his codefendant regarding the benefits of testifying were not reduced to writing and provided to the defense. *This is a blatant lie.* The agreement was, in fact, reduced to writing and was tendered to petitioner prior to his trial. (See Attachment) Further, petitioner ignores the fact that not only did he extensively cross-examine his wife during the People's case-in-chief regarding her conversations with the State, he called her to testify in his own case-in-chief and thoroughly questioned her then as well. The Illinois Supreme Court stated,

The jury was apprised as well of the terms of her plea agreement with the State and the fact that she might serve as few as 10 years for her part in the commission of the murder of Jarrell Edwards. The jury was also instructed that the testimony of an accomplice is subject to suspicion, should be considered with caution, and should be carefully examined in the light of the other evidence in this case.

Petitioner's claim must be rejected.

Photo line-up

Petitioner lists four things that were not done during a photo identification before the witness' in-court identification. Petitioner simply lists these items but does not argue that he was in any way prejudiced as a result, presumably, because he knows that his claim is unsupported. Additionally, neither the Illinois or United State's Constitutions require the items listed.

Commission Recommendation 29 and 30

Petitioner claims his sentenced should be reduced because the State's Attorney's decision to seek death was made without uniform protocols to guide his discretion and was not

approved by a state-wide review committee. However, “[i]t has long been recognized by th[e] Illinois Supreme C]ourt that the State's Attorney is endowed with the exclusive discretion to decide which of several charges shall be brought, or whether to prosecute at all. A prosecutor's discretion extends to decisions about whether or not the death penalty should be sought.” People v. Jamison, 197 Ill. 2d 135, 161-62, 756 N.E.2d 788 (2001). Therefore, any attempt to mandate such a review would constitute an impermissible restriction on the independence of the various State’s Attorneys under the Illinois Constitution. Moreover, petitioner does not even allege much less argue that the decision to seek death in his case was the result of an abuse of discretion. Accordingly, it must be rejected.

Commission Recommendation Nos. 55 and 56

Petitioner claims that he did not have the opportunity to present expert testimony concerning the problems associated with eyewitness testimony and that the jury was not instructed accordingly. Petitioner is wrong. He had the opportunity to present such an expert but never sought to have one testify. He never asked the trial court to appoint such an expert. He never requested additional time to obtain such an expert. It is petitioner who chose to not present such testimony. Likewise, petitioner never sought to have the jury instructed in such a manner. Most importantly, petitioner does not attempt to now demonstrate how the outcome of his proceedings would have been different.

Commission Recommendation No. 62

Petitioner’s claim that he was not afforded a right of allocution during his sentencing hearing is a *blatant lie*. Not only did petitioner speak to the court, he rambled on for 19 pages of the transcript of the proceedings, never once expressing grief for the victim or his family.

Petitioner's claim must be rejected.

Commission Recommendation No. 70

Petitioner also claims that he is entitled to clemency because the Illinois Supreme Court failed to consider whether his death sentence was disproportionate, excessive or otherwise inappropriate. Petitioner has effectively conceded that his sentence was proper, however, because after being sentenced to death, he did not make this argument to the Illinois Supreme Court. Presumably, he failed to do that because he knew that, based on the facts and circumstances of this case, his argument would be rejected. In sentencing petitioner, the trial court stated,

And I've looked at the facts of this case, the circumstances surrounding this case, the evidence of this case. The—This Court brings to – with it all of its experience. This Judge does not sit in a vacuum. This judge brings with it [sic] myself to the court; all of my life experience; all of the experience that I've had in and around the criminal justice system for almost thirty years.

I have seen hundreds of – of murder cases. I've seen them firsthand as a police detective—a homicide detective for years. I've seen them in the – in the capacity of an attorney both as a State's Attorney and as a Defense attorney. And I have seen them as a Judge. I have seen the horrors of death and war. I have seen the horrors of death in life – in my professional life.

This is one of the more horrible, horrible cases that I have ever seen. I have looked hard to find – And the responsibility is awesome. I've looked hard to find a factor sufficient to preclude the imposition of the death penalty. And there are none.

This Court finds that there are no factors sufficient to preclude the imposition of the death penalty in this case. And it is thereby the order of this Court that the sentence on this matter for the – for this case is that the defendant will be sentenced to death for this – for this matter.

The Illinois Supreme Court has demonstrated that it will address comparative sentencing arguments whenever they are raised by defendants 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 defendant'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 is because he did not ask the Court to do so. Since petitioner never asked the trial court or the Illinois Supreme Court to address this claim, it should be rejected now.

CONCLUSION

Petitioner repeatedly slit the chest, neck, and face of 17 year old Jarrell Edwards in his upper chest, abdomen, chin, and neck. Then as Jarrell was begging for his life, petitioner saturated his entire body, including his bleeding wounds with gasoline. He then set him on fire. In the last moments of his life, Jarrell's voice box, windpipe and lungs filled up with the smoke he inhaled from his own burning body until his skin charred and split and he finally died of carbon monoxide intoxication. The trial court and the Illinois Supreme Court have extensively reviewed and weighed the evidence and determined that McLaurin must be sentenced to death. Ironically, however, petitioner believes that to sentence him to die a quiet death, by the needle, a death he denied Jarrell, is unfair. His claim must be rejected and his petition must be denied.

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

Respectfully submitted,

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