

OCTOBER 2002 SESSION  
PRISONER REVIEW BOARD  
STATE OF ILLINOIS

---

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
vs.	)	Docket No. \
	)	
COREY MOORE,	)	Inmate No. K75523
	)	
	)	
	)	

---

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

---

**PEOPLE'S RESPONSE IN OPPOSITION TO PETITION  
FOR COMMUTATION OF DEATH SENTENCE**

---

**HEARING REQUESTED**

RICHARD A. DEVINE  
STATE'S ATTORNEY OF COOK COUNTY

BY: BERNARD J. MURRAY  
JON J. WALTERS

OCTOBER 2002 SESSION  
PRISONER REVIEW BOARD  
STATE OF ILLINOIS

---

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	Docket No. \
vs.	)	
	)	Inmate No. K75523
COREY MOORE,	)	
	)	
	)	

---

**I.**

**HISTORY OF THE CASE**

In September, 1996, petitioner, Corey Moore, shot and killed Lonnie Williams in the course of robbing him. He then tried to kill Melanie Williams three times, but three times, petitioner's gun jammed. Petitioner then fled to Atlanta. Less than three months later, petitioner returned to Chicago, and fearing that his girlfriend Kimberly Fort was talking to the police, petitioner shot Ms. Fort in the back with both barrels of a shotgun. The day before the murder, Kimberly had contacted a police detective about petitioner, and she related to him that petitioner had threatened to kill her if he found out she was helping the police. After Kimberly's murder, petitioner was arrested in Atlanta using a false name and carrying four pieces of false identification.<sup>1</sup> Judge James Egan sentenced petitioner to life in prison for Lonnie Williams' murder, and sentenced petitioner to death for Kimberly Fort's murder.<sup>2</sup> Petitioner's appeal is under consideration by the Illinois Supreme Court.

---

<sup>1</sup> Thus, petitioner's claim on page 2 of his petition that he has no known aliases is not accurate. Petitioner was also known as Corey Porter to Melanie Williams.

## II.

### FACTS OF THE CASE

#### The Trial in Case Number 97CR-1779

In September, 1996, Melanie Williams was a business partner with Lonnie Williams in a Baskin-Robbins Store located at 8601 S. Cottage Grove in Chicago, and was also his girlfriend and resided with him on the second floor at 3020 N. Hoyne. (R. 324-8) After a rash of armed robberies at the store that summer, Lonnie hired petitioner in late July or early August to be at the store to deter future robberies. (R. 329-31) Petitioner worked at the store for three weeks, but was fired when he failed to appear for work on two consecutive weekends. (R. 331-2) On three occasions after the firing and before September 3<sup>rd</sup> of which Melanie was aware, petitioner came to the store to see Lonnie. (R. 370) The first time, petitioner requested to be paid for work he had done, Lonnie paid him, and petitioner left. (R. 370-1) Melanie did not know how much was paid. (R. 371-2) Petitioner came the following day, made small talk, and helped Lonnie unload some supplies. (R.372) On none of the three occasions were harsh words spoken between petitioner and Lonnie.

On September 3<sup>rd</sup>, the day after Labor Day, Melanie and Lonnie closed the store and Lonnie brought a bag containing money from the store's sales for the week. (R. 333-4) They arrived home about 10:25 pm. (R. 334) As Melanie followed Lonnie, and as she approached the front porch, petitioner grabbed her and put a gun to her head. (R. 335-38) She let out a scream, and petitioner shook his head and told her to be quiet. (R. 338) The gun was a semi-automatic and had a black handle and silver body. (R. 338-9) Petitioner proceeded up an inner stairway

---

2 Judge Egan conducted a joint sentencing hearing for both murders.

with the gun to Melanie's head. (R. 339) Lonnie walked down three or four steps from the top of the stairs and asked, "Corey, what's up?" (R. 339-40) Petitioner took the gun from Melanie's head and put it onto Lonnie's stomach. (R. 340) Lonnie pushed Melanie behind himself. (R. 340) Petitioner said, "Give me the money, give me the money." (R. 341) Lonnie reached into his back pocket, took out money, and handed it to petitioner. (R. 340) After taking the money, petitioner said, "This isn't enough. There's got to be more." (R. 341) Lonnie handed petitioner the bag of money he had brought from the store. (R. 342) Petitioner then said, "You all shouldn't have done me like you did," and Melanie heard, but did not see, the gun go off. (R. 343) Melanie ran toward her apartment and petitioner ran immediately behind her. (R. 343) Melanie backed up to a couch, fell back on it, and pleaded with petitioner not to shoot her. (R. 344) Petitioner continued to approach with the gun in his hand, and put the gun directly on her chest near her heart. (R. 344-5) Melanie clutched her cross and closed her eyes while petitioner pulled the trigger. (R. 345) When Melanie heard a clicking sound, she opened her eyes. (R. 345) Petitioner was standing about two feet away from her, still aiming the gun at her. (R. 346) Petitioner pulled the trigger a second time, but the gun did not fire. (R. 346) Once again Melanie closed her eyes, and when she opened them, petitioner was further back with the gun still aimed directly at her. (R. 346) Petitioner pulled the trigger a third time, and again, the gun did not fire. (R. 346) Petitioner turned and ran out the door. (R. 347)

Melanie ran downstairs, locked the front door, ran to the cordless phone, and called 911. (R. 347) She went to Lonnie's side on the stairway, where he lay gasping for air and gurgling blood in a pool of blood. (R. 347-8) Police officers and ambulance personnel arrived, and Lonnie was taken to Illinois Masonic Hospital where he never regained consciousness, and where

he died on September 4<sup>th</sup>. (R. 348-50) His death resulted from the gunshot wound to his face which fractured his mandible and lacerated his brain. (R. 442-44)

Romero Ponce testified that he lived at 3016 N. Hoyne, two doors south of Melanie and Lonnie's address, and was at home about 10:20 pm on September 3<sup>rd</sup>. (R. 383-4, 388-9) He heard a crack like a gunshot from the north, went to the window furthest north at the front of his home, and looked out. (R. 385) He saw petitioner crossing over to the front of his house from the north with a gun in one hand and a rag in the other. (R386-7) With a streetlight directly in front of his home, Romero saw petitioner cross the street to a white car, fumble with the keys, place the gun and rag in the passenger seat, enter the car, and drive off. (R. 387-8) Romero called 911, and saw police and ambulance personnel arrive at 3020 N. Hoyne. (R. 388) On September 5<sup>th</sup>, police came and showed him a group of photos. (R. 389) Romero recognized one person from the group and told police this person could be the person he saw, but he would need to see him physically. (R. 389-9) On December 11<sup>th</sup>, he identified petitioner in a lineup at Area 3 Police Headquarters. (R. 391-2)

Chicago Police Detective Mark Reiter testified that on September 3<sup>rd</sup>, he responded to the shooting and spoke to Melanie for a few minutes. (R. 400-5) She was quite upset, and very agitated and scared. (R. 400-5) After speaking with Melanie, Detective Reiter began looking for an individual named Corey Porter. (R. 405) After developing information as to a possible address where Corey Porter could be found, he went to 8320 S. Mackinaw and spoke to Kimberly Fort. (R. 406) Kimberly gave him a small photograph of the person she knew as Corey Porter. (R. 406-7) Detective Reiter showed that photo to Melanie, and she identified it as a photo of Corey Porter. (R. 407) Detective Reiter then went to 3833 South Langley, where he spoke to

Jackie Moore who stated she was petitioner's cousin. (R. 407) As a result of that conversation, Detective Reiter learned of two possible out-of-state locations for petitioner. (R. 408) After contacting authorities in Wisconsin, Detective Reiter was given the name of Corey Moore as a possible suspect. (R. 408-9) Detective Reiter placed the named Corey Moore into the police computer and obtained a black and white digital photograph of Corey Moore. (R. 409) Detective Reiter then returned to Kimberly Fort, and she identified the photograph as the same person she knew as Corey Porter. (R. 409) Melanie also identified the photo as a photo of Corey Porter. (R. 410) Mr. Ponce indicated the photo looked like the person he saw outside his window. (R. 411-12) On September 6<sup>th</sup> an arrest warrant was issued for petitioner and put into the computer for nationwide distribution. (R. 412-3)

Special Agent Michael Greene of the F.B.I. testified that on December 2<sup>nd</sup>, he received information about the possible whereabouts of a fugitive named Corey Moore in Atlanta. (R. 436-7) He found and arrested petitioner, who said his name was Michael Jackson and who carried 4 pieces of identification with that name. (R. 437-39) Petitioner was taken to the Fulton County Jail to await extradition. (R. 439)

On December 10<sup>th</sup>, Detective Reiter learned that petitioner was in custody in Atlanta, he made plans to travel to Atlanta to pick up petitioner, and the next day, he took custody of petitioner. (R. 419) Petitioner was taken to Area 3, where Mr. Ponce identified petitioner in a lineup. (R. 419-20) After midnight, Detective Reiter and Assistant State's Attorney (ASA) Jeff Neslund spoke to petitioner, who admitted working for Lonnie but denied any involvement in the shooting or robbery. (R. 422)

ASA Mike Rogers testified that he spoke to petitioner at Area 3 at about 2:00 am. (R. 47-49) Petitioner said that he knew Lonnie and used to work for him. (R. 451) Petitioner also said that Lonnie had shorted him on some money at the store and he knew where Lonnie lived, but he did not kill him. (R. 451) When ASA Rogers twice informed petitioner that Melanie was implicating him, and that his cousin was implicating him as pawning off the gun, petitioner said, "Well it was me." (R. 451-2) After ASA Rogers told petitioner to think about what the crime lab would do with the shell casing found at the scene and the gun his cousin put in his hand, petitioner got upset and said he did not want to talk to him. (R.452) ASA Rogers ended the interview. (R. 452)

At about 6:30 pm. that same day, ASA Rogers spoke to petitioner at Area 2. (R. 452-3) ASA Rogers told petitioner that, when he walked out of the room, petitioner was going to be charged with two separate murders and he really did not care what petitioner said to him. (R. 454) ASA Rogers said that the only thing that mattered was how petitioner wanted to be perceived. (R. 454) He asked petitioner if he was a person who took responsibility for what he did or was he someone who just said bring it on. (R. 454) He showed petitioner a photograph of his cousin and of a woman named Barbara, who he thought was seeing one of his cousins, and said his own family was implicating him. (R. 454) Petitioner started crying and said, "I killed them both." (R. 454) ASA Rogers spoke to petitioner about the murders of Lonnie Williams and Kimberly Fort. (R. 455) At the end, he asked petitioner how he had been treated, and petitioner said "straight" and "with respect." (R. 455) ASA Rogers spoke to petitioner again in the presence of ASA Neslund and Detective Talon, and asked petitioner to tell them what he had told ASA Rogers. (R. 455-6) At the conclusion of this conversation, petitioner agreed to give a court-

reported statement. (R. 456-7) Petitioner initialed corrections made to the statement, and signed the statement. (R. 458-464)

In the statement, petitioner said that he lived at 8320 S. Mackinaw. (R. 468) He worked at the Baskin-Robbins for security purposes, and sold drugs for Lonnie, whom he knew for about four months. (R. 469) He was looking for Lonnie because Lonnie owed him \$400 back pay. (R. 469) He was not working at the store on September 3<sup>rd</sup> because Lonnie told petitioner a month previously that he no longer needed him. (R. 470) Petitioner went to the store, then went to Lonnie's home. (R. 470) Petitioner waited for Lonnie to come home in a car owned by his cousin, Lydia Mays. (R. 471) When petitioner saw Lonnie and Melanie, he yelled "Lonnie" out of his car, and Lonnie asked who was there. (R. 471) Petitioner answered, "CO," and asked, "what's up with my money?" (R. 471-2) Lonnie said hold on or come upstairs and went upstairs with Melanie behind him. (R. 472) Petitioner got out of the car and went in behind them. (R. 472) He was armed with a loaded, silver .380. (R. 472) Petitioner said that the gun belonged to Lonnie, and that petitioner had used it as security guard at the store. (R. 472-3) Petitioner pulled out the gun as he walked in the door. (R. 473) Melanie made sounds like she was afraid because she saw the gun. (R. 473) Lonnie asked her what was wrong, noticed he had the gun out, and said, "oh, no, I know it's not that serious." (R. 473) Petitioner said he just wanted his money. (R. 474) Lonnie stuck his arm out while holding a bag and said, "here, take the money." (R. 474) Petitioner reached for it and Melanie made a sudden move toward the apartment. (R. 474) Petitioner made a sudden move toward Melanie that made Lonnie make a sudden move to grab petitioner. (R. 474) Petitioner threw off Lonnie, and Lonnie staggered down two or three stairs. (R. 474) Lonnie tackled petitioner, and petitioner fell back and fired one shot. (R. 474-5)

Lonnie was right on top of him and had no weapon. (R. 475-6) Lonnie fell sideways, petitioner grabbed the money, and petitioner ran in the apartment behind Melanie. (R. 475)

Melanie looked like she was going to grab the phone. (R. 475) He walked towards her, and she covered herself up and said, “please don’t, please don’t,” and grabbed his arm. (R. 475) Petitioner pushed her off with the gun in his right hand and ran downstairs. (R. 475-6) Petitioner ran across the street, tossed the gun over in the park, and jumped in the car. (R. 476) Petitioner drove around for about an hour, bought an 8-ball of cocaine for \$125 and 3 bags of weed for \$30 with the money he got from Lonnie, then smoked it. (R. 476-7) The bag contained about \$500. (R. K80) Petitioner already had plans to leave town. (R. 478) His father and he had been talking about going to Atlanta for months. (R. 478) He spoke to his father on the 4<sup>th</sup>, and asked him if he was still planning on going to Atlanta. (R. 478) Petitioner went to Atlanta about a week and half after he shot Lonnie. (R. 478-9) He went to Atlanta to get away from the drugs and to get away from the police because he was scared. (R. 479)

At the close of evidence, the court found petitioner guilty of the murder and armed robbery of Lonnie, and the attempted murder of Melanie. (R. 588-91)

### **The Trial in Case Number 97CR-1780**

On September 3, 1996, Chicago Police Detectives Mark Reiter became involved in the investigation of the murder of Lonnie Williams. (R. 852-3) After he spoke to Melanie Williams, he begun looking for a suspect named Corey Porter. (R. 853-4) That same night he went to 8320 South Mackinaw, which was an address where Corey Porter might possibly be found, and spoke to Kimberly Fort. (R. 854-5) He spoke to her about Corey Porter’s possible whereabouts,

and she provided him with another possible address and a photograph of the person known to her as Corey Porter. (R. 855) On September 4<sup>th</sup>, Detective Reiter learned that Corey Porter's real name was Corey Moore. (R. 856) Detective Reiter obtained a photo of Corey Moore and showed it to Kim Fort on the 4<sup>th</sup>. (R. 856-58) An arrest warrant was subsequently obtained for Corey Moore. (R. 859)

Chicago Police Detective Pat Harrington was assigned to the F.B.I. Fugitive Task Force in Chicago. (R. 911-12) In early September, 1996, he was contacted about a wanted offender named Corey Moore and subsequently opened a file on him. (R. 913) On the morning of November 20<sup>th</sup>, he received a call from Kimberly Fort regarding petitioner. (R. 913) After speaking with her, he and two F.B.I. agents met her outside the building at 2501 West Monroe in the Rockwell Gardens housing complex. (R. 913-4) Kimberly was afraid and agitated. (R. 915) She told him something about petitioner. (R. 915) Detective Harrington then put Kimberly and two of her children into his car and drove to her home at 8320 South Mackinaw. (R. 915) When they arrived, Detective Harrington and the two agents entered Kim's apartment using her keys and searched for petitioner. (R. 916) Detective Harrington noticed that a television was on and discovered fairly fresh food on the stove. (R. 916) Kim contacted the building management for her town home complex and requested that they change her locks that day. (R. 917)

On November 21, 1996, Synetta Smothers, who resided at 8324 S. Mackinaw, was preparing to leave home at about 9:00 am when she heard someone screaming outside her home. (R. 791-2) She went out her front door to look out and saw Kim, her neighbor, who lived two houses away from Synetta at 8320 S. Mackinaw and whom Synetta had known for three or four months. (R. 793) Kim was wearing a t-shirt and shorts. (R. 794) Petitioner was with Kim and

was pulling her by the t-shirt up the street closer to Synetta. (R. 793-95) Petitioner was wearing a black skull cap, a black down coat, black pants, and black shoes, and had what looked like a shotgun in his other hand. (R. 795) Kim was crying. (R. 796) Petitioner pulled Kim through the gate in front of Kim's house, then stopped and looked around. (R. 796) When petitioner looked in Synetta's direction, he stared at her. (R. 797) Petitioner then told her to "get [her] ass in the house," and Synetta turned and went back into the house. (R. 797) A matter of seconds after she walked back into the house, Synetta heard a loud noise, which she believed to be a shotgun or gun blast. (R. 797-8) Synetta waited for a few minutes because she was afraid, then went back outside to take a look and saw a neighbor waving for her on the property at 8320 S. Mackinaw. (R. 797-8) Synetta walked over there, and as she approached the gate, she turned her head and saw Kim lying in the gangway, bleeding and gasping for breath. (R. 798)

Synetta remained in the area after police began to arrive and she spoke to them. (R. 799) Police officers showed her a photo, and she recognized the person in the photo as petitioner. (R. 799-800) She told police petitioner was the person she saw dragging Kim. (R. 800) On December 12<sup>th</sup>, she identified petitioner in a lineup at Area 2. (R. 800-1)

The time period starting when she first saw petitioner with Kim was short, and it took a matter of seconds for them to walk through the gate and into the gangway once they made it there. (R. 807) Synetta testified that she did not know petitioner or his name and had not seen him before the 21<sup>st</sup>. (R. 812) She did not tell Detective Abbott that she knew petitioner as Corey Moore and had seen him on several occasions. (R. 813) She may have heard his name but did not know him by that name. (R. 815) She thought detectives showed her two pictures. (R. 815) On the 21<sup>st</sup>, Synetta described petitioner to the officers as wearing a black skullcap, black down coat,

black pants, and black shoes. (R. 821) She did not recall describing petitioner's height, weight, eyes, or complexion. (R. 821-2) Neighbors gathered at the crime scene and talked amongst themselves; Synetta learned the name "Corey" before she ever spoke to the detectives. (R. 823)

Katherine McGue, a nurse, lived on the first floor of the two-flat building at 8320 S. Mackinaw. (R. 840-1) Kimberly Fort lived upstairs. (R. 842) Katherine knew that Kim had a boyfriend name Corey, but had not seen him for at least three months prior to November 21<sup>st</sup>. (R. 842) At 9:00 am, she heard a big boom coming from her window near the gangway. (R. 843) She went outside to see what happened and saw Kim, full of blood, lying in the gangway. (R. 844) As Katherine looked toward the back gate, she saw two people running. (R. 844-5) The person closest to her was near her back door and the second was at the gate in the alleyway. (R. 845-47) Both men were wearing long black jackets with hoods. (R. 847-8) Katherine ran in her house and told someone to call 911, then went out with towels and tried to administer first aid. (R. 848) She also administered CPR. (R. 848) Kim's pulse was weak. (R. 848-9) After the ambulance arrived, Katherine went upstairs to get Kim's children, and found them trembling and shaking in a closet. (R. 849-50) Kim died of multiple gunshot wounds, and the medical examiner noted two oval wounds adjacent to each other. (R. 905-8)

Robert Davie, a forensic investigator with the Chicago Police Department, arrived at the scene about 10:00 am. (R. 825-6) He went to the south gangway and observed a large pool of blood on the sidewalk and what appeared to be two pieces of wadding used in the production of shotgun shells. (R. 827) A screen was broken in a rear window on the second floor. (R. 828) Snow on top of a shed had been walked upon. (R. 828)

Chicago Police Detective Andrew Abbott arrived at the scene at about 9:30 am and observed a large pool of blood on the sidewalk in the south gangway, two shotgun waddings in the pool, and a large blood-soaked towel alongside the pool. (R. 861-64) In the rear of the building, he saw that the glass of a second-floor window had been broken and the outside screen was partially torn from the window frame. (R. 865) There were footprints in the snow on top of a roof area just below the window. (R. 866) After speaking with Katherine McGue and Synetta Smothers, Detective Abbott went to Kim's apartment and discovered a color photograph of the victim and a male black subject as well as a business card belonging to Pat Harrington. (R. 866-68) Detective Abbott took the photo outside and showed it to Synetta, who identified the male black subject in the photo as an individual known to her as Corey whom she had seen earlier that morning. (R. 868) After Detective Abbott spoke to Pat Harrington and various individuals, a stop order was put in place for petitioner's arrest. (R. 870-74) An arrest warrant had already been issued. (R. 875)

On December 12<sup>th</sup>, Detective Abbott learned that petitioner was in custody at Area 2. (R. 875) At approximately 9:30 am, Detectives Abbott and Morrissette interviewed petitioner for about 15 minutes. (R. 892-3) Synetta Smothers arrived at about 11:30 am to view a lineup. (R. 876) Upon viewing the individuals in the lineup, Synetta immediately pointed out petitioner as the individual she saw dragging Kim down the street. (R. 877-78) At about 6:00 pm, Detective Abbott had a conversation with petitioner and Detective Morrissette and ASA Theo Jamison. (R. 879-80) Detective Abbott informed petitioner that he had been positively identified in the lineup, and petitioner denied any involvement in the murder. (R. 880) Detective Abbott stated that to the best of his recollection, on the day of the murder, Ms. Smothers described petitioner as a male

African-American, 5 feet 8 inches tall, with facial hair and a dark complexion, wearing dark clothes and a skull cap. (R. 884-87)

ASA Mike Rogers arrived at Area 2 at about 6:30 pm on December 12<sup>th</sup>. (R. 920-1) He spoke to ASA Jamison and Detectives Abbott and Morrisette, then spoke to petitioner. (R. 921-2) ASA Rogers' testimony about his initial statements to petitioner was essentially the same as in case number 1779. (R. 452-54, 922-24) In response, petitioner cried and said, "I did it, I killed them both." (R. 924) Petitioner spoke to ASA Rogers for a while about both murders, and when ASA Rogers asked petitioner how he had been treated, petitioner said "straight" and with respect. (R. 921-5) ASA Rogers asked ASA Jamison and either Detective Abbott or Morrisette to step into the room, and then asked petitioner to tell them what he had told ASA Rogers. (R. 925) In the early morning hours of December 13<sup>th</sup>, petitioner gave a court-reported statement. (R. 926) Petitioner initialed corrections to the statement, and signed each page. (R. 929-33)

In the statement, petitioner said he was going home at about 9:00 am on November 21<sup>st</sup> to 8320 S. Mackinaw. (R. 938) He was armed with a .12 gauge double-barreled, sawed-off shotgun, which was straddled across his shoulders underneath his coat. (R. 938-9) He tried his keys in the door and discovered that the locks had been changed, so he went to the back window and tried to enter through the safety bars on the window. (R. 939) Kim, his girlfriend of four years, opened the curtain, and petitioner told her to open the door. (R. 938-9) Kim said no and locked the window. (R. 939-40) Petitioner asked her why, and Kim said she did not want him in there and was going to call the police. (R. 940) Petitioner lost his temper and broke the window with the butt of the gun. (R. 940) He stuck his head in the window and saw Kim run to the front of the house. (R. 940) He heard the screen door open and close downstairs at the front door.

(R. 940-1) Petitioner jumped off the roof by the back window and went towards the front, where he saw Kim running around the corner. (R. 941) He chased her, caught her, and asked her why she was so scared, as he was confused. (R. 941) Kim just screamed petitioner's name out loud and said, "don't shoot me." (R. 942) The gun was visibly hanging out the side of the coat. (R. 942) Petitioner wondered why Kim thought he was going to shoot her. (R. 942) Petitioner pushed off of Kim and told her to walk to the house. (R. 942) As they walked, it occurred to petitioner that Kim must have told the police about him regarding Lonnie's murder. (R. 942-3) Petitioner said that he was armed that day because people were trying to kill him for Lonnie's murder because he had done it. (R. 943) Petitioner shot Kim as she walked about ten feet in front of him. (R. 943) He used both triggers. (R. 943) Kim fell and made noises like choking. (R. 943) Petitioner saw tears in her face. (R. 943)

Petitioner felt faint and started running. (R. 944) He threw the shotgun off in the streets, and went to his cousin Marlon's house. (R. 944) After staying at the home of Marlon and Barbara Sales for two hours, petitioner went out and bought weed and beer, which he smoked and drank. (R. 944-5) He stayed there a night, and returned to Atlanta where he remained until he was brought back to Chicago. (R. 945)

Petitioner told ASA Rogers that he knew that the police were looking for him for Lonnie's murder, and that he had been hiding in Atlanta and at various people's homes. (R. 952) He said that part of the reason he killed Kim was because he thought she talked to the police. (R. 952-3)

Brian Maryland, a forensic scientist with the Illinois State Police, examined evidence recovered from the scene, and the wadding was .12 gauge shot and the pellets were No. 5 size,

which is one of many sizes that can be fired from a .12 gauge shotgun. (R. 908-10) The parties stipulated that Special Agent Michael Greene would testify as he had in case number 1779. (R. 910-11) The parties also stipulated that November 21, 1996, was a Thursday, and that November 28, 1996, was Thanksgiving. (R. 910)

Michael Jackson, petitioner's father, testified for the defense. (R. 712-3) He was residing at the Racine County Jail serving a work-release sentence for substantial battery. (R. 712-3) In early September, 1996, petitioner was not living with him and he was not in contact with him. (R. 713-4) At some point he had a conversation with petitioner about moving to Atlanta, and he would say mid-September was when he and petitioner moved to Atlanta. (R. 714) They stayed at a lodge for a week, then moved to the Executive Inn in Atlanta. (R. 714-5) Mr. Jackson's girlfriend subsequently moved in. (R. 715)

In early or mid October, Kim Fort visited petitioner for a couple days, and Michael rented them a separate room. (R. 716-7) Then Kim returned to Chicago by bus with petitioner. (R. 717) Petitioner was gone two or three days, then returned to the Executive Inn. (R. 717) After a month, during which Michael worked various jobs, he began working security at the Executive Inn. (R. 718) Tension arose about the murder of people living in the room and petitioner's not contributing to the room expenses, and in early to mid-November, Mr. Jackson spoke to petitioner about moving out. (R. 717-19) Petitioner stayed about a couple of weeks, then petitioner went to a Salvation Army Shelter for a day or two. (R. 720) Michael testified that this occurred in early November. (R. 720)

Mr. Jackson saw petitioner practically everyday from the time petitioner moved out until petitioner's arrest in early December. (R. 721) As security guard, petitioner's father had access

to all the rooms and would give petitioner a free room during that period. (R. 721) Mr. Jackson spent Thanksgiving with petitioner, and to the best of his recollection, petitioner was not gone from Atlanta for an extended period around Thanksgiving. (R. 722) The longest time that he did not see petitioner from early November to early December was one or two days. (R. 722) Petitioner's father had no knowledge that petitioner left town and returned to Chicago during November. (R. 723)

Mr. Jackson had lived in Chicago 43 years before moving to Atlanta. (R. 723) Mr. Jackson thought that petitioner lived at 39<sup>th</sup> and Langley before they left for Atlanta. (R. 724) He had no idea how long petitioner lived there. (R. 725) He had been in contact with his son maybe a year before they moved to Atlanta. (R. 725-6) In September, 1996, petitioner told his father petitioner needed to get out of town because people were after him. (R. 727) Mr. Jackson testified that petitioner moved out about three or four weeks after they arrived in Atlanta, which might have been around early to mid-October. (R. 729) From mid-October until petitioner's arrest, petitioner did not stay in the same room as Mr. Jackson. (R. 730) Petitioner's father testified that he believed petitioner left Atlanta for Chicago more like October than November, but he was not certain. (R. 731) Mr. Jackson previously told ASA William Fahy and an investigator that, at some point before Thanksgiving, Kim came to Atlanta and she and petitioner took a bus to Chicago. (R. 731-34) Mr. Jackson also told them he had seen his son on Halloween and Thanksgiving in 1996. (R. 734-5) Mr. Jackson said that Kim's visit could have been anywhere in October or November. (R. 735-6) He acknowledged speaking to petitioner's lawyer, but could not remember telling the lawyer that Kim visited in November. (R. 736-7) After being shown a copy of a statement he gave to petitioner's lawyer, petitioner's father

admitted that Kim's visit was in November. (R. 737-39) Mr. Jackson believed he had been his son before Thanksgiving after he returned to Atlanta, and said it was shortly after Halloween. (R. 739-40) Mr. Jackson had previously told ASA Fahy that he did not know when petitioner returned to Atlanta, but he did remember seeing petitioner the next time on Thanksgiving. (R. 740-1) Petitioner's father could not say what his son's whereabouts were on November 21, 1996. (R. 741) He could not say that petitioner was in Atlanta or Chicago that day. (R. 741)

On redirect, Mr. Jackson said he saw petitioner just about everyday after petitioner moved out. (R. 742) On recross, he acknowledged that he never said that to ASA Fahy when he spoke to him. (R. 743) He said that the days he specifically remembered seeing petitioner were Halloween and Thanksgiving, that petitioner left for Chicago with Kim in November, and that he did not know when petitioner came back but he did remember seeing petitioner on Thanksgiving. (R. 743-4)

Lydia Mays, petitioner's cousin, testified that on November 19<sup>th</sup>, at about 10:00 pm, she accepted a collect call from petitioner. (R. 999-1001) While petitioner was still on the line, Lydia attempted to call one of Kim's sisters, and eventually she reached Kim. (R. 1002-3) Lydia listened while petitioner and Kim spoke. (R. 1003) A couple of days later, after Kim had been murdered, an officer with the F.B.I. came to Lydia's place of employment. (R. 1004-5) The officer showed her a phone bill, asked her if it was hers, and asked who was calling her long distance. (R. 1006) She called petitioner long distance. (R. 1007)

The parties stipulated that a representative from Greyhound would testify that there is regular bus service between Chicago and Atlanta; the fastest service took 14 hours and the local service took 16 hours. (R. 1008)

At the close of the trial, the court convicted petitioner of intentional and knowing first-degree murder, aggravated unlawful restraint, and felony murder predicated on aggravated unlawful restraint. (R. 1084)

### **The Evidence at the Eligibility Hearing**

At the eligibility hearing on cases 97CR 1779 and 1780, the People asked the trial court to consider the evidence in both cases as to petitioner's eligibility for the death penalty in each case. (R. 1089)

The trial court found as to both cases that the killings were intentional. (R. 1114) The court found petitioner eligible for the death penalty in case number 1779 based on petitioner's committing multiple murders and committing murder in the course of an armed robbery. (R. 1115) The court found petitioner eligible for the death penalty in case number 1780 based on petitioner's committing multiple murders and petitioner's murdering to prevent the victim from testifying in any criminal prosecutions or giving material assistance to the prosecution. (R. 1115-17; C.R. 122)

### **The Evidence at the Hearing on Aggravation and Mitigation**

Chicago Police Officer Herman Gary testified that in April, 1990, he arrested petitioner for possession of cocaine. (R. 1135-38) Petitioner was convicted and sentenced to one year of probation. (R. 1139) Chicago Police Officer Eugene Offett testified that on October 26, 1994, he noticed a large bulge in petitioner's waistband, chased petitioner after he fled, recovered a loaded handgun, and arrested petitioner. (R. 1145-481) Petitioner pled guilty to misdemeanor unlawful use of a weapon and received one year of probation. (R. 1149) Officer Anthony Salemi, a correctional officer at Cook County Jail, testified that on January 20, 1997, he searched a

cell in which no one but petitioner was housed and discovered a shank in petitioner's mattress. (R. 1140-43) Petitioner denied that it was his. (R. 1143) The disciplinary board found him guilty and gave him ten days in segregation. (R. 1143)

Detective Pat Harrington testified that Kim Fort called him on November 20, 1996, and asked if he was still looking for petitioner and if he would come and talk to her. (R. 1174-77) She said she had received a phone call from petitioner the previous night and she was afraid and needed to go home. (R. 1177) He arranged to meet her. (R. 1177) She was nervous, agitated, and looked afraid. (R. 1178) She told him petitioner called her at her sister's apartment and said the conversation was pleasant at first. (R. 1178) Petitioner asked about her and her children. (R. 1178) She was surprised to hear from him because she had not heard from him since he was involved in the murder. (R. 1178-9) Petitioner then became enraged and began accusing her of cooperating with the police in their attempts to find him. (R. 1179) He threatened to kill her if he found out she was helping the police. (R. 1179) He warned her that if she tried to go back home, he had people watching the residence at 8320 S. Mackinaw. (R. 1179)

Detective Harrington drove Kim to her home, but she was afraid to enter because he had a set of keys. (R. 1179-80) The police searched the home and did not find petitioner, although they did find a television on and relatively fresh food on the stove. (R. 1180) Kim indicated she had not left the television on or any food on the stove. (R. 1180) She made arrangements to have her locks changed that day. (R. 1180-1) Detective Harrington testified that the phone bill he showed Lydia Mays was for the month of October and he learned of it after Kim's murder. (R. 1183)

Elizabeth Fort, Kim's sister, published her victim impact statement. (R. 1153-56)

In her statement, she related that two nights before the murder, Kim received a phone call from petitioner and looked terrified. (R. 1154) Kim told her sister petitioner had warned her not to go home and that he was going to kill her. (R. 1154)

Dr. Michael Stone, a psychologist, testified in mitigation. (R. 601-2) He had performed about 80 evaluations and testified about 60 times in capital cases. (R. 604) All of the evaluations were for defense attorneys. (R. 608) Approximately five or six times he found a petitioner incompetent or insane. (R. 604) Dr. Stone was contacted by the Public Defender's Officer to provide a psychological examination of petitioner and to testify, and was paid for his evaluation. (R. 610) His billing rate is \$150 per hour. (R. 6110-11)

Dr. Stone met with petitioner to evaluate him on December 21, and December 24, 1998, and saw him for a follow-up session after that. (R. 611) Dr. Stone conducted a psychological interview which involved gathering relevant history and assessing his mental status. (R. 613) Dr. Stone also conducted several tests on petitioner, including the Millon Clinical Multiaxial Inventory (MCMI). (R. 614-27) Petitioner's results on the MCMI indicated a high score for anxiety, post-traumatic stress disorder (PTSD), and major depression. (R. 618-20) The validity scales on the MMPI and MCMI tests were in opposite directions in terms of petitioner trying to present favorably or unfavorably. (R. 677-79) Petitioner had no history of inpatient or outpatient treatment for mental illness or substance abuse. (R. 652) No mental health professional had ever treated petitioner. (R. 652) Testing did not reveal any organic brain problems. (R. 658)

Dr. Stone interviewed petitioner's mother in March, 1999, over the phone. (R. 668) Petitioner's mother was incarcerated for murdering her husband at the time of the hearing. (R.

668-9) She indicated she had an extensive history of psychiatric hospitalization, but Dr. Stone did nothing to verify that beyond speaking to her sister who agreed on the two hospitals. (R. 669) During the interview, petitioner's mother blamed someone named William Hunter for sexually abusing petitioner as a child, but did not give any specifics. (R. 670) She said it happened when petitioner was young but did not give a specific age. (R. 670-1) Petitioner said that it happened when he was ten years old, but the mitigation specialist said he had told her it was earlier and may have been as early as age seven. (R. 671) Dr. Stone did not try to interview William Hunter. (R. 671) Dr. Stone relied upon a woman, who was incarcerated for murder, had an extensive history of psychiatric hospitalization, and was on psychotropic medication as he interviewed her to find out information about someone who was never treated for a mental illness and had an unremarkable medical history. (R. 672-3)

Petitioner was willing to relate bad events in his life, but when Dr. Stone pushed further, petitioner would not give him all the details. (R. 684) Petitioner said that when one person drank they became abusive but did not specify what abuse took place. (R. 688) No mental health history exists to support the conclusion that petitioner has had chronic PTSD since age ten. (R. 686)

Dr. Stone was aware that petitioner was in an altercation in the County Jail on July 5, 1997, five to six months before he interviewed petitioner. (R. 683) Being in jail and being in an attack could be a factor in causing one's anxiety level to be higher than someone in the general population. (R. 683-4) Being imprisoned on two murder charges and facing a possible death sentence could be factors in anxiety and depression. (R. 688) The fact that the case was set for a trial date only a week before Dr. Stone interviewed petitioner could have affected petitioner's

level of anxiety and depression. (R. 689) Had he interviewed petitioner in a non- custodial situation in which petitioner had not committed two murders, his test-taking and history may have been affected. (R. 690)

Petitioner's father, Michael Jackson, testified that he had no significant contact with petitioner in his first seven or eight years, saw petitioner practically half the year when petitioner was nine, and saw him hardly ever into petitioner's teen years. (R. 746-48) He did not know much about petitioner's upbringing. (R. 748-9) He was not aware petitioner's mother had mental problems. (R. 749) He briefly reestablished contact with his son when he was 14, and did not have regular contact with petitioner until about a year before they left for Atlanta. (R. 752-3)

He had contact with petitioner one to three times the year before they moved. (R. 753-4) During that time, petitioner provided for Kim Fort's children, and from what he saw of petitioner and Kim, they loved each other. (R. 748, 754) He did not see any problem between petitioner and Kim when they were in Atlanta. (R. 755) In 1996, Mr. Jackson and petitioner became pretty close and they would talk about family matters and discuss problems. (R. 765) He had spoken with petitioner three or four times since his arrest. (R. 765) Petitioner never said anything about his mother's problems, never said she was abusive in any way, and never complained that his mother's husband was abusive in any way. (R. 757-8) He never mentioned a William Hunter to his father. (R. 764) Petitioner never expressed any remorse for the murders of Lonnie Williams and Kim Fort and for the things he did to Melanie Williams. (R. 767)

Linda Taylor testified that she had worked for a Job Corps program in Wisconsin for 14 years. (R. 970-1) Petitioner went through the program. (R. 973) Petitioner was an average student. (R. 977) There were times when they had a little bit of conflict. (R. 977) His

problems were basic student problems. (R. 978) Other than normal daily living problems, petitioner did not cause any problems at the center, and he successfully completed the program, graduating in December, 1992. (R. 979-80, 983) Petitioner had been released from his first attempt at a job corps program. (R. 980) Petitioner did not seem to be suffering from severe depression. (R. 987) At times, petitioner would be “hyper.” (R. 987) Ms. Taylor would classify this as anxiety, but not severe anxiety. (R. 987) She could not remember if petitioner saw a staff psychiatrist. (R. 988)

Eboni Wilson testified that she was 10 years old, and that when she was 3, her mother lived with petitioner for 1 year. (R. 1009-10) She still sees him from time to time. (R. 1010) He treated her as a daughter when he lived with her. (R. 1010-11) She said that he taught her things, and helped her learn better in school. (R. 1011) She read a statement that petitioner was a father to her and took care of her and her brother. (R. 1011)

Petitioner’s son, Corey, Jr., testified that he was six years old (R. 1016-17) He remembered living with his father when he was younger. (R. 1017) He took them outside and played with them, and bought them clothes and shoes. (R. 1020) After his father moved out, he would still visit with him. (R. 1021) He still gives good advice and treats him pretty much like a son even though he is not around much. (R. 1021-2)

Lydia Mays, petitioner’s first cousin, testified she knew petitioner her whole life although they never lived together. (R. 1185-6) Older people in her family said that petitioner’s mother, Denise, and the men she lived with were on drugs. (R. 1193) Ms. Mays testified that she received a collect call from petitioner at about 10:00 pm on November 19, 1996. (R. 1196)

Eventually, Ms. Mays reached Kim Fort and eavesdropped on a conversation between petitioner and Kim. (R. 1197) She never heard petitioner threaten to kill Kim. (R. 1197)

At the conclusion of the hearing, the court summarized the evidence. (R. 1307) The court considered that Melanie Williams and Kim Fort pleaded for their lives. (R. 1307-8) The court did not weigh petitioner's criminal history as significant. (R. 1308-9) The court considered petitioner's possession of a shank in jail in aggravation. (R. 1309) The court found that there had been abuse in the family, including that of petitioner as a child, and petitioner did not have a stable family life. (R. 1310-1) In addressing remorse, the court noted that petitioner apologized to the families and cried before ASA Mike Rogers, but the court also noted that, after the murders, petitioner went out and bought drugs or beer. (R. 1311) Petitioner's remorse did not appear to be genuine, but a response to being caught. (R. 1311) The court did consider that petitioner gave a voluntary confession. (R. 1311) The court considered petitioner's conduct in the structured environment of Job Corps, but that was offset by petitioner's possession of a shank in jail. (R. 1312)

In case number 1779, the court determined that, in light of Dr. Stone's testimony, and petitioner's story that he came to collect a debt, petitioner was under sufficient stress that he exercised poor judgment, and there was enough mitigation to offset the aggravation. (R. 1312-3)

In case number 1780, the court noted that the stress of being a fugitive was added to the other stresses petitioner was under, but petitioner himself was responsible for being a fugitive, unlike other stresses, which were beyond his control. (R. 1313) The killing of Kim Fort was as close to the court could say to an execution. (R. 1314) She begged for her life and her children were upstairs. (R. 1314) Petitioner's conduct was inexcusable. (R. 1314) The fact that Kim

was a witness in the other case caused the court to determine that petitioner should be sentenced to death. (R. 1315)

### **III.**

#### **REASONS FOR DENYING THE PETITION**

##### Introduction

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.

Because petitioner’s death sentence has not yet been affirmed by the Illinois Supreme Court on direct appeal, this petition for executive clemency is premature. The Illinois Constitution of 1970 expressly provides that “Appeals from judgments of Circuit Courts imposing a sentence of death shall be directly to the Supreme Court as a matter of right.” Article VI, section 4(b). Pursuant to this provision, the Supreme Court promulgated Supreme Court Rule 606(a) which states that “In cases in which a death sentence is imposed, an appeal is automatically perfected without any action by the defendant or his counsel.” Therefore, it is clear that all convictions resulting in death sentences must be reviewed by the Court before the defendant may be executed.

Due to this constitutional restriction, it is clear that no convictions resulting in death sentences are final prior to the completion of the Illinois Supreme Court’s review on direct appeal. As the Court has long recognized, the completion of the direct appeal is a necessary element of criminal prosecutions. See People v. Mazzone, 74 Ill. 2d 44, 46, 383 N.E.2d 947 (1978) (holding that a defendant’s death while his appeal is pending requires the convictions to be abated *ab initio*); O’Sullivan v. People, 144 Ill. 604, 610, 32 N.E. 192 (1892) (same); People v. Robinson, 187 Ill. 2d 461, 463, 719 N.E.2d 662 (1999) (same). Thus, it cannot be disputed that in capital cases, the

Court's affirmance is an indispensable component of a "conviction." Accordingly, because the Governor's clemency power is expressly limited to situations "after conviction" (Article V, section 12) (and in fact the practice has always been to wait until the completion of the entire appellate and post-conviction process), neither this Board nor the Governor may consider a clemency petition from petitioner until the finding of guilt and death sentence are affirmed by the Illinois Supreme Court.

1.

**THE EYEWITNESS' TESTIMONY WAS  
SUBSTANTIALLY CORROBORATED BY OTHER  
EVIDENCE SO THAT THE EVIDENCE OF  
PETITIONER'S GUILT WAS OVERWHELMING.**

Petitioner now contends that he was innocent and convicted largely on the basis of a single eyewitness' testimony. However, when petitioner appealed to the Illinois Supreme Court and was represented by the same lawyer he is now, he made no such challenge to the evidence against him, or specifically, the eyewitness' testimony in this case. Furthermore, the evidence against petitioner was overwhelming and substantially corroborated the eyewitness' account. As well, the Governor, himself, has not introduced in the legislature the recommendations relied upon by petitioner. Some of these recommendations are inapplicable and some may have been complied with, while others were not proposed as mandatory procedures by the Governor's Commission. This Board should recommend that petitioner's claim for clemency be rejected.

It is simply false to say that petitioner's guilt rested on a single eyewitness' identification. Petitioner gave a court-reported confession, signed and corrected by him (attached

as an appendix), which confirmed that he killed Kimberly Fort, and that he killed her because he feared she would talk to the police about him. Petitioner was already a fugitive, having committed the murder of Lonnie Williams less than three months before this murder. The day before the murder, Detective Harrington, who was assigned to the F.B.I. Fugitive Task Force, was contacted by Kimberly Fort and met with her. When they returned to her house that day, they discovered signs that someone had been in Kim's home. Notably, at sentencing, both Detective Harrington and Kimberly's sister, Elizabeth, through her victim impact statement, related that petitioner had threatened Kimberly shortly before the murder. Detective Harrington testified at sentencing that petitioner had warned Kim not to speak to the police. Petitioner's continuing to remain a fugitive after killing Kim and his giving a false name to the police in Atlanta are further indications of his guilt. In addition, Katherine McGue, who lived downstairs from Kimberly Fort, knew Kim's boyfriend's name was Corey. Petitioner's guilt is not in question, and he was not convicted on the basis of a single, uncorroborated eyewitness' testimony. Petitioner's failure to raise this issue in the Illinois Supreme Court is an important signal to this Board that even petitioner's attorney recognized how weak this claim is.

Further, the eyewitness identification in this case was strong and credible. Even petitioner acknowledges that Ms. Synetta Smothers "is undoubtedly an honest person who would not knowingly mis-identify the perpetrator of the crime she witnessed." (Pet. p. 6) Ms. Smothers witnessed this crime from only a short distance, as this Board can see from a photograph depicting her residence and the victim's residence two close doors down (photograph attached as appendix). Ms. Smothers was in front of her house during daylight hours: 9:00 a.m. She witnessed petitioner pull Kimberly by her t-shirt up the street toward Synetta. (R. 794) He had a shotgun in his other

hand. When petitioner reached the gate in front of Kimberly's house, he stopped, stared at Ms. Smothers, and told Ms. Smothers to get her "ass in the house." (R. 796-7) It then took a matter of seconds for them to walk through the gate and into a gangway out of her sight. (R. 807) So saying, as petitioner does, that petitioner was only in her sight for a matter of seconds is not entirely accurate. (Pet. p. 4) Three weeks later, Ms. Smothers identified petitioner in a lineup (photograph of lineup attached). According to the police detective with her at the lineup, her identification was positive and immediate. (R. 890-1) Ms. Smothers was thus able to view petitioner in daylight hours from a close distance under circumstances which would compel her to pay close attention to petitioner. It is notable that the trial judge rejected any claim that Ms. Smothers' identification was unnecessarily suggestive. (R. 234-5) It is also notable that Ms. Smothers was able to give a full and accurate description of petitioner as 5'8", having facial hair and a dark complexion, and wearing dark clothing and a skull cap. (R. 887) While some minor differences existed between Synetta's testimony and that of the police detective as to whether she had seen petitioner before, she had heard his name before she spoke to the police. (R. 823) These minor inconsistencies do not detract from her clear opportunity to observe petitioner commit this crime. In any event, the judge had more than enough evidence through Ms. Smothers' testimony and all the other evidence presented to convict petitioner.

Petitioner argues that Ms. Smothers' viewing a photograph of petitioner, and then three weeks later, viewing a lineup containing petitioner and four others violated recommendations of the Governor's Commission. One of those recommendations, #12, is clearly inapplicable because it applies, unlike this case, in a case where the administrator of the lineup does not know who the suspect is. (Governor's Commission Report at 34) As for recommendation 14 regarding a

statement recording the witness' confidence, Detective Abbott did write a supplemental lineup report, and he testified at trial that Ms. Smothers' identification at trial was immediate and positive. (Supp. R. 65; R. 890-1) The Commission itself recognized that implementation of electronically recorded interviews would "require further study and consultation," and that proposals regarding lineup procedures were just proposals. (Report at 30, 32) These proposals had not been tested in court and were to be used when practicable; they were not mandatory requirements of admissibility. (Report at 30) Even the Governor's Amendatory Veto of House Bill 2058 does not attempt to enact these proposals into law. Therefore, these proposals seem to have very little future other than as proposals.

Further, even assuming for argument's sake that these proposals became law, petitioner would still have been convicted based on the other evidence at trial. Petitioner's argument assumes too much because it requires one to believe that Ms. Smothers' lineup identification was based on her viewing a photograph rather than her witnessing the events that she described, including petitioner's staring at her and threatening her while holding a shotgun. Petitioner's contentions simply have no merit.

2.

**PETITIONER'S CORROBORATED  
CONFESSION, GIVEN TO AN ASSISTANT  
STATE'S ATTORNEY AND RECORDED BY A  
COURT REPORTER, WAS PROPERLY FOUND  
TO BE VOLUNTARY.**

Petitioner again raises an issue he did not bother to raise before the Illinois Supreme Court. Petitioner now claims, falsely, that he was held by the police for over 48 hours before he

confessed, and thus, his confession was involuntary. The facts are that, after being extradited all the way from Atlanta where petitioner had been a fugitive, in half the time petitioner complains of, the police, investigating petitioner's two separate murder cases, had conducted separate lineups and petitioner had given statements in both of his cases. Given the complexities of the police investigation caused by petitioner's flight from Chicago and his commission of two different murders, the time elapsed represented good police work and was not unreasonable. This Board should reject petitioner's untrue claim.

Contrary to petitioner's statement in his petition that he was arrested on December 10, 1996, the facts show that the Chicago Police took custody of petitioner on December 11, 1996, and brought him back to Chicago's Area 3 Police Headquarters at 11:30 p.m. (R. 419) The police conducted a lineup and police and prosecutors briefly spoke to petitioner, but he denied involvement in Lonnie Williams' murder. (R. 421-2, 95-99) Per Chicago Police Department regulations, petitioner was transported to central detention for booking as an extradited prisoner. (R. 422-3) Later, on the 12<sup>th</sup> of December, police spoke to petitioner at Area 2 Police Headquarters. (R. 49-53) Petitioner admitted committing both murders to Assistant State's Attorney Mike Rogers at about 6:45 p.m. on the 12<sup>th</sup>. (R. 101-5) A lineup was conducted at Area 2 prior to petitioner's admission of guilt. (R. 53) Thus, petitioner had made an admission of guilt in less than half the time he now claims he was in custody. His confession in both cases was taken by a licensed court reporter. (R. 108) A photo was taken of petitioner by the court reporter after petitioner gave these court-reported confessions (the confession and photograph are attached). The photo shows petitioner suffering no sign of coercion. There are no facts to support a claim of an involuntary or coerced confession. Petitioner has simply misrepresented facts to this Board.

The real facts show that an Atlanta F.B.I. agent, police officers, and prosecutors all advised petitioner of his Miranda rights, and he consistently waived his right to an attorney. (R. 31-2, 49-52, 98, 103-4, 421-2, 935-37) Petitioner initialed corrections to the statement and signed each page. (R. 929-33) Petitioner stated in the court-reported statement that he had been treated fairly by the police and assistant state's attorney, had been given food and drink, had the use of the washroom, had slept, had not been threatened or promised anything, and had given his statement freely and voluntarily. (R. 946-7) As discussed in the Statement of Facts, petitioner's other confession was also substantially corroborated by other evidence including an eyewitness. Although petitioner insinuates that the confession was tainted somehow because of the building it was given in, buildings do not coerce people into confessing to murder. Petitioner gave his confession to a lawyer, not beefy police who beat or intimidated him. Petitioner's claim is devoid of any genuine facts showing that he was coerced, and relies instead upon falsehood and insinuation.

Petitioner, seemingly ignoring the court-reported nature of his confession and the fact that the police and prosecutors agreed that petitioner denied involvement up until he spoke with Assistant State's Attorney Rogers at about 6:45 p.m., decries the absence of taping of his interviews. Initially, the People point out that Assistant State's Attorney Mike Rogers testified in court, subject to cross-examination, not once, but three times regarding his interview of petitioner. The trial judge, who heard Assistant State's Attorney Rogers testify, denied petitioner's motion to suppress his statement. (R. 157) Petitioner has never presented any compelling evidence to dispute Assistant State's Attorney Rogers' testimony. Second, petitioner failed to complain to the Illinois Supreme Court about the absence of taping, let alone that his confession was coerced.

Petitioner's failure to raise this issue in the Illinois Supreme Court is, again, an important sign of how weak this claim is. Third, petitioner points out that under the Governor's Commission's proposals both statements and the interrogations leading up to them should be videotaped. What petitioner fails to recognize is that neither the Commission nor the governor himself call for the suppression of a statement simply because it was not videotaped. Rather, even under the Governor's proposed legislation (HB3717 & HB2058), such statements will still be admissible if the trial court finds that it was voluntarily made after considering the totality of the circumstances. Because the trial judge expressly found that petitioner's statement was voluntarily made when it denied his motion to suppress statements, it is clear that the failure to videotape his statement had absolutely no effect on the fairness of his proceedings.

Finally, petitioner seems to assert that because some people have falsely confessed to crimes, his confession must be false. However, each case must be examined on its own facts. The actual facts of this case, and not petitioner's misstatements, reveal a voluntary confession that is strengthened by corroborating evidence, and by the fact that, essentially simultaneously, petitioner confessed to another crime that was also substantially corroborated by other evidence. This Board has before it this case, not the cases listed by petitioner. Under the facts of this case, petitioner's confession was voluntary, and his complaint has no merit.

**3.**

**PETITIONER WAS REPRESENTED BY  
EXPERIENCED AND ABLE COUNSEL, AND HE  
RECEIVED A FAIR TRIAL.**

Petitioner's third and final complaint is that he was not represented by members of the

Capital Litigation Trial Bar and that his lawyers somehow admitted their own incompetence. Actually, the late Jack Carey, petitioner's lead counsel, was a highly respected and experienced trial attorney in the top unit of the Public Defender's Office. The trial judge complimented Mr. Carey before and after this case, and even refrained from imposing a death sentence in one of the two cases before him (a life sentence was the only other sentencing option) based in part on what he termed counsel's "powerful" argument. Moreover, petitioner fails to show that his now deceased counsel would not have qualified for the Capital Litigation Trial Bar or what difference having such a lawyer would have made to his case.

Regarding Jack Carey, as the obituary from the January 8, 2002 Chicago Daily Law Bulletin shows (attached to this response), he was an experienced and well-respected attorney. It had been sixteen years since he graduated from law school when he tried this case, and he was a member of the Public Defender's Homicide Task Force. He was also a president of the Public Defender's Union and was credited with turning the court-related drug treatment program TASC into a statewide program. He had a master's degree in social work from the University of Chicago. Before trial, Judge Egan said of Jack Carey, who had appeared before him on several cases, that he was "a very good attorney, from the top unit in the Public Defender's Office, the Murder Task Force." (Supp. R. 11) At sentencing and again at the motion to reconsider sentence, Judge Egan found the arguments of Jack Carey, and of co-counsel Phil Coffey, to be "powerful." (R. 1306-7, 1315, 1363) Petitioner cannot show that Jack Carey would not have qualified for the Capital Litigation Bar.

Furthermore, the Supreme Court has clearly held that amendments to its rules, including those regarding lawyers, are not retroactively applicable. The Supreme Court has refused to

assume that in cases decided prior to the promulgation of new rules of procedure in capital cases, the performance of trial attorneys was inadequate regardless of what the record might reveal. People v. Simpson, \_\_\_ Ill.2d \_\_\_, 2001 Ill. LEXIS 1081, 50 (2001). Prior to that promulgation, a multitude of cases were tried by competent attorneys, adjudicated by experienced judges, and carefully reviewed on the merits by the Supreme Court. People v. Simpson, 2001 Ill. LEXIS at 49-50. In adopting new rules, the Court never intimated that all cases tried prior to the new rules lacked reliability. People v. Simpson, at 50. Thus, petitioner's conviction and sentence are not somehow invalid simply because the Illinois Supreme Court has promulgated new rules.

Petitioner tries to claim that his attorneys admitted their own incompetence. What is true is that petitioner's lawyers utilized the tactic of claiming they themselves were at fault in an effort to spare their client's life. The courts have had a great deal of experience with this tactic. Indeed, the courts do not put much stock in such second-guessing by attorneys. The refusal to permit Monday morning quarterbacking by anyone, defense counsel included, is aptly explained in the case of People v. Williams, 215 Ill.App.3d 800, 810, 576 N.E.2d 68 (1<sup>st</sup> Dist. 1991), cited with approval in People v. Sanchez, 169 Ill.2d 472, 490, 662 N.E.2d 1199 (1996).

Incompetency of a trial lawyer cannot be judged by what he or she feels he should have done after the trial is over. After a trial, whether it be civil or criminal, every lawyer, no matter how experienced, can think of a number of things he or she should have said or done as well as matters that should have remained unsaid or undone. The test of incompetency by a trial, post-trial, or appellate lawyer is based on a showing that the counsel's performance fell below an objective standard of reasonableness and was prejudicial to the defense. To demonstrate prejudice one must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. People

v. Williams, 215 Ill. App.3d 800, at 810.

Therefore, the Illinois Supreme Court has not found an attorney's own admission as to his alleged failings binding on it or determinative of the issues raised, and such an admission does not by itself establish ineffective assistance of counsel. People v. Harris, 182 Ill.2d 114, 158 (1998). Instead, the courts recognize such a ploy for what it is, an attempt to advocate for the client even at the lawyer's own expense. In any event, the Illinois Supreme Court is at this time considering petitioner's claims of ineffective assistance of counsel.

There is something untoward in this argument by petitioner. He berates his trial lawyer, but the only other issues he has raised in this petition were issues raised, not by his appellate lawyer before the Illinois Supreme Court, but by this very same trial lawyer who was somehow incompetent. While Jack Carey is no longer alive and cannot defend himself, it is hoped that this Board will strongly consider the words of those who knew him as an advocate, including the words of the very judge before whom this case was tried.

Moreover, no lawyer could have achieved any different result for petitioner. The evidence, not only in this case but in his other trial, was simply overwhelming. Nor is there any mistaking the facts that petitioner killed two people, and only failed to kill another by blind luck, and that one of the people petitioner killed was helping the prosecution in petitioner's other murder case. Petitioner's attorney fought every stage of these proceedings and called seven witnesses, including a psychologist, at the sentencing hearing. That petitioner's counsel was able to prevent petitioner's receiving the death penalty on both cases was a tribute to his skill. Petitioner's argument does not merit a commutation of his sentence.

## CONCLUSION

Corey Moore murdered Lonnie Williams in the course of a robbery and tried hard to kill Melanie Williams at the same time. He fled Chicago and subsequently killed Kimberly Fort because he suspected she was talking to the police about him. He shot Kimberly in the back with both barrels of a shotgun in what the trial court found to be an execution. Petitioner went out and used drugs after both murders, revealing his total lack of respect for human life and lack of remorse.

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

Respectfully submitted,

RICHARD A DEVINE  
STATE'S ATTORNEY OF COOK COUNTY

BY: BERNARD J. MURRAY  
JON J. WALTERS