

OCTOBER 2002 SESSION
PRISON REVIEW BOARD
STATE OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS)	
)	
vs.)	Docket No. 23625
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JOHNNIE LEE EVANS)	Inmate No. A-25103
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)	

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

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

HEARING REQUESTED

RICHARD A. DEVINE
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By:
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Assistant State's Attorneys.

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I

STATEMENT OF FACTS

Johnnie Lee Evans is a serial rapist and murderer. Between March 11, 1974, and January 24, 1983, he was out of custody for a total of seventy-one (71) days. Johnnie Lee Evans spent those seventy-one (71) days raping or attempting to rape seven (7) different women and murdering one sixteen (16) year old girl.

On March 11, 1974, Johnnie Lee Evans raped T.Y. in an elevator with a knife. Twenty (20) days after he was released from the county jail, Johnnie Lee Evans raped L.B. in a CHA elevator. Six (6) days later, he raped R.C. in a CHA elevator. On July 7, 1975, Johnnie Lee Evans was convicted of rape and sentenced to the Illinois Department of Corrections. He was paroled on May 3, 1978.

On May 12, 1978, only nine (9) days after being paroled, Johnnie Lee Evans raped G.C. in a CHA elevator. On October 12, 1978, he was convicted of rape and sentenced to the Illinois Department of Corrections. He was paroled on December 23, 1982.

On January 16, 1983, only twenty-four (24) days after being paroled, Johnnie Lee

Evans

attempted to rape A.W. during an armed robbery in a CHA elevator. On January 17, 1983, he tried to rape D.S. at knife point. On January 18, 1983, Johnnie Lee Evans raped M.M. in a CHA elevator. On January 22, 1983, only thirty (30) days after being paroled, Johnnie Lee Evans murdered 16 year old Adrian Allen with a knife during an attempted rape in a CHA elevator.

On January 22, 1983, Adrian Allen telephoned her mother and said that she would be coming to visit and would arrive in 30 to 40 minutes. Adrian never made it to her mother's CHA apartment. As Adrian was riding in the elevator on her way to her mother's apartment, Johnnie Lee Evans tried to rape her and then brutally murdered her. He stabbed Adrian Allen 22 times in the chest, abdomen, back, face, eyelids and neck, cutting her windpipe and severing her jugular vein. Adrian Allen was five (5) months pregnant.

He left Adrian face down in the elevator in a pool of her own blood. Adrian's underwear and jeans were around her ankles and her top was pushed up above her breasts. Two children found Adrian's dead body. In a court reported statement, Johnnie Lee Evans admitted killing sixteen (16) year old Adrian Allen. He told the police that when he first got on the elevator he did not intend to do anything, but when he found himself alone on the elevator with Adrian, as Johnnie Lee Evans explained, "[T]here it was, you know."

HISTORY OF THE CASE

Johnnie Lee Evans was convicted of the attempted rape and murder of Adrian Allen by a jury in the Circuit Court of Cook County before the Honorable Joseph Urso in 1984. Judge Urso presided over the bench sentencing hearing. Judge Urso found Johnnie Lee Evans eligible for the death penalty because he was over the age of 18 when he committed the murder and the murder was committed during the course of a forcible felony. After hearing evidence in aggravation and mitigation and considering his statement in allocution, Judge Urso sentenced Johnnie Lee Evans to death for the murder of Adrian Allen and to thirty (30) years in the Illinois Department of Corrections for the attempted rape of Adrian Allen.

On direct appeal to the Illinois Supreme Court, the case was remanded back to the trial court for the limited purpose of conducting a hearing into the question of racially motivated peremptory challenges pursuant to Batson v. Kentucky, 476 U.S. 79 (1986). The trial court conducted a Batson hearing and determined that Johnnie Lee Evans had failed to make out a prima facie case of racial discrimination in the prosecution's exercise of peremptory challenges. The Illinois Supreme Court subsequently affirmed the convictions and the sentence of death in People v. Evans, 125 Ill. 2d 50, 530 N.E.2d 1360 (1988).

On June 27, 1990, Johnnie Lee Evans filed a pro se petition with the Circuit Court of Cook County for relief pursuant to the Post-Conviction Hearing Act. (725 ILCS 5/122-1 et seq.) His appointed counsel later filed an amended petition, which was dismissed without an evidentiary hearing. The Illinois Supreme Court affirmed the circuit court's order dismissing the post-conviction petition. People v. Evans, 186 Ill. 2d 83, 708 N.E.2d 1158 (1999). The United States Supreme Court denied a petition for writ of certiorari on November 1, 1999.

Evans v. Illinois, 528 U.S. 965, 120 S. Ct. 401 (1999).

On March 29, 2000, Johnnie Lee Evans filed his Placeholder Petition for Writ of Habeas Corpus in the United States District Court for the Northern District of Illinois. Discovery was conducted, and on December 5, 2001, he filed an “Amended Petition for Writ of Habeas Corpus” and supporting Memorandum of Law. The matter has been fully briefed and is now awaiting a ruling from the Honorable Joan H. Lefkow of the United States District Court for the Northern District of Illinois.

Evidence Presented at Trial:

Around 1:50 p.m. on January 22, 1983, Alaura Brown received a telephone call from her daughter, 16-year-old Adrian Allen. Adrian said that she was coming to her mother’s apartment at 3547 South Federal in Chicago. Adrian Allen never arrived. The next time Alaura Brown saw her daughter was when she identified her body at the Cook County Medical Examiner’s Office the following day.

On January 22, 1983, two children discovered Adrian Allen’s body in the elevator at 3547 South Federal. Police arrived and found Adrian Allen face down in the elevator, with her undergarments and jeans around her ankles. A ski jacket, sweater, and a bra were pushed up above her breasts. There was a large quantity of blood on the floor and “smatterings” of blood on the walls. Examination of Adrian’s body in the elevator revealed that she had been stabbed repeatedly. Blood samples also were recovered from the 12th floor south stairwell, the 15th floor south stairwell, and the 16th floor north stairwell. A red-stained coat liner was recovered from a garbage can on the 17th floor.

The Medical Examiner, Dr. Edmund Donoghue, testified as to the results of the post

mortem examination of Adrian Allen's body. There were 17 stab wounds (a wound deeper than it is long, made by a pointed instrument), and 5 incised wounds (a wound longer than it is deep, made by a sharp-edged instrument). He testified that both types of injuries could have been made with a knife.

Dr. Donoghue described the following wounds: a deep slanting stab wound to the upper right chest which struck the right upper and middle lobes of the lung; a deep vertical stab wound to the right chest penetrating the upper lobe of the lung; two deep horizontal stab wounds to the left side of the chest causing liver and kidney damage; two vertical stab wounds to the left chest causing liver damage; a horizontal stab wound cutting the liver and stomach; three stab wounds to the abdomen and three to the breast, none of which entered the body cavity; and one stab wound in the lower back, involving skin and muscle only.

Dr. Donoghue described stab wounds to the left side, the face, the left neck area, the right eyebrow and eyelid, the left forehead and the left upper eyelid. The five incised wounds included one to the second finger of the left hand and four to the front of the neck. One of these wounds was particularly deep — it cut the windpipe and grooved the front of the spine — and another severed the anterior half of the jugular vein.

On January 23, 1983, the day after the body was discovered, Detective John Markham was assigned to the investigation. He reviewed police reports concerning the robbery and attempted rape of A.W.. He interviewed A.W.. He also interviewed D.S. who had been threatened by Johnnie Lee Evans with a knife. Detective Markham went to 3517 South Federal and arrested Johnnie Lee Evans at his apartment.

At the police station, Detective Markham took Johnnie Lee Evans' clothing, which

appeared to have blood stains. He reviewed police files, looking for similar crimes in elevators, and learned of the rape of M.M.. He arranged for A.W. and M.M. to view Johnnie Lee Evans in a lineup. Both women identified Johnnie Lee Evans in the lineup.

Following the lineup, Detective Markham interviewed Johnnie Lee Evans. Detective Markham told him that he had been identified by A.W. and M.M.. Johnnie Lee Evans then gave statements admitting that he had attempted to rape A.W. and that he had raped M.M.. Detective Markham then asked Johnnie Lee Evans about Adrian Allen. Johnnie Lee Evans then gave the first of three conflicting statements about the murder.

Johnnie Lee Evans first stated that he was in the CHA building at 3547 South Federal around 4 p.m. on January 22, and he got on the elevator with a man and a woman. He said that he planned to go up to the 16th floor. He assumed that the man and woman were together, but the man got off on the 10th floor and the woman stayed on the elevator. After the man got off, Johnnie Lee Evans jammed the elevator between floors and pulled out a knife. The woman started fighting him and the knife was knocked to the floor. Johnnie Lee Evans recovered the knife, and the woman said, "All right, do what you have to do," and pulled off her pants and underclothing. He started to get on top of her, but someone outside yelled to "let the elevator go," and the woman started fighting, so Johnnie Lee Evans stabbed her three times. She stopped moving and he stood over her. She grabbed his leg, so he stabbed her some more. He released the elevator, got out on the 14th floor, and fled into a stairwell. At the 15th floor, he crossed to the other stairwell, and walked down to the first floor. He returned to his mother's apartment and washed up. Abrasions on his right hand were received during the struggle with the woman. This interview began at 1 a.m. and ended at 3 a.m. on January 24, 1983. After this interview, Johnnie Lee Evans spoke

privately with his brother, Ronald Richardson. Ronald then went to the crime lab with Detective Markham and identified the coat liner recovered from 3547 South Federal.

Johnnie Lee Evans made his second statement at 4 p.m. on January 24, 1983. In this statement, Johnnie Lee Evans said that when he jammed the elevator between floors, the victim jumped on him and they fought. When he pulled out a knife, the victim fought even harder, screaming and hollering. Then she stopped, said she “wouldn’t tell” and pulled down her pants and underclothing. Johnnie Lee Evans dropped the knife, and he and the victim fought for it. Johnnie Lee Evans started to get on top of the victim, but when someone screamed to “let the elevator go,” the victim “went berserk” and started fighting him, so he stabbed her. Johnnie Lee Evans said that he continued to stab her until she stopped fighting. He then released the elevator, went to the 14th floor, and ran into the stairwell. He took off his coat because it was full of blood, and he dumped it into a garbage can on the 15th floor. He then went to the 16th floor and took off his coat liner because it had blood on it. In this statement, Johnnie Lee Evans said that after he cleaned up at his mother’s apartment, he returned to the elevator and tried to open the doors, but could not. He then went back to his own building and waited to see if the police would arrive. He then went back to the elevator and tried again without success to open the elevator doors. Johnnie Lee Evans said he considered calling the police but decided not to because he did not want to be questioned about the victim’s death. He waited under the breezeway of his mother’s building until the police arrived.

Detective Markham called the felony review unit of the State’s Attorney’s Office, and an Assistant State’s Attorney interviewed Johnnie Lee Evans and took a court-reported statement from him. Johnnie Lee Evans read the typed statement and signed it. In the court-reported

statement, Johnnie Lee Evans said that when he pushed the stop button on the elevator, the victim “jumped” him and grabbed him around the neck, screaming. He pulled out a knife and told the woman to “be cool,” that he intended to get off the elevator. The two fought over the knife and “tussled” when the knife fell to the floor. The victim then told him to do what he was going to do and get it over with, and she pulled down her pants. Johnnie Lee Evans said that before he could “get any — get ready to do anything,” someone outside yelled for the elevator, and the victim “went berserk,” screaming and struggling for the knife. He said that the victim was taller than him, and he pushed her back with the knife and cut her; he said that he did not know how many times he stabbed her. After the victim fell, Johnnie Lee Evans “unstuck” the elevator and got off. He panicked when he noticed that his coat had blood on it, so he took the coat off and put the liner in the 16th floor garbage can and the coat in a can on the 15th floor. He went home, but then returned to the building and considered calling the police. He decided not to call the police because he did not want to have to explain himself. He eventually saw police on the 12th floor.

Johnnie Lee Evans said that when he got on the elevator, he “didn’t have anything in [his] mind.” He was on his way to see a woman on the 16th floor, and he was not paying much attention to the victim or the other man on the elevator. He explained, “So, I didn’t have no intention to do anything, you know. But then when the man got off the elevator, you see what I’m saying, there it was, you know.”

At trial, the People presented evidence that during the week of January 16, 1983, Johnnie Lee Evans had also attacked A.W. and M.M. on elevators in CHA buildings.

A.W. testified that she lived in a CHA building located at 3615 South Federal in Chicago. Around 11:30 p.m. on January 16, 1983, she was returning home from church with her two

children. She saw no one in the lobby of her building as she waited for the elevator. When the elevator arrived, A.W. and her children got on. Johnnie Lee Evans jumped in the elevator just as the door started to close. He “mashed the stop button” and stopped the elevator between floors.

Johnnie Lee Evans pulled a ski hat down over his face. The mask had a hole cut out of it for one eye. He told A.W. to cooperate and everything would be all right. He told her to unbutton her coat, and she did. He then pulled out two sticks linked by a chain, which A.W. described as “karate sticks,” and pulled her dress loose and started “fiddling all over” her. He opened her dress, unbuttoned her girdle, and told her to lie down and open her legs. When she refused, Johnnie Lee Evans started beating her in the head with the karate sticks. A.W.’s children screamed, and Johnnie Lee Evans threw A.W. to the floor. Someone outside was yelling for them to release the elevator. Although Johnnie Lee Evans continued to beat A.W. in the head, she was able to get up and pull out the stop button. Johnnie Lee Evans hit one of the children on the head with a karate stick, causing her to bleed. Johnnie Lee Evans grabbed A.W.’s purse and fled. A.W. testified that in the purse was a knife with a pearl handle bearing the word “Lion.”

A.W. went to her apartment and immediately called the police to report the attack. She described Johnnie Lee Evans as about 5' 6" tall, with one “strange looking” eye which was “wavy-like” and “couldn’t keep still.” She identified Johnnie Lee Evans in a lineup on January 23, 1983.

M.M. testified that on January 18, 1983, Johnnie Lee Evans raped her. At around 10:00 p.m, M.M. left her apartment at 3617 South Federal in Chicago and went to the deli across the street. Outside the store, she saw a black male, about 5' 5" tall, with one “lazy eye.” M.M. went into the store. When she came out, she saw no one, but she stopped several times when she thought she heard footsteps. M.M. returned to her apartment building and waited for the elevator.

When the elevator arrived, she got on and punched “16.” As the doors started to close, someone said “hold it,” and pushed a foot into the elevator. M.M. continued pushing the button for her floor, but the man pushed the doors apart. It was the same man she had seen outside the deli. The man was Johnnie Lee Evans.

Johnnie Lee Evans rolled a red ski mask down over his face with his right hand, while punching the elevator stop button with his left. He pulled a knife and said, “Lady, don’t scream.” He then pulled a navy ski mask down over the red one, but M.M. could still see his eyes and lips. She offered Johnnie Lee Evans money, but he declined, saying, “All I want is pussy.” Johnnie Lee Evans felt under her clothes and performed oral sex on her while holding a knife. Gesturing with the knife, Johnnie Lee Evans told her to lie down, saying, “Lady, don’t make me cut you up and leave you on this elevator. Please don’t make me kill you.” M.M. described the knife as a white pocketknife bearing the word “lion.” Johnnie Lee Evans pulled her pants off, and again had oral sex, and then sexual intercourse. He then climbed out the top of the elevator. M.M. released the elevator and got out. She called the police and she was taken to a hospital. M.M. identified Johnnie Lee Evans in a lineup on January 23, 1983.

Johnnie Lee Evans gave a statement to the police admitting to the armed robbery and attempted rape of A.W.. In his statement to the felony review Assistant State’s Attorney, Johnnie Lee Evans explained that when he saw the woman and her children getting on the elevator, he decided he was going to rape the woman.

Johnnie Lee Evans gave a statement to the police admitting to the rape of M.M. with the knife he had taken from A.W.. In his statement to the felony review Assistant State’s Attorney,

Johnnie Lee Evans admitted that he raped M.M. with the same knife that he later used to kill Adrian Allen.

The jury found Johnnie Lee Evans guilty of murder and attempted rape of Adrian Allen. The case proceeded to a death penalty hearing.

Evidence Presented at the Death Penalty Hearing:

The trial court found Johnnie Lee Evans eligible for the death penalty because he was over the age of 18, had killed Adrian Allen during an attempted rape, and had killed her with the knowledge and intent that his actions would cause death. The case then proceeded to the aggravation/mitigation phase of the death penalty hearing.

Aggravation:

In aggravation, the People presented the testimony of three other women that Johnnie Lee Evans had raped. R.C. testified that Johnnie Lee Evans raped her in an elevator at 3547 South Federal on January 14, 1975. T.Y. testified that Johnnie Lee Evans raped her in an elevator at 3617 South Federal on March 11, 1974; however, charges based on this incident were later dismissed. G.C. testified that Johnnie Lee Evans raped her in an elevator at 3653 South Federal on May 12, 1978. During the attack, Johnnie Lee Evans threatened that if she did not stop crying he was going to stick her 22 times (the exact same number of stab wounds he inflicted upon Adrian Allen) because his knife was too small to kill her with one stab. G.C. could hear Johnnie Lee Evans flicking the knife. After the attack, Johnnie Lee Evans sent G.C. three or four letters, one including what she described as a “dirty picture.” Johnnie Lee Evans also called her house collect from the county jail, and after he was convicted and sentenced for raping her, he sent a letter to her from the Joliet Correctional Center.

D.S. testified that on January 17, 1983, she lived in apartment 701 at 3517 South Federal. Around 8:30 p.m., she was at home with her four children when Johnnie Lee Evans came to her door and said he wanted to talk. She had met Johnnie Lee Evans the previous day through his brother, who told her that Johnnie Lee Evans had just come from out of town. Johnnie Lee Evans told her to put her kids to bed and have sex with him. When she told him to leave, he grabbed her around the neck and pulled out a knife and threatened her. She struggled loose and grabbed her own knife, and her mother called the police.

Paula Banks, the younger sister of a man who was incarcerated at Menard Correctional Center with Johnnie Lee Evans, testified that she received letters from Johnnie Lee Evans while he

was in jail, asking her to be his girlfriend. Paula read one of the letters aloud at the hearing, and this letter contained threats. Paula testified that because of these letters, she feared for her safety.

Donald Gentsch, the record office supervisor for Menard Correctional Center, testified to Johnnie Lee Evans' disciplinary record with the Illinois Department of Corrections. Johnnie Lee Evans was admitted to the Department of Corrections on November 17, 1978, and was released on mandatory supervised release on December 23, 1982. During that time, 26 disciplinary reports were filed on Johnnie Lee Evans. Five of those reports involved major infractions. His file also contained a memo seeking review of certain books found in his possession which were believed to contain obscene material involving children: "Perverved Teacher," "The Swap Club," "Soft Thighs," and "Gang Rape Virgin." Three of the books were given to Johnnie Lee Evans after being deemed suitable by the Publications Review Committee.

Dr. Edmund Donoghue who performed the autopsy on Adrian Allen testified that Adrian was five months' pregnant at the time she was murdered; however, the pregnancy was not visible externally and he did not discover it until he conducted his internal examination.

Mitigation:

In mitigation, Johnnie Lee Evans testified on his own behalf and also presented the testimony of a clinical psychologist. Johnnie Lee Evans admitted committing all of the rapes with which he was charged, except for the rape of T.Y. He said that he raped the women to prove that he was a man.

Johnnie Lee Evans said that he wanted to plead guilty in this case, but he chose to go to trial because the State was seeking the death penalty. Although Johnnie Lee Evans' family still lived in Chicago, none of them came to support him during the trial. His mother refused to come

and testify for him because she said that the people in the projects would put her out if she did.

Johnnie Lee Evans made a lengthy statement in allocution. He denied his guilt and said “And I’m still not saying that I did anything . . .” He said that R.C. and G.C. were the only two women he ever tried to rape; however, he then admitted raping L.B. Johnnie Lee Evans denied writing any letters to Paula Banks, but acknowledged that his Islamic name and prison identification number were on the envelope.

After Johnnie Lee Evans got out of the county jail on December 19, 1974, he raped L.B. on January 8, 1975. He said that he stopped the elevator because he wanted “to have some type of affection,” meaning sex. Six days later, he raped R.C. because he was lonely. He admitted using “intimidation” to get G.C. to have sex with him.

Johnnie Lee Evans explained that he would approach women in the elevator “because that’s the only place that is convenient.” He said that he did not go out looking for women to have sex with; he just happened to be on the elevator with them. When he raped G.C., he was on his way to see “a brother named Dennis”; when he raped R.C., he was going to see “a partner of [his] named Larry Rush”; and when he raped L.B., he was going to see “[s]ome acquaintance.” He said that he did all of these things to get even with the State, even though none of his victims had anything to do with the State.

Johnnie Lee Evans again testified that he wanted to plead guilty to murdering Adrian Allen and take a natural life sentence, even though he had nothing to do with the crime. He could not say where he was at the time of the murder. However, he denied ever wearing the coat liner found at the scene, and said that it did not belong to his brother. When asked about the blood on his clothing and under shorts, Johnnie Lee Evans said that just before Detective Markham came to

arrest him, he was washing dishes and got “a little bitty nick” on his thumb. He said that he did not get a bandage for it, but instead wiped it on his pants. When Detective Markham came and told him to get dressed, he started to take his green pants off, so his finger touched the top of his shorts. He said that the blood got on his socks when he pulled them up to put on his shoes, and the blood got on his boot when he was tying his shoelaces. He claimed that all of the blood on his clothing and shoes had come from the single cut on his thumb. When asked about the blood on his maroon pants and gold t-shirt, Johnnie Lee Evans said that the police had mixed his clothes with the coat liner, and that the blood on the coat liner had then gotten on his pants and t-shirt.

When asked whether he felt the same need for affection at the sentencing hearing that he felt when he raped those three women, Johnnie Lee Evans replied, “One would always feel lonely. We would always feel the need.” Johnnie Lee Evans said that he considered rape to be a violent crime, but added, “And it all depends on how the act was committed.” He did not believe that the rapes of L.B., R.C. and G.C. were violent crimes.

Clinical psychologist Dr. Rosenwald testified that he did not believe that Johnnie Lee Evans did not understand what he was doing when he committed the rapes to which he admitted; however, he believed that Johnnie Lee Evans did not see his acts of rape as violent. He admitted that Johnnie Lee Evans showed no remorse for the rapes he had committed. Dr. Rosenwald conceded that Johnnie Lee Evans did not suffer from any psychosis. He said that previous examinations by the Psychiatric Institute did not indicate that any psychiatrist or psychologist believed that Johnnie Lee Evans suffered from a psychosis.

The trial court considered all of the testimony presented in aggravation and mitigation, as well as the presentence investigation and Johnnie Lee Evans’s own remarks, and noted that

it gave no weight to the disciplinary actions in his prison record. The court found that there were no mitigating circumstances sufficient to preclude the imposition of the death penalty, and specifically found “that the murder of Adrian Allen was not committed while [Johnnie Lee Evans was] under the influence of an extreme mental or emotional disturbance, as it would preclude the imposition of the death penalty.”

On June 11, 1984, Johnnie Lee Evans was sentenced to death for the murder of Adrian Allen and thirty (30) years in the Illinois Department of Corrections for the attempted rape of Adrian Allen. On November 4, 1985, Johnnie Lee Evans was sentenced by the Honorable Judge Vincent Bentivenga to thirty (30) years in the Illinois Department of Corrections for the attempted rape and armed robbery of A.W. and thirty (30) years in the Illinois Department of Corrections for the rape of M.M..

III

REASONS FOR DENYING THE PETITION

Introduction

Johnnie Lee Evans was justly convicted and sentenced to death for a brutal crime he admitted committing. In all of his appeals, he has never raised a claim of actual innocence. In fact, Johnnie Lee Evans has refused to consent to DNA testing. Because he was properly sentenced to death for a crime he did, in fact, commit, there is absolutely no reason to reward Johnnie Lee Evans with clemency.

Johnnie Lee Evans asserts that he is entitled to clemency because he did not receive the benefit of the changes to the Illinois capital sentencing system that 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 that were not available at the time of his trial, Johnnie Lee Evans claims that his trial (as well as that of every other capital Petitioner 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 Petitioners by the federal and state constitutions" and that "[a] violation of procedures designed to secure constitutional rights should not be equated with a denial of those constitutional rights." Id. at *63, 64.

Thus, the fact that the Court, the General Assembly and the Governor's Commission have recommended changes in how capital litigation cases are handled does not automatically mean that all previous capital cases were mishandled. Furthermore, Johnnie Lee Evans has never even attempted to demonstrate how the recent changes would have affected the outcome of his case. Moreover, Johnnie Lee Evans ignores the fact that the Illinois Supreme Court has examined the proceedings in his case more than once and has determined that they were fundamentally fair and that he was not unduly prejudiced in any manner.

A. Response to Claims of Injustice During the Investigation Stage

1) The Arrest Of Johnnie Lee Evans Was Based On Probable Cause

Johnnie Lee Evans first claims that the proceedings against him were unfair because he was arrested without probable cause. To the contrary, the Illinois Supreme Court specifically addressed this claim and held that Detective Markham had probable cause to arrest Johnnie Lee Evans. Furthermore, this argument has been raised in defendant's federal Habeas Corpus petition, and must be addressed and ruled on before defendant can be executed. As such, it is not a reason to grant clemency.

In his direct appeal, the Illinois Supreme Court rejected the argument that his arrest for the offenses against D.S. and A.W. was merely a pretext to allow the police to question Johnnie Lee Evans about the murder of Adrian Allen, affirming the ruling of the trial court. The Supreme Court observed:

[E]ven though defendant was briefly asked about four offenses upon his arrival at the police station, that does not make his arrest pretextual. During this approximately five-minute encounter, defendant was asked only one question relating to the Allen murder — whether he knew about the girl found in the elevator. Merely because defendant was in custody for one charge does not

preclude the police from investigating other unrelated charges concerning the defendant.

Evans, 125 Ill. 2d at 71-72. Accordingly, the Illinois Supreme Court concluded that nothing in the Record suggested that his arrest was improper.

Detective Markham relied on information in a police report about the A.W. incident and information from D.S. about her encounter with Johnnie Lee Evans. D.S. told Detective Markham and his partner that “Johnnie Richardson” had demanded sexual relations with her and threatened her with a knife. D.S. described her assailant, including his “lazy eye,” and she told the detectives which apartment he lived in. “The officer, after talking to the victim, had her complaint fresh in hand, and he immediately proceeded to the place given by the victim where defendant could be found. The officer knocked and announced his office and purpose and a woman invited him into her home where the defendant was arrested.” Evans, 125 Ill. 2d at 71. When the detectives went to Johnnie Lee Evans’ apartment and saw that he matched the description given by D.S., they properly arrested him for the assault on D.S..

As the Illinois Supreme Court noted, nothing in the record indicates that the detectives had any subjective ulterior motives for arresting Johnnie Lee Evans. The detectives only asked him one question about the murder. Thus, Johnnie Lee Evans was properly arrested based upon probable cause, and the proceedings against him were fair and just.

2) Detective Markham’s Original Handwritten Notes Were Missing But They Were Reconstructed And Given To The Defense Prior To Trial

Johnnie Lee Evans next claims that he should be granted clemency because Detective Markham’s original handwritten notes of his interview with him were lost prior to his trial in 1984. However, the 2 pages of handwritten notes were reconstructed at the time of the trial in

1984. The trial judge first held a full hearing about the missing notes. Detective Markham had previously testified that he had turned the notes in to the sergeant on duty on January 24, 1983, when he made his report, and that was the last time he had seen the notes. At the hearing concerning the missing notes, the sergeant who was on duty that night testified that he had no knowledge about the whereabouts of the notes. The trial judge heard arguments and ultimately ordered Detective Markham to reconstruct the notes. The defense received the reconstructed notes, and the trial proceeded. Johnnie Lee Evans was not prejudiced by the absence of the original handwritten notes.

3) Detective Markham Was A Credible Witness

Johnnie Lee Evans claims that “Detective Markham’s credibility is questionable,” and refers to the case of People v. Jones, 156 Ill. 2d 225, 620 N.E.2d 325 (1993), in which post-trial DNA evidence indicated that the victim had another man’s semen in her vagina, ultimately leading the prosecution to drop the charges against the defendant. Johnnie Lee Evans infers that Detective Markham must have beaten Jones in order to get him to confess, that Detective Markham must have done so in every case, and therefore, Detective Markham must have beaten Johnnie Lee Evans in the case at bar in order to get him to confess to the rape and murder of Adrian Allen. In fact, in the Jones case, the Illinois Supreme Court stated: “The evidence in this case overwhelmingly supports the policemen’s claims that no abuse occurred . . .” Jones, 156 Ill. 2d at 243 (emphasis added). Prior to trial Johnnie Lee Evans filed a motion to suppress his confession alleging physical coercion by Detective Markham. However, at the hearing on the motion to suppress, Johnnie Lee Evans abandoned his claim of physical coercion and only

alleged that Detective Markham ignored his request for an attorney. Likewise, Johnnie Lee Evans never claimed on direct appeal that Detective Markham physically coerced him into confessing. Thus, nothing in the Jones case casts any doubt upon Detective Markham's credibility in the present case.

4) Judge Palmer's Ruling On Pretrial Motions Was Fair

Johnnie Lee Evans claims that he should be granted clemency because after ruling on his pretrial motions, the judge assigned to the case recused himself, stating that he could not give him a fair trial. The Illinois Supreme Court rejected that precise argument on direct appeal. Moreover, this issue has been raised in the federal Habeas Corpus petition, and must be addressed and ruled on before Johnnie Lee Evans can be executed. As such, it is not a reason to grant clemency.

Johnnie Lee Evans' case was assigned to Judge Romie Palmer on February 15, 1983. According to the Record, one of Johnnie Lee Evans' attorneys was held in contempt in another case in Judge Palmer's courtroom on March 7, 1984, and Johnnie Lee Evans' other attorney was held in contempt on March 28, 1984. These contempt findings were vacated on March 14 and April 4, 1984. The hearings on Johnnie Lee Evans's motions to quash arrest and suppress statements were held on April 2 through April 9, 1984.

On April 12, 1984, after Judge Palmer denied Johnnie Lee Evans' motion to reconsider the denial of his motions to quash arrest and suppress evidence, the judge recused himself, stating:

I have had some matters that have in the past been against counsel for the defendant: namely citations for contempt which were later vacated. I thought this matter over seriously, and I do not believe I can give this defendant a fair trial under the

circumstances. And one additional fact that my – I don't believe that I possess at this time the competence by reason of everything that has happened that I can give everyone a fair trial.

For that reason I would recuse myself. The Clerk will call the chief, the presiding Judge and ask him to get another Judge to hear this case.

The case was then transferred to the Honorable Judge Joseph Urso.

Judge Urso reviewed the transcripts of the hearing on the motions to quash arrest and suppress evidence, conducted a hearing, and gave a lengthy statement explaining his denial of the motion to rehear the pretrial motions. Later, when the matter was raised in the Supplemental Motion for New Trial, Judge Urso again stated that the motions had been ruled on properly, and that he would have ruled the same way.

In considering Johnnie Lee Evans' claim on direct appeal, the Illinois Supreme Court noted that Judge Palmer's alleged "prejudice" was directed toward the attorneys, and not Johnnie Lee Evans himself. Evans, 125 Ill. 2d at 79. Additionally, the Supreme Court observed that Judge Palmer did not indicate that his feelings interfered with his rulings on the pretrial motions, only that they might later impede his ability to give Johnnie Lee Evans a fair trial.

The Illinois Supreme Court conducted an independent review of the record and found that it supported Judge Urso's determination that Judge Palmer's rulings were based on the evidence and were not influenced by any bias or prejudice. Evans, 125 Ill. 2d at 80. The Supreme Court stated:

We note in this connection that there is no evidence that Judge Palmer's rulings on the defendant's motions were motivated by 'unconscious taint,' bias or prejudice, nor does defendant direct our attention to any. Rather, they were objective rulings based on

the evidence before him and were fully supported by that evidence. Accordingly, we decline to grant defendant a new hearing on his motion to suppress.

Evans, 125 Ill. 2d at 80.

Johnnie Lee Evans, himself, did not believe Judge Palmer was biased against him at the time he recused himself. Johnnie Lee Evans filed a motion requesting that Judge Palmer reconsider his recusal. In the motion to reconsider, Johnnie Lee Evans indicated that he was satisfied with Judge Palmer and wished to go to trial before him. Thus, this is not a proper basis for awarding clemency.

5) The Court Reported Statement Was Properly Admitted Into Evidence Even Though It Was Not Videotaped

Johnnie Lee Evans also seeks clemency because his court reported confession was not videotaped. He points out that under the Governor's Commission's proposals both statements and the interrogations leading up to them should be videotaped. Johnnie Lee Evans is asking this Board to overturn the Illinois Supreme Court's express finding that his court-reported statement was voluntary. The Supreme Court stated:

The record discloses no evidence that defendant's waiver of counsel was somehow coerced, or that he was badgered into confessing after purportedly invoking the right to counsel. Indeed, defendant expressly stated that he was well treated by the police officers and that he gave the statement of his own free will.

Evans, 125 Ill. 2d at 80.

What Johnnie Lee Evans 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. In denying his motion to suppress statements, the trial judge expressly found that Johnnie Lee Evans' statement was made voluntarily. Moreover, the jury was instructed pursuant to Illinois Pattern Instruction 3.06-3.07 to consider all the evidence when determining whether or not Johnnie Lee Evans made the statement and how much weight it should be given. Johnnie Lee Evans cannot assert that he was prevented from arguing at trial that his statement was unreliable. It is clear that the failure to videotape his statement had absolutely no effect on the fairness of his proceedings.

6) There Was No Prejudice To Johnnie Lee Evans Because The Forensic Evidence Was Not Analyzed By A Civilian Lab

Johnnie Lee Evans claims that he was prejudiced because the physical evidence in this case was not examined by an independent laboratory, as recommended by the Governor's Commission. As to the physical evidence, there was no prejudice to Johnnie Lee Evans. Johnnie Lee Evans has never made any request for an examination by an independent laboratory. Furthermore, Johnnie Lee Evans has refused to consent to DNA testing. His refusal has precluded any further testing in this case by any laboratory. The only reasonable conclusion from his refusal is that he knows that the results will confirm the guilty verdict rendered by the jury. Furthermore, his refusal raises the question as to whether additional testing of his DNA would implicate him in other uncharged rapes.

B. Response to Claims of Injustice During the Decision To Seek The Death Penalty

1) The State's Attorney Made a Reasoned Decision to Seek Death

Johnnie Lee Evans 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 Court 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, Johnnie Lee Evans 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, his claim must be rejected.

2) Johnnie Lee Evans Was Properly Found Eligible For The Death Penalty Under The Felony Murder Eligibility Factor

Johnnie Lee Evans asserts that he is entitled to clemency because he was found eligible for the death penalty based upon an aggravating factor other than those factors that the Governor’s Commission has recommended be retained. Specifically, the Commission concluded that the current list of 20 factors is overly expansive and therefore unconstitutional. Accordingly, it was suggested that the list be reduced to just five factors: (1) murder of a peace officer or fireman; (2) murder of any person in any correctional facility; (3) multiple murder; (4) murder accompanied by the intentional infliction of torture; and (5) murder of a witness, prosecutor, defense attorney, juror, judge or investigator.

However, the Illinois Supreme Court has expressly rejected the Commission’s logic and held that Illinois’ death penalty statute satisfies the constitutional mandate because it “genuinely narrows the class of individuals eligible for the death penalty and reasonably justifies imposition of a more severe sentence on those Petitioners compared to others found guilty of first degree murder.” People v. Ballard, ___ Ill. 2d ___, 2002 Ill. LEXIS 376 at *73 (No. 88885 August 29,

2002) (citing Zant v. Stephens, 462 U.S. 862, 877, 103 S. Ct. 2733, 2742 (1983)). As the Ballard Court explained, “there are innumerable examples of first degree murders that do not fit within any of the statute's eligibility factors” and “[e]ach provision is narrowly tailored to fit a specific set of facts and circumstances.” Id., 2002 Ill. LEXIS 376 at *74.

Moreover, each of the aggravating factors represents a determination by the General Assembly that certain types of murders are so deplorable that the death sentence may be imposed. Each one is intended to ensure that the most helpless members of our society (such as children, the elderly or disabled persons) are protected against violence or to provide a strong disincentive for the offender to kill the victim. For example, cold, calculated and premeditated murders are properly death eligible because they are limited to situations where the Petitioner has carefully planned the murder over an extended period of time, and the availability of the death penalty may be the only thing which prevents these Petitioners from deciding to actually kill their victims. As the Illinois Supreme Court stated “a Petitioner who contemplates a murder for a substantial period of time, yet still commits it, is set apart from other murder Petitioners in a meaningful way.” People v. Williams, 193 Ill. 2d 1, 36, 737 N.E.2d 230 (2000). Similarly, murders in the course of another felony, such as rape or home invasion, are properly death eligible to help deter the Petitioner from killing the victim. Given these important policy considerations, Johnnie Lee Evans’ request must be rejected.

C. Response to Claim of Injustice During the Trial Stage

1) Johnnie Lee Evans Was Not Denied Adequate Funding To Investigate His Case Or To Retain Experts

Johnnie Lee Evans asserts that he is entitled to clemency because he was not given the benefit of financial assistance from the Capital Litigation Trust Fund to investigate the case and/or

to retain the necessary expert witnesses. However, despite the creation of the Capital Litigation Trust Fund, there is no indication that any capital Petitioner in Illinois, and particularly those prosecuted in Cook County, has ever been deprived of the necessary funds to investigate or retain appropriate experts. Rather, courts have denied various requests which are deemed unreasonable or unnecessary, the same standard which applies for funds under the Capital Litigation Trust Fund. 725 ILCS 124/15(c). Also, the Cook County Public Defender has significant resources available for capital litigation. Therefore, the mere fact that the Capital Litigation Trust Fund was not created until 2000 is irrelevant.

D. Response to Claims of Injustice During the Sentencing and Review Phases

1) The Defense Attorneys Were Competent and Well Prepared For Sentencing

Johnnie Lee Evans has had exhaustive appeals to the Illinois Supreme Court. He previously made allegations of ineffective assistance of counsel. The Illinois Supreme Court conducted a comprehensive assessment of defense counsel's performance at the capital sentencing hearing and found that Johnnie Lee Evans' attorneys provided competent representation. Evans, 186 Ill. 2d at 96. In his Petition for Executive Clemency, Johnnie Lee Evans has alleged a new theory of ineffective assistance of counsel that he has never raised in any of his post trial proceedings.

At the close of the guilt phase of the trial, defense counsel requested a 30-day continuance in order to obtain a psychological evaluation by Dr. Alan Rosenwald. Counsel did not request any additional continuances, and Dr. Rosenwald testified at the sentencing hearing. Johnnie Lee Evans claims that his trial attorneys did not begin preparing for the capital sentencing hearing early enough, and that one of his trial attorneys was later issued a written reprimand and suspended for 30 days by the Public Defender's Office. He does not claim that this case was one of the cases for which the reprimand was issued or the suspension imposed. Although defense counsel were not prepared to proceed with the sentencing hearing immediately after the jury returned its verdict, they requested a continuance in order to complete their preparation for the hearing, and the trial judge granted their request. When the date for the sentencing hearing arrived, defense counsel made no claim that they were not prepared for the sentencing hearing or that they wished to have any additional evaluations of Johnnie Lee Evans completed. The length of time defense counsel requested was adequate to

prepare for the sentencing hearing. See United States ex rel. Henderson v. Page, 2000 U.S. Dist. LEXIS 14540 at *159 (N.D. Ill. September 29, 2000) (rejecting Petitioner's claim that a defense attorney cannot adequately prepare for a capital sentencing hearing in a month). Where counsel requested a reasonable amount of time to prepare, and the Illinois Supreme Court expressly ruled that counsel provided competent representation, there is no basis to award clemency to Johnnie Lee Evans.

2) There Was A Knowing And Intelligent Waiver Of A Jury For Sentencing

Johnnie Lee Evans claims that his attorneys' lack of preparation for the sentencing hearing led him to make an uninformed waiver of a jury for the sentencing. His affidavit filed with the United States District Court in his Habeas case on December 12, 2001, however, indicates that he was not forced to waive a jury for sentencing, but rather made a strategic choice to proceed to bench sentencing. The affidavit states:

13. [Defense counsel Placek and Verdun] first talked to me about whether I should be sentenced by Judge Urso or by a jury after the jury convicted me on May 2, 1984. Marijane Placek told me that she did not think Judge Urso would impose the death penalty because [he] is Catholic and because he had never previously imposed the death penalty.

Thus, the waiver of a jury for the sentencing phase was not the result of defense counsel's inability to proceed to sentencing immediately. Rather, the waiver was a calculated risk based upon defense counsel's assessment of the likelihood that Judge Urso would not impose a sentence of death. Given the devastating aggravation evidence presented at the sentencing hearing, defense counsel wisely advised their client to elect bench sentencing. Defense counsel could reasonably conclude that the shocking evidence in aggravation would have less impact upon an experienced criminal courts judge, than upon a jury of ordinary citizens.

3) The Defense Attorneys Conducted A Thorough Investigation And Presentation Of Available Mitigating Evidence

Johnnie Lee Evans next claims that he should be granted clemency because his attorneys failed to present mitigating evidence from a psychologist and a social worker. This issue has been raised in his federal Habeas Corpus petition and must be addressed and ruled on before Johnnie Lee Evans can be executed. As such, it is not a reason to grant clemency. Furthermore, the Illinois Supreme Court addressed this issue and expressly ruled that counsel's performance at the capital sentencing hearing was effective.

Attached to the state court Post-Conviction Petition were two affidavits: one from a clinical psychologist, Dr. Gerard Girdaukas, and one from social worker Arlene Messner-Peters. Just as he claimed in his Post-Conviction Petition, Johnnie Lee Evans now asserts that if this evidence had been presented at sentencing, he would not have received the death penalty. Johnnie Lee Evans presented his own testimony and that of Dr. Rosenwald, a psychologist, in mitigation. Johnnie Lee Evans gave extensive, detailed testimony regarding neglect, abuse, and sexual molestation from his family, coworkers, and strangers during his childhood and teenage years. He also testified about his marriage and children and explained how his family was separated due to his jail record and his wife's neglect of the children. Johnnie Lee Evans admitted committing all of the rapes with which he was charged, except for the rape of T.Y.. He explained that he committed those crimes due to a "need of affection," and remarked, "I had to prove that I was a man," and "I just wanted somebody to love me." People v. Evans, 186 Ill. 2d 83, 100, 708 N.E.2d 1158 (1999).

Dr. Rosenwald testified that he performed a psychiatric examination of Johnnie Lee Evans and believed that he felt "very impotent and empty and dependent" and "victimized,"

and that he felt anger as a result of neglect and abuse by his family. Dr. Rosenwald described him as “chronically a depressed human being who feels helpless, rejected, abandoned, unloved.” Evans, 186 Ill. 2d at 100.

The Illinois Supreme Court found that the social history evidence described in the affidavit of social worker Arlene Messner-Peters would have been cumulative to the extensive mitigation testimony and would not have had any effect on the outcome of the death sentencing hearing. Additionally, the Illinois Supreme Court observed that this type of evidence is “not inherently mitigating.” Evans, 186 Ill. 2d at 101, citing Stewart v. Gramley, 74 F.3d 132, 136 (7th Cir. 1996). “The judge could have regarded defendant’s troubled life, with his criminal record, as an indicator of defendant’s future dangerousness.” Evans, 186 Ill. 2d at 101. Similarly, the court found that the evidence of mental impairments as described in Dr. Girdaukas’s affidavit was not inherently mitigating. Evans, 186 Ill. 2d at 102, citing Holman v. Gilmore, 126 F.3d 876, 882-84 (1997).

The United States Supreme Court has repeatedly described evidence such as that now offered by Johnnie Lee Evans as a “two-edged sword.” See, e.g., Penry v. Lynaugh, 492 U.S. 302, 324, 109 S. Ct. 2934 (1989). As the Illinois Supreme Court observed in People v. Franklin, 167 Ill. 2d 1, 27, 656 N.E.2d 750 (1995), although this type of evidence may evoke compassion, it may also demonstrate Johnnie Lee Evans’ dangerousness and show that his conduct cannot be deterred. See also People v. Ward, 154 Ill. 2d 272, 336-37, 609 N.E.2d 252 (1992) (evidence about defendant’s troubled childhood is not per se mitigating).

The evidence contained in the Messner-Peters affidavit is not solely mitigating; portions of it are aggravating. For example, the affidavit states:

When he was sixteen years old, Mr. Evans forced his sister Beverly to have oral sex with him in an elevator after he stopped the elevator between floors. After Beverly reported this incident to their mother, Ms. Richardson beat John with an electrical cord and called the police. He spent one night in a juvenile detention center and was released the following day to his uncle. His mother, who wanted Mr. Evans out of the household, registered him for the Job Corps. He waited at home, with the incestual (sic) relationship between Mr. Evans and Beverly continuing, until he left for the Job Corps.

(Pet. Ex. B at 11). The affidavit further indicates that Johnnie Lee Evans was terminated from the Job Corps program after he “defended himself from a homosexual attack by attacking the man with a knife.” (Pet. Ex. B at 12). After marrying Betty Ann Clanton Pruitt and having two children with her, Johnnie Lee Evans and his wife “abused drugs and alcohol,” Johnnie Lee Evans used marijuana daily and reported being intoxicated throughout the day. (Pet. Ex. B at 16)

Among Ms. Messner-Peters’ conclusions was that his dysfunctional childhood resulted in “increased frustration and the inability to control aggressive behaviors” and “the association of love with violence and the inability to function under stress without aggression.” (Pet. Ex. B at 17) Johnnie Lee Evans argues that if the sentencing judge had heard this evidence, he would have found him less culpable and would not have sentenced him to death. To the contrary, this evidence would only have reinforced a finding that Johnnie Lee Evans could not control his aggression and was a danger to society.

Moreover, because the proposed evidence is similar to that which was presented at his sentencing hearing, the additional evidence would not have changed the result of sentencing hearing. Here, Johnnie Lee Evans’ testimony at the sentencing hearing spans 149 pages of the trial transcript. He went into great detail about how he was abandoned by his mother as an infant, was not loved by anyone and was considered a burden by his caretakers, was treated as an outcast, was

physically, sexually, and emotionally abused, was hospitalized several times as a child and eventually had his left eye removed, was badly beaten as a teenager and required 36 stitches in his head, and was unable to find suitable employment as an adult. Most importantly, he was able to provide a first-hand explanation of his feelings about all of this. The sentencing judge was well aware of his troubled childhood and the effect that it had on him. Trial counsel could have reasonably concluded that testimony from Johnnie Lee Evans' own mouth, affirmed by a psychologist, would have been most compelling.

Most importantly, presentation of evidence explaining why Johnnie Lee Evans murdered Adrian Allen would have directly contradicted his own testimony expressly denying that he committed the murder. In his statement in allocution, he expressly denied murdering Adrian Allen.

Here, trial counsel tried to portray Johnnie Lee Evans as abused, unwanted and unloved by his own family. He presented expert testimony in an effort to explain why his background would lead him to commit such a brutal and heinous act upon an innocent sixteen-year-old girl. Nevertheless, even if this evidence attempted to explain the reason for his inhumane actions, it did not excuse them. The trial court did not find such evidence to be sufficient to preclude what it believed to be the proper sentence: death.

4) There Was No Prejudice To Johnnie Lee Evans By His Counsel's Failure To Present Explicit Testimony Stating That He Suffered From An Extreme Mental Or Emotional Disturbance At The Time Of The Crime

Johnnie Lee Evans next claims that he should be awarded clemency because defense counsel was ineffective for failing to investigate and present evidence that he was suffering from an extreme mental or emotional disturbance at the time of the crime, a statutory mitigating factor. This issue has been raised in his federal Habeas Corpus petition, and must be addressed and ruled

on before Johnnie Lee Evans can be executed. As such, it is not a reason to grant clemency.

The Illinois Supreme Court considered this claim in his post-conviction appeal. Despite the filing of affidavits from Dr. Rosenwald, Dr. Gerard Girdaukas and Arlene Messner-Peters attesting that Johnnie Lee Evans was acting under an extreme mental or emotional disturbance at the time of the crime, the Illinois Supreme Court rejected that claim. Further, the court found that Johnnie Lee Evans failed to show that his attorneys were objectively incompetent. Defense counsel developed a sentencing strategy and obtained a psychological evaluation of him by Dr. Alan Rosenwald, a psychologist with experience testifying in death penalty cases. Trial counsel elicited testimony from Dr. Rosenwald that Johnnie Lee Evans had a “long-standing mental disturbance, and that consequently there would be periods of time where he would be acting under extreme duress,” and that “it was highly probable that [Johnnie Lee Evans] was under emotional factors which could contribute to the crimes that he committed.”

The Illinois Supreme Court noted that it would have been difficult for counsel to elicit testimony from Dr. Rosenwald that Johnnie Lee Evans was acting under the influence of an extreme mental or emotional disturbance at the time of the crime when Johnnie Lee Evans had just finished testifying that he did not act in any way at all. Thus, the testimony that he claimed his attorneys should have presented would have been inconsistent with his own testimony. Evans, 186 Ill. 2d at 96-97. The court queried:

Should trial counsel have presented a defense that contradicted defendant's protestations of innocence? Should counsel have labeled their client a liar so they could additionally label him a murderer who acted under an extreme emotional disturbance? Rather, closing argument reveals that trial counsel's sentencing strategy was to portray defendant as the neglected and unwanted victim of an abusive childhood, who raped women in a misguided quest for love. "A reasoned decision to make the best of a bad situation by pursuing a particular line of defense satisfies the constitutional minimum." Kokoraleis v. Gilmore, 131 F.3d 692, 697 (7th Cir. 1997).

Evans, 186 Ill. 2d at 97.

The court also found that Johnnie Lee Evans was not prejudiced, describing the aggravation evidence as "plentiful and significant" and detailing the evidence of defendant's numerous rapes of women on CHA elevators and bad conduct in prison. Evans, 186 Ill. 2d at 97-98. Finally, the court noted that proof of one mitigating factor, by itself, will not always preclude the imposition of the death sentence – rather, the sentencer must carefully weigh all aggravating and mitigating factors in order to reach a fair and just result. Evans, 186 Ill. 2d at 99. Thus, the court held that Johnnie Lee Evans received competent legal representation.

Dr. Rosenwald's post-trial conclusion that Johnnie Lee Evans acted under an extreme mental or emotional disturbance at the time of the crime is dubious. Dr. Rosenwald first examined Johnnie Lee Evans in May of 1984, more than a year after the crime. Furthermore, Dr. Rosenwald failed to consider the information in his confession, given two days after the murder. This information surely was the best evidence of his state of mind at the time of the crime; yet Dr. Rosenwald testified that he did not consider it important.

Johnnie Lee Evans' own statement indicates that there was no particular emotional trigger for his January 1983 attacks on A.W., M.M. and Adrian Allen. On January 6, 1983, he happened

to see A.W. and her two children waiting for an elevator. He followed them onto the elevator, jammed the elevator between floors, threatened A.W. with karate sticks and raped her. Two days later he happened to see M.M. waiting for an elevator. Again, he followed her onto the elevator, jammed the elevator between floors, threatened her with a knife, and raped her. During his mitigation testimony, when asked why he chose elevators for the scene of his crimes, he explained that it was “convenient,” and remarked, “You know, you are going to commit no crime or whatever you do in the open or out there on the sidewalk. . . . I stopped the elevator to commit a crime.”

Notably, in his statements to the police and the Assistant State’s Attorney, Johnnie Lee Evans did not mention any stressful event that may have preceded his attack on Adrian Allen. In fact, in more than one version of his statement, he claimed that it was the victim, and not Johnnie Lee Evans, who “went berserk,” and that he had to stab her to protect himself.

There is no evidence of any emotional disturbance in the court reported statement of Johnnie Lee Evans. Instead, his statement demonstrates that he is a sexual predator who carefully orchestrates encounters with women in elevators because that is the most “convenient” place for him to rape them. Rather than claiming that he acted out of an emotional disturbance, Johnnie Lee Evans said that when he got on the elevator, he “didn’t have anything on [his] mind.” When the man got off the elevator he was left with a prime criminal opportunity, as he explained, “[T]here it was, you know.”

In contrast to his proposed mitigation evidence, the trial court was faced with a great deal of compelling evidence in aggravation. In ruling on his Post-Conviction Petition, the trial judge made it clear that, with or without the additional evidence contained in the Post-Conviction

Petition and supporting affidavits, he would have sentenced him to death. Johnnie Lee Evans should not be awarded clemency based on evidence that had no effect on the sentencing decision.

5) Johnnie Lee Evans Did Not Ask The Illinois Supreme Court To Conduct Proportionality Review Of His Sentence

Johnnie Lee Evans 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. The Illinois Supreme Court has demonstrated that it will address comparative sentencing arguments whenever they are raised by Petitioners in capital cases (see People v. Emerson, 189 Ill. 2d 436, 727 N.E.2d 302 (2000); People v. Palmer, 162 Ill. 2d 465, 491, 643 N.E.2d 797 (1994)), and will vacate a death sentence if it determines that it is excessive in light of the facts of the case and the Petitioner's background (see People v. Smith, 177 Ill. 2d 53, 685 N.E.2d 880 (1997); People v. Blackwell, 171 Ill. 2d 338, 665 N.E.2d 782 (1996)). It is clear that the only reason the Illinois Supreme Court did not review Johnnie Lee Evans' sentence in such a manner is because he did not ask the Court to do so.

CONCLUSION

Johnnie Lee Evans has been the recipient of all the constitutional safeguards and due process protections of our legal system. Johnnie Lee Evans has never made a claim of actual innocence. He claims in his Petition for Executive Clemency that he has suffered numerous injustices during the prosecution of his case. Almost every claim of injustice alleged in his petition has previously been presented to, and argued before, the Illinois Supreme Court. The Illinois Supreme Court determined that all of his claims were without merit. The Illinois Supreme Court found that Johnnie Lee Evans was treated fairly by the judicial system.

Johnnie Lee Evans is a violent serial rapist and murderer. Johnnie Lee Evans preyed on young women in elevators in public housing projects. He stopped the elevators between floors and trapped his victims. Once his victims were unable to escape, he brutally raped them. Over a period of seventy-one (71) days, Johnnie Lee Evans terrorized and victimized at least seven (7) women and sixteen (16) year old Adrian Allen.

Johnnie Lee Evans was justly convicted of the rape and murder of Adrian Allen. He must not be awarded clemency.

RECOMMENDATION

The People of the State of Illinois respectfully request that the Prisoner Review Board recommend to the Governor that Johnnie Lee Evans' Petition for Executive Clemency be denied. Johnnie Lee Evans in his petition requested that the Governor commute his sentence of death to an appropriate sentence other than death. A sentence of death was, and continues to be, the only appropriate sentence for Johnnie Lee Evans.

Respectfully submitted,

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