

OCTOBER 2002 SESSION
PRISONER REVIEW BOARD
STATE OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)	
)	Docket No. \
vs.)	
)	
JUAN CABALLERO,)	Inmate No. N 01002
)	
)	

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

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

—————

HEARING REQUESTED

RICHARD A. DEVINE
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Assistant state's Attorneys.

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INTRODUCTION

Petitioner confessed to the February 24, 1979, murders of 16 year old Frank Mussa, 17 year old Michael Salcido and 19 year old Arthur Salcido. The motive for the murders was that the victims were members of a rival gang. Since the victims were visiting Chicago from a small town, they naively believed Petitioner and his friends when they said they were also from the same gang. The victims made the fatal mistake of bragging about once making a “hit” on Petitioner’s gang.

Each of the three victims was separated from the others and then, one by one, they were butchered by Petitioner and three co-defendants. The site of the killings was the victims’ car. First, Arthur was killed. While the sound of the blood gurgling out of his throat could still be heard, the second victim, Frank, was forced into the car. Petitioner was invited to stab Frank, but he deferred, saying he had more experience with guns. Petitioner, however, cheered on co-defendant Placido LaBoy, while LaBoy virtually cut Frank’s head off.

When LaBoy licked Frank’s blood off his fingers, another co-defendant, Aviles, left to go and throw up. Petitioner, however, having received this tutorial from LaBoy, retrieved the

third victim, Michael. Petitioner forced Michael into the car, past the dead bodies of his brother and friend, past Frank's decapitated head. Then, Petitioner put his knee between Michael's shoulders, pulled Michael's head back and slit his throat. Petitioner and LaBoy then shared the task of stabbing Michael in the chest over and over again.

Petitioner confessed to these crimes. When asked whether he would do it again, he said: "I'd kill Michael for sure, but I don't know about the other two." People v. Caballero, 102 Ill.2d 23, 464 N.E.2d 223, 234 (1984).

Petitioner is a killer. On his first time out, he managed to slaughter three people. He said he would do it again. He does not deserve mercy.

I

HISTORY OF THE CASE

A jury found petitioner guilty of the gang-related triple homicide of 19 year old Arthur Salcido, 17 year old Michael Salcido and 16 year old Frank Mussa. The same jury sentenced petitioner to death.

The murders occurred in 1979. Four men were responsible for the murders: petitioner, Luis Ruiz, Placido LaBoy and Nelson Aviles. In 1980, petitioner and co-defendant Ruiz were tried simultaneously by separate juries who convicted them and sentenced them to death. People v. Caballero, 102 Ill.2d 23, 464 N.E.2d 223, 225 (1984).

In 1988, Aviles was apprehended. He agreed to testify against LaBoy. A jury found LaBoy guilty of the three murders, but declined to sentence him to death. LaBoy was sentenced

to three consecutive sentences of natural life. (LaBoy Record, JJ 57-58)

Aviles pled guilty and was sentenced to 40 years. People v. Caballero, 179 Ill.2d 205, 688 N.E.2d 658, 663 (1997).

In 1994, Ruiz' death sentence was vacated. People v. Ruiz, 177 Ill.2d 368, 686 N.E.2d 574 (1997). The re-sentencing hearing has not yet been held.

Petitioner's sentence of death is still in effect.

Petitioner's case has been before the Illinois Supreme Court five times. The first time was petitioner's direct appeal in which the court affirmed the convictions and death sentence.

People v. Caballero, 102 Ill.2d 23, 464 N.E.2d 223 (1984) (Caballero I)

The second appeal was the result of the dismissal of petitioner's first post conviction petition. The court reversed the lower court and remanded for a hearing on the issue of the effectiveness of defense counsel's representation at sentencing. People v. Caballero, 126 Ill.2d 248, 533 N.E.2d 1089, 1102 (1989) (Caballero II).

After the hearing, the lower court found that defense counsel had been effective at sentencing and denied the post conviction petition. The Illinois Supreme Court affirmed.

People v. Caballero, 152 Ill.2d 347, 604 N.E.2d 913, 921-22 (1992) (Caballero III).

Petitioner then filed a successive post conviction petition alleging that his death sentence is constitutionally disparate to co-defendant LaBoy's natural life sentences. The lower court dismissed the petition because it was successive. The Illinois Supreme Court reversed and remanded for a hearing on the issue of disparate sentences. People v. Caballero, 179 Ill.2d 205, 688 N.E.2d 658, 663-64 (1997) (Caballero IV).

After the hearing, the lower court found that petitioner's sentence is not disparate to LaBoy's and denied post conviction relief. Petitioner has appealed that ruling and his case is pending before the Illinois Supreme Court.

II

FACTS OF THE CASE

On February 24, 1979, petitioner and three other offenders murdered 16 year old Frank Mussa, 17 year old Michael Salcido and 19 year old Arthur Salcido.

In Caballero I, the Illinois Supreme Court recounted the facts of the murders as follows.

One of the victims, Michael Salcido, was a Chicago resident. Following a visit to Princeton, Illinois, to see his brother Arthur, the two brothers and a friend, Frank Mussa, drove from Princeton to Chicago on February 24, 1979, in order to return Michael to his home. The three youths arrived in Chicago around midnight, visited with Michael's mother at her apartment, and then proceeded to a neighborhood restaurant at about 1 a.m.

At the restaurant, the three encountered the defendant and Luis Ruiz, Placedo LaBoy, and Nelson Aviles. Although they were strangers to each other, Michael approached Ruiz and asked if he knew where he could buy some marijuana. Ruiz professed ignorance as to a possible source. Michael sought to establish a relationship with the strangers by asserting that he knew a Jose Cortez, a member of a gang known as the Latin Eagles. Ruiz responded by asking Michael if he was an Eagle. Michael answered yes and went

on to boast that he had assisted Cortez in killing members of a rival gang, the Latin Kings. Unbeknownst to Michael, Ruiz was actually a member of the Latin Kings and not the Latin Eagles. Ruiz, however, did not reveal this to Michael, Arthur and Frank. Instead, Ruiz said that he, Caballero, Aviles, and LaBoy were Eagles like Michael. Ruiz then said that he could take them to buy marijuana.

According to a confession signed by Caballero, all seven youths then entered the car which Michael and his friends were using. Michael, Arthur, and Frank occupied the front seat while Caballero, Ruiz, LaBoy and Aviles occupied the back seat. Pursuant to Ruiz' instructions, the car was driven into an alley and parked. The occupants of the back seat then alighted and instructed Michael, alone, to bring money and follow them around the corner. After the corner was turned, Ruiz explained the deception to Michael and expressed his anger to Michael for helping to kill his friends. This was followed by the four Kings beating Michael until they were "satisfied." Ruiz and LaBoy then returned to the car, took control of the wheel, and drove around the corner to pick up Michael, Aviles, and Caballero. After everyone was in the car, the four Kings began to talk in Spanish so the other boys

would not understand. The subject of the conversation was that Michael and his friends should be killed because they could see their faces and could identify them. They then drove into a second alley.

After parking in the alley, Caballero and LaBoy took Michael and Frank out of the car, down the alley, and into a gangway where Laboy stood guard over them with a gun. Caballero then returned to the car where he saw Aviles stabbing Arthur and heard him gasping for breath and the gurgling of blood as it came out of his throat. LaBoy then brought Frank from the gangway to the car. At this point, Caballero was offered the opportunity to stab Frank; however, he stated that he would prefer to shoot him. Ultimately, Caballero encouraged LaBoy to cut Frank's throat, which was accomplished, and Caballero went to retrieve Michael. Caballero returned with Michael, who was told to lie in the back seat of the car. As Michael began to enter the car, he evidently observed the bodies of his friends in the front seat as Caballero related he had to push Michael headfirst into the car. Caballero then pulled Michael's head back, slit his throat, and then stabbed Michael in the chest several times. Following the murders, the four men rummaged through

Michael's suitcase. Socks from the suitcase were used in an unsuccessful attempt to wipe the car clean of fingerprints so, as defendant stated, "we wouldn't get caught." They then left the scene. Caballero and Ruiz were arrested and charged on March 3, 1979, after the police matched Ruiz' fingerprints to a fingerprint on the car.

Further evidence against the defendant included the testimony of Julio Lopez, also a Latin King, which was that he saw the four Kings together on the night of the murder in the vicinity of the crime. Dr. Robert Kirschner, a pathologist, also testified regarding the stab wounds on the victims. His description of the wounds found on Michael's body corroborated Caballero's version of how Michael had been killed. Following the defense presentation, Raymond Wesolowski testified in rebuttal for the State that he was arrested and placed in the cell next to Caballero's. Wesolowski testified that they shared a cigarette. He asked defendant what he was "in for." Caballero related that he had been charged with murder. Caballero asked Wesolowski if he had read about the three Latin Eagles that had been killed. When Caballero was asked if he had killed them, he said that he had.

Caballero I, 464 N.E.2d at 226-27.

... After giving a statement, the assistant State's Attorney asked him [petitioner] if he had to do it over "would he do it again." Defendant stated that he would "if it was a sure thing." The assistant State's Attorney then said "there is no such thing as a sure thing. You got caught." Defendant replied "a lot of Kings kill people without getting caught." The assistant State's Attorney again replied: "Well, you got caught, Juan. would you do it if you had to do it all over again." The defendant replied: "I'd kill Michael for sure, but I don't know about the other two."

Caballero I, 464 N.E.2d at 234.

III

REASONS FOR DENYING THE PETITION

A.

PETITIONER'S SENTENCE WAS NOT DISPARATE TO LABOY'S.

The defense claims that Petitioner's sentence of death is disparate to LaBoy's

sentence of natural life.

The following three factors determine whether a defendant's sentence is disparate from a co-defendant's: (1) whether the defendant is more culpable than the co-defendant; (2) whether the defendant's rehabilitative prospects are demonstrably worse than the co-defendant's; and (3) whether the defendant's criminal history is significantly worse than the co-defendant's. People v. Kitchen, 159 Ill.2d 1, 636 N.E.2d 433, 452 (1994),

In the case at hand, petitioner was culpable for each of the three murders. He guarded Frank Mussa and Michael Salcido while his companions killed Arthur. He begged off killing Frank only because he wanted to shoot him instead of stabbing him. He encouraged LaBoy to "slice" Frank's throat. Having quickly learned the technique of slicing throats from LaBoy, petitioner then "sliced" Michael's throat and stabbed Michael in the chest multiple times. Thus, petitioner was responsible for each of the three murders and his culpability was no less than LaBoy's. The defense argument that petitioner was simply a "follower" is not borne out by the evidence.

Defendant's rehabilitative prospects are dismal in that he proclaimed that he would kill Michael again if only he were sure he would not get caught. LaBoy's prospects for rehabilitation are no better than petitioner's since LaBoy committed three more crimes after the triple homicide.

Defendant's criminal history, other than the triple homicide consists of only one conviction for unlawful use of a weapon. However, as the post conviction court pointed out, petitioner had no further opportunity to commit crime since he was incarcerated for the triple homicide. Laboy was not immediately incarcerated and his history includes three more

convictions occurring after the murders at issue here. Defense counsel represented that LaBoy was convicted of a gang related armed robbery on May 8, 1979; robbery of a car on August 2, 1979; and aggravated kidnapping on June 10, 1987.

Thus, just as the post conviction court found, petitioner's sentence was not disproportionate to LaBoy's. Petitioner was an active participant in the murders. He was not a follower. He showed no remorse. Rather he proclaimed his willingness to kill again if only he did not have to pay the consequences.

This was a vicious murder – a virtual slaughter. The death penalty is warranted in this case. Just because one jury was lenient on LaBoy should not mean that petitioner somehow deserves clemency.

B.

**THE NEW ILLINOIS SUPREME COURT
RULES ARE NOT TO BE APPLIED
RETROACTIVELY. FURTHER, THE
COMMISSION RECOMMENDATIONS ARE NOT
LAW AND MAY NEVER BECOME LAW.**

Petitioner asserts that he is entitled to clemency because he did not receive the benefit of the changes to the Illinois capital sentencing system which have recently been adopted, proposed

or enacted. By relying upon a laundry list of new Supreme Court Rules, statutes and proposals from the Governor's Commission on Capital Punishment which were not available at the time of his trial, petitioner claims that his trial (as well as that of every other capital defendant in Illinois) was by definition fundamentally unfair. However, the Illinois Supreme Court has expressly rejected the claim "that every capital trial has been unreliable and that all appellate review has been haphazard" (People v. Hickey, ___ Ill. 2d ___, 2001 Ill. LEXIS 1080 at *57 (No. 87286 September 27, 2001)). Rather, the Court held that the additional safeguards included in its rules governing capital cases are not retroactively applicable because they "function solely as devices to further protect those rights given to defendants by the federal and state constitutions" and that "[a] violation of procedures designed to secure constitutional rights should not be equated with a denial of those constitutional rights." Id. at *63, 64.

Thus, the fact that the Court, the General Assembly and the Governor's Commission have endeavored to improve the process does not mean that an injustice would result simply because the recent changes were not applied retroactively to petitioner's case. Instead, a true injustice would only result if it were reflexively determined that petitioner's trial was fundamentally unfair without any examination of the proceedings themselves. It is telling, however, that petitioner has not even attempted to demonstrate how the recent changes would have affected the outcome of the proceedings. Moreover, petitioner ignores the fact that every court which has examined the proceedings in his case determined that they were fundamentally fair and that he was not unduly prejudiced in any manner.

Petitioner asserts that he is entitled to clemency because the new Supreme Court Rules governing capital cases were not applicable to his proceedings. However, the Illinois Supreme

Court has clearly held that the amendments to its rules are not retroactively applicable. Hickey, 2001 Ill. LEXIS 1080 at *65.

Vienna Convention

Petitioner asserts that he is entitled to clemency because he is a foreign national and he was not properly notified of his rights to contact his consulate pursuant to the Vienna Convention. However, every court that has examined this issue has determined that a violation of the treaty does not warrant suppression of evidence or dismissal of the indictment as a remedy. People v. Kim, 318 Ill. App. 3d 1078, 1080, 743 N.E.2d 656 (1st Dist. 2001); People v. Villagomez, 313 Ill. App. 3d 799, 812, 730 N.E.2d 1173 (2000); United States v. Li, 206 F.3d 56, 63 (1st Cir. 2000) (noting that the State Department believed that the only remedies for failure of consulate notification under the Vienna Convention are diplomatic, political or those that exist between states under international law and that the Vienna Convention does not create individual rights).

Qualifications Of Defense Counsel

Petitioner asserts that he was represented at trial by an “obviously overmatched attorney.” Petitioner seems to overlook one detail: his confession. How was any attorney going to win Petitioner’s case? Petitioner admitted to slicing Michael’s throat, stabbing Michael in the chest and encouraging LaBoy while he tried to cut Frank Mussa’s head off. No amount of capital litigation training would have made a difference in the outcome of this case.

Adequate Funding

Petitioner asserts that he is entitled to clemency because he was denied adequate funding to investigate the case and to retain the necessary expert witnesses. However, despite the creation

of the Capital Litigation Trust Fund, there is no indication that any capital defendant in Illinois, particularly those prosecuted in Cook County has ever been deprived of the necessary funds to investigate or retain appropriate experts. Rather, courts have denied various requests 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.

Discovery Depositions

Petitioner argues that he should have been allowed to depose the witnesses in his case. Once again, Petitioner overlooks the fact that he was the primary witness in his case. His confession is what convicted him and sentenced him to death. Thus, little would have been gained by deposing the other witnesses. Furthermore, the “inconsistencies” Petitioner refers to all occurred on the record during the various trials. Obviously, Petitioner’s statement could be used only against him. Thus, at Laboy’s trial, the People were confined to Aviles’ testimony and Aviles saw things at a different angle than Petitioner. Depositions at the time of trial would not have changed any of this. Aviles was not even available to be deposed until 10 years after Petitioner’s trial.

Videotaping

Petitioner seeks clemency because his confession was admitted into evidence even though it was not videotaped, and 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. Further, Petitioner testified at trial and told the jury that his statement was not voluntary. The jury obviously rejected this testimony since it found him guilty. Moreover, the Illinois Supreme Court extensively reviewed the testimony given at the hearing on the motion to suppress and the trial court's findings. The Illinois Supreme Court agreed that Petitioner's statement had been given voluntarily. People v. Caballero, 102 Ill.2d 23, 464 N.E.2d 223, 228-30 (1984). Thus, there can be no question but that Petitioner was afforded every opportunity to challenge the circumstances under which his statement was given.

CONCLUSION

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

Respectfully submitted,

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