

OCTOBER 2002 SESSION
PRISONER REVIEW BOARD
STATE OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)	
)	Docket No.
vs.)	
)	
KENNETH ALLEN,)	Inmate No. 721058
)	
)	

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
STATE'S ATTORNEY OF COOK COUNTY

By: MICHAEL O'BRIEN
JAMES E. FITZGERALD
Assistant State's Attorneys

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I

HISTORY OF THE CASE

Defendant pled guilty to the murders of two police officers. He represented himself at trial and the sentencing hearing. When the Office of the State Appellate Defender informed the Illinois Supreme Court that defendant did not wish to appeal his death sentence, the Court, noting that all sentences of death are automatically appealed to that Court regardless of defendant's wishes, ordered that the circuit court allow the late filing of a motion to withdraw the plea of guilty. People v. Allen, 79 Ill. 2d 471 (1980). Once the direct appeal was heard, the Court remanded the case to allow both parties to conduct a complete psychological, psychiatric and neurological examination of defendant. People v. Allen, 101 Ill. 2d 24 (1984). Upon remand, the circuit court found that defendant was unfit to stand trial. That finding continues to this date per the conclusions of the Department of Mental Health. Defendant remains in the custody of the Chester Mental Center to this day.

II

FACTS OF THE CASE

The defendant, Kenneth Allen, was charged by a 7 count information, Number 79-1-1283, with the murders of two Chicago police officers. (R. C1466-1475) The facts forming the basis for the charges arose in late the afternoon of March 3, 1979, when the heavily armed defendant opened fire on two unsuspecting police officers who had just concluded a routine traffic stop of two individuals not involved with defendant. As Officers William Bosak and Roger Van Schaik walked back to their car, the defendant pulled up in his car in the opposite lane of 115th Street in Chicago, aimed through the open window of his car and murdered Officer Bosak by shooting him three times. In the gun battle that ensued, the defendant repeatedly wounded Officer Van Schaik. The second murder was committed when the defendant stood directly over Roger Van Schaik who was already wounded, and was pleading for his life and shot him twice in the face at point blank range.

Following a jury finding of fitness to stand trial presided over by the Honorable Frank B. Machala (R. 782), the defendant pleaded guilty as charged. On December 3, 1979, Judge Machala accepted the pleas and entered judgment on the first four counts. (R. 200, 201) On January 16, 1980, following a sentencing hearing held pursuant to III. Rev. Stat. 1977, ch. 38, sec. 9-1(d) and (g) the defendant was sentenced to death. (R. 1120)(R. CI607-1608). On March 13, 1980, in a per curiam order, the Illinois Supreme Court, on its own motion, appointed the State Appellate Defender for the purpose of an appeal of the defendant's conviction and sentence pursuant to the automatic review provisions of III. Rev. Stat. 1977, ch. 38, sec. 9-I(i) and Supreme Court Rule

606(a)(R. CI612-1613) The brief submitted on defendant's behalf was prepared pursuant to that order and was filed without the consent of the defendant. R. C1777)

THE INCIDENT OF DECEMBER 13, 1978

The Chicago police were initially contacted by the defendant's common-law wife, Ms. Bianca Smith, on the evening of December 10, 1978. Ms. Smith informed the police that she was having "problems" with the defendant and that he was armed. (R. 942, 1092) In response to this domestic complaint, officers proceeded to the residence of the defendant at 10127 S. Aberdeen in Chicago. Upon arrival at this address, the defendant refused to allow the two uniformed police officers entry into the home. "The officers at the time did not enter [the defendant's] premises, because they did not have proper jurisdiction." (R. 942, 1092) Apparently the domestic situation was not resolved and Ms. Smith left the defendant.

Bianca Smith again contacted the police three days later, on the morning of December 13, 1978. Once again, Ms. Smith stated that there was a man with a gun at 10127 Aberdeen and she requested the assistance of police for the purpose of picking up some of her personal belongings and leaving. (R. 932, 1043A) Following this complaint, at approximately 10:30 that morning, several police officers were dispatched to the defendant's residence. The defendant believed that he was "within his rights" as lease holder of the property to prevent Ms. Smith and the police from entering the house. (R. 932, 1043) In order to demonstrate his feelings, the defendant then armed himself and displayed the rifle to police. (R. 933)

Lieutenant Robert Hanley of the 22nd District Tactical Unit arrived at the Aberdeen address in the late morning hours of December 13, 1978, to find several uniformed police

positioned behind the fenders of their squad cars. The defendant was standing on the front doorstep with a bolt-action rifle held at "high port."¹ (R. 1088) Accompanied by Sergeant Martin, the lieutenant ran two or three houses south of the 10127 address and approached the defendant's residence through back yards. Lieutenant Hanley then came up along-side the defendant's building and positioned himself at the corner of the house, approximately 15 feet away from where the defendant stood. Hanley peered around the corner of the house and attempted to initiate a conversation with the defendant. (R. 1087-1089) The defendant replied that, "the next fucking pig that puts his foot on my property, I'm going to blow his head off." Lieutenant Hanley continued in his efforts to resolve the dispute "before innocent people were injured." The defendant claimed that policemen were "laughing and smirking" at him as they cocked and uncocked their pistols. The defendant looked back at Lieutenant Hanley, then gazed at the other policemen positioned in front of the building and said, "you mother fuckers are all going to pay for this." (R. 933, 1090)

The defendant went into the house, only to reappear a minute or two later carrying what appeared to be a M-16, with magazine pouches on his belt and a .45 caliber automatic in his pants. (R. 1090) The defendant was positioned in front of the house holding a weapon across his chest when Commander James B. Delaney of the 22nd Police District arrived on the scene. Commander Delaney assumed command and attempted to negotiate the surrender of Kenneth Allen. (R. 1044) After face to face negotiations lasting approximately 2½ hours failed, the defendant went inside the house and further negotiations were conducted by telephone. (R. 1046) At some point thereafter, Commander Delaney was admitted entry into the defendant's residence and negotiations continued

¹ "High port" is a term of art used to describe the holding of a rifle at a 45 degree angle in front of the chest. (R. 1088)

in front of a television crew. The defendant eventually surrendered to police without any shots being fired. This confrontation with police lasted approximately 19 hours. Based upon his observations, Lieutenant Hanley never questioned the defendant's sanity and he opined that the defendant was fully aware of his actions. (R. 1097)

On the following day, December 14, 1978, Judge Everette Braden conducted a hearing to set the defendant's bond on weapons charges stemming from the incident with police. As a result of that hearing, Judge Braden raised the initial \$5000 bond that had been set, increasing it to \$20,000. On that same date, Judge Braden issued a search warrant with respect to the defendant's 10127 S. Aberdeen address.

On December 14, 1978, Investigator Barry W. Costello of the Chicago Police Department executed the search warrant signed by Judge Braden. (R. 1073) No one was home when the police arrived. (R. 1081) The defendant stated that he was still in police custody at this time. (R. 934) In executing that warrant, Investigator Costello was compelled to forcibly enter the premises by breaking down "burglar bars and the door to the home." (R. 1081) Once inside, the police then forcibly opened the metal cabinet used by Kenneth Allen to store firearms. (R. 1084) Investigator Costello recovered the following firearms from within that metal cabinet:

1. one Colt .45 semi-automatic pistol;
2. one Smith and Wesson revolver, model number 57;
3. one Smith and Wesson revolver, model number 27;
4. one Colt .357 Python revolver;
5. one .44 magnum Super Blackhawk revolver;
6. one Winslow seven millimeter rifle with scope;
7. one Weatherby 12-gauge shotgun;

In addition to the many guns recovered, over one thousand rounds of ammunition of various types were confiscated. (R. 1082, 1083)

The defendant returned home to find these guns were gone, confiscated by police. Kenneth Allen then found a copy of the search warrant that Investigator Costello had left in the house. He was greatly angered by these events. (R. 934, 935) In response to these actions by police, the defendant engaged an attorney in an effort to get the firearms back. The attorney, Mr. Kermit Coleman, informed the defendant that in all likelihood he would be unable to retrieve these weapons. The defendant stated he was "upset about, at minimum the financial loss involved." (R. 935)

THE EXECUTIONS

Officers William Bosak and Roger Van Schaik were partners, assigned to the tactical unit of the Fifth District of the Chicago Police Department. As tactical unit officers, Bosak and Van Schaik wore civilian clothes and drove in an unmarked police car. (R. 242, 243) William Bosak, a 13 year veteran of the Chicago Police Department, was married and the father of two young girls, ages 9 and 7. His partner, Roger Van Schaik, had been married only one year and one half and was the father of a 14 month old child. (R. 235, 236, 238) The officers were working the 9:00 a.m. to 5:00 p.m. shift on March 3, 1979.

Early that afternoon, at approximately 1:30 p.m., the defendant visited a locksmith and glazier shop located at 233 East 115th Street in Chicago, only one block from a Chicago police station. (R. 1067) The defendant was dressed in a faded military type field jacket. (R. 1069) He had some unusual questions to ask of the shop's proprietor, Mr. Stanley Evans. The defendant viewed some samples of bullet proof glass available in the shop and asked Mr. Evans whether such glass was installed in police cars. Evans replied that this type glass was not found in squadrols, but was

installed in the riot wagons. In response, the defendant pulled a .45 caliber bullet out of his pocket and asked whether it could penetrate the glass. Mr. Evans indicated that it would not. (R. 1068) This was the extent of their conversation. (R. 1069)

Some 2½ hours later, at approximately 4:00 p.m., Mr. Melvin Taylor was driving a gold 1972 Ford Pinto wagon northbound on Racine Avenue just south of 115th Street in Chicago. (R. 291, 292, 883) Accompanying Mr. Taylor was his 21 year old passenger, Mr. William Chism. (R. 303) As they approached the stoplight at the intersection of Racine and 115th, they saw a police car just west of them on 115th Street. Just as Mr. Taylor turned right at the intersection and proceeded east on 115th, the police flashed a spotlight through their back window. Mr. Taylor curbed his car in front of an auto shop on 115th, just east of May Avenue. The unmarked police car pulled up just behind them, somewhat toward the middle of the street. (R. 292, 293) Officers William Bosak and Roger Van Schaik, both in plainclothes, exited their car and approached Mr. Taylor's Pinto on opposite sides.

Officer Donald Cranley, another policeman assigned to the 5th District Tactical Unit was driving with his partners eastbound on 115th in the vicinity of May Avenue. He saw Officer Bosak outside their blue unmarked squad car and Officer Van Schaik exiting that car. Officer Cranley also observed the “gold Pinto wagon” that they had curbed. Cranley slowed down to see whether they needed any assistance, and Officer Bosak waved them on saying everything was under control. (R. 883, 884) After being assured that everything was fine, Officer Cranley and his partners left the vicinity. (R. 885)

Officers Bosak and Van Schaik then continued their duties, asking both occupants of the Pinto to step out of the car to conduct a protective search. (R. 294) Mr. Taylor and Mr. Chism were

cooperative, and as one officer asked routine questions the other went inside the Pinto. The only item retrieved from the car was a bag of peanuts and Mr. Taylor jokingly commented that the officer had taken some; the other officer then asked if he could share and Taylor laughed. The officers told them they were free to leave. (R. 296)

As Mr. Taylor and Mr. Chism turned to go back into their car, shots rang out. (R. 296, 308) Mr. Taylor turned around and saw Officer William Bosak lying in the street.

Stalking the officers, the defendant had pulled up in a brown Ford in the westbound lane of 115th Street, directly across from their car. (R. 147, 937) He had seen the officers conduct the traffic stop of Mr. Taylor and Mr. Chism. He watched as the officers walked back to their car. As William Bosak (whom the defendant referred to as the "pug-nosed officer") approached his squad car, Kenneth Allen produced a .45 caliber, semiautomatic, hand gun, opened his car door, aimed through the open window of that door, and repeatedly shot the unsuspecting officer in the back, emptying his pistol. (R. 147, 937)

Melvin Taylor then ran to his car and started the engine. (R. 297) Upon hearing the shots, his friend, William Chism, turned to his right and saw the defendant's car, which was stopped across the street. Both Taylor and Chism saw the defendant, Kenneth Allen, firing a pistol held with two hands through the open window of that car. (R. 297, 298, 309, 310) Mr. Taylor crouched down in his car and looked in the rearview mirror for Chism. Taylor "pulled off a little bit" and William Chism opened the door to the passenger side of the car. Chism slipped and fell in the street as he was getting into the car. After going forward another 40 or 50 feet, Melvin Taylor stopped, enabling William Chism to catch up to the car and get in. (R. 299, 300, 310)

James Oliver, an off-duty Chicago policeman, was driving in a police department "limousine-type" squad car with his five year old daughter in the vicinity of 115th and May, about 4: 15 that afternoon. (R. 245) He saw the Ford Pinto of Melvin Taylor and the unmarked squadrol of Bosak and Van Schaik facing east on 115th Street. As he approached, Officer Oliver saw Officer William Bosak lying in the street by the driver's side, front wheel well of their unmarked squad car. (R. 248) At that time, Mr. Taylor was pulling away from the curb at a slow rate of speed in the Pinto station wagon, east-bound, while Mr. Chism was running toward that car. (R. 249)

While making a U-turn, Officer Oliver then saw a squad car coming from the west. He also noticed the defendant's brown Ford parked in the westbound lane of 115th Street, across from the unmarked car of Basak and Van Schaik. (R. 250, 251) Officer Van Schaik and the defendant were at opposite ends of the unmarked squad car engaged in a gun battle. (R. 251) Upon completing the U-turn, Oliver proceeded east in pursuit of Mr. Taylor's Pinto. Based upon what Officer Oliver had observed, he mistakenly believed that the occupants of that car were directly involved in the shooting. He followed the Ford Pinto to the vicinity of 107th and Parnell in Chicago, where he called for additional police assistance. (R. 253, 254)

Meanwhile, the defendant continued his attack. Mr. Sam Miles, a resident of the area, was in his home when he heard the shots. He looked out the front window and saw the defendant standing towards the front of the unmarked car and Officer Van Schaik standing at its rear. (R. 323, 324). They were firing upon one another with handguns. Suddenly, a stray bullet came through Mr. Miles' window, forcing him to back away. (R. 328) Watching from a different vantage point, Mr. Joseph Jackson, another homeowner on the street, looked out his window and saw the prone and lifeless body of William Bosak lying in the street. (R. 336)

The defendant and Officer Van Schaik continued to exchange shots as they circled the squad car in pursuit of one another. (R. 377) When the shooting momentarily stopped, it appeared to eyewitnesses that Officer Van Schaik had run out of ammunition and was “Only trying to evade being shot.” (R. 343, 357) Kenneth Allen returned to his car and retrieved a .30 caliber carbine rifle with a “paratrooper” type scope. Now armed with a rifle, the defendant went to the front of the police car and exclaimed, “I have you now”, and fired. (R. 328, 341, 377, 397)

Officer Van Schaik made his way to the passenger side of the squad car, grabbed the hand microphone of the police radio and began yelling for help, saying that he was wounded and that his partner was down. (R. 149, 358, 363, 398) After firing two or three times, the defendant's rifle malfunctioned, but Officer Van Schaik, wounded and without ammunition was unable to seize upon the opportunity. (R. 343, 390, 399)

Kenneth Allen picked up the .38 caliber service revolver laying near the corpse of William Bosak. (R. 357, 387, 399) Officer Van Schaik then fell on his back toward the rear of the squad car. It appeared that he had been shot again. (R. 344, 379, 386)

As the defendant approached, Roger Van Schaik made a futile attempt to push himself away from the defendant by placing his palms down and moving in a backward fashion. (R. 379, 400) Officer Van Schaik repeatedly pleaded with the defendant, yelling “Oh, God, please don't shoot.” (R. 379, 401) The defendant walked up to the officer, stood directly over him, and executed Roger Van Schaik by shooting him two times in the face and head at point blank range. The murder weapon was the service revolver that had belonged to Officer William Bosak. (R. 345, 380, 401)

Dr. Robert J. Stein, the Chief Medical Examiner of Cook County, performed the autopsies of the murdered officers. His examination of the corpse of William Bosak revealed a number of bullet wounds of both entrance and exit, as well as a type of bullet wound known as a "slap abrasion" wound. (R. 906) There was a bullet wound of entrance present in the left anterior chest wall which perforated the lung and exited the left side of the back. In addition, a bullet was removed from the left lateral portion (the left side) of the chest. (R. 907) An examination of Officer Bosak's back also revealed a bullet wound of entrance. The bullet wound tract extended from right to left, angulating downward, perforating a portion of the liver as well as lacerating the heart, and the bullet was retrieved from the left side of the chest. Also present was a bullet wound of entrance to the left buttock. This wound tract extended from back to front, fracturing the pelvis, where the bullet was retrieved. (R. 907, 908) Finally, the "slap abrasion II type wound" appeared on the upper portion of the right hand, and consisted of denuded superficial hairs of the skin compatible with the projectile of a bullet. (R. 908) A total of six wounds appeared on the body. (R. 917) Dr. Stein opined that the wound to the back with involvement of the heart caused the death of William Bosak. (R. 909)

The external examination of Officer Roger Van Schaik revealed multiple gunshot wounds to the head, the back, the arms, the mouth and the neck. (R. 912) The wound to the head entered the right parietal region, which is to the right hand side of the back of the head. The wound tract extended from right to left and lacerated the brain, the bullet exiting the left parietal region just above the ear. Another bullet wound of entrance was to the right upper lip. The wound tract extended from front to back towards the vertebrae and involving the mouth, where the bullet was retrieved.

A wound of entrance and exit appeared to the upper portion of the right side of the back. The wound tract extended from right to left and exited in the middle of the spine itself. Another bullet wound of entrance and exit appeared in the right upper arm and a number of "slap abrasion" type wounds appeared in the neck area. In sum, the examination of this body revealed seven bullet wounds. Dr. Stein opined that the wound to the head with involvement of the brain caused the death of Officer Roger Van Schaik. (R. 912-914)

THE ARREST

Officer Daniel Franklin and his partner Gary Walker received an emergency call for help while on duty at approximately 4:10 p.m. on the afternoon of March 3, 1979. They sped to the scene of the executions, travelling from 60 to 70 miles per hour westbound in the eastbound lanes of 115th Street. (R. 257, 260, 261)

Upon arrival at the scene, Franklin and Walker saw a brown Ford facing westbound with the driver's door open and the unmarked squad of the fallen officers parked alongside the curb facing eastbound. (R. 262, 263) The officers brought their car to a stop about five feet from the unmarked squad and saw the body of slain Officer William Bosak lying face down by the front tire of that car. (R. 265, 283)

A male African-American, dressed in a black turtleneck and an army fatigue jacket was bending over the body of Officer Van Schaik. (R. 264, 283, 284) The officers exited their squad car and approached on foot until they were within 10 feet of the individual and the downed officers. (R. 265) They did not know whether this person was the perpetrator or someone rendering aid. (R. 151) That person, Kenneth Allen, then turned and faced the approaching officers. He was carrying

the .30 caliber carbine rifle in his right arm and had the .38 revolver of William Bosak tucked into his belt. (R. 151, 265, 284) After seeing the officers he quickly jumped into the open door of the brown Ford, "hit the gas pedal," and sped westbound toward Racine. (R. 266, 285) Officer Franklin fired one shot at the fleeing auto. (R. 285)

Defendant drove west to Racine Avenue where he turned around in the parking lot of the J & S Auto shop at that location and then headed back east for a renewed attack upon police. As Officer Walker stated, "[w]e were there, standing over the two bodies." (R. 285) Officer Franklin stood in the middle of the westbound lanes of 115th street. The defendant steered his car directly at that officer, as he headed east in the westbound lanes. As the car approached, Officer Franklin saw that the defendant held the .30 caliber carbine semi-automatic rifle outside the window, while he crouched down and guided the car by peering under the steering wheel and steered with his right hand. (R. 267) Again, Kenneth Allen opened fire on police. (R. 268)

Officer Franklin fired two shots "as he was coming at me," and then jumped out of the path of the speeding car, firing one more shot as the defendant passed by. Defendant proceeded east towards Halsted Street.

At this juncture, Officer James Treacy and his partner, Officer Edward Todd, arrived on the scene. They first observed the squadrol of Officers Franklin and Walker. (R. 420, 422) Further west on 115th Street they saw the unmarked car of Officers Bosak and Van Schaik and the defendant's brown Ford. (R. 422, 423, 431) They also saw the defendant initially head west, then turn around and head back toward them. They stopped, and as the defendant approached, both assumed firing positions behind the squadrol doors. The defendant was firing at them and Officer

Treacy returned fire, emptying his revolver. (R. 425, 430) However, the defendant again managed to elude police and continued eastward. (R. 425)

Officer Franklin ran over to Roger Van Schaik, but it appeared that he was dead. He then went to William Bosak's side, but he was dead too. "They were both soaked in blood." (R. 269) Officer Bosak was "lying face down in a large pool of blood." Officer Van Schaik was "lying toward the rear wheel well of his unmarked car, laying somewhat on the side. His face was white and blue, and blood was coming from his body, his arms and shoulder." (R. 286, 287) Other police arrived on the scene, and Franklin and Walker assisted them in putting the corpses of the executed officers into the paddy wagon. (R. 268)

Aside from the numerous bullet fragments recovered from the unmarked squad of the slain officers, evidence technician Officer Charles Jackson recovered a fired bullet from the piano in the living room of a home located at 1133 West 115th Street. (R. 851) Officer Treacy examined his squadrol to find that there were bullet holes in the driver's-side door, that the back windshield was "shot up," and that there was a bullet hole in the rear portion of the left side of the car. (R. 426)

Officer William Cranley, a fellow member of the 5th District Tactical Unit who had previously asked the now deceased officers whether they needed assistance at the time of the traffic stop of the gold Pinto, responded to the emergency radio communication. (R. 885) He and his partner were travelling westbound on 115th toward the scene when they observed the defendant approaching just west of Morgan Avenue. (R. 886) The defendant's car slowed and Officer Cranley noticed that he held a weapon outside the driver's window which was pointed at them. (R. 891, 896) Kenneth Allen then drove his car between the squadrol and a CTA bus and collided with both

simultaneously. (R. 887) The squadrol was struck on the passenger side and the momentum carried it up over the curb and onto the sidewalk. The defendant continued eastbound on 115th. Officer Cranley proceeded to the scene of the murders where he watched as one of the corpses was carried to the paddy wagon. (R. 887)

Officer Alton Howell and his partner Charles Radcliffe also reacted to the emergency radio communique. (R. 452) They were driving westbound on 115th Street toward the scene, when they viewed the defendant's car speeding eastbound toward them. (R. 454) The officers brought their squadrol to a stop at the intersection of 115th and Aberdeen in an effort to block the progress of Kenneth Allen's car. The defendant appeared to be on a head-on collision course with the squadrol. When Officer Howell noticed that Kenneth Allen was still carrying the carbine rifle outside the vehicle window, he left the squadrol and opened fire. (R. 455, 456) The defendant's car then veered south, went to the curb side of the street, up on a snow bank, and around their squad car. Officer Howell fired more shots as the car passed, but once again the defendant managed to escape and continue eastbound. The officers re-entered their squadrol and renewed pursuit. (R. 456, 797)

Officer Lawrence Rapien and his partner, Officer Robert Roland, were east of the execution site when they received the radio communique directing them to the scene. (R. 441) As they drove west on 115th, they were informed the defendant's car was eastbound on 115th, approaching Halsted Avenue. The officers were only one half block east of Halsted, but the traffic stopped at that intersection blocked their path. (R. 442) In order to avoid that traffic, Officer Rapien pulled into the eastbound lanes and headed west. When they arrived at the intersection of 115th and Halsted, they saw the defendant's car coming toward them. Other squad cars were

directly behind the defendant in pursuit. (R. 443) In order to insure that Kenneth Allen would be stopped, Officer Rapien slowed his squadrol and intentionally steered head-on toward the defendant. They collided and the defendant's car was finally brought to a halt. Officer Rapien sustained an injury to his left knee upon impact. (R. 447)

Even after the collision, Officer Rapien could see that the defendant still held a silver snubnosed revolver in his right hand. (R. 444, 445) Officer Alton Howell described the scene as resembling a “giant parking lot for the police department.” (R. 462) Officer Donald Krivokapich and partner John Crotty pulled up alongside the defendant’s car. Both officers drew their revolvers and got out of the squadrol. Krivokapich yelled that the defendant had a gun. The defendant then threw his revolver to the floor of the passenger side of the car. Officer Crotty ordered the defendant out of his car as Officer Krivokapich tried to open the car door, but it was jammed shut. The defendant then put his hands out of the open car window and placed them on the door. In response, the officers holstered their weapons and pulled Kenneth Allen through the opening of the car window. (R. 809-811, 824-825)

Upon extricating the defendant from his car, a slight scuffle ensued and he was knocked to the ground. The defendant’s field jacket “flipped up” and the officers saw that he was wearing a pair of handcuffs on the back of his pistol belt. The defendant was then handcuffed with his own handcuffs. The defendant was wearing a pistol belt with an attached holster that was strapped to his right leg. He also carried ammunition pouches containing clips, as well as several boxes of ammunition in his field jacket.

Assisting police were instructed to remove any guns from the defendant's car and Officers Crotty and Krivokapich transported Kenneth Allen to the 5th District Police Station.

While enroute to the station the defendant said that the police messed his life up and he was going to mess police lives up. (R. 882) At that same location Officers Radcliffe and Howell delivered to Officer Crotty the weapons that were removed from Kenneth Allen's car. The following firearms were confiscated: the .38 caliber service revolver of William Bosak, with which the defendant executed Roger Van Schaik; the .45 caliber automatic he used to shoot William Bosak in the back; and the .30 caliber carbine enforcer also used to fire upon several police officers. (R. 813-815)

The defendant's car was transported to the 5th District Police Station and Officer Crotty removed a brown briefcase from the back seat. (R. 1055) Upon examining the contents of that briefcase, Crotty discovered a blue notebook which contained certain names, phone numbers and other information. (R. 1056) One such page of this notebook revealed the name Delaney, the time 2:00 p. m., a license plate number, and the word "brown". (R. 1057) Another slip of paper within the notebook contained the names of Investigator Barry Costello and Judge Everette A. Braden. (R. 1058)

At the second phase of the death penalty hearing held on January 16, 1980, Commander James Delaney viewed the notebook recovered from Kenneth Allen's car. He testified that his last name appeared within it and that the license number appearing by his name on the same slip of paper accurately recorded the license number of the vehicle he was assigned in December of 1978. In addition, Commander Delaney stated that this vehicle was deep bronze in color, thus very similar to the brown color the defendant had noted next to the license number recorded on that same page. As previously noted, Commander Delaney was the officer in charge during the defendant's confrontation with police on December 13, 1978. (R. 1037-1039)

At that same hearing, Associate Judge Everette Braden also testified. Judge Braden viewed a page of the blue notebook recovered from the defendant's car and noted that his complete name, his home address and phone number accurately appeared within. (R. 1030, 1031) Judge Braden set bond on the defendant after his December 13 arrest on weapons charges and had signed the search warrant authorizing police to enter the defendant's residence at 10127 Aberdeen, which resulted in the police confiscation of numerous firearms. As previously noted, that search warrant was executed by Investigator Barry Costello, whose name also appeared on the list found in the defendant's car after the murders. (R. 1072, 1073)

Officer Allen Davis and his partner, Officer Roosevelt Eli, conversed with the defendant at Area 2 Headquarters after his arrest for the murders. (R. 1059, 1060) After properly advising Kenneth Allen of his constitutional rights, Officer Davis initiated the conversation by asking him why he committed the murders. The defendant then mentioned his December 13th confrontation with police. (R. 1063) Officer Davis told the defendant that he “had shot the wrong guy.” (since neither of the slain officers had participated in the police activities of December 13th and 14th) The defendant stated that he knew he had killed the wrong guy and indicated that his intended victim was Lieutenant Robert Hanley, an officer who played a leading role in the incident of December 13, 1978. (R. 1064, 1065)

Assistant State’s Attorney Charles Hartman was in charge of the Felony Review Section of the Cook County State's Attorney's Office on March 3, 1979. He was not on duty on the afternoon that Officers Bosak and Van Schaik were slain, but heard of the murders over his car radio. (R. 924) Assistant State's Attorney Hartman then left the Army Reserve meeting that he had been attending and traveled to Area 2 Headquarters to participate in the investigation. He had two

conversations with the defendant on the evening of the murders, the first of which took place at approximately 9:00 p. m. (R. 925, 926) Initially the defendant stated that he knew two Chicago Police Officers had been killed, but did not personally know anything about it. Assistant State's Attorney Hartman then informed the defendant that he had spoken with a large number of witnesses, both police and civilian, and that they would soon view him in a line-up. He also noted that a number of firearms were recovered from the car and stated words to the effect of "you got to be kidding me." (R. 928, 929) Kenneth Allen then said "yes, I did it, I killed them." After this admission, the defendant again discussed the events surrounding the December 13, 1978 confrontation with police. (R. 929) This conversation was interrupted so the defendant could participate in a line-up, but it resumed at approximately 11:00 p.m. that evening. (R.931)

During the second conversation between Assistant State's Attorney Hartman and the defendant that evening, Kenneth Allen stated that he watched the traffic stop conducted by Officers Bosak and Van Schaik and he "thought this was another violation of the people's rights by police." (R. 937)

The defendant thought he recognized the "pug-nosed" officer as one who was involved in the episode of December 13th, so he shot Officer William Bosak as he returned to the squadrol. The defendant stated there was no turning back at that point and he opened fire on Officer Van Schaik. Kenneth Allen admitted that after his .30 caliber carbine rifle malfunctioned, he picked up the service revolver of Officer Bosak and "then shot the already wounded second officer." (R. 938) In pleading guilty to charges of murdering two police officers, the defendant himself stated that the fact that approximately 250 rounds of ammunition were recovered from his car along with the firearms indicated that he intended to kill more than two people. (R. 1102)

III

REASONS FOR DENYING THE PETITION

The defendant has pled guilty to the murder of two Chicago police officers. The officers were not involved with defendant at the time of their deaths. They had stopped another vehicle for a possible traffic violation. After sending the occupants of the car on their way without issuing any tickets, the officers were returning to the car. The defendant had been laying-in-wait for the officers. Having observed them during the traffic stop defendant pulled his car near theirs. Defendant believed that they were messing with people's lives, just as the police had somehow messed with his. In any event. Officer Bosak, a husband and the father of two little girls, was the first to be gunned down by the heavily armed defendant. He was shot in the back a number of times. His death was instantaneous. His partner, Officer Van Schaik, returned fire on defendant. A gun battle ensued and Officer Van Schaik was wounded several times. However, the officer, a husband and the father of a little child, apparently ran out of bullets. Defendant knew this and approached the officer who was now pleading for his life. Defendant showed no mercy. Instead, using Officer Bosak's gun, he came up to Officer Van Schaik and shot him twice in the face at point-blank range.

Defendant's rampage against the police did not stop there. Defendant then took the officers' car and shot at the police who had responded to the call for help. Not only did defendant fire at these officers from the car, he also tried to run them down. Finally, once defendant was caught, he confessed to the authorities. The defendant told two officers that he knew he had shot the wrong policemen, because they were not involved in his December confrontation with the police, and that his real targets were the officers who were so involved. He told Assistant State's

Attorney Hartman that those officers who had responded to his home in December were his real targets and that they would pay. Defendant also said Judge Braden and his attorney on that case were also responsible and that they too would pay. He told them that he armed himself with weapons and 250 rounds of ammunition because he wanted revenge on the police because they messed with his life when they responded to two calls from his wife in December of 1978.

On the second of those calls defendant barricaded himself inside his home for 19 hours. The police were finally able to convince defendant to lay down his arms and surrender. A subsequent search of defendant's home revealed a huge cache of weapons and ammunition which were confiscated by the police. Defendant became angry when he learned that these items would not be returned to him. It is then that defendant began to formulate his plan to murder his so-called tormentors. This plan culminated in the brutal, vicious and cold-blooded assassinations of Officers Bosak and Van Schaik.

In his closing argument at the sentencing hearing (see attached) defendant stated that he deserved the death penalty. However, he continually attempted to shift the blame for his actions onto the Chicago Police Department, the State's Attorney's Office and the media, arguing that because they had violated his rights they responsible for his actions (defendant said he had been a "peace-loving" person prior to December), and that the reason the officers were dead was because of the policies followed by those agencies.

After defendant was arrested a search of his car revealed chilling evidence. A blue notebook was found. One page contained the name Delany, the time 2:00 p.m., a license plate number and the word "brown." Commander Delany, who negotiated with defendant in December, 1978, said that he drove a bronze police vehicle in December, 1978, and that the license number of

that car was the same as the one found in the notebook. Another page contained the name of Judge Everette Braden as well as his home address and phone number. Judge Braden had raised defendant's bond and signed the search warrant for defendant's home in December 1978. This evidence reveals defendant's plan to kill police officers and other authorities who he thought had interfered with his life.

The above evidence overwhelmingly establishes that defendant's attack of Officers Bosak and Van Schaik was the result of a well thought out plan. His actions were not the result of a paranoid mind, but were rather the actions of a sane mind which had revenge and murder as its goals. The evidence shows that defendant did not blow-up in an instance and kill the officers on the spur of the moment, but rather it shows that defendant had listed the names of some of the people he wanted to kill, that he fully armed himself for his planned confrontation with the police, that he stalked and then ambushed the murdered officers, and that it was his intent to kill as many police as he could on that fateful day. Defendant, on the day of the murders, attempted to discover what type of bullet would penetrate bullet-proof glass. The evidence shows that defendant knew what he wanted to do and that he carried out his plan to near perfection.

While it is true that defendant has been hospitalized, that is so because a hearing, conducted after he entered his guilty pleas and was sentenced, established that he was not competent to stand trial. His pleas of guilty still stand and no court has ever held that defendant was insane at the time of the murders. It must be remembered that prior to the entering the pleas of guilty, a jury had found that defendant was competent to stand trial. The fact that the Illinois Supreme Court remanded the case for further psychiatric evaluation, that defendant was later found unfit to stand trial and that he has been hospitalized, all demonstrate that our system works, for

there is absolutely no possibility that defendant will be executed in the foreseeable future. If defendant remains unfit for trial then the State of Illinois will continue to attempt to give him the care that he needs. Should he attain fitness at some point then the proceedings will begin again and there is no doubt that the proceedings will be fair, because they have been fair and reliable in the past.

The People would point out that defendant's stay in the Department of Mental Health had been less than admirable. He has continually refused to cooperate or talk with his doctors, and other staff, refuses medication at times and at one point barricaded himself in his room. (See attached) These can also be signs of one who is a malingerer or worse. This finding finds support in the words of then Chief Justice Ryan in his dissent, "I fear that the majority opinion establishes the proposition that one can enhance the probability of having his conviction reversed if he persists in obdurate obstructionist tactics." People v. Allen, 101 Ill. 2d at 37 (Ryan, C.J. dissenting). Just as defendant's executions of Officers Bosak and Van Shaik were the result of a plan, perhaps defendant has developed another plan to escape his just fate.

Defendant also 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, defendant 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 defendant’s case. Instead, a true injustice would only result if it were reflexively determined that defendant’s trial was fundamentally unfair without any examination of the proceedings themselves. It is telling, however, that defendant has not even attempted to demonstrate how the recent changes would have affected the outcome of the proceedings. Moreover, defendant ignores the fact that the Supreme Court and circuit court have protected his rights and because there is a finding that he remains unfit to stand trial, he will not be subject to execution at any time in the near future.

Defendant 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.

Defendant alleges that his death sentence should be commuted in light of Atkins v. Virginia, 122 S. Ct. 2242 (2002), because he is mentally retarded and that, therefore, the imposition of the death sentence violates the Eighth Amendment’s prohibition against cruel and unusual punishment. Although the Court in Atkins noted that mental retardation is characterized as having

a significantly subaverage general intellectual functioning and significant limitations in adaptive functioning in at least two skill areas with the onset prior to age 18 (122 S.Ct. at 2245 n.3), the Court expressly stated that it was not adopting a definition of mental retardation and left it to the various states to adopt a definition of mental retardation and delineate procedures for determining whether or not a particular defendant is mentally retarded. Id. at 2249-50. Because Illinois has not yet adopted a definition of mental retardation nor has it crafted the appropriate procedures, defendant's claim is premature and should not be considered by the board at this time. Further, there is no evidence whatsoever that defendant is mentally retarded.

For all of these reasons, defendant's request for clemency must be denied.

CONCLUSION

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

Respectfully submitted,

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