OCTOBER 2002 SESSION
PRISONER REVIEW BOARD
STATE OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
vs.	)	Docket No.
	)	
LEONARD KIDD	)	Inmate No. N-23646
	)	
	)	
	)	

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

PEOPLE'S RESPONSE IN OPPOSITION TO PETITION FOR EXECUTIVE CLEMENCY

HEARING REQUESTED

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INTRODUCTUON

Leonard Kidd has been convicted of killing more people in the State of Illinois than any other person currently on death row. Further, he has the dubious distinction of having killed more children than anyone else in the history of the State of Illinois. He has been convicted of killing fourteen (14) people, eleven (11) of which were children. He currently is held in the Illinois Department of Corrections on two separate, and unrelated, death sentences. For unknown reasons, he has established a commitment to death and destruction that is virtually unparalleled in modern history. It is for these reasons, and those described in more detail below, that the People vigorously oppose the petitioner's application for executive clemency.

In one case, the petitioner has been convicted of murdering ten (10) children in an arson fire that he started in 1980. Having deceived authorities for years regarding the cause of that fire, in 1984, he brought more pain and misery to yet more citizens of our county. He, and his co-defendant and half-brother, Leroy Orange, massacred four (4) more individuals including another child. After using drugs and alcohol, Kidd and Orange, bound and gagged the four victims and decided to stab or slice the victims over 70 times, and then to add greater indignity

to the corpses, they then lit the room on fire in hopes of destroying the victims' bodies and any evidence. The result of their savagery was described by one veteran Chicago Police Detective as being one of the most repulsive crime scenes he had ever seen.

Because the petitioner is under two separate death sentences (one sentence for the 1980 ten victim arson murder and another death sentence for the 1984 four victim multiple murder) the People will oppose each clemency petition separately. Accordingly, this response is in objection to executive clemency will focus on the facts and aggravation that was elicited during the petitioner's prosecution for the 1984 quadruple murder of Ricardo Pedro, Michelle Jointer, Renee Coleman, and nine year old Anthony Coleman.

As will be outlined in greater detail below, the Defendant's Petition for Executive Clemency inconsistently jumps between the 1980 ten victim arson-murder and the 1984 quadruple murder. This clemency petition is filled with half-truths and conveniently ignores claims that were fully rebutted and rejected during the course of the litigation. As discussed below, the petition ranges from fantasy to outright deception. Accordingly, the People respectfully ask that this Board objectively review the actual **facts** and conclude, as all other courts in this land have, that Leonard Kidd is a manipulative, malingering, mass-murderer that has absolutely no excuse to possibly justify the brutality and misery that he has caused in this world.

I

HISTORY OF THE CASE

Leonard Kidd ["Defendant" or "petitioner"] plead guilty and was convicted of the January 12, 1984 stabbing deaths of Michelle Jointer, Ricardo Pedro, Renee Coleman, and Renee's nine-year-old son Anthony in Chicago, Illinois. This Illinois Supreme Court reversed Defendant's original convictions on appeal, see People v. Kidd, 129 Ill. 2d 432 (1989) due to insufficient legal admonishments by the trial judge. Upon remand, the Defendant no longer wished to enter a guilty plea and chose to contest the evidence against him and exercised his right to a jury trial. He was then retried in the Cook County Circuit Court. Defendant proceeded to a jury trial on: eight counts of murder under 720 ILCS 5/9-1 (a)(1) and (a)(2); four counts of felony murder under 720 ILCS 5/9-1 (a)(3) (with armed robbery as the predicate felony); one count of armed robbery of Ricardo Pedro under 720 ILCS 5/18-2; one count of aggravated arson under 720 ILCS 5/20-1.1; and four counts of concealment of homicidal death under 720 ILCS 5/9-3.1. (Common Law Record [hereinafter "CLR" or "R"] at 51-76). The jury returned general verdicts of guilty for murder, armed robbery, aggravated arson, and concealment of homicidal death. (CLR 286-95).

Defendant retained his jury for the sentencing hearing. After proving Defendant's age and convictions in this case, the prosecutors established Defendant's eligibility for the death penalty by proving he had been convicted of murdering two or more persons, 720 ILCS 5/9-1 (b)(3), had committed a murder during the course of an armed robbery, 720 ILCS 5/9-1 (b)(6), and had killed a child less than twelve years of age, when the death resulted from exceptionally brutal or heinous behavior indicative of wanton cruelty. 720 ILCS 5/9-1 (b)(7). (R. 1890-92). Both parties presented evidence at the second phase of sentencing, but the jury concluded there were no mitigating factors sufficient to preclude the death penalty. The Honorable Christy

Berkos then entered judgment on the murder convictions and sentenced Defendant to death. The judge also ordered Defendant to serve two consecutive 30 year terms for the armed robbery and aggravated arson convictions, with those sentences to run consecutively to concurrent 5 year sentences ordered for each of the four concealment of homicidal death convictions. (R. 2188-89).

Defendant then perfected and appealed his convictions under Article VI, section 4(b) of the Illinois Constitution and thereby was directly reviewed by the Illinois Supreme Court. Upon review the Illinois Supreme Court upheld each of those convictions with the exception of the aggravated arson convictions were vacated due to the aggravated arson statute in effect at the time of his convictions was determined to be unconstitutional in an unrelated case. All other convictions were affirmed. The petitioner's death sentence was also affirmed by the Illinois Supreme Court.

II

FACTS OF THE CASE

Because the Defendant's petition is factually incomplete and makes allegations without any cited support, for the benefit of the Governor and the Board, the People provide an extensive **factual** review with appropriate record citation.

State's witness O.J. Hassan was an insurance consultant who lived in a second floor apartment at 1553 W. 91st Street, the corner of 91st and Ashland, directly below the apartment occupied by Renee Coleman and Michelle Jointer. (R. 856-57). At approximately 4:15 a.m. on January 12, 1984, Hassan heard a "very loud and disturbing noise" of people shuffling around and moving their feet overhead in Apartment 309. (R. 863). Hassan then heard Renee "hysterically" shout "You guys, stop it" from her kitchen. (R. 865). Hassan heard nothing else and began working on his accounts. Around 6:00 a.m., however, Hassan heard noises coming from the rear bedroom, including the sounds of "people shuffling things, being knocked down, people moving around". (R. 867). He heard Renee scream again and he heard her son Anthony crying for a couple of minutes in a "loud, sobbing voice". Then everything became very quiet. (R. 870). He called the police department around 6:20 a.m. (R. 876). A few minutes later he saw water and smoke coming into his apartment, and he ran upstairs to discover a fire had broken out in Renee's apartment. (R. 873). Hassan later talked to police officers and may have given them a physical description of Renee's boyfriend, the one who "stayed high all the time". (R. 877). (Other witnesses later testified that Renee's boyfriend was Leroy Orange, the half-brother of Defendant Leonard Kidd. (R. 1042, 1065)). Hassan may also have told officers that Renee's boyfriend had visited her on the night of January 11. (R. 877).

Police and fire officials found the body of 27 year-old Renee Coleman near a radiator in the rear bedroom. She was lying on her back with her arms above her head. (R. 890-91, 905, 913, 951). Her wrists had been bound with a telephone cord, and there was a green cloth or gag around her neck. (R. 1006). Renee had suffered 17 stab wounds and 18 incised wounds for a total of 35 injuries. (R. 1007). She had been stabbed in the chest, shoulder, face, back and hand, and there were defensive wounds on her hands and arms. (R. 1006-1008). Her killer had nearly slashed her nose off her face. (R. 1006).

Next to Renee, officers found the body of her 9 year-old son Tony on the floor. The boy was lying on his back near the head of the bed. (R. 890). Someone had tied and knotted a telephone cord around his wrists and behind his body. (R. 924, 1017-21). The officers also found a green cloth, perhaps used as a gag, tied and knotted around his neck. (R. 921, 1017). Tony had received 7 stab and 6 incised wounds to the face and chest, and some of the chest wounds extended into the muscle between his ribs. (R. 890, 1018, 1022).

Michelle Jointer's body was lying face down on a rollaway bed. (R. 890, 905). Her hands and arms had been bound behind her back with an electrical extension cord. A Christmas stocking was also tied to her wrist. (R. 916, 995-96). A woman's blue nightgown, both tied and knotted, was tied around her neck. (R. 918, 921, 995). Michelle had received 14 stab wounds to her chest, shoulder, thigh, and back, and some of the stab wounds had penetrated into the muscles between her ribs, as well. (R. 1000). Michelle also had defensive wounds on her hands. (R. 996-97).

The fourth and final victim, 25 year-old Ricardo "Skinny" Pedro, was found lying on his side with his head propped on a folded rollaway bed. (R. 905, 1197). His legs and ankles had been bound with a brown scarf, and his wrists were bound with a black, felt-type material. (R. 970-72). Officers found a blood-soaked cloth wrapped twice around his neck and knotted three times. (R. 915, 972). In addition to defensive wounds on his hands and arm, one of which nearly went through his right hand, Pedro had received 10 stab wounds to his face, neck, chest and armpit. (R. 973-74). There were lacerations to his face, including a large cut extending from the left corner of his mouth across his neck. His jaw had been "sliced open". (R. 890, 914). Pedro had a knife blade inserted in his skull, extending from under his right eye through the bones of his upper jaw, across the left side of his face, and ultimately protruding out from under his left ear. The medical examiner later removed both the knife and what appeared to be the tip of that knife wedged in the opposite or right side of his head. (R. 974).

The medical examiner affixed cause of death for all four victims as multiple stab wounds. Pedro was killed by the stab wound to his neck transecting his carotid artery, whereas the other victims died as a result of stab wounds to the heart. (R. 1025). The examiner also noted the different sizes and characteristics of the stab wounds to conclude that a number of different knives had been used to stab the victims. For example, Renee and Michelle had been stabbed with different knives, Michelle and Pedro were stabbed with different knives, and Tony's wounds were entirely different from those of any other victim. (R. 1003, 1012-13, 1022-24). As noted below, Defendant helped police officers recover three knives which, the experts concluded, could have been used to inflict these injuries. (R. 1013-15). Portions of a fourth knife were, as noted, lodged in Pedro's skull.

Renee, Michelle and Pedro had all ingested cocaine recently, possibly within three hours before their deaths. (R. 1037-38).

The Arson

Bomb and arson specialists determined that someone had set two separate fires inside the apartment in the front and rear bedrooms. The fire in the rear bedroom began when someone ignited the bedding material on three sides of the rollaway bed. (R. 1297-98).

The Arrest Of Leroy Orange

After they had secured the crime scene, police officers searched Renee's apartment for anything that could help them identify the victims. After they found an address book and an application for public assistance, filled out by Eniwotec Durr, officers contacted Durr and interviewed her early in the afternoon of January 12. The officers asked Durr who the victims had been with the night before, and Durr told the officers what she knew. The officers also showed her some photographs found in Renee's bedroom nightstand, and Durr made some identifications, including an identification of Leroy Orange. The officers found two addresses for Leroy in the address book and, with the assistance of Illinois Bell, obtained the corresponding addresses of 802 E. 75th Street and 7915 S. Emerald. (R. 936). The officers went to the S. Emerald address at 3:00 p.m. and arrested Leroy Orange, for whom there was already an outstanding arrest warrant in another case. (R. 928-38, 1042).

Mildred Orange's Testimony And Defendant's Arrest

Mildred Orange Dixon testified that she and Leroy were married and residing at 802 E. 75th Street in 1984. (R. 1040). On Wednesday January 11, Leroy left home around 7:00 p.m.

He did not say where he was going. (R. 1044-45). Leroy had not returned by 9:00 a.m. the next morning when she went to work. (R. 1048). Leroy often spent nights elsewhere. (R. 1074).

Mildred was met by police officers when she returned home from work at 2:00 p.m. on January 12. They told her they were looking for Leroy. (R. 1049-51). Mildred thought that Leroy might be at his mother's house on 7915 S. Emerald, where Defendant also lived. After Mildred called that home and spoke to Leroy, some of the officers left her and went to arrest Leroy Orange. (R. 1053, 1124).

At this time, Mildred noticed a pair of shoes on the kitchen table that had not been there when she went to work. (R. 1048, 1054). She also noticed a pair of blue pants, shirt, and jacket that had not been there earlier that morning. She recognized the pants and told the officers they belonged to Leonard Kidd. (R. 1054-55).

Around 3:30 or 3:45 p.m., while officers were still in Leroy's home, Defendant called Mildred and said he needed to meet her somewhere and talk to her. He told her that Leroy had been arrested and asked her to call police headquarters to find out the nature of the charge. (R. 1077). He refused to discuss the matter any further over the phone, although he did say "Mildred, I've got something to tell you that could put me and Poky [Leroy] away for the rest of our lives". (R. 1060, 1126). Mildred met Defendant at a McDonald's near his home around 4:00 or 4:30 p.m. (R. 1062). Inside the restaurant, Defendant said "Mildred, you know Renee. She was talking about you and Carmen [Mildred's child] and calling you all kinds of names and she came up all stabbed and me and Leroy didn't have nothing to do with it. Leroy paid somebody to have her killed". (R. 1063-64, 1078, 1041). Officers arrested Defendant at that time. (R. 1127). Defendant's arrest is further described in Argument II to this brief.

When Mildred saw Leroy later that evening at police headquarters, she noticed he had changed his clothing since the night of January 11. (R. 1068). Someone had entered her apartment that morning, January 12, and had removed a blue sweater from the closet. (R. 1047). Mildred never again saw the clothes that Leroy was wearing when he left home on the night of the murders. (R. 1068, 1070).

Additional Occurrence Testimony

On the evening of January 11, Reed Randolph and his best friend Ricardo "Skinny" Pedro, in the company of Ernest and Sharon Holloway, paid a visit to Pedro's girlfriend Michelle at her apartment at 91st and Ashland. When they arrived there at 10:30 p.m., someone named Renee was also present. (R. 1088-92). Around 11:15 or 11:30 p.m., a man, subsequently identified as Leroy Orange, arrived as well. R. 1093, 1100). The friends chatted for awhile and drank beer and Cognac purchased by Pedro and Holloway. (R. 1093).

Renee and Leroy left around 11:00, but they returned at 11:30 with a pipe shaped in the form of male genitalia. (R. 1096, 1105). Randolph did not see anyone using drugs. (R. 1098). Leroy and Pedro briefly argued about something around 11:45 p.m. (R. 1103-104). Randolph and the Holloways left the apartment around midnight, although they returned ten minutes later because Holloway had forgotten his hat. (R. 1106). Randolph talked to Pedro in the hallway and cautioned him not to spend the night there. It wasn't safe, Holloway concluded, because there was "too much traffic in and out". (R. 1107-108). He did not see Kidd at the apartment. (R. 1106). Holloway gave all of this information to police officers when they contacted him. (R. 1099-1100).

Defendant's First Post-Arrest Statement

After being advised of his constitutional rights, Defendant gave his first statement to police detectives McGuire and Flood at 5:15 p.m. on January 12, 1984. (R. 1129-32). Defendant admitted he had been at the apartment rented by Leroy's girlfriend [Renee Coleman] at 91st and Ashland between midnight and 4:30 a.m. Defendant claimed he had spent most of his time in the front bedroom with Michelle, who was undressed. Defendant overheard an argument between Leroy and Skinny Pedro and decided to go home when the argument turned violent. Before he could do so, however, two "dudes" entered the apartment. One dude had a steak knife, whereas the other dude had a switchblade. Defendant left at that time. (R. 1133-34).

When officers quizzed him about going home, Defendant altered his account and said he had remained outside the apartment as a lookout because he felt that "something really bad" was going to happen. He saw the dudes leave the apartment, and one was wearing an Army jacket covered with blood. Leroy then left the apartment, too, and they both got on the bus to go home. When Defendant asked his brother what had happened inside the apartment, Leroy said "we cut them up real bad". (R. 1134-35).

When officers noticed a Wittenauer watch on his wrist, People's Exhibit 64, Defendant claimed Pedro had traded his watch for Defendant's radio. Officers could not find a radio at the crime scene, although they did recover one from Defendant's home. (R. 1135-37).

Defendant next provided some details about the two dudes at the apartment. One dude was named Larry but used the nickname "Slick Rick". (Note that Leroy Orange is also known as Larry. (R. 1139)). The other dude was named Ricky Jones. Defendant claimed they lived

in the area of 67th and Halsted, and he made an identification of one from a photograph taken from police files. The officers knew the identified man lived at 87th and May, however. (R. 1138-40).

When confronted with that information, Defendant admitted he had lied when he named Ricky Jones as one of the men in the apartment. He still maintained that Larry a.k.a. "Slick Rick" was there, however, and he refused to give additional information at this time. (R. 1141).

Officers interviewed Leroy Orange again around 5:45 or 6:00 p.m., and they arranged to have Defendant brought to Leroy's interview room so that Leroy would know his brother had been taken into custody. (R. 1141).

At 6:30 or 6:45 p.m., officers talked to Defendant again and similarly arranged to have Leroy brought into Defendant's interview room. Leroy told his brother that he had already admitted all four murders to the police. Leroy also advised him that he had admitted that "Slick Rick" did not exist. (R. 1142, 1160). Leroy was returned to his own interview room at that time.

First Recovery Of Evidence

At this point Defendant admitted he had lied about "Slick Rick", and he added that he didn't want his brother "to go down" for all four murders by himself. (R. 1142). He agreed to take police officers out to recover evidence. At 7:00 p.m. Defendant took officers McNally, McCabe and Dioguardi to an alley at 9434 S. Justine, three blocks from the crime scene, where they recovered a freebasing cocaine pipe, spoon, clothing and burned debris from a garbage

can. (R. 1162, 1178, 1190). He did not help the officers recover any knives at this time. (R. 1170).

Defendant's Second Statement

Defendant gave his second statement to McGuire and Flood around 10:30 p.m. Defendant said he was at the Sportsman's Lounge at 79th and Halsted on the evening of January 11 when Leroy and Renee arrived. While Renee waited in the car, the two brothers had a conversation inside the bar. (R. 1143, 1163). The three then drove to Defendant's home on S. Emerald where Defendant got his Pioneer radio-TV "box" and gave it to his brother. (R. 1144, 1164). Defendant then returned to Sportsman's where he drank and ate some rib tips. (R. 1164). He later returned home. Leroy called him at 12:30 a.m. and asked him for help. Leroy said he had "a problem with a stud" and he complained that "the old boy is shacking up with Renee". (R. 1144, 1165). Defendant took a bus to Renee's apartment at 91st and Ashland and arrived there around 1:30 a.m. Leroy offered him some cocaine which he refused. (R. 1145).

Continuing his second statement, Defendant said Leroy and Pedro became involved in a violent argument around three o'clock in the morning. (R. 1145, 1166). Pedro had a razor, whereas Leroy had a knife with which he stabbed Pedro a number of times. (R. 1145, 1165). Leroy managed to get Pedro into the rear bedroom where he bound Pedro's hands and feet. Leroy left Pedro in the bedroom, in bed. (R 1165). Defendant told Leroy he was worried about Pedro, and he wanted to call an ambulance and get him to the hospital. (R. 1146, 1167). Renee said, "No, don't make him no madder than he is". (R. 1167). Defendant offered Pedro a cigarette instead. (R. 1146). Pedro asked that he "not be hurt any longer", and Defendant used a towel "near" Pedro's neck to try to stop the bleeding. (R. 1146, 1166). Renee and her son Anthony were seated on the floor of the bedroom while Defendant tried to help Pedro. (R. 1147).

In this same statement, the Defendant was trying to help Pedro with a towel, Leroy was in the front of the apartment having sex with Michelle on the couch. Michelle was the same woman that Defendant had had sex with earlier. (R. 1147-48, 1167). (Note that tests performed on both Renee Coleman and Michelle Jointer were negative for spermatozoa. (R. 1283)). Sometime that morning Michelle walked into the bedroom, wearing a sweater with a towel wrapped around her waist, and she picked up a pipe. Defendant then claimed that after Michelle left, Defendant told Renee "Let's try and jump Leroy", but Renee replied that, too, would only make Leroy madder. (R. 1168).

Around 5:30 a.m., Leroy also walked into the bedroom, and he was wearing only a towel. (R. 1147-48, 1168). He had come to "check on people". (R. 1168). Leroy brought Michelle into the bedroom. Leroy had already bound and gagged her, and he was carrying a large butcher knife. (R. 1148-49). Leroy and Pedro fought again, and Leroy stabbed Pedro "in his brains" and killed him. (R. 149, 1169). Then Leroy forced Renee to tie up her son Tony, after which Leroy bound Renee and gagged both of them. After making Renee lie on the floor, Leroy straddled her and said "Don't be nervous" and stabbed her. (R. 1151). Leroy then stabbed and killed Tony. (R. 1151). After Renee rolled over on her side, Leroy stabbed her in the back. Michelle, meanwhile, was kneeling on the bed and said "Don't do it" twice. Leroy nevertheless stabbed Michelle in the chest, causing her to fall forward on the bed where Leroy stabbed her in the back. (R. 1152). Defendant said he felt "nervous" and "upset" by his brother's actions. (R. 1169).

Completing this statement, Defendant said Leroy gathered up whatever things "they"

wanted to remove from the apartment before Leroy set fires intended to eliminate fingerprints. (R. 1152, 1154). Defendant took his radio-TV "box" at this time. Defendant also gave contradictory accounts about Pedro's watch. Although Defendant had earlier said that Pedro had given him the watch as a gift, and had asked him not to tell Leroy, now Defendant said he "removed it from his wrist and it was given to him" after Pedro's death. (R. 1153). The brothers then went to an alley at 91st and Ashland where they disposed of the cocaine, pipe, knives and pants. Leroy had been wearing two pairs of pants and tried to burn one of them at this time. Defendant said he did not have any blood on himself. The brothers then went to Defendant's home on S. Emerald. (R. 1154). Leroy told his brother he had done these things because Renee had "done him wrong". (R. 1170). In this second statement, Defendant did not claim that his brother had persuaded him to do anything; Defendant denied any participation in the murders whatsoever. (R. 1172).

Second And Third Trips To Recover Evidence

Defendant then agreed to take officers out again to recover additional evidence. At 12:00 a.m. Defendant took them to the same alley they had visited earlier, where they recovered a large butcher knife, People's Exhibit 55, in a different dumpster. (R. 1182).

At approximately 10:30 a.m. on January 13, Defendant took officers out for a third and final time, to an alley at 9256 S. Justine. This time Defendant directed officers to a knife with a bent blade, People's Exhibit 57, in a garbage can. The officers also recovered a knife with a broken tip, People's Exhibit 56, in a different location two buildings away. (R. 1187, 1191-93). Defendant had not directed them to these two knives during his two earlier trips to the alleys. (R. 1196).

A forensic scientist found blood on all three knives recovered in the alleys, but she could not determine whether it was human blood. (R. 1277-78). Other testimony indicated these knives could have been used to stab the victims. For example, one of the knife wounds entered Renee Coleman's back and struck her shoulder blade, and People's Exhibit 57, the knife with the bent blade recovered on the last trip to the alleys, could have been used to inflict this wound and could have bent the knife blade as well. (R. 1013-15). There were also preliminary indications of blood on the jacket that Mildred Orange had found in her kitchen. (R. 1288).

Defendant's Court-Reported Statement

Defendant gave a third statement, transcribed by a court reporter, to former Assistant State's Attorney Dernbach (now a Circuit Court Judge) and Detectives Flood and Bajenski at 2:50 a.m. on January 13, 1984. (R. 1326, 1350). After being advised of his Miranda rights, Defendant stated he was in the Sportsman's Lounge on January 11 when Leroy and Renee arrived. Leroy asked Defendant to give him TV-radio "box" so he could obtain cocaine. Defendant agreed, and the three drove to Defendant's home on S. Emerald where Defendant got the "box" and gave it to his brother. Defendant then returned to the bar and stayed there until 12:00 or 12:30, when he returned home. (R. 1328-29).

Leroy called and said he was having a "little problem", but he did not say with whom he was having a problem. Defendant went to Renee's apartment at 1553 W. 91st Street and arrived there around 1:30 a.m. Pedro, Michelle, Leroy, Renee, and Tony were there when he arrived. Leroy was basing cocaine, but Defendant didn't have any. (R. 1330-33).

Sometime later, Leroy and Pedro got into an argument. Pedro had a razor, whereas Leroy had a knife that he used to stab Pedro. After he stabbed him, Leroy tied him up with a belt and a neck scarf. (R. 1333-34). At that point, Renee and Tony were in the bedroom. Pedro was in bed, bleeding, and Leroy left the room. Defendant used a white towel for an hour and a half in an attempt to stop the bleeding, he said. (R. 1334).

Now Leroy was in the front of the apartment with Michelle. When Defendant left the bedroom to talk to him, Leroy said "I'm coming, hold on". Defendant told his brother that Pedro was bleeding to death and should be taken to a hospital. (R. 1334-35).

A little while later, Leroy walked into the bedroom wearing only a towel with a floral design. He "looked" before leaving the bedroom, but returned again a half an hour later. (R. 1335-36). Pedro had managed to work his hands free. (R. 1337). Leroy stabbed Pedro three times, and at least once "up in the neck". (R. 1337).

After he stabbed Pedro, Leroy got Michelle and put her on the bed. Leroy tied her hands behind her back and placed a blue and white nightgown in her mouth. (R. 1338). Renee and Tony were also in the room. Leroy started to tie up Tony when Renee said "don't mess with my son". They argued for awhile. After Renee bound Tony herself, Leroy tied up Renee and cut up sheets to put in the victims' mouths. (R. 1338). Leroy then stabbed Renee and Tony, in that order. (R. 1339). Leroy stabbed Michelle last and set the sheets on fire. (R. 1339). Leroy used three knives to stab the victims. (R. 1341). Defendant was not bound or restrained in any way when Leroy was doing all of this. Defendant said he was trying to get out; "I was

fighting myself". (R. 1339).

Defendant explained how he got a watch from Pedro: "We had talked, and he told me to take it off his arm." (R. 1339). After Defendant laid the watch on the dresser, however, Leroy picked it up. (R. 1340). Defendant took his TV-radio and Leroy grabbed the "knives and stuff". (R. 1340, 1343). Leroy started a fire in Tony's bedroom by lighting a blanket. (R. 1341). Then Leroy put the three knives in a bag, along with a mirror, the cocaine, a pipe, spoon and razor blade. (R. 1342). Both of them left the apartment around 6:15 or 6:30 a.m. (R. 1344).

Leroy got rid of the butcher knife (the same knife that Defendant had pointed out to police officers) by throwing it in a dumpster in an alley near 91st and Ashland. (R. 1342-43). Leroy similarly disposed of the other knives in other garbage containers. Both men then went home. (R. 1343).

Defendant also told A.S.A. (now Judge) Dernbach he had taken police officers to an alley near 94th Street where they recovered clothes that Leroy had tried to burn. Although the court reporter originally indicated both men had tried to burn the clothes, Defendant corrected the written statement to refer to Leroy only. (R. 1346).

Leroy Orange's Statement

During Dernbach's cross-examination, defense counsel proved the contents of a court-reported statement given by Orange to Dernbach, Flood and Bajenski at 3:56 a.m. on January 13. (R. 1350-51). After being advised of his rights, Leroy said he went to the Sportsman's Lounge at 79th and Halsted with Renee Coleman to ask Defendant to give him his TV-radio to

obtain cocaine. (R. 1358). They went to Defendant's house on S. Emerald where Defendant gave it to him. (R. 1359). Leroy and Renee then went to her apartment at 1553 W. 91st Street. Pedro, Michelle and Tony were there. (R. 1359). Leroy started free-basing cocaine. Around 12:30 or 1:00 he called Defendant and asked him to come over. After Defendant arrived at 1:30, Leroy told him he was having problems with Pedro. (R. 1361).

Around 3:30 a.m., Leroy and Pedro argued. After he stabbed him, Leroy tied his hands and feet. Although Renee and Michelle were present, Anthony was not in the room at that time. Defendant was in another room as well. (R. 1361-62).

After he stabbed and bound Pedro, Leroy and Michelle went to the front of the apartment and smoked cocaine. Two hours later, Leroy returned to the bedroom. Although Pedro, Renee, and Tony were there, Defendant was not in the room. Michelle was in the kitchen. (R. 1362-63). At this time, Leroy stabbed Pedro again. Pedro did not have any type of knife or other weapon. (R. 1363). Then Leroy tied up Michelle. When asked if Defendant was in the room at that time, Leroy responded "I don't think so". (R. 1363). After Renee tied up Tony, Leroy tied up Renee. (R. 1363). He used a green scarf to gag them and a blue scarf for Michelle. (R. 1364). Defendant was present in the bedroom by the time he had finished restraining his victims. (R. 1364). Leroy stabbed Renee, Tony, and Michelle in that order. Michelle was in bed when Leroy stabbed her. (R. 1364-65).

Leroy started a fire by lighting sheets. When asked if Defendant was present at that time, Leroy again said "I don't think so". (R. 1365). Leroy set another fire with matches and newspaper up front near the living room. (R. 1365). Leroy picked up a watch from the bedroom and Defendant carried out his TV-radio. (R. 1366). Leroy also carried a knife, coke

spoon, and pipe in a brown bag. (R. 1366). After discarding the knife in a garbage container near 91st and Ashland, Leroy tried to burn the clothing he had worn in the apartment. Both men then went to S. Emerald. (R. 1367).

In his written statement, Leroy said he used one knife only when he stabbed the victims. When asked if there were other knives in the bag, Leroy answered "I don't remember". (R. 1368).

Defendant's Prior Testimony At The Orange Trial

The State called Barbara Kimbrough, a court reporter, to read the testimony Defendant gave on May 21, 1985, at the trial of his brother Leroy Orange. Once again Defendant said he was at the Sportsman's Lounge when Leroy arrived. Leroy told him that Renee wanted to talk to him. The three went to Defendant's house where he gave the TV-radio "box" to Renee. Leroy didn't have anything to do with the "box", and Defendant did not give Renee the "box" to give to someone else to obtain cocaine. Instead, he gave her the box because she said she was on her way to pick up $20, he said. (R. 1432-34). Defendant then returned to the bar where he drank beer and played cards with Boney and Pauline, persons whose last names he does not know. (R. 1435). Defendant went home at an unknown time. (R. 1436).

After he received a call from Leroy, Defendant went to Renee's home and he arrived there around 2:00 a.m. (R. 1436-37). Renee, Michelle and Leroy were in the kitchen playing a card game called Bid Whisk when he arrived. (R. 1397-98, 1438). Defendant smoked some cocaine that Pedro gave him, and he drank some beer mixed with alcohol. (R. 1395, 1397-98). Leroy left the apartment about a half an hour after Defendant had arrived. (R. 1399, 1438).

After Leroy had left, Defendant and Pedro had a conversation in the back bedroom. Michelle was in the kitchen cutting up cocaine, and Michelle gave Renee "her half" after Pedro told her to do so. (R. 1401). The doorbell rang a few minutes later, and Renee talked to someone outside the window. (R. 1401-1402). Leroy came to the back, but did not enter the apartment, and asked Defendant if he wanted a ride to 79th Street. Defendant declined. (R. 1402, 1438). A few minutes later, the doorbell "rang back" a second time, and Michelle spoke to someone over the intercom while Renee went to the window. (R. 1403). Michelle sat on the couch and smoked some more cocaine while Defendant and Pedro returned to the back bedroom. (R. 1403).

After Defendant and Pedro smoked some more cocaine, Pedro produced a "Sherman stick", or PCP-laced marijuana which he said had just been dipped. Defendant hadn't tried it before, but he took 4 or 5 strong "hits" which made him feel funny. (R. 1398-99, 1403). He smoked some more cocaine and began to feel better. (R. 1404).

Defendant at that time inquired "What about my money?" and Pedro replied "You had got high". In response to Defendant's protests, Pedro said "You know what I'm talking about". Defendant went into the kitchen and unplugged his "box". Pedro interfered, however; "He told me not to even try it". When Defendant turned around, Pedro had a big butcher knife in his hand. Defendant left his "box" alone, announced he was leaving, and went into the bedroom to get his jacket. (R. 1404).

Defendant said he was in the bedroom when "I got scared and I turned around and hit him. And I knocked the knife out of his hand. I fell down to my knees and got the knife, and I come back up, and I stabbed him". (R. 1405). Tony ran into the room and said "oh, oh he's

bleeding", and Renee and Michelle started walking toward the bedroom. (R. 1405). (Defendant contradicted himself on cross-examination, however, when he said he was able to stab Pedro because everyone was already tied up at that time. (R. 1431)). Defendant grabbed Tony, placed a knife against his neck, and said he wanted to leave. Renee got a knife from the kitchen and said "Let my damn son go". Michelle and Renee were hollering, and Defendant's mind was "drifting". (R. 1405-406). Defendant pulled out a telephone cord and cut it. At Defendant's direction, Renee and Michelle tied up Pedro with the telephone cord and a piece of sheet. (R. 1406, 1416). (Confronted with a photograph during cross-examination, Defendant stated Renee and Michelle used a telephone cord and a belt. He could not explain why the cord was not visible in the photograph, and suggested that Pedro "broke loose somehow", someone removed the cord, or that it was destroyed during the fire. (R. 1419-20, 1444)). Then Renee tied up Michelle. Defendant told Tony to put his hands behind his back, prompting Renee to say "I'll tie up my own God-damned son". After he ordered Renee to walk over to him, Defendant placed a knife against Renee's back. Renee then tied up Tony. (R. 1406). When Renee tried to approach him, Defendant stuck the knife out and Renee "ran into it. That's how the knife got bent". (R. 1407, 1439). As Defendant was swinging the knife, Renee tried to grab it and was cut on the chest an unknown number of times. (R. 1407, 1439). Defendant did not notice anything unusual about her face and did not remember slicing the bridge of her nose in two. (R. 1439). At his direction, Renee kneeled on the floor and Defendant bound her hands. Then Defendant gagged Tony and Renee. Somehow Pedro was already gagged. (R. 1407). Defendant was preparing to tie up Michelle when she said she wanted to talk to him. (R. 1407).

Defendant took Michelle out to the front room where he untied her. (R. 1407, 1421). They both smoked some cocaine. Michelle urged him to smoke some more. (R. 1408).

Michelle agreed to have sex with him and undressed in the front room. (R. 1408, 1421). They went into Tony's room where Defendant pulled down his pants. He thought he might throw up, so both of them went into the bathroom. Michelle stood by the sink, and did not try to run away, while Defendant vomited in the toilet. (R. 1408, 1424). Michelle then wrapped a towel around her waist. (R. 1409).

Defendant and Michelle went into the kitchen where Michelle urged him to drink a glass of water. As he was doing so, Defendant noticed the knife with the black handle in a kitchen drawer, the same knife that had already "broke off into Skinny's [Pedro's] temple". (R. 1409, 1425). After he grabbed the knife, Defendant took Michelle into Tony's bedroom and told her to get dressed. (R. 1425). (Defendant had earlier said that Michelle undressed in the front room. (R. 1408)). Defendant cut the television cord in Tony's room and tied up Michelle. He also used a blue scarf to gag her. He then took her into the other bedroom where she asked him if she could lie down. (R. 1410).

At this point Pedro broke loose and hit Defendant in the head. Defendant "stabbed him again, stabbed him again" an unknown number of times, but Pedro continued fighting. (R. 1410, 1428, 1448). Pedro hit him in the head even after he had stabbed him. (R. 1449). Everyone was moving around and making a funny noise, Defendant said, and he noticed Michelle's gag was off. (R. 1411). Defendant then stabbed Renee. It looked as if Pedro was getting up, so Defendant stabbed him again as well. Next Defendant stabbed Michelle in the bed. It looked as if Pedro was getting up yet another time, so Defendant stabbed him again and broke the knife. (R. 1411-12). "Blood was all over my hands. I couldn't get control of myself". (R. 1412). Defendant stabbed Tony next. "I didn't intend to kill nobody. I never did hurt nobody." (R. 1412). Defendant said he removed the watch from Pedro's arm after he

stabbed him, and he forgot he was wearing the watch until police officers noticed it during the interrogation. (R. 1396-97). Defendant said he started a fire in Tony's bedroom by lighting the curtains and the bedspread. He then set a second fire up front as well. (R. 1452-53).

Defendant claimed that Leroy was not present when he, Leonard Kidd, stabbed all four victims. (R. 1396). He tried to put the blame on Leroy, or anybody else for that matter, because his mind was "drifting". (R. 1413). He also told Mildred Orange that "they" had done something bad because he was hoping she would give him money with which to leave town. (R. 1480).

During the Orange trial, Defendant identified the three knives he had used, and he admitted he had thrown them away in garbage cans and dumpsters along with the cocaine pipe, mirror, spoon, fork, and pants that he had used to wrap up the knives. (R. 1393, 1395, 1459). He admitted he had lied to police officers when he told them that Leroy put the knives there. (R. 1482). After disposing of the knives, he went home. Leroy was there when he got home, but Defendant did not tell Leroy that he had just stabbed four people. Nor did Defendant tell him that his girlfriend Renee was dead. (R. 1463, 1469). Defendant later left a pair of pants, boots, and jacket at Leroy's house. (R. 1468).

During cross-examination, the prosecutors quizzed Defendant about his January 12 telephone call to Mildred Orange. Defendant admitted he had called Mildred and had asked her to meet him. He equivocated about the other contents of the conversation, however. (R. 1479-82).

The prosecutors also impeached Defendant's testimony in a number of ways. First the

prosecutors used the written statement given to Dernbach. Defendant admitted telling Dernbach that Leroy (rather than Renee and Michelle) had tied up Pedro with a belt and a scarf (rather than a telephone cord). (R. 1442-44). Then again, he may have told Dernbach that he personally tied up Pedro. (R. 1450). He could not remember whether he had told Dernbach that he tied up Michelle. (R. 1451). He could not remember whether he had told Dernbach that Leroy forced Renee to bind Tony. (R. 1472). He admitted he had told Dernbach that Leroy stabbed Pedro and Renee, although he could not remember telling Dernbach that Leroy and Pedro had an argument. (R. 1444, 1445, 1450). He told Dernbach that Leroy took the watch. (R. 1452). He also told Dernbach that Leroy was in the other bedroom with Michelle, when in fact Defendant himself was with the girl. (R. 1471-72). Even in the same breath, Defendant alternately admitted and denied things contained in his written statement. (R. 1473).

The prosecutors also impeached Defendant's testimony with a statement he had given to jail personnel a couple of days after the murders. At Leroy's trial, Defendant admitted he had used cocaine and marijuana before the night of the murders. He told a paramedic, however, that he did not use drugs at all. (R. 1465-66).

Defendant's Testimony At His Prior Trial

The State also called a second court reporter, Samma Freeman, to read Defendant's August 13, 1985 testimony given at the sentencing hearing in the first prosecution. Although that testimony tracked the account given at the Orange trial, there were several significant differences, including Defendant's suggestion of mental illness and claim of drug intoxication.

Defendant testified he was at the Sportsman's Lounge when Leroy and Renee arrived. Renee said she was on her way to pick up $20, and she wanted Defendant's TV-radio "box",

too. (R. 1514). Defendant instructed her to give him whatever she could pay him. Renee promised him she would pay him and asked him not to worry. (R. 1515). She also recommended that he visit her later "to finish the deal about the box". She said she had a man there dealing cocaine who would "straighten him out on the money". (R. 1517). After they went to his home and got the box, Defendant returned to the bar. (R. 1516). During the course of the evening, he drank about 10 beers. (R. 1559). He could not or would not mention the names of the friends with whom he played cards; "they are some school teachers and things". (R. 1560). Defendant left Sportsman's and bought some rib tips for a lady playing cards and delivered them to her at Sportsman's before returning home.

Defendant stayed home for awhile before he went to Renee's apartment. In this testimony, Defendant never mentioned any phone call from Leroy. (R. 1516-17). Renee, Leroy, Michelle and Pedro were all in the kitchen when he arrived at an unknown time. (R. 1517, 1559). While Michelle was cooking cocaine in a tube by the stove, Defendant drank a beer mixed with an inch and a half of alcohol. (R. 1520). After Michelle had finished cooking the cocaine, the other three showed Defendant how to smoke cocaine from a pipe. (R. 1521). He had snorted cocaine once before, at the time of his father's death in 1979, but he had never smoked cocaine, and he had not used cocaine at all between 1979 and 1984. (R. 1522-23). Then Defendant drank some more beer and alcohol and played a hand of Bid Whisk for Michelle. (R. 1519, 1524). Defendant wanted to leave, in order to catch up with "Christine and Tracey", but Pedro reassured him and said he would take care of him. (R. 1524).

Continuing this conversation in the kitchen, Pedro asked Defendant if he was messing around with Renee or Michelle. "I said, be for real. You see my brother here? Him and Renee is dealing. That ain't none of mine." (R. 1525). Michelle began cutting up the rest of the

cocaine, and she gave Renee her half at Pedro's suggestion. (R. 1526).

Defendant and Pedro went into the back bedroom while Michelle remained in the kitchen cutting cocaine. Pedro produced a freshly-dipped Sherman stick which Defendant smoked. (R. 1527). Defendant said he did not know what it contained. (R. 1529). (Compare Defendant's testimony at the Orange trial, where he said he knew it was PCP. (R. 1399)). Michelle came into the bedroom and asked Defendant if Leroy knew he was smoking "that stuff". Defendant said he did not, and put it out. (R. 1528-29).

Leroy returned at this point and walked into the kitchen to get his coat. (R. 1529). (At the Orange trial, Defendant indicated Leroy never entered the apartment at this time. (R. 1402, 1438)). Leroy asked him if he wanted a ride to 79th Street, but Defendant declined. (R. 1529). Leroy then went to the front and to the door. (R. 1529). The doorbell "rang back" and Michelle answered the intercom while Renee went to the window. Defendant and Pedro stood by the door. When asked where Leroy was, Defendant emphatically said "Leroy had left. He had left out. He was gone, never did come back. He had left". (R. 1530).

Defendant and Pedro returned to the back bedroom where they drank some more beer mixed with alcohol. (R. 1530). Defendant also smoked some more cocaine. When Pedro said "Go ahead, that's for you", Defendant took another puff from the Sherman stick. (R. 1531). He also smoked some more cocaine when Pedro urged him to do so. (R. 1531).

Defendant went into the kitchen. He turned around and saw that Pedro had a big butcher knife in his hand. (R. 1532). Pedro told him not to mess with the TV-radio "box".

According to Defendant, Pedro said "I had gotten high already. You done got your money's worth". (R. 1533). Defendant returned to the bedroom to get his coat. He hit Pedro and stabbed him after he managed to obtain the knife, just as he recounted at the Orange trial. (R. 1534-35). When Tony walked into the bedroom, Defendant grabbed him and placed a knife against his neck. (R. 1535). Renee then got a knife from the kitchen and told Defendant to let her "Goddamn son" go. (R. 1536). Renee dropped the knife when Defendant told her to, however. (R. 1536).

At Defendant's direction, Renee and Michelle tied up Pedro. They tied his hands and arms with a belt and also used a telephone cord. (R. 1537-38). (At the Orange trial, Defendant claimed they used a cord and a sheet, and never mentioned a belt until confronted with a photograph of Pedro's body. (R. 1406, 1416)). Then Renee bound Michelle's hands with a scarf. Defendant was contradictory here: "I had tied Michelle up -- at that time, I had Renee to tie Michelle up". (R. 1537-38). Renee announced she would tie up her own "Goddamn son" and, at Defendant's direction, Renee bound Tony with a telephone cord that Defendant had ripped out of the wall. (R. 1537). At this point, Defendant picked up the big butcher knife, and Renee ran into it, causing her to cry. (R. 1539). Defendant then tied up Renee.

Michelle said she wanted to talk to him, so Defendant took Michelle into the front room where he untied her. (R. 1539). She encouraged him to smoke some more cocaine to make him feel better, which he did. She then undressed at his suggestion. They went into Tony's bedroom where Defendant pulled his pants down. He began to feel ill, however, so they both went into the bathroom where he vomited. Michelle suggested he get a glass of water to make him feel better. (R. 1540).

Michelle and Defendant went into the kitchen where he drank a glass of water. Michelle draped a towel around herself. (Unlike his testimony at the Orange trial, Defendant did not mention anything about seeing a knife in a kitchen drawer at this time. (R. 1425)). The two then walked into the front room where Michelle got dressed. (At his brother's trial, Defendant said Michelle dressed in Tony's room. (R. 1425)). Defendant cut a television cord and bound Michelle's hands. (R. 1541). He then took her to the back bedroom where he gagged her with a blue scarf. (R. 1541).

Pedro broke loose at this point and hit Defendant in the head. (R. 1541). Defendant responded by stabbing all four of his victims: "I didn't do it intentionally, but he hit me on my head". (R. 1541). For the first time, Defendant now said he saw "red things" coming at him. (R. 1542). Defendant stabbed Pedro, Michelle, and Renee in that order. Presumably he stabbed Tony last. When asked if he had stabbed Tony six times, Defendant replied "Not intentionally". (R. 1565). He also said "I looked and saw Tony over there in the corner with a knife stuck up in his chest." (R. 1545). He further stated the knife broke, and the blade remained, inside Pedro's head. (R. 1562). Defendant heard noises, but the noises stopped "after everybody was dead". (R. 1544). The red things stopped moving then, too. (R. 1545). Defendant pulled the knife out of Tony's chest and walked into the kitchen where he put all the knives and the pipe in a brown bag. He also remembered to take his TV-radio "box". (R. 1545-46).

At this point, Defendant started seeing red things again. "Looked like they was just shaking, coming at me with little hands and stuff". (R. 1546). Defendant set two fires to kill the red things and left the apartment. (R. 1546, 1564). He later threw the knives in various garbage cans and burned the pants he had been wearing. (R. 1564-65).

On cross-examination, Defendant acknowledged he had never mentioned the red things to anyone before. He didn't mention them when he was testifying at his brother's trial because "when I was on the stand, I was shaken up". He was not similarly nervous testifying at his death penalty hearing, however. "No, I ain't shaken up today; just talking about people that I killed." (R. 1549).

The Fireman's Identification

The State completed its case-in-chief with testimony from James Thomas, a Chicago firefighter. Between 6:00 and 7:00 a.m., Thomas was sent to Renee Coleman's apartment at 91st and Ashland to extinguish the fire. (R. 1235-38). As he was standing next to his truck, Leonard Kidd walked up to him and asked if anyone in the building was dead. When Thomas responded this was so, Defendant wanted to know if their bodies had been burned. When advised they had not, Defendant said "Damn" and walked away. (R. 1241-42). The circumstances surrounding Thomas' identification are further discussed in Argument V to this brief.

<u>The Defense Case</u>

The Psychologist's Testimony

Linda Wetzel, a clinical psychologist, was retained by defense counsel and paid over $1,000 for her services. (R. 1671-72). She interviewed Defendant twice in May of 1993 and administered a number of tests. (R. 1610, 1614, 1623-24). She found Defendant to be alert, generally oriented, cooperative, polite, and naive. He mimics the language of others, she reported. (R. 1622-25, 1634). Defendant is also "overly compliant and vulnerable to the

influence of others in his attempt to please people". (R. 1635). Wetzel refused to change her opinion when confronted with Dr. Kaplan's own expert opinion that Defendant is "very manipulative" and a malingerer. (R. 1654). Her opinion was similarly unaffected by Dr. Stipes' December, 1985 conclusion that Defendant is a malingerer and substance abuser who has an anti-social personality disorder, i.e. he refuses to follow the rules of society. (R. 1659).

Wetzel administered an IQ test and concluded that Defendant's full scale IQ is 73. (R. 1625). There is a three point margin of error. (R. 1664). Although an IQ of 70 is generally considered to be the cut-off score for retardation, Wetzel decided that Defendant has been mentally retarded since childhood. (R. 1620, 1632). In this connection, Wetzel relied on school records fixing Defendant's IQ at 64 (age 7), 67 (age 10), and 63 (age 15). (R. 1615, 1617). Defense counsel had not shown Wetzel a report from Dr. Smith that fixed Defendant's current IQ at 73. (R. 1664, 1676). Defendant was enrolled in special education classes through the eighth grade. (R. 1621).

Wetzel relied, in large measure, on things that Defendant had told her. She did not believe that he had lied to her or had faked symptoms in any way. (R. 1643, 1650). Defendant told her he could not remember his birthdate, and Wetzel concluded that Defendant has a moderately impaired memory. (R. 1625, 1629). Wetzel refused to change her opinion when confronted with a psychiatrist's report, dated 12-12-91, that concluded that Defendant has a completely normal memory. (R. 1653, 1658).

Defendant also told Wetzel that he had received two head injuries at the ages of 14 and 15. She did not mention one of them in her report. (R. 1622, 1661). Although Wetzel concluded Defendant had some type of internal brain damage, she made no attempt to

corroborate her finding by requesting an EEG, CAT scan or MRI. (R. 1667-68).

Wetzel concluded that Defendant has a neuropsychological impairment known as diffuse organic brain impairment. (R. 1630-31). Because Wetzel had not provided a psychiatric diagnosis, her opinion was not affected by a psychiatrist's conclusion that, although Defendant claims to see things and hear voices, he does not suffer from any sort of mental illness. (R. 1642, 1655-58). Other doctors similarly found no evidence of depression or suicidal thinking. (R. 1664).

Because Wetzel concluded that Defendant has subnormal reading and spelling abilities, she also doubted that Defendant had written the two page letter shown to her during cross-examination. (R. 1626, 1669).

The jury was instructed as to the law, they deliberated, and they found the Defendant guilty on all counts.

The Sentencing Hearing

The Eligibility Stage

After both lawyers had given opening statements, Defendant decided not to testify at the eligibility stage of his death penalty hearing. (R. 1848-58, 1853-54, 1845). The parties then stipulated the evidence presented at trial, Defendant's birthdate (3-22-61) and Anthony Coleman's date of birth. Tony was 9 years old when he was murdered. (R. 1855). The court then admitted the guilty verdicts returned at the trial stage into evidence. (R. 1856). Both parties delivered closing arguments, and defense counsel objected to a number of the State's

proposed instructions. (R. 1845-48). The jury then returned verdicts finding Defendant eligible for the death penalty under section 9-1(b)(3) (two or more murders), 9-1(b)(6) (murder in the course of an armed robbery) and 9-1(b)(7) (murder of a child under twelve).

Additional Evidence In Aggravation

The State proved Defendant's criminal history at the second stage of the hearing. Defendant's record is best portrayed by this time line, which summarizes 45 instances of misconduct:

12-28-78 Defendant pleaded guilty to contributing to the sexual delinquency of a child, after having intercourse with a 14 year old girl on 5-24-78. He was sentenced to one year misdemeanor probation, which was satisfactorily completed on 5-1-80. (R. 1933-37).

8-5-80 Defendant pleaded guilty to, and received one year misdemeanor supervision for, contributing to the sexual delinquency of 14 year old Michelle Brown after having intercourse with her. (R. 1940-43).

4-23-81 Defendant pleaded guilty to felony theft from person after running up to a lady, snatching her purse, and knocking her down. Defendant received two years felony probation and 20 days in jail. (R. 1944-51).

10-28-82 Defendant pleaded guilty to attempted residential burglary after he was seen removing a stereo console from a home. Defendant received 3 years in prison. (R. 1949-51).

11-3-82 Defendant's probation was revoked and he was ordered to serve two years in prison. (R. 1947-48).

10-5-83 Defendant was paroled. (R. 1981).

1-12-84 Defendant murdered Renee Coleman, Anthony Coleman, Michelle Jointer and Ricardo Pedro.

4-30-84 Defendant started a fire in a toilet in his cell and refused an order to put it out. (R. 1957-59).

6-13-84 Guards found a razor blade during a shakedown of Defendant's cell. (R. 1959).

4-20-85 During a verbal altercation with a correctional officer at the county jail, Defendant said he did what he wanted, that he called the shots, that it was "too hot for bullshit", and that the inmates were "ready to roll". (R. 1959).

6-16-85 After having just warned Defendant an hour before about setting fires, an officer responded to a report that Defendant had burned his hand in the cell. Defendant had been written up on 6-8-85 for starting a fire then, as well. (R. 1959).

7-24-85 When an officer tried to deliver Defendant and other inmates to the hearing board, Defendant said "Oh, he ain't no bad ass, he is by himself in the stairwell and there is no other officer around". (R. 1960-61).

10-28-85 After disobeying an order to be quiet and stand in line, Defendant announced "I don't have to listen to that shit, those orders are for dogs and cats". Defendant added that "You better hope I don't get a death sentence because you'll be sorry because every dog has its day". (R. 1962).

4-27-88 When taken to see an X-ray technician at Pontiac, Defendant demanded to see a doctor and said "Don't put your hands on me ... I've killed two people, I'll kill again". Defendant had to be forcibly removed. (R. 1900-1904).

5-31-88 Defendant demanded breakfast and a certain medication, and ordered others to release him from the hospital. He complained about the door to his cell, and wanted to see the warden to complain about the treatment he had been receiving. When an officer ordered Defendant's door hatch closed, Defendant threatened to burn the place down. (R. 1978-79).

8-10-88 Defendant started fires on two galleries and threw a typewriter roller at an officer when he extinguished the flames. (R. 1979-80).

8-17-88 Defendant was disciplined for arson and damage to property and received 3 months C grade as punishment. (R. 1975).

9-6-88 Defendant was disciplined for creating a health hazard. One month commissary restriction. (R. 1975).

10-6-88 Defendant was disciplined for threats. 3 months C grade. (R. 1976).

10-6-88 Defendant was disciplined for drugs or fermented alcohol. 4 months C grade. (R. 1976).

10-21-88 Defendant was disciplined for having fermented alcohol. 6 months C grade and 1 month segregation. (R. 1976).

11-2-88 Defendant was disciplined for intimidation, disobeying an order, insolence, and a health violation. 6 months C grade. (R. 1976).

11-3-88 Defendant was disciplined for assault and insolence. 6 months C grade and 1 month segregation. (R. 1976).

11-11-88 Defendant was disciplined for having fermented alcohol. 6 months C grade and 2 months segregation. (R. 1976).

11-29-88 Defendant threatened to kill a nurse and said "Leave me alone, you fucking bitch, I'll kill you before I leave here". (R. 1980).

12-6-88 Defendant was disciplined for assault. 6 months C grade and 1 month segregation. (R. 1976).

12-6-88 Defendant was disciplined for intimidation and insolence. 6 months C grade and 3 months segregation. (R. 1976).

1-12-89 When Officer Margherio attempted to escort Defendant and inmate Andrew Johnson to their cells, Defendant took a can of Spaghettios wrapped in a sock and swung it over his shoulder, hitting Johnson in the head three times. Johnson was handcuffed and unable to defend himself. Officers had to use chemical agents to subdue Defendant. (R. 1909-14).

1-17-89 Defendant was disciplined for assault, threats, fighting, insolence, and disobeying an order. 1 year segregation and 1 year C grade. (R. 1977).

1-23-89 Defendant was disciplined for an unnamed rule violation. Verbal reprimand. (R. 1977).

2-1-89 Defendant threatened Officer Dallas as he was attempting to make a plumbing repair. Defendant called him a racist and "motherfucker" and threatened to "bust his head". Someone threw a bag containing "hooch" at Office Dallas from Cell 222, Defendant's cell. (R. 1922-25).

2-25-89 Defendant was disciplined for disobeying a direct order. 1 month, no commissary. (R. 1977).

3-8-89 Defendant was disciplined for an unspecified dangerous disturbance, intimidation and insolence. 6 months C grade. (R. 1977).

5-3-89 Defendant was disciplined for intimidation and insolence. 1 month C grade. (R. 1977).

7-20-89 Officers conducted a shakedown of Defendant's cell and found a 9" homemade shank. (R. 1981)

7-31-89 On the way to the exercise yard, Defendant assaulted inmate Owens. Owens was also handcuffed and unable to defend himself. Defendant was subdued after a warning shot was fired. Defendant later filed a grievance and complained that Owens had spit on him. (R. 1917-21). 1 year C grade and 6 months segregation. (R. 1977).

9-30-89 Defendant was disciplined for assaulting an employee, danger to servants and insolence. 2 months C grade and segregation. (R. 1977).

9-30-89 Defendant was disciplined for a dangerous disturbance and intimidation. 2 months C grade and 1 month segregation. (R. 1978).

10-16-89 As Defendant was being escorted on the gallery, he hit librarian Carol Eli on the shoulder, called her a bitch, and refused to return to his cell. Other inmates joined in, said they were going to "ride" with Defendant, and announced officers would have to take all of them. The disturbance was quelled by the TAC team who needed to use chemical agents and shields to protect themselves from objects thrown by the inmates. Defendant was disciplined for abusing privileges, disobeying an order, unauthorized property, assaulting an employee, damage to property, intimidation and insolence. 1 year C grade and 1 year segregation. (R. 1925-29, 1978).

10-20-89 Defendant was disciplined for insolence. Verbal reprimand. (R. 1978).

11-26-91 After complaining to Officer Surrell that he had not received his milk with his tray, Defendant demanded to see a lieutenant. Defendant complained "the bitch" [Surrell] wouldn't talk to him, and Defendant threatened to "get her" in the interlock or on the catwalk. (R. 1963).

2-17-92 Officers found a 20'-30' rope in Defendant's cell. (R. 1964).

4-1-92 Defendant was loud and abusive when warned about using the telephone. He announced the inmates ran the tier. (R. 1965).

12-14-92 Officers found a sharpened, 6" metal rod in Defendant's cell. (R. 1965).

12-14-92 Several hours later, when an officer told Defendant to extinguish a cooking fire in his cell, Defendant said "Fuck you, you pussy white motherfucker"; "I have a hit on you", and "I'm going to kick your white ass on the boulevard or take you out on the next shakedown of ABO". (R. 1966-67).

2-18-93 When told to undress for a search, Defendant said "I am tired of this shit, I ain't going to take this shit no more" and threatened to get a piece of metal and "take care of business". (R. 1969).

5-4-93 Defendant threatened to "cut up" and kill an officer if he walked into his cell. (R. 1967-69).

During the course of the aggravation and mitigation hearing, additional information was

discovered and brought forward thereby continuing to show a disturbing pattern of sociopathic activity committed by this petitioner. For example, it was established that he had previously put a cat in a washing machine filled with scalding hot water and then put the cat in a wagon and pulled it around to show people. Likewise, it was brought forth that the defendant once threw a puppy off a back porch roof.

As the parties were about to give their closing arguments, Defendant said, in the presence of the jury, "I don't know where the State's Attorney is but he better stay the fuck away from me." Defendant denied this statement when the state's attorney asked to place the remark on the record. (R. 2100).

Jury's Death Penalty Deliberations

After hearing all matters in aggravation and mitigation, the jury decided there were no mitigating factors sufficient to preclude the sentence of death. (R. 2151-52).

Defendant gave a statement in allocution. The judge then entered judgment on the verdicts, sentenced Defendant to death for the murders, and ordered a total of 65 years imprisonment for the remaining felonies. (R. 2184-89).

III

REASONS FOR DENYING THE PETITION

Petitioner asserts that he is entitled to clemency because he did not receive the benefit of the changes to the Illinois capital sentencing system which have recently been adopted, proposed or enacted. By relying upon a laundry list of new Supreme Court Rules, as well as 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 Petitioner in Illinois) was by definition fundamentally unfair. However, the Illinois Supreme Court has clearly held that the amendments to its rules are not retroactively applicable. People v. Hickey, 2001 Ill. LEXIS 1080 at *65 (September 27, 2001). Moreover, the Illinois Supreme Court has expressly rejected the claim "that every capital trial has been unreliable and that all appellate review has been haphazard" . Hickey, 2001 Ill. LEXIS 1080 at *57. 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 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.

Adequate Funding

Petitioner specifically asserts that he is entitled to clemency because he was denied adequate funding to investigate his case and/or to retain necessary expert witnesses. (Pet. 15). Despite the recent creation of the Capital Litigation Trust Fund, however, there is no indication that any capital petitioner 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.

Moreover, this claim is particularly unpersuasive in Kidd's particular cases. In each of the two multiple murder cases he was permitted to hire and obtain the services of experts. Specifically, in the quadruple murder case, defense counsel hired both a licensed social worker who was presented to the court as a mitigation expert and a clinical neuropsychologist who administered IQ and other tests before trial. Both were paid "expert" witness fees and both testified on behalf of the defendant at his trial. These experts interviewed numerous members of Petitioner's family in order to provide a comprehensive social history of Petitioner both at trial and sentencing. Their testimony fills over a hundred pages of the trial record. It should be further noted that notwithstanding the Petitioner's claim of inadequate funding, the Petitioner has been

permitted to hire even more experts during his post-conviction hearing. This Petitioner has never suffered in the least due to his indigency.

Experienced Counsel

Petitioner also claims he was denied the services of the two experienced attorneys guaranteed to him by the new Capital Litigation Rules. (Pet. 14). The petitioner suggests that he was somehow denied benefits provided under the newly enacted Supreme Court Rules. The petitioner correctly points out that those individuals that are arrested and charged with capital crimes receive "Not one, but two attorneys are appointed in capital trials" (Pet. 14) What the petitioner fails to disclose is that in the quadruple murder case, petitioner was represented by two highly experienced assistant public defenders, and no one appointed pursuant to the new Rules could possibly have done a better job. In fact, based upon their extensive trial, and murder and capital litigation experience, both attorneys would easily qualify for admission in the Capital Litigation Trial Bar.

Notwithstanding the focus of this response to be on the quadruple murders of Renee Coleman, Anthony Coleman, Michelle Jointer, and Ricardo Pedro, it is certainly worth noting that the petitioner's claim that he was "…forced to represent himself…." (Pet. 14) in the 10 victim arson murder is nothing short of deceptive. All one has to do is read the colloquy cited by the Illinois Supreme Court in the Kidd opinion (687 N.E.2d 945, at 955) between Judge Schreier and the petitioner, and it will be extraordinarily clear that no one "forced" this defendant to represent himself. In actuality, it was quite the contrary. Judge Schreier spent an extensive period of time on two separate court dates trying to talk the defendant out of representing himself. But, true to

form, with his usual bravado and arrogance, the petitioner once again exercised more bad judgment and chose to represent himself.

On appeal before the Illinois Supreme Court, the defendant claimed that he wasn't fully apprised of his rights and didn't knowingly and intelligently waive his right to counsel. The Supreme Court analyzed this issue and extensively cited the trial court record identifying all of the efforts that Judge Schreier made to dissuade the petitioner from representing himself. Moreover, the Supreme Court noted that notwithstanding the defendant's choice to proceed *pro se*, in another extraordinary effort to protect the petitioner's constitutional rights, Judge Schreier ordered that an experienced public defender who knew the petitioner for over 10 years act as "stand-by counsel" to further assist the petitioner should he ask for it. It would appear from the clemency petition filed by Kidd that he acted as his own attorney throughout the entirety of this case. Again, this is misleading. What is not mentioned is that after the defendant was convicted of all counts, petitioner asked this experienced counsel to step in and take over his sentencing hearing.

Ironically, the petitioner cites to Justice Moses Harrison's opposition to capital punishment in recent years. (P-13). However, what is not noted, is that Justice Harrison is the author of the petitioner's opinion which affirmed his death sentence and furthermore dismissed all of the petitioner's claims, including any contention that the petitioner was denied effective assistance of counsel.

Preservation of Physical Evidence

Petitioner also notes that the new Rule 416 modifies former discovery practice. (Pet. 14). In this connection, Petitioner specifically contends that the State failed to preserve important

physical evidence in the quadruple murder case which purportedly would "….exonerate or substantially mitigate his involvement" in this case. Specifically, he cites a "a radio boom box " which, he claims, was recovered and inventoried at the crime scene, but which was lost by the Clerk of the Circuit Court. (Id.) But Petitioner has not made any attempt whatsoever to demonstrate the materiality of this evidence, or show how it would now "exonerate or at least substantially mitigate his involvement". (Id.) Indeed, Petitioner admitted in his statement, and later testified in open court, that he and Leroy Orange had sold the "box" to buy cocaine, but Petitioner reneged on the deal and took the "box" home with him. (R. 1328-29, 1514-17, 1545-46). This is incriminating - not exonerating - evidence. The officers also testified that they could not find the "boom box" at the crime scene, although they did recover one from Petitioner's home. (R. 1135-37). It was the State--not the petitioner--who was upset at the clerk's failure to produce the "boom box" for the retrial. In sum, again, petitioner has misstated the record and has failed to even attempt to argue how the presence of the radio "boom box" could possibly exonerate him.

Depositions

The petitioner claims that the new Supreme Court Rules permit the taking of depositions in capital cases which were not available at his trial. The defendant claims the new rules would permit "…important and exonerating witnesses [to] be more properly preserved." (Pet. 15). Again, what the petitioner fails to disclose is that by the time that the petitioner's case was tried in 1993 the petitioner had given a court-reported statement admitting to being accountable for the quadruple murder, a full judicial confession given after his original plea of guilty where he fully admitted to stabbing all four victims, and another judicial confession where he testified at his co-defendant's trial where again he admitted that he alone stabbed all of victims. There is a distinct reason that the petitioner does not provide any specificity or cite

any “important and exonerating witnesses” which he would like to depose in the quadruple murder case. There isn’t any.

Videotaping

The clemency petition suggests that the petitioner was convicted based “…upon uncounseled purportedly self-incriminating statements that police and prosecutors alleged that he made during custodial interrogations” and was at least one of those statements was “…the product of torture” and obtained only after the petitioner “…habitually requested a lawyer.” (Pet. 15-16). In yet another failure by the petitioner to disclose the actual facts of this case, the ***least*** culpable statement that the petitioner gave in the quadruple murder was the one that was obtained by the police and the assigned prosecutor! It should be noted that the verbatim, court-reported statement that was provided by the petitioner contains each and every constitutional right given by the prosecutor and thereafter waived by the petitioner.

In contrast, the ***most*** culpable statements made by the petitioner were made in open court, with counsel present (and against the advice of counsel), in a comfortable chair within the safety of a courtroom, in front of a judge, in front of a jury, and with no interrogating police or prosecutors present. It was in this setting that the defendant admitted to personally stabbing all four victims. Videotaping would have not benefited the petitioner in the least.

In an apparent reference to the ten victim case, the petitioner states that video taping would have permitted “…Mr. Kidd—had he been appointed counsel—to dramatically impeach the trial testimony of those witnesses with their prior inconsistent statements.” (P.16). As noted above, counsel was appointed as standby counsel because the ***petitioner refused*** to heed the repeated warnings of his counsel and the trial judge.

Moreover, Petitioner fails to recognize that neither the Commission nor the governor himself call for the suppression of a statement simply because it was not videotaped.

Claims Of Physical Abuse

Petitioner next claims that police officers physically abused him and forced him to give

false confessions in the quadruple murder case. Again, what is not disclosed is that that every judge who has heard this claim has rejected it. Judge Berkos, presiding over the pre-trial motions (and later, the jury trial of the quadruple murder) heard extensive testimony from numerous witnesses and concluded that Petitioner's claims were utterly false, and that no coercion or improper police practices had been used. The confessions were voluntarily made. (R. 310-11).

The Illinois Supreme Court then reviewed the evidence, heard additional argument on the point, and agreed that Petitioner's confessions were freely and voluntarily given. Kidd, 175 Ill. 2d at 28. Moreover, Petitioner's half-brother, Leroy Orange, has also claimed police abuse - Kidd and Orange were interrogated at the same police station at roughly the same time - and the Illinois Supreme Court has totally rejected Orange's allegations, too. People v. Orange, 195 Ill. 2d 437 (2001).

The petitioner has made various inconsistent claims of abuse throughout the years. They have become more extensive and dramatic as the years have gone on. Interestingly, when the petitioner testified for his brother and the petitioner admitted that he stabbed all four victims, he never testified that he was abused by the police in any way. Further, the claims of abuse originally made to the trial court through a Motion to Suppress never once claimed that Lt. Burge was involved in any form of abuse. Accordingly, a motion in limine was ordered by Judge Berkos due to no allegations against Lt. Burge (R-813-816).

Moreover, the defendant did not even choose to testify at his own Motion to Suppress. Nor did the petitioner testify as to any claims of abuse when he testified at his sentencing hearing on August 13, 1985.

The Illinois Supreme Court reviewed Judge Berkos findings of voluntariness, agreed that

there was no showing that the petitioner was ever abused or injured while in police custody, and found that there was no evidence of coercion. It was also noted that Judge Dennis Dernbach (former Assistant State's Attorney) who took the defendant's statement specifically asked how he had been treated and the petitioner had no complaints as to his treatment.

Petitioner's claims have been reviewed again and again and no court has ever found that any claim regarding abuse had a scintilla of credibility.

Mental Retardation

The petitioner alleges that his death sentence should be commuted in light of Atkins v. Virginia, 122 S. Ct. 2242 (2002), claiming that he is mentally retarded and that, therefore, the imposition of the death sentence violates the Eighth Amendment's prohibition against cruel and unusual punishment.

This petitioner, who claims to be retarded, had acted as his own counsel throughout the prosecution of the ten victim arson murder. Although Judge Schreier, as noted above, made every effort to dissuade the petitioner from attempting such a task, Judge Schreier was surprised at his trial skills without the benefit of any formal training. Of course, after losing the trial, the petitioner claimed to have been under the influence of drugs, at which time the defendant testified and the judge made the following findings:

> "[B]ecause defendant lacks credibility that in my judgment he was not using drugs during the trial in this Court, and I further find that he exhibited absolutely no sign of drug use.
>
> He was competent, he was totally mentally fit, he was as sober as anyone in the Courtroom, and he didn't do a bad job as his own lawyer."

The petitioner has a history of violence (14 murder convictions), unprovoked attacks (a

mountain of jail and penitentiary records), and claiming to be retarded when he actually is malingering (faking retardation). The petitioner is quick to cite school records that suggest subnormal intelligence, however, he fails to mention that throughout the litigation, it has been shown that he has the full capacity to adapt and function well in society. All too often he simply chose not to.

The petitioner fails to note that once again, after losing his *pro se* trial, he claimed to be suffering from a "history of mental retardation, brain damage, and epilepsy" thereby preventing him from knowing and intelligently waiving his right to assistance of counsel. Justice Harrison and the rest of the Illinois Supreme Court disagreed. Kidd, 687 N.E.2d 945 (1997).

The defendant's own experts, Dr. Karen Smith and Dr. Linda Wetzel, show that the petitioner has a full scale IQ of 73 which is above the cut off for mental retardation as measured in the DSM-IV TR. More troublesome for the petitioner is that when the court appointed expert, Dr. Albert Stipes, attempted to test the petitioner, it was Dr. Stipes's professional opinion that the petitioner was "malingering" (defined by Dr. Wetzel as "faking on tests to make yourself worse than you really are). (Kidd, id, at 953, also see, R-1625, 1664, 1676). Additionally, the trial reflects that testimony was presented to the trial court that the petitioner does not suffer from any form of mental illness. (R. 1642, 1655-58). The petitioner again makes no mention of four (4) reports that were testified to originally authored by a Dr. De Los Santos, who concluded in 1988 and 1989 that petitioner had good attention and concentration and an average intellect (R.2074-77).

When the facts and testimony is objectively viewed it becomes clear that the petitioner does not fall within the ambit of Atkins. More specifically, there exists a wealth of information and judicial opinions that directly contradict the self-serving claims of the petitioner that he suffers from mental retardation.

Claims Of Actual Innocence

Of all the basis forwarded by the petitioner seeking executive clemency, this claim is by far the most specious and ridiculous. To sum up the degree of evidence that points to the defendant's guilt: A signed court reported statement, a prior guilty plea to all four murders (later vacated due to improper judicial admonishments), a judicial confession given at his the trial of his brother and co-defendant that is more culpable than his court-reported statement , a second judicial confession at the petitioner's own sentencing hearing, a handwritten letter by the petitioner that he wrote in August, 1984 admitting to the murders, an identification of the petitioner outside the scene of the murder by a fireman, an admission to his sister-in-law that what he and his brother did could put them into jail for the rest of their lives, and three separate trips that the defendant took the police on to show them where they hid the knives used to stab the victims.

The defendant is not innocent.

CONCLUSION

For all these reasons, the People of the State of Illinois respectfully request that this Board and Governor Ryan deny Executive Clemency to LEONARD KIDD for the quadruple murder identified by it's trial number 84-667.

Respectfully submitted,

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IV

AFFIRMING OPINIONS

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VICTIM IMPACT STATEMENTS

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DOCUMENTATION FROM VICTIM'S RELATIVES

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COPIES OF STATEMENTS/CONFESSIONS

VIII

EXHIBITS

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DEFENDANT'S CRIMINAL HISTORY