

OCTOBER 2002 SESSION
PRISONER REVIEW BOARD
STATE OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
v.)	Pardon Docket No. \
)	
LEONARD KIDD)	Inmate No. N23646
)	
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)	

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

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

HEARING REQUESTED

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I.

HISTORY OF THE CASE

Leonard Kidd has murdered 14 people, 13 of them women and children. In 1980 he set a fire at night in the apartment building where his girlfriend lived and where he knew numerous children were sleeping. 10 of those children died in the fire. In 1984 he stabbed to death a 9-year old boy, her mother, another woman and a man. After butchering the victims, Leonard Kidd set fire to that apartment building as well.

Leonard Kidd ["Petitioner"] has been twice convicted of murder and twice sentenced to death. In case number 84-CR-667, tried before the Honorable Christy Berkos, Petitioner was convicted of the January 12, 1984 stabbing deaths of Michelle Jinter, Ricardo Pedro, Renee Coleman, and Renee's 9 year old son Anthony, all of whom resided at 1553 W. 91st Street, Chicago, Illinois. The Illinois Supreme Court reversed Petitioner's original convictions on appeal, see People v. Kidd, 129 Ill. 2d 432 (1989), and Petitioner was retried in the Cook County Circuit Court. The jury returned guilty verdicts for the offenses of murder, armed robbery, aggravated arson, and concealment of homicidal death. Petitioner retained his jury for

the sentencing hearing. The prosecutors established Petitioner'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). After the parties presented evidence in aggravation and mitigation, the jury concluded there were no mitigating factors sufficient to preclude the death penalty. Judge Berkos then entered judgment on the murder convictions and sentenced Petitioner to death. The judge also ordered Petitioner 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). Petitioner's convictions and death sentence were affirmed on appeal. People v. Kidd, 175 Ill. 2d 1 (1997).

In case number 92 CR 12334, tried before Judge Schreier, Petitioner was convicted of the October 28, 1980 arson and murders of 10 children living in an apartment building at 1512 E. 65th Place in Chicago. Petitioner's father owned the building. After the Illinois Supreme Court reversed Kidd's original convictions on appeal, see People v. Kidd, 147 Ill. 2d 510 (1992), Kidd was retried in the Cook County Circuit Court. Kidd represented himself at trial, with assistant public defender Robert Strunck serving as standby counsel. (R. 96-100). The jury found Kidd guilty as charged on all counts. (CLR 113-123).

Kidd retained his jury for the sentencing hearing, and elected to be represented at both stages of that hearing by assistant public defender Robert Strunck. After proving Kidd's age and prior murder convictions, the prosecutors established Kidd's eligibility for the death penalty by proving he had been convicted of murdering 2 or more individuals. 720 ILCS 5/9-1 (b)(3).

(CLR 135). Both parties then presented evidence at the second phase of sentencing, but the jury concluded, in a little less than an hour, that there were no mitigating factors sufficient to preclude the death penalty. (R. 1189, 1191). Judge Schreier entered judgment on the murder convictions and sentenced Kidd to death. Petitioner's convictions and sentences were affirmed on direct appeal. People v. Kidd, 178 Ill. 2d 92 (1997).

II.

FACTS OF CASE NO. 84-CR-667:

THE 4 VICTIM CASE

The State's Case At Trial

At approximately 4:15 a.m. on January 12, 1984, neighbor O.J. 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 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 ran upstairs and discovered 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 Petitioner Leonard Kidd. (R. 1042, 1065)).

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 Jinter'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. As noted below, Petitioner 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. Bomb and arson specialists determined that someone had set two separate fires inside the apartment in the front and rear bedrooms. (R. 1297-98).

Petitioner's Arrest

Police officers contacted Eniwotec Durr and interviewed her early in the afternoon of January 12. The officers showed Durr 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, went to one of these, and arrested Leroy Orange, for whom there was already an outstanding arrest warrant in another case. (R. 928-38, 1042).

Mildred Orange's Testimony

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).

After she returned home from work, 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, Petitioner Leonard Kidd 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 Petitioner at a McDonald's near his home around 4:00 or 4:30 p.m. (R. 1062). Inside the restaurant, Petitioner 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 Petitioner at that time. (R. 1127).

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. (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). 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).

Petitioner's First Post-Arrest Statement

After being advised of his constitutional rights, Petitioner gave his first statement to police officers at 5:15 p.m. on January 12, 1984. (R. 1129-32). Petitioner admitted he had been at the apartment rented by Leroy's girlfriend [Renee Coleman] on 91st Street between midnight and 4:30 a.m. Petitioner claimed he had spent most of his time in the front bedroom with Michelle, who was undressed. Petitioner 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. Petitioner left at that time. (R. 1133-34).

When officers quizzed him about going home, Petitioner 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 Petitioner 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, Petitioner claimed Pedro had traded his watch for Petitioner's radio. Officers could not find a radio at the crime scene, although they did recover one from Petitioner's home. (R. 1135-37).

Petitioner next provided some details about the two dudes at the apartment. One dude was named Larry but used the nickname "Slick Rick". (Leroy Orange was also known as Larry. (R. 1139)). The other dude was named Ricky Jones. Petitioner 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 a different address, however. (R. 1138-40).

When confronted with that information, Petitioner 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 Petitioner 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 Petitioner again and similarly arranged to have Leroy brought into Petitioner'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 Petitioner 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. Petitioner 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).

Petitioner's Second Statement

Petitioner gave his second statement around 10:30 p.m. Petitioner 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 Petitioner's home on S. Emerald where Petitioner got his Pioneer radio-TV "box" and gave it to his brother. (R. 1144, 1164). Petitioner then returned to Sportsman's where he drank and ate some dinner. (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). Petitioner 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, Petitioner 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). Petitioner 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). Petitioner offered Pedro a cigarette instead. (R. 1146). Pedro asked that he "not be hurt any longer", and Petitioner 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 Petitioner tried to help Pedro. (R. 1147).

As Petitioner 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 Petitioner had had sex with earlier. (R. 1147-48, 1167). (Please note that tests performed on both Renee Coleman and Michelle Jinter 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. After Michelle left, Petitioner 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). Petitioner said he felt "nervous" and "upset" by his brother's actions. (R. 1169).

Completing this statement, Petitioner said Leroy gathered up whatever things "they" wanted to remove from the apartment before Leroy set fires intended to eliminate fingerprints. (R. 1152, 1154). Petitioner took his radio-TV "box" at this time. Petitioner also gave contradictory accounts about Pedro's watch. Although Petitioner had earlier said that Pedro had given him the watch as a gift, and had asked him not to tell Leroy, now Petitioner 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. Petitioner said he did not have any blood on himself. The brothers then went to Petitioner'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, Petitioner did not claim that his brother had persuaded him to do anything; Petitioner denied any participation in the murders whatsoever. (R. 1172).

Second And Third Trips To Recover Evidence

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

At approximately 10:30 a.m. on January 13, Petitioner took officers out for a third and final time, to an alley at 9256 S. Justine. This time Petitioner directed officers to a knife with a

bent blade in a garbage can. The officers also recovered a knife with a broken tip in a different location two buildings away. (R. 1187, 1191-93). Petitioner 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).

Petitioner's Written Statement

Petitioner gave a third statement, transcribed by a court reporter, to former Assistant State's Attorney (now Judge) Dernbach at 2:50 a.m. on January 13, 1984. (R. 1326, 1350). After being advised of his Miranda rights, Petitioner stated he was in the Sportsman's Lounge on January 11 when Leroy and Renee arrived. Leroy asked Petitioner to give him TV-radio "box" so he could obtain cocaine. Petitioner agreed, and the three drove to Petitioner's home on S. Emerald where Petitioner got the "box" and gave it to his brother. Petitioner 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. Petitioner 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 Petitioner 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. Petitioner 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 Petitioner left the bedroom to talk to him, Leroy said "I'm coming, hold on". Petitioner 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). Petitioner was not bound or restrained in any way when Leroy was doing all of this. Petitioner said he was trying to get out; "I was fighting myself". (R. 1339).

Petitioner explained how he got a watch from Pedro: "We had talked, and he told me to take it off his arm." (R. 1339). After Petitioner laid the watch on the dresser, however, Leroy

picked it up. (R. 1340). Petitioner 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 Petitioner 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).

Petitioner also told 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, Petitioner corrected the written statement to refer to Leroy only. (R. 1346).

Leroy Orange's Statement

Leroy Orange also gave a court-reported statement to Dernbach 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 Petitioner to give him his TV-radio to obtain cocaine. (R. 1358). They went to Petitioner's house on S. Emerald where Petitioner 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 Petitioner and asked him to come over. After Petitioner 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. Petitioner 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, Petitioner 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 Petitioner 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). Petitioner 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 Petitioner 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 Petitioner 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).

Petitioner's Prior Testimony At The Orange Trial

The State called a court reporter to read the testimony Petitioner gave on May 21, 1985, at the trial of his brother Leroy Orange. Once again Petitioner 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 Petitioner's house where he gave the TV-radio "box" to Renee. Leroy didn't have anything to do with the "box", and Petitioner 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). Petitioner then returned to the bar where he drank beer and played cards with persons whose last names he does not know. (R. 1435). Petitioner went home at an unknown time. (R. 1436).

After he received a call from Leroy, Petitioner 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 when he arrived. (R. 1397-98, 1438). Petitioner 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 Petitioner had arrived. (R. 1399, 1438).

After Leroy had left, Petitioner 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 Petitioner if he wanted a ride to 79th Street. Petitioner 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 Petitioner and Pedro returned to the back bedroom. (R. 1403).

After Petitioner and Pedro smoked some more cocaine, Pedro produced a "Sherman stick", or PCP-laced marijuana which he said had just been dipped. Petitioner 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).

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

Petitioner 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). (Petitioner 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)). Petitioner 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 Petitioner's mind was "drifting". (R. 1405-406). Petitioner pulled out a telephone cord and cut it. At Petitioner'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, Petitioner 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. Petitioner 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, Petitioner placed a knife against Renee's back. Renee then tied up Tony. (R. 1406). When Renee tried to approach him, Petitioner stuck the knife out and Renee "ran into it. That's how the knife got bent". (R. 1407, 1439). As Petitioner was swinging the knife, Renee tried to grab it and was cut on the chest an unknown number of times. (R. 1407, 1439). Petitioner 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 Petitioner bound her hands. Then Petitioner gagged Tony and Renee. Somehow Pedro was already gagged. (R. 1407). Petitioner was preparing to tie up Michelle when she said she wanted to talk to him. (R. 1407).

Petitioner 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 Petitioner 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 Petitioner vomited in the toilet. (R. 1408, 1424). Michelle then wrapped a towel around her waist. (R. 1409).

Petitioner and Michelle went into the kitchen where Michelle urged him to drink a glass of water. As he was doing so, Petitioner 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, Petitioner took Michelle into Tony's bedroom and told her to get dressed. (R. 1425). (Petitioner had earlier said that Michelle undressed in the front room. (R. 1408)). Petitioner 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 Petitioner in the head. Petitioner "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, Petitioner said, and he noticed Michelle's gag was off. (R. 1411). Petitioner then stabbed Renee. It looked as if Pedro was getting up, so Petitioner stabbed him again as well. Next Petitioner stabbed Michelle in the bed. It looked as if Pedro was getting up yet another time, so Petitioner 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). Petitioner stabbed Tony next. "I didn't intend to kill nobody. I never did hurt nobody." (R. 1412). Petitioner 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). Petitioner 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).

Petitioner 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, Petitioner 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 Petitioner did not tell Leroy that he had just stabbed four people. Nor did Petitioner tell him that his girlfriend Renee was dead. (R. 1463, 1469). Petitioner later left a pair of pants, boots, and jacket at Leroy's house. (R. 1468).

The prosecutors also impeached Petitioner's testimony in a number of ways. First the prosecutors used the written statement given to Dernbach. Petitioner 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 Petitioner himself was with the girl. (R. 1471-72). Even in the same breath, Petitioner alternately admitted and denied things contained in his written statement. (R. 1473).

The prosecutors also impeached Petitioner's testimony with a statement he had given to jail personnel a couple of days after the murders. At Leroy's trial, Petitioner 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).

Petitioner's Testimony At His Prior Trial

The State also called a different court reporter to read Petitioner'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 Petitioner's suggestion of mental illness and claim of drug intoxication.

Petitioner 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 Petitioner's TV-radio "box", too. (R. 1514). Petitioner 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, Petitioner 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). Petitioner left Sportsman's and bought some food for a lady playing cards and delivered it to her at Sportsman's before returning home.

Petitioner stayed home for awhile before he went to Renee's apartment. In this testimony, Petitioner 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, Petitioner 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 Petitioner 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 Petitioner drank some more beer and alcohol and played a hand of Bid Whisk for Michelle. (R. 1519, 1524). Petitioner 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 Petitioner 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).

Petitioner and Pedro went into the back bedroom while Michelle remained in the kitchen cutting cocaine. Pedro produced a freshly-dipped Sherman stick which Petitioner smoked. (R. 1527). Petitioner said he did not know what it contained. (R. 1529). (Compare Petitioner's testimony at the Orange trial, where he said he knew it was PCP. (R. 1399)). Michelle came into the bedroom and asked Petitioner if Leroy knew he was smoking "that stuff". Petitioner 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, Petitioner indicated Leroy never entered the apartment at this time. (R. 1402, 1438)). Leroy asked him if he wanted a ride to 79th Street, but Petitioner 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. Petitioner and Pedro stood by the door. When asked where Leroy was, Petitioner emphatically said "Leroy had left. He had left out. He was gone, never did come back. He had left". (R. 1530).

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

Petitioner 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 Petitioner, Pedro said "I had gotten high already. You done got your money's worth". (R. 1533). Petitioner 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, Petitioner grabbed him and placed a knife against his neck. (R. 1535). Renee then got a knife from the kitchen and told Petitioner to let her "Goddamn son" go. (R. 1536). Renee dropped the knife when Petitioner told her to, however. (R. 1536).

At Petitioner'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, Petitioner 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. Petitioner 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 Petitioner's direction, Renee bound Tony with a telephone cord that Petitioner had ripped out of the wall. (R. 1537). At this point, Petitioner picked up the big butcher knife, and Renee ran into it, causing her to cry. (R. 1539). Petitioner then tied up Renee.

Michelle said she wanted to talk to him, so Petitioner 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 Petitioner 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 Petitioner went into the kitchen where he drank a glass of water. Michelle draped a towel around herself. (Unlike his testimony at the Orange trial, Petitioner 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, Petitioner said Michelle dressed in Tony's room. (R. 1425)). Petitioner 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 Petitioner in the head. (R. 1541). Petitioner 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, Petitioner now said he saw "red things" coming at him. (R. 1542). Petitioner stabbed Pedro, Michelle, and Renee in that order. Presumably he stabbed Tony last. When asked if he had stabbed Tony six times, Petitioner 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). Petitioner heard noises, but the noises stopped "after everybody was dead". (R. 1544). The red things stopped moving then, too. (R. 1545). Petitioner 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, Petitioner started seeing red things again. "Looked like they was just shaking, coming at me with little hands and stuff". (R. 1546). Petitioner 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, Petitioner 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 with testimony from Chicago firefighter sent to Renee Coleman's apartment (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, Petitioner wanted to know if their bodies had been burned. When advised they had not, Petitioner said "Damn" and walked away. (R. 1241-42)

The Defense Case

A clinical psychologist testified that she found Petitioner to be alert, generally oriented, cooperative, polite, naïve, and easily influenced by others. (R. 1622-25, 1634). Her opinion was not affected by other evidence that Petitioner is "very manipulative" and a malingerer. (R. 1654). Her opinion was similarly unaffected by a psychiatrist's 1985 conclusion that Petitioner 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).

The clinical psychologist administered an IQ test and concluded that Petitioner's full scale IQ is 73 with a 3 point margin of error. (R. 1625). Another expert ALSO affixed Petitioner's current IQ at 73. (R. 1664, 1676).

The psychologist relied on what Petitioner had told her and concluded that he had not lied in any way. Petitioner told her he could not remember his birthdate, and from this the expert concluded that Petitioner has a moderately impaired memory. (R. 1625, 1629). She refused to change her opinion when confronted with a psychiatrist's report, dated 12-12-91, that concluded that Petitioner has a completely normal memory. (R. 1653, 1658).

Another psychiatrist noted that, although Petitioner 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).

The Sentencing Hearing

Additional Evidence In Aggravation

The State proved Petitioner's criminal history at the second stage of the hearing. While he was incarcerated at the Pontiac prison in the early 1980's, and yet a second time between in 1988-89, Kidd amassed a disciplinary file that was 7 inches thick. The file catalogued 30 rules infractions, 22 of which involved "major" infractions resulting in loss of good time, privileges or segregation. (R. 979, 976, 986). He was also confined in the Cook County jail between 1984-85 and 1991-93, where he was found guilty of 41 rules infractions. Eleven of those 41 incidents involved assaults and batteries. (R. 907-10). Some of the rules infractions for "drugs" mentioned below include punishment for possession of "hooch" or homemade liquor. (R. 983).

Petitioner's record is best portrayed by this time line:

12-28-78 Petitioner 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 Petitioner 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 Petitioner pleaded guilty to felony theft from person after running up to a lady, snatching her purse, and knocking her down. Petitioner received two years felony probation and 20 days in jail. (R. 1944-51).

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

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

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

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

4-30-84 Petitioner 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 Petitioner's cell. (R. 1959).

4-20-85 During a verbal altercation with a correctional officer at the county jail, Petitioner 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 Petitioner an hour before about setting fires, an officer responded to a report that Petitioner had burned his hand in the cell. Petitioner 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 Petitioner and other inmates to the hearing board, Petitioner 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, Petitioner announced "I don't have to listen to that shit, those orders are for dogs and cats". Petitioner 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, Petitioner demanded to see a doctor and said "Don't put your hands on me ... I've killed two people, I'll kill again". Petitioner had to be forcibly removed. (R. 1900-1904).

5-31-88 Petitioner 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 Petitioner's door hatch closed, Petitioner threatened to burn the place down. (R. 1978-79).

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

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

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

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

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

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

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

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

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

11-29-88 Petitioner 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 Petitioner was disciplined for assault. 6 months C grade and 1 month segregation. (R. 1976).

12-6-88 Petitioner 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 Petitioner and inmate Andrew Johnson to their cells, Petitioner 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 Petitioner. (R. 1909-14).

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

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

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

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

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

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

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

7-31-89 On the way to the exercise yard, Petitioner assaulted inmate Owens. Owens was also handcuffed and unable to defend himself. Petitioner was subdued after a warning shot was fired. Petitioner 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 Petitioner was disciplined for assaulting an employee, danger to servants and insolence. 2 months C grade and segregation. (R. 1977).

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

10-16-89 As Petitioner 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 Petitioner, 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. Petitioner 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 Petitioner 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, Petitioner demanded to see a lieutenant. Petitioner complained "the bitch" [Surrell] wouldn't talk to him, and Petitioner threatened to "get her" in the interlock or on the catwalk. (R. 1963).

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

4-1-92 Petitioner 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 Petitioner's cell. (R. 1965).

12-14-92 Several hours later, when an officer told Petitioner to extinguish a cooking fire in his cell, Petitioner 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, Petitioner 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 Petitioner threatened to "cut up" and kill an officer if he walked into his cell. (R. 1967-69).

Attached to this Response, and marked Exhibit A, are Petitioner's disciplinary reports in prison which chronicle an additional 78 incidents of misconduct during the years 1995 to 2002.

As the parties were about to give their closing arguments, Petitioner 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." Petitioner denied this statement when the state's attorney asked to place the remark on the record. (R. 2100).

The jury decided there were no mitigating factors sufficient to preclude the death penalty.

FACTS OF CASE NO. 92-CR-12334:

THE TEN VICTIM CASE

The Arson

Petitioner's father, Melvin Kidd, owned a two-story apartment building located at 1512 E. 65th Place in Chicago. (R. 508, 591). Petitioner was often seen helping his father around the building. Indeed, a tenant noticed that Petitioner always had a lot of keys to the building. (R. 655, 675).

While his father was still alive, Kidd told a tenant he was "gone (sic) be owning" the building because his father "had given" (sic) it to him. (R. 592). Kidd made a similar statement in 1980, when he told another tenant that "he thought the building was his". (R. 656). Before his death in 1979 or 1980, however, Melvin - apparently without Kidd's knowledge - transferred the building by warranty deed to Kidd's sisters, Deborah and Beverly. (R. 593, 681, 725). Deborah instructed the tenants to pay their rent to her, and to her alone. (R. 657). Kidd still visited the building nearly every day after his father's death, however. (R. 657). After his

father had died - and a few months before the fire - Kidd told a tenant that "soon this building gone (sic) pay off". (R. 667). The City of Chicago had condemned the building and had posted a notice, but Kidd tore it down. (R. 669, 682). Another one of Melvin's buildings, located at 7724 S. Blackstone, was also destroyed by fire on an undisclosed date. (R. 679). Yet another building on W. 65th Place, also given to Kidd by his father, was similarly "burned up" while Kidd was incarcerated. (R. 725).

The building located at 1512 E. 65th Place contained 5 apartments. (R. 508, 591). Emma Burt and her 4 children lived in a second floor apartment on the west side of the building. Brenda Boyd, in turn, lived with her 5 children in another second floor apartment on the east side of the building. (R. 467, 530, 591, 653). There were 3 first floor apartments, all of which were vacant at the time of the fire. (R. 530). Someone referred to as "Mr. Bob" had formerly resided in the front apartment. The rear apartment had been further subdivided into 2 apartments, and Ida Clay had formerly lived on the east side of the rear of the building. (R. 425-27, 466, 540).

Gertrude Burt Armstrong (who lived 2 doors away) was babysitting her sister Emma's children on the evening of October 28, while Emma was at work. All of Emma's children were home at the time of the fire. (R. 531, 658-59). Also present in the Burt apartment were Gertrude's 5 children. (R. 463, 528, 531). The following children died as a result of the fire: 7-month old Deavon Boyd, 7-year old Chirodia Anderson, 2-year old Cyrus Anderson, 9-year old Ronald Anderson, 6-year old Patricia Burt, 5-year old Denise Burt, 1-year old Latashia Monique Burt, 17-year old Diane Armstrong, 13-year old Linda Armstrong, and 6-year old Albert Burt. The parties stipulated the cause of death as acute carbon monoxide toxicity caused

by the fire. (R. 689-703). The carbon monoxide blood saturation for just one of the victims, Diane Armstrong, was 79 per cent. (R. 694).

Chicago Police Detective Ernest Rokosik inspected the premises the next day. (R. 379). After conducting an extensive investigation, including examination of two V-shaped patterns of burning, Rokosik determined the fire had 2 points of origin in a living room (also called a dining room) in the rear, first floor apartment on the west side of the building. He found the first of these burn patterns inside a closet on the east wall of the room. The second point of origin was in the northeast corner of that room. The fire had burned through the ceiling, communicated to the second floor, and spread both east and west until it ignited a staircase. When the fire reached a stairwell and acquired additional oxygen, it intensified and rose, until it eventually communicated through the roof. (R. 382, 388, 392, 401, 404-405, 410, 415, 427). The fires were caused by the intentional ignition of ordinary combustibles, e.g. paper and rags, with an open flame. Rokosik could not exactly determine the type of open flame, but a cigarette lighter certainly could have been used. (R. 421, 445, 452).

Rokosik also found signs of a small fire in the Clay apartment, specifically a pile of papers and clothing which bore signs of surface burning or charring. (R. 386). There was no path of communication to the fire damage in the remainder of the building, however. (R. 385-86, 392). Rokosik further testified the fire could not possibly have begun in either "Mr. Bob's" apartment or in the basement of the building. (R. 395, 396, 397, 399, 417, 456, 450-51).

Rokosik eliminated numerous possible causes of fire, including radiators, electrical and household appliances, light and ceiling fixtures, spontaneous combustion of organic material, the circuit breaker; and BX cables. (R. 402, 403, 406, 407, 408, 416, 441, 455, 457). During cross-examination, Rokosik stated he did not know that apartment lights had allegedly been

blinking before the fire. He had checked the circuit breakers, however, and had already excluded faulty wiring from the list of possible causes. (R. 460-61). In his opinion, there was no possibility whatsoever of a providential or accidental cause of fire. (R. 421).

Kidd's Visit To The Burt Apartment

14 year old Renee Armstrong, Kidd's girlfriend, was sleeping with her brothers and sisters in the Burt apartment when Kidd arrived there late in the evening of October 28, 1980. (R. 463-64). Kidd chatted with Gertrude Armstrong in the kitchen for awhile. He asked her if she was cooking anything and said he could smell something burning. Gertrude had not cooked that evening, however, and she did not smell anything unusual. (R. 535, 537, 585). Kidd convinced her to cancel her plans to visit his brother¹. He advised her not to leave because, in his words, "I feel something gone (sic) happen". (R. 536, 579). Kidd also inquired next door, but Brenda Boyd wasn't cooking anything, either. (R. 536, 608).

When he returned from the Boyd apartment, Kidd asked if "Ne Ne" was home. (R. 537). After he awakened her, Renee announced she was hungry. They made plans to go to McDonald's. (R. 467-69, 532, 534, 538). While Renee and Kidd were talking to Gertrude in the front of the apartment, and Renee sought her mother's permission to go out, Kidd again announced that he smelled smoke. Neither Renee nor Gertrude could smell any smoke, however. (R. 470, 538). Kidd then announced he would go downstairs to check for fire. When he did so, with Gertrude and Renee bringing up the rear, they found all of the apartment doors were closed. No one else was present on the first floor. (R. 470, 474, 539). Gertrude

¹ Gertrude later married Petitioner's half-brother Leroy Orange, with whom Petitioner was convicted of aggravated arson, first degree murder, armed robbery, and concealment of homicidal death in Petitioner's other appeal, case number 76490. Gertrude gives her name as Gertrude Burt Armstrong Kidd. (R. 716, 719).

and Renee still could not smell any smoke and did not see any evidence of fire. (R. 470). Kidd then kicked in the door of the locked Clay apartment and all 3 of them entered the apartment. They found a small fire under a dresser thrown over a pile of telephone books and newspapers, which they put out with a tub filled with water. They also kicked the surrounding area with their feet to make sure the fire had been completely extinguished. (R. 471-73, 540-43).

Kidd at this time announced he wanted to check the west apartment, too, and he entered that apartment by kicking a hole in the wall and crawling through. At his direction, Gertrude and Renee remained behind in the Clay apartment. They lost sight of Kidd for 3 to 5 minutes. After he returned, Kidd reported he could not find a fire. He stuffed a blanket into the hole in the wall and everyone returned upstairs. (R. 473-74, 543-45). At this point in time, Renee and Kidd went to a nearby McDonald's to get their food. They saw someone wearing an Army jacket and a beige cap standing in the yard. Renee did not pay any particular attention to this person, however, because people often cut across the yard. (S)he was not running away, Renee testified. (R. 489, 495, 516, 517-19, 548). Renee returned to the Burt apartment alone, and Kidd did not rejoin her for another 2 or 3 minutes. (R. 548).

After his return, Kidd again announced he smelled something burning. Renee and Gertrude did not. (R. 497, 549). Renee went upstairs and began to eat her food. (R. 475-76). Kidd followed her upstairs 3 to 5 minutes later and persisted yet a 4th time in stating that he smelled something burning. Renee still could not smell anything odd. (R. 512). Kidd and Gertrude went into the bathroom, and Kidd kicked a hole in the wall. Gertrude still could not see any smoke. (R. 476-77, 550).

But when Kidd entered the kitchen, and began opening cabinets, smoke was billowing out. (R. 477-80, 550). All 3 of them went downstairs again, with Kidd in the lead. The door to

the Clay apartment was closed. After he again entered the west apartment, Kidd hollered out to Renee. He told her to instruct her mother get the children out because the building was on fire. (R. 480-82, 564). Kidd suffered burns requiring hospitalization before he managed to escape.

During cross-examination, both Renee and Gertrude testified that they did not know, or could not remember, the lights of the building flickering off and on during that evening. (R. 506, 561). Gertrude further rejected the suggestion that children on the first floor might have been playing with matches. (R. 565).

Renee and her mother both acknowledged that Kidd lived with them for several weeks after his release from the hospital. (R. 515, 567). They did not learn about Kidd's responsibility for the fire until 1984. (R. 568). Kidd moved out of Renee's home when her mother ordered him to leave. (R. 516). Gertrude added the information that Kidd had broken into their home on one occasion. (R. 566).

Brenda Boyd's Testimony

Brenda Boyd was at home with her children when Kidd knocked on the door of her apartment and announced the building was on fire. (R. 594). Brenda sent 2 of her children downstairs to check, but they returned and reported the fire was out. (R. 595). Twenty minutes later, however, Linda Burt knocked on the door and rushed into her apartment. Linda unsuccessfully tried to help her escort her children from the burning building. (R. 596). Brenda did not see any children playing with matches on the night of the fire, either. (R. 604).

Emma Burt's Testimony

After she had completed her shift at work, family members met Emma Burt at the El station and advised her that her children had died. (R. 661). Emma also testified and added the information that, during a conversation in her home a few months before the fire, Kidd said "his

father taught him to set fires without hurting anybody". (R. 670). Recalling that earlier conversation, Emma went to Billings Hospital the day after the fire and asked him if he was responsible for the fire that killed her children. Kidd claimed he had jumped out a window trying to save her baby, but Emma accused him of lying. (R. 677). During yet a third conversation, which took place in Gertrude's kitchen a week after the fire, Emma asked Kidd again if he had set the fire. Kidd responded by inquiring whether she could "protect him" in the event he told her what he knew. He then walked away from her. (R. 672). Two weeks later, Emma asked Kidd a final time if he had "done it". Kidd again replied "if I told you who (sic) I know, will you protect me" and walked away. (R. 673). In open court, Emma Burt looked at Kidd and announced "I always believed you did it." (R. 680).

Emma did not see any children playing with matches that day, either. (R. 684, 685). She did not have any trouble with the lights in her apartment before the fire, and they did not flicker off and on, as Kidd suggested in his questioning. (R. 685).

Petitioner's Statements To Police Officers

Assistant State's Attorney James Linn testified he was at work on the morning of September 14, 1984 when he learned that attorney Earl Washington had contacted Assistant State's Attorney Kaplan about a 1980 fire. (Washington described that conversation in his suppression hearing testimony during the first trial in this case. See Supplemental Record). In the company of Chicago Police detectives, Linn interviewed Kidd at the State's Attorney's Office later that day.

When questioned by the officers, Kidd described his visit to Renee Armstrong on October 28. He told them he smelled smoke during the visit. He further recalled how he, Renee and Gertrude had gone downstairs and "stomped out" the small fire in the Clay

apartment. (R. 619-21). Kidd specifically claimed that, when he and Renee were going to McDonald's, they saw a man named Knezil ("Sneeze") Harper running away from the building. He added that he had never got along with Sneeze. (R. 623). Completing this first account, Kidd said he was the only person to smell smoke after they began to eat their meal. (R. 621). He went to the first floor by himself, opened a door, and was burned in the face by a backdraft. (R. 622). He then ran upstairs and banged on apartment doors in an attempt to rescue people. (R. 622).

After they went out and interviewed Sneeze, and learned he could account for his whereabouts that night, the officers confronted Kidd and accused him of lying. Kidd again denied responsibility for the fires and portrayed himself as a hero who had tried to save people, particularly one child, before jumping out of a window to save himself. (R. 625).

But the officers then produced photographs of the 10 deceased children and showed them to Kidd one by one. Kidd's demeanor changed. He began to tremble and his breathing became labored. According to Linn's testimony, Kidd put his head down on his hands and said "I don't want to run from this anymore. I was involved. I did start the fire". (R. 626). Kidd said he set the fire "for a lot of reasons", including a "very personal matter involving his father". (R. 627, 632, 646). He added that he had experienced a great deal of anguish over who would inherit some real estate after his father's death. (R. 632). Kidd then told the officers that their photographs did not portray the exact origin of the fire. He pointed to a window and said he had started the fire by lighting old clothing in a closet behind that window. (R. 631). He then said he wished to talk to his mother and grandmother before continuing his statement, so he could explain to them why he had started the fire. He did not want them to learn about it from the television or newspaper. (R. 627, 633). When his mother finally arrived at the office

many hours later, however, Kidd refused to speak to her. He also decided he did not wish to speak to the officers any further. (R. 639).

The Capital Sentencing Hearing

The Eligibility Stage

As noted above, the jury decided Kidd was eligible for the death penalty because he had been convicted of committing 2 or more murders. (R. 854, CLR 135).

Evidence In Aggravation

For evidence in aggravation at the second stage of the hearing, the State proved Kidd's prior criminal history, including his responsibility for the 1984 murders of Michelle Joiner, Ricardo Pedro, Renee Coleman, and her 9 year old son, Anthony Coleman, all of which are discussed above. The State introduced a transcript of Kidd's prior testimony, given at Orange's trial on May 21, 1985, at which Kidd claimed full responsibility for those murders. The State also proved Petitioner's extensive criminal history, which is also summarized in the timeline above.

The jury decided there were no mitigating factors sufficient to preclude the death penalty. (R. 1191). Judge Schreier then entered judgment on the verdicts and sentenced Petitioner to death.

III.

REASONS FOR DENYING THE PETITION

Introduction

Petitioner asserts that he is entitled to clemency because he did not receive the benefit of the changes to the Illinois capital sentencing system which have recently been adopted, proposed or enacted. By relying upon a laundry list of new Supreme Court Rules, 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 the 4 victim case, defense counsel hired both a licensed social worker and a clinical psychologist, who administered IQ and other tests before trial, and who 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 one hundred pages of the trial record. In the 10 victim case, in turn, both a neuropsychologist and a licensed social worker testified in

mitigation at sentencing. Petitioner has now hired additional experts, too, who have compiled even more reports which are appended to his clemency petition. Petitioner has a present remedy in the state courts. Petitioner has already filed a post-conviction petition, which is currently pending in the Cook County Circuit Court. The post-conviction judge has the authority to hold an evidentiary hearing, at which all of these expert witnesses may be heard, evidence taken, the necessary facts established, and relief granted, if appropriate.

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). In case number 84 CR 667, however, 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. It is true that, in case number 92 C 12334, Petitioner represented himself. But it was Petitioner himself who insisted on his right to appear pro se. The trial judge originally continued the proceedings to enable Petitioner to hire the attorneys of his choice, Dan Webb and Paul Biebel. (R. 9-28). When Petitioner was unable to hire them, and his indigency was apparent, the judge appointed Assistant Public Defender Robert Strunck to represent Petitioner. Strunck had represented Kidd in legal matters for the last 10 years, including the "4 victim murder case" in which Kidd had just been convicted and sentenced to death. Strunck reported he had advised Kidd of his rights and had told him it was not in his best interests to waive counsel. The judge similarly warned Kidd it would be "absolutely and totally foolish" for him to proceed without Strunck. The judge reminded Kidd of various matters encompassed in his defense, including the need to draft his own instructions and make his own objections. But Kidd persisted in his desire because, as he put it, "It looks like that's my only way out". Kidd specifically claimed he had a

greater ability to uncover perjury from witnesses with whom he was personally acquainted. (R. 83-91). The judge finally accepted Kidd's waiver of his right to counsel after he again admonished Kidd of his rights and again mentioned the potential pitfalls of pro se representation. The judge named Strunck as standby counsel and ordered him to maintain a duplicate file of any documents filed in the case. (R. 94-102). The Illinois Supreme Court determined that defendant had chosen to waive his right to the assistance of counsel because of his expressed belief that in an earlier trial witnesses had lied. The Court stated that defendant's choice had to be accepted because of "that respect for the individual which is the lifeblood of the law." Mr. Strunck served as standby counsel throughout the guilt-innocence phase of the proceedings², and Kidd conferred with him from time to time. (R. 680, 737). Even if the new rules had been in effect at the time of Petitioner's trial, then, the result would have been the same.

Videotaping

Petitioner also seeks clemency because police officers did not videotape the statements of "significant prosecution witnesses". Petitioner makes no effort to identify those witnesses by name, to demonstrate the importance of their testimony, or even to indicate at which trial (the 4 victim or the 10 victim trial) they testified. (Pet. 16). 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.

² Moments after the jury returned their guilty verdicts, Petitioner elected to have Strunck represent him at sentencing. "He can finish. I lost." (R. 816).

Counsel For Interrogation

Petitioner claims that he is entitled to clemency because he requested but was denied a lawyer while he was being interrogated. (Pet. 16). Under the Governor's Commission proposals, the public defender would be allowed to represent any suspect in a potentially capital case who requests to speak to a lawyer during an interrogation. But there is no evidence that Petitioner ever did, in fact, ask to confer with an attorney during interrogation. See Kidd, 178 Ill. 2d at 127 (10 victim case). Similarly, Petitioner did not think to make this allegation during his appeal in the 4 victim case. People v. Kidd, 175 Ill. 2d 1 (1996). Therefore, even if this proposal had been in effect at the time of petitioner's arrest, it would not have applied to him.

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 4 victim case - "a radio boom box" - which, he claims, was recovered and inventoried at the crime scene, but which cannot now be located in the office of the Clerk of Court. (Id.) But Petitioner has not made any attempt whatsoever to demonstrate the materiality of this evidence, or how it would now help "exonerate or at least substantially mitigate his involvement". (Id.) In one of his many post-arrest statements, Petitioner claimed that victim Pedro had traded his watch (the subject of the robbery count) for a radio boom box that Petitioner owned. In his written statement, Petitioner even admitted he removed the boom box from the apartment and took it home with him. (R. 1340, 1343). 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). In sum, Petitioner has misstated the record here and has failed to show how the presence of a radio boom box in his home could possibly exonerate him.

Claims Of Physical Abuse

Petitioner next claims that police officers physically abused him and forced him to give false confessions in the 4 victim case. Petitioner has overlooked the fact, however, that every judge who has heard this claim has rejected it. Presiding at the 4 victim case, Judge Berkos 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). Petitioner should not be permitted to substitute his own word for the well-considered conclusions of 11 judges, conclusions made after considering all the evidence in these cases.

Mental Retardation

Petitioner 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", see 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 petitioner is mentally retarded. Id. at 2249-50. Thus, it is not yet possible to make a legal finding of mental retardation. Once such procedures are established and IF defendant is found to be retarded clemency will not be necessary. If he is found not to be retarded it would not be appropriate to grant clemency on these grounds. Because Illinois has not yet adopted a definition of mental retardation nor has it crafted the appropriate procedures, petitioner's claim is premature and should not be considered by the board at this time.

Equally important, the State has disputed Kidd's claim of mental retardation. As noted above, there is ample evidence with which to conclude that Petitioner's IQ is 73, a score above the cut-off point for even mild retardation. Moreover, the record contains references to 4 reports from a psychiatrist named De Los Santos, who concluded in 1988 and 1989 that Petitioner had good attention and concentration and an average intellect. (R. 2074-77). Petitioner should present whatever evidence he has to the Cook County Circuit Court, where his post-conviction petition is now pending. The post-conviction judge is better suited to decide this issue, because he has the time and resources to conduct an evidentiary hearing, to receive testimony from expert witnesses, to evaluate the witness' credibility, and to make the appropriate factual determinations. If, as Petitioner now alleges, he is mentally retarded, then the post-conviction judge can be counted on to vindicate his Eighth Amendment rights.

Claims Of Actual Innocence

From time to time in his petition, Kidd suggests or claims he is actually innocent of the crimes for which he has been convicted. This Board should reject those claims in their entirety.

In the 4 victim case, Petitioner gave a number of corroborated confessions to police officers. The circuit court judge and the judges of the Illinois Supreme Court have already determined that those statements were voluntarily given. If that were not enough, Petitioner took police officers out to the crime scene and showed them where he and his half brother Leroy Orange had hidden the knives they used to stab their victims, as well as the bloody clothing they had burned. If this were not enough, Petitioner took the stand at Orange's trial and stated, in sworn testimony in open court, that he had committed these crimes.

Petitioner's claim of innocence in the 10 victim case fails miserably, too. The State proved that Petitioner, who was present in the building at the time, had burned down his father's apartment building in order to settle a grudge. Petitioner confessed to this crime, too, and his confession was admitted into evidence at trial. Indeed, Petitioner even inspected photographs of the crime scene and showed the officers where and how he had started the fire. Twenty two (22) years later, it is ludicrous to suggest that the fire may have been started by small children (now deceased) who were playing with matches, much less to contend that Petitioner could have preserved this information by means of a pre-trial deposition. (Pet. 15). Both an experienced arson investigator and a resident of the building specifically rejected this possibility in their testimony at trial.

Equally unavailing is Petitioner's assertion that he would have been acquitted if he had been permitted to depose Kniezzel Harper who, Petitioner alleges, failed a polygraph. If Harper lied to a polygraph operator about his involvement in the fire, as Petitioner contends, then there is no reason to believe that Harper would obligingly have given Petitioner a deposition in which he admitted everything. The suggestion is preposterous. Moreover, there is no evidence that Harper failed a lie detector test or any evidence that he was scheduled to take

another one; Petitioner certainly has not attached any report to his petition. Finally, all of this was explored at trial and resolved against Petitioner. Petitioner originally said that he had seen someone named Knezil "Sneeze" Harper running away from the building around the time of the fire. But police officers went out and interviewed Harper and learned that Harper could account for his whereabouts at the pertinent times. The officers then confronted Petitioner and accused him of lying, and Petitioner broke down and gave the confession described above. (R. 623-46). In sum, Petitioner has recycled one of his earlier statements, proven in a court of law to be a lie, and now asks this Board to accept that lie as a basis for clemency.

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 in case numbered 92 CR 12334.

Respectfully submitted,

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September 18, 2002