

OCTOBER 2002 SESSION
PRISONER REVIEW BOARD
STATE OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)	
)	Docket No. \
vs.)	
)	
LEROY ORANGE,)	Inmate No. N-52381
)	
)	

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

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

—————
HEARING REQUESTED

PATRICK DRISCOLL,
ACTING STATE'S ATTORNEY
COOK COUNTY STATE'S ATTORNEYS OFFICE

By: DAVID J. O'CONNOR
JOAN F. FRAZIER

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INTRODUCTION

Petitioner's petition for executive clemency is premature and not properly before the Board because at this time he has **no sentence** pending against him. Moreover, the petitioner has been found guilty of a quadruple murder, including that of a small child, which was committed with such unparalleled ferocity and brutality that it can only be described as utterly inhuman.

In 1995, the Illinois Supreme Court ordered that the trial court hold an evidentiary hearing to determine whether petitioner was denied the effective assistance of counsel at his sentencing hearing. On remand, the trial court found that petitioner's trial counsel had been ineffective at sentencing and ordered a new sentencing hearing. For reasons described below, that sentencing hearing is still pending.

The Illinois Supreme Court has defined "commutation" as the change of punishment to which a person has been condemned to a less severe one. People ex rel. Smith v. Jenkins, 325 Ill. 372 (1927). Since petitioner does not have a sentence pending against him at this time, there is nothing for the Board to commute. Petitioner's petition should be denied on that basis alone.

If the Board does reach the merits of petitioner's petition, it will find it to be wholly without merit for the following reasons.

In the early morning hours of January 12, 1984, petitioner Leroy Orange murdered four people in an apartment house in Chicago, stabbing them over 52 times, and then setting their apartment on fire. Petitioner's victims were Renee Coleman, 27, Anthony Coleman, 10, Michelle Jinter, 30, and Ricardo Pedro, 25. Petitioner signed a written confession to these murders. After a trial by jury in 1985, petitioner was found guilty of four counts of murder, four counts of concealment of a homicidal death, and aggravated arson. The trial court imposed a death sentence.

It would be difficult to overstate the heinous and unbelievably savage nature of the crimes committed by petitioner. As described more fully below in Section II, on the night of the murders petitioner was at a gathering at the apartment of Renee Coleman, his former girlfriend. Petitioner freebased cocaine during the night, and eventually got into an argument with Ricardo Pedro over drugs. Petitioner tied up Pedro and stabbed him in the chest, throat, and head. The Chief Medical Examiner later found a blade from one of the murder weapons, broken and lodged, inside of Ricardo Pedro's skull.

Without further provocation, petitioner, and his half-brother and co-defendant, Leonard Kidd, tied up and stabbed to death Renee Coleman, her son Anthony, and Michelle Jinter. If the word "overkill" is appropriate anywhere, it is here, where petitioner stabbed and slashed each of his bound victims multiple times.

Petitioner and his co-defendant were so violent they punctured the lungs of 10 year-old Anthony Coleman, and almost completely severed his heart. Anthony's body was found crouched down next to a bed. They also stabbed Michelle Jinter 14 times, inflicting wounds from her neck to her ribs. They also inflicted untold brutality on Renee Coleman by stabbing her multiple times, including eight stab wounds to her left breast and virtually slicing her nose off.

Not one of these victims was armed. Not one of these victims posed a threat to petitioner. One might wonder what was his explanation for his actions? He provided the incredibly callous and barbaric response, “Stabbed them. Nothing else to do.”

Continuing with his barbarous behavior, petitioner and his co-defendant then chose to defile the corpses even further by setting the bedroom on fire in hopes of incinerating the bodies and destroying any evidence. Then they fled into the night.

The following day, petitioner was arrested. He signed a confession admitting his guilt for the four murders.

Since petitioner’s conviction and sentencing, he has been vigorously represented in post-trial proceedings by the Office of the State Appellate Defender and the Northwestern University Legal Clinic. A direct appeal and two extensive post-conviction petitions were filed on petitioner’s behalf, and his case had been heard three times by the Illinois Supreme Court.

Petitioner’s torture allegations, which he relies on so heavily here, were fully aired in the Illinois Supreme Court in 1995 and then again in 2001. In both cases, the Illinois Supreme Court found the allegations to be meritless. The Illinois Supreme Court stated in its April 2001 opinion that petitioner never identified or described the police officers he claims tortured him, and that the officers who testified that they were responsible for his interrogation were never named in any of the internal police investigations as having abused suspects. Petitioner has told the Board that he is included in a group of defendants whose confessions were extracted by Lt. Jon Burge and his colleagues, but the truth is that there is no evidence Burge ever even spoke with petitioner. His baseless claims of being the subject of “torture” have been reviewed by citizens and courts alike and the petitioner has failed to convince anyone that he has ever been abused in any fashion. Nonetheless, he continues to append newspaper

articles about others, incessantly uses the word “torture”, and creates collective monikers like the “Burge 10”, in hopes that it causes an emotional and reactionary response without the benefit or review of **facts**.

Given petitioner’s admitted responsibility for four brutal and entirely senseless deaths, and given that a jury has rejected his claims, three Circuit Court judges have rejected his claims, and the Illinois Supreme Court has on two occasions reviewed and rejected his claims, it is a total outrage that petitioner wants the Board to pardon him for his crimes. It is simply mind-boggling that the petitioner who did not even contest the sufficiency of the evidence against him when he first appealed his convictions, has now made a claim in his clemency petition that he is actually innocent!

As discussed below, based on the facts, the petitioner’s bid for executive clemency should be denied as well.

I

HISTORY OF THE CASE

Leroy Orange was tried by a jury in 1985 and convicted of four murders, four counts of concealment of homicidal deaths, and aggravated arson. Defendant chose to be sentenced by the trial judge, who found the mitigating factors insufficient to preclude imposition of the death penalty.

On direct appeal, the Illinois Supreme Court affirmed defendant’s convictions and sentence for the murders and concealments of homicidal deaths, but reversed his

conviction for aggravated arson because the statute had been ruled unconstitutional. People v. Orange, 121 Ill.2d 364 (1988). The United States Supreme Court denied defendant's petition for writ of *certiorari* on October 11, 1988. Orange v. Illinois, 488 U.S. 900 (1988).

In January, 1989, defendant filed a *pro se* petition for post-conviction relief and asked for appointment of counsel. The Northwestern Legal Clinic assumed defendant's representation and on October 15, 1991, filed an amended petition for post-conviction relief. Judge Thomas P. Durkin summarily dismissed the petition.

On appeal, the Illinois Supreme Court remanded the case for an evidentiary hearing on defendant's claim that defense counsel was ineffective at trial for failing to call witnesses in mitigation. On remand, the trial court found that defendant's attorney was ineffective at sentencing, and ordered a new sentencing hearing. Thus, at present petitioner is not under a death sentence.

While the sentencing hearing was pending, the Northwestern Legal Clinic filed a second petition for post-conviction relief on defendant's behalf. In this petition, defendant asserted that he had new evidence to support his already heard allegation that the police tortured him into confessing to the murders. Judge Daniel M. Locallo summarily dismissed defendant's petition.

On appeal, the Illinois Supreme Court affirmed the trial court's dismissal, noting that defendant never identified the police officers who allegedly tortured him, and that defendant's claim would not have warranted the granting of a new trial. The Court remanded the case for the sentencing hearing that had been stayed.

II

FACTS OF THE CASE

In the early morning hours of January 12, 1984, defendant Leroy Orange, and his co-defendant, Leonard Kidd, murdered four people in an apartment house in Chicago, stabbing them over 52 times, and then setting their apartment on fire. Defendant's victims were Michelle Jinter, 30, Renee Coleman, 27, Ricardo Pedro, 25, and Anthony Coleman, 10. After a trial by jury in 1985, defendant was found guilty of four counts of murder, four counts of concealment of a homicidal death, and aggravated arson. The court sentenced defendant to death.

The sequence of events began on the evening of January 11, 1984, when a certain Eniwetok Durr telephoned her friend Renee Coleman to talk about their plans for the evening. Renee Coleman, her son Anthony, and Michelle Jinter shared an apartment at 1553 W. 91st Street in Chicago. (R. 455) While Ms. Durr and Renee were speaking, defendant picked up a telephone extension and began teasing Ms. Durr. (R. 1953) According to Ms. Durr, defendant and Renee Coleman once had a relationship, but they parted because of defendant's violent behavior. (R. 1948) The two women agreed to meet later that night at a disco.

At about 9:15 p.m. that night, Reed Randolph, who was friends with Ricardo Pedro, went to Renee Coleman's apartment. Renee Coleman, Michelle Jinter, Ricardo Pedro, and defendant were all at the apartment. (R. 2039) Everybody was talking and laughing, and no one seemed to be in any fear for any reason. (R. 2057-58)

While Reed Randolph was at the apartment, defendant and Renee Coleman left, and then later returned in possession of a pipe with a spoon in it. Randolph warned Ricardo Pedro to leave because he thought that all of the traffic in and out of the apartment seemed unsafe. (R. 2061) Randolph left the apartment at about midnight.

What happened next comes from defendant's signed confession, taken the day after the murders. According to defendant, he free-based cocaine that night. At

about 1:00 a.m., defendant called his stepbrother Leonard Kidd and asked him to come over. Defendant told Kidd he was having some trouble with Ricardo Pedro over cocaine. (R. 2272) Kidd arrived at about 1:30 a.m.

At about 3:00 a.m., defendant began arguing with Pedro, and then the two began fighting. Defendant stabbed Pedro in the chest and then bound his hands and feet. (R. 2308) Defendant did not think that Pedro had been armed. (R. 2310) Meanwhile, Leonard Kidd was in another room. Defendant left Pedro in the bedroom, and went to the front of the apartment and smoked more cocaine. (R. 2309)

At about 5:30 a.m., defendant returned to the room where he had left Ricardo Pedro. Renee and Anthony Coleman were also in the room at this point. When defendant saw that Pedro had unbound his hands, another fight ensued and defendant stabbed Ricardo Pedro in the throat and head. (R. 2274) Defendant then tied up Michelle Jinter, ordered Renee Coleman to tie up her son, and then defendant tied up Ms. Coleman. (R. 2310) Leonard Kidd came into the room after defendant finished tying up his victims. (R. 2311) Defendant stabbed Renee Coleman, 10 year-old Anthony Coleman, and Michelle Jinter. (R. 2311) Defendant later said, "Stabbed them. Nothing else to do." (R. 2312)

Dr. Robert J. Stein, Chief Medical Examiner, described at trial the wounds defendant's victims sustained. Dr. Stein testified that Ricardo Pedro sustained numerous stab and incised wounds, four stab wounds on the left side of his neck, and many defense wounds. (R. 1999-2000) A bulge was discovered in the right side of his head, which an x-ray examination revealed to be a knife without a tip. A bulge in Pedro's left temple area proved to be the tip of the knife. (R. 2002) Michelle Jinter was stabbed 14 times, and had defense wounds on her right hand and burns over her arms. The stab wounds were clustered from her neck to her ribs. (R. 2008-09) Anthony Coleman was stabbed six times, and suffered multiple incised wounds. Anthony's heart was almost entirely severed and his lungs were punctured. (R. 2014)

Renee Coleman sustained multiple stab wounds and defense wounds, with eight stab wounds clustered over her left breast. (R. 2018)

After the stabbings, defendant set the bedding in the room on fire. Leonard Kidd was not in the room at this point. (R. 2312) Defendant then gathered the cocaine pipe and the knives, and put them in a bag. (R. 2275) Defendant started a second fire in the front of the apartment, using matches and newspapers.

After defendant and Kidd left the apartment, they disposed of the murder weapon, cocaine pipe and spoon in an alleyway several blocks away. (R. 2276, 2314) Defendant also tried to burn his clothing and discard it in a garbage can. (R. 2314-15)

At 6:30 a.m., the Chicago Police Department was notified that there was a fire at 1553 West 91st Street. Upon arrival, the police saw flames and smoke pouring out of Renee Coleman's apartment. Four bodies were discovered in a back bedroom. One of the bodies was a man whose jaw had been slashed. (R. 1935) This was the body of Ricardo Pedro. Another body was that of a small boy, crouched down next to the bed, identified as Anthony Coleman. One woman was found lying dead on the floor, and identified as Renee Coleman, Anthony's mother. Another woman was found face down on the bed and subsequently identified as Michelle Jointer. (R. 1935) All of the victims had been tied up, and all had been stabbed to death.

The police found an Illinois Department of Public Aid application with Eniwetok Durr's name on it in the apartment. (R. 2118) The police contacted Ms. Durr, and she told them about her telephone conversation with Renee Coleman the night before, during which defendant had picked up the extension. (R. 2122)

The police arrested defendant at his mother's home that afternoon. (R. 2075, 2231) That same day, Leonard Kidd telephoned Mildred Orange, defendant's wife, and told her, "Mildred, I have something to tell you that could put me and Pokey

[defendant] away for the rest of our lives." (R. 2669-70) Kidd was arrested by the police later that afternoon. (R. 2238)

At the police station, defendant signed a confession admitting his guilt for the four murders. (R. 2283) Leonard Kidd also gave a statement to the police which was generally consistent with what defendant had said in his confession. (R. 2839-61) Kidd said that while the stabbings were taking place, he was trying to get out. Kidd said, "I was frightened myself." (R. 2855) Kidd never told police that he participated in the killings in any way, and defendant never said Kidd was involved in the murders, either. (R. 2192-93, 2293)

Defendant downplays his confession by suggesting that he actually provided the police little information, simply answering yes or no to questions that were asked of him. To the contrary, apart from his admissions, defendant told the police:

- that he tied up Pedro after stabbing him;
- that Pedro was unarmed;
- that Leonard Kidd was in another room when he tied up Pedro;
- that he smoked cocaine after the first time he stabbed Pedro;
- that when he later returned to the room, Renee and Anthony were still there with Pedro, but Michelle Jointer was in the kitchen;
- that after he stabbed Pedro a second time, he tied up Michelle, and then he tied up Renee;
- that Renee tied up her son Anthony;
- that Leonard Kidd came into the room after the victims were tied up;
- that he stabbed Renee first, then Anthony, and then Michelle;

- that he gagged his victims with sheets;
- that he started the fire with matches and newspaper; and
- that after leaving the apartment he threw the murder weapon into a garbage can.

TRIAL

At trial, defendant changed his story from what he had originally told the police: Defendant claimed that the only reason he confessed to the murders was because the police had tortured him. (R. 2640) Defendant testified that although he had been at Renee Coleman's apartment on the night of the murders, he left the apartment at 2:30 a.m. while Kidd was still there. (R. 2566) Defendant said he went to visit a friend, Shirley Evans, and remained at her home until 8:00 that morning. Defendant admitted that he never told the police that he had been at Shirley Evans' home. (R. 2656)

Shirley Evans testified at trial that defendant came to see her at 2:45 a.m. to pick up a job application, and that he stayed until 8:00 a.m. (R. 2500) Ms. Evans admitted that she never told the police that defendant was with her when the murders took place, and that it was not until October, 1984, that she decided to testify for him. (R. 2532) She changed her mind, but three or four months prior to the May, 1985 trial, she again decided to testify on defendant's behalf. (R. 2527-28) Ms. Evans also acknowledged that she and defendant were personal friends, that she had visited him in jail many times, and that the two talked about the case. (R. 2532)

Leonard Kidd testified on defendant's behalf at trial and took full responsibility for the murders. In his initial statement to the police, Kidd had said that defendant had committed the murders. (R.2852-55) At trial, however, Kidd testified that it was he who had committed the murders and who had set the fires, and he said no one else had been present. (R. 2383-84)

Kidd explained that he and Ricardo Pedro fought over money the night of the murders, and Pedro threatened him with a butcher knife. (R. 2393) Kidd said that he knocked the knife from Pedro's hand, and when he stood up from retrieving the knife, he stabbed Pedro.

Kidd said that when Ms. Coleman came at him, he stuck out a knife and she ran into it. (R. 2395) Kidd said he later tied up Michelle Jinter and brought her to the back bedroom with the others. Pedro broke loose, Kidd said, so he stabbed him, and then stabbed the rest of the victims. (R. 2399-2401)

Notwithstanding his testimony, Kidd admitted that in his earlier confession he had said that he saw defendant pull a knife on Ricardo Pedro, stab him, and then tie him up, and said he saw defendant kill the other victims. (R. 2436-37) Kidd claimed that he had not been given his constitutional rights before giving his statement, (notwithstanding their printed existence in the court-reported statement). He further claimed that the only reason he said that the defendant had committed the murders was because he was told that he would then be let go. (R. 2442) Kidd admitted that when he showed the police where the knives were, he told them that he and defendant had put them there. (R. 2493)

Amazingly, although Kidd now also claims that he was the subject of police abuse, while under oath and testifying for his own brother, he never advanced such a claim.

Chicago firefighter James Thomas testified at trial that he was at the scene responding to the fire at 6:30 a.m. Mr. Thomas said that while he was engaged in putting out the fire, a man approached him and asked him if the bodies had burned. (R. 2726) When Thomas told him they had not burned, the man said, "Damn" and walked away. (R. 2726) Mr. Thomas identified a photograph of a man who he said resembled the man he saw that morning, but he could not be definite. (R. 2726, 2802-3) He believed that the photograph resembled Leonard Kidd. Thomas

explained, "I was walking in a hurry, talking. I was still thinking about what I was supposed to have been doing." (R. 2803)

In the State's rebuttal case, Mildred Orange testified that the blue sweater that defendant said he had been wearing the night of the murders was in fact still in their son's closet when she left for work at 9:00 a.m. on January 12, 1984. (R. 2661, 2664) Mrs. Orange knew the sweater was still in the closet because she had thought of wearing it that day. (R. 2664) Mrs. Orange also testified that she noticed that defendant was wearing different clothing than he had worn the night before. (R. 2673)

Mildred Orange also testified that Leroy Kidd telephoned her the day after the murders and said, "Mildred, I have something to tell you that could put me and Pokey [defendant] away for the rest of our lives." (R. 2669-70)

Although defendant contended that the police had tortured a confession out of him, Mrs. Orange testified that when she went to the police station on the night that defendant was arrested, she did not hear anyone screaming. (R. 2672) She also testified that she saw defendant at the police station, and he did not seem to be in any pain. (R. 2672)

Defendant's wife further testified that when she visited defendant at the County Jail on June 27, 1984, she learned that defendant's girlfriend Deidre Irvin had been there to see him that day. (R. 2677) Mrs. Orange testified that defendant told her that Deidre Irvin was going to say that he had been with her on the night of the murders. (R. 2678)

Also in rebuttal, the State called the police personnel who had been involved in defendant's arrest and interrogation. Chicago Police Department detectives Daniel McWeeny, Raymond McNally, John McCabe, David Dioguardi, Dennis McGuire, Robert Flood, Leonard Bajenski, Ray Madigan, and assistant state's attorney Dennis Dernbach (now a Circuit Court Judge), testified that they never saw anyone put a bag on defendant's head at the police station, punch him in the

stomach, shock him with electricity, put any pins or needles into his body, hit him in the testicles, or tell him what he must say. None of these witnesses heard defendant scream, either. (R. 2692, 2734, 2743, 2750, 2757, 2771, 2772, 2810, 2820)

Finally, Dr. Shirish Parikh of the Cermak Hospital, testified that when he examined defendant on January 14, 1984, two days after the arrest, he looked for signs of the physical abuse that defendant said he had suffered, and found none. (R. 2876) According to Dr. Parikh, defendant said that police officers had stuck needles in his back or buttocks, and had squeezed his testicles. Defendant never said anything to Dr. Parikh about having been given an electrical shock, having been punched in the stomach, slapped in the face, or having a bag put over his head. (R. 2876-79, 2918) Dr. Parikh testified that he found no bruises, needlemarks, cuts, or lacerations on defendant's body. Dr. Parikh also said that defendant showed no sign of pain during an examination of his buttocks, and that defendant's genitals appeared normal. (R. 2876-2879) Dr. Parikh's examination revealed only a small pimple on defendant's buttock. (R. 2880)

Following closing arguments, the jury returned a verdict finding defendant guilty of committing the four murders, concealment of homicidal deaths, and aggravated arson. (R. 3107-08) Defendant was found not guilty of the armed robbery of Ricardo Pedro. After the sentencing hearing was held five days later, the court found the mitigating factors insufficient to preclude imposition of the death penalty. (R. 3133) Defendant's motion for a new trial was denied on June 24, 1985. (R. 3140)

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

Thus, the fact that the Court, the General Assembly and the Governor's Commission have endeavored to improve the process does not mean that an injustice would result simply because the recent changes were not applied retroactively to petitioner's case. Instead, a true injustice would only result if it were reflexively determined that petitioner's trial was fundamentally unfair without any examination of the proceedings themselves.

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. The sole exception is that the trial court

determined that petitioner's defense counsel was ineffective at sentencing, and on the basis of that finding ordered a new sentencing hearing, which is still pending.

The other reasons petitioner offers for a pardon or grant of clemency are equally meritless.

1) Petitioner's Torture Allegations

Petitioner urges that his case is comparable to 13 others where defendants have been exonerated and released from Illinois' Death Row, and that he too should therefore be granted clemency. Petitioner's unsubstantiated and baseless claims of torture are not grounds for executive clemency. Furthermore, petitioner's torture allegations were heard and rejected at his trial, twice on post-conviction review, and three times in the Illinois Supreme Court.

A. Petitioner's Torture Allegations Are Not Grounds For Executive Clemency.

The flaw undermining petitioner's entire petition is his belief that if he claims he was tortured by police, then his remedy is clemency. Petitioner has had his remedy – his claim was heard three times in the trial court and three times in the Illinois Supreme Court. No court or jury has believed his allegations.

Despite the fact that petitioner's claim of torture has been repeatedly rejected, it will be aired again in still another forum. By order of Cook County Circuit Court Judge Paul B. Biebel, Jr, a Special Prosecutor unaffiliated with the Cook County State's Attorney's Office will investigate the claims of police torture in this case and others. Therefore, notwithstanding petitioner's statement to the Board that he has "little hope" of obtaining a hearing on his allegations, his claims are going to be investigated yet again by another impartial source.

Because courts have repeatedly heard and rejected petitioner's torture allegations, and because those allegations will be examined yet again by the Special Prosecutor, a grant of clemency to petitioner would be not only premature, but also completely inappropriate.

B. Petitioner's Torture Allegations Have Already Been Heard Three Times in the Trial Court and Twice in the Illinois Supreme Court.

Petitioner asserts that to this day, he has never had a chance to have his torture claim fully heard. This claim is *totally false* and outright deceptive.

1) Petitioner Presented His Torture Claim at his Trial.

Petitioner first presented his torture claim at his 1985 trial. Defense counsel Earl Washington filed a motion to suppress before trial, arguing that petitioner's confession was involuntary. The trial judge dismissed the motion on the grounds that it was insufficient. After discussing the matter with petitioner, Mr. Washington and the petitioner decided to present the torture allegations during trial rather than pursuing the suppression motion, because Washington thought petitioner would be a good witness, and thought the jurors might be receptive to his testimony. In the trial court, the petitioner had exercised his constitutional rights and chose a jury of his peers. He again exercised his constitutional rights and chose to testify. He aired all of his claims in front of a jury of his peers. The jury was obviously not persuaded. Having heard his allegations and weighing those claims against all of the facts, testimony, and physical evidence, the jury obviously found no credence in any of his allegations.

2) Petitioner Presented His Torture Claim Two Separate Times in Post-Trial Proceedings in the Trial Court.

Petitioner raised his torture claims in a post-conviction petition filed in 1989, and then in a second post-conviction petition filed in 1998. Petitioner appended voluminous documents to his petitions, including affidavits, medical records, police investigations, an affidavit from defendant, the lengthy deposition of defense counsel Earl Washington, newspaper articles, legal cases, an ARDC report, and much more. The documents appended to petitioner's first post-conviction petition alone numbered over 1400 pages. Although an evidentiary hearing was not held on the petitions, all of the evidence was before the trial court, and counsel were permitted to present extended argument.

Each post-conviction petition was heard by a different judge. Each judge rejected petitioner's claim of torture.

3) Petitioner Presented His Torture Claim Two Separate Times in the Illinois Supreme Court.

Over the past 8 years, the Illinois Supreme Court has considered and rejected petitioner's torture claim on two separate occasions.

In 1995, the Court held that petitioner's torture allegations were too nonspecific, and that he failed to name any of the officers allegedly involved in the abuse. Furthermore, petitioner's medical reports did not support his claim of physical abuse, and he exhibited no evidence of trauma. People v. Leroy Orange, 168 Ill.2d 138 (1995). The Court noted that the paramedic who examined petitioner after his arrest reported that he found no bruising or indication of tenderness on petitioner's back, scrotum or anus. The only mark on his body was a slight pimple on his buttock. Furthermore, two officers testified at trial that Lt. Jon Burge was not present during petitioner's interrogation at the police station.

In 2001, the Court again rejected petitioner's claim of police coercion, in part because petitioner relied on some of the evidence he used in his first post-conviction petition, because the 600-page record of trial proceedings concerning petitioner's confession did not contain any specific reference or description as to the identity of the alleged torturers, and because evidence of torture in other cases did not constitute evidence that petitioner was tortured. People v. Leroy Orange, 195 Ill.2d 437 (2001). The Court noted that "the officers who testified at ... defendant's trial that they were responsible for the defendant's interrogation were not named in any of the internal police investigations as having abused suspects."

The Court said of Lt. Jon Burge, "with respect to the defendant's allegation that Burge had been involved in eliciting his confession by coercion, we note that the defendant did not name Burge as one of his torturers in his first post-conviction petition filed in 1991, even though he claims that he learned of the identity of Burge when he was shown a group of pictures by an OPS investigator in 1990." In 1998, fourteen years after the crime, the petitioner asserted for the very first time that Lt. Burge had abused him. He also claimed that he told someone from OPS in 1990. Not once, in any forum, has the petitioner ever provided any type of corroboration that he even met with an investigator from OPS in 1990. Of course, by the time that he made this claim in 1998, Lt. Burge had been dismissed from the police department. The petitioner saw an opportunity and attempted to seize upon it.

Petitioner also attempts to prove that Lt. Burge was involved in his interrogation by pointing out that Burge received a commendation for his role in the case. (Petition at 7, Ex. E) The commendation actually names 20 different officers, however, and singled out the "skillful interrogation techniques of the detectives," not Lt. Burge. Moreover, anyone who understands the commendation process in the Chicago Police Department, also

understands that “group” or “team” commendations are common, and attempts to give credit to everyone who assisted in the investigation, including scene detectives, canvassing detectives, and even supervisory personnel, including Sergeants and Lieutenants.

In another attempt to bolster his torture allegations, petitioner argues that his case is strikingly similar to those of the 13 defendants who have been exonerated and released from Death Row. Frankly, the Petitioner’s case has virtually no similarities to any of these 13 cases he keeps citing. Petitioner’s citation to these cases cannot be permitted to blur the fact that he has been given opportunity after opportunity to prove his claims and has failed each and every time. Simply put, he does not have any evidence of his own to support his allegations. What happened in other cases, to other defendants at other times, is simply no proof that petitioner was abused by the police.

Moreover, none of the cases petitioner uses to illustrate his point are comparable to his own. For example, in the *Ronald Jones* case, post-trial DNA testing revealed that defendant could not have been the offender. Petitioner does not have anything close to that form of exculpatory evidence.

In the *Joseph Burrows* case cited by petitioner, evidence came to light that two witnesses committed perjury at defendant’s trial, and one of those witnesses later admitted being the killer. But in *Burrows*, the defendant never confessed to the murder.

Evidence that the defendant confessed in the *Steven Manning* came from a jailhouse informant. Petitioner in this case made his confession to an assistant state’s attorney and the police. That Assistant State’s Attorney has since become a Judge in the Circuit Court of Cook County and has never altered his testimony in any fashion as to the confession that the petitioner gave to him.

Furthermore, it is untrue that petitioner's confession was the only evidence of his guilt. There was a great deal of corroborative evidence presented to the jury. For example:

- petitioner said in his confession that he was at Renee Coleman's apartment on the night of the murders, and Eniwetok Durr testified that when she called Renee that night, petitioner picked up the telephone extension;

- petitioner said that while he was at Renee Coleman's apartment, he telephoned Leonard Kidd and asked him to come over. Kidd did so.

- petitioner said in his confession that he tied up the victims, and when police arrived at the apartment, they found that the victims were bound;

- petitioner said in his confession that he stabbed the victims, and the Chief Medical Examiner found a broken knife lodged in Ricardo Pedro's skull;

- petitioner said he used a sheet to gag the victims, and a police officer testified that there was loose binding by the bodies that might have been gags that slipped down;

- petitioner said in his confession that when he left the apartment, he took with him a bag containing a knife, coke spoon, and pipe, and put the bag in a garbage container a block or two away. Police recovered knives and a pipe from various garbage cans.

- the very last person to be seen with the four victims shortly before their deaths was none other than the petitioner.

Given this evidence, it is completely false that the death penalty was imposed in petitioner's case on the basis of uncorroborated statements. Notably, petitioner did

not even bother challenging the sufficiency of the evidence against him in his direct appeal in 1988. People v. Leroy Orange, 121 Ill.2d 364, 369 (1988).

Furthermore, contrary to petitioner's assertion, there was nothing "suspicious" about the circumstances surrounding his confession. After his arrest, he told police he did not know anything about the murders until he learned that Leonard Kidd had been arrested. Petitioner was surprised that Kidd was there, and at that point admitted that he and he alone committed the murders. Petitioner acknowledged that he understood his rights, and voluntarily gave his confession to then Assistant State's Attorney Dennis Dernbach. Shortly thereafter, he signed his court-reported confession.

There is accordingly no merit to petitioner's claim that his confession was "suspicious" and he has been wrongly convicted.

2) Petitioner Did Not Want An Attorney at the Police Station.

Petitioner argues that public defenders should be provided to indigent suspects during custodial interrogations.

The transcript of petitioner's confession reflects that he was advised of his right to an attorney, and he did not want one. Based on that, even if a public defender had been present at the police station, petitioner would not have asked for representation.

3) The Failure to Videotape Petitioner's Confession Had No Effect on the Fairness of the Proceedings.

Petitioner also seeks clemency because his confession was admitted into evidence even though it was not videotaped. Petitioner points out that under the Governor's Commission's proposals, both statements and the interrogations leading up to them should be videotaped.

What petitioner fails to recognize is that neither the Commission nor the Governor call for the suppression of a statement simply because it was not videotaped. Rather, even under the Governor's proposed legislation (HB3717 & HB2058), such statements will still be admissible if the trial court finds that it was voluntarily made after considering the totality of the circumstances. Because the Illinois Supreme Court has twice found that petitioner's confession was not the product of police coercion, it is clear that the failure to videotape his statement had absolutely no effect on the fairness of his proceedings.

Moreover, because the jury was instructed pursuant to Illinois Pattern Instruction 3.06-3.07 to consider all the evidence when determining whether or not petitioner made the statement and how much weight it should be given, petitioner cannot complain that he was prevented from asserting at trial that his statement was unreliable and should not be considered.

4) Petitioner Was Convicted Because He Is Guilty, Not Because the Police Had Tunnel Vision.

Petitioner believes that had the police who investigated his case received training on the dangers of confirmatory bias, otherwise known as tunnel vision, he would not have been tried for murder.

It was not tunnel vision that led to petitioner's arrest. He was arrested and tried for a quadruple murder because the evidence pointed to his involvement. He was arrested because police found a Public Aid application with Eniwetok Durr's name on it in Renee Coleman's apartment, and when Ms. Durr was contacted, she told police that petitioner had been in the apartment the night before. Police arrested petitioner shortly thereafter, and he never challenged the legality of his arrest. Shortly after his arrest petitioner confessed to the four murders, and that is why he was tried for murder.

It is true that Leonard Kidd eventually tried to take the blame for the murders, but when he first spoke with police, he gave a statement which was generally consistent with what petitioner had said in his own confession. Indeed, Kidd said that while the stabbings were taking place, he was trying to get out. Kidd said, "I was frightened myself." He never told police that he participated in the killings in any way, and petitioner never said Kidd was involved in the murders, either. Leonard Kidd testified incredibly at petitioner's trial that it was he who committed the murders, but his testimony was rife with inconsistencies and outrageous claims. The jurors clearly did not believe him.

5) No Police Officer Perjured Himself at Petitioner's Trial.

Petitioner argues that if at the time of his trial, police perjury had been a basis upon which the Board could revoke certification of a peace officer, then maybe police department employees who knew about misconduct at Area 2 would have been willing to step forward.

Petitioner has never demonstrated that any police officer committed perjury at his trial. Petitioner has not even named the officers who allegedly tortured him. Moreover, the fact that the Illinois Supreme Court has twice discounted petitioner's claim of torture means that the Court must have found the testimony of the police officers credible.

6) Judge Cieslik Rejected Petitioner's Suppression Motion Because It Was Insufficient, Not Because It Was Clutter.

Petitioner argues that if trial judge Arthur Cieslik had received specialized training in overseeing capital cases as suggested by the Governor's Commission, he would have been afforded a suppression hearing on his claim of torture. Defense counsel Earl Washington did in fact file a motion to suppress petitioner's confession

prior to trial. That motion has been missing from the trial court record for a number of years, so it is not possible to know how it read.

Regardless, according to Earl Washington's deposition, Judge Cieslik declined the suppression motion because it lacked legal authority and was otherwise insufficiently pled. Judge Cieslik suggested to Mr. Washington that he redraft the motion. As discussed in Section B.1, however, Mr. Washington decided it was better strategy to present the torture claims before the jury. This strategic decision was made after discussing the issue with petitioner. On review, the Illinois Supreme Court affirmed Mr. Washington's choice of strategy.

There is accordingly no merit to petitioner's claim that Judge Cieslik rejected his suppression motion because he did not want clutter in his neat files.

7) The Illinois Supreme Court Rejected Petitioner's Argument that Defense Counsel Was Ineffective At His Trial.

Petitioner argues that if the new Illinois Supreme Court rules regarding qualification for counsel in capital cases had been in force at the time of his trial, the outcome of his trial would have been different.

However, the question whether defense counsel Earl Washington was ineffective has already been addressed in the court system. Petitioner raised a claim of ineffectiveness on direct appeal and in his first post-conviction petition. The upshot of those claims was that the Illinois Supreme Court found that Earl Washington was not ineffective at the trial of the petitioner. The Circuit Court only found that Washington should have done more at the petitioner's sentencing hearing. It is for that reason that petitioner was granted a new sentencing hearing.

Petitioner further argues that defense counsel must be afforded adequate compensation and resources. This issue was adjudicated in the courts as well.

Petitioner claimed in his post-conviction petition that the real reason Earl Washington withdrew his suppression motion was because the court declined to appoint him as counsel. The Illinois Supreme Court rejected this argument, noting that Mr. Washington agreed to continue representing petitioner on a *pro bono* basis, and that he knew when he tendered the suppression motion in the first place that he was receiving little or no compensation for his services.

Petitioner also argued in the courts that Earl Washington's vision problems, and the pendency of ARDC charges against him, rendered him ineffective. The Illinois Supreme Court disagreed, noting that Mr. Washington functioned despite lifelong vision problems, and that petitioner wholly failed to show that the outcome of his trial would have been any different in the absence of the ARDC charges.

Furthermore, despite the creation of the Capital Litigation Trust Fund, there is no indication that any capital defendant in Illinois, particularly those prosecuted in Cook County has ever been deprived of the necessary funds to investigate or retain appropriate experts. Rather, courts have denied various requests which are deemed unreasonable or unnecessary, the same standard which applies for funds under the Capital Litigation Trust Fund. 725 ILCS 124/15(c). .

8) The State Never Failed to Turn Over *Brady* Material to Petitioner.

Petitioner argues that the procedural history of his case is marred by Brady violations because the State never apprised him of the pattern and practice of torture at Area 2. In point of fact, most of the documents petitioner now lists as withheld Brady material were cited by him in his first or second post-conviction petition, or both.

The fact of the matter is that petitioner cannot identify one allegation that he was not able to raise in either of his post-conviction petitions. Since his claims have

been aired, petitioner's meritless Brady claim cannot be said to have effected the fairness of his prosecution.

9) Petitioner's Torture Claims Have Been Fairly Heard in the Circuit Courts and the Illinois Supreme Court.

Judge Paul Biebel has ruled that a conflict exists because Cook County State's Attorney Richard A Devine, while in private practice, represented Lt. Jon Burge in two federal lawsuits brought against the City of Chicago, Lt. Burge and other Chicago police officers. As petitioner further notes, the State's Attorney has filed a motion seeking clarification of the ruling, and whether the State's Attorney's Office has a conflict from continuing to prosecute Area 2 cases.

On the basis of this ruling, petitioner argues that it follows that the State's Attorney has been unable to fairly address his claims of torture since Richard Devine took office in 1996. However, petitioner's trial took place in 1985, long before Mr. Devine took office. Moreover, petitioner's allegations of torture have been litigated in the circuit court and in the Illinois Supreme Court, all of whom have no affiliation with the Cook County State's Attorney. Petitioner has offered no specifics in support of his claim that he has not had a fair hearing of his appeals while Richard Devine was in office. This allegation therefore furnishes no grounds for pardon or a grant of clemency.

Parenthetically, petitioner has argued that the Prisoner Review Board must act in his case because it is the final check in the system. It is not. Petitioner still has recourse to the federal courts through a *habeas corpus* petition if he so chooses, and may still seek a petition for writ of *certiorari* in the U.S. Supreme Court.

10) Nothing in Leroy Orange's Personal History Suffices to Overcome the Fact that He Murdered Four Innocent People, One of Whom Was a 10 Year-Old Child.

Petitioner's argument that his personal history warrants a grant of executive clemency is premature and should be discounted for two reasons.

First, since petitioner has not yet had his new sentencing hearing, the State has not had the opportunity to examine all of his mitigation witnesses and fully explore their testimony. Petitioner is presenting the Board with just one side of the story.

Second, the place for petitioner to present his mitigation witnesses is in the trial court, not to the Prisoner Review Board. It is for the sentencer to assess all factors in mitigation and aggravation, and determine whether given petitioner's mitigating factors, imposition of the death sentence is warranted. Moreover, only through cross-examination and weighing aggravation, can the sentencing body assess the appropriate penalty. To provide untested, self-serving affidavits to the Prisoner Review Board is once again, deceptive.

Even so, petitioner's claim that his worthiness of a pardon is apparent from review of his personal history is completely meritless. For no discernable reason, petitioner slaughtered four innocent people, one of whom was a young boy. Petitioner has never offered any explanation for his behavior other than, "Nothing else to do." Illustrative of the savagery with which petitioner acted, he inflicted eight clustered stab wounds over Renee Coleman's left breast, in addition to the many other stab wounds she sustained. Petitioner's 14 stabs to Michelle Jinter ranged from Ms. Jinter's hand to a cluster of stab wounds reaching from her neck to her ribs. Petitioner's torture murder of Ricardo Pedro included driving a knife into Pedro's skull. Petitioner struck possibly his cruelest blows to 10 year-old Anthony Coleman, virtually severing Anthony's heart from his body. Petitioner then compounded his unspeakable crime by

attempting to conceal his acts by setting fire to the apartment containing the bodies of his victims. Veteran Chicago Police Detective Robert Flood testified at trial that this was one of the most repulsive crime scenes he had ever seen.

In the face of these facts, it is unlikely that even testimonials from family and friends that petitioner's mother and stepfather were abusive alcoholics would have resulted in a sentence less than the death penalty.

Moreover, even though petitioner would have the Board believe that his murderous conduct in this case stemmed from a poor relationship with his parents, the affidavits he relies on establish that he had a warm relationship with other family members. In addition, petitioner's relationship with his mother was sufficiently sound that it was to her home that he fled after committing these murders. Petitioner's intimation that his violent behavior stems from his childhood is also belied by the fact that he was capable of maintaining employment during the 17 year period from 1967 to 1984, and that he was sufficiently in control of himself to avoid getting caught for any crimes during the 15 year period between 1968 and 1984. It is also somewhat ironic that on one page the petitioner suggests that his violent behavior is due to a dysfunctional childhood, when on another page he claims that he is actually innocent of these crimes.

In sum, the history of petitioner's adult years does not suggest a man irredeemably harmed by his upbringing. He has no excuse for murdering four people.

11) Petitioner Is Not Currently Subject to a Death Sentence.

Because petitioner's case has been remanded for a new sentencing hearing, he does not have a death sentence or any other sentence pending against him. Respectfully, it is not possible for the Board to recommend that petitioner's sentence be

reduced when there is no sentence to commute. Furthermore, there is nothing in the Illinois constitution or the executive clemency statute that empowers the Governor to order in advance of sentencing that the death penalty not be imposed in a petitioner's case.

CONCLUSION

For all these reasons, the People of the State of Illinois respectfully request that this Board and Governor Ryan deny a hearing for executive clemency, or in the alternative, to deny executive clemency to Leroy Orange.

Respectfully submitted,

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