OCTOBER 2002 SESSION
PRISON REVIEW BOARD
STATE OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	**Docket No.**
vs.	)	
	)	**Inmate No. B06802**
Madison Hobley,	)	

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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INTRODUCTION

Hobley killed seven people, including two children, and wounded numerous others by setting fire to his apartment building. Hobley was having an affair and decided to rid himself of his family. In the process, he traumatized many other families by killing or severely injuring their loved ones. Hobley bought a gallon of gas and poured it in the front stairwell of the three-story building, including the top of the stairwell where his own unit was located and where his wife and infant child lay sleeping.

Hobley's suspicious actions during fire suppression efforts led to his arrest after he failed a polygraph test and then admitted that he could not stand to lose his mistress nor see his wile and child become involved with another man. Shortly thereafter, two independent witnesses came forward, relating how Hobley purchased the gas minutes before the blaze broke out from a gas station located a couple blocks from his building.

Hobley's callous disregard for life, even that of his own child, warranted his death sentence. To this day, Hobley refusing to show remorse for the deadly horror he inflicted upon the sleeping residents of his building. Hobley reiterates

meritless claims that have been repeatedly reviewed and rejected by the jury, the trial courts and the Illinois Supreme Court.

Petitioner does not assert that he is entitled to clemency because he did not receive the benefit of the changes to the Illinois capital sentencing system. Instead, Hobley regurgitates fantastic claims already rejected by various courts and the jury that convicted and sentenced him. Hobley does not address voluminous evidence and rulings against him but cites to newspaper articles to support his claims. It is also interesting to note that Hobley does not request commutation but demands a full pardon.

Nowhere in Hobley's petition, does he acknowledge that the Judge Porter recently wrote a lengthy ruling denying these claims. Judge Porter's ruling was issued after two years of discovery, including depositions, and after hearing voluminous testimony. Significantly, Judge Porter ruled that the linchpin of Hobley's "planted can" theory, fellow arsonist Donnell McKinley, committed perjury in attempting to support this conspiracy hearing. Not only does Hobley fail to acknowledge this ruling, he cites a newspaper article "The Magic Can" that totally *contradicts* the recently-minted "planted can" theory.

HISTORY OF THE CASE

1. On January 6, 1987, at approximately 2:00 A.M., a three-story apartment building was set on fire when Hobley poured gasoline on the front stairwell and in front of his own apartment. Hobley's wife and young son, who were asleep inside their third floor apartment, and five other people including another child all died as a result of Hobley's arson. Hobley involved in an adulterous affair, had been given an ultimatum by his lover, and did not want his wife or child to become part of a new man's family.
2. Hobley's actions during and after the fire aroused police suspicion and he was eventually charged with the seven arson murders. Witnesses identified him as the man who had purchased gasoline at a gas station close to the fire scene. The gas can was found on the second floor where Hobley told police he had thrown it.
3. At trial, Hobley recanted his earlier oral confession but his testimony concerning his actions on the night of the murders was severely impeached by independent forensic expert testimony. Hobley claimed to smell smoke, left his apartment, and returned to it after investigating smoke down the hall. The location and heat of the fire, however, would have instantly "cinderized" Hobley if he had entered the stairwell.

4. The jury convicted Hobley of all seven murders on August 2, 1990. On August 4, 1990, the jury sentenced Hobley to death.

5. The Illinois Supreme Court affirmed Hobley's convictions and sentences in 1994. 159 Ill. 2d 272, 637 N.E. 2d 992 (1994).

6. Hobley's post-conviction petition was dismissed by the trial court in July of 1996. On appeal of that dismissal, the Supreme Court found that some of the issues warranted further post-conviction proceedings and remanded those issues.

7. Extensive post-conviction discovery, numerous depositions and protracted hearings were conducted over a two-year period. As Hobley's claims fell apart under scrutiny, he simply kept changing them, grasping upon incredible theories of conspiracy wherein conspirators where not even identified, let alone proven to have committed any act in furtherance thereof.

8. On July 8, 2002, Judge Dennis Porter issued a 30 page opinion denying all of Hobley's claims. Notably, Judge Porter found Donnell McKinley, another arsonist, committed perjury. McKinley stated that the gas can recovered by police at the Hobley's crime scene was his and was used by him to commit a different arson.

9. The appeal of Judge Porter's ruling is before the Illinois Supreme Court.

II.

FACTS OF THE CASE

On January 6, 1987, at approximately 2 a.m., a fire broke out in an apartment building located at 1121-23 East 82nd Street in Chicago. The fire claimed the lives of seven persons: Anita and Philip Hobley (defendant's wife and son), Anthony Bradford, Johnny Dodd, Shelone Holton, Schalise Lindey and Robert Stephens. The cause of death for each victim was determined to be acute carbon monoxide toxicity. Numerous others were burned while escaping from the fire, or severely injured when they leapt from windows.

The three-story apartment building had hallways, which ran the length of the building on each floor, and there was a staircase at each end of the building. The south stairwell collapsed during the fire. Analysis of the stairwell debris revealed traces of gasoline. Fire investigators determined that the Fire was started in the south stairwell.

At the time of the fire, defendant lived in apartment 301 with his wife and 15-month-old son. Apartment 301 was located directly across from the south stairwell on the third floor of the apartment building. There was conflicting testimony as to whether gasoline was poured on the door of apartment 301. The door and door jam of apartment 301 were almost completely burned away, but tests of the area revealed no traces of gasoline. The State's expert Testified that a peculiar burn pattern on the floor in front of the door showed gasoline had been poured there, but that the water used to extinguish the fire could have washed away all traces of gasoline. Defendant's expert testified that

the burn pattern was caused by a "chimney effect" created when the fire moved up the south stairwell.

At trial, Andre Council testified that on the night of the fire he stopped at an Amoco station located at 83rd and Cottage Grove in Chicago. Council remained at the station to visit with the gas station attendant, Kenneth Stewart. While he was at the gas station, Council allegedly saw a man in a dark pea coat approach the station on foot carrying a gasoline container. The man purchased $ 1 worth of gasoline. Council stated that the lighting at the station was excellent, and he was standing within five feet of the man while the man pumped the gas.

Council further stated that he paid particular attention to the man because while the man was filling his gas container, he spilled some gasoline on Council's car. Approximately 30 to 45 minutes after the man had left, Council saw fire trucks go past the Amoco station. The fire trucks were heading in the direction of Council's home, so he left the Amoco station.

Upon arriving home, Council noticed that the fire trucks had stopped at a building located approximately one block from where he lived. Council walked over to the fire scene, and he noticed the man who had purchased the gasoline standing near the building. While watching television the next day, Council saw a picture of defendant on the news identifying him as a suspect detained by police in connection with the fire investigation. Council recognized defendant as the man whom he had seen buy gasoline the night before, and telephoned the police to report the incident.

The apartment building consisted of four floors: the garden-level English basement and the first, second and third floors. The building was long and narrow, with an inside stairwell located at its front and an outside stairwell located at its rear. A single hallway ran the length of each floor and could be accessed by both stairwells. The top three floors each contained seven apartments, numbered 01 through 07. The fire was located in the front stairwell of the building, nearest the apartments numbered 01 and 02.

At the time of the fire, defendant lived in apartment 301 with his wife and son. Apartment 301 was located directly across from the front stairwell on the third floor.

Investigation revealed that gasoline, an accelerant, was used to start the fire. The front stairwell completely collapsed as a result of the fire. Tests of stairwell debris revealed the presence of gasoline in the front stairwell. Experts for both the State and the defense agreed that the fire was intentionally set with gasoline somewhere in the front stairwell.

Tests of the area outside of apartment 301 revealed no traces of gasoline, however, the door and door jam of apartment 301 were burned almost completely. This negative result was not conclusive as gasoline is often totally consumed by the fire, especially if located where the heat was most intense.

A firefighter called to the scene saw that the fire was burning hotter on the third floor, and he smelled the presence of gasoline in the burning stairwell. While the fire still raged, firefighters discovered four bodies in the

third-floor hallway. Another body was found in the second-floor hallway. A firefighter located the bodies of Anita and Philip Hobley inside of apartment 301, lying to the right of the window up against the wall. He testified that, when he arrived, the door was shut but burned off. The window had been stripped or blown out. Some furniture in the apartment had melted tops, which evidenced the enormous heat that had been in the apartment. He smelled the odor of gasoline.

Louis Casa, the building manager, testified that he rented apartment 301 on November 12, 1986, to defendant. A woman named Angela McDaniel was also there. Casa was under the impression that Hobley and McDaniel would live together. Casa was not aware that at some time between November 12, 1986, and the day of the fire, McDaniel had moved out and defendant had moved his wife and son into the apartment.

Two witnesses testified regarding a gasoline purchase on the night of the fire. Andre Council testified that he was visiting Kenneth Stewart while Stewart worked at an Amoco station located at 83rd and Cottage Grove in Chicago. Council parked his car next to a gasoline pump. Sometime after midnight on January 6, 1987, Council saw a man walk up to the station. The man was carrying a gasoline can and asked to purchase one dollar's worth of gasoline. Council was not certain of the size of the can, but he said it looked like a one-gallon can. Council made an in-court identification of defendant as the man who had purchased the gasoline. Council described defendant as wearing a navy blue or black pea coat, a hat and jeans while at the station.

Council stated that the man then left the station, walking toward the direction of the building. Sometime later, fire trucks passed the station. Council left because he lived near the direction where the fire trucks were heading. After a brief stop at home, Council went near the fire. Council again saw the man, Hobley, who was now standing near the viaduct, about two houses away from the fire. Council claimed that Hobley was wearing the same thing as when he saw him at the Amoco station. When Council later saw defendant on television as a suspect in the fire, he called police and told them about the gasoline purchase.

The second witness, Kenneth Stewart, was working at the Amoco station on the night of January 5 and 6, 1987. He recalled that a short man purchased one dollar's worth of gasoline with a standard red and yellow gasoline can. The can was a one-gallon can. Stewart acknowledged that the gasoline can, People's exhibit 8, was a two-gallon can. Stewart said that it looked similar to the can he saw. Stewart witnessed a lineup at 4 p.m. on January 6, 1987. After some difficulties, Stewart stated that defendant "favored" the man who purchased the gasoline. He also stated that he could not tell with "any degree of certainty." At trial, Stewart expressed more certainty, but acknowledged that he saw the man's face for only three to four seconds.

A number of professionals investigated the fire to determine its cause. One of them was Fire Marshall Francis Burns. He testified that the extreme heat outside of apartment 301, and the damage sustained at that location, evidenced that an accelerant had been poured on the floor outside the door of

apartment 301. He also stated, however, that if the door to apartment 301 had been left open and a window inside the apartment was open, the fire would have been drawn to apartment 301 more intensely because fire seeks oxygen.

Detective Virgil Mikus, a Chicago police officer then assigned to a federal arson task force, arrived at the scene at 3:10 a.m. and was assigned to investigate the cause and origin of the fire. As part of his investigation, he examined the exterior and interior of the building, and collected debris samples for examination. Mikus testified that a flammable liquid was poured in front of apartment 301. As evidence of this, he noted a circular pour and burn pattern outside the apartment door with a four to six foot diameter, and that the roof and baseboards had been completely burned.

Chicago police Detectives Robert Dwyer and James Lotito also investigated the fire. At about 9 a.m. on January 6, 1987, Dwyer and Lotito interviewed defendant at his mother's home after determining that he had been a tenant of apartment 301. Dwyer, Lotito and defendant sat in Dwyer's vehicle, and Dwyer told defendant that the fire had been intentionally set and asked defendant if he had any idea who may have done it. Dwyer testified that defendant mentioned a suspicious fire in the building on December 31, 1986. Defendant also mentioned that he suspected a woman named Angela McDaniel, with whom he had previously had an affair. Defendant then agreed to accompany the officers to Area Two Police Headquarters (Area 2).

After arriving at Area 2, Dwyer learned information that contradicted defendant's story. Defendant was read his Miranda rights so that he could be

questioned again. Defendant gave Dwyer the address and telephone number of McDaniel.

Defendant was then taken to another area police headquarters, at 11th and State Streets, where he was interviewed by Sergeant Patrick Garrity. In the meantime, Dwyer and Lotito interviewed McDaniel over her lunch hour. Garrity testified that no one else was present during their interview. According to Garrity, defendant first denied involvement with the fire, but mentioned his suspicions of McDaniel. Garrity told defendant that he had reason to believe that he was lying. Defendant then allegedly broke eye contact and made an admission. Garrity testified that defendant told him that he had gone to a gasoline station with a can, purchased gasoline, poured it in the stairwell and in the hallway outside his apartment, lit the gasoline with a match, and then threw the gasoline can down the second-floor hallway. Defendant said that he did this because he was experiencing trouble with his girlfriend Angela and his wife. Garrity took notes during this interview, but those notes stated only that defendant made "admissions." Garrity stated that he did not write down defendant's confession, but rather notified the investigating detectives.

Subsequently, Dwyer interviewed defendant in an interview room. Lotito and Officer McWeeney were either in or just outside of the room during this time. Dwyer testified that defendant repeated his confession to him. Defendant also told Dwyer that he could not handle his wife anymore and that he wanted to be with McDaniel in the future. Defendant was then allowed to speak to his attorney, who had arrived, and was then taken to the lineup. After the

lineup, Dwyer was escorting defendant back to Area 2 when they were approached by reporters. Defendant told the reporters that the police have the wrong man.

Dwyer testified that he took notes of defendant's confession, but those notes do not exist anymore. Dwyer destroyed them because "They were a mess. Quite frankly they were soaking wet. You know, ink was running on them. Once I completed my report I no longer had need for the notes and it is my custom that if I don't need them to just discard them." The report that still exists was written on January 31, 1987. Dwyer denied ever physically brutalizing or racially harassing defendant.

Detective John Paladino testified that when he started his shift on the afternoon of January 6, 1987, another officer contacted him and told him to go to the fire scene and locate a gasoline can on the second floor. He also spoke with Dwyer. Paladino went to the fire scene and found the gasoline can inside of apartment 206 in the kitchen under the sink. He located the arson investigators and had them take photographs of the can. Paladino found the can at 5 p.m. on January 6, 1987. This two-gallon can was introduced at trial as People's exhibit 8.

Paladino further testified that the black powder appearing on the can at trial appeared to be fingerprint powder. He stated that the can had been sent to the crime lab for fingerprint testing.

Some tenants testified about the night of the fire. Debra Bedford of apartment 302 testified that her apartment was directly across the hall from

apartment 301. After being awakened by a smoke alarm, she touched her front door and noticed that it was hot. She did not open the door. She called the fire department. She then sat in her window for about 10 to 15 minutes as her apartment filled with extreme heat and smoke. The fire department finally arrived and rescued her with a ladder.

After her rescue, Debra Bedford saw defendant at the scene of the fire. He was upset. Defendant told her that he thought his wife and baby were still in there, and that he thought maybe they were behind him as he ran out. Defendant was wearing a short jacket, like a pea coat, and pants, but no shoes. Bedford testified further that the coat introduced as defense exhibit 1 looked like the coat defendant was wearing. She examined the coat and noted that it is a ladies coat, since it buttons on the left side.

Althea Tucker of apartment 203 testified that she went to the window when she realized the building was on fire. Her brother Curtis Tucker, who had just escaped from apartment 207, called for her to throw her children down. From her window, Tucker saw defendant near the viaduct, which was two houses away. Defendant ran toward the building. Defendant then helped her brother catch her son when she dropped him from the window. Defendant was wearing a T-shirt and pants, but no shoes and no jacket.

Angela Slatton testified that she lived in apartment 206 with Howard Wilson and her toddler daughter. Apartment 206 was near the rear of the building. She awoke after her daughter bit her. The apartment was full of smoke. She opened the door and saw that the hallway was full of smoke, real hot and dark. She

closed the door. She threw her daughter out the window. Firemen then rescued her and Wilson with a ladder. Slatton denied that the two-gallon gasoline can later found in her apartment belonged to her or Wilson. This was the gasoline can introduced as People's exhibit 8.

Brian Greene, a firefighter, testified that while the January 6, 1987, fire was still burning, he entered the second-floor hallway through the back stairwell with his supervisor. Greene did not know if other firefighters had already been in the second-floor hallway. Although he was equipped with appropriate fire-fighting equipment, the heavy smoke and heat required him to crawl on the floor. He crawled halfway through the building. As he crawled, he looked at the floor. He located the body of Anthony Bradford and took it outside. Green never saw a gasoline can in the hallway.

There was brief testimony regarding an earlier fire in the building on December 31, 1986. Some tenants testified that there had been a small fire on the third floor on December 31, 1986, a few days earlier than the instant fire. Louis Casa, the building manager, fixed the damage caused by the December 31,1986, fire. He described the damaged area as being in the third-floor landing area, about nine feet outside of apartment 301.

At the close of the State's case, defendant moved for a mistrial. Defendant argued that Detective Paladino's testimony revealed that the State had performed fingerprint testing on the gasoline can introduced as exhibit 8. Defendant asserted that he was entitled to a mistrial because the State had never disclosed to the defense that a fingerprint analysis had been performed

on that can. Nor did the State disclose to the defense the results of that test. The assistant State's Attorney told the trial judge that no such fingerprint report existed. The trial judge accepted the State's representation and denied defendant's motion for a mistrial.

Defendant testified that he did not set fire to his apartment building and that he never confessed to doing so. Defendant admitted having had an affair with Angela McDaniel while he was married. He met McDaniel at a going-away party during the third week of October 1986. The affair lasted about one month. In November 1986, defendant rented apartment 301 in the building on 1121-23 East 82nd Street for McDaniel because she had no credit. McDaniel moved into the apartment, but defendant did not. Defendant's wife discovered the affair in mid-November 1986, after McDaniel moved into apartment 301. A week later, his wife threw defendant out of their home and told him not to return until he ended the affair. Defendant stayed with McDaniel for four days. Defendant then informed McDaniel that he was ending the affair. McDaniel moved out of the apartment after Thanksgiving Day, 1986, because she could not afford it on her own. At Thanksgiving, defendant admitted the affair to his wife's grandparents, who had raised her. He and his wife then reconciled.

According to defendant, he and his wife and child moved into apartment 301 during the week before Christmas of 1986 because it was nicer than where they were living. When defendant came home from work on December 31, 1986, there was a large burn hole in the carpeting outside their apartment. His wife told him that she and another tenant had put out a fire there. Defendant

suspected that McDaniel may have had something to do with the fire because their affair had ended badly.

After New Year's Day, 1987, defendant called McDaniel and arranged to meet her at a lounge. Defendant asked McDaniel if she knew anything about the fire in the building. She asked if the fire was on the third floor, but then denied having any knowledge of the fire. McDaniel stated that she wanted the $ 590 back that she had put down on the apartment. When defendant said that he wanted to stay with his wife and baby, she slapped him and said that he "was going to pay for wasting her time."

Defendant testified that he was home with his wife and child on the night of the fire. He was awakened that night by what he initially thought was his watch alarm. After realizing that the noise was a smoke alarm, he woke his wife and got out of bed. When he opened the hallway door, he saw and smelled smoke. Defendant told his wife there was a fire and to get the baby.

Defendant went out into the hallway to investigate, leaving the door to his apartment open. The smoke appeared to be coming from apartment 304. After he had walked 40 to 50 feet down the hallway, he claimed that smoke was coming out of apartment 304 down the hallway and was low to the floor. Hobley claimed he turned around to discover the hallway had filled with smoke and flames. Hobley claimed that he then pounded on the wall to his apartment to try to communicate with his wife. The smoke was low in the hallway near that apartment. Defendant was walking over to knock on the door to that apartment when he heard a popping noise. The doorway to his own apartment

went up in flames. The fire had come up the stairwell. Defendant could not get back inside his own apartment. He pounded at the wall and screamed at his wife to shut the door and go to the window. Defendant then "got down low" and ran out the back door because he could not breathe.

Once outside, defendant went and stood below his bedroom window. The window was open a few inches, as it always was because the apartment tended to be warm.He saw smoke coming out of his window, but never saw his wife or baby. Defendant was wearing only a T-shirt and shorts, and was not wearing shoes. Defendant ran to the front of the building where some people had gathered. He was looking for help to get his wife and baby out. A man gave defendant some oversize pants to wear.

After defendant put the pants on, he could see fire trucks driving by. He ran after the trucks, but could not catch them, so he ran back to the building. He helped a man catch a baby who was being thrown out a window. He then saw flames coming out of his apartment. Defendant went back to the front of the building searching for help. There he saw Debra Bedford, whom he knew. He told Bedford that he did not know if his wife and baby got out of the fire and asked to use a telephone. He went into the house next door, called his mother and asked her to bring him and his family some clothes. A lady then gave him some gym shoes to wear.

When defendant went back toward the building, he saw a fireman. He asked the fireman to save his wife and baby, and pointed to his window. The fireman told him that some people had been rescued from the third floor and he

should go around the back. There, a policeman told him to check the trauma units in the front. He went to the trauma units. He saw a lot of confusion and people everywhere. He returned to the house next door and called his mother again.

Once outside again, defendant could see that all the windows to his apartment had been broken out by the firefighters. Flames were coming out of his apartment. A woman came up to him and wrapped a coat around him. Defendant asked a firefighter if he knew if his wife and baby had been saved, and he said no. His mother, Myra Hobley, then arrived at the fire scene with her landlord. Defendant told his mother that he could not find his wife and baby. They were hugging and crying. His sister Robin Milan then arrived. Robin directed their mother to take him home, and Robin stayed to look for defendant's wife and baby. At his mother's house at 8006 South Rhodes, several relatives began arriving. They called hospitals searching for defendant's wife and child. Robin arrived a short time later stating that she could not find Anita or Phil at the fire scene.

Robin called for an ambulance for defendant. Defendant was taken to St. Bernard's Hospital in Chicago, where Robin asked that he be given a sedative. When the doctors informed her that tests would be needed first, Robin took defendant back to his mother's house. Later in the morning, police officers arrived at his mother's home. Defendant's mother gave the officers the clothes he was wearing during the fire.The officers then told defendant to come out to their car. They questioned defendant about the fire and asked him if he

had any enemies. Defendant told the officers about his affair with McDaniel and how it had ended badly. The officers then took defendant to Area 2 headquarters to avoid the news media.

At Area 2, Detective Dwyer placed defendant in an interview room, handcuffed him to a wall ring, and began to physically abuse and racially harass him. Later, defendant was taken to 11th and State after giving out McDaniel's telephone number. There defendant was asked a series of questions by Sergeant Patrick Garrity. When defendant denied setting the fire, Garrity kicked him.Defendant denied that he confessed to Garrity that he had set the fire. Detectives Dwyer and Lotito and Officer McWeeney escorted defendant to another room where he was again handcuffed. Defendant complained that his handcuffs were too tight. The officers hit and kicked defendant and told him to confess. Lotito put a plastic typewriter bag over his head until he blacked out. When he regained consciousness, Dwyer told defendant that they had interviewed McDaniel. Defendant was then allowed to see a lawyer, Steven Stern, and was placed in a lineup.

As defendant was being escorted back to Area 2, the media was there. A reporter asked defendant why he did it. Defendant said, "I didn't do it. They got the wrong person. I didn't do it." A videotape of this discussion was entered into evidence. Therein, defendant denies setting the fire, denies knowing who set the fire, and says he awoke to a smoke detector.

On cross-examination, defendant admitted having had some difficulties with

his wife after Thanksgiving, 1986. On November 30, 1986, he took his son away from his wife. Defendant also admitted lying to McDaniel about his wife to convince McDaniel to have sex with him.

John Campbell, an expert in the field of fire investigation and analysis, testified that gasoline poured in the hallway outside of apartment 301 could not have been the cause of the damage to that area. Rather, the damage outside of apartment 301 was the result of a "chimney effect," which caused the fire to burn hotter and gain intensity as it traveled up the stairwell. The fire "mushroomed out" at the upper level of the stairwell, which acted like a firebox. In Campbell's opinion, accelerant actually burned only in the stairwell at a point above the entry to the building. He further opined that the fire happened exactly as defendant described it.

Robin Milan, defendant's sister, testified and corroborated some of defendant's testimony. She stated that, after she arrived at the fire, she stayed to look for defendant's wife and son while her mother took defendant home. She could not locate them. Later, she followed defendant to the emergency room so he could get a sedative. She removed defendant from the hospital when she realized how long it would take.

Myra Hobley, defendant's mother, testified and she also corroborated some of defendant's testimony. She stated that defendant was shaking and crying when she arrived at the fire scene. She took defendant to her home so he could calm down. A family member later called the paramedics because defendant "was hysterical." The next morning, police arrived and she gave

them the clothing that defendant was wearing during the fire, but forgot the coat. After realizing that she had forgotten to give the coat to police, she gave the coat to defendant's public defender on January 8, 1987. The coat was introduced into evidence as defense exhibit 1. It was a dark-colored ladies pea coat.

Penny Hobley, defendant's other sister, testified that she went to the morgue and identified the bodies of defendant's wife and son. Defendant was at their mother's house rocking and crying. At the morgue, she saw Detective Dwyer and he asked her if she knew Angela McDaniel.

Curt Tucker of apartment 207 testified that he lived there with his mother. His brother Anthony Bradford woke him and told him that there was a fire. Tucker escaped out the rear stairwell. He went beneath the window of apartment 203, where his sister lived, when he saw defendant come up from under the viaduct. Defendant was wearing pants, but no shoes. Defendant helped Tucker catch his infant nephew. Defendant told Tucker that his wife and child were in an apartment where smoke and flames were coming out the window. Later, a neighbor gave defendant some shoes. There were no fire engines at the scene when Tucker saw defendant.

Georgia White testified that she lived next door to 1121-23 East 82nd Street. During the fire, people came into her home to use the telephone and for clothing. Defendant was one of those people. When he arrived, defendant was wearing no shoes and, to her recollection, no coat. She let defendant use her telephone. She also gave defendant a pair of gym shoes to wear.

Ollie Portwood, the grandmother of Angela McDaniel, testified that McDaniel was home at their house on the night of the fire. She stated: "Angela didn't go no further than the back yard that night. She and the girl upstairs from next door, they was playing, running and playing in the back yard, and myself and the lady next door, we was in the kitchen. We could see them, so she was out there." She did not know where McDaniel was at the time of trial. She had not seen her in months.

Sergeant Patrick Garrity testified and denied abusing defendant. Detective James Lotito also testified and denied abusing defendant. Lotito took no notes whatsoever of defendant's alleged admissions. Lotito's notes did refer to defendant's denials of his involvement with the fire, however.

The jury found defendant guilty of seven counts of felony murder, one count of arson, and seven counts of aggravated arson, as earlier noted. The jury was polled in open court. The capital sentencing hearing was bifurcated. At the first stage, the jury found defendant eligible for the death penalty.

In aggravation, the State called two witnesses. The first witness was Patricia Phiefer. In late November 1986, Patricia received a call from Anita Hobley asking her to come over to Anita's apartment because defendant had "abducted" Philip. Patricia took Anita home with her that night. The next morning, defendant called Patricia's apartment demanding to speak to his wife, but Anita refused. That afternoon, a brick was thrown through the window

of Patricia's apartment, and she called the police. After the police had arrived, the telephone rang.

One of the policemen then present picked up a second telephone and listened while Patricia spoke with the caller. Patricia testified that she recognized the voice of the caller as defendant's. The caller asked if Patricia now would let him speak to his wife, and she refused.She then thanked the caller for breaking her window, and he said that she was welcome. The caller then told Patricia that he was going to burn down the apartment in which she lived. The second witness in aggravation was Officer Glenn Evans, the officer who listened in on Patricia's phone call. He corroborated Patricia's story.

Defendant called 27 witnesses in mitigation. Defendant's mother and sisters testified , as did several teachers and coaches. Employees at the Cook County jail testified that although approximately 85% to 90% of the inmates had some gang affiliation, defendant did not. Finally, former co-workers of defendant testified that he was a good worker.

After the second stage, the jury found no mitigating factors sufficient to preclude imposition of the death penalty. The trial court sentenced defendant to death.

On direct appeal, the Illinois Supreme Court upheld the convictions and sentences, finding the evidence overwhelming. Hobley then filed a post-conviction. The first petition was dismissed by the trial court without a hearing. On appeal of the first petition, the supreme court remanded for a hearing on two issues: whether the jury had been influenced by patrons of the hotel restaurant

where the jury was sequestered and whether evidence that the gas can was negative for fingerprints had been withheld, whether there was a “secret” set of police reports, and whether there was a second gas can found at the crime scene that was hidden from the defense. An extensive hearing was conducted and the claims were all denied. These claims were demonstrated to be totally meritless.

In fact, two of these sensational allegations were refuted by **examining the first few pages of the police reports.** It is incredible and an insult to the victims that Hobley persists in these imflammatory and disingenuous claims. Yet, Hobley’s clemency petition is merely a rehash of those claims as well as others that were already discounted by the trial courts and the supreme court.

As the post-conviction hearing on these issues is dispositive of Hobley’s claims here, they are set out in detail below and are appended to this response.

III. REASONS FOR DENYING THE PETITION.

At the onset, highlights of evidence adduced at the post-conviction hearing should be noted:

1] **all defense attorneys** at trial were aware that the gas can was negative for prints, in fact, trial counsel discussed this fact, it was contained in the police reports, no exculpatory evidence was withheld;

2] no laboratory “report” was ever generated about the fingerprints as there were **no prints** to compare or “report” about;

3] two police department ["RD"] case numbers were assigned the case as was noted in the **first line of the first page** of the reports and **defense counsel issued numerous pretrial subpoenas listing both** of these numbers;

4] **no** second can was ever found at the scene and post-conviction counsel **abandoned** this claim upon learning that their investigator erroneously transposed inventory numbers from an unrelated arson case;

5] post-conviction counsel **abandoned the claim made to the supreme court** that two cans existed and instead contended that unknown people checked out a gas can inventoried an unrelated arson out of the recovered evidence section and "planted" it at the fire scene on the second floor;

6] the arson detective he [Detective Mikus] who inventoried the can from the unrelated arson committed by Donnell McKinley, had *nothing* to do with Hobley or his questioning, nor did Mikus have any contact with the officers who were told by Hobley that Hobley's can was thrown down the second floor hallway, nor did Mikus have any contact with the officers sent to the crime scene to search for Hobley's can after Hobley confessed;

7] attempting to develop some basis for the *new* conspiracy claim [that McKinley's can was checked out of police custody, taken to the crime scene in the presence of fire officials and media, and "planted" inside the doorway of a second-floor apartment], post-conviction counsel called the arsonist [McKinley] to testify that he could *positively identify* the common red and yellow can recovered from Hobley's crime scene as actually being his gas can;

8] McKinley was severely impeached in stating he could identify the can because he recognized a **vial** taped to the can **by the crime lab during testing done after Hobley's arson** as being taped to his can and recalled the vial would cause a rattling noise as he carried it;

9] the post-conviction court found that this other arsonist, McKinley, committed perjury and would have testified to anything to try to help Hobley;

10] Hobley's attempts to support his claim that the can used by Hobley must have been planted because it was "too clean" *per* Hobley's "expert ", Ogle, who has no arson investigation expertise and admitted his testimony was a favor, as well.

A. Hobley's Claim That He Did Not Confess to the Murders Has Been Rejected By the Trial Court at Pre-trial Motions, By the Jury When Hobley Testified, and Has Been Twice Rejected by the Illinois Supreme Court in Both Appeals. [Response to paragraphs 16-21]

The People will respond to Hobley's petition in the order that it is presented. In a section aptly utilizing the term "version," Hobley recounts the facts of his horrendous crime, while predictably painting himself as a hero. [Pet.2-3] Hobley testified he heard a fire alarm and left his family while he went down the hall to investigate. After he had walked 40 to 50 feet down the hallway, he turned around to discover the hallway had filled with smoke and flames. Defendant claims that he bent low and exited through the door at the north side of the building. According to the experts, Hobley would have been cinderized due to the intensity of the heat at the top of the stairwell.

Hobley also alleges that the police lied when they testified that he gave an oral confession after failing the polygraph test. Again, the jury heard Hobley

testify to this and rejected his claim. When Hobley has asked the supreme court to consider this issue, it has declined by stating the obvious: the jury heard Hobley's contentions and rejected them. Thus, the fact that other criminals may made similar allegations is irrelevant: Hobley's "version" is that he did not confess. Hobley does not claim a confession was beaten out of him.

Furthermore, the supreme court and the trial court heard and rejected his claim of coercion. The day after his confession, photographs were taken of defendant showing scrapes on his wrists and a small bruise in the middle of his chest. Defendant claimed these injuries were caused by the police's use of physical abuse during defendant's interrogation. Detective Dwyer testified that he observed defendant tugging at his handcuffs while defendant was waiting to speak with an assistant State's Attorney. This testimony was corroborated by the assistant State's Attorney. The supreme court stated that the State has show by clear and convincing evidence that the injuries to defendant's wrists were self-inflicted and were not commensurate with his alleged beatings.
159 Ill.2d 294-295

Furthermore, the supreme court rejected the notion that allegations of coercion in unrelated cases would bolster Hobley's claim. The supreme court addressed the issue when Hobley's post-conviction dismissal was appealed and noted that Hobley denied that he ever made an incriminating statement. In Hobley, the defendant raised a claim of actual innocence, relying upon newly discovered evidence showing that officers at Area 2 engaged in a pattern and practice of police torture. Hobley, 182 Ill. 2d at 444. The court

rejected the defendant's claim, finding that the evidence was being used to supplement the defendant's assertions that his confessions were coerced and involuntary and that the introduction of these confessions violated his constitutional rights. Hobley, 182 Ill. 2d at 444. The gas can issue is addressed below to avoid redundancy.

Hobley litigated a motion to suppress, testified on his own behalf telling the jury that the police lied when they testified that he gave an oral confession after failing the polygraph test. On direct appeal, when Hobley has asked the supreme court to consider this issue, it has declined by stating the obvious: both the trial court and the jury heard Hobley's contentions and rejected them. On appeal of the first denial of his post-conviction petition, the Illinois Supreme Court again rejected Hobley's attempts to revisit this issue, even when Hobley tried to bootstrap other criminals' abuse claims to his own. The supreme court noted that Hobley has not contended that an involuntary and coerced confession was given by him, but that officers totally fabricated his oral confessions.

Not only has the claim been consistently and repeatedly rejected as false, the trial court and the supreme court both found that scrapes on his wrist visible in a photograph taken the day after his arrest, were self-inflicted. Furthermore, the supreme court commented on the fact that Hobley did not have any injuries that would be present where one received a beating such as that claimed by Hobley: " There was ["clear and convincing''] testimony that the injury to defendant's wrist was self-inflicted [by tugging at his handcuffs] , and

all the police officers involved in the alleged brutality denied any abuse took place. Further, defendant's injuries were not commensurate with his alleged beatings." 159 Ill.2d 294-295.

Furthermore, the supreme court rejected the notion that allegations of coercion in unrelated cases would bolster Hobley's claim. The supreme court addressed the issue when Hobley's first post-conviction dismissal was appealed and noted that Hobley denied that he ever made an incriminating statement. Thus, the supreme court has rejected these contentions and they have no merit. 182 Ill.2d 404 (1998)

It is curious that Hobley concedes that his conveniently-timed investigation of smoke coming from apartment 304 made it "humanly impossible" to return to his family in 301 by the "wall of fire." This is curious not only because it uncharacteristically contains a kernel of truth, but also because it highlights the incredibility of Hobley's version of events. All experts agreed that within minutes the heat in the hallway would be instantly fatal due to the chimney effect caused by rising fire in a contained vertical space. Hobley, ever-portraying himself as the hero, stated he walked 40-50 feet down the hallway to examine smoke at 304. This claim alone is ridiculous because at that point, the fire was contained in the front stairwell-40-50 feet **in opposite direction**. At trial, Hobley told the jury that he returned to the stairwell area to pound on his apartment wall.

Experts testified that the heat would be incedibly intense at that time, at that location. Chief Burns testified that if this scenario were true, Hobley would

have been a human cinder. Hobley's own experts described the deadly, intense heat from the chimney effect near Hobley's entrance at the top of the stairs. It is ironic that Hobley now admits that this wall of fire was impassable, yet he stood next to it without even being harmed. True to form, Hobley asks us to believe that the wall of fire was not so deadly that Hobley the Hero was prevented from pounding on the very walls that the inferno was consuming. [See attached abstracts *re* Dr. DeHaan & Chief Burns]

Hobley's attempt to bolster this claim with allegations of a planted gas can have been thoroughly refuted during the post-conviction hearing. Judge Porter noted :"We have now gone from two gas cans in the Second Amended Petition to zero gas cans in the Third Amended Petition." [Attached Order pp.25-26] After a lengthy analysis, Judge Porter summarized:" the only evidence in this record to link that [planted] can to Madison Hobley is the testimony of Donnell McKinley [the arsonist of an unrelated fire]. This court finds Donnell McKinley's testimony to be worthless. It is the opinion of this court that McKinley committed perjury in his testimony before this court. He was severely impeached by his deposition testimony. It is clear to this Court that he would say anything to help Petitioner's case. " [Order pp. 29-30]

As to Hobley's contention that the can was "too clean" to have been in the hallway during the fire, the court rejected it as well. The court noted that this argument was presented at trial and rejected. Furthermore, the State called two experts who refuted the opinion of Hobley's "expert" Ogle, who had

absolutely no experience in criminal fire investigations. The court found the state's experts, however, were "impressive" [Order pp. 31-32]

B. The Testimony of Detective Mikus Concerning Gasoline Poured In Front of Hobley's Apartment Door Was Corroborated by Chief Burns. [Response to paragraph "A", page 4]

Detective Mikus, one of the arson detectives, testified that it looked as if gas had been poured in front of Hobley's door. Fire Chief Burns testified at trial that he examined the same area and reached the same conclusion. At the post-conviction hearing, Burns again explained that liquid had seeped into the tongue and groove wood flooring and burned a distinct pattern there. Dr. DeHaan viewed photographs of burn patterns years after the fire and did not get to personally examine the crime scene. Neither did Ogle, Hobley's "expert." As a matter of fact, Ogle never has investigated an arson.

Dr. DeHaan, testified for the State at the post-conviction hearing, and literally "wrote the book" of instruction on fire investigations, did not examine the crime scene personally. Detective Mikus and Fire Chief Burns did and both testified that gas was poured directly in front of Hobley's door. Chief Burns explained at the post-conviction hearing that a flammable liquid soaked into the tongue and groove floor in front of Hobley's apartment. Burns further testified that the burn pattern around the door of Hobley's apartment was consistent with gasoline being poured there.

Even if some of the experts disagreed over one of the burn patterns, all experts agreed that a flammable liquid was poured in the staircase. Even if the

contradictory opinions of Hobley's hired experts is considered, they are totally insufficient to require clemency.

C. Council's Identification of Hobley was Corroborated by Stewart and Both were Deemed Credible by the Jury and by the Supreme Court. [Response to paragraphs "B" and "C" pages 4-5.]

When Andre Council saw Hobley on television, he immediately called police and gave a written statement to prosecutors. His credibility was thoroughly explored before the jury, investigated by the defense team, and reviewed by the supreme court on direct appeal.

Council also testified at the post-conviction hearing, adamantly stating that his prior consistent statements were true. Also during the post-conviction hearing, it was revealed that the trial defense team had all relevant documents concerning Council, was aware of his background. In fact, the defense tried to inquire into an unrelated matter where Council was arrested and the trial court found it too collateral. The same issue was raised on direct appeal and the supreme court agreed that these matters were inadmissible.

As to Kenneth Stewart, his identification of Hobley was always tentative, yet it is compelling as it corroborates Council's testimony. After seeing Hobley on the news, Andre Council called the police, viewed a line-up and gave a detailed written statement including Hobley's purchase of gasoline minutes before the fire. Council's testimony was corroborated by another witness, Kenneth Stewart, who also testified at trial. These issues were litigated at trial and at the post-conviction hearing. They have no merit as they confirmed by these previous reviews and certainly do not support clemency.

Hobley raises nothing here that even remotely would justify clemency.

D. Hobley's Affair was the Motive for the Murders.

Here, Hobley merely asserts that the affair was over at the time of the fire. This assertion is neither credible nor relevant. Hobley simply states that his affair had ended at the time that he killed his family. This is simply another self-serving assertion that was previously litigated. What is further insulting, however, is the misrepresentation that the supreme court changed its characterization of the evidence in the post-conviction opinion. It did not. Even more disturbing, is the fact that Hobley makes this assertion, in light of the fact that he purposefully misled the supreme court during that post-conviction appeal.

In summary, this disjointed section simply highlights the fact that in his clemency petition, Hobley is simply attempting to continue the masquerade of innocence that he conjured up while murdering his family and the unfortunate souls who lived in their building. Salient examples of the myriad misrepresentations are found in the fact that Hobley represented to the supreme court that the state "hid" a negative fingerprint report. The fact the gas can was negative for prints is found in opening pages of the police report. At the post-conviction hearing on the issue, Hobley's defense team **admitted they all knew the can had been dusted and was negative for prints**. Similarly, Hobley actually argued to the supreme court that there was a "secret" RD number. The **first line of the police report** states that there were **2** RD

numbers assigned and **Hobley's attorneys issued numerous subpoenas** listing both these RD numbers. These misrepresentations are shocking but totally within the character of a man who killed 7 people including his only child and has the audacity to portray himself as a hero.

II. EVIDENCE ADDUCED AT THE LENGTHY POST-CONVICTION HEARING THOROUGHLY REFUTES HOBLEY'S EVER-CHANGING, SPECIOUS CONSPIRACY THEORIES. HOBLEY'S LUDICROUS, INSULTING AND EVER-EVOLVING CLAIM THAT THE GAS CAN WAS PLANTED HAS BEEN THOROUGHLY REFUTED. [Response to "I. And II."]

Petitioner has made bold, but false and specious claims alleging that a gas can from another crime scene was checked out of ERPS [Chicago Police Department's facility for storing criminal evidence] and "planted" at this fire scene to falsely corroborate petitioner's confession. Again, it should be noted that THIS IS TOTALLY DIFFERENT from the accusation made in the supreme court. There Hobley claimed a *second gas* can was found in his building after the fire and not only was the second can been hidden from defense, it was destroyed when Hobley's post-conviction investigators asked to examine it. These are very serious allegations and the supreme court ordered that a full hearing be had on this shocking claim.

During the resultant depositions, it immediately became apparent that the investigator who claimed to have discovered a second gas can was totally mistaken and had written down the wrong inventory number. This erroneous inventory number belonged to a gas can impounded for a totally different arson committed by Donnel McKinley. At this point Hobley owed, at the very least, an apology to the many people who had been unjustifiably slandered in the media

[See "Magic Can'" article attached to Hobley's petition]. Hobley also should have retracted his incredible claims of malicious conspiracy made to the supreme court. These corrective steps would be the logical actions of honourable people, however, Hobley has consistently demonstrated that honesty is not one of his possessed traits.

Therefore, instead of admitting that his assertion to the supreme court was an outrageous mistake, Hobley now claims that there was only one can but that this can was *planted* at the crime scene. Thus, the theory *du jour* goes something like this:

1] when Hobley confessed to homicide detectives that he poured gas in the stairway and threw his can down the second floor hallway;

2] "someone" [1] decided to utilize the gas can from Donnell McKinley's earlier arson at another apartment building although none of the homicide detectives had any part in that arson, nor did they have contact with arson detectives during this questioning;

3] the chosen can [2] was already inventoried and impounded at ERPS by Detective Mikus, who had nothing to do with Hobley's interrogation nor did have any part in the recovery of the can;

4] "someone," not Mikus or the interrogating detectives, went to ERPS and took possession of the can from the unrelated case[3];

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[1] No one is ever identified, these conspirators are faceless and nameless. Nor are we enlightended as to how these anonymous individuals were able to work so efficiently in concert. Telepathy, perhaps?

[2] No one has ever posited a theory, let alone some *evidence* that explains why this gas can was chosen.

[3] No one has tendered documentary evidence showing this can was removed from ERPS

5] ERPS records show that McKinley's gas can was **never ever removed or checked out**,(an act which does require the signing of papers and results in the log entries at ERPS);

6] "someone" then took the McKinley can to Hobley's murder scene where numerous fire personnel still laboured and where media personnel still were present;

7] "someone" managed to carry McKinley's can, undetected, into the building;

8] "someone" chose to place McKinley's can just inside the door of a second floor apartment, but under the sink in an open area on the floor;

9] Detective Paladino found the can and had evidence technicians photograph it as it lay on the second floor.

The story line for this latest theory is that the arsonist from the earlier, unrelated fire, McKinley, recognizes "his" can, that the timing of its destruction [during Hobley's post-conviction investigation] seems "fishy", and that the can was just "too clean" to have been near this horrendous fire. This claim is patently ridiculous, further insulting the victims and people who worked hard in the aftermath of this senseless tragedy.

Apparently it is of no consequence to Hobley that accusations of misdeeds such as these, profoundly affect the personal life and professional reputation of people who were simply doing their job in the wake of this horrific crime.
Consider that the primary support for this claim comes from a convicted arsonist.
Donnell McKinley was severely impeached when he identified his gas can *by the*

vial attached during the lab's testing process. McKinley actually stated that he **knew** it was his can, despite its common red and yellow design, *because the crime lab's vial would rattle as he carried the can down the street.*

Judge Ported found McKinley was severely impeached and committed perjury. Petitioner admits that McKinley was impeached. Instead of abandoning the claim upon impeachment, petitioner argues the marvel of how *McKinley's hands fit the dents in the can.* Hobley actually argued that because McKinley demonstrated how he squeezed the can during his arson, and because his hands "fit" in the dents, that this proves the can is his!

Although this impeachment happened many months ago and McKinley's testimony was disgraceful, the claim is still presented. Consider the fact that although extensive discovery was conducted, not one iota of evidence of mishandling or suspicious destruction has been presented. The claim is still presented. Consider that, despite abundant discovery afforded Hobley, we have not been enlightened as to who, why, or how this "planting" actually occurred. The list of unanswered and unanswerable questions is endless.

It has not been explained **how** this can was checked out. Hobley again alleges "someone" at ERPS was complicit in the conspiracy to allow removal without any documentation. Hobley does enlighten as to how the other anonymous conspirators happened to luck upon another malignant heart behind the counter at ERPS who was willing to plant evidence. Hobley does not explain just how "someone" managed to check the can out so it could be planted. Or how ERPS employees knew, a decade later, to cover up this miscarriage by

destroying the can when the post-conviction investigation requested it. Or how these ERPS employees knew to document a FALSE destruction of evidence since the can was planted in 1987 and really was not inventoried at ERPS anyway.

How did the can get from ERPS to Hobley's crime scene? Who knew to plant it? How did Mikus, who had nothing to do with Hobley's interrogation, get involved in planting this evidence? Why not get one out of someone's garage? Why go through the trouble of taking a can from ERPS? Why didn't they just go to a gas station and **buy** a damn gas can?

Despite the endless unanswered questions, the claim is not dropped. Petitioner next claims the condition of the can supports the "plant" theory. Petitioner ignores the Niagara Falls of water in the building during suppression, the chaos and confusion during rescue efforts, efforts aided only by the light from helmets and flashlights. When petitioner argues that the can must have been near the fire, he ignores the large number of firefighters going through, kicking debris in the dark. Yet, when he relies upon these *same numbers when* arguing that surely the firefighters would have noticed the gas can on the second floor.

The can was recovered a few feet inside a door that was kicked in during rescue efforts. The hall was dark full of water and debris and firefighters were looking for people not cans. Yet, petitioner contends the timing of the discovery is suspicious. Chief Burns testified that it was not uncommon to see gas cans in apartment buildings. Nor would they immediately be suspect of a gas can found

in an apartment. There simply is not a shred of evidence to support this claim of conspiracy.

Further, Hobley argues that because the plastic cap was not melted on the can that it could not have been in the hall. Dr. DeHaan testified that there are any number of reasons why the cap was not melted, most of which simply require common sense. Judge Porter rejected this contention as well.

Similarly, Hobley's rantings about ERPS are inconsequential and irrelevant here. The chain of custody was not broken for the gas can used by Hobley and he has nothing but speculation to support this absurd theory. Judge Porter agreed and halted attempts to pursue this ridiculous line of inquiry.

The bottom line is that either Investigator Lee Smith or someone he spoke to ERPS transposed a number on the inventory sheet for the can. By coincidence that erroneous number belonged to another gas can from a separate unrelated fire that also was investigated by Mikus.

Despite years of unfettered discovery, petitioner has utterly failed under ANY of his various and ever-changing theories to show that the can was planted or in any manner mishandled. Despite the fact that there is not a shred of evidence to back up these allegations of a conspiracy, petitioner persists in making accusations that impugn the integrity of personnel assigned to this case. Therein lies a *substantiated* injustice. The post-conviction court recognized this and denied this claim, specifically noting that McKinley committed perjury.

III. HOBLEY'S ASTONISHING ARROGANCE AND PREVARICATION ARE REVEALED IN PRESENTING THIS THOROUGHLY DISCREDITED CLAIM WHERE HIS OWN TRIAL ATTORNEYS TESTIFIED THEY KNEW THE GAS

CAN WAS NEGATIVE FOR FINGERPRINTS AND WHERE THERE WAS SIMPLY NOTHING TO WRITE A REPORT ABOUT.

Here is the analysis that resulted in remand of the recent evidentiary hearings in the post-conviction court:

> Before his trial, defendant filed a motion for discovery requesting the production of reports pertaining to fingerprint testing and other exculpatory evidence related to the case. Despite these requests, defendant was never informed of the existence of a negative fingerprint report on the gasoline can introduced as People's exhibit 8, nor was he informed of the existence of a second gasoline can found at the fire scene. The items attached to defendant's petition indicate that these items were in the possession of the State before and during defendant's trial. Both the fingerprint analysis and the second gasoline can were apparently catalogued by the Chicago police department in reports with RD No. J007699, an RD number that defense counsel did not have at the time of trial. Defendant claims that this worked to mask the existence of these items from the defense. At pages 439-440.

The evidence adduced conclusively shows that the representations made to the supreme court are **totally and utterly baseless**. The defense trial team fully aware that the gas can was negative for fingerprints. Clyde Lemons described strategizing with this information and remembered the defense attorneys opining that because the crime was committed in January that gloves were probably used. [8/2/00 R.106-107, 131-133] There is no doubt that the defense trial team was aware that no fingerprints were on the can.

What is troubling, however, is how ridiculously simple it was to totally dispel any notion that such information was withheld. Similarly, the “secret RD number” allegation was most easily refuted. How? **By reading the first few pages of the police report.**

The opening line of the major supplemental report states that there is an additional RD number assigned to case. In fact, the defense attorneys issued a number of pretrial **subpoenas listing both RD numbers**. The portion of the report listing physical evidence states in plain English that the gas can recovered on the second floor was **negative for fingerprints**.

Hobley again requires that the wealth of evidence be ignored that the defense team knew from the onset of discovery that that gas can was tested for fingerprints and was negative for fingerprints. To this day, the existence of a separate "report" has never been established. There is nothing to report on as there were no prints to compare.

In the original post-conviction filings that were reviewed by the Supreme Court, petitioner contended that his defense team was unaware that the can had been checked for prints, was unaware that the can was negative for prints, and was unaware that 2 RD numbers existed of the case. The evidentiary hearing has shown that the defense team knew the can was dusted for prints, knew the can was negative for prints and knew that 2 RD numbers existed for the case. For example, the defense team issued numerous subpoenas listing both RD numbers to the crime laboratory, police and fire department.

Instead of acknowledging that there was no withholding of exculpatory material, petitioner persists, distorting the facts by manipulating semantics. The record of post-conviction testimony is replete with evidence that the defense was always aware that the can was negative for prints. No comparison was done because *there was nothing to compare*. Yet, incredibly, Hobley requests a

pardon because the defense did not receive a "report" on the absence of fingerprints.

Instead of acknowledging that the lab did not generate a report on a comparison that was impossible to conduct, petitioner has seized upon a "receipt for evidence" form [used in evidence tracking] as being the withheld "report." **Yet, Hobley has failed to demonstrate that this receipt was not tendered.** The evidence shows that the defense was allowed to view the state's files after receiving voluminous discovery. **Also, the defense "lost" much of its file, foreclosing the state from proving that this receipt was tendered.**

In any event, petitioner's semantics are inconsequential where the evidence is overwhelming that the defense knew the can was dusted for prints and was negative. Most importantly, the defense did possess the police reports which provided this information. Even if petitioner had demonstrated that the receipt for evidence was not tendered, **which he has not,** the "exculpatory" evidence: the absence of fingerprints was known to the defense and documented in police reports received by the defense.

Hobley should concede that his trial attorneys were well aware of the second RD number and that there were no prints on the can. Instead, he relies upon the testimony of attorney Harmon who testified that although she knew the police report stated the gas can was negative for prints that she did not trust the detective who typed up the report. This is patently ridiculous made more so by the assertion that, acting on her "suspicion", she subpoenaed the laboratory for "reports." This simply highlights the fact that petitioner's trial

counsel was aware that the can was negative for prints. It further proves that the laboratory generated no report.

On direct appeal, petitioner also argued that a fingerprint report was not tendered. The analysis on direct appeal is set out below.

At trial, Detective Paladino, a witness for the State, testified that the gasoline can he found in apartment 206 was sent to the crime lab for fingerprint analysis. Additionally, Paladino testified that he believed the black powder visible on the can at trial was fingerprint powder. Based on Paladino's testimony, defendant moved for a mistrial. The prosecutor denied the existence of a fingerprint report, and opened his file to defendant. No fingerprint report was found, and the trial court denied defendant's motion for a mistrial.

In Brady, the Court held "that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." Brady, 373 U.S. at 87, 10 L. Ed. 2d at 218, 83 S. Ct. at 1196-97.

In the present case, the contents of the fingerprint report, assuming a fingerprint report ever existed, are unknown. In order to determine materiality under Brady, it is necessary to consider the content of the undisclosed evidence and its effect upon defendant's guilt or punishment. The Brady analysis is ill-suited for situations where evidence has been lost or destroyed and its contents are unknown. Additionally, the sanction normally imposed under Brady, a remand for a new trial, would be ineffective in this type of situation. The undisclosed evidence would not be available at a second trial. We do not believe, therefore, that Brady controls here.

The present case is similar to Arizona v. Youngblood (1988), 488 U.S. 51, 58, 102 L. Ed. 2d 281, 289, 109 S. Ct. 333, 337, where the Court held that "unless a criminal defendant can show bad faith on the part of the police, failure to preserve potentially useful evidence does not constitute a denial of due process of law." The underlying policy concerns of Youngblood are analogous to those in the present case. In order to promote the preservation of exculpatory evidence, there must be the possibility of a sanction where evidence is lost or destroyed. On the other hand, a defendant should not be rewarded for the inadvertent loss of a piece of evidence where other evidence sufficient to support his conviction remains. The proper balance between these competing interest can be accomplished through careful consideration of (1) the degree of negligence or bad faith by the State in losing the evidence, and (2) the importance of the lost evidence relative to the evidence presented against the defendant at trial.

We believe that imposing sanctions against the State here would be inappropriate. First, defendant has failed to show any bad faith on the part of the State. More importantly, there was independent evidence tying defendant to the gasoline can. Two witnesses identified defendant as filing a gasoline can prior to the fire, and a can similar to that described by the witnesses was discovered as a result of information gained from defendant's confession. There is also overwhelming evidence of defendant's guilt separate from the gasoline can.

Defendant next claims that the State's withholding of the fingerprint report violated our Supreme Court Rule 412 (134 Ill. 2d R. 412). Rule 412 deals with material or information that is within the possession or control of the State. As discussed above, it is not clear that a fingerprint report ever existed. However, even if we assume that a fingerprint report did exist at one time, it has now been lost. **The prosecutor stated that he had never seen a fingerprint report. The State opened its entire file to defendant, and the fingerprint report was never found. Defendant has not shown that the fingerprint report was in the possession or control of the State, or available to it.** The State, therefore, could not have an obligation to disclose the report under rule 412. [emphasis added]
159 Ill. 2d 306 -308

After exhaustive efforts, the facts are the same as set out on direct appeal: no fingerprint "report" was ever generated. This is quite logical given the fact that fingerprint reports contain comparisons of prints found on evidence to prints of a suspect. Hobley ignores this and persists in naming an evidence receipt the "fingerprint report. "

Hobley's persistence in arguing this issue is truly puzzling. If the defense team had a piece of paper entitled "lab report" that stated the can was negative for prints, what difference would it make where everyone knew the can had no prints. Attorney Lemons even testified that he recalled discussing the lack of prints with the defense team and opining that gloves were worn as it was winter.

His attorneys all testified that they knew that there were no prints on the can. In fact, during post-conviction discovery, the state received copies of what was left of their file as two-thirds of it was "lost." On the defense copies of the police reports, the section reporting that the can was negative for prints was highlighted and underlined.

At first blush, it is amazing that Hobley presents this disingenuous claim as a basis for pardon. Yet, persistent misrepresentation has long been Hobley's signature trait. Hobley regurgitates fantastic claims repeatedly rejected by various courts and the jury that convicted and sentenced him. Hobley does not address voluminous evidence and rulings against him but cites to newspaper articles to support his claims, even if the article adopts a theory he has since abandoned. It is also incongruous, where a judge recently rejected these same claims after two years reviewing the extensive discovery and evidentiary hearings, that Hobley ignores the rulings and evidence but demands a full pardon. Hobley's claims and request for clemency are an insult to the people who died and were severely injured during this terrible fire.

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

Respectfully submitted,

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State's Attorney of Cook County

Celeste Stewart Stack

Paul Tsukuno

Paul Tsukuno