

OCTOBER 2002 SESSION
PRISON REVIEW BOARD
STATE OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)	
)	Docket No. \
vs.)	
)	
ROBERT CASILLAS,)	Inmate No. N-33565
)	
)	

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

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

HEARING REQUESTED

RICHARD A. DEVINE
STATE'S ATTORNEY OF COOK COUNTY

By: CATHERINE SANDERS
ANNA DEMACOPOULOS
SARI LONDON

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PEOPLES OBJECTION TO UNTIMELINESS
OF CASILLAS' CLEMENCY PETITION

The People strenuously object to Casillas' late and untimely filing of his Clemency Petition. The Prisoner Review Board very clearly set a time frame in which his petition was due. Casillas' petition was due on or about August 26, 2002. Without any justification for his delay, Casillas filed his petition September 19, 2002. Due to this untimely filing, the People have had inadequate time to contact the victims, review, prepare and respond to his petition. We strongly object.

Additionally, it must be noted that Casillas filed his verification and consent affidavit on August 25, 2002 obviously without having read the petition in which he verified because that petition was not filed until September 19, 2002. This is clearly wrong and violates the Rules of the Prison Review Board. As such, Casillas' petition should be denied. Assuming, however, this Board's and the Governor's review of this petition despite these violations, the People respectfully respond to and strongly oppose Casillas' petition.

HISTORY OF THE CASE

Thirteen years ago, on February 24, 1989 Robert Casillas robbed and then fatally shot Chang Choi and Myung Choi, the owners of Key Jewelers, which was located at 6903 N. Clark Street. Defendant was arrested for those charges on July 24, 1995. (R. CL C23) Robert Casillas confessed to involvement in this horrible crime but he blamed his co-defendant Guadelupe Aguilar for the shooting. (Despite Casillas's claim that he was not the actual shooter we know from the co-defendant's statement that Casillas was in fact the actual shooter) Robert Casillas was charged by Indictment No. 95 CR 32125 with ten counts of murder for the deaths of Chang Choi and Myung Choi. (R. CL C7-C16) While awaiting trial for this case, Casillas escaped from the Cook County Department of Corrections on August 21, 1995. He went to Disney World and then ultimately went to Texas where he was finally apprehended on September 27, 1995 and brought back to Chicago to stand trial.

On October 24, 1996, defendant's Motion to Suppress Statements was heard. (R. 50-71) After hearing all the witnesses and argument, the trial court denied defendant's motion. (R. 71) Thereafter, Casillas and co-defendant Aguilar was tried before separate but simultaneous juries. On April 23, 1997, with the Honorable Loretta Hall Morgan presiding, Casillas' jury was selected. (R. 305-470) The jury trial commenced on April 28, 1997. (R. CL C2, 475) Thereafter, on May 5, 1997, the jury found defendant Casillas guilty of two counts of murder for the shooting deaths of Chang Choi and Myung Choi. (R. 1569)

On May 6, 1997 defendant's death hearing was commenced. (R. 1578-2039) Defendant had previously waived a jury for the death phase of his case. (R. 277-282) Defendant was found eligible to receive the death penalty and after hearing evidence and argument in support of

aggravation and mitigation, the trial court sentenced defendant Casillas to death. (R. 2039) On July 7, 1997, defendant's motion for new trial and reconsideration of his sentence was denied. (Supp. R. Vol.1-10) On August 20, 1997, Casillas filed his Notice of Appeal.

The Illinois Supreme Court reviewed Casillas' trial and sentencing hearing and affirmed both his convictions and death sentence. People v. Casillas, 195 Ill. 2d 461, 749 N.E.2d 864 (2000). His Petition for Rehearing was denied on June 4, 2001. Moreover, the United States Supreme Court declined to review the decision. Currently, Casillas has filed a Petition for Post-Conviction Relief which is pending in the trial court.

For the reasons that follow the People of the State of Illinois respectfully request that Governor Ryan and this Board reject Robert Casillas executive clemency.

II

FACTS OF THE CASE

Prior to jury selection, in front of the entire jury venire, the trial court spoke to the potential jurors. (R. 303-314,320-322,413-416) The trial court informed the jury about many fundamental concepts involved in a criminal trial. Those concepts included the burden of proof, presumption of innocence and that the indictment was not evidence of guilt. (R. 303-314,320-322,413-416) After the jury was selected and sworn but prior to hearing opening statements, the trial judge once again told the jurors that the state had the burden of proof. (R. 495,496)

The evidence at trial established that February 24, 1989 was the last time James and Connie Choi saw their parents Chang Choi and Myung Choi alive. (R. 526-528) The Chois owned Key Jewelers located at 6903 N. Clark. (R. 525)

Later in the evening while James Choi was watching television he saw a news report which showed his parents' store surrounded with police. (R. 526-527) When James drove to the store he saw numerous police. His father's friend informed him that his mother and father had been "gunned down". (R. 528)

Police Officer Leroy Rosen first arrived at the jewelry store at approximately 5:15 p.m., responding to a call of a holdup alarm. (R. 531) It was later determined that the holdup alarm had been activated at 6903 N. Clark by remote on February 24, 1989 at 5:13 p.m. (R. 662,669) The light was on in the store but the front door was locked. (R. 531) Other police cars responded to the scene. (R. 533)

Sergeant Thomas Schaedel also responded to the call and went to the back of the store through the alley. (R. 539, 540) When he walked through the corridor he noticed small pieces of

jewelry in the snow. (R. 541) Several pieces of jewelry were recovered by the rear of the store during the investigation. (R. 749-752) The back screen door of the store had been ripped and the back door was open. (R. 541)

When Sergeant Schaedel entered the back of the store, he saw Myung Choi laying face down on the floor in a pool of blood, which was coming from her head. (R. 541) In the front of the store, Chang Choi was laying face down in a pool of blood. (R. 542) Jewelry was on the floor and cases were open. (R. 542)

Detective Philip Mannion, who also went to the jewelry store, explained that you had to be buzzed in to enter the store and that something covered the windows which prevented people from looking inside the store. (R. 550, 561) The victim, Mr. Choi, was lying on the floor face down with his feet under the worktable. (R. 561) He had a gunshot wound to the right side of his head. (R. 562) Mrs. Choi was on the other side of the partition in the back part of the store. (R. 565) She was also laying face down on the floor with a gunshot wound to the right side of her head. (R. 565, 566) Spent casings were found near Mr. and Mrs. Choi's bodies. (R. 568, 569) There was a bullet hole in the partition, which divided the front and the back of the store. (R. 569,570) A bullet was later recovered on top of the ceiling tiles. (R. 756-759, 1055)

The back door was open and unlocked. (R. 577) The screen door had been kicked out and the clasp on the lock of the door was intact but the chain was broken. (R. 577) This indicated that the back door had been locked. (R. 592) There was snow on the ground and the snow had been trampled on. (R. 591)

Forensic Investigator Thomas J. Ginnelly of the Crime Lab Mobile Unit responded to the scene. (R. 681) He photographed the crime scene, collected firearms evidence, and checked for

fingerprints. (R. 684,685,688,695) Specifically, cartridge casings were found near the victims bodies, a live round was found laying on top of Mrs. Choi's leg, and a right hand black leather glove was recovered. (R. 692-695) Some latent prints were recovered at the scene, which were sent to the Latent Unit Identification Section. (R. 712) The black glove did not contain any suitable prints to compare. (R. 696, 1058)

On December 21, 1995, Latent Fingerprint Examiner William Kovacs examined the latent fingerprints, which were recovered on February 24, 1989 from 6903 N. Clark. (R. 969-978) Based on his comparisons of the latent prints found at the scene and co-defendant's fingerprints, Officer Kovacs determined that defendant Aguilar's fingerprints had been left at the scene. (R. 970-978) On May 9, 1995, Officer Kovacs received a request from Washington State to compare photocopies of fingerprints. (R. 978-981) Based on the quality of the photocopies, Officer Kovacs was unable to make a comparison. (R. 978-981)

The victims' daughter, Connie, worked at the jewelry store every Saturday. (R. 615) She would clean the counters and display the jewelry. (R. 615) She explained that approximately \$15,000 in wholesale value of jewelry was missing from the store. (R. 623) There was also an alarm system in the store, which included an alarm box and a remote. (R. 632)

In the back room, the sofa blocked the back door, which was padlocked and had a wooden bar across it. (R. 638) The back door was never used except once when her father opened the door. (R. 639, 640) The screen did not have a rip in it. (R. 639, 640) Her father never wore glasses or gloves when he worked but he wore a magnifier. (R. 640,645)

Medical Examiner Doctor Eupil Choi conducted the autopsies on Mr. and Mrs. Choi on February 25, 1989. (R. 772-795) Mr. Choi suffered a gunshot wound to the right side of his head. (R.

777) His head was in a downward position when he was shot. (R. 780) Mrs. Choi suffered a gunshot wound to the right side of her head. (R. 789) She also had a laceration on the left backside of her head, which was caused from blunt trauma. (R. 785,786) The bullets were recovered from both victims' bodies. (R. 779,788) It was Dr. Choi's opinion that the cause of death for both victims was a gunshot wound to the head. (R. 794, 795)

The parties stipulated that Firearms Examiner Gaynor received the bullets recovered from the ceiling panel and from Mr. and Mrs. Choi's heads. He examined the bullets. (R. 1057) He determined that each bullet had been fired from the same .32 caliber semiautomatic weapon. (R. 1057)

Between December 1988 and February 1989, Patricia Farias allowed defendant Casillas (Rush) to stay at her apartment. (R. 852-853) She had met defendant Aguilar, whom she knew as Stiletto, in January 1989. (R. 853)

When Patricia woke up on February 24, 1989, she saw defendant and Aguilar in her apartment. (R. 854) She would not allow defendant to borrow her car that day. (R. 855) She went to work and she came home around 5:45-6:00 p.m. (R. 855)

After work she parked her car in front of the jewelry store located at 6903 N. Clark. (R. 856) She observed several police cars and officers at that location. When she tried to open the door to her apartment, the door was locked and it had been bolted on the inside. (R. 856) She knocked on the door and Aguilar opened the door. (R. 858) As she entered her apartment and went toward her bedroom, she noticed that her bedroom door was closed and locked. (R. 858) Defendant opened the door. Defendant was not usually in her bedroom. (R. 859)

Once in the bedroom, Patricia noticed two large green garbage bags, black trays and jewelry on her bed. (R. 859) Patricia told defendant to leave her apartment. (R. 860) Defendant stated that

they needed a ride. (R. 860) Patricia drove defendant and Aguilar to Casillas' sister's house. (R. 864) They brought the garbage bags and a gym bag with them. (R. 862)

After driving defendant and Aguilar to his sister's house, Patricia went to her friend's house. (R. 867) Patricia told her friend that she thought defendant did something really bad. (R. 867) About a month later, Patricia received a call from defendant. (R. 867) She asked defendant, "Did you do that?" Defendant said, "I asked you not to ask me any questions, I just called to see how the kids were." (R.867)

Patricia did not call the police because she was afraid. (R. 868) She finally spoke to Detective Zuley about what she knew in May 1995. (R. 868) She did not tell the detective everything until a few weeks later because she was afraid. (R. 868)

On the day of the incident defendant never told her that he was afraid of "Stiletto". Defendant also never said, "I didn't have anything to do with this." (R.869) Patricia stated that back in January 1989 she had a conversation with defendant where he stated that he would like to get a gun because he had always had one. (R. 870) Patricia, however, had never seen defendant with a gun. (R.873)

Paul Hernandez, defendant Casillas' brother-in-law, stated that he was home the evening of February 24, 1989, when defendant and Aguilar came to his house. (R. 939,940) Defendant and Aguilar had three bags of jewelry, which they put on the kitchen table. (R. 942) While they were in the kitchen, Aguilar said, "We ripped off a jewelry store." (R. 943, 955, 956) Defendant did not say where the jewelry came from. (R. 949) Defendant seemed to be nervous that night. (R. 950) That evening Aguilar had his shirt over his pants and was constantly adjusting his pants. (R. 953) Paul stated that he did not see defendant with a gun that night and that he did not think he had a gun. (R. 954) Defendant

and Aguilar spent the night but left the next morning with their jewelry. (R. 946) Paul did not go to the police and did not speak to the police about that night until July 31, 1995. (R. 947)

A.T.F. agent Steve Brezette testified that on April 25, 1995, he was working with a confidential informant who gave him information about the homicide which occurred February, 1989. (R. 814,815) Agent Brezette passed this information on to Detective Zuley. (R. 815,994)

Detective Richard Zuley had been to the jewelry store on the evening of February 24, 1989. (R. 993) He spoke to a person named Steve Slamski who lived at 1672 W. Farwell. (R. 994)

After his conversation with Agent Brezette, he looked to speak to Mr. Slamski again. (R. 994) He learned that Mr. Slamski had died. (R. 994)

On July 24, 1995, Detective Zuley interviewed defendant Casillas. (R. 995) Defendant was advised of his rights and was willing to talk about what happened on February 24, 1989 at Key Jewelers. (R. 999) The conversation lasted approximately twenty- five minutes. (R. 999) Thereafter, Assistant State's Attorney Alesia was notified. (R. 999) During defendant's conversation with A.S.A Alesia, defendant minimized his involvement in the crime. (R. 1000)

Specifically, defendant stated that he was wearing a pair of dark colored gloves. (R. 1000) He stated that he and Aguilar first went to Key Jewelers located at 6903 N. Clark Street at 4:00 p.m. in order to "case" the place. (R. 1001) While in the store, Aguilar asked the owners about the price of a piece of jewelry. (R. 1007) Then they returned to Patty Farias' apartment where they did some cocaine. (R. 1002) Defendant told the detective that Aguilar became weird and aggressive after they did cocaine. (R. 1008) They returned to the jewelry store at 5:00 p.m.(R. 1002) Defendant stated that he knew what was going to happen when they went back to the jewelry store because he was told by Aguilar to "keep your eyes open" or "keep a look out". (R. 1002, 1014) Defendant knew that meant

that a robbery was "going to go down". (R. 1003)

Defendant also told the detective that when they returned to the store Aguilar asked to look at the piece of jewelry he had looked at earlier. (R. 1018) Defendant stated that while he was "watching out", he heard gunshots and he turned and saw Aguilar with a gun in his hand pointed at the man who was slumped over. (R. 1026)

Mrs. Choi screamed and she ran toward the buzzer. (R. 1026) Mrs. Choi was dragged into the back and she was pleading for her life. (R. 1003) Defendant watched while Aguilar shot Mrs. Choi. (R. 1027) Thereafter, Aguilar grabbed up trays of gold and defendant carried eight of the trays. (R. 1027) When defendant and Aguilar left the store they had to take a two by four off the door in order to exit. (R. 1004) They went down the alley, down the gangway, and across the street to Patty's apartment. (R. 1004)

While in Patty's apartment, defendant and Aguilar emptied the jewelry out onto Patty's bed. (R. 1005) The jewelry was then placed in two garbage bags. (R. 1005) When Patty came home and she knocked on the door Aguilar answered the door while defendant stayed in the bedroom with the jewelry. (R. 1005) Patty was very angry with defendant when she saw the jewelry on the bed. (R. 1005) She had seen the police cars and wanted to know if defendant was responsible for what she had seen. (R. 1006) Defendant first told Detective Zuley that he went to get Patty's car but then after being confronted with the fact that Patty said she went to get the car defendant stated that she may have gone with him. (R. 1006) Defendant also told the detective about going to his brother-in-law's house. (R. 1007) Defendant also admitted that he was given, "his share" by Aguilar. (R. 1007)

Detective Zuley showed defendant the Chicago Police Department Daily Bulletin dated March 6, 1989. (R. 1010) Defendant identified himself and Aguilar in the bulletin that was showed to

him. (R. 1012)

On July 24, 1995, Assistant State's Attorney ("A.S.A."), Joseph Alesia was working in the felony review unit when he was assigned to go to Belmont and Western to question defendant about a double murder which had occurred on February 24, 1989. (R. 1060-1064) When he arrived at the station at 3:00 p.m. he met with Detective Zuley and then he introduced himself to defendant. (R. 1062) A.S.A. Alesia left the station to interview a witness and he returned to the station at approximately 8:00-9:00 p.m. (R. 1065).

Thereafter, the A.S.A. spoke to defendant and advised defendant of his rights. (R. 1065) After defendant said that he understood his rights, defendant agreed to speak to A.S.A. Alesia about the double murder. (R. 1066) Defendant chose to memorialize his statement in handwritten form. (R. 1067) The contents of defendant's handwritten statement were published to the jury. (R. 1079-1092)

In his statement defendant admitted knowing co-defendant Aguilar (Stiletto) and said that he, defendant, was known as Rush. (R. 1081) Defendant stated that back in December 29, 1988, he moved in with a girl named Patty. (R. 1081) There was a jewelry store on Clark Street just around the corner from Patty's apartment. (R. 1081)

Defendant stated that on February 23, 1989, he and Aguilar were "hanging out" and ended up at Patty's apartment. (R. 1082) The next day, after Patty would not let him borrow her car and after she went to work, he and Aguilar stayed in the apartment all day until 4:00 p.m..(R. 1082) At 4:00 defendant and Aguilar went to the jewelry store located on Clark Street. (R. 1082) Defendant and Aguilar had to be buzzed into the store. (R. 1083) While in the store he and Aguilar started to look at jewelry. (R. 1083) Aguilar asked the older woman about the price of a "medal". (R. 1083) Defendant admitted that they went to the store in order to "case" it, to look for security and to see if it would be

easy to rob. (R. 1083) Aguilar told the older woman that he would be back and they returned to Patty's apartment. (R. 1083)

While at Patty's apartment, defendant did a one- inch line of cocaine and Aguilar did two one inch lines of cocaine. (R. 1083) Defendant stated, he was not intoxicated by the cocaine. (R. 1084) Defendant admitted going back to the jewelry store at 5:00 p.m. to rob it. (R. 1084) Neither defendant nor Aguilar had a mask on and only Aguilar had a knit cap on. (R. 1084)

When they returned to the store only the older male and female "Korean's" were there. (R. 1084) Defendant stated that after they were buzzed into the store, Aguilar told defendant to "keep his eyes open". (R. 1084) Defendant knew that "keep your eyes open" meant that something was going to happen. (R. 1084)

Defendant stated that Aguilar asked to look at a piece of jewelry while defendant was by the display cases by the front "watching for anyone who was approaching during the robbery". (R. 1085) Aguilar told the man that he would take the medallion. (R. 1085) While the woman was writing up a receipt the man was working on the medallion at the buffing machine. (R. 1085) Defendant stated that he heard a pop and saw Aguilar with his arm extended with a gun in his hand pointing it at the old man's head. (R. 1085) He saw that the man was slumped down onto the machine. (R. 1085) Defendant stated that the gun was a .25 or a .32 caliber automatic. (R. 1085)

Defendant then stated, the woman screamed "oh, no, oh, no, oh, no". (R. 1086) The woman ran to an alarm button and pressed it. (R. 1086) The woman also ran to the back of the store where Aguilar chased her. Defendant ran back there too. (R. 1086) Defendant stated that Aguilar held the woman by the neck and tried to shoot her. (R. 1086) She was screaming "oh, no, no". (R. 1086) Aguilar pulled the trigger but the gun jammed. (R. 1086) After Aguilar cleared the jam, a live bullet

that had been jammed in the gun popped out. (R. 1086) Defendant stated that Aguilar then shot the woman in the head one time and the woman went down. (R. 1086)

Defendant admitted that Aguilar began to empty trays of jewelry into a box and gave seven or eight trays of jewelry to defendant. (R. 1087) They went to the rear of the store and Aguilar took a two by four off the rear door and they left the store carrying the jewelry. (R. 1087) Defendant admitted that after they walked through the gangway and the alley, they went back to the apartment where defendant was staying. (R. 1087)

Defendant admitted that when they returned to Patty's apartment he bolted the door and he went to Patty's bedroom and threw the trays of jewelry on the bed. (R. 1087) A few minutes later when Patty came home, she yelled for him because she could not get into her apartment. (R. 1087) When they let Patty into her apartment, she asked, "what's up, there's a lot of cops out by the store." (R. 1087) After Patty went to her room and saw the jewelry, she looked at defendant for answers. (R. 1088) Defendant admitted that he and Aguilar put the jewelry in plastic bags and told Patty that they wanted to get out of there. (R. 1088) Patty told defendant that the car was parked by the jewelry store. (R. 1088) Defendant got the keys and walked to where the car was parked. (R. 1088) Defendant stated that the police were all around and he had asked a police officer, "What's going on". (R. 1088) The officer told defendant that it was a robbery and defendant then asked if anyone was hurt. (R. 1088) The officer did not know if anyone had been hurt. (R. 1088) When defendant returned with the car, Patty and Aguilar came out and Aguilar had the bags of jewelry. (R. 1088) While they were getting in the car, a police car stopped and looked at them but then left. (R. 1089)

Patty drove them to defendant's sister's house. (R. 1089) Defendant and Aguilar spent the night at his sister's house. (R. 1089) Defendant claimed that Aguilar threw the jewelry trays in the

garbage in the alley and then put the gold jewelry in a bandanna. (R. 1089)

Defendant admitted that the next day Aguilar gave him a handful of gold chains, rings, and medallions from the bandanna. (R. 1089) Defendant stated that he gave it away during the next week. (R. 1089)

Defendant admitted that he never saw the "Korean's" with any weapons. (R. 1089) Defendant stated that he could never forget what happened back in 1989 because he could not forget doing something like that, which he claimed meant, "robbing the jewelry store". (R. 1090) Prior to defendant's present statement, defendant never told the police what happened. (R. 1090)

During defendant's statement he identified a photo of Aguilar and he identified police sketches of himself and Aguilar, which had been in a police bulletin. (R. 1090) Defendant also stated that he had been treated well and no one threatened him or made him any promises. (R. 1091) Defendant ate, drank, and used the washroom. (R. 1091) After the statement was read out loud and corrections were made, defendant signed the statement. (R. 1091.1092)

At no point during the interview did defendant tell A.S.A. Alesia "his stomach was in his throat during the time he was in the jewelry store ". (R. 1093) Defendant also never said that he was "thunder struck when this robbery occurred". (R. 1093) In the beginning of defendant's statement A.S.A. Alesia described the crime as a fatal shooting and not a murder. (R. 1095) A.S.A. Alesia never told defendant that he would most likely be a witness against Aguilar and he would only be charged with armed robbery. (R. 1097, 1098) Thereafter, during the trial, defense counsel made an oral motion in limine to bar evidence of defendant's escape. (R. 1285) The trial court denied defendant's motion. (R. 1286)

Thereafter, the parties stipulated that on August 21, 1995, defendant was an inmate at the

Cook County Department of Corrections awaiting trial. (R. 1287) The evidence established that on August 21, 1995, at approximately 9:00 p.m. defendant escaped from Cook County Department of Corrections. (R. 1289-1295) After escaping, defendant received assistance from fellow Latin King gang members. (R. 1308-1325)

Specifically, Victor Cervantes testified that on August 21, 1995, at approximately 9:00 p.m. he was at a party at 25th Street and Sacramento when he saw a man whom he identified as defendant standing on the corner by himself. (R. 1307, 1308) He had never met defendant before. (R. 1314) He asked defendant "what you be about?" (R. 1308) After defendant said where he was from, Cervantes invited him to join them at the party. (R. 1309) Defendant had a beer and he asked for a ride. (R. 1309) Cervantes' brother drove by and gave defendant a ride. (R. 1311, 1312) Shortly thereafter, Cervantes returned to the party and he saw a lot of police cars and helicopters with spotlights. (R. 1313)

On cross-examination, Cervantes stated, even though it was not his party he took it upon himself to invite defendant. (R. 1315) He also stated, although defendant was a stranger he asked his brother to give defendant a ride. (R. 1315)

After cross-examination the state asked for a side bar. (R. 1318) In accordance with a prior motion in limine to keep out evidence of gang affiliation the State had deliberately avoided mentioning defendant's gang membership. (R. 1319) On cross-examination the defense raised the issue, why would Cervantes give defendant help? (R. 1319, 1320) The court stated that because the issue had been brought out on cross-examination, the court could not preclude the State from bringing out the fact that defendant received help because he was a gang member. (R. 1320, 1321)

On re-direct, Cervantes explained that when he asked defendant, "What does he be about?" that meant, was defendant in a gang? (R. 1324) Cervantes explained that defendant told him that he

was a Latin King and defendant showed Cervantes his tattoo on his arm. (R. 1325) He invited defendant to the party and gave him a ride because defendant was a Latin King. (R. 1325)

After defendant's escape, William Prybell, from the Fugitive Warrant Unit of the Cook County Sheriff's Police, was one of the many assigned to locate defendant. (R. 1326, 1327) By September 27, 1995, the search exceeded the boundaries of Illinois. (R. 1329) They received information that defendant was in Pasadena right outside Houston, Texas. (R. 1329, 1330) On September 27, 1995, he went with other officers to Texas where they apprehended defendant and transported him back to Chicago. (R. 1330)

After the People rested, defendant testified on his own behalf. (R. 1352-1431) Defendant testified that he was with Aguilar ("Stiletto") on February 24, 1989, and that they went to the jewelry store where Stiletto looked at jewelry but that he did not go to "case" the place or to be a look out. (R. 1358-1366) Defendant claimed he was shocked when he saw Stiletto shoot the Asian man. (R. 1367) Defendant stated that after Stiletto shot the woman, defendant backed against the cut-out by the wall and fell to his knees. (R. 1368) He claimed that he felt sick and scared. (R. 1369)

Defendant admitted that he was wearing gloves that day but that he did not lose a glove on that day. (R. 1371, 1413) Defendant testified that when the lady ran for the buzzer he jumped over the counter. (R. 1414) Defendant claimed he did not see Aguilar hit the woman with the gun. He did however see her get shot. (R. 1416) Defendant admitted that the gun was a .32 automatic weapon. (R. 1417) Defendant did not initially accept the gold from Stiletto but after a short conversation he accepted it. (R. 1380) During his testimony defendant denied many of the things he had said in his statement. (R. 1422-1424)

Defendant claimed he did not talk to the police prior to 1995 because he was afraid for his

family. (R. 1383) Defendant claimed that when he first spoke to Detective Zuley he was told that his family could be protected. (R. 1384, 1385) Defendant claimed he had been told that he would not be charged with murder and that he would only be charged with armed robbery. (R. 1390) It was not until he was arraigned that he realized that he had been charged with murder. (R. 1393) After the card Detective Zuley had given him was taken away, he was scared. (R. 1394) He escaped from jail a week later. (R. 1394)

Although defendant claimed to be afraid of co-defendant Aguilar, he allowed Patty to be alone with Aguilar when he went to get the car. (R. 1409) Additionally, he took Aguilar to his sister's house who had six small children. (R. 1420) Even when Aguilar was not near defendant while they were at his sister's house, he never left and went to the police. (R. 1421) He did not go to the police the next day when Aguilar was no longer with him. (R. 1421, 1422) Thereafter, defendant rested. (R. 1444) In rebuttal, the People presented two certified copies of conviction. One was for defendant's May 23, 1984 conviction for escape and the other was defendant's July 27, 1990 conviction for felony use of a weapon. (R. 1444, 1445)

Detective Zuley testified in rebuttal and stated that when he spoke to defendant July 24, 1995, defendant told him that Aguilar told him to "keep your eyes open". (R. 1447) That meant that a robbery was about to go down. (R. 1447) Defendant also told the detective that both defendant and Aguilar removed the two by four from the back door. (R. 1447) Defendant was not emotional and did not cry in front of the detective. (R. 1448) Thereafter, the People rested in rebuttal. (R. 1449)

Before closing argument, the jury was questioned about watching a television program. (R. 1454) Juror Storslee, who watched the television show defendant was on, was excused as a juror, over defendant's objection. (R. 1485) Several jury instruction conferences were held. (R. 133-1339, 1346,

1467-1482) I.P.I. Instructions 2.02 and 2.03 were not mentioned. (R. 1467) Prior to closing argument the trial judge told the jury that closing argument was not evidence and that the state would have an opportunity to talk in rebuttal because it was their burden to prove defendant guilty beyond a reasonable doubt. (R. 1487) The trial judge also told the jury that the court would instruct them on the law. (R. 1487)

After hearing closing argument from both sides, being instructed on the law and deliberating, the jury found defendant guilty of the murders of Chang Choi and Myung Choi. (R. 1545-1566, 1569)

Sentencing Hearing

A death penalty hearing commenced May 6, 1997. Defendant's birth certificate, which stated that defendant was born June 16, 1964, was admitted into evidence. (R. 1579) Defendant was therefore 24 years old when he committed the murders. (R. 1579) The jury verdicts convicting defendant of the murders of Chang Choi and Myung Choi were also admitted into evidence. (R. 1580) Defendant had been convicted of murdering two people. (R. 1580) Defendant presented no evidence during the eligibility phase. (R. 1581) Thereafter, defendant was found eligible to receive the death penalty. (R. 1582)

The People presented defendant's felony convictions, prior bad acts, escape, and his disciplinary reports from the Illinois Department of Corrections in aggravation. (R. 1582-1836) Victim Impact Statements of the victims' children were also presented. (R. 1838-1841, 1854-1856)

Specifically, Youth Officer William Dejulio, testified he arrested defendant for burglary on September 21, 1982. (R. 1583, 1584) On September 22, 1982, defendant received three years probation. (R. 1587)

Assistant State's Attorney Kenneth McCurry testified that in September 1983, he was an Assistant State's Attorney in Judge Schiller's courtroom. (R. 1752) In that capacity he would write a pen letter when a defendant on a case was sent to the penitentiary. (R. 1752)

Two pen letters, which A.S.A. McCurry wrote were published. (R. 1754) The first letter concerned defendant attempting to burglarize a laundromat on November 19, 1982. (R. 1754) The second letter concerned defendant's attempt escape from Cook County Jail on July 27, 1983. (R. 1756)

A certified copy of conviction for attempt burglary in case no. 83-6949 established that defendant was sentenced to four years in the Illinois Department of Corrections. (R. 1772) A certified copy of conviction for attempt escape in case no. 83-8410 established that defendant was sentenced to four years in Illinois Department of Corrections. (R. 1772)

Chicago Police Officer Wayne Griffin was working February 11, 1983, at 11:15 p.m. when he observed defendant driving a 1969 Chevy Nova in the location of 1100 West 19th Street. (R. 1779, 1780) An investigation revealed that the car belonged to Gustavo Vargas and that the car had been stolen. (R. 1781) Defendant was arrested and he admitted stealing the car. (R. 1781)

Chicago Police Officer Mikolajczyk arrested defendant on May 26, 1990, for unlawful use of a weapon, no firearms owner's identification card, defacing a firearm, and a traffic violation. (R. 1635-1641) On July 27, 1990 defendant pled guilty to unlawful use of a weapon and received three years in the Illinois Department of Corrections. (R. 1642)

Chicago Police Officer William Soraghan testified that on September 16, 1991 he was investigating a shooting, which had occurred on September 15, 1991. (R. 1613) The victim Artemio Garcia had been shot in the head and he had stab wounds on his face and arms. (R. 1614) During the investigation he spoke to Leon Jones. (R. 1614) On September 16, 1991 he spoke to Jerry Dewange

who lived directly across the street from where the incident occurred. (R. 1615) Mr. Dewange told him that on September 15, 1991 some "Mexicans" were drinking in the parking lot. (R. 1616) He was looking out his basement window and heard a disturbance across the street. (R. 1616) He saw a group of Latin Kings approach the "Mexicans" and they started a fight. (R. 1616, 1617) When the "Mexicans" were winning the Latin Kings fled. (R. 1617) A couple of minutes later the Latin Kings returned to the scene of the fight in a car. (R. 1617) One of the Latin Kings had a gun in his hand and shot one of the "Mexican's". (R. 1618) Mr. Dewange described the car as a brown Buick Regal where the hood of the car was a different color. (R. 1618) The hood of the car and the side of the car had gray primer. (R. 1618)

On September 16, 1991, Officer Soraghan saw the vehicle, which matched the description he had been given, coming out of the alley at the same location the man had been shot the day before. (R. 1618, 1622) Defendant was the driver of the car. (R. 1619) Defendant had scratches on both sides of his cheeks and on his neck. (R. 1619, 1622) Defendant was placed under arrest for the shooting of Artemio Garcia. (R. 1619) Defendant denied involvement in the shooting. (R. 1620)

The witnesses were called to the station. (R. 1620) A line-up was conducted. Defendant was the only Latin King the officer knew in the line-up. (R. 1620, 1621) The four or five witnesses who viewed the line-up did not make an identification during the line-up. (R. 1621) After the line-up, Mr. Dewange told the officer "you know I can't identify the Latin Kings." (R. 1621) He said that he lives in the neighborhood with Latin Kings, they know who he is and he is the only black man in the neighborhood. (R. 1621) He said that they would kill him. (R. 1621) The victim could not be interviewed because he was in surgery at the time. (R. 1624) As a result of the shooting the victim is a quadriplegic. (R. 1624)

Officer Soraghan believed that two of the witnesses who viewed the line-up were black. (R. 1625) In the police report the car in question was described as a brown, two door Olds with gray primer on the doors. (R. 1627) The photo of defendant's car showed that there was gray primer on the hood and not on the door. (R. 1628)

Detective George Tracy testified that on October 21, 1991, he was assigned to investigate a shooting, which occurred in the alley of 2410 South Drake. (R. 1661) The victim, Gerardo Gonzalez, (Ya-Yo), had suffered a gunshot wound to his right eye. (R. 1662-1665) He later died from his injuries. (R. 1732)

Detective Tracy spoke to Jaime Garcia who lived at 2404 South Drake. (R. 1669) He had heard a gunshot. (R. 1669) Jaime Garcia told the detective that he had looked in both directions down the alley and when he looked north he saw two Hispanic males running north in the alley between Central Park and Drake. (R. 1670)

On October 22, 1991, Area 4 received an anonymous phone call concerning the shooting. (R. 1670) The information was that the victim had been shot as a result of a drug rip off. (R. 1671) Two males, one hispanic teenager, Jazz, and another male, Slim, were named. (R. 1671)

Officers Soraghan and Esparza assisted in the investigation. (R. 1671) Jazz was Martel Gomez and Slim was Zadell Calelzon. (R. 1671) On October 28, 1991 the detective had a conversation with Officers Esparza and Sorghan concerning Javier Chavez. (R. 1672) Thereafter, Chavez was taken to the Blue Island Police Station. (R. 1672) The detective had received information that some of the participants in the crime were from Blue Island and they were Latin Kings. (R. 1672) Chavez identified two Latin Kings from Blue Island, Jaime Alvarez (Flaco) and Robert Lopez. (R. 1672, 1673)

When Chavez was brought to Area 4 police station he did not originally mention defendant's name. (R. 1673) When defendant's name was mentioned Chavez began to shake uncontrollably and he denied knowing a person named Rush. (R. 1673)

After the detective told Chavez that he had spoken to Alvarez, Chavez admitted that he knew defendant (Rush). Chavez explained that when he was standing on 24th Street, after he heard the gunshot in the alley, he had seen defendant run northbound out of the alley carrying a gun. (R. 1674) He stated that he had only known defendant (Rush) a few months. (R. 1674)

On October 29, 1991, Detective Tracy requested assistance from Assistant State's Attorney Matt Mahoney concerning the shooting death of Mr. Gonzalez. On July 28, 1992 defendant's trial for this incident commenced before Judge Karnezis. (R. 1675) Chavez testified at defendant's trial. (R. 1675) (Casillas was convicted by a jury for the murder of Geraldo Gonzalez but his conviction was reversed and remanded by the Appellate Court due to certain evidence that was improperly given to the jury during their deliberation) Approximately a month after the trial, Chavez was shot six or seven times. (R. 1676) At the time Chavez was shot, defendant was in custody. (R. 1678) The detective never found out who shot Chavez. (R. 1680)

Assistant State's Attorney Matt Mahoney (A.S.A Mahoney) testified that he was working Felony Review October 29, 1991, when he was called to Area 4 police station concerning the fatal shooting of Gerardo Gonzalez. (R. 1684) He spoke to Javier Chavez that day and prepared Chavez's handwritten statement. (R. 1684) That statement was published. (R. 1686-1699)

A.S.A. Mahoney also spoke to Jaime Alvarez who was in custody for the shooting. (R. 1690) A.S.A. Mahoney took a court reported statement from Alvarez. (R. 1690) That statement was also published. (R. 1691-1708)

A.S.A. Mahoney also spoke to Martel Gomez who gave a court reported statement. (R. 1709) That statement was also published. (R. 1709-1719)

After all the statements were taken, an arrest warrant was issued for defendant concerning the murder of Gerardo Gonzalez. (R. 1722)

Chicago Police Officer Robert Lenihan testified that from October 28, 1991, to January 8, 1992, he sought to execute an arrest warrant for defendant for the charge of murder. (R. 1735) On January 8, 1992, at approximately 8:30 p.m., Officer Lenihan observed a blue sports car parked in an alley. (R. 1736) When the officer approached the car he saw defendant in the front passenger seat. (R. 1737) Officer Lenihan told defendant he was under arrest. (R. 1738) Defendant told the officer, "You're going to have to shoot me, motherfucker. You're going to have to kill me." (R. 1739) Defendant told the driver to start the car but the driver listened to the officer and left his hands on the dashboard. (R. 1739) Defendant pulled the car door closed. The officer saw defendant reach down toward the floor and he thought defendant had a gun. (R. 1739) Defendant said, "You're going to have to shoot me, you're going to have to kill me or I'm going to kill you." (R. 1740) Defendant ran toward the officer and then ran down the alley. (R. 1740, 1741) After a chase and receiving assistance, defendant was apprehended and taken into custody. (R. 1743) Defendant continued to say, "You are going to have to shoot me, you're going to have to kill me." (R. 1743) A weapon was never recovered. (R. 1747)

Evidence concerning the apprehension of defendant after he escaped from Cook County Correctional Center was also presented in aggravation. Specifically, Detective Larry Savitsky and Carl Mitchell, of the Harris County Sheriff's Department in Houston Texas, were working as part of the Gulf Coasts Violent Offender Task Force on September 22, 1995. (R. 1590, 1599) They assisted

in apprehending defendant who had escaped from Cook County Jail. (R. 1590, 1599) They had been unsuccessful with three different locations they had targeted in the search for defendant. (R. 1591) Finally, Detective Savitsky had received information from a confidential informant. (R. 1592) The address he had been given was a known Latin King hangout. (R. 1592) Many police officers went to the given location in Pasadena. (R. 1592, 1593, 1600)

Detective Mitchell went to the back of the house where he saw defendant who had gone back inside the house. (R. 1601, 1602) He later saw defendant in custody with Sergeant Duffin. (R. 1602) Several weapons were recovered as a result of the execution of their warrant. (R. 1603-1608) Several items of Latin King paraphernalia were also found. (R. 1607, 1608)

Jeanette Cuomo testified that on September 29, 1995, she was an Assistant State's Attorney assigned to the Felony Review Unit of the Cook County State's Attorney's Office. (R. 1827) At that time she was assigned to speak to defendant who had just been returned from Texas on an extradition warrant for escape. (R. 1828)

Defendant spoke to her about the escape, which happened August 21, 1995. (R. 1829) Defendant told her that on that day he was assigned to garbage duty at the jail. (R. 1829) Defendant wanted to work that detail so he could see how he could scale the walls and fence in order to escape. (R. 1829) He planned his escape with inmate James Hallohran. (R. 1829) On that day, defendant wore his Cook County Jail uniform over clothing he received from a fellow Latin King gang member in jail. (R. 1829) The clothing he received was a black t-shirt, black pants, black socks, and black gym shoes. (R. 1829)

On August 21, 1995, defendant and James Hallohran waited until dark, approximately 9:00 p.m. (R. 1830) They went outside to the canister and defendant climbed the metal pipe onto a rooftop

and then he jumped from the rooftop onto the public area outside Division One. (R. 1830) James Hallohran was behind defendant. (R. 1830) When defendant jumped onto the public area he removed his outer jail clothing. (R. 1830)

After defendant removed his clothing, he ran into a sheriff. Defendant responded briefly to the sheriff and acted as if nothing was wrong. (R. 1831) At that time, James Hallohran was caught. (R. 1831)

Defendant walked past a guard house and nodded to another correctional officer. (R. 1831) Defendant then walked out onto the city street. (R. 1831)

Defendant told the Assistant State's Attorney he was able to leave the Chicago-land area because he had help from fellow Latin King Gang members. (R. 1831) He received \$1,000 from fellow gang members and then he drove to Disney World and Epcot Center. (R. 1831) Thereafter, he went to Houston Texas. (R. 1832) Defendant tried to cross the border into Mexico on several occasions but because he did not have the proper papers he was unable to cross the border. (R. 1832) He even tried to bribe a guard at the border. (R. 1832)

Defendant told Ms. Cuomo that he did not become a Latin King until 1984 when he was 18 years old and was sent to Stateville. (R. 1832) During his conversation with the Assistant State's Attorney, defendant was very self-confident and proud of his gang membership. He even showed her his gang tattoos and described what they meant. (R. 1833)

Defendant told Ms. Cuomo that he enjoyed life in Stateville, where he had a television, a microwave oven, a grill, and a skillet in his cell. (R. 1833) He said that he cooked with fresh groceries and that everyday he made himself corn tortillas and beans and rice. (R. 1833) He also told her that he enjoyed spaghetti and would often call his foster mother for recipes. (R. 1833)

Defendant had access to a file, which he paid \$40 dollars for. (R. 1833) He used that file to make shanks. (R. 1833) He also told Ms. Cuomo that he purchased a beeper for \$150 from a prison guard.

Defendant spoke about an incident where he and other gang leaders had a meeting with rival gang leaders where they invoked a code of silence in the prison. (R. 1834) The people at the meeting were known as the council. (R. 1834) The code of silence was a restriction on all gang members from "ratting" on each other to the police or the State's Attorneys. (R. 1834) This code was to inhibit the police from making arrests and to inhibit State's Attorneys from effectively prosecuting cases. (R. 1834) Violators would be dealt with by the use of violence. (R. 1838)

As a gang member, defendant received various toiletries, Reebok gym shoes, and clothing from other Latin King Gang members in jail. (R. 1838) He had received a pair of gym shoes from the film director Oliver Stone who had filmed the movie, Natural Born Killers, in Stateville. (R. 1838) Those shoes were the ones that he wore when he escaped from Cook County Jail. (R. 1838)

Defendant's statement to the Assistant State's Attorneys was never reduced to handwritten form. (R. 1836) Defendant was never questioned as to why he escaped. (R. 1836)

Investigator Prybell, who was one of the officers who went to Texas in order to find defendant on the escape warrant, testified that defendant told him that he trains every day to escape. (R. 1849) Defendant said that he runs, lifts weights, and said that his whole day revolves around how he can escape from institutions. (R. 1849) Defendant also had a conversation with Captain Panush of the Department of Corrections about his possible punishment. (R. 1847) Defendant told the captain that he would do anything necessary to get out of that punishment. (R. 1847)

Chicago Police Officer Salvador Esparza testified about information concerning the Latin

King Street Gang and her specific knowledge concerning defendant's rank in the gang. (R. 1643-1657) She explained that the various rankings even exist in the penitentiary and within Cook County Jail. (R. 1646) The rankings consist of a regular soldier at the bottom, the Enforcers, the Inca, and the Crown Counsel. (R. 1647) Officer Esparza had had specific information about the Latin Kings and defendant since 1988. (R. 1649) Officer Esparza knew defendant's nickname was Rush and that R stood for Royalty. (R. 1650) In September 1991, Officer Esparza saw the tattoos on defendant's body. (R. 1650) Defendant has his name on his left shoulder. (R. 1651) He also has a lion king with a crown on his forearm. That means kings of the jungle. (R. 1651) That tattoo relates to the enforcement he has to conduct to watch over his faction of Kings. (R. 1651) Defendant has a tattoo on his right arm of a lion with a crown on top of his hand. (R. 1651) That tattoo means a high powered enforcer. (R. 1652) On his right forearm is the name of one of his fellow gang members that had passed away. (R. 1652) Defendant has a tattoo on his back, which is a skeleton sitting on a throne. That tattoo indicates King Rush who has a high rank in the organization. (R. 1653) An enforcer has to act out violent crimes and acts of violent punishment to either his own members or to opposing gang members. (R. 1655) The enforcer has power and recognition, and other members look up to the enforcer. (R. 1656) In the penitentiary, an enforcer could obtain weapons and could conduct punishment, and could receive benefits such as food or getting different types of jobs. (R. 1651)

Several witnesses testified concerning defendant's behavior while in custody. (R. 1759-1825)

Correctional Officer John Shury was involved in an altercation with defendant on November 18, 1995. (R. 1761) Defendant struck Officer Shury. (R. 1762) Defendant also struck Lieutenant Howell. (R. 1762, 1769)

Compliance Administrator for Cook County Jail, Ronald Hinton, is responsible for maintaining disciplinary reports on inmates. (R. 1774) The disciplinary reports concerning defendant were published. (R. 1775, 1776) On one occasion defendant failed to have on proper D.O.C. pants and claimed he did not have to listen. (R. 1776) On another occasion, two handcuff keys and razor blades were found in defendant's cell. (R. 1776)

Sergeant Edward Brudnicki testified that he used to work for Stateville Correctional Center and that on March 2, 1984, he was working as a Will County Sheriff's Police Officer. (R. 1783) He received information on that day that a person escaped from Joliet State prison. (R. 1784) At 11:14 p.m. he received information that someone in a jail uniform was inside Club 99. (R. 1784) When Sergeant Brudnicki entered the club he found defendant standing by the phone. (R. 1786) Defendant was arrested. (R. 1790) When defendant was searched a screwdriver was recovered. (R. 1791)

Superintendent Robert Griffin explained that he was in charge of two cell houses at Stateville, one of which is the house, which holds the worst level inmates. (R. 1792) Since 1986 he has had several contacts with defendant. (R. 1795) He had written up several disciplinary reports involving defendant. (R. 1797-1800) Defendant was written up for making threats to an officer; he was observed trying to break into the laundry gate with a "prybar", the prybar was recovered from defendant; defendant was also found in possession of a nine inch shank. (R. 1797-1800)

Defendant's nickname at Stateville was Houdini because he had escaped a couple of times. Defendant's reputation among other officers at Stateville was that he was an enforcer and that he was known to carry out "hits" for his gang. (R. 1802) He was also known to carry weapons. (R. 1802) It was Superintendent Griffin's opinion that out of all the different inmates he had known at Stateville he would rate defendant within the top five for being a problem for his safety and the safety of other

people within the institution. (R. 1803)

Lyla Coches, the Chief Record Officer for Illinois Department of Corrections, testified she was the keeper of records for all disciplinary reports for inmates located in State institutions. (R. 1811) She testified concerning the disciplinary reports filed against defendant. (R. 1812-1826)

At the conclusion of aggravation, the victim's son, James Choi, prepared a victim impact statement which was published. (R. 1838-1841) The victim impact statement of Connie Choi, the victims' daughter, was also published. (R. 1854-1856)

Defendant presented several witnesses in mitigation. (R. 1868-1982) Several correctional officers from Stateville and Cook County testified that defendant did not pose a disciplinary problem for them. (R. 1868-1891, 1940-1949) Captain Morgan from Stateville did not check defendant's records before he testified on defendant's behalf. (R. 1874) Officer Sandoval, from Cook County Jail, also testified that defendant told him if he got the opportunity to escape again he would. (R. 1887) Neither Officer Panush nor Officer Sandoval found out how defendant gained possession of the keys to his shackles and handcuffs. (R. 1891, 1948)

Defendant's sister Alvina Casillas and his brother Emmanuel Casillas testified on defendant's behalf. (R. 1911-1939, 1953-1973) They described defendant's childhood. After their father was kicked out of the house by their mother, defendant and his brothers and sisters were beaten, hardly fed, not sent to school, and they did not have a proper place to sleep. (R. 1913-1920, 1953-1960) The children were removed from their mother's home in 1975 when defendant was ten years old. (R. 1918) Despite their horrible childhood defendant's sister, who is now married with seven children, has never hit her children. (R. 1931) His brother Emmanuel never killed or hurt anyone as a result of their childhood. (R. 1968, 1970)

Don Etzig, who was defendant's foster parent in the early 1980s, testified on defendant's behalf. (R. 1896-1906) Defendant followed his rules and was never disrespectful or abusive to him. (R. 1901, 1905) Defendant coached Little League for him. (R. 1903)

Thereafter, defendant tendered the transcript of Javier Chavez's trial testimony from the Gerardo Gonzalez murder trial. (R. 1980-1983) Defendant rested in mitigation. (R. 1982)

After hearing all the evidence and arguments in support of aggravation and mitigation, the trial court sentenced defendant on June 18, 1997. (R. 2033-2039) After careful consideration of all the evidence, the trial court held that it did not find any mitigation sufficient to preclude the imposition of the death penalty. (R. 2039) Thereafter, defendant was sentenced to death. (R. 2039) On July 7, 1997, defendant's Motion for New Trial and to Reduce Sentence was denied. (Supp.R. Vol. 1 4-10) On August 20, 1997, defendant filed his Notice of Appeal.

III

REASONS FOR DENYING THE PETITION

A unanimous jury found Robert Casillas guilty, beyond a reasonable doubt, for the fatal shooting of Chang Choi and Myung Choi. The Honorable Loretta Hall Morgan, who presided over the long and extensive pre-trial motions and the trial, agreed with the jury's verdict. Casillas, who could only have been sentenced to natural life without parole or death, waived a jury for sentencing. During the aggravation phase of the death hearing, the People presented a plethora of aggravating evidence against Casillas. Casillas has an extensive criminal background, is an admitted enforcer for the Latin Kings Gang, is an extreme flight risk (Casillas was convicted for attempt escape from Cook County Jail in 1983, he escaped from Joliet State Prison in 1984 and he escaped from Cook County Correctional while he was awaiting trial in August 1995.), and he has many disciplinary infractions both from before and after he has been incarcerated on this case. In fact, Casillas' nickname from Stateville is Houdini because of his history of escaping. Casillas admits that he spends his whole day running and lifting weights in preparation to escape. Superintendent Griffin testified that out of all the different inmates he had known at Stateville he would rate Casillas within the top five for being a problem for his safety and the safety of other people within the institution.

The trial judge took her job very seriously when sentencing Casillas. Casillas was found eligible under the multiple murder eligibility factor. Thereafter, based on the extensive aggravating evidence and despite mitigation, which was presented, the trial court came to the only proper conclusion. The trial judge held that she could not find any mitigation sufficient to preclude the imposition of the death penalty. Based on the evidence presented both at trial and at the

sentencing hearing and the fact that Robert Casillas is such a flight risk one must ask this question concerning the death penalty, If not Robert Casillas-then who? Even though Casillas never gave any consideration or mercy to the Chois and their family, he now asks for mercy. The People for the following reasons strongly oppose Casillas' petition for clemency.

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, 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. It is telling, however, that petitioner has not even attempted to demonstrate how the recent changes would have affected the outcome of the proceedings. Moreover, petitioner ignores the fact that every court which has examined the proceedings in his case determined that they were fundamentally fair and that he was not unduly prejudiced in any manner.

Supreme Court Rules

Petitioner asserts that he is entitled to clemency because the new Supreme Court Rules governing capital cases were not applicable to his proceedings. However, the Illinois Supreme Court has clearly held that the amendments to its rules are not retroactively applicable. Hickey, 2001 Ill. LEXIS 1080 at *65.

Casillas Claims That He Lacked An Attorney Who Was A Member Of The Capital Trial Bar.

Casillas asserts that he lacked an attorney who was a member of the Capital Litigation Trial Bar. The Capital Litigation Trial Bar, which Casillas talks about was established by the Illinois Supreme Court in 2000. However, the Illinois Supreme Court has clearly stated that the amendment to its rules are not retroactively applicable. Hickey, 2001 Ill Lexis 1080 at *65. Nevertheless, Casillas was zealously represented by two very experienced defense attorneys, both of which have handled numerous murder trials and other serious felony trials. Casillas was represented by George Nicols, who was a prominent member of the Multiple Defendant Task Force of the Cook County Public Defenders Office and George Grezeka, who was part of the Murder Task Force of the Public Defenders Office. Both attorneys worked in very specialized units in the Public Defenders Office, which have only highly experienced trial attorneys. Both attorneys had significant experience in litigating capital cases. A review of the Supreme Court's Capital

Litigation Trial Bar roster reveals that George Grezeka has been approved by the Court to try capital cases. George Nicols has since retired from the Public Defender's Office but he certainly would qualify for the Capital Litigation Trial Bar. It is clear that even though the Supreme Court's Rules governing capital cases are not retroactively applicable to Casillas's proceedings, it is clear that the defense attorneys in petitioner's trial were well qualified to engage in capital litigation.

Casillas claims that his attorneys made certain errors in judgement. He first claims that the jury heard that Casillas was a member of a street gang when counsel asked a witness, a total stranger but a fellow Latin King gang member, why he gave Casillas help when he escaped from Cook County Jail, thereby opening the door that Casillas was a gang member. Defense counsel's question to the witness was not an error in judgement it was trial strategy to suggest that the witness's testimony was not credible. The Illinois Supreme Court in affirming Casillas' conviction held that the gang evidence was properly admitted to rebut the suggestion that the witness was not credible People v. Casillas, 195 Ill. 2d at 483. Moreover, Casillas did not raise ineffective assistance of counsel regarding this trial tactic. The Illinois Supreme Court nevertheless rejected Casillas' other attempts of trying to blame his trial attorneys for ineffective assistance.

Casillas also tries to blame his trial counsels for the inadvertent mistake which occurred at the end of trial where the jury was not given the written and oral instruction concerning the burden of proof and presumption of innocence. This issue has already been decided and rejected by the Illinois Supreme Court. See, Casillas, 195 Ill. 2d at 473-481. The Illinois Supreme Court found that the jury was adequately informed about the burden of proof and the presumption of innocence.. Id. at 474. The Court's decision was based on the extensive instruction given to the potential jurors during voir dire and prior to closing arguments, the written instructions actually

tendered to the jury, and the statements made by the attorneys during closing arguments. Id. at 475-479. Moreover, the Illinois Supreme Court also held that the evidence of Casillas' guilt was overwhelming. Id. at 478. The Illinois Supreme Court also reject Casillas' claim that trial counsel was ineffective for failing to tender the instructions or object to the omitted instructions. Id. at 481. The Court found that counsel was not ineffective because the outcome of the trial would not have been different and because Casillas was not prejudiced. It is clear that Casillas is not entitled to clemency.

Videotaping

Petitioner also seeks clemency because his statement where he inculpated himself was admitted into evidence even though it was not videotaped, and 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 himself 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 trial judge expressly found that petitioner's statement was voluntarily made when it denied his motion to suppress statements, it is clear that the failure to videotape his statement had absolutely no effect on the fairness of his proceedings. In Addition, Casillas never raised on appeal that the trial court's ruling on his Motion to Suppress was improper. 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.

During the Aggravation Stage Of The Death Hearing, The Trial Judge Properly Considered the Fact That Casillas Was Involved In A 1992 Murder.

Casillas claims that he is entitled to clemency because the trial judge at the death penalty hearing stated that he had been involved in a 1992 murder although that charge had not been resolved and the People subsequently dropped the murder charge after Casillas had been sentenced to death. The murder case, which Casillas talks about involved a shooting where the victim Gerardo Gonzalez was shot in the right eye and subsequently died from his injuries. The evidence pertaining to this murder was more than sufficiently reliable to be considered by the trial judge during aggravation. Casillas was arrested for this murder, indicted, tried by a jury with the Honorable Themis Karnezis presiding, and was thereafter found guilty and convicted of the murder. The Appellate Court however, in a Rule 23 Order reversed defendant's conviction and remanded the case for a new trial. Casillas' conviction was reversed only because the trial judge abused his discretion when he allowed one of the witness' handwritten statement to go to the jury during deliberation but he did not give the jury the witness' conflicting trial transcript, which was not available. In its decision however, the Appellate Court found that defendant was proven guilty beyond a reasonable doubt, and that the evidence supported the verdict. It is clear therefore that the evidence which had been presented during aggravation and which was thereafter considered by the judge fell within what is statutorily permissible. The evidence concerning this murder was both relevant and reliable.

While the Illinois Supreme Court held that Casillas had waived this issue on appeal, they nevertheless held that even if defense counsel had objected to this evidence during sentencing the

outcome of Casillas' sentencing would not have been different Casillas, 195 Ill. 2d at 491-492. The Court noted that twenty-two witnesses testified for the People in aggravation, and a written statement was admitted into evidence from the twenty-third witness. In addition, to testimony regarding the murder and the other shooting that defendant was involved in, the trial court heard extensive evidence of Casillas' criminal history, which dated back to 1982. The court further heard testimony and accepted evidence regarding Casillas' numerous disciplinary infractions while in prison, including testimony from a guard at Stateville Prison who stated that Casillas had a reputation as a gang enforcer and hit man and was one of the "top five" worst inmates in terms of safety problems. Id. at 491. Additionally, the Illinois Supreme court noted that the trial court heard evidence of three different escape attempts, which earned Casillas the prison nickname "Houdini".

The Court further noted that the record indicated that the trial court properly considered all the factors in aggravation and placed special emphasis on the facts surrounding the instant crime, including that Mr. and Mrs. Choi were shot for apparently no reason, leaving two small children without parents. Id. at 492. The Illinois Supreme Court found that the evidence presented in aggravation was substantial.

It is clear that the trial court had a phlethora of evidence, which supported sentencing Casillas to death. Whether it be the horrible crime he committed, his extensive criminal background, his disciplinary problem while he has been incarcerated, or the fact that he is an extreme escape risk, Casillas received the sentence that he deserved under the law and is not entitled to clemency.

CONCLUSION

Robert Casillas without any regard for human life went to rob Key Jewelers, which was owned by Chang Choi and Myung Choi. During the robbery Chang Choi and Myung Choi were both shot in the head. Mrs. Choi was shot while she was pleading for her life. In his confession, Casillas tried to lay all the blame on co-defendant Aguilar. Even though it is the People's position that Casillas was the actual shooter he was nevertheless, at the very least, an active participant and held accountable for the shootings. Casillas has never shown any remorse for what he has done. Casillas not only committed this terrible crime but he has an extensive criminal background, is an extreme escape risk, and has a long history of disciplinary problems in the penitentiary.

Robert Casillas is solely responsible for the position he finds himself in now.

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

Respectfully submitted,

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