

OCTOBER 2002 SESSION
PRISONER REVIEW BOARD
STATE OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
vs.)	Docket No. _____
)	
RONALD KITCHEN,)	Inmate No. B-09130
)	
)	
)	

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

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

—————
HEARING REQUESTED

PATRICK T. DRISCOLL, JR.
ACTING STATE’S ATTORNEY OF COOK COUNTY

By: STEVE GOEBEL
WILLIAM D. CARROLL

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I.

FACTS OF THE CASE

PROCEDURAL HISTORY

Following a jury trial in the Circuit Court of Cook County, petitioner Ronald Kitchen was found guilty for the murder of two women and their three young children. People v. Kitchen (Kitchen I), 159 Ill.2d 1, 636 N.E.2d 433 (1994). At the ensuing death penalty hearing, the same jury determined that petitioner was eligible for the death penalty due to the presence of an aggravating factor: the murder of two or more individuals. The jury subsequently found that there were no mitigating factors sufficient to preclude the imposition of the death penalty. Kitchen, 159 Ill.2d at 11, 17. On direct appeal, this Court affirmed petitioner's conviction and sentence. Kitchen, 159 Ill.2d at 47-48. Subsequently, petitioner filed in the trial court a petition for post-conviction relief. Following a hearing, the trial judge (who was the same judge who had presided over petitioner's trial) dismissed all of petitioner's claims. On appeal from this ruling, the Illinois Supreme Court reversed and remanded for further proceedings, on the grounds that the dismissal was done without proper notice to petitioner. People v. Kitchen (Kitchen II), ___ Ill. 2d ___, 2000 Ill. LEXIS 336 (2000)(modified on denial of rehearing, originally reported at 189 Ill. 2d

424; 727 N.E.2d 189 (1999). The case is currently before the Circuit Court of Cook County for further proceedings on petitioner's petition for post-conviction relief.

STATEMENT OF FACTS

Before discussing the facts of these five murders, the People wish to point out several problems in petitioner's Statement of Facts. First, petitioner's version of the Statement of Facts has been rejected by a jury, a judge and the Illinois Supreme Court. Second, the contention that the People's witness, Willie Williams, fabricated his testimony against petitioner in order to gain an early release was rejected by the Illinois Supreme Court. Kitchen I, 159 Ill. 2d at 27-29. Third, the notion that Williams learned about the facts of the crime not from Petitioner but from the Chicago Tribune fails because Williams knew certain facts that only the killers could have told him, and which were not in the Chicago Tribune article upon which petitioner relies¹: that four of the five victims were suffocated and that Deborah and Rose were dealing in narcotics (confirmed by the narcotics dog search). Fourth, as will be discussed below, there are two videotapes of newscasts that showed petitioner as he walked normally and uninjured from the station into a police van (R. 1381-82, 1394-95), thus entirely refuting petitioner's claim that he had been tortured into confessing.

Turning to the facts of this case, at trial it was established that during the early morning hours of July 27, 1988, the severely charred bodies of 26-year-old Deborah Sepulveda, her son Peter Jr., age three, and daughter Rebecca, age two, together with 30-year-old Rose Marie Rodriguez, and her son Daniel, age three, were recovered following a fire in the Sepulveda residence located at 6028 South Campbell Street in Chicago. Kitchen, 159 Ill.2d at 11. The bodies of Deborah and her two children were found in the front bedroom of the home; Deborah's body was found face down on the floor, and the

¹ The article as it appears in the post-conviction record (PCC. 113-14) does not appear to have been reproduced in its entirety.

bodies of Peter Jr. and Rebecca were found lying together holding hands on the bed. Id. The bodies of Rose Marie and Daniel Rodriguez were found lying on the bed in the rear bedroom. Id. at 11-12. There were no eyewitnesses to the murders. Id. at 12.

After the fire was extinguished, Detective Dan McInerney of the Bomb and Arson Unit found a number of areas in the house that were origins of the fire. Id. The detective determined that the fires had been intentionally set using available materials and hand-ignited with an available flame. Id.

Dr. Robert Stein, chief medical examiner for Cook County, performed the autopsies of the victims. Dr. Stein opined that Rose Marie died of manual strangulation. Id. The cause of death of the other four victims was due to suffocation. Id. The absence of both carbon monoxide in the victims' blood and of soot in their tracheae revealed that the victims were dead before their bodies were set on fire. Id.

While investigating the premises immediately following the fire, Detective Craig Cegielski of the Chicago Police Department found in the basement numerous small manila envelopes lying on a workbench. Id. The detective also found a large box containing the same type of envelopes next to the workbench. Id. According to the detective, based upon his extensive experience, these types of envelopes were commonly used to package narcotics. Id.

On August 8, 1988, Officer Frank Balzano of the Chicago Police Canine Unit conducted a narcotics search in the Sepulveda home. Id. The search dog indicated the presence or odor of narcotics in the rear bedroom and on the basement workbench. Id. Officer Balzano also saw the box of small manila envelopes near the workbench; however, the envelopes were not inventoried by the police or admitted into evidence. Id. at 12-13. A search of the premises did not reveal any controlled substances. Id. at 13.

As of August 26, 1988, petitioner and co-defendant Marvin Reeves were in custody on the basis of information provided by Willie Williams, a long-time friend of both petitioner and Reeves. Id. Petitioner and Reeves worked for a major narcotics supplier, and Williams would help them deliver

drugs to their sellers (and collect the money owed to them), including on a regular basis Rose Marie and Deborah. Id. at 14. Shortly after the murders, while Williams was an inmate at the Illinois Department of Corrections (IDOC), he twice called petitioner (on August 1 and 5, 1988). Id. at 13.2 In those conversations, petitioner said that he and Reeves had strangled Rose Marie to death, and suffocated Deborah and the three children with a pillow, because the women owed them \$1,225 for drugs. Id. Using alcohol retrieved by Reeves from the trunk of his car, Reeves and petitioner then set the bodies on fire to cover up the details of the murders. Id. at 13-14. Petitioner said that he killed the children because he did not want to leave any witnesses, and that if he had to, he would do it again. Id.

Late in the evening of August 25, 1988, petitioner was arrested and brought into Area 3 police headquarters for questioning. Id. at 14; (R. 1055). Petitioner gave an oral statement to the detectives incriminating himself and Reeves in the murders. Id. Petitioner later agreed to give a handwritten statement to an Assistant State's Attorney. Id. In that statement (which was virtually the same as the oral statement he had given to the detectives earlier that day (R. 1083-1090, R. 1135-1139)), petitioner related that Reeves picked him up at his home around 11:00 P.M. on July 26, 1988, in a 1977 yellow Buick Regal, and asked whether he wanted to go for a ride to see a woman who owed him money. Id. Petitioner agreed, and they drove to the Sepulveda home. Id. Upon arriving, Reeves told petitioner to wait in the car, and Reeves went into the Sepulveda residence alone. Id. Because the living room windows were open, petitioner heard a conversation between Reeves and a woman. Id. After several minutes, the conversation turned into an heated argument, during which Reeves and the woman exchanged profanities. Id.

At that time, petitioner got out of the car, walked up to and knocked on the front door. Id.

² Although Williams described these calls as "collect" calls, he explained that he thought that "collect" meant billing the call either to his mother's or his girlfriend's telephone numbers. Id. at 13.

Petitioner entered the home, and saw Reeves go to the back bedroom and close the door behind him. Id. at 15. Next, petitioner heard punching and slapping sounds, followed by the sounds of a woman screaming and then gasping for breath. Id. After that, Reeves left the rear bedroom and told petitioner that he wanted to leave. Id. Both men walked out through the front door to the car. Id.

At the car, petitioner saw Reeves take a plastic quart container out of the trunk and walk back into the house. Id. A moment later, petitioner noticed that all of the living room windows and the front door were now closed. Id. Reeves returned to the car and put the container back into the trunk. Id. As they drove off, Reeves laughed and told petitioner that he thought he had "killed the bitch." Id. At the conclusion of the statement, petitioner indicated that he had been treated well by both the police and the Assistant State's Attorney. Id. Petitioner also indicated that he had given the statement voluntarily, and that he was not threatened or given any promise in exchange for his statement. Id.

Detective Thomas Ptak testified that he searched the trunk of the 1977 Buick Regal belonging to Reeves. Id. In the trunk of Reeves' car, the detective found a plastic bottle containing a small amount of charcoal fluid, and an empty can of gasoline beneath a blanket. Id. It was stipulated that the gasoline can contained a residue of gasoline, and that the plastic container contained flammable lighter fluid. Id. It was also stipulated that no suitable fingerprints could be found for comparison purposes from either of these containers. Id.

At around 6:00 P.M. on the day of the murder, Victor Guajardo, Jr., who lived in the home next to the Sepulvedas, saw an older model, yellow, two-door car parked in front of the Sepulveda home. Id. The car was positively identified as the one driven by Reeves. Id. at 16.

The following evidence was presented in petitioner's case-in-chief. Leslie Jenkins, petitioner's sister, testified that at the time of the murders, petitioner was at a splash party at the home of Irene Morrison at 825 West 50th Place in Chicago. Id. Despite the fact that Jenkins knew that her brother had

been arrested on August 25, 1988, she did not tell anyone that he was with her on the night of the murders until two weeks before trial. Id. Petitioner also testified that on the evening of July 26, 1988, he had been at a pool party with his son at Irene Morrison's home. Id. Petitioner spent the night at the party, and did not return home until 9:00 A.M. the next day. Id. Karen Williams, keeper of the company records for Illinois Bell, testified that based upon company telephone records, there were only two collect telephone calls made to petitioner's residence. Id. Those calls were made on August 1, 1988, from Joliet, Illinois. Id. However, Williams explained that if a calling party billed their call to a third-party billing number, the calling party's telephone number would not appear on the receiving party's telephone records. Id.

During the State's rebuttal, Detective Michael Kill testified that on August 25, 1988, Eric Wilson, petitioner's cousin, came to the police station. Id. According to Detective Kill, on August 1, 1988, Reeves told Wilson that he and petitioner "had killed some people who lived on the other side of Western because they owed them some money." Id. Wilson also told the detective that on August 16, 1988, he had had a conversation with petitioner at his uncle's home. Id. At one point, Reeves walked up and interrupted their conversation by saying: "I hope Willie [Williams] doesn't say anything. He is the only one that can get me in trouble over those people and knows what I did to them." Id. at 16-17. Officer Richard Dowling testified that he was very familiar with the house located at 825 West 50th Place, and that he had also been there during July of 1988. Id. at 17. According to Officer Dowling, there has never been a pool at that address nor anywhere else in the 800 block of 50th Place. Id.

In petitioner's rebuttal case, Jenkins testified that she was mistaken as to the exact location of the pool party, and that the pool was located at 815 West 50th Place, instead of 825 West 50th. Id. It was established that Morrison had since relocated the pool. Id. Photographs were introduced to show the site where the pool was supposedly located. Id. Three other witnesses who knew petitioner and Jenkins

corroborated the evidence that Morrison had moved the pool the following year to her new home. Id.

Following deliberations, the jury returned a guilty verdict for the first degree murder of all five victims, but acquitted petitioner of aggravated arson. Id. The jury further found petitioner eligible for the death penalty under the statutory aggravating factor of murdering two or more individuals. Ill. Rev. Stat. 1985, ch. 38, par. 9-1(b)(3). Id. The jury then heard the testimony of several witnesses in aggravation and mitigation, and found no mitigating factors sufficient to preclude the imposition of a death sentence. Id. The trial judge subsequently sentenced petitioner to death for the murder of the five victims. Id.

II.

REASONS TO DENY 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 the Illinois Supreme Court has examined the proceedings in his case and determined that they were fundamentally fair and that he was not unduly prejudiced in any manner.

The following are reasons to deny Petitioner’s request for executive clemency.

Supreme Court Rules

Petitioner asserts that he is entitled to clemency because certain 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.

Adequate Funding

Petitioner asserts that he is entitled to clemency because he was denied adequate funding to investigate the case and/or to retain the necessary expert witnesses. However, despite the creation of the Capital Litigation Trust Fund, there is no indication that any capital defendant in Illinois, particularly those prosecuted in Cook County has ever been deprived of the necessary funds to investigate or retain appropriate experts. Rather, courts have denied various requests which are deemed unreasonable or unnecessary, the same standard which applies for funds under the Capital

Litigation Trust Fund. 725 ILCS 124/15(c). Also, the Cook County Public Defender has significant resources available for capital litigation. Therefore, the mere fact that the Capital Litigation Trust Fund was not created until 2000 is irrelevant.

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. 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.

Public Defender at the Police Station

Petitioner claims that he is entitled to clemency because he requested a lawyer while he was being interrogated but was not appointed an attorney until he appeared in court. He points out that under the Governor's Commission proposals, the public defender would be allowed to represent any suspect in a potentially capital case who requests to speak to a lawyer during an interrogation.

However, petitioner fails to mention that the trial court expressly found that he did not unequivocally request an attorney during his interrogation. Therefore, even if this proposal had been in effect at the time of petitioner's arrest, it would not have applied to him.

Decision to Seek Death

Petitioner claims his sentence should be reduced because the State's Attorney's decision to seek death was made without uniform protocols to guide his discretion and was not approved by a state-wide review committee. However, "[i]t has long been recognized by th[e Illinois Supreme C]ourt that the State's Attorney is endowed with the exclusive discretion to decide which of several charges shall be brought, or whether to prosecute at all. A prosecutor's discretion extends to decisions about whether or not the death penalty should be sought." People v. Jamison, 197 Ill. 2d 135, 161-62, 756 N.E.2d 788 (2001). Therefore, any attempt to mandate such a review would constitute an impermissible restriction on the independence of the various State's Attorneys under the Illinois Constitution. Moreover, petitioner does not even allege much less argue that the decision to seek death in his case was the result of an abuse of discretion. Accordingly, it must be rejected.

Informant testimony

Petitioner alleges that clemency should be granted because a jailhouse informant testified at his trial even though there was no pre-trial hearing to determine the reliability of such a witness. However, such a claim ignores the fact that both the trial court (and the Illinois Supreme Court (Kitchen I, 159 Ill. 2d at 27-29)) determined that the evidence was relevant and probative before admitting the testimony into evidence. Petitioner also ignores the fact that the trier of fact heard the evidence, and after considering the credibility of the witness and all the attendant circumstances (including Williams' criminal background) deemed the testimony reliable.

Further, there is no evidence in the record that Mr. Williams was released early in exchange for

his incriminating testimony in the case at bar. On the contrary, Williams testified at trial that at no time was he promised any sort of leniency from the Cook County State's Attorney's Office. (R. 907, 941-942) Thus, the jury was fully and completely aware of the fact that Williams was imprisoned for only three months of a three-year prison sentence, and yet, despite the attendant negative inferences of Williams' "short" prison stay, chose to believe Williams' testimony that he did not receive any "breaks" for incriminating defendant. Additionally, it is ludicrous to assume that the police and the Department of Corrections would let Williams out of prison only on the basis of his telephone call to the police. Petitioner's assertion that there was a connection between Williams' testimony and his release on an unrelated conviction is baseless.

Petitioner's claim that Williams learned about the facts of the crime from a July 27, 1988 Chicago Tribune news article fails because Williams told the police two facts which only the killer could have known and that were not in the article: that four of the five victims were suffocated and that Deborah and Rose were dealing in narcotics (confirmed by the narcotics dog search). Also, petitioner's interpretation of Williams' testimony in the Reeves trial has no basis in the record. Williams testified that he did not read about the murders in the newspapers until after he had first spoken to co-defendant because at first he did not believe him. (S.R.(Transcript of the Trial of co-defendant Marvin Reeves) 384, 408) It was not until after Williams read the papers that he called Detective Smith. (S.R. 384, 408)

In-Custody Informant

Petitioner claims that he is entitled to clemency because he did not receive an instruction admonishing the jury to consider the testimony of an in-custody informant with caution, as recommended by the Governor's Commission (Recommendation 57). However, a reading of the recommendation in the Commission's Report reveals that the Commission intended that such a pattern instruction be given to the jury where an in-custody informant testifies for the prosecution in exchange

for a plea agreement, a promise not to be prosecuted or a financial benefit (Report, Recommendation 57, p. 132).

Sufficient to Preclude

Petitioner asserts that clemency is warranted because the statutory language and corresponding jury instruction that after considering all of the evidence that “there is no mitigating factor sufficient to preclude the imposition of a death sentence” led the jury to mistakenly believe that the death penalty is mandatory. However, both the Illinois Supreme Court and the federal courts have consistently rejected any claim that the statute is confusing and might lead a jury to believe that the death penalty is mandatory. See People v. Mitchell, 152 Ill. 2d 274, 346, 604 N.E.2d 877 (1992); Silagy v. Peters, 905 F.2d 986, 998-99 (7th Cir. 1990). Moreover, because both the prosecution and the defense argued to the jury about the appropriateness of the death sentence in petitioner’s case, any confusion in the language of the instruction was negated by the closing arguments.

Supreme Court Proportionality Review

Petitioner also claims that he is entitled to clemency because the Illinois Supreme Court failed to consider whether his death sentence was disproportionate, excessive or otherwise inappropriate compared to a “similar defendants” (By “similar,” does petitioner means “similar mass murderers”? Petitioner does not explain). However, petitioner neglects to mention that on direct appeal he did in fact argue that his sentence was disproportionate to his co-defendant’s sentence of natural life. The Illinois Supreme Court compared petitioner’s sentence not only to that of his co-defendant but also to cases where the court had vacated the death penalty, and concluded that petitioner’s sentence of death was not disproportionate. Kitchen I, 159 Ill. 2d at 45-46.

Petitioner Confessed Freely And Voluntarily To Murdering The Five Victims. There Is No Evidence That Petitioner Was Physically Abused During Questioning By Anyone.

At both the suppression hearing and trial, petitioner testified that when the police brought him to Area 3 headquarters, he was put in a room and handcuffed to the wall. According to petitioner, a short time later, a detective and a tall, heavy-set sergeant walked in and commenced hitting and kicking petitioner. The beating lasted for an hour and a half or two hours. At one point during the night, petitioner asked an officer if he could call home. In response the officer hit petitioner in his head with a telephone receiver. Later, petitioner claimed that during later beatings he had been pummeled in the head, ribs and groin, with a nightstick once and a telephone book several times. (R. 145-74,1242-1252, 1277-89)

On direct appeal, petitioner argued that his attorney was ineffective for failing to withdraw from the case so that he could testify that he viewed petitioner at the police station immediately after petitioner gave his inculpatory statements and saw that he had in fact been beaten and was injured, thereby supporting petitioner's, co-defendant Reeves' and Eric Wilson's testimony of physical coercion with "neutral, unbiased" testimony. In rejecting this contention, the Illinois Supreme Court noted the "substantial evidence" presented by the People at the motion to suppress, including four Chicago police officers each testified that petitioner had not been beaten and had given his confession voluntarily. This Court further noted that the Felony Review Assistant State's Attorney also testified that he did not see any of the police officers physically strike, threaten, or assault defendant. This Court then went on to note: "Most importantly, a videotape was presented at the suppression hearing which showed [petitioner's] exit from the police station to the police wagon. In the videotape, [petitioner] was walking normally and not limping in any manner, nor did he show any visible signs of injury." Kitchen, 159

Ill.2d at 30; (Appendix ___) The trial court certainly found the videotape to be significant, because according to the court it refuted petitioner's testimony at the hearing that he was injured and limping when he was escorted out of Area 3. (R. 372-73) In fact, the videotape was the cornerstone of the trial court's finding that petitioner's claim of police brutality was simply not credible. (R. 375-76)

In addition to the above evidence, Louis Gregory Simmons, a paramedic at the receiving station for the Cook County Department of Corrections Cermak Hospital, testified that on August 27, 1988, he examined petitioner as a part of the intake screening process. (R. 325-26) Mr. Simmons did not observe any injuries to petitioner's body. (R. 340; PCC. 138-39 (Intake Report)) As part of the examination, Mr. Simmons inserted a Q-Tip into petitioner's penis to check for sexually transmitted diseases, and manually checked the penis for lice. (R. 330-31) Petitioner did not respond to Mr. Simmons' physical probing of the groin. (R. 331) Petitioner informed Mr. Simmons that he was in good health; petitioner did not complain of injuries to his ribs or groin, and never asked for medical attention or to be taken to the emergency room. (R. 333-34; PCC. 138-39)

Given the complete absence of any observable injuries to petitioner (especially after such an allegedly horrific and prolonged thrashing), the lack of medical corroboration, and the lack of a complaint to both the Felony Review Assistant State's Attorney and the intake paramedic who examined petitioner following his confession, petitioner has failed to make a substantial showing of a Sixth Amendment violation that his trial attorney should have testified that petitioner was tortured into confessing by the police. In closing, the People would point out as a matter of logic that if petitioner had been actually tortured into giving a confession, the police would no doubt have forced petitioner to give a far more damning confession than the one in the case at hand.

Defense Counsel's Decision Not To Present Medical Testimony That Would Not Have Supported a Claim of Police Abuse

Petitioner asserts that he is entitled to clemency because his trial attorney was ineffective for failing to present the medical testimony of three treating physicians (Drs. Hamb, Malek and Laties) regarding the nature and extent of his physical injuries, including “severe groin trauma,” at the hands of the police. For example, petitioner relies on the affidavit of a Dr. Hamb, who averred that on September 1, 1988 he treated petitioner at Cermak Hospital. (Post-Conviction Common Law Record (PCC.) 317, 991) Dr. Hamb would have testified that petitioner complained of groin pain that was the result of the police beating his groin with fists, a knee and a nightstick, and that petitioner said that he had urinated blood on or about August 27, 1988. (PCC. 317, 991) The doctor would have testified that he noted that petitioner's testicles were swollen and tender to the touch. (PCC. 991)

The problem with petitioner's position is that trial counsel knew about these doctors, but concluded that their testimony would have been useless. First, it must be remembered that petitioner was taken from Area 3 to the Cook County Jail (and to the intake at Cermak Hospital, where he was determined to be in good health by paramedic Simmons) on the evening of August 27, 1988, and not on September 1, 1988, five days later. Thus, Dr. Hamb's examination of petitioner would merely have established that petitioner had been beaten since his arrival at the county jail, and not by the police at Area 3.

Second, during the suppression hearing the parties had a discussion with the court regarding whether petitioner was going to be able to locate and call a Dr. Ahmed Laties. (R. 319-22) During the discussion, defense counsel tendered to the court various medical records, including those of Dr. Hamb. (R. 319) Defense counsel told the court that he had dropped his previously-

announced intention to call a Dr. Malek, because only that doctor's name was set out in the medical records and it did not appear as though he had actually examined petitioner. (PCC. 321) In his affidavit attached to the instant post-conviction petition, defense counsel averred that he only attempted (unsuccessfully) to contact one of the treating physicians, and that he "believe[d] that the other physicians may not have supported our position about the injuries." (PCC. 101) Since Dr. Laties was the only physician that counsel tried to reach, it stands to reason that Dr. Hamb was one of the doctors that counsel did not think would be of assistance to the cause. Thus, counsel clearly made an informed, strategic decision not to call Dr. Hamb. The soundness of that decision is borne out by the fact that Dr. Hamb did not treat petitioner until five days after he was taken from Area 3 to the county jail. Counsel could reasonably have concluded that Dr. Hamb's testimony would only have established to a finder of fact that petitioner had been beaten during that time.

Third, as previously discussed, there is wealth of evidence showing that petitioner had not been beaten at any time by the police. Thus, Dr. Hamb's proposed testimony would not have changed the result of the hearing or the trial.

Defense Counsel's Decision Not To Recuse Himself Due To An Alleged Conflict of Interest

Petitioner pleads for clemency on the grounds that his trial attorney failed to remove himself from the case in order to testify and provide a "credible account" of what he witnessed at Area 3 when he spoke to petitioner, who at that time allegedly complained that the police had beaten him for hours. However, on direct appeal the Illinois Supreme Court rejected this claim, determining that there was no conflict of interest. Kitchen I, 159 Ill. 2d at 28-30. Moreover, as discussed above, the evidence that petitioner was not in the slightest manner abused by the police is overwhelming.

Defense Counsel's Failure To Adequately Impeach Willie Williams

Petitioner asks for clemency because his defense counsel was ineffective for failing to gather

certain information in order to "severely impeach" Willie Williams. However, the following "unused" evidence of impeachment was either not the least bit impeaching, or disregarded as a matter of strategy, or would have been only cumulative to the impeachment evidence that was presented at trial.

A. The Chicago Tribune article about the murders would not have impeached Williams in any manner. First, according to the police reports and his testimony in the Marvin Reeves' trial, Williams did not read the Chicago papers until several days after petitioner had told him, complete with details, about how and why he had killed the victims. (PCC. 170; S.R. 384, 408) It was not until after Williams had read the papers that he called Detective Smith. (PCC. 170; S.R. 384, 408) Second, Williams knew certain facts about the victims' death that only petitioner could have told him, which were not in the Tribune article: that four of the five victims were suffocated and that Deborah and Rose were dealing in narcotics (confirmed by the narcotics dog search). Third, and most importantly, three different juries (the jury here who found petitioner guilty, and the two juries who found co-defendant Reeves guilty) found Willie Williams to be entirely credible.

B. During trial, Detective Dan McInerney testified that he had determined that the fires at 6028 South Campbell had been independently set by available materials and hand-ignited with an open flame. (R. 1041) The detective further opined that the fires had been smoldering and burning slowly for approximately three hours, and possibly longer, before they were extinguished. (R. 1041-1042) In response to a hypothetical question, Detective McInerney stated that if lighter fluid had been used it could have ignited the types of fires and burn patterns that he had witnessed. (R. 1042) The detective explained that the lighter fluid would either have burned off or been washed away during the extinguishing of the fire. (R. 1042) On cross-examination, in response to two questions from defense counsel, the detective testified that he did not detect the odors of gasoline or charcoal lighter fluid in either of the burnt bedrooms where the victims were found. (R. 1047) According to

petitioner, however, trial counsel's cross-examination was insufficient to dispel the notion raised by the prosecution that accelerants were used to set the fires. In support of his claim, petitioner points to the cross-examination of Detective McInerney at co-defendant Marvin Reeves' trial, where the detective stated eight times that in his opinion no accelerant was used. In other words, petitioner's complaint is that his attorney did not ask enough times whether an accelerant had been used. Petitioner's argument is meritless. Not only did defense counsel establish on cross-examination through Detective McInerney that he did not detect the use of accelerants, the People on direct examination elicited from the detective the very same opinion:

"A. [DETECTIVE MCINERNEY] We determined the cause [of the fire] was probably available materials hand ignited with an open flame." (R. 1041)

Thus, the jury was made fully aware that in the opinion of the People's expert the assailants did not use any accelerants to start the fires.

C. As to the telephone records of Williams' mother and girlfriend, based on a review of the record of the trial, it is apparent that defense counsel did not subpoena those records because Williams did not explain until cross-examination and later on redirect examination that what he meant by calling petitioner collect was to bill the call either to his mother's number or to his own home where he lived with his girlfriend. (R. 921-23, 936-38, 943) Instead of attempting to obtain those phone records, counsel instead chose during closing argument to place that burden on the State to produce Williams' mother or those records. (R. 1571, 1573) Counsel then argued to his advantage that the reason the State did not come forth with that evidence was because Williams never billed the calls in that manner, suggesting that he never spoke to petitioner but in reality fabricated those incriminating conversations. (R. 1573)

Defense Counsel's Failure To Call And Prepare Available Alibi Witnesses

Petitioner next asserts that his trial counsel rendered ineffective assistance by failing to call the owner of the house that was the location of his alibi, and to properly prepare the alibi witnesses to give the correct address of the alibi location. According to the affidavit of Irene Morrison, she was the owner of the home at 815 West 50th Place in Chicago where the pool party had been held on the night of July 26, 1988, that petitioner had attended the party that night, and that she had been contacted by defense counsel and agreed to testify on behalf of petitioner but was never told when to come to court. (PCC. 319-20) According to petitioner, his defense was severely damaged when he and his sister, Leslie Jenkins, gave the wrong address of the home where the pool party had been held. Petitioner attributes the address confusion to poor preparation of petitioner and Jenkins, which "likely" would have been averted by calling Ms. Morrison.

However, on direct review, the Illinois Supreme Court determined that the evidence was sufficient to uphold petitioner's convictions, and that the jury rightly rejected the alibi defense. Kitchen I, 159 Ill.2d at 28. However, the Court's holding made it clear that the discrepancy over the alibi address was only one of many problems with the alibi. Kitchen I, 159 Ill.2d at 25-27.

Further, upon learning that petitioner and Jenkins gave the wrong address, defense counsel promptly had Jenkins testify that the pool in question was located at 815 West 50th Place, and not at 825 West 50th as she had previously testified. (R. 1450-1451) Counsel then called four more witnesses, Lonnie Wooten, James Mitchell (Ms. Morrison' grandson), Lonnie Richardson and Oily Thomas to corroborate Jenkins' testimony as to the correct address of the location of Irene Morrison's pool on July 26, 1988. (R. 1462, 1475-1477, 1492, 1515) Counsel had Thomas explain to the jury that he was at the party in question and saw defendant there. (R. 1515, 1517) Counsel's actions certainly dispel any notion that his performance was deficient.

Lastly, the alibi defense was rife with ruinous inconsistencies. Petitioner's testimony that he told Detective Kill that he had been at the pool party on July 26, 1988 was flatly denied by Detective Kill. Kitchen, 159 Ill.2d at 25-26; (R. 1293-94, 1357-58). Petitioner admitted that he did not tell ASA Lukanich that he had been at the pool party. Id. at 26; (R. 1294-95). The testimony of Leslie Jenkins, regarding the party itself, is internally inconsistent. At first, Jenkins did not know anyone at the party, then she stated she knew half of the people there. Id. at 26-27; (R. 1218). Jenkins also testified that although she had visited her brother in jail over 10 times following his arrest, she did not inform anyone regarding her first-hand knowledge of the alibi until the eve of trial (two years later). Id. at 26; (R. 1220-22). The testimony of Oily Thomas, who also waited for two years before coming forward with petitioner's alibi (R. 1527), suffers for the same reason. Most significantly, Officer Dowling testified that he was very familiar with the house located at 825 West 50th Place, and that he had also been there during July of 1988. Kitchen, 159 Ill.2d at 17. According to Officer Dowling, there has never been a pool at that address nor anywhere else in the 800 block of 50th Place. Id. Thus, defense counsel could have called Ms. Morrison to testify as to petitioner's alibi, and could have prepared petitioner and Jenkins to testify as to the correct address of the splash party, and the verdict of the jury would still not have changed.

Failure To Present “Compelling Evidence Of Alternative Perpetrators”

According to petitioner, the police reports of the investigation into the murders and certain information disclosed in the trial of Marvin Reeves show that the murders could have been committed by the husband of Deborah Sepulveda, Peter, Sr., and his brother Arturo Sepulveda, because Deborah was having an affair. Petitioner argues that had his attorney at trial conducted an investigation, he would have learned that Peter's alibi regarding his whereabouts in Mexico were vague, that Arturo's alibi was suspect because he may have been seen near the Sepulveda's home on the evening of the murders when

he claimed he was at his own home during the entire night, and that both Peter and Arturo failed lie detector exams.

As to defense counsel's failure to investigate, defense counsel stated in his affidavit to petitioner's post-conviction petition that he did not consider exploring the possibility that the Sepulveda brothers performed the killings since the discovery materials contained nothing "which would have led to the contemplation of such an investigation." (PCC. 104) Looking at the police reports in his possession (which he did have, contrary to his representation in his clemency petition), counsel was correct in reaching that conclusion.

According to those reports, there was no reason to look into the possibility that Peter Sepulveda committed the murders. Other than the indication that Deborah Sepulveda was having an affair with a friend and her remark to Joseph Gutierrez that Arturo Sepulveda was "probably" spying on her "again" for Peter (PCC. 154), there is nothing to indicate that Peter Sepulveda knew about Deborah's affair. (PCC. 152-54) Arturo denied to the police any knowledge of Deborah's extra-marital affairs or that his brother asked him to spy on Deborah, and stated that he was home during the night of the murders. There is nothing in the reports that Arturo Sepulveda took, not to mention flunked, a polygraph test. There is some indication that Peter did not pass his lie detector exam, but it appears that he may only have been attempting to hide the fact that he was with a specific woman on July 26, 1988, and not that his entire story about being in Mexico was false. (PCC. 173-74) The fact that Peter was in Mexico between the dates he gave is supported by the documents found in his truck by the El Paso police. According to one of the reports, Peter did not cross the border into the United States until July 29, two days after the murders. (PCC. 239) Petitioner's plea for clemency on this ground should be denied.

No Amount Of Additional Mitigation, Even If Presented By Defense Counsel, Would Have Mattered: The Aggravating Evidence Was Simply Overwhelming

According to petitioner, his sentence should be commuted because his defense attorney provided no representation at his sentencing hearing where he only called one witness in mitigation, and did not consider hiring a psychologist or mitigation “expert.” However, given the overwhelming nature of the aggravating evidence arrayed against petitioner, no amount of additional mitigating evidence would have mattered.

Most significantly, petitioner bragged about how he killed to adult women and their three toddler children (ages 3, 3 and 2). Petitioner boasted that he killed the children so as not to leave witnesses behind. Petitioner crowed that if he had to he would kill them again. (R. 902-05) Five murdered victims alone is more than enough to overcome any possible mitigating evidence petitioner could now muster. However, petitioner had an extensive history to boot. On December 26, 1987, Officer Salvador DeLuca he arrested petitioner (who was accompanied by Eric Wilson) for unlawful use of a weapon, for which petitioner received one year supervision. (R. 1686-1689) Detective James Bailey arrested petitioner on September 17th, 1983 burglary to an auto, an offense for which he was subsequently prosecuted. (R. 1691-1694) Officer Michael Malone arrested petitioner for acting as a lookout during the burglary of an auto. (R. 1695-1697) Officer John Rossie, on February 26, 1988, he arrested petitioner for aggravated assault based on a complaint that defendant had fired several shots at the complainant. (R. 1698-1700) Officer Kevin Russell testified that on June 3, 1988, he executed a search warrant for narcotics at the residence of petitioner at 5033 South Aberdeen. (R. 1702-1703) There, in petitioner’s presence, the officer found 211 grams of cocaine and a sawed-off .22 caliber rifle. (R. 1704-1706) Petitioner’s plea for clemency on this ground should be denied.

RECOMMENDATION

The People of the State of Illinois respectfully request that the Prisoner Review Board recommend to the Governor that Petitioner's petition for executive clemency be rejected.

Respectfully submitted,

STATE'S ATTORNEY OF COOK COUNTY

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