

OCTOBER 2002  
PRISONER REVIEW BOARD  
OF THE  
STATE OF ILLINOIS

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*In re:* )  
 ) Docket No.  
TERRENCE BROOKS, ) Inmate No. B 51055  
Petitioner )

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

HEARING REQUESTED

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BY:  
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## INTRODUCTION

The People of the State of Illinois vehemently oppose commutation of this inmate who not only has killed four people in three shootings but who has orchestrated two prison riots. A jury of Illinois citizens sentenced where Brooks had all constitutional protections afforded him, and the Supreme Court of the State of Illinois affirmed his convictions and sentences. Returning Brooks to the general population is not only unjustified, but will undoubtedly result in more lost lives. Highlights of Brooks' violent history include:

1] At the age of 17, Brooks gunned down a "good Samaritan" who saw Brooks' fellow gang members beating a man and who attempted to stop the vicious beating. Ralph Jackson, Brooks' first-known murder victim, was rewarded for his good deed by being gunned down by Brooks while Jackson attempted to flee. Witnesses to this first murder reported that Brooks laughed as he fired the weapon at the dying Good Samaritan and attempted to kill Reginald Hall as well. Both victims were unarmed and attempting to flee Brooks. His attempt to paint this cold-blooded execution as "self-defense" or defense of his gang members is as an insulting, as it is ludicrous.

2] Brooks' rank in the street gang afforded him a good income and the luxury of posting bond on the murder of Ralph Jackson. While on bond he orchestrated a second shooting spree during a gang war over drug territory. This second spree attacked two separate residential areas consecutively, leaving three people dead, including a 13-year old boy.

3] Not only is Brooks a vicious murderer, totally lacking in remorse, but Brooks has orchestrated two prison riots. While in Cook County Jail he led a riot wherein the inmates took over a tier and riot and negotiating squads were summoned during a lengthy standoff. During the standoff, the jail director attempted to reason with Brooks, and for his efforts was told that Brooks would sodomize the director if he attempted to enter the tier. While in state prison, a similar riot was orchestrated in the exercise yard and Brooks ultimately attacked a guard on the stairs and when apprehended, yelled to other inmates to start fires. Brooks was also found in possession of confidential inmate-transportation documents demonstrating yet another attempt at violence or escape.

4] Brooks' motive for every incident of deadly violence whether murder, attempt murder, or rioting was to further the interests of his gang. Brooks not only deserves the death penalty for killing four people and wounding innocent bystanders but he has conclusively demonstrated that he can never be a peaceful inmate. Brooks has consistently shown that he is an extremely dangerous inmate whose return to the general prison population will undoubtedly result in the loss of more innocent lives.

5] Brooks' claim of innocence is based upon a series of inaccurate representations designed to mislead and confuse. Brooks' conveniently ignores that the same contentions were rejected at trial, by the Supreme Court on appeal, and by the post-conviction court. The Supreme Court recognized that this case is fraught with gang-intimidation efforts.

6] Brooks' opportunistic attempt to bootstrap Area 2 claims to his case is particularly misleading and disingenuous. Brooks' did not confess nor did he ever claim of any mistreatment. After the triple murder, Brooks did speak to police, but only to taunt them stating that he would post any bond set and to brag by inviting them to inspect his new, expensive car.

7] Where Brooks has demonstrated that he will gleefully take innocent life whether incarcerated or on the street, commutation of his sentence would be the ultimate travesty of justice. Not only will justice to his victims be denied, it is certain that personnel and other inmates will be placed in extreme jeopardy if he is allowed to congregate with fellow gang members again and plot more violence and mayhem.

## **II.STATEMENT OF CASE FACTS:**

A detailed history of the case and the crimes is set out below as required by Brooks' consistent reiteration of misleading, inaccurate, and of course, self-serving assertions. This history is lengthy and undoubtedly onerous for an overburdened review board. In the interests of expediency, the People will present a short rebuttal of Brooks' proffered case facts before supplying a review of the actual evidence heard and proceedings in court.

Post-conviction proceedings are currently pending and the People have asked for a hearing on one of the issues. The post-conviction court's opinion dismissing the other issues is appended. Brenda Hall, a witness who had to be

relocated before trial and who testified of her great fear having witnessed some of the 1991 murders, was nevertheless located by Brooks' post-conviction investigators. Hall gave a statement stating that although she testified three times identifying Brooks', she actually could not see him shooting because it happened too fast. Hall does not contend that Brooks was not the shooter, nor that anyone coached or suggested her previous identifications. Thus, Brooks has no support for an innocence claim and Hall's post-conviction recantation will be severely impeached by evidence of three prior sworn testimonies and other related impeachment.

As to reference to a "corroborated alibi " this was available at trial and not presented. Defense trial counsel listed the alibi witness on his answer to discovery but ultimately did not call the witness, a life-long friend of Brooks and fellow gang member. Thus, the assertion that a court has not heard the alibi is intentionally misleading where the record demonstrates a conscious decision to forego that defense at trial.

Similarly, the allegation that identifying witnesses have recently recanted is misleading. As set out below, both the trial court and the Supreme Court found that Taylor's post-trial recantation was incredible and gang-induced. Epton identified Brooks', denied it at trial, and was impeached with a statement given to a co-defendant's counsel that the only shooter he could see was, in fact, Brooks. Cruthird has not submitted any recantation and everything alleged here was fully examined by the trial and supreme courts. The following is evidence actually adduced at trial and sentencing:

On August 7, 1991, three people, including a 12-year-old boy were killed during two consecutive drive-by shootings in Chicago's Englewood neighborhood. Members of the Black Disciples fired the shots that killed them from a taxicab, a rival gang controlled the buildings targeted. The shootings were provoked by an earlier incident in which a member of the Gangster Disciples [the rival gang] shot at the car of a Black Disciple.

Detective Daniel McWeeney testified that on August 7, 1991, he met with other detectives at 516 West 71st Street. From these detectives, McWeeney learned that two separate shooting incidents at two locations had occurred in a short period of time. Both shootings occurred in the same neighborhood, involved a similar-looking taxicab, which was followed by a red LeBaron, and 9 mm. casings were found at both crime scenes.

The first shooting occurred shortly before 11:00 p.m. at 6556 South Peoria Streets. The second shooting occurred a few minutes later, at 516 West 71st Street. (Vol. 2, G13) At the Peoria Street address, Rhenardo Bussle was fatally shot while Marcus Taylor and George Cruthird were shot and injured. (Vol. 2, G13-14) At the 71st Street address, John Coleman and Gregory Archibald were fatally shot while Alan Epton was injured. The stolen taxicab was found shortly after the shootings, abandoned in a vacant lot and filled with sixty spent casings.

Detective McWeeney went to St. Bernard's Hospital to interview Alan Epton, a victim from the 71st Street shooting. Mr. Epton was in pain and receiving treatment and seemed reluctant to speak with the detective.

McWeeney told Epton that he would return later and interviewed Epton again at 11:00 a.m., with Detective Ptak present. When Epton found out that his two friends, Archibald and Coleman were dead, he agreed to tell the detectives what he observed.

Epton related that he was with victims Archibald and Coleman (who were members of the Gangster Disciples), when he saw the taxi followed by the LeBaron. "Tojo" a Black Disciple, was driving the taxi and he recognized some of the Deloney family members in the LeBaron. Epton also recognized Ollie Bays, also a Black Disciple who associated with Tojo and the Deloneys. Gunfire came from both vehicles.

Marcus Taylor, (a victim from the first shooting on Peoria Street) was also interviewed in the hospital and told Detective McWeeney that he would not identify anyone but confirmed that the cars used by the shooters were a taxi and a LeBaron. Taylor also stated that he is a Gangster Disciple and that the shooters were Black Disciples. Taylor said that there had been other shootings in the neighborhood due to a war between these two gangs.

Based upon the information gained from Epton, which included the address of the Deloneys, Detective McWeeney and other officers went to the address supplied by Epton on the 7200 block of South Union Street in the early afternoon of August 8, 1991. Maurice and Javan Deloney were brought to the station, were photographed and a photo array was shown to Epton who identified both Deloneys as shooters. Later that day, Javan Deloney implicated

himself, as well as, defendant, Curtis Milsap, Ivan Smith a.k.a. "Tojo", Maurice Deloney, and Ollie Bays.

Based upon Javan Deloney's confession, Detective McWeeney put together two more photo arrays: one with six color photographs including defendant's photograph; and a second array consisting of nine black and white photographs which included Bays and Milsap. Epton was shown the two additional arrays and identified defendant as a shooter, as well as Bays and Milsap. Defendant was arrested a few days later.

Detective James O'Brien testified that he put together a line-up on August 13, 1991, that included defendant. Epton viewed the line-up and identified defendant. Defendant chose his position in the line-up.

Alan Epton testified that he was shot on August 7, 1991. Epton testified that he spoke to police several times before being shown photo arrays. Epton testified that while being shown defendant's array, the police kept flipping to defendant's photograph, asking if defendant was one of the shooters. Epton said that there were two photographs of defendant in the single array that he was shown. Epton testified that he responded that he knew defendant but was not sure if defendant was a shooter. Epton testified that he did not identify defendant as a shooter.

The People then argued that because the witness testified that he did not identify defendant, (as opposed to testifying that suggestive police procedures caused him to identify defendant) that there was no identification to suppress. The trial court asked defendant what he was seeking to suppress

and defendant responded that he wanted to prevent the police from testifying that Epton made an identification of defendant. The court ruled that because Epton's testimony would conflict with the police officer's testimony that it was a question of credibility for the jury as opposed to a question of suggestive police procedure. The court further ruled that because Epton testified that he did not identify defendant that the court need not decide whether the array procedure was suggestive, therefore the motion was denied.

Defendant called George Cruthird to testify as to his identification of defendant. Cruthird testified that he was shot while standing in front of 6556 Peoria on August 7, 1991 at 10:50 p.m. In June of 1993, Cruthird was in jail for a pending case when he saw a photo array in the office of the State's Attorney. Cruthird knew defendant and Ivan Smith before the shooting. When Cruthird saw the photo array he picked defendant's photograph as being one of the shooters. Detective Stehlik testified that he read in the paper that George Cruthird had been arrested with a large quantity of cocaine. The detective had been looking for Cruthird as a witness to these murders.

On June 8, 1993, Cruthird, (who was in custody), Cruthird's attorney, and Detective Stehlik met at the State's Attorney's office. Cruthird told the detective that he knew defendant and Ivan Smith and that they were shooting at him on the night that Cruthird and the other victims were injured or killed.

To ensure that Cruthird was referring to the same individuals as were already charged, Detective Stehlik laid six photographs on a table and told Cruthird to identify anyone that he knew. Prior to showing Cruthird the

photographs, Cruthird stated that he could identify defendant and Ivan Smith. Cruthird identified defendant and Ivan Smith. Detective Stehlik did not tell Cruthird who shot Cruthird or who Cruthird should pick from the array.

Defendant then called Brenda Hall to testify concerning identification procedures. Hall testified that in April of 1993, she accompanied Detective Kill to the State's Attorney's office. Hall had been to the office on two or three previous occasions. The first time, in September of 1991, Hall tendered a bullet recovered from her car after the shooting. From the date of the shooting until April of 1993, Hall was never shown photographs. Hall testified that she would not speak to police about the shooting because she and her baby had almost been killed.

In April of 1993, Hall agreed to talk. Hall viewed photographs, which were laid out on a table. Hall picked two photographs representing the shooters that she saw on the night of the murders. Defendant rested as to his motions concerning the identifications by Cruthird and Hall. The trial court denied these motions. After being admonished, defendant waived a jury trial.

### **THE PEOPLE'S CASE-IN-CHIEF**

Defendant was charged along with four codefendants: Ivan Smith, Maurice Deloney, Javan Deloney, Curtis Milsap. Defendant waived a jury trial and his bench trial was conducted simultaneously with Ivan Smith's jury trial and the severed bench trials of the other codefendants with the exception of Maurice Deloney. Defendant's attorney and Maurice Deloney's attorney both stated that they had no objection to these defendants being tried together. At

the time of trial, the trial court stated that it could keep the facts separate as to the severed defendants.

Officer Patrick Doyle testified that on August 7, 1991, at approximately 11:00 p.m, he received a radio call of a person shot at 6556 South Peoria. Upon arrival, a few minutes later, Officer Doyle saw a person laying in the walkway leading to the front door of the apartment building located at that address. The person, Rhenardo Bussle was bleeding from the chest.

The officer spoke to some witnesses and sent out a flash message to look for a red and white taxicab. The officer also learned that two other victims had left the scene and were at 6539 Sangamon. At the Sangamon address, one block west, the officer found George Cruthird and Marcus Taylor. Cruthird was bleeding from the neck and Taylor was wounded in the right abdomen. Both men refused to give any information regarding the shooting. An ambulance took these two victims to the hospital.

Officer Doyle returned to Peoria Street and spoke to a witness. The officer noted bullet damage around the entrance to 6556 Peoria, which shared a common entrance with 6558 Peoria and comprised a large apartment building. He also noted streetlights illuminating the area.

Rhonda Bussle testified that she is the mother of the deceased victim, Rhenardo Bussle. Rhenardo Bussle was thirteen years old when he was murdered. On the night that he was murdered a person came to her home and told her of the shooting. Ms. Bussle went outside to find her son lying in front of the Peoria address with a gunshot wound to the chest.

The parties stipulated to the testimony of Dr. Kirschener, the medical examiner who performed the autopsy on Rhenardo Bussle. Rhenardo Bussle died of a gunshot wound where the bullet entered his back traveled through his abdomen, pancreas and liver and exited his chest. Rhenardo Bussle died of severe injury to these organs and the loss of a great amount of blood.

George Cruthird testified that he is presently serving a 15-year sentence for narcotics offenses. Cruthird stated that on the afternoon of August 7, 1991, that he standing on the corner of 66th and Peoria, an area where his gang, the Gangster Disciples, sold drugs. When "Tojo" a.k.a, Ivan Smith, a Black Disciple, drove by, a shot was fired at his car. The shot came from the same side of the street where Cruthird was standing with other Gangster Disciples. Cruthird had known Ivan Smith for four years. Smith's gang, the Black Disciples, was at war with Cruthird's gang, the Gangster Disciples. Cruthird was unsure if the gunfire struck Smith. Cruthird fled the area when the shooting started. That same night, shortly before 11:00 p.m., Cruthird was in front of the building again with Marcus Taylor, a.k.a. "Romy" and Rhenardo Bussle. At this time, Cruthird saw three cars heading towards them from 64th Street. The middle car was a taxicab with its headlights turned off. The taxicab had an illuminated sign on its roof and was moving forward very slowly, as if it were picking up a passenger.

The passenger windows of the cab were then rolled down and Cruthird could see that "Tojo" a.k.a. Ivan Smith was driving and that defendant was leaning forward between the front and rear seats of the cab towards the

door. Cruthird had known defendant for approximately four years. Both men that Cruthird saw in the cab were members of the Black Disciples. Cruthird was not able to see the faces of the cab's other occupants.

After Cruthird saw defendant leaning forward in the cab, there was a hail of gunfire from the cab. Cruthird saw lights from the firing guns in the cab. Cruthird stated that defendant "appeared" to be shooting, but he really just saw sparks and lights coming from everywhere in the cab. (Vol. 4, 532-533)

Taylor was just standing on the sidewalk in a daze, so Cruthird pushed him down and lay on top of him. The shooting continued and Cruthird felt a burning sensation in his back. Cruthird jumped up and ran towards a gangway on the side of the building. As Cruthird ran, he saw Rhenardo Bussle lying in the doorway of the building. The shooting continued as Cruthird ran. Cruthird was shot in the back of the head and in his jaw as he ran. Cruthird ran to his house on the next block. Marcus Taylor also ran to Cruthird's house. Taylor was bleeding and injured. Cruthird's mother called an ambulance. The ambulance took the victims to Christ Hospital. Bullet fragments were removed from Cruthird's jaw.

At the hospital, police attempted to interview Cruthird, but he refused to tell the police what happened. Cruthird explained that he was concerned that he could be arrested. Cruthird was also concerned that he or his family members would be hurt because people in the neighborhood knew about the ongoing gang conflict. Cruthird also explained that he was running from the police because he did not want to talk to them. Cruthird stated that he did not

like the police. Cruthird explained that some time after the shooting, he was arrested for drugs. Cruthird then spoke to the Assistant State's Attorney about the shootings. On June 8, 1993, Cruthird gave a court-reported statement to law enforcement officials with his own attorney present. The same day, Cruthird was sentenced to fifteen years in the penitentiary. Cruthird testified that he had no agreement with the State's Attorney's Office other than the fact that they agreed to recommend that Cruthird not be sent to Pontiac or Stateville. On cross-examination, Cruthird stated that he was hiding from police, staying at a different address, and was keeping a low profile after the shootings. On July 26, 1992, and on December 22, 1992, Cruthird was arrested but did not attempt to conceal his identity to police..

When police at the hospital initially questioned Cruthird, he told them that he dropped something on the ground just as the shooting started, therefore he did not see anything. Cruthird stated that he was at the State's Attorney's Office on two occasions before he admitted that he knew who shot him. Cruthird denied that he was told the name of his assailants but admitted that he did not lie at the Motion to Suppress where he testified that he was told their names.

Delores Scroggins Bowden testified that on August 7, 1991, she lived at 6759 Parnell. On that evening, she saw a taxicab headed eastbound. Later, she saw the cab parked in a vacant lot across the street. Ms. Bowden remembered talking to detectives that same night, however, she did not remember telling them that she saw the cab turn south on Normal, nor that she

heard gunshots, nor that she saw the cab later being parked in the vacant lot.

Ms. Bowden also testified that she did not remember telling detectives that one, short, male black with a wide-brimmed hat exited the cab in the lot. Ms. Bowden testified that she still lives in the neighborhood is afraid of testifying and that she knows some of the defendants.

Dewitt Watkins testified that on the night of the murders he lived with his mother in a second floor apartment at 6552 Peoria. That evening he was looking out of his front window when he saw a red and white cab approaching very slowly. Mr. Watkins saw the headlights of the cab extinguish when the cab was one to two houses away. As the cab proceeded slowly, Mr. Watkins saw fire coming from the back and front of the cab.

Mr. Watkins heard gunfire and screams, and fell to the floor. The window he had been looking through was broken and bullets penetrated the walls of his apartment. Mr. Watkins identified photographs depicting the bullet damage to his apartment. Jerome, a.k.a. Marcus, Taylor testified that on August 7, 1991, he was at the corner of 66th and Peoria. Taylor stated that this corner is a hangout for the Gangster Disciples and that they sell drugs from that corner. Taylor sold drugs at that location with Cruthird and others.

Taylor stated that he has known codefendant Ivan Smith for four to five years and that Smith's street name is "Tojo." On the afternoon of August 7, 1991, Tojo drove by their corner and got into an altercation with Taylor and his friends by throwing rival gang signs. Tojo is a Black Disciple. Taylor's gang was at war with Tojo's gang.

The Gangster Disciples had a person stationed on the third floor of the building to protect their drug business. A security person on the third floor fired a shot at Tojo. Taylor did not know if the shot struck anything. Tojo drove a short distance away and stated that he would be returning.

Later that same evening, at approximately 11:00 p.m., Taylor was selling drugs again in front of the building located at 66th and Peoria. Also present were Cruthird and Taylor's younger cousin, Rhenardo Bussle, a.k.a. "Buzz." Two cars pulled up. First came a red LeBaron and following it was a taxicab. The LeBaron stopped in the intersection of 66th and Peoria while the taxi stopped in front of their building. The passenger windows on the taxi were then rolled down.

Taylor saw the nose of a gun emerge from the taxi's window and Cruthird pushed Taylor to the ground. Both men lay on the ground at the entrance to the building under a hail of gunfire. They stayed in this position til the gunfire died down then they got up and observed Rhenardo Bussle lying on the ground. At this time, Taylor saw defendant in the cab. Taylor had known defendant for 12 years. Taylor also saw that the driver had a little long curl hairstyle but had a hat pulled over his face. Taylor knew Ivan Smith also and was aware that he had a similar hairstyle but he could not be positive that the driver was Ivan Smith. During this brief pause in the gunfire, Cruthird ran through the other entrance of the building. When the gunfire stopped and the cab sped off, Taylor checked on his cousin, Rhenardo. Rhenardo was bleeding, choking and repeating that "it hurt," before he passed out.

Taylor ran to see if Cruthird was in back of the building, wounded, but Cruthird had made it home. Taylor was bleeding from a graze wound and later went to the hospital without contacting the police because he did not want to be involved in their investigation. At the hospital, Taylor saw the police and left without being treated.

The next day, Taylor went to the police station. Taylor did not tell the police whom he saw. He told the police that he would not identify anyone. Taylor did not want to get involved and considered the issue to be one of the gang war. Taylor kept quiet because he "didn't want to be next" or to "be hurt."

Taylor's aunt, Rhenardo Bussle's mother, kept "coming down" on Taylor, she told Taylor that he "should do the right thing." On April 8, 1993, he gave a court-reported statement detailing the events on the night of his cousin's murder.

Taylor explained that his real name is Jerome but that he uses the name Marcus as well as other aliases. Taylor admitted that he selling drugs while on probation for another offense. Taylor stated that the first time he admitted that he could identify anyone was one month earlier after his aunt had spoken to him for two and half hours straight. Law enforcement personnel did not tell Taylor whom to identify.

Officer Clarence Longley testified that on the night of the murders that he was received an assignment of people shot at 618 West 71st Street. The area is a major business thoroughfare. When Officer Longley arrived one of the victim's was in the ambulance, another was lying on the curb. The officer

spoke to witnesses and received a description of a red and cream-colored taxicab.

Clemy Archibald testified that at 9:30 p.m. on the night of the murders, her son, Gregory Archibald left their home. The next time she saw him, he had two bullet wounds to the head and was dying on 71st Street.

The parties stipulated to the testimony of the assistant medical examiner, Ethel Dijacamo. The autopsy conducted on Gregory Archibald revealed that he died as a result of two gunshot wounds to the head, which caused severe brain injuries.

Rose Coleman testified that in August of 1991 she had a son named John Coleman. Ms. Coleman saw her son on the morning of the murders. The next time she saw her son he was deceased and at the hospital.

The parties stipulated to the testimony of assistant medical examiner Ethel Dijacamo. The autopsy performed on John Coleman revealed that he died as a result of a gunshot wound to his lower chest, which caused fatal injury to his heart and lungs. A copper, hollow base, medium caliber bullet was recovered from Mr. Coleman's body and inventoried.

Detective James O'Brien testified that he was en route to the crime scene at 65th and Peoria when he received a radio broadcast of another shooting at the 71st Street location which was just minutes away. Detective O'Brien stopped at the Peoria crime scene and received a flash message that the cab used in the shootings was in a vacant lot at 68th and Normal. The detective went and observed that the cab was empty except for numerous shell

casings in the back of the cab. The steering column of the cab was peeled and there were no keys in the ignition.

Detective O'Brien called for assistance to secure the cab and its contents. Detective O'Brien did a quick canvas of the area for witnesses and spoke to Delores Scroggins. Ms. Scroggins, who lived at 6759 South Parnell, was frightened when she was interviewed.

Detective O'Brien then proceeded to the 71st Street crime scene, where he learned that the other car involved was a red LeBaron. The next day, the gray Chevette was found with bullet holes in it and a license-applied-for sticker on it with the name and address of Ivan Smith. Detective O'Brien returned to the location several times in order to confiscate the Chevette but was not able to locate it again until March of 1993. In 1993, it was still registered to Ivan Smith but it had duct tape placed over the bullet holes.

Patrick Moran, an evidence technician, testified that he went to the Peoria crime scene shortly after the shootings. He observed a car on the street with bullet damage, took photographs and recovered physical evidence. Moran took photographs of bullet damage to first floor, second floor, and third floor apartments. On the third floor of the building, Moran recovered eight live rounds of nine-millimeter ammunition, a spent casing and some metal casings.

Moran also processed the cab recovered at 6801 South Parnell. He found 55 discharged cartridge casings from the rear passenger compartment of the cab. Seven additional casings were found after the cab was towed to the pound. No casings were recovered from the front area of the cab's interior.

Marcella Scott testified that, on the night of the shooting, she was at 71st Street and the Dan Ryan Expressway with her cousin, Brenda Hall. Ms. Hall was in her red Cavalier with her infant son. Ms. Hall's car was parked in front of Ms. Scott's car and the two women were speaking to Ms. Scott's boyfriend, Allen Epton. Epton then turned to enter a store.

A short time later, Ms. Scott heard a firecracker-like noise and looked behind her. She saw a cab by the viaduct behind her. Too many gunshots were fired for her to count. Her shoulder was burning and the back window of her car had been shattered. A casing popped into Ms. Scott's lap and her driver's door was damaged by gunfire. Ms. Scott got out of her car to speak with her cousin and saw the cab. Ms. Hall, whose car had also been struck by gunfire, told Ms. Scott to get back in the car. The two women then left the area and did not wait for police. Ms. Scott saw two people struck by gunfire as she drove away.

One month later, Ms. Scott drove her car to the State's Attorney's Office and turned over the casing that popped into her lap and photographs were taken of her car as well as Ms. Hall's car.

Detective Joseph Stehlik testified that he went to the crime scene on 71st Street. John Coleman was lying in front of a liquor store and Gregory Archibald was lying inside of a sandwich shop.

Firearms examiner Robert Smith testified as an expert in his field concerning evidence recovered in the investigation. Of the 60 casings recovered from the back of the cab, the vast majority were nine-millimeter in

caliber. Four of these sixty casings were fired from the same gun, further comparison was not possible. One discharged bullet from the 71st Street crime scene matched the four matching casings recovered from the cab. The bullet recovered from the body of victim John Coleman was also nine millimeter in caliber.

Brenda Hall testified that in August of 1991, she lived on 73rd Street but had moved and had been given 150 dollars for moving expenses and 750 dollars for her first and last months' rent by the State's Attorney's Office. On the night of the shootings, Ms. Hall joined up with her cousin, Marcella Scott and Scott's eight-month-old son. The two women proceeded in separate cars to 71st Street to see Allen Epton. They parked near a restaurant when they saw Epton on the street. Ms. Hall conversed with Epton for a short time and then introduced him to Ms. Scott who was in the car behind them. Epton walked to Ms. Scott's car and greeted her.

Shortly thereafter, Ms. Hall heard a firecracker-like sound and turned to observe a cab in the street. She identified the two men that she saw shooting from the cab as Javan Deloney and defendant, who was in the front seat. Defendant was leaning with his chest and gun hanging out of the window and had a dark-colored shirt on.

Ms. Hall saw the three people, who were shot, on the sidewalk. Epton was shot in the foot. Another victim was spitting up blood and asking for help. A third victim was just lying on the ground.

Ms. Hall said "let's go" and the two women drove off and met again on Parnell Street. After they stopped, Ms. Hall noticed that her car had been struck by gunfire and a bullet fragment was in her car. Ms. Scott's back window had been shot out. Ms. Hall testified that she did not know defendant before the shooting. Ms. Hall brought the bullet fragment to the State's Attorney's Office in September of 1991.

Ms. Hall did not give any details of the incident until April of 1993, even though the Assistant State's Attorney previously attempted to speak to her about the incident. When she did decide to cooperate, Ms. Hall picked defendant's photograph out of an array along with Javan Deloney's.

Detective Michael Kill testified that he brought Brenda Hall to the State's Attorney's Office on April 1, 1993. Ms. Hall was shown photographs, which included the photographs of defendants Milsaps, Bays, Smith, and Maurice Deloney.

Allen Epton<sup>1</sup> testified that he knows defendant and identified defendant in court. On August 7, 1991, Mr. Epton was shot in the foot when gunfire from a cab struck him. Mr. Epton identified a photograph of the cab that was found abandoned and full of spent casings on Parnell Avenue.

Mr. Epton testified at trial, that during the shooting, he could not tell how many shots were fired and could not see who was firing the weapons. Mr. Epton was then shown a four-page document, which contained his signature

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<sup>1</sup> Epton explained that his surname is actually "Eppting." Due to the fact that, throughout the majority of the record, Eppting is referred to as "Epton," the People will continue to refer to him as "Epton" in order to avoid confusion.

on all four pages. Mr. Epton stated that he signed the document because certain people threatened him around his house, specifically members of his gang. Mr. Epton did admit that he made the statement and that in it he identified defendant as being in the back passenger side of the cab and in fact, that defendant was the only person whom he could identify. (Vol. 8, 1158-1159) Mr. Epton said that he signed the statement because he was young and scared. Mr. Epton's statement recounted that he was kneeling down by Ms. Hall's car and then started to walk to a restaurant when he heard shots. He saw Ms. Hall grab her baby and duck down in the car. Mr. Epton did see a cab midway between his two women friends' cars. Mr. Epton admitted making the statement at the office of a co-defendant's attorney's office. In that statement, Mr. Epton stated that he saw defendant in the back passenger side window of the cab. At trial, however, Mr. Epton stated that he was unable to see anyone because it was too dark. Mr. Epton also stated that he lied when he told the police that Maurice Deloney was also in the back of the cab.

Mr. Epton told the police that he did not see anything when they first spoke to him while he was being treated at the hospital. The day after the shooting, Mr. Epton gave the police officers names of rival gang members, (Ivan Smith, Ollie Bays, and Pete Deloney), but not defendant's name.

The third time that Mr. Epton spoke with the police, they showed him photographs, including a photograph of defendant. Mr. Epton said that he did not identify defendant in that photo array. Mr. Epton had not mentioned

defendant to the police, but told the police that he recognized defendant because he knew defendant.

Mr. Epton was serving a six-year sentence for armed violence at the time of trial. While incarcerated at the county jail, Mr. Epton was brought over to the State's Attorney's Office two or three times. Mr. Epton stated that in those meetings, he told the Assistant State's Attorney that he did not see who was shooting. Mr. Epton was asked to cooperate, but did not and still received the minimum sentence. The parties stipulated to Mr. Epton's statement of July, 1992. In that statement Mr. Epton was asked if defendant was the only person whom he could positively identify. Mr. Epton answered affirmatively. The People then rested in their case-in-chief.

Defendant presented his case. The parties stipulated that if Detective Maslanka was called to testify that he would state that he interviewed Dewitt Watkins. Mr. Watkins told the detective that he saw about seven shots come from the rear of the cab and none from the front of the cab.

Detective Maslanka also interviewed Marcus Taylor who stated that he would not identify anyone, but would provide information. Mr. Taylor stated that he was very afraid and apprehensive. Mr. Taylor told the detective that he saw the rear window of the cab go down and a passenger get out and start shooting. Mr. Taylor gave a description of 2 male blacks, one with a baseball cap and a hood. Mr. Taylor did not mention a front passenger or defendant. Detective Maslanka also spoke to George Cruthird who stated that he saw shots fired from a cab and from a gangway across the street. The parties also

stipulated to Assistant State's Attorney Marbeck's testimony that he spoke to George Cruthird on June 8, 1993, and Mr. Cruthird stated that he saw the people in the cab start shooting when they were three houses away from the building where he stood. Mr. Cruthird acknowledged that the State's Attorney's Office would recommend that he be placed somewhere other than Stateville or Pontiac. Defendant was found guilty as charged in the indictment. (Vol. 8, 1236-1239, 1247-1267, 1267-1274, 1277)

### **Post-Trial Motions**

Defendant filed a motion for a new trial based upon newly discovered evidence in the form of the recantation of his trial testimony by Marcus a.k.a. Shawn Taylor who previously testified for the People. An affidavit from Taylor was filed and an attorney was appointed to represent him and this attorney advised Taylor of the consequences of admitting that he perjured himself at trial. Taylor was sworn and testified before the trial court.

Taylor testified that when he was shot on Peoria Street that he did not see defendant in the cab. Taylor also testified that he did not see photographs of defendant until he was taken by Detective Kill for the first time to the State's Attorney's Office in April of 1993.

Taylor said that when he went to the State's Attorney's Office he was told that it was known that Taylor had information based upon a police report. When Taylor denied knowledge of the shooting, he was taken into a room and shown photographs of defendant and the cab. (Vol. 9, 1309-1311) After a

while, Taylor agreed to testify and gave a court-reported statement, which was false.

On the day of trial, Detective Kill took Taylor to the State's Attorney's Office, where Taylor said that he would not testify. According to Taylor, the Assistant State's Attorney told him that he would be locked up for contempt if Taylor refused to testify. The Assistant State's Attorney asked Taylor if "they" had gotten to Taylor. Detective Kill promised Taylor that he would be safe on the streets if Taylor would testify. Taylor was shown three photographs of defendant and one photograph of the cab and was rehearsed for his testimony. Taylor testified against defendant at the trial. At the post-trial hearing, Taylor said that he was actually laying face down at the time of the shooting and did see the shooters. Taylor denied that he was threatened in order to change his trial testimony and he denied being promised anything to recant. Taylor stated that he came to court with his older brother.

During cross-examination, Taylor denied coming to court with a courtroom spectator who was wearing a gold medal on his neck. At first, Taylor denied going to the hospital after the shooting, stating that he was told to lie about this by the People. Taylor then admitted that he did in fact go to the hospital, but avoided the police there. When Taylor did speak to the police, he gave his brother's name because he did not want to be involved.

Taylor admitted the 1991 shootings involved Gangster Disciples being shot at by Black Disciples. Taylor also admitted that there was currently a truce between these gangs. When asked if part of the truce was an

agreement to change testimony, Taylor became agitated, and gave the nonresponsive answer that he did not see anything. Taylor was asked again if part of the truce agreement was Taylor's recantation. Taylor did not deny that recantations are common in a truce situation, but said that the truce was not the reason that he was changing his testimony.

Taylor admitted that he told the police at the hospital that he would not identify anyone. Taylor also admitted that he avoided the police who were looking for him during the pendency of defendant's case. Taylor admitted that he had known defendant for his entire life and would see him often.

Taylor denied that he told Detective Kill to pick up Taylor for court in a non-police vehicle, because he did not want the Black Disciples to know that he was testifying. Taylor also denied telling Detective Kill that gang members were watching him and told him that if he testified that he was dead. Taylor denied asking Detective Kill for an escort to his car after testifying but admitted that the detective did escort Taylor, his girlfriend and child after Taylor's testimony. Taylor admitted that his cousin wanted him to testify. Taylor also conceded that his written statement said that he had not been promised anything or threatened. Taylor also admits that his own handwriting on the written statement adds the fact that "Alonzo" is one of the people that will kill Taylor if he testifies. Taylor denied at the post-trial hearing that he was actually concerned for his safety at the time that he made the statement.

Taylor stated that he saw defendant's attorneys and asked for their card and called them on his own. Taylor also stated that he went to

defendant's mother's house and got the attorney's phone number. Taylor attempted to reconcile these two versions by saying that he both received the attorney's card at the courthouse and went to defendant's mother's house.

Taylor denied telling Rhenardo Bussle's mother that he was being forced to change his trial testimony. Taylor also denied telling his aunt that he was offered money to recant. The Assistant State's Attorney asked the record reflect that Taylor left the courtroom with the spectator wearing the gold medal whom Taylor had denied knowing.

The People called Rhonda Bussle who explained that her son was one of the deceased victims in this case. Taylor is her cousin and a witness in the case. In April of 1994, Ms. Bussle told Taylor that he must talk to the Assistant State's Attorneys about the case. In their discussions, Taylor told Ms. Bussle that defendant committed the shootings.

On July 18, 1994, Ms. Bussle spoke to Taylor on her porch in the afternoon. Taylor told her that he was being forced to change his statements. Taylor said that he was scared but did not state whom he was afraid of. Taylor admitted that he signed papers in defendant's attorney's office.

Ms. Bussle was angry with Taylor and told him that he could not be part of the family if he changed his testimony. Taylor repeated that he was scared. Two days later, Ms. Bussle spoke to Taylor in the hallway of the courthouse. Taylor told Ms. Bussle that "they" brought him to court and forced to go to court. On September 22, 1994, Ms. Bussle encountered Taylor again, this time with her thirteen-year-old son present. Taylor told her that he had to

go to court and that he may get one-to-three years for perjury. Taylor stated that he had been offered money but would not say by whom. Taylor said that he was being forced to go to court and was being brought to court against his will. Taylor said that the whole neighborhood was talking that defendant killed her son. Ms. Bussle told the Assistant State's Attorneys about her conversations with Taylor.

The People also called Detective Michael Kill at the hearing. Detective Kill testified that on April 8, 1994, after Taylor gave his court-reported statement in the State's Attorney's Office, Taylor expressed fear for his safety. Specifically, Taylor stated that he was afraid that the Black Disciples would kill his girlfriend and his son. Taylor was also afraid that the gang would have Taylor killed on the street.

Taylor gave Detective Kill the addresses of his aunt, his baby and his mother whom he felt were all targets due to his cooperation. Detective Kill offered to have Taylor's relatives moved for their safety. On May 9, 1994, Taylor told Detective Kill to pick him up at 752 West 69th Street at 8:15 a.m.. Taylor also told the detective not to use a police vehicle when he came for Taylor. Detective Kill used his own vehicle, a Jeep. When the detective arrived at the address, Taylor's girlfriend said that Taylor would need a few more minutes. Detective Kill conversed with Taylor's girlfriend who asked the location of the courtroom where Taylor would be testifying. She said that she preferred to drive herself to court.

When Taylor came out, he told Detective Kill that he was afraid that they would be ambushed if gang members saw a squad car at his address. Taylor also said that Black Disciples were waiting for him to come out and that they were not going to let Taylor go to court. Detective Kill became angry because he saw someone watching him, standing at the corner. Detective Kill saw someone walking back to the corner from Kill's Jeep. Detective Kill asked Taylor what this person was doing and Taylor told him the gang members were waiting on the corner as well as near a garage across the street. Detective Kill was upset with Taylor for jeopardizing the detective's safety.

Taylor told Detective Kill that while he was talking to Taylor's girlfriend, gang members came up to Kill's Jeep where Taylor was sitting. These people told Taylor not to testify "or else." Detective Kill was angry because Taylor did not tell the detective that he was in the middle of an ambush situation until they had left the area. Detective Kill received the first names of the people who threatened Taylor while he sat in the Jeep. Detective Kill did not follow up on the matter as Taylor insisted that it go no further. Detective Kill was livid because his Jeep had no radio on which to call for assistance. When Detective Kill arrived at court he told the People's attorneys what had happened.

After Taylor testified, Detective Kill walked Taylor, his girlfriend and child to their car. Detective Kill made sure that no one was following them. Defendant has a brother named Lonzo, whom Taylor had expressed fear of in his court-reported statement. The trial court denied defendant's motion for

a new trial stating that even if it had heard Taylor's recantation testimony during the trial, it still would find defendant guilty.

### SENTENCING

Judge Strayhorn presided over defendant's original sentencing hearing and found defendant eligible for the death penalty. After hearing aggravation and mitigation evidence, Judge Strayhorn found no mitigating circumstances sufficient to preclude the imposition of the death penalty. It was subsequently discovered, however, that defendant had not waived a jury for sentencing purposes. Therefore, a second sentencing hearing was presided over by Judge Colleen McSweeney Moore and defendant chose to have a jury deliberate as to his sentence. As to the eligibility phase, Judge Earl Strayhorn testified that beginning on May 6, 1994, he presided over defendant's bench trial. Judge Strayhorn identified a certified copy of defendant's convictions resulting from that trial. Assistant State's Attorney David Lavin testified that in September of 1992, he prosecuted defendant in front of Judge Theis, on case number 90CR-22854. Defendant was convicted of the murder of Ralph Jackson, being found guilty of two counts of murder. David Lavin identified certified copies of the murder convictions. Defendant's birth certificate was entered into evidence. The jury found defendant eligible for the death penalty and was polled.

Carolyn Fair testified that she is a nurse and a realtor. In September of 1989, Ms. Fair had a brother named Ralph Jackson. Mr. Jackson, her brother was 29 years old and worked at a meat packing company.

Mr. Jackson had two daughters and a son. The week before his murder, Mr. Jackson took Ms. Fair to a rental car agency. Later that week, Ms. Fair received a telephone call in the early morning hours from the hospital. Ms. Fair was very upset and her children counseled her not to go to the hospital alone, so she proceeded to her father's house. At her father's house a telephone call was received from her sister-in-law, telling them that Mr. Jackson had died. Ms. Fair identified a photograph of Mr. Jackson and the parties stipulated that she would identify a photograph of Mr. Jackson that was taken at the morgue.

Karen McDonald testified that on September 2, 1989, she was 19-years-old and living on the south side of Chicago. At 3:00 a.m, Ms. McDonald was leaving the Surf Lounge at 68th and Halsted Streets and was heading to a restaurant across the street. Ms. McDonald was walking with a friend when she noticed a fist fight in progress in front of the restaurant. Neither participant in the fistfight had a weapon visible. Suddenly, a man jumped out from the side of the restaurant.

This man, identified as defendant by the witness, had a machine-gun type weapon with a long clip in it and a barrel that had holes in it. Defendant aimed the machine gun at the two men who were fighting. One of the struggling men got up and started to run away. Defendant aimed at the running man and shot at him. The victim had his back turned to defendant as he was shot. Defendant continued to shoot at the victim as the victim tried to get across the street. Defendant fired approximately three to five shots at the victim. Ms. McDonald did not hear any words exchanged between defendant

and the victim. The victim ended up lying on the ground in front of the lounge.

Defendant fled and Ms. McDonald attempted to calm the victim as he lay bleeding from different areas all over his body. Ms. McDonald did not see where defendant fled. The victim was trying to talk and to get up. Ms. McDonald tried to keep the victim lying still and was holding his hand. Ms. McDonald thought that the victim had expired by the time the ambulance arrived. Ms. McDonald learned that the victim had indeed died and spoke to the police. Ms. McDonald told the police that she could identify defendant and was relocated out of fear for her safety. Ms. McDonald spent two weeks in a hotel at the State's Attorney's Office's expense and also received her first month's deposit and rent from the office totaling 750 dollars.

Ms. McDonald subsequently moved to Little Rock, Arkansas. While living there, she pled guilty to two cases of forgery involving checks and received probation. The State's Attorney's Office paid for Ms. McDonald to come to Chicago to testify. In September of 1992, Ms. McDonald testified in a separate proceeding that the victim and defendant were involved in a fight during which defendant pulled out a gun.

Officer Thomas Richardson testified that in 1989 and 1990 he was a gang crimes officer at the 51st and Wentworth police area, which includes 68th and Halsted. Officer Richardson explained how the police monitor gang activity by talking to the gang members on the street and by getting information from neighborhood residents, school officials, church members, and other law enforcement groups. Prison gangs are also monitored.

Information gathered is entered into computer databases. Attempts are made to determine which gang controls a certain area by identifying what gang members are prevalent via their clothing tattoos and graffiti.

Officer Richardson was aware of the murder of Ralph Jackson (described by Ms. McDonald above) and learned that defendant was the shooter. During this investigation, as well as others, Officer Richardson learned that defendant was a high-ranking member of the Black Disciples, the predominant gang in Englewood. Defendant was wanted for the murder of Ralph Jackson, but could not be located.

One year after Mr. Jackson's murder, Officer Richardson received information that defendant could be located at 6205 Cottage Grove Avenue. When the police went to the address on September 7, 1990, a man named Smith answered the door and the police saw defendant running through the rear of the apartment. Defendant hung out of an upstairs window and then dropped to the ground and was arrested. On the ground next to defendant was a clear plastic bag containing 174 packages of suspect cocaine. In the bedroom where defendant had been staying, a nine-millimeter semi-automatic weapon was recovered as well as a .38 caliber Taurus weapon. Both weapons were fully loaded. Defendant was arrested but made the 250,000-dollar bond that was set. Officer Richardson testified at defendant's trial where defendant was convicted and sentenced to 40 years for the murder of Ralph Jackson on October 26, 1992.

Officer Richardson identified the Narcotics recovered on defendant's arrest and the laboratory report confirming that the 174 bags contained 19.48 grams of cocaine. The officer also identified the guns recovered from defendant's room and a photograph of defendant. The photograph depicted a tattoo on defendant's upper chest of the grim reaper with "BDN" written underneath it which the officer testified signifies defendant's membership in the "Black Disciple Nation." On defendant's arm is a tattoo of a devil holding up three fingers, which is also representative of membership in the Black Disciples. On defendant's back is a bulldog firing a semi-automatic weapon and holding a bag, which represents "property" and the gunfire, represents the willingness to protect the gang's property. Rhonda Bussle testified that on August 7, 1991, she had three children including her 13-year-old son, Rhenardo. Ms. Bussle saw her son that evening between 7:00 and 8:00 p.m., then he left their home. Later that night, Ms. Bussle heard gunfire. A person came and told her that Rhenardo had been shot. Ms. Bussle went down the street to where she found her son laying in a doorway in the 6500 blocks of Peoria Street. She accompanied him to the hospital where he was pronounced dead. Ms. Bussle identified a photograph of her son.

Rosalee Coleman testified that in August of 1991 she had two children, one of whom was nineteen years old and named John. (Vol. 13, 547-548) Ms. Coleman saw her son the day before he was murdered and then received a call from the hospital. By the time that Ms. Coleman arrived at the

hospital, John Coleman was dead. Ms. Coleman identified a photograph of her son.

Clemmy Archibald testified that she had a son named Gregory who was seventeen years old on August 7, 1991. Gregory went to the store at about 11:00 p.m., and a short time later Ms. Archibald heard gunfire and saw people running down the street. Ms. Archibald's niece informed her that her son had been shot and Ms. Archibald went to 71st Street to find him lying dead inside a restaurant. Ms. Archibald also identified a photograph of her son. As to Ms. Archibald, Ms. Coleman, and Ms. Bussle, the parties stipulated that the women would identify morgue photographs of their sons.

George Cruthird testified that he is serving a fifteen- year sentence for possessing 2500 grams of cocaine. On August 7, 1991, Mr. Cruthird was at an apartment building located at 65th and Peoria at approximately noon. Mr. Cruthird, a member of the Gangster Disciples, was performing drug transactions at that time.

Mr. Cruthird testified that a Chevette drove up and when it paused, he saw that the driver was Ivan Smith, a.k.a. "Tojo," a rival member of the Black Disciples. Two shots were fired at Ivan Smith's car. At 11:00 p.m., Mr. Cruthird was in front of the same building with "Romey" a.k.a. Marcus Taylor, and "Buzz" a.k.a. Rhenardo Bussle. All three young men were members of the Gangster Disciples. At this time, they saw three cars slowly approaching. The middle car was a taxicab with its headlights off but its roof sign light up. The cab slowed and the windows were rolled down and gunfire

came from the cab. Mr. Cruthird recognized Ivan Smith and defendant in the cab. Both men were Black Disciples, whom Mr. Cruthird's gang was feuding with that summer.

Mr. Cruthird pulled Taylor down and he squatted down on the sidewalk. Mr. Cruthird felt a burning in his back. Mr. Cruthird then ran to the gangway and saw Bussle fall back into the doorway. Gunfire was bouncing off of the walls in gangway. Mr. Cruthird was shot in the jaw and in the back of the head. Mr. Cruthird ran to his mother's house on the next block. Mr. Cruthird was bleeding and went to the hospital. The police tried to learn what happened from Mr. Cruthird, but he refused to give any details. Mr. Cruthird told them that he was bent over to pick up a bag and did not see anything during the incident.

That summer there had been a number of shooting incidents between the two warring gangs. Mr. Cruthird's family lived in the neighborhood and he was concerned that their safety would be in jeopardy if he cooperated with the police. In 1994, Mr. Cruthird was brought to the State's Attorney's Office and signed a statement. A few days later, Mr. Cruthird was sentenced on his narcotics case and received fifteen years. Mr. Cruthird had no agreement with the State's Attorney's Office other than that they recommend that he not be sent to Pontiac or Stateville. Mr. Cruthird was incarcerated at the Illinois River Correction Center at the time of defendant's sentencing hearing. Mr. Cruthird had 21 disciplinary actions against him during his incarceration, mostly for gang activity. Mr. Cruthird is a high-ranking member of his gang.

Dewitt Watkins testified that he was 31 years old and had been employed as a security guard for 7 years. On August 7, 1991, he was in his mother's second floor apartment at 6552 Peoria at approximately 11:00 p.m. Mr. Watkins was sitting in the front window when he saw a cab come slowly up the street. The cab's headlights were extinguished and gunfire came out of the front and back of the cab. Mr. Watkins heard about 10 to 15 shots and heard screams as he lay on the floor. Outside a young boy lay in the doorway. Bullets damaged the window where Mr. Watkins had been sitting and also damaged the walls of his mother's apartment. Mr. Watkins identified a photograph of the cab recovered in the vacant lot. Evidence Technician Patrick Moran testified that he processed the crime scene at 6556 Peoria. He described the area as housing multi-story apartment buildings. Officer Moran described bullet damage to the building and to a car parked in front of the building. Officer Moran recovered bullet fragments from the threshold of the building and went upstairs in the building, finding bullet damage in the first floor landing window. There were bullet holes in the walls of a first floor apartment in its living room wall and ceiling. There was a bullet hole in a window near the bed where the resident was sleeping with her child with a corresponding bullet hole in the wall of the adjoining bedroom. The resident was visibly upset and shaken. On a third floor windowsill, Officer Moran recovered a box of 8 live rounds of nine-millimeter ammunition.

Officer Moran went to the adjoining building to the north and discovered bullet damage to a first floor window. On the second floor, Officer Moran met Dewitt Watkins and his mother and examined the bullet damage to their apartment. Officer Moran photographed and inventoried the evidence recovered and damage discovered.

Officer Moran then received the assignment to process the cab recovered at the vacant lot at 6801 Parnell. Keys were on the roof the rear windows were partially down, the steering column was peeled and a large quantity of spent casings were in the back passenger area of the cab. Officer Moran inventoried recovered evidence and photographed the cab.

Brenda Hall testified that in August of 1991, she had one son named Jonathon who was eight months old. On August 7, 1991, at approximately 10:30 p.m., Ms. Hall was with her cousin, Marcella Scott, when they decided to visit Allen Epton at 71st and Parnell. Ms. Hall and her son drove over in her red Cavalier, while Ms. Scott drove her white Camaro.

The women saw Mr. Epton and pulled over on 71st Street. Ms. Hall talked to Mr. Epton for five to ten minutes while seated in her car. Mr. Epton then walked back to Ms. Scott's car and said spoke to her. Mr. Epton had started to walk to a nearby store when gunfire erupted. The gunfire sounded like fireworks and was coming from behind the women's cars. Ms. Hall turned and saw a cab with gunfire coming from it. Defendant (whom Ms. Hall identified) was firing from the front seat area. Two people were firing from the cab, which had its headlights extinguished. Ms. Hall's baby was screaming

and she was bent over him. After approximately 20 shots were fired. A shell casing was on the floor of Ms. Hall's car. The shooting stopped and Ms. Hall raised her head again. She saw a boy laying on the sidewalk bleeding and asking for help. Two other people were injured, including Mr. Epton. One victim was by the store and the other by the restaurant.

Mr. Epton asked Ms. Hall to go to his aunt's house and tell her that he had been shot. Ms. Hall and Ms. Scott drove to the other end of Parnell and asked each other if they were all right. There were 3 bullet holes in Ms. Hall's car and Ms. Scott's back window had been shot out and her car had a bullet hole in it as well.

The women did not talk to the police on the night of the shootings because they were afraid. On September 6, 1991, Ms. Hall went to the State's Attorney's Office and gave the shell casing to the Assistant State's Attorney. Ms. Scott was with her and photographs were taken of the women's cars, but Ms. Hall still refused to discuss the incident. On April 1, 1993, Ms. Hall went to the State's Attorney's Office again. This time, Ms. Hall told the details of the incident and identified two photographs of the offenders. Ms. Hall chose to talk at this time because she was offered relocation opportunities. Ms. Hall was given her first month's rent plus a security deposit (750 dollars) and 150 dollars for moving .

Robert Smith, an expert firearms examiner testified that he reviewed the evidence recovered in this case. Mr. Smith found that bullet fragments recovered from the crime scene were nine-millimeter in caliber. The

8 live rounds recovered from the third floor windowsill of the building on Peoria were nine-millimeter in caliber. From the back of the cab, 60 nine-millimeter casing were found. Of this 60, four were definitely fired from the same gun. A casing recovered at the 71st Street crime scene was fired from the same gun as the four casings recovered from the cab. The bullet recovered from John Coleman's body also came from this same gun.

Captain James Hatcher of the Cook County Department of Corrections testified that on August 15, 1993, he monitored a call for help from one of his staff and was informed of a possible riot in Division One, the maximum-security unit of the jail. When Captain Hatcher arrived, Superintendent Carey was attempting to negotiate with a group of inmates on tier F-1. These inmates had prepared themselves for combat. The inmates had used soapy water to make the floor slippery; they had torn up furniture to make weapons; they had used debris to build barricades; and they had made head and arm protectors out of Styrofoam and towels. Defendant was not only a participant, but was a leader in the riot. As the officials attempted to negotiate a peaceful end to the situation, defendant kept telling the other inmates not to leave and to stand together. Defendant was carrying a bottle with the neck broken off and a 30-inch metal rod from a table. As Captain Hatcher was telling the inmates to go into their cells, defendant was telling them to disobey and stand together. Defendant was shouting obscenities.

The riot started when officers tried to transfer an inmate off of the tier. Defendant did not want the inmate to be moved. After nearly two

hours, the order to retake the tier was given. The corrections officers divided into two groups: one to enter each door of the tier. First, the officers had to deconstruct a barrier of wires and ropes from the gates to the tier. As Captain Hatcher was attempting to take down the barrier, defendant doused him with a liquid chemical cleaning agent. The tier was eventually returned to the officers' control. After disciplinary proceedings, defendant was given 29 days in segregation, which the most serious penalty that an inmate can receive.

Doctor Edmund Donoghue testified that he reviewed the report prepared by Doctor Mary Jumbelic concerning the autopsy she conducted on Ralph Jackson. Mr. Jackson was shot in the left side of his back with the bullet traveling through two ribs, his left lung, his right lung, and exiting through his front right chest. Mr. Jackson was also shot through his the right arm. A third gunshot wound penetrated the abdomen, bowels, and exited the opposite side of the abdomen. Mr. Jackson also had a bullet wound to the right arm and the bullet was recovered from under the skin of his arm. Ralph Jackson died of multiple gunshot wounds.

Dr. Donoghue also testified concerning the autopsy conducted by Dr. Kirschener of Rhenardo Bussle. Mr. Bussle had a gunshot wound to the right lower back, which penetrated the abdomen, pancreas, stomach, diaphragm through the chest cavity, exiting the left chest. Mr. Bussle also died as a result of gunshot wounds. Dr. Donoghue was present for the autopsy of Gregory Archibald conducted by Dr. Ethel Dijacamo. A gunshot wound to Mr. Archibald's head caused major injury between the two hemispheres of the

brain and through the corpus collusum. The bullet exited the upper forehead. Gregory Archibald died as a result of a gunshot wound to the head. Dr.

Donoghue also supervised Dr. Dijacamo's autopsy of John Coleman. A gunshot wound penetrated his left chest, his lung the ventricles of his heart and his aorta. The bullet was recovered from under the skin of his arm.

County Correctional Officer Darren Angel testified that on August 15, 1993, he saw inmates preparing for a riot in tier Division One. The inmates were arming themselves putting blankets around their heads and arms and were throwing soapy water on the floor. The inmates had toilet bowl cleaning chemicals to throw and had fashioned shanks. Various people tried to negotiate with the inmates, including the jail's executive director. After hours, the officers started to retake the tier. Officer Angel was familiar with defendant from previous contacts and witnessed giving orders to other inmates during the riot and standoff. During the riot, defendant was making sure that the inmates stayed in the dayroom next to the entrance of the tier. Every time inmates who did not want to be involved would attempt to leave the tier, defendant would order other inmates to stop them by closing the gate. If inmates went into their cells (as officials were requesting), defendant would make them come out of their cells again.

Defendant used abusive language and was boisterous. Defendant was in control of the other inmates. Defendant had a metal pipe weapon and was covered with padding. When the executive director gave the order to retake the tier, defendant told the director that if he entered the tier,

that defendant would make the director his "bitch." Officer Angel went to the hospital to be treated for an asthma attack after chemicals were poured on him during the retaking of the tier.

Officer Michael Meyers of the Cook County Department of Corrections testified that on the day of the riot he was one of the first officers to enter the tier to retake it. As he reached the gate to the tier, he began cutting down sheets placed there. The first three officers to attempt to enter were repeatedly struck with metal bars whenever they attempted to enter. Officer Meyers was the first officer to make it into the tier.

Officer Meyers had on a helmet and carried a shield and baton. As he attempted to allow the other officers to get through the inmates' barricade two inmates attacked him. While one inmate struck him in the leg with a bar, the other struck at the officer's shield. Eventually the shield disintegrated. Officer Meyers thought that he was going to die but other officers started to get through and his attacker retreated.

Later, after the tier and another outbreak on an upper deck were brought under control, Officer Meyers determined the extent of his injuries. Officer Meyers suffered severe bruising on his biceps and upper thigh. Years after the riot, Officer Meyers still had bruising on his thigh from the repeated blows. Approximately 26 to 29 shields were damaged or destroyed in that riot. Officer Meyers was unable to see who was striking him from behind and the attacker facing him had his face covered with a sheet.

Officer David Zelig testified that on November 13, 1992, he was escorting defendant when he noticed that two other inmates were following too closely behind him. Officer Zelig ordered the inmates to stay back but they disregarded the order. One of the inmates slapped the officer's hand as he extended it. Defendant then grabbed the officer from behind, pinning the officer's arms down. The other two inmates repeatedly struck the officer over the head and body, as defendant was holding him. Officer Zelig yelled for help and was aided by other officers. Officer Zelig's ear was bruised and he suffered head injuries. Defendant received the maximum 29-day sentence of segregation after a hearing. Cook County Correctional Officer Gerald Walton testified that he responded to Officer Zelig's call for help. Officer Walton observed defendant hitting Officer Zelig. Officer Zelig and the three inmates all fell to the ground. Officer Walton's hand was injured as a result of breaking up the attack. Officer Walton was also present for the August 15th riot and saw defendant telling officials that they would not lock up and if any official entered, that they would be hurt. Detective James O'Brien testified that on August 7, 1991, he received a broadcast of people shot at 6556 Peoria Street. The detective learned that a red and beige cab was involved in the shooting and this cab was located in a vacant lot at 68th and Parnell. (Vol. 15, 837-840)

Detective O'Brien saw numerous spent casings in the rear of the cab, observed that the steering column was peeled and that the engine was still hot. He then interviewed Delores Scroggins who saw the cab, heard gunshots and then saw the same cab park in the lot. Ms. Scroggins saw one

male black exit the cab. Detective O'Brien learned that the cab was stolen earlier that day. Detective O'Brien then went to 71st Street and learned that three people had been shot. On the sidewalk, was John Coleman, who had been shot in the chest. Gregory Archibald was shot in the head in front of a restaurant. Allen Epton was shot in the foot. Detective O'Brien went to the hospital and learned that Coleman and Archibald were dead. The detective spoke to George Cruthird concerning the Peoria Street shooting, but Cruthird was evasive and said he dropped a bag. Detective O'Brien spoke to Javan Deloney and started looking for defendant. The detective looked for defendant or either of his cars: a BMW or an Eldorado. The detective also looked for Ivan Smith and his gray Chevette.

On August 9, 1991, Detective O'Brien found Smith's Chevette, which had bullet hole in the front window and two bullet holes in the passenger door. The car was registered to Ivan Smith. Before they could impound it, the Chevette disappeared. On March 10, 1993, they found the car again with duct tape over the bullet holes. It was still processed by technicians

Officer Dennis Cullom testified that he arrested defendant on August 13, 1991, at the courthouse. On that date he spoke to defendant after defendant was searched and money was recovered from his person. Defendant interrupted his Miranda warnings twice stating that he knew his rights. Defendant told the officers that he had 1200 dollars, which he did. Defendant stated that he got the money from selling drugs. Defendant told the officers to hurry up because he would make bond no matter what amount

was set. Defendant then asked the officers if they had seen his new 30,000 dollar Cadillac. Defendant just smiled when asked if he paid cash for it. A drug-sniffing dog indicated on the money which defendant had in his possession and the officers notified the asset forfeiture unit.

Ronald Hinton testified that he is the records keeper for the Cook County Department of Corrections. He explained the procedure for disciplinary hearings, which includes the generation of a report, and then a hearing by an administrative board. If the allegations are founded, an inmate can receive a verbal reprimand or segregation up to 29 days. On July 17, 1992, drugs were found in defendant's shoes and he received 10 days in segregation. On November 13, 1992, he received 29 days for assaulting Officer Zelig. On December 26, 1992, defendant possessed marijuana and received seven days.

On August 15, 1993, defendant refused to obey an order, which resulted in the riot described above. Defendant received 29 days. (Vol. 16, 903-905) On May 6, 1995, he received five days for disrespectful and abusive language. On December 5, 1995, he received seven days segregation for fighting with an inmate. On December 18, 1995, defendant refused to stand count and received a verbal reprimand. On January 31, 1996, defendant refused three times to obey an order to lock up and get off the phone and used obscene language. Defendant received seven days segregation. On February 15, 1996, defendant was found to be in possession of an unknown substance and received seven days segregation. The People then rested in aggravation.

William Doyle, the Superintendent of Reception at Joliet Correctional Center testified that on December 20, 1993, he observed the inmates returning from the dining hall because they had been having problems with the inmates refusing to go back to the cellblocks. On this date, a group of inmates refused to go in the cell house. The two inmates who were inciting the others were handcuffed. Some of the same group began to move towards the cellblock.

Once the two were handcuffed, others started to fight the guards. More guards were called and tours conducted by armed guards were initiated. The several guards who were fighting the 20 to 25 inmates, had no weapons other than chemical sprays. A warning shot was fired by the armed tour. This is considered a serious situation at the facility and the shot is considered a drastic measure with potential for injury to both guards and inmates. Later, the superintendent learned that the officer who took a group into the cellblock, Officer Nance, had been assaulted. The superintendent called in several inmates who were identified as the ringleaders of the riot, including defendant. Defendant not only was uncooperative, but also threatened the superintendent's life. Defendant told the superintendent to enjoy his life because it was going to be short. Defendant was disciplined for this incident. Illinois Department of Corrections Officer Samuel Nance testified that on December 20, 1993, he was moving inmates from the dining hall, when they refused to enter the cellblock. Two inmates were cuffed at the superintendent's direction and Officer Nance then moved 15 inmates into the

cellblock. As the group climbed the stairs, defendant moved ahead of the guard. Defendant met Officer Nance on the stairs and said that they were going outside. There were five to seven inmates standing behind defendant. Officer Nance ordered defendant back up the stairs. Defendant replied that they would not go upstairs but that they were going to go outside with the rest of the inmates. Defendant then shoved Officer Nance backwards, causing him to fall down a couple steps. Officer Nance then sprayed the group with chemicals. The group of inmates ran back upstairs and Officer Nance pursued them. Defendant stated that he could not see and Officer Nance held defendant until handcuffs were brought to him. Officer Nance put the handcuffs were placed on defendant. The guards escorted defendant to the superintendent's office.

As defendant was escorted to the superintendent's office, defendant told the inmates in the gallery to yell if anyone was locked up or if anyone was not returned to their cell that evening. Defendant threatened that the inmates were going to "rock this place" if any one was locked up. Defendant was locked down that night. James Utley, the Records Division Supervisor of Dixon Correctional Center, described the record keeping process and disciplinary hearing process. On November 19, 1993, defendant was processed into the penitentiary system at the Joliet Correctional Center. Defendant committed nine violations, all considered major, during his incarceration.

On December 4, 1993, defendant violated rules against arson, gang disturbances, misuse of property and gang activity at Joliet. On that date, defendant set off the fire alarms four times. When defendant's cell was searched, papers containing scheduling information for the different Illinois prison facilities.' This information included a map of Illinois, with the marked locations of the correctional facilities, their security classification, call radio numbers, and the days on which transfers were to take place. This information is classified, highly confidential, and its dissemination to civilians or inmates is considered an extreme security risk because it would allow interference with the transfer of prisoners. Defendant was demoted to Grade "B" status for two months and denied commissary privileges for two months.

Defendant was given a reprimand after failing to return to his quarters after a meal. Defendant was guilty and received a reprimand for wearing clothing, which indicated that he resided in a different cell house than the cell house where defendant resided. On December 20, 1993, defendant received three months segregation for throwing burning objects into the gallery and also received a demotion to grade "C" status. On the same date, defendant assaulted a person, caused a gang disturbance, used intimidation, threats and violence and was insolent. This was also the date on which defendant threatened the superintendent's life. Defendant had one year of good time credit revoked, received one year of segregation, and a negative transfer was recommended. On November 4, 1994, defendant refused to be stripped search and was demoted to Grade "C" for two months. On

November 10, 1994, defendant engaged in sexual misconduct in the visiting room and received three months segregation and a three-month demotion to grade "C." On November 11, 1994, defendant refused to be strip searched after visiting with his attorney and received a 15-day segregation and a demotion to grade "C" for three months. On November 16, 1994, defendant again refused a strip search and received the same sentence.

Mr. Utley explained that an inmate on death row is in his cell 23 hours a day and is chained and accompanied by two staff members when moved. An inmate serving a natural life sentence enjoys the same benefits offered by the system as any other inmate. Generally, inmates serving long or natural life sentences are the most difficult to deal with because they do not care about further punishment. The People rested in aggravation and defendant elected not to testify.

Defendant called some family members in mitigation to testify that he was helpful and not violent as well as jail personnel to testify that defendant was injured in the riot. The jury sentenced defendant to death.

### **III. REASONS FOR DENYING THE PETITION.**

The evidence set out above, overwhelmingly demonstrates that this inmate would never be a candidate for any type of clemency if not for the unprecedented behavior of the governor. Further evidence of this can be found in the substance of his petition that relies upon formulaic assertions and other generalized materials that have absolutely no application to Brooks case. This is the status quo for any litigation by Brooks', which consistently turns a blind

eye to his own guilt and history of violence. Instead, Brooks' can be counted upon to divert attention with rhetoric on matters that are not even remotely relevant to his case.

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 that 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. It is obvious that Brooks has simply adopted boilerplate arguments here.

#### 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.

Specifically, the privately retained counsel of his choice at trial represented petitioner. Trial counsel is a veteran defense attorney whom Brooks chose to represent him in both his murder trials. While depositions were not required at the time of trial, the main witnesses gave written or court-reported statements.

#### Adequate Funding

Brooks fails to identify what witnesses or investigation he was deprived of with the exception of an expert on "eyewitness testimony." These types of witnesses have no legitimate basis of expertise and merely seek to invade the

province of the jury. 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.

As to line-up or photographic identification procedures, the trial court heard extensive testimony and found the procedures proper. The court found nothing suggestive about any of the procedures and these decisions were affirmed by the supreme court. If Brooks' logic were adopted, every criminal conviction ever rendered would be overturned as the proposals concerning identification listed on page 12 of his petition have never been utilized. The safeguards against suggestibility already in place are wholly sufficient, especially in case such as this where three of the four identifying witnesses knew Brooks from previous contacts.

#### Eyewitness Expert Testimony and Instructions

Brooks contends that his jury did not receive an instruction regarding eyewitnesses proposed by the Ryan Commission. Current instructions are sufficient and the proposal improperly highlights a single type of evidence.

As to an eyewitness expert, proposed testimony of this type can only invade the province of the jury. This is especially true where it is well within the ken of a layman to use his own experiences in adducing the ability to observe.

The only true purpose in presenting an “eyewitness expert”, hired by a criminal defendant, would be to tell a jury that the witnesses could not see what the witnesses testified that they did see. Clearly, the jury and only the jury, must weigh this type of evidence.

Finally, Brooks that Ryan Recommendation 65 supports clemency. The Illinois Supreme Court and the federal courts have consistently rejected any claim that the statute and accompanying instruction is confusing and might lead a jury to believe that the death penalty is mandatory. See People v. Mitchell, 152 Ill.2d 274, 346 (1992); Silagy v. Peters, 905 F.2d 986, 998-999(7<sup>th</sup> Cir. 1990). Certainly, where the focus of the penalty stage and the arguments by both sides concerned the appropriateness of the death penalty, any “confusion” in the language of the instruction was negated by these arguments.

#### Decision to Seek Death

Brooks claims his sentenced 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 the Illinois Supreme Court 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.

#### Benefits for testimony

Brooks alleges that clemency should be granted because discussions concerning witness benefits were not reduced to writing. Again, Brooks ignores the fact that any benefit [such as relocation] were fully disclosed to the defense. Such a claim also ignores the fact that both the trial court (and the Illinois Supreme Court) 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 deemed the testimony reliable.

#### Statutory Mitigating Factors

This boilerplate argument is wholly inapplicable to Brooks who is simply a cunning, vicious street criminal. Petitioner complains that his jury was not instructed to consider as statutory mitigating factors the fact that he had a history of extreme emotional or physical abuse and/or that he suffers from reduced mental capacity. However, although the jury was not expressly instructed to consider these factors, it was instructed that mitigating factors include “any reason why the defendant should not be sentenced to death” and that it should consider all mitigating evidence even if it does not pertain to one of the enumerated factors. Illinois Pattern Jury Instruction 7C.06.

#### Allocution

Brooks refused his opportunity to speak at sentencing. Yet, Brooks also claims that clemency is appropriate because he was denied the opportunity to make a statement in allocution at his sentencing hearing. However, as the Illinois Supreme Court stated long ago, “an unsworn statement to the sentencing jury [to be] consider[ed] along with testimony given under oath and the arguments of counsel would at the least confuse the jurors, and might also impair their ability to weigh the aggravating and mitigating factors.” People v. Gaines, 988 Ill. 2d 342, 380, 430 N.E.2d 1046 (1981). Moreover, petitioner was free to testify under oath at his sentencing hearing to explain why he should not be sentenced to death, but chose instead to rely upon his witnesses in mitigation and his attorney’s closing argument. Therefore, he was given every opportunity to present himself to the trier of fact before he was sentenced.

#### Instruction on Alternative Sentences

Brooks’ contentions here are especially meritless in light of the fact that he murdered three people in the present case and also had a prior murder conviction. Petitioner believes that his death sentence should be commuted because the jury was not instructed as to all the possible alternative sentences, including that he could have been sentenced to as little as 20 years imprisonment. However, except in cases where the only alternative is mandatory natural life, such a rule would actually serve to prejudice the defendant. If a jury is told that the defendant could be sentenced to as little as 20 years (even though such a sentence is highly unlikely), the jury might determine that the death penalty is necessary to ensure that he is never released into society. It is for this

reason that current Illinois law requires that juries be instructed not to concern themselves with sentencing issues. Illinois Pattern Jury Instructions 1.01 & 7C.05 The only exception to this rule is that the jury must be informed where natural life imprisonment is the only available option. People v. Gacho, 122 Ill. 2d 221, 522 N.E.2d 1146 (1988). Accordingly, despite the Governor's Commission's recommendation, the fairness of petitioner's sentencing hearing was ensured by not instruction the jury on the available sentencing options.

#### Judicial Override

Brooks asserts that his sentence should be commuted because the judge was not given the opportunity to override the jury's decision to impose the death penalty. Petitioner is wrong, however, because Illinois judges have long had the inherent authority to grant a new trial or sentencing hearing (or even enter a judgment notwithstanding the verdict). Because the trial judge at petitioner's trial denied his post-trial motions, it is clear that the judge would not have overridden the jury's verdict.

#### Supreme Court 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. However, because the Illinois Supreme Court has demonstrated that it will address comparative sentencing arguments whenever they are raised by defendants in capital cases (see People v. Emerson, 189 Ill. 2d 436, 727 N.E.2d 302 (2000); People v.

Palmer, 162 Ill. 2d 465, 491, 643 N.E.2d 797 (1994)) and will vacate a death sentence if it determines that it is excessive in light of the facts of the case and the defendant's background (see People v. Smith, 177 Ill. 2d 53, 685 N.E.2d 880 (1997); People v. Blackwell, 171 Ill. 2d 338, 665 N.E.2d 782 (1996)), it is clear that the only reason the Illinois Supreme Court did not review petitioner's sentence in such a manner is because he did not ask the Court to do so.

### SINGLE EYEWITNESS

As set out in detail above, Brooks was convicted by testimony from a number of witnesses. The representation that there was a single witness is disingenuous.

### **CONCLUSION**

Brooks is a vicious street-gang enforcer who not only takes pride in killing for the gang, he takes pleasure in it. His alarming disciplinary history guarantees prison personnel will be future victims if this killer is returned to the general population. Brooks is simply a ruthless thug who wreaked havoc on a neighbourhood and managed to kill four innocent, unarmed people before his 20th birthday. Brooks gladly accepts his role as an enforcer on behalf of a street gang. Brooks thrives on violence because he has developed an appetite for killing. As a result, Brooks has no place in civilized society, nor should he be released into the general prison population to further endanger personnel and inmates.

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

Respectfully submitted,

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Celeste Stack