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Dear Chairman and Members of the Board:

During the recent hearing concerning the application for clemency by John Spirko board members asked the State's representatives to comment on Spirko's alibi evidence. In response, the State's representatives noted that the evidence concerning Spirko's "alibi" was presented by his lawyers at trial and fully considered and rejected by the jury.

The substance of Spirko's "alibi" is that he could not have participated in the abduction and aggravated murder of Betty Jane Mottinger at 8:30 a.m. on August 9, 1982 because he was elsewhere on August 9, 1982. Namely, 1) he visited his Parole Officer in Toledo between 9:30 and 10:00 a.m.; 2) he accompanied his sister to her doctor in Toledo between 12:00 and 12:30 p.m.; and 3) He picked up a package at the post-office in Swanton, which prompted him to place a phone call to the Eddyville prison at 2:14 p.m. on August 9, 1982.

In the interest of ensuring that the Board has all relevant information, I have again reviewed the evidence presented at trial. A review of the trial transcript reveals the following information with respect to Spirko's "alibi."

Cathy Carpenter, Spirko's sister, testified that at 9:30-10:00 a.m. on the morning of August 9, 1982, she took Spirko to the parole office of Mr. Lohmeyer in Toledo, approximately 30 miles from her home in Swanton. (Trial Transcript, pgs. 2995-2996). Parole Officer Lohmeyer testified that he did not recall what time he met with Spirko and his sister on August 9, 1982, but that his practice was to see people after 10:00 a.m. (Trial Transcript, pgs. 3033-3035). Lohmeyer's practice of not making early appointments contradicted Carpenter's claim that she and Spirko drove 30 miles to the parole office, waited 15 minutes for Lohmeyer, finished the Lohmeyer interview an hour and a half later, then drove 30 miles back to Swanton, and accomplished all of this before 11:45 a.m. on August 9, 1982. (Trial Transcript, pgs. 2995-2998 and 3012).

Ms. Carpenter also testified that Spirko accompanied her to the office of her doctor between 12:00 and 12:30 p.m. (Trial Transcript, pg. 3000). Dr. Bringman's testimony was that his office records showed Cathy Carpenter was the second person that day to receive a Demerol injection, and that this treatment could not have taken place before the office opened at 12:00 p.m. Dr. Bringman had no recollection of seeing Carpenter that day, and implied that one of his staff nurses may have handled Carpenter's injection. Because of the effect of the drug, his office would not allow Carpenter to drive herself home afterwards, but he had no personal knowledge about how Carpenter got home. (See Trial Transcript, pgs. 3226-3231).

Carpenter also testified that after picking up a package from the post office, Spirko called Eddyville prison to complain about a missing television, and that this call took place at 2:14 p.m.

However, the Swanton Postal Clerk testified that the postal receipt for the package could not have been signed before 2:27 p.m. (Trial Transcript, pgs. 3047-3074, note especially the stipulation on pages 3073-3074, which states that Stickles did not return from lunch until 2:27 p.m.)

Contrary to the representation to the Board by attorney Hill, there was never any evidence presented by Spirko that anyone from Eddyville prison confirmed that Spirko made the 2:14 p.m. phone call. In fact, Spirko himself did not testify about that phone call. Instead, Spirko's testimony was solely about a phone call he made to the prison days before, to make arrangements about shipping his personal effects. (Trial Transcript, pgs. 3485-3488).

The trial record further shows that his sister and alibi witness, Cathy Carpenter, previously gave a false alibi for Spirko during her sworn and tape recorded testimony at a parole revocation hearing regarding Spirko's assault on Teresa Fabro. This information was brought out by the prosecutor at Spirko's trial. In fact, during Carpenter's cross-examination the defense stipulated that Spirko pled guilty to the Fabro assault, and was in fact present when his assault on Fabro took place. (Trial Transcript, pgs. 3016-3024).

I hope that the above information will assist the Board in understanding the State's position on this issue.

Sincerely,



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Charles L. Wille  
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James Tassie