

OCTOBER 2002 SESSION
PRISONER REVIEW BOARD
STATE OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)	
)	Docket No. \
vs.)	
)	
ANTON BROWN,)	Inmate No. B-37417
)	
)	

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

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

HEARING REQUESTED

RICHARD A. DEVINE
STATE'S ATTORNEY OF COOK COUNTY

By: LINDA WOLOSHIN

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I

HISTORY OF THE CASE

On September 5, 1990, petitioner was arrested for the murder, by stabbing and strangulation, of Aretha Phillips and the murders, by drowning, of her children, two-year-old Monique Belton and three-year-old John Belton. On July 20, 1992, a jury returned verdicts of guilty of first-degree murder as to all three victims. The jury found petitioner eligible for the death penalty in that he murdered two or more persons and in that he murdered a person under twelve years of age with death resulting from brutal or heinous behavior indicative of wanton cruelty. On July 22, 1992, following a hearing in aggravation and mitigation, the jury returned a verdict finding no mitigating factors sufficient to preclude the imposition of a sentence of death. On October 4, 1992, the court sentenced petitioner to death.

The Illinois Supreme Court affirmed petitioner's conviction in People v. Brown, 172 Ill. 2d 1, 665 N.E.2d 1290 (1996) Petitioner's petition for post-conviction relief was subsequently denied without a hearing. On September 7, 1999, petitioner's appealed the denial of his petition for post-conviction relief. On March 14, 2001, the case was argued before the Illinois Supreme

Court. Their opinion on petitioner's post-conviction appeal is pending.

II.

FACTS OF THE CASE

(The Crimes)

On September 2, 1990, defendant, Anton Brown, lived with Aretha Phillips and her two children at 3835 South Federal, Apartment 210. (R. KK76) On that day defendant worked at Farmer's Market until 5:00 p.m. (R. KK76) Upon leaving work, he purchased some wine and cocaine with \$50.00 he had borrowed from his boss. (R. KK76) He returned to the apartment. (R. KK76)

Aretha arrived home with her son John, age three, and her daughter, Monique, age two, at approximately 7:00 p.m. (R. KK76) Aretha began to undress the children. (R. KK76) Sometime later, defendant asked Aretha if she would dress the children. (R. KK76) He wanted to visit a friend to borrow some money. (R. KK76) Aretha dressed the children and they all went out. (R. KK76)

When defendant was unable to get any money from Mr. Godwin, a friend of his mother's, he went to visit his Aunt Belinda at a church at 84th and Racine. (R. KK76-77) She gave him only \$5.00. (R. KK77) Aretha, who had been sitting in the car with the children, walked up to defendant and told him she was tired and wanted to go home. (R. KK77) They began to argue. (R. KK77) It was approximately 8:50 p.m. and Belinda told defendant to go home. (R. KK77) Defendant then went to his uncle's store at 43rd and State but missed him because the store was closed. (R. KK77)

Defendant drove home, stopping for \$5.00 worth of gasoline on the way. (R. KK77) When they arrived home, at 9:15 or 9:30 p.m., Aretha undressed the children and put them to bed in their bedroom. (R. KK77) The children were wearing only their underwear. (R. KK77)

Aretha changed into a nightgown. (R. KK77) Defendant entered the bedroom and they began to argue. (R. KK77) Defendant was pretty sure the argument was about drugs and money. (R. KK78) Defendant became angry. (R. KK78) Aretha leaned over on the bed as if going to sleep. (R. KK78)

Defendant went into the kitchen and grabbed the brown-handled steak knife that was on the counter. (R. KK78) He returned with the knife to the bedroom. (R. KK78) Defendant sat on the bed. (R. KK78) When Aretha rolled over; defendant stabbed her with the knife. (R. KK78) Aretha screamed and defendant stabbed her again. (R. KK78) Aretha began to cry and told defendant that he loved her. (R. KK78) Defendant stabbed her again. (R. KK78) Defendant could not remember how many times he stabbed Aretha but did recall stabbing her in the neck at least once. (R. KK78)

Defendant rinsed the knife off in the kitchen. (R. KK78) He then put the knife in a sock, put the sock in the garbage bag and threw the bag in the garbage chute. (R. KK78) He then sat down on the couch to think. (R. KK78)

Defendant returned to the bedroom and saw that Aretha was still breathing. (R. KK78) He took a pillow and put it over Aretha's face and held it there for a long time. (R. KK78)

Defendant took Aretha's beeper and sold it to someone downstairs for \$35.00. (R. KK79) He sold her television to some other people for about \$40.00. (R. KK79) He had the buyers come up to the apartment to get the television from the living room. (R. KK79)

Defendant returned to the bedroom and took the keys to Aretha's car. (R. KK79) When he left, he locked the bedroom door. (R. KK79) Defendant rented the car to someone downstairs for some cocaine. (R. KK79)

Defendant then sat on the couch to think about what to do with the children. (R. KK79) He decided to leave them in the apartment. (R. KK79) Defendant went into the children's room and saw

that they were still sleeping. (R. KK79) After filling the bathtub with water, he returned to the children's bedroom and picked up John. (R. KK79) He carried the three year old into the bathroom and held him under the water for a long time. (R. KK79) Defendant then picked him up and put him in the hallway. (R. KK79)

Defendant "repeated the process" by taking Monique from the bedroom, carrying her into the bathroom and holding her under the water for a long time. (R. KK79) Defendant then ripped down the shower curtain and wrapped the children up with it. (R. KK79-80) He put the children's bodies under their bed. (R. KK80)

Defendant kicked in the door to Aretha's room and wrapped her body in a quilt. (R. KK80) He moved the body onto the floor and piled clothing on top of it. (R. KK80) He did not want anyone to find them. (R. KK80)

Defendant then "got himself together" and went to work. (R. KK80)

The foregoing was defendant's statement to assistant state's attorney John Mahoney. (R. KK74) At the conclusion of the statement, defendant wrote "and regrets it all." (R. KK80-81)

On Sunday, September 2, 1990, defendant's aunt, Belinda Maratre, was at her church at 8459 South Racine. (R. II95, 101) When she saw defendant, whom she had not seen in a year, she stepped outside. (R. II95, 96) Defendant asked to borrow \$25.00. (R. II97) During their 20-minute conversation, while Mrs. Maratre spoke to defendant about Jesus and the need to repent, she became aware of Aretha Phillips' presence. (R. II97-98, 103) Aretha was sitting in a car directly across the street of the church. (R. II 98) She called from the car that she was ready to go. (R. II99) Defendant did not leave. (R. II99)

Mrs. Maratre was still conversing with defendant when she noticed Aretha behind her. (R.

II99) She had a baby on her hip. (R. II101-102) Mrs. Maratre saw another child in the back seat of the car. (R. II102) She said, "Anton, I'm ready to go." (R. II100) After being introduced to Mrs. Maratre, Aretha kept saying, "Anton, I'm ready to go. I told you I'm ready to go; I want to put the kids to bed." (R. II102) Mrs. Maratre gave defendant \$5.00 because she did not want her bible class disturbed. (R. II101)

The next day, Monday, Labor Day, September 3, 1990, Aretha Phillips was scheduled to work at Goldblatt's from 9:45 to 5:00. (R. II88, 92) She did not show up. (R. II88, 92)

Approximately 1:00 a.m. the next morning, Gary Parson and Bernard Mitchell were in the breezeway under 3835 South Federal when defendant asked Bernard if he was interested in a beeper. (R. LL9, 18, 26) Bernard asked if it worked and after cutting it off and on, he gave defendant \$20.00 for it. (R. LL18-19, 26)

Shortly thereafter, Corey Bender joined Gary Parson and Bernard Mitchell in the breezeway. (R. II45-47, 67, LL9-10, 26) They were again approached by defendant. (R. II45-47, LL9-11) This time defendant asked if any of them wanted to buy a television. (R. II46, 67, LL10, 27, 29) He described it as a large color TV. (R. LL12) Corey Bender answered that he was interested and asked where the television was. (R. II46, 67, LL11) Defendant told him that it was at his house and took Corey and Bernard up to the second floor of the building. (R. II46, 48, 68)

At the second floor, defendant used his key and walked into an apartment. (R. II49, 68, 69) They went into the living room. (R. II49) Corey again asked where the television was. (R. II49) Defendant answered that it was in the back bedroom and went to get it. (R. II49) Defendant would not allow Corey to go with him. (R. II49) When Corey asked if he could use the washroom, defendant said no and ran to the back and began closing all the doors. (R. II49-50)

Defendant returned with the television, which he set on the living room floor. (R. II50-51, 70) Corey asked if the television worked and if defendant could plug it in. (R. II51) Defendant did so. (R. II51) Corey Bender gave defendant \$30.00 for the television. (R. II51) Defendant then asked Corey how he could get rid of three bodies. (R. II51-52, 71) Corey and Bernard left, taking the television which they placed under the breezeway. (R. II52, 72, LL12, 27, 29)

A short time later, defendant returned to the breezeway and asked if any of them were interested in a car. (R. II55, LL13) The car was blue with little rust spots on it. (R. LL15) Gary Parson got into the car, pushed the accelerator and looked at the car. (R. II56, LL14-15) He then asked defendant for the title. (R. II56, LL15) Defendant went through the glove compartment as though he were looking for the title but did not find it. (R. II57, LL15) Gary told defendant he did not want the car. (R. II57, LL15) Defendant drove off. (R. LL15)

Gloria Wallace, Aretha's mother, last saw her daughter, age 22, and her grandchildren, John Belton, age three, and Monique Belton, age two, on September 2, 1990. (R. II122, 125-126, 128-129, 165-166) Mrs. Wallace and Aretha had no contact that Monday. (R. II137) On Tuesday, Mrs. Wallace tried to contact Aretha. (R. II143, 166) A woman, whose voice she did not recognize, answered. (R. II143, 189) Mrs. Wallace called the police. (R. II139)

Mrs. Wallace went to her daughter's building and tried to climb up the window into the apartment. (R. II149, 170) Her husband told her to get down and he would climb in. (R. II149-150) After climbing through the window, James Wallace went to the front door and unlocked it. (R. II150) They went into Aretha's bedroom where they saw a pile of clothes. (R. II150, 171) There were flies hovering around it. (R. II171) Mrs. Wallace attempted to pick up the clothing but couldn't. (R. II151) There was something under it and blood under it. (R. II151)

On September 5, 1990, at approximately 10:30 a.m., Officer Velma Cox was driving a marked car down Dearborn approaching 39th Street when a screaming, hysterical Mrs. Wallace ran in front of her. (R. II151, 152, 209-210, 212) She told the officer that she had gone to her daughter's apartment and thought she was dead. (R. II151, 210, 213) The officer asked where she was. (R. II210) Mrs. Wallace gave her the address. (R. II210) Officer Cox told Mrs. Wallace to get into the car and took her back to the building. (R. II152, 211) Just before arriving, Officer Cox notified the dispatcher. (R. II211) Other officers arrived at the apartment simultaneously with her. (R. II211, JJ148)

While Officer Cox remained outside trying unsuccessfully to calm Mrs. Wallace, Officer Robert Johnson went inside. (R. II212, JJ149, 150) Officer Johnson proceeded directly to the rear bedroom. (R. JJ150) There he saw an empty bed and a bundle of clothes in the corner of the bed. (R. JJ151) He walked toward the bundle, lifted a piece of sheet and looked underneath. (R. JJ151) He saw a small portion of a woman's partially deteriorated face. (R. JJ151) Officer Johnson backed out of the room and called for a supervisor, crime lab and detectives. (R. JJ151) He secured the area. (R. JJ152)

Detective James O'Leary arrived at the scene, spoke with Officer Johnson and proceeded to the rear bedroom of the apartment. (R. JJ161, 220) He was directed to a pile of clothing between the bed and the wall. (R. JJ163) He saw the right arm of Aretha Phillips extending from the pile. (R. JJ163) Detective O'Leary removed the top of the cover from the body of Aretha Phillips. (R. JJ163-164) He observed stab wounds next to the right ear, the right neck, the upper right chest or breast and the right shoulder blade. (R. JJ164) He then covered the body back up. (R. JJ164)

After the detectives arrived, Officer Johnson reentered the apartment. (R. JJ152) Mrs.

Wallace had asked where the two babies were. (R. JJ153) Officer Johnson went into the first bedroom to look. (R. JJ153) He looked under one bed and saw nothing. (R. JJ154) Under the second bed, he saw a bundle wrapped in something maroon. (R. JJ154) It was a shower curtain. (R. JJ155) He poked it with his stick. (R. JJ154) It was solid. (R. JJ154) Officer Johnson grabbed the mattress and flipped it over. (R. JJ154, 164) He again felt the bundle and felt a body. (R. JJ154) He backed out of the room and notified the detectives. (R. JJ154)

Detective O'Leary came into the bedroom and stuck his hand inside the shower curtain. (R. JJ155) He felt a shoulder and an arm. (R. JJ165) The detective probed a little further into the shower curtain and felt another shoulder and another arm. (R. JJ165) He knew the two children were inside. (R. JJ155, 165)

Detective O'Leary then returned to the back bedroom. (R. JJ165) He noted that there was nothing covering the mattress but that a photo album lay at the foot of the bed. (R. JJ166, 223) He noted that the door of the bedroom had a privacy lock in the handle that you could lock or open from the inside. (R. JJ166) Part of the lock had been broken away. (R. JJ167, 276)

After the crime lab and medical examiner had finished processing the bedroom, taking blood and paint standards and dusting for fingerprints, the detectives unwrapped Aretha Phillips from the dark blue blanket and miscellaneous clothing that was piled on top of her. (R. JJ167-168, 222-224) She was dressed in a white nightgown or slip. (R. JJ168) Her body was bloated, swollen and discolored. (R. JJ168) There was some skin slippage. (R. JJ168) Her face itself was disfigured. (R. JJ168) There was blood on the sheets and the blanket. (R. JJ168) There was also a pillow with blood that was over her head. (R. JJ168)

After noting the condition of the body, the injuries and the items in the room, the detectives

proceeded to the front bedroom. (R. JJ168) There they unraveled the children. (R. JJ168) John Belton was lying on his side, intertwined with his sister. (R. JJ168) His right arm and right leg were across hers. (R. JJ168) He was dressed in white jockey shorts, with the television character Alf on the rear portion. (R. JJ168-169) Monique was lying on her left side under John's arm and leg. (R. JJ169) She was dressed in a pair of white training pants. (R. JJ169) The bodies were beginning to decompose. (R. JJ169)

The detectives proceeded to examine the apartment. (R. JJ169) Detective O'Leary examined the front door to the apartment. (R. JJ169) The locking device on that door was secure. (R. JJ169) There was no damage to it. (R. JJ169, 170)

Detective O'Leary then had a conversation with Mrs. Wallace. (R. II152, JJ170, 230) Detective O'Leary asked Mrs. Wallace if anyone else lived in that apartment with her daughter and her two grandchildren. (R. JJ170-171) She gave him defendant's name and described him. (R. II153, 172, JJ173, 230) She told the detective the places where defendant might be found. (R. II172, 231)

Detective O'Leary asked if there was anything in the apartment that might identify or help the police in locating defendant. (R. II153, JJ174) Mrs. Wallace had seen defendant's photograph in Aretha's photo album the week before. (R. II153, 188) She told Detective O'Leary about the album. (R. JJ174) Detective O'Leary retrieved the album from the bedroom and asked Mrs. Wallace to look through the album to see if she could find a photograph of defendant. (R. JJ174) Mrs. Wallace looked through the album. (R. II154, 189, JJ175, 273) There were no photographs of defendant. (R. II154, JJ274) She told the detectives his photograph was gone. (R. JJ175) She showed Detective O'Leary the blank spot in the album where a photograph had apparently been removed. (R. JJ175)

After the apartment had been completely processed, detectives took Mrs. Wallace back into

the apartment and asked her to see if she could find anything out of the ordinary or anything missing from the apartment. (R. JJ175) She told them that her daughter's television, microwave, beeper and stereo were missing. (R. II154-155, 187, JJ175-176, 274) Mrs. Wallace also told detectives about the blue 1979 Malibu automobile that Aretha owned. (R. II127-128, JJ176-177) The car was also missing. (R. II154, JJ177)

Detectives began their attempts to locate defendant, going to various addresses and leaving business cards. (R. JJ177-183, 231) Approximately 9:30 that evening, defendant and his uncle, Officer Charles Maratre, came into the office. (R. JJ184, 231-232) Defendant was taken into custody on a violation of probation warrant, placed in an interview room and after a brief conversation with his uncle, during which he did not ask to remain, Detectives O'Leary and Redmond entered the room. (R. JJ184-185, 232, 233, 278) They identified themselves, told defendant they were conducting the investigation and Detective O'Leary read defendant his constitutional rights. (R. JJ185) Defendant waived them. (R. JJ187)

Defendant subsequently told the detectives that he went to work on September 2nd in the morning and worked through the day until 5:00. (R. KK15) Prior to leaving work, he borrowed \$50 from his boss. (R. KK15) Defendant then went to the apartment that he shared with Aretha and the two children. (R. KK15) They were not at home. (R. KK15) Defendant went downstairs, purchased some cocaine and some wine and got high on that. (R. KK15)

Aretha and the two children returned home approximately 7:00 that evening. (R. KK16) Defendant was hungry and cooked some chicken. (R. KK16) After they ate, defendant told Aretha to get the kids up and get them dressed to go out. (R. KK16) Defendant wanted to try to get some more money for cocaine. (R. KK16) He wanted Aretha to drive him around. (R. KK16) They left the

apartment and drove around to several friends' homes in an attempt to get some money. (R. KK16) Eventually, they met up with defendant's aunt Belinda. (R. KK16) She gave him \$5.00. (R. KK16) Defendant stated that during the course of his conversation with his aunt, Aretha disrespected her. (R. KK16) There was a brief argument and they left. (R. KK16)

They continued to drive around in an effort to find some more money. (R. KK16) During this time, Aretha demanded that defendant put \$5 worth of gasoline in her car. (R. KK16) Defendant did that. (R. KK16) They then drove to 43rd and State in an effort to see defendant's uncle at a food store there. (R. KK16) They got there too late. (R. KK16) The store was closed. (R. KK16) They returned to the apartment. (R. KK16)

Once in the apartment, Aretha put the children to bed in their underwear. (R. KK16) Aretha then went to her bedroom and put on a white nightgown and lay down in the bed. (R. KK16) Defendant walked into the room and an argument started. (R. KK16-17) Aretha told him that he wasn't helping her out, that he was spending all of his money on drugs and that he was not assisting her and the children. (R. KK17) She then rolled over to go to sleep. (R. KK17)

Defendant got up, went to the kitchen and got a knife. (R. KK17) He then returned to the bedroom and sat on the edge of the bed. (R. KK17) He began arguing with Aretha and as he did so, he stabbed her twice. (R. KK17) She turned to him and started crying, asking him why he did this, telling him that she loved him and asked him to call an ambulance and get her to a hospital. (R. KK17) Defendant stabbed her several more times. (R. KK17)

Defendant left the bedroom and went out into the living room, sat down on a sofa and thought about what he had done. (R. KK17) A short time later, he returned to the bedroom. (R. KK17) He saw that Aretha was still breathing. (R. KK17) Defendant took a pillow and tried to suffocate her. (R.

KK17) When he removed the pillow, Aretha was still breathing. (R. KK17) Defendant got some water, which he threw on her and on the pillow and then again held the pillow over her face. (R. KK17)

Defendant left the bedroom, locked the door, took the keys to the car and left. (R. KK17) Defendant went to the lower level of the building. (R. KK17-18) There he met a man he had seen before and rented the car to him for eight bags of cocaine. (R. KK18)

Defendant returned to the apartment where he smoked some of the cocaine. (R. KK18) As he was smoking, defendant was thinking about what he was going to do with the children. (R. KK18) He walked into the bathroom and filled the tub with water. (R. KK18) He then walked to the children's bedroom, picked up John and woke him up. (R. KK18) Defendant brought John into the bathroom, placed him in the tub and held him under the water until he stopped struggling. (R. KK18) Defendant then took John out of the tub and laid him in the hallway. (R. KK18) He returned to the bedroom where he picked up Monique. (R. KK18) Monique woke up. (R. KK18) Defendant placed her into the tub and held her under the water until she stopped moving. (R. KK18) Defendant ripped the shower curtain down, wrapped the two children in it and hid their bodies under Monique's bed. (R. KK18)

Defendant then kicked the door in to Aretha's bedroom. (R. KK18) He attempted to pick her up but dropped her on the floor. (R. KK18) He wrapped her in a blue blanket and took the laundry and threw it on top of her. (R. KK18-19) It was daylight. (R. KK19) Defendant got himself straightened out and went to work. (R. KK19) After working all day, defendant returned to the apartment and sold some of the items in it. (R. KK19) He used the proceeds to buy more cocaine. (R. KK19)

Late on Wednesday, September 5th, Corey Bender and Gary Parson learned of the triple murder. (R. II57-58, LL19) Corey told Gary that that was where he had purchased the television. (R. LL19, 30) Corey telephoned the police who came and picked him up. (R. II58, 75, 77) They went to Corey's apartment and got the television. (R. II58)

On September 6, 1990, Dr. Michael Chambliss, a forensic pathologist with the Office of the Medical Examiner, was assigned the autopsies of Aretha Phillips, John Belton and Monique Belton. (R. JJ23, 38) Aretha arrived clothed in a light pink negligee, which bore reddish areas of discoloration of blood and possibly some purging fluid. (R. JJ45) She was 5'3" tall and weighed 136 pounds. (R. JJ44-45) There were postmortem abrasions on her legs. (R. JJ46, 52-53) Her abdomen and small and large intestines were distended and her tongue protruding as a result of gas formation from the postmortem process and her liver, lungs and heart showed some changes of decomposition. (R. JJ46, 47-48, 50) There was skin slippage, swelling and marbling. (R. JJ40, 44, 49, 50-52)

There were a total of nine stab wounds on her face, head, neck, chest, back, arm and hand consistent with having been inflicted with a knife. (R. JJ54-69) The wounds could eventually produce death with time as a result of bleeding. (R. JJ70) Dr. Chambliss concluded that the cause of death was multiple stab wounds but could not rule out suffocation as a possible cause of death or joint cause of death. (R. JJ75) Because of the decomposition, it would be difficult to determine or recognize some of the smaller changes that would go along with suffocation that a pathologist would look for. (R. JJ75-77, 133)

A toxicology report failed to detect any drugs and detected a level of alcohol consistent with that formed during the bacterial process during decomposition in a postmortem state. (R. JJ78-79)

John Belton, age three, weighed 39 pounds and was just over 40" in body length. (R. JJ80-81)

He was received in jockey shorts. (R. JJ81) He also showed skin slippage, marbling, blisters, protruding tongue and swelling as a result of postmortem decomposition. (R. JJ41-42, 82-85) Also present was a discoloration of the upper lid of the eye different from the type of discoloration seen with postmortem decomposition. (R. JJ42, 85, 135) This discoloration resembled a bruise occurring prior to death or right around the time of death. (R. JJ42, 85, 135)

Dr. Chambliss also found abrasions on John's face that occurred prior to his death. (R. JJ42, 88-89, 136) In the forehead area was a curved abrasion. (R. JJ42, 88) There were also discolored scraping type injuries on the right forehead, right cheek area in two locations and the upper lid of the left eye. (R. JJ89) These were blunt trauma injuries. (R. JJ89) Corresponding hemorrhages were found. (R. JJ90-92) The degree of hemorrhage on the left forehead indicated that the injury occurred while John was alive. (R. JJ95) The white portions of his eyes were congested as a result of injuries noted in the neck, specifically pressure around the neck area at the back or base of the tongue. (R. JJ86, 87) Hemorrhages were noted over the front of the trachea or windpipe and the lower portion of the larynx. (R. JJ96-97) The discoloration in the internal organs of the neck tissue was consistent with a strangulation process. (R. JJ98) Dr. Chambliss concluded that John Belton died as a result of strangulation, causing a swelling of his brain which died as a result of lack of oxygen. (R. JJ98-99) He could not, however, rule out drowning as an additional cause of death because decomposition would obscure the findings detected in a drowning case, which is best diagnosed in the very fresh early stages of death. (R. JJ98-99, 138)

Two-year-old Monique weighed 24 pounds and measured just over three feet at the time of her death. (R. JJ104) Her body also showed signs of decomposition as previously described. (R. JJ42-43, 106-107) She also showed congestion to the conjunctival area of the eye showing pressure

around the neck. (R. JJ108) Congestion at the base of her tongue further evidenced pressure around her neck. (R. JJ108) In the neck area, there were hemorrhages involving the strap muscles in two locations. (R. JJ109) There was a pre-death abrasion on the top of her left wrist area. (R. JJ108-109, 112) Dr. Chambliss ruled the cause of her death to be strangulation, again being unable to rule out drowning as an additional cause of death. (R. JJ114, 138)

Dr. Chambliss determined that each of the bodies had been deceased between four and six days prior to his examinations. (R. JJ49, 101, 112)

On September 18, 1990, Corey Bender and Gary Parson viewed lineups. (R. II59, JJ202, LL20) Each of them identified defendant. (R. II60, LL20-21)

A month after the murders, Mrs. Wallace saw Aretha's car at the pound. (R. II155) She recovered a Raggedy Ann doll and a stuffed puppy from the car. (R. II155, 192, JJ271)

(The Aggravation)

On October 23, 1988, at 4:30 p.m., Officer Frederick Barrett received an assignment of shots fired at 110th and Wentworth. (R. NN88-89) At that location, he met Jerry Singleton. (R. NN89) Mr. Singleton told the officer that defendant, while walking with Maurice Brown, handed Maurice Brown a gun and directed him to shoot Mr. Singleton. (R. NN92) On the command of defendant, Maurice Brown fired two shots at Singleton. (R. NN92)

Officer Barrett put Singleton in his squad car and toured the area for defendant and Maurice Brown. (R. NN92) He observed them going into a game room at 145 East 111th Street and followed them in. (R. NN92-93) The officer found defendant and Maurice Brown at the rear of the game room and recovered a .32 caliber snub nose blue steel H and W revolver on the floor next to them. (R.

NN93, 94)

The revolver was loaded with four live rounds and had two empty chambers. (R. NN94) The points of the four live rounds were filed off. (R. NN94) The purpose of filing off the point of a bullet is so it flattens on impact. (R. NN94) That results in a larger wound area. (R. NN94) Defendant was taken into custody and charged with unlawful use of a weapon and aggravated assault. (R. NN93, 95) He failed to appear in court and a bond forfeiture warrant was issued. (R. NN95)

On September 19, 1987, defendant was found guilty of possession of a controlled substance with intent to deliver. (R. NN98-99) On December 3, 1987, defendant received a sentence of eighteen months felony probation with the first six months to be served in the Cook County Department of Corrections. (R. NN98, 99)

Gang Crimes Specialist John Bloore testified that he knew defendant to be a member of the Gangster Disciples Street Gang. (R. OO60) Officer Bloore identified a photograph of defendant, wearing a shirt with the initials GWA, meaning gangster with attitude, and a six-pointed star. (R. OO63) In the photograph, defendant's hands are making a pitchfork, a sign of the Disciples street gang. (R. OO63)

The jury returned a verdict sentencing defendant to death. (R. OO139) On October 14, 1992, the trial court imposed the sentence of death. (R. TT27)

III

REASONS FOR DENYING THE PETITION

Petitioner committed three premeditated murders. It was only after Aretha Phillips had turned over to go to sleep that petitioner went to her kitchen, returned with a knife and stabbed her.

When she cried and spoke of their love, he stabbed her several more times. After thinking about what he had done, he returned to the bedroom. He discovered that Aretha had not had the good grace to die from her stab wounds so he smothered her with a pillow. Being initially unsuccessful, he then threw water on her and on the pillow and smothered her again.

More horrific is that, after thinking about what to do with the children who had slept through their mother's murder, he made the decision to fill the bathtub and drown them.

Petitioner walked into the bathroom and filled the tub with water. He then walked to the children's bedroom, picked up 39-pound three-year-old John and woke him up. Petitioner brought John into the bathroom, placed him in the tub and held him under the water until he stopped struggling. While he struggled, petitioner inflicted blunt trauma to his cheek and eye and forehead.

When he had succeeded in murdering John, petitioner took him out of the tub and laid him in the hallway. He returned to the bedroom to, as he put it, "repeated the process" with 24 pound, two-year-old Monique. Monique woke up. Petitioner placed her into the tub and held her under the water until she stopped moving. As she struggled, she received a pre-death abrasion on the top of her left wrist area. Then, as though he were putting together a bundle of garbage, petitioner ripped the shower curtain down, wrapped the two children in it and hid their bodies under Monique's bed. As if nothing had happened, he went to work. Clemency is undeserved.

(Petitioner's Claims)

Introduction

Petitioner asserts that he is entitled to clemency because he did not receive the benefit of the changes to the Illinois capital sentencing system which have recently been adopted, proposed or enacted. By relying upon a laundry list of new Supreme Court Rules, statutes and proposals from the Governor's Commission on Capital Punishment which were not available at the time of his trial, petitioner claims that his trial (as well as that of every other capital defendant in Illinois) was by definition fundamentally unfair. However, the Illinois Supreme Court has expressly rejected the claim "that every capital trial has been unreliable and that all appellate review has been haphazard" (People v. Hickey, ___ Ill. 2d ___, 2001 Ill. LEXIS 1080 at *57 (No. 87286 September 27, 2001)). Rather, the Court held that the additional safeguards included in its rules governing capital cases are not retroactively applicable because they "function solely as devices to further protect those rights given to defendants by the federal and state constitutions" and that "[a] violation of procedures designed to secure constitutional rights should not be equated with a denial of those constitutional rights." Id. at *63, 64.

Thus, the fact that the Court, the General Assembly and the Governor's Commission have endeavored to improve the process does not mean that an injustice would result simply because the recent changes were not applied retroactively to petitioner's case. Instead, a true injustice would only result if it were reflexively determined that petitioner's trial was fundamentally unfair without any examination of the proceedings themselves. It is telling, however, that petitioner has not even attempted to demonstrate how the recent changes would have affected the outcome of the proceedings. Moreover, petitioner ignores the fact that the Illinois Supreme Court, which has examined the proceedings in his case, determined that they were

fundamentally fair and that he was not unduly prejudiced in any manner.

Supreme Court Rules

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

Pretrial Discovery Depositions

Petitioner further claims that he was denied the protection of pretrial discovery depositions. Of course, petitioner had full answers to discovery, listing every witness the People might call, complete with addresses. Petitioner was able to investigate and interview every witness pre-trial. Petitioner does not even speculate what information he might glean from a deposition that he could not glean from a pre-trial interview. Furthermore, Illinois Supreme Court Rule 416 provides that depositions are permitted only upon leave of court. The Supreme Court has granted the trial judge the discretion to balance the interests of the parties to “insure that depositions are not being interposed for any improper purpose.” Petitioner here does not name the persons he would have deposed or what the good cause would have been for deposing them.

Videotaping

Petitioner also seeks clemency because his statement where he inculpated himself was admitted into evidence even though it was not videotaped, and points out that under the Governor’s

Commission's proposals both statements and the interrogations leading up to them should be videotaped. What petitioner fails to recognize is that neither the Commission nor the governor himself call for the suppression of a statement simply because it was not videotaped. Rather, even under the Governor's proposed legislation (HB3717 & HB2058), such statements will still be admissible if the trial court finds that it was voluntarily made after considering the totality of the circumstances. Because the trial judge expressly found that petitioner's statement was voluntarily made when it denied his motion to suppress statements, it is clear that the failure to videotape his statement had absolutely no effect on the fairness of his proceedings. Moreover, because the jury was instructed pursuant to Illinois Pattern Instruction 3.06-3.07 to consider all the evidence when determining whether or not petitioner made the statement and how much weight it should be given, petitioner cannot complain that he was prevented from asserting at trial that his statement was unreliable and should not be considered.

Public Defender at the Police Station

Petitioner claims that he is entitled to clemency because he requested a lawyer while he was being interrogated but was not appointed an attorney until he appeared in court. He points out that under the Governor's Commission proposals, the public defender would be allowed to represent any suspect in a potentially capital case who requests to speak to a lawyer during an interrogation. However, petitioner fails to mention that the trial court expressly found that he did not unequivocally request an attorney during his interrogation. Therefore, even if this proposal had been in effect at the time of petitioner's arrest, it would not have applied to him.

Electronic Recording of Witness Interviews

Petitioner asserts that he attempted to challenge the testimony of Corey Bender, to whom he sold the proceeds of the crime. Petitioner omits that he also asked Corey Bender how to get rid of three bodies. In any event, petitioner takes issue with the fact that the police did not electronically record Corey Bender's statement. Corey Bender's statement was recorded in police reports however, and again, Corey Bender's name and address were provided to petitioner pre-trial. There was no obstacle to pre-trial interviews with this witness.

Moreover, there is not the slightest possibility the result of petitioner's trial would have been different had he deposed Corey Bender. Petitioner's confession was signed by him and bore his handwritten addendum "and regrets it all." Petitioner has never advanced any motive for Corey Bender. In fact, petitioner did not Corey Bender prior to selling him the victim's property. Therefore, petitioner was not deprived of a fair trial by the absence of pre-trial depositions.

Independent State Forensic Laboratory

Petitioner now asserts that blood, hair and fibers recovered from the scene were not analyzed by an independent laboratory. Petitioner never requested that any of this evidence be analyzed by an independent laboratory. He never asserted in the trial court that he suspected any tampering had been done with the evidence. Rather, he seemed, at the time of trial, to be content with the fact that no forensic evidence linked him to the crime. That being the case, no unfairness resulted to petitioner by the failure of the court to sua sponte forward the evidence to another laboratory.

Eligibility Factors

Petitioner ignores that he was found death eligible not only on the factor that the victim was under the age of twelve and the death was the result of brutal or heinous behavior indicative of wanton cruelty, but also on the factor of multiple murder, a factor not rejected by the Governor's Commission. Nonetheless, petitioner asserts that he is entitled to clemency because he was found eligible for the death penalty based upon an aggravating factor other than those factors which the Governor's Commission has recommended be retained. Specifically, the Commission concluded that the current list of 20 factors is overly expansive and therefore unconstitutional. Accordingly, it was suggested that the list be reduced to just five factors: (1) murder of a peace officer or fireman; (2) murder of any person in any correctional facility; (3) multiple murder; (4) murder accompanied by the intentional infliction of torture; and (5) murder of a witness, prosecutor, defense attorney, juror, judge or investigator.

However, the Illinois Supreme Court has expressly rejected the Commission's logic and held that Illinois' death penalty statute satisfies the constitutional mandate because it "genuinely narrows the class of individuals eligible for the death penalty and reasonably justifies imposition of a more severe sentence on those defendants compared to others found guilty of first degree murder." People v. Ballard, ___ Ill. 2d ___, 2002 Ill. LEXIS 376 at *73 (No. 88885 August 29, 2002) (citing Zant v. Stephens, 462 U.S. 862, 877, 103 S. Ct. 2733, 2742 (1983)). As the Ballard court explained, "there are innumerable examples of first-degree murders that do not fit within any of the statute's eligibility factors" and A[e]ach provision is narrowly tailored to fit a specific set of facts and circumstances." Id., 2002 Ill. LEXIS 376 at *74.

Moreover, each of the aggravating factors represents a determination by the General

Assembly that certain types of murders are so deplorable that the death sentence may be imposed. Each one is intended to ensure that the most helpless members of our society (such as children, the elderly or disabled) are protected against violence or to provide a strong disincentive for the offender to kill the victim. For example, cold, calculated and premeditated murders are properly death-eligible because they are limited to situations where the defendant has carefully planned the murder over an extended period of time, and the availability of the death penalty may be the only thing which prevents these defendants from deciding to actually kill their victims. As the Illinois Supreme Court stated “a defendant who contemplates a murder for a substantial period of time, yet still commits it, is set apart from other murder defendants in a meaningful way.” People v. Williams, 193 Ill. 2d 1, 36, 737 N.E.2d 230 (2000). Similarly, murders in the course of another felony such as rape or home invasion are properly death eligible to help deter the defendant from killing the victim. Given these important policy considerations, petitioner’s request must be rejected.

Decision to Seek Death

Petitioner 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, A[i]t has long been recognized by th[e Illinois Supreme C]ourt that the State's Attorney is endowed with the exclusive discretion to decide which of several charges shall be brought, or whether to prosecute at all. A prosecutor's discretion extends to decisions about whether or not the death penalty should be sought.” People v. Jamison, 197 Ill. 2d 135, 161-62, 756 N.E.2d 788 (2001). Therefore, any attempt to mandate such a review

would constitute an impermissible restriction on the independence of the various State's Attorneys under the Illinois Constitution. Moreover, petitioner does not even allege much less argue that the decision to seek death in his case was the result of an abuse of discretion. Accordingly, it must be rejected.

Allocution

Petitioner 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.

Sufficient to Preclude

Petitioner asserts that clemency is warranted because the statutory language and corresponding jury instruction that after considering all of the evidence that "there is no mitigating factor sufficient to preclude the imposition of a death sentence" led the jury to mistakenly believe that the death penalty is mandatory. However, both the Illinois Supreme Court and the federal courts have consistently rejected any claim that the statute is confusing and might lead a jury to

believe that the death penalty is mandatory. See People v. Mitchell, 152 Ill. 2d 274, 346, 604 N.E.2d 877 (1992); Silagy v. Peters, 905 F.2d 986, 998-99 (7th Cir. 1990). Moreover, because both the prosecution and the defense argued to the jury about the appropriateness of the death sentence in petitioner's case, any confusion in the language of the instruction was negated by the closing arguments.

Judicial Override

Petitioner 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.

CONCLUSION

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

Respectfully submitted,

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