

OCTOBER 2002 SESSION  
PRISONER REVIEW BOARD  
STATE OF ILLINOIS

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PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
vs.	)	Docket No. _____
	)	
JOHN CHILDRESS,	)	Inmate No. A-82154
	)	
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SUBMITTED TO THE HONORABLE GEORGE RYAN, GOVERNOR  
OF THE STATE OF ILLINOIS

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

**HEARING REQUESTED**

RICHARD A. DEVINE  
STATE’S ATTORNEY OF COOK COUNTY

By: LUANN SNOW  
ALAN J. SPELLBERG

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**I**

**FACTS OF THE CASE**

On August 15, 1989, petitioner John Childress, killed Sara Cardona, a 30 year old wife and mother, by repeatedly stabbing her. (R. 286, 277) The grand jury charged petitioner in a fourteen count indictment with first degree murder, aggravated criminal sexual assault, residential burglary, burglary, and home invasion. (R.C. 11-26) The jury convicted petitioner of first degree murder, felony murder, attempt aggravated criminal sexual assault, home invasion and burglary. (R. 832) The jury found petitioner eligible for death. (R. 888) Following evidence presented in aggravation and mitigation, the jury sentenced petitioner to death. (R. 1219)

The evidence adduced at trial was as follows:

Sara Cardona's son, Ruben Lopez Jr., was six years old the day his mother was killed. (R. 282) On that day he was playing at his friend's house down the street when he saw his mother with the petitioner outside his home. (R. 283-284) When Ruben Jr. went back home, he went to his mother's bedroom and tried unsuccessfully to open the bedroom door. Pushing it a second time, the

door opened and there he saw petitioner stabbing his mother. (R. 286) According to Ruben Jr. the petitioner dropped the knife and ran out the back door. Ruben Jr. left the house and yelled for help. The first person he saw was a neighbor, Marie Taylor. (R. 287-288)

On cross-examination Ruben, Jr. admitted that petitioner had come to his home on some other occasions. He was also familiar with the petitioner because petitioner had lived next door to his family at one time. (R. 291-292)

Marie Taylor had been friends with Sara for 10 years. (R. 298) Marie had also known the petitioner for several years. (R. 299) On August 15, 1989, Marie was walking her dog past Sara's house when she heard Ruben screaming. (R. 302) Marie testified that she ran into Sara's house through the open front door. As she did, Ruben Jr. ran to her, and told her to "help his mommy," and dragged her to the back bedroom of their home. (R. 303) Marie tried to open the bedroom door, but it felt like something was holding it. When she finally got the door open, she saw petitioner kneeling over Sara with a knife in his hand. (R. 304) The petitioner had a hold of the knife which was thrust into the victim's chest. The victim was laying on the bed, without any clothes on. Petitioner, who had his underwear down, was having sex with Sara. (R. 304-305) Marie said to petitioner, "What the fuck do you think your [sic] doing?" Petitioner turned and struck Marie who fell into the night stand. (R. 306) Marie got up, pulled Ruben Jr. out of the room and told him to run and get help. (R. 307) Petitioner pulled his pants up, buttoned his belt, and while looking directly at Marie, smiled. He took his red hat off the stove, put it on and left through the back door. (R. 308)

Sara was bleeding profusely and the knife was stuck in her chest. Sara got up and asked Marie to take the knife out. Marie told her to lay still. Sara began to walk and pulled the knife out as she did. (R. 309) While Marie held Sara, Sara told her that petitioner had raped her and that he told her he would kill her before he did "any time." Sara told Marie that she did not want her little boy to

see her that way, so Marie wrapped Sara in a blanket. (R. 310)

Marie testified that the victim was only 5'1 in height and weighed possibly ninety pounds. (R. 329) On the day after the murder Marie identified the petitioner in a line-up. (R. 330)

Angel Cruz, Sara's next door neighbor, testified that on August 15, 1989, he heard screams for help coming from Sara's house. (R. 361) He ran into her house and saw Sara falling to the floor. Sara was bleeding heavily. Marie Taylor told him that the "guy" was still in the house. (R. 363) As Mr. Cruz ran to the kitchen, he saw petitioner leaving through the back door. He had seen petitioner 20 minutes earlier in the back alley as Mr. Cruz was throwing out some garbage. (R. 364) He also knew petitioner because he had seen him other times in the neighborhood. (R. 366) Mr. Cruz also identified petitioner in a line-up the following day. (R. 367)

Mr. Cruz denied on cross-examination that he ever told any police officers that he saw petitioner going into the victim's home before the murder. (R. 372-373) Mr. Cruz denied seeing the victim have a conversation with petitioner or allow him into her apartment. (R. 373-374)

Officer Giselle Pikor received a call that an aggravated battery was in progress at 3216 W. Wabansia. (R. 378) When she and her partner, Max Steele, arrived, they entered the first floor apartment and saw one woman laying on the floor with another woman holding her. (R. 379) There was blood everywhere, and there was a kitchen knife laying nearby. (R. 379) The officers learned the identity and description of the offender and began canvassing the area. (R. 380) On cross-examination Officer Pikor testified that she recalled the victim telling her that petitioner had raped her. However, the officer never filled out a report relative to this. (R. 385)

On August 16, 1989, at approximately 8:00 p.m., petitioner was arrested. (R. 388-391) At that time, petitioner was 5'6" to 5'8" in height and he weighed about 200 pounds. (R. 392)

Detective Schalk and his partner ran a line-up which Ruben Jr., Marie Taylor and Angel Cruz viewed. (R. 405) Each of them identified petitioner. (R. 406)

At 5:22 a.m. on August 16, 1989, Sara was pronounced dead. (R. 470) The Cook County Medical Examiner, Dr. Yuksel Konakci, performed the autopsy on the decedent. (R. 428) There were multiple stabbing and incise wounds on the exterior of Sara's body. (R. 428) Incise wounds are inflicted by sharp objects and the length of the wound is greater than its depth. This type of wound is done with some type of cutting instrument. Stab wounds result when the length of the wound is less than its depth. In those cases, the instrument itself penetrates further than the cut or the opening of the wound. (R. 429) There were two incise wounds on the victim's left forearm. (R. 428) Below these, Dr. Konakci observed stab wounds. He also saw several "defense wounds" on the top of the victim's hand. On the right side of Sara's back there was a stab wound. There were several bruises on her back and also on the back of both hips. (R. 430-431) Sara's upper left chest had stab wounds, penetrating into the chest cavity and lung. On the lower left chest, there were two stab wounds and below those an incise wound. One of the stab wounds penetrated through the chest cavity into the abdomen and liver. (R. 433) On the inside of Sara's right thigh, there were two stab wounds and an incise wound. (R. 434) The toxicology report was negative for the presence of cocaine, alcohol, or opiates. (R. 436-435)

In Dr. Konakci's opinion, the cause of Sara's death was multiple stab and incise wounds. (R. 439) The total number of wounds that Sara sustained were 12 stab wounds and 10 incise wounds. (R. 452) Dr. Konakci testified that while sexual assault could not be ruled out, he saw no evidence of injury in the genital area. (R. 452-453) The State rested its case. (R. 474)

Petitioner's motion for Directed Finding as to two counts of aggravated criminal sexual assault (the oral sex) was granted and the Motion for Directed Finding as to all other counts was denied. (R. 480-481)

The first defense witness was Erica Luedke, a Chicago Fire paramedic. (R. 486-487) He transported the victim to Illinois Masonic Hospital. (R. 488) According to her report, while en route to the hospital the victim told her that she had not been sexually assaulted. (R. 489)

Officer George Alvarado was called next to testify. (R. 498) His report on this homicide indicated that Marie Taylor told him that the victim said that petitioner came to her door asking for water and she let him in. (R. 501) His report did not mention that petitioner was kneeling between victim's legs when Marie first saw them. Nor did it mention that petitioner and victim were having sex. (R. 500) On cross-examination Officer Alvarado testified it was his conclusion that the victim had been sexually assaulted. (R. 503)

The parties stipulated that the vaginal and rectal swabs analyzed by the Chicago Police Department's Crime Laboratory were negative for the presence of spermatozoa. (R. 508)

Petitioner testified on his own behalf. (R. 474) He said that he and Sara had been friends. He also knew her husband, Ruben, and her son, Ruben Jr. (R. 529) Petitioner claimed that the nature of his relationship with Sara was that she allowed him to keep his drug paraphernalia at her house so that his girlfriend would not find it in his house. (R. 530) This relationship had existed for approximately six months prior to the victim's death. (R. 530) Petitioner maintained that he saw Sara "do" drugs two or three times. Specifically, he stated that he saw her snort cocaine. He admits never seeing her shoot cocaine. (R. 531) On those times when Sara did snort cocaine, she had obtained the drugs from petitioner allegedly in exchange for sex. He claimed he traded cocaine for sex with Sara approximately five times. (532)

On August 15, 1989, petitioner was working on his car and drinking with a friend in front of petitioner's house. (R. 532) After petitioner finished, he went and bought \$40.00 worth of cocaine. He brought the cocaine to the victim's house, knocked on the door and asked her if he could use his "works," meaning his drug paraphernalia. (R. 533-534) He had a syringe and a bottle cap to mix the drugs in. (R. 534) He admitted seeing Angel Cruz outside of the victim's home. (R. 535)

He went to the back bedroom because that was where he allegedly used the drugs. (R. 535) He injected himself in the arm with the cocaine. Sara then asked him for some cocaine and petitioner told her he would give her the drugs in exchange for sex. She allegedly agreed, but said they first had to go down the street to check on her son. (R. 536)

After she returned petitioner said they had consensual oral sex in the bedroom. (R. 537) Petitioner said he could not get an erection, and so he told the victim he would not give her any drugs and was instead going to use the rest of the cocaine himself. At this point, petitioner testified he had his pants open, and the victim was naked. The two argued about drugs. (R. 537-538)

Petitioner claimed that as he was preparing the rest of the drugs, the victim came back into the room with a knife. The two of them struggled for the knife. (R. 538) Petitioner admitted stabbing Sara after taking the knife from her. After he stabbed her, petitioner maintained that the victim pulled the knife from her shoulder and came at him a second time. He again stabbed her. Although petitioner could not remember how many times he stabbed her, he admitted at least three times. After stabbing the victim, petitioner went out the back door because he was scared by what had happened. He denies seeing anyone else in the apartment. (R. 539) Petitioner admitted on direct examination that he pled guilty to felonies in both 1978 and 1986. (R. 540)

On cross-examination, the State questioned the petitioner about all of the different drug paraphernalia that petitioner had on the day of the murder. (R. 541-543) Petitioner maintained that

while he could remember everything that happened before he stabbed the victim, he could not remember much of what occurred after the stabbing. (R. 545-546) Petitioner testified that he was 5'7" tall and approximately 200 pounds. (R. 547) He admitted that the victim was much smaller than he was and that he was a lot stronger than her. (R. 548) Petitioner alleged on cross-examination that the victim was naked when she went into the kitchen to get the knife even though the doors to her apartment were unlocked and her son could run back and forth into the apartment. (R. 551-552)

Petitioner denies knowing why he stabbed the victim, other than he was angry that she had a knife. (R. 561) He maintained on cross-examination that he was "under the influence" so "I don't really know what happened." (R. 561) Petitioner also admitted that after leaving the victim he went out and drank some more. (R. 563)

Petitioner admitted that he may have been kneeling over the victim, stabbing her, at one point in time. (R. 569) He also stated not being completely sure if he had sexual intercourse with the victim, although he testified he was "pretty sure" he did not. (R. 575)

In rebuttal for the State, Detective Bogucki testified that he thoroughly searched Sara's apartment and found no drug paraphernalia of any kind. (R. 606) He did not find a bottle cap, a hypodermic needle or any white powder. (R. 607)

The jury returned a verdict finding petitioner guilty of first degree murder (knowing and intentional), first degree murder (felony murder), attempt aggravated criminal sexual assault, home invasion, and burglary. (R. 832)

#### PETITIONER'S CRIMINAL BACKGROUND

Detective Thomas Blomstrand testified that on October 7, 1977, he was assigned to

investigate a homicide. (R. 857) He found the body of Webster Hardwick at the bottom of a stairwell in an alley on the west side. (R. 858) Hardwick had been stabbed repeatedly and the front pockets of his trousers had been pulled out and the back pockets on his pants had been cut open. (R. 859) The protocol showed that Mr. Hardwick was stabbed approximately ninety-six times, along with multiple incise wounds. (R. 1018) The murder was committed in front of a little girl. (R. 1114) Petitioner pled guilty to the murder of Webster Hardwick on May 19, 1978. (R. 861)

On December 9, 1965, petitioner pled guilty to armed robbery and received 5 years probation, and 6 months in the Department of Corrections. (R. 914) The jury heard testimony from John Carpenter, the victim of petitioner's 1965 armed robbery. (R. 914-915) Mr. Carpenter was held up by the petitioner while in his car stopped at a stop sign at St. Louis and Madison. (R. 916) The petitioner ordered the victim out of his car and took the car. (R. 917)

Petitioner's daughter, Sadie McGee, also testified for the State with respect to her relationship with her father. (R. 921-922) Ms. McGee was not raised by petitioner, but rather by two separate step-fathers. (R. 922-923) She first met the petitioner when she was approximately nine years old. (R. 924) While living at her maternal grandmother's, the petitioner came to visit. (R. 927-928) That night, when petitioner was drunk, he came into her room and said "Let daddy be the first." (R. 929)

On a separate occasion, while at another grandmother's home, she and her natural brother were in the same room together when her father again came to her bed to persuade her to sleep with him. (R. 931-933) Her brother promised to protect her if petitioner tried again. (R. 933)

In July, 1966 petitioner was sentenced to 90 days in the Department of Corrections for criminal trespass to a vehicle. (R. 975-976) This conviction and sentence resulted in a violation of petitioner's probation. (R. 976)

In April of 1969, petitioner was sentenced to the penitentiary for burglary. (R. 976) In March, 1972 petitioner was sentenced on a misdemeanor charge of resisting arrest. (R. 976) In September, 1973 petitioner was convicted and sentenced for unlawful use of weapons. (R. 977)

Ms. McGee also testified about her father's various periods of incarceration. She testified that in talking with her father while he was in jail he would tell her to stay away from drugs and how they were ruining his life, but then when he got out of jail he went on drugs again. (R. 938) The witness barred her father from coming around when he was on drugs. (R. 939) She had seen her father high "a lot." (R. 942)

While petitioner was on parole for Webster Hardwick's murder, he committed attempt aggravated criminal sexual assault, kidnapping and unlawful restraint on a 54 year-old retarded woman. (R. 1015-1017) On November 4, 1985, at 6:45 p.m., James Cole saw petitioner enter a building that Mr. Cole owned in the 300 block of North Central Ave while holding a woman by the hand. (R. 1007-1008) Mr. Cole recognized the woman because she lived at an area halfway house for mentally retarded people. (R. 1008) Mr. Cole recognized this woman because she walked slightly humped over. (R. 1009) Mr. Cole knew that petitioner was not one of his tenants, so he began to run through the building to see what room they went in. (R. 1010) Near a stairway he found petitioner on top of the woman having sex with her. (R. 1011) Petitioner had his pants down and the woman's dress was pulled up. Her underwear was on the balcony. (R. 1011) Mr. Cole asked petitioner what he was doing. Petitioner replied, "Can't you see? Leave me alone. I'm getting some white pussy." Petitioner turned to Mr. Cole and said, "Like, you want some." Mr. Cole told another man to get the police. (R. 1012). Petitioner was running out of the building when the police caught him. (R. 1013) Petitioner pled guilty to attempt aggravated criminal sexual assault, kidnapping and unlawful restraint. (R. 1016)

## FINDINGS OF THE ILLINOIS SUPREME COURT

On direct appeal, the Illinois Supreme Court affirmed petitioner's conviction and death sentence, finding that petitioner's "identity as the assailant was unchallenged" and that "[t]he evidence showed overwhelmingly that the [petitioner] had stabbed and then raped the victim." People v. Childress, 158 Ill. 2d 275, 300-01, 633 N.E.2d 635 (1994). The court also stated that the evidence supporting the jury's determination to impose the death penalty was substantial, pointing out that petitioner

"had a lengthy criminal record, beginning with the offense of armed robbery, which he committed in 1965 when he was 18, and culminated in the offenses charged here, which eh committed in 1989 at the age of 42. In the intervening period, the [petitioner] committed a number of violent offenses, including murder in 1977, and attempted criminal sexual assault and other crimes in 1986."

Id. at 312.

Similarly, in his post-conviction appeal, the Court stated:

[T]he aggravating evidence supporting the jury's imposition of the death penalty was overwhelming. Petitioner has an extensive criminal record spanning three decades. Petitioner has a prior conviction for murder, as well as convictions for armed robbery, criminal trespass to a vehicle, burglary, resisting arrest, disorderly conduct, unlawful use of a weapon, attempted aggravated criminal sexual assault, kidnapping and unlawful restraint. Petitioner has a history of victimizing others. The State presented evidence at sentencing that petitioner was caught having sex with a mentally retarded woman and attempted to sexually molest his own daughter Sadie McGee when she was 8 years old. (In her affidavit attached to the post-conviction petition, Sadie now admits that petitioner actually did molest her.)

The circumstances surrounding the murder in this case are particularly brutal and heinous. Petitioner stabbed the victim, who was approximately 5 feet 2 inches tall and weighed only 90 pounds, 12 times and inflicted 10 more incise

wounds. Petitioner committed the murder in the presence of the victim's six-year-old son. A neighbor who responded to the screams of the victim testified that she saw petitioner having sex with the victim while the knife still protruded from her chest.

People v. Childress, 191 Ill. 2d 168, 180, 730 N.E.2d 32 (2000).

### III

#### REASONS FOR DENYING THE PETITION

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

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

prejudiced in any manner.

Petitioner first 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. Moreover, despite his claims to the contrary, all the participants in petitioner's trial were thoroughly familiar with the particularities of capital litigation. First, the trial judge was the Honorable James J. Heyda, one of the most respected jurists to ever preside over criminal trials in Cook County and was well aware of how to conduct a capital trial. The prosecutors were Edward Snow and Kevin Sheehan, both veteran prosecutors with extensive jury trial experience. Finally, the defense attorneys were both long serving assistant public defenders. Karen Shields was a member of the Cook County Public Defender's Murder Task Force and is now a highly respected Cook County Associate Judge, while Charles Buchholz was a veteran public defender and is currently a member of the Capital Litigation Trial Bar. Therefore, even though the Supreme Court's Rules governing capital cases are not retroactively applicable to his proceedings, it is clear that all the participants in petitioner's trial were well-qualified to engage in capital litigation.

Petitioner next asserts that he is entitled to clemency because he was denied adequate funding to investigate the case and 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, which represented petitioner at trial, has always had significant resources available for capital litigation.

Therefore, the mere fact that the Capital Litigation Trust Fund was not created until 2000 is irrelevant.

Similarly, petitioner asserts that his proceedings were unfair because the Death Penalty Trial Assistance Division of the Office of the State Appellate Defender (725 ILCS 105/10(c)(5)) had not been established at the time of his trial and that therefore his trial counsel did not receive assistance in the investigation preparation and trial of his capital case. What petitioner ignores, however, is that this division of the State Appellate Defender was created to assist public defenders in rural areas who are faced with defending a capital case but have little resources or experience. Moreover, as stated above, petitioner was represented by the Cook County Public Defender's Office, which has significant resources to address capital cases and long ago created the Murder Task Force, an elite unit of veteran lawyers, in order to ensure quality representation in murder cases, both capital and non-capital.

Petitioner also seeks clemency because his custodial interrogation was not videotaped. However, since petitioner never gave any statement to the police, it is clear that there was nothing to videotape.

Also, although petitioner laments the fact that the forensic evidence was analyzed by the Chicago Police Crime Lab and not an "independent lab" as recommended by the Commission, petitioner ignores the fact that although he admitted at trial that he murdered Sarah Cardona, the parties stipulated at his trial that the crime lab found no sperm on the vaginal and rectal swabs. (R. 508)

Petitioner also 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. However, in making such a claim, petitioner has

completely misstated the facts of his case. Although, the Commission concluded that the current list of 20 factors is overly expansive and therefore unconstitutional, it expressly stated that persons convicted of murdering more than one person should be subject to the death penalty. (Commission Report at 68,71) Because the jury expressly found that petitioner was eligible for the death penalty because he intentionally murdered more than one person, it is clear that he was properly found eligible for the death penalty.

Petitioner further claims that his sentence should be reduced because the State's Attorney's decision to seek death was made without uniform protocols to guide his discretion and was not approved by a state-wide review committee. However, "[i]t has long been recognized by 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.

Petitioner next asserts that his sentence should be reduced because none of the Commission recommendations agreeing with the Supreme Court Rules regarding the experience, training or qualification of prosecutors and defense counsel were available to him. However, as already stated, even though the Supreme Court's Rules governing capital cases are not retroactively applicable to his proceedings, it is clear that all the participants in petitioner's trial were well-qualified to engage in capital litigation.

Petitioner next complains that no expert testimony was ever presented to the jury regarding eyewitness testimony and that the jury was not instructed to consider such testimony carefully. However, such petitioner never offered such testimony or sought such an instruction. More importantly, however, defendant's identity was never in question because he himself admitted at trial that he stabbed the victim. Also, the eyewitnesses in this case, the victim's son and two of her neighbors, knew petitioner because he lived in their neighborhood. Thus, there was never any basis or reason to challenge the eyewitness identifications in this case.

Petitioner also complains that his jury was not instructed to consider as statutory mitigating factors the fact that he had a history of extreme emotional abuse. However, petitioner never offered any such evidence which would have supported such an instruction.

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, 88 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, since he was given every opportunity to present himself to the trier of fact before he was sentenced, the failure to permit him to make an unsworn statement to the jury did not render his trial fundamentally unfair.

Petitioner next 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.

Petitioner further 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). In fact, petitioner himself requested the trial judge to enter such a ruling when he filed a post-trial motion seeking a new trial, a new sentencing hearing or a sentence other than death after the jury entered its verdict. Because the judge denied his post-trial motions, it is clear that the judge declined the opportunity to override the jury's verdict that petitioner should be sentenced to death.

Finally, petitioner 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.

As “other reasons for granting clemency,” petitioner also points out the slight inconsistency at trial where Ruben Jr. testified that he saw petitioner drop the knife and run out the back door before he went to get help, while Marie Taylor testified that petitioner ran out the back door after she entered the bedroom and confronted petitioner as he was having sex with the victim while she laid naked on the bed with a knife in her chest. Of course, this inconsistency is meaningless since petitioner has always admitted killing Sarah Cardona. Moreover, given the fact that Ruben Jr. was only six years old when he saw his mother murdered and only eight years old when he testified at petitioner’s trial, it is certainly not surprising that he may have been confused as to when he saw petitioner try to escape through the back door.

Moreover, petitioner reprises his claim that the victim admitted him into the apartment because she would give him sex in exchange for drugs and he would therefore keep his drugs in her apartment. Accordingly, petitioner implies that he did not rape her or break into her home. However, the jury heard this story when petitioner testified at trial and expressly rejected it when it found him guilty of intentionally murdering Sarah Cardona. As the Illinois Supreme Court stated “[t]he evidence showed overwhelmingly that the [petitioner] had stabbed and then raped the victim.” People v. Childress, 158 Ill. 2d 275, 300-01, 633 N.E.2d 635 (1994). Also, as Detective Bogucki testified at trial, no drug paraphernalia of any kind was found in the victim’s apartment. (R. 606) Accordingly, it is clear that petitioner’s claims are ludicrous and must be rejected.

## CONCLUSION

John Childress, a lifelong criminal, brutally murdered and raped his neighbor Sarah Cardona by stabbing her repeatedly in the chest after he forced his way into her apartment in the evening of August 15, 1989. Ms. Cardona's then-six-year-old son watched in horror as Childress ended his mother's life and has had to continually live with that memory. Unfortunately, Ms. Cardona is not the only victim of Childress' violent and destructive behavior. In 1977, Childress and two other offenders brutally murdered Webster Hardwick by stabbing him 96 times in an alley. Petitioner was also convicted for attempting to rape a mentally retarded woman while he was on parole for the murder of Webster Hardwick and one time tried to sexually molest his own 8-year-old daughter. Thus, Childress has made a lifetime career out of preying upon others, making it clear that he is unable to conform his behavior to the expectations of civilized society.

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

Respectfully submitted,

RICHARD A. DEVINE  
STATE'S ATTORNEY OF COOK COUNTY

by: LUANN SNOW  
ALAN J. SPELLBERG