

OCTOBER 2002 SESSION  
PRISONER REVIEW BOARD  
STATE OF ILLINOIS

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PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
vs.	)	Docket No.
	)	
REGINALD CHAPMAN,	)	Inmate No. K- 64382
	)	
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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: Kathleen Lang  
Paul Groah  
Thomas Byrne

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**I**

**FACTS OF THE CASE**

The last time Angela Butler and her five-month old son, Christopher were seen alive was on August 27,1994. They were with the defendant, Reginald Chapman, who insisted that they go with him in his car. Several days later on September 4, 1994, Angela’s bloated and discolored body was found floating in the CalSag canal south of Chicago. Christopher’s badly decomposed and disfigured body was found eight days later in a different section of the same canal. (R. 1817)

Several months before she was killed, Angela Butler began dating the defendant. (R. 1235) They lived together for several months. During this time Angela became pregnant with the defendant’s baby. Their son, Christopher, was born on April 9, 1994. (R. Supp. Rec. I, pg 19) A short time after Christopher’s birth, their relationship ended. (R. 1235) Angela began dating a former boyfriend, Louis Murrillo, and by June they were engaged to be married. (R. 1260) She was planning to move to Iowa that fall to live with Louis while he attended college. Defendant told

police that on the morning of August 27, 1994, Angela called him and told him that they needed to talk about the upcoming move for her and Christopher. (R. 1854)

The defendant and Angela did have a conversation on August 27<sup>th</sup>. It began in the parking lot of the Dominick's Food Store located at 70<sup>th</sup> and King Drive. (R. 1282) Angela left the Murillo's house around 2:30 p.m. (R. 1282) She was with Louis Murillo's mother, Antoinia Collins, his aunt, Juanita, and his brother Curtis Taylor. (R. 1282) On their way to a birthday party, they stopped at a Dominick's store to get a cake. (R. 1282) They arrived at the store between 3:00 and 3:30 p.m. (R. 1299) Antonio Collins and Juanita went into the store while Curtis, Angela and Christopher waited in the car. (R. 1283) Before she went into the store, Antoinia gave Angela the keys to the car. (R. 1289)

Curtis and Angela sat in the back seat with Christopher. (R. 1283) As they were sitting there, defendant approached the car, knocked on the window and motioned for Angela to get out. (R. 1283) Angela asked the defendant what in the world he was doing there. She got out of the car and started talking to defendant. (R. 1284) Curtis Taylor heard the defendant ask to see the baby, as he had not seen Christopher in over a week. (R. 1284)

Angela returned to the car and got Christopher. (R. 1286) Curtis watched as she handed the baby to the defendant. (R. 1286) After Angela gave the defendant the baby, they walked over to defendant's large white car which was parked about fifteen feet away. (R. 1286,1287) When they got to the car, Defendant opened the driver's side door, put his hand on Angela's neck and shoved her into the car. (R. 1287)

Curtis Taylor immediately became concerned about Angela. (R. 1288) He got out of his mother's car and ran over to the defendant's car. (R. 1288) Defendant was now seated in the

driver's seat and Angela was next to him. (R.1288) Curtis asked Angela where she was going as they were on their way to a party. (R. 1289) She responded that she was going for a ride and that she would be back in a few minutes. (R. 1289) Angela handed defendant Antoinia Collins' car keys to give to Curtis. (R. 1289, 1854) Curtis testified at trial that Angela seemed frightened and the defendant seemed angry and upset. (R. 1289)

Curtis watched as the defendant's car left the parking lot. (R. 1295) When he went back to his mother's car, he realized that Angela had left the baby's diaper bag on the seat. (R. 1291) After his mother returned to the car they waited for another ten minutes for Angela to return. When he failed to come back, they went to the party. (R. 1295) After they got to the party, Curtis called his house to see if Angela was there. (R. 1296) He was unable to locate her. He never saw Angela or Christopher alive again. (R. 1296)

On September 4, 1994, the crew of a tug boat saw a body floating in the CalSag canal near the bridge located at 131<sup>st</sup> Street and Kedzie. (R. 1326, 1481) The Illinois State Police Underwater Search and Recovery Team (USART) and members of the criminal investigations unit were dispatched to the scene. (R. 1326, 1369, 1979) The body was floating face down in the water about ten feet from shore. (R.1482, 1800) When dive team members recovered the body, they discovered that it was wrapped in orange and black electrical cord. (R. 1800) The cord was attached to two free weights, one weighing fifty pounds and the other weighing twenty-five pounds. (R. 1803)

The body which was bloated and discolored from being in the water, was dressed in the same clothes Angela was wearing when she disappeared, a burgundy T-shirt, khaki shorts, and white gym shoes. (R. 1802) The hands contained a total of nine rings, including a 1971 high school class ring with the name Bettye Anderson inscribed on it. (R. 1486) Crime scene

investigator Dexter Barlett removed the class ring from the body and gave it to the lead investigator, Carolyn Black. (R. 1371, 1487)

Based on this information, Officer Black and her partner Sgt. Amenitsch went to the Anderson home on September 8, 1994. When they interviewed Mrs. Anderson, she identified the ring as belonging to her daughter, Bettye Anderson. (R. 1377) She explained that her daughter was living in Israel but Bettye's daughter, Angela Butler was living in Chicago. (R. 1377) Mrs. Anderson told the investigators that she gave Bettye's ring to Angela approximately two years earlier. (R. 1377) Mrs. Anderson also told the investigators that Angela Butler had a five month old son, Christopher, and that she was living with her fiancée's family, the Murillos. (R. 1378) According to Mrs. Anderson, Angela had been missing since August 27, 1994.

Later on September 8, 1994, the police asked Elaina Murillo to come down to the police station. She identified the clothing recovered from the body as belonging to Angela Butler. (R. 1240) Through their interviews of Elaina and other family members, the investigators learned that Angela and Christopher were last seen with the defendant. (R.1333) At this point the focus of the investigation was to find five month old Christopher Butler. (R. 1379)

The police went to the defendant's house the next day. (R. 1333) He was at home with his girlfriend, Tiffany Brownlee and her small son, Jermei. (R. 1433) Before defendant answered the door, he began to plan an alibi. He told Tiffany to say that he had been "with her" (R.1434). Defendant agreed to talk to the police and signed a consent form so they could search his apartment and car. (R 152, 179, 1338) He was taken to the Illinois State Police station on the south side of Chicago for his initial interview. At that time Defendant told police that he did not recall the last time he saw Angela. (R. 1343) He also denied owning any weight lifting equipment. (R. 1344)

After further questioning defendant admitted owning weight equipment but maintained that he recently sold it to a person he only knew as "Foy." (R. 1344) He later said that he gave the equipment to his brother. (R. 1347)

When Tiffany Brownlee was interviewed, she told police that she was with the defendant on August 27, 1994. During the day they went to the defendant's mother's house. (R. 1421) That afternoon Defendant received a phone call and left the house saying he would be right back. (R. 1423) When he had not returned after one and a half hours, Tiffany left and went to her mother's house. (R. 1424) Tiffany also told investigators that she saw the defendant the next day. (R. 1425) They went back to his mother's house and defendant cleaned out the trunk of his car. (R. 1426) When they returned to the defendant's apartment that evening, Tiffany noticed that it was very messy. (R. 1427) The weights that the defendant kept in the bedroom were missing, as well as the long orange electrical cord that connected the television in the bedroom to the electrical outlet in the kitchen. (R. 1428)

Defendant was interviewed again around 11:00 a.m. This time he told police that he did not know where Angela and Christopher were but that they were together. (R. 1382) At this time the police were still searching for Christopher. Twice that afternoon police divers attempted to get information from the defendant on where they might look for Christopher. (R. 1806-9) In a second search of the Defendant's apartment, officers found bed sheets with blood on them. (R. 1544, 45) When evidence technicians processed defendant's car they found a blood smear on the rubber weather strip located around the lip of the trunk. (R. 1496) They also recovered several items from the trunk, including a pair of white infant gym shoes with blood droplets on them. (R. 1496) DNA testing done on the blood droplets revealed that it was Angela's blood on the infant shoes found in

defendant's trunk and on the bed sheet found in defendant's apartment. (R. 1635).

The next morning, Saturday, September 10, 1994 defendant was moved from the Illinois State Police station to the lock up at a local suburban police department. (R. 1348) Around 11:30 a.m., defendant was interviewed by Assistant State's Attorney Pierre Tismo. (R. 1854) At this time he admitted that he spoke with Angela on August 27, 1994 in the grocery store parking lot. (R. 1854) According to the defendant, they met there to talk about Angela's upcoming move to Iowa with her boyfriend. (R. 1854) He said that he, Angela and Christopher drove in his car to his apartment. (R. 1854) Defendant admitted that he and Angela got into a fight. (R. 1854) He told police that he hit Angela with an open hand, his fist and a baseball bat. (R. 1854) When asked where Christopher was, Defendant did not answer and began crying. (R. 1855) Police divers searched the canal but did not find Christopher.

During the time that ASA Tismo was interviewing defendant, Agent Black was at home preparing to come to work. (R. 260) During her testimony in the hearing on defendant's motion to suppress statements, Agent Black testified that somewhere around 11:30 to 11:40 a.m., she received a page. (R. 260) She dialed the phone number from her home phone. The person who answered the call identified himself as an attorney representing the defendant's father, D.C.Chapman. (R. 261) The attorney maintained that Mr. Chapman had been unable to get any information about the defendant. (R. 261) Agent Black advised the caller that she was at home and could not give him any information on the phone. (R. 262) The caller became upset and started shouting and Agent Black again advised him that she could not give him any information on the phone without verifying his identity. (R. 262)

Shortly after the phone call, Agent Black left home for work. During her seventy minute

drive to the Blue Island police department she received another page with a phone number she did not recognize. (R. 263) She was unable to return the page as she was stuck in traffic and did not have access to a cellular phone. (R. 263) Attorney Nathan Diamond Falk also testified during the motion to suppress. According to Falk, he was retained by D.C. Chapman on September 10, 1994 to represent his son Reginald Chapman. (R. 427) He testified that he made several phone calls to get information about the defendant and was eventually given the name and pager number of Carolyn Black. (R. 430) He paged Agent Black who returned his call but refused to give him any information without verifying his identity. (R. 437) Falk testified that he gave Agent Black the phone number and address of his home and office so she could make such a confirmation. He maintained that she told him she would get back to him, but never did. (R. 438)

Falk then stated that he drove to the Illinois State police station and met with Mr. Chapman. (R. 440) He specifically remembered listening to the Michigan-Notre Dame football game on his way to the station. (R. 454) It was stipulated between the parties that on September 10, 1994 the Michigan-Notre Game started at 1:45 p.m. (R. 527) Falk also testified that when he arrived at the station he identified himself as the attorney representing defendant. (R. 442) He stated that he stayed at the station for several hours but was never told where defendant was or given the opportunity to speak with him. (R. 443,447) On the basis of this testimony the court suppressed any statement given after 2:00 p.m. on September 10, 1994.

On the next day, September 11, 1994, the defendant was positively identified in a line up by Curtis Taylor. (R. 1297) The defendant spoke with ASA Tismo and Agent Black again during the day. (R. 378) Later that night around 11:00 p.m., defendant went with ASA Tismo, Agent Black and Trooper O'Keiff, to the CalSag canal area of Blue Island. (R. 856) They eventually stopped near

the bridge located at Division Street. (R. 1857) Defendant was then transported to the lock up at the Markham courthouse. (R. 1857) Beginning right before midnight, the defendant gave a thirteen page handwritten statement to ASA Tismo. (R. 386, 387) That statement detailed how he beat Angela with a bat until she was unconscious. He described how he wrapped both her body and Christopher's with orange electrical tape and attached weights. Finally, defendant detailed how he put the bodies in the trunk of his car and drove to the CalSag canal. He then disposed of the bodies by throwing them in the canal.

On Monday, September 12, 1994, the state police dive team located the body of Christopher Butler in canal. Like his mother, Christopher was wrapped in orange electrical tape that was tied to forty pounds of free weights. (R. 1833) The body was badly decomposed and was missing the head, right arm and portions of the left arm. (R. 1818, 1900) Christopher's body showed evidence of aquatic activity and it was the opinion of the medical examiner that the dismemberment of the body occurred as a natural consequence of the environment. (R. 1902) The cause of death was suffocation or lack of oxygen. (R. 1911)

Angela's autopsy revealed that she died as a result of strangulation. On the back of Angela's head there was a one-inch laceration that indicated some sort of blunt force trauma. Underneath the laceration, between the scalp and the skull, there was evidence of hemorrhage. According to the forensic pathologist, this meant that Angela was alive at the time she sustained the laceration because bleeding occurred. The examination also revealed that the right hyoid bone of Angela's neck was fractured. This injury was consistent with death by manual strangulation.

Many of the items recovered by crime scene investigators were submitted to the Illinois State Police Crime Lab for analysis. Forensic Scientist Daniel Gandor was able to confirm the presence of

human blood on the trunk weather stripping from the Defendant's car, on the infant shoes found in his trunk, and on the bed sheets found in the defendant's bedroom. (R. 1635) The stains found on the bat recovered from his apartment were negative for the presence of human blood. (R. 1645) The blood evidence was sent to the state crime lab in Springfield to determine if DNA could be extracted from the samples that were confirmed as human blood. (R. 1687) David Metzger, the state DNA research coordinator, testified that he was able to extract DNA from the sheet and the shoes but not from the weather stripping. (R. 1690) He also successfully extracted DNA from the bone samples taken from Angela and Christopher as well as a blood sample taken from the defendant. (R.1611, 1698)

A DNA comparison was done by William Frank, also a research coordinator at the state crime lab. (R. 1711) His DNA analysis revealed that Angela Butler and the defendant, Reginald Chapman were the biological parents of Christopher Butler. (R. 1741) It also revealed that the DNA extracted from the stains on the bed sheets and on the infant shoes matched the DNA of Angela Butler. (R. 1746, 1748)

Forensic testing was also done on the orange electrical cord used to attach the weights to Angela and Christopher. David Thurgren, another forensic scientist at the state crime lab, testified that he examined the cords removed from both bodies to determine if they could be matched physically. (R. 1937) It was his conclusion that the cord removed from Angela's body and the cord removed from Christopher's body had been joined together at one time. (R. 1942)

After hearing all the evidence and the arguments of counsel, the jury returned a verdict of guilty on four counts of first degree murder. (R. R.2048-50, C.178-79) The trial then moved into the eligibility phase.

### Eligibility

At the hearing for eligibility, the jury was instructed that they could consider as evidence that the defendant was convicted of the first degree murder of Angela Butler and the first degree murder of Christopher Butler. (R. 2062) The court rejected the defendant's tendered instruction defining intent, finding that it should be given its ordinary and common usage. (R. 2056) There was a stipulation to the birth certificates of Christopher Butler and the defendant. (R. 2063) The jury found the defendant eligible for the death penalty under the multiple murder and exceptionally brutal and heinous aggravators. (R. 2084-85)

### Sentencing

Before the hearing on mitigation and aggravation began, the defendant waived his right to a jury and requested that the trial court make the sentencing determination. (R. 2119) The defendant told the court that he did to want to be present for the rest of the proceedings. (R. 2110) After admonishing the defendant of his right to attend the hearing, the judge excused his presence. Three other times during the hearing in aggravation and mitigation the court had the defendant brought before the court to reaffirm his desire to be absent from the proceedings.

In aggravation the State introduced evidence of the previous abuse Angela suffered at the hands of the defendant. Betty Simpson, Angela's cousin testified that in April or May 1994, Angela visited with her at their grandmother's house. Angela could barely walk as a result of a beating from the defendant. (R. 2145) Angela told Betty that Defendant had pushed her down a flight of stairs while she held Christopher in her arms.

At a family reunion in July, 1994, Angela told Betty that the defendant was following her

around and she was afraid of him. (R. 2147) Angela said defendant told her that he was going to kill her and get away with it. (R. 2147) During September, 1994 Angela told Betty that the defendant had “jumped on her” and stolen her food stamps. She also said that the defendant would only give her money if she was going to the store and she had to have his permission to leave their apartment. (R. 2142)

Angela’s former boss, Denise Thigpen, related others instances when Angela was physically abused by the defendant. She testified that in July, 1994, Angela came to work late one day after being beaten by defendant. (R. 2153) Her face was swollen and she was crying. (R. 2153) Angela told Denise that she did not want to go home because he would be there. About two weeks later, Angela told Denise and several other employees at Payless that the defendant had taken her by a river and beat her up. It was dark and defendant told her to go ahead and scream because nobody was going to hear her. (R. 2157) Defendant refused to take Angela home until she had sex with him. (R. 2157) Several weeks after that, Angela showed Denise the spot where this attack occurred. It was near the a 127<sup>th</sup> street bridge over the CalSag canal. (R. 2158)

Denise related another incident that summer when Angela called her and told her that defendant had beat her again. This time he put a heavy bar bell on top of her so she could not move and then left the apartment with the baby. (R. 2159) She was there for seven hours until she finally escaped by crawling out a window. (R. 2159) Defendant told her that if he couldn’t have her nobody would. (R. 2160) Angela told Denise she was not worried because her uncle talked to defendant and he promised not to hurt her. (R. 2160)

Chicago police officers Jones and Cicso had contact with Angela on July 16, 1994. PO Jones took a report from Angela about 10:00 a.m. that morning. Angela related that defendant had

beat her, held her in the apartment and refused to let her leave. (R. 2169) Later that afternoon Angela told PO Cicso that defendant had taken their baby as well as her purse with all her identification including her passport, public aid card, birth certificate, and medical cards. Defendant told Angela that he would “stop her from doing anything.”

After hearing all the evidence in aggravation and mitigation the trial court found that there were no mitigating factors sufficient to prohibit the imposition of the death penalty and the defendant was sentenced to death.

On appeal, Reginald Chapman’s convictions for the first degree murders of Angela and Christopher Butler were affirmed and his sentence of death upheld by the Illinois Supreme Court. The Court found that the murders in this case were the culmination of a tragic pattern of abuse and an escalating history of violence by the Petitioner against Angela. In the view of our state’s highest court, “the circumstances surrounding the murders of Angela and Christopher bespeak the actions of a cold-blooded murderer.” 743 N.E. 2d at 88.

## REASONS FOR DENYING THE PETITION

### 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 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.

1. Governor's Commission Proposed Reforms

The Commission appointed by the Governor has issued a report that makes suggestions on changes that could be made to the system for capital litigation in Illinois. To date, none of these suggestions have been adopted by the General Assembly.

a) Public Defender at the Police Station

Petitioner claims that he is entitled to clemency because he did not have the opportunity to consult with an attorney during the various interviews he had with police during the initial investigation. 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. Petitioner fails to mention that the Illinois Supreme Court upheld the finding of the trial court that "the defendant was advised of his *Miranda* warnings numerous times, agreed to waive those warnings and to speak to authorities; that the defendant did not ask to speak [to] or see a lawyer; [and]... that the police or the State's attorney did not coerce the defendant into giving any oral or written statements." People v. Chapman, 194 Ill.2d 186, 743 N.E.2d 48, 63 (2000).

Petitioner further asserts that despite the fact that he never requested to speak to an attorney, his inculpatory statements were still improperly obtained because his family hired an attorney to represent him and he was denied access to that attorney. Attorney Nathan Diamond-Falk testified at the hearing on Defendant's Motion to Suppress that he was contacted by the Defendant's father on Saturday, September 10, 1994. Defendant first spoke to police officers on Friday, September 9,

1994 at approximately 7:00 a.m. Attorney Falk did not go to the police station to see Defendant on September 10, 1994 until sometime after 1:45pm.<sup>1</sup>

Pursuant to People v. McCauley, 194 Ill.2d 414, 645 N.E.2d 923 (1994), the statements given after Attorney Falk arrived at the police station were suppressed. When reviewing this issue, the Illinois Supreme Court noted the holding suppressing the statements made by Defendant after Attorney Falk arrived at the police station struck the appropriate balance between the state's interest in effective crime investigation and a suspect's state constitutional rights to due process and against self-incrimination. In this case not only did the Defendant fail to request counsel, he was afforded the heightened protection of the Illinois Constitution when the statement he gave detailing how he committed these murders was suppressed.

b) Videotaping (Defendant)

Petitioner also seeks clemency because his inculpatory statement was admitted into evidence even though it was not videotaped, as suggested in the Governor's Commission proposals.. What petitioner fails to recognize is that neither the Commission nor the governor himself calls 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 suppressed only

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<sup>1</sup>Attorney Falk testified that he listened to the Notre Dame versus Michigan football game during his drive to the police station. It was stipulated by the parties that this football game started at 1:45 p.m. on Saturday, December 10, 2002.

the statement made after his attorney arrived at the police station, 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.

c) Electronic Recording (Witnesses)

Petitioner also seeks clemency because the police interviews of significant prosecution witnesses that the petitioner “challenged at trial” were not electronically recorded. He fails to name any specific witnesses he considers “significant.” If Petitioner had any question about the testimony of a specific witness, he could have interviewed them before trial. In addition, the Governor’s Commission recommendation 8, cited by Petitioner as the basis of this claim for clemency, does not require recording the interview of all witnesses in a homicide. It refers to the testimony of witnesses who may recant or whose testimony may “evolve” over time. The Petitioner has not asserted that this type of witness problem occurred in this case. In addition, the record does not reveal this type of witness problem but does show that the State’s witnesses were subject to a thorough and complete cross-examination by the defendant.

d) Line up Procedures

Petitioner asserts that the line up procedure used in this case was defective because it was not videotaped, it was not sequential, it was not conducted by officers unaware of the suspect’s identity, it did not include a statement of the witness’ confidence level and the witness was not informed that the suspect might not be included in the lineup.

Petitioner's allegation of improper identification procedure is without basis. He failed to raise any issue concerning the line up identification either at trial or during the review of this case by the Illinois Supreme Court. The reason for this seems apparent. There simply was not a question of identification in this case. Far from the parties being strangers, the Petitioner murdered his former girlfriend and the baby boy they had together. The witness who identified the Petitioner in a line up, Curtis Taylor, was the brother of Angela's fiancée. His identification of the Petitioner as the person Angela was last seen with was corroborated by several factors. These include the defendant's own admission, the evidence of Angela's blood in the Petitioner's trunk and the fact that the electrical cords and weights used to hide the bodies in the canal belonged to defendant. As a result any claim of clemency based on line up procedures is without merit.

(e)(1) Analysis of Evidence

Another of the factors cited by defendant as a basis for clemency is the fact that all the forensic testing was done at the state police crime lab as opposed to an independent lab as suggested in Recommendation 10 of the Governor's Commission proposals. Petitioner has never challenged the testing or procedures of the state police lab. Petitioner could have asked for an independent analysis of the evidence but failed to do so. There is no indication that defendant would have been denied funds for forensic testing. The state crime lab has done the forensic analysis of evidence in most of the criminal cases brought in the State of Illinois. The fact that the forensic scientists employed by the state performed the analysis of the evidence in this case without any assertion of some impropriety cannot support a claim for clemency.

(e)(2) Decision to seek the death penalty

Petitioner claims his sentence should be reduced because the State's Attorney's decision to

seek death was made without uniform protocols to guide his discretion and was not approved by a state-wide review committee. However, [i]t has long been recognized by 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.

(f) Expert Testimony

Petitioner asserts that he is entitled to clemency because he was denied adequate funding to investigate the case and/or to retain an expert witness on eyewitness identification. However, there is no evidence that Petitioner ever requested funds to retain such an expert or that the court would have denied such a request.

Additionally, there was no identification issue in this case as the parties were not strangers but did know each other. (See discussion under section 1 (d)) The Petitioner also points out that the jury was not instructed on eye witness identification as suggested by Recommendation 58 of the Governor’s Commission Proposals. Petitioner fails to mention that the jury was given I.P.I 3.15 which cautions the jury to consider all the facts and circumstances regarding any witness identification. This instruction was more than sufficient in Petitioner’s case where identity was not a crucial issue in the case.

g) Instruction on Probative Value of Electronically Recorded Statement

Petitioner also asserts that he should be granted clemency because the jury was not instructed that an electronic recording is probative of whether a statement was made and what was said. The basis of this argument is Recommendation 58 of the Governor's Commission Proposals. This instruction would not be applicable in this case as the defendant has never asserted that he did not make statements to the police. (See defendant's statement attached to this response) His contention at trial and on appeal concerned his access to counsel at the time these statements were made. The failure to give an instruction that is not applicable to the facts in this case cannot stand as a reason to grant clemency.

#### h) Proportionality of Sentence

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.

## 2. Illinois Supreme Court Rules Amendments

Petitioner asserts that he is entitled to clemency because the new Supreme Court Rules governing capital cases were not applicable to his proceedings. He points to the fact that neither the defense counsel nor the prosecutors were certified to try capital cases, that the trial judge did not have the benefit of Capital Litigation seminars, and that there were no discovery depositions. The Illinois Supreme Court has clearly held that the amendments to its rules are not retroactively applicable. Hickey, 2001 Ill. LEXIS 1080 at \*65. In addition, Defendant has not asserted any way the application of these rules would have affected the outcome of this case.

Appointment of Two Trial Counsel - Defendant argues he should be granted clemency because he was not represented by two defense counsel as required by the new Supreme Court Rules. As stated above the amendments to the Supreme Court rules are not retroactively applicable. Hickey, 2001 Ill. LEXIS 1080 at \*65. In addition, as defendant points out in his petition, defendant raised this issue on direct appeal. The Supreme Court considered this issue even though it had not been properly preserved for appeal. The Court rejected Petitioner's argument finding that at that time Illinois law did not mandate appointing two counsel in capital cases and that the trial court did not err in failing to appoint an additional defense counsel.

#### Experience of Counsel

Petitioner also contends that his trial counsel was inexperienced in violation of Supreme Court Rule 714, which establishes the Capital Litigation Trial Bar. This rule as stated above, is not retroactively applicable. Hickey, 2001 Ill. LEXIS 1080 at \*65.

To support his claim that trial counsel was inexperienced, Petitioner argues that counsel failed to conduct any investigation of the case, that he did not prepare any mitigation for sentencing, that he failed to engage in any significant voir dire and that he did not understand the basic rules of

evidence. The record does not support these assertions. Defense counsel's investigation of this case is obvious from the numerous pretrial motions he filed and his extensive cross examination of the State's witnesses. The record reveals that the defense attorney presented sixteen witnesses in mitigation including a mitigation specialist and a licensed social worker who did an extensive compression study off all the possible mitigation factors. (R. 2188-2222)

Contrary to Petitioner's assertion, the record shows that the defense attorney not only filed a motion to allow attorney participation in voir dire, he actively participated in the questioning of the jurors. (R. 671- 1117) During the course of the proceedings the trial noted on several occasions that the defense attorney did a good job representing the defendant and did not exhibit any deficiencies in his representation. (R. 518, 524) See also, Chapman, 743 N.E.2d at 74 (noting that after a post trial proceeding the trial court found that defendant had received effective assistance of counsel) While reviewing the Petitioner's post-trial motion based on ineffective assistance of counsel, the Supreme Court upheld the trial court's finding that defense counsel had provided effective representation, noting that the defendant's allegations did not show possible neglect of the case. Chapman, 743 .E.2d at 75.

Petitioner also claims that his defense counsel failed to attack the factual basis for death penalty eligibility. The eligibility hearing in this case was a very short proceeding that included opening statements by the state and defense, two stipulations and closing statements. During this proceeding, defense counsel did offer an instruction for eligibility. (R. 2056) Petitioner fails to articulate how counsel could have attacked his eligibility for the death penalty during this proceeding.

Petitioner also contends that defense counsel allowed the jury to be improperly instructed at

the eligibility stage. On review the Illinois Supreme Court specifically rejected this argument. The Court held that although the eligibility verdict form did not contain the necessary culpable mental state, the finding of intent for eligibility was supported by the evidence heard at trial, the jury instructions, and the guilty verdicts returned during the guilt and innocence phase.

#### Notice of Aggravating Factors

Petitioner also bases his plea for clemency on the remark by the trial court during sentencing that this crime was “preconceived” or “planned.” According to Petitioner, he was not given fair notice that this aggravating factor would be considered. The Supreme Court specifically rejected this argument, finding overwhelming evidence of the preconceived nature of this case and that the trial judge properly commented on this evidence.

Likewise Petitioner’s contention that he was entitled to notice of this aggravating factor as required under the new Supreme Court 416 (c) is without merit. The judge merely commented on the evidence that the murders of Angela and Christopher Butler were preconceived. This was not one of the statutory aggravating factors that was argued or submitted to the jury on the verdict forms for eligibility. In any event, the amendment to the Supreme Court Rules that requires notice of aggravating factors is not a proper basis for clemency as the Illinois Supreme Court has held that these rules are not retroactively applicable. Hickey, 2001 Ill. LEXIS 1080 at \*65.

### 3. Enacted Legislative Reforms

As yet another basis for clemency, Petitioner repeats in a broader manner his assertion in section 1(f) (dealing specifically with an eye witness identification expert) that he did not have adequate funding to investigate the case or hire expert witnesses. He also cites the fact that he did

not have the benefit of the Death Penalty Trial Assistance Division of the Office of the State Appellate Defender. There is no evidence that the Petitioner was denied necessary funds to investigate or retain appropriate experts. Early in the proceedings (November 27, 1995), the trial court approved funds for an independent psychological examination. (R. 64) <sup>2</sup>

The court also approved funds for a mitigation specialist. (R. 591) The court properly limited the funds for that expert. The courts must review such requests and determine if they are reasonable. This is the same standard which applies for funds under the Capital Litigation Trust Fund. 725 ILCS 124/15(c). There is nothing in the record to indicate that the mitigation evidence gathered for the Petitioner was deficient or incomplete. A compression study was done by Lynn Rittenberg. She filed a report reviewing many possible mitigation factors. (Supp. Rec. I, p40) Joanne Glass-Watson, the mitigation specialist, filed a twenty-eight page report. (Supp. Rec. I, 2) In addition, defense counsel had Petitioner evaluated by Dr. Richard Harris who did a mitigation psychological evaluation. (Supp. Rec. I, 29) Some of the voluminous medical and school records obtained by the Petitioner's mitigation team are contained in the nearly 700 hundred pages of Supplemental Record filed by the Petitioner on appeal. (Supp. Rec. I and II) On review the Illinois Supreme Court specifically noted all the different types of mitigation evidence that was presented to the trial court. 743 N.E.2d at 80. Petitioner has failed to articulate any further mitigation that would have been available if the Capital Litigation Trust Fund had been in place.

### Other Factors

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<sup>2</sup>The additional psychological evaluation was ultimately done by the Psychiatric Institute.

a) Petitioner's Behavior in Prison

Petitioner also points out that he has had few disciplinary problems in prison. Attached to this petition are copies of the two disciplinary actions defendant has had while incarcerated.

b) Representation By Attorneys Kauffman and DeCristofaro

Petitioner's final plea for clemency is based on the suspension of two of his defense attorneys, Neil Kauffman and Antonio DeCristofaro. Neither of these attorneys were suspended as a result of improper action on this case. Mr. DeCristofaro, represented Petitioner during the early stages of these proceedings. Defendant does not point to any specific actions by Mr. DeCristofaro that were ineffective or improper. The record shows that during the time he represented Petitioner he was active in the case, filing numerous motions including a Motion Suppress Statements and a Motion to Quash Arrest. (C.L. 21, 22) Attorney De Cristofaro also requested and was granted funds for an independent psychological evaluation of the Petitioner. (C.L. 22) No matter what personal problems Mr. DeCristofaro had, there is nothing to suggest that his representation of the defendant was deficient.

Mr. Kauffman was the trial attorney in this case. After he his suspension ended, he again entered his appearance as private defense counsel for Petitioner. This was over one year before the trial. When reviewing Petitioner's Motion for a New Attorney to argue post-trial motions, the trial court specifically found that Mr. Kauffman did a sincere job, exhibited no deficiencies (R. 518) and in fact did a good job representing Petitioner. (R. 524) The Illinois Supreme Court affirmed the finding of the trial court holding that the trial court adequately inquired into counsel's performance and concluded that he has provided effective representation. 743 N.E.2d at 501. There is nothing in the record or the opinion of the Illinois Supreme Court to indicate that the personal and professional

problems that these attorneys had affected their representation of the Petitioner.

## CONCLUSION

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

Respectfully submitted,

RICHARD A DEVINE  
State's attorney of Cook County

by: Kathleen B. Lang