

OCTOBER 2002 SESSION
PRISONER REVIEW BOARD
STATE OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)	
)	Docket No. \
vs.)	
)	
REGINALD MAHAFFEY,)	Inmate No. A92127
)	
)	

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

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

HEARING REQUESTED

PATRICK DRISCOLL, Acting State's Attorney of Cook County

By: JUDY L. DeANGELIS
RENEE GOLDFARB
PAUL TSUKUNO
Assistant State's Attorney

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I

HISTORY OF THE CASE

Petitioner was indicted by a grand jury for the murders of Dean and Jo Ellen Pueschel, and the attempted murder of Richard (Ricky) Pueschel. Petitioner and his brother, Jerry Mahaffey, another inmate on Death Row, were jointly indicted and were tried jointly, however, petitioner's convictions and sentence were reversed and a new trial was granted. Besides the murder and attempt murder charges, petitioner was charged with various counts of rape, deviate sexual assault, aggravated battery, residential burglary, home invasion, armed robbery, armed violence and theft. Following a jury trial presided over by the Honorable Thomas A. Hett in which petitioner appeared *pro se* throughout trial, petitioner was found guilty of the murders of Dean and Jo Ellen, the attempt murder of Ricky, home invasion, rape, armed robbery, aggravated battery to a child, residential burglary and theft. The same jury found petitioner eligible for the death penalty in that at least one of the murders was committed during the course of one of the charged felonies. Following the presentation of evidence in aggravation, the jury found no mitigating factors sufficient to preclude imposition of the death penalty. The trial court imposed the sentence of death

and entered extended sentences of 60 years for attempt murder, 30 years for home invasion, armed robbery and rape of Jo Ellen, with all sentences to run consecutively.

On direct appeal, the state court affirmed petitioner's convictions and sentence of death. People v. Mahaffey, 166 Ill. 2d 1 (1995). Both a Petition for Rehearing and a petition for writ of certiorari were denied. Mahaffey v. Illinois, 516 U.S. 1045 (1995). Petitioner sought state post-conviction relief pursuant to the Illinois Post-Conviction Hearing Act (725 ILCS 5/122-1 et seq). Prior to filing an amended post-conviction petition, another fitness hearing was held. Following the trial court's finding of fitness, defense counsel filed an amended post-conviction petition which was dismissed on the state's motion. The state court affirmed the dismissal, People v. Mahaffey, 194 Ill. 2d 154 (2000), and denied his Petition for a Rehearing. A Petition for Writ of Certiorari was denied by the United States Supreme Court. Petitioner next filed a Petition for a Writ of Habeas Corpus, pursuant to 28 U.S.C. sec. 2254, which was denied on November 13, 2001, United States ex rel. Mahaffey v. Schomig, 2001 U.S. Dist. LEXIS 18934 (N.D. Ill. Nov. 15, 2001), as well as petitioner's Motion to Alter or Amend Judgment on November 29, 2001. Petitioner then appealed to the Seventh Circuit but was denied any relief on his claims on June 27, 2002. Mahaffey v. Schomig, 2002 U.S. App. LEXIS 15341 (No. 01-4271). Petitioner has not yet filed a Writ of Certiorari in the United States Supreme Court although he has requested a stay of the mandate pending the filing of same.

II

FACTS OF THE CASE

PRE TRIAL MOTIONS

Prior to petitioner's first trial in 1984, a motion to quash arrest and suppress statements was filed by petitioner's trial counsel, requesting that his arrest be invalidated and his confession suppressed. The bulk of the testimony with regard to the motion to quash centered on petitioner's contention that the warrantless arrest was illegal and that there was no consent given to enter his apartment. The trial court denied the motion to quash arrest.

As to the motion to suppress statements, petitioner claimed that his confession was not knowingly, voluntarily and intelligently given since he was never given his Miranda warnings and he was beaten by the arresting officers at his apartment, the officers who transported him to Area 2, and by the interrogating officer at Area 2. The arresting officers testified that, not only had they given petitioner his Miranda warnings, but no one ever beat him with a flashlight, punched him in his ribs, knocked him against the wall or put a bag over his head. The assistant state's attorney who took petitioner's confession stated that he never saw anyone hit petitioner, never saw any signs of petitioner being hit, and petitioner had stated to him that he had not been beaten and had been treated well while at the station. After hearing the testimony on the motion, the trial court found the officers to be credible and determined that petitioner's confession was not beaten out of him, and that he was properly advised of his rights prior to confessing to the brutal murder of Dean, the rape and murder of his wife, JoEllen, and attempt murder of their son, Ricky. He also found that the statements given at petitioner's apartment and during the ride to Area 2 were admissible.

THE TRIAL

On August 29, 1983, at approximately 8:00 a.m., Mr. and Mrs. Joseph Heinrich were waiting for their daughter, Jo Ellen, to bring their grandson, Ricky, to their house so that they could watch him. While waiting, Dean's place of employment called the Heinrich home inquiring as to Dean's whereabouts since he had not arrived yet for work. Because no one was answering the telephone at his daughter's house, Mr. Heinrich drove to his daughter's house, approximately ten minutes away. When he reached the house, he found his grandson, Ricky, walking outside, covered with blood. Ricky told him he was looking for the car keys to drive to his grandparents' house and that his mom and dad were dead.

On August 28, 1983, the day before, Ricky, a 6th grader, had spent the entire day at his grandparents' house. He was still on summer break and was not attending school but he was participating in youth baseball. His mother picked him up that night and, at approximately 8:30 p.m., Ricky went to bed. Later that night, Ricky was woken up while being held in a head-lock position. He tried to scream but a hand was over his nose and mouth. Two voices were telling him to be quiet. After blacking out for some time and then regaining consciousness, Ricky got out of bed and went into the kitchen where he saw a man holding his mother and another man coming through his back door. The two men, one of whom was petitioner, ordered he and his mother to lay on their stomachs on the dining room floor. One of the men began striking his mother with an object. She was crying and she told Ricky to listen to the men.

The next thing Ricky knew, he woke up in his bed and found himself in a puddle of blood. He did not remember going from the dining room to his bedroom. He walked into the bathroom, looked at himself in the mirror and looked in his parents' room and saw his father

"sprawled out against one of the walls" with blood near him. After walking into the dining room area, he saw his mother lying in a pool of blood at her head. She had no heartbeat. The phone was ringing but Ricky could not answer it because the receiver had been ripped off the telephone. He walked out their back door and started walking toward the alley when he met his grandfather.

Paramedics soon arrived and Ricky was taken to the hospital where he stayed for approximately one week. He had suffered a fractured skull, five stab wounds in his back and his left eye was swollen shut. He also had hemorrhaging in the brain which was considered life-threatening. During his hospital stay, Ricky was accompanied by his doctor and transported by ambulance to Area 6 police station in order to view a line-up. His doctor was unhappy about Ricky going to view the line-up because Ricky was not completely recovered from the head injury "by any means." Ricky was unable to identify either of the two men who were in his apartment that night because he was in a daze and was not sure of himself at the time of the line-up.

At trial, Ricky was 99% sure that petitioner was one of those men. The description of the two men that he gave the police was that one was a light complected black or Latino, while the other was shorter and a darker complected black man. Ricky believed petitioner to be the lighter complected man. Petitioner's picture in the newspaper following petitioner's attempt escape from jail did not play a part in Ricky's identification of petitioner.

Sgt. Pierczynski was a patrol sergeant on August 30, 1983 for the 13th District, Chicago Police Department. At approximately 1:15 p.m. on that day, Pierczynski was sitting in a marked patrol car when he was approached by an elderly black man who told him that there was a vehicle parked in the "project" at 2245 West Lake Street which appeared to be "out of place." When Pierczynski arrived at the lot where the car was parked, he saw a red sports car. The license plate

on the car, J-O-Z-Z, matched the plates which were given on an all-call broadcast earlier that day for a 1982 red Camaro owned by Jo Ellen Pueschel.

Detective Anthony Graffeo with the Chicago Police Department, Area 6 Violent Crimes division, arrived at 2519 West Jerome at approximately 9:30 a.m. He entered the apartment where he saw one of Ricky's bats, covered with blood and at least one knife on top of the kitchen counter. In the dining room, he saw the body of Jo Ellen lying in a pool of blood, dressed only in a blue night gown with no underclothing. She had a two inch slit in her scalp, her right eye was swollen shut and her face was battered and bloody. Upon walking through the apartment, he saw blood on a linen closet door in the hallway area. He entered one of the bedrooms which was in disarray and which had blood throughout with another one of Rickey's bats covered with blood. Lying face down on the floor was Dean, dressed in blue jogging shorts, covered with blood on his back and eight visible puncture wounds and a contusion on his eye. Various gun paraphernalia were under the bed near his body. An empty gun rack was above. Laying next to his body was an empty gun holster, a belt, and some shotgun shells. A jewelry box on a dresser near the body had been opened. A t-shirt with blood and "slice" marks was found in Ricky's bedroom, and drops of blood were found in the bathroom sink.

One of the arresting officers, Sergeant Byrne, testified that he and his partner, Detective Grunhard responded to a radio call and proceeded to 95th and the Dan Ryan at about 2:00 a.m. on September 2, 1983. There, he met Sergeant Jackson who had Cedric Mahaffey (petitioner's brother) seated in his squad car. Byrne called Area Six Violent Crimes and learned about the proceeds that had been taken from the home where the murders had occurred. Byrne went back to the car and asked Cedric what kind of guns had been taken.

After further speaking with Cedric, they proceeded to 3534 W. 13th Place where petitioner was staying. The officers showed their badges when the door was opened by a man named Morriell Redmond and asked if Reginald Mahaffey was in the apartment. After Redmond told them they could search his apartment, Yucaitis and Byrne walked to the rear and they saw the body of a black male lying on the floor. Petitioner told the officers his name, and he was told he was under arrest. Byrne saw a .357 Magnum revolver on the nightstand next to where Reginald had been lying which was recovered.

Byrne further stated that the first thing petitioner said after his arrest was that he knew that the police officers were "coming after" him and that he knew he was "going to get caught." Petitioner continued to talk, stating that he and his brother had gone to the northside to commit a burglary but their van broke down. As they were walking from the van, they found an open window, crawled through the window of the first floor apartment into the bathroom. They went into a bedroom and beat a young boy and stabbed him, and entered another bedroom where they beat a man and woman to death. Petitioner said they took 3 guns, a .357 Magnum, a shotgun and carbine rifle, together with jewelry, video equipment, a VCR, an Atari game and video cassettes. Grunhard removed from a nearby closet a dust cover for a turntable which contained twenty-four pieces of jewelry, all of which were identified by Byrne and by Josephine Heinrich as belonging to either Dean, Jo Ellen or Ricky. Also removed from the bedroom where petitioner was lying were boxes containing .30 caliber carbine bullets and .12 gauge shotgun shells. At this point, petitioner said that the officers had "most of what [petitioner and his brother] got" and that his brother had a VCR, Atari game and some cassettes.

Byrne and Grunhard returned to Area 2 Headquarters where all the recovered proceeds were placed on a long table. As Byrne, Yucaitis and petitioner stood next to the table, petitioner put his left hand out and removed from his third finger a white metal ring with a blue stone center. Petitioner reached into his trouser pocket and pulled out a man's Seiko watch and a gold chain with a crucifix. He handed all items to the detective and said that the items belonged with everything on the table.

Joseph Heinrich, Jr., Jo Ellen's brother, identified the Remington .12 gauge shotgun, the universal caliber Carbine rifle and the .357 Smith and Wesson revolver as belonging to Dean Pueschel. Jo Ellen's mother, Josephine, identified various items of jewelry recovered from petitioner's apartment as belonging to Dean, Jo Ellen and Ricky. Specifically, she identified the crucifix given to Dean by his mother, his ring and his watch which were recovered from petitioner.

Pam Fish, a forensic scientist in the serology unit of the Chicago Police Department crime lab, testified that she ran tests on certain evidence gathered from the crime scene including bloody bats, blood taken from the victim's bodies and a vaginal swab taken from Jo Ellen. One of the bats had Jo Ellen's type blood, while the other had Dean's type blood. The vaginal swab tested positive for the presence of spermatozoa. Ms. Fish also tested the .357 revolver which had blood traces which were consistent with Jo Ellen's blood type. During cross-examination, Ms. Fish explained that petitioner was a "non-secretor" which meant that his semen did not secrete his blood type. She could not determine the blood type from the vaginal swab taken from Jo Ellen because the vaginal swab did not reveal the presence of activity for any blood type.

MAHAFFEY'S CONFESSION

According to Assistant State's Attorney Irving Miller, on September 2, 1983, he went to Area 2 where, at approximately 9:30 a.m., he entered a small room where petitioner was being held. (R. 1555-57) He requested that petitioner's handcuffs be removed and he proceeded to introduce himself as a lawyer working with the police and that he was not his lawyer. (R. 1558) He advised petitioner of his Miranda rights and petitioner indicated that he understood his rights. (R. 1558-59) He first spoke with petitioner, and after speaking with Jerry Mahaffey for approximately 20-30 minutes, Miller returned to petitioner's room where he confronted petitioner, telling him that he believed that petitioner had lied during their first conversation. (R. 1559-59A) Petitioner admitted having lied and admitted that he had sex with Jo Ellen Pueschel. (R. 1560)

Miller had the various items from the long table brought into a larger room where he proceeded to take a "court-reported" statement from petitioner. (R. 1561-62) At that time, petitioner repeated his earlier statement that he had no complaints about the treatment by the police. (R. 1563) After being advised of his rights another time, petitioner gave a 23-page statement which detailed the events of August 29, 1983 and on which he corrected errors, initialed and signed. (Supp. Record and R. 1568-1611) Petitioner stated that he and his brother Jerry planned to burglarize a clothing store on the northside of the city. (R. 1573) They left at approximately 2:30 a.m. and drove a borrowed tan/brown van to Howard Street near Western Avenue in order to stake out a certain clothing store. (R. 1574-75) The particular store they had in mind was "not fit" because of excessive traffic so they decided to "check out" a different clothing store, only to have the battery in the van die. (R. 1576-77) They locked the van, walked through a parking lot and noticed that one of the apartments in the apartment building had an open window.

(R. 1578) Petitioner said he removed the screen to the bathroom window and his brother was the first to go inside. (R. 1578) They saw someone in a side room and they entered the kitchen, drank some Kool-Aid from the refrigerator, and took some money from a wallet which was sitting on the kitchen table. (R. 1579) Petitioner picked up a butcher knife which had a blade one inch wide at the bottom and approximately 5 inches long. (R. 1580) They entered the "kid's room," and his brother said "man, it's a boy." (R. 1580) Petitioner got on top of Ricky's back and pulled a pillow over his head, telling him not to make any noise and that everything would be "all right." (R. 1581) Petitioner proceeded to choke him while Jerry held Ricky's mouth with a pillow. (R. 1582) Ricky attempted to call for help and struggled with petitioner and his brother. (R. 1582) Petitioner told Jerry to stab him so Jerry stabbed him, according to petitioner, "I don't know how many times." (R. 1582) Petitioner discovered a basket of bats in Ricky's room and Jerry hit Ricky over the head a couple of times. Petitioner could not remember if Ricky was stabbed or clubbed first. (R. 1583) Petitioner picked up a bat and went into the other room where he thought were two ladies because of the "long hair." (R. 1584) Petitioner stood on the left side of the bed while Jerry stood on the right, both carrying bats. (R. 1584) They both, simultaneously, hit Dean Pueschel in the head with the baseball bats. (R. 1585) Jo Ellen awoke while Jerry was still hitting her husband a few more times with the bat and petitioner told her to "be quiet," that "she would be all right". (R. 1586) He took her into the kitchen where he began to have sexual intercourse with her and finished the act over the arm of a couch in the living room. (R. 1587) While he was still having sex with Jo Ellen, Jerry emerged from the bedroom with a .357 magnum and said, "[M]an, this mother fucker had a big pistol." (R. 1587) Jerry called Jo Ellen a "bitch" and told her to tell them where the other pistols were. (R. 1588) Petitioner returned to the bedroom where Dean was lying face-up on the floor and

looked at the jewelry box on the dresser. (R. 1588) He took some jewelry and a t-shirt from a dresser drawer. (R. 1588) Petitioner returned to the room where Jerry was having sex with Jo Ellen "in the mouth." (R. 1589) Petitioner told her everything was going to be all right if she cooperated. Jo Ellen told petitioner that Jerry was being "rough with her" and petitioner said, "just go along because [you] really ain't got no choice." (R. 1590)

Petitioner asked Jo Ellen where the car keys were. (R. 1590) She gave him the keys and told him there was an alarm on the car. (R. 1591) Petitioner told her that "it would be just as bad for her as it might be for [him]" and she put on a brown trench coat, went outside and de-alarmed the car. (R. 1591-92) Petitioner packed "a few distinguished items like the TV machine, tape player and the arcade game" and some tapes and put them in a box with some jewelry, the rifle, shotgun and .357 magnum. (R. 1592) The assistant state's attorney pointed to the various items mentioned by petitioner and petitioner identified each one as having been taken from the apartment. (R. 1593) Petitioner also stated that they took a box of "30/30 shells," two boxes of 12 gauge shells, one box of 38 special and one box of .357 "mags" which he identified during his statement. (R. 1595)

Petitioner further stated that after he loaded the "merchandise" into the car, he returned inside the house and hit Jo Ellen in the head with the .357. (R. 1596) He told her to lay down. (R. 1596) Her son mumbled, "Mom, lay down, just lay down, Mom." (R. 1596) As she was trying to say something, petitioner hit her "a couple of times on the head" with the pistol while her son lay right next to her. (R. 1597) As he was leaving the house, he again told Jo Ellen that she was going to be all right and she "kind of believed" him. (R. 1597-98) Jerry told petitioner that they had to "kill this bitch, too" and petitioner said, "I know, man. Don't make her panic." As petitioner was leaving, he heard "solid hits" which told him that "[Jerry] was finishing the lady and her son off

with the bats, you know. I didn't know for sure. I only thought that." (R. 1598) Petitioner also told Jerry to stab the "little boy." (R. 1599)

After leaving the apartment, petitioner started the car and waited for about four minutes for Jerry to come out of the apartment. (R. 1599) Petitioner drove the car south on Western Avenue toward the expressway. (R. 1600) They went to 3534 West 13th Place where petitioner was staying at the time and loaded the "goods" into the house. (R. 1600) Petitioner put the jewelry in an ice dish and told Jerry that they had to "get rid of the car." (R. 1601) They proceeded to the projects at 2245 West Lake Street and left the car in a back parking lot, hoping that somebody would steal it so that any fingerprints petitioner may have left would have been "no good." (R. 1601) The two took a bus to 13th Place. (R. 1602) The following Tuesday, petitioner and Jerry moved some of the proceeds to their other brother's house. (R. 1603) Petitioner kept a "few choice pieces of jewelry," the shotgun and the .357 magnum, while Jerry took the rifle, Zenith tape player and tapes. (R. 1603) Petitioner took the arcade game and small portable TV to another brother's house. (R. 1603)

During his arrest, petitioner said that he told the police where the .357 was, that they discovered the shotgun in the closet and that he was wearing certain of the jewelry which he gave to the detective at the police station, including Dean's wedding ring. (R. 1604-05) When shown a photograph of Jo Ellen, Dean and Ricky by the assistant state's attorney, petitioner responded, "Those are my victims." (R. 1606) After the court-reporter typed the statement, petitioner reviewed it for corrections, making certain corrections which he initialed. (R. 1608-1611)

Following the People's introduction of 94 trial exhibits into evidence, the state rested and petitioner presented no testimonial evidence in the defense case-in-chief. (R. 1656-57, 1690-92)

Petitioner did introduce into evidence a line-up photo which was taken on September 2, 1983. (R. 1656, 1691)

Following closing arguments and the trial court's instructions to the jury, the jury returned verdicts of guilty for the murders of Dean and Jo Ellen, the attempt murder of Ricky, home invasion, rape, armed robbery, aggravated battery to a child, residential burglary and theft. The trial court admonished petitioner regarding his right to counsel at the sentencing hearing. At that time, Kevin Smith, the public defender who sat with petitioner at counsel table throughout the trial, stated to the court that he did not believe that petitioner was fit for sentencing. Based on this statement, and over the prosecution's objection, the trial court requested that Dr. Reifman from the Psychiatric Institute examine petitioner for fitness.

Three days following his examination, Dr. Reifman testified that petitioner met the legal requirements and standards for fitness to be sentenced. He found petitioner to be stupid and that he used poor judgment but such was not a result of a mental condition which would render him unfit for sentencing. According to Reifman, petitioner's closing argument following trial was not a product of a person "mentally diseased" but the product of a person who is not very smart. Petitioner had the capacity to understand but had a lack of knowledge and could not prepare a trial because he's not a lawyer. Dr. Reifman was aware that petitioner had a borderline or below average intelligence but did not believe that petitioner had an organic delusional disorder. The doctor had seen petitioner on previous occasions, including the time period when he was organic or brain damaged from his fall in 1985. At that time petitioner was not organically deluded which is when he would have been, if it all. Petitioner may have developed a functional delusion but the doctor did not believe petitioner had an organic delusion. Petitioner's religious conversion was also not

significant enough to be considered the product of a mental disease. According to Reifman, petitioner was stupid but stupidity is not a mental disease. The prosecution then presented its evidence during the eligibility stage and the jury found petitioner eligible for the death penalty based on the aggravating factor that petitioner committed murder during the course of a felony.

DEATH PENALTY HEARING

Following petitioner's opening argument to the jury at the second stage of the hearing, the prosecution presented Dr. Reifman who testified that petitioner was not suffering from a mental disease, but that he did suffer from what he believed to be an anti-social personality disorder. Reifman's opinion was that petitioner was fit for sentencing. The prosecution then presented various witnesses who testified as to petitioner's prior criminal acts including a robbery of a White Castle restaurant in 1980, a burglary both at a used car dealership in 1978 and at a general merchandise store in 1979. Further aggravating evidence was introduced regarding petitioner's unsuccessful escape attempt from the Cook County Department of Corrections. (R. 2048-2066, 2141-2149, 2170-2178, 2197-2200)

After the prosecution rested in aggravation, closing arguments were presented by both parties and the jury found that there were no mitigating factors sufficient to preclude the imposition of the death penalty. The trial court subsequently sentenced petitioner to death, with an extended term of 60 years for the attempt murder, 30 years for home invasion, armed robbery and rape, with all sentences to run consecutively.

III

REASONS FOR DENYING THE PETITION

REGINALD MAHAFFEY DOES NOT DESERVE EXECUTIVE CLEMENCY IN ANY FORM WHERE HE ADMITTED THAT HE AND HIS BROTHER JERRY MAHAFFEY INVADED THE HOME OF DEAN AND JO ELLEN PUESCHEL AND BRUTALLY MURDERED BOTH OF THEM AND TRIED TO KILL THEIR ELEVEN YEAR-OLD SON, WHO, BY THE GRACE OF GOD, SURVIVED THE ATTACK ALTHOUGH HE WATCHED HIS MOTHER AND FATHER BEING KILLED BY TWO SADISTIC MONSTERS.

Although Reginald Mahaffey is trying to claim that he is actually innocent of the murders of Dean and JoEllen Pueschel and the attempt murder of their eleven year old son, Ricky, he never made that inane, unsupported claim until he presented such claim to the federal courts, seventeen years after the murders. Even so, every court which has heard his cries have completely rejected anything he has had to say, including any attempt to claim that his “other brother” did it. Mahaffey’s arguments to this Board are not only ludicrous, they are utterly appalling. Mahaffey is not actually innocent of the crimes he committed, nor is he deserving of any relief on any of his claims, ever. It would not only be “just” to execute Reginald Mahaffey, it will be welcomed by the surviving victim of the attack, Ricky Pueschel, as well as his entire family who have endured twenty years of unbearable pain and suffering since the horrible murders were committed by petitioner and his brother. Reginald Mahaffey is the “poster child” for the death penalty and his victims’ family members deserve to see him executed. They can only hope and pray that he will then burn in hell.

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.

First, petitioner asserts that he is entitled to clemency because he did not receive pretrial discovery pursuant to Ill. S.Ct. Rule 416 and that 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. Thus, petitioner is not deserving of any relief based on the new rules.

Next, petitioner seeks clemency because his custodial interrogation was not videotaped or electronically recorded. Under the Governor's Commission's proposals, 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. Contrary to Petitioner's claims, he was not beaten while he was confessing to the horrific rape and murder of Jo Ellen and Dean Pueschel as was clearly evident from the written confession itself and every word which was uttered in the courtroom during the Motion to Suppress hearing. Moreover, Judge Hett reviewed the totality of the circumstances and found that, not just by a preponderance of the evidence, but, beyond a reasonable doubt, petitioner's confession was not obtained by coercion. Although petitioner claims throughout his petition that he was beaten by Jon Burge and the team at Area 2, such accusation is a lie. In fact, the record in this case proved that petitioner never demonstrated physical injuries commensurate with his allegations of police brutality, nor did he ever complain at the time of interrogation, or immediately thereafter, that he was beaten during his arrest or was coerced into confessing. He even admitted in his confession that he had been treated "okay," that he had no

“complaints about the way the police treated” him, that he was given food and coffee, and no threats or promises were made to him to induce him to confess. (Supp. R. 23) Simply put, this record proves that Mahaffey has lied about any alleged abuse and his attempt to continue to lie must now be stopped. There is not one shred of evidence to substantiate any alleged torture which petitioner claims he was subjected to by Area 2 officers. Nonetheless, even without his confession, every court which has reviewed this case has found that the evidence of petitioner’s guilt was overwhelming and that the prosecution did not even need his confession to prove that he brutally raped and murdered the Puschels. As the courts have found:

[a]part from defendant's confession, the State presented evidence at trial to prove defendant guilty beyond a reasonable doubt. Richard Puschel, who was 11 years old at the time of the offenses and was 18 at the time of trial, provided an in-court identification of defendant as one of two men he saw in the apartment the night of the crimes, testifying that he was "99% sure " that defendant was there. "99% sure" may not be sufficient identification of defendant as the perpetrator of the crime, particularly in a capital case. However, Richard Puschel's identification of defendant is corroborated by evidence that at the time of his arrest, shortly after the murders were committed, defendant was in possession of jewelry and weapons taken from the Puschel home at the time of the commission of the crimes. Specifically, the jury heard evidence that numerous items of personal property which were stolen from the Puschel's residence were found in defendant's apartment, including two dozen pieces of jewelry identified as belonging to either Jo Ellen, Dean or Richard Puschel. The jury also heard evidence that, at the police station following defendant's arrest, defendant removed a man's ring from his hand and a watch from his back pocket, stating that these items belonged with the other pieces of property that had been seized from his apartment. The ring and watch were identified at trial as also belonging to Dean Puschel. In addition, the loaded .357 Magnum revolver recovered from defendant's night stand, as well as a shotgun recovered from defendant's

closet, were identified as belonging to the Puschels. Under the totality of the evidence, our review of this record convinces us that in light of the overwhelming evidence establishing defendant's guilt, confidence in the outcome of defendant's trial is not undermined, even assuming the claimed error. Mahaffey, 194 Ill. 2d at 179-180. (emphasis added)

Videotaping or an electronic recording of petitioner's confession would have only helped the prosecution, not petitioner. 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.

Petitioner additionally 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 record does not support his claim, nor has he ever claimed in twenty years since the day of his arrest that he ever requested a lawyer at the police station. Therefore, even if this proposal had been in effect at the time of petitioner's arrest, it would not have applied to him.

Petitioner further seeks clemency because witness interviews were not electronically recorded. However, petitioner was provided with all of the witness' names prior to trial and he was certainly not surprised by the fact that Ricky testified at trial, especially where petitioner was the one who did not stab Ricky enough or hit him enough with a baseball bat to kill him, but only maim him. Further, petitioner represented himself and had access to everything that was being

presented in the prosecution of his case. Also, petitioner's trial was actually his second jury trial. The same witnesses who testified in petitioner's first trial also testified at his second trial. Therefore, petitioner was well aware of whom the witnesses were and the substance of their testimony. Moreover, petitioner has failed to demonstrate how the outcome of his trial would have differed had Ricky's interview been electronically recorded. Finally, petitioner could have interviewed Ricky prior to trial and could have electronically recorded those interviews. Petitioner chose not to do so.

Moreover, petitioner's reliance on Ricky's inability to choose petitioner out of a line-up is inane where the record proved that Ricky had not yet recovered from the head injuries he had suffered, at petitioner's hands, "by any means" and he was in a daze at the time of the lineup. (R. 1162-63, 1177-78, 1529-30) Moreover, petitioner's accusation that Ricky was "unsure" about his in-court identification is simply wrong, given Ricky's testimony that he was "99% sure" that petitioner was one of his parent's murderers. Petitioner is not deserving of executive clemency on this claim.

Petitioner next alleges that his death sentence should be commuted because he is mentally retarded. There is absolutely no evidence that has ever been presented in any proceeding throughout the years since the murders of Dean and JoEllen Pueschel to support, or prove, that Mahaffey is mentally retarded. Also, there has been no evidence presented, ever, to prove that petitioner suffers from reduced mental capacity or has a history of extreme emotional or physical abuse. In fact, the testimony presented after all of petitioner's fitness examinations prove that petitioner was fit to stand trial and that according to every qualified expert that has ever examined petitioner, petitioner merely has a personality or character disorder, an anti-social personality

disorder, which was not a mental illness but was simply a specific type of personality functioning. He is not mentally retarded, by any means. It is important to note that the petitioner represented himself during his second jury trial. The record bears out that petitioner asked many relevant questions on cross-examination of the People's witnesses, including the examination of Ricky Pueschel. Petitioner cross examined virtually every witness, probing his/her testimony completely. He gave a closing argument, discussing the lack of fingerprint evidence (R. 1718), the unreliability of Ricky's in-court identification (R. 1730, 1797), and told the jury to weigh the evidence (R.1729). He asked the jury to return a not guilty verdict (R. 1734). Just because he failed to convince the jury doesn't mean he is mentally retarded.

Petitioner next claims that he is deserving of clemency because he was convicted based in part on the testimony of an eyewitness who viewed a line-up prior to the in-court identification and that the Governor's Commission recommendations were not available at the time of the line-up. Petitioner fails to point out that the line-up resulted in no identification by the eyewitness, Ricky Pueschel, since Ricky had been in the hospital, recovering from the horrible injuries which should have killed him, but, by the grace of God, they did not. In fact, Ricky's doctor was very angry that Ricky went to view the line-up because Ricky was not completely recovered from the head injury "by any means." Again, Ricky was unable to identify either of the two men who were in his apartment that night because he was in a daze and was not sure of himself at the time of the line-up. Thus, the Commission recommendations would have been meaningless to petitioner on this claim.

Petitioner also seeks clemency because the forensic evidence used against him at trial was analyzed by a state police forensic laboratory as opposed to an independent laboratory. The

forensic expert was Pamela Fish and she has never been found to have been remiss in any of her work in this case. Moreover, there has never been a judicial opinion written by any court of law that Ms. Fish engaged in a “pattern of overstating results in favor of the prosecution,” contrary to petitioner’s unsupported claim in his Petition.

Nonetheless, petitioner was aware that a very small portion of the evidence the State intended to present in their case consisted of forensic evidence. Petitioner could have obtained an independent analysis, however, he never requested one at any point prior to or during the trial. Petitioner never requested an independent analysis during the post-conviction proceedings. Petitioner never requested an independent analysis during the federal court proceedings. Further, Petitioner’s present claim ignores the fact that the trial court, the Illinois Supreme Court, the District Court and the Seventh Circuit Court of Appeals have upheld the integrity of the evidence. Petitioner also ignores the fact that the jury heard the evidence, and after considering the credibility of the witness and all the attendant circumstances, deemed the testimony reliable.

Petitioner further 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.

Petitioner was convicted of killing two people. Thus, he was eligible for the death penalty as a multiple murderer even though the jury did not find him eligible under this factor.

However, petitioner qualified for the death penalty, and was found eligible by the jury for the death penalty, where he committed the murders while he was committing numerous other felonies, including rape, armed robbery, attempt murder, aggravated battery of a child, home invasion, residential burglary and theft. 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 "each 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 are properly death eligible to help deter the defendant from killing the victim. Regardless of the above, petitioner DID commit the murders following the infliction of torture; he tortured Dean and JoEllen, as well as Ricky, even though Ricky survived. Petitioner deserves to die.

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, it 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 claims that he is entitled to clemency because eyewitness testimony was presented against him at trial and he did not have the opportunity to present expert testimony concerning the problems associated with eyewitness testimony. Petitioner never requested that expert testimony be permitted to rebut Ricky’s eyewitness testimony and he certainly has not presented evidence as to how such expert testimony would have helped him.

Petitioner asserts that he is entitled to clemency because he was denied adequate funding to investigate the case and/or to retain the necessary expert witnesses. However, despite the creation of the Capital Litigation Trust Fund, there is no indication that any capital defendant in Illinois, particularly those prosecuted in Cook County has ever been deprived of the necessary funds to investigate or retain appropriate experts. Rather, courts have denied various requests which are deemed unreasonable or unnecessary, the same standard which applies for funds under the Capital Litigation Trust Fund. 725 ILCS 124/15(c). Also, the Cook County Public Defender has significant resources available for capital litigation. Therefore, the mere fact that the Capital Litigation Trust Fund was not created until 2000 is irrelevant.

Petitioner complains that his jury was not instructed to consider as statutory mitigating factors the fact that he had a history of extreme emotional or physical abuse and/or that he suffers from reduced mental capacity. However, although the jury was not expressly instructed to consider these factors, it was instructed that mitigating factors include “any reason why the defendant should not be sentenced to death” and that it should consider all mitigating evidence even if it does not pertain to one of the enumerated factors. Illinois Pattern Jury Instruction 7C.06. His argument that he suffered brain damage and that he could not cooperate with counsel has been soundly rejected by every court which has been asked to review his senseless claim.

Petitioner also claims that clemency is appropriate because he was denied the opportunity to make a statement in allocution at his sentencing hearing. However, petitioner is sadly mistaken since he probably received more allocution than any other defendant presently sitting on Death Row because petitioner chose to represent himself and presented what could be termed “allocution” throughout the entire trial. Therefore, he was given every opportunity to

present himself to the trier of fact before he was sentenced and he certainly used it. Nonetheless, 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).

Petitioner also 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 the prosecution 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). 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.

Petitioner next claims that “despite being mentally retarded” he was sentenced to death. Petitioner is nothing more than a **LIAR**. In the twenty years since petitioner brutally raped and

murdered JoEllen and beat her husband with a baseball bat until he was dead, **NOT ONE** court has found petitioner to have any type of mental disorder or disease whatsoever. In fact, petitioner was found fit at every fitness hearing that was ever held, and, more importantly, he represented himself at his second trial only after, yet, another, fitness hearing was held. Then, during the sentencing hearing at that trial, Dr. Robert Reifman, from the Psychiatric Institute of Chicago found that there was no evidence that petitioner was suffering from a mental disease, even though he did believe petitioner had a mixed personality disorder, that he was anti-social, self-centered, child-like, immature and very impulsive. However, such does not equate to mental retardation and petitioner's attempt to jump on the "mental retardation" bandwagon is disgusting.

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. Nonetheless, petitioner's sentence was not disproportionate to his codefendant's sentence since his brother also, deservedly, received a sentence of death.

Mahaffey finally claims he has been “rehabilitated,” is a “model prisoner with a few disciplinary tickets” and that he should be given an “appropriate sentence of imprisonment.” Of course, he fails to ever mention his prior long and extended criminal history before the horrific acts were perpetrated against Dean, Jo Ellen and Ricky, nor does he mention the fact that while he was in the Cook County Jail awaiting trial, and being the “model prisoner” that he claims to be, he and his brother, together with other inmates of that jail (at least one of whom is presently on Death Row), escaped from the jail, taking jail guards at gunpoint, as hostages, and inflicted injury and violence on those officers. Officer Vernon Williams testified that at one point during the escape attempt, Mahaffey, at gunpoint, told him to lie on the floor, which he did. Then Mahaffey’s brother, Jerry Mahaffey, entered the office with two other inmates, and uniforms were taken from the officers. Another officer, Officer Callahan, was met by Reginald Mahaffey dressed as a lieutenant with another inmate dressed as an officer in the tunnel at Division 4 of the Cook County jail. Mahaffey pulled out a gun and Officer Callahan backed into an office. Mahaffey then put a gun to the head of Officer Robertson and said, “You’re coming with me,” and told Officer Callahan to come along as well. They headed to the security office and Mahaffey grabbed Captain Hunt around the neck and told inmate Greer, “You take the big cheese. I’ll take the honky motherfucker.” Captain Hunt testified he was beaten on the head by Mahaffey. They were then marched down the center of the building and Mahaffey pointed the gun at the female guard and told Officer Callahan, “if she doesn’t open that door, I’m going to kill this motherfucker, and then I’m going to kill her.” The door was opened and the officers were dragged out of the building.

After his capture, he was brought to a Chicago Police Department District Station where he, admittedly, jumped out of a window, receiving the injuries that he now terms “organic brain

damage.” In fact, at his second jury trial, petitioner said in his closing argument, “Yes. I went out the window on the third floor. Went out the window on my own. “ (R. 1722)(emphasis added)

It is clear that petitioner never has, and never will, believe that the rules of society pertain to him or that human life has worth or that he could ever possibly be “rehabilitated.” He is not mentally retarded, no one has ever testified in any court that he is mentally retarded, and he was found fit to the point that he **REPRESENTED HIMSELF** in a capital murder trial. He is not “actually innocent” of the crimes and he has never presented any proof whatsoever, in any shape or form to prove that someone, anyone, other than REGINALD MAHAFFEY, committed the crimes with his cohort, his brother, Jerry Mahaffey. Ricky stated that he was 99% of his identification and every court has found that the evidence of his guilt was overwhelming. He was never tortured during his interrogation and every court which has examined his ridiculous claim that he was tortured has soundly rejected such unsupported accusations. What is true about Mahaffey is that he is an unremorseful, brutal murderer who should not be allowed to live, let alone live in prison. Executive clemency for this monster must be denied.

CONCLUSION

For all these reasons, the People of the State of Illinois respectfully request that this Board and Governor Ryan deny executive clemency to brutal murderer **REGINALD MAHAFFEY**.

Respectfully submitted,

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By: _____
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