

OCTOBER 2002 SESSION
PRISONER REVIEW BOARD
STATE OF ILLINOIS

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| PEOPLE OF THE STATE OF ILLINOIS, |) | |
| |) | Docket No. \ |
| vs. |) | |
| |) | |
| ROBERT FAIR, |) | Inmate No. B-09602 |
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SUBMITTED TO THE HONORABLE GEORGE RYAN, GOVERNOR
OF THE STATE OF ILLINOIS

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

HEARING REQUESTED

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Assistant State's Attorneys

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I

HISTORY OF THE CASE

Following a jury trial in the Circuit Court of Cook County, the defendant was convicted of the murders of Candace Augustus and her 11 year-old son, Gregory. The same jury which convicted defendant determined that he was eligible for the death penalty based on two statutory aggravating factors: (1) murder of two or more individuals (Ill. Rev. Stat. 1987, ch. 38, par. 9-1(b)(3)); and (2) murder of an individual under 12 years of age which resulted from exceptionally brutal or heinous behavior indicative of wanton cruelty. (Ill. Rev. Stat. 1987, ch. 38, par. 9-1(b)(7).) After the jury found no mitigating circumstances sufficient to preclude imposition of the death sentence, the trial judge sentenced defendant to death. The Illinois Supreme Court affirmed defendant's convictions and sentence. People v. Fair, 159 Ill. 2d 51 (1994).

The defendant then filed a petition for post-conviction relief which was denied by the circuit judge. On appeal, the Supreme Court affirmed the dismissal of the petition on all issues except one. The Court remanded the case for limited purposes of discovery concerning defendant's claim that since it was discovered after defendant's trial that the trial judge, Paul

Foxgrover, was converting court fines to his own use in unrelated cases, the defendant should be given the opportunity to try to make out a due process violation by establishing the necessary nexus between Foxgrover's corrupt practices in those unrelated matters and his performance while presiding over defendant's trial. People v. Fair, 193 Ill. 2d 256 (2000). The circuit court conducted the prescribed hearing wherein the People turned over to defendant some 2,500 pages of documents. The circuit court held that despite having access to these documents, the defendant had utterly failed to establish the nexus required by the Supreme Court's opinion. The defendant's petition was thereby denied. The defendant's case has been appealed to the Illinois Supreme Court, however he has not yet filed a brief in the matter

II

FACTS OF THE CASE

Following a jury trial in the Circuit Court of Cook County, the defendant was convicted of the murder of Candace Augustus and her 11 year-old son, Gregory. The same jury that convicted defendant determined that he was eligible for the death penalty based on two aggravating factors: (1) murder of two or more individuals (Ill. Rev. Stat. 1987, ch. 38, par. 9-1(b)(3)); and (2) murder of an individual under 12 years of age which resulted from exceptionally brutal or heinous behavior indicative of wanton cruelty. (Ill. Rev. Stat. 1987, ch. 38, par. 9-1(b)(7).) After the jury found no mitigating circumstances sufficient to preclude imposition of the death sentence, defendant was sentenced to death.

Stephen Augustus, the brother and uncle of the victims, arrived home from work during the early morning hours of October 18, 1987. At 5:30 a.m. Stephen was awakened by his mother who told him that Candy was missing and they had to go and look for her. She was worried because one of Candy's friends from work had called the night before and said Candy (Candace Augustus) had not shown up for her shift as a waitress at Chi Chi's Restaurant, something which never happened. Stephen and his mother then drove to Candy's home in a Dixmoor trailer court. (R. 1011-13)

When they arrived at Candy's home around 6:00 a.m. Stephen noticed that the trailer was dark and that her car was gone. After unsuccessful attempts to enter the trailer home Stephen moved the front steps to a window where he broke a window and entered. As he did so he knocked over a lamp, so he turned on a television set for light. Stephen then went to his nephew Gregory's room and turned on the light. (R. 1015, 1017-18) He did not see Gregory at first because of the rumpled

condition of the bed but he did see that the wall was splattered with blood. Upon pulling back the covers Stephen discovered Gregory's body. Blood covered the side of his nephew's head and his body was cold to the touch. Believing Gregory to be dead he recovered the body with the blanket. (R. 1020) Stephen then entered his sister's bedroom and saw her laying on her back across the bed. Her legs hung over the side of the bed and she was still clutching the pillow which covered her face. She did not answer when he called her name. He turned and went to the kitchen to use the phone. On the way he grabbed and held onto his mother. After reaching the police by phone Stephen was told to administer CPR. He did so. The pillow was stuck to Candy's face so he did not attempt to remove it. Candy's coloring was blue and she had no pulse. (R. 1021-22)

Dixmoor police Officer Donald Schwartzkopf arrived at Candy's trailer home around 7:00 a.m. on October 18th. He saw the victim's mother and brother who both appeared to be in a state of shock. Stephen said "They're in the bedroom." (R. 1036-37, 1039) The officer first entered Candy's bedroom, where he saw her body on the bed and blood splattered on the walls. He checked to see if anyone else was in the room. Schwartzkopf, who is also an emergency medical technician, determined that Candy was dead because lividity had set in the legs and the body was cold and clammy. (R. 1042-43) Pulling the pillow back from the face he observed a massive amount of blood. (R. 1042) The officer said the room was messy and the contents of a purse or drawer was strewn on the bed. A baseball bat was lying next to the bed. (R. 1043) Stephen Augustus said that this bat belonged to Gregory. (R. 1010)

Illinois State Police Investigator Dexter Barlett, an evidence technician, processed the scene. Dexter was found to be an expert in the field of blood spatter and flight interpretation. This field is a scientific formula which uses mathematics to determine the velocity of the blood spatter and

where it came from. (R. 1052-57) The investigator stated that there are two kinds of blood and cast-off spatter; high speed velocity and low speed velocity. High speed velocity is caused by discharging a firearm and results in a small spray of blood. Low speed velocity is indicative of the usage of a bludgeoning instrument and results in a larger spray of blood. Hence the two rates of velocity are easily distinguishable. In the low speed velocity scenario the instrument comes in contact with the object (in this case the victims' heads) and splits the skull, which results in profuse bleeding because the victim is still alive. The weapon does not collect blood on itself on the first contact, rather it starts to collect it on the second contact. When the weapon is raised after the second contact, the collection of blood on the weapon flies off. On the third strike the weapon collects more blood, and it now also casts off blood in a forward motion. Thus there is a castoff coming up which would spatter on the ceiling and then would cause spatter on the walls as the weapon comes down again to strike the victim. (R. 1066-68) Brain matter spattering does not come from the weapon but rather from the striking of the blow itself thereby causing the matter to splash upwards. (R. 1077)

The blood and brain cast-off spatters in Gregory's room were found on the west and north walls and on the ceiling. (R. 1065) The three cast off patterns in Gregory's room indicated that he had been struck four times. (R. 1068) The spatter on the north wall came from the area of the pillow which may have absorbed some of the blood. However, because of the velocity of the blow which struck Gregory's head, the pillow did not prevent all of the blood from spattering. (R. 1078) In Gregory's case the blows were struck with a high degree of impact. This conclusion is based on the fact that the skull does not typically come apart because it is held together by the scalp. Here, the skull was fragmented and splattered as if it were a liquid. (R. 1079) Additionally, a large piece of skull and brain matter were found on the curtain. (R. 1078) It was Bartlett's opinion that Gregory was

killed first because the body was found in a relaxed state and there were no signs of a struggle. Barlett's theory of who died first is based on the lack of a lot of blood on the bat which indicates that the blood was probably wiped off on the pillow which covered Candy's face. (R. 1071, 1094-95)

Barlett found Candy laying crossward on the bed. The north wall had blood spatter and the ceiling had cast off spatter. (R. 1080) The blood spatter indicated a low velocity impact on the victim. (R. 1081) Candy had a pillow covering her face. Her face and head were grossly disfigured. (R. 1083-84) Candy also had bruises to her left hand and forearm, her right forearm and on both of her upper thighs. (R. 1093) It was Barlett's opinion that the injuries to both victims were consistent with being hit with a baseball bat. (R. 1087)

While investigating Candy's room Barlett found that the cord to the answering machine had been cut. He also found an unsheathed knife on the top of the cable box. (R. 1080) An aluminum baseball bat was found under Candy's legs, which were partially off the bed. (R. 1081) Barlett carefully inspected the entire trailer. He did not notice any blood on either the knife or the cable box nor could he tell when the knife was placed on the box. (R. 1099, 1101) The answering machine was unplugged but he could not determine when it had been rendered unusable.

Joseph Ambrozich, a forensic scientist with the Illinois State Police, was qualified as an expert fingerprint examiner. (R. 1107-08) He conducted tests on the knife found in Candy's bedroom, which revealed twelve points of comparison with defendant's fingerprint card, although the standard is that there need be only seven points of comparison before an identification can be made. (R. 1109, 1111, 1112, 1114, 1119)

Dr. Robert Kirschner of the Cook County Medical Examiner's Office performed the autopsies on the bodies of Candy and Gregory. The external examination of Gregory showed severe

blunt trauma injuries of the head. A gaping wound on the right side of the head extended eight inches from the rear to the front. There were multiple skull fractures associated with that laceration and portions of brain tissue were visible. A laceration is a tearing of the skin which is caused by blunt force. (R. 1202-04)

The second noted injury was a small laceration above Gregory's right eyebrow. The third noted injury consisted of two lacerations of the right ear accompanied by a crushing and tearing of the ear cartilage. (R. 1205-06) The fourth noted injury was a small abrasion of the right temporal region which included extensive bruising of that area that extended downward to the right side of the neck. (R. 1206-07)

The internal examination of Gregory revealed a multiple depressed comminuted (multiple fragments impacted together) involving the right temporal bone and extended to the base of the skull in both the front and the middle. Another skull fracture extended completely around the skull from the right side of the head through the rear of the head to the left side. There was extreme injury to the brain with hemorrhages in the lining tissues around the brain. Extensive lacerations and bruising of the right parietal lobe and the right temporal lobes were also revealed. Additionally, there was extensive injury to the undersurface of the right frontal lobe, the front of the brain, and numerous hemorrhages and bruises in the left side of the brain. The brain had shifted to the left. (R. 1207-08)

Dr. Kirschner concluded that Gregory's death occurred almost instantaneously with the infliction of the gaping wound on the right side of the head. Three blows had been struck to his head, and these blows were consistent with being hit with a baseball bat. Death was due to severe blunt trauma injuries of the head. (R. 1208-09)

The first group of noted injuries on Candy's body were several, vertical lacerations of the

forehead. A laceration with ragged edges ran down the middle of the forehead and caused multiple fractures. These lacerations were characteristic of blunt trauma injuries. The second noted injury was a deep laceration on the forehead. The third noted injury was also to the forehead and extended down through the skull. Brain tissue was visible. The fourth noted injury was on the left eyebrow and was surrounded by an abrasion. The fifth noted injury was over the right eyebrow. The sixth noted injury was to the right forehead just below the hairline. This injury was caused by sharp trauma such as a sharp object. (R. 1212-13)

The seventh noted injury were multiple bruises involving the upper facial tissues. The eighth noted injury was a large bruise across the bridge of the nose involving the right eye tissues and temporal region. The ninth noted injury was a fractured upper jaw resulting in the loss of a tooth. There were also multiple fractures of the jaw resulting in loosened teeth. (R. 1214-15)

The examination also revealed multiple depressed skull fractures. There were also fractures extending into the base of the skull on both sides of the head. The membranes surrounding the brain had slight hemorrhaging. The brain itself showed an extreme injury in that the right frontal lobe was partially pulverized and the left frontal lobe also had extensive damage. Candy's brain injuries were concentrated on the front, right side of the brain. The numerous bite marks on her tongue were associated with the blow to the lower portion of the face. Her lungs showed the presence of aspirated blood, which is blood taken into the lungs at the time of injury. (R. 1216-17) The bruises and injuries on Candy's left hand were defensive injuries. The injuries on her thighs were several days old which indicated that they did not occur at the same time as the head injuries. (R. 1218-19) Candy's head injuries were consistent with being hit with a bat and she was struck approximately five times. Death was caused by severe blunt trauma to the head. The toxicology reports on Candy were

negative. (R. 1219-20) Dr. Krischner ruled that the manner of death in both cases was homicide. (R. 1221)

Lisa Renison was a co-worker and good friend of Candy, and had known her for nearly four years. (R. 996-97) Lisa knew defendant from when he picked Candy up from work on a few occasions. She had talked with Candy about her relationship with defendant. Defendant had been staying at Candy's trailer since August of 1987 when he returned to the area from California. Candy had known defendant for at least ten years and had taken him in because he had nowhere else to go. Also, Candy and Gregory had lived with defendant and his family for a short while in California. (R. 998-99) Lisa had learned that Candy did not want defendant in her home because he was not working and she did not want her son, Gregory, around defendant's lifestyle. (R. 1000)

On Friday, October 16th, Lisa and Candy worked the 4:00 to 11:30 p.m. shift at the restaurant. When Candy was leaving she was upset. When Lisa told her she should sit down for a while Candy told her she had to get home because she was going to tell defendant that she wanted him out that night. (R. 1001) Candy was scheduled to work the next night, which was Sweetest Day, a particularly busy night at the restaurant. Candy, however, did not appear for work, something Lisa had never known her to do. (R. 1003)

Michael Morgan of the Dixmoor Police Department was in charge of the investigation. He learned from Candy's mother and brother that defendant had been living with her, and, also, that her car was missing. (R. 1141-42) Morgan learned from Lisa Denison that when Candy left work on October 16 she was going to ask defendant to leave the trailer. (R. 1145) Morgan verified that defendant had left for Friars Point, Mississippi, his ancestral home, after the murders. (R. 1146)

Morgan and Officer Schwartzkopf arrived in Mississippi in the early morning hours of

October 22. That afternoon they began their investigation in the Coahoma County area. They learned from Gerald Simmons that he had picked up defendant and drove him into Friars Point. They also spoke with defendant's mother who said she had not seen him. The officers spoke with other of defendant's relatives and friends, leaving their cards and phone number so that defendant could contact them. They later learned that defendant walked into the Coahoma County Sheriff's Office during the early morning hours of October 23, and said he was there pursuant to Morgan's request. (R. 1147-50)

During the afternoon of October 23, Morgan and Schwartzkopf met with defendant at the Sheriff's Office. Morgan went over defendant's Miranda rights point by point. He identified People's Exhibit No. 53 as the signed Miranda and waiver of rights form. (R. 1151) Defendant said he was at Candy's trailer on October 17, 1987, and had been staying there for about six weeks. Candy came home from work around 12:30 a.m. on the 17th. Defendant was lying in bed when he heard her car pull up, so he got up and opened the door for her. He was back in the bedroom when he heard Candy come in. She slammed the door closed and threw her keys on the kitchen table. Candy came into the bedroom and changed her clothes. (R. 1154-55)

Defendant related that he and Candy started to argue about his personal life, how they felt about each other and other problems. At that point, the defendant claimed that Candy reached above the headboard and pulled out a hunting knife. Defendant said he was able to get the knife away from her and placed it on top of the television set. The argument continued and grew more heated. Defendant walked into the front room. Defendant picked up Gregory's bat from a chair, went into the boy's room and hit him three times with it. He then went back into Candy's room, first placing the bat next to the bathroom door. Candy was sitting on the bed. Defendant knelt beside her and began to

cry. However, she continued to argue so he got up and retrieved the bat. Defendant then struck Candy four or five times. He placed a pillow over her head because of all the blood. Defendant returned to the front room, sat on the floor and allegedly cried. (R. 1156-58)

Afterwards defendant said he got dressed, grabbed his bag, which he had packed earlier that night, and took off in Candy's car. Defendant first stopped for gas, cigarettes and coffee and then headed south on Interstate-57. At about 183rd Street defendant was tempted to go back to Candy's trailer but instead headed to Champaign. He stayed at the Prospect Motel and parked Candy's car across the street because the motel's lot was full. (R. 1158-59) Candy's car was found in this area by the Champaign police. (R. 1185-87) Defendant said he boarded a bus on the afternoon of October 18. This bus took him to Memphis where he then boarded another bus bound for Clarksdale, Mississippi. (R. 1160)

Defendant said that he did not mean to kill Candy and Gregory; that he did not know what happened as "things got crazy." (R. 1160) Morgan then prepared a written statement. He went over the statement with defendant, who read it and made corrections where necessary. Defendant then signed the statement at approximately 5:02 p.m. on October 23, 1987 (R. 1161-63) The statement was then published to the jury. (R. 1164-71)

The officers and defendant started back to Illinois on October 24. They stopped at a Holiday Inn in Sykeston, Missouri, so they could refresh themselves. When they arrived at the Dixmoor police station at 7:30 a.m. on October 25, defendant was placed in a cell so he could rest. That evening Morgan contacted Assistant State's Attorney Sheila Devane. He filled her in on the investigation and was present when she spoke to the defendant. (R. 1172-73)

Devane said she spoke with the detectives when she first arrived at the Dixmoor police

station on the evening of October 25. (R. 1234, 1237) She then read defendant his Miranda rights. As to each right defendant said he understood. (R. 1238, 1240-41) Defendant's statement to Devane was consistent with the previous written statement. Defendant agreed to give a court-reported statement. At the time defendant spoke with Devane he was in excellent physical condition. She asked him several times how he had been treated by the police and he continually replied that he had been treated very well. Defendant appeared to be well-rested and he did not appear to be under the influence of drugs or alcohol. During the interview with Devane defendant had been given food, drink and cigarettes. (R. 1242-44)

When the court-reported statement was finished defendant reviewed it in Devane's presence. He made corrections and initialed them. He also initialed each page of the statement, and, along with Devane and Morgan, signed the last page of the document. (R. 1245, 1268-72)

Although reference to a knife is made in defendant's two-page statement given previously to Morgan, Devane did not ask defendant about it because he did not mention the knife to her and also because if Candy did pull out the knife, this occurred before the argument between defendant and her got heated. (R. 1278, 1281) Devane also stated that defendant did not seem confused either in general or as to dates. (R. 1281)

Michael Morgan of the Dixmoor Police Department was called to testify concerning the defendant's statement of October 24, 1987. He said that the conversation of that date was tape recorded, as was the conversation he had with defendant on October 23, 1987. The tape of the conversation had on October 24 was marked "formal confession" by the officer. Officer Schwartzkopf was present at both interviews. (R. 1309-13, 1316) At both sessions the recording machine was controlled by Morgan, however the machine itself has an automatic shut-off which

works when the tape comes to its end. With regard to the conversation of the 23rd Morgan said that not everything that was said was taped. (R. 1314) Morgan said that the tape of the 24th covered what was said and that he made no deletions on that tape at a later time. (R. 1317) The purpose of taping the conversations was to assist Morgan in his note taking, and Morgan would tape all information he received from defendant that he considered to be important. The conversation of the 24th was thereafter summarized in the two page statement which defendant signed. (R. 1319-20, 1322)

Prior to trial defendant filed his first motion to quash arrest alleging that he was illegally arrested between 1:30 a.m. and 2:00 a.m. as he entered the Coahoma County Sheriff's Office. After the court denied that motion defendant filed a second motion to quash arrest alleging that there was no probable cause to place defendant under arrest later that morning. This motion was also denied. Finally, defendant moved to suppress the statements he made while still in Mississippi. This motion was also denied. For purposes of clarity the facts adduced at each motion will be set forth separately.

a. Defendant's First Motion To Quash Arrest

Defendant stated that he entered the Coahoma County Sheriff's Department either late on the night of October 22 or early in the morning of October 23, 1987. Deputy Gibson was present and defendant believed it was Gibson who searched him between 1:45 a.m. and 2:00 a.m. on the 23rd. After the search defendant said he was placed in a locked detention room. At that time defendant said he was not committing any crime nor was he told that the police had a warrant for his arrest. Defendant said he had been in continuous custody since October 23, 1987, and at no point was he ever informed that he was free to leave. (R. 70-75)

Upon cross-examination defendant stated that he personally walked into the sheriff's office of his own free will, that no officer had gone out and picked him up. He was not handcuffed when he

entered. (R. 76-77) Defendant identified himself and asked if someone was looking for him. The search of his person was conducted in the lobby of the station. Afterward defendant went into the back area and was seated at a long desk. Defendant admitted that he was not handcuffed, fingerprinted or photographed at this time. Defendant stated that he was not given Miranda at this time, nor did he sign a waiver of rights form. (R. 78-82) However, defendant admitted that Respondent's Exhibit 2 was a Miranda rights and waiver form which bore his signature as well as that of Deputy Gibson, and that the form was dated 1:41 a.m., October 23, 1987. Defendant did not ask if he could leave the station. (R. 83)

Defendant said that the Dixmoor police officers arrived at the Sheriff's office around 3:00 a.m. They did not photograph, handcuff or fingerprint defendant at this time, however, they did read him his Miranda rights and started to interview him. (R. 84-87) Around 4:45 a.m. defendant told the officers he was tired, whereupon he was allowed to rest for 15 minutes. (R. 87-88) Defendant was placed in a cell. He said he next spoke to the Dixmoor police officers at 2:15 p.m. that afternoon. That interview lasted until 5:00 or 5:30 p.m. when defendant said he was tired. (R. 90-91) Defendant said he was not handcuffed during this interview and Morgan told him he was under arrest. (R. 93) After resting for 15 minutes Schwartzkopf asked defendant if he wished to talk. Defendant told him to get Morgan and thereafter made a statement implicating himself in the murders. (R. 95)

Defendant stated that when he first entered the sheriff's office he had not slept for several days. However, he never mentioned this fact to the officers, nor did any one force him to stay awake during this period. (R. 101, 105, 108) After his initial contact with the Dixmoor officers defendant said that a deputy sheriff asked him general questions concerning his date of birth, height and weight etc. This deputy supposedly told defendant that he was being placed under arrest as a suspect in a

double homicide. (R. 102-03)

The trial court denied the motion stating that no arrest occurred between 1:30 and 2:00 a.m. on October 23, 1987. (R. 115-16)

b. Defendant's Second Motion To Quash Arrest

Defendant testified that after he entered the Coahoma County Sheriff's office at 1:30 a.m. on October 23, 1987, he was placed in what he described as a detention room. The door to that room was locked and he remained there for about one hour. When the Dixmoor officers arrived defendant said he was moved into what he believed to be an interview room. (R. 144-45) After speaking with the Dixmoor officers defendant said he was told by a deputy sheriff that he was under arrest for a double homicide that had occurred in Dixmoor. Defendant was then placed in a holding cell. (R. 146-47) Prior to the arrival of the Dixmoor officers at 3:00 a.m. no one said anything to defendant about the murders or anything else. (R. 148)

On cross-examination defendant stated that he spoke with the Dixmoor officers from 3:00 to 5:00 a.m. During that interview defendant was not told that he was under arrest nor was he handcuffed, fingerprinted or photographed. (R. 164-65) When the interview with the Dixmoor police officers finished at 5:00 a.m. they did not tell defendant that he was under arrest. Rather defendant was told that he was a suspect in a double homicide and they were going to let him get some rest. (R. 171, 184) During the interview defendant was given food and drink. (R. 173-74) Defendant told the officers that Tiny Williams had given him a ride from Chicago to Memphis; however, he admitted that was not the truth. (R. 180) He also told them that he still had clothes in Candy's trailer. (R. 182) Defendant said he left Candy's trailer during the early morning hours of October 18, 1987. (R. 185) He also told the officers that he had last seen Candy between 4:30 and 5:30 p.m. on October 16 when

she left for work; however he admitted that this was not true because he last saw her at the trailer between 1:00 and 2:00 a.m. on October 17. (R. 204-05)

Defendant reiterated that a Coahoma County deputy told him at 5:00 a.m. that he was being held as a suspect in a double homicide. (R. 197) No one told defendant that he was free to leave. Nor does he remember anyone telling him that he was under arrest at anytime. (R. 198)

Dixmoor Police Officer Michael Morgan was assigned to the double homicide. Upon his arrival at the scene the only evidence of forced entry into the trailer was the one made by Stephen Augustus, the victim's brother. Gregory's body was found in the front bedroom and Candy's was found in the back bedroom; both of their heads had been crushed. (R. 210-11) Morgan learned from the family that Candy had not reported to work and that they could not get in touch with her. He also learned that Candy was having problems with defendant, who had been staying with Candy since August of 1987 and she wanted him out of the house. (R. 213-14, 218-20) The officer also was informed that Candy's car was missing. (R. 216)

The defendant's wife, Linda Coslet was contacted at her home in California. From her it was learned that defendant had relatives living in Coahoma County, Mississippi. She informed the police that she was afraid of the defendant and that she was not surprised that he would do something like this. (R. 215-17)

On October 21, 1987, the Dixmoor police were informed by the Coahoma County Sheriff's Office that defendant was in the area. Defendant was telling everyone in the area that the reason for his being in Mississippi was that he was involved in a murder in Chicago. (R. 221-22, 234) Morgan and Officer Schwartzkopf went to Mississippi. They spoke with several of defendant's relatives and friends, but did not find defendant. They left their cards with these individuals and asked them to

have defendant contact them. (R. 222-24) During the early morning hours of October 23 the officers received a call from the sheriff's office telling them that defendant had just come in. (R. 225-26)

Morgan and Schwartzkopf arrived at the sheriff's office around 3:00 a.m. Defendant was sitting behind the counter of an open squad room. Defendant had previously signed a Miranda waiver form, which the officers showed to defendant, and which he acknowledged, prior to speaking to him. (R. 225-26) Defendant told the officers that he had left some of his personal belongings in Candy's trailer; however, Morgan did not see any such belongings in the trailer. Defendant said that when he left he went to Western Avenue and flagged down a cab. Morgan had lived in the same trailer park for 4 years and it was his experience that it was rare to flag down a cab in the area as they responded only to calls. (R. 229-30)

Defendant told the officers that once he arrived in Mississippi he knew the police were looking for him. He had been staying in abandoned houses. Defendant wanted to know why the officers needed to talk to him and what evidence they had on him. Around 4:45 a.m. defendant was told that he was a suspect in a double homicide. (R. 231-32) Although defendant stated that Candy and Gregory were like family to him, he had no reaction when initially told that the two had been murdered and he did not even ask how they had died. (R. 233) The interview as concluded when defendant said he was tired. (R. 232)

The trial court found that an arrest of defendant occurred at approximately 5:00 a.m. and that the police had probable cause to arrest him at that time. (R. 313-15)

c. Motion To Suppress Statements

Defendant stated that after 5:00 a.m. on October 23, 1987, he was interviewed three different times by the same Dixmoor officers. These sessions were tape recorded. Defendant

remembered signing some documents on either October 23 or 24. (R. 322-24) He claimed that at no time during these interviews was he ever advised of his right to an attorney, and that, in fact, he was never given, nor did he speak to, an attorney on either October 23 or 24. (R. 325, 329) Defendant stated that upon his return to the Dixmoor police station on either October 25 or 26 he talked to an Assistant State's Attorney and a court reporter. He had not spoken to an attorney at that time. (R. 328)

Upon cross-examination defendant said when he voluntarily walked into the Coahoma County Sheriff's Office around 1:30 a.m. a deputy read him the Miranda rights and defendant signed a waiver. Defendant identified Respondent's Exhibit #1 as the waiver which contained his signature and the date of October 23, 1987 and the time of 1:41 a.m. Defendant said that he understood the Miranda warnings. (R. 330-31) He also stated that he never asked for an attorney when he spoke with the Dixmoor officers later that morning. At 5:00 a.m. he told the officers that he was tired and the interview ended. He stayed at the jail. The Dixmoor officers returned at 2:15 p.m. that afternoon but he does not remember if he was again given his Miranda rights at that time. (R. 332-33) Defendant reiterated that he understood the rights as contained on the Miranda form. (R. 334)

At approximately 5:15 p.m. defendant told the officers that he wanted to rest and they complied. At no time did defendant tell the officers that anyone had threatened him. (R. 335) About fifteen minutes later Officer Schwartzkopf asked defendant if he wanted to talk. Defendant said "yes" because he was not getting any rest and he was mentally exhausted. (R. 337) Schwartzkopf did not strike defendant but only said they would get defendant out of jail once he spoke with them. Defendant said that at one point during this afternoon session Morgan told him they would get him out of the Mississippi jail once he spoke to them. (R. 338-40) Once defendant started speaking with

the Officers he told them the details of the offense. Afterwards a written statement was prepared, and defendant identified Respondent's Exhibit #2 as his statement and said it contained an accurate summary of what he said at the time. Defendant admitted signing this statement. (R. 343-46)

The officers and defendant arrived back in Dixmoor at approximately 7:30 a.m. on October 25. Defendant, after processing, was left alone for 8 to 10 hours. However, defendant said he did not sleep during this time because it was cold in the jail and he was told there were no blankets. However, he did not mention this fact when he spoke to the Assistant State's Attorney later that night. (R. 358-59) Defendant spoke with the Assistant State's Attorney around 8:00 p.m. on October 25. She gave him the Miranda rights and defendant said he understood those rights. (R. 361-62) He did not ask for an attorney at that time, instead he waived his rights and spoke with her. (R. 361, 362-63) A court reporter arrived around 1:00 a.m. on October 26 and a formal statement was given. (R. 362) Defendant identified respondent's Exhibit No. 4 as that court reported statement and acknowledged that the Miranda rights were included at the beginning of the statement. (R. 363-64)

Michael Morgan of the Dixmoor Police Department said that upon his arrival at the Coahoma County Sheriff's Office at 3:00 a.m. he was informed that defendant had already been given his Miranda rights and had signed a waiver. Morgan then went over the waiver form with defendant point by point. (R. 376-78) Defendant indicated his willingness to speak and they spoke in a squadroom until 5:00 a.m. (R. 380) Later that afternoon, around 2:15, the Dixmoor officers again spoke with defendant and he was again given Miranda point by point. They spoke until 5:30 p.m. when defendant said he wished to rest. At no time did defendant say he did not wish to talk with the officers. Nor did defendant ask for a respite from questioning until 5:30 or ask for an attorney. Prior to the afternoon interview defendant said he was feeling fine. (R. 381-83)

Shortly after 5:30 p.m. Schwartzkopf informed Morgan that defendant wished to speak with them. Defendant then stated, "I did it. Sit down and I will tell you how I did it." (R. 385) This conversation ended at between 7:00 and 7:30 p.m. During this time defendant never requested an attorney nor did he express a desire to stop the interview. (R. 386-87)

The following day, October 24, at 1:00 p.m. the officers met with defendant. Defendant was again given Miranda and he signed the waiver form. (R. 388) Defendant then related the same story he had given the previous day. The conversation ended between 3 and 3:30 p.m. Defendant said he would give a written statement and Morgan then prepared it. Defendant was given the opportunity to read the statement and make any corrections or changes. Defendant made a correction which had been made deliberately by Morgan and then he signed the statement. At no time during this period did defendant ask for an attorney or that he wished to terminate the interview. (R. 389-91)

While enroute from Mississippi to Dixmoor defendant and the officers stopped at a hotel for three hours so they all could eat, rest and refresh themselves. They arrived in Dixmoor at approximately 7:00 a.m. on October 25 and defendant was left alone in a cell until Assistant State's Attorney Devane arrived that evening. Morgan was present when Devane read defendant his Miranda rights and agreed to talk. Defendant told basically the same story he had given on the two previous days. A court reported statement, which defendant agreed to give, was taken early on October 26. At no time did defendant ask for an attorney or ask that the conversation be stopped. Morgan denied telling defendant while they were in Mississippi that he would get him out of that state once defendant talked and told him what happened. (R. 393-97)

The trial court found the statements were voluntarily given and denied the motion to suppress. (R. 487-88)

3. THE SENTENCING HEARING

At the first phase of the sentencing hearing the jury found defendant eligible for the death penalty based on two factors: (1) that he had been convicted of killing two or more individuals (Ill. Rev. Stat. 1987, ch. 38, par. 9-1(b)(3) and (2) because he killed a victim who was under the age of 12 years at the time of death. (Ill. Rev. Stat. 1987, ch. 38, par. 9-1(b)(7)). (R. 1525-27)

In finding that the evidence proved beyond a reasonable doubt the existence of the aggravating factor that defendant's murder of Gregory resulted from exceptionally brutal or heinous behavior indicative of wanton cruelty, the Supreme Court held,

Although defendant's attack upon Gregory may not have been prolonged, it nonetheless comports with the established definition of brutal and heinous conduct. Police investigator Bartlett testified that Gregory was asleep in his bed at the time defendant perpetrated the attack. Apparently, at some point during the verbal altercation with Candace, defendant left the bedroom and entered the living room to retrieve the baseball bat. He entered Gregory's room, and leveled three blows to his head. The force of those blows resulted in considerable amounts of blood and brain matter being spattered across the walls. Indeed, one blow was so severe that a gaping eight-inch wound was left in the side of the sleeping boy's head. Gregory's skull was cracked open. According to Dr. Kirschner, there was extreme injury to several parts of the brain. Dr. Kirschner stated that the first blow rendered Gregory "at least unconscious and probably killed him instantly." Yet in spite of the fact that the first blow may have been sufficient to kill Gregory, defendant nonetheless inflicted two more blows to his head.

We find that defendant's bludgeoning of an 11-year-old boy with a baseball bat as he slept in his bed at night constitutes exceptionally brutal and heinous behavior indicative of wanton cruelty. Defendant's attack upon Gregory was without provocation, for he was not involved in any manner whatsoever with defendant's argument with

Candace. Rather, he was an innocent child victimized by defendant's senseless and brutal violent conduct. The trial judge properly instructed the jury concerning defendant's eligibility for the death penalty under the section 9-1(b)(7) statutory aggravating factor. People v. Fair, 159 Ill. 2d 51, 81-82 (1994).

At the second phase John Coglin testified that while he was an Assistant State's Attorney in March of 1966 he took a plea from defendant. The offense occurred at 1:00 a.m. on January 13, 1966. At that time defendant and two juveniles took a cab ride to 70th and Yale. Once there, defendant, who was sitting behind the driver, put his arm around the driver's neck and displayed a knife. Defendant told the two boys to get the money. When they had taken some money defendant asked the driver if he had more, to which he said "no." Defendant then pulled back on the driver's neck and said that he should be cutting his throat and cutting his head off, but that he would let the driver go. Defendant then told the driver to leave immediately or he would blow his head off. The driver went a short distance when he saw two officers. One of the officers was William Callighan, who went back to the scene and followed some footprints in the snow. He found defendant and two juveniles in a second floor apartment where they were splitting up money. A knife was recovered there. (R. 1539-72)

Robert Felsenberg has been a pharmacist since 1961. On January 12, 1972, he owned Morsek Drugs at 5056 South Ashland. A clerk in the store was helping two other customers so Mr. Felsenberg went to help defendant. As he approached, defendant pulled back his jacket and showed Felsenberg the gun in his waistband. Defendant told him to keep his head and eyes down and to go to the cash register. Felsenberg gave defendant the money from his waistband and \$140 that was in the cash register. Defendant told everyone to lay on the floor and then he left the store. (R. 1629-37)

Defendant was arrested by Officer Kwiatkowski as he was fleeing the store. When he was caught defendant said "You have got me now, and I will show you where the gun is." Defendant did so. Although the gun was a replica of a real gun Kwiatkowski said that to an untrained eye the gun would appear real. (R. 1637-42)

James Gildea was an Assistant State's Attorney when he prosecuted defendant on June 6, 1968 for armed robbery. Defendant and his co-defendant followed a 15 year old newspaper boy after he finished his route. The boy noticed the two men following him and ran into the lobby of an apartment building seeking help. Defendant and the other man came in and defendant put a gun to the boy's head and led him out of the building and took him to a gangway. There they took the boy's jacket, gloves, watch and \$3 in change. They told the boy to wait between two garbage cans for 15 minutes and if he were asked what happened he was to say that he had been robbed by two Black Stone Rangers. The defendant and his accomplice were arrested two days later when the boy spotted them with his jacket. (R. 1658-66)

Chicago police officer Fred Hattenbuger responded to a call of shots fired at 6160 North Winthrop on June 7, 1980. Defendant told the officer that his young child had somehow gotten the gun and it accidentally discharged. Defendant pled guilty to not having an FOID card. (R. 1645-50)

Dorothy Maples lived in the same Cypress, California apartment complex as defendant during October and November 1986. Her son Jared came home crying one day. He said that he had been in a fight with defendant's kids when defendant came up behind him and lifted him off the ground by his shirt. When Maples asked her son what happened he said that he had been fighting with one of defendant's sons when that boy ran home. Defendant then came out with a bat and chased Jared and eventually caught up to him. Defendant then told his son to beat up Jared. (R. 1677-

82)

In March or April of 1987, Ms. Maples was at home with her boyfriend, who wore a leg brace, and other family members. Defendant, his children and an assistant manager came to the door and said that Maples' son, Daniel, had thrown a rock at defendant's little girl, who was covered in blood. A heated argument ensued and Maples' boyfriend went outside to fight the defendant, who had armed himself with a baseball bat. Defendant swung at Maples and her boyfriend, hitting Maples once in the leg. (R. 1683-92) Maples later learned that defendant's little girl had actually been injured by defendant's two sons as they were playing; however, the little girl did not want to get into trouble so she made up the story about Daniel. (R. 1702-03)

Cameron Forbes, the record office supervisor for the Illinois Department of Corrections, testified to defendant's Illinois convictions as outlined above. He stated that defendant's inmate card, which covers his several stays in the Department, reflected a dismal adjustment on defendant's part. Defendant's history in the Department revealed that he had been cited for 68 violations of the rules. The intake reports state that defendant had been treated well as a child and that there was enough money in the home as he was growing up. A sociology report dated February 3, 1965, indicated that defendant said that his first arrest occurred when he was 15 years old when he and two other boys brutally beat another boy as the result of an argument. In the same report defendant admitted to 15 to 20 other robberies, committed either alone or with others, in which guns, knives and other weapons were used. The report concluded, in the personality section, that defendant "has established few goals in life and visions little purpose in life other than self-gratification." (R. 1573-1600)

Defendant then stipulated to three convictions for armed robbery, as well as his California conviction for driving without a valid license. (R. 1623-28; 1652-55)

Linda Coslet was defendant's common-law wife for 11 or 12 years, and he is the father of her two youngest children. She met defendant while she was on work release and defendant was visiting one of the other ladies in the program. (R. 1742-43)

She said that defendant got along well with the children, and that she and he had a loving relationship during most of their time together. She and defendant first lived together on Chicago's northside where defendant worked at a hotel and attempted to open a beauty salon. While on the northside Ms. Coslet first met Candace Augustus and her son, Gregory. They moved in with defendant and Coslet for three years and even stayed with them for a short while after Coslet and defendant moved to California. After Candy and Gregory moved back to Illinois they all kept in touch through letters. Linda was the primary breadwinner while defendant stayed home and raised the children. (R. 1745-57)

In referring to the June 1980 incident where defendant told the police that his child had accidentally discharged a gun, Linda said it was defendant that shot the gun as he checked out the apartment for a possible burglar, but he did not want to tell this to the police. (R. 1768-69) Throughout their entire relationship defendant used drugs, primarily cocaine. From 1985 to 1987 defendant's drug use escalated and he was selling drugs from their apartment. Near the end of their relationship defendant began to steal money from Linda in order to buy more drugs. Defendant's use of drugs affected the children and the marital relationship. In August of 1987, they mutually agreed that defendant should leave. (R. 1770-79) When asked if she thought up until one year prior to her testifying whether death was the appropriate penalty for defendant, Ms. Coslet answered "I believe in the death penalty, yes." (R. 1776-77)

In his direct appeal to the Illinois Supreme Court, the defendant raised no issues regarding

trial error. People v. Fair, 159 Ill. 2d at 81. With regard to the evidence introduced at the aggravation/mitigation phase of the sentencing hearing the Supreme Court held on both the direct appeal and the post-conviction appeal that the evidence in aggravation was overwhelming. People v. Fair, 159 Ill. 2d at 89, 92; People v. Fair, 193 Ill. 2d at 269.

III

REASONS FOR DENYING THE PETITION

The defendant advances several reasons in support of his petition for clemency. Each reason, however, falls far short of its intended goal, especially when they are viewed in their accurate context.

In defendant's recitation of the facts he makes much of the fact that he voluntarily turned himself into the Coahoma County, Mississippi, Sheriff's Department on October 28, 1987, after learning from relatives that two Dixmoor, Illinois, detectives wished to speak with him. The murders of Candace and Gregory Augustus occurred on the night of October 17-18. Despite defendant's protestations of remorse over these killings, the true facts show that he bragged about these murders to family and friends. Additionally, he did not immediately turn himself into the authorities at the time of the murders. Rather, defendant ran, thereby revealing his true nature, that of a coward, a coward who brutally beat a sleeping child and a defenseless woman to death with a baseball bat. Defendant fled the bloody murder scene in Candace's car which he abandoned in Champaign. From there, defendant made his way to his ancestral home in Mississippi, where he bragged to family and friends that he was wanted for murder in Chicago. Only after defendant learned that the police wanted to talk to him did he go to the sheriff's office. It is important to remember that defendant had no reaction when first told by the detectives that Candace and Gregory had been murdered. So much for defendant's statements that he deeply loved and cared for Candace and Gregory. While defendant walked into the sheriff's office of his own volition, he waited five days to do so. Moreover, he did so only after being cornered in a remote rural hamlet by pursuing authorities. Defendant's actions in doing so, when viewed in their proper context, is

incredibly aggravating and certainly not a reason to grant clemency.

Defendant also maintains in his personal life history section that he maintained a “common-law spousal” relationship with Candace. This claim is not only deceptive and absurd, but is an insult to Candace’s memory. Nothing could be further from the truth because there is absolutely no evidence of such a relationship between Candace and defendant. The evidence is that Candace had known defendant and his common law wife for 10 years prior to her murder. Candace and Gregory met defendant through his common law wife, Linda Coslet, when Coslet and defendant lived on Chicago’s northside. Candace and Gregory lived with them for about three years. After defendant and Coslet moved to California, Candace and Gregory came out and stayed with them for a short while, before coming back to Illinois. Eventually, Coslet had defendant move out because he was using and selling drugs and stealing from her to support his habit. That is when defendant returned to Chicago and turned up on Candace’s doorstep. Candace took him in because he had no where else to go. However, after a while, Candace, too, wanted defendant out because he refused to get a job and she did not want her son exposed to such a lifestyle. On the night she was killed, Candace was going to tell defendant that he had to leave. This evidence points to one conclusion, that defendant and Candace were friends and nothing more. For defendant to represent to this Board that he had a common law spousal relationship with Candace is a perversion of reality.

The defendant’s criminal history as well as his history of bad acts in and out of prison is extensively detailed in the factual recitation of this response. Suffice it to say that defendant is one who had decided at an early age that committing crimes and using drugs was the life for him. It also demonstrates that defendant’s weapon of choice is a baseball bat, which he armed himself

with during two confrontations while living in California, and which he cruelly wielded in murdering Candace and Gregory.

Defendant also seeks clemency on the basis that his due process right to a fair trial was violated because he was convicted and sentenced by a corrupt judge. Defendant's trial judge was later convicted of converting court fines he had imposed in unrelated cases to his personal use. Defendant's representation to this Board is that if a judge is corrupt in one case it follows, as a matter of fact and law, that he is corrupt in all cases. Defendant also asserts that Judge Foxgrover ruled in favor of the People on the motion to quash arrest and rejected defendant's offer to plead guilty to the charges in return for a life sentence in order to curry favor with Cook County prosecutors who were investigating him at the time. Such thinking, however, is flawed and has been previously rejected by this state's highest court.

There is no doubt that while then Judge Foxgrover was presiding over defendant's trial and sentencing hearing, he was engaged in corrupt practices in less serious, unrelated cases that were before him. Defendant raised this issue in his post-conviction petition which was denied by Judge Nealis. Defendant raised the issue on his appeal from that ruling. The Illinois Supreme Court rejected defendant's argument that a judge's corruption in one case necessarily taints all cases he had presided over. That Court held, citing its earlier opinion in People v. Titone, 151 Ill. 2d 19 (2002),

Petitioner [Titone] alleges that he was convicted either because his trial attorney failed to pay Judge Maloney the \$10,000 bribe or because Judge Maloney accepted the bribe but convicted petitioner anyway in order to convince federal authorities investigating judicial corruption in Chicago that he did not accept a bribe. This Court affirmed the dismissal of the post-conviction petition, holding that petitioner presented no evidence that

Judge Maloney accepted or agreed to accept a bribe in petitioner's case. We also held that the fact that Judge Maloney was then under investigation in nonrelated cases arising out of his tenure as a Cook County Circuit Judge was not germane to the facts of that case. The mere fact that Judge Maloney was implicated in accepting bribes in other nonrelated cases, we concluded, could not serve to taint all other decisions with which Judge Maloney was involved. Instead, we held that a petitioner who alleges that his trial judge's corruption violated his right to a fair trial must establish (1) a "nexus" between the judge's corruption or criminal conduct in other cases and the judge's conduct at petitioner's trial; and (2) actual bias resulting from the judge's extra judicial conduct.

People v. Fair, 193 Ill. 2d 256, 261. The Court remanded defendant's case to the circuit court to allow him discovery in support of his claim. That discovery was to be limited to "Judge Foxgrover's confession and any interviews of witnesses conducted during the investigation into Judge's Foxgrover's criminal activity." Id. at 265.

At the hearing conducted pursuant to the remand, the People turned over to the defendant approximately 2,500 pages of documents. In fact, the People went beyond the limited discovery called for by the Supreme Court. The Assistant State's Attorney, at a hearing before Judge Nealis conducted on December 28, 2001, stated,

We took it upon ourselves to put this issue to rest forever, to tender not only what the Supreme Court requested that we tender to the defendant, Robert Fair, but then above and beyond that, that everything else regarding the prosecution of Mr. Foxgrover.

Mr. Fair was provided over 2,500 pages of discovery, he was provided, pursuant to the Supreme Court mandate, an opportunity to create and form a nexus that might exist between Robert Fair's trial and Judge Foxgrover's misconduct.

In the pages [tendered], Mr. Fair's name is mentioned not even once, and we want this to be emphasized and understood, there is no connection

between Robert Fair's prosecution and Judge Foxgrover's misconduct. It does not exist. The nexus will never exist. (12/28/01 hearing before Judge Nealis, pp. 10-11)

Defendant does not now complain that he was not given the appropriate documents. Yet, before this Board he persists that Foxgrover's corruption was so pervasive that one can only conclude that he was denied a fair trial as a result. Defendant cites two instances which he believes support his position.

The first allegation in this regard is his contention that Judge Foxgrover refused to allow defendant to plead guilty in return for a sentence of natural life. In support of his contention defendant has attached the affidavit of one of his trial attorneys. The People maintain that the affidavit is of little, if any, use. First, it is an affidavit from only one of this trial attorneys. One must ask where is the affidavit of the other attorney who represented defendant at trial. The affidavit does not reference a date or dates when a 402 conference was requested or who was present at the time. Defendant does not cite any page of the record where such a conference was requested. The affidavit is silent as to whether the People agreed to such a conference. Supreme Court Rule 402 requires a substantial agreement between the parties as to a possible plea before the judge becomes involved. In this case there never was an agreement of any kind between the parties as to a plea. As the Assistant State's Attorney, who tried the case, told Judge Nealis,

Counsel suggested, Judge, just a moment ago that this was a judge-made decision as to whether or not a 402 conference was going to take place.

Our position in this case, accordingly to my recollection, was that it had never changed. We had sought the death penalty, we believed wholeheartedly that the death penalty was the appropriate sentence based upon Robert Fair's acts as well as his past criminal record.

I don't believe that our position had ever changed throughout the entire course of the litigation from the first moment that it came into our system.

So, there is never going to be any meeting of the minds, so to speak, between the prosecution and the defense that we were willing to reduce this case to a natural life. (12/28/01 hearing before Judge Nealis, pp. 24-25).

Because the People never reached a substantial agreement with the defense as to a possible plea, (indeed, there is considerable doubt whether such a conversation ever took place), the judge would not be involved in a 402 conference. Perhaps that is what he told defendant's attorney, if he told him anything; that he would not participate in a conference without the People being present. The defendant makes much to do about the fact that he has always been willing to enter a plea of guilty to the charges in exchange for a natural life sentence. He seems to suggest that he was willing to take a greater sentence than he could have received. Defendant makes much to do about nothing, for in Illinois there are but two possible sentences available to a defendant who is convicted of killing two or more people: death or natural life. In any event, defendant could have entered a plea of guilty without a 402 conference, but he chose not to do so.

The defendant next posits that Judge Foxgrover had to make credibility determinations at the hearing on the motion to quash arrest and suppress. Defendant argues that because of the judge's corruption in unrelated cases, he necessarily found in favor of the State at the motion in order to curry favor with the office which was investigating him. This contention is also without merit. The Illinois Supreme Court, on direct appeal, found that there was no Fourth Amendment violation relative to defendant's arrest. In regard to the issue of whether defendant was arrested when he first entered the Coahoma County Sheriff's office around 1:30 a.m., the Court held "We find sufficient evidence in the record to show that defendant was not placed under arrest when he voluntarily entered the police station at 1:30 a.m." People v. Fair, 159 Ill. 2d at 70. Thus, the

Court found, as a matter of law, that the evidence established defendant's arrest took place at 5:00 a.m. and that probable cause existed for his arrest at that time. Thus, any credibility determinations made by Judge Foxgrover are of little consequence, since the question of probable cause is a legal question which must be supported by the evidence.

It must be remembered that it was a jury which convicted defendant of these murders, that it was a jury which found defendant was eligible for the death penalty and, that it was a jury which sentenced him to death. The trial judge had no hand in any of these determinations. The defendant has failed to establish the necessary nexus between Judge Foxgrover's corrupt acts in unrelated cases and his conduct in defendant's case. The defendant was given a fair trial with all the constitutional guarantees which are associated with it.

Defendant 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. He specifically points only to a lack of comparative review of his sentence. 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, defendant 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 defendant has not even attempted to demonstrate how the recent changes would have affected the outcome of the proceedings. Moreover, defendant 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.

Defendant specifically 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 defendant’s sentence in such a manner is because he did not ask the Court to do so.

Defendant cites to decisions in other cases and hearsay newspaper articles where

multiple murderers escaped the death penalty. Many of those cases are from sister jurisdictions, some of which do not have the death penalty. In any case, defendant fails to draw any parallels between the facts of the cases he cites and his own case. This defendant, for no reason whatsoever, killed two innocent people. He killed them not for drugs or money, but because he is a diabolical person, who cares not one wit for others. He claims he loved his victims dearly, going so far as to say that he thought of Gregory as his own son. Someone who loves and cares deeply for others does not do what this defendant did. They do not take a little boy's bat and bash in his brains repeatedly as he sleeps, as this defendant did. They do not go to a friend's room and crush her skull, as this defendant did. They do not flee the area and return to their ancestral home where they brag about their actions, as this defendant did. There is no case which compares to defendant's case. These were not crimes of passion. This is not an instance where a killer's mind was altered by ingestion of drugs or alcohol. These are not murders which were unintended. Nor did this defendant suffer from any mental defect or illness. These murders were committed by a man in charge of all of his facilities. This defendant brutally murdered Candace and Gregory because he wanted to kill them. No case compares to the cruel, calculated, cold-blooded murders which this defendant committed.

In conclusion, the People respectfully request that defendant's request for clemency be denied. Defendant received a fair trial and sentencing hearing. His convictions and sentence of death were affirmed on direct appeal. On appeal from the dismissal of his post-conviction petition, our Supreme Court remanded the case for limited discovery in order to give defendant the opportunity to develop a nexus between Judge Foxgrover's corruption in unrelated cases and his actions at defendant's trial. This alone establishes that the system is not "broken". Rather, it

establishes that our judges and prosecutors are ever vigilant to ensure that each defendant receives a fair trial. The citizens of this State have spoken through their elected representatives in the General Assembly, which enacted the death penalty for certain, specified murders. Our Supreme Court has upheld the constitutionality of that statute in numerous cases and no federal court, when presented with the question, has found any constitutional flaws in the statute. This defendant has not presented one valid reason as to why his sentence of death for two brutal murders should be reduced or commuted. The People ask that clemency for this defendant 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 Robert Fair.

Respectfully submitted,

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