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**IN RE: BRETT XAVIER HARTMAN, CCI #A357-869**

**STATE OF OHIO  
ADULT PAROLE AUTHORITY  
COLUMBUS, OHIO**

Date of Meeting: October 10, 2012

Minutes of the **SPECIAL MEETING** of the  
Adult Parole Authority held at 770 West Broad Street,  
Columbus, Ohio 43222 on the above date.

IN RE: BRETT XAVIER HARTMAN, CCI # A357-869

SUBJECT: Death Sentence Clemency

CRIME, CONVICTION: Aggravated Murder with death penalty specification, Tampering with Evidence, Kidnapping

DATE, PLACE OF CRIME: September 9, 1997 in Akron, Ohio

COUNTY: Summit

CASE NUMBER: CR 97-09-1987

VICTIM: Winda Snipes, (age 46)

INDICTMENT: 9/17/1997: Count 1: Aggravated Murder; Count 2: Tampering with Evidence.

INDICTMENT SUPPLEMENT: 10/16/1997: Count 3: Aggravated Murder with specification; Count 4: Kidnapping.

TRIAL: Jury

VERDICT: 4/30/1998: Found guilty as indicted.

SENTENCE: 5/22/1998: Count 3: Sentenced to DEATH (\*Note - Count 1 was merged with Count 3 by the Judge for sentencing purposes); Count 2: 5 years; Count 4: 10 years.

ADMITTED TO INSTITUTION: June 2, 1998

JAIL TIME CREDIT: 11 days

TIME SERVED: 172 months

AGE AT ADMISSION: 23 years old

CURRENT AGE: 38 years old

DATE OF BIRTH: June 29, 1974

PRESIDING JUDGE: Honorable Michael T. Callahan

PROSECUTING ATTORNEY: Sherri Bevan-Walsh

**FOREWORD:**

Clemency in the case of Brett Xavier Hartman, A357-869 was initiated by the Ohio Parole Board, pursuant to Section 2967.03 and 2967.07 of the Ohio Revised Code and Parole Board Policy #105-PBD-01.

On September 27, 2012, the Parole Board interviewed Brett Hartman via video-conference from the Chillicothe Correctional Institution. His attorney, David Stebbins was present at the interview. Board Members participating in the interview included Chairperson Mausser and Parole Board Members Mr. Cholar, Mr. Imbrogno, Mr. Nelson, Mr. Rauschenberg, Mr. Houk, and Ms. Thalheimer.

A Clemency Hearing was then held on October 10, 2012 with all nine (9) members of the Ohio Parole Board participating. Brett Hartman was represented by David Stebbins of the Federal Public Defender's Office at this hearing. Co-Counsel Michael Benza was also in attendance. Arguments in opposition to clemency were presented by Summit County Chief Assistant Prosecutor Brad Gessner and Assistant Attorney General Tom Madden. Jacqueline Brown, friend of victim Wanda Snipes, also testified in opposition to clemency.

The Parole Board considered all of the testimony, the information disseminated by presenters at the hearing, prior investigative findings as well as judicial decisions. With these, the Board deliberated upon the propriety of clemency in this case. With nine (9) members participating, the Board came to a unanimous agreement, and voted to provide an unfavorable recommendation for clemency to the Honorable John Kasich, Governor of the State of Ohio.

**DETAILS OF THE INSTANT OFFENSE (CR97091987):** The following account of the instant offense was obtained from the Ohio Supreme Court opinion, decided October 3, 2001:

“Brett Hartman met Winda Snipes at a bar in Akron, Ohio, sometime during 1997. Subsequently, they engaged in sexual intercourse on several occasions. During the late afternoon of September 9, 1997, Hartman went to Snipes' apartment and brutally murdered her by tying her to the bed, stabbing her one hundred thirty-eight times, slitting her throat, and cutting off her hands.

Hartman was convicted of aggravated murder, kidnapping, and tampering with evidence, and sentenced to death. In order to establish Hartman's guilt, the state introduced statements Hartman had made to the police and to a fellow inmate in jail, and the testimony of a co-worker that Hartman mentioned cutting off a victim's hands as a way to eliminate evidence in the O.J. Simpson case. The state also introduced as evidence Hartman's bloody tee-shirt and Snipes's watch recovered from Hartman's apartment, and forensic testimony linking Hartman to the murder.

Around 2:20 a.m. on September 9, 1997, Brett Hartman met Winda Snipes at the Bucket

Shop, an Akron bar. Hartman kissed Snipes on the cheek and they talked. Thereafter, Hartman and Snipes left the bar and they went to her apartment across the street.

Around 3:00 a.m., David Morris, an acquaintance of Hartman and Snipes, left the Inn Between, another Akron bar. While walking past Snipes' apartment on his way home, Morris observed Snipes and Hartman through the upstairs window of her apartment. Morris testified that Snipes was yelling at Hartman about touching stuff that was not his. Hartman closed the window blinds and "obviously she wasn't very happy about it" because she "scolded" him and reopened the blinds.

That afternoon, at around 4:30 p.m., Snipes was observed crossing a street in a nearby business district. She was never seen alive again.

Hartman had the day off from work on September 9. According to Richard Russell, a bartender at the Inn Between, Hartman entered the bar at around 8:00 p.m. and appeared nervous and hyper, and talked excessively. Thereafter, Hartman was in and out of the bar five to six times between 9:00 and 10:30 p.m.

Hartman first contacted the police on September 9 with a series of anonymous 911 calls, which he later admitted to. His first 911 call at 9:59 p.m. reported the location of a mutilated body. The police officers dispatched to Snipes' address entered Snipes' apartment building and checked around, but left after finding nothing unusual. Meanwhile, Hartman viewed the police unit's arrival and departure while hiding behind a tree across the street. Hartman then made another 911 call telling the police to return to the apartment building and provided further instructions on the body's location.

Akron police officers responding to this call entered Snipes' unlocked apartment and found her naked, mutilated body lying on the bedroom floor. Snipes' leg was draped across the bed, a pair of pantyhose tied her ankle to the bed leg, and a white plastic chair was on top of her body. Snipes' hands were cut off and have never been found.

Around 10:45 p.m., Hartman was at the Inn Between with Morris, while police units were across the street investigating Snipes' murder. Morris, having learned that Snipes had been murdered, suggested to Hartman that he should talk to the police, since Morris had observed Hartman at Snipes' apartment the previous evening.

Shortly before midnight, Hartman approached Detective Gregory Harrison while he was at a mobile crime lab parked outside Snipes' apartment. Hartman walked up to Harrison and said, "I hear it's pretty bad in there," and asked if Harrison had "ever seen anything so gruesome." Later that evening, Hartman approached Harrison a second time and spontaneously mentioned that Snipes was a whore, "that she slept around a lot," and that "he had slept with her and he had even slept with her the night before at 3:00." In their final contact at around 3:00 a.m., Hartman was "kind of mumbling to himself" and Harrison heard Hartman say that "she was a whore, she was a big whore, and she got what she deserved."

Between 11:30 p.m. and 12:15 a.m., Hartman also approached Akron Police Lt. John A. Lawson near the murder scene and, “rather abruptly said, ‘You’re going to find my semen in her and my prints over there.’ ” When Lawson asked why, Hartman said he “had been with her earlier that morning, the morning of the 9th,” and that he had had sex with her.

At 12:15 a.m. on September 10, Hartman spoke to Detective Joseph Urbank in front of the apartment building. Hartman began their conversation by announcing that “he had sex with the victim the night before.” Moreover, Hartman said he did not know her name but “only knew her as psycho bitch and that everybody knew that if you got drunk and were horny you went to go see her, you went to go see psycho bitch.”

Hartman also told Urbank that he went to Snipes’ apartment at 2:30 a.m. on September 9, and “she started dancing a little bit.” He “lifted her onto the bed, undressed her,” and “they started having vaginal intercourse.” Hartman said that he was disappointed because Snipes refused to have anal intercourse, and he left her apartment around 3:30 a.m. However, Hartman claimed that he did not know anything about the murder until the bartender at the Inn Between told him about it on the evening of September 9.

Around 6:00 a.m. on September 10, police took Hartman to the Akron police station, where he was interviewed by Lawson and Urbank. During his interview, Hartman denied making the 911 calls, and denied hiding behind a tree across from Snipes’ apartment. Then, Hartman changed a part of his story and admitted hiding behind a tree near the murder scene.

Following the September 10 police interview, the police searched Hartman's apartment with his consent. The police seized Hartman's bloody tee-shirt from underneath the headboard of his bed, a pair of his jeans, and his boots. Police found a knife on his dresser and Snipes’ wristwatch on Hartman's bed stand.

Police took Hartman to the police station after the search of his apartment. While awaiting transfer to the Summit County Jail, Hartman approached Detective John R. Gilbride and blurted out, “I was the one that called the police” and “I’m the one that found the body.”

Hartman told Gilbride he had been sexually involved with Snipes since February 1997, and had sexual intercourse with Snipes during the early morning hours of September 9. Hartman stated that “after having sex the psycho bitch threw him out of the apartment stating that her boyfriend was coming over.” He left around 3:30 a.m. and returned to his own apartment.

According to Gilbride, Hartman said that he slept until 6:00 p.m. on September 9, and then took the bus to the Inn Between bar around 7:30 p.m. Gilbride testified that while going into the Inn Between bar, Hartman noticed a light on in Snipes’ apartment and decided to visit her. According to Gilbride, Hartman gained entry to the apartment through an unlocked door and claimed that he found her dead body in her bedroom. Hartman said that he unsuccessfully tried to pick her body off the floor, noticed that her

hands had been cut off, and “freaked out.” Thinking “I’m going to get busted for this,” Hartman washed her blood off his hands and clothes, tried wiping down everything he touched, removed evidence linking him to her apartment, and went home.

Snipes was stabbed one hundred thirty-eight times. Bruising on her ankles indicated that she was alive when she was tied to the bed. Additionally, sperm was found in her vagina and anus. The medical examiner concluded that Snipes had died from strangulation and a slit throat either in the late afternoon or early evening of September 9.

Police found Hartman's bloody fingerprint on the leg of the white chair draped over Snipes' body, and police found another of Hartman's fingerprints on Snipes' bedspread. An expert witness testified that the long linear blood patterns found on Hartman's tee-shirt and Snipes' bedspread were applied by a long-bladed knife. Further, the blood patterns found on Hartman's tee-shirt were applied while the tee-shirt was lying flat, and not while Hartman was wearing it.

At trial, the prosecution introduced a set of Hartman's knives, including a meat cleaver, a knife, and a knife sharpener that Hartman kept at the Quaker Square Hilton, where he worked as a chef.

Christopher Hoffman, a Hilton co-worker, testified that he talked to Hartman in August 1997 about the O.J. Simpson trial. According to Hoffman, Hartman said that Simpson could have disposed of evidence against him by cutting off the victim's hands and eliminating “fibers and hair and skin that might be found on the fingernails.”

Bryan Tyson, a fellow inmate at the Summit County Jail, testified that during a jailhouse conversation, Hartman admitted that he had killed Snipes. According to Tyson, Hartman said that “he pushed himself on her, something in his mind snapped, she was hitting him, he lost his temper, did things he regretted, killed her.” Then, Hartman said that he had “tried to make it look like a burglary,” admitted cutting off Snipes' hands, and mentioned a hacksaw, and jokingly said ‘Don't leave home without it,’ like the credit card commercial.”

Jessica O'Neill, an acquaintance of Hartman, talked on the phone with Hartman on September 9. Phone records showed that O'Neill called Hartman's apartment and spoke with him at 3:12 p.m. and 4:50 p.m. She also claimed that she talked with Hartman on the phone around 6:30 or 7:00 p.m.

The defense also introduced evidence suggesting an alternative suspect, Jeff Nichols. Nichols lived across the hallway from Snipes' apartment until he moved out of his apartment around September 1, 1997. Nichols worked as a handyman for the apartment building and had access to the landlord's keys to other apartments.

In January 1997, Jeffrey Barnes, a friend of Snipes, was visiting Snipes' apartment when Nichols came to her door. According to Barnes, Nichols “got up right to her door and then he said, ‘Slit the bitch's throat, cut her up,’ and called her a slut and all other kind of

vulgar names.” Barnes reported this incident to the police upon hearing about Snipes’ murder.

On an evening prior to September 1, 1997, Linda Zarski, a neighbor in Snipes’ apartment building, heard Snipes pounding on Nichols’ door and screaming that she wanted her shirt.

On another occasion prior to the murder, Linda Kinebrew, a neighbor living at the apartment, “heard [Nichols] arguing, telling [Snipes] to let him in and she wouldn’t.”

Carol Parcell, Hartman’s mother, provided an alibi. Hartman lived at his mother’s apartment, and Parcell claimed that when she came home on September 9 at 6:15 p.m., her son was sleeping in his bedroom. According to Parcell, Hartman woke up at 7:00 p.m., got ready, left the apartment at 7:30 p.m., and returned to the apartment around 8:15 p.m.

Hartman testified on his own behalf. He admitted having sex with Snipes several times over the past year and during the early morning hours of September 9 when he was at Snipes’ apartment. After having sex, Hartman returned to his apartment at about 3:30 a.m., slept until 6:15 p.m., left his apartment at 7:35 p.m., and returned to the Inn Between bar.

Before reaching the Inn Between, Hartman noticed that Snipes’ bathroom light was on at her apartment, and he decided to visit her to see if he could “get laid.” Hartman entered Snipes’ apartment through an unlocked door and found her mutilated body in the bedroom. Hartman tried to “get her up and put her on the bed to see if there was anything else I could help with.”

Hartman “freaked out” after noticing Snipes had no hands and realized he “could get in a lot of trouble” if he was placed at the scene. Thus, he washed her blood off his hands, wiped down the cupboards, chair handles, and anything else he might have touched, gathered whatever items he could find that belonged to him, and left Snipes’ apartment. Hartman “ran home” and threw the items taken from Snipes’ apartment into a nearby dumpster. Upon arriving home, Hartman changed his shoes and hid the bloody tee-shirt so that his mother would not find it.

Thereafter, Hartman hurried back to the Inn Between bar and started drinking. When he was “semi-intoxicated,” Hartman made the anonymous 911 calls reporting the location of Snipes’ body, admitted standing behind a tree watching the police arrive at Snipes’ apartment, and later approached the police to report that he had been at the apartment the previous evening.

Hartman introduced photographs taken of his naked body following his arrest to show the absence of bruises and injuries. Hartman explained that a cut on his elbow had occurred at work while he was moving crates.

Hartman acknowledged talking with Chris Hoffman about the O.J. Simpson case but did not recall discussing anything about cutting off a victim's hands.

Hartman knew Tyson as a fellow inmate but denied making any jailhouse admissions that he murdered Snipes.

The grand jury indicted Hartman on two counts of aggravated murder, including one count of murder with prior calculation and design and one count of felony murder. A capital specification relating to murder during a kidnapping was included in the felony murder count. He was also charged with kidnapping and tampering with evidence.

The jury found Hartman guilty of all offenses and recommended death for Snipes' murder. The trial court sentenced Hartman to ten years for kidnapping, five years for tampering with evidence, and death for the aggravated murder of Snipes."

### **PRIOR RECORD**

**Juvenile:** Brett Hartman has no known juvenile arrest record in Ohio. As a juvenile, he lived in Arizona, California, New Mexico, Ohio and Wisconsin. At the age of 13, he was charged with Theft and placed in the New Mexico Diagnostic Center for a term of 90 days. Mr. Hartman self-reported that he continued to have contact with juvenile authorities. He incurred drug related charges, joyriding, shoplifting, and several DUI's. He turned himself into juvenile authorities at the age of 17 at which time he was placed in a Group Home. No further information is available.

**Adult:** Brett Hartman has the following known adult arrest record:

<b><u>Date</u></b>	<b><u>Offense</u></b>	<b><u>Location</u></b>	<b><u>Disposition</u></b>
9/7/1997 (Age 23)	Aggravated Murder with specification; Tampering with Evidence; Kidnapping CR97-09-1987	Akron, Ohio	<b>Instant Offense</b>

**Traffic:** Brett Hartman has received traffic citations that were disposed of via fine, court costs and driving suspension.

### **Institutional Adjustment:**

Brett Hartman was admitted to the Department of Rehabilitation and Correction on June 2, 1998. His work assignments while incarcerated at the Mansfield Correctional Institution included Material Handler, Porter and Tutor. At the Ohio State Penitentiary, Hartman's work assignments included Library Aide and Clerk Administrator. Since his transfer to the Chillicothe Correctional Institution, his work assignment has been that of a Recreation Worker.



Hartman has participated in several programs during his incarceration including a Medical Programming Class, Drug Awareness, SAFE People, Commitment to Change, Stress Management, and three Controlling/Managing Anger courses. He has also participated in multiple inmate community service projects and has assisted in various institutional art and painting projects at the Ohio State Penitentiary. In October 2006, Hartman achieved a certificate in Legal Assistant / Paralegal studies through a correspondence program. In March 2008, he achieved a certificate of ordination from the Minister's for Christ Assembly of Churches, a result of his self-studies. Hartman has also attended regular Christian worship services at the Ohio State Penitentiary since June 2006.

Since his admission, Hartman has accumulated the following disciplinary record which resulted in placement in disciplinary control:

- 4/03/2009 – Possession of Contraband, including any article knowingly possessed which has been altered or for which permission has not been granted – Hartman was found guilty for possessing two concealed pieces of metal which the institution believed were from a pair of broken tweezers. He received 5 days in disciplinary control for his rule infractions.
- 1/28/2009 – Disobedience of a Direct Order – Hartman refused to uncover his cell window and also used disrespectful language toward staff. He received 7 days in disciplinary control for this rule infraction.
- 9/22/2002 – Possession of Contraband, including any article knowingly possessed which has been altered or for which permission has not been granted – Hartman was found guilty for possessing 83 extra state envelopes. He received 6 days in disciplinary control for this rule infraction.

Brett Hartman has received approximately four (4) additional conduct reports since he was admitted to the Department of Rehabilitation and Correction in 1998. These conduct reports did not result in Disciplinary Control. On each occasion, Hartman was found to be in possession of minor contraband items.

### **APPLICANT'S STATEMENT:**

Brett Hartman was interviewed by members of the Parole Board on September 27, 2012. Mr. Hartman began the interview by explaining that he feels horrible about Ms. Snipes' death, but he is innocent of the crime. He explained Ms. Snipes as having a bubbly personality and that he was not aware of her name at the time of the crime, however they would meet up in bars at closing and go to her apartment to have sex.

Mr. Hartman shared many details of the crime and his claims of innocence with the Board that have been captured in prior interviews and hearings, and asked that the Board take all the information previously provided into consideration as well. He stated that since he was right about the location of one of the phone calls placed on the night the

crime was discovered, the Board should consider that he may be right about his other claims, particularly as they relate to withheld evidence.

Mr. Hartman further stated that he recently found out that he has a daughter, who is now twenty (20) years old. He stated that this is new information that was not previously known or presented. Paternity was verified through DNA testing and he received the results last week. He stated that he has talked to her on the phone, and they have written letters to each other. He further indicated that a church conducted a fundraiser to provide her the funds so that she could travel to CCI to visit him on October 11, 2012. Hartman stated that he would like to receive clemency so that he could get to know his daughter.

Mr. Hartman expressed that he has not been able to get involved in as much community service since the transfer to Chillicothe Correctional Institution. However, he indicated that he is still very interested in continuing positive relationships within the community by sharing his artwork and anything else he can do to be productive. He continues to be involved in religious studies and shares this knowledge with others in any way he can.

During the interview Mr. Hartman spoke about his upbringing and stressed the fact that he was raised to never get the police involved in anything. He made mention of this several times. When questioned about why he called the police to tell them there was a body in the apartment, he stated "I felt it was my civic duty to call them." He states he made the second call after drinking more and becoming resentful towards the police that they did not find the body the first time.

Mr. Hartman indicated that there is a great deal of evidence that has not been tested that would indicate who actually committed this crime. He further stated that since he was able to prove a phone call was made from a different location than that presented at trial, the Board should consider that he is correct on everything else he claims relating to the evidence that has not been tested. Regarding the DNA testing of the semen in the victim's anus that indicated he was the donor, he explained that public records he has obtained states that the coroner called a detective asking what time it was on the clock in Ms. Snipes' apartment. He alleged that this proves that the Coroner stated before trial that the victim was killed thirty-six (36) hours prior to what he testified at trial, which is the time he has always claimed to have had sex with her.

When asked what type of clemency he is requesting, he stated he wants a sentence reduction to twenty-five (25) to Life so he can spend time getting to know his daughter and further pursue his claim of innocence in the courts.

## **ARGUMENTS IN SUPPORT OF CLEMENCY:**

Attorney David Stebbins represented Mr. Hartman at the clemency hearing conducted on October 10, 2012. Co-counsel Michael Benza was also in attendance. Attorney Stebbins indicated that all previous arguments and information presented in support of clemency are still valid and should be again considered. He indicated that the information would be summarized, given that they were fully argued at the two previous clemency hearings. The reasons and arguments supporting clemency entail four areas:

1. Critical evidence from the crime scene and on the victim's body was never tested, bringing the integrity of the verdict into question.
2. Institutional Adjustment.
3. Community and Family Support.
4. Compelling mitigating evidence from Brett Hartman's childhood and upbringing.

### **Critical Evidence**

Attorney Stebbins argued that although Hartman acted irresponsibly and strangely around the police at the time of the crime, the evidence is far from overwhelming that Hartman is the killer. Hartman has always claimed that he did not kill the victim, and there are many outstanding pieces of evidence such as a used condom, fingerprints, hair, mop, clothing and other materials that have never been tested and that could lead to the real killer. He further stated that they have been denied access to testing these items by the Summit County Prosecutor's Office, and the state and federal courts have not provided any relief. An appeal to the United States Supreme Court is being prepared.

### **Institutional Adjustment**

Attorney Stebbins began by stating that Hartman has been a model prisoner, incurring only a few write ups during his incarceration, none of which involved acts of violence. He has held jobs during his incarceration which is not typical for Death Row inmates. Hartman has been involved in many community service projects to include donating his paintings for charity auctions and use by community organizations. In addition, he has painted murals on the housing unit walls during his stay at the Ohio State Penitentiary, and paid for the materials.

### **Community and Family Support**

Attorney Stebbins stated that Hartman has always had the support of his family, particularly his mother and his two half sisters. His mother and one half sister have passed away, but his other sister still supports and maintains a website devoted to proving his innocence. Hartman has also recently discovered that he has a daughter who he will meet for the first time the following day. Hartman wants to have the opportunity to develop a relationship with her. Hartman also has many supporters who have signed

petitions indicating that they believe that he is deserving of clemency. He also maintains contact with several religious supporters.

### **Compelling Mitigating Evidence**

Attorney Stebbins explained that the mitigating evidence previously presented to the Board concerning Hartman's chaotic childhood was not considered by the jury, and has not been presented to any reviewing court. He indicated that the mitigating evidence presented at trial only consumed forty-one (41) pages in the trial transcript, and did not include any explanation that would explain Hartman's behavior, given that the jury found him guilty, such as the type juries normally seek when recommending a life sentence in lieu of death.

Attorney Stebbins then summarized the information previously presented regarding Hartman's childhood. As a young child, Hartman lived with his parents until they divorced when he was age five (5). He then moved to California with his mother and sister Ria, at which point his mother became involved in a volatile relationship with a man who did not like children. Hartman was then sent to live with his aunt in New Mexico on a Navajo Reservation, where he was very isolated and was the only Caucasian child. He was only supposed to stay with his aunt for a few months, but his mother kept sending him back to his aunt, which resulted in Hartman living with his aunt until he was 12. He was then sent to live with his biological father and stepmother, who had relocated to New Mexico. His stepmother was a disciplinarian, and Hartman did not respond well to her. He eventually ran away, robbed a hotel, was arrested and placed in the New Mexico Youth Diagnostic Center. At this facility he was diagnosed as a "very disturbed adolescent" due to childhood trauma, and desperately needed a highly structured environment. Several recommendations were made regarding continued therapy and placement in a residential setting. However, upon his release, none of these recommendations were implemented. A custody battle then ensued between his father and mother, and eventually Hartman was placed back with his mother.

He then moved with his mother to another Indian reservation where he began drinking and using drugs. He eventually ran away from the reservation, and ended up living on the streets of Encinido, California. He and another youth stole a car and were arrested. This arrest resulted in his being placed in a group home. He later walked away from this facility. He eventually moved in order to live with his sister Ria in Akron, Ohio. Approximately a year later, he returned to California with the intention of turning himself in to authorities, but ended up living on the streets with other homeless individuals. After a period of alcohol and drug abuse, he turned himself in and was returned to the center that he walked away from.

Attorney Stebbins states that Hartman experienced some success at the group home. He completed his GED and obtained vocational skills. Ultimately, he was successfully released from the group home shortly before his eighteenth birthday. Hartman then moved to Wisconsin to live with his mother and sister Diane, where he was a good influence on his sisters' sons.

At the age of twenty (20) he moved to Akron, Ohio with his mother where he shared an apartment with her and was working regularly. However, he was drinking as much as twenty-four beers a day.

Attorney Stebbins further argued that Hartman never received the psychotherapy, intensive counseling, or highly structured environment that had been ordered for him over the years, and was never properly treated for the trauma he suffered as a child. If the Board believes that Hartman committed the offense, as the jury did, the mitigating evidence is sufficient to warrant a favorable recommendation, as it likely would have resulted in a recommendation of less than death from the jury, had they heard the same information.

Attorney Stebbins acknowledged that other than a preliminary report written by Dr. Schmidtgoessling that is included in the attachments to the recent application, there is no additional new information that was not previously presented to the Board. However, Attorney Stebbins argued that they believe that given all of the information previously presented, clemency is appropriate in this case.

#### **ARGUMENTS IN OPPOSITION TO CLEMENCY:**

Summit County Chief Assistant Prosecutor Brad Gessner and Assistant Attorney General Tom Madden presented arguments in opposition to clemency. Attorney Gessner argued that this case is a classic example of someone who wants to have it both ways. It is inconsistent for Hartman to simultaneously argue that he is innocent of the crime, and present mitigating evidence explaining why he committed the crime. Hartman continues to deny his guilt despite the presence of overwhelming evidence that was previously presented and explained at the two prior clemency hearings.

Regarding Hartman's claim that the Summit County Prosecutor is withholding evidence from the defense, Assistant Prosecutor Gessner reminded the Board that the Summit County Prosecutor wrote to defense counsel and advised that her office would turn over any evidence it has if so ordered by a court. All reviewing courts have ruled on this issue and have agreed that the only evidence not tested before trial that had any probative value was the semen located in the victim's anal cavity. The courts permitted testing on that sample, and when it came back as belonging to Hartman, he then tried to argue that the coroner stated before trial that the semen was deposited 36 hours prior to the crime, a time at which he has always admitted to having sex with the victim. This position was opposite of the position he himself took at trial, which was that he did not have anal sex with the victim. There is no such report of the coroner that proves what Hartman claims. This manner of twisting the facts to suit his argument has been persistent since trial.

Assistant Prosecutor Gessner further argued that Hartman's claim that if the mitigating evidence presented to the Board had been presented to the jury, a sentence less than death would have been recommended is without merit. The mitigating evidence presented

simply demonstrates that Hartman is the type of person who would commit such a crime. In addition, the recent preliminary report submitted by Dr. Schmidtgoessling comes to the same conclusion. Assistant Prosecutor Gessner then reminded the Board that all of the evidence, in addition to the DNA evidence, established Hartman's guilt. This evidence includes Hartman's palm print on the chair that was found on top of the victim's body, the bloody t-shirt and the victim's watch that were found in his apartment, and Hartman's phone calls and odd behavior toward police. Hartman also failed a polygraph exam.

Assistant Prosecutor Gessner also pointed out that at the most recent interview with the Board, Hartman stated that he wanted his sentence commuted to 25-Life, so that he could possibly be released. However, Hartman posted on his website that he wants a new trial or to be put to death, but nothing in between. Hartman continues to manipulate his "supporters" and tries to sell his artwork to gain funds for himself. He is not as charitable as he would have the Board believe.

Assistant Prosecutor Gessner argued that Hartman has presented no additional information that would warrant the Board making a favorable recommendation to the Governor. Hartman is not worthy of clemency, and his death sentence should be carried out.

#### **VICTIM'S REPRESENTATIVE:**

Ms. Jacqueline Brown, friend of victim Winda Snipes, spoke on behalf of the victim and the victim's family. Ms. Brown stated that she and Ms. Snipes shared the same place of employment, and this is where they first met. She expressed that "everyone is ignoring the fact that this is about Winda. She was a jovial person and she had a good personality, everyone liked her. She came to Ohio with her friends from church."

Ms Brown further explained the last time she spoke with Ms. Snipes was the night prior to the murder. Ms. Snipes had introduced her to a friend that lived downstairs and his name was Jerry. Ms. Brown explained that Jerry called her to share the news that something bad had happened to Ms. Snipes. Jerry called her back a short time later and told her that "they are taking Winda out in a body bag." Ms. Brown further explained that she eventually spoke to a Detective and asked him if Ms. Snipes was dead. He at first would not tell if she was dead or not. After asking a couple of times the Detective told her that Ms. Snipes was dead. Ms. Brown wanted to know if her family had been notified yet, and if not, that there would be a book beside the bed with the names of her family in it, so the police could contact the family.

Ms. Brown indicated that she attended the entire trial except the first day. She stated that she does not understand why Hartman denies the murder, given all the evidence against him, and has no doubt that he killed Winda. She further explained that Ms. Snipes' family feels the same way and that they want his sentence carried out.

**PAROLE BOARD'S POSITION AND CONCLUSION:**

The Board reviewed submissions both in favor of and in opposition to clemency, to include all materials submitted and testimony presented during the prior clemency hearings and interviews, as well as all materials presented from the interview with Hartman on September 27, 2012, and at the hearing conducted on October 10, 2012. The Board reached a unanimous decision to provide an unfavorable recommendation regarding clemency based on the following:

- The overwhelming evidence presented during trial clearly established that Hartman is guilty of this crime. Hartman shows no remorse and continues to claim his innocence despite the evidence indicating his guilt.
- Hartman's counsel presented mitigating evidence that he argued was not presented at trial. If this alleged additional mitigation had been presented at trial, it is equally if not more likely that a jury would be more convinced that Hartman was capable of committing this heinous crime, and would not have changed the recommendation.
- The fact that Hartman has had good institutional adjustment, minimal conduct reports, continued his education, and performed many hours of community service does not sufficiently mitigate against the aggravating factors of this crime, such to warrant a favorable recommendation for clemency.
- A reprieve to continue litigating the untested evidence issue is not warranted, as this issue has been reviewed multiple times and Hartman has been denied relief.
- The only new information presented to the Board during this hearing and interview with Hartman is Hartman's recent discovery that he has a 20 year old daughter with whom he wishes to develop a relationship. It is unfortunate that this discovery did not occur earlier in Hartman's incarceration, however, it does not warrant a recommendation for clemency.

**RECOMMENDATION:**

Following the consideration of all available information, the Ohio Parole Board with nine (9) members participating, by a vote of nine (9) to zero (0), recommends to the Honorable John Kasich, Governor of the State of Ohio, that Clemency be DENIED in the case of Brett Xavier Hartman.

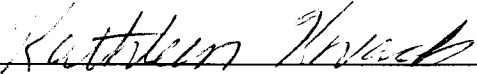
Brett Hartman, A357-869  
Death Penalty Clemency Report

Adult Parole Authority  
Ohio Parole Board Members  
Voting **Favorable**

Ohio Parole Board Members  
Voting **Unfavorable**



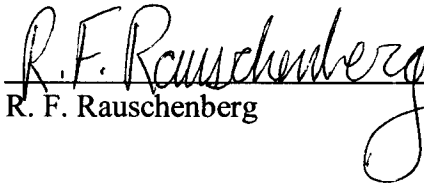
Cynthia Mausser, Chair



Kathleen Kovach



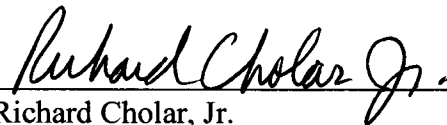
Ellen Venters



R. F. Rauschenberg



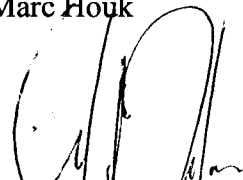
Trayce Thalheimer



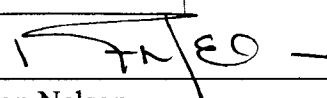
Richard Cholar, Jr.



Marc Houk



Andre Imbrogno



Ron Nelson



A 9/11/2001

You have taken away a very beautiful person.

You think you ~~have to~~ can get away with this, but you can't

You have already been seen, Keep on trying to lie, because I know God is on my side. Winda knows who killed her, and you do too. I see this has begun to eat you up,

little by little, piece by piece bit by bit, until you become

nothing. Winda was not a bad person, in fact she was a very caring and wonderful person. You took her away from a loving family. I just hope one day you will be on your

knees crying for your sins. Nobody loves her more than the Lord, And nobody is going to love and miss her more than us. I guess our Father in heaven was ready for her to come home, we her family and friends on earth, we just weren't ready.