

State of Ohio
Adult Parole Authority
Columbus, Ohio

CLEMENCY REPORT

David Brewer
MANCI #A187-234

April 14, 2003

David Brewer #A187-234
Death Penalty Clemency Report
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**STATE OF OHIO
ADULT PAROLE AUTHORITY
COLUMBUS, OHIO**

Date of Meeting: April 7, 2003

Minutes of the SPECIAL MEETING of the Adult Parole Authority held at
1030 Alum Creek Drive, Columbus, Ohio 43205 on the above date.

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IN RE: David Brewer #187-234

SUBJECT: Death Sentence Clemency

CRIME, CONVICTION: Aggravated Murder, 2 Counts with specifications

DATE, PLACE OF CRIME: March 21, 1985
Beavercreek, Ohio

COUNTY: Greene

CASE NUMBER: 85CR71

VICTIM: Sherry Byrne

INDICTMENT: Count 1: Aggravated Murder w/ prior calculation and design
Count 2: Aggravated Murder in the course of a kidnapping
Each count included two specifications

PLEA: Original Plea on March 19, 1985 of Not Guilty
And Not Guilty by Reason of Insanity, each count.
On May 24, 1985 the Court found defendant competent.
NGRI plea withdrawn prior to trial

TRIAL: Three-Judge Panel

VERDICT: September 19, 1985. Guilty as charged

SENTENCE: Death

DATE OF ADMISSION: October 17, 1985

TIME SERVED: 17 years and 6 months

JAIL TIME CREDIT: 174 days
AGE AT ADMISSION: 26 years old (d.o.b. 4-22-59)
PRESIDING JUDGES: Honorable M. David Reid
Honorable Robert H. Gorman
Honorable Kenneth A. Rohrs
PROSECUTING ATTORNEY: William F. Schenck

FOREWARD:

Clemency in the case of David M. Brewer was initiated by The Honorable Bob Taft, Governor of the State of Ohio, and the Ohio Parole Board, pursuant to Section 2967.13 of the Ohio Revised Code and Ohio Parole Board Policy 501.09.

A previous Clemency Report was sent to the Honorable George V. Voinovich, then Governor of the State of Ohio, on February 23, 1996. That report contained a unanimous Parole Board recommendation against clemency.

Our current inquiry included an interview with Mr. Brewer by Parole Board Member, Jim Bedra on April 1, 2003 at the Mansfield Correctional Institution. Assisting Mr. Bedra and present during the interview was Parole Board Parole Officer, Matt Morris. Also present at the interview was Mr. Brewer's attorney, Richard J. Vickers.

On April 7, 2003 a clemency Review Hearing was held with nine members of the Ohio Parole Board participating. Present at that hearing were representatives from the Public Defenders Office, Attorneys Joseph E. Wilhelm and Richard J. Vickers. The inmate's uncle, Phillip E. Brewer and cousin, Beverly Brewer were present to speak in his behalf. Also in attendance was Green County Prosecuting Attorney William F. Schenck. Representatives from the Office of the Ohio Attorney General included Timothy Prichard, and Heather Gosselin. Testimony was also provided by the victim's mother, Myrtle Kaylor and the victim's husband, Joe Byrne.

After careful review and deliberation concerning the documentary evidence and testimony provided, the Parole Board voted and reached a unanimous decision.

We now submit to the Honorable Bob Taft, Governor of the State of Ohio, our report and recommendation.

DETAILS OF THE OFFENSE:

At about 10:15 on the Morning of Thursday, March 21, 1985, Sherry Byrne called her husband Joe and told him that she was going to the Red Carpet Inn in Sharonville, north of Cincinnati, to meet David Brewer and his wife Kathy. Mr. Brewer and Joe Byrne were boyhood acquaintances and college fraternity brothers, and the two couples saw each other socially. According to Sherry, Brewer and his wife Kathy were at the motel to celebrate Kathy's pregnancy, and to deliver a set of stereo speakers, which he had promised Joe.

Sherry and her dog arrived at the motel sometime before noon that morning. Mr. Brewer was there alone, having told his wife that he would be in Cincinnati for the day on business.

Brewer and Sherry engaged in sexual intercourse. He testified at trial that Sherry was a willing partner. However, he later made statements to police officers suggesting that Sherry may not have been willing, or might have been intimidated by his size.

According to Brewer, Sherry expressed guilt about what had happened. They left the motel and drove in his car to a park "to talk about it" and because he "could not get her to calm down." He maintained throughout that she voluntarily got into the trunk. He then drove to a less populated area north of Cincinnati where he opened the trunk and tried to convince Sherry not to tell her husband or his wife. He bound her feet with speaker wire, closed the trunk again, and drove to another location.

After another conversation, he locked her in the trunk once more and returned to the motel in Sharonville. There he moved Sherry's car from the motel parking lot to a place about a block away. He then took Sherry to a park in Mason, drove around and unlocked the trunk twice, trying to convince her not to tell her husband. He then drove back toward Sharonville, stopping at a convenience store to release the dog. The dog was later recovered in Mason. The dog's license tag was missing.

Brewer returned to the motel and checked out at around 4:30 p.m. He then went to the Remco store in Dayton where he was employed as a manager. He was in the store about ten minutes. When he came out, he heard Sherry pounding on the lid of the trunk. He went to a nearby drugstore and bought some tape "for bondage." He later told police officers that he used the tape to bind Sherry's hands, but he denied this at trial.

Brewer then drove through the Beaver Creek and Sugar Creek areas and proceeded southeast toward Wilmington, stopping once for gas and several times to attempt to persuade Sherry to stop pounding on the trunk lid.

Several witnesses saw a hand holding a piece of paper through a gap in the trunk seal with the words "HELP ME PLEASE" written in what appeared to be lipstick. These witnesses called law enforcement authorities. Patrol officers searched for the car. The Beaver Creek police also ran a computer check of the license number. They called Brewer's home and Remco. They visited the Remco store to search for his car.

After buying gas a second time, Brewer drove north toward Xenia. At the Cattlemen's Inn on U.S. Route 35, he stopped and made a pay phone call to Remco. One of the employees told him that the police were looking for him "about the way you were driving." Brewer then drove to a remote area near Factory Rd., where he stopped between 7:30 and 8:00 in the evening. He opened the trunk, but closed it quickly when a car drove by. He then left the area when the car returned.

Brewer returned to Remco at about 8:00p.m. and called the Beavercreek police. He spoke with Sgt. Richardson, who told him to come to the station that night and bring his car. Brewer said he would be there in about a half hour. He stayed at Remco for about ten minutes, and then left in his car. He stopped a short distance away and opened the trunk to tell Sherry he would let her go in a remote area. He then drove back to the Factory Rd. area.

When Brewer opened the trunk, he claimed that Sherry got out, slapped him and ran. He caught her and choked her, first with his hands and then with a necktie. He went back to his car and got a butcher knife. He stabbed Sherry several times, and then slashed her throat.

Leaving Sherry's body in a roadside ditch, Brewer drove to the Beavercreek police station. He went into a restroom to wash blood from his shoes and hands. He then spoke with the officers, who asked about the "HELP" sign that had been seen sticking out of his trunk. He told police that he had picked up a female hitchhiker, and had been riding around with her. He explained the sign as a prank suggested by the hitchhiker, whom he said he could not identify. The Beavercreek police cited him for inducing panic and released him.

Brewer returned to the Factory Rd. area and placed Sherry's body in the trunk of his car. He stopped by Remco to call his wife, telling her he would be home soon. He then went home and went to bed.

In the meantime, Joe Byrne became concerned when his wife failed to come home. He called Kathy Brewer, who told him she had not seen Sherry that day, was not pregnant, and knew nothing about any stereo speakers. Joe notified the police and filed a missing persons report. Accompanied by a friend, he drove around the Sharonville area that night looking for Sherry or her car. The friend later found Sherry's car where Brewer had left it.

The following day, Brewer placed the body in a sleeping bag and drove to Franklin. He rented a self-storage locker, purchased a padlock, and left Sherry's body. He cleaned his car at a car wash and went to work at Remco.

Later that morning, Brewer called Joe Byrne. He asked Joe if the police considered him to be a suspect. The following evening, Brewer and his wife visited Joe at his home to console him. Joe believed that "someone who knew both of us" was responsible for Sherry's disappearance, and Brewer expressed a fear that this same person might want to "get" Kathy.

The following Monday, Brewer was called by the Springdale Police Department to come in for questioning. Although he was not in custody, he was fully advised of his Miranda rights. In the interview, he gave several stories to the police. At first, he claimed only to have called Sherry from a pay phone to tell her about the stereo speakers. When asked about the "HELP ME PLEASE" sign hanging out of his trunk, he repeated, with some embellishments, the hitchhiker story he told the Beavercreek police. When questioned about discrepancies in his story, he admitted that he lied. He revealed that he met Sherry at the motel. He claimed that Sherry was fearful because she had been getting obscene phone calls and was being followed by a mysterious stranger. According to this story, he last saw Sherry at the motel. After a break in the interview he asked to speak to his wife. Police approached Kathy Brewer and told her "there were numerous problems in the interview with her husband." Kathy became hysterical and was taken to the hospital. She returned to the station at about 2:00a.m. accompanied by her father and brother. In the intervening hours, the police searched his car pursuant to a written waiver signed by Brewer.

Upon her return, the officers asked Kathy to speak with her husband. They told her that they would observe the meeting through a two-way mirror. Kathy went into the interview room alone and spoke with her husband for a few minutes, while the officers, Kathy's father and brother listened and watched through the two-way mirror. During this conversation, Brewer admitted killing Sherry. Kathy came out of the room and told the officers that he wanted to speak to them again. Detective Teague recorded the taped confession to the killing of Sherry Byrne. He told where he had hidden Sherry's body. Later that morning Brewer led officers to the scene of the killing. While in the car, and after indicating his awareness of his Miranda rights, he gave further details. He gave additional statements to the Beavercreek police later that day.

The police recovered Sherry Byrne's body from the storage locker. The Hamilton County Coroner's office performed an autopsy. The autopsy revealed that Sherry's killer had attempted to strangle her, which caused fractures of her hyoid bone and of her spinal cord at the seventh cervical vertebra. The deputy coroner testified that the attempted strangulation did not kill her, but would have left her partially paralyzed. There were multiple stab wounds to her chest and abdomen and a slash across her throat inflicted with a butcher knife. There were bruises on her chest "caused by a blunt injury," bruises on her arms "consistent with defense wounds," bruising in her pelvic area, which may have been caused by "forcible thrusting" of a man's body on top of her, and a knife wound to her right hand.

On March 28, 1985, Brewer was indicted by the Greene County Grand Jury on one count of aggravated murder during the commission of a kidnapping, and one count of aggravated murder with prior calculation and design. Each count carried two specifications of aggravating circumstances: commission of the offense while committing or attempting to commit kidnapping and commission of the offense in order to escape detection, apprehension, trial or punishment for another offense. Brewer pled not guilty and not guilty by reason of insanity. The insanity plea was withdrawn before trial.

Brewer waived his right to a jury and elected to be tried by a three-judge panel. He was found guilty on both counts and all specifications on September 19, 1985.

PRIOR RECORD:

Juvenile: None.

Adult:

<u>Date</u>	<u>Offense</u>	<u>Court</u>	<u>Disposition</u>
12-22-78	Failure to Yield	Springboro Mayors Ct.	\$10.00 fine and CC
8-25-81	Disorderly Conduct	Lexington, Kentucky	Fine/Cost \$50.50
3-21-85	Inducing Panic	Fairborn, Ohio	Dismissed
3-26-85	Agg, Murder 2cts. with specs.	Greene County	Instant Offense

INSTITUTIONAL ADJUSTMENT:

Mr. Brewer was admitted to prison October 17, 1985. His prison files were reviewed on April 1, 2003 and found to be generally commendable. The one serious blemish is a 1986 rule violation where he was found to be in possession of a plastic glove full of marijuana. Aside from that, he can be described as a model inmate. He has routinely received positive work evaluations. He has drawn the praise of a number of ODRC employees for his excellent work and his positive behavior. In his application for Clemency, he emphasizes this positive institutional conduct as an 18-year demonstration of being a productive member of the prison community.

PROPONENTS:

An extensive written application and documentation outlining the reasons David M. Brewer should receive Executive Clemency was filed with the Parole Board. On April 7, 2003, Attorney Joseph E. Wilhelm and Attorney Richard J Vickers presented oral testimony in support of their application. Reasons expressed in favor of the granting of Executive Clemency are as follows:

- His positive and productive background should weigh heavily in favor of mercy. The murder of Sherry Byrne was an aberration in a life virtually devoid of either legal or moral misconduct
- David Brewer is remorseful for his actions.

- He has family and community support evident by numerous letters written in his behalf. (These letters can be found in the body of the Clemency application.) The trial court panel never considered these letters in mitigation of the death penalty because they were excluded from consideration as hearsay.
- David Brewer is and has been a productive and positive inmate in Ohio's prison system after his conviction and death sentence. He has proven himself to be a model of rehabilitation. Courts have recognized that the ability of a capital defendant to make a positive adjustment to incarceration is a factor of significant weight that mitigates against the imposition of the death penalty.
- David Brewer pleads for clemency and asks for a commutation of his death sentence to a life sentence.

Beverly Brewer, the inmate's first cousin, provided an oral and written statement on April 7, 2003. She expressed condolences to Sherry Byrne's family. She expressed her love of David. She was shocked by his action. He seemed to be the least likely to be capable of such violent acts. He had always been, and is today, a good person with much to offer. She views David as unique among death row inmates as he has no prior record. Her belief is that the death penalty is reserved for those individuals who show no remorse, or who are beyond rehabilitation, or who have committed repeated violent acts against society. None of the statements describes David. She asks the State of Ohio to consider the uniqueness of David's case and the possibility that this is one of those rare times when recommending clemency is the right thing to do.

Phillip E Brewer, the inmate's uncle, also provided an oral and written statement on April 7, 2003. He expressed his belief that his nephew's execution would not serve justice, as the death penalty should be reserved for hardened criminals who repeatedly demonstrate disregard for law and humanity. He stated that he would never understand David's crime because whatever caused him to do it is beyond the normal person he was, the character he demonstrated all his life. He has been a model prisoner and that does not surprise him. He asks the State of Ohio to spare David's life.

William J. Scurlock, retired ODRC employee, also testified in Mr. Brewer's behalf. He supervised Brewer for two years when the inmate worked as Head Unit Clerk. He believes that David can be a productive member of a prison institution if gets the chance. He asks that his sentence be commuted to life without parole.

Numerous letters and affidavits of support from family, teachers and friends are included in the body of the Clemency application.

OPPONENTS:

William M. Schenck, Greene County Prosecuting Attorney, and Heather Gosselin and Timothy Prichard Of the Ohio Attorney General's Capital Crimes Unit represented the State of Ohio at the hearing before the Parole Board on April 7, 2003. Arguments offered in opposition to the granting of Executive Clemency included:

- Brewer checked into a motel and then lured Sherry Byrne there with a false story.
- He took extensive measure to conceal Sherry by placing her in the trunk of his car and then tied her with wire and later with masking tape. He refused to let her go even though he had many opportunities to do so.
- He allowed himself enough time to complete the murder after receiving instructions from police to come to their office. The murder was extremely violent by strangulation, stabbing and finally by slitting her throat.
- He concealed evidence of the murder, ultimately hiding her body in a self-storage unit.
- Brewer has never accepted true responsibility. He provided several versions as to what really happened and confessed when confronted with overwhelming evidence. He continues to tell varying versions of the crime. The latter suggests a lack of remorse
- Letters presented in his behalf at the mitigation phase of trial were indeed presented to the three-judge panel in form of a pre-sentence report to the court.
- The aggravating and mitigating circumstances surrounding the crime were considered at trial, upheld throughout the appellate process, and affirmed by the Ohio Supreme Court.

Joe Byrne, the victim's husband, and Myrtle Kaylor the victim's mother, read prepared statements describing their incredible loss and stated opposition to the granting of clemency. Both are disturbed by Brewer's allegations that Sherry was a consenting participant in sexual intercourse with him. They believe Brewer raped her. Copies of their statements are attached to this report.

CONCLUSION:

The Ohio Parole Board reviewed the documents and deliberated extensively on the information provided. The Board found that considerable deception was used to lure the victim to an encounter that ultimately lead to her death by strangulation, stabbing and finally by the slitting of her throat. The prolonged duration of the ordeal presented Mr. Brewer with ample opportunities to respond in a manner that could have avoided Sherry Byrne's fatal demise. There was nothing presented to suggest any manifest injustice in the sentence of death. The Board gave extensive consideration to the question of mercy, yet we could not find this a sufficient reason to warrant a recommendation for clemency due to the aggravating factors of this crime

RECOMMENDATION:

Following consideration of available information, the Ohio Parole Board, with nine (9) members participating, recommends to the Honorable Bob Taft, Governor of the State of Ohio, by a vote of nine (9) to zero (0) that Executive Clemency be denied in the case of David M. Brewer #187-234.

David Brewer #A187-234
Death Row Clemency Report


Adult Parole Authority
Ohio Parole Board Members
Voting Unfavorable



Gary Croft



Jim Bedra



Dr. Sandra A. Mack



Betty J. Mitchell



Cynthia Mausser



Peter Davis



Olivia Karl



Robert Maszczyński



Kathleen Kovach