

DATE TYPED: June 23, 2009
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IN RE: JOHN FAUTENBERRY, OSP #A279-989

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

Date of Meeting: June 16, 2009

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: John Fautenberry OSP #A279-989

SUBJECT: Death Sentence Clemency

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

DATE, PLACE OF CRIME: February 17, 1991 in Hamilton County, Ohio

COUNTY: Hamilton

CASE NUMBER: B912206

VICTIM: Joseph Daron, Jr. (Age 45)

INDICTMENT: 3/27/1991: Counts 1-2: Aggravated Murder with 2 Aggravating Circumstance specifications; Count 3: Aggravated Robbery with firearm specification; Count 4: Grand Theft (motor vehicle) with specification; Count 5: Grand Theft with specification.

PLEA: 7/23/1992: Pled No Contest, to the indictment; Found Guilty by Three (3) Judge Panel.

SENTENCE: 9/16/1992: Counts 1-2: Sentenced to DEATH (*Note - Count 1 was merged with Count 2 for sentencing purposes); Count 3: 10-25 years plus 3 years actual for firearm specification; Count 4: 2-10 years; Count 5: 1 ½-5 years.

ADMITTED TO INSTITUTION: October 19, 1993

JAIL TIME CREDIT: 33 days

TIME SERVED: 189 months (includes jail time credit)

AGE AT ADMISSION: 30 years old

CURRENT AGE: 45 years old

DATE OF BIRTH: July 4, 1963

JUDGES: Honorable William J. Morrissey, Jr.
Honorable William S. Mathews
Honorable Gilbert Bettman

PROSECUTING ATTORNEY: Arthur M. Ney, Jr.

FOREWORD:

Clemency in the case of John Fautenberry, A279-989 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 May 29, 2009, John Fautenberry declined an opportunity to be interviewed by the Parole Board at the Ohio State Penitentiary. A Clemency Hearing was then held on June 16, 2009 with seven (7) members of the Ohio Parole Board participating. No formal presentation was made by Attorney Dennis Sipe in behalf of John Fautenberry. Arguments in opposition to clemency were presented by Hamilton County Assistant Prosecutor Ron Springman and Assistant Attorney General Justin Lovett.

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 seven (7) members participating, the Board came to a unanimous agreement, and voted to provide an unfavorable recommendation for clemency to the Honorable Ted Strickland, Governor of the State of Ohio.

DETAILS OF THE INSTANT OFFENSE (B912206): The following account of the instant offense was obtained from the Ohio Supreme Court opinion, decided July 5, 1995:

“On March 27, 1991, the Grand Jury of Hamilton County, Ohio, returned a five-count indictment against subject, John Fautenberry. Count One charged Fautenberry with the aggravated murder of Joseph Darin pursuant to R.C.2903.01, and included two specifications: first, that the murder of Darin was committed while Fautenberry was committing, attempting to commit, or fleeing immediately after committing or attempting to commit the offense of aggravated robbery; and second, that Fautenberry possessed a firearm when he committed the murder. Count Two contained a second charge of aggravated murder involving the same victim and included two specifications, namely, that the murder was part of a course of conduct involving the purposeful killing of or attempt to kill two or more persons, and that Fautenberry possessed a firearm while committing the offense. The remaining counts charged Fautenberry with aggravated robbery, theft of a motor vehicle, and theft of a credit card.

On July 23, 1992, a three-judge panel accepted subject's pleas of no contest to each of the five charges. The panel then considered the admitted facts and evidence, and found subject guilty as to all counts. The evidence, including the transcripts of several confessions subject made to the police, established the following.

During 1990, subject worked as a cross-country truck driver for a company based in Portland, Oregon. In the early part of November 1990, subject informed one of his supervisors that he was quitting his job because of the long hours that were required of him as a truck driver. Thereafter, subject spent a few days at the Flying J Truck Stop in Portland loading and unloading trucks for money. It was at that time that subject met Donald Nutley. On one occasion, Nutley, who possessed several firearms, invited subject to go target shooting with him. The two drove to an area near Mt. Hood, Oregon, where they proceeded to fire at bottles until approximately sunset. As they walked back to Nutley's vehicle, subject fired a single, fatal .38 caliber round into the right side of Nutley's head. Subject then stole approximately \$10,000 in cash from his victim and dumped the body somewhere in the Mt. Hood area. Nutley's body was not located until April 1991.

In early February 1991, subject was traveling from Rhode Island to Ohio when he arrived at the Pilot Truck Plaza in Hunterdon County, New Jersey. Subject, out of money and in need of gasoline in order to continue his trip, met Gary Farmer, who allegedly offered to provide subject with food and money in exchange for sex. Upon entering Farmer's truck, subject fatally shot Farmer once in the head with a .22 caliber handgun. Subject left the body in the truck, stole the victim's wallet, and completed his trip to Cincinnati, Ohio.

After spending some time in Cincinnati, subject left his sister's home on February 17, 1991, with no money, no transportation, and, it appears, a desire to travel to Oregon. Subject began hitchhiking on Interstate 275 when Joseph William Daron, a father of two young children, stopped his vehicle and offered subject a ride. Subject explained that he was trying to reach Columbus. Daron offered to drive subject approximately twenty miles out of his way to a restaurant near the junction of Interstate 71, where subject believed he might better be able to find a ride to Columbus. Upon reaching the restaurant, subject exited Daron's vehicle, reached back into the car and shot Daron twice in the right side of his chest with the same .22 caliber handgun that he had used to kill Farmer. After the shooting, subject drove to a wooded area on the north bank of the Ohio River, where he threw Daron's body. Subject then used Daron's vehicle, credit cards, and cash to return to Oregon.

Subject arrived in Portland, Oregon, on February 24, 1991, and went to a local bar to meet a friend, Wes Halbrook. Several people, including Christine Guthrie, were invited to join the two men at Halbrook's apartment for a private party. The following day, subject and Guthrie traveled to Rockaway, Oregon, where they spent a few days at the Silver Sands Motel. On the return trip to Portland, subject drove Guthrie to a wooded area, where subject claimed they would find something of interest. The two walked into the woods on foot and subject fired three shots from his Jennings J 22 pistol into the back of Christine Guthrie's head. Subject then took the victim's bank credit card and address book containing the personal identification number for the credit card, left the body in the woods, and returned to Portland, where he used the credit card to make cash withdrawals. Guthrie's body was not discovered until April 1991.

In early March 1991, subject traveled to Juneau, Alaska. While there he spent his time working on a fishing boat and consuming large quantities of alcohol. Subject met Jefferson Diffie at some point during this period. On March 13, 1991, subject accompanied Diffie to the latter's apartment, where subject beat, handcuffed and fatally stabbed Diffie seventeen times. Shortly thereafter, subject was arrested by the Alaska police. He ultimately pled guilty to the charge of first-degree murder in connection with Diffie's death, and received the maximum sentence available under Alaska state law: ninety-nine years' confinement without parole eligibility.

Shortly after his arrest by the Alaska police, subject made four separate statements to various law enforcement officers concerning his involvement with the five murders. Subject spoke to the police in detail concerning the sites of the murders, the manner in which he had carried out the killings, and the locations where the police could find the victims' bodies.

After finding subject guilty of all counts and specifications in connection with Daron's murder, the Hamilton County three-judge panel conducted a mitigation hearing on September 14, 1992. The panel unanimously sentenced Fautenberry to death. Consecutive sentences were imposed for the other offenses, except those which were merged. The court of appeals affirmed subject's convictions and sentence of death."

PRIOR RECORD

Juvenile: John Fautenberry has no known juvenile arrest record in Ohio. No further information is available.

Adult: John Fautenberry has the following known adult arrest record:

<u>Date</u>	<u>Offense</u>	<u>Location</u>	<u>Disposition</u>
9/13/1982 (Age 19)	Disorderly Conduct, Reckless Endangerment, Resisting Arrest, Criminal Mischief	Gorton, Connecticut	Dismissed
1/17/1983 (Age 19)	Theft	Atlanta, Georgia	2 years probation
6/26/1983 (Age 19)	Larceny, Disorderly Conduct While Intoxicated, Loitering and Prowling	Miami, Florida	Unknown

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Death Penalty Clemency Report

10/10/1986 (Age 23)	Carrying Concealed Weapon B864235	Hamilton County, Ohio	1/6/1987: 3 years probation; 1/4/1990: probation discharged.
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Details: The subject was also charged with Aggravated Assault; this charge was dismissed.

12/23/1986 (Age 23)	Assault 86CRB034801	Hamilton County, Ohio	\$250 fine
2/1991 (Age 27)	Murder, Robbery, Possession of Weapon for Unlawful Purpose	Hunterdon County, New Jersey	Life - No parole eligibility for 30 years, concurrent with Alaska sentence.
2/17/1991 (Age 27)	Grand Theft (Motor Vehicle)	Clermont County, Ohio	Unknown
2/17/1991 (Age 27)	Aggravated Murder with specification, Aggravated Robbery with firearm specification, Grand Theft (Motor Vehicle), Grand Theft	Hamilton County, Ohio	INSTANT OFFENSE
3/13/1991 (Age 27)	Murder, Robbery, Theft, Fraudulent Use of Credit Card	Juneau, Alaska	Sentenced to 99 years, with no parole eligibility.

In addition to the above arrests, John Fautenberry confessed to the 1990 Aggravated Murder and Kidnapping of Donald Nutley in Mt. Hood, Oregon and the 1991 murder of Christine Guthrie in Portland, Oregon. Prosecution in these cases was not pursued due to Fautenberry's convictions in Ohio, Alaska and New Jersey.

Traffic: John Fautenberry was cited on 5/2/1986, for Speeding in Hamilton County, Ohio for which he received a \$60.00 fine and costs.

Institutional Adjustment:

John Fautenberry was admitted to the Department of Rehabilitation and Correction on October 19, 1993. His work assignments while incarcerated at the Mansfield Correctional Institution included Material Handler, Laundry Worker and Porter. Since his transfer to the Ohio State Penitentiary, Fautenberry's work assignment has been as a Porter. Fautenberry was enrolled in GED classes while at the Mansfield Correctional Institution. He has also voluntarily participated in community service projects at the Mansfield Correctional Institution and at the Ohio State Penitentiary.

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

- 08/12/1996 – Fighting – Fautenberry was involved in a fight with another inmate. He received 7 days in disciplinary control for this rules infraction.
- 10/09/2008 – Disrespect to an officer, staff member, visitor or other inmate – Fautenberry intentionally did not move and as a result bumped into a Corrections Officer and then made a disrespectful comment to this Corrections Officer. He received 8 days in disciplinary control for this rule infraction.

John Fautenberry has received approximately three (3) additional conduct reports since he was admitted to the Department of Rehabilitation and Correction in 1993. These conduct reports did not result in Disciplinary Control. In 1996, Fautenberry kicked a gate and yelled, thus causing a disturbance; in 1998, he refused an order to exit his cell; and in 2008, he was found to be in possession of minor contraband.

APPLICANT'S STATEMENT:

As previously mentioned, John Fautenberry declined to be interviewed by the Parole Board on May 29, 2009.

ARGUMENTS IN SUPPORT OF CLEMENCY:

On June 8, 2009, the Board received a letter from Attorney Dennis Sipe asking Chairperson Mausser for a continuance regarding Inmate Fautenberry's scheduled Clemency Hearing. Attorney Sipe indicated that he needed more time to prepare and present his client's case for clemency. In turn, Ms. Mausser provided a written response to Attorney Sipe indicating that the date of the hearing was now near the execution date and that a continuance was not feasible. She also pointed out that the Board had already delayed the original hearing date which was to take place on May 28, 2009 at his request. The Board did not receive a written application for clemency nor did anyone appear in person to argue in support of clemency at the hearing on June 16, 2009.

ARGUMENTS IN OPPOSITION TO CLEMENCY:

Assistant Hamilton County Prosecutor Ron Springman and Assistant Attorney General Justin Lovett presented arguments in opposition to clemency at a hearing that was conducted on June 16, 2009. Prosecutor Springman shared with the Board that there are very few serial killers on death row in Ohio. He pointed out that John Fautenberry is one of those people. In fact, he described Fautenberry's case as "troubling" in that he "knew in advance" that he was going to kill each of his five victims. Springman pointed out that each of Fautenberry's victims were willing to go out of their way to assist Fautenberry in one way or another. Each victim extended kindness to Fautenberry, and Fautenberry repaid this kindness by murdering each of his unsuspecting victims.

Prosecutor Springman shared that Joseph Daron from Ohio was murdered when he extended his kindness to John Fautenberry when Fautenberry was hitchhiking. Fautenberry only pretended to be hitchhiking so he could get money, a car, and flee from the State of Ohio. Joseph Daron stopped to assist Fautenberry in getting to Columbus. In turn, Fautenberry shot Daron in the chest multiple times, pushed his body out of the driver's seat of the vehicle, and drove the vehicle to the North Bank of the Ohio River where he dumped Daron's body. Fautenberry then left with the victim's car and credit cards. Joseph Daron's Bible was found in Fautenberry's hotel room when he was arrested and Daron's briefcase was found in Fautenberry's storage shed.

Prosecutor Springman pointed out that John Fautenberry is an intelligent individual with a high IQ. In fact, he indicated that defense counsel went to great lengths to make certain that Fautenberry understood what would happen if he pled guilty to death-eligible murder, in that this was the first time this had ever been done in Hamilton County. Fautenberry was psychologically tested multiple times. Each test indicated that Fautenberry was intelligent, knew right from wrong, and did not suffer from any brain impairment or mental illness. Additionally, Prosecutor Springman stated that Fautenberry displayed no remorse, was boastful, and "picked out people's weaknesses."

Prosecutor Springman described John Fautenberry as a "cold, calculated, narcissistic, psychopath." He shared that Fautenberry does not suffer from brain impairment, and in fact, he was able to provide a detailed written description to law enforcement as to where Christine Guthrie's body could be located. Prosecutor Springman noted that Fautenberry provided this written description after he was promised to get back some of his personal items that had been taken during the investigation.

At trial, Dr. Schmidtgoessling who testified for the defense stated that John Fautenberry had to be arrested or kill himself to stop his crime spree of murders. This was in response to a question regarding Fautenberry's potential for danger to others.

It was also brought up by the prosecutor that Fautenberry was able to give a detailed confession to law enforcement and civilians, including FBI Agent Ott, Detective Nelson, and Chris Yaw, a news reporter. Police also discovered a notebook wherein John Fautenberry had written a letter to his ex-girlfriend, Olivia Priest, admitting that he killed five people.

Prosecutor Springman further illustrated to the Board how each of the victims extended kindness to Fautenberry prior to his murder. Donald Nutley met Fautenberry at a truck stop in Oregon. Mr. Nutley befriended him and invited Fautenberry to go target shooting. While target shooting, Fautenberry shot Nutley in the back of his head, hid his body, and stole \$10,000 cash. Fautenberry then hid the victim's vehicle and purchased a motorcycle for himself.

John Fautenberry then met Gary Farmer at a truck plaza in New Jersey where Mr. Farmer offered to buy him breakfast. The two went back to the cab of Mr. Farmer's truck. It was

at this point in time that Fautenberry fatally shot Farmer in the head, stole \$40 and took his pocket knife.

Prosecutor Springman shared that Christine Guthrie met Fautenberry while at a bar in Oregon. They spent several days together having fun as Fautenberry planned her murder. He lured Ms. Guthrie into the woods by telling her they were going to look for elk and deer. He then shot her in the back of her head, took her credit cards, and hid her body.

In his final murder in Alaska, John Fautenberry killed Jeff Diffie. Mr. Diffie helped Fautenberry by letting him stay at his apartment. In turn, Fautenberry repaid Mr. Diffie by handcuffing him and stabbing Diffie 17-18 times in a torturous manner in order to obtain the PIN number to Mr. Diffie's bank card. Mr. Diffie finally gave John Fautenberry his PIN number. It was at this time Fautenberry inflicted the lethal stab wound.

John Fautenberry also admitted to killing a sixth victim by the name of Richard Combs in Oregon by stabbing him to death. However, Fautenberry was not prosecuted for this offense.

Prosecutor Ron Springman concluded by telling the Board that John Fautenberry is a serial killer who has neither mental health issues nor any organic brain impairment. In fact, Springman shared with the Board that while Fautenberry was being held in Alaska, he tried to escape from custody. Additionally, Fautenberry came up with a plot to escape and take either his defense attorney or a psychologist hostage while being held in the Hamilton County Justice Center in Ohio.

Additional testimony was provided to the Board by Assistant Ohio Attorney General Justin Lovett. Lovett pointed out that Fautenberry's case has been under judicial review for the last 15 years. He shared that all courts have affirmed his conviction and sentence and that no leniency is warranted in this matter.

The Board did question Attorney Lovett with regard to Judge Moore's dissent with the Sixth Circuit Court of Appeals regarding the ineffective assistance of counsel claim. Judge Moore felt that Fautenberry's counsel had an obligation to explore the organic brain defect given Fautenberry's history of physical abuse, headaches, and head injuries. Assistant Attorney General Lovett shared with the Board that John Fautenberry refused to cooperate with examiners to look at this very issue. Attorney Lovett further stated that if Fautenberry had been examined and found to have an organic brain defect that it would not outweigh the aggravating factors in this case.

VICTIM'S REPRESENTATIVES:

Joseph Daron's daughter, Rachel Daron, gave verbal testimony to the Board as to the impact that her father's murder has had on her life. Rachel shared that her father has two daughters and that she was four years old when her father was murdered. She regrets that her father could not be present for her birthday celebrations, to see her graduate, or be

present to walk her down the aisle when she gets married. She further pointed out that Fautenberry does not deserve to live and that justice needs to be served.

Additionally, several family members were in attendance from the families of Donald Nutley, Gary Farmer, and Jefferson Diffie.

PAROLE BOARD'S POSITION AND CONCLUSION:

The Board finds that this case has been reviewed by the justice system for the last 15 years without any finding of serious error. The Board also finds that there was no manifest injustice in this case and that the aggravating circumstances presented in both the written materials and at the Clemency Hearing outweigh any mitigation that might have been presented, even if John Fautenberry was tested and found to suffer from the presence of Organic Brain Syndrome.

John Fautenberry is a multi state serial killer who has confessed to his Ohio offense as well as the murders in Oregon, New Jersey, and Alaska. He befriended each of his victims in a cold and calculated manner and then proceeded to kill each one. At no time was guilt contested in any of his crimes. The crime against Joseph Daron coupled with the additional multiple victims renders a recommendation of mercy inappropriate.

RECOMMENDATION:

The Ohio Parole Board with seven (7) members participating, by a vote of (7) to (0) zero recommends to the Honorable Ted Strickland, Governor of the State of Ohio, that Executive Clemency be denied in the case of John Fautenberry.

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

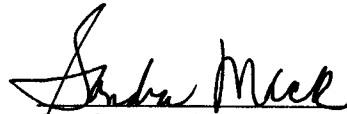
Ohio Parole Board Members
Voting **Unfavorable**



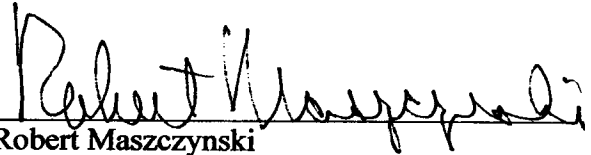
Cynthia Mausser, Chair



Jim Bedra



Sandra Mack, Ph.D.



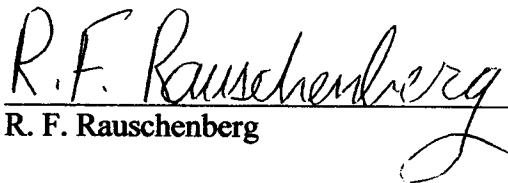
Robert Maszczyński



Kathleen Kovach



Ellen Venters



R. F. Rauschenberg