DATE TYPED: May 7, 2009

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IN RE: DANIEL E. WILSON, OSP #A260-074

STATE OF OHIO ADULT PAROLE AUTHORITY COLUMBUS, OHIO

Date of Meeting: April 30, 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: DANIEL E. WILSON, OSP # A260-074

SUBJECT: Death Sentence Clemency

CRIME, CONVICTION: Aggravated Murder with specification, Kidnapping,

Aggravated Arson

DATE, PLACE OF CRIME: May 4, 1991 in Elyria, Ohio

COUNTY: Lorain

CASE NUMBER: 91CR040383

VICTIM: Carol Lutz, (age 24)

INDICTMENT: 6/04/1991: Count 1: Aggravated Murder with three (3)

specifications; Count 2: Aggravated Murder with three (3) specifications; Count 3: Aggravated Murder with three (3) specifications; Count 4: Kidnapping; Count 5: Aggravated

Arson.

TRIAL: Jury

VERDICT: 3/27/1992: Found guilty as indicted.

4/22/1992: Jury recommended sentence of Death in Count 1 of the indictment: Aggravated Murder with one (1)

specification.

SENTENCE: 5/08/1992: Count 1: Aggravated Murder: Sentenced to

Death; Count 4: Kidnapping: 10-25 years; Count 5:

Aggravated Arson: 10-25 years.

ADMITTED TO INSTITUTION: May 14, 1992

TIME SERVED: 216 months (from date of arrest)

AGE AT ADMISSION: 22 years old

CURRENT AGE: 39 years old

DATE OF BIRTH: September 10, 1969

PRESIDING JUDGE: Honorable Lynett McGough

PROSECUTING ATTORNEY: Gregory A. White

FOREWORD:

Clemency in the case of Daniel E. Wilson #A260-074 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 April 17, 2009, the Parole Board interviewed Daniel Wilson via video-conference at the Ohio State Penitentiary. His attorney, David Doughten, was present at the interview. Board members participating in the interview included Chairperson Ms. Mausser and Parole Board Members Mr. Bedra, Mr. Bogan, Ms. Kovach, Dr. Mack, Mr. Maszczynski, Mr. Rauschenberg, and Ms. Venters.

A Clemency Hearing was then held on April 30, 2009 with all eight (8) members of the Ohio Parole Board participating. There was no presentation made on Daniel Wilson's behalf at this hearing, nor were his attorneys in attendance. However, defense counsel did submit materials to the governor's office and a representative from that office provided a copy of the materials to the Parole Board. Arguments in opposition to clemency were presented by Lorain County Prosecutor Dennis Will and Principal Assistant Attorney General Charles Wille. Jerry and Martha Lutz, parents of the victim, and Doug Lutz, brother of the victim, also testified in opposition to clemency.

The Parole Board considered all of the statements, the information disseminated by presenters at the hearing, materials from Daniel Wilson's attorneys that were provided by the governor's office, prior investigative findings as well as judicial decisions. With these, the Board deliberated upon the propriety of clemency in this case. With eight (8) members participating, the Board came to unanimous agreement and voted to provide an unfavorable recommendation for clemency to the Honorable Ted Strickland, Governor of the State of Ohio.

<u>DETAILS OF THE INSTANT OFFENSE (B912352):</u> The following account of the instant offense was obtained from the Ohio Supreme Court opinion:

In Elyria, on Saturday, May 4, 1991, around 1:30 p.m., the subject, Daniel Wilson, killed Carol Lutz by locking her in the trunk of her car, puncturing the gas tank, and setting the car on fire. Wilson then walked away, allowing Carol Lutz to be baked alive.

On the previous afternoon, Wilson was drinking at the Empire Tavern, a bar he frequented. Between 5:00 and 6:00 p.m., he went to the home of Angie Shelton, a girl he dated. As they argued, Wilson got mad, "slammed" her "against the wall," threw her on the bed, and "went to hit" her. Shelton told him that if he hit her, she "would be the last person that he hit." Wilson then left, and later returned to the Empire Tavern.

That evening, Carol Lutz drove her 1986 Oldsmobile Cutlass to the Empire Tavern to meet Douglas Pritt, an old boyfriend, and Wilson, apparently a new friend. Pritt, Lutz and Wilson played pool and drank together. Pritt left the bar sometime between 12:30 a.m. and 1:00 a.m. Lutz left close to 2:30 a.m., and Wilson left right after she did. According to Wilson's confession, Lutz offered him a ride home. She drove with him to the trailer where he lived. Once there, they

drank one or two beers. Wilson vaguely recalled driving to Lorain to search for a party, and stopping at his father's house.

Darlene DeBolt, a service station cashier in Stow, stated that Wilson stopped at the station around 5:55 a.m. on May 4. He was driving a black Oldsmobile Cutlass and appeared to be alone. DeBolt did not hear any noise coming from the Oldsmobile. Wilson told DeBolt, an old friend, that the car was his, that he had just driven from Canada, and that he "stopped a few states back for a few beers." DeBolt smelled alcohol on him. Wilson tried to get DeBolt to go out with him and was "persistent and pushy." DeBolt refused to leave work and after sixty or ninety minutes, Wilson left.

When Wilson woke up on May 4, around 7:30-8:00 a.m., he was in a parking lot, sitting in the driver's seat of Lutz's Oldsmobile. Lutz, who was locked in the trunk, asked him to let her out, but he did not. Wilson could not recall how she got there. He drove to various places including a park where he took a walk. He remembers thinking, "How am I going to get out of this?" Throughout this time, Lutz remained locked in the trunk.

Later that morning, Wilson drove to a school and parked the Oldsmobile. After awhile he took off the gas cap, stuffed a rag in the open neck of the gas tank and lit the rag. This time, the fire burned out. Lutz told him "she really had to go to the bathroom." He "took the rag back out" of the gas tank and "let her [out to] go to the bathroom."

When he "told her to get back" in the trunk, "she stood there-she begged and pleaded with me. She begged-she'd turn around for 30 seconds and let me run like hell." Lutz told Wilson, "she'd go home and forget about it." Wilson didn't believe her and thought to himself, "How can you forget about being locked in a trunk?" Wilson stated that he did not just leave her in the trunk because he "figured somebody would find her. She'd get out and tell who I was."

When Wilson told her to get back in the trunk a second time, she complied. She sat in the trunk for fifteen to twenty minutes with the lid up. They talked, and "[s]he asked me why don't I just let her go?" He "even gave her a cigarette." Then he closed the trunk lid, "poked a hole in the gas tank," stuffed a towel or blanket into the gas tank, "let it soak with gas and lit it." Then he "walked away from the car" and went to a nearby park.

While out driving that day, Janette Patton and her mother noticed smoke and saw Lutz's Oldsmobile enveloped in fire. Within a short time, an ambulance arrived. A paramedic opened a door to check for people and saw that there were none in the passenger compartment.

At 1:34 p.m., the Elyria Fire Department responded to reports of a car fire. Firemen extinguished the fire and forced open the trunk of the Oldsmobile. Steam and smoke poured from the opened trunk obscuring their view. When firemen extinguished the remaining flames, they found Lutz's body.

Lutz died from third-degree burns and carbon monoxide poisoning. Her body was almost totally covered with third-degree burns. Her clothing and hair had mostly burned off and portions of her skin "had burst open as a result of the buildup of heat in the tissues of the body." Lutz's body

had been, essentially, cooked "in a metal container just as if it were in an oven." Her soot-covered body emitted a petroleum odor. Lutz had no alcohol in her system, nor had she eaten recently.

An arson investigator estimated that the flames could have heated the trunk to over 550 degrees, which could cause combustibles there to ignite and catch fire. There were no holes in the trunk, but there was a puncture in the gas tank. Investigators found a gas cap under the driver's seat and a tire iron and cross bar in the back seat. Several samples of materials taken from inside the car tested positive for kerosene.

Police Detective Ray Riley traced the car to Carol Lutz and learned that she had last been seen with Wilson at the Empire Tavern. On May 9, police took Wilson into custody. Riley interviewed Wilson after advising him of his *Miranda* rights. Wilson waived his rights and agreed to talk with the police. Riley tape-recorded the interview. Wilson confessed to keeping Lutz locked in the trunk of the Oldsmobile intermittently from 7:30 a.m. on May 4 until the time of her death. It appears that around 1:30 p.m., he killed her by setting the Oldsmobile on fire.

The grand jury indicted Wilson on three aggravated murder counts. Count I charged aggravated murder by prior calculation and design; Count II charged felony-murder (kidnapping); and Count III, as amended, charged felony-murder (aggravated arson). Each murder count had three death specifications. Specification one charged murder to escape "detection, apprehension, trial, or punishment" for kidnapping, specification two charged murder during kidnapping, and specification three charged murder during an aggravated arson. Wilson was also indicted for kidnapping (Count IV) and aggravated arson (Count V).

Wilson defended himself at trial by claiming intoxication and lack of prior calculation and design. The jury found Wilson guilty on all counts and specifications.

PRIOR RECORD:

Juvenile:

<u>Date</u>	<u>Offense</u>	Location	Disposition
7-30-1982	Vandalism	Elyria, Ohio	9-14-1982: Remanded to Detention Home,
(Age 12)	#J-28622		restitution ordered;
			9-30-1982: Placed on Probation

<u>Details:</u> On 7-30-1982, Elyria police were contacted to report a home had been vandalized and that there was an attempt to start a small fire to the home's stove. The living room was soaked and ransacked with water throughout the house. Lipstick was on the mirrors, and laundry and bedding was strewn about the house.

1-19-1984	Involuntary Manslaughter	Elyria, Ohio	3-30-1984: Committed to Department of	
(Age 14)	2 counts, Aggravated		Youth Services	
	Burglary			
	#J-31766			

<u>Details:</u> On 1-16-1984, the subject entered the residence of Frank Cebula, age 81, to use the phone. When he got to the phone, he pulled it from the wall, and began ransacking the dining room, and demanding money. The subject swung a drawer at the victim, striking him in the right hip, and then picked up a wooden candlestick holder which he used to strike the victim on the right side of the head. The victim later died as a result of his injuries.

<u>Probation/Institutional Adjustment:</u> On 9-30-1982, the subject was placed on Juvenile Court supervision. While on supervision, the subject performed well. He improved his school attendance and his attitude. He was discharged in 1983, with a good prognosis.

On 3-30-1984, the subject was committed to the Department of Youth Services, where he remained until 6-30-1987 when he was discharged. According to their records, the subject performed well in school, but received misconduct charges for pushing, smoking, not doing chores or getting up on time. It was noted that he had a serious problem with drugs and alcohol. His overall adjustment was listed as minimal.

<u>Other Adjudications:</u> The subject had two (2) Speeding tickets and one (1) Reckless Operation charge as a juvenile. Additionally, in 1982 he was cited for No Drivers License.

Adult:

Date	<u>Offense</u>	Location	Disposition
5-4-1991	Aggravated Murder	Elyria, Ohio	DEATH;
(Age 21)	with specification;		10-25 years;
	Kidnapping		10-25 years
	Aggravated Arson		

Institutional Adjustment:

Daniel E. Wilson was admitted to the Department of Rehabilitation and Correction on May 14, 1992. His work assignments while incarcerated at the Mansfield Correctional Institution included Porter, Tutor, Library Aide and Material Handler. He was also in the extended privilege unit. Since his transfer to the Ohio State Penitentiary in 2005, Daniel Wilson's work assignment has been as a Clerk Administrator. He is also housed in the extended privilege unit at the Ohio State Penitentiary.

Since his admission in 1992, Daniel Wilson has only received one (1) conduct report which was for having an outdated zip code book in his cell. He was cited on another occasion for having a light bulb in his cell, but that charge was withdrawn. He has never been placed in disciplinary control.

APPLICANT'S STATEMENT:

As previously stated, Mr. Wilson was interviewed by the Parole Board on April 17, 2009. He read a prepared statement and then answered questions presented by Board Members. His account of the offense was consistent with the version he originally gave to law authorities. "I

set the car on fire with her in the trunk after a lot of hours of drinking." He emphasized that in 1991, he made a terrible decision that caused Carol Lutz her life, however, he would like to be shown mercy for the man he is today.

The applicant stated that he has had only two conduct reports in eighteen (18) years of prison. Mr. Wilson stated he provides services to other death row inmates as he is a GED tutor, a librarian and legal typist.

After further questioning regarding the offense, the inmate discussed his being in a daze when he woke and heard Carol Lutz making noise and "freaked out." He readily admitted his guilt and that his actions caused the death of Carol Lutz. He stated he was unable to recall how Ms. Lutz initially got in the trunk and does not recall if he ever discussed that with her prior to setting the car on fire. Mr. Wilson does not recall talking to Ms. DeBolt, the gas station cashier, from approximately 5:55 a.m. to approximately 7:30 a.m. He denied that he is purposely not answering some of the questions that he did not answer. He states he shares all that he remembers of that night. He recalls waking up approximately 7:30 a.m. or 8:00 a.m. and heard Ms. Lutz making noise in the trunk. He stated Ms. Lutz remained in the trunk except when he let her out to use the bathroom on the side of the car. He also recalls going to the park and thinking about what he should do. The applicant stated Carol Lutz pleaded with him "quite a few times to let her go."

The applicant was asked if he made any sexual overtures toward the victim prior to her death and he responded, "No, I never touched her". He was also asked if he was angry after having broken up with his girlfriend earlier in the day and perhaps took his anger out on Carol Lutz. He stated that he and his girlfriend had broken up but contrary to what she reported he had no intentions of hitting her and he did not take any anger out on the victim.

Mr. Wilson also answered questions concerning his trying to cause the car to catch fire on two separate occasions. He admitted that the first time he tried to catch the car on fire by putting a rag in the gas tank. That didn't work so he later punctured the gas tank underneath the car, let a towel or blanket soak with the gas, and then he lit the blanket. He was asked what he did next. He responded that he walked away and never looked back.

Mr. Wilson was asked if he had a fair trial and he responded "yes and no". He felt some mistakes were made. He expressed concern that more of his abuse as a child was either not presented or was misrepresented and was also concerned that his juvenile record may have had a negative impact on his sentencing. (During the interview, Mr. Wilson's account of his involuntary manslaughter as a juvenile differed from the official version in that he stated he did not pull the phone out of the wall and he did not mention that he hit the victim with a candlestick).

Mr. Wilson stated he is willing to take his punishment for causing the death of Carol Lutz but he hopes that punishment is life without parole. He stated that he is asking for mercy and a chance to live-to be of some value.

ARGUMENTS ADVANCED IN SUPPORT OF CLEMENCY:

No representative appeared on Mr. Wilson's behalf at the clemency hearing conducted on April 30, 2009 to offer arguments in support of clemency. In addition, written materials were not submitted by Mr. Wilson's counsel to the Parole Board. Mr. Wilson's attorneys submitted materials in support of clemency directly to the governor's office and a copy of those materials were provided to the Parole Board. The following reasons to grant clemency were included in those materials:

Mr. Wilson was an alcoholic suffering from the disease at the time of the offense.

Mr. Wilson's childhood was marked by chronic abuse by his father. The applicant's father tortured his three sons on a regular basis, including locking them in their bedroom and not allowing them to use the bathroom for extremely long lengths of time and handcuffing them to a chair and beating them.

Mr. Wilson's mother escaped the torment of a battering husband but abandoned Daniel and his younger brother David, leaving them with an abusive alcoholic father.

The applicant's father often denied his sons food. Daniel and his younger brother, David, were forced to steal food and steal money for food from neighbors. This accounts for Daniel's involuntary manslaughter, where he entered the neighbor's house which resulted in the neighbor being injured and later dying from those injuries.

Mr. Wilson's foster parent enabled his drinking, which became more chronic following the suicide of his foster brother.

Dr. Eisenberg examined Mr. Wilson and determined he is above average intelligence and has difficulty becoming emotionally involved with others and had a "lifestyle marked by strong dependency needs, maladjustment and chaos." He determined that Mr. Wilson is severely alcohol dependent and is a product of a "classic dysfunctional family" marked by physical, emotional, and verbal abuse. He also determined that Daniel identified with his father, not his "battered" mother and that there is every indication he can adjust in an institutional setting.

The abuse that Mr. Wilson endured from his father led to his alcoholism and alcohol was the contributing factor that lead to the death of Carol Lutz.

There was no evidence of a planned attack on anyone.

Mr. Wilson has been a model prisoner on death row. He provides needed services to other inmates. He is a GED tutor and legal typist and would be no threat to staff or other inmates if placed in general population.

The attorneys representing Mr. Wilson provided a DVD to the governor's office. The DVD contained statements from the applicant's friends, family, and investigators that corroborate Mr. Wilson's dysfunctional family and his abusive childhood. They also submitted psychological reports discussing Mr. Wilson's alcoholism and the impact of his dysfunctional family. Mr. Wilson's younger brother, David, provided a graphic detailed statement of the abuse the boys suffered at the hands of their father. David Wilson described several incidents of abuse, both physical and verbal. The incidents include but are not limited to their father locking them in their room for long periods of time, not allowing them to use the bathroom, and sometimes depriving them of food. Their father referred to Daniel as "super piss" because he urinated in the bed. He also discussed other incidents that involved their father handcuffing them to chairs and beating them; and pointing a gun at him.

Finally, the Parole Board received a copy of the request for a reprieve that was submitted to Governor Strickland. A reprieve was requested "to permit Mr. Wilson to complete ongoing litigation currently pending before the Lorain County, Ninth District Court of Appeals". A copy of the summary of that litigation was also submitted.

ARGUMENTS ADVANCED IN OPPOSITION TO CLEMENCY:

Lorain County Prosecutor Dennis Will and Principal Assistant Attorney General Charles Wille presented arguments in opposition to clemency at the hearing conducted on April 30, 2009. Mr. Will discussed Mr. Wilson's prior record as a juvenile. He stated that when the applicant was approximately 12 or 13 years old that he and another male broke into an older woman's home. The house was ransacked and trashed; they started a small fire, filled the bathtub with water and tried to drown a parrot. He also discussed the involuntary manslaughter conviction where Mr. Wilson entered the home of an eighty-two (82) year old neighbor. The applicant entered the home under the pretense of wanting to use the phone. He pulled the phone out of the wall, and hit the victim with a drawer and a candlestick. The victim was not found until two days later and he died approximately five days later.

Mr. Will further stated that Mr. Wilson requested his juvenile record be expunged approximately two weeks prior to committing the offense against Carol Lutz. According to Mr. Will, the judge that considered the expungement asked Mr. Wilson "Do you drink?" Mr. Wilson answered "once in a while." Mr. Will stated the applicant minimized his drinking then but during the sentencing hearing in the Carol Lutz case, Mr. Wilson's unsworn statement was that during the time before his request for expungement, he was drinking before work, during work, and after work. Mr. Will states the applicant makes statements or leaves out information to support his own interests.

Mr. Wilson confessed to the crime. He gave detailed information on how, after a second attempt, he set the car on fire and admitted to having Carol Lutz in the trunk for at least 5 or 6 hours prior to her death. During those hours he drove around, including to a park. At some point, he made a conscious decision to burn the car with Carol Lutz in the trunk. He had two opportunities to release her and failed to do so.

Mr. Will argued that Mr. Wilson knowingly killed Ms. Lutz to avoid detection or apprehension for kidnapping her. There was no evidence that Mr. Wilson was under the influence of alcohol

when he murdered Carol Lutz. Several hours had passed since his last drink according to Mr. Wilson and more hours passed as Ms. Lutz remained in the trunk of the car.

Principal Assistant Attorney General Charles Wille contended that this case has been reviewed by the courts and the pending litigation involving the aggravating factor being invalid due to an error in jury instruction is not a reason to recommend clemency. A prior court has found the jury instruction to be harmless error and there were three aggravating factors proven. The prosecutor chose to go forward with one, but could have had all three considered in order to obtain a sentence of death.

Mr. Will stated while he believes Mr. Wilson had a difficult childhood it does not excuse committing a crime like this. Ms. Lutz was burned alive to prevent her from reporting her kidnapping to the police. "The applicant's trial attorneys presented mitigating evidence on his behalf to the effect that Mr. Wilson's father was an alcoholic who mistreated and failed to properly care for Wilson and his mother and two brothers. A jury nevertheless found beyond a reasonable doubt that the aggravating factor alleged and proven by the prosecution outweighed the mitigating circumstances presented by the defense". Both Mr. Will and Mr. Wille argued that there are insufficient reasons to grant clemency to Mr. Wilson, and that the jury's determination should not be disturbed.

Carol Lutz's mother, father, and brother gave statements concerning the impact of the offense and the loss of Carol Lutz to their family, their community, and themselves. They do not feel the applicant is remorseful or deserving of mercy. They remain opposed to clemency.

PAROLE BOARD'S POSITION AND CONCLUSION:

The Parole Board reviewed documentary evidence presented both in support of and in opposition to clemency. This review included the April 17, 2009 interview of Mr. Wilson, submissions and findings from the April 30, 2009 clemency hearing, and materials from Mr. Wilson's attorneys that were provided to the Parole Board by a representative from the governor's office.

Mr. Wilson admits his guilt. He argues that his alcoholism and abusive childhood contributed to his bad decision to set the car on fire with Carol Lutz in the trunk. He states he was in a daze and does not recall all that happened. What Mr. Wilson does recall is troubling enough. He made two attempts to set the car on fire knowing Carol Lutz was in the trunk.

In reference to Mr. Wilson being too intoxicated to know or be aware of his actions, the Parole Board considered that several hours had passed since Mr. Wilson's last drink, according to him, and that he had the victim in the trunk for approximately six hours. Mr. Wilson knowingly killed Ms. Lutz to avoid detection or apprehension for kidnapping her. He went to the park to take a walk and thought "How am I going to get out of this?" His solution was to keep Ms. Lutz in the trunk while he set the car on fire. His first method and first attempt was unsuccessful, so he tried a different method the second time and was successful.

Carol Lutz was burned alive in the trunk of the car and Mr. Wilson walked away and "never looked back". Mr. Wilson now asks for mercy. He reported that the victim pleaded for him to let her go "quite a few times" but he was not able to out of fear that she would inform the authorities he had locked her in the trunk.

Although the Board was particularly troubled and sympathetic to the abandonment of the applicant by his mother and the abusive childhood suffered by the applicant and his siblings at the hands of their father, it does not mitigate enough to outweigh the aggravating factor. We agree with the statement in the sentencing opinion of the trial judge where it was noted that Mr. Wilson "carefully considered his actions and his alternatives," and that after this lengthy consideration, Mr. Wilson chose to take the victim's life.

RECOMMENDATION:

The Ohio Parole Board with eight (8) members participating, by a vote of (8) to zero (0) recommends to the Honorable Ted Strickland, Governor of the State of Ohio, that Executive Clemency be denied in the case of Daniel Wilson.

Written Statement of Daniel Wilson 4/17/2009

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Daniel E. Witson A260-074 Death Penalty Clemency Report

Adult Parole Authority Ohio Parole Board Members Voting Favorable

Ohio Parole Board Members Voting Unfavorable

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