

DATE TYPED: January 12, 2010
DATE PUBLISHED: January 13, 2010

IN RE: MARK A. BROWN, OSP #A320-827

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

Date of Meeting: January 5, 2010

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: Mark A. Brown, OSP #A320-827

SUBJECT: Death Sentence Clemency

CRIME, CONVICTION: Aggravated Murder with aggravating circumstances specification and gun specification (2 counts).

DATE, PLACE OF CRIME: 01/28/1994 in Youngstown, Ohio

COUNTY: Mahoning

CASE NUMBER: 94CR120

VICTIM: Isam Salman (age 32)
Hayder Al Turk (age 30)

INDICTMENT: 03/04/1994: Counts 1-4: Aggravated Murder with aggravating circumstance specifications and firearm specification; Count 5: Aggravated Robbery with firearm specification; Count 6: Having Weapon While under Disability with physical harm specification and firearm specification.

TRIAL: 02/08/1996: Found Guilty by Jury of Count 1 & 2; Not guilty of Counts 3-5; Count 6 dismissed.

SENTENCE: 02/28/1996: Count 1: Sentenced to DEATH with 3 years for firearm specification; Count 2: Sentenced to Life with parole eligibility after 30 years with 3 years for firearm specification; Sentences to be served consecutively.

ADMITTED TO INSTITUTION: March 5, 1996

JAIL TIME CREDIT: 815 days

TIME SERVED: 13 years, 10 months

AGE AT ADMISSION: 23 years old

CURRENT AGE: 37 years old

DATE OF BIRTH: November 13, 1972

JUDGE: Honorable George Limbert

PROSECUTING ATTORNEY: Prosecutor James Philomena
 Assistant Prosecutor Carolyn Mulligan

CO-DEFENDANT: Allen Thomas (Juvenile Court Case #94-JUV-136):
 03/25/1994: Pled guilty to amended charges
 Obstructing Justice and Tampering with Evidence and
 sentenced to 6 months DYS; sentence suspended and
 placed on probation. Allowed to move to California to
 complete this supervision term.

FOREWORD:

Clemency in the case of Mark A. Brown, A320-827 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 December 17, 2009, Mark Brown was interviewed by the Parole Board at the Ohio State Penitentiary.

A Clemency Hearing was then held on January 5, 2010 with six (6) members of the Ohio Parole Board participating. Arguments in support of clemency were presented by Pamela Prude-Smithers and Rachel Troutman of the Ohio Public Defender's Office. Also speaking on his behalf and in support of clemency were attorney Don Malarcik, Michelle Brown (sister), Paul Forman (friend) and Stephanie Johnson (friend). Arguments in opposition to clemency were presented by Mahoning County Prosecutor Paul Gains, and Assistant Attorney General Adam Van Ho. The victim's representatives, Terri Rasul (sister of victim Isam Salman), Shady Salman (son of victim Isam Salman), Ashraf Salman (son of victim Isam Salman), Mudalaleh Salman (daughter of victim Isam Salman) and Adel Ali (brother-in-law of victim Isam Salman), also spoke in opposition to clemency.

The Parole Board considered all of the written submissions, arguments, information disseminated by presenters at the hearing, prior investigative findings as well as judicial decisions and deliberated upon the propriety of clemency in this case. With six (6) members participating, the Board voted unanimously to provide an unfavorable recommendation for clemency to the Honorable Ted Strickland, Governor of the State of Ohio.

DETAILS OF THE INSTANT OFFENSE (CR): The following account of the instant offense was obtained from the Ohio Supreme Court opinion, decided October 8, 2003:

On the evening of January 28, 1994, the subject, Mark A. Brown, went with his friend, Allen Thomas, a.k.a. "Boonie," a juvenile, and Boonie's uncle, Gary Thomas, to a store to purchase beer and wine. Thomas then drove them to the home of Boonie's cousin, Kenny Dotson, to play cards. A group of juveniles was also at the house that evening. Brown and Boonie drank wine mixed with a number of Valiums, and smoked marijuana in "blunts," which are cigars that have been cut open, emptied of tobacco, and filled with marijuana.

Thomas stated that while playing cards, Brown pulled out a gun and put it back in his pants or coat pocket. Thomas further stated that Brown talked about the movie "Menace II Society" and said that he wanted to copy the scene in the movie where assailants robbed and killed two Oriental store clerks.

Later that night, Thomas drove Brown and Boonie to the Midway Market in Youngstown to buy more drinks. Thomas parked the car while Brown and Boonie entered the store together. A group of minors who had been at Dotson's house earlier were standing just outside the store. Two of the minors, Marcus Clark and Myzelle Arrington, saw Brown and Boonie leave the store. They then saw Brown reenter the store alone, wearing a mask or bandanna around his neck. They said that Boonie and Thomas were in the car. They then heard gunshots and ran back to the Dotson home.

Thomas verified the boys' account of what occurred, and added that before reentering the store, Brown said, "I forgot to do something." While Brown was in the store, Thomas heard gunshots. Thomas saw Brown casually walk away from the store and get back into his car. When Thomas asked Brown what went on in the store, Brown replied, "Oh, that wasn't nothing but some firecrackers." Thomas drove Brown and Boonie back to the Dotson home, where he observed Brown "messing with the gun." Thomas also noticed that there was blood on Brown's hand and clothing. Both Clark and Arrington saw Brown either wiping off or loading a 9-mm black gun. Arrington saw him counting money.

At approximately 9:55 that evening, Officer Timothy Morgan Jr. of the Youngstown Police Department received a call that a robbery was in progress at the Midway Market. He and his partner arrived on the scene and found two Arab males who had been shot and were apparently dead. One victim was found lying on the floor face up and the other was kneeling behind the register counter. A "blunt" and a packet of marijuana were on the floor nearby. The victims were later identified as storeowner Isam Salman and employee Hayder Al Turk. Dr. Anil Nalluri, Chief Deputy Coroner of Mahoning County, performed autopsies and determined that the victims died of hemorrhage and shock as a result of gunshot wounds to the head.

Lieutenant David McKnight interviewed several witnesses and, on January 31, 1994, secured a warrant for Brown's arrest. On February 3, 1994, Brown was arrested in Warren and transported back to Youngstown. After advising him of his *Miranda* rights, which he waived in writing, police began questioning him. During the questioning, Brown admitted being at the Midway Market but claimed that Boonie was the shooter. Although police knew that video cameras in the store were not operating during the murders, the lieutenant asked Brown whether he knew that there were video cameras in the store. Brown said that he had not noticed. Police told him that there were two video cameras in the store. Brown replied, "Well, I guess you know what happened there then." When the police answered, "yes," Brown stated, "Well, you've got me." He also said, "Then you know I did it." Brown then admitted to shooting one of the victims, but stated that he did not recall shooting the second victim. Brown claimed that he got the gun from Steven Dotson and had "just flipped out." Brown expressed regret over what happened and explained, "It's the Valliums [sic]. They make you go off."

When Brown was apprehended, police retrieved a 9-mm Glock semiautomatic firearm under the couch cushion in the front room. The firearm was later identified by Steve Jones, who said that Brown had robbed him of his car at gunpoint on December 15, 1993; Jones's Glock was in the car's trunk at the time. Michael Roberts, a forensic scientist in the BCI firearms department, examined the Glock firearm, nine cartridge casings recovered from the crime scene, and four bullets retrieved from the victims. He concluded that all nine cartridges were fired from the Glock firearm. He further concluded that the bullets recovered from the victims indicated that they were fired from a Glock weapon; however, he could not confirm or eliminate the Glock retrieved from Brown as the weapon from which they were fired.

At trial, Brown took the stand in his own defense. Brown admitted shooting one of the victims but not the other. He testified that Boonie was with him at the time of the shooting, and that Boonie took the gun from him after the first victim was shot. He stated that he did not steal any money from the store. Although he told police that he got the gun from Steven Dotson, he testified that he actually got it from a different friend, Mike Austin. Brown further testified that he was "messed up" when police interviewed him, and that he requested an attorney two or three times, but that this request was denied.

The jury convicted Brown of two counts of aggravated murder committed with prior calculation and design. The jury also found him guilty of the firearm specifications attached to these counts and the death penalty specifications that the murders occurred in the course of killing two people, but acquitted him of the specifications that the murders were committed while committing aggravated robbery. The jury returned not guilty verdicts as to counts three, four, and five, which charged Brown with aggravated murder while committing aggravated robbery, and with the crime of aggravated robbery itself. The jury recommended that Brown receive the death penalty for the aggravated murder of Salman and life imprisonment for the aggravated murder of Al Turk. The trial court sentenced Brown to death and to life imprisonment with parole eligibility after 30 years, with the sentences to run consecutively, and to three years of actual incarceration on the firearm specification for each of the two counts, to be served consecutively.

PRIOR RECORD

Juvenile Offenses: Mark Brown has the following known juvenile arrest record:

<u>Date</u>	<u>Offense</u>	<u>Location</u>	<u>Disposition</u>
11/01/1987 (Age 14)	Riding in a Stolen Car	Liberty Twp., Ohio	Warned & Released
03/19/1989 (Age 16)	Grand Theft (M-1)	Youngstown, Ohio	06/14/1989: Placed on Probation.

12/06/1989 (Age 17)	Receiving Stolen Property	Youngstown, Ohio	Sentenced to 6 months DYS at Cuyahoga Hills
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Dismissed, Nulled or Unknown Adjudications: On 10/06/1989, Brown was charged with Carrying Concealed Weapon in Youngstown, Ohio; on 02/22/1990, the charge was dismissed.

Charges were not pursued for a 01/08/1990 Receiving Stolen Property allegation in Youngstown, Ohio.

Adult Offenses: Mark Brown has the following known adult arrest record:

<u>Date</u>	<u>Offense</u>	<u>Location</u>	<u>Disposition</u>
09/26/1991 (Age 18)	Drug Abuse (91CR892)	Youngstown, Ohio	03/20/1992: 1 year LorCI and costs, suspended; placed on 2 years probation; 09/29/1992: probation terminated.

Details: On 09/29/1991, Mark Brown was driving a Chevrolet Camaro believed to be stolen. Police stopped the vehicle, at which time Brown attempted to flee the area, but was apprehended. A large rock of "crack" cocaine (3.1 grams) was found in a small plastic bottle on Brown's person. It was later determined the vehicle Brown was driving was not stolen, but had been loaned to him by the owner of the vehicle.

04/18/1992 (Age 19)	Aggravated Trafficking in Cocaine (92CR477)	Youngstown, Ohio	09/29/1992: 18 months LorCI; Admitted under inmate# A265405; 08/31/1993: Released due to expiration of sentence.
01/28/1994 (Age 22)	Aggravated Murder with aggravating circumstance specifications and gun specification (2 counts) (94CR120)	Youngstown, Ohio	02/28/1996: DEATH consecutive to Life with parole eligibility after 30 years; consecutive w/ 3 years for each gun specification. INSTANT OFFENSE

Dismissed, Nulled and/or Unknown Dispositions: On 04/18/1992, Brown was charged with Resisting Arrest and on 07/28/1992, he was charged with Loitering for the Purpose of Drug Activity; both charges were dismissed. Dispositions are unknown for a 09/01/1992 charge of Loitering for Drugs and a 12/07/1993 charge for Assault. A 12/15/1993, Aggravated Robbery charge in Youngstown, Ohio was also dismissed.

Institutional Adjustment:

Mark A. Brown was admitted to the Department of Rehabilitation and Correction on March 5, 1996. His work assignments while incarcerated at the Mansfield Correctional Institution included Laundry Worker, Barber and Recreation Worker. Since his transfer to the Ohio State Penitentiary, his work assignments have been as a Material Handler and as a Laundry Worker. Brown has participated in Pre-GED Student programming while at the Mansfield Correctional Institution and at the Ohio State Penitentiary. He also completed two (2) phases of Controlling Anger & Managing It and Stress Management since his transfer to the Ohio State Penitentiary. Brown has volunteered for various community service projects and participates in religious service programs. He is currently housed in the extended privilege unit at the Ohio State Penitentiary.

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

- 05/19/1997: Threatening bodily harm to another, with or without a weapon. Brown made a verbal statement which was deemed to be threatening to another inmate(s). He received 15 days in disciplinary control for this rules infraction.

Brown has received approximately three (3) additional conduct reports since he was admitted to the Department of Rehabilitation and Correction in 1996. All three offenses were for Possession of Minor Contraband (dates of occurrences 12/2000, 8/2003, and 5/2006).

APPLICANT'S STATEMENT:

Mark Brown was interviewed via video-conference by members of the Parole Board on December 17, 2009. During that interview Brown expressed remorse for his involvement in this crime. He took full responsibility for the death of Mr. Al Turk. When asked to provide details of the crime, Brown explained that he was with his friend "Boonie" (aka Allen Thomas) drinking wine laced with valium. At some point during the evening they asked Boonie's uncle Gary Thomas to drive them to the Midway Market to get cigars. While in the store, Brown said he dropped a small bag of marijuana on the counter and Mr. Al Turk made some sort of comment to him. They then got into a verbal confrontation, and Brown said Mr. Al Turk reached for something. Thinking Mr. Al Turk was reaching for a gun, Brown pulled his gun out and started shooting. Brown stated he was so intoxicated from the wine laced with valium that he did not aim, but shot wildly. He does not know how many shots he fired, but did see Mr. Al Turk fall to the ground. He stated that Boonie then asked for the gun. Brown gave it to him and then heard more shots. The two then ran from the store. The next thing Brown remembers is being in Mr. Thomas' car driving down the street.

Brown asked the Board to recommend mercy to the Governor on his behalf. He asked that his life be spared. Brown explained that he is a changed person, and has grown and matured. He stated that he has four teenage children, and has tried to stay involved in their lives and influence them to stay in school. He has also been a positive influence on his teenage

nephew and his nephew's friends by advising them to stay off the streets and avoid the same mistakes he made. He also related that he has completed several programs, has participated in community service and has good conduct in prison. Brown stated that he wants to live, and can be productive from prison. He stated that he is not a bad person, but was young and immature when this crime occurred, and regrets the bad choices he made.

ARGUMENTS ADVANCED IN SUPPORT OF CLEMENCY:

Pam Prude-Smithers and Rachel Troutman, of the Ohio Public Defenders Office appeared at the clemency hearing and presented the following arguments in support of clemency:

Ms. Prude-Smithers provided the following arguments:

- There is new evidence in the case that had not been considered prior to this hearing. Mark Brown is innocent of killing Mr. Salman and a key prosecution witness, Myzelle Arrington has admitted he lied during his trial testimony. Brown has had ineffective counsel, from the original trial through the appeals process. At trial, his counsel failed to call witnesses that could refute testimony presented by the prosecution even though counsel was in possession of these witnesses' statements. Trial counsel John Juhasz stated in a letter that he believes Brown did not kill Mr. Salman, and he was aware that there were conflicting witness statements. However he did not use these witnesses and he can provide no good reason why they were not utilized during trial.
- During the appeal, even when armed with a written statement from Mr. Arrington recanting his testimony, appellate counsel failed to investigate it further, and did not pursue a new trial based upon this new evidence. It is unclear why Mr. Arrington failed to come forward prior to 2003. However, Mr. Arrington claims that at the time of this crime, he had pending charges in juvenile court and Mr. Philomena promised him a deal if he testified against Brown. Mr. Arrington claims he felt threatened by Mr. Philomena and chose to testify as he was instructed.
- Mark Brown has always taken responsibility for the death of Mr. Al Turk, and for taking the gun to the market which resulted in the death of Mr. Salman. However, he has always denied shooting Mr. Salman. There are several factors that support Brown's claim that Boonie was the shooter of Mr. Salman. These include the fact that there was gunshot residue found on Boonie's jacket, there was an unknown palm print found on the gun and in the store, and witnesses who were never heard at trial stated that two males were seen running out of the store after shots were fired. In addition, Boonie told police that he was in the store when Brown started shooting, and a witness stated that Boonie was heard to say, "I think I killed him". In addition, the manner in which each man was killed demonstrates that 2 different people shot the victims. Mr. Salman was shot execution style while Mr. Al Turk was shot point blank as a result of Brown thinking he was acting in self defense. All of these factors raise considerable doubt regarding the state's theory that Brown was the sole shooter who was in the store alone.
- Two jurors from Brown's trial are now convinced that if they had known this evidence during the trial, they would not have voted for a death sentence. One Juror,

Elle York was uncomfortable with the sentence of death during the jury deliberations. Ms. York did not feel the sentence of death was the appropriate sentence for Mr. Salmon's death. However, due to pressure from the other 11 members of the jury, she eventually voted for the death sentence. Upon delivering the verdict, and the polling of the jury, Ms. York told the Judge that it was not her verdict but she had "compromised" with the other jury members. Defense counsel asked for a mistrial at that time or at least instruction from the Judge to the jury to only consider life sentences. The judge rejected that request and advised the Jury to continue deliberating. Ms. York advised that during the continued deliberations, the other members of the jury again pressured her. She finally gave in to the pressure, voted for the death sentence and advised the court that it was her verdict. However, since that time Ms. York has been uncomfortable with her vote and has regretted her decision not to hold out for a life sentence. An additional juror who was contacted regarding the new evidence provided a written statement that she too would have voted differently had she known this evidence at trial.

Attorney Don Malarcik spoke on Mark Brown's behalf and provided the following:

- Mr. Malarcik was one of Mark Brown's attorneys from 2004 to 2009 and represented him along with co-counsel during the federal habeas action. Mr. Malarcik had no prior experience with this type of action, and made mistakes during his representation. He did a poor job representing Brown, and did not take appropriate action when Brown presented him with Mr. Arrington's letter recanting his testimony. Mr. Malarcik stated that he failed to request trial counsel's file, which would have revealed witnesses who could refute the state's claims. It is his hope that his failures in representation will not reflect poorly on Brown. In addition, he got to know Brown as a person while representing him. Brown is not the same man who walked into the market the night of the shooting. He has not only accepted responsibility for this crime, but is very remorseful, kind, compassionate and unassuming. Brown suffered a horrific childhood at the hands of his own mother. Despite her neglect and abuse and failure to help him even after this crime, Brown has forgiven his mother for the severe abuse she inflicted upon him. He showed great love for his children and has shown that he deserves to have his sentence commuted to life.

Rachael Troutman of the Ohio Public Defenders Office presented the following information regarding Mark Brown's childhood and institutional adjustment:

- Mark Brown's childhood involved severe abuse and neglect from the time he was born. Brown's mother was a life long drug abuser who abused and neglected all of her children. Drug use was more important to her than the well being of her children. Brown and his siblings were often left alone for days at a time at very young ages. Brown was not enrolled into Kindergarten until he was 6 years old. He and his siblings had to ensure that they got to school by themselves. During his childhood, Brown was abandoned by his mother and sent to live with his Aunt on several occasions. He moved between Pennsylvania, Ohio and California. While he was

with his mother, who was abusing drugs and alcohol, he would be subject to physical and emotional abuse. While living with his mother in California during his early teen years, Brown was robbed by gang members. Having received no assistance from any adults, Brown decided to join a rival gang. His life spiraled out of control from that point. Brown eventually returned to Youngstown, Ohio and began living a criminal lifestyle as part of his gang involvement. This lifestyle eventually culminated in the crime for which he was sentenced to death.

- Mark Brown's life in prison has been exceptional. He has only had one ticket that resulted in segregation and very few other infractions. He participates in religious services and has completed anger management and stress management. He maintains contact with his 4 children on a regular basis and tries to motivate them to stay in school and off the streets. However, Ms. Troutman points out that if Brown is put to death, it will have a negative impact on not only these 4 children, but the other people in Brown's life. She states that executing Brown will not ease the pain of the victims, but will only cause more pain and suffering to Brown's family and friends.

Stephanie Johnson, a friend of Mark Brown, stated the following:

- Mark Brown's sister, Michelle, was raised as a member of her family and was able to escape the abuse the children suffered at home. Ms. Johnson detailed the childhood Brown faced from an abusive mother. The Johnson family knew all the children were being abused but never called the police to report it. Ms. Johnson wishes she and her family had done more to help. She stated that Brown was never shown any love or attention. Ms. Johnson does not feel justice will be done if Brown is executed.

Michelle Brown, Mark Brown's sister, stated the following:

- Their mother was very abusive and she was lucky to have been raised by the Johnson family. Over the years she lost contact with her brother and didn't reconnect with him until after the trial. Ms. Brown asked that her brother's life be spared as he had no chance from his childhood.

Reverend Froman stated the following:

- He met Mark Brown when a friend asked him to write to someone on death row. Reverend Froman began to write to Brown in 2007 and a friendship began. Brown is committed to his family and demonstrates that rehabilitation is possible, even from death row.

ARGUMENTS ADVANCED IN OPPOSITION OF CLEMENCY:

Mahoning County Prosecutor Paul Gains appeared at the clemency hearing and presented the following arguments in opposition to clemency:

- There was a great deal of “case fixing” in Mahoning County during the time Mr. Philomena was the Prosecutor. However, all of the cases were investigated and there was no indication that any such activity occurred in this case. The two prosecutors involved in this case gave sworn statements that no deal had been reached with Mr. Arrington in exchange for pre-determined testimony.
- From the moment Brown was arrested he continually changed his story. His first interview with police implicated Boonie in both shootings. When confronted with the fact that there were two cameras in the store, Brown confessed to shooting Mr. Al Turk. Brown did not confess to killing Mr. Salman, but also did not implicate Boonie. Brown merely stated that he didn’t remember what happened and that Boonie took the gun away from him. In his written statement, Brown again stated that he shot Mr. Al Turk, but did not shoot Mr. Salman. He wrote that Boonie took the gun out of his hands. At no time did Brown say Boonie shot Mr. Salman, or that any shots were fired after the gun was taken out of his hands. At his trial, Brown testified that he shot Mr. Al Turk and Boonie took the gun out of his hands and since he didn’t shoot Mr. Salman, Boonie must have shot him. At trial Brown never testified that he heard any additional shots fired. It wasn’t until Brown spoke with the Parole Board in December 2009, that he claimed that after he shot Mr. Al Turk, Boonie asked for the gun and after giving Boonie the gun, he heard shots. These inconsistent statements demonstrate that Brown is attempting to manipulate the system.
- All the evidence concerning Boonie’s involvement was presented to the jury. This included Boonie’s coat containing gunshot residue and Mark Brown’s testimony that Boonie was in the store when the shootings occurred. Even assuming that Boonie was in the store at the time of the shooting, it is unlikely that the jury’s verdict would be different. Brown would still be responsible for both killings and a death penalty specification would still apply. Myzelle Arrington’s statement is likewise not sufficient to warrant a new trial, as the mere presence of Boonie in or near the store does not establish that he was a shooter. The new evidence the defense claims to have uncovered is not really new evidence, and certainly will not meet the legal standard to warrant a new trial.
- It can be assumed that Boonie was never called to testify because his testimony was not necessary. Brown did not implicate Boonie in the crime and Brown’s statements, coupled with those of independent witnesses, were enough to prove Brown’s guilt.
- The courts have considered the claim that the verdict was the result of Ms. York feeling undue pressure to vote in favor of a death sentence. The courts have decided that the jury was instructed properly, and there was no undue pressure placed on the jury to make such a finding. The Parole Board should give credence to the jury’s verdict.

Assistant Attorney General Adam Van Ho presented the following:

- The claim of innocence was not raised during the appellate process. The claim argued was whether the requisite intent was established to support the Aggravated

Murder conviction. Brown's story regarding the shooting has changed many times over the years and only recently has he actually said Boonie was the second shooter. The issue of Ms. York's claims of pressure was reviewed and the court found no undue pressure. This is the first time there has been any mention of a second juror doubting the verdict. However, that juror has only been interviewed by the Ohio Public Defender's office and presented with information as they would like it to be considered.

- There are many factors that weigh against a favorable clemency recommendation. These factors include the fact that this case involves multiple slayings, and an execution style killing. The only reason for the second killing was to eliminate that victim as a witness to the first killing. In addition, Brown's prior criminal history demonstrates that mercy should not be granted.

Detective McKnight made himself available to respond to questions from the Board Members and provided the following:

- He questioned both Brown and Boonie. After being confronted with the possibility of a camera in the store, Brown confessed to the shooting of Mr. Al Turk but not Mr. Salman. However, Brown never implicated Bonnie in the shooting of Mr. Salman. Eventually Brown stated Boonie took the gun from Brown but there was still no claim that Boonie shot anyone. Boonie gave a statement explaining that he was in the store when Brown started shooting but ran out. The only change in the many times Boonie was questioned was that he first stated he was at the front window when the shooting started then finally admitted he was in the doorway.
- The conflicting witness statements may have been a result of other people in the area running when the shots were fired. The two men witnesses described as running from the store may not have been Brown and Boonie, but other people in the area.
- There is no difference in the manner in which the two victims were shot other than the shooting of Mr. Salman was execution style, while he was trying to hide. It cannot be concluded that there were two different shooters. Both victims were shot twice in the head and multiple times in the body. In total nine shots were fired and all nine shots struck the two victims.
- Brown and Boonie were convicted of crimes based on their individual involvement. Boonie did handle the gun after it was used, therefore he was convicted of Tampering with Evidence. Detective McKnight was satisfied that each offender was convicted of the crime commensurate with their respective role in this offense.

VICTIM'S REPRESENTATIVES:

Several members of Mr. Salman's family presented to the Board as follows:

- Terri Rasul, Mr. Salman's sister, stated that Mr. Salmon's death left seven (7) children without a father. The plea of mercy for Mr. Brown based on the claim that he is a good man and his death would cause pain to his family is hard for her family to accept, since Brown took so much away from their family. Ms. Rasul feels

Brown's sentence should be carried out to show the public that when such a terrible crime is committed there are consequences.

- Shady Salman, Mr. Salman's son, stated that he was representing the two men who were killed. He explained how the day his father was killed was the first day of a lifetime of grief. He stated that Mr. Brown was arrested, given a fair trial and confessed to a mass murder and he should not be given another chance.
- Ashraf Salman, Mr. Salman's third child, recounted the night his father was killed. Mr. Salman also asks that justice be served.
- Mudalaleh Salman, Mr. Salmans daughter, read a poem written by her sister detailing how the death of her father affected her.
- Mr. Ali, Mr. Salmans brother-in-law, explained that he lived in the area of town where Brown grew up and that he had a history of carrying guns, selling drugs and was never up to any good.

PAROLE BOARD'S POSITION AND CONCLUSION:

The Parole Board considered all of the written submissions, arguments, information disseminated by presenters at the hearing, the interview with the applicant, prior investigative findings as well as judicial decisions and deliberated upon the propriety of clemency in this case. Clemency in the form of a commutation to life without the possibility of parole is not recommended for the following reasons:

- While Mark Brown denies shooting Mr. Salman, the Board finds it more likely that he was the principle offender in the killing of both victims. The jury heard Brown's version of the offense and considered other evidence regarding the presence of the co-defendant and the possibility that he shot Mr. Salman. That theory was rejected and Brown was found guilty of both killings. There was nothing compelling presented that supports Brown's version of the offense.
- The mitigation presented regarding Brown's childhood and his good institutional adjustment does not outweigh the aggravating factors in this case. Specifically, the mitigation does not outweigh the fact that there were two innocent victims killed during this offense. The second victim appeared to be attempting to hide from the shooting and was killed execution style. Robbery was not established in this case, which suggests the motivation for the shooting of Mr. Salman was to kill him.
- Brown had a significant criminal history at the time of this offense.
- The conviction and sentence have received extensive consideration by reviewing courts and have been upheld. There appears to be no manifest injustice in either the conviction or sentence. Whether or not the evidence presented in the pending motion for a new trial is sufficient to warrant a new trial is an issue best left to the courts. A reprieve at this juncture is not necessary, as the trial court will consider the motion prior to the scheduled execution date.

RECOMMENDATION:

The Ohio Parole Board with six (6) members participating, by a unanimous vote of six (6) to zero (0) recommends to the Honorable Ted Strickland, Governor of the State of Ohio, that executive clemency be DENIED in the case of Mark A. Brown, A320-827.

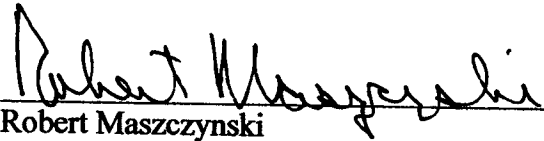
Mark A. Brown, A320-827
Death Penalty Clemency Report

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

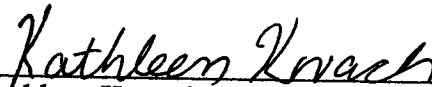
Ohio Parole Board Members
Voting **Unfavorable**



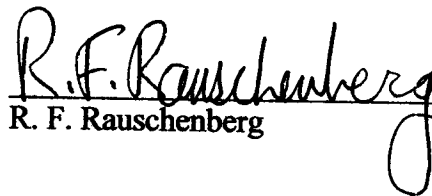
Cynthia Mausser, Chair



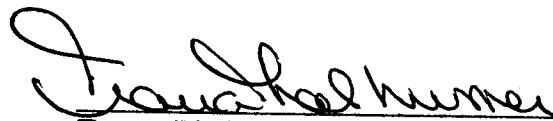
Robert Maszczyński



Kathleen Kovach



R. F. Rauschenberg



Trayce Thalheimer



R. B. Oberdier, Acting Board Member