

DATE TYPED: June 23, 2006
DATE PUBLISHED: June 19, 2006

IN RE: ROCKY BARTON, MANCI #A457-297

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

Date of Meeting: June 19, 2006

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

IN RE: Rocky Barton, MANCI #A457-297

SUBJECT: Death Sentence Clemency

CRIME, CONVICTION: Aggravated Murder with Gun Specification and Aggravating Circumstance Specification consecutive with Having Weapon While under Disability

DATE, PLACE OF CRIME: January 16, 2003; Waynesville, Ohio

COUNTY Warren

CASE NUMBER: #03CR20526

VICTIM: Kimbirli Jo Barton

INDICTMENT: 2/10/2003: Counts 1: Aggravated Murder with Gun Specification and Aggravating Circumstance Specification.
Count 2: Having Weapon While Under Disability

PLEA / VERDICT: 9/23/2003: Pled Guilty to Count 2, Having Weapon While Under Eligibility.
9/30/2003: Found guilty by Jury as charged in Count 1, Aggravated Murder with Gun Specification and Aggravating Circumstance Specification.

SENTENCE: 10/10/2003: Count 1: Death consecutive with 3 years for Gun Specification and consecutive with Count 2: 5 years.

ADMITTED TO INSTITUTION: October 10, 2003

TIME SERVED: 32 months prison

AGE AT ADMISSION: 47 years old (D.O.B. - 7/28/56)

CURRENT AGE: 49 years old

JAIL TIME CREDIT: 268 days (unverified)

PRESIDING JUDGE: Honorable Neal B. Bronson

PROSECUTING ATTORNEY: Rachel A. Hutzel.

FOREWORD:

Clemency in the case of Rocky Barton #A457-297 was initiated by The Honorable Bob Taft, Governor of the State of Ohio, and the Ohio Parole Board, pursuant to Sections 2967.03 and 2967.07 of the Ohio Revised Code and the Parole Board Policy #105-PBD-05.

On May 19, 2006, Rocky Barton declined an opportunity to be interviewed by a representative of the Parole Board at Mansfield Correctional Institution. Mr. Barton has since submitted two (2) letters to the Parole Board in which he indicates that he does not want clemency nor did he want his attorney, Christopher Pagan to represent him at the Clemency Hearing. The Parole Board subsequently met on June 19, 2006 to hear the case of Rocky Barton. The inmate's counsel, Christopher J. Pagan and co-counsel Chris McEvilly were not present at this hearing.

Arguments in opposition to clemency were presented by Warren County Prosecutor Rachel A. Hutzel and the victim's family including Sheri Hathway (sister), Tiffany Reising (daughter) and Julie Vickers (daughter). Also present at the hearing were Warren County Assistant Prosecutor Andrew Sievers, Warren County Prosecutors Office Law Clerk Katie Stenman, Senior Deputy Attorney General Heather Gosselin, Deputy Attorney General Matthew Hellman, Assistant Attorney General Anna Franceschelli and Assistant Attorney General Thomas Madden. At the conclusion of all testimony, the Board adjourned to deliberate and discuss the case.

The Board gave careful review, consideration and discussion to all testimony, and to all available facts pertaining to the crime including all supplemental materials submitted by the Warren County Prosecutor's Office. The Board deliberated extensively upon the propriety of clemency in the form of commutation and in the form of reprieve. **With seven (7) members participating, the Board voted unanimously to provide an UNFAVORABLE recommendation to the Honorable Bob Taft, Governor of the State of Ohio.**

DETAILS OF THE OFFENSE: The following details are taken from the Ohio Supreme Court Decision dated April 5, 2006:

Kimbirli and Rocky Barton had known each other for many years and married on June 23, 2001, during his incarceration for attempted murder in Kentucky. Following his release from prison in 2002, he lived in a Warren County farmhouse on Bellbrook Road

owned by his father, Donald, with Kim and Jamie, her 17-year-old daughter from a prior marriage.

Barton and Kimbirli generally had an amicable relationship and planned to renew their wedding vows in May or June 2003. Tiffany, Kim's 22-year-old daughter from a prior marriage, described Kim's relationship with Barton as "sometimes good, sometimes bad, the highs were very high, the lows were really low." Julie, Kim's 27-year-old daughter from a prior relationship, also described Kim and Barton's relationship as "up and down. Really good or really bad."

Tiffany described Barton as "very moody, possessive, controlling, and just very manipulative." Julie also thought Barton could be, at times, "very jealous, very controlling, very manipulative, always accusing Kim of things, causing fights." Jamie agreed that Barton acted "controlling and possessive," although she felt close to him and described him as the only father figure that she could depend upon.

On January 16, 2003, the morning of the murder, Barton awakened Jamie at 7:20 a.m. and told her to get her things together: "You're going to Tiff's house. The wedding's off. Your mom's a psycho bitch." Barton then drove Jamie to Tiffany's home and told Tiffany that her mother "had gone off the deep end and that she was crazy and she was leaving him." Jamie described Barton as acting "really strange" and "aggravated."

Around 7:30 that morning, Kim arrived at Lasik Plus, where she worked as a technical assistant. Karla Reiber and Molly Wolfer, her co-workers, recalled that Barton had called more than six times that morning. He insisted on being placed on hold while Kim tended to patients, often for as long as 10 or 15 minutes, until she became available. Reiber described Barton as "very angry," and Wolfer described him as "very agitated, very angry," and "very irate."

After speaking with Barton on the phone around 10:30 a.m., Kim related to co-workers that she had heard shots fired. She told others that she had heard a "bang" over the phone. Police later recovered a spent shotgun shell in a bedroom at Barton's home, which supported her suspicion that Barton had fired a shotgun while talking with her on the telephone.

Wolfer described Kim as crying, "very frantic," and "very scared" when she left work around 10:30 a.m. Before leaving, Kim called Tiffany and asked whether she and Jamie could live with her temporarily. Tiffany described her mother as hysterical, frantic, and scared and agreed to have her mother and sister move in with her.

Barton also talked on the telephone with several others that day. Around 7:45 a.m., he left a message with his employer, saying that he would not be at work that day because of a family emergency. Around 10:45 a.m., he spoke with his supervisor, Carol Williamson, and informed her that Kim had been "acting strange" due to her medication and that Kim intended to leave him.

Barton also called Randy Hacker, Julie's former husband, and complained about Kim and Julie. Barton seemed "edgy" and "irritated," according to Hacker, and left Hacker a message, saying, "Before I go on to my demise, I should call you." In a later call, Barton informed Hacker that Kim intended to move out and that he would be going back to jail.

Barton also spoke on the telephone several times that day with Glen Barker, an insurance agent. Barker has a background in counseling, and he offered to serve as a mediator between Barton and Kim. Barton visited Barker at his office around 9:30 a.m. and seemed calm and quiet, but Barton was anxious to speak with his father, who was in Florida. Barker called Kim at work on Barton's behalf, but Kim would not discuss the matter. Barker testified that Barton adamantly refused to allow Kim to collect her possessions from their house.

Barton's father, Donald, talked with Barton and Kim from Florida that morning in an effort to defuse the situation. Donald told Barton not to worry because anything that Kim might take from the farmhouse could be replaced, and he informed Kim that she could keep his car, which she currently drove. Larry Barton, Barton's uncle, also spoke with Barton several times by telephone on the day of the murder, and he offered assistance. Barton told Larry that he thought the police would be called, and he vowed that "he wouldn't go back to jail."

Around 11:00 a.m., Kim arrived at Tiffany's home. Barton called 25 or 30 times; Jamie and Tiffany overheard Barton cursing and yelling on the telephone and described his voice as "scary." Jamie overheard him tell Kim, "I'm going to kill you, you f* * *ing bitch," causing Kim to become "really nervous and scared" while "crying and shaking."

Around 3:00 p.m., Kim and Jamie made plans to return to their Bellbrook Road home to retrieve some clothing and personal effects. When Larry arrived at Tiffany's house, however, he strongly advised Kim not to go home. She agreed to stay away but gave Larry a list of things that she and Jamie wanted him to retrieve.

Immediately after Larry left to retrieve the items, Barton called again and persuaded Kim and Jamie to come to Bellbrook Road to obtain their things. When Larry arrived at Bellbrook Road, Barton had locked the gate, something he rarely did. Larry asked Barton to open the gate, but Barton absolutely refused to allow him onto the property. He kept saying, "I've lost it." Barton stood near his own truck behind the locked gate while Larry's truck remained parked on the road.

When Kim and Jamie arrived, however, Barton unlocked the gate and instructed Larry to lock it after they entered because he did not want "the police coming in." Then Barton got in his truck, backed up "real fast" into the garage, and closed the garage door. Larry and Kim separately drove onto the property.

As Kim got out of the car and turned to shut her door, Barton came out the side door of the garage with a shotgun. As he ran toward Kim, he yelled "You aren't going anywhere, you f* * *ing bitch," and he then fired the shotgun while four to six feet from her and

struck her in her side. Feeling the impact, Kim fell, but moved toward her daughter, yelling, "Oh, Jamie, Oh Jamie." As Jamie reached for her mother, Barton shot her in the back from a distance of one to two feet. Kim fell to the ground, while Jamie screamed, "Mom, can you hear me? Can you hear me? Please stay with me, mommy, please stay with me." Barton then aimed the gun at Jamie's head and at Larry. Barton next walked to the side of Larry's truck and said, "I told you I was insane," dropped to his knees, and shot himself in the face. Barton then walked into the house.

Jamie and Larry called 911. Emergency Medical Services ("EMS") personnel arrived and upon examining Kim found her ashen in color, not breathing, and with fixed and dilated pupils and no pulse. Following an autopsy, Dr. Karen Powell, a forensic pathologist, determined that Kim had died from "shotgun wounds of the left shoulder and right back regions" that caused injuries to her lungs, heart, and liver.

In response to the emergency call, police arrived and located Barton, alert and cooperative, inside the house. An EMS technician described him as suffering from a gunshot wound with non-life-threatening injuries to his chin, mouth, and nose.

Upon investigation, police confiscated the murder weapon, a .410 pump-style shotgun, and four spent shotgun shells. Police also recovered six live shotgun shells from Barton at the hospital.

CRIMINAL HISTORY:

Juvenile Offenses

None Known

Adult Offenses

<u>Date</u>	<u>Offense</u>	<u>Location</u>	<u>Disposition</u>
10/15/1986 (Age 30)	Driving Under the Influence	Fairborn, Ohio	11/30/1988: Guilty
11/12/1988 (Age 32)	Driving Under the Influence	Lebanon, Ohio	9/14/1989: Guilty
9/13/1989 (Age 33)	Driving Under the Influence	Warren County, Ohio	1/11/1990: Guilty
1/4/1991 (Age 34)	1. Attempted Murder 2. Theft by Unlawful	Madison County, Kentucky	4/9/1991: 15 years concurrent w/ 2 years;

**Taking
Case #91-CR-021**

6/30/1999: paroled;
2/9/2001: returned to
Kentucky as a parole
violation due to
conviction for
Domestic Violence;
2/1/2002: discharged.

Details: On 1/4/1991, the subject was with his ex-wife Brenda Johnson at her home in Madison County, Kentucky. The subject struck her over the head with a shotgun and continued to beat her until she passed out. She woke up as the subject tied her feet with electrical tape and her hands with an electrical cord. The subject told her he had planned to kill her for some time. He went through her purse and ransacked the house. He forced the victim to take several pills and to lick the blood off of his hands and shoes. The subject then stabbed the victim three times in the back and cut her throat. She lost consciousness. The subject then stole the victim's car, leaving her for dead. When the victim awoke, she was able to make it to a neighbor's home for help. On 2/7/1991, the subject was arrested in San Diego, California and was subsequently extradited to Kentucky on 2/14/1991 as a result of the above offense.

9/18/2000 (Age 44)	Domestic Violence	Waynesville, Ohio	12/5/2000: 30 days Jail (with credit for time served), 2 years probation, \$200 fine; 2/9/2001: probation terminated due to Parole violation.
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Details: On 9/18/2000, Jamie Barton of Waynesville, Ohio reported to police that she is in the process of divorcing the subject, Rocky Barton. She reported that the subject had just tried to enter her house, had caused damage to the doorframe and that she had been receiving numerous phone calls from the subject.

1/16/2003 (Age 46)	Aggravated Murder, Having Weapon Under Disability Case #03CR20526	Waynesville, Ohio	INSTANT OFFENSE
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Dismissed, Nolled, and Unknown Dispositions:

On 5/12/1975, the subject was arrested for Burglary and Assault in Polk County, Oregon. No information regarding this arrest is available.

On 11/14/1985, the subject was charged with Felonious Assault by the Lebanon, Ohio Police Department in Case #85CRA47809. This case was dismissed.

On 6/10/1988, the subject was arrested for Possession of Cocaine by the New Jersey Race Track Unit; this charge was dismissed.

On 8/5/1988, the subject was charged with Possession of Marijuana and Cocaine by the New Jersey Race Track Unit. The charge was remanded to a lower court, with the disposition being unknown.

On 9/18/2000, the subject was charged with Tele-communications Harassment and Criminal Damage; on 12/5/2000, the charge was dismissed.

On 9/5/2002, the subject was arrested for Disrupting Public Service and Domestic Violence. On 9/5/2002, police spoke with Kimbirli Barton who advised that her husband, Rocky Barton, had grabbed her by the shoulders, pushed her against a kitchen wall and then down into a chair, and then onto the living room couch. She advised that she tried to telephone her daughter, but the subject grabbed the phone and pulled the cord out from the wall. The subject told the victim that if she left him, it would be a murder-suicide situation. The victim stated that since the subject had left the house, it was over and she did not want to file charges. She refused to provide a written statement. On 9/17/2002, the charges were dismissed.

Institutional and/or Supervision Adjustment:

On 4/9/1991, the subject was sentenced to 15 years prison in the State of Kentucky for Attempted Murder and Theft by Unlawful Taking. He was paroled in June of 1999 and his supervision was transferred to Ohio. On 10/5/2000, the State of Kentucky released the subject from active supervision, but this was rescinded when Kentucky was notified that he had been arrested for domestic violence. Upon conviction, the subject was ordered to two (2) years of reporting probation, and he was returned to Kentucky for parole violation proceedings. He remained incarcerated until 2/1/2002, when the subject was discharged due to reaching the minimum expiration of his sentence.

On 10/10/2003, the subject was admitted to the Department of Rehabilitation & Correction to serve his sentence in the Instant Offense. Mr. Barton is currently housed at the Mansfield Correctional Institution. Institution records reveal that his adjustment to incarceration has been without incident. His work assignment is that of a porter.

Mr. Barton's Mental Health Status & Competency:

Notwithstanding Mr. Barton's repeated requests that he no longer be represented by Attorney Christopher J. Pagan or any other counsel, Attorney Pagan filed a Motion for an Evaluation to Determine Competency to Waive Further Direct and Collateral Challenges to His Death Sentence. The Motion raises two (2) important issues: 1) whether the sentencing court should have directly inquired of Mr. Barton, on the record, to ascertain if Mr. Barton knowingly & intelligently understood the potential consequences of his decision to not offer any mitigation evidence at the penalty phase of the trial, eg. an *Ashworth* waiver colloquy; and 2) whether there are sufficient indicia of incompetence to

require a *Berry* hearing to determine Mr. Barton's competence to waive his rights to future direct appeals and collateral proceedings. As of June 22, 2006 the Supreme Court of Ohio remanded the case to the trial court for the limited purpose of holding "an evidentiary hearing to determine whether the defendant's competency to waive further appeals should be psychiatrically evaluated. The court shall further determine whether such decision was voluntarily, knowingly, and intelligently made."

Mr. Barton is currently housed in the mental health unit at the Mansfield Correctional Institution [ManCI] with a diagnosis of Major Depression with psychotic features and a self-reported history of delusional thinking, auditory hallucinations, impaired insight and his attempted suicide during commission of the instant offense. In July 2005 he was admitted to the Oakwood Correctional Facility for more extensive evaluation, treated with medication and discharged after one (1) week. Prior to these reported mental problems beginning in May 2005 Mr. Barton has no documented history of mental illness other than a five (5) hour pre-trial session with a neuropsychologist [Dr. Smalldon] who noted no indications of mental disturbance. Moreover, there are no indications in the trial record to indicate that Mr. Barton suffered from any mental illness. As of this date Mr. Barton remains cooperative with the mental health treatment staff and compliant with his medications.

CONCLUSION:

The Board finds that Mr. Barton is lawfully convicted of the Aggravated Murder of his 4th wife, Kimbirli Barton, and lawfully convicted of the specification for his prior conviction of the Attempted Murder of his 2nd wife. He also was lawfully convicted of Domestic Violence with death threats against his 3rd wife. Without question, Mr. Barton is a repeat violent offender of serious magnitude.

The Board finds that Mr. Barton's diagnosis of Major Depression with psychotic features does not rise to the level of a serious mental disease or defect to warrant significant or sufficient mitigation against imposition of the death penalty. The Board further finds that a recommendation for a Reprieve or for Stay of Execution is not warranted due to any credible evidence of Mr. Barton's incompetence. Credible and convincing evidence was presented by Warren County Prosecutor Rachel Hutzal to support a finding that Mr. Barton appeared fully competent to voluntarily, intelligently and knowingly waive his right to present mitigation evidence at trial, and that he appears fully competent to waive his right to counsel, and to waive his right to further appeals and collateral proceedings. To this date Mr. Barton has repeatedly expressed his intentions in this regard by clear, concise, precise, logical, well stated and well written language.

The Board notes that Mr. Barton's post conviction diagnosis of Major Depression with psychotic features and his resulting mental health treatment for the past year is additional mitigation evidence that was not known by the jury or by the sentencing judge. However, the overwhelming weight of the aggravating circumstance in this case remains more than sufficient to outweigh the mitigating factors beyond a reasonable doubt.

The Board fully concurs with Mr. Barton's accurate self-assessment & unsworn statement to the jury during the mitigation phase of the trial, which states in pertinent part:

“ And for the ruthless, cold-blooded act that I committed, if I was sitting over there, I'd hold out for the death penalty”. ... “Punishment would be to wake up every day and have a date with death. That's the only punishment for this crime.”

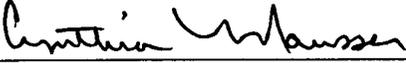
RECOMMENDATION:

The Board gave careful review, consideration and discussion to all testimony, and to all available facts pertaining to the crime including all supplemental materials submitted by the Warren County Prosecutor's Office and Mr. Barton's letter to the Board. The Board deliberated extensively upon the propriety of clemency in the form of commutation and in the form of reprieve. **With seven (7) members participating, the Board voted unanimously to provide an UNFAVORABLE recommendation to the Honorable Bob Taft, Governor of the State of Ohio.**

Rocky Barton #A457-297
Clemency Report

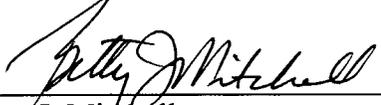
Ohio Parole Board Members
Voting **FAVORABLE**

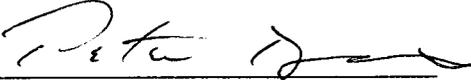
Ohio Parole Board Members
Voting **UNFAVORABLE**


Cynthia Mausser, Chairperson


Jim Bedra


Sandra Mack, Ph.D.


Betty J. Mitchell


Peter Davis


Kathleen Kovach


Ellen Venters