

DATE TYPED: September 11, 2007
DATE PUBLISHED: September 14, 2007

IN RE: ROMELL BROOM, OSP #A187-343

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

Date of Meeting: September 7, 2007

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: ROMELL BROOM, OSP #A187-343

SUBJECT: Death Sentence Clemency

CRIME, CONVICTION: Aggravated Murder with two (2) Felony Murder Specifications & Aggravated Felony Specification; Rape with Aggravated Felony Specification; Kidnapping with Aggravated Felony Specification; Attempted Kidnapping with Aggravated Felony Specification (2 counts)

Kidnapping with Aggravated Felony Specification

DATE, PLACE OF CRIME: September 21, 1984 in Cleveland, Ohio
December 6 & 18, 1984 in Cleveland, Ohio

COUNTY: Cuyahoga

CASE NUMBER: CR196643, CR196020

VICTIMS: Tryna Middleton, 14 years old (deceased)
Tammie Sims, 13 years old
Bonita Collier, 13 years old
Melinda Grissom, 11 years old
Venita McKenney, 12 years old

INDICTMENT: CR196643: January 10, 1985: Count 1: Aggravated Murder with two (2) Felony Murder Specifications & Aggravated Felony Specification; Count 2: Rape with Aggravated Felony Specification; Count 3 - 7: Kidnapping with Aggravated Felony Specification; Count 8: Felonious Assault.

September 10, 1985: Counts 6-8 severed; April 24, 1986: Counts 6-8 nolle.

CR196020: January 11, 1985: Count 1: Kidnapping with Aggravated Felony Specification; Count 2: Felonious Assault with Aggravated Felony Specification

FINDING: CR196643: October 3, 1985: Found guilty by Jury of Counts 1-3 as indicted and guilty of the lesser included offenses in Counts 4-5, Attempted Kidnapping with Aggravated Felony Specification.

CR196020: Found guilty by Jury of Count 1 as indicted; Not guilty Count 2.

SENTENCE: CR196643: October 16, 1985: Count 1: DEATH; Count 2: 15-25 years (with 15 years actual incarceration); Count 3: 12-15 years (with 12 years actual incarceration); Count 4: 12-15 years (with 12 years actual incarceration); Count 5: 12-15 years (with 12 years actual incarceration). All terms to run consecutively.

CR196020: April 24, 1986: 15-25 years (with 15 years actual incarceration) and costs.

ADMITTED TO INSTITUTION: October 24, 1985

TIME SERVED: 273 months

AGE AT CONVICTION: 29 years old

CURRENT AGE: 51 years old

DATE OF BIRTH: June 4, 1956

PRESIDING JUDGE: Honorable Paul R. Matia

PROSECUTING ATTORNEY: John T. Corrigan

ACCOMPLICE: None.

FOREWORD:

Clemency in the case of Romell Broom #187-343 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. The Ohio Supreme Court has set an execution date of October 18, 2007 in this case.

On August 27, 2007, Parole Board Member Peter Davis interviewed Mr. Broom at the Ohio State Penitentiary in the presence of his counsel, Timothy Sweeney and Adele Shank. Observing the interview via teleconference were Carol Ellensohn and Sarah Hadacek from

the Ohio Attorney General's Office; and Matthew Morris, Parole Program Specialist with the Ohio Parole Board.

An extensive presentation of the case was made on September 7, 2007 by Mr. Broom's counsel and by the state, in the persons of Assistant Cuyahoga County Prosecutor Jon W. Oebker and Assistant Attorney General Sarah Hadacek [Capital Crimes Unit]. Testimony was also received from Randall Broom (brother of petitioner), Alan Rossman, Esq. (Mr. Broom's trial counsel) and from state's witnesses Gary Belluomini (FBI agent & friend of victim Tryna Middleton), Dr. Lewis Maddox, PhD (Molecular Geneticist with Cellmark Diagnostics), Bessye Middleton (mother of victim Tryna Middleton) and Hattie McIntosh (Aunt of victim Tryna Middleton).

The Board gave careful review, consideration and discussion to all testimony, and to all available facts pertaining to the crime including the application submitted by Mr. Broom's counsel and the response submitted by the Cuyahoga County Prosecutor's Office and the Attorney General's Office. The Board deliberated extensively upon the propriety of clemency in the form of commutation. With seven (7) members participating, the Board voted to provide an UNFAVORABLE recommendation to the Honorable Ted Strickland, Governor of the State of Ohio.

DETAILS OF THE INSTANT OFFENSE (CR196643 and CR196020): The following account of the instant offense was obtained from the Ohio Supreme Court opinion decided December 30, 1988:

In the fall of 1984 in the Cleveland area, three separate but related incidents occurred involving five young girls. The first incident occurred on September 18, 1984 between 8:15 and 9:00 p.m. Twelve-year-old Venita McKenney was walking to her home on East 120th Street, Cleveland, after visiting her cousins, when a car drove past her, turned around and parked. After Venita walked past the car, the driver got out of the car, grabbed her from behind, and threatened her with a knife. When she struggled and fell, he said, "Get up bitch, shut * * * up bitch, get up bitch." Fortunately, two residents in a nearby home overheard the incident, and opened their door allowing Venita to escape from her assailant. One of these residents identified the subject, Romell Broom as the assailant in a lineup and at trial. She said his car was a four-door brown car. Also, an investigating police officer testified that a witness reported the car as a four-door brown "possibly a Ford Granada."

The second incident resulted in the rape and murder of fourteen-year-old Tryna Middleton late Friday and in the early morning hours of Saturday, September 21 and 22, 1984. Tryna, a ninth-grade student at Shaw High School, attended a Friday night football game accompanied by her friends and neighbors, Tammy Sims and Bonita Callier.

Tammy had a midnight curfew, so after the game the girls started to walk home to Henderson Avenue, where they all lived. They went from Terrace Road, which runs alongside Shaw High, and southeast up Oakhill Road, where they saw a parked car which they thought looked suspicious because of the way it was parked "between the streets." Neither Tammy

nor Bonita could identify the make or color of the suspicious car. The girls retraced their steps down Oakhill to Terrace Road and then they went southwest on Terrace Road and then south onto Lee Road which, like Oakhill, goes up an incline. At the top of the hill, the girls stopped to rest for a few minutes. The time was between 11:20 and 11:30 p.m. From Lee Road the girls turned east onto Glynn Road, which is a lighted, level, tree-lined street of homes situated on large lots.

As the girls proceeded eastward along Glynn on the sidewalk, a car without its lights on came toward them and parked about two houses in front of them. The driver got out of the car and ran past the girls to a spot a couple of houses behind them. The girls had walked past the parked car when they heard footsteps from behind, and the assailant tried to grab all three girls. During the struggle, the assailant said, “[c]ome here bitch” and pulled a knife. Tryna, who was five feet tall and slightly built, could not get free. Tammy and Bonita ran across the street where a homeowner let them in to call the police and their mothers.

The girls were unable to get the license number of the car, but they described the car as “brown,” “tan,” or “a goldish color,” and as a four-door Ford Granada, with a light-colored top. They described the assailant as a young black male, possibly in his early twenties, weighing approximately one hundred sixty pounds and five feet nine inches in height, with a light to medium complexion and a thin mustache.

Approximately two hours later Tryna's body was found in a parking lot adjacent to an abandoned swimming pool in Forest Hills Park in Cleveland. Sperm cells were found in her rectum and vagina. She had been stabbed seven times in the chest and abdomen. Five of the stabbings perforated Tryna's heart and lungs causing almost instantaneous death. Tryna had also incurred an incised wound on her right forearm which the coroner testified was the result of Tryna's efforts to defend herself.

Tammy and Bonita each examined hundreds of photographs, but they were unable to identify any suspect until after the third incident described hereafter.

On December 6, 1984 around 6:30 p.m., eleven-year-old Melinda Grissom had gone to a corner store close to her home on Chamberlain Avenue in Cleveland. The day before it had snowed and the side streets, such as Chamberlain, were still slippery. On her way home Melinda noticed a car following her. The car pulled onto Chamberlain. As Melinda turned the corner from East 74th onto Chamberlain, a man who was “going down in his pocket” as if to get something walked past her and without a word grabbed her neck from behind and started hitting her. She struggled and screamed as she was thrown into the assailant's car. Once inside the car the assailant said, “[b]itch, get your feet off of me.”

Melinda's younger sister witnessed the beating and abduction and called to her mother. Mrs. Grissom, who was barefoot, ran outside to the car, and grabbed the locked door of the driver's side of the car in which Melinda had been thrown. Mrs. Grissom hung on to the door while screaming for help and for her daughter to jump from the car. The icy road made the car's wheels spin and slowed its travel, thus allowing Mrs. Grissom to hold on to the door and to pound the window and push the car with her hip so that the car bumped into a parked

car. Melinda followed her mother's entreaties, and unlocked the door on the passenger's side and jumped out. The commotion was witnessed by two young men who got the license number of the departing car and gave it to Mrs. Grissom. Melinda was taken to the hospital because her leg had been injured. Within an hour the car, a 1973 Buick, had been traced to its owner, the father of the subject, Romell Broom. The engine was still warm when the police arrived. The subject, who was at his father's house, admitted that he had been driving the car. He was read his *Miranda* rights and voluntarily accompanied the police to the hospital, where he was positively identified by Mrs. Grissom and her daughter. The two other witnesses to the incident later picked the subject out of a lineup and at trial.

Police noticed the similarities between the three incidents, which occurred within several miles of each other. All the victims and witnesses of the two September incidents independently picked the subject out of lineups after Tammy and Bonita first identified his photograph in a photo array. Police investigation revealed and subject's witnesses confirmed that prior to November 6, 1984, when he wrecked it, the subject drove his girlfriend's car, a goldish-brown Ford Granada with a light top. Tammy identified the car at the police impound lot. Bonita said the car in the impound lot was the same kind and color of car as that used by her assailant.

Tests determined that the sperm found in Tryna came from a person whose blood was type B, which approximately twelve percent of the national population possesses. The subject has type B blood, while the victim had type O blood. In addition, two hairs were removed from Tryna's hand. One matched her hair and the other one could not be excluded as belonging to the subject. According to Detective Svekric, the subject voluntarily advised police during questioning that "he couldn't admit to anything, because he didn't want to go to jail for something that he couldn't remember."

A police officer testified that "we asked him if we were wrong in believing that he was responsible for these crimes. His response to that was No." Subject also admitted that he drove a used, gold 1978 Ford Granada. Finally, another prisoner testified that after subject was identified in a lineup, subject referred to Tryna and asserted that the state could not prove anything.

On January 10, 1985, an indictment was issued charging Romell Broom with one count of aggravated murder with two specifications for felony murder, one count of rape, five counts of kidnapping, and one count of felonious assault. All counts except the last included a prior aggravated felony specification. Mr. Broom entered a plea of not guilty at his arraignment on January 15, 1985.

The trial court granted the defense's motion to sever counts six, seven, and eight of the indictment. These counts concern the incidents of September 18, 1984 and December 6, 1984. Prior to trial, Mr. Broom expressed willingness to accept a plea offer to plead guilty to Aggravated Murder with a sentence of 30 years to Life. The purported plea bargain was not approved by the Court. Jury trial began on September 16, 1985 on the remaining counts concerning the Tryna Middleton murder and the related crimes. On October 3, 1985, the jury found appellant guilty of aggravated murder with both capital punishment specifications,

rape, kidnapping, and two counts of attempted kidnapping. Following a mitigation hearing held on October 9, 1985, the jury recommended the death penalty on October 10, 1985. The trial court reached the same conclusion and sentenced appellant Broom to death for the aggravated murder and to maximum consecutive sentences on the other counts. Broom's conviction and sentence were affirmed on August 3, 1987 by the court of appeals.

DETAILS OF THE INSTANT OFFENSE (CR017108): The subject is also serving sentence in CR017108, the details of which are as follows:

On 10/25/1974, the victim was driving his car in Cleveland, Ohio when a car pulled in front of him and stopped. The passenger of that car, later identified as the subject, exited the vehicle and pulled a gun. The subject forced his way into the victim's car and while holding the victim at gunpoint, began to follow the first car. Both cars then stopped and the subject robbed the victim of \$57.00 cash. They then told the victim to exit the vehicle and start walking. The subject and co-defendant then drove off in the victim's car. The subject was arrested a short time later, in the victim's car.

The subject was indicted on 11/21/1974, for Kidnapping and Aggravated Robbery. On 6/27/1975, he pled guilty to the lesser included offense of Robbery and the remaining count was nolle. The codefendant in this case was found not guilty. On 11/13/1975, the subject was sentenced to 5-15 years in this case. On 6/30/1992, he was admitted under institution #R 93238. On 5/11/1984, the subject was granted 2 years parole. On 10/18/1999, the subject was recommitted under A378-343 as a result of his conviction in the instant offense.

DETAILS OF THE INSTANT OFFENSE (CR018981): The subject is also serving a sentence in Case #CR018981, the details of which are as follows:

On 3/15/1975, the victim was getting into his car in the downtown area of Cleveland, Ohio when the subject pulled a gun on him and demanded money. Another assailant appeared and they both searched the victim until they found his wallet. They stole \$25.00 in cash and his credit cards. They then ordered him to exit his vehicle and walk. At this point, they entered the victim's car and drove away. The subjects were caught while still in the vehicle.

The subject was indicted on 4/10/1975, for Aggravated Robbery and Carrying Concealed Weapon. On 4/29/1975, he pled guilty to Count 1 as indicted, and the remaining count was nolle. On 4/29/1975, the subject was sentenced to 4-25 years in this case. On 5/11/1984, the subject was granted 2 years parole. On 10/18/1999, the subject was recommitted under A378-343 as a result of his conviction in the instant offense.

DETAILS OF THE INSTANT OFFENSE (CR019937): The subject is also serving a sentence in Case #CR019937, the details of which are as follows:

On 1/11/1975, the victim (age 12) was babysitting the subject's niece. The subject stopped by the residence and asked to use the bathroom. The victim went to take the baby to the bedroom, at which time the subject followed her and struck her. He then raped her.

The subject was indicted on 5/13/1975, for Rape. On 6/27/1975, he pled guilty to the indictment. On 11/13/1975, the subject was sentenced to 7-25 years in this case. On 5/11/1984, the subject was granted 2 years parole. On 10/18/1999, the subject was recommitted under A378-343 as a result of his conviction in the instant offense.

PRIOR RECORD:

Juvenile:

<u>DATE</u>	<u>OFFENSE</u>	<u>PLACE</u>	<u>DISPOSITION</u>
2/10/1970 (age 13)	Robbery, Truancy (Case #261 915)	Cleveland, Ohio	3/24/1970: Committed to the Ohio Youth Commission

On February 10, 1970, the subject was found in possession of the master key to Harry E. David Junior High School. The previous day, a robbery had taken place at the school and four tape recorders were stolen.

2/11/1970 (age 13)	Auto Trespassing (Case #262 265)	Brook Park, Ohio	4/13/1970: Committed to the Ohio Youth Commission
-----------------------	-------------------------------------	---------------------	--

On February 11, 1970, the subject was apprehended by Brook Park Police riding in a stolen 1965 Ford.

3/20/1970 (age 13)	Unlawful Entry and Stealing, Auto Trespassing (Case #263 336)	Cleveland, Ohio	4/13/1970: Committed to the Ohio Youth Commission
-----------------------	---	--------------------	--

On March 20, 1970, at 1:35 a.m., the subject was apprehended at East 83rd and Euclid Avenue, in Cleveland, Ohio. He was in possession of a stolen 1963 Chevy.

11/29/1971 (age 15)	Auto Tampering Auto Trespassing (Case #276 931)	Cleveland, Ohio	11/5/1972: Recommitted to the Ohio Youth Commission
------------------------	---	--------------------	--

The subject was found in a 1964 Chevrolet owned by Valerie Ward, of Cleveland, Ohio.

12/11/1971 (age 15)	Stolen Auto (Case #282 396)	Cleveland, Ohio	11/29/1972: Committed to Ohio Youth Commission
------------------------	--------------------------------	--------------------	---

On December 11, 1971, at 5:30 p.m., at 1601 East 85th Street, Cleveland, the subject was picked up in a stolen auto.

ADULT:

<u>DATE</u>	<u>OFFENSE</u>	<u>PLACE</u>	<u>DISPOSITION</u>
10/25/1974 (age 18)	Robbery (CR017108)	Cleveland, Ohio	11/13/1975: 5-15 years OSR concurrent with CR 019937; 5/11/1984: Paroled; 10/24/1985: Re-committed.
3/15/1975 (age 18)	Aggravated Robbery (CR018981)	Cleveland, Ohio	4/29/1975: 4-25 years OSR and costs; 5/11/1984: Paroled; 10/24/1985: Re-committed.
5/13/1975 (age 18)	Rape (CR019937)	Cleveland, Ohio	11/13/1975: 7-25 years OSR concurrent with CR017108; 5/11/1984: Paroled; 10/24/1985: Re-committed.
9/21/1984 (age 28)	Count 1: Aggravated Murder with 2 Felony Murder Specifications & Aggravated Felony Specification; Count 2: Rape with Aggravated Felony Specification; Count 3: Kidnapping with Aggravated Felony Specifications; Counts 4 & 5: Attempted Kidnapping with Aggravated Felony Specification (CR 196643)	Cleveland, Ohio	10/16/1985: Count 1: DEATH; Count 2:15-25 years with 15 years actual; Count 3: 12-15 years with 12 years actual; Counts 4 & 5: 12-15 years with 12 years actual; all terms to be served consecutive. (INSTANT OFFENSE)
12/6/1984 (age 28)	Kidnapping with Aggravated Felony Specification (CR 196020)	Cleveland, Ohio	4/24/1986: 15-25 years CCI with 15 years actual incarceration. (INSTANT OFFENSE)

INSTITUTIONAL ADJUSTMENT:

Romell Broom was admitted to the Department of Rehabilitation and Correction on October 24, 1985. His current work assignment is that of a porter. Previous work assignments include barber, recreation student, and porter. Mr. Broom was enrolled in GED classes at the Mansfield Correctional Institution (MANCI) from 8/2001 to 8/2004. His participation ended when that program was terminated at MANCI. He has not participated in any other programs during his incarceration. Mr. Broom was transferred from MANCI to Ohio State Penitentiary (OSP) on 10/18/2005 and remains incarcerated at this location at the present time.

On 1/6/1993, Mr. Broom was found to be in possession of a pen with a needle attached to it. He was charged with Possession of Contraband and received 15 days in Disciplinary Control (DC) as a result of this rule infraction. Mr. Broom has received eight (8) minor conduct reports that did not result in DC during his approximately twenty-two (22) years of incarceration. These conduct reports included offenses of Possessing Minor Contraband (5), Engaging in a Verbal Argument with another Inmate (1), Refusing an Order of a Staff Member (1) and Disrespecting a Staff Member (1).

APPLICANT'S STATEMENT:

Parole Board Member Peter Davis interviewed Romell Broom on August 27, 2007 at the Ohio State Penitentiary. Broom made the following statement regarding the instant offense: During his interview with the Board, Mr. Broom strongly asserted his claim of innocence for all of the crimes for which he currently stands convicted. He repeatedly denied ever seeing or touching or attempting to abduct the deceased victim Tryna Middleton or her two friends, Bonita Callier or Tammy Sims. He denied being anywhere in or near the location where these three victims were accosted on the night of September 21, 1984. Similarly, Mr. Broom also maintained that he had never seen or touched or attempted to abduct victim Venita McKenny on the night of September 18, 1984. He strongly asserts that he is the victim of mistaken identity in both incidents, alleging that the state's two (2) primary witnesses [Ms. Callier & Ms. Sims] were not sure of their identification of him during the initial photo array, then gradually become more certain during the line ups, and finally were "positive" by the time of their trial testimony ----- suggesting that their "positive identification" of him was gradually massaged and unduly influenced by law enforcement authorities. He noted that the witnesses' initial description of him was very general as to build, age, complexion and hair (eg. fitting the description of thousands of other Black men in the Cleveland area). Additionally, the witnesses' description of the perpetrator's car was equally general, conflicting and inaccurate. Mr. Bloom restated his claim that the trial court erred by denying his defense counsel's motion for the appointment of an expert on eye-witness testimony to allow counsel to more effectively impeach the credibility of the state's witnesses.

Mr. Broom does admit to running over the leg of victim Melinda Grissom on December 6, 1984 (unintentionally, inadvertently and unknowingly), but strongly denies that Ms. Grissom was ever inside his automobile or that he made any attempt to force Ms. Grissom into his car. He admits to being in the area where Ms. Grissom was walking home, further admitting to sitting in his car and smoking marijuana, and then attempting to flee the icy snow covered

area when a strange woman (subsequently known to him as Melinda Grissom's mother) suddenly began beating on his window and yelling obscenities at him "for unknown reason(s)". He does not understand why Melinda Grissom and her mother would lie to police and accuse him of attempting to abduct Melinda. At worst, says Mr. Broom, he is guilty of a "hit skip" involving Melinda Grissom.

Mr. Broom stated that his jury conviction of the September 21, 1984 Murder / Rape / Kidnapping of Tryna Middleton was unfair, most notably due to the trial court's allowance of "similar acts" testimony involving the prior September 18, 1984 attempted kidnapping of Venita McKenney and the subsequent December 6, 1984 attempted kidnapping of Melinda Grissom.

Mr. Broom remarked that many other "similar" murders, rapes and abductions of young Black girls had occurred in the Cleveland area while he was incarcerated, during his parole supervision, and after his conviction for the instant offenses. He surmised that law enforcement authorities were under strong public pressure to convict someone and that his prior Rape conviction of the 12 year old daughter of his father's girlfriend was the basis for making him a primary suspect.

Mr. Broom also asserted that he "did not receive a fair trial or a fair chance to appeal" due to the failure of the Cuyahoga County Prosecutor to provide his trial counsel with "8 volumes" of documents. These documents were "withheld" and not discovered until his federal appeal. He asks that the Parole Board recommend to the governor that he be granted clemency in any form that would allow him additional time to "show my innocence".

ARGUMENT ADVANCED IN SUPPORT OF CLEMENCY:

Counsel for Mr. Broom allege multiple acts of "egregious prosecutorial misconduct" which resulted in an unfair trial, conviction and sentence of death ----- notably the suppression of evidence favorable to Mr. Broom's trial attorneys, presenting a "grossly misleading picture of what happened on the night Tryna Middleton was killed", the "cynical effort to mislead the jury and unfairly demonize Broom", and the use of improper and prejudicial" other acts evidence. Counsel further argues that Mr. Broom is continuing to litigate compelling legal issues concerning his "unfair" trial and the state's current method of execution. In mitigation, counsel provided information as to the murder/rape of Mr. Broom's sister just three months prior to his parole for rape in May 1984 and that Mr. Broom has developed himself into a respectful and productive prisoner, having earned special privileges on death row.

PAROLE BOARD'S POSITION AND CONCLUSION:

The Board is persuaded by strong, credible testimony and exhibits presented by State's counsel which effectively refuted and rebutted each of petitioner's claims.

THE SUPPRESSED EVIDENCE [Brady claim]: Pursuant to the federal court decision in Brady v. Maryland, the government must disclose exculpatory or impeaching

information to defendant's trial attorneys. Interviews conducted by the East Cleveland Police Department [ECPD] of various potential witnesses (many of whom were Shaw High School students & acquaintances of Bonita Callier, Tryna Middleton & Tammy Sims) were never disclosed to Mr. Broom's trial attorneys. This "suppressed" evidence was not discovered until years later by petitioner's appellant counsel pursuant to a Public Records request. Among other hearsay allegations, the ECPD documents contained disparaging statements indicating that Bonita, Tryna & Tammy shared a proclivity for getting into cars with strange men, that they reportedly used alcohol and drugs on the night of Tryna's abduction and murder and that they "explored" their sexuality with more than one male partner. Petitioner's counsel strongly assert that such "suppressed" documents precluded trial counsel from effectively challenging the credibility of Bonita and Tammy and allowed the prosecutor to paint an inaccurate picture of the victims as "innocent little girls."

Testimony from trial counsel Alan Rossman characterized the state's withholding of the ECPD documents as "undermining confidence in the trial process & jury verdict", "a great taint on the trial", "precluded trial counsel from making an honest testing of the adversary system", and "could have allowed the defendant to raise a viable and substantive evidentiary challenge to the capital aggravators [rape / kidnap], and to the credibility of the state's two main witnesses".

Although this issue of "suppressed evidence" [Brady claim] was granted an evidentiary hearing by Federal District Court Judge O'Malley, Judge O'Malley determined that the testimony received in the evidentiary hearing regarding the substance of Mr. Broom's Brady claim could not be considered due to the judicial doctrine of "procedural default" [failing to raise the issue and develop the record in the state court]. Thus, no court has made a determination "on the merits" of petitioner's Brady claim.

However, the Board gave considerable inquiry into and discussion on this issue, adopting the judicial standard of review as to the "materiality" of the suppressed evidence, i.e. whether there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the trial would have been different. "A 'reasonable probability' is a probability sufficient to undermine confidence in the outcome." The Board concurs with the preliminary finding of Judge O'Malley that the ECPD documents "allegedly withheld appear to constitute largely inadmissible hearsay, often in the form of conjecture and rumor. To the extent it would have been admissible or have altered Broom's trial strategy, moreover, it only would have been used for impeachment purposes". On that issue, the Board finds that persuasive testimony was received from FBI agent Gary Belluomini as to the credibility of the State's two prime witnesses (Bonita Callier and Tammy Sims). Their initial identifications of Mr. Broom's car and of Mr. Broom himself were "very credible" from their first interview with Agent Belluomini to the end of the trial. The likelihood that the suppressed evidence would have successfully impeached the two identification witnesses, or resulted in a more favorable verdict or sentence, is remote.

Even if the "suppressed" evidence raises doubt as to the sufficiency of evidence of rape, the same conclusion cannot be drawn for the kidnapping element of the offense. Either aggravating factor, in and of itself, is sufficient to cause the jury to reach a similar finding at

least as to Mr. Broom's guilt. Additionally, the Board finds that the "suppressed" evidence does not appear to be sufficiently probative as to additional evidence that would be admissible or reliable to refute evidence of Mr. Broom's guilt nor to support his claim of innocence. The Board is also persuaded by the argument of State's counsel that the "suppressed" evidence is too speculative to support any reasonable probability that the jury's verdict would have been different, especially in light of Judge O'Malley's observation: "given the profound evidence of Broom's guilt".

Petitioner's counsel intimated that the Cuyahoga County prosecutor deliberately and intentionally suppressed the belatedly discovered ECPD documents, referring to such prosecutor behavior as "egregious", "took advantage of the suppression to misrepresent the remaining evidence", and "conceal important evidence". Had such "suppression of evidence" been deliberate or intentional it may have warranted significant mitigation by this Board. However, the Board accepts the following findings of fact by Judge O'Malley on this issue:

"(1) the Cuyahoga County prosecutors disclosed all the materials in their files, as well as the Cleveland Police Department files, to defense counsel; (2) the East Cleveland Police Department reports dating October 31, 1984 and later (those beyond the initial abduction report and eyewitness list), were not contained in either the prosecutor's or the Cleveland Police Department's files and, therefore, were not disclosed to defense counsel; and (3) **the prosecutors were not aware of the subsequent East Cleveland Police Department investigations or reports** that were eventually produced to Broom through his public records action at any time prior to the current proceedings."

DNA TEST RESULTS

Counsel for petitioner asserts that the DNA testing conducted in 2001 was "inconclusive"; State's counsel effectively rebutted such a conclusion and presented credible testimony in the person of Lewis Maddox, PhD [a Molecular Geneticist with Cellmark Diagnostics]. Far from being "inconclusive", the DNA test results strongly implicate Mr. Broom as only 1 in 2.3 million for Black males. The Board concurs with the statement of State's counsel that the DNA test results "confirm our confidence in the defendant's guilt".

"OTHER ACTS" EVIDENCE:

Petitioner contends that he was denied a fair trial by the admission of evidence of other acts, specifically all evidence concerning the attempted kidnapping of Venita McKenney on September 18, 1984, and the attempted kidnapping of Melinda Grissom on December 6, 1984. The Supreme Court of Ohio fully discussed this issue and determined that the "other acts" testimony was properly allowed by the trial court on the issue of identity of the perpetrator. The jury was given a carefully drafted limiting instruction to explain that the evidence concerning those two incidents was admitted only for the purpose of considering whether those acts tended to show intent, motive, scheme, plan or system for the

September 21 Kidnapping / Rape / Murder of Tryna Middleton and Attempted Kidnapping of Tammy Sims and Bonita Callier.

How “similar” is similar enough? Counsel for petitioner assert that the “similar acts” testimony comprised one half [1/2] of the identity evidence in Mr. Broom’s trial. At the Board hearing counsel argued for a very narrow interpretation of case law authority to limit “similar acts” to instances of far more particularized methods and means than shown in this case. Moreover, counsel asserts that the trial court was not provided with statistics and facts of numerous other crimes of similar import in the Cleveland area in the same time period.

The Board finds that significant and sufficient similarities existed among the three incidents to warrant the jury’s proper consideration. As noted by the Ohio Supreme Court and by state’s counsel at the hearing, all three incidents occurred within a few months of each other, within a few miles of each other, and all involved young Black girls between the ages of eleven and fourteen walking along a street after dark. Credible evidence was presented at trial and at the Board’s hearing to find that the method in all three incidents was identical: a lone driver in a car passed the victims, parked the car and then attacked them from behind, trying to get the victims into the car while using the same scurrilous language. Two of the incidents involved the same car and a knife. This Board is in full concurrence with the Ohio Supreme Court’s conclusion as to the trial court’s admissibility of the “other acts” evidence [testimony] as it was relevant to the issue of petitioner’s defense of mistaken identity.

After extensive review of the record in this case, and after careful consideration of all testimony and exhibits presented by petitioner’s counsel and by the Cuyahoga County Assistant Prosecutor and the Attorney General’s Capital Crimes Unit, the Board finds that substantial credible and corroborative evidence of Mr. Broom’s guilt was properly presented to the jury.

After careful review and deliberation, the Ohio Parole Board has concluded the following:

- There is no residual doubt or question as to Mr. Broom’s guilt in this case;
- Mr. Broom committed heinous crimes against very young female victims;
- There is no credible evidence to support Mr. Broom’s 22 year claim of innocence;
- There is no reasonable probability that, had the “suppressed” evidence been disclosed to the defense, the result of the trial would have been different.
- Significant and sufficient similarities existed among the three incidents to warrant the jury’s fair and proper consideration (the “similar acts” were similar enough);
- The credibility of the State’s two principal witnesses were credible;
- DNA test results are strongly suggestive and corroborative of Mr. Broom’s guilt;
- There is nothing in Mr. Broom’s history, character or background that can be given any significant weight in mitigation;
- A sufficient justifiable basis for mercy cannot be found. There is no manifest miscarriage of justice in the imposition of sentence.

RECOMMENDATION:

On September 7, 2007, the Ohio Parole Board met and reviewed the case of Romell Broom for executive clemency consideration for the purpose of submitting a report and making a recommendation to the Honorable Ted Strickland, Governor of the State of Ohio. **With seven (7) members voting, the Parole Board unanimously recommended that Romell Broom be given an UNFAVORABLE recommendation for executive clemency in any form.**

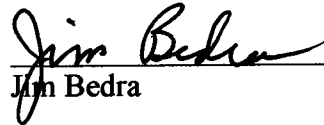
Romell Broom #A187-343
Death Penalty Clemency Report

Ohio Parole Board Members
Voting **FAVORABLE**

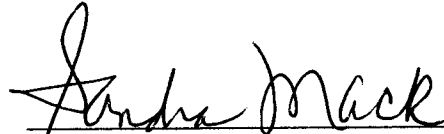
Ohio Parole Board Members
Voting **UNFAVORABLE**



Cynthia Mausser, Chairperson



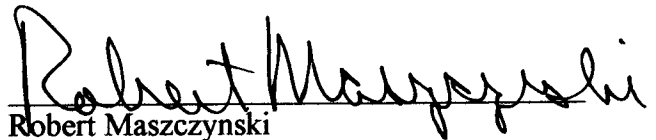
Jim Bedra



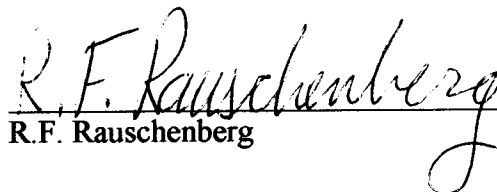
Sandra Mack, Ph.D.



Peter Davis



Robert Maszczyński



R.F. Rauschenberg



Trayce Thalheimer, Acting Board Member