

DATE TYPED: December 10, 2009
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**IN RE: VERNON L. SMITH A288-960
(n.k.a. ABDULLAH SHARIF KAAZIM MAHDI)**

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

Date of Meeting: December 3, 2009

Minutes of the **SPECIAL MEETING** of the
Adult Parole Authority held at 770 West Broad Street,
Columbus, Ohio 43222 on the above date.

IN RE: Vernon L. Smith (n.k.a. Abdullah Sharif Kaazim Mahdi) A288-960

SUBJECT: Death Sentence Clemency

CRIME, CONVICTION: Aggravated Murder with aggravating circumstances specification and firearm specification, Aggravated Robbery (3 counts).

DATE, PLACE OF CRIME: May 26, 1993 in Toledo, Ohio

COUNTY: Lucas

CASE NUMBER: 93-6197

VICTIM: Sohail Darwish – age 28

INDICTMENT: June 28, 1993: Count 1: Aggravated Murder with aggravating circumstances specification and firearm specification (as to Vernon Smith); Count 2: Aggravated Murder with firearm specification (as to Herbert Bryson and Lamont Layson) Counts 3-5: Aggravated Robbery with firearm specification (as to Vernon Smith, Herbert Bryson and Lamont Layson).

VERDICT: March 15, 1994: Found guilty by jury of the indictment.

SENTENCE: March 22, 1994: Count 1: Sentenced to DEATH; Counts 3 & 4: 8-25 years concurrent, but consecutive to Count 1; Count 5: 7-25 years consecutive with all other counts; 3 years for each gun specification.

ADMITTED TO INSTITUTION: March 25, 1994

TIME SERVED: 15 years, 8 months

AGE AT ADMISSION: 21 years old

CURRENT AGE: 37 years old

DATE OF BIRTH: April 7, 1972

JUDGE: Honorable Judge James D. Bates

PROSECUTING ATTORNEY: Prosecutor Anthony G. Pizza
Assistant Prosecutor Chris Anderson

CO-DEFENDANT'S: Herbert Bryson (A286-414): 11/16/1993: Pled guilty to Involuntary Manslaughter; 11/30/1993: Sentenced to 10-25 years; Next release consideration hearing is March 2010 (actual).
Lamont Layson (A286-417): 11/20/1993: Pled guilty to Aggravated Robbery; 11/30/1993: Sentenced to 7-25 years; Paroled 6/1/2001; Final Release 7/2/2002.

FOREWORD:

Clemency in the case of Vernon L. Smith (n.k.a.: Abdullah Sharif Kaazim Mahdi) A288-960 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.

Mahdi declined an opportunity to be interviewed by the Parole Board on November 12, 2009 at the Ohio State Penitentiary prior to the clemency hearing.

A Clemency Hearing was then held on December 3, 2009 with seven (7) members of the Ohio Parole Board participating. Arguments in support of clemency were presented by Kimberly Rigby and Robert K. Lowe of the Ohio Public Defender's Office and Dr. James Reardon of the Columbus Traumatic Stress Center. Arguments in opposition to clemency were presented by Lucas County Prosecutor Julia Bates, Lucas County Assistant Prosecutor Chris Anderson and Assistant Attorney General Thomas Madden. Charlotte Darwish, wife of the victim, also presented testimony in opposition to clemency. Her daughters Dolly and Mona Darwish were also present.

The Parole Board considered all of the arguments, the 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 seven (7) members participating, the Board voted five (5) to two (2) to provide an unfavorable recommendation for clemency to the Honorable Ted Strickland, Governor of the State of Ohio.

DETAILS OF THE INSTANT OFFENSE (CR94-01-0158): The following account of the instant offense was obtained from the Ohio Supreme Court opinion, decided July 26, 2000:

On the evening of May 26, 1993, Vernon Smith, n.k.a. Abdullah Sharif Kaazim Mahdi, and Herbert Bryson robbed the Woodstock Market located at the corner of Woodstock and Avondale in Toledo. During the robbery, Smith fired a single shot at the upper chest of Sohail Darwish, causing his death. Approximately two weeks later, Smith was arrested and then indicted on one count of aggravated murder with a firearm specification, and a death penalty specification alleging that Smith was the principal offender in committing aggravated murder during an aggravated robbery. Smith was also indicted on three counts of aggravated robbery. Subsequently, Smith was found guilty as charged by a jury and sentenced to death.

During the afternoon of May 26, 1993, Smith met up with Herbert Bryson and Lamont Layson at a dirt basketball court in a park at Highland and Maplewood in Toledo. The trio discussed "hitting a lick," *i.e.*, committing a robbery. The group got in Bryson's car, and Smith directed them to the corner of Woodstock and Avondale, where the Woodstock Market was located. Layson remained in the car while Smith and Bryson headed toward the carryout. Jeremiah Bishop, who was two houses down from the Woodstock Market at that time, saw Smith and another person enter the carryout.

Bryson testified that after he and Smith entered the carryout, they noticed only two people in the store, both of whom were behind the counter. Bryson asked about a type of beer, and the storeowner, Sohail Darwish, came around the counter and walked over to the cooler to assist him. Darwish retrieved a forty-ounce beer bottle from the cooler and placed it on the counter. Bryson did the same. As Darwish was ringing up the sale on the cash register, Smith brandished a black gun and ordered Darwish to "[o]pen the cash register, motherfucker."

Darwish, who was standing next to Bryson, put his hands up in the air and did not resist. Bryson went behind the counter and hit several buttons on the cash register, trying to open it. Bryson then ordered Darwish to open the cash register, which he did. Darwish then put his hands back up in the air.

Osand Tahboub, a former co-worker who was visiting Darwish at the carryout at that time, testified that the gunman then told Darwish to "[m]ove and empty your wallet, motherfucker." As Darwish was reaching for his wallet, Smith fired a single shot, hitting Darwish in the chest. Smith then ordered Tahboub to empty his wallet as well, and the two assailants then fled the scene. Darwish was able to push the alarm button before he fell to the floor. As a result of the single gunshot wound to the upper left side of his chest, Darwish bled to death.

After Smith and Bryson left the carryout, Layson, who was waiting in Bryson's car, noticed Smith holding a gun in his hand when he and Bryson climbed back into the automobile. According to Layson, Smith exclaimed, "[D]ang, I forgot the beer." When Bryson asked Smith "why did he do it," Smith replied that he shot the man "in the arm" because "he moved too slow," and that "[h]e took too long * * * [o]pening the cash register."

According to Layson, Smith then said, "[F]uck him, he in our neighborhood anyway. He shouldn't be in our neighborhood with a store no way." Later, Smith and Bryson split the money taken in the robbery, which was apparently over \$400. They also gave Layson all the stolen food stamps from the robbery plus \$50.

On June 9, approximately two weeks after the murder, police detective Dennis Richardson received information that persons possibly involved in a homicide were incarcerated in the Sandusky County Jail. Based on this and other information he received from sources, Richardson made up an eight-man photo array, including a photo of Herbert Bryson, to show to Tahboub. The next day, upon viewing the array, Tahboub selected Bryson's photo

as “[n]ot the guy with the gun, but the other guy.” Based on this information and the fact that computer records showed Smith as a known associate of Bryson, Richardson compiled a second photo array that included a picture of Smith. Richardson showed Tahboub the second photo array, and Tahboub immediately selected Smith's photo as that of the gunman.

Consequently, Smith was arrested, and along with Bryson and Layson, was indicted by the grand jury in the Darwish murder. In count one, Smith was charged with aggravated felony-murder during an aggravated robbery. A death penalty specification attached to this count alleged that Smith was the principal offender in the aggravated murder during a robbery, R.C. 2929.04(A)(7). The second count charged Bryson and Layson with aggravated felony-murder during an aggravated robbery. Counts three through five charged all three defendants with aggravated robbery of the carryout, of Darwish, and of Tahboub respectively. All five counts also carried firearm specifications.

Prior to trial, defense counsel informed the trial judge that the prosecution had offered Smith a plea bargain to avoid the death penalty. However, Smith declined the plea offer contrary to the advice of defense counsel. At an in-chambers conference, Smith reiterated his desire to decline the plea bargain and proceed to trial.

A jury trial was held wherein both Bryson and Layson testified for the state as a result of plea agreements. Bryson, who was in the carryout at the time of the shooting, testified that Smith fired the gunshot that caused Darwish's death. Layson testified that Smith exhibited no remorse when he admitted that he had shot the carryout owner. Tahboub also testified and identified Smith as the murderer. The defense presented no witnesses and made no closing argument at the conclusion of trial. After deliberation, the jury found Smith guilty as charged.

At the mitigation hearing, several witnesses testified on Smith's behalf, including his wife, mother, and a psychologist, Robert Kahl, who evaluated Smith. In Kahl's opinion, Smith suffers from a mental illness, but Kahl was unable to identify it specifically, since he was unable to complete his evaluation due to Smith's lack of cooperation during the interview process. Smith's mother testified that Smith's biological father was never around during Smith's childhood. In addition, Smith's stepfather physically abused the mother in front of the children, including Smith. Smith's wife, Grace Smith, testified that Smith broke down and cried one or two days after the murder and told her that it was an accident, and that he didn't mean to do it. The jury recommended death, and the court imposed the death sentence on Smith.

PRIOR RECORD

Juvenile: Mahdi has the following known juvenile record:

<u>Date</u>	<u>Offense</u>	<u>Location</u>	<u>Disposition</u>
1983 (Age 11)	Vandalism (2cts.)	Lucas County, Ohio	Placed on probation.

1985 (Age 13)	Criminal Damage	Lucas County, Ohio	\$40 fine & costs suspended, Probation.
1986 (Age 14)	Unauthorized Use of Motor Vehicle	Lucas County, Ohio	Committed to DYS for 6 months – Stayed; Probation, 50 hrs. Public service; 7/9/87: Probation terminated.
1986 (Age 14)	Grand Theft	Lucas County, Ohio	Nolled upon condition restitution be paid.
1987 (Age 15)	Complicity to Commit Robbery	Lucas County, Ohio	Committed to DYS - Stay; Probation, 30 days house arrest.
1989 (Age 16)	Drug Abuse	Lucas County, Ohio	Committed to DYS
1990 (Age 17)	Felonious Assault	Lucas County, Ohio	Committed to DYS

Adult: Mahdi has the following known adult record:

<u>Date</u>	<u>Offense</u>	<u>Location</u>	<u>Disposition</u>
7/2/1992 (Age 20)	License Required	Toledo, Ohio	30 days jail (susp.), \$50.00 fine & costs.
6/11/1993 (Age 21)	Aggravated Murder Aggravated Robbery (2) Aggravated Robbery Case# 93-6197	Toledo, Ohio	DEATH 8-25 years 7-25 years INSTANT OFFENSE

Institutional Adjustment:

Mahdi was admitted to the Department of Rehabilitation and Correction on March 25, 1994. His work assignments while incarcerated at the Mansfield Correctional Institution included Material Handler, Clerk, and Laundry Aide. Since his transfer to the Ohio State Penitentiary, his work assignment has been as a Library Aide.

Mahdi has not completed programming during his term of incarceration. He is eligible to be housed in the Ohio State Penitentiary's extended privilege unit.

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

- 04/21/1995 – Threatening bodily harm to another, with or without a weapon – Mahdi made verbal threats to custody staff. He received 5 days in disciplinary control for this rules infraction.
- 07/23/1996 – Disobedience of a Direct Order – Mahdi was found guilty of disobeying directives from custody staff to not leave a towel hanging off his bed as the towel blocked their ability to observe the cell. He was also found guilty of not allowing staff to check an outgoing package and for being disrespectful. He received 15 days in disciplinary control for this rule infraction.
- 02/25/1999 – Fighting – with or without weapons, including instigation of, or perpetuating fighting – Mahdi was involved in a physical altercation with another inmate. He received 10 days in disciplinary control for this rules infraction.
- 01/04/2006 – Disobedience of a Direct Order – Mahdi, along with other inmates, were praying on the cell range and refused the directive of custody staff to “lock down” until they were done praying. This resulted in a delay to staff that were completing a security check. He received 10 days in disciplinary control for this rules infraction.

Mahdi has received approximately five (5) additional conduct reports since he was admitted to the Department of Rehabilitation and Correction in 1994. Four conduct reports were for Disobedience of Direct Orders (dates of occurrence 10/1994, 11/1994, 12/1994, and 4/1996). He also had one conduct report for Possession of Minor Contraband (date of occurrence 4/2009).

APPLICANT’S STATEMENT:

Mahdi declined an opportunity to be interviewed by the Parole Board on November 12, 2009 at the Ohio State Penitentiary prior to his clemency hearing.

ARGUMENTS IN SUPPORT OF CLEMENCY:

A written application with exhibits outlining the arguments in support of clemency for Abdullah Sharif Kaazim Mahdi was received by the Parole Board. On December 3, 2009, a hearing was conducted to further consider the merits of the application. Kimberly Rigby and Robert K. Lowe of the Ohio Public Defender’s Office represented Mahdi and presented additional witnesses at the hearing in support of clemency:

Attorney Kimberly Rigby shared with the Board that Mahdi is not the “cold blooded killer” that the State is going to make him out to be during its presentation. Rather, Mahdi grew up in a home with no father figure and an absent mother who would often abandon him while she went out and partied. He also witnessed violence when his step-father would physically abuse his mother. Mahdi started to self-medicate by abusing drugs and alcohol starting at 15 years of age. He also became involved in a street gang to “prove himself,” and this led to his juvenile criminal history.

During his childhood, Mahdi had difficulty forming meaningful relationships because his family moved frequently. He attended many different schools and was unable to bond with friends. In essence, he grew up in a home that was plagued with poverty, violence, and neglect.

In 1992, Mahdi attempted to change his life for the better, and he and his wife moved to Dallas, Texas to live with his godmother for approximately six months. However, they moved back to Toledo, Ohio because his wife was homesick, ill, and pregnant. It was at this time that Mahdi regressed back to his old habits and once again became involved in illegal gang activity.

On the day of the instant offense, Mahdi and his wife went to see the movie called Menace II Society. After the movie, he and his wife went their separate ways. Mahdi met up with co-defendants Herbert Bryson and Lamont Layson at a local park. They drove around in the car together, talked about the movie, and decided to get some beer. Attorney Rigby claims that the decision to commit a robbery of the Woodside Market was simply a “spur of the moment decision” on the part of the inmate and his co-defendants. She pointed out that when Mahdi and his co-defendant entered the store, their only intent was to commit a robbery and not a homicide. She further claims that Mahdi was very nervous and shaking, which caused the gun he was holding to “accidentally” fire. The weapon allegedly had a hair trigger and fired easily.

Mahdi thought that the bullet that was fired from his weapon struck the victim in his arm. Mahdi became scared at this time, and he and his co-defendant ran out of the store quickly, leaving the beer on the counter. It was not until the next day when he was watching the news at home with his wife that he learned the victim was killed. At this time, Mahdi became distraught, broke down and cried, and confessed to his wife what he had done. He was arrested 16 days later.

Attorney Rigby stated that Mahdi’s trial counsel was “ineffective from the get go” and that they “failed their client at every turn.” She brought up the fact that trial counsel never questioned prospective jurors about their biases regarding race or religion during the voir dire process. Furthermore, trial counsel conceded to guilt, did not challenge any of the evidence put on by the state, presented no witnesses, presented no closing statement, and only cross-examined two of the state’s witnesses.

Attorney Rigby also shared that the “movie made me do it” theory was inappropriate to be presented during the mitigation phase of trial, and that his counsel failed Mahdi by not presenting his lack of intent to kill during the guilt phase of his trial. Instead, they waited and presented some of this evidence at the mitigation phase of trial after guilt was already established.

During her presentation, Attorney Rigby also claimed that her client’s lack of intent is evident by the fact that the victim was shot in a non-vital area according to the testimony presented by the coroner. The coroner also testified to the fact that the trajectory and initial

entry point of the bullet suggest the lack of intent to kill. Attorney Rigby pointed out that if Mahdi meant to kill the victim, he would have shot him a second time and that he would have shot the other witness that was present in the store at the time of the robbery.

Attorney Rigby further pointed out that one of Mahdi's jurors now agrees with Mahdi's narrative as to what happened on the night the victim was killed. Juror John Scheuer has signed an affidavit indicating that he greatly regretted the decision imposing death in this case. He now believes that nerves played a part in the shooting rather than an intent to kill. He also shared that he can recall that the jury was split about the death penalty because jurors had doubt about Inmate Mahdi's intent to kill.

Robert Lowe of the Ohio Public Defender's Office also presented verbal testimony to the Board supporting clemency for Mahdi. He shared that counsel failed to gain the trust of their client, and that they did not have a good working relationship. He, too, feels that the "movie made me do it" theory was totally inappropriate and that blaming society and the jury for the crime could have prejudiced and alienated the jury. He also pointed out that the jury did not have a complete picture of Mahdi. Dr. Kahl, a psychologist who presented at the mitigation phase of the trial was never able to complete his examination of Mahdi as Mahdi refused to continue the examination. Additionally, counsel did not hire a mitigation specialist to consult with prior to this phase of the trial.

Attorney Lowe also urged the Board to examine Judge Sherck's dissent with the Sixth Circuit Court of Appeals when he wrote: "The physical evidence and undisputed testimony tends to support the appellant. This is true whether or not the gun went off because of the appellant's nervousness. Appellant was at close range, within a few feet of the victim, and hit a spot on the victim's body which, in most circumstances, would not be in a vital area."

In a letter dated November 9, 2009, Judge Sherck supplied the Board with a ratification and explanation of his dissenting opinion. He summarized his dissent by stating, "...in essence, the defendant was provided with little defense in this case. This is so because defense counsel chose a trial tactic that was essentially wiped out by a change in the law."

Attorney Lowe also referenced Justice Lundberg Stratton's dissent in the Ohio Supreme Court decision. In her dissent she concluded: "...that issues of race and religion so infected this trial that the failure to voir dire the jury on those issues made counsel's performance so deficient that counsel were not functioning as the counsel guaranteed by the Sixth Amendment, and that counsel's errors prejudiced the defendant and deprived him of a trial whose result was reliable."

Finally, Attorney Lowe argued to the Board that this case does not constitute "the worst of the worst." Furthermore, the jury was not able to consider life without the possibility of parole in that this sentencing option was not available at that time. He referenced a capital case from Lucas County in the year 2000 where Terrance Davis shot his pregnant girlfriend six times in the stomach killing both her and her unborn child. The jury came back with the sentencing option of life without the possibility of parole. He also pointed out that since

1996, 29 capital cases have gone to trial in Lucas County. Those trials have resulted in eight death sentences and seven sentences of life without the possibility of parole.

With regard to Mahdi's adjustment to prison, Attorney Lowe pointed out his client has only received nine conduct reports in that last 15 years. Only four of those conduct tickets resulted in disciplinary control. He also informed the Board that Mahdi is a compliant inmate, resides on the extended privilege unit, has adapted to prison life, has shown that he can function within a structured and disciplined environment, and that he presents no risk for future dangerousness.

Attorney Rigby read statements to the Board from Mahdi's aunt, Patricia Dickerson and his cousin, Johnnell Terrell. Ms. Dickerson who was like a mother to Mahdi shared that Mahdi was only 14 years of age when his grandmother collapsed and died in his presence. A year later, he also experienced the loss of his most-loved cousin, her son, who was killed in an auto accident. Additionally, Mahdi came within inches of his own death when he suffered a head trauma himself.

Dr. James Reardon who is a psychologist with the Columbus Traumatic Stress Center also presented testimony to the Board. Dr. Reardon had the opportunity to meet with and evaluate Mahdi 13 years ago for a post conviction forensic consultation. The Ohio Public Defender's Office contacted him again and requested his assistance for Mahdi's clemency hearing. Dr. Reardon did request to meet with Mahdi again prior to the clemency hearing, but Mahdi declined that invitation.

Dr. Reardon shared that he does not feel that the words "cold blooded" and "no remorse" describe Mahdi. He described a cold blooded killer as "someone who is devoid of feeling." Dr. Reardon then went on to share examples with the Board of offenders he believed were cold blooded killers and contrasted them to Mahdi. He further pointed out that he believes Mahdi displayed remorse for this senseless killing. Thirteen years ago when interviewed by Dr. Reardon, Mahdi shared that the decision to rob the store was a last minute decision. He further indicated that the gun just "went off," and he thought that the victim was shot in the arm.

Dr. Reardon went on to explain his opinion as to why Inmate Mahdi did not cooperate throughout the trial process. He felt that Inmate Mahdi suffered from psychological issues specifically a depressive disorder beginning early on in his life. He lost his only stability when his step-father left and his mom was absent from his life most of the time. Subsequently, Mahdi turned to alcohol and marijuana to self medicate. Dr. Reardon also concluded that Mahdi suffered from a paranoid personality disorder and this fact was one of the reasons he had difficulty trusting others.

Dr. Reardon shared that it was unfortunate that Mahdi did not speak to the Board. He shared that Mahdi did express remorse for his actions 13 years ago. He further indicated that Mahdi took complete responsibility for his actions, but was not pleased with the way his counsel handled his case.

Dr. Reardon criticized the fact that Dr. Kahl, the psychologist who testified during the mitigation phase of the trial, only met with Mahdi ten days prior to his trial. Furthermore, Dr. Kahl was unable to complete his psychological testing with Mahdi because he was unable to establish a rapport with him. He also characterized Dr. Kahl's opinions during the mitigation phase of trial as "inept and counterproductive" and most likely "pissed off the jurors." Dr. Reardon was surprised to see that Dr. Kahl had a sum total of two written pages of notes from his interview with Mahdi. He also shared that Mahdi was offended by Dr. Kahl comparing his crime to the movie Menace II Society.

Dr. Reardon concluded his testimony by stating the Mahdi is not the "worst of the worst" and should be granted clemency. Rather, Mahdi made a bad decision, regrets it, feels responsible, but knows he can't change it. Furthermore, Mahdi feels sorry for what he did and not for himself. Dr. Reardon truly believes that some individuals do deserve the death sentence, but Mahdi is not one of them.

ARGUMENTS IN OPPOSITION TO CLEMENCY:

Arguments in opposition to clemency were presented by Lucas County Prosecutor Julia Bates, Lucas County Assistant Prosecutor Chris Anderson, and Assistant Attorney General Thomas Madden. Charlotte Darwish, wife of the victim, also presented testimony in opposition to clemency.

Lucas County Prosecutor Julia Bates shared with the Board that she was an Assistant Prosecuting Attorney when Mahdi was tried. While she was not assigned to handle the case, she vividly recalls seeing the victim's wife, Mrs. Darwish in court. Mrs. Darwish was pregnant, and had a daughter with her who was less than a year old. Both of these children were to grow up without their father. Prosecutor Bates reminded the Board not to forget about the victim in this case who she described as a loving husband and father. Prosecutor Bates shared that the testimony presented by defense counsel and their witness during the clemency hearing was "purely speculation, lacked credibility and was a last ditch effort." She also pointed out that this case has been litigated thoroughly for the last 16 years, and all issues raised at the clemency hearing have already been addressed. She respectfully requested that the judgment and sentence be carried out.

Assistant Prosecutor Chris Anderson was the trial prosecutor who handled the actual prosecution of this case back in 1994. He stated that the only reason the State offered an initial plea agreement to Mahdi was because their main witness returned to Lebanon after the offense, and they were concerned that their case would be weakened without him. Mahdi, however, would not accept the plea. The prosecutor's office then received assistance from the United States Embassy, and was able to facilitate the witness returning to Toledo days prior to the beginning of the trial. Mahdi then requested to enter into a plea following voir dire. A meeting was held with the victim's widow at defense counsel's request. However, during the meeting she indicated that she would not be supportive of the plea and the plea agreement was not again offered.

Prosecutor Anderson shared that many capital cases are purely mitigation cases particularly where there is overwhelming evidence of guilt, as in this case. Arguing guilt can actually be counter productive for the defense. He argued that hearsay rules prevented the defense from raising the accident theory in the guilt phase of the trial, due to the fact that the only evidence that existed to support the accident theory was Mahdi's statement that he made to others. Those statements are not admissible; therefore, it was not ineffective representation by defense counsel to not pursue the accident theory, but was a tactical choice. He further pointed out that the victim fully complied with the demands of Mahdi and offered absolutely no resistance. In fact, Mr. Darwish was shot as he was retrieving his wallet. The coroner also testified that the victim was shot in the chest, and not the left shoulder or arm as the defense claimed during their presentation to the Board.

Additionally, Mahdi continued with the robbery after shooting Mr. Darwish when he pointed his gun at a second victim in the store and demanded his money. He and his co-defendant then fled the scene. Prosecutor Anderson shared that the only remorse Mahdi displayed was a statement of regret to his codefendant that he left the beer at the store. Mahdi also stated to his codefendant that he shot the victim because "he moved too slow," and that "he took too long opening the cash register."

Prosecutor Anderson urged the Board to consider the fact that all courts that have reviewed this case have rejected the accident theory. Even Judge Sherck on post conviction denied the residual doubt theory. With regard to not asking about race and religion during voir dire, Prosecutor Anderson believes the defense thought this might help keep jurors more open-minded.

Prosecutor Anderson contended that many of defense counsel's tactics were directed by Mahdi, and that he himself sabotaged his own defense. Mahdi was uncooperative throughout the trial, chose to wear his jail uniform to trial, and would not cooperate with Dr. Khal, the psychologist who was supposed to testify on his behalf at the mitigation phase of trial. Prosecutor Anderson pointed out that Mahdi continues to be uncooperative as evidenced by his refusal to speak with Dr. Reardon, or to be interviewed by the Board as part of the clemency process. He also asked the Board to discount Dr. Reardon's testimony in that he has not spoken to Mahdi in 13 years.

Prosecutor Anderson also asked the Board to discount the two juror affidavits presented by defense counsel. He pointed out that a verdict cannot be legally overturned based on juror reconsideration. He also pointed out that it was defense counsel who prepared the affidavit that Juror John Scheuer signed, which calls into question whether this juror understood the actual trajectory of the bullet.

With regard to Juror Johnson, defense counsel presented to the Board that trial counsel should have objected to Mr. Johnson sitting as a potential juror in that he knew several of the police officers involved in the investigation and one of Mahdi's co-defendants. Juror Johnson was the assistant principal at the high school that co-defendant Herbert Bryson attended. He knew Bryson as a "bad little rascal" and recalled that he had been suspended from school. Prosecutor Anderson pointed out that Mahdi's attorneys likely would have

wanted to keep this juror in that he might not have found Bryson's testimony incredible. This would have been beneficial to the defense as Bryson was called as a state's witness. Furthermore, Juror Johnson did not state in his affidavit that he struggled with or regretted his recommendation of death to the court in this case.

Assistant Attorney General Thomas Madden stated that intent in this case is very clear. Mahdi intended to commit a robbery with a gun, he gave co-defendant Bryson directions to the Woodstock Market in Toledo, Ohio, he had been in the store before, he had a loaded weapon, he shot the victim in the chest, and showed no remorse other than forgetting the beer. He also pointed out the Inmate Mahdi had been committing crimes since he was 11 years of age.

The state concluded their presentation by stating that defense counsel's arguments do not merit clemency and that the sentence of death as recommended by the jury and imposed by the judge should be carried out.

VICTIM'S REPRESENTATIVES:

Charlotte Darwish, wife of the victim, also presented testimony in opposition to clemency. Her daughters, Dolly and Mona Darwish, were also present. She pointed out that her children like Mahdi were raised in the inner city, were raised in a fatherless home, and had to rely on welfare to survive. The only difference is that they applied themselves, received scholarships to attend an affluent school, and remain on the honor roll today.

Mrs. Darwish shared with the Board that her husband was a good father, loving husband, and a giving man. When she closed her husband's store after his death, she found \$4,000 of IOU's where her husband had allowed customers who had no money to purchase food for their families based on the IOU system.

With regard to plea negotiations, Mrs. Darwish met with defense counsel on a Saturday following voir dire simply to inconvenience them. She had no intentions of accepting a plea negotiation and simply wanted to see how far the defense was willing to go to protect their client. She also wanted to meet with them so she could vent her frustrations.

Finally, Mrs. Darwish told the Board that Mahdi had no reason to kill her husband in that he complied with all of Mahdi's demands. Additionally, she shared with the Board that she prefers to refer to Inmate Mahdi as Vernon Smith which is his given name. Mahdi in Arabic means "chosen one" and that this continues to be his mindset in that Vernon Smith feels like he is "the savior or the chosen one". Mrs. Darwish concluded by asking that the death sentence in this case be carried out.

PAROLE BOARD'S POSITION AND CONCLUSION:

The Board reviewed documentary evidence presented both in support of and in opposition to clemency. Five (5) of the seven (7) Parole Board Members found the following factors pivotal to their recommendation regarding an unfavorable recommendation of clemency:

- The issues that were raised in the clemency application as well as in the oral presentation by the Ohio Public Defender's Office simply reiterated all of the claims that have been extensively reviewed and discounted by the courts for the past 16 years.
- While some mitigation was presented regarding Inmate Mahdi's childhood, members found that these factors did not outweigh the aggravating factors in this case.
- The sentence of death is not disproportionate to other similar Aggravated Murder/Aggravated Robbery cases that involved the killing of a store merchant.
- There was absolutely no reason for Mahdi to kill the victim. The victim in this case was shot in the chest as he was attempting to reach for the wallet in his pocket. The victim was completely compliant with Mahdi's demands and offered absolutely no resistance, thus making this killing even more aggravating.
- Mahdi refused to communicate with the Board by way of an interview or through a written statement apparently because he believes he has said everything there is to say about the offense. This is indicative of Mahdi's continued lack of cooperation. There is no indication of significant remorse.
- Furthermore, the only display of remorse presented to the Board occurred many years ago and is hearsay.
- Mahdi has a prior juvenile record that involved commitments to the Department of Youth Services. His record began when he was 11 years of age.
- There was no manifest injustice that occurred in this case, and no substantial basis for mercy to be granted.

Two (2) of the seven (7) Parole Board Members found the following factors pivotal in making a favorable recommendation regarding clemency:

- Although it is troubling that Mahdi did not choose to participate in an interview with the Board, we find that the information presented at the clemency hearing and the information submitted to the Board, lead us to vote in the minority. We respectfully dissent and recommend a commutation to a life sentence without the possibility of parole for the following reasons:
- Some consideration was given to Judge Sherck's opinion regarding the death penalty for the "worst of the worst cases." Although, in reality, it does not get any worse than losing a loved one to murder under any circumstances, there are cases on death row for Aggravated Murder committed during a robbery of a retail establishment that may make them the worst of the worst. Many of them have characteristics (such as multiple slayings, execution-style killing, prior record of imprisonment and the like) that may make them the "worst of the worst." This case lacks those characteristics. At the hearing, the Attorney General's office brought up the case of Ernest Martin, who was executed after having committed Aggravated Murder during the robbery of a store. However, he shot the clerk through a closed glass door at the beginning of the robbery, clearly intending to kill the clerk.

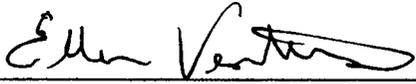
- The prosecution offered Mahdi a plea agreement that removed the death penalty, before the jury was selected. In the clemency hearing, the prosecutor explained that the offer was made because they were not sure if the eyewitness, Mr. Tabhoub would return from Lebanon. However, in the trial summary that was submitted by the state, they say the offer was made, they were not sure if the witness would return, and that Mahdi took too long to respond- so they took the offer off the table. According to the defense counsel, the offer was not “taken off the table”; Mahdi turned the plea offer down. At the time of the offer, the prosecutor was willing to accept a sentence without the death penalty. The second plea agreement discussion was initiated by Mahdi. The prosecutor reported he said “no” but was then asked if they could all meet and talk to the victim’s widow, which the prosecutor agreed to do. The affidavit from then defense counsel states they were discussing terms of the agreement when the victim’s widow objected to a plea. However, again, the prosecutor was willing to accept a sentence without the death penalty.
- Judge Sherck and Juror Scheuer raise concerns about whether the inmate intended to kill Mr. Darwish. Judge Sherck agrees with the aggravated murder conviction but does not agree with the sentence of death in this instance. He focused on many reasons and he particularly doubted Mahdi’s intent to kill. Judge Sherck opined that “the *McGuire* case eliminated consideration of residual doubt during the sentencing phase of the trial by overruling *Watson*, which was law during the time of the applicant’s trial and that it is fundamentally unfair to retroactively apply *McGuire* to this case.” “The unfairness occurs because the defense withheld certain evidence going to appellant’s intent in the guilt phase, undoubtedly believing it more persuasive as going toward residual doubt in the penalty phase. In my view, this is critical because that evidence creates doubt as to appellant’s *mens rea* at the time of the shooting.” Former Juror Scheuer, in a sworn affidavit, stated he regrets imposing death on Mahdi. The jury submitted questions twice during deliberations about intent. Mahdi himself thought he shot the victim in the arm, making it unlikely he believed he had killed Mr. Darwish. The co-defendant(s) stated Mahdi made negative comments about Mr. Darwish and they also stated Mahdi said he shot the victim in the arm. If we are to find them credible as to the report of the negative comments they say he made, why wouldn’t we find them credible when they say that Mahdi said he shot him in the arm and that Mahdi believed he had shot him in the arm-thus raising questions about his intent. We also considered that Mahdi did not shoot Mr. Tabhoub. It may lead one to believe that he was not in the mind set to kill to evade detection by killing all witnesses or otherwise display the traits of a “cold-blooded” killer.
- Mahdi states the gun went off due to his nervousness during the robbery. Was this a “robbery gone bad” or did he intentionally shoot Mr. Darwish? The jury decided that this was an aggravated murder. Mahdi indicated to his co-defendants that he shot the victim in the arm and complained that he should not be in the neighborhood anyway. It appears his intentions were not to kill Mr. Darwish and at that point he did not think he had.

- Given the concern over Mahdi's intent to kill and considering Judge Sherck's opinion as to whether this is the "worst of the worst" in terms of Aggravated Murders during the robbery of a retail establishment, a sentence of life without parole could likely have been chosen by the jury had it been available. We believe that is the more appropriate sentence in this case.

RECOMMENDATION:

The Ohio Parole Board with seven (7) members participating, by a vote of five (5) to two (2) recommends to the Honorable Ted Strickland, Governor of the State of Ohio, that executive clemency be **denied** in the case of Vernon L. Smith (n.k.a.: Abdullah Sharif Kaazim Mahdi) A288-960.

Adult Parole Authority
Ohio Parole Board Members
Voting Favorable

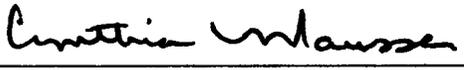


Ellen Venters

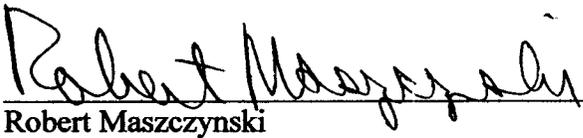


R. F. Rauschenberg

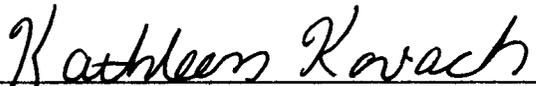
Ohio Parole Board Members
Voting Unfavorable



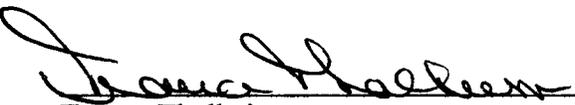
Cynthia Mausser, Chair



Robert Maszczyński



Kathleen Kovach



Trayce Thalheimer



R. B. Oberdier, Acting Board Member