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**IN RE: BRETT XAVIER HARTMAN, OSP #A357-869**

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

Date of Meeting: July 12, 2011

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: BRETT XAVIER HARTMAN, OSP # A357-869

SUBJECT: Death Sentence Clemency

CRIME, CONVICTION: Aggravated Murder with death penalty specification, Tampering with Evidence, Kidnapping

DATE, PLACE OF CRIME: September 9, 1997 in Akron, Ohio

COUNTY: Summit

CASE NUMBER: CR 97-09-1987

VICTIM: Winda Snipes, (age 46)

INDICTMENT: 9/17/1997: Count 1: Aggravated Murder; Count 2: Tampering with Evidence.

INDICTMENT SUPPLEMENT: 10/16/1997: Count 3: Aggravated Murder with specification; Count 4: Kidnapping.

TRIAL: Jury

VERDICT: 4/30/1998: Found guilty as indicted.

SENTENCE: 5/22/1998: Count 3: Sentenced to DEATH (\*Note - Count 1 was merged with Count 3 by the Judge for sentencing purposes); Count 2: 5 years; Count 4: 10 years.

ADMITTED TO INSTITUTION: June 2, 1998

JAIL TIME CREDIT: 11 days

TIME SERVED: 157 month (does not include JTC)

AGE AT ADMISSION: 23 years old

CURRENT AGE: 37 years old

DATE OF BIRTH: June 29, 1974

PRESIDING JUDGE: Honorable Michael T. Callahan

PROSECUTING ATTORNEY: Sherri Bevan-Walsh

**FOREWORD:**

Clemency in the case of Brett Xavier Hartman, A357-869 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. A Clemency hearing was previously held in this case on February 26, 2009, after which the Parole Board submitted an unfavorable (8-0) recommendation to then Governor Ted Strickland. Mr. Hartman received a stay of the April 7, 2009 execution date. The Ohio Supreme Court has now set a new execution date of August 16, 2011.

On June 28, 2011, Brett Hartman was interviewed via video-conference by the Parole Board from the Ohio State Penitentiary. A Clemency Hearing was then held on July 12, 2011 with eight (8) members of the Parole Board participating.

The Parole Board considered all of the written submissions, arguments, information disseminated by presenters at the hearing, prior investigative findings as well as judicial decisions and deliberated upon the propriety of clemency in this case

The Parole Board considered all of the written submissions, arguments, the information disseminated by presenters at the hearing, materials and testimony disseminated during the Clemency Hearing of February 26, 2009, and any investigative findings as well as judicial decisions as they deliberated upon the propriety of clemency in this case. With eight (8) members participating, the Board voted unanimously to provide an unfavorable recommendation for clemency to the Honorable John R. Kasich, Governor of the State of Ohio.

**DETAILS OF THE INSTANT OFFENSE (CR97091987):** The following account of the instant offense was obtained from the Ohio Supreme Court opinion, decided October 3, 2001:

“Brett Hartman met Winda Snipes at a bar in Akron, Ohio, sometime during 1997. Subsequently, they engaged in sexual intercourse on several occasions. During the late afternoon of September 9, 1997, Hartman went to Snipes's apartment and brutally murdered her by tying her to the bed, stabbing her one hundred thirty-eight times, slitting her throat, and cutting off her hands.

Hartman was convicted of aggravated murder, kidnapping, and tampering with evidence, and sentenced to death. In order to establish Hartman's guilt, the state introduced statements Hartman had made to the police and to a fellow inmate in jail, and the testimony of a co-worker that Hartman mentioned cutting off a victim's hands as a way to eliminate evidence in the O.J. Simpson case. The state also introduced as evidence Hartman's bloody tee-shirt and Snipes's watch recovered from Hartman's apartment, and forensic testimony linking Hartman to the murder.

Around 2:20 a.m. on September 9, 1997, Brett Hartman met Winda Snipes at the Bucket Shop, an Akron bar. Hartman kissed Snipes on the cheek and they talked. Thereafter,

Hartman and Snipes left the bar and they went to her apartment across the street.

Around 3:00 a.m., David Morris, an acquaintance of Hartman and Snipes, left the Inn Between, another Akron bar. While walking past Snipes's apartment on his way home, Morris observed Snipes and Hartman through the upstairs window of her apartment. Morris testified that Snipes was yelling at Hartman about touching stuff that was not his. Hartman closed the window blinds and "obviously she wasn't very happy about it" because she "scolded" him and reopened the blinds.

That afternoon, at around 4:30 p.m., Snipes was observed crossing a street in a nearby business district. She was never seen alive again.

Hartman had the day off from work on September 9. According to Richard Russell, a bartender at the Inn Between, Hartman entered the bar at around 8:00 p.m. and appeared nervous and hyper, and talked excessively. Thereafter, Hartman was in and out of the bar five to six times between 9:00 and 10:30 p.m.

Hartman first contacted the police on September 9 with a series of anonymous 911 calls, which he later admitted to. His first 911 call at 9:59 p.m. reported the location of a mutilated body. The police officers dispatched to Snipes's address entered Snipes's apartment building and checked around, but left after finding nothing unusual. Meanwhile, Hartman viewed the police unit's arrival and departure while hiding behind a tree across the street. Hartman then made another 911 call telling the police to return to the apartment building and provided further instructions on the body's location.

Akron police officers responding to this call entered Snipes's unlocked apartment and found her naked, mutilated body lying on the bedroom floor. Snipes's leg was draped across the bed, a pair of pantyhose tied her ankle to the bed leg, and a white plastic chair was on top of her body. Snipes's hands were cut off and have never been found.

Around 10:45 p.m., Hartman was at the Inn Between with Morris, while police units were across the street investigating Snipes's murder. Morris, having learned that Snipes had been murdered, suggested to Hartman that he should talk to the police, since Morris had observed Hartman at Snipes's apartment the previous evening.

Shortly before midnight, Hartman approached Detective Gregory Harrison while he was at a mobile crime lab parked outside Snipes's apartment. Hartman walked up to Harrison and said, "I hear it's pretty bad in there," and asked if Harrison had "ever seen anything so gruesome." Later that evening, Hartman approached Harrison a second time and spontaneously mentioned that Snipes was a whore, "that she slept around a lot," and that "he had slept with her and he had even slept with her the night before at 3:00." In their final contact at around 3:00 a.m., Hartman was "kind of mumbling to himself" and Harrison heard Hartman say that "she was a whore, she was a big whore, she got what she deserved."

Between 11:30 p.m. and 12:15 a.m., Hartman also approached Akron Police Lt. John A.

Lawson near the murder scene and, “rather abruptly said, ‘You’re going to find my semen in her and my prints over there.’ ” When Lawson asked why, Hartman said he “had been with her earlier that morning, the morning of the 9th,” and that he had had sex with her.

At 12:15 a.m. on September 10, Hartman spoke to Detective Joseph Urbank in front of the apartment building. Hartman began their conversation by announcing that “he had sex with the victim the night before.” Moreover, Hartman said he did not know her name but “only knew her as psycho bitch and that everybody knew that if you got drunk and were horny you went to go see her, you went to go see psycho bitch.”

Hartman also told Urbank that he went to Snipes's apartment at 2:30 a.m. on September 9, and “she started dancing a little bit.” He “lifted her onto the bed, undressed her,” and “they started having vaginal intercourse.” Hartman said that he was disappointed because Snipes refused to have anal intercourse, and he left her apartment around 3:30 a.m. However, Hartman claimed that he did not know anything about the murder until the bartender at the Inn Between told him about it on the evening of September 9.

Around 6:00 a.m. on September 10, police took Hartman to the Akron police station, where he was interviewed by Lawson and Urbank. During his interview, Hartman denied making the 911 calls, and denied hiding behind a tree across from Snipes's apartment. Then, Hartman changed a part of his story and admitted hiding behind a tree near the murder scene.

Following the September 10 police interview, the police searched Hartman's apartment with his consent. The police seized Hartman's bloody tee-shirt from underneath the headboard of his bed, a pair of his jeans, and his boots. Police found a knife on his dresser and Snipes's wristwatch on Hartman's bed stand.

Police took Hartman to the police station after the search of his apartment. While awaiting transfer to the Summit County Jail, Hartman approached Detective John R. Gilbride and blurted out, “I was the one that called the police” and “I’m the one that found the body.”

Hartman told Gilbride he had been sexually involved with Snipes since February 1997, and had sexual intercourse with Snipes during the early morning hours of September 9. Hartman stated that “after having sex the psycho bitch threw him out of the apartment stating that her boyfriend was coming over.” He left around 3:30 a.m. and returned to his own apartment.

According to Gilbride, Hartman said that he slept until 6:00 p.m. on September 9, and then took the bus to the Inn Between bar around 7:30 p.m. Gilbride testified that while going into the Inn Between bar, Hartman noticed a light on in Snipes's apartment and decided to visit her. According to Gilbride, Hartman gained entry to the apartment through an unlocked door and claimed that he found her dead body in her bedroom. Hartman said that he unsuccessfully tried to pick her body off the floor, noticed that her hands had been cut off, and “freaked out.” Thinking “I’m going to get busted for this,”

Hartman washed her blood off his hands and clothes, tried wiping down everything he touched, removed evidence linking him to her apartment, and went home.

Snipes was stabbed one hundred thirty-eight times. Bruising on her ankles indicated that she was alive when she was tied to the bed. Additionally, sperm was found in her vagina and anus. The medical examiner concluded that Snipes had died from strangulation and a slit throat either in the late afternoon or early evening of September 9.

Police found Hartman's bloody fingerprint on the leg of the white chair draped over Snipes's body, and police found another of Hartman's fingerprints on Snipes's bedspread. An expert witness testified that the long linear blood patterns found on Hartman's tee-shirt and Snipes's bedspread were applied by a long-bladed knife. Further, the blood patterns found on Hartman's tee-shirt were applied while the tee-shirt was lying flat, and not while Hartman was wearing it.

At trial, the prosecution introduced a set of Hartman's knives, including a meat cleaver, a knife, and a knife sharpener that Hartman kept at the Quaker Square Hilton, where he worked as a chef.

Christopher Hoffman, a Hilton co-worker, testified that he talked to Hartman in August 1997 about the O.J. Simpson trial. According to Hoffman, Hartman said that Simpson could have disposed of evidence against him by cutting off the victim's hands and eliminating "fibers and hair and skin that might be found on the fingernails."

Bryan Tyson, a fellow inmate at the Summit County Jail, testified that during a jailhouse conversation, Hartman admitted that he had killed Snipes. According to Tyson, Hartman said that "he pushed himself on her, something in his mind snapped, she was hitting him, he lost his temper, did things he regretted, killed her." Then, Hartman said that he had "tried to make it look like a burglary," admitted cutting off Snipes's hands, and mentioned a hacksaw, and jokingly said " 'Don't leave home without it,' like the credit card commercial."

Jessica O'Neill, an acquaintance of Hartman, talked on the phone with Hartman on September 9. Phone records showed that O'Neill called Hartman's apartment and spoke with him at 3:12 p.m. and 4:50 p.m. She also claimed that she talked with Hartman on the phone around 6:30 or 7:00 p.m.

The defense also introduced evidence suggesting an alternative suspect, Jeff Nichols. Nichols lived across the hallway from Snipes's apartment until he moved out of his apartment around September 1, 1997. Nichols worked as a handyman for the apartment building and had access to the landlord's keys to other apartments.

In January 1997, Jeffrey Barnes, a friend of Snipes, was visiting Snipes's apartment when Nichols came to her door. According to Barnes, Nichols "got up right to her door and then he said, 'Slit the bitch's throat, cut her up,' and called her a slut and all other kind of vulgar names." Barnes reported this incident to the police upon hearing about Snipes's

murder.

On an evening prior to September 1, 1997, Linda Zarski, a neighbor in Snipes's apartment building, heard Snipes pounding on Nichols's door and screaming that she wanted her shirt.

On another occasion prior to the murder, Linda Kinebrew, a neighbor living at the apartment, "heard [Nichols] arguing, telling [Snipes] to let him in and she wouldn't."

Carol Parcell, Hartman's mother, provided an alibi. Hartman lived at his mother's apartment, and Parcell claimed that when she came home on September 9 at 6:15 p.m., her son was sleeping in his bedroom. According to Parcell, Hartman woke up at 7:00 p.m., got ready, left the apartment at 7:30 p.m., and returned to the apartment around 8:15 p.m.

Hartman testified on his own behalf. He admitted having sex with Snipes several times over the past year and during the early morning hours of September 9 when he was at Snipes's apartment. After having sex, Hartman returned to his apartment at about 3:30 a.m., slept until 6:15 p.m., left his apartment at 7:35 p.m., and returned to the Inn Between bar.

Before reaching the Inn Between, Hartman noticed that Snipes's bathroom light was on at her apartment, and he decided to visit her to see if he could "get laid." Hartman entered Snipes's apartment through an unlocked door and found her mutilated body in the bedroom. Hartman tried to "get her up and put her on the bed to see if there was anything else I could help with."

Hartman "freaked out" after noticing Snipes had no hands and realized he "could get in a lot of trouble" if he was placed at the scene. Thus, he washed her blood off his hands, wiped down the cupboards, chair handles, and anything else he might have touched, gathered whatever items he could find that belonged to him, and left Snipes's apartment. Hartman "ran home" and threw the items taken from Snipes's apartment into a nearby dumpster. Upon arriving home, Hartman changed his shoes and hid the bloody tee-shirt so that his mother would not find it.

Thereafter, Hartman hurried back to the Inn Between bar and started drinking. When he was "semi-intoxicated," Hartman made the anonymous 911 calls reporting the location of Snipes's body, admitted standing behind a tree watching the police arrive at Snipes's apartment, and later approached the police to report that he had been at the apartment the previous evening.

Hartman introduced photographs taken of his naked body following his arrest to show the absence of bruises and injuries. Hartman explained that a cut on his elbow had occurred at work while he was moving crates.

Hartman acknowledged talking with Chris Hoffman about the O.J. Simpson case but did

not recall discussing anything about cutting off a victim's hands.

Hartman knew Tyson as a fellow inmate but denied making any jailhouse admissions that he murdered Snipes.

The grand jury indicted Hartman on two counts of aggravated murder, including one count of murder with prior calculation and design and one count of felony murder. A capital specification relating to murder during a kidnapping was included in the felony murder count. He was also charged with kidnapping and tampering with evidence.

The jury found Hartman guilty of all offenses and recommended death for Snipes's murder. The trial court sentenced Hartman to ten years for kidnapping, five years for tampering with evidence, and death for the aggravated murder of Snipes.”

### **PRIOR RECORD**

**Juvenile:** Brett Hartman has no known juvenile arrest record in Ohio. As a juvenile, he lived in Arizona, California, New Mexico, Ohio and Wisconsin. At the age of 13, he was charged with Theft and placed in the New Mexico Diagnostic Center for a term of 90 days. Hartman self-reported that he continued to have contact with juvenile authorities. He incurred drug related charges, joyriding, shoplifting, and several DUI's. He turned himself into juvenile authorities at the age of 17 at which time he was placed in a Group Home. No further information is available.

**Adult:** Brett Hartman has the following known adult arrest record:

<b><u>Date</u></b>	<b><u>Offense</u></b>	<b><u>Location</u></b>	<b><u>Disposition</u></b>
9/7/1997 (Age 23)	Aggravated Murder with specification; Tampering with Evidence; Kidnapping CR97-09-1987	Akron, Ohio	<b>Instant Offense</b>

**Traffic:** Hartman has received traffic citations that were disposed of via fine, court costs and driving suspension.

### **Institutional Adjustment:**

Brett Hartman was admitted to the Department of Rehabilitation and Correction on June 2, 1998. His work assignments while incarcerated at the Mansfield Correctional Institution included Food Service Worker, Laundry Worker, Material Handler, Porter, Recreation Worker and Tutor. Since his transfer to the Ohio State Penitentiary, Hartman's work assignments included Library Aide and Clerk Administrator.

Hartman has participated in several programs during his incarceration including a Medical Programming Class, Drug Awareness, SAFE People, Commitment to Change and Stress Management. He participated in Controlling/Managing Anger (CALM I-III)

courses in 3/2009, 6/2009 and in 3/2011. Hartman continues to participate in multiple inmate community service projects and has assisted in various institutional art and painting projects at the Ohio State Penitentiary. In October 2006, Hartman achieved a certificate in Legal Assistant / Paralegal studies through a correspondence program. In March 2008, he achieved a certificate of ordination from the Minister's for Christ Assembly of Churches, a result of his self-studies. Hartman has also attended regular Christian worship services at the Ohio State Penitentiary since June 2006.

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

- 4/09/2009 – Possession of Contraband, including any article knowingly possessed which has been altered or for which permission has not been given – Hartman was in possession of two pieces of metal from a pair of broken tweezers. He received 7 days in disciplinary control for this rules infraction.
- 1/28/2009 – Disobedience of a Direct Order – Hartman refused to uncover his cell window and also used disrespectful language toward staff. He received 7 days in disciplinary control for this rules infraction.
- 9/22/2002 – Possession of Contraband, including any article knowingly possessed which has been altered or for which permission has not been granted – Hartman was found guilty for possessing 83 extra state envelopes. He received 6 days in disciplinary control for this rule infraction.

Brett Hartman has received approximately seven (7) additional conduct reports since he was admitted to the Department of Rehabilitation and Correction in 1998. These conduct reports did not result in Disciplinary Control. They were for possession of minor contraband items (6) and disrespect to staff (1).

#### **APPLICANT'S STATEMENT:**

Hartman was interviewed by the members of the Parole Board on June 28, 2011. Hartman opened the interview by saying that he feels horrible about the victim's death, but that he was not the person responsible for her death. He admitted doing many stupid things the night of the murder, getting in over his head and panicking. However, he does not wish to die for something he did not do and wants a chance to regain his life. If executed, there will be no chance of proving his innocence. He also argued that he can be of benefit to General Population.

Hartman explained that, on the evening before the murder, he went to the bars and hoped to meet a woman he had started dating. However, she didn't show up. Instead Hartman ran into the victim at the Bucket Stop Bar. After closing time, both went to her place and had sex. Contrary to his previous statements, Hartman told the Board that he doesn't remember having anal sex with the victim. At one point, the victim said her boyfriend was coming and that Hartman had to leave. Although heavily intoxicated, Hartman got dressed and left the apartment. Also contrary to previous statements made by him, Hartman said that he left his t-shirt at the victim's apartment and left wearing only a

white light windbreaker. Hartman stated that he went home around 1:00-2:00 in the morning.

Hartman admitted having a peculiar, casual sexual relationship with the victim. Neither one really knew each other's name. The victim would call the applicant either Brent, Brad, or whatever. They would meet at bars and go back to her apartment for sex. Hartman told the Board that he never took Ms. Snipes to his place.

After leaving the victim's apartment, Hartman arrived home and sleep for most of the day. He had a hangover, but was not drunk. Hartman argued that he was at home at the time of the victim's death. He even answered a couple of phone calls at the time of her death. When he finally woke up, Hartman got ready and left his apartment around 6:00 p.m. He caught the 7:35 p.m. bus to Highland Square with the intention of going back to the bars. Hartman had to take the bus because his license was suspended as the result of several DUIs and unpaid fines.

After getting off the bus, Hartman noticed that the victim's light was on. Hartman stated that he was planning on having sex with a female friend later that night and wanted to have sex with the victim as a warm up. Without being concerned about the victim's boyfriend being there, Hartman went to her apartment and rang her buzzer. After receiving no response, Hartman went to the side door, and found it propped open. Hartman opened the door and hollered, but got no response. As he walked in, Hartman saw the victim's leg draped across her bed. Thinking it to be a joke, the applicant attempted to help her by moving the body. He then noticed that the victim had no hands and panicked. At that point he thought: "if someone finds me here, they're going to think I did it." Hartman thought about his traffic warrants and, in a split second, decided to grab everything that would connect him to the apartment. Hartman took beer bottles, ashes from ash trays and his t-shirt that was lying on the victim's bed. He also wiped clean things he believed he had touched and washed his hands in the tub. After cleaning the apartment, the applicant grabbed the victim's keys, walked out, locked the door and went home. He disposed of most of the retrieved items on his way home. Still restless, Hartman left his place and went to the bar to drink. He drank heavily.

After some drinking, Hartman decided to make an anonymous 911 call and tell officers about the murder. A police car responded and officers entered the apartment building. However, the applicant saw them walk out and leave. Hartman decided to make a second 911 call. This time he gave them the correct apartment number. Hartman told the Parole Board that he did not reenter the apartment, but doesn't remember how he determined her apartment number.

This time, the officers arrived and stayed. Hartman was very intoxicated. Thinking that the police would find his fingerprints anyway, he decided to approach the officers and talk to them. Hartman admitted he made a number of statements to the officers.

Hartman also consented to a search of his apartment, where officers found female clothes, jewelry and an incomplete knife set. In justifying the presence of the female

items in his room, Hartman said that he would bring women to his apartment and have sex with them. He claimed that they were mostly one night stands. The women would leave his apartment wearing his T-shirts. Hartman had a small wicker basket in his room where he kept the materials that women left behind and would use those items as a ploy to invite the women back to his apartment.

In addressing questions about the victim's wrist watch that was found in his room, Hartman argued that the wrist watch found did not belong to the victim. He argued that there was nothing to identify it as hers. He said that the wristwatch was given to him by a married woman he was having an affair with. They had a standing appointment every Tuesday. In regards to the knife set, Hartman explained that he got them in cooking college. He stated that there were three empty slots because one paring knife was stolen and the other two slots had never been used.

Hartman stated that detectives were "hounding" him about taking a polygraph. Hartman finally agreed to take one after they said he could go home. Hartman signed waivers and was hooked up to the machine. Only the detective asked many questions and then stormed out of the room. The Polygrapher then said "sorry, I forgot to turn it on." Since then, Hartman had refused to take any other polygraph. He also fears that little comments would be taken out of context.

During the Parole Board interview, Hartman argued a number of evidentiary issues. First, he argued that DNA testing should be allowed on hairs and on a used condom that were found. Hartman also requested further testing on finger prints allegedly found on a clock and a mop handle. Hartman explained that, despite trial testimony to the contrary, prints clearly were lifted from those items. Hartman stated that the real killer mopped up and touched the clock.

Hartman also argued that the detectives dismissed Jeffrey Nichols as a suspect too quickly. At trial, a witness testified that Nichols threatened the victim and that Nichols was a "known violent crack addict." Hartman claimed that Nichols had done work in the building and had access to the apartments. That explains why officers entered the victim's apartment through an unlocked door despite the fact that he had locked the door before leaving the victim's apartment. If the hairs found on the victim belonged to Nichols, the applicant argued, it would help his case.

Hartman also answered questions about evidence that was presented at trial against him. Hartman explained that his palm print found on the chair next to the victim's body got on the chair after he tried to move her body. He also admitted to previously lying to police officers when he told them that he was wearing the t-shirt when he found the body. Hartman also addressed Brian Tyson's trial testimony. He stated that Tyson lied at trial and took Hartman's explanation out of context. Hartman stated that Tyson later apologized to him. Finally, Hartman stated that his trial counsel did not discuss with the family about mitigating culpability.

In answering questions about his prior denials of having anal sex with the victim, he argued that his previous claim was based on the coroner's testimony about the time of death. Hartman stated that his memory was very hazy and his recollection was like a security camera that takes a picture every thirty seconds.

Since his conviction, Hartman tries to be helpful, donate to charities and teaches painting to several inmates. Although his mother passed last August, Hartman still has the support of family members and friends.

Hartman also talked about his childhood. He stated that, as a young boy, he would sneak beers from his father. He ran away at age 12-13 and lived on the streets of Los Angeles. Hartman described his use of alcohol, methamphetamines, heroin, cocaine and marijuana. He stopped doing hard drugs at 18, but continued with alcohol and marijuana. Hartman stated that he averaged 15-20 beers per day.

### **ARGUMENTS IN SUPPORT OF CLEMENCY:**

A written application with exhibits outlining the arguments in support of clemency was submitted to the Parole Board. On July 12, 2001, a hearing was conducted to further consider the merits of the application. Assistant Federal Public Defender David Stebbins represented Hartman at the clemency hearing, and presented the following arguments in support of executive clemency:

#### **Testing of Critical Evidence**

Attorney Stebbins argued that testimony was presented at trial regarding the collection of hair evidence by the Akron Police Department and the Summit County Coroner. The collected evidence included hairs removed from the victim's body, and from a chair next to her bed. A hair was also found enmeshed in a pair of pantyhose. Officers also collected a mop sponge that contained hairs, a bloody cloth containing hairs, and a long hair attached to a hair dryer. None of those hairs were tested.

Attorney Stebbins argued that Hartman should be afforded the opportunity to have this potentially exculpatory hair evidence examined and tested before he is executed. He has thus far been denied this opportunity by the state courts, but has recently filed a 1983 action in federal court, seeking to compel this testing. This evidence, if tested, could support Hartman's argument that someone else committed the crime. The most likely alternate suspect is Jeffrey Nichols, as he dated the victim, had done handyman jobs in the building and had been heard threatening and arguing with the victim a few weeks prior to the murder. Attorney Stebbins asked the Board to recommend a reprieve so that this issue can be heard by the federal courts.

When questioned by the Board about Hartman taking any other polygraph, Attorney Stebbins informed the board that Hartman had recently taken one but that the result was not favorable.

### **Hartman's Development since his 1997 Incarceration**

For the last 13 years, Hartman has not been idle in prison. He has used his time on death row to better himself and to attempt to better his environment on death row. He has participated in many community service projects and has assisted in various institutional art and painting projects at the Ohio State Penitentiary. Since entering prison, Hartman has also made numerous contributions, both financial and artistic, to various churches, charities and organizations.

Since his transfer to the Ohio State Penitentiary, Hartman has become a self-taught artist. Hartman has produced a rather large body of paintings that have been distributed to his family and friends and that have been displayed and sold. Hartman has also donated his paintings for sales and auctions to raise money for various organizations. In addition, he has worked with other inmates on death row to teach them painting, and has helped raise money for supplies for them. Hartman has used his artistic talents to better his environment and the surroundings on death row by painting ten permanent murals at the entrances to the various pods on death row at OSP.

Hartman has also been an exemplary inmate while incarcerated on death row at both Mansfield Correctional Institution and the Ohio State Penitentiary. Since 1998, Hartman's record consists of two incidents that have resulted in disciplinary control and six conduct reports that were disposed of otherwise.

In addition, Hartman has taken as many institutional programs as he has been permitted. Among those, he has obtained a Legal Assistant / Paralegal Diploma in 2006, a Certificate in Civil Litigation in 2007, and an Honorary Associates Degree in 2007. Hartman was ordained as a Minister by the Ministers for Christ, Assembly of Churches, Peoria, Arizona on March 14, 2008. Hartman also attends mass, and regularly counsels with Pastor Deborah Weissner of Akron, Ohio.

### **Hartman's Life Story as Compelling Mitigation**

Attorney Stebbins argued that trial counsel did not fully investigate, develop and present to the jury compelling mitigation evidence. The years of chaos, dysfunction, abuse, abandonment, and isolation in Hartman's childhood and adolescence were not explained to the jury. What was presented at the penalty phase of his trial was simply the testimony of Hartman's sister Rhea Wolpert and his aunt Arletta Hartman, which only provided brief snapshots of Hartman's history. Attorney Stebbins argued that there is a reasonable probability that, but for trial counsel's failures, at least one juror would have voted for a life sentence. The following family history was then presented by Attorney Stebbins:

Hartman experienced a remarkably chaotic childhood and adolescence. His life was marked by dislocation, abandonment and rejection. His mother, Carol Parcell was married five times and had three children. Hartman's two sisters, Diane Moretti and Rhea Wolpert, are seventeen and eleven years older than him, respectively. All three have

different fathers. The three siblings never had the chance to live together as a family when Hartman was a child.

Hartman's father, James Hartman, was previously married and had six children. He divorced his first wife to marry Hartman's mother. James Hartman became disabled and turned to alcohol. They were divorced by 1979. Hartman was only five years old. James Hartman was then absent from his son's life for several years.

After the divorce, Hartman and his mother moved from Wisconsin to California. In 1980, while living in California, Carol married Ralph Brittan. Mr. Brittan did not want any children and did not like Hartman. Instead of addressing the conflict between her husband and her son, Carol decided to try to find a different place for her son to live. She turned to Hartman's paternal aunt, Arletta Hartman. Ms. Arletta Hartman agreed to take Hartman for one semester. She was a middle-aged single woman living on a Navajo Indian Reservation in Arizona.

Hartman was only eight years old when he went to live with his aunt in February 1983. Ms. Arletta Hartman was a special education teacher at the Saint Michael Catholic Indian School on the Navajo Reservation. For Hartman it was a change of culture, language, environment and lifestyle. The trailer in which Ms. Hartman lived was located in an isolated section of the Navajo Reservation. It was three-quarters of a mile from the nearest paved road, had an unreliable water supply, and was without a TV or neighbors. Ms. Hartman was able to enroll Hartman midyear at her school. However, Hartman had difficulty with the teaching style and with some topics. To make matters worse, Hartman was hyper-active and became disruptive in the classroom. Because most of the schoolmates were Navajo Indians, he also found himself as an outcast.

Throughout the time Hartman stayed with his aunt, he longed to return to his mother in California. Hartman was allowed to return to his mother during the summer with the expectation of staying there. However, for the following three years, Hartman was returned to his aunt in Arizona for the school year. During his summer visits with his mother, Hartman was often mistreated or ignored by his mother's male companions. Each year when Hartman returned from his visits with his mother, Ms. Hartman found his behavior more difficult to manage. After almost four years with her, Hartman was sent to live with his father, who had relocated to New Mexico with his new wife. The couple lived in and operated a motel in a town approximately thirty miles from Ms. Hartman's home. Hartman's step-mother, Leanna, was a disciplinarian and attempted to deal with Hartman's behavior.

Hartman continued to rebel while living with his father and his step-mother. At the age of twelve, he began stealing and taking beer from his father's refrigerator. Hartman also ran away from home twice. The first time was only overnight. The second time was for a few days. On a third occasion, thirteen year old Hartman robbed a Motel's employee of the day's receipts. Hartman's motive was to get the train fare to travel to California to be with his mother. Instead, Hartman was arrested and was charged with larceny. He was declared a delinquent child in August 1987.

As punishment for the larceny, Hartman was committed to the New Mexico Youth Diagnostic and Development Center for ninety days. The court also requested a diagnostic evaluation. Hartman was evaluated at the facility, and was diagnosed as being a very disturbed adolescent who was repressing strong feelings of anger, hostility and abandonment. The evaluation concluded that Hartman needed professional intervention with intense psychotherapy. It was further recommended that Hartman be placed in a stable therapeutic environment. However, the recommendations were not followed. Instead, Hartman was returned to his mother in California.

Mr. Hartman went to live with his mother and her fifth husband Ted Parcell, on an equally isolated Indian Reservation in California. The living conditions at home were primitive and the couple's relationship was volatile. Fourteen year old Hartman began using drugs and got suspended from school. He soon ran away from his mother. This time, Hartman began living on the streets and abusing drugs and alcohol. On one occasion, he consumed so much alcohol that he ended up hospitalized for alcohol poisoning. Hartman was later arrested for a car theft and for selling controlled substances. The court ultimately sent Hartman to the McDowell Youth Home. He eventually walked away from one of the group homes and a warrant was issued for his arrest.

Hartman then went to live with his sister Diane, her husband and her sons. They were also living on the same Indian reservation where he had previously lived with his mother. Hartman was sixteen years old and already had a significant substance abuse problem. Diane attempted to help him, but was not successful. In an attempt to control his excessive and underage drinking, Diane took his picture to the only local store where alcohol was sold, and threatened to turn them into authorities if they sold alcohol to Hartman.

Hartman eventually left the reservation and went to live with his other sister, Rhea, in Akron, Ohio. He stayed there for the better part of a year. Hartman eventually decided that he needed to return to California to clear up his legal problems. After stopping at his Aunt Arletta and father's residences, Hartman arrived in California. Instead of dealing with his legal issues, he returned to living on the streets.

While on the streets, Hartman became a regular methamphetamine user. When his friends began injecting methamphetamine, Hartman realized he had to get off the streets. He then surrendered himself to California authorities, and was returned to the McDowell Home to complete his sentence. Hartman did well this time. He entered the emancipation program in which he learned and obtained vocational skills. Seventeen year old Hartman successfully completed the program. By then, his mother, his sister Diane and her sons had move to Wisconsin. Hartman went to live with them.

In Wisconsin, Hartman had decided to become a cook and began working at a nursing home where he became the head cook. He also attended culinary school. After approximately three years in Wisconsin, Harman and his mother moved to Akron and lived with Rhea. He became gainfully employed as a cook, and was eventually able to

move out of his sister's home. He and his mother shared an apartment and expenses. Hartman continued to abuse alcohol during the time he lived with his mother. Despite maintaining employment, he was living a lifestyle that centered on alcohol use and casual sex with women he barely knew. This irresponsible and reckless lifestyle caused him to be in a position where he could be accused of a murder he did not commit.

In addition, to the above arguments, Attorney Stebbins presented the following supporters on behalf of Hartman:

A video-taped statement of Rhea Wolpert, Hartman's sister was presented. Ms. Wolpert stated that she is eleven years older than Hartman. Ms. Wolpert said that Hartman did not get along with either of his stepfathers. One of them, Ralph, did not want kids, was strict and mean to Hartman. As a result, Hartman was sent to live with a paternal aunt in Arizona. Ms. Wolpert also stated that alcohol abuse has been a problem in the family. With both her husband and her mother now deceased, Ms. Wolpert asked the Parole Board to recommend clemency for her brother.

A video-taped statement of Arletta Hartman was presented. Ms. Hartman stated that she was Hartman's paternal aunt and worked at the Saint Michael Indian School in Arizona as a special education teacher. She stated that eight year old Hartman came to live with her for one semester because he was having school and behavioral problems. Instead of staying for only one semester, Hartman ended up staying with her for more than three years. Hartman arrived in February and started going to Saint Michael School. Hartman was hyper-active and had difficulties in school for the first two years. Ms. Hartman explained that she got her nephew a bike and a dog. He explored, played outside and got along with adults better than kids. Ms. Hartman would send him to his mother once the semester concluded, with the expectation that Hartman would stay with his mother. However, Hartman's mother would end up calling her in the middle of the summer to ask her to keep Hartman for another semester. Hartman would always come back disappointed. He eventually moved in with his father and stepmother. While staying with his father, Hartman did very well at school. His stepmother was the disciplinarian at home and ensured that he completed his school work. Ms. Hartman remembers at least three occasions in which Hartman's mother would tell him that she was going to visit him on a particular day. She would not show up and Hartman would be hurt. Between his desire to get back to his mother and not liking the rules his step mother attempted to enforce, Hartman ran away again. On one occasion, Hartman robbed a woman that worked at the motel that was being managed by his step mom. Hartman went back to his mother after that and eventually engaged in drug and alcohol abuse. Since his incarceration, Ms. Hartman visits her nephew twice a year and has seen him mature and become a beautiful person. Ms. Hartman stated that she believes he is innocent and that he deserves clemency.

Pastor Deborah Wissner of the Bethany Lutheran Church in Akron, Ohio stated that she came in contact with Hartman through his mother who was a member of the congregation since 2003. Pastor Wissner visits Hartman two or three times per month. They also correspond through letters between their visits. Pastor Wissner stated that Hartman is

intelligent, witty, personable, kind and has perfected his talents, including his artist abilities. One of his paintings is in her office. Hartman cares deeply for his family and for the welfare of others. Pastor Wissner was present at one of the last meetings between Hartman and his mother. During that meeting, both received communion. Hartman's mother died soon after. Pastor Wissner asked that the Parole Board recommend clemency as Hartman's life is worth saving and he has much to contribute to society.

A video-taped statement of Diana Moretti, Hartman's sister was presented. Ms. Moretti talked about the family environment at the Indian Reservation in California where Hartman resided after leaving Arizona. Both her mother and her mother's husband at the time abused alcohol. When Hartman moved in with Ms. Moretti in California, she was herself dealing with domestic abuse and alcohol problems at home with her ex-husband. Ms. Moretti remembers Hartman ending up in a hospital after an alcohol overdose. Eventually, Ms. Moretti, her two sons, Hartman and his mother relocated to Wisconsin and lived together in a large house in the country. Ms. Moretti stated that Hartman was a very good influence on her sons, for which she is grateful, as she contributes their success as adults to Hartman's influence during their teenage years.

The video-taped statement of Vince Wolpert, Hartman's nephew was presented. Mr. Wolpert stated that Hartman is his uncle and that Hartman is the reason he is who he is today. His uncle got him interested in cars, and he now manages a Firestone station. Hartman was a significant influence during his teenage years, and taught him to take responsibility for his actions. Hartman was ordained as a Minister since his incarceration, and performed the wedding ceremony of Mr. Wolpert and his wife at OSP. Mr. Wolpert attributes his success to Hartman's influence.

The video-taped statement of Josh Wolpert, Hartman's nephew was presented. Hartman is also his uncle and Hartman is also the reason he is who he is today. Hartman taught him to take responsibility for his actions. Similar to Hartman, Mr. Wolpert grew up in an Indian reservation and understands what it is like to be an outcast. Mr. Wolpert also stated that Hartman taught him about metallurgy and art. Mr. Wolpert asked that the Parole Board recommend clemency so he can continue his relationship with Hartman.

The video-taped statement of Sister Alice Gerdeman was also presented. In her statement, Sister Gerdeman stated that she is a member of the Intercommunity Justice and Peace Center. She became acquainted with Hartman through the center. Sister Gerdeman stated that Hartman has been involved with the center since 2003. He is a selfless person and reaches out beyond his own problems to help others. He is very concerned about his mother, other family members and fellow inmates who are on death row. Sister Gerdeman sees Hartman as a person that is talented and has much to give to others, and that his life should be spared.

Attorney Stebbins argued that had trial counsel presented this complete picture of Hartman's upbringing, including the report from the New Mexico youth authorities suggesting treatment for Hartman that he never received, they would have been provided with an explanation for Hartman's behavior, and it is very likely that at least one juror

would have voted to spare his life. For this reason, and the doubts surrounding his conviction coupled with his good institutional conduct and contributions, the Parole Board should recommend clemency for Hartman.

### **ARGUMENTS IN OPPOSITION TO CLEMENCY:**

Assistant Summit County Prosecutor Brad Gessner and Assistant Attorney General Tom Madden appeared at the clemency hearing and presented the following arguments in opposition to clemency:

In addressing the mitigation presented at Hartman's trial, Assistant Prosecutor Gessner asked the Board to recall the details Arletta Hartman shared in her statement regarding the larceny offense committed by Hartman as a youth. She indicated that Hartman robbed the female motel employee and tied her hands up. It would be reasonable for a defense attorney to not want the jury to hear such facts, given the nature of the instant murder charge, and those facts would have likely come out if defense counsel had presented the report from the New Mexico Youth Diagnostic Center. Mr. Gessner also argued that defense counsel is not required to present all mitigation evidence, but to investigate possible mitigation evidence. It is likely that defense counsel's presentation of Hartman's sister and aunt was a strategic decision in order to keep other unfavorable information away from the jury. Moreover, Hartman's sister and aunt testified to the family history, chaotic childhood and the alcohol and drug abuse.

The evidence at trial established that Hartman was the killer, and not Jeffrey Nichols. Hartman was observed in the area of the victim's apartment from 7:30 p.m. until he talked to police officers investigating the murder. Hartman was seen in and out of a local bar 5 or 6 times. Hartman was observed acting nervously. He made a series of 911 calls. The first one was a hang up. The second 911 call was made at 9:57 p.m. Police arrived and entered the building. They found Ms. Snipes apartment locked. They heard no noise coming out of her apartment. The officers decided to leave and investigate another location down the street. Hartman saw the officers leave and a few minutes later decided to make a third 911 call. This time he gave more details of the location of the apartment and watched as the officers responded a second time. When the officers arrived again, they climbed to the top of the landing and could hear music coming from the victim's apartment. They also found her door unlocked and the victim lying on the carpet with her foot tied to the bed.

Initially Jeffrey Nichols was considered to be the primary suspect. Officers had learned that Nichols and the victim had argued and he had threatened her. Officers did a thorough investigation of Nichols. They questioned him for hours, thoroughly searched his apartment and questioned Nichols' roommate. The officers found that nothing linked Nichols to the crime.

Knowing that he had been observed by a witness at the victim's apartment, Hartman decided to go and talk to the officers. Although not a suspect at first, Hartman approached officers outside the crime scene and began acting suspiciously. He made

comments about Ms. Snipes being a “whore” and “getting what she deserved.” Hartman also told officers that he had had sex with her the night before. He later made additional admissions that included making the 911 call, cleaning the murder scene and disposing of items taken from the apartment.

At one point, officers executed a search warrant at Hartman’s apartment. Several pieces of evidence were collected linking Hartman to the murder. Officers found the victim’s wristwatch in Hartman’s possession. Hartman’s bloody shirt was found hidden behind his bed. Officers also examined the scene and found Hartman’s bloody thumb print on the victim’s bedspread and his palm print on a chair that was next to the body.

Police officers also talked to one of Hartman’s co-workers. The co-worker testified that Hartman had made a statement regarding the OJ Simpson case, indicating that by cutting off a victim’s hands, DNA evidence could not be obtained from the fingernails. Moreover, while he was in the county jail, Hartman confessed to a fellow inmate.

In addition, Assistant Prosecutor Gessner argued that this case is unique in that the evidence against Hartman has actually gotten stronger since trial. He initially denied having anal intercourse with the victim, and stated that the semen found in the victim’s anal cavity would identify the real murderer. Reviewing courts permitted DNA testing of that semen. The DNA testing identified the semen as belonging to Hartman. Despite this overwhelming evidence, Hartman has continued to argue that if testing were permitted on hairs collected, it would reveal the identity of the true killer. This issue was addressed at the last clemency hearing, and reviewing courts have denied testing on these hairs, as the results would not be probative and would have no effect on the outcome of the trial. Hartman has failed to demonstrate otherwise, thereby not meeting the legal standard for testing. Any further litigation on this issue will not prove to be successful for Hartman, and is simply a delay tactic to avoid the impending execution date.

Finally, Assistant Prosecutor Gessner argued that Hartman has continued to deny guilt and lie about his role in this offense. Any good behavior or institutional conduct since his incarceration does not outweigh the viciousness of the crime, and Hartman’s total lack of regard for the victim. Assistant Prosecutor Gessner argued that clemency should not be recommended.

#### **VICTIM’S REPRESENTATIVE:**

Ms. Jacqueline Brown, friend of victim Winda Snipes, spoke on behalf of the victim, the victim’s family and on her behalf as a friend of the victim. She stated that she and the victim met through work. The victim was a loving, caring, funny person and very close to her family. She worked raising funds for non-profits. Although she came from a well-to-do family, the victim was happy with the little she had. Ms. Brown explained that Winda taught her how to be humble.

Ms. Brown recalled the day of the murder. She reported that “Jerry” called her to tell her that something horrible happened to Ms. Snipes and that she was taken out in a body bag.

Jerry was a disabled person who lived in the same building as Ms. Snipes and had Ms. Brown's telephone number. Ms. Brown told the Board that she became aware of the funeral services of Ms. Snipes the same day of the services and was not able to attend.

Regarding Hartman, Ms. Brown stated that she met Hartman at a bar. He approached Ms. Brown and introduced himself. Ms. Brown eventually realized who he was and said "you dated Winda." Hartman replied in the affirmative and went on to say positive things about Ms. Snipes. Ms. Brown made it clear that Hartman knew her friend's name. When Ms. Brown mentioned the meeting to her friend, Ms. Snipes referred to him as weird. Ms. Brown acknowledged that Ms. Snipes was sexually active. On one occasion, they discussed the risks of having multiple partners. Ms. Snipes told Ms. Brown that she would not have sex without insisting that her partner use a condom.

Ms. Brown stated that she is convinced of Hartman's guilt. Although she went to trial with an open mind, the evidence presented at trial clearly pointed to Hartman as the perpetrator. In addition, Ms. Brown stated that she recently spoke to Ms. Snipe's mother. The victim's mother told her to tell the Board that they have not forgotten the victim, that she is always on their minds and that they want the state of Ohio to proceed with the execution.

#### **PAROLE BOARD'S POSITION AND CONCLUSION:**

The Parole Board reviewed submissions both in favor of and in opposition to executive clemency. The Parole Board reached a unanimous decision to make an unfavorable recommendation for both a Commutation of the sentence and for a Reprieve based on the following:

- Hartman brutally murdered Ms. Snipes after tying her up, beating her and sexually assaulting her. Hartman slit her throat, stabbed her 138 times and cut off her hands which have never been found. Evidence presented to the jury alluded to the victim still being alive as one of her hands was being severed.
- Not only does Hartman place himself at the scene, but corroborating evidence demonstrates that Hartman committed this heinous murder. This evidence includes the victim's wrist watch that was found in Hartman's bedroom, Hartman's print found in blood found near the victim, and Hartman's semen that was found in Ms. Snipe's anal cavity close to the time of her death.
- Despite the overwhelming evidence presented in this case, Hartman has repeatedly denied involvement in the offense other than having consensual sex with the victim, finding her body and tampering with the crime scene. He has also repeatedly asked for further testing of evidence. One of those requests was granted in 2006 for the testing of semen found in the victim's anal cavity. That DNA testing was completed, the results of which were a match to Hartman. Hartman's continued efforts to test hairs have been unsuccessful in the courts, as

the results would have no effect on the outcome of the trial. A reprieve to continue this litigation is not warranted.

- The extensive aggravating factors of this crime outweigh Hartman's institutional adjustment and mitigation materials that were presented by Hartman's counsel. Moreover, the jury heard substantially similar mitigation evidence regarding Hartman's chaotic childhood and alcohol problems, and chose to recommend a sentence of death. It is unlikely that the outcome would have been different had the jury heard any of the additional information regarding Hartman's childhood presented to the Parole Board.

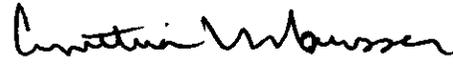
**RECOMMENDATION:**

Following consideration of all available information, the Ohio Parole Board, with eight (8) members participating, recommends to the Honorable John R. Kasich, Governor of the State of Ohio, by a unanimous vote, that Executive Clemency be denied in the case of Brett Xavier Hartman.

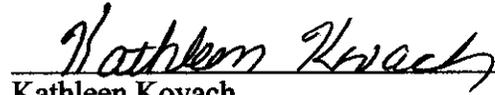
Brett Hartman, A357-869  
Death Penalty Clemency Report

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

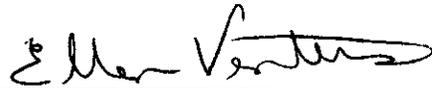
Ohio Parole Board Members  
Voting **Unfavorable**



Cynthia Mausser, Chair



Kathleen Kovach



Ellen Venters



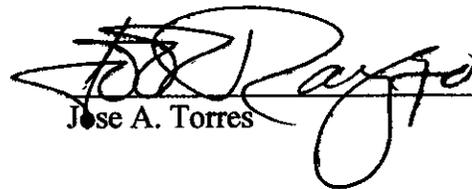
R.F. Rauschenberg



Bobby J. Bogan, Jr.



Trayce Thalheimer



Jose A. Torres



Cathy Collins-Taylor