

DATE TYPED: June 30, 2011  
DATE PUBLISHED: July 1, 2011

**IN RE: KENNETH WAYNE SMITH, A326-630**

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

Date of Meeting: June 23, 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: Kenneth Wayne Smith, A326-630**

SUBJECT: Death Sentence Clemency

CRIME, CONVICTION: Aggravated Murder with 3 death penalty specifications (2 counts), Aggravated Robbery with prior felony conviction specification (2 counts)

DATE, PLACE OF CRIME: May 12, 1995 in Hamilton, Ohio

COUNTY: Butler

CASE NUMBER: CR95-05-0471

VICTIMS: Lewis Ray and Ruth Ray

INDICTMENT: Counts 1 & 2: Aggravated Murder with 3 death penalty specifications; Counts 3 & 4: Aggravated Robbery with prior felony conviction specification.

TRIAL: Trial by Jury

VERDICT: Found Guilty as indicted.

DATE OF SENTENCE: February 8, 1996

SENTENCE: Counts 1 & 2: DEATH;  
Counts 3 & 4: 15 – 25 years

ADMITTED TO INSTITUTION: February 16, 1996

JAIL TIME CREDIT: 278 days

TIME SERVED: 15 years, 5 months (does not include JTC)

AGE AT ADMISSION: 30 years old

CURRENT AGE: 45 years old

DATE OF BIRTH: November 13, 1965

JUDGE: Honorable Anthony Valen

PROSECUTING ATTORNEY: John F. Holcomb

**CO-DEFENDANT:**

Raleigh Randall "Randy" Smith was convicted in Butler County Case CR95050470 as follows: Count 1: Complicity to Aggravated Murder - Sentenced to Life with parole eligibility after 30 years - Count 2: Aggravated Murder Sentenced to Life with parole eligibility after 30 years; Count 3: Complicity to Aggravated Robbery - Sentenced to 15-25 years; Count 4: Aggravated Robbery - Sentenced to 15-25 years; all counts to run consecutively. Smith was admitted to the Ohio Department of Rehabilitation and Correction on 3/1/1996 under inmate #A326980. His first statutory hearing is scheduled to be held in 9/2065.

**FOREWORD:**

Clemency in the case of Kenneth W. Smith, A326-630 was initiated by the Ohio Parole Board, pursuant to Sections 2967.03 and 2967.07 of the Ohio Revised Code and Parole Board Policy #105-PBD-01.

On June 7, 2011 Kenneth W. Smith, the applicant, was interviewed via video-conference by the Parole Board at the Corrections Medical Center. A Clemency Hearing was then held on June 23, 2011 with seven (7) members of the Ohio Parole Board participating. Arguments in support of and in opposition to clemency were then presented.

The Parole Board considered all of the written submissions, arguments, information disseminated by presenters at the hearing, prior investigative findings as well as judicial decisions and deliberated upon the propriety of clemency in this case. With seven (7) members participating, the Board voted seven (7) to zero (0) to provide an unfavorable recommendation for clemency to the Honorable John R. Kasich, Governor of the State of Ohio.

**DETAILS OF THE INSTANT OFFENSE (CR95-05-0471):** The following account of the instant offense was obtained from the Ohio Supreme Court opinion, decided October 15, 1997:

On May 12, 1995, sometime around 11:00 p.m., Kenneth W. Smith (applicant), and his brother, Randy Smith, brutally murdered Lewis Ray and Ruth Ray in their Hamilton, Ohio home. Lewis was severely beaten, his skull was fractured, and his throat was slit, severing his windpipe and carotid arteries. Ruth died from manual strangulation. Their home was ransacked, and money and jewelry were taken. The following morning, David L. Lester, Ruth's son, discovered the bodies of his mother and stepfather and called the police.

In the Rays' home, police observed signs of a struggle, blood on the kitchen floor, and bloody footprints throughout the house. Police found a damaged white ceramic coffee pot covered with blood stains in the trash can and a green army camouflage hat on the floor. A

knife had recently been removed from a butcher block set. Police found Lewis lying on the kitchen floor and Ruth lying in the doorway between the hall and bedroom. The Rays' bedroom had been ransacked, and the contents of dressers were strewn about the floor.

Earlier in the evening of May 12, 1995, Kenneth and Randy Smith had gone to the Crystal Lounge, a.k.a. Crystal Bar, with a friend, Russell C. Baker. At approximately 10:20 p.m., applicant borrowed Baker's car allegedly to pick up his wife, Brenda Smith, and some friends. By midnight, the applicant had not returned Russell's car. At about that time, Brenda and Lillian Canafax, Randy's live-in girlfriend, arrived at the Crystal Lounge also looking for the Smith brothers. About forty-five minutes later, Russell and the two women decided to go to Chasteens Bar. The applicant eventually showed up at Chasteens Bar at approximately 1:30 a.m. When Russell questioned the applicant about the car, applicant claimed that he was late because he had been in a fight at a gas station. He showed Russell a bump on his head. At the time, Russell also noticed that the applicant had changed his clothes.

At approximately 2:00 a.m., the applicant left Chasteens Bar in his Monte Carlo automobile with Brenda, Randy, Lillian, and Russell. The applicant drove to his house, handed his car keys to Randy, and instructed Randy to take a stuffed pillowcase from a nearby blue automobile and put it into the trunk of the Monte Carlo. Russell accused the Smith brothers of being "out thieving with my car." The applicant replied, "Russell, I wouldn't do that." The group then drove to Buckeye Street, where Russell's brother, James, was staying. Russell soon went home and to bed.

In the early hours of May 13, 1995, the applicant admitted to his friend, James Baker, that he had killed Lewis Ray and that his brother, Randy, had strangled Ruth Ray. James testified that on May 12, 1995, he was staying at his mother's apartment, when the applicant and Randy arrived at approximately 1:30 a.m. in Russell's automobile. The Smiths had been to the apartment earlier in the evening before going to the Crystal Lounge. The applicant told James that he had been in a fight, and James noticed that the applicant had cleaned up and changed clothes. The applicant was wearing a sweater and boots instead of tennis shoes. He was not wearing a hat. James further testified that the applicant left the apartment again at 1:35 a.m. to go to Chasteens Bar.

When the applicant returned to James's mother's apartment at approximately 2:45 a.m., he began to tell James about the murders. James testified that the applicant told him that he had taken a hammer and "struck Louie Ray between his eye[s]," and that during this time, the applicant had winked at his brother, Randy, who followed Ruth into a bedroom and strangled her. The applicant also told James that they took gold and jewelry in a pillowcase from the Rays' home.

James testified that when he asked the applicant why he killed the Rays, the applicant replied that they had killed them to prevent the Rays from identifying them. James testified that the applicant "was talking how he sliced Lewis Ray's throat from ear to ear and just laughing about it." He also told James that after he killed Lewis, he "kicked Ruth's brain in" to make sure she was dead. James testified that the applicant brought a

pillowcase stuffed with jewelry inside the apartment, but James asked him to take it back to the car.

Later that morning, James was driving around with the applicant and Brenda. They stopped to buy cigarettes and marijuana. The applicant mentioned to James that he was concerned because he lost his green army camouflage hat in the struggle with Lewis. Eventually they drove to Russell's home. There, out of the applicant's presence, James told Russell what the applicant had admitted. The applicant then suggested to James that he hide the remaining jewelry. This prompted Russell to contact the police. Police later recovered the jewelry in the attic of a garage.

In addition to the testimony of James Baker, Lillian Canafax testified that she was outside Chasteens Bar arguing with Randy when he showed her a gun. She testified that she saw the same gun in her bedroom the following morning. Several days later, after she found the gun and money under the bed, she authorized police to search the apartment. Lillian also turned over to police three money orders she had purchased for Randy the day after these crimes occurred.

Another witness testified that around 11:15 or 11:30 p.m., he saw Randy standing outside a pizza parlor about a block from the Rays' residence. The witness testified that Randy had a hammer in his hand as he ducked behind the building. Russell testified that a hammer was missing from his car after he had loaned his car to the applicant.

That afternoon, the police detained the applicant for questioning. At the time, police observed cuts and scratches on the applicant's face, and a long cut and bruises near his right collarbone. Police also searched Brenda's purse and discovered a cellophane bag containing rings, two \$100 bills, and a quantity of nonsequentially numbered food stamps. Police knew that Lewis sold similar jewelry and suspected that he may have dealt in food stamps as currency.

At the police station, the applicant waived his *Miranda* rights and admitted that he and Randy had killed Lewis and Ruth. The applicant said that while at the Crystal Bar, he and Randy had talked about going to rob the Rays, and decided that they would have to kill the Rays because they did not want the Rays to be able to identify them. The applicant told police that after arriving at the Rays' house, he and Lewis began to argue about money that the applicant supposedly owed Lewis. The applicant further admitted that he picked up an object from the kitchen counter and struck Lewis, eventually overpowering him. The applicant claimed that Lewis said, "I'm going to kill you, Kenny," so the applicant grabbed a knife and cut Lewis's throat. He then rolled Lewis on his side and took his wallet. The applicant said he walked to the bedroom and saw Ruth's body on the floor. Randy had choked her to death. The two men ransacked the bedroom and left in Russell's automobile.

Police apprehended Randy Smith. They found \$344 in bloodstained currency on him. Randy initially denied any knowledge of the murders. Police allowed Randy to speak with his brother, who said, "They got us brother, everybody is telling on us, tell the truth, that's

what I did.” Randy then explained to the police his involvement in the crimes.

Later, after again being advised of his *Miranda* rights, the applicant gave the police a written confession. In his statement, the applicant said that while playing pool at the Crystal Lounge, he talked with Randy about robbing Lewis. He borrowed Russell's car and drove to a pool hall about half a block from the Ray home. The applicant stated that he and his brother walked to the Rays' house. Lewis invited the Smiths into his home. The applicant and Lewis began to argue about \$2,500 that the applicant owed Lewis. The men began to fight in the kitchen and the applicant grabbed something from the counter and struck Lewis's head. They continued to wrestle on the floor. The applicant knew he was going to have to kill Lewis to keep him from telling anyone what happened. The applicant then grabbed a knife and “sliced Louie across the throat.”

In his written confession, the applicant further admitted that he took Lewis's wallet, then walked into the bedroom. Ruth was lying on the floor in the doorway, and the applicant had to step over her body. He said he asked Randy what had happened, and Randy said he had choked Ruth. The applicant further admitted that he then ransacked the bedroom, taking rings, watches, and necklaces, and placed the items in a plastic bag and left.

According to his signed confession, the applicant went home after the murders to shower and change clothes. He and Randy divided the money found in Lewis's wallet. The applicant's share was around \$625. The applicant then put his bloody clothes, the knife, and Lewis's wallet into a green trash bag that Randy later threw into the river. The two men then drove to Chasteens Bar.

In his confession, the applicant explained that after leaving Chasteens Bar, he drove to the apartment where James Baker was staying and began to go through the jewelry that they had taken from the Rays' house. The applicant picked out some items he wanted to keep. The following morning he placed some rings into a plastic bag and gave them to Brenda, who put them into her purse. The applicant put the remainder of the jewelry into the trunk of his Monte Carlo. He and James then put the jewelry into the attic of James's grandmother's garage. During police questioning, the applicant also admitted that the wristwatch he was wearing had belonged to Lewis.

At trial, the applicant testified that he and Randy went to the Rays, intending only to steal saws and drills from the yard. They parked the car away from the house, but as they walked into the yard, Lewis opened the gate and saw them. Lewis invited them into the house, and the men began to argue about money that the applicant allegedly owed Lewis. The applicant testified that within ten minutes, “everything got real violent.” Lewis “jumped up,” told the applicant he “was going to shoot” him, and hit the applicant “upside the head with something.” The applicant testified that he grabbed something from near the stove and struck Lewis. The applicant testified that Lewis tried to push him down the basement steps. The applicant then grabbed a knife and cut Lewis as he approached. The applicant bent down, turned Lewis on his side, and grabbed his wallet. The applicant further testified that Randy told him that he had choked Ruth. The brothers then ransacked the bedroom, taking jewelry.

The applicant denied that he intended to kill the Rays. He claimed that Lewis was his best friend, and he “wouldn't cold blooded kill him for nothing.” The applicant testified that he was very upset about the Rays because they were “like family” to him. He admitted that he told James about killing Lewis, but testified that he wasn't laughing or joking, but instead, he was “in tears.”

Kenneth Smith was charged in two counts with the aggravated felony-murder of Lewis Ray and Ruth Ray in violation of R.C. 2903.01(B). Each murder charge contained three death specifications: the offense was committed to escape detection, apprehension, trial, or punishment for other offenses, R.C. 2929.04(A)(3); the offense was part of a course of conduct involving the purposeful killing of two or more persons, R.C. 2929.04(A)(5); and the offense was committed during the course of an aggravated robbery, R.C. 2929.04(A)(7). He was also charged with two counts of aggravated robbery that included the allegation of a prior felony conviction for attempted burglary. The jury convicted Kenneth Smith as charged and recommended the death penalty on the aggravated murder counts. The trial court sentenced him to death.

### **PRIOR RECORD**

**Juvenile Offenses:** Kenneth Wayne Smith has the following known juvenile arrest record:

<b><u>DATE</u></b>	<b><u>OFFENSE</u></b>	<b><u>LOCATION</u></b>	<b><u>DISPOSITION</u></b>
4/6/1981 (Age 15)	Criminal Trespass, Theft	Middletown, Ohio	Official Probation, \$25.00 costs.

**Details:** On 4/6/1981, the applicant and another juvenile were observed breaking into and then entering a residence in Middletown, Ohio.

11/4/1983 (Age 17)	Gross Sexual Imposition	Fairfield, Ohio	Official Probation, 6 month commitment to DYS.
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**Details:** On 11/4/1983, the applicant forced a 12 year old female to have sexual intercourse. He was originally charged with Rape in this case.

**Adult Offenses:** Kenneth Wayne Smith 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>
9/28/1985 (Age 19)	Disorderly Conduct	Hamilton, Ohio	10/9/1985: \$25.00 costs

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2/24/1986 (Age 20)	Petty Theft, Resisting Arrest, Assault	Hamilton, Ohio	2/24/1986: \$100 costs, 30 days suspended with good behavior for 3 years, non-reporting probation.
3/30/1986 (Age 20)	Disorderly Conduct	Hamilton, Ohio	4/11/1986: \$25.00 costs, waived.
6/11/1986 (Age 20)	Criminal Trespass	Fairfield, Ohio	6/17/1986: \$100.00 costs, 30 days suspended, 2 yrs. good behavior, community service in lieu of costs.

Details: The applicant, along with a juvenile codefendant, entered a garage in Fairfield, Ohio and went through two (2) cars.

8/11/1986 (Age 20)	Assault, Criminal Damaging	Hamilton, Ohio	9/4/1986: \$100.00 costs, 30 days, ordered to pay restitution.
5/3/1987 (Age 21)	Attempted Burglary CR87-05-0259	Hamilton, Ohio	9/28/1987: 2 -10 years; 1/29/1990: paroled; 2/14/1992: Final Release.

Details: On 5/3/1987, victim contacted Hamilton Police to advise that his back door had been pried open and the door handle and frame were damaged. That same evening, the applicant was apprehended in the area with a flashlight and pry bar in his possession. Further investigation revealed the pry bar caused the damage to the victim's door.

10/28/1993 (Age 27)	Disorderly Conduct - Fighting	Hamilton, Ohio	11/2/1993: \$45.00 fine, \$50.00 costs, 30 days suspended.
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Details: On 10/28/1993, the applicant was observed punching his wife several times.

2/26/1995 (Age 29)	DUI (1 <sup>st</sup> offense), Consuming in a Motor Vehicle	Hamilton, Ohio	3/7/1995: \$1000.00 fine (\$600.00 suspended), \$155.00 costs, 6 months Resolutions (suspend all but 3 days), ODL suspended for 180 days.
5/12/1995 (Age 25)	Aggravated Murder (2 counts), Aggravated Robbery (2 counts)	Hamilton, Ohio	INSTANT OFFENSE

**Other Convictions:**

On 9/4/1984, the applicant was charged in Hamilton, Ohio with Failure to Produce for which he was ordered to pay \$25.00 court costs.

On 4/25/1986, the applicant was ordered to pay court costs after being charged with Fictitious Tags in Hamilton, Ohio.

The Fairfield Police Department issued a bench warrant for the applicant on or about 12/2/1986. He received 10 days, suspended on two years good behavior, for the foregoing charge.

On 10/14/1992, the applicant was cited with Failure to Drive in Marked Lanes by the Hamilton Police Department. He was ordered to pay a \$42.00 fine and \$15.00 court costs. In addition, his driver's license was suspended 90 days.

On 10/14/1992, the applicant was cited with Illegal Plates and was ordered to pay \$15.00 in court costs.

On 7/11/1995, the applicant appeared in Hamilton Municipal Court for No Drivers License and Illegal Plates. He was ordered to pay a \$45.00 fine and \$50.00 in court costs on both charges.

**Dismissed, Nolled and/or Unknown Dispositions:**

On 8/31/1984, the Hamilton Police Department arrested the applicant on a bench warrant; disposition unknown.

On 10/5/1984, the applicant was arrested by the Hamilton Police Department for Contempt of Court which stemmed from an earlier traffic charge; the charge was later nolled.

On 8/21/1985, the applicant was charged with Fictitious Plates in Hamilton, Ohio; the charge was later dismissed.

On 12/4/1986, the applicant was arrested for Aggravated Burglary in Hamilton, Ohio; this charge was later dismissed.

On 5/3/1987, the applicant was arrested by the Hamilton Police Department for Possession of Criminal Tools and Carrying Concealed Weapon. These charges were nolled on 9/28/1987.

**Institutional Adjustment:**

Kenneth W. Smith was admitted to the Department of Rehabilitation and Correction on February 16, 1996. Since his admission, the applicant has never been placed in Disciplinary Control nor has he been cited with any conduct reports. His work assignments while incarcerated at the Mansfield Correctional Institution included Barber, Porter and Recreation Worker. He completed the "Freedom from Smoking" program while at this institution. The applicant was recently transferred to the Corrections Medical Center.

**APPLICANT'S STATEMENT:**

On June 7, 2011 an interview was conducted by six (6) Board Members with the applicant via videoconference from the Corrections Medical Center. The applicant told the Board that he was truly sorry for his crimes and that he takes full responsibility for his actions that led to the deaths of Lewis and Ruth Ray. The applicant stated he is asking for clemency for his family, his kids and his church because his life has meaning to them. He is requesting clemency in the form of a commutation to life without parole. The applicant explained that he has two children, a son and a daughter, and one grandchild. He related that he has become a better person in the last 16 years, has stayed out of trouble, and has joined the Catholic Church where he is an active member.

The applicant explained that this offense occurred after a day of drinking and ingesting over 100 different pills. He was with friends and had tried to purchase marijuana but he was unable to do so. While he was at a local bar with his brother Randy Smith, the two began discussing their money problems. As they continued to drink whiskey, his brother suggested that they rob Lewis Ray in order to get money. The applicant stated he knew Lewis Ray had just acquired several saws that were being kept in his backyard under a tarp, and that instead of robbing them, they should go steal the saws so they could sell them to pay their bills. The two drove to Mr. Ray's home, but parked down the street. When they got to the house and opened the gate, a motion detector went off and alerted Mr. Ray. When Mr. Ray came to the door, applicant and Randy Smith went into the house. While the applicant and Mr. Ray were seated at the kitchen table they began to argue about a friend of the applicant who owed Mr. Ray money. The applicant stated Mr. Ray hit him with a coffee pot and the two began to struggle. The applicant then grabbed a hammer from nearby and hit Mr. Ray. The two were wrestling and the applicant stated he doesn't remember much after that. Then next thing the applicant remembers is looking for Randy and finding him in the bedroom filling up a pillow case with property from the Rays. The two left the house and took the property to James Baker's house. James later took the property to his grandmother's house. The applicant admits he and his brother cleaned up, put the weapons, bloody clothing and victim's wallet into a bag and threw it all over a bridge.

The applicant was then questioned regarding inconsistencies with his current statement. The applicant advised that the statements provided by James and Russell Baker were only partial truths, and that they felt threatened by the police into saying what the police wanted

them to say. The applicant indicated he doesn't remember the statements he made to the police as he was too intoxicated to think clearly. He stated that although there is a written statement from him, he did not write it himself and he never really read it. The applicant stated that his brother Randy tried to make him look like a monster, that the police lied in their reports, and that it was not his idea to rob the Rays. The applicant indicated that he and Randy did not bring the hammer to the Rays home, and that he had no intention of killing the Rays that night. After Mr. Ray hit him, he exploded and doesn't remember much else. The applicant failed to mention the use of the knife to cut Mr. Ray's throat until he was asked about it, however, he again stated he didn't remember using the knife. He did remember having blood all over him afterwards. The applicant denied he encouraged his brother to kill Mrs. Ray. He stated he believed that his brother had gone to the bathroom when the argument started between himself and Mr. Ray. When Randy came out of the bathroom, the applicant saw Mrs. Ray with a gun, and she was headed toward the applicant. Randy grabbed Mrs. Ray to stop her from shooting the applicant, and during the struggle, he choked her to death. The applicant denies kicking Mrs. Ray in the head while she lay on the floor.

The applicant stated that during his time in prison he has become a better person. He has maintained contact with his children through letters, but they have had limited in-person contact. He has also maintained contact with his younger siblings through letters and did write and recently received a letter from his brother Randy.

The applicant pointed out that he has blocked out a lot of the details of his offense. He admitted this is his coping mechanism as it was such a terrible crime. He also admitted that it is possible that the statements made at the time of the offense may be closer to the truth than what he remembers now. He believes he "had to block out the crime to live with myself" and he "created the story" to cope with what he had done.

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

A written application with exhibits outlining the arguments in support of clemency was provided to the Parole Board. On June 23, 2011, a hearing was conducted to further consider the merits of the application. Attorneys Sharon Hicks and Carol Wright of the Federal Public Defender's Office represented the applicant at his clemency hearing. Ms. Hicks advised the Board that they are requesting a clemency in the form of life without parole for the applicant. Testimony was then presented in support of the applicant's clemency request.

A video-taped statement of David Smith, applicant's brother was presented wherein he described the environment he and his siblings grew up in. He related he is younger than both the applicant and Randy. He stated he was only 9 months old when his mother died. David related that their father was a drunk and was never home for the children. The applicant and Randy ran the streets most of the time and had no form of discipline in their lives. David explained there was no parental control in their home and that all four children had to fend for themselves. Most of the time there was no food to eat and their

clothing was dirty. When their father remarried, their step mother did not like the applicant and Randy, so they were never home. The two younger children, David and his sister Glenda were physically abused by their step mother, and Glenda was forced to care for their ill stepmother at a very young age. David stated the family was hated by the neighborhood as his father was a drunk. He doesn't remember any affection from his father or step mother and the only attention paid to the younger children was from the applicant and Randy. Eventually the two younger children were removed from the home and placed in the care of an aunt and uncle who moved to the country where they raised David and Glenda with their own children for approximately 7 years. During this time, the children were loved, introduced to God, received schooling and were held accountable for their actions. David credits this period in his life as the reason he did not follow the path of the applicant and Randy. David stated he returned to his father's home when his aunt and uncle divorced. He was about 15 years old and he remembers the neighborhood was rough.

David pointed out that the applicant was an "awesome" brother, but his use of drugs and alcohol negatively influenced his life. He wanted the Board to know that the applicant is not the monster everyone makes him out to be. David asked the Board to have mercy on his brother, because he loves his brother and feels he is a positive force in David's life.

Dr. Bob Stinson, Forensic Psychologist presented a power point regarding moral culpability and how it related to the applicant's request for clemency. Dr. Stinson's presentation involved the relationship between risk factors and the propensity toward violence. These risk factors involve family, school and the community. He showed that the greater number of risk factors a youth is exposed to, the greater the probability of violence. The strongest factor to stop the violence is to reduce the risk factors. Dr. Stinson showed how the applicant met not only some of the risk factors that could lead to violence, but he met every single risk factor noted in the study. He explained that a lack of parental involvement coupled with family instability and lack of discipline predisposed the applicant to violence. The applicant's abuse as a child from his parents, the trauma of watching his mother die, and neglect were also high risk factors for future violence. Dr. Stinson felt that "early development was a major factor in this crime". In sum, Dr. Stinson stated that given the presence of every risk factor, and the lack of any protective factor's in the applicant's childhood, violent behavior with negative outcomes were destined to occur from the applicant.

Dr. Stinson also pointed out that at the applicant's trial there was testimony regarding his IQ level. Dr. Stinson felt that while the psychologist who testified explained what that IQ level meant, she misrepresented the applicant's IQ as "low average". Dr. Stinson stated that an IQ of 77 is not low average; it is actually much lower than that. He explained that only 6% of the population has an IQ of 77. While at trial, the psychologist misrepresented that IQ as being in the 35<sup>th</sup> percentile. Dr. Stinson believes this information would have been important to the jury during the mitigation phase of the sentencing hearing.

Dr. Robert Smith spoke via a video presentation regarding the applicant's substance abuse history. Dr. Smith detailed the extent of the applicant's substance abuse history starting at

age 10 when he was huffing gasoline. Dr. Smith explained that a 10 year old child does not “choose” to start abusing substances, but rather learns this behavior by watching the adults in his life. The abuse graduated over the years to alcohol, marijuana, stimulants, depressants and extensive mixing of alcohol and drugs. After the significant trauma of watching his mother collapse and die, his substance abuse escalated. Dr. Smith points to the applicant’s quantity and duration of abuse and how his tolerance was strikingly high.

Dr. Smith also spoke about how the abuse suffered by the applicant and his extensive use of substances may have been a factor in the brutality of the crime. As he grew, he repressed the years of abuse and neglect, and masked it with the substance abuse. On the night of the offense, he may have had a distorted perception of the argument between himself and Mr. Ray. The repressed anger and rage took over causing the significantly explosive violence.

When discussing any perceived minimization of the crime the applicant may have presented to the Board, Dr. Smith explained that children of abuse tend to find ways to deal with the emotional toll it takes on them. The guilt he feels is so immense that he has to find ways to deal with it. Since he can no longer turn to drugs and alcohol as a means of forgetting the abuse, he has to find a different coping mechanism. Repressing or distorting the details of the crime have become the way the applicant deals with the shame he feels.

Glenda Smith, applicant’s sister, also provided a statement via video. In her statement, she explained that she was two (2) years old when their mother died. After her father remarried, she was at pre-school age yet became the sole caretaker of her stepmother. She never went to school, but was responsible for making sure her younger brother David was up, dressed and sent to school. She was sexually abused by her father. At age 8 or 9, she had to go to the bars to find her father and drive him home. She related that the applicant took care of her. He took the younger children to the park, dressed them and tried to protect them from their abusive parents. Finally Glenda and David were removed from the home and went to live with their aunt and uncle. For those several years she went to school, was loved and had a normal childhood. When her aunt and uncle split up, she refused to live with her father, so she moved in with the applicant. The applicant tried to provide for everyone. His home was filled with his wife’s family, his friends who didn’t work, his 2 young children and Glenda. No one worked except the applicant, and he was expected to provide for all of them. The applicant had a serious substance abuse problem and everyone in his house drank and did drugs all day, every day.

Glenda asked the Board to show mercy to her brother. His death would greatly alter her life as he is still a big part of her life. He provides advice to her via letters and fills her in on his family’s lives.

Kenneth Ray Smith, the applicant’s son appeared in a video and in person at the hearing. He asked the Board to recommend clemency for his father. Mr. Smith explained that his father was a good father; he provided for him and his sister and played with them all the time. His fondest memory is playing hot wheels with his father after he returned home

from work. After the applicant went to prison, there was very little contact as his mother did not take him to visit his father and would not give him all the letters his father sent. However, Kenneth Ray left the house at a very young age at which time he would receive his father's letters more regularly. In those letters, his father taught him many things and provided guidance. Kenneth Ray did start down the same path as his father, using drugs, stealing and running the streets. When he was 19, he was arrested for Carrying a Concealed Weapon, and spent the weekend in jail. When his father heard about it, he wrote Kenneth Ray a letter "yelling" at him. That letter had a great impact upon Kenneth Ray, and he began to turn his life around. Now he is 24 years old, has his own home, is raising a younger sibling and his own child and continues to get great advice from his father. While they have been writing back and forth all these years, he finally got to visit him recently and received a hug from his father. Kenneth Ray stated that hug will stay with him forever. Kenneth Ray told the Board he would be devastated if his father was executed. He asked the Board to give him a few more years to have his father in his life.

Father Anthony Borgia, a Catholic Priest from the Toledo Diocese, spoke regarding the applicant's spiritual growth. Father Borgia met the applicant as he is the pastor at St. Peter's parish in Mansfield, and ministers to the inmates on Death Row. During their time together, the applicant was baptized and confirmed in the Catholic faith. He became very involved in the weekly masses and has become very spiritual. Father Borgia stated that when the applicant prays, he prays for forgiveness, for his wife Brenda who is deceased, for his victims and his victims' families. Father Borgia stated that the applicant is not the same person he was 16 years ago. He has a great love of life, sees the value of life and wishes he could undo the day of the offense. Father Borgia asked that the Board recommend mercy for the applicant.

Attorney Sharon Hicks pointed out to the Board that they are not contesting applicant's guilt; they are not contesting the brutality of the offense and not re-weighing the aggravating and mitigating factors. Rather, as demonstrated through their witnesses, the applicants' developmental history, mental illness, limited cognitive ability and chaos that he endured during childhood lessened his moral culpability. Who he is today should matter and should factor into the clemency decision. His life has value and his family relationships are meaningful. He is asking for more time, for understanding, forgiveness and for mercy.

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

In addition to a written materials provided in response to the applicant's written application for clemency, arguments in opposition to clemency were presented by Butler County Prosecutor Michael Gmoser, Butler County Assistant Prosecutor Michael Oster and Assistant Attorney General Brenda Leikala at the clemency hearing.

Mr. Gmoser stated that throughout these proceedings, the theme of the applicant's selective memory has been prevalent. Mr. Gmoser stated that the nightmare of the night of the offense has been attempted to be diminished by a dream the applicant has created.

During the applicant's interview with the Board, the truth was missing as were significant details. It is implausible that the applicant would not review his statement to police in preparation for these clemency proceedings, unless he purposely chose not to. This allowed him to claim a lack of memory when confronted on the details of the offense.

Mr. Gmoser pointed out that the distinct planning of this offense contradicts any claim that the applicant's mind was so polluted by drugs and alcohol that he could not have planned it. First, witnesses testified regarding the conversations the applicant and his brother engaged in at the bar. One of the witnesses testified that whenever he would approach the brothers who were sitting at the bar, they would stop talking. Second, when the applicant went to the Ray's home and knocked on the door, he knew what would have to be done to the victims in order to escape detection and eliminate witnesses when Mr. Ray answered the door. This planning required a certain degree of intelligence and critical thinking. Third, the evidence was clear that the applicant was the mastermind in this offense. He gave the "nod" by way of a wink to Randy to kill Mrs. Ray. After Randy choked Mrs. Ray, the applicant kicked her in the head numerous times to be sure she was dead, because it was his planned intention to make certain that both victims were dead. Then, after the killings, the two went to the bedroom, put socks over their hands and ransacked the house. Their thought process was clear - to hide fingerprints. They split the money in half, took jewelry and watches. After fleeing the scene, they returned home to shower, then disposed of the weapons, wallet, bloody clothing, brake and gas pedals from the car. Upon apprehension, Randy Smith would not give a statement to police until permitted to do so by the applicant. Randy Smith was the subservient brother, as the evidence revealed.

Mr. Gmoser argued that the issue of the presence of risk factors in the applicant's childhood has been heard, considered and weighed by the jury and all reviewing courts. He acknowledged that many violent offenses are committed by offenders with similar backgrounds, but that fact does not and cannot excuse murder or form a basis for mercy. While the applicant's family has provided testimony regarding the man he has become, this case is not about the man he is now; it is about the man he was at the time of the offense and the facts of that offense. The progress he has made while in prison should not be relevant in considering a clemency recommendation.

Brenda Leikala, Assistant Attorney General, argued that the applicant was the "brains and muscle" behind this offense, and his death sentence as opposed to Randy Smith's life sentence is evidence that the system worked as it should, in that individualized sentencing was the outcome. The two juries considered several important facts that demonstrate that the different sentences for the two codefendants were a reasonable outcome. The applicant admitted to police that the crime was his idea and he knew at some point he would have to kill the victims to escape detection. The victims were selected in advance, and the defendants went to the door to gain entry and did not steal from the yard. In addition, weapons were brought to the scene, as Randy Smith was seen with a hammer and rag at approximately 11:30 p.m. that evening. The applicant took on the stronger victim, and left the weaker victim for his brother to kill. The applicant used two different weapons to kill Mr. Ray. During the offense, he hit Mr. Ray at least 27 times with the

hammer. When Mr. Ray was on the ground, he took a knife from the counter and cut Mr. Ray's throat "from ear to ear" severing the arteries on each side of his neck. Then, as Mr. Ray lay bleeding and dying, the applicant flipped him over and took his wallet from his back pocket. Randy Smith was the smaller of the two brothers. He was assigned by the applicant to kill Mrs. Ray. He used his hands alone to choke her to death; there was no blood and not nearly the violent struggle that the applicant had engaged in with Mr. Ray. The applicant was injured while Mr. Ray fought back, but Randy had no marks on him indicating very little struggle.

Upon the applicant's arrest, he admitted to police that it was his idea to rob the Rays and that Randy just went along. During his trial, testimony was heard from witnesses that the applicant laughed about the killings when recounting them to his friends. He stated he gave Randy the "wink" indicating it was time for him to kill Mrs. Ray. Randy would not give a statement to police until he was permitted to do so by the applicant, after which, he too indicated that the offense was the applicant's idea. During Randy's trial, there was testimony that he was beaten frequently by both the applicant and their father, and was subservient to the applicant. The additional mitigation presented at Randy's trial, along with the evidence of his subservient role in the offense, lead his jury to recommend a life sentence. That outcome was entirely reasonable, and is not a basis for a recommendation for clemency for the applicant who was the "brains and muscle" behind the offense. In the applicant's case, the mitigating factors were not significant enough to outweigh the aggravating factors. Ms. Leikala argued that the applicant is requesting mercy; however he showed no mercy to his two victims.

Michael Oster, Butler County Assistant Prosecutor, pointed out that during the applicant's interview with the Parole Board he claimed that he takes full responsibility for his actions. However, in his recounting of the offense, he described the offense of murder, not aggravated murder. The applicant's statements have changed over the many years since this offense occurred, but until his interview with the Board he never admitted to using a hammer during the offense. However, during this telling of the offense, he left out the use of the knife until questioned about a knife. Mr. Oster suggested that the applicant's lack of forthrightness in regard to the details of the offense may make the applicant feel better, but it is certainly an insult to the concept of "accepting responsibility". The applicant told this Board during the interview that police made up lies about him, witnesses lied at the direction of the police, and that Randy was the mastermind for this offense. He claimed he could not remember details but admitted that his lack of memory was a coping mechanism to help him forget. All of these statements point to a man who is not accepting responsibility for the deaths of two people.

Mr. Gmoser concluded by stating that the applicant is not sorry enough; he blames his brother, blames his childhood, holds back critical facts, and minimizes the offense. He has failed to demonstrate any reason why the lawfully imposed sentence should not be carried out.

**VICTIM'S REPRESENTATIVE:**

Survivors of Lewis and Ruth Ray presented to the Board. Ms. Tonya Mull, Lewis Ray's daughter spoke about the impact of this crime. She stated she was tasked with cleaning the house after the crime. She related she knew the Smith family as their families grew up together. She stated she is happy to hear that the applicant is doing well now, but that doesn't change what happened. Ms. Mull stated this crime was all about money; money the applicant borrowed and did not want to pay back. Ms. Mull advised that her father would have loaned the Smith boys more money if they had asked. He helped out anyone who asked. The Smith boys called her father "dad" and were very close to him. Ms. Mull pointed out that a lot of people had problems growing up, but applicant was able to get clean when he would get locked up and he chose to go back to the drug life whenever he was released. She advised that this crime tore her family apart and she has no relationship with her natural brother anymore. She understands the Smith family wanting more time but she wanted more time too. If the sentence is carried out, it will be some form of closure for her. Ms. Mull also read a letter to the Board from her son.

David Lester, son of Ruth Ray spoke next. He related that he grew up with an abusive father, and began to use drugs extensively. After his mother married Lewis, they both helped him through this difficult period of his life. Mr. Lester indicated that he spoke with his mother just hours before the offense. He stated his usual routine was to stop by their home and visit for a while, but on this night she told him to go home and they would see him the next day at the flea market. This was at approximately 9:00pm. The following morning when Lewis didn't show up at the flea market, Mr. Lester sent his wife to look for his parents. She contacted him and advised that the cars were at the house and no one would answer the door. Mr. Lester went to his parents' home and found bloody footprints on the back step. He forced the door open only to find Lewis lying on the floor dead and covered in blood. He called out for his mother and went to find her, only to find her laying in the hallway, also dead. When he contacted police he was taken to the police station to be questioned. Mr. Lester stated he lives with the picture of the crime scene every day. He thinks that if he had followed his regular routine on the night of the offense, he would have either been killed with the Rays, or they would be alive today. He is currently still taking medication for his problems. Mr. Lester advised that not only did he lose his parents that day, but he lost his two best friends. Mr. Lester feels 16 years is too long to wait for the applicant to receive what he deserves.

Debbie Nelson, daughter of Ruth Ray presented to the Board as well. Ms. Nelson was 12 years old when Ruth married Lewis and she considered him her father. Ms. Nelson did not know the Smith brothers prior to the offense, but she watched them in court and they had very different demeanors. The applicant refused to tell what he did with the money he stole from the victims telling the court he threw it away. He showed very little emotion during the trial. Randy Smith was the smaller of the brothers and did whatever applicant told him to do. During his trial he seemed more aware that he had done something wrong. She too is not in favor of clemency, and would like the sentence imposed carried out.

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

The Ohio Parole Board reviewed and considered all information submitted both in support of and in opposition to clemency. The Parole Board reached a unanimous decision to submit an unfavorable recommendation regarding Kenneth Smith's request for a commutation to life without parole based on the following:

- The arguments presented in the application for clemency and at the hearing were not compelling enough to warrant the grant of executive clemency. Essentially the same mitigation was presented at trial that was presentend to the Board, therefore the jury's recommendation did include consideration of the facts relating to the applicant's childhood and background. The mitigating factors do not outweigh the many aggravating factors in this case.
- The fact that the brother codefendant received a different sentence is a reasonable outcome and not problematic in this case. Both juries were presented with evidence and the same version of the facts by the state suggesting that the applicant was the planner and more dominant participant, and was an abuser of his brother codefendant. It is not unreasonable that his codefendant brother's jury found his mitigating factors more compelling than did the applicant's jury.
- The applicant continues to minimize his actions, and although some of his selective memory may be explained away as a coping mechanism, it is also likely that it is an attempt to portray himself in the most favorable light, and avoid the penalty as imposed at trial. While he claims he cannot remember portions of the offense, the evidence overwhelmingly indicates his role as the primary offender in the deaths of the two victims.
- The arguments related to the applicant's positive institutional conduct and serious medical condition do not outweigh the nature and seriousness of the offense, so as to warrant a recommendation for mercy.

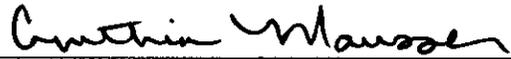
**RECOMMENDATION:**

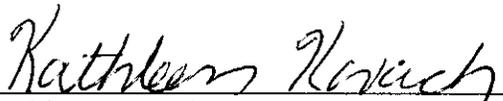
The Ohio Parole Board with seven (7) members participating, by a vote of seven (7) to zero (0) recommends to the Honorable John R. Kasich, Governor of the State of Ohio, that executive clemency be denied in the case of Kenneth Smith A326630.

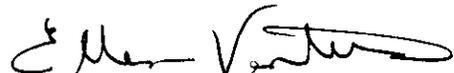
Kenneth Wayne Smith, A326-630  
Death Penalty Clemency Report

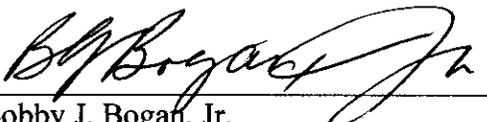
Adult Parole Authority  
Ohio Parole Board Members  
Voting **Favorable**

Ohio Parole Board Members  
Voting **Unfavorable**

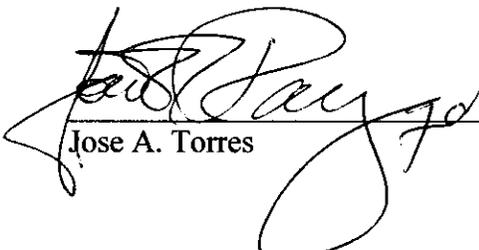
  
Cynthia Mausser, Chair

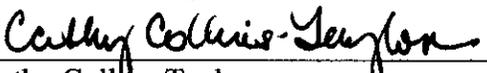
  
Kathleen Kovach

  
Ellen Venters

  
Bobby J. Bogart, Jr.

  
Trayce Thalheimer

  
Jose A. Torres

  
Cathy Collins-Taylor

6-22-11.

Dear parole board,

- I'm upset that I cannot see my own
- grandpa but they can see Kenny's own kids
- I feel sad that Kenny has to be executed his actions are why this has to happen.
- I do not like having to hear about all this stuff about the clemency hearing and the execution.
- 
- 
- 

<sup>my</sup>  
• ~~Tom~~  
Warren