

DATE TYPED: July 19, 2006
DATE PUBLISHED: July 20, 2006

IN RE: DARRELL W. FERGUSON, OSP#A456-727

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

Date of Meeting: July 14, 2006

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

IN RE: Darrell W. Ferguson, OSP #A456727

SUBJECT: Death Sentence Clemency

CRIME, CONVICTION: Aggravated Murder with 3 Aggravating Circumstances Specifications (3 counts); Aggravated Burglary (3 counts); Aggravated Robbery (3 counts); Robbery; Escape; Tampering with Evidence

DATE, PLACE OF CRIME: December 25th and 26th, 2001, Ohio

COUNTY Montgomery

CASE NUMBER: 2002CR00353

VICTIMS: Thomas King
Mae Fugate
Arlie Fugate

INDICTMENT: Count 1: Aggravated Burglary; Count 2: Robbery; Count 3: Aggravated Burglary; Count 4: Aggravated Robbery; Count 5: Aggravated Robbery; Count 6: Aggravated Murder while committing Aggravated Burglary; Count 7: Aggravated Murder while committing Aggravated Robbery; Count 8: Aggravated Burglary; Count 9: Aggravated Robbery; Count 10: Aggravated Robbery; Count 11: Aggravated Murder while committing Aggravated Robbery; Count 12: Aggravated Murder while committing Aggravated Robbery; Count 13: Aggravated Murder while committing Aggravated Burglary; Count 14: Aggravated Murder while committing Aggravated Robbery. (Each Aggravated Murder count contained five death-penalty specifications: murder to escape detection or apprehension, murder while at large after breaking detention, murder as a course of conduct in killing two or more people, murder while committing both aggravated burglary and aggravated robbery.)

PLEA: Guilty to Indictment

SENTENCE: 9/12/2003: Sentenced to the following:
Count 1: Five (5) years; Count 2: Ten (10) years; Count 3: Eight (8) years; Count 4: Ten (10) years; Count 5: Ten (10) years; Count 7 (merged with count 6): DEATH; Count 8: Ten Years; Count 9: Ten (10) years; Count 12 (merged with count 11): DEATH; Count 14 (merged with count 13): DEATH; Count 15: Five (5) years

ADMITTED TO INSTITUTION: September 25, 2003

TIME SERVED: 55 months

AGE AT ADMISSION: 25 years old (D.O.B. 1/30/1978)

CURRENT AGE: 28 years old

JAIL TIME CREDIT: 627 days

PRESIDING JUDGE: Honorable Judge David A. Gowdown
Honorable Judge Dennis J. Langer
Honorable Judge Jeffrey M. Welbaum

PROSECUTING ATTORNEY: Assistant Prosecutor Daniel J. Brandt
Assistant Prosecutor David M. Franceschelli

FOREWORD:

Clemency in the case of Darrell W. Ferguson, OSP #A456727 was initiated by the Honorable Bob Taft, Governor of the State of Ohio, and the Ohio Parole Board, pursuant to Sections 2967.03 and 2967.07 of the Ohio Revised Code and the Parole Board Policy #105-PBD-01.

A Death Row Clemency Review Hearing was conducted on July 14, 2006, with seven members of the Ohio Parole Board participating. Attorney Gary Crim represented Darrell Ferguson. Mr. Crim made no opening or closing statement.

Present at the hearing on behalf of the State were Assistant Montgomery County Prosecutors Daniel Brandt, Carley Ingram, and David Franceschelli. James Cornett, the son of victims Mae and Arlie Fugate, provided testimony following the State's presentation. The family of victim Thomas King provided a written statement and poem.

After reviewing and deliberating upon the information provided, the Parole Board voted and reached a unanimous decision.

We now submit to the Honorable Bob Taft, Governor of the State of Ohio, our report and recommendation.

DETAILS OF THE OFFENSE: The following details are taken from the Ohio Supreme Court Decision dated April 12, 2006:

In July 1999, Ferguson was convicted of burglary and sentenced to two years in prison. On November 8, 2001, Ferguson, while on post release control, was ordered to complete a substance-abuse treatment program at Talbert House in Cincinnati, Ohio.

On December 20, 2001, Ferguson was granted a two-day pass to visit his mother at her Dayton home. The pass was effective from 9:00 a.m. on December 21 until 12:00 p.m. on December 23, when he was required to return to Talbert House. Ferguson went to his mother's Dayton home, but he did not return to Talbert House when his pass expired.

Around 4:00 a.m. on December 23, 2001, Ferguson broke into the Dayton apartment of James Nicholson, a double amputee in a wheelchair, and William Ferrell. Once inside the apartment, Ferguson knocked Nicholson to the ground, removed Nicholson's wallet from his pants pocket, and took cash from the wallet. As he left, Ferguson warned Nicholson and Ferrell that if they called the police, he would return and kill them.

At some time on December 25, 2001, Ferguson went to Thomas King's home in east Dayton. Ferguson knew the 61-year-old King because Ferguson's mother had been married to King's brother. King was disabled and could walk only with crutches.

Ferguson knocked on the door, and King, who was alone, let Ferguson into the house. After Ferguson and King talked for a time, Ferguson attacked King, repeatedly stabbed him with a kitchen knife, and kicked and stomped King with his steel-toed boots. Following the attack, Ferguson took a 13-inch television, a 19-inch television, and a stereo "boom box" and fled.

According to his later confession, Ferguson then went to a Meijer's store and purchased some gold spray paint to "huff," i.e., to inhale the paint vapors for a quick high. Ferguson then went to an area underneath a bridge and "tried to put a bread bag over his face to go ahead and just do himself in because he knew what he did was wrong."

On the evening of December 26, Ferguson went to the home of 68-year-old Arlie Fugate and 69-year-old Mae Fugate in east Dayton. Ferguson knew them because Ferguson's family had once lived near the Fugate home.

Ferguson knocked on the Fugates' door and asked to use their bathroom. The Fugates let Ferguson inside their house. After Ferguson came out of the bathroom, he took a knife from the kitchen and attacked the Fugates. Ferguson repeatedly stabbed, stomped, and kicked both of them with his boots. Following the attack, Ferguson stole Mae's wedding ring and other jewelry, Arlie's wedding band, and loose change that was kept in jars and jugs in the house. Ferguson then left the house.

After leaving the Fugate home, Ferguson walked to Sid's Towing Service. Around 1:00 a.m. or 1:30 a.m. on December 27, Ferguson approached Jeffrey Fleming Jr., an acquaintance who worked at Sid's Towing. Ferguson asked Fleming for a ride to another location in Dayton, and Fleming drove him there. Fleming noticed blood on Ferguson's jeans, but Ferguson told Fleming that the blood was from a fight.

After the murders, Ferguson traded several of the stolen items to Vicki Miller for crack cocaine. Miller identified Ferguson from a photo array as the man who had made the trade. Police recovered this property from Miller's residence in Dayton, from Miller's father, and from a Dayton pawn shop. The 13-inch television was never recovered.

Around noon on December 27, Ferguson went to the Dayton home of Ricky Webb, an acquaintance. Webb, Dwayne Abney, and Willie Townsend were at the house when Ferguson arrived. Ferguson said that he wanted to watch the noon headlines on television. The group then watched news coverage of the three murders. Ferguson said that he had killed the victims at both locations. In describing what happened, Ferguson said "that one guy went to pull a weapon on him. He said he let him have it. And that's what they had coming to them for trying to pull a weapon on him."

While watching the news, Ferguson asked how to get blood out of clothes. Townsend told him to soak the clothes in cold water. Abney noticed that there were darkish brown stains on the bottom of Ferguson's jeans and that Ferguson was wearing black, steel-toed boots.

Later on December 27, Ferguson went to the Dayton home of Irma Hess, where he washed his pants to get the blood out. Ferguson remained at the Hess home until he was arrested the next day.

Around 8:00 p.m. on December 26, police were dispatched to the King home after a friend found King's body. Police noticed that the rear door to the house was ajar, but found no signs of forced entry.

King's body, found on the dining room floor, had sustained multiple knife wounds and a severe beating to his face. Two kitchen knives were found near King's body. The wall near King's body was heavily covered with blood spatter. Police also found a distinctive bloody footprint on King's pants, and similar bloody footprints were found on the carpet near his body.

The dining room area had been rifled, but the rest of the house showed no signs of being ransacked. Police later determined that a 19-inch television had been stolen from the dining room, a stereo "boom box" from the kitchen, and a 13-inch television from the bedroom.

Around 9:00 a.m. on December 27, James Cornett, the Fugates' son, discovered Arlie's and Mae's bodies on their living room floor. Police arriving at the Fugate home found the front door ajar, but found no signs of forced entry.

The bodies of Arlie and Mae were found next to each other in the living room. Arlie and Mae sustained multiple stab wounds and had been badly beaten. It appeared that the bodies had been arranged in the center of the room, and that Arlie had been dragged by his shoulders to that position, because his pants and underwear were pulled down to his hips. A bloodstained kitchen knife was found near the bodies. Police also found bloodstains near the front door, on living room furniture and carpeting, and on a dining room chair and carpeting. A bloody foot impression was also left on Arlie's face.

The living room had been ransacked. Arlie's wallet was next to his feet, and its contents were scattered on the floor. A fanny pack and Mae's wallet were lying next to Arlie's head, and her wallet had been rifled through. After talking to Cornett, police learned that Mae's rings and Arlie's wedding band had been taken from their hands. Jugs and jars filled with coins were also missing from the home.

As the investigation progressed, Ferguson was identified as the primary suspect. On December 28, the police obtained an arrest warrant for Ferguson for the Nicholson robbery and learned that Ferguson was staying at the Hess home.

At 3:00 p.m. on December 28, Detectives Gary Dunsky, Doyle Burke, and another uniformed police officer went to the Hess home. When the police came to the door, Irma Hess confirmed that Ferguson was inside. The police then entered the house, placed Ferguson under arrest, and took him to the police station.

At the station, Detective Burke advised Ferguson of his *Miranda* rights, and he waived those rights. Subsequently, Ferguson provided the police with a detailed account of the murders reflecting facts already described. Ferguson also gave a videotaped confession.

Denise K. Rankin, a forensic scientist, conducted DNA testing of bloodstains on Ferguson's boots. DNA testing of one bloodstain showed "a mixture where Arlie Fugate and Thomas King are possible contributors." DNA testing of another bloodstain on the boots showed "a mixture where Arlie Fugate is a possible contributor." According to Rankin, the probability of an individual contributing to the mixed profile of this second stain is one in 62,770,000 Caucasians, one in 43,220,000 African Americans, one in 40,210,000 Southeastern Hispanics, and one in 21,120,000 Southwestern Hispanics. Ferguson is a Caucasian.

Daniel Lee Bibby, an expert in trace analysis, compared sole prints from Ferguson's boots with bloody impressions found on the victims' bodies and at the King and Fugate homes. Bibby concluded that the imprint left on Arlie's face was consistent with Ferguson's right boot heel. Bibby also found that shoe impressions on two carpet samples from King's home were consistent with the tread pattern from Ferguson's right boot. Finally, Bibby found that impressions from "red-brown material" on King's pants were similar to an element in the tread pattern of Ferguson's boots.

Dr. Russell Uptegrove, Deputy Coroner for Montgomery County, performed or

supervised autopsies of all three victims. Mae suffered numerous stab wounds and blunt-force injuries to the head and face. She died as the result of “multiple stab wounds of the back.” Arlie suffered numerous blunt-force facial injuries that were consistent with being kicked or stomped. Arlie died from “multiple stab wounds of the chest.” King also suffered numerous blunt-force injuries to the head consistent with being kicked or stomped with steel-toed boots. He suffered six stab wounds in the chest caused by a single-edge knife. King died as the result of multiple sharp and blunt-force injuries.

Before trial, Ferguson wrote letters to the judge and the prosecutor. In a January 3, 2003 letter, Ferguson informed the prosecutor, “I committed all 3 murders, burglaries, and robberys.” (Sic.) Ferguson also wrote, “I wish to get this over with as soon as possible. I Darrell Wayne Ferguson wishes to seek the Death penalty.” (Sic.)

In a January 7, 2003 letter, Ferguson wrote the trial judge that when he went to King's home, he “hit [King] and beat hime to death and then stabbed hime. [He] took the t.v. and sold them.” (Sic.) As to the Fugate murders, Ferguson stated, “[I] club[b]ed [Mae] in the forehead with a metal and wooden candle stick holder. I beat her down untill she could not move. I beat arlie to death as well and then stabbed both of them.” (Sic.) Ferguson wrote, “[W]hat is done is done and if i could bring them back i wouldn't. I have no Remorse for what i did.” (Sic.) He also wrote, “[I] * * * is asking you in my right state of mind would you please Find it in good will to give me the Death penalty.” (Sic.)

CRIMINAL HISTORY:

Juvenile Offenses

<u>Date</u>	<u>Offense</u>	<u>Location</u>	<u>Disposition</u>
4/3/1990 (Age 12)	Theft	Miami Township, Ohio	5/21/1990: Adjusted and admonished.

Adult Offenses

<u>Date</u>	<u>Offense</u>	<u>Location</u>	<u>Disposition</u>
12/12/1996 (Age 18)	Disorderly Conduct, Dayton, Ohio Petty Theft #96-CRB-16190		30 days suspended, 1 year probation 4/7/1999: Probation revoked, 15 days imposed.

6/18/1997 (Age 19)	Aggravated Menacing, Disorderly Conduct #97-CRB-7901	Dayton, Ohio	6/27/1997: 30 days jail, 20 days jail suspended, restitution, placed on 1 year unsupervised probation.
1/10/1998 (Age 19)	Abusing Harmful Intoxicants #98-CRB-73	Kettering, Ohio	1/29/1998: 30 days jail, 10 days jail suspended, fined \$250.00 and costs, 6 month license suspension, placed on 2 years unsupervised probation.
4/12/1998 (Age 20)	Unauthorized Use of Property #98-CRB-692	Dayton, Ohio	4/15/1998: 30 days jail, 27 days jail suspended, fined \$250.00 (\$150.00 suspended) and costs, 1 year probation. 3/4/1999: Probation revoked, 27 days jail imposed.
6/17/1998 (Age 20)	Corrupting Another with Drugs #CRB9801115A	Riverside, Ohio	6/30/1998: 6 months jail, 163 days jail suspended, fined \$25.00 and costs, drug and alcohol assessment ordered , placed on 1 year probation.
8/2/1998 (Age 20)	Theft	Fairborn, Ohio	8/3/1998: 30 days jail suspended, fined \$50.00 and costs, ordered to attend Social Responsibility Clinic.
8/14/1998 (Age 20)	Unauthorized Use of Property #98-CRB-12000	Dayton, Ohio	8/14/1998: 30 days jail, \$250.00 fine and costs suspended.

2/8/1999 (Age 21)	Unauthorized Use of Property	Dayton, Ohio	3/23/1999: 30 days jail, 9 days jail suspended, \$250.00 fine and costs suspended.
3/2/1999 (Age 21)	Burglary 99CR782	Dayton, Ohio	7/22/1999: Sentenced to 2 years prison. 7/28/1999: Admitted under institution number A380823 4/23/2001: Released under 3 years Post Release Control 1/22/2004: Unfavorable Final Release from Post Release Control.

Details: On 2/26/1999, the subject broke into a residence located in Dayton, Ohio. Entry was gained when he kicked in the front door. Once inside, he rifled through a jewelry box, and removed a VCR.

12/28/2001 (Age 22)	Aggravated Murder (3 cts), Aggravated Burglary (3 cts), Aggravated Robbery (3 cts), Robbery, Escape, Tampering with Evidence 2002CR00353	Dayton, Ohio	INSTANT OFFENSE
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Other Convictions:

On 7/17/1997, the subject was convicted of disorderly conduct. He received a 30 day suspended sentence and paid a fine of \$125.00. He also has received a total of 12 traffic citations since 1998 which were satisfied through payments of fines and costs.

Dismissed, Nulled, and Unknown Dispositions:

On 12/12/1996, the subject was charged with Criminal Trespassing; he was released. On 9/15/1997, the subject was arrested for Domestic Violence, and for Contributing to the Delinquency and Unruliness of a Minor; both charges were dismissed. On 2/1/1998, the subject was charged with Burglary; disposition unknown. On 4/23/1998 and 8/13/1998, the subject was charged with Theft; dispositions unknown. On 6/17/1998, the subject was charged with Abusing Harmful Intoxicants in Case# 98-CRB-01115B; the charge was dismissed. On 10/5/1998, the subject was charged with Theft of a Firearm in Case# 98CR3140; the charge was dismissed on 11/4/1998.

Institutional and Supervision Adjustment:

At the time of the instant offenses, the subject was on 3 years of Post Release Control. He received an unfavorable final release from supervision on 1/22/2004, due to his conviction in 2002CR00353.

Since his 9/25/2003 admission to prison, Darrell Ferguson's adjustment has been unremarkable. He has had no serious conduct reports and no programmatic achievement.

PROPOSERS TO CLEMENCY:

The Ohio Parole Board received no written application for clemency on Darrell Ferguson's behalf. Mr. Ferguson's attorney, Gary Crim, attended both the clemency hearing and a 6/28/2006 interview with Mr. Ferguson conducted by Parole Board Member Robert Maszczyński. Mr. Crim did not participate in either the hearing or the interview. The interview was conducted at Mr. Ferguson's request. However, little or no mitigation was offered by Mr. Ferguson. As in previous statements to the Court, Prosecuting Attorneys, and others; he expressed no remorse or regret and in fact described his murderous actions as pleasurable. He claims to have had crime scene photos in his cell for gratification. Mr. Ferguson asserted that he had compiled a list of people to rob and kill. He would have continued killing had he not been arrested. Mr. Ferguson read and submitted a written statement.

OPPOSERS TO CLEMENCY:

Daniel Brandt, Carley Ingram, and David Franceschelli, Assistant Montgomery County Prosecuting Attorneys represented the State of Ohio at the hearing before the Parole Board on July 14, 2006. Arguments in opposition to the granting of Executive Clemency included:

- The conviction is lawful, fair and just.
- The crimes occurred while he was AWOL from a drug treatment/halfway house program.
- Ferguson sought out three vulnerable people who trusted him to rob and kill.
- All three were killed in assaults that are almost unimaginable in their sustained violence.
- Both the trial court and the Supreme Court of Ohio found that any slight mitigation that can be found falls far short of offsetting the aggravating circumstances.
- He taunted the families of his victims at sentencing and has posted hateful poems and essays about the crimes and his satanic beliefs at his personal website.
- Since his conviction, he has written and spoken many times of how gratifying it was to see his victims suffer and die at his hands.

- He is a remorseless, sadistic killer who preyed upon the elderly and the weak.
- Ferguson has not asked for clemency.

Thomas Cornett, the son of victims Arlie and Mae Fugate, provided compelling testimony in opposition to clemency. He described his upbringing and enumerated his parent's many positive attributes. Mr. Cornett recalled the horror of finding his parents murdered, the aftermath of having to clean up the crime scene, and the psychological impact of having to sell, give away, or throw away, "years of memories".

CONCLUSION:

The Ohio Parole Board deliberated extensively on the documentary and testimonial evidence provided. Nothing to mitigate against the sentence of death for the brutal, horrific killing of three vulnerable victims could be found. Nor does there appear to be any justifiable basis for mercy. Mr. Ferguson, as evidenced by repeated statements and writings, is beyond remorseless. He found killing pleasurable. The aggravating circumstances overwhelmingly outweigh any mitigating circumstances. Similar conclusions were reached by both the trial court and a unanimous Ohio Supreme Court. There is no manifest injustice in denying Executive Clemency.

RECOMMENDATION:

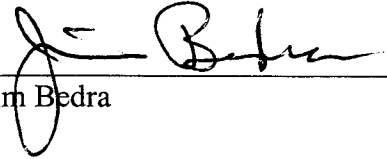
The Ohio Parole Board with seven (7) members participating, by a vote of seven (7) to zero (0) recommends to the Honorable Bob Taft, Governor of the State of Ohio, that Executive Clemency be denied in the case of Darrell W. Ferguson #456-727.

Ohio Parole Board Members
Voting **FAVORABLE**

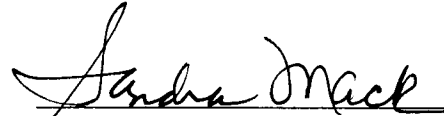
Ohio Parole Board Members
Voting **UNFAVORABLE**



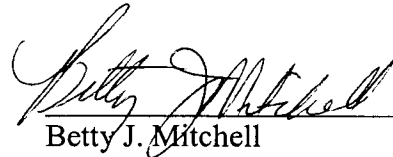
Cynthia Mausser, Chairperson



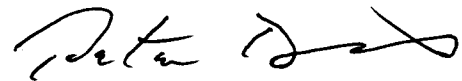
Jim Bedra



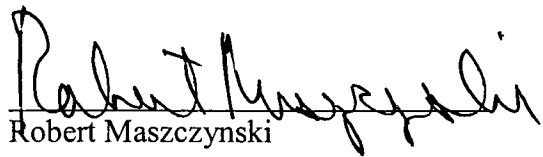
Sandra Mack, Ph.D.



Betty J. Mitchell



Peter Davis



Robert Maszczyński



Ellen Venters