

DATE TYPED: August 21, 2001
DATE PUBLISHED: August 23, 2001

**STATE OF OHIO
ADULT PAROLE AUTHORITY
OHIO PAROLE BOARD**

Date of Meeting: August 20, 2001

Minutes of the SPECIAL meeting of the Ohio Parole Board
held at 1030 Alum Creek Drive, Columbus, Ohio, on the date
referenced above.

IN RE: **JOHN WILLIAM BYRD, JR. - #175145**

SUBJECT: Death Penalty Clemency
CRIME, CONVICTION: Aggravated Murder c/s
Aggravated Robbery, 2 cts. c/s c/c/w
Abduction
DATE, PLACE OF CRIME: B831662 - 4/17/83 - Cincinnati, Ohio
CR85317 - 10/14/85 - Lucasville, Ohio
COUNTY: B831662 - Hamilton County
CR85317 - Scioto County
CASE NUMBERS: B831662 and CR85317
VICTIMS: B831662 - Mr. Monte Tewksbury
CR85317 - Mr. William D. Dunn
INDICTMENT: B831662 - Aggravated Murder - 1 count
Aggravated Robbery - 3 counts
CR85317 - Kidnapping - 1 count
VERDICT: B831662 - Found Guilty - 8/12/83
PLEA: CR85317 - Pled Guilty - 7/23/86
SENTENCE: B831662 - Death c/s 14 to 50 years
CR85317 - 2 to 10 years
DATE OF ADMISSION: B831662 - 8/23/83
CR85317 - 7/23/86
TIME SERVED: 18 years
AGE AT ADMISSION: 19 years old - Date of Birth 12/18/63
JAIL TIME CREDIT: 126 days
EXECUTION DATE: September 12, 2001
PRESIDING JUDGE: B831662 - Honorable Donald Schott
CR85317 - Honorable John B. Marshall
PROSECUTING ATTORNEY: B831662 - Arthur M. Ney, Jr.
CR85317 - Lynn Grimshaw
CO-DEFENDANTS B831662 - John Brewer, #175066 and
William Danny Woodall, #175067
CR85317 - Eric Swofford, #178862
Jay w. Scott, #178850 and
William Zuern, #181416

FOREWORD:

Clemency consideration in this case was initiated by the Honorable Bob Taft, Governor of the State of Ohio and the Ohio Parole Board, pursuant to Section 2967.03 of the Ohio Revised Code and the Parole Board Policy #501.09 on Clemency for Death Penalty Inmates. Following the collection of available information and review of this case, the Ohio Parole Board submits this report and recommendation.

OFFENSES:

The offense for which the inmate seeks clemency involves the aggravated murder of Mr. Monte Tewksbury, age 40, although other allied offenses and offenses committed while confined will be discussed.

On April 17, 1983, at approximately 11:00 p.m., inmate John Byrd and co-defendant John Brewer entered the King-Kwik store located at 9870 Pippin Road, Cincinnati, where Monte Tewksbury was employed part-time as a clerk. Both men were wearing masks and inmate Byrd was armed with a knife. They demanded money and Mr. Tewksbury, offering no resistance, gave them \$133.97 of the store's money. The men demanded that Mr. Tewksbury give them his wallet, watch, and wedding ring. Mr. Tewksbury complied in giving up these items. Mr. Tewksbury was then stabbed in the side, resulting in a puncture wound to his liver that caused massive internal bleeding. Byrd and Brewer pulled the store's telephone out of the wall and ran outside to a waiting van driven by co-defendant William Woodall. At approximately 11:10 p.m. Robert Shepard was driving northbound on Pippin Road. He saw two men run from the King-Kwik store and enter a large red van parked at the corner. The van then drove off.

Although severely injured, Mr. Tewksbury managed to get to the outside phone where he called his wife and advised her that he had been robbed and hurt, and that she should call the police and an ambulance. At that time, Cecil Conley, a customer, arrived at the King-Kwik store and saw Mr. Tewksbury leaning against the wall beside the phone. Mr. Conley helped Mr. Tewksbury into the store and laid him on the floor. He then went back to the phone and found Mrs. Tewksbury was still on the line. He told her what he had found, hung up, and called the police. Mr. Conley returned to Mr. Tewksbury, who told him about the robbery and the items that had been taken from him. He told Mr. Conley that he had not resisted the robbery. Police and Mrs. Tewksbury arrived at the scene. Mr. Tewksbury was still conscious and was able to advise them of the events of the robbery. He was transported to Providence Hospital, however, at 1:16 a.m. in the early morning hours of April 18, 1983, Mr. Tewksbury died as a result of the knife wound.

Meanwhile, at approximately 12:05 a.m. on April 18, 1983, approximately one hour after the King-Kwik robbery and murder, two men wearing masks entered the U-Totem store located at Roundtop and Colerain. One of the men was again brandishing a knife. Jim Henneberry, a clerk at the store, was standing at the cash register while a customer, Dennis Nitz, was playing a video game near the front door. Henneberry realized what was occurring and he fled to a room in the rear of the store and locked the door. The robber carrying the knife chased Henneberry and tried to kick open the door and pry it open with the knife, but was unsuccessful. The other masked robber pushed Nitz back when he tried to leave. Nitz was able to dodge him and leave the store.

As he left, he noticed that the man (later identified as John Brewer) had red hair. Inmate Byrd and co-defendant Brewer fled the store, again to the waiting van, taking the entire cash register.

At about 1:00 a.m. on April 18, two Forest Park police officers were on duty in a marked police cruiser. They observed a large red cargo van drive past their location at a slow rate of speed, pull into a K-Mart parking lot and turn off their headlights. A few minutes later the van's headlights were turned back on and the van left the lot. About four minutes later, the van reappeared, again at a slow rate of speed. The officers became suspicious and followed the van. It pulled into the parking lot of a United Dairy Farmer store that was closed at the time. The officers pulled in behind the van. One of the occupants, later identified as John Brewer, got out of the van and approached the police car. Brewer identified himself as "David Urey" and told police he had no identification. The driver, William Woodall, and the inmate, John Byrd, gave police identification that was called in to the dispatcher. Although there were no current warrants for either Byrd or Woodall, the dispatcher reported that both had prior felony convictions.

Police officers observed the inside of the van with a flashlight and saw coins on the floor of the van. They also saw stocking masks and a knife in a tray on the dashboard. A Shell credit card in the name of Sharon Tewksbury was lying on the floor and a cash drawer from a cash register was in the back of the van.

All three men were arrested and eventually charged with committing aggravated murder and three counts of aggravated robbery. John Byrd was also charged with two death penalty specifications.

On August 12, 1983 inmate was found guilty by jury of Aggravated Murder, with both death penalty specifications, and two counts of Aggravated Robbery. On August 16, 1983 the jury, following the penalty phase of the trial recommended the sentence of death. On August 19, 1983 the court accepted the recommendation of the jury and sentenced John W. Byrd to be put to death in the manner prescribed by law.

PRIOR RECORD and INSTITUTIONAL ADJUSTMENT:
Juvenile:

Department of Correction files reflect that inmate's arrest record dates back to 1977 when the inmate was age 13. Over the next thirteen months he was arrested for incorrigibility, criminal damaging, and issuing a false alarm. He was admonished and locally supervised until November 1978 when he was committed to the Ohio Youth Commission for violation of probation. Following his release Byrd was again committed to the Ohio Youth Commission for Unauthorized Use of a Motor Vehicle in October 1979 where he served approximately one and one-half years. Shortly after his second release Byrd was arrested for Unauthorized Use of a Motor Vehicle and this case was held open until he reached age eighteen.

Adult:

1/82	Theft	Frankfort, Ky.	2/82: 1 year at Ky. State Reformatory 12/82: Discharged by conditional release (expiration of sentence)
11/82	Promoting Contraband Details: Inmate in possession of a homemade knife (shank)	LaGrange, Ky.	11/82: Two years probation
3/83	Disorderly Conduct	Cinn., Oh.	4/83: 1 year probation
4/83	Possession of Drugs	Cinn., Oh	Same as above
4/83	Aggravated Murder Aggravated Robbery(3 cts) Details: Aggravated murder and robbery of Monte Tewksbury, King-Kwik store and U-Totem store	Cinn., Oh	8/83: Death penalty
10/85	Abduction Details: On 10/14/85 at approximately 1:00 p.m. inmate Byrd and others executed a planned takeover of cellblock J1 at SOCF. Inmates on death row took two corrections officers hostage, threatened to kill the officers, and destroyed state property. The institution negotiated the safe release of the hostages.	Lucasville, Oh	2-10 years added sentence

Institution Adjustment:

A review of the inmate's institution adjustment shows a different pattern of behavior during the first half and second half of this period of confinement. Between 1983 and 1992 the inmate amassed twenty major rule violations for such activities as creating a disturbance, possession of intoxicating substances (hooch and Motrin), threatening to kill other inmates, attempting to hit other inmates, verbal threats to officers, spitting on and throwing urine and feces at or on officers, setting items in his cell on fire, destruction of state property, taking officers hostage, threatening to kill them, assault on another inmate, and fighting. Between 1992 and the present, Byrd has had only one major infraction, in 1998, involving verbal threats to an officer.

SOCIAL HISTORY:

John William Byrd, Jr. was born on December 18, 1963 in Cincinnati, Ohio to the union of John and Mary Byrd. The marriage lasted a very short time due to John Byrd Sr.'s violent attacks on his wife and child. During his childhood and adolescence, Byrd's mother was married three additional times. In each instance, the men in John Byrd's life were physically and emotionally abusive. To escape this home situation Byrd ran the streets. At age thirteen Byrd became more rebellious, didn't attend school on a regular basis, and began abusing alcohol and drugs. At this time he became involved in the criminal justice system with a series of minor offenses. This

resulted in two commitments to the Ohio Youth Commission. Byrd completed the ninth grade before officially dropping out of school. He worked infrequently performing manual labor, painting, construction or roofing jobs. At age eighteen Byrd was convicted of stealing a truck and was committed to the Kentucky State Reformatory where he remained until December 1982. A short four months later Byrd, age 19, committed the offenses for which he is incarcerated.

PROPOSERS:

The Office of the Ohio Public Defender currently represents John Byrd. They have provided the Ohio Parole Board written argument and documentation outlining the reasons John Byrd seeks executive clemency. On August 20, 2001 David H. Bodiker, Ohio Public Defender, and Gregory W. Meyers, Chief Counsel, Death Penalty Division, personally appeared and gave oral arguments before the Ohio Parole Board. Reasons expressed in favor of the granting of executive clemency are as follows:

1. John Byrd was not the principal offender in the killing of Monte Tewksbury as Byrd did not stab the victim.
2. The state's key witness fabricated his testimony
3. The disproportionate sentences given to Byrd and Brewer

Counsel supported their first reason with the sworn affidavits of John Brewer, #175-066. In both affidavits, one sworn in 1989 and the other sworn in 2001, Brewer testified that as a reaction to Monte Tewksbury grabbing at him or tussling with him, that he (Brewer) stabbed Monte Tewksbury in the side causing his death. Counsel indicated that Byrd's trial lawyers made errors in the trial that now are legal barriers to the courts hearing evidence (Brewer's confession) that would exonerate Byrd from being the "principal offender" and therefore remove the death penalty as a sentencing option. They pointed out that Byrd is being punished for Brewer's conduct. Counsel also provided affidavits from inmates Roger "Red Bone" Hall, Benny Fields, Darryl Messer, William Vandersommen and former inmate Dan Cahill, that testify to Brewer telling them on numerous occasions that he (Brewer) was the one who stabbed Monte Tewksbury. Counsel further supported the credibility of the Brewer affidavits by identifying other evidence that pointed to Brewer as the actual killer.

The truthfulness of the trial testimony of Ronald Armstead is the basis for the second reason cited by counsel for the granting of executive clemency. Armstead was in the Cincinnati Workhouse at the same time in 1983 as Byrd, Brewer and Woodall. Armstead testified at the Byrd trial that John Byrd had confessed to him that he (Byrd) was the one that stabbed Monte Tewksbury. Counsel pointed out that Armstead's testimony was crucial to the prosecution, as it was the only evidence that differentiated John Byrd from John Brewer. Counsel hammered away at the fact that Armstead fabricated the entire story in an effort to gain favor with the Prosecutor's Office. To support this contention Counsel provided details of the racially segregated nature of the Cincinnati Workhouse in 1983 (Armstead is black and Byrd is white). Everyone in the Workhouse knew Armstead to be an informant. Counsel provided sworn affidavits from persons in the Cincinnati Workhouse, at the time, that Ronald Armstead and Virgil Jordan were known to have fabricated the testimony that Byrd told Armstead he had killed Monte Tewksbury. Counsel clearly indicated that not only was the testimony of his conversations with Byrd fabricated, but that Armstead lied to the jury concerning his pending return as a parole violator. Armstead led the

jury to believe that he had no other cases pending and therefore was receiving no benefit by his cooperation with the authorities and that he had no motive to lie. Counsel concluded that no one should be put to death on the word of a jailhouse snitch.

As to the third point raised by Counsel, of the three persons convicted of the Aggravated Murder of Monte Tewksbury, John Byrd alone received the death penalty. He received this sentence as the "principal offender". Where there is any doubt as to the roles played by each co-defendant, the disproportionate sentences of death vs. life imprisonment must be corrected.

In addition to Counsel's presentation the Ohio Parole Board received the comments of John Byrd's mother, Mary Ray, and his sister, Kim Hamer. Mrs. Ray is in extremely frail condition, having suffered three strokes within the last three weeks. She mustered enough strength to give an impassioned plea for her son's life to be spared. Likewise, Ms. Hamer also requested mercy and indicated that her brother is a God fearing man who has expressed remorse for what occurred. Ms. Hamer is fearful that the loss of her brother through execution would also lead to her mother's death and possibly her younger brother becoming suicidal. She also requested that John Byrd's life be spared.

The Ohio Parole Board has received hundreds of individual letters supporting the granting of clemency. In addition, we have also received petitions favoring the granting of clemency that contained approximately 2750 signatures.

OPPONENTS:

Mr. Michael K. Allen, Hamilton County Prosecuting Attorney, represented the State of Ohio at the hearing before the Ohio Parole Board on August 20, 2001. Mr. Bill Bryer, Chief Assistant Prosecutor, Mr. Jim Canepa and Ms. Heather Gosselin, Assistants from the Attorney General's Office, assisted Mr. Allen.

Mr. Allen asserted that the record clearly reflects that John Byrd stabbed Monte Tewksbury on April 17, 1983. Mr. Allen outlined the extensive number of appeals, motions for new trial, post-conviction appeals, etc. that this case has generated. A review of the evidence in the case shows that there was a great deal more than the testimony of Ronald Armstead. Evidence found in the van clearly showed the connection between the King-Kwik and the U-Totem robberies. Byrd was identified by the clerk as the man brandishing the knife at the U-Totem store. There is contradictory evidence of Byrd's state of intoxication. At trial it was pointed out that Byrd had blood on his clothing that matched that of the victim and that there was blood on the van's drivers seat near where Byrd was crouching. In 1987 the Ohio Supreme Court in reviewing the facts stated, "Identity of Byrd as both a participant and as the principal offender was a contested issue at trial. The U-Totem evidence which supported the state's allegation that Byrd was the participant with the knife was highly probative on this issue."

The Prosecutor stands behind the testimony of Ronald Armstead and points to the fact that more than twenty people testified in the course of the trial. Courts have reviewed the testimony provided by Armstead and found that there is no credible evidence that Ronald Armstead lied in his trial testimony.

The Prosecutor moved on to a discussion of the Brewer affidavits. There is clearly nothing new. Defense counsel has hidden these documents for twelve years for the purpose of delay of the death sentence upon exhausting all other appeals. Brewer's affidavits are demonstrably false. Brewer has nothing to lose as his prior record and his institution conduct would probably prevent his release anyway. Brewer testified at his own trial that not only hadn't he killed anyone, but that he and Byrd had never been to the King-Kwik. Brewer told prison officials upon admission that Byrd had killed the victim. Co-defendant Woodall corroborated this when he also told the admissions officials that Byrd had stabbed Monte Tewksbury. Both these affidavits state that the victim either tussled or grabbed Brewer prior to him striking the fatal blow. However, the statement of the victim himself was that he offered no resistance.

The Prosecutor discussed Byrd's behavior since his incarceration. The Prosecutor referred to letters and other documents showing that Byrd was extorting other inmates and inmate's families while confined to Death Row. He further noted Byrd's participation in the rioting in SOCF, J1, in 1985 for which he received an added sentence. Perhaps most shameful is Byrd's threatening letter to the Tewksbury family in 1986.

Mr. Jim Canepa, Office of the Attorney General, offered some factual representations for the purpose of accuracy.

1. Monte Tewksbury did not say that the man who stabbed him wore a plaid shirt. He told police that one of the men wore a plaid shirt. Brewer's affidavit doesn't mention the shirt or where or when it was discarded.
2. Counsel's statement that there was no identification of Byrd at the U-Totem robbery is incorrect. At trial the customer, Mr. Nitz, identified Byrd as the man with the knife.
3. Byrd was wearing the Pulsar watch belonging to Monte Tewksbury when he was arrested.
4. The role played by Byrd in both robberies indicates that he was not "passed out".
5. Blood, the same type as the victim's, was found on Byrd's clothing
6. There is no evidence that shows that the victim was behind the counter when stabbed
7. The autopsy report was unable to confirm or deny that the knife found in the van was used to inflict the fatal stab wound. Although the dimensions of the knife were consistent with the dimensions of the injury, no competent pathologist would state categorically that a particular knife of common type caused a particular injury.

In addition to the Prosecutor's presentation the Ohio Parole Board received comments from the victim's wife, Mrs. Sharon Tewksbury, and the victim's daughter, Ms. Kim Tewksbury. In addition to relating the feelings of her children, Mrs. Tewksbury indicated that she has gotten on with her life, but will always remember and be affected by the actions of John Byrd. He is an unremorseful and violent offender. She is convinced that the right man is on Death Row and she asks that clemency be denied. Ms. Kim Tewksbury stated that she had a wonderful relationship with her father and that she misses him very much. Nothing less than the execution of John Byrd will bring closure.

The Ohio Parole Board has received hundreds of individual letters opposing the granting of executive clemency. In addition, we have received approximately 2000 petition signatures and approximately 150 E-mails also opposing clemency for John W. Byrd.

CONCLUSIONS:

The Ohio Parole Board, following review of the extensive written material submitted and the oral arguments presented on August 20, 2001, reach the following conclusions:

- The murder of Mr. Monte Tewksbury was a totally senseless, callous act, committed without any provocation
- John W. Byrd, as convicted by jury, did stab and kill Mr. Monte Tewksbury during the course of committing an Aggravated Robbery on April 17, 1983.
- The affidavits of John Brewer in 1989 and 2001 lacks any credibility whatsoever
- The statements of William Woodall while in jail, upon admission to the penitentiary, throughout most of his incarceration, and those given weeks before his death appear to be the most consistent and credible of the statements provided.
- The testimony of Ronald Armstead is important and significant but it was not the only evidence that was relied upon in convicting John Byrd. Woodall corroborated significant parts of Armstead's testimony. We conclude that Armstead did not fabricate his testimony.
- The mitigating factors presented to the Parole Board do not outweigh the aggravating circumstances in this case
- The exercise of Executive Clemency is not warranted in this case

DISSENTING OPINION

The taking of the life of Monte Tewksbury is indeed a tragedy. Mr. Tewksbury's life was a precious one and the taking of that life was a very cruel and senseless act. When a life has been taken in a crime such as this, the family of the victim is saddened and deeply hurt, and in most cases seek the death penalty, for they cry out for the perpetrator's life to be taken also, and rightfully so. However, the evidence in this case does not meet the standards of weight and sufficiency necessary to convince one beyond a reasonable doubt of John Byrd's guilt as the murderer of the victim in the crime charged.

Compelling evidence that left no room for doubt convicted most people in our society who are condemned to death. Others witnessed the crime, or the criminal confessed, or some other type of evidence caused everyone to be certain that this is the guilty party.

Where there is even a slight possibility of putting someone to death where a factual or legal error might have been committed or ignored, it is unconscionable that we as a civilized society would take such a risk. Records indicate that the co-defendant, John Brewer, has twice confessed under oath by affidavit that John Byrd did not commit the crime and it was he, John Brewer, who stabbed Monte Tewksbury causing his death.

John Byrd, #175-145
Death Penalty Commutation
Page 9

The death penalty is inappropriate in this case where so much doubt exists as to the actual killer of the victim Monte Tewksbury. Life without the possibility of parole will serve the purpose of punishment for John Byrd's involvement in this senseless murder, as well as a way of protecting society from Byrd.

RECOMMENDATION:

Following consideration of available information, the Ohio Parole Board, with eleven (11) members participating, recommends to the Honorable Bob Taft, Governor of the State of Ohio, by a vote of ten (10) to one (1), that Executive Clemency be denied in all forms in the case of John W. Byrd, #175-145.

John W. Byrd, #175-145
Death Penalty Commutation

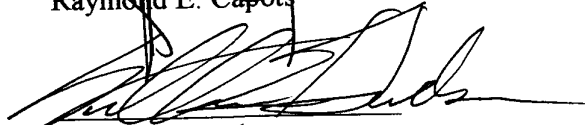
Adult Parole Authority
Ohio Parole Board Members
Voting **Unfavorable**



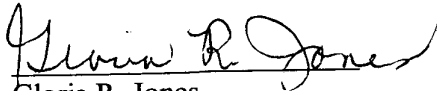
Margarett T. Ghee




Raymond E. Capots



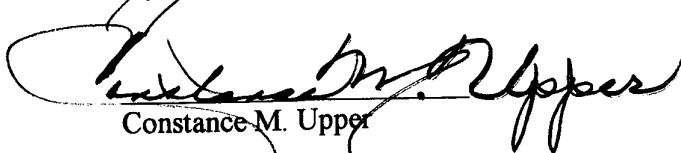
William E. Hudson



Gloria R. Jones



Jay R. Denton



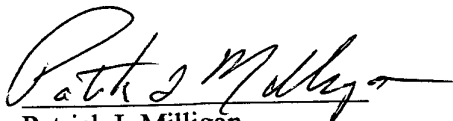
Constance M. Upper



Larry D. Mathews



Jim Bedra

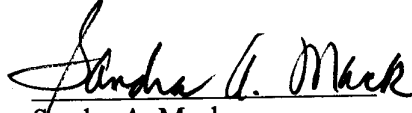


Patrick I. Milligan



Betty J. Mitchell

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



Sandra A. Mack