

# URGENT ACTION

## OHIO EXECUTION LOOMS DESPITE DOUBT OVER GUILT

**Kevin Keith, a 46-year-old African American man, is facing execution on 15 September in Ohio, USA. He has a clemency hearing before the Ohio Parole Board on 11 August. He maintains that he did not commit the three 1994 murders for which he was sentenced to death.**

On the evening of 13 February 1994, Marichell Chatman, her seven-year-old daughter Marchae Chatman and her aunt Linda Chatman were fatally shot in Marichell's flat in Bucyrus in mid-Ohio. Her two young cousins and her boyfriend, Richard Warren, were also shot, but survived. Kevin Keith was arrested on 15 February. Three days later, Quanita Reeves, one of the two young cousins who survived the shooting and who knew Kevin Keith as an occasional babysitter, told police that the gunman was her "daddy's friend, Bruce". Shown a photo of Kevin Keith by police, she excluded him as the gunman. Nevertheless, by 1 June 1994 – less than four months after the crime – Kevin Keith was on death row, remarkably swift proceedings for a US capital case.

Central to the prosecution's case was the claim that, in hospital after the shooting, Richard Warren had named Kevin Keith as the gunman. A police officer testified that it was from Warren's nurse, Amy Gimmets, that he had first heard the name 'Kevin' in the case. The state did not call Amy Gimmets as a witness, and in 2007 Kevin Keith's lawyers discovered that no one by that name had ever been employed at the hospital. Richard Warren's attending nurse was Amy Whisman. She signed a statement in July 2007 that she had called the police when Richard Warren had woken up after surgery, but had neither asked him, nor been told by him, who the gunman was.

Keith's attorneys argue that it was the police who suggested the name 'Kevin' to Warren, not the other way around, and that immediately after the shooting Warren had told four different people that he did not know the identity of the gunman, whose face was partially masked by a jumper pulled up over his mouth and nose. The day after the crime, the police called Warren and provided him with the names of four 'Kevins', including Kevin Keith. The police reported that Warren then selected 'Keith' as the last name, but that the phone call had not been recorded. Then, videotaped later that evening, Richard Warren reported that he did not know 'Kevin's' last name. He was then shown photographs of six men in which the picture of Kevin Keith was the only one providing a facial close-up. Richard Warren chose this photo. Thirteen US experts in eyewitness identification have noted that "faulty eyewitness identification is the single most likely factor to result in wrongful conviction". They concluded that Richard Warren's identification of Kevin Keith was "tainted by many factors", including suggestive police techniques. They have also questioned the reliability of the testimony of another eyewitness who caught a brief glimpse of the gunman as he fled, initially could not identify him, and only identified Kevin Keith after he appeared on the television news.

Kevin Keith's lawyers are seeking a new trial on the claim of newly discovered evidence that the state withheld evidence favourable to him, including about an alternative suspect. They are also seeking executive clemency.

### **PLEASE WRITE IMMEDIATELY in English or your own language, in your own words:**

- Noting the serious doubts that have been raised about Kevin Keith's guilt;
- Explaining that you are not seeking to excuse the murders in this case or to downplay the suffering caused;
- Calling on the Ohio Parole Board to recommend that Governor Ted Strickland commute this death sentence.

### **PLEASE SEND APPEALS BEFORE 11 August 2010 TO:**

Ohio Parole Board  
770 West Broad Street, Columbus, Ohio 43222, USA  
**Fax: +1 614 752 0600**  
**Email: [drc.publicinfo@odrc.state.oh.us](mailto:drc.publicinfo@odrc.state.oh.us)**  
**Salutation: Dear Board members**

Also send copies of your appeals to diplomatic representatives of the USA accredited to your country. Please check with your section office if sending appeals after the above date.

**Please also sign this petition in your private capacity (it will be presented to the Board at the hearing on 11 August):**  
[http://criminaljustice.change.org/petitions/view/relief\\_urgently\\_needed\\_for\\_innocent\\_man\\_on\\_ohios\\_death\\_row](http://criminaljustice.change.org/petitions/view/relief_urgently_needed_for_innocent_man_on_ohios_death_row)

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### ADDITIONAL INFORMATION

More than 130 people have been released from death rows on grounds of innocence in the USA since 1976. At the original trial in each case, the defendant had been found guilty beyond a reasonable doubt. It is clear beyond any dispute that the USA's criminal justice system is capable of making mistakes. International safeguards require that the death penalty not be imposed if guilt is not "based upon clear and convincing evidence leaving no room for an alternative explanation of the facts".

At Kevin Keith's trial, unable to produce the non-existent Nurse Gimmets, the prosecution called another nurse, John Foor, who testified that Richard Warren had written down the name 'Kevin' early in the morning after the shootings. In its closing argument, the prosecutor stated that Foor had called the police. The recording of any such call has been destroyed, and the authorities are currently being sued in an unrelated case on account of the destruction of such recordings. This lawsuit has revealed, however, that written logs were kept of such calls. Kevin Keith's lawyers received copies of the logs on their client's case in March 2010. There was no record of any call from John Foor. In addition, at the trial, the state had used evidence that a bullet casing from the murder weapon had been found near an electricity plant, some distance from the crime scene. It argued that this implicated Kevin Keith as the gunman because he had picked up his girlfriend at the plant two hours after the murders. However, the newly revealed police logs suggest that the casing was found near a McDonald's restaurant, over a mile from the electricity plant.

Four women have provided alibi evidence that Kevin Keith was not at Marichell Chatman's flat at the time of the crime. Only two of them testified at the trial. There was also some evidence at the time of the trial that there was an alternative suspect known to the police. Indeed a relative of this individual had told Kevin Keith's trial lawyers that this suspect was "in on the killings". This alternative suspect has a brother called Bruce, raising the question as to whether Quanita Reeves had mistaken the two brothers. In 2007, Kevin Keith's lawyers discovered more evidence pointing to this alternative suspect that they argue had been withheld from the defence. Less than a month before the shooting, the police had conducted a drug raid and arrested nine individuals, including Kevin Keith. The police were acting on the basis of information providing by a member of the Chatman family. The evidence that came to light in 2007 was that two weeks before the shootings, the alternative suspect had told a police informant "that he had been paid \$15,000 to cripple" the man whose information had led to the drug arrests. There was also evidence that the alternative suspect had told another man that he had been paid to kill the Chatman informant, and that he had the habit of masking his face with a jumper as the gunman did in the shootings in the Bucyrus apartment block.

In 2009, a three-judge panel of the US Court of Appeals for the Sixth Circuit considered whether to review the new evidence pointing to the alternative suspect and showing that Nurse Amy Gimmets does not exist. This was the second time Kevin Keith's case was in front of the Sixth Circuit so, under US law, before the court would consider the new evidence on the merits, it first had to decide whether this evidence alone would establish Kevin Keith's innocence. Two judges found that the new evidence was not enough to meet this burden. The third dissented, however, and found that the new evidence alone established significant doubt. He stated that "any reasonable factfinder would have serious, and reasonable, doubt as to whether it was Keith or [the alternative suspect] who committed the murders. Under these circumstances, [Keith] could establish by clear and convincing evidence that a *reasonable* factfinder could not find Keith guilty of three counts of murder." No further appeal is allowed.

Amnesty International does not know whether Kevin Keith committed the crime for which he was sentenced to death, but in any event unconditionally opposes any use of the death penalty anywhere. There have been 1,218 executions in the USA since it resumed judicial killing in 1977, 38 of them in Ohio. There have been 30 executions in the USA this year, five of them in Ohio.

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