

## Kevin Keith: A Case of Innocence Executive Summary

Kevin Keith is an innocent man on Ohio's death row, wrongfully convicted of a crime he did not commit based on faulty eyewitness identification – the leading cause of wrongful convictions nationwide. He has an alibi for the time of the crime supported by four witnesses. There is no forensic evidence that links him to the crime. Mr. Keith is scheduled to be executed on September 15, 2010.

In 2007, after all of his allotted appeals were exhausted, new counsel took on Mr. Keith's case. Upon investigating, counsel discovered new evidence for Mr. Keith that supported what Mr. Keith was saying from day one – he is actually innocent.

The new evidence shows that the primary evidence used to convict Mr. Keith – the eyewitness identification by a surviving adult victim – was improperly influenced. Thirteen years after he was convicted, Mr. Keith discovered that one of the State's supposed "witnesses" – who was critical to corroborating the legitimacy of the eyewitness identification – does not actually exist.

Mr. Keith's new evidence further implicates an alternative suspect who told a police informant that he was paid to carry out the 1994 attack in Bucyrus, Ohio that killed three people and wounded another three – the crime for which Mr. Keith is scheduled to be executed. The police were aware of the statements by the alternative suspect, but no one turned them over to Mr. Keith's counsel.

No court has ever had the entirety of new evidence before it. Some of the new evidence has been time-barred and therefore has never, and may never, be heard on its merits by any court.

### Case Background

On the evening of February 13, 1994, Marichell Chatman, her daughter Marchae, and Marichell's aunt Linda Chatman were shot to death at the Bucyrus Estates Apartments in Bucyrus, Ohio. Richard Warren, Marichell's boyfriend, and Marichell's young cousins, Quanita and Quinton Reeves, were also shot but survived. On February 15, 1994, Kevin Keith was arrested for these shootings. By May 31, 1994, Mr. Keith was sentenced to death for this crime. From crime to sentencing, only three-and-a-half months passed.

The police committed themselves right away to the fact that Mr. Keith was the shooter, and one of the officers testified that he brought up Mr. Keith's name at the crime scene. At first, the connection was logical. The victims' family member was a police informant responsible for a drug raid weeks before where Mr. Keith had been one of eight people arrested, though the charges against him were later dismissed. However, the police assumed this was Mr. Keith's motive for the shooting, even though Mr. Keith had no

violent history (he had one prior robbery conviction for purse-snatching and two petty theft convictions). Moreover, Mr. Keith had an alibi supported by four witnesses.

Then, five witnesses told the police that they had seen a “large black man” – described as about 6’1,” 350 pounds – hanging around in the area. Mr. Keith, at 6,’ 300 pounds, fit the description. But then, a month later, the police discovered that the “large black man” described by those five witnesses was *not* Mr. Keith but a man who had just moved into the apartment complex a few days earlier. Furthermore, none of them had actually seen that man do anything criminal; they had all been describing a man who was a bystander at the scene.

When it was discovered that those five people were not describing Mr. Keith, the police did not revisit their theory that Mr. Keith was the perpetrator. Nor did they revisit it when Richard Warren, the surviving adult victim, described his shooter as about 260 pounds, and another witness told police that the shooter was wearing layered or insulated clothing. Mr. Keith weighed 40 pounds more than Mr. Warren’s description, and insulated clothing would have made him appear even larger. Further, Mr. Warren described the shooter as 6’3” – the same height as himself – and Mr. Keith is three inches shorter than Mr. Warren and the described shooter. But Mr. Keith had already been in jail for a month, and his trial was only two months away.

The police had “solved” the case before they even interviewed all of the surviving victims. Three days after Mr. Keith was arrested for the shootings, Quanita Reeves, one of the children who survived the shooting, excluded the picture of Mr. Keith as the man who shot her, instead identifying the shooter as her “daddy’s friend, Bruce.”

Additionally, Mr. Warren initially told no less than four different witnesses – including a police officer – that he did not know who shot him as the shooter wore a partial face mask that covered his mouth and nose. Mr. Warren’s memory somehow changed by the time of his final, taped statement to police, as he had by then recalled that a man named “Kevin” was his attacker. He identified Kevin Keith as that “Kevin” – providing the primary evidence used to convict Mr. Keith.

In spite of his alibi and no conclusive forensic evidence proving his involvement, Mr. Keith was convicted in 1994 and sentenced to death.

### **Mr. Keith Was Convicted Based on Faulty Eyewitness Identification**

The main evidence used to wrongfully convict Mr. Keith was the erroneous eyewitness identification of the surviving adult victim, Richard Warren. The police procedures that led to Mr. Warren’s identification of Mr. Keith as the shooter were highly unreliable and have been widely discredited by social science research.

The day after the shooting, from his hospital bed, Mr. Warren spoke on the phone to a police officer who had him choose a name out of a name-array of four “Kevins.” The

officer gave him the names Kevin Keith, Kevin Thomas, and then two other “Kevins” for which he made up last names. That officer later testified that he could not recall those other two last names. The officer also testified that he did not record that particular phone call with Mr. Warren, even though all outgoing phone lines at the Bucyrus police department are recorded. It was during that unrecorded phone call that the police claim Mr. Warren said he was 75% sure that Keith was the shooter’s last name.

Later that evening, two different police officers went to see Mr. Warren in the hospital. The police then had him identify the shooter based on a suggestive photo lineup. Mr. Warren himself acknowledged during his testimony at Mr. Keith’s trial that the photo lineup he was shown was biased against Mr. Keith, as Mr. Keith’s photo was projected larger than all of the others. And the police failed to include in the lineup the picture of Kevin Thomas – one of the other “Kevins” they had asked Mr. Warren about – despite the fact that he also fit the physical description of the shooter.

Additionally, according to Mr. Warren’s medical records, the police supplied him with the motive for the shooting. In the days following the attack, Mr. Warren told his psychologist that the police had suggested that the shooting was intended to target the police informant responsible for the recent drug raid.

Furthermore, Mr. Warren identified Mr. Keith despite telling at least four people immediately after the shooting, including a police officer, that he did not know who shot him and that the shooter was wearing a face mask. All of these individuals testified to this fact at trial.

Adding to the unreliability of Mr. Warren’s identification, Quanita Reeves, the seven-year-old who survived the shooting, told the police that she was shot by her father’s friend “Bruce.” She was shown the same suggestive photo lineup as the adult surviving victim and excluded the picture of Mr. Keith as the man who shot her.

The only other witness to identify Mr. Keith – a neighbor who saw the shooter flee the scene – did so after being unable to identify the shooter in her first two statements to police and only after seeing Mr. Keith’s picture on the news as the man arrested for the crime. Decades of scientific research prove that witness memory is easily susceptible to error, particularly when exposed to improper influence. Like any other evidence at a crime scene, witness memory must be preserved carefully and retrieved methodically, or it can be contaminated.

Indeed, eyewitness identification is cited as the most inaccurate and unreliable form of evidence. It is the single greatest cause of wrongful convictions nationwide, playing a role in more than 75 percent of convictions overturned through DNA testing. In Mr. Keith’s case, the eyewitness identifications were deeply flawed, tainted by improper influence and suggestion.

## New Evidence Shows that the Eyewitness Identification Was Improperly Influenced

Mr. Warren's identification was the main evidence used by the State to wrongfully convict Mr. Keith. The defense moved to suppress this identification of Mr. Keith as the shooter. At the suppression hearing, the State used a statement by Mr. Warren's nurse to counter the problems of suggestion inherent in providing Mr. Warren with only one first name ("Kevin") from which to choose. Police testified that the nurse who attended to Mr. Warren at Grant Medical Center – Nurse "Amy Gimmets" – called them after she had removed the tube that was in his throat to say that he had identified the shooter as "Kevin." It was only then, they claimed, that they provided Mr. Warren with a name-array of "Kevins."

No one by the name "Amy Gimmets" testified at trial. Instead, an officer read notes from the supposed call with Nurse "Gimmets."

Now, through a search of hospital records, Mr. Keith's counsel has uncovered that Mr. Warren was not attended to by a nurse named "Amy Gimmets." Indeed, counsel uncovered that no person by the name "Amy Gimmets" has ever been employed by Grant Medical Center, nor is this person listed on the Ohio Board of Nursing's License and Verification Website. A search of investigative websites identifies no person by the name "Amy Gimmets" in the entire State of Ohio or, it appears, in the entire United States.

Counsel for Mr. Keith discovered that the actual attending nurse who removed the tube from Mr. Warren's throat is Amy Whisman, who is listed as the attending nurse on the victim's medical records and in the initial police report. On July 25, 2007, Nurse Whisman stated in a signed affidavit that she called police to let them know that Mr. Warren had awoken – but she did not give the police a name for the shooter because Mr. Warren never said a name. In the affidavit, Nurse Whisman states:

*"I did not ask Richard Warren for the name of the person who shot him, and Richard Warren never told me the name."*

The case against Mr. Keith looks much different in light of the new affidavit from Mr. Warren's actual attending nurse and the hospital records, which indicate that the police employed suggestive tactics to cause Mr. Warren to identify Mr. Keith. Without the supposed statement from Nurse "Gimmets," the police would not have corroboration for why they supplied the name "Kevin" to Mr. Warren.

Furthermore, according to the hospital security guard's report, Mr. Warren told the hospital security guard that the shooter's name was unknown. This report was made one hour *after* the police claim that Mr. Warren told them in their unrecorded phone conversation that the shooter's name was "Kevin."

**New Evidence Uncovers Alternative Suspect Who Told Police Informant That He Was Paid to “Cripple” Target of Attack**

In addition to the newly discovered information that undercuts the State’s eyewitness evidence against Mr. Keith, there is now also new evidence that identifies an alternative suspect for the crime for which Mr. Keith stands to be executed.

In 2007, counsel for Mr. Keith learned through a public records request that this individual made a before-the-fact confession that he planned to commit the crime in question. Just two weeks before the murders, he told a confidential police informant that he was paid to “cripple” the drug informant who police determined to be the target of the attack at the Bucyrus Estates Apartments.

Mr. Keith’s counsel discovered this admission in an unrelated case file pertaining to a string of pharmacy burglaries in the area at the time of the attack. In addition to this admission, an accomplice in the burglaries also told police that this individual had been paid to commit the attack in question.

This newly discovered case file includes additional evidence that the alternative suspect was known to wear the type of face mask with a mouth covering that the shooter was described to have worn.

No jury has ever considered this evidence, which was suppressed by the State and which could have changed the outcome of Mr. Keith’s guilty verdict.

Furthermore, additional evidence points to the guilt of the alternative suspect, including:

- The alternative suspect has a known violent criminal past, involving convictions for armed robbery and murder.
- A relative of his contacted Mr. Keith’s counsel during the trial and told counsel that he had bragged about committing the attack. Other relatives also alerted defense counsel to the fact that there were other unsolved murders for which they believed him to be responsible. The jury heard none of this, however, as the trial judge called it “immaterial” and refused to allow defense counsel to question the individual about it.
- Quanita Reeves, the seven-year-old surviving victim who excluded Mr. Keith as the perpetrator, identified her father’s friend “Bruce” as the shooter. Bruce is the brother of the alternative suspect. Both Bruce and his brother were friends with Quanita’s father and involved in a pharmacy burglary ring with him.
- The alternative suspect showed up at the crime scene following the attack. According to a sheriff’s trial testimony, the alternative suspect knew the type of bullets involved in the killings, but then tried to lead the sheriff to believe

that the shooter must have come in from out of town. He also made sure to tell the sheriff that his car – which matched the physical description given by a witness who saw a car flee the scene – was broken down that night.

- The alternative suspect provided contradictory alibis. He stated that he was at his mother's house sleeping and also stated that he was with a friend 28 miles away in a neighboring town. Mr. Keith has a solid alibi supported by four witnesses.
- The alternative suspect's car also had license plate numbers that matched the numbers in a license plate imprint in a snow bank at the crime scene. The police could not say for certain that the imprint was left the night of the murders. One of the victims had the same license plate numbers in the car she drove. The police assumed the imprint was from the getaway car because a witness saw a car get stuck in the snow fleeing the scene. Police introduced the license plate imprint at trial to implicate Mr. Keith because his girlfriend occasionally drove her grandfather's car, which also had some license plate numbers matching the snow indentation. However, Mr. Keith's girlfriend did not have her grandfather's car at the time of the crime, nor did Mr. Keith have access to it. The police found no forensic evidence of any kind linking Mr. Keith to the car. Moreover, this car did not match the description of the car provided by the witness, and the prosecutor never had the witness confirm whether that car was the car she saw that night.

### No Forensic Evidence

The only forensic evidence the State presented that "linked" Keith to the crime is the "043" in the license plate of his girlfriend's grandfather's car – a car that Keith was never known to drive – and the tire tracks found outside of the crime scene. The tire treads recovered from the grandfather's car did not match the tire casts made from the scene. However, the State's expert looked at a brochure of the tires originally purchased for that car by the grandfather, and she testified that those tires in the brochure were "similar in tread design." Over time, that has evolved in the courts to being a "match" of the tires.

Both Keith and his girlfriend have denied that Keith has ever even been inside the grandfather's car, much less driven it. There was not a shred of evidence found inside Keith's girlfriend's grandfather's car that linked it to Keith or to the crime scene, but the police and prosecutor were convinced it was the getaway car. Further, the girlfriend's grandfather's car was green, but the eyewitness described the getaway car as cream or light yellow.

Within the last month, Kevin Keith was finally able to have an expert evaluate the evidence relied upon by the State in coming to its conclusions about the car. After reviewing the evidence, track evidence expert and retired FBI agent William Bodziak has **excluded the girlfriend's grandfather's car** as the car that left the license plate imprint

in the snow. Bodziak's findings also contradict the reasoning behind the State's exclusion of the alternative suspect's car as the car belonging to the killer. The alternative suspect's license plate – plate 043LIJ on his cream or light yellow Chevy Impala – could very well have left the impression in the snow.

Furthermore, the State's experts admitted at trial that, because of the small area in which the victims were shot, the shooter likely would have had blood spatter on him. No blood spatter was ever found on Mr. Keith or any of his belongings. The experts further admitted that none of the forensic evidence collected conclusively linked Mr. Keith – or anything in his home – to the crime.

### **Alibi Supported by Four Witnesses**

Mr. Keith has an alibi for the time of the crime supported by four witnesses. These witnesses include Mr. Keith's aunt, who was also related to some of the victims in the shooting, and a neighbor who lived in the same Mansfield, Ohio apartment complex as Mr. Keith's girlfriend and saw the two of them leaving the complex fifteen minutes before the shooting occurred. (Mansfield is 28 miles from Bucyrus, Ohio.) This witness saw Mr. Keith and his girlfriend leaving the apartment complex in a blue car, which does not match the description of the car seen fleeing the crime scene by a witness. After leaving the apartment, Mr. Keith and his girlfriend then went to his aunt's house in Crestline where he was seen by his aunt and another witness at the time of the shooting. (Crestline is 15 miles from Bucyrus.)

### **Ohio Innocence Project Calls for New Trial**

The Ohio Innocence Project – an organization that typically only works on non-death penalty cases involving DNA evidence – filed a brief with the Ohio Supreme Court in 2009 arguing that Mr. Keith deserves a new trial based on the unreliability of the eyewitness identification used to convict him.

Director of the Ohio Innocence Project Mark Godsey has stated: "New evidence in the case, which has never been reviewed in full on its merits, raises concerns that the eyewitness identification used to convict Mr. Keith was unreliable and that he may be innocent."

In addition, the National Innocence Network has recognized the injustices in Mr. Keith's case and is filing an *amicus* brief on his behalf at the United States Supreme Court.

### **Innocent Man Faces Execution**

The State's case against Mr. Keith centered on flawed eyewitness identifications and erroneous forensic evidence. Now, newly discovered evidence debunks the validity of

the State's primary piece of evidence – the adult surviving victim's eyewitness identification of Mr. Keith. The attending nurse's affidavit and the hospital records suggest that police fabricated a fictitious nurse to cover up that they improperly fed the name "Kevin" to the victim, thus discrediting the impartiality of the identification. This surviving victim had initially told at least four people that he did not know who the shooter was. One other surviving witness identified a man other than Mr. Keith as the shooter.

Furthermore, additional new evidence uncovers an alternative suspect, who confessed to a police informant just two weeks before the murders that he planned to commit the attack.

Four witnesses attest to the fact that Mr. Keith had an alibi for the time of the crime. Mr. Keith has no history of violence, unlike the alternative suspect, who has a known violent criminal past.

Mr. Keith has steadfastly maintained his innocence from the time of his wrongful conviction and throughout his 15 years on death row. The State of Ohio now risks putting to death an innocent man with no jury ever hearing evidence proving his innocence and implicating an alternative suspect for the crime.

**Please visit Kevin Keith's website - [www.kevinkeith.org](http://www.kevinkeith.org) -- and click on the link to sign his petition.**