

Supplement to Kevin Keith's Clemency Petition

This supplemental submission is in response to several issues raised during the August 11, 2010 hearing and the supplement filed by the State of Ohio. This supplement serves to provide the Board with complete and accurate information about three key areas of inquiry in furtherance of its consideration of Mr. Keith's application for clemency.

A. The random shell casing identified by Fernelle Graham does not support Keith's conviction.

- The location of the found casing mysteriously changed after Keith was arrested. According to the Bucyrus Police radio dispatch logs (attached to Clemency Application, Bates No. 0842 on 2-14-94), Ms. Graham initially reported that she "thinks she may have found [the casing] in the McDonalds area," which is located around the corner from the shooting, and nowhere near the General Electric plant. Only later – and without explanation as to the reason for the changed story – do police and Ms. Graham assert that the casing was found near her home, across from the GE plant where Keith was alleged to have picked up Zina Scott on the night of the crime.
- The changed story ultimately is inconsistent with the police theory on the events surrounding the crime. On page 430 of the trial transcript, Ms. Graham testified that it was "a quarter to ten" when she looked out of her window and saw the trash on her sidewalk. According to her testimony, the bullet casing was found with that trash. On page 410 of the trial transcript, Ms. Scott testified that Keith picked her up at 11 p.m. that night.
- If the trash and casing were outside Graham's house at 9:45, and Keith picked up Ms. Scott at 11 p.m., then the trash and bullet casing were collected well before Kevin Keith was in that area on February 14, 1994.
- Police and prosecutors offered no explanation for this inconsistency in their theory.

B. The 1982 Oldsmobile Omega owned by Keith's girlfriend's grandfather was not used in the shootings.

- Nancy Smathers, the eyewitness to the getaway car, has never identified the Oldsmobile Omega as the car she saw that night.
- Nationally-recognized expert William Bodziak reviewed all materials relied upon by BCI in the findings it made regarding the 1982 Oldsmobile Omega. As set forth in the expert report submitted in Keith's clemency petition, Bodziak has excluded the Omega as the car that made the impression in the snow.

- Specifically, Bodziak stated that the “photographs are not consistent with the profile of the front of the 1982 Oldsmobile in that, on that vehicle, the license tag is mounted fairly flush with the bumper, thus contact with the license tag to the degree that it pushed snow enough to produce an impression, would also have produced impressions of the remainder of the bumper. No evidence of the other areas of the bumper appears in these photographs. Instead, the snow appears to be undisturbed in those areas.”
- Bodziak further determined that “the only way to opine that a crime scene tire impression is the same tread design and dimension as a tire or tires on the Oldsmobile Omega would be to make full circumference known test impressions of a tire of that same design and tread dimension and to compare it directly to a cast of a crime scene impression. Instead [BCI examiner] chose to simply make a visual evaluation and opine the design was similar. The forensic use of the word “similar” has no further meaning than it would for a layman in that it can only attest to a visual likeness of sorts and does not include the tread dimension. It is noted that the Firestone Triumph 2000 tire design was made in many sizes both in the passenger and light truck market.”
- The State apparently excluded Rodney Melton’s license plate because the ‘043’ came first, before the letters.
- Bodziak stated, however, that “there is insufficient evidence to determine from what portion of the license tag the numerals “4” and “0” would be from, since no other numerals or reference areas appear in these photographs depicted above. Thus based on the limited detail, a distinction could not be made between a license plate that reads “MVR043” versus others that have the numerals “04” somewhere on the plate.
- Lastly, during the hearing, the State referenced a photo of a 2-door Impala to show the slanted window and emphasized that it did not fit the description given by Smathers. This is misleading. The back window of a 4-door Impala (which is the model of Melton’s car) has a more vertical window shape, similar to the 1982 Omega.

C. Eyewitness testimony from surviving victims continues to change over time.

- In 1994, Quanita Reeves said “Bruce” shot her (transcript page 715), he was wearing a mask (transcript page 716), none of the men in the photo lineup were the shooter (transcript page 720) and she said that the picture of Kevin was not the shooter because the shooter didn’t have that bump on his head (transcript page 720). Then she was asked if that was who she called Bruce. She said no (transcript page 721). Quanita also stated the shooter drank two glasses of water (transcript page 716).
- The State’s response to Keith’s application for clemency contains the following statement: “Quanita positively identified Keith as the shooter.” Response, p. 12. The response then quotes a portion of what Quanita told police (“it looks like him”), but failed to finish the sentence (“but it’s not him”). Tr. p. 720.

- In 2010, Quanita issued a statement contending that Kevin shot her, he was not wearing a mask, and she remembers clearly seeing Kevin's face as the shooter. Her mother said that she called Kevin Keith "Bruce," although no other person has testified to that fact.
- In 2010, Joyce Reeves claimed that she was not aware that Quanita had excluded the picture of Kevin Keith as the shooter.
- In 1994, Quinton Reeves said the name "Kevin" but was unable to pick Kevin Keith's photo from a six-pack lineup.
- In 2010, Quinton said he remembers clearly that it was Kevin, and he did not have a mask on and that he drank at least 8 glasses of water.
- Immediately after the shooting, Richard Warren told at least four people, including a police officer interviewing him, that he did not know who shot him and that the shooter wore a mask. The officer arriving on scene noted that Richard Warren was coherent, and Warren was able to tell him the address of the apartment.
- In a statement to police provided a day later, Warren said the shooter was wearing a turtleneck shirt that he'd pulled up to cover his nose, clearly remembers the shooter drinking water through the turtleneck shirt and suddenly remember that the person was identified to him as "Kevin."
- Thirteen memory experts have concluded that, based on Warren's poor observation of the shooter, it is unlikely that his memory contained a good image of the shooter. This deficit in memory is further compounded by the administration of morphine, which is currently being used to help war veterans forget their memories of the trauma they sustained.
- The lineup the police showed to Richard Warren was biased. Kevin's picture was not only in the center, but it was foremost. Kevin was the only person without hair, and no other man in the lineup was as large as he was. If the lineup were fair, when random people given the general description of a "big fat black guy" they would only pick out Kevin's picture 16% of the time. In this lineup, Kevin's picture is picked out by 75% of random people.
- In addition, the officer indicated to Warren that shooter was in the lineup, which tells the witness that the should pick someone out. Just before Warren picked out Kevin Keith, he told the police that he could only identify the shooter by his build.
- At the time when this memory would be freshest, Richard Warren did not give the name "Kevin" to the police officer that first responded. Although Warren later said he told a doctor at Bucyrus hospital the name Kevin, the doctor denied that this occurred.

- Nurse John Foor testified that Warren wrote the name Kevin down at 5:00 am. Warren, himself denied writing the name down. Warren was on a ventilator, so he could not have said the name Kevin to John Foor. And an examination of Warren’s handwritten notes shows that the name Kevin was not in Warren’s scrawling handwriting.
- In 1994, in his first statement to police, Jesse Delaney told the police that the shooter was wearing a mask and could not identify him. By the time police “re-interviewed” him on the day before trial, Delaney suddenly could identify the shooter as Kevin Keith. Even in that second statement, however, Delaney maintained that the shooter was wearing a mask.

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