

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, : Supreme Court #: 96-1149
 PLAINTIFF, : Case No. 94-CR-0042
 vs. :
 KEVIN KEITH, : DEATH PENALTY CASE
 DEFENDANT. :

 MOTION TO SET EXECUTION DATE

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FILED
 JUL 09 2009
 CLERK OF COURT
 SUPREME COURT OF OHIO

RECEIVED
 JUL 09 2009
 CLERK OF COURT
 SUPREME COURT OF OHIO

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I. Factual Summary

In 1994, a jury in Crawford County, Ohio, convicted and sentenced to death Defendant Kevin Keith (hereinafter "Keith") for the aggravated murder of Marichell Chatman, Linda Chatman, and Marchae Chatman. On the evening of February 24, 1994, Keith entered the apartment of Marichell Chatman who lived with her daughter, Marchae, and Richard Warren. At the time, Marichell's cousins, Quanita and Quinton, and her aunt Linda Chatman were also there. Keith came into the apartment after exchanging a few words with Linda and pulled out a nine-millimeter handgun. Keith ordered everyone to lie on the floor and admitted that he was there because Marichell's brother was a police informant in a drug investigation involving Keith. Keith then fired ten to twelve shots injuring Warren, Quanita, Quinton and killing Marchae, Linda and Marichell. Along with other evidence, Keith was identified by a neighbor by Warren as the gunman.

II. Procedural Summary

On April 5, 1996, the Third District Court of Appeals affirmed Keith's convictions and sentence. *State v. Keith* (April 5, 1996), Crawford App. No. 3-04-14, unreported, 1996 Ohio App. LEXIS 1720. On October 1, 1997, this Court affirmed the judgment of the Court of Appeals. *State v. Keith* (1997), 79 Ohio st.3d 514, 684 N.E.2d 47. On April 6, 1998, the Supreme Court of the United States denied Keith's petition for a writ of certiorari. *Keith v. State* (1998), 118 S.C. 1393.

On September 20, 1996, Keith filed a petition for post-conviction relief pursuant to Ohio Revised Court (RC) Section 2953.21. On February 4, 1998, the trial court dismissed Keith's petition. On August 19, 1998, the Ohio Court of Appeals affirmed the decision of the trial court. *State v. Keith*, (August 19, 1998) Crawford App. No. 3-98-05, unreported, 1998 Ohio App. LEXIS 3836. This Court then dismissed Keith's discretionary appeal on December 23, 1998. *State v. Keith* (Ohio Dec. 23, 1998), 84 Ohio St. 3d 1447, 703 N.E.2d 326. Again the United States Supreme Court denied certiorari. *Keith v. Ohio* (1999), 527 U.S. 1027.

Keith thereafter filed with the United States District Court for the Northern District of Ohio a petition for a writ of habeas corpus. The District Court denied the petition, and that decision was affirmed subsequently by the United States Court of Appeals for the Sixth Circuit. *See Keith v. Mitchell* (6th Cir.2006), 455 F.3d 662. Keith then sought review by the Supreme Court of the United States of the Sixth Circuit's judgment via a petition for a writ of certiorari. *Keith v. Hour* (2007), 549 U.S. 1308. On January 13, 2009 Keith petitioned to file a second habeas petition but was denied by the Sixth Circuit. *Keith v. Bobby* (6th Cir.2009), 551 F.3d 555.

III. Lethal Injection Litigation

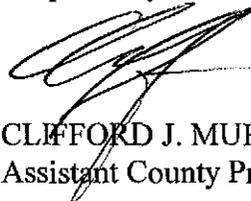
On April 23, 2007, Keith filed a motion to intervene in the pending *Cooley* lethal injection lawsuit in federal district court before Judge Frost. *Cooley v. Tacit* (S.D.OHIO 2007), 2007 U.S. Dist. LEXIS 45769. Judge Frost granted Keith's motion on June 25, 2007. *Cooley v. Taft* (S.D. Ohio, 2007), 2007 U.S. Dist. LEXIS 29734. However, on September 30, 2008, the Southern District Court issued a decision that Cooley's complaint should be dismissed. *Cooley v. Strickland* (6th Cir.2008), 2008 U.S. Dist. LEXIS 75630. Cooley was later executed on October 14, 2008. Keith also filed a motion to intervene in the pending *Reynolds* lethal injection lawsuit.

However on August 28, 2008, Judge Frost dismissed Reynolds's claim and ruled Keith's motion to intervene as moot. *Reynolds v. Strickland* (S.D.Ohio,2008), 2008 U.S. Dist. LEXIS 78977. Keith has also intervened in *Otter et al. v. Strickland et al.* Case no. 08cv 13337. As this Court has scheduled executions in the past for inmates who had intervened in the *Cooey* and *Reynolds* lawsuits (See Jeffrey Lungen, Jerome Henderson, Kenneth Biros and Clarence Carter), Keith's intervention should not serve as an impediment to the State's motion.

IV. Argument and Request for Relief

As Keith has fully exhausted all available legal challenges to his conviction and death sentence, the State of Ohio respectfully requests this Court to set a date for Keith's execution.

Respectfully Submitted,



CLIFFORD J. MURPHY
Assistant County Prosecutor

**COUNSEL FOR PLAINTIFF STATE
OF OHIO**

CERTIFICATE OF SERVICE

On the 8th day of July, 2009, a copy of the foregoing was sent via first class, U.S. mail to Rachel Troutman and Tyson Fleming, 8 East Long Street 11th Floor, Columbus, Ohio 43215 Counsel for Defendant and Mark Godsey, The Ohio Innocence Project, Prof. of Law Director, U.C. College of Law, PO Box 210040, Cincinnati, Ohio 45221-0040.



Clifford J. Murphy, Assistant Prosecutor