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TIMOTHY YOUNG  
State Public Defender

ORIGINAL

January 24, 2012

Office of the Clerk  
Supreme Court of Ohio  
65 South Front Street, 8<sup>th</sup> Floor  
Columbus, Ohio 43215-3431

Re: Request for Recusal, Case No. 2011-0443

Dear Clerk:

Counsel for Kevin Keith respectfully requests that Justice Paul Pfeiffer recuse himself from deciding the matter *State v. Kevin Keith*, Case No. 2011-0443, which is currently pending in front of the Supreme Court of Ohio. This letter is being filed in accordance with S. Ct. Prac. R. 14.6(B)(1), and the supporting affidavit is enclosed.

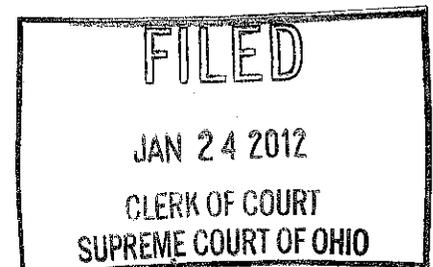
Respectfully Submitted,

Rachel Troutman

Assistant State Public Defender

Enclosure

cc: Clifford Murphy, Assistant Crawford County Prosecutor (with enclosure)



IN THE SUPREME COURT OF OHIO

STATE OF OHIO, :  
Plaintiff-Appellee, :  
v. : Case No. 2011-0443  
KEVIN KEITH, :  
Defendant-Appellant. :

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**Affidavit of Rachel Troutman**

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STATE OF OHIO )  
 ) ss:  
COUNTY OF FRANKLIN )

I, Rachel Troutman, after being duly sworn, hereby state as follows:

1. I am an attorney in Ohio, licensed and in good standing since November 2003.
2. I am lead counsel for Kevin Keith, and together with my co-counsel, I filed a Memorandum in Support of Jurisdiction on behalf of Mr. Keith in the Supreme Court of Ohio on March 17, 2011. The assigned case number is 2011-0443.
3. As of the date of this affidavit, the Supreme Court of Ohio has not ruled on case number 2011-0443. Thus, the matter is still awaiting a decision by the Supreme Court regarding whether it will accept jurisdiction in *State v. Keith*, Case No. 2011-0443.
4. According to Rule 2.11(A)(5) of the Ohio Code of Judicial Conduct, “a judge shall disqualify himself or herself in any proceeding in which the judge's *impartiality* might reasonably be questioned, including” when “the judge, while a judge or a *judicial candidate*, has made a public statement, other than in a court proceeding, judicial decision, or opinion, that commits or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy.”
5. On January 19<sup>th</sup>, 2012, the Bucyrus Telegraph Forum ran an article in which it quoted Justice Pfeiffer making public statements regarding Kevin Keith, the case against Keith, as well as Justice Pfeiffer's opinion regarding the job done by the Bucyrus Police Department. The statements attributed to Justice Pfeiffer include the following:

- “I voted to uphold Kevin Keith's conviction and that he should have the death penalty, but that is an exact example of why the law should go away. Keith's family has come to his aid in a very aggressive way. Most people on death row do not have anyone who cares about them that way. The Innocence Project got involved and that stirred up a lot of editorial support.”
- “The Akron Beacon Journal said it would be a gross miscarriage of justice if he were put to death, but I thought the Bucyrus Police Department did a good job. A lot of what never makes those opinion pieces is the fact that the imprint of Keith's license print was left in the snow in front of his girlfriend's apartment.”
- “The governor has the power to commute the sentence and I have no quarrel with the fact that he did. But the fact that (Keith) was able to avoid the death penalty when others that are on death row are not able to, is just as good of a reason to get rid of it.”

6. The subject matter of *State v. Keith*, Case No. 2011-0443, surrounds allegations of police and prosecutor misconduct. The materiality analysis for most of Mr. Keith's claims involves his innocence and the lack of evidence against him. Specifically, the Propositions of Law contained in Keith's Memorandum in Support of Jurisdiction are as follows:

- **Proposition of Law I:** When a defendant uncovers favorable evidence that had been suppressed by the State, the court's materiality analysis should include all pieces of suppressed evidence, despite that the pieces were uncovered at separate times and raised in separate proceedings. A sufficiency of the evidence analysis is inappropriate.
- **Proposition of Law II:** Impeachment evidence is material impeachment evidence when it affects the testimony of a key witness.
- **Proposition of Law III:** When the State suppresses evidence from the defense, the defendant is unavoidably prevented from discovering the evidence within the time limit for a new trial motion.

- **Proposition of Law IV:** When the police destroy potentially useful evidence in bad faith, a finding that the evidence was not material under *Brady v. Maryland* does not obviate the court's need to adjudicate a properly-raised claim under *Arizona v. Youngblood*.
- 4. Kevin Keith's case is largely about police misconduct. Justice Pfeiffer publicly stated that he thinks the Bucyrus Police Department did a good job in Keith's case. He has, in other words, appeared to commit himself to ruling in a particular way, especially with regard to Proposition of Law IV (police destruction of evidence in bad faith). *Rule 2.11(A)(5) of the Ohio Code of Judicial Conduct*.
- 5. Justice Pfeiffer expressed his opinion about Keith's guilt, but he relied on evidence that has been discredited since the time Justice Pfeiffer reviewed the case (he stressed the "imprint of Keith's license print was left in the snow"). In July 2010, one of the nation's leading experts in forensic impressions reviewed the evidence and found that the snow imprint did not match the shape of the front bumper of the car that was Keith's purported getaway car. He also found that the imprint did not have enough detail registered to determine whether the numbers in the license plate came first or last. At the time of Keith's trial, the Bucyrus Police Department had relied on the fact that the numbers came second as a way to exclude other credible suspects.
- 6. I did not include in Keith's Memorandum in Support of Jurisdiction any mention of the impression analyst's report, because I did not feel it was permitted under the rules. The expert's report was not the subject matter of the motion for new trial, and it was the appeal from the motion for new trial that led to Case No. 2011-0443. I also felt that such an analysis could have been conducted earlier—during trial or postconviction proceedings—in the exercise of due diligence, and thus it could not meet the legal criteria.
- 7. Some of the arguments we raised in *State v. Keith*, Case No. 2011-0443, involve a materiality analysis. That requires an analysis of whether the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict.
- 8. Justice Pfeiffer's public statement regarding his conclusion of Keith's guilt "appears to commit the judge to reach a particular result or rule in a particular way": he appears to be committed to a finding that no evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict. *Rule 2.11(A)(5) of the Ohio Code of Judicial Conduct*.
- 9. Justice Pfeiffer's stated reasoning for his conclusion—the snow imprint—has been refuted by an expert who challenged and discredited conclusions by the Bucyrus Police Department. Justice Pfeiffer's public statements that the "Bucyrus Police Department did a good job" appear to commit him to that position, and it will be difficult for him to rule in a way that indicates otherwise.

Further affiant sayeth naught.

  
Rachel Troutman

Sworn and subscribed in front of me on this the <sup>24<sup>th</sup></sup> day of January, 2012.





TERI SLACK  
NOTARY PUBLIC STATE OF OHIO  
MY COMMISSION EXPIRES APRIL 9, 2012