

URGENT ACTION

WITHHELD EVIDENCE AT ISSUE AS EXECUTION NEARS

William Montgomery is due to be executed in Ohio on 11 April for a 1986 murder he says he did not commit. Six federal judges argued he should have had a new trial because a police report contradicting the state's theory of the case was withheld from the defence.

On 8 March 1986, the body of Cynthia Tincher was found in her car in Toledo, Ohio. On the same day, her flatmate Debra Ogle was reported missing. Her body was found on 12 March in a wooded area in Toledo. Both women had been shot. **William Montgomery** and Glover Heard were each charged with both murders. Glover Heard avoided the death penalty by pleading guilty to complicity to murder in exchange for testimony against his co-defendant and a prison sentence of 15 years to life. William Montgomery was brought to trial in September 1986. The state's theory was that he killed Debra Ogle on 8 March while robbing her, and then shot Cynthia Tincher to prevent her identifying him as having been with Debra Ogle. The defence presented no witnesses, but only cross-examined the state's witnesses. The jury convicted William Montgomery of the aggravated murder of Debra Ogle and the murder of Cynthia Tincher. He was sentenced to death for the Ogle murder and to 15 years to life for the Tincher murder.

Six years later, a police report came to light that Debra Ogle had been seen alive by several of her friends early on 12 March 1986, four days after the time the state asserted that William Montgomery had killed her. In 2007, a US District Court judge found that the police report would have "severely undercut Heard's credibility and destroyed the State's timeline of the case" as well as the "State's theory of Montgomery's motivation for killing Tincher". He ordered the state to retry William Montgomery. The state appealed. A three-judge panel of the Sixth Circuit Court of Appeals, by two votes to one, upheld the retrial order on the grounds that the report undermined confidence in both the conviction and sentence. The state again appealed. In 2011, the full Court of Appeals overturned the District Court order. Five of the 15 judges dissented. If three judges had voted the other way, William Montgomery would have likely received a new trial. In May 2012, the US Supreme Court refused, without comment, to take the case.

While the state has sought to cast doubt on the sighting of Debra Ogle on 12 March 1986 described in the police report, in 2012 William Montgomery's lawyers obtained an investigative report from forensic experts concluding that "there is considerable support for the hypothesis that the victim Debra Ogle died around March 12, 1986".

There will be a clemency hearing before the Ohio Parole Board on 8 March 2018. The governor can grant clemency whatever the parole board's recommendation. William Montgomery has been on death row for over 30 years. His execution has been set for 11 April.

Please write immediately in English or your own language, in your own words:

- Calling on the Board to recommend clemency and the Governor to stop the execution of William Montgomery and to commute his death sentence, noting persistent doubts about the reliability of the conviction;
- Noting that six federal judges have held that he should receive a new trial because the withheld police report directly contradicted the state's theory of the case and severely undermined confidence in the verdict;
- Pointing to the frequent errors that have occurred in US death penalty cases, including in Ohio.

PLEASE SEND APPEALS BEFORE 8 MARCH (PAROLE BOARD) and 11 APRIL 2018 (GOVERNOR) TO:

Ohio Parole Board
770 West Broad Street
Columbus, Ohio 43222, USA
Email: drc.paroleboard@odrc.state.oh.us
Fax: +1 614-752-0600

Salutation: Dear Board members

Governor John Kasich
Riffe Center, 30th Floor,
77 South High St, Columbus, OH 43215-6117, USA
Fax: +1 614 466 9354
Email: www.governor.ohio.gov/Contact/ContacttheGovernor.aspx
(please use the AI USA details: 5 Penn Plaza, 16th Floor, New York, NY 10001, Phone: 212 807-8400, Fax: 212 627-451)
Twitter: @JohnKasich
Salutation: Dear Governor

Also send copies to diplomatic representatives accredited to your country. HIS EXCELLENCY WOODY JOHNSON, [U.S. Embassy London](http://www.embassyusa.org) 33 Nine Elms Lane London, SW11 7US, United Kingdom, Phone: (0)20 7499-9000 **Please check with your section office if sending appeals after the above date.**

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ADDITIONAL INFORMATION

International standards on the death penalty prohibit the execution of anyone whose guilt is not based upon “clear and convincing evidence leaving no room for an alternative explanation of the facts”. Evidence at William Montgomery’s trial showed that he purchased the gun used in the murders about three weeks before the crime, and that he led police to Debra Ogle’s body on the afternoon of 12 March 1986 (he said he had lent Glover Heard the gun and that he knew from him where the body was). In its 2007 ruling, the District Court found the state’s case was “not airtight”. The “police report could have undermined Heard’s testimony, which was the core of the State’s case”, and “could have undercut the State’s theory of how the murders occurred by completely discrediting the State’s timeline of the murders as well as its supplied motive for Montgomery’s murder of Tincher”.

When the full Sixth Circuit overturned the District Court’s order, the majority acknowledged that “some evidence at trial also tended to implicate Heard”, and his “multiple accounts... certainly undermined the credibility of his testimony”. However, it said that the jury was “aware of all of this”, and that the withheld police report “exonerates Heard as Ogle’s shooter because he was imprisoned by the time of the alleged sighting on March 12”. Three of the five dissenting judges said that the evidence against William Montgomery was “anything but” strong. Even without the withheld report, proof of his guilt “is dubious at best”. They argued that the majority’s contention that the police report was immaterial because it undercut the defence theory [that Heard was the gunman] “entirely misses the mark” – the report “sheds light on additional potential defense theories that could have been available” to William Montgomery, “thus further undermining the reliability of an already questionable verdict”.

The other two dissenting judges argued that the majority decision “provides a disincentive for prosecutors to comply with the law”, gutting the deterrent effect of the constitutional rule against withholding of evidence “in all but the most unconscionably severe cases”. In this case “no one has seriously contested the fact that the prosecutor suppressed the evidence simply because it was inconsistent with his theory of the case... Montgomery is entitled to a jury trial free of gross prosecutorial misconduct”. The dissenters added that, “apart from Heard’s implausible testimony, the case against Montgomery was entirely circumstantial” and he “had no motive at all”. They added that “one can only wonder whether, had his counsel known of the existence of some affirmatively exculpatory evidence, such as the testimony of witnesses who saw Ogle days after the prosecution claimed she was murdered – and perhaps combined it with other evidence, such as the coroner’s report stating Ogle died on the day she was allegedly seen, not days before – a different result might have obtained in this case. We will never know, because the state made sure that did not happen”.

Since 1973 in the USA, more than 160 wrongful convictions in capital cases have been discovered, including nine in Ohio. Police and prosecutorial misconduct, as well as inadequate defence representation, have been frequent contributors to such errors. In a dissent in 2015, two US Supreme Court Justices wrote that “crimes at issue in capital cases” can be “accompanied by intense community pressure on police, prosecutors, and jurors to secure a conviction. This pressure creates a greater likelihood of convicting the wrong person”. They said the frequency with which the death penalty has been “wrongly imposed” was “striking”, and another reason why the Court should reconsider the constitutionality of the death penalty itself.

There have been 1,469 executions in the USA since they resumed in 1977 under new capital laws approved by the Supreme Court in 1976. Ohio accounts for 55 of these executions. There has been four executions in the USA so far this year. Amnesty International opposes the death penalty, unconditionally. Today 142 countries are abolitionist in law or practice.

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