

PUBLIC

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UA 153/07 Death penalty

USA (Texas) Patrick Bryan Knight (m), white, aged 39

Patrick Knight is scheduled to be executed in Texas on 26 June. He was sentenced to death in Randall County in 1993 for the murder of Mary Ann and Walter Werner in 1991. Patrick Knight, who was 23 years old at the time of the crime, has been on death row for more than one third of his life.

According to the evidence presented at trial, on the morning of 26 August 1991, Patrick Knight and his friend Robert Bradfield broke into the Werners' home near the city of Amarillo in order to burgle it. When the couple returned home during the burglary, the assailants locked them in the basement. On the night of 27 August, the Werners were put in their van, driven into the country and shot in the head. Police questioned Knight who lived in a trailer next to the Werners' house. He eventually confessed to the crime and led the police to the victims' bodies. The jury returned a verdict of guilty of capital murder. Robert Bradfield was also convicted of capital murder, and was sentenced to life imprisonment.

In order to pass a death sentence, a Texas capital jury must unanimously find that the defendant would pose a future danger to society if allowed to live, even in prison. At Patrick Knight's sentencing, the prosecution presented 16 witnesses – including jail staff and other inmates – in support of a future dangerousness finding, nearly half of whom testified about the defendant's alleged bad conduct in pre-trial detention. The defence presented no mitigation witnesses at all. In a post-conviction affidavit, the lead defence lawyer stated that because he believed there was little doubt about his client's guilt, he had focussed on investigating potential mitigating evidence. However, he said that the investigations had turned up little of use to the defence, including on mental health issues. Knight's mother and grandmother had indicated that they did not wish to help Knight, and they then moved from Amarillo without notice and could not be contacted further.

The appeal courts have rejected the claim that Knight received constitutionally inadequate representation at the sentencing. This claim has centred around one of the prosecution's witnesses, Cynthia Risley, a guard at the jail where Knight was held in pre-trial custody. Knight had been in the jail for the entire 16 months that Risley had worked there, and his segregation cell was directly opposite her station. She had testified at the trial that she was a part of a team that had found makeshift weapons in Knight's cell, and that he had a bad temper, and that she might be afraid of him if there was not a metal door between them when he got angry.

Since the trial, it has emerged that Cynthia Risley had more to say about Patrick Knight that the jury did not hear, and this additional testimony had mitigating value. At a federal court hearing in 1999, Risley testified that from her observation of and interaction with Knight during his pre-trial custody, she came to believe that he had emotional problems; that although he preferred his segregation cell to being held with other inmates, he was lonely; and that he had been abandoned by his family. She said that he "had no visitors, he had nobody". She said that Knight would confide in her, and would call her "Mom". She said that she had reached the opinion that his possession of makeshift weapons was an indicator of his boredom rather than of any violent intent. She also said that, although Knight did not talk much about the crime, and did not expect sympathy from her, he had said that he was going to take full responsibility for both murders even though Robert Bradfield had participated in one of them, because he knew that Bradfield's family would not cope if Robert Bradfield were to receive the death penalty. She said that she thought that Patrick Knight had, over time, begun to feel remorse about the crime because he "got to the point where he understood really the gravity of what he had done". She did not think that he would be a future danger in prison, so long as he was kept in a "controlled structured environment". The defence lawyers had known that the prosecution intended to call Risley as a witness and that Knight had spoken fondly of her. However, they had never contacted her. In the post-conviction proceedings, Cynthia Risley stated that she would have been available to talk to the

defence. At the federal hearing, the trial lawyer acknowledged that, with hindsight, "it would not have been a bad idea probably" to interview the jailers who had come into contact with Knight.

In 2005, the US Supreme Court handed down a decision, *Rompilla v. Beard*, in which it held that "even when a capital defendant and his family members have suggested that no mitigating evidence is available, his lawyer is bound to make reasonable efforts to obtain and review material that counsel knows the prosecution will probably rely on as evidence of aggravation at the trial's sentencing phase". The *Rompilla* case involved defence counsel who had conducted mitigation investigation, including interviews with the family and mental health experts. However, their investigation had turned up little in mitigation. Even so, the Supreme Court held that the legal representation had been deficient when the lawyers failed to examine the court file on Rompilla's criminal record that they knew the prosecution would use in seeking a death sentence. In an appeal to the Supreme Court, Knight's lawyer argued that "the similarities between this case and *Rompilla* are striking. Both Knight's counsel and counsel in *Rompilla* knew that the prosecution intended to use certain evidence as part of its aggravation case during the punishment phase. This evidence [Risley's testimony] was readily available and easily investigated." However, the Supreme Court has refused to take the case.

Patrick Knight comes from a highly dysfunctional family background. Alcohol abuse was reportedly common in the family (Knight had drunk large amounts of alcohol at the time of the crime). When Knight was four years old, he was found at the bottom of a swimming pool with a tricycle on top of him. He required emergency hospitalization and experienced seizures for at least a year afterwards. From the age of nine, he was taken to psychologists on a number of occasions due to behavioural problems. At the age of 13 or 14, he dropped out of school.

As Patrick Knight's execution date has approached, his case has gained some notoriety because of his reported decision to collect jokes from which he intends to select one for his final statement. He has stated that by doing this he is not intending any disrespect to the murder victims. In a letter urging the Texas Board of Pardons and Paroles to allow the execution to go forward, the Randall County Criminal District Attorney has asserted that Knight's "obscene plan to recite a gag at the moment of execution" gives "the clemency process a bad name". Amnesty International considers that whatever is motivating Patrick Knight, the Texas clemency process has already earned a bad name for itself, having failed to prevent nearly 400 executions in the past 25 years, including of child offenders, prisoners with serious mental disabilities, people denied adequate legal representation, and those whose guilt remained in doubt to the end.

There have been 1,080 executions in the USA since judicial killing resumed there in 1977. Texas accounts for 394 of these executions. There have been 23 executions in the USA this year, 15 in Texas.

RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible, in English or your own language, in your own words:

- expressing sympathy for the family of Walter and Mary Ann Werner, explaining that you are not seeking to excuse the manner of their deaths or to downplay the suffering caused;
- opposing the execution of Patrick Knight;
- noting that the defence lawyers did not present a single witness at the sentencing, and expressing concern that the jury was left unaware of mitigating testimony that could have been provided by Cynthia Risley;
- calling for clemency for Patrick Knight, and for the addressees to support a moratorium on executions.

APPEALS TO:

Rissie Owens, Presiding Officer, Board of Pardons and Paroles, Executive Clemency Section
8610 Shoal Creek Boulevard, Austin, TX 78757, USA

Fax: +1 512 463 8120

Salutation: Dear Ms Owens

Governor Rick Perry, Office of the Governor, P.O. Box 12428, Austin, Texas 78711-2428, USA

Fax: +1 512 463 1849

Salutation: Dear Governor

COPIES TO: diplomatic representatives of USA accredited to your country.

PLEASE SEND APPEALS IMMEDIATELY.