ARTICLES

THE SARAN WRAP OF COMPLICITY: FINDING GUILT AFTER AN OHIO PRISON REBELLION

*Staughton and Alice Lynd**

INTRODUCTION

I. BACKGROUND FACTS

A. Tensions between prisoners and correctional officers
B. Racial and religious tensions among prisoners
C. Unreliable prisoner testimony
D. Targeting the leaders

II. THE SARAN WRAP OF COMPLICITY IN THE TRIAL COURTS

III. THE SARAN WRAP OF COMPLICITY IN THE OHIO SUPREME COURT

A. Conclusions unsupported by reliable evidence
B. An ethical question

IV. WHO KILLED OFFICER VALLANDINGHAM?

A. Anthony Lavelle takes a plea
B. The conspiracy to frame Were and Hasan
C. The alternative theory

V. THE SARAN WRAP IN THE ELDER AND SOMMERS MURDERS

A. Who killed Earl Elder?
B. Who killed David Sommers?

CONCLUSION

INTRODUCTION

FIVE men were sentenced to death for their alleged roles as leaders of the uprising at the Southern Ohio Correctional Facility (SOCF) in 1993. These capital convictions were based almost wholly on the testimony of other prisoners without independent objective corroborating evidence. Although not charged with complicity in the indictments, it was on a theory of complicity that these men were found guilty and sentenced to death. Defendants in these cases could not be convicted of complicity without an underlying crime. Prosecutors argued that the underlying crime was conspiracy to commit aggravated riot, although this too was not charged in the indictments.[1]

During the years since the five were condemned, the administration of Ohio's death penalty laws and practices has come under scrutiny by the American Bar Association and by a task force appointed by the Chief Justice of the Ohio Supreme Court and a former president of the Ohio State Bar Association. In 2014, the Joint Task Force to Review the Administration of Ohio's Death Penalty issued a report that included the following recommendations:

> **RECOMMENDATION 17: Enact legislation that maintains that a death sentence cannot be considered or imposed unless the state has either: 1) biological evidence or DNA evidence that links the defendant to the act of murder; 2) a videotaped, voluntary interrogation and confession of the defendant to the murder; or 3) a video recording that conclusively links the defendant to the murder; or 4) other like factors as determined by the General Assembly.**[2]

And, by a vote of nineteen to zero,

> **RECOMMENDATION 18: Enact legislation that does not permit a death sentence where the State relies on jailhouse informant testimony that is not independently corroborated at the guilt/innocence phase of the death penalty trial.** [3]

---

* Staughton Lynd is the author of LUCASVILLE: THE UNTOLD STORY OF A PRISON UPRISING (1st ed. 2004, 2d ed. 2011), and *Napue Nightmares: Perjured Testimony in Trials Following the 1993 Lucasville, Ohio, Prison Uprising*, 36 CAP. U. L. REV. 559 (2008). Alice Lynd is the author of *Unfair and Can't Be Fixed: The Machinery of Death in Ohio*, 44 U. TOL. L. REV. 1 (2012). The Lynds served as co-counsel for the class of prisoners in Ohio's supermax class action, *Austin v. Wilkinson*, 189 F.Supp.2d 719 (N.D. Ohio 2002), *aff'd in part, rev'd in part*, 545 U.S. 209 (2005).

1. *See* sidebar arguments in Trial Tr., State v. Skatzes, Nos. 94-CR-2890, 94-CR-2891 (Ohio C.P. Montgomery Cnty.) [hereinafter State v. Skatzes], vol. XXI-A, 4475-77 (Nov. 30, 1995); vol. XXIII, 4886-87 (Dec. 4, 1995).

2. Joint Task Force Report to Review the Administration of Ohio's Death Penalty, Final Report & Recommendations (Apr. 2014) [hereinafter Joint Task Force Report], at 10 (emphasis in original), *available at*, http://www.supremecourt.ohio.gov/Boards/deathPenalty/resources/finalReport.pdf, (last visited Nov. 19, 2019). For Task Force vote counts, *see* Summary of Recommendations prior to page 1.

3. *Id.* (emphasis in original). *See* commentary, at 10-11.

If these recommendations of the Task Force were implemented, none of the Lucasville condemned could be executed.

The uprising at SOCF in Lucasville, Ohio, one of the longest in United States history, lasted from April 11 to 21, 1993. Prisoners killed ten men: nine fellow prisoners believed to be informants, or "snitches," and one hostage correctional officer. After a negotiated surrender, prosecutors sought death sentences against six men, five of whom were found guilty and condemned to death. Other participants were sentenced to many years of imprisonment or life behind bars.

The five men sentenced to death are an African American named Keith LaMar, convicted of having been the leader of a "death squad" that murdered alleged snitches on the first day of the disturbance; two Caucasians, George Skatzes[4] and Jason Robb, who were members of the Aryan Brotherhood at the time of the uprising; a former Muslim imam, James Were; and the Muslim imam at the time of the rebellion, Siddique Abdullah Hasan (hereinafter Hasan), formerly known as Carlos Sanders, whom authorities identified as the leader of the uprising.[5]

The cases against the "Lucasville Five" are still being litigated. One man, LaMar, has unsuccessfully appealed to the United States Supreme Court and

---

> In 2005, the American Bar Association House of Delegates adopted the following resolution: "That the American Bar Association urges federal, state, local and territorial governments to reduce the risk of convicting the innocent, while increasing the likelihood of convicting the guilty, by ensuring that no prosecution should occur based solely upon uncorroborated jailhouse informant testimony."

There may be some question as to what is meant by "uncorroborated jailhouse informant testimony." According to the Joint Task Force Report, the ABA Report that accompanied the Resolution on Jailhouse Informants "defined a jailhouse informant as 'someone who is purporting to testify about admissions made to him or her by the accused while incarcerated in a penal institution contemporaneously.'" Joint Task Force Report at 12.

More broadly, the Joint Task Force Report also quotes an opinion written by Justice Jackson in 1952: "The use of informers, accessories, accomplices, false friends, or any of the other betrayals which are 'dirty business' may raise serious questions of credibility." On Lee v. United States, 343 U.S. 747, 757 (1952) (likewise quoted in the ABA Report on Jailhouse Informants at 4).

The Innocence Project, while principally concerned with DNA-based exoneration cases, defines "jailhouse informants" as "people in prison who are incentivized to testify against a defendant in exchange for a benefit, which can include receiving leniency in their own case." "Unregulated jailhouse informant testimony deeply harms our justice system," *Informing Injustice: The Disturbing Use of Jailhouse Informants*, INNOCENCE PROJECT, https://www.innocenceproject.org/informing-injustice/ (last visited Oct. 14, 2019).

This broader definition of the activity of informants, whether in jail or prison, and in a variety of forms not limited to alleged admissions, is the use obviously relevant to the argument of this article and is intended throughout.

4. Opinion, State v. Skatzes, *supra* note 1, 5 (Jan. 30, 1996): "Corrections Officer Ra[t]cliff testified that George Skatzes undoubtedly saved his life . . . . The jury recommended the death penalty for all cases [sic] and counts except for the guard Robert Vallandingham, apparently feeling that as a result of Officer Ra[t]cliff's testimony the defendant did not deserve the death penalty on that particular charge."

5. For background of these five men, *see* STAUGHTON LYND, LUCASVILLE: THE UNTOLD STORY OF A PRISON UPRISING, 31-45 (2d ed. 2011) [hereinafter LYND, LUCASVILLE].

subsequently received what prisoners on death row call "a date," that is, a date on which the State plans to execute him.[6] Ohio has so many condemned men awaiting their dates that LaMar is not scheduled to die until November 2023.[7]

Closely examined, the cases against the Lucasville Five have certain common characteristics and reveal a common prosecution strategy. As will be shown below, in the absence of conclusive evidence as to who the actual killers were, the prosecution targeted the men who they believed were the leaders of the uprising. To do this, they needed to show that the leaders entered into a conspiracy and were complicit in what resulted. Conspiracy does not carry the death penalty in Ohio; complicity does.[8] We call this strategy "the Saran Wrap of Complicity" because Court of Common Pleas Judge Fred Cartolano characterized it in this way when he presided over the trial of Hasan and the second trial of Were.

I. BACKGROUND FACTS

There are four background facts essential to understanding the Saran Wrap strategy as applied in the Lucasville cases.

A. Tensions between prisoners and correctional officers

There was a history of complex tensions between prisoners and correctional officers at Lucasville.

Prisoners at Lucasville were 57 percent African American.[9] They came from cities like Cincinnati and Dayton or segregated neighborhoods in northern Ohio and experienced a multitude of challenges. A court had ordered interracial celling, an order resented by both blacks and whites. The Correctional Institution Inspection Committee (CIIC), made up of four state senators and four state representatives, conducted an intensive survey in 1989 of the situation at SOCF. The CIIC conducted 102 inmate interviews and received 427 letters from prisoners. Prisoners described widespread misconduct by correctional officers.

6. Associated Press, *Execution Date Set for Ohio Inmate Convicted In Prison Riot*, LOCAL 12.COM (Dec. 19, 2018), https://local12.com/news/nation-world/execution-date-set-for-ohio-inmate-convicted-in-prison-riot (last visited Jan. 7, 2020).

7. *See id.*

8. Ohio Rev. Code Ann. § 2923.03(F) (West 1986): Whoever is guilty of complicity "shall be prosecuted and punished as if he were a principal offender." A 1974 Committee Comment explicitly states: "an accomplice to aggravated murder is liable to the death penalty the same as the actual murderer." https://law.justia.com/codes/ohio/2006/orc/jd_292303-c81.html (last visited Jan. 7, 2020).

9. Ohio Civil Service Employees Association, AFSCME Local 11, *Report and Recommendations Concerning the Ohio Department of Rehabilitation and Correction and the Southern Ohio Correctional Facility[,] Lucasville, Ohio* [hereinafter AFSCME Report] (Aug. 30, 1993) at 79. During the trial of Thomas Blackmon, the Court noted for the record that the composition of L-block as of April 11, 1993 was 429 black inmates and 327 white inmates, which when rounded is 57% African American. State v. Blackmon, No. 94CR-1349 (Ohio C.P. Franklin Cnty.), vol. I, 201 (Apr. 27, 1994).

They "relayed fears and predictions of a major disturbance unlike any ever seen in Ohio prison history."[10]

More than 90 percent of correctional officers were whites,[11] recruited from communities near the prison. Lucasville is merely a crossroads, hardly even a small town, located in Scioto County near the Ohio River. Its culture is that of the South. The manner of speaking and general outlook of the guards very much resemble that of their Kentucky counterparts on the other side of the river.

A perceptive prisoner who spent many years at SOCF before, during, and after the uprising offered the following insights in a letter to the authors. The correctional officers, he says, were typically working-class men who had been employed in local manufacturing industries before these enterprises shut down or left.

> The region—southern Ohio, western Kentucky, and West Virginia—is severely impoverished by unemployment and lack of opportunity. As much as 75% of the region is living under the poverty level. Child hunger is among the highest in the nation. Most families struggle to make ends meet with the normal expenses of mortgages/rent, health insurance, utilities, car payments and fuel, food.

"The officers work a dangerous job, often frozen for an extra shift," he continued, "only to watch rapists, murderers, and armed robbers" as they complain about one thing or another. The officers feel humiliated to be passing breakfast trays to such prisoners.

After the surrender, an organization located in nearby Portsmouth circulated petitions calling for use of the death penalty against prisoners responsible for the uprising. Completed petitions were to be returned to "Death Penalty, Box 761, Portsmouth, Ohio." More than 25,000 signatures were obtained within a few weeks.[12]

B. *Racial and religious tensions among prisoners*

There were serious tensions between black and white prisoners and between African Americans who were Sunni Muslim and those who were not.

On the first afternoon of the uprising, a so-called "death squad" killed several prisoners who were believed to be "snitches." Hasan had arranged for men who were regarded as "snitches" to be locked up for their own protection in cells within the L-6 pod that was controlled by Sunni Muslims. Disregarding Hasan, the death squad went from cell to cell, dragged out the occupants, and killed them. Those

---

10. *See* LYND, LUCASVILLE, *supra* note 5, 18-24 and sources cited therein.

11. AFSCME Report, *supra* note 9, 80.

12. *See* LYND, LUCASVILLE, *supra* note 5, Appendix Three, 192, for a copy of one of the petitions. Between 25,000 and 26,000 signatures on petitions and letters were submitted to the Office of the Governor in June 1993, calling for use of the death penalty. Alice Lynd obtained copies through a public records request. Signatures include those of men who were taken hostage during the Lucasville uprising and family members. Two of the jurors in each of two non-capital Lucasville cases appear to have been signers of petitions demanding application of the death penalty.

who were convicted for participation in the death squad were all African American; those who died at their hands were all white.

Keith LaMar was prosecuted as the leader of the death squad.[13] In LaMar's case, the prosecution withheld evidence that emerged in later trials implicating another large black man as the possible leader of the death squad. Keith LaMar was also prosecuted and sentenced to death for the murder of Dennis Weaver, a Native American, in a cell where LaMar, Weaver, William Bowling, Michael Childers, and six other men were crammed on K-side during the rebellion.

An affidavit obtained by counsel for LaMar after his case reached federal court illustrates the precarious position of prisoners who were not affiliated with any group that sought to protect them. Abdul Muhammad Saadiq, also known as Sean Davis, nicknamed "Berzerko," stated that he knew Dennis Weaver, that he and Weaver had gotten into an argument, that Davis had knocked out Weaver, and that Weaver had told other inmates that he wanted to kill Davis. After the riot ended, William Bowling and Sean Davis talked about "the ongoing Lucasville riot situation." Sean Davis said in his affidavit:

> 7. During our conversations Bowling informed me that he had killed Dennis Weaver. Bowling stated that he had killed Weaver out of loyalty because Weaver (a non-Muslim) had threatened my life. . . .
>
> 9. I was aware that Michael Childers was already speaking to the State Highway Patrol. It became known that Childers implicated Bowling in the Weaver murder during his interviews. Childers was also claiming that Keith LaMar ordered Weaver's death.
>
> 10. Bowling asked me if he should go along with Childers and blame Keith Lamar for ordering Dennis Weaver's death. I told Bowling that he should join with Childers and blame LaMar for the order. At the time, I felt my advice was justified since LaMar was a non-Muslim and he was being seen as a ringleader for other inmate murders anyway.
>
> 11. I was wrong for telling Bowling to blame Keith LaMar for ordering Weaver's death when that was not true. According to the Muslim Faith, Bowling is responsible for his own actions and his own decision to kill Dennis Weaver.[14]

Ulterior motives such as these corrupted the testimony of inmates during the investigation and trials.

---

13. *See* Eric Heisig, *Inmate Who Killed Five In 1993 Lucasville Prison Riot Loses Challenge To Conviction*, CLEVELAND.COM (Jan. 11, 2019), https://www.cleveland.com/court-justice/2015/08/inmate_who_killed_five_in_1993.html (last visited Jan. 7, 2020).

14. Affidavit of Abdul Muhammad Saadiq A.K.A. Sean Davis (Aug. 15, 2005), *LaMar v. Houk*, No. 1:04-cv-00541 (S.D. Ohio), in *State v. LaMar*, Appendix to Response of Defendant Keith LaMar to Motion to Set Execution Date (Ohio No. 1998-1983, Sept. 27, 2018), Apx. 086-087.

C. *Unreliable prisoner testimony*

The evidence that supports death sentences against the Lucasville Five consists almost entirely of unreliable testimony by other prisoners. [15]

Keith LaMar's counsel told his jury, "All they have is the testimony of the inmates."[16] The prosecution's lead investigator, Sergeant (later Lieutenant) Howard Hudson, conceded the point. He explained that "due to contamination of the crime scene" there was "no physical evidence" linking "any suspect to any victim, or any victim to any weapon, or any suspect to any weapon. It was to[o] contaminated."[17] In another case, the state's lead investigator likewise testified:

> Of all the items that were collected, there was no physical evidence that was ever linked, linking any suspect to any weapon or any suspect to any victim. The problems that we had were that the samples sent in had been degenerated and they were contaminated to a point where they were of no value and could not be conclusive in any testing.[18]

During cross examination in a third case, the following was asked and answered: " Q. [B]asically you found no physical evidence to tie anybody to anything? A. Not that could be tied to any suspect or any victim."[19]

And finally, in a second trial of James Were ordered by the Ohio Supreme Court, the lead investigator explained that "because of the contamination of the crime scene and because of the deterioration of the tissues and the samples, we were not able to match any victim to any suspect, any victim to any weapon or any weapon to any suspect."[20]

There is a tape recording, known as Tunnel Tape 61,[21] that records a meeting of leaders between 8 and 9 a.m. on the morning of April 15. The prosecution claimed that a decision to kill a guard was made at that meeting. However, what is audible on the tape is for George Skatzes to get on the phone being used for negotiations and demand that electricity and water, that had been shut off early in the uprising, be turned back on. The tape records an agreement that the leadership group was to re-convene several hours later and only then determine whether a

---

15. *See* Alice Lynd, *Unfair and Can't Be Fixed: The Machinery of Death in Ohio*, 44 U. TOL. L. REV. 1, 51-55 (2012), regarding the unreliability of prisoner informant testimony.

16. Trial Tr., State v. LaMar, No. 94CR-136 (Ohio C.P. Lawrence Cnty.) [hereinafter State v. LaMar], vol. XIV, 3708 (June 29, 1995).

17. Testimony of Sgt. Howard Hudson, Trial Tr., State v. Were, No. B-958499 (Ohio C.P. Hamilton Cnty.) [hereinafter State v. Were I], vol. X, 984 (Oct. 3, 1995).

18. Testimony of Sgt. Howard Hudson, Trial Tr., State v. Skatzes, *supra* note 1, vol. VI, 1913 (Oct. 25, 1995).

19. Testimony of Sgt. Howard Hudson, Trial Tr., State v. Sanders, Nos. B-953105 and C-960253 (Ohio C.P. Hamilton Cnty.) [hereinafter State v. Sanders], vol. 15, 3191-92 (Feb. 6, 1996).

20. Testimony of Sgt. Howard Hudson, Trial Tr., State v. Were, No. B-9508499 (Ohio C.P. Hamilton Cnty.) [hereinafter State v. Were II], vol. 17, 1514 (May 6, 2005).

21. *See generally* Trial Ex. 322a, State v. Skatzes, *supra* note 1. Portions of the transcript of Tunnel Tape 61 pertinent to what was discussed and decided at the meeting on the morning of April 15 and that were used in several of the trials appear as Appendix One in LYND, LUCASVILLE, *supra* note 5, at 173-87.

guard would be killed. The tape may arguably be objective evidence, but any suggestion that the tape offers evidence of a meeting of leaders deciding to kill a correctional officer is simply untrue. Nothing of the kind can be heard on the tape.

The sole incontrovertibly objective evidence regarding the homicides was the autopsies of the victims. A dramatic example of testimony that the prosecution must have known to be mistaken but persisted in offering was the assertion that the men who murdered Officer Vallandingham put a metal bar across his neck and stood on it, rocking back and forth until they were sure he was dead. The autopsy was performed by Dr. Patrick Fardal, chief forensic pathologist and deputy coroner for Franklin County. Dr. Fardal testified in the trials of Robb, Skatzes and Hasan that "Mr. Vallandingham died solely and exclusively as a result of ligature strangulation."[22] The dead man's neck showed no signs of the injury to the larynx that alleged use of a metal bar would have caused.

D. Targeting the leaders

Confronted by a mass of inconsistent and unreliable prisoner testimony about what happened during the uprising, the prosecution adopted a strategy of blaming everything that happened on a single conspiracy masterminded by a handful of leaders who deserved whatever maximum punishment the law could provide.

During the prisoner uprising at the Attica prison in September 1971, the county prosecutor, who expected to charge prisoners with offenses when the rebellion was over, signed a statement indicating how he would proceed. He said, "I deem it to be my obligation to prosecute only when in my judgment there is substantial evidence to link a specific individual with the commission of a specific crime."[23]

At Lucasville, a very different strategy—targeting the "leaders" in collecting and assessing evidence—was apparent early. Prisoner Johnny Fryman had almost been killed by other inmates at the beginning of the rebellion and had no reason to wish to protect any so-called leaders. While in the infirmary at SOCF, two members of the Ohio State Highway Patrol questioned him.

> They made it clear that they wanted the leaders. They wanted to prosecute Hasan, George Skatzes, Lavelle, Jason Robb, and another Muslim whose name I don't

---

22. Testimony of Patrick Fardal, Trial Tr., State v. Robb, No. 94 CR-10-5658 (Ohio C.P. Franklin Cnty.) [hereinafter State v. Robb], vol. 24, 4442 (Mar. 17, 1995). *See id.* at 4433: "[T]here was no injury to the voice box or the trachea." *See also id.* at 4438: "There was nothing on the outside of the body that would tell me another type of object was used across the neck other than what we saw as far as the ligature goes." And, *id.*, in answer to the question, "Were there any crushing injuries to the larynx, the voice box or any organs in the neck?" Dr. Fardal answered, "No." *Accord*, Trial Tr., State v. Skatzes, *supra* note 1, vol. XXIII, 4865, 4870-71 (Dec. 4, 1995).

In Hasan's case, Dr. Fardal testified again that, in his opinion, Officer Vallandingham died as a result of ligature strangulation. Testimony of Patrick Fardal, Trial Tr., State v. Sanders, *supra* note 19, vol. 19, 4170-71 (Feb. 12, 1996). *See also id.* at 4175: "[I]f two large men were jumping up and down on this man's neck with a bar across it, I would have expected some injury to his larynx or trachea. I didn't see anything like that . . . ."

23. HEATHER ANN THOMPSON, BLOOD IN THE WATER: THE ATTICA PRISON UPRISING OF 1971 AND ITS LEGACY, 119 (2016).

> remember [almost certainly Were]. They had not yet begun their investigation but they knew they wanted those leaders. I joked with them and said, "You basically don't care what I say as long as it's against these guys." They said, "Yeah, that's it."[24]

Emanuel Newell was attacked by other prisoners during the surrender. Lieutenant Root, Sergeant Howard Hudson, Trooper Randy McGough, and Trooper Cary Sayers talked with him shortly thereafter in the SOCF infirmary. According to Newell, these officers said, "We want Skatzes. We want Lavelle. We want Hasan." They said, "We know they were leaders. We want to burn their ass. We want to put them in the electric chair for murdering Officer Vallandingham."[25]

Judges and courts alike entertained the same perspective, but expressed it in more elegant language. The Lucasville cases, the authorities opined, involved the coordinated activity of three ruthless prison gangs. Gang leaders, who tightly controlled the actions of gang members, were the real criminals, and the only way to exact retribution was by punishing them.[26]

II. THE SARAN WRAP OF COMPLICITY IN THE TRIAL COURTS

The prosecution needed a legal doctrine that could be stretched to cover the decision-making of the three prisoner organizations involved in the uprising. None of the capital indictments charged either conspiracy or complicity.[27] Jurors just off the streets could not be expected to understand complex legal conceptions. A former prosecutor named Fred Cartolano who had become a judge,[28] invented a doctrine that he characterized as "the Saran Wrap of Complicity" in the trials of Muslim leaders Hasan and Were.

Saran Wrap, according to advertising material on the internet, "stretches to seal,"[29] and "can stretch up to 500%."[30] So it was also with Saran Wrap as a legal doctrine in the Lucasville trials. Judge Cartolano lectured the jury in Hasan's case:

---

24. LYND, LUCASVILLE, *supra* note 5, at 74.

25. *Id.*

26. *Id.*

27. The Court of Common Pleas for Scioto County, Ohio issued the following capital indictments on July 29, 1994: 94CR-377, Keith LaMar, Aggravated Murder w/ death specifications; 94CR-380, James Were, Aggravated Murder w/ death specifications, Kidnapping; 94CR-381, Kenneth Law, Aggravated Murder w/ death specifications, Kidnapping; 94CR-382, George Skatzes, Aggravated Murder w/ death specifications, Kidnapping; 94CR-383, Jason Robb, Aggravated Murder w/ death specifications, Kidnapping; and 94CR-384, Carlos Sanders [Hasan], Aggravated Murder w/ death specifications, Kidnapping.

28. James Forman Jr. suggests that one reason the "legal landscape [has become so] anti-defendant" is that "43 percent of federal judges have been prosecutors, while 10 percent have been public defenders." James Forman Jr., Opinion, *The Democratic Candidates Should Tell Us Now Who They'll Put on the Supreme Court*, N.Y. TIMES (Mar. 11, 2019), https://www.nytimes.com/2019/03/10/opinion/supreme-court-2020-democrats.html (last visited Jan. 7, 2020).

29. SARAN PREMIUM WRAP, http://www.saranbrands.com/saran-wrap (last visited Feb. 27, 2020).

30. https://www.boxforless.com/categories/Stretch-Films/?msclkid=8b14824965a213272e1ede3719c66aaa (last visited Mar. 5, 2019, no longer on line). For a more general description of Saran Wrap, *see* https://en.wikipedia.org/wiki/Plastic_wrap (Dec. 18, 2019; last visited Feb. 27, 2020).

> Now remember, what I told you about complicity, every one of these charges is wrapped within the wrappings of complicity, aiding and abetting, helping someone. So you have to take every one of these charges and wrap it with the Saran Wrap of complicity.[31]

Was the issue a felonious assault on correctional officer George Horsley? Judge Cartolano told the jury that if they found that Hasan had knowingly caused physical harm with a deadly weapon beyond a reasonable doubt, then "no matter how serious it was," if it was "wrapped in the Saran Wrap of complicity" it was "their duty to find him guilty."[32]

"Similarly," the judge told the jury, "if you find that the State of Ohio has proven beyond a reasonable doubt . . . all of the elements of felonious assault as it applies to [correctional officer] Larry Dotson, wrapped in the Saran Wrap of complicity, then it is your duty to find [Hasan] guilty."[33]

Likewise with regard to the kidnapping of Officers Robert Vallandingham and Michael Hensley, Judge Cartolano instructed the jury that, if they found that by the use of force the defendant restrained Vallandingham and Hensley and did this for the purpose of holding each of them hostage, "wrapped in the Saran Wrap of complicity [it was their] duty to find him guilty."[34]

Applying the same chain of reasoning to harm done to prisoner Johnny Fryman by other prisoners, Judge Cartolano instructed the jury that if the facts, even when "wrapped in this Saran Wrap of complicity," do not prove beyond a reasonable doubt the commission of a crime, the perpetrator must be found not guilty.[35]

Conspiracy, complicity, and the relationship between them came up in the first of the Lucasville capital trials, *State v. Robb*. The judge was not Cartolano, but Thomas Mitchell, who stated to counsel:

> THE COURT: . . . I wish they would have been more explicit in the [Ohio criminal] code between the crime of conspiracy and the act of complicity, **which is not in itself a crime.** . . .
>
> Complicity has to be associated with something else in order to be a crime. Conspiracy doesn't have to be associated with something else to be a crime.[36]

The concept of complicity as a "Saran Wrap" enabled the court in *Robb* and the other capital cases that followed to hold the supposed leaders of the disturbance responsible for whatever occurred. Three prisoner associations were active among the more than 400 prisoners who surrendered at the end of the eleven days. Sunni Muslims were the most numerous, followed by the Aryan Brotherhood and then the Black Gangster Disciples. Representatives from each of the three groups met

31. Jury instructions, Trial Tr., State v. Sanders, *supra* note 19, vol. 24, 5225 (Feb. 21, 1996).
32. *Id.* at 5225, 5227.
33. *Id.* at 5227-28.
34. *Id.* at 5232-35.
35. *Id.* at 5228, 5230.
36. Trial Tr., State v. Robb, *supra* note 22, vol. 28, 5059-60 (Mar. 23, 1995) (emphasis added).

daily during the occupation of L-block. The prosecution chronicled the behavior of members of the three groups and then attributed responsibility to the leaders.

The underlying assumptions were presented in LaMar's trial. Judge Fred Crow told the jury, "An accomplice is one who purposely or knowingly assists or joins in the commission of a crime."[37]

> If you find beyond a reasonable doubt that Keith LaMar purposely aided, helped, assisted, encouraged, or directed himself with another in the commission of an offense, he is to be regarded as if he were the principal offender and is just as guilty as if he had personally performed every act constituting the offense.[38]

The court edged toward an explicit requirement of intent, stating: "the mere association with one who perpetrates an unlawful act does not render the person a participant in the crime as long as his acts are innocent."[39]

A little more fully, yet another state court judge, Donald Cox, explained to the jury in the first trial of James Were that "the mere presence of a person at or near [the] scene of the alleged crime will not necessarily make that person an aider or abettor if the person does not conspire or perform any part of some criminal conduct. . . ."[40]

George Skatzes was tried between Were and Hasan, with Judge Mitchell presiding. The judge told the jury: "It is the prosecution's theory of this case that this defendant purposely committed these offenses in conjunction with others. This is referred to as complicity."[41]

The most complete defense to a charge of "complicity" was set forth in this trial. The judge stated:

> The mere presence of a person at the scene of a crime and/or the fact that he was acquainted with the actual perpetrators of the offense is not sufficient proof, in and of itself, that he acted in complicity with such persons.
>
> The mere approval or acquiescence without expressed concurrence of the doing of something to contribute to an unlawful act is not acting in complicity to commit the act. Failure to object to the illegal acts of another without more is not complicity.[42]

The last of the Lucasville capital trials was a second trial for James Were on the ground that when first tried he should have been provided a hearing to determine whether he was mentally competent.[43] The judge was again Cartolano, who had first pronounced the "Saran Wrap" approach to complicity in the previous case against Hasan, and voiced it again when instructing the jury in *Were II*. Counsel for Were, Attorney Elizabeth Agar, objected to Cartolano's proposed jury

37. Trial Tr., State v. LaMar, *supra* note 16, vol. XIV, 3837 (June 29, 1995).
38. *Id.* at 3843.
39. *Id.* at 3843-44.
40. Trial Tr., State v. Were I, *supra* note 17, vol. XVII, 2169, (Oct. 16, 1995).
41. Trial Tr., State v. Skatzes, *supra* note 1, vol. XXVIII, 5815 (Dec. 14, 1995).
42. *Id.* at 5819.
43. State v. Were, 761 N.E.2d 591, 593-94 (Ohio 2002).

instructions because they gave the jury authority to infer the defendant's guilt from external facts such as mere presence or apparent acquiescence.

The language in Judge Cartolano's instructions which Attorney Agar found insufficient was the following: "Participation with a criminal intent may be inferred by you from the defendant's action, by the defendant's presence, by the defendant's companionship and conduct, either before or after the commission of the particular offense involved."[44] At this point, as if to make sure that the jury understood him, Judge Cartolano went on to emphasize that the three crimes attributed to Were "are wrapped with a Saran Wrap of complicity."[45]

Attorney Agar protested: "Judge, with regard to your instruction on complicity, we're objecting to your leaving out the language I presented . . . which indicates not just mere presence, but also acquiescence or silence is not sufficient." She continued: "I think that leaving that out, in addition to your instruction that intent could be inferred by presence, basically leaves the jury back in the position that standing silent is sufficient [to establish guilt]."[46]

III. The Saran Wrap of Complicity in the Ohio Supreme Court

A. Conclusions unsupported by reliable evidence

The Saran Wrap of Complicity was stretched in the Lucasville capital cases to condemn the leaders for "complicity" in any crimes committed by the prisoners, or in concert with members of other prisoner groups. Without using the words "Saran Wrap," the Ohio Supreme Court embraced the Saran Wrap concept of complicity.

In *State v. Robb,* the first to be tried in the series of capital cases, the Supreme Court of Ohio explained: "the state established that the entire Lucasville drama involved a major conspiracy by inmate gang members."[47] The Supreme Court's procedure in "establishing" facts concerning the alleged conspiracy and complicity left much to be desired. There were no citations to the transcripts produced below. Because what was known about the conduct of the leaders so often failed to support the Court's generalizations, acts by prisoners other than the defendants were relied on excessively.

The high court assumed that inmates simply did what their leaders encouraged or directed. For example, the assertion that "gang leaders, including Skatzes, conspired over 11 days to seize and control L-complex"[48] is contradicted by the admission of the prosecutor in Skatzes's case that Skatzes had nothing to do with planning or executing the initial takeover.[49] Similarly, the Supreme Court stated in affirming the lower courts in Robb's case that Robb "voted for the death

44. Trial Tr., State v. Were II, *supra* note 20, vol. 22, 2261 (May 13, 2003).
45. *Id.* at 2262.
46. *Id.* at 2282-83.
47. State v. Robb, 723 N.E.2d 1019, 1036 (Ohio 1999) [hereinafter State v. Robb (1999)].
48. State v. Skatzes, 819 N.E.2d 215, 247 (Ohio 2004) [hereinafter State v. Skatzes (2004)].
49. Trial Tr., State v. Skatzes, *supra* note 1, Vol. XXXI, 6096 (Jan. 11, 1996).

of a guard"[50] but as we have already discussed there is no objective evidence that such a vote occurred.

The Ohio Supreme Court imagined the embattled prisoners in L-block as a unified force. That was far from the case. Skatzes spent many hours on the telephone on April 14 negotiating an agreement that the prisoners would give up two hostage correctional officers in exchange for access to the media to address a statewide audience.[51] But as Skatzes was reminded at the critical leadership meeting the next morning, he had not been authorized to offer the release of two officers.[52] Moreover, it seemed to other prisoners in rebellion, especially to the Muslims, that Skatzes had gone too far when, in the speech he was finally able to broadcast, he addressed the family of hostage Officer Jeff Ratcliff and tried to assure them that Ratcliff would return safely.[53] Accordingly, Jason Robb, like Skatzes a member of the Aryan Brotherhood but more of a "hardliner," took Skatzes's place as a negotiator and performed valuable service in making arrangements for the prisoners' surrender.[54] Some of the graffiti painted on the walls of the occupied cell block depicted Aryan Brotherhood and Muslim symbols, but other graffiti asserted the unity of blacks and whites[55] testifying to the constant efforts of the white and black prisoners to find common ground.

One thing is certain: No one had foreseen that the prisoners would take over all of L-block or that the occupation would last so long and cost so many lives. The Ohio Supreme Court misunderstood the dynamics of the rebellion. The prisoner body, freed to make decisions for itself, was not a unified, hierarchical organization. It was difficult for men from very different backgrounds to fashion a common strategy. Their improvised arrangements were constantly being revised.

The Saran Wrap strategy of the authorities was mistaken in seeking to put responsibility for everything that happened in L-block on the shoulders of half a dozen group representatives who were perceived as "complicit" in executing a well-defined "conspiracy."

B. *An ethical question*

Justice Paul E. Pfeifer of the Ohio Supreme Court wrote a weekly column in *The Daily Reporter*, a publication that described itself as the official newspaper of

50. State v. Robb (1999), *supra* note 47, 723 N.E.2d at 1040.

51. Testimony of Sgt. Howard Hudson, Trial Tr., State v. Skatzes, *supra* note 1, vol. VIII, 2158 (Nov. 3, 1995); testimony of Anthony Lavelle, *id.* at vol. XVIII, 3919 (Nov. 21, 1995), and vol. XX, 4104 (Nov. 28, 1995). *See also* Negotiation Tape 5, *id.* at Trial Ex. 296A (Apr. 14, 1993, 8:23-10:50 p.m.), identified by Sgt. Howard Hudson, State v. Skatzes, supra note 1, vol. VII, 2053 (Oct. 31, 1995).

52. LYND, LUCASVILLE, *supra* note 5, Appendix One, Tunnel Tape 61, 179-180.

53. Trial Ex. 309A, 4, State v. Skatzes, *supra* note 1.

54. Testimony of Attorney Niki Schwartz, Trial Tr., State v. Robb, *supra* note 22, vol. 32, 5605-06 (Apr. 4, 1995): "Jason . . . deserved a large part of the credit for the peaceful resolution of the riot . . . the only time a major prison riot has been resolved voluntarily."

55. LYND, LUCASVILLE, *supra* note 5, at 82, "Graffiti in L block: Black and White Together 11 Days"; *id.* at 84, "Graffiti in L block: Convict Race."

the Columbus Bar Association and of courts including the United States District Court, the United States Circuit Court, and the Supreme Court of Ohio.[56]

On May 15, 2002, the Ohio Supreme Court denied LaMar's direct appeal. On July 31, 2002, *The Daily Reporter* published a column by Justice Pfeifer entitled, "The Lucasville Prison Riot," in which he discussed the case of Keith LaMar. The "facts" set out in the column were drawn entirely from the Supreme Court's opinion, which in turn were drawn entirely from witness testimony at LaMar's trial, without independent objective corroborating evidence linking the defendant to the murders for which he was convicted. This column was sandwiched between the Ohio Supreme Court's May 15, 2002 opinion[57] and the same court's August 11, 2004 denial of LaMar's application to reopen his direct appeal.[58]

A more questionable column by Justice Pfeifer commented on the case of George Skatzes. The unanimous opinion of the Ohio Supreme Court on direct appeal was written by Justice Pfeifer himself.[59] Only a few months after this appeal was decided on December 8, 2004, Justice Pfeifer wrote a column entitled "Ohio inmate deserves death for role in 1993 Lucasville riot."[60]

Public commentary by a judge regarding a case that is still pending in any court would appear to have violated Ohio's Code of Judicial Conduct, Canon 3, B(9): "While a proceeding is pending or impending in any court, a judge shall not make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair trial or hearing. . . ."[61]

The Commentary on B(9) states, "The requirement that judges abstain from public comment regarding a pending or impending proceeding continues during any appellate process and until final disposition. . . ."[62] Skatzes's case had not yet

---

56. *The Daily Reporter* identifies itself as "Central Ohio's only daily business and legal newspaper." http://www.thedailyreporteronline.com/about/ (last visited May 8, 2019). "It is the official newspaper of the Columbus Bar Association, the United States Circuit Court, United States District Court, Supreme Court of Ohio and all Courts of Record of Franklin County, Ohio. . . ."

57. State v. LaMar, 767 N.E.2d 166 (Ohio 2002).

58. State v. LaMar, 812 N.E.2d 970 (Ohio 2004). Subsequently, a Petition for Writ of Habeas Corpus was filed in federal district court. *See* LaMar v. Warden, No. 1:04-cv-541 (S.D. Ohio, Aug. 16, 2004); LaMar v. Houk, Nos. 11-3131 and 3153 (Feb. 7 and Feb. 10, 2011); Lamar v. Houk, 798 F.3d 405 (6th Cir. Aug. 18, 2005), *cert. denied* (Feb. 17, 2016).

59. State v. Skatzes (2004), *supra* note 48.

60. Copies of this article, published on Wednesday, May 18, 2005, are on file with the authors. An editor's note states: "*The case referred to is* State v. Skatzes, *104 Ohio St.3d 195, 2004-Ohio-6391. Case No. 2003-0487. Decided Dec. 8, 2004. Majority opinion written by Justice Paul E. Pfeifer.*" In the cases of both Keith LaMar and George Skatzes, it was foreseeable that their cases would be considered further by the Supreme Court of Ohio, a U.S. District Court and the U.S. Court of Appeals.

61. The quoted language from the Code of Judicial Conduct was in effect between May 1, 1997 and March 1, 2009.

62. *Id.*

reached the Ohio Supreme Court on post-conviction review,[63] nor had it yet been filed in any federal court,[64] but would be considered in the future by those courts.

IV. WHO KILLED OFFICER VALLANDINGHAM?

A. *Anthony Lavelle takes a plea*

The murder of hostage Officer Robert Vallandingham is at the center of the Lucasville cases. Defense witnesses who were bystanders, not accomplices, and who had no reason to expect benefits from the State in return for their testimony, implicated Anthony Lavelle and a group of Black Gangster Disciples in the murder of Officer Vallandingham that had not been authorized by other prisoners and in which the Lucasville Five were not complicit.

Reginald Wilkinson, director of the Ohio Department of Rehabilitation and Correction, and his associate Thomas Stickrath, pronounced in an article in *Corrections Management Quarterly* that according to Special Prosecutor Mark Piepmeier

> the key to winning convictions was eroding the loyalty and fear inmates felt toward their gangs. To do that, his staff targeted a few gang leaders and convinced them to accept plea bargains. Thirteen months into the investigation [in May 1994], a primary riot provocateur agreed to talk about Officer Vallandingham's death. He later received a sentence of 7 to 25 years after pleading guilty to conspiracy to commit murder. His testimony led to death sentences for riot leaders Carlos Sanders, Jason Robb, George Skatzes, and James Were.[65]

The "primary riot provocateur" who turned informant was Anthony Lavelle, leader of the small number of Black Gangster Disciples in L-block. Here is how Lavelle was induced to become a witness for the State.

After the surrender, Hasan, Skatzes and Lavelle were placed in adjoining cells in the "North Hole" at Chillicothe Correctional Institution. On April 6, 1994, Skatzes was taken to a room where he found Sergeant Hudson, together with Trooper Randy McGough of the Highway Patrol, and two prosecutors.[66] Skatzes told the investigators that he could not help them and turned to go back to his cell. Deputy Warden Ralph Coyle entered the room and told Skatzes that Central Office had decided he could not go back to the North Hole. Skatzes protested vehemently

---

63. Skatzes's case reached the Supreme Court of Ohio nearly four years later. The Court declined jurisdiction and dismissed the appeal "as not involving any substantial constitutional question." Entry, State v. Skatzes, 903 N.E.2d 1222 (Ohio 2009).

64. A Notice of Intention to File Habeas Corpus Petition was filed in Skatzes v. Smith, in the United States District Court for the Southern District of Ohio, No. 3:09-cv-289, on July 30, 2009 and as of January 2020 the habeas petition is still pending.

65. Reginald A. Wilkinson and Thomas J. Stickrath, *After the Storm: Anatomy of a Riot's Aftermath*, CORR. MGMT. REV. (1997), 1(1), 21.

66. Testimony of Howard Hudson, Trial Tr., State v. Skatzes, *supra* note 1, vol. VIII, 2215-18 (Nov. 3, 1995).

that this would make him look like a snitch. The apparently unrebutted account of Skatzes's attorney continues:

> Mr. Skatzes was moved to another cell . . . the evening of April 6. It was intimated to his former "roommates," Sanders and Lavelle, that he is now cooperating with the prosecution. . . . Matters were made still worse on the 8th or 9th when my client returned to North Hole to rejoin Sanders only to discover that Lavelle had been moved. Lavelle, it appears, is sounding the alarm that Skatzes is a snitch.[67]

Indeed, the day after Skatzes failed to return to his cell, Lavelle wrote the following to Jason Robb.

> Jason,
>
> I am forced to write you and relate a few things to you that have happen down here lately.
>
> With much sadness I will give you the raw deal, your brother George has done a vanishing act on us . . . .
>
> On Wednesday April 6, 1994 G[eorge] said about 8:00 a.m. that he had a lawyer visit coming . . . . [N]ow to be short and simple, he failed to return that day and today they came and packed up his property which leads me to believe that he has chose [sic] to be a cop . . . .
>
> Lavelle[68]

Skatzes recalled that when he was allowed to return to the North Hole a few days later, he went up to the bars separating his cell from Hasan's and said, "I don't know you. You don't know me. I didn't tell them anything."[69] Hasan wrote a short letter to the effect that he believed George Skatzes was telling the truth, which was distributed among Aryan and Muslim prisoners.[70]

The State moved quickly to finalize a plea deal with Anthony Lavelle. On June 9, 1994, Prosecutor Piepmeier charged Lavelle with conspiracy to commit aggravated murder.[71] On June 10, Judge Mitchell entered a sentence of 7 to 25 years.[72] This was the maximum sentence for "conspiracy" in contrast to "complicity" which can be punished by death.

---

67. Letter from Jeffry F. Kelleher to Mark Piepmeier, Lucasville Special Prosecutor (Apr. 13, 1994).

68. Letter from Anthony Lavelle to Jason Robb (Apr. 7, 1994), State v. Robb, Defendant's [Trial] Exhibit 8. *See also* Testimony of Anthony Lavelle, Trial Tr., State v. Robb, *supra* note 22, vol. 19, 3356-58, 3361-67 (Mar. 10, 1995).

69. Personal communication from George Skatzes to Alice and Staughton Lynd.

70. Testimony of Roger Snodgrass, Trial Tr., State v. Skatzes, *supra* note 1, vol. XXII, 4652-54 (Dec. 1, 1995).

71. STAUGHTON LYND, *Napue Nightmares: Perjured Testimony in Trials Following the 1993 Lucasville, Ohio, Prison Uprising* [hereinafter LYND, *Napue Nightmares*], 36 CAP. U. L. REV. 559, 587 (2008), citing Information, State v. Lavelle, No. 94CR 307 (Ohio C.P. Scioto Cnty. June 9, 1994).

72. *Id.* citing Entry of Sentence (June 10, 1994).

B. The conspiracy to frame Were and Hasan

Meantime the State and its prosecutors were developing a strategy to convict Hasan and Were. One of the prisons to which participants in the uprising were transferred after the surrender was the Mansfield Correctional Institution. Three men who celled together in Mansfield decided to make up a story. As one of them, Kenneth Law, later explained: "Before my first interview with the Ohio State Patrol, myself, Sherman Sims, and [Stacey Gordon], talked regularly about regaining our freedom. We knew that information in the Vallandingham murder was the key to the door."[73]

The story that Law, Sims, and Gordon concocted pinned the murder on two men they knew the State wished to convict, Hasan and Were, and another two men who (as Law explained it to the authors) they knew to be isolates who had no backing from other prisoners.

The three began with generally agreed-upon facts. They alleged that Officer Vallandingham was murdered a little after 10 a.m. on the morning of Thursday, April 15. Further, according to the story, the two men they had cast as the hands-on killers brought hostage officer Robert Vallandingham, bound and blindfolded, to a downstairs shower. Hasan, it was alleged, told Were that if he didn't receive word from Hasan by a few minutes after 10 a.m. Were was to "take care of his business."

Hasan then left L-6, so the story went. A few minutes later Were told the two assassins to proceed. They went into the shower stall and strangled the helpless hostage, Officer Vallandingham.

After jointly creating their false account of Officer Vallandingham's death, Sims and Law experienced what Law described in a March 2000 affidavit as a "falling out." When Sims was indicted for assault he told the authorities that he wanted to talk with members of the Ohio State Highway Patrol investigating team. An interview was arranged, at which Sims revised his telling of the story by substituting Law for one of the two men who were said to have actually killed Vallandingham. After the interview, Sims was immediately transferred to the Oakwood Correctional Institution, where, as a participant in the so-called "snitch academy," he was housed together with other men whom the prosecution expected to testify for the State.

The next day Law, correctly inferring that Sims had turned informant, asked to see the Highway Patrol. He was taken to the Patrol's Mansfield station where he was interrogated. The interrogation began between 9 and 10 a.m. At 1:22 p.m., approximately four hours later, the officers turned on the tape recorder.[74] On the tape, Law recounted the original story that he, Sims, and Gordon had fabricated.

The authorities continued to meet and talk with both Law and Sims. As Law tells it, prosecutors (whom he names) "placed tremendous pressure on me, saying they would convict and execute me for killing Vallandingham, which I had nothing

73. For Kenneth Law's narrative, *see id.*, 604-609, and sources cited therein.

74. *Id.* at 607 citing Memorandum in Support of Motion to Suppress at 6, State v. Law, No. B-9409511 (Ohio C.P. Hamilton Cnty. May 31, 1995).

to do with, unless I said that Hasan had commanded the killing. I refused to cooperate any further."[75]

Accepting as true the false scenario that both Law and Sims presented, but choosing to believe Sims rather than Law as to who the hands-on killers were, prosecutors indicted Law for the kidnapping and aggravated murder of Officer Vallandingham.[76] In August 1995, the jury convicted Law of kidnapping but hung on the more serious murder charge.[77]

According to an affidavit by Law, "the prosecutors then increased the pressure on . . . me to cooperate and avoid a second trial. They made it clear that I would die for something I had not done unless I said what they wanted me to say. I eventually broke, and gave false testimony."[78]

The testimony the authorities induced Law to give against Were and Hasan at their trials in 1995 and 1996 was the same testimony the authorities had earlier determined to be false with respect to Law's own role when they put Law on trial for his life. The prosecutor told Hasan's jury that they should not doubt Law's testimony because he was simply repeating the statement he had previously made to the authorities.[79]

The state does not know who physically killed Officer Vallandingham. Prisoner Alvin Jones, a.k.a. Mosi Paki, was tried and convicted by a Rules Infraction Board (RIB) for taking part in the murder of Officer Vallandingham. Testifying at the RIB hearing, according to Sergeant Hudson, inmate Kenneth Law "took himself out of act [of killing Officer Vallandingham] and replaced himself with inmate Darnell Alexander." Years later, Prosecutors Piepmeier and Breyer wrote that "Sanders designated fellow Muslim James Were to kill Corrections Officer Vallandingham. Inmates Law and Allen were the other two participants."[80]

Prosecutor Hogan confessed in a filmed interview, "I don't know. And I don't think we'll ever know" who strangled the officer.[81]

C. *The alternative theory*

So who did kill Officer Vallandingham? Kenneth Law, in one of his post-testimony affidavits, makes a startling accusation. "At one point, I revealed to [the authorities] that Anthony Lavelle had killed Vallandingham. The prosecutor told me that my story would have to change because Lavelle was a State witness."[82] The problem for the prosecution was that the provocateur who was to be their star

75. Affidavit of Kenneth Law (Sept. 19, 2003), ¶¶ 11, 13, Petition for Post-Conviction Review, State v. Skatzes, *supra* note 1, Ex. 27 (Oct. 6, 2003).

76. State v. Law, No. 94CR-381 (Ohio C.P. Scioto Cnty. July 29, 1994).

77. State v. Law, No. C-950651, 1996 WL 539792 (Ohio Ct. App. Sept. 25, 1996), 1.

78. Affidavit of Kenneth Law, ¶13, *supra* note 75.

79. Testimony of Kenneth Law, Trial Tr., State v. Sanders, *supra* note 19, vol. 11, 2301-02 (Jan. 31, 1996).

80. Motion to Dismiss Defendant's Petition to Vacate, State v. Skatzes, *supra* note 1, at 26 (Feb. 24, 2004).

81. A d jones film, "The Great Incarcerator, part 2: The Shadow of Lucasville" (published June 28, 2017), 34:27-30, https://www.youtube.com/watch?v=YqVslMz1UaA (last visited Apr. 1, 2019).

82. Affidavit of Kenneth Law, *supra* note 75, ¶11.

witness was also most likely the man responsible for killing Officer Vallandingham.

There is compelling evidence that Vallandingham's murder was a rogue action, planned and carried out by a few of the Black Gangster Disciples, under the leadership of only one of the leaders of the rebellion, Anthony Lavelle, without approval from any representatives of the Muslims or the Aryan Brotherhood.[83]

In reality, Officer Vallandingham's murder was not the result of a decision by leaders of a conspiracy of prison gangs. The prisoner representatives who met early in the morning on April 15 decided to meet again later that day to determine whether to carry out a murder of a hostage guard and presumably who that guard would be and who would kill him. After the meeting, George Skatzes went on the phone to voice prisoner demands for resumption of water and electricity, as those in attendance at the meeting had directed him to do.

Anthony Lavelle, leader of the Black Gangster Disciples, concluding that the Muslims and the Aryan Brotherhood were indecisive and feared doing what had to be done, recruited two participants from the dozen or so members of the BGD and led them to L-6, where they proceeded to kill Officer Vallandingham.

When Hasan and other Muslim leaders, Cummings and Bell, a.k.a. Nuruddin, went to L-6 to find out what was going on, they encountered a trembling Were

83. For a detailed description of the overwhelming evidence implicating Anthony Lavelle, *see* LYND, *Napue Nightmares*, *supra* note 71 and sources cited therein. In summary, court testimony and affidavits tell the following narrative. On April 14, 1993, Lavelle attempted to recruit two members of the Black Gangster Disciples, Brian Eskridge and Aaron Jefferson, to kill an officer. The next morning, prisoner Sean Davis heard Lavelle tell prisoner Stacey Gordon that he was going to "take care of that business" and Gordon responded, "[Y]ou go ahead, take care of it . . . . I will come clean it up afterward." Prisoner Willie Johnson testified that around 9 a.m. on April 15, he heard Lavelle say, "I told George [Skatzes] to tell them to turn on the water and electricity by 10:00 o'clock or I'm going to send one of these honkies up out of here." Lavelle then told BGD member Johnny Long to "put on your mask" and Lavelle, Long, and a third man, left the pod. Prisoners Eddie Moss, Tyree Parker, and Sterling "Death Row" Barnes, who were in the L-block hallway that morning, saw Lavelle come from L-1, go into L-6 and return in the direction of L-1. Prisoner Tony Taylor saw Lavelle with Stacey Gordon go to the upper range of L-6 and escort Officer Vallandingham to the shower on the bottom range. According to prisoner Willie Johnson, when the three members of the BGD returned to L-1, Lavelle "was like in a frenzie . . . saying 'see how they like me now, see if they think we bullshitting now. The Muslims just playing games, they ain't serious.'" James Bell, a/k/a Nuruddin, recalled:

> At that time, Namir [Were] was security on the door of L-6. I . . . found Hasan and Cummings in the gym. We went to L-6. Namir was standing outside the door. He seemed dazed, shell-shocked. Namir asked Hasan and Cummings, "Did you authorize Lavelle to kill a guard?" Hasan said, "No."

Thereupon, Were went to L-1 and knocked Lavelle to the floor. According to Willie Johnson, Were explained: "Lavelle, you going to be held responsibility [sic] for what you caused."

Lastly, two older prisoners reported that Lavelle confessed the murder to them. LeRoy Elmore stated that he pushed a cart with food and water to all the occupied pods, including L-1. Lavelle approached him and said that Were had knocked him down. "I said, 'What did you do?' Mr. Lavelle answered, 'I had the guard killed.'" Roy Donald had seen Lavelle and two others enter and leave L-6. Later that day, Lavelle came to the pod where Donald slept. "Lavelle told me that Gordon had given him the OK to kill a guard and that he took care of his business."

standing outside the door of the pod, who asked them whether they had approved the murder of a guard. They answered No. Were then went to L-1, found Lavelle, and in front of several witnesses knocked him to the floor, accusing him of endangering them all by acting without authorization.[84]

There is simply no way that Lavelle's homicidal course of conduct can be attributed to Hasan, Were, Robb, or Skatzes. Lavelle was not implementing a decision by the leaders. He acted in violation of the decision of the leadership group earlier that morning, which was to delay any decision about killing a guard until another meeting later that day.

V. THE SARAN WRAP IN THE ELDER AND SOMMERS MURDERS

The Saran Wrap style of determining guilt was that if more than one prisoner could be charged with the murder, the prosecution sought the death penalty for anyone whom they identified as a leader and a lesser sentence for any other prisoner. If you determine guilt without objective evidence, you get convictions and death sentences like those imposed on George Skatzes for his supposed role in the killing of two prisoners, Earl Elder and David Sommers, and on Jason Robb for the death of David Sommers.[85] What we see again in these decisions was the conception that if the jury was presented with a tangled network of supposed facts, all said to arise from the decisions and actions of particular leaders, the jury should convict those leaders and recommend the death penalty.

---

84. Affidavit of James Bell, a.k.a. Abdul Muhaymin Nuruddin, State v. Were II, *supra* note 20, Notice of Filing of Supplemental Exhibit, in James Were, n.k.a. Namir Abdul Mateen's Memorandum Contra to the State's Motion to Dismiss [Second Amended Post-Conviction Petition], Exhibit HHHHH, ¶¶ 9, 11-12 (Aug. 8, 2007); Testimony of Willie Johnson, Trial Tr., State v. Robb, *supra* note 22, vol. 25, 4661-62 (Mar. 20, 1995); and Testimony of Eddie Moss, *id.* at 4525-28 (Mar. 20, 1995). *See also* Testimony of Willie Johnson, Trial Tr., State v. Were I, *supra* note 17, vol. XV, 1783-84 (Oct. 12, 1995), and Testimony of Eddie Moss, *id.* at 1824-25.

85. *See* Petition for Writ of Habeas Corpus, Skatzes v. Smith, No. 3:09-cv-289 (S.D. Ohio, Apr. 5, 2010) [hereinafter Petition for Writ of Habeas Corpus, Skatzes v. Smith] at 30 n.6:

> Snodgrass testified that he took part in the murder of inmate Elder, (*Skatzes*, Tr. at 4391-96); inmate Sommers, (*Skatzes*, Tr. at 4595); and tried to kill inmate Newell (*Skatzes*, Tr. 4488-90). Snodgrass was offered a plea to a sentence of 5-25 years for the involuntary manslaughter of Elder, to run concurrently with the 5-25 years he was already serving for aggravated robbery. (*Skatzes*, Tr. at 4595.) Snodgrass was paroled in September 2006.

See also Petition for Writ of Habeas Corpus, Skatzes v. Smith, ¶¶ 201, 213, 338, 373: Jesse Bocook was indicted without death penalty specifications for the aggravated murder of David Sommers and, having entered a plea, Bocook was convicted of voluntary manslaughter. (Judgment of Conviction Entry (Feb. 6, 1996), State v. Bocook, Lawrence County Court of Common Pleas, No. 95-CR-1156.)

A. *Who killed Earl Elder?*

On the first day of the uprising, Earl Elder was found, together with Officer Ratcliff, in the stairwell at the back of one of the cell blocks. Prisoners broke into the stairwell and extracted both the officer and inmate Elder.[86]

There were three separate attacks on Elder before he died. The first attack was by prisoners in L-2 after Elder was extracted from the stairwell. It is undisputed that Elder was not dead after the first attack.[87] Elder was then dragged to L-6-60, where the second and third attacks occurred.[88] George Skatzes was implicated only in the second attack.[89]

As summarized in the opinion of the Ohio Supreme Court, George Skatzes told Roger Snodgrass, "'We got to go to L6.' At L6, Skatzes told Snodgrass, 'I want you to take this guy out,' which Snodgrass understood to mean that he was to kill someone."[90] According to the defense, "take this guy out" meant to do with Elder what Skatzes had done that afternoon with Officer Fraley and others who were seriously injured: take the man out to the yard where he could be rescued and given medical care.[91]

Roger Snodgrass and Timothy Williams testified for the prosecution that Snodgrass entered cell L-6-60 and stabbed Elder with an ice pick type weapon. Snodgrass said he stabbed Elder with a very thin, long, ice pick shank.[92] Williams described the weapon used by Snodgrass to stab Elder as an ice pick type weapon with the end of the weapon protruding to a point.[93]

The forensic pathologist who performed the autopsy on the body of Elder, Dr. Larry Tate, testified that there were many superficial "pin prick" wounds, made with an instrument that had a point rather than an elongated edge.[94] The many pin pricks were "little round holes" that barely penetrated the skin, like those made by an icepick.[95] These pin prick wounds were "non-lethal."[96] Dr. Tate testified that in

86. State v. Skatzes, 2008 Ohio 5387, 2008 WL 4603303 (Ohio App.2 Dist.) [hereinafter State v. Skatzes (2008)], ¶ 42 (Oct. 10, 2008).

87. Trial Tr., State v. Skatzes, *supra* note 1, vol. IV, 1522 (Oct. 23, 1995); *id.* at vol. XXIII, 4838 (Dec. 4, 1995); *id.* at vol. XXIV, 5131-32 (Dec. 4, 1995); *id.* at vol. XXVII, 5663 (Dec. 13, 1995). *See also* State v. Skatzes (2008), *supra* note 86 at ¶ 42.

88. State v. Skatzes (2008), *supra* note 86 at ¶ 42.

89. Trial Tr., State v. Skatzes, *supra* note 1, vol. XXI, 4391-96 (Nov. 29, 1995). *See also* State v. Skatzes (2008), *supra* note 86 at ¶ 18.

90. State v. Skatzes (2004), *supra* note 48 at 251, ¶ 137.

91. *See* Petition for Habeas Corpus, Skatzes v. Smith, *supra* note 85 at 8-10, ¶¶ 15-24, providing a fuller presentation of Skatzes's efforts during the first hours of the disturbance to assist Officers Fraley, Kemper, and Schroeder, and prisoner Fryman out of L-block and onto the yard where the authorities could retrieve them and give them medical attention.

92. Testimony of Roger Snodgrass, Trial Tr., State v. Skatzes, *supra* note 1, vol. XXI, 4395 (Nov. 29, 1995).

93. Testimony of Timothy Williams, Trial Tr., State v. Skatzes, *supra* note 1, vol. XIV, 3072 (Nov. 15, 1995).

94. Testimony of Larry Tate, Trial Tr., State v. Skatzes, *supra* note 1, vol. XXIII, 4840-45 (Dec. 4, 1995).

95. *Id.*

96. *Id.*

his opinion Elder "died of multiple stab wounds into the vena cava and the heart" by a broad edged instrument like a knife.[97] Incidentally, Dr. Tate found a shard of glass in one of the lethal wounds.[98]

The Supreme Court of Ohio mistakenly stated that Snodgrass had killed Elder.[99] Snodgrass testified that when he left cell L-6-60, Elder was "still moaning."[100] After Snodgrass returned to the gym, a prisoner known as "Lucky" Roper came to the gym and told Snodgrass, "the dude ain't dead."[101] The Ohio Supreme Court was clearly erroneous in stating that "Skatzes told Snodgrass that he [Skatzes] would 'take care of it.'"[102] Snodgrass clarified on cross-examination that it was Roper, not Skatzes, who said he would "take care of it."[103]

The third attack on Elder occurred after Snodgrass left L-6.[104] The following facts, not before the courts on direct appeal, were presented on post-conviction review.

On August 9, 2000, years after Skatzes's trial, Eric Girdy confessed that he and other inmates killed Elder with a knife made out of a piece of glass from the mirror in the officers' bathroom.[105] In 2005, the State of Ohio indicted Girdy for the aggravated murder of Elder.[106] Girdy entered a plea of no contest.[107] Girdy was found guilty and sentenced to 15 years to life, to run concurrently with sentences he was already serving.[108]

There is objective evidence to support the conclusion that Elder died as a result of the third attack on him, not as a result of superficial stab wounds by Snodgrass, but from stab wounds from a shard of glass. The autopsy report by Dr. Tate states regarding Wound #33: "When the dissection is done in the depths of this wound, a chard [sic] of glass is recovered and retained for police

---

97. *Id.*

98. *Id.* at 4838. *See also* State v. Skatzes (2008), *supra* note 86 at ¶ 18.

99. State v. Skatzes (2004), *supra* note 48 at 241, ¶ 83.

100. Testimony of Roger Snodgrass, Trial Tr., State v. Skatzes, *supra* note 1, vol. XXI, 4395 (Nov. 29, 1995).

101. *Id.* at 4398, and on cross, *id.* at vol. XXI-A at 4590-91 (Nov. 30, 1995). *See also* Petition for Writ of Habeas Corpus, Skatzes v. Smith, *supra* note 85 at 77, ¶¶ 103-04.

102. State v. Skatzes (2004), *supra* note 48 at 251, ¶ 138.

103. Testimony of Roger Snodgrass, Trial Tr., State v. Skatzes, *supra* note 1, vol. XXI-A, 4590-91 (Nov. 30, 1995).

104. Testimony of Timothy Williams, Trial Tr., State v. Skatzes, *supra* note 1, vol. XIV, 3076-77 (Nov. 15, 1995).

105. Deposition of Alice Lynd, Defendant-Movant's Memorandum in Support of Motion for New Trial Based on New Evidence [hereinafter New Evidence], State v. Skatzes, *supra* note 1 at 79, 95-96 (Jan. 25, 2007).

106. Indictment, State v. Girdy, No. 05-CR-1416 (Ohio C.P. Scioto Cnty. Oct. 22, 2005) [hereinafter State v. Girdy], New Evidence, *supra* note 105 at 137-38.

107. On June 6, 2006, Girdy pled guilty to Elder's murder in the Scioto County Court of Common Pleas. *See* Waiver, State v. Girdy, New Evidence, *supra* note 105 at 132 (June 6, 2005). *See also* State v. Skatzes (2008), *supra* note 86 at ¶ 19.

108. Judgment Entry, State v. Girdy, *supra* note 106 (Aug. 24, 2006), in State v. Skatzes, *supra* note 1, Amended Exhibits One and Four to Defendant-Movant's Memorandum in Support of Motion for New Trial Based on New Evidence, Submitted January 24, 2007 [hereinafter Amended Exhibits], Amended Ex. 2 at 13-15 (Jan. 29, 2007). Amended Ex. 2 at 13-15 (Jan. 29, 2007).

authorities."[109] The Ohio State Highway Patrol found several pieces of glass in L-6-60 where Elder was killed that "could have originated from the same source" as the piece of glass found in Elder's body.[110]

This independent objective evidence supports the conclusion that Girdy and accomplices caused the death of Elder, for which Girdy was prosecuted and convicted. Because Snodgrass's alleged assault on Elder did not cause Elder's death, and the cause of Elder's death was a fatal injury inflicted by the independent intervening actions of Girdy and other prisoners, neither Snodgrass nor Skatzes was complicit in nor should have been held responsible for Elder's death.[111]

Ohio Jury Instruction 409.56, applicable in homicide cases, which was not presented to the jury at Skatzes's trial, states: "3. INDEPENDENT INTERVENING CAUSE OF DEATH. If the defendants inflicted an injury not likely to produce death, and if the sole and only cause of death was . . . (fatal injury inflicted by another person), the defendant who inflicted the original injury is not responsible for the death."

Nevertheless, the Court of Appeals on post-conviction review, concluded, "The fact that Girdy may have been involved in these attacks, even if he inflicted a potentially fatal blow, does not preclude the conclusion that Skatzes was also culpable for Elder's murder."[112] The Saran Wrap of Complicity was stretched, once again, to keep George Skatzes on death row for the murder of Earl Elder.

B. *Who killed David Sommers?*

Three prisoners were convicted of killing prisoner David Sommers: Jason Robb, George Skatzes, and Aaron Jefferson. Jason Robb was the first of the three to be tried. He was found guilty of complicity in the Sommers murder.[113]

Roger Snodgrass testified in the trials of Jason Robb, George Skatzes, Carlos Sanders, and Aaron Jefferson that the decision to kill David Sommers was made on the spur of the moment. Roger Snodgrass, Jesse Bocook, and George Skatzes who were members of the Aryan Brotherhood, Robert Brookover who according

---

109. Autopsy of Earl Elder, C93-1060 by Larry R. Tate, M.D., Forensic Pathologist, Deputy Coroner, Franklin County, Columbus, Ohio (Apr. 13, 1993), Amended Exhibits, *supra* note 108, Amended Ex. 1 at 7.

110. *See* Ohio State Highway Patrol Crime Laboratory, Submission List Report (Jan. 1, 1993 through Oct. 14, 1994), samples 93-2128 and 93-3137, produced in discovery in State v. Robb, *supra* note 22; *see also* Ohio State Highway Patrol Crime Laboratory, Result Text (Jan. 1, 1993 through Oct. 14, 1994), samples 93-2128 and 93-3137, produced in discovery in State v. Robb, *supra* note 22. The Crime Laboratory Submission List Report and Result Text are two separate documents. For each numbered sample, the Submission List Report lists either a victim (e.g., Earl Elder), or the location where the sample was found (e.g., L-6-60); the Result Text briefly describes the sample (e.g., blood tube, piece of glass) and any subsequent action (e.g., blood sent to FBI and BCI for testing) or findings. It is necessary to look at both lists to correlate the victim, location, and test results if any are reported).

111. *See* Petition for Writ of Habeas Corpus, Skatzes v. Smith, *supra* note 85 at 41-42, ¶¶ 121-22 and n.10.

112. State v. Skatzes (2008), *supra* note 86 at ¶ 22.

113. State v. Robb (1999), *supra* note 47.

to the Supreme Court was a recent Aryan recruit, and Aaron Jefferson who was a member of the Black Gangster Disciples, were named as being in L-7 at the time.

According to the Ohio Supreme Court in *Robb*, "Bocook . . . said, 'Go get the bitch David Sommers.' Robb left, then came back in with Sommers running right behind him."[114] In *Skatzes*, the Supreme Court wrote: "Robb left to get Sommers from L2 and, moments later, Sommers was seen chasing Robb into L7."[115] But in the trial of Aaron Jefferson, Gregory Durkin testified that it was Snodgrass and Brookover who took Sommers out of L-2.[116]

George Skatzes was the second prisoner to be tried and convicted for the aggravated murder of David Sommers.[117]

Dr. Leo Buerger performed the autopsy on the body of David Sommers. In Skatzes's case, he testified that the cause of death was a single massive blow to the head with a blunt instrument that split the skull and caused loss of part of the brain tissue.[118] But it was not until the trial of Jefferson that Dr. Buerger was asked about the relative positions of the attacker and the victim. Dr. Buerger testified that the fatal blow was a single blow to the *front* of Sommers' head by a person standing right in front or maybe a little to the left of the victim.[119]

Roger Snodgrass testified that Sommers was lying on his stomach with his face down when Snodgrass saw Skatzes hit Sommers on the *back* of the head.[120] Dr. Buerger found no evidence of injury on the *back* of Sommers' head.[121] Thus, if what Snodgrass testified as to what Skatzes did was true, Skatzes could not have wielded the single massive blow that killed David Sommers.

In considering whether to recommend the death penalty in Skatzes's case, Prosecutor Hogan asked the jury to "think about David Sommers, . . . where [Skatzes] wielded a bat and literally beat the brains out of this man's head."[122]

A couple of months later, a different prosecutor argued that it was Aaron Jefferson who dealt the fatal blow:

> If there was only one blow to the head of David Sommers, the strongest evidence you have [is] this is the individual—I won't call him a human—this is the individual that administered that blow. . . . If there was only one blow, he's the one that gave it.

114. State v. Robb (1999), *supra* note 47, 723 N.E.2d at 1031. At Robb's trial, Robert Brookover testified that Robb ran into L-7 with Sommers ten or fifteen feet behind him. Testimony of Robert Brookover, Trial Tr., State v. Robb, *supra* note 22, vol. 15, 2431-32 (Mar. 6, 1995).

115. State v. Skatzes (2004), *supra* note 48, 819 N.E.2d at 231, ¶ 20.

116. Testimony of Gregory Durkin, Trial Tr., State v. Jefferson, No. 95-CR-3922 (Ohio C.P. Montgomery Cnty.) [hereinafter State v. Jefferson], vol. IV at 436-437 (Mar. 20, 1996).

117. For a fuller presentation of the issues related to the death of David Sommers, *see* Petition for Writ of Habeas Corpus, Skatzes v. Smith, *supra* note 85, at 67-84, ¶¶ 196-251.

118. Testimony of Leo Buerger, Trial Tr., State v. Skatzes, *supra* note 1, vol. XV, 3293-95 (Nov. 16, 1995).

119. Testimony of Leo Buerger, Trial Tr., State v. Jefferson, *supra* note 116, vol. III, 285-286 (Mar. 19, 1996).

120. Testimony of Roger Snodgrass, Trial Tr., State v. Skatzes, *supra* note 1, vol. XXI-A, 4483-85 (Nov. 30, 1995); Trial Tr., State v. Sanders, *supra* note 19, vol. 12, 2566 (Feb. 1, 1996); Trial Tr., State v. Jefferson, *supra* note 116, vol. III, 332, 370, 371 (Mar. 19, 1996).

121. Testimony of Leo Buerger, Trial Tr., State v. Jefferson, *id.,* vol. III, 286 (Mar. 19, 1996).

122. Closing argument, Trial Tr., State v. Skatzes, *supra* note 1, vol. XXXI, 6108 (Jan. 11, 1996).

> He's the one that hit him like a steer going through the stockyard, the executioner with the pick axe, trying to put the pick through the brain. That put that baseball bat into the brain of David Sommers.[123]

However, it may be that neither Skatzes nor Jefferson wielded the single lethal blow. In Skatzes's case, Snodgrass testified that Jesse Bocook dragged Sommers into the shower and beat Sommers' brains in.[124] In subsequent trials, Snodgrass testified that Bocook dragged Sommers into the shower, put Sommers's head "up against the wall" and beat him with a "golf swing motion with the ball bat."[125]

Sgt. Howard Hudson testified that he found blood spatters on the back and front walls, the floor of the shower and directly outside the shower.[126] The blood spatters provide objective physical evidence that the fatal blow was struck when Sommers was up against the wall in the shower, consistent with Dr. Buerger's testimony as to the position of the victim and the stance of the murderer.

Still later, Snodgrass told other prisoners that he himself had wielded the single massive blow. Three such prisoners wrote affidavits filed by counsel for Skatzes on post-conviction review.[127]

The Court of Appeals in Skatzes's case on post-conviction review determined that "there was no way to prove who had inflicted the fatal head injury."[128] However, "A defendant charged with an offense may be convicted of that offense upon proof that he was complicit in its commission, even though the indictment is stated in terms of the principal offense and does not mention complicity."[129]

Thus, the Saran Wrap of Complicity was stretched to keep both Robb and Skatzes on death row based wholly upon accomplice testimony, uncorroborated by any objective evidence. Snodgrass was not charged with anything in relation to the death of Sommers. Bocook pled guilty to voluntary manslaughter.[130] Brookover took a plea to involuntary manslaughter.[131] Aaron Jefferson is

123. Closing argument, Trial Tr., State v. Jefferson, *supra* note 116, vol. V, 656-57 (Mar. 21, 1996).

124. Testimony of Roger Snodgrass, Trial Tr., State v. Skatzes, *supra* note 1, vol. XXI-A, 4486 (Nov. 30, 1995).

125. Testimony of Roger Snodgrass, Trial Tr., State v. Sanders, *supra* note 19, vol. 12, 2567 (Feb. 1, 1996); Trial Tr., State v. Jefferson, *supra* note 116, vol. III, 334 (Mar. 19, 1996).

126. Testimony of Sgt. Howard Hudson, Trial Tr., State v. Skatzes, *supra* note 1, vol. VI, 1971-76 (Oct. 25, 1995); Trial Tr., State v. Jefferson, *supra* note 116, vol. II, 173-75 (Mar. 18, 1996).

127. Petition for Writ of Habeas Corpus, Skatzes v. Smith, *supra* note 85, 75-76, 225-27, and sources cited therein.

128. State v. Skatzes (2008), *supra* note 86, ¶ 56.

129. *Id.*

130. Jesse Bocook was indicted without death penalty specifications for the aggravated murder of David Sommers. He entered a plea and was convicted of Voluntary Manslaughter. Judgment of Conviction Entry, State v. Bocook, No. 95-CR-1156 (Ohio C.P. Lawrence Cnty. Feb. 6, 1996).

131. *See* Testimony of Robert Brookover, Trial Tr., State v. Skatzes, *supra* note 1, vol. XVII, 3687-88 (Nov. 20, 1995). *See also* LYND, LUCASVILLE, *supra* note 5, Appendix Four, 195 and Appendix. Five, 197.

serving life in prison. Jason Robb and George Skatzes remain sentenced to death for the murder of David Sommers.

Stripped to its essentials, the choice faced by prosecutors was whether to concede that it was impossible to know which prisoners were responsible for particular homicides or build the best case they could against the men they believed to have been the leaders of the rebellion on the basis of unreliable prisoner informant testimony. They chose the latter.

CONCLUSION

Judge Cartolano, who invented and repeatedly used the term "Saran Wrap of complicity," did not explain why it was so important to him. However, the thrust of his jury instructions in overseeing two of the most important Lucasville trials, those of Hasan and Were, was reasonably clear. Judge Cartolano used the term "Saran Wrap of complicity" to communicate to the jury what he called their "duty" to focus on the spokespersons and leaders of prisoner organizations that took part in the uprising. The same approach was echoed by the Ohio Supreme Court.

The Lucasville cases, the authorities claimed, involved the coordinated activity of three ruthless prison gangs whose members were controlled by their leaders. Each group sponsored a variety of crimes. Gang leaders were the real criminals. However, as has been shown above, there is no way the State can determine who actually killed Officer Vallandingham or prisoner David Sommers. Similarly, the State cannot determine who coordinated the "death squad" on April 11 or who murdered Earl Elder later that evening.

When what happened in the "Lucasville riot" is compared to the criteria for prison justice set forth by the Joint Task Force, the result is the same. Much as the public may demand that someone be executed in reprisal for the death of a hostage officer, convictions based solely on testimony by accomplices and other prisoner informants should be found insufficient to support a finding of guilt, let alone a death sentence.

The most significant obstacles standing in the way of such reckless administration of justice are recommendations of the Joint Task Force that a death sentence is impermissible when the State relies on jailhouse informant testimony that is not independently corroborated, and there is no objective evidence that conclusively links any defendant to any of the murders. None of the Lucasville capital sentences satisfy these criteria. The task ahead is for the Ohio legislature, the Supreme Court of Ohio, or the governor of Ohio, to recognize and implement these evolving standards of decency.