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September 27, 2012

To: Kate McGarry  
David Doughten

From: Staughton and Alice Lynd

Re: Remand of Keith LaMar's Case to the District Court for  
Further Discovery

Five prisoners have been indicted for aggravated murder, found guilty, and sentenced to death, for their alleged activity during the Lucasville prison uprising of April 11-21, 1993.

Keith LaMar is alleged to have supervised a group of prisoners known as the "death squad" during the first hours of the uprising. Allegedly, the death squad led by LaMar went from cell to cell in cell block L-6 assaulting prisoners believed to be "snitches." LaMar was sentenced to death for the aggravated murder of prisoners Depina, Svette, and Vitale, and to life imprisonment for the aggravated murder of Staiano.

LaMar was also sentenced to death for the aggravated murder of prisoner Dennis Weaver. After LaMar left L-6 and went out to the recreation yard, he and nine other prisoners were placed in cell K-2-36. Two days later, LaMar allegedly ordered three of these prisoners to strangle Weaver, who was also confined in the cell.

All five Lucasville capital cases are in the federal courts. The case of Jason Robb is before Judge Algenon Marbley in the Southern District of Ohio, Eastern Division. According to established practice, the other four cases were initially referred to Magistrate Michael Merz in the Southern District of Ohio, Western Division.

In two of these cases, the matter of Keith LaMar and the appeal of Siddique Abdullah Hasan f.k.a. Carlos Sanders, Magistrate Merz recommended to the assigned judge of the District Court that the prisoner's habeas petition should be dismissed without an evidentiary hearing or other additional proceedings. After brief consideration, Judge Rose affirmed that recommendation in LaMar's case without comment. Judge Dlott, however, in effect reversed the Magistrate's recommendation in her November 2011 order in the case of Hasan. As set forth below, she ordered extensive discovery in a number of specified categories.

Subsequent to Judge Dlott's decision, a consensual agreement of judges and counsel in the Robb and Hasan cases consolidated these cases, for the sole purpose of discovery, under Judge Marbley. James Were, who had intervened in the Robb case for the purpose of discovery, is also part of that proceeding.

Thus a common law of discovery has begun to emerge in the Lucasville capital cases. The District Court decision denying further discovery in LaMar's case represents a dramatic exception. The emerging common law has been recognized by

Magistrate Merz, who has written in the case of a fourth Lucasville capital defendant, George Skatzes: "it seems inappropriate, in the absence of very persuasive argument to the contrary, for this Court to constrain discovery in this case arising out of the same factual circumstances if District Judges of this Court have granted parallel requests." Decision and Order, Skatzes v. Smith, Case No. 3:09-CV-289 (Southern District of Ohio, Western Division), Docket No. 76, Feb. 24, 2012, p. 17 n.5.

Therefore, Appellant LaMar seeks to have his appeal to this Court stayed so that his case can be remanded to the District Court. There LaMar's habeas counsel should be given access to the same categories of materials that are being made available to counsel for Hasan, Robb, and Were.

#### Specific Discovery Desired

The following are kinds of discovery made available to defendant Hasan by Judge Dlott's Order of November 17, 2011, p. 9, that should be made available to LaMar.

##### 1. Database of Witness Statements and Trial Testimony

Appellant LaMar should be granted complete access to the database generated by the Ohio State Highway Patrol (OSHP). Specifically, Judge Dlott granted: "Records deposition of the Ohio State Highway Patrol ('OSHP') to obtain the computer generated index of witness statements and trial testimony, created and maintained by OSHP"; "The [OSHP] database burned to a CD by the OSHP"; and "Access to the original version of the



database [to] be provided by the OSHP."

(a) Appellant should be granted a records deposition of the OSHP to obtain the **computer generated index** of witness statements and trial testimony. Appellant has seen an incomplete version of a thirty-page document entitled "Listing of Interviews Sorted by Name and Indexed on Interview Number," dated March 21, 1995. Appellees should produce the complete Listing.

(b) Appellant should be granted the **database burned to a CD** and access to the original version of the database. Entries to the database were made by OSHP officers summarizing their interviews with potential prisoner witnesses. Appellees have thus far provided only selected entries from the database. Appellees should produce the entire database burned to a CD.

(c) No **transcripts have been provided from trials** relevant to the murder of the same victims as those for which Petitioner LaMar was convicted.

The trial court judge in LaMar's case initially agreed to make the transcripts of the trials of other alleged members of the death squad available to LaMar's defense counsel. During a pretrial hearing, he changed his mind on the ground that "we'd be here for ten years waiting for the last trial to go down." Pre-Trial Hearing of March 6, 1995, Transcript p. 21.

In fact, trials of five other prisoners alleged to have been part of the death squad or to have assisted it (Gregory Curry, Rasheem Matthews, Derrick Mathews, Derek Cannon, and Timothy Grinnell) were completed **before** the trial court hearing

concerning LaMar's motion for new trial, held on October 9, 1995. Evidence in one of the preceding trials, State v. Grinnell, No. 94-CR 11-66418 (Court of Common Pleas, Franklin County, Ohio) is especially relevant. Two witnesses stated under oath that they had seen prisoner Stacey Gordon, not Keith LaMar, seek entrance to L-6 at the head of the death squad and demand that the person operating the console open the doors of the cells where supposed "snitches" were confined.

## 2. Summaries and Transcripts of Witness Statements

Judge Dlott granted: "Upon request, access to the interview summaries and transcripts still maintained by the OSHP at their facilities on Alum Creek Dr., Columbus, Ohio."

(a) When directed by the trial court before trial, counsel for the State made available to counsel for LaMar the names of forty-three prisoners who had been interviewed by the OSHP. Separately, the State made available a list of database entries but, with the acquiescence of the trial court judge, refused to say which prisoner had been interviewed for each database entry.

The forty-three names did **not** include five of the six prisoner witnesses subsequently called by the prosecution at trial. The database entries after the following interviews with prosecution witnesses have **never been made available to LaMar's defense counsel:**

Robert Bass, interviews on 05/18/93; 12/02/93; 01/06/94; 03/31/94; 07/14/94; 10/24/94.

Michael Childers, interviews on 05/04/93; 05/05/93;



07/01/93; 10/26/93; and 07/20/94.

Stacey Gordon, interviews on 05/26/93; 09/8/94 (when Gordon testified on the occasion of his plea agreement that he did not know LaMar and had not seen LaMar in L-6 on April 11); 12/07/94; 01/05/95; 01/26/95; 02/09/95; and 10/25/95.

John Malveaux, interviews on 03/03/94; 04/29/93; and 10/26/93.

Ricky Rutherford, interviews on 05/05/93; 10/26/93 (two interviews); and 08/02/94.

(b) The State has never made available the following material, itemized in the foregoing Listing, concerning critical witnesses who were with LaMar in the cell on K-side at the time Dennis Weaver was murdered.

William Bowling. The State has never made available transcripts of the following taped interviews with Bowling: 04/29/93, tape A071; 10/26/93, tape A180; and 08/04/94, tape D057. Additionally, the State has not produced the database entries summarizing these interviews. The State has also never made available the database entries after an additional, untaped interview with Bowling on 5/10/93, and a second, untaped interview on 10/26/93. Bowling is the prisoner who LaMar believes was principally responsible for Weaver's death.

Eric Scales. The State had never made available the taped interview with Scales on 10/26/93, tape A186, or the database entry that summarized it. The State has also not made available the database entries after additional, untaped interviews with

Scales on 05/07/93; 10/26/93; and 03/28/94. Scales was not only in the cell on K-side when Weaver was killed there but he was also alleged to have been a member of the death squad in L-6.

### 3. Videotapes and Transcripts of Depositions

Judge Dlott granted: "Copies of video depositions and transcripts of same in the possession of the OSHP;" and, more particularly, "Copies of the video depositions of each of the witnesses that testified at Petitioner's trial."

The incomplete Listing cited above describes eighteen such depositions of potential witnesses in the LaMar case, five of them with prisoners (Bass, Childers, Louis Jones, Malveaux, and Rutherford) who became prosecution witnesses at trial. The list of these depositions, all of which have thus far been unavailable to defense counsel for LaMar, is attached.

Counsel for LaMar have received **no video tapes whatsoever of depositions taken by the State.** Any courtroom advocate desires the opportunity to hear or see a potential witness answering questions. Presumably for this reason, Judge Dlott ordered prosecutors not merely to provide transcripts, but to make available to Hasan copies of relevant video tapes. Petitioner LaMar deserves access to these sources.

### 4. Audio and Other Video Tapes Relevant to the Murder[s]

Judge Dlott granted: "Copies of the audio tapes of each of the witnesses that testified at Petitioner's trial," and "Copies of any audio or video tapes prepared by the special prosecutor or the OSHP during the Lucasville Investigation relevant to the



murder" [for which defendant was convicted].

No videotapes have been produced for any of the following prisoner witnesses who testified at Petitioner LaMar's trial (see Index of Examination, Trial Transcript at 4354-56): Robert Bass, Anthony Walker, Thomas Taylor, Stacey Gordon, Louis Jones, Ricky Rutherford, Michael Childers, John Malveaux, and William Washington.

#### 5. Rules Infraction Board Hearings

Judge Dlott granted: "Transcripts and/or tape recordings of RIB [Rules Infraction Board] Hearings in the possession of DRC."

No such RIB evidence has been made available to counsel for LaMar at any stage of these proceedings.

#### Conclusion

In evaluating the need for these several kinds of evidence, it must be kept in mind that Brady requires the production not only of evidence deemed exculpatory, but of evidence that may impeach credibility. Since the actions alleged to have been committed by LaMar took place in crowded locations and were witnessed by several dozen prisoners in L-6 and eight prisoners (other than LaMar) in K-2, it follows that the testimony of **all** these witnesses was potentially relevant to credibility.

Accordingly, the categories of evidence specified by Judge Dlott as required to be produced in the case of Siddique Abdullah Hasan are equally relevant, and required to be produced, in the case of Keith LaMar. For that reason, appellate proceedings in this Court should be stayed while the case is remanded to the



District Court, with direction that discovery comparable to the discovery ordered in Hasan's case must be made available to LaMar.

## **DEPOSITIONS**

**Counsel for LaMar have received no audio or video tapes of any of the following depositions.**

Copies of any video or audio depositions of each of the witnesses who testified at Petitioner's trial:

Robert Bass, 3-31-94, interview # 1230, tape #D054

Michael Childers, 7-28-94, interview #1303, tape #D055

Louis Jones, 4-8-94, interview #1334, tape #D051

John Malveaux, 3-3-94, interview #1205, tape #D066

Ricky Rutherford, 8-2-94, interview #1302, tape #D056

## **Other Depositions**

“Copies of any audio or video tapes prepared by the special prosecutor or the OSHP during the Lucasville Investigation relevant to the murder” for which defendant had been convicted:

Stanley Aldridge, 12-13-93, interview #1083, tape #D015;  
1-21-94, interview #1146, tape #D002

Daniel Belcher, 5-4-94, interview #1257, tape #D032

William Bowling, 8-4-94, interview #1301, tape #D057

Ruben Brazzile, 2-4-94, interview #1183, tape #D035

Donald Cassell, 7-21-94, interview #1338, tape #D067

Hiawatha Frezzell, CD 2-11-94, interview #1178, tape #D065

Daniel Johnson, 6-8-94, interview #1269, tape #D031

Gerald Kelly, interview #1155, tape #D023

David Lomache, CD 5-19-94, interview #1330, tape #D030

Steven Macko, 5-5-94, interview #1255, tape #D036

Brian Seneff, 12-14-93, interview #1151, tape #D025

Thomas Taylor, 3-14-94, interview #1217, tape #D52

Reginald Williams, 5-6-94, interview #1253A, tape #D033