SW = State's Witness
SW #2 = State's Witness 2
SW #3 = State's Witness 3
NW = New Witness
OIP SA = OIP Staff Atty
AP = Asst. Prosecutor
Det 1 = Detective 1
Det 2 = Detective 2
GF = Gaines' Friend

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April 3, 2012

Mr. Mark Godsey, Esq.
Director, Rosenthal Institute for Justice/Ohio Innocence Project
P.O. Box 210040
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Dear Mr. Godsey:

On March 14th you authored a commentary on the Bryant "Rico" Gaines case. You were extremely critical of the criminal justice system in general and this office in particular.

Initially you describe the background as follows:

> "Rico was originally convicted primarily on snitch testimony-a witness who was given leniency in exchange for pointing the finger at Rico. A few years after his conviction, the guilt of the snitch made him recant his trial testimony. Rico tried to get his conviction overturned at that point, but as anyone in this line of work knows, a recanting snitch will get you nowhere in the courts."

As you know, the "snitch" you are referring to is SW. The term snitch is pejorative in nature, and you double-down on that charge by saying that SW "was given leniency in exchange for pointing the finger at Bryant Gaines." Your allegations are false.

Bryant Gaines participated in the murder of Clarence Eugene Bradshaw on September 7, 2003. SW witnessed the crime, came forward and was interviewed by Cincinnati Police on September 7, 2003, and identified Bryant Gaines [whom he knew] as a participant. SW was a juvenile at the time and had no pending charges, as either an adult or a juvenile. Bryant Gaines went to trial in January 2004 and SW testified against him. There were no pending charges at the time he testified. SW did not get leniency, and had no need for leniency.

It is deplorable for you to say what you did about him. Because, far from a "snitch," SW was a cooperating witness who put himself in danger by coming forward. The claim that this office gave him leniency is a total fabrication on your part.

Reinforcing this conclusion is the fact that in June 2005, well after the conclusion of Gaines' trial, SW was indicted on adult felony charges. He went to trial and was convicted and sent to prison for six years.[1] The State opposed all of his appeals and twice successfully opposed his motions for judicial release. (T.p. of 8/11/2010 attached.) It could not be more apparent that your claim of "testimony in exchange for leniency" is patently false. As for your claim that SW's recantation was based on feelings of guilt, a more likely reason is his subsequent incarceration in the same prison as Gaines' brutal co-defendant Lonnel Dickey; and resultant intimidation. SW admits to a fight with Dickey his very first day at Lebanon Correctional Institution. At that time, Dickey told SW that if he wanted to "go to war over it," Dickey "had people on the inside."

That is not to say, however, that no one ever attempted to assist SW with efforts at leniency. On April 24, 2009, OIP SA of the Ohio Innocence Project wrote a letter (copy attached) to Judge Robert Winkler, which began as follows:

> "Dear Judge Winkler:
>
> I write to you today on behalf of SW . It is my understanding that SW is applying for judicial release, and I wholeheartedly recommend that such release be granted.
>
> I am an attorney working for the Ohio Innocence Project at the University of Cincinnati College of Law. I have never before written in support of a petition for judicial release, but I am making an exception to that general rule for SW ."
>
> "* * * He has been a model prisoner who has used his time to educate himself and to prepare for a career as a barber upon his release. He does not cause trouble or engage in violent behavior."

At the time this letter was written, SW already had 15 infractions recorded at the prison. Using your reasoning process regarding leniency, SW's recantation is very questionable.

In addition, on March 8, 2012, OIP SA sent an e-mail to my office (copy attached) containing what could be construed as an unethical proposal as to freeing Mr. Gaines without a conviction. This e-mail concluded with the following problematic language:

> "From a publicity standpoint the Ohio Innocence Project would agree to stay quiet about anything other than the IAC violation."

Of course, the State rejected this questionable proposal and Gaines pled guilty. Your blog then followed.

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[1] And the prosecutor's actions in that case completely contradict your implication that this office strives for convictions at any cost. As soon as the AP on SW's case , became aware of facts that exonerated SW's co-defendant, Mr. X, she took immediate action to vacate X's conviction.

In discussing the Ohio Innocence Project's discovery of a new witness, NW you failed to mention that Gaines had filed a previous motion, based on an affidavit from co-defendant Lonnel Dickey saying he (Dickey) was carrying two guns, and fired all the shots at victim Bradshaw. The story now presented by new witness NW is contradictory to this earlier theory, and Mr. Gaines, who admittedly was present at the scene, would surely know this.

You also state in your blog that the Ohio Innocence Project's "new" witness, waited until now to come forward out of fear of the "true killers." However, both of these "true killers," Lonnel Dickey and Charles Jackson, have been serving lengthy prison sentences since 2004 and were in jail prior to that. This explanation of NW's belated appearance is suspect.

You state in your blog, apparently in reliance on the work of your compatriots, that there is no evidence of guilt: that Gaines is completely innocent. Ohio Innocence Project attorney OIP SA continually stated in her pleadings – and when given the chance, to the press - that "there was not a shred of evidence" against Bryant Gaines outside of SW's testimony. Even taking into account the fact that the adversarial process allows both the prosecution and the defense to interpret evidence, this statement is wrong. The record is replete with documented, verifiable facts that refute it.

Evidence Known by Police at the Time Gaines was Indicted

1. <u>Gunshot Residue</u>

SW described Bryant Gaines when he saw him at the scene. He said Gaines wore a white t-shirt and dark pants. At about 10 a.m. the following morning, police went to the home of Gaines' mother and told her they wanted to speak to Bryant Gaines. (T.p. 247) She stated that he was not at home and she did not know where he was. At about the same time, a car pulled up in front of her home, and Gaines got out of the car. He was wearing a white t-shirt, a tank top, dark pants and gym shoes. (State's Exhibit 22, 23, 24) These clothes and shoes were sent to the Hamilton County Crime Laboratory. All tested positive for gunshot residue. (State's Exhibit 25)

When police questioned Gaines, he said he spent the day at a barbeque at Janara Tucker's apartment building, and that he was inside her apartment when he heard shots being fired. He denied any involvement in the shooting, and said he ran to his mother's house when it ended. He said he saw no one on the street that he knew when he left the scene. (T.p. 257) He said he learned later that Gene Bradshaw had been shot. He said he was unaware that the police were looking for him. (T.p. 254) Gaines made no statements about the clothes he was wearing.

Detective David Landesberg noted that Gaines appeared to have recently bathed or showered when he arrived at his mother's home. His hair was wet and he smelled as if he had just showered. This was not something brought out on direct at trial because at that point, Gaines had not made any statements about having changed his clothes. It is mentioned here to rebut the

current theory that the state had "not a shred of evidence" before Gaines was indicted. It would also account for a lack of gunshot residue on Gaines' hands.

Testimony

SW said he was walking towards his brother, Gene Bradshaw, when he saw Bryant Gaines go through the front door of the apartment building at 697 Greenwood. (T.p. 127) As Bradshaw walked towards that apartment building, Lonnel Dickey shot him. "As that was happening, Rico (Gaines) had come and fired one." (T.p. 134) Bradshaw fell, and Dickey walked down towards him and shot him in the head. Although he saw a third, unidentified man prior to the shooting, he said that man did not have a weapon and did not shoot anyone. (T.p. 138, 139)

Evidence that Corroborated SW's ***Original Testimony***

SW #2

SW's brother, SW #2 was outside the apartment building where the murder occurred. He testified that he heard gunshots and jumped behind a car parked in front of the building. He looked up and saw Gene Bradshaw fall to the ground. He then saw Lonnel Dickey and Bryant Gaines come down the steps. An unknown, unidentified third man followed, "but the two main people that came downstairs was my cousin Rico and Lonnel." (T.p. 161)

This testimony constituted direct evidence that Gaines and Dickey walked away together past the body of the victim, Gene Bradshaw, as they left the scene. This also corroborates other state's witnesses' testimony.

SW #3

The father of both SW and SW #2, as well as the victim Gene Bradshaw, came outside from his apartment as soon as he heard gunshots. As he ran across the yard, two more shots were fired. He immediately saw "boys" running from the scene, but could not identify them. He saw SW and SW #2 over a body. The first thing he heard was SW yelling that "Rico and this boy just shot Gene." (T.p. 190)

This testimony also corroborates SW's trial testimony.

Post-Trial: SW's ***Testimony***

2. NW ***<u>the "New" Witness</u>***

Bryant Gaines' mother approached the OIP with NW a man who said he saw Chuckie Jackson and Lonnel Dickey shoot Bradshaw. NW signed an affidavit describing this, and later testified at an evidentiary hearing on December 1, 2010. Many discrepancies exist between these two explanations ***and*** with the evidence presented at trial. The autopsy report from the Coroner's Office and the Official Crime Laboratory Report bear this out.

a. The Weapons

NW 's affidavit stated specifically that "the guns Chucky (Jackson) and Lonnel (Dickey) used were pistols but were not automatics." NW testified that he has knowledge of guns. (In fact, he pled guilty to having a weapon while under a disability in 2008. The complaint described the weapon as a ".357 cal Revolver.") At the evidentiary hearing, NW described a pistol as the same as a revolver. (Evid. H. T.p. 70) He reiterated that Jackson and Dickey used pistols.

The Official Crime Laboratory Report identified the casings found at the scene as ".380 Auto" and ".45 Auto" cartridge cases. (State's Exhibit 21)

At the evidentiary hearing, NW admitted that his affidavit must have been wrong.

b. Victim shot "in the back"

NW gave a statement to Detective McKinley Brown on July 28, 2008. He stated that he did not see who fired the first shot from the porch. "When he (Bradshaw) got up there to the doorway of going into that other complex, I seen fire come out. They shot him." (Evid. H. T.p. 30) He said when this happened, he began "backpedaling," i.e., he ran backwards across the street and then half-way up a driveway. While running in this fashion, he said two figures came down from the porch. He then recognized them as Chuckie Jackson and Lonnel Dickey. He stated:

> "Then Chucky and Lonnel, they ran up to the body right there and shot him, both shot him in the back." (Interview T.p. 36)

At the December 1st evidentiary hearing, he testified that "the tall guy" shot Bradshaw in the back. (Evid. H. T.p. 31) He stated he could not remember if it was once or twice. He also stated Dickey then shot the victim in the head twice. (Evid. H. T.p. 31)

The Coroner's Laboratory Report and the testimony of the coroner who conducted the autopsy on Bradshaw's body confirmed that the victim was shot in the abdomen, but never in the back. (One shot to the abdomen could have entered the body through the victim's left arm, exited the arm and then re-entered in the abdomen. T.p. 282-283)

(As you will recall, OIP SA stated over and over that the murder could not have occurred the way SW described, but only in the manner described by NW. Your blog also stated that you hired an unidentified expert who came to this conclusion.)

c. The timing of Gaines' exit from the scene

NW stated in his interview with Det. 1 that Gaines exited the building ten minutes after the shooting. (Interview T.p. 43) NW's affidavit stated that "[a]pproximately ten minutes" after Chucky Jackson and Lonnel Dickey left the scene, Bryant Gaines exited the apartment building.

At the December 1st evidentiary hearing, he agreed that Gaines exited the building after ten minutes. (T.p. 76) On further questioning, he said that "ten minutes might have been a little much." (T.p. 77) He told Det. 1 that the police did not arrive for more than 20 minutes after the shooting. (Interview T.p. 43)

CAD records and Det. 2 's testimony show that police arrived within two minutes of the 911 call. The 911 call was made immediately after the shots were fired.

Gaines testified at his trial that as soon as the shooting ended, he left the scene. "Once I talked to Buddy and said the few words that I said, we exited the building." (T.p. 324, 398) He said he was "on the street" before police and paramedics arrived. (T.p. 384) As stated previously, he told Det. 2 in his interview that he didn't see anyone on the street that he knew. NW testified that he knew Gaines and considered him to be a friend. (Evid. H. T.p. 24, 25)

d. Credibility Despite Drug Addiction?

NW admitted at the evidentiary hearing that he had a heavy drug problem at the time of the murder. (Evid. H. T.p. 74) In response to a question about whether this affected his perception of the events, he responded "What's that got to do with it?" (Evid. H. T.p. 73) Although he testified to the details of the shooting, he said he had no memory of who he bought his heroin from in 2003 and that he was "probably high" at the time of the murder. (Evid. H. T.p. 74, 92)

NW's affidavit states that Gaines wore a white t-shirt the night of the murder. At the evidentiary hearing, he testified that he did not remember what Gaines wore. "I don't remember them little details. It's been seven years ago." (Evid. H. T.p. 77)

e. Connections to Defense Witnesses

NW said he had known Mrs. Mincy since they were kids, and knew Bryant Gaines, whom he considered to be a friend. (Interview T.p. 6, 7; Evid. H. T.p. 25) He said that GF, who testified for Gaines at trial, was "a long-time friend." (T.p. 26) He said GF had seen him as he left the murder scene with Gaines (Evid. H. T.p. 51), and that years later, when he decided to come forward, he was working for I GF. (Evid. H. T.p. 36) GF has numerous felony drug trafficking convictions.

NW said he had not known Chuckie Jackson until the night of the murder, and only "knew of" Lonnel Dickey.

e. Discrepancies Between the Testimony of SW and NW

SW testified at the evidentiary hearing that he saw NW and his wife walking down the street before the murder. He said NW called out to the victim, Gene Bradshaw. SW testified that days after the murder, NW told him "that he had seen everything." (SW had not *ever* testified to seeing NW at the scene before and did *not* mention this is his 2007 or 2008 affidavits.)

NW testified at the evidentiary hearing that he never saw SW at any time before, during or after the shooting. He said he talked to no one about what he saw for five years.

3. SW ***'s Depiction of his Fight with Dickey in Prison***

SW 's September 19, 2008 affidavit stated that he and Dickey argued over Dickey's refusal to come forward to exonerate Bryant Gaines. He said Dickey told him that if he needed to go to war over it, he (Dickey) had people on the inside. SW said he punched Dickey and a fight broke out. (See pg. 2) Other inmates broke it up.

By the time SW testified at the 2010 hearing, he said that when he spoke to Dickey in prison, Dickey was apologetic and wanted to say that he was sorry about the situation. He said Dickey "was breaking down and everything," and that Dickey could not look him in the eye. (Evid. H. T.p. 148)

Characterizing SW ***'s "Recantation" Testimony***

SW testified in Gaines' trial in early 2004. Four years later, SW signed an affidavit stating that "My testimony at that time was inaccurate and I did not see Mr. Gaines shoot Eugene Bradshaw."

Yet when SW testified at the December 2010 evidentiary hearing, he did not say that his testimony was incorrect, but stated only that he believed it was possible he made a mistake (T.p. 144). He testified that his testimony "could have been a mistake" (T.p. 154), "I believe possibly it was the other individual that was out there" (T.p. 159). "It could be a possibility, yes" (T.p. 160), and "I believe it's a possibility that I made a mistake" (T.p. 161)

And *when* did SW start to change his mind about his very specific description of the murder, seen from standing approximately 20 feet from the victim? Only after he was threatened by co-defendant Lonnel Dickey at the Lebanon Correctional Institutional where he was first incarcerated in December 2005.

September 2003 – January 2006

During the three years SW was not in prison, he did not publicly express any doubt about this testimony.

On June 16, 2004, Dickey signed an affidavit in which he took sole responsibility for the murder, stating that he alone shot Bradshaw. No action was taken by SW.

In January 2006, shortly after being incarcerated on unrelated felony charges, SW said he was confronted by Dickey, who told him that Gaines was not involved in the shooting. One year and eight months went by and SW did not recant.

2007

During these months, family members and a new attorney, David Washington, visited or were otherwise in contact with SW. (See transcript from Aug. 2, 2007 hearing in Case No. C-070627) He then signed the first affidavit (August 1, 2007) saying his testimony was inaccurate and that he didn't see Gaines shoot Bradshaw.

According to OIP SA , at least as early as December 2007, members of the Innocence Project met with NW . (OIP SA did not join the OIP until January 2008)

2008

OIP SA stated in an email to our assistant prosecutor that in April 2008, SW "was very hesitant to do an affidavit for us." She sent us notes from a telephone conversation from April 29, 2008. In her notes, she said that SW stated that once Dickey shot Bradshaw, Gaines came out of the apartment building and SW saw a flash. Her notes then stated that SW "now knows" that it was Chuckie Jackson who fired that shot. This "knowledge" is based on Dickey's statements in prison to SW: "That is when it became clear to SW that his testimony had been wrong."

That statement is in contradiction with the June 16, 2004 affidavit by Lonnel Dickey filed in court by Gaines' attorney, in which Dickey stated that he was the sole gunman who murdered Bradshaw. This alone should demonstrate that Dickey's credibility is suspect.

SW 's contact with the OIP corresponds with the entrance of NW , a "new witness" who spoke with Gaines' mother, Judy Mincy, and afterwards, the OIP. NW said that he saw Bradshaw's murder and that Gaines was not involved. He said Gaines did not come out of the apartment building until ten minutes after the shooting occurred. This conflicts not only with SW's trial testimony, but also with all of his later statements. SW at both times stated that Gaines, Dickey and an unidentified third man were outside the apartment building at the same time. He also said they jogged away from the scene together.

NW's statement also differs from Gaines' trial testimony, mentioned above.

Four months after OIP SA said SW was reluctant to sign an affidavit for the OIP, he signed his second affidavit. (September 19, 2008) In it, he detailed his prison conversations with Dickey and Dickey's claim that Chuckie Jackson was the second assailant in Bradshaw's murder. SW stated only that he "witnessed the murder" and did not include details.

SW also - for the first time - stated that NW was at the scene of the murder and that he called out to Bradshaw shortly before the shooting began. (It did *not* state that he allegedly saw and spoke with NW several days after the murder, a statement not made until December 1, 2010.)

2009

According to a letter written by OIP SA to the Common Pleas Court, she said she spoke to and visited SW at the Ross Correctional Institution while she investigated Gaines' case. In April 2009, she wrote a letter to the Common Pleas Court Judge who sentenced SW and asked that he be released from prison. In her letter, she stated that she met with SW in prison "on more than one occasion." She said she spoke with various prison personnel, including his case manager. She told the judge that SW had been a respectful, model prisoner and that she wished her own children treated others with the same respect and courtesy exhibited by SW.

In reality, in addition to attending classes, SW was written up for numerous prison infractions. Recorded infractions included disobedience of a direct order, destruction, misuse or alteration of property, stealing or embezzlement of property, possession of contraband, extortion by threat of violence or other means, and giving false information or lying to departmental employees. He had 14 infractions at the time OIP SA wrote her letter, and 24 by the time he was released.

NW ***Credibility***

NW has been a career criminal from 1973 through 2011. He has at least 13 convictions during this period. He has an extensive history of drug abuse. This, coupled with his implausible story of fleeing the scene in fear while "running backward" so that he could see the crime, is not believable. The proffered reason for his delayed appearance as a witness, as discussed earlier, is also not credible. Likewise, much of what he says is contrary to undisputed evidence. No one would find him reliable.

As noted earlier, the adversarial process allows each party to interpret the evidence. However, your comments made after Gaines entered his guilty plea are not accurate, and do not reflect the true content of the record in this case.

Sincerely,

Joseph T. Deters
Prosecuting Attorney

JTD/mag

Enclosures

COURT OF COMMON PLEAS

HAMILTON COUNTY, OHIO

- - -

STATE OF OHIO,

PLAINTIFF,

vs.

CASE NO.

SW ,

DEFENDANT.

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

ANNE FLANAGAN, ESQ.,

ON BEHALF OF THE PLAINTIFF,

GREGORY COHEN, ESQ.

ON BEHALF OF THE DEFENDANT.

BE IT REMEMBERED that the above-entitled cause came on MOTION FOR JUDICIAL RELEASE on August 11th, 2010, before the Honorable Robert C. Winkler, Judge, one of the judges of the said Court of Common Pleas, the following proceedings were had.

MORNING SESSION, AUGUST 11, 2012

P-R-O-C-E-E-D-I-N-G-S

THE COURT: State of Ohio v. , Motion for Judicial Release, .

MR. COHEN: His mother just stepped out.

THE COURT: Mr. Cohen, anything you wish to add? I did read your motion. I have reviewed Judge Schweikert's sentence. I have reviewed the presentence investigation report and the victim impact statement. Anything you want to add?

MR. COHEN: Judge, his mother would like to speak on his behalf if the Court would allow it.

THE COURT: Come on up, ma'am.

All right. Go ahead, ma'am.

MR. COHEN: Introduce yourself.

SW's Mom : I'm , SW's mom, and this is his father.

We are here to ask the Court to release SW under the grounds that he served the majority of his sentence,

five-and-a-half years.

THE COURT: He will be out in six months is what you're saying?

SW's Mom: Yes.

THE COURT: It was a six-year sentence.

SW's Mom: He has done over five years, and he should be out by May or June of 2011.

SW have completed his GED. He has a number of certificates and trades that he have took. He has been outstanding in there. He hasn't been in any trouble or had any new charges on him. He happily served his time. I'm asking, as his mother, to please let him out or grant him maybe a halfway house or something if you don't feel that he is ready to hit the streets. I have a home. He has a place to stay.

This is his father and his stepfather, who have businesses that's willing to put him to work.

THE COURT: Is that where he was working at the time of this offense?

SW's Mom : With his father.

THE COURT: I know he was working with a family member.

SW's Mom : His stepfather has an electric and plumbing business and is willing to employ him.

SW has served his time on this. I think the man that was in the case with him that actually had the weapon did approximately something like a year and came home. He has been out.

THE COURT: Is that right?

MS. FLANAGAN: That was handled in Juvenile Court, so I did not have contact on that.

SW's Mom : He did, like, under a year and came home, and he was the actual person that had the gun. SW didn't have the gun. He just happened to be there with the guy. So SW have served, I believe, over his time for this charge -- over his time.

THE COURT: Did you want to say anything, sir?

DEFENDANT'S FATHER: No. I would

just like for my son to be home. I feel the same way. SW had done beyond his time as far as this charge goes. He didn't hurt nobody. He didn't put his hands on nobody, and all of this took place within less than 60 seconds, and now his whole life has flashed right before his eyes. Sixty seconds and he is doing six years for it. He didn't touch nobody.

MR. COHEN: Again, to reiterate for the record, the prior judge who sat on this bench witnessed a trial. Obviously, SW was the one who was yelling, crying, and was upset. He may have appeared to be the more intimidating person. A jury of 12 individuals sat and watched this trial and convicted two young men.

MS. FLANAGAN: You're mistaken, counsel. It was a bench trial.

MR. COHEN: The judge then convicted a young man on the identification by the victims, and it turns out not to be the individual who

committed the offense. He was released, basically, when another individual was apprehended based upon whatever information. I don't know how that was received. But then it was processed in Juvenile Court.

SW was bound over based upon his age. He had no prior contact with the system. He did not have a record when he came in.

THE COURT: Not a juvenile record?

MR. COHEN: My understanding is he had no juvenile record.

THE COURT: Go ahead.

MR. COHEN: The kid who had the gun was allowed to stay in Juvenile Court, enter a plea, and did a year in DYS. I think he was given a longer sentence, but was released after a year on good behavior.

We have an individual here who has taken basically every program available to him. He was not thrown out of any programs. He wanted to rehabilitate himself from an undisciplined juvenile

into a respectful, disciplined adult. When he gets out and returns to society, and he will come out under PRC, which is limited supervision. If there is a concern about this individual, he can be transitioned to a halfway house or released onto probation, and that would give him structure to watch and see that he continues to mature, and he essentially comes out with skills and education that he can build on.

He was on his way down. He is not here. I have to go forward without his personal statement. Again, it's not a trial. It's a request for leniency by the Court.

He was working at Rally's at the time of the offense as well as for family members. There was a part-time job. Again, you know, he acknowledges his behavior that day was wrong. He indicated at trial that he was just so upset with the death of a friend that he did something stupid.

THE COURT: I have had people that

close to me who have died, and I never felt compelled to hijack a bus.

What do you want to say, ma'am?

MS. FLANAGAN: Your Honor, of the two, he is the lesser in terms of the conduct. However, he was the instigator of this, and if you view the films, they were back and forth together brandishing the gun. The bus driver and another woman passenger were terribly frightened.

Judge Schweikert felt the second person, Dante Allen, was, in fact, the correct person. The Judge never wavered in that. The victims never wavered in that.

The only reason that it was any different in terms of handling of that codefendant is because afterward another young person confessed. With a confession in place before the decision, that's a little bit unclear on the procedure of how it ended up we dismissed the case against Dante Allen, who later became known as the "Peace Bowl killer" in another event.

To focus back here on this defendant, I'm very happy he has taken the time to improve himself, but he was up and down the bus frightening the passengers, making the bus driver stop.

I believe their indication at the time of sentence caused the judge to impose the sentence that he did. He took into account all of the other factors, and I do hope this young man does come out and he does have family support.

I recall his family being here at the time, and I hope he does well once he is out. Those are the factors that were present in the case at the time that he was sentenced, Your Honor.

MR. COHEN: Judge, if you look at the sentencing guidelines, and you look at the reason behind having these motions, here's the perfect example of a first-time offender, a heavy sentence, and he does the vast majority of that sentence, and he is not just getting a walk to go back on the street. He would come back under some form of supervision.

The State is correct, in December of 2006, the error was perceived at the time and the individual who had been convicted was released.

MS. FLANAGAN: I have to say along that note, though, present from the beginning of the case was certainly this defendant knew who his companion was and was not forthcoming with that.

MR. COHEN: He said all along that was not the right person.

MS. FLANAGAN: He said all along it was not the person. He did not actually say who it was. That still shows participation. That was a troubling factor.

MR. COHEN: He was 17 years old.

THE COURT: I wasn't the judge that heard this trial. Based upon what I see here, what SW was convicted of, it seems like to me it's in the low range of sentences. A six-year sentence seems to be overly fair in this particular instance.

As I said, I read the victim impact

statements. This one is a passenger, Ms. Davis, who was on the bus. She indicates that there was an elderly lady on the bus, who was clenching her chest, and also a blind lady who didn't know what was happening. There were 25 to 26 people on the bus that were yelling and crying.

The bus driver, I think, quit her job because of this incident.

DEFENDANT'S FATHER: No, sir.

THE COURT: Well, that's what it says. She's been unable to work. She was taken to University Hospital. She believed she was going to be shot. It says, "We didn't know whether we were going to be shot."

And I know that, ma'am, you understand, and, sir, you understand how this works. If I were to grant your motion for judicial release, he would be out, but I would hang over his head the maximum possible sentence that I could. And I must tell you that I have not had a good experience with these. I do about

two of these a year, and I can tell you at least one of those people come back and they get the more severe sentence.

Based upon what I have read here and what he has done while he was in prison, quite frankly he seems to be doing better in prison than he did out and about, and I'm not going to disturb that. I am going to deny the motion for judicial release.

He will be released next May. I assume he will be on post-release control, so there will be some supervision in place.

I'll note any objections that you have.

The motion is denied.

MR. COHEN: Thank you, Your Honor.

(Whereupon, the proceedings were concluded.)

C-E-R-T-I-F-I-C-A-T-E

I, DEBORAH KAHLES, RPR, AN OFFICIAL COURT REPORTER IN THE HAMILTON COUNTY COURT OF COMMON PLEAS, DO HEREBY CERTIFY THAT AT THE SAID TIME AND PLACE STATED HEREIN I RECORDED IN STENOTYPE AND THEREAFTER TRANSCRIBED THE WITHIN PAGES AND THAT THE FOREGOING TRANSCRIPT IS A TRUE AND ACCURATE TRANSCRIPT OF MY SAID STENOGRAPHIC NOTES.

IN WITNESS HEREOF, I HEREUNTO SET MY HAND THIS 10th DAY OF MARCH, 2012.

_____

DEBORAH KAHLES, RPR
OFFICIAL COURT REPORTER
COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

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PO Box 210040
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April 24, 2009

Hon. Robert C. Winkler
320 Hamilton County Courthouse
1000 Main Street
Cincinnati, Ohio 45202

Re: Judicial Release for SW

Dear Judge Winkler:

I write to you today on behalf of SW . It is my understanding that SW is applying for judicial release, and I wholeheartedly recommend that such release be granted.

I am an attorney working for the Ohio Innocence Project at the University of Cincinnati College of Law. I have never before written in support of a petition for judicial release, but I am making an exception to that general rule for SW .

In June of 2005, SW 's friend was murdered. Later that day, teenaged SW , upset that his friend was dead, got on a bus without paying and yelled at a passenger on the bus whom he thought was involved in the murder. He then got off the bus without harming anyone.

Another young man got on the bus when SW did. That teenager had a gun (which may or may not have been a toy). While SW paced the bus aisle crying and yelling, the other teenager brandished the gun. Both boys got off the bus within a few minutes without anyone being harmed.

As a result of that one act, SW and another teenager, Dante Allen, were arrested and convicted of felonious assault, two counts of kidnapping, inducing panic, and disruption of public services. However, as both boys said all along, Dante Allen was not the other man on the bus – Derrick Smith was. Thus, SW (who everyone agrees had no gun and did nothing more than get on a bus without paying and yell and cry at a passenger) is serving six years in prison. The charges against Dante Allen were dismissed, and Derrick Smith (the man who actually brandished the gun on the bus) pled guilty to lesser charges, has served his time, and is already out of prison. I am attaching for your review a copy of *State v.* SW , 2007 (Ohio App. 1st Dist. 2007), in

which Judge Painter states emphatically that SW 's conduct warranted a year or two for inducing panic and disrupting public services. He has already served more time than that.

Besides the injustice of SW 's sentence, I recommend judicial release for SW for other reasons. SW was a witness to the murder of his brother in 2005. I am currently representing one of the two men convicted of murdering SW 's brother, whom new evidence now indicates was innocent of the crime.

As the case has progressed, I have spoken with SW many times. I have met with SW in prison on more than one occasion. I have spoken with various prison personnel about SW , including SW 's case manager at Ross Correctional Institution.

After all of this contact, one thing has become very clear to me and to those who supervise SW in prison. SW is an intelligent and respectful young man. He has been a model prisoner who has used his time to educate himself and to prepare for a career as a barber upon his release. He does not cause trouble or engage in violent behavior. He is well-liked by the prison staff, and he is generally respected by those around him. After more than one telephone conversation, I have hung up the phone and expressed to those around me that I wish my own children treated others with the same respect and courtesy that SW exhibits.

The bottom line is this. Eighteen-year-old SW , after learning that a close friend had been murdered less than a year after his brother had also been killed right before his eyes, got on a bus without paying, and he yelled and cried. He did not hurt anyone – not even the passenger he believed to be involved in the murder. He was not carrying a weapon. He did not threaten to hurt anyone. It was not a smart thing to do, and he knows that. He has truly learned his lesson, and he has absolutely no interest in returning to prison – ever.

For these reasons, I wholeheartedly recommend that SW be granted judicial release. I appreciate your time and attention to this matter, and I would be happy to answer any questions you may have concerning SW .

Sincerely,

OIP SA
Attorney/Assistant Academic Director
Ohio Innocence Project
University of Cincinnati College of Law
(513)556-0752

AP

From: OIP SA
Sent: Thursday, March 08, 2012 12:28 PM
To: AP
Subject: Gaines

AP,

As I sit here working on my "to do" list for Gaines, it occurs to me that you and I may have missed an opportunity for us to both win this morning. As I see things (and I'm sure your view is different than mine, but we may have some common ground), we have one court granting a motion for new trial based on newly discovered evidence and one court conclusively finding a Sixth Amendment IAC violation. It seems to me that whether the next court (or courts as we are prepared to fight this for decades, if necessary) says the evidence is new or old, my client is ultimately going to win a new trial in this case (esp. since there is no evidence of any kind establishing his guilt). As it stands, the State could agree to let him out on the 1st District's finding of an IAC claim, publicly state that the defense attorney didn't do his job so you have to let Gaines out, and there is no PR harm to the prosecutor's office or to the police. If you choose to do that, we would voluntarily drop any appeals on our Motion for New Trial and we would voluntarily drop our Brady claims. My client just wants out of prison. He has already done 9 years for a crime Chuckie Jackson committed. He has 2 daughters that desperately need him out, and a sick mother who is trying (with much difficulty) to raise one of his daughters. In addition, before this, he had no significant criminal history. From a publicity standpoint, the Ohio Innocence Project would agree to stay quiet about anything other than the IAC violation. Just a thought. What do you think?

OIP SA

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