

In the Matter of  
WARREN LILLY, JR. #447655

**TRIAL COURT'S COMMENTS  
REGARDING 1983 PRISON RIOT**

Case No. 07CV392

**Appeal 2009XX607-CR**

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The DOC recently filed an affidavit by Warden Timothy Lundquist of Dodge Correctional Institution. At ¶9 of his affidavit, the Warden talks about a riot at Waupun Correctional Institution in 1983. He indicates that, "A precipitating factor of this riot was the suicide death of one of the institution's inmates." This is offered to bolster the State's penological interest claim. The Court won't take issue with what the Warden has averred. However, some additional context could be helpful to the Court of Appeals in determining whether the 1983 situation should somehow be transposed into the present or future should inmate Lilly unintentionally die as the result of a hunger strike.

Twelve inmates were charged with taking hostages as part of the 1983 riot at Waupun Correctional Institution. I have all twelve of their files in a box in my office as I dictate this memo. In the very first file that I pulled out of that box, State v. Michael Franklin, Dodge County Case 83-CR-1121, the first thing I found in the file was a half inch thick stack of newspaper accounts regarding that uprising. I have just reviewed them and can therefore add the following accounts to Warden Lundquist's statements.

There was about a 7½ hour inmate takeover of two buildings at Waupun Correctional Institution on Monday, January 31, 1983. The disturbance reportedly involved 54 inmates and 15 hostages, although there were, all total, about 140 inmates within the two buildings that were seized by the inmates. According to newspaper

accounts, many of the inmates in those buildings did not actively participate in any type of riot and were kept there involuntarily, not wanting to be part of the disturbance.

The disturbance ended after about 7½ hours with no serious injuries suffered by any hostages, guards, or inmates. No concessions were made to the inmates in order to get them to surrender.

As the Warden alluded to, there had been an apparent suicide within a few days prior to the disturbance. Inmate Rafael Martinez-Frometa, a 26 year old Cuban refugee, was found hanged in his cell. He had been serving a life sentence for a stabbing death in Madison in 1981. In the weeks leading up to the disturbance, Martinez-Frometa had been the instigator of a number of violent and destructive incidents within the prison, including attacks on other inmates. One of the prison administrators indicated that Martinez-Frometa had been a trouble maker and described him as “one very disturbed individual.”

According to other inmates’ reports to news reporters following the riot, the prison had cracked down on Martinez-Frometa, and it is alleged that he had been subjected to a couple of severe beatings by correctional staff within just a week or two before he was found hung in his own cell. A lot of inmates were upset by his death and questioned whether or not he had hung himself, or whether someone else had killed him and made it look like a suicide. Many of the primary instigators of the takeover were Hispanic and had been loyal to the group supporting Martinez-Frometa in recent weeks.

Newspaper accounts also talk about, “The twin problems of overcrowding and lack of activity for inmates” as having caused trouble throughout the Wisconsin prison system for several years leading up to the disturbance. Waupun Correctional Institution, in particular, was severely overcrowded. Also, in this north cell block where

329 inmates resided, only 39 of them had jobs prior to the disturbance. The newspaper accounts are replete with efforts by the legislature and various committees and prison staff in response to the riot to try to reduce the overcrowding and to increase programming, education and jobs to keep the inmates busy. Certainly those were some additional factors that created the conditions that fostered the 1983 disturbance.

So a fair reading of the accounts was that the apparent suicide hanging of Rafael Martinez-Frometa was a factor that led up to the disturbance. It was not so much that the State had allowed him to kill himself, but that many inmates believed that some of the correctional staff had set it up to make it look like a suicide, but that they had actually killed Mr. Martinez-Frometa. (This Court makes no such assertion.)

Certainly the Court of Appeals can draw its own conclusions and form its own opinions as to whether there is any likelihood of a similar uprising should 59 year old, college educated Warren Lilly starve himself to death after successfully obtaining an order to terminate his force feeding. My own opinion is that it is an unreasonable stretch of the imagination to assume that any inmate would do anything, other than possibly joke about that goofy Lilly guy, in response to hearing that inmate Lilly had starved himself to death.

Clearly, Mr. Martinez-Frometa had been at the eye of the storm of a series of violent disturbances at WCI within weeks leading up to his hanging, and those circumstances are a far cry from the one man hunger strike protest that Mr. Lilly has maintained over the years. Certainly there is no indication that any other inmates have tried to create a disturbance or take over a prison to get the DOC to stop force feeding Mr. Lilly. This Court can only assume that other inmates would approve of the Court's

termination of the force feeding and the directions to the DOC to simply leave Mr. Lilly alone.

By analogy, let's assume for a moment that inmates could be charged criminally as a class, rather than as individuals, and that the State charged Warren G. Lilly and others currently at DCI with conspiracy to foment a riot by obtaining a "Do Not Feed Order" for Mr. Lilly and then having him starve himself to death in order to accomplish that. In such a case, could a trial Court properly allow the State to use the 1983 uprising as Other Acts Evidence? I don't think so. Such evidence would have utterly no probative value given both the remoteness in time as well as the substantial disparities in the operative circumstances. That same logic should apply here.

Death occurs fairly regularly within the DOC inmate population. Probably every year, one or more inmates are killed by other inmates.<sup>1</sup> Every year some inmates commit suicide and many more die from disease or old age. Yet I am not aware of any disturbances which have occurred in response these deaths since the 1983 riot at Waupun. Finally, the reader should remember that Lilly has repeatedly stated that he has no intention of starving himself to death. The DOC finds this irrelevant. I don't.

Dated this 9<sup>th</sup> day of June, 2009.

**BY THE COURT**

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**ANDREW P. BISSONNETTE  
CIRCUIT JUDGE, BRANCH 3  
DODGE COUNTY, WISCONSIN**

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<sup>1</sup> An inmate is killed by another inmate approximately every 18 months or so just in Dodge County.