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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Courtney Clyburn Pope, Circuit Court Judge

Appellate Case No. 2023-000009
Case No. 2017-CP-02-1413

Otis Owens, Respondent,

v.

Sheriff Michael Hunt, the Aiken County Sheriff's Office, Aiken County
Detention Center, and Aiken County, Appellants.

RECORD ON APPEAL (VOLUME 1 OF 3)
(pp. 1-350)

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STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

Otis Owens,

Plaintiff,

vs.

Michael Hunt, in his official capacity
as Sheriff of Aiken County, Aiken
County Sheriff's Office, Aiken
County Detention Center, and Aiken
County.,

Defendant.

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

CASE NO.: 2017-CP-02-01413

JURY VERDICT FORM

1. Do you find, by a preponderance of the evidence, that the Defendants were grossly negligent in their supervision and confinement of the Plaintiff?

☒ YES

☐ NO

2. If you answered "YES" to Question 1, then we, the Jury, find actual damages in favor of the Plaintiff, Otis Owens, as follows:

DAMAGES: \$ 150,000

I, DANNY GREEN, Jury Foreperson, certify that the above verdict reflects a
Unanimous verdict in this case.

Danny Green
Jury Foreperson

November 4, 2022

FILED 11/04 2022
Robert J. White CMP
C.C.P. & G.S.
Charles R. Plante
Deputy Clerk

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Aiken
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2017CP0201413

Otis Owens
PLAINTIFF(S)

County Of Aiken et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Defendant's Motion for Judgment Notwithstanding the Verdict (JNOV) is GRANTED in part, and DENIED in part: the Defendant's motion to dismiss Aiken County as a co-defendant is GRANTED; all other motions related to JNOV are DENIED.

Defendant's Motion for Nisi Remittur is DENIED.

Defendant's Motion for a New Trial is DENIED.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 12/02/2022 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Aiken Common Pleas

Case Caption: Otis Owens VS County Of Aiken , defendant, et al

Case Number: 2017CP0201413

Type: Order/Electronic Form 4

So Ordered

The Honorable Courtney Clyburn Pope

Electronically signed on 2022-12-02 14:05:52 page 3 of 3

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

Case No.: 2017-CP-0201413

Otis Owens,

Plaintiff,

v.

**ORDER GRANTING DEFENDANTS'
MOTION TO AMEND ORDER**

Sheriff Michael Hunt, the Aiken County
Sheriff's Office, Aiken County Detention
Center, and Aiken County,

Defendants.

This matter came before the Court pursuant to a Motion to Amend Order under SCRCP Rule 59(e), filed on December 13, 2022 by the above-referenced defendants ("the Defendants"), excluding Aiken County which has been dismissed as a party. A trial was conducted in the above-referenced case during the October 31st Term of Court. The jury returned a verdict in favor of the above-referenced plaintiff ("the Plaintiff"). The Defendants moved for judgement notwithstanding the verdict ("JNOV") or, alternatively, moved for a new trial or new trial nisi remittitur. The court issued a Form 4 Order denying the Defendants' motions for nisi remittitur and a new trial, and granted and denied in part the Defendants' motion for JNOV. The court granted the Defendants' JNOV motion to dismiss Aiken County as a party-defendant and denied all other motions related to JNOV. The Defendants' filed a Motion to Amend Order, requesting the court issue a ruling on each ground raised in their post-trial motions to preserve the issues for appellate review. I hereby grant the Defendants' motion and amend the electronic Form 4 Order entered by the court on December 2, 2022.

LEGAL STANDARD

Under Rule 59(e), a party may move to alter or amend a judgment. SCRCP 59(e). The losing party must present his issues and arguments to the lower court and obtain a ruling; if the lower court fails to rule upon the arguments, the losing party must file a motion to alter or amend to preserve the issue for appellate review. *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000). It is “beneficial to the judicial process for a trial judge to articulate relevant findings and conclusions of law in an order...” *Woodson v. DLI Properties, LLC*, 406 S.C. 517, 527, 753 S.E.2d 428, 433 (2014).

ANALYSIS

Because the court issued its ruling in a Form 4 Order and did not hear oral arguments on the Defendants’ post-trial motions, this Court finds that it is beneficial for the court to articulate its findings and conclusions of law in denying the Defendants’ post-trial motions to preserve a record for appellate review. I hereby amend the previous Form 4 Order issued and now enter an Order to articulate the court’s findings, conclusions of law, and rulings on the Defendants’ post-trial motions:

I. Defendants’ Motion for Judgement Notwithstanding the Verdict (JNOV)

A. The Defendants’ motion to dismiss Aiken County as a party-defendant is GRANTED.

The Defendant’s motion to dismiss Aiken County as a party-defendant is granted. South Carolina Law provides the sheriff “shall have custody of the jail in his county and, if he appoint[s] a jailer to keep it, the Sheriff shall be liable for [the] jailer and the sheriff or jailer shall receive and safely keep in prison any person committed to either of them [...]” S.C. Code Ann. § 24-5-10. The South Carolina Supreme Court has held that county detention centers are “jails within the meaning of Section 24-5-10. *Roton v. Sparks*, 270 S.C. 637, 244 S.E.2d 214 (1978). South Carolina Sheriffs and counties are treated as separate entities: “sheriffs and their deputies

are state, not county, officials.” *Cone v. Nettles*, 308 S.C. 109, 112, 417 S.E.2d 523, 525 (1992) (citing *Gulledge v. Smart*, 691 F.Supp. 947 (D.C.S.C.1988), *aff’d* 878 F.2d 379 (4th Cir.1989)). Under the South Carolina Tort Claims Act (“SCTCA”), which governs this action, a plaintiff must name as a party defendant only the agency or political subdivision *for which the employee was acting*. S.C. Code Ann. § 15-78-70(c) (emphasis added). Only the entity employing the employee whose act gives rise to the action may be sued. *Faile v. S.C. Dep’t of Juvenile Justice*, 350 S.C. 315, 329-30, 566 S.E.2d 536, 543 (2002).

Deputy Gibson (“the officer”), the officer involved in the search of the Plaintiff, is an employee of the Aiken County Detention Center (“ACDC”). ACDC is operated by the Aiken County Sheriff’s Office, and employees of ACDC are employed by the Sheriff’s Office, not the county. Because the Sheriff and county are separate entities, actions by ACDC officers are attributive to the Sheriff’s Office, not the county. I find Aiken County is not liable and cannot be held liable under the South Carolina Torts Claims Act for any grossly negligent act or omission by an employee working at ACDC. This Court does not find that the inclusion of Aiken County on the verdict form resulted in prejudice to all Defendants warranting the grant of JNOV for all defendants. Thus, the Defendants’ motion for JNOV is granted in part, and Aiken County is hereby dismissed as a party-defendant as a matter of law. The verdict and judgment rendered against Aiken County in this action is hereby vacated.

B. The Defendant’s motion for JNOV on grounds the Plaintiff failed to prove a claim for gross negligence is DENIED.

The Defendants’ motion for JNOV on ground that Plaintiff failed to prove a claim for gross negligence is denied. When pleading a claim, a party must state a short and plain statement of facts showing the party is entitled to relief. SCRCP 8(a). A party may set forth two or more statements of a cause of action...either in one count...or in separate counts. SCRCP 8(e)(2).

When a verdict is reached, the finding of the jury will not be disturbed unless the record fails to disclose any evidence which reasonably supports the jury's verdict. *Hutson v. Cummins Carolinas, Inc.*, 280 S.C. 552, 556, 314 S.E.2d 19, 22 (Ct. App. 1984).

The Defendant argued the Plaintiff claimed he was "assaulted," but did not plead a claim for assault and battery, which the Defendant argued was the proper cause of action for an unreasonable search by a correctional officer, not gross negligence. Def.'s Mot. Jnov. 4 (citing *State Farm Fire & Cas. Co. v. Barrett*, 340 S.C. 1, 11, 530 S.E.2d 132, 137 (Ct. App. 2000) (recognizing negligence and intentional torts are mutually exclusive causes of action). The Defendants further argue the Plaintiff intended to bring an intentional tort for sexual assault and failed to prove his claim for gross negligence. Def.'s Mot. Jnov. 5.

The Plaintiff's first cause of action was for gross negligence. Compl. ¶ 22. The Plaintiff brought his claim for gross negligence under the SCTCA and gave a short and plain statement of facts, which included an assault allegation, to support the gross negligence claim. Compl. ¶¶ 21-24. In his pre-trial brief, the Plaintiff further articulated his claim for gross negligence under the SCTCA by arguing his cause of action arose under the Act from the Defendants' gross negligence in the control or confinement of the Plaintiff, an inmate. Pl.'s Pre-Tr. Br. 6-7 (citing S.C. Code Ann. § 15-78-60(25))¹. It does not appear from arguments in the Plaintiff's filings or evidence presented at trial that the Plaintiff intended to bring a cause of action for assault.

Furthermore, the verdict form presented to the jury asked the jury to consider whether the Plaintiff proved by a preponderance of the evidence that the Defendants were "grossly negligent in their supervision, and confinement of [the Plaintiff]." Verdict Form. The jury understood the

¹ Subsection 25 provides an exception to governmental immunity for exercising the duty of control, supervision, or confinement of a prisoner in a grossly negligent manner. S.C. Code Ann. § 15-78-60(25).

issue of the case to be gross negligence in supervision and confinement, not assault. Regarding that issue, the jury returned a verdict for the Plaintiff, and this Court will not disturb the finding of the jury absent a showing the record fails to disclose any evidence which reasonably supports the jury's finding. This Court finds that the Plaintiff intended to plead a cause of action for gross negligence and mentioned the allegation of assault merely to support the gross negligence claim regarding the Defendants' confinement and supervision of the Plaintiff. Thus, the Defendant's motion on this ground is denied.

C. The Defendants' motion for JNOV on grounds the Defendants are entitled to absolute sovereign immunity under the South Carolina Torts Claim Act is DENIED.

The Defendants' motion for JNOV on grounds the Defendants are entitled to sovereign immunity under the SCTCA is denied. The Defendants argue they are entitled to immunity under the SCTCA because the Plaintiff alleged the officer assaulted the inmate, which is an intentional tort not actionable under the Act. Def. Mot. Jnov. 5. A government entity is not liable for loss resulting from...employee conduct...which constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude. S.C. Code Ann. § 15-78-60(17). The SCTCA provides an exception to government immunity for gross negligence in the control, confinement, or supervision of an inmate. S.C. Code Ann. § 15-78-60(25). In most cases, gross negligence is a factually controlled concept whose determination best rests with the jury. *Madison ex rel. Bryant v. Babcock Ctr., Inc.*, 371 S.C. 123, 144, 638 S.E.2d 650, 661 (2006). When a verdict is reached, the finding of the jury will not be disturbed unless the record fails to disclose any evidence which reasonably supports the jury's verdict. *Hutson*, 280 S.C. at 556.

The Defendants based their reasoning for the motion on an assertion the Plaintiffs allege a cause of action for assault, not gross negligence. Based on analysis above, this Court has decided that the Plaintiff's cause of action was for gross negligence in the confinement and

supervision of the Plaintiff, not assault. The issue of gross negligence is a question best determined by a jury, and the jury found the Defendants were grossly negligent in the exercise of their duties in confinement and supervision of the Plaintiff. This Court will not disturb the jury's finding absent a showing the record fails to disclose any evidence which reasonably supports the jury's finding. Thus, the Defendants are not entitled to sovereign immunity under the SCTCA, and the Defendants' motion on this ground is denied.

D. The Defendants' motion for JNOV on grounds the Plaintiff failed to prove a claim for gross negligence in the Defendants' hiring and supervision of employees is DENIED.

The Defendants moved for JNOV on grounds the Plaintiff failed to prove a claim for gross negligence in the hiring and supervision of employees. The elements of negligent hiring and retention are (1) whether the employer had knowledge of the employee's propensity, and (2) the foreseeability of harm to third parties. *Doe v. ATC, Inc.*, 367 S.C. 199, 206, 624 S.E.2d 447, 450 (Ct. App. 2005). The Defendants argue the Plaintiff presented no evidence of prior misconduct by the officer, no evidence of whether the Defendants knew or should have known of the officer's propensity to misconduct, and no evidence of foreseeability. Def. Mot. Jnov. 7. At trial, the Plaintiff presented evidence of ACDC policies, Aiken County Sheriff's Office policies, and witness testimony regarding whether employees were aware of and following such policies. The Plaintiff presented evidence of employee deviations from the policies set by federal law, the Sheriff's Office, and ACDC. The Plaintiff also presented testimony evidence regarding the officer's general reputation and history to prove the point of whether the Defendant had knowledge of the officer and the foreseeability of harm. The jury found this evidence was sufficient for the Plaintiff to prove beyond a preponderance of the evidence that the Defendants were grossly negligent in their hiring and supervision of the officer. This Court will not disturb

the jury's finding absent a showing the record fails to disclose any evidence which reasonably supports the jury's finding. Thus, the Defendants' motion on this ground is denied.

E. The Defendants' motion for JNOV on grounds the Plaintiff failed to prove a claim for failure to provide medical care is DENIED.

The Defendants' motion for JNOV on grounds the Plaintiff failed to prove a claim for failure to provide medical care is denied. The Plaintiff alleged in its complaint that the Defendants failed to provide medical care to support its claim that the Defendants were grossly negligent in the confinement and supervision of the Plaintiff. Compl. ¶ 21. The Defendants argue the Plaintiff did not present expert medical testimony to prove a deviation from a standard of care and proximate cause. Def. Mot. Jnov. 8. At trial, the Plaintiff testified that he was not seen by a doctor until days after the incident. The Plaintiff presented calendar dates on the incident report of the search and on medical reports to show the Plaintiff had not been seen by a doctor until days after the incident. The jury found this testimony sufficient to find the Defendants grossly negligent in their supervision and confinement of the Plaintiff by failing to provide immediate medical care. This Court will not disturb the jury's finding absent a showing the record fails to disclose any evidence which reasonably supports the jury's finding. Thus, the Defendants' motion on this ground is denied.

F. The Defendants' motion for JNOV on grounds the Plaintiff should not have been allowed to proceed with claims related to a PREA investigation is DENIED.

The Defendants' motion for JNOV on grounds the Plaintiff should not have been allowed to proceed with any claims or allegations related to the investigation conducted by ACDC personnel under the Prison Rape Elimination Act ("PREA") is denied. The Defendants argue the Plaintiff's PREA allegations are not actionable because PREA does not create a private right of action. Def. Mot. Jnov. 8. However, the Defendants are mistaken regarding the Plaintiff's intent

for offering evidence of allegations related to PREA. As the record reflects, the Plaintiff presented evidence of an a PREA investigation to support its claim the Defendants were grossly negligent in its confinement and supervision of the Plaintiff by showing a deviation from federal guidelines regarding sexual assault allegations. The Plaintiff did not present such evidence to proceed with a cause of action under PREA. Thus, the Defendants' motion on this ground is denied.

II. Defendants' Motion for a New Trial Absolute or New Trial Nisi Remittitur

A. The Defendants' motion for a new trial absolute or new trial nisi remittitur on grounds the damages award is unsupported by evidence and grossly excessive is DENIED.

The Defendants' motion for a new trial on grounds the trial record does not support the jury's \$150,000 damages verdict is denied. When the jury's verdict is inadequate or excessive, the trial judge has the discretionary power to grant a new trial nisi but must have a compelling reason to do so. *Waring v. Johnson*, 341 S.C. 248, 256, 533 S.E.2d 906, 910 (Ct. App. 2000). To determine whether a verdict award is inadequate or excessive, the trial judge must distinguish between awards that are merely unduly liberal or conservative and awards that are actuated by passion, caprice or prejudice. *Id.* at 257. The trial judge must grant a new trial only when the award is "so grossly inadequate or excessive that it shocks the conscience of the court and clearly indicates the amount was the result of passion, caprice, prejudice, partiality...or some other improper motives" *Id.* The grant or denial of a motion for a new trial nisi is left to the discretion of the trial judge, and the decision will not be disturbed on appeal absent an abuse of discretion. *Id.* at 256.

After the jury found the Defendants were grossly negligent in the confinement and supervision of the Plaintiff, they awarded \$150,000 in damages for the Plaintiff. The Defendants argue the damages award is supported by the evidence and disproportionate to the injury. Def.

Mot. Jnov. 9-11. The Plaintiff and other witnesses testified regarding his mental and emotional state after the incident, and the jury was allowed to consider such testimony and the alleged injury sustained. There is no evidence the jury's award was the result of passion, caprice, prejudice, or any other improper motive. As a result, it is within the discretion of the trial judge whether to grant a new trial absolute or new trial nisi remittitur. Absent a showing of passion, caprice, prejudice, improper motive by the jury, or any other compelling reason, this Court does not find it appropriate to grant a new trial absolute or reduce the amount awarded by the jury. Thus, the Defendants' motions are denied.

B. The Defendants' motion for a new trial absolute on grounds the court improperly allowed lay testimony regarding an alleged hydrocele injury and its causation is DENIED.

The Defendants' motion for a new trial absolute on ground the court erred in allowing the Plaintiff to present lay testimony regarding the hydrocele injury and its causation is denied. The Defendants argue the court improperly allowed the Plaintiff to testify regarding a hydrocele injury and its causes. Def. Mot. Jnov 9-10. However, as the record reflects, the court sustained several of the Defendants' objections to the Plaintiff's mentioning of the injury and its causation without laying a proper foundation or calling an expert witness. The court also made note of a running objection by the Defendant to the Plaintiff's testimony. The Defendants' objections and the court's rulings are noted on the record. Thus, the Defendants' motion is denied.

C. The Defendants' motion for a new trial on grounds the court improperly admitted evidence of the officer's prior bad acts towards other inmates is DENIED.

The Defendants' motion for a new trial on grounds the court erred by allowing the jury to hear testimony of the officer's bad acts towards other inmates is denied. Evidence of prior bad acts is inadmissible to prove a person's propensity or conformity with the character trait alleged; however, such evidence may be admissible to show motive, identity, the existence of a common

scheme or plan, the absence of mistake or accident, or intent. SCRE 404. “The law in civil cases [...] permits proof of other acts other than the one charged which are so related in character, time and place of commission as to [...] tend to show the existence of a common plan or system.”

Citizens Bank of Darlington v. McDonald, 202 S.C. 244, 24 S.E.2d 369 (1943).

At trial, the Plaintiff offered evidence that the officer’s frisk search of the Plaintiff and other inmates, using the same technique, caused similar injuries to the other inmates. The officer conducted a frisk search on the Plaintiff and other inmates on the same day, at the same time, using the same frisk technique, and the basis for the searches arose from the same incident in which the officer suspected the inmates searched had contraband. The other inmates suffered similar injuries as the Plaintiff resulting from the same search. The Plaintiff offered the evidence of the officer’s prior acts of improper frisk technique used on other inmates to show the absence of mistake by the officer and a common scheme by the officer to conduct a frisk search in a manner that deviated from protocol resulting in similar injuries to the Plaintiff and others. The court ruled overruled the Defendants’ objections, finding the evidence is admissible under Rule 404(b) because the searches were so related in character, time, and place as to show the common scheme of the officer to conduct the frisk searches in this manner and show the absence of mistake. I hereby affirm the ruling and deny the Defendants’ motion on this ground.

D. The Defendants’ motion for a new trial on grounds the court improperly allowed the jury to hear testimony regarding alleged retaliation by Deputy Gibson is DENIED.

The Defendants’ motion for a new trial on grounds the court improperly allowed the Plaintiff to present testimony regarding retaliation against the Plaintiff is denied. Evidence is relevant if it has any tendency to make the existence of a fact of consequence more or less probable than without the evidence. SCRE 401. Irrelevant evidence is inadmissible. SCRE 402. Relevant evidence may be excluded if its probative value is substantially outweighed by unfair

prejudice or confusion of issues. SCORE 403. The Plaintiff presented testimony regarding retaliatory actions by the officer after the incident to support his claim that the Defendants were grossly negligent in the supervision and confinement of the Plaintiff and were grossly negligent in the supervision of employees. The court found this testimony to be relevant to both the issues, and did not find the probative value of the testimony was substantially outweighed by prejudice or confusion of issues. I hereby affirm the court's ruling and deny the Defendants' motion.

E. The Defendants' motion for a new trial on grounds the court improperly excluded the PREA Report prepared by Lieutenant Bowman is DENIED.

The Defendants move for a new trial on grounds the court erred by excluding evidence of a PREA investigation conducted by Lt. Bowman. Hearsay is an out of court statement, whether written or oral, offered to prove the truth of the matter asserted. SCORE 801. Hearsay is inadmissible unless an exception applies. SCORE 802. An exception to the hearsay rule is available where the declarant is unavailable for one or more of the reasons provided by the rule. SCORE 804(a). However, the declarant is not "unavailable" within the meaning of the party seeking to offer the declarant's statement procured the witness's absence. *Id.* An exception to the hearsay rule is also available for records kept within the ordinary course of business, at the time of the event, by a person with personal knowledge and a duty to report. SCORE 803.

Lt. Bowman prepared a writing which stated that an investigation was made regarding the Plaintiff's allegations and no wrongdoing was found on the part of the officer. The statement was about a paragraph long, was prepared on plain white paper without a letter head, and did not bear any indication that it was a formal report prepared in compliance with PREA. The statement itself is hearsay because it is an out of court statement offered to prove the truth of whether there was wrongdoing on behalf of the officer and whether the Defendants followed federal policies under PREA. Lt. Bowman was not present at trial because he was on vacation. Vacation is not a

reason upon which the rule makes Lt. Bowman an “unavailable” witness; thus, the 804(a) exception does not apply.

The court rejected the Defendants’ argument regarding the statement’s admissibility as a business record under Rule 803 due to the Defendant being unable to establish the document met the requirements of the rule. The court excluded the statement as inadmissible hearsay and the Defendants’ objection is noted for the record. I hereby affirm the court’s ruling and deny the Defendants’ motion on this ground.

F. The Defendants’ motion for a new trial on grounds the trial court erred by publishing to the jury a video deposition taken in federal court litigation is DENIED.

The Defendants move for a new trial on grounds the court erred by allowing the Plaintiff to publish a video deposition that was noticed and taken in federal court. Under Rule 32, a deposition may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice. Rule 32(a). A deposition of any witness, party or not, may be used by any party for any purpose if the court finds ...the witness is unable to attend or testify because of...imprisonment. Rule 32(a)(3)(C).

The Defendant argued the deposition of Wilhite was improperly published to the jury because the deposition was noticed and taken in a federal action and Rule 32 does not permit the use of federal action, and if it does, the federal action must be a “later action” consistent with the federal rule. Def. Mot. Jnov. 15 (citing FRCP 32(a)(8)). South Carolina has not incorporated subsection 32(a)(8) in its Rules of Civil Procedure. The language of the South Carolina rule is broader than the federal rule and allows the use of *any* deposition. The SC Rule does make a distinction between depositions taken in state or federal court, as the federal rule does. Additionally, the SC Rule does not restrict the use of depositions only to those taken in a later action, unlike the federal rule. At trial, the court overruled the Defendants’ objection, finding the

broad language of Rule 32 was does not exclude the use of a federal deposition in state court and does not limit the use of depositions to only those taken in a later action. Thus, I hereby affirm the court's ruling and deny the Defendants' motion on this ground.

G. The Defendant's motion for a new trial under the Thirteenth Juror Doctrine is DENIED.

The Defendants' motion for a new trial under the Thirteenth Juror Doctrine is denied. Under the Thirteenth Juror Doctrine, a trial judge possesses veto power and may grant a new trial when he finds the evidence does not justify the verdict. *Vinson v. Hartley*, 324 S.C. 389, 402, 477 S.E.2d 715, 722 (Ct. App. 1996). I hereby decline to exercise veto power to grant a new trial under this doctrine.

CONCLUSION

Based on forgoing reasons, the Defendants' Motion of Judgment Notwithstanding the Verdict is GRANTED in part and DENIED in part. Aiken County is hereby dismissed as a party-Defendant, and the verdict and judgment rendered against Aiken County in this action is hereby vacated. All other motions related to JNOV are DENIED. The Defendants' Motion for Nisi Remittitur is DENIED. The Defendants' Motion for a New Trial is DENIED.

IT IS SO ORDERED.

Judge Courtney Clyburn Pope
South Carolina 2nd Judicial Circuit

February ___, 2023
Aiken, South Carolina



Aiken Common Pleas

Case Caption: Otis Owens VS County Of Aiken , defendant, et al

Case Number: 2017CP0201413

Type: Order/Leave to Amend

So Ordered

The Honorable Courtney Clyburn Pope

Electronically signed on 2023-02-21 14:34:25 page 14 of 14

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	
Otis Owens,	)	CASE NO. 2017-CP-02-
	)	
Plaintiff,	)	COMPLAINT
	)	(Jury Trial Requested)
vs.	)	
	)	
Sheriff Michael Hunt, the Aiken County Sheriff's	)	
Office, Aiken County Detention Center, and	)	
Aiken County,	)	
	)	
Defendants.	)	

COMES NOW, the plaintiff, alleging and complaining of the defendants as follows:

PARTIES, JURISDICTION AND VENUE

1. Otis Owens is an inmate who was housed in Aiken County, South Carolina, during the events described herein.
2. Michael Hunt is the Sheriff of Aiken County.
3. The Aiken County Sheriff's Office is a law enforcement agency created and operated by Aiken County and, upon information and belief, operates the Aiken County Detention Center.
4. The Aiken County Detention Center is a facility created for the detention and housing of persons charged with crimes.
5. Aiken County is a political subdivision of the State of South Carolina, existing pursuant to the laws of South Carolina.
6. The events giving rise to this action transpired in Aiken County, South Carolina.
7. Jurisdiction and venue are proper for the foregoing reasons.

FACTUAL BACKGROUND

8. The plaintiff incorporates the foregoing paragraphs as if repeated here, verbatim.
9. On or about January 27, 2017, when the plaintiff was going in from the recreation yard, an Aiken County Detention Center corrections guard, in searching the plaintiff, probed the plaintiff's belly button, ran his hands up the inside of the plaintiff's legs, and grabbed and

squeezed the plaintiff's testicles. The guard maliciously and aggressively assaulted the plaintiff, going beyond anything necessary to search the plaintiff. The guard, while acting for the governmental defendants, acted in disregard for the plaintiff's rights, and acted in a way that could only be construed as at least reckless and grossly negligent.

10. The plaintiff requested medical attention for the injuries to his testicles, but the Aiken County Detention Center and other defendants denied medical treatment.
11. On or about February 24, 2017, a sonogram revealed that the plaintiff had sustained injuries to his groin and that fluid had accumulated around his testicles.
12. The plaintiff was treated with Tylenol and antibiotics for ten days for the injuries he sustained as a direct and proximate result of the defendants' tortious acts.
13. All governmental and non-governmental entities condoned and ratified the actions of guards, officers, employees, and agents acting on their behalf during the events related to this action.
14. Agencies, companies, employers, entities, and all other non-individual defendants named herein or named at a later date are liable via *respondeat superior* for individuals' actions and are directly liable where applicable, for torts such as negligent hiring and supervision.
15. Some or all of the defendants' actions were motivated by unreasonable financial gain.
16. The plaintiff is therefore informed and believes he is entitled to judgment against the defendants.

FOR A FIRST CAUSE OF ACTION
(Common Law Liability for Gross Negligence & Recklessness)

17. The plaintiff incorporates the foregoing paragraphs as if repeated here, verbatim.
18. The defendants had a duty to exercise due care, defined to mean the care which a person of ordinary reason and prudence would exercise in the circumstances.
19. Governmental entities and employees had a duty to exercise that degree of knowledge, skill, and care required of police officers/guards/governmental employees/public officials/municipalities which is ordinarily possessed and exercised by those in their special line of work.
20. Breaches of duties constitute negligence and sometimes recklessness.
21. The defendants breached their duties in a negligent, reckless, and grossly negligent manner

in some or all of, but not limited to, the following particulars:

- a. by assaulting the plaintiff;
 - b. by battering the plaintiff;
 - c. by using excessive force;
 - d. by failing to ensure that the officers and others complied with all applicable policies and procedures;
 - e. by failing to provide the plaintiff immediate and/or appropriate medical care and/or appropriate medication;
 - f. by failing to adequately investigate the employees and defendants' conduct prior to tortious actions described herein;
 - g. by authorizing, adopting, and ratifying the officers' and guards' conduct toward the plaintiff;
 - h. by hiring the officers, employees, and defendants who were incompetent, lacked proper education and training, or were otherwise unfit;
 - i. by unlawfully detaining and falsely imprisoning the plaintiff;
 - j. by threatening the plaintiff;
 - k. by forcing the plaintiff to incur medical bills against his will;
 - l. by refusing basic needs such as access to a bathroom and food; and
 - m. in other such particulars as the evidence may show.
22. As a direct and proximate result of the negligent, grossly negligent, and reckless acts and omissions of the defendants, the plaintiff sustained injuries and damages, including those set forth above.
23. Governmental entities and employees are liable for injuries caused by their gross negligence and recklessness and non-governmental entities are liable for injuries caused by their negligence and recklessness.
24. The plaintiff is therefore informed and believes he is entitled to judgment against the governmental entity and employee defendants pursuant to the South Carolina Tort Claims Act, and entitled to judgment against the other defendants pursuant to common law, statutory law, and all other applicable law.

FOR A SECOND CAUSE OF ACTION
(Negligent Hiring and Supervision)

25. The plaintiff incorporates the foregoing paragraphs as if repeated here, verbatim.
26. The defendants each had a duty to adequately supervise competent and fit employees.
27. The defendants each had a duty to hire persons fit for employment, to perform background checks, and to require appropriate education, experience, and other qualifications.
28. The governmental and non-governmental defendants breached their duties to adequately supervise and hire employees in a negligent and grossly negligent/reckless manner in some or all of the following particulars:
 - a. in failing to ensure that officers complied with department procedures regarding incidences such as those described herein;
 - b. in failing to ensure that officers complied with employment policies and procedures regarding arrests, detention, and interaction with persons such as the plaintiff;
 - d. in failing to warn the plaintiff and others of the defendants' (including their employees') dangerous propensities toward others;
 - e. in failing to adequately investigate the conduct of the defendants toward the plaintiff;
 - f. in failing to appropriately interview candidates or require that candidates be qualified before hiring them; and,
 - g. in other such particulars as the evidence may show.
29. As a direct and proximate result of the negligent and grossly negligent/reckless acts and omissions of the defendants, the plaintiff suffered injuries and damages, including those set forth above.
30. The plaintiff is therefore informed and believes he is entitled to judgment against the defendants.

WHEREFORE, the plaintiff requests a jury trial and judgment against the defendants for actual damages, statutory damages, costs, punitive damages where allowed by law, and such other relief the Court deems just and equitable.

Respectfully submitted,

THE J.T. HAWKINS LAW FIRM, LLC

s/ Joshua T. Hawkins

Joshua T. Hawkins, S.C. Bar No: 78470

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Greenville, South Carolina 29605

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josh@jthawkinslaw.com

Attorney for Plaintiff

Greenville, South Carolina
June 20, 2017

Pursuant to Rule 38, SCRCP, Plaintiff demands a trial by jury on all issues triable to a jury.

s/ Joshua T. Hawkins

Joshua T. Hawkins

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	
	)	
Otis Owens,	)	
	)	Civil Action No. 17-CP-02-1413
Plaintiff,	)	
	)	
v.	)	ANSWER ON BEHALF OF DEFENDANTS
	)	
Sheriff Michael Hunt, the Aiken County	)	(Jury Trial Demanded)
Sheriff's Office, Aiken County Detention	)	
Center and Aiken County,	)	
	)	
Defendants.	)	
	)	

The Defendants answer the Complaint of the Plaintiff as follows:

FOR A FIRST DEFENSE

1. The Complaint fails to state a claim for which relief can be granted.

FOR A SECOND DEFENSE

2. These Defendants deny each and every paragraph not hereinafter specifically admitted, qualified, or explained.
3. That as to paragraphs 1 and 2, these Defendants would admit same.
4. That as to paragraphs 3 and 4, these Defendants would deny same and demand strict proof thereof. By way of explanation, these Defendants would allege neither the Aiken County Sheriff's Department nor the Aiken County Detention Center is an entity amenable to suit.
5. That as to paragraphs 5 and 6, these Defendants would admit same.
6. That as to paragraph 7, these Defendants would allege that such allegations set forth legal conclusions which can neither be admitted nor denied. In so far as such allegations attempt

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to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof.

7. That as to paragraphs 8, 17, and 25 these Defendants would reiterate and reallege each and every paragraph and affirmative defense as if set forth herein verbatim.

8. That as to paragraph 9, these Defendants would admit that on or about January 27, 2017, the Plaintiff was searched by correctional officers to insure that no contraband was entering the facility. That as to the remaining allegations, these Defendants would deny same and demand strict proof thereof.

9. That as to paragraph 10, these Defendants would deny same as stated and demand strict proof thereof.

10. That as to paragraph 11, these Defendants lack sufficient information concerning any diagnostic test performed on the Plaintiff or any of the results of such tests. Therefore, these Defendants would deny same and demand strict proof thereof.

11. That as to paragraph 12, these Defendants would admit that the Plaintiff did receive treatment while at the Detention Center, but as to the exact nature, extent and reason for such treatment, these Defendants lack sufficient information upon which to form a belief as to the truth and veracity of same, and therefore denies same and demands strict proof thereof.

12. That as to paragraph 13 and 14, these Defendants would allege that such allegations set forth legal conclusions which can neither be admitted nor denied. In so far as such allegations attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof.

13. That as to paragraphs 15 and 16, these Defendants would deny same as stated and demand strict proof thereof.



14. That as to paragraphs 18, 19, and 20, these Defendants would allege that such allegations set forth legal conclusions which can neither be admitted nor denied. In so far as such allegations attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof.

15. That as to paragraphs 21 and 22, these Defendants would deny same and demand strict proof thereof.

16. That as to paragraph 23, these Defendants would allege that such allegations set forth legal conclusions which can neither be admitted nor denied. In so far as such allegations attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof.

17. That as to paragraph 24, these Defendants would deny same and demand strict proof thereof.

18. That as to paragraphs 26 and 27, these Defendants would allege that such allegations set forth legal conclusions which can neither be admitted nor denied. In so far as such allegations attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof.

19. That as to paragraphs 28, 29, and 30, these Defendants would deny same and demand strict proof thereof.

FOR A THIRD DEFENSE

20. These Defendants would allege that any and all claims for punitive damages should be stricken from the Complaint as such damages are not recoverable under the common law of South Carolina or under the South Carolina Tort Claims Act, §15-78-10 et seq. of the Code of Laws of the State of South Carolina, 1976 as amended.

FOR A FOURTH DEFENSE

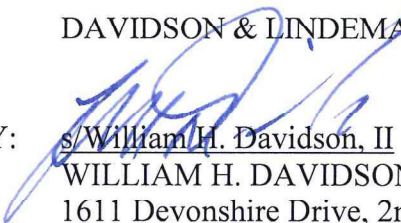
21. These Defendants would allege that they are immune from suit pursuant to §15-78-10 et seq. including §15-78-60 (3), (4), (5), and (6).

FOR A SIXTH DEFENSE

22. The Defendants would allege that they are immune from suit or the discretionary decisions made by its employees.

WHEREFORE, having fully answered the Complaint of the Plaintiff, the Defendants pray that the Complaint be dismissed with prejudice, for the costs of this action, and for such other and further relief as the Court deems just and proper.

DAVIDSON & LINDEMANN, P.A.

BY: 
s/William H. Davidson, II
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ATTORNEY FOR DEFENDANT

COLUMBIA, SOUTH CAROLINA

JULY 25, 2017

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	
 Otis Owens,	)	
	)	Civil Action No. 2017-CP-02-1413
Plaintiff,	)	
	)	
vs.	)	NOTICE OF MOTION AND
	)	MOTION FOR JUDGMENT
Sheriff Michael Hunt, the Aiken County	)	NOTWITHSTANDING VERDICT,
Sheriff's Office, Aiken County	)	OR ALTERNATIVELY, MOTIONS
Detention Center, and Aiken County,	)	FOR NEW TRIAL ABSOLUTE AND/OR
	)	NEW TRIAL NISI REMITTITUR
Defendants.	)	
_____	)	

TO: THE HONORABLE COURTNEY CLYBURN POPE
JOSHUA T. HAWKINS, COUNSEL FOR PLAINTIFF

PLEASE TAKE NOTICE that the Defendants Sheriff Michael Hunt, the Aiken County Sheriff's Office, Aiken County Detention Center, and Aiken County, hereby respectfully move before the Honorable Courtney Clyburn Pope at the Aiken County Judicial Center, Aiken, South Carolina, at such time and place as may be set by the Court, for an Order pursuant to Rule 50(b), SCRCF, and Rule 59, SCRCF, granting a judgment notwithstanding the verdict (JNOV), or alternatively, a new trial absolute. In the alternative, the Defendants move as well for a new trial nisi remittitur. The Defendants reserve the right to supplement these motions with a supporting memorandum of law and also respectfully request oral argument.

The Defendants submit the following grounds:

I. Judgment Notwithstanding the Verdict (JNOV)

A. Aiken County is Not a Proper Party-Defendant

Aiken County is not and cannot be held liable under the South Carolina Tort Claims Act for any grossly negligent act or omission by an employee working at the Aiken County Detention Center. The Aiken County Detention Center is operated by the Aiken County Sheriff and not Aiken County in accordance with S.C. Code Ann. § 24-5-10, which provides: "The sheriff shall have custody of the jail in his county and, if he appoint a jailer to keep it, the sheriff shall be liable for such jailer and the sheriff or jailer shall receive and safely keep in prison any person delivered or committed to either of them, according to law." *See*, S.C. Code Ann. § 24-5-10. The South Carolina Supreme Court has held that county detention centers are "jails" within the meaning of S.C. Code Ann. § 24-5-10. *Roton v. Sparks*, 270 S.C. 637, 244 S.E.2d 214 (1978).

South Carolina law treats the Sheriff and the County as separate entities. In *Cone v. Nettles*, 308 S.C. 109, 417 S.E.2d 523 (1992), the Supreme Court held that a sheriff and his deputies in South Carolina are state, rather than county, employees. The Court in *Cone* examined and found persuasive prior federal court case law which had concluded that "in South Carolina sheriffs and deputies are state, not county, officials." 417 S.E.2d at 525, *citing Gullede v. Smart*, 691 F. Supp. 947 (D.S.C. 1988), *aff'd* 878 F.2d 379 (4th Cir. 1989). As the *Cone* Court recognized, the federal district court in *Gullede* had specifically found that "(1) the South Carolina constitution establishes the office of sheriff and the term of office, S.C. Const. art. V, § 24; (2) the duties and compensation of sheriffs and deputies are set forth by the General Assembly; (3) their arrest powers are related to state offenses; and (4) the Governor of South Carolina has the authority to remove a sheriff for misconduct and fill the vacancy." 417 S.E.2d at 525. Based upon those factors, the Supreme Court agreed with the

conclusion reached by the court in *Gulledge* that a sheriff and his deputies are state, not county, officials.

Since *Cone* was decided in 1992, it has been cited favorably in several state appellate cases. For instance, in *Edwards v. Lexington County Sheriff's Department*, 386 S.C. 285, 688 S.E.2d 125 (2010), the State Supreme Court, citing *Cone*, reaffirmed that "under South Carolina law, the sheriff and sheriff's deputies are State, not county, employees." 688 S.E.2d at 127, n.1. The State Supreme Court described this principle as "settled law" and declined to address what the Court described as "the legally settled distinction between a county government and a sheriff's office for liability purposes." *Id.* See also, *Lampley v. Hulon*, 432 S.C. 566, 854 S.E.2d 489 (Ct. App. 2021).

S.C. Code Ann. § 15-78-70(c) of the Tort Claims Act, which governs the Plaintiff's gross negligence action against Aiken County, specifically provides that "a person, when bringing an action against a governmental entity under the provisions of this chapter shall name as a party defendant only the agency or political subdivision *for which the employee was acting.*" S.C. Code Ann. § 15-78-70(c). (Emphasis added). Similarly, in *Faile v. South Carolina Department of Juvenile Justice*, 350 S.C. 315, 566 S.E.2d 536 (2002), the Supreme Court held that "only the entity employing the employee whose act gives rise to the claim may be sued." 566 S.E.2d at 543. Clearly, any employees of the Sheriff's Office, including Deputy Gibson who was involved in the search of the Plaintiff, would be acting for the Aiken County Sheriff and not for Aiken County.

In sum, the persons operating the Aiken County Detention Center are employees of the Sheriff and not employees of the County. Aiken County is not liable under state law for any acts or omissions by an employee of the Sheriff working at the Detention Center, and as a result, Aiken County should be dismissed as a matter of law.

B. Plaintiff Failed to Prove Claim for Gross Negligence

The crux of the Plaintiff's allegations against the Defendants is a sexual assault committed by Deputy Matthew Gibson upon the Plaintiff during a pat down search. Specifically, in his Complaint, the Plaintiff alleges that Gibson "in searching the plaintiff, probed the plaintiff's belly button, ran his hands up the inside of the plaintiff's legs, and grabbed and squeezed the plaintiff's testicles. The guard maliciously and aggressively assaulted the plaintiff, going beyond anything necessary to search the plaintiff." *See*, Complaint, ¶ 9.

In his First Cause of Action, the Plaintiff pled a tort claim for gross negligence against the Defendants. Without dispute, gross negligence was the only legal theory that was presented to and decided by the jury. *See*, Verdict Form. Importantly, the Plaintiff did not plead a claim for assault and battery, which would be the proper cause of action under state law for an unreasonable search by a correctional officer or a sexual assault.

In effect, gross negligence does not per se include intentional conduct. South Carolina law, in fact, recognizes that intentional torts may not be committed in a negligent manner. In other words, negligence and battery are mutually exclusive; there is no such cause of action for a negligent assault and battery or a grossly negligent assault and battery. *See, State Farm Fire & Cas. Co. v. Barrett*, 340 S.C. 1, 530 S.E.2d 132, 137 (Ct. App. 2000) (recognizing that "an intentional tort ... by definition cannot be committed in a negligent manner"); *Restatement (Second) of Torts*, § 262, cmt. d ("The definition of negligence given in this Section includes only such conduct as creates liability for the reason that it involves a risk and not a certainty of invading the interest of another. It therefore excludes conduct which creates liability because of the actor's intention to invade a legally protected interest of the person injured or of a third person"). Moreover, in *Gist v. Berkeley County Sheriff's Dept.*, 336 S.C. 611, 521 S.E.2d 163 (Ct. App.

1999), the South Carolina Court of Appeals recognized that "[f]alse imprisonment is an intentional tort; negligence is not an element." 521 S.E.2d at 167. Accordingly, the Court concluded that "the gross negligence standard is not applicable" to claims for intentional torts. *Id.*

The same is true in case at bar. The gross negligence standard is not applicable to the intentional tort of assault and battery or any vicarious liability claim based on a sexual assault or sexual misconduct committed by Deputy Gibson. In other words, if the Plaintiff intended to bring a tort claim for the sexual misconduct alleged against Deputy Gibson, the proper cause of action would be for assault and battery – not for gross negligence. Yet, the Plaintiff did not plead an assault and battery claim against either Gibson or the Defendants. The Plaintiff is alleging what is clearly considered to be intentional conduct; yet, intentional conduct is not actionable under the law as gross negligence. The Defendants are therefore entitled to a JNOV on the gross negligence claim as alleged in the First Cause of Action.

C. Defendants are Entitled to Absolute Sovereign Immunity under S.C. Code Ann. § 15-78-60(17)

In addition, as indicated, the Plaintiff alleged that Deputy Gibson acted maliciously and with the intent to cause harm. Importantly, South Carolina law recognizes that “an intent to harm will be inferred as a matter of law when a person sexually assaults, harasses, or otherwise engages in sexual misconduct towards an adult.” *State Farm Fire & Cas. Co. v. Barrett*, 340 S.C. 1, 530 S.E.2d 132, 136 (Ct. App. 2000). Because the Plaintiff has alleged that Deputy Gibson committed an act of sexual assault or sexual misconduct upon him, the Defendants are entitled to absolute sovereign immunity under S.C. Code Ann. § 15-78-60(17) of the Tort Claims Act, which provides: “The governmental entity is not liable for a loss resulting from ... employee conduct ... which constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude.” The

law infers an intent to harm from Deputy Gibson's conduct as alleged, and thus, the Defendants are entitled to absolute immunity under S.C. Code Ann. § 15-78-60(17). The Defendants are entitled to a JNOV on this additional basis.¹

D. Plaintiff Failed to Prove Claim for Gross Negligence in Hiring and Supervision of Employees

In his Second Cause of Action, the Plaintiff alleged that the Defendants are grossly negligent in the hiring and supervision of Deputy Gibson.² In the leading case of *Doe v. ATC, Inc.*, 367 S.C. 199, 624 S.E.2d 447 (Ct. App. 2005), the Court of Appeals held as follows:

Our review of negligent hiring and retention cases from other jurisdictions leads us to conclude that such cases generally turn on two fundamental elements -- knowledge of the employer and foreseeability of harm to third parties. These elements, from a factual perspective, are not necessarily mutually exclusive, as a fact bearing on one element may also impact resolution of the other element. From a practical standpoint, these elements are analyzed in terms of the number and nature of prior acts of wrongdoing by the employee, and the nexus or similarity between the prior acts and the ultimate harm caused. Such factual considerations -- especially questions related to proximate cause inherent in the concept of foreseeability -- will ordinarily be determined by the factfinder, and not as a matter of law. Nevertheless, the court should dispose of the matter on a dispositive motion when no reasonable factfinder could find the risk foreseeable or the employer's conduct to have fallen below the acceptable standard.

624 S.E.2d at 450. The Court of Appeals further explained that the applicable standard is "whether

¹ The Court also erred in not allowing any Tort Claims Act immunity defenses including S.C. Code Ann. § 15-78-60(17) to at the very least be charged to the jury so that the jury could determine whether immunity applied.

² As discussed above, and incorporated herein, the Defendant Aiken County is not the employer of Deputy Gibson or any deputies working for the Aiken County Sheriff. *See, Heath v. County of Aiken*, 295 S.C. 416, 368 S.E.2d 904 (1988) (holding that deputy sheriffs are not county employees and thus are not covered by county personnel policies). Thus, the County cannot be held liable for negligent hiring or supervision of any sheriff's deputies, including Deputy Gibson.

the employer knew the offending employee was in the habit of misconducting himself in a manner dangerous to others." 624 S.E.2d at 450-451. Thus, it is necessary that the plaintiff "demonstrate some propensity, proclivity, or course of conduct sufficient to put the employer on notice of the possible danger to third parties." 624 S.E.2d at 451.

Here, the Plaintiff did not meet his burden of proof. The Plaintiff presented no evidence of prior misconduct by Deputy Gibson, nor that the Defendants knew or should have known of any prior misconduct by Deputy Gibson. In short, there is no evidence that Deputy Gibson had the propensity for improper behavior or had engaged in such a course of conduct in the past sufficient to have put the Defendants on notice of any possible danger to third parties, including the Plaintiff. As a result, the Plaintiff's claims for negligent hiring and retention should have been dismissed at the directed verdict stage and not presented to the jury. The Defendants are entitled to a JNOV on that claim.

Moreover, with respect to the negligent supervision claim, it fails for the same reasons stated above – a lack of evidence of foreseeability. *See, Degenhart v. Knights of Columbus*, 309 S.C. 114, 420 S.E.2d 495 (1992). In the absence of evidence that the Defendants knew or should have known of the necessity to exercise control over its employee, there can be no liability for negligent supervision. *See, Brockington v. Pee Dee Mental Health Center*, 315 S.C. 214, 433 S.E.2d 16 (Ct. App. 1993). *See also, Moore by Moore v. Berkeley County School District*, 326 S.C. 584, 486 S.E.2d 9, 13 (Ct. App. 1997) (“[a]bsent some evidence indicating notice to the District of [employee’s] inappropriate sexual proclivities, there is no basis to conclude the District knew or should have known of the necessity for supervising her conduct outside the classroom”.); *Bank of New York v. Sumter County*, 387 S.C. 147, 691 S.E.2d 473, 478 (2010) (affirming

summary judgment where there was no evidence that the South Carolina Judicial Department knew or should have known employees posed an “undue risk of harm to the public”).

For each of these reasons, the Plaintiff did not present viable negligent hiring, retention, and supervision claims against the Defendants, and a JNOV should be granted on the Plaintiff’s Second Cause of Action.

E. Plaintiff Failed to Prove Claim for Failure to Provide Medical Care

The Plaintiff also failed to prove any claim for the failure to provide medical care. As discussed below, the Plaintiff presented no expert medical testimony. Thus, the Plaintiff presented no expert medical testimony as required to prove a claim for medical malpractice or medical negligence, including evidence of the standard of care, a breach thereof, and proximate cause. Moreover, the evidence demonstrates that the Plaintiff was provided medical care for the alleged injury to his testicle.

F. Claims Related to PREA Investigation

The Plaintiff should not have been allowed to proceed with any claims or allegations related to the investigation conducted by Detention Center personnel under the Prison Rape Elimination Act, 42 U.S.C. § 15601 (“PREA”). The Plaintiff’s allegations related to the PREA investigation are not actionable because PREA does not create a private right of action. *See, Taylor v. Worrick*, 2016 WL 11190496, *7 (D.S.C. 2016); *Moorman v. Herrington*, 2009 WL 2020669, *2 (W.D. Ky. 2009).

II. New Trial Absolute or New Trial Nisi Remittitur

A. Damages Award is Unsupported by the Evidence

The Defendants are entitled to a new trial absolute because the trial record is devoid of evidence supporting the jury's \$150,000 verdict in actual damages against the Defendants.

The Plaintiff testified that during the search, Deputy Gibson squeezed his testicle for "one second." He testified that he had pain in the testicle for about seven to ten days, and had no pain thereafter. The Plaintiff presented no evidence of medical specials, including any medical bills or out-of-pocket expenses. The Plaintiff also presented no evidence of any permanent impairment nor any evidence of future medical expenses. That is the extent of the properly admissible evidence of damages and does not support an award of \$150,000.

As discussed below, the Court erred in allowing the Plaintiff to present lay testimony that he developed a hydrocele that was proximately caused by Deputy Gibson's search on January 27, 2017. In the absence of that impermissible lay testimony, there is clearly not sufficient evidence of the Plaintiff's injuries and damages to support a verdict of \$150,000 actual damages. Nonetheless, even with that evidence, the Plaintiff testified that the hydrocele was not painful and was fully cleared up by a ten-day administration of antibiotics. Thus, even with that evidence, there is still an insufficient record to support a verdict of \$150,000, and a new trial absolute should be granted.

B. Court Improperly Allowed Lay Testimony to Present Evidence as to the Development of a Hydrocele and Proximate Causation Related Thereto

As stated, the Court erred in allowing the Plaintiff to present lay testimony that he

developed a hydrocele that was proximately caused by Deputy Gibson's search on January 27, 2017, and that error requires the granting of a new trial absolute.

The development and cause of a hydrocele present a medical issue that requires expert medical testimony. Under South Carolina law, a plaintiff in a negligence action has the burden of proving that the injury was caused by the actionable conduct of the defendant. Importantly, “[w]here a medical causal issue is not one within the common knowledge of the layman, proximate cause cannot be determined without expert medical testimony.” *In re Bausch & Lomb Contact Lens Solution Products Liability Litigation*, 693 F.Supp.2d 515, 518 (D.S.C. 2010). The federal district court, applying South Carolina law, has further explained “[e]xpert testimony is *required* where the claimant is attempting to establish causation of a medically complex condition.” *Jones v. Danes Medical, Inc.*, 1999 WL 1133272, *4 (D.S.C. 1999). (Emphasis in original). Similarly in *Smith v. Michelin Tire Co.*, 320 S.C. 296, 465 S.E.2d 96 (Ct. App. 1995), the South Carolina Court of Appeals held that “[i]f a [plaintiff] is attempting to establish causation of a medically complex condition, ... expert medical testimony is required.” 465 S.E.2d at 97. By way of example, in that case, the Court of Appeals explained that “the exacerbation of Smith’s recurrent major depression was a medically and scientifically complex condition and this required expert testimony of causation.” *Id.*

In the case at bar, the Plaintiff presented no expert medical testimony regarding the hydrocele – how a hydrocele develops, what it is, what are the causes, how it is treated, and most importantly, that the Plaintiff developed a hydrocele that was proximately caused by Deputy Gibson’s actions. Instead, the Court improperly allowed the Plaintiff to testify and his counsel to

argue that the Plaintiff developed a hydrocele,³ the diagnosis of the hydrocele, how it was treated, and that it was proximately related to Gibson's conduct. The jury should not have been permitted to even consider the evidence that the Plaintiff was diagnosed with a hydrocele or that the condition was proximately caused by Deputy Gibson in the absence of competent medical expert testimony. A new trial absolute is warranted.

C. Verdict is Grossly Excessive

The Defendants request that the Court grant a new trial absolute because the verdict of \$150,000, in addition to being unsupported by the evidence, is shockingly disproportionate to the injuries as to indicate that the jury was moved or actuated by passion, caprice, prejudice, or other considerations not found in the evidence.

As the Supreme Court has explained, "[w]hen a party moved for a new trial based on a challenge that the verdict is either excessive or inadequate, the trial judge must distinguish between awards that are merely unduly liberal or conservative and awards that are actuated by passion, caprice, or prejudice." *Allstate Ins. Co. v. Durham*, 314 S.C. 529, 431 S.E.2d 557, 558 (1993). "[W]hen the verdict is so grossly excessive ... that the amount awarded is so shockingly disproportionate to the injuries as to indicate that the jury was moved or actuated by passion, caprice, prejudice, or other considerations not found in the evidence, it becomes the duty of the trial judge ... to set aside the verdict absolutely." *Id.*, citing *Easler v. Hejaz Temple*, 285 S.C. 348, 329 S.E.2d 753, 758 (1985).

³ The Plaintiff's counsel raised the issue of the hydrocele in his opening statement despite having no expert medical testimony to support the Plaintiff's claim that he developed a hydrocele which was proximately caused by Deputy Gibson's conduct. The Court overruled the Defendants' objection on that part of the opening argument in error.

As discussed above, the verdict of \$150,000 was not supported by the evidence presented. That demonstrates that the verdict is grossly excessive. In addition, the size of the jury's verdict demonstrates that the jury's verdict must have been the result of bias, prejudice, or other improper considerations, including an attempt to punish the Defendants, which an award of actual damages cannot do. The Court is respectfully requested to set aside that verdict against the Defendants and grant a new trial absolute.

In the alternative, even if this Court were to conclude that the verdict is not grossly excessive as to warrant a new trial absolute, the Defendants submit that the verdict is certainly unduly liberal such that the Court should, in the proper exercise of fundamental fairness and justice, grant a remittitur to a more appropriate amount given the evidence. Subject to the other motions, the Defendants submit that a more appropriate damages award based on the record presented would be \$25,000. Therefore, in the alternative of the Defendants' other arguments for a JNOV and new trial absolute, it submits that a remittitur to \$25,000 would be warranted.

D. Jury was Improperly Allowed to Hear Testimony of Deputy Gibson's "Bad Acts" Towards other Inmates and those Inmates' Claimed Injuries or Damages

The Court erred in allowing testimony from other inmates as to the conduct of Deputy Gibson in searching them. The Plaintiff presented that evidence as proof of a "common scheme or plan." "As a general rule, evidence of a person's prior bad acts is not admissible for the purpose of proving action in conformity therewith on a particular occasion." *Judy v. Judy*, 384 S.C. 634, 682 S.E.2d 836, 840 (Ct. App. 2009); Rule 404(a), SCRE. "However, evidence of other crimes, wrongs, or acts may be admissible to establish (1) motive, (2) intent, (3) the absence of mistake or accident, (4) a common scheme or plan embracing the commission of two or more crimes so

related to each other that proof of one tends to establish the other, or (5) the identity of the perpetrator.” *Id.*; Rule 404(b), SCRE. “Where the other bad acts are not the subject of conviction, they must be proven by clear and convincing evidence.” *Id.*

In the case at bar, the Court made no finding based on clear and convincing evidence that the evidence presented by other inmates constitutes admissible and probative evidence of prior bad acts by Deputy Gibson such that he was engaged in a common scheme or plan. Moreover, the Plaintiff was not required to present evidence of a “common scheme or plan” for his allegations involving Deputy Gibson to be actionable against the Defendants.

In addition to improperly allowing these other inmates to testify as to the conduct by Deputy Gibson as to them, the Court also erred in allowing those inmates to also testify as to their own injuries or damages, which were not relevant to any issue before the jury and were presented solely to inflame the jury, which it accomplished as demonstrated by the grossly excessive verdict. The Court erred in allowing Jeremy Ard to testify that he was diagnosed with erectile dysfunction and to speculate that it was causally related to Deputy Gibson’s conduct. Similarly, the Court erred in allowing Stephen Wilhite to testify by deposition that he developed a hydrocele and to speculate that it was causally related to Deputy Gibson’s conduct and to describe how his condition was medically treated which differed from the Plaintiff’s experience. These erroneous evidentiary rulings warrant a new trial absolute.

E. Jury was Improperly Allowed to Hear Testimony Regarding Alleged Retaliation by Deputy Gibson

The Court also improperly allowed the Plaintiff and the other inmates to present testimony that Deputy Gibson “retaliated” against them in several particulars. That testimony was not relevant nor probative to any issue raised in this litigation. The Plaintiff never pled any claim for

retaliation, nor would such a claim, if pled, have been actionable against the Defendants based upon the bar of S.C. Code Ann. § 15-78-60(17). Instead, that testimony of after-the-fact conduct was presented solely to inflame the jury, which it accomplished as demonstrated by the grossly excessive verdict.

F. Court Erroneously Excluded Evidence of the PREA Report and Findings

While the Court did allow the Plaintiff to raise issues before the jury related to PREA and the PREA investigation conducted by Lieutenant Robert Bowman, the Court erroneously limited the Defendants' ability to present the substance or results of that investigation by both disallowing Lieutenant Bowman from testifying to as to the information contained within the report and by excluding the report itself. The Defendants were prejudiced by the Court's ruling that the PREA investigative report constituted inadmissible hearsay without an exception. The report was admissible under Rule 803(8), which provides for the admissibility of "[r]ecords, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth (A) the activities of the office or agency, or (B) matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding, however, in criminal cases matters observed by police officers and other law enforcement personnel; provided, however, that investigative notes involving opinions, judgments, or conclusions are not admissible." Rule 803(8), SCRE.

G. Court Erroneously Allowed Wilhite Video Deposition from Federal Court to be Published to the Jury

The Court erroneously allowed the Plaintiff, over the Defendants' objection, to publish the video deposition of Stephen Willhite to the jury when that deposition was not noticed or taken in the state court litigation. That deposition was noticed and taken *solely* in the pending federal action

brought pursuant to 42 U.S.C. § 1983, which involves different claims than the case at bar. Rule 32(a)(8), FRCP, allows for a deposition taken in state court to be used in a “later action” brought in federal court. However, Rule 32 of the South Carolina Rules of Civil Procedure does not include any similar provision. In addition, the federal lawsuit was commenced in 2019, as compared to the state court litigation which was filed on June 20, 2017. Thus, even if there was an equivalent to the federal rule in the South Carolina Rules of Civil Procedure (which there is not), the video deposition that was published was not taken in the “earlier action.” Just the opposite – that video deposition was taken in the later-filed action and was improperly used in the earlier of the two lawsuits. Moreover, if the Plaintiff had intended to use the deposition of Stephen Wilhite at the trial of this case, he was not precluded from taking Wilhite’s deposition in this state case to address the claims and issues related to this case. Importantly, the Plaintiff presented this Court with no South Carolina authority, nor did the Court cite any, that allows a federal deposition to be used and published in a state court trial. The Defendants were prejudiced because the examination of the witness was not tailored to the allegations and claims made in the state court case. This is an additional issue that warrants a new trial absolute.

H. Jury was Improperly Allowed to Return Verdict Against Aiken County

For the reasons discussed above, the Defendant Aiken County was an improper party-Defendant and should have been dismissed at the directed verdict stage. The inclusion of Aiken County on the verdict form resulted in prejudice to all of the Defendants because the Plaintiff improperly raised an issue regarding Aiken County’s budget during closing arguments and incorrectly argued to the jury that Aiken County had liability to the Plaintiff, when clearly none exists as a matter of law. The Court also erred in allowing all of the party-Defendants, including

Aiken County, to be identified collectively as “Defendants” on the verdict form when S.C. Code Ann. § 15-78-100(c), as a matter of law, requires liability to be apportioned between governmental tortfeasors. This also creates fundamental unfairness because the jury was not allowed to decide which Defendants were liable and which were not, and as demonstrated herein, there is no question that Aiken County has no liability to the Plaintiff.

I. Thirteenth Juror Doctrine

The Defendants move for a new trial absolute as well based upon the Thirteenth Juror doctrine. "Under the 'thirteenth juror' doctrine, a trial judge may grant a new trial absolute when he finds the evidence does not justify the verdict. This ruling has also been termed a granting of a new trial upon the facts." *Vinson v. Hartley*, 324 S.C. 389, 477 S.E.2d 715, 722 (Ct. App. 1996). "[T]he trial judge is the thirteenth juror, possessing the veto power to the Nth degree." *Id.* "The trial judge, sitting as the thirteenth juror charged with the duty of seeing that justice is done, has the authority to grant new trials when he is convinced that a new trial is necessitated on the basis of the facts in the case." *Id.* As discussed above, the evidence presented in this case does not support the jury's verdict. Therefore, a new trial absolute should be granted.

Respectfully submitted,

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Counsel for Defendants

November 14, 2022

ORAL ARGUMENT REQUESTED

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Otis Owens,

Plaintiff,

v.

Sheriff Michael Hunt, the Aiken County
Sheriff's Office, Aiken County Detention
Center, and Aiken County,

Defendants.

Civil Action No. 2017-CP-02-1413

**NOTICE OF MOTION AND
MOTION TO ALTER OR AMEND ORDER
AND/OR MOTION TO RECONSIDER**

TO: THE HONORABLE COURTNEY CLYBURN POPE

JOSHUA T. HAWKINS, COUNSEL FOR PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that the undersigned attorney for the Defendants Sheriff Michael Hunt, the Aiken County Sheriff's Office, and Aiken County Detention Center will move before the Honorable Courtney Clyburn Pope at such time and place as may be set by the Court, for an Order, pursuant to Rule 59(e), SCRCF, altering, amending, and reconsidering the Form 4 Order filed on December 2, 2022. The Defendants' counsel received written notice of entry of the Form 4 Order on that same date.

The Defendants' motion is based upon the following grounds:

The Form 4 Order does not specifically address and provide the Court's reasoning or legal analysis for the denial of each of grounds for relief as set forth in the Defendants' Post-Trial Motions. The Form 4 Order states that "Defendant's Motion for Judgment Notwithstanding the Verdict (JNOV) is GRANTED in part, and DENIED in part: the

Defendant's motion to dismiss Aiken County as a co-defendant is GRANTED; all other motions related to JNOV are DENIED." The Form 4 Order further states the "Defendant's Motion for Nisi Remittitur is DENIED," and that "Defendant's Motion for a New Trial is DENIED."

The Defendants (with the exception of Aiken County which has now been dismissed) have filed this motion to affirmatively and officially on the record request that the Court issue a ruling on each ground raised in their Post-Trial Motions. The Defendants make this request in order to ensure that all of the issues and arguments raised in their Post-Trial Motions are preserved for appellate review. The Defendants recognize that in the case of *Woodson v. DLI Properties, LLC*, 406 S.C. 517, 753 S.E.2d 428 (2014), the South Carolina Supreme Court addressed the necessity of a formal order in the context of a motion for summary judgment. The Supreme Court found that findings of fact and conclusions of law were not required and concluded *on that record* that "the circuit court's reasoning is clear from the order, as it plainly referenced the evidence the circuit court considered in making its decision." 753 S.E.2d at 433. The Supreme Court thus found *in that case* that the appellate court had "a sufficient record before it to permit meaningful appellate review and make a decision on the merits." *Id.* Nonetheless, the Supreme Court also "agree[d] it is better practice -- and in most cases common practice -- as well as beneficial to the judicial process for a trial judge to articulate relevant findings and conclusions of law in an order granting summary judgment." *Id.*

Woodson, of course, dealt with an order granting summary judgment, and based on that specific record, found the record was sufficient to allow for meaningful appellate review. The Court did not adopt a blanket rule necessarily that all form orders are sufficient under all circumstances. Thereafter, in *Lollis v. Dutton*, 421 S.C. 467, 807 S.E.2d 723 (Ct. App. 2017), the Court of Appeals addressed whether a form order was sufficient with respect to post-trial

motions. The Court of Appeals noted that the “circuit court’s summary order denying all post-trial motion did not specifically address” certain grounds raised in the motions. Despite citing to *Woodson*, the Court of Appeals still found that certain grounds required the circuit court to exercise discretion and “[n]othing in the order denying the post-trial motions indicates the circuit court order made such a determination.” 807 S.E.2d at 734.

In sum, the appellate case law still remains unclear when a form order or a summary order is sufficient to properly present and preserve issues for meaningful appellate review. Indeed, the Supreme Court has described a formal order as the “better practice” and “beneficial to the judicial process.” *Woodson*, 753 S.E.2d at 433. In the case at bar, the appellate court will only have the trial record as well as the post-trial motions filed by the Defendants. However, in this case, unlike most where the use of a form order suffices, the Plaintiff never filed a written response to the motions, and the Court did not hold a hearing where both sides had the opportunity to orally argue the issues and the Court could have provided oral rulings from the bench as often occurs. In other words, typically where there is a hearing, it is more likely that an adequate record is made so that a form order is sufficient to provide the appellate court with an understanding of the trial court’s rulings. Additionally, the Form 4 Order in this instance, unlike the one in *Woodson*, gives no indication, even in summary fashion, of the Court’s reasoning and legal analysis. In some instances, it is possible that an appellate court could determine that a trial court followed the reasoning in an opposition memorandum when denying a motion, but in this case, there was no opposition memorandum filed. Given the absence of a record on the opposition position and the absence of the Court’s own analysis and reasoning, the Defendants are concerned that a appellate court will conclude that there is an insufficient bases for the court to review this Court’s rulings. Often when the record is inadequate and the appealing party has

not sought relief under Rule 59(e), the appellate court will summarily affirm or dismiss the appeal based on an inadequate record.

In short, the Defendants seek to ensure in a case of this importance that an appeal will be decided on the merits and not on a preservation error. To that end, the Defendants with this motion are formally asking the Court to issue a formal order that provides its reasoning and legal analysis on the grounds raised. The Defendants wish to meet its responsibilities to make certain the grounds for appeal are properly preserved and that the appellate courts can provide meaningful review for the benefit of all the parties.

The Defendants' motion is based upon the pleadings filed in this case; the Form 4 Order filed December 2, 2022; the Defendants' Post-Trial Motions previously filed; the rules of court; and such other matters as may be properly presented to the Court at the time of the hearing.

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Counsel for Defendants

December 12, 2022

1 STATE OF SOUTH CAROLINA)

2 COUNTY OF AIKEN)

COURT OF COMMON PLEAS

3
4 OTIS OWENS,)

5 PLAINTIFF,)

6 vs.)

7 SHERIFF MICHAEL HUNT, THE AIKEN)
8 COUNTY SHERIFF'S OFFICE, AIKEN)
9 COUNTY DETENTION CENTER, AND AIKEN)
COUNTY,)

DEFENDANTS.)

TRANSCRIPT

OF

RECORD

2017-CP-02-1413

10
11 October 31st - November 4th, 2022
12
13

14 B E F O R E:

15 THE HONORABLE COURTNEY CLYBURN POPE, Judge; and a jury.
16

17 A P P E A R A N C E S:

18 JOSHUA T. HAWKINS
19 ESQ.
Attorney for the Plaintiff

20 WILLIAM H. DAVIDSON, II and JOHN GRIMES, JR.
21 ESQ.
22 Attorneys for the Defendants
23
24

25 Transcribed by Pamela E. Green, from
DCRP, Digital Courtroom Recorder Project

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<u>NOS.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
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1 2:30 and go directly into those arguments. I hope -- my
2 hope is not to keep the jury out any more than 30 minutes,
3 sitting and waiting more than 30 minutes.

4 Do you think that is possible that we do it within that
5 amount of time?

6 MR. DAVIDSON: I'll be close, Your Honor.

7 THE COURT: Okay.

8 MR. HAWKINS: Like I said, it depends on how much --

9 THE COURT: Sure.

10 MR. HAWKINS: -- (indiscernible).

11 THE COURT: All right. Well, maybe you-all will go
12 down to the pool hall at lunch and work these, work these
13 issues out.

14 No?

15 All right. We'll be back at 2:30 and we'll see how --
16 we will -- we'll plan for that.

17 Court is adjourned until 2:30.

18 MR. HAWKINS: Thank you, judge.

19 (WHEREUPON, Court was in recess for the lunch break.)

20 THE COURT: Please be seated.

21 All right. Mr. Hawkins, Mr. Davidson, are you-all
22 ready to proceed?

23 MR. HAWKINS: Yes, Your Honor.

24 MR. DAVIDSON: Yes, Your Honor.

25 THE COURT: All right. Let's get into these motions.

1 All right. Mr. -- all right. Now that we do have the
2 plaintiff present.

3 Mr. Hawkins.

4 MR. HAWKINS: You ready?

5 THE COURT: Yes.

6 MR. HAWKINS: May it please the Court.

7 Your Honor, the first motion in limine that we have
8 with the Court is a motion to exclude my client's prior
9 arrest and convictions. The incident that we're talking
10 about that we filed suit over is wholly contained within the
11 facility. There's, there's no allegation of abuse of
12 process or anything like that.

13 And so any prior convictions for, for arrest or
14 anything like that would only serve to prejudice the jury.
15 It wouldn't have any probative value, Your Honor.

16 THE COURT: All right. Mr. Davidson.

17 MR. DAVIDSON: Your Honor, under 609 of the South
18 Carolina Rules of Civil Procedure, impeachment by evidence
19 of a crime, if Mr. Owens goes on the stand, I have the right
20 to impeach him in regard to the crime that he has been
21 convicted of in the past as long as they are over a year
22 and/or within 10 years.

23 In this incidence, Mr. Owens did, in fact, have a
24 conviction that was over 10 years in late -- over a year in
25 late, excuse me, within the 10 year realm. He was arrested

1 and convicted for distribution of methamphetamine.

2 Now, the plaintiff also raised in their complaint
3 something about false arrest or false detention. He was in
4 jail at the time of these events for that very crime that he
5 ultimately was convicted of---

6 THE COURT: And so---

7 MR. DAVIDSON: ---and the---

8 THE COURT: Distribution of meth?

9 MR. DAVIDSON: Distribution of methamphetamine and
10 ultimately was sentenced to the Department of Corrections
11 where he was housed for a period of time before he was
12 released.

13 So, it's our position, Your Honor, that the fact that
14 he had that conviction would, in fact, be relevant in regard
15 to 609, that rule, Your Honor.

16 Also, the fact that he is presently in the detention
17 center is also relevant in regards to this case. So, that
18 would be the only question I would ask him, where are you
19 presently living, Aiken County Detention Center, and were
20 you previously convicted of a crime of that distribution of
21 methamphetamine both of which would be a yes answer. And we
22 believe, under 609, both of those questions are proper and
23 effected in regards to impeaching him in this case and
24 that---

25 THE COURT: Mr. Davidson, why do you think that his

1 present living situation is relevant to this current case?

2 MR. DAVIDSON: Because, Your Honor, there, there is
3 evidence -- well, I don't know where they're coming with
4 this, whether they're gonna bring it in or not, they want to
5 bring in evidence that, that my officer has made certain
6 comments within the last year while Mr. Owens has been there
7 about this case. He kind of leered at Mr. Owens or his
8 roommate.

9 They have taken depositions of inmates who are
10 presently in the facility in regard to those issues.

11 So that would make that relevant if they are in this,
12 A, introducing that into evidence. I'm not gonna ask what
13 he's in there for, Your Honor. I'm not gonna ask the fact
14 that he cut his ankle bracelet off, violated probation, and
15 violated the terms of his bonds. I'm not gonna get into
16 that. But that's one of his grounds in this case.

17 But if he goes into the issues of what the other
18 inmates said, I think I have the right to ask where he is
19 housed presently.

20 THE COURT: Mr. Hawkins.

21 MR. HAWKINS: Yeah, Your Honor.

22 So, first of all, as Mr. Davidson knows, and I don't
23 know why he couched the argument this way, impeachment does,
24 does not mean you come out throwing, throwing questions
25 about stuff that is irrelevant. Impeachment, and Rule 609's

1 very clear about this, impeachment means if my client were
2 to say I've never been convicted of distribution of meth, he
3 would then have the right to ask him about it.

4 what he's talking about is coming out of the gate, the
5 first question on cross, that are you in jail for proof --
6 for distribution of meth. He's not gonna take the position
7 that he hasn't ever done that cause we're not gonna ask him
8 about it. He's talking about an impeachment with which is
9 what the rule says and then he's trying to apply it to
10 something that's not impeachment.

11 So prior convictions don't have any relevance at all to
12 this case or what happened. We don't have a claim for,
13 regardless of, of how he's couched his argument, we don't
14 have a claim for false arrest. We don't have a claim for
15 false imprisonment. We have a claim for gross negligence
16 and negligent hiring and supervision and that's it.

17 As to where he's housed now, absolutely again
18 irrelevant. The, the jury doesn't know the parameters of
19 when he was at the detention center. He's actually gonna be
20 getting out shortly I think. But they don't know when he
21 was there, you know, how long he was in for or anything like
22 that.

23 So, if we want to say, after the PREA report,
24 Mr. Gibson then retaliated against him for filing for a PREA
25 report, we're entitled to do that under Jinks versus

1 Richland County because that's a violation of a law or
2 policy. But they shouldn't be able to say well, you're in
3 jail now, aren't you, you're a jailbird, you're distributing
4 meth. That's just highly prejudicial and it doesn't make
5 any sense to talk about that stuff that doesn't have
6 anything to do with the gross negligence that we're talking
7 about in the case, judge.

8 THE COURT: Any response, Mr. Haw -- Davidson?

9 Excuse me.

10 MR. DAVIDSON: Yes, Your Honor.

11 I think he was probably misinterpreting 609. 609 says
12 impeachment by evidence of conviction of a crime for the
13 purposes of attacking credibility of witnesses.

14 1. Evidence that a witness, other than the accused,
15 and we're not talking about a criminal case here, has, has
16 been accused of it, other than an accused, that has been
17 convicted on a crime, shall be admitted subject to 403 if
18 the crime is punishable by death or imprisonment in excess
19 of one year under the law under which the witness was
20 convicted and evidence that the accused has been convicted
21 of such crime shall be admitted if the Court determines the
22 probative value of admitting this evidence outweighs the
23 prejudicial effect by the accused. And we're not, we're not
24 hearing any argument that this is a 403 exception, Your
25 Honor.

1 This is purely impeachment of Mr. Owens in regard to a
2 crime that he committed in the past that resulted in a
3 sentence of over a year and it was within the 10 year
4 period. That is part of the rule. It allows me to impeach
5 a witness in regard to their criminal convictions if it
6 falls within that.

7 Now, if it was something like he was charged with
8 sexual abuse of a minor or some that might cause some type
9 of prejudicial value, and I'm trying to think of when it
10 might come into play, if it was a simple case dealing with a
11 shoplifting or a simple case dealing with a slip and fall,
12 and he had been convicted of criminal sexual conduct with a
13 minor, then I can see the Court saying this is a shoplifting
14 case and that type of conviction would prejudice the witness
15 or prejudice the defendant. I can see that in that case.

16 But what we're dealing with here is the detention
17 center, the actions within the detention center in regard to
18 Mr. Owens who was an inmate in the detention center at the
19 time this all transpired and ultimately was convicted or
20 pled guilty to the crime of distribution of methamphetamine.

21 So it is relevant. It is probative in this instance
22 and it falls squarely in, in regard to 609, Your Honor.

23 THE COURT: Mr. Hawkins, are you planning on
24 introducing --.

25 MR. HAWKINS: Your Honor, could I -- would it be all

1 right if I respond to that?

2 THE COURT: Yeah. Let me get the question out and then
3 we'll---

4 MR. HAWKINS: Okay.

5 THE COURT: ---and then we'll circle back.

6 MR. HAWKINS: Yes, ma'am.

7 THE COURT: Are you planning on introduce -- I want you
8 to address to -- I want you to respond and I also want you
9 to address whether or not you are planning on introducing
10 any testimony regarding his current incarceration.

11 MR. HAWKINS: We're not -- we don't want to introduce
12 testimony about current incarceration. We do want to say --
13 obviously, when this happened, you know, it didn't happen
14 the last day he was in there. So, he, he was in for a
15 period of time afterwards.

16 We want to introduce evidence that, after the report,
17 after the Prison Rape Elimination Act report, there was
18 retaliation by Mr. Gibson. We don't want to say he's still
19 retaliating against me right now or anything like that and,
20 and I'll point out that, again, Mr. Davidson read Rule 609,
21 which it deals with impeachment, as something that it's not.

22 Impeachment is they say something that needs to be
23 impeached. Until he says something that needs to be
24 impeached, 609 doesn't apply and will knows that. And I
25 would also point out that I believe it's Subpart A, Sub 1

1 gives the Court raw discretion over this matter and he kind
2 of glossed over that part.

3 In, in, in the federal context, which federal rule's
4 close to the state rule, Judge Hendrix just ruled on this in
5 a trial within the last two years. They came out and it
6 wasn't even raised. The Court raised it sua sponta. She
7 said unless we all -- and you give good reason to talk about
8 why this guy's in there, we ain't gon' talk about it and the
9 Court, the Federal Court, did that sua sponta, Your Honor.

10 So what he's saying is not the law. It's not the rules
11 and that's not the way evidence works, Your Honor.

12 MR. DAVIDSON: Your Honor, I don't know -- have any
13 idea what basis the -- Judge Hendrix ruling was.

14 MR. HAWKINS: The rules.

15 MR. DAVIDSON: I'd have to rule -- read the opinion.
16 I'd have to know the factual scenario.

17 The rule heading talks about allowing evidence of a
18 conviction to be used to impeach the credibility of the
19 witness. It is used so that I can ask the question of Mr.
20 Owens has he ever been convicted of the crime of
21 distribution of, of methamphetamine. I have records that
22 show he has. I have his deposition where he admitted so.

23 In this instance, it is proper in regard to the case
24 insofar as Mr. Owens' credibility in regard to his
25 testimony.

1 Now, this retaliation issue we can deal with during
2 the, the examination in regard to whether or not there's
3 evidence that shows retaliation. There obviously was no
4 injury from it but I'm not sure what the relevance of it is
5 in this case. This case involves a pat down search that
6 they claim went awry.

7 MR. HAWKINS: And, Your Honor, I would also point out
8 for the record I can't imagine what probative value the
9 conviction would have since we're not talking about writing
10 bad checks or theft or something that would speak to his
11 ability to tell the truth. Distribution of methamphetamine
12 has nothing to do with telling the truth on the stand
13 especially if we're not talking about anything but the gross
14 negligence once he's detained in the detention center.

15 MR. DAVIDSON: I would just add this, Your Honor, and
16 then I'll sit down again.

17 THE COURT: I'm listening.

18 MR. DAVIDSON: We, we did away -- well, I didn't. The
19 Court did away with crimes of moral turpitude, turpitude
20 exceptions to the evidence rule. It use to be in the old
21 days -- I hate to say this. It used to be in the old days
22 you could introduce evidence for impeachment regarding the
23 credibility, essentially 609, if it involved a crime of
24 moral turpitude. Our Court got away from that.

25 But if you were to go back and look at a crime of moral

1 turpitude, dishonesty in a -- and I think dishonesty and
2 false statement, dishonesty, one of the areas that defined
3 the moral turpitude was the distribution of narcotics. That
4 was one of the, one of the grounds behind moral turpitude
5 recognizing, okay, that someone who is dealing drugs and is
6 caught for distribution of those drugs has committed a crime
7 of dishonesty and a crime of moral turpitude.

8 THE COURT: Okay.

9 MR. DAVIDSON: So, it is relevant in this case.

10 MR. HAWKINS: Well, there's no---

11 THE COURT: But I don't want to get into -- I'm sorry.
12 Go ahead.

13 MR. HAWKINS: There's -- he hasn't cited a case. He
14 has cited a, a former rule that all this is within the
15 Court's discretion and has nothing to do with the case we're
16 talking about.

17 THE COURT: It is. But I will tell you that Green v.
18 Hewett does get rid of the moral turpitude standard---

19 MR. HAWKINS: That's it.

20 THE COURT: ---in South Carolina and my ruling, after
21 hearing arguments, is that I will allow the mention of the
22 original charge.

23 Now, I don't know whether -- are you trying to
24 eliminate any mention of the current charge?

25 MR. HAWKINS: Well, we don't want any mention of him

1 tampering with his ankle monitor.

2 THE COURT: All right.

3 MR. HAWKINS: That's one---

4 THE COURT: I do---

5 MR. HAWKINS: That's one, that's one, one thing he has
6 been charged with.

7 THE COURT: That he has---

8 MR. HAWKINS: And he has been charged---

9 THE COURT: ---been charged with?

10 MR. HAWKINS: ---with it (indiscernible).

11 THE COURT: But is he the -- convicted -- is there a
12 conviction?

13 MR. HAWKINS: Not -- no. No, judge.

14 THE COURT: All right. So that is not --.

15 MR. DAVIDSON: No. And none of that -- that's not
16 relevant. The issue would be where he is now. That's---

17 THE COURT: All right.

18 MR. DAVIDSON: ---the only question.

19 THE COURT: Now, I think that we can reserve the issue
20 for where he is now to -- for a later time if it does come
21 in -- in this -- if it is introduced, whatever evidence,
22 evidence that may make it relevant, then we will have a
23 discussion at that point. But in terms of the old charge,
24 distribution of meth, I will -- the Court will allow that in
25 and your objection -- your argument and your objections are

1 noted for the record in that regard.

2 All right. Mr. Hawkins, you had a sec -- a second?

3 MR. HAWKINS: I think the Court disposed---

4 THE COURT: The first---

5 MR. HAWKINS: ---disposed of that just now. That's a
6 motion to exclude the reference of the plaintiff's parole
7 violation and ankle monitor.

8 THE COURT: All right. And I see your motion to
9 exclude going on history of any incarcerated or formerly
10 incarcerated witnesses?

11 MR. HAWKINS: Right.

12 I don't see -- just like the first motion, I don't see
13 what relevance that could have except to attack the
14 witnesses and try to, try to prejudice the plaintiff.

15 THE COURT: Are there witnesses you -- or planning on
16 witnesses --?

17 MR. HAWKINS: Well, we're gonna play videos of two
18 people who had the same thing happen to them. This, this
19 person, Mr. Gibson, he searched several different people and
20 he injured about four of them. And so two other people are
21 gonna testify by video. But we're probably gonna have to
22 get together and, and come up with a -- where we start and
23 stop the sound or something like that because there's some
24 objections.

25 THE COURT: Are these video depositions or you mean a,

1 a live video---

2 MR. HAWKINS: No, no.

3 THE COURT: ---testimony?

4 MR. HAWKINS: We've got recordings to play for the jury
5 of two witnesses.

6 THE COURT: Yes, sir. All right.

7 MR. HAWKINS: And I think he's got one that he's gonna
8 read in but that's -- it's not an in court -- an
9 incarcerated person. It's a, a law enforcement person.

10 THE COURT: Okay. All right. Mr. Hawkins, you also
11 have a motion to exclude prior gunshot, gunshot wound.

12 MR. HAWKINS: Yes, Your Honor.

13 MR. DAVIDSON: I---

14 MR. HAWKINS: During deposition---

15 MR. DAVIDSON: I don't have any problem with that, Your
16 Honor.

17 THE COURT: Okay. All right.

18 MR. HAWKINS: Yeah, I, I do want to state for the
19 record, just in case it comes up, during deposition there
20 was some discussion of a gunshot wound he has on his thigh
21 and will seemed to indicate that that could be the cause of
22 his hydrocele injury instead of the -- instead of Gibson's
23 gross negligence. So, I just want to make sure that he's
24 not allowed to ask any questions about his gunshot wound.
25 He shot himself in 2003. So --.

1 THE COURT: All right. So then for the record and
2 counsel has stated he has no issue with excluding those
3 questions.

4 All right.

5 MR. HAWKINS: And then we have a motion to exclude any
6 grievances or disciplinary actions unrelated to this action.

7 So, there's a kiosk system at the detention center and
8 inmates can write grievances in there, there or there's a
9 write-up system to discipline inmates when they get in
10 trouble. If they talk during count or if they go to the
11 wrong shower or if they do something they're not suppose to
12 do, they get in trouble.

13 So, we would ask that anything that's not related
14 specifically to the event that we're talking about and the
15 retaliation after, we ask that that be excluded.

16 THE COURT: All right. So, those are sort of akin to
17 write-up slips in high school where you sort of---

18 MR. HAWKINS: Right.

19 THE COURT: Okay.

20 All right. Mr. Davidson.

21 MR. DAVIDSON: Your Honor, I don't believe, and I may
22 be wrong, I don't believe Mr. Gibson ever wrote up Mr. --

23 THE COURT: Owens.

24 MR. DAVIDSON: -- Owens.

25 THE COURT: Uh-huh.

1 MR. DAVIDSON: So, from that prospective, it wouldn't
2 necessarily be relevant for bias.

3 THE COURT: Uh-huh.

4 MR. DAVIDSON: Okay. The other point is there are some
5 disciplinaries of Mr. Owens in regard to his communication
6 to another inmate in regard to the matters of this suit and
7 the matters of this event. Those we would believe would be
8 relevant since they deal with these events.

9 MR. HAWKINS: And we don't have a problem with -- I
10 know what he's talking about. He's talking about Otis going
11 to the kiosk and writing in under Mr. Wilhite's name so that
12 when he writes a message, when Wilhite gets back on the
13 kiosk, he can see what Otis wrote and we don't have a
14 problem with that. That's related to the incident.

15 We just don't want him to say, you know, Otis, weren't
16 you written up after this event for, for talking in your
17 cell. Weren't you written up the year before this because
18 you didn't go to bed in time or something like that.

19 THE COURT: All right.

20 MR. HAWKINS: We don't want anything that's irrel --
21 wholly irrelevant to what we're talking about.

22 THE COURT: All right. So I believe you had an
23 agreement?

24 You have an understanding about that?

25 MR. DAVIDSON: Yes, Your Honor.

1 THE COURT: All right. All right. Mr. Hawkins.

2 MR. HAWKINS: Your Honor, we currently have an action
3 pending in Federal Court, a civil rights claim, and we ask
4 that there be no reference to the federal lawsuit because it
5 involves a different burden of proof. It involves a
6 different theory of liability, a violation of civil rights
7 under 14 U.S. Code Section 1983.

8 And so that could confuse the jurors. They could
9 wonder why it's pending in both -- in two different places
10 and they could draw conclusions from it that, that are, you
11 not, not warranted.

12 THE COURT: All right. Mr. David -- I'm sorry. Were
13 you done, Mr. Hawkins?

14 MR. HAWKINS: Yes. Yes, Your Honor.

15 THE COURT: All right. Mr. Davidson.

16 MR. DAVIDSON: Your Honor, that lawsuit is against
17 Mr. Gibson personally. We believe it would be relevant. It
18 wouldn't be a lot of time spent on it. It would be
19 basically that Mr. Owens has another suit against Mr. Gibson
20 regarding the same factual underpinning as this case and
21 that would be relevant in this case, Your Honor.

22 MR. HAWKINS: And, Your Honor, and what's the jury's
23 (sic) gonna do?

24 They're gonna say oh, well, if he's got a suit pending
25 against him personally, then we don't need to hold the

1 Sheriff's Office responsible and the whole point behind the
2 Tort Claims Act is to name the governmental entity and not
3 the employee.

4 That would be -- I think that would be catastrophe for
5 them to hear anything about the federal suit. I think it
6 would be an appellate nightmare and I don't think there's
7 any reason to introduce it except that he wants to prejudice
8 the jury or confuse the jury.

9 THE COURT: Okay. All right. Mr. Davidson, I am going
10 to rule in favor of Mr. Hawkins or Mr. Owens, excuse me, and
11 exclude the mention of the pending federal -- the pending
12 1983 case.

13 MR. DAVIDSON: That's fine. Thank you, Your Honor.

14 THE COURT: All right. Thank you.

15 And, Mr. Hawkins, you have this last motion?

16 MR. HAWKINS: Yes, Your Honor, and we had a couple
17 things come up after we submitted or around the same time we
18 submitted our motion pursuant to the Court's deadline.

19 There's an indication -- so there's basically three
20 additional matters. There's an indication that opposing
21 counsel may offer some unrelated medical records of my
22 client, sick calls or medical records or things of that
23 nature. If there's something that's not related to his
24 hydrocele injury, I don't think it's relevant at all if
25 there's any sick call for upset stomach or something like

1 that. I don't think that's relevant.

2 I don't think it would do anything but be superfluous
3 evidence or, or, or really unrelated evidence for the
4 confusion of the jury. I don't think it would do anything
5 to introduce medical records that don't have anything to do
6 with the hydrocele injury.

7 THE COURT: Explain to me what this is, Mr. Hawkins,
8 that you're referencing.

9 It's medical records?

10 MR. HAWKINS: Yeah, they indicated a bunch of different
11 medical records and there was more medical records than just
12 what we're talking about that was exchanged through
13 discovery. So, I just want some sort of ruling that says
14 medical records related to the hydrocele injury, you know,
15 that's relevant obviously. But medical records before or
16 after this event wouldn't have any relevance.

17 THE COURT: Mr. Davidson.

18 MR. DAVIDSON: Your Honor, the medical records are gon'
19 be some part of a thorny question in this matter and
20 actually I was gonna bring this up regarding opening
21 statement.

22 THE COURT: Okay.

23 MR. DAVIDSON: And I think in this case, Your Honor,
24 that counsel has kind of made a quantum leap between the pat
25 down search and his allegation that my client, in Federal

1 Court, and obviously the sheriff's deputy in this case,
2 seized and twisted Mr. Owens' testicle. As a result of
3 those allegations, they wait -- want to make the leap that
4 that caused Mr. Owens' hydrocele.

5 well, that reference or that cause issue is, in fact,
6 medical opinion, conclusion, finding, and, without the
7 appropriate medical testimony to establish the proximate
8 cause between the events surrounding what Mr. Gibson did and
9 the hydrocele approximately a month later, is not
10 appropriate and not -- can't be or argued without laying the
11 proper foundation that a medical person has established that
12 most probably the injury occurred from what happened with
13 the pat down and that would be the standing with a
14 reasonable degree of medical certainty most probably the
15 injury occurred or the hydrocele occurred as a result of
16 Mr. Gibson's actions.

17 without that type of foundation coming in during the
18 trial, to argue that in front of the jury and during opening
19 argument would be prejudicial and, in my opinion, would
20 result in an -- a potential mistrial either at the opening
21 argument stage or during the trial itself cause I think
22 you've got to lay the foundation for that type of argument,
23 and you're not really suppose to argue in opening
24 statements, regarding what happened and the cause and
25 effect. So that would be the issue in that.

1 The medical records that -- some of the medical records
2 deal with Mr. Owens having high blood pressure and getting
3 his medication on a monthly basis. Some of which is around
4 the period of time of this event.

5 The Sheriff's Department independently contracts with a
6 health provider. There is no indication in the records of
7 the independent health provider that Mr. Owens sought sick
8 call during those periods of time regarding injuries to his
9 testicles.

10 So, I think it would be relevant during the period of
11 time that this occurred -- and I'm not talking about what
12 happened in 2015 when he was there or 2016 when he was there
13 or when it -- when he's there now. I'm talking on or around
14 the time of the events surrounding this pat down, which is
15 January 25th, 2017.

16 So, that's kind of my position in regard to the medical
17 records which flows into the argument dealing with opening
18 statements, Your Honor.

19 MR. HAWKINS: Your Honor, I don't -- I think he just
20 made a motion in limine to exclude his injury. I -- I'm --
21 he didn't file motions in limine before said to. So, to the
22 extent he -- he's making a motion now, he's waived that
23 obviously.

24 But as far as the medical records go, he has to go ever
25 so often and get blood pressure medicine, which he does.

1 That doesn't -- the fact that he went and got blood pressure
2 medicine and his scrotum was still swollen and he didn't
3 talk about it doesn't do anything except prejudice the jury
4 if he says well, you went to get your blood pressure
5 medicine, and you didn't complain about your injured
6 testicles, did you. That's just an unfair question that
7 doesn't have anything to do with the injury that's
8 documented.

9 As far as the medical documentation goes, he can say he
10 was treated for a broken leg say. I've had that happen at
11 trial without a doctor. He doesn't need a doctor for him --
12 to say I was in a car wreck. I got treatment for a broken
13 leg. He can say this man grabbed me. I got treat -- I had
14 treatment for hydrocele injury. It's the -- essentially the
15 same thing.

16 Again, he hasn't made a motion. But to the extent he's
17 trying to untimely make a motion, that would be my response.

18 As far as -- as far as not going back into 2000 or, or
19 whenever, I'm glad we agree on that. But I don't think, if
20 there's medical in the interim -- if you're just going to
21 get your medicine, if you've already made your sick call,
22 hey, my scrotum is swollen because this man grabbed and
23 squeezed my testicles, if you've already made that call and
24 you're waiting to see an ultrasound person, the fact that,
25 in the interim, you still have to have your heart medicine

1 or your breathing medicine or whatever doesn't have anything
2 to do with the initial gross negligence.

3 He just wants to ask that question so he can say well,
4 you went to medical on, you know, three or four more times
5 and you never talked about your, your hydrocele, did you.
6 Of course, he -- if the Court decides to let that in, he can
7 say no, because I was going for my heart medicine and they
8 already knew about the hydrocele. But I don't think it does
9 anything but confuse the, the jury and just elicit
10 irrelevant information.

11 MR. DAVIDSON: Your Honor, the last I looked, a motion
12 in limine is a request for a preliminary ruling which deals
13 with the evidence that may or may not come in during the
14 trial. It is not binding on the Court nor is it binding on
15 the parties. And if my memory serves me correct, the Court
16 may rule or -- for or against a party and the party, even
17 during the testimony, must still raise the ground for the
18 objection.

19 The fact that I may not have raised an issue dealing
20 with opening argument, and I'm not sure he's gonna argue
21 this during opening argument, but if he is, I believe that
22 it's prejudicial because he is going to have to lay the
23 foundation to show proximate cause from one point to the
24 other. This ain't a leg. This is not something that deals
25 with somebody who got in a car wreck and broke a leg.

1 This deals with a medical condition which is called a
2 hydrocele. A hydrocele is fluid that is built up in the
3 scrotum. It can occur from many different factors. Because
4 of that, you would need an expert to come in and testify
5 that most probably, based on a reasonable degree of medical
6 certainty, the hydrocele was caused by X.

7 Now, I don't know if he's got that or not. But to
8 introduce that during opening argument, and I'm, I'm raising
9 this, it's not a motion in limine because I could wait and
10 object during opening argument. But I don't want to
11 necessarily mistry this case during opening argument. But
12 that's why it would be prejudicial unless he can lay that
13 foundation.

14 MR. HAWKINS: Your Honor, I don't know -- and, and
15 this -- it's certainly his right to object. I get that.

16 In all the cases I've tried, I've never objected during
17 opening or had anybody object during opening, and I know
18 will does it because I know people who've tried cases
19 against him. I know he moves for mistrial in openings. I
20 know he threatens mistrials during, during trial. He should
21 not be able to alter the flow of what I'm telling the jury
22 the evidence is gonna show.

23 The whole point of that statement is my roadmap for the
24 jury about what the evidence they're gonna see is gonna show
25 and he shouldn't be able to hamstring and limit me because

1 he, one, didn't timely file a motion. You know, we, we
2 filed all our motions and he got to see all of them. He
3 didn't file anything.

4 Now he's coming here today before we start trial and
5 he's throwing stuff at us that we hadn't got to consider
6 because he didn't file his motions when the Court told us to
7 and that's not fair and it's -- hamstrings us potentially
8 and it doesn't allow us to, to, and I'm not being
9 melodramatic, advocate for our client the way we need to.

10 We've got the burden of proof. He was treated for a
11 hydrocele injury. He was there when they were treating him
12 for a hydrocele injury and we're not talking about brain
13 surgery. It's, it's fluid around the testicles caused from
14 trauma. That's what it is.

15 If he wants to talk about causation and object when the
16 evidence is coming out, that's fine. But to say that that's
17 not the injury that was caused, that's just an unnecessary
18 hamstringing of our case because he certainly is a witness
19 to his treatment. He certainly can talk about his damage
20 and they know -- that's -- I've tried lots of cases where
21 there was not a doctor present but the person says I was
22 treated for this. I could have -- I was prescribed
23 medication for this and that's just routine evidence, Your
24 Honor.

25 MR. DAVIDSON: Your Honor, I'm, I'm -- well, I'll let

1 you talk to your clerk.

2 (Pause.)

3 THE COURT: I'm listening, Mr. Davidson.

4 MR. DAVIDSON: Yes, Your Honor.

5 THE COURT: Go ahead.

6 MR. DAVIDSON: I'm not trying to hamstring him. What
7 I'm trying to do is make sure that what the evidence is
8 establishes what his allegations are and, if they don't,
9 then we got a huge problem.

10 Now, yes, I move for mistrial. I think any good lawyer
11 who hears something that is, in fact, improper at any point
12 in a trial on behalf of his client should move for mistrial
13 and I, I, I freely admit I have done it before and most of
14 the times, when I raise my mistrial motions, they are based
15 on valid grounds. Matter of fact, they're always based on
16 valid grounds and I can't think of about two that have been
17 denied.

18 But, in this instance, Your Honor, there has to be
19 medical evidence. A hydrocele is not a broken leg. A
20 hydrocele can be caused by multiple things. Not just
21 trauma.

22 THE COURT: Is he not permitted to assert his
23 allegation in his opening statement?

24 MR. DAVIDSON: Your Honor, if he has no basis to
25 establish it by evidence, no.

1 MR. HAWKINS: We do and we will and he knows that and
2 he's trying to confuse the issues. And this whole mistrial
3 thing, that -- I know that's coming cause he will move for a
4 mistrial during this trial. That will happen because it's
5 will. Not because of the -- how the case is presented.

6 MR. DAVIDSON: Your Honor, I, you know, I'm not sure
7 what the evidence he has to establish A to B. I'm---

8 MR. HAWKINS: And that's our trial strategy, judge.

9 MR. DAVIDSON: But if he doesn't have the evidence to
10 establish it, then, when we get to that point in the trial,
11 I'm not sure how you unring that bell.

12 THE COURT: All right.

13 MR. DAVIDSON: And that's my---

14 MR. HAWKINS: Your Honor, he can---

15 MR. DAVIDSON: ---concern.

16 MR. HAWKINS: He can listen to how the evidence comes
17 out and make his objections. But he can't -- he can't write
18 our opening for us and he can't say that Mr. Hawkins, you
19 just can't talk about the fact your guy was injured and he
20 went to the doctor and then they gave him medicine for this.
21 He's a witness to that, judge. I mean he -- he's a witness
22 to it. Ain't -- they gave him the medicine. He had to take
23 the medicine.

24 THE COURT: All right. Mr. Hawkins, I am going to
25 permit you to assert your allegation in the opening.

1 However, Mr. Davidson, I am going to note that you have
2 objected to the mention -- to the mentioning of that and it
3 will not -- you know, if, if there is some other matter that
4 you need to object to during his opening, you certainly have
5 whatever right to do that. However, with regards to this
6 mention, I've ruled on it and I will note that objection as
7 a running objection.

8 MR. DAVIDSON: And I, I appreciate that, Your Honor,
9 and I appreciate you making it a running objection. I, I --
10 only thing I would ask is that there's a running objection
11 and that that objection also continue in this trial
12 question.

13 THE COURT: All right. We will, we will certainly add
14 that in for the record --

15 MR. DAVIDSON: Thank you, Your Honor.

16 THE COURT: -- Mr. Davidson.

17 All right.

18 MR. HAWKINS: Judge, I think just two more.

19 The first one is the PREA report. The Prison Rape
20 Elimination Act requires an investigation to be opened when
21 there's a sexual abuse allegation and a report made and it
22 requires that a, a PREA, Prison Rape Elimination Act, report
23 be done.

24 We requested all documents related to this case and all
25 materials related to this case five years ago. And about

1 four or five days ago we got a supplemental response with no
2 date and no signature. And, you know, I kind of thought
3 well, what in the world is this five years late.

4 And so the next day we had a, a deposition. We were
5 trying to get some depositions in. I agreed that, if he
6 wanted a deposition done before trial, and I agreed to do it
7 inside of 10 days and then he starts trying to publish that
8 report during that deposi -- that deposition.

9 So, one, it was untimely produced, and, two, it
10 contains hearsay. The report says -- cause this event was
11 caught on video and the Sheriff's Office erased the video.
12 They allowed it to be deleted over.

13 And so it contains a statement that says I watched the
14 video. There's no PREA violation.

15 So, it's, it's hearsay. The guy's not here to testify.
16 We're gonna play his deposition. But this is part of the
17 deposition I want cut out is where he's talking about the
18 hearsay that's on the video because the video was in their
19 control. They erased it.

20 PREA says you're suppose to preserve evidence. They
21 didn't preserve that evidence and they allowed the video to
22 be destroyed. They didn't bring in a tech person to try to
23 recover the deleted file or anything like that. Then they
24 didn't produce the report, which I'm not sure existed five
25 years ago, until just a few days ago.

1 And so, I don't know that -- it's, it's interesting
2 though that the timeline fits exactly with a sanctions order
3 that was entered and Mr. Davidson was counsel for Clemson in
4 that case. There was a sanctions order entered by Judge
5 McIntosh where there was an email that was not produced for
6 five years, the exact same timeline.

7 The Court basically said this email should of been
8 produced. It wasn't produced and we're awarding attorney's
9 fees.

10 That case went to trial. He moved for a mistrial and
11 got it without producing the email. They started trial a
12 second time. By that time the, the offense, the plaintiff
13 had found it, and there was a sanction order entered.

14 So, I ask that they not be able to talk about this
15 document because it contains hearsay and because it was just
16 produced a few days ago.

17 THE COURT: Mr. David -- Davidson.

18 MR. DAVIDSON: First, Your Honor, we produced in this
19 case the PREA notes in regard to a Stephen wilhite. Quite
20 honestly, I thought, when we -- when it said PREA notes for
21 wilhite or PREA notes, that it was the ones dealing with Mr.
22 Owens. For some unknown reason, I don't know why, the ones
23 dealing with Mr. Owens did not go out when those did, which
24 was, in fact, several years before.

25 When we were preparing the case for trial, we found

1 those records. I realized what had happened and we sent
2 them immediately to Mr. Owens and his counsel.

3 Number 2. This idea about Clemson and the sanctions
4 dealt with emails, Your Honor. We produced over 20,000
5 emails from Clemson. We asked the plaintiff's counsel to
6 provide us with word searches that would provide
7 information. They did. We produced the inmate -- the
8 emails for those word searches. They then asked us to do
9 another search and we produced those. That's when this one
10 came up because we found it based on another category of
11 words to be searched.

12 We produced probably a thousand emails with that word
13 search and one of the emails was the one that they claimed
14 we were hiding. Wasn't being hiding (sic). It wasn't doing
15 anything. It just had not come up during the search.

16 Now, that's not what happened here. We're not talking
17 about emails. We're talking about something that happened
18 internally in my office where it should of gone out, it
19 didn't, and we sent Mr. Wilhite's out, which ain't got a
20 thing to do with this case.

21 Now, the idea that, that, for some unknown reason, the
22 individual who prepared the report can not testify about his
23 own report does not raise a hearsay issue. It is the person
24 that's preparing the report. He is reading his report.
25 It's just like when a doctor reads his medical record into

1 the evidence. He created the record. Therefore, he is able
2 to read it. It's not an out-of-court statement offered for
3 the proof of the matter asserted because he is the one
4 that's making that report.

5 So, it's not hearsay. In fact, every time you have
6 someone come in with a memorandum, a letter they've done, a
7 memo they've done, a check register they have completed, and
8 it's theirs and the lawyer asks the witness would you mind
9 publishing what you did in this case, that's not hearsay
10 because they are the ones that created it.

11 So, it's not an out-of-court statement offered for the
12 truth of the matter asserted. It is, in fact, a statement
13 done by the individual who is present in Court subject to
14 cross-examination, and, in this instance, was subject to
15 cross-examination by Mr. Hawkins. So, it is, in fact,
16 admissible into evidence in this case.

17 Now, the video, here's the problem with the video.
18 When this happened in 2017, Mr. Bowman looked at the video
19 and it had nothing on it that would help him one way or the
20 other to establish what had happened. So, he didn't think
21 to retain it because basically it showed nothing.

22 At the jail, videos are recycled on a regular basis
23 every 60 to 90 days. Mr. Hawkins did not bring suit or
24 anything until I believe June 26th, 2017, after the video
25 had recycled through and been written over. So, there was

1 no issue at that point about spoliation, about getting a
2 letter of retention, anything to require that tape to be
3 maintained.

4 PREA doesn't require you to keep every little piece of
5 paper and every little thing you have. It requires you to
6 investigate, prepare a report, and find whether it was
7 founded or unfounded or unsustained and, in this instance,
8 that's what happened to the video.

9 Thank you, Your Honor.

10 MR. HAWKINS: Your Honor, the reason that people can
11 talk about documents they author is because they're there.
12 This person didn't author this video. He's trying to give
13 testimony about an out-of-court statement for the truth of
14 the matter asserted and also my co-counsel just handed me a
15 note.

16 It's not, under 804, he's not unavailable. If he were
17 unavailable, he'd have a, a better argument. He's just on
18 vacation. He went on his honeymoon or something like that.
19 That's why we went and accommodated him by taking his
20 deposition. But for him to talk about a video that he
21 didn't take, that he just saw, that's just somebody talking
22 about something that his employer destroyed.

23 And, and I would add that I have the order from Judge
24 McIntosh if he wants to take the position that he wasn't
25 hiding something. There's a reason this is a sanctions

1 order.

2 THE COURT: Okay. well, let me, let me make sure that
3 I'm clear on a few points.

4 This video is, is gone?

5 MR. HAWKINS: Is destroyed, written over, deleted.

6 THE COURT: Okay.

7 MR. DAVIDSON: It wasn't destroyed.

8 MR. HAWKINS: It was destroyed.

9 MR. DAVIDSON: It wasn't destroyed.

10 THE COURT: well, we don't have it.

11 MR. DAVIDSON: It was written over.

12 THE COURT: We don't have that.

13 MR. HAWKINS: We didn't have it.

14 THE COURT: Now---

15 MR. HAWKINS: They didn't comply with PREA which
16 requires them to do an---

17 MR. DAVIDSON: No.

18 MR. HAWKINS: ---actual investigation to preserve
19 evidence.

20 THE COURT: All right. well, my question is this
21 officer --

22 MR. HAWKINS: Bowman.

23 THE COURT: -- Bowman who you took their -- you took
24 Bowman's deposition---

25 MR. HAWKINS: Yes, Your Honor.

1 THE COURT: ---in a few days -- and this was last
2 week---

3 MR. HAWKINS: Yes, Your Honor.

4 THE COURT: ---I think.

5 MR. HAWKINS: Friday.

6 THE COURT: And he is testifying about or he, in his
7 deposition, there's---

8 MR. HAWKINS: Yeah, he just read it in and we had taken
9 a, a deposition before and will indicated he -- I'm not
10 gonna use it. That's got hearsay in it. And then, when he
11 started reading it, I said will, you said you weren't gonna
12 use it and he said I didn't say that and he asked him to
13 publish it into the record. So, he just reads this
14 report---

15 THE COURT: And that's what occurred last week---

16 MR. HAWKINS: And it's just---

17 THE COURT: ---is that right?

18 MR. HAWKINS: ---self-serving.

19 THE COURT: And Bowman is not available---

20 MR. HAWKINS: Correct.

21 THE COURT: ---or his---

22 MR. HAWKINS: He's on his honeymoon or something like
23 that.

24 THE COURT: Okay. And so we are trying to have the or
25 Mr. Davidson is trying to have the, the, the deposition read

1 in?

2 MR. HAWKINS: Or even if he just redacts out the part
3 about hearsay. I mean I think it's untimely. But I would
4 agree just redacting out the part about the hearsay. If he
5 wants to say---

6 THE COURT: And you're alleging that the testimony
7 given in this deposition regarding what occurred in this
8 video is hearsay?

9 MR. HAWKINS: Right. Because it's a video that was
10 taken of the event. He goes -- he didn't offer this or take
11 the video. He goes later and looks at it. Then they
12 destroy it or they allow it to be deleted. And then later
13 he says, you know, that was good for us. So we just deleted
14 it, which doesn't make any sense.

15 THE COURT: All right. At what point in, in witness
16 testimony is this deposition to be read?

17 MR. HAWKINS: There are two -- there are two witnesses
18 before that witness. There are Gallam and Gibson and I
19 expect that they will each take one to two hours.

20 THE COURT: So I -- I'd like to, to take some time to
21 think about this, which you-all determine -- you-all want to
22 make this -- you want to read this -- when is it gonna be
23 presented, tomorrow?

24 MR. DAVIDSON: It just depends on his case, Your Honor,
25 when he---

1 THE COURT: Right.

2 MR. DAVIDSON: ---finishes---

3 MR. HAWKINS: I---

4 MR. DAVIDSON: ---his case.

5 MR. HAWKINS: I think it would be tomorrow afternoon,
6 judge.

7 THE COURT: Okay. Cause how many witnesses do you --?

8 MR. HAWKINS: We probably are gonna have -- it's
9 changed a couple times. I don't --

10 THE COURT: Just roughly.

11 MR. HAWKINS: -- think -- maybe seven or eight.

12 THE COURT: All right.

13 MR. HAWKINS: But there are some of those that will
14 take, for me, they'll take six minutes---

15 THE COURT: Right.

16 MR. HAWKINS: ---you know.

17 THE COURT: Okay. All right. I'll give you-all a, a
18 decision on my ruling in the morning with regards to this
19 specific issue.

20 MR. HAWKINS: Thank you, judge.

21 The last issue that we have is the issue of Erikson.
22 Deputy Erikson, I sent a subpoena for, for him to come to
23 court, and he worked for the Sheriff's Office when this
24 happened. So, you know, technically he is still under
25 Mr. Davidson's counsel. I couldn't go talk to him

1 individually cause he's represented.

2 And so I served a subpoena on him through his attorney.
3 Mr. Davidson is now taking the position that, since he quit,
4 that service is not good. And it's fine if he doesn't come
5 to the trial. But what I don't want to happen is him not
6 come and testify in my case cause I subpoenaed him and then
7 will call him when he puts up the defense case because he's
8 under subpoena. He's suppose to be here and he's suppose to
9 testify.

10 I'm happy to, to waive that. I'm happy to, to say we
11 won't call him. But I don't want to not call him and then
12 will get to call him.

13 MR. DAVIDSON: Your Honor?

14 THE COURT: You plan on calling him, Mr. Davidson?

15 MR. DAVIDSON: If he doesn't, yeah. But what I told
16 him is that I needed to talk to Erikson about the subpoena
17 and see if he would agree to allow me to accept it. I don't
18 accept things for clients or for employees or former
19 employees unless I -- they give me their consent. He did.

20 So, if I -- that's why I asked the Court to ask Mr.
21 Hawkins to tell me who he wants to call and when so that I
22 can make sure those people are here. Last I talked to Mr.
23 Erikson, he was going to be here this week as a result of
24 essentially the subpoena and my subpoena.

25 So, that's---

1 THE COURT: Mr. Hawkins.

2 MR. DAVIDSON: ---where we are on this. So if he tells
3 me when---

4 THE COURT: Mr. Hawkins, are you gonna---

5 MR. DAVIDSON: ---I'll have him here.

6 THE COURT: All right. You're gonna call him---

7 MR. HAWKINS: Yes, Your Honor.

8 THE COURT: ---Mr. Hawkins?

9 MR. HAWKINS: I'm gonna call him. What -- the only
10 issue I wanted to clear up to make sure it didn't become an
11 issue is he's conveniently not here when I get ready to call
12 him and then, after I rest, he calls him and that's what I
13 want -- don't want to happen cause, cause he's properly
14 subpoenaed, and in a Tort Claims Act case, a deputy who
15 works for the Sheriff's Office is---

16 THE COURT: Well, he says he's gonna have him here.

17 Are you calling him tomorrow, Mr. Hawkins?

18 MR. HAWKINS: Probably after Bowman if we have time.
19 If not tomorrow, the next day.

20 THE COURT: Can you have him here tomorrow?

21 MR. DAVIDSON: I can have him here tomorrow.

22 My, my concern is I have people that have jobs. I have
23 correctional officers who have obligations at the detention
24 center. I just want to know when so that I'm not having a
25 bunch of people sitting in the back of the courtroom, and I

1 know it happens, but, at the end of the day, they gon' be
2 sorry we didn't get to you.

3 THE COURT: I understand.

4 MR. DAVIDSON: We'll see you first thing in the
5 morning. I just want to try to make sure that I can get my
6 people in and out in a, in a fairly orderly fashion.

7 THE COURT: I understand that.

8 MR. DAVIDSON: That's all I'm asking.

9 THE COURT: All right. So, I just want to be clear,
10 you're gonna call -- the plan is for him to go tomorrow
11 morning?

12 MR. HAWKINS: The plan---

13 THE COURT: The afternoon.

14 MR. HAWKINS: Tomorrow afternoon, yes, judge. The plan
15 will be for him to go after we figure out what we're gonna
16 do with Bowman. After Bowman, if not, if we don't have time
17 tomorrow if it ran too late, then the next day. So, Tuesday
18 afternoon or Wednesday morning.

19 THE COURT: All right.

20 MR. DAVIDSON: Could we get some idea?

21 Is he planning on calling witnesses today or is he
22 planning---

23 MR. HAWKINS: No, she said---

24 MR. DAVIDSON: Who's he gonna -- who's he gon' call
25 tomorrow, judge?

1 That can give me some idea of when---

2 THE COURT: Sure.

3 MR. DAVIDSON: ---these people might be a -- need to be
4 available.

5 THE COURT: He's gonna start calling his witnesses
6 tomorrow.

7 MR. HAWKINS: Right. I -- yep, at the Court's --.

8 THE COURT: That's---

9 MR. HAWKINS: As long as that's what the Court wants me
10 to do.

11 THE COURT: That's right, Mr. Davidson, and, Mr.
12 Hawkins, we will get started tomorrow morning at 9:30,
13 promptly at 9:30, and he'll begin calling his witness
14 then---

15 MR. DAVIDSON: If it's any of---

16 THE COURT: ---and I will---

17 MR. DAVIDSON: If it's any of my people that he wants
18 first thing, I need to know it, Your Honor.

19 THE COURT: All right. Mr. Hawkins, are you gonna tell
20 him exactly where you -- who you're gonna call tomorrow so
21 we can make sure that they're here?

22 But in addition to that, I'll probably make sure that
23 the jury gets lunch tomorrow so that we can take a quick
24 lunch break and go right back into the testimony.

25 MR. HAWKINS: That is no problem, judge, and I can, I

1 can tell you right now on the record tomorrow it will be
2 these two gentlemen and then it will be Bowman's deposition
3 and then Erikson after that.

4 THE COURT: All right. Is that, is that acceptable,
5 Mr. Davidson?

6 Mr. Davidson---

7 MR. DAVIDSON: Yes.

8 THE COURT: ---did you get those names?

9 MR. DAVIDSON: I'm just, I'm just writing them down---

10 THE COURT: All right.

11 MR. DAVIDSON: ---and I got them, Your Honor, and I'll
12 have them available.

13 THE COURT: All right.

14 MR. HAWKINS: And I think the only other matter for the
15 Court, Your Honor, is our motion to sequester witnesses
16 pursuant to the rule. We just ask that somebody who's gonna
17 offer testimony not be in the courtroom while testimony
18 (sic) being offered.

19 THE COURT: All right. Any objection to that,
20 Mr. Davidson?

21 MR. DAVIDSON: Your Honor, as long as I can maintain
22 Mr. Gibson, who was the officer that was involved, and Mr.
23 Gallam, who's the representative of the Sheriff's
24 Department.

25 MR. HAWKINS: No. No, that's, that's---

1 MR. DAVIDSON: Other than those -- other than those
2 individuals, I don't---

3 THE COURT: Gibson and Gallam?

4 MR. HAWKINS: And that's, and that's the problem, Your
5 Honor. Gibson is a witness. He's not a defendant in this
6 case. And so while Gallam's giving testimony, under the
7 rule, he would be sequestered -- Gibson will be sequestered
8 because he has -- Gallam has a right to be here because he's
9 the -- he's the representative for the defendant.

10 THE COURT: Right.

11 MR. HAWKINS: So, he can be here for all the testimony.
12 But, under the rule, Gibson is sequestered if another
13 witness is offering testimony because he's not a -- in the
14 1983 case, it's different. He would get to sit in the
15 courtroom.

16 MR. DAVIDSON: That's---

17 MR. HAWKINS: But not in the Tort Claims Act case.

18 MR. DAVIDSON: That's fine, Your Honor. Gallam can
19 stay. Gibson can sit outside.

20 The other question I have is whether or not counsel is
21 gonna need Sheriff Hunt. Sheriff Hunt has an issue
22 Thursday. I mean Wednesday. He's supposed to be out of
23 town at some professional---

24 MR. DAVIDSON: Do you need Sheriff Hunt?

25 MR. HAWKINS: Yes, ma'am, on Wednesday.

1 MR. DAVIDSON: On Wednesday?

2 MR. HAWKINS: Yeah.

3 MR. DAVIDSON: Okay. Can't put him on Tuesday?

4 MR. HAWKINS: Or, or, if it, if it please opposing
5 counsel, since he's hurt about this, we can go long on
6 Tuesday and I can try to put him in after all the other
7 witnesses. If he's got something that's more important than
8 the Court's business, then we can try to put him up, you
9 know, Tuesday at 5:00PM or whenever we get done with other
10 witnesses.

11 THE COURT: How long do you anticipate your questioning
12 of Sheriff Hunt?

13 MR. HAWKINS: Not very long. Not, not more than 30
14 minutes.

15 MR. DAVIDSON: I'll see what I can do either way,
16 judge.

17 THE COURT: All right. Thank you.

18 The -- listen. We'll, we'll, we'll need to move
19 expeditiously. Tomorrow we'll certainly work through the
20 case. But we will need -- if we, if we can get the sheriff
21 up tomorrow, I would rather start him before 5:00 so that we
22 don't have angry---

23 MR. HAWKINS: Yes, Your Honor.

24 THE COURT: ---jurors.

25 MR. HAWKINS: Absolutely.

1 THE COURT: I think that benefits both---

2 MR. HAWKINS: Absolutely.

3 THE COURT: ---parties. And so, if that is possible,
4 but we'll need to play it by ear tomorrow.

5 MR. HAWKINS: Yes, Your Honor.

6 THE COURT: He is unavailable, it sounds like, on
7 Wednesday.

8 MR. DAVIDSON: I, I may be able to get him to do it
9 adjust the -- I just -- I'll have to talk to him tonight,
10 Your Honor.

11 THE COURT: All right. Please -- will you give us an
12 update on that in the morning at, at, at 9:30, Mr. Davidson?

13 MR. DAVIDSON: Yeah, I will, Your Honor.

14 MR. HAWKINS: Yes, Your Honor.

15 THE COURT: Are, are there any other matters that we
16 need to take up outside the presence of the jury?

17 MR. HAWKINS: Not from---

18 THE COURT: Any from the plaintiff?

19 MR. HAWKINS: None from the plaintiff.

20 THE COURT: Any from the defendant, Mr. Davidson?

21 MR. DAVIDSON: No, Your Honor. As long as the record
22 protects me.

23 MR. HAWKINS: We could---

24 MR. DAVIDSON: Thank you, Your Honor.

25 MR. HAWKINS: We could -- if it, if it's efficient with

1 the Court, we can say that we both want the frisk policy in.
2 So we could, we could stipulate to that if opposing counsel
3 wants to. That's just a suggestion. I know that's one
4 thing we do agree on.

5 THE COURT: The frisk policy?

6 MR. HAWKINS: Yes, Your Honor.

7 THE COURT: Being entered?

8 MR. HAWKINS: Yes, Your Honor. I think so.

9 MR. DAVIDSON: That's fine.

10 THE COURT: All right. All right. Can you bring the
11 jury back and I will -- we will go right into openings after
12 I read my charge to the jury.

13 (WHEREUPON, the following takes place within the
14 presence of the jury.)

15 THE COURT: Ladies and gentlemen of the jury, the case
16 that we are about to try is the case of Mr. Otis Owens
17 versus Sheriff Michael Hunt, the Aiken County Sheriff's
18 Office, Aiken County Detention Center, and Aiken County.

19 Before we begin this trial, I want to tell you that
20 this trial probably will be different from what you might
21 expect. Many people do not have the chance to attend actual
22 court sessions, as you are doing now, and they may think,
23 from watching television or movies, that trials are always
24 full of high drama, intense action, and rivetting
25 circumstances.

1 while all of these things may be true at sometimes,
2 this trial is not for entertainment. It is a fundamental
3 part of our democracy. Sometimes, during trials, the day
4 may be slow, deliberate, and repetitive and that is quite
5 the opposite of what you have seen on television or in
6 movies.

7 This courtroom is a place of honor that is dedicated to
8 the protection and preservation of citizen's rights through
9 our justice system. The attorneys appearing before you are
10 advocates for the parties that they represent. But first
11 and foremost, they are officers of the court. They are
12 sworn to uphold the integrity and fairness of our judicial
13 system and to help you make a decision.

14 You should expect the attorneys to be professional,
15 competent, and ethical in the representation of their
16 client's interest. Remember that you too have taken an oath
17 to try this case and reach a fair and just verdict and you
18 are also expected to be professional, reasonable, and
19 ethical. Thank you very much for accepting the important
20 responsibility of jury service and for your contribution
21 today to our judicial system.

22 What I will say now is meant to serve as an
23 introduction to the trial of this case. These remarks are
24 not about the law in the case. I will instruct you on the
25 law at the end of the trial before you go back to decide the

1 case.

2 Before the trial begins, I do want to explain the
3 procedure that we will follow so that you-all can better
4 follow along and understand what is happening. I will
5 permit you, beginning tomorrow, to take notes during this
6 trial.

7 You-all have been selected as fair and impartial jurors
8 whose purpose it is to find and determine the facts. You
9 are the sole judge of the facts. If at anytime I make a
10 comment regarding the facts, you must disregard it. You are
11 to determine the facts from the testimony you hear and from
12 any other evidence that is presented. You should not be
13 influenced by opinions or statements that you may have heard
14 outside of this courtroom.

15 It is especially important that you perform your duty
16 of determining the facts in a diligent manner. That is
17 because there is no way to fix an incorrect determination of
18 the facts by a jury. When you comply with your oath to
19 impartially determine the facts of this case, you will have
20 fulfilled your duty as jurors and no one will have the right
21 to criticize your verdict.

22 On the other hand, and with equal emphasis, the same
23 law that makes you the judges of the facts makes me the
24 judge of the law. The law, as given by the Court, is the
25 only law that you may consider. You must accept and follow

1 it even though you may disagree with the law.

2 I can not tell you, the jury, what the facts are. But
3 you can not disagree with me about what the law is or what
4 it should be. Your job is to take the law as I give it to
5 you and apply it to the facts as you find them from the
6 testimony of the witnesses and any other evidence that is
7 presented. After doing that, you will render your verdict,
8 the true and just verdict, under the solemn oath that you
9 just took as jurors.

10 Until I advise you to begin your deliberations, you
11 must not discuss this case with anyone, including your
12 fellow jurors, friends, family members, and anyone involved
13 in the case. This includes discussions face-to-face and
14 those by telephone, email, text, blogs, social media, or any
15 other method of communication.

16 You may not use a computer, cellphone, or any other
17 electronic device with communication capabilities at the
18 time you are in the courtroom or during your deliberations.
19 During your break for meals and overnight, if necessary, you
20 may use those devices. However, you may not, at anytime,
21 use those devices to get or to send information about this
22 case. This includes information about a party, a witness,
23 an attorney, a court officer, any news accounts about this
24 case. You can not conduct any research on any topics
25 raised, any topics you may think would be helpful in

1 deciding the case, or any testimony presented by the
2 witnesses.

3 During the trial, do not read, listen to, or watch any
4 news reports regarding this case. This includes anything
5 that may be in the newspaper or on the Internet, radio, or
6 television. You must not consider anything that you have
7 read or heard about the case outside the courtroom whether
8 before or during this trial.

9 After the case is submitted to you, you must discuss it
10 only in the jury room with your fellow jurors. The
11 attorneys and parties in this case have been advised that
12 they are not to talk to you at all. So, if you see anyone
13 involved in this case and they do not say hello to you, they
14 are not being rude. They are simply following the Court's
15 instructions.

16 It is important that you keep an open mind and not
17 decide any issue in the case until all of the evidence has
18 been presented, the parties have made their closing
19 arguments, and I have instructed you on the law in this
20 case.

21 Now, in just a moment, the attorney for the plaintiff
22 will make what is called an opening statement. The attorney
23 will explain to you the issues in this case or at least what
24 the attorney thinks the issues are in this case. The
25 attorney for the defendant will also make an opening

1 statement.

2 what the attorneys tell you during their opening
3 statements is not evidence in this case. It is only their
4 contention as to what the issues are. The evidence in this
5 case will be presented to you by the testimony of sworn
6 witnesses from this witness stand or by exhibits that may be
7 produced into evidence.

8 Now, from time to time during the trial, you may hear
9 one of the lawyers say something like Your Honor, may we
10 have a side bar or I believe that we have a question of law
11 or a matter of law to discuss with you or, Your Honor, may
12 we approach the bench. Sometimes myself I may find it
13 necessary to excuse you, the juror, from the courtroom for a
14 short while so that the attorneys and I can discuss a matter
15 of law.

16 The reason that we do this is because you are the
17 judges of facts and sometimes, when I am discussing the
18 matters of law with the attorneys, it is necessary for me to
19 make some comment about the facts so that I can rule whether
20 or not a particular law applies. Because I am not suppose
21 to tell you what I think the facts are, I will excuse from
22 the courtroom while these discussions take place so that you
23 will not be influenced by anything that I might say or do in
24 connection with those facts.

25 In determining what the true facts are in this case,

1 you must decide whether or not the testimony of the witness
2 is believable. It will be my responsibility to rule as a
3 matter of law as to whether certain testimony is admissible
4 at all or not. But once testimony is admitted, whether or
5 not you believe it is solely for you to determine.

6 In deciding whether to believe a witness, you have the
7 right to consider whether the witness has an interest in the
8 result of the trial, whether the witness is prejudiced
9 toward either party in the case, and whether the witness has
10 had an opportunity to have seen the matters and things about
11 which the witness may testify. And you may also take into
12 consideration the way the witness acts on the witness stand.

13 You have a right to consider anything that is in the
14 record that will help you evaluate the testimony of the
15 witnesses. That means that it is your duty to pay close
16 attention to the witnesses, to observe the witnesses, to
17 listen to the witnesses, and to also pay close attention to
18 the attorneys and to the Court. Do not let your thoughts
19 wander but pay attention to the testimony so that, at the
20 end of the trial, you will be able to determine what the
21 true facts are, to apply the law to those facts, and to
22 render a true and just verdict.

23 Tomorrow morning I will select a foreperson. I will
24 let you know who that is at the beginning of the day
25 tomorrow. It is that fore -- foreperson's duty to act as

1 the jury's spokesperson here in court. If there are any
2 questions or concerns, you will reach out to that foreperson
3 and that foreperson will write a note to our bailiff who
4 will communicate with me.

5 In order to preserve everyone's rights, I will give the
6 parties an opportunity to object to anything that I have
7 said during my preliminary charge.

8 Are there any exceptions to anything that I've said by
9 the plaintiff?

10 MR. HAWKINS: None from the plaintiff, judge.

11 THE COURT: Any from the defendant?

12 MR. DAVIDSON: None from -- Your Honor, and I ask
13 Mr. Gibson to step out pursuant to your ruling on
14 sequestering witnesses.

15 THE COURT: Very good, sir.

16 MR. DAVIDSON: Thank you, ma'am.

17 THE COURT: All right. At this time we will begin the
18 trial.

19 Is Mr., is Mr. -- where is Officer Gibson?

20 MR. DAVIDSON: Excuse me?

21 THE COURT: He's outside?

22 Gibson is outside?

23 MR. DAVIDSON: Yes, ma'am.

24 THE COURT: Oh.

25 MR. DAVIDSON: Under your ruling I asked him, since he

1 will be a witness, to be sequestered --

2 THE COURT: Very good.

3 MR. DAVIDSON: -- I asked him to step out of the
4 courtroom as you said.

5 THE COURT: Thank you, sir.

6 MR. DAVIDSON: Thank you, ma'am.

7 THE COURT: All right. At this time we will begin the
8 trial.

9 MR. HAWKINS: May it please the Court?

10 THE COURT: Yes.

11 MR. HAWKINS: The government is required to follow
12 certain safety rules that are in place to prevent injury to
13 the public. Specifically, any branch of the government or
14 any arm of the government, whether it's the FBI, CIA,
15 Sheriff's Department, Highway Department, any arm of the
16 government has to follow safety rules when it interacts with
17 the public and with its citizens. If it disregards these
18 rules, and it hurts a citizen, then the government is
19 responsible for the harm it caused.

20 Specific to this case, the Sheriff's Office is required
21 to follow certain rules that are in place for pat down
22 searches. If the Sheriff's Office, through one of its
23 deputies or other employees, breaches one of these rules or
24 breaks one of these rules, and hurts somebody, or does
25 something just to hurt somebody, then the Sheriff's Office

1 is responsible for that injury, for the harm it caused them.

2 Now, I'm gonna tell you the story of what happened in
3 this case.

4 Believe it or not, this starts in 1871 when Aiken
5 County's created. But the parameter is now Aiken County's
6 created in 1871 and, shortly thereafter, the Sheriff's
7 Office is created.

8 At some point, of course, you need a jail. So a jail's
9 created. After that the Sheriff's Office assumes the duty
10 and responsibility to run the jail, the detention center.

11 Now we can fast forward all the way to 2010. Between
12 2010 and 2015, they're several reports of misconduct,
13 excessive force, and other rule violations against the
14 Sheriff's Office.

15 In 2015, the Sheriff's Office receives---

16 MR. DAVIDSON: Your Honor---

17 MR. HAWKINS: ---an app---

18 MR. DAVIDSON: ---I'm gonna object. I'm not sure the
19 relevance of what happened in '15 or '10. This involves a
20 '17 issue, Your Honor.

21 MR. HAWKINS: And when we start getting into evidence,
22 he can make an evidentiary objection, Your Honor.

23 THE COURT: All right. Overruled.

24 MR. HAWKINS: Thank you.

25 MR. DAVIDSON: Thank you, Your Honor. Protect my

1 record.

2 MR. HAWKINS: So now we're at 2015.

3 2015, the Sheriff's Office receives an online
4 application from an unemployed man who'd been unemployed for
5 about a year. He's not particularly excited about the
6 Sheriff's Office but he said in his deposition it was a job.
7 So the Sheriff's Office calls the person in and the sheriff
8 go and meets with him, had somebody else meet with him.
9 They meet for an hour or so. And based on that online
10 application, they hire this man.

11 His name is Timothy Gibson. Gibson now has the
12 authority of the Sheriff's Office, a badge, and the power to
13 search people.

14 In 2017, Gibson is up on some stairs at the detention
15 center here in Aiken. Across from him is a video monitor.
16 The video monitor and Mr. Gibson both have a bird's-eye view
17 onto some men below who are playing cards. Mr. Gibson
18 accuses them of playing dice.

19 He approaches the men and he says all right, give me
20 the dice. You know that's contraband. And these men know
21 that he can do whatever he wants and they say we don't have
22 any dice, man. They're cards. You know, we're allowed to
23 have cards but here you go. We don't have dice in here.
24 No, I'm serious. Give me the dice right now. Really we
25 don't have any dice. They didn't have any dice.

1 He says you want to play it that way. Line up. You're
2 all getting searched. Owens, you're first.

3 So, he puts Owens up against the wall and Owens' been
4 searched before in the detention center. So he thinks it's
5 gonna be a search and the searching's gonna be over. Like
6 TSA. You know, start up, stop, okay.

7 That's not what happens. Gibson, who you're gonna see
8 in a little bit, takes his finger and rams it in Owens
9 bellybutton, for what reason I don't know, and then he goes
10 down and he describes his hand as a blade with a chopping
11 motion and chops Owens in the testicles. Then he turns his
12 hand over and squeezes, as hard as he can, both testicles
13 and he does this with such force that it causes a traumatic
14 testicular injury called a hydrocele where the fluid comes
15 in (indiscernible) exactly (indiscernible).

16 Of course, Mr. Owens says that's not right. He says
17 you hurt me. He becomes nauseous. He gets done with Mr.
18 Owens. Mr. Owens has to sit down for the nausea. He goes
19 to the other men. He does this repeatedly. He injures four
20 men. One to the point of surgery.

21 After that, Mr. Owens talked to one of the injured men
22 who happened to be his roommate, Mr. Wilhite. That's the
23 person who ended up having surgery.

24 They said what are we gonna do, how are we gonna fix
25 this---

1 MR. DAVIDSON: Your Honor, with all due respect about
2 Mr. Wilhite, I want to note an objection and we can take it
3 up afterwards if you'd like. But I want to protect my
4 record and the issue that regards that.

5 THE COURT: We'll take it up out -- we'll take it
6 outside the presence of the jury.

7 Continue.

8 MR. HAWKINS: Thank you, judge.

9 Mr. Wilhite and Mr. Owens say we got to figure out what
10 to do, you know, cause this -- grabbed my sex organs. This
11 is more than just an injury. They're upset about it.
12 Wilhite tells him the only way we can probably get
13 investigated is to go to medical. So they file grievances
14 and they report what happened.

15 They also filed reports under the Prison Rape
16 Elimination Act, PREA. PREA requires an investigation in
17 circumstances like this. PREA requires that if someone
18 reports a sexual abuse event, there should be an
19 investigation. You should gather all evidence like video
20 evidence. You should take witness statements. You should
21 gather all recorded statements. You should assess
22 credibility but that's not what happens.

23 During the search, Gibson obviously doesn't think PREA
24 is a big deal or there were either consequences and he says
25 to them y'all can just give up the dice. This will be over

1 for (indiscernible).

2 The men are searched, all of them. Every man in the
3 rec yard's searched. The area's searched I think three
4 times. No dice are ever recovered to this day.

5 Gibson still doesn't take it seriously, and because
6 they have to open an investigation, and they send what's
7 called a PREA officer. And this is just an officer that
8 they've picked to, to act as a PREA officer to open the
9 investigation.

10 But he doesn't record any statements. He doesn't
11 interview one eye witness to the event. He doesn't preserve
12 the video. Allows it to be written over. Doesn't show it
13 to his supervisor. He opens and closes the entire
14 investigation in less than one hour.

15 So they come back and they talk to Mr. Owens and they
16 say look, that report you made, it's unfounded. There's
17 nothing to it. He says what are you talking about. He says
18 that's it. So, the, the -- that was Lieutenant Bowman he
19 went to see.

20 At this point Otis is frustrated, beyond frustrated.
21 The other men are frustrated.

22 So, he has his mother, who's sitting in the courtroom,
23 reach out to me and we file a lawsuit. When Gibson gets
24 wind that he's filed a lawsuit, he really takes his
25 retaliation to the next level and he begins to, in addition

1 to the humiliation of the event, he begins to tease Otis
2 about it. He begins to remind him about it. He begins to
3 make comments like that lawsuit -- I think he said that
4 little lawsuit you got ain't gon' work or something to that
5 effect.

6 So, I want to make sure that I didn't miss anything.
7 But that's where we are today. That's the story of kind of
8 what, what has happened.

9 So now I'm gonna tell you who we sued and why we've
10 sued them. There is several rule violations and policy
11 violations and acts of gross negligence in this case.
12 You're gonna find a bunch of them when I give you the
13 evidence and then we'll call witnesses to testify. I
14 encourage you to see how many you can find and talk to each
15 other about that once you start your deliberation. I'm
16 gonna talk to you about a couple of the ones I've been
17 (indiscernible).

18 The first rule we sued for violation of the policy
19 regarding searches. It requires an open palm up on a
20 testes. Not a grab, not a pull, not a yank. Nothing that
21 can cause a traumatic testicular injury.

22 This is the injury we're talking about. It's a
23 hydrocele injury. The testes, the little testicle here,
24 trauma to the testicle causes fluid to come in and surround
25 the area. It causes swelling and, and a, a significant

1 amount of pain. This lasted for a few weeks I think. we'll
2 get into that in the evidence.

3 But the policy is very clear. It's very clear what you
4 can do. You can't chop. You can't squeeze. You can't
5 inflict trauma for obvious reasons.

6 we all talked about, as I mentioned earlier, TSA,
7 getting searched at the airport. That's the way a frisk
8 should be. I've never seen anybody that had a testicular
9 injury, traumatic injury, in there. It's inconvenient but
10 I've never seen that happen.

11 If the search is done pursuant to the policy, in fact,
12 it's impossible to cause this injury. You'll hear that from
13 the evidence.

14 The second rule, the second policy that we have brought
15 suit for is the policy that requires deputies to establish a
16 reasonable suspicion before they conduct a search. The
17 police department or the Sheriff's Office or anybody who can
18 search anybody has to first establish a reasonable suspicion
19 exists before they can conduct a search. This is true at a
20 sporting event. This is true if you get searched going into
21 a football game. A reasonable suspicion is that you have a
22 backpack or something like that.

23 It's true if you get pulled over. The deputy can't
24 just search you because he wants to give you a hard time.
25 He's got to have a reasonable suspicion to search you. This

1 is true anytime a deputy does a search. They have to
2 establish a reasonable suspicion.

3 Now, the search itself was obviously horrible. But
4 there was no reason to do the search in the first place.
5 The men didn't have any dice.

6 So, the odds that they exhibited any kind of action
7 that would lead anybody to think they had a dice is the
8 problem. Beyond that, that -- the, the video of the men
9 playing cards was destroyed by the Sheriff's Office.
10 They'll tell you it was allowed to be deleted or it rewrites
11 itself every 60 to 90 days. In any event, they're gonna
12 have to show evidence. My client made a report within 24
13 hours.

14 There's no excuse for any of this evidence to be gone,
15 any of this video evidence to be gone in -- including the
16 video of what would have indicated to Gibson reasonable
17 suspicion cause remember Gibson's up on the stairs above the
18 men just like the cameras were up there. They have similar
19 views. If there's a reasonable suspicion, they could of
20 preserved that evidence. We don't have that.

21 Those are some of their internal policies. The final
22 part of the internal policy, policy, and this is their own
23 policies that were -- there's a part of the policy, and it's
24 not on the exhibit that I showed you, but -- or the, the
25 demonstrative that I showed you. But you'll see it in the

1 trial. We're gonna put it up so you can see it. It says a
2 search must be conducted with as much dignity as possible.

3 That obviously the exact opposite of intentionally or
4 recklessly inflicting an injury on someone just because you
5 can. So, we've brought suit for violation of that policy.

6 The Prison Rape Elimination Act has several policies
7 buried within it. We're gonna talk to you about those and
8 some of the policies contained in that federal law say, if
9 there is a report of sexual assault or sexual abuse, one,
10 you got to keep the abuser, alleged abuser, away from the
11 potential victim. We're gonna show you that the Sheriff's
12 Office violated that rule.

13 We're gonna show you that the rule in PREA that
14 requires a real investigation was breached and violated by
15 the government. We're gonna show you that the government
16 didn't preserve any evidence. Like I said before, conducted
17 no interviews. Conducted no recorded interviews. Didn't do
18 anything. Open and closed the investigation inside of one
19 hour.

20 Now's the part of opening where I like to thank jurors
21 and this, this part I need to take a minute or two on
22 because I don't want you to think that I'm checking off a
23 box or I'm saying something that attorneys always say. I
24 genuinely mean thank you to everybody sitting here in this
25 group (indiscernible.)

1 Nobody has ever taken his complaint seriously.
2 Nobody's ever taken this allegation seriously because he has
3 addiction issues. He has convictions for possession or
4 distribution of methamphetamine. He broke the rules and
5 he's paying the price. But the government has to follow the
6 rules too and he's still a person.

7 They don't get to just torture him or do these kinds of
8 things to people because they're in jail. They're still
9 people and, in America, how we treat people in jail is one
10 of the things that separates us from our enemies. Everybody
11 has basic rights. Everybody has basic needs.

12 The reason you being here means so much to me is
13 because he finally gets to tell somebody what happened. He
14 finally gets to tell somebody about this violation who can
15 do something about it cause the government won't do anything
16 about it.

17 Without the jury, the Second Amendment to the
18 Constitution of the United States doesn't mean anything.
19 Without the jury, the government or big corporation or
20 anybody with more power than the people in the community can
21 do whatever they want to anybody, steamroll right through,
22 and keep going without consequences. The jury is what
23 equalizes the playing field.

24 The people in Aiken County, the people in this box are
25 who decide what the government is allowed to do here, how

1 dangerous the government is allowed to be here, and when the
2 government has to take responsibility for its actions.

3 I'm gonna talk to you a little bit about what the
4 burden of proof is. The burden of proof in this case is
5 more likely than not.

6 So, if you imagine two scales and you have the
7 government on one side and you have the community member on
8 the other side and we all show you evidence of
9 (indiscernible) -- we're gonna show you evidence and then,
10 at the end of trial, we tip the scales ever so slightly in
11 any amount in our favor, then you're able to hold the
12 government responsible for what it's done for a
13 (indiscernible) violation.

14 Another way to think about it is a game of tug of war
15 on the 50-yard line of a football field. And the reason I
16 say on the 50-yard line is because, if you imagine there's
17 a, there's a piece of tape right here, if we move that rope
18 any amount to where -- our side, you have the power to hold
19 the government responsible for what it did. If we move it a
20 millimeter or an inch or a mile or any amount, you're able
21 to hold the government responsible.

22 This is not like a criminal case where the burden of
23 proof is much higher. Nobody's going to jail at the end of
24 this case. In a criminal case, it's beyond all reasonable
25 doubt. A wrongdoer in a criminal case can create an out by

1 creating a doubt.

2 In a civil case, that doubt does not create an out.
3 Remember that as y'all go into deliberations. A doubt does
4 not create an out. You can have doubt in this case. You
5 can have 49.9999 percent doubt as long as we've shown you
6 that it's more likely than not the government caused an
7 injury.

8 When we go through the evidence, you're going to hear
9 people object. Some lawyers, it seems like, object every
10 five minutes. Some lawyers, and I try to be one of these
11 lawyers, hold objections for when they're necessary to
12 preserve the record, and I'm gonna try to do that in this
13 case and let just evidence flow and be as unheated as I can.

14 When you hear the evidence, it's gonna come out
15 different ways. We're advocating for our client. We're
16 advocating for justice and we're gonna try to show you every
17 good, bad, and ugly thing that happened.

18 When the government talks to you -- and will Davidson
19 is good. He's the government's lawyer in a lot of cases.
20 Everything he tells you will sound good. But when we're
21 showing you evidence, and when he's cross-examining
22 witnesses, and we're giving you our theories of liability or
23 defenses, I want you to keep in mind this question.

24 What makes more sense?

25 One of the theories I've heard is that there's some

1 preexisting condition or something else caused this
2 testicular injury than this search. But I want you to ask
3 yourself what makes more sense.

4 Four men had previous conditions that all had an onset
5 while they got searched by Gibson or did Gibson just hurt
6 them?

7 You're gonna see Mr. Gibson or, excuse me, Mr. Owens,
8 you're gonna see Mr. Owens talk about a sonogram that shows
9 the testicular injury. You're gonna see a grievance. The
10 sick call says I feel, right here, I feel that Gibson
11 violated me as a man. You're gonna hear that there was a
12 PREA report made. A sexual assault report was made.

13 You're gonna hear that Mr. Wilhite had surgery. You're
14 gonna hear that Mr. Ard, another witness, the same thing
15 happened to him. We're gonna play those -- we're gonna play
16 that testimony on a screen.

17 So, I want you to ask yourself what makes more sense
18 that these injuries, just by some big coincidence, all
19 happened to different men at the same time which was
20 recorded on a video, was deleted by the way, or did the
21 government (indiscernible).

22 You're gonna hear that the government, despite having
23 one person watch the video, never brought a tech person in
24 to try to recover deleted files. You're gonna hear that
25 PREA requires certain kinds of video monitoring systems be

1 in place and I don't think you're gonna have an answer for
2 why it wasn't. But they'll have a chance to respond to that
3 and answer questions when we get into the evidence.

4 I want you to keep in mind that this is not something
5 that he complained about hurting or pain. It's something he
6 had to see a medical professional for. This is something
7 there was medical injury over.

8 I want you to keep in mind that Gibson was never
9 reprimanded. He was never given counseling. Gibson will
10 tell you, and he said in his deposition, so he's got to say
11 it here unless he changed his story, nobody even asked him
12 did you grab these mens' testicles. I think that would be
13 question number one in my investigation. A man said you
14 grabbed his testicles. Did you do it. He says I didn't
15 even get asked that question.

16 The defense is gonna ask you to believe everything
17 except what the evidence shows and there's undisputed
18 evidence in this case.

19 One way I've seen the defense lean is, you know,
20 they're not gonna come out and say it out loud but these
21 guys are cops. These are good guys. They got hard jobs.

22 My brother's a cop. Brother's a detective. Both cops.
23 They do have hard jobs. That's why the Sheriff's Office
24 should make sure that only people fit to do the job have the
25 job.

1 Not somebody that wants any job because they've been
2 unemployed for a year. Not somebody who gets mad because
3 they're wrong about some dice. Somebody who can handle
4 themself professionally with inmates and with other people
5 that they work with and somebody who recognizes that
6 everybody, including people in Aiken County, even what the
7 Bible calls are the least among us in the jail, have basic
8 human rights.

9 The last thing I'll tell you to watch out for is the
10 implication that this is small or it's insignificant. I, I
11 think Gibson's, and you'll hear testimony, at one point
12 Gibson says to one of the other inmates, if Owens is such a
13 big, tough guy, I don't know why he's worried about a little
14 nut check like it's not a big deal that he violated his
15 constitutional rights, like it's not a big deal that he
16 treated him -- not like an animal. I wouldn't treat a dog
17 like that.

18 That's torture. It's sexual abuse. It's sexual
19 torture.

20 Is small sexual torture ever okay?

21 That's the question y'all need to ask yourself when you
22 hear the evidence.

23 will's gonna come up here and tell you that the facts
24 are nothing like I presented them to you. But we're gonna
25 show you the evidence and it's undisputed.

1 Mr. Owens has lived with this for over five years now.
2 No one's ever taken it seriously. He tried to handle it
3 internally without file -- filing a lawsuit. They didn't do
4 anything. He filed a lawsuit out of desperation because
5 they ignored him because he was lucky enough to have
6 somebody on the outside that would help find a lawyer. If
7 this would of happened to somebody that didn't have anybody
8 on the outside, they couldn't do anything. It's been five
9 years.

10 The government is, is in front of the citizens of Aiken
11 County now and it can't hide behind motions. It can't hide
12 behind papers or procedure anymore.

13 So, I'll, before I sit down, challenge will, will you
14 come up here and finally apologize to the people of Aiken
15 and Mr. Owens---

16 MR. DAVIDSON: Your Honor---

17 MR. HAWKINS: ---for misconduct---

18 MR. DAVIDSON: ---that is not proper---

19 MR. HAWKINS: ---of the Sheriff's Office?

20 MR. DAVIDSON: ---argument in front of the jury.

21 MR. HAWKINS: It's actually proper---

22 MR. DAVIDSON: I need to take a matter up with the
23 Court---

24 MR. HAWKINS: And there's no case law excluding that---

25 THE COURT: All right. Sustained.

1 MR. HAWKINS: ---and no rule, no rule of evidence.

2 THE COURT: All right. Sustained.

3 If you'll proceed on.

4 Are you done?

5 MR. HAWKINS: I'm, I'm done, Your Honor.

6 THE COURT: I apologize.

7 All right. That will conclude plaintiff's opening.

8 MR. DAVIDSON: Would you explain to the jury what you
9 mean by sustained, Your Honor?

10 MR. HAWKINS: Your Honor, I would object to that. I
11 think this is not a good faith objection and I think it's
12 just to impede the evidence, the evidence and commentary to
13 the jury.

14 THE COURT: All right. Mr. Davidson, if you will come
15 and present your opening argument?

16 MR. DAVIDSON: Thank you, Your Honor.

17 Ladies and gentlemen, what the word sustained means is
18 it means you agree and said that his argument was not
19 appropriate.

20 Now, on January 25th of 2017, Matt Gibson is the --
21 was what the correctional facility called a floater. That
22 means he would of gone from unit to unit depending on any of
23 the staff for those unit needed to take a break, go to
24 lunch, step out for a moment.

25 So he floated and he was called to a dorm that was

1 called -- they call it pods. He was called to Delta pod to
2 relieve one of the officers who was leaving. Delta pod is
3 what they call the open dorm.

4 The evidence will show the open door means is the
5 inmates are not locked in their cell. It will also show
6 that, during this time, Mr. Wilhite and Mr. Owens per chance
7 were roommates. It will also appear that in that pod were
8 approximately 80 inmates.

9 On that day, and it was rec, right outside that pod,
10 through a glass wall, is an enclosed area with a concrete
11 floor.

12 why?

13 It allows the inmate to leave the pod and go to a rec
14 area. There were approximately 20 inmates in the rec area.

15 One thing the evidence will show is Matt Gibson was the
16 only correctional officer in that pod with approximately 80
17 inmates. The evidence will also show all he had on him was
18 what they call OC spray.

19 Now, Mr. Gibson, who is now a corporal, that day saw
20 what he believed to be inmates playing dice in the rec yard.
21 That's gambling and the dice would be contraband cause what
22 you don't want in a facility is contraband being -- because
23 somebody loses money, somebody loses something, they get
24 mad. They start a fight. They do whatever.

25 So he, the evidence will show, contacted his

1 lieutenant. His lieutenant said wait till the other officer
2 comes back and then search the individuals on the rec yard
3 and that's what he did.

4 He waited for Officer Erikson to come back. He then
5 began, out in the rec yard, to search the inmates who --
6 what is commonly referred to as a frisk search and he will
7 talk about a frisk search and how it's done as will Mr.
8 Owens.

9 Mr. Gibson denies that he ever grabbed Mr. Owens'
10 testicles. He did examine that area because you will hear
11 testimony that inmates are pretty innovative. They can hide
12 things in multiple places.

13 You will hear evidence, ladies and gentlemen, I submit
14 that they can actually take a string, tie them around their
15 private parts, and hide things in those areas. So you have
16 to check them cause you don't want to leave contraband into
17 the institution.

18 Now, there was a question about reasonable suspicion.
19 The reasonable suspicion he was talking about is what law
20 enforcement officers on the street have to, have to do a
21 search. In a jail, when an individual comes in as an inmate
22 or what they call a pretrial detainee, they lose certain
23 rights.

24 One of those rights is they lose the ability not to be
25 searched when they need to be searched. There doesn't have

1 to be a level of reasonable suspicion. If an inmate or a
2 detainee goes out to work in the yard or goes to the
3 courthouse, they have the right to check him, do a frisk
4 search when he returns to the institution.

5 If he comes out of the kitchen where he's working, they
6 have a right to do a frisk search as he leaves the kitchen.
7 If he's out in court and for some reason he's there for a
8 period of time and the correctional officers feel that they
9 need to search him, they can search him.

10 why?

11 Because the correctional officers are concerned about
12 the safety and security of the institution. An inmate
13 walking out of the kitchen could have a fork, could have a
14 knife, could have a spoon that will be sharpened to use it
15 as a shank to cut another like another inmate or to cut a
16 correctional officer.

17 The same thing is true if they're out in the yard
18 working and they come in and they get a stick. They can
19 sharpen a stick and make it a weapon. That's why there's
20 institutional safety. They can search whatever they feel is
21 necessary. They don't need reasonable suspicion and you
22 will hear testimony to that effect.

23 Mr. Gibson searched approximately 20 or so inmates.
24 You've heard testimony about Wilhite, the roommate of Mr.
25 Owens, and Mr. Owens complained.

1 Now, you've also heard something about hydrocele, fluid
2 in the scrotum.

3 Well, I submit, ladies and gentlemen, a hydrocele can
4 be caused by multiple things. The plaintiff has the burden
5 of proving to establish what most probably caused the
6 hydrocele.

7 But an interesting thing in this case is that when Mr.
8 Owens, and I submit, ladies and gentlemen, the evidence will
9 show Mr. Owens testified he had pain in his groin area for a
10 week to 10 days. And then, after that, it was gone and
11 nothing else was wrong with him. Nothing else was wrong.

12 Well, if you consider January the 25th, and you say a
13 week, then you're getting into the first of February. If
14 you say 10 days, you're still the first of February. The
15 sonogram he talks about that was done wasn't ordered until
16 February the 24th, almost a month after being
17 (indiscernible), a month. And, at the same time, the end of
18 February, the medical staff, which is not part of the
19 detention center, prescribed for him, I believe it was the
20 end of February, Ibuprofen and an antibiotic.

21 So, I submit, ladies and gentlemen, what do you use
22 antibiotics for?

23 An infection.

24 A month after they did the test and they prescribed the
25 antibiotic for Mr. Owens. He's had no further problems or

1 medical visits. When he went to the Department of
2 Corrections for what Mr. Hawkins said is distribution of
3 methamphetamine, he had no complaints (indiscernible).

4 So, in this case, ladies and gentlemen, Corporal
5 Gibson, Matt, denies he ever squeezed or did anything
6 inappropriate. He will illustrate how he did the pat down.
7 He goes up the leg, used the back of the hand, he does cause
8 that's the way he was trained. Goes and checks the groin
9 area. If you feel something, it's something hidden under
10 the scrotum, it will drop out. If it's something tied up in
11 there, you will feel it and then complete the rest of the
12 pat down. Mr. Owens said it lasted for a second.

13 That's what this case is about. They have to prove
14 gross negligence. That means that Officer Gibson didn't
15 exercise slight care in performing his duties at the
16 detention center on that day.

17 I submit, ladies and gentlemen, if I'm in a cell area
18 with 80 individual inmates, and one of the correctional
19 officers, I'm not gonna do something that's gonna cause any
20 problems because you're outnumbered. All you've got is a
21 can of spray and hopefully (indiscernible) would cause
22 anybody (indiscernible) do something (indiscernible).

23 At the end of the case you'll be asked to render a
24 verdict. I'm gonna ask that you listen to all the evidence.
25 I would ask that, at end of the time, you return a verdict

1 in favor of Sheriff Hunt cause that's who he is.

2 The county had nothing to do with the case. Sheriff
3 Hunt would (indiscernible). He is separate and distinct
4 from the county. The Sheriff's Department is basically the
5 sheriff. The detention center is under the sheriff. So,
6 did -- Sheriff Hunt, that's who the defendant is in this
7 case.

8 But, like I said, Mr. Owens said a week to 10 days, the
9 pain would stop. Never had blood in his urine. Had a
10 steady flow and it wasn't until the end of February that he
11 goes and he gets the sonogram, put him on antibiotics.
12 That's what the evidence will show. Like I said,
13 antibiotics treat infection.

14 Thank you for your time.

15 Oh, by the way, (indiscernible) I had hip replacement
16 about two days ago.

17 THE COURT: Thank you. Thank you, Mr. Davidson. Thank
18 you---

19 MR. DAVIDSON: Thank you.

20 THE COURT: ---Mr. Hawkins.

21 All right. Ladies and gentlemen of the jury, at this
22 time I'm going to excuse you for the night.

23 Let me remind you that you are not to discuss this case
24 with anyone. Not even amongst yourselves. Do not attempt
25 to do any research on any of the topics that have been

1 raised, any of the parties to the case, or any other members
2 of the courtroom here today. We will give you all of the
3 information that you will need.

4 I ask that you be back at the courthouse at 9:30 and,
5 at that time, we will begin hearing testimony.

6 Do you-all have any questions for me?

7 (WHEREUPON, there was no response.)

8 THE COURT: Very good. We will see you tomorrow
9 morning.

10 (WHEREUPON, the following takes place outside the
11 presence of the jury.)

12 THE COURT: All right. Gentlemen, during the opening
13 there were several objections. I have one objection noted
14 at 3:49---

15 MR. DAVIDSON: There was --.

16 THE COURT: ---regarding --?

17 MR. DAVIDSON: Excessive force, Your Honor, from back
18 as far as 2010 to 2015.

19 Quite honestly, that's really not relevant what
20 happened that far back and I, quite honestly, there's no
21 evidence that there was any issue and there may of been in
22 the Sheriff's Department. But it doesn't necessarily mean
23 the Sheriff's Department deputies who are road deputies
24 would have any issue in regard to the detention center.
25 That was one.

1 THE COURT: Yes.

2 And I believe I sustained that one on the record but
3 the -- that was not a spoken objection. So that is in the
4 re -- that objection is noted for the record.

5 MR. DAVIDSON: All right. The other one was that he
6 raised the issue of Mr. Wilhite and surgery.

7 Now, Your Honor, what may or may not happen to
8 Mr. Wilhite really wouldn't be relevant to what happened to
9 Mr. Owens.

10 Now, you can have Mr. Owens being treated appropriately
11 and then Mr. Wilhite not being treated appropriate and
12 needed surgery. The fact that Mr. Wilhite had surgery does
13 not establish any relevant evidence as to what happened to
14 Mr. Owens in this case nor the fact that Mr. Wilhite had
15 surgery establishes any evidence that would be relevant to
16 Mr. Owens cause we know in this case there was never any
17 surgery for Mr. Owens. So, that was the next one we raised.

18 And, then finally, Your Honor, during closing argument,
19 plaintiff's counsel raised the issue about "a nut check" and
20 the violation of my client -- of his client's constitutional
21 rights. I believe he is opened the door to the federal
22 lawsuit being brought up in this case because that's where
23 those rights have been finally vindicated.

24 So those are my grounds, Your Honor. I appreciate your
25 listening to me.

1 THE COURT: Thank you, Mr. Davidson.

2 Mr. Hawkins, do you have any response first to the --
3 I've already ruled on the first objection. But the second
4 objection regarding the surgery of Mr. Wilhite.

5 MR. HAWKINS: Yes, Your Honor.

6 That's a pretty common question that comes up. It's
7 part of common scheme. It's part of the same event. So
8 it's absolutely relevant.

9 Mr. Gibson did this to all these men at the same time.
10 We're not saying he acted in conformity with something else
11 or, you know, that he did something that was unrelated. He
12 did this. He lined these men up and he treated all them the
13 same way and Mr. Wilhite is going to, is going to testify by
14 video.

15 Mr. Davidson had a chance to cross-examine him about
16 that. He said yeah, he hurt me. He done me the same way
17 and I had to have surgery. The jury can weigh his
18 credibility. He's entitled to offer that in as part of
19 common scheme.

20 THE COURT: All right. And in regards to the third
21 objection?

22 MR. HAWKINS: I think he was talking about the
23 constitutional right reference and I don't know why---

24 THE COURT: He thinks you're opening the door to---

25 MR. HAWKINS: Yeah, I don't know how that would---

1 THE COURT: --- (indiscernible).

2 MR. HAWKINS: --- open a door. We're not in evidence,
3 one. But, two, I'm entitled to say he violated his
4 constitutional rights. We haven't brought a claim for that
5 in this case. We can't bring a claim for that in this case.
6 So, there's nor -- there's no, no door opening or anything
7 like that.

8 THE COURT: All right.

9 MR. HAWKINS: And I -- was there one more thing that I
10 needed to respond to?

11 I can't remember if there was another objection.

12 THE COURT: All right. I believe Mr. Hawkins that
13 Mr. Davidson objected to the request for an apology---

14 MR. HAWKINS: Yes.

15 THE COURT: --- to the citizens of Aiken County.

16 MR. DAVIDSON: You sustained that, Your Honor --

17 THE COURT: Right.

18 MR. DAVIDSON: -- is my understanding.

19 THE COURT: All right. Yes.

20 All right. So what I've already -- do you wish to
21 place any argument on the record?

22 I've already sustained that.

23 MR. HAWKINS: Yeah. Right. I mean I -- yeah, I, I
24 think you can do it but, but you sustained it. So I -- it's
25 sustaining as far as I---

1 THE COURT: Yes, and there's---

2 MR. HAWKINS: There's no argument I can make now.

3 THE COURT: Well, there's a unique, unique situation
4 because I didn't take -- I would not take the arguments
5 during the --

6 MR. HAWKINS: Right.

7 THE COURT: -- in opening.

8 All right. All right. With regards to Mr. Wilhite.

9 MR. HAWKINS: Your Honor?

10 MR. DAVIDSON: Your Honor?

11 THE COURT: Yes.

12 MR. DAVIDSON: I see no way that it -- 406 doesn't
13 apply in that instance. Habit or routine practice, you
14 know. A habit's one thing. This is, this is an isolated
15 incident and routine practice of an organization.

16 well, this is Mr. Gibson doing this. Whether
17 corroborated or not regarding of present (indiscernible) is,
18 is relevant to prove the conduct of the person, organization
19 on a particular occasion was in conformity with the habits
20 or routine practice.

21 There's absolutely no evidence that this was a habit or
22 routine practice. Routine practice, Your Honor, would be
23 like for an organization. I'll use a doctor's office. You
24 go to a doctor's office and the first thing they want you to
25 do is fill out a form giving your past medical history and

1 they do it in every case. That is, in essence, Your Honor,
2 routine practice of the medical officer.

3 THE COURT: Any response, Mr. Hawkins?

4 MR. HAWKINS: Your Honor, I'm not even sure how to
5 respond to that. That's beyond the pale. I mean it --
6 nobody's brought a claim for a routine practice.

7 We're saying this is how this rogue officer acted with
8 these people at this time and this is one of the people that
9 got hurt. He -- Mr. Wilhite offered testimony about it --

10 THE COURT: Okay.

11 MR. HAWKINS: -- and he cross-examined him.

12 THE COURT: Well, let me ask you this, Mr. Davidson.

13 Should -- are you asking for some sort of corrective or
14 that -- for that sentence to be stripped --

15 MR. DAVIDSON: Well, it---

16 THE COURT: -- stricken---

17 MR. DAVIDSON: Your Honor, that's why---

18 THE COURT: ---out from the record?

19 MR. DAVIDSON: That's why I objected at the time and I
20 understand the Court -- I'm not real sure if you overruled
21 it or, or sustained my objection. But I went ahead and
22 raised it because I understood that the Court was not
23 inclined --

24 THE COURT: To take argument at that --.

25 MR. DAVIDSON: ---to take argument at that time.

1 Now, my point is the fact that you have something
2 happened to someone that is not the individual who is
3 brought the suit is not relevant to establish any evidence
4 in regard to the individual plaintiff. In other words, the
5 fact that Mr. Wilhite may have had an injury does not
6 establish, one way or the other, whether or not Mr. Owens
7 had an injury. Mr. Owens' case stands on its own.

8 THE COURT: All right. So, at the time of the
9 objection I did not make a ruling on the record. But I will
10 make that ruling now and I am going to sustain that
11 objection. I do not believe that there needs to be
12 corrective --

13 MR. DAVIDSON: I agree. That's fine, Your Honor.

14 THE COURT: -- type of, of instruction to the jury.
15 But for the record that we, we build it correctly, I am
16 sustaining that objection.

17 MR. HAWKINS: Your Honor?

18 THE COURT: We're making a note that I did not make a
19 corrective instruction to the jury.

20 MR. HAWKINS: Can I put one thing on the record?

21 THE COURT: Certainly, Mr. Hawkins.

22 MR. HAWKINS: Your Honor, this is to show that this --
23 we had to -- we have the burden of proving gross negligence
24 and this is to show that this person was grossly negligent
25 at this time with these people. What he's talking about is

1 not in any way, shape, form, or fashion related to what
2 we're doing.

3 we're talking about whether or not this person was
4 reckless and grossly negligent. It's a common scheme. It
5 gets in for that.

6 He, he -- there's no, there's no legal basis to keep
7 this out, none at all, because this is part of all one
8 event. It's not a practice by an organization.

9 MR. DAVIDSON: I think -- I'm, I'm not sure his
10 objection goes as far as -- I mean he's not made a motion to
11 keep wilhite's testimony out.

12 MR. HAWKINS: Okay.

13 THE COURT: Has he?

14 MR. DAVIDSON: Not yet, Your Honor. It may be coming.

15 MR. HAWKINS: Well, Your Honor, we need, we need to
16 deal with this because it -- that's crazy for somebody to
17 be -- and it's obviously within your raw discretion. And so
18 you can make a ruling about what's fair. But it's crazy for
19 somebody to hurt all these people and the jury not be able
20 to hear about what happened all in one event. That's just
21 insane.

22 THE COURT: All right. Well, let's do this.

23 Let me, let me address what has been objected to
24 presently.

25 MR. HAWKINS: Yes, sir.

1 THE COURT: With regards to the 19 -- the 1983 basis
2 objection or, or his objection to, to (indiscernible) or
3 that statement is along the lines of did this violate his
4 constitutional rights, I am going to overrule -- going to
5 overrule that objection. I don't believe --.

6 MR. DAVIDSON: It really makes a---

7 THE COURT: I do not---

8 MR. DAVIDSON: But it wasn't an objection.

9 THE COURT: It wasn't an objection.

10 MR. DAVIDSON: It was basically that I thought that by
11 raising that before the jury that he had essentially opened
12 the door and, and my understanding, for one, he's got to be
13 careful, a lawyer making a statement in open court can, in
14 fact, essentially open the door to testimony in an area that
15 the Court has found that's not admissible.

16 So, you could say X is not admissible and then they
17 raise it at some point in the trial and it then opens the
18 door for me to explore that, Your Honor.

19 MR. HAWKINS: That's---

20 THE COURT: All right.

21 MR. HAWKINS: And that's not opening the door, Your
22 Honor, because I --.

23 THE COURT: Well, I'm gonna -- I'm, I'm ruling that it
24 didn't. And so while it -- I mean -- there was an objection
25 to the phrase. And so I am overruling that objection or

1 I'm -- let me say this.

2 I'm going to sustain that objection. I do not think it
3 was proper to request that at -- in that moment in the
4 opening. However, I do not believe that that opens the door
5 in a -- for any mention to overturn my prior ruling with
6 that regard.

7 So in the morning I do need to come in and make a
8 decision or give you my decision regarding the, the
9 outstanding motion in limine.

10 MR. HAWKINS: Which, which one was that, judge?

11 THE COURT: The PREA reports.

12 MR. HAWKINS: Oh, yeah. Right. Okay. Sorry.

13 THE COURT: Okay. And then we will take any matters
14 that may have come up overnight and handle it outside the
15 presence of the jury. But we'll bring the jury in and we'll
16 go right into witness testimony.

17 MR. HAWKINS: Yes, Your Honor.

18 THE COURT: All right. All right. You-all have a good
19 evening. I hope---

20 MR. DAVIDSON: I have a copy of that report, Your Honor
21 --

22 THE COURT: All right.

23 MR. DAVIDSON: -- and I'll be more than glad to provide
24 for the Court's review during the night.

25 THE COURT: Yes.

1 If you have a copy of that, that, that may be helpful
2 in my---

3 MR. HAWKINS: We've got a copy of it somewhere.

4 THE COURT: ---decision.

5 MR. HAWKINS: Your Honor, we got it.

6 THE COURT: Thank you. Thank you.

7 All right. So the Court is adjourned for the evening
8 and we will see you gentlemen tomorrow morning at 9:30AM.

9 MR. DAVIDSON: Thank you.

10 THE COURT: Thank you. Have a safe evening.

11 MR. DAVIDSON: Appreciate it.

12

13 (WHEREUPON, Court was in recess for the evening.)

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Tuesday, November 1st, 2022

THE COURT: Please be seated.

Good morning, gentlemen.

MR. HAWKINS: Good morning, Your Honor.

MR. DAVIDSON: Good morning.

THE COURT: Thank you for your patience. I was concluding a hearing in the back.

All right. I believe that our first order of business is to rule on the unresolved matter. I did hear argument on that yesterday and I have made my decision with regards to that ruling or that motion. Excuse me.

I do believe that the officer's -- Lieutenant Bowman's statement with regards to the video is hearsay. And so I will not be permitting that portion of the deposition to be read into the record. I am permitting, as it stands now, I'm not excluding the deposition. There's been no motion to do that. I'm not doing that.

I am only asking that part or, or ruling that, if the deposition is read, that the portions of testimony regarding this video be redacted and not read to the jury.

Does that resolve that issue, Mr. Hawkins, Mr. Davidson?

MR. DAVIDSON: Make sure I understand.

THE COURT: Yes.

1 MR. DAVIDSON: We need to redact out any reference to
2 the video that might be in the deposition?

3 MR. HAWKINS: No, she's excluding the statement in
4 total.

5 MR. DAVIDSON: Is that right, Your Honor?

6 THE COURT: I'm not completely aware of what the
7 contents of the deposition are. I'm not excluding the --
8 yes, that's correct, Mr., Mr. Davidson.

9 MR. DAVIDSON: Okay.

10 THE COURT: I believe this video is hearsay and should
11 not be referenced.

12 MR. DAVIDSON: All right. I'll, I'll delete any, any
13 reference to the video of what he might or might not have
14 seen on the video.

15 THE COURT: That's correct.

16 MR. DAVIDSON: Thank you, ma'am.

17 THE COURT: Thank you.

18 MR. HAWKINS: Your Honor?

19 Your Honor, I understood the ruling to be that this
20 document is excluded. But, but Mr. Davidson indicated that
21 we're just redacting out the video part.

22 So I just want clarification on is this excluded or is
23 just the part about the video excluded cause this, this
24 document --?

25 THE COURT: This is excluded. This---

1 MR. HAWKINS: Right.

2 THE COURT: This, to me---

3 MR. HAWKINS: It is hearsay.

4 THE COURT: Right. This --.

5 MR. HAWKINS: Right. Cause it's an out-of-court

6 statement---

7 THE COURT: Let me tell you what to---

8 MR. HAWKINS: ---for the matter -- for the truth of the

9 matter asserted.

10 THE COURT: This entire document, to me, is hearsay.

11 MR. HAWKINS: And---

12 THE COURT: So let me be clear on that.

13 MR. HAWKINS: Okay.

14 THE COURT: I do not believe that Lieutenant Bowman

15 falls within an exception of hearsay after hearing arguments

16 yesterday and doing my own research. I -- this statement is

17 excluded. This document is excluded. The mention of the

18 video, if, if that deposition is read, will be excluded.

19 what you want to tell me, Mr. Davidson?

20 MR. DAVIDSON: I just want to make sure the -- that I

21 make my record, Your Honor.

22 THE COURT: Yes.

23 MR. DAVIDSON: He had raised---

24 THE COURT: Go ahead.

25 MR. DAVIDSON: ---803(8), records of regularly

1 conducted activities and other records of an -- in the
2 court's, which is Number 8, which are the -- and -- which
3 are the exceptions to the hearsay rule, Your Honor.

4 THE COURT: All right.

5 MR. DAVIDSON: We just want to make sure that's---

6 THE COURT: Absolutely.

7 MR. DAVIDSON: ---on the record, Your Honor.

8 MR. HAWKINS: And, and, and I want to put this so
9 that -- the pertinent parts of the rule.

10 Yes, 803(6) I believe there's no proof of the time of
11 making of the video. There's no data or anything on it. So
12 that would further -- your ruling's as excluded. But for
13 the record, there are also additional reasons to exclude the
14 statement. And so I want to say that in case this goes up
15 on appeal or something.

16 THE COURT: All right. Very good.

17 So, both of those points are noted for the record.

18 MR. HAWKINS: Your Honor, I, I don't know if -- I'm
19 sorry.

20 Did I start talking before you were done?

21 THE COURT: No, you're---

22 MR. HAWKINS: Okay.

23 THE COURT: You're good, Mr. Hawkins.

24 MR. HAWKINS: So, this stuff dovetails into another
25 issue. My cocounsel and I were talking about -- last night

1 we were looking at the rule in this and what happened is
2 there's basically 10 days have to be given for a deposition
3 and will started asking about four or five days before trial
4 can we do this deposition or do we have to get the Court
5 involved. So, I've said -- we went ahead and noticed the
6 deposition, right.

7 If the Court rules that that comes in, and that's the
8 Court's ruling, and, and we're gonna abide by that
9 obviously, but there's no proof of -- that he's tried to get
10 that person here. There's no proof that he's unavailable
11 per the rule.

12 He went on a cruise for a honeymoon. But he hasn't
13 subpoenaed him. He's not unavailable under the rule.

14 So, we would move that the entire deposition be
15 excluded because, per the rule, that deposition itself is
16 hearsay because it's an out-of-court statement and he's not
17 unavailable. Unavailable is by death or a few other
18 exceptions and he's not unavailable per the rule.

19 So, if the Court's ruling is that that's gonna come in,
20 then we'll put that up as part of our case. But I believe
21 that his deposition should be excluded entirely per the rule
22 and that's in Rule 804 Subpart A, Subpart 5 and it reads, in
23 pertinent part, absence from the hearing and opponent's
24 statements, the -- unable to procure the declarant's
25 attendance or in the case of hearsay exception under the

1 subdivision (B)(2), (3), or (4), the declarant's attendance
2 for testimony by process or other reasonable means. There's
3 been no proof of process to try to get this guy here.
4 There's been no showing that they tried to procure him and
5 he's unavailable.

6 So, per the rule, he's not unavailable and we should
7 not read his deposition into the record, Your Honor.

8 THE COURT: Mr. Davidson.

9 MR. DAVIDSON: Give me a moment, Your Honor.

10 THE COURT: Certainly. Take your time, Mr. Davidson.

11 MR. DAVIDSON: Thank you, Your Honor.

12 (Pause.)

13 MR. DAVIDSON: Your Honor, it came --.

14 THE COURT: Mr. Davidson.

15 MR. DAVIDSON: Thank you, Your Honor.

16 It came to our attention last week that Officer Bowman
17 was -- had recently gotten married and that he planned his
18 honeymoon leaving Saturday and would not return for 10 days.
19 I brought that to Mr. Hawkins' attention with the idea that
20 we needed to take his deposition if it were going to be used
21 at trial.

22 Mr. Bowman, in my opinion, is unavailable. You know I
23 could of subpoenaed him. I probably would of gotten killed
24 by his wife but that's the second point.

25 In fact, I talked with Mr. Hawkins about it and he

1 decided he wanted to take his deposition. We had had a
2 conference call set up with the Court if there would of been
3 an issue about taking the deposition. But I thought we had
4 an agreement to take his deposition or allow Mr. Hawkins to
5 take his deposition for the purpose of the trial.

6 He obviously is unavailable, Your Honor. Under Rule
7 32(3), he's obviously a distance more than a hundred miles.
8 He's out-of-state. He's on a cruise in the Caribbean.
9 Actually, at the last of his deposition, I asked him those
10 questions to establish his unavailability, that he was, in
11 fact, on a cruise or be on a cruise starting that Saturday
12 and will not return I think 10 days later.

13 So, that's what we did in this case, Your Honor. So, I
14 think a deposition is proper to be used.

15 MR. HAWKINS: And, Your Honor, the rule says unavail --
16 has to be unavailable. Unavailability has to be established
17 at trial.

18 The rule he quoted doesn't apply. The evidence rule
19 applies. That's the rule and he's -- and, and I, you know,
20 he's trying to make these kind of jokey little remarks about
21 I get killed by his wife to lighten the mood but this is
22 important. He's not -- the rule says he's not unavailable
23 and he -- and let me say for the record, he never mentioned
24 anything about Bowman at trial anytime before less than a
25 week before trial and then he asked me at a, at the

1 deposition that we had to squeeze in because we had a, a
2 date certain.

3 At that deposition I get there and he says oh, well,
4 Bowman's deposition, we need to take this. We're not gonna
5 have to talk to the judge are we. Meanwhile, his office is
6 already emailing the judge and he's trying to sandbag me
7 with this deposition less than a week before trial.

8 So, of course, I say well, if he's gonna call that guy,
9 I got to call him in my case so I control how his testimony
10 comes out. So, I call my office and say let's get a notice
11 ready. He's gonna try to get this guy to testify. But he
12 hasn't established his unavailability. I don't need to put
13 him up. I don't want to call him in my case.

14 And so I move that that deposition be excluded because
15 it's hearsay under the rule and he's not unavailable under
16 the rule. And I don't think he should be rewarded for
17 trying to line this thing up less than 10 days from a
18 notice, put me in a situation where I have to notice him or
19 I run the risk of his deposition coming out the way I can't
20 control, and then saying oh, well, now we're gonna play
21 this. We're gonna read this into the record when it wasn't
22 part of my case until he sandbagged me with less than a week
23 before trial and he's not available under the rule, Your
24 Honor.

25 MR. DAVIDSON: Judge, number one, I didn't sandbag him.

1 I told him immediately when I found out Mr. Bowman was not
2 going to be available. I offered to notice the deposition
3 and take it. He decided he would notice the deposition and
4 take it so that he could use it in his case in chief if he
5 so desired.

6 So I let him do that. That's fine. I then did
7 cross-examination of Mr. Bowman or Lieutenant Bowman at the
8 deposition.

9 So, that's kind of the way the facts went. Yes, we
10 called the Court. We had a conference call set up in case
11 there was an issue that he was going to object to the taking
12 of the deposition of Mr. Bowman cause he was not gonna be
13 available for trial. I was gonna get the Court involved at
14 that point but I thought we'd worked it out. But that's
15 where we are.

16 MR. HAWKINS: And, Your Honor, what the rule says that
17 even if it's an unavailability -- and it can't be by the,
18 the -- that party's own doing. He made him unavailable when
19 he said go ahead and go on vacation and then didn't subpoena
20 him. That was of his own doing, number one.

21 Number Two. I want to, I want to outline this for the
22 Court and on the record. Nothing was ever said about
23 Bowen -- Bowman pretty much throughout this for five years.
24 He was referenced at a couple of depositions. He never
25 mentioned wanting to take his deposition. He never

1 mentioned wanting him to be part of trial.

2 And then we get that document that Bowman has
3 supposedly authored less than a week before trial. At the
4 time Your Honor said to file these submissions, that---

5 THE COURT: Uh-huh.

6 MR. HAWKINS: ---for the first time, on -- was when we
7 got that document that we asked for five years ago. And
8 then, all of a sudden, he produces that document and the
9 next day or so, right around that time -- same timeframe he
10 says oh, and by the way, we're gonna get this guy to testify
11 at trial. So then I'm panicking, scrambling, trying to
12 notice his deposition because he's not produced this
13 document for five years and then told me that he's gonna
14 have the author of it testify too and then trying to publish
15 it into the deposition after he said at another deposition
16 that it was hearsay.

17 So, that's what I'm faced with, Your Honor, and I'm
18 trying to just jumble all this stuff as it's thrown out.

19 THE COURT: well, Mr. Hawkins, that is noted for the
20 record. Let me ask both of you gentlemen this.

21 With regards to the deposition or the use of it, will
22 that be done today?

23 MR. HAWKINS: It will, if Your Honor rules that it
24 comes in, it will be done today. I move that it be
25 excluded. But if Your Honor rules against me, then that

1 will be done today.

2 I just -- I -- what I don't want to run the risk of is
3 me not putting up in my case and then him using it against
4 me in his case when he's sprung it on me and then sprung the
5 document on me.

6 THE COURT: All right. Mr. Hawkins, give me an idea if
7 this -- will you -- I don't, I don't want to assume that
8 this would be your first witness. I'd like a few moments to
9 consult with my law clerk on this---

10 MR. HAWKINS: Oh.

11 THE COURT: ---and let me think about this not --
12 decision.

13 MR. HAWKINS: Of course, Your Honor, and if Your Honor
14 needs any of the rules we've, we've quoted, I'll write them
15 down and give Your Honor a list, whatever you want. But we
16 plan to do Gallam and Gibson this morning.

17 THE COURT: Okay.

18 MR. HAWKINS: And I expect those will take probably
19 four hours together.

20 THE COURT: Okay. All right. I, I will, I will give
21 you my ruling on this particular deposition. But I am going
22 to allow, if you want to have your second chair to write
23 down those rules for me, and I'll allow Mr. Davidson's
24 second chair to submit whatever within the next hour. I'm
25 not asking for a memo. I'm just saying if there's---

1 MR. HAWKINS: And, Your Honor, I -- my -- Ethan -- it
2 reminded me. I, I do need to say on the record. He is, he
3 is just passed the bar and he's waiting to be sworn in.

4 THE COURT: All right.

5 MR. HAWKINS: So --.

6 THE COURT: He is not -- he is not a licensed attorney
7 within---

8 MR. HAWKINS: Right.

9 THE COURT: ---the State of South Carolina?

10 MR. HAWKINS: Right. Not until---

11 THE COURT: He's assisting you.

12 MR. HAWKINS: Yes, not until November -- when is the
13 swearing in?

14 THE COURT: November 2nd?

15 MR. HAWKINS: It's the 14th.

16 THE COURT: The 14th. All right.

17 MR. HAWKINS: Yeah, and, and then he'll be able to
18 argue these motions for me. He will.

19 THE COURT: Very good.

20 All right. Congratulations.

21 And, Mr. Davidson, I'm sorry.

22 who is your -- who's your second chair?

23 MR. DAVIDSON: John Grimes. He's my -- he's an
24 associate with our office.

25 THE COURT: Grimes?

1 MR. DAVIDSON: Grimes. G-R-I---

2 THE COURT: M-E-S.

3 MR. DAVIDSON: ---M-E-S.

4 MR. GRIMES: Yes. Correct.

5 THE COURT: All right. Very good, Mr. Grimes.

6 whatever Mr. Davidson wants you to jot down very
7 quickly, my law clerk will come down in-between witnesses
8 and get if -- you don't have to do anything. But if you so
9 wish to do that, Mr. Davidson, we'll extend that -- we'll
10 extend that courtesy --

11 MR. DAVIDSON: Yes.

12 THE COURT: -- to you.

13 MR. DAVIDSON: Just so the record's complete, Your
14 Honor, we identified Lieutenant Bowman back in May of 2018.
15 Thank you, ma'am.

16 THE COURT: Thank you, sir.

17 MR. DAVIDSON: That's all I've got.

18 THE COURT: Mr. Davidson, Mr. Hawkins, are there any
19 other matters that we need to take up outside the presence
20 of the jury?

21 MR. HAWKINS: None from the plaintiff, Your Honor.

22 MR. DAVIDSON: I would kind of like to know who he's
23 planning on starting. He had some video he was doing of the
24 inmates I think. I didn't know if he was gonna do that now
25 or at some other---

1 THE COURT: He said Gallam and --?

2 MR. HAWKINS: Gallam and Gibson.

3 THE COURT: Gibson.

4 MR. HAWKINS: Yeah.

5 And, and, and for the record, we kind of got in this
6 yesterday, him wanting to know order. This is getting into
7 trial strategy.

8 THE COURT: Okay.

9 MR. HAWKINS: There's a certain reason that I've got
10 these in the order that I do. I want the evidence to come
11 out a certain way and I have to, I have to do that for the
12 benefit of my client. So I don't -- I don't want to -- I
13 don't want to have to keep answering Will's questions about
14 when I'm doing who and how I'm doing them if, if they're
15 under subpoena.

16 THE COURT: Certainly. And I won't make you do that,
17 Mr. Hawkins. I just want him to have some sense of when
18 Gibson can come in and out---

19 MR. HAWKINS: Yes, Your Honor.

20 THE COURT: ---when whoever needs to be here needs---

21 MR. HAWKINS: Yes.

22 THE COURT: ---to be here.

23 MR. HAWKINS: Yes, Your Honor.

24 THE COURT: And I don't need anything other than up to
25 that.

1 MR. HAWKINS: Thank you, Your Honor.

2 MR. DAVIDSON: And, and the only reason I brought up
3 the two inmates, there's some issues before those
4 depositions can be produced.

5 THE COURT: All right. Very good.

6 MR. DAVIDSON: Thank you, Your Honor.

7 THE COURT: Thank you.

8 Anything else, gentlemen?

9 MR. HAWKINS: None from the plaintiff.

10 THE COURT: All right. And, and none from you, Mr.
11 Davidson?

12 MR. DAVIDSON: None, Your Honor.

13 THE COURT: All right. Very good.

14 Can we bring the jury back in please?

15 UNIDENTIFIED SPEAKER: Okay. Judge, we need to -- to
16 bring in---

17 THE COURT: Oh, excuse me. Excuse me. I'm sor -- I
18 apologize. We need to bring the plaintiff in.

19 (Pause.)

20 THE COURT: All right. The plaintiff is present.

21 Can we bring the jury in please?

22 (WHEREUPON, the following takes place within the
23 presence of the jury.)

24 THE COURT: Good morning, ladies and gentlemen of the
25 jury and alternates.

1 where are my two alternates?

2 UNIDENTIFIED SPEAKER: We're not sure who's the
3 alternate.

4 THE COURT: Juror Number 22. Excuse me. Juror Number
5 140.

6 Do you remember your juror numbers?

7 THE JUROR: I'm 140.

8 THE COURT: Pi -- Pisano?

9 THE JUROR: Right here.

10 THE COURT: All right. You're Alternate Number 1.

11 THE JUROR: Okay.

12 THE COURT: Juror Number 25.

13 (WHEREUPON, the juror raises their hand.)

14 THE COURT: All right. And you're Alternate Number 2.

15 Please stay seated where you are. When we take our next
16 break, I will ask that the alternates move to these two last
17 chairs in the back row and that the jury shift itself.

18 All right. Juror Number 76?

19 (WHEREUPON, the juror raises their hand.)

20 THE COURT: All right. Good morning. You are the
21 foreperson.

22 All right. And so what that means is that we will have
23 you come and sit where this gentleman is sitting after the
24 break. We'll -- we will -- we will rearrange everyone. You
25 are perfect where you are now.

1 All right. We will be providing lunch to you as a
2 jury.

3 Have you-all placed your lunch orders?

4 (WHEREUPON, there was no audible response.)

5 THE COURT: Very good.

6 All right. At this time we'll begin the trial. We
7 will try to break around every hour and a half or so. That
8 all depends on where we fall with our witness testimony and
9 exhibits.

10 All right. All right. We'll allow the plaintiff to
11 call his first witness.

12 MR. HAWKINS: May it please the Court, Your Honor.
13 We would like to call Timothy Gibson to the stand.

14 MR. DAVIDSON: I'm going to get him, Your Honor.

15 THE COURT: Thank you.

16 THE CLERK: If you'll place your left-hand on the --
17 place your left-hand on the Bible. Raise your right-hand.

18 TIMOTHY GIBSON, being first duly
19 sworn, testified as follows:

20 THE CLERK: Okay. Please take the seat in the witness
21 box and state your full name for the Court.

22 DIRECT EXAMINATION

23 BY MR. HAWKINS:

24 Q. How are you, Mr. Gibson?

25 A. Morning.

1 Q. Mr. Gibson, I know that -- I know I have asked you
2 these questions before and I've got your deposition here and
3 we'll -- gonna go through the questions I asked you. This
4 is the first time the jury has heard your testimony. So,
5 I'm not asking you the same questions to be redundant. I
6 just have to ask for the record.

7 okay?

8 A. Yes, sir.

9 Q. Can you tell the jury when you started work with the
10 Sheriff's Office?

11 A. 2005.

12 Q. Was it 2005 or 2010?

13 A. Oh, 2000 -- I've been there for approximately seven
14 years.

15 Q. Okay. When you applied, did you apply online?

16 A. I printed the application online and took it to HR.

17 Q. You had one meeting with someone from the Sheriff's
18 Office before you were hired, correct?

19 A. Correct.

20 Q. You never met with the sheriff?

21 A. The sheriff, no.

22 Q. Okay. You met with Mr. Gallam?

23 A. Yes, sir.

24 Q. Okay. And based on that online application, you were
25 hired and given a badge, correct?

1 A. Can you repeat---

2 Q. Based on that online application, you were hired and
3 given that badge, correct?

4 A. After other processes.

5 Q. I'm asking about the interview.

6 After that interview -- you, you never did meet with a
7 panel, did you?

8 A. No.

9 Q. Okay. So, after that interview, you were hired and
10 given a badge?

11 A. Correct.

12 Q. Okay. Would you categorize the interview as fairly
13 informal?

14 A. The dress was informal. It was business casual but it
15 was a very professional interview.

16 Q. Do you recall giving a deposition back in 2018?

17 A. Yeah.

18 Can I see it?

19 Q. Yeah. Go to Page 33 in your deposition please. I'm
20 just gonna read my question and you can give your answer.
21 okay?

22 A. Hold on.

23 Q. Look at Line 7.

24 okay. So is it fair to say it was fairly informal?
25 Is that fair to say?

1 will objects and then what was your answer on Line 11?

2 MR. DAVIDSON: Page what again?

3 MR. HAWKINS: It's Page 33.

4 A. But if we can back up, we were talking about --

5 Q. I'm asking---

6 A. -- the dress.

7 Q. Just read, just read the -- Line 11 and you can explain
8 whatever you want.

9 A. Yes.

10 Q. Okay. So we can agree that it was fairly informal for
11 the jury?

12 (WHEREUPON, there was no audible response.)

13 Q. If your answer's yes, I'm just asking is that correct
14 or was incorrect when you were under oath that --
15 (indiscernible) that sentence?

16 A. My answer was yes.

17 Q. Okay. Now explain whatever you want to the jury.

18 A. But previous questions, he said fairly informal. I
19 said dress casual. So---

20 Q. No.

21 A. ---fairly informal. Not jeans and a T-shirt. Not a
22 tuxedo. Not a suit.

23 Q. Okay.

24 A. You're talking about dress.

25 Q. Okay. So you didn't wear a suit?

1 (WHEREUPON, there was no audible response.)

2 Q. You didn't wear a suit?

3 A. No.

4 Q. You didn't wear a tie?

5 A. I wore a polo shirt and a nice pair of khakis.

6 Q. Okay. And so you went in a pair of khakis to the
7 Sheriff's Office and based on -- the interview lasted about
8 an hour?

9 Is that fair to say?

10 A. Yes.

11 Q. Okay. You were, you were given a job after some other
12 things happened, correct?

13 A. Yes.

14 Q. Okay. All right. And you applied for this job because
15 you had been unemployed for about a year, right?

16 (WHEREUPON, there was no audible response.)

17 Q. We can go to your deposition if you need help.

18 A. I was a full-time student.

19 Q. All right. But you had been unemployed for about a
20 year, correct?

21 A. Yes.

22 Q. All right. And it was just you and Mr. Gallam in the
23 interview, in the interview room.

24 Is that correct?

25 A. Yes.

1 Q. I think you told me there was no panel?

2 A. Yes.

3 Q. Okay. And, and I asked you about how long it took and
4 I think the answer was about an hour?

5 A. It was about an hour.

6 Q. Is that accurate?

7 Okay. Let's talk about -- let's talk about the safety
8 rules. The frisk policy is designed for safety.

9 That's fair to say, right?

10 A. The safety of inmates.

11 Q. The safety of everybody.

12 A. The safety of the public. Safety---

13 Q. Safety of the public?

14 A. ---of other officers.

15 Q. All right. Because at, at the Sheriff's Office,
16 whether there's a pat frisk of someone at a traffic stop or
17 whether you're frisking somebody in the jail, it's important
18 to follow protocol, right?

19 A. Yes.

20 Q. Okay. If you don't follow property, people can get
21 hurt, right?

22 A. Yes.

23 Q. Okay. So, so, is it fair to categorize these protocols
24 as safety rules?

25 A. It is -- can you repeat?

1 Q. Is it fair to categorize those protocols and policies
2 as safety rules?

3 A. As safety rules?

4 Q. As safety rules, yeah.

5 A. I wouldn't say rules.

6 Q. You wouldn't?

7 A. They're guidelines of how we're suppose to do the
8 procedure.

9 Q. They're not suggestions, are they?

10 A. No.

11 Q. Okay. Okay. Let's start at -- on Page 14 of your
12 deposition -- tell me, tell me when you get to, to that
13 page.

14 A. Excuse me?

15 Q. Tell me when you get to Page 14.

16 A. Ah.

17 Q. All right. So, at Page 14, I'm gonna start my question
18 at Line 3.

19 Okay. All right. Very good. Is it important to
20 follow the basic safety rules?

21 What was your answer?

22 A. Yes.

23 Q. Okay. Is it important to follow protocols?

24 A. Yes.

25 Q. What was your answer?

1 A. Yes.

2 Q. Okay. Why is it important to follow protocol and basic
3 safety rules?

4 A. It governs how we do our job.

5 Q. It governs how you do your job.

6 Okay. And then I said right.

7 Why is it important to follow those rules that govern
8 how you do your job and what was your answer?

9 A. Of situations like this.

10 Q. Okay. And the situation we were talking about was the
11 pat frisk where Mr. Owens was injured, correct?

12 A. Correct.

13 Q. Okay. And then we -- well, I'll just ask you now in
14 front of the jury rather than going through the deposition.

15 Do you agree that it's important to follow safety rules
16 across the board?

17 A. Yes.

18 Q. Even when it's related to establishing reasonable
19 suspicion?

20 A. Yes. But we're talk -- talking about reasonable
21 suspicion from a jail standpoint. They're rules. An
22 inmate's life is very different from a normal person's life.

23 Q. But it's, but it's worth the same amount, right?

24 A. Yeah.

25 Q. You agree on that?

1 A. Yeah.

2 Q. Okay. Go ahead.

3 A. (Indiscernible) my reasonable position at anytime and
4 they could be pat searched for safety, security, like I
5 said, of the public, other inmates, myself, my other
6 officers. They're -- they could be walking through the
7 hallway, limping funny, that's all it takes, or not -- or
8 acting up or acting wrong.

9 Q. Mr. Gibson, if you're, if you're saying -- and you, you
10 stop me if I'm -- I don't want to miscategorize anything
11 you're saying. I want to make sure I've got your answer
12 right.

13 If you're saying that you have reasonable suspicions --
14 suspicion all the time, why is there a policy that says when
15 you can establish reasonable suspicion?

16 (WHEREUPON, there was no audible response.)

17 Q. There's a policy that says when you can reestablish and
18 that -- have, have a full search.

19 A. Uh-huh.

20 MR. DAVIDSON: Your Honor, can I see the policy if he's
21 gonna reference it?

22 MR. HAWKINS: You have the policy. You produced it.

23 MR. DAVIDSON: Your Honor, I would like to see what
24 he's referencing.

25 MR. HAWKINS: Here. You can have mine. Here you go.

1 THE COURT: All right. Thank you.

2 MR. HAWKINS: Section 2, Roman Numeral II, the part I'm
3 talking about. You just let me know when you're done with
4 it, will.

5 why is there a policy that says when you can establish
6 reasonable -- establish reasonable suspicion and that you
7 must establish it if it exists all the time?

8 A. I, I didn't write the policy. So, I don't know---

9 Q. Okay. Fair enough.

10 A. ---why.

11 Q. Fair -- yeah, fair enough and it, it just exists for
12 you to govern how you do your job, correct?

13 (WHEREUPON, there was no audible response.)

14 Q. Is that a yes?

15 A. Uh-huh.

16 Q. And I'm not being rude.

17 A. Yes. Yes. Yes.

18 Q. She has to make a record of it.

19 A. Yeah.

20 Q. Sorry.

21 Okay. Now, this is a very important question. This is
22 very important for this trial, this question.

23 MR. DAVIDSON: Your Honor, all the questions are
24 important. He doesn't need to characterize one question
25 over another as important. That's an improper question.

1 MR. HAWKINS: To say it's important?

2 THE COURT: All right. Let's move forward.

3 MR. HAWKINS: So -- can I get, Your Honor, a ruling on
4 that for the record?

5 I'm sorry.

6 what -- what's the ruling on the objection?

7 THE COURT: It's overruled.

8 MR. HAWKINS: Okay. Thank you, Your Honor. I'm sorry.

9 Okay. The question is are you aware of any evidence
10 that you followed safety rules when you searched Otis and
11 the other men who were injured?

12 A. Repeat it.

13 Q. And you can look at Page 36 in your deposition if you
14 need to.

15 Is there any evidence that you followed safety rules
16 when you searched Otis and the other inmates?

17 A. Repeat it one more time. I'm not really under---

18 Q. I'll just---

19 A. Can you---

20 Q. I'll just read---

21 A. Can you reword it?

22 Q. Yeah, I can read it.

23 A. I'm not really understanding what you're---

24 Q. I'll read it exactly how you answered it with the
25 deposition.

1 MR. DAVIDSON: Your Honor, he's not impeaching the
2 witness in conformance with the rules.

3 MR. HAWKINS: Your Honor, I -- I've asked him twice the
4 answer and he's---

5 THE WITNESS: And I'm not understanding your question.

6 THE COURT: All right. Hold on.

7 Let me address the objection first. We can not all
8 talk at once. It is impossible for the court reporter to
9 maintain her record.

10 Mr. Davidson has objected to the form of your
11 impeachment. I am going to overrule and allow you to
12 continue your questions so that the witness may understand
13 the form of your question.

14 MR. HAWKINS: Yes, Your Honor.

15 THE COURT: All right. Let's proceed.

16 Q. And, and for the benefit of the witness, I'm gonna read
17 from Line 19, Page 36.

18 Is there any -- is there any evidence that you followed
19 protocol other than you telling me that you followed
20 protocol?

21 What was answer at Line 22?

22 A. No.

23 Q. Okay. So we agree there's no evidence other than your
24 position -- other -- what you're telling me.

25 There's no evidence, documentary, paper, video, or

1 otherwise, that shows you followed protocol when you
2 searched these men (indiscernible), right?

3 A. Correct. There---

4 Q. All right.

5 A. ---would of been video but it or I, I think it's been
6 stated it's been overwritten.

7 Q. Right. Yeah, that's a big issue in the case, isn't it?
8 (WHEREUPON, there was no audible response.)

9 Q. It -- well, let me ask you about that since you brought
10 it up. It's your understanding---

11 A. Because---

12 Q. It's your understanding that the video search has now
13 been destroyed or (indiscernible)?

14 A. Yeah, there was a PREA investigation though.

15 Q. Right.

16 But is that your understanding of what happened to the
17 video?

18 A. To my knowledge. I don't know what happens with the
19 video. That's just what I've heard.

20 Q. Okay. Well, we'll get into that. We'll get into that
21 in detail in just a minute.

22 Do you know what this is?

23 A. That's (indiscernible).

24 Q. Okay. Is that a picture of Otis when he was using the
25 kiosk improperly?

1 A. I can't say it's him cause it's an inmate with his back
2 to the camera.

3 Q. Okay. Well, we'll get into that with another witness.

4 In any event, is it fair to say that this is a picture
5 on the video of an inmate?

6 A. That is taken from a screenshot of the video---

7 Q. Right.

8 A. ---of the pod.

9 Q. Okay. So, is it fair to say, when y'all want footage
10 of an inmate getting in trouble, you don't have any problem
11 getting it, preserving it, producing it, whatever you need
12 to do to make sure it doesn't go anywhere as long as this
13 inmate getting in trouble and not the government?

14 A. There was no problem in getting a screenshot.

15 Q. Right.

16 Okay. In fact, y'all get screenshots of video footage
17 of inmates when they broke the rule like talking during
18 count or going to the wrong shower all the time, don't you?

19 A. No.

20 Q. You don't?

21 A. Something as small as talking to during count---

22 Q. Something as small as you---

23 A. ---they wouldn't---

24 Q. You often (indiscernible)?

25 A. They wouldn't take a screenshot of someone talking

1 during count.

2 Q. Okay.

3 A. But the, the pod deputy would write them a reprimand.

4 Q. Okay. Okay. We're gonna try to get back on track so
5 we don't get too far afield here.

6 Did you tell me -- and I'll show -- and you can tell me
7 if you need me to bring this policy back up there or do you
8 have a copy?

9 A. I got one.

10 Q. Let me -- this will be good for the court reporter. We
11 have it premarked.

12 But this is in by agreement. This is the pat/frisk
13 policy.

14 Can we, we go ahead and enter this in?

15 THE COURT: All right. Yes.

16 No objection?

17 MR. DAVIDSON: None, Your Honor.

18 THE COURT: Yes, sir.

19 (Pause.)

20 THE COURT: Exhibit A?

21 MR. HAWKINS: Yes, ma'am.

22 (WHEREUPON, the pat-frisk policy was marked as
23 Plaintiff's Exhibit A and received into evidence at this
24 time.)

25 Q. The pat/frisk policy -- I want you to look at, for the

1 record, Aiken County Sheriff's Office Detention, Detention
2 Division Policies and Procedures Number 3, Capital B, Number
3 9, Little F. It's this one that's right here.

4 A. All right.

5 Q. Mr. Gibson, a pat/frisk is to be done with an open palm
6 up like this, right?

7 A. Correct.

8 Q. It's not to be done, as your lawyer demonstrated
9 yesterday in opening, with the back of -- you don't backhand
10 somebody in the groin to do a pat proceeding?

11 A. It's the way I was trained.

12 Q. That's not what policy says though, right?

13 A. Correct.

14 Q. Were you -- and you were trained to do it with the back
15 of your hand (indiscernible)?

16 (WHEREUPON, there was no audible response.)

17 Q. Is that a yes?

18 A. Yes.

19 Q. Okay.

20 A. To prevent --.

21 Q. You want to just leave it up there in case --?

22 A. Yeah.

23 Q. Oh, I got you.

24 In your deposition you didn't tell me that you did it
25 with the back or the front of your hand, did you?

1 Look at Page 49.

2 A. No, I used an open blade to check the groin area.

3 Q. Blade?

4 You used the word blade.

5 A. Yeah.

6 Q. Show me what you mean with your hand when -- more
7 importantly, show the jury.

8 A. (WHEREUPON, the witness complies.)

9 Q. Okay. So a blade is -- right.

10 So, so, a blade is not an open hand like the policy
11 says and it's not the back of your hand like your lawyer
12 says, right?

13 A. Right.

14 Q. It's different than both of those, right?

15 A. Yes.

16 Q. So, by your account, by your lawyer's account, and by
17 (indiscernible) account, by all three accounts, you violated
18 the policy, right?

19 A. Yeah.

20 Q. I'm sorry?

21 A. Yeah.

22 Q. Okay. And, and that policy we agree is for safety?

23 A. Yes.

24 Q. And you -- and -- okay. And that's the policy you
25 violated just so the record's clear?

1 (WHEREUPON, there was no audible response.)

2 Q. That's the policy you violated just so the record's
3 clear, right?

4 A. Yes.

5 Q. It's Exhibit A for the record.

6 Can you see, Mr. Gibson, how using your hand like a
7 blade could cause an injury?

8 A. Could I see how?

9 Q. Yeah.

10 A. Yes.

11 Q. Okay. Do you think you could of done the, the
12 pat/frisk differently to avoid injury?

13 A. So you're, you're be -- you're asking me if I caused
14 injury?

15 Q. I'm -- well, do you think you caused an injury?

16 A. No, not the way I do it.

17 Q. Okay. But if the jury establishes that you did cause
18 the injury, if you did grab and squeeze this man's testicle
19 to the point of injury, we agree that that would be a
20 violation of the safety rules if, if the jury determines
21 that happened?

22 A. Any way I perform that pat search, whether blade, palm
23 up, palm down---

24 Q. Okay.

25 A. ---no way, to this day, does not cause injury whether

1 it be from policy.

2 Q. Do -- well, do you have any idea why four men reported
3 injuries after the search?

4 MR. DAVIDSON: Your Honor, with all due respect, we got
5 to take a matter up with the Court.

6 THE COURT: Certainly. We'll side bar.

7 (WHEREUPON, a bench conference was held at this time
8 out of the hearing of the jury.)

9 THE COURT: All right. Mr. Charlie, will you escort
10 the jury to the jury room?

11 We have a matter of law that we need to take up outside
12 their presence.

13 (WHEREUPON, the following takes place outside the
14 presence of the jury.)

15 THE COURT: And you -- Mr. Grimes, do you have
16 anything?

17 (WHEREUPON, there was no audible response.)

18 THE COURT: Okay. All right. Mr. Davidson has
19 objected.

20 MR. DAVIDSON: Your Honor?

21 THE COURT: Your objection is hearsay, Mr. Davidson?

22 MR. DAVIDSON: Well, number one, it should be hearsay
23 what these other individuals would of said.

24 THE COURT: Okay.

25 MR. DAVIDSON: Number one. The way he phrased his

1 question, he said four individual claims. So, he is
2 interjecting into his question evidence in this case that
3 would be hearsay and he is not laid the proper foundation.

4 Number two. I raised before the Court the fact that
5 somebody else may or may not have been injured that day, and
6 there were approximately 10 to 20 inmates in the rec yard
7 that day. The fact that somebody may have claimed to be
8 injured does not establish that Otis Owens was injured. The
9 fact that Mr. Owens claims he was injured doesn't establish
10 that Mr. Ard or Mr. Wilhite were injured. I think those are
11 the two inmates that they want to use their depositions on.
12 I don't know of four inmates that are gonna be called to
13 testify but maybe I'm wrong.

14 It -- the problem you've got, and the reason I say it's
15 not relevant, the fact that somebody else claims they were
16 injured doesn't tend to prove, and that's what relevance is,
17 tend to prove that Mr. Owens was injured. This case is
18 solely about Mr. Owens and whether or not he was injured on
19 that day.

20 Mr. Owens could of been injured and none of the other
21 individuals could of been injured or let's say Mr. Ard was
22 injured and Mr. Owens can not prove that he was injured.
23 The fact that Mr. Ard is injured doesn't establish any
24 evidence that Mr. Owens was injured and there is no
25 exception that allows this type testimony in. Otherwise you

1 would have individuals coming in saying Johnny drives fast
2 all the time and he caused a wreck for me, and, therefore,
3 that establishes he caused the wreck with somebody else.

4 That -- that's not relevant in this case, Your Honor.

5 what's relevant in this case is whether or not Otis
6 Owens was injured and can prove that he was injured in this
7 case. He can't use these other individuals to bootstrap his
8 case because what they're saying deals with them. If they
9 want to bring their own separate lawsuit, that's fine. If
10 he had wanted to bring a class action, fine. If he had
11 wanted to name all these individuals as plaintiffs in this
12 action, there'd probably been some motions but he could of
13 done that.

14 So, it's not relevant to this case whether or not Mr.
15 Ard, Mr. Wilhite, or any other individual was injured. We
16 could call 10 individual in -- inmates in here and each one
17 could of said we weren't injured.

18 well, what does that establish?

19 It doesn't establish that Mr. Owens wasn't injured. It
20 establishes they weren't. So that's why it's not relevant
21 and it's prejudicial to allow this testimony to continue in
22 regard to these other individual inmates.

23 THE COURT: All right. Mr. Hawkins.

24 MR. HAWKINS: Thank you, Your Honor.

25 First of all, what he's trying to do is what I said he

1 would try to do yesterday and that's slip in a conformity
2 argument. This is part of a common scheme. This is part of
3 one event and that's plain from the rule.

4 The other thing is it has effect on a listener and it's
5 admissible for that reason. I understand why he doesn't
6 like it because it proves an act of gross negligence that
7 involves several people but it's part of a common scheme,
8 it's part of one event, and it shows an active gross
9 negligence -- this is one singular act of gross negligence.

10 Him targeting all these men, telling them to lineup,
11 they're all getting searched, this was done as a group.
12 This is not conforming of I searched this person and hurt
13 him a month ago so I probably hurt him. That's not what it
14 is and I knew that's what he would argue. That's why I
15 tried to preemptively deal with it yesterday.

16 He's trying to slip in a conformity argument. It's not
17 here. It's a common scheme. It's part of one event, and,
18 secondly, it has an effect on a listener and it's, it's
19 admissible for that reason.

20 The third thing I want to point out is it's central to
21 this case. This event where these men were hurt is central
22 to this case.

23 So, to keep it out serves nothing but for him to try to
24 chop parts of my case out he doesn't like and that are
25 admissible under the rules, Your Honor.

1 And, and also, Your Honor, he made a mention about
2 hearsay. It's not being offered for the truth of the matter
3 asserted in any way. It's been offered for the effect on
4 the listener.

5 So, that's three or four reasons why it's admissible
6 and that's --.

7 And I would also add, not to, to interrupt, but I would
8 also add that these are eye witnesses who are gonna offer
9 testimony. It's not -- they're gonna offer testimony about
10 what they saw in the entire event. They're -- we've got
11 their video depositions. We're ready to play them. They're
12 gonna offer the testimony.

13 THE COURT: All right. So, let me, let me make sure
14 that I am clear.

15 You did -- you've already asked the question whether or
16 not these, these three other individuals claimed that they
17 were injured---

18 MR. HAWKINS: Right. He's---

19 THE COURT: ---by the witness?

20 MR. HAWKINS: Yeah, he says there's no way I could of
21 caused the injury and then I said well, are you aware that
22 four other people said you did injure them.

23 So, even if everything will said was right, and it's
24 not for four or five reasons, even if that was correct, I
25 would be able to ask him, once he says there's no way I

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1 caused an injury, well, are you aware that four people said
2 you did because he's, he's testified about the same method
3 on all these men---

4 THE COURT: I understand that---

5 MR. HAWKINS: ---or at least implied that.

6 THE COURT: My, my question for you is how -- I'm not
7 asking for a specific answer.

8 MR. HAWKINS: Yes, Your Honor.

9 THE COURT: Your line of questioning is what I'm asking
10 about.

11 Do we walk down that line with regards to asking him
12 about these three allegations or these three---

13 MR. HAWKINS: I don't think---

14 THE COURT: ---individuals?

15 MR. HAWKINS: I don't think so at this time because the
16 next thing I had on my outline was to go into the, into the
17 policy and, and into how Otis was injured. I just asked
18 that follow-up question cause he --

19 THE COURT: I understand.

20 MR. HAWKINS: -- he elicited it at trial.

21 THE COURT: So later in your -- and I'm not asking your
22 trial strategy but---

23 MR. HAWKINS: Yes, ma'am.

24 THE COURT: ---but if there -- is there any intent that
25 you specifically ask him about these claims again?

1 MR. HAWKINS: And so it---

2 THE COURT: I'm not -- not, not that there's a door
3 opened.

4 MR. HAWKINS: Right. Right. Right.

5 THE COURT: But is---

6 MR. HAWKINS: Well---

7 THE COURT: ---whether it's specific---

8 MR. HAWKINS: At some point, at some point we're going
9 to because he testified in his deposition yes, he's aware
10 that other people made claims of injury. So, at some point
11 we're gonna ask him because we have to and because those
12 witnesses are also gonna offer testimony yes, I saw him hurt
13 Otis. He hurt me at the same time in the same manner.

14 THE COURT: Mr. Davidson.

15 MR. DAVIDSON: Your Honor, if he wants to ask an
16 individual that was present what he saw, then I believe that
17 would be admissible although given your previous ruling
18 about what Mr. Bowman, Lieutenant Bowman, saw on the video
19 was hearsay.

20 So, what, number one's, good for the goose is good for
21 the gander. What they may have seen might be hearsay
22 because they want to argue that that type stuff is
23 out-of-court information that is offered for the truth of
24 the matter asserted. But let's go a couple of steps down
25 the road.

1 This is not a 404 -- character evidence is not
2 admissible to put your conduct in except other crimes. It
3 is also not habit or routine practice under 406. Evidence
4 of habit on a person or routine practice of an organization,
5 whether corroborated or not, and regardless of the presence
6 of eye witnesses is relevant to prove the conduct of the
7 person or organization in a particular occasion once it was
8 in conformity with the habit or routine practice.

9 There is no showing that this was a habit or routine
10 practice. Like I think I said yesterday, a routine practice
11 would, or habit, would be I do this every time. I, in a
12 surgical case, the doctor says I used this type stitching
13 every time. That's my habit. That would be admissible.

14 The fact that you go to a doctor's office and the
15 doctor gets you to fill out a form, and that form is a
16 routine practice of that practice or organization, then that
17 would be allowed to come in because that would establish,
18 and I believe the standard is clear and convincing evidence,
19 of a habit under the case law. But, under 406, this is not
20 habit or a pattern or practice---

21 MR. HAWKINS: Your Honor?

22 MR. DAVIDSON: ---and the -- if, if counsel will allow
23 me---

24 MR. HAWKINS: I thought you were done. I'm sorry,
25 will.

1 MR. DAVIDSON: what, what he wants to do is try, like
2 I've said, is try to establish that Otis Owens was injured
3 by virtue of other inmates being injured. well, that's not
4 the -- relevant whether they were or were not injured.

5 Now, they can testify about what they saw I believe
6 despite your previous ruling. They can testify that they
7 were there. But to get into whether they were or were not
8 injured or what Otis Owens did to them would not be relevant
9 what -- not Otis Owens. Mr. Gibson did to them would not be
10 relevant to establish that Mr. Owens had this happen to him
11 and then, as a result, most probably he was injured. And
12 this -- that is not relevant in this case.

13 And, and the fact that, Your Honor, I said it's even
14 prejudicial if you want to quote, it's relevant, which I
15 don't believe it is---

16 MR. HAWKINS: well---

17 MR. DAVIDSON: ---brought because, in fact, and what
18 he's trying to do with Mr. Gibson by saying four individuals
19 is introduce that evidence into this case at this stage and
20 ask him about were -- are you aware that other inmates
21 complained. well, inmates complained. That doesn't
22 necessarily mean that Otis Owens had an injury.

23 So, it is not relevant. It is not an exception to the
24 hearsay rule. It is not habit or routine---

25 MR. HAWKINS: For -- under 406.

1 MR. DAVIDSON: ---practice under 406.

2 THE COURT: All right.

3 MR. DAVIDSON: We have not---

4 THE COURT: I'm gonna let Mr. Hawkins respond.

5 MR. DAVIDSON: We have---

6 THE COURT: What's your response, Mr. Hawkins?

7 MR. HAWKINS: We have -- I've said -- will knows this.
8 I've said so many times. We're not arguing habits. We're
9 arguing event and then he said, I want to point this out for
10 the record---

11 THE COURT: Well, I'm gonna take the habit argument out
12 of it cause I think all three of us---

13 MR. HAWKINS: Right. We're not arguing that.

14 THE COURT: ---certainly agree---

15 MR. HAWKINS: He---

16 THE COURT: ---it's not habit.

17 MR. HAWKINS: He just made the argument on the record
18 that eye witness testimony is hearsay and what's good for
19 the goose is good for the gander. He tried to argue what
20 they saw with the, the evidence they're gonna offer that
21 they saw with their eyes is the same as somebody looking at
22 a video and then testifying about the hearsay. He said
23 what's good for the goose is good for the gander.

24 That's complete -- I mean that's evidence 101 that eye
25 witness can testify about what they saw and he's trying to

1 call it hearsay. That's insane, Your Honor.

2 THE COURT: Well, I, I think we -- well, I'm, I'm --
3 listen. The witness is testifying to what they saw is not,
4 is not an issue for me.

5 MR. HAWKINS: Okay.

6 THE COURT: I believe the motion -- the objection is
7 based on -- solely upon you mentioning their specific
8 injuries.

9 MR. HAWKINS: And we're not arguing habit, Your Honor.

10 THE COURT: I do believe that any alleged injury to any
11 other individual is not admissible and the, the basis for
12 that one is that I do not -- obviously it is not habit. Do
13 not believe that it is admissible under Rule 404.

14 But, Mr. Hawkins, you -- you've mentioned this
15 deposition. That part I'm a little unclear on. You -- in
16 your -- at the beginning of your argument you mentioned his
17 deposition.

18 MR. HAWKINS: Right. He's ad -- he's admitted in his
19 deposition that he's aware of at least reports of other men
20 injured at the same time.

21 THE COURT: Okay.

22 MR. HAWKINS: And under 404(b), 404(b)'s pretty clear
23 that it comes in under a common scheme. It's, it's not
24 contested by anybody that this happened all at the same time
25 in a common search, in a common pat down, in a common video.

1 That's not contested by anybody, Your Honor, and, in 404(b),
2 I mean that just -- under common scheme or plan, logical
3 connection.

4 The -- I mean in State versus Morales, that, that is a
5 very wide birth or latitude, any logical connection, and
6 this is part of the same pattern -- this is part of the same
7 pattern in an event where he's hurting people, people all at
8 the same time. So that fits directly within the rule --
9 directly within 404(b)---

10 THE COURT: well, let me---

11 MR. HAWKINS: ---and directly within State---

12 THE COURT: Let me---

13 MR. HAWKINS: ---versus Simpson.

14 THE COURT: ---pull some case law very quickly on
15 common scheme and plan cause I---

16 MR. HAWKINS: And the cite I---

17 THE COURT: I'm not solely -- I'm not wholly convinced
18 that it is -- it does fall under common scheme.

19 MR. HAWKINS: Yes, Your Honor. In the logical
20 connection language, which is in State versus Morales,
21 that's 433 S.C.---

22 THE COURT: Hand it to me.

23 You're reading it from there?

24 MR. HAWKINS: Yes, ma'am.

25 THE COURT: Can I see it?

1 MR. HAWKINS: Yes, ma'am.

2 MR. DAVIDSON: will you give---

3 MR. HAWKINS: We've got---

4 MR. DAVIDSON: ---give me a moment to find it, Your
5 Honor?

6 THE COURT: Absolutely. I'll tell you where we're
7 looking. State, State v. Morales. This is on page --
8 look -- I don't know what version you have.

9 MR. DAVIDSON: Can you---

10 MR. GRIMES: Do you have a cite for it?

11 MR. HAWKINS: But we would -- we would point the
12 Court's attention to the any logical connection. I mean --
13 that -- we're way past any logical connection. This is
14 directly related. These men are lined up next to each other
15 having the same thing done to them by the same deputy at the
16 same time with the same ending.

17 THE COURT: All right.

18 MR. DAVIDSON: what the -- can you give us the cite?

19 THE COURT: 433 S.C. 196. 433 S.C. --.

20 MR. DAVIDSON: Thank you, Your Honor.

21 THE COURT: All right.

22 (Pause.)

23 MR. HAWKINS: Your Honor, could I offer language from
24 another case?

25 THE COURT: All right. what case are you -- what---

1 MR. HAWKINS: It's a---

2 THE COURT: What case are you citing?

3 MR. HAWKINS: It's Judy versus Judy. That's 384 S.C.
4 634. It says for prior act evidence to be admissible to
5 establish common scheme or plan, close degree of similarity
6 between prior bad act in the present case is necessary.
7 It's identical. It's, it's not even closely similar. It's
8 identical.

9 THE COURT: Give me the cite again.

10 MR. HAWKINS: It's Judy versus Judy, Court of Appeals
11 case in 2009. The cite is 384 S.C. 634 or I have the
12 Southeastern Reporter cite too if the Court would like that.

13 THE COURT: He's got it.

14 MR. HAWKINS: Okay.

15 THE COURT: Do you have it opposing -- do you have it,
16 Mr. Grimes?

17 MR. GRIMES: Yes, ma'am.

18 (Pause.)

19 MR. HAWKINS: And I've got the page number if the Court
20 wants that for its---

21 THE COURT: That's not necessary.

22 MR. HAWKINS: Okay. Thank you, Your Honor.

23 THE COURT: All right.

24 (Pause.)

25 THE COURT: All right. Mr. --.

1 All right. With regards to the allegations from the
2 three other inmates --.

3 All right. Mr. Hawkins and Mr. Davidson, I am going to
4 rule -- I am going to allow the testimony of the -- I'm
5 going to allow you to question him with that regards and I
6 want to make it clear for the record for Mr. Davidson, Mr.
7 Davidson, I'll also make your objection clear.

8 With regards to the -- okay. With regards to common
9 scheme, Citizens Bank of Darlington states the law in civil
10 cases, as well as criminal, permits proof of acts, other
11 than the one charged, which are so related in character,
12 time, and place of commission as to attempt to show
13 existence of common plan or system. And so I am going to
14 Rule 404 -- I'm going to rule that it does fall within
15 404(b), Subsection B, that it is admissible to show the
16 existence of a common scheme or plan.

17 Mr. Davidson.

18 MR. DAVIDSON: Yes, Your Honor. I just want to make
19 sure the record is also clear.

20 THE COURT: Yes.

21 MR. DAVIDSON: Citizens Bank versus Darlington that you
22 just referenced holding that Lyles is also applicable in
23 civil cases, that's dealing with common practice or scheme,
24 when the other man acts are not subject to a conviction,
25 which this is not, they must be proven by clear and

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1 convincing evidence, State v. Kendall. When considered
2 whether there will be clear and convincing evidence, the
3 Court is bound by -- this Court is bound by the Trial
4 Court's findings unless they're extremely erroneous. I
5 don't believe there's any evidence, clear and convincing,
6 one way or the other in this matter, Your Honor.

7 MR. HAWKINS: Your Honor?

8 MR. DAVIDSON: If, if I could finish?

9 The exceptions also, if you look at the rule, it says
10 it's admissible to show motive. Well, there's no motive
11 been shown here.

12 Identity. There's none of that.

13 Existence of a common scheme or plan, absence of
14 mistake, accident, or intent.

15 Well, in, in this instance, Your Honor, if, if the
16 Court's ruling that common scheme or plan, there's been no
17 evidence that Mr.---

18 THE COURT: Gibson.

19 MR. DAVIDSON: ---Gibson planned this or came up with a
20 scheme to do this and, in fact, then you would have to
21 establish that by clear and convincing evidence. I just
22 want to make it all sure that's all on the record, Your
23 Honor.

24 Thank you, ma'am.

25 THE COURT: Okay. All right. Thank you, Mr. Davidson.

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1 All right. It is 10:57.

2 Are we ready to move forward---

3 MR. HAWKINS: Yes, Your Honor.

4 THE COURT: ---Mr. Hawkins?

5 MR. HAWKINS: Yes, Your Honor.

6 THE COURT: All right. You'll continue questioning
7 this witness.

8 May we bring the jury back in please?

9 Thank you, sir.

10 MR. HAWKINS: May I go back to the podium?

11 THE COURT: Yes.

12 (WHEREUPON, the following takes place within the
13 presence of the jury.)

14 THE COURT: Thank you, ladies and gentlemen of the
15 jury. We will now resume the trial.

16 Mr. Hawkins.

17 MR. HAWKINS: Thank you.

18 May it please the Court.

19 CONTINUED DIRECT EXAMINATION

20 BY MR. HAWKINS:

21 Q. Mr. Gibson, we've been talking about Exhibit A, which
22 is the pat/frisk policy and I've highlighted some portions
23 that we've been talking about. I want you to read for me,
24 if you would, B-2 right here, the part that I've
25 highlighted.

1 Do you see that part right there?

2 (WHEREUPON, there was no audible response.)

3 Q. Can you just read that for the jury starting with the
4 frisk?

5 A. Frisk search shall be performed with the greatest
6 degree of dignity possible for the arrestee.

7 Q. Okay. So it's clear for the record, so the frisk shall
8 be performed with the greatest degree of dignity possible
9 for the arrestee, right?

10 That's what it says?

11 A. Yes.

12 Q. Okay. And so if the jury establishes that, that you
13 grabbed Mr. Owens in the groin and his testicles, caused
14 injury, that would be the opposite of conducting a search
15 with the most degree of dignity possible, correct?

16 A. Repeat the question.

17 Q. I'll rephrase it.

18 Is there any way you can grab someone's testicles
19 specifically to cause pain and at the same time conduct the
20 search with the most degree of dignity possible?

21 Is there any way those two things can be done at the
22 same time?

23 A. Dignity in regards to the policy, my understanding is
24 like a strip search. You wouldn't parade them around if you
25 have to do a strip search. You take them off by themselves.

1 That was just a clothed body---

2 Q. Okay.

3 A. ---search.

4 Q. Well, it's in the pat/frisk policy, not the strip
5 search policy, right?

6 A. I know.

7 Q. Correct?

8 A. Correct.

9 Q. Okay. We're not talking about strip searches.
10 We're talking about pat searches where you search
11 someone's groin, right?

12 A. Uh-huh.

13 Q. Is that a yes?

14 A. With their clothes on, yeah.

15 Q. Okay. And is there any way you can grab someone's
16 groin and cause pain, and, at the same time, conduct the
17 search with dignity?

18 That's my question.

19 Can those two things be done at the same time, grab a
20 groin for injury and conduct a search with dignity?

21 Can those two things be done at the same time?

22 A. There are -- actions wouldn't be dignified but --.

23 Q. Okay. It wouldn't be -- it wouldn't be respecting
24 someone's dignity to do that, to grab the testicles, right?

25 A. Correct.

1 Q. And that would be true of Owens, right?

2 A. Uh-huh.

3 Q. Is that a yes?

4 A. Yes.

5 Q. wilhite?

6 A. Yeah.

7 Q. And Ard?

8 A. I don't know about Ard. Only---

9 Q. Can you---

10 A. ---Owens and wilhite---

11 Q. And Mr. Brockington?

12 A. ---are suing me. I've never heard that name till
13 today.

14 Q. Okay. Fair enough.

15 Did, did you accuse Otis of playing dice or just the
16 rest of the men that were in the area?

17 A. It was the whole rec yard was out there playing.

18 Inmates were in the corner playing dice of the rec yard.

19 Q. Inmates are allowed to have cards, aren't they?

20 A. And they're suppose to play them inside on the card
21 table.

22 Q. Okay. So there's no problem with possession of cards
23 inside but there -- there's a problem with dice, correct?

24 A. Correct.

25 Q. Have you ever found any dice anywhere to this day

1 related to that incident ever?

2 A. Related to that incident?

3 Q. Yeah.

4 A. No.

5 Q. How many times did y'all search the rec yard for those
6 dice?

7 A. Once after everybody was pat searched.

8 Q. Okay. You searched everybody and then you searched the
9 whole rec yard?

10 A. Uh-huh.

11 Q. Is that a yes?

12 A. Yes.

13 Q. And you didn't find any dice?

14 A. No.

15 Q. What kind of dice did you think that they had?

16 A. Dice are usually made out of paper. So, it could of
17 easily would be swallowed, crushed, many things.

18 Q. It, it sounds like -- tell me if I'm wrong.

19 It sounds like you still think they may of been playing
20 dice?

21 Is that your testimony?

22 A. I saw them playing dice.

23 Q. So, in front of the jury today, after five years and no
24 dice ever being found, no dice being found on anybody, your
25 testimony is still that they were playing dice?

1 A. Yeah.

2 Q. Okay. Did you, at one point, look in these mens'
3 bellybutton for the dice?

4 A. No.

5 Q. You didn't stick your finger in their bellybuttons?

6 A. No.

7 Q. So if we hear testimony about that later, you would --
8 you'll disagree that you ever probed a bellybutton for dice?

9 A. Never.

10 Q. Okay. Were you angry because you couldn't find any
11 dice?

12 A. No.

13 Q. Were you frustrated?

14 A. No. We, we search things daily and never find it.

15 Q. Well, do you establish reasonable suspicion before you
16 go looking like the policy says?

17 A. Yes.

18 Q. Okay. I'm gonna ask you a question from Page 17 of
19 your deposition. Start on Line 9.

20 MR. DAVIDSON: Page what please?

21 MR. HAWKINS: Page 17.

22 Q. Is there any proof that there were ever any dice other
23 than you saying you saw dice?

24 what was your answer---

25 A. No.

1 Q. ---on Line 11?

2 A. No.

3 Q. Do you remember telling me that it's important to
4 follow safety rules across the board?

5 A. Yes.

6 Q. Is that true for reasonable suspicion too?

7 A. Yes.

8 Q. So, that's important for reasonable suspicion and
9 conducting a search with dignity and conducting a search
10 with palm up over the groin, correct?

11 A. Yes.

12 Q. Okay. There was a camera -- there were -- there was a
13 camera in the pod when you were working that day, was, was
14 there?

15 A. Yes.

16 Q. Okay. You're (sic) don't dispute there was a camera?

17 A. They---

18 Q. And that---

19 A. There is a camera in the pod, yes.

20 Q. Okay. And you dispute that it was rolling?

21 A. No.

22 Q. And you don't dispute that you never tried to recover
23 the camera to show what reasonable suspicion was for the
24 search?

25 Do you dispute either one of those things?

1 A. No.

2 Q. Okay. Okay. And you were elevated above these men
3 when you first saw them on some stairs?

4 A. Correct.

5 Q. And the camera was also elevated, wasn't it?
6 It's on the, it's on the ceiling.

7 A. Yes, and it---

8 Q. Okay.

9 A. It rotates.

10 Q. Okay. And how many cameras were inside that little I
11 guess half sphere?

12 A. At that time it's just one rotating camera. So---

13 Q. It wasn't---

14 A. ---if it's pointed---

15 Q. ---multiple cameras?

16 A. ---this way, it will not catch what's over here.

17 Q. Okay.

18 A. It constantly rotates.

19 Q. Okay. But we don't -- just so it's clear for the jury,
20 we don't know what was on the camera because it was allowed
21 to be deleted, correct?

22 A. To my knowledge.

23 Q. Okay. Well, we'll get into that in more detail in a
24 minute.

25 Can we agree that a sexual assault allegation is

1 serious?

2 A. Yes.

3 Q. Okay. If somebody -- and you're aware by now that
4 these men, at least two of them, have alleged sexual assault
5 during this search?

6 A. Yes.

7 Q. If -- well, for the jury, is it your position that you
8 didn't commit sexual assault?

9 Is that your position?

10 A. I did not commit a sexual assault.

11 Q. I'm sorry?

12 A. I did not commit a sexual assault.

13 Q. Okay. If somebody alleged a sexual assault, and you
14 didn't do it, why would you not demand that video be
15 preserved?

16 why did you not demand that somebody get and preserve
17 that video to comply with PREA?

18 MR. DAVIDSON: Can we have a sidebar, Your Honor?

19 THE COURT: Yes.

20 (WHEREUPON, a bench conference was held out of the
21 hearing of the jury at this time.)

22 MR. HAWKINS: Thank you, judge.

23 THE COURT: Mr. Hawkins.

24 MR. HAWKINS: Thank you, judge.

25 MR. DAVIDSON: Thank you, ma'am. Appreciate it.

1 Q. And after the side bar, I just need to ask you one more
2 question. We all agree that the event search was recorded
3 and it was available to view before it was deleted.

4 We agree on that, right?

5 A. To my knowledge, yes.

6 Q. Okay. Nobody, nobody ever showed it to you?

7 A. No.

8 Q. You didn't ever ask to see it?

9 A. No. To my -- if it was a PREA case, they interviewed
10 me and, from there---

11 Q. All right.

12 A. ---they take it up -- the PREA investigator does their
13 thing. I don't know---

14 Q. Do you know---

15 A. ---what they do.

16 Q. Okay. Well, let's talk about -- let's talk about a
17 PREA interview one minute.

18 If -- we can agree that you said, if it's PREA, they're
19 suppose to interview you, aren't they?

20 A. They did.

21 Q. All right. Well, we'll, we'll see.

22 Okay. So, for the record, we're talking about PREA
23 115.71 Subsection S, Subsection 2. We agree that there's
24 suppose to be an investigation over a sexual assault that's
25 alleged.

1 We agree on that, right?

2 MR. DAVIDSON: Your Honor---

3 Q. Correct?

4 MR. DAVIDSON: ---with, with all due respect, if he's
5 gonna read a policy, he needs to lay a foundation whether or
6 not this witness is familiar with it, has anything to do
7 with it.

8 MR. HAWKINS: No. No, that's not the rule and I can
9 hand him -- I can hand him a copy of PREA and he can flip
10 through, Your Honor, that unless I'm moving it into
11 evidence, then will's wrong about that. So---

12 THE COURT: I'm gonna---

13 MR. DAVIDSON: I---

14 THE COURT: I'm gonna overrule and allow you to submit
15 the policy.

16 MR. HAWKINS: Thank you, judge.

17 THE COURT: Use, use the policy. Excuse me.

18 MR. HAWKINS: Yeah. Thank you, judge.

19 Q. Okay. This is PREA Section 115.71. You look at that
20 if you need to. Tell me, if I start asking you questions,
21 just tell me to stop if you need a second.

22 MR. DAVIDSON: Can he provide me a copy, Your Honor?

23 MR. HAWKINS: It's PREA. It's the federal law. You
24 have a copy.

25 MR. DAVIDSON: I want to see what you're---

1 MR. HAWKINS: Okay.

2 MR. DAVIDSON: ---using.

3 MR. HAWKINS: Okay.

4 THE WITNESS: This, this isn't our PREA policy.

5 THE COURT: You can just hold on. Hold on.

6 You can show him --

7 MR. HAWKINS: Yes, ma'am.

8 THE COURT: -- that. We allow -- get the document and
9 show it to---

10 MR. HAWKINS: Yes, ma'am.

11 THE COURT: ---whether that's a --.

12 Q. You said -- I want you to look at Page 6 in your
13 deposition and that's what I'm gonna ask you---

14 MR. DAVIDSON: Your Honor?

15 Q. You just said --.

16 MR. DAVIDSON: I think we need to have a sidebar again.
17 I apologize.

18 THE COURT: All right. Why don't you escort the jury
19 out unless someone wants a smoke break?

20 (WHEREUPON, the following takes place outside the
21 presence of the jury.)

22 THE COURT: All right. Mr. Davidson.

23 MR. DAVIDSON: Your Honor?

24 THE COURT: You take issue with the statute?

25 MR. DAVIDSON: If I was understanding Mr. Owens -- I

1 mean Mr. Hawkins, he handed up a document to my client and
2 I, I kind of want to make sure I see what he's got cause
3 this is two pages here.

4 MR. HAWKINS: I gave him -- he got what he---

5 THE COURT: That's, that's what he has.

6 MR. DAVIDSON: That's what he has?

7 THE COURT: That's what was in his hand.

8 MR. DAVIDSON: Your Honor, this is not the policy for
9 the detention center and that was what it was kind of
10 referenced that. This is actually federal guidelines that
11 are included in the I believe the Federal Registry, Your
12 Honor.

13 Our policy is completely different. It does not
14 necessarily have to follow all the guidelines. No
15 correctional officer is gonna be familiar with federal rules
16 of code, guidelines, for PREA.

17 THE COURT: May I see it?

18 MR. DAVIDSON: Yes, ma'am.

19 THE COURT: Will you get it to him?

20 MR. DAVIDSON: You got it?

21 MR. HAWKINS: Okay.

22 MR. DAVIDSON: I don't know what you'd like to give
23 her.

24 THE COURT: Thank you.

25 Continue, Mr. Davidson.

1 MR. DAVIDSON: This is all -- if you look at it, it's
2 only a partial document, Page 27, Section 115.68, and then
3 it goes 115.71. Then it goes (f)(2).

4 This is the federal guidelines, Your Honor.

5 THE COURT: All right.

6 MR. DAVIDSON: This doesn't identify where it's from or
7 anything, Your Honor.

8 Our policy on PREA would indicate that it's just like
9 the policy that -- for frisk and things like would indicate
10 it's for the Sheriff's Department and the Sheriff's Office.
11 It would have a header saying when it was adopted. It would
12 indicate where -- the basis of it. That's not what this is.

13 So, to try to say this is a department policy when, in
14 fact, it has nothing to do with the department other than
15 it's a guideline, and, as you know, federal code has
16 guidelines all through it, that does not necessarily have to
17 be followed. They are just that, guidelines. And they're
18 expecting a correctional officer to know what the federal
19 rules and guidelines are for PREA I believe is, is the way
20 he phrased it. Is problematic for this jury and I have a
21 great deal of problems with the way he phrased it
22 referencing this was a policy of the department.

23 It is not and I believe that was misleading for the
24 jury in an attempt to mislead this witness.

25 MR. HAWKINS: Your Honor, PREA -- so, first of all, I

1 want to say on the record he just referred to the Prison
2 Rape Elimination Act, a CFR, as a, as a suggestion
3 basically. That's not what it is.

4 Multiple defense witnesses have testified about PREA.
5 Yes, we complied with PREA. Yes, PREA's a big deal. Yes,
6 they -- he filed a PREA report.

7 The document -- the hearsay document he moved to have
8 admitted is a PREA report.

9 So, I don't know -- I don't even know what kind of
10 argument he's making that we can't talk about a federal law.
11 If you violate a federal law, and this is, you know, Jinks
12 versus Richland County, I know that talks about internal
13 policies, but if you have policies especially that your,
14 your internal policies are modeled after, that's absolutely
15 relevant especially when they have tried to introduce a
16 hearsay document that's a PREA report with multiple eye
17 witnesses, including Mr. Gallam, have talked about how they
18 comply with PREA, everything's compliant with PREA. We
19 gathered evidence compliant with PREA.

20 That's, that's what's misleading. And to, and to
21 suggest that a federal law is somehow misleading to a jury
22 is, is -- I mean it's absurd.

23 Beyond that, if there's any conflict between state law
24 and this federal law, by the Doctrine of Preemption, the
25 federal law trumps. That's basic preemption law. That's,

1 that's Civil Procedure 101 in law school, Your Honor.

2 THE COURT: All right. Mr. Hawkins, I, admittedly, did
3 not hear how -- I don't remember how the question was
4 phrased.

5 Did you refer to it as policy or how did you
6 reference---

7 MR. HAWKINS: Just, just PREA, the Prison Rape
8 Elimination Act I think. But I'll -- I'm happy to couch it
9 however the Court wants me to. The, the point is it's a law
10 that, that governs detention facilities and the, the -- and
11 the assembly, either administrative body or the assembly,
12 enacted this to eliminate prison rape and sexual assault.
13 So, to say that it's a suggestion or a guideline is not, is
14 not correct.

15 THE COURT: I'll allow you to ask, ask him with regards
16 to that but I do -- I want you to make sure that you phrase
17 the question, or however you're going to use this, that it
18 is clear it is de -- that it's -- not confuse this jury that
19 this is Aiken County Detention Center's -- I want it to be
20 clear that it's a federal statute.

21 MR. HAWKINS: Yeah. And I will clarify it in my next
22 question, Your Honor. I will -- I withdraw the distinction
23 between the two.

24 MR. DAVIDSON: And he's got to -- he's got to lay a
25 foundation, Your Honor.

1 MR. HAWKINS: Not unless I'm introducing it. No, I
2 don't.

3 MR. DAVIDSON: If you're showing it to him, you need to
4 lay a foundation as to whether or not he has ever seen it
5 and does he know what it is. That's the question that has
6 to be asked to lay the foundation for this, this witness.

7 Now, Your Honor, I, I dare say that the guidelines --
8 as, as the Court is aware, the federal government drafts
9 legislation all the time.

10 In their guidelines they develop all the time that are
11 not considered part of the statute that are done to assist
12 agencies, federal, state, individuals, in how to conduct
13 matters. And I believe to ask this witness about a federal
14 guideline is highly improper and prejudicial unless he lays
15 the foundation and I still think it's prejudicial the way
16 he's doing it.

17 THE COURT: All right.

18 MR. DAVIDSON: And he -- and, Your Honor, I would like
19 to have this document marked as an ex -- Court Exhibit.

20 THE COURT: Certainly. I will do that, Mr., Mr.
21 Davidson. I have no issue marking this as a Court Exhibit.

22 (Pause.)

23 THE COURT: All right. So this will be Court's Exhibit
24 A.

25 MR. DAVIDSON: Can I have this?

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1 MR. HAWKINS: You can have it.

2 THE COURT: All right.

3 (WHEREUPON, the document was marked as Court's Exhibit
4 A for identification purposes only at this time.)

5 THE COURT: Mr. Hawkins, I do want a foundation.

6 MR. HAWKINS: Okay.

7 THE COURT: It's easy to, to lay and---

8 MR. HAWKINS: And I think I can---

9 THE COURT: I'm just trying to give that back to him.
10 I think it's, it's fairly simple to---

11 MR. HAWKINS: Oh.

12 THE COURT: ---lay a foundation.

13 MR. HAWKINS: Okay.

14 THE COURT: But I do think it's proper for you to lay
15 that foundation.

16 MR. HAWKINS: And, Your Honor, if you're going forward,
17 PREA is, is -- I mean this case is about a PREA violation.
18 So, if, if the fight comes up again or something going
19 forward, I just want to put that on the record. I mean this
20 is -- this is what the case is about.

21 THE COURT: So noted for the record.

22 MR. HAWKINS: Thank you, judge.

23 This says -- oh, we've already got A.

24 THE COURT: That's Court's. That's a---

25 MR. HAWKINS: Oh, I'm sorry.

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1 THE COURT: That's -- all right. Mr. Kelly, are you
2 ready to bring the jury back in?

3 Mr. Turner, is he -- did he go down for the smoke
4 break?

5 THE BAILIFF: I'll check.

6 THE COURT: Okay.

7 (Pause.)

8 THE BAILIFF: They're still downstairs.

9 THE COURT: All right. Just let me know when they come
10 back up.

11 Gentlemen, if you-all need a restroom break --

12 MR. DAVIDSON: Thank you, Your Honor.

13 THE COURT: -- please do so. We've got about 10
14 minutes.

15 Officer Gibson, are -- do you need a bathroom break?

16 THE WITNESS: I'm fine, Your Honor. Thank you.

17 (WHEREUPON, a short recess was taken at this time.)

18 THE COURT: We will bring the jury back in.

19 (WHEREUPON, the following takes place within the
20 presence of the jury.)

21 THE COURT: All right. Officer Gibson, we are having
22 some audio issues. If you can make sure that you speak the
23 way I'm speaking into that microphone so that we can hear
24 and, Mr. Hawkins, make sure that you're projecting so that
25 we can---

1 MR. HAWKINS: Yes, Your Honor.

2 THE COURT: ---hear you clearly.

3 All right. At this time we will resume the trial.

4 Mr. Hawkins.

5 CONTINUED DIRECT EXAMINATION

6 BY MR. HAWKINS:

7 Q. Mr. Gibson, before we had a sidebar and the jury went
8 out, I had asked you if you were interviewed about this and
9 were -- you told me you were interviewed.

10 Is that still your testimony?

11 A. Yes.

12 Q. And you understand you're under oath here today,
13 correct?

14 A. Yes.

15 Q. And you were under oath in -- on August 7th, 2018,
16 when I took your deposition, weren't you?

17 A. Yes.

18 Q. All right. So, looking at Page 60, starting on Line
19 20, and I asked you so two inmates on already exactly how --
20 yeah.

21 So, two inmates made allegations of sexual abuse and
22 nobody ever sat down with you in an interrogation room or
23 anything like that and what was your answer at Line 23?

24 A. What page?

25 Q. Line 23 on Page 60 in your deposition. And I'll -- so

1 it doesn't get too far back in time, I'll read it again.

2 Two inmates made allegations of sexual abuse and nobody
3 ever sat down with you in an interrogation room or anything
4 like that?

5 what was your answer on Line 23?

6 A. Not that I can remember.

7 Q. Okay. So---

8 A. Never sat in an interrogation room.

9 Q. Okay. So, so now you're saying that you were
10 interviewed but the reason you're answering differently is
11 because it wasn't in the room that I qualified the question
12 with?

13 A. I couldn't remember if I was interviewed.

14 Q. Well, that was---

15 A. I couldn't remember.

16 Q. ---in 2018, a year from the incident.

17 A. It's been quite a long time.

18 Q. Right. But it was closer in time when I asked you the
19 question cause the event happened in 2017 and I asked you in
20 2018 and you said not that I can remember.

21 So now that we're farther away from that, more than
22 five years, you -- are you saying you remember it better?

23 A. No, I don't.

24 Q. Okay. So I'll ask you again.

25 Has anybody ever sat down in a room and done an

1 interview about this incident?

2 A. Not that I can remember.

3 Q. Okay. Has anybody ever taken a recorded interview or a
4 recorded statement about the alleged sexual assault?

5 A. Not to my knowledge.

6 Q. Okay. And you were -- would you remember something
7 like that if it happened?

8 A. With it being a recording?

9 Q. Okay. And then I -- and the next question I'm gonna
10 ask you is on the next line.

11 Did anybody ask you point blank did you grab his
12 testicles and look at Page 61.

13 What was your answer?

14 A. Not that I can remember.

15 Q. So we can agree that nobody ever sat down in a room and
16 talked with you about this event in an interview, correct?

17 A. We can agree to that I don't remember.

18 Q. Okay. And we can agree that you don't remember ever
19 being asked the question point blank did you grab his -- in
20 his testicles?

21 A. Yes.

22 Q. Okay. I asked you some questions about the Prison Rape
23 Elimination Act.

24 Do you recall that?

25 A. Yes.

1 Q. Okay. And is this a, is this a -- well, let me back
2 up. I want to make sure it's clear for the record and then
3 I'll follow the Court's instructions. This is not in your
4 internal policy.

5 This is what federal law requires, correct?

6 A. That is not our policy, correct.

7 Q. Right.

8 This is the Prison Rape Elimination Act that's the U.S.
9 government, correct?

10 A. I, I assume so but I --.

11 Q. You assume so?

12 A. I, I mean I -- if I -- I don't know what that piece of
13 paper is you're holding.

14 Q. Okay. You don't?

15 (WHEREUPON, there was no audible response.)

16 Q. Aren't you required to have PREA training every year or
17 not---

18 A. Yes, we get PREA training. But they don't hold up --
19 you're asking me what's that's hold -- you -- what you're
20 holding in your hand.

21 Q. Okay. Do you know what -- the minimum standards for
22 detention facilities in South Carolina?

23 A. Not off the top of my head.

24 Q. Okay. well, this is the bare minimum required by all
25 detention facilities and right here, at 1036, can you see

1 where it says each facility shall maintain records and types
2 of hours of training completed by each security officer?

3 A. Yes.

4 Q. Do you see that?

5 A. Yes.

6 Q. And right here one of those sexual abuse/assault
7 awareness and response, P-R-E-A?

8 A. Yes.

9 Q. Right?

10 A. Yes, we do get training. But you were asking about
11 that document. I don't know what that is.

12 Q. And I'm not trying to put you in a bad spot.
13 what I'm saying is if you got training, how do you not
14 know what that document is?

15 It's got a big federal seal on it.

16 MR. DAVIDSON: Objection---

17 A. Because they don't hold up a federal seal.

18 MR. DAVIDSON: ---Your Honor.

19 THE COURT: Hold on. Hold on.

20 Objection?

21 MR. DAVIDSON: Number one, Your Honor, if he can show
22 me a federal seal on that document I would appreciate it.
23 He hadn't showed me a document other than two pages he asked
24 about that I objected to and that is actually a CFR.

25 Now I requested and I think you instructed him to lay

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1 the foundation for the document. So, I continue my
2 objection, Your Honor.

3 THE COURT: Let me see that.

4 MR. HAWKINS: Your Honor, is---

5 MR. DAVIDSON: Is there not a seal?

6 Is the document you got got a seal?

7 MR. HAWKINS: Right here with a big eagle on it.

8 MR. DAVIDSON: well, that's, that's the federal
9 government.

10 MR. HAWKINS: That's what I just said.

11 THE COURT: All right.

12 MR. DAVIDSON: He's not even gonna lay a foundation,
13 Your Honor.

14 THE COURT: I'm, I'm going to sustain. I want you to
15 lay, to lay---

16 MR. HAWKINS: Yes, Your Honor.

17 THE COURT: I want you to continue to lay your
18 foundation, Mr. Hawkins.

19 MR. HAWKINS: Yes, Your Honor.

20 And, and for the record, before I do that, the, the
21 section from the minimum standards for local detention
22 facilities in South Carolina was 1035, Subsection L and 1036
23 right there.

24 Do you receive Prison Rape Elimination Act training?

25 A. Yes.

1 Q. Are you required, per your own -- per Aiken's internal
2 policies, to be familiar with the Prison Rape Elimination
3 Act?

4 Are you required to be familiar with that and have
5 training on it?

6 A. Required to have training.

7 Q. Okay. From your training -- well, first of all, did
8 you bring any documentation with you about your PREA
9 training?

10 A. That---

11 Q. Do you know---

12 A. That would be---

13 Q. ---if anybody brought any?

14 A. That would be in my training record.

15 Q. Okay. Do you know if the type of hours and, and the,
16 and the number of hours and all that is in your, is in your
17 training records?

18 A. I haven't seen my training record.

19 Q. Okay. We'll get into that later then.

20 So, you're familiar that the Prison Rape Elimination
21 Act contains guidelines and rules for evidence preservation
22 and how to respond to a sexual assault?

23 You -- are you aware of that?

24 A. Yes.

25 Q. Okay. So, we agree that this document, the Prison Rape

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1 Elimination Act, governs and provides rules and guidelines
2 for---

3 MR. DAVIDSON: Your Honor, so a federal statute and
4 guidelines. It may govern the facility. The facility has
5 policies and procedures that deal with this.

6 THE COURT: All right. What's your objection?

7 MR. DAVIDSON: It's, it's misleading---

8 THE COURT: Is it a running objection?

9 MR. DAVIDSON: ---and there's no found -- and no
10 foundation, Your Honor. He hadn't laid the foundation for
11 any of this.

12 MR. HAWKINS: Every time I start trying---

13 THE COURT: All right.

14 MR. HAWKINS: ---to asking these questions he objects,
15 Your Honor.

16 THE COURT: All right. Objection is overruled.

17 Continue---

18 MR. DAVIDSON: Thank you.

19 THE COURT: ---Mr. Hawkins.

20 MR. HAWKINS: Thank you, judge.

21 Is it, is it, from your training, from your PREA
22 training, is it your position in front of this jury that you
23 complied with what PREA requires and what, you know, PREA
24 --?

25 A. I complied with Aiken County's policy of PREA.

1 Q. Okay. Did -- do you think you should apply, that you
2 should comply with the federal government's Prison Rape
3 Elimination Act?

4 A. I complied with our agency's policies.

5 Q. Well, what I'm asking is do, do you think you should
6 comply with the federal government's Prison Rape Elimination
7 Act?

8 A. If that is written into our policy, yes.

9 Q. Okay. The footage that we talked about earlier --

10 A. Uh-huh.

11 Q. -- can we agree that that footage is directly related
12 to this case?

13 A. Yes.

14 Q. Okay. Did you tell me at one point that lieutenants
15 can get that footage anytime they want to?

16 Look at Page 37 Line 7 through 8 of your deposition.

17 A. And, again, I don't know how the camera works. But I
18 think I said yes.

19 37?

20 Q. Page 37 Line 9.

21 Okay. And I'm gonna ask you a question just how I
22 asked at your deposition.

23 A. Yes.

24 Q. Do you, do you agree that that's directly related to
25 this case, correct?

1 I mean---

2 A. Ye---

3 Q. ---the footage of the search that we're talking about
4 is related to this case, right?

5 A. Yes.

6 Q. And what's your answer on Line 12?

7 A. Yes.

8 Q. Okay. And can we agree -- and this is, this is on Page
9 37 too. Lines 13 through 18.

10 Can we agree that, since we filed suit soon after the
11 event, the government should have saved the footage of the
12 event?

13 Can we agree on that?

14 A. There was an objection but yeah.

15 Q. And I'll, I'll just read the, the question. Line 13.

16 And that's, that's something -- I mean we filed suit
17 pretty quick after this happened. So that's something that
18 should have been held on to.

19 Can we agree on that?

20 will objects and then what was your---

21 MR. DAVIDSON: As to the objection, Your Honor, it's
22 still the --.

23 THE COURT: So noted for the record.

24 Q. And what was your answer on Line 18?

25 A. Yes.

1 Q. Okay. So they should of held on to it, right?

2 A. I should of held onto it?

3 Q. The government. Your employer.

4 A. Yes.

5 Q. Okay. And multiple men have accused you of causing
6 trauma to their testicles, correct?

7 A. I only know of two.

8 Q. Okay. Well, look on -- two is multiple. Let's look on
9 Page 19. Start on Line 21.

10 MR. DAVIDSON: May I have a continuing objection, Your
11 Honor?

12 THE COURT: Yes, sir. The, the objection will continue
13 to run.

14 MR. DAVIDSON: Thank you, Your Honor.

15 Q. Okay. So we're talking about -- start on Line 14
16 talking about wilhite---

17 A. Uh-huh.

18 Q. ---Inmate Number 107850 and, and I asked you, further
19 down I say, what's he suing you for. You said the exact
20 same thing that---

21 A. Exact same thing.

22 Q. ---oh -- Otis is.

23 MR. DAVIDSON: Your Honor, if, if he's gonna impeach
24 the witness, he needs to ask a question and then impeach him
25 right. This is -- all he's doing is reading this

1 deposition.

2 MR. HAWKINS: Okay. I'll ask the question differently.
3 what---

4 THE COURT: Try to rephrase the question.

5 MR. HAWKINS: Thank you, Your Honor.

6 Q. Do you know what they -- do you know what they, Owens
7 and wilhite, two people --

8 A. Uh-huh.

9 Q. -- do you know---

10 MR. DAVIDSON: what line?

11 MR. HAWKINS: It's Page 19 Line 24 to pick where I'm
12 starting with. Actually Line 25.

13 Do you know what they, Otis and wilhite, allege?

14 If they both allege the same thing, do you know what
15 they're alleging that you did and what was your answer at
16 Line 3?

17 A. Trauma to the scrotum area.

18 Q. Trauma to the scrotum area.

19 All right.

20 A. Yes.

21 Q. Okay. So that's, that's two people that were searched
22 that day that both alleged trauma to their scrotum,
23 testicle, groin?

24 A. Correct.

25 Q. Okay. And I clarified that. Look on Line 4.

1 Just the scrotum and the test -- just the scrotum or
2 the testicles themselves or both?

3 what was your answer at Line 6?

4 A. The testicles themselves I believe.

5 Q. Okay. And is it your understanding that was a
6 hydrocele injury?

7 A. I didn't know what they---

8 MR. DAVIDSON: Same objection, Your Honor.

9 THE COURT: So noted.

10 Q. Is it your understanding that Mr. Otis -- Owens
11 sustained two moderate size hydrocele injury, one on each
12 testicle?

13 MR. DAVIDSON: what line please, page and line?

14 MR. HAWKINS: I, I didn't -- I'm just asking the
15 question.

16 MR. DAVIDSON: Oh, okay.

17 A. I'm, I'm, I'm not a medical professional. I don't know
18 what type of -- all I knows (sic) is he was suing me for
19 damage.

20 Q. Okay. we'll get into that.

21 was Mr. wilhite also treated for his traumatic
22 testicular injury?

23 A. To my knowledge if he put in a request, yeah.

24 Q. Okay. well, I want to ask you what I asked you at Line
25 7 on Page 20.

1 Do you know if wilhite has any medical records showing
2 an injury?

3 A. The only---

4 MR. DAVIDSON: which---

5 A. The only records I've seen---

6 MR. DAVIDSON: which line?

7 A. ---pertaining to this case. So I said yeah.

8 Q. Okay.

9 MR. DAVIDSON: Your Honor, can -- I'm gonna have an
10 objection to this line of questioning. It's not relevant.
11 The medical records in this case would be hearsay regarding
12 what this individual sought. He's not a medical
13 professional and the -- and, for the record, Mr. wilhite
14 sued him also---

15 MR. HAWKINS: Your Honor?

16 MR. DAVIDSON: ---for the record.

17 MR. HAWKINS: Your Honor, I'm happy to take the word
18 medical record out of my question. I, I don't have a
19 problem doing that if it will speed things along.

20 THE COURT: All right. Please do that, Mr. Hawkins,
21 and, for the record, that objection -- I do believe the
22 question is relevance. So I'm overruling that objection.

23 MR. HAWKINS: Thank you, judge.

24 THE COURT: Thank you.

25 Q. And did you refer to Mr. wilhite's injury as a damaged

1 scrotum at some point?

2 A. Yes.

3 Q. All right. And you saw the paperwork related to
4 Mr. Wilhite's injury, correct?

5 A. Yes.

6 MR. DAVIDSON: Your Honor?

7 THE COURT: Objection, Mr. Davidson?

8 MR. DAVIDSON: Yes, ma'am. He, he -- his, his -- the
9 fact that he may have seen a record in regard to another
10 lawsuit doesn't mean that he has evidence that he can
11 introduce in this case. It would be hearsay.

12 MR. HAWKINS: And, Your Honor---

13 MR. DAVIDSON: It would be offered for the out-of-court
14 statement offered for the truth of the matter asserted.

15 THE COURT: What's your response, Mr. Hawkins?

16 MR. HAWKINS: If he'll let me go two or three questions
17 without an objection, these men also---

18 THE COURT: Well, all right.

19 MR. HAWKINS: Sorry.

20 THE COURT: I don't want you to -- Mr. Davidson, I'm
21 going to overrule.

22 Mr. Hawkins, I'll allow you to continue your line of
23 questioning.

24 MR. HAWKINS: Thank you, judge.

25 For clarification for the jury and for everybody,

1 there's not just medical records related to these injuries.

2 There's also grievance forms related to these injuries,
3 correct?

4 A. To my knowledge, yes.

5 Q. Okay. Did Otis submit a grievance the day that you
6 ended with -- the day that the search happened?

7 A. The lieutenants and shift command reads the grievances.

8 Q. Okay.

9 A. But I have --

10 Q. Okay.

11 A. -- (indiscernible) them.

12 Q. Okay. So, does this -- this document that I've handed
13 you, is this a grievance submitted by Mr. Owens on January
14 the 25th of 2017?

15 A. Yes.

16 Q. Okay. What does it say right here?

17 When he's -- talks about what you did, what does it say
18 right here where I've highlighted?

19 A. He violated me as a man and embarrassed me.

20 Q. He violated me as a man and embarrassed me.

21 Okay. And then what does this say down here?

22 Read that part.

23 A. You want me to read someone else -- what someone else
24 typed in?

25 Q. Yeah, cause it's coming into evidence. Your lawyer

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1 wanted to know this.

2 A. well---

3 Q. what does it say?

4 A. Resubmit this request on 1/27/17.

5 Q. Okay. So, under PREA and with your PREA training,
6 sexual assault allegations are serious, right?

7 A. Yes.

8 Q. And you're suppose to provide medical treatment
9 immediately if there's a sexual abuse allegation reported,
10 correct?

11 A. Yes.

12 Q. But y'all told him to wait two days with a hydrocele
13 injury before he could even see a professional or get any
14 medicine, right?

15 MR. DAVIDSON: Object---

16 Q. That's what the reporter---

17 MR. DAVIDSON: ---Your Honor.

18 Q. ---told him to do?

19 THE COURT: Basis of objection?

20 MR. DAVIDSON: Your Honor, he said you waited two days.

21 well, there's no indication that Mr. Gibson was
22 involved in this and the question is whether or not Mr.
23 Owens improperly submitted a grievance.

24 MR. HAWKINS: Okay. This, this is important, Your
25 Honor.

1 Can I respond?

2 THE COURT: Mr. --.

3 MR. HAWKINS: Can I respond?

4 THE COURT: Is it, is it a -- let's sidebar.

5 (WHEREUPON, a bench conference was held out of the
6 hearing of the jury at this time.)

7 THE COURT: All right. Mr. Hawkins, if you'll resume.

8 MR. HAWKINS: Thank you, judge.

9 Mr. Gibson, I want to clarify something for the jury.
10 I said -- I said you waited two days before you gave him any
11 attention but that wasn't you.

12 That was the Sheriff's Office who you work for,
13 correct?

14 A. I believe the name is listed at the bottom of the --.

15 Q. Okay. Yeah, no. We will -- we'll, we'll get into
16 that.

17 But all this, this person and you and all and Mr.
18 Gallam, all these people are employees of the Sheriff's
19 Office, right?

20 A. Yes.

21 Q. Okay. And, as you know, the law on this kind of case
22 that says we have to name a sheriff and/or the Sheriff's
23 Office. We can't name you individually. We have to name
24 the entity. And so that's why I said collective you. You
25 being you-all at the Sheriff's Office.

1 Is, is that -- does that clarify things?

2 A. Yes.

3 Q. Do you need clarification on anything else?

4 A. What was the original question?

5 Q. Did, did you-all at the Sheriff's Office, being you and
6 Lieutenant Bedford, and Bowman, and Gallam, and everybody
7 that works at the Sheriff's Office, did you-all tell
8 Mr. Owens to wait two days after he reported a sexual
9 assault?

10 A. And see in that case I can't, I can't be a part of that
11 collective unit---

12 Q. Okay.

13 A. ---cause I don't see the, the requests.

14 Q. Okay.

15 A. They go on there. They type. I don't look over their
16 shoulder.

17 Q. Okay.

18 A. So --.

19 Q. Okay. Well, I'll ask it this way.

20 Per this request, did the Sheriff's Office, through one
21 of its employees, tell Otis he couldn't have it -- medical
22 attention the day of the assault, he had to wait two more
23 days?

24 Is that, is that fair to say?

25 A. Yes.

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1 Q. Okay. It wasn't immediate medical attention like in
2 the minimum standards of PREA or anything like that?

3 It was you need to wait two days, correct?

4 A. Yes.

5 Q. And then he had to wait for almost a month before he
6 got a ultrasound, right?

7 A. I --.

8 Q. Okay.

9 A. whatever the medical schedule. The---

10 Q. well, here -- here's the ultrasound. Here's the date.

11 MR. DAVIDSON: Your Honor, if he---

12 Q. That's 2/24/17.

13 Do you see that?

14 THE COURT: Hold on, Mr.---

15 MR. HAWKINS: Oh, I'm sorry.

16 A. I'm---

17 MR. DAVIDSON: He's got to lay---

18 THE COURT: Mr. Davidson.

19 MR. DAVIDSON: ---a foundation whether or not this
20 gentleman would of ever have seen an ultrasound other than
21 when Mr. Hawkins is putting it in his face---

22 MR. HAWKINS: No, Your Honor.

23 MR. DAVIDSON: ---and pointing out a date. He's not
24 involved in medical and medical is a separate contract
25 entity at the detention center.

1 THE COURT: All right. And you're offering this
2 ultrasound?

3 MR. HAWKINS: For the date, for the date of when it
4 happened.

5 Are you aware that you-all at the Sheriff's Office made
6 him wait a month before---

7 MR. DAVIDSON: Objection, Your Honor.

8 THE COURT: All right. Objection is, is overruled. I
9 will allow him to ask regarding the date of the ultrasound.
10 Not medical testimony.

11 MR. HAWKINS: Okay.

12 All right. Do you see the date right here on the
13 ultrasound?

14 A. Yes.

15 Q. What does that date say?

16 A. 2/24. It might be a '17. It's blocked by --.

17 Q. You -- okay. You're saying you can't say the seven,
18 right?

19 A. If it is a seventeen.

20 Q. Okay. Can you read this date right here?
21 What's that say?

22 A. June 15, '17.

23 Q. Okay. And what does that say right there?

24 A. Moderate sized --.

25 MR. DAVIDSON: Your Honor, I object.

1 Q. Hydrocele.

2 A. Yeah.

3 MR. DAVIDSON: He's trying to publish---

4 Q. Was it---

5 A. It's hydrocele---

6 THE COURT: Hold on.

7 MR. DAVIDSON: ---a---

8 THE COURT: Hold on.

9 MR. DAVIDSON: ---medical record.

10 THE COURT: All right. Your objection is what, Mr.
11 Davidson?

12 MR. DAVIDSON: Number 1. The record is not in
13 evidence, number one. He's trying to get him to publish
14 information from a medical record that he is laid no
15 foundation for and it has not been introduced and this
16 individual is not a medical professional and does not work
17 for the medical department since the medical department is
18 an independent contractor of the Sheriff's Department.

19 He's got to lay a foundation. He just can't stick a
20 medical record in front of somebody and say read what it
21 says. He's publishing something at that point that's an
22 out-of-court statement that he is offering for the truth of
23 the matter asserted.

24 THE COURT: All right. Thank you.

25 MR. DAVIDSON: So, it's hearsay.

1 THE COURT: All right, Mr.---

2 MR. DAVIDSON: I want---

3 THE COURT: Mr. Hawkins -- excuse me.

4 Mr. Hawkins, what's the purpose of the introduction of
5 the medical record?

6 MR. HAWKINS: I didn't need -- I didn't move to
7 introduce it in evidence yet, Your Honor. We, we, we will
8 at some point. But the purpose of showing him this
9 document, he said he couldn't see the date on the
10 ultrasound. So, I showed him the record of where my client
11 was diagnosed with hydrocele.

12 MR. DAVIDSON: Your Honor?

13 THE COURT: All right.

14 MR. DAVIDSON: He's, he's now publishing to the jury --

15 THE COURT: All right.

16 MR. DAVIDSON: -- the diagnosis, and I'm gonna -- and,
17 quite honestly, this is improper and I'm gonna need to take
18 a matter up outside the presence of the jury.

19 THE COURT: We will do that. We will do that
20 expeditiously.

21 Mr. Charlie, at this point, ladies and gentlemen of the
22 jury, I am going to allow you-all to break for lunch. We
23 will reconvene at -- we'll reconvene at 1:45. We have lunch
24 provided for you.

25 Thank you.

1 (WHEREUPON, the following takes place outside the
2 presence of the jury.)

3 THE COURT: All right. I've excused the jury out for a
4 long lunch. However, we are still on the record.

5 Officer Gibson, because I have done that, your attorney
6 is not able to explain to you, but you are not to have any
7 communication with your attorney cause you are still a live
8 witness and I broke in the middle of your testimony. So
9 that---

10 MR. DAVIDSON: Your Honor, I've told him that too, Your
11 Honor.

12 THE COURT: Okay. All right. You -- so, Mr. Davidson
13 is aware and Officer Gibson is as well.

14 Mr. Davidson, do you have your objection, sir---

15 MR. DAVIDSON: Yes---

16 THE COURT: ---and we have a matter of law?

17 MR. DAVIDSON: The plaintiff was asking Mr. Gibson
18 about a medical record that was essentially the results of
19 the sonogram or ultrasound---

20 THE COURT: Right.

21 MR. DAVIDSON: ---done on Mr. Owens on, on 2/24/17 and,
22 and I recognize that cross-examination is, is somewhat
23 broader. This is cross even though it's direct testimony.

24 But you can't ask a witness a question, even on cross,
25 number one, that he has not laid a foundation for and then

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1 read to the jury what the diagnosis or conclusion or finding
2 is in that medical record. That is improper because it's
3 not in evidence and to publish it before it goes into
4 evidence is highly unusual, improper, and prejudicial. To
5 ask this individual about that medical record and what it
6 says is improper because that medical record is hearsay
7 until it is introduced in evidence and a foundation laid
8 whether or not that document can or can not come into
9 evidence.

10 So, to do that at this stage with this witness, who is
11 not a medical doctor, not a nurse, doesn't work for Southern
12 Health Department who is the individual contractor for the
13 detention center, is highly prejudicial and I believe was
14 improper for Mr. Hawkins to publish that information to the
15 jury. And I think he published -- what he published, Your
16 Honor---

17 THE COURT: Tell me exactly what he published.

18 MR. DAVIDSON: Do what now?

19 THE COURT: Tell me exactly what he --.

20 MR. DAVIDSON: I believe he published, Your Honor---

21 MR. HAWKINS: I can hand a copy of---

22 MR. DAVIDSON: ---evidence of a hydrocele in the
23 results from the ultrasound to say what the---

24 THE COURT: You can give it to her.

25 MR. DAVIDSON: ---impression is.

1 MR. HAWKINS: Oh, I'm sorry.

2 would, would Your Honor like the, the ultrasound too
3 cause we asked about the dates on both of them?

4 He said he couldn't see the date on the ultrasound.

5 THE COURT: All right. Let Mr. -- yeah, just hand me
6 that and let Mr. Davidson continue.

7 (Pause.)

8 THE COURT: The purpose of the document was for the
9 date.

10 Is that correct---

11 MR. HAWKINS: For the day---

12 THE COURT: ---Mr. Hawkins?

13 MR. DAVIDSON: But, but then, Your Honor, he's asked
14 him about when and how this occurred. This man doesn't know
15 anything about this record. He should of laid the
16 foundation, number one, before he even asked about the date.
17 Have you ever seen this document. Are you familiar with it.
18 Do you know what it is. Then he could of asked him about
19 the date.

20 But then he goes beyond that, and I objected to that
21 also if you'll remember, but he went beyond that and he went
22 into the impression as is contained within that document and
23 he published it to the jury. This document is not in
24 evidence. This document, right now, he's offering it or I
25 assume what he -- why he read it or said it to the jury is

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1 for the truth of the matter asserted, which makes it
2 hearsay, which is improper, which is prejudiced my client.
3 I have avoided this like the plague.

4 THE COURT: All right. Mr.---

5 MR. DAVIDSON: But I'm gonna move for a mistrial based
6 on Mr. Hawkins' conduct in reading that information to the
7 jury and trying to get into evidence hearsay information
8 regarding the impressions that were found on the ultrasound
9 and that's, that's wrong, judge.

10 THE COURT: All right. So I'm gonna allow Mr. Hawkins
11 to address both, both issues.

12 Mr. Hawkins, I want you to address first the underlying
13 objection and then you'll respond to the motion for a
14 mistrial.

15 MR. HAWKINS: Yes, Your Honor.

16 As far as, as far as showing him the second document, I
17 tried to show him the first document. He says well, I can't
18 see the date because the seven's covered up. So I show him
19 the second document.

20 We have to say -- I didn't ask him to publish the
21 entire document or what did the doctor say. He went to the
22 doctor because of the testicular injury. So, I asked him to
23 read the date and then we're talking about the testicular
24 injury. That's it.

25 I didn't ask him to read the entire medical record. I

1 didn't move to have the medical record admitted into
2 evidence. If he says I can't see, I can't see what that
3 says, I'm entitled to go up there with another document and
4 say okay, how about the date on this one, can you see this
5 one, and it's related to the injury we're talking about,
6 right. Right.

7 As far as the mistrial, as far as I know he does that
8 in every case. I told the Court he would do it in this case
9 because I knew he was gonna do it and I knew it was coming.
10 That would be an incredible waste of resources, an
11 incredible waste of time, an incredible waste of this jury's
12 time when there's not been anything to -- and he always does
13 then when he gets worked up, he goes---

14 THE COURT: It's all right.

15 MR. HAWKINS: ---closer to the judge.

16 THE COURT: It's all right. We'll, we'll allow -- I
17 will allow him to move about.

18 Tell me about why there should not be -- just give me
19 argument regarding the mistrial.

20 MR. HAWKINS: Right.

21 Your Honor, we have spent an incredible amount of time
22 and resources getting ready for this trial. We have obeyed
23 the Court's rulings, as far as I can tell, at every term.
24 We've dealt with, I don't know, how many objections.

25 He shouldn't be able to just move for a mistrial in

1 every case and hope he gets it some of the time. A mistrial
2 is for when something egregious happens. Not when something
3 that we had to go and find ourselves. It shows a date that
4 he says he doesn't know about and then we say okay, well is
5 this the date it happened.

6 THE COURT: All right.

7 MR. HAWKINS: And a mistrial is, is tampering with a
8 juror. A mistrial is doing something that's -- the Court
9 has previously ruled you can't do. Not something he doesn't
10 like. That's not grounds for a mistrial, Your Honor.

11 THE COURT: All right.

12 MR. DAVIDSON: Your Honor?

13 MR. HAWKINS: He did this in the last case he tried
14 against Clemson and Judge McIntosh denied it.

15 THE COURT: All right. Well, tell me what you want to
16 tell me, Mr. Davidson.

17 MR. DAVIDSON: Your Honor, number one, a mistrial is an
18 appropriate remedy when the plaintiff or defendant exceeds
19 the bounds of proper examination or statements before the
20 jury or a judge. I would not be doing my job as a lawyer
21 for my client if, if, in this instance, I did not move for
22 it.

23 I would ask the Court to get the court reporter, if she
24 can do it, I don't know if she can do it or not, she may
25 want to throw a book at me---

1 THE COURT: What you want -- you want her to replay---

2 MR. DAVIDSON: I want her, if she doesn't mind, if
3 she's got it typed out, I would like for her to find what
4 Mr. Hawkins published in regard to this document because my
5 memory was, and the reason I objected, was he published the
6 information in that or at least a synthesized -- okay. I
7 believe he said it was a, a -- or diagnosed as a hydrocele
8 or swelling of the testicles and he published that to the
9 jury.

10 The document is not in evidence. The document has not
11 had a foundation laid. The document is bald hearsay. He
12 did that in an attempt to offer it into evidence, an
13 out-of-court statement, the writing, that would be hearsay
14 because it's being offered, I assume, for the truth cause it
15 doesn't go to notice to this gentleman cause he's never
16 seen, or if he's seen it, he saw it in regard to the
17 lawsuit. He doesn't deal with it. He doesn't deal with
18 medical. That's all through the medical people. His name
19 does not appear on this document in any form you know.

20 THE COURT: All right.

21 MR. DAVIDSON: I even have questions about asking him
22 the date without him being able to identify what in the
23 world it is. I can show anybody any document from anywhere
24 and say well, isn't this the Magna Carta and they, you know,
25 they may think yes, it is.

1 well, it's -- the fact that it is, you need to ask them
2 are you familiar with the Magna Carta, have you ever seen it
3 before.

4 THE COURT: All right.

5 MR. HAWKINS: Your Honor, I didn't make him answer the
6 question I can't see the date. I had another document---

7 MR. DAVIDSON: I'm not talking about---

8 MR. HAWKINS: ---with the date on it.

9 MR. DAVIDSON: ---that.

10 MR. HAWKINS: I didn't make him give me that answer.

11 THE COURT: All right. This is what we're gonna do.

12 I'm going to -- I'm gonna let you-all break for lunch
13 and I'm gonna come -- I'm gonna ask that we be back here
14 at -- okay.

15 All right. I'm gonna ask that we meet back here at
16 1:30. I'll give you my rulings with regards to the
17 questioning of this witness on this particular document.

18 But also, Mr. Dawkins, and -- Mr. Hawkins---

19 MR. DAVIDSON: That's fine.

20 THE COURT: Mr. Hawkins and Mr. Davidson, I'll give you
21 my ruling with, with regards to your motion for mistrial.
22 In that mean time, I'm going to get with my court reporter
23 and I'll go back and review the record.

24 MR. DAVIDSON: Thank you, Your Honor.

25 THE COURT: All right. So you-all have a good lunch

1 and I will come back -- we'll come back here at 1:30 --

2 MR. DAVIDSON: Thank you, Your Honor.

3 THE COURT: -- and I'll make my rulings.

4 MR. HAWKINS: Thank you, judge.

5 THE COURT: Thank you.

6 (WHEREUPON, Court was in recess for the lunch hour.)

7 THE COURT: -- laying the foundation for these
8 documents or these medical records.

9 Let me say this. I am going to sus -- to, to sustain
10 that, Mr. Hawkins. But let me say this and I believe that
11 you're offering this, and correct me if I'm wrong or stop me
12 if I, if I am mischaracterizing, but I believe the purpose
13 of you offering the first document, the initial one, was to
14 it -- to establish that your client had not been permitted
15 to report for two days.

16 Is that correct?

17 MR. HAWKINS: Exactly, Your Honor.

18 THE COURT: All right. And I believe that your purpose
19 then, using the second document, was because a witness
20 stated that he could not see one of the numbers.

21 MR. HAWKINS: Exactly, Your Honor.

22 THE COURT: All right. Now, let me say to that, Mr.
23 Hawkins, I think that your point is made with the jury
24 that -- I think you asked him, prior to the introduction of
25 any of this, I think that you established that he had not

1 reported until two days after the alleged incident.

2 MR. HAWKINS: Right. He was told to report again to
3 the facility, yes, Your Honor.

4 THE COURT: Okay. And so the reason that I wanted to
5 get some clarification on that is because I believe your
6 point is established.

7 MR. HAWKINS: Okay.

8 THE COURT: I don't know how necessary it is to then
9 reestablish the two day time period through these documents.

10 MR. HAWKINS: Okay.

11 THE COURT: I don't think they're necessary---

12 MR. HAWKINS: And, Your---

13 THE COURT: ---to do that.

14 MR. HAWKINS: And, Your Honor, just, of course, I'm
15 gonna do whatever Your Honor tells me to do. But just so
16 Your Honor doesn't think I'm beating a dead horse, the, the
17 call -- the grievance establishes the two day waiting
18 period. The ultrasound establishes the waiting a month
19 before they let him have the ultrasound.

20 And so it's to establish two different instructions to
21 wait.

22 THE COURT: Okay.

23 MR. HAWKINS: But, of course, I'm gonna do whatever you
24 tell me.

25 THE COURT: I understand. Thank you---

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1 MR. HAWKINS: That---

2 THE COURT: ---for that clarification, Mr. Hawkins. I
3 do -- but I don't think the use of these documents at this
4 juncture are not necessary. I don't want to get into this
5 jury tapping out---

6 MR. HAWKINS: Yes, Your Honor.

7 THE COURT: ---and then being confused.

8 MR. HAWKINS: Yes, Your Honor.

9 THE COURT: Mr. Davidson, with regards to the mistrial,
10 I do not believe that there was an error so egregious that
11 it determines that there is a necessity for a mistrial. So,
12 that motion I am going to deny.

13 MR. DAVIDSON: Your, Your Honor, with all due respect,
14 and I don't want to --.

15 THE COURT: Certainly. I'll allow you to go with the
16 record.

17 MR. DAVIDSON: I don't want to necessarily argue to the
18 Court after a ruling but I'm gonna have to -- need to say
19 something for the record.

20 The, the portion of the tape that was read dealt with,
21 and we objected earlier about that and I believe you gave a
22 continuing objection, regarding testimony by Mr. Hawkins or
23 questions by Mr. Hawkins in regard to Officer Gibson knowing
24 what the allegations were cause he was sued in two lawsuits.
25 So, he knew what they were alleging in those lawsuits.

1 Doesn't necessarily mean that establishes the injury or
2 the proximate cause and, and, quite honestly, you can make
3 an argument that it's hearsay. But I'm not gonna make that
4 right now.

5 The basis of the, of the motion for mistrial came later
6 in the testimony. That came where Mr. Hawkins was handing
7 him the medical record --

8 THE COURT: Right.

9 MR. DAVIDSON: -- showing him the medical record in
10 regard to the date and Mr. Hawkins then referenced the
11 diagnosis on that record. That was when we objected and
12 that's when I ultimately raised the hearsay. Not the
13 portion that you've had the court reporter---

14 THE COURT: Right.

15 MR. DAVIDSON: ---publish.

16 It, it is -- it is incorrect and improper to publish
17 information into the record for the jury when that
18 information has not come into evidence in a proper format.
19 As, as I have indicated, there's ways to put in medical
20 records into evidence and that has not occurred.

21 So, counsel should not be able to publish that
22 information and say that the diagnosis was X because there's
23 no evidence of that. No competent evidence of that. Even
24 though a lawyer's arguments can not be considered as facts,
25 and even their questions in some -- in cross-examination

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1 should not be considered as facts, I believe, in this
2 instance, by publishing the diagnosis in this case, and I
3 can't remember exactly how it was worded, but I am sure he
4 published something about a diagnosis or the condition that
5 was found, that would be improper in front of the jury.
6 That's, that's my position and---

7 THE COURT: All right.

8 MR. DAVIDSON: ---so that came later---

9 THE COURT: Right.

10 MR. DAVIDSON: ---in the testimony.

11 THE COURT: But I was clear, I was clear on what the
12 basis of the mistrial was on. I was listening to that
13 portion of the testimony---

14 MR. DAVIDSON: Yes, ma'am.

15 THE COURT: ---with regards to that ruling.

16 MR. DAVIDSON: And, and I understand.

17 THE COURT: All right.

18 MR. DAVIDSON: But I have made my, my objection to
19 mistrial in regards to his raising the diagnosis later in
20 front of my client when he was showing him the ultrasound
21 printout.

22 THE COURT: Okay.

23 MR. DAVIDSON: So that's my position on that, Your
24 Honor.

25 THE COURT: So---

1 MR. DAVIDSON: I would like the Court to review that if
2 the Court doesn't mind.

3 And then, finally, for the record, I want to make sure
4 I've got this covered. The document he handed up that
5 became Court Exhibit A is actually 28 CFR 115.71. So, it's
6 Code of Federal Registry. That's where that document was
7 found.

8 THE COURT: Right.

9 MR. DAVIDSON: And I just need to make -- put that on
10 the record, judge.

11 THE COURT: That is noted for the record and I will
12 give my, my court reporter can not -- I will give her a
13 moment to go back to that point---

14 MR. DAVIDSON: That's fine.

15 THE COURT: ---after he elicited---

16 MR. DAVIDSON: I appreciate---

17 THE COURT: All right.

18 MR. DAVIDSON: I appreciate that, Your Honor.

19 THE COURT: Certainly. I don't mind doing that.

20 (Pause.)

21 MR. DAVIDSON: I, I believe -- I believe there's
22 been---

23 THE COURT: Can you hear it?

24 MR. DAVIDSON: I believe there's been -- I believe I
25 heard Mr. Hawkins talk about the diagnosis in regards to

1 that case. If it's not there, it's a little bit further on
2 and I hate to do that to the court reporter.

3 MR. HAWKINS: We side barred after that.

4 MR. DAVIDSON: So---

5 THE COURT: Yeah, I think, I think -- let's, let's
6 hold -- we'll see.

7 MR. DAVIDSON: I am almost positive, Your Honor. I've
8 actually asked my -- the people at my table if they heard
9 the same thing.

10 (WHEREUPON, a playback of testimony occurred at this
11 time.)

12 MR. DAVIDSON: Offered for the -- sorry. This would be
13 an out-of-court statement.

14 THE COURT: Hold on a second.

15 MR. DAVIDSON: Okay. I forgot she's got to --.

16 THE COURT: You good?

17 All right. Go ahead.

18 MR. DAVIDSON: Your Honor, whether he's getting my
19 client to read the diagnosis, number one, is incorrect cause
20 it's hearsay. It hadn't been proffered into evidence. It
21 hasn't been admitted into evidence. The medical record at
22 this stage would be an out-of-court statement offered for
23 the truth of the matter asserted, Number 1.

24 Number 2. Mr. Hawkins later, it was right when I
25 objected or right before lunch, where he referenced the

1 diagnosis himself and I remember him standing right up there
2 and basically saying the diagnosis was a hydrocele and I
3 objected immediately.

4 That is improper. That document is not in evidence.
5 To publish the diagnosis of the condition before there has
6 been any evidence of it being introduced would be improper
7 and would be hearsay even done in, in this instance to try
8 to get before the jury that information in an improper way.
9 That's why I'm moved for mistrial.

10 THE COURT: I understand.

11 And considering that, and after listening to what the
12 court reporter has replayed for us, I still maintain my
13 ruling that I am denying the motion for mistrial. It is now
14 noted of document that your objection and the basis of your
15 objection or the basis of your motion I should say. That is
16 documented for the record, Mr. Davidson.

17 MR. DAVIDSON: Would the Court consider a curative
18 instruction?

19 MR. HAWKINS: Your Honor, may I respond to that?

20 THE COURT: With regards to the curative?

21 MR. HAWKINS: Yes, ma'am.

22 THE COURT: What cure -- what's your -- what do you
23 want to tell them?

24 MR. HAWKINS: Well, certainly -- certainly that's a, a
25 remedy the Court can consider. But I think, if, if the

1 Court would consider what I think, which doesn't matter,
2 what the Court thinks matters, if such a -- such has been
3 made of it already. To make a curative instruction about me
4 uttering the word hydrocele, which we have a -- we had a --
5 we had argument about that before we started and it was
6 ruled that I could say the word hydrocele. The fact that
7 it's also written on other documents is that -- I, I can't
8 help that. I have to---

9 THE COURT: Let me ask Mr. Davidson this. Let me ask
10 Mr. Davidson.

11 what type of -- what are you proposing as a curative
12 instruction?

13 MR. DAVIDSON: That they discon -- that the jury---

14 THE COURT: Disregard.

15 MR. DAVIDSON: ---disregard any comments made by
16 plaintiff in regard to the condition that Mr. Owens had
17 that -- in regard to his reference to what Mr. Gibson -- I'd
18 have to think about it. But it would be something similar
19 to that.

20 THE COURT: I don't mind doing that. I think -- I
21 don't, I don't -- I'll see --

22 MR. DAVIDSON: I'll let you figure out how to word it
23 and I'll be glad to look at it but---

24 THE COURT: well, obviously, Mr. Davidson, I, I -- I'm
25 not sure that the jury heard it.

1 MR. DAVIDSON: well---

2 THE COURT: But I, I don't know.

3 MR. DAVIDSON: I don't know either.

4 THE COURT: I don't know and I don't mind doing a, a
5 very short curative instruction on that. But, you know, as
6 the record reflects that you, you objected pretty quickly.

7 MR. DAVIDSON: I'm good at that.

8 THE COURT: You're good at it, Mr. Davidson. But I --
9 I'm not quite sure that they heard something. But I'll do
10 a, a short -- my, my law clerk is already typing one. So,
11 he's good at it too. So we will, we will -- I will give a,
12 a brief curative.

13 MR. DAVIDSON: That's fine.

14 MR. HAWKINS: That's---

15 THE COURT: Let's -- give us a minute.

16 MR. DAVIDSON: That's my concern -- that's my concern
17 with all this testimony about diagnosis---

18 THE COURT: I'll---

19 MR. DAVIDSON: ---before it comes into evidence.

20 THE COURT: well, we'll -- I'll give that instruction.

21 MR. DAVIDSON: Thank you, Your Honor.

22 THE COURT: All right. But there -- there's some
23 housekeeping things that I -- we're -- there's some
24 housekeeping that I want to address.

25 So, at this point, it's a, it's a little after 1:00 --

1 it's a little after 2:00 and we're still on our first
2 witness. We're not gonna get through the eight to nine
3 witnesses today.

4 So, what I want to tell both you, Mr. Hawkins, and you,
5 Mr. Davidson, is that I do want to keep this trial clean.
6 It's very, very difficult. It is impossible for my court
7 reporter to hear when we are all talking at once.

8 And so, while we can all zealously advocate for our
9 clients, I do want to make sure that -- you know, my child's
10 second grade class, they have to hold a ball in order to
11 talk. I want to make sure that we are all not talking at
12 once and it -- it is okay for you to be passionate. But
13 when there's an objection, we'll have to stop, address the
14 objection.

15 Mr. Hawkins, I'll always give you time to argue as well
16 as Mr. Davidson.

17 Now, once I make a ruling, I certainly don't mind you
18 making a clear record. Let's do that. But let's be careful
19 that we are not arguing after the ruling. And so I think
20 that that will move us along as far as we'll go.

21 We'll stay a bit later tonight -- today. We'll stay a
22 bit later today. But we will need to -- we'll need to clean
23 this up a little bit so that we can get to all the
24 witnesses. But you want to get -- give Mr. Davidson his,
25 his time.

1 All right?

2 MR. HAWKINS: Thank you, judge.

3 THE COURT: Yes, sir.

4 MR. DAVIDSON: I have -- the sheriff is here.

5 THE COURT: All right.

6 MR. DAVIDSON: I don't know if he --.

7 THE COURT: He's not available tomorrow?

8 MR. DAVIDSON: He -- I---

9 THE COURT: That's what -- what was my understanding he
10 wasn't available.

11 MR. DAVIDSON: Yeah, he's got -- he's got something he
12 wanted to leave at 9:00. I, I can -- I might be able to
13 twist his arm and do it in noon so he can stay and testify
14 if Mr. Hawkins wants him to testify or Mr. Hawkins can take
15 him out of order. I just want to --.

16 THE COURT: Let's see where we can go.

17 MR. DAVIDSON: Okay.

18 THE COURT: Let's see where we---

19 MR. DAVIDSON: That's fine.

20 THE COURT: Yeah.

21 MR. DAVIDSON: I don't know if we'll need him today. I
22 hate to make him sit out there when he's got other things.
23 But I can have him sit right now if Mr. Hawkins wants him
24 to -- gonna call him today.

25 MR. HAWKINS: Your Honor, I don't see any way it's

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1 gonna be possible to get to him today cause it's at 2:00 and
2 we're still on the first witness---

3 THE COURT: All right.

4 MR. HAWKINS: ---and we still got to do Gallam.

5 THE COURT: Okay.

6 MR. HAWKINS: And he's gonna be a long one.

7 MR. DAVIDSON: Can I, can I --?

8 THE COURT: You want to excuse him and see if he can
9 come back tomorrow?

10 MR. DAVIDSON: I'll, I'll -- if the Court doesn't mind,
11 let me walk out there and talk to him a second.

12 THE COURT: Please do so.

13 MR. DAVIDSON: And I'll do it quickly.

14 MR. HAWKINS: For, for the---

15 THE COURT: Keep us on the---

16 MR. HAWKINS: For the---

17 THE COURT: Be careful.

18 MR. HAWKINS: For the record, could we make a note that
19 he is under subpoena until he's testified, Your Honor.

20 THE COURT: All right.

21 MR. HAWKINS: Yeah. Thank you, Your Honor.

22 THE COURT: That's duly noted for the record.

23 All right. We'll stand down for about five minutes.

24 (WHEREUPON, a short recess was taken at this time.)

25 THE COURT: Can we bring the jury in please?

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1 (WHEREUPON, the following takes place within the
2 presence of the jury.)

3 THE COURT: Mr., Mr. Hawkins, I apologize.

4 Mr. Hawkins, Mr. Davidson, can you sidebar please?

5 (WHEREUPON, a bench conference was held out of the
6 hearing of the jury at this time.)

7 MR. DAVIDSON: Thank you, Your Honor.

8 THE COURT: All right. Welcome back, ladies and
9 gentlemen of the jury.

10 Before we proceed, the jury is instructed to disregard
11 any statements that were made by the plaintiff's attorney
12 regarding hydrocele during questioning.

13 All right. At -- so at this time we will now proceed
14 with the questioning of this witness.

15 MR. HAWKINS: Thank you, judge.

16 May it please the Court?

17 THE COURT: Mr. Hawkins.

18 CONTINUED DIRECT EXAMINATION

19 BY MR. HAWKINS:

20 Q. Mr. Gibson, I'm gonna hand you what we've talked about
21 earlier. This is a grievance form.

22 Is this a -- is this a grievance form that you've seen
23 completed often in your career the same kind of form that
24 you've seen completed by inmates?

25 A. Yes.

1 Q. Okay. And have you seen this grievance form before?

2 A. In the packet, yes.

3 Q. Okay. And this is something that's created, produced
4 in the ordinary scope of, of business and, and at the, at
5 the jail and at the detention center, correct?

6 A. Yes.

7 Q. Okay.

8 Your Honor, I move to have the grievance, the grievance
9 moved into evidence. I think it's by, it's by agreement
10 cause I think, I think will had indicated that it was on---

11 MR. DAVIDSON: May I see---

12 MR. HAWKINS: ---his exhibit list but---

13 MR. DAVIDSON: ---which one you're handing him?

14 MR. HAWKINS: It's, it's the grievance.

15 MR. DAVIDSON: Well, just -- let me, let me see it.

16 (Pause.)

17 MR. DAVIDSON: Minus the highlighting, Your Honor.

18 MR. HAWKINS: Your Honor, if I, if I -- if I put
19 another copy into evidence, I'm just gonna have to highlight
20 that after it's in evidence. So --.

21 MR. DAVIDSON: No highlights can come in, Your Honor.

22 MR. HAWKINS: Yes. Yes, they do all the time.

23 whatever, whatever will speed things along, Your Honor.

24 THE COURT: You have issues with the highlighting of
25 the sentence?

1 (WHEREUPON, there was no audible response.)

2 THE COURT: Let me see. It's highlighted---

3 MR. DAVIDSON: It's extenuated in certain items, Your
4 Honor.

5 THE COURT: We can give that back to Mr. Hawkins.

6 All right. Mr. Hawkins, I'm going to sustain that
7 objection. I'll just ask that -- you can use that at this
8 point. I'm not gonna make you redo anything before it is
9 sent back to the jury. We'll just get a clean copy.

10 MR. HAWKINS: Thank you. Yes, Your Honor. I've got it
11 right here. I'm just letting Mr. -- bates number.

12 THE COURT: All right. Very good. Thank you.

13 MR. DAVIDSON: No objection to that one, Your Honor.

14 THE COURT: Thank you.

15 All right. Exhibit B.

16 (WHEREUPON, the grievance form was marked as
17 Plaintiff's Exhibit B and received into evidence at this
18 time.)

19 Q. I'm gonna hand you what has been marked as Exhibit B.
20 This is the -- what we just looked at absent the
21 highlighting.

22 Can you read that sentence for me right there?

23 A. Can you please resubmit this request on 1/27/17.

24 Q. Okay. And read this sentence right here. Starts with
25 today.

1 A. Today Deputy Gibson conducted a pat down search on me
2 and violated me as a man, embarrassed me by grabbing me
3 excessively in my crotch area.

4 Q. Okay. You said earlier I think in your testimony that
5 you don't believe you caused an injury to Mr. Wilhite or Mr.
6 Owens.

7 Is that right?

8 A. Correct.

9 Q. Do you remember giving me some alternative theories of
10 what you thought could of caused their injury?

11 A. Yes, sir.

12 Q. All right. And were those preexisting condition, STD,
13 and chronic masturbation?

14 A. I remember saying chronic masturbation. I don't --.

15 Q. Look at Page 23 of your deposition at Line 10.

16 A. Yes.

17 Q. Okay. And am I right about those three examples that
18 you gave that could of caused the injury?

19 A. Yes, previous condition, STD. It could be chronic
20 masturbation.

21 Q. Are you aware of any evidence today that a preexisting
22 condition caused injuries in either Mr. Wilhite or Mr.
23 Owens?

24 MR. DAVIDSON: Your Honor, this witness is not a
25 medical doctor and has not had access to any of the medical

1 information on---

2 MR. HAWKINS: All right.

3 MR. DAVIDSON: ---or any of the testimony.

4 MR. HAWKINS: Mr.---

5 MR. DAVIDSON: That was---

6 THE COURT: Mr. Hawkins.

7 MR. HAWKINS: Your Honor, he offered that of his own
8 volition of his accord and I'm entitled to ask him if he has
9 any evidence to back up his alternative theories and he
10 offered that. Not me.

11 THE COURT: All right.

12 MR. DAVIDSON: He asked, he asked him---

13 THE COURT: I'm gonna sus -- I'm gonna sustain.

14 Let's---

15 MR. DAVIDSON: Thank you, Your Honor.

16 THE COURT: Let's move on.

17 Q. Are you aware of any evidence -- well, let me ask you
18 this. Forget the preexisting condition thing.

19 How many times -- when I took your deposition on
20 August 7th of 2019, you had been working at the detention
21 center for three years since 2015, right?

22 A. Uh-huh. Yes.

23 Q. Is that a yes?

24 (WHEREUPON, there was no audible response.)

25 Q. How many times had you seen anybody masturbating in the

1 jail?

2 A. Once.

3 Q. One?

4 A. Because it was blatantly out in front of the other
5 inmates.

6 Q. Okay. That's fine. And that's Page 23 Line 23 in your
7 deposition. But my point is this. There's an injury that
8 happens simultaneously the same way to multiple people at
9 the same night of the search.

10 Do you think it's reasonable to offer something you've
11 seen once in three years as an explanation for multiple
12 injuries in multiple men at the facility?

13 MR. DAVIDSON: Objection, Your Honor.

14 THE COURT: What's the basis of your objection?

15 MR. DAVIDSON: Calling for medical conclusions again,
16 Your Honor.

17 MR. HAWKINS: The medical---

18 MR. DAVIDSON: He's trying to get---

19 MR. HAWKINS: Masturbation's not a medical---

20 MR. DAVIDSON: ---why a person---

21 MR. HAWKINS: ---condition---

22 THE COURT: Hold on.

23 MR. DAVIDSON: ---why he might of come up with that
24 from a medical point of view, Your Honor. He's just
25 saying---

1 THE COURT: I'll let---

2 MR. DAVIDSON: ---this is something that could be
3 considered.

4 THE COURT: All right. Mr. Hawkins, your response,
5 sir?

6 MR. HAWKINS: I'm asking about how many times he saw an
7 event. He's telling he's seen it once in three years. I'm
8 asking is it reasonable to offer something he's seen once in
9 three years as an explanation for something that happened to
10 multiple people at the same time.

11 THE COURT: All right. Thank you.
12 Overruled. Continue.

13 MR. HAWKINS: Okay. So the -- thank you, judge.

14 So the, the question is is it reasonable to offer
15 something you saw once as an explanation for something that
16 happened in multiple men after you assaulted them?

17 A. And I'd like to add onto that. It happened---

18 Q. Oh, sure. Answer any way you want.

19 A. And---

20 Q. I just -- I would like an answer -- I'd like the Court
21 to direct the witness to answer the question first and then
22 you give an explanation.

23 A. Under -- what was the question?

24 Q. The question again was do you think it's reasonable to
25 offer something you saw once in three year (sic) for an

1 explanation for, for multiple injuries in multiple men after
2 you searched them?

3 A. No.

4 Q. Okay.

5 A. But, like I said -- like I stated, that particular
6 inmate was masturbating in front of the whole pod. We don't
7 just randomly walk into the bathroom or walk into the
8 showers and just start staring at people. What they do in
9 there is their business. So, me seeing that one inmate in a
10 year is cause he was in the middle of it and everybody.

11 Q. Are you aware of -- have, have you heard anything, seen
12 anything, any evidence at all that my client or Mr. Wilhite
13 had masturbated at any point prior to being assaulted and
14 searched?

15 A. I'm not medical. They don't say here's his record.
16 Here's all his kiosk forms.

17 Q. And, and that's fine. That's fair.

18 I'm just asking do you have any evidence that
19 Mr. Wilhite or Mr. -- you offered it as an explanation for
20 the injuries. So I'm asking if you know of any evidence for
21 it.

22 A. No.

23 Q. Do you?

24 You don't?

25 A. No.

1 Q. Okay. Do you think that these injuries all occurred at
2 the same time after the search by coincidence or you think
3 you had anything to do with doing this?

4 A. Yes, I think it was coincidence.

5 MR. DAVIDSON: Objection, Your Honor. Continuing my
6 objection regarding all these injuries.

7 THE COURT: All right. That objection is running.
8 Thank you.

9 Q. Did -- I'm sorry. Did you answer?
10 I'm -- I honestly lost my train of thought.
11 Did you answer what I was asking you?

12 A. Yes, I answered.

13 Q. Okay. You -- I asked you do you think it was a
14 coincidence and you said yes, you do think it's a
15 coincidence?

16 A. Yeah.

17 Q. Okay. That's fine. And --.

18 Okay. Now, you, you just said you think -- you do
19 think it's a coincidence. That's fine if that's your
20 answer.

21 But I want to ask you is that still your answer if
22 there are multiplying witnesses and, you know, I want -- and
23 I don't know how to say this where it won't draw an
24 objection to.

25 If they're -- if there had been events or people that

1 had to go to medical, and there've been multiple eye
2 witnesses, and with a similar kind of injury, do you still
3 think it's coincidence that multiple people were injured at
4 the time you, you searched them in their groin?

5 Do you---

6 MR. DAVIDSON: It's the same objection, Your Honor.
7 Just protect me on the record please.

8 THE COURT: Noted for the record.

9 Q. I mean did you -- is your testimony that you still
10 think it's coincidence?

11 A. Uh-huh. Yes.

12 Q. Okay. We talked about this earlier and I don't want to
13 beat a dead horse. I just want to make sure the record's
14 clear.

15 Do you agree that it's a safety rule violation to grab
16 and twist an inmate's testicles?

17 A. Yes.

18 Q. So, if the jury finds you did that, we can agree that's
19 a safety rule violation?

20 A. Yes.

21 Q. Can we agree that is cruel?

22 A. Yes.

23 Q. Okay. That shouldn't happen, correct?

24 A. Correct.

25 Q. That would, that would constitute a sexual assault?

1 A. Yeah.

2 Q. Yes?

3 A. Yes.

4 Q. Okay. And did the Sheriff's Office ever do anything
5 after this was reported like give you a counseling or
6 talking to?

7 A. Yeah, after I was interviewed by PREA I don't think
8 there was any disciplinary action.

9 Q. Were you ever reprimanded in any way?

10 A. No.

11 Q. Did anybody offer to reopen the investigation after Mr.
12 Owens was treated?

13 A. No.

14 Q. Nobody, nobody said that there's a -- there's some hurt
15 people here, we need to reopen the investigation?

16 A. No.

17 Q. In fact, at some point after that you, you got
18 promoted, didn't you?

19 A. Yes.

20 Q. So the Sheriff's Office knew about this, knew about the
21 video, knew about the multiple injuries, and you still
22 received your promotion.

23 Is that correct?

24 A. Yes.

25 Q. Have you ever seen -- and, and I'm gonna point you to

1 Page 31 of your deposition so we can get, get -- keep the
2 record straight. In fact, I'll just read it all on top so
3 from your deposition.

4 Have you ever seen a stack of papers anywhere, and this
5 is going back to about the allegation and sexual assault,
6 on the previous page---

7 MR. DAVIDSON: What page?

8 Q. ---and then I asked you have you ever seen a stack of
9 papers anywhere?

10 What was your answer?

11 MR. DAVIDSON: What was the page please, sir?

12 MR. HAWKINS: 31.

13 MR. DAVIDSON: 31.

14 MR. HAWKINS: The background's on 30.

15 Have you ever seen a stack of pages anywhere?

16 A. I said besides what you handed to me.

17 Q. What -- you read---

18 A. Huh?

19 Q. Keep -- read that. Read that whole sentence please.

20 A. Like here Wilhite is suing you. Here Owens is suing
21 you. Yeah, I -- so I got the paperwork.

22 Q. No.

23 Did we see that---

24 A. I did see that.

25 Q. That, that part before it. It starts with I have on

1 Line 3---

2 A. There would be---

3 Q. ---Page 31.

4 A. No, I haven't seen any actual paperwork besides---

5 Q. Okay. You haven't seen any actual paperwork that was
6 generated for the bulk of this event at all or at least you
7 hadn't on the day I took your deposition on August the
8 7th of 2008, right?

9 A. Correct.

10 Q. And that was a year and seven or eight month after the
11 event?

12 The event happened January 25th or so of 2017 and
13 then your deposition was August 7th, 2018.

14 And so, in all that time, nobody showed you one piece
15 of paperwork, one recorded video, anything about the sexual
16 assault allegation, right?

17 A. Correct.

18 Q. Nobody sat you down and said what happened here, we'll,
19 we'll (indiscernible), right?

20 A. Right.

21 Q. Okay. So, at some point there was a determination of
22 unfounded, right?

23 Did you know---

24 A. Are you---

25 Q. ---that?

1 A. Are you talking about the---

2 Q. There's a---

3 A. ---statement?

4 Q. There's a -- well, let me ask you.

5 Under PREA, from your training with PREA, not being a
6 concession, we see it, the sexual assault allegation is
7 made, it can be substantiated, unsubstantiated, or
8 unfounded.

9 Is that, is that correct?

10 A. To my knowledge it is.

11 Q. I'm sorry?

12 A. To my knowledge, yes.

13 Q. Okay. And if it's, if it's substantiated, that means
14 there was sufficient evidence to confirm the allegation.

15 Am I right so far?

16 A. Uh-huh. Yes.

17 Q. Okay. And if it's unsubstantiated, that means there's
18 evidence but not enough to substantiate the allegation.

19 Am I still right?

20 A. Yes.

21 Q. Okay. But if it's unfounded, that means that nothing
22 happened at all and that there was no sexual assault,
23 correct?

24 A. Correct.

25 Q. Okay. And under PREA, if this had been marked

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1 substantiated or unsubstantiated, y'all'd have to review
2 this. After investigation, you'd have to do a, a review of
3 it 30 days later.

4 Am I still correct?

5 A. I, I don't know that far. I'm not the PREA
6 coordinator.

7 Q. Okay. This is PREA 115.86 Subsection A. Look with me
8 right here.

9 Okay. This is the part of PREA. It says -- you tell
10 me if I'm reading it correctly.

11 MR. DAVIDSON: Objection, Your Honor.

12 MR. HAWKINS: You want me to have him read it?
13 what, whatever will move this.

14 MR. DAVIDSON: 115 CFR---

15 MR. HAWKINS: No, that was---

16 MR. DAVIDSON: 28 CFR 115.71 is the Code of Federal
17 Registry. He hasn't laid the foundation whether this
18 witness has ever seen the Code of Federal Registry or has
19 reviewed. Just ask him a question about what may be in a
20 Code of Federal Registry we believe is---

21 THE COURT: All right.

22 MR. DAVIDSON: ---improper at this time.

23 THE COURT: I'm going to sustain it.
24 If you'll lay a foundation please?

25 MR. HAWKINS: Yes, Your Honor.

1 Mr. Gibson, you testified earlier that you have
2 received PREA training, correct?

3 A. Correct.

4 Q. And PREA dictates what has to be done and how evidence
5 has to be gathered in a sexual assault allegation, correct?

6 A. Correct.

7 Q. And you would have -- and whatever PREA says the
8 facility has to do, that is what the facility would look to
9 to make sure it does what PREA mandates or suggests,
10 correct?

11 A. By the PREA coordinator, yes.

12 Q. Okay. Now, I'm gon' show you from, from that
13 document---

14 MR. DAVIDSON: Your Honor, that doesn't establish the
15 foundation of whether or not this witness has ever seen this
16 document, is familiar with this document. As the Court has
17 heard, they has (sic) their own policies and procedures that
18 they are governed by.

19 THE COURT: All right. I'm gonna overrule that. I, I
20 believe the foundation's been established.

21 MR. HAWKINS: Thank you, judge.

22 All right. Right here, you tell me if I'm -- I'm gonna
23 ask you a question about this. I want you to tell me if I'm
24 reading it correctly.

25 The facility, that's the detention center, right?

1 A. Yes.

2 Q. Okay. Shall conduct sexual abuse incident review, an
3 incident review. At the conclusion of every sexual abuse
4 investigation, including where the allegation has not been
5 substantiated, unless the allegation has been determined to
6 be unfounded.

7 Is that what it says?

8 A. Yes.

9 Q. So, because y'all marked it unfounded, you didn't have
10 to do the extra work of the incident review, right?

11 A. Once again, I'm not the PREA coordinator. Once they
12 sit me down and interview me, if they pull me back in the
13 office --.

14 Q. Okay. Well, from what I just read and what we just
15 talked about, can you draw the logical conclusion that,
16 because the Sheriff's Office marked this unfounded instead
17 of substantiate or unsubstantiated, the Sheriff's Office
18 avoided the extra work of doing an incident review after
19 it -- after investigating.

20 Is that fair to say?

21 MR. DAVIDSON: Your Honor, calls for speculation. This
22 individual is not a PREA officer and has -- obviously is not
23 in charge in that area. It would call for speculation on
24 behalf of this witness.

25 MR. HAWKINS: Could I respond?

1 (WHEREUPON, there was no audible response.)

2 MR. HAWKINS: Your Honor, we have just read from
3 federal law, and he just agreed, that it -- an incident
4 review is required at the conclusion of every investigation
5 unless it's determined to be unfounded. So that it's
6 logical, he can agree that -- or if he disagrees he can tell
7 me that they don't have to do that incident review if the
8 allegation is determined to be unfounded.

9 THE COURT: All right. Sustained.
10 Please go forward.

11 MR. HAWKINS: Thank you, judge.

12 Q. All right. So, this isn't --.

13 THE COURT: I apologize. Overruled. Excuse me.
14 Please go forward.

15 MR. HAWKINS: Thank you, judge.

16 I want to make sure I don't leave this part out. It's
17 important.

18 In Subpart B, and tell me if you need me to bring it up
19 there, the review shall ordinarily occur within 30 days at
20 the conclusion of the investigation.

21 Did -- you have any reason to doubt that's what that
22 says?

23 Just look at -- look at Subpart B right here. Right,
24 right there.

25 A. That's what it says.

1 Q. Okay. And because y'all didn't let Otis get a
2 ultrasound until February 24th, the investigation had
3 already closed, right?

4 A. That's up to the doctors. The doctors only come
5 certain times of day, certain times a week.

6 Q. Well, well, with all due respect, y'all were in charge
7 of providing medical attention.

8 When you have the doctors come is not my client's
9 fault, right?

10 A. It's not mine either. I don't, I don't -- it's an
11 outside facility. It's a contractor thing.

12 Q. Well, he's, he's locked up in a jail cell. He can't go
13 to the doctor.

14 A. And I can't make medical come see him.

15 Q. Right. But your employer, the Sheriff's Office, can.

16 They can make sure he gets the treatment he's suppose
17 to have under PREA, can't they?

18 A. Uh-huh.

19 Q. They can take him to the hospital, can't they?

20 A. If it's an emergency.

21 Q. Well, do you think a sexual assault's an emergency
22 where your testicles are swollen?

23 MR. DAVIDSON: Your Honor, here we go again.

24 MR. HAWKINS: I didn't, didn't reference---

25 THE COURT: All right, sir. Is there an objection?

1 MR. DAVIDSON: Yes, ma'am.

2 THE COURT: What's your objection?

3 MR. DAVIDSON: Going into evidence that is not in the
4 record---

5 THE COURT: I'll---

6 MR. DAVIDSON: ---as yet.

7 THE COURT: All right. I'm gonna sustain the
8 objection.

9 Move forward.

10 MR. HAWKINS: Thank you, judge.

11 Because the event was marked unfounded -- first of all,
12 let's get this straight for the jury.

13 There was an event?

14 There was a search, correct?

15 A. Uh-huh.

16 Q. There was an event where you searched these mens'
17 groins, correct?

18 A. I performed a frisk search.

19 Q. Notwithstanding the fact that there wasn't -- your
20 hand came in contact with these mens' genitals up through
21 their clothes, correct?

22 A. Through their clothes?

23 Q. Did your hand come in contact with the groin area of
24 these men---

25 A. Yes.

1 Q. ---or your hands (indiscernible)?

2 A. Yes.

3 Q. Okay. So, there was an event. Your hands touched
4 their genitals, hands in-between, and the event was still
5 marked unfounded, correct?

6 A. To my knowledge, yes.

7 Q. And because it was marked unfounded, that was 30 days
8 later, there was no incident review cause it was unfounded
9 instead of unsubstantiated or substantiated, correct?

10 A. Yes.

11 Q. Okay. We agree that an allegation of sexual assault
12 should be investigated immediately, right?

13 A. Yes.

14 Q. Not two days later, right?

15 A. Yes.

16 Q. Not a month later --

17 A. Yes, sir.

18 Q. -- right?

19 We agree that, so it's clear for the record, there
20 should be a gathering of evidence including witness
21 testimony, correct?

22 A. Yes.

23 Q. There should be credibility assessments made, correct?

24 A. Yes.

25 Q. And all evidence, including video evidence, should be

1 preserved, correct?

2 A. It should.

3 Q. Okay. Okay. Can we agree that and I'm looking at --
4 I'm looking at PREA again. This is 115.71, administrative
5 investigation.

6 Can we agree that investigation should in an effort to
7 determine whether or not staff, that's you, staff's actions
8 or failures contributed to the abuse?

9 A. That's what it says.

10 Q. Okay. And just one more time, nobody ever sat down and
11 interviewed you with a, with a recorder going---

12 A. Not a recorder---

13 Q. ---right?

14 A. ---no.

15 Q. Nobody shared -- ever showed you a video?

16 A. No.

17 Q. Nobody ever asked you point blank did you grab this
18 man's testicles?

19 A. No.

20 Q. Okay. And nobody ever made an, an effort to gather
21 physical and testimonial evidence, correct?

22 A. Like I said, that's the PREA coordinator.

23 Q. Did anybody that you know of ever make an effort to
24 gather physical and testimonial evidence?

25 A. Not to my knowledge but that's the PREA coordinator's

1 job. Once---

2 Q. Okay.

3 A. Once Inmate Owens submits his PREA request --.

4 Q. Did anybody ever make an effort to, to give the
5 reasoning behind any credibility assessments or even make
6 any credibility assessments that you know of?

7 Did that ever happen?

8 A. I don't understand that.

9 Q. Okay. Y'all are suppose to go to witnesses, see what
10 they said, and then assess their credibility.

11 Did anybody do that?

12 A. The PREA coordinator might of but that's not me.

13 Q. Okay. Do you know of any -- that ever happened?

14 A. Not to my knowledge.

15 Q. Okay. Did anybody ever make an effort to list,
16 describe, and, and gather investigative facts and findings?

17 A. Not to my knowledge.

18 Q. That never happened to your knowledge?

19 A. Not to my knowledge.

20 Q. No further questions.

21 A. I'm not the PREA coordinator.

22 Q. No further questions.

23 THE COURT: Cross-exam.

24 CROSS-EXAMINATION

25 BY MR. DAVIDSON:

Timothy Gibson - Cross-examination
By Mr. Davidson

1 Q. Mr. Gibson, do you know what the Code of Federal
2 Registry is?

3 A. No.

4 Q. Have you ever read the Code of Federal Registry?

5 A. No.

6 Q. You have to answer yes or no.

7 A. No.

8 Q. You have to speak up now so I can hear you.

9 A. No.

10 Q. I don't have the best hearing in the world.

11 A. No.

12 Q. Okay. Mr. Hawkins has been asking you questions about
13 PREA and reading you portions of something he referenced as
14 115.

15 Were you aware that that's the document that comes from
16 the Code of Federal Registry?

17 A. No.

18 Q. Have you ever compared that document with the actual
19 policies that deal with PREA in the detention center?

20 A. No.

21 Q. You are covered by the policies of the detention center
22 for PREA, correct?

23 A. Yes.

24 Q. The department has a PREA coordinator, correct?

25 A. Yes.

Timothy Gibson - Cross-examination
By Mr. Davidson

1 Q. It ain't you?

2 A. Not me.

3 Q. He does the investigation, right?

4 A. Yes.

5 Q. He makes the findings?

6 A. Yes.

7 Q. You ever get involved in doing a PREA investigation?

8 A. No.

9 Q. So what he does or doesn't do is up to him, correct?

10 A. Yes.

11 Q. Now, you actually, I think in your deposition -- do you
12 still have the deposition up there?

13 A. Yes.

14 Q. On Page 31, just Mr. Hawkins asked you, Line 1, have
15 you ever seen this stack of papers anywhere?

16 what was your answer at that time?

17 A. Besides what is handed to me like here -- well, like
18 wilhite is suing you and Owens is suing you and I haven't
19 seen any actual paperwork.

20 Q. So, Mr. wilhite was suing you.

21 Is that correct?

22 A. Correct.

23 Q. So was Mr. Owens?

24 A. Yes.

25 Q. And wouldn't it be correct that Mr. wilhite actually

1 dropped his lawsuit?

2 A. Yes.

3 Q. And where did -- are you aware of where Mr. Wilhite and
4 Mr. Owens roomed in the cell block Delta pod?

5 A. At that time they were bunkmates.

6 Q. They were bunkmates?

7 (WHEREUPON, there was no audible response.)

8 Q. Now, about what time did you observe the individuals in
9 Delta pod playing what you perceived to be dice?

10 A. It was -- I came in there for the first 15. So it was
11 probably some time early in the morning.

12 Q. At 3:00 in the morning before---

13 A. Probably, probably around ten o'clock.

14 Q. About ten o'clock.

15 All right. Now, do you have the inmate grievance
16 record in front of you?

17 A. No, I don't. It's back --.

18 MR. DAVIDSON: If -- Madam Court Reporter, do you have
19 that?

20 I believe it's -- yeah, if you'd show him that. Just
21 hand it to him. All this plastic makes it hard to get
22 around.

23 So, it occurred at about ten o'clock or before ten
24 o'clock in the morning, correct?

25 A. Correct.

1 Q. And you -- how do you file a grievance at the detention
2 center?

3 A. Anytime during rec time, which when I was in there it
4 was their recreation time, which is when the inmates can
5 come out, watch TV, go out into the rec yard -- it's their
6 playtime if you will. I'm sorry. I lost track.

7 Q. Yeah.

8 How do they file a grievance?

9 A. Okay. So, as long as it's rec time, they can come up,
10 ask permission to cross the yellow line at an officer's
11 desk. It's almost like an ATM machine. They put in their
12 little PIN number. A list of requests pop up, whether it be
13 get a medical request, you want to talk to the facility,
14 order your canteen, put money on your phone, et cetera, as
15 long as it's rec time, not count times, they're allowed to
16 do it.

17 Q. And this is what's called an open door?

18 A. Yes.

19 Q. What does that mean?

20 A. Picture just a room like this, concrete barriers every
21 so often, about two bunks, every now and then maybe a bunk
22 bed, officer desk just like the judge's station, no gates,
23 no walls, no nothing. Open officer just roving around,
24 walking around.

25 Q. Are they able to leave their bunk area to play cards

1 and things like that in a common area?

2 A. During recreation time, yes.

3 Q. All right. What time's recreation time?

4 A. In the morning there's a regimen. They got to clean up
5 first. We wait for inspection from the shift command and
6 then, once he signs off on that, and usually it's medical
7 pass, once medical pass comes through, if the pod is clean,
8 rec starts.

9 Q. And how long does -- they were, they were on rec when
10 you saw them---

11 A. Yes.

12 Q. ---watch them shooting the dice?

13 A. Yes.

14 Q. Okay. And how long does rec time last let's say after
15 ten o'clock?

16 A. It will go up to lunch trays and lunch trays could be
17 anywhere from 11:30, 12:00, 12:30 depending on how fast the
18 kitchen is. You shut it down for trays. They eat. They go
19 up. We do a quick clean-up and then they come back out till
20 one o'clock count time.

21 Q. And then after count, when you say count time, what are
22 you observing occurring?

23 A. All the inmates are to be standing at their bunks. No
24 talking. We do a head count just to make sure all the
25 population is there. Then once counts cleared, they come

1 back out for rec.

2 Q. So, they would be out for rec after they cleaned up --

3 A. Uh-huh.

4 Q. -- after breakfast and I think you said till about
5 11:00 or 11:30 when they got lunch?

6 A. Uh-huh. Yes.

7 Q. And then, after lunch, they would come out for rec time
8 after they'd cleaned up, right?

9 A. Yes.

10 Q. And they would stay out till about 1:00, which is count
11 time?

12 A. Yes.

13 Q. And then from 1:00 to whenever, what time did they---

14 A. About 4:30, which is their dinnertime.

15 Q. And after dinnertime, if they cleaned up, and would
16 that be rec time at that point?

17 A. Yes, till about six o'clock which is quiet time. Gives
18 the officers a chance to finish their paperwork for the day.
19 They're basically at their bunk quieted down a little bit.

20 Q. All right. Are they able to move around inside the
21 dorm and go to the kiosk during quiet time?

22 A. During quiet time, no. They'd have to wait till after
23 seven o'clock count, which would be the night shift. New
24 officer would come in and it would reset the cleaning,
25 inspection, med pass, and then they'd be out probably 9:00,

Timothy Gibson - Cross-examination
By Mr. Davidson

1 9:30.

2 Q. So, if you don't mind, look at Exhibit B, an inmate
3 grievance matter and it was filed, I think you said, by Otis
4 Owens, correct?

5 A. Correct.

6 Q. And Mr. Owens would use a PIN number.

7 That's his number that allows him to access the kiosk,
8 correct?

9 A. Correct.

10 Q. And you said this happened around -- before ten o'clock
11 or so when the pat down occurred?

12 A. Yes.

13 Q. Can you tell the jury, on 1/25/2017, what time Mr.
14 Owens actually filed this grievance?

15 A. 10:40PM.

16 Q. 10:40PM.

17 So about 12 hours later?

18 A. Yes.

19 Q. Okay. And he'd been with Mr. Wilhite during that
20 period of time?

21 A. Yes.

22 Q. Did -- could they have thought about what they wanted
23 to do?

24 A. Yes.

25 Q. Now, the officer's findings indicate what at the very

1 bottom please, sir?

2 A. Please resubmit this request on 1/27/17. This is when
3 Lieutenant Butts returns to work so the issue can be
4 immediate -- immediately addressed, Lieutenant Debord.

5 Q. And I believe counsel showed you this one. I'm not
6 sure if it was introduced into evidence.

7 I show you the grievance for Mr. Owens and what's the
8 date on that please, sir?

9 A. 1/29/2017 at 5:11PM.

10 MR. DAVIDSON: Okay. We'd ask that this be introduced.

11 THE COURT: Any objection?

12 MR. HAWKINS: I haven't seen it yet. So I just need to
13 look at it.

14 (Pause.)

15 MR. HAWKINS: Without objection.

16 THE COURT: Defendant's Exhibit A.

17 (WHEREUPON, the grievance report was marked as
18 Defendant's Exhibit A and received into evidence at this
19 time.)

20 Q. Now, I'm gonna show you again Defendant's Exhibit A and
21 ask if you can identify that document again please, sir.

22 A. That's a printout of a kiosk request.

23 Q. Okay. And it was dated what date again?

24 A. 1/29/2017 at 5:11PM.

25 Q. All right. The previous grievance asked him to submit

1 his grievance request within two days when the lieutenant
2 came back, correct?

3 A. Yes.

4 Q. Within four days, correct?

5 A. Yes.

6 Q. Now, you're not the PREA coordinator, correct?

7 A. No, I am not.

8 Q. You don't know what he does as far as his jobs,
9 correct?

10 A. Correct.

11 Q. The lawsuit that Mr. Wilhite brought essentially was
12 the same thing with Mr. Owens, correct?

13 A. Yes.

14 Q. And they were roomies?

15 A. Yes.

16 Q. Now, the camera that's in the Delta pod I think you
17 said in the center of the room?

18 A. Yes.

19 Q. Do you -- have you ever accessed that camera?

20 A. No.

21 Q. Okay. Do you know how it works?

22 A. Yes.

23 Q. How does it work?

24 A. It -- it's a pan camera. So, it's going around in
25 circles 24 hours a day. So, I, I think I stated it earlier

1 let's say the judge was getting attacked right now, and it
2 was facing that way, it wouldn't even catch it.

3 Q. And you don't know whether or not, in this instance,
4 the camera caught anything about the dice or whether it
5 caught anything about the pat down?

6 A. I do not know.

7 Q. You never saw it?

8 A. No.

9 Q. That would be up to your PREA coordinator, correct?

10 A. Yes.

11 Q. And I think it was indicated that you -- it was
12 indicated that they're cameras in the center of the pod.

13 Is there a camera in the rec room or rec area?

14 A. No.

15 Q. Now, when you say rec area, what are we talking about?

16 A. It's, it's an addition to the pod. So, for a visual
17 reference, if this was the pod, and you cut a hole in that
18 backdoor or back wall, another door, it's a concrete square
19 with caging on top. But it allows them access to outside
20 fresh air.

21 Q. Now, you are from the Aiken area?

22 A. Yes.

23 Q. Did you grow up here?

24 A. Yes.

25 Q. Where did you go to high school?

Timothy Gibson - Cross-examination
By Mr. Davidson

1 A. Aiken High.

2 Q. And after high school, what did you do?

3 A. I worked temp work for about a year and then I joined
4 the military.

5 Q. What branch?

6 A. Navy.

7 Q. How long were you in the Navy?

8 A. Six years.

9 Q. And when you left the Navy, what rank did you have?

10 A. I had a petty officer second class E -- E5.

11 Q. And was your discharge from the Navy honorable?

12 A. Yes.

13 Q. Once you came back to Aiken or I think I heard
14 something about you were unemployed, but you were also doing
15 what at that time?

16 A. I was a full-time student at Aiken Tech using my GI
17 bill.

18 Q. Okay. And what were you studying at Aiken Tech?

19 A. Computer networking.

20 Q. And then you saw I think an, an add for --

21 A. Uh-huh.

22 Q. -- correctional officer?

23 A. Yes.

24 Q. What did you do in (indiscernible)?

25 A. Printed out a application from the Internet, took it up

1 to Aiken County HR center, and turned it in.

2 Q. Do you know what HR or the Sheriff's Office did in
3 regard to checking on you?

4 In other words, did they do a background check?

5 A. Oh, yes.

6 Q. You know what all they did?

7 A. I know I had to pay a fine for the background check.

8 Q. You had to pay something for the background check?

9 A. Yes.

10 Q. Do you know specifically what they did in regard to the
11 background check?

12 A. I think they do a credit score and I also have to do a
13 polygraph.

14 Q. And I think you said you interviewed with Captain
15 Gallam who's here today.

16 what's his position please, sir?

17 A. He's the captain of the detention center.

18 Q. Okay. He's over the detention center?

19 A. Yes.

20 Q. And I think you said it was informal in that you didn't
21 have to wear a coat and tie?

22 A. Yes.

23 Q. He asked you some pretty good questions?

24 A. Yes.

25 Q. And, after your interview, would I be correct you had

1 to go be polygraphed?

2 A. I don't know if it happened before or after. But I
3 know I was polygraphed.

4 Q. Do you know if they did a criminal background check?

5 A. Yes.

6 Q. Do you know if they checked references?

7 A. Yes.

8 Q. So, they kind of dug into your background before you
9 were offered the position?

10 A. Yes.

11 Q. Once you were offered the position, can you tell the
12 jury a little bit about what kind of training you received?

13 A. You get -- you start with a preservice. So that's
14 classroom training with the training officer. Once that's
15 completed, you get assigned an FTO, a field training
16 officer, which is what I am currently.

17 They do pretty much hands-on training. We've got the
18 trainee and myself. We follow this book. It tells you how
19 to do day-to-day operations. The trainee has to show you
20 and demonstrate that they understand it and you sign off on
21 it. That lasts about two weeks.

22 And once that (sic) done, you're cut loose. Maybe
23 about a month later you go to the Criminal Justice Academy
24 in Columbia, South Carolina and then, when you pass that,
25 you're official.

1 Q. When you go to the Criminal Justice Academy in
2 Columbia, what type of things did they talk to you about?

3 A. They teach you basic legals, pat searches, defensive
4 tactics.

5 Q. Anything else?

6 A. A lot of classroom. A lot of classroom work.

7 Q. Is that where you learned to do a pat down search?

8 A. Yes.

9 Q. Did you go over that with your field training officer
10 also?

11 A. Yes.

12 Q. And is that where you learned to do the blade approach
13 where go underneath the scrotum, scrotum and testicles?

14 A. The under -- the underarm.

15 Q. Under the arm?

16 A. And the, the blade.

17 Q. And the other stuff.

18 Okay. And that's what you were trained in the academy?

19 A. Yes.

20 Q. Now, when you come back and you're assigned to the
21 detention center, you have to graduate from the academy to
22 be certified, correct?

23 A. Yes.

24 Q. Okay. And did you graduate and were you certified?

25 A. Yes.

Timothy Gibson - Cross-examination
By Mr. Davidson

1 Q. All right. Now, I think we mentioned about Delta pod
2 is an open dorm?

3 A. Yes.

4 Q. Okay. And how many inmates are actually in that open
5 dorm?

6 A. About 75 to 80.

7 Q. And as a correctional officer, what was your position
8 in January, 2017?

9 A. That day I was the relief deputy. So, I go from dorm
10 to dorm and give the pod officer who was working that pod 15
11 minute break or, if they have an emergency, I'll, I'll be
12 the one to go relieve them.

13 Q. And was that why you were in Delta pod that day---

14 A. Yes.

15 Q. ---that morning?

16 A. It was Erikson's time for his 15 minute break.

17 Q. Who is Erikson?

18 A. He was the officer actually in charge of the pod room
19 that day.

20 Q. Now, when you're assigned to Delta pod, how many
21 correctional officers are in there with you with 80 inmates?

22 A. Just yourself.

23 Q. Just yourself.

24 Do you have a weapon?

25 A. Just your OC, your pepper spray.

1 Q. All right. Pepper spray?

2 (WHEREUPON, there was no audible response.)

3 Q. So, you're in a locked environment?

4 Is that pod locked?

5 A. Yes.

6 Q. And you're in there with 80 something inmates?

7 A. Yes.

8 Q. Now, prior to January 25th, 2017, did you know Otis
9 Owens?

10 A. Only that he was incarcerated.

11 Q. Had you ever disciplined him before to your knowledge?

12 A. Not to my knowledge.

13 Q. Okay. Did you ever have any problems with Mr. Owens?

14 A. No.

15 Q. Okay. Did you ever have any problems with Mr. Wilhite?

16 A. No.

17 Q. Had you ever disciplined him?

18 A. Not to my knowledge.

19 Q. Now, once you came into Delta pod after relieving
20 Mr. Erikson, what would you have done?

21 A. A security check. Because you're taking over that pod,
22 you want to make sure everything's good. You don't want --
23 the relieving officer may not tell you anything. You don't
24 want to go in there and then all of a sudden someone might
25 be having a seizure upstairs. So, you just do a walk

1 around, make sure everything's okay so you know that --
2 that's, that's the standard that everything's good in here
3 right now. Everything else is my responsibility.

4 Q. Now, as a correctional officer, when can you do a pat
5 down search on inmates?

6 A. Whenever I feel it jeopardizes the safety of the
7 inmates, safety of the officers, or safety of the public.

8 Q. You're looking or when you're doing the pat down
9 search, what potentially are you looking for?

10 A. Contraband, anything they're not suppose to have.

11 Q. And during your time at the detention center prior to
12 January, 2017, had you conducted other pat down searches?

13 A. Yes. Daily.

14 Q. Had you found contraband before?

15 A. Yes.

16 Q. Okay. What type contraband do you find?

17 A. You can find anywhere from sharpened pieces of fences,
18 sharpened toothbrush, dice. They'll modify anything from
19 a -- the toothbrush they'll get. They'll dig out the
20 security caulking on windows and they'll make a make shift
21 showerhead and that is something they're not suppose to
22 have.

23 Q. Have you found any weapons before inmates?

24 A. Yes.

25 Q. Now, when an inmate -- give you a question.

1 when an inmate comes out of the kitchen, are they
2 subject to being pat down?

3 A. Yes.

4 Q. why?

5 A. Cause they could -- they -- I think the, the inmates
6 that work in the kitchen, they have access to knives. They
7 have access to thermometers, stuff like that. A simple pen
8 is laying there and they could take it back to the pod,
9 which is not allowed. They bring back food. It's not
10 allowed. They get their issued food. So more contraband.

11 Q. why wouldn't they be allowed to have a pen?

12 A. It could be used like a knife. It's a weapon.

13 Q. Now, that day you saw the inmates squatting in the
14 corner I think you said?

15 A. Yes.

16 Q. And what were they doing?

17 A. They were rolling dice.

18 Q. Okay. And I believe you said dice were considered
19 contraband?

20 A. Yes.

21 Q. why is that?

22 A. It is not something they're issued. They could be used
23 for gambling and paying back debts which causes tension in
24 the pods.

25 Q. Okay. And once you saw the dice, what did you do?

Timothy Gibson - Cross-examination
By Mr. Davidson

1 A. I opened the door or the rec yard door. I explained to
2 the inmates hand me the dice, no repercussions, but I know
3 you have dice.

4 Q. When you say no repercussions, what do you mean?

5 A. No write-ups.

6 Q. No what?

7 A. No disciplinary action.

8 Q. You just wanted the dice?

9 A. Yes.

10 Q. And did you -- could you tell, were they regular dice
11 or ivory kind or what?

12 A. Most of the time inmate's dice are made of paper.

13 Q. And what did the inmates respond to you about giving
14 over the dice?

15 A. That they didn't have any dice and that they didn't
16 know what I was talking about.

17 Q. Once that happened, what did you do?

18 A. I secured the pod. I notified my lieutenant and waited
19 for Erikson to come back.

20 Q. You waited for who to come back?

21 A. Deputy Eriks (sic) from his break.

22 Q. And, at that point, once Erikson came back to the pod,
23 where were you going to conduct the pat down searches?

24 A. Out in the rec yard.

25 Q. Out in the rec yard?

1 (WHEREUPON, there was no audible response.)

2 Q. And where was Erikson gonna stay?

3 A. At the doorway letting them back in after I got done
4 searching.

5 Q. why would he be standing at that door?

6 A. Cause I wouldn't want it to shut on me and then I'm out
7 there with a lot of inmates.

8 Q. How many inmates approximately were out in the yard?

9 A. About 25.

10 Q. And do you recall whether you searched all of them or
11 part of them?

12 A. Probably 50/50 probably.

13 Q. And did you search Mr. Owens?

14 A. To my knowledge, no.

15 Q. what?

16 A. To my knowledge, no. I just searched everybody.

17 Q. Okay. Can you tell me or tell the jury how you do a
18 pat down search?

19 A. I start at the top. If they got long hair, you run
20 your fingers through their hair, beards, (indiscernible)
21 that, open their mouth, check behind the ears. You go down
22 to the collar, make sure nothing's down there. If they're
23 wearing long sleeves, you go all the way up the arm with the
24 crunch method what I call it. Make sure nothing's solid.

25 Q. And when you say crunch meth, what do you mean?

1 A. Just like, just like that all the way up the arms,
2 squeezing my hands. Make sure nothing is hiding alongside
3 their arm. Check the armpits, make sure nothing's down
4 there. The front of the back. Back of the back. Then I
5 start at the bottom of the foot, crunch all the way up,
6 blade, bottom of the -- bottom of my hand cause they could
7 tie something around their genitals. Crunch all the way up,
8 blade, and check the bottom of their feet to make sure
9 they're not hiding anything in their socks.

10 Q. And during that period of, of time, did you ever grab
11 any inmate---

12 A. No.

13 Q. ---in the testicles or the scrotum area?

14 A. No.

15 Q. You showed that you were doing a blade since you --
16 your hand was flat going underneath the scrotum and the
17 groin?

18 A. Yes.

19 Q. Okay. Why again do you do that?

20 A. Cause I don't want to -- palm, palm down, there's no
21 way I can grab someone. But open handed blade, my hand is
22 open, that's the way I grabbed anything.

23 Q. Now, that policy says you're suppose to do palm up.

24 A. Correct.

25 Q. But you prefer to do palm down.

1 Is that right?

2 A. Correct.

3 Q. To your knowledge, did anybody complain while you were
4 doing your pat down searches?

5 A. No.

6 Q. At no time did you actually grab anybody --

7 A. No.

8 Q. -- in their groin area?

9 A. No.

10 Q. Okay. How, how tall are, are you, Mr. Gibson?

11 A. 5'7", 5'8".

12 Q. And back then, in 2017, it's been five years, how much
13 did you weigh?

14 A. Probably about 175, 180.

15 Q. And when did you become aware that anybody was
16 complaining about the way you performed this frisk search?

17 A. When I got the deposition that I was being sued.

18 Q. When you got the lawsuit from either Wilhite or Owens?

19 A. I don't know which one was first. It was around the
20 same time I got both of them.

21 Q. Now, I heard something mentioned about cards.

22 Are they allowed to have cards in the unit?

23 A. Yes.

24 Q. Are they allowed to gamble with cards?

25 A. Gambling is not allowed.

1 Q. And they can play cards where?

2 A. In the rec yard or in the dayroom on the tables.

3 Q. On the tables?

4 A. Nothing is allowed outside the rec yard.

5 Q. And as a correctional officer, a floater, or what did
6 you call yourself?

7 A. Relief officer.

8 Q. Okay. Do you have anything to do with inmates
9 requesting medicine?

10 A. If -- the relief officers don't -- strictly does
11 breaks.

12 Q. Okay. And, to your knowledge, did you ever have any
13 involvement with Mr. Owens going to medical?

14 A. No.

15 Q. Did you have any involvement at all with him even
16 requesting medical or not requesting medical?

17 A. No.

18 Q. Did you, after this, search the yard?

19 A. Yes, once all inmates came in.

20 Q. Did you ever find anything---

21 A. No.

22 Q. ---that would indicate a problem?

23 A. No.

24 Q. And after you finished up doing the searches and
25 checking the yard, what did you do?

Timothy Gibson - Cross-examination
By Mr. Davidson

1 A. I left the pod, continued on my next break, the next
2 pod I had to go to for their break.

3 Q. Okay. And where did you do these searches?

4 A. In the, in the rec yard exiting out the door.

5 Q. Now, when you do them, what do you make the inmate do?

6 A. He placed two hands on the wall, leaning slightly
7 forward, legs spread a little -- shoulder length apart.

8 Q. Okay. Why is that?

9 A. To put them at a dif -- disadvantage position in case
10 they want to get combative.

11 Q. Okay. You have them actually facing a wall?

12 A. Yes.

13 Q. Okay. So you're not in front of them?

14 A. No.

15 Q. Is that correct?

16 All right. And so you're not, you're not looking
17 straight at their navel?

18 A. Correct.

19 Q. Okay. That would be all the way around in the front?

20 A. Yes.

21 Q. Have you ever checked a navel?

22 A. No.

23 Q. Or checked the waistbands?

24 A. Yes.

25 Q. I ask you this one more time.

Timothy Gibson - Cross-examination
By Mr. Davidson

1 Did you ever do anything to squeeze or twist any
2 inmate's testicle on that date in question?

3 A. No.

4 Q. And you don't know how Mr. Wilhite or Mr. Owens came up
5 with this story, do you?

6 A. No.

7 MR. DAVIDSON: Now, with the Court's indulgence, I
8 would like for him to demonstrate a pat down search on me.

9 Mr. Owens---

10 MR. HAWKINS: Your Honor, is he asking that Gibson pat
11 search him?

12 what would that do for anybody?

13 MR. DAVIDSON: (Indiscernible) in evidence, Your Honor.

14 MR. HAWKINS: Why don't you let him do what he did to
15 Owens on you?

16 MR. DAVIDSON: Your Honor?

17 THE COURT: I'm going -- I'm going to -- I'll allow it
18 --

19 MR. HAWKINS: Okay.

20 MR. DAVIDSON: Thank you, Your Honor.

21 THE COURT: -- Mr. Davidson.

22 Just watch your step.

23 MR. DAVIDSON: Step down please.

24 MR. HAWKINS: Yeah, Your Honor. Just note an objection
25 for the record.

1 THE COURT: That objection is noted.

2 Q. Do you wear gloves when you do pat downs?

3 A. Always.

4 (WHEREUPON, the witness comes down from the stand.)

5 Q. Now, let's -- or should we go this way or should we go
6 that way?

7 Let's go this way. That way---

8 A. Checking my tongue real quick.

9 Q. I'll leave my -- I'm not sure (indiscernible).

10 All right now. Tell me what I'm suppose to do.

11 A. Place your hands on the wall.

12 Q. Hands on the wall.

13 A. (Indiscernible).

14 Q. All right.

15 A. Lean inside the door (indiscernible).

16 Start with the hair.

17 All right. I don't see anything in the hair. Go to
18 the collar. We check behind the ears. I don't see anything
19 back there. Collar. Armpit. Crunch method like I said.
20 Armpit. Crunch method. (Indiscernible). Check their back.
21 Check their front. Start the (indiscernible). Crunch
22 method all the way up. Blade under your hand. Crunch
23 method all the way up. Blade, other hand. All then, before
24 they go in, I'd ask them to open their mouth.

25 Q. So you can look---

Timothy Gibson - Cross-examination
By Mr. Davidson

1 A. Look (indiscernible).

2 Q. Just look under their tongue?

3 A. Uh-huh.

4 Q. You've known inmates to hide things in their mouth?

5 A. Always. Every day from med pass.

6 Q. When you say med pass, what do you mean?

7 A. When the nurse comes for -- to distribute medication.

8 THE COURT: All right. Officer Gibson, if you could
9 come back into the microphone so we can --.

10 MR. DAVIDSON: Thank you, Your Honor.

11 (WHEREUPON, the witness returns to the stand.)

12 Q. And that was the way you were trained to do a pat down?

13 A. Yes, that's, that's the way I do it to this day.

14 MR. DAVIDSON: If Your Honor will indulge me for a
15 second?

16 I'm gonna check with---

17 THE COURT: Yes, sir.

18 MR. DAVIDSON: ---my cohorts.

19 (Pause.)

20 Q. All right. Have you ever had an inmate make
21 allegations against you?

22 A. Yes.

23 Q. And is that a fairly regular thing, that inmates --

24 A. Yes.

25 Q. -- for whatever reason, may allege you did something

Timothy Gibson - Cross-examination
By Mr. Davidson

1 when you really didn't?

2 A. Yes.

3 Q. And I think you said you're actually a corporal now?

4 A. Correct.

5 Q. And what are your job duties as a corporal?

6 A. Whenever there's a new hire, I'm suppose to take them
7 round, pod to pod, and the book we described, and train them
8 by that book.

9 Q. So you're a field training officer?

10 A. Yes.

11 Q. Is this your first time ever testifying?

12 A. Yes.

13 Q. First time ever being sued?

14 A. Yes.

15 Q. Well, wilhite may of been the first.

16 A. Well, first, first time being in court.

17 Q. Being in Court.

18 Nervous?

19 A. Yes.

20 MR. DAVIDSON: Your Honor, I have no further questions.

21 THE COURT: Thank you.

22 Redirect.

23 MR. HAWKINS: Sure.

24 REDIRECT EXAMINATION

25 BY MR. HAWKINS:

1 Q. Let's talk about wilhite's case for a minute.

2 You don't know if it was settled or voluntarily
3 dismissed or what, do you?

4 MR. DAVIDSON: Objection, Your Honor.

5 Q. You don't know if wilhite's case was settled, do you,
6 for money?

7 MR. DAVIDSON: Your Honor, the Court can take judicial
8 notice of the federal records in this case. It's, it's
9 clear in those records---

10 MR. HAWKINS: Your Honor, I can---

11 MR. DAVIDSON: ---the case was dismissed.

12 MR. HAWKINS: I'm entitled to ask him if he knows what
13 happened to wilhite's case because he opened the door when
14 he asked the questions.

15 THE COURT: All right. I'll allow the questioning.

16 Q. Okay. You don't know what happened to Mr. wilhite's
17 case, do you?

18 A. I heard it was settled. But I don't know what
19 happened.

20 Q. You heard it was settled?

21 You, you heard it was settled but you don't know what
22 happened?

23 A. Yeah, I heard.

24 Q. Okay. well, are you aware that the government, who's
25 being sued, writes the statute that says how you can sue the

1 government?

2 Did you know that?

3 A. No.

4 Q. Did you know the government builds protections for
5 itself into the statutes that allow someone to sue the
6 governor?

7 MR. DAVIDSON: Your Honor, this is not relevant to
8 the---

9 MR. HAWKINS: Your Honor, he opened the door when he
10 asked this.

11 MR. DAVIDSON: No, Your Honor.

12 THE COURT: Let him make his objection.
13 what's your objection?

14 MR. DAVIDSON: Your Honor, this is not relevant. The
15 fact that there is a statute out there would be in the
16 purview of the Court in regards to the Tort Claims Act and
17 what defenses may they or not be admissible and available to
18 the State including Sheriff Hunt in this instance.

19 MR. HAWKINS: He's mad cause this backfired.

20 THE COURT: All right, Mr. Hawkins.

21 MR. DAVIDSON: I have not opened the door to any of
22 this, Your Honor.

23 THE COURT: Your response?

24 what's your response, sir?

25 MR. HAWKINS: My response is he asked him what happened

1 to that suit. I'm entitled to -- I'm entitled to ask all
2 the questions about his knowledge about having that suit,
3 what the status of the suit was, and why the suit may or may
4 not have been dismissed. He just, he just---

5 THE COURT: All right. I'll allow that line of
6 question -- I'll allow those -- that line of questioning---

7 MR. HAWKINS: Yes. Yes, Your Honor.

8 THE COURT: ---on that.

9 Q. Opposing counsel just suggested to you, and we can read
10 back the record if we need to, that he dropped the suit,
11 wilhite dropped the suit.

12 Is that what you remember him asking you?

13 A. Yes.

14 Q. Okay. He didn't drop it.

15 If it was dismissed, that would of been a decision of
16 the Court, right?

17 A. Yes.

18 Q. Okay. Well, are you aware that Mr. Wilhite tried to
19 represent himself cause he couldn't get a lawyer?

20 A. I just heard it's not an active case and the lot---

21 Q. Are you aware it was in federal court?

22 A. No.

23 Q. Are you aware that, in federal court, they hand out
24 summary judgments and dismissals like trick-or-treat candy?

25 A. No.

1 MR. DAVIDSON: Your Honor, objection.

2 THE COURT: All right.

3 MR. DAVIDSON: One mistake---

4 THE COURT: Mr. Hawkins.

5 MR. HAWKINS: Your Honor, he tried to---

6 THE COURT: Wait a minute.

7 Mr. Hawkins, I'm gonna allow you to ask your questions.

8 I will sustain the objection to the form of that question.

9 I do want you to simply ask your questions, Mr. Hawkins.

10 MR. HAWKINS: Yes, Your Honor.

11 Q. Just in here for the record, are you aware that
12 Mr. Wilhite tried to represent himself (indiscernible)?

13 A. No.

14 Q. Would it surprise you to know that Mr. Wilhite has
15 never been to law school?

16 A. No.

17 Q. Would it surprise you that Mr. Wilhite's case got
18 dismissed because he didn't put specific language for or
19 specific evidence with his submissions to the Court
20 pertaining to the lawsuit?

21 Would that surprise you?

22 A. No.

23 Q. So, Mr. Wilhite can't get any justice, can he?

24 MR. DAVIDSON: Object to the form of the question, Your
25 Honor.

1 THE COURT: All right. Rephrase the question---

2 MR. HAWKINS: Yes, Your Honor.

3 THE COURT: ---Mr. Hawkins.

4 Q. If Mr. Wilhite's case is now dismissed when he tried to
5 represent himself and he couldn't find a lawyer, he doesn't
6 have a remedy now, does he?

7 A. He doesn't have a what?

8 MR. DAVIDSON: Objection, Your Honor.

9 Q. Do you know of any remedy---

10 THE COURT: Hold on.

11 what's the -- what's your objection?

12 MR. DAVIDSON: It's not relevant, Your Honor. The case
13 was dismissed. He's trying to prejudice this jury in regard
14 to Mr. Wilhite.

15 THE COURT: I sus---

16 MR. DAVIDSON: He asked was it he knew the case was
17 dismissed. He said yes.

18 THE COURT: All right. Thank you, Mr. Davidson.

19 I'll sustain that objection.

20 Move along, Mr. Hawkins.

21 MR. HAWKINS: Yes, Your Honor.

22 Q. You said earlier in your testimony that this event
23 happened before or about 10:00AM?

24 A. Correct.

25 Q. Okay. But it -- that's not -- that's not right, is it?

1 It actually happened between one o'clock and 4:00PM,
2 didn't it?

3 A. Not to my knowledge.

4 Q. Is it possible you're mistaken?

5 A. Possibly.

6 Q. Okay. If we, if we call some more witnesses and show
7 that this happened between 1:00PM and 4:00PM, is, is that
8 different than the way you testified earlier that it was
9 10:00AM?

10 A. Yes, that would be different.

11 Q. And when you talked about weapons, talk about people
12 making shivs and all this other stuff, have you ever found a
13 weapon on Otis, ever?

14 A. Otis, no.

15 Q. Has Otis ever been in a fight in jail?

16 A. I do not know.

17 Q. Do you have any evidence that he has been?

18 A. I'll have to pull up his record.

19 Q. Okay. Do you know right now if you have evidence that
20 my client's ever been in a fight in jail ever?

21 A. As of, of me---

22 Q. Yeah.

23 A. ---no.

24 Q. Okay. You told these men that they wouldn't have any
25 rights if they gave up the dice, right?

1 A. Uh-huh.

2 Q. Is that a yes?

3 A. Yes.

4 Q. Then what incentive did they have to lie about dice?

5 They offered you cards.

6 what incentive did they have to lie about knives

7 (phonetic) if you told them there wouldn't be any write-ups?

8 A. They didn't offer me cards.

9 Q. They didn't offer you playing cards and say here, we're
10 playing cards?

11 A. No.

12 Q. All right. It's your testimony that that didn't
13 happen?

14 A. No.

15 Q. Okay. well, I'll still ask them the question.

16 You told them there was gonna be no writes-up for the
17 dice, then what incentive---

18 A. If---

19 Q. ---do you think they had to still tell you a lie?

20 A. It's progressive discipline. We don't need to write an
21 inmate up for every little thing. I mean if they to -- if,
22 if you want to be that, that hard core officer who they
23 can't even sneeze without getting in trouble, but that would
24 of been the end of it. Hand me the contraband. The day
25 goes on. No issue.

1 Q. And you've testified just a minute ago that you're sure
2 you saw them playing dice?

3 A. Yes.

4 Q. You never found any dice?

5 A. It could -- it was made out of paper more than likely.
6 They could of crushed it, ate it, swallowed it.

7 Q. Did you ever find any dice?

8 A. No.

9 Q. Did anybody find any dice?

10 A. No.

11 Q. Did Erikson find any dice?

12 A. No.

13 Q. Did Bowman find any dice?

14 A. No.

15 Q. Did Gallam find any dice?

16 A. No.

17 Q. Did Sheriff Hunt find any dice?

18 A. No.

19 Q. Ever to this day?

20 A. The dice are---

21 Q. Find any dice from that day?

22 A. From that day, no.

23 Q. I may of misheard part of your earlier testimony. But
24 it sounded like you said you didn't search anybody.

25 But we agree for the jury you did conduct searches that

1 day, correct?

2 A. I did conduct searches.

3 Q. Okay.

4 A. Whether or not I searched Owens that day, I searched a
5 lot of people in that yard right there.

6 Q. And, and it's not your testimony that you didn't search
7 Otis, is it?

8 A. Huh?

9 Q. It's not your testimony that you didn't search Otis, is
10 it?

11 A. No, it's that I don't know if I for sure searched Otis.
12 I searched---

13 Q. Okay.

14 A. ---18, 19, 20 inmates then.

15 Q. Okay.

16 A. And I don't take a tally---

17 Q. All right.

18 A. ---all right, your name is this, your name is that---

19 Q. All right.

20 A. ---your name is this.

21 Q. Well, we don't know because we don't have the video?

22 A. Correct. Correct.

23 Q. Isn't it true that, after this search, multiple people
24 complained about excessive force?

25 A. The only two I know is Owens and Wilhite.

1 Q. You don't know about Ard?

2 A. No.

3 Q. Don't know about Brockington?

4 A. No. The only reason I know those two is cause they
5 actively gave me court documents that they were suing me.

6 Q. Okay. Did you say earlier the first time you learned
7 the suit against the Sheriff's Office -- and, for the
8 record, your other suit is not against you personally?

9 You know that, right?

10 A. Yes.

11 Q. It's against the Sheriff's Office?

12 A. Yes.

13 Q. You know the lawsuit (indiscernible) Sheriff Hunt
14 and/or the Sheriff's Office?

15 A. Yes.

16 Q. And that Sheriff Hunt doesn't have any personal
17 liability. But that's who the named party is.

18 You know that, right?

19 A. Yes.

20 Q. Okay. So, you said the first time you ever learned the
21 suit was in 20 teen -- 2018 when you had to give a
22 deposition, right?

23 A. Yes.

24 Q. So you just said earlier in your testimony that there
25 was a PREA investigation, not only less than an hour, but

1 you knew that happened back in February of 2017, didn't you?

2 A. Just cause there's an investigation doesn't mean
3 there's gonna be a lawsuit.

4 Q. Well, you knew there was an allegation of sexual abuse,
5 didn't you?

6 A. Yes.

7 Q. When Mr. Davidson was talking to you earlier, he said
8 that the inmates would be facing a wall (indiscernible)?

9 A. Uh-huh.

10 Q. Is that --?

11 A. Yes.

12 Q. Okay. In actuality, you had these inmates facing a
13 window, up against the window, didn't you?

14 A. Yeah.

15 Q. Okay. And there was a camera over there that was
16 looking through the window, right?

17 A. Yeah.

18 Q. Okay.

19 A. If it---

20 Q. So---

21 A. If the pan --

22 Q. Okay.

23 A. -- went around.

24 Q. Again, we don't know cause y'all didn't preserve it,
25 right?

Timothy Gibson - Redirect examination
By Mr. Hawkins

1 A. Yes.

2 Q. Okay. So, you didn't have them up against the wall.
3 You had them up against a window where there was a video
4 recording this man's groin and whether or not a hand grabs
5 or pulled or, or hit something, right?

6 A. Yeah.

7 Q. Okay. But we don't have the video of that, right?

8 A. Correct.

9 Q. Okay. The last thing -- the last thing I'll ask you
10 and your -- Your Honor, I'm gonna ask the court reporter's
11 indulgence like Mr. Davidson did and I'm gonna ask that
12 Mr. Gibson be searched in the manner he searched Otis by
13 Otis in front of this jury. I suppose just read out what
14 happened on Mr. Gibson for the jury.

15 A. You want to currently---

16 THE COURT: I -- wait a minute.

17 Let me make sure that I understand what your request
18 is.

19 You want your client to --?

20 MR. HAWKINS: Yeah, I want Mr. Gibson to stand up here
21 like he's an inmate and then proceed to do to him what he
22 did to Otis.

23 THE COURT: No, I'm not gonna allow that. Let's move
24 on.

25 MR. HAWKINS: I have no further questions.

1 THE COURT: All right. Recross.

2 MR. DAVIDSON: Just, just one, Your Honor.

3 RECROSS EXAMINATION

4 BY MR. DAVIDSON:

5 Q. You're employed by the sheriff, correct?

6 A. Correct.

7 MR. DAVIDSON: Your Honor, we have the order from the
8 United States District Court and the Honorable Joseph F.
9 Anderson dismissing Mr. Wilhite's case. It was based on
10 Mr. Wilhite wishing the case to be dropped.

11 I would ask the Court to take judicial notice of that
12 order. It's an order in the United States District Court
13 and we believe the Court can take judicial notice of it.

14 THE COURT: Any objection, Mr. Hawkins?

15 MR. HAWKINS: No, Your Honor. He represented himself
16 in that case. He didn't have a lawyer. And so it doesn't
17 surprise me that a Federal Court dismissed it if he didn't
18 have the, the---

19 THE COURT: All right.

20 MR. HAWKINS: ---right phrase and affidavits.

21 THE COURT: I will -- the Court will take judicial
22 notice.

23 (WHEREUPON, the document was taken judicial notice of
24 at this time.)

25 THE COURT: Any further questions, Mr. Davidson, for

1 this witness?

2 MR. DAVIDSON: None, Your Honor. We appreciate it.

3 THE COURT: Thank you. This witness will now be
4 excused.

5 Please watch your step going down this.

6 All right. All right. Ladies and gentlemen of the
7 jury, at this time we're gonna take a 10 minute recess.

8 (WHEREUPON, the following takes place outside the
9 presence of the jury.)

10 MR. HAWKINS: Your Honor, I re---

11 THE COURT: All right.

12 MR. HAWKINS: I realize we never gave this original to
13 the Court.

14 Does the Court want the original of Mr. Gibson's
15 deposition?

16 THE COURT: Yes. Please give that over to our court
17 reporter.

18 Do you have the original?

19 MR. HAWKINS: This is the original of the -- we were
20 given -- we were deposing him with a copy of his deposition.
21 I mean we were examining him with a copy of his deposition.

22 THE COURT: Mr. Davidson, you don't have that---

23 THE DIGITAL REPORTER: He never entered into it as an
24 exhibit.

25 MR. DAVIDSON: I don't have the original, Your Honor.

1 They took the deposition. I don't know where it is.

2 MR. HAWKINS: It's right here.

3 MR. DAVIDSON: Oh, okay.

4 THE COURT: All right.

5 MR. HAWKINS: So I just leave that with the Court?

6 THE COURT: Are you marking it?

7 MR. HAWKINS: I don't, I don't need to. I just didn't
8 want there to be any kind of issue with --.

9 THE COURT: All right. We'll have the -- is it -- it
10 should be stamped.

11 MR. HAWKINS: It is.

12 THE COURT: Okay.

13 MR. HAWKINS: It says original, yes, Your Honor.

14 THE COURT: All right. Very good. We'll keep that.

15 MR. HAWKINS: Thank you, judge. Sorry about that.

16 THE COURT: I need to address -- I believe there's an
17 outstanding objection regarding the entering in of the
18 deposition of Officer --.

19 MR. HAWKINS: Bowman.

20 THE COURT: Of Lieutenant Bowman.

21 MR. DAVIDSON: Oh, Your Honor, we've heard all kinds of
22 things about this video, about what Bowman did, and what he
23 didn't do, and obviously that report that you had last night
24 to review is the report of his investigation. We believe,
25 based on all the questions plaintiff has asked about the

1 video, where it was, and what it was seen, what didn't be
2 seen, what Bowman did, what Bowman didn't do, that that
3 report should come in, Your Honor.

4 It is not a hearsay document. It is a document that
5 was prepared by Lieutenant Bowman. It was made and put in
6 the file at the detention center. It became a business
7 record of the detention center and, therefore, even if it's
8 not a hearsay because it was prepared by Bowman, it would
9 come in even as an exception to the hearsay rule as a
10 business record.

11 THE COURT: All right. Let me address that since I
12 believe that what -- I'll let you argue about it, Mr.
13 Hawkins, in just a moment. But what I'm referencing is
14 the -- was there not an objection to excluding the video
15 deposition or maybe the reading of the deposition of
16 Lieutenant Bowman?

17 MR. HAWKINS: Yes, Your Honor. We moved to --

18 THE COURT: That's right.

19 MR. HAWKINS: -- exclude that because he's not
20 unavailable as the rule defines, as the, as the rule
21 defines. We were only made aware that he wanted the
22 deposition---

23 THE COURT: Right.

24 MR. HAWKINS: ---you know, a few days before trial.

25 THE COURT: All right.

1 MR. HAWKINS: That happened about 10 days.

2 THE COURT: All right. And so my ruling is that I will
3 allow the reading of that.

4 Do you -- you wanted to read the deposition or is it a
5 video?

6 MR. DAVIDSON: It was not videoed, Your Honor.

7 THE COURT: Okay. All right.

8 MR. DAVIDSON: We didn't have time.

9 THE COURT: All right. I will allow the reading of
10 that deposition.

11 Let me, let me address another issue. Y'all are still
12 continuing to argue and talk over each other. I have no
13 issue with you-all being passionate. But we're, we're past
14 the line of, in my opinion, disrespectfulness. So, I want
15 it to stop from both sides so that we can just move
16 expeditiously through these witnesses and through this
17 testimony.

18 MR. HAWKINS: Yes.

19 THE COURT: All right?

20 MR. HAWKINS: Yes, judge.

21 THE COURT: Okay. All right.

22 MR. DAVIDSON: I apologize to the court reporter if I'm
23 doing that, Your Honor, cause I try not to make my court
24 reporters mad at me.

25 THE COURT: Well, we're all mad at the both of you.

1 MR. DAVIDSON: Well, that's okay. Trust me---

2 THE COURT: I think we're all upset.

3 MR. DAVIDSON: Trust me, judge. I been married 43
4 years and I've been mad at -- people been mad -- my wife's
5 been mad at me for 40 of them.

6 THE COURT: Well, I'm gon' hold both of y'all in
7 contempt if we don't stop with the back and forth. I do
8 want to allow both of y'all to argue your objections and
9 both of you-all to argue against those objections. I have
10 no issues with any of that.

11 Excuse me. And though I am slow to anger, my patience
12 is wearing a little thin.

13 So, let's try to be cognizant of that so that we can
14 proceed on with the trial. That said, why don't you guys
15 make sure that you take a short bathroom break or stretch
16 break, whatever it is that you're wanting to do. We'll come
17 back in about five or six minutes.

18 MR. HAWKINS: Thank you, judge.

19 (WHEREUPON, a short recess was taken at this time and
20 the following takes place within the presence of the jury.)

21 THE COURT: All right. Thank you, ladies and gentlemen
22 of the jury.

23 Mr. Hawkins, will you call your next witness please?

24 MR. HAWKINS: Yes, Your Honor.

25 May it please the Court.

Nicolas Gallam - Direct examination
By Mr. Hawkins

1 We call Mr. Gallam to the stand.

2 THE CLERK: Place your left-hand on the Bible and raise
3 your right-hand.

4 NICOLAS GALLAM, being first duly
5 sworn, testified as follows:

6 THE CLERK: Please take a seat in the witness box.
7 State your full name for the Court.

8 THE WITNESS: My name is Nicolas Michael Gallam.
9 G-A-L-L-A-M.

10 DIRECT EXAMINATION

11 BY MR. HAWKINS:

12 Q. Mr. Gallam, I'm gonna give you a copy of your
13 deposition in case we need to reference it.

14 A. Yes, sir. Thank you.

15 MR. HAWKINS: And here's the original for the Court.

16 MR. DAVIDSON: Your Honor, we've never received this.
17 Did y'all get them from the court reporter?

18 MR. HAWKINS: Do what?

19 THE COURT: well, is this---

20 MR. DAVIDSON: Is that not his deposition?

21 MR. HAWKINS: That's his deposition.

22 THE COURT: Okay.

23 MR. DAVIDSON: We never, we never got this from the
24 court reporter.

25 MR. HAWKINS: Oh, you should of ordered one. I did.

1 MR. DAVIDSON: I, I did.

2 MR. HAWKINS: Oh, we got it in -- I mean you -- do you
3 want to let him use the original or --?

4 THE COURT: I don't mind him using the original.

5 Is there any objection to him referencing the original,
6 Mr. Davidson?

7 MR. DAVIDSON: I'm somewhat disappointed in the court
8 reporter. But I'll, I'll deal with that later.

9 THE COURT: All right.

10 MR. HAWKINS: Well you -- so I'm just gonna hand him on
11 the record---

12 THE COURT: Certainly.

13 MR. HAWKINS: ---the original.

14 MR. DAVIDSON: Can I---

15 THE COURT: Yes.

16 MR. DAVIDSON: Can I go ahead and open it, Your Honor?

17 THE COURT: Yes, you can go ahead and open it. I'm
18 watching you open it. You have the Court's permission to
19 review that quickly.

20 (Pause.)

21 MR. DAVIDSON: Your Honor, we did request a copy at the
22 end and we never waived the reading and signing.

23 THE COURT: All right. Are you objecting to the use of
24 this deposition?

25 MR. DAVIDSON: Yes, ma'am, Your Honor.

1 THE COURT: All right. I'm going to overrule. But
2 your objection's duly noted for this record.

3 MR. DAVIDSON: That's fine. Thank you, Your Honor.

4 THE COURT: Thank you. Thank you, sir.

5 MR. DAVIDSON: Just wanted to make sure it was stated.

6 THE COURT: Absolutely.

7 MR. HAWKINS: Thank you. Thank you, will.

8 Mr. Gallam, I'm gonna ask you some of the questions
9 that I asked you the other day at your deposition.

10 okay?

11 A. Yes, sir. Before we get started, can I ask if the
12 original is in a, a bigger font?

13 This small -- this font is---

14 Q. Do you want a---

15 A. I've got good eyes. But this is really small.

16 Q. Okay.

17 A. Thank you.

18 MR. HAWKINS: So, I guess, on the record, I'm gonna
19 trade with will with the witness.

20 THE COURT: I'm gonna allow. If you'll get the
21 original.

22 MR. DAVIDSON: My eyes ain't much better.

23 THE WITNESS: Thank you, sir.

24 Q. Mr. Gallam, I'm just gonna jump right into the
25 substance and kind of cut out some of the facts so we move

1 as quickly possible.

2 You have heard us talking about the video of the, of
3 the search video, have you?

4 You heard that during this trial?

5 A. Yes, sir.

6 Q. Okay. I just want to ask, is it fair to say -- I'm
7 gonna be asking you questions from Page 20 if we go there.

8 Is it fair to say you destroyed or didn't retain a
9 video of evidentiary value?

10 Line 4 and I'll, I'll read it too. I'll read right
11 from the deposition.

12 Is it fair to say you didn't preserve a piece of
13 evidence that had evidentiary value?

14 A. Yes, sir --

15 Q. Okay. Do you know---

16 A. -- was my answer.

17 Q. Can we agree that the video destroyed there did have
18 some evidentiary valuing?

19 A. Repeat the question.

20 Q. We agree that the video was destroyed and it did have
21 evidentiary value?

22 A. No, I think the word destroyed is maybe --

23 Q. Okay.

24 A. -- not---

25 Q. Okay.

1 A. ---the correct term.

2 Q. I'll, I'll rephrase it.

3 Is it fair to say that you didn't preserve a video of
4 evidentiary value?

5 A. Yes.

6 Q. Okay. And according to PREA, once the government
7 learns of an allegation of sexual abuse, y'all should
8 press -- preserve the evidence, correct?

9 A. Yes.

10 Q. And that's in PREA 115.64(a)(2) for the record.

11 Is it a -- did PREA -- we talked about this in your
12 deposition.

13 PREA requires y'all to, to make a description of
14 physical testimony or evidence after a sexual assault
15 allegation?

16 A. Can, can you repeat the question?

17 I'm, I'm having a hard time hearing you.

18 Q. Yeah.

19 A. I'm sorry. I'm -- 24 years in the military. My
20 hearing's not as good either.

21 Q. Can you hear me better right here?

22 A. Yes, sir.

23 Q. Okay. Does PREA require y'all, as a facility, as a --
24 as an agency to, after a report of a sexual assault, to make
25 a description of physical and testimonial evidence related

1 to that alleged assault?

2 A. Yes, sir.

3 Q. And does it require y'all to make a reasoning for
4 credibility assessments?

5 A. Yes, sir.

6 Q. And should you tape record interviews and preserve
7 those recorded interviews?

8 A. Yes, sir.

9 Q. Okay. Did, did, did y'all do that in this case?

10 A. No, sir.

11 Q. Thank you.

12 And y'all should gather -- investigate facts, correct?

13 A. Yes, sir.

14 Q. And there's no -- strike that.

15 Can you give the jury any good reason, and this is from
16 Line 10, can you give the jury any good reason that this
17 video was not preserved?

18 MR. DAVIDSON: what line?

19 what page?

20 MR. HAWKINS: That's Line 10 on Page 20.

21 Q. I'll read it how it comes out at deposition, and,
22 again, I don't mean to beat a dead horse.

23 But if it showed that Gibson would of (indiscernible)
24 policy and procedure, do you have any reason you can give me
25 why Gibson or Bowman or somebody didn't insist that it be

1 retained and what was your answer on 14?

2 A. My answer was no, sir, I can not give you the reason
3 why we did not retain it.

4 Q. Okay. And under PREA, y'all were suppose to preserve
5 evidence and recorded interviews from witnesses, correct?

6 A. Yes.

7 Q. And y'all didn't do that, right?

8 A. No, sir.

9 Q. And did -- you already told me y'all didn't make or
10 preserve any eye witness interviews, right?

11 A. No, sir.

12 Q. Or -- you, you did tell me that?

13 A. Yes, I did.

14 Q. (Indiscernible) for me---

15 A. That's correct. The answer was no.

16 Q. Yeah, I didn't want to be --

17 A. Sure.

18 Q. -- (indiscernible) accusing on that.

19 And did that, that PREA person preserve any footage or
20 talk to any third party inmates about what happened?

21 A. No, sir.

22 Q. Should he have done that?

23 A. He did not do that because, once he spoke to the
24 claimant who said it was not sexual in nature, then it was
25 not a PREA issue.

1 Q. Okay. So, it's your, it's your testimony that you
2 think Otis said it wasn't sexual in nature?

3 A. That's correct.

4 Q. Did he grab his sex organ though?

5 A. That's what he alleged, correct.

6 Q. Okay. And so the allegation is not when he touched him
7 on the back and (indiscernible) and then grabbed his
8 testicles and squeezed, correct?

9 A. Correct.

10 Q. And, under PREA, that would be a sexual assault, right?

11 A. But once he said it was not a sexual act, that was not
12 the case.

13 Q. Well, I'm, I'm -- well, he didn't -- he never said he
14 tried to stimulate him and I'm asking you if, if, if, if
15 (indiscernible) a present inmate by the testicle and
16 squeezing, is that considered a sexual assault under PREA?

17 A. Yes.

18 Q. Okay. Did he put a timestamp on anything at all?

19 A. Who's he?

20 Q. The -- Logan, the PREA person.

21 A. No---

22 Q. The PREA---

23 A. He did not.

24 Q. He didn't---

25 A. On his report, no.

1 Q. He, he didn't make -- he didn't do an interview and had
2 it transcribed like, like, like your dep -- like your
3 deposition?

4 He didn't, he didn't make an interview like that or a
5 timestamp or anything, right?

6 A. No, sir, he made a digital copy---

7 Q. Okay. And (indiscernible)---

8 A. ---on a word document---

9 UNIDENTIFIED SPEAKER: Well, wait a second. One at a
10 time.

11 THE WITNESS: Your Honor, can I finish my answer?

12 MR. DAVIDSON: If he can allow---

13 THE COURT: All right.

14 MR. DAVIDSON: ---this witness to complete his answer.

15 MR. HAWKINS: He's---

16 THE COURT: Okay. I'm going to allow --.

17 MR. HAWKINS: Your Honor, can I just respond?

18 THE COURT: Well, no. Let me let Deputy Gallam, this
19 witness, finish your first question and then we'll proceed
20 on.

21 MR. HAWKINS: Okay. But it was -- it was to a ruling
22 you made about what -- some records that it was about to
23 come out and that's, that's why I objected or that's why I
24 stopped the -- and I (indiscernible) sidebar if we need to.

25 THE COURT: All right. You -- you -- what the --

1 please state your, your original question.

2 Q. So, the original question was---

3 THE COURT: No, what you, what you asked him just now.

4 MR. HAWKINS: Did he ever make a, a transcript of an
5 interview and put the timestamp on it like at your
6 deposition I think.

7 THE COURT: All right. And is it -- his response was
8 something that I already made a ruling on?

9 MR. HAWKINS: Yes.

10 THE COURT: All right. Let's sidebar for a moment.

11 (WHEREUPON, a bench conference was held out of the
12 hearing of the jury at this time.)

13 THE COURT: Mr. Hawkins.

14 MR. HAWKINS: Thank you, judge.

15 Y'all didn't never -- y'all didn't never gather up or
16 consider any of Otis' medical records, did you?

17 That's at Page 24 if you need to look.

18 A. What line, sir?

19 Q. I asked you, I said he didn't include any of the
20 medical records or the fact that Otis Owens was treated as a
21 result of the event and then what was your objection or what
22 was your answer at Line 8?

23 A. No, sir, and that was believed because the -- he did
24 not seek medical treatment until after the investigation was
25 concluded.

1 Q. where -- well, he -- were you in here when he said that
2 he put in a request on 25 and then had to wait until almost
3 a month later to get an ultrasound?

4 Did you hear any of that?

5 MR. DAVIDSON: Objection, Your Honor.

6 A. No.

7 MR. DAVIDSON: Mischaracterizing the evidence in the
8 grievance.

9 THE COURT: All right. Sustained.

10 Let's move on.

11 Q. Did y'all ever consider that Greg Wilhite had also been
12 in during the event that injured Mr. Owens?

13 A. Not that I'm aware of. I was not the investigating
14 officer.

15 Q. But, but you're his boss, right?

16 A. That's correct, yes, sir.

17 Q. All right. So if he messed up an investigation, it
18 would be up to you to either reprimand him or review, review
19 the investigation?

20 A. Yes, sir.

21 Q. Okay. And then y'all didn't take into consideration
22 the fact that Wilhite had to have surgery after the injury?

23 MR. DAVIDSON: Objection, Your Honor.

24 MR. HAWKINS: I don't know what it --.

25 THE COURT: Basis?

1 what's the basis of your objection?

2 I'm sorry, Mr. Dawkins (sic).

3 MR. DAVIDSON: He's getting back into Mr. Wilhite and
4 testifying about what surgery may or may not have been had
5 by Mr. Wilhite and there's no proximate cause to show that
6 that surgery in any form or fashion was related to the, to
7 the pat down search on January the 25th, 2017.

8 THE COURT: All right. Mr. Hawkins.

9 MR. HAWKINS: Thank you, judge.

10 THE COURT: All right. Let me, let me, just for the
11 record, sustain that objection.

12 Let's move on, Mr. Hawkins.

13 Q. Okay. Does PREA require that y'all provide medical
14 attention for any event related to a PREA report?

15 A. Yes, sir.

16 Q. Okay. Did you tell me at one point we could of easily
17 said no and done with any medical so the -- Mr. Owens?

18 Did you say that on Page 29 at Lines 22, 23?

19 A. Lines number again, sir?

20 Q. It's Page 29. Lines 22 and 23.

21 A. Yes, sir, that was the statement. But the context was
22 that we did provide him medical treatment, and if we were
23 not concerned about his medical wellbeing, we could of
24 easily not said that we were gonna give him medical
25 treatment.

1 Q. Well, the, the reason I'm asking you is because you --
2 we agree that PREA requires you to provide medical treatment
3 if there's been a report of a sexual assault, correct?

4 A. Yes, sir, there's a lot of things that require us to
5 give the inmate population medical treatment.

6 Q. So, it's not -- you were mistaken or you were wrong
7 when you said we could have easily said you don't need to go
8 to medical cause PREA doesn't allow that, correct?

9 A. Re, restate the question please, sir?

10 Q. Your statement we could have easily said you don't get
11 to go to medical does not comply with PREA because PREA
12 requires you to provide medical treatment when there's been
13 a report of sexual assault, right?

14 A. That's correct. And that's what we did.

15 Q. Okay. And that was -- we finally got him -- y'all
16 finally got him to an ultrasound like a month late, in
17 February, right?

18 A. Yeah. But I believe there was previous treatment
19 before the ultrasound.

20 Q. Some pain medication for the swelling?

21 A. Yes, sir, and antibiotic if I'm not mistaken---

22 Q. Right.

23 A. ---but I'm not---

24 Q. Right.

25 And I think, I think you're right to---

1 A. ---I'm not a medical person.

2 Q. ---prevent the, the, the liquid around the hydrocele
3 from becoming infected and (indiscernible)---

4 MR. DAVIDSON: Objection, Your Honor. He's now
5 testifying---

6 A. That, that I don't know.

7 MR. DAVIDSON: ---as to medical reasons.

8 MR. HAWKINS: Your Honor, he's brought it up.

9 THE COURT: All right. I'm going to sustain your
10 objection.

11 Let's move on.

12 Q. Did anybody at anytime talk to Gibson about the fact
13 that he injured multiple inmates?

14 Page 33.

15 A. No, sir.

16 Q. Okay. Do you think that's it's a coincidence that
17 Owens and these other men were injured, had the same type of
18 injury immediately after Gibson searched them?

19 Do you think that's a coincidence?

20 A. Are you referencing the deposition?

21 Q. I think it's 32. Yeah, I mean you can just give me the
22 answer and we can go to the deposition. It's Line 6.

23 I said do you think that it was a coincidence that
24 Wilhite and Owens both suffered the same type of injury
25 immediately after Deputy, Deputy Gibson searched the groin

1 area. Then Mr. Davidson objects. And then your answer's on
2 Line 12.

3 A. So, my answer there was no. But further down Line 21 I
4 did say oh, I'm sorry, yes, that it was a coincidence. I
5 do -- I don't know what the reasoning is. I don't know why
6 both had an injury.

7 Q. Okay. So you say no, it's not a coincidence on Line 15
8 and then no, it's not a coincidence on Line 18 and then, on
9 Line 21, you change your answer and you said no, I'm sorry.
10 Yes, I (indiscernible) reasoning is.

11 Right?

12 A. Yes, sir.

13 Q. So, so do you think it's a coincidence or do you not
14 think it's a coincidence that multiple men sustained
15 injuries after the search?

16 A. I don't, I don't know what the reasoning that it --
17 anybody would have injuries.

18 Q. Could it be because of excessive force?

19 A. It could be.

20 Q. Okay. Did anybody ever -- did, did you and your
21 superior -- let me ask you this.

22 who is your superior?

23 who do you answer to?

24 A. The chief deputy.

25 Q. Okay. And so it's, it's the, the sheriff and then that

1 chief deputy and then you?

2 A. That's correct.

3 Q. Okay.

4 A. Yes, sir.

5 Q. Did anybody ever consider giving Gibson a counseling
6 after what happened?

7 A. No, sir.

8 Q. Did anybody ever consider giving Gibson a reprimand of
9 any sort?

10 A. No, sir.

11 Q. In fact, he received a promotion at some point, didn't
12 he?

13 A. That's correct.

14 Q. Is it acceptable to harass -- for a guard to harass an
15 inmate after making the PREA report?

16 A. No, sir.

17 Q. That itself -- that retaliation would be forbidden by
18 PREA, wouldn't it?

19 A. Yes, sir.

20 Q. And is that also forbidden by your internal policies?

21 A. Yes, sir.

22 Q. Is that also forbidden by the minimum standards in the
23 detention center's in South Carolina?

24 A. To my knowledge, I'm, I'm pretty good with the minimum
25 standards not -- and I don't believe there's a -- anything

1 about retaliation in minimum standards and I could be wrong.

2 But --.

3 Q. Okay. Well -- and it's, and it's big. It's thicker
4 than PREA.

5 A. Yes, sir.

6 Q. So, I'll ask you this cause I know this is in there.

7 Is there provisions in minimum standards that says you
8 have to provide medical attention and -- you have to provide
9 reasonable access to medical attention to inmates?

10 Is that in the --?

11 A. Yes, sir.

12 Q. Okay. Is there something in minimum standards about if
13 you ever, if you ever see something as an employee of the
14 Sheriff's Office that threatens the wellbeing, here --
15 observe an event that threatens the wellbeing or health of
16 an inmate you have to log that?

17 Is that in the minimum standards?

18 A. Re -- reask the question.

19 Q. Do the minimum standards require you to log any event
20 that could threaten the health or wellbeing of an inmate?

21 A. Yes, sir. I mean we, we log just about everything.

22 Q. Okay. Did you log -- did -- the event about the search
23 of Mr. Gibson?

24 I, I -- and I'm not saying cause that it's in in
25 your -- I honestly don't know if you did or not.

1 A. I, I wouldn't know that.

2 Q. Y'all don't have any---

3 A. I'm like---

4 Q. I'm sorry.

5 A. We did have paper logbooks at that time.

6 Q. Okay.

7 A. Whether or not there was something notated in that log,
8 the search had been conducted.

9 Q. Okay. So y'all didn't go back and look for those logs
10 and bring them to court to show that it was logged in
11 compliance with minimum standards for PREA or your internal
12 policies?

13 A. No, sir, I don't believe so.

14 Q. Okay. Does retaliation, like re, retaliation I've been
15 asking you about, violate safety rules?

16 Look at your deposition on Page 36 Line 7 through 11.

17 A. Line number again, sir?

18 Q. It's Page 36 Line 7 through 11. I asked you okay.
19 Well, we can agree though that it would be a violation of
20 safety rules to retaliate against somebody that may report,
21 that would be a violation.

22 What was your answer on Line 11?

23 A. Sure.

24 Q. Okay. And we agree---

25 MR. DAVIDSON: If Your Honor---

1 Q. ---to continue---

2 MR. DAVIDSON: ---could note my objection over from Mr.
3 Gibson about the use of a deposition like this. It's not
4 done for impeachment. He's just reading---

5 THE COURT: All right.

6 MR. DAVIDSON: ---the deposition.

7 THE COURT: Objection's noted.

8 MR. DAVIDSON: Thank you, ma'am.

9 Q. We can agree, Mr. Gallam -- am, am I saying that
10 correctly, Gallam?

11 A. Yes, sir.

12 Q. I remember I got it wrong in your deposition. So sorry
13 about that.

14 A. I've, I've been dealing with it for a long time.

15 Q. Uh-huh.

16 So we agree that it's a safety rule violation to, to
17 retaliate against somebody because they made a PREA report?

18 Can we agree on that?

19 A. Yeah, I'm, I'm not sure what you're talking about the
20 safety rules. Maybe against policy and procedure or against
21 regulations like PREA.

22 Q. Okay. Well, are your internal policies for safety?

23 A. Yeah, they're for a, a number of things.

24 Q. Okay. Are they rules?

25 A. Sure.

1 Q. Okay. So we -- can we call them safety rules?

2 A. If, if that's what you want to call them, sir---

3 Q. Okay.

4 A. ---sure.

5 Q. All right.

6 A. We call them policy and procedures.

7 Q. Okay. All right. So, we'll just use those
8 interchangeably if that's okay.

9 A. If that's what you want to do.

10 Q. All right. What's -- about PREA, we won't use policy
11 or safety rules. Let's just say PREA violation.

12 Is it also a PREA violation, specifically 115.61
13 Subsection A, to allow a guard to retaliate, retaliate
14 against an inmate to report a sexual abuse?

15 A. Yes, I do, I do believe that's the case. Of course,
16 PREA is a very large guideline from the federal government.
17 So, I don't know the section that you, you know, quoted. I
18 don't know if that's correct. But, yes, there is, there is
19 language in PREA that talks specifically about retaliation
20 towards somebody that has claimed a sexual misconduct.

21 Q. I don't want to belabor the point.

22 To protect the record, do you, do you want to see PREA
23 and---

24 A. I, I don't know -- necessarily---

25 Q. ---to, to help with that?

1 A. ---need to, no, sir.

2 Q. Yeah, I'm not -- and I'm just saying if you -- if I get
3 to something you want to see, ask me and I'll --

4 A. Yes, sir.

5 Q. -- I'll hand it up.

6 Do you have any evidence that the entire invest --
7 investigation lasted more than one hour?

8 A. No, sir.

9 Q. Is that a rough estimate of about how long it lasted to
10 your understanding?

11 A. To my understanding, that's what Lieutenant Bowman
12 stated.

13 Q. Okay. Is a grabbing and squeezing a man's genitals
14 enough for an allegation of sexual assault?

15 A. Re -- repeat the question please, sir.

16 Q. Is a guard grabbing and squeezing a man's genitals
17 enough for an allegation of sexual assault?

18 A. An allegation, yes, sir.

19 Q. Okay. And if it's determined to be -- if, if it --
20 that's determined to impact them (indiscernible) from that
21 happening, can we agree that that constitutes a sexual
22 assault, grabbing and squeezing a man's testicles to inflict
23 pain?

24 A. I, I would assume so, yes, sir.

25 Q. If a deputy does that to a woman during a traffic stop,

1 is that also considered sexual assault?

2 A. Yes, I believe so. Yes, sir.

3 Q. Do we agree that it's bad for a deputy to do this to a
4 man as to a woman?

5 A. Sure. Yes, sir.

6 Q. Do you remember talking to me -- do you remember
7 talking to me about the video system that was in place at
8 the time this happened?

9 A. Yes, sir.

10 Q. Do you remember telling me that it wasn't the best
11 video system?

12 A. Correct.

13 Q. In fact, there was plenty of funding, plenty of money
14 available to have a video system that was compliant with
15 PREA at the time, wasn't there?

16 A. No, we didn't have budgeted funds for that.

17 Q. The county -- the, the budget -- the general budget was
18 159 million-dollars and change?

19 MR. DAVIDSON: Your Honor, I'm not sure of the
20 relevance of the county's budget at this point.

21 MR. HAWKINS: Your Honor, he, he just said that they
22 didn't have the appropriate funding and I'm gonna read and
23 show him what's the public and business record of Aiken
24 County's funding and how much they had that year.

25 MR. DAVIDSON: Your Honor, that's all well and good.

1 But Aiken County can have a budget that actually helps run
2 the Clerk's Office or this court. It depends on the
3 allocation of County Council and the reason for that
4 allocation. So, this would not be relevant to this case,
5 Your Honor.

6 MR. HAWKINS: Your Honor, if that's -- he's, he's, he's
7 free to cross him on the document however he likes. The
8 document says what it says.

9 MR. DAVIDSON: Your Honor?

10 THE COURT: I am going to sustain. I believe that line
11 to be irrelevant.

12 Let's move on.

13 MR. HAWKINS: May I lay a foundation, Your Honor?

14 THE COURT: You can lay a foundation.

15 Q. I'm gonna show you a letter from chairman of the County
16 Council.

17 Have you ever -- have you ever reviewed any documents
18 like this that address budget and funding for Aiken County?

19 A. No, sir.

20 Q. Are you aware that this is a publically available
21 document?

22 A. I did not know that, no, sir.

23 Q. Okay. Do you have any reason to doubt the authenticity
24 of this document?

25 A. No, sir.

1 Q. Was it your testimony just a minute ago that you didn't
2 have the appropriate funding for a, for a video system that
3 complies with PREA?

4 MR. DAVIDSON: Your Honor, he still hasn't laid the
5 foundation. This gentleman, number one, hadn't never seen
6 that document, and, number two, it's not relevant to what
7 the overrule budget for Aiken County is.

8 THE COURT: I'm gonna---

9 MR. HAWKINS: Your Honor, I'm happy not to use the
10 document if it will move things along.

11 THE COURT: Yes, let's move on.

12 Q. Okay. Are you aware that the operating budget for
13 Aiken County in 2017 was 159 million-dollars for---

14 MR. DAVIDSON: Your Honor, same objection. It's not
15 relevant, Your Honor, to the case.

16 THE COURT: I'll sustain that. I do not find it to be
17 relevant, Mr. Hawkins, and let's move on.

18 Q. Do you contend that you had any problem paying for
19 appropriate training to comply with PREA prior to the event
20 we're talking about in 2017?

21 A. No, sir.

22 Q. Okay. There was plenty of money there for appropriate
23 training?

24 A. Yes, sir. We did most of that training in-house.

25 Q. Okay. And I think PREA and minimum standards require