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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 2 OF 3)
(pp. 351-700)

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1 you to keep logs and records of training for people like
2 Deputy Gibson to make sure that they receive the PREA
3 training they need for the next year.

4 Is that correct?

5 A. Yes, sir.

6 Q. Okay. And do y'all have documentation and proof that
7 Deputy Gibson received the appropriate PREA training prior
8 to the event in 2017?

9 A. Yes, sir.

10 Q. Okay. Where all -- where is that?

11 A. I supplied it to our counsel.

12 Q. Okay. If that exists, we can see it.

13 A. It came -- yes, it's, it's forwarded in our records
14 management system---

15 Q. Okay. Right.

16 A. ---and it's a report that we run out of that for any,
17 any training records and---

18 Q. Okay. We'll see it at some point.

19 A. ---and there should be training rosters for each class
20 that was given.

21 Q. We'll see that at some point during the trial then.

22 A. I, I, I don't know.

23 Q. Oh, okay. Fair enough.

24 So, when was the last time, before January 25th of
25 2017, y'all had a, a meeting to talk about the staffing and

1 the video monitoring system to make sure that it was PREA
2 compliant?

3 A. Staffing, we, we discuss staffing all the time. It's a
4 continual request through the Aiken County, County Council
5 and we recently, I believe in 2019, did do an upgrade to
6 that security system, to the CCTV system---

7 Q. And when---

8 A. ---with inside the facility.

9 Q. When -- you said 2019?

10 A. Yes, sir, I, I believe it, it was 2019/2020, yeah. I'm
11 not a hundred percent sure. It should of been around March.
12 Right around when COVID first started. So March, 2020.

13 Q. Okay. I'm gonna hand you -- this is PREA 115.13,
14 supervision and monitoring.

15 would you mind just reading Subsection A here for the
16 jury please?

17 MR. DAVIDSON: what number please?

18 Q. Just read the number into the record for will. See,
19 you have the microphone.

20 A. 115.13, supervision and monitoring. Section A. The
21 agency shall ensure that each facility it operates shall
22 develop, document, and make its best efforts to comply with
23 regular basis with -- do you want just what's highlighted or
24 the whole section?

25 Q. The whole thing.

1 A. A staffing plan that provides for adequate levels of
2 staffing, and, where applicable, video monitoring to protect
3 (sic) inmates against sexual abuse in calculating adequate
4 staffing levels and determining the need for video
5 monitoring facilities shall take into consideration.

6 Number one, generally accepted detention and
7 correctional practices.

8 Q. You don't, you don't have to read all that if you don't
9 want to. You can but you don't have to.

10 A. Okay.

11 Q. You good with it?

12 A. Yeah. Wherever you wanted me to read.

13 Q. All right. And so that section required you meet ever
14 so often and make sure that you have appropriate video
15 monitoring to protect the inmates against sexual abuse,
16 right?

17 A. Yes.

18 Q. And so, before this happened---

19 MR. DAVIDSON: Your Honor, I want to just -- I
20 apologize.

21 I want to note an objection to not read that as part of
22 the CFR.

23 THE COURT: Okay.

24 MR. DAVIDSON: We talked about it earlier in the
25 earlier evidence issue. We don't believe, at this point,

1 it's relevant with Aiken County.

2 THE COURT: All right.

3 MR. DAVIDSON: It's just a guideline.

4 THE COURT: That objection is noted for the record.

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

6 THE COURT: You may proceed.

7 Q. Okay. Okay. And, Mr. Gallam, prior to the, the
8 assault on this gentleman in two -- in January of 2017,
9 y'all are suppose to meet and make sure that, per PREA, you
10 had appropriate video monitoring to protect inmates against
11 sexual abuse, right?

12 A. Yes, sir.

13 Q. But notwithstanding that, you didn't -- you had a video
14 system that -- well, do you think your video system was
15 appropriate and PREA compliant?

16 A. I, I would definitely say that it did meet -- I mean
17 there's a reason why we upgraded it. It definitely needed
18 some upgrade. But it did, for the most part, serve the
19 purpose of documenting the every day functions inside the
20 detention center.

21 Q. It worked fine when y'all needed footage of the inmate,
22 right?

23 A. Well, I mean we've, we've -- we have handled staff
24 misconduct with it.

25 Q. All right.

1 A. We've handled inmate on inmate assaults with it. We've
2 handled inmate on staff assaults with it. So, yeah, I think
3 it, it adequately helped with a numerous amount of things.
4 Not just discipline inmates.

5 Q. Yes, sir.

6 The -- did y'all ever, did y'all ever consider -- when,
7 when Otis got a sonogram that showed an injury in February,
8 did y'all ever consider, at that point, reopening, reopening
9 the investigation of the assault?

10 MR. DAVIDSON: The same objection being previously been
11 made about sonograms and injury.

12 THE COURT: All right. All right. That objection will
13 remain running.

14 Q. Did y'all ever consider reopening the investigation
15 after learning about Otis' injury to his testicles?

16 MR. DAVIDSON: Same objection.

17 THE COURT: Okay. It's not necessary to -- I've got it
18 running.

19 Go ahead.

20 A. No, sir.

21 Q. Okay. And did you ever hire -- because it's, it's your
22 position that the -- I've heard 30 days. I've heard 60
23 days. I've heard 90 days. I've heard all of it.

24 But I want to make sure it's clear for the jury it's
25 your position that this video system is written over. It

1 goes for a certain period of time without not being
2 preserved.

3 Is that correct?

4 A. Yes, sir. So it any -- you know, anything when you're
5 dealing with data on a, on a server, there's only so much
6 space. And so depending on what was on that video, you
7 know, the motion on the video could make it less timeframe
8 that it would record. We tried to get 30 to 60 days out of
9 each recorder that we had at that time.

10 Q. Okay. So -- but with a better system that was more
11 com -- compliant with PREA, you could of had a larger berth
12 where you could of gone back six months in (indiscernible)
13 data, right?

14 A. Well, I -- I mean six months is a long, a long amount
15 of storage---

16 Q. Right.

17 A. ---and I don't know many correctional facilities that
18 have six months of storage data.

19 Q. Well, that wasn't my question and, and, with respect,
20 you don't know about others. You've only worked at this
21 correctional facility and you -- have you worked at another
22 detention center somewhere?

23 A. No. But I'm, I'm very involved in the State Jail
24 Association.

25 Q. Yes, sir.

1 A. I, I talk to a lot of my colleagues. I researched a
2 lot and I've talked to a lot of colleagues within the state
3 when we upgraded our system. So, yes, I do know quite a bit
4 about other detention facilities and the state's security---

5 Q. I'm---

6 A. ---electronics.

7 Q. From talking to other people, not from working directly
8 with the electronics or from experience with the
9 electronics?

10 A. Yes, sir.

11 Q. Just from talking to people, right?

12 A. Yes, subject, subject matter experts.

13 Q. Okay.

14 A. Yes, sir.

15 Q. All right. Well, how far back can you go now in the
16 new system?

17 A. Now we're up to like 60 to 90 days.

18 Q. Well, you said it was 60 to 90 days for this system.

19 A. I said 30 to 60.

20 Q. Maybe Bowman said it. I'm sorry.

21 In any event, can you, can you go back further with the
22 system you have now than you could with the system you had
23 when Otis was hurt?

24 A. When he was allegedly hurt, yes, sir.

25 Q. All right. I understand we disagree about that.

1 A. Yes, sir.

2 Q. You, you don't -- but you don't dispute the fact that
3 he was treated for an injury, do you?

4 MR. DAVIDSON: Your Honor---

5 A. He was treated---

6 MR. DAVIDSON: ---objection.

7 THE COURT: Basis?

8 MR. DAVIDSON: There's no evidence that he was injured.

9 MR. HAWKINS: Your Honor?

10 MR. DAVIDSON: There's been no testimony by anybody
11 competent to testify about that.

12 THE COURT: All right. Your objection is noted for the
13 record.

14 Overruled.

15 MR. DAVIDSON: Thank you.

16 Q. Does the video system you have now allow you to pull
17 that -- go further back in time and pull videos than the
18 system you had in place when Otis was allegedly injured?

19 A. Yes.

20 Q. Okay. Did y'all, on January 25th, the day this
21 happened and the day that Otis reported the injury, did
22 y'all -- did anybody talk to anybody else about making sure
23 the video was preserved?

24 Did you talk to Bowman?

25 Did Bowman talk to you or did anybody talk to anybody

1 at the detention center to make sure this sexual assault
2 video was preserved?

3 A. No -- nobody had discussion on the allegation.

4 Q. Okay. What about on the 27th?

5 There was a note that's in evidence somewhere. It's
6 the second one. B I think. Yeah, I'm sorry.

7 I show you Plaintiff's B where -- I guess this is
8 Lieutenant Debord. It's not a (indiscernible). Sorry.

9 Did anybody make any attempt to preserve the video on
10 January 27th?

11 A. Not to my knowledge, no.

12 Q. Did anybody make any attempt to preserve the video in
13 early February when the investigation was concluded?

14 A. No, sir.

15 Q. Did anybody make any attempt to reopen the
16 investigation in the end of February when Otis was finally
17 taken to get an ultrasound?

18 A. No, sir.

19 Q. These men that were, were injured and there were a few.
20 There were -- there was Wilhite and there was Owens. There
21 was Ard, Ard (indiscernible).

22 Were, were each of those men's potential injuries
23 reported to the facility manager?

24 A. I don't believe so, no, sir.

25 Q. Does -- do the minimum standards in Section 1065

1 require an allegation to be reported to a facility manager?

2 A. I'm, I'm not -- I'm not a hundred percent sure on that
3 standard.

4 If I could see it?

5 Q. I'm gonna show you 1065 Subsection F of the minimum
6 standards for detention facility at South Carolina. It's
7 right there. It says 1065 on the previous page if you want
8 to look at it.

9 A. Sure.

10 Q. It's just 1065.

11 A. Yeah.

12 Q. It just says---

13 A. Yeah, 1065's got, on the first page, has all the way up
14 to Subsection E. I just want to make sure I'm reading it
15 all---

16 Q. Oh, okay.

17 A. ---for context.

18 Q. I know that's clip's aggravating. I'm sorry about
19 that.

20 A. Yeah, Subsection F in 1060 does state all incidents
21 that result in serious physical harm or threaten of life of
22 any inmate in a facility shall be reported promptly to a
23 facility manager.

24 Q. Okay. And we agree -- and, for the record, that's
25 minimum standards for local detention facilities in South

1 Carolina section 1065(f) and it says that if there's -- if
2 there's an event that threatens the safety or well being of
3 an inmate it has to be reported to the facility manager,
4 right?

5 A. That's not what it says, sir.

6 Q. Okay. Well, correct me.

7 A. It says all incidents that result in serious physical
8 harm to or threaten the life of an inmate in the facility
9 shall be reported promptly to a facility manager.

10 Q. Okay. And we, we agreed earlier that sexual assault is
11 serious, right, or did -- I may have, I may have talked to
12 your colleague about that.

13 Is sexual assault serious?

14 A. Yes.

15 Q. Okay. Was this reported to the facility manager?

16 A. No.

17 Q. So, a sexual assault wouldn't pose a physical harm to,
18 to someone potentially, correct?

19 A. It wouldn't threaten the life, no, sir.

20 Q. Well, I'm not asking about that part. It said -- I'm
21 asking the part -- it says serious physical harm.

22 Does, does sexual assault pose a potential---

23 A. I would assume some sexual assaults would cause serious
24 physical harm.

25 Q. Okay. Who was the facility manager --

1 A. I am, sir.

2 Q. -- or then -- and nobody they -- reported that to you
3 or talked to you about it at all --

4 A. No, sir.

5 Q. -- at the time?

6 A. Not on the 25th, no, sir.

7 Q. Or the 27th?

8 A. I don't believe so, no, sir.

9 Q. Or, or by the beginning of February by the -- by
10 February 25th?

11 A. I don't remember the -- I mean we're talking 2017. I
12 don't know when they had made -- they, they did make me
13 aware of this at some point. I, I don't know the exact day
14 or time.

15 Q. Yes, sir.

16 If, if they had -- if they had complied with the
17 minimum standards and reported this, would, would that be
18 documented anywhere?

19 would it be logged or --?

20 A. Not necessarily. I mean the, the standard doesn't say
21 that it has to be documented.

22 Q. Okay. So --.

23 A. It just says---

24 Q. The---

25 A. ---it has to make me aware.

1 Q. So, they can just tell you no -- is it your testimony
2 that it would comply with minimum standards for somebody
3 just to come to you and say hey, Owens, you know, is, is
4 hurting and he's saying it's from a search?

5 A. I, I believe that's the intent of the standard, yes,
6 sir.

7 Q. Okay. The, the video was never submitted to the
8 facility manager, correct?

9 A. No, sir.

10 Q. And the video that we are -- we talked about this in
11 the deposition.

12 Had -- the video would of recorded the event where the
13 sexual assault was alleged?

14 A. It might have.

15 Q. But we don't know that cause we don't have it, right?

16 A. That's correct.

17 Q. And then the minimum standards at 1049, and I'll hand
18 this back to you if you need to see it, require incidents
19 which endanger physical welfare of inmates to be logged?

20 Do you want to see that or --?

21 A. Yeah, if you don't mind, yes, sir.

22 Q. Yes. And I don't, I don't have the page from the PREA
23 book and I want to make sure I got the right section for
24 you. Minimum standards Section 1041, filed reports.

25 A. And what was your question in regards to it?

1 Q. Can I see it?

2 I just want to make sure -- let me make sure I ask you
3 this --

4 A. Uh-huh.

5 Q. -- the right way.

6 You read, you read Section 1049 of (indiscernible) just
7 now, right?

8 A. That's correct.

9 Q. Does that section require incidents which involve or
10 endanger physical welfare of inmates to be logged?

11 A. Can I have the standards back?

12 Q. Sure.

13 It's Page 22.

14 A. Yeah. That standards (sic) states incidents which
15 involve or endanger the lives or physical welfare of
16 employees, inmates, and/or visitors shall be recorded and
17 retained.

18 Q. Thank you.

19 A. And that's talking about a log report.

20 Q. So did y'all, did y'all log this event?

21 A. I, I don't know what was in the housing unit log at the
22 time of the allegation.

23 Q. Okay. Well, read -- I can, I can show you if I need to
24 but we'd requested all the documents and materials related
25 to this action in any way back in 2017, June, July. That

1 was over five years ago.

2 So -- and I guess my question is, first, can we agree
3 that threaten the physical welfare of (indiscernible) an
4 inmate has to be logged?

5 We agree on that?

6 A. Yes.

7 Q. Did y'all log this event?

8 A. I'm, I'm unaware.

9 Q. Okay. Did y'all make any effort to look for, find, or
10 to bring it to court since we asked for a copy of this?

11 A. I believe we did, yes, sir.

12 Q. Okay. Where is it?

13 A. I, I don't know. We would of turned over anything that
14 we had.

15 Q. Do y'all have it here for the jury to see?

16 A. No, I --.

17 Q. And, and I'm---

18 A. I'm---

19 Q. The only, the only reason I'm asking it that way is, is
20 if you can tell me that it was logged, I, I just want to see
21 if you have any proof it was logged so we can show the jury
22 that the minimum standards were complied with. That's why
23 I'm asking---

24 A. Sure.

25 Q. ---the question.

1 So, as far as you, at least for right now too -- for
2 this part of the trial, we don't have any log-ins?

3 A. I am unaware, at this time, where those---

4 Q. Okay.

5 A. ---logs are.

6 Q. Okay. And I'm not trying to -- I've just been trying
7 to make sure the record's clear.

8 A. That's fine, sir. I'm here to answer questions.

9 Q. At one point when I was asking you questions about
10 whether or not y'all preserved or saved the video, did you
11 tell me that you didn't think it had any evidentiary value?

12 A. Yes, sir, the -- from what I was told from the
13 investigating officer---

14 Q. No.

15 A. ---yes, sir.

16 Q. Okay. Okay.

17 A. And am I allowed to speak about that or --?

18 Q. Yeah, you're not. That's fine. That's fine. He's --
19 well, the fact is we're gonna read his deposition to the
20 jury here in a little bit but---

21 A. Can I, can I answer that question then or --?

22 Q. Well, that, that answers my question.

23 A. Okay.

24 Q. I have, I have a follow-up to that.

25 A. Okay. Sure.

1 Q. Yeah.

2 So, if -- you know -- did y'all make the determination
3 that it didn't have any evidentiary value after Otis made
4 the sexual assault allegation?

5 A. No, sir, or during, during the PREA investigation---

6 Q. During that house?

7 A. Yes.

8 Q. Okay. That's when y'all decided that it didn't have
9 any evidentiary value?

10 A. Yes.

11 Q. But we agree now, as we went through some back and
12 forth, that all videos related to a potential sexual assault
13 do have evidentiary value, right?

14 A. Yes.

15 Q. All right. Did, did you ever bother -- did you ever
16 bother to go look at the footage or say I'm gonna get this
17 footage, you got to show Gibson or anything like that?

18 Did you ever do that?

19 A. I did not, no.

20 Q. Okay. And Bowman didn't to your knowledge, right?

21 A. Not to my knowledge, no, sir.

22 Q. Okay. And, and we, we agree, for the record and the
23 jury, that, at some point, for days even, y'all had the
24 video before it was written up?

25 Y'all had it and it was (indiscernible)?

1 A. Yes, sir.

2 Q. That's right?

3 Okay. And do you recall -- were you sitting in court
4 when Owens said in his statement he'll -- to Gibson, and I
5 quote, violated me as a man?

6 Did you hear that?

7 A. I, I, I don't remember Owens being on the stand, sir.

8 Q. You don't -- I'm sorry. What?

9 We---

10 A. You said when Owens said. I, I don't remember Owens
11 having testimony.

12 Q. Oh, I'm sorry. I did get them mixed up.

13 When, when we were taking Owens testimony and I gave
14 you---

15 A. I don't remember Owens having testimony, sir.

16 Q. Oh, Gibson. Sorry.

17 A. Okay.

18 Q. Sorry.

19 Do you remember that, that report was by Owens?

20 A. I, I---

21 Q. He's, he's the one that said (indiscernible)?

22 A. I'm a little confused now.

23 Q. Yeah. Yeah.

24 A. Sorry.

25 Q. Well, it's my fault for asking a bad question. I'm

1 asking about when Gibson was testifying about Owens
2 statement. That's what I'm asking about.

3 Do you recall when he -- when we talked about this
4 statement right here by Owens about Gibson?

5 A. And you're wanting me to read this?

6 Q. No, I just want to ask you a question about, about this
7 part right here where, where Owens says, about Gibson, I
8 feel that he violated me as a man.

9 Did -- do you recall us talking about that?

10 A. I -- vaguely, yes, sir.

11 Q. Okay. What does this mean to you?

12 A. You know, I, I, I think that it can mean several
13 things. In my 21 years of working in a detention center,
14 I've heard that numerous amounts of times. Sometimes
15 jokingly from the inmate population. When you're conducting
16 a thorough pat down search, it, it does kind of -- it is a
17 little bit dehumanizing.

18 You know, we, we, in America, are not use to people
19 feeling all over our bodies. And so, yes, that is a little
20 bit dehumanizing and I've heard inmates say that, that,
21 that, you know, you've, you've taken my manhood or you've,
22 you've -- I don't, I don't know what the exact words were in
23 the grievance. But, yes, I have heard that in several
24 different times and it, it can mean an array of things I
25 think.

1 Q. And that array of things it could mean, could it mean
2 to refer to someone violating them sexually, violating---

3 A. I think so, yes, sir.

4 Q. All right.

5 A. I wouldn't disagree with that.

6 Q. And are you aware we had some questions and things in
7 Gibson -- are you aware by now in the trial where we're
8 talking about that Owens was, in fact, treated for a
9 testicular injury?

10 MR. DAVIDSON: Your Honor?

11 MR. HAWKINS: I can ask him if he's aware, Your Honor.

12 MR. DAVIDSON: No, Your Honor, not until a foundation's
13 laid regarding the evidence regarding the injury about
14 they're related.

15 THE COURT: I'll sustain.

16 Let's move on.

17 Q. Okay. And we, we talked about this a minute ago.

18 The, the video related to the PREA investigation, we
19 agree now that it had evidentiary value, right?

20 A. Yes, sir.

21 Q. Okay. And is it to -- fair to say that you destroyed
22 and didn't retain the video that had evidentiary value?

23 A. We did not retain.

24 Q. I don't have any more questions for you, Mr. Gallam.
25 Please answer any questions your attorney has.

Nicolas Gallam - Cross-examination
By Mr. Davidson

1 A. Thank you, sir.

2 THE COURT: Cross.

3 MR. DAVIDSON: Yes, ma'am, just a few.

4 CROSS-EXAMINATION

5 BY MR. DAVIDSON:

6 Q. To your knowledge, when Lieutenant Bowman was doing his
7 investigation, was everybody still in the jail, the inmates,
8 Mr. Owens, Mr. Wilhite?

9 A. Yes, sir.

10 Q. Was Mr. Gibson working at the county?

11 A. Yes, sir.

12 Q. So, in that instance, it doesn't necessarily take very
13 long to round people up in the jail, does it?

14 A. No, sir, it's not like a criminal investigation on the
15 streets.

16 Q. So, an hour's not necessarily unusual one way or the
17 other?

18 A. Yes, sir.

19 Q. Now, I think we've heard Mr. Gibson testify about this
20 camera system and I think you've testified (indiscernible).
21 I just want to make sure I understand this.

22 This is a rotating camera, right?

23 A. Yes, sir. So this is a pan/tilt/zoom camera. There's
24 one camera in the housing unit which was in the middle of
25 the dayroom of the housing. Just like Deputy Gibson said,

1 it's, it's pretty similar to this square building that we're
2 in today on a pan/tilt/zoom tour. So meaning that it
3 automatically is turning at a very slow pace rotating around
4 the dayroom.

5 Q. So, it could show something on one side but not show
6 something on the other?

7 A. That's correct, sir.

8 Q. And, to your knowledge, Lieutenant Bowman looked at
9 that?

10 A. That -- yes, sir.

11 Q. Okay. And basically he decided not to keep it?

12 A. Yes, sir.

13 Q. And put the film I think or the data back into the
14 system to save y'all some space?

15 A. Well, it, it doesn't necessarily come out. It's, it's
16 a -- the record is stored on a, on a hard drive, and as that
17 hard drive space comes to the end, it overrides the very
18 furthest data on it.

19 Q. Okay. So, it would override the hard drive too?

20 A. Yes.

21 Q. Okay. Now, I'm gonna show you what I think is
22 Defendant's Exhibit B and I think C, Madam Court Reporter.
23 I may be wrong.

24 Am I right, B and C?

25 (WHEREUPON, a discussion with the digital court

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1 reporter took place at this time.)

2 Q. Now, I'm gonna show you what is marked as Grievance
3 Reports A and B, Captain Gallam. If you don't mind, take a
4 moment and review those please, sir.

5 A. (WHEREUPON, the witness complies.)

6 Q. Have you looked at B, his B?

7 A. I looked at A first, sir.

8 Q. Okay. Take a look at B.

9 A. Yes, sir.

10 Q. All right. Is there anything in either of those
11 reports about I've been injured or I have been physically
12 hurt or I need to see medical?

13 A. No, sir.

14 Q. Well, now, in fact, in B, Mr. Owens referenced that
15 he's been embarrassed, correct?

16 A. Yes, sir.

17 Q. And in the B document, what's the date of that?

18 A. January 25th, 2017.

19 Q. Okay. Nothing in that one about being injured?

20 A. No, sir.

21 Q. Nothing about being embarrassed?

22 A. Correct.

23 Q. All right. Your A I believe is the one I introduced.
24 Again, what's the date of that one?

25 A. 1/29/2017.

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By Mr. Davidson

1 Q. Anything about injury or I'm hurting or I need to see a
2 doctor?

3 A. No, sir.

4 Q. Okay. Inmates can file grievances if somebody's not
5 doing what they want them to do or they feel like they've
6 been mistreated?

7 They can file a grievance like I need to see medical
8 and nobody's taking me?

9 A. Yes, sir, and they can file a, a medical sick call at
10 any point in time.

11 Q. Okay. I'm gonna show you -- and, Your Honor, I don't
12 necessarily have to introduce these. But I'm gonna -- I'm
13 just gonna show him some more grievances if you don't mind
14 and this is from Mr. Hawkins is A-27 and these are my
15 internal notes, Your Honor, A-28, I believe A-25, excuse me,
16 and then A-16 and if you'll take a moment.

17 Make sure they're in chronological order please.

18 A. Yes, sir.

19 MR. HAWKINS: Your Honor, I don't remember what the
20 ruling was on -- and I don't know which one he's
21 referencing. But I don't know what the ruling was on
22 grievances unrelated to the injury. I think we took that up
23 with the Court out of the presence of the jury but I can't
24 remember.

25 THE COURT: Mr. Davidson.

1 MR. DAVIDSON: Oh, I'm sorry, Your Honor. These are
2 all during the time period from the end of January till
3 about the first week of February. One I think is in March.
4 They're all dealing with grievances. They're all dealing
5 with---

6 MR. HAWKINS: Yeah. Yeah, that's not what I'm talking
7 about. I'm talking about the --.

8 THE COURT: Are they, are they, in fact -- are they
9 grievances related to this, this specific case?

10 MR. DAVIDSON: Yes, Your Honor.

11 MR. HAWKINS: How?

12 No, I don't -- could I see them?

13 THE COURT: You, you can -- you certainly can observe
14 them.

15 MR. HAWKINS: And it's not something that doesn't have
16 anything to do with the injuries.

17 THE COURT: Well, you just --.

18 MR. DAVIDSON: (Indiscernible).

19 MR. HAWKINS: Yeah, and this, this has nothing to do
20 with the injury.

21 THE COURT: All right.

22 MR. DAVIDSON: Your Honor?

23 THE COURT: Then---

24 MR. DAVIDSON: Can I show them to the Court and let's
25 take a---

1 THE COURT: Yes.

2 what I'm going to do is give the jury a break. They're
3 overdue for a break. We'll give them a, a, a, a 15 -- a 10
4 minute break.

5 All right. If you'll escort the jury out and allow
6 them a bath, bathroom and smoke break.

7 MR. DAVIDSON: Thank you, Your Honor.

8 (WHEREUPON, the following takes place outside the
9 presence of the jury.)

10 THE COURT: All right. Let me see the grievances. Let
11 me see it.

12 THE WITNESS: Your Honor, can I step down and get a
13 drink of water?

14 THE COURT: Yes.

15 MR. HAWKINS: And for the Court, Your Honor, I think
16 the, the last thing about the injury was in March and I
17 think some of these were in -- I mean in, in February and
18 some of these were in March. So this is after the, the
19 injury and everything I think.

20 THE COURT: All right.

21 (Pause.)

22 THE COURT: All right. My ruling was no submission
23 regarding (indiscernible) introduction. No introduction of
24 grievances or disciplinary actions that are related to this
25 action. These appear to be -- I just want to make sure I'm

1 understanding.

2 These are requests from Mr. Owens for his records?

3 MR. DAVIDSON: Dealing with this incident, Your Honor.

4 MR. HAWKINS: All right. So what -- what would that --
5 he's asking for documents. I don't know what that had to do
6 with, with anything really. I'm not even that worried about
7 it. I just don't want---

8 THE COURT: Right. So -- well, I just want to make
9 sure that your objection is clear that I ruled on your, your
10 objection. Your objection was that this perhaps violated
11 that, that ruling that I made earlier. I don't think that
12 the substance of these grievances violate that.

13 MR. HAWKINS: Okay.

14 THE COURT: Your next objection is to relevance?

15 MR. HAWKINS: Well, it, it is, Your Honor. But if, if,
16 if this doesn't conflict with your prior ruling, then I, I
17 guess he's entitled to go try to lay a foundation for it. I
18 just -- I would object on relevance for the record I guess.

19 THE COURT: Okay. All right. I'm going to overrule
20 that objection as it stands now. I'll allow him to continue
21 to lay his foundation.

22 Did you step down?

23 Did you get your water?

24 THE WITNESS: Yes, ma'am.

25 THE COURT: All right. We've got about five more

1 minutes till the jury comes.

2 MR. HAWKINS: Thank you, Your Honor.

3 THE COURT: Thank you.

4 (WHEREUPON, a short recess was taken at this time.)

5 MR. HAWKINS: I think probably if, if Your Honor has
6 ruled, and I think Your Honor has ruled that the deposition
7 of Bowman's coming in, then that would go next. But we have
8 to figure out which lines are, are gonna be read because
9 some lines reference the hearsay that Your Honor ruled on.

10 THE COURT: All right. Well, what I'm trying to gauge
11 is right -- when to release our jury.

12 If that -- if you've got some just -- you've got some
13 issues to work out with that deposition is what you're
14 telling me?

15 MR. HAWKINS: Yes, Your Honor. A solution I can offer
16 is to -- if the sheriff is still around, try to -- I don't
17 want to do this. But I could try to put him last. But I
18 don't know how long he's gonna take with it. I don't need
19 but about 10 minutes with the sheriff.

20 THE COURT: Is he gone?

21 MR. HAWKINS: If that would---

22 THE COURT: He's gone.

23 MR. HAWKINS: Oh, okay. Nevermind.

24 THE COURT: All right. All right. I'm gonna
25 release -- if we've got, we've got deposition -- how long is

1 it gon' take to work up these deposition issues?

2 MR. HAWKINS: It depends on how much pushback we get.

3 THE COURT: All right. But how much, how much needs to
4 be --?

5 MR. HAWKINS: To, to read it?

6 (WHEREUPON, there was no audible response.)

7 MR. HAWKINS: Once we, once we figure out what's
8 gonna -- what Your Honor rules on what's gonna be read in
9 and we start reading, I don't think it will take 20 minutes
10 because they're -- nobody's here to make objections and---

11 THE COURT: Okay.

12 MR. HAWKINS: ---you know, cross and stuff like that.
13 We're just gonna read it in. It's, it's pretty---

14 THE COURT: All right. I'm gonna, I'm gonna try, try
15 to get the deposition read today if we can -- depends on how
16 long you go with, with the -- this -- I know what your name
17 is. But I will tell you---

18 MR. DAVIDSON: Just---

19 THE COURT: ---I want to rely---

20 MR. DAVIDSON: What---

21 THE COURT: ---and I'm having to---

22 MR. DAVIDSON: whatever you want to call me, judge.

23 THE COURT: well, I'm having an issue with names this
24 week. But I keep trying to call y'all Dawkins and I keep
25 trying to call him Chief Renco.

1 THE WITNESS: All right.

2 THE COURT: But I---

3 THE WITNESS: That's a, that's an honor. Thank you.

4 THE COURT: I know.

5 MR. DAVIDSON: I can -- and, judge, like I say, I'll
6 answer to most anything. I been, I been called a lot worse
7 by a lot of different people.

8 THE COURT: No, we're not gonna do any of that here.
9 But let's see how long it takes with, with our witness and
10 then I'll make a decision on whether or not -- all right.

11 MR. HAWKINS: Yes, Your Honor.

12 MR. DAVIDSON: Your Honor, on, on the -- I'm sorry I'm
13 not standing.

14 On the deposition, I -- I'm gonna need to know what
15 excerpts he wants to read so that I can then look at the
16 deposition of Bowman, I assume that's who you're talking
17 about, to decide what counter designations I may want to
18 utilize in my cross-examination of Mr. Bowman. So,
19 that's -- I -- I'm not sure how that's gon' -- how long that
20 will take, whether he's got the designations already done.

21 THE COURT: Do you have your designations done?

22 MR. HAWKINS: No, we haven't -- we just got it I think
23 yesterday evening --

24 THE COURT: All right.

25 MR. HAWKINS: -- after trial.

1 THE COURT: Okay. All right. That -- so I won't
2 release our jury -- I'm gonna release the jury after this,
3 after this witness.

4 MR. HAWKINS: Oh. Are we still on his cross or am I
5 redirect?

6 I forgot where---

7 THE COURT: No, we're on cross.

8 MR. HAWKINS: Okay.

9 THE COURT: Yeah, we're still on cross.

10 All right. Let's -- we're ready for the jury?

11 (WHEREUPON, there was no audible response.)

12 MR. HAWKINS: Let's bring the jury back in please.

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

15 THE COURT: All right. Mr. Davidson.

16 MR. DAVIDSON: Thank you, Your Honor.

17 CONTINUED CROSS-EXAMINATION

18 BY MR. DAVIDSON:

19 Q. (Indiscernible) I want you to take a moment to -- I
20 hand you a grievance which is identified as A-027, and if
21 you could read to me the date of that one please, sir?

22 A. Yes, sir. February 5th, 2017.

23 Q. And who's it submitted by?

24 A. Otis Owens, Inmate Number 905233.

25 Q. Okay. And in that document do you see anything about

1 Mr. Owens complaining about an injury or a problem or the
2 fact that he needs to go see medical?

3 A. No, sir.

4 Q. I show you the next one.

5 who is that done by please, sir?

6 A. Otis Owens, Inmate Number 905233.

7 Q. When was it done?

8 A. February 6th, 2017.

9 Q. Anything about injuries, needing to see medical,
10 anything like that?

11 A. No, sir.

12 Q. Showing you the next one.

13 If you can tell me who did that one?

14 A. It's also Otis Owens. 905233 inmate number.

15 Q. And is there anything in that one about injuries or
16 needing to see medical, anything like that?

17 A. No, sir.

18 Q. Show you this one.

19 what's the date of -- who's that one done by?

20 A. Once again, Otis Owens. Inmate Number 905233.

21 Q. Okay. And what's the date of that one?

22 A. March 14th, 2017.

23 Q. The grievance system is where you can bring to staff's
24 attention or management's attention that you're not happy,
25 something ain't right, you need something fixed?

Nicolas Gallam - Cross-examination
By Mr. Davidson

1 A. Yes, sir.

2 Q. Right?

3 A. It's, it's the means for the inmate population to
4 communicate with staff, whether it be contract medical
5 staff, kitchen, programs, supervisors. Whatever it might
6 be, they have, they have a means to do that.

7 Q. And, and I'm gonna show you another one.

8 what's the date of that one?

9 A. March 17th, 2017.

10 Q. And who's it by?

11 A. Mr. Otis Owens.

12 Q. Anything about that one about seeing medical, having an
13 injury, having anything that's wrong with him as a result of
14 the pat down search on January the 25th, 2017?

15 A. No, sir.

16 Q. And they were all responded to by staff, were they not?

17 A. Yes, sir. That's correct.

18 Q. He actually referenced getting some information for his
19 attorney at one of these, didn't he?

20 A. Yes, sir.

21 Q. That was around the -- March 14th, 2017.

22 He wants to get anything that there might be on the
23 kiosk for his attorney, right?

24 A. Yes, sir, his statement was I need all, what I assume
25 what he meant to say was kiosk information, for my lawyer

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By Mr. Davidson

1 from the 25th of -- 27th of January. Thanks a lot.

2 Q. And, again, nothing about medical?

3 A. No, sir.

4 Q. Or injury?

5 A. No, sir.

6 Q. That's all the questions -- oh, one other question.

7 You said you were in the military for 24 years?

8 A. Yes, sir.

9 Q. What branch?

10 A. Both Marine Corps and Army.

11 Q. Okay. And when did you get out?

12 A. I just retired September 30th.

13 Q. Of what?

14 A. The Army Reserve.

15 Q. Thank you.

16 A. Yes, sir.

17 Q. No further questions.

18 THE COURT: Redirect.

19 REDIRECT EXAMINATION

20 BY MR. DAVIDSON:

21 Q. Mr. Gallam, that (indiscernible) that said I need to
22 get some documents for my attorney, that was in March?

23 A. I, I don't recall the date. The -- these aren't it,
24 sir. I think Mr. Davidson has them.

25 Q. Oh, okay.

1 MR. DAVIDSON: what date?

2 MR. HAWKINS: I thought they were put in evidence. I'm
3 sorry.

4 If I represent to you that document is dated March
5 (indiscernible).

6 A. I wouldn't, sir. I, I believe that it was around that
7 timeframe. I just didn't have the exact date. I didn't
8 want to---

9 Q. All right.

10 A. ---mis, mis --.

11 Q. No, and I, and I appreciate.

12 A. ---represent myself.

13 Q. I appreciate that.

14 Now, if memory serves (indiscernible), y'all determined
15 this event was unfounded in April of or, excuse me, in
16 February of 2017, correct?

17 A. I believe that was the timeframe.

18 Q. So, so immediately after he tried to handle the matter
19 internally, and y'all said it's un -- it's unfounded, he was
20 trying to get documents for an attorney in March, he
21 immediately started trying to be proactive about taking
22 legal action, right?

23 A. I would assume so.

24 Q. And he's never sued -- you got any knowledge that he's
25 ever sued the detention center or the government before

1 this?

2 A. I, I have no knowledge of that, no, sir.

3 Q. So, there's no evidence that he's litigious or suit
4 happy or anything like that?

5 A. Not that I'm aware of.

6 Q. So, it stands to reason then that he took this event
7 pretty seriously and wanted to stay on top of it?

8 A. I, I can't say what his intent was.

9 Q. Okay. well, let me ask you about, about something
10 else. You, you said that an hour is an -- appropriate to do
11 a PREA investigation earlier if they're (indiscernible) in
12 the jail.

13 Do, do you recall that?

14 A. Yes, sir.

15 Q. Okay. So, is that -- then -- and I'm just gonna talk
16 about what PREA requires.

17 Is that an appropriate amount of time to talk to all
18 our witnesses, get recorded statements from my witnesses,
19 review and preserve evidence, watch and go over the video
20 with the aggressor and the victim, and wait for the
21 treatment and records to come back so that that can all be
22 included in, in the investigation?

23 Is an hour sufficient to do all that?

24 A. Yeah, I think, I think so. When you're -- you know, if
25 you're, if you're talking about a full blown sexual assault

1 like a CSC first, a, a forcible rape, yes, that's gonna take
2 much longer because there is some -- you know, of course,
3 you'd have to send them to the hospital for a rape kit.
4 You'd have to, you know, preserve evidence and all this
5 other stuff. We didn't feel like that was the case on this
6 incident.

7 Q. All right. But, at a minimum, can we agree that it
8 would of been a better decision to wait to see what injuries
9 there were before concluding the investigation within an
10 hour?

11 A. Well, it's -- the, the investigation wasn't, you know,
12 concluded the hour after the, the alleged incident.

13 Q. No, it was concluded within an hour of when it was
14 opened, right?

15 A. Yes.

16 Q. And that was way before y'all let Otis have a sonogram
17 or an ultrasound in February?

18 A. I don't know about the ultrasound. Whenever he
19 requested medical treatment, we got him medical treatment.
20 We provide him access to our contract medical provider at
21 that time.

22 Q. Well you -- well, he reported on the 25th of January
23 that he needed medical treatment or he didn't get an
24 ultrasound until a month later on the 24th of February,
25 right?

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By Mr. Davidson

1 A. Right. Just like if I went to the doctor to today, I
2 probably wouldn't get a sonogram today.

3 Q. I don't know. Yeah, I, I don't know. I mean I haven't
4 been to the doctor for an ultrasound or sonogram.

5 But can we agree that it was about a month between when
6 Otis reported the injury and when he got the ultrasound?

7 A. Uh.

8 Q. I think it was an ultrasound. I, I may be saying it
9 incorrectly but I think it's (indiscernible).

10 Can we agree that it was the 25th of January to the
11 24th of February?

12 A. If, if that was the day of the ultrasound, yes, sir, I,
13 I could agree to that.

14 Q. Can we agree that he can't go to medical unless y'all
15 let him cause he's in jail?

16 Can we agree on that at the time the, at the time this
17 happened?

18 A. Correct. We provide him with access to medical
19 treatment.

20 Q. Okay. And did you know that he was on, he was -- he
21 did initially receive some, some pain medicine for, for the
22 injury?

23 Did you know that?

24 MR. DAVIDSON: Your Honor, objection. Going beyond the
25 level of cross-examination.

1 MR. HAWKINS: Your Honor, I, I -- he -- we even talked
2 with this whole direct and cross about the injury, about
3 when he was sent to medical. This is directly related to
4 all that.

5 THE COURT: I don't believe that was -- I don't
6 believe -- there's no testimony in cross. So, I'll sustain
7 that objection.

8 MR. DAVIDSON: Thank you, Your Honor.

9 Q. On cross you talked about the hard drive and all that
10 kind of stuff and y'all never made any effort to examine the
11 hard drive or have any professional examine the hard drive
12 to recover the sexual assault video?

13 A. No, sir.

14 Q. You never contacted a tech person to come in and try to
15 restore the deleted video?

16 A tech professional. IT.

17 A. No, sir.

18 Q. Okay. And we're talking about the timing of when Otis
19 reported this, what he did in the interim during the
20 reported injury when y'all let him have an ultrasound.

21 Are you aware that immediately after the event happened
22 Otis called the lieutenant and the sergeant and told him
23 what happened in person without filing a grievance and did
24 those, did those people tell you anything about him being
25 upset and saying, you know, lieutenant and sarge, any

1 person, without filing a grievance?

2 MR. DAVIDSON: Your Honor, going beyond cross.

3 MR. HAWKINS: That -- no, it's not because you, you
4 just asked him about what he did when he reported in that
5 and what he did in the interim. That's directly related to
6 your questioning.

7 THE COURT: All right. Overruled.

8 A. Can you repeat, sir?

9 Q. Yeah.

10 Are you aware that Otis, right after the event
11 happened, between -- right after the event before he went
12 and filled out an official grievance at the kiosk, he was
13 raising cane and upset because somebody had grabbed -- his
14 privates hurt so that he, he called and the lieutenant and
15 the sergeant came in person and talked to him about with
16 (indiscernible).

17 Are you aware of that?

18 A. I, I believe that is the case, yes, sir.

19 Q. All right. Did y'all monitor that evening?

20 A. Not that I'm aware of.

21 Q. So there was an immediate response to a sexual assault
22 and y'all didn't log it or, or report it anywhere, right?

23 A. Repeat the question.

24 Q. There was an in person response to a potential sexual
25 assault that wasn't on the kiosk and y'all never logged that

1 so that it was -- recorded it, correct?

2 A. Well, I, I, I believe they didn't think of it as a
3 sexual assault. They were believing it as a -- possibly an
4 improper search.

5 Q. All right. Well, my question is if somebody said --
6 put on a sexual assault -- sexually assaulted and they
7 responded, they didn't see, we original -- we agree---

8 A. I don't believe your client said that he felt that he
9 was sexually assaulted at that time.

10 Q. I know but he said this person was grabbing him in the
11 testicles and hurt him.

12 We can agree on that, right?

13 MR. DAVIDSON: Objection, Your Honor.

14 THE COURT: What's the basis?

15 MR. DAVIDSON: Going beyond cross, Your Honor, and he's
16 also getting into where we objected to the idea that
17 grabbing caused an injury without the proper foundation or
18 the proper evidence produced.

19 MR. HAWKINS: Your Honor, respectfully, the Court has
20 ruled on this numerous times---

21 MR. DAVIDSON: No.

22 MR. HAWKINS: ---on both of those.

23 THE COURT: All right. I'm gonna overrule.
24 Go ahead.

25 MR. DAVIDSON: Thank you, Your Honor.

1 Q. You're aware that the lieutenant and sergeant responded
2 to this event right after it happened, correct?

3 A. Yes.

4 Q. Okay. And you're aware that there's no record that I
5 have on kiosk that it was an in person response, correct?

6 A. Were you talking about the---

7 Q. By the sergeant -- by the sergeant and lieutenant was
8 in person response.

9 So there's nothing on the kiosk about it, right?

10 A. Are you saying from your client requesting them to
11 come?

12 Q. They, they were---

13 A. I don't understand the question.

14 Q. Yeah.

15 Oh, okay. You disagree that a sergeant and a
16 lieutenant responded in person after this search took place
17 and talks to Owens?

18 A. Yes.

19 Q. Okay. Did y'all record that or the contents of the
20 conversations with Otis anywhere?

21 A. No, sir, that, that happens on a daily basis that a,
22 a -- supervisors respond to talks to inmates about any type
23 of complaint.

24 Q. Okay. So, that's, that's fine. But we're talking
25 about something that involves like grabbing the inmate's sex

1 organ. And so I think PREA, I think you'll agree with me,
2 PREA requires that in a situation like that, everything be
3 recorded and I want to know, for the jury, did y'all make
4 any efforts to record the lieutenant and sergeant's in
5 person response to my client after this sexual assault?

6 A. Not, not to my knowledge, no, sir.

7 Q. Oh, okay. Sorry if I asked that in a confusing way.

8 Okay. Did the PREA, did the PREA coordinator -- did
9 the PREA coordinator ever come back and talk to that
10 lieutenant or that sergeant?

11 A. I'm not aware.

12 Q. Did the PREA coordinator, to your knowledge, go back
13 and say the sergeant or lieutenant, who responded in person,
14 and tried to do a recorded video or a recorded interview?

15 A. No, sir.

16 Q. Okay. And if, if -- so you would agree, and this I
17 think is gonna be my last question, can we agree that
18 regardless of when the event took place, whether it's
19 10:00AM or 4:00PM or anytime in-between, can we agree that
20 immediately Otis reported that, complained about it, and
21 that a sergeant and a lieutenant responded?

22 Can we agree on that?

23 A. Yes, I believe that's the case.

24 Q. And that he made an official report later that night?

25 A. Yes.

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1 Q. Thank you. I don't have any more questions.

2 A. Thank you, sir.

3 Q. Thank you for your time.

4 THE COURT: Any recross?

5 MR. DAVIDSON: No further questions, Your Honor.

6 THE COURT: All right. This witness may be excused.

7 Please watch your step.

8 THE WITNESS: Thank you, Your Honor.

9 THE COURT: All right. Ladies and gentlemen of the
10 jury, at this time I am going to excuse you for the night.
11 Let me remind you that you are not to discuss the testimony
12 or any of the evidence that you've heard today with anyone,
13 not even with each other. We will give you -- please do not
14 try to do any research because we'll give you all of the
15 information that you need in order to make your informed
16 decision.

17 I ask that you be here tomorrow morning at 8:45. We,
18 we will provide biscuits for you in the morning.

19 Do we have anyone who's a vegetarian on the jury?

20 Sausage biscuits okay?

21 THE JUROR: Can I get turkey?

22 THE COURT: Turkey?

23 There's no turkey -- do they do turkey?

24 THE JUROR: Turkey sausage.

25 THE COURT: We'll ask. I'm not sure if they do. If

1 they don't, we'll get you a plain biscuit.

2 THE JUROR: Okay.

3 THE COURT: All right. Very good.

4 All right. You up -- ladies and gentlemen, have a good
5 night. We'll see you tomorrow morning at 8:45.

6 (WHEREUPON, the following takes place outside the
7 presence of the jury panel.)

8 THE COURT: All right. Gentlemen, I know that we have
9 some issues to handle with regards to that deposition.

10 You want to get into that cause I'd like to start
11 tomorrow morning --

12 MR. HAWKINS: Sure, Your Honor.

13 THE COURT: -- with your next witness. We're, we're
14 way behind.

15 MR. DAVIDSON: Are you looking at nine o'clock, 9:15?

16 THE COURT: We're gonna try. We're gonna try at
17 nine o'clock. That is what -- that is the hope.

18 MR. DAVIDSON: That's your goal.

19 THE COURT: That's the goal. We'll see how this --
20 we'll see how this goes right now.

21 MR. DAVIDSON: That's fine.

22 Your Honor, what I need -- can I sit?

23 THE COURT: Do I have a -- okay. All right.

24 Mr. Dawkins -- Mr. Davidson.

25 MR. DAVIDSON: Your Honor, I apologize.

1 THE COURT: You can sit. I understand. I---

2 MR. DAVIDSON: My leg is---

3 THE COURT: I'm taking notice of the hip surgery.

4 That's fine.

5 MR. DAVIDSON: My leg's getting a little tired.

6 THE COURT: Certainly.

7 MR. DAVIDSON: If we could get his designations so that
8 we can go back and look at them and see what counter
9 designations we might want --

10 THE COURT: Uh-huh.

11 MR. DAVIDSON: -- to make --

12 THE COURT: Uh-huh.

13 MR. DAVIDSON: -- for any of his depositions, then that
14 would help us speed things up.

15 THE COURT: All right.

16 MR. DAVIDSON: Because even if -- it's my
17 understanding, under the rule, you're suppose to put your
18 designations to, to the lawyer on the opposite side one day
19 in advance.

20 Okay. Well, if I can get them tonight by whatever
21 time, then I can -- Gruier (phonetic) and I and Mr. Grimes
22 can sit down and mark what he wants to do, see if they're
23 any objections, and then designate what we need to
24 designate, and then we can email them back -- that back to
25 him tonight and I'm -- depends on how long it's gonna take.

1 THE COURT: Uh-huh.

2 MR. DAVIDSON: And I don't know whether he wants to --
3 how he wants to handle those two tomorrow, whether they're
4 gonna be first up or second up, third up, how he wants to
5 handle any of that. But I need to have something that I can
6 look at to say okay, I object to this, this, and this or I
7 want to designate this, this, and this in counter
8 designation to his designations.

9 THE COURT: All right. Mr. Hawkins, I don't think
10 you've had an opportunity to do the designations at this
11 time?

12 MR. HAWKINS: No, Your Honor, and I think it might pose
13 evidentiary problems or I don't care. I, I can -- I think
14 we have it where we can email it to Mr. Davidson. But
15 because we don't have the original, we don't have that to
16 give to the Court and I don't know what that's gonna do for
17 the record or, or what evidentiary problems it's gonna
18 cause.

19 THE COURT: You don't have the original deposition?

20 MR. HAWKINS: No, because they, they did an expedited
21 copy. And so, it -- because we, we got it last -- we just
22 took this deposition.

23 THE COURT: Is this the one from last Friday?

24 MR. HAWKINS: Friday.

25 THE COURT: Okay.

1 MR. HAWKINS: Literally on Friday.

2 THE COURT: Right.

3 MR. HAWKINS: And so whatever Your Honor tells me to do
4 I'm gonna do that. What I foresee happening is us having to
5 fight about this after we trade designations, and then
6 trying to figure out where we're gonna stop and start our
7 and Wilhite's deposition cause I assume that they'll be
8 portions of that the jury can't hear. I mean I'm willing to
9 play all of them. But I'm -- I think Will's probably gonna
10 want to object.

11 THE COURT: You got two depositions for tomorrow?

12 MR. HAWKINS: Two video depositions.

13 THE COURT: And you-all have not -- there's been no
14 discussion about---

15 MR. DAVIDSON: There's been no designations, Your
16 Honor.

17 MR. HAWKINS: Yeah, I---

18 THE COURT: No designations---

19 MR. HAWKINS: I'm -- well, I'm---

20 THE COURT: ---and discussions?

21 MR. HAWKINS: I'm willing to play the whole thing.
22 It's just I think he probably needs to submit what he
23 doesn't want played. We took it at -- we took it as -- we
24 took them as trial depositions I believe.

25 THE COURT: I'm sorry?

1 MR. HAWKINS: I believe we took those as trial
2 depositions. So, we would just play the thing -- we would
3 play it in total but I, I acknowledge that he has to have a
4 chance to object and things like that.

5 THE COURT: All right. With regards to that
6 deposition, can you make your designations and get that to
7 him?

8 MR. HAWKINS: Yes, Your Honor. We'll -- I can do
9 that---

10 THE COURT: What time?

11 MR. HAWKINS: ---today and, and I guess whether we get
12 a timeline or when he gets his counter designations to me.

13 THE COURT: Well, he's gonna get them back to you
14 tonight. But he needs to have your designations first.

15 MR. HAWKINS: That's fine.

16 THE COURT: Just give me a ball park.

17 Do you think it's gonna take you an hour, two hours?

18 MR. HAWKINS: I think -- I, I still -- I have to go to
19 the jail too to, to meet with Otis. I think I can do it
20 within an hour --

21 THE COURT: All right.

22 MR. HAWKINS: -- I think. And, and the other thing is,
23 because we're not at the office, I don't know -- there's no
24 way for me to really scan it in. I, I -- this is the only
25 copy I have. And so I can highlight the portions I want on

1 here and then hand it to Your Honor or I can try to get a
2 copy made here at the courthouse so I can make a copy for
3 destinations or however the Court wants me to do it.

4 MR. DAVIDSON: If he can---

5 MR. HAWKINS: It's a---

6 MR. DAVIDSON: ---write page and line, Your Honor, I
7 can use that.

8 MR. HAWKINS: I can do that---

9 THE COURT: well, let's---

10 MR. HAWKINS: I can do that with an email and copy
11 the -- your clerk if you want me to do that.

12 THE COURT: Yes. If you'll copy my clerk. But don't
13 y'all copy of your arguments that y'all gonna have tonight.

14 MR. HAWKINS: Yes, Your Honor. 10/4.

15 MR. DAVIDSON: He's gonna be---

16 THE COURT: That is---

17 MR. DAVIDSON: --- (indiscernible) gets over here.

18 MR. HAWKINS: Your Honor, I -- Your Honor, I---

19 THE COURT: I'll get you a biscuit if you do not
20 contact -- we keep -- cause we have other -- you can not
21 cloud up my email---

22 MR. DAVIDSON: All---

23 THE COURT: ---with 50 emails.

24 MR. DAVIDSON: All I want's -- all I want's the
25 statements (indiscernible) I'm (indiscernible).

1 THE COURT: All right.

2 MR. HAWKINS: I just don't know---

3 THE COURT: No, you're gonna get sausage or plain.

4 MR. HAWKINS: Plain.

5 MR. DAVIDSON: well, let's just --.

6 THE COURT: we'll see in the morning.

7 MR. DAVIDSON: All right.

8 MR. HAWKINS: I just don't know why the Court would

9 draw the conclusion of they'll be an argument between will

10 and I.

11 THE COURT: I don't know.

12 well, let's do this. I want you to get him to him --

13 get it to him by, by 7:00, 7:30.

14 MR. HAWKINS: Yes, Your Honor.

15 THE COURT: Okay. And then he'll -- that will give him

16 some time to---

17 MR. DAVIDSON: Hopefully---

18 THE COURT: ---get in a response.

19 MR. DAVIDSON: ---we can, we can get it -- I'm gonna

20 try to get something to eat tonight since (indiscernible).

21 THE COURT: You-all are staying here?

22 MR. DAVIDSON: Yeah.

23 MR. HAWKINS: I'm staying in Aiken, yes, Your Honor.

24 THE COURT: All right.

25 MR. DAVIDSON: we appreciate your help in the meantime.

1 THE COURT: We appreciate that here in Aiken.

2 Let -- let's do this. You-all, you-all copy my law
3 clerk on the lines and then talk amongst yourselves.

4 Now, with regards to these videos, are the videos to be
5 played tomorrow?

6 MR. HAWKINS: I would like to play them tomorrow, Your
7 Honor---

8 THE COURT: After---

9 MR. HAWKINS: ---if we could.

10 THE COURT: After lunch or before lunch?

11 MR. HAWKINS: Well, I don't think this is gonna -- if
12 we start at 9:00 tomorrow, I think we'll be done with this
13 by 10:30. So I would assume we would start one of them
14 before lunch. I think if we start one before lunch, they
15 may be taking a late lunch cause it's probably gonna go --
16 well, not our -- ours is short. We could probably start --
17 have Ard -- the whole thing probably doesn't last an hour
18 with Ard---

19 THE COURT: Okay.

20 MR. HAWKINS: ---the deposition.

21 THE COURT: All right.

22 MR. DAVIDSON: As, as long as -- as, as -- and I, I
23 know I'm being --.

24 THE COURT: You're---

25 MR. DAVIDSON: (Indiscernible) all thin out. So let's

1 just say that.

2 If I can get the sheriff up so that I don't get pistol
3 whipped, and he can get out of here around lunchtime, I
4 would greatly appreciate it. He's not gonna be long. I
5 will not be that long with him. I mean it's -- if I do what
6 I did with Captain Gallam with the sheriff, I'll be
7 surprised.

8 THE COURT: Okay. All right.

9 MR. DAVIDSON: That's the only thing I'd ask.

10 THE COURT: Where is, where does Hunt fall in your
11 order?

12 After those video depositions or, or not?

13 MR. HAWKINS: Yeah. Yeah. But I'm trying to think if
14 there's a way I can do him in the morning. He has to go
15 after Bowman for sure.

16 MR. DAVIDSON: That's fine.

17 MR. HAWKINS: Yeah, we could do that. We could do---

18 THE COURT: Just get him after Bowman?

19 MR. HAWKINS: Yeah, and that way -- cause I don't think
20 my questions will take more than 10 minutes.

21 THE COURT: Okay.

22 MR. HAWKINS: I don't know how long he's got with him.

23 THE COURT: All right. Not long.

24 MR. DAVIDSON: Ten minutes.

25 THE COURT: So we'll get him after Bowman and then

1 we'll, we'll do, at that point, we'd have discussion about
2 the video depositions or will you have that --?

3 MR. HAWKINS: well (indiscernible) first.

4 MR. DAVIDSON: I --.

5 THE COURT: I've already got y'all---

6 MR. DAVIDSON: I don't---

7 THE COURT: ---all out tonight but---

8 MR. DAVIDSON: Yeah, I'm not sure what he's gon' use.
9 But, you know, maybe we can figure that out.

10 THE COURT: Okay. All right. well, let's, let's get
11 the oral deposition -- let's get those designations copied
12 to my clerk and then we'll proceed from there. Tomorrow
13 morning you'll do Bowman and then Hunt and then we'll be
14 prepared to have a brief conference on those video---

15 MR. HAWKINS: That's fine.

16 THE COURT: ---depositions.

17 MR. HAWKINS: Your Honor, I want -- as, as far as what
18 can be done with the video depositions tonight, I'm trying
19 to think of all the stuff we have to do tonight. I don't
20 know if we can -- cause we can't submit --.

21 THE COURT: See, my fear is, with the video deposition,
22 or do you not have to do the cutting and editing?

23 MR. HAWKINS: well, I think what we're gonna have to do
24 is stop and start at timestamp marks. I think -- yeah, I
25 think we're gonna have to stop the sound at certain

1 timestamps, mark them, you know, mute and unmute basically.

2 MR. DAVIDSON: Yeah.

3 THE COURT: All right. All right. And you have the
4 ability to do that?

5 MR. HAWKINS: well, hopefully Ethan does.

6 THE COURT: All right.

7 MR. HAWKINS: I -- when it comes to technology, I, you
8 know --.

9 THE COURT: Okay.

10 MR. HAWKINS: I mean I can mute---

11 THE COURT: well, I'm unsure---

12 MR. HAWKINS: I can mute and unmute.

13 THE COURT: Okay. We need you to handle that
14 expeditiously tomorrow. We really do because we are -- we,
15 we can't go into next week.

16 MR. HAWKINS: I don't want to go into next week.

17 THE COURT: All right.

18 MR. HAWKINS: My birthday's Friday. I'm trying to go
19 back to Greenville and --.

20 THE COURT: well, let's, let's try to do that then.
21 I'll bring you cupcakes if you wrap this, this up on
22 Thursday. I'll bring you the good ones.

23 MR. HAWKINS: I'll eat them.

24 THE COURT: Okay.

25 MR. HAWKINS: I'll eat them.

1 THE COURT: All right.

2 MR. DAVIDSON: Your Honor, I will try -- well, I will.

3 THE COURT: But I certainly don't want to rush your

4 case. But in all honesty---

5 MR. HAWKINS: No, I---

6 THE COURT: ---we just need to move along---

7 MR. HAWKINS: No, I do want to get done with it --

8 THE COURT: ---expeditiously.

9 MR. HAWKINS: -- really this week you know.

10 THE COURT: All right. Very good. Let's get that --

11 that will give you some time to work.

12 Yes, sir. Yes, Mr. Davidson.

13 MR. DAVIDSON: I will try to get -- I will not try. I

14 will see if Adam can send your law clerk a copy of the

15 deposition of Doctor -- of Officer Bowman so he will have it

16 --

17 THE COURT: Okay.

18 MR. DAVIDSON: -- to go with the designations --

19 THE COURT: Very good.

20 MR. DAVIDSON: -- if that suits you.

21 THE COURT: All right. Thank you.

22 All right. Gentlemen, you-all have a, a good evening.

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

24 THE COURT: We'll see you tomorrow morning at 9:00AM.

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

1 wednesday, November 2nd, 2022

2
3 THE COURT: Please be seated.

4 Good morning, gentlemen. I see that there were a few
5 designations that we need to talk about.

6 All right. Mr. Davidson, do you want to start with
7 your first objection?

8 MR. DAVIDSON: Yes, Your Honor. I believe our first
9 objection, Your Honor, was on --

10 THE COURT: What is it?

11 MR. DAVIDSON: -- Page 11.

12 THE COURT: Page 11.

13 MR. DAVIDSON: Yeah, Page 11 and you gonna have to kind
14 of bear with me cause I, I did it on the actual transcript
15 and I've got it on the computer but I, I like my, my method
16 better.

17 Page 11 Line 5 through Page -- through the bottom of
18 that page. I think we said 25 but it should be -- it's 24.

19 THE COURT: All right. And your objection is what?

20 MR. DAVIDSON: That this goes to the issue of
21 Mr. Wilhite having surgery and having an injury procedure.
22 Are you aware of a procedure on the drawing. Yes, I believe
23 it was a cyst.

24 All of that goes, Your Honor, to the issue of his
25 claiming damages, Mr. Wilhite's claiming damages, which

1 would not be relevant to Mr. Owens' case.

2 Number two, Your Honor, there has been no showing as
3 yet that the damages to anyone were proximately caused by
4 the injury to the testicles or the scrotum. So---

5 THE COURT: All right.

6 MR. DAVIDSON: ---that was your objection on that
7 similar to what we made previously that you'd granted
8 (indiscernible).

9 THE COURT: Okay. All right, Mr. Hawkins.

10 MR. HAWKINS: Thank you, judge.

11 I, I don't want to get in the -- anymore back and forth
12 than we have to. Your Honor has ruled on this. There's
13 been a lot of testimony about the people from the jail who
14 are aware that Mr. Wilhite got hurt. That has come in. I
15 think Your Honor has ruled that's admissible and I don't
16 think there's any reason to change it now. I think that's
17 part of the case.

18 That's part of the case -- common scheme. And if
19 Bowman, the PREA coordinator, is aware of other injuries
20 that happened during the same event, that's when there's a
21 common scheme and I think the Court's ruling was correct on
22 that.

23 THE COURT: All right.

24 All right. Mr. Davidson, I am going to allow this
25 testimony to be read. But your objection is, is noted for

1 the record and the basis of your objection.

2 MR. DAVIDSON: Thank you, Your---

3 MR. HAWKINS: Your Honor?

4 MR. DAVIDSON: Thank you, Your Honor.

5 THE COURT: All right.

6 MR. HAWKINS: Your Honor, can I -- so I've just got
7 this one copy. I can put on my copy here that we are going
8 to read 1 through 24 at Page 11.

9 THE COURT: Yes.

10 MR. HAWKINS: Okay. Thank you.

11 THE COURT: If that's what you wish. If you wish to
12 read that---

13 MR. HAWKINS: Thank you.

14 THE COURT: ---part.

15 All right. Page 14.

16 MR. DAVIDSON: Lines 5 through Line 11 taking out the
17 objections that I made too contemporaneous with the time and
18 then 13 through 17 are the two, Your Honor.

19 THE COURT: So, Lines 5 through 17?

20 MR. DAVIDSON: Yes, Your Honor. Five through -- we
21 have basically 5 through 17. Same rationale, judge. We're
22 talking about causation.

23 MR. HAWKINS: Should I give the Court my response
24 whenever the Court would like?

25 THE COURT: Yes, Mr. Hawkins.

1 MR. HAWKINS: Your Honor, I don't, I don't think this
2 has anything to do with causation. We're asking what
3 they're aware of. This is the same thing we talked about on
4 Page 11. The Court's ruled on it.

5 It contains a lot of stuff about policy violations, and
6 if this -- the allegations are confirmed, does that
7 constitute a policy violation, and, of course, under Jinks
8 versus Richland County, we can talk about policy violations.

9 THE COURT: All right. I'm, I'm going to allow this
10 portion to be read in.

11 But, Mr. Haw -- Davidson, you've meant -- you mentioned
12 another set of lines?

13 MR. DAVIDSON: Yes, ma'am, 13 through 17 where he says
14 does not allow Gibson to search Owens, squeeze his testicles
15 so violently that he causes a hydrocele injury, correct.

16 Now, there is, is yet no testimony, competent
17 testimony, in regard to what caused the hydrocele injury or
18 even if it was a hydrocele injury. There's been a lot of
19 talking about it by Mr. Hawkins. I've objected and I
20 believe that if -- I believe the Court has ruled out those
21 issues dealing with causes and causation.

22 THE COURT: All right. Mr. Hawkins.

23 MR. HAWKINS: Yes, Your Honor.

24 It's the, it's the same thing that we talked about on
25 Page 11 and the part of Page 14.

1 Also would point out, and, and depending on how the
2 Court rules on this or what the Court wants, there --
3 there's a big body of case law that says circumstantial
4 evidence is just as good as direct evidence. We're not
5 required to put up a doctor or anything like that if -- and
6 my client's gonna testify in a little bit that he had an
7 injury. He went to a doctor. He, he received medical
8 treatment for it and he---

9 THE COURT: All right. I'm, I'm okay with that. But
10 this question -- I'm -- we're, we're not -- I'm not going to
11 allow seven -- that specific question, 13.

12 MR. HAWKINS: So strike 13 through 16?

13 THE COURT: That's correct.

14 MR. DAVIDSON: Seventeen.

15 THE COURT: Through 17 because that -- the answer is on
16 17.

17 MR. DAVIDSON: Thank you, Your Honor.

18 THE COURT: All right. And so now we have Page 12?

19 MR. DAVIDSON: And those are pages that we counter
20 designated that we wanted to have read in the record, Your
21 Honor.

22 THE COURT: All right. Mr. Hawkins, is there any
23 objection to reading -- to their counter designations?

24 MR. HAWKINS: Of course, Your Honor. Your Honor has
25 already ruled that this PREA document was -- you talking

1 about Page 12?

2 THE COURT: Yes, Lines 9 through 19 is our first
3 designation.

4 MR. HAWKINS: Right.

5 Your Honor has already ruled that that document stays
6 out in reference to the camera and, and that's exactly what
7 those lines reference. So I, I don't know if he's -- I
8 don't know if he's trying to sneak that in or if it was an
9 oversight but that---

10 THE COURT: All right. Let me read it.

11 MR. HAWKINS: Okay.

12 (Pause.)

13 THE COURT: This refers to the previous -- to the
14 document, that short document?

15 MR. HAWKINS: Yes, Your Honor.

16 THE COURT: Is this in reference to that, Mr. Davidson?

17 MR. DAVIDSON: Yes, Your Honor, and then we didn't try
18 to sneak it in. If you'll look at the next bulletin that we
19 did, we've actually asked the Court to allow us to introduce
20 evidence about that document and, in fact, that document to
21 have it published.

22 Mr. Hawkins has constantly talked about the camera, the
23 video, the video not being kept, the fact that there was
24 essentially "no investigation or it only took an hour."

25 Well, in my opinion, Your Honor, and obviously your

1 opinion's what counts, we believe he is opened the door with
2 these multiple questions to allow us to have Mr. Bowman,
3 Lieutenant Bowman, testify about what he did, what
4 documentation he had, and the fact that the video did not
5 show anything, that the department did not keep it, that it
6 did not have a policy to keep something like that, and the
7 fact that he, after talking with Mr. Owens, he realized this
8 was not a sexual matter and, therefore, it was not a PREA
9 matter to be considered.

10 So, that's why we've added it. If you look at some of
11 our, of course, additions, as well as the next bullet point,
12 that's why we have added those areas, Your Honor, and we've
13 sat that our clearly in our designations.

14 THE COURT: All right. So before we get into a
15 discussion regarding this PREA document, I want to save
16 those for the end of this conference. The PREA documents
17 are contained on Page 12, 9 through -- the, the PREA
18 document is contained on Page 12, 9 through 19, as well as
19 17 referenced to it there?

20 MR. DAVIDSON: Yes, ma'am. Page 3 was, in fact, the
21 document that you reviewed.

22 THE COURT: Okay. And so there's also reference that
23 we've discussed on Page 17?

24 MR. DAVIDSON: Hang on. Give me a second.

25 THE COURT: All right. Well, I'm asking.

1 MR. HAWKINS: So, I'm not, I'm not striking anything
2 from 12 yet, Your Honor, right?

3 THE COURT: Not yet. We're gon' -- I'm gonna circle
4 back to that.

5 MR. HAWKINS: Okay.

6 THE COURT: I just want to save that PREA discussion
7 order.

8 MR. HAWKINS: Okay.

9 MR. DAVIDSON: Seventeen is just asking if he knew that
10 Mr. Owens had been at the detention center --

11 THE COURT: All right.

12 MR. DAVIDSON: -- more than once, Your Honor. That's
13 all that was.

14 MR. HAWKINS: And---

15 THE COURT: All right.

16 MR. HAWKINS: And, Your Honor, I, I think that they
17 have gotten some latitude there. They've drawn a rule that
18 the -- his distribution and possession charge came in. I
19 don't think there's any need to say he's a career criminal
20 in essence to the jury. I don't think that will do anything
21 but prejudice them and it has nothing to do with the case.

22 THE COURT: All right. I'm, I'm gonna allow it in. I
23 don't think that this is so prejudicial that it, that it, it
24 is unfair. All evidence is prejudicial. But I -- you know,
25 the jury has already heard this testimony. It doesn't, it

1 doesn't necessarily equate to (indiscernible). I don't know
2 that, that it would have that opinion---

3 MR. HAWKINS: Thank you, judge.

4 THE COURT: ---based off of those. So, I'll allow that
5 in -- that designation.

6 Page 25.

7 23 through -- oh, okay. Line 23. Get to the bottom.

8 MR. DAVIDSON: I think we wanted 25, Line 23 through
9 26.

10 Line 2 -- twenty-five, Line 23, that deals with -- it
11 was a pat down search that was more thorough than normal and
12 that's -- that kind of goes along also Captain Gallam
13 talking about inmates being offended sometime regarding a
14 pat down. So, we believe that is relevant, Your Honor.

15 THE COURT: Mr. Hawkins. Mr. Hawkins.

16 MR. HAWKINS: We're, we're talking about Page 25, 23?

17 THE COURT: Yes, 23 and it runs over to the next page,
18 Lines 1 through 2.

19 MR. HAWKINS: I'll consent to that. It---

20 THE COURT: All right.

21 MR. HAWKINS: I mean he's asking so based on your
22 information you received from wilhite. In other words, he
23 felt that essentially it was a pat down search that was more
24 thorough than normal. We'll consent to that.

25 THE COURT: All right. Thank you, sir.

1 Page 27 is the next.

2 MR. DAVIDSON: Yes, Your Honor.

3 This is -- this page, as well as the next page, on Page
4 28, Line 1 through 9, excluding the objections, and Line 13
5 through 17 are the foundation in the record for why he is
6 not available and we introduce that to show his
7 unavailability this week, the fact that he is on his
8 honeymoon and will not be back until November -- I mean --
9 yeah, I think next week.

10 MR. HAWKINS: Your Honor, he's not unavailable per the
11 rule. They haven't subpoenaed him or made any effort to get
12 him here. Your Honor has ruled that his deposition will be
13 read in and, and we accept the Court's ruling. But we don't
14 see any reason, reason for them to be able to talk about
15 stuff that's unrelated and waste time because, one, he's not
16 unavailable per the rule and, two, it doesn't do anything
17 except give him an opportunity to talk about this guy's
18 honeymoon that doesn't matter in this case.

19 THE COURT: All right. I, I think it's irrelevant.
20 I'm gonna take it out.

21 MR. HAWKINS: What -- that starts on 27, which line?

22 THE COURT: It, it -- you only have 18 through 23,
23 Mr. Davidson, and I, and I don't see any mention of the
24 honeymoon.

25 MR. DAVIDSON: Your---

1 MR. HAWKINS: It goes into the next page I believe.

2 MR. DAVIDSON: Next page, Your Honor.

3 THE COURT: Okay.

4 MR. DAVIDSON: Your Honor, if, if -- that's fine as
5 long as counsel, in closing argument, doesn't make any
6 reference that Mr. Bowman didn't care cause he didn't even
7 show up.

8 THE COURT: I think that's appropriate -- an
9 appropriate request, Mr. Hawkins -- Mr. Davidson.

10 MR. HAWKINS: Well, Your Honor, I, I -- and I'm gonna
11 do whatever the Court tells me. But he could have been
12 here. He could have subpoenaed him. He checked -- he told
13 him it's fine, go on a cruise.

14 I don't think it's fair to say go ahead and go on the
15 cruise, then have it read in, and then say oh, well, you
16 can't use the fact that he didn't come against him. I mean
17 he, he chose to do that. He chose to let him. You know,
18 I'm -- I mean that's just not -- he shouldn't benefit from
19 telling a witness not to be here.

20 MR. DAVIDSON: I didn't -- number one. I didn't tell
21 him not to be here. He told me that he had a honeymoon. In
22 fact, as you will remember, and your law clerk can confirm,
23 we had a conference call set up to discuss this with you so
24 as not to run into these problems. I thought we'd had it
25 worked out that he could essentially go on his honeymoon, we

1 would do his deposition, and it could be used at trial.

2 My thing is, Your Honor, I don't want the jury thinking
3 that, for some reason, either he doesn't care or that I
4 procured him not coming. He had the honeymoon. It was
5 planned.

6 And so that's my objection. Either I get to say where
7 he was or where he is today or he doesn't get to say, in
8 closing argument, Mr. Davidson didn't even bring Mr. Bowman
9 or Lieutenant Bowman doesn't care enough to come.

10 MR. HAWKINS: No. You either bring him or I get to say
11 that in closing and, Your Honor, I, I would add this. This
12 case has been pending for five years. He could of taken
13 that video -- he could of taken that video deposition
14 anytime he wanted to. He chose to wait till four days
15 before -- or, no, less than that. Less than -- like Friday.
16 And so---

17 THE COURT: All right.

18 MR. HAWKINS: ---he shouldn't benefit from that.

19 THE COURT: well, Mr. Hawkins, I -- and your, your
20 argument is sufficiently noted on the record. But I am
21 going to -- I'm not gonna have the -- these last two
22 designations read. But I am going to prohibit you from
23 mentioning the -- that Bowman --

24 MR. HAWKINS: I mean it -- and, and, Your Honor---

25 THE COURT: But the, the, the absence -- the mention of

1 the absence of the witness doesn't strike me as egregious as
2 pounding the (indiscernible).

3 MR. HAWKINS: As pounding the what?

4 I'm sorry.

5 THE COURT: As, as reiterating that he went on a
6 vacation -- a preplanned vacation and wasn't subpoenaed. I
7 don't know that I---

8 MR. HAWKINS: I, I wouldn't -- I'm not -- I don't plan
9 to say any of that.

10 THE COURT: Okay.

11 MR. HAWKINS: I mean I think it's fair -- it's, it's
12 closing. So it's obvious wide latitude. But I don't
13 think -- I don't think I'm precluded from saying we didn't
14 hear from this witness at, at trial cause that's true and he
15 could of been here. He's just not. And, and whether -- why
16 he's not is not, you know, I mean I -- if, if they want to,
17 to let him---

18 THE COURT: well---

19 MR. HAWKINS: If they want to not take his
20 deposition---

21 THE COURT: Mr. Hawkins---

22 MR. HAWKINS: --- (indiscernible).

23 THE COURT: Here's what we're gonna do, Mr. Hawkins.
24 I -- you, you -- I don't mind you mentioning that we did not
25 hear from Lieutenant Bowman.

1 MR. HAWKINS: Okay.

2 THE COURT: And, and that's the extent of it.

3 MR. HAWKINS: Okay. Thank you, judge.

4 THE COURT: All right.

5 All right. And so now we come to -- back to the PREA
6 issue it looks like.

7 MR. DAVIDSON: Yes, ma'am.

8 MR. HAWKINS: And then there -- I don't know if the --
9 I don't know if Your Honor wants to do the portions that we
10 object to that they designated. Like starting on Page 3
11 they designated a bunch of portions that talk about the
12 document we're about to discuss. So I don't know if we want
13 to do them all at the same time or I'll obviously do
14 whatever you tell me.

15 THE COURT: Yeah, let's, let's handle them.

16 MR. HAWKINS: So---

17 THE COURT: We'll handle them right now.

18 Page 30.

19 MR. HAWKINS: So, yeah, it starts on Page 3.

20 THE COURT: Lines 20.

21 MR. HAWKINS: Yeah, he starts -- on Page 3, they start
22 at nine and then he's talking about what he viewed on the
23 video. He's talking about -- he's talking about how he, he
24 didn't see anything.

25 THE COURT: Okay now. What line are we on?

1 MR. HAWKINS: It's Page 3---

2 THE COURT: I'm sorry.

3 MR. HAWKINS: ---and then line --.

4 MR. DAVIDSON: Twenty, Your Honor.

5 MR. HAWKINS: No, hang on one second please. I'm

6 sorry.

7 Okay. Starts -- yeah, starts on Line 10.

8 MR. DAVIDSON: Twenty, Your Honor.

9 MR. HAWKINS: No. No, it's not, will. That's not what

10 I object to. I start earlier than that.

11 THE COURT: Your objection, your objection is to Line

12 10?

13 MR. HAWKINS: Yeah, because---

14 THE COURT: Okay.

15 MR. HAWKINS: When I, when I start---

16 THE COURT: Just tell me where to read.

17 MR. HAWKINS: Okay.

18 MR. DAVIDSON: You designated that.

19 MR. HAWKINS: You -- I'm talking about what I'm

20 objecting to you designated.

21 MR. DAVIDSON: No, I---

22 THE COURT: All right. Let's go forward. Let -- let's

23 go---

24 MR. HAWKINS: You---

25 THE COURT: ---with Line 10 and let me read and --.

1 MR. DAVIDSON: Your Honor, just so we're correct, and I
2 want to make sure this is right, Line 10 was designated by
3 the plaintiff. We designated Line 20.

4 THE COURT: All right.

5 MR. HAWKINS: Okay. Starting with, starting with 18, I
6 asked him, I say you didn't see the event. He says correct.
7 And then -- and I don't know where the, where the Court
8 wants to draw the distinction. But I asked him on 20, which
9 is where will's talking about, was the event caught on
10 camera and then he says no, it was not.

11 So we know there was a video and he's talking about
12 what he viewed on the camera cause when I pushed him on that
13 he says well, yeah, I watched it. It just didn't show
14 anything.

15 So, he's, he's talking about the event not being on
16 anything he viewed on the video.

17 And so, for that reason, because the Court's ruled that
18 whatever he says about the video's hearsay, we believe that
19 should not be read in because that would be inconsistent
20 with the prior ruling.

21 THE COURT: All right. And just, just for my own --
22 you did not want to start at 10?

23 MR. HAWKINS: No, Your Honor.

24 THE COURT: Okay. So, when -- we're going straight to
25 18 through --?

1 MR. HAWKINS: Yeah. No, I think will's right. I---

2 THE COURT: All right.

3 MR. HAWKINS: Twenty is -- cause if you look down on
4 25, he, he starts saying that -- and going into four, yeah,
5 I saw the video but there was nothing on it. And I think
6 all the defense witnesses agree that there was, in fact, a,
7 a video. So I think that would be confusing but if he says
8 no, there wasn't a video, and then he goes on to explain,
9 well, yeah, I saw a video. But there was nothing of an
10 evidentiary value on it.

11 THE COURT: And, Mr. Davidson, your argument is that
12 --?

13 MR. DAVIDSON: Well, number one---

14 THE COURT: You know, I've already made my prior ruling
15 but your argument is that he's opened the door?

16 MR. DAVIDSON: He's opened the door, Your Honor, cause
17 he's gone in about this video and I think the jury needs to
18 understand -- and he's already got all the information we
19 didn't keep the video. But I think the jury needs to
20 understand there was nothing on the video that showed the
21 search or anything else in regard to that.

22 So that I believe would give a complete picture of what
23 happened rather than all the plaintiff saying to all my
24 witnesses the video didn't exist, you didn't keep it, et
25 cetera, et cetera. I think the jury under -- needs to

1 understand why. My -- the -- Lieutenant Bowman watched the
2 video. There was nothing on the video and, therefore, he
3 did not see a need to keep it.

4 Now, whether that's right or wrong, the jury will have
5 to decide, but he decided not to keep it, and it's not
6 hearsay. And the reason I say it's not hearsay, if you have
7 a doctor comes in here who had a x-ray done, and he comes in
8 and reads his x-ray to the jury, that's not hearsay, Your
9 Honor. That's his testimony regarding something that he
10 essentially looked at.

11 People come in all the time and testify about what a
12 picture shows and why it shows. Criminal cases where they
13 have pictures of the scene and somebody who was there saw
14 it, and saw the video, or saw the picture, comes in and
15 explains what they're seeing or why they saw what they saw,
16 but it's not hearsay, Your Honor. It's, it's essentially
17 Mr. Bowman's testimony regarding what he saw on the video.

18 MR. HAWKINS: And, Your Honor, my response will be,
19 one, that those are two issue -- different issues as the
20 Court has rightly pointed out. The issue of whether the
21 video was spoliated, whether it was destroyed, that can be
22 talked about. Somebody watching a video that they didn't
23 take is a different issue.

24 That's hearsay and the Court was right on that. And
25 the Court was right on that because of the Best Evidence

1 Rule, which is, I think, 1002 requiring the original in the
2 Rules of Evidence. And then, of course, they don't have the
3 original document here to talk about it. And there's also a
4 differentiation that should be drawn between a doctor
5 talking about a x-ray that he took or, or was taken in his
6 office and he worked with to create and somebody watching a
7 video they did not create, destroying it, and then coming
8 and telling the jury what it had on it. The law doesn't
9 permit that, Your Honor.

10 THE COURT: All right. Let me read through the rest of
11 these designations.

12 (Pause.)

13 MR. HAWKINS: If -- and if the, if the Court wants case
14 law, we have that ready for the Court if the Court wants it.

15 THE COURT: No, I'm, I'm all right. Let me -- I'm
16 reading through these different designations.

17 (Pause.)

18 THE COURT: Can you-all go to Page 18 please and 18
19 through -- Lines 18 through 20. I'm, I'm not understanding.

20 MR. HAWKINS: Eight -- eighteen, Lines 18 through 20?

21 THE COURT: That's correct. That's what is written.
22 That's what was requested, sallyport, correct, and who else
23 did you talk to at that time.

24 MR. DAVIDSON: They, they actually designated that,
25 Your Honor, where that's, that's a mistake on our part.

1 THE COURT: Okay. Okay. I just was trying to
2 understand that.

3 MR. DAVIDSON: Yeah.

4 THE COURT: All right.

5 MR. DAVIDSON: That's a mistake on our part.

6 (Pause.)

7 MR. DAVIDSON: And a boo boo on the next one, Your
8 Honor.

9 THE COURT: On Page, Page 20?

10 MR. DAVIDSON: Twenty. Technically 24 through Line 1
11 on the next page --

12 THE COURT: Yes.

13 MR. DAVIDSON: -- is never answered.

14 THE COURT: Right. We, we just -- yeah.

15 MR. DAVIDSON: What was answered is Line 9 through---

16 THE COURT: Ten, 13.

17 MR. DAVIDSON: Yeah, to, to 13 less the, less the
18 objections.

19 THE COURT: All right.

20 MR. DAVIDSON: I apologize for that---

21 THE COURT: That's all right.

22 MR. DAVIDSON: ---Your Honor.

23 THE COURT: I, I think we sort of figured that out once
24 we --.

25 MR. DAVIDSON: Yeah, I was -- we were trying to do this

1 kind of late. So --.

2 That's my fault.

3 (Pause.)

4 THE COURT: All right. And just for my clarification,
5 on page -- your last designation was 22, that is referencing
6 the PREA form?

7 MR. DAVIDSON: Correct, Your Honor.

8 Now I, I did not include the PREA form. Again, I think
9 he's opened the door but I, I left it undesignated so that
10 you could look at these pages and decide whether it should
11 or should not come in or should or should not come in with a
12 redaction. And that's on Page 25, Your Honor. Line 11 is
13 where he published that document.

14 THE COURT: All right. Mr. Davidson, Mr. Hawkins,
15 I've, I've made a decision.

16 Now, after reading through all of these proposed
17 designations, Mr. Davidson, I do believe that there's a, a
18 good potential for this to be interpreted two different ways
19 when he's stating that nothing was on the video. I, I think
20 there's some interpretation what he means by that and he is
21 not here for examination and I am -- I'm going to maintain
22 that the, that this PREA document or the mention of the PREA
23 document is excluded.

24 And so these designations will not come in as well as
25 Page 12, 9 through 19.

1 Mr. Dawkins -- Davidson, would you, would you like to
2 add anything to the record?

3 MR. DAVIDSON: Twelve -- what was that, Your Honor?

4 THE COURT: It was the first one that I said that we
5 would circle back to---

6 MR. DAVIDSON: Oh, okay.

7 THE COURT: ---Mr. Davidson.

8 Yes, sir, on page -- so it's under your counter
9 designation -- designate the portions immediately -- that is
10 Page 12, 9 through 19.

11 MR. DAVIDSON: Your Honor, just for the record, number
12 one, he was available and could of been questioned about
13 this by plaintiff's counsel, number one.

14 Number two. The fact that there may or may not be
15 multiple interpretations of what he said is a matter for the
16 jury to decide and we believe to exclude it, and exclude it
17 from the jury's deliberation after the testimony about this
18 document, about the camera by plaintiff's counsel, without
19 an explanation of why, what went on, is a, unfortunately, in
20 this case, Your Honor, prejudicial to the defendant. It is
21 not hearsay and, therefore, we note that for the record,
22 Your Honor.

23 THE COURT: Yes, sir. Thank you, Mr. Davidson.

24 Mr. Hawkins, anything to place on the record, sir?

25 MR. HAWKINS: No, your -- no, Your Honor. We agree

1 with the Court's ruling.

2 THE COURT: All right. With regards to after we bring
3 the jury in, you will read -- you will begin with this
4 deposition?

5 MR. HAWKINS: We -- we're fine doing that and then
6 getting into the videos or we can call the sheriff if he
7 wants to get out of here.

8 THE COURT: Okay. Yes, I, I thought that we had agreed
9 yesterday to do that --

10 MR. HAWKINS: Okay.

11 THE COURT: -- do that and then call Hunt.

12 MR. HAWKINS: Perfect. Perfect. We'll do that.

13 THE COURT: And then we will do the two videos.

14 MR. HAWKINS: Okay.

15 THE COURT: Okay. All right. Any, any concerns before
16 I bring the jury in, Mr. Davidson?

17 MR. HAWKINS: Your -- Your Honor, I'm -- I, I, I
18 apologize.

19 I am not sure how we're gonna read this, if somebody's
20 gonna be will, somebody's gonna be me, somebody's gonna be
21 the witness. I don't have -- I'm not sure about which
22 sections are highlighted. I've stricken through the ones
23 Your Honor said will be stricken through. But I guess I'm
24 unclear on which parts we're, we're reading.

25 If we could just---

1 THE COURT: All right. Well, let's make sure that
2 we're clear cause I don't want anything read that should not
3 be or anything---

4 MR. HAWKINS: And I---

5 THE COURT: ---not read that should be.

6 MR. HAWKINS: And if I could just go by and, and
7 highlight what is definitely getting read, that will help
8 me.

9 THE COURT: You need a few minutes --

10 MR. HAWKINS: Well---

11 THE COURT: -- or you want to go through it together?

12 MR. HAWKINS: I'm, I'm on Page 3. I guess that's where
13 we're starting.

14 So I guess Lines 5 through 19 we're reading on Page 3?

15 THE COURT: Yes, those lines will be read.

16 MR. HAWKINS: Okay. And then, and then, and then we --
17 and then we start on Page 4 Line 20?

18 Is that where we pick back up?

19 MR. DAVIDSON: Line 6.

20 THE COURT: Oh, that -- oh, that -- I see.

21 All right. So let's hear -- your email says four --
22 Page 4, 16.

23 MR. HAWKINS: Okay. So start at 16?

24 THE COURT: Yes.

25 MR. HAWKINS: Okay.

1 THE COURT: Page 4, 16 through Page 5 Line 25.

2 MR. HAWKINS: And do we go -- did we, did we go into
3 page -- I guess we go into Page 6 and stop at Line 2 or I
4 guess we just won't ask the question if we're stopping at
5 Line 2.

6 MR. DAVIDSON: That one's designated by you.

7 THE COURT: You desig -- your next designation---

8 MR. HAWKINS: Well---

9 THE COURT: ---is Page 7.

10 MR. HAWKINS: Well, I was just trying to highlight
11 everything that we're reading. And so -- because I, I don't
12 know -- you know, he's designated things and I have
13 designated things. I want to make sure I don't miss
14 something or read something I'm suppose to.

15 MR. DAVIDSON: You designated Page 5, Line---

16 MR. HAWKINS: Well that's---

17 MR. DAVIDSON: ---1 through 12.

18 MR. HAWKINS: But that's not what I'm -- that's not
19 what I'm asking. I'm asking -- we, we start on Page 5 and
20 we---

21 THE COURT: Right.

22 MR. HAWKINS: ---we read all Page 5 and then I guess do
23 we just, do we just stop there or --?

24 MR. DAVIDSON: Yes.

25 MR. HAWKINS: We just stop on Line 24 I guess cause

1 that's the end -- that's an answer to a question.

2 THE COURT: And then it looks like you pick up on Page
3 7.

4 MR. HAWKINS: Okay. So nothing on Page 6.

5 THE COURT: Is that your understanding, Mr. Davidson?

6 MR. DAVIDSON: Yes, Your Honor. I have he reads from
7 Page 7 Line 7 all the way to Page 8 Line 4.

8 THE COURT: Okay. So we're looking at the same thing.

9 MR. HAWKINS: Okay.

10 THE COURT: All right.

11 MR. HAWKINS: So, so start on Page 7 Line 7 and then go
12 all the way down that page?

13 THE COURT: Looks like you go to Page 8 Line 4.

14 MR. HAWKINS: Okay. Then we stop and, and we don't
15 pick up again until Page 9?

16 THE COURT: Line 19 and that goes down to Page 10 Line
17 1.

18 MR. HAWKINS: Okay.

19 THE COURT: And then Page 10 Lines 4 through 10.

20 MR. HAWKINS: And then we pick back up on 10 23.

21 THE COURT: Wait a minute. Page 10---

22 MR. HAWKINS: Yes, ma'am.

23 THE COURT: ---four through---

24 MR. HAWKINS: Page 10.

25 THE COURT: ---14.

1 MR. HAWKINS: Oh, through 14. I'm sorry.

2 THE COURT: Is that, is that correct, Mr. Davidson?

3 MR. DAVIDSON: I had, and maybe I was wrong, I had 19
4 through 25 on the Page Number 8 and then Page 10 -- Page
5 10---

6 MR. HAWKINS: That might -- yeah, that might of been---

7 MR. DAVIDSON: Page 1 all the way to Page 14, Your
8 Honor. That's what I highlighted. That's off his --.

9 MR. HAWKINS: That's Page 8 line what?

10 MR. DAVIDSON: Page 10. I think we're on Page 10.

11 THE COURT: We're on Page 10 and I have, pursuant to
12 his email, I have Page 10.

13 MR. HAWKINS: I thought we went back to eight just now
14 for some reason.

15 Okay.

16 THE COURT: No, I don't have anything on Page 8.

17 MR. HAWKINS: I don't either.

18 Okay. All right. So 10 is 1 through 14. Four through
19 14. Sorry.

20 THE COURT: That's right.

21 So let's make sure we're clear on the same page.

22 On Page 10, you're going Lines 4 through 14.

23 MR. HAWKINS: Yes, Your Honor.

24 THE COURT: And then again on Page 10 you're going
25 Lines 23 reading all of Page 11 and reading up to Page 12

1 through Line 8.

2 MR. HAWKINS: Okay.

3 MR. DAVIDSON: Line -- what was the Line 8 on 12,
4 right?

5 THE COURT: That's what I have, yes, sir.

6 MR. DAVIDSON: Thank you, ma'am. I have one, one
7 question.

8 THE COURT: Yes.

9 MR. DAVIDSON: On Page 10, I recognize you're taking
10 out I looked to see if there was any video. I did not see
11 anything on the video. I think that if, if we're going to,
12 to start on Line 4, I hate to say it's not substantive cause
13 it starts out asking him did it feel done in a sexual
14 nature. I think it should start on Line 3 talking about
15 how---

16 THE COURT: I wait and I talked to Otis Owens.

17 MR. DAVIDSON: Yes.

18 MR. HAWKINS: That's fine.

19 THE COURT: I agree.

20 MR. HAWKINS: That's fine.

21 MR. DAVIDSON: Thank you, Your Honor.

22 THE COURT: So that it makes sense.

23 Now we're down to Page 14 Lines 2 through 17.

24 MR. DAVIDSON: And that would be line -- hang on.
25 Should -- I think it should start on 13 --

1 THE COURT: That's right.

2 MR. DAVIDSON: -- Line 25 if he's gonna have number one
3 on Page 14.

4 MR. HAWKINS: So we -- you're looking at 13 and 14?

5 MR. DAVIDSON: See, Your Honor, cause the number one on
6 Page -- Line 1 on Page 14 is really the answer to questions
7 that then starts on Page 13---

8 THE COURT: Thirteen.

9 MR. DAVIDSON: ---Line 25. So either we take that
10 answer out or were includes (sic) the question---

11 MR. HAWKINS: So---

12 MR. DAVIDSON: ---on Line 13 are you still working --
13 you still work at the detention center.

14 THE COURT: Are you there?

15 MR. HAWKINS: Yes, Your Honor. So Line 13, Line 25
16 we're starting at?

17 THE COURT: Yes.

18 MR. HAWKINS: Okay.

19 THE COURT: Because it, it gives you the question.

20 MR. HAWKINS: Like the context of the question, right.
21 And then we go all the way to 17 or do we stop at 12?
22 I can't remember if that was taken out.

23 MR. DAVIDSON: I think that was -- I think actually
24 four is taken out.

25 MR. HAWKINS: So on 14, we, we stop at four?

1 MR. DAVIDSON: That's what I have noted.

2 THE COURT: Yes.

3 MR. DAVIDSON: And then we go to 15, Your Honor. Oh,
4 no, we go to 20. Excuse me.

5 MR. HAWKINS: So, so nothing between 14 and 20?

6 MR. DAVIDSON: Yeah, start at 20. Read down to 25, go
7 to the next page, and read all of it.

8 Now that's part of my examination, Your Honor, on Line
9 10---

10 MR. HAWKINS: Well should---

11 MR. DAVIDSON: ---and it's on Page 16. I think that
12 they designated that whole page to be read and --.

13 THE COURT: What page?

14 MR. DAVIDSON: All right. Your Honor, on Page 15 Line
15 10 --

16 THE COURT: All right.

17 MR. DAVIDSON: -- to --

18 THE COURT: That's in.

19 MR. DAVIDSON: -- 25.

20 THE COURT: Yeah.

21 MR. DAVIDSON: And the next page is the entire page,
22 which is four, 16, 1 through 25, and then it goes over to 17
23 Line --.

24 THE COURT: Eight.

25 MR. DAVIDSON: -- 8. But then you allowed me to ask

1 the two questions next, which is Line 9 through 11. So, it
2 should be 9 through 11 also. So it should be on that page,
3 1 to 11.

4 MR. HAWKINS: Okay. Where did that start at, will?

5 That was on -- you started on Page 15?

6 MR. DAVIDSON: Started on -- started on Page 15 Line
7 10. That's just Mr. Davidson. And then it goes to 25 on
8 that page. The next page is 1 to 25. The next page is 1 to
9 11. That's on Page 17.

10 THE COURT: You got that, Mr. Hawkins?

11 MR. HAWKINS: I'm, I'm trying, Your Honor. I'm sorry.

12 THE COURT: That's okay. Let's make sure on page --.

13 MR. HAWKINS: And so that, that goes all the way until
14 Page 17 and stops on Line 11, right?

15 THE COURT: That's correct.

16 MR. DAVIDSON: But then it starts back up, Your Honor,
17 if I've, if I've noted it right, and you can correct me if
18 I'm wrong, I believe on Page 17 Line 25---

19 THE COURT: That's right.

20 MR. DAVIDSON: ---and it goes over to Page 28 -- no,
21 18.

22 THE COURT: Eighteen. Line 22.

23 MR. DAVIDSON: Line 22.

24 THE COURT: All right. So, Mr. Hawkins, you'll read
25 Page 17, 1 through 11, and then again lines -- you'll,

1 you'll start back up at Line 25.

2 MR. DAVIDSON: And then---

3 THE COURT: Hold on.

4 MR. DAVIDSON: Oh, I'm sorry.

5 THE COURT: I'm not -- are you there, Mr.---

6 MR. HAWKINS: I'm to -- I've got to 18 Line 22 is where
7 I've stopped.

8 THE COURT: Okay. All right. So we're on Page 18
9 through Line 22 and you stop there.

10 MR. HAWKINS: Uh-huh.

11 MR. DAVIDSON: And then, Your Honor, the next page,
12 19---

13 THE COURT: One through 20.

14 MR. DAVIDSON: I had 1 to 25.

15 THE COURT: Oh, Lines 1 -- there we go.

16 MR. DAVIDSON: One to 25 --

17 THE COURT: Through---

18 MR. DAVIDSON: -- the entire page.

19 THE COURT: That's right. So I have Page 19, all of
20 Page 19, and then down to Page 20 through Line 17.
21 You have that, Mr. Hawkins?

22 MR. HAWKINS: Yes, Your Honor.

23 MR. DAVIDSON: And then lines---

24 MR. HAWKINS: Actually could I, could I have one
25 second?

1 I'm sorry.

2 THE COURT: All right.

3 (Pause.)

4 MR. HAWKINS: Okay.

5 MR. DAVIDSON: The next page would be Line -- would be
6 Page 20 Line 1 to 17, Your Honor.

7 THE COURT: That's right.

8 You have that, Mr. Hawkins?

9 MR. HAWKINS: Yes, Your Honor.

10 THE COURT: Next page is 21 Lines 23 -- you begin at
11 23.

12 MR. DAVIDSON: Twenty-three, Your Honor. Line 23 on
13 Page 21 over to Page 22 Line -- I believe it should be 16,
14 Your Honor.

15 THE COURT: That's correct.

16 MR. HAWKINS: So, so we're 21 23 goes to 22 16?

17 THE COURT: That's correct.

18 MR. DAVIDSON: Then we jump, Your Honor, to Page 26.

19 THE COURT: Wait a minute.

20 MR. DAVIDSON: Okay.

21 THE COURT: Don't we go to 25?

22 Is that what I have?

23 MR. DAVIDSON: I didn't have anything on 25. That's
24 the actual form, Your Honor, that was published into the
25 record.

1 THE COURT: All right.

2 MR. DAVIDSON: Oh, you allowed in -- excuse me. My, my
3 associate is, is -- reminds, reminds me. You allowed Page
4 25 Lines 23.

5 THE COURT: All right. That's right.
6 Thank you, Mr. Grimes.

7 MR. DAVIDSON: And that goes over to Page 26 Line 2.

8 THE COURT: One through two.

9 MR. DAVIDSON: All right.

10 THE COURT: Do you have that, Mr. Hawkins?

11 MR. HAWKINS: Yes, Your Honor.

12 THE COURT: And now we're on Page 26.

13 MR. DAVIDSON: Twenty Line 18 to the next page, 27,
14 Line 15, Your Honor.

15 THE COURT: All right. You've got that, Mr. Hawkins?

16 MR. HAWKINS: Yes, Your Honor.

17 MR. DAVIDSON: Line 29 through 6.

18 MR. HAWKINS: What, what page?

19 MR. DAVIDSON: Twenty-nine.

20 MR. HAWKINS: Is, is there -- is there nothing from
21 page -- where it stops at Page 27 on Line 15 and it don't
22 pick up again until Page 29, right?

23 THE COURT: Well, you've designated Page 28.

24 MR. HAWKINS: And then you --.

25 THE COURT: That's -- beginning at Line 23.

1 MR. HAWKINS: Okay. So it starts at Line 23.

2 MR. DAVIDSON: Oh. I'm sorry, Your Honor. You're
3 absolutely right. And then it goes over to 29.

4 THE COURT: Through Line 7.

5 MR. DAVIDSON: Through Line 6 really. (Indiscernible)
6 say that.

7 THE COURT: Okay. All right. So we're all clear on
8 that?

9 MR. DAVIDSON: Yes, Your Honor.

10 THE COURT: Okay. And, Mr. Hawkins, you have some --
11 your senior associate or your assistant that you have with
12 you will read?

13 MR. HAWKINS: Okay. Do you want, do you want will to
14 make his objections or do want us to read that or how do you
15 want to --?

16 THE COURT: I want the transcript read as from---

17 MR. DAVIDSON: Yeah, I---

18 THE COURT: There are objections located within the
19 body---

20 MR. HAWKINS: Yes, Your Honor.

21 THE COURT: ---that we're reading?

22 MR. HAWKINS: Yes, Your Honor.

23 MR. DAVIDSON: We -- Your Honor, what I would propose,
24 just for the record, is that we hand up the original
25 deposition.

1 MR. HAWKINS: We don't have it.

2 No -- nobody has it and actually, Your Honor, I was
3 gonna bring this up but -- and the thing that might get us
4 out of having to fight, I don't think you're gonna do this,
5 but the, the rule says that in order to, to read it in, we
6 have to file, as soon as possible with the Clerk of Court,
7 the original. So we technically can't comply with that
8 rule. But I, I figured Your Honor had made a decision and
9 wouldn't---

10 THE COURT: Yes.

11 MR. HAWKINS: ---keep it out.

12 THE COURT: And I think that that rule is pertaining to
13 lack of -- attempting to get the deposition in this case
14 just was not possible for the court reporter to have to
15 turnaround the deposition in time. In that there's an
16 issue, the Court of Appeals will deal with it.

17 MR. DAVIDSON: I think that -- they should -- we should
18 have -- I don't know where the original is, Your Honor. It
19 should be available because we've got---

20 THE COURT: All right.

21 MR. DAVIDSON: ---all of our transcripts. But---

22 THE COURT: Okay.

23 MR. DAVIDSON: ---it doesn't matter. We've got --
24 we'll get a blank transcript, one that hadn't been written
25 on --.

1 THE COURT: All right. What you want to do with
2 regards to these objections?

3 MR. DAVIDSON: We would, we would re -- I've, I've
4 already made mine on the record for what we've talked about
5 today.

6 THE COURT: Uh-huh.

7 MR. HAWKINS: So the objections I had in the deposition
8 obviously will be set forth for the Court to see if, if
9 and -- there's an appeal in this case. So, we can handle it
10 that way.

11 THE COURT: So do, do not read those that are not---

12 MR. HAWKINS: Yeah, read---

13 THE COURT: You don't find it necessary---

14 MR. HAWKINS: You don't have to read---

15 THE COURT: So we---

16 MR. DAVIDSON: ---the objections.

17 MR. HAWKINS: So we, we think that they do need to be
18 read. We think that they have to be read the way the
19 deposition came out. That's our position, Your Honor.

20 MR. DAVIDSON: Your Honor, you've already ruled on all
21 my objections. I don't think the objections need to be
22 reread cause you've ruled on them. That's the whole purpose
23 of---

24 THE COURT: Well, Mr. Hawkins, I, I, I tend to agree
25 that I'm not --.

1 MR. HAWKINS: I mean I don't think he should -- I don't
2 think he should be able to get the benefit of impeding the
3 flow of the deposition and then not have to deal with it at
4 trial so the jury sees that he's objecting every -- to every
5 question.

6 THE COURT: All right. Let's do this. We're gonna do
7 this. We're gonna read the transcript as it is because I
8 don't want there to be any confusion with how your people
9 are reading. I want it to -- I don't want to add more to
10 that.

11 So we're gonna read the transcript as it is written and
12 make sure that you have, when you send whoever you're gonna
13 send up, you introduce them to the jury as reading this part
14 so that the jury's not confused.

15 MR. HAWKINS: Yes. And I'll have to stand really --
16 you want him in the witness box or you -- just us in front
17 of the jury?

18 THE COURT: Whoever -- we usually put them in the
19 witness box.

20 MR. HAWKINS: Okay. So I'll just have to stand very
21 close to Ethan and I'll read my part and then he can read
22 the witness' parts if that certainly please the Court.

23 THE COURT: That's usually how we do it.

24 MR. HAWKINS: And, and then you -- well, you said you
25 wanted it read as on transcript and, and was that with or

1 without the objections?

2 THE COURT: That's with the objections.

3 MR. HAWKINS: With the objections. And so I'll -- he
4 won't read that part. I'll -- or will he?

5 THE COURT: No, he's not gonna read his own part.

6 MR. HAWKINS: Thank you.

7 THE COURT: So you'll need some more assistance or, or
8 you can read it---

9 MR. HAWKINS: Yeah.

10 THE COURT: ---and say---

11 MR. HAWKINS: I can.

12 THE COURT: ---I am --.

13 MR. HAWKINS: Yeah, I can.

14 THE COURT: Just read the name. Mr., Mr. Davidson --

15 MR. HAWKINS: Yeah.

16 THE COURT: -- and then read the part.

17 MR. HAWKINS: Okay. Perfect.

18 THE COURT: Okay. All right. Can we bring the jury
19 in?

20 All right. Gentlemen, let me remind you again and I
21 can't -- we have to stop talking over each other because
22 it's impossible to get a good record.

23 All right?

24 MR. HAWKINS: Your Honor, if -- so -- just so I don't
25 do anything that's in conflict with the Court's instruction,

1 do you, do you want me to explain -- I don't want to say
2 unavailable cause I don't want that in their head. But I
3 don't want to explain in a way that conflicts with your
4 instruction. So --.

5 THE COURT: You know, in, in past trials, I've never
6 had anyone to explain why they were reading a deposition.

7 MR. HAWKINS: Okay.

8 THE COURT: They just say---

9 MR. HAWKINS: Okay.

10 THE COURT: ---we're reading the deposition of.

11 MR. HAWKINS: Okay.

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

14 THE COURT: All right. Thank you, ladies and gentlemen
15 of the jury, for your patience.

16 At this time we will resume the trial.

17 All right. Mr. Hawkins.

18 MR. HAWKINS: Thank you, Your Honor.

19 May it please the Court.

20 Your Honor, we would like to read Lieutenant Bowman's
21 deposition into the record.

22 THE COURT: Very good.

23 MR. HAWKINS: And reading the part of Lieutenant Bowman
24 will be our associate attorney, Ethan Jedziniak, for the
25 record.

1 THE COURT: All right. Mr. Hawkins, because you are
2 (indiscernible) just make sure that you project so that my
3 court reporter can---

4 MR. HAWKINS: Yes, Your Honor. Can I---

5 THE COURT: ---hear you.

6 MR. HAWKINS: Can I get up here just so cause we have
7 one copy?

8 THE COURT: Oh, yeah. Yes.

9 MR. HAWKINS: Okay.

10 Q. Lieutenant Bowman, my name is Joshua Hawkins. I
11 represent Otis Owens in a lawsuit brought against the
12 Sheriff's Office for excessive force.

13 Do you know anything about the lawsuit?

14 A. Yes, I do.

15 Q. Okay. Do you know anything about the incident of
16 sexual assault claimed by Mr. Owens?

17 A. Vaguely, yes.

18 Q. You -- well --.

19 A. I know, I know the part that I was involved in,
20 yes.

21 Q. Okay. You didn't see the event, correct?

22 A. Correct.

23 Q. For the jury, okay, did you review any evidence
24 related to Otis Owens injury?

25 A. What do you mean by -- I mean I don't understand by

1 evidence. I mean --.

2 Q. For PREA, you're suppose to review all evidence
3 related to the event.

4 Did you review any evidence related to Otis' injury?

5 A. I talked to Owens, Otis Owens, yes.

6 Q. Okay. Was he upset about the event?

7 A. I believe so. But once I asked him if he felt it
8 was done in a sexual nature, he said no, it wasn't. So then
9 that, that pretty much I was done with it because I was
10 there as the PREA coordinator. And once he said that he
11 felt it wasn't done in a sexual nature, I mean I was out of
12 it from there.

13 Q. Did you save the video?

14 A. No, I did not.

15 Q. Did you allow the video to be destroyed and
16 overwritten?

17 MR. DAVIDSON: Object to the form.

18 A. The video was overwritten.

19 Q. So you allowed it to be overwritten?

20 A. It's something that does by itself.

21 Q. Right.

22 A. Thirty days.

23 Q. If you didn't, did you allow that to happen without
24 preserving it is my question.

25 A. I did not preserve it, no.

1 Q. Did you have the ability to preserve it?

2 A. Yes.

3 Q. Did you ever do an assessment of any witness
4 credibility during your investigation?

5 A. No.

6 Q. It's my understanding that the investigation lasted
7 about one hour.

8 Is that, is that a fair approximation of the time you
9 spent investigating the event?

10 A. Probably.

11 Q. Okay. So about one hour for the investigation?

12 A. Correct.

13 Q. Okay. And did you, did you ever interview any
14 inmate eye witnesses?

15 A. No. Like I said, once, once they said that they
16 didn't feel it was in a sexual nature, then I was done.
17 There was nothing else for me to investigate.

18 Q. Okay. Well, what's your -- is it your
19 understanding that the allegation was Gibson grabbed Owens
20 sex organ?

21 Is that the allegation?

22 A. I was told to investigate.

23 Q. Just answer and then you can explain.

24 A. Okay.

25 Q. Okay. So was Mr. Owens allegation that Gibson

1 grabbed his sex organs?

2 A. I guess so. The complaint was not made to me.

3 Q. Okay. Now give me the explanation that you, you
4 want to give me for it.

5 A. I was told to investigate a possible PREA incident.
6 So that's what I did. I looked --.

7 MR. HAWKINS: Wait. Yeah, you---

8 THE WITNESS: Yeah.

9 MR. HAWKINS: You have this one.

10 THE WITNESS: Yeah.

11 I, I went and I talked to Otis Owens and I asked him
12 did he feel it was done in a sexual nature. He said he did
13 not feel it was done like that. So then that was the end of
14 my investigation.

15 Q. Do you feel that your investigation was thorough?

16 A. Based on him stating that he felt it was not done
17 in a sexual nature, yes.

18 Q. Do you feel that your investigation complied with
19 the requirements of PREA?

20 A. Yes.

21 Q. Okay. All right. Did you ever talk to Jeremy Ard
22 about the incident?

23 A. No, not that I can recall.

24 Q. Did you ever talk to Stephen or Brett Wilhite about
25 the incident?

1 A. Yeah, wilhite was in the sallyport with Owens when
2 I spoke to him.

3 Q. Did you ever ask wilhite about his injury?

4 A. I didn't know he had an injury.

5 Q. You didn't know that wilhite got operated on?
6 And then will objects to the form.

7 A. I know he had a -- some type of procedure or
8 something.

9 Q. Do you know what -- are you aware the procedure was
10 on his groin?

11 A. Yes, I believe it was a cyst he had removed.

12 Q. Well, he had a procedure. He says he had a -- he
13 says he had surgery as a result of the injury caused by
14 Gibson.

15 And then will Davidson objects to the form.

16 A. I don't know who was the cause of that. I mean I
17 heard it was a cyst. So I don't know if a pat search can
18 cause a cyst.

19 Q. Okay. When was the last time PREA training was
20 provided to Gibson before the incident happened?

21 A. I do not know.

22 Q. Are there any -- are there any records stored that
23 show how often Gibson was provided PREA training?

24 A. Yes.

25 Q. You still work at the detention center?

1 A. Correct.

2 Q. Are you familiar with the pat/frisk policy?

3 A. Yes.

4 MR. HAWKINS: And do -- Your Honor, do you want me to
5 read all the examination by Mr. Davidson?

6 MR. DAVIDSON: Probably for the flow, it might be fine
7 for him to do that or I can do it, Your Honor. Either way.

8 MR. HAWKINS: I'm, I'm fine to do. I just want to make
9 sure I do what you want.

10 THE COURT: Just identify as Mr. Davidson.

11 MR. HAWKINS: Okay. All right. So now we are --.

12 MR. DAVIDSON: I can tell the jury. This is -- these
13 are the questions I asked and he's gonna read it just for
14 continuity.

15 THE COURT: Thank you.

16 MR. HAWKINS: Okay. So by Mr. Davidson.

17 Q. Lieutenant Bowman, just a few questions if you
18 don't mind.

19 You're presently employed at the detention center?

20 A. Correct.

21 Q. How long have you been at the detention center?

22 A. Twenty-one years.

23 Q. And during that period of time, you start as a
24 correction officer?

25 A. Correct.

1 Q. Okay. And you're presently what rank?

2 A. I'm a lieutenant.

3 Q. Okay. So you moved up over those years -- over
4 those 21 years?

5 A. Correct.

6 Q. And what's your job duties presently?

7 A. The assistant. Excuse me. The assistant jail
8 administrator.

9 Q. Okay. You're number two here at the jail?

10 A. Correct.

11 Q. Now, you were here in 2017.

12 Is that correct?

13 A. Correct.

14 Q. And what were you doing in 2017 at the detention
15 center?

16 A. I was a classification lieutenant and also a PREA
17 coordinator.

18 Q. How long were you a PREA coordinator?

19 A. I think about two years.

20 Q. Okay. And when did you stop the PREA coordinator?

21 A. When I got promoted to this position.

22 Q. As a PREA coordinator, did you go through training?

23 A. Yes, I did.

24 Q. Okay. And were you aware that the department here
25 at the Sheriff's Office has periodic training with

1 correctional officers in regard to PREA?

2 A. Yes.

3 Q. Do you know how often that is?

4 A. Every year.

5 Q. Now, do you know Otis Owens?

6 A. Yeah, from being in here.

7 Q. Okay. From, from being in the detention center?

8 A. Yes.

9 Q. Do you know whether Mr. Owens has been in the
10 detention center more than once?

11 A. Yes, he has.

12 Q. Now, in 2017, were you the PREA coordinator?

13 A. Yes.

14 Q. Okay. And did you become involved in a reported
15 case of a potential PREA violation involving Otis Owens and
16 Stephen Wilhite?

17 A. Yes.

18 Q. Now, both Mr. Wilhite and Mr. Owens were where at
19 the time?

20 A. In D pod I believe.

21 Q. Okay. And was the -- was there a video camera in
22 the D pod?

23 A. Yes.

24 Q. Okay. Where was that camera located?

25 A. In the ceiling in the center of the housing unit.

1 Q. Okay. In your interview I think you indicated
2 earlier that Mr. Owens was, was in you said the sallyport?

3 A. Correct.

4 Q. And who else did you talk to at that time?

5 A. Wilhite.

6 Q. Did you talk to both of those gentlemen?

7 A. Correct.

8 Q. And who else did you talk to?

9 A. Deputy Gibson.

10 Q. And was he working at the time?

11 A. Yes.

12 Q. The fact that you were able to round up all those
13 people in an hour and talk to them in --.

14 MR. HAWKINS: Your Honor?

15 Your Honor, I have a question for the Court.

16 (WHEREUPON, a bench conference was held out of the
17 hearing of the jury at this time.)

18 MR. DAVIDSON: He designated it, Your Honor.

19 MR. HAWKINS: No, she said, she said go straight
20 through.

21 MR. DAVIDSON: All right.

22 THE COURT: Yes. So it will be read.

23 MR. HAWKINS: Okay. So I'll start the question again.

24 Q. The fact that you were able to round up all these
25 people in an hour, and talk to them, and view the video, was

1 that about the normal time it would take you to find two
2 individuals in the jail and an employee who was working?

3 A. Correct.

4 Q. And when you interviewed Mr. Owens, what did he
5 tell you?

6 A. That he did not feel it was done in a sexual
7 nature.

8 Q. Okay. And that's what you were looking at as far
9 as PREA coordinator or as far as PREA was concerned?

10 A. Correct.

11 Q. And I think you indicated that you talked to
12 Mr. Gibson.

13 what did Mr. Gibson tell you?

14 A. He was looking for a pair of dice and he did a pat
15 search on them.

16 Q. Okay. Did he indicate anything inappropriate about
17 the way he did the pat down search?

18 A. No.

19 Q. Okay. Are you familiar with pat down searches?

20 A. Yes.

21 Q. And is part of the pat down search to examine the
22 area in the groin to ensure there's no contraband being
23 hidden in that area?

24 A. Yes.

25 Q. Okay. Now the video is in the center of the pod.

1 Is that right?

2 A. Correct.

3 Q. Okay. And where -- where was your understanding
4 that the pat down search occurred?

5 A. I believe it was out in the rec yard.

6 Q. What was the -- did the department have a policy of
7 practice in regard -- what was the -- did the department
8 have a policy or practice in regard to training videos at
9 the time?

10 A. No.

11 Q. And what happened to the video?

12 A. When space ran out it was rewritten over.

13 Q. Okay. When we say ran out and rewritten over, what
14 does that mean?

15 A. The hard drive is only so big, and once it gets to
16 the end, the olding (sic) recordest (sic) -- the oldest
17 recording on it, it starts rewriting over it.

18 Q. How long does that take?

19 A. Depending on how much motion and everything else,
20 between 60 and 90 days.

21 Q. Okay. And, to your knowledge, during that 60 or 90
22 days, did anyone request that that video be pulled or used?

23 A. No.

24 Q. So based on your information that you received from
25 Wilhite, Owens, and Gibson, you felt that essentially it was

1 a pat down search that was just more thorough than normal?

2 A. Correct.

3 Q. Okay. And do you know approximately how big the
4 pod is on essentially the interior of it?

5 A. That square footage, no.

6 Q. Okay. How many cells does it have?

7 A. There's only four cells. It's an open housing unit
8 so they're -- we don't really have any cells in it.

9 Q. All right. So they're open and allow the inmates
10 to move about?

11 A. Yes.

12 Q. Okay. And the rec yard is outside the pod?

13 A. Correct. It's attached to it. But, yes, it's
14 outside.

15 Q. And it's secure?

16 A. Correct.

17 Q. And there was no camera in the rec yard?

18 A. Correct.

19 Q. In the rec unit.

20 A. Correct.

21 Q. And the camera in question was in the center of the
22 ceiling of the pod?

23 A. Correct.

24 MR. HAWKINS: And then this is where I start again. So
25 this -- these questions are by me to the witness.

1 Q. Just to make sure, your entire investigation lasted
2 less than one hour, right?

3 A. Thereabout, yes.

4 Q. Did you record any interview?

5 You, you didn't record any interviews, did you?

6 A. No, I did not.

7 Q. And did you preserve any video evidence?

8 A. No.

9 MR. HAWKINS: And that concludes the reading of the
10 deposition.

11 THE COURT: So thank you. This witness can step down.

12 All right. Mr. Hawkins, please call your next witness.

13 MR. HAWKINS: Your Honor, we would call Sheriff Hunt to
14 the stand.

15 THE CLERK: Place your left-hand on the Bible and raise
16 your right-hand.

17 MICHAEL HUNT, being first duly
18 sworn, testified as follows:

19 THE CLERK: Thank you. Please take a seat in the
20 witness stand and state your full name for the Court.

21 DIRECT EXAMINATION

22 BY MR. HAWKINS:

23 Q. How are you, sheriff?

24 A. Good. Good morning.

25 Q. I don't expect we'll have you in here a very long

1 while. I understand you have something else you have to do
2 today.

3 A. Vacation.

4 Q. Okay. All right. I don't think it will take very
5 long.

6 Sheriff, are you familiar with the pat down searches?

7 A. I am.

8 Q. Okay. What is the policy for pat down searches?

9 A. I've looked up the policy since you deposed me and it
10 specifically amounts -- relates to reasonable, reasonable
11 suspicion.

12 Q. Okay. When I took your deposition on the 26th I
13 guess last week, did you, did you tell me then that you
14 didn't know what the policy was---

15 A. I---

16 Q. ---at that time?

17 A. I did not know it verbatim, no, sir.

18 Q. Okay. So did you look it up this time?

19 A. Correct.

20 Q. So now you know.

21 Okay. And that policy that you had to look up, you
22 sign that policy?

23 A. Yes, sir.

24 Q. Okay. So that policy was in, in effect with your
25 signature but you didn't know the contents of it?

1 A. Yes, sir, I have a lot of policies and I don't know the
2 specifics of every policy.

3 Q. Okay.

4 A. When there's an issue, and it's a policy issue, I
5 simply ask a staff member to go pull the policy.

6 Q. Yes, sir.

7 Is it ever -- oh, and you -- you've been in law
8 enforcement for 40 -- 41 years, 41 years if my memory holds?

9 A. I think so, yes, sir.

10 Q. Okay. So let me ask you, from that experience, has it
11 ever occurred that you have to search in such a way that
12 you've caused a -- an injury if there's no resistance?

13 A. No, sir.

14 Q. Okay. If it -- if an injury is caused during a pat
15 down search, if there's no resistance, would that be a
16 violation of the policy?

17 A. I would think so, yes, sir.

18 Q. Okay. And like -- well, we asked you this at your
19 deposition.

20 We agree that policies are like safety rules?

21 A. Yes, sir.

22 Q. Okay. And in your policies related to pat down
23 searches, do you know if those comply with PREA or what PREA
24 spells out for pat down searches?

25 A. I've been told by the captain or the -- Nick Gallam

1 that we are in compliance.

2 Q. Okay. So, so you, you didn't know at your deposition
3 but then you've talked to Mr. Gallam?

4 A. Correct.

5 Q. And then he told you that the pat down searches are in
6 compliance with the Prison Rape Elimination Act?

7 A. That we are in compliance.

8 Q. Okay. Do the same rules apply to searches for inmates
9 as they do for people at traffic stops?

10 A. I would think that reasonable, reasonable suspicion is
11 easier to obtain in a detention center because every time
12 you move an inmate, whether it's inside or outside, there's
13 a chance for contraband.

14 Q. Well, let's talk about the pat searches themselves. I
15 mean on the pat searches, we may have a different opinion
16 about the reasonable suspicion thing, but are the pat down
17 searches themselves, are the policies the same for a girl
18 pulled over at night on the side of the road as they are for
19 an inmate suspected of contraband?

20 Are you suppose to pat that person the same way?

21 A. I would say they're similar, yes, sir.

22 Q. Okay. And, and they would be similar because you want
23 to protect people outside of the jail as well as people in
24 the jail, right?

25 A. Correct.

1 Q. Okay. If there's footage related to an allegation of
2 sexual assault or PREA violation, should that footage be
3 saved?

4 A. If we know at the time of the allegation.

5 Q. Okay. If the, if the allegation is reported the same
6 day that, that the person is saying they were assaulted,
7 should that video footage be pulled -- if it's pulled and
8 saved -- if it's, it's reported the same day?

9 A. I don't have knowledge of that happening.

10 Q. Okay. Well, I'll represent to you that it did happen
11 in this case.

12 So, since this allegation of sexual assault was made
13 the night of the day it happened, should that footage have
14 been retained in your opinion?

15 A. If it happened at that time, yes, sir.

16 Q. Okay. Are you aware -- has anybody told you that Mr.
17 Owens was injured in a pat down search?

18 A. Not until this came up.

19 Q. Is that because you -- you don't keep up with all the
20 lawsuits that had your name in the caption, right?

21 A. No, sir.

22 Q. Because, as you know, you're the statutory defendant.
23 You are the Sheriff's Office.

24 When there's wrongdoing alleged by a deputy, the proper
25 party is you and/or the Sheriff's Office, right?

1 A. Correct.

2 Q. Okay. So you don't, you don't take these personally?

3 A. I don't. But, sir, you got to understand, there's a
4 lot goes on here and I have a lot of responsibilities. So I
5 don't know every little thing that goes on. I don't know
6 every lawsuit.

7 Q. Yes, sir.

8 And, and, and I don't, I don't mean that to imply that
9 you should know the details of every lawsuit. I just want
10 to demonstrate to the jury that the fact that your name
11 might be on the caption is not necessarily a shot at you
12 personally.

13 Do you take it that way?

14 A. Well, I think when you're named in a lawsuit it's a
15 little bit personal. It's me.

16 Q. Right.

17 And, and just like, you know, the governor, the
18 governor is the proper party, you know, when something's
19 alleged against the State. You're the proper party when
20 something's alleged against the Sheriff's Office. And so I,
21 I want -- I want to make sure that if there's something you
22 take personally about this suit that you get a chance to
23 respond to.

24 A. I don't take anything personal, sir.

25 Q. Okay. All right. And you don't have a, a personal

1 stake or anything in this lawsuit?

2 You're not gonna pay any money out of your pocket---

3 MR. DAVIDSON: Objection, Your Honor.

4 Q. ---towards any---

5 MR. DAVIDSON: Not a proper question.

6 MR. HAWKINS: It is a proper question.

7 THE COURT: Sus -- sustained.

8 Let's move on.

9 Q. You're not required to be here for trial, are you,
10 besides being subpoenaed?

11 A. I was subpoenaed.

12 Q. Besides my subpoena, you're not required to be here,
13 right?

14 A. I guess if you didn't subpoena me I wouldn't be
15 required to be here.

16 Q. Right. Cause you'll be on vacation for the rest of
17 trial.

18 Is that right?

19 A. Sir, I've had a vacation planned for a year and I care
20 enough today to be here today.

21 Q. To comply with the subpoena that you're legally
22 obligated to comply with?

23 A. Correct.

24 Q. And, and I don't mean that to say -- I don't mean that
25 to say you don't care about the case. What I mean to say is

1 you're not required to be here.

2 A. Not if I'm not subpoenaed.

3 Q. Okay. And, and just so the record's clear, you're,
4 you're gonna leave and you won't be here when the verdict's
5 read or when we argue and closing or anything like that,
6 right?

7 A. No, sir.

8 Q. Okay. If, if there's footage related to the event the,
9 the lawsuit stems from, in this case a sexual assault, can
10 we agree that that's important for a jury to see?

11 A. If there was footage, yes, sir.

12 Q. Yeah.

13 If, if there was footage of the event of the search and
14 a potential sexual violation, that would be important
15 evidence for a jury to weigh, right?

16 A. Yes, sir, if we have it.

17 Q. Okay. And I think you told me you didn't know how many
18 times you've been named in a lawsuit?

19 A. I don't.

20 Q. Okay. Sheriff, I don't have any more questions for
21 you. Thank you---

22 A. Thank you, sir.

23 Q. ---for your time.

24 THE COURT: Cross-examine.

25 MR. DAVIDSON: Your Honor, may we have a sidebar for a

1 quick moment?

2 THE COURT: Yes.

3 (WHEREUPON, a bench conference was held out of the
4 hearing of the jury at this time.)

5 MR. DAVIDSON: Thank you, Your Honor. I appreciate
6 that.

7 THE COURT: Cross-examine.

8 CROSS-EXAMINATION

9 BY MR. DAVIDSON:

10 Q. Sheriff, how many deputies total do you have?

11 Do you know?

12 A. Total employee, probably over 200 total employees.

13 Q. Total employees?

14 A. Yes, sir.

15 Q. Do you know how many deputies actually work at the
16 detention center?

17 A. I think it's 90 something.

18 Q. Is that included in the 200?

19 A. Yes, sir.

20 Q. And I think you said, if I'm correct, you've been there
21 41 years?

22 A. I've got I think on my 41st starting -- 41 years law
23 enforcement. Nineteen as a sheriff.

24 Q. And my understanding is you don't, you don't run the
25 jail?

1 A. No, sir, I leave that to Mr. Gallam.

2 Q. And he reports to who?

3 A. The chief deputy.

4 Q. And do you get involved with the chief deputy and
5 Captain Gallam in regard to the day-to-day management of the
6 jail?

7 A. No, sir.

8 Q. Okay. Who do you leave that up to?

9 A. Mr. Gallam.

10 Q. And do you know about how many policies the Sheriff's
11 Department has?

12 A. Hundreds.

13 Q. You got everything from how you should wear your
14 uniform?

15 A. Everything from uniform, high speed chases, anything
16 that we would get involved in.

17 Q. How to preserve evidence---

18 A. Yes, sir.

19 Q. ---with regard to criminal investigation's concerned?

20 A. Yes, sir.

21 Q. And you don't know all those policies by heart, do you?

22 A. No, sir.

23 Q. If something comes up, you might have to ask somebody
24 to go bring you the policy---

25 A. If---

1 Q. ---itself?

2 A. If there is an incident that I need to look at, and
3 they bring it to me, it's a policy issue, I simply tell the
4 division head, which in this case would be Mr. Gallam, to
5 pull me the policy and I'll read the policy and make a
6 decision.

7 Q. Now -- and I think you said that you had this vacation
8 planned for a while?

9 A. A year.

10 Q. The fact that you were going on vacation or will be out
11 of state, I think Captain Gallam's been keeping you posted
12 on what's going on in the courtroom?

13 A. Yes, sir, every day.

14 Q. The fact that you're going on vacation doesn't mean
15 that you don't care what's going on?

16 A. No, sir, it does not mean that at all and every
17 lawsuit's important whether you're named or not. However, I
18 have a vacation planned with my family and I put my family a
19 little bit first.

20 Q. Thank you, sheriff, and that's (indiscernible).

21 A. Thank you, sir.

22 THE COURT: Redirect.

23 REDIRECT EXAMINATION

24 BY MR. HAWKINS:

25 Q. And, sheriff, just so I'm clear about the, the

1 policies, Mr. Davidson asked you some questions and
2 indicated that you had a bunch of policies and you wouldn't
3 necessarily know what was in all of them, right?

4 A. Correct.

5 Q. But your signature's required to be on those policies,
6 right?

7 A. Correct.

8 Q. It's required to be on those policies to show that you
9 looked at it and signed off on it approving it, correct?

10 A. And I do. They bring the policy to me when it's
11 written. We discuss it.

12 Q. Yes, sir.

13 A. We discuss any changes based on suggestions from the---

14 Q. Okay.

15 A. ---director or the captains that we might want to take.

16 Q. Yes, sir.

17 A. And then I make the final decisions and sign off on it.

18 Q. Yes, sir.

19 So, this -- so that the record's clear and for the
20 jury, you're suppose to know what's in those policies and be
21 familiar with because you're the sheriff?

22 A. I know what's in them when I sign off of them. But I
23 can't remember every detail of a policy for years to come.

24 Q. Okay. Thank you, sheriff. I don't have any more
25 questions.

1 A. Yes, sir.

2 THE COURT: Any recross?

3 MR. DAVIDSON: No, Your Honor. We ask that the sheriff
4 be excused from his subpoena so he can go be with his
5 family.

6 MR. HAWKINS: Without objection.

7 THE COURT: Thank you.

8 All right. This witness can be excused. Please watch
9 your step.

10 THE WITNESS: Thank you, judge.

11 THE COURT: All right.

12 MR. DAVIDSON: Thank you, sheriff.

13 THE COURT: All right. At this time we will give the
14 jury a, a bit of a break, a stretch break. If you'll escort
15 the jury out and allow bathroom and smoke breaks.

16 (WHEREUPON, the following takes place outside the
17 presence of the jury.)

18 THE COURT: All right. All right. Mr. Hawkins and
19 Mr. Davidson, the first that I, I feel that we need to
20 discuss is the video depositions. Tell me where we are with
21 regards to showing those.

22 MR. HAWKINS: We have, we have our lines and timestamp
23 numbers ready to -- we got them ready to go. We've got the
24 timestamps written down and ready to submit to the Court.
25 The system that we propose to use is -- we tested this to

1 make sure it worked. Hooking a cord up to Ethan's laptop --

2 THE COURT: Okay.

3 MR. HAWKINS: -- and then -- and stopping it where it
4 needs to be stop and then starting it where it needs to be
5 started.

6 THE COURT: All right. And who's the first deposition
7 of?

8 MR. HAWKINS: I think we would play -- I think we would
9 play wilhite first.

10 THE COURT: All right. Now, I understand, Mr.
11 Davidson, there's an objection to some of the testimony in
12 the video deposition?

13 MR. DAVIDSON: Your Honor, number -- the first things,
14 we did not get any designation or lines of where they might
15 be playing some. So, I'm, I'm flying blind a little bit. I
16 thought we would of gotten those last night like the rule
17 says you do. You're suppose to do them a day ahead.

18 We have multiple objections, Your Honor. But first
19 objection, Your Honor, is Mr. wilhite's deposition was taken
20 in the federal court case. Mr.---

21 MR. HAWKINS: We got all that cut out.

22 MR. DAVIDSON: Mr., Mr. Hawkins, during his motion in
23 limine, raised the issue about the federal court case and
24 the fact that he did not want any information coming in on
25 that because it's a different standard and the different

1 parties, the different issues---

2 MR. HAWKINS: We've cut all that out.

3 MR. DAVIDSON: ---all the 1983, those type of things.

4 THE COURT: All right. And that's been removed?

5 MR. HAWKINS: We've cut all the 1983 stuff out, Your
6 Honor.

7 MR. DAVIDSON: This is, this is not -- this case was
8 not -- well, this was removed, Your Honor, but it is in
9 federal court---

10 THE COURT: All right.

11 MR. DAVIDSON: ---and, therefore, the deposition is not
12 proper to be used in state court because it never was
13 noticed in state court.

14 MR. HAWKINS: We -- I think we said -- I know we said
15 on one of them this is to be used in state or federal court
16 trial, and, beyond that, there's nothing that stops you from
17 using a deposition from a federal case that he chose to
18 remove to federal court and use it in state court.
19 That's -- I mean there's, there's no authority for that.

20 MR. DAVIDSON: There's nothing in the record about this
21 being used in the state court action, Your Honor. It was
22 solely noticed in the federal court action.

23 MR. HAWKINS: I, I know---

24 MR. DAVIDSON: The fact that it is in federal court
25 would make it a totally different forum, totally different

1 rules of civil procedure and evidence. He's already raised
2 many of these grounds during his motion to exclude any
3 information about the federal court. And, for that reason,
4 Your Honor, we object to the use of the federal deposition
5 in a state court action.

6 MR. HAWKINS: Okay. So, I've got, I've got an excerpt
7 from Ard's deposition. We, we took Ard and Wilhite the same
8 kind of way.

9 MR. DAVIDSON: All right.

10 MR. HAWKINS: This is the be -- this is the beginning
11 of or -- excuse me.

12 THE COURT: You have Wilhite and who else?

13 MR. DAVIDSON: Mr. Ard, Your Honor, and he's in state
14 court.

15 THE COURT: So the only description -- dispute is
16 Wilhite?

17 MR. DAVIDSON: That's correct.

18 MR. HAWKINS: Yeah, we've got -- so, so we, we took
19 this deposition of Ard and we, we made it plain. He's
20 known, he's known this for years.

21 THE COURT: All right.

22 MR. HAWKINS: In the---

23 THE COURT: Well, what about---

24 MR. HAWKINS: In the Court---

25 THE COURT: ---Wilhite's deposition?

1 MR. HAWKINS: In the Court of Common Pleas -- do what?

2 THE COURT: Right. Wilhite's, Wilhite's deposition.
3 Ard, I think he's a, he's agreed to Ard if that was noticed
4 in state court.

5 MR. HAWKINS: Okay.

6 THE COURT: What about Wilhite's?

7 MR. HAWKINS: Yeah, even, even if he -- even if there
8 was some authority he could rely on, which there's not,
9 it's, it's prior testimony. He's had notice of it for
10 years. There's -- I mean this is, this is no different than
11 using, you know, a civil court trial transcript to impeach
12 somebody in a criminal matter or vice versa.

13 It's, it's un -- it's an under oath video for trial
14 statement. He's known about it for years. He's never filed
15 a motion in federal court or state court that -- I mean I
16 don't even know what this is. I don't know why he waited
17 till right now before we're about to play it to bring this
18 up.

19 THE COURT: All right. Well, the -- let's just,
20 let's -- let me say this.

21 With regards to Wilhite and Ard, Mr. Davidson, are
22 there, are there contents of that video for which you have
23 specific objections?

24 MR. DAVIDSON: Yes, Your Honor.

25 THE COURT: Let's go through Ard first while I decide

1 on wilhite.

2 MR. HAWKINS: We're, we're going through just the
3 transcript right now, Your Honor?

4 MR. DAVIDSON: And I apologize. These -- I, I
5 handwrote these when I didn't get something from them. So,
6 it's a, it's a little -- maybe a little disjointed, Your
7 Honor.

8 THE COURT: All right.

9 MR. HAWKINS: Yeah, we sent -- we sent this, this
10 morning. So, he's -- he has been, been copied on that.

11 MR. DAVIDSON: Well, I -- this morning was --.

12 THE COURT: All right. Well let's see. Let's go
13 through it --

14 MR. DAVIDSON: Yeah, let's do.

15 THE COURT: -- cause the jury's waiting on us.

16 MR. DAVIDSON: Page 7. Line 21.

17 THE COURT: Do we have a copy?

18 MR. HAWKINS: Um.

19 THE COURT: Do -- is that an extra one?

20 MR. HAWKINS: I, I don't---

21 THE COURT: I don't want to take what you have.

22 MR. HAWKINS: Do you want to make a copy of the, of
23 the---

24 MR. DAVIDSON: I've got a clean one, judge, if you want
25 it.

1 THE COURT: I don't care. I just want to make sure I'm
2 able to follow along.

3 MR. HAWKINS: Here's -- here are the originals.

4 THE COURT: All right. Thank you.

5 All right. For the record, I am opening the original
6 of Ard.

7 MR. DAVIDSON: Thank you, Your Honor.

8 THE COURT: Jeremy Ard's deposition.

9 MR. DAVIDSON: And I'm on Page 7, Your Honor.

10 THE COURT: All right. Page 7?

11 MR. DAVIDSON: Yes, Your Honor. Page 7 Line 21 through
12 25.

13 THE COURT: All right.

14 MR. DAVIDSON: The reason being, Your Honor, the -- I
15 don't believe Mr. Ard can see what's in the minds (sic) of
16 Mr. Gibson. That would be pure speculation on his part as
17 to what Mr. Gibson was thinking or not thinking at the time.

18 The next question, Page 24, do you think that had
19 something to do with him grabbing y'all and being violent
20 with you. Again, that's dealing with Mr. Ard, Your Honor.
21 It doesn't deal with Mr. Gibson and it ties in with the
22 question before about him being grabbed, Your Honor, and we
23 don't believe it's relevant what happened to Mr. Ard in this
24 case. Mr. Ard was not part of any investigation.

25 THE COURT: All right. What's your response, Mr.

1 Hawkins?

2 MR. HAWKINS: The, the same, same thing as Mr. Wilhite.
3 The Court's ruled they can testify about what they observed
4 on that day if Mr. Gibson appeared to be angry. They can
5 certainly offer testimony about that. He had a chance to
6 cross-examine him and this is all common scheme. This is
7 all one event. They're entitled to testify about what
8 happened.

9 THE COURT: All right.

10 MR. HAWKINS: Yes, ma'am.

11 THE COURT: I'm sorry. I'm sorry. I didn't mean to
12 cut you off.

13 MR. HAWKINS: Oh, no, no. That's it, Your Honor. The
14 same -- the thing as with Wilhite and what we keep talking
15 about.

16 THE COURT: All right.

17 MR. HAWKINS: He's just testifying about his
18 impressions from that day.

19 MR. DAVIDSON: That's speculation what Mr. Gibson may
20 or may not have been thinking, Your Honor.

21 MR. HAWKINS: No. No, it's not. It's speculation to
22 say somebody was angry. They -- he can see if he was angry
23 or not.

24 MR. DAVIDSON: But he set forth he -- what he
25 speculated to be the reason.

1 THE COURT: All right. I'm gonna allow it since it,
2 it -- the question is did it appear. And so it's his, it's
3 his observation of whether or not he was. It is -- he's not
4 asking him if he was. He's asking him if it appeared he
5 was. So, I'm gonna allow that in.

6 what's your next objection, excuse me, Mr. -- next
7 objection.

8 MR. DAVIDSON: Page 8 Line 5.

9 THE COURT: All right.

10 MR. DAVIDSON: All the way -- well, Page 8 Line 5 to
11 Page 9 Line 5 I believe, Your Honor.

12 MR. HAWKINS: And we've, and we've already got that, at
13 least this constitutional part, we've already got taken out
14 from the prior -- from the Court's prior instruction. We've
15 taken that out.

16 THE COURT: All right. So let me ask you this.

17 With, with -- on Page 8 to Line 5, you've taken that
18 out all the way to --?

19 MR. HAWKINS: We've, we've taken out all the
20 constitutional rights violated stuff.

21 THE COURT: So I want to, I want to make sure we're
22 talking about the exact same lines cause if it plays --.

23 (Pause.)

24 THE COURT: All right. While he's looking for that,
25 why don't you tell me the next one?

1 we've got that. we'll come back to that
2 (indiscernible)---

3 MR. DAVIDSON: It's page---

4 THE COURT: ---in just a second.

5 You got that?

6 MR. DAVIDSON: I got---

7 MR. HAWKINS: Oh, I'm sorry. Did -- I, I was waiting
8 for -- I'm sorry. Yes.

9 THE COURT: Cause I was waiting to see if you did
10 remove --.

11 MR. HAWKINS: Yes.

12 THE COURT: Okay.

13 MR. HAWKINS: We're, we're going to remove -- we don't
14 have -- we don't have eight in -- we're not playing Page 8
15 at all. There are -- the, the portion of the video that
16 contains Page 8 we're not playing.

17 THE COURT: All right. And what about Page 9?

18 MR. HAWKINS: We have -- we start at nine where it says
19 and I'm going to show you what's marked as Exhibit 1.

20 THE COURT: Okay. So that is removed.

21 MR. HAWKINS: That's right.

22 THE COURT: All right.

23 MR. HAWKINS: So, we, we -- yeah, we start at nine and
24 we're playing that.

25 THE COURT: You start at nine and you begin -- on Page

1 9, you began the portion of the video that says -- that is
2 Line 9---

3 MR. HAWKINS: Yes.

4 THE COURT: ---and I'm going to show you.

5 All right. And so the, the section that Mr. Davidson
6 has an issue with has already been removed.

7 MR. DAVIDSON: Thank you.

8 Your Honor, we go, we go all the way down on Page 8, 5
9 through 25, and then over to Page 9 on Line 7 I believe,
10 Your Honor.

11 THE COURT: That's right.

12 MR. HAWKINS: We've---

13 THE COURT: So, he's removed.

14 MR. HAWKINS: We've removed that.

15 MR. DAVIDSON: Okay.

16 THE COURT: All right.

17 MR. DAVIDSON: I just want to make sure.

18 We object to Page 9 Line 15.

19 MR. HAWKINS: And that's -- yeah, we left that in
20 because it's asking about the behavior of Gibson, what he,
21 what he observed, what people he grabbed---

22 THE COURT: All right. Let me---

23 MR. HAWKINS: ---in the private area.

24 THE COURT: Let me find me -- out.

25 Your objection is---

1 MR. HAWKINS: We'll---

2 THE COURT: ---based on?

3 MR. DAVIDSON: Page 15 -- I mean Page 9 Line 15 to Page
4 10 Line 1 --

5 THE COURT: All right.

6 MR. DAVIDSON: -- are all leading questions, Your Honor
7 and not proper in form and we reserved the question -- the
8 objection.

9 MR. HAWKINS: Well, the -- this was a deposition, Your
10 Honor, and we would much prefer to have him here but he's
11 not. And so this is what we're stuck with. That's---

12 THE COURT: All right.

13 MR. DAVIDSON: You still got to ask---

14 THE COURT: I do think it's---

15 MR. DAVIDSON: ---non leading questions.

16 THE COURT: All right. I'm gonna take that -- I want
17 you to take that part out---

18 MR. HAWKINS: And---

19 THE COURT: Do not play that part. I do think it is
20 leading.

21 MR. HAWKINS: And did you --?

22 THE COURT: But your, your argument is noted for the
23 record.

24 MR. HAWKINS: Well, well, the, the reason I was asking,
25 I -- like does the affidavit appear to be true and accurate,

1 that's, that's not a leading question and neither is I want
2 to ask you about this behavior. That's not a leading
3 question either. And then would you say there's a pattern,
4 that's not -- none of that's leading.

5 MR. DAVIDSON: That is all leading, Your Honor.

6 MR. HAWKINS: No. No, it's not. Would you, that's
7 a---

8 THE COURT: All right.

9 MR. HAWKINS: Those are open ended---

10 THE COURT: I've, I've, I've ruled that it -- that it's
11 leading.

12 MR. DAVIDSON: Thank you, Your Honor.

13 THE COURT: So let's, let's move on to the next
14 section.

15 MR. HAWKINS: Yeah, I want to make sure we're taking
16 out the right thing.

17 9 15 through 10 1 we're taking out?

18 THE COURT: Yes, sir.

19 MR. HAWKINS: Okay.

20 MR. DAVIDSON: All right. Okay. On Page 10 of Line
21 11 -- oh, excuse me. Line 13 all the way to Page 11 to Line
22 3.

23 MR. HAWKINS: So -- okay. So, we have, we have that
24 in. Starting at Page 10 Line 13, we have all that -- we
25 have all that in to, to play, to play.

1 THE COURT: All right. Why do you object to it, Mr.
2 Davidson?

3 What -- why do you object to it, Mr. Davidson?

4 MR. DAVIDSON: Number one. It's leading.

5 Number two. The question -- if you look at Question
6 Number 13, do you think that the county or the County
7 Sheriff's Office is or are they doing anything to stop Mr.
8 Gibson from acting inappropriate or correct his behavior.
9 From recent trips, visits to the jail, no, it's still the
10 same.

11 Well, none of that would be relevant. It's after the
12 fact. He's talking about recent trips I guess when he's
13 been locked up.

14 THE COURT: Uh-huh.

15 MR. DAVIDSON: Then he goes on, have people like you
16 and Mr. Owens reported Gibson doing this kind of stuff.

17 Number one, that would be hearsay cause he doesn't know
18 what other people are doing unless they tell him and it's
19 leading, and, despite the report, has anything happened to
20 Mr. Gibson. Again, same thing.

21 THE COURT: All right.

22 MR. DAVIDSON: And that---

23 THE COURT: So that, that goes down to Page 11 Line 4.

24 MR. DAVIDSON: Yes, ma'am.

25 MR. HAWKINS: And our position on that is it's

1 obviously not leading. But, Your Honor, when -- part of our
2 claim is negligent supervision and reprimands. Reprimands
3 including the -- a reprimand yes or no for the event that
4 the lawsuit's related to is part of a negligent hiring and
5 supervision claim. So, that's directly related to the
6 lawsuit.

7 MR. DAVIDSON: And, Your Honor, this -- he said -- Mr.
8 Ard said from my recent visits to the jail---

9 MR. HAWKINS: Right. That would be---

10 MR. DAVIDSON: ---do you have anything -- it would be
11 post event. It wouldn't have anything to do with this case,
12 Your Honor.

13 MR. HAWKINS: No. But the point of it is that it's
14 post event. This incident, was he ever reprimanded for it,
15 it's part of our case.

16 THE COURT: All right. I'm going to rule that it be
17 taken out. The basis of that ruling is I do think it's
18 subsequent action.

19 what's your next objection, Mr. Davidson?

20 MR. DAVIDSON: Hang on one minute, Your Honor.

21 (Pause.)

22 MR. DAVIDSON: That would be -- Your Honor, I also have
23 11, 5 through 8.

24 THE COURT: What's your objection?

25 MR. DAVIDSON: That shows -- if we connected it but I

1 just separated it out.

2 MR. HAWKINS: We don't have that in our version I don't
3 think.

4 MR. DAVIDSON: Okay.

5 THE COURT: All right. Make sure it's, it's out, Mr.
6 Hawkins.

7 MR. HAWKINS: Eleven, 5 through --?

8 THE COURT: Eight, yes, sir. So you'll start on 10,
9 Line 10.

10 MR. HAWKINS: Yeah, we don't have that in, in our --.

11 THE COURT: Yes, sir. Thank you.

12 MR. DAVIDSON: All right. On Page -- this kind of
13 spills over from Page 18 Line 22 all the way to we believe
14 the next page, Your Honor. All this deals with an event
15 that occurred in 2019 when Mr. Ard was in jail again.

16 THE COURT: We're on Page 18.
17 what line?

18 MR. DAVIDSON: Page 18.

19 THE COURT: what line?

20 MR. HAWKINS: Cause I don't---

21 MR. DAVIDSON: Excuse me. I'm, I'm actually wrong.
22 He, he goes into -- and I'm -- I apologize, judge. I'm
23 having to find -- all right. Page -- I apologize, judge.
24 Page 16.

25 THE COURT: All right.

1 MR. DAVIDSON: Line 16 going all the way over to Page
2 17.

3 THE COURT: What's your objection?

4 Excuse me.

5 MR. DAVIDSON: Well---

6 THE COURT: What's your objection?

7 MR. DAVIDSON: Well, this all deals with him claiming
8 that he has erectile dysfunctional -- dysfunction as a
9 result of what happened to him at the jail.

10 THE COURT: All right.

11 MR. DAVIDSON: But, number one, it wouldn't be
12 relevant.

13 Number two. It'd be pure speculation for him to be
14 able to give a medical diagnosis and say what the proximate
15 cause of erectile dysfunction is given that it has multiple
16 factors that play into it, high blood pressure, primarily
17 medicines, things like that.

18 So, we object to all of that dealing with his medical
19 condition.

20 THE COURT: All right. Mr. Hawkins.

21 MR. HAWKINS: Yes, Your Honor.

22 It's the same thing as, as Your Honor ruled with
23 Wilhite and the fact that he had surgery. He's able to say,
24 after this event, I've had ED. He had a chance to
25 cross-examine him. I mean it's, it's the same thing as

1 wilhite exactly. He, he -- what -- part of it is---

2 THE COURT: All right. I'm gonna---

3 MR. HAWKINS: ---I took---

4 THE COURT: I'm gonna allow it, Mr. Hawkins.

5 MR. HAWKINS: Thank you, judge.

6 THE COURT: I'm gonna allow that testimony.

7 MR. DAVIDSON: You're allowing that, Your Honor?

8 THE COURT: Yes, sir.

9 MR. DAVIDSON: All right. Just note our objection
10 regarding no proximate cause, no medical testimony, the fact
11 that it was dealing with another individual, and it occurred
12 it appears based on his testimony in 2019 --

13 THE COURT: All right.

14 MR. DAVIDSON: -- cause that's on Page 19, Your Honor,
15 at the very top of that page.

16 THE COURT: All right. So noted for the record.

17 Next objection.

18 MR. DAVIDSON: Okay. All right. The same thing, Your
19 Honor, starting on Page 19 where he says 2019 was he, was he
20 searching you for and he talks about he was searching for
21 him for -- in the kitchen.

22 THE COURT: Oh, this is a different incident?

23 MR. DAVIDSON: Yes, ma'am. It's -- that's where all
24 this -- he claimed -- judge, he, he claims he was searched
25 by Mr. Gibson---

1 THE COURT: And---

2 MR. DAVIDSON: ---in 2017.

3 THE COURT: Uh-huh.

4 MR. DAVIDSON: Then he claims Mr. Gibson searched him
5 again and grabbed him again and that's where he develops
6 erectile dysfunction and I got him to admit that all of that
7 occurred in 2019---

8 MR. HAWKINS: What are you---

9 MR. DAVIDSON: ---and that's Page 19 and he goes
10 through and talks about what happened on the search. He
11 said he rammed his hand up. He was giggling and---

12 THE COURT: And what are the lines?

13 what are the lines that you want---

14 MR. DAVIDSON: All of Page 19. It's line -- if you
15 look at 14, that's where he talks about giggling. Prior to
16 those two incidents on Page -- Line 21, those two incidents
17 are after the fact.

18 MR. HAWKINS: No, it's -- no, it's not. He says prior
19 to both instance -- instances. So that starts at the time
20 of that 2017 search and it was Mr. DeMasters and, and not
21 will that took the deposition. But, but that's what --
22 that's what happened or maybe Mr. --.

23 THE COURT: So he's testifying---

24 MR. HAWKINS: Maybe he took Wilhite's deposition. But,
25 anyway, he's talking about the time starting in 2017.

1 Before that he had no problems. And that's on Page 19 at
2 Line 21.

3 MR. DAVIDSON: That talks about any other problems with
4 him. It doesn't have anything to do with---

5 MR. HAWKINS: Prior to these two instances.

6 THE COURT: But that says that -- this -- wasn't this
7 searching us back in --.

8 MR. DAVIDSON: Yeah, it's 2019---

9 MR. HAWKINS: That's---

10 MR. DAVIDSON: ---Your Honor.

11 MR. HAWKINS: ---one of the searches, Your Honor, the
12 2019. The one that we're talking about where it starts the
13 clock is 2017 when he searched Mr. Wilhite and Mr. Owens.
14 And he said prior to these two searches I didn't have any
15 problems.

16 THE COURT: All right. I don't want any mention of the
17 2019. I don't find that relevant. Search --.

18 MR. HAWKINS: So how do we -- what do we -- how do we
19 cut---

20 MR. DAVIDSON: See that's where---

21 MR. HAWKINS: Do we cut that word?

22 MR. DAVIDSON: ---he (indiscernible) comes from, judge.

23 MR. HAWKINS: Will, he said both instances. It's right
24 here.

25 THE COURT: All right.

1 MR. HAWKINS: How -- so how do we -- how do we need to
2 cut that away, judge?

3 THE COURT: What are the lines that you are proposing,
4 Mr.---

5 MR. HAWKINS: We --.

6 THE COURT: Mr. Davidson, what are the lines that
7 you're proposing?

8 MR. DAVIDSON: Your Honor -- I believe, Your Honor, it
9 starts on Page 16 Line -- well, Line 16 he's asked a
10 question. He gives an answer that (sic) non responsive on
11 Line 18. But then it goes on and talks about his erectile
12 dysfunction. He talks about having his test -- testicles
13 yanked. We know they've been yanked multiple times
14 according to him.

15 On the next page, Page 17 --.

16 THE COURT: So you want to take out --?

17 MR. DAVIDSON: I want to take out, take out Page 16 and
18 all the information with erectile dysfunction and the fact
19 that he's had a second incident where he claims Officer
20 Gibson grabbed him, which was 2019 --.

21 MR. HAWKINS: But Your Honor's already ruled on Pages
22 16 and 17, right?

23 MR. DAVIDSON: And he claims the second incident
24 happened in September of 2019, Your Honor.

25 MR. HAWKINS: We're, we're -- I mean if we're gonna

1 take out the second incident obviously. But 16 and 17, he's
2 talking about the event. Yeah. That's -- yeah.

3 All right. Yeah.

4 (Pause.)

5 THE COURT: Page 16 is in reference to what event?

6 MR. HAWKINS: Seventeen -- okay. So, yeah, he's asking
7 him what kind of --.

8 THE COURT: Well tell me where it's -- well, yeah,
9 figure it out and tell me what -- if that is in reference to
10 2017.

11 (Pause.)

12 MR. HAWKINS: Oh, yeah.

13 Okay. So that's in reference to the '17 event, the
14 first event because on Page 15 at Line 12 he says okay. I'm
15 sorry. Going back to some of your earlier answers and
16 that's when he was talking about the 2017 search and that
17 he's still having pain to this day from it or whenever his
18 deposition was taken.

19 MR. DAVIDSON: Your Honor, if you look at 2000 and -- I
20 mean 15, he talks of the -- he talks about whom -- they ask
21 him about what -- what's bothering him. He says his penis
22 and testicles hurt.

23 Have you gotten any outside medical treatment for that?

24 No, sir, I haven't. Haven't gotten any medical
25 treatment for this. Again, lack of knowledge to know what

1 to do about it.

2 All right. And then we go on and he says it hurts---

3 THE COURT: What page are you on?

4 MR. DAVIDSON: Page 15.

5 THE COURT: All right.

6 MR. DAVIDSON: And I apologize, Your Honor. I'm (sic)
7 be a lot better prepared like I was the last one if I'd of
8 had this line -- it would be Line 12 I believe and he goes
9 on --.

10 MR. HAWKINS: Yeah, that's all in reference to the
11 '17 search. All of it.

12 THE COURT: All right.

13 MR. DAVIDSON: And he gets into trying to say what the
14 cause of his ED is, Your Honor, and we objected to that
15 because of causation and then he, he freely admits, all the
16 way over on Page 19, that he's had problems with Mr. Gibson
17 supposedly in 2019---

18 MR. HAWKINS: And for---

19 MR. DAVIDSON: ---and all.

20 MR. HAWKINS: And for the record, he didn't say -- he
21 didn't offer any evidence about causation. What he said
22 was, in response to the question, I never had any problem
23 before. So that's specifically different from -- he's, he's
24 able to---

25 THE COURT: All right.

1 MR. HAWKINS: ---testify about that.

2 THE COURT: I need y'all to clear it up for me.

3 This incident on Page 16 or this ED on Page 16 -- 15
4 and 16 is in reference to the 2017 event?

5 MR. HAWKINS: Right.

6 THE COURT: I know it -- I know he's referencing two.
7 But is it also referencing the 2017 event?

8 MR. HAWKINS: Yes, it starts in the '17 search.
9 January 5th, 2017.

10 MR. DAVIDSON: He doesn't give a date, Your Honor.

11 MR. HAWKINS: He says both incidents. That's -- the
12 first one's (sic) is January 25th, 2016.

13 THE COURT: All right. He says both incidents?

14 MR. HAWKINS: I think so.

15 MR. DAVIDSON: where?

16 MR. HAWKINS: On page -- let me see.

17 (Pause.)

18 MR. HAWKINS: Yeah, it says, it says -- okay. So, on
19 Page 19 at Line 21, it says prior to those two incidents.
20 So, the first one's obviously the '17 incident.

21 THE COURT: On Page 19---

22 MR. HAWKINS: Yeah.

23 THE COURT: ---where at?

24 MR. HAWKINS: Line 21. It says -- yeah, it says -- he
25 starts talking about '19 or asking a question about '19 on

1 page -- on line---

2 THE COURT: All right. So he -- let me un -- let me
3 understand this.

4 He talks about having these dysfunctions and then
5 afterward he gives the date or he, he agrees that it is
6 prior to the two events?

7 MR. HAWKINS: Yeah he asked --

8 THE COURT: That it---

9 MR. HAWKINS: After he---

10 THE COURT: That is the two incidents that caused?

11 MR. HAWKINS: Yes, Your Honor.

12 After will asked him some questions, he says go back to
13 your -- prior to, on Line 21, prior to those two incidents,
14 did Mr. Gibson, where he grabbed you, did you have any other
15 problems with it?

16 THE COURT: None.

17 MR. HAWKINS: None.

18 MR. DAVIDSON: Your Honor?

19 MR. HAWKINS: And that's Line 21 on Page 19, Your
20 Honor.

21 THE COURT: All right. Mr. Davidson.

22 MR. DAVIDSON: If you read Line 21, it says prior to
23 those two incidents with Mr. Gibson --

24 THE COURT: Uh-huh.

25 MR. DAVIDSON: -- where he grabbed you, did you have

1 any other problems with him at all. He's not talking about
2 problems in regards to yanking him or anything. He's asking
3 any other problems at all. He says none.

4 Now, he also -- he goes through and talks about 2019.
5 He didn't make any complaints at the jail about that.
6 Anything dealing with September of '19 is not relevant to
7 this case and---

8 THE COURT: I agree. I'm just trying to determine
9 whether I -- okay. I'm gonna make my ruling. I, I believe
10 that these prior pages are referencing both 2017 and 2019
11 from what I've read. I will allow that.

12 Now this, this regarding complaining in 2019, that has
13 to come out.

14 Is that removed?

15 MR. HAWKINS: Okay. So we start taking that out at
16 Page 19 at Line 4, Your Honor.

17 THE COURT: And where do you pick back up?
18 We got about 10 more minutes.

19 You have other objections while, while he's waiting --
20 while he's looking for that?

21 MR. HAWKINS: Okay. So, so 19, 4 through where,
22 where -- I mean I -- okay. So let's see.

23 Okay. If we take out 19, 4 through 20, 21, does that
24 work?

25 THE COURT: At Line 21.

1 MR. HAWKINS: 19, 4 through 20 Line 21.

2 THE COURT: All right. Mr. Davidson.

3 MR. DAVIDSON: Twenty through what?

4 THE COURT: Through Page 21 -- okay. Oh, Page 20 Line
5 21.

6 MR. DAVIDSON: That's fine, Your Honor.

7 THE COURT: All right. That is removed.

8 Any other objections?

9 MR. HAWKINS: That, that -- I was -- we were trying to
10 figure out logistically about the video. We, we got 19, 4
11 through 20 Line 21 out.

12 Okay.

13 THE COURT: All right.

14 MR. DAVIDSON: And, Your Honor, just so the record is
15 complete, and I'm not arguing with you, I just want to make
16 sure I've got it on the record --

17 THE COURT: Yes.

18 MR. DAVIDSON: -- Page 16, Mr. Ard says I believe it
19 gave me ED just to be up front about it.

20 Well, there he goes. He essentially is, is diagnosing
21 himself and the cause and that's what we objected to, Your
22 Honor.

23 THE COURT: All right.

24 MR. DAVIDSON: The next objection --.

25 (Pause.)

1 MR. DAVIDSON: Your Honor, Page 23 Line 19 --

2 THE COURT: All right.

3 MR. DAVIDSON: -- through 25.

4 THE COURT: What's your objection?

5 MR. DAVIDSON: It's talking about him reviewing the
6 lawsuit, federal lawsuits, state lawsuit, and it goes over
7 to the next page. Let's see. He talks about --.

8 THE COURT: All right. Is that removed?

9 MR. HAWKINS: I think so. I'm trying to make sure.
10 We're off -- we're definitely okay removing if it's not
11 already.

12 THE COURT: Okay.

13 MR. HAWKINS: Yeah, because it's just talking about --
14 yeah.

15 But where does it stop on Page 24, will, what you want
16 out?

17 You want 20?

18 MR. DAVIDSON: It's starts on Page 23.

19 MR. HAWKINS: Twenty-three, 19?

20 MR. DAVIDSON: Nineteen.

21 MR. HAWKINS: And --.

22 MR. DAVIDSON: Next would be through Page 19 -- I mean
23 24 page -- Line 19.

24 MR. HAWKINS: Twenty -- it's 23, 19 where it, where it
25 starts.

1 MR. DAVIDSON: Yeah.

2 MR. HAWKINS: And then you want to go to how far?

3 MR. DAVIDSON: Twenty-four, 19.

4 THE COURT: All right.

5 MR. HAWKINS: Hang, hang on one second.

6 We would, we would want to stop on 16. So that it
7 would start on 17 with I witnessed the same force used on
8 other inmates at the time.

9 MR. DAVIDSON: And, Your Honor, if you don't mind, if
10 you go to 25?

11 THE COURT: Did you hear him, Mr. Davidson?

12 MR. DAVIDSON: Excuse -- yeah, I did. I heard him.
13 But if you take, take, take and read on from Line 20 --

14 THE COURT: Uh-huh.

15 MR. DAVIDSON: -- all the way over to --

16 THE COURT: Seventeen.

17 MR. DAVIDSON: Well, 20 -- it actually goes on Page
18 25 -- let's see. I think it goes all the way over to 21,
19 Your Honor.

20 MR. HAWKINS: Wait.

21 MR. DAVIDSON: Cause if you look at that---

22 MR. HAWKINS: No, we will -- we start on Page 23.

23 MR. DAVIDSON: Talking about -- I'm sitting talking
24 about---

25 THE COURT: No, where we are, Mr. Hawkins, is on

1 page -- to where he starts talking about other force---

2 MR. HAWKINS: Uh-huh.

3 THE COURT: ---force on other inmates. Page 17.

4 MR. DAVIDSON: He doesn't know the name.

5 MR. HAWKINS: Oh.

6 THE COURT: Excuse me. I'm sorry.

7 MR. HAWKINS: Well---

8 THE COURT: Page 24.

9 MR. HAWKINS: Okay.

10 THE COURT: Line 17. Page 24 Line 17. He begins this
11 the -- the questioning about other inmates and it continues
12 on to what line, Mr. Davidson?

13 MR. DAVIDSON: It continues on -- well, it really --
14 this is what's kind of squirrely about this, Your Honor.

15 This was a meeting he had in Mr. Hawkins' office where
16 he reviewed some of the legal pleadings, and he says, under
17 Paragraph 2, that's your handwriting in that and it says I
18 witnessed the same force used on other inmates at the time
19 and on other dates and times when I was incarcerated.

20 Yes, sir.

21 Obviously that's leading but then he goes on okay. Now
22 the other inmates you're talking about, besides you and Mr.
23 Owens, I think -- I can't think of their names based. It's
24 been three years and Mr. DeMasters asked the question it's
25 been a while.

1 On other dates and time when you've been incarcerated,
2 are we talking about just one time in '19, September of '19?

3 Yes, sir.

4 Any other times?

5 Not that I recall.

6 So, he goes on down all the way down to Page 21. He's
7 talking about 2019 at that point, Your Honor. But we
8 believe everything that has to do with 2019 needs to be
9 withdrawn.

10 MR. HAWKINS: No, he's, he's talking about the search
11 and it's clear from the substance. DeMasters said, said '19
12 and he answered as if it were '17.

13 MR. DAVIDSON: He said '19.

14 MR. HAWKINS: Because, because he talks -- he talks
15 about the other men in the rec yard. He's talking about
16 that search in '17.

17 MR. DAVIDSON: No.

18 MR. HAWKINS: He's describing it's substantively
19 exactly the way everybody else says.

20 MR. DAVIDSON: Mr. DeMasters asked the questions. It's
21 pretty clear. Are you talking about just that one time in
22 2019?

23 MR. HAWKINS: Yeah, and he answered about '17.

24 MR. DAVIDSON: September of 2019. That's Line 5---

25 MR. HAWKINS: And that---

1 MR. DAVIDSON: ---on four and five on Line 25 -- on
2 Page 25 and he said yes, sir. He said any other times?

3 Not that I recall.

4 MR. HAWKINS: Judge, the -- it's clear from the record
5 he's asking about how many other guys were in the rec yard.
6 He's asking about if you see him search other men. It's
7 clear that he's talking about the January 25th, 2017,
8 search.

9 MR. DAVIDSON: Can you show me where he references
10 (indiscernible) at?

11 MR. HAWKINS: It's -- how many other---

12 MR. DAVIDSON: (Indiscernible).

13 MR. HAWKINS: Yeah, he says out---

14 THE COURT: All right. Bless you I think.
15 Well, this ends on Line 21?

16 MR. HAWKINS: Yeah, cause on Page 24 he's talking about
17 I witnessed the same force used on other inmates at the same
18 time other dates. Now other inmates are we talking about
19 besides you, Mr. Owens?

20 I can't think of the names that -- involvement.
21 Probably five or six of us.

22 THE COURT: Yeah, I don't, I don't think --.

23 MR. HAWKINS: And he says---

24 THE COURT: That's not how I read it.

25 MR. HAWKINS: And he -- he says, he says it's been like

1 three years and this has taken in -- on -- in 2020.

2 THE COURT: All right.

3 MR. HAWKINS: So he says it's been like three years
4 down on Line 25 of Page 24.

5 MR. DAVIDSON: And then we asked him direct---

6 THE COURT: All right. I'm gonna -- I'm ruling that it
7 be taken out. I want that taken from Line 21.

8 MR. HAWKINS: So---

9 THE COURT: Are there any other objections?

10 Through, through -- I want it taken out from on Page 25
11 all the way up to Page 25 Line 21.

12 MR. HAWKINS: Okay. So we start on 23 at -- where do
13 we start taking out on Line 23?

14 THE COURT: You're going to take out---

15 MR. HAWKINS: Page, Page 23. I'm sorry.

16 THE COURT: Nineteen -- wait a minute.

17 MR. DAVIDSON: All right. Then on line---

18 MR. HAWKINS: Wait, wait, wait a second. Wait a
19 second.

20 Okay. So we start at Page 23 Line 19 and we take out
21 everything through Page 25 at Line 21?

22 THE COURT: That's correct.

23 MR. HAWKINS: Okay.

24 THE COURT: Are there any other objections?

25 MR. DAVIDSON: Hang on, Your Honor.

1 (Pause.)

2 MR. DAVIDSON: Page 29.

3 MR. HAWKINS: Page 29?

4 MR. DAVIDSON: Line 10 and 11, he's talking about the
5 second time.

6 MR. HAWKINS: We don't have anything from 29 in.

7 THE COURT: Okay. Next objection.

8 MR. HAWKINS: And we don't have anything from 30 in
9 either.

10 THE COURT: All right.

11 MR. DAVIDSON: Then the next one I have is 32. First
12 he talks about whether he was aware that Mr. Owens required
13 medical treatment for his injuries caused by Mr. Gibson. He
14 says yes, sir. But that would hold -- that would solely be
15 based on hearsay, Your Honor. It's also a leading question.

16 MR. HAWKINS: He's a, he's a party.

17 MR. DAVIDSON: He's---

18 MR. HAWKINS: And it's, it's not a statement and he's a
19 party.

20 MR. DAVIDSON: It, it doesn't matter if he's a party.

21 MR. HAWKINS: It does. It does matter.

22 MR. DAVIDSON: It's still gonna be hearsay cause we
23 don't know where he heard it from. It says sounds like you
24 also maybe didn't get treatment.

25 THE COURT: All right. Anything up -- well, just tell

1 me lines.

2 MR. DAVIDSON: Okay.

3 THE COURT: I got it right here. I can see it.

4 MR. DAVIDSON: Four.

5 THE COURT: Uh-huh.

6 Four through what?

7 MR. DAVIDSON: I'm looking.

8 MR. HAWKINS: We've got 4 through 10 in in our version.
9 Page 32 Lines 4 through 10 and then we stop because of the
10 constitutional question next.

11 MR. DAVIDSON: Yeah, we object to four all the way
12 to -- let's see.

13 THE COURT: You object, you object to what lines?

14 MR. DAVIDSON: I'm, I'm looking, Your Honor.

15 THE COURT: Oh, I'm sorry. I thought you told me the
16 line.

17 MR. DAVIDSON: No.

18 MR. HAWKINS: And why---

19 MR. DAVIDSON: That's the problem I'm having without
20 having designations.

21 The next page, 33, through Line 5.

22 MR. HAWKINS: Yeah, we've got 33, 2 through 5 in.

23 THE COURT: So did you give me the numbers?

24 MR. DAVIDSON: Oh, I'm sorry. I, I wanted to cut 32
25 Line 4 all the way over to 33 Line 5, Your Honor.

1 MR. HAWKINS: So we, we have a lot of that out. The
2 only thing we have in is 4 through 10 on Page 32.

3 THE COURT: Okay.

4 MR. HAWKINS: We got 32, 4 through 10, and then we've
5 got 33, 2 through 5. But 33, we'll, we'll concede -- we'll
6 throw that out if it will narrow the scope of what we're
7 talking about.

8 THE COURT: Take 33 out.

9 Let me look at 32.

10 MR. HAWKINS: One through 4 I believe -- 4 through 10.
11 I'm sorry.

12 THE COURT: I -- no, I want 4 through 10 out as well.
13 I'm ruling 4 through 10 out. But your argument is noted for
14 the record.

15 MR. HAWKINS: All right.

16 THE COURT: All right. Any more objections,
17 Mr. Davidson?

18 MR. DAVIDSON: No, ma'am, Your Honor.

19 THE COURT: All right. That concludes Mr. Ard's.

20 Now, Mr., Mr. Hawkins, we gonna, we gonna play this
21 deposition or Mr. Ard first.

22 Are y'all prepared to do that?

23 MR. HAWKINS: We need 10 minutes because we got to, we
24 got to adjust the stop and start points.

25 THE COURT: All right. I want---

1 MR. DAVIDSON: Judge, I want to make sure --.

2 MR. HAWKINS: Or my -- Ethan has just suggested that we
3 argue about Wilhite now and then we can take lunch because
4 that will take some time. Then we can take lunch to fight
5 about or, or to, to get the stop and start points correct on
6 both videos. But that's just a suggestion.

7 THE COURT: We got, we got to get what we can because
8 the jury's lunch has not been delivered yet and we are --
9 because these weren't done last -- realistically -- not
10 wasting -- we're using a tremendous amount of time right
11 now. And so I need to at least get one deposition played or
12 if you've got a, a witness that is here that can be on the
13 stand and we can work out the depositions later.

14 MR. HAWKINS: Is Erikson here?

15 MR. DAVIDSON: No.

16 MR. HAWKINS: Okay.

17 MR. DAVIDSON: I told him to be here---

18 MR. HAWKINS: Okay.

19 MR. DAVIDSON: ---this afternoon.

20 MR. HAWKINS: Okay.

21 THE COURT: Okay. All right. So let's get -- let's --
22 she'll work on that and we will -- yes, sir.

23 MR. DAVIDSON: I've, I've had this raised against me so
24 I'm gonna raise it now.

25 where's their evidence that Mr. Ard is not available?

1 MR. HAWKINS: We actually do have that because I
2 figured you might raise it, will.

3 MR. DAVIDSON: Well, you need to put it in the record.

4 MR. HAWKINS: But, but you've already waived that by
5 putting Bowman in and we'll -- we got---

6 MR. DAVIDSON: You're not entitled to---

7 MR. HAWKINS: Waiver from their---

8 THE COURT: All right. Just give me the evidence if
9 you've got it.

10 MR. HAWKINS: It's an affidavit of non service. We've
11 had a process server look for Mr. Ard at his house and all
12 the neighboring houses or the last known address.

13 MR. DAVIDSON: What was the address on that?

14 MR. HAWKINS: Well, you'll have to look at it
15 (indiscernible).

16 MR. DAVIDSON: Your Honor, what was the address?

17 THE COURT: 226 Lock Lane Southeast Aiken South
18 Carolina.

19 MR. DAVIDSON: Two -- 2-2-6. It should of been.

20 THE COURT: Lock Lane. 226.

21 MR. DAVIDSON: Okay.

22 THE COURT: Lock Lane. Southeast.

23 MR. DAVIDSON: Yeah, I know. Actually in his
24 deposition he indicated that it was 246 Lock Lane.

25 THE COURT: Again, is it what?

1 MR. DAVIDSON: 246. He said -- he gave that address in
2 his deposition.

3 MR. HAWKINS: And that was a typographical error and
4 she called the process server and he did go to the address
5 in, in the deposition as well. And she can sign an
6 affidavit or whatever will needs so that we can move forward
7 with the trial.

8 THE COURT: All right. I'm gonna allow the deposition
9 of Mr. Ard. So that's a -- we'll move on.

10 MR. DAVIDSON: I'm gonna need some time -- Your Honor,
11 I don't know how you're gon' handle this cause I don't, I
12 don't know designations specifically by Mr. Hawkins. There
13 are some areas that I had outlined that I was gonna
14 cross-examine Mr. Ard if he showed up. I'm gonna need to
15 look at the transcript to pull those out and make sure he's
16 gonna read those cause I don't know what he's, what he's
17 reading and what he ain't.

18 THE COURT: You said that there's some questions that
19 you were going to ask Mr. Ard had he appeared and what
20 you're going to do was to --

21 MR. DAVIDSON: And I've got---

22 THE COURT: -- read the depo -- the deposition
23 transcript?

24 MR. DAVIDSON: Yeah, it's, it's -- these questions
25 are -- basically came out of his deposition. So I need to

1 make sure that I have, that I have these pages in the
2 transcript marked. But that I also have something from Mr.
3 Hawkins that tells me what he's going to play so I can
4 ensure that my, my -- what would, would of been my
5 designation that I got this last night are, in fact,
6 included in the reading of the deposition. And then I
7 apologize, judge. I, I, I, I would of done this last night.

8 MR. HAWKINS: Will, we all worked until eleven o'clock
9 last night.

10 THE COURT: All right. Here's the thing.

11 MR. HAWKINS: I tell you five times---

12 THE COURT: All right. How many witnesses do you have
13 for today?

14 MR. HAWKINS: We have Wilhite, Ard, the sheriff, and
15 Bowman done already. We have Erikson and then we have the
16 inmate witnesses after Erikson.

17 THE COURT: How many?

18 MR. HAWKINS: Three. But they don't take -- but they
19 are -- they're on the stand for, as far as I'm concerned,
20 three minutes a piece, the inmates.

21 MR. DAVIDSON: And each of those inmates, Your Honor,
22 have stories to tell about things that happened after these
23 events. In fact, several years after these events.

24 MR. HAWKINS: Yeah, that's the -- it's the retaliation
25 claim that we have that we've been building and other people

1 have been testifying about.

2 MR. DAVIDSON: And there's---

3 MR. HAWKINS: Will knows that.

4 MR. DAVIDSON: And there's no retaliation claim. In
5 fact, if something occurred in 2019 to 2020, it would not be
6 relevant to what happened in 2017, Your Honor.

7 MR. HAWKINS: We have been talking about retaliation
8 for PREA report this whole trial. If you have a problem
9 with the pleadings, those are conformed to the evidence
10 after trial. You know that, Will.

11 MR. DAVIDSON: I'm -- Your Honor, I, I --.

12 MR. HAWKINS: I don't know why we have to fight about
13 everything.

14 THE COURT: All right, Mr. Hawkins.

15 MR. DAVIDSON: Because I'd like to comply with the
16 rules.

17 The fact that he may have produced evidence doesn't
18 mean he gets to conform cause I'm objecting to retaliation.
19 In fact, I'm objecting to retaliation that happened in 2019
20 to '20. Several of these individuals, in fact, at least
21 two, were not even in the jail in 2017. I believe one was
22 and I believe he was in a different pod. So, he didn't know
23 anything about these events.

24 All of their testimony deals with after the fact that
25 Mr. Gibson came to the window, looked at him funny, or

1 something like that after the fact or said your lawsuit's
2 not going anywhere after the fact. Nothing to do with the
3 event surrounding the case nor the PREA investigation, nor
4 any indication that it was related in any way, you know,
5 other than the events in -- occurring in 20 -- some of these
6 guys have been there---

7 THE COURT: All right.

8 MR. DAVIDSON: ---for the whole time.

9 THE COURT: Okay. Well, hold on. Listen. We're not
10 there yet.

11 MR. DAVIDSON: I understand.

12 THE COURT: I want---

13 MR. DAVIDSON: I understand. I just want to make sure
14 the Court's aware.

15 THE COURT: Thank you, sir.

16 Mr. Hawkins?

17 MR. HAWKINS: Yes, Your Honor.

18 THE COURT: Are these inmates incarcerated?

19 MR. HAWKINS: Yes, Your Honor. We have an order that
20 we filed or either a motion or order -- a consent order I
21 think for transfer to get them here and because of---

22 THE COURT: Have you verified that?

23 MR. HAWKINS: Yeah. Well --.

24 THE COURT: I mean do you know---

25 MR. HAWKINS: My staff---

1 THE COURT: ---if they're, they're gon' be here this
2 afternoon?

3 MR. HAWKINS: Well, we've got the order. I was gonna
4 take that up with the Court when we got closer to their dep
5 -- to their testimony because they're -- they don't need to
6 be transferred back and forth if we don't know when we're
7 gonna---

8 THE COURT: Well, we'll bring---

9 MR. HAWKINS: ---put them---

10 THE COURT: ---them up all day. The, the problem that
11 I think you're about to have is that I don't -- we need to
12 verify whether these, these -- your witnesses are coming and
13 I got to get something in front of this jury. I mean we --
14 I -- we can't go past Friday.

15 MR. HAWKINS: I don't want to go past Friday.

16 THE COURT: I got a date certain on Monday.

17 MR. HAWKINS: Yeah. I do not want to go---

18 THE COURT: And---

19 MR. HAWKINS: ---past Friday.

20 THE COURT: And -- so -- but we're in danger of that
21 because of a lot of this -- a lot of these things that we
22 have spent the last three hours doing should of been done
23 prior to the trial. And so that's -- you know, we, we
24 just -- we can't use up our, our time like this.

25 MR. HAWKINS: Right. And, and what I would respond

1 with, Your Honor, is these witnesses -- we took these as
2 trial depositions and these witnesses were listed on our
3 witness list, discovery responses, all that kind of stuff.
4 If he wanted to do anything with the video, he's had years
5 to do it and he had -- cause we're fine to play the whole
6 thing. He doesn't want to play the whole thing---

7 THE COURT: I---

8 MR. HAWKINS: ---so that's why we're spending time on
9 that is because he wants certain parts out.

10 THE COURT: All right. Well, here. You need to make
11 sure that these -- that the jail has their transport order
12 and knows to bring them up this afternoon.

13 MR. HAWKINS: Okay.

14 THE COURT: Tell me when your team -- when they get
15 back in -- are we ready to go with the video?

16 MR. DAVIDSON: I -- I'm still -- I'm trying to mark my
17 places, Your Honor, to make sure they're, they're done.

18 THE COURT: All right. I'm gonna give you -- I'm gonna
19 give you 10 more minutes to do that and then we're gon' play
20 that video.

21 will that video be ready to play in 10 minutes?

22 UNIDENTIFIED SPEAKER: Yes, Your Honor.

23 THE COURT: All right. All right. We're gon' stand
24 down for, for 10 minutes.

25 (WHEREUPON, a short recess was taken at this time.)

1 THE COURT: All right. Please be seated.

2 All right. Are we prepared to play --?

3 MR. HAWKINS: Your Honor, we spent a bunch of time
4 editing and, and getting everything ready to go pursuant to
5 the Court's instructions, and then, when we got back in and
6 got this ready to go, will informed me that he wants some
7 more stuff. He's got some more -- he wants some more stuff
8 read in or, or something.

9 So I'll, I'll let him address that.

10 THE COURT: All right. Before we address anything,
11 this has been a day certain trial since May 24th is my
12 understanding and it does not seem as though y'all were
13 ready to go to trial when you take deposition -- a
14 deposition last week. We got videos that haven't been
15 designated. I mean there's a lot going on here.

16 This jury is -- it -- just so the both of you know, and
17 I don't know who they're not pleased with, they are not
18 pleased I think with this entire situation.

19 Let me ask you this before we proceed forward.

20 Mr. Hawkins, the transfer order -- I think we just
21 received a transport order.

22 THE CLERK: It was filed October 31st.

23 THE COURT: That's what I thought.

24 THE CLERK: Yeah.

25 THE COURT: So what have you received via email---

1 THE CLERK: I just---

2 THE COURT: ---transport order to --.

3 MR. HAWKINS: Yeah, it's just---

4 THE COURT: Oh, you just sent me the copies.

5 MR. HAWKINS: Yes, Your Honor.

6 THE COURT: All right. Now, were those given to the
7 Sheriff's Office?

8 MR. HAWKINS: Okay. So, we emailed -- because the
9 Sheriff's Office is his client, I think we gave them to will
10 so there's no direct contact.

11 MR. DAVIDSON: who did y'all send them to?

12 MR. HAWKINS: She's pulling up the sent email.
13 October 27th. Two, two emails back to back.

14 THE COURT: Okay.

15 MR. DAVIDSON: Were they in the orders to take their
16 depositions?

17 THE COURT: It doesn't matter. Let's see -- let me see
18 if -- let me see if we are able to have them transported
19 because that's an issue if you can't get your witnesses
20 here. But let me see if we have the ability to do that.

21 Mr. Davidson, tell me, tell me what you'd like to tell
22 me.

23 MR. DAVIDSON: Your Honor, it -- my -- I'm gonna try to
24 get my thoughts together.

25 As a result of the issues surrounding what was being

1 designated and what was not, and I went through the
2 examination that we did of Mr. Will -- Ard and I was going
3 to designate my examination for plaintiff's counsel and I
4 did it during the break and I, as I said, I apologize for
5 holding it up last night if I'd of known we would of had
6 this issue.

7 I have designated, out of the examination, the, the --
8 six lines -- basically six pages where I want certain lines
9 read or played on the tape. I don't care about having any
10 other examination done by Mr. DeMasters. That's all I want
11 to have played and I was trying to declare -- honestly I was
12 trying to cut down the time taken to go on.

13 Like I do Page 13 Line 6 through 10, Page 13 Line 20
14 through 22, Page 14 Line 10 to 21, Page 15 Line 5 to 7, Page
15 15 Line 12 to 19, Page 16 Line 6 to 12.

16 THE COURT: All right.

17 MR. DAVIDSON: Page 29, 7 to 9. Page 30---

18 THE COURT: All right. Hold on, Mr. Davidson.

19 Did you speak with Mr. Hawkins about those?

20 MR. HAWKINS: I, I told him, when I came back in, can I
21 add this information. I provided it to him. Yeah, we---

22 MR. DAVIDSON: They indicated that, that they had
23 already edited and --.

24 MR. HAWKINS: Yeah, we spent a lot of time here trying
25 to get this ready cause I thought we were going through the

1 deposition for everybody's sake and we spent a lot of time
2 getting it ready to play. And then when we got ready to
3 play it up, he said well, I want this read in and---

4 MR. DAVIDSON: I have---

5 THE COURT: All right. All right. So let me, let
6 me --.

7 MR. DAVIDSON: I'll --.

8 THE COURT: We are dangerously close to not finishing.
9 How many more witnesses do you have?

10 You've got the three from the jail.

11 MR. HAWKINS: I'm considering not calling some of them
12 if, if it will cut down on time now.

13 THE COURT: You've got two videos?

14 MR. HAWKINS: Two videos, Ard---

15 THE COURT: Or---

16 MR. HAWKINS: Erikson.

17 THE COURT: Wait a minute. You may have just one.
18 How, how long is the -- Ard's video?

19 MR. HAWKINS: Our version is probably less than --
20 yeah, less than half an hour. It's---

21 MR. DAVIDSON: It will be less than that if I cut out
22 all my examination and just read what I want and I'll read
23 it.

24 THE COURT: Mr. Wilhite -- if I let Mr. Wilhite's
25 deposition in, and though it is unedited, how long is that

1 one?

2 MR. HAWKINS: I would imagine, by the time we edit Mr.
3 Wilhite's, it will also be less. About half an hour.

4 MR. DAVIDSON: And I've got multiple objections.

5 THE COURT: And after those jail witnesses, who do you
6 have?

7 where are you in your case?

8 MR. HAWKINS: Mr. Owens and his parents. So, Mr.
9 Owens, Mrs. Owens, Otis Owens, Erikson are the in person
10 witnesses I have left besides the inmates.

11 THE COURT: That's six in person and two videos.
12 Is that correct?

13 MR. HAWKINS: Right.

14 THE COURT: Is that what I'm hearing?

15 MR. HAWKINS: Correct. Well it -- did you count
16 Erikson?

17 THE COURT: I did not. That's seven in person and two
18 potential videos.

19 Now, Mr. Davidson, I know he's called a good bit of
20 your witnesses that we had listed.

21 Do you have any estimation?

22 MR. DAVIDSON: I, I may not have any, judge. I may
23 have one.

24 THE COURT: Okay.

25 MR. DAVIDSON: But can I raise one other issue?

1 THE COURT: What's your issue?

2 MR. DAVIDSON: Mr. and Mrs. Owens have been sitting in
3 the courtroom the entire time and we were under an order of
4 sequestration.

5 MR. HAWKINS: We thought -- we made a motion for our
6 case to sequester defense witnesses. You never made a
7 motion.

8 MR. DAVIDSON: It was just a motion to sequester, Your
9 Honor, and it applies across the board to everybody.

10 THE COURT: All right. Mr. Hawkins, editing or, excuse
11 me, adding -- you, you want -- do you want, Mr. Davidson,
12 these, these lines that you were giving us earlier, you want
13 them added in or you want them taken out just so I'm clear?

14 MR. DAVIDSON: Oh.

15 THE COURT: That's not -- Mr. Davidson, the---

16 MR. DAVIDSON: I'm, I'm sorry.

17 THE COURT: ---with regards to this Ard video---

18 MR. DAVIDSON: All I want read, okay---

19 THE COURT: Are the -- are these designations?

20 MR. DAVIDSON: Are those designations. I don't care --
21 hang on. Let me see.

22 THE COURT: You don't want the rest of them read?

23 Do you have an issue with the rest of them being read?

24 MR. DAVIDSON: Yes, Your Honor, cause some of them are
25 just the questions that you would ask during a discovery

1 deposition and I would rather have just my questions and I
2 had proposed that I use --.

3 THE COURT: All right. What I'm trying to determine is
4 whether it is, it is worth the benefit of reediting the
5 video.

6 MR. HAWKINS: We, we offered the possible solutions of
7 either him reading it in the portions he wants or them
8 editing their own version and playing that. We have
9 objections to that too cause he wants to play stuff that
10 talks about Ard filing or not filing grievances, how many
11 times he's been in the detention center, all this
12 unrelated---

13 THE COURT: Is that---

14 MR. HAWKINS: ---stuff.

15 THE COURT: So you wants -- he wants --.

16 MR. HAWKINS: I mean I don't know why -- how many times
17 Ard being in the detention center is related to anything.

18 THE COURT: All right. Well, let me make sure that I
19 understand.

20 He wants to add -- you've got a video?

21 MR. HAWKINS: Yeah, and he wants to add more to it I
22 think.

23 THE COURT: All right.

24 MR. DAVIDSON: I'm, I'm -- Your Honor, I'm trying to
25 delete Page 11 to 32.

1 THE COURT: So you're not trying to add?

2 You're trying to delete?

3 MR. DAVIDSON: I am trying -- I want to delete and just
4 read those pages and lines to the jury.

5 MR. HAWKINS: You just said you want some stuff read on
6 13 that we didn't have in. You want to add to it.

7 MR. DAVIDSON: Your, Your Honor -- now -- okay. There
8 are certain areas they have deleted that I want read. I'm
9 sure one of them is Mr. Ard was convicted of distribution of
10 methamphetamine.

11 THE COURT: Okay. Well now not what the substance is.
12 I'm just trying to understand what you're asking for.

13 MR. DAVIDSON: Yeah, that's, that's it.

14 THE COURT: All right. How long would it take just
15 here -- how long would it take, Mr. Hawkins, to add or
16 edit -- how long will it take to edit?

17 MR. HAWKINS: I, I don't know. I mean we -- I thought
18 we were doing this all voluntary---

19 THE COURT: Sure.

20 MR. HAWKINS: ---while he was in here.

21 THE COURT: Ten minutes, twenty minutes, an hour?

22 MR. HAWKINS: Yeah. He's got -- yeah, 10 or 15
23 minutes. I get -- I bet I don't -- I want to make sure he
24 tells me everything this time so we don't have to do it
25 again.

1 THE COURT: Well --.

2 MR. DAVIDSON: I'll write them down. I'll write them
3 down and give it to him again.

4 THE COURT: Is there an issue with something that he --
5 is there an issue with something that he wishes to have
6 added in?

7 MR. HAWKINS: Yes, Your Honor, and I guess we'd have to
8 go through all of them and he wants to have Mr. Ard talk
9 about how many times he's been in the detention center,
10 whether or not he's filed kiosks -- kiosk grievances that
11 don't relate to this lawsuit. A bunch of stuff that's -- he
12 went on and on about what's relevant in the other video and
13 he wants to add all this stuff that doesn't have anything to
14 do with the lawsuit.

15 MR. DAVIDSON: Your Honor, the question about the kiosk
16 is had he ever filed a grievance. He said no. That's
17 important because he claims he was assaulted by Mr. Gibson.
18 He never filed a grievance about it. I asked the question
19 did you ever miss a sick call. No.

20 THE COURT: Tell me the sections that you want added
21 and tell me the edits you want.

22 MR. DAVIDSON: All right. I'm gonna ask you, Your
23 Honor, I'll go through them like we did before. I want
24 to -- I want to put in the record Page 13 Line 6.

25 THE COURT: Through 10?

1 MR. DAVIDSON: Through 10, yes, ma'am.

2 THE COURT: The next one that you, that you were
3 proposing to add?

4 You want to add that in?

5 MR. DAVIDSON: I want to, I want to have that read.
6 That's it.

7 Okay. Page 13 Line 20 through 22.

8 Next page. Page 14 Line 10 through Line 21.

9 THE COURT: Wait a minute. Why do you want that added?

10 MR. DAVIDSON: Well, it talks about he and Mr. Owens
11 have known each other for a number of years. They went to
12 school together.

13 MR. HAWKINS: Yeah, and he wants to cut out the next
14 part that says so would you consider y'all self close
15 friends and he says no. That doesn't make any sense to read
16 just the part he likes and cut out the rest.

17 MR. DAVIDSON: That's fine. I'll -- let him read it.
18 I'm fine with that.

19 MR. HAWKINS: We don't need any of it, will.

20 THE COURT: All right. What's the next section that
21 you're proposing?

22 MR. DAVIDSON: Line 15 -- I mean -- excuse me. Page 15
23 Line 5 through 7. It talks about how many times he's been
24 at the jail.

25 THE COURT: Why do you want that read?

1 MR. DAVIDSON: Cause it goes to his attitude towards
2 the jail and whether he might be biased against the jail or
3 either the sheriff. He's been locked up 10 times down
4 there.

5 MR. HAWKINS: So, I'll---

6 THE COURT: What's your next --?

7 MR. DAVIDSON: All right. The next one is Line 15 -- I
8 mean -- God knows. Pages---

9 THE COURT: Page 15?

10 MR. DAVIDSON: Yeah, Page 15 Line 12 through 19.

11 THE COURT: Why do you want that read?

12 MR. SWETT: Because he claims he's still hurting but
13 he's never received any medical treatment.

14 MR. HAWKINS: And then you want to cut out the part
15 where he got medicine that comes right after that?

16 He -- he's just cherry picking from the transcript,
17 judge.

18 MR. DAVIDSON: Well, that's -- not (indiscernible). I
19 asked him on Page 16, Line 6 through 12 --.

20 THE COURT: Got it.

21 MR. HAWKINS: We're playing that already.

22 THE COURT: All right. Any other parts?

23 MR. DAVIDSON: Hang on. Two more. Lines---

24 MR. HAWKINS: What page?

25 MR. DAVIDSON: Page 29 Line 7 through 9. He says he

1 never went to sick call and then finally on Page 30 Line 21
2 to 23 where he talks about he pled guilty to distribution of
3 methamphetamine in 2016 and he was given -- well, that
4 doesn't matter. A 10 year sentence. That's it.

5 THE COURT: Mr. Hawkins, here's what I want your team
6 to add. Add Page 13, 6 through 10. Add Page 13, 20 through
7 22, Page 29, 7 through 9, Page 30, 21 through 23. I'm not
8 including the rest of the requested.

9 MR. HAWKINS: Thirty -- I'm sorry, Your Honor.
10 Page 30?

11 THE COURT: Twenty-one through 23.

12 MR. HAWKINS: Thank you, judge.

13 THE COURT: The rest of them I'm not adding. So if
14 your team could get started on that.

15 Do you have it?

16 All right.

17 MR. DAVIDSON: Note our objection, Your Honor. Thank
18 you, ma'am.

19 THE COURT: Thank you, sir. Thank you, Mr. Hawkins.
20 Now --.

21 MR. HAWKINS: And I'm just -- just -- Your Honor, I
22 just want to put my objection about the portions he wants
23 read in. I'm not gonna argue.

24 THE COURT: Certainly.

25 MR. HAWKINS: Just want to put it on the record.

1 THE COURT: Yes, those objections are noted for the
2 record. Thank you, Mr. Hawkins.

3 Before we play this video, once it is edited, are there
4 any issues regarding this video?

5 MR. HAWKINS: Your Honor, I don't think so. I've
6 instructed my team if anything about the constitutionality
7 or second event --

8 THE COURT: All right.

9 MR. HAWKINS: -- somehow comes out, immediately to
10 hit -- cause we had to do it so quickly.

11 THE COURT: Right.

12 MR. HAWKINS: I don't think it is. They're really good
13 but --.

14 THE COURT: All right. And none from you, Mr. Davidson
15 --

16 MR. DAVIDSON: When he starts to play---

17 THE COURT: -- with regard to that video?

18 MR. DAVIDSON: Yeah, based on what I've heard, no, as
19 long as they only play those --

20 THE COURT: I understand.

21 MR. DAVIDSON: -- what sections you allowed me, Your
22 Honor.

23 THE COURT: All right. After this video is played, I
24 will allow the jurors to have lunch and then we will take up
25 all other matters of law during our lunch period.

1 Yes, Mr. Hawkins.

2 MR. HAWKINS: I just, I just want to put on the record
3 that I think it may help speed up the trial, and I just
4 suggest this to the Court, if -- since we sent all the
5 portions we want from Wilhite's deposition this morning, if
6 they can look at that over lunch. Give us -- you know,
7 we'll be working on editing it. I, I just want to utilize
8 everybody's time and try to move forward.

9 THE COURT: All right. Thank you.

10 MR. DAVIDSON: They sent it to me, judge, and, quite
11 honestly, you can send me all kind of stuff about videos and
12 I had no clue. I'll have to get it---

13 THE COURT: Mr. Grimes has a clue.

14 MR. DAVIDSON: I hope so though. Gruier (phonetically)
15 hopefully has. I'll let you look, look at that and see if
16 you can find it.

17 MR. HAWKINS: You want me to try and find it and resend
18 it?

19 THE COURT: Mr. Hawkins, tell me your, your law clerk's
20 name.

21 MR. HAWKINS: Ethan Jedziniak.

22 THE COURT: Jedziniak.

23 MR. HAWKINS: Jedziniak.

24 THE COURT: Thank you.

25 MR. HAWKINS: It's J-E-D---

1 THE COURT: Z-I-N---

2 MR. HAWKINS: ---Z-I-N-I-A-K. Yeah, his, his sister's
3 my law partner. And so I've had to say that name a lot.

4 THE COURT: All right. Very good. I just -- I will
5 not call him cause I -- I'm afraid to pronounce the name.

6 All right. What I can anticipate at lunch, lunch is
7 motions regarding the PREA document. I will tell you the
8 decision that I have made regarding the wilhite deposition
9 and I will give you, at the end of lunch, my decision on the
10 witness sequestration. I'm going to give the jury,
11 obviously, a longer lunch than I will give us so that we can
12 work in their absence.

13 MR. HAWKINS: You want me to go see where they are with
14 the video, judge?

15 THE COURT: Yes.

16 (Pause.)

17 THE COURT: We're off the record.

18 (Pause.)

19 THE COURT: I'm sorry. I want -- I do want to say
20 thank you on the record to our court reporter. She's very
21 gracious.

22 Your team -- let the record reflect that your team
23 was -- that, Mr. Hawkins, that your team was able to edit
24 the video. And so the video is now ready to show to the
25 jury.

1 Is that correct, Mr. Hawkins?

2 MR. HAWKINS: Yes, Your Honor.

3 And, and just for the record, Mr. Davidson is welcome
4 to inspect it or watch it before we watch it in front of the
5 jury. I just want to put that on the record.

6 THE COURT: All right. Thank you.

7 All right. Can you bring the jury in please?

8 (WHEREUPON, the following takes place within the
9 presence of the jury.)

10 THE COURT: All right. Ladies and gentlemen of the
11 jury, at this time we will now resume the trial.

12 Mr. Hawkins.

13 MR. HAWKINS: Thank you, judge.

14 I guess we'll say we'll call Mr.---

15 THE COURT: Yes, please introduce to the jury who you
16 will be calling -- who you -- whose video deposition you
17 will read---

18 MR. HAWKINS: Yes. We will be playing---

19 THE COURT: ---into the record now.

20 MR. HAWKINS: ---the video deposition of Jeremy Ard.

21 Q. Okay. Are you aware of why we're here about what
22 Mr. Owens' case is about?

23 A. I am.

24 Q. Okay. Do you recall a, a employee where you were
25 housed named Timothy Gibson?

1 A. Yes, sir.

2 Q. Okay. And did Timothy Gibson have anything unique
3 about him in the way he, he treated or searched inmates
4 while -- in your experience with him?

5 A. Oh, yes, sir. He was very angry on that day. He
6 thought that there was some guys that had some dice on the
7 rec yard. And when he come down to search us all in he made
8 us all stand out here while, while they got the team to come
9 in and search the whole pod. But I mean he was just real
10 rough. I mean I'm -- to the point where he was, you know,
11 just ramming his hand up between our legs, yanking on us.

12 Q. When you say yanking on you, you mean private area?

13 A. Yes, sir.

14 Q. And did you observe him do that to Mr. Owens?

15 A. Oh, yeah.

16 Q. And did that to you?

17 A. Yes, sir.

18 Q. All right. Did it cause you pain?

19 A. Yes, sir. I've been hurting ever since.

20 Q. Was it clear that it caused Mr. Owens pain?

21 A. Yes, sir.

22 Q. How many people did you see Timothy Gibson do this
23 to?

24 A. It's about, about five of us out there.

25 Q. Okay. All right. And did anybody say anything

1 like you're not supposed to be grabbing our privates?

2 A. Oh, yeah.

3 Q. Okay. What was his response when people would say
4 something to him?

5 A. I didn't do it.

6 Q. Did Mr. Gibson accuse you and some other people of
7 playing dice?

8 A. Yes, sir.

9 Q. All right. Were y'all actually playing dice?

10 A. No, sir.

11 Q. Did he ever find any dice?

12 A. No, sir.

13 Q. Well, did it -- anger -- did it appear to anger Mr.
14 Gibson that he didn't find any dice after he searched y'all?

15 A. Very much so.

16 Q. Okay. Do you think that had something to do with
17 him grabbing y'all and being violent with you?

18 A. I'm sure it was.

19 Q. Did Aiken County or the Aiken County Sheriff's
20 Office ever done anything to stop Mr. Gibson from doing
21 that?

22 A. No, sir. He's been put right back in the same pod
23 with us. A incidence happened when Mr. Owens was in a pod
24 and Gibson was put in the pod and then Gibson noticed that
25 Mr. Owens was in there and he radioed up to the front and

1 said you need to do something with Mr. Owens. He's starting
2 up again and he hadn't, he hadn't said a thing to, to that
3 man.

4 Q. I understand from your testimony that you said he
5 was ramming his hand and he was yanking on you.

6 Just so, so I understand, I don't get too graphic, but
7 what do you mean when he said -- you said he was yanking on
8 you?

9 A. Grabbing the testicles.

10 Q. Okay. He didn't grab the, the shaft or anything,
11 just the testicles?

12 A. Well, he bumped into it.

13 Q. He did.

14 Did he, did he twist it or did he just yank on it?

15 A. Well, there's a little twisting going on.

16 Q. Okay. Did he squeeze it?

17 A. Yes, sir.

18 Q. Okay.

19 MR. DAVIDSON: Your Honor?

20 Q. Did you complain to anybody about that?

21 A. We all complained.

22 MR. DAVIDSON: All this was suppose to be cut out, Your
23 Honor. All I was wanting is the sections I said and that
24 you ruled on that you gave me---

25 THE COURT: All right. Let's sidebar.

1 (WHEREUPON, a bench conference was held out of the
2 hearing of the jury at this time.)

3 THE COURT: Ladies and gentlemen of the jury, I'm going
4 to -- we have a matter of law that we need to take up.

5 At this time your lunch is available. We'll give you
6 your lunch and we will call you back in. We'll probably
7 adjourn for lunch until about 1:45 or so. We will let you
8 know expeditiously and then we'll bring you back in.

9 Thank you.

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

12 THE COURT: All right. Let the record reflect that Mr.
13 Davidson has an objection to --.

14 Mr. Davidson.

15 MR. DAVIDSON: Yes, Your Honor.

16 During the discussions I indicated that the only
17 portions of Mr. DeMasters examination were the pages I
18 outlined, which was Pages 13 Line 6 through 10. I can read
19 them if you want me to.

20 THE COURT: No, I remember very distinctly the ones
21 that I, in fact, have them written, the ones that you
22 specifically wanted added.

23 MR. DAVIDSON: I see.

24 THE COURT: I think the misunderstanding that we're
25 having is that you only wanted those added.

1 MR. DAVIDSON: That's -- and I indicated during the
2 discussion that all I wanted in the, in the -- essentially
3 in the deposition were those questions, that I did not want
4 any of -- other of Mr. DeMasters examination.

5 Now, that's what I wanted. I didn't want all of his
6 examination and I even remembered that I was -- I said to
7 the Court that I was cutting out approximately 11 through
8 32, the majority of those pages of the deposition.

9 THE COURT: You did.

10 MR. DAVIDSON: So, that's what I was of the impression
11 that was gonna happen, that when the examination, like for
12 cross, the pages that I had wanted read in for
13 cross-examination of this witness would be read.

14 Now, this deposition, when it was taken, was like a
15 discovery deposition --

16 THE COURT: Right.

17 MR. DAVIDSON: -- cause we didn't know Mr. Ard was or
18 was not going to be here. So, in that instance in the -- if
19 it were a discovery deposition, we have the right to ask
20 questions that may or may not be relevant or may or may not
21 be---

22 THE COURT: Right.

23 MR. DAVIDSON: Okay. It doesn't mean all those
24 questions come into evidence. If he wants to use this
25 deposition now or as a deposition for trial, then he has to

1 use his direct examination and then I have the right to
2 determine what is my cross-examination just like I would at
3 trial and that's what I have done.

4 MR. HAWKINS: Your Honor, that is not what the rule
5 says. It's Rule 804 Subpart B---

6 MR. DAVIDSON: Of what, what---

7 MR. HAWKINS: Subpart 1.

8 MR. DAVIDSON: 0-4, what's 0-4?

9 THE COURT: He said eight -- you said 804?

10 MR. HAWKINS: Yes, Your Honor, and I'm, I'm looking at
11 it right now. It doesn't say anything about we can't use a
12 portion that was his cross at -- I don't know what he's
13 doing. This is insane.

14 THE COURT: All right. Let me look at it. Let's be
15 respectful. Let me look at this.

16 what are you referencing please, Mr. Hawkins, 804?

17 MR. HAWKINS: 804.

18 THE COURT: What Subsection?

19 MR. HAWKINS: Yes, Your Honor. 804(b)(1), former
20 testimony.

21 There's no part of this rule that says we can't use
22 part of former testimony because it was elicited through
23 cross. We, we went through this ad nauseam and, before he
24 came and said we want this extra stuff added, we went
25 through this in detail, line by line, the whole thing, and

1 we spent so much time editing it to make it conform to the
2 Court's instructions. Then he added more stuff and we edit
3 it to conform with what he wanted and now he's saying that
4 we can't use his cross.

5 I'm, I'm -- and I'm not trying to be disrespectful.
6 It's just we spent so much time on this, Your Honor, and I'm
7 baffled as to what he wants because I'm looking at Rule 804.

8 THE COURT: well, let me say this.

9 Mr. -- I do remember having some confusion, I think
10 everybody does, I had some confusion as to whether he was
11 adding or deleting and we went through a series of
12 questioning as to, as to whether he was adding certain
13 things which he answered yes, and I do remember him stating,
14 stating that the deposition would be shorter because he
15 wanted to also delete.

16 Now, the Court may have misunderstood exactly what he
17 wanted to delete because we then began to focus on what he
18 wanted to add, and I believe that's where some of the issue
19 was coming in. We certainly would of had this discussion or
20 debate, arguments, excuse me, over the, the use of the cross
21 prior to the viewing of the deposition. But I believe we
22 became -- we just began to focus on what was to be added.

23 MR. HAWKINS: And, Your Honor, I think that -- I think
24 this might resolve. But the crux of his argument now is
25 that we can't use certain portions because it's cross. But

1 the rule says, in Subpart 1, it -- it goes through what has
2 to be present. And it says if you've have an opportunity
3 and similar (indiscernible) to develop the testimony by
4 direct, cross, or redirect examination, if it's, if it's
5 been done through any of those means, I think you can play
6 it at trial and it doesn't matter that he did the cross.

7 MR. DAVIDSON: where are you looking?

8 MR. HAWKINS: 804(b).

9 THE COURT: He's on eight -- 804(b), hearsay exception,
10 (1), former testimony. 804(b)(1).

11 MR. HAWKINS: And it just says as long as they've had
12 an, an opportunity to, to cross and redirect and all that,
13 then it doesn't matter who did the cross or who did -- it
14 doesn't say anything about that.

15 THE COURT: All right. I've heard -- I've got your
16 argument. I've got it.

17 Mr. Hawkins, let's give him a chance to locate that and
18 make his argument.

19 MR. HAWKINS: Thank you, judge.

20 THE COURT: Certainly.

21 MR. DAVIDSON: Your Honor, (b), former testimony, and I
22 just want to make sure that I get this right, testimony
23 given as a witness at another hearing, all the same, or a
24 different proceeding or in a deposition taken in compliance
25 with the law in the course of same or another proceeding, if

1 the party against whom the deposition is offered or in a
2 civil actual or preceding a predecessor in interest, had an
3 opportunity or similar motive to develop testimony from
4 direct, cross, redirect. That's talking about if there's a
5 deposition that's less taken -- let's say I show up at in a
6 probate matter, then that matter may be allowed to be used
7 in this court for purposes of impeachment or whatever.

8 Okay. It doesn't deal with the case where you deem it
9 a discover deposition, which would be covered under Rule, I
10 believe, 30, which would be an opportunity for the parties
11 to discover the evidence in this case. And, for that
12 reason, now they want to confirm a discovery deposition into
13 a trial testimony.

14 Well, the fact it's a discovery deposition may mean I
15 may ask questions that absolutely do not have any basis or
16 relevance to this case. I may ask questions about the fact
17 that he and Mr. Wilhite and Mr. Owens or Mr. Ard and Mr.
18 Owens had been friends for 10 years. The, the Court has
19 ruled that doesn't come in.

20 Well, I asked a question at that point is the question
21 that does not come in. He didn't object to it. I've asked
22 that it be put in.

23 So, it's, it's in this instance I have a right, just
24 like I would if Mr. Ard was here, but he's shown that he's
25 unavailable, to cross-examine him on matters that I thought

1 were important. Then the Court could rule whether I was
2 right or wrong to ask the question just like in this
3 instance. I don't want the whole deposition put in because,
4 quite honestly, some of it doesn't need to come in.

5 But it was done in discovery. We asked questions X, Y,
6 and Z. I can't object to my own questions as I'm asking
7 them. I guess I could. It makes no sense to say so and so,
8 so and so, objection, now answer the question and preserve
9 the objections during the taking of the deposition.

10 This was not a deposition that we knew was going to be
11 used at trial cause he had to show here today that Mr. Ard
12 was not available.

13 MR. HAWKINS: Yes, you did. That's why we videotaped
14 it, will. You know that and the --.

15 And, Your Honor, I would point out that the rule
16 mirrors Rule 32. I don't know why he's going to the Rules
17 of Civil Procedure when we're already in trial where the
18 Rules of Evidence govern. But they have known this was a
19 discovery deposition for use at trial. They've known that.
20 They've, they've known that.

21 Moreover, they've known, since we took the deposition,
22 we were gonna use it at trial and that was years ago, they
23 never got us anything about anything they wanted out.
24 Furthermore, the rule says similar or the same proceeding.
25 It doesn't say in probate court although we could use that.

1 This is the same proceeding.

2 A hearing or other proceeding in this, in this matter
3 we are allowed to play. There's no rule anywhere that says
4 we can't play something because it was his cross. He got a
5 chance to look at this. We edited it based on what he
6 wanted. Then we edited it again based on what he wanted the
7 second time and now he's objecting in front of the jury.
8 It's not right, Your Honor.

9 MR. DAVIDSON: Your Honor, this is a hearsay rule, the
10 question whether or not the deposition of Mr. Ard would be
11 hearsay and this (indiscernible) this. If you look at the
12 Rule---

13 MR. HAWKINS: Thirty-two.

14 MR. DAVIDSON: ---804, hearsay exceptions, declarant
15 unavailable. B, hearsay exceptions.

16 what governs the use of depositions at trial is under
17 this rule of 30 -- 32, use of depositions in a court
18 proceeding. Technically he's suppose to submit to me, a day
19 beforehand, excerpts that he wants to use. Not the morning
20 of. He didn't---

21 MR. HAWKINS: And technically you're suppose to let me
22 know 10 days in advance you want a deposition done. But I
23 agreed to try to accommodate you---

24 MR. DAVIDSON: Your Honor?

25 MR. HAWKINS: ---with Bowman.

1 MR. DAVIDSON: Your Honor?

2 THE COURT: Mr. Hawkins, let him finish. I'll hear
3 from you.

4 MR. HAWKINS: Sorry, judge.

5 MR. DAVIDSON: Your Honor, so, in this instance -- and
6 it, quite honestly, he could say it was taken for trial
7 however long ago we took Mr. Ard's deposition. But if
8 Mr. Ard was available and showed up, he could use and
9 testify on the stand and not use his deposition. So, it,
10 it -- you know, I know that all lawyers want to talk about
11 de bene esse depositions.

12 There is no such thing in the rules as a de bene esse
13 deposition. That is the old rules under the evidence
14 statutes and under what, what was referred to in the old
15 days as Copley.

16 Now you use Rule 32 as to when you can use a deposition
17 at trial. If you submit excerpts, you're suppose to submit
18 them to me a day ahead of time.

19 THE COURT: What -- Mr. Hawkins, what is in here -- I'm
20 gonna let you make an argument but just answer this question
21 for me.

22 What is in -- is there a, a good question of, of his
23 cross in your video?

24 MR. HAWKINS: I'm not sure exactly how much. But I do
25 want to put on the record if this is correct, and we're

1 scrambling trying to find stuff, this is a notice of the
2 video deposition of Jeremy Ard for use at trial.

3 MR. DAVIDSON: Your Honor, he couldn't use it at trial
4 if Mr. Ard was available.

5 MR. HAWKINS: We tried to find him. He's not. We
6 handed up an affidavit.

7 MR. DAVIDSON: Can I---

8 MR. HAWKINS: And, and, Your Honor, I want to point
9 that 32 mirrors 804. There's no, there's no basis for
10 whatever he's objecting to.

11 Rule 32 says there's no basis. Rule 804(b)(1) says
12 there's no basis. That deposition notice says there's no
13 basis. I, I don't know why we're wasting time fighting
14 about this because we went through so much time trying to
15 get the video ready for the jury.

16 THE COURT: All right. It's 12:50. We shall take a
17 quick lunch and come back and we'll have all these rulings
18 for you. It is 12:51. I want you-all to come back here at
19 1:45.

20 MR. HAWKINS: Thank you, judge.

21 THE COURT: All right. Court is adjourned until 1:45.
22 (WHEREUPON, Court was in recess for the lunch break.)

23 THE COURT: All right. Thank you. Please be seated.

24 All right. Gentlemen, let me, let me go over a few
25 things with you-all.

1 First thing is that I need to make several rulings.
2 But before I do that, the Court has been put in a very
3 difficult position because the video depositions were not
4 designated a day before pursuant to the rules. And so I've
5 had the -- I've thought about this over lunch and this is
6 what we're going to do, Mr. Hawkins.

7 I'm still going to allow the depositions at this point.
8 However, I know that Mr. Davidson has a number of
9 objections.

10 Is that, is that still true, Mr. Davidson?

11 MR. DAVIDSON: In, in regard to Wilhite---

12 THE COURT: The---

13 MR. DAVIDSON: ---I think we've gone through and -- not
14 Wilhite. And, I think we've gone through and addressed all
15 those, Your Honor.

16 THE COURT: But not Wilhite?

17 MR. DAVIDSON: But not Wilhite.

18 THE COURT: The---

19 MR. DAVIDSON: We've got multiples for that.

20 THE COURT: All right. This is what I'm going to do,
21 Mr. Hawkins, and I am terribly sorry but that -- this is
22 what I believe is the best thing to do because our jury
23 is -- they are the most important people in this courtroom
24 and our jury has had terrible inconvenience. They've been
25 sitting in that room for the good little -- a good bulk of

1 the day. I purchased them lunch because I thought we would
2 continue straight through. That hasn't exactly been the
3 case.

4 what I'm going to do is pause these depositions. I
5 know that we began playing this deposition. However, we
6 will play it tomorrow as well as the deposition of wilhite
7 if I still continue to allow that in.

8 Now, you're going to give your designations to---

9 MR. HAWKINS: We, we have, Your Honor.

10 THE COURT: You've already given them to him?

11 MR. HAWKINS: Yes, Your Honor.

12 THE COURT: All right. And so I know that he has some
13 objections. I don't, I don't think you've had the
14 opportunity to see the objections or to go over them. I
15 know y'all haven't had a chance to talk about them. But
16 you-all can go -- enter into those discussions tonight and
17 we'll see what can be resolved before tomorrow morning.

18 In the morning we'll start at nine o'clock and we'll
19 have about 45 minutes to discuss those objections. So, we
20 will bring this jury in at approximately 10:00AM tomorrow.
21 I will be here at -- wait a minute.

22 (Pause.)

23 THE COURT: We will begin at 9:00AM. Our court
24 reporter is available and I want you two gentlemen in at
25 9:00AM so that we can get those video depositions squared

1 away.

2 Mr. Hawkins, you will have to call the live witnesses
3 now.

4 MR. HAWKINS: Yes, Your Honor.

5 THE COURT: All right. The jail is transporting over
6 your, your witnesses. I don't know the order in which you
7 wish to do that. Erikson is here I believe.

8 MR. DAVIDSON: We called him to make sure he was on his
9 way, Your Honor---

10 THE COURT: Okay.

11 MR. DAVIDSON: ---and I've got him. Mr. Gibson's
12 outside.

13 THE COURT: Okay.

14 MR. DAVIDSON: As soon as sees him, he's gonna come get
15 me so I can, I can talk to him and let him know what's going
16 on and have him on standby.

17 THE COURT: All right. So you plan to call Erikson,
18 the three Owens, the Owens (indiscernible).

19 Is that right?

20 MR. HAWKINS: Yes, Your Honor.

21 THE COURT: And then your three --

22 MR. HAWKINS: Inmates.

23 THE COURT: -- inmates.

24 All right.

25 MR. HAWKINS: Well, I, I may not even call all three of

1 them. I have to see. I have to wait and see when, when
2 it's time. I may just call one of them or none of them or
3 all of them.

4 THE COURT: All right. So while we are waiting on
5 Erikson to get here, you know that Mr. Davidson has raised
6 an issue. I think you're aware that over at the sidebar Mr.
7 Davidson raised the issue of the PREA document.

8 MR. HAWKINS: The -- yeah, the one we've been talking
9 about.

10 THE COURT: That's right.

11 Mr. Davidson, would you like to present your, your
12 argument on---

13 MR. DAVIDSON: I can.

14 THE COURT: ---on that matter?

15 MR. DAVIDSON: I can, Your Honor.

16 Your Honor, the document that was -- that is in
17 question is -- was published in the deposition of Mr. --
18 Lieutenant Bowers (sic) and I'll -- let me give the page and
19 line for the record. I apologize, Your Honor. I thought I
20 had it. Page 25.

21 All right. Page 25, Your Honor, for the record, Line
22 10 I asked him to publish the document in question.
23 Obviously one of their arguments is plaintiff's counsel has
24 opened the door in regard to the investigation and the items
25 that were done in the investigation and not called

1 Mr. Bowman findings.

2 The next, Your Honor, is that this document, which was
3 published into the record, is a business record of the
4 Sheriff's Department and, therefore, would be an exception
5 to the hearsay rule and would, therefore, come in.

6 The other, Your Honor, is, is that it would be -- hang
7 on. Let me find the other numbers. I never can remember
8 hearsay numbers. I know it's 803. It would also be a
9 record of regularly conducted activity and it would also be
10 a public record or report that was done by the department.
11 So, it's under two exceptions to the hearsay rule.

12 Further, Your Honor, Officer Bowman -- Lieutenant
13 Bowman prepared the report and, therefore, it would be in
14 his purview to be able to publish that report similar to
15 when a doctor reviews and reads his medical records before
16 the jury where he is written his findings upon an
17 examination.

18 It's our position that the report should come in with
19 the -- based on all of those grounds, Your Honor.

20 THE COURT: Thank you.

21 MR. DAVIDSON: Thank you, Your Honor.

22 THE COURT: I want you to, Mr. Davidson, really get
23 into a discussion regarding him opening the door. I made a
24 ruling.

25 MR. DAVIDSON: I know. I just raised it.

1 THE COURT: Certainly. Certainly. And I -- and I'm,
2 I'm okay with that.

3 But I made that ruling regarding the unavailability,
4 whether or not he was considered unavailable or not. So I'm
5 more interested in the argument pertaining to Mr. Hawkins
6 opening the door. In other words, allowing a document in.

7 MR. HAWKINS: Sure, Your Honor.

8 The only thing that can open the door is if I asked
9 somebody or talked about what the video showed. I've talked
10 about the fact that we don't know what it shows because they
11 don't have it. They've spoliated it. So, nobody's talked
12 about what the video showed.

13 what -- I have, I have elicited testimony from people
14 who never saw the video who said yes, that would of been --
15 the search would of been captured. But nobody is testifying
16 about what they've observed on the video. That was ruled to
17 be hearsay. It's hearsay within hearsay actually and
18 nobody's opened the door to any of that.

19 He's made that open the door argument I, I think eight
20 times or something like that. I don't think anything has
21 changed in the course of the trial that -- I don't think the
22 Court needs to change its ruling. There's been nothing that
23 opened the door to like somebody saying yeah, I saw the
24 video and it was egregious what they did to him. That would
25 of opened the door for, you know, impeachment or something

1 like that. But under the Best Evidence Rule, a, a, a
2 photograph like that that's described in another hearsay
3 document is hearsay on hearsay and it can't come in.

4 There's also, as far as the business record argument
5 goes, no identifying information whatsoever. There's no
6 date. There's no signature. All it is is six lines typed
7 at the top of a page that was just printed out of a printer.
8 We don't know when it was created. We don't know anything
9 about it.

10 And then as to the video, he keeps bringing up this
11 x-ray example that's not analogous. Bowman's not the author
12 of that video. He didn't make it. He didn't create it. He
13 viewed it and then he tried to testify about what he saw,
14 which is hearsay in a, in a hearsay document.

15 So, he didn't preserve it. He doesn't get to spoliage
16 it and then describe it. That -- that's counter to, one,
17 public policy, policy, two, the rules of evidence and,
18 three, the Best Evidence Rule in general.

19 THE COURT: All right.

20 MR. DAVIDSON: May I?

21 THE COURT: Certainly respond, Mr. --

22 MR. DAVIDSON: Then what I believe---

23 THE COURT: -- Mr. Davidson.

24 MR. DAVIDSON: ---in his deposition, Your Honor, he
25 testified that he did this report on the computer on or

1 around the -- February the 6th. He also indicated he never
2 printed the, the report so as to sign it. It was just
3 basically left on his computer.

4 The other point, Your Honor, is the only thing in this
5 report that talks about the video, it says he watched it.
6 The fact that, that a radiological technician takes an x-ray
7 and then gives it to the doctor to read doesn't mean that
8 the x-ray is hearsay or that the doctor's testimony is
9 inappropriate. That would be similar to what we have here.

10 This, this idea that you can -- and I'm, and I'm gonna
11 go to the open door one more time and I just want to make
12 this sure for the record. The fact that they have brought
13 up that there was nothing on the tape or there was something
14 on the tape or there might have been something on the tape,
15 it is our position that he looked at it. He's testified in
16 the past that there was nothing on it. It didn't show the
17 pat down. It didn't show the area, and, therefore, it was
18 written over.

19 It would be very much like you take a picture and
20 nothing comes out, okay, and they decided they wouldn't keep
21 it. So he's gone into all those areas establishing what he
22 believes is spoliation. Yet, in the record, it's clear that
23 they didn't show anything and that's why it was used -- it
24 was essentially written over.

25 Now, whether that's spoliation or not, that's an

1 argument we'll have later. But we believe the report should
2 come in since it deals with what he found in his findings in
3 regard to the PREA investigation and that's it, Your Honor.

4 THE COURT: All right. Thank you.

5 MR. HAWKINS: Your Honor, if that, if that hearsay
6 document comes in, what he's essentially gonna do with it is
7 say to the jury, the one person who saw it said there was
8 nothing there, and then I don't have that person here to
9 cross. He, he didn't come to trial. He's talking about
10 something he didn't create. He's talking about a hearsay
11 within hearsay document. I mean I -- I'm, I'm trying to --
12 because we're arguing about so much, I'm trying to keep it
13 short---

14 THE COURT: Well, you can---

15 MR. HAWKINS: ---but I just---

16 THE COURT: I understand---

17 MR. HAWKINS: Okay.

18 THE COURT: ---your argument. You've made it.

19 MR. HAWKINS: I'm sorry, Your Honor.

20 THE COURT: No, you're fine, Mr. Hawkins. But that's
21 all the argument I need. I, I understand your point.

22 MR. HAWKINS: And I, I just would add to the record
23 that that -- nobody's testified about seeing the video and
24 it showing something counter to what his hearsay witness
25 would say.

1 THE COURT: I understand.

2 MR. HAWKINS: So, there's been no door opened.

3 THE COURT: So noted for the record.

4 All right. Both parties have made their argument.

5 They are both reflected in the record. I am going to rule
6 that the document does remain out at this time and do not
7 find that he's opened the door. So to my prior ruling that
8 this is hearsay remains.

9 Is Mr. Erikson here?

10 MR. DAVIDSON: I'll go look, Your Honor.

11 THE COURT: He's here. Okay.

12 MR. DAVIDSON: I'll go look.

13 THE COURT: All right. Would you like a minute, Mr.
14 Davidson?

15 MR. DAVIDSON: Yeah, I'm gonna go get him, Your Honor,
16 if that's who he wants first.

17 MR. HAWKINS: I, I think that's who we have to -- if,
18 if the Court's instructed me to call eye witnesses, I think
19 that's what we have to do, Your Honor.

20 THE COURT: You want, you want Erikson first?

21 MR. HAWKINS: Of if he's -- if he's here. If he's not
22 here, I can put Otis' parents up.

23 THE COURT: All right. Let's, let's -- they indicate
24 he's here. So we'll go with that.

25 MR. HAWKINS: Okay.

1 THE COURT: Let's give Mr. Davidson just a minute or
2 so.

3 (Pause.)

4 MR. DAVIDSON: Excuse me, Your Honor. The officer is
5 getting him.

6 (Pause.)

7 THE COURT: All right. Is this Mr. Erikson?

8 MR. ERIKSON: Yes, ma'am.

9 MR. DAVIDSON: Yes.

10 THE COURT: Very good. Thank you, sir.

11 All right. Can you bring the jury in please?

12 Thank you.

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

15 THE COURT: All right. Thank you.

16 Ladies and gentlemen of the jury, was lunch okay?

17 (WHEREUPON, jurors respond in the affirmative.)

18 THE COURT: You want something different tomorrow?

19 THE JUROR: Yes, ma'am, we do.

20 THE COURT: well, we know the jury's awake. So all
21 right. I think our only other option, in all honesty, is
22 pizza.

23 Is that all right?

24 (WHEREUPON, the jurors nod affirmatively.)

25 THE COURT: we will figure it out.

1 If not, just take that as a warning which means to
2 pack. We have refrigerators, and if that's not what you
3 want, we may need to pack -- that's not what you want, is
4 it?

5 (WHEREUPON, there was no audible response.)

6 THE COURT: I'm talking to you. Yes.

7 THE JUROR: As long as it's cheese. No meat.

8 THE COURT: We'll get you some cheese. No meat. No
9 meat for you.

10 Okay. All right. All right. So at this time we will
11 resume the trial.

12 Mr. Hawkins, your next witness, sir.

13 MR. HAWKINS: Thank you, Your Honor.

14 Before I call him, would it -- you probably already
15 addressed this. Would you -- would it be all right to give
16 just an instruction on why we are, are stopping and we're
17 gonna -- they're gonna hear the rest of that testimony
18 tomorrow.

19 THE COURT: I certainly have no issue doing that.

20 Now, before the jury was released for lunch, you-all --
21 we began to watch a video deposition. We've determined
22 that, in the essence of time, we will hear those arguments
23 outside of your presence and we will continue to call our
24 live witnesses so that we do not delay you-all any longer or
25 force you to sit in that jury room.

1 | And so we are moving forward a bit out of order.

2 | However, it's still all pertinent information.

3 All right. So, I will instruct Mr. Hawkins to call his
4 next witness.

5 MR. HAWKINS: Your Honor, we would call Christopher
6 Erikson to the stand.

7 THE CLERK: Place your left-hand on the Bible. Raise
8 your right-hand.

9 CHRISTOPHER ERIKSON, being first
10 duly sworn, testified as follows:

11 THE CLERK: Please take your seat in the witness box.
12 State your full name for the court.

13 THE WITNESS: My name is Christopher Robert Erikson.

14 | DIRECT EXAMINATION

15 | BY MR. HAWKINS:

16 | Q. Mr. Erikson, how are you?

17 | A. I'm good, sir, and yourself?

18 Q. I'm good. Thank you for, for coming in. We appreciate
19 it.

20 I'm gonna ask you some questions about the
21 January 25th, 2017, search related to a lawsuit that
22 involves Mr. Gibson, the Sheriff's Office.

23 | You -- are you aware of that lawsuit?

24 | A. Yes, sir.

25 Q. Okay. Do you know anything about the search that

1 happened on January 25th?

2 A. I was present for the search.

3 Q. Okay. And has anybody -- did, did any of the people
4 there at the search accuse you of, of any wrongdoing or
5 anything like that?

6 A. At the time, no, sir.

7 Q. Okay. Did, did you observe Timothy Gibson do a search
8 on some people?

9 A. Yes, sir.

10 Q. Did you, did you -- did anybody ever complain about the
11 way Mr. Gibson did the search at the time he was searching
12 people?

13 A. Yes.

14 Q. Okay. Who complained?

15 A. Mr. Owens and Mr. Wilhite had complaints.

16 Q. Did Mr. Ard have any complaints?

17 A. Not to my knowledge. Not to my recollection.

18 Q. Okay. And so do you remember if Mr. Brockington
19 complained at all?

20 A. No, sir, the only ones that were verbal -- highly
21 verbal that I can remember were Owens and Wilhite.

22 Q. And what -- what did they complain about?

23 A. There are certain times, when searching someone at the
24 detention center, that if someone does a proper search that
25 an inmate may be surprised because sometimes there are

1 deputies that may not do a proper search. So, they may have
2 become accustomed to a certain way of someone searching, and
3 when someone does a proper search, they may be like hey,
4 what are you doing and those were the types of comments that
5 were made by Mr. Owens and Mr. Wilhite.

6 Not specifically to quote them but along those lines.
7 They were like hey, you know, what are you doing, watch it,
8 to that effect.

9 Q. Okay. So, it's your testimony that neither of those
10 gentleman said you hurt me or, or became angry but rather
11 that they just said hey, what are you doing?

12 A. No. At no time did I observe either inmate at the time
13 state any -- what would the word be?

14 That they were injured or that anything hurt. Just
15 they expressed a -- just a surprise. Like surprised.

16 Q. Did, did either one of them look at you and say do you
17 see what this man's doing to me?

18 Do you recall that?

19 A. I believe -- I don't remember exactly what they said
20 but they did complain to me---

21 Q. All right.

22 A. ---while, you know, why he was searching like that or
23 they, they had complaints. But I -- to my recollection, I
24 don't remember exactly what their complaints were. I do
25 remember though it was not of actual physical harm.

1 Q. Okay. Are you and Mr. Gibson still friends?

2 A. Honestly I never considered Mr. Gibson my friend. I've
3 always considered him a co-worker.

4 Q. Okay.

5 A. I've never spoken to him outside of work at any given
6 time when I did work with him or afterwards.

7 Q. Were y'all, we're y'all laughing and cutting up with
8 each other right outside here yesterday afternoon?

9 A. We spoke briefly, yeah.

10 Q. And were y'all laughing and cutting up?

11 A. Yes.

12 Q. Okay. And do you have his cellphone number in your
13 phone?

14 A. I do not.

15 Q. You don't have his cellphone number saved in your
16 phone?

17 A. No, I do not.

18 Q. Y'all've never texted or, or anything like that?

19 A. No.

20 Q. Okay. At the time when you worked at the detention
21 center, did you generally follow the policy and rules?

22 A. I always followed policy and rules to what I believed
23 them -- what I understood them to be.

24 Q. Okay. Were you, were you reprimanded for letting an
25 inmate out of jail too early?

Christopher Erikson - Direct examination
By Mr. Hawkins

1 A. I was.

2 Q. Okay. And letting an inmate out of jail too early
3 would be against policy and rules?

4 A. That is correct, sir.

5 Q. Okay. Were you also reprimanded for having a cussing,
6 a cussing match in the middle of the lobby and saying F you
7 and throwing a book over a counter?

8 A. I do not recall that incident.

9 Q. Have you ever had any anger issues?

10 A. At some point in my life, yes.

11 Q. Okay. I'm gonna show you a corrective action document.
12 If you would, just read -- start reading right here and
13 read that highlighted portion out, out loud for the jury
14 please.

15 A. Sergeant Erikson became extremely irate and yelled at
16 Deputy Hess and said fuck you, Hess. I do have a daughter.
17 He then walked out of intake and threw the keys over the
18 booking counter and they landed on a folder in front of
19 Deputy Hess at the booking desk as he exited. Further down
20 highlighted, Sergeant Erikson will be counseled on the
21 importance of being professional at all times and how his
22 actions were inappropriate for a supervisor. He will also
23 be counseled on how he needs to better control his emotions
24 when having a conversation with an employee.

25 Q. Thank you, sir.

1 And that was -- the Defendant's Bates Number
2 1012-F-0006.

3 And now, to, to your credit, at some point you did take
4 responsibility. You say, as a supervisor, I take full
5 responsibility for my actions of signing off on the release.
6 That's the release too early. I do believe more training
7 should be provided for all supervisors to better understand
8 sentencing sheets and discharge documents.

9 Do you remember writing that document?

10 A. I do, sir, and when it comes to sentencing sheets and
11 releasing documents, they are sometimes very complicated to
12 read---

13 Q. Yes, sir.

14 A. ---and comprehend.

15 Q. Yes, sir.

16 A. And there was a misunderstanding on my part---

17 Q. Okay.

18 A. ---as to whether or not that inmate should be released
19 and it was my belief that they should be released.

20 Q. Yes, sir.

21 Is it fair to say, for the jury, that more training
22 might be a good idea in general down at the detention
23 center?

24 A. I always believe that training is a good idea. If
25 you're not learning something new everyday then you're doing

1 something wrong.

2 Q. Okay. I'm gonna ask you a few questions that I had
3 previously asked Mr. Gibson.

4 Are you -- what's required for a sexual assault abuse
5 allegation?

6 Is there a -- is there an immediate investigation
7 required by PREA?

8 A. To my knowledge there is a PREA investigation that is
9 required.

10 Q. Okay. And from your time in the detention center,
11 during that investigation, as required by the Prison Rape
12 Elimination Act, should the detention center or the
13 Sheriff's Office gather all evidence including video
14 evidence and recorded statements by victims, aggressors, or
15 bystanders?

16 A. It's my personal belief that I would think that would
17 be common.

18 Q. And is that in -- and is that required by PREA to your
19 knowledge?

20 A. To my knowledge.

21 Q. Okay.

22 A. Then, again, it's been a couple years since I've been a
23 sheriff's deputy.

24 Q. You don't work in law enforcement anymore?

25 A. No, sir, I do not.

1 Q. Okay. And I'm, and I'm not trying to embarrass you or
2 anything like that. It's just that the issue we're talking
3 about from reporting it, and I, I promise we'll be done with
4 this, I, I won't call you back and testify anymore, did you
5 get terminated for pulling a gun on somebody in an Outback
6 Steakhouse parking lot?

7 A. I was terminated because I was falsely accused of a
8 crime. Aiken City did no investigation. They took the
9 statements of the alleged victims and immediately issued a
10 warrant for my arrest, again, without interviewing any
11 witnesses to include three of them that were there that my
12 lawyer knows of. And it is the policy of the Aiken County
13 Sheriff's Office to terminate any employee that is had
14 charges filed against them and that comes in the backdoor of
15 that detention center.

16 So, therefore, I was fired because of policy. My case
17 was later dismissed and, to clarify, I never pulled a
18 firearm.

19 Q. They didn't do an investigation right away, did they?

20 A. No, they did not.

21 Q. That hurt you, didn't it?

22 A. It did. I still have PTSD from, from that incident to
23 this day.

24 Q. Do you have any opinion as to how my client might feel
25 for a botched investigation for him to have with the

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1 Sheriff's Office --

2 MR. DAVIDSON: Objection as to form.

3 Q. -- and to the sexual assault allegation?

4 THE COURT: Please rephrase the question.

5 MR. HAWKINS: Yes, Your Honor.

6 Having gone through something like this, and being the
7 victim, I'll say the victim, of an agency not doing a proper
8 investigation, and you being harmed by that, can you see how
9 my client would also be upset that nobody took his sexual
10 assault allegation seriously?

11 MR. DAVIDSON: Object to the form.

12 Q. You can answer the question---

13 THE COURT: I'm---

14 Q. ---unless you're instructed not to.

15 A. Okay.

16 THE COURT: He's not to, he's not to answer. I'm going
17 to---

18 MR. HAWKINS: I apologize, Your Honor.

19 THE COURT: ---sustain. It's okay. That is normally
20 the procedure.

21 I am going to sustain that objection. Excuse me.

22 Q. Is it important -- if something is reported that
23 involves either a potential firearm or an alleged sexual
24 assault allegation, is it important to do a thorough
25 investigation whether PREA's involved or not?

1 A. I believe so, yes.

2 Q. Okay. And is it important for a sexual assault
3 allegation to gather all evidence, documentary evidence,
4 video evidence, eye witness accounts, everything, so that
5 the allegation of sexual assault can be properly examined?

6 Is that important?

7 A. I believe that's important in any case.

8 Q. Do you have any idea of why the Sheriff's Office did
9 not retain a video of a, of a search that we were talking
10 about earlier?

11 Do you have any knowledge about that?

12 A. I do not know.

13 Q. You wouldn't have been -- I know you haven't seen the
14 video but you would have been captured on the video at some
15 point, correct?

16 A. That's correct.

17 Q. Okay. And those cameras, those cameras that spin
18 around like that, have you ever been in -- have you ever
19 been in the room where the monitors are that show what that
20 camera can see?

21 A. Yes.

22 Q. Have you seen someone use a joystick to stop and start
23 when that camera moves?

24 A. Yes, you can do that.

25 Q. And have you seen someone zoom in and out with that

1 joystick?

2 A. Yes, you can do that.

3 Q. I'm sorry.

4 Do you know what this is?

5 A. That's a housing unit officer's desk.

6 Q. Do you know if that's Otis Owens?

7 A. I don't know a hundred percent. I would say my
8 assumption.

9 Q. Okay. Let me -- oh, I'm sorry.

10 Were you finished?

11 A. It's his build. It's his hairline. But I couldn't say
12 a hundred percent whether it was him or not.

13 Q. Okay. This right here where this says auto pan, that
14 means that the -- that means that it -- it's taken on the
15 camera that it's on auto pan, pan?

16 That means spin, correct?

17 A. To my recollection, yes.

18 Q. And when an inmate was doing something -- from your
19 experience in the detention center, when an inmate's doing
20 something that the detention center might want footage of,
21 the detention has no problem stopping that camera, zooming
22 in, and stopping that camera for as long as it needs to,
23 correct?

24 A. The camera I believe does time out and goes back to
25 auto pan at some point.

1 Q. No, I'm talking about in -- when there's somebody using
2 the joystick. They say hey, there's Otis. Look, he's using
3 the kiosk improperly. They zoom in.

4 They can do that as long as they want, right?

5 A. You could but you couldn't -- you wouldn't be able to
6 see what he's doing on the kiosk.

7 Q. Well, my point, Mr. Erikson, is that we been talking
8 about this video the whole trial and we've been talking
9 about why it was deleted, why some people made grievances
10 while it still existed, while that it was up to 90 days,
11 after the event, but nobody did anything to preserve the
12 footage and my point is that I want to establish, while this
13 search was going on, and these men were having whatever was
14 done to them, the movement was, was -- like this camera
15 here, the movement was visible to whoever was using that
16 joystick and they could of stopped, probably did, did,
17 zoomed in and caught the whole search on camera?

18 MR. DAVIDSON: Objection.

19 Q. That could of been done, right?

20 MR. DAVIDSON: Object---

21 THE COURT: What's the basis of your objection?

22 MR. HAWKINS: Beg the --.

23 THE COURT: I'm sorry, Mr. Davidson.

24 What's the basis of your objection?

25 MR. DAVIDSON: Oh, he said probably did stop. There's

1 no evidence one way or the other of that, Your Honor. He
2 can't---

3 MR. HAWKINS: Okay. I withdraw that part of the
4 question.

5 THE COURT: All right. That part is withdrawn.

6 Q. That camera, that camera, whoever was sitting at that
7 joystick and these men were getting searched, at some point,
8 cause this took more than a minute, that camera panned
9 around to where these men were getting searched, right?

10 A. It may have. I would have no way of knowing.

11 Q. And the people that were sitting at that joystick
12 watching whatever's going on had the ability to zoom in and
13 stop the camera from your experience, right?

14 A. They could have.

15 Q. Okay. But, again, we don't know what's on that video
16 cause it's gone, right?

17 A. I have no idea what -- where the video is or --.

18 Q. No, but I mean -- okay. That brings up an int -- an
19 interesting point. I'm gonna ask you a couple of questions
20 from PREA. If you don't know or just stop me if I ask you a
21 bad question.

22 A. Okay.

23 Q. There was suppose to be an interview done cause there
24 was a sexual assault allegation.

25 We agree on that, right?

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1 A. Yes.

2 Q. Okay. And you were an eye witness at least some of
3 what happened cause you were there during the search, right?

4 A. I was there for the search.

5 Q. Nobody, nobody came to you and said we're gonna sit
6 down and do a recorded interview, did they?

7 A. It was five years ago. So, to my recollection, I can't
8 remember if I was interviewed right then or if I was
9 interviewed afterward like days later or I couldn't, I
10 couldn't speak to a timeframe or --.

11 Q. I asked Mr. Gibson directly during his deposition and
12 during this trial, I said did anybody come to you during
13 this investigation and say pointblank did you grab these men
14 by the testicles---

15 MR. DAVIDSON: Your Honor?

16 Q. ---and he said no, nobody ever said that. So, I want
17 to ask you---

18 THE COURT: Do you have an objection?

19 MR. DAVIDSON: Yes, Your Honor.

20 THE COURT: What is it?

21 MR. DAVIDSON: Pitting one witness against the other
22 one. Improper question.

23 THE COURT: I'm gonna sustain.

24 Please rephrase your question.

25 MR. HAWKINS: Sure, Your Honor.

1 Did anybody ever come to you pointblank and say did you
2 see Mr. Gibson grab these mens' testicles?

3 Did anybody ever take the time to do that?

4 A. I believe it was asked. But, again, I can't speak to
5 the timeframe of when it was asked. I know I was asked to
6 write a statement as to the events and I can't remember if
7 that was once I learned that Mr. Owens had filed a lawsuit
8 or if it was just after. Again, it was five years ago. So
9 I don't, I don't remember the timeframe.

10 Q. There's a statement by you somewhere, a written
11 statement?

12 A. I, I provided a statement to who I believe was the, the
13 local -- the counsel.

14 Q. Oh, you went and talked to Will at his office or, or
15 you talked with Will or something?

16 A. At some point. Someone advised me---

17 Q. All right.

18 A. ---I needed to write a statement.

19 Q. Oh, okay. All right. I got you.

20 Is that like an affidavit or something maybe?

21 A. Yes, I don't know what it---

22 Q. Oh, okay.

23 A. ---what it specifically was called.

24 Q. I thought for a minute you were telling me that, during
25 the sexual assault investigation, somebody came to you and

1 got a statement about that but that's not what you're
2 saying?

3 A. The only statement I recall writing was for --

4 Q. For the Sheriff Office's lawyer?

5 A. Yes.

6 Q. Okay. All right. Fair enough.

7 And there -- was there another issue with an early
8 release on a Johnson where he was released -- he was never
9 sent to the Department of Corrections where he was suppose
10 to go?

11 Do you -- and I'll hand you a document.

12 A. To my knowledge, this is the same incident you had
13 mentioned earlier of the inmate released early.

14 Q. I thought there were two different instances.

15 Is this the same one?

16 A. I believe this is the only incident I had and he was
17 recovered the very next day.

18 Q. Okay.

19 A. But even though the Sheriff's Office issued this to me,
20 there were inconsistencies on the paperwork that showed it
21 to be confusing. One could of interpreted it one way or
22 another---

23 Q. Okay.

24 A. ---because there was some -- there was a stamp that was
25 left out.

1 Q. who, who did the paperwork, the Sheriff's Office?

2 A. It would of been the Court. There was some stamp or
3 something that was left out and it was even told to me that
4 the -- it was an honest mistake that some -- you know, it's
5 very complicated to read and --.

6 Q. Was there an issue where you were reprimanded because
7 you failed to serve warrants on individuals before they went
8 to afternoon bond court?

9 Do you recall that?

10 A. I don't specifically recall it.

11 (Pause.)

12 A. Yes, I recall this incident.

13 Q. Okay. And then -- I'm sorry.

14 And then was there another incident where you were
15 counseled because -- and I guess that's a copy of a
16 discipline. It's not a reprimand but it's a lighter kind of
17 disciplining and counseling?

18 A. It's a counseling to make you aware that you've, you've
19 done something wrong and you need to be mindful of it and
20 make sure you make corrections.

21 Q. Okay. And this one's where you did not properly check
22 to see if there were active warrants for a guy named
23 Herarra.

24 Do you remember that one?

25 A. Yes, sir, I remember this.

1 Q. Okay.

2 A. The person specifically said that they had warrants
3 with a specific agency and I checked that agency and they
4 had no warrants with that agency, and I was counseled
5 because it was found that they had warrants but with a
6 different agency and I had only checked the agency that the
7 person believed they had warrants with.

8 Q. Okay. So, you, you remember all these disciplines now
9 that I've shown you these documents?

10 A. Yes, as you're -- you show me the documents, it helps
11 me remember a little bit better.

12 Q. Fair enough.

13 Did any -- has anybody made you aware or do you know,
14 from working in the facility at the time, that the PREA
15 investigation, the sexual assault allegation that was
16 investigated, took less than one hour or about one hour?

17 Has anybody made you aware of that?

18 A. I've heard it talked about as this trial has gone on---

19 Q. Okay.

20 A. ---that you've made a, you've made a point that that---

21 Q. Yes, sir.

22 A. ---that's what's allegedly happened.

23 Q. Yes, sir.

24 A. But other than that, I don't -- I never knew anything
25 about the investigation, how long it took or --.

1 Q. Okay. Given the, the, the policy violations of -- and
2 I'm not -- don't mean to put you on the spot. It's just
3 I'm, I'm trying to make a point for the jury.

4 Given the policy violations that we've seen with your
5 employment there at the Sheriff's Office, and given the
6 policy violations we've seen in this case, is it fair to say
7 that policy violations are fairly common at the detention
8 center with the Sheriff's Office?

9 A. I think what's fairly common is everybody makes
10 mistakes and the Sheriff's Office holds everybody
11 accountable --

12 Q. Okay.

13 A. -- whether you're a good deputy, bad deputy. They hold
14 everybody accountable and they---

15 Q. Right.

16 A. ---take every action to correct people's mistakes.

17 Q. Okay.

18 A. A lot of those mistakes were made when I first became a
19 sergeant.

20 Q. Yes, sir.

21 A. So I was inexperienced in that position and still
22 learning. So, a lot of those counselings and whatnot were
23 based on I was new to the position and still learning and
24 they wanted to make sure that I didn't make those mistakes
25 again.

1 Q. Okay. And so you didn't see the actual grabbing of the
2 testicle?

3 A. No, sir, I never saw Deputy Gibson grab anyone's
4 testicles, no.

5 Q. Okay. Could you see -- could you see Gibson's hand on
6 Otis' groin?

7 Do you remember seeing that?

8 A. The only thing I could see that it -- was his hand was
9 in-between his legs performing the pat search or---

10 Q. You're, you're---

11 A. ---work---

12 Q. You're, you're holding your hand up like this like a
13 blade?

14 A. His hands were -- one hand on both sides of his legs.

15 Q. Okay. You didn't see the part where he was between his
16 legs?

17 A. No, I was -- if you want to consider it the position of
18 a clock, if he was facing twelve o'clock, I was at a nine
19 o'clock position his -- from him --

20 Q. Okay.

21 A. -- to me.

22 Q. So you, you didn't see his hand when it was on Otis'
23 groin, right?

24 A. No, his hand would not have been visible when it was in
25 that region.

1 Q. But what you testified for sure is that Otis and
2 Wilhite, at least those two, were unhappy with the search
3 and they complained to you?

4 A. They did.

5 Q. Did you ever talk to Gibson about, about what they said
6 or about the allegation?

7 A. I did not, not. Not -- no, I mean --.

8 Q. Okay. Did you have a personal meeting with some of the
9 gentlemen who were injured later that night at your desk or
10 at a desk?

11 A. If I recall, this incident happened during the day.

12 Q. Yes, but that -- later that night. Well, that's an
13 interesting point. So, defense witnesses say ten o'clock.
14 We say it's the afternoon that it happened.

15 what's your recollect -- what's your recollection?

16 A. I've -- my recollection is that I believe it was during
17 the day in the afternoon.

18 Q. In the afternoon.

19 So that was in -- does between 1:00 and 4:00 sound
20 fairly right?

21 I mean I know that's a three hour time span but does
22 that sound fair?

23 A. Again, I, I thought it was during the day and my shift
24 was between seven o'clock in the morning and seven o'clock
25 at night.

1 Q. Okay.

2 A. So anywhere between that timeframe is what I would
3 assume or recollect that it may of happened.

4 Q. Okay. You don't have an opinion about the morning or
5 afternoon?

6 You said it happened in the daytime?

7 A. I believe it was the afternoon.

8 Q. Okay. All right. Did, did wilhite and Owens -- the
9 event happens in the afternoon. That -- the 25th, right?

10 A. Uh-huh.

11 Q. Is that a yes?

12 A. Yes.

13 Q. And then later that night at 9:00 or 10:00PM or, or
14 sometime a few hours later, did, did you have a meeting --
15 well, they did their, their grievance at 10:00. So maybe
16 the grievance. But some time that night they, they had a
17 meeting with you at the desk and talked about the event.

18 Do you recall that?

19 A. It -- I wouldn't have been there if it was at night.
20 My shift would of ended at 7:00PM.

21 Q. So, so it could of been -- if, if it was night, it was
22 January. So it would get dark at this 5:30 or so -- or
23 5:45. So, it would of been some time between dark and 7:00.

24 Is that fair to say?

25 A. If, if it -- I, I don't recall a meeting.

1 Q. Okay. You don't recall meeting them?

2 A. I don't recall a specific meeting like hey, guys, come
3 up to the desk and talk to me about this or them coming up
4 and saying we need to talk to you about this. I don't
5 recall that, no.

6 Q. Okay. In the, in the area where this happened, you got
7 the rec yard and then you come in and there's a, there's the
8 area inside.

9 Are you, are you familiar with what I'm talking about?

10 A. You have the rec yard. Then you have the -- I guess
11 you would call the multi -- well, just the open floor area
12 where all the tables and chairs are.

13 Q. Okay. Bear with me a second.

14 (Pause.)

15 Q. Okay. The doorway that comes into the rec room, you
16 familiar with that area?

17 A. Yes.

18 Q. Okay. Is there a -- is it -- there's a camera right
19 there that is -- it captures everything in the rec room?

20 A. The camera is centered in that room --

21 Q. Okay.

22 A. -- in the ceiling.

23 Q. And so, if there's footage from just after that event,
24 if, if Otis Owens came in hunched over like this because he
25 was nauseous and hurting, would that camera have caught him

1 walk into that area?

2 MR. DAVIDSON: Object as to the form, Your Honor.

3 There's no evidence of any of that.

4 MR. HAWKINS: Your Honor, we have to put in evidence --
5 we have to put up witnesses out of order because of the
6 situation we're in and---

7 THE COURT: All right. Why don't you just rephrase
8 that question?

9 MR. HAWKINS: Sure.

10 If, if my client was holding his stomach because he was
11 nauseous from pain of the traumatic testicular injury and he
12 comes in to the, the, the rec area, not (indiscernible) the
13 (indiscernible) but the rec room --

14 A. Uh-huh.

15 Q. -- that camera would have, would have captured that --
16 hunched over, that, that look of pain if we had the, if we
17 had the footage, right?

18 A. It's possible. That camera can pan up and down angle
19 wise.

20 Q. With the joystick?

21 A. Yes. And normally whatever it's last set on, if
22 someone moved it with the joystick, that's what it stays at.
23 So, if someone were to pan it up to see the second floor of,
24 of the housing unit --

25 Q. Uh-huh.

1 A. -- the second tier --

2 Q. Right.

3 A. -- you actually wouldn't see much of anything in that
4 area---

5 Q. Uh-huh.

6 A. ---directly below it where all the tables and chairs
7 are right inside from the rec yard.

8 Q. Okay. Got you.

9 A. So there's no way for me to know if it would of caught
10 it or not.

11 Q. Is there somebody -- in that room where there's a
12 person sitting with a joystick and operating the camera, is
13 there somebody always in that room?

14 A. There is someone always in that room, yes.

15 Q. So there's some -- there's someone who's always in
16 there to point the camera where they want to if they want to
17 from your knowledge?

18 A. From my knowledge, yes. But, at the same time, they
19 have every camera in the whole entire facility that -- and
20 they're not on every single -- those cameras aren't on every
21 single screen. They only show up to a certain amount of
22 cameras on the screens. So, an operator would have to
23 specifically be looking at one specific screen to see what's
24 going on.

25 Q. And there's a camera in sallyport?

1 A. There is.

2 Q. Does that spin or, or is it subject to the control of
3 the joystick or does it move?

4 A. No, that is a stationary camera.

5 Q. It's fixed.

6 So, if somebody -- if somebody comes in the sallyport
7 in any condition, hurt or otherwise, that camera states --
8 they walk in the view of that camera (indiscernible)?

9 A. It should---

10 Q. Right?

11 A. ---yes.

12 Q. And, and we talked about earlier, Otis was visibly
13 upset after the search?

14 A. Yes, he was, he was upset.

15 Q. Wilhite was upset after the search?

16 A. Yes, he was upset.

17 Q. And Ard, did you -- I think you told me you don't know
18 or you don't know about Ard or what he said afterwards?

19 A. I do not recall anything regarding an inmate Ard, no.

20 Q. You don't remember Jeremy Ard?

21 A. I do not.

22 Q. Okay. Who asked you to call the white shirts after
23 this -- after the search?

24 A. I, I don't recall. I, I don't even recall if someone
25 said to call the white shirts.

1 Q. Okay. For the jury's benefit, what is the white shirt?

2 A. At the time the white shirt would of been the
3 lieutenant, the shift lieutenant.

4 Q. Okay. Do -- you don't recall Ard or, excuse me,
5 wilhite or Owens saying somebody needs to call the white
6 shirts and a lieutenant and a sergeant comes in right after
7 the search?

8 You don't recall that?

9 A. I don't recall them requesting that. But I do recall
10 them giving advice as to how the procedure worked if they
11 had a grievance.

12 Q. Do you know if -- did you ever say to -- did you ever
13 say to Owens, after he was searched when he was upset, that
14 he, he exhibited that upset, say -- did you ever say to him
15 Otis, calm down, there's a way to handle things?

16 Did you ever say that?

17 A. I don't recall whether I said that or not. But it
18 sounds like something I would of said to him, yes.

19 Q. Okay. And we've established that he was upset.

20 So, if he was upset, that would of been something you
21 said Otis, just take it easy or calm down, there's a way
22 handle to things?

23 A. Yes.

24 Q. And what, what would that mean, file a grievance, to,
25 to call a white shirt?

1 what would that mean?

2 A. I do recall telling him look, there is, there is a way
3 to handle things. If you have a grievance, you can use the
4 kiosk and you can put that grievance down on that kiosk.
5 It's your right to do so.

6 Q. Okay.

7 A. You know --.

8 Q. And, and you knew that point -- you knew at that point
9 that a grievance was gonna be against Mr. Gibson, correct?

10 A. Honestly, I, I wouldn't begin to speak on what Mr.
11 Owens was thinking or what he would put a grievance in about
12 other than he had an issue with the circumstances or that,
13 you know, alleged incident.

14 Q. Okay.

15 A. So I wouldn't know what he was thinking or what he was
16 gonna put in.

17 Q. Okay.

18 A. For all I know he could of been putting a grievance in
19 on me, which would---

20 Q. Okay.

21 A. ---would of been his right to do so.

22 Q. If there's -- there's been sort of a theory advanced by
23 the defense that these men got together and, and made up a
24 story or something like that and I don't know what benefit
25 that would be.

1 Do you have any evidence about these men getting
2 together and trying to fabricate something?

3 A. I honestly have no evidence of them trying to fabricate
4 something and I have no evidence of Deputy Gibson doing any
5 wrongdoing.

6 Q. No evidence one way or the other (indiscernible)?

7 A. No. From what, what I saw, it, it didn't look like he
8 did anything wrong. So, I mean---

9 Q. And you---

10 A. ---I---

11 Q. And so -- and so -- but to reiterate, you couldn't see
12 his hands but you do know the men were upset?

13 A. They said -- they, they acted as though they were
14 upset.

15 Q. Okay. And you, you didn't see his hand on the crotch
16 when he was searching?

17 A. No. And like I've said before, I've seen inmates burst
18 out with commentary and be upset plenty of times when
19 someone's doing a strip search on them. Whether it was
20 warranted or not, in -- inmates have made comments before
21 even when deputy -- you know, you could clearly, clearly see
22 a deputy not doing anything wrong.

23 Q. Well, had -- has Otis ever made a false grievance about
24 a deputy ever before, before or since that you know about?

25 A. I don't know if he has or has not.

1 Q. Do you have any evidence that Otis has ever fabricated
2 a false -- a grievance about an officer touching
3 inappropriately?

4 Do you have any evidence about that?

5 A. I have no evidence about that, no.

6 Q. Was Otis generally a good natured person from your
7 experience with him at the detention center?

8 A. From my experience with him, he, he followed some rules
9 and broke some rules just like every inmate.

10 Q. Okay.

11 A. He normally never gave me a whole lot of problems.

12 Q. Okay.

13 A. I may have disciplined him here and there from time to
14 time for infractions but --.

15 Q. When, when you disciplined him, did he accept the
16 discipline?

17 A. To my knowledge, yes.

18 Q. Okay. Was he generally a pleasant person?

19 A. I can't say that he stood out to be a problematic
20 inmate to -- at least for me.

21 Q. He was not problematic?

22 A. For me.

23 Q. Okay.

24 A. Everyone---

25 Q. Was he problematic for anybody that you know of?

1 A. I wouldn't be able to speak to that. I can only speak
2 to when he was in the housing unit with me.

3 Q. Ever known of Otis to get in a fight?

4 A. I can't recall a specific instance where he's been in a
5 fight.

6 Q. Never known of an instance where Otis having a weapon
7 or a shiv or anything dangerous?

8 MR. DAVIDSON: Your Honor?

9 THE COURT: What's your objection?

10 MR. DAVIDSON: Objection, Your Honor, cause he's trying
11 to build character. That's not the proper place to do that.

12 MR. HAWKINS: Again, Your Honor, I have to call
13 witnesses out of order because of the situation we're in.

14 THE COURT: All right. I'm -- let's rephrase that
15 question. Make sure that's relevant.

16 MR. HAWKINS: Sure.

17 Do you have any knowledge that Otis has ever been
18 caught with a weapon or a shiv or anything dangerous in jail
19 ever?

20 MR. DAVIDSON: Same objection, Your Honor.

21 THE COURT: Thank you. So noted.

22 MR. HAWKINS: May he answer?

23 THE COURT: Yes.

24 A. I don't recall ever if he -- he's ever been caught with
25 a, a weapon.

Christopher Erikson - Direct examination
By Mr. Hawkins

1 Q. Do you know anything about Otis' telephone habits?

2 Have you, have you ever seen Otis on the phone?

3 A. I'm sure I, I had seen him on the phone in the course
4 of my duties, yes.

5 Q. Is it -- has it been your observation that, that he
6 calls his mom every single day?

7 A. I would have no way of knowing who he calls.

8 Q. You don't know (indiscernible)?

9 A. I don't listen -- I never listen to inmate's
10 conversation---

11 Q. Okay. Fair enough.

12 A. Well -- okay.

13 Q. Fair enough.

14 Did y'all, did y'all ever find any dice that day?

15 A. To my recollection, no, we did not.

16 Q. In your opinion, do you think there was actually any
17 dice or do you think Erikson's just mistaken or what?

18 I mean do you think Gibson was just mistaken or what?

19 A. I couldn't speak to whether he was mistaken or not.

20 Q. Okay. You -- but y'all didn't find any dice?

21 A. We did not, no.

22 Q. And did you ever see the playing cards that the men had
23 who Gibson thought was playing dice?

24 MR. DAVIDSON: Objection, Your Honor. Getting into --
25 trying to get in the mind of Mr. Gibson, what he thought.

1 MR. HAWKINS: I'll rephrase it.

2 MR. DAVIDSON: It's not a proper question.

3 THE COURT: I'll sustain---

4 MR. HAWKINS: I'll rephrase it.

5 THE COURT: I'll sustain. Please refer -- rephrase.

6 MR. HAWKINS: Yes, Your Honor.

7 Did you ever see any playing cards beneath the, the
8 window near the wall?

9 MR. DAVIDSON: I do not remember any playing cards.

10 Q. Okay. One second.

11 (Pause.)

12 Q. For the purposes of this lawsuit or this case, are you
13 represented by Mr. Davidson?

14 Is he your lawyer?

15 A. Yes, he represents me.

16 Q. He represents you.

17 Okay. One more second.

18 (Pause.)

19 Q. And so you've been, you've been represented by Mr.
20 Davidson all through this lawsuit, right, from the time --
21 cause you're, cause you're one of the named parties of a
22 lawsuit, right?

23 MR. DAVIDSON: Objection, Your Honor. I'm not sure the
24 relevance of the fact I may or may not have represented him
25 in, in something that may have something to do with this

1 suit or the other suit.

2 MR. HAWKINS: well---

3 MR. DAVIDSON: He's opening the door to the other
4 suits, Your Honor.

5 THE COURT: All right. I'll sustain---

6 MR. HAWKINS: Okay. I'll rephrase, I'll rephrase the
7 question.

8 THE COURT: Thank you.

9 MR. HAWKINS: And, and---

10 THE COURT: Sustained.

11 Q. And I'm not talking about Mr. Wilhite's lawsuit that
12 got dismissed or anything like that.

13 what I'm talking about is, since this lawsuit has been
14 filed, this one where the Sheriff's Office is the, is the
15 defendant, has will Davidson always been your lawyer until
16 right now today?

17 MR. DAVIDSON: Same objection, Your Honor.

18 MR. HAWKINS: He can answer that.

19 MR. DAVIDSON: Can I, can I make a -- can we take a
20 sidebar?

21 THE COURT: You wish for a sidebar?

22 MR. DAVIDSON: Yes, ma'am, just -- it will be very
23 brief.

24 THE COURT: Yes, sir.

25 (WHEREUPON, a bench conference was held out of the

1 hearing of the jury at this time.)

2 MR. HAWKINS: And thank you, judge.

3 MR. DAVIDSON: Appreciate it.

4 THE COURT: Mr. Hawkins.

5 MR. HAWKINS: Sure.

6 Do you know if -- has anybody come to you from the
7 Sheriff's Office, whether it's Mr. Gallam, the sheriff
8 himself, Bowman, or Gibson, anybody come to you and said,
9 you know, we messed up this investigation, we should of
10 taken this sexual assault seriously?

11 Has anybody said anything like that to you?

12 A. No, sir.

13 Q. As far as you know, does anybody care to do anything
14 different than the Sheriff's Office going forward in the way
15 they handled Mr. Owens investigation?

16 MR. DAVIDSON: Objection, Your Honor.

17 MR. HAWKINS: Your Honor, I -- I'll with---

18 THE COURT: Can you please rephrase it?

19 You, you withdraw it?

20 MR. HAWKINS: Yeah, I'll ask it a different way.

21 THE COURT: All right. Please rephrase.

22 I'm gonna sustain.

23 Q. As far as you know, is the Sheriff's Office doing
24 everything the same in handling all future investigations,
25 right now today, the same way that they handled the

Christopher Erikson - Direct examination
By Mr. Hawkins

1 investigation related to the sexual assault allegation made
2 by Mr. Owens?

3 MR. DAVIDSON: Objection. The gentlemen doesn't even
4 work there anymore.

5 THE COURT: All right. I'm gonna sustain that. I, I
6 think it causes for speculation and I don't believe that
7 he's even employed there anymore.

8 MR. HAWKINS: All right. I don't have anymore
9 questions for, for this witness unless, you know --.

10 THE WITNESS: Thank you.

11 THE COURT: Thank you.

12 Cross.

13 CROSS-EXAMINATION

14 BY MR. DAVIDSON:

15 Q. Mr. Erikson, have you ever conducted a PREA
16 investigation?

17 A. No, sir.

18 Q. And it sounds like from what Mr. Hawkins read, the
19 Sheriff's Department takes policy issues, things that may
20 create a problem within the detention center, fairly
21 seriously on the issue of disciplinary matters, correct?

22 A. Yes.

23 Q. Now, do inmates complain about all kinds of things?

24 A. They do.

25 Q. Do they sometimes complain to get correctional officers

1 in trouble?

2 A. They do.

3 Q. And I think Mr. Wilhite and Mr. Owens were actually
4 roommates together.

5 Is that true?

6 A. I don't recall -- they were in the same housing. I
7 don't be -- know if they had bunk area -- shared a bunk area
8 or not.

9 Q. Yeah.

10 It's been a while?

11 A. Approximately five years.

12 Q. Now, you mentioned something about a joystick.

13 That's in what, what is called in a correctional
14 facility a control room, is it not?

15 A. Yes, the control room is where the cameras --.

16 Q. All right. And there's one officer normally in the
17 control room, correct?

18 A. That's the norm, yes. There's one officer in there.

19 Q. And that officer has, if, if you remember that's great,
20 has multiple TV screens or camera screens to monitor,
21 correct?

22 A. There's a total of, or at least when I was there,
23 there's a total of two big screen TVs and then a smaller,
24 smaller TV.

25 Q. And the camera that rotates the picture around the

1 institution?

2 A. Yes.

3 Q. So you might be in the sallyport on one camera and you
4 might be in the, the Pod A or Pod B or some other, kitchen,
5 some other area, within the detention center, correct?

6 A. Yes. There's -- if I could take a guess, there's
7 probably about 30 camera views that are up in front of the
8 officer that's in there.

9 Q. And I think you said this camera in the pod -- B pod
10 was in the center of the pod itself, correct?

11 A. That's where that camera -- yes.

12 Q. There's no pod -- there's no camera in the rec area,
13 correct?

14 A. No, there's not.

15 Q. All right. Now, the control officer that's in that
16 area, he actually opens every door in that facility,
17 correct?

18 A. That is correct.

19 Q. All right. So, if I want to come in the front door,
20 and I ring a bell, and there's somebody else, let's say,
21 trying to leave the kitchen and they ring a bell, he's then
22 got to look at the camera to see which one to open or which
23 one not to, correct?

24 A. That is correct.

25 Q. Okay. So, he's handling not only all cameras, but he's

1 handling all the doors within the facility?

2 A. That's correct.

3 Q. And you wouldn't know how many doors there are cause
4 it's like in the Aiken Detention Center, would you?

5 A. If you gave me a moment I could probably start counting
6 in my head.

7 Q. More than one?

8 A. Yes, sir.

9 Q. Mr. Erikson, I appreciate it and I hope I did a good
10 job for you.

11 THE COURT: Redirect.

12 REDIRECT EXAMINATION

13 BY MR. HAWKINS:

14 Q. Mr. Erikson, have you ever seen -- on the camera, have
15 you ever seen someone in the rec yard without their shirt on
16 and told them hey, you got to put your shirt back on?

17 A. I have.

18 Q. Okay. And if you saw that through the camera, that can
19 see through the window into the rec yard, right?

20 A. Yes. Again, as long as that camera's pointed in that
21 direction correctly or as long as it's pointed in that
22 direction, yes.

23 Q. Right. My point is there's a camera in the rec room.
24 We agree on that?

25 A. Yes, sir.

1 Q. So that camera, through that window, can also see into
2 the rec yard and you can tell inmates stop playing with a
3 volleyball or put your shirt back on or whatever you need to
4 tell them, right?

5 A. It can, yes.

6 Q. Okay. I just want to make sure it's clear that you can
7 still see outside into the rec yard with the camera and you
8 can always see in the rec room because of the camera in the
9 middle of the ceiling.

10 Is that all correct?

11 A. That is correct. But I would also like -- if I may
12 point out, that officer's job in there is not to look at
13 every single camera and what is going on in each unit.

14 Q. Okay. Well, would it be a big deal if there was -- if,
15 if men were lined up against the wall and they were all
16 getting searched, wouldn't that be something to pay
17 attention to if it was a group search?

18 A. That would be up to that officer that's -- whether they
19 took an interest to watch that or not.

20 Q. Okay. Well, I want to ask you a question cause I've
21 heard, heard the camera being saved. I've heard of 30, 60,
22 90 day. I've heard all kinds of different numbers. For the
23 number of men who were in the area when this happened, I've
24 heard different numbers.

25 So I want to ask you how many men were, were in the

1 area and searched on January 25th, 2017?

2 MR. DAVIDSON: Beyond cross, Your Honor.

3 THE COURT: I'll sustain.

4 MR. HAWKINS: Your Honor, he talked a lot about the
5 cameras and what they could see. The cameras obviously
6 could see the number of men in the yard. We know that now
7 cause we just established it and the number of men in the
8 rec yard.

9 THE COURT: Let's have a side bar.

10 (WHEREUPON, a bench conference was held out of the
11 hearing of the jury at this time.)

12 MR. HAWKINS: Thank you, judge.

13 MR. DAVIDSON: Appreciate it.

14 THE COURT: Mr. Hawkins.

15 MR. HAWKINS: Sure.

16 So it's clear for the jury, we agree that the
17 camera in the rec room can capture multiple men in the rec
18 yard or in the yard, right?

19 A. Again, it, it can -- it can possibly do that, yes.

20 Q. Okay. Thank you.

21 All right. Just (indiscernible) more.

22 Do you have -- Mr. Davidson asked you about this
23 directly. He said something about getting guards in
24 trouble.

25 Do you have any evidence that Mr. Owens has ever tried

Christopher Erikson - Redirect examination
By Mr. Hawkins

1 to get a guard in trouble for something until this incident
2 with Mr. Gibson?

3 A. I have no evidence to that.

4 Q. Okay.

5 A. But I, I wouldn't know.

6 Q. Okay. But I'm just making sure it's clear for the jury
7 there's no evidence in the record that Mr. Owens has ever
8 tried to make up a story about a guard to your knowledge?

9 Is that fair to say?

10 A. To my knowledge, no.

11 Q. Okay. Had he ever even complained about Gibson before
12 this?

13 A. Again, to my knowledge, no.

14 Q. And this happened in January of 2017?

15 A. Yes.

16 Q. Okay. And then he's saw this through all the way to
17 right now at the end of 2022, right?

18 A. I would assume so. We're here.

19 Q. Does that look like something somebody made up or
20 (indiscernible)?

21 MR. DAVIDSON: Objection, Your Honor.

22 MR. HAWKINS: I'll withdraw the question.

23 MR. DAVIDSON: Improper question.

24 MR. HAWKINS: No more questions of this witness.

25 THE COURT: All right. Thank you, Mr. Hawkins.

Christopher Erikson - Recross examination
By Mr. Davidson

1 Any recross?

2 MR. DAVIDSON: I -- just, just one, Your Honor.

3 THE COURT: Yes.

4 RECROSS EXAMINATION

5 BY MR. DAVIDSON:

6 Q. Mr. Erikson, we've heard a term called rec room and rec
7 yard.

8 The rec yard is actually the area that's separated from
9 a pod, is it not?

10 A. Yes, sir.

11 Q. All right. And the rec -- his referring to the rec
12 room is -- that actually is the pod, is it not?

13 A. Yes, sir.

14 Q. Okay. There's a -- an area that's open that has tables
15 in it that the inmates can play cards or write letters,
16 things like that, correct?

17 A. Yes, sir.

18 Q. Sometimes referred to as the rock?

19 You ever heard that term?

20 A. I don't recall that term.

21 Q. Okay. All right. No further questions. Thank you,
22 Your Honor.

23 THE COURT: Thank you. This witness may be excused.
24 Please watch your step.

25 THE WITNESS: Yes, ma'am.

1 MR. DAVIDSON: And, Your Honor, he's subject to my
2 subpoena as well as Mr. Hawkins. If he could be excused
3 just so he can go back to work I'd appreciate it.

4 THE COURT: Any objection?

5 MR. HAWKINS: I don't have any objection to that.

6 THE COURT: Thank you, sir.

7 The -- this, this witness may, may now be excused.

8 All right. Ladies and gentlemen of the jury, do
9 you-all need a bathroom break, stretch your leg?

10 THE JUROR: No.

11 THE JUROR: No.

12 THE JUROR: Move on.

13 THE JUROR: Go ahead.

14 THE COURT: Usually you say yes but I do need to remove
15 you.

16 MR. DAVIDSON: Your Honor?

17 Your Honor, I will, I will take the hit on this.

18 THE COURT: Okay.

19 MR. DAVIDSON: I need to go to the bathroom.

20 THE COURT: Listen, we're gonna give you a 10 minute
21 break. We need to handle some matters of law.

22 MR. DAVIDSON: Thank you, Your Honor.

23 (WHEREUPON, the following takes place outside the
24 presence of the jury.)

25 MR. DAVIDSON: Your Honor, I was serious.

1 Can I can go out and come right back?

2 THE COURT: Yes, sir, I'll give you --.

3 MR. DAVIDSON: All right. Thank you, ma'am.

4 THE COURT: Just to -- just -- can you make it back
5 about five minutes?

6 MR. DAVIDSON: I don't---

7 THE COURT: Mr. Hawkins?

8 MR. DAVIDSON: I'm hoping, Your Honor.

9 THE COURT: Do you (indiscernible)?

10 MR. DAVIDSON: I hope so, Your Honor.

11 THE COURT: All right.

12 MR. DAVIDSON: But I'll (indiscernible).

13 THE COURT: Okay. We'll take up some matters when he
14 comes back.

15 If you-all need to take a short break, go ahead.

16 (WHEREUPON, a short recess was taken at this time.)

17 THE COURT: Mr. Davidson and Mr. Hawkins, I, I told
18 you-all before we broke for lunch that I would rule with
19 regards to the Owens' testimony. I believe Mr. Davidson
20 objected to that because they had been present in the
21 courtroom while the other witnesses were, were testifying.

22 Now, there was -- there were several pretrial motions.
23 One of which was from the plaintiff regarding the subpoena
24 of -- subpoenaing of witnesses and I am going to allow the
25 Owens', the parents of the, of the plaintiff to testify.

1 Mr. Davidson, your, your motion or your objection to
2 their testimony is noted and those reasons were there
3 earlier.

4 Now, you need a few minutes you said with regards to
5 the inmate's depositions?

6 MR. HAWKINS: Yes, Your Honor, if I could put, if I
7 could put both of them up. After that if I could just have
8 15 or 20 minutes to read these inmate---

9 THE COURT: How long?

10 MR. HAWKINS: Fifteen or 20 minutes.

11 THE COURT: How long would their testimonies take
12 collectively?

13 MR. HAWKINS: I think, for me, three or four minutes a
14 piece maybe.

15 THE COURT: All right. And you're calling Mr. Owens
16 last?

17 MR. HAWKINS: Yes.

18 THE COURT: Okay. All right. Let's -- Mr. Davidson,
19 do you have anything before the -- I bring the jury in?

20 MR. DAVIDSON: There, there obviously will be issues
21 dealing with the inmates and the fact that they're
22 testifying about matters which occurred years later. At
23 least that's what they testified in their depositions and I
24 would just renew my objection to the parent's testifying
25 since they were not sequestered as was requested by

1 plaintiff's counsel and I didn't oppose cause I basically
2 sent all my people out.

3 THE COURT: I -- thank you.

4 All right. We're gonna, we're---

5 MR. HAWKINS: I just, I just want to put on the record
6 in case he appeals this so I'm protected that we made a
7 motion. That obviously is, you know, works for defense
8 witnesses.

9 So he didn't make a motion, one, and then, two, these
10 witnesses that we're talking about are not in the detention
11 center. All these other witnesses have knowledge about the
12 event in the detention center and things of that nature.
13 They don't have -- they don't overlap.

14 And so hearing this other -- hearing -- for the
15 Otis' -- for the -- Otis' parents to hear anything that
16 happened in the detention center wouldn't have any effect on
17 their testimony.

18 THE COURT: All right.

19 MR. HAWKINS: And that's just for the record.

20 MR. DAVIDSON: It's, it's---

21 THE COURT: Duly noted for the record.

22 Can we bring our jury back in?

23 (WHEREUPON, the following takes place within the
24 presence of the jury.)

25 THE COURT: All right. Thank you, ladies and gentlemen

Debra Owens - Direct examination
By Mr. Hawkins

1 of the jury. We'll now resume the trial.

2 Mr. Hawkins, please call your next witness.

3 MR. HAWKINS: Yes, Your Honor.

4 The plaintiff would call to the stand Debra Owen (sic).

5 THE CLERK: If you'd place your left-hand on the Bible.
6 Raise your right-hand.

7 DEBRA OWENS, being first duly
8 sworn, testified as follows:

9 THE CLERK: Please take a seat in the witness box and
10 state your name for the Court.

11 THE WITNESS: My name is Debra K. Owens.

12 DIRECT EXAMINATION

13 BY MR. HAWKINS:

14 Q. Mrs. Owens, I'm just gonna ask you a couple of
15 questions about your knowledge of your son and this lawsuit.
16 okay?

17 A. Okay.

18 Q. All right. For the jury, do you have a close
19 relationship with your son?

20 A. Yes, sir.

21 Q. In 2000 -- 2017, around the time of this search we're
22 talking about when he was incarcerated was I guess when he
23 was at the detention center, was he calling you every single
24 day?

25 A. Every day.

1 Q. Okay. Every day.

2 All right. Do you -- do you remember when you found
3 out about this search?

4 A. Yes.

5 Q. Okay. Is it fair to say that you know Otis' mood and
6 character as good as anybody?

7 A. Yes, sir.

8 Q. Okay.

9 MR. DAVIDSON: Your Honor, with all due respect, he's
10 leading his witness and he can't get into character---

11 THE COURT: All right.

12 MR. DAVIDSON: ---or that type of questioning.

13 THE COURT: I'm going to sustain to the leading.
14 If you will rephrase your questions, Mr. Hawkins?

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

16 Is there anyone that knows Otis better than you?

17 A. No.

18 Q. Okay. Is he a kind person?

19 A. Yes, sir.

20 Q. Has he ever done anything that -- to anyone who's
21 considered mean or mean spirited that you know about?

22 A. No, sir.

23 Q. Have you ever known him to make false allegations or
24 make things up about people?

25 A. No, sir.

Debra Owens - Direct examination
By Mr. Hawkins

1 Q. Do you acknowledge he has -- had addiction issues in
2 the past?

3 A. Yes, sir.

4 Q. Does he -- as far as you know, does he acknowledge
5 that?

6 A. Yes, sir.

7 Q. Okay. And notwithstanding the addiction issues, to
8 your knowledge, is he generally honest?

9 A. Yes, sir.

10 MR. DAVIDSON: Your Honor, same objection. You can't
11 ask that of this witness, Your Honor.

12 MR. HAWKINS: Your Honor, we -- I will say again on the
13 record we have to go out of order because of the issues that
14 I'm (indiscernible).

15 THE COURT: His objection is to the question regarding
16 character?

17 Is that right?

18 MR. DAVIDSON: Yes, Your Honor.

19 THE COURT: All right. All right. I'm going to
20 sustain that, Mr. Hawkins, but please be -- please continue.

21 MR. HAWKINS: Thank you, judge.

22 Q. All right. What's your recollection of what you found
23 out about the search that took place in 2017?

24 MR. DAVIDSON: Hearsay, Your Honor.

25 MR. HAWKINS: It's a statement by a party.

1 MR. DAVIDSON: It would be an interest -- he would be a
2 person of interest. It's not a mention against interest,
3 Your Honor, which is what the rules require. In this
4 instance it would be pure hearsay.

5 THE COURT: All right. Please rephrase the question,
6 Mr. Hawkins.

7 MR. HAWKINS: Sure.

8 Did you notice any change in Otis' mood between
9 January 24th of 2017 and January 25th of 2017?

10 A. Yes, sir.

11 Q. Okay. How would you describe the change in his mood?

12 A. He seemed depressed, humiliated, and he had told me
13 what had happened.

14 MR. DAVIDSON: Objection, Your Honor.

15 MR. HAWKINS: I---

16 THE COURT: I'm going to sustain that.

17 MR. HAWKINS: Okay.

18 THE COURT: Continue.

19 MR. HAWKINS: Thank you, judge.

20 As far as what you know about the situation goes, do
21 you think that Otis would have even filed a lawsuit if the
22 detention center would of acknowledged what happened to him?

23 MR. DAVIDSON: Objection, Your Honor.

24 A. No, sir.

25 MR. DAVIDSON: It's not relevant and plus it goes into

1 his character.

2 MR. HAWKINS: No.

3 THE COURT: All right.

4 MR. HAWKINS: Can I respond please?

5 MR. DAVIDSON: It's speculation also, Your Honor.

6 MR. HAWKINS: Okay. I understand he doesn't like this
7 testimony. But we can ask it, Your Honor, because she is
8 able to testify about her impressions and about the
9 knowledge of her son and how he generally behaves. She
10 knows -- she testifies she knows him better than anybody.
11 So she'd be able to give that, that opinion because it's not
12 her -- an out-of-court statement or anything like that.

13 THE COURT: All right. I am going -- I'm not going
14 to -- I'm going to sustain for the speculation. But I
15 believe you can rephrase the question.

16 MR. HAWKINS: Sure.

17 MR. DAVIDSON: Your Honor, and it's -- I'd like to be
18 heard on whether --.

19 THE COURT: Yes.

20 MR. DAVIDSON: Mr. Hawkins made some comment and he not
21 liking the question. It's not me not liking the question.
22 It's me also going by the rules of evidence in this case.
23 Thank you, Your Honor.

24 THE COURT: Certainly. Thank you.

25 And I will also, during charges, we will address that.

1 MR. DAVIDSON: Thank you, Your Honor. I appreciate
2 that.

3 THE COURT: All right.

4 Q. Do you have any evidence that Otis ever would of filed
5 a lawsuit had the Sheriff's Office taken responsibility for
6 what happened?

7 MR. DAVIDSON: The same objection.

8 MR. HAWKINS: Judge, I don't know---

9 THE COURT: I, I, I did not hear the question.

10 MR. HAWKINS: I asked Mrs. Owens do you have any
11 evidence that Otis ever would of filed a lawsuit if the
12 Sheriff's Office had taken responsibility for the sexual
13 assault at the detention center.

14 MR. DAVIDSON: Same objection, Your Honor.

15 MR. HAWKINS: I, I can ask if she has any evidence,
16 Your Honor.

17 MR. DAVIDSON: That would be opinion testimony.

18 THE COURT: I'm -- I'm going to sustain that, Mr.
19 Hawkins.

20 Q. Mrs. Owens, do you have power of attorney for Otis?

21 A. Yes, sir.

22 Q. If the jury allows damages and determines that there
23 was a rule violation, who will have control of any allowance
24 of damages?

25 MR. DAVIDSON: Objection, Your Honor.

1 A. I will.

2 Q. Okay. How's that---

3 THE COURT: Hold on.

4 what's the basis of your objection?

5 MR. DAVIDSON: Your Honor, whether she has or has not
6 power of attorney doesn't have anything to do with this
7 case.

8 THE COURT: It's relevance?

9 MR. DAVIDSON: Yes, ma'am.

10 THE COURT: All right. I'm, I'm gonna overrule.
11 Proceed, Mr. Hawkins.

12 Q. What was your answer to the question you do -- I asked
13 you do you have power of attorney for Otis?

14 A. Yes, sir.

15 Q. And if this jury allows any damages, who will have
16 control over that damage money?

17 A. I will.

18 Q. Okay. I don't have any further questions.

19 THE COURT: All right. Cross-examination.

20 CROSS-EXAMINATION

21 BY MR. DAVIDSON:

22 Q. You love your son, do you not?

23 A. Yes, sir.

24 Q. Do anything in the world for him?

25 A. Yes, sir.

1 MR. DAVIDSON: That's all the questions I have, Your
2 Honor.

3 THE COURT: All right. Any redirect?

4 MR. HAWKINS: No redirect from the plaintiff.

5 THE COURT: Thank you. This witness may be excused.
6 Mrs. Owens, please watch your step right here.

7 THE WITNESS: Thank you.

8 THE COURT: Mr. Hawkins, please call your next witness.

9 MR. HAWKINS: The plaintiffs would call Keith Owens to
10 the stand.

11 THE CLERK: Place your left-hand on the Bible. Raise
12 your right-hand.

13 KEITH OWENS, being first duly sworn,
14 testified as follows:

15 THE CLERK: Thank you. Please take a seat in the
16 witness box.

17 THE WITNESS: Thank you.

18 THE CLERK: State your full name for the Court.

19 THE WITNESS: My name's Herbert Keith Owens.

20 DIRECT EXAMINATION

21 BY MR. HAWKINS:

22 Q. Mr. Owens, you have a -- you, you and your wife both
23 have a close relationship with your son?

24 A. Yes.

25 Q. Okay. And has he acknowledged or, or do, do you know

1 if he has any problem acknowledging that he's had addiction
2 issues in the past?

3 A. Personally I don't know.

4 Q. Okay. Does, does your wife talk to him more than you
5 do?

6 A. Yes.

7 Q. Okay. Around 2017 when he was at the Aiken County
8 Detention Center, did your wife talk to him pretty
9 frequently?

10 A. Yes.

11 Q. Everything your wife testified about this now, is that
12 all true and accurate to the best of your knowledge?

13 MR. DAVIDSON: Your Honor---

14 A. Yes, sir.

15 MR. DAVIDSON: ---objection. Not a proper question,
16 not a proper foundation, and he's also again trying to
17 bolster the other witnesses' testimony with another witness.

18 THE COURT: Your argument, Mr. Hawkins?

19 MR. HAWKINS: No, Your Honor. I'll do whatever y'all
20 want me to do.

21 THE COURT: All right. I'm gonna ask that you -- I'm
22 gonna sustain and as that you rephrase the question.

23 MR. HAWKINS: Yes, Your Honor.

24 I'll just ask you some of the questions I asked her
25 then.

1 Is your son generally a nice person?

2 A. Yes, sir.

3 Q. Do the people generally like him?

4 A. Yes, sir.

5 Q. Tell the jury about that.

6 A. I've had my painting business. He's met a lot of my
7 clientele and they all love him.

8 Q. Okay.

9 A. He's never done nothing wrong to none of them.

10 Q. Okay. And as to the, the addiction, as far as his
11 life, has he been, as far as you know, productive and, and
12 pleasant with people?

13 A. Yes.

14 Q. Okay. And when -- in the past when he hasn't been
15 dealing with addiction, has he always worked and, and earned
16 money?

17 A. Yes, sir.

18 Q. Okay. Has he ever been one to make up allegations
19 about, about sub (indiscernible)?

20 A. No, sir.

21 Q. Has he ever been able -- has he ever been one to make a
22 big deal out of nothing?

23 A. No, sir.

24 Q. Anything else you want to tell the jury about Otis?

25 A. It's just that he told me that he was searched---

1 MR. DAVIDSON: Your Honor, objection.

2 THE COURT: All right. Sustained.

3 Q. Well, let me ask you this.

4 Did you notice any change in Otis' mood before and
5 after the sexual assault?

6 A. Yes.

7 Q. Okay. Was it a negative change?

8 A. Yes, sir.

9 Q. Okay. Was -- in your estimation, did he seem upset
10 about the event?

11 A. Yes, sir.

12 Q. Humiliated?

13 A. Yes, sir.

14 Q. Violated?

15 A. Yes, sir.

16 Q. I don't have any other questions for this witness.

17 Thank you, judge.

18 THE COURT: Cross-examination.

19 MR. DAVIDSON: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. DAVIDSON:

22 Q. I've seen you referred to as Senior.

23 Are you Otis, Senior or is it Keith?

24 A. My name isn't Otis. It's Herbert Keith.

25 Q. Just Keith?

Keith Owens - Cross-examination
By Mr. Davidson

1 A. Yes, sir, Herbert Keith.

2 Q. Fair enough.

3 Mr. Owens, you're aware that your son served time at
4 the Department of Corrections for distribution of
5 methamphetamines, correct?

6 A. Yes, sir.

7 Q. And Fentanyl?

8 A. Sir?

9 Q. Fentanyl also.

10 A. That I don't know nothing of.

11 Q. Thank you.

12 No further questions.

13 THE COURT: Any redirect?

14 MR. HAWKINS: Just one redirect.

15 REDIRECT EXAMINATION

16 BY MR. HAWKINS:

17 Q. Mr. Owens, are you aware that Owens -- Mr. Owens, your
18 son Mr. Owens, has never had any involvement with, with
19 Fentanyl whatsoever?

20 A. No, sir.

21 MR. HAWKINS: No further questions.

22 THE COURT: Recross?

23 MR. DAVIDSON: No, Your Honor.

24 Thank you, sir.

25 THE COURT: Thank you. This witness may be excused.

1 Mr. Owens, please watch your step.

2 THE WITNESS: Okay. Thank you.

3 THE COURT: They tell me it happens---

4 THE WITNESS: I didn't see the second one.

5 THE COURT: It happens every trial. It's okay.

6 All right. I need to excuse the jury to the jury room.

7 (WHEREUPON, the following takes place outside the
8 presence of the jury.)

9 THE COURT: All right. There is -- thank you. There
10 is an objection that Mr. Hawkins needs to place on the
11 record during the testimony of I believe it was Mr. --
12 what's the witness?

13 MR. HAWKINS: I can't remember, judge. It was
14 either -- it was Erikson.

15 THE COURT: Erikson.

16 MR. HAWKINS: Erikson.

17 THE COURT: During the testimony of Erikson there was
18 an objection -- there was a sidebar.

19 Do you wish to place that on the record?

20 MR. HAWKINS: Well, yeah -- yes, Your Honor.

21 We were asking Erikson some questions about the fact
22 that he's been represented all along the way by Mr.
23 Davidson. Mr. Davidson made us jump through some
24 unnecessary hoops and subpoenas and that sort of thing where
25 he indicated that he didn't know if he could get, you know,

1 accept service for Mr. Erikson. Ultimately he had him here
2 but I want to put that on the record.

3 I also want to put on the record that he's indicated
4 we've opened the door to a federal lawsuit somehow and I
5 don't see how that could of happened.

6 THE COURT: Well, I'm not sure that he made that actual
7 motion. I think he---

8 MR. HAWKINS: Okay.

9 THE COURT: He may of said it in sidebar.

10 But, Mr. Davidson, are you making that motion?

11 MR. DAVIDSON: Here -- here's my problem, judge.

12 I, I represent Mr. Erikson in a lawsuit that Mr. Owens
13 brought in state court and then it was removed to federal
14 court. I got an order of dismissal dismissing him and the
15 other defendants, other than Mr. Gibson, in regard to a
16 federal lawsuit. I think it -- the fact that I may or may
17 not represent him doesn't mean, mean much of anything quite
18 honestly and I still believe that potentially they have
19 opened the door to the federal lawsuit.

20 But that's, that's my position and I'll live with your
21 ruling, judge.

22 THE COURT: Okay.

23 MR. HAWKINS: I, I don't see what relevance the federal
24 lawsuit could possibly have to anything except to confuse
25 jurors about burdens of proof, and witnesses, and named

1 defendants, and all kinds of stuff. That -- that's just
2 add -- that's just trying to create an appellate nightmare
3 which I, I guess is what he wants.

4 THE COURT: well, here's, here's where we are with
5 that. I've already ruled on it.

6 MR. HAWKINS: Okay.

7 THE COURT: We're just simply placing this on the
8 record---

9 MR. HAWKINS: Okay.

10 THE COURT: ---so that it is preserved for, for either
11 party. I do, at this time, want to -- we have something
12 else to take up?

13 MR. HAWKINS: Yes. Yes, Your Honor, and it's just from
14 the last questions that Mr. Davidson asked and I didn't know
15 what he was talking about when he said fentanyl.

16 My client -- I consulted with my client. He said I
17 don't have anything -- any charge to do with Fentanyl. He
18 said that was the charge that was made, hadn't been found
19 guilty of, and somebody else, a -- some girl had signed a
20 statement where she's going to plead guilty, guilty.

21 THE COURT: All right.

22 MR. HAWKINS: I'm showing---

23 THE COURT: Has she already been convicted of Fentanyl?

24 MR. HAWKINS: She hasn't been convicted.

25 THE COURT: No, he---

1 MR. HAWKINS: He, he -- Your Honor---

2 THE COURT: Has, has your client?

3 MR. HAWKINS: He hasn't and he's leading the jury to
4 believe that he's got a Fentanyl related conviction and he
5 doesn't.

6 MR. DAVIDSON: I asked him, Your Honor. I, I thought
7 he had a Fentanyl charge involved with the methamphetamine.
8 His father indicated he didn't. That's the end of that.

9 MR. HAWKINS: And I, I would ask for a curative
10 instruction that he does not have any Fentanyl related
11 charges at all.

12 THE COURT: All right. Let me, let me consider that.
13 Let me consider that.

14 what I want to do right now is give you about 15
15 minutes to go over---

16 MR. HAWKINS: Okay.

17 THE COURT: ---this deposition. This eight---

18 MR. HAWKINS: There's three of them. There's three of
19 them. But if I, if I have 15 or 20 minutes, I can, I can be
20 ready, judge.

21 THE COURT: I'm gonna give you 15.

22 MR. HAWKINS: Thank you, judge.

23 THE COURT: So we'll stand down for 15 minutes.

24 MR. HAWKINS: I -- I don't know that we have the
25 originals. I -- so that -- so that that's on the record. I

1 don't think we have the originals to give to the Court,
2 judge.

3 THE COURT: Okay.

4 MR. HAWKINS: We just -- we -- I just got these handed
5 to me.

6 THE COURT: All right. But the, the, the inmates are
7 here to testify?

8 MR. HAWKINS: Right.

9 THE COURT: And you've got---

10 MR. HAWKINS: We just---

11 THE COURT: Okay.

12 MR. HAWKINS: I just got handed the---

13 THE COURT: Okay.

14 MR. HAWKINS: Yes, Your Honor.

15 THE COURT: All right. Thank you. Go ahead and take
16 this time.

17 (WHEREUPON, a short recess was taken at this time.)

18 THE COURT: Please be seated.

19 All right. Are we ready to proceed?

20 MR. HAWKINS: Yes, Your Honor.

21 Before we do, these are inmates that I wanted some
22 direction on the record about -- I don't think it'd be
23 appropriate for Mr. Davidson to go into their criminal
24 history or what they're in for or anything like that. That
25 doesn't have anything to do with the case unless he made

1 some showing -- unless he made some showing out of the
2 presence of the jury, a proffer, for example, that it could
3 somehow -- that it would somehow be admissible under the
4 rules.

5 The second thing is I would ask that he limit any cross
6 questions in -- so it doesn't take the jury in some---

7 THE COURT: I'm sorry. I just didn't hear that last
8 part.

9 MR. HAWKINS: I would ask that he limit any cross
10 questions so that it doesn't taint the jury or suggest that
11 my client's currently incarcerated. We're gonna ask the
12 questions in such a way that, you know, did you observe,
13 after this, this -- some retaliation.

14 THE COURT: Okay.

15 MR. HAWKINS: But I don't want will to get up there and
16 say you're in there with him right now, aren't you, or --
17 cause that would defeat the purpose of him wearing street
18 clothes.

19 THE COURT: All right. Let's -- so, with regards to
20 your first point, the criminal -- are you trying to limit
21 the criminal -- him bringing up any criminal record for
22 impeachment purposes?

23 MR. HAWKINS: Well, no. Well, if they do something to
24 get impeached. But to go up there on cross and just say
25 well, you're in for X, Y, Z, and everything else, I don't

1 think that's relevant to anything we're talking about.

2 THE COURT: All right. Mr. Davidson.

3 MR. HAWKINS: That -- that's his plan with everything.

4 MR. DAVIDSON: It's 609, Your Honor.

5 THE COURT: Okay.

6 MR. DAVIDSON: I can, I can use criminal convictions
7 for the purposes of impeaching the witness.

8 THE COURT: Right. He can only use convictions
9 unless---

10 MR. DAVIDSON: That's all I'm gonna use, all I'm gonna
11 use.

12 MR. HAWKINS: But, Your Honor, he's not using this
13 stuff for impeachment. He keeps, he keeps talking about
14 impeachment and if it means he can come out of the door with
15 it.

16 Impeachment means I say something, you have something
17 counter to that, and you impeach me with it. It doesn't
18 mean I go up there on cross and immediately go into a
19 criminal history. That's not what impeachment is.

20 MR. DAVIDSON: 609, Your Honor. I'm gonna---

21 MR. HAWKINS: Right. It says exactly what I just said,
22 will.

23 MR. DAVIDSON: It says impeachment by evidence of
24 conviction of crime. Quickly---

25 THE COURT: Yes, Mr. Hawkins. That is, that is

1 actually how -- that is the rule of the -- that is how the
2 rule functions.

3 MR. HAWKINS: Right. It---

4 THE COURT: It is impeachment more so of his
5 credibility or the, the witnesses' credibility.

6 MR. HAWKINS: And I don't have a problem if he does --
7 if he says something to be impeached. But he has to
8 first -- before you can use 609, there has to be an
9 impeachable statement.

10 MR. DAVIDSON: No.

11 THE COURT: No, that's not -- that's not how it -- all
12 right. Let me make my ruling.

13 I'm gonna rule that he can use convictions within,
14 within 609. He can not use anything that is more than the
15 10 years. I, I will limit his questioning with regards to
16 present status.

17 I'm not sure what they're in jail for, if they're
18 serving 30 day sentences or if they're awaiting trial for
19 something. He can only use convictions.

20 Mr. Davidson, I do want you to stay clear from any
21 indication that Mr. Owens is presently in the Aiken County
22 Detention Center.

23 MR. DAVIDSON: Your Honor, the real problem with that
24 is that several of these individuals have been roommates
25 with Mr. Owens. So, I think that would be relevant for the

1 jury to know.

2 Also, all of these "retaliations" happened either in
3 2019, '20, or '21. Some of this as recent as three to six
4 months from when we took the deposition, which would
5 indicate that Mr. Owens is in jail. But it also would
6 indicate that all of these individuals' testimony isn't
7 relevant to the issues involved in this case, which is the
8 frisk search that was done on January the 25th, 2017.

9 what happened in '19, '20, and '21, and I think one of
10 them may be even in '22, isn't relevant in regard to this
11 case.

12 THE COURT: He's offer -- what are you offering the---

13 MR. HAWKINS: For---

14 THE COURT: ---witnesses for?

15 MR. HAWKINS: For claims related to our retaliation.
16 We, we got a big retaliation claim. We've built that
17 throughout discovery in this case. We've talked about it
18 throughout this trial. To try to -- to, to let them be
19 transported and---

20 THE COURT: All right.

21 MR. HAWKINS: ---then try to cut it out now and change
22 the Court's ruling---

23 THE COURT: I'm gonna, I'm gonna let him -- I'm gonna
24 let the witnesses testify.

25 All right. That's my -- I'm -- we're gonna call the

1 witnesses.

2 MR. HAWKINS: Your Honor, and our---

3 THE COURT: Are some of these incidents within the
4 last---

5 MR. HAWKINS: And I'm not gonna off -- I'm not gonna
6 say what date did this retaliation happen. I'm just gonna
7 say did you observe Mr. Gibson retaliate against Mr. Owens.
8 That's it.

9 I'm not gonna say -- I mean there's no reason to put
10 the date and timestamp on it. They're giving the testimony
11 that they saw retaliation.

12 THE COURT: Do you plan on using the dates,
13 Mr. Davidson?

14 MR. DAVIDSON: Yes, ma'am, I mean I'm -- I've got to
15 build a record to show this testimony is not relevant to
16 the, to the issues in this case and I'm taking a moment
17 to -- if the Court will give me a second---

18 MR. HAWKINS: Well, while he's finding that---

19 MR. DAVIDSON: ---I'll.

20 MR. HAWKINS: ---I'll add that there's already been
21 testimony's come out that says retaliation is a violation of
22 policy and we know from Jinks versus Richland County that
23 violation of a policy is evidence of gross negligence. He's
24 gonna testify that that retaliation has caused him damage
25 and he's entitled to do that. There -- he can't keep this

1 out under the rules. He just wants to.

2 MR. DAVIDSON: Your Honor, there was never any
3 allegations in the complaint dealing with retaliation. It
4 deals with assault and battery, excessive force, be sure
5 that we complied with policies, failure to provide with
6 needed appropriate medical care, adequate investigate,
7 authorize of doc to ratify his actions, hiring officers who
8 are incompetent, unlawful detaining, and false imprisonment,
9 by threatening the plaintiff by force of, of, of -- by force
10 the plaintiff to incur medical bills and refusing to provide
11 basic needs.

12 The closest one is threatening the plaintiff and that
13 would be Mr. Gibson and all these individuals talk about
14 seeing smirks, seeing -- one of them said that Mr. Gibson
15 required them, he and then Mr. Owens, of recent, Your Honor,
16 so it's coming in that he's in jail, of recent to scrub the
17 wall to get drawings off of it in their cell.

18 MR. HAWKINS: Your Honor, if you told him to limit the,
19 the time and limit his questions and he just tells the Court
20 I'm gonna do it a different way, that -- I mean he can't
21 just disobey what the Court says.

22 MR. DAVIDSON: I'm not -- what I -- I'm not going to---

23 THE COURT: I'm not quite sure I placed any ruling
24 regarding this -- the retaliation questioning.

25 MR. HAWKINS: Well, I was talking about the limit in --

1 was, was your ruling just to the limit of convictions or was
2 your ruling also to---

3 THE COURT: No, I don't---

4 MR. HAWKINS: ---to limit the---

5 THE COURT: I do not want and I do not think -- but I
6 do not want Mr. Davidson to ask any question arguing --
7 argue that indicates that Mr. Owens is in the detention
8 center on November the 2nd, 2022.

9 MR. HAWKINS: And that's all I'm trying to rule---

10 MR. DAVIDSON: But, judge, how do I avoid if he has
11 been a roommate with one of these gentlemen cause he's in
12 there and he's been in there for a good while other than the
13 period of time he escaped?

14 How do I avoid, okay, showing that he, in fact, roomed
15 with one of these individuals or roomed with two of these
16 individuals?

17 That would go to the issue of whether or not there's
18 bias. It would be a matter that the jury can---

19 THE COURT: Certainly.

20 Can you not do that by asking if he's roomed or ever --
21 if, if he is ever roomed with the, the defendant?

22 MR. DAVIDSON: But you have to -- they need -- the jury
23 needs to know what date we're talking about. My position is
24 none of this is relevant. The fact that something happened
25 in 2022 isn't relevant to what happened five years ago.

1 MR. HAWKINS: Your Honor, we are able, one, to conform
2 our pleadings to the evidence and, two, I have policy
3 violations in the complaint and they -- there's already been
4 testimony on that witness stand that PREA violations,
5 violations of an -- internal policies happen. There's been
6 that testimony even by---

7 THE COURT: All right.

8 MR. HAWKINS: ---our witness.

9 THE COURT: All right. I've heard enough.

10 Mr. Hawkins -- Mr. Davidson?

11 MR. DAVIDSON: Yes, ma'am.

12 THE COURT: I'm, I'm going to allow you to ask them if
13 they have -- if they were roommates. I do not want you to
14 ask present tense and I do not want you to go into the dates
15 of when they were roommates.

16 MR. DAVIDSON: What about the dates of when they claim
17 that this "retaliation" occurred?

18 THE COURT: When are the dates?

19 When do they claim?

20 MR. DAVIDSON: They claim---

21 MR. HAWKINS: They don't, they don't put a date in
22 their answer. I, I asked them, you know, have you observed
23 him retaliate. Yeah, he came in there and said that he's
24 such a big guy. I don't know why he's worried about a
25 little nut check.

1 THE COURT: Well, I also think that if you ask them
2 when this alleged -- they observed this alleged behavior,
3 that still doesn't indicate that it happened October,
4 31st through November the 2nd.

5 MR. DAVIDSON: All right. Your Honor, here's, here's
6 one. It is Mr. Hemminger and I'm just gonna read the
7 deposition.

8 THE COURT: All right.

9 MR. HAWKINS: You want me to hand up a copy?

10 THE COURT: No, I'll, I'll listen to it.

11 MR. HAWKINS: What line is it, will?

12 MR. DAVIDSON: Page 15 Line 3. The events dealing with
13 Mr. Gibson saying something about the lawsuit of Mr. Owens,
14 that would of been about six months ago?

15 Six months ago. About five months ago. Five months
16 ago.

17 And when was the first -- and when did you first get
18 here?

19 More recent incarceration. The resident -- the razor
20 occurred when?

21 He claimed earlier that there was a search of Mr. Owens
22 room and his room looking for a razor --

23 THE COURT: Uh-huh.

24 MR. DAVIDSON: -- and he said razor. He said I was in
25 C-3. So I'm going to say about three months ago. Three

1 months. Three or four.

2 okay. And Mr. Owens is in what pod?

3 when all this happened, that I know of, yeah, C-3.

4 So he was in your pod?

5 okay. I think---

6 THE COURT: Well, Mr. Davidson, none of that indicates
7 that he's been here currently. I think that's okay.

8 MR. DAVIDSON: But here's the problem. The date of
9 this deposition is 10/26/22.

10 THE COURT: All right.

11 MR. DAVIDSON: So five months before that would of been
12 May. Three months before that would of been July of '22.
13 That's what they're claiming retaliation of---

14 THE COURT: Okay.

15 MR. DAVIDSON: ---and what happened in '22.

16 MR. HAWKINS: What does that have to do---

17 THE COURT: That's fine. I think, I think it's okay
18 for you to mention those, those dates because if -- for me,
19 as long as it is not indi -- indicative of him being in
20 jail.

21 MR. DAVIDSON: How -- here's my problem.

22 How can it not be indicative of him being in jail when
23 we're talking about retaliation in '22?

24 THE COURT: He may of been released last Friday.

25 MR. HAWKINS: And I'm not him---

1 THE COURT: Tell me if I'm not understanding, Mr.
2 Davidson.

3 MR. DAVIDSON: I understand, Your Honor.

4 THE COURT: If you---

5 MR. DAVIDSON: I understand.

6 THE COURT: If you get into those dates, which I'm
7 going to allow, I just don't want you to, when one of these
8 witnesses comes on the stand, say are you roommate -- are
9 you gonna go back and talk to him tonight.

10 MR. DAVIDSON: I -- I'm -- Your Honor, I don't know
11 what these guys are gon' say on the stand. That's the
12 problem. I've got a deposition. But these are inmates and,
13 you know, they have been known to do things that are
14 unpredictable let's just say.

15 So -- but I can tell you all three of these inmates
16 have nothing that dates back to the time of these events or
17 even close temperate with the time of these events. And
18 I've objected to the retaliation issue and I'm objecting to
19 him trying to conform the pleadings, Your Honor.

20 THE COURT: All right. That objection is noted and
21 your, your arguments have been placed on the record.

22 Anything further?

23 MR. HAWKINS: I think Your Honor ruled that he can, he
24 can reference dates from depositions?

25 THE COURT: Yes.

1 MR. HAWKINS: Okay. Thank you, judge.

2 THE COURT: I'm allowing Mr. Davidson to reference the
3 dates.

4 MR. DAVIDSON: Thank you, Your Honor.

5 THE COURT: Thank you.

6 All right. Are we ready to bring---

7 MR. HAWKINS: Yes, Your Honor.

8 THE COURT: ---out the jury?

9 All right. Let's bring the jury back in please,
10 Mr. will.

11 THE BAILIFF: Yes, ma'am.

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

14 THE COURT: All right. Thank you, ladies and
15 gentlemen.

16 Mr. Hawkins, please call your next witness.

17 MR. HAWKINS: Your Honor, we would call Christopher
18 Hemminger to the stand.

19 THE CLERK: Raise your right-hand.

20 KRISTOPHER HEMMINGER, being first duly
21 sworn, testified as follows:

22 THE CLERK: will you please take a seat and
23 (indiscernible)?

24 State your whole name for the Court.

25 THE WITNESS: Okay.

1 THE COURT: Watch your step.

2 DIRECT EXAMINATION

3 BY MR. HAWKINS:

4 Q. Mr. Hemminger, would you state your full name for the
5 jury please?

6 A. Kristopher Hemminger.

7 Q. Okay. Mr. -- is it Hemminger?

8 A. Yes, sir.

9 Q. Okay. Sorry. I didn't want to get it wrong. I took
10 your deposition a while back.

11 Do you remember that?

12 A. Yes, sir.

13 Q. Okay. I'm gonna ask you a few of the questions that I
14 asked in your deposition and I don't expect it'll take very
15 long.

16 okay?

17 A. All right.

18 Q. All right. Do you know Otis Owens?

19 A. Yes, sir.

20 Q. Okay. From what you know about Otis Owens, is he a
21 pretty nice guy?

22 A. Yes, sir.

23 Q. Has he ever caused any---

24 MR. DAVIDSON: Your Honor, he's getting---

25 Q. ---problem or anything like that that you know of?

1 MR. DAVIDSON: ---in character witness -- getting into
2 character, is he a nice guy, is he---

3 MR. HAWKINS: Your Honor?

4 MR. DAVIDSON: ---was he and all---

5 MR. HAWKINS: You know---

6 MR. DAVIDSON: It's just an improper question.

7 MR. HAWKINS: Your, Your Honor, if I could respond?

8 Not only have we had this conversation and the Court
9 has ruled, but also he has attacked his character directly.
10 Not only am I going out of order, but he's attacked my
11 client's character by saying stuff like, you know, inmates
12 just do all kind of stuff---

13 THE COURT: All right.

14 MR. HAWKINS: They might do all kind of stuff.

15 THE COURT: All right. Here's what we're gonna do.
16 I'm gonna sustain that. I want you to rephrase the
17 question.

18 MR. DAVIDSON: Okay. Fair enough.

19 Have you ever---

20 THE COURT: Thank you, Mr. Hawkins.

21 MR. HAWKINS: I'm sorry, Your Honor.

22 Q. Have you ever known of my client, Mr. Owens, to cause
23 any kind of problems when he was in the jail?

24 A. No, sir.

25 Q. Have you ever known him to make up an allegation about

1 an, an officer that wasn't true?

2 A. No, sir.

3 MR. DAVIDSON: Your Honor, the same thing, Your Honor.
4 I mean they're trying to bolster his reputation and his
5 character by the way he's asking these questions.

6 MR. HAWKINS: Your Honor?

7 THE COURT: All right. I'll sus---

8 MR. HAWKINS: Your Honor?

9 THE COURT: Please rephrase.

10 MR. HAWKINS: Can I just respond?

11 THE COURT: Yes, you can.

12 MR. HAWKINS: The reason, the reason I need to elicit
13 this testimony is because that he has factual knowledge of
14 whether or not Otis has ever made something up about
15 somebody the jury's entitled to hear it and that's all I'm
16 trying to do.

17 THE COURT: All right. I'm gonna reask -- ask it in a
18 different way, Mr. Hawkins.

19 MR. HAWKINS: Yes, judge.

20 Have you ever, have you ever seen or observed Mr. Owens
21 doing anything that was -- that, that appeared to you to be
22 geared toward getting an officer in trouble?

23 A. No, sir.

24 Q. Okay. All right. Do you know Mr. Gibson?

25 A. Officer Gibson?

1 Q. Yeah.

2 A. Yes, sir.

3 Q. Okay. Have you ever heard him make any kind of
4 statement to the effect of in reference to Mr. Owens that
5 this little lawsuit you got ain't gonna work or something
6 like that?

7 A. Yes, sir.

8 MR. DAVIDSON: Keep -- note my objection---

9 MR. HAWKINS: Okay.

10 MR. DAVIDSON: ---Your Honor, and make it a continuing
11 objection.

12 THE COURT: I will allow that objection to run.

13 Q. Okay. And was it your understanding that that was in
14 reference to this lawsuit?

15 A. Yes, sir.

16 Q. Is Otis -- has it been your experience that Otis
17 generally gets along with everybody?

18 MR. DAVIDSON: Same objection.

19 A. For the most part, yes, sir.

20 Q. Okay. Okay. Would you describe Mr. Gibson as "a smart
21 aleck"?

22 A. Yes, sir.

23 Q. Okay. You ever seen him -- I won't -- well, just look
24 at your deposition.

25 Have you ever seen him interact with Mr. Owens where he

1 would sort of belittle Mr. Owens?

2 A. Maybe speak down to him in a sense.

3 Q. Like mean?

4 A. Sort of, yes, sir.

5 Q. Okay. And so how many times do you think you've
6 observed Gibson down or speak in a demeaning manner to Otis?

7 A. Twice.

8 Q. Okay. And do you know if that's related to this
9 lawsuit---

10 A. I---

11 MR. DAVIDSON: Objection, Your Honor.

12 A. I---

13 Q. Do you know if it's related to this lawsuit?

14 A. I couldn't---

15 THE COURT: One second.

16 MR. HAWKINS: Oh, I'm sorry.

17 THE COURT: What's, what's the basis of the objection?

18 MR. DAVIDSON: Number one, the first question was
19 leading and how could he know whether or not -- what
20 Mr. Gibson was or was not thinking at that period of time.
21 It would call for pure speculation --

22 THE COURT: Mr.---

23 MR. DAVIDSON: -- of the witness.

24 THE COURT: Mr. Hawkins, is---

25 MR. HAWKINS: Oh, I'm sorry.

1 THE COURT: Do you have a response?

2 MR. HAWKINS: I'm sorry. I'm sorry. I thought
3 you're -- I'll just withdraw the question or ask a different
4 question --

5 THE COURT: Thank you.

6 MR. HAWKINS: -- to speed things up okay.

7 Okay. Let's talk about, let's talk about the search
8 for the razors.

9 Do you remember Gibson being involved in a search for
10 razors, like shaving razors?

11 A. Yes, sir.

12 Q. Okay. And do you remember Gibson got -- bypassing
13 other cells and going directly to my client's cell?

14 A. Yes, sir, there's 16 cells in a, in a dorm.

15 Q. Okay.

16 A. There's eight on top and eight on the bottom.

17 Q. Okay. And when this -- when these razors went missing,
18 were -- did you observe Gibson go immediately from where he
19 was, bypass other cells, and go directly to Mr. Owens cell?

20 A. Yes, sir.

21 Q. And were there ever any cells -- I mean were there ever
22 any razors assigned to his room?

23 A. Not to my knowledge.

24 Q. Okay. So, is it fair to say that Gibson went -- passed
25 over the cells directly to Otis' room to look for razors

1 when no razors were ever assigned to that room on that day?

2 A. To my knowledge, yes.

3 Q. Okay. Thank you, Mr. Hemminger. I don't have any more
4 questions for you. Please answer any questions Mr. Davidson
5 has.

6 A. Thank you.

7 THE COURT: Cross.

8 CROSS-EXAMINATION

9 BY MR. HEMMINGER:

10 Q. Mr. Hemminger --

11 A. Yes.

12 Q. -- and I think I'm saying that right?

13 A. Yes, sir.

14 Q. I think I got you to help me say it last week when we
15 took your deposition, right?

16 A. Yes, sir.

17 Q. All right. Now, razorblades are considered contraband
18 in a correctional facility, correct?

19 A. The blade itself, yes, sir.

20 Q. Okay. And would I be correct -- I think you said that
21 Mr. Gibson, and I think another officer you said, came in
22 and searched Mr. Owens' room, correct?

23 A. There were more than two officers.

24 Q. Okay. So it was a group of them?

25 A. Yes, sir.

1 Q. Okay. And you don't -- you didn't know they were gonna
2 search that room until they came in to search it, correct?

3 A. Correct.

4 Q. You don't know what information they had about whether
5 there might or might not be a razor in that cell that could
6 be used as a contraband or was contraband?

7 A. Well, I'm not understanding what you're asking me.

8 Q. All right. Slow down then.

9 You don't know any information about what the officers
10 were told which resulted in them searching that cell,
11 correct?

12 A. Well, I'm, I'm not really understanding what you're --
13 what's, what's your questioning.

14 Q. All right. Listen to my question one more time.

15 You don't know if somebody told an officer there were
16 razors in that cell, do you?

17 A. No, I, I would not have that knowledge, no.

18 Q. Okay. And so if somebody told a white shirt, a
19 lieutenant, that there was a razor in that cell, you
20 wouldn't know that, correct?

21 A. No, I'm an inmate.

22 Q. Okay. And you wouldn't know just if the lieutenant
23 sent the officers in there to do a cell check to see if
24 there was, in fact, contraband in that cell, correct?

25 A. I would not. That's not information that I would know,

1 no.

2 Q. Thank you.

3 All right. Now, I think you said this check of the
4 razor, and I may be wrong, you were in C-3, correct?

5 A. Yes, sir.

6 Q. Okay. And it happened about three months ago, correct?

7 A. Yes, sir.

8 Q. And that -- Mr. Owens was in that pod at that time,
9 correct?

10 A. Yes, sir.

11 Q. And I think you said something about -- said something
12 about the lawsuit and I think you said that occurred about
13 six months ago, correct?

14 A. Yes, sir, six -- five or six months ago.

15 Q. And you've previously been convicted of possession,
16 sell, or disposal of a stolen, stolen vehicle, correct?

17 A. Yes, sir.

18 Q. That was in 2018, correct?

19 (WHEREUPON, there was no audible response.)

20 Q. Right?

21 A. I want to say it was '18. It might of been '17.

22 Q. You've also been charged with methamphetamine or
23 cocaine, correct?

24 MR. HAWKINS: Your Honor, I'm gonna object. This is
25 just trying to embarrass the witness.

1 THE COURT: All right. Sustained. Excuse me.
2 Overruled.

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

4 Isn't that correct, methamphetamine or cocaine base?

5 A. Yes, sir.

6 Q. And did you know Mr. Owens on the street?

7 A. Yes, sir.

8 Q. You've known him several years now, right?

9 A. Yes, sir.

10 Q. Consider him a friend?

11 A. Yes, sir.

12 MR. DAVIDSON: No further questions, Your Honor.

13 THE COURT: All right. Thank you.

14 Any---

15 MR. HAWKINS: I don't have any redirect, judge.

16 THE COURT: All right. This witness may be excused.

17 Mr. Hemminger, please watch your step going down.

18 THE WITNESS: Okay.

19 THE COURT: All right. Mr. Hawkins, please call your
20 next witness.

21 MR. HAWKINS: Your Honor, we would call Willie Franklin
22 to the stand.

23 THE CLERK: If you'll raise your right-hand please?

24 WILLIE FRANKLIN, being first duly
25 sworn, testified as follows:

Willie Franklin - Direct examination
By Mr. Hawkins

1 THE CLERK: Please take a seat in the witness box.
2 State your full name for the Court.

3 THE COURT: Mr. Hawkins.

4 MR. HAWKINS: Thank you, judge.

5 DIRECT EXAMINATION

6 BY MR. HAWKINS:

7 Q. Mr. Franklin, would you state your complete name for
8 the jury please?

9 A. Willie Maurice Franklin.

10 Q. Mr. Franklin, I'm gonna ask you some of the same
11 questions that I asked you when I took your deposition a
12 while back and I don't expect it will take very long.

13 okay?

14 (WHEREUPON, there was no audible response.)

15 Q. You have to answer out loud.

16 A. Yes, sir.

17 Q. Sorry about that.

18 okay. So, do you know Mr. Owens, my client?

19 A. Yes, ma'am. Yes, sir, we was roommates.

20 Q. okay. Y'all, y'all use to be roommates?

21 A. Yes, sir.

22 Q. okay. Have you ever observed him have any kind of
23 arguments with guards or anything like that?

24 A. No, sir.

25 Q. You ever observe him have a problem with any

Willie Franklin - Direct examination
By Mr. Hawkins

1 correctional officers or guards or anything like that?

2 A. No, sir.

3 Q. Is he a nice guy as far as you know?

4 A. Yes, sir.

5 Q. Pleasant guy?

6 A. Yes, sir, the best roommate I ever had.

7 Q. Okay. Do most people -- do most people like Mr. Owens,
8 to your knowledge?

9 A. Yes, sir.

10 Q. Is he generally honest as far as you know?

11 A. Yes, sir.

12 MR. DAVIDSON: Your Honor, objection.

13 Q. And then---

14 THE COURT: What's the basis of the objection?

15 MR. DAVIDSON: He's asking whether Mr. Owens was
16 honest. That goes to character, Your Honor. It's not a
17 proper foundation for him---

18 MR. HAWKINS: He's already attacked his character,
19 judge, and we're having to go out of order because of the
20 situation we're in.

21 THE COURT: I understand. I'm going to sustain.
22 Continue, Mr. Hawkins.

23 Q. Have you ever known Otis to tell a lie?

24 A. No, sir.

25 Q. Okay. Now, have you ever -- give me one second.

Willie Franklin - Direct examination
By Mr. Hawkins

1 Have, have you ever observed Gibson single out Mr.
2 Owens and make him do things like clean other people's
3 drawings off the walls and things like that?

4 A. Yes, sir.

5 Q. Okay. Do you know -- you have any idea why he singled
6 Mr. Owens out?

7 A. No, sir.

8 Q. Okay. Did, did you ever observe Mr. Gibson tell Mr.
9 Owens if he didn't, if he didn't do things like clean other
10 people's drawings and things like that he wouldn't get any
11 rec in the rec yard?

12 A. Yes, sir.

13 Q. And was that something -- in, in that regard, was he
14 singling out Mr. Owens?

15 A. Yes, sir.

16 Q. Was he treating Mr. Owens differently than other
17 inmates?

18 A. Yes, sir.

19 Q. Have you ever seen Mr. Gibson go out of his way to come
20 into Mr. Owens' room and smirk or make faces or tease him?

21 A. Yes, sir.

22 Q. Okay. Have you ever heard Mr. Gibson say that little,
23 that little whatever you've got going on ain't gonna work or
24 something to that effect?

25 A. Yes, sir.

Willie Franklin - Direct examination
By Mr. Hawkins

1 Q. Do you know if that was related to this lawsuit, if
2 that---

3 A. Yes, sir.

4 Q. Okay. And you told me it was because of the lawsuit.

5 Okay. And does he come in to, to, to smirk or, or
6 smirk at or tease Otis during count -- when he comes for
7 count?

8 A. Yes, sir.

9 Q. Does he make a special effort to go out of his way in
10 what he's doing to go make fun or, or belittle Otis?

11 A. Yes, sir, he come to the door and look at him and
12 smirk, walk off, and proceed with his count.

13 Q. Okay. What does, what does generally Otis' reaction?
14 what does he do?

15 A. I didn't hear.

16 Q. What does Otis do when Gibson do---

17 A. Nah, he just stare at him. He don't say nothing to
18 him.

19 Q. Okay. Has Otis ever caused you any problems?

20 A. No, sir.

21 MR. HAWKINS: I don't have any more questions.

22 THE COURT: Thank you.

23 Cross-examination.

24 MR. DAVIDSON: Thank you, Your Honor.

25 CROSS-EXAMINATION

Willie Franklin - Cross-examination
By Mr. Davidson

1 BY MR. DAVIDSON:

2 Q. From my understanding, you're not suppose to draw on
3 the walls of the rooms that y'all are assigned to, correct?

4 A. Yes, sir.

5 Q. Okay. And would I be correct that not only did you and
6 Mr. Owens -- y'all were roommates I believe, correct?

7 A. Yes, sir.

8 Q. And y'all were roommates when Mr. Gibson told y'all to
9 clean the walls with an eraser, correct?

10 A. Yes, sir.

11 Q. Told other inmates to do the same thing, correct?

12 A. Well, no, sir. He just told us cause we had a, a whole
13 lot of bunch of drawing on the wall, some drawings that we
14 didn't put up there.

15 Q. You remember giving your deposition and at that time I
16 asked you did you make -- did he make other inmates do that
17 or just you-all?

18 Do you remember your answer?

19 A. Yes, he's -- I said he makes other people clean the
20 walls. But that certain day nobody else cleaned the wall
21 but us.

22 Q. Okay. All right. But y'all were cleaning y'all's cell
23 at that point, correct?

24 A. No, we clean up in the morning time. Before we came
25 out for rec, he came to the door and dropped the eraser

Willie Franklin - Cross-examination
By Mr. Davidson

1 magic in the room and told us if we don't clean the walls we
2 wasn't getting no recreation.

3 Q. I apologize. I just got this. I want to make sure I
4 quote you right, Mr. Franklin. He asked -- I asked you at
5 that time okay. And this is Line 11 Page 16.

6 When you saw Officer Gibson give you I think you said
7 you and Owens the eraser for the walls, there were drawings
8 on the wall.

9 Do you recall your answer at that time?

10 A. Yes, sir.

11 Q. You said yeah. Whoever was in that room before us had
12 a lot of drawings on that wall and he wanted you to get that
13 off the wall.

14 Yes.

15 And does that happen to other inmates that have
16 drawings on their walls?

17 MR. HAWKINS: Your Honor, if---

18 A. And I said---

19 MR. HAWKINS: I'm gonna object. If he's trying to
20 impeach, he needs to hand a copy and then, and then read
21 along the way that impeachment goes. Just read a deposition
22 transcript.

23 MR. DAVIDSON: No, I'm just doing it like plaintiff's
24 counsel did.

25 Mr. Franklin, I show you your deposition.

Willie Franklin - Cross-examination
By Mr. Davidson

1 A. I know, I know what I told you.

2 Q. Do what now?

3 A. I know what I told you.

4 Q. Okay. And it says and he wanted you to get that off
5 the wall.

6 Yeah.

7 And I asked you, and does that happen to other inmates
8 that have drawings on the wall?

9 A. Yeah. And I told you yes, it do.

10 Q. Okay. All right. Just want to make sure we're on the
11 same page.

12 And when did he come into the room and tell y'all to
13 get the drawings off the wall?

14 A. Before our rec started.

15 Q. Before rec.

16 When was that in relation to what year?

17 A. This year, '22.

18 Q. '22.

19 Okay. Now, the smirk occurred when?

20 A. This year.

21 Q. '22.

22 A. '22.

23 Q. Okay. And I believe in 2020 you were convicted or pled
24 guilty to malicious injury to property, correct?

25 A. Yes, sir.

Willie Franklin - Cross-examination
By Mr. Davidson

1 Q. Actually it was malicious injury to property at the
2 courthouse---

3 A. Yes, sir.

4 Q. ---correct?

5 This courthouse?

6 A. No, at the county jail courthouse.

7 Q. The county jail.

8 Okay. And then I think in '21 you were either
9 convicted or pled guilty to domestic violence second degree.

10 Is that correct?

11 A. Yes, sir.

12 THE CLERK: That's all the questions I have, Your
13 Honor.

14 THE COURT: Thank you.

15 MR. DAVIDSON: Thank you, Mr. Franklin.

16 THE WITNESS: Yes, sir.

17 THE COURT: Any redirect?

18 MR. HAWKINS: I don't think I have redirect, judge.

19 THE COURT: Okay. This witness may be excused.

20 Please watch your step right now.

21 All right. Mr. Hawkins, please call your next witness.

22 MR. HAWKINS: Yes, Your Honor.

23 We would call Emmanuel O'Neal to the stand.

24 THE CLERK: Raise your right-hand please.

25 EMMANUEL O'NEAL, being first duly

1 sworn, testified as follows:

2 THE CLERK: Please take a seat in the witness box and
3 state your full name for the Court.

4 THE COURT: All right. Sir, if you'll state your whole
5 name for the Court and then spell your last name please.

6 THE WITNESS: Emmanuel Lewis O'Neal.

7 THE COURT: Thank you.

8 Mr., Mr. Hawkins.

9 MR. HAWKINS: Thank you, judge.

10 DIRECT EXAMINATION

11 BY MR. HAWKINS:

12 Q. Mr. O'Neal, I'm gonna ask you some questions. These
13 are the same questions I asked you at your deposition.

14 Okay.

15 A. All right.

16 Q. And if you could, try to get a little closer to the
17 microphone and, and give a clear answer. I know we've been
18 giving our court reporter a hard time. I want to make the
19 record clear.

20 Do you know, Mr. Owens?

21 A. Some from the county, yeah.

22 Q. Okay. Has he -- have you ever observed him to be
23 aggressive or anything like that toward guards?

24 A. Nah. No, sir.

25 Q. Okay. You ever, you ever known him to make any

1 allegations about guards or anything like that?

2 MR. DAVIDSON: Your Honor, again---

3 A. No, sir.

4 MR. DAVIDSON: ---he's getting into all that character
5 stuff.

6 THE COURT: Yes.

7 All right. I'm going to sustain.

8 Please move forward, Mr. Hawkins.

9 Q. Did you ever have occasion to observe Mr. Gibson
10 interact with my client, Otis?

11 A. At different times, yes, sir.

12 Q. Okay. Did he ever -- did Mr. Gibson ever make any kind
13 of comments like that little lawsuit ain't gonna work or I
14 ain't worried about that or, or something to that effect?

15 MR. DAVIDSON: Objection. Leading, Your Honor.

16 A. It's not gon' work. I'm not worrying about that.

17 THE COURT: Hold on one second, Mr. O'Neal. I'm going
18 to overrule.

19 Continue, Mr. Hawkins.

20 MR. HAWKINS: Thank you, judge.

21 Please restate for the jury the statements that you
22 heard Mr. Gibson make about Mr. Owens lawsuit.

23 A. It's not gonna work. I'm not worrying about that. It
24 never happened and the, the main one I heard was he was
25 talking to another inmate. He said he's suppose to be such

1 a big tough guy. why he worrying about a little nut shot.

2 Q. Okay. And he was talking about -- is it your
3 understanding he was talking about the sexual assault on Mr.
4 Owens in 2017?

5 MR. DAVIDSON: Object---

6 A. Yes, sir.

7 MR. DAVIDSON: ---as to the form, Your Honor.

8 THE COURT: Your objection is to the form?

9 MR. DAVIDSON: Objection to the form. Also leading,
10 Your Honor.

11 THE COURT: All right. Please rephrase, Mr. Hawkins.
12 I'll sustain.

13 MR. HAWKINS: Judge -- and I'm not trying to be vulgar,
14 but the nut shot comment, what was that, what was that in
15 reference to?

16 A. From my understanding, it's suppose to have been a, a,
17 a pat down or whatnot and he end up getting hurt during the
18 pat down. I guess grabbed his nuts or whatnot. Excuse me.

19 Q. Okay. Do you say he grabbed his testicles?

20 A. Yeah.

21 Q. Talking about Mr. Gibson grabbed Mr. Owens testicles?

22 A. Yes, sir.

23 Q. And is it your understanding that that's where Mr.
24 Owens injury came from?

25 A. Yes, sir.

1 Q. Okay. Now, do you, you have any knowledge about
2 Mr. Gibson being in close proximity or around Otis when he
3 was not suppose to be around Otis?

4 A. I mean I seen him back there a couple times in---

5 MR. DAVIDSON: Objection, Your Honor. It's leading and
6 there's no foundation.

7 THE COURT: I sustain.

8 Rephrase.

9 Q. Do you have any knowledge about Mr. Gibson's vio --
10 violating the rules of PREA which require him to stay away
11 from a potential sexual assault victim?

12 MR. DAVIDSON: Object---

13 A. I mean---

14 MR. DAVIDSON: ---as to the form of the question, Your
15 Honor. I'm not sure how this witness would know the
16 requirements nor much less whether or not there's been any
17 action in regard with something that happened in 2017. He
18 needs to lay a foundation first of all.

19 THE COURT: I'll sustain.

20 Mr. Hawkins.

21 Q. What is Mr. Gibson's general attitude toward Otis like?

22 A. I would say in a nitpicking way from time to time.

23 Q. Caddy?

24 A. Yeah, real caddy.

25 Q. Does Gibson take any opportunity he can to needle Otis?

1 A. Oh, yeah.

2 Q. Does he take any opportunity he can to make Otis' life
3 miserable?

4 MR. DAVIDSON: Objection. Leading.

5 Q. Is that a yes?

6 A. Yes, sir.

7 Q. Okay. I don't have any more questions. Please answer
8 any questions the Sheriff's Office attorney has.

9 THE COURT: Cross.

10 MR. DAVIDSON: Let me get organized, Your Honor. I
11 apologize. Tearing up all my papers.

12 CROSS-EXAMINATION

13 BY MR. DAVIDSON:

14 Q. Mr. O'Neal, you said there was some teasing and things
15 he said.

16 what year was that please, sir?

17 A. Sir?

18 Q. what year?

19 A. what year was what?

20 Q. when you heard this -- these comments or this tension?

21 A. Oh, that was this year.

22 Q. when?

23 A. This year.

24 Q. This year.

25 '22?

Emmanuel O'Neal - Cross-examination
By Mr. Davidson

1 A. Yes, sir.

2 Q. And---

3 A. Him---

4 Q. You've known Mr. Owens for a fair amount of time,
5 correct?

6 A. I don't think. He only been locked up about a year on
7 this charge but yes, sir.

8 Q. You call him Scoot, right?

9 A. Yes, sir.

10 Q. That's what he goes by in the jail?

11 A. Yes, sir.

12 Q. You ever room with Scoot?

13 A. No, sir.

14 Q. Been in the same pod?

15 A. Yes, sir.

16 Q. And were you at the Aiken County Detention Center in
17 2017?

18 A. No, sir.

19 Q. You just recently been there, right?

20 A. Yes, sir.

21 Q. You ever been convicted of a crime?

22 A. Yes, sir.

23 Q. Okay. Ever spent time at the Department of
24 Corrections?

25 A. Yes, sir.

Emmanuel O'Neal - Cross-examination
By Mr. Davidson

1 Q. what was that for please?

2 A. Felony fleeing (phonetic) and alluding. Felony
3 fleeing (phonetic) and alluding.

4 Q. You ran from the police?

5 A. Yes, sir.

6 MR. DAVIDSON: The Court's indulgence.

7 (Pause.)

8 MR. DAVIDSON: That's all I have. Thank you, sir.

9 Appreciate it.

10 THE COURT: Thank you.

11 Any redirect, sir?

12 MR. HAWKINS: I just have one question, Your Honor.

13 REDIRECT EXAMINATION.

14 BY MR. HAWKINS:

15 Q. Are you aware that Otis' whole family and everybody who
16 knows him calls his Scooter?

17 A. No, sir.

18 Q. You don't have knowledge of that?

19 A. No, sir.

20 MR. HAWKINS: I don't have any more questions.

21 THE COURT: All right. Any recross?

22 MR. DAVIDSON: None, Your Honor.

23 THE COURT: All right.

24 MR. DAVIDSON: Thank you.

25 THE COURT: This witness may be excused.

1 Mr. O'Neal, watch your step going down please.

2 All right. Mr. Hawkins, please call your next witness.

3 MR. HAWKINS: Your Honor, I don't think we have any
4 more live witnesses to go or none that we can get in today.
5 We have Otis but he's gonna take a while. I think -- and I
6 don't know what, what the Court wants to do. But if we did
7 the rest of Ard's, I don't think it would take but maybe 15
8 more minutes but I'll do whatever the Court tells me to do
9 obviously.

10 THE COURT: All right.

11 All right. Ladies and gentlemen of the jury, I'm going
12 to release you for the night. Please let me remind you that
13 you're not to discuss this case with anyone. Not even
14 amongst yourselves. Please do not try to conduct any
15 research regarding this case. We'll give you everything
16 that you need.

17 You-all want biscuits in the morning?

18 THE JUROR: Yes.

19 THE JUROR: Yes.

20 THE COURT: All right. We will, we will do that for
21 you tomorrow morning. Please be here tomorrow morning at
22 ten o'clock.

23 All right. All right. Thank you.

24 Any questions from me before you're released?

25 (WHEREUPON, there was no audible response.)

1 THE COURT: Thank you. Have a good evening.

2 (WHEREUPON, the following takes place outside the
3 presence of the jury.)

4 THE COURT: All right. What issues do we need to take
5 up outside the, the presence of the jury?

6 MR. HAWKINS: I don't know that I have any, Your Honor,
7 unless we're talking about the next depositions.

8 THE COURT: All right. And so what I -- we're gonna
9 do, as I, as I stated earlier, we're gonna give you-all --
10 give Mr. or Mr. Davidson's already made his objections or
11 written down his objections. But I'm gonna give you-all
12 time to look over those and see if there's something that
13 you attorneys can work out amongst yourselves tonight.

14 Tomorrow morning, at nine o'clock, whatever you were
15 not able to work out tonight, we will go over at 9:00AM and
16 we'll spend about 45 minutes on that and then you'll call --
17 we'll --.

18 MR. HAWKINS: I'll call Otis and then we'll do those
19 depositions and then I -- it will -- we'll rest and make
20 our, you know, DV motion.

21 THE COURT: All right. And then we will hear from you,
22 Mr. Davidson.

23 Is that correct?

24 MR. DAVIDSON: That's correct, Your Honor.

25 THE COURT: All right. Do you have any witnesses to

1 present?

2 MR. DAVIDSON: I'm gonna talk to Mr., Mr. Gallam
3 tonight but I don't believe so, Your Honor.

4 THE COURT: All right. And if you do, I believe that
5 tomorrow will, will be fine.

6 MR. DAVIDSON: Okay.

7 THE COURT: It will---

8 MR. HAWKINS: And we'll, we'll be through -- depending
9 on how long they take with all these other people, we --
10 we'll hopefully be through tomorrow afternoon.

11 THE COURT: All right. All right. That said, we do
12 need to talk about jury charges.

13 MR. DAVIDSON: Can I, can I add something to the record
14 that I learned from my trusted associate during the break?

15 THE COURT: Yes, sir.

16 MR. DAVIDSON: In regard to Mr. Ard's deposition --

17 THE COURT: Yes.

18 MR. DAVIDSON: -- I would like the Court to be aware,
19 and I would like in the record, that under the Federal Rules
20 of Civil Procedure, Rule 32, which our civil procedures
21 are -- mirror that, there is a provision. It is Section
22 8(a).

23 THE COURT: 88?

24 MR. DAVIDSON: 8 the Letter A and the Number 8.

25 THE COURT: All right.

1 MR. DAVIDSON: And it says depositions lawfully taken
2 and is required filed by any state or federal court action
3 may be used in a latter action involving the same subject
4 matter between the same parties or their representatives or
5 their successor in interest to the same extent as if taken
6 in the latter action and the deposition previously taken may
7 also be used as allowed under the federal rules of evidence.

8 THE COURT: All right. So, are -- we pulled that
9 earlier today.

10 MR. HAWKINS: There's no -- there---

11 THE COURT: Well, hold on. Hold on.

12 MR. HAWKINS: Okay.

13 THE COURT: We pulled that earlier today and I think
14 --.

15 MR. DAVIDSON: They're, they're---

16 THE COURT: I don't know that our rules---

17 MR. HAWKINS: There---

18 MR. DAVIDSON: Does not.

19 MR. HAWKINS: There is no, there is no---

20 MR. DAVIDSON: There isn't---

21 MR. HAWKINS: ---analogous rule.

22 THE COURT: All right. Well, let's let him finish.
23 Let---

24 MR. HAWKINS: I'm sorry.

25 THE COURT: Let -- let me -- get your thought out, Mr.

1 Davidson.

2 MR. DAVIDSON: I apologize to the court reporter.

3 There is no analogous rule in the State Rules of Civil
4 Procedure under Rule 32.

5 THE COURT: All right.

6 MR. DAVIDSON: Our Court, in the adoption rules,
7 decided to take certain ones and adopt them and certain ones
8 not to. It would be our position that in not adopting this
9 rule, our Court recognized that you could not use a
10 deposition from another action in another court in a state
11 proceeding. If they had wanted us to be able to do that
12 procedure in state court, they would of adopted Rule A, Rule
13 A-8 of Rule 32 of the federal, of the Federal Rules of Civil
14 Procedure and they didn't.

15 So, it's my position, Your Honor, that stands basically
16 for the proposition that Mr. Wilhite's deposition, taken in
17 the federal action, is not proper to be used in the state
18 action. I appreciate it. Thank you, Your Honor.

19 THE COURT: Thank you, Mr. Davidson.

20 Mr. Hawkins.

21 MR. HAWKINS: Your Honor, I don't know if he's asking
22 the Court to speculate as to what our Legislature was
23 thinking and what they adopted or didn't adopt. But the
24 rules we have are pretty clear that if you've got
25 proceedings, sworn statement, statements from another

1 proceeding, you can use it at trial. That's, that's as
2 clear as day in Rules of Evidence and it's as clear as day
3 in our Rule 32.

4 I, I mean it's -- it's crystal clear and I, I mean I
5 don't even -- I don't -- I'm not sure what he was arguing.
6 I think it was that we should read---

7 THE COURT: They're---

8 MR. HAWKINS: ---into the minds of---

9 THE COURT: well, there are portions of certain
10 statutes that weren't limiting it and the Legislature -- has
11 been ruled that the Legislature's intent was to allow
12 something because of the elimination.

13 Now, what I'm going to do or what my law clerk and I
14 are going to do is to make a, a -- do a little bit more
15 research. We did not have a tremendous amount of time at
16 lunch. But we will have some opportunity to do that
17 tonight.

18 MR. HAWKINS: And let, let me say, Your Honor, so that
19 it's on the record --

20 THE COURT: All right.

21 MR. HAWKINS: -- I took this when both actions were
22 pending for use at trial. Will knew -- he knew, has known
23 since I took the depositions for years, that those are the
24 video depositions we had for this trial because we had those
25 witnesses on our witness list, on our discovery responses.

1 There's -- this has been out there since we learned of these
2 witnesses and we took the depositions. The -- and will, and
3 will had every opportunity to do whatever he wanted and he
4 never did anything.

5 He waited -- he definitely waived it on Ard cause we
6 already started that for the jury and he made submissions.
7 He also participated in what we're gonna do with wilhite
8 with making submissions there. And to say he wants to
9 prejudice this trial by taking out stuff he's known about
10 for years and trying to, you know, wait, wait until we're in
11 trial to raise this is, is -- it's not fair. It's not the
12 rules and it's not law.

13 THE COURT: All right. I won't hold it against him
14 that he's making some submissions because he's done so at my
15 direction. And so I -- that, that part won't be involved in
16 my consideration. However, I'm going to give you-all a
17 ruling on this.

18 MR. DAVIDSON: Can I make one point?

19 THE COURT: You can, Mr. Davidson.

20 MR. DAVIDSON: Mr., Mr. Wilhite was also identified in
21 the federal lawsuit by plaintiff's counsel and he noticed it
22 in the federal case. He did not double caption it.

23 So, my position is I, I, I don't need to read his mind.
24 I can take him for his word and then I can raise, if need
25 be, cause I, you know, quite honestly, I don't think we have

1 anything saying Mr. Wilhite's not available. He should of
2 been available. Could of shown up and testified.

3 MR. HAWKINS: We actually do. We have an affidavit if
4 the Court wants it.

5 MR. DAVIDSON: That's fine.

6 THE COURT: All right.

7 MR. HAWKINS: Does the Court want it?

8 Should we---

9 THE COURT: I don't.

10 MR. HAWKINS: Okay.

11 THE COURT: I'm going to give you-all the ruling on
12 this tonight. But, in the mean time, before you receive
13 that ruling, I want you to exchange -- Mr. Davidson, get Mr.
14 Grimes to send that to Mr., Mr. Hawkins.

15 MR. DAVIDSON: Which, which one?

16 What, Your Honor?

17 THE COURT: The, the designations or the -- excuse me.
18 The objections.

19 MR. DAVIDSON: I think we've already sent them.

20 THE COURT: You already sent those?

21 MR. DAVIDSON: We haven't done the objections yet, Your
22 Honor. He's still working on them.

23 THE COURT: All right.

24 MR. DAVIDSON: I'll get that to him.

25 And how do you want to handle the jury charges?

1 I'll say that to your law clerk.

2 THE COURT: Yes. Yes. We, we -- do you have your
3 proposed jury charges ready?

4 MR. HAWKINS: We have a -- we have a list. I can tell
5 you what we're gonna propose. We don't have the charges
6 drafted to hand up but I can tell you---

7 THE COURT: Okay. Well, hold, hold---

8 MR. HAWKINS: Okay.

9 THE COURT: Hold on one second.

10 Let me -- first, it may be easier for me to explain it
11 this way. We will only accept the jury charges
12 electronically so that my law clerk can piece the charges
13 together.

14 MR. HAWKINS: Do you, do you -- when you say
15 electronically, do you want us to send an email where it's
16 our proposed jury charge one or do you want us to do a
17 document and E-File it or how do you want it?

18 THE COURT: No, I just want them -- a word document.

19 MR. HAWKINS: Okay.

20 THE COURT: Email it to us.

21 MR. HAWKINS: So the what -- and I'm not trying to
22 belabor the point. I just want to make sure I do it like you
23 want.

24 Do you want done each charge on a different caption
25 like -- and we use to hand them up or do want a word

1 document that's just -- this is proposed charge one, the
2 next page is the next one, and so on until---

3 THE COURT: Whatever it is easier for you. I don't
4 have it -- how you have it format looks. So it -- either
5 way.

6 MR. HAWKINS: Okay. Thank you, judge.

7 MR. DAVIDSON: I've got ours ready. You can give them
8 to her.

9 THE COURT: All right. Mr. Davidson, if, you know, you
10 shoot those over whenever you would like to. Make sure that
11 Mr. Hawkins has a copy of those.

12 Mr. Hawkins, if you will, whenever you have those
13 ready, we would like them tomorrow. Let's have them
14 tomorrow by after lunch.

15 MR. HAWKINS: Yes, Your Honor.

16 THE COURT: Okay. And I don't know when -- I don't
17 know how the testimony will fall. But we do need those so
18 that we can begin to do what we do up here with the charges.

19 Any questions from each of you?

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

21 THE COURT: Any from the defense?

22 MR. DAVIDSON: None, Your Honor, and I appreciate your
23 indulgence.

24 THE COURT: All right. Well, we will see you-all
25 tomorrow morning at 9:00.

1 Mr. Hawkins, how old will you be on Friday?
2 MR. HAWKINS: Forty-three.
3 THE COURT: Forty-three?
4 MR. HAWKINS: Yeah.
5 THE COURT: All right. You-all have a safe evening.
6 Court is adjourned until tomorrow morning.
7
8 (WHEREUPON, Court was in recess for the evening.)
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1 Thursday, November 3rd, 2022

2
3 THE COURT: Please be seated.

4 Good morning.

5 MR. HAWKINS: Morning.

6 THE COURT: All right. All right. Gentlemen, we
7 have -- do we have -- did we come to any agreement on the
8 designations and objections?

9 MR. HAWKINS: I don't believe so, Your Honor. We got
10 some objections on all -- almost every single page of the --

11 THE COURT: All right.

12 MR. HAWKINS: -- deposition.

13 THE COURT: well, let's go through them.

14 Do I have a transcript that, that video deposition that
15 I can follow along with?

16 MR. HAWKINS: wilhite.

17 THE COURT: We may have it.

18 All right. Please let the record reflect I am opening
19 --.

20 MR. HAWKINS: We're doing wilhite or Ard?

21 THE COURT: wilhite.

22 MR. HAWKINS: Okay. All right. Let me give my rulings
23 with regards to the use of either deposition. I am going to
24 permit the use of both depositions. Your arguments were
25 placed on the record yesterday. And so those arguments are

1 reserved in case of an appeal.

2 So that moves us forward to wilhite's deposition.

3 Mr. Davidson, I apologize. I do not have your list of
4 objections. You showed it to me yesterday. But I do not
5 believe I know what your objections are. So if you'll just
6 tell them to me, we'll go through one by one.

7 MR. DAVIDSON: If Your Honor'll give me a second, I
8 might be able to email you the page and line. It might be
9 helpful to your clerk. I thought we had already done that.

10 THE COURT: Thank you.

11 MR. DAVIDSON: And, Your Honor, some of these
12 objections, I did this a while back before you had made some
13 of the rulings during the trial. So, some of them may come
14 up and I may raise the objection to protect myself on the
15 record and it may be something that you've either ruled for
16 me or ruled against me.

17 THE COURT: All right.

18 MR. DAVIDSON: So it's, it's kind of this is --.

19 THE COURT: All right. Well, we'll work it that way
20 but we only have 45 minutes. So let's go ahead and get, get
21 rolling.

22 MR. DAVIDSON: You should have it. I hope.

23 THE COURT: We don't have it just yet. But that's not,
24 that's not on you. That's -- there we go. We got it.

25 All right. Page 6 you're objecting to?

1 MR. DAVIDSON: Yeah, and I -- and if the Court doesn't
2 mind, I'll kind of -- I'll kind of make this a double
3 adventure.

4 THE COURT: All right.

5 MR. DAVIDSON: Plaintiff requested, on Page 6 Line 4
6 all the way to Page -- to Line 22. We objected to 4 to 10
7 first.

8 Number one, Your Honor, in this it talks about --
9 called today about a claim that Otis Owens was brought while
10 alleged that, among other things too, it's that Gibson
11 probed his navel, grabbed his testicle, twisted his
12 testicle. All of that is leading, Your Honor, and also it,
13 it -- there's no foundation laid that Mr. Wilhite knew any
14 of this, saw any of this, or -- at that time.

15 Our next objection -- and I don't know how you want to
16 do that. If you want to rule as we go --?

17 THE COURT: Do you have anything you want to present?

18 (WHEREUPON, there was no audible response.)

19 THE COURT: Yes, we'll, we'll take it as we go.

20 MR. HAWKINS: Yes, Your Honor.

21 He's, he's in jail and I'm telling him what we're gonna
22 depose him about. I don't think it's leading. I think it's
23 all right, this is what we're here about and then are you
24 familiar with any of it. So the question is are you
25 familiar with any of this stuff and he tells me that yes, he

1 is.

2 He doesn't -- you know, it's, it's not like I say the
3 government was grossly negligent, right. I didn't say that.
4 I said this is what we're here to talk about. Are you
5 familiar with this event and he simply answers yes.

6 MR. DAVIDSON: And, Your Honor---

7 MR. HAWKINS: And, and also we're not required to
8 lie -- lay a foundation. We're not getting a, a picture or
9 something into evidence. I'm simply telling him what the
10 deposition is about and he answers that he knows what it's
11 about.

12 THE COURT: All right. Mr. Davidson.

13 MR. DAVIDSON: Your Honor, quite honestly, the first --
14 I guess you'd say the second sentence, we're here today, and
15 he goes through and he basically says what the case is about
16 and he talks about all of the facts that are in play in this
17 case about the search.

18 Now, all of that is leading and then are you familiar
19 with any of that, you know, if that was only---

20 THE COURT: All right.

21 MR. DAVIDSON: ---the only question, that---

22 THE COURT: Well, I've made my decision, Mr. Davidson.
23 I'm gonna eliminate those -- just that section.

24 What are the numbers again?

25 Lines 4 through 10, I'm going to take that part out in

1 the video.

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

3 THE COURT: All right. Next objection.

4 MR. DAVIDSON: All right. The next objection, Your
5 Honor, he raises Jeremy Ard and says Jeremy Ard has also
6 testified Gibson grabbed I think multiple, multiple
7 occasions. Also on January 27th, '17, when he did the
8 same thing to Mr. Ard. Are you familiar with that. Same
9 thing, Your Honor.

10 THE COURT: Mr. Hawkins.

11 MR. HAWKINS: Your Honor?

12 Your Honor, we're gonna play Ard first. So, his, his
13 testimony will be out there.

14 My position is the same. I'm telling him about the --
15 he, he doesn't have anything to, to be familiar with what
16 he's been deposed about unless I tell him. He just knows he
17 has to show up somewhere cause he's in jail. So, unless I
18 say hey, these are the questions that I'm asking you about,
19 this is the event I'm asking you about, he has no idea why
20 he's showing up to somebody with a, with a video camera.

21 So our, our position's the same, Your Honor. I, I
22 think it -- I think it does prejudice our ability to present
23 this unavailable witness to the, to the jury if we just
24 eliminate everything he talked about and what he knew about.

25 MR. DAVIDSON: And I raised at that point it was

1 leading, Your Honor. He's arguing after -- since we
2 reserved all objections.

3 THE COURT: Uh-huh.

4 MR. DAVIDSON: And he didn't even attempt to try to fix
5 it.

6 MR. HAWKINS: Right, Your Honor.

7 And, and, for the record, just, just so Your Honor
8 knows the context that I was -- the context of how this
9 deposition came out, this was particularly difficult because
10 we got on the record and will said okay, I'll reserve my
11 objection's to the end and then he objected throughout the
12 deposition. So, I'm not only trying to elicit information.

13 But I'm having to deal with will constantly objecting,
14 you're leading, speaking objections, all this kind of stuff,
15 and I'm trying to still elicit the testimony I need because
16 I know the guy's probably not gonna be available for trial.

17 So I, I would ask that Your Honor take that into
18 consideration when, when considering which portions to
19 strike out.

20 THE COURT: I will. Thank you, Mr. Hawkins, for that
21 information.

22 I am going to take this portion, 17 through 22 out. I
23 do -- that is leading. Let me, let me take that out but
24 let's move on to the next one.

25 That is Page 7?

1 MR. DAVIDSON: Page 7. They wanted -- they designated
2 Line 4 through 25. We had a problem with 12 through 14.
3 Two guys thought they were playing dice.

4 Obviously, Your Honor, he can't testify to what
5 Mr. Gibson did or did not see. That would be a question
6 that Mr. Gibson would have to respond to what he did or did
7 not see. Not what this gentleman thought Mr. Gibson saw or
8 what Mr. Gibson didn't see.

9 MR. HAWKINS: Your Honor, Mr. Gibson has said himself
10 on the stand and in evidence he thought he saw guys playing
11 dice. So -- this witness -- this eye witness to what Gibson
12 was doing, and what he was looking for, and what he searched
13 Mr. Wilhite for is entitled to offer his knowledge about
14 that event, Your Honor.

15 THE COURT: All right. That will remain in the video.
16 Next objection.

17 MR. DAVIDSON: And, like I said, some of these were
18 done a while back, Your Honor, before you made some rulings.

19 THE COURT: Okay.

20 MR. DAVIDSON: So, he wanted Line -- on Page 8 Line 1
21 through 25. We objected to 5 through 25.

22 If you will see, it says Erikson pod, came in, pat down
23 search, Otis was the first one to be pat down. When he came
24 up to his testicles, he raised, he raised his tippytoe and
25 said man, you're hurting me. So, the next one on the pat

1 search, he's done me. It's leading and he's talking about
2 hearsay about what Mr. Owens -- I mean what Mr. Owens may or
3 may not have said.

4 Same thing is true with the next question. He, he
5 essentially phrases it a leading question and Mr. Owens told
6 Gibson you hurt me when Gibson got to the -- that's leading.
7 And then it goes on go ahead. He looked at Erikson for him
8 to, for him to help out. So Gibson gets to me. He does me
9 the same way.

10 Okay. Let me ask you a question about that. Otis --
11 when Gibson grabbed Otis' testicles, he looked to Erikson
12 for help.

13 THE COURT: All right.

14 MR. DAVIDSON: Well, number, number one, Your Honor,
15 besides being hearsay, we're talking about what happened to
16 Mr. Wilhite I believe in some of this. We're talking about
17 what Otis would of said, which is obviously hearsay, and
18 we're also talking about Gibson grabbing Mr. Otis' testicle
19 and that's again a leading question. And looking for help
20 from Mr. Erikson comes in as a leading question, Your Honor.
21 And I, you know, that's, that's -- I tried to make note of
22 some of this during the deposition.

23 THE COURT: All right. Mr. Hawkins.

24 MR. HAWKINS: Your Honor, this is the -- this is the
25 main primary portion of the deposition where Wilhite tells

1 what he observes, tells the story of what happened on that
2 day and to cut this out is essentially to eliminate
3 Mr. Wilhite's deposition. I don't think it's -- I don't
4 think it's leading if he tells me something, I clarify, I
5 say okay, so this---

6 THE COURT: Well, I'm more concerned about the hearsay,
7 not so much the leading. Just getting to the hearsay
8 that---

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

10 My client, who's having to go out of order, is a party,
11 one, and, two, is gonna say on the stand that that's what
12 happened. He's able to corroborate my client's testimony
13 because he's gonna say yeah, I told him he hurt me and also
14 Erikson offered testimony about that. Also Gibson offered
15 testimony about the allegations Mr. Owens made and that he
16 was, and that he was upset and also it will come in as the
17 effect on listener.

18 It wouldn't even be asserted for the truth -- it
19 wouldn't even be asserted for the truth of the matter. It
20 would be the effect on listener. I'm able to ask him, under
21 the effect to listener exception, what happened, what did
22 you observe, what was its imprint on you. And so come -- it
23 would come in for several different reasons, Your Honor.

24 Also even if he -- so, so he's testifying right here
25 about what he saw. He raised up on his tippytoes. He said

1 man, you hurt me.

2 He's talking about something he's gonna say from the
3 stand and something other people have said happened.

4 THE COURT: All right.

5 MR. HAWKINS: And, and it's -- and it's already in, in
6 evidence and then he talks about what he experienced in the
7 pat down search.

8 THE COURT: All right. Hold on, Mr. Hawkins.

9 (Pause.)

10 MR. HAWKINS: Yeah, and, number four, I don't think
11 it's an exception. I think it's just -- if it's, if it's
12 offered for the effect, then it comes in. I misspoke.

13 THE COURT: I want you -- I will keep in Lines 5
14 through -- and listen to me carefully. Lines 5 through 10
15 to conclude at tippytoes.

16 MR. HAWKINS: So cut, cut out and he said man, you hurt
17 me?

18 THE COURT: Correct.

19 MR. HAWKINS: So it's -- cut out that sentence?

20 THE COURT: Yes.

21 MR. HAWKINS: Okay.

22 THE COURT: I will -- what I want eliminated is the
23 remainder of Line 10 through---

24 MR. HAWKINS: So, do you, you cut out where he says so
25 I was the next one to be pat searched cause he's talking

1 about his experience during the event like, like Ard is?

2 THE COURT: Hold on. Let me read it.

3 MR. HAWKINS: Okay.

4 THE COURT: Let me, let me make that conclusion.

5 MR. HAWKINS: Sorry.

6 THE COURT: That's okay.

7 Ten through 18 I want cut out.

8 MR. HAWKINS: So I, I don't get to leave in the part
9 where he says that Gibson did him the same way?

10 He says he came to me. I was the next one.

11 THE COURT: I see it but---

12 MR. HAWKINS: Cause that -- cause, cause Ard's offering
13 that same testimony in his.

14 THE COURT: What's problematic -- what's problematic is
15 and so he said man, you hurt me.

16 MR. HAWKINS: Yeah. So I'm -- we're cutting that out
17 and he would just, he would just pick up where he says so I
18 was the next one to be pat searched cause he talks about
19 Otis getting searched. He goes up on his tiptoes.

20 THE COURT: All right. Let's leave -- well -- let's --
21 this is what I want you to do. Take out that sentence -- I
22 want you to skip over or edit that sentence and---

23 MR. HAWKINS: Okay.

24 THE COURT: ---where he's -- and so he said man, you
25 hurt me. I'll allow -- I will allow the following:

1 So I was the next one that he pat searched. He done me
2 the same when he done him and that's it.

3 I am not -- I, I am -- we're eliminating 13 through 18
4 and the -- let's see. Hold on.

5 MR. HAWKINS: Can---

6 THE COURT: Thirteen through 21 is not necessary.

7 MR. HAWKINS: Can, can -- may we leave in the part at
8 16 where he says he raised up on his tiptoes?

9 THE COURT: No.

10 MR. HAWKINS: Okay. So 13 through 21?

11 THE COURT: Yes. And let me read. I'll let you leave
12 on the rest of Page 8 and that's all.

13 MR. HAWKINS: Okay. So---

14 THE COURT: Next line---

15 MR. HAWKINS: So to make, make sure -- I want to make
16 sure I don't leave something in that should come out.

17 We're cutting out, on Page 10, the sentence that says
18 and so he said man, you hurt me and then we're cutting out
19 Lines 13 through 21?

20 THE COURT: That's correct.

21 MR. HAWKINS: Okay.

22 THE COURT: Next objection, Mr. Davidson.

23 MR. DAVIDSON: All right. Again, Page 9, Your Honor.
24 They wanted to produce I believe Lines 9 through 25 on that
25 page.

1 THE COURT: All right.

2 MR. DAVIDSON: We have objection starting with okay.
3 Then what happened and then he goes into what happened to
4 him in regard to the search that occurred to him.

5 THE COURT: Okay.

6 MR. DAVIDSON: And he describes it and he does that
7 and, and obviously I note an objection for relevance as to
8 what happened to Mr. Ard -- I mean Mr. Wilhite because what
9 happened to him is not necessarily relevant to what, in
10 fact, happened to Mr. Owens and that was the basis of that,
11 Your Honor.

12 THE COURT: I understand.

13 MR. HAWKINS: Your Honor, this is the, the same thing
14 the Court's ruled on.

15 THE COURT: All right. I don't need any argument.
16 We've already -- I've ruled on that. So I am gonna allow---

17 MR. HAWKINS: Thank you.

18 THE COURT: Let, let, let me just make sure that I
19 get---

20 MR. HAWKINS: Thank you, judge.

21 THE COURT: ---see how far it goes.

22 (Pause.)

23 THE COURT: I'll allow that to -- that will remain in.

24 MR. DAVIDSON: That -- and, Your Honor, I'm not trying
25 to be difficult. You know why -- what I---

1 THE COURT: Certainly.

2 MR. DAVIDSON: ---what I---

3 THE COURT: That objection -- your objection is, is
4 noted---

5 MR. DAVIDSON: Thank you.

6 THE COURT: ---for that portion.

7 MR. DAVIDSON: Protection for the record, Your Honor?

8 THE COURT: Yes, sir.

9 Mr. Davidson, you do not have to or either -- neither
10 one of you has to apologize for maintaining the record.

11 MR. DAVIDSON: Okay. Yeah. But I know it's slowing
12 things down, Your Honor.

13 THE COURT: We'll work through out.

14 All right. Next objection.

15 Page 10.

16 MR. DAVIDSON: They wanted in -- they wanted, on Page
17 10 Line 12 through 25. We objected to those lines, Your
18 Honor.

19 Again, the first question is obviously leading and
20 cumulative. He's already described what's happened to him.

21 The next question, which is -- that's Number 12 through
22 16. The next one, which is nine -- 19 through 25, again,
23 it's leading in that instance, Your Honor, both of those
24 questions.

25 THE COURT: One second.

1 MR. HAWKINS: Well, Your---

2 THE COURT: You can automatically start once we're,
3 we're---

4 MR. HAWKINS: I---

5 THE COURT: ---sure that he's concluded.

6 MR. HAWKINS: Okay.

7 THE COURT: I'm, I'm listening.

8 MR. HAWKINS: Okay. Your Honor?

9 THE COURT: Just so you know, Mr. Hawkins, I have three
10 children. So I can read and I can chew gum at the same
11 time. So, once he's thrown out the (indiscernible) hear
12 every word that both you and Mr. Davidson are saying.

13 MR. HAWKINS: Yes. Yes, Your Honor. Sorry about that
14 for not---

15 THE COURT: That's all right.

16 MR. HAWKINS: ---being more responsive.

17 I, I think that I'm allowed to clarify what -- the
18 story he's told. But, you know, I -- however you -- however
19 Your Honor rules. I, I don't want to have a, a fight about
20 everything. So --.

21 THE COURT: All right. I'm, I'm going to, Mr. Dawkins
22 (sic), and that is to preserve the record, but I am going to
23 remove both of those sections. The first series, 12 through
24 16, I do find is redundant or --.

25 MR. HAWKINS: Cumulative.

1 THE COURT: -- cumulative, thank you, and 19 through 25
2 is leading.

3 MR. HAWKINS: So, so that would be 12 -- 12 through 25
4 or 11 through 25?

5 Is that what we're cutting?

6 THE COURT: Yes. Yes.

7 MR. HAWKINS: Because that---

8 THE COURT: These are the other lines -- this -- these
9 other lines aren't --

10 MR. HAWKINS: Okay.

11 THE COURT: -- don't make sense for them.

12 All right. Next objection. Page 12 -- 11. Excuse me.

13 MR. DAVIDSON: Again, Your Honor, this goes to the
14 relevance. I think you may of already cleaned that up when
15 you made other rulings. But I'll let you review it again.

16 THE COURT: Okay.

17 MR. DAVIDSON: It's irrelevant.

18 THE COURT: Let me skim this very quickly.

19 MR. DAVIDSON: And it's, it's -- they wanted 3 through
20 25. I objected to 5 through 25 and I'll tell you one other
21 thing once you --

22 THE COURT: Just -- all right.

23 MR. HAWKINS: And, Your Honor, I would point out that
24 this is, this is exactly what everybody has been testifying
25 to. It's a -- central of the case.

1 what happened immediately after the injury, whether,
2 you know, they called a lieutenant, they called a sergeant
3 to come in, that's all central to what happened. So
4 especially because their witnesser, Erikson, is, you know, I
5 called him in my case and he's a defense witness and he, he
6 testified about all this.

7 So, we have to offer -- we have to offer testimony
8 about it too to give our side. He testified about yes, they
9 came to me. There may of been a meeting that night.
10 They -- we called a lieutenant or sergeant in. I think---

11 THE COURT: Well, I'm gonna leave it in.

12 MR. HAWKINS: Okay.

13 THE COURT: I'm gonna leave it in---

14 MR. HAWKINS: Okay.

15 THE COURT: ---Mr. Davidson -- Mr. Hawkins -- and, Mr.
16 Davidson, do you need to preserve anything?

17 MR. DAVIDSON: Yes, Your Honor, if you don't mind.

18 The last sentence or next to the last couple sentences,
19 Line 22, well, we went, we went and seen a couple of times
20 talking about medical.

21 THE COURT: Right.

22 MR. DAVIDSON: Then we brought somebody down to do like
23 an ultrasound on our testicles and I ended up having surgery
24 behind this. Obviously there's no in -- information in the
25 record regarding Mr. Wilhite and regarding a diagnosis or

1 the reason he had surgery other than the testimony that
2 there was some question whether or not he had a cyst --.

3 THE COURT: All right.

4 MR. DAVIDSON: -- on his scrotum.

5 THE COURT: All right. Mr. Hawkins.

6 MR. HAWKINS: Yes, Your Honor.

7 They -- there (sic) want to leave in the part about,
8 you know -- and they offered testimony about this. So to
9 the extent he's objecting, he would of opened the door
10 anyway because he's leaving in the testimony in Bowman's
11 deposition about he thinks it was a cyst. If he's gonna
12 offer testimony about that, we get to, we get to give
13 Wilhite's testimony. Also it's consistent with Your Honor's
14 previous ruling.

15 THE COURT: With regards to the I ended up having,
16 having surgery part---

17 MR. HAWKINS: Yeah, he---

18 THE COURT: ---of this?

19 MR. HAWKINS: Right. He's, he's not offering a
20 diagnosis. He's not offering a doctors -- this is not a
21 medical mal case. He's saying yeah, I got hurt and I ended
22 up having surgery. He certainly can offer that testimony.

23 MR. DAVIDSON: why, why is it relevant whether this
24 gentleman had surgery or not?

25 MR. HAWKINS: Because---

1 MR. DAVIDSON: He's not a plaintiff---

2 MR. HAWKINS: Because the---

3 MR. DAVIDSON: ---number one.

4 MR. HAWKINS: ---the acts of gross negligence in this
5 case is, is what we're talking about and this shows that,
6 during this common scheme or plan, he was grossly
7 negligently during this event.

8 THE COURT: Let me---

9 MR. HAWKINS: This---

10 THE COURT: Let me think about this one particular and
11 come back to that one.

12 MR. DAVIDSON: That's fine.

13 THE COURT: Let me think about this one.

14 Page 12. Lines 3 through 5.

15 MR. DAVIDSON: Again, Your Honor, they---

16 THE COURT: That's the same thing.

17 MR. DAVIDSON: They wanted to introduce Line 1 through
18 25 on that page. I had an objection first.

19 THE COURT: Okay.

20 MR. DAVIDSON: So you had -- you, you had surgery as a
21 result of Mr. Gibson's excessive force.

22 THE COURT: I'm gonna reserve that one for when I come
23 back to this other one.

24 MR. DAVIDSON: All right.

25 THE COURT: Let's see.

1 MR. DAVIDSON: And it's also, Your Honor, just for the
2 record---

3 THE COURT: The same thing in Line 24?

4 MR. DAVIDSON: It's also leading, Your Honor. Nine
5 through 24, they talk about he had a hydrocele. Well, I --
6 you know, the only way he knows he had a hydrocele is
7 somebody in the medical department either told him or he
8 read it on a record all of which would be hearsay.

9 So -- and all of this, we believe, is not really
10 relevant to Mr. Owens and what happened to Mr. Owens, what
11 medical treatment Mr. Owens may or may not receive. You
12 know, there's no evidence that Mr. Owens had surgery.
13 It's -- all of that goes to Mr. Wilhite really isn't
14 relevant to what happened in regard to Mr. Owens cause he
15 didn't have surgery.

16 MR. HAWKINS: Your Honor?

17 MR. DAVIDSON: All it's doing -- and, and it's not,
18 it's not to establish gross negligence.

19 MR. HAWKINS: Your Honor, if---

20 MR. DAVIDSON: Gross negligence would have to be based
21 on what happened to Mr. Owens, you know, that they failed to
22 exercise slight care to Mr. Owens, whether or not they did
23 something deliberately to Mr. Owens that rose to the level
24 of, of reckless or slight care, lack of slight care. That
25 would be in regard to the standard that would apply in this

1 case to Mr. Owens. Not to Mr. Wilhite or Mr. Ard.

2 MR. HAWKINS: Your Honor, I would respond to that cause
3 this is really important to this case.

4 We have the burden of proof of showing gross
5 negligence. His common scheme, that's why the common scheme
6 doctrine exists. His common scheme and plan, while he's
7 engaged in this activity with these inmates, tends to prove
8 that he was being gross negligent -- grossly negligent at
9 the time.

10 Well, we don't have to eliminate all the parts that the
11 defense doesn't like. We're entitled to show the jury that,
12 during this common scheme, this man was acting in a grossly
13 negligent manner. We have the burden of proof on that.

14 How are we suppose to carry our burden of proof if we
15 can't, if we can't show the jury how grossly negligent he
16 was being during this common scheme?

17 And so to, to do what will wants cuts out common scheme
18 and plan all together, just eliminates it from the rules of
19 evidence.

20 MR. DAVIDSON: Your Honor, my understanding, you're
21 gonna allow the introduction of the fact Mr. Ard and
22 Mr. Wilhite claim they were improperly searched like Mr.
23 Owens was. That's common scheme. What's common scheme is
24 not what type medical care they receive later.

25 MR. HAWKINS: That's not what we're talking about.

1 The common---

2 MR. DAVIDSON: No, that's the---

3 MR. HAWKINS: The common scheme---

4 THE COURT: All right. Hold on, Mr. Hawkins. Let
5 him -- I -- I am gonna come back to you for the rest of it.

6 MR. HAWKINS: Thank you, judge.

7 MR. DAVIDSON: If you look at these questions, he said
8 they done an ultrasound. They done an ultrasound. I had a
9 hydrocele. I had a hydrocele around my testicles build up.

10 well, number one, that's all a medical question that
11 you would need a doctor to testify to cause all of that's
12 hearsay.

13 Number two. It's not relevant what Mr. Wilhite to --
14 had happen to him in regard to any injury because he would
15 then be getting into what Mr. Wilhite's claim may or may not
16 have been.

17 Finally, they have introduced absolutely no evidence,
18 medical evidence, that he had a hydrocele, that the
19 hydrocele was caused by the trauma. There's no evidence of
20 that and there's no evidence that most probably the trauma
21 caused the hydrocele whether you're talking about Mr. Gibson
22 or you're talking about Mr. Wilhite.

23 The common practice or scheme would be the issue
24 concerning the pat down search. Not a common practice or
25 scheme of what may of happened in medical cause, in medical,

1 they could of had totally different issues. we've had --
2 and I didn't open the door about a cyst. I think he had
3 some questions elicited to the question about a cyst, and
4 the fact that he had a cyst or not, Mr. Gibson thought it
5 was a cyst. You know, that was his question. I didn't ask
6 that.

7 MR. HAWKINS: I didn't ask if he had a cyst.

8 MR. DAVIDSON: So---

9 MR. HAWKINS: I didn't ask that question.

10 MR. DAVIDSON: So it was elicited during your
11 testimony.

12 So the fact that this talks about a hydrocele, an
13 ultrasound, he had, he had, he had -- so you had the same
14 injury that Otis has. well, he doesn't know. You know, he
15 doesn't know whether Otis had a hydrocele or Otis had a
16 tortuous twisted testicle that caused him to have an
17 inflation in the testes. There -- there's no evidence
18 that -- what Mr. Owens had.

19 MR. HAWKINS: Your Honor, I---

20 MR. DAVIDSON: It says question---

21 MR. HAWKINS: ---want to point out to the Court that---

22 THE COURT: Hold on.

23 MR. HAWKINS: ---that---

24 THE COURT: He's almost done.

25 All right. Mr. Davidson.

1 MR. DAVIDSON: It says we both had hydroceles around
2 our testes. He would of had to talk to a doctor to get that
3 information. That's all hearsay.

4 I can't, I can't hear you tell me that you've got
5 bronchitis and then I be able to say well, the judge is got
6 bronchitis. That's hearsay. If, if the doctor tells me the
7 judge has bronchitis, and I then relay that to some third
8 party, that's an out-of-court statement offered for the
9 truth of the matter asserted and it's hearsay.

10 THE COURT: All right. Let me hear from Mr. Hawkins.
11 Mr. Hawkins.

12 MR. HAWKINS: Your Honor, the -- we're not worried
13 about the fact that they did an improper search. We're
14 worried about the fact that they did it so improperly that
15 it was grossly negligent, which is what we're trying to
16 prove.

17 If Mr. Wilhite has an injury, if he goes and gets
18 treated, he's aware of the injury. He's aware of his
19 treatment and it has effect on the listener. Mr. Davidson
20 wants to ignore all the reasons this stuff comes in and it
21 comes in for several.

22 We have to be able to show the, the jury, one, here's a
23 witness. This witness can tell you that his guy was being
24 grossly negligent during these searches and here's how he
25 knows. He ended up having surgery. That -- whatever he

1 found out at medical has an effect on the listener. He's
2 aware of the fact he had surgery even if he hadn't talked to
3 anybody. If he hadn't had any conversations with anybody,
4 he would still be aware of the fact that he had surgery.

5 So, I get that he doesn't like it because it shows how
6 grossly negligent Mr. Gibson was being at the time. But he
7 doesn't get to change the rules of evidence cause he doesn't
8 like the evidence.

9 THE COURT: All right. Thank you, Mr. Hawkins.

10 All right. So, on Pages 11 and 12, I'm gonna -- we're
11 gonna circle back to that. We'll come back to that.

12 Let's, let's, let's move on to Page 13.

13 You wanted the entire page, Mr. Hawkins, and, Mr.
14 Davidson, you --?

15 MR. DAVIDSON: I just about deleted everything, Your
16 Honor. I think I did and this, again, goes to the same
17 argument I just made.

18 He's talking about what happened to him and the
19 officer, talking about a syringe, some type of hydrocele. I
20 decided to do surgery. He goes through all the things that
21 happened to him in regard to his scrotum and we, again,
22 raise the same argument we just raised.

23 THE COURT: All right. So, both of those -- the --
24 uh-huh. We'll (indiscernible) this one as well.

25 MR. DAVIDSON: I think that's a circle back?

1 THE COURT: Yes.

2 All right. So we have three circle back.

3 Now, Mr. Hawkins, just so the record reflects, your
4 argument is the same---

5 MR. HAWKINS: Yes, Your Honor.

6 THE COURT: ---regarding---

7 MR. HAWKINS: Yes, Your Honor.

8 But if it would -- if it would eliminate the fight, I
9 would punt on Page 13 and just -- if we could just get some
10 of this stuff pared down so we could put on some evidence.
11 I -- you know, I, I don't think there's a need to fight
12 about every single page of the deposition. But that's just
13 my position, Your Honor.

14 THE COURT: All right. I'll take that into
15 consideration. Thank you, Mr. Hawkins.

16 All right. Page 14.

17 MR. DAVIDSON: Oh, they, they wanted 1 through 25. I
18 basically objected to all of it.

19 If you look at it, it deals with -- the first question,
20 what do you know about or do you know of anything Jeremy
21 Ard's injury. And, again, number one, it's the same
22 argument I've had in regard to Mr. Ard is, is the rest of it
23 that gets into issues about the medical treatment. In this,
24 it essentially gets into the issue about what happened to
25 him.

1 And if you look at Line 19, did you see Gibson assault
2 Ard also, well, assault's a legal term, Your Honor. I'm not
3 sure that that would be a proper question and I objected
4 cause it's leading.

5 You saw Gibson assault Owens and Ard. Again, that's
6 leading, Your Honor. So that's the same objection that
7 rolls over to Page 15. And then he mentions a Dean Oglesby
8 who we've never even heard Dean Oglesby's name mentioned.
9 And I can go down and do 15 if you want me to cause it's
10 kind of a continuation, Your Honor.

11 Fifteen, they wanted 1 through 25 again. Did Gibson
12 ever make any comment to you after the fact that
13 acknowledge -- he acknowledged (indiscernible) used
14 excessive force. That's a leading question and it's not
15 a -- not a proper question and it's trying to elicit
16 something about that Gibson would of acknowledged that he
17 did something and Gibson's never acknowledged that he did
18 anything wrong.

19 No, sir, he never talked -- I never talked to him. I
20 never talked to him.

21 Okay. I never talked to him.

22 All right. But they tell -- they tell him, they tell
23 him to come to the pod and shake mine and Otis' bunk area.
24 They found, found a piece of a pill and all of that's not
25 relevant, Your Honor, because it deals with the retaliation

1 claim and I've raised objections to the retaliation claim
2 because it's not relevant in this matter and they haven't
3 raised it in their pleading.

4 And they raised the pleadings I believe in 2000 and --
5 some time in 2017 and there was absolutely nothing about
6 retaliation in their pleadings. So, that's that one, Your
7 Honor.

8 MR. HAWKINS: Your Honor, I -- I'll try to make my
9 response very short.

10 A part of our pleadings are violations of the policies,
11 guidelines, retaliation, obviously violates PREA, minimum
12 standards. I could list a bunch. So, I don't really think
13 he even has a valid objection to this page. He -- he's
14 basically just going page by page and wants to cut out the
15 entire testimony is what it boils down to.

16 THE COURT: All right. Mr. -- go on to Page 16.

17 MR. DAVIDSON: That's, Your Honor, that deals with his
18 lawsuit being represented and not represented, about him
19 bringing the suit. I ain't a lawyer though and I'm just
20 going -- I'm kind of highlighting it. I don't believe any
21 of that's relevant whether he brought a lawsuit or didn't
22 bring a lawsuit.

23 MR. HAWKINS: Your Honor, he talked about that lawsuit
24 a bunch in front of the jury and tried to make it sound like
25 there was nothing to it and it was voluntarily dismissed,

1 which wasn't the case. It got dismissed because he tried to
2 be his own lawyer. He, he talked about that himself and
3 elicited testimony about it.

4 He's entitled to say I'm not a lawyer. I tried to
5 represent myself. I brought a lawsuit over it. He's
6 absolutely entitled to say that. In fact, I think will's
7 question in front of the jury and on the record was and he
8 wanted it dismissed. He said that and it's not true.

9 THE COURT: All right. Page, Page 17.

10 MR. DAVIDSON: Your Honor, in Page 17 -- and I'm, I'm
11 gon' try to, to tell you -- I think this goes to the issue
12 of where he is talking about what happened to him and --
13 well, he's (indiscernible) your prior rulings even though we
14 object to its irrelevance (sic). We don't believe this
15 establishes a common practice or scheme nor does it fall
16 under that exception. We will abide by your ruling on that.
17 If you look at it, I think that's what this is.

18 MR. HAWKINS: Our position's the same. We don't think
19 the Court needs to change its prior rulings. We think this
20 is consistent -- leaving this in is consistent with Your
21 Honor's prior ruling, Your Honor.

22 MR. DAVIDSON: We're not asking you to, judge. Like I
23 said, I did this a long time ago.

24 THE COURT: Yes.

25 All right. Well, so we will leave 17 as is.

1 wait. Let me read 18.

2 MR. DAVIDSON: I think it's---

3 THE COURT: All right.

4 MR. DAVIDSON: Similar.

5 THE COURT: All right. Okay. And so on Page 18, you
6 have 5 through 19?

7 MR. DAVIDSON: Eighteen --.

8 Yeah, Your Honor, on Page 17, the first couple lines go
9 with the lawsuit information too. So I know your concern on
10 that, on that.

11 The next page is 18.

12 MR. HAWKINS: And, Your Honor, I just want to add
13 something to the -- my associate just told me something
14 about the lawsuit. I think that counsel asked the Court to
15 take judicial notice and I just want to make sure that the
16 record could be corrected if it needed to be. It was --
17 that case was dismissed for lack of jurisdiction. It
18 appears on, on PACER. And so the federal judge dismissed
19 that case for lack of jurisdiction. I just wanted, if there
20 was a judicial notice issue---

21 THE COURT: (Indiscernible).

22 MR. HAWKINS: Okay.

23 THE COURT: All right. So, the Court does take
24 judicial notice of that.

25 MR. DAVIDSON: And I've got the -- I asked the Court if

1 we could have the, the order issued by Judge Anderson --.

2 THE COURT: Made as an exhibit?

3 MR. DAVIDSON: Made an exhibit and it doesn't say
4 anything about lack of jurisdiction, Your Honor. I'll,
5 I'll---

6 MR. HAWKINS: I'll take it up.

7 THE COURT: All right. Let me look at it.

8 But you did -- I remember being requested that.

9 MR. DAVIDSON: Yes, Your Honor.

10 THE COURT: I think we're on I believe Exhibit B.

11 MR. HAWKINS: And I can, I can show you the PACER if it
12 conflicts with -- the there's something conflicting. I
13 haven't seen that order. But PACER says dismissed for lack
14 of jurisdiction. Dismissed - lack of jurisdiction.

15 MR. DAVIDSON: PACER, if it's anything like the state
16 system, which is it somewhat, I don't necessarily ever
17 believe what I see on either one of them. So, I look at the
18 actual document.

19 MR. HAWKINS: And I've never seen the order, judge.

20 THE COURT: All right. So I mean this order is -- I
21 mean the order reads in it, and I am gonna make it Court
22 Exhibit A, after careful reviewing of the, the laws, the
23 record in this case, as well as the report, this Court finds
24 the magistrate's -- magistrate judge's recommendation fairly
25 and accurately summarizes the facts and applies the current

1 principle of law. Accordingly, the Court adopts the report
2 and grants plaintiff's motion to dismiss.

3 The Court dismisses the complaint without prejudice.
4 The Court further finds, finds that the defendant's motion
5 for summary judgment is moot.

6 MR. HAWKINS: So I guess that was probably will's
7 motion I assume if it was, if it was this defendant. And
8 so, Your Honor, he knew that wilhite didn't want that
9 dismissed. The Court dismissed it. And so I would just
10 want to make that part of the record.

11 MR. DAVIDSON: I think the---

12 THE COURT: Well so, so---

13 MR. DAVIDSON: The Court---

14 THE COURT: The -- well, you know, I'll make this Court
15 Exhibit B. But whether or not we get into his lawsuit,
16 whether it was dismissed or unfounded or any of that, still
17 has the question of relevance to this particular lawsuit.

18 MR. HAWKINS: Right.

19 THE COURT: Yes, sir.

20 MR. HAWKINS: And, and, Your Honor, the reason it's
21 relevant is because he's put in the jury's mind that wilhite
22 voluntarily dismissed or didn't want the suit to go forward
23 and that's not true. He filed a motion to get it dismissed
24 and it got dismissed. And it's clear from his testimony,
25 this testimony clarified that, and because he brought that