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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 3 OF 3)
(pp. 701-1048)

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into the jury's attention, this -- Wilhite should be able to explain what happened.

I can't battle like that. I'm not a lawyer. I tried to represent myself. He's entitled to say that after Will said what he said on the record in front of the jury.

THE COURT: All right. Well, I haven't yet ruled on whether or not that comes in.

(WHEREUPON, the order was marked as Court's Exhibit B for identification purposes only at this time.)

THE COURT: All right. So let's move onto Page 18.

MR. DAVIDSON: Eighteen, line -- they wanted Lines 1 to 25.

THE COURT: One to 25 is what you've---

MR. DAVIDSON: And I---

THE COURT: ---what you've designated?

MR. DAVIDSON: I object to a lot of -- I call this the bellybutton section of the deposition --

THE COURT: All right.

MR. DAVIDSON: -- because this is where he gets in to describe what Mr. Owens did or I mean Mr. Gibson did in regard to his bellybutton and actually had him raise his shirt and show his bellybutton. And I think your ruling, if, if I'm right, I would raise relevance. But I understand your previous ruling about allowing---

THE COURT: All right.

MR. DAVIDSON: ---some of the information to come in. So we're gonna get to see if that (indiscernible).

THE COURT: Okay. All right. So, I will maintain the prior ruling -- hold on. Let me read. Let me read these last --.

(Pause.)

THE COURT: Okay. Now those lines will remain.

MR. DAVIDSON: Thank you, Your Honor.

THE COURT: And your objection is noted for the record.

MR. DAVIDSON: Thank you, Your Honor.

THE COURT: All right. Page 20.

MR. DAVIDSON: That will be Page 19.

Let's see. This is, again, about retaliation and we've objected about retaliation even as far back as when this deposition was taken. We don't believe it's relevant in this case, Your Honor, and hadn't been pled and we've objected and we don't believe they can conform their pleadings of some five years of (indiscernible).

THE COURT: All right. Now, Mr. -- I'm gonna, I'm gonna skip over this, Mr. Hawkins. I'm gonna let you make your argument. But I, I have some questions regarding the retaliation, which is why I reserved that for later.

MR. HAWKINS: Sure.

Do, do you want me to put my argument on the record or wait?

THE COURT: We'll come back.

MR. HAWKINS: Okay.

THE COURT: We'll come back in just a minute.

All right. Page 20. I don't want to get lost---

MR. HAWKINS: Yes.

THE COURT: ---in the details.

All. Right so Page 20.

MR. DAVIDSON: They wanted Lines 1 through 16. We objected to 8 through 16 talking about Mr. Gibson, was he upset about the dice. I believe you already let evidence in about this. They asked about violating your constitutional rights. I, I -- I've moved to -- excuse me. They didn't include any of that, Your Honor.

So it's basically about Gibson and Erikson being upset about not finding any dice and I think you've already ruled that in, Your Honor.

THE COURT: Yes, sir, I have. But your, your objection for this portion of the, the deposition is noted for the record --

MR. DAVIDSON: Thank you, Your Honor.

THE COURT: -- and that will remain in.

Page 21.

MR. DAVIDSON: They wanted in 7 through 25. They want to talk about Gibson's pattern of behavior to excessive force. That's leading. You saw him use excessive force on

more than one occasion. Again, that's leading and all the next questions are also.

You filed a sexual assault claim at one point -- at some point. Do you remember that. Yes, sir. Again that's leading.

Page 22. They wanted Lines 1 through 25. We objected to most of that, Your Honor. If you look at -- they want to hand in the document dealing with the sexual assault form. They wanted him to look at as founded or unfounded. All of this deals with him and his claims, Your Honor. We don't believe it's relevant.

We also believe, as we've indicated, that all these questions or most of them are leading. Like the last question, what, what did -- so what did -- did anybody do anything you're aware of to investigate what happened. In other words, if there's an unfounded result, I'm trying to figure out what somebody did to reach that result and that's, that's somebody else's work, Your Honor. That would not be relevant. Plus it's -- you're trying to get into somebody else's mind. It's pure speculation of what somebody may of done in that instance.

So, to -- and it's got leading. It's got speculation about what other people did and it's got relevance, Your Honor, to all those comparatives.

THE COURT: Mr. Hawkins.

MR. HAWKINS: Yes, Your Honor.

I think it's all -- I don't see how anything could be more relevant to this lawsuit than what we're talking about and he's certainly entitled to talk about what he's aware of, what happened, and what he's experienced. That's, that's our position.

THE COURT: Thank you, sir.

MR. DAVIDSON: Line 20 -- well, Line 23 really starts with the question on 17 about unfounded results. I objected.

THE COURT: Wait.

Where are you?

I'm not --.

MR. DAVIDSON: The question on Page 22.

THE COURT: Okay.

MR. DAVIDSON: Line 17.

THE COURT: All right.

MR. DAVIDSON: Goes over -- the answer goes over to the next page and I objected.

Their answer, if you look at it, deals with the retaliation issue dealing with the pill. After you put in -- he talks about after you put in the sexual assault allegation on there, they let him search your bunk area and found a piece of a pill. They come back to the sallyport asking you if it's mine. I said you can take the pill to

any -- talking about going to medical. Sergeant Rynell, at that time, told him, that's all hearsay, Your Honor, in regard to what Rynell may of said about this pill and I'm not sure it's even relevant because we don't believe there's a retaliation claim. So we get back to that, Your Honor.

MR. HAWKINS: Your Honor, first, that's a statement against interest by an opposing party because the Sheriff's Office is the entity we have to sue. This is a member of the Sheriff's Office. So this is a statement by the Sheriff's Office to the extent he's talking about Rynell.

Secondly, he's telling me the story about what happened when they came in his bunk and retaliated. This is consistent with Your Honor's rulings on letting these other retaliation witnesses testify. It's consistent with all the other testimony we've heard in the case. It's consistent with the, the questioning, the questioning of Mr. Erikson. It's gonna be consistent with my client's statement.

This is what the case is about. Will's known this for years. I don't know why this is being raised now. So, I, I don't see any reason to cut any portion of that out. That's him telling the story of what happened and what happened following.

MR. DAVIDSON: And if Your Honor will remember, I raised the issue about the three individual inmates testifying about retaliation because all of their incidences

occurred in this calendar year---

MR. HAWKINS: And---

MR. DAVIDSON: ---and would not be relevant to what we were involved in in 2017.

MR. HAWKINS: And, Your Honor---

MR. DAVIDSON: So---

MR. HAWKINS: ---I would say in response that every time we come to something that we don't agree about, there's this, this narrative of if you'll remember Your Honor, I objected, I objected, I objected. He's objected to everything throughout the entire trial. Making 150 objections during a trial doesn't mean you just get to make arguments about it because you impede things and make objections that are, I don't think, in good faith.

So, I ask the Court to note that as we continue to go through deposition.

MR. DAVIDSON: I'm gonna, I'm gonna have to stand up on that one, Your Honor.

Every objection I have made has been in good faith in accordance with the Rules of Evidence, Rules of Civil Procedure, and I can't help that I've had to make them. I'm an advocate for my client. I have to protect the record in case this case were to go up on appeal because, if I don't object, then I am sure an Appellate Court is gonna say you waived your right to waive that issue cause you didn't

object in the lower court.

So, that's why I'm doing what I'm doing. I, I, unfortunately, I'm sorry it's taking as long as it has. But I can't help it. I've got to raise it and I raised them in regard to the three individual inmates because all their incidences were in 2022 and I have raised issues about retaliation even before this. This deals with that issue and you've already indicated you're gonna circle back on it.

THE COURT: All right.

MR. HAWKINS: And, Your Honor, the, the only thing I would say in response is that yeah, we were, we were talking at lunch yesterday. I, I don't -- I've tried cases plenty of times, getting along with lawyers. They may not have the same position I do but get along with them.

This is an intentional delay that -- like making the jury go in and out all the time, making us put that video back up, making us go edit the video, then come back and then add his stuff, then go back and edit it to have -- his stuff, and then come back and then he complain about it again while the video's playing, that is an intentional delay of this trial. This trial should of taken three days max and it's taken as long as it's taken because he won't stop making bad faith objections.

THE COURT: All right. Well, I'm not -- here's, here's where we are. I am not going to hear anymore. You've noted

your disdain for each other on the record and that's as far as I'm gon' let it go. We're gon' proceed and we're gonna do all of the legal work in this case.

MR. HAWKINS: Yes, Your Honor.

THE COURT: And we're gon -- we're gonna run a tight ship from here on out.

All right.

MR. DAVIDSON: Thank you, Your Honor.

THE COURT: All right. So let's, let's move onto Page 24 and then we've got these others that we need to circle back to.

Page 24, you've got -- what did you want?

You wanted all of Page 24, Mr. Hawkins?

MR. HAWKINS: I believe so, Your Honor.

THE COURT: Okay. All right. And you want -- you object to 3 through 7?

MR. DAVIDSON: Yes, ma'am, it in -- if you look at the, the first question, it's clearly leading.

MR. HAWKINS: Okay. So our position on that, Your Honor, is it's not leading. I can ask him if there's any doubt in his mind---

THE COURT: Well---

MR. HAWKINS: ---that he used excessive force on him.

THE COURT: Okay. We'll let him make his objection first, Mr. Hawkins.

MR. HAWKINS: Oh, I'm sorry.

THE COURT: Is that your objection?

MR. DAVIDSON: Yes, Your Honor.

THE COURT: All right. And that's your argument. I got your argument.

MR. HAWKINS: Yes, ma'am.

MR. DAVIDSON: Your Honor, the next question, Page -- Line 10 --

THE COURT: Through 21?

MR. DAVIDSON: Yes, ma'am, it all talks about hearsay about what an officer may of have said about what about -- what happened to Gibson. Three days discipline. It's not an admission against interest. It seems to be just a conversation about Gibson -- if, if I give Gibson three days off for disciplinary sanctions on him, I'm not going to come back here and tell you that I'm giving him three days off for a disciplinary sanction. Well, I'd need to know something.

Well, there was no discipline. What relevance this would have would be over -- outweighed by the prejudice of 403 because there was no discipline and the, the evidence here is what the officer may or may not have said to Wilhite really isn't relevant in this case and it's not an admission against interest.

THE COURT: All right. Let's---

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

THE COURT: Oh, I'm sorry.

Are -- were you done, Mr. Davidson?

I'm sorry.

MR. DAVIDSON: Yes, ma'am. I apologize.

THE COURT: All right. Mr. Hawkins.

MR. HAWKINS: So, Your Honor, what's good for the goose is good for the gander. He insisted that Bowman's deposition come in. He didn't make him available for trial. He allowed him to go on a cruise to do whatever he's gonna do and Bowman -- if, if Bowman were here in person, I could ask him about those statements on the stand. But he's not because Will says it's okay for you to go. We don't need you for trial.

And, secondly, Your Honor, this is an admission by Bowman who's not only a member of the party, he's -- he's high up at this point. I think he was like third in, in command. Now he's number two I think.

So, we're not just talking about any deputy in this case. We're talking about somebody who's high up. He was the PREA coordinator. So that's an admission of statement by a party against interest. It has high probative value. It comes in because Will insisted that his deposition testimony come in, didn't make him available for trial, didn't subpoena him. I don't see any reason why it can't

come in.

THE COURT: All right. And I believe you also have Page 25?

MR. DAVIDSON: This all goes back to the, the information about discipline now -- Mr. Ard, Mr. Wilhite wanting to know whether or not he got a discipline or not.

Let's see. And I'm not even sure it's responsive to a question, Your Honor. What did you say about the three days. It's, it's the same thing and then he goes kind of off on tangents about the three days and excessive force and he's nonresponsive and I objected, Your Honor, on Line 21.

THE COURT: All right. Mr. Hawkins.

MR. HAWKINS: Your Honor, his -- this is the witness giving a story about what happened and the events following. It's directly and -- it's directly related and central to this case, high probative value. I mean he's gonna, he's gonna offer testimony. It's not, not asking somebody else what Wilhite said. Wilhite's gonna talk about it. So --.

THE COURT: All right. All right. Let's, let's address one, one legal concern that I'm having in order to make my decision about some of these and that is the retaliation.

Mr. Hawkins, your retaliation -- I know we've talked about retaliation briefly but that is not a part of your pleadings.

MR. HAWKINS: Right, Your Honor. But you can conform pleadings up to and through the close of trial. And so we're, we're able to adduce that cause -- and it makes sense if you think about it like in terms of why 15(a) is so liberal.

You can always amend your pleadings absent some sort of prejudice because when you get into a lawsuit, and when you start doing discovery, you're gonna find out other stuff than you know when you start the lawsuit. Before I start the lawsuit I can't take any depositions.

So when I take depositions, I'm gonna start learning about all kinds of stuff including retaliation. Retaliation is a breach of policy. It's a breach of PREA. It's a breach of the minimum standards and all that is evidence of gross negligence under Jinks versus Richland County.

So, if 15(a) says you can liberally construe your pleadings, and I think further down in 15, I think it's in 15, it might be another rule, we can conform our -- always conform our pleadings to evidence. We now have evidence from that witness stand from at least three different people of retaliation. We're about to have evidence from four different people's retaliation. And when Ard and Wilhite give their testimony, we'll have five or six -- I think six witnesses of retaliation.

So, given the liberal pleading rules, given that

there's, there's case law too that says you can amend your pleadings up to, through, and the close of trial, that's, that's fair game. And, and there's no prejudice because he's been on notice of this for years.

We've been talking about retaliation I think in every single deposition we've ever taken. He's known about it. It's -- it causes damages. It's, it's evidence of gross negligence under Jinks versus Richland County. There's six or seven reasons we get to talk about retaliation and offer that evidence, Your Honor.

THE COURT: Thank you, Mr. Hawkins.

Mr. Daw -- Mr. Davidson, your response, sir?

MR. DAVIDSON: I'll go by Dawkins too, Your Honor, if you need to.

THE COURT: I, I -- I'm, I'm not sure why my brain has that etched and it's for both of you. But I, I apologize.

MR. DAVIDSON: I've had, I've had that problem for years, Your Honor.

15(b) clearly says that you can amend or conform the pleadings. But it also talks about a party objecting to it. And, in this instance, we've objected. We've objected as far back as Mr. Wilhite's deposition, Mr. Ard's deposition. We objected to the evidence as it came in this court.

The pleadings do not raise anything about that. The fact that something may have happened in '22 would not be,

in my opinion, relevant to what's gone on in '17. There's no way to show that any of that, including the erasing the drawings off the wall, which they're not suppose to have, had any regard to being a retaliatory action.

The same thing with getting a razor out of the cell, going and searching, and not knowing whether or not there was evidence of the -- a razor. That happened in '22. That doesn't necessarily mean retaliation. That means, in fact, the officers were doing their jobs to see if there was contraband.

So, we've objected through this. It would prejudice my case and my defenses in this matter and it's just not relevant based on the evidence and also based on our objections, Your Honor.

MR. HAWKINS: Your Honor?

THE COURT: Let me get -- let me read the rule.

MR. DAVIDSON: And I know you can, you can do it. You can allow it. Obviously the judge has the authority to allow it --

THE COURT: Well---

MR. DAVIDSON: -- if there's no prejudice and if it's really relevant to the underlying issues in this case. And, like I say, it's really not, Your Honor.

THE COURT: All right. But let me read the rule into the record.

Rule 15(b) states that evidence is objected to at the trial on the grounds that it is not within the issues made by the pleadings, the Court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the Court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits, the Court shall, upon motion, grant continuance reasonably necessary to enable an objecting party to meet such evidence. Upon allowing any such amendment or evidence, the Court shall state in the record the reason or reasons for allowing the amendment or evidence.

In the event the Court should try issues and not raised by the pleadings, it shall state in the record all such issues tried and the reason therefore.

MR. HAWKINS: And I'll give my response whenever Your Honor wants me to.

THE COURT: I'm absolutely ready, Mr. Hawkins.

MR. HAWKINS: Your Honor, what he's talking about, what's he really talking about, and he can use 15(b) against me too. He can amend his answer right now if he wants to.

But what we're talking about is -- are, are issues for juries. That would invade the province of the jury to say well, that wasn't retaliation. He was just doing what he

was suppose to do. That's a jury question. That's a fact question.

Why he, why he treated Mr. Owens differently than other inmates and if he treated Mr. Owens differently than, than other inmates, that is a jury question for them to decide from what they hear from that witness chair. That's a jury -- he's trying to mix up law and facts and that's not proper.

That would invade the province of the jury. That would violate the Seventh Amendment of the United States Constitution. It would violate the State Constitution.

THE COURT: All right. Gentlemen, thank you. Your arguments are received.

We do have some things that we need to come back to and that is Page 12 Lines 3 through 5. We are -- Page 12 Lines 3 through 5, I'm ruling that those are out of the deposition. Lines 9 through 24 I'm also removing from the deposition. Page 13 will be removed from the deposition. Page 14 -- am, am I going too fast?

MR. HAWKINS: That -- I'm, I'm with you, Your Honor.

THE COURT: All right. Page 14, I will admit Lines 3 through 7.

MR. HAWKINS: So, so 1 and 2 are out of 14 or that's the question.

THE COURT: I understand. But I -- the -- I find the

question problematic. He didn't exactly answer -- he answered another question. He didn't exactly answer your question.

MR. HAWKINS: Okay. So we just take out Lines 1 and 2 then?

Is that right?

THE COURT: Yes.

MR. HAWKINS: Yes, Your Honor.

THE COURT: Do you see the answer another---

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

THE COURT: But I will allow the testimony of Lines 3 through 7 to come in.

MR. HAWKINS: Thank you, judge.

THE COURT: I will -- I want you to take out 8 through 11 and I will allow 12 through 18.

MR. HAWKINS: So, 8 -- 8 through 11. So on 14, 1 and 2 come out and then 8 through 11?

THE COURT: Yes.

MR. HAWKINS: Okay.

THE COURT: The rest is, is to be taken out.

MR. HAWKINS: The, the rest -- I've got 1 and 2 and then 8 through 11.

There's more to be taken out?

THE COURT: He asked for 23 through 24 to be removed.

MR. HAWKINS: Okay. Twenty-three through 24 are

removed or I guess 23 through 25 cause that's an objection.

THE COURT: Yes.

MR. HAWKINS: Okay. Same objection.

THE COURT: And so it looks like on Page 15, we'll need to remove Line 2 as well. It's just a, it's just a random --.

MR. HAWKINS: I have to take Page -- Line 2 out of 15?

THE COURT: Yes, it look like he's just randomly answering after the objection.

Do you---

MR. HAWKINS: Yes.

THE COURT: Do you see that?

MR. HAWKINS: Yes, Your Honor.

I -- Your Honor, I -- so it's clear on the record, he, he can't say he saw the gross negligence on these other individuals too, Oglesby and Ard?

That's on 2 of 15. Page 15 Lines -- just Line 2.

THE COURT: Yeah, take your question out. Your testimony that you saw Gibson assault.

MR. HAWKINS: Okay. Okay.

THE COURT: And so I think the answer -- it's just a random -- it's just two random names there.

MR. HAWKINS: That's right.

And was that, was that removed because, because Will -- Will didn't like the word assault, right?

Is that---

THE COURT: Yes, I do believe that -- I, I don't like that word either.

MR. HAWKINS: Okay. I am going to allow 3 through 24.

Page 16 -- let me go back to 16. I can't read my notes. I can't remember. We left in through 17. We left in 18.

Page 19 I am going to allow to remain.

Let me, let me make sure. I'm going to allow, on Page 19, Line 6 through 11.

MR. HAWKINS: That's in, Your Honor?

THE COURT: That's in. I do not find the rest of the page relevant, Mr. Hawkins.

MR. HAWKINS: Your Honor, 19, at the beginning, is a continuation of -- Page 18 was let in. He's telling the story then---

THE COURT: It is. So Lines 1 through 3 will -- it is.

MR. HAWKINS: So, 4 -- so 4 through 25 we take out? Four through 25 on Page 19?

THE COURT: No.

MR. HAWKINS: Oh.

THE COURT: Just -- I want you to take out the objection. It's -- this is what I want on Page 19, 1 through 11.

MR. HAWKINS: One through 11 stays in?

THE COURT: Yes.
MR. HAWKINS: The rest is out?
THE COURT: That's it.
MR. HAWKINS: We'll take out 12 through 25.
THE COURT: Yes. So that takes us to Page --.
MR. DAVIDSON: Twenty-one I've got, Your Honor.
THE COURT: Twenty-one. I did not make a ruling on 21?
MR. DAVIDSON: No, ma'am.
THE COURT: Oh, I'm sorry. Yes, Page 21 Lines 7 through 23, I am removing those based on speculation.
MR. HAWKINS: Your Honor, so at 20, I'm asking if he filed a sexual assault complaint and I'm asking, I'm asking him about the resolution of it. This -- that, that wouldn't be speculation. He would know about whether or not his, his complaint was, was verified, Your Honor.
Do I, do I have to take that out too or---
THE COURT: I'm sorry. I'm, I'm -- let me, let me --.
MR. HAWKINS: I'm sorry.
THE COURT: I'm sorry. No, I'm sorry.
You take -- what did you request on 21?
MR. HAWKINS: I think we probably had the whole thing in or close to it. But it's on 22 for -- or on 20, he -- he's told me all about, you know, some stuff that he's done and then I asked him if he filed a sexual assault allegation at some point. And then he tells me that he did and I asked

him was it -- was it found to be unfounded and he says it was. And so --.

THE COURT: But you took out the constitutional rights?

MR. HAWKINS: I took out that stuff, yes, ma'am. The only thing I'm leaving in is -- the only thing I would like Your Honor to leave in, if you will, is 20 through 25 cause we got 1 through 6 in and then I would like for 20 through 25 to stay in.

THE COURT: And you objected to that, correct, Mr. Davidson?

MR. DAVIDSON: Yes, ma'am, cause if you look at -- I think 20 -- it says 20 -- what, what was it on 20?

Page 20?

MR. HAWKINS: Oh, yeah, we -- Your Honor, I'm sorry. We had taken out 1 through 6 on 21 cause it's got something about the constitution in it. Yeah, we got 1 through 6 out.

THE COURT: Right.

MR. DAVIDSON: You should have 17 through 25 out cause that deals with constitutional rights on Page 20.

The only thing that's in there, Your Honor, at least what I wrote down---

MR. HAWKINS: Oh, it is.

MR. DAVIDSON: ---is 8 through 16 is your ruling that that was in. You overruled my objection.

MR. HAWKINS: Oh, yeah, we didn't, we didn't have that

in, Your Honor. My -- Ethan's telling me now.

THE COURT: All of 21's not out.

MR. HAWKINS: Oh, okay.

THE COURT: Yeah, listen to her. She's --.

MR. DAVIDSON: I think 21, I think 7 through 23 you said was out. The rest of it could come in. But I don't feel -- I don't -- I think -- I forgot to object and I don't know -- well, excuse me. They didn't request 1 through 6. So actually what they requested, I objected on 21 -- on Page 21.

THE COURT: You objected to what?

MR. DAVIDSON: On Page 21---

THE COURT: Uh-huh.

MR. DAVIDSON: ---I objected to Lines 7 through 23.

THE COURT: That's right.

MR. DAVIDSON: And you ruled that was out.

THE COURT: I did. I looked. Yes, I did.

MR. DAVIDSON: And then on the next page I think that's a circle back.

THE COURT: Okay. Do you have that?

MR. HAWKINS: I, I -- he was going back and forth.

Is 20 -- is it -- is 21 all out?

Okay.

THE COURT: So 21 --

MR. HAWKINS: Okay.

THE COURT: -- is out.

MR. HAWKINS: I got the whole thing switched.

Okay. Sorry, Your Honor.

THE COURT: It's okay. They're a lot of numbers that we're looking at.

MR. HAWKINS: Indulge us, Your Honor, please.

(Pause.)

MR. HAWKINS: Okay. So, 20 -- 20, Your Honor, is -- yeah, 20 we have in in its entirety.

We have 1 through 16?

MR. DAVIDSON: Yeah.

MR. HAWKINS: So we have 1 through 16 and then 17 through 25 on 20 come out because of the vi -- the constitution.

Okay.

MR. DAVIDSON: Your Honor, what you designate -- what you designated on Page 20 comes in.

THE COURT: Okay. And that takes us up to Page 24.

MR. DAVIDSON: Twenty-two, Your Honor, I believe.

(Pause.)

MR. HAWKINS: So, he, he didn't have any objection to 22?

MR. DAVIDSON: He did.

MR. HAWKINS: Oh, he did?

MR. DAVIDSON: I think 22 and 23.

THE COURT: He objected to all of Page 22 and --.

MR. DAVIDSON: And I think the rest of them actually are circle back questions, Your Honor.

THE COURT: Right.

So all of 22 and then 23 through Line 18 is what he's objected to.

Is that correct, Mr. Davidson?

MR. DAVIDSON: Yes, ma'am.

THE COURT: All right. Thank you.

MR. DAVIDSON: That's about the pill in the bunks.

THE COURT: That's right.

All right.

MR. DAVIDSON: He's asking him about what the -- what the employee within the agency does to investigate. That will be --.

MR. HAWKINS: That's a sentence---

MR. DAVIDSON: We'll (indiscernible) move along say what that is.

MR. HAWKINS: Yeah, that's a central issue in the case, what they do to investigate and that's a statement by a party. So, against interest too.

THE COURT: I am going to allow 22 in. I kind of believe there's prior testimony in that regard.

Let me make sure all of 22 can come in.

(Pause.)

THE COURT: All right. I'll allow the top of Page 23, which I think that that's already been requested anyway.

MR. HAWKINS: And that's two -- so I want 22 and then 23, is there -- do I need to strike anything from 23?

THE COURT: You can keep 23.

MR. HAWKINS: Okay.

THE COURT: Twenty -- Page 24, you'll leave in Lines 3 through 7.

MR. HAWKINS: And then---

THE COURT: Wait a minute. Wait a minute.

All right. We'll leave in Lines 3 through 7. Ten through 21 are (indiscernible). Lines 10 through 21 will be removed -- will come out. Those come out.

MR. HAWKINS: Okay. Lines 10 through 21 on Page 24?

THE COURT: That's correct, yes, sir.

MR. HAWKINS: And that's, that's me asking Wilhite if he knows that -- if Gibson was disciplined for this search?

THE COURT: I see it, yes, sir. That -- that's to come out as well as Page 25, 1 through 18.

Did I miss anything?

Do I need to repeat anything?

UNIDENTIFIED SPEAKER: Eleven, 25 and I don't know if you said you were (indiscernible).

MR. HAWKINS: What now?

THE COURT: Page 11.

MR. HAWKINS: We've got -- I've got all that in.

MR. DAVIDSON: Well, Your Honor, I think the question was -- you were gonna circle back on Lines 23 -- 22 through 25---

MR. HAWKINS: When---

MR. DAVIDSON: ---where it talks about his surgery and the ultrasound and stuff like that and I think, consistent, that should come out.

THE COURT: Yeah, that's right. Thank you for asking.

That's Lines 23 through 25. That's all.

MR. HAWKINS: We, we strenuously oppose Will's position on that because it's central to our case, Your Honor. It's, it's extremely important to our case to show that he was so grossly negligent he injured several people. We got to show he was grossly negligent and that's a common scheme and we don't think the rule would mean anything if we would -- if he had to take that out, Your Honor.

THE COURT: All right. That's completely up to you. But I am gonna be removing Lines 23 through 25.

MR. DAVIDSON: Thank you, Your Honor.

THE COURT: There was a question on Page 16?

Oh, yes.

MR. HAWKINS: Your Honor, can I -- what was -- for the record, can I get the basis of the, of the ruling on 11, 23---

THE COURT: I do not find it relevant.

MR. HAWKINS: Thank you, Your Honor.

THE COURT: Yes, sir, and your objections are noted. I believe you made argument. If not, you can, you can do that now.

MR. HAWKINS: No, Your Honor. If that's, that's the, the Court's ruling---

THE COURT: Okay.

MR. HAWKINS: ---that's the Court's ruling.

THE COURT: Yes, sir. Page 16.

MR. DAVIDSON: That's about the lawsuits, Your Honor.

THE COURT: All right. I am going to allow Page 16 and I understand Mr. Dawkins (sic) has objected and that will go through Page 17 Line 30 (sic).

MR. DAVIDSON: Yeah, that's right. Thank you, Your Honor.

THE COURT: Through 17 Line 3 and there was one more page she needed.

Is, is that all of them?

You've got all of them?

MR. DAVIDSON: I think we finally got them, judge.

THE COURT: All right.

MR. HAWKINS: And then I've got my objections to his submissions.

THE COURT: Yes, sir.

MR. HAWKINS: So they want, they want 27, 14 through 27 1 in.

THE COURT: Okay.

MR. HAWKINS: And this is, this is just him sort of going through Wilhite's --.

THE COURT: Give the line numbers again---

MR. HAWKINS: It's Page 20---

THE COURT: ---Mr. Hawkins.

MR. HAWKINS: It's Page 27 -- well, I'll go to -- I'll do the ones he had on 26 first so we can go in order on. Twenty-six -- starting on, on Page 26, starting on Line 5, he starts talking to him -- talking to Wilhite about being in jail and why he's there on federal drug charges and the gun crime and it's just --.

THE COURT: What's he want in cause we only got five minutes?

MR. HAWKINS: He wants 26, 5 through 16 and we don't think any of that's relevant to anything Mr. Wilhite's gonna offer.

THE COURT: Okay. Let me, let me look at it.

(Pause.)

THE COURT: Mr. Davidson.

MR. DAVIDSON: Your Honor, the -- quite honestly, I got to show why he's unavailable and I basically set forth why he's unavailable cause he's in the county jail in North

Carolina.

MR. HAWKINS: He, he doesn't have to show that. There's -- he doesn't have to talk about it at all.

THE COURT: All right. I'm gonna---

MR. HAWKINS: He doesn't have to do anything.

THE COURT: I'm gonna remove that or I'm gonna -- I'm gonna remove that portion.

MR. HAWKINS: And that's 5 through 16, Your Honor?

THE COURT: Yes.

MR. DAVIDSON: Well, part of that, that last question about being a frequent guest of Aiken County.

MR. HAWKINS: Yes, she removed that.

THE COURT: I saw it but our -- your, your objection's noted.

MR. DAVIDSON: Thank you, Your Honor.

THE COURT: Yes, sir.

MR. HAWKINS: And then, Your Honor, for -- and for the record so we don't run into the same problem we ran in yesterday, we're, we're playing the questions he, he, he asked on cross. We're playing those. So I want to say that on the record so Will can hear me so we don't come back in here and say he's playing portions of my cross I didn't want played.

But, on Page 27, 14 through 28, Line 7 we're okay -- we'll, we'll leave -- we're okay with that submission as

long as we get to play the rest of what he's talking about cause what he wants to do is play part of Wilhite's testimony that he likes and then cut out the rest while Wilhite's still going and, and talking.

And so I think if, if they want it in, that's fine but it shouldn't be taken out of context. It should be left in with the rest of Wilhite's testimony, and if, and if---

THE COURT: So what are you proposing?

MR. HAWKINS: So I'm proposing---

THE COURT: If you---

MR. HAWKINS: If, if, if they want that in, then all the rest of this stuff---

THE COURT: You got to give me the lines is what I'm asking for.

MR. HAWKINS: Oh, I'm objecting to it if, if they're -- if they're saying the rest of that can't come in.

THE COURT: Okay.

MR. HAWKINS: Cause yesterday we started playing---

THE COURT: Yeah, but let me read all of it.

MR. HAWKINS: Okay.

THE COURT: That's all I'm trying to do.

Tell me -- you want all of this in and you will not object to this if I rule all of it can come in?

MR. HAWKINS: If you---

THE COURT: Is that what you're saying?

MR. HAWKINS: Yeah, if you start on -- let's see. Let me make sure.

MR. DAVIDSON: Page 27 Line 2.

THE COURT: Page 27 Line 2 is what you want?

MR. DAVIDSON: Your Honor?

MR. HAWKINS: Yeah, they didn't object to any of it but --.

MR. DAVIDSON: But no, Your Honor, with all due respect, we designated certain specific sections that we wanted in like four -- on Page 27 Line 14 through 25.

THE COURT: Uh-huh.

MR. HAWKINS: And we, we designated this portion.

THE COURT: Hold on.

MR. HAWKINS: We designated this portion already. They didn't object to it.

THE COURT: Oh, okay. So then -- it's, it's a moot point---

MR. HAWKINS: Right.

THE COURT: ---if you both designated it.

MR. HAWKINS: Right.

(Pause.)

THE COURT: All right. So you both want it in there is what I'm hearing.

Is that correct?

(WHEREUPON, there was no audible response.)

THE COURT: Okay.

MR. HAWKINS: We didn't designate 27. I'm sorry. I don't know what's going on.

MR. DAVIDSON: My understanding, Your Honor, they designated -- we designated Page 27---

THE COURT: Yeah.

MR. DAVIDSON: ---14 through 25---

(WHEREUPON, Mr. Hawkins was talking to his associates very loud.)

MR. DAVIDSON: I'll wait, Your Honor.

THE COURT: All right. Clear it up for me, Mr. Hawkins.

What is it that you want in?

MR. HAWKINS: As long as we get to play all of it, we're fine with that. What we don't want to happen is---

THE COURT: I get, I get what you don't want to happen.

But what is it?

What is all of it, all of the pages what?

MR. HAWKINS: Twenty-seven and 28 I think.

THE COURT: Okay.

MR. HAWKINS: Yeah, 27 through 29. That's what, that's what we designated.

THE COURT: Yeah, they didn't, they didn't object to it.

MR. HAWKINS: Okay.

THE COURT: So you're gon' play all of that.
MR. HAWKINS: All right.
MR. DAVIDSON: If, if Mr.---
THE COURT: And his designation is just within your designation.
MR. HAWKINS: Okay. Thank you, judge.
THE COURT: All right.
MR. HAWKINS: I'm sorry for the confusion.
THE COURT: It's okay.
Is there anything else that we---
MR. DAVIDSON: They designated Page 30 Line 11 through 25. We didn't object to that either.
THE COURT: Okay. So Lines -- Page 30 Lines 11 through 25 will come in as well?
MR. DAVIDSON: Thank you, Your Honor.
THE COURT: All right. Is that all, Mr. Hawkins?
MR. HAWKINS: Yes, Your Honor.
THE COURT: Okay. All right. And, and I want to be abundantly clear because I don't -- I'm not -- I want to make sure that my rulings were understood.
Mr. Ard's video deposition is coming in as it was edited yesterday and I, and I had have Mr. Davidson's objections on the record. We took argument from both yesterday but that is my ruling.
Mr. Wilhite's deposition will come in after these edits

are done that we just completed.

All right. Are there any other matters that we need to take up before we bring this jury in?

MR. HAWKINS: Your Honor, logistically, just so we can make sure we have this edited the right way, would it be all right if we got maybe an hour and 15 minutes for lunch so we can do this at lunch?

THE COURT: So, your order is Mr. -- who are you calling?

Tell me the -- who you're calling---

MR. HAWKINS: I'm about---

THE COURT: ---(indiscernible)?

MR. HAWKINS: I'm about to call my client --

THE COURT: Okay.

MR. HAWKINS: -- Mr. Owens.

THE COURT: And he will take some time?

MR. HAWKINS: He will take some time.

THE COURT: Okay.

MR. HAWKINS: And then my hope that -- I would let -- I, I would say maybe they can do this while he's going. But I'm afraid I'll need an exhibit or something (indiscernible)---

THE COURT: Okay.

MR. HAWKINS: So --.

THE COURT: I'm not going to, to -- I'm not going to

hold that against you.

MR. HAWKINS: Okay.

THE COURT: I'm just trying to figure out -- he will take until lunchtime?

MR. HAWKINS: Yes, Your Honor, and we're gonna---

THE COURT: All right.

MR. HAWKINS: ---play these video depositions as the last part of our case.

THE COURT: Very good.

And so we will take about -- I usually give about an hour and 15 --

MR. HAWKINS: Okay.

THE COURT: -- an hour and 30 for lunch --

MR. HAWKINS: Okay.

THE COURT: -- if y'all act right. If you don't, we (indiscernible).

All right. Mr. Davidson, any issues to address outside of the jury's presence -- the presence of the jury?

MR. DAVIDSON: Give me one minute, Your Honor.

Oh and I apologize for not standing, Your Honor. I'm just --.

THE COURT: It's all---

MR. DAVIDSON: I'm trying to, I'm trying to conserve what I got.

THE COURT: It's all right. It is noted for the record

that it is all right for you to sit, Mr. Davidson.

MR. DAVIDSON: I just didn't want you to -- no disrespect for not standing.

THE COURT: I understand.

MR. DAVIDSON: I'll stand while the jury's out.

THE COURT: So --.

MR. DAVIDSON: I'm just trying to conserve.

THE COURT: I understand.

(Pause.)

MR. DAVIDSON: I'm good, Your Honor.

MR. HAWKINS: Okay.

MR. DAVIDSON: Madam Court Reporter, just make note that said I'm -- all my objections that have been noted for the record.

THE COURT: All right. Thank you, Mr. Davidson.

MR. DAVIDSON: You're, you're welcome, Your Honor.

(Pause.)

THE COURT: All right. We'll bring the jury in in seven more minutes.

MR. DAVIDSON: Okay.

THE COURT: All right. And we'll, we'll go off-the-record.

MR. DAVIDSON: Thank you, Your Honor.

THE COURT: Thank you.

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

THE COURT: Bring them in. Thank you.

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

THE COURT: All right. Good morning, ladies and gentlemen of the jury. I know that we promised biscuits instead of donuts.

THE JUROR: Donuts were good.

THE JUROR: I have donuts (indiscernible).

THE COURT: Mr. Charlie, did you get assorted or just plain?

THE JUROR: Plain.

THE BAILIFF: Plain.

THE COURT: Yes.

THE JUROR: That's what they said.

THE JUROR: (Indiscernible) by this order, did you have anything?

THE COURT: Yes.

All right. We'll see what we can do. We'll see.

All right. Ladies and gentlemen of the jury, thank you for your patience. At this time we will resume the trial.

Mr. Hawkins, please call your next witness, sir.

MR. HAWKINS: Thank you, judge. May it please the Court.

We would call Otis Owens to the stand.

THE CLERK: Please place your left-hand on the Bible

and raise your right-hand.

OTIS OWENS, being first duly sworn, testified as follows:

THE CLERK: Please take a seat in the witness box and state your full name for the Court.

THE WITNESS: Yes, ma'am.

My name is Otis Keith Owens.

DIRECT EXAMINATION

BY MR. HAWKINS:

Q. Otis, tell the jury where you're from.

A. Aiken, South Carolina.

Q. Your parents from here?

A. Yes, sir.

Q. Your whole family's from here?

A. Yes, sir.

Q. What's your family call you?

A. Scooter.

Q. Is that what everybody calls you?

A. Yes, sir.

Q. Okay. Mr. Owens, before we get into you -- testimony, you've heard a lot of other witnesses testify and I'm gonna ask you some questions about that. But I want to -- I want to sort of acknowledge something for the jury before we get started.

A. Yes, sir.

Q. Have you had addiction problems in the past?
A. Yes, sir.
Q. Do you acknowledge that you, in the past, have broken rules?
A. Yes, sir.
Q. And, in 2017, were you at the detention center here in Aiken County (indiscernible)?
A. Yes, sir.
Q. Okay. And on the 25th, 24th and 25th of January of 2017, I want you to tell the jury what happened between you Mr. Gibson.
A. Yes, sir.
Start from the whole -- from the---
Q. Yeah.
Start from, from when you were in the rec yard and---
A. Okay.
Q. ---when he said I see y'all playing dice or whatever happened and just go through the whole thing.
A. Yes, sir. It was a, a group of us, about 11 to be -- approximately 11 of us. We was on the rec---
Q. Let me ask you a question about that.
A. Yes, sir.
Q. I heard an officer offer some testimony about 25 people or something like that.
Is that your---

A. No, sir.
Q. Tell the jury exactly how many people were there.
A. Yes, sir. There was exactly 11 people. It was four guys underneath the window. You got a window. When you're facing in the rec yard, you got a window that's about a little bit under waist high and the rest is like windows up.

So, you got a group of four guys under the window playing cards. You got seven of us walking around doing laps cause you're not allowed to work out or nothing. So, we're doing laps.

I see Gibson come in and relieve Erikson. That was our senior officer. Erikson was in our pod that day.

So, Erikson leaves out. Gibson goes and do his security setting. So he's going up the right side stairs and he sees the guys underneath the window. So, he, he runs down there, opens the door. He thinks the guys are playing dice, which there's no dice. He's (sic) actually see cards on the table. It's four guys sitting around in a circle playing cards.

So, he was like give us the dice now or I'm gonna shake y'all down. So, everybody's telling him there's no dice. We ain't paying attention. Us seven guys are still walking around.

So, he locks the door. He's like y'all give me the dice. All y'all gon' get wrote up. So, they steady telling

him they ain't no dice. So he leaves out. He locks the door. Locks us in.

So, about 15 minutes later when Erikson break gets up, Erikson comes in. I see him over there telling Erikson what's going on. Then he comes back to the rec field door, opens the door. I'm the first one in line and he tells us to line up so we can get searched.

I'm the first one. Erikson's got the door open. I'm the first one. I'm facing inside the pod against the window. He tells us to get up against the window.

So I'm facing against the pod and he starts on my ears and comes down checking underneath my arms, does around my waste. Sticks his finger in my bellybutton. When he sticks his finger in my bellybutton, I look to my left and I say Erikson, do you see this guy cause he was being real -- really rough.

So, Erikson just put his hand up. So -- oh, I'm sorry. So then started at my feet and he come up. When he come up, he shock me in my testicles, grabbed two hand fulls, and squeezed.

Q. When you say he grabbed two hand fulls, he grabs you with two hands or what, what do you mean by that?

A. No, sir, one hand, both testicles.

Q. Okay. Oh, okay. All right. I see what you're saying.

So how, how far was the force when he chopped you?

A. Oh, it was, it was hard.
Q. All right. Did you become nauseated?
A. Yes, sir, and watering in the eyes, bent over.
Q. Okay. Did that happen in view of the camera?
A. The camera, the camera could see in the rec field.
MR. DAVIDSON: Your Honor, with all due respects, he's leading his witness.
MR. HAWKINS: Your Honor, asking him if it happened in view of the camera is an open question and he, he can answer that if---
THE COURT: I'm going to, I'm going to overrule.
Please continue, Mr. Hawkins.
MR. HAWKINS: Thank you, judge.
All right. And so when he put you up against the window here, could you see clearly through you -- the window?
A. Yes, sir.
Q. Could you see the camera?
A. Yes, sir.
Q. Okay. Did he search -- first of all, did he search all 11 or did Erikson search any of the men?
A. He searched every one of us.
Q. Okay. So, if we heard testimony earlier that Erikson searched some, is that correct or incorrect?
A. That's a lie.

Q. Okay. Okay. So, so how long did it last for?
When he grabbed on to your, your private area, genitals, how long did he have a hold of it?
A. Just a second and I jumped away from him and I was like I'm really angry with him. And so Erikson steps up and he said all right, Owens, I seen it. Everything's fine. He's like there's a way you do things.
So, I'm already hurting. So, I walk inside the doorway right there and sit in the chair right inside the doorway. Got a bunch of chairs lined up against the window seal. So, I sat there and I was telling him hey, you need to go ahead and call the white shirt, call me a lieutenant down here right now and he did. He did. Officer Erikson did call the lieutenant.
Q. All right. What did, what did the lieutenant say or -- excuse me.
Did you then meet with the lieutenant and the sergeant?
A. Yes, sir, they come in the door.
Q. All right. Now, following this -- following this event, did you fill out some, some grievances?
A. Yes, sir.
Q. Okay. We'll get into all that in a minute.
A. Yes, sir.
Q. What time of day was it?
A. It was before -- it was after 1:00 -- it was before --

like four o'clock.
Q. Okay.
A. It was like -- that was like his last break.
Q. Okay.
A. That was Erikson's last break.
Q. And, and Erikson testified he worked till 7:00 and your -- you, you have knowledge that that was his last break of the day --
A. Yes, sir.
Q. -- before he left?
A. Yes, sir.
Q. Do you recall -- could you see the sun from the -- was there windows where you could see the sun?
A. No, sir, it's---
Q. You can't?
A. ---all blocked in.
Q. Okay. So, you couldn't see what time of day it was?
A. I mean---
Q. Like---
A. ---you got a -- like a steel grate over the top.
Q. Okay.
A. So you can see the sky but you really can't tell where---
Q. Okay.
A. ---the sun is.

Q. Okay. All right. And so how long did the pain last for?
A. Right then I was nauseated. It hurt. I mean it constantly hurt after that. But I mean I stayed nauseated for about 45 minutes afterwards, excruciating pain from the get go.
Q. How long did it -- how long did the excruciating part last?
A. Maybe a couple hours.
Q. All right. And so then it started subsiding?
A. Yes, sir.
Q. All right. And so, so, after that, what was the -- how long did the pain last -- not just the excruciating part but how long did you have pain after the event?
A. About seven to day -- seven to ten days and then it went away for a little bit. But then it come back and then it just went away all together after that.
Q. All right. When did the -- did you notice any swelling?
A. Yes, sir.
Q. And I'm not---
A. Right way.
Q. And I'm not trying to embarrass you.
A. Yes, sir.
Q. I know that there's people in here.

How bad was the swelling?
A. Yeah, I mean it got pretty bad --
Q. Worse---
A. -- the next day. It was worser the next day then it was that first day.
Q. Okay. And when you went to get your ultrasound on the 24th, was it, was it still swollen or---
A. Yes, sir.
MR. DAVIDSON: Your Honor?
A. Some. It done went down.
THE COURT: Hold on.
What's your objection?
MR. DAVIDSON: Leading. I mean you're gonna get your -- and he included evidence about an ultrasound and I don't know where he's gonna get that in from this---
THE COURT: All right.
MR. DAVIDSON: ---witness---
MR. HAWKINS: We're not talking about it.
THE COURT: All right. I'm going to overrule.
Continue, Mr. Hawkins.
Your objection is noted, Mr. Davidson.
MR. DAVIDSON: Thank you, Your Honor.
THE COURT: Thank you, sir.
MR. HAWKINS: Thank you, judge.
When you, when you went to get your ultrasound on the

24th, had the swelling subsided by that point?
A. Yes, sir, a lot.
Q. Okay. Did you still have a little swelling?
A. Yes, sir.
Q. But it was almost gone?
A. Yes, sir.
Q. Okay. When was the swelling the worst?
A. Within the first like two or three days after.
Q. Okay. And were you roommates with Wilhite during the time?
A. Yes, sir.
Q. At any point did you, from being roommates with him, see his testicles?
A. No, sir.
Q. You didn't never see---
A. No, sir.
Q. ---the actual swelling?
A. I believed him.
Q. Okay.
A. I know how mine looked. So I know -- I believed him.
Q. Okay. You didn't, you didn't see it though?
A. No, sir.
Q. Okay. All right. How bad was he hurt?
A. He was hurt very bad. He had to have surgery.
Q. Okay.

MR. DAVIDSON: Your Honor, objection. We've already had ruling on this from the Court. (Indiscernible) introduce this. Improper. He should of warned his client.

THE COURT: All right. Sustained.

Mr. Hawkins, let's ask a different---

MR. HAWKINS: I'll go down a different path all together, Your Honor.

MR. HAWKINS: All right.

Q. Before I ask you any more questions --

A. Yes, sir.

Q. -- was there a PREA investigation done about this?

A. Yes, sir.

Q. How long did it last?

A. One hour. No more than an hour.

Q. Okay. Okay.

A. To my knowledge. I'm sorry. I mean but nobody never -- after we filed the PREA, nobody never come back to us, ask us no questions or nothing.

Q. Nobody -- so after you filed the PREA -- and I'm gonna get into any statements you would of given that night.

A. Yes, sir.

Q. But after, after you filed the sexual assault allegation --

A. Yes, sir.

Q. -- and that -- and within that one hour, did anybody

come to you and try to do a recorded interview or anything like that?

A. Lieutenant Bowman come in and got me and Wilhite and took us in the sallyport.

Q. Yeah.

A. And---

Q. That's the PREA coordinator?

A. Yes, sir---

Q. Okay.

A. ---that was the PREA---

Q. Okay.

A. ---coordinator.

Q. Go ahead.

A. And told us that his investigation was closed and he didn't want to hear nothing else about it.

Q. Okay. Okay. Well, let me ask you a question about that then.

He -- did you hear his testimony read into the record?

A. Yes, sir.

Q. Okay. So he said he talked to witnesses and all this kind of stuff.

A. That's a lie.

MR. DAVIDSON: Your Honor, he's pitting witnesses against witnesses.

MR. HAWKINS: Okay. Well, I'll---

THE COURT: Sus---
MR. HAWKINS: I'll withdraw it. I'll withdraw it.
THE COURT: All right.
MR. DAVIDSON: Your Honor?
Never mind.
THE COURT: All right. Sustained. But the question is with -- withdrawn.
Q. Okay. Let me ask you directly.
Did Bowman ever ask you do you feel this was sexual in nature?
A. Yes, sir.
Q. Did he ever ask you that question?
A. Yes, sir.
Q. Okay. What'd you say?
A. I told him it was. He sexual assault me.
Q. Okay. So, did, did you hear Bowman's earlier testimony where he said you, you made the opposite statement?
A. Yes, sir, that's a lie.
Q. Okay. Did you ever say to Bowman I don't think it was sexual in nature?
A. No, sir, I even wrote a statement and said in the statement that I felt sexually violated.
Q. Okay. So you say you wrote something with your hands?
A. Yes, sir.
Q. When did you, when did you write that?

A. The night when the lieutenant and the sergeant come in. The sergeant made -- it was only three of us that wrote statements. Made me, Wilhite, and Brockington write out a written statement---

Q. Okay.

A. ---on a piece of notebook paper.

Q. So, there's a handwritten statement somewhere where you describe exactly what happened that night?

A. Yes, sir.

Q. What did you describe?

Tell the jury what you described happening.

A. Explain exactly what happened during the pat search about him grabbing my testicles and that I felt sexually violated.

Q. Well, we requested all materials related to this five years ago. I've never seen that.

Do you know where it went?

MR. DAVIDSON: Your Honor---

A. I'm not sure, sir.

MR. DAVIDSON: ---objection. His colloquy, monologue, whatever you want to call, it is not a proper question---

MR. HAWKINS: Your---

MR. DAVIDSON: ---that---

MR. HAWKINS: Your Honor, that's evidence about a document---

MR. DAVIDSON: Your Honor?
MR. HAWKINS: ---that existed five years ago---
THE COURT: I'm gonna---
MR. HAWKINS: ---and it was not produced.
THE COURT: I just ask that you rephrase the question.
MR. HAWKINS: Okay. Yes, Your Honor. And I'm, I'm trying to move along. I'm sorry if I'm taking too long.
THE COURT: No, you're fine. Just rephrase please.
Q. Okay. Do you know where that statement went that you wrote about your sexual -- about sexual assault?
A. Lieutenant Hettich took it with him the night he left when he left out of the pod.
Q. Who else wrote statements?
A. Wilhite wrote statements and the -- David Brockington wrote statements.
Q. Did, did Ard ever write a statement?
A. No, sir, not at the -- he wasn't at the table sitting with us when they made us write the statement.
Q. What happened to Ard after he got injured?
A. He come in and said that he was hurting too and so did Brockington. But Wilhite -- Brockington didn't say nothing till later on that night.
Q. Okay. Did, did Ard -- was Ard with you -- after the event, did you and Wilhite have a conversation?
A. Yes, sir, that's my roommate.

Q. Would -- did Ard come and, and was he part of that conversation or was he gone for a while and then came back?
A. Yeah, he was gone for a while. We didn't -- we don't -- we didn't really talk too him to much.
Q. Okay. All right. So, so the three people who would of made handwritten statements were you, and Wilhite, and who else?
A. David Brockington.
Q. Brockington?
A. Eddie David Brockington---
Q. Okay.
A. ---I think that was his name.
Q. After, after y'all wrote those handwritten statements, what did y'all do with them?
Who did you give it to?
A. We turned them in at -- to L.T. Hettich.
Q. Okay. Did you ever see the statement again after that?
A. No, sir.
Q. Did you ever ask to see it?
A. No, sir. Yes, sir, I did. I wrote -- I put on the kiosk about 10 days later or something like that and asked it -- because I got you at the time and I asked that -- for copies of the statement that I wrote and the incident report.
Q. Okay. So you -- so did you put the Sheriff's Office on

notice back in that time five years ago that you had an attorney and that you needed those statements?
A. Oh yes, sir.
Q. Okay.
A. Multiple times.
Q. And you never saw them --
A. No, sir.
Q. -- ever after that?
A. No, sir.
Q. Not in any meeting with me. Not in any meetings with anybody at the Sheriff's Office. You never saw those statements again.
Is that---
A. No, sir.
Q. ---what you're telling me?
A. Yes, sir.
Q. Okay. Did you ever, did you ever ask for those statements in a grievance?
A. Yes, sir, multiple times.
Q. Okay. Are these some of your grievances?
A. Uh-huh. Yes, sir.
Q. Is that -- does this reflect the way grievances are generally generated in the jail?
A. Yes, sir.
Q. And have you seen lots of grievances like this before?

A. Yes, sir.
Q. Are these the kind of grievances the jail ordinarily keeps in their general course of business?
A. Oh, yes, sir.
Q. And did you offer the, the substance of this grievance?
A. Yes, sir.
MR. HAWKINS: Your Honor, at this time I'd move to have admitted three grievances as Plaintiff's C I believe.
MR. DAVIDSON: Could we have the dates please?
MR. HAWKINS: Yeah. The dates are 2/5/17, 2/6 of '17, and 2/10 of '17.
THE COURT: Any objection?
MR. DAVIDSON: The dates again please, sir, are two---
MR. HAWKINS: Yeah, two -- it's 2/5, 2/6, and then 2/10.
THE COURT: Is there any objection to the exhibit?
MR. DAVIDSON: Oh, I'm sorry, Your Honor. I told you no.
THE COURT: All right. Yes, sir.
Plaintiff's C?
MR. HAWKINS: Yes, Your Honor.
THE COURT: Okay.
(WHEREUPON, the three grievances were marked as Plaintiff's Exhibit C and received into evidence at this time.)

Q. Okay. So this handwritten statement where you wrote down what happened that night, you -- did you tell me you asked for it again?
A. Yes, sir.
Q. Okay. I want you to read for the jury what you wrote -- well, first of all, highlight that date for me?
A. (WHEREUPON, the witness complies.)
Q. Okay. And then read what you wrote to the jury?
A. I need a copy of the statement I wrote the other day. Please and thank you.
Q. Okay. Will you highlight that for the jury?
A. Yes, sir.
Q. What's the date on the next one?
A. 6/12 -- I mean 2/6/17.
Q. Okay.
A. At 9:06.
Q. And---
A. I mean --.
Q. Oh, yeah, 9:06AM and highlight your statement there for the jury.
Does it say the same thing?
A. I need a copy of the incident report and statement I signed please. Thank you.
Q. So it's a little -- it is a little bit different?
A. Yeah.

Q. Okay. And this one, what's the date on that one?
A. 2/10/17 at 1:50 -- 1:51PM.
Q. And what does this one say?
A. I need a copy of the incident report and affidavit please. Thank you.
Q. Okay. So do they make you sign an affidavit too?
A. Yes, sir.
Q. You ever seen an affidavit again?
A. No, sir.
Q. Where did you have to write these statements at?
A. In the dayroom. We have tables that we eat off on. And so the lieutenant sat us at the tables in front of the officer's desk and made us write the statement on the desk in front of the officer.
Q. Okay. Is, is that -- is this picture right here, are these the tables where you wrote the statements --
A. Yes, sir.
Q. -- with the checkered boards on them?
A. Yes, sir.
Q. Does this, does this fairly and accurately depict the way this area looked when you---
A. Yes, sir.
Q. ---wrote those statements?
A. Yes, sir, absolutely.
MR. HAWKINS: Your Honor, I move to have this picture

from the dayroom admitted as Exhibit D.

THE COURT: Any objection?

MR. HAWKINS: There's two pictures. This is produced by defense. So --.

MR. DAVIDSON: Your Honor, I don't have any problem.

THE COURT: All right. Plaintiff's Exhibit D.

(WHEREUPON, the photograph was marked as Plaintiff's Exhibit D and received into evidence at this time.)

Q. All right, Otis. This is a bad little picture. So I apologize for everybody that can't see it.

But I want you to point to the jury where you were sitting when you wrote your statement, at which table?

A. I was sitting here. Me and David Brockington was sitting at this table and Wilhite was sitting over here at this table.

Q. Okay. And this -- and so this, this camera -- this camera view here, you obviously would of been in view of this camera?

A. Yes, sir.

Q. So, there would of been footage of you writing a statement immediately after the event --

A. Yes, sir.

Q. -- if they had saved it?

A. Yes, sir.

Q. Anybody ever offer to go over that footage with you,

the footage from where you're writing the statement or the footage from the event itself?
A. No, sir.
Q. Anybody ever offer to go over the footage from before the event when the Sheriff's Office was required to establish reasonable suspicion?
A. No, sir.
Q. What did -- I want to go back to -- I want to go back to your meeting with Bowman --
A. Yes, sir.
Q. -- because Bowman's account is -- well, they said they didn't feel sexual assaulted---
A. Yes, sir.
Q. ---is that right, into the investigation?
So, I want to -- give, give the jury, if you can, as, as close to a verbatim exchange between you and Bowman as possible.
A. All right. He called me and Wilhite in the sallyport. He was in the sallyport.
Q. And what date was the date by the way?
A. I'm not sure exactly it's been so long ago.
Q. How long -- how many days worth was, was the event when you met with him?
A. And then -- four or five days.
Q. Did you still have swelling?

A. Yes, sir.
Q. Still have pain?
A. Yes, sir.
Q. Okay. Go ahead, sir.
A. All right. So he called us in the sallyport and he didn't want no explanation. He didn't want nothing. He said his investigation is closed and that's the end of it.
So, I asked him, I was like -- I asked him, I was like well, is this, this officer gay. What his pregversy (phonetic). I mean he was like it's, it's over with, it's over with and we walked back in. That was it.
Q. So he didn't do -- he didn't do an interview, a PREA interview then?
A. No, sir, and he didn't want to hear what we had to say and he never not one time questioned the other 11 inmates that was out on the yard.
Q. He never questioned the eye witnesses?
A. No, sir, near one of them.
Q. How many people saw -- how many people saw this happen to you?
A. Every bit of the 11 people that was out there.
Q. Okay. What is that, Otis?
Do you recognize this document?
A. Yes, sir.
Q. Okay. What is that?

A. This is a, a, a piece of paper that they give SCDC when they take you from Aiken County to the Department of Corrections.
Q. Okay. And what does it describe -- what does it describe down here under continuity of care?
A. It describes -- well, you got a doctor that goes over everything and it describes like what kind of medicine you was on in the county. It describes like your medical history in the county.
Q. Okay. So, after, after you finally got your ultrasound on the 24th---
A. Yes, sir.
Q. ---were you prescribed something for the, for the swelling---
A. Yeah.
Q. ---and the inflammation?
A. Yes, sir, they gave me 800-milligram Ibuprofen for the pain. That's the highest pain medication you can get in the county jail. And they gave me antibiotics to, to make sure the hydrocele fluid---
MR. DAVIDSON: Your Honor---
A. ---didn't get infected.
MR. DAVIDSON: ---with all due respect, I don't think he can testify as to the medical reasons. He can say what he got.

THE WITNESS: That's what he told me.
MR. DAVIDSON: He can't ultimately diagnose himself.
MR. HAWKINS: Your Honor, he said to this jury in opening antibiotics are for infection. He's allowed to correct that and tell him what he got the antibiotics for.
THE COURT: All right. I'll allow it.
Q. Okay. Well we -- thank you, judge.
When you went, when you went there -- when you got your treatment, did they do any blood work?
A. No, sir.
Q. Do you know why they didn't do any blood work?
A. It was internal.
Q. Okay.
A. That's what he said.
Q. Did you have any scrapes, cuts, abrasions, anything around your groin?
A. No, sir.
Q. Okay. Did they check you for some other stuff when you went?
A. No, sir.
Q. No, I mean when you -- when they fill out this sheet, did they check you for something?
A. Oh, yeah, when you go to SCDC, they check you for STDs. They do a -- like a 10 panel blood test on you. So, I mean if you got any kind of diseases, it's gon' come back within

like seven days.
Q. Okay.
A. AIDS. Everything.
Q. Okay. Well, did you have -- were you diagnosed with HIV---
A. Oh.
Q. ---when you went?
A. No, sir.
Q. And this was after the event?
A. Yes, sir.
Q. Did you have a fever?
A. No, sir.
Q. Were you pregnant?
A. No, sir.
Q. Did you have an STD?
A. No, sir.
Q. And that would be marked here if you did?
A. Never had no kind of injury or nothing wrong down there till this incident happened.
Q. Okay. And, and they put a place for STD on here, right?
A. Yes, sir.
Q. Otis, on the 24th when you got your ultrasound, did, did the person who did the ultrasound show you a screen---
MR. DAVIDSON: Your Honor?

Q. ---a scan of what was happening?
A. Yes, sir.
MR. DAVIDSON: Obviously that -- Your Honor, we have a matter to take up with the Court I do believe.
THE COURT: All right. All right.
MR. DAVIDSON: Your Honor, I, I appreciate Mr. Hawkins' disgust that he's showing to the jury but I believe this is a legal matter.
THE COURT: All right. All right. We will take that up.
We'll excuse the jury please.
MR. DAVIDSON: Thank you.
(WHEREUPON, the following takes place outside the presence of the jury.)
THE COURT: All right. What is the -- all right. Your objection, Mr. Davidson?
MR. DAVIDSON: Your Honor, whether this witness was shown an ultrasound, or whether this witness was told what was on the ultrasound, whether something was shown to him on the ultrasound, and this is where the swelling is, would all be hearsay and they've not laid a foundation through a medical expert as to what's on that film. And as of right now, he didn't take the film. He didn't develop it. He didn't interpret it and it would be hearsay to him.
THE COURT: Mr. Hawkins.

MR. HAWKINS: Yes, Your Honor.

With respect, Mr. Will -- Mr. Davidson didn't give me a chance to go through laying the foundation. Had he, I would of had -- I would of asked my client is this what you saw, does this fairly and accurately depict what you saw, and what was on the screen, are these your medical records, were, did it show an injury, were you treated for an injury. He's entitled to testify about that.

This isn't a document that he destroyed like they destroyed the video camera. This is a document that's part of his damage. He's testifying about his damage and it's basic law that you can authenticate a record through the patient.

I can ask him about his medical records, is this what you were treated for, is this what the scan showed, is this what the scan showed when you were treated for the injury, is that consistent with how you felt. I can ask him all those questions and I should be able to ask him all those questions and lay that foundation without having the jury sent out, judge.

MR. DAVIDSON: Judge, with all due respect, he can't authenticate a medical record through the patient cause the patient doesn't have the medical background nor the knowledge other than it's a medical record. He can't interpret it. He can't testify to what's on it. He can't

testify as to the results. He can't do anything with that document other than say I went to the hospital on this date or I went to the doctor on this date.

He can't get into what they said, what they interpreted cause all that was hearsay, and all of that would require a medical doctor to testify as to what most probably was seen on that ultrasound and I don't think Mr. Owens is a -- ability as a radiologist to read an ultrasound.

MR. HAWKINS: Your Honor, this happens all the time in car wreck cases. You put somebody on the stand. It's a $15,000 case. So you don't want to call an expert. You go through their medical records. You show it to them, what were you treated for, you hand them x-rays. That happens all the time in trial everywhere.

THE COURT: I understand.

But, but, Mr. Hawkins, what -- what is -- what is the use of the ultrasound?

I want to know. I'm not gonna make him proffer---

MR. HAWKINS: Well---

THE COURT: ---his testimony.

MR. HAWKINS: Well, for, for one, it's (sic) has an effect on that listener. For another thing, it impeaches their prior---

THE COURT: Right. But, no, I mean the overall.

MR. HAWKINS: Oh.

THE COURT: I mean what are you going to be -- are you asking---

MR. HAWKINS: Oh, it shows, it shows the -- it shows the injury. It's right here. It shows the hydrocele on his testicles. I mean that's, that's -- and there's -- look, they've said he didn't have a hydrocele injury. They've implied that and said it directly in this trial and this proves that's wrong.

They shouldn't get to ask him about his criminal history and every other witness about their criminal history and then get mad when I do the same thing.

MR. DAVIDSON: Judge, I haven't said anything about him not having a hydrocele. What I said is they need medical testimony to proffer that information---

MR. HAWKINS: Well, it -- that's not required.

MR. DAVIDSON: ---because that, that is a medical diagnosis.

MR. HAWKINS: Your Honor, if this was med---

MR. DAVIDSON: A medical doctor---

MR. HAWKINS: If this was a med mal case, and that was the issue, then he would be right. But you don't have to put a doctor up to let somebody talk about their treatment and their damage. That's not the law and he's trying to conflate the two so that he can get away with keeping something central to the case out.

MR. DAVIDSON: Your Honor, I, I don't know a separate rule book or separate rule of trial for a $15,000 automobile wreck case.

THE COURT: All right.

MR. DAVIDSON: The rules are the rules. In this instance, that record, as he's showing it to him cause he's argued about -- remember, the video, what somebody saw on the video---

MR. HAWKINS: What he saw---

MR. DAVIDSON: ---would be hearsay.

THE COURT: Well, Mr., Mr. Hawkins, this is what I'm, I'm going to do. Give me -- you know, pull the rule or pull a case that lets me permit those medical records in or authenticate those medical records through your client. I'll give you a few minutes.

MR. HAWKINS: Thank you, judge.

(Pause.)

THE COURT: Mr. Davis (sic), let's stand down for about five minutes.

MR. DAVIDSON: Thank you, Your Honor.

THE COURT: All right.

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

THE COURT: All right. We're back on the record.

MR. HAWKINS: All right.

THE COURT: Mr.---

MR. HAWKINS: So there's -- and I'm sorry. I'm looking -- try to look at three different things at once.

The, the first reason that we're able to do this is in Rule of Evidence 701 and this is---

THE COURT: 701?

MR. HAWKINS: Yes, Your Honor.

THE COURT: Just a second.

All right. Opinion testimony.

MR. HAWKINS: Right.

So, he -- this doesn't -- it doesn't require any -- and this is in the, the last Section C. This doesn't require any special skill or experience or anything like that for him to talk about his experience and the effect and impression this had on him.

THE COURT: Uh-huh.

MR. HAWKINS: So that's the first reason.

THE COURT: All right.

MR. HAWKINS: Effect on listener statements are not hearsay, is relevant based solely upon the facts---

THE COURT: Where are you reading from now?

MR. HAWKINS: This is, this is a, a definition of hearsay. This is akin to the Federal Rule of Evidence 801. But it, it mirrors very closely our state rules.

THE COURT: So, you're in Federal Rule 801.

MR. HAWKINS: The definition in Federal Rule 801---

THE COURT: Uh-huh.

MR. HAWKINS: But I think it goes a step further.

THE COURT: All right.

MR. HAWKINS: I mean there's no question that he can certainly testify how he felt, that he went to the doctor, the pain that he felt.

THE COURT: Right.

And I don't have any -- I don't think anyone has any question in that regard.

MR. HAWKINS: Right.

And this, and this is talking about the, the knowledge, notice, and awareness it had on the listener. So he's there with this ultrasound person. The, the notice, the impression, the knowledge, the knowledge that he gleaned from that is -- if -- he can talk about all that and I think, I think the, the document itself comes in. But he definitely can talk about it.

THE COURT: Well, we -- yeah, I don't think anybody's concerned about him talking about the ultra -- that he had an ultrasound to the extent that he says I had an ultrasound as in whatever his testimony is about pain whatever. I think it's when you begin to diagnose---

MR. HAWKINS: He's---

THE COURT: ---and then you need the picture or the ultrasound, the, the foundation for the picture.

MR. HAWKINS: Right. And, and I'm not gonna ask him, you know, did you diagnose yourself. I'm not gonna say that. I'm gonna say you met with this person, did you see any image, what was that impression on you, how did you feel when you---

THE COURT: Are you trying to introduce the actual picture of the ultrasound as an exhibit?

MR. HAWKINS: If I can lay all that in front of the jury I'm going to try and Your Honor will either admit it or overrule me or deny me. But I am -- I did -- I would like the chance to try in front of the jury to establish that.

THE COURT: I, I have no issue with you certainly trying in front of the jury. I am concerned about your -- I will, I will let you try. I will always---

MR. HAWKINS: Yes, ma'am.

THE COURT: ---allow you to practice law. I don't mean that funny but I, I will always allow you to, to make your argument. But let's just see if you can lay the foundation.

MR. HAWKINS: Okay.

THE COURT: I---

MR. HAWKINS: And, and so---

THE COURT: He is not the author of that document.

MR. HAWKINS: No. And I'm not, I'm not offering him as a medical expert. I'm simply offering this document to ask if it's consistent with the impressions, the mental

impressions, the effect on him, how -- what he observed, how he felt, if it fairly and accurately depicts what he saw on the screen. I'm not offering him as a doctor or medical expert at all.

THE COURT: All right. So, let's lay some ground rules. I don't want the picture shown until it is actually -- I don't want it published---

MR. HAWKINS: Okay.

THE COURT: ---until I make a ruling on whether or not---

MR. HAWKINS: Can, can I take it to talk to Otis about it while I'm up there or do you want it to say on the desk?

THE COURT: You can talk to Mr.---

MR. HAWKINS: Okay.

THE COURT: ---Owens. Certainly you can hand it to Mr. Owens.

But, Mr. Owens, I don't want you to flash that---

THE WITNESS: Yes, ma'am.

THE COURT: ---and show it to the jury---

THE WITNESS: Yes, ma'am.

THE COURT: ---until I make my decision and, Mr. Hawkins, I don't want to---

MR. HAWKINS: Right. Yes, ma'am---

THE COURT: ---publish---

MR. HAWKINS: ---parade it around. I understand.

THE COURT: ---to the jury until I have made a ruling on whether or not the actual ultrasound -- but I want to be very careful since the jury is out. Be very careful in your questioning and you ask whatever questions you wish. But just know that Mr. Davidson will object if there's -- I, I assume he will object---

MR. HAWKINS: Yeah.

MR. DAVIDSON: ---if there is some sort of testimony regarding a diagnosis.

MR. HAWKINS: Okay. And, and, yeah, so I, I won't elicit any questions about, you know, was the diagnosis a hydrocele---

THE COURT: Certainly.

MR. HAWKINS: ---or anything like that.

THE COURT: But please explore whatever your, your plan was to explore with him regarding his pain or his own lay testimony. The Court has no issue with that.

MR. HAWKINS: Okay. And -- okay. Your Honor, the last thing I want to put on the record is I don't think it's appropriate for Mr. Davidson to say I have disgust or something. I don't know what he said. But he said something in front of the jury when I was standing up there with Otis and I don't think that's appropriate because it comes across on the record like I'm doing something nefarious.

THE COURT: Well, let me say this.

I think I allowed both of you-all to say some real kind of snippy sort of petty things to each other. And so you don't exactly come with clean hands, Mr. Hawkins, in that regard.

But what I will ask for both gentlemen is that we keep all of those comments down to a minimum so that the jury does not have a -- personal feelings---

MR. HAWKINS: Yes, Your Honor.

THE COURT: ---that may impact anything that happens in the jury room.

MR. HAWKINS: Yes, Your Honor.

THE COURT: Anything else to take care of?

Mr. Davidson, you wish to be heard?

MR. DAVIDSON: Yes, Your Honor, just, just briefly.

701(c) does not require special knowledge, skill, experience, or training. Anything that has to do with a sonogram or an ultrasound would require special training and knowledge. I don't believe he can give any opinions about what he saw or where he saw it or what they said. So, I'm, I'm reiterating my objection and I'm -- I understand the Court's ruling. I just want to make sure we don't get too far a field that it creates an issue.

THE COURT: I understand. Thank you, Mr. Davidson.

MR. DAVIDSON: 80 -- 801, if they get into the

ultrasound, if they say the word hydrocele, that is offered for the truth of the matter asserted. It still does not establish any causation between what happened a month before and what he experienced at this period of time.

MR. HAWKINS: Your Honor?

MR. DAVIDSON: I call the Court's attention, Your Honor, under Rule or Article 9, Rule 901, requirement for authentication/identification. The general provision says the requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient before a finding that the matter in question is what it purports to claim.

That means you need somebody to come in and authenticate the record and then they go through types or examples of those and I'm sure the Court has seen that happen many times in court. They go through also -- and there is a -- there are provisions of what they call self-authenticating.

THE COURT: Yes, sir.

MR. DAVIDSON: And they set forth those self-authenticating areas. That's 902.

In those, none of the areas of self-authentication apply to this record, Your Honor. This is a medical record. It does not self-authenticate under 902. It requires, under 901, someone to authenticate that record---

THE COURT: Yes.

MR. DAVIDSON: ---and that's, that's part of my objection to this line of questioning.

THE COURT: Yes, I understand. I'm going to allow -- and Mr. Hawkins is going to ask his questions in a way that don't trample on those rules. And so I'm going to allow him to try to establish his foundation and then I'll make a ruling based on what I heard.

MR. HAWKINS: Thank you, judge.

THE COURT: All right. All right.

MR. DAVIDSON: Are we gonna do it from a proffer or are you gon' actually bring the jury in?

I did -- I, I just -- I just -- it escaped me for a second. You can bring the jury in and let him do it in front of a jury. I -- you know, that's fine.

THE COURT: He, he -- you were -- you want to do it in front of the jury or you want me -- to proffer that?

MR. HAWKINS: Yes, Your Honor, whatever will move -- because, because if you tell me no, it can't come in, I'm just gonna go to something else.

THE COURT: All right.

MR. HAWKINS: There's no sense in wasting time and you know --.

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

All right. Can we bring the jury back in please?

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

THE COURT: All right. Mr. Hawkins.

MR. HAWKINS: Thank you, judge.

THE COURT: Your witness.

CONTINUED DIRECT EXAMINATION

BY MR. HAWKINS:

Q. All right. Otis, when you went to get your -- when you went to get your sonogram, did you still have some swelling?

A. Yes, sir.

Q. Okay. And did -- what, what did they do there?

What did they do with you?

A. She -- I started off with I asked her what -- I mean how long she been doing it and she told me she been a registered nurse for 15 years. So then she did the hydrocele. She put some, some cold liquid, whatever, on my testicle, whatever, and took this little -- I don't -- I can't explain what it was. Like a little wand, whatever, and went around the inside, outside, around the, the bottom of my testicles.

Q. Was, was the injury worse on one side or the other?

A. Yes, sir, and she told me I had---

MR. DAVIDSON: Your Honor---

A. ---what was on the left-hand---

MR. DAVIDSON: ---(indiscernible).

A. ---side was bigger---
THE COURT: Hold on, Mr.---
THE WITNESS: I'm sorry.
THE COURT: ---Hawkins.
MR. DAVIDSON: He can't testify to what the nurse told him.
THE COURT: He can not. So, I will sustain that.
Please rephrase your question---
Q. From---
THE COURT: ---Mr. Hawkins.
MR. HAWKINS: Yes, Your Honor.
From your observation when you would look at your, your private area---
A. Yes, sir.
Q. ---was one side worse than the other?
A. Yes, sir, the right side was worser than the left.
Q. Okay. And did it take swelling longer to go down on that side than the left?
A. Yes, sir.
Q. Okay. And with the -- when you were sitting -- when you were sitting there and you had this liquid and all on you where you were being treated---
A. Yes, sir.
Q. ---was that embarrassing?
A. Yes, sir.

Q. Okay.
A. Very.
Q. Okay. Was it, was it also embarrassing when the search itself happened?
A. Yes, sir.
Q. Did you have any feelings of being violated?
A. Yes, sir.
Q. Tell the jury exactly how it made you feel from that prospective.
A. It just made me feel less of a man. I mean for an officer, somebody that's suppose to be like looking out for us to do something like that.
Q. And well -- back to when you were in the chair when the, when the ultrasound was going on --
A. Yes, sir.
Q. -- did you learn anything during that meeting---
A. Yes, sir.
Q. ---(indiscernible)?
A. She asked me---
Q. You can't---
A. ---what happened. Oh, I'm sorry.
Q. You can't say---
A. Okay.
Q. ---a statement she said.
A. Oh, yes, sir.

Q. Just tell me what you learned. Just tell me what you knew after you left.
A. Oh, it was an injury to the groin.
Q. Okay. And do you see on this picture that I'm, that I'm handing you, do you see where the injury was to---
A. Yes, sir.
Q. ---the groin?
Can you point to it?
A. At the bottom of that big section on the bottom.
Q. Okay. And do you know what that big section on the bottom is.
A. Yes, sir, hydro---
Q. Okay.
A. Hydrocele.
Q. Okay.
MR. DAVIDSON: Your Honor, objection. He's getting into medical diagnoses. He's not -- he can't authenticate. He's not competent to give that type of testimony.
THE COURT: Mr. Hawkins.
MR. HAWKINS: Your Honor, I'll ask a different question if it will make him happy.
THE COURT: All right. I'll sustain. I'm going to sustain, Mr. Hawkins. But please make---
MR. DAVIDSON: I understand. I just -- I'm getting a little worried about where we're heading with some of this,

Your Honor.

THE COURT: All right. Noted for the record, Mr. Davidson.

Mr. Hawkins, continue.

Q. Was this on -- did you go see the person for the ultrasound on February 24th?

A. Yes, sir.

Q. Okay. And did they -- did they do an ultrasound of both your right and your left testicle?

A. Yes, sir, and the right one was larger than the left.

Q. Did---

A. A lot larger than the left.

Q. From, from your -- from your whole observations, when you would look at yourself, at your private area --

A. Yes, sir.

Q. -- did you notice that -- was the swollen area tender to the touch?

A. Yes, sir.

Q. Okay. And I'm not trying to be too graphic.

What did it -- when you would touch your scrotum, what did it feel like?

A. It just was very uncomfortable and like a numb -- a numbness.

Q. Did it feel like there was liquid between the skin and the---

A. Oh, yes, sir.
Q. ---the testicle?
A. Yes, sir, you could tell.
MR. DAVIDSON: Your Honor, he's leading his witness.
MR. HAWKINS: Your Honor, I can ask him if that's what it felt like.
THE COURT: All right. Over---
MR. HAWKINS: You want me to rephrase.
THE COURT: Overruled. Overruled.
Please continue, Mr. Hawkins.
MR. HAWKINS: Thank you, judge.
Okay. So I want to ask you where you can give a, a clear answer.
What did it feel like when you would touch your scrotum during the time it was swollen?
A. My right side, I could tell there was a lot of fluid in my right side, and, my left side, I really couldn't tell nothing.
Q. Okay. And you talked earlier about -- you talked earlier about how the pain subsided a week or 10 days after the event and you said it, it would come back.
How, how many times did it come back?
A. Maybe twice. I'm not sure exactly but maybe twice.
Q. What did it feel like when it came back?
A. It was mild.

Q. It was mild when it came back?
A. Yes, sir.
Q. Okay. Did anybody ever offer -- did anybody ever make you aware or tell you that PREA requires you to be made -- requires the facility to make counseling available?
Did anybody ever offer counseling?
A. No, sir.
Q. Did anybody ever say -- ask you do you need some counseling?
A. No, sir.
Q. Were you ever provided any kind of counseling or psychiatric treatment after what happened?
A. No, sir.
Q. Did the sheriff ever investigate or do anything?
A. Absolutely not.
Q. Mr. Gallam, did he ever investigate or, or become aware of the event as far as you know?
A. Absolutely not.
Q. Did he ever come and have a meeting with Erikson or Gibson as far as you know?
A. Not as I know of, no, sir.
Q. Did, did Gibson ever try to sexually stimulate you during this event?
A. No, sir.
Q. Was it purely aggressive?

A. Yes, sir.
Q. Okay. Did he show -- during, during his search, did he show any -- did he even show slight care while he was giving you this (indiscernible)---
MR. DAVIDSON: Objection, Your Honor.
A. Absolutely not.
THE COURT: What's your objection?
MR. DAVIDSON: It calls for a legal conclusion, Your Honor, and it -- it's also leading, Your Honor.
MR. HAWKINS: Your Honor, I can ask how much care he, he took in the search. He can lay his observations (indiscernible). The, the fact that the, the similar words overlap in some case law is not, is not a basis for an objection.
THE COURT: All right. Let's, let's rephrase your question please to keep the point across.
MR. HAWKINS: Oh. Oh.
THE COURT: I'll sustain that.
Rephrase your question.
Q. Okay. So, did Officer Gibson take any care or regard for you as a person when he searched you?
A. No, sir, me or the other four.
Q. Was it, was it you and four more or was it four total?
A. It was four total.
Q. Okay.

A. I'm sorry.
Q. And who were the four again?
A. Steven Brett Wilhite, me, myself, Jeremy Ard, and Jeremy -- what's his name?
Eddie David Brockington.
Q. Brockington.
Did anybody else -- did, did anybody else who was there and, and, and got injured, did they, did they express disdain or dissatisfaction or, or any kind of negative feelings toward the Sheriff's Office after this happened?
A. Yes, sir.
Q. Okay. And did they express those?
A. Yes, sir.
Q. Fairly often after the event?
A. Yes, sir.
Q. Did you ask for -- well, let's back up.
Right after this happened, you, you go and you asked for the lieutenant right after it happened, right?
A. Yes, sir.
Q. So, after the event, the first thing that happens is you go to this room and write a statement?
A. Yes, sir.
Q. Okay. All right. And then, after that, what was the next thing -- what was the next thing that happened related to the event the next day?

A. Or -- the next day the lieutenant, I can't remember exactly who it was, come and picked us up. You know, there's a, a series you go through. You got to put on the kiosk to go to medical. So, the next day, without me and Wilhite even putting on the kiosk to go to medical, they come and picked us up and they took us to medical.
Q. Okay. So, they took you -- they took you to medical the next day---
A. Yes, sir.
Q. ---without there being a kiosk request?
Is that what you---
A. Yes, sir.
Q. So, would there be any record of that as far as you know?
A. No, sir, and I mean medical probably logged -- I had, had to log us in.
Q. Okay. So there should be a record of this?
A. Yes, sir.
Q. Okay. It should be part of any kind of file created on this --
A. Yes, sir.
Q. -- as far as you know?
A. Yes, sir.
Q. Did, did, did the PREA coordinator ever -- did the PREA coordinator ever say to you or, or make any effort to gather

these documents related to your treatment?
A. Never talked to him till after he closed the investigation and wouldn't let us talk.
Q. The -- when you went to medical that next day, did they give you some pain medicines?
A. Yes, sir, Ibuprofen 800-milligram.
Q. Okay. Did that help?
A. Not really.
Q. Okay. When was the first time you got the antibiotic?
A. After the -- after I found out that I had fluid on my testicles, they gave me antibiotics so the fluid wouldn't get infected.
Q. Well, we -- during that time between---
MR. DAVIDSON: Your Honor, move to strike. He can't give an opinion as to why they gave him an antibiotic cause that would be a medical decision.
THE COURT: Sus -- Mr. Hawkins.
MR. HAWKINS: I'll ask a different question.
THE COURT: Okay. Sustained.
Q. Let's talk about the time between -- because Will talks about this in his opening. And so I want to ask you some questions directly related to this.
Between the time you were assaulted and injured---
A. Yes, sir.
Q. ---and the time that you finally got an ultrasound, did

you ever ask hey, what's the status of, of my ultrasound, am I gonna be treated?

Did you ever ask anybody about that?

A. Yes, sir, we got a nurse that come around twice a day. Once in the morning for sick call -- I mean for med call and once in the afternoon.

Well, at nighttime like after -- most of the time it's like 8:00 or 9:00. So every time the nurse come in at nighttime, I'd ask her hey, what's going on with the, with the ultrasound, when are we gonna be seen, and she wouldn't never -- there's not a date right now.

Q. Okay. So -- all right. So, between the time you got injured and the time you finally got the ultrasound, did you make several requests for treatment or for the status of what the ultrasound was that was not in writing?

A. Just that---

Q. Well, what I'm saying is did you make several verbal requests?

A. Yes, sir.

MR. DAVIDSON: Your Honor, he's leading his witness. I'm trying to be as prudent as I can.

THE COURT: All right.

MR. HAWKINS: You want me to ask it a different way, Your Honor?

THE COURT: Yes, please. I'll sustain. Please

rephrase.
Q. Did you make any verbal requests after you were injured to the nurse?
A. Yes, sir, multiple.
Q. Okay. And were -- as far as you know, were those verbal requests reported on a kiosk?
A. I'm not sure. Oh, no, sir. I'm sorry.
Q. Okay. So, I want to make sure that's clear in case there's any insinuation that you waited or didn't do anything.
A. Yes, sir.
Q. Do you have any control over when the Sheriff's Office takes you to get treatment?
A. No, sir.
Q. Are you like -- and I'm gonna ask a, a silly question but are you locked up while you're in jail?
A. Yes, sir, and you can tell---
Q. Okay.
A. Sorry. You can tell on one of the grievances, I filed it on this day and it took like three days for them to answer it.
Q. Okay.
A. So, I mean if they're available at the time, they'll answer it. But, if not, you might have to wait.
Q. Okay. All right. And so is, is it, as far as you

know, is it the Sheriff's Office responsibility to get you medical treatment that you need?
A. Yes, sir.
Q. As far as you know, can the Sheriff's Office put that responsibility off on somebody else?
A. No, sir.
Q. Okay. After you finally got the antibiotic and you finally got the ultrasound, how long was it after, after that that the swelling went down you believe?
A. A couple -- maybe a couple weeks, a week.
Q. Okay.
A. A week at the most I think.
Q. All right. So we have -- we have the initial swelling that's worse right after?
A. Yes, sir.
Q. Okay. Then it subsides and it's almost gone?
A. Yes, sir.
Q. Then you have the ultrasound done?
A. Yes, sir.
Q. And then is it fair to say after that there's just a little bit of swelling?
A. Yes, sir, and then, within a couple days or a week, it was totally gone.
Q. Okay. All right. Is there -- in the sallyport, is there another video camera?

A. Yes, sir.
Q. Okay. Is that where you were interviewed?
A. Yes, sir. Well, that's where he closed the interview---
Q. Okay.
A. ---if you call it.
Q. So, as far as you know, would there have been video footage of him telling you the interview's closed?
A. Yes, sir.
Q. Did anybody ever offer to go over that footage with you?
A. No, sir.
Q. Did anybody ever offer to reopen the PREA investigation and get that footage and see what happened at that interview?
A. No, sir.
Q. When you've been -- when you've been detained before, have you, have you gotten in trouble for small infractions?
A. Yes, sir, I have.
Q. Okay. What are some, some of the things that---
A. There've been so -- it's been so long ago, I mean I'm not sure exactly what they was.
Q. Okay.
A. But it was minor infractions.
Q. Okay. Have you ever got in trouble for talking during

count?
A. Probably so, yes, sir.
Q. You ever got in trouble for using the kiosk improperly?
A. Yes, sir.
Q. Okay. Do you recall sending Wilhite a message with the kiosk that said you got an attorney?
A. Yes, sir.
Q. What exactly did you say to Wilhite?
A. I told him that I loved him and I'm praying for him and that I had Joshua Hawkins as a lawyer now.
Q. Okay. And did you get in trouble for that, for using the kiosk to do that?
A. Yes, sir.
Q. Okay. What was your punishment?
A. I think they might of took canteen or bunk restriction. It was something simple.
Q. Okay. Did you do what they -- when you broke a rule, did you do what they told you?
A. Yes, sir.
Q. Did you complain about it?
A. No, sir.
Q. Did you take whatever notifications---
A. Yes, sir.
Q. ---came your way?
A. Yes, sir.

Q. Have you ever gotten in trouble for anything major at the jail?
A. Never.
Q. Have you ever gotten in a fight?
A. No, sir.
Q. Have you ever been caught with a, with a weapon or a knife or shiv?
A. No, sir.
Q. Have you ever gotten into even a verbal disagreement with another inmate to the degree where y'all had to be separated?
A. Never.
Q. That's never happened?
A. No, sir. Most of the time I'm a model inmate. Try to get done with it as fast as possible.
Q. We talked about your conviction. Now I'm not trying to embarrass you or anything like that.

Have you---
A. Yes, sir.
Q. So the jury knows, I want, want to make sure this is clear.

Do you have a rehab facility lined up?
A. Yes, sir.
Q. You already have a bunk and everything---
A. Yes, sir.

Q. ---ready to go?
Are you excited about that?
A. Yes, sir. Very.
Q. Okay. And I want to make sure I've got this on the record. I think I asked you earlier.
Did you become nauseous immediately after being injured?
A. Yes, sir.
Q. Did you expect -- did you ever experience any pain during urination?
A. Sometimes.
Q. Did anybody ever find any dice?
A. No, sir.
Q. Did you, did you hear Gibson offer earlier that he still thinks to this day that he, he saw people playing dice?
A. Yes, sir, there was never no dice.
Q. Okay. Well, you're, you're one of the inmates and so maybe you have an inside view of this.
A. Yes, sir.
Q. Did anybody show you any dice outside of the presence of Gibson?
A. No, sir.
And I think if he seen the guys playing dice, four guys, why didn't he just get them four guys and pull them

out instead of like trying to punish the whole, whole rec area?

Q. Okay. I want to ask -- I want to ask for the jurors, for the jury's benefit.

Did you, or, or as far as you know anybody else, have a problem being searched if the search was done the right way?

A. No, sir, that's fine.

MR. DAVIDSON: Objection---

Q. Okay.

MR. DAVIDSON: ---to leading.

THE COURT: All right. Overruled.

Continue.

Q. Okay. And when you were complaining about this -- well, is it fair to say you were outraged by what happened?

A. Oh, absolutely.

Q. After this happened, did you, did you ask anybody like, hey, why didn't they do another kind of search?

A. Yes, sir.

Q. Okay. What are some alternatives that you offered that they could have done?

A. They could of stripped searched us, took us in a bathroom, one of the officers, strip down, they check your clothes.

Q. So you would of rather been stripped searched then what happened to you?

A. Oh, of course, yes, sir.
Q. Did anybody ever offer to pull any footage for you so that -- so that they could see Gibson and see exactly what happened?
A. No, sir.
Q. Did you try to handle this matter internally?
A. Yes, sir.
Q. Did you try to handle this matter without filing a lawsuit?
A. Yes, sir.
Q. Would you have even filed a lawsuit if the Sheriff's Office would of taken responsibility?
MR. DAVIDSON: Your Honor---
A. No, sir, I show wouldn't.
MR. DAVIDSON: ---objection. Not a proper question.
MR. HAWKINS: That's not an objection, judge.
MR. DAVIDSON: It's not an objection?
It is an objection.
THE COURT: All right. Overruled.
Q. Okay. Did you want to -- for the past five years or it's been more five years now, since January 25th of 2017, you been dealing with this?
A. Yes, sir.
Q. Have you been dealing with this since January of 2017?
A. Yes, sir.

Q. Okay. And would you, would you rather have had to fight the Sheriff's Office tooth and nail for five years or for them to just take responsibility?

MR. DAVIDSON: Your Honor, objection.

A. That's all they had to do.

THE COURT: All right.

MR. DAVIDSON: It is not a proper question.

THE COURT: All right. I'm gonna sustain.

Just move on, Mr. Hawkins.

Q. Has Gibson or Gallam or anybody else ever apologized to you at all during the last five years?

A. No, sir.

Q. Has anybody ever said we could of done things differently?

A. No, sir.

Q. Has anybody ever said what happened was wrong and we shouldn't have done it?

A. No, sir.

MR. HAWKINS: You can laugh all you want, Will. It's not funny.

THE COURT: All right. Let's move on.

MR. DAVIDSON: (Indiscernible) laughed.

Q. You ever accused anybody else of sexual assault?

A. No, sir, never.

Q. In your entire life, have you ever made another sexual

assault allegation?
A. No, sir.
Q. Have you ever accused another officer of excessive force?
A. No, sir.
Q. Have you ever accused another officer in any context of sexual, of sexual assault?
A. No, sir, I get along with all of them.
Q. It's not any secret to anybody in here that you've been arrested before.
Otis, have you ever accused a police officer, during arrest, of a sexual assault?
A. No, sir.
Q. Have you ever accused the Aiken County Sheriff's Office or any law enforcement agency of excessive force or sexual assault before this happened?
A. No, sir.
Q. Tell me about -- tell the, tell the jury about cause I know all this. So let's tell the jury about the cameras and how they rotate.
A. Okay. The cameras, like the picture that you got, are -- that where the desk and them windows are is like this -- if -- the camera's in the middle of the room and it like rotates. But you got an officer that sits in the control room with like a joystick. I heard them talking

about it and I mean I've seen it happen before. Like they can stop and move it, like zoom in to certain areas of the pod.

Q. Have you ever seen the -- have you ever seen the, the camera rotate and stop --

A. Yes, sir.

Q. -- and stay there for a while?

A. Yes, sir.

Q. Give the jury some examples of when you've observed the cameras stop and, and focus on individuals.

A. All right. Some guys outside on the rec field, you -- if you see in that picture where that window is, that's the sallyport.

All right. If you turn around facing the other way---

Q. Hang on a second.

A. Yes, sir.

Q. I'm gonna show you a picture. Let's do this.

All right.

A. If you see these windows right here --.

Q. All right. Where they can -- yeah.

A. The -- where the windows are right here, all right, on the backside, if you turn around the other way, it's a row of windows but they're real tall and they go about the same height down as the wall and the windows go on the -- maybe four or five foot. That's the rec area. And some guys be

out there -- they take toilet paper rolls and put them in their socks and play like volleyball out there.

So, whoever's in the booth controlling the cameras zone in -- zoom in and see the guys out there playing or they might have their---

MR. DAVIDSON: Your Honor, objection. He's got to lay a foundation to this if he's ever been in the control room and knows what can be seen or can not be seen. So -- and I'm not sure this inmate's ever been in the control room at the detention center.

THE COURT: Mr. Hawkins.

MR. HAWKINS: Your Honor, he's able to testify about his observations when he's outside, if they've talked to him from the control room. It's common knowledge with, with all these inmates where the people in the control are---

THE COURT: All right.

MR. HAWKINS: ---and where the control room is.

MR. DAVIDSON: Your Honor?

THE COURT: All right. Do you have a matter of law? You need to sidebar?

MR. DAVIDSON: For about two seconds, Your Honor.

THE COURT: All right.

(WHEREUPON, a bench conference was held out of the hearing of the jury at this time.)

THE COURT: Okay.

MR. HAWKINS: Thank you, judge.
THE COURT: Mr. Hawkins, your witness.
MR. HAWKINS: Thank you, judge.
Q. Otis, have you ever been outside -- have you been outside in the rec yard and observed people playing volleyball with a piece -- with a roll of toilet paper inside their sock?
A. Yes, sir.
Q. Okay. Has anybody -- has any -- have any guards or any Sheriff's Office personnel ever instructed those people to stop doing that?
A. Yes, sir, officer get a call at the desk. He'll come to the door. He'll tell us out there on the rec field, hey, put your shirt on or quit doing -- playing ball.
Q. Okay. Now, did this instruction come from somebody -- a guard who was standing beside you or from a guard inside the facility?
A. Shift super -- shift commander that's inside the booth where the cameras are.
Q. Okay. And, and we're talking about the camera that -- we're talking about the camera that focused toward the window and you're on the other side of that window?
A. Yes, sir.
Q. Okay.
A. And if you look in this picture right here, you can see

the inmate.
Q. Yeah, it's right there.
A. All right. If you flip that camera around, it's the same distance from them windows to the windows behind us.
Q. Okay.
A. You might see better in that picture.
Q. Okay. And this window here, is that the --?
A. They're taller. On the backside, the rec field side, they're taller. They're like---
Q. Okay.
A. ---5-foot tall instead of 3-foot.
Q. Okay. And how far from this window, this window pane, is it to the outside like where there's grass or where, where there's air and you're not inside?
A. Exactly -- where the camera sits?
The camera sits dead in the center of the pod.
Q. Okay.
A. You---
Q. Okay. So, so out here's the rec yard?
A. Right behind you.
Q. Right behind me?
A. Yeah.
Q. And it's the same kind of windows but they're taller?
A. Yeah.
Q. Okay. Gotcha.

All right. So, has anybody on the rec yard -- to your knowledge, has anybody on the rec yard ever got in trouble for something they were doing in the rec yard because somebody inside viewed them doing something inappropriate?

A. Yes, sir.

MR. DAVIDSON: Your Honor, that's gonna require hearsay---

THE COURT: All right.

MR. DAVIDSON: ---without---

THE COURT: Sustained.

MR. DAVIDSON: Thank you, Your Honor.

Q. I'm gonna hand you -- I don't think this is in yet. I don't want to put it in twice.

I'm gonna hand you a grievance that you wrote back on January 29th, 2017. This is I guess four days after the event.

A. Yes, sir.

Q. Okay. Can you read, can you read that for the jury, what you wrote?

A. Yes, sir, I totally understand and respect the authority and your duties. But I, but I been doing time just as long as you've been here and what I went through on the day was uncalled for. I have multiple witnesses to include but not limited to Deputy Erikson who is probably the most by the book -- the most by the book officer.

He should have conducted a strip search since the jail does thorough searches.

How do I know if he is not gay and made a reason to do that to me?

Why do y'all have PREA if you just gonna, just gonna uphold your duties -- your deputy's wrongdoing?

I am not going to complain. So take that into consideration as well. Thank you.

Q. Okay. So, you wrote this on the 29th after, after being injured and dissatisfied with the way you were searched?

A. Yes, sir.

Q. All right. And this is, this is just a, a standard grievance that's done at the general course of the jail's business?

A. Yes, sir.

MR. HAWKINS: Your Honor, plaintiff moves to have this admitted. Inmate grievance from 1/29/17.

THE COURT: Object -- any objection?

MR. DAVIDSON: No, Your Honor.

THE COURT: All right. Plaintiff's E. Thank you.

MR. HAWKINS: Yes, Your Honor.

(WHEREUPON, the grievance was marked a Plaintiff's Exhibit E and received into evidence at this time.)

Q. Okay. What was the -- read this down here, this

officer's findings.
A. All right. It says officer's findings.
Sir, I have investigated this matter due to the suspect, the contraband, at a pat search and concluded, as witnesses (sic) by Deputy Erikson, that the pat search is needing the clothing. Deputy Gibson was searching for a pair of dice that was suspected. My investigation was completed. Lieutenant Hettich.
Q. Hettich?
A. Yes, sir.
Q. Lieutenant Hettich?
A. Yes, sir.
Q. Did Lieutenants Hettich ever do anything about what happened?
A. No, sir, the only thing he did was made us write this (sic) statements and right after the incident happened.
Q. Okay. The handwritten statements?
A. Yes, sir.
Q. That we don't have?
A. Yes, sir.
Q. Do those -- do you have any knowledge about whether or not those cameras have audio or microphones?
A. Yes, the one inside the pod has audio and the one inside the sallyport had audio -- has audio.
Q. Okay. How do you know that?

A. Because the officer comes on the mic and people talk during, during quiet time or when lights are out. So, the officer might get on the phone and be like hey, keep an eye, keep an eye and an ear out to see where the talking's coming from. So, like one whole side might get wrote up, get our canteen took, for talking at night if the officer can't see it.

Q. Okay. So, the, the microphones on those cameras, did anybody ever come to you after the event and say hey, we have audio of what happened and how you complained and we're gonna save that?

Did anybody say that to you?

A. No, sir.

Q. Did anybody ever offer to go over the audio with you?

A. No, sir.

Q. Otis, I'm gonna show you the -- I'm gonna show you the, the pat frisk policy.

First of all, what's this -- what's this word up here?

A. Confidential.

Q. Do you have any idea why this would be confidential?

A. I guess they don't want---

MR. DAVIDSON: Your Honor---

A. ---the inmates to see it.

MR. DAVIDSON: ---I'm gonna object. I'm not sure this witness, number one, has ever read this form. It would

require him knowing the findings of the Sheriff's Department when they're confidential. I'm not sure what value it is to have him read a policy that the sheriff's deputies use.

MR. HAWKINS: Your Honor, this is already in evidence. I can ask him about the contents thereof and I can ask him if he has any idea why it says what it says and he can answer yes or no. And if the answer's no, the answer's no.

THE COURT: All right. I'll allow it.

Q. Okay. Do you have any idea why it would be marked confidential?

A. I guess so the inmates won't see it.

Q. Okay. And, again, I'm not trying to ask silly questions. But I want to make sure that I understand where the Sheriff's Office went wrong.

What does this say here, and I'm reading it for the record, from three procedures Capital B, Number 9, Letter Little F.

A. Crotch with palm up.

Q. Okay. With, with a, with a palm up. Not, not with the palm down like Will said during opening.

Is it -- would that be a -- if you're looking at this policy, would that comply with this policy?

A. No, sir.

Q. Would a blade method or a chop comply with this policy?

A. No, sir.

Q. And would a assault or grab comply with this policy?
A. No, sir, absolutely not.
Q. And is it -- the policy says that the search shall be done with the most dignity possible?
A. Yes, sir.
Q. Is that part of the---
A. Absolutely not.
Q. Did you feel any dignity during or after the time of this search?
A. Absolutely not.
Q. Did you see -- we're gonna hear from Ard and Wilhite by video in a little bit.
Did Mr. Gibson injure any of those people?
A. I---
MR. DAVIDSON: Objection, Your Honor.
MR. HAWKINS: Your Honor, he, he can say what he saw at, at the time of the event.
MR. DAVIDSON: Leading and no foundation.
THE COURT: All right. Rephrase your question.
MR. HAWKINS: Sure.
THE COURT: All right.
Q. What did you see after your injury?
A. I really wasn't paying no -- too much attention to them because I was hurting myself. I was in pain. I just---
Q. Okay.

A. ---sat inside and just kept my head down waiting on the lieutenant to come in.
Q. Okay. So you didn't, you didn't, you didn't see with your eyes Gibson hurt Ard or Wilhite?
A. No, sir, but they come---
MR. DAVIDSON: I have an objection, Your Honor. Leading.
Q. Did you see, with your eyes, Gibson hurt Ard or Wilhite?
A. No, sir. But they come in and said that they -- the same thing.
Q. Okay.
THE COURT: Sustained.
MR. DAVIDSON: Thank you, Your Honor.
THE COURT: Please rephrase your questions.
Q. Was there ever -- and, and when you were sitting -- when you're sitting in a chair after the event when you were nauseous and all that, did anybody else come sit in any of the other chairs?
A. Yes, sir.
Q. Who was that?
A. Brett Wilhite.
Q. Okay. Was -- did he appear to be in pain?
A. Yes, sir, very much.
Q. Did -- when did he -- when did you learn what happened

to him?
A. When it -- as soon as he come in and sat beside me in the chair---
Q. All right.
A. ---asking to speak to the white shirt too.
Q. When did you learn what happened to Ard?
A. Later on that night he come to our bunk and told us what -- after the -- when the lieutenant come -- he come in for a minute and then he left. When he come back in, that's when Ard approached him too.
Q. Okay.
A. And -- but Ard, Ard never wrote a statement. It was just to Brockington. But Ard told him verbally that he was done the same way.
MR. DAVIDSON: Your Honor?
Q. Okay.
MR. DAVIDSON: Objection to, to what Ard may of (indiscernible).
THE COURT: Sustained.
Q. When did you learn about Brockington's injury?
A. Right after it happened.
Q. Okay. Did -- did one of the officers ever say that Gibson was too rough on his pat down?
A. Yes, sir.
Q. Who was that?

A. Deputy Erikson.
Q. So you heard Erikson say---
A. Yes, sir, he -- we had a meeting at his desk and he told me and Wilhite both that his officer was really rough.
Q. Okay. Did he, did he ever acknowledge the sexual component of it or did he just say he was too rough?
A. No, sir, he said he---
MR. DAVIDSON: Objection. Leading.
Q. Okay. What did he say to you?
A. He said he never seen the actual grabbing. But he said his officer was really rough.
Q. Okay. Do you have any idea why -- do you have any idea why Gibson was sticking his finger in y'all's bellybutton?
A. Hm. No, sir, I -- he said he was looking for dice.
Q. In your bellybutton?
A. Yes, sir.
Q. Where else -- did he search anywhere else on your body in that same pod in the search for dice?
A. Behind my ears.
Q. You don't -- did you have more hair than you have now?
A. No, sir.
Q. Did he -- he, he searched with his hands behind your ears?
A. Yes, sir.
Q. Where else did he search?

A. Made us open our mouths, around my socked area, around my waistline.
Q. Okay. Did you have a problem with any of the waistline stuff?
A. No, sir.
Q. You have a problem with the sock---
A. No, sir.
Q. ---area?
What are the only parts of the search or what parts of the search did you find odd or offensive?
A. Bellybutton and the whole grabbing of the testicles.
Q. Did you hear Gibson admit that he used his hand like a blade?
A. Yes, sir.
Q. Did you---
A. Multiple times.
Q. Did he -- from, from -- is that consistent with what happened to you, straight up and---
A. Yes, sir.
Q. How, how hard do you think it was?
A. Very hard.
Q. Okay. When did you -- when did you feel the pain?
Did you feel the pain when he stuck you like a blade or when he turned his hands over and grabbed you?
A. It happened so---

MR. DAVIDSON: Object as to the form. He's actually leading his witness again, Your Honor. Also it's repetitive and cumulative at this point.

THE COURT: All right. All right. Mr. Hawkins, I'm going to -- I'm gonna overrule that. But I will ask you to rephrase your question and to make sure you're not asking repetitive --.

MR. HAWKINS: Thank you, judge.

You -- do you know if, during the PREA investigation, Bowman, the PREA coordinator, ever, ever went to any of the eye witnesses that were there and saw what happened?

A. No, sir, he never did.

Q. Did you hear Erikson talk about how he was upset when he got fired from his job because of the insufficient investigation?

A. Yes, sir.

MR. DAVIDSON: Your Honor, we're trying again to pit witnesses against each other and I'm just -- can try to go ahead -- one witness comment on another witnesses' testimony is improper.

MR. HAWKINS: I'll withdraw it.

THE COURT: All right. Mr. Hawkins, all right.

MR. HAWKINS: I'll withdraw it and ask a different questions (sic).

When you, when you interacted with Erikson, who did he

work for?
A. The jail, Mike Hunt, the sheriff.
Q. The Sheriff's Office?
A. Yes, sir.
Q. Okay. So if he is -- if he was dissatisfied with an investigation, he would be with the Sheriff's Office, would he not?
A. Yes, sir.
Q. Had you ever had a problem with your -- I'd ask Gibson about some, some alternate theories he might have about why you were injured.
Have you ever had any sort of issue with your groin?
A. Never till that incident.
Q. Ever had any -- ever had any issues with swelling in your groin, hydrocele, or anything like that?
A. Never, sir.
MR. DAVIDSON: Your Honor, objection. He's now trying to lay a diagnosis in his question.
MR. HAWKINS: I can ask him if he's ever had a hydrocele injury.
MR. DAVIDSON: The same -- Your Honor?
THE COURT: All right. I'm going to overrule.
Continue, Mr. Hawkins.
MR. HAWKINS: Thank you, judge.
Have you ever had -- I'm not trying to be graphic. I'm

not trying to embarrass you.

Have you ever had any issues with chronic masturbation?

A. No, sir, never.

Q. Okay. Sorry to ask the question.

A. That's fine.

Q. I had to.

Did you ever write to a, a battered person's shelter?

A. Yes, sir.

Q. Did they write you back?

A. Yes, sir, on the back of the PREA pamphlet through the jail, it tells you if not -- if you're not happy with the outcome and investigation, it says to write the PREA -- I mean the Cumbee Center for abused people. So, I wrote the Cumbee Center and a woman named Naomi, Naomi, or it was a weird name, she wrote me back.

Q. Okay. Do you know where that letter is now?

A. I got moved around so much I'm not sure.

Q. Okay. Was it helpful when you wrote Naomi?

A. Yes, sir, she did a lot of counseling like through the letters. I mean we corresponded back and forth like eight or nine times.

Q. Okay. So you didn't -- the jail didn't offer you counseling but you were able to sort of write this person, Naomi, back and forth?

A. Yes, sir.

Q. Do you have plans to visit her at some point in time?
A. Yes, sir, she helped me a lot.
Q. Did Gibson ever chuckle or laugh while he was doing these searches?
A. Yes, sir, he did, and he said -- the exact words is we can stop this now if you just give up the dice or we wouldn't have to go through this if you'd just give up the dice. That was his exact words.
Q. I may be almost done.
(Pause.)
MR. HAWKINS: I don't have any more questions. Please answer any questions the government's lawyer has.
THE COURT: Yes, sir.
Cross.
MR. DAVIDSON: It's gon' be a while, Your Honor.
You want me to do it now or after lunch?
THE COURT: All right. Cross will take some time, sir?
MR. DAVIDSON: Yes.
THE COURT: All right.
MR. DAVIDSON: Yes, ma'am.
THE COURT: All right.
MR. DAVIDSON: I'm sorry.
THE COURT: Okay. At this time we will break for lunch.
Ladies and gentlemen of the jury, we, we have provided

lunch for you. But I am permitting you to, you know, walk around outside. There's some benches out back in order to take your smoke breaks or just a nature break if you need.

It's 12:40. It's 12:40 right now and we'll reconvene promptly at two o'clock.

Thank you.

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

THE COURT: All right. We, we do have a matter that we need to discuss before I -- I know that you've got to get the video ready for us.

And so Mr. Davidson.

MR. DAVIDSON: Your Honor, during -- and I assume you mean about what I raised at sidebar?

THE COURT: That's correct, yes, sir. This is during sidebar. There was some discussion about your cross-examination---

MR. DAVIDSON: Yes, Your Honor.

THE COURT: ---questions.

MR. DAVIDSON: During the examination of Mr. Owens, there were multiple questions asked about disciplines and whether he had gotten in any trouble in jail, had any disciplines, anything like that. He admitted to he had got disciplined for the issue. He hadn't gotten into any other trouble. Tried to paint him as a model prisoner.

Well, we know also that Mr. Owens cut the ankle monitor off himself and was a fugitive for several -- I want to say several weeks if not a month.

For that reason, given the fact that the plaintiff has opened -- essentially opened the door trying to show that his client is such a, such a wonderful prisoner and has not had any problems of substance at the detention center, we believe the fact that he cut the monitor off and escaped is, is pertinent and relevant to this case now. We believe they opened the door to that issue.

Thank you, Your Honor.

THE COURT: All right. And so, Mr. Hawkins, I'll let you respond. But I do need to ask some questions because I don't -- I know there was an ankle monitor event.

But was this -- he was out on a bond?

He was not located within the jail?

MR. HAWKINS: Right. And you, and you took the words out of my mouth. This has nothing to do with anything that ever happened while he was at the detention center.

He was out. He had a -- an ankle monitor on and he cut it off or something. I don't know exactly what happened. But it has nothing at all, at all to do with anything he -- that ever happened in the jail. It doesn't show that he ever got in trouble for anything major in the jail. It doesn't show anything at all for anything.

And the second thing is I would say about that is they shouldn't be allowed to benefit from this because they knew where he was. We had a trial for a date certain. We were about to start trial. The deputies purposefully didn't go pick him up and tried to wait until the civil trial started. He told me that. They told him, when they came to pick him up, yeah, we knew where you were but they told us not to come pick you up until after this date. Then after he got a -- Your Honor granted a continuance, they immediately went and picked him up.

THE COURT: All right. Well, I -- you know, I don't know -- I don't want to get into that portion of it. I don't think it's relevant to my ruling with regards to whether or not to use that on cross.

MR. DAVIDSON: And he was actually on home detention and in custody when he cut that ankle monitor.

THE COURT: So it was home detention?

MR. DAVIDSON: And on -- and in custody at that point under the way the law works in regard to ankle monitors and home detention. He was not on probation or parole. He was actually -- the Court had ordered him in custody and allowed him to have an ankle bracelet and to remain in, in a certain location, which I believe it was his house as well as I understand.

MR. HAWKINS: Your Honor, I, I know that opposing

counsel likes to open the door arguments for everything. But this just does not have any -- whether he's done anything violent or got in major trouble in jail has nothing to do with something he did while he was on home detention at all.

THE COURT: All right.

MR. HAWKINS: And it has no probative -- it has no probative value whatsoever---

THE COURT: All right. Well, Mr. Hawkins, Mr.---

MR. HAWKINS: ---for, for how he was in jail.

THE COURT: Wait, Mr. Hawkins. You're about to talk your way out of the ruling.

Mr. Davidson, I am not going to permit the questioning regarding the ankle monitoring. So, my ruling from the motion in limine will still, will still stand. I don't, I don't know that I really made a ruling because it was consented. We agreed on that.

MR. DAVIDSON: That's what we did since they had not what they---

THE COURT: I understand.

MR. DAVIDSON: As long as, as long as the Court will consider my argument part of my proffer---

THE COURT: Yes.

MR. DAVIDSON: ---in this case, I will appreciate it, Your Honor.

THE COURT: Yes, sir. Thank you, sir.

All right. I have -- I've broken until 2:00PM because it -- I wasn't quite sure if we had anything that -- we are going through the charges as we speak.

Now, you've got two depositions. That will take about an hour.

MR. HAWKINS: Yes, Your Honor, maybe---

THE COURT: Collectively is what I mean.

MR. HAWKINS: I, I think -- if -- I think Will mentioned he might object during the, the videos for the record. I don't think it will take him any more than an hour and a half total for both of them.

THE COURT: Okay.

MR. HAWKINS: I don't think.

THE COURT: Are you going to object during the video or can or are there some objections that we could maybe place and run?

MR. DAVIDSON: Your Honor, we -- we've already dealt with all the objections---

THE COURT: Okay.

MR. DAVIDSON: ---based on -- unless something happens and they play something they shouldn't but --.

THE COURT: Well, certainly that's a different---

MR. DAVIDSON: Yeah.

THE COURT: All right.

MR. DAVIDSON: That's a different animal. But we -- you and I essentially have gone through all the pages. You've ruled on my objections in or out or---

THE COURT: Okay.

MR. DAVIDSON: ---we'll circle back to them in or out. So you've---

THE COURT: All right.

MR. DAVIDSON: ---dealt with all that.

THE COURT: So we've got about an hour and -- and then you've got the remainder of Mr. Owens' testimony---

MR. DAVIDSON: Yes.

THE COURT: ---which you think will take an hour and a half, two hours?

MR. DAVIDSON: No, no, no. Won't take long. I'm---

THE COURT: Okay.

MR. DAVIDSON: I don't know how long. I just didn't want to necessarily have the jury wanting to go to lunch---

THE COURT: Understood.

MR. DAVIDSON: ---and I may still be asking questions. I (indiscernible) better to go to lunch and then come back in and hopefully I can, you know, do it in 45 minutes to an hour.

THE COURT: All right.

MR. HAWKINS: And there's a, there's a -- there's a running offer for the other side to view our version as

edited up until time we play it.

THE COURT: Okay.

MR. HAWKINS: You know, so, I want to put that on record.

THE COURT: So just let him know. I don't know if y'all are emailing. We can text each other. Let him know once it's been edited to your satisfaction and, and with them what I ruled on and then you can allow him to watch if he so wishes to, to take advantage of that.

MR. HAWKINS: Yes, Your Honor.

THE COURT: All right. So we will, we will go ahead and break for lunch and I don't -- now listen. We're gonna get the witnesses done.

Does the State -- does the Sheriff's Office wish to present any witnesses or is that undetermined?

MR. DAVIDSON: I don't believe so, Your Honor.

THE COURT: All right. The reason that I ask is because we can go into both -- we can release the jury and go into our motions and then have a charge conference if that is necessary.

MR. DAVIDSON: That's -- I think that's wise, Your Honor.

MR. HAWKINS: You're talking---

THE COURT: All right.

MR. HAWKINS: You're talking about closing tomorrow

then?

THE COURT: I, I don't think this -- yes, because---

MR. HAWKINS: Okay.

THE COURT: I don't think that I can -- I don't like to give juries charging if it's gonna hit at four o'clock.

MR. HAWKINS: Okay.

THE COURT: Because if I read an hour and then we got -- we'll be here all night.

MR. HAWKINS: Okay.

THE COURT: All right. And so we can come in certainly in the morning and then fresh and I'll give them a good breakfast. And y'all might of worked your way out of these cupcakes tomorrow. But we will -- I will determine that at five o'clock today. And so the jury will be fresh to hear everything tomorrow morning, closings and then they'll deliberate, if -- we'll just see what happens.

Okay?

MR. HAWKINS: Thank you, judge.

THE COURT: All right. Thank you. We'll, we'll see you-all at two o'clock.

MR. HAWKINS: Thank you.

THE COURT: Thank you.

THE WITNESS: Thank you, judge.

THE COURT: Watch your step right there.

THE WITNESS: Yes, ma'am.

THE COURT: And he goes back with you -- well, Mr. Brock?

THE OFFICER: Yes, ma'am.

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

THE COURT: All right. Please be seated.

All right. Gentlemen, are we to ready to bring the jury?

MR. DAVIDSON: Your Honor, there was, there was one thing on the designation. We need some clarification as to whether or not Page 27 Line 14 and 25 would be included. It was not objected to. So I assume it has been included.

THE COURT: I'm sorry. I can't hear you.

MR. DAVIDSON: Oh, I'm sorry.

THE COURT: One more time, Mr. Davidson.

MR. DAVIDSON: The deposition of Mr. Wilhite --

THE COURT: Yes.

MR. DAVIDSON: -- Page 27 Line 14 to 25 that we designated and it's -- and I think it spills over to the next page, Your Honor. But I believe that was designated and I believe it was without objection. So, it should be included.

MR. HAWKINS: We, we objected. I don't remember what the Court's ruling was on that.

THE COURT: Madam Clerk, may I see the deposition please?

MR. DAVIDSON: Yes, Your Honor.
MR. HAWKINS: We objected to all that.
(Pause.)
THE COURT: 14 -- Page, Page 27 14 -- Lines 14---
MR. DAVIDSON: Through 25 and then go over to the next. Page 28 to Line 7. Page---
MR. HAWKINS: Yeah, we're, we're all of the impression all that was out, Your Honor.
THE COURT: Mr. Hawkins, this is the first time I've read this. So I, I know it wasn't raised. You -- I know that when we -- I've got Pages 24, 26, Pages 30. But I don't have 27.
MR. DAVIDSON: That's cause there was no objection, Your Honor.
MR. HAWKINS: Yeah, it was, it was their designation that me -- let me pull up the objections I had to it.
THE COURT: I don't believe it was objected to and I'm not saying you didn't intend to object to it prior. But I know this is the first time that I've read this portion of the deposition.
MR. HAWKINS: Yeah. So, we, we objected to 26 5 through 16. But then we said for 27, 14 through 28 7 --.
THE COURT: You did. I have 14 through 28 written down.
MR. HAWKINS: Yeah.

THE COURT: But I never went back and I -- I never went back and addressed it.

MR. HAWKINS: Okay.

MR. DAVIDSON: Your Honor, I think what happened is they said if they could, on Page 28 Line 11 through 25, we could have---

THE COURT: That's right.

MR. HAWKINS: Well---

THE COURT: That's correct.

MR. DAVIDSON: But that's fine. That's what we agreed to.

THE COURT: Okay. So it's---

MR. HAWKINS: Yeah.

THE COURT: So it's in?

MR. HAWKINS: And so we're -- that and the following portion are in?

THE COURT: Okay.

MR. HAWKINS: Okay.

THE COURT: Yes, that's correct. That is exactly what happened.

MR. HAWKINS: Okay.

THE COURT: Because I do have 14 through 28 written---

MR. HAWKINS: Okay.

THE COURT: ---but no page number beside it.

All right. Very good. That's, that's what resulted

and that's why I didn't go into it.

MR. DAVIDSON: Thank you, Your Honor. We were just clarifying.

THE COURT: Certainly. Thank you, Mr. Davidson.

Mr. Hawkins, any issues?

MR. HAWKINS: No, Your Honor. I don't think so. We're -- I think we got everything edited. I'm ready to go.

THE COURT: All right. We're gonna bring the jury back in and resume -- oh, I'm sorry.

MR. DAVIDSON: No, Your Honor.

THE COURT: All right. We'll bring the jury back in and resume with cross-examination.

Thank you.

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

THE COURT: All right. Thank you, ladies and gentlemen. At this time we will resume.

Mr. Davidson, your witness.

MR. DAVIDSON: Thank you, ma'am.

CROSS-EXAMINATION

BY MR. DAVIDSON:

Q. Mr. Owens, I just have a few questions I need to ask you.

On January the 25th, 2017, you were in D Pod, correct?

A. Yes, sir.
Q. And that's, that's open view?
A. Yes, sir.
Q. And I believe your roommate was Mr. Wilhite, correct?
A. Yes, sir.
Q. And I believe, just for the record, you are, in fact, 6'3", 6'4", about 285, or were back then?
A. Yes, sir.
Q. Prior to January 25th you had no problems with Mr. Gibson, correct?
A. No, sir.
Q. He never threatened you before?
A. No, sir.
Q. Never afterwards either, correct?
A. Yes, sir.
Q. Just---
A. I mean no, sir.
Q. He had never threatened you after this --
A. No, sir.
Q. -- correct?

Okay. And if I might not be correct.

You had no other incidences with Mr. Gibson, correct?
A. Yes, sir, I did.
Q. You did?
A. Yes, sir.

Q. Do you remember giving me your deposition on I believe it was October 22nd, 2018?

Just one second.

A. Yes, sir.

Q. And I asked you at that time, if you don't mind -- well, let's get the original.

Judge, you want me to open it?

THE COURT: Yes, please open it. I'll -- do you want me to open it?

MR. DAVIDSON: No, it, it---

THE COURT: Okay.

MR. DAVIDSON: Either way. It doesn't matter to me.

THE COURT: Of course, granted. You have permission to open the original.

MR. DAVIDSON: Thank you, ma'am, if I can. They must use super glue on this one.

Do you remember giving me the -- you remember giving me this deposition, don't you?

A. Yes, sir.

Q. Okay. I think we actually -- you, at that time, were in the Department of Corrections, correct?

A. Yes, sir, I was a county inmate, a state inmate at a county jail.

Q. Facility over in Fairfield I think?

A. Yes, sir.

Q. Okay. And if you don't mind, turn to Page 29 please, sir?
A. (WHEREUPON, the witness complies.)
Q. I asked you this -- I asked you this question, Line 3.
Okay. Ever had any other incident with Officer Gibson and at that time you said no, sir?
A. Yes, sir.
Q. Correct?
A. Yes, sir.
Q. All right. Now, when you indicated that Officer Gibson did the pat down search, I think you said he was looking for dice, right?
A. That's what he---
Q. And---
A. It -- that's what he said.
Q. Okay. And the---
A. Yes.
Q. And dice are usually sometimes made out of paper, correct?
A. Best of my knowledge.
Q. And you would agree with me inmates can be very innovative about where they hide stuff, correct?
A. Yes, sir.
Q. They can hide stuff in their fold of their skin. If you got a, a gut, they can hide it in the creases.

Correct?
A. Yes, sir.
Q. They can hide it tied around their scrotum, correct?
A. Yes, sir.
Q. Or their penis?
A. Yes, sir.
Q. They might hide it under their tongue?
A. Yes, sir.
Q. Okay. And they might wet it -- a piece of paper, wet it and put it behind their ear, correct?
A. Yes, sir, it will be noticeable though.
Q. All right. So, when you do a pat down search, you are looking in various places where inmates may hide things, correct?
A. Yes, sir.
Q. Contraband?
A. Yes, sir.
Q. Could be a shank or a weapon, correct?
A. Yes, sir.
Q. You've seen that before, haven't you?
A. Yes, sir.
Q. And you've seen them hide shanks or weapons all kind of places on them, correct?
A. Yes, sir.
Q. Now, I think you also said that Officer Gibson,

according to your testimony, grabbed you for about a second?
A. Yes, sir.
Q. Okay. Kind of in out grabbing?
Come out real quick?
A. I kind of snatched away from him.
Q. Okay. All right. And I think you also indicated he checked your tongue, your collar, your ears, under your arms?
He went down your arm, under your arms?
A. Yes, sir, and my bellybutton.
Q. Checked your elbow?
A. And my bellybutton.
Q. And your bellybutton?
A. Yes, sir.
Q. He checked your waistband?
A. Yes, sir.
Q. That you -- kind of pulls his hand out and run your fingers around it?
A. He did it hisself.
Q. He did it hisself --
A. Yes, sir.
Q. -- cause you're leaning on the wall, aren't you?
A. Yes, sir.
Q. And he's behind you --
A. Yes, sir.

Q. -- right?
Okay. And he would check your legs?
Go up and down your legs?
A. Yes, sir.
Q. Up and down your arms?
A. Yes, sir.
Q. Check your socks?
A. Yes, sir.
Q. All right. And you would be wearing flip flops I think --
A. Yes, sir.
Q. -- or slides---
A. Slides.
Q. ---correct?
A. Yes, sir.
Q. Slides.
He checked the bottom of your feet?
Checked your socks too?
A. Yes, sir.
Q. And I think you said Erikson was actually at the door---
A. Yes, sir.
Q. ---right?
A. He had the door opened.
Q. All right.

A. With the door propped---
Q. And that door locks, does it not?
A. Yes, sir. Yes, sir.
Q. And he was standing kind of on the inside of the door opening it up on some of the inmates as they were checked to come inside the pod?
A. Yes, sir.
Q. And I think you described the pod, that's where the inmates are housed, aren't they?
Seventy-five, 80 inmates may be in that unit, correct?
A. Yes, sir, on the outside, outside area of the dayroom.
Q. And they move around whenever they want to?
A. Yes, sir.
Q. Except when count and you got to stand by your bunk at that point?
A. Yes, sir.
Q. Okay. And you and Wilhite had an area that y'all slept together?
Basically had two beds and you slept in the same general area---
A. It was---
Q. ---right?
A. It was three beds, a bunk bed---
Q. Okay.
A. ---and a single bed to the side, which was mine.

Q. Okay. Now, on the 25th, I think in your previous testimony you indicated that there was nothing that you felt was inappropriate of a sexual manner by Mr. Gibson that you'd ever seen him before, correct?
A. Sir -- rephrase that.
Q. Okay. You didn't think there was anything -- nothing inappropriate of a sexual manner, correct?
A. I didn't say that.
Q. Okay. You remember on your deposition on Page 23 Line 17 I asked you did you ever feel like he was doing anything that was inappropriate in a sexual manner anytime he saw you and you indicated no, sir, correct?
A. Anytime he seen me or that particular time -- yeah, any time he seen it.
Q. I asked you anytime---
A. No, sir.
Q. ---you saw him?
A. No, sir.
Q. You never saw anything that would indicate any type of sexual inappropriate behavior around him?
A. No, sir. No, sir, not---
Q. Never any comments---
A. No, sir.
Q. ---right?
A. Not to that incident.

Q. All right. Now, going back to the incident, you said you have pain but there was no blood in your urine, right?
A. No, sir.
Q. I think you said you needed to come inside and go to the bathroom to urinate?
A. Yes, sir.
Q. And when he squeezed you, you didn't urinate on yourself, did you?
A. No, sir.
Q. Okay.
A. It went away.
Q. And I think you testified to me that, in fact, you have a -- what I call a steady stream of urine. Nothing ever affected your stream.
Correct?
A. No, sir.
Q. Okay. And you also indicated that the pain lasted, I think you said, about a week to a week and a half, 10 days?
A. Seven to 10 days.
Q. Okay.
A. Yes, sir.
Q. All right. And, after the incident, nothing else, nothing else -- there was nothing else after that, correct?
A. I said that but at the time it's been so long, but yes, sir, I said that.

Q. Okay. Well, let's just make sure.
A. Yes, sir.
Q. Okay. You gave this deposition, make sure I got the date right, October 22nd, 2018.
You were in Fairfield?
A. Yes, sir.
Q. All right. And I asked you so how long after the pat down did you start developing any type of pain, your urination, and you said right after, correct?
A. Yes, sir.
Q. Okay. And then I asked you with -- the question on Page 42 please, sir.
A. Forty-two.
Q. Page 42. When did the pain in your scrotum clear up and your answer was what Mr. Owens?
A. It, it was probably a week or a week after the incident.
Q. After the incident happened---
A. Yes, sir.
Q. ---correct?
Okay. And then I said okay. After that or the week and a half, any other problems and what did you say?
A. No, sir.
Q. Okay. So, as of October 22nd, 2018, which is only a year or a little over a year after the incident, you

indicated, after a week to a week and a half, you had no other problems, correct?
A. Yes, sir.
Q. Now, also I believe, when you went to the Department of Corrections, you didn't tell them anything about having a problem with urination or with your scrotum or anything like that, correct?
A. I told them about the incident. They knew about the incident but no problems with urination.
Q. Okay. Didn't have any problems with your scrotum?
A. No, sir.
Q. Okay. And the Department of Corrections has a mental health department, does it not?
A. Yes, sir.
Q. Okay. You went out there I think April -- mid April, 2017, somewhere along in there?
A. Yes, sir.
Q. Okay.
A. Somewhere around in there.
Q. I think that was for your charge of distribution of methamphetamine?
A. Yes, sir.
Q. And at that time you never saw anyone at the department about your scrotum---
A. No, sir.

Q. ---correct?
A. The swelling was down by then.
Q. The only problem you had at that point was high blood pressure?
A. Yes, sir.
Q. Okay. And you can run high on your blood pressure?
A. Yes, sir.
Q. You're on medicine?
A. Yes, sir.
Q. Okay. Do you know all the effects that high blood pressure can cause on your body?
A. Yes, sir.
Q. Okay. Cause a lot of problems?
A. Yes, sir.
Q. Isn't it?
MR. HAWKINS: Your Honor, I'm, I'm gonna object. Looks like he's getting into asking him to speculate, and since he has such a problem with that, I'd ask that he be instructed not to do that medical diagnosis.
THE COURT: All right. I'll -- I'll sustain. I will allow questioning regarding his knowledge of his symptoms.
Q. Well, the knowledge of yours -- you know, they're a lot of different symptoms from blood pressure that you have---
A. Yes, sir.
Q. ---correct?

And you also I think -- I think, I think I heard this right.

While you were in the department -- at the Aiken County Detention Center, you masturbated on a regular basis, correct?

A. Not a regular basis.

Q. Okay.

A. Every now and then.

Q. Did it in the shower?

A. Yes, sir.

Q. Did it with soap?

A. Yes, sir.

Q. Okay. Are you aware of what could happen if you masturbate and do it with soap in a shower?

A. No, sir.

Q. Okay. Does the soap that's (sic) y'all use in the shower a communal soap?

A. No, sir. Never had the---

Q. It's your own soap?

A. Yes, sir, and it ain't never had that problem before till the incident.

Q. All right. Well, my question is did you know that masturbation can, can cause some problems, correct?

A. Yes, sir. But not that incident.

Q. All right. Now, I think you also indicated that you

got antibiotics and I believe you got those at the end of February 2017 around the 28th?

A. Yes, sir, when they told me I had the hydrocele pocket, the fluid.

Q. Well, you got the antibiotics, right?

A. Yes, sir, the day after that.

Q. And they gave them to you for 10 days?

A. Yes, sir.

Q. And they told you to take them?

A. Yes, sir.

Q. And, after you took them, everything cleared up?

A. Within, within a week, two weeks after---

Q. Okay.

A. ---the antibiotics.

Q. That's good.

So, the antibiotics cleared up whatever problem you had---

A. Yeah, with---

Q. ---within the --?

A. The hydrocele, yes, sir.

Q. Yeah. That's all right. That's all right.

Now, medical staff at the jail is really run by a company called Southern Health Partners, right?

A. Yes, sir.

Q. Okay. You put in a sick call request on the kiosk to

go see them?
A. Sometimes. If it's a, a real dire emergency, they take you up there without being on sick call.
Q. Okay. And you get -- I think they come by your cell and give you your Lisinopril?
A. Yes, sir, they have pill line twice a day.
Q. Okay. And Lisinopril is a medicine you understand is for your high blood pressure?
A. Yes, sir.
Q. So the medical staff I think is, for all practical purposes, independent of the Sheriff's Department, correct?
A. I'm not sure about that.
Q. I understand.
MR. HAWKINS: Your Honor, I'm gonna object. They have a---
THE COURT: Okay.
MR. HAWKINS: ---non delegable duty to provide medical care and he's---
MR. DAVIDSON: Your Honor---
MR. HAWKINS: ---leading the jury to believe---
MR. DAVIDSON: ---he's---
MR. HAWKINS: ---that it's so (indiscernible)---
MR. DAVIDSON: If he's got---
MR. HAWKINS: ---Sheriff's Office.
MR. DAVIDSON: If he's got an objection, then make it

and then not argue.

THE COURT: All right.

MR. HAWKINS: Okay.

THE COURT: What's the basis of your objection?

MR. HAWKINS: The, the basis of my objection is it's misleading, Your Honor, because he's, he's acting like the Sheriff's Office doesn't have the responsibility to provide medical care. He's trying to put it off on another entity.

MR. DAVIDSON: I just asked about the Southern Health Department, Your Honor.

THE COURT: All right. I'm gonna -- I'm going to overrule it.

Q. Now---

THE COURT: Overruled.

MR. DAVIDSON: Thank you, ma'am. I appreciate it.

I think, after this incident, you, and Ard, and Wilhite all got together and talked about it, right?

A. No, sir, me and Wilhite.

Q. Let me give you a minute and I'll try to find that.

A. Yes, sir.

Q. Now, make sure I'm right about this.

Look likes in March of 2017 you refused medical a couple of times, did you not?

A. I, I -- I'm not sure.

Q. Okay. Let me show you something. See if this

refreshes your memory.
A. I've never signed this. They make you sign a refusal --
Q. Okay.
A. -- right there in the pod.
Q. So, right now those are refusals though.
You claim you've never signed them?
A. I've never signed them.
Q. Okay.
A. We sign them in the pod.
Q. So somebody helped, helped you---
A. Yeah.
Q. Somebody else must of signed that?
A. That's not the -- you got a nurse that comes by twice a day. If you refuse, they sign right there on the -- on like a book.
Q. Okay. All right. And then this is something that's in the record?
A. Oh, I'm---
Q. You ever seen this before?
A. No, sir.
Q. Okay. But it does indicate that at least in March -- you've refused medical before, haven't you?
A. No, sir.
Q. Never have?

A. Not as far as I know.
Q. Okay. When you went to the Department of Corrections I think the Aiken County Detention Center, I think you testified to this, does a continuity of care form?
A. Yes, sir.
Q. Okay. And are you aware on the continuity of care form where it says substance use/abuse and then it says list if known?
A. Yes, sir.
Q. Okay. Are you aware that Mr. Statton, James Statton, indicated no on that?
A. I seen that on the paper. But most time it's like a checklist. They just go by it and don't ask you no questions.
Q. Okay. Well, you know Mr. Statton, do you?
A. No, sir, not personally.
Q. And he indicated you had no issues in regarding substance abuse?
A. Yeah.
Q. Is that correct?
A. He just checked, checked the checklist.
Q. Okay. Now, your attorney showed you two pictures I think.
A. Yes, sir.
Q. Okay. Those are a result of a grievance, right?

A. Yes, sir.
Q. Okay. You got written up because you were using Mr. Wilhite's PIN number to access the kiosk, correct?
A. Yes, sir, I --.
Q. All right. Now Mr. Ki -- Mr. Wilhite was in another dorm?
A. Yes, sir.
Q. Okay. And inmates from one dorm are not to communicate with inmates from the other---
A. Yes, sir.
Q. ---correct?
A. He was in lock up. I was in D Pod. I wrote him on the kiosk and told him that I loved him and I'm praying for him and I have Mr. Hawkins as a lawyer (indiscernible).
Q. So you're actually communicating with Mr. Wilhite about the matters dealing with this lawsuit, correct?
A. I just told him I had a lawyer and I was recommended for that and got in trouble.
Q. Okay. Cause you're not suppose to be communicating, number one, between inmates, right?
A. Yes, sir.
Q. And you show ain't suppose to be taking their PIN number?
A. Oh, yes, sir.
Q. And using their PIN number to communicate?

A. Yes, sir.
Q. Okay. Cause if you do that, that means there's really -- Mr. Wilhite can see what you've written but it doesn't necessarily get into the system, correct?
A. It's in the system regardless.
Q. Okay. All right. And you were telling Mr. Wilhite about having a lawyer in this---
A. Ex---
Q. ---right?
A. Exactly what I just said.
Q. Okay. All right. Now, you've never been in the control room at the Aiken County Detention Center---
A. No.
Q. ---have you?
A. No, sir. But when you're in the booking, you can see -- the control room doors are always open. You see the monitors.
Q. Okay. They're a bunch of monitors.
Is that right?
A. Yes, sir, two screens I think.
Q. Do you know, do you know what all the control room officer does other than what you've heard here, here today?
A. I know they watch the cameras cause I done seen multiple people get in trouble with the camera in the dorm like taking six ounce cups of juice off the tray cart when

it comes in and the person that's running the control booth zooms in and catches the person stealing juice. So he calls the officer at their desk and tells the officer hey, such and such just got juice --

Q. Okay.

A. -- and they get it -- they get in trouble for it.

Q. That camera has a cover on it, doesn't it?

A. Yes, sir.

Q. And that's a smoky lense cover, isn't it?

A. No, sir, you can see the camera moving around.

Q. You can see it moving?

A. Yes, sir.

Q. Okay. And it's got actually an intercom system in the dorm, correct?

A. Yes, sir.

Q. And an intercom system in the, in the rec yard, right?

A. Yes, sir.

Q. So, if the control officer wants to communicate, he's got to go through the intercom system, correct?

A. Yeah, or call the officer.

Q. Call the officer on the phone?

A. Yes, sir.

Q. Okay. Now, in the reports that have been introduced, the grievances you did --

A. Yes, sir.

Q. -- in January I think 25th, 29th, several were in February, and several in March?
A. Yes, sir.
Q. You remember that?
A. Yes, sir.
Q. No where in those do they indicate you were having any pain or any injury?
A. Yes, sir.
Q. That's right?
A. Yes, sir.
Q. Isn't that correct?
A. Yes, sir.
Q. And the first one you did, I think you said this occurred around four o'clock I think is what you remember?
A. Yeah, it's probably two to four o'clock timeframe.
Q. Two to four o'clock.
You didn't file a grievance until I believe 10:40 that night, correct?
A. Yes, sir, after, after count, they got -- the nurse comes around. Sometimes the nurse don't get there till 10:30 and then you always got a line of people trying to get on the kiosk to write requests. You got 80 people in there.
Q. And that was---
A. So---
MR. HAWKINS: Your Honor?

Q. ---the January 25th---
MR. HAWKINS: Your Honor, I would ask that Mr. Davidson allow the witness to finish his answer.
Q. You can finish. I apologize.
A. Yeah. So I mean you got a line. You got to wait. You got to wait your turn. So it was -- yeah.
Q. All right.
A. Whatever times it says on there, that's what time I used the kiosk.
Q. Well, it says 10:40 --
A. Yes, sir.
Q. -- in the evening?
A. Yes, sir.
Q. So that'd been about six hours after -- six to eight hours after this happened, right?
A. Yes, sir, I can't help count -- sometimes they have delayed count. It might be 9:30 before we even come out.
Q. Nothing in that one on the 25th about having pain or hurting or anything like that, correct?
A. I told the officer that come in that night.
Q. All right.
A. The white shirt.
Q. My question, Mr.---
A. Oh, on the grievance, no, sir.
Q. Yes, sir.

A. No, sir.
Q. That's the only grievance?
A. Yes, sir.
MR. DAVIDSON: Beg the Court's indulgence.
(Pause.)
Q. And you don't recall you and Wilhite talking about this situation?
A. Oh, yes, sir, we talked about it.
Q. Okay. And you recall that Wilhite convinced you and Ard to file grievances?
A. Convinced us?
Q. Yes.
A. No, sir.
MR. DAVIDSON: If the Court will give me one second to check my notes I would appreciate it.
THE COURT: Okay.
(Pause.)
Q. Oh, Mr., Mr. Owens---
A. Yes, sir.
Q. ---I think you said you've been convicted of distribution --
A. Yes, sir.
Q. -- of methamphetamine?
A. Yes, sir.
Q. You've also been convicted of failing to stop for a

blue light, correct?
A. Yes, sir.
Q. You got sentenced five years for that one, didn't you?
A. Yes, sir.
Q. Okay. And I think you've also been convicted of burglary?
A. Back in 2000 -- back in 1999.
Q. '99?
A. Yes, sir.
Q. Oh, I apologize. I thought it was sooner.
A. No, sir.
Q. Um---
A. I was 17 at the time.
Q. Any other convictions?
A. That's about it.
Q. Okay. Have you been convicted of distribution more than an once?
A. No, sir.
Q. Just once?
A. Yes, sir.
MR. DAVIDSON: Court's indulgence.
(Pause.)
THE COURT: He's not rested yet.
MR. HAWKINS: I'm sorry, Your Honor.
(Pause.)

Q. Thank you, Mr. Owen (sic).
A. You welcome.
MR. DAVIDSON: No further questions.
A. Thank you, sir.
THE COURT: Redirect.
MR. HAWKINS: Thank you, judge.

REDIRECT EXAMINATION

BY MR. HAWKINS:

Q. Otis, I'm just gonna clarify a couple of things.
A. Yes, sir.
Q. Did Mr. Davidson just come up here and try to blame Southern Health Partners for the Sheriff's Office not taking a good ultrasound?
A. Exactly.
MR. DAVIDSON: Object to the form, Your Honor. It's leading.
MR. HAWKINS: Lead -- that's asking---
MR. DAVIDSON: I didn't blame anybody.
THE COURT: All right. Overruled.
Let's move on please.
Q. Was it your testimony, when Mr. Davidson was asking you that, they can catch people with the camera for taking juice from a cart?
A. Yes, sir.
Q. But they lost a sexual assault video?

A. Yes, sir.
Q. Is that right?
They -- when you take juice, they got you. But they can't keep up with a sexual assault.
Has that ever been your experience?
A. Yes, sir.
MR. DAVIDSON: Your Honor, objection. Leading.
MR. HAWKINS: I'll ask a different question.
Since Mr. Davidson is so interested in the four (indiscernible) decisions that you've made, let's talk about your distribution charge.
A. Yes, sir.
Q. Have you ever been a dope dealer?
A. No, sir.
Q. Tell the jury why it was a distribution charge.
A. All right. I don't know if y'all up to, up to par. I, I imagine y'all not. South Carolina's got the roughest drug laws period.
So, just say in Georgia, it's 28 grams felony possession. Over here in Carolina, if you get anything over a gram, that's either distribution or PW -- possession with intent. So, on mine, I got caught with like 1.2 grams.
Q. Okay. Do you acknowledge that was a bad decision?
A. Yes, sir.
Q. Do you acknowledge that you broke the rules and you had

to go to jail for it?
A. Yes.
Q. You have any problem doing your time for that?
A. No, sir.
Q. Should the Sheriff's Office also have to follow the rules?
A. Yes, sir, exactly.
MR. DAVIDSON: Your Honor?
Q. So, Mr. Davidson went through some, some grievances about you using Mr. Wilhite's PIN number.
Do you remember that?
A. Yes, sir.
Q. So, does the Sheriff's Office have access in every grievance and everything you'd ever done on the kiosk?
A. Yes, sir.
Q. And the worst thing they could find was you telling Wilhite you love him and you got a lawyer?
A. Yes, sir.
Q. Well, maybe they lost it like they lost the other stuff.
A. Hu hu, basically.
MR. DAVIDSON: Your Honor, objection. Leading. Monologue by plaintiff's counsel. Move to strike.
THE COURT: Yes. Let's -- I, I will strike that.
Let's move on, Mr. Hawkins. Let's clean it up.

MR. HAWKINS: Yes, Your Honor.

You still got your deposition up there?

A. Yes, sir.

Q. You were asked the question about Page 23 Line 14 where Mr. Davidson asked you about your experience with Eric -- Gibson before the sexual assault.

A. Yes, sir.

Q. Do you see that right here?

A. Yes, sir.

Q. And you see where you indicated that he had never been sexually inappropriate with you before the 25th of January?

A. Yes, sir.

Q. Was he asking you and you -- were you answering about times before January 5th -- January 25th of 2017?

A. Yes, sir.

Q. Oh, yeah, I do have a question.

I think Mr. Wilhite (sic) asked you if Wilhite convinced you to do something.

A. Yes, sir.

Q. Did Wilhite convince you to do anything after you got assaulted?

A. No, sir, that was on my own accord.

MR. HAWKINS: I don't have any more questions.

THE COURT: Recross.

MR. DAVIDSON: None, Your Honor. Thank you, ma'am.
THE COURT: All right. This witness may be excused.
Please watch your step, Mr. Owens.
All right. You'll -- yes, just leave it right there. We'll get it.
THE WITNESS: Thank you, ma'am.
THE COURT: Thank you, sir.
All right. Mr. Hawkins.
MR. HAWKINS: Your Honor, at this time we'd play the video deposition of Mr. Wilhite.
THE COURT: All right.
(WHEREUPON, the following is the deposition of Timothy Brett Wilhite played for the jury with the questions of Mr. Hawkins.)
UNIDENTIFIED SPEAKER: We are going on the record---
Q. Okay. Tell me what you know about Timothy Gibson in general.
A. I know he's a deputy with the county detention center. That's about all I know about him.
Q. Okay. Do you know a guy named Jeremy Ard?
A. Yes, sir.
Q. All right. Tell me exactly what happened on January 27th, 2017.
A. Okay. We was walking around on the rec, on the rec outside of, of Echo Pod and Deputy Gibson was doing a

security check. And as he's walking down the set of stairs and comes by the window of the rec area, he looked and seen, seen two guys supposedly throwing dice out there on the rec yard.

Q. You're talking about, you're talking about Gibson saw two guys he thought were playing dice?

A. Yes, sir.

Q. Okay.

A. And so he comes out there on the rec field and gets the -- tries to get the dice from the two guys that had the dice. But they didn't give them, they didn't give them to him. So he closes the rec field door. He goes to the desk and he calls for Officer Erikson to come back off of his break.

Q. Okay. Well, let me ask, let me ask you a question.

Did it -- did they ever find any dice?

A. No, they never found any dice.

Q. Was there any dice?

A. I don't know. We were, we were just walking around in the rec field. I don't know. I wasn't, I wasn't paying attention to anybody. I was in conversations.

Q. Okay. All right. Go ahead.

A. So when Erikson got in the pod, they come to the rec area and they said they gon', they gon' pat search everybody down. So Otis was the first one they pat searched

and I -- when he come up, when he come up to the testicle area, he raised, he raised to his tippytoe. He done me the same -- he done --.

Q. Well, let me ask a question.

A. He looked at Erikson for, for him to help, for him to help out. And so Gibson gets to me, let --.

THE COURT: Ladies and gentlemen, let me take a, a brief moment to explain to you that the reason that you're seeing some of these pauses and clips in the video is because I determined, on a legal basis, that some of these items are not admissible and it's, it's nothing due in part to either attorney.

Q. I mean you were also in pain?

A. Right.

Q. So both you and Otis Owens are in pain at this point?

A. Right.

Q. Okay. What happened next?

A. So we go inside -- so we go inside and tell him -- I tell him very plainly when we get inside. I, I sit down in a, in a chair and tell I need to see a sarge. Well, then he goes, then he goes -- send us to medical.

Well, they send a sarge in there. They send a sarge in there and they send a lieutenant in there. I can't remember, I can't remember who the lieutenant was. But it

was, it was Sergeant Soloman at the time. He's no longer -- he's not there anymore.

Sergeant Solomon, he come in and got Erik -- got, got Gibson and Erikson's word and what happened and then he leaves. So the only thing I can do was put in for medical for me and I put in for Otis Owens medical to be seen.

Well we went and we were seen a couple times.

MR. DAVIDSON: That's supposedly out, Your Honor.

MR. HAWKINS: Your Honor, they had a chance to review everything. We're playing exactly what --.

THE COURT: Please continue.

Q. -- Ard's injury?

A. Yeah. Every -- everybody, everybody that was out there he done the same way. There was like nine of us out there that he done the same way and the reason why he said he was so forceful with his hands is because we all had -- it was, it was in wintertime. So --.

I told him, I said why don't you do a strip search. You don't put to your hands on me to do a strip search. You can strip search me in the bathroom. You can get every article of clothing off of me and search me without having to put your hands on me and then -- they didn't want to do that.

Q. And did you see -- did you see Gibson assault Ard also?

A. Yes, sir.
Q. All right. Did you -- did, did Gibson ever make any comment to you after the fact that acknowledged he had gone too far or used excessive force?
A. No, sir, he never -- I never, I never talked -- I never talked to him.
Q. Okay.
A. I never talked to him. But they have him in the pod -- they let him come to the pod and shake mine Otis Owens' bunk are down. They found -- they found a piece of a pill. It was not mine. They charged, they charged me with it after, after we done been putting this stuff in on the kiosk about wanted to go to medical, wanting to know what's going on with medical and this and that after they found out that, that Otis had hired you.
Q. Yep.
A. That they come -- they come and let Gibson do a, a shakedown of our bunk area.
Q. So, is it your opinion that Gibson retaliated against you and other inmates after Otis Owens hired a lawyer?
A. That's right.
MR. DAVIDSON: Objection.
Q. All right. And then you -- did you ever, did you ever make the effort to pursue your legal claim against

Gibson or any other defendants?

A. I tried to but --

MR. DAVIDSON: Objection.

A. -- I (indiscernible) a lawsuit. I ain't, I ain't no lawyer and I wish I had, I wish I had a lawyer to represent me.

Q. Okay. So you, so you did look in to pursuing a legal claim at some point?

A. Yes, sir. Yes, sir, I put in -- the same officers that you just named except for Michael Hunt. I didn't have him. I didn't have Michael Hunt in, in the 1983 civil lawsuit. But every officer you named I had them in the civil lawsuit back in the 1983. I ain't a lawyer but I, I can't, I can't, I can't do nothing.

Q. But you tried to do it yourself?

A. I tried to do it myself, yeah.

Q. All right. And, and you, you tried to do that about how long ago?

A. That's been in 2018. In 2018 I put it in, I put it in. I had certain -- well, I, I put it in 2017, and after I had surgery, after I had surgery. And so I, I put in I think a couple more, a couple more motions or whatever. And after that -- I ain't no lawyer. I can't, I can't, I can't battle like that. I don't know how. I'm ignorant.

Q. Okay. So, it looks like Jeremy Ard and Otis Owens

both had pain after Gibson assaulted them.

Is, is it your testimony that you, you experienced pain following the event?

A. Yes, sir.

MR. DAVIDSON: Objection.

A. I still have the pain. I'm, I'm trying to be seen -- I'm trying to be seen -- I'm trying to be seen now by Mecklenburg Sheriff's Office Medical Facility for the same, for the same reason.

Q. Did, did Gibson probe or jam his fingers into your bellybutton?

A. He, he did.

MR. DAVIDSON: Objection.

A. He didn't, he didn't jam them in there. He lifted my shirt, my, my orange shirt and my thermal shirt, and stuck his finger inside my navel and I mean like he rubbing my bellybutton.

Q. Okay. Did he do that to anybody else?

A. He done it to everybody. He said, he said I -- the navel is a place we could hide dice. He was, he was dead set on finding them dice.

Q. How much do you weigh?

A. Right now I probably weigh about 200-pounds.

Q. Okay. And can you -- did, did -- I'm sorry to ask you this.

Could you stand up and pull your shift up so the camera can see your belly?

A. Yeah, he, he pulled my shirt up and he, he searched down my navel and went like this inside my, inside my bellybutton.

Q. Okay.

A. He was rubbing my bellybutton.

Q. Okay. All right. So how tall are you?

A. I'm about 5'9".

Q. Okay. Did you ever confront Gibson about what he did to you or any of the other inmates?

A. Yes, sir, right here. Oh, I was, I was hot. They, they called in -- they called in a sergeant and it's two lieutenants come in. But it wasn't for our protection or to help us. It was because I'm -- verbally I was raising hell with Gibson and Erikson because I know that Erikson -- I said, man, you just seen what this guy done. I said you not doing nothing about it and now y'all calling for, for help from first responders like I'm doing something wrong. I'm not wrong for what I'm complaining about. This man just hit me in my nuts and it hurt.

MR. DAVIDSON: Objection.

Q. Has, has Gibson ever accused people of playing dice before, before this incident?

A. I'm not -- I can't speak. I don't know.

Q. Did Gibson become visibly upset when he couldn't find any dice?

A. They both -- they were both, they were both upset. They were both upset because Gibson---

Q. Gibson and Erikson?

A. Gibson and Erikson, yes, sir.

Q. Did they appear to be mad because they couldn't find any dice?

A. Yes, sir. They said they was -- I can't remember exactly what they said on there. It's on the kiosk.

Q. Right.

Well, if, if they produced a document that says unfounded, is it -- has it been your observation that the facility keeps track of complaints whether they're founded or unfounded?

A. Yeah.

MR. DAVIDSON: Object.

A. They're, they're suppose to. I mean they're supposed to be on the kiosk.

Q. Yeah.

So these records exist somewhere?

A. They, they exist.

Q. Okay. All right. What did -- so what did -- did anybody do anything that you're aware of to investigate what happened to you?

In other words, if there's an unfounded result, I'm trying to figure out what somebody did to reach that result or if they did anything.

A. No. No -- they -- when, when he sent Gibson in there to search me and Otis' bunk area, they sent him, him in there a couple weeks after this happened after I reported the sexual, the sexual assault allegation on there. They let him search my bunk area. He found a piece of a pill. They come back to the, to the sallyport and asked me was this mine.

I said you can take that pill to any -- to medical. They'll verify that's not my, that's not my medicine. I take my medicine and Sergeant Riddell, at that time, told me, he said Wilhite, he said I'm gonna let this matter go. He said I'm gonna take that pill down to medical. If they say it's not your medicine, I'm gon' let this go. He said now this investigation you talking about with you and Gibson, I had nothing -- I had -- I don't know anything about this.

So, the next morning when I came out of rec, I put it in on the kiosk and I told him, I said I feel like I'm being retaliated on from the Aiken County Sheriff's Department for Gibson's -- that thing on January 27th and that --.

MR. DAVIDSON: Note an -- note an objection. Move to strike.

Q. Go, go ahead, Mr. Wilhite.

A. When, when Riddell come back on shift that night, he called the Echo Pod and told them to come and pack my stuff and they, they took me to lockup.

Q. Is there any doubt in your mind that Gibson used excessive force on you Ard, Owens, and the other people that he searched on the date we're talking about?

A. No, sir.

MR. DAVIDSON: Same objection.

Q. Your Honor -- okay. What were those reasons Mr. Wilhite?

(WHEREUPON, the following questions played were asked by Mr. Davidson.)

Q. Okay. What were those reasons, Mr. Wilhite?

A. You just, you just named it.

Q. Okay. Burglary?

A. Yeah.

Q. Okay. Now, you've indicated that y'all were in on January the 27th, 2017, in Echo Dorm.

Is that right?

A. That's right.

Q. You, Ard, and Owens were all in the same dorm or cell area, correct?

A. Right.

Q. Okay. And you said that, after this event with the

pat down search coming in from the, from the rec yard, you and Owens and Ard sat down and talked about it, correct?

A. Yes, sir.

Q. And you basically got Owens and Ard to file essentially the reports about the events with the detention center management in this case, did you not?

Mr. Ard (sic), let me make sure I understood what you've said. I think y'all sat around and talked and then you got Owens and Mr. Ard to file grievances or request for investigation with the management at the detention center, correct?

A. Let me put it, let me put it like this. We sat, we sat and talked. It wasn't y'all needed, y'all needed to put in this, y'all need to put in this. No, I told them what you need to do to go through, go through medical. If you want to see -- if you want to see result from, from this right here, you need to go through, you need to go through medical, be seen through medical, and let, let medical take care of everything cause they're -- there's nothing, there's nothing to hide.

Q. Okay. You, you knew how -- because you'd been there a good bit, you knew how the system worked which was the best way for them to get attention for what they were claiming had happened, correct?

A. Well, see this is, this is, this is where -- this

is where -- if you hurt, where you go?

You go to medical.

Q. I understand.

A. Right.

Q. Well, my question is---

A. So don't---

Q. ---you trying to---

A. Don't, don't try to -- don't try -- hold, hold, hold on. Don't try to twist this around that I'm an old convict and I the system and how do I beat these things.

You understand what I'm saying?

Cause I don't give a damn about this interview right there. I don't care about this interview. This interview don't do me nothing. I got 15 years minimum to do on my mother-fucking sentence.

You understand what I'm saying?

Q. Mr. Ard (sic), I'm, I'm asking---

A. I'm Wilhite.

Q. Wilhite and I'm sorry.

My, my question is, Mr. Wilhite, you had been there. So you knew the best way for Owens and Ard to get---

A. To get attention, to get attention that they needed cause they said they were, they were injured. That's exactly right.

Q. When was the last time you talked with Otis or Mr.

Ard?

A. I ain't talked to them since, since 2000 -- 2018. Like I, like I said, I got sent, I got sent to lockup. I got sent to lockup in -- somewhere, somewhere in-between -- this happened, this happened from January, from January 27th. December of 2018 I got sent to lockup. So I, I didn't -- I didn't see them again.

Q. All right. Now, when was the first time you talked or spoke with Mr. Hawkins or a representative of his office?

A. Well, I wrote Mr. -- I wrote Mr. Hawkins after Otis had, had hired him and he was representing Otis. I wrote to him to try to get him to represent me and he wrote me back and told me that he couldn't represent me because he was representing Otis.

Q. All right. Okay.

MR. HAWKINS: Okay. That conclude the deposition.

THE COURT: Thank you.

Mr. Hawkins, you have another deposition to play?

MR. HAWKINS: Yes, Your Honor. We'd like to play the deposition of Jeremy Ard.

THE COURT: All right. Ladies and gentlemen of the jury, I'm not going to take a break right just -- if you'd like to stand up and stretch -- do you need a break?

No?

All right. Let's stand up and stretch. Please do that

while they're -- feel free to do that while they are adjusting the videos.

(Pause.)

MR. HAWKINS: Your Honor, the -- can we start?

THE COURT: Yes.

MR. HAWKINS: Okay.

(WHEREUPON, the following is the deposition of Mr. Ard and the questions were by Mr. Hawkins.)

Q. Are you aware of why we're here about what Mr. Owens' case is about?

A. Oh yeah.

Q. Okay. Do you recall a, a employee where you were housed named Timmy Gibson?

A. Yes, sir.

Q. Okay. And did Timothy Gibson have anything unique about him, the way he, he treated or, or searched inmates while in your experience with him?

A. Oh yes, sir. He was very angry on that day. He thought there were some guys had some dice on the rec yard. And, when he come down to search us all in he made us all stand out there while they went and got the team to come in and search the whole pod. But he was just real rough. I mean I'm -- to the where he was, you know, just ramming his hand up between our legs, yanking on us.

Q. When you say yanking on you, you mean private area?

A. Yes, sir.
Q. Okay. And did you observe him do that to Mr. Owens?
A. Oh yeah.
Q. Did he do that to you?
A. Yes, sir.
Q. All right. Did it cause you pain?
A. Yes, sir, I been hurting ever since.
Q. Was it clear that it caused Mr. Owens pain?
A. Yes, sir.
Q. How many people did you see Timothy Gibson do this to?
A. It's about five of them in there.
Q. Okay. All right. And did anybody say anything like you're not suppose to be grabbing our privates or---
A. Oh yeah.
Q. Okay. What was his response when people would say something to him?
A. I didn't do it.
Q. Did Mr. Gibson accuse you and some other people of playing dice?
A. Yes, sir.
Q. All right. Were y'all actually playing dice?
A. No, sir.
Q. Did he ever find any dice?

A. No, sir.

Q. Well did it anger -- did it appear to anger Mr. Gibson that he didn't find any dice after, after he searched y'all?

A. Very much so.

Q. Okay. Do you think that had something to do with him grabbing y'all and being violent with you?

A. I'm sure there was.

Q. Aiken County or the Aiken County Sheriff's Office ever done anything to stop Mr. Gibson from doing that?

A. No, sir, he's been put right back in the same pod with us. An incident happened when Mr. Owens was in the pod and Gibson was put in the pod and then Gibson noticed that Mr. Owens was in there and he radioed up to the front and said you need to do something with Mr. Owens. He's starting up again and he hadn't, he hadn't said a thing to, to that man.

(WHEREUPON, the following questions were asked by Mr. DeMasters.)

Q. That's the (indiscernible) that he said he would ram his hand and he was yanking on you and you said -- just so I understand. I don't want to get too graphic.

But what do you mean when he said -- when you said he was yanking on you?

A. Grabbing testicles.

Q. Okay. He didn't grab the, the shaft or anything? Just the testicles?
A. Well, he bumped into it.
Q. He did.
Did he, did he twist it or did he just yank on it?
A. Well, there's a little twisting going on.
Q. Okay. Did he squeeze it?
A. Yes, sir.
Q. Okay. Did you complain to anybody about that?
A. We all complained --
Q. Well, I --
A. -- on that, on that day.
Q. Did you before the jail, correct?
A. No.
Q. Cause you filed grievances before at the jail, correct?
A. No.
Q. Okay. You never filed a grievance at the jail?
A. No.
Q. Okay. So you filed grievances on the kiosk?
A. Yes, sir, I mean I have before but not, not about that situation.
Q. Right.
Okay. And who'd you talk to at the jail about it, Erikson?

Who else?

A. Whoever came to the pod that, that sal -- during that situation.

Q. Okay. Did you know Mr. Owens before that date which I think was January 2017, January 25th?

A. Yes.

Q. Okay. How'd you know him?

A. Went to school together.

Q. Okay. How long have you known Mr. Owens?

A. Ten, 15 years.

Q. Fifteen years.

Would you consider yourselves close friends?

A. No.

Q. What school did y'all go to together?

A. Midland Valley.

Q. Do you see him socially?

I guess not anymore. He's at the Department of Corrections.

But prior to him being in the Department of Corrections, have you ever -- did you see him socially?

A. No.

Q. Okay. So what -- do you see him at the jail at Aiken County?

A. Pretty much.

Q. Okay. Have you gotten any outside medical

treatment about it?

A. No, sir, I haven't, haven't gotten medical coverage go do that. I guess it's a lack of knowledge to know what to do about it. I mean --.

Q. Again, now if we say it hurts, like how's it hurt?

A. Just like -- just throbs.

Q. Constantly?

A. Not constantly but a lot of times.

Q. Okay. Is there specific action that you do that makes it throb?

A. No.

Q. Okay. And how -- again, I'm not trying to be so graphic. But due to the nature of the allegations I got to be.

A. Yeah.

Q. Does it, does it throb when you masturbate?

A. No.

Q. Did you experience any pain when you were urinating?

A. No.

Q. Had any blood in your urine?

A. Hu huh.

Q. Okay. So just certain, certain times it still throbs to this day?

A. Yeah.

Q. Do you take any over-the-counter medications to treat the problem?

A. Hu huh. I believe it gave me ED just to be up front about it.

Q. Just for the record (indiscernible) erectile dysfunction?

A. Yes, sir.

Q. Okay. Do you think, do you think you've suffered from ED because of what Mr. Gibson did, yanking your testicles?

A. I didn't have no problem before that.

Q. How old are you?

A. Forty.

Q. I'm not much older than that. I turn 40 next year.

When was the last time you tried to have sexual intercourse when it didn't work?

A. Last week.

Q. Has it -- I'm sorry. Again, again I'm not trying to get too much into your personal history. But if you're gonna say that yanking caused your erectile, erectile dysfunction, how many times do you think you've tried and it hasn't worked due to ED?

A. A number of them.

Q. A number of times?

A. A great number.

Q. Okay. Have you ever taken any medications, prescription medication, to help with the ED?
A. I take Viagra now.
Q. Okay. Is that pre -- I assume that's prescribed to you by a doctor?
A. Yes, sir.
Q. Where do you get that prescription from?
A. It's doctors -- online doctor.
Q. Is it like a keep.com or one of those?
A. Heydoctor.com.
Q. Heydoctor.com?
A. It's more discrete. It's an em -- it's an embarrassing situation actually.
Q. I, I know. I'm, I'm not trying to embarrass you. I promise you that. Just trying to defend my clients to the best of my ability.
A. So I wasn't sure what to do about the injury, you know, if -- cause I, I didn't have money to pay for, you know, doctor visits for that --
Q. Okay.
A. -- at the time.
Q. Have you talked -- do you know a guy by the name of David Brockington?
A. I do.
Q. Okay. Was he there that date that, that Mr. Gibson

grabbed you?

A. Yes, sir, he was.

Q. Okay. Have you talked to David Brockington recently?

A. No, sir.

Q. Okay. When was the last time you saw David Brockington?

A. At jail at that time. That's the last time I seen him.

Q. Okay. What about Stephen Wilhite?

Do you recognize that name?

A. He may of been one of them. I can't, I can't recall.

Q. Okay. That's fine. So I guess you haven't talked to Stephen Wilhite recently?

A. No.

Q. Did you ever go to sick calls as a result of him grabbing your testicles the first time?

A. No, sir.

Q. It looks like you pled guilty to distribution of meth first back in 2016?

A. I took a plea deal.

MR. HAWKINS: That concludes the deposition, Your Honor.

THE COURT: All right. Thank you.

All right. Mr. Haw -- Mr. Hawkins, do you have any other witnesses?

MR. HAWKINS: We do not and we would rest and I ask that I be able to make my DV motion at the appropriate time.

THE COURT: All right.

All right. Ladies and gentlemen of the jury, please take the jury to the jury room.

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

THE COURT: Hold -- before you get into that, Mr. Hawkins, how long do you anticipate your -- Mr. Davidson, will you be presenting any witnesses just for the record?

MR. DAVIDSON: For the record, no, Your Honor. I don't think he's rested yet. So --.

MR. HAWKINS: I, I did. I just rested.

THE COURT: He rested on the record in front of the jury.

Would you like to rest in front of the jury?

MR. DAVIDSON: No, Your Honor. I'll wait until we get through with DV if I can.

THE COURT: All right.

MR. DAVIDSON: Your Honor, I can do that in the morning, judge.

THE COURT: Yes, I was going to say it's 3:25 now and I think your closings -- how long do you anticipate your

closings?

MR. HAWKINS: Mine's gon' be probably 45 minutes.

THE COURT: And yours?

MR. HAWKINS: The -- you mean all together or the, the opening or the rebuttal or --?

THE COURT: Just, just the opening.

MR. HAWKINS: The, the closing will probably be 30 minutes and I think the rebuttal will be 15.

THE COURT: Fifteen.

Okay. All right. And how long do you anticipate, Mr. Davidson?

MR. DAVIDSON: I'm never good at this either. But I'm gonna say 45 minutes.

THE COURT: All right. So I'm gonna add on time.

MR. DAVIDSON: Probably not a bad idea, judge.

THE COURT: I do that with both sides.

All right. Mr. Charlie, will you do the honors and -- well, let me -- I'm gonna go back here to the jury room and remind them not to discuss this case with anyone. So we'll stand down for -- we'll stand down for five minutes.

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

THE COURT: All right. Mr. Hawkins.

MR. HAWKINS: Yes, Your Honor.

THE COURT: Any motions?

MR. HAWKINS: Oh, I thought -- from what -- I thought

Will asked and you granted that we were gonna do that in the morning. I'm happy to do it now.

The DV motion?

THE COURT: Yeah, I think -- well, so, we've got some time to do it now.

MR. HAWKINS: I'm happy to do it now.

THE COURT: Okay. I wanted to do motions and then that way that will determine obviously for the motions, whether or not we need to enter into the charge conference and -- but I'm gonna do the charge conference in the morning.

MR. HAWKINS: Okay.

THE COURT: I want to get straight into our closings and charges --

MR. HAWKINS: Okay. So---

THE COURT: -- and then deliberation.

MR. HAWKINS: Okay. So, Your Honor, we obviously have to and also want to in this case make a directed verdict motion in favor of the plaintiff.

Your Honor, after all the evidence is put up, and the defendants having a chance to cross-examine witnesses and talk about the evidence that's been entered into the record, there's only one reasonable inference and that is of liability, gross negligence against the government.

The government's main wis -- witness, Mr. Gibson, admitted that, by all definitions, policy was not followed.

He, he admitted that whether the hand was done palm down or whether the hand was done like that or whether it was like we said and, and like a blade for the record, and -- or whether it was done with a grab like we said, he admitted, by all of those different accounts, they violated policy.

Under Jinks versus Richland County and the other cases we submitted, gross negligence can be found through a policy violation.

Now, what's coming in Will's directed motion, and, and what he's gonna respond with is that he's gonna say the government can't be held liable for a violation of a policy. But that's not the law.

There is a section in the Tort Claims Act in the exceptions to the waiver of immunity where the Legislature talks about not being able to sue for enactment or enforcement of a policy. But, one, that's not the same as violation of a policy, and, two, what -- the cases I submitted earlier, or I don't know if I've submitted them, but I have them here, Repko and Chop -- Chakrabarti---

THE COURT: Repko?

MR. HAWKINS: It's Repko, it's Repko versus County of Georgetown and then Chakrabarti versus City of Orangeburg. They talk about that issue specifically and I can hand these up to the Court. I've got the pertinent portions highlighted.

THE COURT: All right. I'll take them.

MR. DAVIDSON: If I can get a set too if you're handing it to the Court.

MR. HAWKINS: And so, Your Honor, what those cases say is that if there's a gross negligence standard, like there is in a misconduct case and excessive force case, then you read that gross negligence, gross negligence standard into all the other exceptions.

So, what we've done is we've shown something, through multiple witnesses, that was grossly negligent. We know that we're not barred from bringing -- we, we know that we're not barred from showing gross negligence for the policy violation because of Jinks versus Richland County. And because of those cases, we know that gross negligence standard has to be read into all the -- all other exceptions so they can't claim the defense of you're suing us for, you know, an unlawful policy or something like that. So -- and that's also included in our charges.

And so, for that reason, Your Honor, there's only one reasonable inference that can be drawn and it's that the government was grossly negligence.

So, that's our motion. We ask that a, a verdict be directed in favor of plaintiff.

THE COURT: Thank you. Give me just a moment please.

MR. HAWKINS: Yes, Your Honor.

MR. DAVIDSON: And if I could get a cite or get a copy? I think he's gonna hand up a copy to the Court, then we ought to get a copy. But I'll be glad to look it up.

MR. HAWKINS: I'm gonna see if we got an extra for Will.

THE COURT: Okay.

MR. DAVIDSON: Or you can just give me the cite.

THE COURT: Yeah.

MR. HAWKINS: And, and---

THE COURT: 818 S.E.2d 743.

MR. HAWKINS: And, and I'll put on the record too that---

MR. DAVIDSON: 743?

THE COURT: That's correct.

MR. DAVIDSON: Thank you, ma'am.

MR. HAWKINS: What that, what that kind of does -- what that exception kind of does is, is talks about what, in essence, is the Public Duty Rule and I know that Will in particularly likes the Public Duty Rule. But all the issues related to gross negligence and policy violations can be found in those cases and the progeny related to them, Your Honor.

And we also, we also put a big portion about the Public Duty Rule in our pretrial brief as well.

THE COURT: And the cite for the second case that he

references, Chakrabarti versus City of Orangeburg, is 743 S.E.2d 109.

MR. DAVIDSON: One what?

Excuse me.

THE COURT: 10 -- 109.

MR. DAVIDSON: Thank you, ma'am.

If you'll give me a second to look at it?

THE COURT: House fire.

Is this the fire case?

MR. HAWKINS: I believe so, Your Honor.

(Pause.)

MR. HAWKINS: Your Honor, could I, could I add one more thing---

THE COURT: Yes, sir.

MR. HAWKINS: ---just so I -- it's all out so you can respond to all of it?

THE COURT: Yes, sir.

MR. HAWKINS: The reason, the reason we think we're entitled to a directed verdict at least as to liability is that they had an offer -- they had a chance, during trial, to offer evidence to rebut the evidence we put on that that -- that's an uncontested policy violation and they haven't offered any evidence to rebut the, the evidence of gross negligence in the policy violation.

THE COURT: Thank you.

MR. HAWKINS: So that's our motion, Your Honor.

THE COURT: Thank you, Mr. Hawkins.

(Pause.)

THE COURT: All right. Mr. Davidson, any rebuttable, sir?

Any response?

Excuse me.

MR. DAVIDSON: Yes, ma'am.

Gross negligence is indicated by failure to exercise slight care. I think the evidence is clear that Officer Gibson exercised slight care in doing his pat down search. He did it according to his training.

The fact that there may be or may not be a policy violation, under the Tort Claims Act 15-78-60 -- and I'm trying to find the right page, judge. It says governmental entity is not liable for a loss resulting from and then it goes on to say adoption, enforce, or compliance with any law or failure to adopt or enforce any law, whether or not valid (indiscernible) including but not limited to any charter, provision, ordinance, resolution, rule, regulation, or written policy.

So, under the Tort Claims Act, the sheriff can not be held liable for a policy violation in regard to this matter. We did not raise Subsection 25 in our answer because they pled this as a -- what appears to be a gross negligence

case. As a result of that, that defense stands alone as to the other defenses we have in this case.

So, we also, as a result, and I don't believe -- I'm trying to look at Jinks again because Jinks involved a whole scenario of problems at the Richland County Detention Center with an individual being -- having DTs and whether or not the staff had monitored them appropriately or not. I'm not -- I can't remember if there was a policy violation. There may have been.

I'm not sure it was, looking at the opinions, I'm not real sure, and I'll have to look at them again, about how they address that cause I don't remember there being really a whole lot of discussion---

MR. HAWKINS: I can hand---

MR. DAVIDSON: ---about our policies.

MR. HAWKINS: ---up a copy of Jinks.

MR. DAVIDSON: That's fine. That's fine. I'll be glad to look at it. Tell me which one you're looking at. They're three of them.

2003. Okay.

(Pause.)

MR. HAWKINS: And while he's looking that up, Your Honor, I'll add that the last case I tried was a -- was against a Sheriff's Office and a detention center and, in this case, Judge Addy sua sponta said from the bench yeah,

policy violations are evidence of gross negligence without anybody asking him. So, he -- I know that Will likes that, that section. He just read a lot. He's filed motions against me using that section.

But it's pretty clear from Chakrabarti and Repko that when you have a gross negligence case like this, you don't, you don't -- you use the policy violations. It's read into all the exceptions and the exceptions to the waiver of immunity.

MR. DAVIDSON: Your Honor, the waiver of exceptions to immunity comes out of a case called -- I believe it's Atkins versus South Carolina Department of Corrections. In that case the State raised Subsection 25 in regard to the claims involving the Department of Corrections. They, at that time, also raised Subsection 5, discretionary immunity under the Tort Claims Act.

In that case, the Court found that you would read gross negligence into the discretionary immunity statute. Since it was raised, they basically said, to be fair, they would apply it to all the exceptions. I've always had questions about that language because, quite honestly, that means even when you have something involving a judicial matter, if you raise gross negligence, then you've got a judge, a judge or a judicial officer by gross negligence.

I think that's wrong but I haven't got the Court to

deal with that issue yet. Although I've had a couple cases up with it, they've dodged that issue. But, in this case, we didn't raise gross negligence. They raised gross negligence.

We solely raised the issue of a policy violation does not give rise to a claim against a governmental immunity -- against a governmental entity because it has immunity. If the Court -- if the Legislature had decided that policy violations were not going to be applicable to the -- in order to give rise to claims against the State, they would not have said in the paragraph is immune from suit for these reasons, and they gave the reasons and one of them was a policy violation. And it clearly says a written policy violation.

And I've raised this. Mr. Hawkins is right. I've had Judge Hocker agree with me and dismiss and throw out a case on a motion to dismiss. A question dealing with whether or not a policy -- allegations of a policy violation are applicable and they just -- he just struck those allegations. Although it's under advisement by Judge Manning because he filed a motion to reconsider, Judge Manning did the same thing. I raised that his allegations on a policy violation are applicable to the State because of the Tort Claims Act and I raised Subsection 5 as an allegation or as a defense to those allegations in a

complaint.

So, it's my position that the fact that you had it in Jinks, there may have been policy violations but there was a whole lot more. There were issues involving whether or not there was training involving DTs. There were issues about monitoring somebody either 30 minutes or 15 for DTs. There were all kinds of issues that gave rise to the death of Mr. Jinks in the Richland County Detention Center as a result of whether or not they appropriately followed medical advice in regard to checking on Mr. Jinks in the jail.

Unfortunately, I remember that case cause it stayed around for a couple of years and I got to go to the U.S. Supreme Court on it. But, in that instance, Your Honor, there were much more than just policy violations. There were a whole slew of evidence of gross negligence.

Here the fact that he did a check and used the back of his hand in a blade motion to check somebody's groin area, just like he was trained, does not, in my opinion, show -- failure to show slight care. He is testified he utilized an (sic) method that was approved by his training and, therefore, was appropriately done. And if you remember Officer Erikson, he basically described the same motion using the blade hand and going up and going over.

So, in our opinion, Your Honor, it doesn't give rise to a directed verdict in this case against the sheriff.

MR. HAWKINS: Your Honor, I would respond that if, if anything Will is saying was correct then Jinks wouldn't mean anything. Jinks wouldn't be a case. The Supreme Court in South Carolina wouldn't have said, you know, you -- a directed verdict motion based, based on, you know, I can't -- and I don't have it in front of me. But I think it was they put policy violations up there and they shouldn't have granted a directed verdict motion or a motion to dismiss or something like that.

The Supreme Court in Jinks recognized policy violations are evidence of gross negligence and it -- I, I want to get to the, the -- I want to get to the policy violation thing cause this is -- I have other cases with Will and this is gonna keep coming up I guess until we fix it.

Not only do Chakrabarti and, and Repko deal with that, but violations themselves are not the enactments of policies. You can't -- if somebody has a policy and say well, that's policy dumb, that can cause me harm, you can't sue for that. But you can sue if they have an internal policy and they violate it. When they have an internal policy that's designed for safety, and then you show that you breached -- that the wrongdoer breached that duty created by the policy, then that is evidence of gross negligence and that's what Jinks says and it's not just Jinks.

It's the other cases that we submitted. They have to do with -- they, they don't all have to do with governmental entities. But it's well established law that you have an internal policy, you violate it, then that's evidence of gross negligence next.

As to what he said about the search, he said well, in my opinion, you know that -- it, it doesn't matter what his opinion is. The evidence is -- I, I asked the question, so by anybody's definition, by your definition, by your lawyer's definition, and by our definition, y'all violated the policy, right, and he said yes. That was the evidence.

So it doesn't come down to their legal argument. That's the evidence. It's uncontested that they violated a policy that hurt my client. That's uncontested.

And so, under Jinks, there's only one reasonable inference, Your Honor.

MR. DAVIDSON: Your Honor, it, it may be something the jury can consider. But it's a great big leap to go from somebody doing a pat down search with a hand up to that's failure to exercise slight fair. That's a -- that's a huge jump. It might be evidence that a jury can consider. But it does not mean that it warrants directed verdict in the light most favorable to the defendant.

Mr. Gibson clearly pointed out that he was doing a search in accordance with his training. Like I said, maybe

evidence, but it doesn't necessarily -- I don't even think it's evidence because of the immunity. But if the Court decides it is evidence, then it goes to the jury, just like everything else, for the jury to decide whether or not the officer acted with slight -- did not act with slight care towards Mr. Owens.

MR. HAWKINS: It's not only evidence, it's uncontroverted evidence. Evidence comes from that witness stand. He admitted that he violated the policy and it was uncontroverted.

He could have gone back up and tried to rehabilitate that if he wanted but he didn't. That evidence is uncontroverted.

And as to what else came out, I think when Gallam was up there, one of those guys, there were admissions that or there's at least evidence that they didn't comply with the minimum standards. If you do what the bare minimum is in South Carolina, that's not even slight care. Bare minimum means slight care and they admitted that they, they -- there's at least evidence they didn't comply with that.

So, on several different fronts and through several different witnesses, they've admitted, in essence, what constitutes gross negligence. They admitted actions that our Supreme Court said are evidence of gross negligence and it was uncontested. That's---

THE COURT: All right. Let me look at Jinks for just a moment.

(Pause.)

THE COURT: All right. Mr. Hawkins, I am denying your motion for a directed verdict.

Are there any other motions, sir?

MR. HAWKINS: No. Thank you, Your Honor.

THE COURT: Thank you.

Mr. Davidson, do you have any motions, sir?

MR. DAVIDSON: You're ready for mine, Your Honor?

THE COURT: Uh-huh.

MR. DAVIDSON: All right. First on housekeeping, Your Honor, in this case, plaintiff's counsel has sued not only the county but also the Sheriff's Department and the detention center.

As the Court is aware, Aiken County is not liable for the acts of the sheriff here in the State of South Carolina. The -- actually the, the case that started all these arguments is Heath versus Aiken County where our Supreme Court decided, decided that a sheriff is a constitutional officer, that his employees, such as Mr. Gibson, would be an employee of the sheriff with the right to hire and fire, and, therefore, the county is not liable for the acts of the sheriff or his employees.

That has been followed in other cases, Coe versus

Nettles, which was actually a case involving a question of whether or not a sheriff could, in fact, in his official capacity be sued under 1983. The Court again found that the sheriff is a constitutional officer, and if I'm remembering right, I believe the county was named in that and it was also found not to be responsible for the acts of the sheriff.

And another case is Gulledge versus Smart. That case was a United States District Court case. I think it went to the Fourth Circuit. I can not remember. It's been a number of years since that case came out.

In that case we had a sheriff and York County involved in a case where a deputy sheriff shot and killed an individual and the Court found that York County was not responsible but that the sheriff was solely responsible since the employees are his employees. He has the right to hire and fire those employees. The county policies and procedures, and I believe this was in Heath, the county policies and procedures do not apply to the sheriff's deputies or the sheriff's employees. They are at will employees of the sheriff subject to the exceptions of at will.

As far as the Sheriff's Department and the department -- the detention center, neither of those entities are entities. They are simply departments of the

sheriff just like his investigative services, just like his process service, just like individuals who may work in the courthouse, they may be under civil service or -- and therefore, they would be separate and distinct departments of the sheriff but would not be independent entities subject to suit.

So, that's our first ground, Your Honor, to clean up that.

MR. HAWKINS: Your Honor, I'm not, I'm not being, I'm not being flippant or curt with the Court or anybody. I just -- I'm not sure what relief he's asking for.

Is he asking that the sheriff be dismissed or the county or --?

MR. DAVIDSON: The sheriff is the only defendant in this case, Your Honor.

MR. HAWKINS: The Tort Claims Act says you have to either name the sheriff or the entity I think and I -- I'll look that up or I guess Ethan will look it up. But I think that if you bring a claim under the Tort Claims Act, you have to name either the entity, which is the Sheriff's Office, or the sheriff I think.

Now, I -- you can't obviously collect the sheriff's personal money. But I think that's the statutory defendant.

And as far as the county goes and he's saying he wants the county out, the county obviously funds the Sheriff's

Department and the detention center and they have county written on their clothes and their cars and their -- and, and the detention itself. (Indiscernible) go in the detention center. So it's, you know, Aiken County sher -- Mike Hunt, Aiken County sheriff.

So, I'm not sure what relief the defense wants but --.

THE COURT: Mr. Davidson, you wish -- the suit, as it reads, is Sheriff Michael Hunt, Aiken County Sheriff's Office, and the Aiken County Detention Center, and Aiken County.

MR. DAVIDSON: Yes, ma'am, I know that.

THE COURT: All right.

MR. DAVIDSON: The only defendant that would be proper in this case is the sheriff.

In Heath, the Court found the deputy sheriff's act as sheriff's agents. Deputy sheriff's are not employees within the meaning of the statute permitting county governing bodies to develop policies and procedures of grievance procedures for county employees. Common and statutory law, which shapes relationships between the sheriffs and deputy sheriff, do not carry over to the sheriff's relationship with other department personnel. Therefore, the Sheriff's Department personnel, other than deputies, were employees within the meaning of the statute permitting county governing bodies to establish personnel policies for county

employees.

They're not county employees, Your Honor. They actually work for the sheriff.

Yes, Mr. Gibson has on his shoulder Aiken County. But it also says Sheriff's Office, Aiken South -- County, South Carolina.

We believe, Your Honor, in this instance, the sole defendant should be Sheriff Michael Hunt in his official capacity.

MR. HAWKINS: Your -- Your Honor, I don't know what purpose it would serve to do anything with the pleadings at this point. The jury's about to have this tomorrow.

If we get a verdict back and the Court wants us to file something we can. But I don't, I don't know why any of this would be necessary. Maybe he wants to do something in closing like say I'm suing the sheriff or something. I, I don't know.

But it doesn't serve any purpose at this point, and beyond that, I think that's (sic) -- Tort Claims Act says the agency for which the governmental actor works. I -- and Gibson works for the Sheriff's Office. That's -- I mean that's on his paycheck. It's on his shirt right now.

So I don't, I don't know why he wants -- I don't know what he wants really.

THE COURT: All right. All right. What's your ground

number two?

MR. DAVIDSON: What now, Your Honor?

THE COURT: What -- you said that this was ground one. This was one.

MR. DAVIDSON: This is first, first housekeeping matter, Your Honor.

THE COURT: Okay.

MR. DAVIDSON: The second housekeeping matter is he is alleged punitive damages in this action. On---

MR. HAWKINS: We're withdrawing that. They not alleged -- allowed. So, if it will speed things up, we'll withdraw the punitive damages.

THE COURT: All right.

MR. DAVIDSON: He's also alleged---

THE COURT: Let the record reflect -- hold on, Mr. Davidson.

Let the record reflect that Mr. Hawkins has withdrawn on his request for punitive damages.

MR. DAVIDSON: That's correct, Your Honor.

THE COURT: All right.

MR. DAVIDSON: He also---

THE COURT: Mr.---

MR. DAVIDSON: I---

THE COURT: ---Davidson.

MR. DAVIDSON: He also alleges statutory damages which

I am not sure what he's alleged to that cause I know of no "statutory damages" in this case.

He also asks for actual damages. Well, there's been no evidence of future medicals. There's been no evidence of medical bills. There's a very limited period of time where they sustained pain. I believe seven to 10 days. So there is no evidence of future damages in this case.

So, I believe those all need to be pared down and we should be granted directed verdict in regard to those damages, Your Honor.

THE COURT: Mr. Hawkins.

MR. DAVIDSON: And that's the last of -- I'm trying to think. That's the last real housekeeping chore we've got, Your Honor.

THE COURT: Thank you.

MR. HAWKINS: Your Honor, there was voluminous evidence throughout the trial, the trial of the damage of violation, humiliation, physical pain. So I, I mean the Tort Claims Act says you can get actual damages. So, I don't know. I don't think there's any grounds for that one.

And also, as far as the statutory damages go, we have a standard prayer for relief and we -- a lot of times if we're copying and paste then from like a Section 1983 complaint or something like that, we use that language. Obviously in Section 1983 you get statutory damages through 1988.

But we're not claiming any attorney fees and we're not claiming punitive damages cause we can't under the Tort Claims Act. But that doesn't -- the Tort Claims Act does have a statutory cap for damages.

So, if this jury comes back with a, you know, one million-dollar verdict, then we're capped to $300,000 per occurrence. So, if they say, you know, there's three occurrences and we give you one million-dollars, we're capped at 900,000.

THE COURT: Any, any response regarding any---

MR. DAVIDSON: No, Your Honor.

THE COURT: ---future damages?

MR. DAVIDSON: No, Your Honor.

THE COURT: Hold on, Mr. Davidson. I mean from---

MR. DAVIDSON: Oh.

THE COURT: ---Mr. Hawkins.

MR. HAWKINS: Your Honor, without having the record in front of me and it's -- I mean they -- there was a lot of evidence put on about, about the injury and about the pain. We're not claiming future lost wages cause we didn't put up evidence of that.

But as far as what might happen in the future, I don't think it would serve any purpose to make any kind of ruling about that cause I mean he said the pain comes and goes. But we didn't put up evidence of like future lost earnings

or anything.

THE COURT: Right.

But also no evidence -- I do not recall any evidence regarding future treatment.

MR. HAWKINS: We didn't -- I don't think we claimed any future treatment.

THE COURT: All right. All right. Thank you, Mr. Hawkins.

So, Mr. Davidson, you're asking me or, or your request -- he's already withdrawn any punitive damages. I'm -- I am going to withdraw -- I'm, I'm not quite sure where we are or where -- what charges have been requested. My law clerk --.

Okay. All right.

MR. HAWKINS: And we -- and, again, Your Honor, there may be language in the complaint, just cause we, we copy and paste a lot, the complaint may have something about future damages. But I don't think we've claimed any of that here at trial and said hey---

THE COURT: Right.

MR. HAWKINS: ---you're, you're gonna have to go to a psychologist in 10 years or anything.

THE COURT: That is not my recollection either, Mr. Haw -- Hawkins.

And so your damages -- you're saying, you're saying the

damages are limited to some elements of actual damages?

Are you alleging that he's -- he's alleged no damages at all?

What are you saying, Mr. Dawkins -- Mr. Davidson?

MR. DAVIDSON: At best, Your Honor, he said he had seven to 10 days of pain. After that, I believe he admitted that he had had no further problem.

Now, let's talk about the hydrocele and the issue of the antibiotic. There is absolutely no evidence that most probably the search caused the hydrocele and that would be a medical diagnosis which would require, in this case, expert testimony in some form to establish that most probably the hydrocele was caused by the search. And by his own admission, after 10 days he had no further pain and no further issues.

Now, he has not produced any evidence that, in fact, the hydrocele came as a result of any injury. In fact, the inference that can be drawn by the jury in the light most even favorable to the plaintiff is that the antibiotics that were provided to him, according to his own testimony, the antibiotics that were provided to him at the end of February, one month after this, essentially took up to 10 days and, after that, after about a week, everything cleared up.

Well, antibiotic -- antibodies -- antibiotics are for

the treatment of an infection. There is no evidence whatsoever that the infection was caused by the search nor is there any evidence that Mr. Gibson most probably caused the injury and I believe the proper way where the question would be phrased, if it had been asked, would of been to a doctor do you have an opinion within a medical degree of certainty as to whether or not most probably Mr. Owens' hydrocele was caused by an injury he received in January 24th or 5th, I can't remember right now, 2017.

And the doctor would have to say yes, I have an opinion and then the next question would be what is that opinion. And even it would be it was caused by the trauma or it might even be it was caused by infection that he got from any other type source in the jail or the fact that he may have blood pressure issues, the fact that he masturbates, or he could just have gotten a urinary tract infection that affected his -- essentially the tubing in his scrotum which caused fluid to build up.

There are multiple reasons you can have swelling in the scrotum in which is, is called a hydrocele and there is absolutely no evidence of that.

MR. HAWKINS: Your Honor, first, as, as Your Honor knows, and as lawyers across the State know, circumstantial evidence is as good as direct evidence. We could of put a doctor up if we wanted to call a medical experts. We didn't

but we didn't have to. The case law's clear you can use circumstantial evidence. You can draw conclusions. That's why we have jurors so they can use their common sense and draw conclusions.

There -- it's undisputed that my client's offered testimony about his physical pain, his humiliation, his feeling of violation. It was clear that his mother observed the same thing. She said he seemed depressed. He seemed down. He seemed different. His father offered the same thing. We're definitely not required to present an expert to talk about the change in mood or somebody being down or, or being visibly distraught.

Secondly, all this stuff he said about this is all the stuff that caused the hydrocele, respectfully the only thing Will's a doctor of is jurisprudence like me. He's not a doctor. He doesn't know and he didn't put up his own expert.

He could of put up, he could of put up an expert and said okay, doctor, what are some other theories of what causes this injury. Tell the jury why you think, you know, it's caused by somethings else. But he didn't do that.

He brought it up in opening and said folks, I submit to you that an infection is, is -- you know, that's how -- you treat that with antibiotics or something like that. Antibiotics is for an infection.

He's not a doctor. He didn't put up a doctor. The evidence came out the way it did and he doesn't like it now. But he doesn't get to cut out the case because he doesn't like the evidence.

The last thing is, you know, he, like I said, can testify about his pain. There's no question -- it's been the jurisprudence of this state for at least 250 years that pain is a -- that's the most basic damage one has. He can testify that this event happened and it hurt me and that survives a motion for summary judgment, a motion for directed verdict, a motion to dismiss.

Those allegations survive any kind of motion at that stage because he's offered testimony that he, that he witnessed the event that happened to him and it caused him pain. It caused him psychological pain. He can testify about that himself. It caused him emotional pain. It caused him physical pain and it caused him embarrassment when he had to go back and get treatment for it.

He testified all -- about all of that. It's all in through direct evidence and circumstantial evidence and the fact we didn't put a doctor up doesn't kill anything.

MR. DAVIDSON: Your Honor, I'm not arguing about pain. I'm not arguing about embarrassment.

What I'm arguing about is there is no evidence to substantiate the causation of a hydrocele. The evidence

that can be viewed in a light most favorable to the plaintiff that, in this instance, he had -- he was given antibiotics. I think the Court and the jury, within their common knowledge, would know that an antibiotic treats an infection. It does not mean that the infection was caused by the trauma.

They would have to establish that most probably the trauma caused the hydrocele, which was based on an infection, and they don't have that. And there is no way to establish medical causation in -- like in this case through circumstantial evidence.

Circumstantial evidence in this case is after seven to 10 days he had no problems period, had no problems. He claimed that he did not go to a doctor or see anyone for the hydrocele or the ultrasound until a month later. He didn't get the antibiotics for a month later.

I have no clue what caused it. He didn't introduce evidence as to what caused it and then it's his burden of proof. It is not my burden of proof to show that we didn't cause it. It's his burden of proof to show that most probably, and I think the Court probably tried some cases that language is (indiscernible) that most probably the injury caused X. And there is no evidence and this is not evidence or not a condition that normal individuals might understand or know and it would need medical testimony

introduce -- to be introduced to establish the causation issue, Your Honor, and that's our position.

THE COURT: Thank you.

MR. HAWKINS: Your Honor, he's welcome to say most of that stuff to the jury. But that's what it is, is a jury question.

He's, he's arguing, you know, he didn't go till a month later. That's a jury question.

He, you know, he did X. He did Y. He did Z. He didn't make sick calls. That's for a jury. That's evidence for a jury. I put up evidence. He cross-examines my witnesses and then the jury figures it out.

You know, to say that -- to say that a directed verdict should be granted on, on these damages we talked about, one, would fly in the face of Hancock. I mean that's a summary judgment case. But the same standard here. You know, is, is there any evidence in the light most favorable to the plaintiff.

The jury is able to say all right, well, he had a -- he had a swollen scrotum, you know. He had this, jury, that happened to him. He testified about all this and he saw his swollen scrotum. He didn't need a doctor to say that.

And as Your Honor appropriately ruled at the beginning of this case, there's nothing wrong with saying the word hydrocele. He knows he went and got treatment for a

hydrocele. They did a sonogram on her (sic) or an ultrasound on him. That's all evidence the jury heard.

And so I -- Will keeps trying to turn this into a medical malpractice case and it's not.

THE COURT: All right. I've heard enough. Thank you for your arguments, gentlemen.

MR. HAWKINS: Thank you, Your Honor.

MR. DAVIDSON: And, Your Honor, I just -- I don't want to belabor the point. Page 42 of his deposition, I asked this question right out of it---

THE COURT: Who Owens -- Owens'?

MR. DAVIDSON: Owen (sic).

After that week to -- or week and a half, any other problems?

No, sir.

THE COURT: All right. Thank you.

MR. HAWKINS: I don't know why---

THE COURT: I, I---

MR. HAWKINS: Okay.

THE COURT: Yeah, I've heard from both of you and I---

MR. DAVIDSON: Yes.

THE COURT: ---(indiscernible).

MR. DAVIDSON: I just wanted to make that on the record.

THE COURT: Very good. Thank you, sir.

All right. I am denying the defense -- the defense's motion for directed verdict.

MR. DAVIDSON: Can I, can I raise one other issue?

THE COURT: Yes.

MR. DAVIDSON: Well, there might be.

If you look at his allegations of, of gross negligence, Your Honor, and, and I think you and your law clerk can probably look at this and see, like Number, Number E, failing to provide immediate medical care.

THE COURT: This is in the such -- the complaint?

MR. DAVIDSON: Yeah, in the complaint.

THE COURT: Uh-huh.

MR. DAVIDSON: There's no evidence of that. There's no evidence -- he says and by failing to adequately investigate.

Well, that's after the fact. That has absolutely nothing to do with the actual event surrounding the "injury" to Mr. Gibson.

The next one is -- let's see.

THE COURT: All right.

MR. DAVIDSON: Adopting the conduct.

Well, we've denied liability. There's, there's no way that negligence can be established or gross negligence by virtue of the idea that we adopted some conflict which is in issue.

Employee of -- were incompetent, lacked proper education and training, which fits into his negligent hiring and retention and supervision. There's been absolutely no evidence of that.

Captain Gallam talked about he interviewed him, the fact he -- even my officer talked about they do a background check. He fills out a, a questionnaire and they do polygraph checks. That's the only evidence there is on that.

Unlawfully detaining and falsely imprisoning the plaintiff. I am not real sure what that is cause he was in jail and at that---

MR. HAWKINS: We'll withdraw that.

MR. DAVIDSON: Okay. That's fine. Thank you.

In threatening the plaintiff. Now, I had the plaintiff indicate that, after this -- that -- even before and after, he's never been threatened by Officer Gibson.

Bathroom and food. There -- there's absolutely no evidence we denied him a bathroom or denied him any food.

So, that, along with the negligent hiring and supervision, which really should be gross negligent hiring and supervision, there's absolutely no evidence of any of that either, Your Honor.

So, we would ask for directed verdict on those also, Your Honor.

MR. HAWKINS: If, if Your Honor is going to stick to the prior ruling, I won't argue. But if there's a question, I will be glad to argue.

THE COURT: I have a question about this bathroom and food allocation.

MR. HAWKINS: All right. We'll---

THE COURT: I don't, I don't remember any testimony regarding anything---

MR. HAWKINS: I, I don't---

THE COURT: ---with---

MR. HAWKINS: Had me to with -- are, are we just striking out parts of the complaint I guess?

THE COURT: I'm just gonna rule -- I'm---

MR. HAWKINS: That's fine.

THE COURT: ---gonna give a directed verdict---

MR. HAWKINS: On the bathroom and food?

THE COURT: ---on the bathroom and food.

MR. HAWKINS: Okay.

THE COURT: Unless you withdraw it.

MR. HAWKINS: Yeah. We'll withdraw the bathroom and food allegation.

THE COURT: All right. And your other one -- ones, Mr. Davidson, were, were what?

Were bathroom and food?

MR. DAVIDSON: I'll, I'll read them out. That would be

Paragraph 28. We obviously -- A, dealing with policies and procedures and B with policies and procedures given the Tort Claims language about not being liable for policies and procedure.

Failing to warn the plaintiff and others of the defendant's included they're going -- dangerous propensity towards others. There's no evidence of that.

Failing to adequately investigate the conduct towards the plaintiff. That would be after the fact and would have no relevance to this---

MR. HAWKINS: That---

MR. DAVIDSON: ---case.

MR. HAWKINS: That has to do with our retaliation claims.

MR. DAVIDSON: In failing---

MR. HAWKINS: Yeah, it does.

MR. DAVIDSON: In failing to appropriately interview candidates, requiring candidates to be qualified before they hire them. That goes into the negligent hiring or the gross negligent hiring and retention that's considered after the second -- I think their second cause of action.

No. When you -- yeah, it is their second cause of action, Your Honor.

THE COURT: All right.

MR. DAVIDSON: Let's see. Threatening -- and I think

he removed false imprisonment. I believe that's all of them, Your Honor.

They're all set forth in Paragraph 21. I'm just -- what I'm trying to do, Your Honor, by doing that, is when you get to the charges, I want the charges to be limited to what really has been proven in this case and---

THE COURT: All right.

MR. DAVIDSON: ---we're talking about a frisk search.

THE COURT: All right. Do you have any response, Mr. Hawkins, with regards to the negligent hiring?

MR. HAWKINS: Sure, Your Honor.

There was a lot of evidence about -- so negligent retention, hiring, training, supervision all goes into one cause of action and we've heard a lot of evidence about -- you know, I asked questions are you suppose to do PREA training.

Yes.

Okay. Do you have that for the jury?

No.

The jury's able to do with that evidence what they will.

As far as when Mr. Gibson was hired, we put up a good bit of evidence that they didn't do anything except take an online application and get one interview.

So he cross-examined on that. There's conflicting

evidence on that. That goes to the jury.

As far as the negligent hiring and supervision claim, I don't think, and, and I might be wrong on this, the Court can tell me, I don't think the gross negligence standard applies to negligent hiring and supervision for a governmental entity. I think the only, the only thing the gross negligence standard applies to is the act of excessive force.

So, where there's a, where there's a, you know, excessive force and an arrest or unlawful arrest or something like that, you have a gross negligence standard. But I don't think the gross negligence standard applies to negligent hiring and supervision. He wants the governmental entity. I think that's a central negligence standard but I could be wrong.

MR. DAVIDSON: And then that brings us to the last question, Your Honor.

What, in actuality, is this case about?

Is it a gross negligence case?

Is it a sexual assault case or is it an excessive force case?

We've heard all three of those theories banded about. They all revolve around the actions of Gibson in doing the pat down search and they're, they're issues because if they're going to go the area of sexual assault or excessive

force, they're issues that arise in regard to this case that have come up during the trial of this matter. If it is a gross negligence case, then it's a gross negligence case.

So, I think, at this point, they need to elect which theory they're going under.

MR. HAWKINS: Your Honor, I -- I've never heard that position taken. But obviously an act of recklessness, which is gross negligence, can constitute a sexual assault. That's -- I mean that happens in courts all the time everywhere unfortunately.

But what -- if Gibson had done this on the streets, somebody caught him, been convicted, he could have been -- he could have been convicted of a sexual assault for this same action that constitutes gross negligence. That's -- and it doesn't necessarily require an intentional act. But it does require that you even, you not even exercise slight care, which is what the evidence has shown that he did.

In fact, by his own word, he didn't do anything wrong. His evidence is yeah, I did everything right. I wasn't grossly negligent. Our evidence is that he was.

So, if -- for the jury to figure out was he or not. But he can't say it's not a sexual assault just because it's also grossly negligent. Of course a sexual assault is grossly negligent. It's horrible.

THE COURT: All right.

MR. DAVIDSON: And the reason I raise that, Your Honor, if it's a sexual assault case, that's an intentional act. If it's an excessive force case, that's not a negligent act. That's not even a gross negligence act. That is also an intentional act on behalf of Officer Gibson in this case. If it's an intentional act under the Tort Claims Act, besides even under the immunities, but actually in the body, the sheriff can not be sued and held liable for intentional acts that cause harm to an individual and that's what we have alleged in this case.

MR. HAWKINS: Your Honor, they can't have it both ways. They can't say we didn't do anything bad at all. But if we did, it was so intentional that it's an intentional act. And I don't, I don't know if he's trying to hang Gibson out to dry on his own here. But he should want it to not be an intentional act so that he has coverage and a lawyer hired by the -- well, it's not IRF. It's, it's their own money for a while. He's trying to hang him out to dry personally.

I mean I don't know -- I've never, never seen somebody do that in open court about their client. But definitely he should want it to stay a Tort Claims Act. We haven't alleged an intentional act anywhere in our complaint.

MR. DAVIDSON: I'm not, I'm not hiring -- I'm not hanging anybody out to dry, Your Honor. I'm---

THE COURT: I understand.

MR. DAVIDSON: ---bringing the law and he's the one that has created this conundrum.

MR. HAWKINS: No, I didn't make the motion, Will. You did and you're wrong.

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

It's -- I am -- I'm denying the motion for directed verdict.

You withdraw the bathroom. You withdraw the punitive damages.

MR. HAWKINS: Yes, Your Honor.

THE COURT: And the jury will see the other -- the jury will be given the other, the other elements.

MR. HAWKINS: Thank you, judge.

MR. DAVIDSON: The county, Your Honor, in or out?

THE COURT: I'm sorry?

MR. DAVIDSON: The county.

THE COURT: Oh, with regard to the other defendants?

MR. DAVIDSON: Yes, ma'am.

THE COURT: Yes.

Mr. Hawkins, I believe the sheriff can -- is the only one who needs to be named as the defendant. But you were saying that you -- that it -- there's a requirement for---

MR. HAWKINS: So sheriffs---

THE COURT: ---(indiscernible)?

MR. HAWKINS: I think the Tort Claims Act gives us the

ability to name a sheriff or the Sheriff's Department.

What I don't want to do is, if, if we get a verdict -- if we're lucky enough to get a verdict, what I don't want to happen is him say oh, well, we got such and such out. So we're off the hook or something like that. And I also don't want him to, in closing, act like we're suing Sheriff Hunt because that would mislead the jury into thinking that I'm gonna get Sheriff Hunt's house or something.

So, under the Tort Claims Act, the proper entity to sue in this case is the sheriff or the Sheriff's Office --

THE COURT: Right.

MR. HAWKINS: -- the Sheriff's Department, which is what we've done both just in an abundance of caution.

But I -- what I would suggest for the Court is that this matter be allowed to go to the jury. What happens after the verdict we can agree to on the record, you know, what's in or out or dismissed or not dismissed. But I don't want -- I don't want to face shenanigans and, and gamesmanship because one entity or another being let out. And also they've waived it.

This has gone on since 2017 and they've---

THE COURT: All right.

MR. HAWKINS: ---never -- you know.

THE COURT: All right. I'm, I'm going to leave the, the caption -- I'm gonna leave the parties in as they are.

Mr. Daw -- Davidson's motion and argument is on the record.

MR. HAWKINS: Thank you.

MR. DAVIDSON: Your Honor, as far as the county's concerned, I'm not looking to do shenanigans. They're just not the proper party.

THE COURT: Okay.

MR. DAVIDSON: If the Court decides to leave them in, then we'll make the appropriate motion posttrial and, you know, if the jury returns a verdict against the county, then no shenanigans. I know where we'll head.

Thank you, Your Honor.

THE COURT: Thank you, sir.

MR. HAWKINS: Thank you, Your Honor.

THE COURT: Thank you.

That leaves us to -- can you print off -- Ms. Charter -- Madam Clerk, can you please print the -- you'll receive in just a moment the proposed charges for both attorneys.

Can you print them off?

(WHEREUPON, the repose by the clerk was indiscernible.)

THE COURT: Just three.

(Pause.)

THE COURT: All right. Gentlemen, you'll receive, in just a few minutes, the proposed charges and we will -- I'll

have our, our conference.

MR. HAWKINS: Your Honor, can I ask a question while those are getting printed off?

I want to make sure just that I'll be getting ready to close this evening, there's not gonna be any renewed motion?

The Court's not gonna hear motions tomorrow?

We're just charging the jury and closing, right?

THE COURT: That's correct.

MR. HAWKINS: Okay.

(Pause).

MR. DAVIDSON: Your Honor, can I, just for the record, I hate to do this, of course, I just want to get the cite of Heath versus Aiken County.

THE COURT: Yes.

Now can you speak up cause---

MR. DAVIDSON: Yes, ma'am I can.

THE COURT: ---I'm having a hard time hearing you?

MR. DAVIDSON: I am.

(Pause.)

MR. DAVIDSON: Your Honor, Heath versus Aiken County, for the Court and for Mr. Hawkins, is 368 S.E.2d 904.

THE COURT: Thank you.

MR. DAVIDSON: And I have a copy if you'd like a copy.

THE COURT: All right. May I have that copy?

MR. DAVIDSON: Thank you. Thank you, Your Honor.

(Pause.)

MR. DAVIDSON: Compliments to the judge. I liked it for -- I could actually read it.

THE COURT: It's hard to read small -- I come down off the bench to do my charges. It's hard to read off. I'm having a hard time reading your case.

MR. HAWKINS: That's my fault, Your Honor. I'm the one who printed it out.

THE COURT: No, it's mine. I missed my eye appointment sitting in trial. Not this one.

MR. DAVIDSON: I have a magnifying glass in the office, Your Honor.

THE COURT: I'm too ashamed to use them.

MR. DAVIDSON: You get my age, you'll use most anything, judge.

THE COURT: Mr. Hawkins doesn't need glasses.

You have contacts?

MR. HAWKINS: No, Your Honor.

All right. You both have copies of the charges.

MR. HAWKINS: Yes.

Your Honor, may I take my jacket off?

I'm about to burn up.

THE COURT: Yes.

All right. So, as you'll see we, we have -- all right. So, as you see, these are -- I've got the introductory

charges, roles of the judge and jury.

Do -- does anyone have any issues with these introductory type charges?

MR. DAVIDSON: So far none, Your Honor.

THE COURT: It's just standard cause of action, preponderance of evidence, the direct and circumstantial evidence charge, the credibility of witnesses charge. We normally charge expert witness but we, we did not have---

MR. HAWKINS: We didn't have any expert witnesses.

THE COURT: ---testimony of -- that's right.

So, we will withdraw that charge.

Depositions charge. I've placed objection charge.

You-all are familiar with the objections charge?

MR. DAVIDSON: I am.

MR. HAWKINS: It's, it's (indiscernible) us, Your Honor.

THE COURT: All right. We do it to protect our (indiscernible).

MR. DAVIDSON: Thank you, Your Honor.

THE COURT: All right. Specific law.

Now this is where we need to get into it. Government entity as a person charge. Charge---

MR. HAWKINS: Your Honor -- yeah, we have, we have the issue with governmental immunity because it kind of, it kind of just takes Will's position and inserts -- it's not the

law. And so it kind of inserts Will's position at -- as if it were the law.

THE COURT: Okay. Hold on. Let's get -- we'll get to that.

MR. HAWKINS: Oh, I thought we were---

THE COURT: Okay.

MR. HAWKINS: I thought---

THE COURT: Let me -- yeah, let me make sure you-all are all right---

MR. HAWKINS: Okay.

THE COURT: ---on governmental entity.

Everyone's okay?

MR. HAWKINS: Oh, yes, yes, yes, yes. Sorry. I just -- I looked. I thought I was at governmental immunity. I'm sorry.

THE COURT: Yes. That's all right.

Respondeat superior, everyone's okay with that?

MR. HAWKINS: Yes.

MR. DAVIDSON: The only thing I would raise, Your Honor, technically it's not really respondeat superior because liability is established through the sheriff by virtue of the Tort Claims Act and I know a lot of judges do respondeat superior. But it's really a statutory obligation the sheriff has rather than respondeat superior.

If the Court's gonna keep respondeat superior, then we

need to rather use the word negligent, it has to be the word gross negligence, Your Honor, cause that would be the standard in this case under the Tort Claims Act.

MR. HAWKINS: Your Honor, we would respond by saying it, it doesn't need to be inserted in here the word grossly. It -- because some of the -- some portions of the Tort Claims Act, as far as I'm aware, don't carry that standard. We have a negligent hiring and supervision claim that would necessarily be done by other employees where the Sheriff's Office would have to be named in that. And the Sheriff's Office is the governmental entity would be vicariously liable and liable through respondeat superior.

So, we don't think anything should change on that charge.

THE COURT: All right. You -- Mr. Davidson -- excuse me.

Mr. Hawkins, you're saying that some of, some of the elements that -- some of the --

MR. HAWKINS: Some, some of the --

THE COURT: -- actions are under the Tort Claims Act---

MR. HAWKINS: Right.

THE COURT: ---and not -- the standard is not gross negligence?

MR. HAWKINS: I think for negligent hiring and supervision it's only negligence and, again, I have not

checked. I'm afraid, as soon as I take that position, I'm gonna check and be wrong. But I -- I'm pretty sure that there's not a gross negligence standard for negligent hiring and supervision. I think that applies to a claim for---

THE COURT: Well, this---

MR. HAWKINS: ---excessive force.

THE COURT: This is what I'm gonna do. I am gonna add grossly negligent in. If, if overnight you make a determination, I will allow that---

MR. HAWKINS: Okay.

THE COURT: ---to be changed in the morning.

MR. HAWKINS: Okay.

THE COURT: Or, excuse me, I will allow the consideration for that to be changed---

MR. HAWKINS: Okay. Thank you.

THE COURT: ---in the morning.

Governmental immunity, you have an issue with that.

MR. HAWKINS: Absolutely. This is not the law.

That -- that's one of the exceptions that Will -- and, and he gets by with this for people that don't know better but that's not the law.

He pulls that exception out and Jinks and Chakrabarti and all those cases I just handed up say that if you have a gross negligence standard, you read that into all the other exceptions. So you can't pull something out and say, you

know -- well, one, we're not, we're not suing them for enactment of a policy or enforcement of a policy.

We're suing them because they violated their internal policies. So that's the first thing. That's the first reason it's confusing.

The second thing is, under Chakrabarti and Jinks, you apply that gross negligence standard to all these other exceptions. So that exception he's talking about doesn't apply. If it did, no case would ever make it to the jury cause, in every Tort Claims Act case, you're talking about violation of a -- policies and procedure just about.

So, if that were true, there, there just wouldn't be any excessive force claims. There wouldn't be any gross negligence claims.

So, that, that leaves the jury to believe all these policy violations are not evidence of gross negligence and then the Court has to turn around, turn around and charge them that policy violations are evidence of gross negligence. It's confusing because it looks like the Court's saying two different things.

THE COURT: All right. And so at the -- I -- have you read the charge in its entirety?

MR. HAWKINS: Let me --.

THE COURT: Go, go to the end. The end of this charge reads a governmental entity may be held liable for loss

resulting from responsibility or duty.

MR. HAWKINS: Yes, Your Honor. I see it.

THE COURT: You see it?

MR. HAWKINS: Yes, Your Honor.

THE COURT: That does not address your issue?

MR. HAWKINS: No, Your Honor, because it starts out by saying Aiken County Sheriff's Office or it starts off by saying they can't be held liable for injury resulting from and it goes into this language that's -- that's specifically addressed by the case law and it looks like they can't be held liable for a policy violation, which is at odds with the, the language lower down in the, in the charge.

And so, one, it's not the law, and, two, I think it's confusing because what -- what he's doing is he's taking that, that piece of Tort Claims Act he talks about if you, you can't sue for the enforcement or creation of a policy but that's not the same thing.

One, it's violating it -- and it, it create a policy and violating it through an act of gross negligence.

So, even if Jinks and Chakrabarti didn't exist, this would still be improper. But they do exist and it's super improper and Will, Will just gets by with this without people catching it.

MR. DAVIDSON: Huh.

May I address this, Your Honor, when you get a chance?

MR. HAWKINS: And that's, and that's super important for this case, judge, in, in our opinion.

THE COURT: Mr. Davidson.

MR. DAVIDSON: Your Honor, my understanding of the reason you have charges is to charge the law in regard to the case before the court.

In this instance, the law of the Tort Claims Act applies. So, the subsections that we handed up that are actually in the jury charges now do provide the jury the law that applies to governmental entities and where and when they can be sued.

If you look at the subsection dealing with policies and procedures, which is your first part of your charge and I believe it is dealing with the adoption enforcement, the third word in that charge is compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including but not limited to and then it goes through and lists all of them including written policies. Compliance with written policies is what this case is about. Governmental entity would not be liable for those.

Now, the others dealing with discretionary immunities, the same thing applies.

Now, if he's making an argument about well, gross negligence should apply to all those subsections, there was a case I believe -- there's a case called Jones v. Lott,

Your Honor, and I can give you the cite if I can read it.

MR. HAWKINS: While he's looking for the cite, Your Honor, the position he's taking is exactly what those two cases address in Jinks and Chakrabarti. They, they, they address this exact position and said you, you don't get to opt out because you're pointing to a policy violation. Where you have a gross negligence standard applicable, you apply that throughout the exceptions.

It's the, it's the exact thing -- same thing he's arguing. It's exactly what he's put in his proposed charge.

MR. DAVIDSON: The Jones v. Lott I'm gonna give you a cite and it's a South Carolina cite. I apologize. It's the biggest one I can read.

387 S.C. 339. It's Willie Jones versus Sheriff Leon Lott.

Your Honor, in that case, Mr. Jones sued Sheriff Lott in regard to a matter involving a shooting of his son. We did not raise, in that case, gross negligence and I actually tried that case (indiscernible).

We did not raise gross negligence at all and the Court found that, since we had not raised gross negligence, that standard of Subsection 25 or anywhere else it might be found in any of the subsections didn't apply in that case. So, the manner and method of applying police protection, if my memory serves me right, was found to be the grounds for

affirming that opinion. And, in that case, the Court found that since we had not raised gross negligence, gross negligence did not apply to that case.

Now, Repko and Jinks, and I'm not real sure about Jinks, I'm gonna have to read it again tonight, it's -- I've read it and I'm, I'm, I'm gotten -- they're three cases involving Jinks and I want to read it again. But I don't think Jinks dealt with this issue because we only came up with the idea that if you did not raise Subsection 25, gross negligence, it wouldn't apply to the other causes of action.

So, in this case, I did not purposely raise Subsection 25, which is a gross negligence standard. So, all your charges under governmental immunities are correct as presented and we handed them up and they're ver -- I believe verbatim from the Tort Claims Act.

MR. HAWKINS: Your Honor, they are verbatim and the Tort Claims Act existed when these other cases were decided and said this is the law. You can't use that as an, as an excuse to get out of a lawsuit.

Jinks and Chakrabarti and Repko all address what, what he's talking about and, and he's, he's trying -- what he's trying to do is take something that the Supreme Court has looked at from the, from the Tort Claims Act, and where the Supreme Court had said hey, here's the law and he's trying to do the opposite of that. He's trying to do the opposite

of what the Supreme Court has said repeatedly now.

THE COURT: I mean this is what I'm gonna do with regard to this governmental, governmental immunity charge.

I'm going to rule on this and -- well, not rule but I am going to give you my final charge in the morning on this and that will give me some time to read those cases.

Gross negligence charge.

MR. DAVIDSON: That's what he pled, Your Honor.

THE COURT: Any issue?

MR. HAWKINS: No. No, Your Honor. Sorry. I was trying to find where -- I just want to make a note on here so I can research tonight.

The governmental immunity, you're, you're taking that under advisement and we'll know in the morning?

THE COURT: That's right. Yes, sir.

MR. HAWKINS: Okay. Sorry about that.

THE COURT: That's okay.

All right. Any issue with the gross negligence charge?

MR. HAWKINS: With, with which one, Your Honor?

THE COURT: Gross negligence.

MR. HAWKINS: No, Your Honor.

THE COURT: All right.

MR. DAVIDSON: Not on behalf---

THE COURT: (Indiscernible).

MR. DAVIDSON: Not on behalf of us, Your Honor.

(Pause.)
THE COURT: Mr. Hawkins, any issue with recklessness?
MR. HAWKINS: No, Your Honor.
THE COURT: Negligent hiring and supervision?
MR. HAWKINS: None from us.
MR. DAVIDSON: We still believe---
THE COURT: Violation---
MR. DAVIDSON: We still believe it should be gross negligence (indiscernible).
THE COURT: You believe that, that should be inserted in here?
MR. DAVIDSON: Yes, ma'am.
THE COURT: Well, I'll take a look at it.
MR. DAVIDSON: All right.
THE COURT: Violation of rules?
MR. HAWKINS: No, Your Honor.
THE COURT: Occurrences.
MR. DAVIDSON: We have a problem with occurrences, Your Honor, cause I don't think there's been any evidence of multiple occurrences.
THE COURT: Mr. Hawkins.
MR. HAWKINS: Yes, Your Honor.
I think we've shown evidence of lots of occurrences. We've shown evidence of the event itself, the -- well, one, there's the event of not failing to establish probable

cause. We put up evidence of that. Maybe for a jury but we put up evidence of that. So, that's an occurrence.

There then is a separate -- and -- there's a separate and different occurrence where they're taken to a different area and then they're -- the actual injury takes place. So, that's another occurrence.

There's also the occurrence where Timothy Gibson chuckles and, and laughs and demeans my client, which he testified. That's not occurrence.

There's then occurrences each time Gibson retaliates and, and demeans and kind of punishes him for, for hiring a lawyer. Those are all separate occurrences.

So, we've established that there are occurrences on occurrences on occurrences, and pursuant to Boiter, I think Boiter is the, the case on that, Boiter directly interprets the language of the Tort Claims Act and says per occurrence, here's the cap.

And so common -- commonly an instruction is given under Boiter. You can -- you, you give the cap that this is multiple occurrences. The jury doesn't know that, of course, cause it's a matter of law with the cap.

MR. DAVIDSON: Your Honor?

MR. HAWKINS: But there should be a question on the verdict form for number of occurrences and this -- there was recently a case, Your Honor, less than a year ago in

Fairfield County, there were 15 occurrences found by the jury and this was---

MR. DAVIDSON: And the judge, and the judge overturned that, Your Honor, on posttrial motions.

MR. HAWKINS: Yeah, and it's about to get reversed on appeal cause it was clearly wrong.

THE COURT: All right. Well, we're not -- I'm not -- I wasn't at that case. So, let's -- your issue with occurrences is that -- is what, Mr. Dawkins -- Mr. Davidson?

Listen, Mr. Dawkins is also my son's second grade teacher and I think that's why I keep trying to say Dawkins.

MR. DAVIDSON: I will, I will take that as a compliment, Your Honor.

THE COURT: Mr. Davidson.

MR. DAVIDSON: The, the occurrence in this issue, Your Honor, is actually the, the frisk search. The fact that, that somebody may have felt an issue dealing with a smirk or finding a razor in somebody's bed, all of which got -- the majority of which happened in 2022 as we objected to them as not being relevant in this case as well as the issue dealing with Mr. Gibson saying he was never threatened or anything by Mr. Gibson after this establishes, in my opinion, one occurrence. That would be the issue surrounding the actual frisk search.

Now, Boiter doesn't have a thing to do with this case

cause Boiter's a case where you had two defendants, two independent defendants, and the Court found, in that instance, the jury could of found liable -- liability on behalf on the Department of Transportation or they could of found liability to be per diem, not the diem -- but Department of Transportation or the Department of Public Safety. And because of that, because there were independent liability issues, the Court said you could have two entities be a hit for the verdict and they were very clear in Boiter that it was an un usual case and it didn't necessarily carry over to any other cases.

So, that's why we say the occurrence language in this, Your Honor, is -- there is one occurrence and that occurrence is the issue dealing with the---

MR. HAWKINS: Your Honor?

MR. DAVIDSON: ---strip search.

MR. HAWKINS: Your Honor, I'm glad he said my opinion because the only opinions that matters now are the juries when they take this under advisement and they go to deliberate. That is a jury question.

If he -- he can argue that all he wants. This is one occurrence. This is -- we're only talking about the, you know, the improper search. He can argue that to the jury. But it's up to the jury to figure out how many occurrences there are.

THE COURT: All right.

MR. HAWKINS: And, and, Your Honor, I would also point out that we -- he's argued his position about retaliation shouldn't count and we shouldn't be able to conform our pleadings and all this. But we -- I mean we argued about Rule 15(b), the fact that you can conform the pleadings, the fact that that's a portion of our damage. We put up witnesses to talk about the retaliation damages. We've got claims for that.

So, all -- those are definitely distinct because they, they happened at a -- on different days. Even if they happened in the same day they can be different occurrences. But those didn't even happen in the same day.

So those are separate and distinct occurrences. Each one of them is its own occurrence under the Tort Claims Act and Boiter makes that clear.

THE COURT: All right.

MR. DAVIDSON: Your Honor?

THE COURT: I'll make a decision on that.

Mr. Dawkins -- Mr. Davidson.

MR. DAVIDSON: If I can.

I don't believe there's ever been any evidence of damages as a result of that. Several of those didn't have even Mr. Gibson involved in them. They were, you know, the issue about the, the razor in his cell. The fact that they

found a razor was in a -- there's no evidence of any damage.

MR. HAWKINS: Yes, there is. I mean I can go through it if the Court wants me to or not. I don't---

MR. DAVIDSON: I just want to---

MR. HAWKINS: ---want to waste time.

MR. DAVIDSON: I just want to make it, for the record, clear.

MR. HAWKINS: Does, does Your Honor want to hear about it or no, I --.

THE COURT: I'll get -- I mean tell me what the damages -- what damages -- I don't need a full explanation but name for me the damages---

MR. HAWKINS: Well, one---

THE COURT: ---that you're alleging with those occurrence.

MR. HAWKINS: Right.

Once we, once we put up evidence of any damages from any of the occurrences, it's not on us, but Will wants it to be, this is what he needs to argue to the jury, it's not on us to do---

THE COURT: But tell me what -- explain to me what damages you're asserting.

MR. HAWKINS: Well, he said that, he said that they would deny him rec and things like that. They said that he would -- they would make him clean stuff that other people

did. We heard evidence about that. So, if you, if you complete---

THE COURT: I mean what is that though, embarrassment? What are the damages?

MR. HAWKINS: Embarrassment, inconvenience, law -- recreation is valuable to people in -- with -- with (sic) they're in jail. They get one hour every day or whatever it is, and you take that away from them because of retaliation, that's a direct and proximately caused damage from the retaliation.

THE COURT: Okay.

MR. HAWKINS: And so there was evidence of that, Your Honor.

THE COURT: All right. Proximate cause -- thank you. I'll give an -- I'm gonna give all my rulings in the morning---

MR. HAWKINS: Thank you judge.

THE COURT: ---or, or, excuse me, you'll get these probably late tonight or in the morning when we get in.

MR. HAWKINS: Thank you, Your Honor.

THE COURT: Proximate cause?

Any issues with proximate cause?

MR. HAWKINS: Give me just one second, Your Honor.

THE COURT: Sure.

(Pause.)

MR. HAWKINS: That's fine with us, Your Honor. The proposed charge is fine with us.

THE COURT: All right. Determination of scope and damaging -- of damages. Excuse me.

That's a -- that's the standard now according to my sort of standard.

MR. DAVIDSON: That's standard.

(Pause.)

MR. HAWKINS: Your Honor, we accept that for the, for the plaintiff's side.

THE COURT: All right. I'm going to remove preexisting conditions. That was --.

MR. HAWKINS: Okay.

THE COURT: That was in the charge. We're, we're actually using one from a Richland Leon Lott case.

And the last bit is my normal conclusion. Please make sure that there's nothing in there that you have an issue with.

MR. HAWKINS: We con -- we accept the conclusion, Your Honor.

THE COURT: All right.

MR. DAVIDSON: Your Honor, on damages, I hate to, I hate to do this but --.

THE COURT: All right. Where are they, the damages?

MR. DAVIDSON: In damages.

There are charges that the mere fact that you have an injury does not necessarily mean that it should be damages found against a defendant. There's also another charge that basically says the damages can not be speculative.

The rationale being for the first one is---

THE COURT: It is. It's there.

MR. DAVIDSON: It's not a res gestae, res gestae -- res ipso case, Your Honor.

THE COURT: Yes. And but did -- but in here I do, I do not -- find normal, conjecture, speculative---

MR. DAVIDSON: Let me---

THE COURT: ---language.

MR. DAVIDSON: Let me look in here.

THE COURT: It should be.

MR. DAVIDSON: I, I just -- I'm getting tired, Your Honor.

THE COURT: Yes, sir. Listen it's in the second paragraph of damages and I instruct you that your award of damages must be reasonable, should not be based on conjecture, speculation, or surmise. Don't --.

MR. DAVIDSON: Yeah, that's fine. You got it.

THE COURT: Okay.

MR. DAVIDSON: I'm sorry. I missed it.

THE COURT: It's all right.

MR. DAVIDSON: I missed it.

THE COURT: It's been a long day.

MR. DAVIDSON: It has been a long day. Thank you, Your Honor.

THE COURT: Mr. Hawkins and Mr. Davidson, we'll see you-all in the morning. We -- I would like to get started at 9:30.

MR. HAWKINS: 9:30.

THE COURT: Yeah.

MR. HAWKINS: Got it, Your Honor.

THE COURT: Yes.

MR. DAVIDSON: Thank you, Your Honor.

THE COURT: Thank you. Have a good evening.

Yes, sir.

MR. HAWKINS: Your Honor?

Your Honor, will you charge -- I know that one of the judges in the Up, in the Upstate---

THE COURT: They charge before?

MR. HAWKINS: Yeah.

Will you charge before or after?

THE COURT: I, I like to charge after.

Is there a request to charge before?

MR. HAWKINS: My preference is that you charge before but that's just---

THE COURT: Yes.

MR. HAWKINS: My preference doesn't mean anything. So

--.

THE COURT: Well, Mr. Davidson, do you have any preference?

MR. DAVIDSON: I don't. It, it -- a lot of times the jury hearing the charge right before we go out makes it stick in there a lot better.

THE COURT: That's why I normally like -- so the theory is that you charge before, they understand the closings.

MR. HAWKINS: Yes, Your Honor.

THE COURT: You charge after, they understand going into the deliberation room. And so I'm gonna charge after that.

MR. HAWKINS: Thank you, Your Honor.

MR. DAVIDSON: Do you give them your charges---

THE COURT: I do.

MR. DAVIDSON: ---for the---

THE COURT: I do send them in the jury room.

MR. DAVIDSON: Okay. All right. That's what I need to know.

THE COURT: All right.

MR. DAVIDSON: Thank you, Your Honor.

THE COURT: Thank you. Have a good evening.

Court is adjourned.

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

Friday, November 4th, 2022

THE COURT: Please be seated.

All right. Good morning, gentlemen.

MR. HAWKINS: Good morning, judge.

THE COURT: Happy birthday.

MR. HAWKINS: Thank you, judge. Appreciate it.

MR. DAVIDSON: I forgot. Happy birthday.

MR. HAWKINS: Thank you, Will.

THE COURT: All right. We have the jury charges as well as the verdict form.

All right. So let me get the, let me get the highlights first with regards to the jury charges.

The first change that I made was to the respondeat superior section. I did add in an employer is liable for the grossly negligent acts or omissions of employees.

Secondly, Mr. Dawkins -- Mr. Davidson, against your request, I did remove the governmental liability section, excuse me, immunity section of the charges.

And, Mr. Hawkins, I have removed the occurrences section of the charges and I've also added in, in the gross negligent hiring and supervision. The plaintiff claimed that defendant was grossly negligent in the hiring. I added the word grossly.

Your arguments are on the record from yesterday. And

so the record is built in that, that fashion.

Now, we did not discuss the jury verdict form.

MR. HAWKINS: Your Honor, could I say one thing about charges?

THE COURT: Yes, Mr. Hawkins.

MR. HAWKINS: I forgot to mention yesterday, and I apologize, I thought about sending an email but I did not want to anger the Court by starting an email chain.

I noticed that this spoliation instruction was not included, and since there was, replete throughout the transcript, evidence of, of loss or destruction of evidence, the camera, the, the -- and the, the handwritten --.

THE COURT: It wasn't included but you didn't, you also didn't request that it be included.

MR. HAWKINS: We -- I thought---

THE COURT: Did he request it?

MR. HAWKINS: I thought we submitted a spoliation charge.

THE COURT: No.

MR. HAWKINS: And just I think, I think the law is in a case like this it was evidence of a loss or destruction and, and we're okay with it applying to both parties. But I think we do have to have one just because of the loss or destruction of the video and the handwritten statements.

THE COURT: Okay. Let me, let me look at your

requested charge. I apologize.

MR. HAWKINS: And I, I think we sent two or three emails. That's our fault. So, I'm sorry if it was lost in that. That comes from me trying to do stuff I should let other people do.

THE COURT: No, it's all right.

While, while I am looking at that, please take a look at the verdict -- proposed verdict form.

(Pause.)

THE COURT: All right. Mr. Davidson, in regards to the spoliation -- proposed spoliation of evidence, do you have a copy of that charge?

MR. DAVIDSON: I'm looking at it right now, Your Honor.

THE COURT: Okay.

(Pause.)

MR. DAVIDSON: I -- I've, I've looked at it, Your Honor, and, and, and this is part of the problem we had during the trial, Your Honor. We were not able to offer any evidence as to what happened and why.

Also, the same thing is true with the statement of Officer Bowman, Lieutenant Bowman regarding his investigation, the fact that he had viewed the video and there was nothing on it. We've heard evidence that the video camera's a rotating camera. You can be looking over here and never see anything over there.

Part of his charge, Your Honor---

THE COURT: The second prong of the charge?

MR. DAVIDSON: Yes, ma'am.

It says if a party fails to preserve evidence for trial, it is for you to determine first whether the party had a duty to preserve the material evidence and obviously, in this case, Officer Bowman indicated that once he was told that it did not appear to be sexual in nature, that ended the PREA investigation.

If you find the party had a duty to preserve the evidence, you must determine whether the party has offered a satisfactory explanation for the failure. We were never given a chance to ex -- to explain what happened nor to introduce the evidence that Officer Bowman had of his statement of what, in fact, he did do and what he found during that investigation or not.

So, I think that's a problem with the spoliation argument and it, it presumes stuff that, quite honestly, we didn't get to do. They objected and, and I understand why the Court ruled as it did and I tried to contest it. But that's a problem with this charge because it indicates we have an obligation or a chance to explain what happened and we didn't.

THE COURT: Uh-huh.

MR. DAVIDSON: And so that's, that's the problem with

the charge, and, for that reason, we do not think spoliation should be charged in this case, Your Honor.

THE COURT: All right. Mr. Dawkins.

MR. HAWKINS: Yes, Your Honor.

MR. DAVIDSON: Mr. Hawkins.

MR. HAWKINS: Yes, Your Honor.

There's a -- there's sort of a, a conflation going on or an, an attempt to conflate explaining what happened to the video with talking about what somebody viewed on the video. That's hearsay. They certainly could of explained what happened to it -- the video. They had a chance to say, and, in fact, they did offer an explanation. He elicited testimony.

He said well, it rewrites ever 30 or 90 days and so we don't have it. And so he had a chance to explain why they didn't preserve it.

It's for the jury to figure -- it's for the jury to weigh and figure out, in the case where there is evidence and there is a (indiscernible) of evidence in the case. But there is evidence of spoliation. It's for the jury to weigh why they destroyed or if they destroyed it, you know, was there a negative inference that could be drawn from it.

The jury is entitled to hear that instruction. If you find that they lost or destroyed evidence, then you're entitled to draw that presumption, if you want to, as the

fact finder. And so, they had plenty of opportunity to talk about or offer explanations for why they didn't preserve it and they didn't do that.

As far as somebody talking about what they saw on the video, that's just hearsay and, and the two are not the same.

So, in a case like this, I think it's -- I mean I -- I've tried cases where spoliation instructions are given and I think it's pretty clear, once you put up any evidence of spoliation, a jury can get an instruction.

THE COURT: All right. Mr. Hawkins, Mr. Davidson, I, I have made a decision.

Mr. Hawkins, I certainly respect your argument. But I do not -- I am not going to add in spoliation of evidence---

MR. HAWKINS: And---

THE COURT: ---charge.

MR. HAWKINS: Thank you, Your Honor. I've made my argument and objection on the record. Thank you.

THE COURT: Yes, sir. Mr. Hawkins, thank you.

All right.

MR. DAVIDSON: And just for the record, Your Honor, I want to note our objection to the deletion of the immunity defenses for the record now and I do -- cause at this point we do housekeeping or you want me to shut up for a minute.

THE COURT: For just a few -- I would like for you to

be quiet for just a few minutes.

MR. DAVIDSON: All right. Good. Thank you, Your Honor.

THE COURT: We'll, we'll come back because I want to discuss the verdict form and then we'll do our housekeeping cause I don't want to forget the verdict form.

All right. You-all had a chance to look at this?

MR. HAWKINS: Yes, judge.

THE COURT: Any issues, Mr. Davidson?

MR. DAVIDSON: Your Honor, I would go back to the argument that the detention center is really not a facility, it's not a legal entity to be sued, and that Aiken County is not a legal entity that should be sued. It is a legal entity but should not be sued in this case because the proper defendant is solely Sheriff Hunt.

THE COURT: I have no issue with changing the language to read the defendants and---

MR. HAWKINS: And, Your Honor, we, we would accept -- if you change to defendants, we accept that.

THE COURT: All right. Mr. Dawkins -- Mr. Davidson.

MR. DAVIDSON: It just implies with the caption that all those defendants are potentially liable and I think it's solely Sheriff Hunt, Your Honor.

THE COURT: Okay.

MR. HAWKINS: Your, Your Honor?

MR. DAVIDSON: Note our objection, Your Honor.
THE COURT: All right. Did it---
MR. HAWKINS: And, Your Honor---
THE COURT: Go ahead.
MR. HAWKINS: Is the decision to change it to defendants cause if it is I won't offer what I'm gonna say?
But if you have a question about it, I do want to comment.
THE COURT: No, we're gonna change it to defendants.
MR. HAWKINS: It is, it is -- so it will read do you, do you find, by preponderance of the evidence, that the defendants were grossly negligent?
THE COURT: Were grossly negligent.
MR. HAWKINS: Okay. That's perfect.
MR. DAVIDSON: And note our objection, Your Honor.
THE COURT: Objection noted, sir.
MR. DAVIDSON: Thank you, Your Honor.
THE COURT: Yes, we also change Otis Owens to plaintiff just to keep it consistent.
MR. HAWKINS: Thank you judge.
THE COURT: Now, Mr. Davidson, let's do some housekeeping.
MR. DAVIDSON: Your Honor, I need to rest my case in front of the jury --
THE COURT: Okay.

MR. DAVIDSON: -- and then I will need to put on the record that my arguments that I did at directed verdict after the plaintiff's case be incorporated as my motion for directed verdict in the defense portion of the case after I rest so that my record is clear and I'm not gonna get whacked at the Court of Appeals---

THE COURT: Yes.

MR. DAVIDSON: ---or the Supreme Court for not raising those objections or those grounds for directed verdict again. So, I assume what I need to do is, is --.

THE COURT: You can just do that now and then, when the -- so we don't have the jury in and out, you can -- do you want to do that?

MR. DAVIDSON: I, I -- I've already said to the Court that I've rested. But I did that so that the Court would know where we were as far as the timing of the witnesses. I still would like to be able to tell the jury that, that I have not---

THE COURT: Certainly.

MR. DAVIDSON: ---now rested.

THE COURT: I'll certainly do that.

MR. DAVIDSON: Now, as far as the motion for directed verdict, I, I have -- I am now rested for the Court and I'll---

THE COURT: Yes.

MR. DAVIDSON: ---do it the jury.

The grounds for, for my directed verdict would be the same grounds I previously made that in regard to the names of the defendants being listed other than Mr. -- Sheriff Hunt and then also the ground dealing with immunities. And the other areas I would ask the Court to incorporate by reference from my previous argument to this argument after my case has been rested, Your Honor, if the Court will do that so I don't have to go back through every one of them again.

THE COURT: Okay. No, you -- we certainly will incorporate that argument, Mr. Davidson, and, Mr. Hawkins, I as---

MR. HAWKINS: Your Honor, I, I would have to obviously make a DV motion after he rests. But I don't think we have to do any of that in front of the jury. I think we can, by agreement, do it here on the record. But I'll, of course, do whatever Your Honor instructs.

THE COURT: No, I want to do it before the jury---

MR. HAWKINS: Okay.

THE COURT: ---comes in and then we'll allow you to certainly rest in front of the jury. I, I, I was gonna ask you to do it anyway because I think it confuses the jury --

MR. DAVIDSON: I understand.

THE COURT: -- what you don't.

MR. DAVIDSON: What I will do -- what I will do is I will rest in front of the jury, and then I will, I will basically say the motions I have previously made, and then I'll put it in, in the -- on the record. I won't give the motions. I'll just say that previous motions made and heard---

THE COURT: Have been incorporated.

MR. DAVIDSON: ---are incorp -- be incorporated and you can agree and we can move on.

THE COURT: All right. Now, Mr. Hawkins, in that regard, I mean if you wish to stand and say that yours -- I don't know if your arguments are renewed against the, the directed verdict---

MR. HAWKINS: They, they are---

THE COURT: ---or do you have different arguments?

MR. HAWKINS: No, no, no. No, Your Honor. I won't do that to the Court or the jury. I just want to make sure that, after he rests -- if he's gonna rest in front of the jury, I want to make sure that I also just say on the record I incorporate, you know, a, a renewed directed verdict motion.

THE COURT: Certainly.

You'll both get your opportunity---

MR. HAWKINS: And that's---

THE COURT: ---to do that.

MR. HAWKINS: And that's just to protect me if he appeals this or something like that.

THE COURT: Thank you.

All right. You'll get a new version of the verdict form.

Now, obviously I have to charge the jury -- well, tell the jury where we are with closings and then you-all will go to your closing as you know and then I'll do my charges and we'll send it -- the jury out then.

(Pause.)

THE COURT: All right. Can we bring the jury in please?

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

THE COURT: All right. Good morning, ladies and gentlemen of the jury. We now will continue the trial.

Mr. Davidson.

MR. DAVIDSON: Yes, Your Honor.

At this time the defense, since plaintiff called all of our witnesses, the defense rests, Your Honor.

THE COURT: Thank you, Mr. Davidson.

Are there any motions?

MR. HAWKINS: Your Honor, I would renew the motions previously put before the Court.

THE COURT: All right.

MR. DAVIDSON: Your Honor, on behalf of the defendant, we would renew our motions for directed verdict that were made yesterday to ask that all of, all of our grounds be incorporated by reference at this portion of the trial.

THE COURT: Yes, sir. Thank you---

MR. DAVIDSON: Thank you, Your Honor.

THE COURT: ---Mr. Davidson.

All right. Those motions are, of course, renewed and my rulings will remain the same.

Ladies and gentlemen of the jury, we are now at the stage of the trial where we will have the final arguments by the attorneys. Once they have completed that, I will then give you my instructions on the law.

Closing arguments are much like opening statements. They are not evidence in this case. Obviously these attorneys will be arguing the evidence in the light that is most favorable to their positions. But it is not evidence.

You already heard all of the evidence. You've heard all of the testimony and all of the exhibits and that is where you will make your decision. However, please pay very, very close attention to these arguments. And once they are completed, I will instruct you on the law and it will then be in your hands for deliberation.

All right, Mr. Hawkins.

MR. HAWKINS: Thank you, judge.

May it please the Court?

THE COURT: Yes.

MR. HAWKINS: Good morning.

(WHEREUPON, the jurors respond good morning.)

MR. HAWKINS: The judge already knows this and I do not know or ever think I'd be spending my birthday giving a closing argument. So --.

(WHEREUPON, the jurors respond happy birthday.)

MR. HAWKINS: Thank you. Thank you. Thank you.

It's the last time I'm gonna get to talk to y'all. I'm gonna talk to y'all and then Will's gonna come up here and he'll talk to y'all and I'll get to talk to you one more time before y'all deliberate. And then Mr. Owens' fate in this case will be in y'all's hands.

So, I've got a big responsibility today. Going up against the government is hard. They have unlimited resources. They have a lot of (indiscernible) to conform and they've blown Otis off for five years now and I'm the only thing standing between him and somebody acknowledging what happened in (indiscernible).

And so I have a big task today to, to tell y'all my final thoughts and that's what I'm gonna do. And where I want to start is where we started at the beginning of the trial with the burden of proof.

I told y'all that, if we move this -- if we move this

row, there's a red piece of tape on that row, if we move any amount, a millimeter, an inch, or 6-feet or any amount, then you can hold the government responsible for what it did to Otis and for the safety rules it violated and the damages it posed to this community. You have the absolute right to hold the government accountable if it moves just for a tiny amount.

Now, I don't think there's any rope left on the government's side. I know I'm biased because this is my client.

So, we've put up evidence on evidence on evidence and you've heard it all, policy violation, policy violation, and policy violation. And Her Honor will tell you when she tells you what the law is that a policy violation is evidence of gross negligence. She'll tell you that.

Now, keep in mind that when we were pulling on this rope, there was no pressure applied on the side of the government. They didn't put up any evidence. So, it was impossible for the rope to go the other way.

They didn't put up one witness. They didn't call one witness and put them in that chair. They didn't put up a case cause they don't have a case. They don't have a defense. What happened to him is indefensible. It's inexcusable and I'm gonna ask you, when I get done talking, to hold the government responsible for it.

I'm gonna use this to write on if the defense don't mind. Just turning it around so y'all can see it.

I want to talk about the evidence that was seen and there's four -- there's four main things I want to talk about.

The first one is all the policy violations. Will is gonna come up here on behalf of the government and he's gonna make excuses for everything that y'all heard about. He's gonna talk about things that don't make sense and that (indiscernible) things. He's gonna suggest things.

But the court is not a place where you hide in the shadows. The court is not a place for you to make suggestions about maybe something could happen. Court is a place where you say what you mean and you back it up with evidence from that chair and with exhibits and that's what we did.

We came to the court and we said to the government in no uncertain terms you broke safety rules. You broke safety rules. You hurt a member of this community, just to be mean, just to harass, just cause you were mad cause you didn't find some dice. You can back it up with proof.

Don't let the government come up here and say stuff like well, you know -- because their story's changed a little bit. You know, it's changed from it didn't happen at the beginning of the trial to well, it happened but he only

hurt for a week to now well, it happened but maybe he got some soap on it in the shower.

Ridiculous. Absurd.

This man's never had any problems at all in that area his whole life until somebody grabbed him as hard as they could just for spite, just to be mean, and he did the same thing to other eye witnesses and everybody saw what happened.

The policy violations in this case are important because they're designed to protect the public, and if the government, the people with those badges are allowed to do things they endanger the public, the county becomes more dangerous.

The first policy violation -- and keep in mind when she tells you that policy violations are evidence of gross negligence. The first time y'all get back in that room and y'all agree that there's a policy violation, you can stop with this first question and then you go to damages because, as soon as there's a policy violation, you got your evidence of gross negligence.

The first policy violation, the most important one, and they're all important, is the policy that says you have to conduct a search with the most dignity possible. Their internal policy says that.

I didn't make that policy. Otis didn't make that

policy. The Sheriff's Office made that policy and supposedly it's to protect members of the community. If there's somebody on this jury that has a question, the rest of you may say this is -- clearly something wrong happened and we mark yes to this first question. If there's somebody that still has a question, you tell them say, look, this is what the policy says, the most dignity possible.

So, if we believe it happened, that's gross negligence. It comes down to one question. He's gonna talk to you about causation and we didn't put a doctor like y'all need a doctor to tell you what happened in this case. The judge is gonna tell you circumstantial evidence is -- has absolutely as much weight as direct evidence.

You don't have to have a doctor tell you directly what happened. You can say hey, he grabbed that man in the most sensitive part of the body and a few other people too and they all had injuries. One of them had surgery.

The dignity policy is the most important one to me because every member of this community in Aiken is entitled to basic human needs even if there's an -- there's no excuse for treating somebody like that. There's no excuse for sweeping it under the rug when everybody knows it happened.

They broke the policy that says you have to use an open palm up.

Y'all remember that, open palm up?

I asked Mr. Gibson on the stand, I said, all right, by your lawyer's account, you use the back of that hand, that violates the policy. By your account, you use your hand like a blade. That violates the policy. And, by our account, you grabbed him and pulled and you squeezed and that violates the policy. I said so, by everybody's account in the courtroom, y'all violated policy and he said yes, in the witness box. There, there's -- as far as liability goes, there's nothing else to talk about.

They violated the policy that says you have to establish reasonable suspicion. And Mr. Davidson indicated that y'all really need to pay attention to that policy cause they're in jail. You know, there was no reasonable suspicion.

Well, if they always have reasonable suspicion, why is there a policy that says when you have it and how you know you have it. They wouldn't need that policy if they could just do whatever they wanted to whoever they wanted, which is the way they've been operating.

Reasonable suspicion policy's important because it applies to people who get pulled over on the side of the road when they're taking their kids to school. It applies to people who are coming back late from work. It applies to people who are coming home from USC or Clemson or Winthrop or anywhere out of town coming back home for a weekend.

They didn't just violate their internal policies, they violated federal law. They violated the Prison Rape Elimination Act. That law is designed to stop sexual assault in prison, which we can all agree is a good thing. And they violated it 15 ways from Sunday.

I, I went out -- I lost count, I'm not saying that because of the jury, I lost count of how many violations they had against PREA. They didn't do an investigation pursuant to PREA. They did one for 45 minutes to an hour.

They didn't take any recorded statements. They didn't save the video camera footage. They didn't offer any counseling. They didn't have the right kind of video monitoring to prevent sexual assault. They brought no laws that comply with PREA or the minimum standards for detention facilities, facilities in South Carolina. This is the bare minimum. It's the bare minimum allowed by the government, and when Will comes up here and starts talking about burden of proof, cause he's going to, when he starts saying they've got to show they didn't even exercise slight care.

That's what slight care is. That's the bare minimum allowed and they didn't comply with it.

It says you have to show logs and records of training related to PREA. We never saw any of that. They've known about this case for five years. We asked them for all materials related. They knew this trial was coming and they

put up no proof that PREA training was complied with or that the minimum standards that say you show to PREA training was complied with either.

The health and safety of inmates, any, any incident that involved the health and safety of inmates, if there's a danger there, it has to be reported and logged according to the minimum standards. They brought no logs. We have not seen that.

So, they violated the public policy, the policy that says you just need to do the right thing. They violated their internal policies at least three, three ways. They violated PREA I don't know how many ways. They violated the minimum standards.

The second thing I want to talk about is the eye witness testimony we heard. The government's position will be -- they won't come out and say this because it sounds disrespectful. But this is what the government's position will be.

These people don't matter. They're inmates. Look at this guy. He's got tattoos on him. Look at that guy. He's got a drug charge. Look at that guy. He's got a, you know, whatever. But look how unsophisticated he is. That's what the message will be.

When Will comes up here, in so, in so many words, it will be ladies and gentlemen, I submit to you that these

people are in jail and they just make up anything. That's what he's gonna say. So, you're the judges of credibility. Not the defense. Not even the judge.

She's the judge of the law. Y'all are the judge of the facts and you're the judge of theses people's credibility.

So, when you look in those people's eyes, when you look in Jerry Ard's eyes, when you saw the shame associated with that he's still dealing with right now, ask yourselves do you think he's making that up cause he hadn't saw these people in years. These people were given -- they're (indiscernible) out. He hasn't spoke to him in a year and I feel bad for Mr. Ard because the Statute of Limitations ran out for him to bring a claim.

He contacted my office. He wanted to bring a claim and it is about to run out but I -- yeah, (indiscernible). So it's running out the next day or two days or something like that. He came to me (indiscernible) and I feel bad for Mr. Wilhite cause he tried to represent himself and Mr. Davidson filed a motion to dismiss against an inmate who didn't know what he was doing and Mr. Davidson got his case dismissed and then stood right here in this spot and acted like Mr. Wilhite wanted that case dropped. It doesn't make any sense.

Why would he file it?

It got dropped because he didn't know what he was

doing. He was trying to represent himself and Will filed a motion to get it dismissed. It's on PACER. We looked it up.

And then I asked Mr. Gibson on the stand about, about it and he started saying oh, I think it settled for some money or something. Just make something up from the stand. It wasn't true.

So, I want you to consider that when you weigh Mr. Gibson's testimony. The rest of his testimony, when he got up here and they did this dog and pony show right here where Will says all right, I want you to pat frisk me and then he comes down here as if he's gonna do to Mr. Davidson what he did to him in spite of where he knew he wouldn't get in trouble and I said all right, well, let's have Mr. Gibson get searched by Mr. Owens.

Everybody gasped and that's the point. Nobody will stand for that, not the judge, not the jury, not the defense, and that's the way we should act about what happened in the jail when Mr. Gibson did it to somebody who couldn't fight back and defend himself---

MR. DAVIDSON: Your Honor---

MR. HAWKINS: ---cause he's got---

MR. DAVIDSON: ---I hate to interrupt but I'm going to cause he's getting way far afield and saying things that are not proper in regard to---

MR. HAWKINS: It's closing.

MR. DAVIDSON: ---closing argument.

MR. HAWKINS: It's closing, Your Honor.

THE COURT: All right. All right. Let's, let's move on. Let's clean up and move on.

MR. HAWKINS: Sure.

And that is, that is, for a jury, Objection Number 120. We been keeping track. By the defense. I think I objected three times.

Let's talk about the fact that these injuries were (indiscernible.) It wasn't -- this wasn't people saying oh, I'm hurt and somebody cause me some pain. He had an ultrasound. This was embarrassing for him.

Mr. Wilhite had to have surgery. Mr. Ard didn't know what to do. He sounds like he still has some problems. But he's (indiscernible). I don't know what's going on with him. I haven't spoken to him.

This, this is not -- this is not somebody holding their neck after a wreck. This is somebody who was injured by a some -- person of authority and the part of the body this person injured on all different people are injuries. At least four of them. I don't know where Brockington is.

The cameras are one of the biggest parts of this case. The camera footage, the camera footage of the men just before the event is gone. The camera search itself is gone.

The camera of the men providing handwritten statements immediately after the event is gone and the handwritten statements themselves are gone and you're entitled, you're entitled to draw an inference from that.

But if it's not here, if they didn't bring it, there's something on it they didn't want you to see and I want you to ask yourself what makes more sense when he starts talking about these cameras cause they're gonna start making excuses about why y'all don't have footage and this is what I want you to keep in mind.

One. They knew that immediately after this happened that he felt he was sexually violated and assaulted because he raised cane about it. So did Wilhite and so did Ard or Ard I think complained a little bit later. But Brockington did.

Immediately after this happened, the Sheriff's Office was on notice that multiple people claimed something that was improper in an act of gross negligence in an act of excessive force. They could of saved the video footage right then and it was probably somebody in that control room.

But let's be fair to the government. Let's say they didn't know right then.

Well, they certainly knew after those handwritten statements. They certainly knew when Otis went to the kiosk

at ten o'clock at night and that's, that's electronic. They certainly had that and were on notice then. They certainly were on notice when they responded back to him and said get back with us in a couple of days. They certainly knew on the 29th when he sent another grievance, which y'all take back with you. They certainly knew in early February when he was writing to people saying hey, I need those statements. I need those handwritten statements that I wrote. I'm gonna take legal action because nobody will do anything.

He tried to handle it internally. He tried to write grievances.

I asked him again just to be, just to be sure. He never even would of filed a lawsuit if the government would of just taken responsibility. That's all he wanted and I don't know where that camera footage went. I know it -- that they've offered some explanation about it being deleted over. But I want you to ask yourself what makes more sense.

Did they just delete over it?

Did they just -- did nobody know what's going on for 90 days or however long the, the video would retain itself or is there -- is there something on it they didn't want everybody to see because supposedly they did an investigation that lasted an hour or whatever. That took place in early February so we'll have footage.

If -- we asked for, we asked for all materials related to this action a few months after it happened in June or July and they never got a tech person go in with the hard drive and try to recover the deleted files or anything.

You think if an inmate had done something to a guard they wouldn't be able to find it?

They put them under the jail for that.

But the government's motto is the rules are good for thee and not for me. The government won't play by the rules that citizens play by.

And I submit to you, folks, that you are the government's boss. The government works for you. It's not the other way around. You are the representatives that are here right now for your community in Aiken and you get to tell the government what to do, which we'll accept, and what's right and what's wrong. Not the other way around.

They never made any -- they never even asked Gibson a question. I asked Gibson, once he answered me, direct -- they never even asked him a question did you grab this man's testicles. If you're doing an investigation about whether somebody assaulted somebody's private area, that seems like question number one on the list.

And, and Bowman said his issues, he said well, he said it -- he didn't feel it was a sexual nature. And when we asked Otis what, what happened, he said no, I never told him

that. He came in and told me it was closed. And when I tried to ask a question about it, he said that's it. It's done and we, we complied with the rule, complied with the PREA. They didn't comply with any rules. He broke 57 of them.

I need to talk to you a little bit about the verdict form and it's gonna -- and you're gonna have to, to answer this question.

Do you find, by preponderance of the evidence, that the defendants were grossly negligent in the supervision and confinement of the plaintiff?

If you know something was wrong that day, then you can mark yes to that question. If you go back there in the room and say all right, who thinks the government did something wrong, everybody raise their hand, you can mark yes to that question. Then you get to damages and that's something that I can't tell you what to write down. I can't do anything except suggest what I know about the case to you.

Damages is whatever you take what the government took from a community member sitting right here and you give it back to them. So that's the value of, and this part is important cause y'all are gonna have to come up with a value for this, that's the value of violation, humiliation, the pain, the embarrassment for having that officer -- having that woman do the ultrasound on his private area, having to

sit and wait after he got some pain medicine. They tell you he had to sit and wait for almost three days before they even let him do an ultrasound. He's steady asking the nurse about it, the stress of that.

But the most important damage in this case to me is the 2,109 days since the event that they made him go without an apology. They make him sit with this. They blew him off. They hid behind procedures and motions and nonsense and bureaucratic red tape until we got right here today in front of y'all and the, the -- try to get the case dismissed. They tried everything but stand on their head to keep this, this case from coming to you now because you're the other members of the community that can hold them accountable.

So, if we're talking -- if we're talking, the actual number is 2,109 days. If we're doing 2,000 days for easy math, and this is completely up to you, I'm just gonna (indiscernible) them all and you have complete discretion on this. I can't go back there with y'all and neither can Will.

Let's say we have 2,000 days. Each one of those days obviously has 24 hours. That's 48,000 hours that he had to go without anybody apologizing to him, without anybody taking responsibility, without anybody being held accountable without so much as a reprimand to Gibson. The federal minimum wage it says you can't pay somebody less

than 7.25 an hour. That's federal law. If you pay somebody less than that, it's illegal. That's the federal government.

So what should the government be held liable for in this case?

Should the government be held to its own standard, the federal minimum wage, the bare minimum?

If that's 7.25, that's $348,000. If you want to pay him more than minimum wage, you can pay him $10.00 an hour, that's $480,000 and we can keep playing with numbers. But you can see how the numbers work.

There's no minimum and they're no maximums. You can write 1 dollar or you can write a million dollar (sic) or you can write whatever you want, whatever you think holds the government fully responsible for what it did to Otis.

Now, I'll tell you that the scale, you know, operating budget for Aiken around this time was about $435,000 a day. I don't know what it is now. That's what it was in 2017.

So, that might be around a days work for Aiken County. But it's been five years and some change for this man waiting on somebody to acknowledge that the Aiken County Sheriff's Department has not respected the rights of its citizens.

I want you to consider that the injury matches up -- this is not some big coincidence despite what Will says

about soap in the shower or antibiotics or whatever weird theories he, he offered. This is not a big coincidence. Multiple men get injured in the same part of their body immediately after the search Gibson conducted by coincidence. That just -- the odds of that are too astronomical.

And so I want you to consider that and I want to tell you that, you know, your verdict is a -- the public trust. I call it public trust. That's what, that's what (indiscernible) mentioned before the public. That's so people can come here and see what's going on in their community. That's what, that's what that's for, so people can come and say hey, they're representatives of our community, what are they gonna do about this government overreach, about these safety rule violations.

What you do will be recorded in this jailhouse, in this courthouse forever. It will be written down and it -- and the facts of this case will be weighed against how accountable the jury held to that (indiscernible). That's absolutely -- that's the way it will be recorded.

And so your verdict is extremely important. It's not just a, it's not just a case that we -- either side's got up here and willy nilly tried. It was very important. It's very important to my client.

And so, when you, when you go through your

deliberations, if somebody who just wants to go home or something like that, I know you've been here all week and y'all are tired and we appreciate everything you've done, but I want you to remind them how important their decision is.

The Seventh Amendment of the United States Constitution gives everybody the right to a trial by jury of their peers. Y'all are this man's peers and the right to a jury -- the jury trial is what Justice Scalia called the spinal cord of jurisprudence in America. It's the only thing that -- that's included in both the Bill of Rights and the body of the Constitution. That's how important the right to a trial by jury was to the people who founded this country.

So I ask that if somebody just wants to go home, you tell them look, this is -- this affected this man's life. It's, it's affecting everybody in Aiken County if we don't do something about it and we should take it seriously.

The Prison Rape Elimination Act exists to eliminate sexual assault in jail by inmates or guards and it's extremely important.

But how are we ever gonna give it any teeth if the government's not required to comply with it?

How are we ever gonna get it -- give it any teeth or to let you -- you know, the government has to retain records like it's suppose to, review and talk about the video

systems like they're suppose to, provide the training they're suppose to, do investigation like they're suppose to.

They didn't do anything -- as far as I can tell, they didn't do anything. We have to prove -- they do anything required for a PREA investigation?

All we have is somebody saying I investigated it and there's nothing to see here.

The government wants you to give an incomplete verdict. They want you to either write a zero on the Number 2 for damages or some number that doesn't hurt them too bad. They want you to not hold the government fully responsible for its safety rule violations and the danger its causing this community. That's what they want.

They want incomplete justice cause an incomplete verdict is incomplete justice and that's what they want. But I want to leave you with something before I sit down and I'm -- I'll, I'll only get to talk to you one more time after that and I'm not trying to be (indiscernible) or anything like that.

But some of y'all will remember the song, I'm showing my age now, from the early 2000s I think. It's called It Wasn't Me by a guy named Shaggy. And the whole song is guy and girlfriend catches him running around on him or something like that and his whole defense is it wasn't me.

Every time she says I saw you, it wasn't me. Caught on camera. It wasn't me.

That's the government's defense. I call it the Shaggy defense. All you men (indiscernible) his shirt after, after the search, it wasn't me.

Yeah, but I think they were (indiscernible) it wasn't me. But, but, but it's on video. It wasn't me.

Did you erase the video?

It wasn't me. It wasn't me. It wasn't me. It wasn't me. That's their defense.

So every time Will comes up here and tries to offer you some theory that doesn't make any sense, I want that (indiscernible), it wasn't me. It wasn't me. It wasn't me.

Before I sit down, I want to ask you to apply the same rules to the government that (indiscernible) applies to its citizens. If you break the rules, sometimes you have to lose your privileges. That's the deal.

But the government has to follow the rules too and I want you to, with your verdict, make the government follow the rules.

Thank you.

THE COURT: Mr. Davidson.

MR. DAVIDSON: Thank you, Your Honor.

On January 25th, 2017, Matthew Gibson was a correctional officer at the Aiken County Detention Center.

His obligation that day was a floater, what I call floater. He says I was a relief officer which means that you were -- that he went from place to place relieving other officers that needed to eat lunch or break, go to the bathroom, whatever reason they might need to leave. And he got called to come to Delta dorm, an open dorm, because Chris Erikson, the other correctional officer in that dorm, needed to take a break.

And so Matthew Gibson went into that cell block, which is approximately 80 inmates by himself, with a can of OC spray. He went in and did what he said was a security check. Checked around the various areas in the cellblock. And as he was coming down the stairs from the second tier, he noticed outside in the rec yard what appeared to be, he wasn't even sure, was a dice game going on.

Inmates are very innovative. They make the dice. They make dice out of paper.

And so he saw the dice, which is contraband because dice are used to gamble and gambling in a prison or in a, a correctional facility creates tension. Somebody owes somebody money, somebody owes somebody something else that they may have that they think is valuable, and when they can't pay, things happen. You can imagine.

And so, Mr. Gibson, Officer Gibson, went down and asked them to turn in the dice and they wouldn't. And so he then

closed the door, which locked when (indiscernible) and called his supervisor, told his supervisor what had happened, and the supervisor told him to let Erikson come back and then they'll just search the inmates.

And there's some question about how many inmates were in the yard. It's been several years but let's say there were 11 inmates all together.

He waited for Erikson. Erikson will come back. And during that period of time, he could easily see the inmates doing away with the dice. Swallowing the paper, crushing it up and so it could go down a drain, hiding it in a (indiscernible), whatever. But there were no dice. That's pretty much the (indiscernible). But they searched the individuals.

Now, they talk about reasonable suspicion. You heard the sheriff say that reasonable suspicion in a correctional facility is a lesser standard than what you have on the street because individuals who are in jail, and the detention center has inmates that run from shoplifting to murder (indiscernible), because of that, and because of the safety and security reasons, the officers, if they suspect that there might be contraband or a weapon or razors or drugs, they have the right to check.

When they check a cell or check cells, they're called shakedowns because they're shaking down the objects in the

jail cell to look for contraband, whether it's marijuana, or whether it's a shank, which is a homemade knife.

And so Officer Gibson began the pat down. Erikson was there when the pat downs began. Interesting. If I was going to grab somebody's testicles and hurt them, might want to do it without anybody there to witness what you're doing. But Erikson was there. Gibson didn't work -- didn't go ahead and start searching them before Erikson got there, which he was within his rights to do. He waited for Erikson.

I submit to you, ladies and gentlemen, if you gon' do something bad, you don't necessarily want somebody witnessing it. But Erikson said that Officer Gibson was performing a thorough pat down and even Mr. Gallam talked about a thorough pat down. That, yes, it can make you feel dehumanized and surprises inmates when it's done right because you do check the groin area. And they talk about Officer Gibson doing it with the back of his hand like that to check and the policy says you should use an open hand.

Well, ladies and gentlemen, Officer Gibson said he had been trained backhand to check. The reason he doesn't do it this way, he wasn't trained that way. (Indiscernible). He got a lot more of a chance to grasp something if your hand is opened.

So, in looking at the policy, you have to look at, and

the jury gets -- y'all get to look at it to decide is it a material issue in the case. We know he checked. He demonstrated it on me. You touch darn near every part of your body.

If you've been through an airport, and they've done a thorough pat down search, then they check you everywhere and the reason being, as even Mr. Owens said, inmates are pretty innovative about where they hide things, fold of the skin, lifted up, put something under that. Tie something to their private parts to hide something. Even Mr. Owens admitted he had seen them hide weapons on them under their clothing.

When they talk about visits to the -- a pat down search is much more noninvasive, dignified, than taking you to a room with two correctional officers and stripping every bit of your clothes off and then making you raise up your genitalia or checking your anus for what's (indiscernible).

It's not a strip search. It's a pat down cause you can check other things. For pat down searches, just you need to find the contraband.

Mr. Gibson, a Navy veteran, was trained at the detention center and then worked with a correctional officer for a period of time. What they call a field training officer, what he is now, and now a corporal. And then went to the South Carolina Criminal Justice Academy where he graduated and was certified. He is a certified correctional

officer who's been trained to do pat downs and I submit, ladies and gentlemen, he performed the pat down search appropriately on that day.

Now, Mr. Owens claims that he chopped or grabbed or twisted his testicle.

Well, ladies and gentlemen, Mr. Erikson didn't hear anything or see anything. They were complaining about the pat down cause it got kind of up close and personal but he said inmates complain about everything. He didn't see anything or hear anything about him calling out in pain. He didn't see anything that was inappropriate. What he witnessed, he believed, was a thorough pat down search.

Now, we heard Mr. Gibson say that he never heard anything else talked about. But, yes, he checked however many inmates that day. We know that three of them have come forward, Mr. Owens, Mr. Wilhite, and Mr. Ard.

Mr. Ard said he never complained. Never went to medical. Never filed a grievance. Mr. Wilhite said yes, I filed a grievance. You heard somebody say something about operation. But you also heard that they had heard it was a cyst that had (indiscernible). Nothing to do with twisting or, or grabbing of the testicles. And you heard Mr. Wilhite say that he was the one that got everybody together to talk and then be able to go to file their grievances.

On January the 25th, whether it happened at two

o'clock, nine o'clock, four o'clock, it wasn't until 10:40 at night that Mr. Owens filed his grievance. Now he claims there was a line to file grievances that day or use the kiosk. But if you look at it, I believe you will have that document back in the room with you. He said he was embarrassed. He felt violated. There was somebody (indiscernible) or you feel them. You might feel violated. You might be embarrassed.

But, in that document, there is absolutely nothing about an injury or pain or I need to see medical. On January the 29th when he filed the next one, and, again, there is nothing about pain or injury. And if you look at the rest of it, when he gets his lawyer involved, and he wants quote, unquote (indiscernible), quite honestly, ladies and gentlemen, I've never seen such. But when he gets his lawyer involved, he still doesn't say anything about that or an injury.

But what did he say on the stand?

He said he had pain for a week to 10 days. I was, in high school, a catcher. Catching is not the easiest job on a baseball team and I'll assure you that catching can be dangerous.

One day I forgot to wear a cup. I didn't tell the couch. I was embarrassed (indiscernible). It (indiscernible) it be -- they (indiscernible) when they had

that -- they were (indiscernible) and then slip on and you hit something, fine.

But what did he say about his pain?

Seven to 10 days.

Oh, I submit, ladies and gentlemen, that pain wouldn't last that long. But that's what he said.

But then I asked him, after seven or 10 days, the pain went away?

Yes.

Anything after that?

Any other problems after that?

On October, 2018, when I took his deposition, ladies and gentlemen, he said no. He didn't bring up anything about (indiscernible). The ultrasound didn't come into play until the 24th of February, one month later. And he also said they prescribed Ibuprofen and an antibiotic.

If you've been to a doctor sometimes, antibiotics nowadays are something they sometimes give you if you need it. Sometimes they won't cause they don't want to wear out antibiotics on you. They want you to be able to receive it when you need it. And they gave him an antibiotic and he claimed that he took it for 10 days and everything was fine after a week.

I submit, ladies and gentlemen, antibiotics are used for infections.

How he got the infection?

No one has come in and testified how he got the infection. But we know he was doing things that could cause him to have an infection in his groin area. Masturbation causing impurities to get up inside your urethra. A urinary tract infection. They never called, ladies and gentlemen, and they do have the burden of proof, they never called anyone from the Southern Health Department to testify what but you could (indiscernible) infection from some sort of. But it cleared up. (Indiscernible).

THE COURT: Just a little bit louder, Mr. Davidson.

MR. DAVIDSON: Okay. Sorry, Your Honor.

Hope y'all can hear me.

We heard from the three inmates, Hemminger, O'Neal, and Franklin, Franklin.

Yes, they've all got a criminal background. They all came in here and said oh, he's (indiscernible) and that's his (indiscernible).

Well, Mr. Hemminger said they came in to his room several (indiscernible) just like this -- Mr. Gibson and they searched it for a razor.

Ladies and gentlemen, you don't want a razor in a jail floating around. You're going to shake down a cell if you think it's in that cell.

Why?

Well, I don't think it takes a rocket scientist to figure out why you want to get a razor out of the institution, to get it out of the hands of an inmate.

The next person who I believe testified was Mr. O'Neal and he testified that he and Mr. Owens lived together and they were required to remove drawings from the wall of their cell and other inmates were required to do the same thing, and last, Mr. O'Neal. He says he was smirking at him.

That's their theory of retaliation all of which occurred in '22. I submit, ladies and gentlemen, that's not retaliation. That can be somebody looking for (indiscernible) problem, (indiscernible) looking for a razor and they want you to clean the walls. It all occurred between (indiscernible).

Mr. Owens said Mr. Gibson (indiscernible). He also said there was never anything "sexual" before this.

I submit, ladies and gentlemen, if you did -- somebody grabbed your testicles and squeezed them and twisted them, that is sexual and Officer Bowman said, when he started the investigation, he talked with Gibson, Erikson, O'Neal -- or not O'Neal. I apologize. Otis Owens and Mr. Wilhite. And Mr. Owens, according to the testimony that was read to you (indiscernible), Mr. Owens indicated that it was not sexual in nature.

Okay. That ended the PREA. That ended the

investigation. That ended any collection of information from any (indiscernible) got over with. But the PREA investigation wasn't really a PREA investigation. And the fact that something's investigated after the fact doesn't establish liability for Sheriff Hunt for what happened on the 25th.

What happened on the 25th, the plaintiff must show, occurred so as (indiscernible) gross negligence. Failure to exercise slight care. But Mr. Gibson indicated the way he did his inspection, search, would find what you needed to find if, in fact, there was contraband hidden in that area.

Mr. Gibson did this search properly. Mr. Owens said to y'all he never had a problem with his urinary stream. He never had blood in his stream. If you had grabbed and twisted somebody, I submit, ladies and gentlemen, the only (indiscernible).

You do get to make the decision about what damages (indiscernible). You can't speculate. You have to be reasonable. If you find that they're no damages, they're no damages. But you can not speculate on what they might be and the damages have to be related to, to January 25th. Not some later event. (Indiscernible).

One other thing I want to clean up. I'm pretty objectionable. My wife says I'm objectionable and we've been married 43 years. She (indiscernible). But I'm a

lawyer.

The judge is gonna charge you about lawyers. We have obligations to clients. We have to follow the rules. This book is the rules of court in the State of South Carolina. In that book are the rules of South Carolina Civil Procedure. In that book is the South Carolina Rules of Evidence and in those it tells lawyers what you have to do to put evidence into the record.

It also tells lawyers you're suppose to object to something because, if you don't, you waive it. It also tells lawyers that you have to protect your client from inadmissible evidence or improper questions. That's when you heard the judge. She's kind of the umpire. She has to say whether you're right or wrong, sustained or overruled.

Sustained means my objection is sustained. Overruled means I was not gonna be allowed to have that evidence kicked out or that question kicked out.

MR. HAWKINS: Your Honor, I'm gonna object just because this is a legal argument. It's not about the facts of the case.

THE COURT: All right. Objection noted for the record.

Mr. Davidson, continue please.

MR. DAVIDSON: Thank you, ma'am.

Years ago there were hearings on TV. Some of you probably remember it. It involved Oliver North and the

Contras and President Reagan.

Now then Oliver North was gonna have to testify in front of Congress and he was a, a lawyer too. Well within his rights. And the congressman got upset with the lawyer because the lawyer was doing his job.

At one point the lawyer told the committee, ladies and gentlemen, I am not a potted plant. That means he's a lawyer. He had an obligation to his client. He couldn't just sit there. He had to object. He had to perform his duties.

I imagine I have to advocate for my client. If you're upset with my objections, well be upset with me. Not the sheriff.

I don't get to talk to you again. This is my last time because if I got to talk to you again, lawyers will never shut up. We'd argue, we'd argue, and we'd argue back and forth. I'll assure you again my wife wishes we had that rule in my house.

So I don't get to talk to you again. But I want to leave you with something I want you to remember. It's something I heard years ago.

In delta, there were 80 inmates. Mr. Gibson, 5'7", about 170 pounds back then, was dealing with a gentleman who was 6'3," 6'4", 285. I'm not gonna issue anything with that gentlemen, number one.

Number one. This is what I was told. You have to remember, Mr. Correctional Officer, that those inmates, 80 inmates in that dorm, with you alone let you go home at night, let you go home at night, and I pray for them (indiscernible).

Try not to do anything that creates an issue because, ladies and gentlemen, I ask you to those inmates allowed Mr. Gibson or Mr. Erikson or anyone else who's in that room to go home at night.

I appreciate your time. I thank you and, in the end, I would ask you to return a verdict on behalf of Sheriff Hunt.

Thank you.

THE COURT: Mr. Hawkins.

MR. HAWKINS: Thank you, judge.

May it please the Court.

THE COURT: Yes.

MR. HAWKINS: First thing I want to say, just so it's clear, Sheriff Hunt has no personal liability in this suit. Sheriff Hunt and the Sheriff's Office have to be named by a statute. That's the way the suit has to be. So, I don't want anybody to get the impression that Sheriff Hunt has any stake or personal interest in this case (indiscernible).

I just want to respond to a couple of things that opposing counsel said. You know, he has tried a lot of these cases, Will has, and he's (indiscernible) clients.

Sheriff's Office here. He's got some clients in Columbia. I do. So, we're not (indiscernible). So I'm often pitted against Will. And they been paying him, you know, for a long time to avoid liability and responsibility in this case.

When I gave y'all our damages model, I showed you what the federal minimum wage was and I told you 7.25 minimum wage, what the damage will be for all those retaliations, investigation that was swept under the rug, all that stuff. I told you about all that and I told you well -- it could be for $10.00.

I submit to you that the government has been paying Will for five years way more than $10.00 an hour with little responsibility.

MR. DAVIDSON: Your Honor---

MR. HAWKINS: So I had---

MR. DAVIDSON: ---with all due respects, I'm gonna have to object to all this about how much I've been paid or being paid for five years. That's not proper argument in closing argument in this type case.

THE COURT: All right. Mr. Hawkins, I will allow you to continue your rebuttal.

MR. HAWKINS: Thank you, judge.

THE COURT: But please clean it up.

MR. HAWKINS: Yes, judge. Thank you.

Will came back up, up here and, and talked about the dice again as if there were some dice. Every witness who sat in that chair, except Gibson, said there were no dice anywhere. Even Gibson admitted there's no proof of any dice, not on the day, not only after that, not on any of the 2,109 days since he accused some people of playing dice.

These people already (indiscernible) from the same way by coincidence. He asked you, you know, what, what proof do we have that he was injured.

Well, there's an ultrasound. It has an injury on it. I just saw it. He went and get treated. Had, had a hydrocele pocket. In one minute---

MR. DAVIDSON: Your Honor, objection. He's going outside the record in this case.

MR. HAWKINS: Your Honor, he testified about his observations and that he was treated for the hydrocele.

MR. DAVIDSON: Your Honor?

THE COURT: Yes.

MR. DAVIDSON: He's, he's bringing items into this case in closing argument's never been admitted. It was objected to and we were sustained about that issue.

THE COURT: Yes, sir.

Mr. Hawkins, I'll allow you to continue.

MR. HAWKINS: Absolutely, Your Honor. Thank you.

There was a reference to a pat down search and how it

makes you feel dehumanized. I've never felt dehumanized by TSA at the airport. Been patted down plenty of times. I've never seen -- I've never seen four people at the same time get injured by somebody grabbing their genitals at the airport and that's the way this pat down search had ended. Multiple people shouldn't had to have get medical treatment after this search.

My (indiscernible) opposing counsel alluded to Deputy Erikson in what he testified to. He told y'all he called (indiscernible). He never saw what Gibson's hands were doing. The only thing he knows for sure is he was irate afterwards, and that Wilhite was irate, and that Ard later complained, and that Brockman (sic) became irate. That's the only thing he knows that something happened to upset those people.

We would know if they had the video camera footage. Will didn't offer an explanation for that. He just said oh, it got written over. Yeah, that's the problem. That's why we're here. If we had it, I'm sure we would of been able to work something out.

And, by the way, I for -- I forgot to say this in, in my -- the first part of my closing. But sexual assault is serious. He says this wasn't really a PREA investigation. But by their own (indiscernible) it's a PREA investigation. So, I wonder is that in the report. They called it a PREA

investigation.

Yes, if somebody accused me of sexual assault, especially today, and there's a video that says I didn't do it, I'm not letting that video go anywhere. I'm saving it on 15 different means of preservation. I'm not letting it go if I -- and the Sheriff's Office and somebody accuses an employee of it, I'm keeping it for that reason because I know, if that happened, I'm gonna have to face the consequences at some point potentially you know.

They don't always have to face the consequences because sometimes a prisoner tries to (indiscernible) themself or sometimes they don't have the knowledge of the rights that they have and that they have some protections in the law. So they get away with a lot. But that happens to me, I'm not letting that video go anywhere and they had it. It was, it was viewable for days, probably weeks as far as I know. Up to 90 days they had it and they didn't preserve it.

I, I hope y'all talk about that in your deliberation room cause that's a big deal and it's sketchy and shady and it doesn't make any sense.

Erikson seemed like a nice enough guy and it's not Erikson's fault that Gibson did this. But I represent to you that we have to weigh Erikson's credibility. He let people go out of jail too early. He got reprimanded for it. He got fired for brandishing a firearm in Outback Steakhouse

parking lot. He has anger issues and he threw some keys over a desk or something and cussed out somebody and got reprimanded for that.

People, people have issues. I'm not judging him but you have to weigh the credibility of what he told you from the stand. He told you from the stand is that he knows that people were upset. He didn't see Gibson's hands but he knows that people were -- he knows something upset those people, something we'll never know for sure because we don't have the camera footage.

Mr. Davidson talked about Gibson's training. He said well, yeah, he violated the policy. But he said he was trained to do it this way and that's entitled -- well, that's not, that's not anybody's fault that the Sheriff's problem that they didn't provide him with the right kind of training and also we asked for his training records so y'all can see them. He said, you know, we'll have them in court.

PREA requires this training, the minimum standards require this training.

Did you bring the training records?

Nothing.

Just told -- at least said that it -- it's all good. Don't worry about it. Don't look at that.

They could of brought anything they wanted to rebut our case. They could of brought any evidence they had and they

didn't bring one piece of paper to put up.

They didn't put a witness in that chair. They didn't put on a case. They're trying to downplay the search now. It -- their theory keeps changing. It changed from it didn't happen at one point at the beginning of the case to it happened but don't give damages except for 10 days to maybe something else caused the -- an injury at the soap. He hadn't had any problems at all in that area of his body before or after the recovery from this incident. None.

I've never heard, and I played sports in high school and college, been in a lot of locker rooms, taken a lot of showers, never heard of anybody, nobody hurt I played sports with, nobody ever friends with, nobody ever known have I ever heard get an infection from a shower with soap.

That's ridiculous. It's absurd. That's what the government's trying to sell you that -- that's what the government's trying to sell its citizens right now. Soap caused this injury.

What a coincidence that soap caused an injury after four people got injured the same way from a search that violated policy. And I'm sorry if I seem passionate. But this infuriates me. It infuriates me to know that, because somebody did wrong and they're paying the price for it, they're doing the time, you got people that treat them worse than animals and that's what it is. I wouldn't do this to a

dog.

And a cyst?

He said Bowman said something about a cyst.

What Bowman says is I don't know. I heard he had surgery. I thought it was for a cyst or something. Bowman doesn't know anything about what's going on and a cyst doesn't make any sense. He -- he coincidentally got a cyst the same time he coincidentally got a soap infection, the same time these other two men coincidentally had injuries to their groin all after getting searched by Gibson in a way that he admits violating policy?

You have to figure out what's going (indiscernible) even by a little bit. And there's a, there's an attorney that I like in Florida. I listen to podcasts and read books.

When he says when defense does something like this, he says it's the zero horses. It's the zero horses now. You hear hoof beats in Aiken. Horse down from Texas. Your hoof beats. You don't look around for zebras cause we're not on Serengeti. They want you looking for zebras and there ain't no zebras around.

That doesn't -- their theory doesn't make any sense. All these theories of soap and, you know, preexisting conditions, there's no evidence of any of these. None of it. They could of put up a witness. They didn't put up

anything. If that was gonna be their defense, they should of put that fence and put up a witness so I could cross-examine them and show y'all from the stent how ridiculous it is like y'all all know (indiscernible).

They talked about Mr. -- and this is the biggest, this is the biggest situation example of victim blaming I've ever seen. They do this to these people and then they blame them, they blame him for waiting until ten o'clock. He didn't file a grievance until after 9:00 (indiscernible). He testified about that. He wrote a statement before that that they never showed you. They never produced. They never brought to court. There's a video of him writing the statement. That disappeared too.

And so I still don't know what the defense is, is that they didn't do it or they did do it. It wasn't that bad or, if they didn't do it, it wasn't bad enough for y'all to take serious. I don't know what your defense is.

That -- the antibiotic thing, that's another thing that doesn't make any sense. Everybody knows who've been to the doctor, that for inflammation, especially of this kind, they can prescribe antibiotics (indiscernible) so the hydrocele fluid doesn't get infected. Everybody knows that. And if they come up here and say it was an infection, there's no evidence of any infection. He testified he had no cuts, scrapes, or abrasions.

Nobody put up one piece of evidence about any cut, scrape, or abrasion, or infection anywhere. If they had a medical -- they got all his medical records. He's in jail.

If they had anything that indicated an infection, you don't think they would have it drawn up on a poster so y'all can see it (indiscernible).

He -- right after that there's a -- medical forms that says he had no STDs. That's the only kind of infection I can think of in that area is an STD. It said he didn't have any.

The lady who did the ultrasound didn't say anything about an infection. (Indiscernible).

The razor. Will stood up here and tried to say, well folks, you just don't want a razor in (indiscernible). Yeah, but that doesn't mean that you can go to somebody's room who there was no razor assigned to as soon as you hear about it and walk past all the other cells, cell, cell, cell, cell. He did Otis' room to say we're shaking your room down for this razor when you never, when you never checked out a razor from, from his -- from -- it's not medical. So whoever hands out razors.

But there was no razor assigned to his room. We heard testimony about that. That was an act of retaliation. He can downplay the smirk and all that all he wants. But when you're making im -- break is important to these people. I

know they're in jail. I know they're just prisoners or whatever Will wants to call them but rec's all they have. And if you tell somebody hey, you got to clean up that other person's mess or you don't get any rec, when they don't go to anybody else, that's retaliation.

You have the power to, to hold the government responsible for each, each act of retaliation and government (indiscernible) got three different people observed it.

Otis doesn't have a voice. He can't talk to you or tell you anything. He can't do anything except hope that I've told you enough and put up enough evidence for you to hold the government, the government responsible. He doesn't have a voice in jail.

When this happened to him he tried to do everything he could. They didn't take it seriously. They didn't save the handwritten notes. They didn't do a valid PREA investigation that violated the rules. They didn't save any evidence. He, he's been voiceless through this whole process and he's, he's, he's not trying to convince anybody that he's a saint. He knows he's got addiction issues. He's knows he's got to go to rehab. But you don't treat anybody like the Sheriff's Office treated him and those other people on that day.

It's not -- we're not talking about a child molesterer (phonetic) or a murderer. We're talking about somebody's

who's on drugs and got arrested for it.

Will stood up and told y'all what you can and can't do. You can't find damages this way. You can't find damages that way. The judge is the only one who can tell you what to assign damages to and I submit to you that you can hold the government as responsible as you want to.

The judge is not gonna tell you there's a minimum or a limit on that line. Right here, that is completely up to you and Will can't do anything about what you write on that number and neither can the government for what number you write on that line.

Will talked about his objections. Well, that's why we kept track of them. We knew that that was gon' be an issue and he's right. He always has a right to make objections. But we also have an obligation not to impede a trial and make a three day trial last five days, make a duty to people not to unduly delay that.

He's right. They're lots of -- there's lots of evidence they wanted out and lots of evidence they kept out. I wish we could show you everything but we couldn't. We weren't allowed to. But we showed what we could get in enough to hold 15 people responsible for what happened. Rule violation on rule violation on rule violation. All of which (indiscernible).

He then talked about Otis is a big guy and life is

scary. Nobody's ever accused of hit -- being anything but a teddy bear as far as I can tell. I've talked to his -- the people that know him. I've talked to his family and got to know them and everybody says the same thing. Everybody loves Scooter.

It's not some dude that Gibson was scared of. He just did that cause he's mad he didn't find any -- (indiscernible) wrong. He didn't find (indiscernible) but maybe -- and he's rubbing the inside of people's bellybuttons. Maybe he's got some weird thing going on. I don't know. But he shouldn't be allowed to do any of it and they're right.

They do have important, hard jobs. That's why only fifth people who (indiscernible) training should be allowed to do that job. I told y'all in opening my brothers are police officers and, in his, in his department, he's a detective with the City of Greenville, if somebody attacks or in some, some way does misconduct, hold them account -- accountable because I don't want my brother to get a bad name. If you give the government a pass for this, the county becomes more dangerous because people in other counties and other agencies learn that Aiken doesn't have a high standard for employees.

So we have the training and qualifications to work somewhere else like Columbia or Myrtle Beach, they hear I

can go to Aiken. That's what they want. They want this county to become (indiscernible) if you give the government a pass.

And, you know, that, that example that I gave earlier about the 18 year old girl on the side of the road, now it's nighttime, she's pulled over, and the deputy pulls her over, I don't want to come back and try another case. I don't want to be back in front of y'all in two years because a deputy sexually assaulted another female when it was nighttime for a traffic stop. That's the case I don't want to try.

I want y'all to stop that from happening right now today with a verdict that says to the government you can not do this. You have to follow the rules just like everybody else.

And the last thing I'll say to you. I only get to talk to you (indiscernible) cause I'm always so worried there's something I won't say or something more I could of done for my client. But I want you to imagine that all of that operating budget for 2017 is in that detention center. It's so much money. I think it was $159 million-dollars.

It's so much money that there are dollar bills crammed against -- hundred dollar bills crammed against the window. There's no inmates in there. Just all the county money's for that year. And then somebody cuts the razor wire and

they break in and they try (indiscernible) on it.

Will we be looking for that video footage then?

Do you think for one second they wouldn't know who was on that footage, their social security number, and their mother's maiden name?

And that's just money. This is a human being from right here in Aiken County and this is what the government thinks of the way they can treat people in Aiken.

I hope that your verdict sends a message that is unmistakable. I hope your verdict is talked about. I hope it's in the paper. I hope your verdict is remembered by the government and today as a day remembered, November 4th, 2022, is the day that 12 people stood up to the government and told the government in no uncertain terms what you will and will not tolerate from the government.

Thank you so much for letting me try this case in front of you.

THE COURT: All right. Ladies and gentlemen of the jury, do y'all -- does anyone need a bathroom break?

(WHEREUPON, there was no audible response.)

THE COURT: Is that a yes?

(WHEREUPON, there was no audible response.)

THE COURT: Okay.

(Pause.)

THE COURT: Why don't you-all stand up and take a

stretch break?

(WHEREUPON, the jurors comply.)

THE COURT: Feel free to move around (indiscernible) if that's what you need to do.

(Pause.)

THE COURT: Ladies and gentlemen of the jury, I remind you that, during this trial, you and I have certain duties to perform.

During this -- as the trial judge, I -- it is my responsibility to preside over the trial of this case and I also have the duty to rule on the admissibility of the evidence that is offered during this trial.

You are to consider only the evidence before you. If there was any testimony ordered stricken from the record during this trial, you must disregard that testimony. You are to consider only the testimony which has been presented from this witness stand, any exhibits which have been made a part of the record in this case, and any stipulations of counsel.

I have the additional duty to charge you the law applicable to this case. It is your duty, as jurors, to accept and apply the law as I state it to you now. If you think you have any idea as to what the law is or what the law ought to be, and it does not agree with what I tell you the law is, you must forget that idea because you are sworn

to accept the law and apply the law exactly as I state it to you.

In every case tried in this court before a jury, the jury becomes the sole and exclusive judge of the facts. A trial judge can not comment on or make any statement about the facts in a case.

Since you are the sole judges of the facts, do not think by anything that I have said during this trial that I have any opinion about the facts of this case. The law does not allow me to have an opinion about the facts.

The plaintiff has brought an action against the defendant in this action by filing what is called pleadings. In the pleadings, the plaintiff alleged that the defendant acted with gross negligence and recklessness and the defendants were negligent in the hiring and supervision of its employees.

The issues for the jury to decide are if the defendant acted with gross negligence and negligence in its hiring and supervision of its employees proximately caused injury to the plaintiff and, if so, what are his damages.

The burden of proof in this case is by the preponderance of the evidence. A preponderance of the evidence simply means the greater weight of the evidence and if the evidence, which as a whole, shows that the fact sought to be proved is more likely true than not true.

This can be illustrated by imagining a set of scales. When the case begins, the scales are even. After all of the evidence has been presented, if the scales remain even or if they tip even slightly in favor of the defendant, then the plaintiff has failed to meet the burden of proof and would not be entitled to recovery in this case. If, on the other hand, the scales tip even slightly in favor of the plaintiff, the plaintiff will have met the burden of proof and you should return a verdict for the plaintiff.

The preponderance of the evidence is not determined by the number of witnesses. Instead, it must be determined by the greater weight of all the evidence.

During the trial, there are two types of evidence generally presented, direct evidence and circumstantial evidence.

Direct evidence is the testimony of a person who claims to have actual knowledge of the facts such as an eye witness. It is evidence which immediately establishes the main fact to be proved.

Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. It is evidence which immediately establishes collateral facts on which the main fact may be inferred. Circumstantial evidence is based on inference and not on personal knowledge and observation. It is proof that does not actually

establish the fact in question but that asserts or describes something else from which you may either reasonably infer the truth of the fact or at least reasonably infer an increase in the probability that the fact is true.

For circumstantial evidence to be sufficient to warrant the finding of a fact, the circumstances must lead to that fact with reasonable certainty. The facts and circumstances should be considered in light of ordinary experience and common sense. The existence of a fact can not be based on speculation, surmise, or conjecture.

The law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence nor is a greater degree of certainty required to circumstantial evidence that than of direct evidence.

The main responsibility of a jury is to make findings or determinations of facts from the evidence and testimony. To complete this task, it is necessary that you determine the credibility of witnesses who have testified in this case.

Credibility simply means believability. It becomes your duty, as jurors, to evaluate the evidence and determine which evidence convinces you that it is true.

In determining the believability of witnesses who have testified in this case, you may believe one witness over

several witnesses or several witnesses over one witness. You may believe a part of the testimony of a witness and reject the remaining part of the testimony of that same witness. You may believe the testimony of a witness in its entirety or reject the testimony of a witness in its entirety.

You may consider whether the witness has an interest in the results of the trial, whether the witness is prejudiced for either the plaintiff or the defendants, the opportunity for which the witness has had to have seen the matters and things about which the witness may testify, and the way the witness acts on the witness stand.

Testimony was presented to you by video deposition. A deposition is sworn testimony given by a witness outside of court in the presence of lawyers for each party who may ask questions of a witness. If any objections are made at the deposition, I ruled on them when the deposition was read or presented.

The -- this testimony is entitled to the same consideration and to be judged as to credibility and weighed by you the same way as if the witness were present and gave the testimony about to be read to you from the witness stand. It is for you, the jury, to determine the effect, value, weight, or truth of the testimony given in the deposition.

Attorneys are officers of the court. Attorneys have the absolute right and duty to bring matters to the attention of the Court by way of objections. Do not inferentially or otherwise become upset or disturbed by counsel by virtue of an objection.

Our trial procedure includes the objection process as a means of control of evidence. For example, letting in proper evidence and keeping out improper evidence. Counsel, by objecting, are simply performing their roles in the trial of this case.

In our courts, no distinction is made between government entities and individuals. A government entity is a person in the eyes of the law. A government entity is entitled to the same fair and impartial consideration and to just -- and to just --.

All right. In our courts, no distinction is made between government entities and individuals. A government entity is a person in the eyes of the law. A government entity is entitled to the same fair and impartial consideration and justice by the same legal standard as an individual.

An employer is liable for the grossly negligent or omissions activity -- an employer's liable for the grossly negligent acts or omissions of employees which are within the scope of their employment and which are proximately --

which proximately caused injury to another person.

Here it is undisputed that the Aiken County Detention Center employees are employees of the Aiken County Detention Center at the time of the incident.

The plaintiff claims that the defendant acted with gross negligence and should compensate the plaintiff for the injuries the plaintiff sustained as a result of the defendant's conduct. By comparison, negligence is a failure to exercise due care. Gross negligence is a failure to exercise a slight degree of care. A person who is so indifferent to the consequences of his conduct as to not give a slight care as to what he's doing acts with gross negligence.

No inference of gross negligence arises from the mere fact of injury. In order to prove his claim of gross negligence, the plaintiff must show, number one, the defendant, Aiken County sheriff, owed the plaintiff a legal duty of the care. Number two, that the defendant breached that duty by failing to exercise even a slight degree of care and, number three, that the plaintiff was injured. Number four, that the defendant's breach of duty proximately caused the injury of the plaintiff.

The plaintiff claims that the defendant acted with recklessness and should compensate the plaintiff for the injury the plaintiff suffered as a result of the defendant's

conduct. Recklessness is a conscience indifference to the rights of the plaintiff or a reckless disregard of the rights of the plaintiff. Violation of the statute is some evidence that the, that the defendant acted recklessly, willful, and wantonly. The plaintiff must prove, by a preponderance or the greater weight of the evidence, that the defendant acted with recklessness.

The plaintiff claimed that the defendant was grossly negligent in the hiring and supervision of its employees. In circumstances where an employer knew or should have known that his employment of a specific person created an undue risk of harm to the public, a plaintiff may claim that the employer was itself grossly negligent in hiring, supervising, or training an employee or that the employer acted grossly negligently in entrusting its employee with a tool that created an unreasonable risk of harm to the public. Employer's liability under such theory rests on the employer's own gross negligence.

You may consider relevant standards of care from various sources in determining whether the defendant breached its duty -- breached duties owed to an injured person in a negligence case. The standard of care in a given case is established and defined by the common law statutes, administrative regulations, and industry standards.

The plaintiff must prove, by the greater weight of the evidence, that the defendant did something wrong and contrary to the, to the accepted standard and practices in the field of corrections before the plaintiff will be entitled to recover. If it does not appear from the greater weight of the evidence that the defendant did something wrong that caused injury to the plaintiff, then the plaintiff is not entitled to recovery despite the fact that he may have been injured.

In order to establish responsibility for the defendant's negligence, the plaintiff must prove, by a preponderance of the evidence, that a defendant's negligence proximately caused the injuries for which the damages are sought. To prove that the defendant's negligence proximately caused the plaintiff's injuries, the plaintiff must first prove causation in fact. This is proven by showing that an injury would not have occurred but for the defendant's negligence.

The plaintiff must also prove legal cause. Legal cause is proven by showing that the injury was foreseeable. This means that the injury occurred as a natural and probable consequence of the defendant's negligence.

If you decide that the defendant's negligence proximately caused the injuries of the plaintiff, and that the plaintiff is entitled to a verdict, your next step would

be to decide how much money the defendant should be required to pay to compensate the plaintiff for his injuries.

In considering the issue of the plaintiff's damages and losses, the law provides that you shall assess the amount that you find to be justified by preponderance of the evidence as full, just, and reasonable compensation for all of the plaintiff's damages. No more and no less.

I instruct you that the award of damages must be reasonable and should not be based upon conjecture, speculation, or surmise. This is what the law refers to as actual and compensatory damages. As with all other facts in this case, the plaintiff must prove his actual damages by the preponderance or greater weight of the evidence.

I instruct you that compensatory damages are not restricted to actual loss of money or the actual loss of time. These damages include both the mental and physical aspects of this injury, tangible and intangible, financial and otherwise. By reimbursing or compensating the plaintiff for what he has lost, (indiscernible), you are to attempt to restore the plaintiff, that is make him whole, or as he was immediately prior to his injuries. Your award of damages should be just and reasonable in light of the testimony and the evidence presented in the case.

Ladies and gentlemen of the jury, as you retire to begin your deliberations, I wish to express the hope that

each of you will be mindful of the importance of your responsibility. You are not called upon to serve as jurors very often and the proper performance of our duty requires each of you to free your mind of all improper influences. You must see to it that the trial is fair and that the verdict is just.

I instruct you that the verdict you find will be a result of you going back in that jury room and confining your consideration to the evidence and the law which you have heard in this courtroom weighing it fairly and impartially as I have every confidence that you will. Everyone is entitled to justice in this case, both the plaintiff and the defendant. All are entitled to justice, nothing more, nothing less. Remember that your verdict must be unanimous.

All right. Mr. Foreperson.

All right. My law clerk is (indiscernible). He's Wonderful.

All right. Ladies and gentlemen, Mr. Foreperson, let me explain the form to you. I'm going to give you a copy of the instructions as well as the verdict form. We'll send them back to you, all right, as well as with the exhibits.

Verdict form. Number one. Do you find, by a preponderance of the evidence, that the defendants were grossly negligence in their supervision and confinement of

the plaintiff. You will check either yes or no. You can't check both.

All right. Number two. If you answer yes to question number one, then we, the jury, find actual damages in favor of the plaintiff, Otis Owens, as follows and you will write the number of damages here.

Now, Mr. Foreperson, you will print your name here and you will sign below.

All right. I'll give the parties an opportunity to object or correct anything that I have stated in the instructions.

Anything from the plaintiff?

MR. HAWKINS: None, Your Honor.

THE COURT: Anything from the defense?

MR. DAVIDSON: None at this time, Your Honor.

THE COURT: Thank you.

All right. At this time, we'll escort the jury to the jury room. Do not begin deliberating until I give you the exhibits and these instructions.

Thank you.

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

THE COURT: All right. Ladies and gentlemen, let me -- let the record reflect that my law clerk gave me -- there was an error on Page 9 and he corrected that scrivener's

error and that is what was added and I took the incorrect Page Number 9 out of the jury charges. There are no changes to the charges that will be given to the jury. And if you wish, you can examine the charges before we send them back.

Are there any objections that need to be taken on the record with regards to the charges?

MR. HAWKINS: Your Honor, we only note our previous objection about spoliation instruction. Other than that, none from the plaintiff.

THE COURT: Thank you, Mr. Hawkins.

Mr. Davidson.

MR. DAVIDSON: Your Honor, please note my previous objection regarding immunities not being included since they are (indiscernible) defenses on behalf of the defendants. And then last, Your Honor, during closing arguments, plaintiff counsel, he keeps referring to hydrocele. I believe the Court ruled that that could not come in without medical testimony.

So, I noted an objection for the record and would like that just included in the record.

THE COURT: All right. That is an concluded (sic) and I do need to make a, a comment regarding the -- there were various objections---

MR. HAWKINS: Your Honor?

THE COURT: ---during the closings and, and I did not

rule in front of the jury on those objections.

But let me be clear that all of those objections I have sustained. I did find, find that all of those objections were substantiated on both sides. And so I, I have sustained -- excuse me.

From, from Mr. Davidson was sustained with the exception, Mr. Hawkins, you objected to Mr. Davidson explaining how objections worked.

MR. HAWKINS: Yes, Your Honor.

In talking about -- I'm talking like that microphone's on.

He went into this -- I think he opened up the Rules of Civil Procedure and started talking about the law and how it worked and all this stuff. So, we objected to that.

In response to the, the hydrocele thing, one, Your Honor made a ruling that the reference was allowed before we started. And so I would, I would say that we're allowed to say the word and, secondly, Otis talked about the hydrocele and it's, it's weird for somebody to object to their own question. But he elicited that testimony. Otis talked about it. And then there was no objection to it.

So there was evidence on the record of the hydrocele.

THE COURT: Okay. Thank you for that, Mr. Hawkins.

Anything further, Mr. Davidson?

MR. DAVIDSON: Housekeeping.

THE COURT: Yes.

MR. DAVIDSON: You got two alternates that are back there.

THE COURT: Yes. Well, I'll remove -- I'll pull them out.

MR. DAVIDSON: I didn't know if you were gonna check and see if everybody on the jury felt well and felt like continuing and then, if, if not, deal with an alternate. Just a---

THE COURT: I've never done that before.

MR. DAVIDSON: Just remind the Court that you got two alternate.

I, I had a judge do it once. He asked the jury -- it was right after COVID. He asked the jury if everybody felt okay and felt that they could complete their deliberation and they all indicated they could. You know, his, his concern is somebody might feel -- start to feel ill and he didn't want to let the alternate go until he was sure.

THE COURT: Absolutely. I---

MR. DAVIDSON: So, that's the only reason I raise it, Your Honor, is a housekeeping matter. I figured you'd get rid of the alternates but I wanted to remind you.

THE COURT: Yeah.

MR. DAVIDSON: I haven't had that background.

THE COURT: Yeah, I appreciate that and, and I think

I'm still a new dog. So I can learn some new tricks.

MR. DAVIDSON: All right.

THE COURT: So --.

MR. DAVIDSON: Whether you're new or old, you're doing okay.

THE COURT: Well thank you.

All right. I'm gonna, I'm gonna bring those alternates out and thank them for their, their service this week. I will invite them to stay as I normally do in -- for the gathering.

Can we bring those alternates in and then I'll let you guys do your exhibits?

(WHEREUPON, the alternate jurors were dismissed at this time.)

THE COURT: All right. The two alternates have been removed from the jury panel.

Gentlemen, if you will get your exhibits together, we can send them back.

MR. HAWKINS: I think the Court has all of ours, Your Honor.

THE COURT: Thank you.

(Pause.)

MR. DAVIDSON: Judge, I got, I got one question.

THE COURT: Yes.

MR. DAVIDSON: We---

THE COURT: Mr. Davidson.

MR. DAVIDSON: We asked the Court to take judicial notice of your (indiscernible) Court order entered by the Honorable Joseph Anderson in the case involving Mr. James Wilhite and I don't know if it's going back to the jury. See it was argued during the plaintiff's case about it being just -- my summary judgment being filed and---

THE COURT: We made it a Court -- we made it a Court Exhibit, did we---

MR. DAVIDSON: And I asked---

THE COURT: Is that---

MR. DAVIDSON: And I asked the Court to take judicial notice of it. I don't know whether you want to send it back as, as -- since the Court's already taken notice of it.

How do you want to handle that?

THE COURT: Mr. Hawkins, Mr. Davidson, do you-all want it sent back?

MR. HAWKINS: I don't know why the jury would need to take anything back that's a Court Exhibit for judicial notice. I --.

THE COURT: What you think, Mr. Davidson?

You are requesting for it to be sent back?

MR. DAVIDSON: Yes, ma'am, it's, it's really not a Court Exhibit. I've asked the Court to take judicial notice of it. So --.

THE COURT: But we put the -- I thought we put Anderson's order as a Court Exhibit.

MR. DAVIDSON: Well, I think you marked it that way. But the problem is it's -- since you took judicial notice of it, the jury should at least have the benefit to read it. I don't think you published it in front of the jury.

MR. HAWKINS: No, that's not the way it works at all.

THE COURT: Now---

MR. DAVIDSON: They take exhibits, trial exhibits back and it wouldn't serve any purpose, judge.

THE COURT: Well, I'm going to leave it out, Mr. Davidson. I do feel like that I could have perhaps instructed or charged the jury that I had taken judicial notice of that, that. But essentially now what we see the document and may not know the purpose of that. So, I am going to leave that, that out.

MR. HAWKINS: Thank you, judge.

THE COURT: Thank you, gentlemen.

MR. DAVIDSON: Would you---

THE COURT: Are all the exhibits ready with -- at this point?

MR. DAVIDSON: They're ready.

Would you consider bringing them back and instructing them about the judicial notice?

I'm just noting that for the record, Your Honor.

THE COURT: Yes, sir. Thank you, Mr. Davidson. I'll -- I will not bring the jury back to instruct them on that. Thank you.

All right. Can you please take the exhibits back and the instructions and verdict form back to the jury and, and permit them to begin -- instruct them to begin deliberating. Please tell them to start deliberating.

All right. We're off, we're off the record.

MR. DAVIDSON: Thank you, ma'am.

THE COURT: Thank you.

(WHEREUPON, the jury began deliberations at 12:36PM and returned with a verdict at 1:42PM.)

MR. DAVIDSON: My people are on the way, judge.

MR. HAWKINS: Your Honor?

THE COURT: I'm sorry. I didn't hear you, Mr. Davidson.

MR. DAVIDSON: My people are on the way.

THE COURT: Okay.

MR. DAVIDSON: I called them.

THE COURT: All right.

MR. HAWKINS: Is it -- I thought we had a verdict. Is it a verdict or question?

THE COURT: It is a verdict.

MR. HAWKINS: Okay.

THE COURT: But we also had a question --

MR. HAWKINS: Okay.
THE COURT: -- prior to the verdict.
MR. HAWKINS: Okay.
THE COURT: And I'm going to read that. I answered that question.
MR. HAWKINS: Okay.
THE COURT: But I wanted to read it. The -- you-all were gone. That's fine. But it -- they were not questions that I was able to answer --
MR. HAWKINS: Okay.
THE COURT: -- which is why I did not call you on that.
MR. HAWKINS: Okay.
THE COURT: They didn't come to me like this.
All right. So the jury did submit three questions prior to the verdict and I will read those for the record.
Question Number 1. How long was he in Aiken County after the incident.
Question Number 2. How long in Fairfield County and for what.
Question Number 3. What did he go to SCDC for and how long and I said that the Court is unable to answer these questions. This testimony was not submitted into evidence and I signed and dated it. That was at 1:17PM for today's date, November the 4th.
I did not call the parties in because I was not able to

give the jury that information. I will make this part of the -- the question's a part of the record. That will be Court's Exhibit C I believe.

THE DIGITAL REPORTER: Yes, ma'am.

(WHEREUPON, the jury's note was marked as Court's Exhibit C and received into evidence at this time.)

THE COURT: All right. You-all ready for me to bring in the jury for the -- any, any questions with regard to the jury questions?

MR. HAWKINS: None from the plaintiff, Your Honor.

MR. DAVIDSON: None from the plaintiff (sic), Your Honor.

If you could wait just a second more so --.

THE COURT: All right. Yes.

MR. DAVIDSON: -- Captain Gallam could be here.

THE COURT: All right. We'll stand down and, and wait for just a minute for the defendants to come.

MR. DAVIDSON: Thank you, ma'am.

THE COURT: All right.

MR. DAVIDSON: That's why I may (indiscernible).

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

THE COURT: We will bring the jury in please.

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

THE COURT: All right. Thank you, ladies and gentlemen

of the jury.

Mr. Foreperson, it is my understanding from our bailiff that you have reached a verdict.

Is that correct?

THE FOREPERSON: Yes, Your Honor.

THE COURT: And is that verdict unanimous?

THE FOREPERSON: Yes, Your Honor.

THE COURT: Have you signed the bottom of the verdict form?

THE FOREPERSON: Yes, Your Honor.

THE COURT: All right. Will you please hand that to the bailiff?

(WHEREUPON, the Foreperson complies.)

THE COURT: Yes, Madam Clerk, please read the jury's verdict.

THE CLERK: Your Honor, in Case Number 2017-CP-02-01413, Otis Owens versus Michael Hunt in his official capacity as sheriff of Aiken County, Aiken County Sheriff's Office, Aiken County Detention Center, and Aiken County, the jury -- the verdict is as follows:

Question Number 1. Do you find, by a preponderance of the evidence, that the defendants were grossly negligent in their supervision and confinement of the plaintiff.

The answer is yes.

Question Number 2. If you answered yes to Question 1,

then we, the jury, find actual damages in favor of the plaintiff of a sum as follows:

$150,000.

I, Danny Green, jury foreperson, certify that the above verdict reflects the unanimous verdict of this case. Signed by the jury foreperson, Danny Green. Dated November 4th, 2022.

THE COURT: Thank you, Madam Clerk.

All right. Does any member -- excuse me.

Does any party wish to poll -- does the plaintiff wish to, wish to poll the jury?

MR. HAWKINS: No need to poll the jury, Your Honor.

THE COURT: Does the defendant wish to poll the jury?

MR. DAVIDSON: Yes, Your Honor.

THE COURT: All right. Madam Clerk, please poll the jury.

THE CLERK: All right. As I call your juror number, please stand and raise your right-hand.

Juror Number 76.

Was this your verdict?

THE JUROR: Yes, ma'am.

THE CLERK: Is it still your verdict?

THE JUROR: Yes, ma'am.

THE CLERK: Thank you.

Juror Number 155.

Was this your verdict?
THE JUROR: Yes.
THE CLERK: Is it still your verdict?
THE JUROR: Yes, ma'am.
THE CLERK: Thank you.
Juror Number 154.
Was this your verdict?
THE JUROR: Yes, ma'am.
THE CLERK: Is it still your verdict?
THE JUROR: Yes, ma'am.
THE CLERK: Thank you.
Juror Number 41.
Was this your verdict?
THE JUROR: Yes.
THE CLERK: Is it still your verdict?
THE JUROR: Yes.
THE CLERK: Juror Number 3.
Was this your verdict?
THE JUROR: Yes.
THE CLERK: Is this still your verdict?
THE JUROR: Yes.
THE CLERK: Thank you.
Juror Number 92.
Was this your verdict?
THE JUROR: Yes, ma'am.

THE CLERK: Is this still your verdict?
THE JUROR: Yes.
THE CLERK: Thank you.
Juror Number 134.
Was this your verdict?
THE JUROR: Yes.
THE CLERK: Is this still your verdict?
THE JUROR: Yes.
THE CLERK: Thank you.
Juror Number 43.
Was this your verdict?
THE JUROR: Yes.
THE CLERK: Is this still your verdict?
THE JUROR: Yes.
THE CLERK: Thank you.
Juror Number 150.
Was this your verdict?
THE JUROR: Yes.
THE CLERK: Is this still your verdict?
THE JUROR: Yes.
THE CLERK: Thank you.
Juror Number 117.
Was this your verdict?
THE JUROR: Yes.
THE CLERK: Is this still your verdict?

THE JUROR: Yes.
THE CLERK: Thank you.
Juror Number 33.
THE JUROR: Yeah.
THE CLERK: Is this your verdict?
THE JUROR: Yes.
THE CLERK: Is this still your verdict?
THE JUROR: Yes.
THE CLERK: Thank you.
Juror Number 39.
Was this your verdict?
THE JUROR: Yes.
THE CLERK: Is this still your verdict?
THE JUROR: Yes, ma'am.
THE CLERK: Thank you.
They've all been polled, Your Honor.
THE COURT: Thank you.
All right.
(WHEREUPON, the jury was dismissed at this time.)
THE COURT: All right. At this time I will take motions.
MR. DAVIDSON: Your Honor, will it be appropriate for me to ask for 10 days?
THE COURT: Absolutely, Mr. Davidson. If you would like to take 10 days, I will accept motions in 10 days---

MR. DAVIDSON: Thank you, Your Honor.

THE COURT: ---and then we'll give you another 10 to reply.

MR. HAWKINS: Thank you, judge.

And, and 10 days for any -- obviously I'm probably not gonna file a lot of motions.

But 10 days for both sides?

THE COURT: Yes.

Gentlemen, I, I would like to say to both of you that this is my first time in, in or having both of you or either of you I should say to appear before me. And I would like to say that this has been a very good experience for me and I hope that you have a good experience here in Aiken County.

Thank you, gentlemen---

MR. DAVIDSON: Thank you, Your Honor.

THE COURT: ---for your work.

MR. HAWKINS: Thank you, judge.

UNIDENTIFIED SPEAKER: Thank you, Your Honor.

THE COURT: I thank you.

All right. Court is adjourned.

* * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Aiken County, South Carolina, on 31st day of October and the 1st, 2nd, and 3rd days of November, 2022.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

May 13th, 2023

PAMELA E. GREEN, Court Reporter

AIKEN COUNTY SHERIFF'S OFFICE
DETENTION DIVISION
POLICIES AND PROCEDURES

Subject	Date	Section No.	Page No.
Search - Frisk	01/02/2008	332.1	1
Applicable Standard(s) SCMS 1065		No. Pages in Section 2	
Amends	Rescinds	Re-evaluation Date	

I. Purpose

To provide guidelines describing methods for conducting frisk searches.

II. Policy

To insure facility security and order, inmates are frisk searched upon admission, when entering or leaving a housing area, and whenever a deputy has reasonable suspicion that an inmate may be concealing contraband.

III. Procedures

A. Frisk searches will be conducted by deputies of the same gender as the person being searched on a routine basis. Deputies shall not conduct frisk searches of arrestee/inmates of the opposite sex except in extreme emergency situations, when directed by the shift supervisor and always in the presence of another deputy. Frisk searches may be performed in any area of the detention center and during movements. Frisk searches ordinarily do not require an inmate to remove clothing other than hats, gloves, coats, and shoes; they are most often used in the daily routine of the detention center.

B. The frisk search shall be preformed in the following manner:
   1. Deputy shall always wear disposable gloves.
   2. Conduct of deputy: The frisk search shall be preformed with the greatest degree of dignity possible for the arrestee. Under no circumstances shall any deputy direct remarks to an arrestee being frisk searched concerning their personal attire, physical attributes, hygiene or mental state.
   3. Advise the arrestee/inmate that a frisk search will be preformed and give appropriate verbal commands.
   4. Prior to the search all contraband items shall be searched and secured by searching deputy to include but not limited to the following:
      a. Outer wear such as hats, coats, vests, sweaters, wigs.
      b. Contents of pockets (turn pockets inside out).
      c. Belts, ties, and jewelry.
      d. Purses, suitcases, and other personal belongings.
      e. Under wire bra.
   5. Observe the body for bulges and other obvious signs of weapons.

PLAINTIFF'S EXHIBIT A

Subject Search - Frisk	Date 01/02/2008	Section No. 332.1	Page No. 2

6. Keep the arrestee off balance by requiring the arrestee/inmate to stand still, with feet separated, with arms fully extended outward and upward placing the hands against a stationary surface (wall, etc.) and have one hand on their back at all times.
7. Deputies shall always look before they touch anything for possible danger.
8. Search all parts of the body; areas not concealed by clothing shall be visually inspected.
9. The deputy shall conduct a frisk search in a systematic way to include the following areas:
   a. Head - Visually observe that hair is free from rubber bands, hairpins, wigs, toupees, etc. that must be removed prior to search.
   b. Neck- Carefully check for jewelry. Examine and invert collar, pinching shirt collar with thumb and forefinger, moving them around to the front.
   c. Shoulders and Arms- Search across shoulders and down the arms. Sleeves that are rolled up shall be unfolded prior to being searched. Check the cuff area by pinching it between the thumb and forefinger.
   d. Side and Back - Search from the shoulder down the back and side area to waistline, then move hands up to armpits.
   e. Chest- From the shoulders search down the shirtfront to the waistline. Female deputies will conduct the sensitive search procedure on female arrestees/inmate. Check the breast area, especially the center of the bra and under breast.
   f. Waist and Legs - Check carefully along the inside of the waistline. Utilizing the crush and feel method search one leg at a time, being certain to check each trouser cuff. If pant legs are rolled they shall be unrolled prior to being searched. Move hand over the arrestee/inmate's lower abdomen and then into the crotch with palm up to inspect for contraband that may be concealed.
   g. Mouth, Nose Ears – Arrestee/Inmate shall be instructed to open mouth to allow deputy to conduct a visual inspection. A visual inspection of the nose and ears shall be conducted as well.
10. Contraband – See division Policy 315 "Contraband Control"

Michael Hunt, Sheriff

IV. <u>Documentation</u>

INMATE GRIEVANCE RECORD

Grievance Type: ID:	Facility		171768
Inmate:	905233	OWENS, OTIS	D
Grievance Status:	CLOS		
File Date:	1/25/2017 10:40:00 PM		
Subject:	ADDITIONAL CATEGORIES/FACILITY/GRIEVANCE/FACILITY - OTHER GRIEVANCE		
Level:	FacShift		
Resolution Date:	1/26/2017 12:51:00 AM		
Resolved By:	D		
Status:	CLOS		

Inmate Statement:
TODAY DEPUTY GIBSON CONDUCTED A PAT DOWN ON ME AND VIOLATED ME AS A MAN AND EMBARASED ME BY GRABBING ME EXCESIVELY IN MY CROTCH AREA. DEPUTY ERICKSON WITNESSED THE WHOLE THING. IF HE THOUGHT I HAD SOMETHING I WASNT SUPPOSE TO HAVE I WOULD RATHER HIM CONDUCT A STRIP SEARCH AND NOT PUT HIS HANDS ON ME THE WAY HE DID. THNK YOU

Officer Review:

Officer Findings:
PLEASE RESUBMIT THIS REQUEST ON 01/27/17, THIS IS WHEN LT. BUTTS RETURNS TO WORK SO THE ISSUE CAN BE IMMEDIATELY ADDRESSED. LT. DEBORD 6289

10212-A-31

INMATE GRIEVANCE RECORD

Grievance Type: ID:	Facility		172889
Inmate:	905233	OWENS, OTIS	D
Grievance Status:	CLOS		
File Date:	2/5/2017 3:49:00 PM		
Subject:	ADDITIONAL CATEGORIES/FACILITY/REQUEST/FACILITY - OTHER REQUEST		
Level:	FacShift		
Resolution Date:	2/6/2017 2:28:00 AM		
Resolved By:	D		
Status:	CLOS		

Inmate Statement:
I NEED A COPY OF THE STATEMENT IWROTE THE OTHER DAY PLEASE AND THANK YOU.

Officer Review:

Officer Findings:
SIR, WHICH SUPERVISOR IS THIS SUPPOSED TO GO TO? LT. DEBORD 6289

INMATE GRIEVANCE RECORD

Grievance Type: ID:	Facility		172932
Inmate:	905233	OWENS, OTIS	D
Grievance Status:	CLOS		
File Date:	2/6/2017 9:06:00 AM		
Subject:	ADDITIONAL CATEGORIES/FACILITY/REQUEST/FACILITY - OTHER REQUEST		
Level:	ShiftSupFac		
Resolution Date:	2/8/2017 8:33:00 AM		
Resolved By:	D		
Status:	CLOS		

Inmate Statement:
I NEED A COPY OF THE INCIDENT REPORT AND STATEMENT I SIGNED PLEASE . THANK YOU

Officer Review:

Officer Findings:
LT BOWMAN IS THE PREA REP AND WILL BE GETTING WITH YOU SHORTLY AS HE CONTINUES HIS INVESTIGATION . LT BUTTS 5992

INMATE GRIEVANCE RECORD

Grievance Type: ID:	Facility		173420
Inmate:	905233	OWENS, OTIS	D
Grievance Status:	CLOS		
File Date:	2/10/2017 1:51:00 PM		
Subject:	ADDITIONAL CATEGORIES/FACILITY/REQUEST/FACILITY - OTHER REQUEST		
Level:	FacShift		
Resolution Date:	2/11/2017 1:26:00 AM		
Resolved By:	D		
Status:	CLOS		

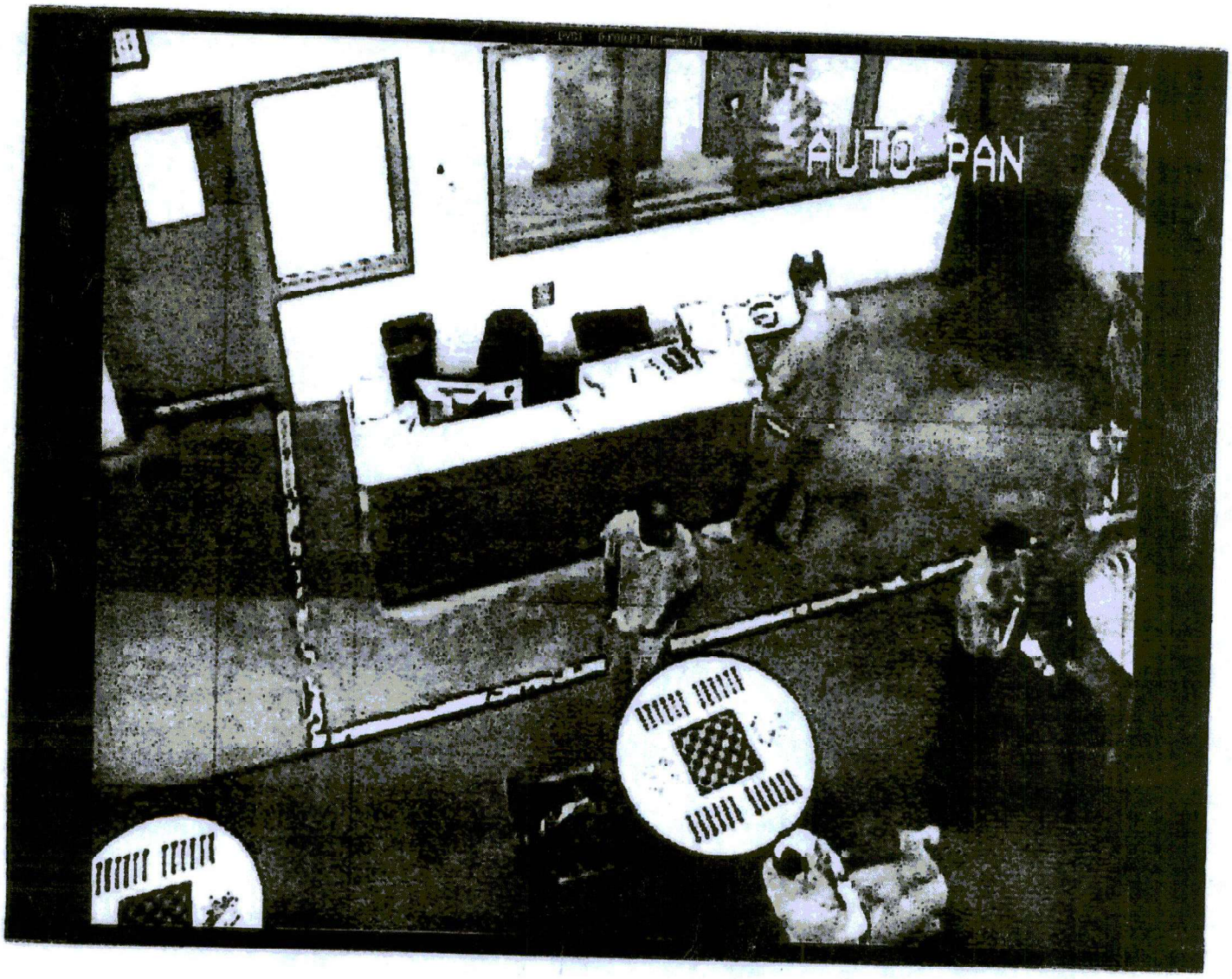
Inmate Statement:
I NEED A COPY OF THE INCIDENT REPORT AND AFFIDAVIT PLEASE. THANK YOU

Officer Review:

Officer Findings:
LT BOWMAN WILL GET WITH YOU WHEN HE RETURNS ON MONDAY. LT BUTTS 5992

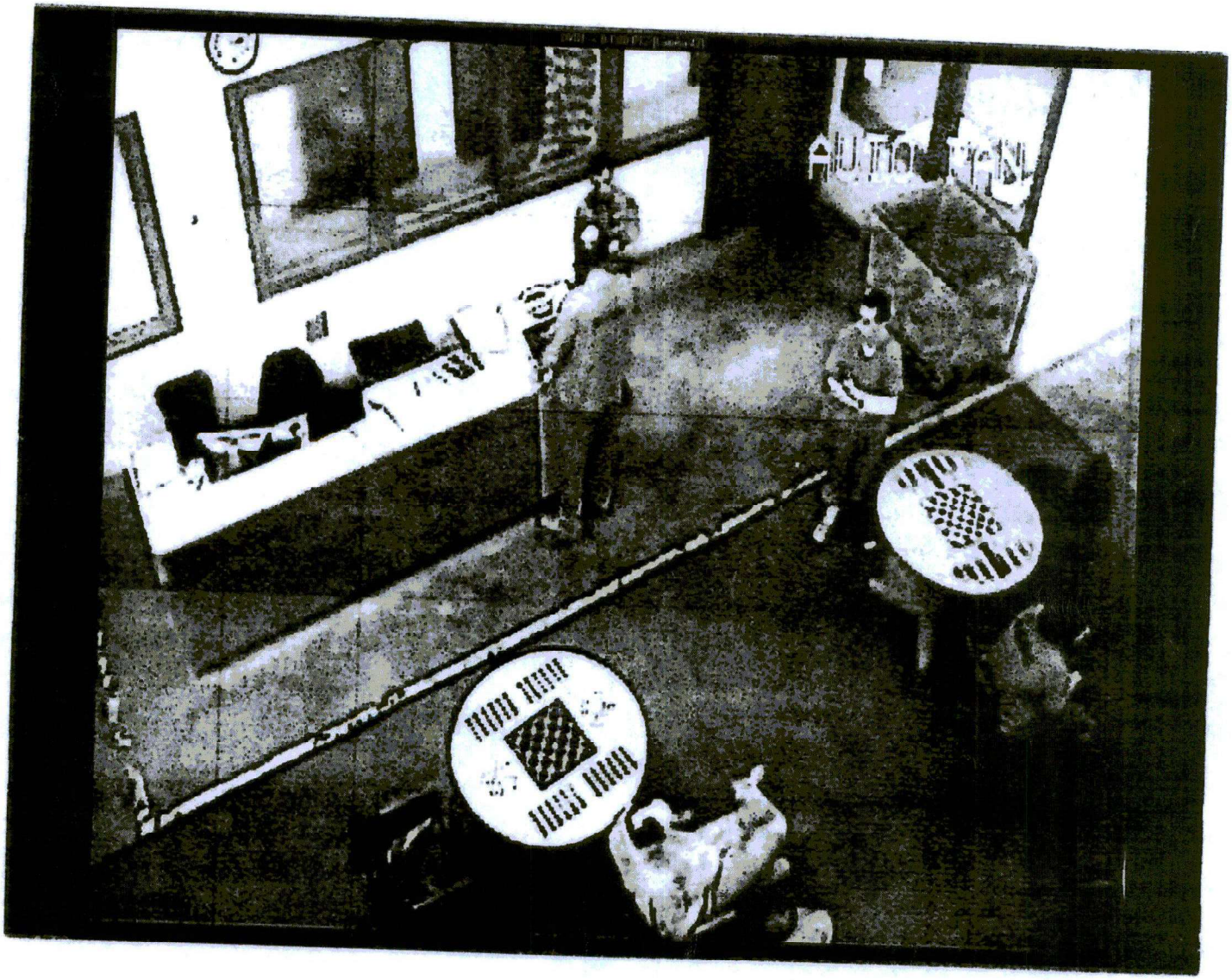
VICON ViconNet - Print Picture

3/7/2017 1:47:05 P



RENGAD 800-631-6989
PLAINTIFF'S EXHIBIT
D
11/3/22

10212-A-23



INMATE GRIEVANCE RECORD

Grievance Type: ID:	Facility		172147
Inmate:	905233	OWENS, OTIS	D
Grievance Status:	CLOS		
File Date:	1/29/2017 5:11:00 PM		
Subject:	ADDITIONAL CATEGORIES/FACILITY/GRIEVANCE/FACILITY - OTHER GRIEVANCE		
Level:	FacShift		
Resolution Date:	1/30/2017 8:32:00 AM		
Resolved By:	D		
Status:	CLOS		

Inmate Statement:
I TOTALLY UNDERSTAND AND RESPECT THE AUTHORITY AND YOUR DUTIES BUT I BEEN DOING TIME JUST AS LONG AS YOU BEEN HERE AND WHAT I WENT THROUGH ON THAT DAY WAS UN CALLED FOR AND I HAVE MULTIPLE WITNESSES TO INCLUDE BUT NOT LIMITED TO DEPUTY ERIKSON WHO IS PROBABLY THE MOST BY THE BOOK OFFICER. HE SHOULD HAVE CONDUCTED A STRIP SEARCH SINCE THE JAIL DOES THOROUGH SEARCHES. HOW DO I KNOW HE`S NOT GAY AND MADE A REASON TO DO THAT TO ME? WHY DO YALL HAVE PREA IF YOUR JUST GOJNA UPHOLD YOUR DEPUTIES WRONG DOING? IM NOT ONE TO COMPLAIN SO TAKE THAT INTO CONSIDERATION AS WELL. THANK YOU.

Officer Review:
FWD TO LT.HETTICH
I BELIEVE YOU ANSWERED THIS THE OTHER DAY. SGT.RIDDELL 6167

Officer Findings:
SIR, I HAVE INVESTIGATED THIS MATTER. DUE TO THE SUSPECTED CONTRABAND A PAT SEARCH WAS CONDUCTED AS WITNESSED BY DEPUTY ERIKSON. THE PAT SEARCH IS NEADING THE CLOTHING. DEPUTY GIBSON WAS SEARCHING FOR A PAIR OF DICE THAT WAS SUSPECTED. MY INVESITGATION WAS COMPLETED. LT. HETTICH 6247

PLAINTIFF'S EXHIBIT
F
11/08/22 JSR
PENGAD 800-631-6989

INMATE GRIEVANCE RECORD

Grievance Type: ID:	Facility		172147
Inmate:	905233	OWENS, OTIS	D
Grievance Status:	CLOS		
File Date:	1/29/2017 5:11:00 PM		
Subject:	ADDITIONAL CATEGORIES/FACILITY/GRIEVANCE/FACILITY - OTHER GRIEVANCE		
Level:	FacShift		
Resolution Date:	1/30/2017 8:32:00 AM		
Resolved By:	D		
Status:	CLOS		

Inmate Statement:
I TOTALLY UNDERSTAND AND RESPECT THE AUTHORITY AND YOUR DUTIES BUT I BEEN DOING TIME JUST AS LONG AS YOU BEEN HERE AND WHAT I WENT THROUGH ON THAT DAY WAS UN CALLED FOR AND I HAVE MULTIPLE WITNESSES TO INCLUDE BUT NOT LIMITED TO DEPUTY ERIKSON WHO IS PROBABLY THE MOST BY THE BOOK OFFICER. HE SHOULD HAVE CONDUCTED A STRIP SEARCH SINCE THE JAIL DOES THOROUGH SEARCHES. HOW DO I KNOW HE`S NOT GAY AND MADE A REASON TO DO THAT TO ME? WHY DO YALL HAVE PREA IF YOUR JUST GOJNA UPHOLD YOUR DEPUTIES WRONG DOING? IM NOT ONE TO COMPLAIN SO TAKE THAT INTO CONSIDERATION AS WELL. THANK YOU.

Officer Review:
FWD TO LT.HETTICH
I BELIEVE YOU ANSWERED THIS THE OTHER DAY. SGT.RIDDELL 6167

Officer Findings:
SIR, I HAVE INVESTIGATED THIS MATTER. DUE TO THE SUSPECTED CONTRABAND A PAT SEARCH WAS CONDUCTED AS WITNESSED BY DEPUTY ERIKSON. THE PAT SEARCH IS NEADING THE CLOTHING. DEPUTY GIBSON WAS SEARCHING FOR A PAIR OF DICE THAT WAS SUSPECTED. MY INVESITGATION WAS COMPLETED. LT. HETTICH 6247

PENGAD 800-631-6989
DEFENDANT'S
EXHIBIT NO. A
FOR IDENTIFICATION
DATE: 11/1/22 RPTR:

§ 115.68 Post-allegation protective custody.

Any use of segregated housing to protect an inmate who is alleged to have suffered sexual abuse shall be subject to the requirements of § 115.43.

Investigations

§ 115.71 Criminal and administrative agency investigations.

(a) When the agency conducts its own investigations into allegations of sexual abuse and sexual harassment, it shall do so promptly, thoroughly, and objectively for all allegations, including third-party and anonymous reports.

(b) Where sexual abuse is alleged, the agency shall use investigators who have received special training in sexual abuse investigations pursuant to § 115.34.

(c) Investigators shall gather and preserve direct and circumstantial evidence, including any available physical and DNA evidence and any available electronic monitoring data; shall interview alleged victims, suspected perpetrators, and witnesses; and shall review prior complaints and reports of sexual abuse involving the suspected perpetrator.

(d) When the quality of evidence appears to support criminal prosecution, the agency shall conduct compelled interviews only after consulting with prosecutors as to whether compelled interviews may be an obstacle for subsequent criminal prosecution.

(e) The credibility of an alleged victim, suspect, or witness shall be assessed on an individual basis and shall not be determined by the person's status as inmate or staff. No agency shall require an inmate who alleges sexual abuse to submit to a polygraph examination or other truth-telling device as a condition for proceeding with the investigation of such an allegation.

(f) Administrative investigations:

(1) Shall include an effort to determine whether staff actions or failures to act contributed to the abuse; and

(2) Shall be documented in written reports that include a description of the physical and testimonial evidence, the reasoning behind credibility assessments, and investigative facts and findings.

(g) Criminal investigations shall be documented in a written report that contains a thorough description of physical, testimonial, and documentary evidence and attaches copies of all documentary evidence where feasible.

(h) Substantiated allegations of conduct that appears to be criminal shall be referred for prosecution.

EXHIBIT COURT A 11/01/22 RENGAD 800-631-6989

(i) The agency shall retain all written reports referenced in paragraphs (f) and (g) of this section for as long as the alleged abuser is incarcerated or employed by the agency, plus five years.

(j) The departure of the alleged abuser or victim from the employment or control of the facility or agency shall not provide a basis for terminating an investigation.

(k) Any State entity or Department of Justice component that conducts such investigations shall do so pursuant to the above requirements.

(l) When outside agencies investigate sexual abuse, the facility shall cooperate with outside investigators and shall endeavor to remain informed about the progress of the investigation.

§ 115.72 Evidentiary standard for administrative investigations.

The agency shall impose no standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse or sexual harassment are substantiated.

§ 115.73 Reporting to inmates.

(a) Following an investigation into an inmate's allegation that he or she suffered sexual abuse in an agency facility, the agency shall inform the inmate as to whether the allegation has been determined to be substantiated, unsubstantiated, or unfounded.

(b) If the agency did not conduct the investigation, it shall request the relevant information from the investigative agency in order to inform the inmate.

(c) Following an inmate's allegation that a staff member has committed sexual abuse against the inmate, the agency shall subsequently inform the inmate (unless the agency has determined that the allegation is unfounded) whenever:

(1) The staff member is no longer posted within the inmate's unit;

(2) The staff member is no longer employed at the facility;

(3) The agency learns that the staff member has been indicted on a charge related to sexual abuse within the facility; or

(4) The agency learns that the staff member has been convicted on a charge related to sexual abuse within the facility.

(d) Following an inmate's allegation that he or she has been sexually abused by another inmate, the agency shall subsequently inform the alleged victim whenever:

(1) The agency learns that the alleged abuser has been indicted on a charge related to sexual abuse within the facility; or

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CERTIFICATE OF COUNSEL

The undersigned counsel certifies that the Record on Appeal contains all material proposed to be included by all parties and not any other material.

LINDEMANN LAW FIRM, P.A.

BY: *s/ Andrew F. Lindemann*

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Counsel for Appellants

November 15, 2023

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SC Court of Appeals

CERTIFICATE OF COMPLIANCE

The undersigned counsel for the Appellants certifies that the Record on Appeal complies with the Supreme Court's Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings, issued April 15, 2014.

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Counsel for Appellants

November 15, 2023