

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEE COUNTY
Court of Common Pleas

The Honorable John George M. McFaddin, Circuit Court Judge
Third Judicial Circuit

Case No. 2014-CP-31-00100

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SC Court of Appeals

Levi Bing Appellant,

v.

South Carolina Department of Corrections. Respondent.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF LEE

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
Case No.: 2014-CP-31-0100

Levi Bing,

Plaintiff,

**ORDER GRANTING SUMMARY
JUDGMENT TO THE SOUTH
CAROLINA DEPARTMENT OF
CORRECTIONS**

vs.

South Carolina Department of Corrections,

Defendants.

This matter is before me pursuant to the Motion for Summary Judgment filed by the Defendant South Carolina Department of Corrections (hereinafter "SCDC").

BACKGROUND

Taking the facts in the light most favorable to the Plaintiff, the Plaintiff was incarcerated in the South Carolina Department of Corrections serving a forty-year sentence for murder, grand larceny and possession of a weapon during a violent crime. On or about June 7, 2010, the Plaintiff was assigned by the South Carolina Department of Corrections to Lee Correctional Institution in Lee County.

According to the Plaintiff's Complaint, the Plaintiff was transferred to his cell in the South Darlington Unit of Lee Correctional Institution in May of 2010. He was transferred because he had recently undergone surgery and was required to be on the first floor. (See Plaintiff's Complaint &4).

The South Carolina Department of Corrections moved Willis Dorsey into that Dorm one month prior to the date of incident.

According to the Plaintiff's Complaint, the Plaintiff requested a transfer out of the room and away from Willis Dorsey. The Plaintiff made the request because Willis Dorsey was in possession of contraband and threatening to Plaintiff. (See Plaintiff's Complaint &5). Despite of the allegations of the Plaintiff being threatened by Willis Dorsey in his Complaint, in his Deposition, the Plaintiff testified otherwise. In the Plaintiff's Deposition of July 26, 2012, he stated that he did not receive any threats from Dorsey nor had any incidents:

Plaintiff's Deposition Page 49 through 50.

Q. And you never had an altercation with Dorsey before this incident here?

A. No, sir.

Q. He never threatened you about anything?

A. No, sir.

Q. He just had – he wasn't the best disciplinary – he wasn't the best inmate disciplinary –wise?

A. Correct.

Q. And that was your concern?

A. Yes, sir.

Q. You were concerned by being with him you were going to get in some disciplinary trouble?

A. I could have gotten anything, sir, anybody with weapons charges; you don't know what the case may be.

Q. Okay, and what do you mean by that?

A. I mean, if he had a weapon or a knife or something like that, you don't know what the situation may be. He could have a knife in the room and I could get charged with it. Whatever they find in the room, they charge both parties.

Q. So you're worried about what disciplinary trouble you may get into by being his roommate?

A. Yes, sir.

Q. Any other concerns you had about rooming with Dorsey that you expressed to the SCDC officials?

A. No, sir, not that I can remember.

According to his Deposition, it was the Plaintiff's understanding that an officer with the South Carolina Department of Corrections smelled marijuana while the Plaintiff was outside his room. Thus, the Plaintiff did not want to have any disciplinary problems due to the conduct of his roommate. Despite this concern, he never placed anything in writing or provides SCDC with specific writing of this concern.

Plaintiff's Deposition Page 46:

Q. Oaky. And everything else that you would have – did you write you wanted him to stay out – you wanted him out of the room to stay out of trouble or did you write he was smoking marijuana or were you specific in why –

A. No, sir.

Q. You were not specific?

A. No, sir. The officers were there because they were ones that witnessed it.

The Plaintiff eventually approached Lieutenant Goodman to request a room change. This request was because his roommate had a disciplinary history and he did not want to lose his Classification.

Plaintiff's Deposition at Page 52.

Q. Any your reasoning for putting – for making this request, was that he had a disciplinary history and you didn't want to get in trouble by being his inmate (sic)?

A. Yes, sir.

Q. And there were no reasons expressed to Lieutenant Goodman other than that?

A. No, sir.

Q. And so your sole reason for requesting a change of roommate, was because you were scared you were going to have a disciplinary infraction for something that Dorsey was doing in violation of the prison rules?

A. Yes, sir.

Q. No other reason?

A. I mean, no, sir.

Lieutenant Goodman then contacted the Plaintiff's Caseworker, Brenda Scott Hickman. The Caseworker stated that pursuant to SCDC policy, the Plaintiff was not eligible for a change of cellmates at this point. The policy of SCDC at that time, was to fill out a Form 18.3 and then the Institutional Classification Committee would review the request to make a decision. However, the Plaintiff was not eligible for a cell transfer at that time. Policy 48.2 states that an inmate can request a cell change every six months. Since

the Plaintiff had not been in the cell for six months with Willis Dorsey, he was not eligible for this change per the policy.

Plaintiff's Deposition Pages 52-53.

Q. And then after Lieutenant Goodman contacted your caseworker, and your caseworker said that wasn't a good enough reason to change roommates; is that right?

A. Yes, sir.

Q. And all that was verbal, correct?

A. Yes, sir.

Q. Nothing in writing?

A. No, sir, I was on the phone call.

Q. And you didn't make a written request to your caseworker, did you?

A. No, sir.

Q. And after that day, was there any more requests to change rooms, whether orally or in writing, with Dorsey?

A. No, sir. They wanted to move me upstairs after my surgery and Lieutenant Goodman got with me and said, Mr. Bing, I want to move you upstairs, but he said I'm not going to move you upstairs because of your medical reasons.

You can't go up the stairs because I still had stitches in my groin area.

Despite this request, there is no evidence that Willis Dorsey was aware of the same.

The Plaintiff testified in his Deposition that he did not tell Willis Dorsey of his request.

Furthermore, there was no altercation or issues between the parties prior to the incident.

Plaintiff's Deposition Page 39 and 40.

Q. Did y'all ever have any altercations before this?

A. No, sir.

Q. You have any disagreements before this incident that we're involved with here today?

A. No, sir.

Q. Any cross words with one another before June of 2010?

A. No, sir.

On June 7, 2010, right after cell count, the Plaintiff was in the room with Inmate Dorsey. In the Dorm Room, there was a hot pot that the parties used to warm coffee. According to the Deposition of the Plaintiff, Dorsey routinely used the hot pot for coffee. The canteen records reflect that the Plaintiff purchased the hot pot through the canteen at Lee Correctional Institution. The canteen records were provided to the Court for its review. The Court notes that a hot pot was purchased by the Plaintiff. Conversely, the canteen records do not show where Willis Dorsey ever purchased a hot pot.

The Plaintiff testified that Inmate Dorsey began to heat up water. The Plaintiff presumed he was fixing a cup of coffee. As the Plaintiff was lying on his bed, Inmate Dorsey threw the hot water on him without warning. The Plaintiff said he jumped up and Dorsey pulled out a knife and stated "you know what I want".

The Plaintiff began to tussle with Inmate Dorsey. At the same time, he started kicking the cell which alerted the officers. The officers opened the door and broke up the altercation.

Once the guards opened the door, the skin peeled off the Plaintiff's torso and neck as he took off his shirt per his Deposition.

The Plaintiff was taken to the Medical Center at Lee Correctional Institution. He was briefly treated by Lee County EMS. He was then moved to the parking lot of the prison where he was airlifted to the Still Burn Center in Augusta, Georgia. He was surgically treated for a partial thickness burn wound that covered 22% of his total body surface and a burn in the cornea of his eye. He was released from the hospital on June 11, 2010 and returned to the Department of Corrections Medical Facility at Kirkland Correctional Institution in Columbia. As a result of the burns suffered by the Plaintiff, he has been permanently damaged and scarred.

After this, Dorsey was charged and found guilty before the Disciplinary Hearing Officer at Lee Correctional Institute with striking an inmate with or without a weapon.

The Plaintiff's Deposition testimony was that he never feared for his safety with Willis Dorsey as his cellmate.

Plaintiff's Deposition Page 75.

Q. You didn't tell them your life was in danger?

A. No, sir.

Q. Or you were scared of being assaulted or anything like that, did you?

A. No, sir.

Q. Just plainly you weren't compatible and you were worried he was going to get you in trouble?

A. Yes, sir.

The Plaintiff alleges that there was some alteration of the coffee pot because the coffee pot had an internal temperature control. The Plaintiff testified in his Deposition that he was unaware that Dorsey had altered the hot pot and did not tell anybody that the hot pot had been altered.

Plaintiff's Deposition Page 78 through 79.

Q. If you didn't know it, then it's fair to say you were not aware of anyone in the South Carolina Department of Corrections being aware that he had altered his coffee pot, are you?

A. I'm not going to answer that.

Q. Huh?

A. I'm not going to answer that.

Q. Well, let me repeat that question because you're going to have to answer, you don't have the right not to answer questions. He can object to them, but you're going to have to answer. Are you aware of anybody within the South Carolina Department of Corrections that knew Dorsey had altered his coffee pot?

A. I'm not sure, sir.

Q. So that means you're not aware of anyone who knew that?

A. I'm not aware.

Q. But you were not aware that he had altered his pot?

A. No, sir, I was not aware.

Q. Any you had roomed with him for about a month?

A. Yes, sir.

Q. And had seen him drink coffee about every day?

A. Yes, sir.

The Plaintiff has filed this action against the South Carolina Department of Corrections. His sole cause of action is negligence/gross negligence. The Plaintiff alleges in his Complaint that the Defendant has a duty to protect him from foreseeable assaults and that they breached that duty by not protecting him from this assault. The Plaintiff further alleges that they breached their duty in allowing Dorsey to possess equipment in his cell to heat waters to temperatures sufficiently high enough to cause third degree burns as well as to transfer Dorsey into a cell and that they should have known Dorsey had the means and motives to assault the Plaintiff. See Plaintiff's Complaint & 14 through 18.

The Plaintiff has retained the services of James Evans Aiken as an expert in Corrections. Mr. Aiken opined that (1) a hot pot should never be allowed in a Correctional Facility; (2) that Inmate Dorsey should have never been assigned to the Plaintiff although he has not seen the Classification File as of the Deposition; (3) he states that there is a complete system failure as there was no way to communicate with the guards of an attack. Mr. Aiken submitted an Affidavit prior to the Hearing. He supplemented his Deposition testimony by opining that SCDC should have conducted a contraband investigation after the Plaintiff's request to change rooms and/or place the Plaintiff in protective custody because he would now be labeled as a "snitch".

STANDARD OF REVIEW

Since it is a drastic remedy, summary judgment should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues.'" Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991) (quoting Watson v. S. Ry. Co., 420

F.Supp. 483, 486 (D.S.C.1975)). An appellate court reviews the grant of summary judgment under the same standard applied by the circuit court. David v. McLeod Reg'l Med. Ctr., 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006). The circuit court should grant summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCF. In determining whether any triable issues of fact exist, the evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the non-moving party. Law v. S.C. Dep't of Corr., 368 S.C. 424, 434, 629 S.E.2d 642, 648 (2006). "A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner." David, 367 S.C. at 250, 626 S.E.2d at 5.

DISCUSSION

I. **SCDC IS ENTITLED TO SUMMARY JUDGEMENT PURSUANT TO THE SOUTH CAROLINA TORT CLAIMS ACT:**

The South Carolina Tort Claims Act "governs all tort claims against governmental entities and is the exclusive civil remedy available in an action against a governmental entity or its employees." S.C. Code Ann. §15-78-10, et. seq. Pursuant to S.C. Code Ann. §15-78-20(b), the Tort Claims Act "constitutes the exclusive remedy for any tort committed by an employee of a governmental entity." Id. Governmental entities are defined by the act as "the State and its political subdivisions." S.C. Code Ann. §15-78-30(d). A governmental

entity includes political subdivisions and agencies thereof. See S.C. Code Ann. §§ 15-78-30(a), (c), (d), (h) (defining “agency,” “employee,” “governmental entity,” and “political subdivision”). A state employee is defined under the act as “any officer, employee, or agent of the State or its political subdivisions, including elected or appointed officials, law enforcement officers, and persons acting on behalf or in service of a governmental entity in the scope of official duty.” S.C. Code Ann. §15-78-30(c). Thus, Defendant in the present action is an agency of the state and any torts alleged to have been committed by any or all of its employees are governed by the provisions of the South Carolina Tort Claims.

A. DEFENDANT IS IMMUNE FROM LIABILITY PURSUANT TO S.C. CODE ANN. § 15-78-60(25).

S.C. Code Ann. §15-78-60(25) provides that a governmental entity is not liable from “responsibility or duty including but not limited to supervision, protection, control, confinement, or custody of any student, *patient*, **prisoner**, inmate or *client* of any governmental entity, except when the responsibility or duty is exercised in a grossly negligent manner.” S.C. Code Ann. § 15-78-60(25)(emphasis added).

Gross negligence is the intentional conscious failure to do something which is incumbent upon one to do or the doing of a thing intentionally that one ought not to do. Etheridge v. Richland School District 1, 341 S.C. 307, 310, 534 S.E.2d 275, 277 (S.C. 2000). “Gross negligence, in the context of liability by a governmental entity, is the intentional conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do; it is the failure to exercise slight care.” links v. Richland County, 355 S.C. 341, 345 (S.C. 2003). “Additionally, while gross negligence ordinarily is a mixed question of law and fact when the evidence supports but one reasonable inference, the question becomes a matter of law for the court.” Pack v.

Associated Marine Institutes, Inc., 362 S.C. 239, 245 (Ct. App. 2004)(citing Etheredge, 341 S.C. at 310)). The Plaintiff has the burden of proving gross negligence. See Stewart v. Richland Memorial Hospital, 450 S.C. 589 (Ct. App. 2002) (Finding that while a governmental entity has the initial burden of establishing a limitation upon liability or an exception to the waiver of immunity, the plaintiff must still prove that the governmental entity has waived immunity)).

As in Pack, there is absolutely no evidence in the record demonstrating that Defendant was grossly negligent. The Pack court determined that summary judgment was proper after finding that employees acted with at least slight care. Pack, 362 S.C. at 245. As in this case, the plaintiff in the Pack case argued the defendants could have done more to address a juvenile's behavior problems before the juvenile acted out. Id. However, the court determined "[t]he fact that more might have been done does not negate a finding that [defendant] employees exercised at least slight care." Id. (citing Etheredge, 341 S.C. at 311-12 (holding that where defendant had no knowledge of animosity between students, and principal and security monitored hallways, the fact that school district might have done more did not negate the fact it exercised slight care for purposes of determining whether gross negligence exception to Tort Claims Act was applicable)).

In cases in South Carolina seem to be scarce as it relates to inmate on inmate assaults. The only reported cases that could be located is McKenzie v. Leeke, 292 S.C. 568, 357 S.E.2d 721 (1987) and Jackson v. South Carolina Department of Corrections, 301 S.C. 125, 390 S.E.2d 467. Those cases demonstrate that the Court determines a Defendant is guilty of gross negligence if he is so indifferent to the consequences of his conduct as not to

give slight care to what he is doing. Anderson v. Ballenger, 166 S.C. 44, 164 S.E. 313 [1932]. Gross Negligence involves a conscious failure to exercise due care. Id.

In Jackson, the South Carolina Department of Corrections placed an inmate who was diagnosed with having strong psychopathic patterns, being unpredictable and being prone to violent outbursts into the same cell as an 88-year-old inmate. The inmate had a history of attacks on inmates and correctional officers, as well as the killing of another inmate. Prior to this inmate's transfer to the general population at Kirkland, he had been incarcerated in the maximum security facility at Central Correctional Institute. The Court determined that the department knew all of these facts when it transferred the inmate to Kirkland.

The Court determined that the evidence light most favorable to the Plaintiff, a jury could reasonably have determined that the transfer exhibited a conscious indifference to the threat he posed to the safety of other inmates at Kirkland Institution. As such, the jury could have seen the transfer as a failure to exercise a slight care under the circumstances.

In McKenzie, an inmate was attacked with a shotgun while having a visitor in the parking lot. There was a policy that allowed inmates with "A" or "AA" custody received visitors within the parking lot. There was also a policy guideline adopted to automobiles coming into the parking states "the shift supervisor will be responsible for having a correctional officer spot check the vehicle every 45 minutes during visitation." There were no spot checks of vehicles prior to this incident.

The Court of Appeals found that the failure to abide by the policy still could not create an issue of foreseeability of the attack. Therefore, the Court of Appeals upheld summary judgment.

The Plaintiff argued through an expert as discussed hereinafter and in their Memorandum that SCDC should have done more to protect the Defendant.

As in Pack, the fact that more might have been done does not render a finding that SCDC failed to exercise at least slight care. The evidence demonstrates that there was no indication whatsoever that Willis Dorsey would attack the Plaintiff. While the Plaintiff never testified that he saw any drug or illegal activity, there is testimony that he was told this by an Officer. Furthermore, the testimony of Lieutenant Goodman stated that the Plaintiff said he was "a hot boy". A "hot boy" could be construed as someone with a disciplinary issue or involved in illegal activity. The Plaintiff fails to point to any policies or procedures of SCDC that requires an investigation into a request for reassignment of a cell mate based upon an unsubstantiated allegation for the request. A search of the cell following the incident did not locate any contraband, including the knife the Plaintiff alleges that Willis Dorsey pulled on him.

The Defendant also asserts that the Plaintiff's claim for gross negligence fails due to the failure of the Plaintiff to establish foreseeability. The Plaintiff's claims do not show any evidence of foreseeability of an attack.

In a negligence action, the plaintiff must prove proximate cause. *Rush v. Blarichard*, 310 S.C. 375, 426 S.E.2d 802 (1993). Negligence is not actionable unless it proximately causes the plaintiff's injury. *Bishop v. South Carolina Dep't of Mental Health*, 331 S.C. 79, 502 S.E.2d 78 (1998). It is clear that a plaintiff may only recover for injuries proximately caused by the defendant's negligence. *Parks v. Characters Night Club*, 345 S.C. 484, 548 S.E.2d 605 (Ct. App. 2001). "Proximate cause requires proof of both causation in fact and legal cause." *Small v. Pioneer Mach., Inc.*, 329 S.C. 448, 463, 494 S.E.2d 835, 842 (Ct. App. 1997). "Legal cause is proved by establishing foreseeability." *Id.* The test of foreseeability is whether the injury is the natural and probable consequence of the alleged negligent act. *Koester v. Carolina Rental Ctr., Inc.*, 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994). "Where the injury complained of is not reasonably foreseeable there is no liability." *Crolley v. Hutchins*, 300 S.C. 355, 357, 387 S.E.2d 716, 717 (Ct. App. 1989). Where intervening acts occur, the original wrongdoer may be

liable despite intervening acts if the intervening acts are foreseeable, or if not foreseeable, if the original wrongdoer's acts " 'would have caused the loss in natural course.' " *Young v. Tide Craft, Inc.*, 270 S.C. 453, 463, 242 S.E.2d 671, 676 (1978). Legal cause, in contrast to the "but for" nature of causation in fact, is proved by establishing foreseeability. *Oliver*, 309 S.C. at 316, 422 S.E.2d at 131. The standard by which foreseeability is determined is that of looking to the natural and probable consequences of the complained of act. *Oliver*, 309 S.C. at 316, 422 S.E.2d at 131. A plaintiff therefore proves legal cause by establishing the injury in question occurred as a natural and probable consequence of the defendant's negligence. *Newton v. South Carolina Pub. Rys. Comm'n*, 319 S.C. 430, 462 S.E.2d 266 (1995). A negligent act or omission is a proximate cause of injury if, in a natural and continuousness of events, it produces the injury, and without it, the injury would not have occurred. *Vinson*, 324 S.C. at 401, 477 S.E.2d at 721. In other words, if the accident would have happened as a natural and probable consequence, even in the absence of the alleged breach, then a plaintiff has failed to demonstrate proximate cause. Where the injury complained of is not reasonably foreseeable, there is no liability. *Crolley v. Hutchins*, 300 S.C. 355, 387 S.E.2d 716 (Ct. App. 1989). In order for conduct to amount to negligence for which compensation can be collected, the defendant must have foreseen, or by the exercise of ordinary care should have foreseen, the probability that his conduct would likely cause injury to another: *Vinson*, 324 S.C. at 401, 477 S.E.2d at 721. One is not charged with foreseeing that which is unpredictable or which would not be expected to happen as a natural and probable consequence of the defendant's negligent act. *Id.* **Sprague v. Beach, 2013 WL 3197923 (2013)** Foreseeability is not determined from hindsight, but rather from the defendant's perspective at the time of the alleged breach. *Parks*, 345 S.C. at 491, 548 S.E.2d at 609. It is not necessary for a plaintiff to demonstrate the defendant should have foreseen the particular event which occurred, but merely that the defendant should have foreseen his or her negligence would probably cause injury to someone. *Greenville Mem'l Auditorium v. Martin*, 301 S.C. 242, 391 S.E.2d 546 (1990). Proximate cause is the efficient or direct cause of an injury. *Small*, 329 S.C. at 464, 494 S.E.2d at 843; *Vinson*, 324 S.C. at 401, 477 S.E.2d at 721.

*3 "Ordinarily, the question of proximate cause is one of fact for the jury and the trial judge's sole function regarding the issue is to inquire whether particular conclusions are the only reasonable inferences that can be drawn from the evidence." *McNair*, 330 S.C. at 349, 499 S.E.2d at 497. Only in rare or exceptional cases may the question of proximate cause be decided as a matter of law. *Trivelas*, 348 S.C. at 137, 558 S.E.2d at 277. If there is a fair difference of opinion regarding whose act proximately caused the injury, then the question must be submitted to the jury. *Ballou*, 291 S.C. at 147-48, 352 S.E.2d at 493. The particular facts and circumstances of each case determine whether the question of proximate cause should be decided by the court or by the jury. *Collins v. Bisson Moving & Storage, Inc.*, 332 S.C. 290, 504 S.E.2d 347 (Ct. App 1998).

The Plaintiff's testimony was simply that he requested a transfer of cellmates which was denied. He never testified that he ever thought he was in danger. However, the Plaintiff's expert opined that SCDC should have known that a complaint about someone possibly being engaged in illegal activity or a disciplinary hearing should trigger an immediate move. Despite these

opinions, the Plaintiff does not identify any standard in that regard. Harris Teeter, Inc. v. Moore and Van Allen, PLLC, 390 S.C. 275, 289, 701 S.E. 2d 742, 749 (2010) held that “conclusory statements that the Respondents breached the Standard of Care does not create a genuine issue of material fact. The Plaintiff’s own Deposition testimony negates the issue of incompatibility. The Plaintiff’s only complaint was that he understood that a correctional officer smelled marijuana outside his room. The Plaintiff never alleged he was in the room or saw Inmate Dorsey smoking marijuana. He did not testify that he saw contraband with Inmate Dorsey. It is also revealing that the Plaintiff testified that Inmate Dorsey never threatened him, had an altercation with him or any disagreements prior to this attack.

The Plaintiff retained the services of James Aiken as an expert in corrections. Mr. Aiken testified in his Deposition and provided in an Affidavit that he had 45 years of experience in Correctional Administration, Correctional Facility Operations and Management and Correctional Facility Inspection and Assessment. Mr. Aiken testified in his Deposition that (1) a hot pot should never be allowed in a correctional facility; (2) that Inmate Dorsey should have never been assigned to the Plaintiff although he has not seen the classification file as of the date of his Deposition; (3) that there was a complete system failure as there was no way to communicate with the guards of an attack. The day before the Hearing, the Plaintiff’s attorney served an Affidavit of James Aiken upon the attorney for the Defendant. This Affidavit provided additional information that a properly trained correctional officer and/or prison administrator either knew or should have known that the Plaintiff’s action in requesting a cell change due to his cell mate being involved in illegal activity would have marked him as a “snitch” and made him a target for retaliation or physical violence from Willis Dorsey. He further opined that the

Plaintiff should have been warned and advised that he may be received as a snitch and should have been placed in protective custody whether he wanted to or not.

Lastly, Mr. Aiken's Affidavit opined that to a reasonable degree of professional certainty, the failure of the Department of Corrections and its employees to expend the elementary effort necessary to undertake steps to protect which should have been a known danger to the Plaintiff, contributed to the severity of his injuries from the attack.

The Defendant's attorney objected to the introduction of the Affidavit pursuant to the Rule 56(c). Rule 56 (c) states "that the adverse party may serve opposing Affidavits not later than two (2) days before the Hearing". The attorney for SCDC advised that the Affidavit was served in the afternoon prior to the Hearing.

The Court notes that Rule 56 (c) requires supporting/opposing Affidavits to be made on personal knowledge. These Affidavits "shall set forth facts such as would be admissible with evidence, and shall show affirmatively that the affiant is competent to testify in matters stated therein." Furthermore, SCRCP Rule 56 (e) states "when a Motion for Summary Judgment is made and supported as provided in this Rule, the adverse party may not rest upon mere allegations or denial of his pleadings, but his response, by Affidavits or otherwise provided in this Rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, Summary Judgment, if appropriate, shall be entered against him.

Other than the issue of the hot pot, as the Court addresses hereinafter, the opinions contained in the Affidavit of Mr. Aiken do not set forth specific facts showing there is a genuine issue for trial. This is based upon the fact that many of his opinions contained in the Affidavit are nothing more than "conclusory statements" of a breach in the Standard of Care. Obviously, the Plaintiff's expert realized that there was an insufficiency in his testimony when they

submitted the post Deposition Affidavit in an attempt to rescue their claim. While the Court reviewed the factors in Cothran v. Brown, 357 S.C. 210, 218, 592, S.E. 2d 629, 633 (2004) to determine whether this post Deposition Affidavit is a sham affidavit, the Court finds that is not necessary due to the fact that Mr. Aiken's testimony fails to establish a Standard of Care.

The correct Standard of Care is a degree of skill, care, knowledge, and judgment used and possessed and exercised by members of a profession. See, Holy Loch Distribs. Inc. v. Hitchcock, 340 S.C. 20, 26, 531 S.E. 2d 282, 285 (2000).

Aiken only speaks in generality when he opined that SCDC violated the Standard of Care. His generalities fall woefully short of the Court's admissibility standards for experts in a gross negligence case. Therefore, this Court finds that Mr. Aiken's testimony does not help the Plaintiff survive SCDC's Motion for Summary Judgment.

While this Court does not exclude the Affidavit of Mr. Aiken, the Court finds that it fails to establish foreseeability and/or any articulated breach in the Standard of Care which would rise to the level of gross negligence.

B. HOT POT AS A DANGEROUS INSTRUMENTALITY

The Plaintiff's expert opines that "in a maximum-security setting such as Darlington Unit in the Lee Correctional Facility, inmates should not have been permitted to possess, in their locked cell and outside of the immediate site and controlled security staff, any instruments such as "hot pot" capable of heating water to scolding temperatures". The Plaintiff's expert further opines that "SCDC should have reviewed and identified from the inmate's inventory and possession and taken control of and removed any instrument in Willis Dorsey's cell capable of being weaponized and causing injury such as a hot pot." While the Court realizes that the only

evidence of possession of a hot pot was by the Plaintiff, the Court does find that this is not a dangerous instrumentality that should not be allowed in prison.

While there is no case law in South Carolina, there are a number of other jurisdictions that have assessed this issue.

In Hayes v. State of Illinois, 47 Ill. Ct. Ci. 389 (1994), the court found that the State is not an insurer as to the safety of an inmate in its custody. It does, however, have a duty to exercise reasonable care under the circumstances and prevent its inmates from suffering harm at the hands of other inmates. However, in cases where inmates have been assaulted by other inmates, the Court has to determine that to prove foreseeability of potential harm, it must be shown that respondent's agents anticipated or should have anticipated third persons would commit criminal acts against a particular inmate who was attacked. The Court found that even though hot water was thrown on another inmate, there was no evidence, as in this case, that the Plaintiff warned the State's agent or that they otherwise knew of the danger of an attack. Thus, the Court granted Summary Judgment.

Next, in Carter v. United States of America, another inmate splashed the Plaintiff in that case with a "super-heated homemade concoction of scalding hot coffee, oral and cleaning chemicals mixed together". The Court stated that "due to the difficulty of prison management, Courts typically provide great deference to the decisions of prison administrators." Citing, Thornburg v. Abbot, 490 U.S. 401, 407-08 (1989). "The Judiciary is ill equipped to deal with the difficult and delicate problems of prison management." Therefore, Courts must "afford considerable deference to the determinations of prison administrators". Turner v. Safley, 482 U.S. 78, 84-85 (1987). ("Running a prison is an inordinarily difficult undertaking that requires expertise, planning and commitment of resources").

Again, the Court again found, pursuant to this Federal Tort Claims Act, that there was no foreseeability and that it was not reasonable to presume that the Plaintiff had an inmate that had the capability to harm another and that, in and of itself, made an instrument inherently dangerous. Thus, the Court dismissed the Plaintiff's case.

Next, the case of Anderson v. Wilkerson, 440 Fed. Appx. 379 (2011) dealt with an inmate who had a microwave that heated water to a boil. The inmate then scalded the other inmate with the hot water. The Plaintiff in that case sued stating the prison was deliberately indifferent to the serious risk of hot water throwing attack when they made the microwave available to inmates during sleep times without regulation, monitoring, or having the oven secure. Again, the Court found that the evidence adduced at trial does not support a finding that the prison was aware of facts from which the inference could be drawn as a substantial risk of serious harm existed by having a microwave that could heat water to a boil. Thus, the Court dismissed the Plaintiff's case.

The Plaintiff has not produced any evidence that there were numerous other boiling water incidences at the Lee Correctional Institution. There is nothing in the records that show any foreseeability of an attack with a hot pot or an issue that would put Lee Correctional Institution on notice that the use of hot pots could be a dangerous instrument. In fact, based upon the Affidavit of the Defendant's expert, Emmett Sparkman, states that "to say that hot pots should never be allowed in cells is contrary or in (sic) contrary to policies of a number of prison systems around the country." Despite having the opportunity to address that issue in his Affidavit, Mr. Aiken never disputes that other prison systems around the country utilize hot pots.

The Court also notes that Mr. Aiken states that any heating devices should be in common areas. Logic would only dictate that liquids could be heated up in a microwave and taken into a cell to produce the exact type of injury as in this case.

C. DUTY TO PROTECT INMATES FROM VIOLENCE

Lastly, the Plaintiff argued that prison officials are responsible for “protecting prisoners from violence at the hands of other prisoners”. See, Farmer v. Brennan, 511 U.S. 825, 833, 114 S. Ct. 1970, 1976, 128 L.Ed. 2d 811 (1970); Dancer v. Stansberry, 772 F. 3d, 340, 346 (4) Cir. 2014”). This duty is formed under the Federal “Deliberate Indifference” standard as it applies to cruel and unusual punishment per the United States Constitution. This standard does not apply to cases under the South Carolina Tort Claims Act against the SCDC.

Furthermore, the Plaintiff references the duty to provide those in custody a safe environment. That is not a duty created per the South Carolina case law but rather, a federal duty created under the Deliberate Indifference Standard. Thus, the act or duty if misapplied by the Plaintiff and their expert.

The Plaintiff also references, Mackenzie v. Lee, Jackson v. South Carolina Department of Corrections, and Faile v. South Carolina Department of Juvenile Justice, 350 S.C. 315, 336, 566 S.E. 2d, 536, 547 (2002) as creating a duty to protect an inmate from assault on another inmate. The Court has reviewed these cases as referenced earlier in this Order. This Court does not see where such a duty has been created, especially when there is no foreseeability to such an attack.

CONCLUSION

None of the evidence contained in this record demonstrates that SCDC failed to exercise slight care. The Plaintiff’s expert Affidavit makes allegations which are conclusory in nature. The Plaintiff’s expert, through his Affidavit, which was filed untimely, fails to establish any

Standard of Care. Pursuant to Rule 56 (e), SCRPC, "supporting and opposing Affidavit should be made on personal knowledge, shall set forth facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify as to matters stated therein."

None of the evidence or opinions of the Plaintiff's experts demonstrate that SCDC failed to exercise slight care. The evidence contained in the record supports only one inference. That inference is that SCDC exercised slight care. Thus, SCDC is entitled to Summary Judgment as a matter of law.

NOW, THEREFORE, based upon the foregoing, it is hereby

ORDERED that the Defendant South Carolina Department of Corrections' Motion for Summary Judgment pursuant to Rule 56 SCRPC is hereby granted and the Plaintiff's action is dismissed with prejudice as to the Defendant South Carolina Department of Corrections.

AND IT IS SO ORDERED.

George M. McFaddin, Jr.
Presiding Judge for the Court of Common Pleas
Third Judicial Circuit

At Chambers:

Sumter, South Carolina.

_____ 2018.



Lee Common Pleas

Case Caption: Levi Bing VS Anthony Padula , defendant, et al

Case Number: 2014CP3100100

Type: Order/Summary Judgment

So Ordered

S/George M. McFaddin, Jr., #2759

Electronically signed on 2018-08-21 14:37:36 page 23 of 23

ELECTRONICALLY FILED - 2018 Aug 22 9:47 AM - LEE - COMMON PLEAS - CASE#2014CP3100100

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEE)

IN THE COURT OF COMMON PLEAS

Levi Bing,)
)
Plaintiff,)

Case No. 11-CP-31-_____

COMPLAINT

v.)

(JURY TRIAL DEMANDED)

Anthony Padula, Warden)
Lee Correctional Institute)
990 Wisacky Highway,)
Bishopville, South Carolina 29010)

and)

South Carolina Department of Corrections,)
4444 Broad River Road,)
Post Office Box 21787)
Columbia, South Carolina 29221-1787)

and)

John Doe representing employees and agents)
of South Carolina Department of Corrections)
whose identities are not yet known)

Defendants.)



COMES NOW THE PLAINTIFF AND ALLEGES AS FOLLOWS:

1. The plaintiff is an inmate who, as of the date of the incident complained of herein, was a incarcerated at Lee Correctional Institution ("LCI").
2. The Defendant Anthony Padula was at all times the warden and chief operations officer at LCI.
3. The Defendant South Carolina Department of Corrections and its employees and agents (including Defendant Padula) were at all times relevant responsible for the administration,

management, security, operations, policies, procedures and supervision of the inmates and staff at LCI.

4. In approximately May of 2010, the plaintiff was transferred to a cell in the South Darlington Unit of LCI and placed with a cellmate named Willis Dorsey. The plaintiff was transferred because he had recently undergone surgery and the room was on the first floor.

5. On more than one occasion over the next several weeks, the plaintiff requested a transfer out of the room and away from Willis Dorsey. The plaintiff made the request because Willis Dorsey was in possession of contraband and was threatening to plaintiff.

6. The plaintiff made these requests to employees of the South Carolina Department of Corrections and under the supervision of Anthony Padula.

7. The plaintiff's requests to transfer were denied.

8. On or about June 7, 2010, while lying on the bunk in his cell in South Darlington, Willis Dorsey came into the cell. Inmate Dorsey heated a pot of water to scalding temperature and then threw it onto the plaintiff causing severe and painful burns.

9. On or about June 22, 2011, Willis Dorsey was convicted by the Disciplinary Hearing Officer of striking an inmate with or without a weapon.

10. As a result of the assault, the plaintiff suffered severe burns over approximately half of his body.

11. As a result of the assault, the plaintiff has undergone excruciating pain and suffering, not only from his burns, but from the subsequent treatment of his injuries.

12. As result of the assault, the plaintiff has suffered severe mental anguish.

13. As a result of the assault, the plaintiff's body has been scarred and permanently damaged.

14. The defendants at all times owed the plaintiff a duty to protect him from foreseeable assaults such as the one that occurred on or about June 7, 2010.

15. The defendants breached their duties in that they failed to protect the plaintiff from the assault on or about June 7, 2010.

16. The defendants breached their duties in that they permitted Willis Dorsey to possess the means and equipment in his cell to heat water to temperatures sufficiently high to cause third degree burns.

17. The defendants breached their duties in that they failed to transfer the plaintiff and locked him in a cell alone with Dorsey unsupervised at a time when they knew or should have known Dorsey had the means and motive to assault the plaintiff.

18. The defendants breached their duties in that they failed to properly or adequately train, supervise or instruct their employees on procedures or actions that would have prevented the assault on the plaintiff.

19. The defendants breached their duties in that they failed to exercise reasonable and slight care to prevent the injuries suffered by the plaintiff.

20. The defendants' action or inactions were carried out intentionally, wantonly and with a reckless disregard for the rights of the plaintiff.

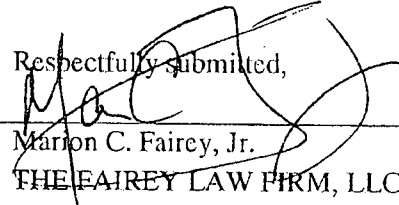
21. The defendants' negligence and gross negligence are the proximate cause of the injuries and damages caused to the plaintiff by the assault.

22. The plaintiff demands a jury trial.

WHEREFORE, the plaintiff respectfully prays that this honorable court enter judgment in his favor for whatever damages are awarded by the jury; that the court award to the plaintiff

the costs and expenses of this suit; and that the court grant such other relief to the plaintiff as it may deem just and equitable.

Respectfully submitted,


Marion C. Fairey, Jr.

THE FAIREY LAW FIRM, LLC

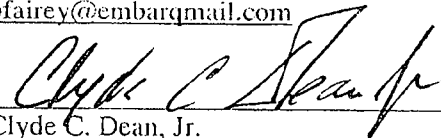
304 Lee Avenue

Post Office Box 661

Hampton, South Carolina

(803) 943-6444

bfairey@embarqmail.com


Clyde C. Dean, Jr.

DEAN LAW FIRM

146 Centre Street

Post Office Box 1405

Orangeburg, South Carolina

(803) 534-5091

September 29, 2011

Hampton, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF LEE

OCT 20 2011

Levi Bing,

JAMES L. DAVIS
FILED
USE COURT
CLERK'S OFFICE

vs.

Anthony Padula and South Carolina
Department of Corrections and John Doe,
representing employees and agents of SCDC
whose identities are not yet known,

Defendants.

IN THE COURT OF COMMON PLEAS

THIRD JUDICIAL CIRCUIT

Case No.: 2011-CP-31-0216

ANSWER

**OF ANTHONY PADULA, SOUTH
CAROLINA DEPARTMENT OF
CORRECTIONS AND JOHN DOE**

The Defendants, Anthony Padula, Warden (hereinafter Padula), South Carolina Department of Corrections (hereinafter SCDC) and John Doe (hereinafter Doe), representing employees and agents of SCDC whose identities are not yet known would respectfully answer the Complaint of the Plaintiff as follows:

1. Each and every allegation hereafter that is not admitted, denied or qualified is hereby denied, and strict proof demanded thereof.

AS A FIRST DEFENSE AS TO PADULA AND DOE

2. Defendants Padula and Doe would show that there are no allegations in the Plaintiff's Complaint that would allow them to be named as Defendants, pursuant to S. C. Code Ann. §15-78-70. Therefore, they are informed and believe that Plaintiff's Complaint against these Defendants should be dismissed, pursuant to Rule 12(b)(6) SCRCF for failure to state a cause of action.

AS A SECOND DEFENSE

3. Your Defendants re-plead all prior defenses as if set forth herein verbatim.
4. Your Defendants admit Paragraphs 1, 2, and 3 of the Plaintiff's Complaint.
5. In regards to Paragraphs 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13 of the Plaintiff's Complaint,

your Defendants would deny the same as written and crave reference to their records concerning the incident for a more complete and accurate description.

6. In regards to Paragraph 14, your Defendants would deny the same as written, and specifically assert the limitations of liability as provided in S. C. Code Ann. §15-78-60 (25).
7. Your Defendants deny Paragraphs 15, 16, 17, 18, 19, 20, and 21 of the Plaintiff's Complaint.
8. In regards to Paragraph 22, your Defendants concur in the request for a jury trial.

FOR A THIRD DEFENSE

9. Your Defendants re-plead all prior defenses as if set forth herein verbatim.
10. The Plaintiff has failed to effect proper service of process as to the South Carolina Department of Corrections and/or individual Defendants. Therefore, this action should be dismissed pursuant to Rule 12(b)(2), Rule 12(b)(4) and Rule 12(b)(5) of the South Carolina Rules of Civil Procedure.

FOR A FOURTH DEFENSE

11. Your Defendants re-plead all prior defenses as if set forth herein verbatim.
12. The Defendants Anthony Padula and John Doe are improperly named in their official capacity in the Plaintiff's Complaint. Defendants Padula and Doe are protected by S. C. Code Ann. §15-78-70 and should not be named, since all conduct that is alleged, pursuant to the South Carolina Torts Claim Act, was within his scope of their official duties.

FOR A FIFTH DEFENSE

13. Your Defendants re-plead all prior defenses as if set forth herein verbatim.
14. In regards to Defendants Padula and Doe, your Defendants would show that there has not been a service upon Padula or Doe. Therefore, your Defendants would move to dismiss

the Plaintiff's Complaint against the Defendants Padula and Doe pursuant to Rule 12(b)(2), Rule 12(b)(4) and Rule 12(b)(5) of the South Carolina Rules of Civil Procedure.

FOR A SIXTH DEFENSE

15. Your Defendants re-plead all prior defenses as if set forth herein verbatim.
16. Your Defendants would show that the Plaintiff has failed to state a cause of action against the Defendants Padula and Doe. Therefore, the Plaintiff's Complaint against Defendants Padula and Doe should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A SEVENTH DEFENSE

17. Your Defendants re-plead all prior defenses as if set forth herein verbatim.
18. The individual Defendants' actions were consistent with well settled law and did not violate any clearly established right possessed by Levi Bing. As such, the individual Defendants (if any such claim has been made against them) are entitled to qualified immunity.

FOR AN EIGHTH DEFENSE

19. Your Defendants re-plead all prior defenses as if set forth herein verbatim.
20. The Defendant South Carolina Department of Corrections and the individual Defendants in their official capacities are immune from suit by virtue of the Eleventh Amendment to the United States Constitution, and are not "person" subject to suit under U.S.C. §1983, if such a claim is construed by the Plaintiff's Complaint.

FOR A NINTH DEFENSE

21. Your Defendants re-plead all prior defenses as if set forth herein verbatim.
22. Your Defendants specifically plead immunity and qualified immunity as complete bars to allegations of the Plaintiff's Complaint.

FOR A TENTH DEFENSE

23. Your Defendants re-plead all prior defenses as if set forth herein verbatim.
24. The actions of the Defendants were objectively reasonable in light of the existing circumstances and therefore, they are entitled to immunity.

FOR AN ELEVENTH DEFENSE

25. Your Defendants re-plead all prior defenses as if set forth herein verbatim.
26. Your Defendants would show that, if the Defendants were negligent, reckless, grossly negligent, willful or wanton in any way in particular, which is expressly denied, nevertheless any injuries or damages allegedly sustained by the Plaintiff as set forth in the Complaint, were due to and caused by the Plaintiff's own acts of negligence, willfulness, wantonness and recklessness, which acts on part of the Plaintiff, combined, contributed to and concurred with any alleged negligence or willful acts of the Defendants, without which the injury or damage complained of would not have occurred or been sustained, and the Defendants plead the Plaintiff's comparative negligence, recklessness and deliberate acts were such a degree that, as complete bar to the within action, in any event, and recovery by the Plaintiff should be reduced in proportion to the degree of his negligence, recklessness and deliberate conduct.

FOR A TWELFTH DEFENSE

27. Your Defendants re-plead all prior defenses as if set forth herein verbatim.
28. That, if any duty of care was owed to the Plaintiff by the Defendants, which expressly and specifically denied, any injuries or damages to the Plaintiff occurred as a result of the delicts of the Plaintiff, and as a consequence, the Plaintiff was fully responsible for any injuries or damages that might have occurred.

FOR A THIRTEENTH DEFENSE

29. Your Defendants re-plead all prior defenses as if set forth herein verbatim.
30. That, upon information believed, any damages or injuries as alleged in the Complaint were due to and caused by the negligence, gross negligence, recklessness, willfulness and wantonness of others and, therefore, your Defendants plead negligence of others as a complete bar to the claims of the Plaintiff.

FOR A FOURTEENTH DEFENSE

31. Your Defendants re-plead all prior defenses as if set forth herein verbatim.
32. Your Defendants would show that there are some vague allegations concerning joint and several liability. That is not the proper standard in this matter. Should the Defendants Padula and Doe not be dismissed, your Defendants would request a special verdict pursuant to S. C. Code Ann. §15-78-100(c).

FOR A FIFTEENTH DEFENSE

33. Your Defendants re-plead all prior defenses as if set forth herein verbatim.
34. These Defendants specifically plead such immunities as may be available to them under the provisions of the South Carolina Tort Claims Act, S. C. Code Ann §15-78-10, *et seq*, as a complete bar to action, including but not limited to the following:
- a. These Defendants are not liable for the loss resulting from the adoption, enforcement or compliance with any law for failure to adopt or enforce a law, whether valid or invalid, including but not limited to, and charter, provision, ordinance, resolution, rule, regulation and written policy (S. C. Code Ann. §15-78-60(4));
 - b. These Defendants are not liable for the loss resulting from the exercise of discretion of judgment or from the performance or the failure to perform any act

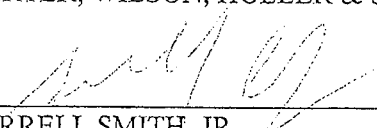
of service which is in the discretion or judgment of the Defendant or Defendants (S. C. Code Ann. §15-78-60(5));

- c. These Defendants are not liable for the loss resulting from the failure to provide police protection or method of police protection S. C. Code Ann. §15-78-60(6));
- d. These Defendants are not liable for the loss resulting from responsibility and their duty including but not limited to supervision, protection, control, confinement or custody of any prisoner or inmate of any governmental entity, except where the responsibility or duty is exercised in a grossly negligent manner. Gross negligence is specifically denied S. C. Code Ann. §15-78-60(25));
- e. These Defendants are not liable for an act or omission of a person other than an employee, including but not limited to the criminal actions of third persons (S. C. Code Ann. §15-78-60(20));
- f. These Defendants specifically plead S. C. Code Ann. §15-78-120 and the limitations therein and as to actual damages and punitive damages;
- g. These Defendants specifically plead S. C. Code Ann. §15-78-70 wherein it states that the exclusive remedy for alleged Tort committed by an employee of a governmental entity is barred as against the individual employees unless the individual employee's conduct was not within the scope of his official duties, or it constitutes an actual fraud, actual malice, intent to harm or crime involving moral turpitude.

WHEREFORE, having fully answered the Complaint of the Plaintiff, your Defendants would move that the Plaintiff's Complaint be dismissed in its entirety and that they be granted cost and disbursement of the defense of said action.

(SIGNATURE ON NEXT PAGE)

LEE, ERTER, WILSON, HOLLER & SMITH, LLC



G. MURRELL SMITH, JR.
ATTORNEY FOR DEFENDANTS
126 N. MAIN STREET/PO BOX 580
SUMTER, SC 29150
(803) 778-2471 f. (803) 778-1643
murrellsmith@leeandmoise.com

Sumter, SC
October 28, 2011

STATE OF SOUTH CAROLINA
COUNTY OF LEE

Levi Bing,

Plaintiff,

vs.

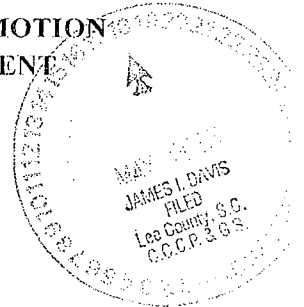
South Carolina Department of Corrections,
and John Doe, representing employees and
agents of SCDC whose identities are not yet
known,

Defendants.

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

Case No.: 2014-CP-31-100

**NOTICE OF MOTION AND MOTION
FOR SUMMARY JUDGMENT**



**TO: LEVI BING, PLAINTIFF, AND HIS ATTORNEYS, MARION C. FAIREY, JR.,
ESQUIRE AND CLYDE C. DEAN, JR., ESQUIRE:**

Would you please take notice that the Defendants, by and through their undersigned counsel, move for the presiding Judge in Court of Common Pleas in Lee County for an Order granting Summary Judgment to the Defendants pursuant to Rule 56 of the South Carolina Rules of Civil Procedure as there is not a genuine issue of material fact in this case.

The basis of this Motion is that Mr. Bing has bought an action for negligence pursuant to the South Carolina Tort Claims Act against your Defendants. The Plaintiff alleges that the South Carolina Department of Corrections failed to protect him from being scalded with hot water by another inmate.

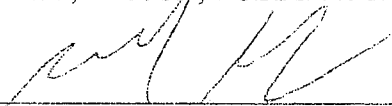
Your Defendants would show that they have immunity pursuant to the South Carolina Tort Claims Act as codified in the S.C. Code Ann. §15-78-60(25) for the supervision, protection, control, confinement or custody of any prisoner unless it is exercised in a gross negligent manner.

The evidence in this case does not demonstrate the Plaintiff exhibited any evidence of gross negligence and as a matter of law, Summary Judgment should be granted.

This Motion shall be based upon the facts of the case, discovery provided thus far, and any affidavits or other submissions. Your Defendants reserve the right to submit a Memorandum in Support of the Motion for Summary Judgment as well as additional affidavits and exhibits at the date of the hearing.

Respectfully submitted,

LEE, ERTER, WILSON, HOLLER & SMITH, LLC



G. MURRELL SMITH, JR.
ATTORNEY FOR DEFENDANTS
126 N. MAIN STREET/PO BOX 580
SUMTER, SC 29150
(803) 778-2471 f. (803) 778-1643
murrellsmith@leeandmoise.com

Sumter, SC
May 12, 2015.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE THIRD JUDICIAL CIRCUIT
COUNTY OF LEE	)	CASE NO.: 14-CP-31-100

Levi Bing,	)	
	)	
Plaintiff,	)	DEFENDANT'S MEMORANDUM IN
	)	SUPPORT OF MOTION FOR SUMMARY
v.	)	JUDGMENT
	)	
South Carolina Department	)	
Of Corrections and John Doe,	)	
Representing employees and	)	
Agents of SCDC whose identities	)	
Are not yet known,	)	
	)	
Defendant.	)	
	)	

TO: MARION C. FAIREY, JR., ESQUIRE, ATTORNEY FOR PLAINTIFF:

Pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, your Defendant, South Carolina Department of Corrections, (hereinafter Defendant), hereby submits this Memorandum in Support of its Motion for Summary Judgment.

STATEMENT OF FACTS

Taking the facts in the light most favorable to the Plaintiff, your Defendant would show that the Plaintiff was incarcerated in the South Carolina Department of Corrections serving a forty year sentence for murder, grand larceny and possession of a weapon during a violent crime. On or about June 7, 2010, the Plaintiff was assigned by the South Carolina Department of Corrections to Lee Correctional Institution in Lee County.

According to the Plaintiff's Complaint, the Plaintiff was transferred to his cell in the South Darlington Unit of Lee Correctional Institution in May of 2010. He was transferred

because he had recently undergone surgery and was required to be on the first floor. (See Plaintiff's Complaint ¶4).

The South Carolina Department of Corrections moved Willis Dorsey into that Dorm one month prior to the date of incident.

According to the Plaintiff's Complaint, the Plaintiff requested a transfer out of the room and away from Willis Dorsey. The Plaintiff made the request because Willis Dorsey was in possession of contraband and threatening to Plaintiff. (See Plaintiff's Complaint ¶5). Despite of the allegations of the Plaintiff being threatened by Willis Dorsey in his Complaint, in his Deposition, the Plaintiff testified otherwise. In the Plaintiff's Deposition of July 26, 2012, he stated that he did not receive any threats from Dorsey nor had any incidents:

Plaintiff's Deposition Page 49 through 50.

Q. And you never had an altercation with Dorsey before this incident here?

A. No, sir.

Q. He never threatened you about anything?

A. No, sir.

Q. He just had – he wasn't the best disciplinary – he wasn't the best inmate disciplinary –wise?

A. Correct.

Q. And that was your concern?

A. Yes, sir.

Q. You were concerned by being with him you were going to get in some disciplinary trouble?

A. I could have gotten anything, sir, anybody with weapons charges; you don't know what the case may be.

Q. Okay, and what do you mean by that?

A. I mean, if he had a weapon or a knife or something like that, you don't know what the situation may be. He could have a knife in the room and I could get charged with it. Whatever they find in the room, they charge both parties.

Q. So you're worried about what disciplinary trouble you may get into by being his roommate?

A. Yes, sir.

Q. Any other concerns you had about rooming with Dorsey that you expressed to the SCDC officials?

A. No, sir, not that I can remember.

According to his Deposition, it was his understanding that an officer with the South Carolina Department of Corrections smelled marijuana while the Plaintiff was outside his room. Thus, the Plaintiff did not want to have any disciplinary problems due to the conduct of his roommate. Despite this concern, he never placed anything in writing or provides SCDC with specific writing of this concern.

Plaintiff's Deposition Page 46:

Q. Oaky. And everything else that you would have – did you write you wanted him to stay out – you wanted him out of the room to stay out of trouble or did you write he was smoking marijuana or were you specific in why –

A. No, sir.

Q. You were not specific?

A. No, sir. The officers were there because they were ones that witnessed it.

The Plaintiff eventually approached Lieutenant Goodman to request a room change. This request was because his roommate had a disciplinary history and he did not want to use his Classification.

Plaintiff's Deposition at Page 52.

Q. Any your reasoning for putting - for making this request, was that he had a disciplinary history and you didn't want to get in trouble by being his inmate (sic)?

A. Yes, sir.

Q. And there were no reasons expressed to Lieutenant Goodman other than that?

A. No, sir.

Q. And so your sole reason for requesting a change of roommate, was because you were scared you were going to have a disciplinary infraction for something that Dorsey was doing in violation of the prison rules?

A. Yes, sir.

Q. No other reason?

A. I mean, no, sir.

Lieutenant Goodman then contacted the Plaintiff's Caseworker, Brenda Scott Hickman. The Caseworker stated that pursuant to SCDC policy, the Plaintiff was not eligible for a change of cellmates at this point. **See Affidavit of Brenda Scott Hickman filed on December 8, 2012.**

Plaintiff's Deposition Pages 52-53.

Q. And then after Lieutenant Goodman contacted your caseworker, and your caseworker said that wasn't a good enough reason to change roommates; is that right?

A. Yes, sir.

Q. And all that was verbal, correct?

A. Yes, sir.

Q. Nothing in writing?

A. No, sir, I was on the phone call.

Q. And you didn't make a written request to your caseworker, did you?

A. No, sir.

Q. And after that day, was there any more requests to change rooms, whether orally or in writing, with Dorsey?

A. No, sir. They wanted to move me upstairs after my surgery and Lieutenant Goodman got with me and said, Mr. Bing, I want to move you upstairs, but he said I'm not going to move you upstairs because of your medical reasons.

You can't go up the stairs because I still had stitches in my groin area.

Despite this request, there is no evidence that Willis Dorsey was aware of the same.

The Plaintiff testified in his Deposition that he did not tell Willis Dorsey of his request.

Furthermore, there was no altercation or issues between the parties prior to the incident.

Plaintiff's Deposition Page 39 and 40.

Q. Did y'all ever have any altercations before this?

A. No, sir.

Q. You have any disagreements before this incident that we're involved with here today?

A. No, sir.

Q. Any cross words with one another before June of 2010?

A. No, sir.

On June 7, 2010, right after cell count, the Plaintiff was in the room with Inmate Dorsey. In the Dorm Room, there was a hot pot that the parties used to warm coffee. According to the Deposition of the Plaintiff, Dorsey routinely used the hot pot for coffee. The canteen records reflect that the Plaintiff purchased the hot pot through the canteen at Lee Correctional Institution. **(See canteen record attached hereto and incorporated herein as Exhibit 1).** There are no canteen records of Willis Dorsey ever purchasing a hot pot. **(See Dorsey's canteen records attached as Exhibit 2).**

The Plaintiff testified that Inmate Dorsey began to heat up water. The Plaintiff presumed he was fixing a cup of coffee. As the Plaintiff was lying on his bed, Inmate Dorsey threw the hot water on him without warning. The Plaintiff said he jumped up and Dorsey pulled out a knife and stated "you know what I want".

The Plaintiff began to tussle with Inmate Dorsey. At the same time, he started kicking the cell which alerted the officers. The officers opened the door and broke up the altercation.

The Plaintiff received second and third degree burns which required treatment at the August Burn Center. By the Plaintiff's own admission, he did not tell anyone that he felt his life was in danger.

Plaintiff's Deposition Page 75.

Q. You didn't tell them your life was in danger?

A. No, sir.

Q. Or you were scared of being assaulted or anything like that, did you?

A. No, sir.

Q. Just plainly you weren't compatible and you were worried he was going to get you in trouble?

A. Yes, sir.

The Plaintiff alleges that there was some alteration of the coffee pot because the coffee pot had an internal temperature control. The Plaintiff testified in his Deposition that he was unaware that Dorsey had altered the hot pot and did not tell anybody that the hot pot had been altered.

Plaintiff's Deposition Page 78 through 79.

Q. If you didn't know it, then it's fair to say you were not aware of anyone in the South Carolina Department of Corrections being aware that he had altered his coffee pot, are you?

A. I'm not going to answer that.

Q. Huh?

A. I'm not going to answer that.

Q. Well, let me repeat that question because you're going to have to answer, you don't have the right not to answer questions. He can object to them, but you're going to have to answer. Are you aware of anybody within the South

Carolina Department of Corrections that knew Dorsey had altered his coffee pot?

A. I'm not sure, sir.

Q. So that means you're not aware of anyone who knew that?

A. I'm not aware.

Q. But you were not aware that he had altered his pot?

A. No, sir, I was not aware.

Q. Any you had roomed with him for about a month?

A. Yes, sir.

Q. And had seen him drink coffee about every day?

A. Yes, sir.

The South Carolina Department of Corrections conducted an investigation into this matter. Inmate Dorsey was charged with assaulting another inmate. **A copy of said investigation is attached hereto and incorporated herein as Defendant's Exhibit #3.**

The Plaintiff has filed this action against the South Carolina Department of Corrections. His sole cause of action is negligence/gross negligence. The Plaintiff alleges in his Complaint that the Defendant has a duty to protect him from foreseeable assaults and that they breached that duty by not protecting him from this assault. The Plaintiff further alleges that they breached their duty in allowing Dorsey to possess equipment in his cell to heat waters to temperatures sufficiently high enough to cause third degree burns as well as to transfer Dorsey into a cell and that they should have known Dorsey had the means and motives to assault the Plaintiff. See Plaintiff's Complaint ¶ 14 through 18.

The Plaintiff has retained the services of James Evans Aiken as an expert in Corrections. Mr. Aiken opined that (1) a hot pot should never be allowed in a Correctional Facility; (2) that Inmate Dorsey should have never been assigned to the Plaintiff although he has not seen the Classification File as of the Deposition; (3) he states that there is a complete system failure as there was no way to communicate with the guards of an attack. However, the last opinion has nothing to do with the eventual attack and should not be considered by the Court.

LEGAL STANDARD

Rule 56(c) of the South Carolina Rules of Civil Procedure requires that summary judgment be granted:

[i]f the pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

S.C.R.C.P. 56(c).

In determining whether summary judgment is proper, this court must view all evidence in the light most favorable to the non-moving party. Bar. v. City of Rock Hill, 500 S.E.2d 157, 158 (S.C. Ct. App. 1998). Summary judgment is appropriate when it is clear there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. Silvester v. Spring Valley Country Club, 543 S.E.2d 563, 566 (S.C. Ct. App. 2001).

Under Rule 56(c), *SCRCP*, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. Baughman v. American Tel. and Tel. Co., 410 S.E.2d 537 (S.C. 1991). With respect to an issue upon which the nonmoving party has the burden of proof, this initial responsibility may be discharged by pointing out to the trial court that there is an absence of evidence to support the

nonmoving party's case. Id. (citing Celotex Corp. v. Cartrett, 477 U.S. 317 (1986)). Once the moving party carries its initial burden, the "opposing party, under Rule 56(e), [must] 'do more than simply show that there is some metaphysical doubt as to the material facts' but 'must come forward with specific facts showing that there is a genuine issue for trial.'" Id. (quoting Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986)). The party opposing summary judgment cannot simply rest on mere allegations or denials contained in the pleadings. George v. Empire Fire & Marine Ins. Co., 545 S.E.2d 500 (S.C. 2001). More than a mere scintilla is required to overcome summary judgment. Bravis v. Dunbar, 449 S.E.2d 495 (S.C. Ct. App. 1994).

In the instant case, considering the evidence and all inferences which can reasonably be drawn from the evidence in the light most favorable to the Plaintiff, there are no triable issues of fact and no evidence to enable the Plaintiff to overcome this Motion for Summary Judgment. Therefore, Defendant respectfully requests that this Court grant its Motion for Summary Judgment.

ARGUMENT

I. THE PLAINTIFF IS PRECLUDED FROM PREVAILING IN THIS ACTION UNDER THE SOUTH CAROLINA TORT CLAIMS ACT.

The South Carolina Tort Claims Act "governs all tort claims against governmental entities and is the exclusive civil remedy available in an action against a governmental entity or its employees." S.C. Code Ann. §15-78-10, et. seq. Pursuant to S.C. Code Ann. §15-78-20(b), the Tort Claims Act "constitutes the exclusive remedy for any tort committed by an employee of a governmental entity." Id. Governmental entities are defined by the act as "the State and its political subdivisions." S.C. Code Ann. §15-78-30(d). A governmental entity includes political subdivisions and agencies thereof. See S.C. Code Ann. §§ 15-78-

30(a), (c), (d), (h) (defining “agency,” “employee,” “governmental entity,” and “political subdivision”). A state employee is defined under the act as “any officer, employee, or agent of the State or its political subdivisions, including elected or appointed officials, law enforcement officers, and persons acting on behalf or in service of a governmental entity in the scope of official duty.” S.C. Code Ann. §15-78-30(c). Thus, Defendant in the present action is an agency of the state and any torts alleged to have been committed by any or all of its employees are governed by the provisions of the South Carolina Tort Claims.

A. DEFENDANT IS IMMUNE FROM LIABILITY PURSUANT TO S.C. CODE ANN. § 15-78-60(25).

Subsection 15-78-60(25) provides that a governmental entity is not liable from “responsibility or duty including but not limited to supervision, protection, control, confinement, or custody of any student, *patient*, **prisoner**, inmate or *client* of any governmental entity, except when the responsibility or duty is exercised in a grossly negligent manner.” S.C. Code Ann. § 15-78-60(25)(emphasis added).

Gross negligence is the intentional conscious failure to do something which is incumbent upon one to do or the doing of a thing intentionally that one ought not to do. Etheridge v. Richland School District 1, 341 S.C. 307, 310, 534 S.E.2d 275, 277 (S.C. 2000). “Gross negligence, in the context of liability by a governmental entity, is the intentional conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do; it is the failure to exercise slight care.” Jinks v. Richland County, 355 S.C. 341, 345 (S.C. 2003). “Additionally, while gross negligence ordinarily is a mixed question of law and fact when the evidence supports but one reasonable inference, the question becomes a matter of law for the court.” Pack v. Associated Marine Institutes, Inc., 362 S.C. 239, 245 (Ct. App. 2004)(citing Etheredge, 341

S.C. at 310)). The Plaintiff has the burden of proving gross negligence. See Stewart v. Richland Memorial Hospital, 450 S.C. 589 (Ct. App. 2002) (Finding that while a governmental entity has the initial burden of establishing a limitation upon liability or an exception to the waiver of immunity, the plaintiff must still prove that the governmental entity has waived immunity)).

As in Pack, there is absolutely no evidence in the record demonstrating that Defendant was grossly negligent. The Pack court determined that summary judgment was proper after finding that employees acted with at least slight care. Pack, 362 S.C. at 245. As in this case, the plaintiff in the Pack case argued the defendants could have done more to address a juvenile's behavior problems before the juvenile acted out. Id. However, the court determined "[t]he fact that more might have been done does not negate a finding that [defendant] employees exercised at least slight care." Id. (citing Etheredge, 341 S.C. at 311-12 (holding that where defendant had no knowledge of animosity between students, and principal and security monitored hallways, the fact that school district might have done more did not negate the fact it exercised slight care for purposes of determining whether gross negligence exception to Tort Claims Act was applicable)).

In cases in South Carolina seem to be scarce as it relates to inmate on inmate assaults. The only reported cases that could be located is McKenzie v. Leeke, 292 S.C. 568, 357 S.E.2d 721 (1987) and Jackson v. South Carolina Department of Corrections, 301 S.C. 125, 390 S.E.2d 467. Those cases demonstrate that the Court determines a Defendant is guilty of gross negligence if he is so indifferent to the consequences of his conduct as not to give slight care to what he is doing. Anderson v. Ballenger, 166 S.C. 44, 164 S.E. 313 (1932). Gross Negligence involves a conscious failure to exercise due care. Id.

In Anderson, the South Carolina Department of Corrections placed an inmate who was diagnosed with having strong psychopathic patterns, being unpredictable and being prone to violent outbursts into the same prison as an 88 year old inmate. The inmate had a history of attacks on inmates and correctional officers, as well as the killing of another inmate. Prior to this inmate's transfer to the general population at Kirkland, he had been incarcerated in the maximum security facility at Central Correctional Institute. The Court determined that the department knew all of these facts when it transferred the inmate to Kirkland.

The Court determined that the evidence light most favorable to the Plaintiff, a jury could reasonably have determined that the transfer exhibited a conscious indifference to the threat he posed to the safety of other inmates at Lee Correction. As such, the jury could have seen the transfer as a failure to exercise a slight care under the circumstances.

In McKenzie, an inmate was attacked with a shotgun while having a visitor in the parking lot. There was a policy that allowed inmates with "A" or "AA" custody received visitors within the parking lot. There was also a policy guideline adopted to automobiles coming into the parking states "the shift supervisor will be responsible for having a correctional officer spot check the vehicle every 45 minutes during visitation." There were no spot checks of vehicles prior to this incident.

The Court of Appeals found that the failure to abide by the policy still could not create an issue of foreseeability of the attack. Therefore, the Court of Appeals upheld summary judgment.

First, the Plaintiff argues that Willis Dorsey should have never been assigned in the same cell with Plaintiff. This is based loosely upon the testimony of the Plaintiff's expert,

James Evans Aiken. However, James Evans Aiken never specifically identified any issues. Rather, he testifies that he would need further information. Your Defendant has supplemented further information to the Plaintiff and no further opinions of the Plaintiff's expert has been provided as of the date of the Hearing. Your Defendant would submit that the Plaintiff's expert stated in his Deposition that he would notify the Defendant of any changes in his opinion. Since none were notified, it is fair to presume that the Plaintiff doesn't have any further opinions. Furthermore, the Affidavit of the Defendant's expert, Emmitt Sparkman of the Mississippi Department of Corrections, states in his Affidavit that the South Carolina Department of Corrections appropriately classified the Plaintiff and performed all the appropriate cell assignment procedures. Emmitt Sparkman further testified from his review of the Classification Files, it appears that Lee Correctional Institution complied with the policies and procedures of cell assignment. There was no indication that Inmate Bing was not compatible with his roommate at the time of the incident.

Also, the Plaintiff's own testimony revealed there was no incompatibility prior to the incident. The Plaintiff's own Deposition testimony negates any issue of incompatibility. The Plaintiff's only complaint was that he understood that the correctional officer smelled marijuana outside his room. The Plaintiff never alleged he was in the room and saw Inmate Dorsey smoking marijuana nor did he ever testify that he saw contraband with Inmate Dorsey.

In fact, the Plaintiff testified that Inmate Dorsey never threatened him, had an altercation with him, or any disagreements.

The Plaintiff's testimony was simply that he requested transfer of cell mates which was denied. He was eventually injured and thus the Department of Corrections should be found to be grossly negligent in that regard.

Your Defendant asserts that the Plaintiff's claim for gross negligence based on the above, fails due to the failure to establish foreseeability. The fact that the Plaintiff complained that his roommate may possibly be involved in contraband does not create any foreseeability as to whether he would be harmed.

Furthermore, the Plaintiff's testimony indicates that he never placed anything in writing. He discussed the request to move with Lieutenant Goodman. Lieutenant Goodman contacted his caseworker who stated that he did not meet the requirements for a cell transfer. Thus, his request was denied. There was no appeal taken to this request and the Plaintiff declined protective custody.

The Plaintiff's complaint that the South Carolina Department of Corrections was grossly negligent is too vague to establish gross negligence.

Your Defendant also asserts that the Plaintiff's claim for gross negligence fails due to failure to establish foreseeability. The Plaintiff's claims are too remote to establish gross negligence.

In a negligence action, the plaintiff must prove proximate cause. *Rush v. Blarichard*, 310 S.C. 375, 426 S.E.2d 802 (1993). Negligence is not actionable unless it proximately causes the plaintiff's injury. *Bishop v. South Carolina Dep't of Mental Health*, 331 S.C. 79, 502 S.E.2d 78 (1998). It is clear that a plaintiff may only recover for injuries proximately caused by the defendant's negligence. *Parks v. Characters Night Club*, 345 S.C. 484, 548 S.E.2d 605 (Ct. App. 2001). "Proximate cause requires proof of both causation in fact and legal ceruse." *Small v. Pioneer Mach., Inc.*, 329 S.C. 448, 463, 494 S.E.2d 835, 842 (Ct. App. 1997). "Legal cause is proved by establishing foreseeability." *Id.* The test of foreseeability is whether the injury is the natural and probable consequence of the alleged negligent, act. *Koester v. Carolina Rental Ctr., Inc.*, 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994). "Where the injury complained of is not reasonably foreseeable there is no liability." *Crolley v. Hutchins*, 300 S.C.

355, 357, 387 S.E.2d 716, 717 (Ct. App. 1989). Where intervening acts occur, the original wrongdoer may be liable despite intervening acts if the intervening acts are foreseeable, or if not foreseeable, if the original wrongdoer's acts "would have caused the loss in natural course." *Young v. Tide Craft, Inc.*, 270 S.C. 453, 463, 242 S.E.2d 671, 676 (1978). Legal cause, in contrast to the "but for" nature of causation in fact, is proved by establishing foreseeability. *Oliver*, 309 S.C. at 316, 422 S.E.2d at 131. The standard by which foreseeability is determined is that of looking to the natural and probable consequences of the complained of act. *Oliver*, 309 S.C. at 316, 422 S.E.2d at 131. A plaintiff therefore proves legal cause by establishing the injury in question occurred as a natural and probable consequence of the defendant's negligence. *Newton v. South Carolina Pub. Rys. Comm'n*, 319 S.C. 430, 462 S.E.2d 266 (1995). A negligent act or omission is a proximate cause of injury if, in a natural and continuousness of events, it produces the injury, and without it, the injury would not have occurred. *Vinson*, 324 S.C. at 401, 477 S.E.2d at 721. In other words, if the accident would have happened as a natural and probable consequence, even in the absence of the alleged breach, then a plaintiff has failed to demonstrate proximate cause. Where the injury complained of is not reasonably foreseeable, there is no liability. *Crolley v. Hutchins*, 300 S.C. 355, 387 S.E.2d 716 (Ct. App. 1989). In order for conduct to amount to negligence for which compensation can be collected, the defendant must have foreseen, or by the exercise of ordinary care should have foreseen, the probability that his conduct would likely cause injury to another. *Vinson*, 324 S.C. at 401, 477 S.E.2d at 721. One is not charged with foreseeing that which is unpredictable or which would not be expected to happen as a natural and probable consequence of the defendant's negligent act. *Id. Sprague v. Beach*, 2013 WL 3197923 (2013). Foreseeability is not determined from hindsight, but rather from the defendant's perspective at the time of the alleged breach. *Parks*, 345 S.C. at 491, 548 S.E.2d at 609. It is not necessary for a plaintiff to demonstrate the defendant should have foreseen the particular event which occurred, but merely that the defendant should have foreseen his or her negligence would probably cause injury to someone. *Greenville Mem'l Auditorium v. Martin*, 301 S.C. 242, 391 S.E.2d 546 (1990). Proximate cause is the efficient or direct cause of an injury. *Small*, 329 S.C. at 464, 494 S.E.2d at 843; *Vinson*, 324 S.C. at 401, 477 S.E.2d at 721.

*3 "Ordinarily, the question of proximate cause is one of fact for the jury and the trial judge's sole function regarding the issue is to inquire whether particular conclusions are the only reasonable inferences that can be drawn from the evidence." *McNair*, 330 S.C. at 349, 499 S.E.2d at 497. Only in rare or exceptional cases may the question of proximate cause be decided as a matter of law. *Trivelas*, 348 S.C. at 137, 558 S.E.2d at 277. If there is a fair difference of opinion regarding whose act proximately caused the injury, then the question must be submitted to the jury. *Ballou*, 291 S.C. at 147-48, 352 S.E.2d at 493. The particular facts and circumstances of each case determine whether the question of proximate cause should be decided by the court or by the jury. *Collins v. Bisson Moving & Storage, Inc.*, 332 S.C. 290, 504 S.E.2d 347 (Ct. App. 1998).

Furthermore, the Plaintiff's complaints were a few weeks prior to the incident. There is nothing that occurred between Inmate Dorsey and the Plaintiff that would indicate there was any

attack that was imminent. Thus, the Plaintiff claims that the failure to transfer Willis Dorsey to another cell fails to meet the standard of gross negligence as a matter of law.

Next, the Plaintiff complained that having a coffee pot in the cell is a dangerous instrument which arises to gross negligence.

First, your Defendant would show that the coffee pot was purchased by the Plaintiff. The Plaintiff is the one that brought this “dangerous instrument” into his own cell. Thus, if it was manipulated to heat a temperature above its regulated level, it only seems to reason that the Plaintiff is the one who manipulated the control mechanism.

Nonetheless, there does not seem to be any South Carolina Law that states that hot pots or coffee pots in prison cells are a dangerous instrument. As pointed out by Emmitt Sparkman, hot pots are allowed at numerous State Correctional Facilities across the Country. Furthermore, there is no difference between having a hot pot in the cell than a microwave in a common area. If an inmate is intent on heating up liquid to throw on another, there is very little a Correctional Facility can do to prevent that.

While there is no case law in South Carolina, there are a number of other jurisdictions which have assessed this issue. In Hayes v. State of Illinois, 47 Ill. Ct. Ci. 389 (1994), the court found that the State is not an insurer as to the safety of an inmate in its custody. It does, however, have a duty to exercise reasonable care under the circumstances and prevent its inmates from suffering harm at the hands of other inmates. However, in cases where inmates have been assaulted by other inmates, the Court has to determine that to prove foreseeability of potential harm, it must be shown that respondent’s agents anticipated or should have anticipated third persons would commit criminal acts against a particular inmate who was attacked. The Court found that even though hot water was thrown on another inmate, there was no evidence, as in

this case, that the Plaintiff warned the State's agent or that they otherwise knew of the danger of an attack. Thus, the Court granted Summary Judgment.

Next, in Carter v. United States of America, another inmate lashed the Plaintiff in that case with a "super-heated homemade concoction of scalding hot coffee, oral and cleaning chemicals mixed together". The Court stated that "due to the difficulty of prison management, Courts typically provide great deference to the decisions of prison administrators." Citing, Thornburg v. Abbot, 490 U.S. 401, 407-08 (1989). "The Judiciary is ill equipped to deal with the difficult and delicate problems of prison management." Therefore, Courts must "afford considerable deference to the determinations of prison administrators". Turner v. Safley, 482 U.S. 78, 84-85 (1987). ("Running a prison is an inordinarily difficult undertaking that requires expertise, planning and commitment of resources").

Again, the Court again found, pursuant to this Federal Tort Claims Act, that there was no foreseeability and that it was not reasonable to presume that the Plaintiff had an inmate that had the capability to harm another and that, in and of itself, made an instrument inherently dangerous. Thus, the Court dismissed the Plaintiff's case.

Next, the case of Anderson v. Wilkerson, 440 Fed. Appx. 379 (2011) dealt with an inmate who had a microwave that heated water to a boil. The inmate then scalded the other inmate with the hot water. The Plaintiff in that case sued stating the prison was deliberately indifferent to the serious risk of hot water throwing attack when they made the microwave available to inmates during sleep times without regulation, monitoring, or having the oven secure. Again, the Court found that the evidence adduced at trial does not support a finding that the prison was aware of facts from which the inference could be drawn as a substantial risk of

serious harm existed by having a microwave that could heat water to a boil. Thus, the Court dismissed the Plaintiff's case.

The Plaintiff has not produced any evidence that there were numerous other boiling water incidences at the Lee Correctional Institution. There is nothing in the records that show any foreseeability or issue which would put the Lee Correctional Institution on notice that the use of hot pots could become a dangerous instrument. Therefore, your Defendant submits that the Plaintiff's claim fails to amount to gross negligence as a matter of law.

Lastly, the Plaintiff argued that there was a "complete system failure" where the panic button is not available to notify guards of harm. First, any use of a panic button would have occurred after the alleged incident which caused the Plaintiff damage. Furthermore, the Plaintiff's own testimony demonstrates that he started kicking on the door in which guards immediately responded by opening the door and separating the inmates. Thus, none of those allegations would arise to the level of gross negligence.

CONCLUSION

The South Carolina Rules of Civil Procedure, Rule 56, specifically provide for relief for a party when there is no genuine issue as to any material fact, and if none, the movant is entitled to judgment as a matter of law. The Complaint in this case fails to raise any genuine issue that the Plaintiff is entitled to the relief sought. Therefore, judgment, as a matter of law should be ordered in favor of the Defendants, or the Complaint should be dismissed on other grounds set forth herein.

Respectfully submitted,

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ATTORNEY FOR DEFENDANT

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Sumter, South Carolina.

June 7, 2018.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEE	)	
Levi Bing	)	Case No.2014-CP-31-100
	)	
Plaintiffs,	)	
	)	Plaintiff's Memorandum
v.	)	In Opposition of Defendant's
	)	Motion for Summary Judgment
South Carolina Department of Corrections	)	
	)	
	)	
	)	
	)	
Defendant.	)	

The Plaintiff respectfully submits this Memorandum in opposition to the Defendant's Motion for summary judgment.

I. Statement of Material Facts

The Plaintiff brought this action for personal injury suffered by him while in the care and custody of the South Carolina Department of Corrections (hereinafter, "the Department"). The Plaintiff was injured during an assault that occurred inside of his cell and perpetrated by his temporary roommate, Willis Dorsey. The Plaintiff alleges that the Department was negligent and grossly negligent in failing to prevent the attack.

A. The Assault

In 2010, the Plaintiff, Levi Bing, was incarcerated at the Lee County Correctional Facility. The Lee County facility is operated by the South Carolina Department of Corrections.

On June 7, 2010, Mr. Bing was assaulted inside his locked cell by his temporary roommate, Willis Dorsey. [Bing p. 56]. Willis Dorsey began the assault by taking a hot pot that he had bought at the prison canteen, filling it with water and plugging it into an electrical outlet and heating the water to near boiling and flinging it onto the Plaintiff's face and upper body, all inside of a locked cell during a prisoner count. [Bing p. 58]. After stunning the Plaintiff with

scalding water, Willis Dorsey then attacked the Plaintiff with a homemade shank inside the locked cell. [Bing p. 58-59].

After the attack had commenced, a guard outside of the cell ran to the door of the cell to investigate the commotion. [Bing p. 59]. Upon opening the door, the guard saw the Plaintiff inside the cell with skin peeled off his torso and neck. [Bing p. 59]. The guards secured Willis Dorsey and then instructed the Plaintiff to leave his cell and "jog to medical." [Bing p. 60].

Once at medical, the Plaintiff was briefly treated by the Lee County EMS. [Bing 60-61]. He was then moved to the parking lot of the prison where he was air lifted to the Stills Burn Center in Augusta, Georgia. [Bing p. 61]. There, he was surgically treated for partial thickness burn wound that covered 22% of his total body surface and a burn in the cornea of his eye. [Ex. 1 – Discharge Summary]. He was released from the hospital on June 11, 2010 and returned to the Department of Corrections medical facility at Kirkland in Columbia. [Id.] As a result of the burns suffered by the Plaintiff, his skin and eye have been permanently damaged and scarred. [Bing pp. 23-24, 98].

After the incident, Dorsey was charged and found guilty before the Disciplinary Hearing Officer at Lee Correctional with Striking an Inmate With or Without a Weapon. [SCDC Investigative Report, February 1, 2011].

B. Lee County Correctional Facility

The Plaintiff was assigned to Lee Correctional Facility in 2005. [Bing p. 27]. Although he had numerous roommates through his time at Lee Correctional, he did not know inmate Willis Dorsey until they were placed into the same cell in May of 2010. [Bing pp. 38-41]. The Plaintiff was placed into this specific cell, which was on the bottom floor of the Darlington Unit, because he had recently had hernia surgery and was medically restricted from climbing stairs. [Bing pp. 43, 53]. Although the Plaintiff did not know why Willis Dorsey was placed in the same cell

[Bing p. 41], Dorsey had been placed into the bottom floor cell for medical reasons as well.

[Goodman p. 31-32].

The Plaintiff did not know Willis Dorsey and had no prior history with him. [Bing pp. 38-41]. Bing worked during the day, and was out of his cell and had little to no interaction with Willis Dorsey. [Bing, p. 40]. After Bing and Dorsey had been housed together for a short while, one of the corrections officers, Officer Santimaw, approached Bing to warn him about Dorsey. Officer Santimaw told Bing that he had smelled marijuana behind his cell door at a time when he knew Bing was working. [Bing, p. 40]. Officer Santimaw then advised Bing to request a roommate change so Bing would not get in trouble if his room was raided and drugs were found. [Bing, p. 41].

Bing then requested a roommate change from Lieutenant Goodman shortly thereafter on the basis that his roommate was a "hot boy." [Goodman, p. 40]. A "hot boy" is an inmate who is involved in illegal activity or who was trouble. [Goodman, p. 40-41]. Bing's meeting with Lieutenant Goodman occurred in Lieutenant Goodman's office. [Goodman, p. 39]. The office had glass walls which afforded a view into the office from Dorsey's cell, making it obvious to Dorsey that Bing and Goodman were talking. [Goodman, p. 40].

Based upon the warning of Officer Santimaw, Bing did not want to be charged if his roommate was caught with something illegal.¹ [Bing, p. 42; Goodman Affidavit]. Bing was advised that his request was denied by SCDC (by Ms. Hickmon). She advised that Bing was not eligible to switch cellmates. [Bing, p. 44; Hickmon Affidavit].

Lieutenant Goodman testified that at this point he advised Bing that he could sign up for protective custody, but that Bing refused. [Goodman, p. 35]. When an inmate goes into protective custody, he is placed in lockup, in a cell by himself to protect him from exposure to

¹In a prison setting, if contraband is found inside of a cell and neither inmate admits ownership, then both inmates are charged with its possession. [Aiken, p. 60].

the other inmates. [Goodman, p. 36]. However, in spite of allegedly offering protective custody to Bing, Goodman testified that he did not feel that Bing was unsafe after reporting Dorsey [Goodman, p. 36]. Goodman testified that he did nothing to independently look into whether Bing was unsafe in the cell with Dorsey [Goodman, p. 37]; that he did not look into Dorsey's administrative record in prison [Goodman, p. 41]; that he did not investigate why Dorsey might be "hot" [Id.]; that he did not alert the contraband team to search Dorsey's cell [Id.]; he did not review any classification materials regarding Bing or Dorsey (who had just recently been placed in the same cell for medical reasons) [Goodman, p. 31-32, 42-43]; he did not inspect Dorsey's cell himself or review his property inventory to determine if there might be a potential weapon in the cell [Goodman, p. 45]; and even if he did offer Bing the option of applying for protective custody (an assertion which Bing denies) [Bing, p. 74], Lieutenant Goodman failed to present the appropriate paperwork to document the offer and Bing's refusal. Instead, Lieutenant Goodman allowed an untrained inmate to determine if he thought he was safe or not. It is also fairly inferable that Lieutenant Goodman failed to communicate with his own fellow officers about the reason Dorsey was "hot" because it was Officer Santimaw who originally alerted Bing that he had smelled marijuana in Dorsey's cell.

About a week after Bing requested a cellmate change, during a routine count during the day, Bing and Dorsey were locked into their cell together when the assault occurred. [Bing p. 59-60].

C. SCDS's Gross Negligence

Regardless of the prison setting, SCDC owes a duty to those in its custody to maintain a safe environment. [Aiken, p. 63]. "Because being assaulted in prison is not 'part of the penalty that criminal offenders pay for their offenses against society,' prison officials are responsible for

“protecting prisoners from violence at the hands of other prisoners.”” *Danser v. Stansberry*, 772 F.3d 340 (4th Cir. 2014) (citations omitted).

According to the Plaintiff’s expert, Mr. James Aiken,² this assault on Mr. Bing was both foreseeable and with the exercise of even slight care, preventable. [Aiken Affidavit, ¶6]. First, Mr. Aiken opined that it was gross negligence on the part of the Department of Corrections to have issued Dorsey a hot pot that is capable of heating water to near scalding temperatures, to allow Dorsey to keep that hot pot inside of his cell and use it unsupervised where it could cause such an injury to Bing in a high security area at a high security prison like Lee Correctional. [Aiken, pp. 40-41, 53-54] [Aiken Affidavit, ¶17]. Mr. Aiken observed that based upon the record in this case, the hot pot that was used as a weapon and caused the injury was issued by the Department. [Aiken, pp 55-56] [Aiken Affidavit, ¶17]. The hot pot, which was capable of heating water to a sufficient temperature to cause second and third degree burns to a person, was allowed by the Department in Dorsey’s cell where he would be locked in with Bing at certain parts of the day. [Aiken, p. 83, 90] [Aiken Affidavit, ¶20]. “[F]or this instrument to get in that cell with the lax of – lax of supervision, security, as well as the capability to inflict that type of injuries – injury, rather, is gross negligence.” [Aiken, p. 85].

Second, as Mr. Aiken observed, an attack on Bing was foreseeable because of Bing’s prior request for a roommate change due to Dorsey’s smoking marijuana in the cell. [Aiken, p. 60] [Aiken Affidavit, ¶13]. Mr. Aiken testified that inside the prison system, when one inmate is perceived by others as complaining to the guards or reporting illegal behavior, they can become targets for abuse at the hands of other inmates. [Aiken, p. 61][Aiken Affidavit, ¶19 and n. 1]. When an inmate such as Bing asks to move cells because his roommate is engaged in illegal

² Mr. Aiken is a former warden at CCI [Aiken, p. 3] who has worked in corrections in South Carolina, Indiana and the United States Bureau of Prisons for more than thirty years who now serves as a consultant to the United States Department of Justice. He has trained and evaluated prison staff to just about every jurisdiction in the United States. [Aiken, pp. 15-30 for summary of his experience].

activity, “it’s just not an inconvenience of smoking marijuana. It’s a life and death situation.” [Aiken, p. 61]. In such life and death situations, the prison staff must be trained to (1) recognize the danger to the reporting inmate and (2) must take steps to protect the inmate from danger, whether the reporting inmate recognizes the danger himself or not,³ and (3) must investigate the report to ascertain its truth.

When asked by counsel for the Department what steps should be taken to comply with the standard of care when an inmate reports that his roommate is engaging in contraband activity, Mr. Aiken testified as follows:

The standard of care is, number one, to protect the inmate providing that information. That inmate is providing information that is normally called – it’s rat information. That person is a snitch now. You have to assume that person is a snitch, and you have to assume other people will know about it.

Now, what are you doing to protect that particular inmate? Moving that inmate to another housing assignment, moving them to another institution, putting them on lock-up, plus offering protective custody. The point is just because you offered that inmate protective custody doesn’t relinquish your responsibility to protect that inmate . . . after you know the specific information that this inmate is saying this person is involved with contraband dope, and for him to share that information with authority automatically endangers and puts him in a level of vulnerability that can cost his life . . . and [SCDC is] responsible to protect that person.

[Aiken, pp. 69-70]. In this instance, when Mr. Bing complained about his roommate being involved in contraband, the Department was under an obligation to “proactively investigate” and to “segregate and protect an inmate.” [Aiken, p. 70]. Because the Department took no steps to do either, it failed to exercise even slight care to protect Mr. Bing. [Aiken Affidavit, ¶22].

II. Discussion

A. Standard of Review

³The Department has produced the affidavit of Lt. Goodman in which he avers that after Bing requested the roommate change, he offered Bing protective custody and Bing declined. Even assuming this assertion is true, in the prison setting, an offer of protective custody does not satisfy the prison’s duty to protect an inmate who is at risk. Doing so relinquishes the authority and duty of the presumably trained prison and its staff and places it in the hands of an inmate who may or may not be aware that he is in danger or in need of protection. [Aiken, p. 68] [Aiken Affidavit, ¶19 and n. 1]. In the prison setting, it should not be the inmate’s choice whether or not he is protected. [Aiken, pp. 63, 73] [Aiken Affidavit, ¶19].

In order to obtain summary judgment, the moving party must demonstrate that there is no issue of material fact and it is clear that the party is entitled to judgment as a matter of law. Rule 56(c), SCRCP. In determining whether any triable issues of fact exist, the evidence and all inferences which can reasonably be drawn from the evidence must be viewed in the light most favorable to the non-moving party. *Hancock v. Mid-South Management Co., Inc.*, 381 S.C. 326, 330, 673 S.E.2d 801, 802 (2009). In cases where the burden of proof is by the preponderance of the evidence, the non-moving party need only submit a mere scintilla of evidence in order to withstand a motion for summary judgment. 318 S.C. at 330, 673 S.E.2d at 803.

In this case, the Department claims that its liability under the Tort Claims Act can only lie upon a showing of gross negligence. S.C. Code Anno. §15-78-60(25). Without conceding that gross negligence is the appropriate standard in this case, the Plaintiff respectfully submits that it has produced at least a scintilla of evidence that the Department was grossly negligent in protecting the safety of Mr. Bing.

Gross negligence is ordinarily a mixed question of law and fact. *Proctor v. Dep't of Health & Envtl. Control*, 368 S.C. 279, 294-95, 628 S.E.2d 496, 504-05 (Ct. App. 2006)(citations omitted). In most cases, gross negligence is a factually controlled concept whose determination best rests with the jury. *Id.* "Gross negligence is a mixed question of law and fact and should be presented to the jury unless the evidence supports only one reasonable inference." *Staubes v. City of Folly Beach*, 331 S.C. 192, 205, 500 S.E.2d 160, 168 (Ct.App.1998), *aff'd*, 339 S.C. 406, 529 S.E.2d 543 (2000).

B. The Duty to Protect Inmates from Violence

In a prison setting, prison officials are responsible for "protect[ing] prisoners from violence at the hands of other prisoners." *Farmer v. Brennan*, 511 U.S. 825, 833, 114 S.Ct. 1970, 1976, 128 L.Ed.2d 811 (1970); *Danser v. Stansberry*, 772 F.3d 340, 346 (4th Cir.2014).

This duty includes the duty to protect an inmate from an assault by another inmate, *McKenzie v. Leeke*, 292 S.C. 568, 570, 357 S.E.2d 721, 722 (1987), and to control a violent inmate in its custody from harming another inmate. *Jackson v. S.C. Dept. of Corrections*, 301 S.C. 125, 126, 390 S.E.2d 467, 468 (1989); *Faile v. South Carolina Department of Juvenile Justice*, 350 S.C. 315, 336, 566 S.E.2d 536, 547 (2002). This duty also includes the duty to provide those in its custody to a safe environment. [Aiken Affidavit, ¶8]. The duty arises when the threat of harm is foreseeable to the Department, meaning the threat of harm is either known or reasonably ascertainable under the circumstances. *McKenzie*, 292 S.C. at 570, 568 S.E.2d at 772.

C. The Attack was Foreseeable

There is at least a scintilla of evidence that this attack was foreseeable to the Department. Both Bing and Lt. Goodman testified that Bing reported that Dorsey was involved in illegal activity in his cell. This evidence supports the premise that the attack was foreseeable because the Department should have recognized that this report by Bing of “hot” or illegal activity would have marked Bing as a snitch who was a target for violence from his cellmate. [Aiken, pp. 69-70] [Aiken Affidavit, ¶16]. Moreover, the meeting between Bing and Lt. Goodman occurred in Goodman’s office which had glass walls with a direct view into Dorsey’s cell. [Goodman, p. 40]. As Mr. Aiken explains, “a properly trained corrections officer or prison administrator either knew or should have known that the Plaintiff’s actions in requesting a cell change due to his cellmate being involved in illegal activity would have marked him as a snitch and made him a target for retaliation or physical violence from Willis Dorsey.” [Aiken Affidavit, ¶16].

Further, the presence of the “hot pot” in the cell that the Department had issued to Dorsey should have been evident from his property inventory and known to the Department. It is well known in correctional facilities that heated liquids can be used as a weapon, exactly like Dorsey did in this case. [Aiken Affidavit, ¶17].

D. The Department Failed to Utilize Slight Care to Prevent the Attack

As Mr. Aiken explains, Bing's report that Dorsey was a "hot boy" should have triggered actions by the Department to (1) warn and protect Bing from harm while the report was investigated and (2) to investigate the validity of the information that Dorsey was involved in illegal activity.⁴ [Aiken, p. 75-76]. The record reveals that there is at least a scintilla of evidence that the Department failed to exercise slight care in protecting Bing from foreseeable harm and investigating Dorsey.

In summary, evidence shows that Bing learned that Dorsey was a "hot boy" from an officer in the Department. Despite one of his officer's passing this knowledge on to Bing, Lieutenant Goodman testified that he did nothing to independently investigate Dorsey. He did not advise the contraband team to search Dorsey's cell or take any action on the report that Dorsey had contraband. He did not look into Dorsey's administrative record to determine if he was violent. He did not review any classification documents to evaluate the compatibility of Dorsey and Bing. He did not evaluate Dorsey's cell to see if he had anything that could be weaponized like the hot pot used to create the scalding water. The Department issued the hot pot to Dorsey and allowed him to keep it in his cell and use it without supervision. Indeed, the Department had no policy to secure and supervise the use of the hot pot that generated the scalding water behind a locked cell door.

The one thing that the Department claims it did to protect Bing (the offer of protective custody) is not documented. Other than the affidavit of Lt. Goodman, the Department has not produced any internal documentation of the offer and its rejection. Moreover, Bing testified that the offer never happened. Even if the Department's claim that it offered protective custody was

⁴ There is some testimony that the Department's personnel were aware of the illegal activity of Mr. Dorsey prior to the assault and did nothing to investigate it: [Bing, p. 40-42] [Goodman, p. 41].

true, by deferring the decision to Bing, the Department abdicated its responsibility. As Mr.

Aiken explained,

In a correctional setting, especially a maximum security setting, an untrained inmate is not the proper arbiter of whether he needs protection or not. A properly trained correctional officer is. The fact that the lieutenant deferred his responsibility for the Plaintiff's safety back to the Plaintiff is an indication not only of a lack of proper training but an abdication of the Department of Correction's duty for the safety of the inmates under its control.

[Aiken Affidavit, ¶19].

III. Conclusion

This case is not appropriate for summary judgment. The Defendant's Motion should be denied and this case set for trial.

Respectfully submitted,

s/ Marion C. Fairey, Jr.

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June 7, 2018
Hampton, South Carolina

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF LEE

3 Levi Bing,

4 Plaintiff,

5 vs.

CASE NO. 2011-CP-31-0216

6 South Carolina Department of Corrections,
7 and John Does, representing employees and
8 agents of SCDC whose identities are not
9 yet known,

Defendants.

DEPOSITION COPY
TO BE FILED

10 DEPOSITION OF: LEVI BING

11 DATE: July 26, 2012

12 TIME: 2:12 p.m.

13 LOCATION: Broad River Correctional Institute
14 4460 Broad River Road
15 Columbia, SC

16 TAKEN BY: Counsel for the Defendants

17 REPORTED BY: AMY R. TINGBERG,
18 Court Reporter

19 A. WILLIAM ROBERTS, JR., & ASSOCIATES

20 Fast, Accurate & Friendly

21 Charleston, SC Hilton Head, SC Columbia, SC
(843) 722-8414 (843) 785-3263 (803) 731-5224

22 Greenville, SC Myrtle Beach, SC Charlotte, NC
23 (864) 234-7030 (843) 839-3376 (704) 573-3919

Page 22	Page 24
1 A. Yeah, pretty much. 2 Q. If you had a cold or you had a sickness 3 or something that you thought you needed to go see 4 the doctor, would you go to this same doctor? 5 A. Yes, sir, when I got older it was Dr. 6 Hepburn, me and my dad started seeing the same 7 doctor once I got older, once I got about 16 or 17. 8 Q. And where was Dr. Hepburn? 9 A. I believe Charleston, North Charleston. 10 Q. Okay. And when you were in Columbia, 11 did you see any physicians here? 12 A. No, sir. 13 Q. In this area? 14 A. No, sir. 15 Q. Have you ever had surgery before? 16 A. Yes, sir. 17 Q. For what? 18 A. I had -- from my younger days, I had 19 some surgery that they went in my arm here for 20 something. I can't remember, my mom would know the 21 information with that. The next surgery I had was 22 a hernia surgery. 23 Q. That's while you were incarcerated, 24 right? 25 A. Yes, that's when I was incarcerated.	1 A. (Indicating). My right thigh. 2 Q. Okay. And is that it? 3 A. Yes, sir, my face, but it pretty much 4 healed a little bit. All this was painful in my 5 surgery, if you look at all that. (Indicating). 6 Q. Have you ever had any burn injuries 7 before? 8 A. No, sir. 9 Q. Okay. And do you have any prior 10 medical problems before you were incarcerated? 11 A. No, sir. 12 Q. High blood pressure, any chronic 13 illnesses, diabetes, or anything like that? 14 A. No, sir. 15 Q. Do you have any now since you've been 16 incarcerated, other than your burn injuries that 17 we're going to talk about? 18 A. No, sir. 19 Q. Your illnesses, and I've got, I guess, 20 what my records go through since you've been 21 incarcerated, probably need to update them. But it 22 goes through April of 2011, but tell me have you 23 been hospitalized for anything other than this burn 24 injury since you've been at the Department of 25 Corrections?
Page 23	Page 25
1 Q. Any other surgery besides that? 2 A. My burn surgery. 3 Q. And we'll get to all that. Any other 4 hospitalizations besides these surgeries that you 5 referenced? 6 A. No, sir. No, sir. 7 Q. Are you having any, other than 8 scarring, are you having any symptoms from your 9 burn injuries? 10 A. Yes, sir, I have to keep suntan lotion 11 because of the heat, my pigment haven't(sic) came 12 back yet. These are my scars here on my back and I 13 have some scars here on my legs as well. 14 (Indicating). 15 Q. Okay. And that's where your scars are, 16 on your back, your chest, and your legs? 17 A. It's chest right here, arm, neck. 18 (Indicating). 19 Q. Hold on just a second, let me write all 20 this down, scars, chest, that's your left arm? 21 A. Yes. (Indicating). 22 Q. Left forearm? 23 A. Yes, sir. Right arm here. 24 (Indicating). 25 Q. Bicep.	1 A. The only thing is the -- 2 Q. And the hernia, I guess. 3 A. Yes, sir, that was at Tuomey Hospital. 4 Q. Have you had anything besides a cold or 5 something like that, have you had any other 6 illnesses while in prison? 7 A. Not that I can recall, sir. 8 Q. Since you've been in prison, how many 9 times have you had to go see the physician other 10 than for this burn injury here? 11 A. I would say I've probably seen the 12 dentist more just for teeth cleaning. 13 Q. And any problems with your teeth? 14 A. No, sir. 15 Q. And no injuries to your teeth as a 16 result of this incident that you filed a lawsuit, 17 is there? 18 A. No, sir. 19 Q. Besides these burns and having to put 20 suntan lotion you say for your pigment; is that 21 right? 22 A. Yes, sir. 23 Q. Any other problems that you're having 24 as a result of these burn injuries? 25 A. A little bit of tightness.

Page 26 1 Q. Tightness where? 2 A. Like, in my skin, neck, in this area. 3 (Indicating). 4 Q. Okay. Tightness in the skin? 5 A. Yes, sir. 6 Q. Not in the muscles or anything like 7 that? 8 A. No, sir, just skin. 9 Q. And I'm sure, I've never been burned so 10 I don't know what you're specifically referring to, 11 but tell me when you refer to tightness in the 12 skin, kind of describe to me what you mean by that? 13 A. Pretty much, let's say if your skin 14 grows back, it's going to grow back to more of a 15 tightness because the hot water was -- I was pink, 16 I was really pink. And when you're sore and you're 17 pink, your skin it's going to tighten up. They had 18 to put pig skin and staples on me over the burns 19 for it to heal. And you really can't do any 20 movement or anything like that because of the 21 staples and stuff that they have on you. And when 22 they take the staples out and stuff, your skin 23 pretty much healed because you can't really move 24 and stretch as you were supposed to. 25 Q. Okay. Let's go back to your	Page 28 1 first dorm you went to? 2 A. The first dorm I went to was Darlington 3 unit. 4 Q. All right. And how long did you stay 5 there? 6 A. I can't recall, I would say three 7 weeks. 8 Q. And then where were you transferred? 9 A. I was transferred to Kershaw unit. 10 Q. Okay. How long did you stay there? 11 A. I'm not sure. I would say a year, if 12 that. 13 Q. How many roommates -- did you have just 14 one roommate there? 15 A. No, I had numerous roommates. 16 Q. No, I'm sorry, not a good question. 17 How many inmates to a room? 18 A. Two. 19 Q. When you were at Kershaw, how many 20 roommates would you estimate you had? 21 A. Two. 22 Q. Who were they? 23 A. Last name was Hemingway, was my first 24 one. And the second one was Smith. 25 Q. All right. And then after Kershaw,
Page 27 1 incarceration. Obviously you pled guilty in 2 Orangeburg and I presume they took you from the 3 detention center over there to here, to R&E; is 4 that correct? 5 A. Yes, sir, to Kirkland. 6 Q. And how long did you stay at Kirkland? 7 A. I stayed at Kirkland approximately two 8 weeks. 9 Q. And what prison were you assigned to 10 from there? 11 A. Lee Correctional. 12 Q. You went to Lee Correctional in 2005? 13 A. Yes, sir. 14 Q. And the date of this incident is, what, 15 do you recall? 16 A. June 7th, I believe, 2010. 17 Q. Yep. And so were you in Lee 18 Correctional Institute for the entire time of your 19 incarceration up until this burn injury? 20 A. Yes, sir, I left there in a helicopter 21 and didn't go back. 22 Q. Okay. And when you first got there, 23 were you in the same dorm the entire time? 24 A. No, sir, I was in numerous dorms. 25 Q. Let's talk about that. What was the	Page 29 1 where did you go? 2 A. I went to Darlington, back to 3 Darlington. 4 Q. And how long were you in Darlington? 5 A. I would say at that time probably a 6 month, if that. 7 Q. And then where -- did you get put in. 8 Darlington for -- is that where the SMU is in 9 Darlington? 10 A. Darlington is a disciplinary unit 11 pretty much. SMU is lock up. 12 Q. Okay. And so when you get in trouble, 13 you get put over in Darlington? 14 A. Correct. 15 Q. When you went to Darlington for the 16 first time, that's just where they held you until 17 they put you in a dorm? 18 A. Yes, sir. 19 Q. You didn't do anything 20 disciplinary-wise to get put in Darlington when you 21 first arrived there, did you? 22 A. Yes, sir. 23 Q. What did you do? 24 A. They had went through their cell search 25 and found marijuana in the room.

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1 Q. Tell me about him, how long did you
2 know him prior to this?
3 A. I would say since I was in Chesterfield
4 in 2000 -- what was it? I'd say 2009.
5 Q. And tell me how the circumstances of
6 y'all knowing, were y'all friends, did you not get
7 along, what type of relationship did you have?
8 A. There's 128 guys in a unit, you know,
9 some of the people you know, some of them you don't
10 know. I didn't know anything about him.
11 Q. You didn't know much about him?
12 A. No, sir.
13 Q. Did you know why he was incarcerated?
14 A. No, sir.
15 Q. Was he ever your roommate before this?
16 A. No, sir.
17 Q. Was he friends with any of your
18 roommates before this?
19 A. No, sir, not that I can recall.
20 Q. And I've done a fair amount of these
21 cases out at Lee prison and I know y'all kind of
22 have some privileges where you go in and out of
23 inmates' rooms and stuff like that?
24 A. Yes, sir.
25 Q. Would he ever come in and out of your

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1 room since you knew him before this incident to
2 hang out?
3 A. Well, no, sir, there's no privileges
4 like that, at least not in the dorms, the doors
5 remain locked at all times.
6 Q. Your door is always locked?
7 A. Yes, sir.
8 Q. But you had a common area where you can
9 congregate to?
10 A. Yes, sir, a dayroom.
11 Q. Would he ever come there with you at
12 times?
13 A. No, sir, not that I recall.
14 Q. When y'all would go outside on the
15 yard, would you do things in the yard? Would he
16 ever hang out with you in the yard?
17 A. No, sir.
18 Q. Did y'all ever have any altercations
19 before this?
20 A. No, sir.
21 Q. You have any disagreements before this
22 incident that we're involved with here today?
23 A. No, sir.
24 Q. Any cross words with one another before
25 June of 2010?

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1 A. No, sir.
2 Q. You were not -- you didn't have any
3 long-standing disputes, any problems -- I don't
4 know how I can describe it -- you just didn't have
5 any animosity with Willis Dorsey before this
6 incident in June of 2010?
7 A. No, sir. Before June of 2010, we
8 requested to get a room change -- I requested to
9 get a room change with my lieutenant. And he was
10 willing to do it, the officer on the rock had
11 smelled marijuana at the time, I was a dorm worker
12 and I was out of the unit. I would be out of the
13 unit during counts to clean up and stuff while
14 everybody was locked behind the door. Officer
15 Santimaw said that he smelt(sic) marijuana at my
16 room.
17 Q. Spell Santimaw.
18 A. Oh, goodness, S-A-N-W-A-N(sic), I
19 believe, I'm not sure how you spell it.
20 Q. All right. Let me back up. I think
21 you were trying to tell me what happened right
22 before. But before y'all were placed in a room
23 together, did you and Willis Dorsey have any
24 animosity with one another?
25 A. No.

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1 Q. And tell me how you ended up in a room
2 with Willis Dorsey.
3 A. For some reason, they had a -- he had a
4 medical bottom bunk, bottom floor pass, so they
5 moved him in a room with me.
6 Q. Do you know what his reason was?
7 A. I'm not sure, sir.
8 Q. How long were y'all in the room
9 together before this incident occurred?
10 A. I'd say a month probably.
11 Q. Okay. Do you recall what cell it was?
12 A. I can't recall. I just know it was on
13 the south side of Darlington on the bottom bunk,
14 bottom tier.
15 Q. Okay. And tell me what -- you were
16 talking about smelling marijuana, help me
17 understand the context of this, how long before
18 this incident was that?
19 A. I would -- the officer smelt(sic)
20 marijuana, I would say it was May 30th, if that, I
21 can't recall what day it was. But Officer Santimaw
22 smelt(sic) marijuana in the room and he noticed
23 that I was out of the room because he counted me on
24 the rock. He advised me that the best thing to do
25 was to have him move out of the room to stay out of

Page 42	Page 44
1 trouble. 2 Q. Have Dorsey move out of the room? 3 A. Yes. 4 Q. Okay. 5 A. I then went to my lieutenant to ask him 6 to move, I gave him a request form to move because 7 any time you want to move, you have to fill out a 8 staff request. 9 Q. Who was your lieutenant that you gave 10 that to? 11 A. At that time, Lieutenant Goodman. 12 Q. And you gave him a written request? 13 A. Yes. 14 Q. And that's what those forms that we see 15 all the time, it's like a grievance? 16 A. No, sir, it's a staff request form, a 17 1929 form. 18 Q. Okay. And you give it directly to 19 Lieutenant Goodman? 20 A. Yes, sir. 21 Q. Okay. What did he do with that? 22 A. I'm not sure, I placed it -- I gave it 23 to him and I don't know what happened. 24 Q. And when did you give that to him? 25 A. I would say around May sometime.	1 Q. To the staff request? When it says 2 disposition by staff member and then there's a 3 signature down at the bottom, who was the one that 4 responded to your staff request to change rooms? 5 A. If I can recall, it was Lieutenant 6 Goodman. It was pretty much a denial. I was in 7 the office with him and when he called Caseworker 8 Hickman, Ms. Hickman at the time. He wanted to 9 make the change, but the caseworker wouldn't do it. 10 Q. When was this, do you recall a date? 11 A. No, sir, I don't recall an exact date. 12 Q. Tell me exactly, I want to know exactly 13 what happened, how you ended up in the office with 14 him and what that conversation was? 15 A. Okay. Me, Officer Bates at the time, 16 we went into the room -- into his office, I'm 17 sorry, into Lieutenant Goodman's office. Officer 18 Bates witnessed when I got Lieutenant Goodman and 19 said, I would like to have -- it was another inmate 20 that I requested to have him around, I can't recall 21 his name. I just know at the time he stayed above 22 me in a room, he said he don't have no problem 23 making the change. He knew the history of Willis 24 Dorsey. I then -- he then made a call to the 25 caseworker over that unit, which was Ms. Hickman,
Page 43	Page 45
1 Q. Okay. And the staff request form, I'm 2 going to show you, is it similar to that? 3 A. Yes. 4 Q. And that's the form 1911? 5 A. Yeah, 1929, is it? 6 Q. It says 1911 on the bottom of this. 7 A. Well, that's what it is then. 8 Q. Okay. And I think -- I wasn't paying 9 attention, when did you say you gave that to him? 10 A. I would say sometime in May, that last 11 part of May. It was -- I'm not sure, I can't 12 recall, I'm not sure if it was before my hernia 13 surgery or after. 14 Q. Okay. Did it come back to you because 15 these forms, these form 1911, has your request and 16 then it has disposition by staff, correct? 17 A. Yes, sir. 18 Q. And does it come back to you with a 19 disposition? 20 A. Yes, sir, it came back to me. It was 21 with my paperwork, but when I left Lee County in 22 the helicopter, I never went back to Lee County, 23 they packed my belongings and stuff. 24 Q. Okay. Who responded to that? 25 A. Responded to, what, sir?	1 she's the caseworker over Darlington unit. He 2 called her and said I have two guys that I would 3 like to move, a room switch. She said, what is the 4 problem? He said I have one that is smoking in the 5 room and it's not compatible with Mr. Bing. And 6 she said that wasn't a good enough reason for me to 7 move. 8 Q. All right. And so was this -- how long 9 would you say this was before the incident happened 10 with Mr. Dorsey? 11 A. I would say no more than two weeks, a 12 week to two weeks. 13 Q. Okay. And what exactly did you say on 14 your request form, if you recall? 15 A. On the request form, I said I would 16 like to -- if I can recall, if I can remember, I 17 know that I said I would like to move to rooms -- I 18 would like to move, inmate -- I forgot the guy's 19 name that was above me, from his room to my room, 20 and Inmate Dorsey to another room, because he 21 wanted to move as well. 22 Q. What was the reason you put on there, 23 if any? 24 A. Pretty much Officer Santimaw and Bates 25 were the ones that said they smelled marijuana in

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1 the room and I told them I would like to have
2 Inmate Dorsey move out of my room to stay out of
3 trouble.
4 Q. Okay. And anything else that you would
5 have -- did you write you wanted him to stay out --
6 you wanted him out of the room to stay out of
7 trouble or did you write he was smoking marijuana
8 or were you specific in why --
9 A. No, sir.
10 Q. You were not specific?
11 A. No, sir. The officers were there
12 because they were ones that witnessed it.
13 Q. I understand --
14 A. Yes, sir.
15 Q. -- but the officers weren't the one
16 that received your request form though, were they?
17 A. No, sir, they was there with me when I
18 did the request form.
19 Q. The time you gave Lieutenant Goodman
20 the form, was that time he called Hickman, your
21 caseworker?
22 A. Yes, sir.
23 Q. That was the first time you gave him
24 that form?
25 A. Yes, sir.

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1 Q. And did you tell him -- tell Goodman
2 anything other than about the marijuana and that
3 you wanted to stay out of trouble for your reasons
4 to move?
5 MR. FAIREY: Object to the form.
6 THE WITNESS: No, sir.
7 BY MR. SMITH:
8 Q. You can -- we didn't say this, if he
9 makes objections, let him make his objection and
10 then you answer the question still. He's just
11 making an objection for the record.
12 A. Okay. Repeat that question, again,
13 sir.
14 Q. When you told Lieutenant Goodman that
15 you wanted to move because you wanted to stay out
16 of trouble, right?
17 A. Yes, sir.
18 Q. And did you say anything about the
19 marijuana in your written request form?
20 A. I can't recall that.
21 Q. Did you tell him any other reasons you
22 wanted to move while you were in the room with him
23 that day?
24 A. Any reason why I wanted Inmate Dorsey
25 to be removed?

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1 Q. Yes, sir.
2 A. Yes, sir, he had pending charges and
3 stuff, I think he had a pending sexual misconduct
4 charge.
5 Q. With an inmate?
6 A. No, sir, with a staff member.
7 Q. All right. He had a sexual misconduct
8 charge pending?
9 A. Yes, sir.
10 Q. And you -- well, tell me everything you
11 told Goodman why you wanted him moved out of the
12 room or wanted a new inmate?
13 A. I can't recall. I think I told Goodman
14 that he was -- I know he had a lot of weapon
15 charges and stuff. And Officer Bates, I believe
16 took over the conversation and said, yes, those two
17 inmates aren't compatible, one gets in a lot of
18 stuff and the other one doesn't.
19 Q. And gets in a lot of stuff, what do you
20 mean by a lot of stuff?
21 A. That would be Mr. Bates question to
22 answer.
23 Q. All right. Anything else that you told
24 Goodman while you were in that room that day?
25 A. Not that I can recall, that I remember.

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1 Q. And you never had an altercation with
2 Dorsey before this incident here?
3 A. No, sir.
4 Q. He never threatened you about anything?
5 A. No, sir.
6 Q. He just had -- he wasn't the best
7 disciplinary -- he wasn't the best inmate
8 disciplinary-wise?
9 A. Correct.
10 Q. And that was your concern?
11 A. Yes, sir.
12 Q. You were concerned by being with him
13 you were going to get in some disciplinary trouble?
14 A. I could have gotten anything, sir,
15 anybody with weapons charges, you don't know what
16 the case may be.
17 Q. Okay. And what do you mean by that?
18 A. I mean, if he had a weapon or a knife
19 or something like that, you don't know what the
20 situation maybe. He could have a knife in the room
21 and I could get charged with it. Whatever they
22 find in the room, they charge both parties.
23 Q. So you're worried about what
24 disciplinary trouble you may get into by being his
25 roommate?

Page 50 1 A. Yes, sir. 2 Q. Any other concerns you had about 3 rooming with Dorsey that you expressed to the SCDC 4 officials? 5 A. No, sir, not that I can remember. 6 Q. And is the only time you requested to 7 be moved, was that one time with Lieutenant 8 Goodman? 9 A. No, sir. Are you talking about through 10 the whole time I was at? 11 Q. Let me rephrase that question. The 12 only time you requested to be moved from Inmate 13 Dorsey was that time with Lieutenant Goodman? 14 A. No, sir, it was Lieutenant Goodman, I 15 requested through Sergeant Jenkins. 16 Q. Tell me about that, when was that? 17 A. That was beforehand, that was before I 18 spoke with Goodman. He was the one that told me to 19 write a request form to Lieutenant Goodman and give 20 it to Lieutenant Goodman. 21 Q. So when you said something to Jenkins, 22 was he the first person you said you wanted to 23 switch roommates with? 24 A. Yes, sir, he said he doesn't do room 25 changes.	Page 52 1 Q. And you put that in writing to 2 Lieutenant Goodman? 3 A. To Lieutenant Goodman. 4 Q. And took it to his office? 5 A. Yes, sir. 6 Q. Somewhere between one and two weeks 7 before this incident? 8 A. Yes, sir. 9 Q. And your reasoning for putting -- for 10 making this request, was that he had a disciplinary 11 history and you didn't want to get in trouble by 12 being his inmate(sic)? 13 A. Yes, sir. 14 Q. And there were no reasons expressed to 15 Lieutenant Goodman other than that? 16 A. No, sir. 17 Q. And so your sole reason for requesting 18 a change of roommate, was because you were scared 19 you were going to have a disciplinary infraction 20 for something that Dorsey was doing in violation of 21 the prison rules? 22 A. Yes, sir. 23 Q. No other reason? 24 A. I mean, no, sir. 25 Q. And then after Lieutenant Goodman
Page 51 1 Q. He said put it in writing? 2 A. Yes, sir. 3 Q. And give it to Lieutenant Goodman? 4 A. Yes, sir. 5 Q. Anyone else you asked for a roommate 6 change? 7 A. No, sir. 8 Q. So let me make sure I understand this, 9 all your requests to move either you and/or Dorsey, 10 to separate y'all from the room that you were in, 11 was one to Sergeant Jenkins? 12 A. No, sir, that was verbally to Sergeant 13 Jenkins. 14 Q. That's what -- whether verbal or in 15 writing, you asked Sergeant Jenkins, correct? 16 A. Yes, sir, verbally. 17 Q. Verbally, and Sergeant Jenkins told you 18 to put it in writing to Lieutenant Goodman? 19 A. Correct, sir. 20 Q. And then you put it in writing through 21 a form 1119, I believe; is that right? 22 A. 1911. 23 Q. 1911, I've got mixed up, you're right. 24 1911? 25 A. Yes, sir.	Page 53 1 contacted your caseworker, and your caseworker said 2 that wasn't a good enough reason to change 3 roommates; is that right? 4 A. Yes, sir. 5 Q. And all that was verbal, correct? 6 A. Yes, sir. 7 Q. Nothing in writing? 8 A. No, sir, I was on the phone call. 9 Q. And you didn't make a written request 10 to your caseworker, did you? 11 A. No, sir. 12 Q. And after that day, was there any more 13 requests to change rooms, whether orally or in 14 writing, with Dorsey? 15 A. No, sir. They wanted to move me 16 upstairs after my surgery and Lieutenant Goodman 17 got with me and said, Mr. Bing, I want to move you 18 upstairs, but he said I'm not going to move you 19 upstairs because of your medical reasons. You 20 can't go up the stairs because I still had stitches 21 in my groin area. 22 Q. When did you have that surgery? 23 A. I'm not sure, sir, it was -- it had to 24 be -- it had to be sometime in May. 25 Q. Okay.

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1 A. And Lieutenant Goodman told me to stay
2 in my room and he wrote in the logbook that he made
3 me stay in the room.
4 Q. Okay. And then any altercations
5 between that time that you and Goodman and -- I
6 can't remember what, Sergeant Jenkins; is that
7 right?
8 A. Yes, sir.
9 Q. Were in the room -- or made that
10 request to the time this incident happened that you
11 had any conversations with anybody employed by SCDC
12 about switching rooms?
13 A. Officers Santimaw and Bates.
14 Q. And what was that about?
15 A. They asked me if they were going to
16 move me, yeah.
17 Q. And you told them that your caseworker
18 said they were not going to move you?
19 A. Correct.
20 Q. Any other conversation besides with
21 them?
22 A. No, sir.
23 Q. All right. So then the next -- well,
24 let me ask this, did Dorsey find out about your
25 requests?

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1 (The proceedings were interrupted.)
2 BY MR. SMITH:
3 Q. Did Dorsey find out about your request?
4 A. I don't know, sir.
5 Q. Did Dorsey want to move out of the room
6 with you too?
7 A. Yes, sir.
8 Q. Why did he want to move out of the
9 room?
10 A. I don't know, sir.
11 Q. Did y'all talk about moving out of the
12 room from one another?
13 A. No, sir.
14 Q. Did you say, I'm going to make a
15 request to change roommates?
16 A. No, sir.
17 Q. Did he tell you he wanted to make a
18 request to change roommates?
19 A. No, sir.
20 Q. And I know I've asked this to you a lot
21 of times, but I'm getting ready to get to the date
22 of the incident here. There was nothing prior to
23 this incident where you had hot water or coffee
24 spilled on you or thrown on you that -- any
25 altercations or cross words with Dorsey?

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1 A. No, sir.
2 Q. And then obviously you had this
3 June 7th, 2010, incident?
4 A. Uh-huh.
5 Q. And the June 7th, 2010, incident, tell
6 me what time did that occur approximately.
7 A. Count time, around 12:30.
8 Q. Okay. And what had you been doing
9 earlier that day?
10 A. I believe I was in the canteen line.
11 Q. Okay. Did you work that day?
12 A. Yes, I believe so.
13 Q. And where were you working, you were a
14 ward --
15 A. Yes, sir, I was just sweeping the rock,
16 something like that.
17 Q. And then tell me what happened at
18 count.
19 A. Okay. I came in the unit from the
20 canteen off the yard at approximately 12 o'clock,
21 12:15. I came into the room, they were locking
22 doors, came into the wing, they were locking doors,
23 Officer Santimaw was working the wing. I went into
24 the room. I went in I was the only one in the room
25 at the time. My roommate at the time, Dorsey, had

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1 got locked out the room when Officer Santimaw was
2 doing his rounds. Officer Santimaw then walked
3 back to the room to let Dorsey in and stated to
4 him, you need to be by your door when they call
5 count or something like that, not to get locked out
6 of his room anymore, that was his warning. He came
7 in, I came in, I sat on the bed. He took some
8 water, put it in the coffee pot, plugged it up. He
9 usually drinks a lot of coffee, so in my mind I'm
10 thinking he's just making a cup of coffee.
11 I was sitting on my bed, the way the
12 room is you have your bed -- when you walk into the
13 door, you walk in -- this is the cell, the cell is
14 pretty much like this here. You have your windows
15 right here. There was a locker here. There's a
16 locker here, and the bed is right here. You have
17 your toilet right here, you have your sink here.
18 This is your door to go out the cell, your door. I
19 was sitting on the bed here. (Indicating).
20 Q. And you're on the bottom bunk?
21 A. Bottom bunk, yes, sir. Sitting on the
22 bed here. He had the pot sitting here by the
23 toilet because the outlet, the electrical outlet is
24 right here to get power. So the pot is sitting
25 here on the toilet. I think he was standing over

Page 58	Page 60
1 here reading something while the water was warming 2 up. I was sitting here on the bed, he then went 3 over here and got the pot and -- like I have a 4 towel right here, hanging to dry where you can't 5 see because there's a desk here as well, a regular 6 desk. And I put a towel here for it to dry after I 7 take my shower. He then took the pot, and as I'm 8 sitting right here, he took the pot, it would be 9 coming from my left side and threw the water on me 10 right here. (Indicating). 11 Q. Did he say anything before he threw the 12 water on you? 13 A. No, he didn't say a word, it was on my 14 blind side. 15 Q. Okay. Go ahead. 16 A. Were you going to ask me something? 17 Q. No, just finish your story. 18 A. I then -- I jumped up because the water 19 was burning, he then pulled out a knife. He pulled 20 out a knife and I asked him, why did you do this? 21 And he said you know what I want and I said, I 22 didn't know what he was referring to. He then 23 charged with the knife. I grabbed the end of the 24 knife and we was wrestling and tussling in the 25 room. (Indicating).	1 And then Dorsey replied to him, we was 2 just wrestling and the water fell on us. I then 3 left -- we went out the room and they called first 4 responders, medical and stuff, Sergeant Anderson, a 5 couple of other sergeant officers came to respond 6 to the call. And I went into a room because all I 7 had on was shorts at the time. I went back into 8 room. I think they had him contained. I went into 9 the room and got my shoes and when I went out the 10 unit, the officers told me to jog to medical 11 because the sun was beaming and my skin was exposed 12 and they told me to jog out of the sun. 13 I passed by the chaplain. I requested 14 for him to call my family. I went in medical, they 15 showered me with cold water and they called the EMS 16 at the time and I sat -- after I took the cold 17 shower, I sat in the medical room, EMS had got 18 there. After the EMS got there, they put some IV 19 in my arm and stuff and they -- 20 Q. Hold on just a second for me. I have 21 to write down everything that you're saying. And 22 they gave you an IV, you said the EMS? 23 A. Yes, the EMS put the IV in my arm. 24 They got on their radio and was telling them how 25 bad I was burned. I then got into the EMS with
Page 59	Page 61
1 Q. When you grabbed the end of the knife, 2 you grabbed the blade end or the handle? 3 A. The blade end, you know, a homemade 4 shank isn't going to be like a knife on the street 5 or you buy at the store. This point here, the 6 pointy part, would be the sharpest edge, the rest 7 of it really isn't that sharp, but it's enough to 8 do damage. 9 Q. Did you cut your hand? 10 A. I cut my hand a little here. They 11 should have taken pictures of that. (Indicating). 12 Q. Okay. Go ahead and finish. 13 A. When he did that, I wrestled him, I was 14 hollering and screaming. The rest of the inmates 15 to the cells next to me and stuff was kicking on 16 the door. They was kicking the door to get an 17 officer because they knew something was wrong at 18 the time. At that time, Santimaw was at the other 19 side counting wings. We were tussling, I'm not 20 sure how long, and then Santimaw ran to the door 21 because he heard the commotion in my cell. He then 22 opened the door and when he seen me I had took my 23 shirt and when I took my shirt off, my skin went 24 off with my shirt. And Santimaw's reaction was, 25 Bing, what in the hell happened to you?	1 Officer Simon, he's over contraband -- well, he's a 2 contraband officer, he was in the back of the EMS 3 with me. We went from the front of the 4 institution -- well, from the medical department of 5 the institution -- 6 Q. Let me stop you there for a second. 7 You said when got in with EMS, you got in the 8 ambulance? 9 A. Yes, the ambulance. 10 Q. All right. 11 A. When I got in the ambulance, the 12 ambulance took me from the medical department of 13 Lee County to the Lee County parking lot of the 14 institution, the institution parking lot. And we 15 waited there a few minutes for a helicopter to 16 arrive. 17 Q. And they took you to the Burn Center in 18 Augusta? 19 A. Yes, sir. 20 Q. Anything else you remember about the 21 incident? 22 A. The incident in the room or... 23 Q. In the room, yes, sir, or afterwards 24 when you were -- before you were taken to the 25 hospital in Augusta?

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1 Lieutenant Goodman did not give you this PC form?
2 A. Correct.
3 Q. And so in essence, he didn't follow
4 procedure?
5 A. Correct, sir.
6 Q. And tell me the protective custody
7 form, I'm familiar with the policy, tell me what
8 your understanding of the protective custody policy
9 is? I understand -- you tell me what your
10 understanding of the protective custody policy is?
11 A. My understanding of protective custody,
12 if you're not compatible with a roommate or
13 whatsoever, or you're not compatible or feel
14 comfortable within the population, you are supposed
15 to -- you're supposed to report it to your officer,
16 immediate officer, lieutenant, sergeant or whoever
17 is available and the supervisor is supposed to ask
18 you, are you -- if you want protective custody or
19 if you don't want protective custody. And you're
20 supposed to sign that for records.
21 Q. And did you request protective custody
22 on that meeting with Lieutenant Goodman?
23 A. No, sir.
24 Q. And the only thing you were requesting
25 was to be moved out or have Dorsey moved out,

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1 right?
2 A. Correct, sir.
3 Q. And you said you weren't compatible,
4 correct?
5 A. Yes, sir.
6 Q. You didn't tell them your life was in
7 danger?
8 A. No, sir.
9 Q. Or you were scared of being assaulted
10 or anything like that, did you?
11 A. No, sir.
12 Q. Just plainly you weren't compatible and
13 you were worried he was going to get you in
14 trouble?
15 A. Yes, sir.
16 Q. And so -- but you would agree with me
17 that does not trigger the protective custody
18 policy, does it?
19 A. No, I'm not going to agree with that.
20 The lieutenant at least, I feel, should have
21 brought that up at least.
22 Q. You were aware of the policy at the
23 time of this meeting, correct?
24 A. No, sir.
25 Q. You weren't aware of the policy?

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1 A. No, sir.
2 Q. But you did not request protective
3 custody?
4 A. No, sir.
5 Q. Anything else that you believe the
6 South Carolina Department of Corrections did or
7 didn't do that caused or contributed to your
8 injuries from your incident with Willis Dorsey?
9 A. Not that I can recall, sir.
10 Q. So if I understand it, let me make sure
11 the two issues that you have with the Department of
12 Corrections, that you feel they have liability to
13 you, would be, one, not transferring him out when
14 you requested because the classification worker
15 overruled everybody?
16 A. Uh-huh.
17 Q. Uh-huh means yes?
18 A. Yes, I'm sorry, yes, sir.
19 Q. And then number two is that Lieutenant
20 Goodman failed to follow the protective custody
21 policy when you made the request about a roommate
22 not being compatible, he should have give you that
23 form?
24 A. Yes, sir, and --
25 Q. Go ahead.

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1 A. And the coffee pot.
2 Q. And the coffee pot.
3 A. Yes, sir.
4 Q. What's wrong with the coffee pot?
5 A. The coffee pot, obviously, is a weapon
6 due to boiling water, that was thrown on me, which
7 is a weapon.
8 Q. And they sell them in the canteen,
9 right?
10 A. Yes, sir.
11 Q. So this wasn't an illegal contraband
12 that was in there?
13 A. No, sir -- anything that's altered is
14 contraband.
15 Q. And you didn't report it as being
16 altered, did you?
17 A. I didn't know it was altered until I
18 got burned.
19 Q. So if you didn't know and you were with
20 him every day he was using it, right?
21 A. Yes, sir.
22 Q. So it's fair to say that the South
23 Carolina Department of Corrections would have known
24 that either, right?
25 MR. FAIREY: Object to the form.

Page 78	Page 80
1 BY MR. SMITH: 2 Q. You can answer the question. Do you 3 need me to repeat the question? 4 A. Yes, sir. 5 Q. If you didn't know it, then it's fair 6 to say you were not aware of anyone in the South 7 Carolina Department of Corrections being aware that 8 he had altered his coffee pot, are you? 9 A. I'm not going to answer that. 10 Q. Huh? 11 A. I'm not going to answer that. 12 Q. Well, let me repeat that question 13 because you're going to have to answer, you don't 14 have the right not to answer questions. He can 15 object to them, but you're going to have answer. 16 Are you aware of anybody within the South Carolina 17 Department of Corrections that knew Dorsey had 18 altered his coffee pot? 19 A. I'm not sure, sir. 20 Q. So that means you're not aware of 21 anyone who knew that? 22 A. I'm not aware. 23 Q. But you were not aware that he had 24 altered his pot? 25 A. No, sir, I was not aware.	1 have to shake the room down if they smelled 2 marijuana, you know, to see if they can find any 3 marijuana because marijuana is contraband inside 4 and out of prison. And wouldn't they conduct a -- 5 well, I'm not going to ask a question, but I feel 6 that they would conduct a urinalysis test because 7 none of that was done. 8 BY MR. SMITH: 9 Q. All right. So in essence what you're 10 saying is, again, you don't believe that the South 11 Carolina Department of Corrections followed their 12 own policies and procedures when the officer 13 smelled marijuana? 14 A. Correct, sir. 15 Q. Okay. 16 (DFT. EXH. 2, Signed statement of Levi 17 Bing, Bates stamped 3042, was marked for 18 identification.) 19 BY MR. SMITH: 20 Q. I'm going to show you what's been 21 marked as Defendant's Exhibit Number 2. I think 22 that's the signed statement that we were looking 23 for, just make sure that's your signed statement. 24 Is that your signed statement? 25 A. Yes, sir.
Page 79	Page 81
1 Q. And you had roomed with him for about a 2 month? 3 A. Yes, sir. 4 Q. And had seen him drink coffee about 5 every day? 6 A. Yes, sir. 7 Q. Before I get into your injuries, let me 8 just make sure... 9 A. One more thing I would like to add -- 10 what's your name again, sir? 11 Q. Mr. Smith. 12 A. Mr. Smith, one more thing I would like 13 to add, if an officer or security goes around and 14 smells marijuana in a room or whatnot, sir, isn't 15 it proper procedure or cause to shake the room down 16 and search the room for marijuana or anything like 17 that. Or number two, give a urinalysis test? 18 MR. FAIREY: He doesn't have to answer 19 your questions. 20 MR. SMITH: I'm going to let you talk. 21 THE WITNESS: Well, I'll turn it back 22 around. From my understanding, if a staff officer 23 goes around and smells marijuana, due to their 24 security, because I believe they're staff of 25 security, they are -- I believe that they would	1 Q. And that's the signed statement from 2 what I showed you in Defendant's Exhibit 1? 3 A. Yes, sir. 4 Q. The exact same language that's in 5 Exhibit 1? 6 A. Can you give me a copy? 7 Q. Yes, she's got it right there. 8 A. Yes, sir. Yes, sir the only thing 9 that's different with this is that right here it 10 stopped and it says: I could hear Dorsey saying 11 that we had been wrestling and the hot water 12 spilled on me by accident. It's just that it's in 13 a different texture, but it's the same wording. 14 Q. When you were in the altercation with 15 Inmate Dorsey over the shank, what happened to it, 16 did you get it out of his hand? 17 A. I can't recall, I don't know if -- I 18 believe that he passed it next door to the cell, he 19 passed it next door to the inmate next door in a 20 vent. 21 Q. Passed it to the inmate next door in a 22 vent? 23 A. Yes, sir. 24 Q. When did you see him do that? 25 A. When the officer came and opened the

Page 98 1 was. 2 Q. And you told me now that the problems 3 you're having as a result of the injuries is your 4 skin is tight? 5 A. Yes, sir. 6 Q. Any other problems you're having? 7 A. Not that I can recall at this time. 8 Q. And obviously you've got scarring, 9 which you've showed me? 10 A. Yes, sir. 11 Q. Any other aches, symptoms, pains, 12 anything else that you're having other than the 13 scarring and the skin being tight on the back of 14 your shoulders that you showed me earlier? 15 A. No, sir. 16 Q. Now, you obviously were seen by the 17 ophthalmologist for the water getting in your eyes? 18 A. Yes, sir, well, the left eye. 19 Q. And then has that healed? 20 A. Yes, sir. 21 Q. Any problems you're having, as we sit 22 here today, with regard to your left eye? 23 A. No, sir, he gave me a prescription and 24 I wear glasses now. 25 Q. When was the last time you went to the	Page 100 1 me? 2 A. 30-something. 3 Q. So you don't need reading glasses yet? 4 A. No, sir. 5 Q. All right. Any other problems that 6 you're having? 7 A. Not that I can -- I mean, I have to pay 8 attention now to who move in the room with me or 9 whatnot from there, I don't have too much problem 10 here, but that's pretty much the main thing, pretty 11 much paranoia a little bit. 12 Q. That was my next question, I'm talking 13 about physical problems right now? 14 A. No, sir, no physical problems. 15 Q. Psychological problems, paranoia with 16 roommates? 17 A. Yes, sir. 18 Q. Have you seen any mental health 19 counselor or therapist or anyone like that? 20 A. No, sir. 21 Q. Are you claiming any psychological 22 damages as a result of this incident? 23 A. No, sir. 24 Q. And we have something called mental 25 pain and suffering, mental anguish and shock, which
Page 99 1 eye doctor before that? 2 A. The last time I seen him. 3 Q. Before he gave you a prescription -- 4 before you saw this eye doctor in Augusta, had you 5 seen an eye doctor before since you've been 6 incarcerated? 7 A. No, I requested to see an eye doctor 8 for -- it was at Kirkland, anytime you need to see 9 the eye doctor you have to go to Kirkland, but I 10 never seen him. 11 Q. What did you want to see an eye doctor 12 for? 13 A. To get my eyes checked. 14 Q. Okay. So you were having problems 15 seeing before you got the water thrown on you? 16 A. No, sir, I wanted to get eyes checked 17 to see if I needed glasses at the time. 18 Q. Do you know what your vision was 19 diagnosed by this doctor in Augusta, by this 20 ophthalmologist? 21 A. I can't recall, sir. 22 Q. Are those glasses for reading or for 23 seeing distances? 24 A. Seeing distances. 25 Q. You're 30-something, didn't you tell	Page 101 1 means you're having mental problems as a result of 2 this, psychiatric problems. Are you having any of 3 those? 4 A. The only problem that I have, I mean, I 5 look at myself every day and I'm obviously in a 6 condition that I wasn't in before I came in here, 7 you know, that's what I have to deal with, scars 8 for the rest of my life. 9 Q. I understand, but from a mental 10 standpoint, any depression or anxiety? 11 A. No, sir. 12 Q. Post-traumatic stress disorder, 13 anything like that? 14 A. No, sir. 15 Q. Haven't seen any counselors for 16 anything like that? 17 A. No, sir. 18 Q. And I understand that your medical 19 treatment has been with the Augusta Burn Unit and 20 Kirkland; is that right? And the eye doctor in 21 Augusta? 22 A. The eye doctor in Augusta, the Burn 23 Center, and Kirkland infirmary and here because I 24 was getting my three-day treatments here. 25 Q. But no other physicians or anyone

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF LEE

LEVI BING,

Plaintiff,

vs.

CASE NO. 2011-CP-31-0216

ANTHONY PADULA and SOUTH
CAROLINA DEPARTMENT OF
CORRECTIONS and JOHN DOE,
representing employees and
agents of SCDC whose
identities are not yet
known,

Defendants.

DEPOSITION OF: JAMES EVANS AIKEN

DATE: February 20, 2015

TIME: 12:17 p.m.

LOCATION: Spartanburg County Administration
Building
366 North Church Street
Spartanburg, SC

TAKEN BY: Counsel for the Defendant
SOUTH CAROLINA DEPARTMENT OF
CORRECTIONS

REPORTED BY: TRISHA M. THOMAS

A. WILLIAM ROBERTS, JR. & ASSOCIATES

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1 (DFT. EXH. 1, Resumé, was marked for
2 identification.)

3 JAMES EVANS AIKEN

4 being first duly sworn, testified as follows:

5 EXAMINATION

6 BY MR. SMITH:

7 Q. All right. Mr. Aiken, my name is
8 Murrell Smith. And just before we get started you
9 were provided what's been marked as Plaintiff's --
10 it's Defendant's Exhibit No. 1. That's your CV, or
11 resumé, I believe, as they call it; is that right?

12 A. That's correct, sir.

13 Q. All right. Is this up to date?

14 A. As far as today, yes, sir.

15 Q. Okay. And is there any additions or
16 corrections or anything that's not -- that's not
17 right on that CV?

18 A. Not that I can recall at this time.
19 Obviously there may be some mistakes, but I don't
20 think so.

21 Q. Okay. Tell me, when were you first
22 contacted about this case?

23 A. Over a year ago.

24 Q. Okay. Do you have any written
25 information?

1 Q. So just looking through these, they
2 mostly have to do with your -- with your service on
3 the Prison Rape Elimination Commission; is that
4 right?

5 A. That's correct. Most of -- I have not
6 -- and I have been urged on a number of times to
7 reduce -- to create some writing, but I haven't
8 gotten time to go around to do that.

9 Q. Okay. Tell me a little bit about your
10 educational background. I see you went to Benedict
11 College, and then you got a master's from the
12 University of South Carolina?

13 A. That's correct, sir.

14 Q. Any other education beyond your
15 master's degree?

16 A. No more than in-service type training
17 that I received while employed with the South
18 Carolina Department of Corrections, Virgin Islands,
19 as well as Indiana, and I did receive, obviously,
20 some training while I was working as a consultant
21 with the U.S. Justice Department.

22 Q. All right. I see you graduated in 1972
23 from Benedict; is that correct?

24 A. That's correct, sir.

25 Q. All right. And then help me with your

1 employment history after college. Did you
2 immediately go into the corrections field?

3 A. I went in before I graduated
4 officially.

5 Q. That tends to be what I experience from
6 people who are long-term correction employees.

7 A. Yes. I started in 1971 after I
8 completed my academic courses at Benedict, and I
9 worked at the Manning Correctional Institution in
10 Columbia, which was a medium-security prison, as
11 administrative assistant and then from there to
12 deputy warden.

13 From there I was promoted to deputy
14 warden at the Central Correctional Institution
15 state penitentiary. From there I was promoted to
16 warden of the women's prison. From there, back to
17 the state penitentiary as the warden, then as
18 regional director of about 17 prisons in South
19 Carolina and --

20 Q. What year -- let me stop you there.

21 A. Okay.

22 Q. What year were you deputy regional
23 administrator? What years was that?

24 A. It's on my resumé, but if I remember
25 correctly, I went there in 1986, I think, or '87.

1 Q. Oh, okay. I see. You've got the
2 employment history --

3 A. Uh-huh.

4 Q. -- the dates listed separately from
5 that.

6 A. That's correct, sir.

7 Q. Who was the director of SCDC at that
8 time?

9 A. Which is what time, sir?

10 Q. At the time you were assistant
11 administrator, regional administrator?

12 A. I think I had two -- I stand corrected,
13 but I think I had two administrators, and it was
14 William D. Leeke and Parker Evatt.

15 Q. Okay. And it looked like you were
16 there for about two years; is that right?

17 A. I think it's till 1989, yes.

18 Q. Okay. From '87 to '89?

19 A. That's correct, sir.

20 Q. All right. And did you work at
21 headquarters over at SCDC? Was their headquarters
22 at Broad River campus then?

23 A. Broad River Road, yes, sir.

24 Q. Okay. And other than that, looks like
25 your -- your experience with South Carolina

1 Department of Corrections was within the
2 institution?

3 A. All of that prior to that last
4 position --

5 Q. Yes, sir.

6 A. -- was inside of prisons.

7 Q. Okay. And then is that your only
8 administrative, which I would call in the
9 headquarters, was this 1987 to 1989 as the deputy
10 regional administrator?

11 A. Are you talking about for South
12 Carolina, sir?

13 Q. Yes, sir. Yes, sir. I'm sorry.

14 A. Yes, sir. To the best of my knowledge.

15 Q. Okay. And what did the deputy regional
16 administrator -- what did you do at that time?

17 A. I think I've listed some of the things
18 there, but just off the cuff I supervised wardens
19 as it relates to classification, security,
20 management of inmates from the security perspective
21 of managing gangs, contraband control, escape
22 prevention, emergency response, all -- all
23 direct-related security matters of those
24 facilities.

25 Q. Okay.

1 A. As deputy regional administrator.

2 Q. Okay. And then from there you went to
3 Indiana Department of Corrections?

4 A. That's correct, sir.

5 Q. What did you do for Indiana? The
6 juvenile justice?

7 A. No, sir. Just step back a little bit.
8 Most of my career has been going into institutions
9 and -- that are not performing correctly: They're
10 spending too much money. They're causing security
11 threats to the community as well as the inmates and
12 staff.

13 And I developed that expertise.
14 Indiana asked me to come to rebuild their system,
15 their adult as well as juvenile system, and to
16 reduce the cost of operation as well as to improve
17 the security posture of those facilities within
18 that agency to better protect the public as well as
19 inmates and staff.

20 Q. Okay. Why did you leave the South
21 Carolina Department of Corrections?

22 A. Well, I was working one day and got a
23 telephone call from a judge in Indiana, and he says
24 I've been doing a nationwide search and your name
25 has come up more than once, to say the least, and I

1 want you to come up here and talk to the governor.

2 Q. Okay. And did you resign your position
3 at South Carolina Department of Corrections?

4 A. Yes, sir.

5 Q. Okay. While you were at South Carolina
6 Department of Corrections did you have any
7 disciplinary history with them?

8 A. Not that I recall, sir.

9 Q. All right. And you went to Indiana for
10 this position to -- for lack of a better term --
11 overhaul their prison system; is that right?

12 A. That is correct, sir.

13 Q. Okay. You were there for, it looks
14 like, about -- sorry. I keep flipping this -- for
15 about two years; is that right?

16 A. Yes, sir.

17 Q. Okay. And then -- or maybe three
18 years, but I can't --

19 A. Uh-huh.

20 Q. If I read this right.

21 A. Okay.

22 Q. It's hard for me to read.

23 A. Approximately so.

24 Q. Yes, sir. I'm not holding you --

25 A. I think I left in '92.

1 Q. I'm not holding you to these dates,
2 so --

3 A. Okay.

4 Q. I'm just trying to get an understanding
5 of your background.

6 A. Uh-huh.

7 Q. And why did you leave the Indiana
8 Department of Corrections?

9 A. Well, first of all, when I accepted the
10 position with the governor, I told him -- Evan Bayh
11 is the name -- I'm not looking for a home.

12 Q. Okay.

13 A. I'm not looking to become a bureaucrat,
14 for lack of a better word.

15 Q. You should have followed him. He went
16 all the way to the Senate.

17 A. Well, we're still very -- we're in good
18 terms. Put it that way.

19 Q. Okay.

20 A. But I told him I will come straighten
21 this system out. It'll take me -- in about 24
22 months. And whenever I leave I will have a choice
23 -- you would have a choice of a number of people to
24 select to be commissioner.

25 And the reason why I left is because I

1 was approached by the U.S. Virgin Islands, and they
2 said that their system was in critical and unstable
3 condition and they needed someone to come and
4 straighten their system out.

5 And I told them that I was moving and
6 transitioning into consultancy and I don't think I
7 would want to do that. And then they said, well,
8 we'll let you do all the consultant work that you
9 think is appropriate and -- but you come and run
10 the system. 'Cause they were dealing with some
11 very bad issues as relates to inmate management.

12 Q. Okay. And so you went to the United
13 States Virgin Islands. Where is that? St. Thomas?

14 A. St. Croix.

15 Q. St. Croix.

16 A. I didn't like to stay on St. Thomas.

17 Q. All right.

18 A. But my jails, some of my prisons were
19 on St. Thomas.

20 Q. Okay. And you stayed there for
21 approximately two years?

22 A. Yes, sir. And then they asked me to
23 come back on a consultant basis too.

24 Q. All right. And it looks like you
25 opened your consultant firm in August of 1994?

1 A. Officially, yes, but I've been doing
2 consultant work since the mid '80s through the
3 Justice Department.

4 Q. Okay. But when you -- your consultant
5 agency, you know, I look at your resumé and you
6 talk about doing the Prison Rape Elimination Act.
7 Was that as part of -- was as a consultant you were
8 doing?

9 A. I was officially appointed as a
10 commissioner of the Prison Rape Elimination
11 Commission by Congress.

12 Q. Okay. I'm not familiar with that. Is
13 that like a full-time job, or is it just a -- I'm
14 not trying to call a political position but a
15 political appointment as a --

16 A. I wish it was, but it wasn't. We ended
17 up working for five complete years. One of the
18 things that I liked about the commission is, number
19 one, is that standards would come about. I don't
20 want to sit on a commission that just puts a big
21 folder together and goes up on a -- on a shelf
22 somewhere.

23 And the Prison Rape Elimination
24 Commission -- by the way, was passed unanimously,
25 as I understand, by the House and the Senate and

1 signed by President Bush.

2 And I was asked -- I was not an
3 advocate. I was not a part of the law being passed
4 or anything. I was sitting at home and got a
5 telephone call from the leadership of the Senate
6 and said you must be on this commission, and I
7 accepted it.

8 And I worked for five years going
9 through correctional agencies all over the United
10 States collecting a wealth of information as well
11 as with my expertise or background in establishing
12 standards.

13 Q. All right. Now, as a commission -- as
14 a commissioner is -- was that a paid position, or
15 was that kind of appointed -- you know, we have
16 commissions in South Carolina.

17 A. Yes, sir.

18 Q. Looks like you're familiar with that.
19 It was akin to what a commissioner would be in
20 South Carolina, a political appointment, or
21 appointment by somebody and you oversee a
22 commission? Is that what you were doing?

23 A. No, sir.

24 Q. Or were you employed by them?

25 A. We were -- I was not employed.

1 Q. Okay.

2 A. I was appointed by Congress. I didn't
3 ask or receive any compensation other than
4 out-of-pocket expenses, and I served for five
5 years. And it took, I must say, much more time out
6 of my regular work than I thought it would be.

7 Q. That was my next question, is is you
8 continued to be a consultant during that time while
9 you were commissioner of the Prison Rape
10 Elimination Commission?

11 A. That is correct, sir.

12 Q. Okay. And when you were consulted in
13 1994 and in those times, what -- who would contract
14 with you?

15 A. U.S. Justice Department.

16 Q. Okay. What did you do for the U.S.
17 Justice Department?

18 A. And I'm saying -- you know, I have done
19 some private work for other --

20 Q. Yes, sir.

21 A. -- agencies, but security delivery
22 systems that become more effective and cost
23 effective as well as productive; teaching wardens
24 how to be wardens; teaching wardens how to be
25 wardens to super-maximum security prisons;

1 emergency response, like gang -- I mean hostage,
2 riots, et cetera.

3 I also delivered training to just about
4 every jurisdiction in the United States, to include
5 Alaska and Hawaii, as it relates to every aspect of
6 a prison delivery system.

7 Q. Okay. Would you do that through the
8 United States Bureau of Prisons, or were you doing
9 that with local -- with state correctional
10 entities?

11 A. U.S. Justice Department comes under the
12 Federal Bureau of Prison -- I mean, comes --

13 Q. Prisons come under the --

14 A. Opposite. Yes.

15 Q. -- Justice Department?

16 A. And the National Institute of
17 Corrections came under the Bureau of Prisons while
18 I was doing work there.

19 Q. All right. Were you part of -- of
20 consulting, training the bureau -- the federal
21 Bureau of Prisons, or was it state?

22 A. State, local, federal, international.

23 Q. All right. So would you do this as --
24 as part of, you know -- you know, I would call it
25 continuing education or continuing training of

1 prisons, or was this more akin when there was a
2 problem with prison systems and the Justice
3 Department or a federal court takeover of a prison
4 system? How would you get involved in this?

5 A. Well, all of the above, basically,
6 except for basically litigation. I went on site to
7 prisons and trained staff as it relates to the
8 fundamentals of a high-security setting.

9 For example, ADX. I taught wardens
10 that came in from all over the United States at
11 ADX, along with other -- my cadre in delivery of a
12 -- of a super-maximum security environment.

13 I investigated and evaluated the
14 security delivery systems with -- where critical
15 events have taken place. I have -- I've done just
16 about all of that. And I'm sure there's some more.
17 It just isn't coming right now.

18 Q. Yeah. And I'm just trying to get an
19 understanding of your background, so I'm not -- not
20 real concerned about every specific thing you've
21 done. I'm just trying to understand what you --
22 what your experience has been.

23 And, you know, from -- obviously we've
24 got standards in South Carolina for local detention
25 centers and correctional centers, and I presume

1 there's federal standards for detention centers and
2 prisons; is that right?

3 A. Well, with the Prison Rape Elimination
4 Commission we found that standards are -- the ACA
5 standards, for example, federal court mandates, and
6 my suggestion is to go by federal court mandates as
7 it relates to the operation of a correctional
8 environment.

9 Q. Okay. And so would you go in for
10 inspection of prison systems from time to time?

11 A. Well, obviously with the Prison Rape
12 Elimination Commission we were in and out of
13 prisons, but consultancy that I was involved with
14 was going into systems and making them better.

15 Q. Okay.

16 A. I -- I am not a consultant from the
17 purest sense of the word. My job is to go in and
18 make it better, not to write out some report, so to
19 speak, to get people to change their actual
20 behaviors and security practices. And that's most
21 of my technical assistance that I've provided to
22 jurisdictions.

23 Q. All right. Since you have been a
24 consultant in 1994 did you ever provide any
25 consultant services to the South Carolina

1 Department of Corrections?

2 A. Consultant services, I provide some
3 expert assistance. I don't know if I did that
4 through the Justice Department. I know I was
5 requested several times, but I -- my time schedule
6 wouldn't allow.

7 However, I must add that a lot of times
8 -- or a number of times, should I say -- that we
9 would find it better to bring people from
10 jurisdictions to the National Academy of
11 Corrections in Colorado. The federal government
12 paid for it. And I have provided expert technical
13 assistance to people from South Carolina and not
14 only there but in some general areas such as
15 jurisdictions that are close to South Carolina.

16 Q. Okay. And when you're talking about
17 expert services, I guess when I -- the legal sense
18 of the term. I'm used to the legal expert
19 services, and I think maybe you're telling me you
20 gave some expert technical training services to
21 people.

22 Is that what you're referring to when
23 you're talking about South Carolina, or are you
24 talking expert services in the legal sense as
25 serving as an expert for the Department of

1 Corrections?

2 A. Well, I don't know about the legal
3 nomenclature of it, but I provided technical
4 assistance to, like, wardens that were in South
5 Carolina.

6 I think I remember one incident in
7 Florida where we were teaching seamless security
8 delivery system as it relates to reducing critical
9 events of injuries to staff, inmates, as well as
10 the general community, for example, and how do you
11 blend those systems together to reduce costs and
12 improve productivity.

13 Q. Okay. And I guess when -- let me make
14 sure I understand. I'm sorry to keep asking these
15 questions. Legal nomenclature of an expert, what
16 I'm referring to, is like what you're doing here
17 today --

18 A. Uh-huh.

19 Q. -- providing expert testimony in a
20 legal case, and you had said you've served as an
21 expert for South Carolina Department of
22 Corrections. Have you done it in a legal case like
23 this before?

24 A. Not like this per se, but I have
25 provided testimony -- I don't know if it was

1 don't see any pictures. I don't see any
2 description of it per se. I don't see the post
3 orders that correctional officers should exercise,
4 precautionary security protocols as to why that
5 particular instrument was in a closed cell with two
6 inmates.

7 I don't see the process in which these
8 two inmates came together, what classification,
9 slash, housing assignment, slash, security
10 clearance that was given in assignment of inmates
11 to this high-security area in the same bed -- or I
12 wouldn't -- I'm sorry. Bed -- but housing
13 configuration, which is a cell.

14 I don't see that the internal affairs
15 investigation is complete from the standpoint of
16 collection of -- of evidence, securing the crime
17 scene, what specific aspects of the cell search was
18 conducted, how injuries occurred such as the
19 cutting of the inmate.

20 And I'm doing this off of recall.
21 Obviously he got cut, if I remember correctly.
22 Where is that weapon. You have to keep in mind
23 that this occurred during the most secure time in a
24 prison, and that's during count time where there's
25 a cease of movement. So there's a total catchment

1 and placement and accountability of inmate
2 population as well as critical events being
3 averted.

4 What specific information that was
5 missing, I think I've shared some of those examples
6 with you, but I need your internal affairs report
7 that's completed. I need the after-action report
8 that was completed or should have been completed by
9 the correctional administrators as to what went
10 wrong, why did that instrument get there, why and
11 how could it be used as a weapon, and how did those
12 two people come together in that particular cell.
13 From there that will serve as a foundation for
14 gathering additional information sources.

15 Q. Okay. And so based upon what we know
16 today and what you have reviewed, what are your
17 opinion -- opinions as it relates to the South
18 Carolina Department of Corrections in its
19 supervision, custody, or control of Levi Bing?

20 A. Based on the information I have before
21 me, there was gross negligence in having that
22 instrument in that particular housing unit that was
23 capable to create a temperature that high with
24 liquids and for the opportunity for that particular
25 inmate in a high-security setting to be able to

1 inflict that level of injury to an inmate.

2 And I say the level of injury not from
3 a medical perspective but a prison operational
4 perspective. Obviously I know what burns are, but
5 when you have to transport a person to another
6 state by chopper, if I remember correctly, that's a
7 critical event.

8 That's not a cut on the finger. That's
9 a very severe injury, and I want to know how did
10 that instrument get there, how did it get in their
11 hands, how it was unsupervised, how it was
12 unsecured, and what went wrong. And I haven't seen
13 that yet.

14 Q. Okay. Well, I understand all the
15 investigation is afterwards, and that's for lessons
16 learned or for, you know, what, why, when,
17 happened, but, you know, this case is about the
18 supervision of Mr. Bing and whether, there was any
19 negligence on the part of the South Carolina
20 Department of Corrections, so --

21 So what I'm concerned about here today
22 is is your opinions as to what -- you know, what --
23 in which way that South Carolina Department of
24 Corrections breached any duties, any standards as
25 it relates to Mr. Bing, and -- and in what way do

1 A. I will certainly notify --

2 Q. Yes, sir.

3 A. -- counsel as new opinions or opinions
4 that I have left out at this deposition -- I will
5 let counsel know.

6 Q. Okay. All right. And so, you know, my
7 job here is to explore with you every opinion, so I
8 want to make that sure we cover every opinion. At
9 the end of this deposition I'm going to say have
10 you given me every opinion that you're aware of at
11 this time, so that's what we're going to do right
12 now, is just go through these opinions step by
13 step --

14 A. Uh-huh.

15 Q. -- 'cause you're talking about system
16 failures, and you've mentioned a couple things, and
17 we'll talk about the hot plate getting introduced
18 into the system, but you're going back and saying
19 that the inmates should have never placed together
20 in the beginning; is that right?

21 A. What I'm saying is that I'm looking at
22 a critical event and these are the things that I
23 have looked at, and what I don't have is the
24 process that the institution used to put these two
25 inmates together.

1 Obviously a lot of people will say,
2 well, you know, you've got three empty beds. And
3 I'll give that as an example. Why don't you just
4 fill them? Sometimes you've got to move 15, 20
5 people to create three beds in a high-security
6 prison.

7 Prisoners don't necessarily get along
8 with each other, and you've got to go through
9 checklists and checkpoints to see the enemies,
10 medical, mental health, contraband, or a number --
11 or gang intelligence, a number of areas you've got
12 to check before that inmate is moved from point A
13 to point B, and I did not receive materials showing
14 the process in which those two inmates got together
15 on the perpetrator's perspective as well as the
16 victim's perspective.

17 I understand there was a medical issue
18 and he was assigned there temporarily, but I'm
19 saying what is that process that is common in
20 high-security settings for those people to come
21 together.

22 And that's just one of the things when
23 I'm talking about systems: Classification, gang,
24 intelligence, information that is generated by
25 staff, notes, previous conflicts. Everything needs

1 to be checked in a seamless fashion before these
2 two ships meet together at night.

3 Q. And so all this that you're referring
4 to -- that you've just referred to, you don't know
5 those answers right now, do you?

6 A. I -- all I know is that two inmates
7 were together and one received very severe burns
8 and the other person was locked in the cell with
9 him and was found guilty by administrative hearing
10 of inflicting that on that other inmate, Mr. --
11 Mr. Bing.

12 Q. All right.

13 A. Bing, rather.

14 Q. And I think, Mr. Aiken, what I'm
15 hearing from you is that there's a lot of
16 information you need to have in your possession in
17 order to solidify or to elucidate your opinions; is
18 that right?

19 A. What I'm basically saying is this.
20 Department of Corrections or counsel show me what
21 their nomenclature or their procedure is to bring
22 these two people together using these catchments.
23 Okay?

24 And if there is an absence of that,
25 that constitutes gross negligence because you don't

1 MR. FAIREY: I mean, this is the file.

2 MR. SMITH: You asked for what now?

3 MR. FAIREY: I asked for copies of all
4 documents concerning Mr. Bing's placement status or
5 service of sentence in South Carolina Department --
6 all documents related to Dorsey. Let's see.

7 MR. SMITH: And you've been provided
8 that. How about policies and procedures and --

9 MR. FAIREY: Let's see. There was
10 another one. Every investigation, every picture --

11 MR. SMITH: You've been provided that.
12 You've been provided that.

13 MR. FAIREY: Yeah.

14 BY MR. SMITH:

15 Q. So what you're asking about is policies
16 and procedures. Is that what you need, or you
17 don't need those?

18 A. What I'm saying, sir, based on what I
19 have my hand on, which I've shown you, the
20 Department of Corrections is in gross negligence to
21 have that instrument in that particular area in the
22 hands of an inmate to inflict that level of
23 violence against -- against another inmate.

24 Q. Okay.

25 A. And that there are -- I would insist

1 that there are routine, basic information that
2 should have been provided by the Department of
3 Corrections to further explain the critical event
4 and how it occurred, and I don't see that.

5 Q. Well --

6 A. Now, I can draw opinions, and I've --
7 I'm willing to provide it again to you based on
8 what I have before me today.

9 Q. All right. Well, what -- what are you
10 -- and I'm just not following you. What are you
11 trying -- what do you need that you don't have? I
12 know that you're not satisfied with the
13 post-incident investigation. I draw that
14 conclusion.

15 What on the pre-incident -- you know,
16 what happened after the event -- you know, this
17 case is about whether the Department of Corrections
18 was negligent -- grossly negligent in the damages
19 to Mr. Bing. It's not about an investigation that
20 occurred afterwards or any of that. Okay? So, you
21 know, that's not relevant to this case in my
22 opinion and --

23 But what I'm concerned about now is
24 what -- do you have the information that you need
25 to -- us to have a discussion on your opinions, and

1 what you're telling me -- I hear you -- you don't
2 need anything else on this hot place being here.
3 We can explore that. What I need to know about is
4 you're mentioning stuff about classification, about
5 -- about supervision and post orders.

6 Is that necessary for us to have
7 opinions on -- for us to discuss your opinions on
8 the negligence -- of the gross negligence of South
9 Carolina Department of Corrections?

10 A. Let me put it this way, and if I'm
11 going the wrong way, just correct me.

12 Q. Okay.

13 A. Two inmates, Mr. Bing and Mr. Dorsey,
14 ended up in the same cell. There is nothing in the
15 documents that I reviewed to say that any
16 precautionary -- prior to the critical event --
17 measure was taken by Defendants to make sure that
18 these people were compatible.

19 Number two -- and I'm giving these as
20 an example -- there was an instrument in which a
21 high degree of temperature could be obtained with
22 liquids that was poured on Mr. Bing. How did it
23 get there. Who was responsible to bring it into
24 that institution and place it in that particular
25 cell. Was it purchased in the canteen. Was it

1 smuggled in by an officer. Was it within the
2 materials that the inmate brought in. I don't
3 know.

4 Based on the materials that I've been
5 provided, it says that this instrument obviously
6 could be easily used as a weapon and it had to be
7 provided by the institution, which is gross
8 negligence unless there is something in the
9 investigation or at least a picture of it that I
10 can draw some other conclusion. So I'm leaving
11 that out.

12 Q. Okay. I see what you're saying.

13 A. Now, those -- those are points and
14 conclusions and expert's opinions that I've -- that
15 I've established. Now, if there is -- I'm just
16 hoping that there are other information that I can
17 be able to review to better understand how these
18 gross negligent activities could take place.

19 Q. Okay. All right. Then we've got
20 enough 'cause those are things that need to be
21 formed through discovery process and -- you know,
22 and we are pushing up on trial, so, you know,
23 that's -- you've been provided the inmate file of
24 Mr. Dorsey. Have you been provided that?

25 A. I don't know. I know I have Mr. Bing.

1 decisions were made right there in the housing
2 units.

3 Q. Okay. And so how long was Mr. Bing and
4 Mr. Dorsey together?

5 A. I don't know. Several weeks, I think.

6 Q. Okay. And were there complaints about
7 the two of them?

8 A. I do recall Mr. Bing wanting to move
9 out of the cell because Mr. Dorsey was involved
10 with smoke -- we call it smoke -- marijuana
11 trafficking and then -- and some other activities,
12 and he didn't want to get sucked up in it.

13 In a correctional environment, if they
14 go and search your cell and no inmate admits to it,
15 you take both of them down.

16 Q. Okay. And so a request to move an
17 inmate because of -- or roommate because of someone
18 smoking marijuana, what should be the procedure
19 that they -- that the Department of Corrections
20 engaged in after that?

21 A. Okay. Let me put it this way, and if
22 I'm -- if I don't answer your -- answer your
23 question correctly, please interrupt.

24 Q. Okay.

25 A. In a correctional environment it's not

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1 an issue of just smoking marijuana. It's the
2 connotations that are involved. I'm an inmate. I
3 want to go straight or I've gotten in enough
4 trouble. I've got somebody that's holding some
5 contraband in the cell. I can go down for this.
6 Okay?

7 Now, y'all are going to take care of
8 it? Fine. All right? Or do I have to suffer the
9 consequence of it. That's the mentality and that's
10 the culture of a prison.

11 Staff -- if staff don't take care of
12 it, an inmate will, whether it's a scenario where,
13 oh, I saw you talking to the police and I know you
14 saw me smoking a joint last night, and I'm going to
15 jack you up for that 'cause we hate rats. Or, oh,
16 you're smoking a joint? Oh, I'm going to -- if I'm
17 going to get in trouble by holding contraband,
18 well, I'm going to take care of you. Okay?

19 So it's not just it's an inconvenience
20 of smoking marijuana. It's a life and death
21 situation.

22 Q. All right. So who did he communicate
23 that with from your review?

24 A. I don't have direct -- I know I did
25 receive some information -- I don't know. I have

1 to check here -- that he did communicate that, but
 2 I found nothing from the Department of Corrections
 3 saying that he was interviewed, we checked this out
 4 and we decided to leave him in the cell and this is
 5 the reasons why we're leaving him in the cell, and
 6 this is why we're moving him out, or we're moving
 7 the other guy out.

8 Q. Did you receive affidavits from
 9 Lieutenant Jonathan Goodman?

10 A. I don't recall any affidavits, sir.

11 Q. How about from the classification
 12 worker?

13 A. I don't think so, sir.

14 Q. Okay.

15 A. I stand corrected, but I don't think I
 16 have it.

17 Q. Okay. Did you review the
 18 classification plan and policy in regards to that?

19 A. I don't think so, sir, unless it's in
 20 this particular record. I think that
 21 classification that I saw was generally an
 22 objective classification system versus an internal.
 23 I wouldn't -- some people don't call it class --
 24 internal assignment.

25 Q. Are you aware that Mr. Bing was offered

1 protective custody prior to this incident by the
2 South Carolina Department of Corrections?

3 A. I may have seen some protective custody
4 slips.

5 Q. Okay. And what's your understanding of
6 what he did?

7 A. I would -- I would have to look at it
8 to -- to --

9 Q. I mean, if he declined protective
10 custody as a result of complaining, is -- is that a
11 breach of the standard of care or gross negligence
12 by the South Carolina Department of Corrections?

13 A. Yes, sir. If I have knowledge as the
14 administrator that an inmate's requested protective
15 custody.

16 Q. No declined protective custody?

17 A. Whether he declined protective custody
18 or not, it doesn't devalue my authority as -- and
19 responsibility to maintain a safe and secure
20 correctional institution. I've had inmates to
21 decline protective custody to go kill somebody.
22 I'm still locking them up.

23 Q. But, Mr. Aiken, if someone comes and
24 complains about I don't want to be around an inmate
25 because he's selling marijuana --

1 Q. Okay. All right. So are you aware
2 there's a cell transfer form for inmates to provide
3 or apply in order to change roommates?

4 A. I am -- I don't remember directly, but
5 I'm -- I'm very much aware of inmates' requests.
6 And that's getting back to what I'm saying. The
7 inmate makes the request.

8 Q. Right.

9 A. But the official is the deciding
10 factor. I want to protect -- it's just -- I'm
11 going to give you an example, maybe, for a
12 layperson.

13 I'm coming in prison with life for
14 three murders. Okay? And I'm interviewing this
15 inmate -- interviewing me. And say how you doing?
16 I'm going fine. Are you going to escape? No, sir.
17 If I put you in a work-release program, are you
18 sure you won't escape? No, sir. I won't escape.
19 You won't kill anybody else? No, sir. I promise I
20 won't kill anybody. Okay. Put him in work
21 release.

22 Same principle with inmates being
23 offered protective custody. You don't relinquish
24 your authority and responsibility just because an
25 inmate denies protective custody.

1 Q. All right. So if an inmate comes and
2 says my roommate is engaging in contraband or
3 activity contrary to the rules of the prison --

4 A. Right.

5 Q. -- what steps should be undertaken by
6 the South Carolina Department of Corrections to
7 comply with the standard of care in corrections and
8 supervision of inmates?

9 A. The standard of care is, number one, to
10 protect the inmates providing that information.
11 That inmate is providing information that is
12 normally called -- it's rat information. That
13 person is a snitch now. You have to assume that
14 person is a snitch, and you have to assume other
15 people will know about it.

16 Now, what are you doing to protect this
17 particular inmate. Moving that inmate to another
18 housing assignment, moving them to another
19 institution, putting them on lock-up, plus offering
20 protective custody. The point is is just because
21 you offered that inmate protective custody doesn't
22 relinquish your responsibility to protect that
23 inmate --

24 Q. All right.

25 A. -- after you know the specific

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1 information that this inmate is saying this person
2 is involved with contraband dope, and for him to
3 share that information with authority automatically
4 endangers and puts him in a level of vulnerability
5 that can cost his life --

6 Q. So --

7 A. -- and you're responsible to protect
8 that person.

9 Q. So it's your opinion that every time an
10 inmate walks up and says my roommate is engaging in
11 contraband then there's an obligation on a prison
12 system to proactively investigate, to segregate or
13 protect an inmate?

14 A. Both.

15 Q. And move them from a -- to a different
16 institution and/or cell?

17 A. I gave you the options of some of the
18 things that prison officials use to better protect
19 inmates that provide very vital information such as
20 that until at least that information is validated.

21 But the point is, that you've got to
22 realize, that we're in a high-security setting, and
23 oftentimes you don't even -- you get less
24 information from that, and you've had -- you've got
25 to protect staff, inmates, and the public with

1 this, the mind set is someone is giving you very
2 important information that can endanger the life of
3 that inmate, and I'm responsible to protect that
4 inmate. It is not the inmate's choice.

5 The inmate made the choice of coming to
6 you and sharing with you some very important
7 information. Validating that and safety of that
8 inmate, if you've got to transfer him to another
9 institution, if you've got to give him another
10 housing assignment -- I'm not saying fill out a
11 form. You don't need to fill out a form. I will
12 put you. I'm in charge of this institution, not
13 you.

14 Q. So if I understand what you're telling
15 me is every inmate that walks up and says my
16 inmate's engaged in contraband, then you're -- you
17 have a responsibility and a duty in your opinion to
18 immediately take charge of that inmate and to--
19 and to either move him to a different institution
20 or move him to different cell. Is that what you're
21 saying?

22 A. What I'm saying, you have that
23 responsibility to protect that inmate depending on
24 a number of factors, and I gave you these
25 alternatives, not saying that there are no other

1 alternatives.

2 Q. So what other factors are you to
3 evaluate if -- if an inmate -- well, let's strike
4 all this. We're talking hypotheticals.

5 If someone in the exact same situation
6 as Mr. Bing walks into your office, and you're a
7 lieutenant -- you're a correctional officer -- and
8 says my -- my roommate is selling dope, then what
9 should -- in your opinion what's the standard of
10 care for a correctional system?

11 A. Number one, provide the necessary
12 envelope, security envelope, for that particular
13 inmate's protection so he won't have scalding water
14 poured on him.

15 And let me -- let me put it this way.
16 I'm a warden. I'm standing at my desk, and an
17 inmate comes to me and says you know, warden,
18 tonight at three o'clock I'm going to escape. You
19 don't know how I'm going to escape, but I'm going
20 to escape. Am I going to say, well, I'll tell you
21 what, you sign this form that you ain't going to
22 get hurt while you escape, you go ahead and try it?

23 No. You're going to lock that inmate
24 up. You're going to transfer that inmate. You're
25 going to do something specifically. The same

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1 context is for the protection of inmates.

2 Q. All right. So I just want to make sure
3 I understand this opinion. Okay? So it is your
4 opinion that if an inmate makes an allegation of
5 contraband by their roommate, then you must have an
6 affirmative duty to engage into the protection of
7 that inmate that makes that report?

8 A. Yes. And do it from the context as
9 it's life and death.

10 Q. Yes, sir. And so that means immediate
11 protection. Either you put him in protective
12 custody or you transfer him or you get him into
13 another institution?

14 A. If you have to close the whole prison
15 down --

16 Q. Yes, sir.

17 A. -- and I have --

18 Q. Yes, sir.

19 A. -- until we get this thing straightened
20 out.

21 Q. Yes, sir. Okay. And so in your
22 opinion that -- if that's the policy of the South
23 Carolina Department of Corrections or any
24 correctional system, that inmates wouldn't use that
25 to -- to make allegations against their roommates

1 if they wanted a transfer of a roommate?

2 A. Not necessarily so. The point is is
3 that you have to protect -- and I think, if you
4 remember, I also say you have to validate.

5 Q. Okay.

6 A. And if that information is not correct,
7 you're going down. You're going to get a
8 disciplinary.

9 Q. All right. But --

10 A. Or I will -- go ahead.

11 Q. No. I didn't mean to interrupt. We
12 both can't talk. Sometimes I ask questions.

13 But first and foremost, before you
14 validate, in my understanding it's your opinion
15 that you must engage those protective measures?

16 A. That is correct.

17 Q. Okay.

18 A. You're talking about a high-security
19 prison that inmates will use everything they can,
20 especially if they sense that an individual is
21 providing information to staff as it relates to
22 contraband issues, and once they say that, game --
23 game over.

24 Q. Okay. All right. I think I understand
25 that, so that -- so that's your -- that's your

1 go to a certain temperature.

2 Q. Yes, sir.

3 A. If I was naive enough to think that
4 inmates can't jerry-rig and increase the
5 temperature, you know, I don't need to be a warden,
6 number one.

7 Number two, is when in doubt, the best
8 answer is no; and, second to that, if you're going
9 to introduce it to the institution and it -- it can
10 get to a higher temperature, you exclude it from it
11 being in a cell with two people together unnoticed
12 by staff so it can be jerry-rigged, if it was, to
13 inflict this type of injury. And the only
14 notification staff had was a kick on the door.

15 Q. All right. We're going to get to all
16 of that.

17 A. Okay.

18 Q. I want to go back to the -- I need a
19 simple yes or no, but if -- I think what I'm
20 understanding from you is that you are saying it's
21 gross negligence and/or a violation of the standard
22 of care to allow the use, sale, distribution of
23 some instrument that heats up liquid. Is that what
24 you're saying?

25 A. I'm not saying that. I'm saying that

1 if that's introduced without the proper protocols,
2 supervision, and protective and precursor
3 evaluation and -- and procedures in place and
4 operational, then you've got a problem.

5 Q. Okay. All right. But the question I
6 asked -- I just want to make sure then. I'm
7 assuming that the answer to this is no. Per se,
8 the fact that you -- that you provide an instrument
9 that heats up liquid is not in and of itself a
10 violation of the standard of care or gross
11 negligence; is that correct?

12 A. If -- and I don't want to go through
13 this all again, but I'm --

14 Q. We're going to if you keep qualified it
15 though.

16 A. Okay. Well, I'm just saying with the
17 provisions I've just shared with you before, that,
18 you know, a lot of stuff goes into the institution
19 that can cause harm, and it doesn't cause harm
20 because staff, administrators, policies,
21 procedures, training, and all of these systems are
22 in place in order to adequately control and manage
23 it.

24 And I'm saying for this instrument to
25 get in that cell with that lax of -- lax of

1 supervision, security, as well as the capability to
2 inflict that type of injuries -- injury, rather, is
3 gross negligence.

4 Q. Okay. I completely understand that,
5 and all I'm trying to understand is you -- is it
6 gross negligence to just make that available?
7 Let's forget how -- how it got introduced and the
8 supervision and all that. I just want to make
9 sure. You're not saying that you should never ever
10 sell an instrument that heats up liquid in a
11 prison?

12 A. And I would have to refrain from the
13 standpoint that I don't even know what it was.

14 Q. All right. But --

15 A. I don't have an idea of what it was. I
16 don't even know what it looks like. I don't know
17 what it does. I don't know anything.

18 Q. All right. Mr. Aiken, I never got an
19 answer. I'm not even talking about what it is,
20 what it looks like. I'm just asking you is if
21 there is an instrument in prison that heats up
22 liquid, is that in and of itself a no-no that
23 should never be in the prison system?

24 A. Of course not. You wouldn't have
25 coffee in the morning.

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1 still don't know the capacity of that particular
2 instrument.

3 Q. Yes, sir.

4 A. And the reason why I'm bringing it up
5 is maybe when -- if it was sold in the canteen it
6 said from a minimum to a maximum. That's
7 immaterial to me. What is and what can this
8 instrument do when somebody jerry-rigs it.

9 Q. Yes, sir. And, you know --

10 A. Am I going to give that inmate an
11 opportunity and the instruments to jerry-rig it.

12 Q. All right. So there wasn't correct
13 observation of staff, presuming that this was
14 allowed and/or provided by corrections.

15 All right. What else?

16 A. It should not have been in that cell.

17 Q. Should not be in that cell. Okay.

18 A. That's right. Unless you can show me
19 otherwise.

20 Number two is that it was in the cell
21 and both inmates were in the secured cell.

22 Q. Okay. And the --

23 A. So you gave -- I mean, without direct
24 sight and sound supervision of correctional staff
25 before the incident took place. And this is a

1 STATE OF SOUTH CAROLINA
2 COURT OF COMMON PLEAS
3 COUNTY OF LEE
4
5 LEVI BING,
6 Plaintiff,
7 vs. CASE NO. 14-CP-31-100
8 SOUTH CAROLINA DEPARTMENT OF
9 CORRECTIONS, ET AL.,
10 Defendants.
11 DEPOSITION OF: JOHNATHAN GOODMAN
12
13 DATE: November 8, 2016
14
15 TIME: 11:33 A.M.
16
17 LOCATION: Law Offices of
18 Jennings & Jennings
19 One Courthouse Square
20 Bishopville, SC
21
22 TAKEN BY: Counsel for the Plaintiff
23
24 REPORTED BY: Wanda K. Cecil
25 Certified Court Reporter

21 A. WILLIAM ROBERTS, JR. & ASSOCIATES
22 Fast, Accurate & Friendly

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25 (803) 731-5224	(864) 234-7030	(704) 573-3919

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Page 30 1 incident happened, how long had you been a 2 lieutenant for the Darlington Unit? 3 A. I think about three years. 4 Q. And looking at these logs -- and I think 5 the first one is dated June 3rd; is that right? 6 A. Right. 7 Q. And about halfway down, there's a 8 reference, says two p.m., Lieutenant Goodman makes a 9 security move for two inmates, Inmate Mack and Jay 10 Cochran. Do you see that? 11 A. Right. 12 Q. Okay. What is a security move? 13 A. That's a move that classification notify 14 me that I should move inmates. I don't have what 15 reason. They'll call me and tell me and then we 16 have to log it in the book. 17 Q. Okay. So when this says, Lieutenant 18 Goodman makes a security move, that's actually not 19 correct? 20 A. Right. I'm going on -- tell the 21 officers to make that move. 22 Q. Okay. 23 A. That's why they probably put it like 24 that. 25 Q. But you got some document from	Page 31 1 classification saying -- 2 A. Right. 3 Q. -- make this move? Okay. On the next 4 page, at the top here -- 5 MR. SMITH: What's the Bates stamp? 6 MR. FAIREY: This is Logbook 58. 7 Q. Logbook 58 and I think the date is still 8 June 3rd. Am I right about that? 9 A. Right. 10 Q. Okay. There's a reference here -- 11 pardon me, I'm trying to read upside down. 12 Lieutenant Goodman moved Inmate Jesse Weir -- 13 A. Right. 14 Q. -- Samuel -- 15 A. Right. 16 Q. -- to Cell 2251 and Levi Bing to Cell 17 1225 for medical reasons? 18 A. Right. 19 Q. Okay. And then it says, will take care 20 of this incident Monday; is that right? 21 A. Right. 22 Q. Okay. And, again, is that something 23 that you would have gotten -- 24 A. Classification. 25 Q. Classification would have required that?
Page 32 1 A. That's because he went and have surgery 2 and he had to move to like a bottom bunk or a bottom 3 floor. 4 Q. So you would have gotten some paperwork 5 or some report from classification saying move him? 6 A. Right. 7 Q. Okay. And what does it mean, will take 8 care of this incident Monday, June 7th? 9 A. That means they going put it all in 10 their system on Monday. 11 Q. Okay. So before June 3rd, Levi Bing was 12 in a different cell? 13 A. Right. 14 Q. And when he moved into Cell 1225, was 15 Dorsey already there? 16 A. I can't recall. 17 Q. But there would be paperwork -- 18 A. Right. 19 Q. -- that showed that; right? 20 A. Right. 21 Q. Because you can't move people -- 22 A. Right. 23 Q. -- just because you -- 24 A. I can't move them. Classification moves 25 them.	Page 33 1 Q. Okay. Now, on 6/7 at 5:15, after this 2 incident occurred, somebody logged in Levi Bing 3 moved out of 1225. Willis Dorsey moved out of 1225. 4 And Kevin Kitt moved into 1225; is that right? 5 A. Right. 6 Q. So at least by five, we know that it 7 wasn't a crime scene anymore? 8 A. No. 9 Q. Or else you wouldn't have moved somebody 10 else in there? 11 A. Right. 12 Q. Now, at that point, do you know if 13 anybody had questioned Bing or Dorsey about what 14 happened? 15 A. No, sir. I think Bing, he had left the 16 institution. He went on a medical run. 17 Q. Okay. So they -- 18 A. And -- 19 Q. I'm sorry. Go ahead. 20 A. Then Dorsey was already in lockup. 21 Q. All right. So Bing actually left? 22 A. The institution. 23 Q. Right. They carried him to the hospital 24 in -- 25 A. Right.

A W R

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1 Q. -- Bishopville?

2 A. No, I don't -- they said he went to the

3 burn center.

4 Q. Right. But he first went to the

5 Bishopville Hospital and got on a helicopter?

6 A. I have no idea.

7 Q. You don't know? Okay. And, of course,

8 you never saw him after that?

9 A. Right.

10 Q. Okay. Now, this is the log from the

11 next day. Okay? And then there's another note in

12 the logbook. It says room changed per Lieutenant

13 Goodman. Inmate Jim Beeks moves from Cell 2220 to

14 Cell 1225 per Lieutenant Goodman. Okay. Is that

15 right?

16 A. Right.

17 Q. And, again, that's --

18 A. Classification. They sent a sheet out.

19 Q. Right. So paperwork came from

20 classification that said you have to move these

21 people?

22 A. Right.

23 Q. All right. And other than that sheet of

24 paper from classification, did you ever get

25 anything, any other information from classification

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1 informed him of that, he told me, don't worry about

2 it.

3 Q. And you said PC, that's protective

4 custody?

5 A. Protective custody.

6 Q. All right.

7 A. I offered him protective custody. He

8 refused that, too.

9 Q. And what is protective custody?

10 A. Protective custody is like you trying to

11 protect him from any harm or danger to his life.

12 Q. Okay. All right. And what does

13 somebody who is in protective custody do?

14 A. He'll go to like lockup and they have

15 him in a cell by himself and they'll protect him

16 from other inmates that would do him harm.

17 Q. Okay. And you offered that to him?

18 A. Yes, sir.

19 Q. You gave him that option?

20 A. Gave him that option.

21 Q. Okay. Did you feel that he was unsafe?

22 A. No.

23 Q. Why not?

24 A. Because he informed me he wasn't unsafe.

25 Q. He told you he didn't think he was

Page 35

1 about inmates?

2 A. You get them all the time when they --

3 when we have to move them. About every day.

4 Q. Did you have any conversations with Bing

5 after he moved into Cell 1225 about his housing

6 assignment?

7 A. I think he came into my office one time;

8 but I really can't recall when he moved in there,

9 1225.

10 Q. Okay. Do you recall what he complained

11 about?

12 A. He had wanted his cellmate out.

13 Q. Who was that?

14 A. Dorsey.

15 Q. Okay.

16 A. And I informed him I don't move inmates.

17 So I called -- I told him he could sign up for PC,

18 but he refused PC. And I stated -- I called

19 classification, Ms. B. Scott, and informed her that

20 Inmate Bing wanted his inmate moved out. But the

21 head of classification always inform the dorm

22 lieutenants and the inmates that whoever having the

23 problem, they going to move. So he didn't want to

24 move, he just want his roommate out. Then he

25 said -- after they had told him that -- after I

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1 unsafe?

2 A. Right.

3 Q. Okay. But you independently, did you

4 look into it or make any determination about whether

5 he might be safe or not?

6 A. No.

7 Q. Okay. After the crime scene was closed

8 and the investigation complete by or the

9 investigation of the cell was completed by

10 contraband, did you -- were you asked or did you

11 provide Dorsey and Bing's inventory?

12 A. No.

13 Q. Did you have Dorsey and Bing's inventory

14 on their log?

15 A. No.

16 Q. Where is that kept?

17 A. That's kept in the property room at the

18 institution.

19 Q. Where is that?

20 A. Property control.

21 Q. What's on an inventory for an inmate?

22 A. Anything that policy state that they can

23 have.

24 Q. Anything that they would actually have

25 in the cell?

A W R

Page 38 1 A. No. Sometimes it could be contraband. 2 They're not allowed to have that. 3 Q. Like what? 4 A. Like homemade wine, shanks, stuff like 5 that. 6 Q. Right. That wouldn't be on the property 7 list? 8 A. On the property sheet, you have like 9 uniform, some kind of appliance, like coffee pots, 10 radio, typewriter, stuff like that. 11 Q. Okay. Do you recall how Dorsey got 12 assigned into the cell with Bing? 13 A. Classification. He was in the -- I 14 think he was in Chesterfield Unit. 15 Q. Okay. 16 A. And they move inmates from different 17 units after their custody level go up. 18 Q. Now, I think there's a statement, maybe 19 it was Bing's statement. Was Bing in the room first 20 or was Dorsey in the room first? 21 A. I think Bing was down there first. 22 Q. Okay. And we saw Bing was there on June 23 3rd, right? 24 A. Right. 25 Q. And I've been through the logbook. It	Page 39 1 doesn't show any entry where Dorsey was put in 2 there. 3 A. Dorsey came after Bing. 4 Q. Right. But wouldn't it -- when he's put 5 in that cell, wouldn't that be entered in the 6 logbook? 7 A. Right. 8 Q. Should be? 9 A. Should be. 10 Q. Okay. And the decision to put them 11 together would have come from -- 12 A. Classification. 13 Q. -- classification committee? 14 A. Right. 15 Q. And is there a classification committee 16 at Lee Correctional? 17 A. Yes. 18 Q. And who was on that in 2010? 19 A. You have Ms. B. Hickman and Ms. Reams. 20 Ms. B. Reams. 21 Q. Okay. And you said Bing came to your 22 office. That's your office in Darlington Unit? 23 A. Right. In the sally port area. 24 Q. And he just walked in there on a normal 25 day?
Page 40 1 A. Right. 2 Q. Does your office have closed walls or 3 has it got open glass so you can see? 4 A. They got a glass in front. 5 Q. Okay. So you can see into your office 6 from the cell? 7 A. Right. 8 Q. Do you remember why Bing told you he 9 needed to move? 10 A. No. He didn't want to move. He wanted 11 his roommate out. 12 Q. That's fine. Do you recall Bing telling 13 you why he wanted his roommate out? 14 A. No. He just said that his roommate was 15 a hot boy. 16 Q. Okay. And can you explain to me what a 17 hot boy is? 18 A. I think a hot boy is just that inmate 19 that's like trouble like. 20 Q. Okay. 21 A. That's inmate code. 22 Q. Inmate code for somebody that's trouble? 23 A. Yeah. 24 Q. To your knowledge, had Dorsey been in 25 trouble in prison before?	Page 41 1 A. I haven't been around Inmate Dorsey 2 because he was in Chesterfield Unit. I was down 3 there in Darlington Unit. 4 Q. Did you look and see what his 5 administrative record was in the prison? 6 A. No. 7 Q. Okay. Did you investigate what Bing 8 thought he was hot with? 9 A. No. 10 Q. Did you suggest or recommend to 11 contraband that they search that cell? 12 A. No. 13 Q. And doesn't contraband search cells 14 every day? 15 A. Right. 16 Q. Okay. You ever talk to them about which 17 ones they might want to look at? 18 A. Sometime I give them numbers to check. 19 Q. But you didn't give them 1225 to check? 20 A. No, not that I can recall. 21 Q. Not in that time frame? 22 A. No. 23 Q. Okay. And the classification committee, 24 you don't meet with them or have any interaction 25 with them, you just get a piece of paper from them

A W R

Page 42 1 that -- 2 A. Right. 3 Q. -- says these two go together? 4 A. Right. 5 Q. Do you know how they work? 6 A. I sort of know how they work. 7 Q. How do they make a determination that 8 two inmates are compatible? 9 A. They go by the weight, age and the 10 crime, whether they're violent or non-violent. 11 Q. Okay. Anything else? 12 A. No, not to my knowledge. That's all I 13 know. 14 Q. How about the history in the 15 institution? 16 A. Right. 17 Q. If they have a record in the institution 18 or not? 19 A. I didn't know about that part. 20 Q. You don't? 21 A. (Shaking head.) 22 Q. How about any other personality traits? 23 A. I don't know. 24 Q. Okay. Have you ever reviewed the 25 information that the classification committee looks	Page 43 1 at when they decide who to put together? 2 A. Sometimes. 3 Q. And how about in this case? 4 A. No. 5 Q. Did you look at the information on Bing 6 and Dorsey to see whether they were compatible or 7 not? 8 A. No. I don't even know Dorsey was in my 9 unit. I think -- I think I was off a couple of 10 days. When I came back, he was down there. 11 Q. Okay. And did you find out he was there 12 because this happened? 13 A. No. 14 Q. You knew he was there before that? 15 A. Right. 16 Q. How did you become aware Dorsey was on 17 your unit? 18 A. I had saw him in the sally port. 19 Q. So you saw him? 20 A. Uh-huh. 21 Q. You didn't get a memo from 22 classification or anything like that? 23 A. No. 24 MR. FAIREY: Okay. All right. 25 (Off-the-record conference.)
Page 44 1 BY MR. FAIREY: 2 Q. How long had Bing been on the Darlington 3 Unit? 4 A. I can't recall. 5 Q. Do you know what his work assignments 6 were? 7 A. No. 8 Q. You ever had any trouble with Bing? 9 A. No. 10 Q. Okay. Did you think it was a mistake 11 for him not to go in protective custody? 12 A. I can't -- I can't say because I asked 13 him and he stated that he didn't need it. 14 Q. Okay. And you didn't think he needed 15 it; correct? 16 A. No. 17 Q. But that's based on what he told you? 18 A. Right. 19 Q. Did you ever find out why Dorsey 20 attacked Bing? 21 A. No. 22 Q. Did you ever find out how Dorsey 23 attacked Bing? 24 A. No. 25 Q. Did you find out how he got the water	Page 45 1 hot enough to burn him? 2 A. No. I just know it was in a coffee pot. 3 That's it. 4 Q. In a coffee pot? Okay. Did Dorsey have 5 a coffee pot or a hot pot on his inventory sheet? 6 A. I have no idea. 7 Q. You know if anybody checked his property 8 sheet during this investigation? 9 A. I don't know. 10 Q. Do you know if the -- you said all the 11 property in the room, Bing's and -- 12 A. Right. 13 Q. -- Dorsey's was taken by contraband? 14 A. Right. 15 Q. Okay. And you believe they took 16 pictures? 17 A. They should. 18 Q. They should take pictures? 19 A. Right. 20 Q. That's the process, the procedure; 21 right? 22 A. Right. 23 Q. And then would it also be the process 24 and procedure to log everything that they took? 25 A. Right.

A W R

ELECTRONICALLY FILED - 2018 Jun 07 5:56 PM LEE - COMMON PLEAS - CASE #2014CP3100100

STATE OF SOUTH CAROLINA
COUNTY OF LEE

Levi Bing,

Plaintiff

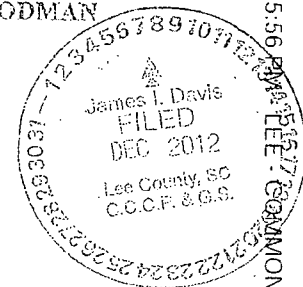
vs.

Anthony Padula, Warden, South Carolina
Department of Corrections, and John Doe,
representing employees and agents of SCDC
whose identities are not yet known,

Defendants.

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
Case No.: 2011-CP-31-0216

AFFIDAVIT OF
LT. JOHNNATHAN GOODMAN



1. My name is Johnathan Goodman. I am currently employed at Lee Correctional Institution. I was employed at Lee Correctional Institution in 2010. I was a Lieutenant at that time.
2. Shortly before the incident on or before June 7, 2010, inmate Bing was brought to my office by Sgt. Albert Bates. Inmate Bing stated that his roommate, Willis Dorsey, was "hot". I presume "hot" meant that he was engaged in activity that was forbidden within SCDC. Inmate Bing did not specify how he was "hot". Inmate Bing kept stating that he did not want to mess up his custody level because of his previous violation of the rules.
3. After that request, I contacted Brenda Scott-Hickmon who was inmate Bing's Classification Worker. I remember the Classification Worker stating that she could not make the determination and that he had to fill out a request form. However, she did advise that he would not be eligible per SCDC Policy for a cell transfer since he had not been assigned a cell for at least six (6) months.

Certified as a True Copy

Clerk, Court of Common Pleas
and General Sessions, Lee
County, South Carolina

4. Following that conversation, I asked Bing if he wanted protective custody. Bing stated that he was not fearful for himself and was only requesting a transfer so he would be able to obtain a certain custody level. Inmate Bing refused to fill out any forms. He stated that he just wanted inmate Dorsey out of his cell. Inmate Bing kept stating that he was in the cell first and inmate Dorsey should be required to leave.

5. The next time I heard from inmate Bing about this situation was following the incident on or about June 7, 2010. As inmate Bing was being escorted to medical following this incident, he screamed at me, "I told ya'll. Now you are going to be a part of my lawsuit."

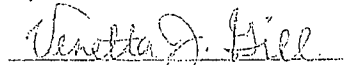
6. At no time did inmate Bing ever indicate that he was fearful of his safety from being in the room with inmate Dorsey. Also, inmate Bing was not eligible for a cell transfer per SCDC Policy 43.2

7. I am unaware of any further requests inmate Bing made about transferring cells after this one occurrence. He also never expressed any concerns for his safety prior to the incident of June 7, 2010.

FURTHER THE DEPONENT SAYETH NOT:


JOHNATHAN GOODMAN

SWORN to before me this 26th
day of November, 2012


Notary Public for South Carolina
My Commission Expires: 3/27/2016

STATE OF SOUTH CAROLINA
COUNTY OF LEE

Levi Bing,

Plaintiff,

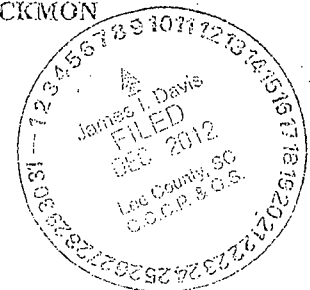
vs.

Anthony Padula, Warden, South Carolina
Department of Corrections, and John Doe,
representing employees and agents of SCDC
whose identities are not yet known,

Defendants.

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
Case No.: 2011-CP-31-0216

AFFIDAVIT OF
BRENDA SCOTT-HICKMON



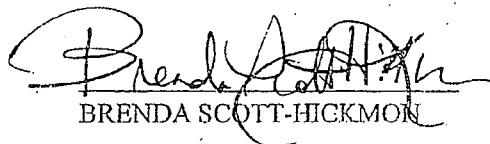
1. My name is Brenda Scott-Hickmon. I am a Classification Worker currently assigned to Manning Correctional Institution. In 2010 I was working at Lee Correctional Institution as a Classification Worker.
2. I recall in the Spring of 2010 when inmate Levi Bing contacted me via LL Goodman about requesting a cell change. At that time, he was requesting that his cell mate be transferred out of the cell. It is my understanding that the cell mate at the time was Willis Dorsey.
3. When I received this call, I advised LL Goodman and/or inmate Bing that I could not transfer inmate Bing and/or Willis Dorsey. There was a classification plan OP 21-04 Section 48-48.3 that provides when an inmate can request a new roommate. In order to request a new roommate, they would have to fill out a Form 18.3 and then the Institutional Classification Committee would review the request and make a decision.

Certified as a True Copy

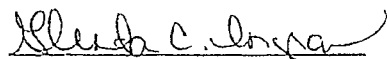
[Signature]
Clerk, Court of Common Pleas
and General Sessions, Lee
County, South Carolina

4. However, inmate Bing was not eligible for a cell transfer at that time. In 2009, Policy 48.2 stated that an inmate could request a cell change every six (6) months. At that point, the Institutional Classification Committee would review the inmate's request and make a decision related to the inmate housing. Since inmate Bing had not been in his cell for six (6) months, he was not eligible for this change per Policy. (A copy of said Policy and Form are attached hereto and incorporated herein as Exhibit A).

FURTHER THE DEPONENT SAYETH NOT:


BRENDA SCOTT-HICKMON

SWORN to before me this 14
day of November, 2012



Notary Public for South Carolina

My Commission Expires: Oct. 7, 2021

SCDC POLICY/PROCEDURE

Change 1 to "OP-21.04": 8. Change 2 to OP-21.04 12.1 26.1 26.3 26.4 26.6 27.8 32.6 32.6 36.1 52.6 73; Change 3 to OP-21.04:43

NUMBER: OP-21.04

TITLE: INMATE CLASSIFICATION PLAN

ISSUE DATE: August 1, 2006

RESPONSIBLE AUTHORITY: DIVISION OF CLASSIFICATION AND INMATE RECORDS

OPERATIONS MANUAL: OPERATIONS

SUPERSEDES: OP-21.04 (JANUARY 1, 2005); Change 1 (March 28, 2005); Change 2 (October 1, 2005)

RELEVANT SCDC FORMS/SUPPLIES: 18-1, 18-3, 18-6, 18-15, 18-34 18-39, 18-68, 18-69, 19-11, 19-29, 19-30, 19-47, 19-54, 19-97, 19-100, 19-123, 19-141, 27-4, 27-9, 27-10, 27-16, 27-17, 27-18, 27-23, 27-30A, 27-49, 27-53, 27-67, 27-70, M-31, S-13, S-15, S-28, B-19

ACA/CAC STANDARDS: 4-ACRS-2A-08, 4-ACRS-3A-03 through 4-ACRS-3A-06, 4-ACRS-5A-01, 4-ACRS-5A-03 through 4-ACRS-5A-06, 4-ACRS-5A-11 through 4-ACRS-5A-16, 4-ACRS-6A-10 through 4-ACRS-6A-12, 4-ACRS-6B-01, 4-ACRS-6B-02, 4-ACRS-7B-03, 4-ACRS-7D-07 through 4-ACRS-7D-10, 4-ACRS-7D-32, 4-ACRS-7D-33, 4-ACRS-7F-01, 4-ACRS-7F-04, 4-ACRS-7F-05, 4-ACRS-7F-08, 4-4017, 4-4095, 4-4096, 4-4235, 4-4250, 4-4253, 4-4255, 4-4285, 4-4286, 4-4287, 4-4288, 4-4289, 4-4290, 4-4291, 4-4292, 4-4295, 4-4296, 4-4297, 4-4298, 4-4299, 4-4300, 4-4301, 4-4302, 4-4303, 4-4304, 4-4305, 4-4344, 4-4442, 4-4444, 4-4449, 4-4499,

STATE/FEDERAL STATUTES Section 24-1-140, South Carolina Code of Laws, 1976, as amended :

PURPOSE: To provide a general outline of the Agency's inmate classification plan and to establish the general criteria by which inmates will be classified and assigned to housing within the Agency.

POLICY STATEMENT: The South Carolina Department of Corrections is committed to upholding public safety and to operating a safe, secure, and humane prison system. To this end, the Agency will develop and implement an inmate classification system designed to assess an inmate's risk based on his/her past criminal behavior and to assign him/her to appropriate

institutional housing based on the results of such risk assessment. To promote positive behavior, an inmate's custody level and privileges while assigned to an institution will be based on behavior driven criteria.

Inmate custody classification is based on different factors and embodies correctional discretion. An inmate has no right to any particular custody level.

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48. CELL ASSIGNMENT FORM: The SCDC Form 18-3, "Cell Assignment Form," will be used to determine the appropriate cell assignment for inmates and will be completed on all inmates housed in cells. The SCDC Form 18-3 is not used for wards or open bay areas. The cell assignment checklist consists of a series of questions designed to record pertinent information which will affect the inmate's housing assignment. The SCDC Form 18-3 and other relevant information and criteria will be used by the ICC or individuals with authority to make specific decisions related to inmate housing (e.g., Warden, Associate Warden, or Major) to determine the inmate's cell assignment. All inmate cell assignments should be made on the basis of rational, objective criteria, taking into consideration each individual inmate's safety, security, treatment, and rehabilitation needs. Inmates in specialized treatment programs who are assigned to a cell will be exempt from the cell assignment process and completion of the SCDC Form 18-3, "Cell Assignment Form." Inmates in specialized treatment programs will be assigned to cells in accordance with their respective treatment program.

48.1 PROCEDURES: Upon arrival at the institution, each newly received inmate will appear before the Institutional Classification Committee within 48 hours (excluding weekends and holidays). The ICC chairperson or classification caseworker assigned to the inmate will complete the SCDC Form 18-3 and determine the inmate's cell assignment status. The following guidelines for cell assignment will be observed by the ICC or individuals with authority to make specific decisions related to inmate housing (e.g., Warden, Associate Warden, Major, Operations).

48.2 GENERAL HOUSING GUIDELINES: Cell assignment will be made on the basis of an inmate's criminal and behavior profile, physical and mental health restrictions, prior history of assaultive behavior, Security Threat Group affiliation, and separation requirements. Inmates should be matched with respect to similar characteristics to other inmates in order to determine cell assignment partners. Housing restrictions and recommendations of health services professional staff as noted by Health Services will be followed by the classification committee and security staff. Any inmate identified by the classification committee as being too assaultive or too vulnerable to be safely housed with another inmate will be housed in a cell alone. The inmate can request a cell change every six (6) months. The ICC will review the inmate's request and make a decision related to inmate housing.

48.3 CELL ASSIGNMENT: Cell assignments will be made on the basis of the criteria listed below. Consideration will be given to all criteria to ensure that the safety and security of all inmates and the institution are maintained.

STATE OF SOUTH CAROLINA
COUNTY OF LEE

Levi Bing,

Plaintiff,

vs.

Anthony Padula, Warden, South Carolina
Department of Corrections, and John Doe,
representing employees and agents of SCDC
whose identities are not yet known,

Defendants.

IN THE COURT OF COMMON PLEAS

THIRD JUDICIAL CIRCUIT

Case No.: 2014-CP-31-100

**AFFIDAVIT OF
EMMITT L. SPARKMAN**

1. My name is Emmitt L. Sparkman and I have been retained as an expert on behalf of the South Carolina Department of Corrections in regards to the above referenced matter. I am currently employed by the Mississippi State Penitentiary as their Director of Education. I am currently responsible for developing academic and vocational goals for students/offenders in coordination with the overall agency education program.
2. That I have thirty-nine (39) years of experience in the field of security and prison systems, including nine (9) years as a correctional officer, six (6) years a probation officer/supervisor and thirteen (13) years as a director, warden or supervisor of multiple county and state institutions.
3. Prior to my current position, I was Deputy Commissioner of Institutions within the Mississippi Department of Corrections. I was responsible for the programs and services for State offenders incarcerated at State institutions, private facilities,

regional facilities and county jails. I directly dealt with the operations and management of prisons as well as the security contained within the prisons.

4. I also have been the Superintendent of the Mississippi State Penitentiary as well as a Warden at Marshall County Correctional Facility. I have been employed in with corrections in one form or another for the past twenty-five (25) years. I attach hereto and incorporate herein by reference my Curriculum Vitae.
5. I have routinely engaged in providing expert services in court in States around the Southeast. I have been qualified as an expert in correctional facilities, security of correctional facilities, and the operations of correctional facilities in both State and Federal Courts. I have testified and been qualified as an expert witness in State and Federal Courts in South Carolina.
6. That I have been retained as an expert witness by counsel for the South Carolina Department of Corrections in the matter stated above and that all of the opinions stated in this Affidavit are stated to a reasonable degree of certainty as a former corrections officer and career corrections administrator.
7. I have reviewed the depositions of Plaintiff Levi Bing, Plaintiff's expert James Aiken. I have also reviewed the classification record, SCDC investigation and the classification file, medical file, warden's jacket and inmate file of Levi Bing. Furthermore, I have reviewed the canteen records of Levi Bing as well as the brochures for two (2) separate "hot pots" that were sold at the Lee Correctional Institution canteen during Levi Bing's incarceration.
8. In regards to the classification, it appears that the South Carolina Department of Corrections appropriately classified the Plaintiff and performed the appropriate

appropriate cell assignment procedure. I have reviewed the Policies and Procedures as it relates to the cell assignment of inmates. From my review of the classification file, it appears that Lee Correctional Institution complied with the Policies and Procedures of cell assignment. There was no indication that inmate Bing was not compatible with his roommate at the time of this incident, Willis Dorsey.

9. According to the records and the deposition of Levi Bing, he was concerned that inmate Dorsey was smoking Marijuana and involved in other contraband. He did not want to lose his privileges. He allegedly made a complaint to Officer Santimaw. While there is no documentation that Officer Santimaw was contacted about this incident, there is information that Lieutenant Richardson discussed this with inmate Bing.

10. It appears that Lieutenant Richardson contacted inmate Bing's classification worker and he was not eligible for a cell transfer in accordance with the policy. Inmate Bing and inmate Dorsey were not in the cell long enough to be eligible for a transfer. This policy is well reasoned as if inmates can freely request transfers, then they would be attempting to pick and choose their cell mates at will.

11. I also find it interesting in inmate Bing's deposition that he did not fear for his life or safety at that time. He simply wanted inmate Dorsey out of his room so he would not receive any disciplinary infractions. There is no indication from anything contained in the record that there was any threat of harm or danger to inmate Bing. In fact, inmate Bing denied he felt he was in threat of harm or danger prior to this incident.

12. Lieutenant Richardson correctly inquired from inmate Bing as to whether he would like protective custody. Inmate Bing declined protective custody which was his only method available to separate inmates who feel that their life and/or safety is in danger.
13. Apparently, on June 7, 2010 inmate Dorsey placed water in the hot pot and heated it up. He threw the water on inmate Bing. Inmate Bing alleges that he grabbed a knife and a struggle ensued. The officers heard the commotion and broke up the fight.
14. It is important to note that there was never a knife that was discovered at the scene despite the fact that both inmates were extracted from the cell. There were also allegations from inmate Bing that his arms were cut with knife. In reviewing the medical file, there is no indication that his arms were cut with a knife.
15. I have reviewed the deposition of the Plaintiff's expert, James Aiken. From my review of the deposition, Mr. Aiken makes three (3) assertions as to the gross negligence of the South Carolina Department of Corrections. It is worthy of noting that he does not make any allegations that the South Carolina Department of Corrections knew or should have known of any danger that inmate Bing was in for this particular harm prior to the incident. I again believe that demonstrates the lack of any prior knowledge or indication that this event was going to occur prior to June 7, 2010.
16. As I understand Mr. Aiken's testimony there are three (3) areas of concern. First, is the complaint there is no information related to the classification of cell

assignment of inmate Dorsey and inmate Bing. The records I was provided clearly demonstrate that the appropriate level of scrutiny was supplied to inmate Bing's classification. It is my understanding that the classification file has been provided to the Plaintiff's attorney. All the information necessary to determine classification is contained within that classification file.

17. Mr. Aiken is also concerned that the hot pot is a dangerous instrumentality that should never be allowed in prisons. From my experience in consulting and running prisons in the State of Mississippi and other similar States, hot pots are not per se dangerous instruments. They certainly can be manipulated to create hot water or scald inmates. However, that simply can be done in a common area with a microwave, a kitchen, or the manipulation of electrical outlets. I have seen scalding of inmates from a number of ways such as microwaves and in kitchens. While it is a horrific event, there is no way you can prevent an inmate in a prison from being injured. To say that hot pots should never be allowed in cells is contrary to the policies of a number of prisons systems around the Country. An inmate can just as easily heat up water in a microwave and scald another inmate as can a hot pot. It is interesting to note that Mr. Aiken suggests that only items should be placed in the common area. This would not prevent an attack if an inmate so desired.
18. Lastly, Mr. Aiken claims there is a complete system failure. He claims that there was no way to communicate to guards that there was an attack. There were not panic buttons or other ways to notify prison guards of an incident. I am familiar

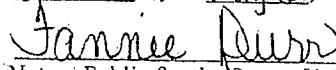
with prison systems that have panic buttons in cells. A cell panic button would not have prevented inmate Bing's assault. Panic buttons are not required for inmate protection as cells can be monitored by periodic cell checks, counts and alert guards. All of that was in place when this incident occurred on June 7, 2010.

19. Overall, my review of the file does not show that the South Carolina Department of Corrections was negligent much less grossly negligent as to the event of June 7, 2010 between inmate Bing and inmate Dorsey. This is an unfortunate incident in which one inmate attacked the other. There is no indicate that the South Carolina Department of Corrections could have done anything to prevent this attack.

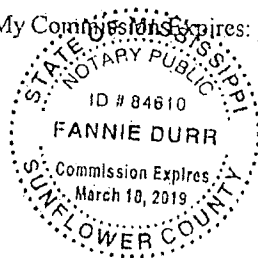
FURTHER THE DEPONENT SAYETH NOT:


EMMITT L. SPARKMAN

SWORN to and subscribed before me this
25th day of August, 2015


Notary Public for the State of Mississippi

My Commission Expires: 03-18-2019



EMMITT L. SPARKMAN
4783 Wesson Heights Drive
Olive Branch, Mississippi 38654
662.231.6872
ellesparkman@gmail.com

EXPERIENCE:

6/01 – Present

Mississippi Department of Corrections
723 North President Street
Jackson, Mississippi 39202-3097

Director of Education (5/13-Present)

Mississippi State Penitentiary
P. O. Box 1057
Parchman, Mississippi 38738

Plans, directs and coordinates Academic and Vocational Programs for the prison complex. Selects Education Program equipment and maintains equipment inventories. Prepares and maintains the annual budget. Responsible for developing Academic and Vocational goals for students/offenders in coordination with the overall Agency Education Program. Supervises professional and clerical staff engaged in providing Academic and Vocational instruction to the offender population.

Deputy Commissioner-Institutions (11/02-5/13)

Central Office
723 North President Street
Jackson Mississippi 39202-3097

Direct the Institution Division of the Department of Corrections with a population of approximately 21,000 offenders and 2500 employees consisting of (3) state institutions, (5) private prisons, and (15) regional prisons. The Deputy Commissioner for Institutions is responsible for the programs and services for state offenders incarcerated in state institutions, private facilities, regional facilities and county jails. The Institution Division has an annual operating budget exceeding 200 million dollars.

Superintendent (2/10-5/12)

Mississippi State Penitentiary
P. O. Box 1057
Parchman, Mississippi 38738

Direct the operations of a prison complex with 6 correctional facilities and 1000 employees housing a maximum population of 3500 offenders. The prison complex consists of two areas supervised by a Warden reporting to the Superintendent. Minimum to maximum custody offenders including death row were incarcerated at the institution. The Superintendent manages an annual operating budget of approximately 70 million dollars.

Superintendent (6/01 - 11/02)

Mississippi State Penitentiary
P. O. Box 1057
Parchman, Mississippi 38738

Directed the operations of a prison complex with 18 correctional facilities and 1580 employees housing a maximum population of 5551 offenders. The prison complex consisted of five areas with each area supervised by a Warden reporting to the Superintendent. Minimum to maximum custody offenders including death row were incarcerated at the institution. The Superintendent managed an annual operating budget of approximately 70 million dollars.

9/96 - 6/01

Wackenhut Corrections Corporation
4200 Wackenhut Drive #100
Palm Beach Gardens, Florida 33410

Warden

Marshall County Correctional Facility
P.O. Box 5188
Holly Springs, MS 38634

Managed daily operations of a 1,000-bed medium security institution by contract for the Mississippi Department of Corrections. Ensure compliance with established Corporate and Department of Corrections policies and procedures. Responsible for a \$10.4 million annual budget and a staff of 241 employees.

11/92 - 8/96

**Kentucky Department of Corrections
Adult Correctional Institutions
P. O Box 2400
Frankfort, KY 40601**

Warden

Northpoint Training Center.
P.O. Box 479, Burgin, KY 40310
Managed daily operations of a 938-bed medium security institution to ensure compliance with established policies and procedures. Maintained fiscal policy and supervised staff of more than 280 employees. Was responsible for a \$10.6 million annual budget.

5/90 - 10/92

**Concept, Incorporated
P.O. Box 333
Louisville, Kentucky 40201**

Facility Director

Pre-Parole and Intermediate Sanction Facility
Mineral Wells, Texas and Pre-Parole Facility
Bridgeport, Texas.

Served as Facility Director of a 600-bed male Pre-Parole Facility, 200-bed male Intermediate Sanction Facility in Mineral Wells, Texas and a 100 bed Female Pre-Parole Facility in Bridgeport, Texas. Responsible for overall management of the facilities with 290 employees and annual budgets exceeding ten million dollars. Initial employment was as Deputy Director of Security and promoted progressively to Facility Director over three institutions in a time span of less than three years.

1985 - 1990

**Brazoria Co. Alcohol/Education Program
P.O. Box 1300, Angleton, TX 77516-1300**

Instructor

Served in this position while employed by the Brazoria County Juvenile and Adult Probation Departments. Instructed persons required by the Courts to attend Alcohol Education Classes. Developed lesson plans. Maintained class records and appropriate statistics. Evaluated participants to determine probability of future alcohol problems and made appropriate referrals.

1988 - 1989

**Brazoria County Juvenile Probation Department
County Road 171, Angleton, TX 77515**

Detention Superintendent/Intake Supervisor

Supervised three Juvenile Probation Officers, twelve detention workers and support staff. Directed daily operations. Screened new referrals and reviewed cases forwarded to the District Attorney. Implemented programs and services required by the Brazoria County Juvenile Board of Judges and Texas Juvenile Probation Commission.

1984 - 1988

**Brazoria County Adult Probation Department
P.O. Box 1300, Angleton, TX 77516-1300**

Intensive Supervision Officer

Supervised high-risk probationers. Ensured all prospective candidates for intensive supervision met the stated eligibility criteria. Developed and implemented supervision plans. Prepared pre-sentence and post-sentence investigations. Provided quarterly reassessment reports to the Texas Adult Probation Commission Case Classification System and Strategies for Case Supervision System.

Initial employment was a Probation Officer supervising 170 misdemeanor and felony adult probationers. Conducted office visits for probationers and made field contacts. Initiated revocation proceedings and prepared pre-sentence investigations.

1975 - 1984

**Texas Department of Corrections
P.O. Box 99
Huntsville, Texas 77342**

Major of Correctional Officers (1982 - 1984)

Ramsey II Unit, Rosharon, TX 77583

Supervised 175 uniformed personnel on a unit with 1,000 high-risk inmates. Directed the operation of all departments within facility. Planned and maintained overall security.

Captain of Correctional Officers (1981-1982)

Ferguson Unit, Midway, TX 77852

Essentially the same duties as that of Major. Supervised 240 employees and 2,500 first-offender inmates between ages 17-21.

Education Consultant (1978 - 1981)

Eastham Unit, Lovelady, TX 75851

Scheduled college level academic/vocational classes. Supervised staff of 20-25 instructors and provided security for staff and inmates in facility of 3,000 multi-recidivist inmates. Coordinated programs through Lee College, Baytown and Windham School System, Huntsville, Texas.

Correctional Officer II (1976 - 1978)

Maintained security in academic/vocational areas under direction of the Educational Consultant. Assumed duties in his absence.

Correctional Officer I (1975 - 1976)

Custodial supervision of 400 inmates.

PROFESSIONAL TRAINING:

PRISON RAPE ELIMINATION ACT (PREA) STANDARDS AUDITOR TRAINING, Bureau of Justice and the PREA Resource Center, Completed June 2013.

EMERGENCY PREPAREDNESS INCIDENT COMMAND SYSTEM FOR CORRECTIONS, National Institute of Corrections, United States Department of Justice, Completed August 2008

ADVANCED MANAGEMENT STRATEGIES FOR PRISON DISTURBANCES, National Institute of Corrections, United States Department of Justice, Completed 1996.

MOTIMER-FILKINS COURT PROCEDURES FOR IDENTIFYING PROBLEM DRINKERS EVALUATOR'S COURSE, Texas Adult Probation Commission and Texas Commission of Alcoholism. Certified March 1986.

STRATEGIES FOR CASE SUPERVISION, Texas Adult Probation Commission and Texas Commission of Alcoholism, Completed December 1985.

CASE CLASSIFICATION, Texas Adult Probation Commission, Completed July 1985.

ALCOHOL RELATED TRAFFIC OFFENDER EDUCATION, Certification Administrator/Instructor Course, Sam Houston State University, Huntsville, Texas, Completed January 1985.

ADULT BASIC PROBATION OFFICERS WORKSHOP, Texas Probation Training Academy, Criminal Justice Center, Sam Houston State University, Huntsville, Texas, Completed April 1984.

EVELYN WOODS READING DYNAMICS COURSE, Huntsville, Texas, Completed April 1979.

PROFESSIONAL SERVICES:

- 8/13-Present **Certified Auditor.** Prison Rape Elimination Act Standards.
United States Justice Department, Washington, D.C.
- 8/95 - Present **Certified Auditor.** Accreditation Program, American Correctional Association, 206 North Washington Street, Alexandria, Virginia.
- 8/95 - 8/96 **Adjunct Instructor.** Criminal Justice, Correctional Services, Eastern Kentucky University, Richmond, Kentucky.

EDUCATION:

- 1993 - 1999 EASTERN KENTUCKY UNIVERSITY, Richmond, KY;
M. S. in Criminal Justice-General Studies
- 1981 TEXAS A&M UNIVERSITY, Bryan/College Station, TX; 36 hours in
Correctional Supervisor Training
- 1975 - 1978 SAM HOUSTON STATE UNIVERSITY, Huntsville, TX; B.S. in
Criminology and Corrections
- 1974 - 1975 ALVIN COMMUNITY COLLEGE AND PARIS JUNIOR COLLEGE,
Paris, TX
- 1970 - 1974 CLARKSVILLE (Texas) HIGH SCHOOL

PROFESSIONAL ACHIEVEMENTS:

WARDEN OF THE YEAR, 2002, North American Association of
Wardens and Superintendents

CRIMINAL JUSTICE PROFESSIONAL OF THE YEAR, 2001,
Mississippi Association of Professionals in Corrections

WARDEN OF THE YEAR, 1997, Wackenhut Corrections
Corporation.

EDUCATION CONSULTANT OF THE YEAR, 1981, Texas
Department of Corrections.

PROFESSIONAL AFFILIATIONS:

American Correctional Association
Southern States Correctional Association
North American Association of Wardens and Superintendents
Mississippi Association of Professionals in Corrections

PERSONAL:

Date of Birth: August 10, 1956
Health: Excellent
Marital Status: Married

Publications

Terry A. Kupers et al, "Beyond Supermax Administrative Segregation: Mississippi's Experience Rethinking Prison Classification and Creating Alternative Mental Health Programs." Criminal Justice and Behavior, Volume 36 Number 10, October 2009. Copyright 2009 International Association for Correctional and Forensic Psychology.

Emmitt L. Sparkman, Kevin I. Minor, and James B. Wells, "A Comparison of Job Satisfaction Among Private and Public Employees." Copyright 2000 by Roxbury Publishing Company.

Thesis

Job Satisfaction of Kentucky Correctional Employees: A Comparison of Private and Publicly Operated Prisons, Eastern Kentucky University, December, 1999.

Presented Publications

"A Comparison of Job Satisfaction Among Private and Public Employees," Academy of Criminal Justice Sciences Annual Meeting; New Orleans, Louisiana, March 2000. Kevin I. Minor PhD, James B. Wells, PhD and Emmitt L. Sparkman

Conference/Training Presentations

"Using Administrative Segregation to Manage Offenders". American Correctional Association, Winter Conference Workshop: January 28, 2013 Houston, Texas.

"Southern Legacies: North American Association of Wardens and Superintendents-Wardens of the Year Experiences". North American Association of Warden and Superintendents, 2009 Training Conference. April 9, 2009 Memphis, Tennessee.

"Hurricane Katrina: The Mississippi Department of Corrections Experience". 4th Annual Correctional Security Conference. October 2007 Cincinnati, Ohio.

"A Look Inside Death Row". American Correctional Association, 136th Congress of Correction Workshop: August 16, 2006 Charlotte, North Carolina.

"The Mississippi Department of Corrections Hurricane Katrina Experience". National Institute of Corrections/Maryland Department of Public Safety and Correctional Services Conference of Regional Interstate Emergency Agreements: May 8-10, 2006 Baltimore, Maryland.

Court Cases

Bryan Clyburn v South Carolina Department of Corrections et al. In the Court of Common Pleas: Civil Action No. 2014-CP-27-018. Defendant Expert Prison Operations. (Pending)

Jonathan Bradley Lisle v South Carolina Department of Corrections et al. In the Court of Common Pleas: Civil Action No. 2014-CP-40-6208. Defendant Expert Prison Operations. (Pending)

Christopher Ford v South Carolina Department of Corrections et al. In the Court of Common Pleas: Civil Action No. 2013-CP-18-1238. 2014. Defendant Expert Prison Operations. Summary Judgment for Defendants Prior to Trial.

Janice Flowers, Individually and as Personal Representative on Behalf of the Wrongful Death Beneficiaries, of Demond Deangelo Flowers v Corrections Corporation of America and John and Jane Does 1-100. In the United States District Court for the Southern District of Mississippi-Western Division: Civil Action No. 5:13-CV-122. Deposition on Subpoena from the Defendant. 2014.

Christopher Lemear v. William Wrenn, Commissioner, et al. Merrimack County Superior Court Docket No. 217-2013-CV-00372. Defendant Expert. Prison Operations and Classification. Case Review and Expert Report. 2014. Case Dismissed.

Leaphart v. South Carolina Department of Corrections et al. Civil Action Number: 2012-CP-35-40. Case Review for Defendants. 2014. (Pending)

Tolen v. South Carolina Department of Corrections et al. Civil Action Number: 2012-CP-35-39. Case Review for Defendants. 2014. (Pending)

Leaphart v Warden Leroy Cartledge et al: Civil Action Number 1:13-cv-01564-DCN-SVH. Case Review for Defendants. 2014. (Pending)

Tolen v Warden Leroy Cartledge et al: Civil Action Number 1:13-cv-01565-DCN-SVH. Case Review for Defendants. 2014. (Pending)

Susan Piazzola, as Personal Representative of the Estate of Saverio E. Piazzola v. Lieber Correctional Institution and South Carolina Department of Corrections et al, Civil Action Number: 2012-CP-18-2151. Case Review for Defendants. 2013-2014.

John Doe Plaintiff vs. Board of County Commissioners of Payne County and Advanced Correctional Healthcare, Inc. Case No. CIV-13-108-F. Plaintiff Expert: Case Review, Expert Report and Witness for Trial (No Testimony)-Jail Classification and Operations. 2013-2014. Jury Verdict for the Defendants.

George Ruiz et al. v. Edmund G. Brown, Jr., et al. United States District Court, Northern District of California, Docket Number: 09-05796 CW. Plaintiff Expert-Corrections. 2013-2014. (Pending)

Mack Myers v Paula Rector Jackson, et al. 0:12-cv-02526-TMC-PJG. Defendant Expert: Case Review and Expert Report-Corrections Facilities Management and Operations. 2013-2014. Dismissed with Parties Reaching a Non-Monetary Settlement.

Russell Dawson v. South Carolina Department of Corrections et al, Civil Action Number: 2010-CP-18-1922 and Russell Dawson v. McKiver Bodison, Warden et al, Civil Action Number 8:11-1781-JFA-JDA, Claim Number: 77177. Case Review for Defendants. 2013.

Odella May Smith, Personal Representative of the Estate of Eddie Hue Smith, Jr., v. Arkansas Department of Corrections, et al: Number: 12-0500-CC Arkansas State Claims Commission. Defendant Expert: Testified on Correctional Facility Security and Operations. October 10, 2012. (Reduced Monetary Award for Loss Claim)

Louis Henderson, et al, v. Kim Thomas, Commissioner, Alabama Department of Corrections, et al: Civil Action Number: 2:11cv224-MHT Middle District Alabama. Deposition for Plaintiff-Care, Custody, and Control Mississippi Department of Corrections HIV/AIDS Offenders. June 5, 2012.

Baxter Felix Vinson, Jr., v. Sharonda Sutton, et al: Civil Action Number: 0:10-847-CMC-PJG. Defendant Expert-Correctional Facilities Management and Operations.

Alice A. Walker, as Personal Representative of the Estate of Daniel Preston Walker v South Carolina Department of Corrections et al; Case Number: 2008-CP-31-0131. Defendant Expert-Correctional Facilities Management and Operations (Case Settled).

Thomas S. Marchese v Sheriff of Horry County, et al: C/A No. 4:08-cv-03706-TLW. Defendant Expert-Correctional Facilities Management and Operations (Case Settled).

Charles Thomas #180540 v. South Carolina Department of Corrections: Civil Action No. : 2008-CP-27-00441. Defendant Expert-Correctional Facilities Management and Operations (Case Settled).

Norman Bradley v. Just Care, Inc. d/b/a Columbia Care Center: Civil Action No. : 08-CP-40-7714. Defendant Expert- Correctional Facilities Management and Operations (Case Settled).

Frederick T. McKnight as Personal Representative of the Estate of Brooks Leon Thomas vs. South Carolina Department of Corrections et al.; Civil Action No. 3:07-3311-MJP. Defendant Expert-Correctional Facilities Oversight and Management (Case Settled).

Julie E. Brabazon, as Personal Representative for the Estate of Jason Michael Gross v. South Carolina Department of Corrections: In the United States District Court for the District of South Carolina, Greenville Division: C/A No. 07-CP-43-2043, Claim Number 35018. December 2008. Defendant Expert-Correctional Facilities Oversight and Management (ongoing).

Robbie Simmons, as Personal Representative for the Estate of Gazzara D. Carson v. South Carolina Department of Corrections: C/A No. 04-CP-34-0413, Claim Number 18467. November 2008. Defendant Expert-Correctional Facilities Oversight and Management (ongoing).

Shylena Martin as Personal Representative of the Estate of Charles Martin v. South Carolina Department of Corrections et al: In the United States District Court for the District of South Carolina, Greenville Division; 6:07-CV-03409-GRA (Survival Action) and 6:07-CV-03422-GRA (Wrongful Death Action) Claim Number T38057. May 2008. Defendant Expert-Correctional Facilities Oversight and Management (ongoing).

Deborah Davis, Arthur Bowens, Eric Tate, Keisha Burgess, Earlene Howell and Barbara Beard v. The GEO Group Inc.: In the United States District Court for the Northern District of Mississippi, Western Division; Cause Number 3:06cv85-M-A. May 2007. Defendant Expert Report-Correctional Staff Searches. (Trial-Jury Verdict for the Defendants).

George Brown v South Carolina Department of Corrections, John Ozmint, Director, George Hagan, Head Warden and John Doe Correctional Officers. Federal Case Number 1:06-cv-01423-RBH. April 2007. Defendant Expert Report-Correctional Facility Operations. (Case Settled).

Charles Brooks v Richard Stringer, Sheriff of Marion County et al. Civil Action No. 2:04cv120KS-RHW. October, 2006. Defendant Expert Report-Correctional Facility Operations.

Richard D. Passman v Sheriff Joel Thames and CNA Surety. No. 2:05CVB5KS-JMR. February, 2006. Defendant Expert Report-Correctional Facility Operations.

Willie L. Brooks v Edward Neal Martin, American National Bail Bonding Agency, Inc. et al. No. 3:05CV191HTW-JCS. January, 2006. Defendant Expert Report-Offender Commitment and Release Procedures.

Moore v. Fordice, et al. 4:90CV125-JAD. June, 2004. Defendant Expert-Trial, Corrections Issues.

Wanda Langford, Administrator of the Estate of Michael Langford v Union County, Mississippi et al. No. 3:00CV152-P-A (Defendant Expert, Jail Operations and Suicide) Prepared and submitted an expert witness report, attended and participated in the Federal Court Trial. November, 2003. (Case was settled during trial prior to expert testimony being given).

Russell v Robert L. Johnson et al (Mississippi Department of Corrections) No. 1:02CV261-JAD. February, 2003. Defendant Expert-Trial, Testified on Correctional Issues.

Underwood v WCC No. 3:01CV179-JAD. January, 2003. Defendant Expert-Trial, Testified on Correctional Administration, Security and Accreditation. (Jury Verdict for the Defendants).

Consulting

South Carolina Department of Corrections. Retained Consultant. In T.R., P.R., and K.W., on behalf of themselves and other similarly situated; and Protective and Advocacy for People with Disabilities, Inc. v. South Carolina Department of Corrections et al. C/A No.: 2005-CP-40-2925. In the Court of Common Pleas Fifth Judicial Circuit. 2014.

Arkansas Department of Community Corrections. Consultant for JFA Institute. Retained to Participate in an Evaluation of Community Corrections Supervision and Conduct an Assessment of the Omega Technical Violator Center. December 2013.

Federal Bureau of Prisons. Consultant for JFA Institute and CNA. Retained to Participate in the Review of the Federal Bureau of Prisons Use of Administrative Segregation. 2013-2014.

Indiana Department of Corrections. Provided Technical Assistance to JFA Institute Reviewed and Made Recommendations for Indiana Department of Corrections Administrative Segregation. 2013.

Oklahoma Department of Corrections. Participated in a Review and Made Recommendations on the Oklahoma State Penitentiary-Administrative Segregation. 2012.

Colorado Department of Corrections. Provided Technical Assistance on Offender Classification and Administrative Segregation. 2011-2012.

National Institute of Corrections-Colorado Department of Corrections. Evaluated and Provided Technical Assistance on Administrative Segregation of Offenders. 2011.

Mexico Federal Penitentiary System. Evaluated and Provided Technical Assistance on the American Correctional Association Accreditation Process. May 2011.

Vera Institute of Justice: Segregation Reduction Project. Design and Implement Segregation Policy Changes for Illinois, Maryland, and New Mexico Department of Corrections. July 2010 to present.

Georgia Department of Corrections. Evaluated Correctional Staffing at Selected Georgia Department of Corrections Prisons. July 2007.

Georgia Department of Corrections. Trained Executive Staff on Staffing Strategies and submitted Recommendations for Staffing Correctional Facilities. November-December 2006.

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF LEE)

Levi Bing) Case No.2011-CP-31-216
)
Plaintiffs,)
)
v.) **Affidavit:**
) **James Aiken**
)
South Carolina Department of Corrections,)
)
)
)
Defendant.)

**Affidavit:
James Aiken**

AFTER BEING DULY SWORN, THE AFFIANT STATES AS FOLLOWS:

2. I have over forty-five (45) years of experience in correctional administration, correctional facility operations and management, and correctional facility inspection and assessment. I have served as the Director of the Bureau of Corrections in the U. S. Virgin Islands, the Commissioner of the Indiana Department of Correction, Deputy Regional Administrator of the Midlands Correctional Region for the South Carolina Department of Corrections (with responsibility for 16 correctional institutions in the Midlands region including maximum, medium, work release and shock probation institutions), Warden of Central Correctional Institution in Columbia, South Carolina, Warden of the Women's Correctional Institution for the South Carolina Department of Corrections, Deputy Warden of Institutional Operations at the Manning Correctional Institution for the South Carolina Department of Corrections, Administrative Assistant at the Manning Correctional Institution for the South Carolina Department of Corrections, and a Social Worker/Drug Abuse Treatment Program at the Manning Correctional Institution for the South Carolina Department of Corrections.

3. I have been qualified to testify as an expert in the field of correctional facility operations, management, planning, inspection, assessment and safety by the federal and state courts of South Carolina.

4. I have been retained by counsel for the Plaintiff in this matter to review the assault of Mr. Bing on June 7, 2010 in the Lee Correctional Institution.

5. I have reviewed the deposition of the Plaintiff, the documents originally produced by the Defendant in discovery in this matter as provided by counsel, the supplement production of documents by the Defendant, the affidavit of Brenda Scott Hickmon, Johnathan Goodman and Emmitt Sparkman.

6. Based upon my review of these materials and my experience in correctional facility operations, management, security and assessment, it is my opinion, to a reasonable degree of professional certainty, that the assault on Mr. Bing was foreseeable to employees of the South Carolina Department of Corrections, and with the exercise of minimum and basic care by the Department of Corrections, the assault could have been prevented.

7. Lee Correctional Facility is a maximum security correctional facility operated by the South Carolina Department of Corrections. The Darlington Unit of Lee Correctional Facility is a maximum security unit.

8. Regardless of the prison setting, the Department of Corrections has a duty to those in custody to maintain a safe environment.

9. Based on my assessment of the materials and discussion with counsel, on June 7, 2010, the Plaintiff was attacked inside his locked cell by his cellmate, Willis Dorsey. Mr. Dorsey began the attack by dumping scalding water he had heated onto the Plaintiff. Mr. Dorsey heated the water in a "hot pot" which was issued to him by the prison canteen and which he was allowed to keep and use inside his locked cell while the Plaintiff was locked in with him. As a result of the attack, the Plaintiff was scalded and suffered partial or full thickness burns.

10. Prior to June 7, 2010, the Plaintiff was placed in cell 1225 in the Darlington Unit of Lee Correctional facility. The Plaintiff shared this cell with another inmate, Willis Dorsey.

11. The Plaintiff and Willis Dorsey had both been recently assigned to this cell.

12. After sharing a cell for a short while, the Plaintiff testified that he was warned by one of the corrections officer in the unit that Willis Dorsey was engaging in drug use while the Plaintiff was out of the cell. The Plaintiff was advised by the same corrections officer that he should request a cell change or else he could be charged if the cell were raided and drugs or other contraband was found.

13. The Plaintiff testified that he then went to the lieutenant of the unit and requested a cell change due to the fact that his roommate might be involved in illegal activity in the cell. This event is corroborated by the Affidavit of Lieutenant Johnathan Goodman produced by the Defendant.

14. Based upon this information, the Plaintiff and Lieutenant Goodman then contacted Ms. Brenda Scott Hickmon to request a cell change for the Plaintiff.

15. The Plaintiff was advised by Ms. Hickmon that he was not eligible for a cell transfer because pursuant to the SCDC policy, he had not been in his current cell for more than six months.

16. At this point, based on information as provided by counsel, it is my opinion that a properly trained corrections officer and or prison administrator either knew or should have known that the Plaintiff's actions in requesting a cell change due to his cellmate being involved in illegal activity would have marked him as a snitch and made him a target for retaliation or physical violence from Willis Dorsey.¹

¹ In his affidavit, Mr. Sparkman avers that "he finds it interesting" that Mr. Bing testified "that he did not fear for his life or safety" at the time he requested a cell change. This is hardly surprising, since Mr. Bing has not been properly trained in the operation and management of a maximum security correctional facility. However, the fact that Mr. Bing was not afraid is exactly the reason that he should have been warned of the danger and protected from it, even if he was put in protective custody against his will, by a correctional officer who has been properly trained to recognize the danger presented by this scenario.

17. It is well known in corrections facilities that heated liquids can be used as a weapon. In a maximum security prison setting such as the Darlington unit in the Lee Correctional facility, inmates should not have been permitted to possess, in their locked cell and outside of the immediate sight and control of security staff, any instruments such as "hot pot" capable of heating water to scalding temperatures.

18. The Plaintiff should have been warned or advised that he might be perceived as a snitch and subject to retaliation or violence from Willis Dorsey.

19. The Plaintiff should have been placed in protective custody regardless of whether he wanted it or thought he needed it himself. In a correctional setting, especially a maximum security setting, an untrained inmate is not the proper arbiter of whether he needs protection or not. A properly trained correctional officer is. The fact that the lieutenant deferred his responsibility for the Plaintiff's safety back to the Plaintiff is an indication not only of a lack of proper training but an abdication of the Department of Correction's duty for the safety of the inmates under its control. The Plaintiff was under the custody, security and control of the South Carolina Department of Corrections and they had the responsibility and authority to ensure the Plaintiff's protection.

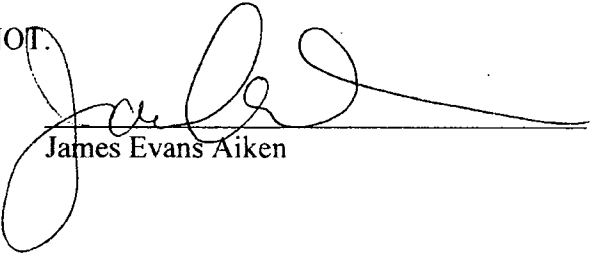
20. Alternatively, the Department should have reviewed, identified (from both inmate's inventory of possessions) and taken control of and removed any instruments in Willis Dorsey's cell capable of being weaponized and causing injury (i.e., the "hot pots" capable of heating water to scalding temperatures).

21. The Plaintiff should not have been locked inside a cell with Willis Dorsey with an instrument, in this case issued directly to Willis Dorsey by the Department of Corrections, capable of causing the injuries inflicted upon the Plaintiff.

22. In my opinion to a reasonable degree of professional certainty, the failure of the Department of Corrections and its employees to expend the elementary effort necessary to

undertake any of these steps to protect what should have been a known danger to the Plaintiff .
significantly caused or contributed to the severity of the injuries the Plaintiff received in this
attack.

FURTHER, THE AFFIANT SAYETH NOT.


James Evans Aiken

Sworn before me this 6 day of June, 2018
Jessica Truett
Notary Public for the State of North Carolina
My commission expires: Sept 30, 2020

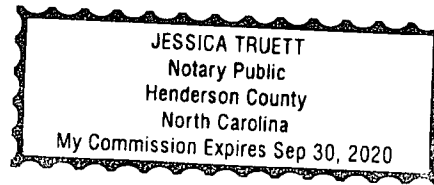


EXHIBIT #1

CANT0012 - INMATE PURCHASE SUMMARY REPORT**Inmate: 308051 -LEVI BING, JR.****Purchase Dates: 04/01/08 - 09/30/08****6/10/2015****Page 3 of 3**

<u>ITEM#</u>	<u>ITEM DESCRIPTION</u>	<u>PRICE</u>	<u>QTY</u>	<u>TOTAL</u>	<u>LOC</u>	<u>CANTEEN NAME</u>	<u>%SALES</u>
52074	CORN, WHOLE KERNEL, 15 OZ	0.97	3	2.91	0551 -01	LEE CANTEEN WEST	0.304%
52080	MUSHROOMS, CANNED	1.11	2	2.22	0551 -01	LEE CANTEEN WEST	0.232%
60103	CLOSE-UP 6 OZ TOOTHPASTE	2.08	2	4.16	0551 -01	LEE CANTEEN WEST	0.434%
60206	DISPOSABLE RAZORS - TWIN BLADE	0.18	5	0.90	0551 -01	LEE CANTEEN WEST	0.094%
60400	DIAL ROLL-ON, 1.5 OZ	1.03	1	1.03	0551 -01	LEE CANTEEN WEST	0.107%
60509	JERGEN'S LOTION	3.60	1	3.60	0551 -01	LEE CANTEEN WEST	0.376%
60512	BABY POWDER, 4 OZ.	0.80	1	0.80	0551 -01	LEE CANTEEN WEST	0.083%
60810	IRISH SPRING SOAP, 3.5 OZ	0.70	6	4.20	0551 -01	LEE CANTEEN WEST	0.438%
60817	AJAX DISH SOAP (LIQUID)	1.75	1	1.75	0551 -01	LEE CANTEEN WEST	0.183%
70006	SHOWER SHOE, XL-DLX	2.79	1	2.79	0551 -01	LEE CANTEEN WEST	0.291%
70338	SURGE PROTECTOR (SINGLE OUTLET)	2.77	1	2.77	0551 -01	LEE CANTEEN WEST	0.289%
70409	STAMPED ENVELOPE (FOR TEMPORA	0.51	2	1.02	0551 -01	LEE CANTEEN WEST	0.106%
70410	BROWN CLASP ENVELOPES, LARGE	0.13	2	0.26	0551 -01	LEE CANTEEN WEST	0.027%
70411	LOOSE LEAF NOTEBOOK PAPER	1.97	1	1.97	0551 -01	LEE CANTEEN WEST	0.206%
70412	STAMPED ENVELOPES #10, LEGAL SIZ	0.50	5	2.50	0551 -01	LEE CANTEEN WEST	0.261%
70490	BATTERIES AA PANASONIC 2/PK	1.75	1	1.75	0551 -01	LEE CANTEEN WEST	0.183%
70491	BATTERIES AAA PANASONIC 2/PK	1.75	2	3.50	0551 -01	LEE CANTEEN WEST	0.365%
70720	AIR FRESHNERS (HANGING)	0.73	1	0.73	0551 -01	LEE CANTEEN WEST	0.076%
70733	TOTE BAG, MESH	3.34	1	3.34	0551 -01	LEE CANTEEN WEST	0.349%
71045	(DISC) HOT POT, BRUSHY CREEK	18.08	1	18.08	0551 -04	LEE CANTEEN EAST	1.887%
71630	SZ 12 MEN/ 14 WOMEN TAN OXFORD	41.83	1	41.83	0551 -04	LEE CANTEEN EAST	4.365%
Total Purchases			1230	\$958.36			

CANT0012 - INMATE PURCHASE SUMMARY REPORT

Inmate: 308051 -LEVI BING, JR.

Purchase Dates: 10/01/08 - 03/31/09

6/10/2015

Page 3 of 3

ITEM#	ITEM DESCRIPTION	PRICE	QTY	TOTAL	LOC	CANTEEN NAME	%SALES
60614	DOO RAGS	2.77	1	2.77	0551 -01	LEE CANTEEN WEST	0.296%
60810	IRISH SPRING SOAP,3.5 OZ	0.74	10	7.40	0551 -01	LEE CANTEEN WEST	0.791%
60812	JERGENS SOAP, 4.75 OZ	0.45	1	0.45	0551 -04	LEE CANTEEN EAST	0.048%
70007	X STRAP LGE SHWR SHOE	1.08	1	1.08	0551 -01	LEE CANTEEN WEST	0.115%
70010	BLACK SHOE POLISH	1.78	1	1.78	0551 -04	LEE CANTEEN EAST	0.190%
70020	PLASTIC ID HOLDER	0.90	1	0.90	0551 -01	LEE CANTEEN WEST	0.096%
70021	CLIP FOR ID HOLDER	0.16	1	0.16	0551 -01	LEE CANTEEN WEST	0.017%
70111	TUBE SOCKS	0.93	1	0.93	0551 -04	LEE CANTEEN EAST	0.099%
70112	WASH CLOTHS	0.36	1	0.36	0551 -01	LEE CANTEEN WEST	0.038%
70167	MENS BRIEF LGE 36-38	7.50	1	7.50	0551 -01	LEE CANTEEN WEST	0.802%
70403	LEGAL PADS, 8 1/2 X 11	1.06	1	1.06	0551 -01	LEE CANTEEN WEST	0.113%
70405	BALL POINT PENS-BLACK	0.22	1	0.22	0551 -04	LEE CANTEEN EAST	0.024%
70410	BROWN CLASP ENVELOPES, LARGE	0.15	2	0.30	0551 -01	LEE CANTEEN WEST	0.032%
70411	LOOSE LEAF NOTEBOOK PAPER	2.28	1	2.28	0551 -01	LEE CANTEEN WEST	0.244%
70412	STAMPED ENVELOPES #10, LEGAL SIZ	0.51	4	2.04	0551 -01	LEE CANTEEN WEST	0.218%
70426	TYPING PAPER	4.38	1	4.38	0551 -01	LEE CANTEEN WEST	0.468%
70491	BATTERIES AAA PANASONIC 2/PK	1.75	2	3.50	0551 -01	LEE CANTEEN WEST	0.374%
70716	SC PLAYING CARDS	1.66	1	1.66	0551 -01	LEE CANTEEN WEST	0.177%
70720	AIR FRESHNERS (HANGING)	0.73	2	1.46	0551 -01	LEE CANTEEN WEST	0.156%
70733	TOTE BAG, MESH	3.47	1	3.47	0551 -04	LEE CANTEEN EAST	0.371%
71005	RADIO, SONY SRF-M35 CLEAR DIG	46.13	1	46.13	0551 -04	LEE CANTEEN EAST	4.930%
71015	ALARM CLOCK, BATTERY, WESTCLO	7.09	1	7.09	0551 -04	LEE CANTEEN EAST	0.758%
71049	HOT POT, CLEAR	25.16	1	25.16	0551 -04	LEE CANTEEN EAST	2.689%
Total Purchases			1021	\$935.66			

BING CANTEEN RECORDS 025

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EXHIBIT #2

CANT0012 - INMATE PURCHASE SUMMARY REPORT

Inmate: 222965 - WILLIS DORSEY

Purchase Dates: 04/01/08 - 09/30/08

6/11/2015

Page 1 of 1

ITEM#	ITEM DESCRIPTION	PRICE	QTY	TOTAL	LOC	CANTEEN NAME	%SALES
20017	SPRITE (C) BY 8'S	0.44	2	0.88	0551 -01	LEE CANTEEN WEST	3.814%
41018	HOT N HONEY CHEESE CURL	0.32	7	2.24	0551 -01	LEE CANTEEN WEST	9.710%
42021	NUTTY BARS-LITTLE DEBBIE	1.62	1	1.62	0551 -01	LEE CANTEEN WEST	7.022%
42022	OATMEAL CAKES-LITTLE DEBBIE	1.42	2	2.84	0551 -01	LEE CANTEEN WEST	12.310%
51107	LIGHT LUNCHES-BEEF	0.59	1	0.59	0551 -01	LEE CANTEEN WEST	2.557%
52029	GRAPE JELLY, 10 OZ	1.74	1	1.74	0551 -01	LEE CANTEEN WEST	7.542%
52030	HOME BRAND PEANUT BUTTER, 12 OZ	1.53	1	1.53	0551 -01	LEE CANTEEN WEST	6.632%
52047	INSTANT RICE	0.97	2	1.94	0551 -01	LEE CANTEEN WEST	8.409%
60400	DIAL ROLL-ON, 1.5 OZ	1.03	1	1.03	0551 -01	LEE CANTEEN WEST	4.465%
60513	PETROLEUM JELLY	1.10	1	1.10	0551 -01	LEE CANTEEN WEST	4.768%
60516	COCOA BUTTER STICK, 1 OZ	1.22	1	1.22	0551 -01	LEE CANTEEN WEST	5.288%
60629	PROFESSIONAL HAIR BRUSHES	1.14	1	1.14	0551 -01	LEE CANTEEN WEST	4.941%
60812	JERGENS SOAP, 4.75 OZ	0.43	4	1.72	0551 -01	LEE CANTEEN WEST	7.456%
60914	SOAP DISHES #10005	0.30	1	0.30	0551 -01	LEE CANTEEN WEST	1.300%
60917	TOOTHBRUSH HOLDERS #10008	0.21	1	0.21	0551 -01	LEE CANTEEN WEST	0.910%
70405	BALL POINT PENS-BLACK	0.21	2	0.42	0551 -01	LEE CANTEEN WEST	1.821%
70411	LOOSE LEAF NOTEBOOK PAPER	1.97	1	1.97	0551 -01	LEE CANTEEN WEST	8.539%
70726	SOLID TUBULAR CLOTHS HANGERS, P	0.29	2	0.58	0551 -01	LEE CANTEEN WEST	2.514%
Total Purchases			32	\$23.07			

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DORSEY CANTEEN RECORD 001

EXHIBIT #3

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INVESTIGATIONS DIVISION
CASE OPENING

ASSIGNED CASE

02-1483

SUBJECT(S)	I/M DORSEY WILLIS	EMP # OR I/M #	I/M 222965	R	B	S	M
	C/O MARIO JONAS	EMP # OR I/M #	EMP. 49061	R	B	S	M
	C/O MARTIN SANTIMAW	EMP # OR I/M #	EMP. 47891	R	W	S	M
	LT. JOHNATHAN GOODMAN	EMP # OR I/M #	EMP 16051	R	B	S	M
		EMP # OR I/M #		R		S	
CASE CODE & OFFENSE:	2 - inmate on inmate assault						
LOCATION:	LEE CORRECTIONAL INSTITUTION						
INCIDENT DATE:	JUNE 7, 2010						
COMPLAINANT:	I/M LEVI BING JR.	EMP # OR I/M #	I/M 308051	R	B	S	M
		EMP # OR I/M #		R		S	
		EMP # OR I/M #		R		S	
INVESTIGATOR:	ROBERT STUCKEY						
TODAY'S DATE:	JUNE 8, 2010						
DETAILS OF INCIDENT:							

On June 7, 2010, Inv. Robert Stuckey was informed that I/M Dorsey Willis, SCDC 222964, B/M threw boiling water on his cell mate, I/M Levi Bing Jr., SCDC 308051, B/M. Inv. Stuckey was advised that C/O Mario Jonas, Emp. 49061, heard I/m Bing banging on his cell door shouting for help. When C/O Jonas arrived at the cell door he could see that he had been burned in some way. C/O Jonas called C/O Martin Santimaw, Emp. 47891, to come assist him get I/M Bing to medical. Lt. Johnathan Goodman, Emp. 16051, also came to assist. Lt. Goodman stated in his incident report that I/M Bing told him that I/M Willis threw hot water on him while he was lying in his bed. I/M Bing was medevacted by helicopter to a local hospital. Inv. Stuckey was advised that I/M Bing is now at a Georgia burn center with second and third degree burns on his arms and chest. I/M Willis has been charged with assault administratively and criminal charges may be pending.

ELECTRONICALLY FILED - 2018 Jun 07 5:26 PM - LEE - COMMON PLEAS - CASE#2014CP3100100

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
OFFICER OF THE INSPECTOR GENERAL
DIVISION OF INVESTIGATIONS

Report of: Ladell C. Grice
Date of Report: February 1, 2011
Case Number: 02-1483

Status: C

TITLE:
Subject(s): Inmate Willie Dorsey, SCDC #222965, B/M
Victim: Inmate Levi Bing, SCDC #308051, B/M
Category: Assault
Location: Lee Correctional Institution
Date: June 7, 2010

INVESTIGATIVE REPORT

SYNOPSIS OF INVESTIGATION:

On June 7, 2010, inmate Levi Bing, SCDC 308051, suffered severe burns to his body following an altercation with his roommate inmate Willie Dorsey, SCDC #222965, ins de Darlington South Room #1225 at Lee Correctional Institution. It was reported that Bing suffered 2nd Degree burns to the left cheek, neck, chest, back and arms as a result of the incident. Bing was transported by EMS and later transferred to the Augusta Burn Center in Augusta, Georgia for medical treatment.

Prior to the incident, Bing and Dorsey were secured in their assigned cell because of institution count procedures. The incident occurred during count time and preliminary review of Bing's SCDC medical records revealed he reported that Dorsey heated water in the microwave and threw it on Bing while he was lying down.

On June 7, 2010, inmate Willie Dorsey was placed in the Special Management Unit as a result of the incident pending administrative charges for Striking an Inmate with or without a Weapon.

In an interview with Investigator Jeff Bentley, Bing stated he was sitting on his bed reading a magazine when Dorsey entered the cell, filled his hot pot with water and plugged it in the electrical outlet over the toilet. After the second officer completed the count, inmate Willie Dorsey threw hot water striking the left side of his face, neck, chest and leg. He and Dorsey wrestled after he was burned and proceeded to kick on the cell door to get the attention of the officers in the unit.

Bing stated that Dorsey produced a homemade weapon (shank) and stated "you know what I want". He grabbed the weapon and suffered cuts inside his palm.

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02-1483

02-1483 Levi Bing

SOUTH CAROLINA
DEPARTMENT OF CORRECTIONS
DIVISION OF INVESTIGATIONS

VOLUNTARY STATEMENT

I, _____, do give the following statement free y and voluntarily.
This statement is true and correct to the best of my knowledge.

Miranda Rights given and waived;

_____ YES

_____ NO

"I was housed at Lee Correctional Institution, Darlington South Unit, Room 1225. The roster may show that I was in room 2251, but Lt. Goodman let me stay in 1225 because it was down stairs and a bottom bunk because of the hernia surgery I had a week or so ago. He had it written in the log book in the dorm and was going to make the adjustments with Operations later. They had moved I/M Willis Dorsey into my room about 3 weeks ago. We had not been getting along very well because he smoked marijuana in the room and was the kind of roommate that could cause problems with security. We mostly stayed out of each other's way. On June 7th, I had just come back from the canteen and had a bag of food. It was right at the midday count time. Dorsey barely made it in the room before Officer Santimaw locked the door. Dorsey came in and put some water in his hot pot and plugged it in the receptical over the toilet. I was sitting on my bed, turned slightly toward the right, reading a magazine. Dorsey was near the desk but I couldn't tell what he was doing because of a towel I had hanging at the foot of my bed. Some time shortly after the second officer had counted, Dorsey threw the boiling water on me without warning. It hit me mostly on the left side of my face and neck and some went on my chest and legs. I was stunned but when I looked up, he had a shank in his hand and said, "you know what I want." I jumped up and grabbed the knife with my left hand, which caused the cuts in my palm, and his other arm and we were wrestling. I finally made it to the door still holding on to him and started kicking to get somebody's attention. Officer Jonas came first and looked in the window. Officer Santimaw got there shortly after that and opened the door. That's when I let go of Dorsey and came out of the room. I could hear Dorsey saying that we had been wrestling and the hot water spilled on me by accident but that was a lie. I don't know what happened to the shank. It felt about an inch wide and had white cloth on the handle."

signature

5003

CASE NUMBER: 02-1483
SYNOPSIS, CONTINUED

No incident reports or documents were submitted reference the discovery of any homemade weapons (shanks) found during a search of the cell after the incident. No documentation was discovered in Bing's medical records regarding lacerations to the hand (palm area) as a result of this incident.

Inmate Willie Dorsey, SCDC #222965, was advised of his Miranda Rights and he acknowledged that he understood them and wanted to talk without having an attorney present. Dorsey stated that he and Bing got into a physical altercation because when he climbed up to the top bunk he was having to make contact with Bing's bed. Dorsey stated that during the altercation, Bing grabbed him and he pushed him away. Dorsey stated that as Bing stumbled backwards into the corner near the toilet his body got entangled in the cord of the hot pot. The hot pot turned over and hot water spilled on Bing's body. Dorsey denied throwing hot water on Bing or threatening him with a weapon during the altercation.

On June 22, 2010, inmate Dorsey appeared before the Disciplinary Hearing Officer on the charge of Striking an Inmate With or Without a Weapon, Section 810, Inmate Disciplinary Rules and Procedures. Dorsey pled not guilty and was convicted by Hearing Officer Sharon Patterson. Dorsey received the following sanction: 6 Days Loss of Good Time 180 Days Disciplinary Detention (15 Days PHD Credit), Canteen, Telephone, Visitation 165 days + 165 days (345 Days Disciplinary Detention) and \$50.00 Restitution.

On June 30, 2010, Dorsey was requested to submit to a Polygraph Examination by Examiner Nicolette Coggins regarding having thrown hot water on Bing. The examination was not administered because Dorsey refused to sign the polygraph consent forms and his uncooperative behavior.

Numerous contacts were made with Attorney Bud Fairy, Dean Law Firm, regarding his client inmate Levi Bing being administered a polygraph examination regarding this incident. Fairy expressed reluctance in having Bing submit to an examination regarding the incident without being present during the examination or something in writing regarding the examination being related only to the scope of this investigation.

Due to the lack of evidence to pursue criminal charges, Assistant Solicitor John Gentry refused prosecution in Lee County General Sessions Court.

It is recommended that this case be placed in a closed status. No further leads to follow.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
DIVISION OF INVESTIGATIONS
POLYGRAPH REPORT

CASE NUMBER: 02-1483
 POLYGRAPH NUMBER: 29-2225
 EXAMINEE: Inmate Willis Dorsey, SCDC #222965, E/M
 DATE: June 30, 2010
 EXAMINER: Nicolee Coggins
 TRANSCRIPTION DATE: June 30, 2010
 EXAMINATION RESULTS: Did Not Test (Refused)

Inmate Willis Dorsey, Lee Correctional Institution, was advised of the identity of the examiner and that he was requested to submit to an interview and polygraph concerning having deliberately thrown hot water on inmate Levi Bing. He was advised of his Miranda Rights but refused to sign a waiver of those rights. He was also advised of his rights concerning his consent to be polygraphed, and signed a refusal of those rights. He also signed a separate refusal form. He made the following comments:

He wants to call his parents and his attorney, Henry Anderson from Florence, or Heather Cannon from Myrtle Beach. He has not been able to call his parents or his attorney because of phone restrictions. He received a threatening note under his door and gave the note to Investigator Grice. The note said that there was a "price on his head of several thousand dollars." He was told that the "hit" might have been set up by Bing, or Bing's family and friends. Bing is said to be a Folk gang member. His roommate, Michael Porterfield, told him the he is also a member of the Folk gang. He believes Porterfield is on lockup for assaulting an officer. He has requested protective custody several times, even writing to the warden, but no one has listened to him.

He and Bing had argued because he had put his foot on Bing's bed to climb up into the top bunk. He was supposed to have the bottom bunk because of a recent severe knee injury. Bing was established on the bottom bunk, so he just took the top bunk to avoid an argument. When he stepped on the corner of Bing's bed, Bing went crazy. He and Bing began to wrestle. At one point, he had pushed Bing back against the wall, but Bing's foot got tangled in the cord to the coffeepot and jerked it off of the shelf near the commode. Bing fell over the commode, half-sitting, half-laying across it. The coffeepot fell off of the shelf and poured out over Bing. Bing shoved it away, but the water in it had poured out over his left shoulder and body. He had not been splattered by the hot water. He does not know how Bing got the cuts on his hands.

A polygraph examination was not administered to the above individual due to:

- ☒ XX Examinee refusal to sign consent forms
- ☒ XX Examinee uncooperative behavior
- ☐ Pre-test confession
- ☐ Examiner declined to administer the examination due to medical/mental condition of the examinee

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
DIVISION OF INVESTIGATIONS

REPORT OF INVESTIGATIVE ACTIVITY

CASE NUMBER: 02-1483
DATE: December 1, 2010
LOCATION: Headquarters: Columbia, SC
INVESTIGATOR: Ladell Grice
TRANSCRIPTION DATE: December 1, 2010

December 1, 2010

On this date, Investigator Ladell Grice received a telephone call from Attorney Bud Fairy, Dean Law Firm, regarding inmate Levi Bing being administered a polygraph examination as a part of this investigation. Fairy stated that he is reluctant at this time to have Bing submit to a polygraph examination. Fairy requested time to consider the matter and will call on December 3, 2010 with his decision.

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SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
OFFICE OF INVESTIGATIONSREPORT OF INTERVIEW

CASE NUMBER: 02-1483
INTERVIEWEE: Inmate Levi Bing, SCDC #308051, B/M
DATE: June 16, 2010
LOCATION: Kirkland Correctional Institution
INVESTIGATOR: Jeff Bentley
DATE TRANSCRIBED: June 24, 2010

Inmate Levi Bing, SCDC #308051, was advised of the identity of interviewing investigator and the nature of the interview. Bing provided the following information in form of a written statement:

I was housed at Lee Correctional Institution, Darlington South Unit, Room 1225. The roster may show that I was in room 2251, but Lt. Goodman let me stay in 1225 because it was down stairs and a bottom bunk because of the hernia surgery I had a week or so ago. He had it written in the log book in the dorm and was going to make the adjustments with Operations later. They had moved I/M Willis Dorsey into my room about 3 weeks ago. We had not been getting along very well because he smoked marijuana in the room and was the kind of roommate that could cause problems with security. We mostly stayed out of each other's way. On June 7th, I had just come back from the canteen and had a bag of food. It was right at the midday count time. Dorsey barely made it in the room before Officer Santimaw locked the door. Dorsey came in and put some water in his hot pot and plugged it in the receptical over the toilet. I was sitting on my bed, turned slightly toward the right, reading a magazine. Dorsey was near the desk but I couldn't tell what he was doing because of a towel I had hanging at the foot of my bed. Some time shortly after the second officer had counted, Dorsey threw the boiling water on me without warning. It hit me mostly on the left side of my face and neck and some went on my chest and legs. I was stunned but when I looked up, he had a shank in his hand and said, "you know what I want." I jumped up and grabbed the knife with my left hand, which caused the cuts in my palm, and his other arm and we were wrestling. I finally made it to the door still holding on to him and started kicking to get somebody's attention. Officer Jonas came first and looked in the window. Officer Santimaw got there shortly after that and opened the door. That's when I let go of Dorsey and came out of the room. I could hear Dorsey saying that we had been wrestling and the hot water spilled on me by accident but that was a lie. I don't know what happened to the shank. It felt about an inch wide and had white cloth on the handle.

S/ Levi Bing, Jr., #308051

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SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
OFFICE OF INVESTIGATIONSREPORT OF INTERVIEW

CASE NUMBER: 02-1483
INTERVIEWEE: Inmate Willis Dorsey, SCDC #222965, B/M
DATE: June 23, 2010
LOCATION: Lee Correctional Institution
INVESTIGATOR: Ladell C. Grice & Robert Stuckey
DATE TRANSCRIBED: June 24, 2010

Inmate Willis Dorsey, SCDC #222965, was advised of the identity of interviewing investigator and the nature of the interview. Dorsey provided the following information:

He was moved from upstairs to downstairs for medical reasons and assigned to Darlington South Unit, Room 1225. He was assigned to the cell with inmate Levi Bing. He was assigned to the bottom bunk because of medical problems with his knee; however, he slept on the top bunk. Bing had been assigned to the cell first and he did not want to cause any problems so he slept up top.

He has previously been involved in several verbal altercations with Bing because of how he climbed up to the top bunk. He had to step on a portion of the bottom bunk's frame where Bing slept to get to the top bunk. Bing told him that he needed to find another way to get up to the top bunk and he tried to tell him that there was not another way to get up top without using the bottom bed frame.

He and Bing had been outside for recreation and when they returned to their cell, Bing plugged in his hot pot. He got up on his bed and laid there for a while before having to use the rest room. He got down, used the toilet and proceeded back to his assigned bunk.

He placed his foot on Bing's bed to get in his bunk and was grabbed by Bing. His foot was positioned on the frame near Bing's face. The placement of his foot caused a physical altercation between him and Bing. They tussled in the room for a few minutes, pushing and shoving each other. Bing swung at him and he grabbed Bing's arm in an attempt to block the hit. He pushed Bing away from him and he stumbled backwards into the corner near the toilet. Bing's body got tangled in the cord to the hot pot and the hot water from the pot spilled on Bing's body.

He did not throw the hot water on Bing during the altercation.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
DIVISION OF INVESTIGATIONS

REPORT OF INVESTIGATIVE ACTIVITY

CASE NUMBER: 02-1483
DATE: February 1, 2011
LOCATION: Headquarters: Columbia, SC
INVESTIGATOR: Ladell Grice
TRANSCRIPTION DATE: February 1, 2011

On this date, Investigator Ladell Grice contacted Assistant Solicitor John Gentry, Lee County Solicitor Office in Bishopville, SC and information regarding this investigation was presented. Upon review of the information presented, Gentry stated that all aspects of the investigation were explored and the case lack prosecutorial merit for presentation to the Grand Jury or General Sessions Court.

As of today's date, Attorney Bud Fairy, Dean Law Firm, has failed to respond as of January 24, 2011, regarding his client, inmate Levi Bing, being administered a polygraph examination as a part of this investigation.

The following information was taken from an automated duty roster for the dates indicated.

Darlington Unit – June 6, 2010

A1 Shift (0645-1900): SGT Derrick Anderson
CO Larry Durant
CO Mario Jonas
CO Martin Santimaw

A2 Shift (1845-0700): CO Melvin Jackson

Darlington Unit – June 7, 2010

A1 Shift (0645-1900): SGT Derrick Anderson *
CO Larry Durant *
CO Mario Jonas *
CO Martin Santimaw *

C Shift (0800-1600): Lt Johnathan Goodman *

A2 Shift (1845-0700): CO Martin Barwick
CO Melvin Jackson

Darlington Unit – June 8, 2010

B1 Shift (0645-1900): CO Albert Bates, Jr.
CO Chase Dinkins
SGT James Jenkins

C Shift (0800-1600): Lt Johnathan Goodman

B2 Shift (1845-0700): CO James Lucas, Jr.
CO Quintero Taylor

* Denotes staff on duty at the time of the incident.

MINI100D SCDC OFFENDER MANAGEMENT SYSTEM
 OMMINSYA MANAGEMENT INFORMATION NOTES (MINS)
 DISPLAY MIN

PHASE: DISTRIBUTED

MIN#: 10-06-0551-0020 INCIDENT DATE/TIME> 06/07/10 13:40

SUBMITTED BY> ARENDA THOMAS SUBMITTING INST.> 0551 LEE

LOC OF INCIDENT> 37 MINIMUM LIVING AREA

SER.INJURY:

CODE:

1> 1205 I/M ON I/M - THROWN OBJECT/SUBSTANCE	NUM 1> 001	SI 1> Y
2> 2910 INJURY - MAJOR	NUM 2> 000	SI 2>
3> 3000 MEDICAL/MENTAL HEALTH	NUM 3> 000	SI 3>
4> 3900 NON-SCDC SERVICE RESPONSE	NUM 4> 000	SI 4>
5>	NUM 5> 000	SI 5>
6>	NUM 6> 000	SI 6>

INVOLVEMENT: > X INMATE > X EMPLOYEE > VISITOR > OTHER INDIVIDUAL

ID	NAME	R/S	AGE
00222965	DORSEY, WILLIS -	B/M	25
00308051	BING, JR., LEVI -	B/M	30
EMPLOYEE	SANTIMAW, MARTIN		
EMPLOYEE	JONAS, MARIO		
EMPLOYEE	SIMON JR, IZELL		
EMPLOYEE	SMITH, KEESHA		
EMPLOYEE	ANDERSON, DERRICK		
EMPLOYEE	SAUERS, RYAN		
EMPLOYEE	WILLIAMS, JIMMIE		

MIN TEXT.>

ON MONDAY THE 7TH OF JUNE IN 2010 AT LEE CORRECTIONAL INSTITUTION AT APPROXIMATELY 1:40PM, OFFICER MARIO JONAS HAD COMPLETED COUNTING THE DARLINGTON UNIT SOUTH WING. OFFICER JONAS RESPONDED TO A BANGING ON CELL DOOR #1225. OFFICER JONAS OBSERVED INMATE LEVI BING JR. #308051- B/M-MI3-AGE 28 AT THE CELL DOOR ASKING FOR HELP. OFFICER JONAS CONTACTED OFFICER MARTIN SANTIMAW WHO WAS CONDUCTING THE COUNT ON THE NORTH WING. OFFICER JONAS TOLD OFFICER SANTIMAW THERE WAS A MEDICAL EMERGENCY. BOTH OFFICERS REPORTED TO CELL #1225. THEY OBSERVED INMATE BING WITH SEVERE BURNS ON HIS UPPER BODY. OFFICER SANTIMAW OPENED THE CELL DOOR ALLOWING INMATE BING TO EXIT. OFFICER SANTIMAW ASKED INMATE WILLIS DORSEY #222965- B/M-MI3-AGE 24 WHAT HAPPENED? INMATE DORSEY STATED, "THEY WERE TUSSLING." OFFICER SANTIMAW CALLED FOR 1ST RESPONDERS. LT KEESHA SMITH, SGT DERRICK ANDERSON AND SGT JIMMIE WILLIAMS RESPONDED. LT SMITH AND SGT ANDERSON EXITED WITH INMATE BING ESCORTING HIM TO MEDICAL. SGT WILLIAMS EXITED WITH INMATE DORSEY. INMATE BING AND INMATE DORSEY WERE EXAMINED BY LPN DONNA WIGGINS AND LPN S. BROWN. INMATE BING REQUIRED ADDITIONAL TREATMENT. EMS ARRIVED AT APPROXIMATELY 1:45PM, FIRE DEPARTMENT AT APPROXIMATELY 2:00PM IN THE VISITOR PARKING LOT AND THE AIR VAC MEDICAL HELICOPTER AT APPROXIMATELY 2:17PM. INMATE

WAS TRANSPORTED TO THE AUGUSTA BURN CENTER. OFFICER IZEL SIMON WAS IN THE AIR VAC HELICOPTER. OFFICER RYAN SAUERS WAS IN THE ESCORT VEHICLE. THE MEDICAL UNITS AND FIRE DEPARTMENT DEPARTED AT APPROXIMATELY 2:40PM. INMATE BING INFORMED LT JONATHAN GOODMAN, DARLINGTON UNIT SUPERVISOR, HIS CELLMATE, INMATE DORSEY, DASHED HOT WATER ON HIM WHILE HE WAS SITTING ON THE BED." INMATE DORSEY STATED, "HE AND INMATE BING WERE TUSSLING." INMATE DORSEY WAS PLACED IN S.M.U. THE EMERGENCY ACTION CENTER AND ALL APPROPRIATE OFFICIALS WERE NOTIFIED.

South Carolina Department of Corrections
Investigative Report

ELECTRONICALLY FILED - 2018 Jun 07 5:56 PM - LEE - COMMON PLEAS - CASE#2014CP3100100

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
OFFICER OF THE INSPECTOR GENERAL
DIVISION OF INVESTIGATIONS

Report of: Ladell C. Grice
Date of Report: February 1, 2011
Case Number: 02-1483

Status: C

TITLE:
Subject(s): Inmate Willie Dorsey, SCDC #222965, B/M
Victim: Inmate Levi Bing, SCDC #308051, B/M
Category: Assault
Location: Lee Correctional Institution
Date: June 7, 2010

INVESTIGATIVE REPORT

SYNOPSIS OF INVESTIGATION:

On June 7, 2010, inmate Levi Bing, SCDC 308051, suffered severe burns to his body following an altercation with his roommate inmate Willie Dorsey, SCDC #222965, in the Darlington South Room #1225 at Lee Correctional Institution. It was reported that Bing suffered 2nd Degree burns to the left cheek, neck, chest, back and arms as a result of the incident. Bing was transported by EMS and later transferred to the Augusta Burn Center in Augusta, Georgia for medical treatment.

Prior to the incident, Bing and Dorsey were secured in their assigned cell because of institution count procedures. The incident occurred during count time and preliminary review of Bing's SCDC medical records revealed he reported that Dorsey heated water in the microwave and threw it on Bing while he was lying down.

On June 7, 2010, inmate Willie Dorsey was placed in the Special Management Unit as a result of the incident pending administrative charges for Striking an Inmate with or without a Weapon.

In an interview with Investigator Jeff Bentley, Bing stated he was sitting on his bed reading a magazine when Dorsey entered the cell, filled his hot pot with water and plugged it in the electrical outlet over the toilet. After the second officer completed the count, inmate Willie Dorsey threw hot water striking the left side of his face, neck, chest and leg. He and Dorsey wrestled after he was burned and proceeded to kick on the cell door to get the attention of the officers in the unit.

Bing stated that Dorsey produced a homemade weapon (shank) and stated "you know what I want". He grabbed the weapon and suffered cuts inside his palm.

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CASE NUMBER: 02-1483
SYNOPSIS, CONTINUED

No incident reports or documents were submitted reference the discovery of any homemade weapons (shanks) found during a search of the cell after the incident. No documentation was discovered in Bing's medical records regarding lacerations to the hand (palm area) as a result of this incident.

Inmate Willie Dorsey, SCDC #222965, was advised of his Miranda Rights and he acknowledged that he understood them and wanted to talk without having an attorney present. Dorsey stated that he and Bing got into a physical altercation because when he climbed up to the top bunk he was having to make contact with Bing's bed. Dorsey stated that during the altercation, Bing grabbed him and he pushed him away. Dorsey stated that as Bing stumbled backwards into the corner near the toilet his body got entangled in the cord of the hot pot. The hot pot turned over and hot water spilled on Bing's body. Dorsey denied throwing hot water on Bing or threatening him with a weapon during the altercation.

On June 22, 2010, inmate Dorsey appeared before the Disciplinary Hearing Officer on the charge of Striking an Inmate With or Without a Weapon, Section 810, Inmate Disciplinary Rules and Procedures. Dorsey pled not guilty and was convicted by Hearing Officer Siaron Patterson. Dorsey received the following sanction: 6 Days Less of Good Time 180 Days Disciplinary Detention (15 Days PHD Credit), Canteen, Telephone, Visitation 165 days + 165 days (345 Days Disciplinary Detention) and \$50.00 Restitution.

On June 30, 2010, Dorsey was requested to submit to a Polygraph Examination by Examiner Nicolee Coggins regarding having thrown hot water on Bing. The examination was not administered because Dorsey refused to sign the polygraph consent forms and his uncooperative behavior.

Numerous contacts were made with Attorney Bud Fairy, Dean Law Firm, regarding his client inmate Levi Bing being administered a polygraph examination regarding this incident. Fairy expressed reluctance in having Bing submit to an examination regarding the incident without being present during the examination or something in writing regarding the examination being related only to the scope of this investigation.

Due to the lack of evidence to pursue criminal charges, Assistant Solicitor John Gentry refused prosecution in Lee County General Sessions Court.

It is recommended that this case be placed in a closed status. No further leads to follow.

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Discharge Summary-Levi Bing
Doctor's Hospital

ELECTRONICALLY FILED - 2018 Jun 07 5:56 PM - LEE - COMMON PLEAS - CASE#2014CP3100100

DOCTORS HOSPITAL - AUGUSTA

DISCHARGE SUMMARY

PATIENT'S NAME: BING, LEVI
 UNIT NUMBER: G000677409
 ACCOUNT NUMBER: C00549876235
 DICTATING DR: Robert F Mullins, MD

ADMISSION DATE: 05/07/2010
 DISCHARGE DATE: 06/11/2010

DIAGNOSES:

1. A 22% total body surface area partial-thickness burn wound injury.
2. Corneal burn.

PROCEDURES:

On 06/08/2010 surgical prep and application of cadaver to the neck and shoulder, debridement of the left ear, porcine to the back, face, torso, left forearm, right arm, right thigh and left thigh, performed by Dr. Robert Mullins and Beccata Coffman PA-C.

HOSPITAL COURSE OF STAY:

This is a 28-year-old African American male who sustained burn wound injuries to his torso, face, neck, right upper extremity, left forearm, right thigh, and back on June 7, 2010 at approximately 1 o'clock p.m. when his roommate threw hot water onto him. Initial medical intervention was provided at the Lee County Correctional Facility in Bishop, South Carolina. The patient was then transferred to the Joseph M Still Burn Center via lifelined for definitive burn wound intervention. As previously mentioned the patient went to the operating room suite on June 8, 2010 for burn surgical intervention and application of allografting. All medical management was provided by Dr. Meyer Swartz. The patient has been placed on Levaquin empirically. He did receive Lovenox for DVT prophylaxis. Dr. Patteh, ophthalmologist, treated the patient for burn wound injuries to the eyelids as well as the cornea. Currently, the burn wound injuries to the left thigh are improving. His cadaver is well appreciated and intact. He will be placed in Acticoat antimicrobial dressing on the date of discharge. This dressing is to remain clean, dry and intact until he returns for his follow-up evaluation. The left ear was debrided in surgery. Currently he is being treated with Polysporin ointment three times per day. His hospital stay was essentially unremarkable and uneventful.

The patient will be transferred to the Kirkland Facility in South Carolina. The Acticoat antimicrobial dressing is to remain clean, dry and intact until he has a follow-up appointment in approximately 7 days. Polysporin ointment to be applied to the left ear three times per day. He is not to get his dressings wet. He is to avoid sun and heat. He is to remain in a clean, cool and dry environment.

DISPOSITION:

Stable at this time for his transfer to Kirkland Facility.

Dictated by: Francine McNeil, NP

706651 2064

9:56 p.m. 06-11-2010

20/228

Robert F Mullins, MD

RFM/MedQ

D: 06/11/2010 10:00 DT: 06/11/2010 10:27 Job #: 427536/422480753

Georgia Network - PCI ALIVE* (PCI: OE Database COCAG)

Run: 06/11/10-11:24 by THOMAS, MARGARET E

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