

1 (Jury Present.)

2 THE COURT. Thank you. Please be seated.

3 Ma'am, you are still under oath. Your witness.

4 MR. JOSH HILL: Thank you, Judge.

5 LATOYA MCCLAIN

6 Having been previously sworn, testified as follows:

7 CROSS EXAMINATION

8 BY MR. JOSH HILL:

9 Q. Ms. McClain, are you a police officer?

10 A. No.

11 Q. What exactly is your job description and your
12 duties?

13 A. To maintain control of the inmates going in and
14 out, their movement, just to control the cell block.

15 Q. So you're a civilian assigned to the jail?

16 A. I'm a detention officer.

17 Q. A detention officer?

18 A. Yes.

19 Q. And what's the training requirements to
20 becoming a detention officer?

21 A. The requirements?

22 Q. Yes.

23 A. When I did, we had to do six weeks in the
24 academy. They just train you on different things.

25 Q. So you spent a little bit of time doing police

1 academy type of work; right?

2 A. Yes.

3 Q. Do you ever conduct any investigations as a
4 part of your duties? I mean, if there's a fight between
5 two inmates?

6 A. Oh yeah, you have to, yes.

7 Q. Now if there was a fight between two inmates,
8 do you interview people?

9 A. Yeah, the inmates. Well, yeah -- well, yeah,
10 the inmates and any witnesses.

11 Q. And when you interview the witnesses, you
12 separate them first?

13 A. Yes.

14 Q. And you interview them separately?

15 A. Separately.

16 Q. Okay. And why do you do that separately?

17 A. So they won't try to feed off of each other and
18 tell the same story.

19 Q. So it's important for the integrity of your
20 investigation to separate them before interviewing
21 them?

22 A. Yes.

23 Q. And in this case, did you have an opportunity
24 to talk to any witnesses?

25 A. In which case?

1 Q. In the case we're here on today?

2 A. Talk to, no.

3 Q. There were seven other inmates in his cell?

4 A. I believe it's seven.

5 Q. Did you talk with any of them?

6 A. No.

7 Q. Okay. And to your knowledge, did anybody talk
8 with any of them?

9 A. Not to my knowledge.

10 Q. Do you know the names or any identifying
11 information of the other people who were in his cell on
12 that day?

13 A. No.

14 Q. Now, you spent a lot of time talking with the
15 D.A. about this case; is that true?

16 A. I guess.

17 Q. You've had a couple of phone conversations with
18 him?

19 A. Yeah, we've talked on the phone.

20 Q. Okay. You met with him this morning outside by
21 the water cooler?

22 A. Yes.

23 Q. By the water fountain?

24 A. Yes.

25 Q. And yesterday you and the other, I guess, the

1 rover deputies, all three of y'all were here in the
2 courtroom together meeting with him?

3 A. Oh, yes.

4 Q. At 1:45 yesterday?

5 A. I -- the time, I guess.

6 Q. Okay. And all three of y'all were talking with
7 the prosecutor about the same case; is that correct?

8 A. Inside here?

9 Q. Yes.

10 A. It wasn't about the case. It was about the
11 entire set up.

12 Q. Okay. But y'all all three were together all
13 talking with him; right?

14 A. Inside or outside?

15 Q. Inside this courtroom.

16 A. I mean, we were -- the layout, I mean, just
17 trying to --

18 Q. At any point in time, were you discussing any
19 aspect of this case with other deputies present?

20 A. Not -- well, the ones -- the three of us.

21 Q. And that would be pretty contrary to what you
22 do when you interview inmates because it cuts into the
23 credibility of the investigation; right?

24 A. I'm not following you.

25 Q. You just said that if you interview inmates in

1 order to maintain some source of integrity to your
2 investigation, to make sure people don't get the same
3 story, you always separate people before talking to
4 them. You just said you and the other deputies spoke
5 together about this case. Is there something special
6 about a deputy as opposed to some other witness?

7 A. No.

8 Q. Okay. Now, on the date in question -- and you
9 said this occurred -- you woke the inmates up at 7:00
10 o'clock in the morning?

11 A. Yes, that's when we wake them up.

12 Q. And this incident occurred at 7:30 in the
13 morning?

14 A. Somewhere around there, yes. I can't remember
15 the exact time, but --

16 Q. So the other inmates were awake?

17 A. A majority of them are still asleep.

18 Q. So what happened when you woke them up at 7:00
19 o'clock in the morning?

20 A. They just take their time getting up.

21 Q. Half an hour to wake up?

22 A. It all depends on the inmates.

23 Q. Okay. What time do inmates have to get ready
24 to come to court?

25 A. They have between -- well, shift starts at

1 6:00, so when I get there, that's when I call them out
2 for court. So a little after 6:00 o'clock.

3 Q. Because yesterday when you were testifying you
4 made it sound as if there was absolute silence in that
5 cell, everybody is asleep, the soul person in that
6 entire cell that is awake is my client and that he was
7 masturbating and there happened to be no other witnesses
8 because everybody was asleep?

9 MR. BERNARD: Objection, Your Honor.
10 Testifying about what happened yesterday in the
11 question.

12 THE COURT: Overruled.

13 THE WITNESS: Before 6:00 o'clock -- no,
14 before 7 o'clock all the inmates are asleep.

15 Q. (By Mr. Josh Hill) And you woke them up at
16 7:00?

17 A. Yes.

18 Q. And this occurred at 7:30 approximately, but
19 it's your testimony that none of the inmates you woke up
20 at 7:00 were awake at 7:30 when this occurred?

21 A. Not to -- I mean, not to my knowledge. I don't
22 remember. I just observed him in that cell block.

23 Q. Do you remember him in that cell block -- and I
24 want to talk about that for a moment. You had an
25 opportunity -- you said yesterday you had spent a couple

1 of seconds making eye contact with him; is that correct?

2 A. Well, I glanced over, and then I turned away.

3 Q. Okay. But you said eye contact; right?

4 A. Well, yeah, I looked over and I seen him and I
5 just turned away, yes.

6 Q. But on that date, you weren't able to -- when
7 the rovers brought him out of the cell, you weren't able
8 to identify him specifically as the person who was
9 masturbating; were you?

10 A. He wasn't familiar to me, no.

11 Q. So you were not able to identify him that day
12 is what you're saying?

13 A. No.

14 Q. Okay. And so you got a chance to look him in
15 the face and were not able to. Now is it fair to say
16 that a penis is smaller than somebody's head, somebody's
17 face?

18 A. Yes.

19 Q. And you were able to see his penis partially
20 obscured by his hand, the bars, the space between you
21 and the lighting in that cell, you were able to see that
22 but you were not able to see his face to identify him,
23 is that your testimony today?

24 A. Repeat that one more time.

25 Q. You were able to see his penis, which was

1 partially obscured by his hand holding it, as you
2 alleged, through the bars in the cell -- in the picture
3 it was opened? But I assume the doors were closed.

4 A. No, they were opened.

5 Q. The doors are opened at 7:30.

6 A. Yes, I opened them up at 7:00 o'clock.

7 Q. Okay. Then let's go to that for a moment. Who
8 had access, who could have gone in and out of these
9 cells? Can people roam freely from one cell to the next
10 and socialize?

11 A. Yes.

12 Q. And how long did it take between you making eye
13 contact with him and the rovers getting there to arrest
14 him?

15 A. He wasn't arrested. Maybe a couple, a couple
16 of minutes, I'll say.

17 Q. So it's very possible people could have been
18 going in and out of that cell if anybody had been
19 awake?

20 A. Possibly, but no one did.

21 Q. And you know this because when you turned away,
22 was there a video recording that captured what was going
23 on when you were looking away?

24 A. Inside the cell block, no.

25 Q. So there was a period of time when you weren't

1 looking at the cell and the cell door was opened and
2 people were going in and out of that cell?

3 A. Where I'm stationed at, it's right here on my
4 left side view.

5 Q. Okay.

6 A. So I could see him.

7 Q. But you said you looked away from him for a
8 period?

9 A. Yes, I looked away, but I could still see from
10 the left side.

11 Q. What's the lighting like at 7:00 or 7:30 in the
12 morning on that floor?

13 A. All the lights are on.

14 Q. Did your floor not have a reputation for
15 leaving the lights off sometimes until 10:00 a.m.?

16 A. I'm not aware of that.

17 Q. I want to get into, I guess, the logistics of
18 the cell itself. There is a toilet in that cell, right,
19 and you testified yesterday to the location; is that
20 correct?

21 A. Yes.

22 Q. And that toilet is behind the wall, the wall
23 extends from the floor to the ceiling; right?

24 A. Yes.

25 Q. And if somebody is standing at that toilet

1 using the toilet or pretty close to using that toilet,
2 they would be obscured from your view?

3 A. I can't see them.

4 Q. You cannot see them. And how far from that
5 wall that would obscure your view to the bunk or where
6 you said he was standing, how far of a distance is that,
7 two feet, three feet?

8 A. Maybe between two and four.

9 Q. Between two and four feet. Okay. The width of
10 this table, counsel table maybe?

11 A. I mean I could just only guesstimate, between
12 two and four feet.

13 Q. So at two feet, arguably somebody could still
14 be using a toilet at two feet, four feet may be a bit of
15 a stretch.

16 MR. BERNARD: Objection, argumentative.

17 THE COURT: Sustained.

18 Q. (By Mr. Josh Hill) And I want to talk a little
19 bit about your training and your job duties. Do you
20 ever, as a part of your job duties, do you ever have to
21 observe inmates in a shower or a restroom type of
22 setting?

23 A. No.

24 Q. When inmates are strip searched outside of your
25 cell, is that within your view?

1 A. No, it's outside.

2 Q. And how do they do that outside of your view?

3 A. Well, they take them out in the hallway.

4 Q. Into the hallway?

5 A. Or into the rec.

6 Q. And you don't have any view of these areas?

7 A. No, I stay inside my room, inside my pod, and
8 the rovers, they go and search the inmates.

9 Q. Now, you would agree with me in a jail setting
10 inmates are regularly exposed; is that correct?

11 A. They are fully dressed.

12 Q. But when they have to shower, they're fully
13 exposed in a shower, there's no stalls where they're
14 hidden behind walls or anything like that?

15 A. In the showers, there is a brick wall.

16 Q. But they are in view of some officers?

17 A. No, they're behind me.

18 Q. I'm not talking about you. I'm talking about
19 other officers in the jail. Inmates are exposed,
20 correct, at times?

21 A. Yes, but we can't see them.

22 Q. In general, I'm not talking about you. I'm
23 talking about some other officer.

24 A. What I'm saying, yeah, the shower is there,
25 each shower is kind of set up differently. And the

1 showers are not in our view. We can't see them
2 showering because there's a brick wall where the showers
3 are.

4 Q. If somebody decides to stab somebody or sell
5 drugs to somebody in that shower, y'all can't see it?

6 A. No.

7 Q. And if somebody wants to give a weapon to
8 somebody else in that shower, y'all can't see it?

9 A. No.

10 Q. There's no security measures to prevent that
11 from happening?

12 A. No.

13 Q. Now when you saw who you say is my client
14 masturbating, did you say he was or was not wearing a
15 shirt?

16 A. He was not.

17 Q. Did you see any identifying information on him
18 that stuck out to you?

19 A. I just seen his penis exposed and he was
20 stroking it.

21 Q. And you didn't see any tattoos or large birth
22 marks?

23 A. I didn't stare that long.

24 Q. Okay. Now, you said part of your duties is
25 sometimes you have to give out medicine?

1 A. No, we have a med cart that comes and when it
2 comes, we call for medication and they go to one of the
3 doors where the nurse is and the nurse distributes the
4 medication.

5 Q. Do you know which inmate gets which
6 medication? Let's back up. Are you aware if a specific
7 inmate is receiving any kind of medication?

8 A. I just call for medication and they know who
9 they are to take the medication and they just go to the
10 door.

11 Q. And you're aware that Mr. Graves has mental
12 health issues; is that correct?

13 A. No.

14 Q. You had no interactions with him whatsoever?

15 A. No.

16 Q. But the second floor of the jail is for people
17 who have mental issues; right?

18 A. That's on the opposite side.

19 Q. Your side has nothing to do with medical and
20 mental health?

21 A. No.

22 Q. And that's your testimony today?

23 A. Yes.

24 Q. Now, have you in the past seen any other
25 inmates masturbating?

1 A. Yes.

2 Q. And were you offended by any of those
3 incidents?

4 A. Yes.

5 Q. And how many times do you think you've seen
6 something like that happen?

7 A. It didn't happen that often.

8 Q. Once a month, more or less.

9 A. Less.

10 Q. Okay. Once every other month maybe?

11 A. Um, no.

12 Q. Now, in each and every one of those times were
13 charges filed against them?

14 A. Yes.

15 Q. Okay. Were you able to see where other people
16 were in the cell when this masturbation, alleged
17 masturbation was occurring?

18 A. Some inmates, I imagine, they were still
19 asleep.

20 Q. And how close was he, you said he was standing
21 by the bunk. How close was he to the inmate in the
22 bunk?

23 A. The inmate was in the bunk right below him.

24 Q. Would you say he was a foot away from that
25 inmate?

1 A. Not even a foot. Right there by the bunk.

2 Q. So your testimony is he was masturbating
3 basically right on top of that inmate's head, so to
4 speak?

5 A. Depending on which way he was laying.

6 Q. You had an opportunity to make a report and
7 speak with other deputies about this incident; isn't
8 that true?

9 A. I'm sorry.

10 Q. You made a report about this incident; right?

11 A. Yes.

12 Q. And in that report you documented everything
13 that you believed to be important; right?

14 A. Everything that happened, yes.

15 Q. And you also spoke with Deputy Harden about
16 this case?

17 A. Yes, because he's the one who did the filing of
18 the -- called the D.A. to get the files -- I mean the
19 charges filed.

20 Q. And do you recall telling Deputy McClain that
21 you witnessed Inmate Graves standing at the toilet
22 located in his cell?

23 A. I'm McClain.

24 Q. That's you. I'm sorry. That you told Deputy
25 Harden that you witnessed Inmate Graves standing at the

1 toilet located in the cell. Do you remember telling him
2 that?

3 A. No.

4 Q. Do you remember telling him that immediately
5 after calling him out over the intercom he put his penis
6 back in his pants and then he retreated to the back of
7 his cell?

8 A. I didn't see that, no.

9 Q. Did you call him out over the intercom?

10 A. Did I call Graves out?

11 Q. Yes.

12 A. No.

13 Q. So if Deputy Harden said you informed him that
14 you called Inmate Graves out --

15 MR. BERNARD: Objection, counsel reading
16 from a document not in evidence.

17 THE COURT: Sustained.

18 Q. (By Mr. Josh Hill) So it's your testimony that
19 you never called out Mr. Graves over the intercom?

20 A. Correct.

21 Q. And it's your testimony that you never saw him
22 retreat to the back of the cell immediately upon being
23 caught?

24 A. No.

25 Q. You never said that to anyone?

1 A. No.

2 Q. The only testimony you gave is that an
3 unidentified inmate was masturbating in his cell?

4 A. Yes.

5 Q. And you called rovers and rovers arrested
6 somebody?

7 A. They didn't arrest him. They went in there and
8 they pulled --

9 Q. Detained somebody. They took somebody out of
10 the cell?

11 A. Yes.

12 Q. The rovers weren't present during any alleged
13 masturbation; were they?

14 A. No.

15 Q. So they just arrested whoever they believed was
16 awake and involved in some sort of incident?

17 A. Pulled them out, yes.

18 Q. As a jailer, some of the inmates were not so
19 polite and pleasant to you; is that true?

20 A. Correct.

21 Q. Sometimes they flip the bird at you?

22 A. Yes.

23 Q. Sometimes they curse at you?

24 A. Of course.

25 Q. And sometimes they make obscene, rude gestures

1 to you?

2 A. Yes.

3 Q. And sometimes it's frankly they're being a
4 jerk, they're not trying to gratify themselves
5 sexually?

6 A. No. When they curse or do something like that,
7 maybe they had a bad day.

8 Q. And you're aware that Mr. Graves has been
9 prescribed and was taking in the jail Risperdal and
10 Seroquel; right?

11 A. No.

12 Q. You're not aware of that?

13 A. We don't get a list of what the inmates are
14 taking.

15 Q. Are you aware that some of the side effects of
16 those drugs is a shy bladder?

17 MR. BERNARD: Objection, counsel is
18 reading from a document.

19 THE COURT: Sustained.

20 MR. JOSH HILL: Judge, I'm not reading
21 from a document.

22 THE COURT: Sustain the objection.

23 Q. (By Mr. Josh Hill) You're aware some of the
24 inmates on your floor are taking medication?

25 A. A lot of them are.

1 Q. And surely you're aware that there's some
2 medications that cause people to be unable or have a
3 difficult time urinating?

4 MR. BERNARD: Objection, Your Honor.
5 Calls for speculation.

6 THE COURT: Sustained.

7 MR. JOSH HILL: Pass the witness, Judge.

8 THE COURT: Redirect.

9 REDIRECT EXAMINATION

10 BY MR. BERNARD:

11 Q. Detention Officer McClain, before we started
12 this trial yesterday, did you think that you would be
13 able to recognize the person who was masturbating in a
14 cell in court?

15 A. Not until we came in and then I recognized, I
16 remembered who he was.

17 Q. So now that you have come in here and recall
18 who he was, could you tell us whether the person who you
19 saw masturbating and looking at you on May 4, 2012 is in
20 the courtroom today?

21 A. Yes.

22 MR. JOSH HILL: Judge, I'm going to object
23 to this tainted identification. She wasn't able to
24 identify him the day of. Here we are seven months later
25 and there is only one person sitting next to me.

1 THE COURT: We don't need to have an
2 arguing objection. We can hear arguments at another
3 time.

4 Members of the jury, we are going to have
5 a hearing outside of your presence.

6 THE BAILIFF: All rise for the jury
7 please.

8 (Outside the jury's presence.)

9 THE COURT: Is your objection in the form
10 of a motion to suppress the identification?

11 MR. JOSH HILL: My objection is that she
12 was present when you arraigned the defendant, when his
13 name was spoken. This is a tainted identification,
14 impermissibly suggestive based on there's only one
15 person on trial and he is sitting next to me and she's
16 already testified she wasn't able to identify him that
17 day.

18 THE COURT: And I will allow him to
19 develop that and we will hear arguments on it and I will
20 make a ruling.

21 MR. JOSH HILL: Judge, I would like to
22 file an oral motion to suppress on that issue.

23 THE COURT: That's fine.

24 MR. BERNARD: Judge, you mean we are going
25 to cross her on it right now.

1 THE COURT: Yes. Mr. Hill. You may
2 proceed.

3 MR. JOSH HILL: All right.

4 CROSS EXAMINATION

5 BY MR. JOSH HILL:

6 Q. So you testified today that from the date in
7 question you are unable to identify Inmate Graves as the
8 person who was masturbating; is that true?

9 A. I didn't know his name.

10 Q. But when they pulled him out of the cell, you
11 said that you were not able to identify the person
12 pulled out of the cell alleged as the same person
13 masturbating on that day?

14 A. I knew who he was and where he was located
15 because he was the only one up, but yes, I didn't know
16 what his name was.

17 Q. But what I'm getting at is, in your entire
18 report, from beginning to end, you refer to him as
19 unidentified inmate. You never once when they pulled
20 him out of the cell, said yes, that's the one who was
21 masturbating?

22 MR. BERNARD: Objection, Your Honor.
23 Assumed facts not in evidence. This report is not her
24 report.

25 THE COURT: Sustained.

1 Q. (By Mr. Josh Hill) At any point in time, when
2 the guards pulled him out of his cell, you never said
3 that's the one who was masturbating.

4 A. I told him that was the one, where he was, and
5 I told them he's right there.

6 Q. Yes, you said which cell and when they pulled
7 him out of the cell you never made a subsequent
8 identification, you never said that the person you just
9 pulled out of that cell was the person who was
10 masturbating. You never did that; did you?

11 A. I don't remember, but I told them that's the
12 one right there. I pointed him out.

13 Q. You pointed to the cell he was in?

14 A. No, I saw where he was and he was the one up
15 and so I said that's him.

16 Q. When he was brought out of the cell by the
17 rovers, you never said that was the man who was
18 masturbating?

19 A. He was --

20 Q. Yes or no?

21 A. No.

22 Q. You never said that. And prior to trial, did
23 you have an opportunity to see photographs of him,
24 whether it was a mug shot or otherwise?

25 A. Graves, no.

1 Q. And when we started this trial, you were
2 sitting here when we made reference to him being named
3 Adrian Graves; is that true?

4 A. I guess, yes.

5 Q. And you were sitting here when the Judge asked
6 how Mr. Graves plead. I stood up, he stood up, and he
7 said not guilty, so you knew the man sitting next to me
8 is Adrian Graves?

9 A. Yes.

10 Q. And you knew that because it's been said over
11 and over in this courtroom?

12 A. No, because I knew who he was.

13 Q. And you just testified a moment ago you put
14 everything in your report; right?

15 A. Yes.

16 Q. And in your report, you never once said that
17 you identified Inmate Graves as the person who was
18 masturbating?

19 MR. BERNARD: Objection, Your Honor,
20 reading from a document not in evidence.

21 THE COURT: Overruled.

22 THE WITNESS: Well, when we write -- I
23 didn't know him by name. So I didn't know his -- I
24 didn't know him by name.

25 Q. (By Mr. Josh Hill) I'm not asking about

1 whether or not you knew him by name? I'm saying in your
2 report, you never once said I identify the person pulled
3 out of his cell as the person who was masturbating? You
4 never said that in your report; correct?

5 THE COURT: He is referring to the report
6 only and what was said in the report.

7 THE WITNESS: Okay. No.

8 Q. (By Mr. Josh Hill) And you already testified
9 that you never said that to anybody and now you've also
10 said you never wrote in your report --

11 THE COURT: One question at a time.

12 Q. (By Mr. Josh Hill) And throughout your report,
13 you refer to somebody else that identified the person
14 they pulled out of the cell as Inmate Graves; correct?

15 A. I'd have to look at the report. I'm not sure.

16 Q. Do you want to see a copy of your report?

17 A. Yes.

18 MR. JOSH HILL: Judge, may I approach.

19 THE COURT: Yes, you may.

20 MR. JOSH HILL: I tendered the report to
21 the witness.

22 THE WITNESS: Okay. Now what was your
23 question again.

24 Q. (By Mr. Josh Hill) At no point verbally or in
25 writing did you ever say the person who was pulled out

1 of that cell is the person I identified as having
2 masturbated; is that true?

3 THE COURT: You must answer the question.

4 THE WITNESS: No.

5 Q. (By Mr. Josh Hill) So what's different when I
6 ask that in two separate questions from one. It's not
7 in your report; right?

8 THE COURT. Wait a second. I'm hearing
9 three questions. I'm not that smart. I need to hear
10 one at a time.

11 Q. (By Mr. Josh Hill) No where in your report do
12 you say I identified the person who was masturbating as
13 the same person that was pulled from the cell, you don't
14 write that in your report; correct?

15 A. I'm trying to follow you because when he was
16 pulled out, the rovers grabbed his arm band and told me
17 who it was, so I could pull his key card up.

18 Q. That is what I'm getting at. The rovers said
19 the person we arrested is named Adrian Graves?

20 A. Pulled out, not arrested.

21 Q. The person they pulled out of the cell is
22 Adrian Graves?

23 A. Yes.

24 Q. At no point do you write here in your report --
25 at no point did it say the person pulled out of his cell

1 identified as Adrian Graves is the person I saw
2 masturbating? No where does that exist in this report?
3 Is that correct?

4 A. I didn't know who his name was until they
5 pulled him out and they checked his arm band.

6 Q. I'm talking about his name. I'm talking about
7 they pulled him out, they said is this the guy, and you
8 say yeah, that was the guy, that never happened?

9 A. No.

10 Q. And you didn't write about that happening in
11 your report either because it didn't happen as you just
12 said?

13 A. They identified him?

14 Q. When I just said they pull him out of the cell,
15 they say is this the guy that did it, and you said that
16 never happened, so clearly you would not have written
17 anything like that in your report because that didn't
18 happen?

19 A. I told them who it was. They needed to go pull
20 him out.

21 Q. Can you tell me if there is anything unique
22 about Mr. Graves' penis?

23 A. I have no idea.

24 Q. Can you tell me if it's circumcised or not?

25 A. I have no idea.

1 MR. JOSH HILL: Nothing further, Judge.

2 THE COURT: You may examine.

3 REDIRECT EXAMINATION

4 BY MR. BERNARD:

5 Q. How did you recognize the defendant today?

6 A. By his facial features.

7 Q. And did you recognize him as the person who was
8 masturbating because he was the person who was arraigned
9 today?

10 THE COURT: He was arraigned yesterday.

11 THE WITNESS: I'm sorry.

12 Q. (By Mr. Bernard) Did you recognize him because
13 he was the person -- did you recognize him as the person
14 who was masturbating because he was the person who was
15 sitting next to the Defense Counsel?

16 A. I recognized who he was when he walked in, when
17 he walked in.

18 Q. And was that -- was that because he was the
19 defendant in this case?

20 A. I'm not following you.

21 Q. And did you -- was that because of anything
22 other than his facial features that you are able to
23 identify the defendant as the person who was
24 masturbating on May 4th? Was it the facial features or
25 anything else other than the facial features?

1 A. Just the facial features. I would have
2 recognized who he was when he walked in.

3 Q. And on the day of -- on May 4th, when the
4 rovers came in to the pod, and after you made the C
5 gesture, did you make another gesture to the rovers?

6 A. I believe I pointed.

7 Q. And what did you point at?

8 A. Graves.

9 Q. When the rovers took Graves out of the cell,
10 did you ever tell them no, that's not the guy who was
11 masturbating?

12 A. No.

13 Q. And at any point, did you say to the rovers
14 you've got the wrong guy?

15 A. No.

16 Q. How do you know that the person that the rovers
17 pulled out of the cell is the person whom you saw
18 masturbating in the cell?

19 A. Because he was still standing beside his bunk.

20 MR. BERNARD: Pass the witness.

21 THE COURT: Anything else, Mr. Hill?

22 MR. JOSH HILL: Briefly, Your Honor.

23 THE COURT: Yes, sir.

24

25

1 RE CROSS EXAMINATION

2 BY MR. HILL:

3 Q. You testified on direct examination yesterday;
4 correct?

5 A. Yes.

6 Q. And at no point were you able to make an in
7 court identification of the defendant?8 MR. BERNARD: Objection, Your Honor. She
9 wasn't asked to make an in court identification of the
10 defendant.

11 THE COURT: Sustained.

12 Q. (By Mr. Josh Hill) Did you have a conversation
13 with the prosecutor between yesterday and today that
14 caused you to feel comfortable identifying the
15 defendant?

16 A. No.

17 Q. Did you and the prosecutor discuss between your
18 testimony yesterday and today whether or not you would
19 make an in court dedication of the defendant?

20 A. No.

21 Q. So at no point did you talk to the prosecutor
22 and say I didn't identified him yesterday but I can
23 today?

24 A. Not to my knowledge.

25 Q. Not to your knowledge?

1 A. I mean I don't think so.

2 Q. You don't think so.

3 A. No.

4 Q. And you would agree with me that --

5 MR. JOSH HILL: Well, I'll pass the
6 witness.

7 THE COURT: Mr. Bernard, anything else?

8 REDIRECT EXAMINATION

9 BY MR. BERNARD:

10 Q. Yesterday -- after you testified yesterday, did
11 you inform Ms. Buese that you would after all be able to
12 identify the defendant in court?

13 A. Yes.

14 MR. BERNARD: We pass the witness, Your
15 Honor.

16 THE COURT. Anything else?

17 RECROSS EXAMINATION

18 BY MR. JOSH HILL:

19 Q. You said after all. Does that mean at some
20 point you were unable to identify him or uncomfortable
21 doing so? At some point between the offense date and
22 today was there a point in time when you were not
23 comfortable identifying -- you just said after all.

24 MR. BERNARD: Objection, Your Honor, asked
25 and answered.

1 THE COURT: Overruled.

2 Q. (By Mr. Josh Hill) You hesitate. Was there a
3 point between the alleged offense and today at any point
4 in time, over that seven month period, was there any
5 point in time that you were uncomfortable identifying
6 the defendant?

7 A. No, I wasn't uncomfortable.

8 Q. So why did you tell Ms. Buese I could
9 identified him after all implying there was a period
10 where you couldn't?

11 A. I don't remember saying after all. I mean, I
12 don't remember saying after all.

13 Q. You just testified that you did.

14 MR. JOSH HILL: I'll pass.

15 THE COURT: Anything else?

16 MR. BERNARD: No, your Honor.

17 THE COURT: Argument.

18 MR. JOSH HILL: Judge, I think in light of
19 all the testimony that has come out, I think it's
20 strangely odd that she's unable to identify the
21 defendant, at any point in time during her direct
22 examination or otherwise in her offense report, in
23 speaking with other deputies, and then she tells one of
24 the prosecutor I can do it after all, after she spent an
25 entire day in the courtroom seeing him referred to as

1 Mr. Graves knowing he was the one charged in this
2 crime. She hasn't been able to identify any identifying
3 information about him that sets him apart on the date of
4 the offense. I think we've got an impermissible
5 suggestive identification in court. I don't see how it
6 can be removed from the tangible that's been happening.

7 MR. BERNARD: Your Honor, several of the
8 things that Mr. Hill said happened didn't happen. She
9 did say she was able to identify him by his facial
10 features. It wasn't after all day yesterday that she
11 testified -- she didn't testify that she realized she
12 was able to identify him after all day's testimony. She
13 said it was after he walked in she realized she would be
14 able to identify him. She wasn't unable to identify him
15 before hand. We never asked her to identify him in
16 court today. And she testified she never looked at any
17 photograph beforehand. All her testimony regarding
18 being -- she said she wasn't uncomfortable with the
19 fact. She simply wasn't sure. And she testified she
20 didn't look at a photograph or anything. She said she
21 simply wasn't sure. Then she saw him this morning and
22 she realized she could. All of these things he brought
23 out here, all goes to the weight and not to the
24 admissibility of the evidence and her testimony, she
25 could identify him today after seeing his face is some

1 evidence that has some tendency to support a material
2 fact, and so this evidence is -- her testimony is
3 relevant and it's not a tainted in court identification.

4 THE COURT: Anything in response to that?

5 MR. JOSH HILL: No, Judge, not at this
6 time.

7 THE COURT: Motion to suppress is denied.
8 The Court finds sufficient basis that the witness has
9 made an independent identification based upon the record
10 in this case and it goes to the weight rather than the
11 admissibility at this point. Let's have the jury
12 please.

13 THE BAILIFF: All rise for the jury.

14 (Jury present.)

15 THE COURT: Please be seated. You may
16 proceed.

17 MR. BERNARD: Your Honor, the State would
18 ask the record to reflect, would ask that the record
19 reflect that the witness has identified the Defendant.

20 THE COURT: Yes.

21 REDIRECT EXAMINATION CONTINUED

22 BY MR. BERNARD:

23 Q. Officer McClain, when you wake up -- you've
24 testified -- I want to call your attention to when you
25 wake up the inmates at 7:00 o'clock. What exactly do

1 you do when you wake them up at 7:00.

2 A. I turn on all the lights. I open up the
3 doors. This is all done by the control panel from the
4 inside and I go over to the intercom and I tell them to
5 get up. I say get dressed, make your bunk and slide my
6 doors back. It's just like a little spill that I do
7 each morning.

8 Q. So aside from turning on the lights, opening
9 the doors and issuing the instructions over the
10 intercom, is there anything else that you do to try to
11 wake them up?

12 A. That's all. Just keep going over the intercom,
13 telling them to wake up.

14 Q. How much do you talk over the intercom?

15 A. I tell them like only a couple of times.

16 Q. Detention Officer McClain, could you show the
17 jury -- show the jury where Graves was standing.

18 A. (Complies) Standing in this area.

19 Q. And was the cell door opened or closed?

20 A. It was opened.

21 Q. And were there any objects obstructing your
22 view of Graves?

23 A. No.

24 Q. Have you ever been inside the inmate area
25 ever?

1 A. Yes.

2 Q. From where Graves was standing in there, can a
3 person see the pod control center from where you were
4 sitting?

5 A. Yes.

6 Q. And what the -- what was the -- what are the
7 windows made of there, the pod windows, what are they
8 made of?

9 A. Glass.

10 Q. And is that glass tinted in any way on either
11 side?

12 A. No.

13 Q. And can a person standing where Graves was see
14 you inside the pod center windows?

15 A. Yes.

16 MR. JOSH HILL: Objection, speculation.

17 THE COURT: Sustained. The jury will
18 disregard the last response made by the witness for any
19 purpose.

20 MR. JOSH HILL: Motion for mistrial.

21 THE COURT: Denied.

22 Q. (By Mr. Bernard) When you have been inside the
23 pod control center, you're inside the inmate area and
24 you're in there, were you able to see in to the interior
25 of the pod control center?

1 A. Yes, you can see inside.

2 Q. Deputy McClain, could you describe to the jury
3 what this space is here?

4 A. That's the shower area.

5 Q. And could you show us then where you sit in the
6 pod control center.

7 A. I sit in this -- well, this is the pod, but I
8 sit like right there in the front because that's where
9 the control panel is to control everything.

10 Q. Could you clear the screen for us.

11 A. Oh, yes.

12 Q. And could you show us where the windows of the
13 control center is?

14 A. All of them?

15 Q. Just the windows on the left side?

16 A. The three windows, right there, right there,
17 and right there.

18 Q. And if a person is here -- are you able to see
19 into this space from the Pod Control Center?

20 A. I can look back, but the shower area, that's a
21 brick wall.

22 Q. So are you able to see into this area here from
23 the Pod Control Center?

24 A. If they are inside the shower, I cannot see
25 inside the shower.

1 Q. Would you clear the screen for us please.

2 A. (Complies.)

3 Q. Officer McClain, where do the inmates sleep?

4 A. In the cells in their bunks.

5 Q. And is there -- I want to call your attention
6 to their bedding. Do they have any bedding?

7 A. They have a mat, a sheet, and a blanket for the
8 bedding and some of them have a pillow.

9 Q. And I want to call your attention to what they
10 wear? Are they issued clothing?

11 A. Yes.

12 Q. What clothing?

13 A. They have a pair of pants, two boxers, and a
14 county shirt and socks and some of them have slides.

15 Q. And are inmates allowed -- after you wake the
16 inmates up, after you speak over the intercom and turn
17 on the lights and open the cell doors at 7:00 in the
18 morning, are inmates permitted to remain in their bunks?

19 A. They can. Some can. Yeah, they are.

20 Q. Did you -- did you tell Graves to get out of
21 this bunk on May 4th?

22 A. No.

23 Q. Do you recall anyone telling Graves he had to
24 get out of his bunk on May 4th?

25 A. Well, when I woke him up at 7:00 o'clock --

1 record clean.

2 Q. (By Mr. Bernard) Are you able to see the
3 inmates using the toilet in the cells?

4 A. Only the feet.

5 Q. On May 4, 2012, when you saw Graves looking at
6 you and masturbating, did you see any feet at the
7 toilet?

8 A. No.

9 Q. About how long had Inmate Graves been in Cell
10 Block C., excuse me, in this pod?

11 MR. JOSH HILL: I'm going to object to
12 relevance.

13 THE COURT: Overruled.

14 MR. JOSH HILL: I'm also going to object,
15 it's a violation to a motion in limine.

16 THE COURT: Overruled.

17 Q. (By Mr. Bernard) About how long had he been in
18 this area? In that pod?

19 A. In F., maybe a couple of months.

20 Q. And about how long had he been in Cell C?

21 A. In Cell C, I'm really not for sure.

22 Q. And before he arrived in this cell, before he
23 started staying in that cell, did you know him?

24 A. No.

25 Q. Had you ever seen him before in your life?

1 A. No.

2 Q. And before this incident occurred, did you ever
3 have any conversations with Graves?

4 A. No.

5 Q. And before this incident occurred, did you ever
6 do anything that you thought would encourage Graves to
7 make a sexual advance to you?

8 MR. JOSH HILL: Object to speculation.

9 THE COURT: Overruled.

10 Q. (By Mr. Bernard) When Graves exposed himself
11 to you while he was masturbating on May 4th, were you
12 offended by that?

13 A. Yes.

14 Q. What went through your mind when that happened?

15 A. My exact words was? What was I thinking?

16 Q. What went through your mind that day?

17 A. That I --

18 MR. JOSH HILL: Objection, relevance.

19 THE COURT: Sustained.

20 MR. BERNARD: Your Honor, I pass the
21 witness.

22 THE COURT: Recross.

23 MR. JOSH HILL: Yes, Judge. Thank you.

24

25

1 A. Not every morning. No.

2 Q. At 7:00 a.m.?

3 A. Not at 7:00, no.

4 Q. Now, you just said that Adrian Graves was in
5 that pod for 2 months; correct?

6 A. I believe so.

7 Q. And you were assigned to that pod as well for
8 those two months; right?

9 A. I worked three different pods.

10 Q. But some of the times of those two months was
11 in this pod?

12 A. Yes.

13 Q. So, in your report when you refer to him as an
14 unidentified inmate, that's two months worth of seeing
15 him. You still didn't know who was?

16 A. He wasn't familiar to me because he wasn't one
17 of our regular inmates.

18 Q. At any point in time, did you ever tell the
19 prosecutor or anyone else that what you saw did not
20 offend you?

21 A. No.

22 Q. At any point in time did you tell the
23 prosecutor or anybody else that you might be unable to
24 identify the defendant?

25 A. No.

1 Q. Were there other African American men in the
2 cell with him?

3 A. Yes.

4 Q. Of similar height and weight?

5 A. I can't remember.

6 Q. And in the report that you filed, you wrote
7 that after the incident; correct?

8 A. Wrote what?

9 Q. Your report, where you described the incident,
10 you wrote that and submitted it over an hour after the
11 incident occurred; correct?

12 A. When they pulled him out, then that's when I
13 started typing up my report.

14 Q. So that's four hours. You can't write a report
15 before something happens; right?

16 A. Correct.

17 Q. Because you can't see into the future? But you
18 wrote a report after the incident occurred?

19 A. Uh-huh. Yes.

20 Q. And at no point in your report did you say the
21 guy they brought out of the cell is the guy I saw
22 masturbating? At no point do you say that in your
23 report? True.

24 A. No, true.

25 MR. JOSH HILL: Pass the witness.

1 THE COURT: Anything else on those
2 points?

3 MR. BERNARD: Yes, Your Honor. Just
4 briefly.

5 THE COURT: Let's keep it brief.

6 REDIRECT EXAMINATION

7 BY MR. BERNARD:

8 Q. Detention Officer McClain, when the rovers came
9 into the cell block after you called them and after you
10 made the C gesture and that was for Cell C, did you make
11 any other gestures to the rovers?

12 A. (Indicating.) Oh, I'm sorry. I pointed. I
13 did a C. When they were walking to the cell, I pointed
14 like that.

15 Q. And who did you point at?

16 A. At Inmate Graves.

17 MR. BERNARD: We pass the witness, Your
18 Honor.

19 THE COURT: Anything else?

20 MR. JOSH HILL: One more question.

21 RECROSS EXAMINATION

22 BY MR. JOSH HILL:

23 Q. At what point yesterday did you approach the
24 prosecutor and let them know that you would be able to
25 identify the defendant?

1 MR. BERNARD: Objection, Your Honor,
2 assumes facts not in evidence.

3 THE COURT. Overruled.

4 Q. (By Mr. Josh Hill) At what time did you notify
5 the prosecutor that you might be able to identify the
6 defendant?

7 A. At what time? I don't know what time.

8 Q. After 5:00 o'clock, after testimony completed
9 for the day?

10 A. I'm not for sure about the time. I don't know.

11 Q. With regard to the time it was after the
12 testimony yesterday, after we stopped trial for the day?

13 A. About the identification of Inmate Graves?

14 Q. Yes.

15 A. Yes, I knew who he was, yes.

16 MR. JOSH HILL: Pass the witness.

17 MR. BERNARD: No further questions, Judge.

18 THE COURT: You may have stand down.

19 Please call your next witness.

20 MR. BERNARD: The State calls Deputy
21 Harden.

22 THE BAILIFF: Your Honor, this witness has
23 been sworn.

24 THE COURT: Good morning.

25 THE WITNESS: Good morning.