

1 LATOYA MCCLAIN

2 Having first been duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. BERNARD:

5 Q. Could you please introduce yourself to the  
6 jury.

7 A. Detention Officer L. McClain.

8 Q. And where do you work as a detention officer?

9 A. At 1200 Baker Street.

10 Q. And what's at 1200 Baker Street?

11 A. What?

12 Q. What facility is at 1200 Baker Street?

13 A. The detention facility.

14 Q. And what are your duties as a detention officer  
15 at that facility?

16 A. To control and maintain the inmates.

17 Q. And were you working there on May 4, 2012?

18 A. Yes.

19 Q. Now Officer McClain, how long have you worked  
20 there?

21 A. A little over five year.

22 Q. And where were you posted when you were there  
23 on May 4, 2012?

24 A. I was in F Pod 2F.

25 Q. And were you wearing a uniform when you were in

1 F Pod 2F?

2 A. Yes.

3 Q. And why aren't you wearing your uniform today?

4 A. My day off.

5 Q. And you said you were from F Pod 2F. What is  
6 that?

7 A. It's where, 2 stands for what floor they're on  
8 and F Pod stands for what pod the inmates are housed in,  
9 and that's 2F.

10 Q. Now before I proceed, Officer McClain is F Pod  
11 2F, is that located in Harris County, Texas?

12 A. Yes.

13 Q. Now, Officer McClain, I am going to show you  
14 State's Exhibit 1. Is that the layout of F Pod 2F?

15 A. Yes.

16 Q. Does this fairly and accurately depict what it  
17 represents?

18 A. Yes.

19 MR. JOSH HILL: No objections.

20 THE COURT: Admitted.

21 MR. BERNARD: May I published to the jury.

22 THE COURT: It may be published to the  
23 jury.

24 Q. (By Mr. Bernard) Officer McClain, could you  
25 tell me where are you posted in this cell block?

1 A. Right here in this approximate area.

2 Q. And Officer McClain, what are these things  
3 separating, these separations here?

4 A. This is the vestibule and this is the brick  
5 wall.

6 Q. Officer McClain, if you could press a little  
7 harder when you press on this.

8 A. I'm sorry. This is the vestibule and this is  
9 the brick walls for each side of the cell blocks.

10 Q. And can you clear the screen for us. Now  
11 Officer McClain, what is this area here?

12 A. That's the day room.

13 Q. And what are these spaces here?

14 A. These are the cell blocks.

15 Q. And what are the rectangular objects?

16 A. Those are the beds.

17 Q. And Officer McClain, I'm showing you what's  
18 marked as State's Exhibit 2. What is this?

19 A. That is a picture of the inside of the pods  
20 looking in the 2F.

21 Q. And when you say inside of the pod, can you  
22 show us on the screen where the pod is.

23 A. The pod is right there. (Indicating.)

24 Q. Does this fairly and accurately represent what  
25 it depicts?

1 A. Yes.

2 MR. JOSH HILL: No objection.

3 THE COURT: Admitted.

4 MR. BERNARD: May we published to the  
5 jury.

6 THE COURT: You may.

7 Q. (By Mr. Bernard) Officer McClain, I'm showing  
8 you next State's Exhibit 1. Officer McClain, could you  
9 clear the scene for us?

10 A. (Complying.)

11 Q. Now Officer McClain, could you show us on  
12 State's Exhibit 1, the layout, could you just draw a  
13 line that shows the view that we have here on State's  
14 Exhibit 2.

15 A. You mean from the inside of the pod to Inmate  
16 Graves, where he was housed, where his bunk was.

17 Q. I mean looking on State's Exhibit 2 there,  
18 there's a certain view that you have and could you draw  
19 a line showing -- could you just put a dot on the cell  
20 where Station 2 is viewed.

21 A. (Indicating.)

22 Q. And could you show us where that is on State's  
23 Exhibit 1.

24 A. (Indicating.)

25 Q. Officer McClain, what is the morning routine --

1 what happens in the morning in that pod on a routine  
2 day?

3 A. We do shifts, we do shift change, and then  
4 anything that happened prior gets passed down. It's  
5 like a briefing. And then I start my day by filling out  
6 that paperwork, hand out the log, pass on books, handle  
7 the inmate cards.

8 Q. And when did your shift start on May 4, 2012?

9 A. 6:00 o'clock.

10 Q. What is the routine for the jail after 6:00,  
11 what happens there in the F Pod?

12 A. 6:00 o'clock is when the shift starts. And we  
13 don't wake the inmates up until 7:00 o'clock.

14 Q. And what happens at 7:00 o'clock when you wake  
15 up the inmates?

16 A. At 7:00, that's when I call into the cell block  
17 by the intercom and I wake all the inmates up.

18 Q. On May 4, 2012, how quickly do the inmates get  
19 up?

20 A. They take their time.

21 Q. And on May 4, 2012, what routine did you follow  
22 or did you wake the inmates up on May 4, 2012?

23 A. Yes.

24 Q. How did you do that?

25 A. By intercom.

1 Q. When was that?

2 A. 7:00 o'clock.

3 Q. And did anything unusual happen on May 4, 2012  
4 when you -- after you called over the intercom to wake  
5 the inmates up?

6 A. I seen an inmate, an unidentified inmate in C  
7 Pod. I'm seeing in C Cell. He was masturbating. I'll  
8 just say that, because that's what he was doing.

9 Q. And what was he wearing?

10 A. He was just wearing boxers.

11 Q. And did -- let's see -- was any part of his  
12 body exposed?

13 A. Yes.

14 Q. What parts of his body was exposed?

15 A. He had his penis out.

16 Q. And were his boxers covering his penis?

17 A. No. His penis was over the front part of the  
18 boxers.

19 Q. And what was he doing?

20 A. He was doing this motion. (Indicating.)

21 Q. And what did you do next?

22 A. I then called the FCC and I told the deputies  
23 in FCC that I had an inmate that was masturbating so  
24 could you get some rovers over here.

25 Q. What's the FCC?

1 A. That's a 4F.

2 Q. Where's that located?

3 A. That's located in the front by the elevator  
4 lobby.

5 Q. And what are rovers?

6 A. Rovers are the men and women that rove the  
7 floor to help deal with inmates, and help with problem  
8 inmates, I'll say that.

9 Q. When you saw the inmate in Cell C masturbating,  
10 where was the inmate standing?

11 A. (Indicating.)

12 Q. Could you clear the screen for us?

13 A. Oh, I'm sorry.

14 Q. Could you show us on Exhibit 1 where the inmate  
15 was standing?

16 A. He was inside C Cell right here because he had  
17 a top bunk.

18 Q. And was he in the bunk or --

19 A. No, he was outside the bunk. He was standing  
20 beside it.

21 Q. And could you show us on Exhibit 2 where he was  
22 standing?

23 A. Because this would be his bunk right here. The  
24 top one, and he was standing besides the bunk.

25 Q. Is there -- aside from the bed, was there any

1 other furniture or anything like that in Cell C?

2 A. The toilet.

3 Q. Where is the toilet?

4 A. Behind this wall. It's behind this wall.

5 Q. Could you show us on Exhibit 1 where the toilet  
6 is in Cell C?

7 A. Right here under this corner.

8 Q. Now, how much time have you spent working as a  
9 detention officer in F Pod before this happened?

10 A. I rotated, I had actually three different pods  
11 that I worked, so I had rotated between three different  
12 pods and F pod was one of my pods.

13 Q. And how many days a week would you work at F  
14 pod?

15 A. I would say maybe two to three days a week.

16 Q. And for how long were you on rotation working  
17 two to three days a week in F pod?

18 A. Probably about maybe a couple of months.

19 Q. And during this time, where do inmates stand or  
20 sit when they were using the toilets in C Cell?

21 MR. JOSH HILL: Judge, I'm going to object  
22 to what inmates do.

23 THE COURT: Overruled.

24 Q. (By Mr. Bernard) You may answer.

25 A. When they use the restroom, they use it in the

1 corner part of it.

2 Q. Could you clear the screen for us. Could you  
3 show us on Exhibit 2 where they stand, understanding  
4 they are inside the wall there.

5 A. It's there where they are standing.

6 Q. Where they use the toilet?

7 A. It would still be behind this wall. I really  
8 can't see them, but it's behind this wall.

9 Q. Okay. And could you just show us again on  
10 Exhibit 1 where that is?

11 A. (Indicating.)

12 Q. And where was the inmate who was masturbating?

13 A. Which one?

14 Q. On Exhibit 1?

15 A. On Exhibit 1, right here.

16 Q. And where was the inmate when he was  
17 masturbating? Can you show us on Exhibit 2.

18 A. Right here in this area because that's his top  
19 bunk right there.

20 Q. And could you show us with a line on Exhibit 1,  
21 which way do -- which way do inmates face when they use  
22 the toilet?

23 A. They face? I really can't see when they're  
24 using the restroom, so they could stand any way but I  
25 really can't see them.

1 Q. And which way was the inmate who was  
2 masturbating facing?

3 A. He was facing --

4 Q. Can you just draw a line on Exhibit 1 where he  
5 was facing?

6 A. There.

7 Q. Outward. And now, were you able to see the  
8 front of his body when he was standing there?

9 A. Yes.

10 Q. And were you able to see his face?

11 A. Yes.

12 Q. And where was he looking?

13 A. He was looking directly at me.

14 Q. And do you recall whether his penis was erect  
15 or placid when this was happening?

16 A. It was erect.

17 Q. And was he doing any bodily -- anything with  
18 his penis other than masturbating?

19 A. No, that was it, masturbating.

20 Q. On the basis on your experience, before going  
21 to the detention officers facility, why do men  
22 masturbate?

23 MR. JOSH HILL: Judge, I'm going to object  
24 to speculation.

25 THE COURT: Sustained.

1 Q. (By Mr. Bernard) Were there others in the cell  
2 block at the time?

3 A. Yes.

4 Q. Where were they?

5 A. They were sleeping.

6 Q. Where were they sleeping?

7 A. In their bunks.

8 Q. And was anyone else in there other than the  
9 inmate who was masturbating and the inmates who were  
10 sleeping in their bunks? Was there anyone else in C?

11 A. Yes, there were other inmates in C, but he was  
12 the only one up at the time.

13 Q. And what happened after you called the rovers?

14 A. After I called for the rovers, then they came  
15 and I opened up the door and let them in to the cell  
16 block so they could escort Inmate Graves out.

17 Q. Could you show us on Exhibit 1 where those  
18 doors are?

19 A. This is the outer door, that little -- that  
20 black line, and this is the inner cell block door.

21 Q. Officer McClain, I'm showing you what is marked  
22 as State's Exhibit 5, what is this?

23 A. That's the inner cell block door.

24 Q. Could you clear the screen. And could you show  
25 us what the angle of view is, shown in this exhibit?

1 A. In that one, shows F pod.

2 Q. Yes.

3 A. This is from the pod here, from this window  
4 right here.

5 Q. Does this fairly and accurately represent what  
6 it depicts?

7 A. Yes.

8 MR. JOSH HILL: No objection.

9 THE COURT: Admitted.

10 MR. BERNARD: May we published?

11 THE COURT: Yes.

12 Q. (By Mr. Bernard) Deputy McClain, could you  
13 point out, show the jury again on State's Exhibit 1,  
14 where the inner door is?

15 A. (Indicating.)

16 Q. And could you show us on State's Exhibit 2  
17 where that door is, where the inner door is? Clear the  
18 screen please.

19 A. (Complying.)

20 Q. How does that inner door function?

21 A. By the control panel. You have to turn a lock  
22 to open it.

23 Q. Where is that control panel?

24 A. Right here.

25 Q. And could you show on State's Exhibit 1, the

1 outer door.

2 A. (Indicating.)

3 Q. What does the outer door look like?

4 A. Same as the inner door.

5 Q. How did the outer door function?

6 A. Again we have to turn a knob to open it.

7 Q. And who controls the outer door and the inner  
8 door?

9 A. I did.

10 Q. And could you clear the screen for us.

11 A. (Indicating.)

12 Q. What did it sound like when the outer door  
13 opens?

14 A. It makes a loud mechanical noise.

15 Q. And is that noise audible inside the cell  
16 block?

17 A. Yes.

18 Q. And that means it's audible inside the cells of  
19 the cell block?

20 A. Yes.

21 Q. And when deputies come to actually go inside  
22 the cell blocks, how do they typically enter the cell  
23 blocks?

24 A. They enter through the outer door and then  
25 through the inner door.

1 Q. Can you show that on the map on the screen?

2 A. They'll come in through this door and come in  
3 through this door.

4 Q. And can they control the doors from that  
5 hallway?

6 A. No. I control the doors.

7 Q. And how do you know when they want to enter?

8 A. I can see them.

9 Q. When they enter, when the deputies want to  
10 enter the cell block?

11 A. I am sitting down in the office and I can look  
12 at the screen. I can open up one side or close one  
13 side.

14 Q. And where are they when they do that?

15 A. Sometimes they could be either in the hallway.

16 Q. Will you show us the hallway you're talking  
17 about on Exhibit 1?

18 A. Yes. This is the hallway right here before you  
19 go into the cell blocks.

20 Q. Could you clear the screen for us. On May 4,  
21 2012, when you called for the rovers after seeing the  
22 inmate masturbating, what happens?

23 A. The two deputies, they get there, they went  
24 into C, and they escorted Inmate Graves out.

25 Q. And where did they enter?

1           A.    They entered through the outer door and then  
2 into the inner door.

3           Q.    And before they came to the outer door, where  
4 were they?

5           A.    They were in the hallway.  I seen them walking  
6 down the hallway.

7           Q.    And then what happened as you saw them walking  
8 down the hallway?

9           A.    I waited until they got a little bit closer.  I  
10 saw them at the outer door because if I opened the outer  
11 door too soon, then they can hear it, the inmates can  
12 hear it.

13          Q.    And after that, did you open the outer door?

14          A.    When they got closer, yes.

15          Q.    And what did they do?

16          A.    They entered through the outer door.

17          Q.    And what happened next?

18          A.    I opened the inner door so they could enter to  
19 the day room area?

20          Q.    Did you do anything before you opened the inner  
21 door?

22          A.    Closed off the outer door.

23          Q.    And were both doors opened when the deputies  
24 went in?

25          A.    No.

1 Q. Why not?

2 A. Because you have to close one door before you  
3 could open up the other.

4 Q. And after you closed the outer door and opened  
5 the inner door, where did the deputies go?

6 A. Well, when they entered, Deputy Harden looked  
7 at me and he was like where. He didn't say it out  
8 loud. It was like a gesture. And I just said, that  
9 means C. (Indicating.)

10 Q. And where did the two deputies -- excuse me --  
11 could you clear the screen for us?

12 A. (Complies.)

13 Q. How many deputies were there?

14 A. There were two.

15 Q. And who were they?

16 A. Deputy Harden and Deputy Jones.

17 Q. And where were they when you communicated with  
18 Deputy Harden, when you made the gesture, the C gesture  
19 to Deputy Harden?

20 A. They just entered the inside. They just came  
21 in through the door.

22 Q. And what happened after that?

23 A. Then they walked over to the C Cell and that's  
24 when they saw Inmate Graves.

25 Q. Can you show me where they were standing at

1 when they approached C Cell?

2 A. A, B, C. They were outside C.

3 Q. And when the outer door opened, when you were  
4 letting the two rovers in, did it make a sound?

5 A. Yes, it made a loud sound.

6 Q. Was that sound audible to you?

7 A. Yes.

8 Q. And was that the normal sound that is usually  
9 made?

10 A. Yeah, it's a normal sound.

11 Q. And after the deputies entered -- excuse me.  
12 What happened after you opened the outer door? What  
13 happened inside the pod after you opened the outer  
14 door?

15 A. When they were already in there?

16 Q. Just after you opened the outer door, what  
17 happened?

18 A. Well, I opened the outer door and I let them in  
19 and I opened the inner door and that's when they walked  
20 over to C Cell, and that's when they went to Inmate  
21 Graves.

22 Q. Now, when you're in the pod there, on duty,  
23 what are your duties in actually standing there or  
24 sitting in the pod?

25 A. Well, we have command, I usually stand so I can

1 control the crowd, you know, if anything else may happen  
2 or whatever.

3 Q. And where are you located when you are standing  
4 to see if anything else is happening.

5 A. I follow them. My eyes follow them.

6 Q. And who are they?

7 A. Deputy Harden and Deputy Jones.

8 Q. Deputy Harden and Deputy Jones. And when  
9 you're on duty, when there isn't anything going on, what  
10 is your job, what is the purpose of having you there in  
11 the pod?

12 A. To make sure no fights break out and we have a  
13 lot of in and out movement too.

14 Q. How do you make sure no fights break out?

15 A. Well, I can't, you know, make sure but if  
16 fights break out, I can call for rovers to handle the  
17 situation.

18 Q. How do you know if any fights break out?

19 A. When you actually see them fighting.

20 Q. All right. What do you have to do to see  
21 whether or not people are fighting?

22 A. Well, when the fight breaks out, it's visible.  
23 I call for rovers and rovers come and I let them in the  
24 same way.

25 Q. And when you're just part of your regular

1 routine there in the pod, where are you? What do you do  
2 with your head? Where are you looking, inside the pod  
3 or outside the pod?

4 A. Well, there's two sides, so I got to make  
5 rounds visually of both sides?

6 Q. Do they require you to do these visual  
7 rounds both sides?

8 A. Yes.

9 Q. Do you have any alternatives, given your  
10 duties, other than looking around?

11 A. I mean, sometimes the medication, triage,  
12 inmates going to the clinic. I mean just a lot of  
13 different events there.

14 Q. What are these events that you're describing?

15 A. One of the things, the daily routines.

16 Q. Okay. When this inmate was looking at you from  
17 C Pod and masturbating, were his eyes opened or closed?

18 A. They were opened.

19 Q. And did he make eye contact with you?

20 A. Yes.

21 Q. And after he made eye contact with you, what  
22 happened?

23 A. I turned away.

24 Q. And how long was this eye contact between the  
25 two of you?

1 A. It was probably like seconds.

2 Q. And after the two deputies arrived and they  
3 took the inmate into his cell -- when they arrived, were  
4 there any other inmates in Cell C when they got there?

5 A. Yes.

6 Q. And where were those inmates?

7 A. They were still in their bunks.

8 Q. And did any inmates get out of their bunk when  
9 you called for the rovers and the rovers arrived?

10 A. Not that I'm aware of. He was the only one  
11 awake at that time.

12 Q. And did you see -- after you opened the outer  
13 cell door, did you see anybody get up in that cell?

14 A. No.

15 Q. And was the inmate who they took out of that  
16 cell the same inmate who was masturbating?

17 A. Yes.

18 Q. And what happened -- where did they go after  
19 they escorted him out?

20 A. They escorted him out of the cell block. They  
21 took him into the hallway.

22 Q. Did you ever ask any of the inmates to  
23 masturbate?

24 A. No, I didn't.

25 Q. Did you ever ask any inmates to look at you

1 while they touched their penis?

2 A. No.

3 MR. JOSH HILL: Judge, I'm going to object  
4 to the relevance of this line of questioning.

5 THE COURT: Sustained.

6 Q. (By Mr. Bernard) Deputy, what is generally the  
7 purpose of masturbation?

8 MR. JOSH HILL: I object, Your Honor.

9 THE COURT: Sustained.

10 Q. (By Mr. Bernard) Deputy, I'm showing you what  
11 is marked as State's Exhibit 6. And what is this?

12 A. There is a list of the places where Inmate  
13 Graves has been housed.

14 Q. Is this a record kept at the jail?

15 A. Yes.

16 Q. Are you a custodian of this record?

17 A. The inmate's card, yes, I could pull it up.

18 MR. BERNARD: Just a moment, Your Honor.

19 Q. Is the records I showed you, State's Exhibit 6,  
20 kept in the regular course of business?

21 A. No, not in my pod. Now, it's somewhere on the  
22 Internet where you have to find it.

23 MR. BERNARD: No further questions, Your  
24 Honor.

25 THE COURT: We are going to recess for the