

1 witness has not been sworn.

2 THE COURT: All right. Come up,  
3 sir. Please raise your right hand.

4 (*Witness sworn.*)

5 THE COURT: Have a seat, please.  
6 You may proceed.

7 **FERNANDO PALOMARES,**

8 having been first duly sworn, testified as follows:

9 **DIRECT EXAMINATION**

10 **BY MR. GILLIAM:**

11 Q. Will you please introduce yourself to  
12 us?

13 A. My name is Fernando Palomares. I'm a  
14 sergeant with the sheriff's office.

15 Q. How long have you been a sergeant with  
16 the sheriff's office?

17 A. A year and six months.

18 Q. And what are you -- I assume you've  
19 worked at the Harris County Sheriff's Office before  
20 you were promoted to sergeant?

21 A. Correct, 14 years.

22 Q. Where is your current job assignment?

23 A. I'm assigned to the sixth floor at 701.

24 Q. And 701 is what?

25 A. The jail, the county jail, 701 North San

1 Jacinto.

2 Q. And is that in Harris County, Texas?

3 A. That is correct.

4 Q. And where were you assigned back on  
5 December 26th of 2014?

6 A. I was assigned to the seventh floor  
7 temporarily.

8 Q. The seventh floor of the same building?

9 A. 701 jail, yes, sir.

10 Q. And did you have an incident with an  
11 inmate named Weylin Allford on that date?

12 A. Yes, I did.

13 Q. And do you see him Mr. Allford in the  
14 courtroom today?

15 A. Yes, sir.

16 Q. And will you identify him by where he's  
17 sitting and an article of clothing he's wearing?

18 A. He's to my right wearing a brown shirt  
19 with stripes.

20 MR. GILLIAM: Your Honor, may the  
21 record reflect the witness identified the defendant?

22 THE COURT: It will so reflect.

23 Q. (By Mr. Gilliam) What was the nature of  
24 the incident you had with the defendant?

25 A. We deployed OC, the pepper spray.

1 Q. Okay. And why did you do that?

2 A. We were ordered by Major Jones to do a  
3 cell search every other day on Inmate Allford's cell  
4 block.

5 Q. Okay. So you were ordered to do a cell  
6 search on the defendant's cell. What happened when  
7 you approached the defendant's cell?

8 A. I informed him that we were there to do  
9 the cell search, and he refused to come to the pan  
10 hole. He had restraints placed on him.

11 Q. After he refuses to come to the pan  
12 hole, what happens?

13 A. I give him multiple orders and then at  
14 the time he continued to refuse and I ordered him to  
15 continue to come to the pan hole and he refused and  
16 I told him I was going to get the OC spray if he  
17 refused my commands.

18 Q. And at this time is the pan hole opened  
19 or closed?

20 A. It's closed.

21 Q. And after he was refusing to comply,  
22 what steps did you take?

23 A. I went and got the OC spray, and I  
24 ordered my detention officers to open the pan hole.  
25 And when I went to open the pan hole, he had

1 barricaded the pan hole using his bed mattress.

2 Q. And after he had barricaded the pan hole  
3 with the mattress, what do you do?

4 A. I pushed the mattress with my left and  
5 proceeded to deploy the OC spray with my right hand.  
6 And I was deploying the OC spray, and he pushed the  
7 mattress back up forcing my hand up against the door  
8 panel.

9 Q. And did you suffer any injuries on your  
10 hand?

11 A. I did.

12 Q. What sort of injuries did you suffer?

13 A. When I went to the doctor, the doctor  
14 said I had tendinitis to my right arm.

15 Q. Okay. I'm showing you what's been  
16 marked as State's Exhibits No. 29, 30, 31, 32, 33,  
17 34, 35, 36 and 37. Do these photos accurately and  
18 fairly depict what they purport to show?

19 A. Yes, sir.

20 Q. And are they taken from that same day  
21 that this incident happened?

22 A. That's correct.

23 MR. GILLIAM: Your Honor, I'd offer  
24 State's Exhibits 29 through 36 into evidence, and  
25 I'm tendering to Defense counsel.

1 MR. SCOTT: We have no objection,  
2 Your Honor.

3 THE COURT: All right. No  
4 objection, they're admitted and you may publish as  
5 necessary.

6 *(State's Exhibits No. 29 through*  
7 *37, Photographs, offered and admitted.)*

8 MR. GILLIAM: Thank you, Judge.

9 Q. (By Mr. Gilliam) State's Exhibit  
10 No. 29, what do we see here?

11 A. It's the door to the cell block where he  
12 was housed.

13 Q. And is that the defendant's cell that we  
14 see in that photo?

15 A. That's correct.

16 Q. State's Exhibit No. 30, what is this?

17 A. Same door with the pan hole opened where  
18 I put the OC spray through.

19 Q. And is the pan hole this thing right  
20 here that I'm pointing to (indicating)?

21 A. That's correct, the little rectangular  
22 door.

23 Q. I'm showing you State's Exhibit 31.  
24 What is all that liquid that we see, the orange  
25 colored liquid on that door?

1           A.    That's the OC spray.  And you can see  
2 where I was trying to get to him when he pressed  
3 my -- when he pushed my arm up and I sprayed  
4 towards -- towards the ceiling of the room.

5           Q.    Okay.  State's Exhibit No. 32, what are  
6 we seeing in this picture?

7           A.    On the left side, that's the mattress  
8 where he folded it and he was using it to barricade  
9 the door.  You can see the pepper spray all over  
10 where I was trying to get him to comply.

11          Q.    So just to be clear, the mattress we see  
12 in State's Exhibit No. 32, was it covering the pan  
13 hole that we see in State's Exhibit No. 30?

14          A.    That is correct.

15          Q.    State's Exhibit No. 33, is that a  
16 picture of you from that day?

17          A.    Yes, sir, it is.

18          Q.    And it's kind of hard to see, but will  
19 you show us where your injuries were?

20          A.    They were on my right-hand side, right  
21 here around the forearm (indicating).  There were  
22 bruising and on the lower side of the arm was also  
23 bruised.

24          Q.    State's Exhibit No. 34, is that just a  
25 picture of the inside of your arms?

1 A. That is correct.

2 Q. Okay.

3 A. You can see it on the right-hand side.

4 Q. Let me zoom in here. Is that the  
5 injuries that you're talking about on the right-hand  
6 side?

7 A. Yes, sir. Uh-huh.

8 Q. Same with 35, are these your injuries  
9 right here?

10 A. Yes, sir, it is.

11 Q. And 36, did you also suffer injuries on  
12 the --

13 A. On the left arm, yes, sir.

14 Q. -- on the left hand? And those are --  
15 you see those right here in State's Exhibit 36; is  
16 that right?

17 A. Yes, sir.

18 Q. State's Exhibit No. 37, is that a  
19 picture of the defendant from that same day?

20 A. It is.

21 Q. And if you look at his eyes -- have you  
22 ever deployed your OC spray before?

23 A. I have.

24 Q. And have you -- as part of your  
25 training, do you have to have OC spray deployed on

1 you?

2 A. Yes, I did.

3 Q. And we're seeing the defendant's eyes  
4 here. The redness in his eyes, would that be  
5 something that's caused by the OC spray being  
6 deployed?

7 A. The irritation, yes, sir.

8 Q. So after the defendant refuses to  
9 comply, pushes your arms against the open pan hole  
10 door, what happened after that?

11 A. We -- like I said, we deployed the OC  
12 spray. And what I did is, I had my detention  
13 officer bring some blankets so I can maintain the  
14 pepper spray inside to get the maximum effect.

15 Q. And were you able to bring the defendant  
16 into compliance?

17 A. After ten minutes of requesting the same  
18 thing, giving him orders to comply by putting his  
19 hands through the pan hole.

20 Q. And finally after ten minutes did he  
21 actually comply --

22 A. Yes, he did.

23 Q. -- and put his hands through the pan  
24 hole?

25 A. Yes, sir.



1           Q.    And you mentioned a little bit what --  
2 did you have to go to the doctor due to these  
3 injuries?

4           A.    Yes, sir, I did.

5           Q.    And just tell us again what did your  
6 doctor say about your injuries or what did you learn  
7 the nature of your injuries were?

8           A.    Well, I explained to him that after  
9 about ten minutes afterwards, I couldn't close my  
10 fist. I couldn't hold anything with my right hand.  
11 He said it was due to the bruising to the tendons or  
12 the nerve area on the forearm and lower bottom of my  
13 arm.

14          Q.    And did you eventually regain your  
15 strength?

16          A.    I have; but what I noticed, that in  
17 February I went to qualify with my pistol and we're  
18 required to shoot from the hip two rounds, when I  
19 fired those two rounds, it hurt.

20                   MR. GILLIAM:  Pass the witness,  
21 Your Honor.

22                   THE COURT:  Defense?

23                   MR. SCOTT:  Could I have a moment,  
24 Judge?

25                   THE COURT:  Yes, sir.

1                   *(Brief pause.)*

2                   MR. SCOTT: May I proceed, Judge?  
3 I'm sorry.

4                   THE COURT: You may.

5                   **CROSS-EXAMINATION**

6 **BY MR. SCOTT:**

7                   Q. Sergeant, I did not note the date of  
8 this occurrence. When was that?

9                   A. December 26th.

10                  Q. Of '14, correct?

11                  A. 2014, yes, sir.

12                  Q. All right, sir. Now, you say that the  
13 purpose of -- the purpose of the action by you was  
14 what again? What were you doing there that day?

15                  A. Cell search, sir.

16                  Q. I'm sorry?

17                  A. Cell search.

18                  Q. Cell search. Okay. All right.

19                  MR. SCOTT: Can I see the pictures,  
20 the latest pictures?

21                  MR. GILLIAM: Right here  
22 (indicating).

23                  Q. (By Mr. Scott) Now, Sergeant, in  
24 relation to the cell search, I gather that -- you  
25 told us this is, in fact -- that cell door, it

1 appears to be at the end of the hallway; is that  
2 correct?

3 A. That's correct.

4 Q. And where was this particular cell?

5 A. Seventh floor.

6 Q. I'm sorry. Go ahead.

7 A. Seventh floor of 701 San Jacinto.

8 Q. I'm sorry. Seventh floor what?

9 A. Seventh floor of 701 jail.

10 Q. This is the first time I've noticed  
11 this, but it appears that the cell door has the name  
12 of the defendant on the right exterior doorjamb; is  
13 that accurate, sir?

14 A. Yes, sir.

15 Q. And also this door -- this door seems to  
16 have a -- what is this right here (indicating)?

17 A. It's a door that closes on the windows.

18 Q. All right. So you could actually close  
19 the glass windows there? You can actually have a  
20 cover --

21 A. Yes.

22 Q. -- or a shield over --

23 A. That's correct. If it's not -- we  
24 usually close those.

25 Q. I'm sorry?

1           A.    If they're not going to use door, the  
2 cell block, we close the door.

3           Q.    Okay.  So if there's nobody in the cell,  
4 then you close that little metal door; is that  
5 right?

6           A.    That's correct.

7           Q.    All right.  This one has, though,  
8 something in it besides just glass, correct?

9           A.    He has paper covering the window.

10          Q.    It says the Holy Bible is propped or  
11 stuck some way in that window; is that correct?

12          A.    That's correct.

13          Q.    All right, sir.  How long had  
14 Mr. Allford been in that location, do you know?

15          A.    That particular floor, no, sir, I do  
16 not.

17          Q.    Okay.

18          A.    I was moved up there temporarily to  
19 assist another sergeant up there.

20          Q.    There must be a rule that they don't  
21 mind if they put Holy Bibles in the windows, right?

22          A.    No, there's not supposed to be --  
23 they're not supposed to be covered.

24          Q.    Half covered, does that count?

25          A.    No, they shouldn't be covered at all.

1 Q. No covers?

2 A. No. When I was talking to him, he was  
3 telling me he was not going to allow me to come  
4 inside.

5 Q. But the Holy Bible, that information  
6 must have been there -- well, you don't know how  
7 long that might have been there, right?

8 A. That's correct. That's correct.

9 Q. All right, sir.

10 Once you -- you sprayed your spray in  
11 the room, correct?

12 A. Yes.

13 Q. And then you had tried to seal it up so  
14 the fumes and the -- what the spray does to you  
15 would have an effect inside that room, correct?

16 A. That's correct.

17 Q. Kind of like tear gas permeates  
18 eventually everything, right?

19 A. That's correct.

20 Q. And at some point in time, then, he came  
21 out of the cell?

22 A. No, sir, he did not come out. I ordered  
23 him to come to the pan hole.

24 Q. Right.

25 A. So he could have restraints placed on

1 him.

2 Q. Okay. He went to the pan hole. Then  
3 what happened?

4 A. I kept giving him orders to come to the  
5 window -- to the pan hole.

6 Q. I couldn't understand you.

7 A. I kept giving him orders to come to the  
8 pan hole to place restraints on him.

9 Q. And did he do that?

10 A. No, sir, he stayed there an extra ten  
11 minutes gathering his legal paperwork.

12 Q. Well, no -- yeah, I'm beyond that.

13 A. Okay.

14 Q. Okay. You close off the hole, you choke  
15 him down with the spray, ten minutes later then what  
16 happens?

17 A. He finally came to the pan hole. We  
18 placed restraints on him and we took him downstairs  
19 to the clinic, to decontamination.

20 Q. So when you go to the pan hole, just for  
21 clarification, you have them stick their hands out  
22 in front of them or do you have them back up to the  
23 hole and stick their hands through the hole in the  
24 back?

25 A. He placed his hands through the back.

1 Q. All right.

2 A. So when you open the door, he had  
3 already moved them back to the front again.

4 Q. So when were the restraints put on him?  
5 When were the restraints put on him, if they were?

6 A. At the pan hole, sir, while he was still  
7 inside. But when the door opened, he had already  
8 moved his hands up to the front.

9 Q. So he was able to move his hands up in  
10 front with the restraints having originally been put  
11 in his back?

12 A. That's correct.

13 Q. And do they do that by jumping through  
14 them or do they just do it --

15 A. I cannot tell you.

16 Q. -- another way?

17 A. I couldn't tell you because he was  
18 already at the door when we pulled him out.

19 Q. Okay. So when the man is standing there  
20 with his hands behind his back, as I'm displaying  
21 here, with his palms up because they're hard to put  
22 down, but palms up, then that's when you put the  
23 handcuffs on his wrists with his hands --

24 A. That's correct.

25 Q. -- up? So we don't lose sight of it,

1 but basically like this (indicating), correct?

2 A. That's correct.

3 Q. All right. But from that point -- are  
4 these normal handcuffs?

5 A. Yes, sir.

6 Q. They got -- they got a space between the  
7 wrist --

8 A. Chain.

9 Q. -- wrist bracelet about that wide  
10 (indicating)?

11 A. That's correct.

12 Q. Okay. So from the point in time that  
13 he's bent over backed up to the window, put his  
14 hands out the window -- the pan hole. I'm sorry.

15 A. Pan hole.

16 Q. I'm sorry. The pan hole. You cuff him,  
17 you open the door and then you say his hands are  
18 then in front of him, right?

19 A. That's correct. There are people that  
20 were double-jointed. They had the ability to move  
21 back to the front.

22 Q. Right. They've got two joints on each  
23 shoulder, right, that makes them double-jointed?

24 A. It's a possibility of that.

25 Q. Let me show you this picture.



1           A.    Uh-huh.

2           Q.    They honed in on the -- on his eyes  
3 being kind of red and watery looking, correct?

4           A.    Well, it was honed on his face just to  
5 show that there was no injuries caused to him.

6           Q.    Well, you commented on the fact that his  
7 eyes or face appeared --

8           A.    Right.

9           Q.    Even after you had been sprayed with OC  
10 spray, this was what was the result on the  
11 defendant?

12          A.    Uh-huh.  Correct.

13          Q.    He had red, kind of watery eyes, right?

14          A.    That's correct.

15          Q.    All right.  Does that also make your  
16 nose get bigger as if it might have been hit on  
17 something?  Does that spray have that effect on you,  
18 make your whole face swell up and your nose swell  
19 up?

20          A.    Yes, sir, it did because you notice on  
21 my photograph, you can see me arms swollen up by  
22 then also.

23          Q.    Okay.  So your arm was swollen up and  
24 his nose was swollen up?

25          A.    That's correct.

1 Q. That's all from the OC spray, right?

2 A. That's correct.

3 MR. SCOTT: Okay. Pass the  
4 witness, Your Honor.

5 THE COURT: State?

6 MR. GILLIAM: Nothing further, Your  
7 Honor.

8 THE COURT: May he be excused?

9 MR. SCOTT: Yes, Your Honor.

10 THE COURT: You're free to go.  
11 State, call your next.

12 MR. GILLIAM: State calls Deputy  
13 Ojeda.

14 THE BAILIFF: Your Honor, this  
15 witness has not been sworn.

16 THE COURT: Come on up, Deputy.  
17 Raise your right hand.

18 *(Witness sworn.)*

19 THE COURT: Have a seat.  
20 You may proceed.

21 **EDMUNDO OJEDA,**  
22 having been first duly sworn, testified as follows:

23 **DIRECT EXAMINATION**

24 **BY MR. GILLIAM:**

25 Q. Deputy Ojeda, will you please introduce