

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

C.B. BY AND THROUGH HIS NEXT
FRIEND, CHARLESTON DePRIEST, ET AL.

PLAINTIFFS

VS.

CIVIL NO. 3:10CV663-CWR-FKB

WALNUT GROVE CORRECTIONAL
AUTHORITY, ET AL.

DEFENDANTS

MOTIONS HEARING
VOLUME 3 OF 3

BEFORE THE HONORABLE CARLTON W. REEVES
UNITED STATES DISTRICT JUDGE
APRIL 3RD, 2015
JACKSON, MISSISSIPPI

APPEARANCES:

FOR THE PLAINTIFFS: MS. MARGARET WINTER
MR. JODY E. OWENS II
MR. ROBERT B. MCDUFF

FOR THE DEFENDANTS: MR. GARY E. FRIEDMAN
MR. WILLIAM T. SILER, JR.
MR. HAROLD E. PIZZETTA, III
MS. KRISSY CASEY NOBILE

REPORTED BY: MARY VIRGINIA "Gina" MORRIS, RMR, CRR
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1 (COURT CALLED TO ORDER)

2 THE COURT: You may be seated. Good morning.

3 (ALL RESPONDED "GOOD MORNING")

4 THE COURT: Plaintiffs ready to call its next witness?

5 MR. OWENS: Yes, your Honor. Plaintiffs call Jeremy
6 Evans.

7 THE COURT: Okay. Mr. Evans, you've been here the
8 entire time. So you know the ground -- the ground rules. So I
9 just ask you to please make sure you speak up so that we can
10 all hear you.

11 THE WITNESS: Yes, sir.

12 THE COURT: Thank you.

13 MR. OWENS: Your Honor, permission to approach
14 Mr. Evans?

15 THE COURT: You may.

16 **JEREMY EVANS,**

17 having affirmed to tell the truth, testified as follows:

18 **DIRECT EXAMINATION**

19 BY MR. OWENS:

20 Q. Good morning, Mr. Evans.

21 A. Good morning, sir.

22 Q. Could you state your name, please.

23 A. Jeremy Evans.

24 Q. Mr. Evans, what's home for you?

25 A. Sir?

1 Q. Where is home?

2 A. Columbus, Mississippi.

3 Q. And how long have you been in MDOC's custody?

4 A. Approximately three years.

5 Q. And where have you spent that three years?

6 A. Walnut Grove.

7 Q. The entire three years?

8 A. The entire three years yes, sir.

9 Q. And before we get started with your examination, there's
10 been some comments made to the court about your stay at Central
11 Mississippi Correctional Facility. Can you speak to your time
12 there?

13 A. Yes, sir. We was transported from Walnut Grove to Central
14 Mississippi Correctional Facility on the 13th of this month
15 through the middle of the night. Upon getting there, you know,
16 we were issued beds, but not beddings.

17 I had to wait until that following Tuesday to confirm the
18 reason why I was moved there. I still haven't got any medical
19 treatment dealing with -- dealing with my high blood pressure.
20 I got confirmation from the superintendent, Mr. King, that, you
21 know, we was moved because they was afraid that, you know --

22 MR. SILER: Objection. Hearsay.

23 THE COURT: Who is -- Mr. King is the superintendent
24 of the MDOC facility? What's his title?

25 MR. OWENS: Yes, your Honor. Mr. King is the

1 superintendent of Central Mississippi Correctional Facility.

2 THE COURT: Objection overruled.

3 BY MR. OWENS:

4 Q. Mr. Evans, could you speak up as well.

5 A. Yes, sir. Mr. King informed me that we was moved dealing
6 with our safety prior to coming to court. He offered me a job
7 in the administration office. Things got better. You know, I
8 got the proper bedding and clothing. So things got better
9 after that until the 1st -- April the 1st when leaving here --

10 Q. "Leaving here" as in leaving court?

11 A. Yes, sir.

12 Q. Your first day in court?

13 A. Yes, sir.

14 Q. Okay.

15 A. When we got back to Central Mississippi, I was transferred
16 to another housing quarter where I didn't have any -- the
17 proper bedding, and I wound up sleeping on steel and the floor.
18 So...

19 Q. Mr. Evans, why did you sleep on the floor?

20 A. Because the steel was so uncomfortable.

21 Q. And when you say you didn't have proper bedding, what are
22 you referring to?

23 A. No mattress, no sheets, no comforter, no anything, no
24 pillow, no anything.

25 Q. And did you ask for bedding?

1 A. Yes, sir.

2 Q. Who did you ask?

3 A. I asked the pod control officer and I asked the officer who
4 brought in the mail.

5 Q. And what were you told or what did you learn from them?

6 A. That I have to wait.

7 Q. And last night I spoke to Mr. Pizzetta of the AG's office
8 about your situation. What happened last night?

9 A. Once I got back, I had to stop, talk to the captain. And
10 she filled out an intake form where she gave me the proper
11 bedding and clothing and pillows and, you know, the proper
12 stuff to house me. So it got a lot better.

13 Q. So, Mr. Evans, you testified that you've been in MDOC's
14 custody for three days (sic). Is that correct? Three years.

15 A. Yes, sir.

16 Q. And have you ever had a rule violation report?

17 A. No, sir.

18 Q. What's your custody status?

19 A. A custody.

20 Q. And is that the highest custody you can be in?

21 A. Yes, sir.

22 Q. All right. Are you currently gang affiliated?

23 A. No, sir.

24 Q. Have you ever been gang affiliated?

25 A. No, sir.

1 Q. Mr. Evans, what's your academic and professional
2 background?

3 A. I have an associate's degree in healthcare. I have a CNA
4 license. I have a pharmacist technician license. I have a
5 home health/homemaker certification.

6 THE COURT REPORTER: I'm sorry. Pharmacist technician
7 license and home health/home care?

8 THE WITNESS: Yes.

9 BY MR. OWENS:

10 Q. Mr. Evans, if you look at the screen in front of you, I'm
11 showing you Exhibit 44. Can you see that?

12 A. Yes, sir.

13 Q. Is that a certificate from East Mississippi Community
14 College?

15 A. Yes, sir.

16 Q. And that's a healthcare assistant?

17 A. Yes, sir.

18 Q. And that's your degree?

19 A. Yes, sir.

20 MR. OWENS: Your Honor, we'd like to move plaintiffs'
21 Exhibit 44 into evidence.

22 THE COURT: Any objection from the defendant?

23 MR. SILER: No objection, your Honor.

24 THE COURT: Exhibit 44 will be admitted.

25 (EXHIBIT P-44 MARKED)

1 MR. OWENS: Also, your Honor, Exhibit 44 includes the
2 license of -- it's actually three -- or four documents, your
3 Honor, with certifications for Mr. Evans, including this one
4 currently on the stand.

5 BY MR. OWENS:

6 Q. Mr. Evans, what document is that right there?

7 A. It's homemaker and home health. It's a certification come
8 from the Vocational Education Department in Workforce
9 Development from the State of Mississippi.

10 Q. And, Mr. Evans, what document is that?

11 A. My license for certified nursing assistant.

12 Q. And, lastly, Mr. Evans, what document is now showing on the
13 scene?

14 A. My state-approved pharmacist technician certification.

15 MR. OWENS: Your Honor, I know the defendants didn't
16 object, but it's actually -- this exhibit is actually four
17 different certifications, four pages. So I just want to make
18 sure we're clear we'd like to move all of those into evidence.

19 THE COURT: Okay.

20 MR. SILER: No objection, your Honor.

21 THE COURT: They're in.

22 BY MR. OWENS:

23 Q. Mr. Evans, because of your professional training, did you
24 have any special jobs while at Walnut Grove?

25 A. Yes, sir.

1 Q. What were those jobs?

2 A. Working in the medical department, sir.

3 Q. I'm sorry. Could you speak up?

4 A. Working in the medical department.

5 Q. And what's the medical department at Walnut Grove?

6 A. The infirmary where the offenders come in. And it's a
7 private contract, you know, from MTC, but it's -- they operate
8 the medical standpoint perspective, you know, seeking, you
9 know, medical attention for the offenders.

10 Q. And what type of responsibilities would you have in the
11 medical infirmary?

12 A. Janitorial work. And on occasion when needed, I would do
13 certain things like vital signs and monitoring IV's, organize
14 medicines, drawing blood, if necessary. So pretty much
15 wherever I'm needed.

16 Q. And you've done that over the last three years?

17 A. Yes, sir.

18 Q. Were there any specific occasions that you had to be more
19 involved with the medical side of it with respect to IV's and
20 drawing blood?

21 A. Sir?

22 Q. Were there any specific occasions that you had to be more
23 involved in the medical component of it?

24 A. Yes, sir.

25 Q. What type of occasions was those?

1 A. Like riots, fights or when we're just short of staff.

2 Q. And you mentioned riots. Were you at Walnut Grove when any
3 riots occurred?

4 A. Yes.

5 Q. Which riots were those?

6 A. Actually three. One November 2012, one at the beginning of
7 the year of -- what was it, '14? And July riot of '14.

8 Q. And I want to talk to you about those riots that you were
9 in medical. But, in particular, since you were at Walnut Grove
10 the last three years, do you have any knowledge about the
11 conditions at Walnut Grove?

12 A. Yes, sir.

13 Q. And what things do you think you can testify about here
14 today?

15 A. Sexual assaults, gang affiliations, contraband and security
16 issues.

17 Q. Okay, Mr. Evans. We'll come back to that, but I want to
18 talk particularly about the July riot that occurred on
19 July 10th.

20 A. Yes, sir.

21 Q. Were you working in the medical unit that day?

22 A. Actually, I had got called back to help out. I was there.
23 I was present. Yes, sir.

24 Q. How did you get called back to the medical unit?

25 A. The administrator over the medical department, she called

1 for me to come to help assist.

2 Q. Who was the administrator?

3 A. Kathy Hogue.

4 Q. Is Ms. Hogue a medical care provider?

5 A. Yes, sir.

6 Q. What's her position?

7 A. Healthcare administrator.

8 Q. Is she a nurse by profession?

9 A. Yes, sir.

10 Q. And where were you when you were first called to come to
11 medical?

12 A. On 7 Alpha on the living quarters.

13 Q. And do you recall who came to get you?

14 A. Sir?

15 Q. Do you recall who came to get you?

16 A. It was an officer. I can't recall who it was that came,
17 but it was an officer.

18 Q. And do you recall why they wanted you to come to medical?

19 A. Not at the time, no, sir.

20 Q. So what happened after you were called to come to medical?

21 A. I was -- walked up to the medical clinic.

22 Q. What did you -- what, if anything, did you see when you
23 walked to the medical clinic?

24 A. A trail of blood and a thick cloud of smoke and gas.

25 Q. What was the blood coming from?

1 A. From all different directions, but it all trailed back to
2 the medical department.

3 Q. And what happened when you got to the medical department?

4 A. It was offenders laying all over the place. People was
5 trying to help out, you know, trying to stop the guys from, you
6 know, bleeding pretty much to death and trying to get everybody
7 seen. It was just -- it was just chaotic. It was something
8 you would think to see on a movie, but only this was reality,
9 you know, watching guys with stab wounds and lacerations over
10 their head and, you know, just constantly bleeding and in and
11 out of consciousness. It was a sight.

12 Q. And what did you do when you arrived there?

13 A. My first instinct was to immediately help out. The -- and
14 that was to start cleaning wounds and getting the offenders
15 from this point to that point, you know, just -- just pretty
16 much just responding.

17 Q. Are there any specific injuries that you remember?

18 A. Yes, sir. It was this one offender, he had a lacerations
19 over his head. And he had glass inside of it. And he kept
20 going in and out of consciousness. And he wouldn't ever, you
21 know, respond to the staff. But he confided in me to not leave
22 his side and asked me to take care of him, make sure that, you
23 know, he don't die, because he was under the impression that
24 they was going to let him die. So that, in particular, just --
25 it just stuck with me that moment.

1 Q. And I couldn't help but notice when we watched the video of
2 the assault in reference that you seemed to be kind of
3 emotionally full. What did that video remind you of?

4 A. You know, seeing the backlash of that, you know, my first
5 time just seeing that, actually what happened to those guys
6 is -- my words can't explain it, you know. You guys seen the
7 video and you see the guys getting brutally attacked, but you
8 didn't see the aftermath. You know, I had the unwanted, you
9 know, pleasure to see that. And, you know, it just -- it just
10 brought back vivid memories. So it was difficult.

11 Q. You spoke earlier that you can testify to sexual assaults.
12 What sexual assaults can you testify to?

13 A. This one in particular incident where I seen a nurse and an
14 officer come out of a staff break room. And upon seeing the
15 officer leave, he was pulling up his pants. And he went
16 another direction, and the nurse came out and came in the
17 opposite direction to where I was. And I noticed red markings
18 around her throat area. And I didn't know whether I just
19 witnessed a sexual assault or just a sexual misconduct or, you
20 know -- or what. So I just reported the incident.

21 Q. Let's slow down a little bit, Mr. Evans. Do you remember
22 the nurse's name?

23 A. Yes, Nurse Bryant.

24 Q. I'm sorry?

25 A. Nurse Bryant.

1 Q. Bryant?

2 A. Yes.

3 Q. Do you remember the officer's name?

4 A. Officer Burrage.

5 Q. Officer Burrage?

6 A. Yes, sir.

7 Q. Now, why were you in a position to see this? What were you
8 doing?

9 A. At the time I was folding up suicide blankets, and I was
10 throwing them in their proper closet. Yes, sir.

11 Q. So were you working at the time?

12 A. Yes, sir, I was.

13 Q. And this was -- again, was it medical?

14 A. Yes, sir.

15 Q. And you say you witnessed Officer Burrage doing what with
16 his pants?

17 A. Fondling them, you know, picking -- pulling them up from
18 around his ankle area.

19 Q. So just to be clear --

20 A. Yes, sir.

21 Q. -- you witnessed this officer pulling his pants up from his
22 ankles.

23 A. Yes, sir.

24 Q. And his pants were completely down.

25 A. Yes, sir. He had the door open -- had the door open,

1 propped up for her to come out with one hand and he was pulling
2 up his pants with the other. Yes, sir.

3 Q. And did she see you, Ms. Bryant?

4 A. Not at the time, but she saw me when she came out the back
5 door.

6 Q. Did she say anything to you?

7 A. No, sir, she was just startled.

8 Q. And did Officer Burrage say anything to you?

9 A. No, sir.

10 Q. And you said you reported this to someone.

11 A. Yes, sir.

12 Q. Who did you report it to?

13 A. The medical officer.

14 Q. Do you remember the name of the medical officer?

15 A. Yes, sir, Officer Sabrina Peeples.

16 Q. Officer Peeples?

17 A. Yes, sir.

18 Q. And when you reported this to Officer Peeples, what, if
19 anything, occurred?

20 A. Sir?

21 Q. What happened when you reported this to Officer Peeples?

22 A. Oh, she told me that she saw in the logbook that the
23 previous officer had done logged that Mr. Burrage and Nurse
24 Bryant was spending quite a few minutes in the staff break
25 room. And two weeks after that a couple of guys that's known

1 as Vice Lords approached me about what I reported.

2 Q. And Vice Lords being gang members?

3 A. Yes, sir.

4 Q. And what did you learn from those gang members?

5 A. That I --

6 MR. SILER: Objection. Hearsay.

7 THE COURT: Objection sustained.

8 BY MR. OWENS:

9 Q. Did the gang members threaten you?

10 A. Yes, sir.

11 Q. Did they call you names?

12 A. Yes, sir.

13 Q. Did they say you were snitching?

14 A. Yes, sir.

15 Q. Did you tell anyone besides Officer Peeples what you had
16 seen?

17 A. No, sir. Well, after that incident being approached by the
18 gang members, yes, sir.

19 Q. Who did you speak to?

20 A. Deputy Warden Mabry and Warden Jenkins.

21 Q. And is Warden Jenkins the head warden at Walnut Grove?

22 A. Yes, sir.

23 Q. And Deputy Warden Mabry would be under Warden Jenkins?

24 A. Yes, sir.

25 Q. And did you report to them what happened?

1 A. Yes, sir.

2 Q. What, if anything, came after -- after what -- reporting to
3 the warden?

4 A. Nothing but a warning for me to be careful and mindful of
5 who I report things to.

6 Q. And who told you that?

7 A. Warden Jenkins.

8 Q. Mr. Evans, did you file an administrative remedy regarding
9 this incident?

10 A. Yes, sir.

11 Q. Is that in front of us right there?

12 A. Yes, sir, it is.

13 Q. And why did you file an administrative remedy?

14 A. Because nothing had got done about it, you know, by me
15 reporting it to staff. So I thought that the ARP would go to
16 MDOC and I could get a thorough investigation on it.

17 Q. And did you later learn anything about Ms. Bryant?

18 A. Yes, sir.

19 Q. What did you learn?

20 A. She was fired for having sexual relationships with
21 offenders.

22 MR. SILER: Objection and move to strike that unless
23 there's a basis for him knowing that information.

24 MR. OWENS: Your Honor, I'm going to do so right --
25 this next question.

1 BY MR. OWENS:

2 Q. How did you come to learn that information, Mr. Evans?

3 A. In the nurse's department they posted up an article.

4 Q. Is this the article that was posted in the nurse's
5 department?

6 (WITNESS EXAMINED DOCUMENT)

7 A. Yes, sir.

8 Q. And is that Nurse Bryant?

9 A. Yes, sir.

10 MR. OWENS: Your Honor, plaintiffs move Exhibit 42 and
11 43 into the record, 42 being this article that Mr. Evans has
12 identified was placed in the nurse's department, and 43 being
13 the administrative remedy form that Mr. Evans submitted about
14 this incident.

15 THE COURT: Any objection from the defendant?

16 MR. SILER: I'm confused as to which exhibit you're
17 moving to admit.

18 MR. OWENS: The administrative remedy, which is
19 Exhibit 43, and Exhibit 42, which is the one that's currently
20 on the screen that shows the article that Mr. Evans learned
21 Ms. Bryant was fired for having sex with an inmate.

22 MR. SILER: Let me speak to the first exhibit first,
23 the administrative remedy matter. We'd move to -- or we would
24 object, rather, to that exhibit on the grounds that it is,
25 first, hearsay; second, that it is irrelevant, because it's my

1 understanding from his testimony that he's talking about two
2 employees being engaged in some issue rather than an employee
3 and some inmate. So that -- I don't see how that has any
4 relevance to the issues we're here about. So I would object on
5 the basis of hearsay and relevance.

6 MR. OWENS: May I respond?

7 THE COURT: Yes, you may.

8 MR. OWENS: The ARP, your Honor, reads and speaks
9 particularly to the gang threats that were made to Mr. Evans,
10 particularly for reporting what was a PREA violation, which I
11 think is particularly relevant here. We've heard testimony
12 from Mr. Vail earlier that -- and also from MTC's
13 vice president, Marjorie Brown, about the need for sexual
14 assaults to not occur and how they contribute to staff -- to
15 inmate safety.

16 THE COURT: All right. The rule violation report that
17 this defendant wrote to MDOC or whoever he reported it to, that
18 will be admitted.

19 MR. SILER: Which number is that, your Honor?

20 THE COURT: That's 40- --

21 MR. OWENS: 3. Plaintiffs' Exhibit 43.

22 THE COURT: -- 3. I'm sorry. He reported misconduct
23 to somebody at MDOC.

24 MR. OWENS: Yes, your Honor.

25 (EXHIBIT P-43 MARKED)

1 MR. SILER: All right. Now, with respect, your Honor,
2 to the next exhibit, which at this point I'm not sure I
3 understand, that this is a newspaper article, as I view it,
4 which I would object to on the basis of hearsay. And then,
5 secondly, the headline I'm reading, it's a different situation
6 because this mentions that a woman is arrested for having sex
7 with a jail inmate, which is not the same information he was
8 just talking about. So I object to that on the basis of
9 relevance and lack of materiality to this situation.

10 THE COURT: All right. Any response from the
11 defendant?

12 MR. OWENS: Yes, your Honor. Mr. --

13 THE COURT: Plaintiff. From the plaintiff. Excuse
14 me.

15 MR. OWENS: Yes, your Honor. Mr. Evans testified that
16 Ms. Bryant was the nurse that he witnessed having an
17 inappropriate something with an officer, and he also reported
18 that event. He subsequently testified that he was approached
19 at a later time frame about that same incident and whether he
20 was snitching by gang members.

21 He lastly testified, your Honor, that he had come to
22 learn that Ms. Bryant had just been terminated after he was
23 approached about the snitching. He learned that when he got to
24 work at the medical unit, which I believe was what counsel
25 opposite objected to, the lack of foundation about how he knew

1 that. And this article highlights how he knew it. He saw the
2 article at his job posted up. And, your Honor --

3 THE COURT: Well, let me ask you this. Where was it
4 posted?

5 MR. OWENS: It was posted at his job in the medical
6 unit where he works on a regular basis.

7 THE COURT: How long had it been posted there?

8 MR. OWENS: It wasn't --

9 THE COURT: Ask him the question, how long had it been
10 posted and is that the employee work area? I need you to
11 describe the area where it was posted, how long it was posted
12 there, and how did he come about -- I mean when did he -- first
13 see it there.

14 MR. OWENS: Yes, your Honor.

15 THE COURT: And if he knows who posted it there.

16 MR. OWENS: Yes, your Honor.

17 BY MR. OWENS:

18 Q. Mr. Evans, you've heard the court's inquiry. When did you
19 first see the article regarding Nurse Bryant? Was it after or
20 before you were threatened?

21 A. It was after.

22 Q. And do you know who posted the article there?

23 A. Yes, sir, Ms. Hogue.

24 Q. Ms. Hogue, the nurse administrator?

25 A. Yes, sir. She said for a warning for her future nurses.

1 Q. And was it posted in a common area that you walk on a
2 regular basis?

3 A. Yes, sir, where I come in and I sign in.

4 Q. And was it taped to the wall, was it --

5 A. It was on view probably on the case dock over there in the
6 station and some were posted --

7 Q. This article was posted in multiple places?

8 A. Yes, sir.

9 Q. Approximately how many of this article were posted around
10 medical?

11 A. Maybe anywhere from 10 to 15 maybe.

12 THE COURT: All right. Objection will be overruled.
13 Exhibit 42 is admitted.

14 MR. SILER: Exhibit -- is it P-42?

15 THE COURT: Yes. I'm sorry. P-42. Right?

16 (EXHIBIT P-42 MARKED)

17 BY MR. OWENS:

18 Q. Mr. Evans, you testified that you could speak about
19 multiple assaults, sexual assaults. That was one we just
20 discussed. Are there any others you can speak of?

21 A. Well, an incident what happened with me personally, yes,
22 sir.

23 Q. When did the incident happen with you personally?

24 A. (No response)

25 Q. I know this is difficult, Mr. Evans. Take your time. Do

1 you recall when the incident happened with you personally?

2 A. Yes, sir.

3 Q. When did it happen?

4 A. I got sexually assaulted from --

5 Q. When did it happen, Mr. Evans?

6 A. February of this year.

7 Q. That's February of 2015?

8 A. Yes, sir.

9 Q. All right. Please continue. What happened?

10 A. I was doing a work detail and I was approached by a CNA
11 that asked did I want any of her soda.

12 Q. What's a CNA, Mr. Evans?

13 A. Certified nursing assistant. I apologize.

14 Q. And do you remember that CNA, certified nursing assistant's
15 name?

16 A. Butler.

17 Q. And you said Ms. Butler asked you if you wanted some of her
18 soda?

19 A. Yes. I declined. And her response was --

20 MR. SILER: Excuse me, your Honor. I'd just like to
21 understand. She said -- I didn't understand what she said.

22 THE COURT: You need to make sure that -- people have
23 anachronisms and terms. Soda, is that Coca-Cola, Pepsi or what
24 does "soda" mean? That's what -- that's what I assume
25 Mr. Siler heard, asking for soda.

1 MR. SILER: "Soda" is the word?

2 THE COURT: Is that -- is that the word?

3 MR. OWENS: Yes, your Honor.

4 THE COURT: Okay. Now, we need to find out what
5 "soda" is, because in common lingo --

6 MR. OWENS: Yes.

7 THE COURT: -- soda is something we drink every day.

8 MR. OWENS: We'll clarify.

9 BY MR. OWENS:

10 Q. Mr. Evans, what's soda?

11 A. A beverage. A Coke.

12 Q. Like as in soda pop?

13 A. Yes, sir.

14 Q. As in S-O-D-A, soda?

15 A. Yes, sir.

16 MR. OWENS: Can we continue, your Honor?

17 THE COURT: Yeah.

18 BY MR. OWENS:

19 Q. So you said that CNA Butler offered you some of her Coke?

20 A. Yes, sir.

21 Q. What happened next?

22 A. I declined. And her response was, *It's not like that. I*
23 *mean having sexual intercourse.*

24 MR. SILER: Objection. Hearsay.

25 THE COURT: Objection sustained.

1 BY MR. OWENS:

2 Q. Did you drink any of the soda?

3 A. No, sir.

4 Q. What happened next?

5 A. She brought up the subject about oral sex.

6 Q. The CNA brought up the subject about oral sex?

7 A. Yes.

8 Q. Oral sex between who?

9 MR. SILER: And I'm going to object to all this on
10 hearsay, your Honor.

11 MR. OWENS: Your Honor --

12 THE COURT: I'm going to give you some leeway to have
13 him -- I understand how difficult it is. But if he's been
14 involved in a sexual assault as he testified, he's going to
15 have to -- maybe you're getting there. It's difficult to get
16 there, but get there, please.

17 BY MR. OWENS:

18 Q. What happened after there was a discussion around oral sex?

19 A. I was fondled and she put her mouth on my genital area.

20 Q. And did she perform oral sex on you?

21 A. Yes, sir.

22 Q. Did you resist?

23 A. Yes, sir.

24 Q. Did you ask her to stop?

25 A. Yes, sir.

1 Q. Approximately how long did this interaction last?

2 A. 30 seconds to 40 seconds.

3 Q. Then what happened?

4 A. She eventually stopped because she see I couldn't get an
5 erection. And I left out of that area. And I reported to the
6 officer upon leaving my job site as to why I was leaving, and
7 the officer made mockery of it and dismissed me.

8 Q. And what was the officer's name?

9 A. Officer Carruthers.

10 Q. Did you report it to anyone else at that time?

11 A. No, sir.

12 Q. Why not?

13 A. By her making mockery of me, I thought about how ludicrous
14 it might sound for a man to get sexually assaulted to that
15 nature. So I kind of tried to put it out of my mind.

16 Q. Did you have any other interaction with this employee after
17 that?

18 A. Yes, sir.

19 Q. What type of interaction did you have?

20 A. Approximately two weeks after that, Officer Carruthers and
21 a medical clerk got into a physical dispute.

22 MR. SILER: Your Honor, could I just get
23 clarification? What is the officer's name? I don't
24 understand.

25 THE COURT: Is it Carruthers?

1 MR. OWENS: Carruthers.

2 THE COURT: I assume C-A-R-R-U-T-H-E-R-S, I guess.
3 That's what I'm writing.

4 BY MR. OWENS:

5 Q. You said there was an altercation between Officer
6 Carruthers and the nursing staff?

7 A. Yes, sir.

8 Q. Did you witness this?

9 A. Yes, sir.

10 Q. What did you witness?

11 A. They got into a shoving match with each other about going
12 in the restricted area.

13 Q. And what, if anything, happened next?

14 A. When the captain came to resolve the issue, Ms. Carruthers
15 stated that she need to come back to verify that -- that
16 they're not back there having sex with me.

17 Q. With you?

18 A. Yes, sir, the nursing staff.

19 Q. And what happened to you after she made that comment?

20 A. The next day I was fired from my job.

21 Q. And, Mr. Evans, were you involved in any inappropriate
22 relationships with any of the Walnut Grove staff?

23 A. No, sir.

24 Q. And have you ever had sexual relations with any of the
25 Walnut Grove staff?

1 A. No, sir.

2 Q. Outside of that sexual assault that you referenced.

3 A. No, sir.

4 Q. Thank you, Mr. Evans, for sharing. You spoke earlier that
5 you can testify about contraband.

6 A. Yes, sir.

7 Q. What, if any, knowledge do you have about contraband at
8 Walnut Grove?

9 A. I seen on several occasions where officers would bring in
10 contraband to the housing unit and they would put -- disguise
11 it in potato chips bags and, you know, food items or just clear
12 bottles and just give it to the offender by coming to their
13 cell door and pop open the door and just leaving it there.

14 Q. And by "contraband," what do you mean?

15 A. I seen cell phones, marijuana, synthetic marijuana,
16 cocaine, alcohol.

17 Q. And do you know, are the officers paid for this?

18 A. Yes, sir.

19 Q. Is it common knowledge that officers bring this material
20 into the pods?

21 A. Yes, sir.

22 Q. And when did you leave Walnut Grove last?

23 A. March the 13th.

24 Q. March 13th?

25 A. Yes, sir.

1 Q. Did you see this occurring in March 2015?

2 A. Yes, sir.

3 Q. Did you see this occurring in February of 2015?

4 A. Yes, sir.

5 Q. And did you see this occurring in January of 2015?

6 A. Yes, sir.

7 Q. Is it fair and accurate that you've seen this the entire
8 time you've been at Walnut Grove?

9 A. Of course, yes, sir.

10 Q. You also spoke, Mr. Evans, that you have knowledge about
11 gang violence and fights. Is that true?

12 A. Yes, sir.

13 Q. What, if anything, have you witnessed as it pertains to
14 gang violence or fights in Walnut Grove?

15 A. At Walnut Grove the gangs there have different code of
16 conduct that they must abide by. And when one of the gang
17 members will violate those codes, they are put in violation.

18 Q. What does "violation" mean?

19 A. Where they will suffer beatings, two guys --

20 MR. SILER: I'm going to object to this, your Honor,
21 unless he lays a foundation of how he knows this information.

22 THE COURT: Lay your foundation.

23 BY MR. OWENS:

24 Q. I believe you testified, Mr. Evans, you witnessed this
25 occur.

1 A. Yes, sir.

2 Q. And where are you -- where do you reside in Walnut Grove?
3 What pod are you on? What zone are you on?

4 A. I'm there with it day in and day out. How would I not know
5 it?

6 Q. And you've seen this in the pod that you're currently
7 living on?

8 A. Yes, sir.

9 Q. And have you been on the same pod the entire time you've
10 been in Walnut Grove?

11 A. Yes, sir.

12 Q. Have you seen this since the close custody inmates have
13 been removed?

14 A. Of course, yes, sir.

15 Q. And have you seen this since the long-term segs have been
16 removed?

17 A. Of course, yes, sir.

18 Q. And how frequently does this occur?

19 A. On a daily basis.

20 Q. And you've testified you've been there three years.

21 A. Yes, sir.

22 Q. Was it occurring on a daily basis in January?

23 A. Yes, sir.

24 Q. Was it occurring on a daily basis in February?

25 A. Yes, sir.

1 Q. And was it occurring on a daily basis in March?

2 A. Of course.

3 Q. Describe for the court of what "two on one" means.

4 MR. SILER: Again, let me object, your Honor. I don't
5 think it's inappropriate -- I'm not contesting him being able
6 to testify to what he's seen and heard, observed during his
7 time there. But I am objecting to him testifying generally
8 about disciplinary processes within gangs, other information
9 that -- in which -- how gangs operate unless he can lay a basis
10 as to how he knows those things. That's what my objection is.

11 THE COURT: Continue to lay your foundation.

12 BY MR. OWENS:

13 Q. When is the last time you've seen one of these two on ones
14 that you refer?

15 MR. SILER: Same objection, your Honor.

16 THE COURT: What is a two on one?

17 MR. OWENS: Your Honor, he's objected every time I
18 think I've asked this question.

19 THE COURT: I mean what is a two on one?

20 MR. OWENS: Is the court asking what a two on one --

21 THE COURT: Ask him what is a two on one.

22 BY MR. OWENS

23 Q. Mr. Evans, what is a two on one?

24 A. Two gang members on that same gang member.

25 Q. When you say "on," what do you mean?

1 A. Two guys fighting one guy for a whole complete 60 seconds.

2 Q. And you've seen this happen when?

3 A. On a daily basis.

4 Q. So the last day you were at Walnut Grove was March --

5 A. 13th.

6 Q. -- 13th.

7 A. Yes.

8 Q. So on March 12th did you see this occur?

9 A. Yes, sir.

10 Q. And where does the fight occur?

11 A. During bathroom break hours, or if -- if it's something
12 that need to be done then, they will go in the shower.

13 Q. And where are the officers when this fight occurs?

14 A. If she's not on the zone, she or he will be tending to
15 another zone.

16 Q. So has officers -- has officers been on the zone when these
17 fights occur?

18 A. Occasionally, yes, sir.

19 Q. And when they're not there, the fights occur as well?

20 A. Yes, sir.

21 Q. What type of injuries occur from this type of fight that
22 you've witnessed?

23 A. Bruises, you know, black eyes, a couple of scrapes.

24 Q. Are these individuals taken to medical?

25 A. Seldom.

1 Q. Do officers witness these injuries?

2 A. After the fact, yes, sir.

3 Q. What does "bedrest" mean?

4 A. Bedrest is when a gang member puts another gang member --

5 MR. SILER: Let me object to this, your Honor. Again,
6 there's no foundation of how he knows this. He's said he was
7 not affiliated with a gang. He's not a gang member. So I
8 don't know how he knows any of this information.

9 MR. OWENS: I'll lay a foundation, your Honor.

10 THE COURT: Thank you.

11 BY THE COURT:

12 Q. How do you know about gangs if you're not in a gang,
13 Mr. Evans?

14 A. Once you're around 90 percent of the guys that's housed
15 with you are gang affiliated, it's impossible for you not to
16 know what's what and what this means and what that not mean and
17 to go here and not to go there for your own personal safety.
18 You should know it.

19 Q. What happens if you don't know it?

20 A. You will be subject to violence. You know, you will be
21 stabbed. You will be beat up. You will be ran off the zone.

22 MR. SILER: Objection, again, your Honor. No
23 foundation as to any of this.

24 THE COURT: Objection overruled.

25 BY MR. OWENS:

1 Q. So even though you're not a gang member, to survive and be
2 safe you need to know about gang culture.

3 A. Of course, yes, sir.

4 Q. You testified earlier when you were threatened by gang
5 members regarding being a snitch for reporting sexual assault.
6 How did you know they were gang members?

7 A. Just who they're affiliated with, you know, that they --
8 how they carry theirself and their known affiliated.

9 Q. Is that common knowledge in the prison?

10 A. Yes, sir.

11 Q. What zone were you on in Walnut Grove?

12 A. I was on the privilege zone.

13 Q. Privilege zone?

14 A. Yes, sir.

15 Q. And do -- what type of doors -- cell doors are on your
16 zone?

17 A. Hinged doors.

18 Q. Hinged doors?

19 A. Yes, sir.

20 Q. Do they function properly?

21 A. No, sir.

22 Q. How do they function?

23 A. Prior to us coming there, you know, guys will stick
24 toothpaste caps off in the part of the door where it latch
25 closed so it's impossible, you know, to keep the doors just

1 locked.

2 Q. Do officers check the doors on a regular basis --

3 A. No, sir.

4 Q. -- on your --

5 A. No, sir.

6 Q. How often do they checks the doors?

7 A. Up until 5:00, every two to three hours maybe.

8 Q. And do -- is it your testimony that officers know that the
9 doors are being rigged?

10 A. Yes, sir.

11 Q. How do the officers know the doors were being rigged?

12 A. They will tell you to put the door on secure after 5:00.

13 Once the major leave, she will tell you that *I'm not coming*
14 *back on the zone. So keep your door -- make sure y'all's doors*
15 *show secure in case the captain or somebody comes through the*
16 *tower, to make sure the door just show secure. So rig them.*

17 Q. And what do you mean by "show secure"?

18 A. Make sure that the lights not on or blinking in the tower.

19 Q. And how can an offender do that from their door, their cell
20 door?

21 A. Toothpaste caps, like I referred to, spoons, folded piece
22 of paper. It's numerous -- it's numerous things you can do to
23 rig the door.

24 Q. And it's your testimony that officers are complicit with
25 these doors being rigged.

1 A. Yes, sir.

2 Q. Because if they show closed, they won't come back and check
3 them?

4 A. Yes, sir, because they claim they're too busy. Yes, sir.

5 MR. OWENS: Court's indulgence.

6 (COUNSEL CONFERRED)

7 MR. OWENS: Unless the court has any other questions
8 for this witness, we tender the witness.

9 THE COURT: All right. Any cross-examination?

10 MR. SILER: Yes, your Honor.

11 **CROSS-EXAMINATION**

12 BY MR. SILER:

13 Q. Mr. Evans, what are you in prison for? What were you
14 convicted of?

15 A. I pled guilty to one count of armed robbery, sir.

16 Q. And your sentence for that is what?

17 A. Eight years.

18 Q. So how many years are you in to your eight-year sentence?

19 A. Three.

20 Q. All right. Do you currently have a job at Walnut Grove?

21 A. Not currently. I'm not there anymore.

22 Q. Well, did you have a job at Walnut Grove before you were
23 transferred to the Central Mississippi facility?

24 A. Yes, sir.

25 Q. What was your job?

1 A. Medical off -- excuse me. Medical porter.

2 Q. A medical --

3 A. Porter.

4 Q. Porter?

5 A. Yes, sir.

6 Q. And how many hours a week did you normally work in that
7 position?

8 A. I will go in from seven that morning to 10:00 that morning.

9 Q. How many days a week?

10 A. Seven.

11 Q. All right. Now, you said that when you arrived -- sometime
12 after you arrived at Central Mississippi Correctional Facility,
13 you had a conversation with Mr. King?

14 A. Yes, sir.

15 Q. Do you recall how many days after you arrived at Central
16 Mississippi that you had the conversation with Mr. King?

17 A. I don't recall exactly how many days, but it was that
18 following week.

19 Q. So what day of the week did you arrive at Central
20 Mississippi?

21 A. Friday.

22 Q. All right. So it was sometime during the week following
23 that Friday that you arrived that you had the conversation with
24 Mr. King?

25 A. Yes, sir.

1 Q. And you said after you had the conversation with Mr. King,
2 things got better?

3 A. Yes, sir.

4 Q. And you also mentioned something about Mr. King telling you
5 or offering you a job. Did I hear that correctly?

6 A. Yes, sir.

7 Q. What job did he offer you?

8 A. Working in the R and C administration.

9 Q. All right. Did you accept the job he offered to you?

10 A. Yes, sir.

11 Q. All right. But you haven't been actually doing anything in
12 the job or you haven't performed the job at all since you've
13 been there?

14 A. Yes, sir.

15 Q. You have?

16 A. Yes, sir.

17 Q. Okay. So up until you began coming to court this week, you
18 had actually been working at Central Mississippi since shortly
19 after you got there.

20 A. Yes, sir.

21 Q. And how many hours a week were you working?

22 A. Maybe three to four hours a day.

23 Q. All right. Were your personal effects brought with you to
24 CMC after you left Walnut Grove?

25 A. Sir?

1 Q. Did you bring your personal effects with you when you left
2 Walnut Grove to go to Central Mississippi Correctional
3 Facility?

4 A. When you say "effects," what do you mean?

5 Q. Did you bring anything with you?

6 A. Like personal belongings?

7 Q. Yes.

8 A. Yes, sir.

9 Q. Okay. And how did you carry those personal belongings?
10 Did you carry them in a bag -- what -- how did you carry them
11 with you?

12 A. Yes, sir. I had a laundry sack, yes, sir.

13 Q. Laundry sack?

14 A. Yes, sir.

15 Q. Okay. Since you have been at the Central Mississippi
16 Correctional Facility, have you managed to keep all of your
17 personal belongings with you?

18 A. Yes, sir.

19 Q. And how would you transport those personal belongings
20 around while you were at Central Mississippi?

21 A. Just bringing them with me, you know, just carrying them.

22 Q. Was it enough you could carry in your hands or did you have
23 to have something that you carried those belongings in?

24 A. Like I say, I had my laundry sack.

25 Q. Okay. Now, did you have a bed sheet that you had your

1 personal belongings stored in?

2 A. No, sir.

3 Q. You weren't carrying things around Central Mississippi in a
4 bed sheet?

5 A. No, sir.

6 Q. All right. Let me ask you about a couple of the things
7 that you've mentioned this morning. One of the first things
8 you talked about had to do with a situation in which you saw an
9 officer pulling up his pants one morning in the medical
10 facility. Is that an accurate statement of what you saw?

11 A. It was nighttime. Yes, sir.

12 Q. Okay. And you would -- it would be fair to say, though,
13 that you never saw him engaged in a sexual act with anyone at
14 that point. Is that correct?

15 A. That would be fair to say, yes, sir.

16 Q. And you never saw the nurse, Nurse Bryant, engaged in a
17 sexual act at that point either, did you?

18 A. That too would be fair to say, yes, sir.

19 Q. All right. You -- let's talk a few minutes about the --
20 your personal sexual assault issue that you mentioned. And you
21 mentioned a moment ago and I think it would be fair to say, you
22 can understand how somebody might have some skepticism about
23 you being assaulted in the manner in which you said. That
24 would be a fair statement. Correct?

25 A. Yes, sir.

1 Q. Okay. Are you a homosexual?

2 A. No, sir.

3 Q. You're a heterosexual?

4 A. Yes, sir.

5 Q. So just for the record, how big are you?

6 A. When you say how big I am --

7 Q. What's your size? How tall are you?

8 A. Six one.

9 Q. How much do you weigh?

10 A. 230 pounds.

11 Q. And you're in pretty fair physical condition, wouldn't you
12 say?

13 A. Yes, sir.

14 Q. And this nurse that you claim assaulted you -- this female.
15 Correct?

16 A. Of course.

17 Q. And how big was she? How tall was she?

18 A. Approximately five eleven.

19 Q. Five eleven?

20 A. Yes, sir.

21 Q. Now, when the sexual assault began, did you have your
22 clothes on?

23 A. When it began?

24 Q. Yeah.

25 A. Yes, sir.

1 Q. All right. And so you said that she put her mouth on your
2 genitals. So somehow or another you had to get undressed.
3 Right?

4 A. After she pulled my pants down, yes, sir.

5 Q. All right. So this lady, woman, pulls your pants down and
6 you are not interested in this. Correct?

7 A. Correct.

8 Q. And so you just -- you just stand there?

9 A. No, sir. I resisted.

10 Q. Well, how did you resist?

11 A. I resist her by -- by not letting her. That's how I
12 resisted.

13 Q. Okay. So what did she do, overpower you so she could put
14 her mouth on your genitals?

15 A. No, sir.

16 Q. So how did that happen? How did that get there?

17 A. She just -- she just put her mouth on it. I mean, after
18 she told me to just try to relax -- I mean, have you ever been
19 sexually assaulted?

20 Q. Not by a woman, or anybody else, I guess, for that matter.
21 Let me hasten to add that. So you just stand there while this
22 woman pulls your pants down and starts to have oral sex with
23 you. That's what's going on?

24 A. If you've never been sexually assaulted, never been put in
25 that predicament, sir, it's hard for me -- understand, please

1 bear with me. It's hard to testify against this, you know.
2 It's very uncommon, but it's not impossible for a male my size
3 to get sexually assaulted by anybody. Until you've been put in
4 that predicament, it's hard -- it's hard to cope with that
5 fact, but it is fact.

6 Q. Couldn't outrun her?

7 A. No, sir.

8 Q. Have you ever jammed a door lock on a cell?

9 A. Yes, sir.

10 Q. Have you jammed your own door lock?

11 A. Yes, sir.

12 Q. Okay. And why would you do that?

13 A. Because the officer told me to do it.

14 Q. Okay. So an officer told you to do it and you jammed the
15 lock.

16 A. Yes, sir.

17 Q. Okay. Let me back up just a moment ago to the situation
18 about the guard and the nurse that you saw. Both of those
19 individuals were employees. They were not inmates. Correct?

20 A. Yes, sir. But MTC, they require for the offenders to
21 report all staff and inmate misconduct, sexual assault and
22 violence.

23 MR. SILER: If the court would indulge me just a
24 moment.

25 (COUNSEL CONFERRED)

1 MR. SILER: Nothing further, your Honor.

2 THE COURT: Any redirect?

3 MR. OWENS: Brief redirect, your Honor.

4 **REDIRECT EXAMINATION**

5 BY MR. OWENS:

6 Q. Mr. Evans --

7 A. Yes, sir.

8 Q. -- with regard to the first sexual assault that you
9 testified about today, where were Nurse Bryant and Officer
10 Burrage?

11 A. Inside the nurse -- the staff restroom -- break room. I
12 apologize.

13 Q. Which one was it, a restroom or a break room?

14 A. Break room.

15 Q. It was a break room.

16 A. Yes, sir.

17 Q. Is there a restroom inside the break room?

18 A. Yes, sir.

19 Q. But they were in the break room.

20 A. Yes, sir, the break room.

21 Q. And did you see Officer Burrage's underwear?

22 A. Yes, sir.

23 Q. And you saw his underwear because his pants were down.

24 A. Yes, sir.

25 Q. Can you think of any plausible explanation his pants would

1 be down and that Ms. Bryant would be there?

2 A. No, sir.

3 Q. You also testified about your sexual assault, which I agree
4 with you, it's no laughing matter. Could you tell me what
5 authority, if any, the CNA had over you at the time?

6 A. Yes, sir. She was my superior.

7 Q. So as your superior, she could write you up?

8 A. Yes, sir.

9 Q. She could give you an RVR?

10 A. Yes, sir.

11 Q. She could recommend your termination?

12 A. Yes, sir.

13 Q. She could affect your very livelihood in that prison.

14 A. Yes, sir.

15 MR. SILER: Objection. Leading, your Honor.

16 THE COURT: Objection overruled.

17 BY MR. OWENS:

18 Q. Tell me the things that the CNA could do being your direct
19 supervisor.

20 A. She could write me up. She could have my job terminated.

21 Q. And as counsel asked you, if you were to physically put
22 your hands on her in a way to cause any harm, what would
23 happen?

24 A. I would be charged.

25 Q. Criminally?

1 A. Yes, sir.

2 Q. Thank you, Mr. Evans. No further questions.

3 A. Yes, sir.

4 THE COURT: The court has a couple of questions, and
5 I'll allow the plaintiff to follow up if it chooses and then
6 the defendant.

7 You were brought to CMCF, Mr. Evans, on March 13th.
8 And I believe your testimony is that you first got bedding
9 materials the following week, probably after reporting to
10 Mr. King. If you came over on Friday the 13th, I need to know
11 what did you sleep on Friday night, what did you sleep on
12 Saturday night, what did you sleep on Sunday night before -- or
13 what did you sleep on before you got your proper bedding.

14 THE WITNESS: Some offenders on the zone gave me a
15 piece of cotton to sleep on.

16 THE COURT: And when you say "a piece of cotton," what
17 is a piece of cotton?

18 THE WITNESS: Outside of a -- inside of a mattress.
19 The cushion that come inside of a mattress. Yes, sir. Some
20 guys tore theirs open and tore some out for me to sleep on.

21 THE COURT: And those were inmates?

22 THE WITNESS: Yes, sir.

23 THE COURT: Did you have pillows?

24 THE WITNESS: No, sir.

25 THE COURT: Blankets?

1 THE WITNESS: No, sir.

2 THE COURT: Sheets?

3 THE WITNESS: I had a sheet that come from my rack
4 partner, another offender, sir.

5 THE COURT: A sheet came from who?

6 THE WITNESS: My rack partner, another inmate.

7 THE COURT: You say your rack --

8 THE WITNESS: Yes, sir.

9 THE COURT: -- partner?

10 THE WITNESS: Yes, sir.

11 THE COURT: Now, in the cell that you're in -- in the
12 cell that you were in those first days, were you sharing that
13 cell with anyone?

14 THE WITNESS: It's an open dorm, sir.

15 THE COURT: It's an open dorm.

16 THE WITNESS: Yes, sir.

17 THE COURT: Okay. Did any employees at MDOC know -- I
18 mean, did you report that you didn't have bedding?

19 THE WITNESS: Yes, sir. They told me I had to wait to
20 see -- to talk to the case manager about it.

21 THE COURT: And when did they say you could talk to
22 the case manager?

23 THE WITNESS: Tuesday.

24 THE COURT: Because the case -- there was no case
25 managers there on --

1 THE WITNESS: No, sir.

2 THE COURT: -- Saturday or Sunday?

3 THE WITNESS: Or Monday. No, sir.

4 THE COURT: Or Monday?

5 THE WITNESS: Yes, sir.

6 THE COURT: Did any guards know that you didn't have
7 bedding?

8 THE WITNESS: Yes, sir.

9 THE COURT: Did you speak to them about?

10 THE WITNESS: Yes, sir. They was the ones that told
11 me that I had to wait to speak with the case manager.

12 THE COURT: And did you ever speak with a case
13 manager?

14 THE WITNESS: Yes, sir.

15 THE COURT: And when did you first speak with a case
16 manager?

17 THE WITNESS: Tuesday afternoon.

18 THE COURT: Tuesday afternoon.

19 THE WITNESS: Yes, sir.

20 THE COURT: You also indicated that at some point in
21 time you had not had your blood pressure medication.

22 THE WITNESS: Yes, sir.

23 THE COURT: Okay. Now, when you were at Walnut Grove
24 on March 13th, had -- are you required to take that medication
25 on a daily basis?

1 THE WITNESS: Yes, sir, two times a day.

2 THE COURT: Two times a day. And what times of day do
3 you usually take it?

4 THE WITNESS: Early that morning in the a.m. and late
5 at night during the p.m.

6 THE COURT: Okay. So when you left Walnut Grove, had
7 you -- how many times had you taken the medication?

8 THE WITNESS: I took it twice that -- that day. Yes,
9 sir.

10 THE COURT: Okay. And what's the name of that
11 medication?

12 THE WITNESS: Clonidine.

13 THE COURT: Cloni- --

14 THE WITNESS: -- -dine, yes, sir.

15 THE COURT: Do you know what it's for?

16 THE WITNESS: High blood pressure medicine.

17 THE COURT: I understand, but do you know if it's a
18 blood thinner or --

19 THE WITNESS: Yes, sir, it's a blood thinner. I
20 apologize.

21 THE COURT: No, no. That's fine. Did you -- then the
22 first Saturday you were at CMCF, did you have your medication
23 that day?

24 THE WITNESS: No, sir.

25 THE COURT: Is that the only medication you're

1 required to take on a daily basis?

2 THE WITNESS: Yes, sir.

3 THE COURT: Okay. You didn't take it Saturday?

4 THE WITNESS: No, sir.

5 THE COURT: Did you take it Sunday?

6 THE WITNESS: No, sir.

7 THE COURT: Did you tell any -- did you tell any
8 guards or any medevac people or whoever dispenses medications
9 at CMCF that you were due to have medication?

10 THE WITNESS: I filled out one sick call. And, you
11 know, usually, when you have a chronic -- chronic illness to
12 that nature, you know, on a monthly basis, you know, you have
13 to see a doctor to get evaluated to make sure everything
14 flowing okay. And I know it was end of the month. So I just
15 filled out one sick call that was informing them I need a
16 refill because I just got transferred without my medication. I
17 haven't heard anything back from them.

18 THE COURT: When did you fill out that sick call form
19 or sick form?

20 THE WITNESS: It was that Monday.

21 THE COURT: Okay. So the 13th was Friday. The 14th
22 was Saturday. The 15th was Sunday. March 16th, Monday, you
23 filled out a sick call --

24 THE WITNESS: Yes, sir.

25 THE COURT: -- whatever?

1 THE WITNESS: Yes, sir.

2 THE COURT: And what did you put on that form?

3 THE WITNESS: That I need -- I need a refill for my
4 medication.

5 THE COURT: Okay. Did you get your medication that
6 Monday?

7 THE WITNESS: No, sir. I haven't heard anything from
8 the sick call. No, sir.

9 THE COURT: Have you had any of your prescribed
10 medication --

11 THE WITNESS: No, sir.

12 THE COURT: -- since you've been at CMCF?

13 THE WITNESS: No, sir.

14 THE COURT: Have you been seen by any medical
15 evaluator since you've been at CMCF?

16 THE WITNESS: No, sir.

17 THE COURT: Has anyone responded to your sick call
18 request -- your form? Has anyone responded to the form that
19 you filled out?

20 THE WITNESS: No, sir.

21 THE COURT: Now, going back to the sleeping and the
22 bedding that you finally -- you indicated that some of the
23 inmates gave you some cotton -- gave you stuff out of a
24 mattress. For how long did you sleep on whatever the inmates
25 provided you?

1 THE WITNESS: Up until April the 1st.

2 THE COURT: And when did you first see Mr. King?

3 THE WITNESS: I seen him -- it was that -- I want to
4 say it was that Thursday, sir, to my knowledge. I seen him
5 that Thursday.

6 THE COURT: Well, I don't want you to be confused.
7 The week after the 13th -- I -- I'm looking at my notes here.
8 So I might be confused. That weekend -- did you see Mr. King
9 that following week?

10 THE WITNESS: Yes, sir.

11 THE COURT: Okay. And after seeing Mr. King that
12 following week --

13 THE WITNESS: Yes, sir.

14 THE COURT: -- did you get the proper bedding?

15 THE WITNESS: Yes, sir, of my own, but I still -- they
16 didn't have any mattresses on the compound 720 where I was. So
17 I continued to keep sleeping on the cushion that the offenders
18 gave to me. I slept on that until last night when I got a
19 brand-new mattress.

20 THE COURT: Oh, you got a brand-new --

21 THE WITNESS: Yes, sir.

22 THE COURT: -- mattress last night?

23 THE WITNESS: Last night, yes, sir, I got a brand-new
24 mattress.

25 THE COURT: And is that mattress any better than what

1 you --

2 THE WITNESS: Yes, sir. It's brand-new. It's inside
3 of the plastic, instead of the cushion.

4 THE COURT: Now, describe for me, then -- well, okay.
5 I guess other than the -- how thick was the bedding that you
6 had to sleep on before getting your proper bedding?

7 THE WITNESS: Probably an inch or two thick, maybe.

8 THE COURT: And did you place that on any steel rails
9 or --

10 THE WITNESS: Yes, sir.

11 THE COURT: You placed that on --

12 THE WITNESS: Yes, sir.

13 THE COURT: -- on the rack --

14 THE WITNESS: Yes, sir.

15 THE COURT: -- or on the bed?

16 THE WITNESS: Yes, sir, and covered it up with a
17 sheet. Yes, sir.

18 THE COURT: And covered that up with a sheet?

19 THE WITNESS: Yes, sir.

20 THE COURT: Okay. Did you have a sheet or blanket or
21 comforter to place over you?

22 THE WITNESS: After I talked to Mr. King, yes, sir.

23 THE COURT: After you talked to Mr. King.

24 THE WITNESS: Yes, sir.

25 THE COURT: But for that weekend --

1 THE WITNESS: I just had one sheet.

2 THE COURT: One sheet that covered --

3 THE WITNESS: Yes, sir.

4 THE COURT: -- the mattress.

5 THE WITNESS: Yes, sir.

6 THE COURT: The bedding.

7 THE WITNESS: Yes, sir.

8 THE COURT: Nothing to cover you.

9 THE WITNESS: No, sir.

10 THE COURT: What was the temperature like at the
11 prison?

12 THE WITNESS: It was hot during the day and at night
13 it was cold.

14 THE COURT: Okay. What do you sleep in as far as
15 clothes?

16 THE WITNESS: I...

17 THE COURT: As far as clothes. I mean, do you sleep
18 in what you're wearing now or --

19 THE WITNESS: Yes, sir, until I talked to the case
20 manager that Tuesday and got my -- my clothing. Yes, sir. I
21 had on a jumpsuit like this (indicating).

22 THE COURT: Okay. I have no further questions. I ask
23 the plaintiff first.

24 MR. OWENS: No further questions, your Honor.

25 THE COURT: Defendant have any follow-up based on what

1 I've asked?

2 MR. SILER: No, your Honor.

3 THE COURT: All right. Mr. Evans, you may return to
4 your seat.

5 THE WITNESS: Thank you.

6 THE COURT: Plaintiff ready to call its next witness?

7 MR. MCDUFF: Your Honor, we call Steve Martin.

8 (WITNESS SWORN)

9 THE COURT: Okay. Mr. Martin, you've been in court
10 most of the time, if not the entire time. Good to see you
11 again.

12 THE WITNESS: Nice to see you, your Honor.

13 THE COURT: You understand the rules about testifying.
14 So go ahead.

15 THE WITNESS: Thank you, sir.

16 **STEVE MARTIN,**

17 having first been duly sworn, testified as follows:

18 **DIRECT EXAMINATION**

19 BY MR. MCDUFF:

20 Q. Morning, Mr. Martin.

21 A. Good morning.

22 Q. You are one of the court-appointed monitors to monitor the
23 compliance with this consent decree in this case. Is that
24 correct?

25 A. That's correct.

1 Q. And the other one is Jim Austin. Is that correct?

2 A. That's correct.

3 Q. Mr. Martin, I want to show you what has been marked for
4 identification as a demonstrative aid which is plaintiffs'
5 Exhibit 22. And have you examined this document previously,
6 Mr. Martin?

7 A. I have.

8 Q. And does it contain a list of the monitors' findings in the
9 various categories from the consent decree over the six reports
10 that you have issued to the court since the consent decree was
11 signed?

12 A. It does.

13 Q. And is it an accurate summary of the findings that you have
14 made in those six reports?

15 A. It is.

16 Q. Mr. Martin, you have spoken before about core areas or core
17 provisions of the consent decree. Could you describe what you
18 mean by that?

19 A. They're areas that typically are viewed and seen as
20 directly linked to harm. That is if you, for instance, have a
21 systemic issue of excessive force, there's no question that
22 harm accrues from that force, a direct linkage. So those core
23 areas are those areas in which I think there's direct linkage
24 between the provision or lack thereof and harm.

25 Q. And what are the core areas with respect to this particular

1 consent decree?

2 A. They are, of course, safe living conditions, staffing, use
3 of force, classification and housing, and medical/mental
4 healthcare.

5 Q. Okay. And we're not dealing with medical and mental health
6 care today. But looking at Plaintiffs' Exhibit 22, if we start
7 at the top, we're talking about the first -- the first row,
8 Classification and Housing System. Is that correct?

9 A. That's correct.

10 Q. Reasonably Safe Living Conditions. Is that correct?

11 A. Correct.

12 Q. Sufficient Numbers of Adequately Trained Staff.

13 A. Correct.

14 Q. And Use of Force and Chemical Agents.

15 A. Correct.

16 Q. Okay. Mr. Martin, looking across at all four of those
17 categories, from the first report through the sixth, have there
18 been any reports where any of those factors have been -- where
19 the defendants have been adjudged to be in full compliance with
20 the consent decree?

21 A. Save the classification and housing system, no.

22 Q. Okay. And that was in the fifth report. Correct?

23 A. Correct.

24 Q. And then in the sixth report, actually, that level of
25 compliance had gone down to partial compliance. Is that right?

1 A. Correct.

2 Q. Let me just talk for a minute about reasonably safe living
3 conditions. You started out in the first report with
4 noncompliance. Second report, noncompliance. Third report,
5 partial compliance. So you saw an improvement at that point.
6 Is that correct?

7 A. Correct.

8 Q. And fourth report, noncompliance. Was there backsliding at
9 that point, in your opinion?

10 A. I think it's fair to describe it as such.

11 Q. And then fifth report, noncompliance. And then sixth
12 report, an improvement to partial compliance. Is that correct?

13 A. Correct.

14 Q. Has it been your experience in monitoring this particular
15 facility that there have been times of improvement, but
16 those -- that improvement has not been maintained?

17 A. That would be the record thus far I believe objectively.

18 Q. The -- you described in your fifth report what you had
19 described -- or what you have said was a troubled and unsafe
20 facility. Is that correct?

21 A. That's correct.

22 Q. And, Mr. Martin, as you use the terms, what is the
23 connection between a reasonably safe living facility or
24 reasonably safe living conditions and a substantial risk of
25 serious harm?

1 A. A direct relationship in a sense that if a facility is
2 unsafe over time, there will be events and circumstances that
3 arise from that general unsafe conditions that manifest
4 themselves in harm to the subject class, to the population at
5 that facility.

6 Q. So if you don't have a reasonably safe living facility,
7 will you have a substantial risk of serious harm?

8 A. Of course.

9 Q. Mr. Martin, how important is sustained compliance and the
10 ability to maintain sustained compliance with these
11 requirements in demonstrating that there is not a substantial
12 risk of serious harm?

13 A. Well, I think one -- you know, it's sine qua non. Without
14 one, you will not have the other. Does that answer --

15 Q. That does answer -- that does answer the question. Has
16 there been sustained compliance with the requirements of this
17 consent decree at Walnut Grove Correctional Facility?

18 A. Has there been sustained --

19 Q. Has there been sustained compliance?

20 A. No, there has not.

21 Q. And over what period of time do you need to see compliance
22 with the requirements in order for you to believe there's been
23 sustained compliance?

24 A. I don't know there's a generally applicable rule there.

25 I -- having had considerable experience in institutional reform

1 matters over a rather broad spectrum of time, to fully
2 institutionalize a process in a facility setting, a
3 bureaucratic setting, takes appreciable time for those
4 processes to become the standard way of operating that facility
5 where you do not have management questioning that operation and
6 you have line staff that have bought in to that and do it
7 routinely and that there are mechanisms in place that if there
8 are deviations or aberrations or rogue operations, to identify
9 those matters and to be able to correct them and bring them
10 back in line, that it can take -- well, in most instances does
11 take years, actually, in a systemic, you know, issue of use of
12 force or crowding or medical healthcare, whatever. Those
13 issues just take time to institutionalize.

14 Q. In light of the fact that there has been no compliance in
15 any report with any -- in any of the core areas except the
16 fifth report with respect to classification, in light of the
17 fact that there's been no compliance with reasonably safe
18 living conditions requirement and in light of the fact that the
19 occasional increase or occasional improvements have been
20 followed by backsliding into full noncompliance, do you believe
21 that today there is a substantial risk of serious harm at
22 Walnut Grove Correctional Facility?

23 A. I believe there is based -- based on the sustainability
24 issue. If you look at it in a straight-line projection method,
25 which is to look at what's happened in the past to predict

1 what's going to happen in the future, fairly simple
2 methodology, there is no record that has been established that
3 would allow somebody like me to project that over the next six
4 months, three months, nine months that I would warrant that
5 this facility is going to operate safely day in and day out
6 over that period of time based on what we've seen in the past
7 two and a half years. I don't have a basis to do that.

8 MR. MCDUFF: Your Honor, at this time I would like to
9 move Exhibit 22 into evidence. I know it's previously been
10 marked as a demonstrative aid. Mr. Martin has confirmed the
11 accuracy. I think it's important as a summary under Rule 1006
12 for this court to use and for us to use if there's any appeal.

13 THE COURT: Any objection?

14 MR. FRIEDMAN: No objection.

15 THE COURT: Exhibit 22 -- P-22 is admitted into
16 evidence.

17 (EXHIBIT P-22 MARKED)

18 BY MR. MCDUFF:

19 Q. Mr. Martin, since Management and Training Corporation has
20 taken over the Walnut Grove facility, do you know how many
21 wardens have been there?

22 A. Three I'm sure and it may be four.

23 Q. Okay.

24 A. Because there was a change prior to MTC. I'm just not
25 recalling the total changes.

1 Q. Has that lack of stability affected the ability to run this
2 prison properly?

3 A. Of course.

4 Q. Mr. Martin, I want to go to your sixth report, which is
5 Exhibit 15, and you did -- you did in the sixth report talk
6 about some signs of improvement since the fifth report. But I
7 want to go specifically to page 11.

8 And you say there at the top, gang activity has been and
9 continues to be a security issue, and then you talk about a
10 table that was provided to you by MDOC that says approximately
11 14 percent of the inmate population were listed by the MDOC as
12 being active gang members.

13 Then I'd like you now to go to the next page, page 12, and
14 go down and look at that table, Table 3, which says that "Gang
15 Affiliation: None," there are 86 percent, and only 14 percent
16 are being listed by MDOC as affiliated with a gang. Do you
17 think those figures are accurate?

18 A. I do not believe them to be accurate. No.

19 Q. Do you know how those figures were obtained? In other
20 words, were they obtained from the inmates themselves reporting
21 whether they were a member of a gang or was there some other
22 method? Do you know?

23 A. I don't know.

24 Q. If we could, let's go back to page 11, please. You
25 described a situation there, Mr. Martin, where you were told by

1 MTC security staff that it was common for active high-level
2 gang members to be escorted by their own security details of
3 inmates. How did you all discover this?

4 A. Dr. Austin during a site work --

5 MR. FRIEDMAN: I'm going to object to hearsay. He was
6 not involved in this to my knowledge. This is Dr. Austin I
7 believe.

8 THE COURT: That's -- I mean, this is part of the
9 information you used to prepare your monitors' report?

10 THE WITNESS: Yes, sir.

11 THE COURT: Objection overruled.

12 A. -- was going to interview an inmate and called for that
13 inmate to be brought out of the housing area. And when that
14 inmate arrived, that inmate was accompanied by another inmate.

15 And as they were moving to the interview room, that inmate
16 remained with the subject called-out inmate. And Jim -- excuse
17 me -- Dr. Austin made inquiry as to who that person was and was
18 told that he acts as a bodyguard for that subject inmate.

19 BY MR. MCDUFF:

20 Q. And as a result of this incident and your questioning of
21 MTC's security staff, what did you tell the people running
22 Walnut Grove with respect to this matter?

23 A. We had a meeting fairly quickly thereafter with the
24 administration with I believe central administration officials
25 present. In fact, I know they were present, the deputy

1 commissioner. And we were rather adamant that that type of
2 open acknowledgment and condoning of a gang structure was --
3 should not be permitted and tolerated under any circumstances
4 at the facility.

5 Q. So is the unacceptability of that situation something you
6 had to inform the prison officials about?

7 A. Yes.

8 Q. You mentioned, Mr. Martin, at the bottom of page 13 of your
9 report that MTC has made comments to your draft sixth report
10 that they have filled the security threat group coordinator
11 position with a lieutenant who is developing further strategies
12 to better manage gang members. Have you been informed at this
13 point of what those strategies are?

14 A. No.

15 Q. So are you in a position to evaluate the effectiveness of
16 those strategies?

17 A. Of course not.

18 Q. Mr. Martin, you also talked in your report about some
19 classification problems at Walnut Grove Correctional Facility.
20 Are those problems that were called to your attention by prison
21 officials or did you have to call those problems to their
22 attention?

23 A. It would be the latter.

24 Q. Mr. Martin, you -- during the sixth report you described --
25 you said that there were interviews conducted with 42 inmates.

1 I know you and Dr. Austin probably did not have time to do all
2 of those yourselves. Did you do some of them?

3 A. I did none.

4 Q. Okay. Did Dr. Austin do some?

5 A. Yes.

6 Q. Who did the rest?

7 A. MTC staff.

8 Q. Okay. And did that include security staff?

9 A. Were they present during --

10 Q. Yes.

11 A. -- the interview? I don't know. I wasn't --

12 Q. Okay.

13 A. I have no direct knowledge.

14 Q. Okay. All right. Mr. Martin, at page 14 of your report
15 you talk about staffing, and you found that the facility was in
16 partial compliance with the core requirement of sufficient
17 numbers of adequately trained staff. And in the middle of the
18 page you said -- the first line, you said, "The current line
19 staff complement is 212 with 28 supervisory staff. This
20 represents a very sizable increase over the prior reporting
21 period."

22 What is your understanding about what has happened to that
23 level of staffing since you wrote this report or since you were
24 informed of those figures?

25 A. There has been a substantial reduction of staff at the

1 facility since this report.

2 Q. Okay. And is it your understanding that happened along
3 with a reduction in the level of the prison population?

4 A. That is my understanding.

5 Q. Has anyone provided you at this point with the new staffing
6 numbers and the staffing allocation for various posts in the
7 prison?

8 A. No, not at this point.

9 Q. Let me ask you this. In order to make Walnut Grove a
10 reasonably safe prison, is it important in this particular
11 prison at this particular time for an officer to be present on
12 each zone during times when the inmates are out of the cell?

13 A. Yes.

14 Q. Okay. And if the officer is assigned to that zone but is
15 leaving and coming in and going out, is that going to make it
16 very difficult to create a reasonably safe living facility on
17 that particular zone?

18 A. It depends on how frequent, whether there were predictable
19 absences, whether there were lengthy absences. I don't
20 subscribe to the theory that it's necessary for an officer to
21 be literally inside a housing area for eight solid hours. Some
22 do, you know.

23 It's more important to have coordination and supervision in
24 place that if that officer is out, regardless of what length of
25 time, that there's an acknowledgment in terms of the control

1 officer being a little bit more aware until -- or a supervisor
2 maybe being a little bit closer in terms until that officer
3 comes back.

4 As I say, I don't like hard and fast rules in this
5 business. They get people in trouble typically, a false sense
6 of security. Anyway, I apologize for getting off base there.
7 But, yes, for the majority of the time that you have inmates
8 out in those common areas, there should be an officer present.

9 Q. In prior reports you have talked about the fact that there
10 was not -- that the staff didn't have a sufficient level of
11 experience or you didn't have a sufficient number of
12 experienced officers on the staff. Is that still a problem, as
13 far as you know?

14 A. Yes. It -- it has been a problem from the first time that
15 I did the calculations of staffing rosters in the monitoring
16 report.

17 Q. And does it remain a problem today?

18 A. It has remained a problem constantly.

19 Q. And you have talked in the past about the fact that there
20 were not sufficient numbers of supervisory staff. Is that
21 still a problem?

22 A. I'm hesitant to answer that given the facility being capped
23 at 962. A couple of housing units that have been closed and
24 the staffing reductions, I'm just not in a position to offer
25 quality, reliable testimony on that issue.

1 Q. Well, let me ask you this. At this time can you warrant
2 that the staffing at Walnut Grove is sufficient to provide
3 reasonably safe living conditions?

4 MR. FRIEDMAN: I'm going to object. He says he's not
5 in a position to make a -- to even talk about it. So that's
6 just a backwards way of getting him to speculate and make him
7 look like he's saying something he's really not saying.

8 THE COURT: Objection overruled.

9 A. You're going to have to rephrase that after counsel's
10 objection.

11 BY MR. MCDUFF:

12 Q. At this time --

13 A. Or restate it. I'm sorry. I can't tell you how to ask
14 your question.

15 Q. At this time based on the information that you've been
16 given, can you warrant that the staffing at Walnut Grove is
17 sufficient to provide reasonably safe living conditions?

18 A. No, I cannot warrant that.

19 Q. Mr. Martin, we were talking a minute ago about the
20 interviews of the prisoners. Have you instructed management at
21 the prison that no security staff should be present during the
22 inmate interviews?

23 A. Have I instructed?

24 Q. Have you or Dr. Austin instructed the prison officials who
25 were conducting the interviews that no security staff should be

1 present?

2 A. I have not.

3 Q. Okay.

4 A. I certainly cannot speak for Dr. Austin --

5 Q. Okay.

6 A. -- on that matter.

7 Q. Okay. Do you believe that the presence of security staff
8 during an inmate interview about conditions at the prison could
9 influence and corrupt the answers?

10 A. I can only tell you that my practice is that security staff
11 not be present for the primary purpose of creating a setting in
12 which the subject inmate is more comfortable in an interview
13 process. I don't make presumptions about -- beyond that.

14 Q. Page 15 of your report at the bottom, talking about
15 incidents of use of force, and you said there have been -- you
16 said in previous reports there have been problems with
17 documentation of use of force.

18 Then you say at the bottom that "the December incidents
19 were all reviewed and documented properly." Then going to the
20 next page, but "the January incidents were lacking in
21 documented reviews." Did you instruct prison -- tell prison
22 officials that they needed to improve the level of
23 documentation?

24 A. Yes. It's been a frustrating exercise to get the facility
25 officials to properly document their reviews of use of force

1 incidents.

2 Q. Is this something you have been asking them to do for a
3 long time?

4 A. Yes.

5 Q. Mr. Martin, I want to go to page 18 of your report. You're
6 talking there about programming. And you have a table,
7 Table 5. Basically shows that of the inmate population,
8 30 percent approximately have no assignment and the rest have
9 some assignment that fits within one of these categories.

10 Were you or, to your knowledge, Mr. Austin -- were either
11 of you provided by prison officials with the number of hours
12 that the various inmates were involved in programming?

13 A. I really don't have the exact recall on this that I should
14 have, and I apologize for that. But I believe --

15 MR. FRIEDMAN: Objection if he's going to speculate.
16 He said he didn't have the recall.

17 THE COURT: Do you have anything to refresh his
18 recollection or -- I saw you reaching for something.

19 MR. MCDUFF: I do have an exhibit that I do want to
20 show him.

21 THE COURT: Okay.

22 MR. MCDUFF: And that would be Plaintiffs' Exhibit 16.
23 And can I ask if that has already been put into evidence?

24 THE CLERK: Yes.

25 BY MR. MCDUFF:

1 Q. It is on the screen. Do you have a copy with you,
2 Mr. Martin?

3 A. I do.

4 Q. Mr. Martin, Plaintiffs' Exhibit 15 -- I mean 16 is a
5 document entitled "Walnut Grove Correctional Facility Program
6 Overview." Mr. Eldon Vail's report states that he was provided
7 this by M -- by prison officials. And on the second page
8 you'll see there that has -- it has statistics and numbers
9 about offenders engaged and the time they have spent in
10 programs as of January 1, 2015. Had you seen this document
11 before today?

12 A. I don't have specific recall of the document.

13 Q. Okay.

14 A. I do have specific recall of the category of Jobs Only,
15 number of offenders, 162, average hours per week, 30. I have
16 seen that data.

17 Q. Okay. And as you can see, the exhibit shows that only 162
18 of the -- and there's approximately 1200 inmates if you add up
19 those four columns -- were in jobs that were 30 hours or more a
20 week, 480 had the average of 15 hours per week. 267, all that
21 can be said is they had at least 3 per week. And 321, it says
22 they had zero per week.

23 Does this information confirm what is in Mr. Vail's report,
24 which I will read to you, where he said that as of January 1,
25 2015, only 13 percent of the prisoners have a job that occupies

1 them 30 hours a week or more? I realize you don't have a
2 calculator, but does that look to be correct to you?

3 A. It does.

4 Q. He said another 39 percent are in educational or vocational
5 programs for 15 hours a week. Does that look to be correct to
6 you?

7 A. It does.

8 Q. The rest of the inmate population, nearly half, is idle
9 with minimal or no productive activities to fill their time.
10 Does the data you have there support that statement?

11 A. Yes.

12 Q. Are you aware of any data since January 1 that would change
13 these figures and indicate an increase in programming hours for
14 the population at Walnut Grove?

15 A. I'm not.

16 Q. Mr. Martin, during the three years you have been monitoring
17 this consent decree and walking through the prison, what have
18 you seen in terms of prisoner activity as compared to prisoner
19 idleness?

20 A. Persuasive idleness, as I know that term and use that term.
21 You know, I leave it to you whether you want to --

22 Q. What do you mean when you say "pervasive idleness"?

23 A. Sitting around dayrooms, not having a lot to do is a pretty
24 sophisticated definition.

25 Q. And in a prison like Walnut Grove at this time where the

1 inmates spend a substantial amount of time out of their cells
2 in the dayroom, on the recreation yard, where you have very
3 inexperienced staff, is it important to maintain a robust level
4 of programming as part of trying to achieve a reasonably safe
5 living facility?

6 A. Is it important?

7 Q. Is it --

8 A. Of course.

9 Q. -- an important factor?

10 A. Of course.

11 Q. Mr. Martin, you have talked about -- in your sixth report
12 about some improvements in terms of the level of violence at
13 the prison during the reporting period covered by that sixth
14 report. Have you seen some reports recently from the prison
15 about violent incidents and off-site medical visits occurring
16 in the middle of March of this year?

17 A. I had received two off-site reports prior to my arrival in
18 Jackson. They are routinely reported fairly quickly to
19 Dr. Austin and I via the deputy commissioner. We get it
20 sometimes moments after it's received in his office or on his
21 Blackberry, whatever. So I had received two of those. Upon my
22 arrival to Jackson, I -- counsel -- or, rather, Mr. Pizzetta
23 out of the AG's office, shared two additional reports that --
24 with me.

25 Q. And so is it correct that between March 5th and March 19th,

1 there were four serious incidents that required prisoners to be
2 taken off-site for medical treatment to hospitals?

3 A. My date ranges, to be precise, are March 5th through
4 March 21st. Is that what you said?

5 Q. I said the 19th. 21st?

6 A. 21st.

7 Q. And does that cause you some concern?

8 A. It does, because we had reported in the sixth report that
9 those incidents were being reduced. And that, obviously, is a
10 very good thing that we were delighted in reporting that
11 because it goes to kind of the heart of the case. And to have
12 over a span of less than three weeks four of those off-site
13 medical runs is bothersome.

14 But, more importantly, I think it illustrates and is
15 related to this sustainability issue and, you know, can we
16 warrant that because January, February, those incidents were
17 down, that March, April, May, whatever, they're going to remain
18 down. Well, of course you can't, because now we've seen in
19 March, of course, three weeks, four of those incidents. And
20 until we can with some reasonable judgment and record establish
21 a record that that can be said, I ain't going to say it.

22 Simple. Not to this court, not to any of the parties.

23 Q. And has there been a record achieved where you can say that
24 there is not a substantial risk of serious harm at this
25 facility?

1 A. No.

2 Q. Since this consent decree has been implemented, it's been
3 just over three years now, has Walnut Grove ever achieved full
4 compliance with the requirement of a reasonably safe living
5 facility?

6 A. No.

7 Q. Is -- today is there a substantial risk of serious harm at
8 the Walnut Grove Correctional Facility?

9 A. Is there a substantial risk of harm? Yes, there is.

10 Q. Thank you, Mr. Martin.

11 A. You're welcome.

12 THE COURT: Before we begin this gentleman's
13 cross-examination, we'll take a ten-minute break.

14 (RECESS)

15 THE COURT: You may be seated.

16 MR. FRIEDMAN: May I proceed?

17 THE COURT: Yes, you may.

18 **CROSS-EXAMINATION**

19 BY MR. FRIEDMAN:

20 Q. First, Mr. Martin, I'm going to show you P-16. I think
21 y'all just looked at that. This is the programming. Y'all
22 were looking at the second page. This deals with an offender
23 population of 1230. Is that correct?

24 A. Correct.

25 Q. How many are there now?

1 A. I believe something in the neighborhood of 900 or so.

2 Q. Okay. This is out of date, isn't it?

3 A. Yes.

4 Q. Doesn't apply to the situation today, does it?

5 A. No, by numbers.

6 Q. If you look at -- if you look at your sixth monitors'
7 report -- that is the most recent report, isn't it?

8 A. It is.

9 Q. And at the time you wrote this report was everything in
10 this report true and correct to the best of your knowledge and
11 belief?

12 A. It is.

13 Q. This is P-15. If you look at Programming -- these headings
14 track the consent decree, don't they?

15 A. They do.

16 Q. And the most recent monitors' report is what we're looking
17 at -- well, let me ask you this. Compliance is as good as it
18 gets from your standpoint, isn't it?

19 A. Yes, sir.

20 Q. You don't go into substantial compliance, do you?

21 A. I've monitored cases in which that term is used.

22 Q. Well, it's not used in this case.

23 A. No.

24 Q. Okay. So compliance is as good as it gets.

25 A. Yes.

1 Q. All right. So on Programming, the first section, they're
2 in compliance. Correct?

3 A. Correct.

4 Q. And the second section on Behavior, they're in compliance.
5 Correct?

6 A. Correct.

7 Q. And the third is compliance. Correct?

8 A. Correct.

9 Q. All right. So from the standpoint of this report, latest
10 report for programming, that's as good as it's going to get for
11 them, isn't it, compliance in all three areas?

12 A. Yes.

13 Q. Am I right?

14 A. Yes.

15 Q. Okay. Let me cover something else real quick and that's
16 these employee interviews. The interviews that were done at
17 the facility this last time, I think y'all touched on the fact
18 that some of them were done by MTC employees. Correct?

19 A. Correct.

20 Q. Under the supervision of Dr. Austin.

21 A. Correct.

22 Q. And is that an accepted practice and procedure?

23 A. Yes.

24 Q. For making -- for doing interviews?

25 A. It can be, certainly. Yes.

1 Q. Okay.

2 A. That is -- let me add, especially when you're using an
3 identifiable instrument, a survey instrument.

4 Q. And, in fact, Dr. Austin was using an identifiable
5 instrument, wasn't he?

6 A. Yes.

7 Q. In fact, he trained the MTC people on using that
8 instrument, didn't he?

9 A. I think that's a fair statement.

10 Q. I believe you testified about staffing, that you really
11 couldn't testify about staffing because of the reduction in
12 force versus the units that are now empty. Correct?

13 A. Yes.

14 Q. Is that right?

15 A. Yes, sir.

16 Q. And I think the next question was, can you warrant that
17 there's sufficient staff to maintain reasonably safe
18 conditions. And you said you can't warrant that.

19 A. I cannot.

20 Q. Okay. But you can't warrant that there's not sufficient
21 staff either, can you?

22 A. Equally true.

23 Q. Can't go either way.

24 A. Correct.

25 Q. All right. In your sixth monitors' report, page 14, in

1 fact, you state -- just start reading there and let's go down
2 to -- read those two sentences starting right there
3 (indicating).

4 A. Starting right there (indicating)?

5 Q. Yes, sir.

6 A. "During the two most recent site inspections,
7 (December 2014/January 2015), the monitors" --

8 Q. I think it's "have."

9 A. -- "have observed improved supervision of the housing areas
10 by line staff. Officers are more diligent in ensuring that
11 cell doors are secure, rounding checks appear to be more
12 frequent, and overall staff presence in the housing areas is
13 much improved."

14 Q. You're used to dictating, aren't you?

15 A. Yeah.

16 Q. You mentioned all the commas.

17 A. That's they way I started out. Showing my age.

18 Q. You've already said that this report is true and correct to
19 the best of your knowledge.

20 A. Yes, sir.

21 Q. Those statements are true and correct to the best of your
22 knowledge. Correct?

23 A. Yes, sir.

24 Q. All right. Y'all talked about the core areas. Do you
25 remember that?

1 A. Yes, sir.

2 Q. And that was addressed in your sixth monitors' report,
3 wasn't it?

4 A. Yes, sir.

5 Q. And, in fact, at the very opening, read that sentence.

6 A. "For this reporting period, the facility has made
7 significant gains in each of the aforementioned core areas of
8 operation."

9 Q. That's a good thing, isn't it?

10 A. Yes.

11 Q. All right. And then you go on page 5 and you follow that
12 up. Read that sentence right there (indicating).

13 A. "As of March 1st, 2015, the WGCf population was 893
14 (Housing Units 3-D and 4-A through D vacated). This
15 significant reduction in the facility population, combined with
16 limiting the population to more manageable minimum/medium
17 custody inmates, bodes well for the future safe operation of
18 WGYCF."

19 Q. That's a true statement, isn't it?

20 A. Yes.

21 Q. The RIF that you mentioned -- as you know, and correct me
22 if I'm wrong, the facility's gone from something like, I don't
23 know, approximately 1280 inmates to down to 962 or less.

24 Correct?

25 A. Correct.

1 Q. That's a substantial reduction in the numbers. Correct?

2 A. It is.

3 Q. And when you have that substantial reduction, it is
4 obvious, isn't it, that you won't need as many correctional
5 officers?

6 A. That's true.

7 Q. Especially when you close down entire zones and entire
8 units.

9 A. Yes, sir.

10 Q. Which they've done.

11 A. They have.

12 Q. So the fact that the RIF took place in and of itself -- I
13 know you said you haven't counted up the numbers, but the fact
14 that the RIF happened after all these inmates were shipped out
15 of there and the population was reduced so much is predictable,
16 isn't it? I mean, you'd expect that. They don't need all the
17 other folks. They don't --

18 A. Certainly you'd expect some reduction, of course.

19 Q. You don't need correctional officers for units that are
20 empty.

21 A. That's correct.

22 Q. But now there are units that are empty.

23 A. Indeed.

24 (COUNSEL CONFERRED)

25 Q. Mr. Martin, you testified I believe just a minute ago that

1 you believe that the facility today was unreasonably unsafe.

2 Is that correct? Was that your testimony?

3 A. I don't know whether the word "unreasonably" -- I would
4 just have to --

5 Q. All right.

6 A. -- be refreshed.

7 Q. Let me ask you this.

8 A. Yes.

9 Q. I'm talking about when you wrote your report and for that
10 time period, the sixth monitors' report -- for that time
11 period -- I'm not talking about what happened before or what
12 may happen in the future --

13 A. Okay.

14 Q. -- was Walnut Grove unreasonably unsafe?

15 A. I don't believe it was.

16 Q. And, therefore -- you're an attorney. Correct?

17 A. I am.

18 Q. All right. And since it's not unreasonably unsafe
19 currently -- because this is current. Correct?

20 A. Yes.

21 Q. Since it's not unreasonably unsafe, that means it's not in
22 violation of the Eighth Amendment. Correct?

23 A. Oh, I would take direction from the court before answering
24 that.

25 Q. I'll withdraw.

1 A. That's the court's province.

2 MR. FRIEDMAN: I'll withdraw.

3 THE COURT: I'll allow you to withdraw.

4 THE WITNESS: Sir?

5 THE COURT: You don't have to answer.

6 THE WITNESS: Good. Thank you.

7 (COUNSEL CONFERRED)

8 BY MR. FRIEDMAN:

9 Q. Let me rephrase that. Currently, based on this report, is
10 there a substantial risk of serious harm to inmates at Walnut
11 Grove, currently?

12 A. Well, that question presupposes that I'm allowed to look
13 forward --

14 Q. No.

15 A. -- to risk of harm.

16 Q. No. I want you to talk about today --

17 A. Okay.

18 Q. -- as of --

19 MR. MCDUFF: Your Honor, I object --

20 THE COURT: No, no. Hold on. What is current and
21 what is today? Because you're pointing at the monitors'
22 report. Are you talking about that being the current date or
23 are you talking about today's date --

24 BY MR. FRIEDMAN:

25 Q. Let's talk about --

1 THE COURT: -- is the confusion.

2 BY MR. FRIEDMAN:

3 Q. The last real information -- the last solid information
4 you've had is for this sixth report. Correct?

5 A. Yes.

6 Q. All right. Let's talk about for that time period. For the
7 sixth report was there a substantial risk of serious harm to
8 inmates at Walnut Grove?

9 A. A present risk of harm when we wrote this report, no.

10 Q. Thank you.

11 MR. FRIEDMAN: No further questions. Let me do my
12 housekeeping here.

13 (PAUSE)

14 MR. MCDUFF: No redirect.

15 THE COURT: No redirect. Mr. Martin, you may step
16 down.

17 THE WITNESS: Thank you, sir.

18 THE COURT: Is the plaintiff ready to call its next
19 witness?

20 MS. WINTER: Plaintiffs rest our case, your Honor.

21 THE COURT: All right. Thank you.

22 **PLAINTIFFS REST**

23 MR. FRIEDMAN: Your Honor, since I'm a little confused
24 about the procedures here, I don't know if I need to make a
25 motion for a judgment as a matter of law or not to protect the

1 record. If I am, I make it; if not, I guess I don't.

2 THE COURT: And if you are making it, it's denied.

3 MR. FRIEDMAN: I wish I could tell you I was shocked.

4 THE COURT: Okay. Scheduling matters. Counsel, meet
5 me in chambers in about ten -- in about five minutes. Is that
6 fine? And we'll have all our calendars and we'll be able to
7 work out some things.

8 MS. WINTER: May we bring our witness Mr. Vail with
9 us, because his schedule will matter too. I assume Mr. Roth's
10 will matter as well.

11 THE COURT: Yes, yes. Oh, I'm sorry. Did -- we had
12 talked about the possibility of a couple of witnesses maybe
13 being called, or do we want to talk with -- talk about
14 scheduling first?

15 MR. SILER: Right. Why don't we talk about
16 scheduling. I think the things we were -- we had people here
17 to prepare for were different from what came off on the stand
18 this morning. So I'm not sure what's the best way to proceed
19 with them. We can talk -- we can represent to the court what
20 we know at this point.

21 THE COURT: All right. Just meet me in chambers in
22 five minutes and we'll iron out those things so we can get
23 people out of here as quickly as possible.

24 MS. WINTER: Your Honor, I just wanted to let you know
25 that we don't need the class representatives here anymore --

1 THE COURT: Okay.

2 MS. WINTER: -- for the proceedings.

3 THE COURT: Okay. In that case then, they are excused
4 for the day. Your attorneys will be contacting you, Mr. Evans
5 and Mr. --

6 MS. WINTER: Owens. How can you forget that?

7 THE COURT: Oh, Owens. Yes, two Owens. That's right.
8 They'll be in contact with you about the next day to report.

9 Now, again, these defendants are in custody of MDOC.
10 Their custody classification, MDOC has a right to consider that
11 based on all information it has before them.

12 Of course, the parties have heard some of the
13 inquiries that the court has made. And I'll just remind the
14 defendant that these representatives are in your custody, your
15 control. And we will be getting to the point where we'll be
16 hearing other stuff possibly, but some of the stuff that the
17 court has heard so far is a little distressing. But I know the
18 State is looking into it. So -- and, hopefully, we'll have
19 answers to some of those things at a later date or responses or
20 whatever.

21 We will return at some later date, but the parties
22 will meet me -- counsel will meet me at my chambers in five
23 minutes. I do believe this matter is adjourned for the day.
24 We will not come -- well, I can't say that, because we may
25 decide to agree to take a witness or two, but we're going to be

1 in recess for sure.

2 (HEARING RECESSED)

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CERTIFICATE OF REPORTER

I, MARY VIRGINIA "Gina" MORRIS, Official Court Reporter, United States District Court, Southern District of Mississippi, do hereby certify that the above and foregoing pages contain a full, true and correct transcript of the proceedings had in the aforementioned case at the time and place indicated, which proceedings were recorded by me to the best of my skill and ability.

I certify that the transcript fees and format comply with those prescribed by the Court and Judicial Conference of the United States.

This the 10th day of April, 2015.

s/ Gina Morris
U.S. DISTRICT COURT REPORTER