

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

JAN 3 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NEIL GRENNING,

Plaintiff-Appellant,

v.

MAGGIE MILLER-STOUT, sued in
individual and official capacity and FRED
FOX, sued in individual and official
capacity,

Defendants-Appellees.

No. 16-35903

D.C. No. 2:09-cv-00389-RMP
Eastern District of Washington,
Spokane

ORDER

Before: HAWKINS, McKEOWN, and W. FLETCHER, Circuit Judges.

Judges McKeown and Fletcher vote to deny the petition for rehearing en banc, and Judge Hawkins so recommends. The full court has been advised of the petition for rehearing en banc, and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for rehearing en banc is denied.

NOT FOR PUBLICATION

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MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of Washington
Rosanna Malouf Peterson, District Judge, Presiding

Argued and Submitted August 27, 2018
Seattle, Washington

Before: HAWKINS, McKEOWN, and W. FLETCHER, Circuit Judges.

Neil Grenning appeals the district court's denial of his requests for (1) a permanent injunction against the 24-hour lighting conditions in the Special Management Unit ("SMU") at Airway Heights Correction Center ("AHCC" or "the prison") in Spokane, Washington; and (2) declaratory relief that those

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

conditions constitute cruel and unusual punishment in violation of the Eighth Amendment. Because the parties are familiar with the facts, we do not recite them here. We have jurisdiction under 28 U.S.C. § 1291. We affirm.

Grenning has standing to pursue injunctive and declaratory relief. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). He endured constant illumination in the SMU for thirteen consecutive days and remains incarcerated at AHCC. He claims several physical injuries resulted from the lighting conditions, which the prison could reinstitute at any time. This personal stake in the outcome confers standing. *Spencer v. Kemna*, 523 U.S. 1, 7 (1998).

The district court acted within its discretion in denying Grenning's request for permanent injunctive relief. *Or. Coast Scenic R.R., LLC v. Or. Dep't of State Lands*, 841 F.3d 1069, 1072 (9th Cir. 2016) (reviewing for abuse of discretion a district court's denial of a request for a permanent injunction). Such relief is "extraordinary," particularly under the Prison Litigation Reform Act. *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 24 (2008); 18 U.S.C. § 3626(a)(1). To obtain a permanent injunction, Grenning had to demonstrate that: (1) he "suffered an irreparable injury;" (2) "that remedies available at law, such as monetary damages, are inadequate to compensate for that injury;" (3) "that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted;" and (4) "that the public interest would not be disserved by a permanent injunction."

eBay Inc. v. MercExchange, L.L.C., 547 U.S. 388, 391 (2006).

The district court heard ample evidence supporting its conclusion that Grenning failed to show that he is entitled to a permanent injunction. Its conclusions largely rested on credibility determinations adverse to Grenning's claims, findings that we review for clear error. *Valenzuela v. Michel*, 736 F.3d 1173, 1176 (9th Cir. 2013). The district court's conclusion that the lighting conditions did not cause Grenning to suffer irreparable injury are well-grounded in the record and entitled to "special deference." *Anderson v. Bessemer City*, 470 U.S. 564, 574 (1985). In addition, the district court permissibly found that legitimate penological reasons support utilizing 24-hour lighting in certain circumstances. This finding supports the district court's conclusion that Grenning failed to show that the balance of hardships and public interest favor entry of a permanent injunction. We note that Grenning cites several cases here that were not presented to the district court, showing that AHCC's lighting is brighter than isolation units in other prisons. *See, e.g., Walker v. Woodford*, 454 F. Supp. 2d 1007, 1020, 1027 (S.D. Cal. 2006); *Wills v. Terhune*, 404 F. Supp. 2d 1226, 1229 (E.D. Cal. 2005); *King v. Frank*, 371 F. Supp. 2d 977, 981 (W.D. Wis. 2005).

The district court's factual findings were not clearly erroneous, and it was within its discretion in denying permanent injunctive relief based on those findings. Grenning was not entitled to declaratory relief because he failed to show

deliberate indifference on the part of prison officials.¹ *Johnson v. Lewis*, 217 F.3d 726, 734 (9th Cir. 2000). We deny as moot the State's motion to strike.

AFFIRMED.

¹ We leave for another day the important Eighth Amendment issues implicated by 24-hour lighting conditions (also referred to as constant illumination). *See, e.g.*, *Keenan v. Hall*, 83 F.3d 1083, 1090–91 (9th Cir. 1996) (holding that the plaintiff's Eighth Amendment claim based on 24-hour lighting presented a triable issue of fact), *opinion amended on denial of reh 'g*, 135 F.3d 1318 (9th Cir. 1998); *Chappell v. Mandeville*, 706 F.3d 1052, 1058 (9th Cir. 2013) (“*Keenan* did not clearly establish that constant illumination violates the Eighth Amendment when done for a legitimate penological purpose.”); *Grenning v. Miller-Stout*, 739 F.3d 1235, 1240 (9th Cir. 2014) (“The precise role of legitimate penological interests is not entirely clear in the context of an Eighth Amendment challenge to conditions of confinement.”).

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

NEIL GRENNING,

Plaintiff,

1

MAGGIE MILLER-STOUT, sued in official capacity; and FRED FOX, sued in official capacity,

Defendants.

NO: 2:09-CV-389-RMP

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This case was tried before the Court commencing on August 15, 2016.

14 Plaintiff Neil Grenning (“Grenning”) was represented by Hunter Ferguson and Reid
15 McEllrath of Stoel Rives, and Defendants Maggie Miller-Stout (“Miller-Stout”) and
16 Fred Fox (“Fox”) were represented by Jerry P. Scharosch and Timothy J. Feulner,
17 Washington State Attorney General’s Office, their respective attorneys of record.
18 Grenning filed suit seeking the following relief: (1) a declaratory judgment that the
19 24-hour lighting used during his SMU confinement in January 2009 is cruel and
20 unusual punishment in violation of the Eighth Amendment; (2) a permanent
21 injunction barring Airway Heights Correctional Center (“AHCC”) from subjecting

1 Grenning to 24-hour lighting with a brightness or intensity the same or similarly
2 dangerous as that used in January 2009 in any future confinement in the SMU; and
3 an order awarding reasonable attorney fees and costs.

4 Prior to trial, the parties stipulated to the following facts:

5 Grenning is a Washington State prisoner incarcerated at AHCC. On January
6 7, 2009, Grenning was engaged in an altercation with another inmate, Michael
7 Murray and following this incident, Grenning sought treatment in the AHCC
8 medical unit. After he received medical treatment, Grenning was confined in the
9 AHCC Special Management Unit (“SMU”) from January 7, 2009, through January
10 20, 2009.¹

11 Grenning’s medical records maintained by AHCC/Department of Corrections
12 and produced in this case do not contain any record showing that Grenning visited
13 the AHCC medical unit after his January 7, 2009, visit until June 1, 2010. Other
14 than the chart note on January 7, 2009, Grenning’s medical records maintained by
15 AHCC/Department of Corrections and produced in this case do not indicate that
16 Grenning sought medical treatment in the AHCC medical unit for any alleged
17 injuries between January 7, 2009, and January 20, 2009.

18

19 ¹ Plaintiff represents that he has been sent to the SMU through no fault of his own,
20 and Defendants presented testimony that inmates can be sent to SMU for a number
21 of reasons, including in the interest of their own protection.

1 Except for staff misconduct grievances, the Department of Corrections'
2 Offender Grievance Program has four levels. The first level is the offender
3 complaint level, or Level 0. At this stage the local grievance coordinator reviews the
4 grievance and determines whether the grievance can become a formal grievance.
5 The first formal level is Level I. At this level of review, the local grievance
6 coordinator is the respondent for the grievance under DOC procedures. Grievances
7 at Level 0 or Level I do not come before the Superintendent or his/her designee for
8 review as a matter of course under DOC procedures.

9 If the inmate is not satisfied with the Level I response, he can appeal to Level
10 II. At Level II, the respondent is the Superintendent or the Superintendent's
11 designee. If the inmate is still not satisfied with the Level II response, he can appeal
12 to Level III. At Level III, the respondent is the Deputy Secretary or the Deputy
13 Secretary's designee.

14 Fifteen grievances were filed by other inmates related to the lighting between
15 2000 and 2009 and were produced in this case. Of those fifteen, the only three
16 grievances that went to Level II or higher were Log ID Nos. 0010034 and 0122425,
17 which went to Level III, and Log ID No. 0907705 which went to Level II. The other
18 twelve grievances reached only Level I or the offender complaint level, including
19 Log ID Nos. 0322009, 0526052, 0306314, 0120365, 0115929, 0508996, 0424317,
20 0603210, 0407882, 0107025, 0119532, and 0116896.

1 RELEVANT TRIAL TESTIMONY

2 Defendant Miller-Stout testified that the SMU lighting is not intended to be
3 punitive, but is instead meant to protect the safety and security of the inmates, the
4 correctional officers, and the facility. Defendants presented testimony that in the
5 SMU, correctional officers must check on high-risk inmates who are more likely to
6 either violate prison rules or to be victims of other inmates and are at an increased
7 risk of being suicidal. Despite these purposes and intentions, Plaintiff presented the
8 testimony of three witnesses to argue that the 24-hour lighting in the SMU is still in
9 violation of the Eighth Amendment's prohibition against "cruel and unusual
10 punishment."

11 Plaintiff first called Tracy Rapp, a licensed engineer, to speak as an expert
12 regarding lighting, and Defendants stipulated to his expertise. Rapp testified that on
13 May 26, 2016, he conducted an investigation of a cell in the SMU at AHCC by
14 taking pictures and taking light measurements in various portions of the cell. Rapp
15 testified that the light fixture in the cell had three tube lights. The center bulb always
16 remained on and the two side-bulbs could be controlled by an inmate with a switch
17 inside the SMU cell. In relevant part, Rapp testified that his reading at the head of
18 the bed reflected 7.1 foot candles when only the 24-hour, center light was
19 illuminated, and an average of 5.9 foot candles in the rest of the room. In testifying
20 about his readings, Rapp did not include precise measurements regarding the
21 distance of his light meter from the light fixture.

1 Rapp discussed additional measurements that he had taken for demonstrative
2 purposes, such as the light measurements from underneath a parking-lot light (3.4
3 foot candles); on the back seat of a sport-utility vehicle with the dome light on (1.4
4 foot candles); a television set in a dark room, etc. Rapp also referred to lighting
5 standards from various organizations and safety codes. Rapp acknowledged that
6 there is no standard for lighting in SMU cells, but he analogized the setting to
7 construction sites or public streets “where loitering or criminal attacks are likely to
8 occur.” Rapp also referenced standards for egress lighting. However, Rapp failed to
9 adequately explain why these settings were helpful for determining proper lighting
10 within a prison setting, or how standards for egress lighting would be applicable to
11 an SMU cell.

12 Rapp’s testimony was later challenged by Defendants’ expert witness, Keith
13 Lane, a professional electrical engineer and expert in lighting design, who testified
14 that not only is egress lighting unhelpful for an analysis of proper lighting in a prison
15 setting, but that Rapp’s testimony also focused on the wrong measurements.
16 Although the parties stipulated to Rapp’s expertise to enable him to testify about
17 lighting issues, his expertise was in general electrical engineering. Lane’s expertise
18 was specifically focused on lighting.

19 Rapp testified about averages but, as Lane pointed out during his testimony,
20 Rapp failed to mention any analysis of maximum-to-minimum ratios, which account
21 for the full range of foot-candle measurements in a room under various light settings.

1 As Lane explained, maximum-to-minimum ratios take into account the effects of
2 fixtures in a room which can cause shadows or otherwise block visibility, important
3 issues in the SMU where guards are looking through a window in the door to
4 observe what is occurring in the cell.

5 Importantly, Rapp's testimony was void of any recognition of the purpose
6 served by the SMU and how lighting must be used by correctional officers. He
7 testified as to what he thinks would be sufficient lighting "necessary to perform a
8 certain visual task" but without any knowledge of what "visual tasks" must be
9 performed in the SMU. Rapp failed to recognize the objectives of correctional
10 officers who depend on lighting in the SMU, and Rapp could not reliably testify
11 about what level of lighting would be necessary to identify blood, injuries to an
12 inmate, or the presence of contraband. Rapp's understanding of what activities
13 could occur in a SMU cell was minimal as he referenced: "sleeping," "laying in a
14 cot," and "moving around," but did not recognize the possibility of suicides or
15 assaults on passing guards that occur within the SMU. Lane's testimony
16 differentiated the lighting codes and standards that Rapp referenced, such as those
17 that are applicable to egress lighting, with the level of lighting needed to observe
18 activities in a cell.

19 The Court finds that Lane's testimony was based on a broader understanding
20 of lighting issues and of the specific lighting needs in the SMU.

1 Plaintiff's second witness was a Doctor of Osteopathic Medicine, Amy
2 Aronsky, a purported expert of "sleep medicine and behavioral medicine."
3 Defendants stipulated to her expertise, but the Court finds that her testimony went
4 beyond the scope of this stipulated expertise. Doctor Aronsky reviewed Plaintiff's
5 medical file, but never examined him personally, and concluded that the cause of his
6 alleged sleep deprivation and headaches was the lighting in the SMU. Dr. Aronsky
7 testified that placing him back in the SMU with 24-hour lighting "would certainly
8 recreate his migraine headache symptoms." Dr. Aronsky asserted that she could
9 make this prospective conclusion "beyond a shadow of a doubt."

10 The Court affords minimal weight to Dr. Aronsky's testimony and to her
11 conclusions and assertions for a number of reasons. First, Dr. Aronsky applied the
12 standard of "beyond a shadow of a doubt" when expressing her prospective medical
13 diagnosis regarding causation, which the Court finds of questionable validity
14 considering the number of variables that she did not consider. Dr. Aronsky never
15 examined Plaintiff, never spoke with him, and was completely unaware of his recent
16 injuries or the nature of his convictions for sexual crimes against children that would
17 make him a likely target for violence in prison and could result in increased anxiety,
18 both for his own safety and possibly remorse, and that could be contributing factors
19 of his insomnia. Furthermore, Dr. Aronsky testified that neither a decrease in
20 lighting nor the use of sleep masks would change her conclusion that Grenning

1 would suffer from headaches if returned to the SMU with any level of 24-hour
2 lighting.

3 Dr. Aronsky based her conclusions largely on Plaintiff's self-reported
4 symptoms as she found them to be "classic" for sleep deprivation. Dr. Aronsky
5 testified that "any light exposure, even at the lowest levels, will result in sleep
6 deprivation." Accordingly, her testimony conflicts with the relief that Plaintiff
7 requests as he seeks an injunction that does not eliminate all lighting, but simply
8 requires Defendants to dim the 24-hour light in SMU cells. If the Court were to give
9 credence to Dr. Aronsky's conclusions, which she bases on vague references to
10 "medical literature," and "good old-fashioned common sense," Plaintiff would still
11 be left without any remedy as neither party has suggested that the lights of the SMU
12 should be completely shut off.

13 Dr. Aronsky failed to address the fact that Plaintiff's symptoms, such as
14 headaches and insomnia, which she attributed solely to sleep deprivation, had
15 occurred for most of his life in other settings. Grenning testified that he experienced
16 headaches since middle school and while meeting with his attorney the day before
17 this trial.

18 Dr. Aronsky testified that the 24-hour lighting caused Grenning's medical
19 symptoms, and on cross-examination, Dr. Aronsky stated that any dimming of the
20 lights would not affect her opinion. Recognizing that she never spoke with Plaintiff,
21 Dr. Aronsky admitted to being ignorant of major stressors in Plaintiff's life, such as

1 the nature of his criminal acts, his work on a graveyard shift, Plaintiff's description
2 of the SMU as often being loud, or the fact that Plaintiff had been head-butted in the
3 face by another inmate just prior to complaining of headaches in the SMU.

4 Despite lacking all of this information, and without meeting Grenning
5 personally, Dr. Aronsky testified that she had considered everything that she felt was
6 necessary to conclude that his headaches were caused by the lighting in SMU and
7 that nothing could make her doubt her conclusions. When asked on cross-
8 examination whether any of the information that she had not considered would affect
9 her determinations, Dr. Aronsky stated that not one of those considerations would
10 cause her to doubt her conclusions.

11 The Court does not afford Dr. Aronsky's testimony significant weight because
12 of her limited investigation into Grenning's history and circumstances, her disregard
13 of other potential factors relating to his headaches, as well as her questionable
14 expertise in light-related sleep disorders.²

15 Plaintiff, Neil Grenning, asserts that the 24-hour light within the SMU
16 violated the Eighth Amendment's prohibition on "cruel and unusual punishment"
17 because it caused him to be sleep-deprived and to suffer from migraine headaches.
18

19 ² Dr. Aronsky testified that two of her more recent publications related to correct
20 "coding" for billing purposes in sleep medicine. This fact does not strengthen the
21 Court's confidence in her testimony in this case.

1 However, his testimony undercut the causal link between the SMU lighting and his
2 alleged symptoms. Plaintiff testified extensively that he has suffered from the same
3 types of headaches that he had in the SMU since he was a student in middle-school
4 in the early 1990s; that he experiences the headaches once or twice a month,
5 presumably even when housed outside of the SMU; that he suffers from sensitivity
6 to light outside of the SMU; and that he most recently suffered a “light-related
7 headache” on the day before trial while meeting with his attorney. Plaintiff
8 presented records and testimony of the numerous times that he was seen by medical
9 providers while incarcerated; that he received glasses for his condition, which he did
10 not utilize in the SMU; and that he was repeatedly prescribed ibuprofen for his
11 symptoms.

12 Grenning acknowledged that AHCC has implemented at least two changes in
13 the SMU that are relevant to his claims: first, AHCC installed lower intensity lights
14 in the SMU; and second, eye masks are available to all inmates for \$1.24 per mask.
15 If an inmate does not have funds on hand, the inmate may purchase a mask on credit.
16 Although Grenning has not tried using a sleep mask in the SMU setting, he testified
17 that he has a sleep mask and that light somehow “seep[s] around” the mask and that
18 some light continues to penetrate through it, interrupting sleep. Plaintiff also did not
19 address how the lower intensity lights that were installed by August 2013 would
20 affect his symptoms.

21

1 The Court finds that Plaintiff's testimony undermined the causation of his
2 symptoms as being due to the 24-hour light in the SMU because of his long history
3 with the headaches and his headaches occurring outside of the SMU. Additionally,
4 Plaintiff failed to provide evidence to question whether the installation of lower
5 intensity lights and the availability of sleep masks are sufficient to reduce the harm
6 that he has alleged, thereby rendering his claim for injunctive relief moot.

ANALYSIS

8 In order for Plaintiff to prove his Eighth Amendment claim, he must
9 demonstrate that Defendants deprived him of a “minimal civilized measure of
10 life’s necessities,” *see Hallett v. Morgan*, 296 F.3d 732, 744 (9th Cir. 2002)
11 (quoting *Frost v. Agnos*, 152 F.3d 1124, 1128 (9th Cir. 1998) (quoting *Wilson v.*
12 *Seiter*, 501 U.S. 294, 304 (1991))), and that Defendants acted with “deliberate
13 indifference” in doing so, *see Farmer v. Brennan*, 511 U.S. 825 (1994). The Ninth
14 Circuit has directed this Court to apply the “deliberate indifference” standard,
15 although “[t]he existence of a legitimate penological justification has [] been used
16 in considering whether adverse treatment is sufficiently gratuitous to constitute
17 punishment for Eighth Amendment purposes.” *Grenning v. Miller-Stout*, 739 F.3d
18 1235, 1240 (9th Cir. 2014).

19 Defendants analogize this case to the facts of *Chappell v. Mandeville*, 706
20 F.3d 1052, 1058 (9th Cir. 2013), in which a prisoner was subjected to continuous
21 light for seven days. The Ninth Circuit in *Chappell* made reference to a number of

1 other courts that had investigated the existence of an Eighth Amendment violation
2 for continuous lighting, and although the results were mixed and fact-specific, “[a]
3 large majority of the courts [] concluded that there was no Eighth Amendment
4 violation.” 706 F.3d at 1059. Although the Ninth Circuit did not determine
5 whether a violation had occurred because Defendants in that case were entitled to
6 qualified immunity, the court stated that it had “some doubt that the conditions that
7 Chappell experienced . . . amounted to an Eighth Amendment violation.” *Id.*

8 On the other hand, in *Keenan v. Hall*, 83 F.3d 1083, 1089 (9th Cir. 1996),
9 the Ninth Circuit held that when an inmate alleged physical and psychological
10 harms due to continuous light for a period of six months, he had alleged enough to
11 survive summary judgment regarding whether he had been deprived of the
12 “minimal civilized measure of life’s necessities.”

13 At the summary judgment stage in this litigation, the district court approved
14 the magistrate judge’s determination that in order for Plaintiff to be entitled to
15 injunctive relief, he must demonstrate that (1) he suffered an irreparable injury; (2)
16 the remedies available at law are inadequate to compensate for the injury, (3) the
17 balance of hardships between the parties warrants a remedy in equity, and (4) the
18 public interest is not disserved by a permanent injunction. *See eBay v.*

19 *MercExchange, LLC*, 547 U.S. 388, 391 (2006); ECF No. 136 at 13.

20 / / /

21 / / /

1 **(1) Whether the lighting caused Grenning any injury**

2 Plaintiff's claim is premised on his assertion that the 24-hour lighting in the
3 SMU caused what he believed to be light-related headaches and sleep deprivation.
4 Plaintiff has the burden of proving causation by a preponderance of the evidence.
5 However, Plaintiff has failed to produce evidence beyond his own subjective
6 conclusions and Dr. Aronsky's conclusory statements regarding the connection
7 between the 24-hour lighting and his symptoms.

8 Plaintiff's testimony also undermines the causation element because he
9 testified that he suffers from the same symptoms that he allegedly experienced in the
10 SMU in different settings and has suffered with these same issues for a majority of
11 his life, before he ever was incarcerated and long before he was sent to the SMU.
12 Furthermore, Plaintiff testified that the most recent time that he suffered a headache
13 so severe that it caused him to vomit was while he was meeting with his attorney on
14 the day before trial began in this matter, outside of the SMU and not subject to 24-
15 hour lighting. Plaintiff failed to address other possible causes of his symptoms,
16 including the fact that he was head-butted, punched, and thrown by another inmate
17 just prior to being sent to the SMU; the anxiety he admitted to experiencing in
18 prison; the noise in the SMU; and other health issues like nausea, heartburn, and
19 aches.

20 The only evidence presented at trial, besides Grenning's own conclusions,
21 supporting the proposition that the 24-hour lighting in the SMU caused Plaintiff's

1 purported symptoms came in the form of Dr. Aronsky's conclusory testimony. As
2 stated previously, the Court finds this testimony to be of little weight. Dr. Aronsky
3 conceded that she had never met Plaintiff; never examined him; was unaware of a
4 number of important variables, including the circumstances of the inmate assault on
5 Plaintiff; and had never visited the SMU cell to see the lighting that she deemed to
6 be the cause of his medical issues. Dr. Aronsky testified that in her opinion, any
7 light would cause sleep deprivation which would cause his headaches.

8 Based on the foregoing, the Court finds that Plaintiff has failed to demonstrate
9 that the lighting within the SMU caused him any injury.

10 **(2) Whether the lighting levels in the SMU created an excessive risk of
11 serious harm to Grenning sufficient to offend contemporary standards
of decency**

12 The parties do not dispute that lighting is necessary within the SMU to enable
13 welfare-checks by the correctional officers, but the parties dispute whether the
14 current brightness of the 24-hour lighting is necessary or creates an excessive risk of
15 harm. Plaintiff argues that something dimmer is sufficient, but did not provide
16 credible evidence regarding any specific remedy or benchmark by which the Court
17 could determine whether the current brightness is excessive.

18 Tracy Rapp referred to a measure of one foot-candle being bright enough for a
19 welfare-check, but his testimony was disconnected from what correctional officers
20 need in the SMU. Plaintiff failed to provide any measure of what would be
21 sufficient lighting to allow officers looking through a window in the cell door to

1 view blood, injuries, or contraband, and the Court has no evidence from which it
2 could conclude that a lower level of lighting would adequately serve these purposes.

3 Rapp suggested alternatives to the 24-hour light, such as installing a switch
4 that would allow both the inmates and correctional officers to control the 24-hour
5 light. This suggestion, however, did not address how a guard's switching a light on
6 every thirty minutes during the night for welfare-checks would be any less disruptive
7 to an inmate's sleep than a continuous light. Defendant Miller-Stout testified that
8 switching lights on and off as the correctional officers moved down a cell-block also
9 would telegraph their movement to the inmates, putting the officers at a higher risk
10 of attack and allowing inmates to plan covert actions around the officers'
11 movements.

12 Plaintiff's evidence can be divided into two groups: Dr. Aronsky's testimony
13 that any light would cause sleep deprivation; and Tracy Rapp's testimony comparing
14 the intensity of the 24-hour light to his light readings in various settings, such as the
15 back seat of a car or a television screen in a dark room. None of the Plaintiff's
16 evidence is persuasive that the current 24-hour light creates an excessive risk of
17 serious harm to Grenning, nor that it offends contemporary standards of decency.
18 Furthermore, considering Defendants' evidence that AHCC already has installed
19 less intense lights and currently provides inmates access to sleep masks, the Court
20 finds that any risk imposed by the lighting is further diminished.

1 The Court finds that neither Dr. Aronsky's inferred proposal of no lights at all
2 nor Rapp's alternative suggestions of switching lights on and off or maintaining
3 unrealistically low light levels is practical, considering the purpose of the lights and
4 the realities of the SMU. Plaintiff also did not submit evidence that any of his
5 proffered alternatives would resolve his personal symptoms and the basis of his
6 lawsuit.

7 **(3) Whether Defendants were deliberately indifferent to any risk posed by
8 the lighting**

9 The parties split this factual inquiry into two sub-parts:

10 **(a) Whether Defendants were aware of any risk created by the lighting**

11 Plaintiff has the burden of proving by a preponderance of the evidence that the
12 24-hour lighting caused specific risks and that Defendants were aware of those risks.
13 Plaintiff argued that there were fifteen complaints about lighting at AHCC, which
14 Defendants argue comprised .06% of the total number of complaints during the
15 relevant time period. The parties submitted exhibits affirming that both Fred Fox
16 and Maggie Miller-Stout were aware of complaints about the 24-hour lighting in the
17 SMU and responded that the issues raised in the prisoner grievances did not require
18 a change in lighting. *See* Exhibits 53 and 224.

19 Fox dealt directly with Grenning's grievance, but the extent of Miller-Stout's
20 knowledge regarding Grenning's complaint is unclear. However, based on the
21 evidence presented by Plaintiff, the Court finds that both Fred Fox and Maggie

1 Miller-Stout were aware of complaints from inmates regarding the 24-hour lighting.
2 As previously addressed, the Court finds that Plaintiff has failed to provide sufficient
3 evidence to prove by a preponderance that he suffered “any risk created by the
4 lighting.” Therefore, the Court finds that Defendants were not aware of any risk to
5 Plaintiff created by the lighting.

6 **(b) Whether Defendants acted reasonably in light of any risk**

7 Defendant Fox testified that when he received Plaintiff’s grievance about the
8 lighting, he spoke with his supervisor, who informed him that the American
9 Corrections Association (ACA) had reviewed the SMU and that the lighting was in
10 line with their requirements. Additionally, he testified that he had checked with the
11 facility’s medical unit in an effort to find out more information about possible
12 medical issues and if the SMU would, in fact, be significantly detrimental to
13 Plaintiff. Fox testified that the medical department informed him that they had not
14 received any complaints from Grenning relating to the conditions in the SMU. The
15 Court finds that Fox’s inquiries constituted a reasonable response to Plaintiff’s
16 grievance.

17 Defendant Miller-Stout similarly testified that when she received
18 notification of a complaint regarding the lighting in the SMU, she relied on a prior
19 federal case that arose in this federal district, *Ridley v. Walters*, which held that the
20 lighting in the SMU at AHCC did not violate the United States Constitution.
21 Although the extent of Miller-Stout’s knowledge regarding Grenning’s complaint

1 remains unclear, Defense counsel provided a notice addressed to Miller-Stout
2 stating that Grenning's Level II grievance was denied by an Administrative
3 Program Manager due to the ruling of a federal court. *See Exhibit 227.* If the
4 Court reads Exhibit 227 as demonstrating Miller-Stout's response to Grenning's
5 grievance, the Court finds that Miller-Stout's reliance on previous case-law
6 allowing the same lighting at the same facility was reasonable.

7 **(4) Whether there is a sufficient likelihood of Grenning again being
8 confined in the SMU under the same conditions that he faced in
9 January 2009**

10 Plaintiff testified that he has been placed in some sort of segregation about
11 twelve times, sometimes as a result of the actions of others. Plaintiff was sentenced
12 to a term of 116 years imprisonment, making it substantially likely that he will be
13 placed in segregation again at some point in the future.

14 In the time since Plaintiff was placed in the SMU at AHCC in 2009,
15 Defendants have replaced the bulbs in the SMU with lower wattage bulbs and have
16 given inmates access to sleep masks to cover their eyes from the 24-hour light.
17 Although Plaintiff argues that these changes would be insufficient to address his
18 symptoms, the record is void of evidence to support that assertion. Therefore, the
19 Court has insufficient evidence to find it likely that Grenning will be subject to the
20 same conditions that he experienced in the SMU in January of 2009.

21 Prior to trial, the parties proposed five "issues of law" to be determined by the
22 Court. Considering the findings outlined above, the Court addresses each in turn.

(1) Whether exposure to the lighting in the SMU is sufficiently serious to violate the Eighth Amendment

The Ninth Circuit Court of Appeals has stated that “[t]here is no legitimate penological justification for requiring [inmates] to suffer physical and psychological harm by living in constant illumination. This practice is unconstitutional.” *Keenan v. Hall*, 83 F.3d 1083, 1090-91 (9th Cir. 1996), *opinion amended on denial of reh’g*, 135 F.3d 1318 (9th Cir. 1998) (quoting *LeMaire v. Maass*, 745 F.Supp. 623, 636 (D.Or. 1990), *vacated on other grounds*, 12 F.3d 1444, 1458-59 (9th Cir. 1993)).

This case presents the question of whether prison officials violate the Eighth Amendment when they keep one of three lights illuminated at all times in an SMU cell for a period of thirteen days.

Plaintiff has presented no credible evidence that the continuous illumination of one of three lights caused his sleep deprivation or any of his headaches, disorientation, or other related symptoms. Grenning failed to address any number of other causes for his symptoms, including the fact that he was head-butted prior to being sent to the SMU, that the injury had occurred when he was attacked in a prison bathroom, or if these symptoms were related to other medical issues about which he had complained in the past (e.g., nausea, heartburn, aches, etc.). Additionally, Grenning testified extensively that he has experienced the same or similar symptoms prior to being incarcerated, outside of the SMU context, and far from the constant illumination that is the subject of this suit.