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As of: April 8, 2022 6:11 PM Z

United States v. Davis

United States Court of Appeals for the Fifth Circuit

January 24, 2022, Filed

No. 20-30438 Summary Calendar

Reporter

2022 U.S. App. LEXIS 1965 *; 2022 WL 226000

UNITED STATES OF AMERICA, Plaintiff—Appellee,
versus DANIEL DAVIS, Defendant—Appellant.

Notice: PLEASE REFER TO FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1 GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.

Prior History: [*1] Appeal from the United States District Court for the Middle District of Louisiana. USDC No. 3:16-CR-124-1.

United States v. Davis, 2019 U.S. Dist. LEXIS 72005, 2019 WL 1896555 (M.D. La., Apr. 29, 2019)

Disposition: AFFIRMED.

Core Terms

district court, assault, eyewitness, enhancement, inmate, argues, witnesses, recollection, restrained, two-level, recorded, abused, obstruction of justice, inadmissible hearsay, witness testimony, bodily injury, civil rights, color of law, per curiam, cover up, admitting, depriving, polygraph, prison, habit

Case Summary

Overview

HOLDINGS: [1]-In an appeal from conviction of

depriving an inmate of his civil rights by assaulting the inmate, conspiracy to obstruct justice, obstruction of justice, witness tampering, and perjury, the admission of the eyewitness's statements did not violate the Confrontation Clause because the statements of the eyewitness were not testimonial since they were informal statements made to acquaintances and did not have the primary purpose of creating an out-of-court substitute for trial testimony; [2]-The district court did not abuse its discretion by admitting eyewitness's statements because the eyewitness made the statements in question contemporaneously with her observation of the assault and immediately after witnessing the assault; thus, the statements were admissible as present-sense impressions under Fed. R. Evid. 803(1).

Outcome

Judgment affirmed.

Counsel: For United States of America, Plaintiff - Appellee: Yael Bortnick, Thomas Evans Chandler, Trial Attorney, U.S. Department of Justice, Civil Rights Division - Appellate Section, Washington, DC; Mary Patricia Jones, Assistant U.S. Attorney, U.S. Attorney's Office, Middle District of Louisiana, Baton Rouge, LA.

For Daniel Davis, Defendant - Appellant: Ian F. Hipwell, Esq., Attorney, Manasseh, Gill, Knipe & Belanger, P.L.C., Baton Rouge, LA.

EXHIBIT

A

Ian Hipwell

Judges: Before OWEN, Chief Judge, and SMITH and ELROD, Circuit Judges.

Opinion

PER CURIAM:

Daniel Davis, a prison official, was convicted of one count of depriving an inmate of his civil rights by assaulting the inmate, conspiracy to obstruct justice, obstruction of justice, witness tampering, and perjury. He was acquitted of an additional count of depriving the inmate of his civil rights related to another alleged assault. The district court sentenced Davis to a total of 110 months in prison and two years of supervised release.

Davis first argues that the district court abused its discretion in denying his motion to sever the counts alleging assault from those [*2] alleging a cover up. Davis, however, fails to show that he suffered specific and compelling prejudice resulting in an unfair trial. *See United States v. Ballis*, 28 F.3d 1399, 1408 (5th Cir. 1994). Thus, the district court did not abuse its discretion. *See id.*

Next, Davis faults the district for admitting evidence related to polygraph examinations. Because the polygraph evidence was offered for the limited purpose of explaining why two witnesses changed their stories regarding the assault and cover up, the district court did not abuse its discretion. *See United States v. Alaniz*, 726 F.3d 586, 606 (5th Cir. 2013); *United States v. Allard*, 464 F.3d 529, 534-35 (5th Cir. 2006).

Challenging the district court's decision to admit testimony from two witnesses recounting statements made to them by an eyewitness to the assault, Davis argues that the eyewitness's statements ran afoul of the *Confrontation Clause* and constituted inadmissible hearsay. The statements of the eyewitness were not testimonial because they were informal statements made to acquaintances and did not have the primary purpose of creating an out-of-court substitute for trial testimony. *See Davis v. Washington*, 547 U.S. 813, 822, 126 S. Ct. 2266, 165 L. Ed. 2d 224 (2006); *Crawford v. Washington*, 541 U.S. 36, 53-54, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004). As a result, the admission of the eyewitness's statements did not violate the *Confrontation Clause*. Moreover, the admission of a witness's recorded recollection of the eyewitness's statements did not implicate the *Confrontation Clause* because the witness testified at [*3] trial and Davis had the opportunity to cross-examine her. *See Crawford*, 541 U.S. at 53-54, 59 n.9.

As for Davis's arguments that the testimony amounted to inadmissible hearsay, the eyewitness made the statements in question contemporaneously with her observation of the assault and immediately after witnessing the assault; thus, the statements were admissible as present-sense impressions. *See Fed. R. Evid. 803(1); United States v. Polidore*, 690 F.3d 705, 720-21 (5th Cir. 2012). Moreover, the testimony at trial indicated that the eyewitness was crying and upset while witnessing the assault and that she was under stress while watching the startling event. Thus, the statements were admissible as excited utterances. *See Fed. R. Evid. 803(2)*. As a result, the district court did not abuse its discretion by admitting these statements. *See Alaniz*, 726 F.3d at 606. Likewise, the district court did not abuse its discretion in permitting a witness to read her recorded recollection of the eyewitness statements because the witness testified that she was

* Pursuant to *5TH CIRCUIT RULE 47.5*, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in *5TH CIRCUIT RULE 47.5.4*.

unable to remember the details of the conversation with the eyewitness; the witness wrote the report when the statements were fresh in her mind; and the report accurately reflected her knowledge. *See Fed. R. Evid. 803(5); Alaniz, 726 F.3d at 606.* Any error in admitting the recorded recollection into evidence as an exhibit was harmless because the [*4] jury heard the substance of the report when the witness read it at trial and in light of the other testimony at trial showing that Davis assaulted the inmate. *See United States v. Flores, 640 F.3d 638, 643 (5th Cir. 2011).*

Next, Davis argues that the district court abused its discretion in denying his request to introduce evidence of the inmate's history of throwing feces from his cell as character evidence under *Federal Rule of Evidence 404(a)(2)* or evidence of habit under *Federal Rule of Evidence 406*. However, Davis has not established how the evidence was relevant to the offense and thus a pertinent character trait. *See Fed. R. Evid. 404(a)(2); United States v. Hewitt, 634 F.2d 277, 279 (5th Cir. 1981).* He also has not established that the inmate's conduct was "a 'regular response to a repeated specific situation' that has become 'semi-automatic'" so as to constitute admissible evidence of a habit. *Leonard v. Nationwide Mut. Ins. Co., 499 F.3d 419, 442 (5th Cir. 2007)* (quoting *Reyes v. Mo. Pac. R.R. Co., 589 F.2d 791, 794 (5th Cir. 1979)*); *see also Fed. R. Evid. 406.* Thus, he has not shown that the district court abused its discretion. *See United States v. Gulley, 526 F.3d 809, 817 (5th Cir. 2008)* (per curiam); *Leonard, 499 F.3d at 442.*

Finally, Davis argues that the district court improperly applied a two-level enhancement for restraint of a victim under *U.S.S.G. § 3A1.3*. He contends that the factor of restraint was already incorporated into the guidelines range by the five-level enhancement under *U.S.S.G. § 2A2.2(b)(3)(B)* for serious bodily injury and the six-level enhancement under *U.S.S.G. § 2H1.1(b)(1)(B)* for

committing the offense under the color of law. He also [*5] argues the inmate was restrained in accordance with prison policy and was not restrained to facilitate the assault.

In *United States v. Broussard, 882 F.3d 104, 109-11 (5th Cir. 2018)*, we upheld the district court's application of the two-level restraint enhancement under *§ 3A1.3* when both the bodily injury enhancement and color of law enhancement applied. Moreover, Davis's argument that the *§ 3A1.3* enhancement is inapplicable because the inmate was lawfully restrained is foreclosed by *United States v. Clayton, 172 F.3d 347, 352-53 (5th Cir. 1999)*. Therefore, the district court did not clearly err in applying the two-level restraint enhancement. *See United States v. Olarte-Rojas, 820 F.3d 798, 801 (5th Cir. 2016).*

AFFIRMED.

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**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA**

FILED

NOV 02 2016

**Deputy Clerk, U.S. District Court
Middle District of Louisiana
Baton Rouge, Louisiana**

UNITED STATES OF AMERICA	:	CRIMINAL NO. <u>16-1245-DD-Ewp</u>
<i>versus</i>	:	18 U.S.C. § 2
DANIEL DAVIS, JOHN SANDERS, and JAMES SAVOY	:	18 U.S.C. § 242
	:	18 U.S.C. § 371
	:	18 U.S.C. § 1512
	:	18 U.S.C. § 1519
	:	18 U.S.C. § 1623

**INDICTMENT FOR DEPRIVATION OF RIGHTS UNDER COLOR OF LAW;
CONSPIRACY TO OBSTRUCT JUSTICE; TAMPERING WITH A WITNESS;
FALSIFYING REPORTS IN A FEDERAL INVESTIGATION; AND PERJURY**

THE GRAND JURY CHARGES:

At All Times Relevant to this Indictment:

- 1) The Louisiana State Penitentiary located in Angola, Louisiana (“LSP–Angola”) was a state prison operated by the Louisiana Department of Public Safety and Corrections, the state agency responsible for the custody, control, care, and safety of inmates housed at LSP–Angola.
- 2) LSP–Angola was divided into different camps. Camp J was a punishment camp for inmates who had committed disciplinary infractions. Inmates at Camp J were housed in restrictive conditions, including solitary confinement. Camp J had five separate inmate housing units: “Shark,” “Gator,” “Cuda,” “Bass,” and “Gar.” The Shark unit was composed of two buildings: Shark One/Two and Shark Three/Four. The Shark One unit contained two tiers where the inmates were housed, and one lobby where correctional officers were stationed. A concrete exterior breezeway connected the two buildings.
- 3) Camp J was run by four rotating shifts of correctional officers (“COs”) referred to as the “A Team,” the “B Team,” the “C Team,” and the “D Team.” The Defendants—Major



DANIEL DAVIS, Captain JOHN SANDERS, and Captain JAMES SAVOY—were supervisory members of the B Team, employees of the Louisiana Department of Public Safety and Corrections, and sworn correctional officers.

- 4) Inmate J.S. was an inmate housed in solitary confinement on the right tier of the Shark One housing unit at Camp J.
- 5) Each of these allegations is hereby referenced and incorporated into each count of this Indictment.

COUNT ONE

6) On or about January 4, 2014, in the Middle District of Louisiana, Defendants **DANIEL DAVIS and JOHN SANDERS**, while acting under color of law and while aiding and abetting one another, willfully deprived Inmate J.S. of the right, secured and protected by the Constitution and laws of the United States, to be free from cruel and unusual punishment. Specifically, Defendants **DAVIS and SANDERS** physically assaulted Inmate J.S. on the Shark One—Right tier while Inmate J.S. was handcuffed and shackled, and failed to intervene to protect Inmate J.S. from being assaulted, despite having the opportunity to do so. This offense resulted in bodily injury to Inmate J.S.

The above is a violation of Title 18, United States Code, Sections 242 and 2.

COUNT TWO

7) On or about January 4, 2014, in the Middle District of Louisiana, Defendants **DANIEL DAVIS, JOHN SANDERS, and JAMES SAVOY**, while acting under color of law and while aiding and abetting one another, willfully deprived Inmate J.S. of the right, secured and protected by the Constitution and laws of the United States, to be free from cruel and unusual punishment. Specifically, Defendants **DAVIS, SANDERS, and SAVOY** physically assaulted Inmate J.S. on the exterior breezeway connecting the Shark units while Inmate J.S. was handcuffed

and shackled, and failed to intervene to protect Inmate J.S. from being assaulted, despite having the opportunity to do so. This offense resulted in bodily injury to Inmate J.S.

The above is a violation of Title 18, United States Code, Sections 242 and 2.

COUNT THREE

8) On or about January 4, 2014, and continuing through June 29, 2015, in the Middle District of Louisiana, Defendants **DANIEL DAVIS, JOHN SANDERS, and JAMES SAVOY** knowingly and willfully combined, conspired, and agreed with one another and with other correctional officers known and unknown to the grand jury to commit the following offenses against the United States:

- a) To knowingly falsify and make a false entry in a record and document with the intent to impede, obstruct, and influence the investigation and proper administration of a matter within federal jurisdiction, and in relation to and in contemplation of such a matter, in violation of 18 U.S.C. § 1519;
- b) To knowingly corruptly persuade, attempt to corruptly persuade, and engage in misleading conduct toward, another person with the intent to hinder, delay, and prevent the communication to a federal law enforcement officer and judge of truthful information relating to the commission and possible commission of a federal offense, in violation of 18 U.S.C. § 1512(b)(3); and
- c) To knowingly give false and misleading testimony about a material matter under oath in a proceeding before and ancillary to a court of the United States, in violation of 18 U.S.C. § 1623.

Manner and Means of the Conspiracy

9) It was the plan and purpose of the conspiracy for Defendants **DAVIS, SANDERS, SAVOY**, and their co-conspirators, to cover up the assaults on Inmate J.S. charged in Counts One and Two of this Indictment by engaging in a variety of obstructive acts, including preparing and filing reports documenting a false cover story, making false entries on LSP–Angola time cards to corroborate that false cover story, tampering with witnesses and physical evidence, and repeating the false cover story to anyone inquiring about the incident.

Overt Acts Committed in Furtherance of the Conspiracy

10) In furtherance of this conspiracy and to effect the objects thereof, members of the conspiracy and other persons known and unknown to the grand jury committed the following overt acts, among others, in the Middle District of Louisiana:

The Cover Story

a) On or about January 4, 2014, Defendants **DAVIS, SANDERS, and SAVOY**, along with Captain Scotty Kennedy (hereinafter referred to as “the conspirators”), met in the Camp J supervisor’s office to discuss how to cover up the assaults on Inmate J.S. charged in Counts One and Two of this Indictment. The conspirators decided that in light of Inmate J.S.’s significant injuries, they could not plausibly deny that there had been some kind of physical confrontation between Inmate J.S. and correctional officers. The conspirators devised a false cover story: (i) that Inmate J.S. was out of his cell and was spitting on and fighting with Captain Kennedy; (ii) that Captain Kennedy, and only Captain Kennedy, used knee strikes, and no other force, to get Inmate J.S. under control; (iii) that Defendant **DAVIS** witnessed Captain Kennedy’s use of force and concluded that it was reasonable and necessary to get Inmate J.S. under control; and (iv) that Defendants **SANDERS** and **SAVOY** were not present during the altercation. The conspirators decided

to falsely document that Captain Kennedy was the only correctional officer who used force because several excessive force complaints had previously been filed against Defendants **DAVIS** and **SANDERS**, and the conspirators believed that investigators would view allegations against Captain Kennedy, who had a clean record, with less scrutiny. The conspirators agreed that they would not document the assault on the exterior walkway, charged in Count Two of this Indictment, because they believed that assault was not witnessed by other inmates.

- b) Captain Kennedy wrote and filed an LSP–Angola Unusual Occurrence Report (“UOR”) documenting the false cover story they had devised.
- c) Captain Kennedy typed up a UOR for Defendant **DAVIS** documenting the false cover story, and Defendant **DAVIS** signed and adopted it.
- d) Captain Kennedy informed Officer E, a subordinate officer, of the false cover story, typed up a UOR for Officer E corroborating the false cover story, and instructed Officer E to sign it.
- e) Captain Kennedy wrote and filed an LSP–Angola disciplinary report documenting the false cover story and falsely accusing Inmate J.S. of rule violations.
- f) Defendants **SAVOY** and **SANDERS** conducted rounds in the Bass dormitory and the hobby shop with Officer E. Defendants **SAVOY** and **SANDERS** initialed time cards in the Bass dormitory and the hobby shop to indicate, falsely, that they were present in those locations at 9:00 a.m. and 9:03 a.m., respectively. After falsifying the time cards, Defendants **SAVOY** and **SANDERS** told Officer E, “We had your back, now you have to have ours.”
- g) Defendants **SAVOY** and **SANDERS** instructed Officer G, who had actually conducted rounds in the Bass dormitory and the hobby shop at 9:00 a.m. and 9:03 a.m.,

respectively, to tell internal investigators, if asked, that Defendants SAVOY and SANDERS were with Officer G when he conducted those rounds.

h) Captain Kennedy ordered Officer H, a subordinate officer, to have an inmate-orderly clean up blood that had spattered on the wall opposite Inmate J.S.'s cell and a pool of blood on the floor in front of Inmate J.S.'s cell before internal investigators had a chance to photograph and document it.

The Internal Affairs Investigation

i) On or about January 5, 2014, when they learned that there would be a formal internal affairs investigation, the conspirators met to discuss what they would tell investigators. They agreed to stick to the cover story that they had devised and documented in official LSP–Angola reports.

j) On or about January 5, 2014, Captain Kennedy gave Officer E copies of the UORs documenting the false cover story and told Officer E to tell internal investigators the following false statements to corroborate the cover story: (i) that he, Officer E, never put Inmate J.S. in a cell; (ii) that Inmate J.S. physically resisted Captain Kennedy; and (iii) that he, Officer E, called Defendant DAVIS over the phone to report a confrontation with security.

k) On or about January 8, 2014, the day Officer F was scheduled to be interviewed by internal investigators, Defendant DAVIS gave Officer F copies of the UORs documenting the false cover story and told Officer F to “get his story straight.” Later that shift, as Officer F was leaving Camp J to be interviewed, Defendant DAVIS pulled aside Officer F and told him to say that Inmate J.S. had been non-compliant.

The Civil Lawsuit

I) On or about June 29, 2015, Defendant **DANIEL DAVIS** was deposed under oath in connection with a civil lawsuit filed by Inmate J.S. arising out of the assaults on Inmate J.S. charged in Counts One and Two of this Indictment. Defendant **DAVIS** repeated the cover story the conspirators had devised and, in so doing, made several false statements and material omissions under oath.

The above is a violation of Title 18, United States Code, Section 371.

COUNT FOUR

II) On or about January 4, 2014, in the Middle District of Louisiana, Defendant **DANIEL DAVIS**, acting in relation to and in contemplation of a matter within the jurisdiction of the United States, knowingly falsified and made a false entry in a record and document with the intent to impede, obstruct, and influence the investigation and proper administration of that matter. Specifically, Defendant **DAVIS** signed and adopted a UOR documenting the false cover story he and his co-conspirators had devised to cover up the assaults charged in Counts One and Two of this Indictment. That report stated, in pertinent part: (a) that when “[Defendant **DAVIS**] arrived on the unit [he] witnessed Capt Scotty Kennedy on Shark 1 Right on the tier floor and [Inmate J.S.] was struggling and fighting with Capt Kennedy”; and (b) that during the incident, “[Inmate J.S.] . . . started to try to spit” at Defendant **DAVIS** and Captain Kennedy. That report omitted: (c) that Defendant **SANDERS** was present and used force against Inmate J.S. Those statements were false because, as Defendant **DAVIS** then well knew, (a) when Defendant **DAVIS** arrived on the unit, Inmate J.S. was handcuffed and shackled and locked securely in his cell—he was not struggling or fighting with Captain Kennedy on the Shark One—Right tier; (b) Inmate J.S. did not spit at or try to spit at Defendant **DAVIS** and Captain Kennedy; and (c) Defendant **SANDERS** was present and used force against Inmate J.S.

The above is a violation of Title 18, United States Code, Section 1519.

COUNT FIVE

12) On or about January 4, 2014, in the Middle District of Louisiana, Defendant JOHN SANDERS, acting in relation to and in contemplation of a matter within the jurisdiction of the United States, knowingly falsified and made a false entry in a record and document with the intent to impede, obstruct, and influence the investigation and proper administration of that matter. Specifically, Defendant SANDERS initialed time cards in the Bass dormitory and hobby shop to indicate that he was present in those locations at 9:00 a.m. and 9:03 a.m., respectively. Those entries were false because, as Defendant SANDERS then well knew, he was not in the Bass dormitory and hobby shop at those times; he was in the Shark One unit and on the exterior breezeway participating in the assaults charged in Counts One and Two of this Indictment.

The above is a violation of Title 18, United States Code, Section 1519.

COUNT SIX

13) On or about January 4, 2014, in the Middle District of Louisiana, Defendant JAMES SAVOY, acting in relation to and in contemplation of a matter within the jurisdiction of the United States, knowingly falsified and made a false entry in a record and document with the intent to impede, obstruct, and influence the investigation and proper administration of that matter. Specifically, Defendant SAVOY initialed time cards in the Bass dormitory and hobby shop to indicate that he was present in those locations at 9:00 a.m. and 9:03 a.m., respectively. Those entries were false because, as Defendant SAVOY then well knew, he was not in the Bass dormitory and hobby shop at those times; he was in the Shark One unit and on the exterior breezeway while the assaults charged in Counts One and Two of this Indictment were taking place.

The above is a violation of Title 18, United States Code, Section 1519.

COUNT SEVEN

14) On or about January 4, 2014, in the Middle District of Louisiana, Defendant **DANIEL DAVIS** knowingly corruptly persuaded, and attempted to corruptly persuade, LSP-Angola employees under his supervision with the intent to hinder, delay, and prevent the communication to a federal law enforcement officer and judge of truthful information relating to the commission and possible commission of a federal offense. Specifically, Defendant **DAVIS** instructed Captain Kennedy and Officer F, among other correctional officers, to stick to the false cover story in order to cover up the assaults charged in Counts One and Two of this Indictment.

The above is a violation of Title 18, United States Code, Section 1512(b)(3).

COUNT EIGHT

15) On or about June 29, 2015, in the Middle District of Louisiana, Defendant **DANIEL DAVIS** was deposed under oath as a defendant in a case then being tried before the United States District Court for the Middle District of Louisiana, Savoie v. Davis, et al., Civil Action No. 14-0700, which arose out of the assaults on Inmate J.S. charged in Counts One and Two of this Indictment. During his deposition, in response to questioning, Defendant **DAVIS** knowingly made the following material statements: (a) that when he arrived on the Shark One unit, Inmate J.S. was out of his cell and was struggling with Captain Kennedy; (b) that Inmate J.S. was “twisting and yelling and cussing and screaming and bucking and throwing a fit”; (c) that Defendants **SANDERS** and **SAVOY** were not present when officers were escorting Inmate J.S. off of the Shark One unit; (d) that when Defendant **DAVIS** and other officers transported Inmate J.S. off of the Shark One unit, they “brought him straight to the patrol”; and (e) that Defendant **DAVIS** “never told [Captain] Kennedy to lie about anything” or “to falsify any documents.”

16) Those statements were false because, as Defendant **DAVIS** then well knew, (a) when he arrived on the Shark One unit, Inmate J.S. was handcuffed and shackled and locked

securely inside of his cell; (b) when Defendant DAVIS ordered Inmate J.S. to come out of his cell, Inmate J.S. complied—he did not twist, yell, cuss, scream, buck, or throw a fit; (c) Defendants SANDERS and SAVOY were among the officers who escorted Inmate J.S. off of the Shark One unit; (d) immediately after Defendant DAVIS and other officers transported Inmate J.S. off of the Shark One unit, they assaulted Inmate J.S. on the exterior breezeway; and (e) Defendant DAVIS told Captain Kennedy to lie to investigators about the assaults charged in Counts One and Two of this Indictment, and to falsify reports, to cover up their misconduct.

The above is a violation of Title 18, United States Code, Section 1623.

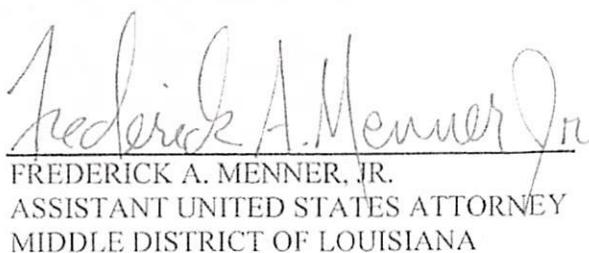
UNITED STATES OF AMERICA, BY

A TRUE BILL



J. WALTER GREEN
UNITED STATES ATTORNEY
MIDDLE DISTRICT OF LOUISIANA

REDACTED
PER PRIVACY ACT
GRAND JURY FOREPERSON



FREDERICK A. MENNER, JR.
ASSISTANT UNITED STATES ATTORNEY
MIDDLE DISTRICT OF LOUISIANA

11/2/16

DATE



CHRISTOPHER J. PERRAS
TRIAL ATTORNEY
CIVIL RIGHTS DIVISION

11/2/16

DATE

Place of Offense:

Matter to be sealed: No YesCity Angola

Related Case Information:

County/Parish West Feliciana

Superseding Indictment _____ Docket Number _____
 Same Defendant _____ New Defendant _____
 Magistrate Case Number _____
 Search Warrant Case No. _____
 R 20/ R 40 from District of _____
 Any Other Related Cases: 16-121-JWD-EWD

Defendant Information:

Defendant Name: Daniel Davis

Alias

Address:

Birthdate: _____ SS #: _____

Sex: _____

Race: _____

Nationality: _____

U.S. Attorney Information:

AUSA: Frederick A. Menner, Jr. NC Bar #: 19707Interpreter: No Yes List language and/or dialect: _____

Location Status:

Arrest Date _____
 _____ Already in Federal Custody
 _____ Already in State Custody
 _____ On Pretrial Release

U.S.C. Citations:

Total # of Counts: 6

<u>Index Key/Code</u>	<u>Description of Offense Charged</u>	<u>Count(s)</u>	<u>Petty/ Misdemeanor/ Felony</u>
<u>18 U.S.C. §§ 242 and 2</u>	<u>Deprivation of Rights Under Color of Law</u>	<u>1, 2</u>	<u>Felony</u>
<u>18 U.S.C. § 371</u>	<u>Conspiracy to Obstruct Justice</u>	<u>3</u>	<u>Felony</u>
<u>18 U.S.C. § 1519</u>	<u>Falsifying Reports in a Federal Investigation</u>	<u>4</u>	<u>Felony</u>
<u>18 U.S.C. § 1512(b)(3)</u>	<u>Tampering with a Witness</u>	<u>7</u>	<u>Felony</u>
<u>18 U.S.C. § 1623</u>	<u>Perjury</u>	<u>8</u>	<u>Felony</u>

Date: 11/2/16Signature of AUSA: Frederick A. Menner, Jr.

District Court Case Number (To be filled in by deputy clerk): _____

Place of Offense:

Matter to be sealed: No Yes

City Angola

Related Case Information:

County/Parish West Feliciana

Superseding Indictment Docket Number
Same Defendant New Defendant
Magistrate Case Number
Search Warrant Case No.
R 20/ R 40 from District of
Any Other Related Cases: 16-121-JWD-EWD

Defendant Information:

Defendant Name: James Savoy

Alias

Address:

Birthdate: SS #: Sex: Race: Nationality:

U.S. Attorney Information:

AUSA: Frederick A. Menner, Jr. NC Bar #: 19707

Interpreter: No Yes List language and/or dialect:

Location Status:

Arrest Date

Already in Federal Custody
 Already in State Custody
 On Pretrial Release

U.S.C. Citations:

Total # of Counts: 3

<u>Index Key/Code</u>	<u>Description of Offense Charged</u>	<u>Count(s)</u>	<u>Petty/ Misdemeanor/ Felony</u>
<u>18 U.S.C. §§ 242 and 2</u>	<u>Deprivation of Rights Under Color of Law</u>	<u>2</u>	<u>Felony</u>
<u>18 U.S.C. § 371</u>	<u>Conspiracy to Obstruct Justice</u>	<u>3</u>	<u>Felony</u>
<u>18 U.S.C. § 1519</u>	<u>Falsifying Reports in a Federal Investigation</u>	<u>6</u>	<u>Felony</u>

Date: 11/2/16

Signature of AUSA:

Frederick A. Menner, Jr.

District Court Case Number (To be filled in by deputy clerk): _____

Place of Offense:

Matter to be sealed: No Yes

City Angola

Related Case Information:

County/Parish West Feliciana

Superseding Indictment Docket Number
Same Defendant New Defendant
Magistrate Case Number
Search Warrant Case No.
R 20/ R 40 from District of
Any Other Related Cases: 16-121-JWD-EWD

Defendant Information:

Defendant Name: John Sanders

Alias

Address:

Birthdate: SS #: Sex: Race: Nationality:

U.S. Attorney Information:

AUSA: Frederick A. Menner, Jr. NC Bar #: 19707

Interpreter: No Yes List language and/or dialect:

Location Status:

Arrest Date Already in Federal Custody
 Already in State Custody
 On Pretrial Release

U.S.C. Citations:

Total # of Counts: 4

<u>Index Key/Code</u>	<u>Description of Offense Charged</u>	<u>Count(s)</u>	<u>Petty/ Misdemeanor/ Felony</u>
<u>18 U.S.C. §§ 242 and 2</u>	<u>Deprivation of Rights Under Color of Law</u>	<u>1, 2</u>	<u>Felony</u>
<u>18 U.S.C. § 371</u>	<u>Conspiracy to Obstruct Justice</u>	<u>3</u>	<u>Felony</u>
<u>18 U.S.C. § 1519</u>	<u>Falsifying Reports in a Federal Investigation</u>	<u>5</u>	<u>Felony</u>

Date: 11/21/14

Signature of AUSA:



District Court Case Number (To be filled in by deputy clerk):

DATE: 1/9/2014
NAME: Katherine Minor
[REDACTED]

TIME: 12:30 p.m.
D. O. B: [REDACTED]
PHONE # [REDACTED]
CELL #: [REDACTED]

MAILING
ADDRESS [REDACTED]

RESIDENCE
ADDRESS [REDACTED]

On the morning of January 4, 2014 I was talking to Mrs. Patricia Seymour on the telephone. Suddenly she started shouting "Oh! My God", "Oh My God". I shouted, Pat, what is wrong? She shouted Major Davis he's hitting him. I asked who is he hitting? She stated this inmate. She then got quiet and I hollered Pat talk to me what are you doing? Then I heard her crying. I told her to sit down and turn around and catch her breath. She was hollering Major Davis, he got the jump suit around his head and he is putting it. She started crying again he is going to hurt him bad. She stated I got boys that's in jail and I am thinking about them, I told her that your children are not here and catch your breath. She shouted they are putting him in the patrol and they are still hitting him. [REDACTED] the patrol entered the Sally port and it parked in front of the cell block entrance. Officers got out (Mr. Adams) and a small short white male. They got the offender out of the back and walked around to the emergency room entrance with him. The offender had an orange jump suit around his head and a white jump suit on with one shoulder out. When the van exited the Sally port the two officers were in it.

(A rear view center)

Signed: Katherine Minor

Date: 1/9/2014

Revised: 5-5-11

Witness: [REDACTED]

Witness: Patricia Seymour

U.S. Exhibit

15a

EXHIBIT
C

USA 000077
20-30438.5422

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

MOTION IN LIMINE OPPOSING HEARSAY STATEMENTS

NOW INTO COURT comes IAN F. HIPWELL and ANDRE BELANGER, attorneys for the defendant, associated with the law firm of MANASSEH, GILL, KNIPE & BÉLANGER, P.L.C., who move to exclude the hearsay testimony as proffered by the government one business day before trial.

Respectfully Submitted:

**MANASSEH, GILL, KNIPE &
BÉLANGER, P.L.C.**

s/ André Bélanger
ANDRE BÉLANGER
Louisiana Bar No. 26797
IAN F. HIPWELL
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8075 Jefferson Highway
Baton Rouge, LA 70809
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(225) 383-9704 Facsimile



UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA
VERSUS
DANIEL DAVIS

CRIMINAL ACTION
NO. 16-124-JWD-EWD

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I electronically filed the foregoing Motion in Limine opposing the Government's Untimely Expert Disclosure, proposed Order and accompanying Memorandum with the Clerk of Court by using the CM/ECF which will send a notice of electronic filing to opposing counsel in the United States Attorney's Office.

Baton Rouge, Louisiana this 20th day of January, 2018.

s/ André Bélanger
ANDRE BELANGER

s/ Ian F. Hipwell
IAN F. HIPWELL

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA
UNITED STATES OF AMERICA
VERSUS
DANIEL DAVIS
CRIMINAL ACTION
NO. 16-124-JWD-EWD

ORDER

CONSIDERING THE FOREGOING MOTION, it is hereby ordered that the Government is prohibited from offering hearsay testimony against the defendant, Daniel Davis.

Baton Rouge, Louisiana, this _____ day of _____, 2018.

JOHN W.deGRAVELLES, JUDGE
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA
UNITED STATES OF AMERICA
VERSUS
DANIEL DAVIS
CRIMINAL ACTION
NO. 16-124-JWD-EWD

MEMORANDUM IN SUPPORT OF THE DEFENDANT'S MOTION IN LIMINE

MAY IT PLEASE THE COURT: The defendant, DANIEL DAVIS, respectfully requests the Court deny the introduction of certain hearsay statements the government intends to introduce at trial.

INTRODUCTION

The Confrontation Clause of the 6th Amendment grants all criminal defendants the right to confront any witness who testifies against him at trial. In 1603, Sir Walter Raleigh's main accuser testified via letter despite Raleigh's request that he be produced and examined at trial. Raleigh was convicted and hanged. The injustice of this proceeding helped to develop the common law tradition of confrontation that is specifically incorporated within the Bill of Rights and it is further embedded generally within the protected constitutional right to Due Process.

PROFFERED TESTIMONY

The Government seeks to introduce testimony of Patricia Seymore who was a correctional officer assigned to the guard tower at Camp J as J.S. was being transported from Camp J to the hospital. The Government proffers that she will testify that she observed the defendant, Daniel Davis, beating J.S. prior to placing him into the transport van. Obviously, this fact is disputed.

LEGAL ISSUE

The issue at hand is simply that the Government advises the defense it will not produce Mrs. Seymore to testify at trial. The Government seeks to introduce Mrs. Seymore's testimony through Katherine Minor who was talking to Mrs. Seymore on the phone when Seymore allegedly witnessed the attack. This fact is also disputed by the defense. Compounding matters, the Government further advises its intent to offer Seymore's testimony through a written statement made by Mrs. Minor in connection with this investigation because Mrs. Minor cannot remember the details of the event. Proposing witness Minor merely read her statement, rather than being offered into evidence is a distinction without meaning in a criminal trial, where the right of confrontation should be protected by the Court.

ARGUMENT

On the last business day before trial, the Government advised that Mrs. Seymore would be unable to testify at trial due to an illness, presumably making her an unavailable declarant under Federal Evidence Rule 804(a)(4). In an effort to do an "end around" to the defendant's confrontation rights, the Government contends that Mrs. Seymore's statements to Mrs. Minor are excited utterances and that the now forgotten memory of Mrs. Minor can "testify from the grave" through her written statement made during this investigation. Hearsay within hearsay. Federal Evidence Rule 805. If the government is successful in admitting this evidence in this manner, the accused will effectively have no one to cross examine concerning this testimony. This seems patently unfair.

The defense contends that Mrs. Seymore's statements to Mrs. Minor are not excited utterances. Even if we assume Mrs. Minor's written recollection is true, her testimony suggests that the details were provided by Mrs. Seymore made pursuant to questioning from Mrs. Minor.

As such, the defense considers such evidence as testimonial statements that should be subject to cross-examination. Additionally, the defense disputes the merits of Mrs. Seymore's statements. Mrs. Seymore also called Lenora Ellis who was working the Sally Port and had the opportunity to view Davis escorting the prisoner. Mrs. Seymore made no comments about a beating to Mrs. Ellis and actually inquired as to what was going on because the inmate had a jumpsuit over his head. Mrs. Ellis did not see Davis beat the prisoner.

Mrs. Minor's written statement should not constitute a "recorded recollection" under Federal Evidence Rule 803(5). This isn't a "diary entry". It's more akin to a police report and indeed was generated as part of the law enforcement investigation into this case. What if every correctional officer who provided a written statement "forgot" their observations? Would we simply read the investigative file into evidence at trial? If we take the Government's position to its ultimate conclusion we would be left with a very absurd result: complete trial by affidavit - the problem of Sir Walter Raleigh.

Federal Evidence Rule 806 permits attacks on the declarant's credibility as if they testified at trial. Here is a brief outline of the attack:

1. The declarant Seymore is not a trustworthy witness. According to Mrs. Ellis, she is known as a "gossip;"
2. The declarant Seymore provided a different account of her observations to Mrs. Ellis;
3. Of course, much effort would be made of Mrs. Minor's inability to recall an all-important conversation.

As the Court can see, we will embark on a mini trial about Mrs. Seymore's credibility and veracity. Under this scenario the Court need not spend much effort deciphering the applicable hearsay rules and can exclude the proffered evidence pursuant to Federal Evidence Rule 403 for

“confusing the issues” and can also invoke the same rule and exclude the evidence for “unfair prejudice” as the accused cannot cross examine a piece of paper.

OTHER ISSUES

The Government also raised two other issues at the jury questionnaire conference: 1) a statement made by Captain Sanders to Lenora Ellis and 2) statements made by J.S. to Captain Kennedy that he was a “murderer”. Here is a brief commentary by the defense on those issues.

The defense concedes that Mrs. Ellis’ impressions and observations about Captain Sanders’ body language is admissible but believes that any statement made by Captain Sanders to Mrs. Ellis are hearsay and would object to its admission if Captain Sanders does not testify at trial. Were he to testify, he can be confronted. This fact would not cure the hearsay nature of Mrs. Ellis’ testimony on the issue but, were it admitted, any error would be harmless. So, in the spirit of cooperation, the defense will not object provided Captain Sanders will testify and acknowledge the statements

Lastly, we think there is an agreement that should J.S. testify, the statements to Captain Kennedy that he was a murderer is fair cross-examination. What if he doesn’t testify? The Government is fearful that the precise statement is prejudicial because J.S. is not a murderer. Perhaps we can compromise. The cross-examination of Captain Kennedy should be able to elicit testimony that J.S. threatened him during the transport from Camp J to the hospital. Were this concession made, perhaps the parties are in agreement on this issue as well.

Respectfully Submitted:

**MANASSEH, GILL, KNIPE &
BÉLANGER, P.L.C.**

s/ André Bélanger
ANDRE BÉLANGER
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IAN F. HIPWELL
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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA **CRIMINAL ACTION**
VERSUS **NO. 16-124-JWD-EWD**
DANIEL DAVIS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I electronically filed the foregoing Memorandum in Support Of the Defendant's Motion in Limine, proposed Order and accompanying Memorandum with the Clerk of Court by using the CM/ECF which will send a notice of electronic filing to opposing counsel in the United States Attorney's Office.

Baton Rouge, Louisiana this 20th day of January, 2018.

s/ André Bélanger
ANDRE BELANGER

s/ Ian F. Hipwell
IAN F. HIPWELL

DATE: 1/9/2014
NAME: Katherine Minor
[REDACTED]

TIME: 12:30 p.m.
D. O. B: [REDACTED]
PHONE #: [REDACTED]
CELL #: [REDACTED]

EXHIBIT

#14

MAILING
ADDRESS

RESIDENCE
ADDRESS

On the morning of January 4, 2014 I was talking to Mrs. Patricia Seymour on the telephone, suddenly she started shouting "Oh, My God", "Oh My God" I shouted. Pat, what is crying she shouted Major Davis he's hitting him. I asked who is he hitting she stated this inmate. She then got quiet and I hollered Pat talk to me what are you doing? then I heard her crying. I told her to sit down and turn around and catch her breath. She was hollering Major Davis, he got the jump suit around his head and he is putting it, she started crying again he is going to hurt him bad. She stated I got boys that's in jail and I am thinking about them, I told her that your children are not here and catch your breath. She shouted they are putting him in the patrol and they are still hitting him. [REDACTED] the patrol entered the Sally port and it parked in front of the cell block entrance. 2 officers got out (Mr. Adams) and a small short white male. They got the offender out of the back and walked around to the emergency room entrance with him. The offender had an orange jump suit around his head and a white jump suit on with one shoulder out. When the van exited the Sally port the two officers were in it.

*(A circle is drawn around the text "real
ment
center")*

Signed: Katherine Minor
Date: 1/9/2014

Revised: S-5-11

Witness:

Witness:

D. M. Acl
Patricia Seymour

LSP.000081

USA 000077
20-30438.835

282A-NO-4412099 Serial 29

FD-302 (Rev. 5-8-10)

- 1 of 5 -



FEDERAL BUREAU OF INVESTIGATION

Date of entry 01/21/2016

Lenora Ellis, Master Sergeant at Louisiana State Penitentiary, work address 17544 Tunica Trace, Saint Francisville, Louisiana, date of birth [REDACTED], home address [REDACTED]

telephone number [REDACTED] cellular telephone number [REDACTED] was interviewed at her place of employment. After being advised of the identity of the interviewing Agents and the nature of the interview, Ellis provided the following information:

It was explained to Ellis that participation in the interview was voluntary and she was not being compelled to participate in the interview as part of her job. Furthermore, it was explained that there would be no disciplinary actions from her employer if she did not participate in the interview. This was memorialized on a form titled "ACKNOWLEDGMENT OF VOLUNTARY STATEMENT," which was maintained as evidence. It was also explained to Ellis that lying to Special Agents during the course of a criminal investigation was a crime.

Ellis had been employed at LSP for approximately 24 years. Ellis currently worked at Camp J and was working at Camp J when two separate incidents involving inmate Joseph Savoy occurred on 01/04/2014. Ellis drew a picture (not to scale) of Camp J to assist with illustrating the incidents which occurred on 01/04/2014. The drawing was maintained as evidence.

Ellis reviewed a written statement dated 01/09/2014 (Bates stamped as LSP.000082) documenting one of the incidents. Ellis wrote the statement herself and could recall the incident that was described in the written statement. According to Ellis, the written statement was truthful and she did not want or need to make any revisions to the statement.

When the above noted situation occurred, Ellis had been working and assigned to the sally port of Camp J. The sally port was a one room office located next to a gate that permitted entrance and exit from Camp J. The gate allowed for vehicles to get in and out of Camp J. The Correctional Officers (CO) assigned to the sally port were responsible for logging anyone that came in or out of this gate on a gate log and tending to traffic coming through the gate, such as vehicle searches.

Investigation on 01/12/2016 at Baton Rouge, Louisiana, United States (In Person)

File # 282A-NO-4412099 Date drafted 01/13/2016

by Joshua C. Morrill, Glenn J. Methvin Jr.

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

USA 007055
20-30438.836

282A-NO-4412099

Continuation of FD-302 of Interview of Lenora Ellis, On 01/12/2016 , Page 2 of 5

There was a separate entrance to Camp J inside the building labeled on the map as "Entrance Building." This entrance was through a doorway, as opposed to a gate entrance like at the sally port. CO were able to come and go through this entrance without being documented. This was also where free people would sign in to obtain access inside Camp J.

The CO assigned to the sally port maintained a master key to the inner gates that lead to the Shark and Gator tiers. These gates were approximately six feet long and could only be unlocked with a master key. When working at the sally port, Ellis would sometimes unlock the gates herself and at other times would provide the key to the CO for use when entry to one of these tiers was necessary.

On the day of January 4, 2014, Ellis recalled there were two separate beeper incidents involving inmate Joseph Savoy, meaning incidents between a CO and inmate Savoy in which the CO requested backup assistance through use of a beeper. Ellis was not sure who or in what order the CO responded for backup to either of the beeper incidents. Ellis had heard through rumors that during the first beeper incident, Captain Kennedy threw and pinned inmate Savoy up against a wall. This did not surprise Ellis because Kennedy was on the tactical team and this would have been consistent with how the team was trained to respond. Ellis had also heard Kennedy had been spit on by inmate Savoy and reported to the medical center after being spit on. Specifically, Ellis recalled the inmate had been transported to the medical center first, and upon the inmates return to Camp J, Kennedy was then transported to the medical center. The two were transferred separately because they had just been involved in an incident and needed to be separated. Sergeant Willie Thomas was also not involved in the second incident because he was also sent to the medical center following the first incident. Ellis could not recall who had told her of these events.

When the second incident occurred, it caught the attention of Ellis because it was the second beeper of the day involving inmate Savoy. It was unusual for an inmate to be involved in two incidents on the same day. Ellis, who is curious by nature, went to the gravel area outside of the sally port to see what was happening from a better viewpoint. Once outside, Ellis observed Major Daniel Davis coming around the back edge of the Shark tier leading inmate Savoy through a grassy area towards Shark gate. Ellis could not recall how much time had passed between the second beeper and when she first saw Davis and inmate Savoy. Initially, Ellis did not know what the orange thing wrapped around inmate Savoy's head was, but later realized it was a jumpsuit. The grassy area had a downward slope. At some point in the walk as the two were going down the slope, inmate Savoy fell to his knees. Davis was holding the inmate when the inmate fell to his knees, and Davis helped the inmate get back up. Davis was walking

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Continuation of FD-302 of Interview of Lenora Ellis , On 01/12/2016 , Page 3 of 5

forcefully with inmate Savoy; however, it seemed to Ellis that the appropriate amount of force was being used considering that the inmate had just been involved in an incident.

About the time Davis arrived at the Shark gate, he was met by Captain James Savoy and Captain John Sanders. Ellis recalled Sanders was already at the gate when Davis and inmate Savoy approached. Savoy later appeared at the gate "out of no where." Ellis also recalled Lieutenant Randall Stead coming from Bass gate toward Shark gate, but Stead did not get all the way to Shark gate before stopping. Ellis never saw Kennedy during the second incident because Kennedy was at the medical center.

Sometime following the second beeper, Sergeant Dwayne Adams, who was assigned to transportation duty at the time of the incident, was called to Camp J for transport. Ellis could not recall the exact point in time that Adams arrived, but it was around the time Davis and inmate Savoy were walking to the Shark gate. Ellis believed Adams was returning from the medical center, but Adams did not have Kennedy with him at the time. This was one of the reasons Ellis was able to recall Kennedy was not involved in the second incident.

Adams drove a van in through the sally port and Ellis gave Adams the key to open the Shark gate. Adams unlocked the Shark gate to allow Davis, Savoy, Sanders and inmate Savoy through the gate so they could get to the van. Prior to getting in the van, inmate Savoy fell down again. Ellis did not see how inmate Savoy fell down. Savoy and Sanders picked inmate Savoy up and forcefully threw the inmate into the van.

From the time Ellis saw Davis and inmate Savoy start walking to the Shark gate until the time the van drove away, Ellis did not witness any excessive force being used against inmate Savoy. Ellis did not witness inmate Savoy get punched, kicked or struck in any way by a CO.

Once in the van, inmate Savoy was transported to the sally port gate. Ellis looked through the van window at the inmate in an attempt to visually identify the inmate. Ellis could not identify the inmate because the inmate had what Ellis now realized was an orange jumpsuit wrapped around his head. There was no blood visible on the orange jumpsuit. The inmate was wearing a white jumpsuit and had one arm outside the jumpsuit. There was blood on the white jumpsuit around the arms. It was not a lot of blood, but enough to notice when looking at the inmate. Ellis asked who the inmate was so it could be logged in the gate log and was told the inmate was inmate Savoy. The van then departed from Camp J towards the medical center.

Later in the day following the incidents on 01/04/2014, Sanders came to

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Continuation of FD-302 of Interview of Lenora Ellis, On 01/12/2016, Page 4 of 5

the sally port to visit with Ellis. Ellis believed Sanders was attempting to find solace in her. Sanders seemed distraught after the incident, which was reflected in his body language. Ellis recalled Sanders sitting and slumping down in a seat. Sanders told Ellis the situation wasn't good. Ellis asked him why, and Sanders responded that he couldn't talk about it. From the way Sanders was behaving, Ellis felt like Sanders knew he was going to be in trouble.

Following the incident, there was a lot of rumor talk amongst the LSP employees. Ellis heard Davis beat inmate Savoy during the second incident. Ellis also heard Sanders helped Davis beat the inmate. Ellis does not believe Sanders helped because when Davis was walking the inmate toward the Shark gate, Davis was all alone. Stead was not close to Shark tier, so Ellis did not think he helped either. Ellis did not think Savoy would have abused an inmate.

Ellis had heard Sergeant Patricia Seymore claimed to have yelled out the window for the CO to stop attacking inmate Savoy. At the time of the incident, Ellis was physically located very close to Seymore and would have heard Seymore yelling, but Ellis did not see Seymore hanging out a window or hear Seymore yelling for the CO to stop. In fact, Ellis recalled seeing Seymore talking on the telephone at the time of the incident. Ellis also heard Seymore claimed to have witnessed inmate Savoy being abused by the CO. Ellis believed Seymore made this story up once it came out that inmate Savoy had sustained injuries. Ellis provided three reasons why she believed this. First, Seymore was a gossip and used the gossip as a way to gain popularity throughout the employees by spreading information throughout the prison. Second, Ellis did not think Seymore could have seen anything more than she (Ellis) had seen, and Ellis had not seen any type of abuse. Third, Seymore's personality was to favor and support the inmates before the CO. Ellis also believed Seymore may have been "fooling around" with an inmate because the inmate would often hang out around the tower Seymore worked at. Ellis thinks that Seymore "jumped on the bandwagon" regarding what she saw and Ellis believed that Seymore was lying about what she saw. Seymore did not yell out the window for the CO to stop abusing inmate Savoy.

Under the best case scenario, the CO used a spit mask when an inmate was spitting. However, Ellis recalled that Camp J was out of spit masks on 01/04/2014 because the last spit mask had been used in a previous incident and no replacement spit masks had been received. The use of a jumpsuit seemed to be logical given the situation and the jumpsuit did not look unusual when Ellis saw inmate Savoy in the van at the sally port. The jumpsuit covered inmate Savoy's entire face because it was so large. The entire jumpsuit had been wrapped around inmate Savoy's face.

FD-302a (Rev. 05-08-10)

282A-NO-4412099 Serial 29

282A-NO-4412099

Continuation of FD-302 of Interview of Lenora Ellis , On 01/12/2016 , Page 5 of 5

Ellis routinely worked with Savoy, Sanders, Stead and Davis. Ellis described Savoy as a good officer that was very fair. Prior to making decisions, Savoy would always listen to the inmates and consider their point of view. Ellis described Sanders as a "yes man" that wanted to move up in rank. Ellis described Stead as a good officer. Ellis did not know Kennedy very well, but said he was nice when they did interact.

Ellis described Davis as having a "I'm big and bad" attitude, or as having "little man syndrome." Davis was meaner than the other CO to both inmates and free people. In the past, Ellis had witnessed Davis trip an inmate by stepping on the back of the leg shackles. Ellis could not recall who the inmate was. Davis tripped the inmate because the inmate was bad mouthing him.

When describing how Davis tripped the inmate, Ellis acted out the events as they would have occurred from the inmate's perspective. As Ellis acted out the tripping, she came to the realization that the fall was similar to how inmate Savoy fell on the hill. Ellis then stated that it was possible Davis had tripped inmate Savoy on the hill by stepping on the back of the leg shackles. Ellis did not see the situation well enough to determine if inmate Savoy was tripped or fell on his own accord. Had Davis tripped inmate Savoy, inmate Savoy would not have rolled down the hill because Davis had hold of the inmate.

Inmate Savoy was described by Ellis as being someone that intentionally acted out with bad behavior in order to push the buttons of the CO. Savoy would routinely cause trouble, and because of his behavior, Savoy was usually in a booth cell.

Ellis would not have been able to see anything that occurred directly outside the main doors of Shark tiers. The CO working at the other Shark tier buildings may have seen what occurred directly outside the main doors of the Shark tiers.

1 **USA V. DANIEL DAVIS 16-CR-124 01-22-2018**

2 **PRETRIAL CONFERENCE**

3 **THE COURT: GOOD MORNING, EVERYONE.**

4 WE ARE HERE, OF COURSE, IN THE MATTER OF THE
5 *UNITED STATES VERSUS DAVIS*, WHICH IS 16-CR-124. WILL COUNSEL
6 ENTER AN APPEARANCE FOR THE RECORD.

7 **MR. PERRAS: CHRISTOPHER PERRAS FOR THE UNITED**
8 **STATES, ALONG WITH CO-COUNSEL, FRED MENNER, AND ZACK DEMBO.**

9 **THE COURT: ALL RIGHT. THANK YOU, SIR.**

10 **MR. BELANGER: ANDRE' BELANGER AND IAN HIPWELL HERE**
11 **WITH MR. DAVIS, WHO IS ALSO PRESENT IN COURT, YOUR HONOR.**

12 **THE COURT: ALL RIGHT. THANK YOU VERY MUCH. WHAT**
13 **WE'RE GOING TO DO THIS MORNING IS TAKE CARE OF SOME**
14 **HOUSEKEEPING ITEMS AND SOME TYING UP OF LOOSE ENDS, THE FIRST**
15 **OF WHICH IS GOING TO BE A RULING ON OUTSTANDING MOTIONS IN**
16 **LIMINE.**

17 **THE FIRST ONE IS THE QUESTION OF THE HEARSAY ISSUE.**
18 **IT CAME BEFORE THE COURT ON THE PARTIES' BRIEFING AND REQUEST**
19 **FOR RULING ON EVIDENTIARY ISSUES, DOCUMENT 144 AND 145. THE**
20 **COURT HAS CONSIDERED THE BRIEFING AND ARGUMENT OF THE PARTIES.**
21 **FOLLOWING THE BRIEFING, THERE'S ONLY ONE CLEAR DISPUTE**
22 **REMAINING BETWEEN THE PARTIES, AND IT CONCERNS THE**
23 **ADMISSIBILITY OF THE ACCOUNT OF PATRICIA SEYMORE, AN ALLEGED**
24 **WITNESS TO ONE OF THE ASSAULTS CHARGED IN THE CASE.**

25 **ACCORDING TO THE GOVERNMENT, MS. SEYMORE DESCRIBED**



1 THE ASSAULT TO KATHERINE MINOR OVER THE PHONE AS IT WAS
2 OCCURRING, AND MS. MINOR, IN TURN, MEMORIALIZED THE
3 CONVERSATION IN A WRITING A FEW DAYS LATER. BECAUSE
4 MS. SEYMORE IS UNAVAILABLE TO TESTIFY, HER ACCOUNT WILL BE
5 OFFERED THROUGH MS. MINOR AT TRIAL. HOWEVER, MS. MINOR IS NOW
6 UNABLE TO RECALL THE DETAILS OF THE CONVERSATION AND HER
7 TESTIMONY REGARDING THE INCIDENT WILL BE OFFERED PRINCIPALLY
8 THROUGH HER WRITTEN STATEMENT. THE DEFENDANT OBJECTS, ARGUING
9 THAT PERMITTING MS. SEYMORE'S ACCOUNT TO BE INTRODUCED VIA MS.
10 MINOR'S WRITTEN STATEMENT VIOLATES THE RULES AGAINST HEARSAY
11 AND HIS CONFRONTATION CLAUSE RIGHTS.

12 THE COURT CONCLUDES THAT THE TESTIMONY DOES NOT
13 VIOLATE THE RULES AGAINST HEARSAY OR THE DEFENDANT'S
14 CONFRONTATION CLAUSE RIGHTS. AS DESCRIBED IN THE CHALLENGED
15 STATEMENT, MS. SEYMORE DESCRIBED THE ALLEGED BEATING AS IT WAS
16 OCCURRING AND SHOUTED, QUOTE, "OH, MY GOD," CLOSED QUOTE.
17 AND, QUOTE, "CRIED AND HOLLERED," CLOSED QUOTE, THROUGHOUT THE
18 CONVERSATION.

19 MS. SEYMORE'S STATEMENTS, THEREFORE, QUALIFY AS
20 EITHER PRESENT SENSE IMPRESSIONS OR EXCITED UTTERANCES
21 ACCEPTED FROM THE RULES AGAINST HEARSAY. THE COURT ALSO
22 DISAGREES WITH THE DEFENDANT THAT MS. SEYMORE'S STATEMENTS ARE
23 TESTIMONIAL WITHIN THE MEANING OF THE CONFRONTATION CLAUSE
24 JURISPRUDENCE SIMPLY BECAUSE SHE MADE SOME OF THEM IN RESPONSE
25 TO QUESTIONS FROM MS. MINOR.

1 QUOTE: "A STATEMENT IS TESTIMONIAL IF ITS PRIMARY
2 PURPOSE IS TO ESTABLISH OR PROVE PAST EVENTS POTENTIALLY
3 RELEVANT TO LATER CRIMINAL PROSECUTION." *THE UNITED STATES*
4 *VERSUS KIZZIE*, 877 F.3D 650 AT 656, (5TH CIRCUIT 2017). SEE
5 ALSO *MICHIGAN VERSUS BRYANT*, 562 U.S. 344 AT PAGE 358 (2011).
6 A STATEMENT IS TESTIMONIAL IF IT IS MADE WITHIN -- WITH THE,
7 QUOTE, "PRIMARY PURPOSE OF CREATING AN OUT-OF-COURT SUBSTITUTE
8 FOR TRIAL TESTIMONY," CLOSED QUOTE. THE COURT DISCERNS NO
9 MEANINGFUL ARGUMENT THAT MS. SEYMORE'S STATEMENTS WERE
10 TESTIMONIAL WHEN EVALUATED UNDER THE PRIMARY PURPOSE STANDARD.

11 WITH RESPECT TO MS. MINOR'S INABILITY TO RECALL THE
12 SPECIFICS OF THE CONVERSATION AND HER NEED TO RELY ON A PAST
13 WRITING, THE FEDERAL RULES OF EVIDENCE PROVIDE THAT IN SUCH
14 CIRCUMSTANCES, SUCH STATEMENTS ARE ACCEPTED FROM THE RULES
15 AGAINST HEARSAY. FEDERAL RULE OF EVIDENCE 8035.

16 THE DEFENDANT'S ARGUMENT THAT MS. MINOR'S STATEMENT
17 DOES NOT FALL WITHIN THE RULE BECAUSE IT, QUOTE, "ISN'T A
18 DIARY ENTRY," CLOSED QUOTE, BUT IS, QUOTE, "MORE AKIN TO A
19 POLICE REPORT," CLOSED QUOTE, IS UNAVAILING AS THE REASON THE
20 WRITING WAS MADE IS NOT RELEVANT UNDER FEDERAL RULES OF
21 EVIDENCE.

22 ALTHOUGH THE PURPOSE FOR WHICH THE WRITING WAS MADE
23 INFORMS WHETHER THE CONFRONTATION CLAUSE MIGHT APPLY,
24 MS. MINOR'S STATEMENT WILL ONLY BE INTRODUCED IF SHE APPEARS
25 AT TRIAL AND IT IS, THEREFORE, IRRELEVANT WHETHER HER

1 STATEMENT WAS TESTIMONIAL. SEE *CRAWFORD VERSUS WASHINGTON*,
2 541 U.S. 36 AT PAGE 59, NOTE 9 (2004). QUOTE, "WHEN THE
3 DECLARANT APPEARS FOR CROSS-EXAMINATION AT TRIAL, THE
4 CONFRONTATION CLAUSE PLACES NO CONSTRAINTS AT ALL ON THE USE
5 OF HIS PRIOR TESTIMONIAL STATEMENTS. IT IS, THEREFORE,
6 IRRELEVANT THAT THE RELIABILITY OF SOME OUT-OF-COURT
7 STATEMENTS CANNOT BE REPLICATED, EVEN IF THE DECLARANT
8 TESTIFIES TO THE SAME MATTERS IN COURT," CLOSED COURT. SEE
9 ALSO *UNITED STATES VERSUS OWENS*, 484 U.S. 554 AT PAGE 559
10 (1988). THE CONFRONTATION CLAUSE GUARANTEES ONLY, QUOTE, "AN
11 OPPORTUNITY FOR EFFECTIVE CROSS-EXAMINATION," CLOSED QUOTE,
12 AND THAT OPPORTUNITY IS NOT DENIED WHEN, QUOTE, "A WITNESS
13 TESTIFIES AS TO HIS CURRENT BELIEF, BUT IS UNABLE TO RECOLLECT
14 THE REASON FOR THAT BELIEF," CLOSED QUOTE, OR, QUOTE, "WHEN
15 THE WITNESS'S PAST BELIEF IS INTRODUCED AND HE IS UNABLE TO
16 RECOLLECT THE REASON FOR THAT PAST BELIEF," CLOSED QUOTE.

17 IT SUFFICES, QUOTE, "THAT THE DEFENDANT HAS THE
18 OPPORTUNITY TO BRING OUT SUCH MATTERS AS THE WITNESS IS BIAS,
19 HIS LACK OF CARE AND ATTENTIVENESS, HIS POOR EYESIGHT AND EVEN
20 THE VERY FACT THAT HE HAS A BAD MEMORY," CLOSE QUOTE.

21 THE DEFENDANT ALSO MOVES TO EXCLUDE THE CHALLENGED
22 TESTIMONY UNDER RULE 403. THE COURT BELIEVES, HOWEVER, THAT
23 THIS TESTIMONY IS POTENTIALLY HIGHLY PROBATIVE OF RELEVANT
24 ISSUES IN THE CASE AND THAT THE DANGER OF UNFAIR PREJUDICE AND
25 CONFUSION OF THE ISSUES DOES NOT SUBSTANTIALLY OUTWEIGH THIS.

1 PROBATIVE VALUE.

2 THEREFORE, FOR THE FORGOING REASONS, THE DEFENDANT'S
3 REQUEST TO EXCLUDE MS. MINOR'S STATEMENT IS DENIED AND
4 ASSUMING THAT SHE REMAINS UNABLE TO RECALL HER CONVERSATIONS
5 WITH MS. SEYMORE, THE STATEMENT MAY BE READ IN COURT
6 CONSISTENT WITH RULE 8035.

7 THE OTHER REMAINING ISSUE -- OR THERE WERE ACTUALLY
8 TWO REMAINING ISSUES, WHICH I DON'T THINK ARE ISSUES AT THIS
9 POINT. ONE WAS THE QUESTION OF MS. ELLIS'S IMPRESSIONS ABOUT
10 HOW MR. SANDERS LOOKED AND WHAT HE SAID. THE DEFENDANT
11 INDICATED AT PAGE 4 OF DOCUMENT 145-2 THAT THERE WAS -- AS A
12 MATTER OF CONCESSION OR A MATTER OF COMPROMISE, THERE WAS NO
13 OBJECTION AS LONG AS SANDERS TESTIFIED AND ACKNOWLEDGED THE
14 STATEMENT. SO I SEE THAT AS A NONISSUE. AND IF I'M WRONG,
15 PLEASE CORRECT ME.

16 AND THEN WE HAVE J.S.'S STATEMENT THAT HE WAS A
17 MURDERER. I UNDERSTAND THAT THERE'S AN AGREEMENT THAT IT IS
18 FAIR CROSS-EXAMINATION TO BRING THIS POINT OUT IF J.S.
19 TESTIFIES. IF J.S. DOES NOT TESTIFY, THE DEFENDANT WRITES AT
20 PAGE 4 OF DOCUMENT 145-2, "THE DEFENDANT IS AGREEABLE TO
21 KENNEDY TESTIFYING THAT J.S. THREATENED HIM."

22 SO I GUESS THAT IS A MINOR LOOSE END, NOT TIED UP.
23 WHAT'S THE POSITION OF THE UNITED STATES ON THAT?

24 MR. PERRAS: THANK YOU, YOUR HONOR. IN TALKING
25 WITH -- WITH CAPTAIN KENNEDY, HE RECALLS THIS CONVERSATION.

1 PRINCIPLE OF LAW I JUST STATED?

2 YOU OKAY WITH THAT, MR. BELANGER?

3 MR. BELANGER: YES, SIR. I THINK YOU'VE ADDRESSED
4 OUR CONCERNs.

5 THE COURT: MR. DEMBO?

6 MR. DEMBO: NO OBJECTION FROM THE GOVERNMENT, YOUR
7 HONOR.

8 THE COURT: OKAY. LET ME SEE IF I HAVE ANYTHING
9 ELSE ON MY LIST. OKAY. SO WHAT'S ON YOUR LIST?

10 MR. DEMBO: SO WE HAD A FEW BRIEF EVIDENTIARY
11 MATTERS THAT CAN BE BROUGHT UP NOW OR ANYTIME BEFORE OPENING.

12 THE COURT: WE'VE GOT SOME TIME NOW SO...

13 MR. DEMBO: SOUNDS GOOD, YOUR HONOR.

14 THE FIRST ONE HAD TO DO WITH THE STATEMENTS MADE BY
15 PATRICIA SEYMORE. PATRICIA SEYMORE WAS NOT CALLED IN EITHER
16 OF THE TWO PREVIOUS TRIALS. INSTEAD, WHAT ENDED UP HAPPENING
17 IS, MS. SEYMORE AT THE TIME WAS SUFFERING FROM CANCER AND AS A
18 RESULT WE CALLED SOMEONE NAMED MS. KATHERINE MINOR TO WHOM
19 MS. SEYMORE HAD MADE CONTEMPORANEOUS STATEMENTS ON THE PHONE
20 TO THE EFFECT OF: THEY'RE BEATING THAT INMATE. MAJOR DAVIS.
21 THEY'RE GOING TO HURT HIM BAD. SOMETHING TO THAT EFFECT.
22 THAT CAME IN UNDER EXCITED UTTERANCE, PRESENT SENSE
23 IMPRESSION, THOSE SORTS OF THINGS.

24 THERE'S BEEN TWO CHANGES SINCE THOSE LAST TWO TRIALS
25 THAT I WANTED TO PUT ON THE RECORD AND I UNDERSTAND THE

EXHIBIT

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1 DEFENSE MAY HAVE AN OBJECTION THAT THEY'VE MADE BEFORE TO US
2 INTRODUCING THIS.

3 THE FIRST IS THAT ONE OF OUR WITNESSES, LEANORA
4 ELLIS, ALSO RECALLED, FOR THE FIRST TIME, A STATEMENT THAT
5 MS. SEYMORE HAD MADE TO HER AS WELL OVER THE PHONE.
6 MS. SEYMORE WAS A TOWER OPERATOR AT THE SHARK UNIT WHO WAS
7 ABLE TO SEE DOWN ONTO THE GROUND. MS. ELLIS RECALLED THAT
8 MS. SEYMORE MADE THE FOLLOWING STATEMENTS TO HER IMMEDIATELY
9 AFTER THE INMATE WAS TAKEN AWAY IN THE PATROL VAN TO
10 TREATMENT. FIRST SHE ASKED HER -- SEYMORE ASKED ELLIS: DID
11 YOU SEE WHAT HAPPENED? AND THEN WHEN ELLIS SAID: WHAT ARE
12 YOU TALKING ABOUT? MS. SEYMORE SAID: DID YOU SEE THEM
13 BEATING THAT INMATE?

14 SO THOSE ARE THE TWO STATEMENTS THAT WE'D SEEK TO
15 ENTER IN; WOULD BE THE STATEMENT TO MINOR MADE
16 CONTEMPORANEOUSLY ABOUT MAJOR DAVIS: HE'S HITTING THAT
17 INMATE. THEY'RE GOING TO HURT HIM BAD; WHICH IS THE SAME
18 STATEMENT THAT CAME IN IN THE FIRST TWO THROUGH MS. MINOR, AND
19 THEN THIS OTHER STATEMENT TO MS. ELLIS: DID YOU SEE WHAT
20 HAPPENED? DID YOU SEE THEM BEATING THAT INMATE?

21 THE TWO THINGS THAT HAVE CHANGED, FIRST, MS. SEYMORE
22 FORTUNATELY, HER CANCER IS IN REMISSION. HOWEVER, IN OUR
23 ATTEMPTS TO CONTACT HER WE'VE DISCOVERED TWO THINGS:

24 ONE, DUE TO, I GATHER, THE CHEMOTHERAPY DRUGS OR THE
25 PASSAGE OF TIME OR SOMETHING, MS. SEYMORE HAS REAL DIFFICULTY

1 WITH HER MEMORY AND COULDN'T EVEN RECALL WHEN AN AGENT CAME
2 OUT AND SERVED HER WITH A SUBPOENA TWO WEEKS AGO. WHEN WE
3 SPOKE TO HER ON THE PHONE IT WAS AN EXTREMELY DISJOINTED
4 CONVERSATION AND ULTIMATELY SHE SAID I DON'T REMEMBER ANYTHING
5 FROM FIVE OR SIX YEARS AGO, MUCH LESS TO TAKE MY MEDICATION
6 EVERY DAY. SHE DIDN'T EVEN FULLY UNDERSTAND WHAT IT MEANT TO
7 BE SUBPOENAED TO COME INTO COURT. SHE SEEMED VERY CONFUSED.

8 SO FOR THAT REASON, EVEN THOUGH FORTUNATELY HER
9 CANCER IS IN REMISSION, THE OTHER THING I'D ADD IS SHE'S
10 SUFFERING FROM A VERY WEAKENED IMMUNE SYSTEM FROM ALL OF THE
11 CHEMOTHERAPY, SO ONE THING WE WERE REALLY HOPING TO DO IS
12 AVOID HAVING TO CALL HER IN AT ALL TO EVEN JUST GET UP AND
13 SAY: I DON'T REMEMBER ANYTHING; WHEN SHE'S IN A VERY
14 VULNERABLE STATE AND ALSO MAYBE -- IS UNDER A VERY SERIOUS
15 FLU -- SHE'S SUFFERING FROM THE FLU AT THE MOMENT.

16 THE JUSTIFICATIONS, THE HEARSAY EXCEPTIONS, THAT
17 APPLY TO MS. ELLIS' STATEMENT -- I MEAN MS. SEYMORE'S
18 STATEMENT TO MS. MINOR APPLY WITH EQUAL FORCE TO HER
19 STATEMENTS TO MS. ELLIS, SO NOTHING I THINK HAS CHANGED IN
20 TERMS OF THE GOVERNMENT'S POSITION AS TO WHY THESE STATEMENTS
21 ARE ADMISSIBLE. YOU KNOW, THE STATEMENTS TO MS. MINOR WERE
22 MADE AT THE MOMENT THAT THE THING WAS OCCURRING AND WAS
23 CLEARLY AN EXCITED UTTERANCE. SHE'S DESCRIBED AS CRYING AND
24 SCREAMING ON THE PHONE AND IT'S ALSO A PRESENT SENSE
25 IMPRESSION SINCE SHE IS DESCRIBING TO MS. MINOR WHAT SHE'S

1 OBSERVING.

2 SIMILARLY TO MS. ELLIS, THIS HAPPENED, AND MS. ELLIS
3 WILL TESTIFY, JUST AS THE INMATE WAS LEAVING. FIRST, AS A
4 BASELINE MATTER, QUESTIONS THEMSELVES ARE NOT HEARSAY SINCE
5 THEY ARE NOT STATEMENTS THAT ARE BEING OFFERED FOR THE TRUTH
6 OF THE MATTER. SO DID YOU SEE WHAT HAPPENED, QUESTION MARK;
7 DID YOU SEE THEM BEATING THAT INMATE, QUESTION MARK, IS NOT A
8 STATEMENT. BUT EVEN IF IT WERE, AGAIN, THIS IS BEING MADE
9 RIGHT AFTER THE INCIDENT WHERE SHE FELT THE NEED TO CALL
10 SOMEONE ELSE UP, EXPLAIN WHAT SHE HAD JUST SEEN AND, AGAIN,
11 WOULD FALL UNDER BOTH EXCITED UTTERANCE AND PRESENT SENSE
12 IMPRESSION.

13 MY UNDERSTANDING IS THAT THE DEFENSE IS NOT SEEKING
14 NECESSARILY TO CALL MS. SEYMORE IN BUT HAS SOME OBJECTIONS AS
15 TO THE ADMISSION OF MS. SEYMORE'S STATEMENTS THROUGH THESE
16 OTHER WITNESSES.

17 THE COURT: ALL RIGHT. THANK YOU. MR. BELANGER.

18 MR. BELANGER: YOUR HONOR, I'D LIKE TO ADDRESS THIS
19 THREE-FOLD. FIRST, IS WE ACCEPT THE GOVERNMENT'S POSITION
20 REGARDING THE HEALTH OF MS. SEYMORE, SO THAT'S NOT AT ISSUE
21 HERE. BUT WE DO HAVE TWO CONCERNS WITH BOTH MS. SEYMORE'S
22 STATEMENT COMING IN THROUGH MS. MINOR AND ALSO THIS NEW
23 STATEMENT COMING IN THROUGH MS. ELLIS. AND I DO THINK BOTH
24 STATEMENTS ARE DIFFERENT.

25 WITH REGARDS TO THE SEYMORE STATEMENT COMING IN

1 THROUGH MS. MINOR, WE WOULD REURGE THE OBJECTION THAT WE HAD
2 MADE ORIGINALLY. NOW, AS I APPRECIATE THE ADMISSIBILITY OF
3 THIS STATEMENT, IS IT IS CONSIDERED BASICALLY LIKE AN EXCITED
4 UTTERANCE COMING FROM MS. SEYMORE, WHICH IS THEN RELAYED TO
5 THE COURT THROUGH THE READING OF MS. MINOR'S STATEMENT.

6 IF THE COURT WILL RECALL THROUGH BOTH TRIALS,
7 MS. MINOR DOESN'T REALLY REMEMBER THE CONTENTS OF THE
8 STATEMENT OTHER THAN MS. SEYMORE WAS EXCITED, AND SO SHE GETS
9 TO READ HER STATEMENT BECAUSE IT WAS CONSIDERED A RECORDED
10 RECOLLECTION OF THE EVENT.

11 NOW, WHERE I HAVE A PROBLEM FOR THIS TRIAL, AND WE
12 PROBABLY SHOULD HAVE RAISED IT THIS WAY IN THE SECOND TRIAL,
13 THIS IS WITH HINDSIGHT, IS WE'RE HERE TO TALK ABOUT WHAT
14 HAPPENED ON THE BREEZEWAY. NOT ABOUT WHAT HAPPENED ON THE
15 TIER, NOT ABOUT WHAT HAPPENED ON THE GRASSY WALKWAY, NOT ABOUT
16 WHAT HAPPENED WHEN THEY WERE PUTTING HIM INTO THE VAN. THOUGH
17 OTHER WITNESSES ARE GOING TO DISCUSS THAT FOR CONTEXTUAL
18 PURPOSES, WE'VE ACCEPTED THAT BECAUSE WE GET TO ACTUALLY
19 CROSS-EXAMINE THOSE WITNESSES.

20 THE COURT: WHEN YOU SAY YOU'VE ACCEPTED IT WHAT YOU
21 DO MEAN BY THAT?

22 MR. BELANGER: WELL, WE UNDERSTAND THAT THEY'RE
23 GOING TO -- OTHER WITNESSES ARE GOING TO BE PAINTING A
24 CONTEXTUAL SCENE; TALKING ABOUT WHAT HAPPENED ON THE TIER;
25 TALKING ABOUT A COVERUP.

1 THE COURT: WHEN MS. SEYMORE DESCRIBES THE EVENT TO
2 TWO DIFFERENT PEOPLE IN SLIGHTLY DIFFERENT WAYS, WHAT EVENT IS
3 SHE TALKING ABOUT?

4 MR. BELANGER: I BELIEVE SHE'S TALKING ABOUT
5 MR. DAVIS TRANSPORTING THE PERSON TO THE VAN.

6 THE COURT: SO AS THEY'RE COMING UP TO THE GATE HE'S
7 THROWN INTO THE BACK OF THE VAN OR WHATEVER, IS THAT WHAT YOU
8 THINK IT IS?

9 MR. BELANGER: THAT'S MY APPRECIATION.

10 THE COURT: OKAY. YOU AGREE WITH THAT, MR. DEMBO?

11 MR. DEMBO: I WOULD SAY BASED ON THE STATEMENTS
12 ALONE IT'S ACTUALLY UNCLEAR WHAT SHE'S DESCRIBING. I THINK
13 THAT IS A POSSIBLE INTERPRETATION, BUT SHE DOESN'T ACTUALLY
14 GIVE A LOCATION FOR --

15 THE COURT: WOULD SHE HAVE BEEN ABLE TO SEE THE
16 BEATING ON THE WALKWAY FROM HER POSITION IN THE TOWER?

17 MR. DEMBO: SO I THINK THAT'S A MATTER IN DISPUTE.
18 IT SEEMS THAT SHE WOULD NOT HAVE BEEN ABLE TO BASED ON ONE
19 PHOTO THAT WE HAVE. AND, OBVIOUSLY, WE'RE NOT -- I HAVE NOT
20 BEEN UP THERE --

21 MR. HIPWELL: MR. DEMBO, I BELIEVE WE COULD AGREE,
22 COULDN'T WE, THAT SHE PHYSICALLY COULD NOT HAVE SEEN FROM HER
23 TOWER POSITION ONTO THE BREEZEWAY, WHICH IS THE SUBJECT OF
24 THIS CHARGE? NOW WHETHER THERE'S SOMETHING ELSE OCCURRING
25 AFTER IS ANOTHER MATTER OF COURSE.

1 MR. DEMBO: I THINK THAT'S RIGHT. I THINK THAT
2 THE -- SO I'M NOT SURE EXACTLY BASED ON THE STATEMENT WHAT
3 SHE'S DESCRIBING SEEING. IT COULD VERY WELL BE THE ESCORT TO
4 THE VAN. I DON'T WANT TO SAY THAT THAT'S DEFINITIVELY WHAT
5 SHE'S DESCRIBING.

6 THE COURT: SO NOT BRIEFED OR ARGUED BEFORE IS THE
7 LATEST OBJECTION MR. BELANGER MAKES WHICH IS THIS SECOND
8 BEATING, ALLEGED BEATING, IS NOT THE SUBJECT OF THE
9 INDICTMENT. HOW IS IT RELEVANT?

10 MR. DEMBO: SO FIRST I WOULD JUST SAY, YOUR HONOR,
11 THE REASON THAT I WAS JUST NOT WILLING TO SETTLE ON EXACTLY
12 WHAT SHE'S DESCRIBING IS, ALTHOUGH THERE'S BEEN DESCRIPTION OF
13 THE BEATING OCCURRING ON THE BREEZEWAY THAT COULD BE IN A LOT
14 OF DIFFERENT LOCATIONS BECAUSE -- ALL WE KNOW IS THE INMATE
15 WAS BROUGHT DOWN ONTO CONCRETE. SO I GUESS WHAT I'M SAYING
16 IS, I'M NOT CERTAIN BASED ON THE EVIDENCE THAT SHE SAYS THAT
17 SHE'S NOT SEEING THE CHARGED BEATING.

18 NOW, I AGREE WITH MR. HIPWELL THAT IF IT'S SQUARELY
19 IN THE BREEZEWAY, THEN SHE WOULD NOT BE ABLE TO SEE IT. BUT,
20 YOU KNOW, THERE'S NOT AN X ON THE CONCRETE WHERE THIS OCCURRED
21 AND THERE ARE PORTIONS OF CONCRETE SHE'S ABLE TO SEE. THE
22 SECOND PART I WOULD RESPOND TO YOUR HONOR IS EVEN IF IT IS NOT
23 THE CHARGED BEATING, WE HAVE GONE AND WILL GO INTO, FOR
24 EXAMPLE, THE EARLIER BEATING ON THE TIER AND IF THIS IS AN
25 ADDITIONAL BEATING IT'S IMPORTANT BOTH FOR CONTEXT AND FOR

1 EVIDENCE OF WILLFULNESS.

2 THAT IS, IF THE DEFENDANT ON OTHER OCCASIONS IN
3 IMMEDIATE PROXIMITY TO THE CHARGED INCIDENT ALLOWED OTHER
4 GUARDS TO BEAT SOMEONE IN FRONT OF HIM AND CHOSE NOT TO DO
5 ANYTHING ABOUT IT, THEN THAT WOULD TEND TO MAKE IT MORE LIKELY
6 THAT (A), HE ACTED WILLFULLY IN THE CHARGED BEATING ITSELF AND
7 (B), THAT HE FAILED TO INTERVENE IN THE CHARGED BEATING
8 ITSELF. AND SO AS MR. BELANGER WAS SAYING, WE'VE INCLUDED
9 INFORMATION THAT'S CONTEXTUAL TO THE BEATING -- THE CHARGED
10 BEATING.

11 THE COURT: OKAY. THEN WITH RESPECT TO THE HEARSAY,
12 I KNOW -- I ASSUME THAT THE DEFENDANT CONTINUES TO SAY THAT
13 THIS IS NOT AN EXCEPTION OR IT SHOULD NOT BE AN EXCEPTION TO
14 THE HEARSAY RULE, BUT YOU'D HAVE -- YOU WOULD HAVE RECORDED
15 RECOLLECTION -- YOU HAVE HEARSAY WITHIN HEARSAY. AND THE
16 FIRST HEARSAY, THE FIRST LAYER OF HEARSAY, IS THAT SHE'S
17 READING FROM HER STATEMENT. THAT'S RECORDED RECOLLECTION.
18 THAT WOULD BE AN EXCEPTION, WOULD IT NOT?

19 MR. BELANGER: IT WOULD, YOUR HONOR. I UNDERSTAND
20 THE BASIS FOR HOW IT GETS IN. I GUESS WHAT I'M URGING HERE,
21 IS NOW KNOWING WHAT WE KNOW ABOUT THE CASE TO MAKE THAT 403
22 BALANCE AND EXCLUDE IT, BECAUSE WE'RE TAKING TWO STEPS -- WE
23 BASICALLY HAVE TWO PEOPLE THAT CAN'T REMEMBER THIS, WHETHER IT
24 BE MS. SEYMORE BECAUSE OF HER PHYSICAL CONDITION OR MS. MINOR
25 WHO JUST CAN'T REMEMBER EXACTLY WHAT HAPPENED AND HAS TO READ

1 FROM HER STATEMENT. NOW WHEN WE JUXTAPOSE THAT TO THE
2 RELEVANCY OF THE OPPORTUNITY TO VIEW, I LITERALLY CANNOT
3 CROSS-EXAMINE THE INITIAL DECLARANT ON THAT. AND THAT'S WHY
4 I'M ASKING IT --

5 THE COURT: I DON'T SEE HOW THE -- WHETHER IT IS OR
6 ISN'T, THE HEARSAY EXCEPTION PLAYS INTO THE RULE OF THE 403
7 ANALYSIS. I MEAN, THE PREJUDICIAL EFFECT EITHER DOES OR IT
8 DOESN'T OUTWEIGH THE PROBATIVE VALUE, WHETHER IT'S HEARSAY OR
9 SOMETHING ELSE. BUT IN ANY EVENT, INSOFAR AS THE HEARSAY
10 EXCEPTIONS ARE CONCERNED, I'M GOING TO -- I MAY BE WRONG BUT
11 NEVER IN DOUBT KIND OF THING -- I'M GOING TO BE CONSISTENT
12 WITH MY EARLIER RULING. I'M GOING TO SAY THAT THESE ARE
13 EXCEPTIONS -- BOTH EXCEPTIONS TO THE HEARSAY RULE.

14 THE ISSUE NOT RAISED IN THE EARLIER CASE IS WHETHER
15 OR NOT IT'S RELEVANT. IT IS RELEVANT. THE QUESTION IT SEEMS
16 TO ME BECOMES SORT OF A 404(B) ISSUE OF OTHER ACTS AND WHETHER
17 OR NOT IT MEETS THAT STANDARD AND I'M GOING TO GIVE SOME
18 THOUGHT TO THAT. I AM LEANING TOWARDS ALLOWING IT INTO
19 EVIDENCE BECAUSE IT DOES INFORM THE CONTEXT OF WHAT HAPPENED
20 AND IT ALSO GOES TO WILLFULNESS, BUT I HAVEN'T MADE UP MY MIND
21 ON THAT. I WANT TO THINK SOME MORE ABOUT THAT.

22 MR. HIPWELL: IF I COULD BE HEARD ONE FINAL TIME,
23 YOUR HONOR, I THINK THE COURT REMEMBERS WITH SOME
24 CONSTERNATION AT STATUS CONFERENCES BETWEEN TRIAL ONE AND
25 TRIAL TWO ME SLOWLY COMING TO THE REALIZATION THAT FOR CONTEXT

1 PURPOSES THIS WAS ESSENTIALLY GOING TO BE A RE-TRIAL AND
2 EVERYTHING WAS COMING IN, INCLUDING ACQUITTED CONDUCT ON COUNT
3 ONE, AND INCLUDING COVERUP. WE FULLY ACCEPT THAT.

4 WHAT WE MAINTAIN IS THAT WE MISSED FOR TRIAL TWO WE
5 THINK A VERY CRITICAL RELEVANCY POINT. IN THE CHARGE,
6 REMEMBER, YOUR HONOR, IS SPECIFICALLY ON THE BREEZEWAY AND
7 THAT BREEZEWAY IS A CONCRETE SQUARE THAT WILL BE PHOTOGRAPHED,
8 IT WILL BE SHOWN TO THE JURY AND ALL. IT'S VERY IMPORTANT,
9 YOUR HONOR. WE THINK THAT THAT CERTAINLY LEANS IN OUR FAVOR
10 FOR THE RELEVANCY KIND OF POINT. I THINK IT WOULD BE VERY
11 CLEAR THAT THIS TESTIMONY THAT IS BROUGHT OUT IS GOING TO BE
12 CONCERNING WHAT IS HAPPENING THERE EITHER ON THE WALKWAY, AND
13 THERE'S DIFFERENCES OF OPINION AND TESTIMONY WILL DIFFER ON
14 WHERE THAT WALKWAY CAME FROM, BUT IT'S OFF THE BREEZEWAY. AND
15 THE BREEZEWAY IT'S OPEN, OF COURSE, TO THE AIR, BUT IT'S
16 ENCLOSED FOR LINE OF SIGHT FOR MS. SEYMORE. THANK YOU, YOUR
17 HONOR.

18 THE COURT: ALL RIGHT.

19 MR. BELANGER: MAY I BE HEARD ON THE PORTION DEALING
20 WITH MS. ELLIS, YOUR HONOR?

21 THE COURT: ON MS. ELLIS?

22 MR. BELANGER: YES, SIR.

23 THE COURT: UH-HUH.

24 MR. BELANGER: THAT'S NOW SOMETHING THAT'S NEW THAT
25 IS GOING TO BE PRESENTED IN THIS TRIAL THAT WAS NOT PRESENTED

1 IN THE OTHER TRIALS, AND I THINK THE BASIS FOR ADMITTING THOSE
2 STATEMENTS FROM MS. ELLIS ARE DIFFERENT THAN MS. SEYMORE OR --
3 OR MS. SEYMORE'S TESTIMONY THROUGH MS. MINOR.

4 WHEN WE'RE DEALING WITH THE TESTIMONY THROUGH
5 MS. MINOR WE HAVE AN HYSTERICAL SEYMORE ON THE PHONE. WE'VE
6 HAD TWO TRIALS AND MS. ELLIS HAS SAID MS. MINOR -- OR
7 MS. SEYMORE WAS NOT HYSTERICAL. SO I DON'T THINK THE EXCITED
8 UTTERANCE COMES IN AND NOW THIS IS JUST A CONVERSATION BETWEEN
9 TWO WITNESSES. WHAT DID THIS ONE WITNESS WHO'S NOT GOING TO
10 BE AVAILABLE SAY TO YOU. HERE IT IS. WELL, I SAY THAT'S
11 HEARSAY. AND I DON'T KNOW --

12 THE COURT: HYSTERICAL IS NOT NECESSARILY -- I MEAN
13 YOU DON'T HAVE TO BE HYSTERICAL TO BE EXCITED, RIGHT?

14 MR. BELANGER: WELL, YOU DON'T, BUT I'M TRYING TO
15 JUXTA-SUPPOSE THE TWO DIFFERENT -- I MEAN THESE ARE SUPPOSEDLY
16 BOTH CONTEMPORANEOUS CONVERSATIONS. ONE --

17 THE COURT: OKAY. I GET IT. SO YOU'RE SAYING
18 NUMBER TWO, MS. ELLIS WAS NOT EXCITED OR HYSTERICAL, EITHER
19 ONE?

20 MR. BELANGER: THE CONVERSATION TO MS. ELLIS,
21 CORRECT, YES, SIR.

22 THE COURT: WELL, HOW DO YOU ADDRESS MR. DEMBO'S
23 ARGUMENT THAT THIS IS REALLY NOT A STATEMENT, IT'S A QUESTION
24 AND A QUESTION DOESN'T FALL UNDER THE HEARSAY RULE?

25 MR. BELANGER: IF IT'S JUST A QUESTION, BUT THEN IF

1 WE'RE GOING TO GET INTO THE CONTEXT OF WHAT WAS DISCUSSED.
2 THEY WERE BEATING THIS PERSON. I STILL SAY THAT THAT IS
3 HEARSAY. AND UNLIKE MS. MINOR WHO HAD A RECORDED RECOLLECTION
4 OF A STATEMENT THAT SHE WAS READ, NONE OF THAT APPEARS IN
5 MS. ELLIS' STATEMENT.

6 THE COURT: OKAY. WELL, I WILL CONSIDER -- I'M
7 GOING TO MAINTAIN THE COURT'S EARLIER RULING WITH RESPECT TO
8 THE FIRST CONVERSATION. I WILL THINK HARD ABOUT THE SECOND
9 ONE AND I'LL LET YOU KNOW JUST AS SOON AS I CAN.

10 MR. BELANGER: THANK YOU, YOUR HONOR.

11 THE COURT: ALL RIGHT. WHAT ELSE DO WE HAVE?

12 MR. DEMBO: I THINK THERE WERE JUST TWO OTHER
13 HOUSEKEEPING MATTERS. ONE WAS ABOUT THE DEATH OF INMATE
14 SAVOIE. I THINK WE SHARED WITH DEFENSE COUNSEL AND THE COURT
15 AFTER THE SECOND TRIAL, THAT UNFORTUNATELY INMATE SAVOIE HAD
16 PASSED AWAY FROM A PULMONARY EMBOLISM WHILE IN CUSTODY IN
17 HUNT. THERE DID NOT APPEAR TO BE ANY LINKAGE TO ANY OF THE
18 CHARGED CONDUCT IN THIS CASE. THERE WAS A CONCERN ABOUT HOW
19 WE WERE GOING TO PLAY THAT FOR THE JURY. WE DISCUSSED A
20 STIPULATION, HOWEVER, DEFENSE COUNSEL HAS INFORMED ME THAT --
21 AND I WANT TO MAKE SURE I'M NOT PUTTING WORDS IN Y'ALL'S --

22 THE COURT: WHICH WITNESS IS THIS?

23 MR. DEMBO: I BEG YOUR PARDON?

24 THE COURT: WHICH WITNESS ARE WE TALKING ABOUT?

25 MR. DEMBO: THE VICTIM, YOUR HONOR.

1 TURN IT OFF, AGAIN, FOR THE REASONS THAT WE'VE TALKED ABOUT
2 OVER AND OVER AGAIN.

3 SO WITH THAT, THANK YOU VERY MUCH. PLEASE BE HERE
4 IN THE JURY ROOM -- AND MR. JONES IS GOING TO SHOW YOU WHERE
5 THE JURY ROOM IS RIGHT NOW -- BE IN THE JURY ROOM SO THAT WE
6 CAN START PROMPTLY AT NINE IN THE MORNING.

7 ALL RISE FOR THE JURY.

8 REPORTER'S NOTE: *(WHEREUPON THE JURY EXITED THE*
9 *COURTROOM.)*

10 THE COURT: BE SEATED FOR A MOMENT. I WANTED TO
11 GIVE THE PARTIES THE COURT'S RULING WITH RESPECT TO
12 MS. SEYMORE AND HER STATEMENTS. MS. ELLIS WAS THE NUMBER 1
13 PERSON AND MS. MINOR IS THE NUMBER 2 PERSON IN THAT SEQUENCE?

14 MR. BELANGER: NO, YOUR HONOR. I BELIEVE MS. --

15 MR. DEMBO: YOU MEAN IN TERMS OF WHEN WE ADDRESSED
16 IT TO THE COURT, YOUR HONOR?

17 THE COURT: NO, WHEN THE CONVERSATIONS TOOK PLACE.

18 MR. DEMBO: OH. NO, I BELIEVE MS. MINOR IS THE
19 FIRST ONE AND MS. ELLIS WAS THE SECOND ONE.

20 THE COURT: OKAY. WELL, I AM GOING TO OVERRULE BOTH
21 THE OBJECTIONS AS TO MS. MINOR -- LET'S SEE, MS. MINOR IS THE
22 FIRST ONE. I FIND THAT IT'S RELEVANT. I FIND THE TESTIMONY
23 IS -- MEETS 404(B) MUSTER. I THINK THAT ITS PROBATIVE VALUE
24 OUTWEIGHS ITS PREJUDICIAL EFFECT. I THINK IT'S AN EXCEPTION
25 TO THE HEARSAY RULE AS AN EXCITED UTTERANCE AND ALSO A PRESENT

1 SENSE IMPRESSION.

2 THE SECOND IN CHRONOLOGY STATEMENT, I ALSO OVERRULE
3 THE OBJECTIONS AND FOR BASICALLY THE SAME REASONS, EXCEPT THAT
4 I THINK THE ONLY DIFFERENCE IS A PRESENT SENSE IMPRESSION IS A
5 STATEMENT DESCRIBING AN EVENT WHICH OCCURS -- THE STATEMENT IS A
6 MADE WHILE OR IMMEDIATELY AFTER THE PERCEIVED -- THE WITNESS
7 PERCEIVED IT. AND I BELIEVE THAT THE SECOND STATEMENT IS A
8 PRESENT SENSE IMPRESSION, EVEN THOUGH -- AND IT PROBABLY IS AN
9 EXCITED UTTERANCE, TOO, ALTHOUGH IT MAY -- IT'S NOT QUITE AS
10 CLOSE IN TIME TO WHEN THE EVENT OCCURRED. AN EXCITED
11 UTTERANCE BEING A STARTLING EVENT MADE WHILE THE DECLARANT WAS
12 UNDER THE STRESS OF THE EXCITEMENT IT MADE.

13 SO IT PROBABLY IS BOTH. BUT IN ANY EVENT, I BELIEVE
14 THAT BOTH OF THOSE STATEMENTS ARE ADMISSIBLE AND THE HEARSAY
15 WITHIN HEARSAY ARGUMENT, I BELIEVE IT IS A RECORDED
16 RECOLLECTION, AND IT MEETS THE HEARSAY EXCEPTION IN THAT
17 REGARD. SO I'M GOING TO OVERRULE THE OBJECTION.

18 IS THERE ANYTHING ELSE THAT WE CAN DO THIS
19 AFTERNOON, CLOSING ON 4:00, THAT MIGHT HELP MATTERS GO MORE
20 SMOOTHLY TOMORROW MORNING?

21 MR. DEMBO: NOTHING THAT THE UNITED STATES CAN THINK
22 OF.

23 MR. HIPWELL: I HAVE ONE MATTER, YOUR HONOR. OF
24 COURSE, I KNOW THE COURT NOTES OUR OBJECTION TO THE TWO
25 RULINGS FOR THE RECORD. YOUR HONOR, I LISTENED VERY CAREFULLY

1 GEORGE WATCHED AS THE TWO CAPTAINS FALSIFIED THE TIME SHEETS,
2 CLAIMING THAT THEY HAD BEEN SOMEPLACE ELSE, AND NOT AT THE
3 TIME OF THE BEATING IN THE BREEZEWAY. "THIS WILL COVER OUR
4 ASSES," HE REMEMBERS THE CAPTAIN SAYING.

5 SERGEANT GEORGE WAS PRESSURED TO FILE A FALSE REPORT
6 OF WHAT HAPPENED AND WHAT HE HAD SEEN. AND WHEN THE INTERNAL
7 INVESTIGATORS WERE GOING TO INTERVIEW SERGEANT GEORGE,
8 SERGEANT GEORGE FELT PRESSURED TO STICK TO THE STORY, BUT
9 INSTEAD SERGEANT GEORGE CAME CLEAN AND HE TOLD THEM WHAT HE'D
10 SEEN.

11 ANOTHER OFFICER WHO SAW PART OF THE BEATING FROM THE
12 GUARD TOWER ALSO SPOKE TO THE INVESTIGATORS. SHE WON'T BE
13 TESTIFYING AT THE TRIAL BECAUSE SHE'S BEEN STRUGGLING WITH A
14 CANCER DIAGNOSIS SINCE THIS HAPPENED. BUT AT THE TIME WHEN
15 SHE SAW THE BEATING, SHE WAS ON THE PHONE WITH HER FRIEND,
16 ANOTHER CORRECTIONS OFFICER, KATHERINE MINOR. MASTER SERGEANT
17 MINOR WILL TELL YOU WHAT HER FRIEND SAID AS SHE SAW IT
18 HAPPENING. SHE SAID, "DEFENDANT DAVIS HAS A JUMPSUIT AROUND
19 AN INMATE'S HEAD." AND THEN SHE STARTED TO CRY. "HE'S
20 HITTING HIM," SHE SAID. "HE'S GOING TO HURT HIM SO BAD."

21 AFTER GATHERING ALL THIS INFORMATION FROM OFFICERS
22 NOT INVOLVED IN THE BEATING ON THE BREEZEWAY, THE
23 INVESTIGATORS CALLED CAPTAIN KENNEDY IN FOR A POLYGRAPH.
24 CAPTAIN KENNEDY WILL TELL YOU THAT HE KNEW THERE WAS NO WAY HE
25 COULD PASS A POLYGRAPH. EVERYTHING HE HAD WRITTEN IN HIS



1 THROUGH MS. MINOR, WE WOULD REURGE THE OBJECTION THAT WE HAD
2 MADE ORIGINALLY. NOW, AS I APPRECIATE THE ADMISSIBILITY OF
3 THIS STATEMENT, IS IT IS CONSIDERED BASICALLY LIKE AN EXCITED
4 UTTERANCE COMING FROM MS. SEYMORE, WHICH IS THEN RELAYED TO
5 THE COURT THROUGH THE READING OF MS. MINOR'S STATEMENT.

6 IF THE COURT WILL RECALL THROUGH BOTH TRIALS,
7 MS. MINOR DOESN'T REALLY REMEMBER THE CONTENTS OF THE
8 STATEMENT OTHER THAN MS. SEYMORE WAS EXCITED, AND SO SHE GETS
9 TO READ HER STATEMENT BECAUSE IT WAS CONSIDERED A RECORDED
10 RECOLLECTION OF THE EVENT.

11 NOW, WHERE I HAVE A PROBLEM FOR THIS TRIAL, AND WE
12 PROBABLY SHOULD HAVE RAISED IT THIS WAY IN THE SECOND TRIAL,
13 THIS IS WITH HINDSIGHT, IS WE'RE HERE TO TALK ABOUT WHAT
14 HAPPENED ON THE BREEZEWAY. NOT ABOUT WHAT HAPPENED ON THE
15 TIER, NOT ABOUT WHAT HAPPENED ON THE GRASSY WALKWAY, NOT ABOUT
16 WHAT HAPPENED WHEN THEY WERE PUTTING HIM INTO THE VAN. THOUGH
17 OTHER WITNESSES ARE GOING TO DISCUSS THAT FOR CONTEXTUAL
18 PURPOSES, WE'VE ACCEPTED THAT BECAUSE WE GET TO ACTUALLY
19 CROSS-EXAMINE THOSE WITNESSES.

20 THE COURT: WHEN YOU SAY YOU'VE ACCEPTED IT WHAT YOU
21 DO MEAN BY THAT?

22 MR. BELANGER: WELL, WE UNDERSTAND THAT THEY'RE
23 GOING TO -- OTHER WITNESSES ARE GOING TO BE PAINTING A
24 CONTEXTUAL SCENE; TALKING ABOUT WHAT HAPPENED ON THE TIER;
25 TALKING ABOUT A COVERUP.



1 THE COURT: WHEN MS. SEYMORE DESCRIBES THE EVENT TO
2 TWO DIFFERENT PEOPLE IN SLIGHTLY DIFFERENT WAYS, WHAT EVENT IS
3 SHE TALKING ABOUT?

4 MR. BELANGER: I BELIEVE SHE'S TALKING ABOUT
5 MR. DAVIS TRANSPORTING THE PERSON TO THE VAN.

6 THE COURT: SO AS THEY'RE COMING UP TO THE GATE HE'S
7 THROWN INTO THE BACK OF THE VAN OR WHATEVER, IS THAT WHAT YOU
8 THINK IT IS?

9 MR. BELANGER: THAT'S MY APPRECIATION.

10 THE COURT: OKAY. YOU AGREE WITH THAT, MR. DEMBO?

11 MR. DEMBO: I WOULD SAY BASED ON THE STATEMENTS
12 ALONE IT'S ACTUALLY UNCLEAR WHAT SHE'S DESCRIBING. I THINK
13 THAT IS A POSSIBLE INTERPRETATION, BUT SHE DOESN'T ACTUALLY
14 GIVE A LOCATION FOR --

15 THE COURT: WOULD SHE HAVE BEEN ABLE TO SEE THE
16 BEATING ON THE WALKWAY FROM HER POSITION IN THE TOWER?

17 MR. DEMBO: SO I THINK THAT'S A MATTER IN DISPUTE.
18 IT SEEMS THAT SHE WOULD NOT HAVE BEEN ABLE TO BASED ON ONE
19 PHOTO THAT WE HAVE. AND, OBVIOUSLY, WE'RE NOT -- I HAVE NOT
20 BEEN UP THERE --

21 MR. HIPWELL: MR. DEMBO, I BELIEVE WE COULD AGREE,
22 COULDN'T WE, THAT SHE PHYSICALLY COULD NOT HAVE SEEN FROM HER
23 TOWER POSITION ONTO THE BREEZEWAY, WHICH IS THE SUBJECT OF
24 THIS CHARGE? NOW WHETHER THERE'S SOMETHING ELSE OCCURRING
25 AFTER IS ANOTHER MATTER OF COURSE.

1 MR. DEMBO: I THINK THAT'S RIGHT. I THINK THAT
2 THE -- SO I'M NOT SURE EXACTLY BASED ON THE STATEMENT WHAT
3 SHE'S DESCRIBING SEEING. IT COULD VERY WELL BE THE ESCORT TO
4 THE VAN. I DON'T WANT TO SAY THAT THAT'S DEFINITIVELY WHAT
5 SHE'S DESCRIBING.

6 THE COURT: SO NOT BRIEFED OR ARGUED BEFORE IS THE
7 LATEST OBJECTION MR. BELANGER MAKES WHICH IS THIS SECOND
8 BEATING, ALLEGED BEATING, IS NOT THE SUBJECT OF THE
9 INDICTMENT. HOW IS IT RELEVANT?

10 MR. DEMBO: SO FIRST I WOULD JUST SAY, YOUR HONOR,
11 THE REASON THAT I WAS JUST NOT WILLING TO SETTLE ON EXACTLY
12 WHAT SHE'S DESCRIBING IS, ALTHOUGH THERE'S BEEN DESCRIPTION OF
13 THE BEATING OCCURRING ON THE BREEZEWAY THAT COULD BE IN A LOT
14 OF DIFFERENT LOCATIONS BECAUSE -- ALL WE KNOW IS THE INMATE
15 WAS BROUGHT DOWN ONTO CONCRETE. SO I GUESS WHAT I'M SAYING
16 IS, I'M NOT CERTAIN BASED ON THE EVIDENCE THAT SHE SAYS THAT
17 SHE'S NOT SEEING THE CHARGED BEATING.

18 NOW, I AGREE WITH MR. HIPWELL THAT IF IT'S SQUARELY
19 IN THE BREEZEWAY, THEN SHE WOULD NOT BE ABLE TO SEE IT. BUT,
20 YOU KNOW, THERE'S NOT AN X ON THE CONCRETE WHERE THIS OCCURRED
21 AND THERE ARE PORTIONS OF CONCRETE SHE'S ABLE TO SEE. THE
22 SECOND PART I WOULD RESPOND TO YOUR HONOR IS EVEN IF IT IS NOT
23 THE CHARGED BEATING, WE HAVE GONE AND WILL GO INTO, FOR
24 EXAMPLE, THE EARLIER BEATING ON THE TIER AND IF THIS IS AN
25 ADDITIONAL BEATING IT'S IMPORTANT BOTH FOR CONTEXT AND FOR

1 WEEKEND. BUT ON WEEKENDS WE'RE NOT AS BUSY. WE MOSTLY TALKED
2 MOSTLY ON WEEKENDS.

3 Q THERE'S NOTHING WRONG WITH YOU TALKING TO HER?

4 A NO, WE CAN TALK.

5 Q THAT'S FINE AS LONG AS YOU DO YOUR JOB; RIGHT?

6 A UH-HUH.

7 Q BUT YOU DON'T RECALL HAVING ANY OTHER CONVERSATIONS
8 WITH HER AFTER THIS INITIAL PHONE CALL THAT YOU GET ON THE
9 WEEKEND, RIGHT, ABOUT THIS EVENT?

10 A (NODDING NEGATIVELY). I DON'T RECALL.

11 Q NOW, AS WE SIT HERE TODAY, YOU DIDN'T REMEMBER WHAT
12 YOU EVEN PUT INTO THIS WRITTEN STATEMENT, CORRECT?

13 A I CAN'T REMEMBER THAT WORD FOR WORD. I CANNOT
14 REMEMBER A LOT OF THINGS.

15 Q THAT'S OKAY. AND THAT'S WHY THEY HAD TO PUT IT UP
16 ON THE SCREEN SO YOU CAN REFRESH YOUR MEMORY; RIGHT?

17 A YES.

18 Q NOW, YOU HAVE MET WITH THE TRIAL TEAM HERE MULTIPLE
19 TIMES; WOULD YOU AGREE WITH THAT?

20 A TRUE.

21 Q I'M SURE THEY WENT OVER WHAT YOU WOULD TESTIFY ABOUT
22 IN EACH OF THOSE MEETINGS; RIGHT?

23 A YEAH.

24 Q AND I'M SURE IN EACH OF THESE MEETINGS YOU WERE
25 GIVEN A COPY OF YOUR STATEMENT TO REVIEW; RIGHT?



1 A TRUE.

2 Q HOW MANY TIMES WOULD YOU SAY YOU'VE MET WITH THEM
3 AND REVIEWED YOUR STATEMENT?

4 A NO MORE THAN ABOUT -- ABOUT THREE.

5 Q SO EVEN AFTER HAVING REVIEWED THIS STATEMENT THREE
6 TIMES, EVEN AS YOU COME IN HERE TODAY, YOU STILL WEREN'T IN A
7 POSITION TO REMEMBER WHAT YOU HAD PUT IN THERE?

8 A WELL, THAT'S THREE TIMES OVER ALL OF THOSE YEARS.

9 Q OKAY. WHEN WAS THE LAST TIME YOU MET WITH THEM,
10 MS. MINOR?

11 A ABOUT A WEEK AGO.

12 Q AND YOU WOULD HAVE REVIEWED THIS A WEEK AGO?

13 A YES.

14 MR. BELANGER: THANK YOU, YOUR HONOR.

15 THE COURT: ALL RIGHT. REDIRECT?

16 MS. CHANNAPATI: NONE, YOUR HONOR. THANK YOU.

17 THE COURT: ALL RIGHT. THANK YOU, MS. MINOR. YOU
18 MAY STAND DOWN.

19 WHO IS YOUR NEXT WITNESS?

20 MR. DEMBO: YOUR HONOR, THE GOVERNMENT'S NEXT
21 WITNESS IS CAPTAIN DOUG MCDONALD.

22 THE COURT: ALL RIGHT. LET'S GET CAPTAIN MCDONALD
23 IN. CAPTAIN MCDONALD, COME FORWARD, SIR, AND THE WITNESS BOX
24 IS OVER HERE, AND MRS. CAUSEY WILL SWEAR YOU IN.

25 *(WHEREUPON, DOUG MCDONALD, HAVING BEEN DULY SWEARN,*

1 IF HE HELPED OTHERS TO VIOLATE INMATE SAVOIE'S
2 RIGHTS; OR,

3 IF HE JUST STOOD BY AND FAILED TO INTERVENE WHEN
4 HE SAW SOMEONE VIOLATING INMATE SAVOIE'S RIGHTS.

5 YOU HEARD EVIDENCE TO CONVICT HIM OF DOING ALL
6 THREE.

7 NOW, FIRST, THE JUDGE WILL TELL YOU THE
8 DEFENDANT CAN BE GUILTY IF HE HIMSELF DEPRIVED INMATE SAVOIE OF
9 HIS RIGHT TO BE FREE FROM CRUEL AND UNUSUAL PUNISHMENT.

10 WHEN YOU'RE DELIBERATING ON THIS, THINK ABOUT
11 THE TESTIMONY YOU HEARD REGARDING WHAT THE DEFENDANT DID AND
12 WHAT INMATE SAVOIE DID.

13 CAPTAIN KENNEDY, CAPTAIN SANDERS, SERGEANT
14 GEORGE ALL TOLD YOU THAT THE INMATE WAS COMPLETELY RESTRAINED
15 IN HANDCUFFS, LEG SHACKLES, A BLACK BOX, AND A WAIST CHAIN WHEN
16 HE STEPPED OUT ON TO THAT BREEZEWAY.

17 YOU SAW WITH YOUR OWN EYES HOW LITTLE SOMEONE IN
18 THAT SORT OF RESTRAINT CAN MOVE. SO, NOT SURPRISINGLY, YOU
19 HEARD FROM CAPTAIN KENNEDY, CAPTAIN SANDERS, SERGEANT GEORGE,
20 EVEN SOME OF THE DEFENSE WITNESSES, MR. STEAD, WHO SAW IT FOR
21 JUST A MOMENT, THAT WHEN THE INMATE WAS THAT RESTRAINED HE WAS
22 NO THREAT TO ANYONE; THERE WAS NO REASON TO USE FORCE ON HIM.

23 REMEMBER ALSO WHAT YOU HEARD ABOUT PATRICIA
24 SEYMORE SCREAMING OVER THE PHONE FROM HER TOWER TO HER FRIEND
25 KATHERINE MINOR. SHE DIDN'T SAY THEY'RE FIGHTING OR THE INMATE

1 IS RESISTING OR GUARDS NEED HELP. NO. SHE YELLED, MAJOR
2 DAVIS, HE'S HITTING HIM. THIS INMATE, HE IS GOING TO HURT HIM
3 BAD.

4 ALL OF THIS WITNESS'S TESTIMONY DEMONSTRATES WHY
5 THERE WAS NO LEGITIMATE REASON FOR THE DEFENDANT TO USE FORCE
6 ON THE INMATE, BUT RATHER THAT THE DEFENDANT DID IT JUST TO
7 INFILCT PAIN.

8 NONE OF THESE WITNESSES TESTIFIED THAT INMATE
9 SAVOIE WAS A THREAT. NONE OF THESE WITNESSES TESTIFIED THAT
10 THEY SAW ANY REASON FOR THE DEFENDANT TO USE FORCE WHEN HE DID.

11 CAPTAIN SANDERS WAS ONE OF THE PEOPLE WHO USED
12 FORCE HIMSELF, AND HE ADMITTED TO YOU UNDER OATH THAT HE WAS
13 WRONG TO DO SO UNDER THE CIRCUMSTANCES.

14 WHEN THE DEFENDANT STOMPED AND KNEED THE
15 RESTRAINED INMATE, WHO WAS ON THE GROUND BLINDFOLDED, THERE
16 WASN'T ANY LEGITIMATE REASON. THAT EVIDENCE BY ITSELF SHOWS
17 BEYOND A REASONABLE DOUBT THAT THE DEFENDANT DEPRIVED INMATE
18 SAVOIE OF HIS RIGHT TO BE FREE FROM CRUEL AND UNUSUAL
19 PUNISHMENT.

20 BUT WHILE YOU'VE HEARD LOTS OF TESTIMONY THAT
21 THE DEFENDANT USED FORCE ON INMATE SAVOIE HIMSELF, THERE'S ALSO
22 EVIDENCE BEYOND A REASONABLE DOUBT THAT HE HELPED THE OTHER
23 GUARDS DO THAT.

24 AS THE JUDGE WILL TELL YOU, A CORRECTIONAL
25 OFFICER VIOLATES THE CONSTITUTION IF HE AIDS AND ABETS OTHERS

1 SUGGESTION HE SOMEHOW GOT FAVORABLE TREATMENT. IF YOU LOOK AT
2 HIS HANDWRITTEN STATEMENT TO INTERNAL AFFAIRS, IT'S DATED
3 JANUARY 15, 2014, TELLING YOU THE SAME STORY HE TOLD Y'ALL
4 YESTERDAY. HE HAD NO IDEA THAT FEDERAL INVESTIGATORS WOULD BE
5 INVOLVED AT THAT POINT.

6 NOW, TALKING ABOUT MOTIVE TO TELL THE TRUTH.
7 YOU'VE ALSO HEARD FROM KATHERINE MINOR, WHO TOLD YOU ABOUT
8 PATRICIA SEYMORE'S CONVERSATION. AND ONE PERSON THAT THE
9 DEFENSE FAILED TO TALK ABOUT WAS THAT PATRICIA SEYMORE ALSO HAD
10 A CONVERSATION WITH LENORA ELLIS. SHE HAD THAT CONVERSATION
11 WITH MS. MINOR WHILE SHE WAS IN THE TOWER, WHERE SHE SAID MAJOR
12 DAVIS IS HITTING THAT INMATE, AND THEN RIGHT AFTERWARDS, SHE
13 CALLED LENORA ELLIS AND SAID DID YOU SEE WHAT HAPPENED. DID
14 YOU SEE THEM BEATING THAT INMATE?

15 SHE WAS COMPLETELY UNINVOLVED IN THIS ENTIRE
16 INCIDENT, NO PLEA DEAL, NO CONCERNS, AND HAD NO REASON TO
17 CONCOCT A STORY WHILE SHE'S ON THE PHONE WITH HER FRIEND
18 TALKING ABOUT HER BLOOD SUGAR.

19 SIMILARLY, LENORA ELLIS, NOT INVOLVED IN THE
20 CONSPIRACY, NO DOG IN THE FIGHT AT ALL, TESTIFIED SHE SAW THE
21 BLOOD SEEPING THROUGH THE INMATE'S JUMPSUIT AND ALSO TESTIFIED
22 THAT SANDERS LATER CAME TO HER AND SAID I THINK WE REALLY
23 MESSED UP. I DON'T THINK THERE'S ANYTHING I CAN DO TO FIX IT
24 THIS TIME.

25 WE TALKED A LITTLE BIT ABOUT SERGEANT GEORGE.



1 JUST DIDN'T LOOK RIGHT.

2 Q SO AFTER YOU FELT LIKE THERE WAS SOMETHING THAT
3 WASN'T RIGHT WHAT, IF ANYTHING, DID YOU DO AFTER THE VAN --
4 IMMEDIATELY AFTER THE VAN LEFT?

5 A I NOTIFIED COLONEL SMITH.

6 Q WHY DID YOU NOTIFY COLONEL SMITH?

7 A BECAUSE HE'S -- WELL, HE WAS KIND OF MORE OR LESS
8 OVER THE CAMP ITSELF, AND I FELT THAT WHENEVER I CONTACTED HIM
9 I TOLD HIM THAT SOMETHING WASN'T RIGHT AND THAT HE MAY NEED TO
10 COME CHECK INTO IT AS SOON AS POSSIBLE.

11 Q WHAT, IF ANY, OTHER CONVERSATIONS DID YOU HAVE
12 IMMEDIATELY AFTER THE VAN LEFT?

13 A MS. SEYMORE CALLED ME FROM THE TOWER.

14 Q AND MS. SEYMORE, THIS IS THE ONE THAT YOU REFERRED
15 TO AS QUEEN --

16 A YES, SIR.

17 Q -- THE ONE WHO WAS STATIONED IN THE TOWER?

18 A YES, SIR.

19 Q WHAT, IF ANYTHING, DID MS. SEYMORE SAY TO YOU?

20 A THE FIRST THING SHE ASKED ME, SHE SAID: WHAT WAS
21 THAT ON THAT INMATE'S HEAD? AND I TOLD HER -- I EXPLAINED TO
22 HER THAT A LOT OF TIMES INMATES WILL PROCEED TO SPIT AND SO IF
23 WE DON'T HAVE WHAT IS THE OFFICIAL SPIT MASKS THAT WE HAVE TO
24 USE WHATEVER IS AVAILABLE AND MAYBE THAT'S ALL THAT WAS
25 AVAILABLE FOR THAT INMATE AT THAT TIME.



1 AND SHE SAID -- AND I'M NOT REAL SURE EXACTLY HOW
2 SHE SAID IT, BUT SHE SAID: WELL, DID YOU SEE WHAT HAPPENED?
3 DID YOU SEE THEM BEATING THAT INMATE? AND I TOLD HER, I SAID:
4 MS. SEYMORE, WE DO NOT NEED TO DISCUSS THIS ON THIS TELEPHONE
5 AT THIS TIME.

6 Q WHY WAS THAT YOUR RESPONSE TO MS. SEYMORE?

7 A BECAUSE A LOT OF TIMES THE PHONES ARE BEING LISTENED
8 TO -- OR WERE AT THAT TIME. I DON'T KNOW ABOUT NOW. -- BY
9 OUR CONTROL CENTER.

10 Q WHAT WAS YOUR CONCERN ABOUT TALKING ABOUT SOMETHING
11 YOU HAD JUST WITNESSED THAT YOU THOUGHT MIGHT HAVE BEEN WRONG
12 AND WHY WERE YOU WORRIED SOMEONE WOULD HEAR THAT?

13 A BECAUSE IT DIDN'T NEED TO BE TURNED INTO GOSSIP ALL
14 OVER ANGOLA. I FELT IT NEEDED TO BE SOMETHING THAT WAS
15 DISCUSSED WITH SUPERVISORS AND PEOPLE THAT KNEW WHAT THEY WERE
16 DOING AND NOT TWO SERGEANTS.

17 Q DID MS. SEYMORE SAY ANYTHING ELSE AFTER SHE ASKED IF
18 YOU HAD SEEN THEM BEATING THAT INMATE?

19 A NOT THAT I RECALL.

20 MR. DEMBO: AT THIS POINT, MS. HAYES, IF WE COULD
21 PULL UP AGAIN GOVERNMENT EXHIBIT 1-B.

22 BY MR. DEMBO:

23 Q NOW, MS. ELLIS, YOU WERE TALKING ABOUT IN THAT
24 MOMENT WHERE YOU WERE, AS YOU PUT IT, "NOSEY" AND YOU WERE
25 OBSERVING WHERE THE DEFENDANT WAS ESCORTING THE INMATE, COULD