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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

ASHLEY DIAMOND, Plaintiff,)	
)	Case No. 5:20-CV-453
vs.)	
)	Macon, Georgia
TIMOTHY WARD, ET AL., Defendant.)	
)	

MOTION FOR PRELIMINARY INJUNCTION
VOLUME II OF II

May 13, 2021

BEFORE THE HONORABLE MARC T. TREADWELL
UNITED STATES DISTRICT JUDGE

NOTE: This transcript conforms with the Court's orders and the parties' requests for redactions.

Proceedings reported stenographically

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1 Macon, Georgia

2 Thursday, May 13, 2021

3 9:00 a.m.

4 P R O C E E D I N G S

5 COURT OFFICER: All rise. United States District
6 Court for the Middle District of Georgia, Macon Division, is
7 now in session. Be seated and come to order.

8 THE COURT: Good morning. Plaintiff may call her
9 next witness.

10 MS. LITTRELL: Your Honor, thank you, sir.

11 COURTROOM DEPUTY: Ms. Littrell, can you please use
12 the mike.

13 MS. LITTRELL: Your Honor, Plaintiffs rest at this
14 time.

15 THE COURT: Pardon?

16 MS. LITTRELL: We don't have any additional witnesses
17 to present today.

18 MS. EZIE: I believe the rest of the testimony will
19 be presented in cross examination.

20 MS. LITTRELL: Also transcripts, I think we talked
21 about yesterday, the deposition transcripts will be presented.
22 Thank you.

23 P L A I N T I F F R E S T S

24 THE COURT: All right. Mr. Chalmers, you may call
25 your next witness.

1 MR. CHALMERS: Your Honor, I believe the Court
2 indicated it would like to hear from Deputy Warden Betterson so
3 we would ask him to testify first.

4 COURTROOM DEPUTY: Mr. Betterson, can you raise your
5 right hand. Do you solemnly swear that your testimony in this
6 case shall be the truth, the whole truth, and nothing but the
7 truth, so help you, God?

8 THE WITNESS: Yes, ma'am.

9 COURTROOM DEPUTY: You can be seated. Just sit down.
10 If you could move it back down a little bit. Can you state
11 your name for the record.

12 THE WITNESS: Carl Elliott Betterson, Junior.

13 THE COURT: Mr. Betterson, I remind you you are now
14 under oath and if you testify falsely, you can be prosecuted
15 for perjury.

16 THE WITNESS: Yes, sir.

17 DEPUTY WARDEN CARL E. BETTERSON
18 called by Defendants at 9:02 a.m., having first been duly sworn,
19 testified as follows:

20 DIRECT EXAMINATION

21 BY MR. CHALMERS:

22 Q. Good morning, Deputy Warden Betterson.

23 A. Good morning, sir.

24 Q. Can you tell the Court your current job title, please.

25 A. Deputy Warden of Care and Treatment at Coastal State

1 Prison.

2 Q. And how long have you had that position?

3 A. A little under two years.

4 Q. Okay. Before taking the position of deputy warden at
5 Coastal State Prison, how were you employed?

6 A. I was the assistant superintendent at Columbus
7 Transitional Center.

8 Q. Is that also a facility that is part of the Georgia
9 Department of Corrections?

10 A. Yes, sir, it is.

11 Q. All told, how long have you been employed by the
12 Department of Corrections?

13 A. I've been with the Department of Corrections six years.
14 I've been with the State for 11 years.

15 Q. Okay. What are your responsibilities as Deputy Warden of
16 Care and Treatment at Coastal State Prison?

17 A. I oversee multiple departments within the facility:
18 Medical, mental health, library services, chaplain services,
19 recreational services, care and treatment services, and I
20 report directly to the warden.

21 Q. Okay. And do you have a connection or responsibility with
22 respect to sexual assault allegations?

23 A. I do. I'm the PREA compliance manager for the facility.

24 Q. And as PREA compliance manager, what do you do?

25 A. We take every PREA case and examine it to make sure that

1 we're falling inside the guidelines, our PREA standards and our
2 Georgia Department of Corrections policy.

3 Q. Do you do all that work on your own at Coastal State
4 Prison?

5 A. No, sir.

6 Q. Do you have a team that assists you with that?

7 A. Yes, sir, I do.

8 Q. Who are the people who are involved in PREA or SART
9 investigations -- and let me stop there and say, do you know
10 what I'm referring to when I say, "SART"?

11 A. Sexual assault response team.

12 Q. Who are the people who are involved in PREA investigations
13 or the SART investigations?

14 A. We have care and treatment staff, which will be a
15 counselor advocate, medical, mental health, myself, SANE
16 nurses, front line investigators such as security.

17 Q. Okay. And then as PREA compliance manager, are you
18 overseen in the work that you do at Coastal by anyone?

19 A. Yes, sir. Once the investigations are completed, I
20 examine all of the PREA cases and make sure that they meet the
21 standard and that everything was done according to policy.

22 Q. Okay. And is there anybody at Georgia Department of
23 Corrections higher than you or off-site at Coastal who would be
24 involved in or who might oversee the PREA process?

25 A. Yes, sir, there is.

1 Q. Who would that be?

2 A. That would be Grace Atchison.

3 Q. Who is she?

4 A. She is the state-wide PREA coordinator.

5 Q. Okay. And Ms. Atchison, from time to time would she
6 provide guidance or input into the PREA investigation process?

7 A. Yes, sir. Very rarely does she not provide any guidance.
8 If not, she does have a support team that I contact if I have
9 any questions.

10 Q. How long have you had the responsibility of being PREA
11 compliance manager at Coastal?

12 A. Since July 1st, 2019. The day I started at Coastal.

13 Q. Okay. Do you know the -- the mental health counselor or
14 the counselor named Tamara Cantera?

15 A. Tamara Cantera, she was previously over the investigation
16 portion of the PREA process, before I got there. She's also a
17 mental health specialist.

18 Q. Are you aware that Ms. Cantera attempted to speak with
19 Ashley Diamond about sexual assault reports or allegations?

20 A. Yes, sir.

21 Q. Are you aware that she was not able to get information or
22 to get Ms. Diamond to communicate about those reports or
23 allegations?

24 A. Yes, sir.

25 Q. What happens in the SART investigation process or a PREA

1 investigation process if an offender does not communicate with
2 your investigative team?

3 A. It -- essentially it just stops the investigation process.
4 With any -- you know, like with any victim, if you're
5 questioning them to try to figure out what's going on with them
6 or what's happening, if they don't provide you with any
7 information, there's really nothing you can do.

8 In Diamond's case, we would continue to try to push to ask
9 questions, just to see if anybody was in the area or if she
10 spoke to anyone else about it. But normally, you know, we
11 would just get a response that she's not allowed to talk about
12 it, I guess because her lawyers told her not to talk about it.

13 Q. Okay. In your experience at Coastal State Prison, as PREA
14 compliance manager, are lawyers typically involved in the
15 communications between you and the offenders?

16 A. Never. I've been involved with PREA -- in various roles
17 since I started with the Department of Corrections, I have
18 never seen a lawyer come in on a PREA case, on a PREA
19 investigation.

20 Q. How important is it in the PREA process or the SART sex
21 investigation -- sexual assault investigation process to get
22 your information and your investigation completed soon after
23 the alleged incident?

24 A. If you don't get the -- the information that you're
25 requesting as soon as you start the investigation, the

1 likelihood of you figuring out exactly what is going on is
2 pretty much limited. You can try to talk to the individuals to
3 get them to try to -- to try to get them to give you
4 information, but it will just stall the investigation. There
5 is nothing you can do without that information.

6 Q. How important is it in the process to know who all of the
7 people are who are alleged to have been involved in the
8 incident? For example, who the victim is and who the aggressor
9 or the attacker is?

10 A. That serves two roles. One, to identify the aggressor,
11 you know, it will protect the victim; also, it will help us to
12 see how it happened and what steps we can take to prevent it
13 from happening in the future. So if you don't give us any
14 information, we don't have anything to go on.

15 Q. Deputy Warden Betterson, do you occasionally take a role
16 in discussing with witnesses or offenders what might have
17 happened in a -- with respect to a PREA assault?

18 A. My -- my role has increased. Tamara Cantera, she left the
19 agency, I believe it was right around October or maybe right
20 before October, so my role as far as PREA increased.

21 At that time I conducted most of the investigations myself
22 while training other staff members on, you know, how to conduct
23 investigations during the PREA process. So at that time, I
24 pretty much did all the investigations for PREA myself.

25 Q. Do you know if the folks -- Ms. Cantera or anyone else who

1 might sit down and try to interview or have a conversation with
2 an offender about a sexual assault allegation, do you know if
3 those people are trained in how to conduct those interviews?

4 A. Yes. Yes, sir. Every member of the SART goes to a SART
5 training. It's an annual training. Matter of fact, we have
6 one coming up this month. And they are required to take that
7 training. Also investigation training. That's through ACA and
8 the PREA -- the national PREA organization.

9 Q. There is an offender at Coastal State Prison, and I'll
10 direct your attention to an incident that occurred on
11 October 31st, 2020, at Coastal State Prison. Do you know the
12 incident I am referring to?

13 A. Yes, sir.

14 Q. It concerns Ashley Diamond?

15 A. (pseudonym inserted) John Doe.

16 Q. I'm sorry, I didn't do that properly. We have been
17 attempting in this court proceeding to refer to the other
18 offender involved in that incident as "John Doe," so I'll ask
19 that you refer to the other offender as John Doe, and I am
20 going to, also, in the questions that I have about that person.
21 Okay.

22 A. Okay.

23 Q. So you recall an incident or a disciplinary report related
24 to the offense on October 31st, 2020?

25 A. Correct.

1 Q. And you recall the subject matter of that -- of that
2 disciplinary report?

3 A. Yes, sir.

4 Q. Okay. Do you recall that it involved an officer seeing --
5 witnessing a sexual act in the cell, Ashley Diamond's cell?

6 A. Yes.

7 Q. Did you question the other offender who we're referring to
8 as John Doe as part of a SART or PREA investigation process?

9 A. Yes. That offender was questioned twice, I believe.

10 Q. Okay. What was the purpose of asking questions or
11 interviewing that offender, Mr. John Doe?

12 A. When I initially got the report, um, I didn't know how,
13 you know -- I guess the entire story. So I wanted to make sure
14 that what I was hearing was actually the factual, that there
15 wasn't any -- anything that was -- that was forced from either
16 one of them. So during the course of my investigation, I spoke
17 with Diamond and John Doe, Offender Doe.

18 Q. Okay.

19 A. Did that answer your question?

20 Q. It did. And you indicated that you spoke with Doe -- John
21 Doe two times?

22 A. Correct. The first time was during the course of the
23 normal PREA investigation. During that time, both parties
24 stated that nothing happened. Weekly -- I'm required at least
25 once a week to make rounds throughout the facility and inside

1 Administrative Segregation. During the rounds, Offender Doe
2 was in Segregation. He stopped me at the door and said he
3 wanted to talk to me.

4 I initially thought that conversation was going to be
5 about the situation between Diamond and Offender Doe, so I
6 placed him on a call-out. I got a CERT to go get him and bring
7 him up to my office. When he got there, he wanted to be put
8 back into the evidence-based program. And I explained to him
9 that he wouldn't be put back in the program, that he would have
10 to go through the 90-day process just like everybody else to
11 try to get back in the process. He asked me why and I told him
12 about the situation. And at that point he started talking more
13 about what actually happened.

14 Q. So did you talk to him about the incident with Ashley
15 Diamond both on the first occasion you mentioned and also on
16 the second occasion?

17 A. Correct.

18 Q. Okay. Mr. Doe has said in testimony that there was a
19 third time that you talked with him in your office. Was there
20 a third time that you can recall?

21 A. That -- the only time I talked to him in my office was
22 when I called him up with CERT.

23 Q. Did you try to pressure this offender, John Doe, into
24 giving a statement against Ashley Diamond?

25 A. I did not.

1 Q. Okay. Did you try to force Mr. John Doe to write a
2 statement or to make an allegation of sexual assault against
3 Ashley Diamond?

4 A. No, sir.

5 Q. Did you have any conversations with John Doe, that
6 offender, other than the conversations you've described
7 relating to the PREA investigation?

8 A. No, sir. The only part of that conversation that deviated
9 from the PREA was the fact that he wanted to get back into our
10 evidence-based program. And that was the initial part of the
11 conversation.

12 Q. Okay. When you say "evidence-based program," are you
13 referring specifically to offenders who are in a certain
14 location or dorm?

15 A. Yes, sir.

16 Q. Which dorm is that?

17 A. That would be N-B/N-A. At that time it was O-C and O- --
18 I'm sorry, O-A and Q-C.

19 Q. Okay. And why would an offender want to be in that
20 dormitory or in that program?

21 A. That's the closest thing you are going to see to being in
22 a college dormitory. There is a lot of structure, little to no
23 violence at all. We write very little DRs. They -- it's an
24 incentive-based program, so, you know, whatever you do good,
25 you're rewarded. And usually it's very well. You know, you

1 get things that the normal population won't get. You are able
2 to -- you get the nicer TVs, the better games. In that program
3 they are fed twice monthly with food outside of the facility.
4 So, I think this week they are getting Chick-Fil-A. Just for
5 doing the right thing. Not causing any problems. And
6 continuing with programming.

7 Q. Okay. I don't know if this is your area as Deputy Warden
8 of Care and Treatment, but there's been testimony in this case
9 that 90 percent -- I think I have that right -- 90 percent of
10 the offenders in the N-Building are sexual violence offenders.
11 Do you know if that's true?

12 A. That is not true. We wouldn't -- when you stratify a
13 prison, you look at the size of a person, the age, their crime,
14 their PREA designation, their gang affiliation, and their
15 charges. So we -- we stratify based on that. You wouldn't
16 put -- it's 94 people in that range, so you wouldn't put 87 sex
17 offenders in a dormitory. You're asking for trouble. That's
18 not what the program is designed for.

19 Q. Okay.

20 A. It is designed to be for success for the offenders in
21 their programs to succeed. And that's a recipe for disaster.

22 Q. Do you discriminate against offenders based on the kind of
23 offense they have in making choices as to who goes into the
24 evidence-based program?

25 A. No. Everybody is afforded the opportunity to go into the

1 program. All you have to do is fill out an application. Once
2 they fill out the application, it goes up to the evidence-based
3 coordinator. They set up interviews.

4 Once they set up interviews and they make their selection,
5 they bring them to me and I look at it. I look at who we're
6 selecting to put in the program, make sure they fit the
7 criteria. Make sure they don't have any, you know, assaults or
8 DRs or anything like that within the last year.

9 Also speak with staff to kind of see, you know, what the
10 temperament of the offender is. We make a determination on if
11 they go into our program. Now, there are several dorms --
12 N-A, N-B -- that will be considered the cream of the crop. Of
13 the dorms. O-A is our ADA dorm, so any offender who wants to
14 get in the program who needs ADA accommodations, they go into
15 that, that range.

16 And D-Building is the one that's usually the starter dorm
17 for the guys who are coming in. And if they, you know, do well
18 in the program, do what we ask them to do, you know, complete
19 their GED, then they will graduate and move to N-Building,
20 which is pretty much the best building on the compound.

21 Q. Right. So, you said the composition of N-Dorm is not, to
22 your knowledge, 90 percent sex offenders?

23 A. No.

24 Q. And the prison does not discriminate based on the offense
25 of an offender as to whether you can get into, work yourself

1 into the N-Dorm?

2 A. No, they are in prison, they are all offenders, they are
3 all going to have charges.

4 Q. So if a sex offender, for example, is showing that that
5 person follows the rules, does not get disciplinary reports,
6 meets all the other criteria to get into N-Dorm, there could be
7 a person with a sexual offense on their record allowed into the
8 N-Dorm?

9 A. Yes, sir.

10 MS. EZIE: Object to form.

11 THE WITNESS: That's correct.

12 THE COURT: And no nodding of heads while the witness
13 is being asked questions for people in the gallery. Thank you.

14 What was the objection?

15 MR. McCOY: Form.

16 MS. EZIE: I believe he's leading the witness, Your
17 Honor.

18 THE COURT: Overruled. You may continue.

19 BY MR. CHALMERS:

20 Q. Mr. Betterson, a few more questions. Ms. Diamond has said
21 in a declaration filed in this case that she -- and I am using
22 her words here -- so, she learned that Defendant Benton, Warden
23 Benton and Deputy Warden of Care and Treatment Carl Betterson
24 had pressured John Doe to submit a false PREA report accusing
25 her of being a rapist and a predator, and that

1 Betterson--you--urged John Doe to be a team player by making
2 false allegations against Diamond. Did you do that?

3 A. No, sir. An offender could never be a team player. The
4 PREA was actually started to ensure that nothing happened to
5 Ms. Diamond. The allegation that came out was that an offender
6 spent the night in the cell with Diamond. So being that she
7 files a lot of PREAs, we had to make a determination that
8 nothing actually happened to her. So the PREA was initially to
9 make sure that she was safe and that nothing occurred. And
10 during the course of speaking with her, she said that, you
11 know, they were in there but nothing happened.

12 Q. There's also been an allegation in this case related to
13 that allegation that you tried to pressure John Doe, that
14 you -- you or others at Coastal State Prison threw John Doe
15 into the hole, into Solitary Confinement, because he wouldn't
16 give you a statement against Ashley Diamond. Did you do that?

17 A. No. John -- Offender Doe was placed in the Segregation
18 before I learned about the actual incident. So, once he came
19 out -- the process is if a person is being removed from the
20 program, they are going to Segregation anyway. And from
21 Segregation, they will be reclassified to the compound. So he
22 was going to go to Segregation regardless.

23 And if I'm not mistaken, when I -- when he was placed in
24 Segregation, he refused to come out because he wanted to come
25 out and go back to N-Building. So he was going to be placed in

1 Segregation to be restratified, but he was not placed in there
2 as any form of disciplinary or anything like that.

3 Now, one of the -- a part of PREA is to separate the
4 victim from the aggressor. If you can't make a determination
5 on who is the victim or who is the aggressor during the course
6 of the investigation, you still separate them to ensure that
7 the potential victim or the likely victim is safe.

8 We didn't know who was the victim -- or I didn't know at
9 the time who was the victim, who was the aggressor, so being
10 that Diamond was in the safest location, we separated Offender
11 Doe from her at the time.

12 Q. When you say, "being that Diamond was in the safest
13 location," what do you mean by that?

14 A. Being in N-Building, that was the safest location for her.
15 I believe shortly after she was placed in Segregation, but I am
16 not familiar with why. N-Building is -- is where you want to
17 be if you're in prison at Coastal State Prison.

18 Q. Deputy Warden Betterson, do you have any control over how
19 long Ashley Diamond remains incarcerated?

20 A. Not at all. That -- that decision, um -- she is
21 sentenced, you know, when she -- from the courts.

22 If she's eligible for parole, that goes to the Parole
23 Board. No one has any sway over the Parole Board. They make
24 their own determination on when somebody is released or if they
25 stay.

1 Q. There has been a contention in this case that Ashley
2 Diamond had PIC credits, and she also had release dates. And
3 those credits or the release dates have been tampered with.
4 Have you tampered with or doctored or changed or altered any of
5 those dates relating to Ashley Diamond?

6 A. No, all of that -- the PIC, Performance Incentive Credits,
7 are handled by Parole. The only part we have in that -- within
8 the Department is giving the offender details or programming
9 that would give them PIC points, but we don't have the ability
10 to take them away.

11 Q. Have you sent materials to the Parole Board or
12 communicated to the Parole Board information in an effort to
13 retaliate against Ashley Diamond?

14 A. No, sir, I have not. We don't -- we're -- we don't have a
15 way of communicating. I don't have a way of communicating with
16 the Parole Board. In a manner -- if I have a question, there
17 is a general email that we use to contact them to get
18 information on maybe where they're at with checking on a
19 person's housing or something like that, if they are over their
20 TPM, but other than that, no, sir.

21 Q. And just to make sure our record is clear, what is the
22 TPM?

23 A. Tentative Parole Month is a month that's tentatively
24 granted to an offender that they may or may not be released on.
25 It is not a guaranteed date.

1 Q. Is that date a date that you, as Deputy Warden of Care and
2 Treatment, can modify or "mess with," for lack of a better
3 term?

4 A. Not at all, sir. That is done -- again, that's --
5 that's -- actually, I don't know who handles the tentative
6 parole month, but I would assume that it's Parole as well.

7 Q. Okay. Thank you.

8 MR. CHALMERS: Those are all my questions.

9 THE COURT: Cross examination?

10 CROSS EXAMINATION

11 BY MS. EZIE:

12 Q. Mr. Betterson, Ms. Diamond has made multiple allegations
13 of sexual assault while housed at the evidence-based dormitory;
14 is that correct?

15 A. I'm sorry, I can barely hear you.

16 Q. Ms. Diamond -- let me see if this is better (removing
17 mask). Ashley Diamond has made multiple allegations of sexual
18 assault while housed at the evidence-based dormitory; is that
19 true?

20 A. Yes, ma'am.

21 Q. Ms. Diamond has never recanted any of her PREA
22 allegations; correct?

23 A. No, ma'am.

24 Q. Ms. Diamond just asked that her lawyers be present for
25 PREA interviews; right?

1 A. Yes, ma'am.

2 Q. And you testified today that you've never seen attorneys
3 participate; correct?

4 A. Correct.

5 Q. But your testimony is not that it's prohibited; is it?

6 A. It is not led to what now?

7 Q. It is not prohibited; is it?

8 A. No, ma'am. Not to my knowledge.

9 Q. Okay. Now, Ms. Diamond also notified GDC officials about
10 the reasons she requested her lawyers be present; right?

11 A. No, ma'am.

12 Q. She never stated that she was worried about retaliation,
13 including from prisoners who are gang affiliated?

14 A. No, ma'am.

15 Q. She never mentioned to any of your staff that she was too
16 distraught to discuss the allegations?

17 A. No, ma'am. If she -- if she was distraught, I'm the
18 person to talk to. I'm -- I'm ultimately responsible for the
19 classification of offenders at that prison. If she felt like
20 she was in any danger, I am the person to report it to.

21 At that time, I would take it up to my warden. I would
22 make a determination whether the -- you know, what we need to
23 do, and I would present it to the warden.

24 Q. If someone said they were too emotionally distraught to
25 discuss their PREA allegations, there's a determination you

1 have to make?

2 A. If someone says they are too emotionally distraught to
3 make a PREA?

4 Q. Participate in a PREA interview without their lawyers
5 present. You are saying you have to do some further evaluation
6 to determine the accuracy of that statement?

7 A. At that time, I -- if someone said that they were
8 emotional distraught about a PREA allegation, we would get the
9 mental health staff involved. Which is a part of our PREA
10 team.

11 Q. Okay. And is your testimony that, um, Ms. Diamond never
12 indicated that she did not feel safe enough to participate in
13 PREA interviews without her lawyers present?

14 A. Um, to my knowledge, she did not say she didn't feel safe
15 enough. She told me that she just would not -- she was advised
16 not to speak to me without a lawyer being present.

17 Q. Okay. Now, Mr. Betterson, you oversaw a number of mental
18 and medical personnel at Coastal; is that correct?

19 A. Yes, ma'am.

20 Q. Including Ms. Cantera?

21 A. Yes, ma'am.

22 Q. Other individuals as well?

23 A. Yes, ma'am.

24 Q. And you had access to the records that they provided about
25 Ms. Diamond?

1 A. No, ma'am. I don't have access to any mental health or
2 medical records.

3 Q. Okay. You discussed Ms. Diamond with Ms. Cantera however;
4 right?

5 A. In the course of PREA, yes, ma'am, any -- any -- any
6 one-on-one contact with the Mental Health and Ms. Diamond, I'm
7 not privy to that. But if it's --

8 Q. In the context of PREA, you did have access to
9 information?

10 A. Yes, ma'am.

11 Q. And you also had access to witness statements that
12 Ms. Diamond provided in context with PREA investigations; is
13 that right?

14 A. Correct.

15 Q. Okay. Please -- let's turn to Plaintiff Exhibit 233-P.
16 Actually, let's see. Now, this is a statement from you,
17 Mr. Betterson; right?

18 A. Correct.

19 Q. Okay. It's indicating that Ms. Diamond was asked to
20 provide a written statement but asked that her lawyers be
21 present; right?

22 A. Correct.

23 Q. And as you testified today, that's the only thing
24 Ms. Diamond has indicated when it comes to PREA -- PREA
25 allegations: That she would like to have counsel with her;

1 right?

2 A. To the best of my knowledge, yes, ma'am.

3 Q. Okay. Why don't we turn to Plaintiff's Exhibit 233-Q.
4 Now, this is another statement that you wrote in connection
5 with Ms. Diamond; correct?

6 A. Yes, ma'am.

7 Q. It indicates the same information: That Ms. Diamond has
8 made PREA allegations, right, that she's touched by another
9 offender in the dormitory?

10 A. Correct.

11 Q. That's a PREA allegation, as we sit here today; correct?

12 A. You say is this -- can you repeat that.

13 Q. That's a PREA allegation, as we sit here today; correct?

14 A. Correct.

15 Q. If someone was inappropriately touched?

16 A. Correct.

17 Q. And, again, all Ms. Diamond indicated was she would like
18 to speak to GDC officials with the presence of her lawyers;
19 correct?

20 A. Correct.

21 MS. EZIE: Can we turn to Plaintiff's Exhibit 107, I
22 believe it's I.

23 MR. CHALMERS: Your Honor, can I ask that the witness
24 be allowed to see the entire document. That was a 2-page
25 document, and I don't know if the full of the first page

1 appears on his screen. It doesn't appear on my screen. So I
2 just want to make sure the witness knows he's permitted to see
3 the full document if he needs to.

4 THE COURT: Do you want to --

5 MR. CHALMERS: I say that because --

6 THE COURT: -- bring that one back up?

7 MR. CHALMERS: I'm sorry?

8 THE COURT: We'll bring it back up.

9 MR. CHALMERS: Okay, thank you.

10 THE COURT: Go to Page 2.

11 BY MS. EZIE:

12 Q. So Page 2 shows your handwriting on your signature; is
13 that right?

14 A. Yes, ma'am.

15 Q. Let's go to Plaintiff's Exhibit 107-I. I'm sorry, I may
16 have the wrong exhibit. Okay. We'll come back to that.

17 Now, Mr. Betterson, you testified that you would have
18 expected Ms. Diamond to confide in you if she had PREA
19 allegations in connection with your role; right?

20 A. Confide in me?

21 Q. That you're the person that she should have spoken to if
22 she had PREA concerns?

23 A. I'm one of the people she could have spoken to, yes,
24 ma'am.

25 Q. Isn't it true that she's filed a PREA complaint against

1 you?

2 A. Yes, ma'am.

3 Q. Is it fair to say that your experience with working with
4 transgender individuals is somewhat limited?

5 A. Well, yes. In an effort to -- to understand what they go
6 through better, I created a transgender group that we meet once
7 weekly. Ms. Diamond is a part of that, as well as the 14 other
8 transgenders that we have at the facility. So I would say it
9 was -- at that time, initially, it was limited. But of course
10 she -- in my position, you have to work to learn. So.

11 Q. Understood. But it's still been your practice to refer to
12 Ms. Diamond using male pronouns, for instance, even though she
13 identifies as a woman?

14 A. No, it is not.

15 Q. Can we pull up Plaintiff's Exhibit 107-B. Do you
16 recognize this document, Mr. Betterson?

17 A. Can you blow it up. (Witness reviewing document.)
18 Correct.

19 Q. Do you see that you're referring to Ms. Diamond in this
20 document; correct?

21 A. Correct.

22 Q. And you're saying -- you're using male pronouns to refer
23 to her; right? You're saying "he"?

24 A. Correct.

25 Q. Okay. Now, Ms. Diamond has -- okay, strike that.

1 You stated earlier today you don't have control over the
2 information that are -- you don't have control over whether
3 Parole determines to release prisoners from your custody; is
4 that correct?

5 A. Yes, ma'am.

6 Q. But you do have control over the information that appears
7 in SCRIBE; is that fair?

8 A. Which information?

9 Q. Information such as whether someone's been designated a
10 PREA aggressor.

11 A. I have the ability to have control over that, but it is
12 not directly created by me. The PREA designation is created
13 once the person comes in during the intake process. With
14 transgenders, it's every time they go out -- six months out or
15 if an incident occurs. Also if an incident occurs. That's
16 typically done by the mental health staff.

17 Q. Understood. And it's correct that Ms. Diamond was
18 classified as a PREA victim when she arrived at Coastal State
19 Prison; right?

20 A. I believe she was, yes, ma'am.

21 Q. That designation was updated at some point, however, to
22 state that she was a PREA aggressor; is that right?

23 A. Yes.

24 Q. Do you know who made that designation?

25 A. That designation was done by Tia Fletcher, the mental

1 health unit manager. We had a conversation, she came to me in
2 regards to the status of her changing, due to the incident with
3 Diamond and Offender Doe.

4 Q. That's the incident that you described as one where you
5 were investigating whether Ms. Diamond has been a victim of
6 sexual assault; right?

7 A. Correct. Or Offender Doe. To see which one was which.

8 Q. And ultimately you determined that there was no
9 substantiated PREA allegation; correct?

10 A. Correct.

11 Q. Did you advise Ms. Fletcher of that?

12 A. Ms. Fletcher is a part of the SART Team, so she knew, yes,
13 ma'am.

14 Q. So Ms. Diamond's PREA designation was updated to say she
15 is a PREA aggressor, even though she's never been the subject
16 of a substantiated PREA investigation?

17 A. The designation does not require that you have to be
18 founded -- that it has to be founded -- a PREA allegation has
19 to be founded. Again, once you come in -- just like I said
20 earlier, when you come in, during intake that question is
21 asked. Even if you've never been in a substantiated PREA
22 doesn't mean that you won't be classified as an aggressor.

23 Q. Okay. So you classify people as PREA aggressors
24 willy-nilly at Coastal; is that your testimony here today?

25 A. Not willy-nilly, ma'am. No, ma'am.

1 Q. Okay.

2 A. We follow the list of questions. And depending on how
3 they answer the question or how -- what's going on with their
4 history, we make a determination then.

5 I think one of the questions is have you ever acted out
6 aggressively towards a child or an adult. You know, when
7 you're coming into prison, if you answer that question yes, I
8 think it will designate you as an aggressor.

9 Q. Okay. Now, who -- is PREA aggressor information available
10 to the Parole Board?

11 A. Could you repeat the question.

12 Q. Is PREA aggressor designations available to the Parole
13 Board on SCRIBE?

14 A. I am not sure.

15 Q. Okay.

16 A. But I believe most information that we have, that they are
17 able to view in SCRIBE, but I am not sure.

18 Q. Okay. Now, Ms. Diamond was also designated a security
19 threat individual; correct?

20 A. Yes, ma'am.

21 Q. Okay. And she was designated a security threat individual
22 even though she's never been accused of preying on other
23 inmates; right?

24 A. I am not a part of that particular process. That is a
25 process that's handled through our -- our STG sergeant. So I

1 am not familiar with that part of that process.

2 Q. So sitting here today, you don't know what the basis of
3 that designation would be?

4 A. No, ma'am.

5 Q. Okay.

6 THE COURT: Did you say "STG sergeant"?

7 THE WITNESS: That's Security Threat Group. That's
8 pretty much gangs in prison. They manage the gang population
9 in the prison.

10 THE COURT: Speak into the microphone.

11 THE WITNESS: Yes, sir. I'm sorry.

12 THE COURT: You were telling us what "STG" is.

13 THE WITNESS: But it doesn't necessarily -- "STG"
14 doesn't necessarily mean that you have to be a gang -- you have
15 a security threat groups. That's any individual -- any
16 individual groups that pose a risk to the safety and security
17 of the facility. Then you have security threat individuals;
18 these individuals may not be a part of any gang, but they pose
19 a risk to the safety and security of the institution, sir.

20 THE COURT: Do you know why Ms. Diamond was
21 classified as a security threat?

22 THE WITNESS: No, sir, I don't. I wasn't -- I was a
23 part of that process maybe six or seven -- six years ago when I
24 was at Autry State Prison, and I haven't --

25 THE COURT: Who would know?

1 THE WITNESS: Sir?

2 THE COURT: Who would know?

3 THE WITNESS: Sergeant Mitchell. He is over our STG.

4 THE COURT: Speak into the mike.

5 THE WITNESS: Sergeant Mitchell. He is over STG at
6 our facility.

7 THE COURT: You may continue.

8 BY MS. EZIE:

9 Q. Now, Mr. Betterson, Ms. Diamond has never been accused of
10 rape or sexual assault in prison; correct?

11 A. To the best of my knowledge, no, ma'am.

12 Q. Okay. Mr. Doe never accused Ms. Diamond of any sort of
13 rape or sexual assault, even though you spoke to him three
14 times; right?

15 A. Correct.

16 Q. Okay. Now, the PREA classification guidance under sexual
17 aggressive factors indicates -- or asks whether an offender has
18 a past history of institutional, prison or jail, sexually
19 aggressive behavior. Does that sound right?

20 A. Correct.

21 Q. Ms. Diamond had never been found to have a history of
22 institutional sexually aggressive behavior prior to her arrival
23 at Coastal; correct?

24 A. Correct. That was one of the questions that we -- I spoke
25 to Ms. Fletcher about. We had a discussion about what would

1 constitute "history."

2 Then after speaking with Offender Doe, he indicated that,
3 you know, even though he was in the room overnight, and he did
4 tell me that he was -- they were -- they were dry humping, I
5 guess that's what you would call it, but he stated that he was
6 not being penetrated. That would still be considered sexually
7 aggressive behavior in an institution where sexual behavior is
8 not permitted. So we made the determination based on that.

9 Q. So, Mr. Betterson, your testimony today is that you are
10 responsible for Ms. Diamond being designated a PREA aggressor?

11 A. That's not my -- that's not what I'm saying. What I'm
12 saying is if -- if I'm asked the question by my subordinate
13 staff, I will guide them to make the best determination
14 possible. But I don't go in and actually make the selections.
15 I let the mental health staff and people responsible for that
16 make their final determination.

17 Q. Okay. So you guided your mental health staff to identify
18 Ms. Diamond as a PREA aggressor based on these statements?

19 A. No, I guided her to what constitutes history.

20 Q. I think we're saying the same thing, but just to confirm,
21 isn't it true that you had a conversation with Ms. Fletcher
22 about whether Ms. Diamond should be designated a PREA
23 aggressor?

24 A. No, I didn't. I had a conversation with her about what
25 would constitute history. If you asked that question again,

1 the question that you just asked, we ended up, you know, going
2 through Webster and Google to try to make a determination of
3 what would best constitute history. Then once we determined
4 what that was, then I told her to make a determination on what
5 she found.

6 Q. Okay. Now, Mr. Betterson, you took detailed notes as part
7 of your PREA investigations; right?

8 A. Yes, ma'am.

9 Q. You generated PREA reports?

10 A. Yes, ma'am.

11 Q. To the best of your knowledge, your notes on Ms. Diamond's
12 PREA investigations are accurate?

13 A. Yes, ma'am.

14 Q. Same for your notes on investigations with (pseudonym
15 inserted) Mr. Doe? Sorry, Mr. Doe, excuse me.

16 A. Correct.

17 Q. Is there any note that you indicated that Ms. Diamond and
18 Mr. Doe had been dry humping?

19 A. I can't remember.

20 Q. So that's never something that you've indicated in your
21 past notes to your knowledge?

22 A. I'm sorry?

23 Q. You have never indicated that in your notes, to your
24 knowledge?

25 A. Um, I -- I -- I don't have the notes in front of me so I

1 can't say yes or no.

2 Q. Okay. Now, Mr. Doe -- sorry, Mr. Betterson, we spoke
3 earlier about how --

4 A. I think with that, I think I may have indicated that he
5 was on top of him, but (pseudonym inserted) Doe -- I'm sorry,
6 John Doe stated that he wasn't being penetrated.

7 Q. Okay. And that's why, among other reasons, you found that
8 there was no substantiated PREA allegation; correct?

9 A. Correct.

10 Q. Now, I want to go back to one of your statements from
11 earlier today which is that PREA information needs to be
12 provided as, um, soon as possible relative to an incident. Is
13 that your testimony today?

14 A. Yes.

15 Q. Now, you've received a number of PREA reports, um, that
16 came through the third-party PREA process; is that right?

17 A. Yes.

18 Q. That's a policy that -- a procedure that GDC policy
19 authorizes; right?

20 A. Yes.

21 Q. Okay. And it was Ms. Diamond's attorneys who made many of
22 those third-party PREA reports; right?

23 A. They -- from what I remember, the -- the reports were
24 already made. But they came after that, that the -- the
25 letters from the attorneys came after the reports was initially

1 made. But, yes, the attorneys did make the -- reported it.

2 Q. So Ms. Diamond made reports within the prison to various
3 staff; is that right?

4 A. Correct.

5 Q. And Ms. Diamond's attorneys also made PREA reports to --
6 to GDC via the third-party PREA process; correct?

7 A. Correct.

8 Q. Did you ever contact anyone who made a third-party PREA
9 report for Ms. Diamond to request additional information before
10 marking them unsubstantiated?

11 A. I'm sorry, can you ask the question again.

12 Q. You've marked almost every report that Ms. Diamond has
13 filed at Coastal's "unsubstantiated"; correct?

14 A. Correct.

15 Q. Did you contact Ms. Diamond's attorneys, who made the
16 third-party reports, before marking them "unsubstantiated"?

17 A. I wouldn't have done that, no, ma'am.

18 Q. You wouldn't have done that. So, you marked Ms. Diamond's
19 PREA reports "unsubstantiated" before contacting the people
20 that made them to see if they had additional information; is
21 that fair?

22 A. Correct.

23 Q. I would like to turn to Exhibit 91-F. And specifically
24 Defendant 700, if we could make that a little bit larger.

25 Mr. Betterson, what kind of document is this?

1 A. This looks like an incident report.

2 Q. Are these reports that you would have access to in your
3 capacity as a PREA compliance manager?

4 MR. CHALMERS: Your Honor, I just -- I don't want to
5 interrupt counsel, but this is different than when we're not in
6 COVID and the witness can see a document and flip through it.
7 Could he just have a chance to look through all 12 pages that
8 are before him so the record is clear as to what he's talking
9 about.

10 THE COURT: Well, he's certainly free to look at it.
11 Although the question is simply whether this report is a report
12 that he would have access to.

13 MR. CHALMERS: Right. But I -- I haven't seen all 12
14 pages of this document, so I don't know, for example, if a
15 document was attached to it that is not actually part of what
16 is referenced on the first page. So, I just -- it would be
17 helpful--I don't think he will need much time--but just to flip
18 through and make sure that his testimony that he is about to
19 give actually applies to all of the exhibit.

20 THE COURT: All right. Well -- yes, let's flip
21 through the document.

22 Although I don't think he's really been asked yet if
23 he'd seen this particular document. Just a type of document,
24 as far as the questions are concerned so far.

25 Are you familiar with this type of document?

1 THE WITNESS: Yes, sir.

2 THE COURT: Have you seen this particular document?

3 THE WITNESS: I believe I have, sir. I am not --

4 THE COURT: Pardon?

5 THE WITNESS: I am not particularly sure.

6 BY MS. EZIE:

7 Q. Why don't you keep scrolling through, if that's okay. And
8 looking at Page 700. Do you see that it indicates that, um,
9 Ms. Diamond was too mentally distraught to discuss her PREA
10 allegations at that time?

11 A. Can you blow it up some.

12 Q. Looking at the bottom of the page.

13 A. Correct.

14 Q. Okay. Can we keep scrolling to Page 702 of that document.

15 MR. CHALMERS: Your Honor --

16 THE COURT: Mr. Betterson, you can look at anything
17 in this document you want.

18 But for the moment, call his attention to what you
19 want him to look at, and we'll see.

20 Then if you need to look at the rest of the document,
21 that's fine.

22 What page did you want him to look at?

23 MS. EZIE: This page, Your Honor.

24 THE COURT: And what's your question about this page?

25 MS. EZIE: Sure.

1 BY MS. EZIE:

2 Q. Do you see that, um, this document indicates that
3 Ms. Diamond made a statement that said, "I do not feel safe
4 enough to conduct a PREA interview without counsel present"?

5 THE WITNESS: Sir, when I think about this, I
6 probably actually would not have seen this document. Because
7 this is against me.

8 THE COURT: Again, the mike.

9 THE WITNESS: This document is against me, so I would
10 not have actually seen this document. This would have been
11 done by Ms. Cantera. This is a PREA allegation against me, so
12 I wouldn't have seen it.

13 COURTROOM DEPUTY: Do you want me to print it?

14 THE COURT: You say you probably didn't see it.

15 THE WITNESS: Yeah, because it's like an officer
16 being investigated. They wouldn't have seen the investigative
17 material against them. I would have provided a witness
18 statement, but that's all I would have seen.

19 THE COURT: Again, the question is only whether or
20 not certain words appear in the document. They certainly
21 aren't attributed to you.

22 THE WITNESS: Yes, sir.

23 THE COURT: So he sees those words, Ms. Ezie.

24 THE WITNESS: Yes, sir, I have seen it.

25 THE COURT: Okay.

1 BY MS. EZIE:

2 Q. Now, you relied on the statements that mental health
3 providers in your department made to Ms. Cantera; right?

4 A. Say it again, ma'am.

5 Q. You relied on the statements that -- that Ms. Diamond
6 provided to mental health professionals within your department
7 when making PREA assessments; correct?

8 A. Correct.

9 Q. Okay. And Ms. Nettles is one of those individuals; is
10 that right?

11 A. A mental health -- no, ma'am. Ms. Nettles would be the
12 retaliation monitor.

13 Q. Is she someone that you had contact with when it came to
14 PREA investigations?

15 A. She -- not -- more than likely not the investigation; but
16 the retaliation portion of it, we're required to check to make
17 sure that offenders are not being retaliated against.

18 Q. Okay. Now, was there ever a time that you advised
19 Ms. Diamond that by requesting that her attorneys be present,
20 that you were going to dismiss her PREA allegations?

21 A. No, sir -- no, ma'am, that never came from me.

22 Q. All right.

23 MS. EZIE: I think that's it for me.

24 THE COURT: Any redirect?

25 MR. CHALMERS: Just one question.

1 REDIRECT EXAMINATION

2 BY MR. CHALMERS:

3 Q. Deputy Warden Betterson, you were asked on cross that
4 Mr. Doe never accused Ashley Diamond of rape, even though you
5 spoke with him three times. Do you recall speaking with
6 Mr. Doe a third time, other than the two you told me about?

7 A. No, ma'am -- no, sir.

8 Q. Thank you.

9 MR. CHALMERS: Thank you, Your Honor.

10 THE COURT: All right. I have some questions.

11 EXAMINATION

12 BY THE COURT:

13 Q. Mr. Betterson, please remember, I know you want to look at
14 me, but you need to talk into the microphone so they all can
15 hear you out there.

16 A. Yes, Judge.

17 Q. Could we bring up Exhibit 107-A. And let's begin by
18 blowing up that first paragraph. I see here -- well, first,
19 this is a report on a PREA allegation that you made and
20 communicated or sent to Warden Benton on July 7, 2020? Is that
21 correct?

22 A. Yes, sir.

23 Q. And in the first paragraph, I see that you refer to Ashley
24 Diamond as "Ms. Diamond"?

25 A. Correct.

1 Q. And you told us earlier that -- I believe you told us
2 earlier that that was your practice?

3 A. Yes. Yes, sir.

4 Q. And is there a practice or procedure with GDC with regard
5 to how transgender inmates are addressed in terms of male or
6 female pronouns?

7 A. Yes. We address them according to how they identify.
8 But, of course, you know, it's -- it's never intentional to say
9 "he," but a person who is not accustomed to dealing with a
10 transgender on a regular basis may make that mistake. But
11 it's -- you know, and like I've explained to our transgender
12 population, unless they are doing it in a derogatory manner or
13 they are trying to, you know, intentionally hurt you. But if
14 they slip up and make a mistake, this is an opportunity for you
15 to correct them and educate them.

16 Q. Now, the subject of this particular PREA investigation --
17 and you can look at this, I think you've looked at it
18 already -- but it concerns allegations of statements made in a
19 dorm meeting by Mr. Jackson. Do you remember that allegation?

20 A. Yes, sir, I do.

21 Q. And this was a PREA allegation that Ms. Diamond reported
22 and provided specific information about?

23 A. (Nodding head in the affirmative.)

24 Q. Is that correct?

25 A. Yes, sir.

1 Q. And you record here that Jackson disclosed Ms. Diamond's
2 private medical information -- and I understand you're
3 communicating -- let me be clear. Are you communicating here
4 what Ms. Diamond said in the investigation? About what
5 Mr. Jackson said?

6 A. Can you blow it up just a little bit more.

7 Q. Yeah. That second paragraph in particular is where I am.
8 Can you blow that up. Can you read that now?

9 A. Yes, sir. Yes, that was communicated to me by
10 Ms. Diamond.

11 Q. And so the allegation was that in a dorm meeting, Jackson
12 had announced or said that "a freak is about to walk in"; it's
13 alleged that Jackson disclosed Diamond's private medical
14 information; made derogatory remarks about her breasts and
15 genitalia; intentionally misgendered her and said, "Don't try
16 touching him," referring to Ms. Diamond, "no matter how much of
17 a woman he," Ms. Diamond, "looks"; and it goes on to say
18 Ms. Diamond's repeatedly referred to as "he" and "it" by
19 Jackson during the meeting. Is that correct?

20 A. Yes, sir.

21 Q. Would you agree that those are inappropriate remarks for a
22 unit manager to make in a dorm meeting about a new transgender
23 inmate?

24 A. Yes, sir, definitely. If those remarks were made, that
25 would definitely be inappropriate.

1 Q. Did you talk to Mr. Jackson?

2 A. I did, yes, sir.

3 Q. What did he tell you?

4 A. He told me he did not make those statements.

5 Q. Why didn't you record that in your investigation?

6 A. During the time -- during that time I actually -- um, was
7 not the investigator. Tamara Cantera was investigating during
8 that time. I was just finalizing, sending it up -- sending my
9 report up to the warden. I didn't actually fully start
10 investigating PREAs until Ms. Cantera left the facility.

11 Q. Speak into the microphone.

12 A. Yes, sir.

13 Q. Let me get this straight. These are inappropriate
14 comments. You talked to Jackson, he denied them. You wrote
15 the report, and you didn't say anything about your
16 interrogation or questioning of Mr. Jackson; is that correct?

17 A. Correct, sir. I -- I spoke to the warden about it, gave
18 the warden my synopsis of -- in regards to, you know, what had
19 happened. But I -- you know, I didn't -- it wasn't during the
20 course of the investigation of the PREA that I spoke with
21 Mr. Jackson.

22 Q. Did you talk to any other participants in that dorm
23 meeting to determine if Jackson made those statements?

24 A. Um, no, sir, I did not.

25 Q. Now, the conclusion recorded there is that -- you've

1 already told us these are inappropriate comments if they were
2 made. And the conclusion does not conclude that they were not
3 made. Is that correct?

4 A. Correct.

5 Q. Rather, the conclusion is that it's not a PREA incident
6 because it's a single incident of harassment?

7 A. Correct.

8 Q. Is that a PREA standard?

9 A. Yes, sir. That would -- it wouldn't be considered a PREA
10 because it's a single incident of harassment. But that still
11 does not mean that if there was something that occurred, that
12 there wouldn't be a disciplinary portion of it for that
13 individual.

14 Q. And then, again, although the comments were inappropriate,
15 because -- and about Diamond, because Diamond didn't hear them,
16 that doesn't constitute harassment?

17 A. Correct. According to the PREA standard, no, sir, it does
18 not.

19 Q. All right. Let's look at Exhibit 107-F. And blow up the
20 top part so we can establish what it is. Is this your report
21 of a PREA allegation? The report is dated October 16, 2020,
22 and it's to Warden Benton.

23 A. Yes, sir.

24 Q. Do you recall this particular PREA allegation?

25 A. Yes, sir, I do.

1 Q. And generally speaking, the allegation was that
2 Christopher Graham, who was not in N-Dormitory, entered
3 Ms. Diamond's cell and acted inappropriately.

4 A. Correct. When I -- with this particular PREA, what I did,
5 I went back and looked at the movement history, and this
6 offender was actually moved out of the dormitory prior to this
7 incident occurring, sir.

8 Q. Does the fact that he was moved out of the dormitory mean
9 he could not have been in the dormitory as alleged by
10 Mr. Thigpen?

11 A. With the number of counts, that would mean he would have
12 been noticed missing out of the dormitory during that time.
13 It's highly unlikely that he would have been able to move, go
14 from one building to the next, through the gates, through the
15 cross gates, and make it to that building. But I can't say
16 that it's impossible.

17 Q. And your conclusion is -- on the last page, let's bring
18 that up. Well, I say "your conclusion." This is the
19 conclusion of the SART Team?

20 A. Yes, sir.

21 Q. And it was determined that the allegation was unfounded
22 due to the offender, Graham, not being in the building when the
23 incident occurred?

24 A. Yes, sir.

25 Q. And is that conclusion based on anything other than the

1 fact that Graham was not a resident of N-Dorm and Graham told
2 you that he was not in N-Dorm?

3 A. Yes, sir.

4 Q. What else was it based on?

5 A. I'm sorry?

6 Q. That is what it was based on?

7 A. Yes, sir.

8 Q. Okay. And let's look at 107-G. Does this concern a PREA
9 allegation that is the subject of your report to Warden Benton,
10 which is dated November the 1st, 2020?

11 A. Yes, sir.

12 Q. And this also allegedly involved Inmate Graham?

13 A. Yes, sir.

14 Q. And it, too, was determined to be unfounded because Graham
15 denied that he had seen Diamond since being moved from
16 N-Building?

17 A. Right. It was also -- if you look at the report, there
18 was no specifics for us to gather any additional information.
19 Couldn't give me a time or place or, you know, when it actually
20 happened. So there was no other way for me to make a
21 determination unless I just spoke to the alleged aggressor.

22 Q. Well, look at the first paragraph. I think the allegation
23 was that Diamond stated that Graham reported to her that he was
24 aware that she named him as an aggressor in a PREA incident.

25 A. Yes, sir.

1 Q. That would be serious if somebody informed him of that?

2 A. Right. But -- when you -- during the course of an
3 investigation, you know, just like any investigation on the
4 street, if somebody makes an allegation, it's possible for them
5 to figure out who made the allegation without someone actually
6 telling them.

7 Q. I mean, what more specific information were you looking
8 for?

9 A. In regards to what, sir?

10 Q. Well, I mean, you say that because there's no more
11 specific information. I mean, you said --

12 A. "An interview was conducted with Offender
13 Ashley Diamond regarding allegations.
14 Offender Diamond was asked where the incident
15 took place; she replied on the walk but could
16 not provide me with any specific information
17 regarding the incident."

18 What I would have done, as an investigator, I would have
19 tried to talk to other -- other offenders or any staff members
20 to make a determination if that possible -- if the incident
21 possibly occurred.

22 THE COURT: Let's pull up -- let's lower the gallery
23 screen for this one.

24 COURTROOM DEPUTY: Just let me make sure -- it is
25 off.

1 THE COURT: 118-C.

2 BY THE COURT:

3 Q. All right. Let's blow up the top part of this so we can
4 see what it is. Do you recognize this to be the disciplinary
5 report for the incident involving Ms. Diamond and John Doe?

6 A. I recognize it as being a disciplinary report, sir. I
7 wouldn't be involved in that process, but I do recognize what
8 it is.

9 Q. Did you ever talk with Officer Brown about this incident?

10 A. I did.

11 Q. How many times?

12 A. I can't remember how many times, but I know I talked to
13 her at least once, sir.

14 Q. When did that conversation take place?

15 A. I don't have an exact time, but it would have been shortly
16 after the incident was reported. But I can't remember exactly
17 when I talked to her.

18 Q. And what was the purpose of that interview, that
19 conversation?

20 A. To work the PREA investigation, sir.

21 Q. Was there any video evidence of that incident?

22 A. Not of the actual incident. However, I did view video
23 evidence that showed Offender Doe going into the cell with
24 Offender Diamond.

25 Q. Let's pull up 92-Y. Do you recognize this to be your

1 statement concerning a conversation with John Doe that occurred
2 on November 23, 2020?

3 A. Yes, sir.

4 Q. Where did this interview take place?

5 A. In my office, sir.

6 Q. And he was escorted there by CERT?

7 A. I am not sure this one was the -- the -- the first or the
8 second. I believe this was the first interview, and I can't
9 remember if he was escorted by CERT or not, but I do know it
10 was in my office.

11 Q. And is this the conversation where John Doe wanted to talk
12 with you about getting out of Administrative Segregation and
13 back into N-Dorm?

14 A. Can you scroll up some more. Yes, sir, it is.

15 Q. I believe you testified on direct examination -- or on
16 examination, that John Doe gave statements denying that there
17 was any sexual activity between John Doe and --

18 A. Correct.

19 Q. -- Ms. Diamond; correct?

20 A. Correct.

21 Q. And then -- let's pull up 107-J. Is this your report to
22 Mr. Benton, dated December 6, 2020, concerning the PREA
23 investigation into the incident involving --

24 A. Yes, sir.

25 Q. -- Mr. Doe and Ms. Diamond?

1 A. Yes, sir.

2 Q. And is this the only report that you made?

3 A. To the best of my knowledge, yes, sir.

4 Q. And so I'm assuming, but correct me, at this point you
5 would have completed the investigation and, based upon the
6 information you had gathered, this was being submitted?

7 A. Yes, sir.

8 Q. Now, in this conversation, did John Doe tell you that he
9 had been engaging in sexual activity with Diamond?

10 A. Um, no, he's never admitted to actually having intercourse
11 with Diamond. I think at some point he said that they -- you
12 know, I -- I believe I asked how, you know, they started
13 talking or dating or whatever. He said that there was some
14 flirting going on, but never admitted to actually having
15 intercourse.

16 Q. Well, did he ever admit to any sexual activity?

17 A. Besides the -- the humping incident?

18 Q. And where is that? Where did he say that?

19 A. (No response.)

20 Q. In your report, where did you record that?

21 A. Can you scroll up, please. (Witness reviewing document.)
22 Can we go to the next page. (Witness reviewing document.)
23 When it says here -- when it says,
24 "When asked about the sexual encounter
25 between himself and Offender Diamond,

1 Offender Diamond (sic) stated that he was not
2 forced to perform the act."

3 That's probably going to be the only thing that's in there.

4 Q. You're referring to...?

5 A. The very last paragraph under the SART recommendation.

6 Q. Now, there is nothing in quotes there; is that correct?

7 A. Correct, yes, sir, there is nothing in quotes.

8 Q. Because your memo is very careful to put in quotes what
9 (pseudonym inserted) Mr. Doe actually said.

10 A. Yes, sir.

11 Q. So, as you've told us, what you just read to us is not in
12 quotes?

13 A. Correct, sir.

14 Q. Was it your intent to communicate to Warden Brooks by this
15 memo that there had been sexual activity between Diamond and
16 Doe, but that it was consensual?

17 A. No, sir. My -- the purpose of this is to -- is simply for
18 PREA. The only thing that we're making any determination is if
19 there was a PREA act that occurred, that -- that violated
20 either Ms. Diamond or Offender -- Offender Doe. That was the
21 entire purpose. It is not to make a determination or try to
22 tell anybody anything other than the fact of what happened with
23 the PREA case.

24 Q. So you did not conclude, based upon Doe's statement, that
25 there has been sexual activity between the two?

1 A. No, sir.

2 Q. Because if, in fact, Doe had admitted sexual activity, I
3 assume -- and tell me if I'm assuming unfairly -- you would
4 have obtained a statement from him confirming that?

5 A. Um, yeah -- well, he -- the statement that we would have
6 gotten from him would have stated what he -- what he wanted to
7 put on the statement. But if he told me something, I would
8 have actually told him that he needs to put it in the
9 statement, yes, sir.

10 Q. Right. It would be his statement. But as the
11 investigator, if he had admitted to you that, yes, he and
12 Diamond were engaged in sexual activity, you would have wanted
13 to memorialize that in his statement?

14 A. Correct.

15 Q. And, in fact, he gave a statement on December 6; didn't
16 he?

17 A. Yes, sir.

18 Q. In that December 6 statement he said nothing --
19 Shall we pull that up, Mr. Doe's December 6 statement. I
20 don't have that number, I'm sorry.

21 COURTROOM DEPUTY: 92-W, it should be.

22 BY THE COURT:

23 Q. And it is 92-W. Do you recognize that to be his
24 statement?

25 A. Yes, sir.

1 Q. Did you ask him to give another statement?

2 A. No, sir, I did not. Not to my recollection.

3 Q. Do you know how this statement came about?

4 A. I'm sorry?

5 Q. Do you know how this statement came about?

6 A. I'm sorry, sir, I can't make out what you're saying.

7 Q. Do you know how this statement dated December 6 from Doe
8 came about? You know, what led to it? Why was it done?

9 A. No, sir.

10 Q. You don't.

11 A. I -- I -- during the course of the investigation, he would
12 have just been asked to provide a statement.

13 Q. So to be sure -- well, let me ask this. What was the
14 basis, as you understood it, or what was the information, as
15 you understood it, that led to Ms. Diamond being classified a
16 sexual aggressor?

17 A. Just the main question in the -- during the -- on the
18 questionnaire regarding history, what constitutes history. If
19 there was an act between two individuals, sexually, then it
20 would either sway yes or no. If it is yes, then it would sway
21 the question to a PREA aggressor. Then no, it would be PREA
22 victim. It would remain PREA victim.

23 Q. What specific incident by way of history are you referring
24 to?

25 A. The particular incident with Doe and Diamond.

1 Q. You just told us that there's no indication that you know
2 of of any sexual activity involved in that incident.

3 A. What was reported to me was that they were dry humping,
4 and I would go based off of that information. But, again, that
5 is still not information -- I wouldn't be -- be the one that's
6 actually going to make that determination. That would be done
7 by the mental health, you know, manager/specialist. So when
8 she asked me what constituted history, and I actually then
9 advised her that if there was an incident that occurred, that
10 you can --

11 Q. I see?

12 A. -- base that on, then --

13 Q. Whatever, it was not anything that Doe said that led -- as
14 far as you know -- to the classification of PREA aggressor?
15 Correct?

16 A. Correct. I don't -- I am not sure what she -- if she
17 interviewed (pseudonym inserted) John Doe or not, but --

18 Q. Based upon your conversation --

19 A. Correct.

20 Q. -- with John Doe. So to your knowledge -- and this is
21 what we heard, but let me see if this is your understanding --
22 the only other suggestion of sexual activity between Doe and
23 Diamond was based upon what Officer Brown said she saw.

24 A. Yes, sir.

25 Q. And what did Officer Brown tell you she saw?

1 A. She told me that she looked through the window -- in fact,
2 if I remember correctly, she looked through the window and saw
3 Ashley Diamond on top of Offender Doe, with her pants down, and
4 that he (sic) was humping her (sic) in a back-and-forth motion.
5 If I can remember correctly.

6 Q. Did she tell you whether she saw Ashley Diamond's penis?

7 A. No, she didn't tell me that, whether or not she saw it or
8 not.

9 Q. And so, clearly, she didn't tell you that she saw Ashley
10 Diamond's penis in John Doe's anus?

11 A. In his hand?

12 Q. "Anus."

13 A. No, sir. No, sir, she didn't tell me that.

14 Q. Now, tell me again -- I'm sorry, I may have -- I may have
15 missed it, who would have been the person who made the
16 determination of sexual aggressor?

17 A. Tia Fletcher. She's the mental health unit manager. Once
18 they go in and they review -- this all happens -- when they
19 come in -- when an offender arrives at our facility, they go
20 through a PREA screening. During that PREA screening, they are
21 asked a series of questions.

22 Transgenders, our population are reviewed more because
23 they are more susceptible to -- violence, I guess, sexual -- or
24 violence. So they are asked more often or after a PREA
25 incident they're asked. So if we file a PREA or a PREA is

1 filed, 30 days later, they're reviewed and they will go through
2 a screening to make that determination.

3 Q. Do you know how many sexual offenders there are in N-Dorm?
4 Or have you known at any given time how many sexual offenders
5 there are in N-Dorm?

6 A. No, sir. I don't know off the top of my head.

7 Q. All right. Thank you, Mr. Betterson.

8 MS. EZIE: Your Honor, could I ask a few follow-up
9 questions based off that?

10 THE COURT: I am going to give Mr. Chalmers the first
11 opportunity.

12 MR. CHALMERS: Thank you, Your Honor.

13 And I will ask in a moment for a few of those
14 exhibits to be brought back up.

15 REDIRECT EXAMINATION CONTINUED

16 BY MR. CHALMERS:

17 Q. Deputy Warden Betterson, are offenders in GDC custody
18 allowed to engage in consensual sex?

19 A. Not at all. They are also not allowed in any -- in other
20 offenders' rooms.

21 Q. Okay. Is consensual sex between offenders a PREA issue?

22 A. It's not necessarily a PREA issue unless they are forced.
23 And that's why we conduct PREA investigations, to see if there
24 was any force or any manipulation involved in it. If it is not
25 forced or any manipulation involved or any foul play involved,

1 then it becomes a disciplinary issue.

2 Q. So if there is force or coercion in a sexual activity,
3 that is a PREA incident?

4 A. Yes.

5 Q. If there is not force or coercion in a sexual act, that is
6 nonetheless still a disciplinary issue?

7 A. Correct. It is not -- it wouldn't be considered PREA.

8 MR. CHALMERS: Can you please pull up, counsel, the
9 document that was marked as Plaintiff's 118-C.

10 BY MR. CHALMERS:

11 Q. You looked at this exhibit earlier today. Can you see it
12 okay, Deputy Warden Betterson?

13 A. I'm sorry?

14 Q. Can you see the Exhibit 118-C on your screen?

15 A. Yes, sir.

16 Q. Can you see that in Roman Numeral II, "Offense Data," that
17 there are three lines for charges listed, and the second line
18 is blacked out?

19 A. Correct.

20 Q. Do you know why that would be blacked out?

21 A. No, sir, I don't.

22 Q. Okay. The first and third lines indicate "sexual
23 behavior" and "indecent exposure"; correct?

24 A. Yes, sir.

25 Q. And what does the document show as to what the finding was

1 with respect to those charges?

2 A. Scroll down. Keep going. Guilty.

3 Q. Okay. So there was a finding of guilty both on "sexual
4 behavior" and "indecent exposure"?

5 A. Yes, sir.

6 Q. Can you --

7 MR. CHALMERS: Counsel, please pull up the document
8 that was marked as Plaintiff's Exhibit 107-J.

9 I'm sorry. Before we do that, Mr. Shapiro, can you
10 pull up Defendants' Exhibit 7. Can you make it all in one page
11 so we could see the whole document.

12 BY MR. CHALMERS:

13 Q. Looking at what is marked as Defendants' Exhibit 7, can
14 you identify this, please.

15 A. It looks like the disciplinary history for Ms. Diamond.

16 Q. Okay. And can you go to the line that -- on the left in
17 the Date column reads 10-31-2020, and can you read for the
18 Court what were the charges on that DR.

19 A. It looks like it was, "damage, tampering with locks and
20 doors."

21 Q. I'm sorry, I didn't realize there are several on 10-31-20.
22 Go to the first one, the one further down at the bottom, Number
23 866981.

24 A. Okay. "Exposure or exhibitionism: Guilty." "High sexual
25 behavior or activity: Guilty." "Soliciting sexual activity:

1 Not guilty."

2 Q. So the -- what's reflected on this disciplinary history,
3 guilty findings on "exposure or exhibition" and "sexual
4 behavior or activity," guilty on both of those, is the same as
5 is what is reflected on the document that we just looked at a
6 moment ago?

7 A. Yes, sir.

8 Q. And the "not guilty" would be the third charge, which was
9 "soliciting sexual activity"?

10 A. Soliciting, yes, sir.

11 MR. CHALMERS: Okay. If we could please have
12 Plaintiff's Exhibit 107-J. And if we can scroll down a little
13 bit. Okay.

14 BY MR. CHALMERS:

15 Q. Deputy Warden Betterson, can you see this okay?

16 A. Yes, sir.

17 Q. You wrote in this memo -- and let me back up. You did
18 identify this as your memo?

19 A. Yes, sir.

20 Q. Okay. You wrote in this memo and put in quotes, "Doe
21 stated, 'We were just messing around.'" Do you see that, in
22 the second paragraph?

23 A. Yes, sir.

24 Q. And did he say that to you?

25 A. Yes, sir.

1 Q. Okay. And if we could move to the next page. As we're
2 moving to the next page, did he give you more details or any
3 more details when he was talking to you and said they were
4 messing around?

5 A. Um, he spoke to me directly about what actually happened.
6 Like I say, he told me there -- you know, he was on -- just
7 being dry humped by Diamond.

8 Q. Well, look to the second page that's being pulled up right
9 now. And you write in the second page of your memo,

10 "Based on this information it was determined
11 that the sexual contact between Offender Doe
12 and Offender Diamond was consensual."

13 Do you see that?

14 A. Correct.

15 Q. Did you write that?

16 A. Yes, sir.

17 Q. Is that what the finding of your review was after talking
18 to (pseudonym inserted) Mr. Doe? Excuse me, to John Doe?

19 A. Yes, sir.

20 Q. The PREA aggressor history -- whether Ashley Diamond is
21 designated as a PREA victim or a PREA aggressor -- can that
22 determination be impacted by an incident where an offender is
23 involved in consensual sexual activity?

24 A. It can. Um, when you look at the behavior, the actual
25 sexual behavior, in the actual act, when it's not supposed to

1 happen, that will be considered aggressive behavior when you're
2 not supposed to be doing it. You're basically going against
3 the GDC guidelines.

4 Q. All right. Thank you, Deputy Warden Betterson.

5 THE COURT: Mr. Betterson, you are under oath. You
6 told me there was no finding by you of any sexual activity
7 between John Doe and Ms. Diamond. Did you not?

8 THE WITNESS: That's what I said.

9 THE COURT: Thank you.

10 Ms. Ezie?

11 MS. EZIE: Oh, I'm sorry.

12 RE CROSS EXAMINATION

13 BY MS. EZIE:

14 Q. Earlier today, Mr. Betterson, you referenced watching a
15 video that indicated Mr. Doe, I believe, entered Ms. Diamond's
16 cell.

17 A. Correct.

18 Q. Remember that? That video did not show them having sexual
19 activity; is that right?

20 A. No, it doesn't.

21 Q. It didn't show them dry humping?

22 A. No, it didn't.

23 Q. So the basis for the disciplinary report that Ms. Diamond
24 received alleging indecent exposure/sexual behavior, that
25 was -- the basis of that DR was Ms. Brown's statement and

1 Ms. Brown's statement only; correct?

2 A. Right. That -- I am not over the DR part, the
3 disciplinary process. But I'm assuming that's what it would
4 have been about.

5 Q. You are not aware of any other documentation that
6 supported that charge as of November -- as of October 31st;
7 correct?

8 A. No.

9 Q. And your testimony today is that you spoke to Mr. Doe at
10 various occasions, but not at that point in time; right?

11 A. Correct.

12 Q. Okay. Now --

13 A. At which point in time are you referring to?

14 Q. As of October 31st. Correct?

15 A. In regards to the disciplinary portion of it?

16 Q. Yes.

17 A. No, not as to the disciplinary portion of it.

18 Q. Or as regards any PREA allegations; correct?

19 A. I did speak to Offender Doe in respect to the PREA
20 allegation.

21 Q. As of October 31st?

22 A. As of -- the incident that took place?

23 Q. Yes.

24 A. I don't know the exact time and date that I spoke with
25 him, but it would have been around that time.

1 Q. Okay. And based on those conversations, however, you were
2 never able to substantiate any PREA charges; correct?

3 A. Correct.

4 Q. Now, there is a camera outside of Ms. Diamond's cell at
5 all times since she's been incarcerated at Coastal State
6 prison; correct?

7 A. Correct.

8 Q. There was a camera outside of her room on July 3rd when
9 someone -- when she alleged someone assaulted her in her cell?

10 A. July 3rd? I am not sure. I do know that we had some
11 camera work done at the facility. But I am not sure exactly
12 when that camera was placed exactly.

13 Q. Have you ever checked to see whether there was video
14 camera footage of July 3rd on Ms. Diamond's cell?

15 A. Not to my recollection, no, ma'am.

16 Q. So you marked Ms. Diamond's PREA allegation alleging that
17 she'd been sexually assaulted on July 3rd "unsubstantiated"
18 before you attempted to view any videos; is that correct?

19 A. I am not aware of it. You said -- well, say that again
20 now.

21 Q. Okay. Is it true that the July 3rd PREA incident that
22 Ms. Diamond alleged was marked "unsubstantiated"? Correct?

23 A. Which incident was the July 3 incident?

24 Q. The incident that she alleged she had been attacked in her
25 cell and there were witnesses who interrupted it. Do you

1 remember that allegation?

2 A. I don't particularly remember it.

3 Q. There are lots of allegations Ms. Diamond's made; right?

4 A. Yeah, there are a lot of PREA cases.

5 Q. Was it your practice to review the cell outside of her --
6 video camera outside of her cell?

7 A. I don't have access to those cameras. If I requested, I
8 could get access, but I don't readily have access to those
9 cameras.

10 Q. Was it your practice to request access to the video
11 footage outside of Ms. Diamond's cell?

12 A. From time to time, yes, ma'am.

13 Q. Was it your practice to request those videos outside her
14 cell when Ms. Diamond alleged that she'd been sexually
15 assaulted?

16 A. I can't remember requesting it, but -- it's likely. It
17 was a while ago.

18 Q. Do you agree that video footage outside Ms. Diamond's cell
19 might have been able to help you substantiate her PREA
20 allegations?

21 A. To see what happened inside of the cell?

22 Q. To see whether people entered her cell.

23 A. Yes, to see if people enter the cell.

24 Q. Okay. Now, we talked a little bit earlier about an
25 incident involving an inmate named Mr. Graham; is that correct?

1 A. Christopher Graham, yes.

2 Q. Am I correct that Mr. Graham was housed in N-Dormitory for
3 a period of time; right?

4 A. Correct.

5 Q. He was housed in N-Dormitory on October 9th; is that
6 right?

7 A. I am not sure. It is possible.

8 Q. Okay. Why don't we turn to -- I believe it's Plaintiff's
9 Exhibit 110. Mr. Betterson, do you -- can you -- do you
10 recognize this document?

11 A. It looks like the movement history that I printed for that
12 PREA case, possibly.

13 Q. Okay. This is a movement history report that you believe
14 you printed out in connection with Ms. Diamond's PREA
15 allegation against Graham; correct?

16 A. Correct.

17 Q. And if we scroll down a little bit, do you see that a
18 Christopher Graham was mentioned?

19 A. Correct.

20 Q. And it's stating that his bed was moved, but -- his bed
21 was moved from the N-Building; correct?

22 A. Yes.

23 Q. And that was true as of October 9th; right?

24 A. Scroll up to the top. As of -- correct. It was reported
25 on 10-9.

1 Q. So on October 9th, Christopher Graham was a resident of
2 Ms. Diamond's dorm?

3 A. Correct.

4 Q. Okay. But you marked that PREA incident "unsubstantiated"
5 because Mr. Graham was no longer part of the dormitory; is that
6 correct?

7 A. No, we have to look at that PREA case. Because when I --
8 I recall looking at that PREA case, when the actual time that
9 Diamond reported the PREA, that Graham was not actually in the
10 dormitory. This was the last -- this was printed to show the
11 last day that Graham was in the dormitory.

12 Q. Okay. So the date that you investigated for the PREA
13 investigation was October 10th?

14 A. Unless I'm seeing it, I can't remember. There are a lot
15 of PREA cases that Diamond reported, so I would have to see
16 them. Do you want to pull it up?

17 MS. EZIE: Do we know that document?

18 THE COURT: Is it 107-F?

19 MS. EZIE: 107-F, thank you, Judge.

20 BY MS. EZIE:

21 Q. Okay. Do you recognize this document, Mr. Betterson?

22 A. Yes.

23 Q. It was prepared by you.

24 A. Yes.

25 Q. Okay. And it states that this PREA incident was reported

1 on the day of October 11th, 2020; right?

2 A. Correct.

3 Q. Do you agree that these allegations, as described, would
4 be a PREA incident?

5 A. Correct.

6 Q. But you never determined -- you never looked to determine
7 whether Mr. Doe -- sorry, whether Graham could have done the
8 actions described in this report even one day earlier, on
9 October 9th; is that fair?

10 A. I did not.

11 Q. And the witness statements that Ms. Diamond and
12 Mr. Thigpen provided, they actually didn't allege a specific
13 date for this incident, they gave you a time range; is that
14 fair?

15 A. I would have to see them.

16 Q. Okay. Let's turn to Plaintiff's Exhibit 233-B. Now, I
17 believe this is a 2-page statement. Do you see that the person
18 who wrote the statement is indicated as Earl Thigpen?

19 A. Yes.

20 Q. He wrote the statement on October 15th, 2020?

21 A. Yes.

22 Q. If we go back to the first page. It says, "At 11:15 p.m.
23 about a week ago, I went to check on Ms. Diamond..." and then
24 it describes this -- the PREA incident that we just talked
25 about; correct?

1 A. Correct.

2 Q. Okay. So that statement doesn't say that this incident
3 occurred on October 10th.

4 A. It does not.

5 Q. You just decided that was the only date that this would
6 be -- that would be the subject of this investigation?

7 A. No, I did not. The -- any date that I choose is based on
8 the -- based as provided by the actual victim.

9 Q. Okay. Why don't we turn, then, to I believe it is --
10 let's see. Well, this is a PREA report that was made by a
11 third party; correct?

12 A. I can't remember how it was made.

13 Q. Okay. Mr. Thigpen reported that he observed Ms. Diamond
14 being assaulted.

15 A. If I am not mistaken, I think Diamond reported that she
16 was advised by Thigpen that it occurred.

17 Q. Okay. So Thigpen acknowledged that he saw Ms. Diamond
18 being assaulted?

19 A. Right. And I think she reported it to me.

20 Q. And in his report he said that "about a week ago," before
21 October 15th, he'd seen this happen; correct?

22 A. Correct.

23 Q. So that was the operative statement; correct?

24 A. I'm sorry?

25 Q. That was the operative statement for this PREA

1 investigation; correct?

2 A. Yes.

3 Q. Okay. But you never reviewed video to see whether anyone
4 entered Ms. Diamond's cell during that time period?

5 A. I did not.

6 Q. Okay. And you marked it "unsubstantiated" even though
7 Mr. Graham was in the -- present in the dormitory one day
8 earlier on October 9th; correct?

9 A. Right, during that time of the report he wasn't present,
10 so --

11 THE COURT: I'm sorry, when was Graham moved from
12 N-Dormitory, Ms. Ezie? Ms. Ezie, I'm talking to you.

13 MS. EZIE: I'm sorry?

14 THE COURT: When does your record show that he was
15 moved? Graham was moved?

16 MS. EZIE: October 9th, 2020, Your Honor. That's
17 based on Exhibit, I believe, 110.

18 THE COURT: All right. Thank you.

19 MS. EZIE: Thank you. No further questions.

20 THE COURT: Mr. Chalmers?

21 MR. CHALMERS: (Shaking head in the negative.)

22 THE COURT: All right. Mr. Betterson, you may step
23 down.

24 (Witness stepped down at 10:43 a.m.)

25 THE COURT: Mr. Chalmers?

1 MR. SHAPIRO: Defendants call Khaliah Reeves, Your
2 Honor.

3 THE COURT: I've lost track of time. We're going to
4 take a 10-minute break.

5 MS. LITRELL: Thank you, Your Honor.

6 COURT OFFICER: All rise.

7 (Court in recess from 10:45 to 10:57 a.m.)

8 COURT OFFICER: All rise. This Honorable Court is
9 back in session.

10 COURTROOM DEPUTY: Ms. Reeves, would you raise your
11 right hand. Do you solemnly swear that the testimony you will
12 give this Court will be the truth, the whole truth, and nothing
13 but the truth, so help you, God?

14 THE WITNESS: I do.

15 COURTROOM DEPUTY: Thank you. You can put your hand
16 down. State your name for the record.

17 THE WITNESS: My name is Lieutenant Khaliah Reeves.

18 COURTROOM DEPUTY: Okay. Thank you.

19 THE COURT: Lieutenant Reeves, remember that you are
20 under oath. And if you testify falsely, you can be prosecuted
21 for perjury. You understand that?

22 THE WITNESS: Yes, sir.

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OFFICER KHALIAH REEVES

called by Defendant at 10:58 a.m., having first been duly sworn,
testified as follows:

DIRECT EXAMINATION

BY MR. SHAPIRO:

Q. Good morning, Lieutenant Reeves.

A. Good morning.

Q. Lieutenant Reeves, before we begin this morning, I want to
very briefly advise you that I am going to be asking you some
questions about an incident that occurred between Ms. Diamond
and another offender. We have been referring to the offender
as "John Doe." And so I will ask that in answering any
questions, that you refer to the other offender as "John Doe"
as well, okay?

A. Okay.

Q. All right. Thank you. Lieutenant Reeves, are you
employed as a correctional officer with the Georgia Department
of Corrections?

A. Correctional Lieutenant.

Q. And at what facility do you work?

A. Coastal State Prison.

Q. How long have you worked at Coastal State Prison?

A. August of this year will make 12 years.

Q. Did you state that your title was "correctional
lieutenant"?

1 A. Yes.

2 Q. What are some of the duties and responsibilities as a
3 correctional lieutenant?

4 A. Um, right now I'm in recruitment. I recruit new hires. I
5 go to different areas to set up job fairs, set up job fairs at
6 the prison. I work hand-in-hand with Personnel to run
7 backgrounds, fingerprints, that sort of thing.

8 Q. And did you have this same title in October of 2020?

9 A. No, sir.

10 Q. What was your title at that time?

11 A. I was a shift lieutenant.

12 Q. And what were your responsibilities as a shift lieutenant?

13 A. I supervised sergeants and correctional officers. I made
14 rounds. I did count. I responded to emergencies, responded to
15 fights, medical issues, emergency issues such as power outages,
16 release offenders, that sort of thing.

17 Q. I want to ask you about a specific incident that occurred
18 on the morning of October 31st, 2020. Do you recall if you
19 were working at Coastal State Prison that day?

20 A. Yes, sir.

21 Q. Do you recall what shift you were working?

22 A. I was working first shift. The shift normally starts at
23 5:45, but since I was a lieutenant, I started shift at 5:00.

24 Q. And what time did your shift end that day?

25 A. Approximately 7:30, 8:00. That's normally what time I get

1 off.

2 Q. Do you recall where you were assigned to work at Coastal
3 State Prison on October 31st, 2020?

4 A. I'm sorry, could you repeat that.

5 Q. Do you recall where you were assigned to work at Coastal
6 State Prison on the date of October 31st, 2020?

7 A. I was the lieutenant, but at the time I was working at the
8 back gate. I was taking out the institution trash.

9 Q. Okay. Do recall receiving a call to respond from an
10 Officer Courtney Brown?

11 A. Yes.

12 Q. Can you tell us a little bit about what you remember about
13 that call.

14 A. When I received the call-out, I immediately shut down the
15 back gate. When I responded, Ashley Diamond was either outside
16 the building or in the lobby. I can't specifically remember.

17 But when I spoke to Officer Brown, she explained to me
18 what happened in the room. She saw him having sex with another
19 offender.

20 Q. Okay. Let me take you through that a little bit more
21 slowly. You were in -- as I understood it, you were in a
22 different part of the facility when you received the call?

23 A. Yes, sir.

24 Q. Where were you?

25 A. It's the back gate area. It's on the other side of the

1 institution.

2 Q. And did you receive a call that went out over the radio?

3 A. Yes. The main control officer called me over the radio.

4 Q. And you were called to respond to which dormitory?

5 A. N-Building.

6 Q. All right. And when you entered N-Building, what did you
7 observe?

8 A. Ashley Diamond was either in the lobby or outside, I can't
9 specifically recall. But Officer Brown was in the control
10 room, and I asked her what was going on, and she told me that
11 she, um, saw him having sex.

12 Q. Do you recall any other statements that Officer Brown made
13 to you other than she had witnessed Offender Diamond and
14 another offender having sex?

15 A. She said that they initially didn't hear her when she
16 opened the door. And she said, "Aye," and they jumped up. Off
17 the bed.

18 Q. Do you recall any additional details?

19 A. Um, I did report it to the duty officer at the time. I
20 don't recall who it was that was working, but I did report it.
21 Anything that happens outside of the normal operations on the
22 weekend, I have to report everything to the duty officer.

23 Q. Okay. Do you know whether Officer Brown spoke with the
24 duty officer at that time?

25 A. She did.

1 Q. Were you present when -- well, let me first ask. How were
2 you communicating with the duty officer?

3 A. I called her from the N-Building control room.

4 Q. And when you say you called her, was this on a facility
5 telephone or on the radio?

6 A. Telephone.

7 Q. Okay. Do you know whether Officer Brown spoke with the
8 duty officer that morning?

9 A. Yes.

10 Q. And do you recall -- were you present when Officer Brown
11 was speaking with the duty officer over the phone?

12 A. Yes.

13 Q. Do you recall what Officer Brown reported to the duty
14 officer when she spoke with her?

15 A. Yes.

16 Q. What was that?

17 A. She went into detail. She said that she was conducting
18 count, and when she opened the door, she saw --

19 MS. EZIE: Objection, hearsay.

20 THE COURT: Overruled. I think we're all interested
21 in Officer Brown's credibility at this point, and I think that
22 is what this goes to.

23 BY MR. SHAPIRO:

24 Q. Lieutenant Reeves, do you need the question read back to
25 you?

1 A. Yes, please.

2 (Court reporter read back requested portion of transcript
3 at 11:05 a.m..)

4 A. She stated when she was doing count, she opened the door,
5 and she saw Diamond's penis inside of the other offender. She
6 said, "Aye," because they didn't notice that she opened the
7 door. When she said, "Aye," they both jumped up, and Diamond
8 was like, "Shoot!"

9 Q. Now, Lieutenant Reeves, did you instruct Officer Brown on
10 what to say to the duty officer?

11 A. No, I didn't.

12 Q. Are you aware that Officer Brown filled out a witness
13 statement in relation to this incident?

14 A. Yes.

15 Q. Did you instruct Officer Brown what to record in that
16 witness statement?

17 A. No. I just told her to make sure she tells what she saw.
18 Basically.

19 Q. All right. After the call with the duty officer, do you
20 recall what happened next?

21 A. Yes. I, um, escorted Diamond to Medical to be checked.

22 Q. Why was Ms. Diamond escorted to Medical to be checked?

23 A. Well, first of all, all offenders, whether they go to
24 Administrative Segregation--which, that's where she was going
25 because it was a disciplinary issue--they have to be checked by

1 Medical.

2 Q. Okay. And after Ms. Diamond was examined by Medical, do
3 you recall what happened next?

4 A. Yes. I escorted her to Administrative Segregation.

5 Q. Which dormitory was that specifically, if you remember?

6 A. G-Building.

7 Q. All right. After escorting Ms. Diamond to G-Building, did
8 you return to the N-Dormitory at any point that morning?

9 A. Yes. I had to get her property.

10 Q. And by "her property," do you mean Ms. Diamond?

11 A. Uh-huh.

12 Q. So did you go to Ms. Diamond's cell later that morning?

13 A. Yes.

14 Q. What, if anything, did you discover when you entered
15 Ms. Diamond's cell?

16 A. The locker box was turned over. Her property was
17 everywhere, the bedding on the mat. It was kind of in a
18 disarray, but -- it was just, like, a mess. Like somebody
19 ransacked the room. That's what it looked like.

20 Q. Do you recall observing anything unusual about
21 Ms. Diamond's cell door?

22 A. No. That was it. It was just all of her stuff was all
23 over the room.

24 Q. Lieutenant Reeves, do you recall discovering a rag in the
25 corner of Ms. Diamond's cell door?

1 A. Yes. We tried to secure the door, and it wouldn't secure.
2 And that's when we, um, noticed that a rag was stuffed in the
3 top part of the door.

4 Q. Okay. Did you take a photograph of that rag?

5 A. Yes.

6 Q. What did you do next?

7 A. I wrote the disciplinary for tampering with the lock.

8 Q. Okay. Did you call for Maintenance to respond at any
9 point?

10 A. Yes, I did.

11 Q. Did Maintenance respond?

12 A. Yes, they did.

13 Q. Do you recall who that maintenance worker was?

14 A. Mr. Rinker.

15 Q. And do you know what, if anything, Mr. Rinker did when he
16 arrived?

17 A. He had removed the rag, and I think he greased up the
18 chain and the lock mechanism to make sure that it secured, and
19 it did.

20 Q. So you were present when Mr. Rinker checked to see if the
21 door would secure?

22 A. Yes, sir.

23 Q. And it was your observation that -- after he removed the
24 rag and made those repairs, that the door did secure?

25 A. Yes.

1 Q. All right. Lieutenant Reeves, I am going to direct you to
2 the screen in front of you to what's been marked as Defendants'
3 Exhibit 8.

4 Now, Lieutenant Reeves, did you testify that you issued
5 Ms. Diamond a disciplinary report based on the rag in the -- in
6 her door?

7 A. Yes.

8 Q. Is this the disciplinary report that you issued to
9 Ms. Diamond?

10 A. Yes.

11 Q. Going to the second page of this exhibit, is this the
12 photograph that you took of the rag in Ms. Diamond's cell door?

13 A. Yes.

14 Q. And does this photo accurately reflect the rag as you
15 discovered it on the morning of October 31st, 2020?

16 A. Yes.

17 Q. Did you issue Ms. Diamond any other disciplinary reports
18 related to this incident?

19 A. Yes.

20 Q. What were those?

21 A. Um, the one that Courtney Brown wrote. Um.

22 Q. Was that related to the --

23 A. The sexual activity. And there was one later on that day,
24 while he (sic) was in Administrative Segregation, she tried to
25 bribe the officer to pass property from one cell to another.

1 Q. I want to ask you about that in a moment, but first let me
2 have you take a look at the screen in front of you. Is this a
3 copy of the disciplinary report that was issued to Ms. Diamond
4 based on the activity that occurred with the John Doe offender?

5 A. Yes.

6 Q. And then you were just explaining that there was a third
7 disciplinary report issued that day; is that correct?

8 A. Yes.

9 Q. And could you explain again what was the basis for that
10 disciplinary report.

11 A. The officer, um, called me. I was on another range in
12 G-Building, um, making rounds. We have to check all offenders
13 that's locked behind the door. But I was on another range, and
14 an officer called me, um, to that range that Offender Diamond
15 was being housed, and he told me that she was trying to bribe
16 him to pass something to another offender in another cell.

17 Q. Do you recall the name of that officer?

18 A. Officer Gordon.

19 Q. Okay. I am going to take you back for a moment. Looking
20 at this disciplinary report, what were the charges that were
21 given to Ms. Diamond?

22 A. "Sexual behavior" and "indecent exposure."

23 Q. And then going back to the first page of this exhibit,
24 what was the basis for the charge in this disciplinary report?

25 A. "Blocking or tampering with the lock."

1 Q. And that is the lock on her cell door?

2 A. Yes, sir.

3 Q. And then finally, looking at this page, is this a copy of
4 the disciplinary report that you issued to Ms. Diamond based on
5 what had been reported to you by the officer in the G-Building?

6 A. Yes, sir.

7 Q. And what was the charge that was reported here?

8 A. "Possession of contraband."

9 Q. Lieutenant Reeves, just a few final questions for you. Do
10 you recall when Ashley Diamond arrived at Coastal State Prison?

11 A. I don't. I don't recall.

12 Q. Okay. Have you had frequent contacts with Ms. Diamond
13 while she's been housed at Coastal State Prison?

14 A. Yes.

15 Q. Lieutenant Reeves, did you issue any of these disciplinary
16 reports in an attempt to retaliate against Ms. Diamond?

17 A. No.

18 Q. Were you attempting to target or unfairly punish
19 Ms. Diamond?

20 A. No.

21 Q. Are you aware of any effort at Coastal State Prison to
22 retaliate against Ms. Diamond?

23 A. No.

24 Q. Have you ever been part of any discussions where
25 retaliating against or targeting Ms. Diamond was discussed?

1 A. No.

2 MR. SHAPIRO: Thank you very much, Lieutenant Reeves.

3 THE WITNESS: Thank you.

4 THE COURT: You may cross-examine.

5 CROSS EXAMINATION

6 BY MR. McCOY:

7 Q. Good morning, Lieutenant Reeves.

8 A. Good morning.

9 Q. My name is Scott McCoy. I am counsel for Plaintiff in
10 this matter, Ms. Diamond.

11 As we've been hearing from you today, on several occasions
12 you have used the pronoun "he" or "him" to refer to
13 Ms. Diamond. Is it your practice to use male pronouns with
14 Ms. Diamond?

15 A. As I've stated to her, there is no -- nothing malicious
16 behind it. It's just -- you have to get used to the verbiage.

17 Q. You have known Ms. Diamond for quite a while now, though;
18 haven't you?

19 A. No. I don't come in contact with her as much. But when
20 I'm making rounds, that's normally when I see her.

21 Q. But you've known her at least -- for months since
22 October 31st; correct?

23 A. A few months.

24 Q. Now, you just mentioned -- testified, I believe, that one
25 of the disciplinary reports that you wrote for Ms. Diamond

1 on -- or associated with the October 31st events was one for
2 passing contraband; correct?

3 A. Yes, sir.

4 Q. What was the contraband?

5 A. It was a personal love note that she was trying to pass in
6 the legal mail.

7 Q. Are offenders not allowed to have possession of personal
8 items like pictures?

9 A. They can have them, yes, sir.

10 Q. All right. Now, you said -- I believe your testimony here
11 today was that Ms. Diamond was -- was trying to bribe someone
12 to pass that contraband; correct?

13 A. Um-hum.

14 Q. Now, in the disciplinary report that you wrote up about
15 this incident, though, you did not make an allegation that
16 Ms. Diamond was trying to bribe anyone; correct?

17 A. Right.

18 Q. Is bribe -- trying to bribe someone a serious offense?

19 A. Yes.

20 Q. And if, in fact, someone was trying to bribe someone,
21 would you not put that into the report about that disciplinary
22 report?

23 A. Correct.

24 Q. Now, on the morning of October 31st, you personally did
25 not witness anything happening at Ashley Diamond's cell;

1 correct?

2 A. No.

3 Q. Everything you know about what happened, allegedly, on
4 that morning, you heard from someone else?

5 A. Right.

6 Q. You have no personal knowledge of what happened at all?

7 A. No, not with the sexual activity, no.

8 Q. Right. And you have not reviewed any videotape of that
9 particular incident; correct?

10 A. No.

11 Q. And you are aware that there are cameras in N-Dorm;
12 correct?

13 A. Yes.

14 Q. And are you aware that there is a camera that shows
15 Ms. Diamond's cell?

16 A. Yes.

17 Q. All right. And in the determination of the DR with
18 respect to the behavior on the morning of October 31st, 2020,
19 you're not aware that any video evidence was considered in
20 finding that to be guilty; correct?

21 A. No.

22 Q. As far as you know, the only evidence that was used to
23 sustain or find guilty that DR, was the statement by Officer
24 Brown; correct?

25 A. Correct.

1 Q. You testified here that at some point in time you came to
2 Ms. Diamond's cell and -- well, yeah, and you noticed that
3 there was a rag stuffed in the door; right?

4 A. Yes, sir.

5 Q. And you wrote a disciplinary report based on that
6 because -- I'm sorry -- you wrote a disciplinary report on
7 that.

8 MR. McCOY: And could we put up Plaintiff's
9 Exhibit 220, please.

10 BY MR. McCOY:

11 Q. Before I ask you about that, I am just going to ask you
12 about this document which has it attached, so. So, this is
13 what I'm showing you as Plaintiff's Exhibit 220. Can you tell
14 me if you recognize this document.

15 A. Yes.

16 Q. What is it?

17 A. It's the declaration.

18 Q. Your declaration?

19 A. My sworn statement, yes.

20 Q. And this is a declaration that you submitted in this case;
21 correct?

22 A. Yes.

23 Q. And if you'd scroll down to the second page, please. Or
24 to the -- actually to the third page. At the bottom there it
25 says, "I declare under penalty of perjury that the foregoing is

1 true and correct"; correct?

2 A. Correct.

3 Q. And that's your signature?

4 A. Yes.

5 Q. All right. And in this declaration, it references some
6 attachments in Paragraphs 12 and 13; correct?

7 A. Yes.

8 Q. And the -- I believe --

9 MR. McCOY: Scroll down to the attachment -- Diego,
10 down to -- this one.

11 BY MR. McCOY:

12 Q. So, this attachment is the disciplinary report that you
13 wrote with respect to the towel -- or the rag in the door;
14 correct?

15 A. Correct.

16 Q. Right. Now, in this disciplinary report, you wrote that,
17 "On the above date and time...", which is listed as
18 October 31st, 2020, at 10:15; correct?

19 A. Correct.

20 Q. "...I, Lieutenant Reeves, entered N-Building B-range...",
21 I'll represent to you that what is behind that marking is,
22 "Cell N-B-136," which is Ms. Diamond's cell; correct?

23 A. Correct.

24 Q. And, "...to see why the door will not secure." Who had
25 told you that the door would not secure that caused you to come

1 in at that time and look at the door?

2 A. I noticed myself when I packed her property.

3 Q. I see. And why were you trying to secure the door?

4 A. So no one else could go in.

5 Q. Why were you inventorying her property?

6 A. Because she was placed in Administrative Segregation.

7 Q. And what happened to the property after you inventoried
8 it?

9 A. I took it to Administrative Segregation and gave it to
10 her.

11 Q. So at that point in time, that cell was empty?

12 A. Yes, sir.

13 Q. So why was there a need to secure it?

14 A. So no one else could go in.

15 Q. Then you state in your statement that, "There was a white
16 rag stuffed in the corner of the door preventing the door from
17 securing"; correct?

18 A. Correct.

19 Q. And then you say, "Offender Diamond, Ashley," and her GDC
20 number, "is the only offender assigned to N-B-136 cell";
21 correct?

22 A. Correct.

23 Q. Right. Now, you never saw Ms. Diamond put a rag in the
24 door; correct?

25 A. Correct.

1 Q. And your only basis for -- for writing a DR that
2 Ms. Diamond put a rag in the door was because you found a rag
3 in the cell that happened to be assigned to her; correct?

4 A. Correct.

5 Q. And you've never seen any video that would show that
6 Ms. Diamond had put a rag in the door; correct?

7 A. Correct.

8 Q. And in the determination of this disciplinary report,
9 there was no video that was reviewed to see whether or not
10 there was a corroboration of whether or not Ms. Diamond put the
11 rag in the door; correct?

12 A. Correct.

13 Q. And you've testified before that we know that there's a
14 camera that shows Ms. Diamond's door; correct?

15 A. Correct.

16 Q. Was there any other basis to your knowledge of -- for the
17 finding of guilty for blocking the door for Ms. Diamond with
18 respect to this DR?

19 A. No.

20 Q. You testified that a maintenance person came and removed
21 the rag; correct?

22 A. Yes.

23 Q. What happened to the rag?

24 A. It was -- I guess it was thrown in the trash. He took it
25 with him.

1 Q. Wouldn't that rag have been evidence that would have been
2 part of the disciplinary report?

3 A. The evidence was the photo.

4 Q. But the rag could have been evidence, as well, of the
5 disciplinary report; right?

6 A. The photo was the evidence.

7 Q. Okay. So, yes, so the testimony is, is that you had the
8 rag, but no one thought to enter it into evidence as part of
9 the disciplinary report?

10 A. Um-hum, correct.

11 Q. Now, so, you testified that Officer Brown was the one that
12 originally came to the door, opened it, interacted with
13 Ms. Diamond and -- and Mr. Doe. Did Ms. Brown ever tell you
14 that she had noticed a white rag in Ms. Diamond's door?

15 A. No.

16 Q. Do you know whether or not -- as Officer Brown interacted
17 with Ms. Diamond and Mr. Doe, whether or not she operated
18 Ms. Diamond's cell door?

19 A. No. She told me that it wouldn't secure.

20 Q. She said that it wouldn't secure?

21 A. Yeah. She tried to secure the door.

22 Q. So -- but she didn't tell you that when she tried to
23 secure the door that she noticed the rag?

24 A. No.

25 Q. You testified that you didn't tell Ms. Brown what to put

1 into her report, but, um, you actually did instruct her to
2 write exactly what she saw on the disciplinary report; correct?

3 A. Correct.

4 Q. Are you aware that Officer Brown has submitted a
5 declaration similar to the one that you submitted in this case
6 that indicates that she can now no longer say that she saw
7 Ms. Diamond's penis in Mr. Doe's anus?

8 MR. SHAPIRO: Objection, Your Honor.

9 Mischaracterizes the testimony. And also she won't have any
10 awareness of that.

11 THE COURT: That was the question, whether she is
12 aware.

13 MR. McCOY: I asked her if she was aware of it.

14 THE COURT: I think the characterization is fair so
15 overruled.

16 (Court reporter read back requested portion of transcript
17 at 11:26 a.m.)

18 A. No, I wasn't aware.

19 BY MR. McCOY:

20 Q. Lieutenant Reeves, if you caught an inmate masturbating in
21 front of -- or to another inmate or staff, would that be a
22 grounds for a sexual behavior DR or an indecent exposure DR?

23 A. Yes.

24 Q. Um, one of the offenses that Ms. Diamond was accused of
25 during this particular incident was "solicitation of sex";

1 correct?

2 A. Correct.

3 Q. Are you aware of any evidence that would have supported
4 that DR?

5 A. No, it was just basically off of what the officer said she
6 saw.

7 Q. Similarly, for the charge of indecent exposure, there was
8 no other evidence other than the statement of Officer Brown;
9 correct?

10 A. Correct.

11 Q. And what evidence was it that supported a charge of
12 indecent exposure?

13 A. It was basically what the officer saw.

14 Q. Which was what?

15 A. That she saw them having sex.

16 MR. McCOY: Actually, I think I will conclude for
17 now.

18 THE COURT: Any redirect?

19 MR. McCOY: You can take that exhibit down, too.

20 MR. SHAPIRO: Lieutenant Reeves, I have just a few
21 very brief follow-up questions for you.

22 REDIRECT EXAMINATION

23 BY MR. SHAPIRO:

24 Q. You've testified that you're aware that there is a camera
25 that is directed on the outside of Ashley Diamond's cell; is

1 that correct?

2 A. Correct.

3 Q. Do you know whether that camera is able to record inside
4 Ms. Diamond's cell?

5 A. I really don't know.

6 Q. Okay. Now, you've also testified this morning that
7 inmates are allowed to have personal items like pictures and
8 letters; is that right?

9 A. Correct.

10 Q. So could you describe for us what prison rule was violated
11 that led to the disciplinary report for the unauthorized giving
12 of contraband that was issued to Ms. Diamond.

13 A. When you're dealing with legal mail, personal paperwork
14 cannot be passed with legal mail.

15 Q. Are offenders allowed to request from officers to pass
16 notes to one another?

17 A. No.

18 Q. Would that be a violation of prison rules?

19 A. Yes.

20 Q. Thank you very much, Lieutenant Reeves.

21 THE COURT: Hang on just a second. Let me be sure I
22 understand. Can an inmate give to another inmate personal
23 items like photographs?

24 THE WITNESS: No.

25 THE COURT: So was that the basis for the DR here?

1 THE WITNESS: Yes.

2 MR. McCOY: I'm sorry, what was the answer?

3 THE COURT: "Yes."

4 All right. Anything further for Lieutenant Reeves?

5 MR. McCOY: Just one thing.

6 RE CROSS EXAMINATION

7 BY MR. McCOY:

8 Q. Can we pull up the exhibit that has the Plaintiff's -- I
9 think it's 220. The one -- the declaration. Now, legal mail
10 is mail that is intended to go to lawyers; correct?

11 A. Right.

12 Q. Could you scroll down, please, to the last attachment.
13 So, the material -- are you aware of what the materials were
14 that constituted what is described as legal mail?

15 A. It was a love note and pictures of herself. That was the
16 personal stuff that was not legal. She had some court
17 documents, but the personal note and the pictures of herself
18 wasn't the legal mail.

19 Q. Were -- did you see the court documents themselves?

20 A. Yes, sir.

21 Q. Then you would have seen that those court documents were
22 actually Mr. Doe's documents related to a *habeas* petition that
23 he was wanting to file; correct?

24 A. Yes.

25 Q. So, um, so those materials were (pseudonym inserted)

1 Mr. Doe's -- or I'm sorry, Mr. Doe's material?

2 A. Yes.

3 Q. And Ms. Diamond was returning those materials to Mr. Doe;
4 correct?

5 A. She attempted to, yes.

6 Q. All right. So, Ms. Diamond was not attempting to send
7 legal mail when she gave those and asked that they be given to
8 Mr. Doe; correct?

9 A. I don't know what the intentions were, but it was personal
10 stuff, like personal love notes, in the paperwork that she was
11 trying to give.

12 Q. So you've characterized it as -- as love notes. But it
13 was a personal picture; right?

14 A. Love notes and personal pictures.

15 Q. Okay. And so -- but if -- inmates are allowed to have
16 that material; correct?

17 A. Yes.

18 Q. And inmates are also allowed, for instance, to have
19 materials like a *habeas* petition; correct?

20 A. Correct.

21 Q. And so -- and -- but your testimony is, is that it is not
22 proper for -- for Ms. Diamond to have been returning those
23 papers to Mr. Doe?

24 A. It is not proper for you to pass things from one cell to
25 another. She can have personal items, such as personal love

1 notes, personal photos, but you can't pass contraband back and
2 forth between cells.

3 Q. Is a *habeas* petition contraband?

4 A. No.

5 Q. And inmates are allowed to have, for instance, a *habeas*
6 petition; right?

7 A. Correct.

8 Q. So -- okay. That's fine.

9 THE COURT: Lieutenant Reeves, you may step down.
10 Thank you.

11 You may call your next witness.

12 (Witness stepped down at 11:35 a.m.)

13 MR. CHALMERS: Warden Benton, Your Honor.

14 COURTROOM DEPUTY: Do you solemnly swear that your
15 testimony in this case shall be the truth, the whole truth, and
16 nothing but the truth, so help you, God?

17 THE WITNESS: I do.

18 COURTROOM DEPUTY: You can be seated.

19 THE COURT: Warden Benton, as you have heard me say,
20 remember that you are under oath, and if you testify falsely,
21 you could be prosecuted for perjury.

22 THE WITNESS: Yes, Your Honor.

23 COURTROOM DEPUTY: Sir, can you state your name for
24 the record.

25 THE WITNESS: Brooks L. Benton.

1 COURTROOM DEPUTY: Thank you.

2 WARDEN BROOKS L. BENTON

3 called by Defendants at 11:35 a.m., having first been duly
4 sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. CHALMERS:

7 Q. Good morning, Warden Benton.

8 A. Good morning.

9 Q. You are the warden at Coastal State Prison?

10 A. I am.

11 Q. And how long have you had that position?

12 A. Approximately -- well, it will be two years in July.

13 Q. Okay.

14 A. Assigned at that prison.

15 Q. Have you functioned or served as warden at other
16 institutions?

17 A. Yes, I have.

18 Q. Which ones?

19 A. Lee Arrendale State Prison. I was assigned there for two
20 years. Whitworth Women's Facility. I was assigned there as
21 warden for four years.

22 Q. Okay. How long have you been with the Georgia Department
23 of Corrections all together?

24 A. November of this year will be 28 years.

25 Q. Okay. Warden Benton, you heard testimony just a moment

1 ago about whether passing love letters or photos from one cell
2 to another, from one offender to another, is a violation of
3 prison rules.

4 A. Yes.

5 Q. Is it?

6 A. Yes, it is.

7 Q. Is it a violation of prison rules for an offender to have
8 photographs in his or her own cell?

9 A. No, it is not.

10 Q. Is it a violation for an offender to have or possess
11 letters in his or her own cell?

12 A. No, it is not.

13 Q. But when an offender tries to send letters or send photos
14 or items of that type to another offender, is that a violation?

15 A. Yes, it is.

16 Q. Warden, are you familiar with the various functional areas
17 at Coastal State Prison? By that I mean Mental Health,
18 Medical, all the different operations of the facility?

19 A. Yes, I am.

20 Q. And overall, you have general oversight of all of those
21 functions?

22 A. Yes, I do.

23 Q. And I -- I only listed a few, but would those also include
24 the basic security functions for the institution?

25 A. Yes, sir.

1 Q. Ashley Diamond, we know, was sent to Coastal State Prison
2 in June of 2020.

3 A. Correct.

4 Q. Were you involved in deciding that Ms. Diamond would be
5 placed at Coastal State Prison?

6 A. No, I was not.

7 Q. How were you informed that she would be placed at Coastal
8 State Prison?

9 A. I received a telephone call from the division director of
10 the Georgia Department of Corrections, Mr. Robert Toole,
11 informing me that Ashley Diamond would be assigned to my
12 institution.

13 Q. Were you -- after that phone call, were you involved in
14 deciding where at Coastal State Prison Ms. Diamond would be
15 housed?

16 A. Yes, I was.

17 Q. And can you explain that.

18 A. Mr. Toole and myself had a conversation in reference to
19 where I would think would be the best place for Ms. Diamond,
20 and it was determined N-Building would be the best location.

21 Q. Has Ms. Diamond remained assigned to N-Building for
22 essentially all of her time at Coastal State Prison?

23 A. Yes.

24 Q. Has she remained in the same cell for the most part for
25 her time at Coastal State Prison?

1 A. For the most part. Except when she first arrived, she was
2 in N-A, the dorm next to it, a dorm over.

3 Q. Okay. And the cell that she has occupied for most of her
4 time, how was that cell selected?

5 A. That cell was selected because it was the first cell as
6 you walk into the dormitory. I have multiple transgenders
7 assigned to my facility, and one of my rules were to place all
8 my transgenders, no matter what location they -- what living
9 unit they lived in, to put them in the front of the dorm. The
10 front of the building. And also with this particular case,
11 Mr. Toole had a hand in that, as well.

12 Q. Okay. It was for security reasons?

13 A. Yes.

14 Q. For safety reasons?

15 A. Yes.

16 Q. For Ashley Diamond's safety and security?

17 A. Yes.

18 Q. Warden Benton, you have heard a lot of discussion about
19 video over the course of the last day and a half.

20 A. Yes.

21 Q. You're aware there's cameras installed in the N-Building?

22 A. Yes, I am.

23 Q. Are there cameras inside of the offenders' cells?

24 A. No, there is not.

25 Q. Are the cameras positioned in such a way that they will

1 record everything that occurs in a prisoner's cell?

2 A. Yes, these cameras, yes.

3 Q. We want to be clear about my question. Are the cameras
4 positioned in such a way that they will record things that
5 occur inside the prison cell?

6 A. No, I apologize. No, sir. No, sir, there's no cameras in
7 the living cells of the dormitory.

8 Q. Okay. And let me ask you another question. With respect
9 to the cameras that are positioned in the dormitory, does
10 Georgia Department of Corrections keep a running stock of every
11 bit of footage from the beginning, when a prisoner enters
12 incarceration, until the time they were released from prison?

13 A. No, sir, they do not.

14 Q. Ms. Diamond has testified in the course of this hearing
15 that 90 percent of the offenders in the N-Building are sex
16 offenders. Do you know that to be accurate?

17 A. No, sir.

18 Q. Ms. Diamond has testified in the course of this proceeding
19 that she was assaulted in July, September, and then October of
20 2020. Have you become aware at any time of the substantiated
21 allegation that assaults occurred?

22 A. No, sir.

23 Q. Have you been aware, have you had personal knowledge in
24 any other way, other than through Ms. Diamond's reports, that
25 she has been assaulted?

1 A. I try to stay in contact with Ms. Diamond as much as I
2 can, with the daily operations that I'm over. When I enter her
3 building, I speak with her as well as all the other offenders.
4 I don't go out of my way to speak to Diamond, but I do go to
5 the building to do my inspections. And because she is right
6 there at the front door, when she's there and not on her
7 working detail, I speak with her.

8 Q. And in the course of her time at Coastal State Prison,
9 have you learned or have you become aware of information that
10 she actually has been sexually assaulted?

11 A. Yes.

12 Q. What is that?

13 A. Um, from time to time, Ms. Diamond would -- would come to
14 me, and based on the PREA allegations as well, that's how I
15 became aware, as well, through the PREA allegations. But
16 sometimes when myself and Diamond are in communication, she
17 would tell me: Warden, did you know that So-and-so did this
18 and did this. And I would tell her, no, I am not aware.

19 And I would ask, did you file a PREA? And so I don't
20 remember each time that -- whether or not she said she did or
21 she did not. But we would have conversations to that -- um, to
22 that area.

23 And she would give me -- she would provide me information,
24 daily information, when I see her about what's going on in the
25 dormitory and what she's doing and what the other offenders are

1 doing or not doing.

2 Q. Did you ever learn through any of your conversations that
3 Ms. Diamond actually had been assaulted?

4 A. No. I have not.

5 Q. The cell doors in the N-Building, do they function in the
6 way that they are supposed to function?

7 A. Not all the time.

8 Q. What do you mean by that?

9 A. There's two -- there's mainly two ways that you can secure
10 the doors in N-Building. One way is by closing the door
11 directly, manually, and then securing. Another way is by a key
12 that you use to secure the upper -- upper panel. When the door
13 is shut, you turn that key, and it secures the door.

14 Q. Okay. Ms. Diamond has testified that she's been forced to
15 live in her cell with a door that does not secure. Is that
16 testimony accurate?

17 A. It -- it's not accurate. But any time that Ms. Diamond
18 has made an allegation that her door does not secure properly,
19 Maintenance has been called in. Every single time that I am
20 aware. If she makes an allegation that her -- there's
21 something wrong with her door or her cell, I contact the deputy
22 warden of security, contact -- we contact Maintenance
23 immediately. To address any concerns.

24 Q. Okay. N-Building is not what is sometimes referred to as
25 a lockdown dormitory; is it?

1 A. No, sir, it is not.

2 Q. Is -- does that mean that there are times during the day
3 when the cells can remain unlocked?

4 A. Yes, sir, there is.

5 Q. What are the times in a day, in a 24-hour period, when the
6 cell doors in N-Building can remain unlocked by prison rules?

7 A. The doors -- the doors mainly stay open throughout the
8 day.

9 Q. Okay.

10 A. Throughout the day. They are secured in the evening
11 hours, at lockdown, 11:00 o'clock. The doors are supposed to
12 be secured at that time.

13 Q. And is there a process by which a dorm officer checks to
14 see if the doors are secured at the times when they should be
15 secured?

16 A. When the officer does their rounds, they're supposed to
17 walk around, checking the doors to make sure that they are
18 secured at night. Does it happen? I am not -- I can't
19 100-percent say it does on a daily basis. And that's just
20 being honest.

21 Q. But your -- your prison rules and your operational
22 requirements for your dorm officers is that they do that?

23 A. Yes.

24 Q. You heard Ms. Diamond testify that she is currently at
25 Coastal State Prison, currently incarcerated on what she

1 referred to as a technical parole violation?

2 A. Yes.

3 Q. You're aware that if a prisoner believes that his or her
4 confinement is unlawful, they can file a lawsuit, a *habeas*
5 petition, asking to be released from prison?

6 A. Correct.

7 Q. Generally a warden is named as the defendant in that case;
8 correct?

9 A. Correct.

10 Q. Has Ms. Diamond sued you saying her confinement is
11 unlawful?

12 A. No, she has not.

13 MS. EZIE: Objection, relevance.

14 THE COURT: Overruled.

15 BY MR. CHALMERS:

16 Q. As far as you know, whatever the technical violation was,
17 it is a lawful basis for the revocation of her probation?

18 A. Correct.

19 Q. Let me ask you about a few other rules. What is the rule
20 on entering another offender's cell?

21 A. It is not supposed to happen. It is against the rules.
22 If you are not assigned to that cell, you are not supposed to
23 enter another person's cell that you are not assigned to.

24 Q. When you and Mr. Toole decided that a safe dormitory for
25 Ms. Diamond at Coastal State Prison would be N-Building, when

1 you decided that she ought to be placed at the front of the
2 dormitory for better security and safety, did you have in mind
3 that she would regularly be entering and exiting the cells of
4 other offenders?

5 A. No, sir.

6 Q. Did you anticipate that she would disregard that rule of
7 entering and exiting the cells of other offenders?

8 A. I did not. I was not aware that she would disregard that.
9 Now, I have had numerous conversations with Ms. Diamond in
10 reference to her safety and security, and I have had numerous
11 conversations explaining to her not to go into another person's
12 cell or not to allow inmates in her cell. It's a one-person
13 cell assigned solely for her, to her.

14 Q. Ms. Diamond testified that there was a period of time
15 where another inmate was assigned to her cell at Coastal State
16 Prison. Are you aware of that?

17 A. I was not aware of that.

18 Q. Have you made an effort to ensure that Ms. Diamond is, in
19 fact, the only occupant of the cell that she is assigned to?

20 A. Yes. I periodically review the camera, and I told
21 Ms. Diamond this as well, that there's an eye in the sky. And
22 I told her that I periodically -- I do not review the camera
23 daily. I do not. But periodically, I will pull up the camera
24 footage and rewind and see what was going on in the dormitory.
25 Not just on the camera that's facing her cell, but there's

1 other cameras in the dorm, as well. And so I'm looking at the
2 other offenders, as well.

3 Q. Have you seen footage of offenders entering -- other than
4 Ms. Diamond, other offenders in N-Building entering
5 Ms. Diamond's cell?

6 A. Yes, I have.

7 Q. We've heard testimony from and about another offender that
8 we're referring to as John Doe. Have you seen footage of John
9 Doe entering Ms. Diamond's cell?

10 A. Yes, I have.

11 Q. Let me ask you about some other types of prison rules.
12 And I'd like to know if these are merely technicalities, as
13 Ms. Diamond describes her parole revocation, or if they are
14 meaningful rules. Possession of a cell phone, is that
15 prohibited in prison?

16 A. No, it is against the rules.

17 Q. If an offender is found to be in possession of a cell
18 phone, will the offender be issued a DR?

19 A. Yes.

20 Q. Okay. Possession of other types of contraband, is that
21 permitted in a prison?

22 A. No, it is not.

23 Q. If an offender is found with contraband, will that person
24 be issued a DR?

25 A. Yes.

1 Q. Having a maintenance worker or an orderly or someone else
2 come into your cell to clean it, as Ms. Diamond has said, is
3 that permitted by prison rules?

4 A. No, it is not.

5 Q. And can that lead to a DR?

6 A. Yes. It could.

7 Q. Tampering with a lock? Cells -- cell doors need to
8 function when they are supposed to be locked. Tampering with a
9 lock, would that be a violation of prison rules?

10 A. Yes, it would.

11 Q. And is it something that, if you learn of it or if your
12 officers learn of it, they would issue a DR for it?

13 A. Yes, they would.

14 Q. Insubordination, calling a general population counselor a
15 "Big Bootie Judy," even that?

16 A. Against the rules.

17 Q. Running into a counselor, pushing past somebody and making
18 physical contact with an officer or a staff member or a
19 counselor? Do you allow offenders to do that?

20 A. No, sir. We do not.

21 Q. What's the big deal? Why don't you just let that slide
22 once in a while?

23 A. The big deal is, offenders are told when a counselor or
24 when a staff member is in close proximity of you, you are
25 supposed to stand there until that staff member clears you--

1 meaning, walk past you and is away from you--before you move.

2 All inmates in the facility has been -- have been given
3 direct orders by procedure, by policy, to -- when a staff
4 member walks past, you get out of the way basically. You stand
5 still until they move.

6 When myself or my inspection team enters the yard or on
7 the compound, they come to the position of attention, and they
8 stay there until we walk past and leave the area.

9 Q. You expect Ms. Diamond to follow these rules?

10 A. Yes. Yes.

11 Q. Do you enforce these rules unevenly as to Ms. Diamond,
12 just because she's a transgender offender?

13 A. No, I do not. I have 13 other transgenders that follow --
14 that have to follow the same rules.

15 Q. Unauthorized presence? Is that something that's a
16 violation of prison rules?

17 A. That is a violation.

18 Q. If it's found to have occurred, would your officers issue
19 a DR?

20 A. Yes. They would.

21 Q. Can we bring up Defendants' Exhibit 7, please. Warden
22 Benton, I am showing you what we have marked as Defendants'
23 Exhibit 7. Can you see this document?

24 A. Yes.

25 Q. Do you recognize it?

1 A. Yes.

2 Q. What is it?

3 A. It's -- it appears to be a DR history sheet.

4 Q. Okay. At the bottom there's a line with some data, and to
5 the far right of that the date 4-26-21. Do you see that?

6 A. (No response.)

7 Q. You may not be able to fully see it on your screen.

8 A. Yes, yes, I do.

9 Q. Is that the date on which the document was printed or
10 generated?

11 A. Yes, it was.

12 Q. Okay. So as of this date, the -- is it correct that
13 the -- that the disciplinary numbers are the DRs that had been
14 issued to Ashley Diamond?

15 A. Yes.

16 Q. I want to look -- direct you to the first entry from the
17 Year 2020, so it's 10-31-2020, and it's DR 866981. Do you see
18 that?

19 A. Yes.

20 Q. And then if you count up from that -- below that point in
21 time, the entry dates are July, 2015, and earlier in time.

22 A. Yes.

23 Q. Do you understand that's a prior period of incarceration
24 for Ms. Diamond?

25 A. Yes.

1 Q. So those DRs that are dated 10-31-2020 and forward in time
2 would be DRs that she's received in this period of her
3 incarceration?

4 A. Yes.

5 Q. Okay. Are you -- are you aware of any retaliation against
6 Ashley Diamond by anyone at Coastal State Prison?

7 A. No, I am not aware.

8 Q. Are you aware of any information that the DRs that
9 Ms. Diamond has been issued at Coastal State Prison are based
10 on retaliation?

11 A. No, I am not aware.

12 Q. Are you aware of any information that DRs have been issued
13 to her based on animosity to her transgender status?

14 A. No. I am not aware.

15 Q. To your knowledge, are any of the DRs that Ms. Diamond has
16 been issued, issued as retaliation rather than as response to
17 the conduct that's charged in the DR?

18 A. No, sir.

19 Q. There are, as you have heard and you may know, more recent
20 DRs that Ms. Diamond has received in April of 2021; correct?

21 A. Yes, sir.

22 Q. We saw the other day some video footage taken of an escort
23 from -- of Ms. Diamond. Do you recall that?

24 A. Yes, sir.

25 Q. And do you recall there's a suggestion that the -- that

1 the video footage cut off right before the exchange with
2 Counselor Moore?

3 A. Yes, sir.

4 Q. Okay. Why is there video footage of that type?

5 A. We decided to -- I decided to video the whereabouts of
6 Ms. Diamond, just escort only, because of the many allegations
7 and, um, just trying to make sure that she was secured, um, and
8 there was no incidents involving her.

9 So, when she leaves the building, I instructed my security
10 team to have a camera on from Point A to Point B. When she
11 gets to those locations, then they shut the camera off.

12 Ms. Diamond works -- I -- Ms. Diamond asked me for a
13 detail because she was in the dorm. She was a dorm orderly for
14 a while, and she would ask me for a detail to get her out of
15 the building so she can do something. Um, I agreed and made
16 her an outside orderly responsible for in front of N-Building,
17 keeping that area clean, keeping my flower beds looking good,
18 free from weeds and overgrowth. And she done a great job at
19 that position. I told her as long as she stays where she's
20 supposed to be, that she will maintain that detail.

21 Q. Okay. So the video we looked at the other day was a video
22 of one of those escorts?

23 A. Yes, sir, it was.

24 Q. When we see Ms. Diamond and Mr. Orr, I believe she
25 identified, unlock the gate and they go through the gate, are

1 they in the area, the secured area of the N-Building?

2 A. Yes, they are.

3 Q. At that time of day, we know it was -- we don't know what
4 time, but it was daylight obviously?

5 A. Yes, sir.

6 Q. At that time of day, would that be a lockdown time of day
7 for the dormitory?

8 A. No, sir, it would not be.

9 Q. So would the officer necessarily be escorting Ms. Diamond
10 all the way into her cell?

11 A. No, sir.

12 Q. She would be free to move about the N-Building once she
13 returns to the N-Building; correct?

14 A. Yes, she would.

15 Q. Let me be clear, she wouldn't be free to go into another
16 offender's cell, but she could move about the building itself?

17 A. Correct, correct. The common areas we call it: The day
18 room, outside her cell, outside the building right there in
19 front of the building where her detail is.

20 So when the camera is shut off, I didn't see any -- any
21 issue with that, because Diamond was walking inside the door.
22 The officer could have shut the camera off right when they
23 walked through the gate, and it would have been sufficient
24 because Diamond was back at her building.

25 Q. Warden Benton, we've heard testimony about release dates

1 reflected on documents for Ms. Diamond and PIC credits. Have
2 you tampered with Ms. Diamond's PIC credits or release date in
3 any way?

4 A. No, sir.

5 Q. To your knowledge, has anyone at Coastal State Prison done
6 that?

7 A. No, sir.

8 Q. Do you have any desire or interest in prolonging
9 Ms. Diamond's stay at Coastal State Prison for some reason?

10 A. No, sir. Ms. Diamond knows that as well.

11 Q. Warden Benton, we've heard that Ms. Diamond has complained
12 from time to time about strip searches that occur on the
13 facility.

14 A. Yes, sir.

15 Q. Are there sometimes searches of offenders performed?

16 A. Yes, sir.

17 Q. Are sometimes strip searches performed?

18 A. Yes, sir.

19 Q. When performed on Ms. Diamond, is that a violation of GDC
20 policy?

21 A. No, sir.

22 Q. Are your officers trained on how to conduct a strip
23 search?

24 A. Yes, sir.

25 Q. And are they trained on how to do a general search of an

1 offender?

2 A. Yes, sir.

3 Q. And is it your expectation and your experience that your
4 officers try to follow those training guidelines?

5 A. Yes, sir.

6 Q. Warden Benton, based on the exhibit that is up before you,
7 Defendants' Exhibit 7, what is the -- at least as of April 26,
8 2021, what is the number of DR reports, or DRs, that were
9 issued to Ms. Diamond?

10 A. Five.

11 Q. And you're looking at the DRs starting with the first
12 entry for October 31, 2020, and then going up to the most
13 recent DR on this sheet for February 22, 2021?

14 A. Yes, sir.

15 Q. And so as of April 26, 2021, Ms. Diamond has been issued
16 five DRs?

17 A. Yes, sir.

18 Q. Now, within a DR, there could be more than one charge;
19 correct?

20 A. Yes, sir.

21 Q. So if you go over to the Charge and Final Disposition
22 Column, for example, there is at least one within those, and
23 that's the very first October 31, 2020, DR that had multiple
24 charges?

25 A. Yes, sir.

1 Q. Okay. But as far as the disciplinaries themselves, the
2 report that's issued, there have been five as of April 26?

3 A. Correct.

4 Q. Thank you, Warden Benton.

5 A. You're welcome.

6 MS. EZIE: Your Honor, can I just briefly recess to
7 use the restroom?

8 THE COURT: Pardon?

9 MS. EZIE: Can I just briefly recess for a restroom
10 break? Five minutes?

11 (Counsel stepped out at 12:03 p.m.)

12 THE COURT: Mr. Chalmers, any other witnesses?

13 MR. CHALMERS: I was looking to see. We do, Your
14 Honor, we have two more.

15 MR. SHAPIRO: Three more.

16 MR. CHALMERS: Three more. We have -- the last three
17 that are on our list are Grace Atchison, Ahmed Holt, and Samuel
18 Miller.

19 THE COURT: All right. We will finish with the
20 warden and then take a lunch break.

21 MR. CHALMERS: Okay.

22 (Counsel returned at 12:05 p.m.)

23 CROSS EXAMINATION

24 BY MS. EZIE:

25 Q. Good morning, Warden Benton.

1 A. Good morning.

2 Q. Now, just before the recess, you were asked whether
3 Ms. Diamond has been issued more than five DRs; is that
4 correct?

5 A. Yes. Based on the April 26.

6 Q. Yes. And so for purposes of that testimony, you were
7 relying on the document that I believe is Plaintiff's
8 Exhibit 5.

9 MS. EZIE: Can we pull that up, please.

10 MR. CHALMERS: It's Defendants' 7, Your Honor, is
11 what we were referring to.

12 MS. EZIE: Will you agree this is the same document?

13 MR. CHALMERS: Um-hum.

14 BY MS. EZIE:

15 Q. Now, this document shows that Ms. Diamond did not receive
16 any disciplinary reports at Coastal State Prison or since her
17 return to custody before the 10-31-2020 DR at Coastal; is that
18 correct?

19 A. I'm sorry, can you repeat that.

20 Q. Sure. Based on this document, is it fair to say that
21 Ms. Diamond had not received a series of disciplinary reports
22 at Coastal prior to October, 2020; correct?

23 A. Correct.

24 Q. October, 2020, is the first time that Ms. Diamond began
25 receiving disciplinary reports at Coastal?

1 A. Correct.

2 Q. Okay. And you see here that there are five reports, um,
3 that, um, you're aware of at least based on this document;
4 right?

5 A. Correct.

6 Q. Your testimony today isn't that Ms. Diamond hasn't
7 received countless other disciplinary charges; is it?

8 A. She has. She has received other disciplinary reports, but
9 due to procedural error, they did not go through.

10 Q. Okay. So Ms. Diamond has not just received five or six
11 disciplinary charges at Coastal; correct?

12 A. By this document, she has. But overall, no.

13 Q. To your knowledge, she's received --

14 A. Correct.

15 Q. -- more than ten?

16 A. I don't know the actual count, but I do know that she has
17 received other DRs that are not listed here that was dismissed
18 due to procedural error.

19 Q. Okay. So Ms. Diamond has received a number of
20 disciplinary charges at Coastal that has been dismissed for
21 procedural errors; correct?

22 A. I wouldn't say "a number," but -- yes, I would say a
23 number, but not -- not a large number.

24 Q. Okay. If I testified today -- or if I indicated to you
25 today that Ms. Diamond has received 20 disciplinary charges, to

1 your knowledge would that number seem accurate?

2 A. No.

3 Q. Would you like us to go over them one by one?

4 A. I sure would.

5 Q. Alrighty.

6 MS. EZIE: Can you please take us to Plaintiff's
7 Exhibit 195. Okay. Can you turn to Page 2 of that document.

8 BY MS. EZIE:

9 Q. Do you see here, Mr. Benton, that this is what's titled a
10 "Disciplinary Report"?

11 A. Yes.

12 Q. It was issued to Ms. Diamond?

13 A. Yes.

14 Q. And the date of this report, um, indicates that it was
15 issued while she was at Coastal State Prison; correct?

16 A. Yes.

17 Q. Um, this is one of the, um, disciplinary reports that
18 presumably was thrown out; correct?

19 A. Yes.

20 Q. Okay. Why don't we go ahead and look at, um, Exhibit --
21 Plaintiff's Exhibit 199. Does that exist? Yes, okay. Do you
22 see that this, Mr. Benton, is another disciplinary report at
23 Coastal?

24 A. Yes.

25 Q. It indicates that a broken wooden pencil was observed on,

1 I believe, Ms. Diamond's floor.

2 A. Yep.

3 Q. This was issued while Ms. Diamond was at Coastal State
4 Prison?

5 A. Yes.

6 Q. Is this another disciplinary report that, to your
7 knowledge, was thrown out for procedural errors?

8 A. Yes.

9 Q. Can we turn to the next page. Um, Mr. Benton, do you see
10 that this is another disciplinary report that Ms. Diamond was
11 issued at Coastal State Prison?

12 A. Yes.

13 Q. This one indicates "failure to follow"; is that accurate?

14 A. Yes.

15 Q. Is this another charge that, to the best of your
16 knowledge, was thrown out for one error or another?

17 A. Yes.

18 Q. Can we turn to Exhibit 209. Is this a DR that was issued
19 to Ms. Diamond at Coastal State Prison?

20 A. Yes.

21 Q. Okay. And it was issued to Ms. Diamond, um, let's see, it
22 says for "unauthorized use of social media"?

23 A. Yes.

24 Q. Okay. Is this, um, a DR that you, um, know the
25 disposition of as of -- as of today?

1 A. No, I do not.

2 Q. Okay. Shall we keep going or do you have -- are you
3 comfortable stating at this time that there have been more than
4 several disciplinary charges that Ms. Diamond's received in
5 excess of the five that we discussed earlier?

6 A. Yes.

7 Q. Now, um, one of the disciplinary charges that was
8 sustained -- if we return to Plaintiff's Exhibit 5 -- I believe
9 was a charge that Ms. Diamond engaged in exposure, exhibition,
10 sexual behavior -- and sexual behavior; is that fair?

11 A. Yes.

12 Q. Are you familiar with this DR?

13 A. Yes, I am.

14 Q. How much -- how many -- how much evidence was supporting
15 this DR at the time it was sustained?

16 A. The factual statement from the officer and the video
17 footage showing the offender going in and out of Ms. Diamond's
18 room through a period of time.

19 Q. Why don't we turn, um, to that disciplinary report now,
20 which I believe is Plaintiff's Exhibit 197. Okay. I am going
21 to direct you onto the first page. This is the statement that
22 you were referencing when you referenced the statement of the
23 officer; correct?

24 A. Yes.

25 Q. That's the statement of Officer Courtney Brown?

1 A. Yes.

2 Q. She is the only person who claims to have been an
3 eyewitness to this event; correct?

4 A. Correct.

5 Q. And you are aware that she's modified her statement since
6 providing it on October 31st; correct?

7 A. Yes.

8 Q. Okay. Why don't we look to the final page of that -- I'm
9 sorry --

10 MS. EZIE: I apologize. If you're able to get
11 Exhibit 197 back up.

12 BY MS. EZIE:

13 Q. I was hoping we could turn to the final disposition page.
14 Okay. So, now referencing this -- this is the final
15 disposition on that disciplinary charge; correct?

16 A. Yes.

17 Q. You can take your time and read it if you'd like, but does
18 this statement reference any video?

19 A. No.

20 Q. Okay. So is it fair to say that at the time this
21 disciplinary charge was sustained, it was sustained on
22 Ms. Brown's statement and her statement alone?

23 A. Correct.

24 Q. Okay. And the video that you referenced does not show
25 Ms. Doe -- Mr. Doe or Ms. Diamond engaging in a sexual

1 activity?

2 A. Correct.

3 Q. Now, you've testified today, Warden Benton, that it seems
4 as though you take a strong view against retaliation; correct?

5 A. Correct.

6 Q. Do you also believe that disciplinary reports and
7 procedures should be fair and -- fair as far as you can tell
8 from an adjudicative standpoint?

9 A. Correct.

10 Q. If you became aware that an inmate had been convicted of a
11 disciplinary charge based on a statement that had been reported
12 to be false or had been modified, would it be appropriate to
13 take action?

14 A. It would.

15 Q. Okay. Has anything been done to remove this disciplinary
16 charge from Ms. Diamond's record as of today's date?

17 A. It has not.

18 Q. Are those actions that you have the authority to take as
19 the warden of Coastal State Prison?

20 A. I have the authority to recommend, yes.

21 Q. Okay. You have made no recommendation to do that?

22 A. I have not based on the -- the multiple charges.

23 Q. The multiple charges, being what exactly?

24 A. On the DR. Exposure. The officer said she witnessed the
25 clothing below the buttocks, below the waist, exposing the

1 rear.

2 Q. That's in the same statement that she has since modified;
3 correct?

4 A. I am not aware of that. Her witness statement.

5 Q. Would you like to see her witness statement today?

6 A. Let me finish reading this DR first. Please. And then,
7 yes, I would love to see that. Yes, ma'am.

8 Q. Let me state it this way, Mr. Benton. In providing this
9 statement, was Ms. Brown being called upon to provide truthful
10 and accurate testimony?

11 A. She was.

12 Q. If a portion of the statement was inaccurate, would you --
13 would you use it as a basis of a disciplinary charge?

14 A. I would use it as a basis to open up an investigation
15 based on what she said or what she changed.

16 Q. Okay. Did you open up an investigation about this
17 disciplinary report?

18 A. Excuse me?

19 Q. To see whether in fact it is accurate?

20 A. Did I open up an investigation? Yes, the investigation of
21 the DR, yes.

22 Q. Subsequent to this conviction.

23 A. After the conviction, no, I did not.

24 Q. Okay.

25 A. But the DRs are reviewed.

1 Q. You are supposed to review the dispositions for accuracy;
2 correct?

3 A. Yes, my staff is, yes.

4 Q. And to date, you have taken -- undertaken no steps to
5 review this DR for accuracy -- for further accuracies or
6 inaccuracies based on changes to witness statements?

7 A. I have not.

8 Q. We can move on. I would like to just quickly address, um,
9 Coastal State Prison. It is a Level II facility within the GDC
10 terminology; correct?

11 A. Yes, it is. Special missions.

12 Q. Okay. So you don't provide Level III services at your
13 prison?

14 A. No, ma'am, we do not.

15 Q. So typically if an inmate is classified as a Mental Health
16 Level III by their health care providers, they have to be
17 transferred to an appropriate facility; correct?

18 A. Correct.

19 Q. And away from Coastal; correct?

20 A. Yes.

21 Q. Okay. Now, you testified earlier today that the
22 determination to place Ms. Diamond in the evidence-based
23 dormitory was because you had determined that was the dormitory
24 that was safest for Ms. Diamond?

25 A. Correct.

1 Q. Okay. So there's no other place within Coastal State
2 Prison that you would recommend Ms. Diamond be housed; is that
3 fair?

4 A. No.

5 Q. You think that any other place would be even more likely
6 to be unsafe for Ms. Diamond?

7 A. I -- yes, that's my personal opinion.

8 Q. Okay. So if the evidence-based dormitory was not an
9 appropriate placement for Ms. Diamond, you would support her
10 being recommended for a safety transfer away from Coastal; is
11 that correct?

12 A. You said "if"?

13 Q. If being placed at the evidence-based dormitory was no
14 longer appropriate for Ms. Diamond, her next option would be to
15 be referred for a safety transfer?

16 A. No, not necessarily. We -- I would, um, converse with my
17 supervisor, and we would get together and talk about, um, what
18 would be a safe place for her.

19 Q. But there's no place within Coastal State Prison that you
20 can identify that would be more appropriate than the
21 evidence-based dorm?

22 A. At this time, I do not.

23 Q. Okay. Now, it's fair to say that since being housed at
24 the evidence-based dormitory, Ms. Diamond has made a number of
25 PREA complaints; is that fair?

1 A. Correct.

2 Q. She has made them verbally to staff; correct? She's made
3 PREA complaints verbally?

4 A. To some staff, yes.

5 Q. She's indicated them to you in conversations?

6 A. Yes.

7 Q. She's written letters or made written statements, is that
8 fair, about PREA allegations?

9 A. I don't know about letters. I have not reviewed any
10 letters.

11 Q. But you've received letters via the third-party PREA
12 complaint process; correct?

13 A. Yes, yes.

14 Q. Those are letters that have described very numerous PREA
15 allegations concerning Ms. Diamond?

16 A. Yes.

17 Q. You were a recipient of those letters?

18 A. I was.

19 Q. You were able to review them?

20 A. Yes.

21 Q. Okay. Yet you're aware that each and every one of
22 Ms. Diamond's PREA complaints, with the exception of one, has
23 been marked "unsubstantiated"?

24 A. Yes.

25 Q. Now, did you ever contact the individuals who had provided

1 you the detailed third-party PREA notices to request additional
2 information?

3 A. I have not.

4 Q. You have never contacted -- you never made any inquiries
5 after the information contained in the third-party PREA
6 complaints?

7 A. No, I have referred all of those to my -- to the
8 Department's legal team.

9 Q. Okay. But you are testifying today that to your
10 knowledge, without contacting anyone for further information,
11 each and every one of those PREA complaints has been dismissed
12 or found unfounded or unsubstantiated?

13 A. Unsubstantiated, yes.

14 Q. And "unsubstantiated" within GDC does not mean that the
15 allegations are false? Is that fair?

16 A. Correct.

17 Q. It doesn't mean that the individual was not sexually
18 assaulted; correct?

19 A. Correct.

20 Q. It just means that you would have required additional
21 information to make a determination; correct?

22 A. We did not have any additional information to make it
23 founded.

24 Q. That's what "unsubstantiated" means; right?

25 A. Yes, yes, I am aware. Thank you.

1 Q. But you're also testifying today that you made no
2 inquiries to get additional information as to --

3 A. I did not.

4 Q. Now, Mr. Benton, you talked about how, um, you have
5 cameras in the dormitory almost as an eye in the sky; right?

6 A. Yes.

7 Q. Now, isn't it true that Ms. Diamond has alleged several
8 incidents where people reportedly entered her dorm without her
9 permission and sexually assaulted her; is that fair?

10 A. You said is it true that she has done what?

11 Q. She has alleged that there were multiple incidents where
12 people have entered her cell and sexually assaulted her.

13 A. No, not to me, no.

14 Q. You have received that information in third-party PREA
15 notices?

16 A. I have.

17 Q. So those notices put you on notice that people had
18 allegedly entered Ms. Diamond's cell; correct?

19 A. Correct. Allegedly, yes.

20 Q. And that once they did, they sexually assaulted her;
21 correct?

22 A. Allegedly, yes.

23 Q. Okay. After receiving those reports, did you take the
24 time to review the video footage outside of Ms. Diamond's cell?

25 A. There has been situations above my control with the camera

1 system. When the camera system was put in, it was not
2 functioning appropriately. So I had to place in a ticket with
3 the -- our outside source that's over that system. And once
4 you place a ticket in there, then whenever they arrive to
5 address the issues, then they do so.

6 Several occasions, from the time the cameras was
7 installed, there were several issues where I had to contact
8 personally the camera people to come out and address the
9 concerns.

10 I tried going back in time to review some of the footage,
11 but it -- it -- there was no footage, because the camera was
12 down.

13 Q. Okay. Is your testimony that -- sorry. Do you have
14 documents that show the period of time where the cameras were
15 non-functional?

16 A. I do not have documents to show the period of time they
17 were non-functional, but I do have documents to show when a
18 work order was presented, was put into the system. Because I
19 do not sit at my desk and check and review footage all day or
20 daily, so I don't know when the cameras went down. But I do --
21 I do know the day that I checked the cameras, they were not up.
22 They were not functioning. So, I placed a work order.

23 Q. Okay. So you should have documents that show when those
24 work orders are placed?

25 A. Yes.

1 Q. But your testimony today is not that -- since
2 Ms. Diamond's arrival at the prison until present, that there
3 have been camera issues that would have prevented you from
4 being able to see the area outside of her cell; correct?

5 A. Yes. That's what I'm saying.

6 Q. You're saying that there are no videos whatsoever from the
7 time that Ms. Diamond's been at Coastal State Prison reflecting
8 the condition of her door or people entering her cell?

9 A. No. There is footage. There is footage of that. But you
10 asked specifically on a certain date and time, and on that date
11 and time, I did not have any footage.

12 Q. Okay. I actually hadn't indicated the date yet, but let's
13 go ahead and do that now.

14 A. I thought you said July, sorry.

15 Q. Well, Mr. Benton, there was a camera outside Ms. Diamond's
16 cell in July of 2020; correct?

17 A. Yes, ma'am.

18 Q. And in July, 2020, Ms. Diamond alleged she was sexually
19 assaulted; correct?

20 A. That's what I hear.

21 Q. Yes. She alleged that someone entered her cell and
22 assaulted -- tried to assault her; right?

23 A. Yes.

24 Q. You know that because that information was provided to you
25 in a letter from Ms. Diamond's attorneys?

1 A. Yes.

2 Q. The attorneys you never contacted for additional
3 information?

4 A. Correct.

5 Q. Okay. Now, today, sitting here, are you aware of whether
6 any video footage exists of that incident, of someone -- of her
7 dormitory and her cell the day --

8 A. No, I am not aware.

9 Q. You don't know one way or the other?

10 A. No, ma'am, I don't.

11 Q. Okay. How recently have you checked to see whether
12 there's a video outside of her cell that day?

13 A. There is none.

14 Q. "There is none." When did you check?

15 A. I can't recall.

16 Q. Okay. So you don't know one way or the other whether you
17 ever checked to see the video of --

18 A. Oh, yes, I know I checked. Yes, I checked.

19 Q. When did you check?

20 A. As I stated earlier, from time to time I walk and speak
21 with Ms. Diamond. And sometimes Ms. Diamond will provide me
22 information on inmates coming into their -- into her cell or --
23 or inmates congregating around her door or issues concerning
24 the dormitory.

25 And I tell her, "Let me go to my office and I will pull

1 the tape." And I've done that. I can't -- I have not recorded
2 anything to that effect. So, no, I don't have any
3 documentation, no video footage right now that I can recall of
4 that July incident.

5 Q. Okay. So when Ms. Diamond's had those conversations with
6 you about people entering her cell -- presumably without her
7 permission; is that fair? What she informed you about, she was
8 complaining about people entering her cell?

9 A. Throughout different conversations, she would say that
10 inmates hang around her door, and that the officers tell them
11 to get away from her door. She was upset because she felt that
12 she should be able to communicate with those individuals
13 outside her door.

14 At no time did she tell me -- and I am trying to think,
15 I'm trying to remember as much as I can remember, of her saying
16 that inmates were unauthorized in her cell. I have seen video
17 footage of inmates being unauthorized in her cell and her being
18 in there with them.

19 Q. Are you referencing a video that has Mr. Doe entering or
20 exiting her cell?

21 A. That's one of them, yes.

22 Q. Okay. You stated earlier that there had been times that
23 you've gone to review the videotape because Ms. Diamond has
24 made a statement to you; correct?

25 A. Yes.

1 Q. What types of statements was she making to you at that
2 time?

3 A. She would say, "Warden, the -- the dorm is ostracizing
4 me," "They are not talking to me," "The officers are shooin
5 the inmates away from the door, telling them they cannot talk
6 to me, they are not in my cell at this time, but they are
7 shooin them away from my door."

8 So I tell her -- I told her at that one particular time
9 that I will go review it, and I will make it known that anybody
10 can communicate with anyone in N-Dorm. So I would go back to
11 the office -- and on that particular case, I do remember going
12 back to the office and, true enough, there were inmates around
13 her door.

14 Q. Okay. Is that the only time that you believe you've gone
15 back to review the security footage outside of Ms. Diamond's
16 cell?

17 A. No. From time to time since Ms. Diamond has been on -- in
18 my prison, I have reviewed the camera from time to time. I
19 have not logged those dates. I have not documented those
20 dates. I just basically turn around, pull up the camera
21 system, and review the dormitory in its entirety. Not just
22 Ms. Diamond's door, because there's other cameras in the dorm,
23 but the dorm in general.

24 Q. Okay. Now, Ms. Diamond as well as a third-party witness
25 reported that someone entered Ms. Diamond's cell in October of

1 2020 without permission. Do you recall that?

2 A. I recall that testimony, yes.

3 Q. Okay. The testimony is that it may have happened, um, the
4 first week of October, sometime in the range of October 7th
5 and, say, October 15th. October 15th is when many of the
6 witness statements were made. Is that fair?

7 A. I recall the testimony, yes.

8 Q. Okay. Did you, um, endeavor to review the video outside
9 of Ms. Diamond's cell after that report was made?

10 A. I can't recall that incident. That specific incident. I
11 cannot recall if I did or did not.

12 Q. Okay. So sitting here today, you can't say one way or the
13 other whether you tried to review videotape for Ms. Diamond's
14 complaint?

15 A. I cannot.

16 Q. Now, in September of 2020, do you recall receiving
17 allegations that Ms. Diamond had been sexually assaulted not
18 once, not twice, but on four different occasions?

19 A. Yes. I had.

20 Q. Okay. Those allegations are fairly detailed; is that
21 fair?

22 A. I can't recall. I know it was turned over to the SART
23 Team to investigate.

24 Q. And they provided approximate dates of those sexual
25 assaults; is that right?

1 A. I can't recall, I'm sorry.

2 Q. Would you like to see that letter?

3 A. If you want me to.

4 Q. Let's do it. Okay. Can we please pull up Plaintiff's
5 Exhibit 173. Um, now, Warden Benton, is this a document that
6 you recognize?

7 A. Yes. I do.

8 Q. Why do you recognize it?

9 A. It was -- it was sent to me.

10 Q. Okay. So you received a copy of this letter?

11 A. Yes, I did.

12 Q. It's described as a Fourth Notice of Constitutional and
13 PREA Violations on behalf of Ashley Diamond. Do you see that?

14 A. Correct.

15 Q. Okay. If we scroll down -- is it Page 1? -- I believe --
16 or Page 3, okay. Do you see that, um, it states here, um,
17 looking at the first paragraph after the heading that says
18 "Ms. Diamond was sexually assaulted...,"

19 MS. EZIE: If I did that, I'm sorry. I didn't
20 realize I did. How do I clear that?

21 BY MS. EZIE:

22 Q. You see it says that Ms. Diamond and her attorneys have
23 repeatedly explained that Ms. Diamond is not safe at Coastal.
24 Do you see that statement?

25 A. Yes, ma'am.

1 Q. Is it true that you've received multiple reports from
2 Ms. Diamond and her attorneys complaining about safety issues
3 at Coastal?

4 A. I have.

5 Q. All while she's been housed in the evidence-based
6 dormitory?

7 A. Correct.

8 Q. Okay. And you see here that the document proceeds to have
9 about four paragraphs -- sorry, three paragraphs describing
10 sexual -- sexually inappropriate incidents; right?

11 A. Correct.

12 Q. Why don't we look at the first paragraph. Under,
13 "Ms. Diamond was sexually assaulted on," -- sorry,
14 "September 18th, September 19th and September 20th, 2020." Do
15 you see that?

16 A. Yes.

17 Q. Okay. Do you see that it describes that an incarcerated
18 person approached Ms. Diamond in her dormitory?

19 A. Yes.

20 Q. Do you see that it states that that person locked her in a
21 room and proceeded to grab her breasts and sexually assault
22 her?

23 A. Yes.

24 Q. That he pushed her to the bed and attempted to forcibly
25 rape her?

1 A. Yes.

2 Q. Do you agree that those statements, as alleged, violate
3 the -- violate GDC's PREA policies?

4 A. Yes.

5 Q. And that they constitute sexual abuse and sexual assault?

6 A. Constitute an investigation, yes.

7 Q. Okay. To your knowledge, did -- sorry, after receiving
8 this information, did anyone ever contact the people who wrote
9 this letter, the ones that were reporting the incident, to ask
10 whether they had additional information to provide?

11 A. I am not aware of that.

12 Q. You certainly did not?

13 A. I have not.

14 Q. Okay. So you don't know right now whether, had you made a
15 request, you would have been provided the name of the attacker?

16 A. No.

17 Q. Additional information that would have allowed you to
18 substantiate this PREA complaint?

19 A. No.

20 Q. You don't know because you never tried to find out?

21 A. I forwarded this document to my legal team.

22 Q. Okay. To your knowledge, no one has ever contacted
23 Ms. Diamond to try to -- the people who submitted this
24 complaint, which in fact are Ms. Diamond's attorneys, to see
25 whether they had additional information to substantiate this

1 PREA?

2 A. Not to my knowledge.

3 Q. Okay. Did you attempt to look at the videos in the
4 dormitory on September 18th to see whether there was any
5 footage that would have corroborated these allegations?

6 A. I cannot recall that.

7 Q. Sitting here today, you can't say one way or the other
8 whether, after receiving this PREA complaint, you ever tried to
9 look and review the camera footage?

10 A. I cannot recall doing this or not doing it.

11 Q. Okay.

12 A. But I know I have on several occasions reviewed the
13 camera.

14 Q. Okay. Now, you see on the next paragraph, it states that,
15 "On Saturday, September 19th, Ms. Diamond was
16 in a room -- was in her room. Another person
17 entered, physically grabbed her and forced
18 her to give him oral sex on the bed."

19 Do you see that?

20 A. Yes, I do.

21 Q. Do you agree that that allegation, as stated, constitutes
22 a PREA violation?

23 A. Yes.

24 Q. It constitutes --

25 A. If it happened, yes.

1 Q. -- sexual abuse and assault?

2 A. Yes, if it happened, yes.

3 Q. And you have never proven that this incident didn't occur;
4 right?

5 A. No.

6 Q. You never tried to get additional information about this
7 incident from the people who reported it, which is to say
8 Ms. Diamond's attorneys?

9 A. No, I have not.

10 Q. Is this another case where you say you never tried to
11 review the footage outside Ms. Diamond's cell?

12 A. At this point I cannot tell you whether I did or did not.

13 Q. Let's look at the next paragraph. It describes a sexual
14 assault that was alleged to have happened on September 20th.
15 Do you see that?

16 A. Yes. I do.

17 Q. Do you see that it says, "The attacker approached
18 Ms. Diamond in her room"?

19 A. Yes.

20 Q. Presumably that is the room that would have the cameras
21 right outside; correct?

22 A. Yes.

23 Q. And that "he proceeded to rape Ms. Diamond"; do you see
24 that?

25 A. The one where --

1 Q. I am looking at the second sentence of that paragraph.

2 A. I'm sorry, you said the Sunday?

3 Q. I'm saying do you see the sentence that says, "He," the
4 person who approached Ms. Diamond in her room, "proceeded to
5 rape Ms. Diamond"? Do you see that language?

6 A. Which paragraph? I am on the wrong paragraph.

7 Q. Let me get you sorted.

8 A. Okay.

9 Q. In between those. Have you been able to read the first
10 two sentences?

11 A. Yes.

12 Q. Do you agree that those sentences, if true, would
13 constitute sexual assault that violates PREA?

14 A. Yes.

15 Q. Okay. To your knowledge, did you ever contact anyone to
16 get additional information? Did you ever contact Ms. Diamond's
17 attorneys, the ones who reported this, to get additional
18 information that would have helped you identify that attacker?

19 A. At no time did I contact Ms. Diamond's attorney.

20 Q. Okay. But yet and still, you were asked to sign off on
21 Carl Betterson's investigations of Ms. Diamond's PREA
22 incidents; right?

23 A. I was.

24 Q. All of those reports recommended that Ms. Diamond's PREA
25 allegations be dismissed as unsubstantiated; correct?

1 A. Every last one.

2 Q. "Every last one"?

3 A. Every last one that I can recall. Once I sign off on it,
4 it's forwarded to our state-wide PREA coordinator for review,
5 further review.

6 Q. But you admit, sitting here today, you can think of no
7 steps that you took to personally attempt to verify the
8 information in this document?

9 A. Correct.

10 Q. Actually, let's keep that up. To your knowledge, were
11 Ms. Diamond's attorneys, were they open to speaking with you or
12 GDC's legal representatives about these incidents?

13 A. I believe they were.

14 Q. And if we look at Page 6 of the document. Do you see that
15 there's a telephone number and contact information on this
16 document?

17 A. It is.

18 Q. Contact information -- I think we've met once now, for me,
19 I am Chinyere Ezie. It has my phone number; right?

20 A. Yes.

21 Q. Email address?

22 A. Yes.

23 Q. It identifies the contact information for an attorney
24 named Beth Littrell?

25 A. Yes.

1 Q. This is also a document that copies a number of people at
2 GDC; correct? Including Ahmed Holt?

3 A. Yes.

4 Q. Randy Sauls?

5 A. Yes.

6 Q. Your legal office?

7 A. Yes.

8 Q. And do you see that right here, it states, "Once again, we
9 request a phone call to discuss these matters." Do you see
10 that?

11 A. Yes.

12 Q. Is it true that Ms. Diamond's attorneys, who made many
13 PREA complaints on her behalf, offered up the opportunity to
14 speak to you about these allegations?

15 A. Speak to me, yes.

16 Q. On more than one occasion?

17 A. Yes.

18 Q. You never took them up on that?

19 A. Exactly. Correct.

20 Q. Okay. Now, I would like to jump to -- you mentioned,
21 Mr. Betterson -- sorry, Mr. Benton -- too many B names -- that
22 you were for a time the warden of two female facilities within
23 Georgia; correct?

24 A. Yes.

25 Q. That's Arrendale State Prison?

1 A. Yes.

2 Q. And Whitworth State Prison; is that correct?

3 A. Whitworth Women's Facility, yes.

4 Q. Is it fair to say through your experiences working at
5 those prisons, that, um, those prisons -- um, sorry, that
6 female offenders within GDC are typically housed in female
7 facilities; is that accurate?

8 A. Female offenders are housed at female facilities, yes.

9 Q. The only female offenders who are not housed in female
10 facilities, as a rule, are transgender women; is that true?

11 A. Can you repeat that.

12 Q. Sure. We have agreed that female facilities typically
13 house female offenders; correct?

14 A. Yes.

15 Q. But that's not true for transgender women; correct?

16 A. Correct.

17 Q. When you were at Lee Arrendale Prison, were there any
18 transgender women housed at Lee Arrendale?

19 A. No, there were not.

20 Q. When you were at Whitworth State Prison, were there any
21 transgender women housed at Whitworth State Prison?

22 A. No, there were not.

23 Q. Are you aware of any instances where GDC has placed
24 transgender women in women's facilities?

25 A. No, I am not.

1 Q. You are aware that Ms. Diamond has requested placement in
2 a female facility; correct?

3 A. I am.

4 Q. Now, we talked earlier about Ms. Diamond being
5 double-bunked at Coastal. Are you familiar with that phrase?

6 A. Double...?

7 Q. "Double-bunked"? Is that to say, being assigned a
8 roommate?

9 A. Yes.

10 Q. Okay.

11 A. Yes.

12 Q. Is your testimony today that you were never asked by
13 another member of staff to place Ms. Diamond in a single cell
14 because she had been assigned a roommate initially?

15 A. No. I do not recall that. All I recall is that once
16 Ms. Diamond arrived, that she was placed in a one-person cell.
17 I requested that the top bunk in that cell be turned off so
18 another offender could not be assigned as her roommate.

19 Q. Okay. There is an individual who's a member of staff,
20 albeit through MHM Centurion, named Dr. Fass; is that correct?

21 Do you remember Dr. Fass?

22 A. Yes.

23 Q. Okay. Dr. Fass recalls having a conversation with you
24 where he requested that Ms. Diamond be put in a single cell.

25 Do you have any recollection of having a conversation of that

1 nature?

2 A. I have no recollection of that conversation because this
3 was done way before Dr. Fass even got involved in Ms. Diamond's
4 affairs.

5 Q. Okay.

6 A. When Ms. Diamond arrived at Coastal State Prison, it was
7 determined by the Director of Field Operations, Mr. Robert
8 Toole, and myself, that she be placed in a one-person cell.

9 Q. Got it. In your time as warden, have you ever approved
10 people for safety transfers to or from facilities that you are
11 the warden?

12 A. No. I have not.

13 Q. Is that something that wardens are able to do?

14 A. Yes. Yes.

15 Q. You're aware --

16 A. We can recommend. I'm sorry.

17 Q. "Recommend," okay. You're aware that Ms. Diamond has
18 requested a safety transfer away from Coastal State Prison?

19 A. I am aware that Ms. Diamond has requested to be
20 transferred to a female prison.

21 Q. And you're aware that she's requested to be transferred to
22 a female prison for reasons of her health and safety?

23 A. Yes.

24 Q. Okay. And isn't it true that other individuals within
25 GDC, including Dr. Fass and others, have recommended that

1 Ms. Diamond be transferred for reasons of safety away from
2 Coastal?

3 A. I am not aware of that.

4 Q. Okay. You don't know one way or the other?

5 A. I am not aware that Dr. Fass or my mental health team has
6 recommended she be transferred to another facility.

7 Q. Are you aware that Dr. Fass and others recommended that
8 Ms. Diamond be transferred, um, because she needed to be
9 classified as a Level III health offender?

10 A. Yes. Yes, I am aware of that.

11 Q. So it's fair to say that you are aware of occasions where
12 Dr. Fass and others have recommended that Ms. Diamond be
13 transferred away from Coastal?

14 A. CSU Level III services, yes.

15 Q. Okay. If you learned today that Dr. Fass and others had
16 recommended that Ms. Diamond be transferred away from Coastal
17 for reasons of safety, is that something that you would
18 consider when deciding whether to make a recommendation that a
19 transfer be provided?

20 A. Yes.

21 Q. Can we look at a document that's been labeled Plaintiff
22 58. I admit this is doctor handwriting, which is pretty
23 difficult to read. Can we turn to page -- um, using the Bates
24 numbers, 365.

25 I admit that this document is a little difficult to read

1 and I'm sorry about that, but do you see that it is a Georgia
2 Department of Corrections Mental Health Progress Note at the
3 top?

4 A. Yes, ma'am.

5 Q. Do you see that it's a progress note dated from
6 August 20th, 2020?

7 A. Yes, ma'am.

8 Q. And if I highlight here -- which is not helping as much as
9 I thought, but maybe you can see a little bit -- do you see
10 that it describes that -- it talks about a clinical plan for
11 subsequent sessions. And do you see that it has a note saying
12 that facility reassignment is something that is part of
13 Ms. Diamond's clinical plan as of August 20th, 2020?

14 MR. CHALMERS: I will object to the form of the
15 question. It misstates what the language says.

16 THE COURT: Well, what's the question? You haven't
17 seen this, have you, Warden?

18 THE WITNESS: No, I have not.

19 THE COURT: Am I correct that it says -- I think the
20 relevant part "follow up with mental health treatment team
21 concerning facility reassignment"? Is that the portion you're
22 talking about?

23 MS. EZIE: Yes.

24 THE COURT: Okay.

25 MS. EZIE: Okay.

1 BY MS. EZIE:

2 Q. Why don't we go to Page 259 of the document. It's a Bates
3 Number. Okay. Do you see at the very bottom of the document?
4 Again, I apologize for doctor handwriting, which I think is
5 sometimes called leg writing, but do you see that in this
6 paragraph it states: Please transfer inmate for security
7 reasons -- this inmate for security reasons. Do you see that?

8 A. Yes.

9 Q. Okay. Do you recognize the signature on that document?

10 A. It looks like "Ross."

11 Q. That's a mental health provider that's at Coastal State
12 Prison.

13 Is it possible to zoom out?

14 If mental health providers at Coastal State Prison thought
15 that Ms. Diamond would be better served at a different type of
16 facility, is that the type of information that you would
17 consider going forward?

18 A. I would consider and send it up.

19 Q. Okay. And if you received that information today, you
20 would agree that today is as good as any day to begin that
21 process of sending it up the chain?

22 A. Yes.

23 Q. If you received information today that -- over the course
24 of this hearing that suggested that Ms. Diamond has been
25 sexually assaulted at Coastal State Prison not once, not twice,

1 but multiple times as she reports, do you agree that, as
2 warden, it would be appropriate to send it up and try to
3 identify some further action?

4 A. Yes.

5 Q. Okay.

6 MS. EZIE: No further questions.

7 THE COURT: You may redirect.

8 REDIRECT EXAMINATION

9 BY MR. CHALMERS:

10 Q. Warden Benton, I want to ask about the DRs that were
11 thrown out that you were asked about earlier.

12 A. Yes.

13 Q. Do you expect your officers in the disciplinary process to
14 follow the procedures?

15 A. Yes, sir.

16 Q. In your command at Coastal State Prison, is your
17 experience that the hearing officers do follow the procedures?

18 A. Yes, sir.

19 Q. They try to do that?

20 A. Yes, sir.

21 Q. For each DR that we've looked at on the documentation,
22 there is typically an officer who writes the charge; correct?

23 A. Yes, sir.

24 Q. And there is also an officer who serves the charge; is
25 that correct?

1 A. Yes, sir.

2 Q. And then there also would be an officer who serves as the
3 hearing officer; correct?

4 A. Yes, sir.

5 Q. If along that path somehow there's a problem, a defect in
6 the process, do you expect the disciplinary charge to be
7 dismissed?

8 A. Yes, sir.

9 Q. Is that dismissal a form of retaliation against Ashley
10 Diamond?

11 A. The opposite.

12 Q. The dismissal is a recognition that there was an error
13 somewhere in the process; correct?

14 A. Yes, sir.

15 Q. And the offenders have rights in the DR process itself?

16 A. Yes, sir.

17 Q. And when the rights in the process are violated, you
18 expect your officers to dismiss or reject the charge?

19 A. Yes, sir.

20 Q. And that has occurred, as counsel has demonstrated, a
21 number of times for Ashley Diamond?

22 A. Yes, it has.

23 Q. Can we pull up -- I lost track. You were shown a letter
24 from counsel that was dated September 29, 2020. Do you recall
25 that?

1 A. Yes, sir.

2 Q. And that was a letter from Ms. Diamond's legal counsel.

3 A. Yes, sir.

4 Q. And then you were asked about, um, describe incidents of
5 sexual assault that had the dates given of September 18,
6 September 19, and September 20. Do you recall that?

7 A. Yes, sir.

8 Q. In those ten days from the alleged assaults leading up to
9 when the letter was dated, September 29, do you recall being
10 informed by Ashley Diamond that she had been assaulted?

11 A. No, sir.

12 Q. When you get information of this kind, a third-party
13 report, do you nonetheless -- if you are aware of it, do you
14 try to get your SART Team or the PREA Team to inquire into it?

15 A. Yes, sir.

16 Q. Are you aware that under Deputy Warden Betterson there
17 have been efforts made, including by Ms. Cantera, to talk to
18 Ms. Diamond when she makes a report or when someone else makes
19 a report on her behalf about sexual assault?

20 A. Yes, sir.

21 Q. And are you aware that in those communications, over and
22 over again, Ms. Diamond has refused to talk to the SART Team?

23 A. Yes, sir.

24 Q. Ms. Cantera would be someone who would be a trained mental
25 health person; is that correct?

1 A. Yes, sir, correct.

2 Q. And she would be able to conduct an interview with
3 Ms. Diamond about those allegations of assault?

4 A. Correct.

5 Q. And that would include allegations of assault that
6 include -- occurred in September of 2020?

7 A. Correct.

8 Q. To your knowledge, in these key time periods of early
9 July, 2020, to September, 2020, alleged assaults, and any other
10 assault, has Ms. Diamond been willing to, as the victim,
11 communicate the information of the alleged assaults?

12 A. No, sir. She has not.

13 Q. Is that problematic from a SART investigation standpoint?

14 A. It is.

15 Q. Do you on a regular basis review Ms. Diamond's mental
16 health records?

17 A. No, I do not.

18 Q. Do you access them?

19 A. No, I -- I do -- I am not going to say I don't have access
20 to them. I choose not to get into diagnoses and stuff of that
21 nature that don't -- I don't have any reason to. I rely on my
22 mental health team to adequately give me information that they
23 believe and feel that is pertinent.

24 Q. So counsel has made a, um, significant issue in her
25 questions of you of the fact that you have not picked up the

1 phone to call the lawyers sitting before us to discuss with
2 them Ms. Diamond's allegations of harassment or abuse. You
3 heard that?

4 A. Correct.

5 Q. But, is it your testimony that when you have become aware
6 that there is a report from Ms. Diamond or a third party, that
7 you have attempted to have your SART Team, Deputy Warden
8 Betterson, and those working with him look into the
9 allegations?

10 A. Correct.

11 Q. Has Ms. Diamond cooperated in that process?

12 A. Correct. She has not.

13 Q. Thank you.

14 MS. EZIE: May I follow up briefly?

15 THE COURT: Briefly.

16 RE CROSS EXAMINATION

17 BY MS. EZIE:

18 Q. Mr. Benton, has Ms. Diamond indicated why she's unwilling
19 to speak to, um -- let me strike that.

20 To be clear, Ms. Diamond has never stated that she's
21 unwilling to cooperate in PREA investigations to your
22 knowledge; has she?

23 A. Not to me personally, but through my SART Team informing
24 me she has.

25 Q. They have informed you that she's requested to conduct a

1 PREA interview with her lawyers present?

2 A. Correct.

3 Q. That's different than refusing to participate in the PREA
4 process; correct?

5 A. Correct.

6 Q. Now, has Ms. Diamond explained to either you or any
7 members of your staff why she had that request made about
8 having her lawyers present?

9 A. I believe she made that known to the SART Team.

10 Q. Okay. The SART Team are the people who are responsible
11 for investigating the sexual assault allegations; correct?

12 A. Correct.

13 Q. Can we turn to Plaintiff's Exhibit 233, I believe it's I.
14 We can zoom that up a little bit.

15 MS. EZIE: And, Your Honor, I would ask that this and
16 other exhibits we used be moved into evidence at close.

17 BY MS. EZIE:

18 Q. But do you see that this is a statement from Ashley
19 Diamond herself?

20 A. Yes.

21 Q. It was made at Coastal State Prison?

22 A. Yes.

23 Q. It's in the form of a witness statement?

24 A. Yes.

25 Q. And, um, do you see that it states,

1 "I would like to pursue my PREA
2 investigations but can't get a response to
3 the request for counsel to be present."

4 Did I read that correctly?

5 A. Yes.

6 Q. It says,

7 "Because of the sensitive nature of the
8 allegations and fear of retaliation, along
9 with privacy concerns, make it very difficult
10 to navigate this process."

11 Do you see that?

12 A. Yes, I see that.

13 Q. "I also fear retaliation from those involved
14 because of gang affiliations."

15 Correct?

16 A. I see that.

17 Q. Do you know whether at this time or any other time
18 Ms. Diamond's request to have a lawyer present because she
19 feared retaliation, because she feared gang -- people with gang
20 affiliations, whether it was ever granted?

21 A. Whether it was...?

22 Q. Was ever granted?

23 A. No.

24 Q. That's to say that each and every time Ms. Diamond made
25 this request, you took no further action?

1 A. I followed the SART investigation process and reviewed the
2 SART documentations and, based on their recommendation, upheld
3 their recommendation.

4 Q. Which was to dismiss this case, dismiss her claims without
5 ever honoring this request?

6 A. Not dismissing but finding it unsubstantiated.

7 Q. Okay. So just to be clear, Ms. Diamond has never been
8 provided, up to this date, an opportunity to discuss with GDC
9 the nature of her PREA allegations in the presence of counsel?

10 A. No. Not in the presence of counsel. Correct.

11 Q. All right. Thanks.

12 EXAMINATION

13 BY THE COURT:

14 Q. Warden?

15 A. Yes, sir.

16 Q. With regard to the cameras, and particularly the camera
17 that shows the door to Ms. Diamond's cell, as I understand your
18 testimony and the testimony of others, but particularly yours,
19 the camera sometimes works and sometimes doesn't work?

20 A. Initially when the cameras were installed, there were
21 major problems with the cameras not recording or -- or going
22 off and not working.

23 Q. And you've also told us that -- you couldn't remember how
24 many times or even when, and that's fine, but that when
25 Ms. Diamond would tell you about intruders into her cell, you

1 would review the video, and on the occasions that you did,
2 those were occasions when the video was not working?

3 A. Yes, sir.

4 Q. And you know that she made PREA allegations or at least
5 her attorneys made PREA allegations at various times that
6 involved intruders into her cell, allegedly?

7 A. (No response.)

8 Q. Correct?

9 A. Yes, sir.

10 Q. I'm sure you would expect the SART Team, as a part of its
11 investigation into those allegations, even if Ms. Diamond did
12 not cooperate by giving a statement, to review the video to see
13 if anybody had entered the cell?

14 A. Yes, sir.

15 Q. And yet, to this date, the only video that we know that we
16 have is the video showing the John Doe entering the cell, which
17 was used as evidence against Ms. Diamond, and the video of the
18 issue involving cleaning the cell, which was used as evidence
19 against Ms. Diamond. Is that correct?

20 A. Yes, sir.

21 Q. Let me show you this.

22 THE COURT: Pass this -- well, why don't you hand
23 that to each counsel table. I will probably have it marked.

24 BY THE COURT:

25 Q. You likely haven't seen this, Warden --

1 A. Thank you, sir.

2 Q. -- but it is a medical note dated -- and we can call it
3 "Court 1" for now (also marked PX 92-P) -- it is a medical
4 record dated October 31st, 2020, from a woman by the name of
5 Spann. Well, you can confirm, have you seen this document
6 before?

7 A. No, sir.

8 Q. But do you recognize this as being a note concerning the
9 incident involving Ms. Doe -- Mr. Doe and Ms. Diamond?

10 A. Yes, sir.

11 Q. Looking halfway down in Ms. Spann's -- actually at the end
12 of that note on the first page, she records,

13 "The warden called Medical and spoke with
14 both C. Anderson RN and myself. He stated
15 that Diamond was the alleged penetrator, and
16 both offenders were denying sexual activity,
17 and no claim of PREA was stated by either
18 offender so there was no further action
19 needed from Medical."

20 Do you see that?

21 A. Yes, sir.

22 Q. Do you recall a conversation with Medical to that effect?

23 A. Yes, sir, I do.

24 Q. And what would be the reason in that situation that
25 Medical -- that no further action from Medical would be

1 required?

2 A. Because they would not call SANE.

3 Q. Pardon?

4 A. The sexual assault nurse examiner. That would be the
5 reason why no further medical attention would be necessary.
6 Because both parties said that they did not -- they were not
7 involved in a sexual act.

8 Q. Were you aware that both parties were asking for a medical
9 examination to prove that they had not been involved in --

10 A. No, sir. Medical makes that determination on whether to
11 or not call SANE based on their information. Or their
12 examination.

13 Q. Well, I am not sure I understand. You were telling them
14 no further action from Medical was needed.

15 A. When who?

16 Q. You were telling Medical that no further action was needed
17 from them.

18 A. Where was that at?

19 Q. That's the sentence we read.

20 A. Oh, I thought -- I'm sorry, Your Honor, I thought you said
21 Medical said that there was no further action needed.

22 Q. No, they said you told them that no further action was
23 needed from them.

24 A. Let me read this, Your Honor, please. (Witness reviewing
25 document.)

1 Yes, I apologize, I did not read it.

2 Q. So why would you instruct Medical not to do anything?

3 A. Because Medical said that there was -- that both parties
4 was denying penetration. They were denying that anything
5 happened. So the SANE nurse is contacted if there is an
6 allegation from any party, any offender, that there was
7 penetration.

8 Q. Well, you had a guard who at that point apparently was
9 alleging there had been penetration.

10 A. Correct.

11 Q. And wouldn't it be logical, if a medical examination could
12 uncover any evidence one way or the other, that that would be
13 evidence that the investigators would want?

14 A. Correct. As I stated earlier, I do not call SANE. I
15 don't have the power to call SANE. SANE is contacted through
16 Medical.

17 I just -- I just made a comment that -- based on the
18 report, that there was no -- no, um -- nothing further to do
19 medically because both individuals, um, claimed that there was
20 no penetration, there was no sexual act.

21 So, yes, I hear what you're saying about the officer
22 saying what she saw. But Medical did not determine or did not
23 have a conversation saying, "Warden, we believe because the
24 officer said it we need to contact SANE." If that was
25 presented, then Medical would have contacted SANE. Based on

1 the officer's testimony.

2 Q. Well, I am still not quite understanding. The offenders
3 are there at Medical to be examined. And you call them and
4 say, "Don't examine them."

5 A. No, sir. No, sir. I did not tell Medical not to examine
6 the inmates.

7 Q. Well, but you used words that they recorded:

8 "He," you, "stated that Diamond was the
9 alleged penetrator and that both offenders
10 were denying sexual activity and no claims of
11 PREA were stated by either offender, so there
12 was no further action needed from Medical."

13 A. Correct.

14 Q. So why did you tell Medical no further action was needed?

15 A. Because both parties said that there was not a PREA.

16 Q. Okay. Well, I still don't understand, but I understand
17 what you're saying.

18 THE COURT: All right. Any further questions,
19 Mr. Chalmers?

20 MR. CHALMERS: (Shaking head in the negative.)

21 THE COURT: Any further questions, Ms. Ezie?

22 MS. EZIE: I've got plenty.

23 FURTHER RECROSS EXAMINATION

24 BY MS. EZIE:

25 Q. I just want to confirm, Warden Benton, you're aware that

1 Ms. Diamond has been classified as a PREA aggressor; correct?

2 A. Yes.

3 Q. You're aware that she's been classified as a security
4 threat individual who preys on other inmates?

5 A. Yes.

6 Q. But you admit that on the day that she was sent to Medical
7 for examination as someone who may have engaged in a sexual
8 act, there was no need because there had been no allegation of
9 sexual activity that you could corroborate?

10 A. There was no PREA. I was told that they were naked, with
11 their pants pulled down, and Offender Diamond was on top of
12 Offender Doe, in a back-and-forth motion.

13 Q. Who made that statement?

14 A. Officer Brown.

15 Q. Isn't that true that Officer Brown also said she observed
16 Offender Diamond's penis in Mr. Doe's anus?

17 A. Yes.

18 Q. Okay. And notwithstanding the allegation, you did not see
19 a reason for them to be examined by a sexual assault nurse?

20 A. Repeat that again.

21 Q. Okay. If Ms. Diamond has been examined by a sexual
22 assault nurse, would it have been able to corroborate whether
23 that sexual activity had taken place?

24 A. Oh, yes, yes.

25 Q. Ms. Diamond was not seen by a sexual assault nurse, even

1 though she requested that examination; correct?

2 A. I was unaware of the request at that time, but yes.

3 Q. You're aware today that --

4 A. Yes.

5 Q. -- Ms. Diamond requested that there be a swab of her
6 penis; correct?

7 A. Through -- through testimony, yes.

8 Q. Okay. And that -- that request was never granted, to your
9 knowledge?

10 A. As far as I'm aware.

11 Q. Okay. You would agree that forensic evidence is relevant
12 to PREA investigations?

13 A. It is.

14 Q. And Mr. Doe was never examined to see whether there had
15 been any anal penetration or sexual activity; correct?

16 A. Correct.

17 Q. And yet and still, sitting here today, Ms. Diamond is
18 still listed as a PREA aggressor and a security threat
19 individual on the SCRIBE system?

20 A. Yes.

21 Q. That's a system that Parole has access to; correct?

22 A. Yes, they do.

23 Q. And you've spoken to Parole about disciplinary charges
24 that include that allegation of sexual conduct; correct?

25 A. I have spoken with the examiner, and the examiner asked me

1 questions. I answered them. And that was it. The phone call
2 didn't last that long. They just asked about her disciplinary
3 history. They didn't go into specifics on a specific DR. They
4 just said, "disciplinary history."

5 Q. Okay. And within Coastal State Prison, Ms. Diamond's
6 disciplinary history begins at October 31st, 2020, when this
7 sexual behavior allegation was made?

8 A. Yes.

9 Q. Okay. So it's fair to say that that's an allegation that
10 you discussed with Parole on that call?

11 A. Not necessarily.

12 Q. "Not necessarily"?

13 A. Correct. I just said when I had a conversation with
14 Parole, they did not specify any specific DR; they just
15 basically talked about her DR history. Of how many DRs she had
16 up until that point.

17 Q. Okay.

18 A. Which they could see it themselves. So technically,
19 necessarily they didn't have to call me. Because they can see
20 it themselves.

21 Q. Okay. Parole relies on records that are supplied through
22 SCRIBE from prison officials; correct?

23 A. Yes.

24 Q. And so if there are inaccuracies in those records,
25 including inaccurate classification, that would be a reason for

1 those records to be updated?

2 A. I don't know what all Parole reviews to make their
3 determination on parole.

4 Q. Okay. If Ms. Diamond had --

5 A. I'm sorry, that's one of the things.

6 Q. If Ms. Diamond had been classified as a PREA aggressor
7 without any supporting evidence, would you agree that that
8 classification should be revisited?

9 A. Correct.

10 Q. And if Ms. Diamond was classified as a security threat
11 individual without any evidence that she preys on inmates, is
12 that a classification that you would say should be revisited?

13 A. Correct.

14 Q. Okay.

15 THE COURT: Warden, what are the consequences of
16 being classified as a PREA sexual aggressor?

17 THE WITNESS: My security threat group sergeant, he's
18 over all of the STIs and STGs -- security threat
19 individuals/security threat group members -- he basically takes
20 a closer look at these individuals on a weekly basis -- daily,
21 weekly, monthly basis, and just basically has them on his list.
22 And he just reviews their activity throughout the prison.

23 It has no bearings on release. It has no bearings on
24 being placed in the honor dorm or evidence-based dormitory.
25 It's -- it's -- the only basis is that Sergeant Mitchell

1 basically has their names written down on his list, and he
2 keeps a closer eye on them.

3 THE COURT: All right. Thank you. I'm told that the
4 document that I asked Warden Benton about is marked as
5 Plaintiff's Exhibit 92-P.

6 MR. McCOY: Correct.

7 THE COURT: So we'll refer to it as that in the
8 record. All right.

9 MR. CHALMERS: Your Honor, I have a few questions.

10 THE COURT: Okay. Well --

11 REDIRECT EXAMINATION

12 BY MR. CHALMERS:

13 Q. Warden Benton, do you know if a SANE examination is done
14 in situations of consensual sexual activity?

15 A. No. I am not aware that it has not been done. As far as
16 my recollection. To my knowledge, consensual sex, a SANE nurse
17 is not contacted. A PREA is not done on consensual sex. A DR
18 is written.

19 Q. Okay.

20 A. The DR system and the PREA system is two different things.

21 Q. There's a fair amount of confusion, I think, on the
22 difference between consensual sex and sexual assault or abuse.
23 Do you understand that sexual assault and abuse is a PREA
24 issue?

25 A. Yes, it is.

1 Q. And do you understand that the PREA policy specifically
2 says that when there is sexual abuse, then a SANE examination
3 will occur?

4 A. Yes. It is.

5 Q. And do you understand that when prisoners deny that sexual
6 activity has occurred, and certainly when there is no
7 indication at a point that sexual abuse has occurred--meaning
8 an assault or a coercion or other kind of forced sex--is it
9 your understanding that a SANE examination would not occur?

10 A. Correct.

11 Q. If you were given information from a nurse who actually
12 stood face-to-face with Ashley Diamond and John Doe, and each
13 of them denied sexual activity, would you respond that a SANE
14 examination must be done?

15 A. I would not.

16 Q. If you were given information from a nurse or a medical
17 professional that they stood face-to-face with Ashley Diamond
18 or John Doe, and neither of them said he or she assaulted me or
19 raped me or forced me or threatened me to have -- in some way
20 and made me have sex with them, would you expect that a SANE
21 examination would be done?

22 A. I would not.

23 MR. CHALMERS: Thank you.

24 THE COURT: All right. We will break for lunch for
25 approximately an hour.

1 COURT OFFICER: All rise. Court is in recess.

2 (Court in recess from 1:13 to 2:22 p.m.)

3 COURT OFFICER: All rise. This Court is now back in
4 session. Be seated. Come to order.

5 THE COURT: All right. You may call your next
6 witness.

7 MR. SHAPIRO: Defendants call Samuel Miller, Your
8 Honor.

9 COURTROOM DEPUTY: Mr. Miller, if you could just
10 stand there for a second. Can you raise your right hand,
11 please.

12 THE WITNESS: Yes, ma'am.

13 COURTROOM DEPUTY: Do you solemnly swear that your
14 testimony in this case shall be the truth, the whole truth, and
15 nothing but the truth, so help you, God?

16 THE WITNESS: Yes, ma'am.

17 COURTROOM DEPUTY: And you can lift that microphone
18 so you can squeeze in there. And please state your name for
19 the record.

20 THE WITNESS: Samuel Miller.

21 COURTROOM DEPUTY: It's up to you if you feel
22 comfortable taking your mask off, you can take it off.

23 THE COURT: Mr. Miller, you have been placed under
24 oath. Remember that if you testify falsely, you can be
25 prosecuted for perjury.

1 THE WITNESS: Yes, sir.

2 THE COURT: Do you understand that?

3 THE WITNESS: Yes, Your Honor.

4 THE COURT: Good.

5 MAINTENANCE DETAIL OFFICER SAMUEL MILLER

6 called by Defendants at 2:23 p.m., having first been duly sworn,
7 testified as follows:

8 DIRECT EXAMINATION

9 BY MR. SHAPIRO:

10 Q. Good afternoon, Mr. Miller. As you know, my name is
11 Robert Shapiro. And I want to ask you just a few brief
12 questions beginning with: Where are you currently employed,
13 Mr. Miller?

14 A. Coastal State Prison.

15 Q. How long have you worked at Coastal State Prison?

16 A. For five years.

17 Q. What is your role at Coastal State Prison?

18 A. I am a maintenance detail officer.

19 Q. Were you a maintenance detail officer in 2020?

20 A. Yes, sir.

21 Q. Could you just briefly describe what are the duties and
22 responsibilities of a maintenance detail worker.

23 A. We repair inmates' cells, doors, locks, toilets, sinks.
24 We maintain the facility to the best of our ability.

25 Q. All right. Mr. Miller, in your role as a maintenance

1 they were off of quarantine.

2 Q. Okay. So, the second time you made repairs to the door
3 was because someone was, once again, trying to interfere with
4 the locking mechanism?

5 A. Yes.

6 Q. Okay. Now, you also described that there were repairs --
7 or I guess the word would be "alterations" that were done to
8 the call button inside of the cells in the N-B-Dormitory.

9 A. That's correct.

10 Q. Could you explain that.

11 A. A warden -- a long time ago, when the building was being
12 constructed, it was originally built for housing the whole.
13 And somewhere along the line, they changed it from housing the
14 whole to becoming an honor dorm. And they connected -- they --
15 a warden can -- told Maintenance to connect back the buttons as
16 a -- instead of a call-back but as a way of serving as as a
17 reward, letting them roam around inside of their range.

18 Q. So if I understand you correctly, at some point the call
19 button was altered so that inmates could release the locking
20 mechanism from the inside of their cell?

21 A. Correct.

22 Q. Was that ever undone so that inmates could no longer
23 unlock the cell door from the inside of their cell?

24 A. I undid it on May 1st --

25 Q. Okay.

1 A. -- to both A and B-Range

2 Q. On May 1st you state that you undid the mechanism that
3 allows the inmates to open the door from the inside of their
4 cell. Who instructed you to do that?

5 A. It was my old supervisor. Nick Clark.

6 Q. Okay. Do you know the reason why the mechanism was being
7 altered?

8 A. You mean back to letting it lock? Yes. It was for
9 COVID-19 lockdown. They were on quarantine back then.

10 Q. So was it -- was the purpose of those repairs so that
11 inmates could no longer release the lock from the inside of
12 their cell?

13 A. That's correct.

14 Q. All right. And you stated that that was May 1st of 2020;
15 correct?

16 A. Correct, sir.

17 Q. Now, after that alteration was made, if an inmate were to
18 go into their cell and close the door firmly behind them, what
19 would happen?

20 A. They would be locked in their cell.

21 Q. Okay. Are you aware of any instances where inmates
22 interfered with the locking mechanism after May 1st, 2020, to
23 prevent that from happening?

24 A. Several of them tried.

25 Q. Okay.

1 A. It wasn't just one side or B-Side; xxxxxxxxxxxxxxxxxxxxxxxx
2 xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

3 Q. Okay. So the May 1st, 2020, repair was not only done to
4 Ms. Diamond's cell; you said that it was done to all cells --

5 A. Yes, sir.

6 Q. -- a and B-Range in the N-Dormitory; correct?

7 A. That's correct.

8 Q. And after you made that alteration, any of those cell
9 doors, if they were closed firmly behind them, would have
10 locked automatically?

11 A. That's correct.

12 Q. You've described instances in which you're aware that
13 inmates will sometimes interfere with the locking mechanism.

14 xx
15 xx
16 xxxxxxxxxxxx

17 A. It can.

18 Q. How so?

19 A. xx
20 xx

21 xx xx
22 xx
23 xx

24 xx xx

25 Q. All right. Mr. Miller, just a few last questions. Have

1 you ever had discussions, to your recollection, with
2 Ms. Diamond about her cell door in particular?

3 A. I have had discussions with many inmates about the same
4 thing, but, yes, I said that it would be up to the warden to
5 reconnect the buttons.

6 Q. Okay. Let me ask you, to the best of your recollection,
7 to focus on Ms. Diamond. Do you recall having any discussions
8 with Ms. Diamond about her cell door?

9 A. Yes.

10 Q. And what do you recall from that discussion?

11 A. That it would be up to the warden to reconnect the
12 buttons.

13 Q. What buttons do you mean?

14 A. The call button.

15 Q. Okay. Did Ms. Diamond request that you reconnect the call
16 button on the inside of her cell?

17 A. Yes.

18 Q. If you had reconnected the call button, would Ms. Diamond
19 have been able to release the lock from the inside of her cell?

20 A. Yes.

21 Q. And, again, what was your response to Ms. Diamond?

22 A. That it was up to the warden to -- when she could
23 reconnect them.

24 Q. Now, did you state that you had this conversation not only
25 with Ashley Diamond but with other inmates, as well?

1 A. Yes, sir, including the ones on my own detail.

2 Q. I'm sorry?

3 A. Including the inmates on my own detail.

4 Q. So was the instruction not to reconnect the call button,
5 was that specific to Ashley Diamond's cell?

6 A. No, sir.

7 Q. Did it apply to all cells in the N-Dormitory at that time?

8 A. That's correct, sir.

9 Q. Thank you, Mr. Miller.

10 THE COURT: All right. You may cross-examine.

11 CROSS EXAMINATION

12 BY MR. McCOY:

13 Q. Good afternoon, Mr. Miller.

14 A. How you doing, sir.

15 Q. I am Scott McCoy. I am an attorney for Plaintiff Ashley
16 Diamond in this matter. I want to ask you a few questions.

17 First off, you have never witnessed Ms. Diamond putting a
18 bar of soap into her door to block it from operating; correct?

19 A. That's correct, sir.

20 Q. And you have never witnessed Ms. Diamond putting a rag in
21 the door to stop it from properly functioning; correct?

22 A. Yes, sir, never.

23 Q. And isn't it true that, um, you don't -- not only the
24 occupant of a cell has the ability and access to potentially
25 block the operation of the cell door; correct?

1 A. That is also correct.

2 Q. And in your experience there are times when other inmates,
3 other than those assigned to a particular cell, actually do
4 have access to the door mechanisms for other inmates' cells?

5 A. I don't -- I am not sure, sir.

6 Q. For instance, are there times in your experience when --
7 during the day, when there are inmates on the -- say, in the
8 N-Building, milling about and walking around, away from their
9 own cells?

10 A. Normally the doors are open. But, yeah, I mean, they
11 could walk into each other's cell.

12 Q. Right. So the door might be open, and someone could walk
13 up to that cell, and there's nothing that would necessarily
14 prevent them from shoving a bar of soap in the door; correct?

15 A. That's correct.

16 Q. You testified that as of May 1st, that there was a policy
17 that all of the internal buttons in all of the cells in N-Dorm
18 would be disabled; correct?

19 A. That's correct.

20 Q. Since that directive in time, have those buttons been
21 reactivated in any of the cells in N-Dorm?

22 A. Not by me, sir.

23 Q. Do you remember submitting a witness statement with
24 respect to repairs that you did on Ms. Diamond's cell door?

25 A. Yes, sir.

1 and the rag on the 31st; correct?

2 A. That's correct.

3 Q. And then the door still was malfunctioning so you had to
4 come back later?

5 A. Um, yes, sir, I came back on that Monday, and I fixed it
6 properly.

7 Q. You can take that down.

8 Do you recall an instance when you made repairs to one of
9 Ms. Diamond's cells in June of 2020?

10 A. Is that A-Range, sir?

11 Q. Well, actually, let's -- let's bring up -- could you bring
12 up Plaintiff's Exhibit 135, please. So, if you would, this is
13 a 3-page document. There are multiple things in here. So what
14 I want to ask you about, the one that concerns you, is on the
15 next page. So if you could scroll down to the second page. If
16 you could, take a look at this. If you could, tell me what it
17 is, please.

18 A. Yes, sir, I remember that.

19 Q. Well, first of all, what is this document?

20 A. This is a work order to -- for a repair. And it's in
21 A-Range.

22 Q. When you say, "A-Range," what does that mean?

23 A. That is A-Range, N-Building.

24 Q. Is this document something that is generated in the normal
25 course as part of maintenance requests?

1 A. Yes, sir, we're supposed to not do work without them.

2 Q. And here it indicates under "Labor," on June 3rd, 2020,
3 you performed work on a Cell 106 in N-5; correct?

4 A. That is correct, sir.

5 Q. Were you aware at this time that this was Ms. Diamond's
6 cell?

7 A. No. I did not know.

8 Q. And the work listed says "Repaired lock." Do you see
9 that?

10 A. Yes, sir.

11 Q. And do you remember what repair you did on this lock?

12 A. I do. That was a very strange one. It was broken before
13 he -- before she ever got in there. xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
14 xxx
15 xxxI had to
16 repair that as well.

17 Q. And so this is the second instance in which you were asked
18 to repair a broken door for Ms. Diamond -- for a cell that
19 Ms. Diamond had been assigned to?

20 A. That is correct.

21 Q. Now, this problem that you experienced with this door, is
22 that something that would have been caused by someone or was it
23 a mechanical defect?

24 A. It is definitely a mechanical defect.

25 Q. So not caused by interference from an inmate?

1 A. Definitely not.

2 Q. Who can ask you to -- well, let me put it this way.

3 Actually, can we bring up actually Exhibit 233-Y. So take a
4 look at this document. Do you know what this document is?

5 A. (Witness reviewing document.) No, sir.

6 Q. Well, I'll represent to you it's a witness statement from
7 the same day that you filled out your witness statement on
8 11-5-2020. Have you ever seen this document?

9 A. No, sir.

10 Q. Were you aware that Dr. Fass had also reported that there
11 was a problem with the workings of Ms. Diamond's cell door at
12 the same time that you made your witness statement?

13 A. No, sir.

14 MR. McCOY: We can take that down.

15 Would you put up 123, please.

16 BY MR. McCOY:

17 Q. Just take a look at this email real quick for me and tell
18 me if you've ever seen it.

19 A. (Witness reviewing document.)

20 Q. Prior to today, were you aware of the contents of this
21 document?

22 A. No, sir.

23 Q. Who can ask for repairs to be done to a broken lock, in
24 your experience?

25 A. Technically anybody who can put in a work order.

1 Q. Could an inmate put in a work order?

2 A. No, just an officer. They're supposed to ask the officer,
3 the officer puts in the work order, turns it in to Ms. Daniels,
4 Ms. Daniels puts it in the computer, which gets printed out to
5 us.

6 Q. For instance, a medical provider like Dr. Fass, who had
7 gotten a report from an inmate that her door was not
8 functioning properly, would need to go through either an
9 officer or here maybe the warden to get that fixed?

10 A. That's true, sir.

11 Q. If the -- so if the doors are properly working so that
12 they lock when they slide shut -- well, first of all, let me
13 ask you this. Is there any kind of a master button or anything
14 in the guard house that functions like the internal buttons --

15 A. Yes.

16 Q. -- that would allow --

17 A. They're supposed to.

18 Q. Hang on just a minute. We have a court reporter so we
19 have to not talk over each other.

20 A. Sorry.

21 Q. No, it's totally fine. It's artificial. Let me just
22 start over and I will get the question out and then we can get
23 the answer.

24 Is there a master release button in the guard control room
25 that would act to release all the cell doors and function

1 similar to the buttons inside if they were working?

2 A. Yes.

3 Q. Thank you. If that button is not activated and the doors
4 are working in accordance with what they -- the policy that you
5 testified--because of COVID on May 1st--where the doors would
6 slide closed and lock, if an inmate were inside the cell, they
7 would not be able to get out, say, if there was a fire;
8 correct?

9 A. Yes, sir.

10 Q. And they wouldn't be able to get out to go to chow?

11 A. Yes.

12 Q. And they wouldn't be able to get out to go to, say, pill
13 call?

14 A. That's true, too.

15 Q. And they wouldn't be able to get out to go to Mental
16 Health?

17 A. I managed to disconnect all the buttons and then reconnect
18 the panel in the module.

19 Q. Okay. I am just trying to see what the effect of that
20 was.

21 A. It would -- everything you said would be true.

22 Q. Are you aware of any other maintenance requests during the
23 period of time that you have worked in -- in N -- at the prison
24 and serviced N-Dorm where there have been requests to repair
25 door locks?

1 A. Not normally, no. It was honor dorm, usually they didn't
2 repair the doors in honor dorm until after COVID.

3 Q. So explain that to me. So they would just leave the doors
4 unrepaired prior to COVID?

5 A. Most of them weren't broke. They just had something in
6 them. So they weren't -- since it was honor dorm, they didn't
7 really do much. They just left the inmates alone.

8 Q. Okay. So you do know of other instances, though, where
9 inmates had maybe stuffed something in the door or -- and tried
10 to stop them from working; correct?

11 A. That's correct.

12 Q. And at some point in time, did Ashley tell you that her
13 door was not working?

14 A. Yes.

15 Q. And when do you remember that was?

16 A. I am not really sure.

17 Q. But she did report to you at least --

18 A. Yes.

19 Q. -- at least on one occasion that her door was not
20 functioning?

21 A. And I also checked it out.

22 MR. McCOY: I think I'm done. You can take that
23 exhibit down, too, thank you.

24 THE COURT: Thank you. Any redirect?

25 MR. SHAPIRO: Very briefly, Your Honor.

REDIRECT EXAMINATION

1
2 BY MR. SHAPIRO:

3 Q. Mr. Miller, just a few follow-up questions. The last
4 question that Ms. Diamond's counsel just asked you was had
5 Ashley Diamond ever reported to you that her cell was not
6 functioning correctly. Do you recall that?

7 A. Yes, sir.

8 Q. And your response was that you checked it out. Is that
9 right?

10 A. That's right, sir.

11 Q. And I understand that to mean that you went and looked,
12 and if any repairs were necessary, you performed those repairs;
13 correct?

14 A. That's correct, sir.

15 Q. You were shown two witness statements just now. The first
16 was one by Dr. Fass that was dated November 5th, 2020. Do you
17 recall that statement?

18 A. Yes, sir.

19 Q. You have no personal knowledge of that statement by
20 Dr. Fass? That was your first time seeing that form; is that
21 correct?

22 A. That's correct, sir.

23 Q. All right. You were also shown the witness statement that
24 you completed on November 5th, 2020, regarding repairs to
25 Ms. Diamond's door. Do you recall that statement?

1 A. I do, sir.

2 Q. And you testified that in that instance you performed a
3 repair to Ms. Diamond's door because the cell door was not
4 unlocking?

5 A. That's correct.

6 Q. Okay. So the only personal knowledge that you have of any
7 issue with Ms. Diamond's door on November 5th of 2020 was that
8 the cell door would not unlock; is that correct?

9 A. That's correct.

10 Q. You were not aware of any issue on November 5th, 2020,
11 with the cell door locking --

12 A. No.

13 Q. -- is that right?

14 A. That's correct.

15 Q. All right. Thank you, Mr. Miller.

16 MR. McCOY: Your Honor? Can I ask one redirect
17 question?

18 THE COURT: You may.

19 RE CROSS EXAMINATION

20 BY MR. McCOY:

21 Q. Mr. Miller, you testified just now that Ms. Diamond told
22 you that the lock on her door was broken, and you fixed it.
23 But prior when we discussed, you told me that inmates could not
24 make requests to have doors fixed.

25 A. That's true, sir.

1 Q. Correct?

2 A. That's correct. They are not supposed to make requests.
3 But I was already there. I figured the least I could do was
4 check.

5 MR. McCOY: Okay.

6 THE COURT: All right. Thank you, Mr. Miller. You
7 may step down. You are excused.

8 THE WITNESS: Thank you.

9 (Witness excused at 2:55 p.m.)

10 THE COURT: You may call your next witness.

11 MR. CHALMERS: Your Honor, can we address a brief
12 matter, and I would like to attempt to do it before Ms. Diamond
13 returns to the courtroom. Related to this testimony.

14 It is unusual --

15 THE COURT: Go to the lecturn, and you can take your
16 mask off.

17 MR. CHALMERS: Thank you, Your Honor. It is
18 unusual -- very unusual to have a detailed explanation of how a
19 prison locking mechanism works. And Mr. Holt has identified a
20 very serious concern about Ms. Diamond having heard this
21 testimony.

22 I have two requests. One, that all of Mr. Miller's
23 testimony be redacted or sealed on the public record so that no
24 offender can get access to it; and, two, that Ms. Diamond not
25 be permitted to see a transcript of that testimony. And we can

1 discuss the particulars of Number 2.

2 But, Mr. Holt, during this testimony -- and I did not
3 anticipate it, I didn't foresee it -- but he has indicated that
4 there's very serious concern with an offender hearing an
5 explanation of how a door locking mechanism works.

6 THE COURT: Okay. Well, I am certainly sensitive to
7 any security concerns, although the issues that I heard about
8 were issues caused by inmates themselves.

9 MR. CHALMERS: Well, I think the biggest concern,
10 Your Honor, is that he gave an explanation of what the locking
11 mechanism consists of and how it works, and I think that's the
12 biggest concern.

13 THE COURT: All right. Well, I -- as I say, I'm
14 sensitive to the security concerns. I don't view that to be --
15 well, we'll work out the details. But, yes, I think it's
16 reasonable to put some constraints on that.

17 MR. CHALMERS: Thank you.

18 MR. McCOY: We would be happy to discuss and see what
19 accommodations we can come to.

20 MR. CHALMERS: And till we reach agreement, will
21 counsel agree that part of the transcript will not be shared
22 with Ms. Diamond?

23 MR. McCOY: Yes, until we figure out what to do,
24 yeah, we will not share that part of the transcript with her.

25 MR. CHALMERS: Okay. Thank you.

1 THE COURT: Thank you.

2 MR. CHALMERS: We call Grace Atchison, Your Honor.

3 COURTROOM DEPUTY: Ms. Atchison, can you wait one
4 second. Just in case you want to take your mask off.

5 (Courtroom Deputy changing out microphone cover.)

6 COURTROOM DEPUTY: Would you please raise your right
7 hand. Do you solemnly swear that your testimony in this case
8 shall be the truth, the whole truth, and nothing but the truth,
9 so help you, God?

10 THE WITNESS: Yes, I do.

11 COURTROOM DEPUTY: Okay. You can be seated. Can you
12 pull that microphone down just a little bit. Okay. Can you
13 please state your name for the record.

14 THE WITNESS: Grace Atchison.

15 THE COURT: And you're welcome to take it off.

16 THE WITNESS: Thank you.

17 THE COURT: Ms. Atchison, you are under oath, and you
18 can be prosecuted for perjury if you do not testify -- if you
19 testify falsely.

20 THE WITNESS: Yes, sir.

21 GRACE ATCHISON

22 called by Defendants at 2:59 p.m., having first been duly sworn,
23 testified as follows:

24 ///

25 ///

DIRECT EXAMINATION

1
2 BY MR. CHALMERS:

3 Q. Good afternoon, Ms. Atchison.

4 A. Good afternoon.

5 Q. How are you currently employed?

6 A. I am the state-wide PREA coordinator for the Georgia
7 Department of Corrections.

8 Q. How long have you had that position?

9 A. Four years.

10 Q. And what are the responsibilities that you have as
11 state-wide PREA coordinator?

12 A. I have oversight over our state prisons, our transitional
13 centers, our probation detention centers, and our county
14 facilities regarding the Prison Rape Elimination Act. And
15 compliance with the standards of that Act.

16 Q. Okay. What is the Prison Rape Elimination Act?

17 A. The Prison Rape Elimination Act is a law that was signed
18 in 2003, and the standards were published in August of 2012 to
19 prevent, detect, respond, and report incidents of sexual
20 harassment and sexual abuse of offenders. And confinement.

21 Q. "And confinement"?

22 A. Yes.

23 Q. In addition to you, as state-wide PREA coordinator, who
24 does GDC have to assist in implementing the PREA standards?

25 A. Me, as the state-wide prison rape coordinator. I also

1 have an assistant state-wide PREA coordinator, and I have a
2 PREA analyst that gathers data and analyzes data.

3 Q. And is it accurate that you and your team provide guidance
4 and oversight, then, to the facilities?

5 A. That's correct.

6 Q. At the facility level, who would be the persons involved
7 in implementing and executing the PREA standards?

8 A. Every facility has -- is required to have a PREA
9 compliance manager, and they do what I do at the facility
10 level. They make sure the compliance is there, that
11 investigations are conducted. Whenever we have an allegation
12 and anything and all things PREA, they have oversight of at
13 their individual facilities.

14 Q. Okay. Who would be the -- or let me just ask you first,
15 are there individuals other than the PREA compliance manager
16 who work towards enforcement or execution of the PREA standards
17 at the facility level?

18 A. Absolutely. Everybody in the prison is responsible for
19 executing PREA standards. They reach Personnel/HR issues. We
20 have a training component with that. We have Medical, Mental
21 Health. So basically every portion of the prison is -- has
22 some part to do with PREA.

23 Q. Are there individuals who are specifically identified as
24 people responsible for investigating reports of abuse?

25 A. Yes, sir.

1 Q. And who are they?

2 A. That would be the SART Team. The Sexual Assault Response
3 Team. Every facility is required to have one. And they all
4 are required to perform specific roles on that SART Team.

5 Q. Can you give us an idea of what those roles are.

6 A. I sure can. Yes, sir. The PREA compliance manager
7 oversees the SART Team, but you will have a SART investigator,
8 you will have a person from the mental health team, the medical
9 team, you have an advocate. And that is the main structure of
10 the SART team.

11 Q. Okay. Are you aware of any facilities that do not have a
12 SART Team?

13 A. No. There should not be any facilities without a SART
14 Team.

15 Q. So every facility generally in the system has a PREA
16 compliance manager and a SART Team?

17 A. That's correct.

18 Q. And that team is charged with, among other things,
19 receiving and investigating reports of sexual abuse or sexual
20 harassment?

21 A. Yes, that's correct.

22 Q. Are you aware that PREA -- and by that I'm referring both
23 to the GDC policy and the federal standards -- are you aware
24 that PREA has fairly precise definitions of what is sexual
25 harassment and what is sexual abuse?

1 A. Yes, sir, they are very clear.

2 Q. What -- what is sexual abuse?

3 A. Sexual abuse has -- there are two sides to that. Because
4 an offender can be sexually abused by a staff member or by
5 another offender. And those definitions vary between who the
6 alleged aggressor is.

7 Q. Okay.

8 A. The -- really, the only difference between the two is if
9 an officer or an employee of the Department coerces or asks an
10 offender to have sexual relations. That would be considered
11 abuse. Whereas, if an offender were to do it, it would be
12 harassment. So that's really the main difference between the
13 two.

14 Q. Okay. Do you -- as to offender-on-offender sexual abuse,
15 would a situation of consensual sex between two offenders
16 constitute sexual abuse under PREA?

17 A. No, it does not.

18 Q. Okay. If -- if there was a report or an allegation, and
19 the inquiry into that matter led to a determination that there
20 was consensual sex or not forced sex, would that at some point
21 along the way be determined to be not a PREA incident?

22 A. Yes. It -- I don't know if you want an explanation for
23 that. But if an officer or a staff member or anybody witnesses
24 what they think to be consensual sex, we don't really know that
25 it's consensual unless we do an investigation on all of it.

1 Q. Okay. In cases of sexual abuse, does PREA talk about
2 examinations, forensic examinations, or SANE examinations?

3 A. Yes.

4 Q. What does it provide for or contemplate would happen?

5 A. Anytime that there is penetration or oral, where you can
6 get the forensics exam, any evidence from that, SANE will be
7 called in. That is determined by the medical staff member at
8 that facility, whoever is in charge in Medical at that
9 facility.

10 Q. Is that SANE process part of the PREA policy or process?

11 A. Yes, it is.

12 Q. Is that SANE examination used outside of the PREA process?

13 A. No.

14 Q. So if a -- if an incident of sexual activity occurs in a
15 prison setting, but it's not sexual abuse as PREA describes
16 sexual abuse, is there generally a SANE examination?

17 A. No. That is not protocol.

18 Q. Let me ask this other question because I want to be clear
19 on this. If there is sexual activity in a prison setting, in
20 GDC prisons, say it's not sexual abuse under PREA but it's
21 consensual sex, is that permitted? Is it allowed, in other
22 words, by GDC?

23 A. No.

24 Q. Okay. So that kind of thing, could it result in some
25 other process, outside of PREA?

1 A. That is correct. It is a disciplinary matter but not a
2 PREA allegation.

3 Q. Okay. So that kind of activity could result in a
4 disciplinary issuance and then a finding of disciplinary
5 violation?

6 A. Correct.

7 Q. Do the PREA standards, the federal standards you're
8 familiar with, or GDC policy, do they contemplate that an
9 offender who is a victim reporting, or an offender who gets an
10 incident reported for him or her, will have an attorney present
11 when that offender is interviewed?

12 A. No, sir. We're allowed to take third-party reports, but
13 we are not allowed to discuss it with anybody other than the
14 victim.

15 Q. Okay. So the third -- when -- we've heard a lot about
16 third-party reports in this proceeding. A third-party report,
17 as you understand it, is when someone other than the victim
18 gives notice that the victim was victimized; is that right?

19 A. That's correct.

20 Q. But it does not change the fact that the person who was
21 the target or who was the victim is the person that has
22 knowledge presumably of the incident; is that right?

23 MS. EZIE: Objection. Leading.

24 MR. CHALMERS: I will rephrase it.

25 ///

1 BY MR. CHALMERS:

2 Q. If there is a third-party report, what is the process of
3 the investigation? Who does the SART Team talk to?

4 A. The third-party report usually comes through my office
5 directly. It can come from the facility as well, but usually
6 that's when the inmate reports it themselves. The victim
7 reports it themselves.

8 Third-party could be letter to my office, the ombudsman
9 unit, the Parole Board. All of that information is filtered
10 back down to my office if one of those entities receive an
11 allegation.

12 And I will forward it, depending on the nature, back to
13 the facility for the SART to conduct an investigation.

14 Q. And in conducting that investigation, what would you
15 expect SART to do?

16 A. The SART needs to immediately take action, separate the
17 victim from the alleged aggressor, and can begin conducting the
18 investigation. That would include interviews of any witnesses,
19 video footage, *et cetera*. Whatever evidence they -- they have
20 at their disposal.

21 Q. Who would be interviewed typically in an investigation?

22 A. Typically, the alleged victim, the alleged aggressor, any
23 potential witnesses, any staff that may have been on duty, work
24 in that dorm that day. Just whoever could be involved.

25 Q. Would you anticipate or would you expect a facility SART

1 Team to interview the third party reporting the incident?

2 A. No.

3 Q. If that third-party report was sent in by a lawyer or an
4 attorney for the alleged victim, would you expect the SART Team
5 to call and interview the lawyer?

6 A. No.

7 Q. Would you expect the SART Team to set up a process for the
8 investigation that would include, for example, at each step of
9 the way any interaction with the victim would also include the
10 lawyer or the attorney present?

11 A. No. The only thing PREA requires that we provide the
12 offender at their request is an advocate. A victim advocate.

13 Q. Okay. And what is the -- just so we know what that means,
14 what is a victim advocate?

15 A. A victim advocate can be anyone from an outside rape
16 crisis center that can help them through any trauma they
17 experience as a result of a rape and through the investigatory
18 process.

19 Some areas are in rural areas of our state and do not have
20 an outside service available, so we are required to have an
21 internal advocate that serves on the SART Team as an advocate
22 for those purposes, if requested by the offender.

23 Q. Okay. Are those victim advocates typically trained in
24 mental health or is that a requirement?

25 A. It is not a requirement, but we do offer advocacy training

1 through GNESEA, the state-wide -- the Georgia Network to End
2 Sexual Assault. And we also do it in the PREA unit, we conduct
3 trainings for advocates, internal advocates.

4 Q. Those people at the facility level who are involved in
5 conducting the -- these investigations, the SART that you're
6 referring to, do they receive training on how to go about
7 collecting information and especially interviewing witnesses?

8 A. Yes, they do. They cannot conduct an investigation
9 without first completing the training.

10 Q. Okay. When do those folks generally get trained?

11 A. When the warden designates that particular person as the
12 SART investigator, they shall then take the NIC training for
13 investigation, PREA investigations. Prior to them conducting
14 any investigation.

15 Q. Okay. How many -- I believe you may have said this, but
16 how many facilities do you have oversight over?

17 A. It varies based on facility closures or openings, but I
18 think at this moment it is 88 facilities.

19 Q. And you mentioned each facility has its own PREA
20 compliance manager and SART Team.

21 A. Correct.

22 Q. Aside from what you've already told us -- that it's not
23 required, it is not contemplated that attorneys are involved in
24 the process -- would it be practical to build in attorney
25 involvement in every SART investigation?

1 A. It would not. This gets a little tricky for me to answer
2 because of the urgency of the situation. If someone is raped,
3 we have to get them medical attention. We have to begin -- we
4 have to separate them from their offenders. And it just is not
5 feasible -- unless every attorney is going to be available
6 24/7, it is just not feasible to build that into our system.
7 And it's not required by federal law.

8 Q. Ms. Atchison, you heard Ms. Diamond testify earlier in
9 this proceeding that she -- at various points, when she alleged
10 she had been subjected to sexual assault or abuse, that she
11 said she would not communicate with the SART Team. Do you
12 recall that?

13 A. Yes, I recall hearing that. Yes.

14 Q. What effect does that have on the --

15 MS. EZIE: Objection. Mischaracterizes testimony.

16 THE COURT: I couldn't hear you.

17 MS. EZIE: Mischaracterizes the witness' prior
18 testimony.

19 THE COURT: Overruled.

20 BY MR. CHALMERS:

21 Q. What impact does that have on the ability of the SART Team
22 at Coastal State Prison to look into whether there is any merit
23 or any validity to her reports of assault?

24 A. It's very difficult when we don't know all of the
25 information, particularly who the aggressor is. Or aggressors

1 are. We have a strict policy that when someone reports a PREA
2 allegation or that they have been sexually abused, that we
3 separate those offenders from the victim to make sure the
4 victim is not revictimized or subject to retaliation. So not
5 knowing that information really does further the risk for the
6 alleged victim.

7 Q. Have you been involved with or have you been aware of PREA
8 allegations at Coastal State Prison, other than Ms. Diamond's
9 allegations? Like the ones from other offenders, I mean. Just
10 ever.

11 A. I'm sorry, can you rephrase that.

12 Q. Yeah. Have you had any experience or knowledge of PREA
13 allegations of other offenders at Coastal State Prison?

14 A. Yes.

15 Q. They occur from time to time?

16 A. Oh, yes, yes.

17 Q. And you're aware that the SART Team at Coastal State
18 Prison investigates allegations not just made by Ashley
19 Diamond, but any allegation by any offender that's made, the
20 SART Team would look into?

21 A. That's correct.

22 Q. Are you aware of any issues at Coastal State Prison where
23 if a PREA report is made and an aggressor needs to be separated
24 that that person will not be separated from the victim?

25 A. No. That violates our policy and the PREA standard.

1 Q. And are you aware of any past violations of the policy or
2 the PREA standard in that regard at Coastal?

3 A. Not to my recollection.

4 Q. Ms. Atchison, do you recall that in November of 2019, you
5 talked with Ashley Diamond on a telephone?

6 A. Yes, I did.

7 Q. And you talked to her by telephone as part of an initial
8 classification process?

9 A. I did. It was originally a GoToMeeting. I believe that
10 the video portion wasn't working on their end, but I believe
11 that she could see me. But, yes, it was GoToMeeting.

12 Q. You heard a part of that conversation that was played in
13 court the other day?

14 A. Yes, sir.

15 Q. Is that the conversation you had with Ms. Diamond?

16 A. Yes, it is.

17 Q. My recollection is it's 29 or 30 minutes, roughly half an
18 hour; is that what you recall?

19 A. Yes.

20 Q. What was the purpose of the meeting?

21 A. The transgender policy, we had just created one, to make
22 sure that there was consistency state-wide with the
23 classification and management of transgender offenders. And
24 part of that process we built into that policy was called a
25 state-wide classification committee.

1 Because the standard -- PREA standard does not require us
2 to house transgender offenders in female or male facilities,
3 whether it's a transwoman or a transman, but it does require us
4 to consider their housing. So we wanted a policy that would
5 make sure that that was being done on an individual basis, so
6 that's where the state-wide classification committee was born.

7 Q. As part of that process, do you consider the offender's
8 preference for assignment?

9 A. Yes, we do.

10 Q. So you would consider as part of that process the
11 offender's preference of assignment either to a female or a
12 male facility?

13 A. Yes. We consider that.

14 Q. And you -- do you make that consideration or go through
15 that consideration whether it's a transgender male or
16 transgender female or intersex person?

17 A. Are you asking do we discriminate?

18 Q. Yes, I am.

19 A. I do not discriminate.

20 Q. So, then, the -- the situation arises, you have the
21 interview because in this case you understood or you knew going
22 into it that Ms. Diamond is transgender?

23 A. Yes.

24 Q. Okay. What did Ms. Diamond indicate to you as to her
25 preference for placement? Male or female facility?

1 A. There were --

2 THE COURT: This gets into what we heard on the
3 phone?

4 MR. CHALMERS: Just in the meeting -- yes, Your
5 Honor. I apologize. I know I'm retreading some ground, but
6 just in the telephone call in general.

7 THE COURT: Very quickly.

8 MR. CHALMERS: Thank you.

9 A. Okay. What was the question?

10 BY MR. CHALMERS:

11 Q. I'm sorry, what did Ms. Diamond indicate, in your
12 telephone call, was her preference as to facility placement?
13 Whether it be female or male?

14 A. She first stated that she would like to go to a female
15 facility, and later clarified that a male facility would be
16 fine as long as it was based on her security classification.

17 Q. Okay. And the latter part of what you just referred to,
18 that is the audio part that we heard in court the other day?

19 A. Yes, sir.

20 Q. And from that conversation, did Ms. Diamond make it clear
21 to you that the -- that the -- her concern from her past period
22 of incarceration was the -- whether she was a medium or close
23 security prisoner?

24 A. Yes, that seemed to be her main concern.

25 Q. And she also indicated in that part, as you said, when she

1 clarified that if she were classified, if she were at a medium
2 security prison, then she would be comfortable with assignment
3 to a men's medium security prison?

4 A. That was my understanding. Yes.

5 Q. Did you later summarize that conversation in a document?

6 A. I did.

7 Q. Okay. I am going to pull up Defendants' Exhibit 2. Do
8 you recognize what we have pulled up as Defendants' Exhibit 2?

9 A. Yes, I did.

10 Q. Okay. Is that your summary of the information that you
11 gathered and the process that you've described?

12 A. Yes.

13 Q. Near the bottom or at the bottom, is that your electronic
14 signature on it?

15 A. Yes, it is.

16 Q. Okay. And near the bottom, you -- you wrote, "My housing
17 recommendation remains neutral as I feel she would function
18 well in either facility type."

19 A. That's correct.

20 Q. And that was your recommendation or your contribution --

21 A. Yes.

22 Q. -- to this process?

23 A. Um-hum.

24 Q. When you talked to Ms. Diamond, did you get information as
25 to whether she was in the process of getting a mental health

1 evaluation and a medical evaluation?

2 A. Yes, when I interviewed her, she had not gone through that
3 at that time.

4 Q. Okay. What was your understanding as to whether or not
5 that -- those things would occur for her?

6 A. My understanding was that she was a Mental Health
7 Level III when she left the -- our custody the first time. But
8 I was not sure if she would be Level III again. And that she
9 had had a previous conversation during a round -- the rounds
10 with Mr. Toole, the facilities ops director, and some of that
11 leadership team, that they had already had a housing discussion
12 with her. So I just advised her, okay, it sounds like that you
13 are -- you have this in the works, you've already talked to
14 some folks about it, and we'll just see where that goes.

15 Q. Okay. Ms. Atchison, do you recall in that interview
16 whether you discussed with Ms. Diamond the PREA process or
17 whether you asked if she knew about PREA?

18 A. Yes, I did.

19 Q. Why would you ask that?

20 A. I ask them all. I ask everybody that I do an interview
21 with if they understand PREA and if they know what it means and
22 what it stands for.

23 Q. And do you recall what she indicated?

24 A. Um, I recall her being very knowledgeable about the PREA
25 standards. When I spoke to her. And she did mention that

1 before my existence as PREA coordinator, that she had had many
2 conversations with the previous administration. So I felt
3 confident that she knew a great deal about PREA.

4 Q. Okay. Did Ms. Diamond tell you at any point in the
5 conversation that because of past victimization, that she
6 wouldn't be able to report instances of sexual abuse?

7 A. No, she did not.

8 Q. Did she say anything to give you any indication during
9 that conversation that she would not communicate or would not
10 be able to participate in the PREA process if she had an
11 incident of sexual abuse?

12 A. No, she did not.

13 Q. You're aware that there have been PREA victim/aggressor --
14 I believe they may be called "PREA risk screenings" done for
15 Ms. Diamond periodically?

16 A. Yes.

17 Q. Can you explain what the PREA risk screening is.

18 A. The PREA risk screening was -- it's a set of questions
19 that determines whether an offender can be a potential victim,
20 a potential aggressor sexually. They can be both or they can
21 be neither.

22 We brought in a doctor -- again, before my time as the
23 PREA coordinator -- as a contractor, to develop an algorithm
24 based on the number of questions you answer 'yes' to or 'no'
25 to. The SCRIBE computer system itself generates whether they

1 are a potential victim or aggressor. It indicates their
2 classification.

3 Q. Okay. So if we can pull up Defendants' Exhibit 3. So --
4 so what we've put before you, Ms. Atchison, is Defendants'
5 Exhibit 3. Do you recognize the page that's on top here?

6 A. Yes, I do.

7 Q. So, I need to ask my co-counsel because I can't tell from
8 the screen in front of me, how many pages is this document.

9 So, I am going to ask Mr. Shapiro to scroll through the
10 document so that you can look through it. And can we get --
11 there we go. Do you have the document in front of you now
12 where you can see the full page on the screen?

13 A. I can see one -- one Offender PREA Classification Detail
14 Sheet, yes.

15 MR. CHALMERS: Okay. Mr. Shapiro, can you just page
16 through the document.

17 THE COURT: While you're looking, counsel, if it
18 helps you at all in organizing your examinations, what we have
19 left, if we don't finish the evidence today, we will reconvene
20 tomorrow afternoon, because I have hearings in the morning.

21 MR. CHALMERS: I believe I will work to help us get
22 finished today, Your Honor. My exhibit is not in the right
23 order.

24 BY MR. CHALMERS:

25 Q. Are you aware -- let me just ask you this. What we've

1 marked and put in front of you as Defendants' Exhibit 3 --

2 COURTROOM DEPUTY: He told me to take it down. I'll
3 put it back up.

4 BY MR. CHALMERS:

5 Q. -- do you recognize the form of the document?

6 A. Yes.

7 Q. And what is this? Is this the assessment that you were
8 describing just a moment ago?

9 A. Yes, it is.

10 Q. And there's a series of questions that appears on the
11 right there would be a 'yes' or 'no' answer to. How are those
12 answers derived?

13 A. It is supposed to be conducted with an interview with the
14 offender.

15 Q. Okay.

16 A. When -- the PREA standards say that when an inmate is
17 transferred to a new facility or enters a facility, that they
18 are required to have an initial victim screening where the
19 counselor usually -- a mental health counselor, but if a mental
20 health counselor is not available, the counselor usually meets
21 with the offender and asks these questions.

22 Or they can answer some of them based on information that
23 we have in our SCRIBE database, such as disciplinary histories
24 and things like that. Just to verify that what the offender is
25 telling them is -- is truthful.

1 Q. Okay. All right. So the -- the information on a PREA
2 class- -- on this PREA risk screening would be something that
3 is updated or performed at the facility level --

4 A. Yes.

5 Q. -- usually. And then based on the information, there's
6 some sort of processing done to result in the actual screening
7 document?

8 A. Yes, sir. I'm sorry I cut you off. The initial screening
9 is required in a 30-day -- after the offender has been at that
10 facility for 30 days. Within that 30 days, we're required to
11 do another one to see how they have adjusted to their new
12 facility. Make sure that they are not -- they haven't become a
13 victim since the last time we screened them.

14 We also do one, according to the standard, every time an
15 allegation -- sexual allegation is made.

16 And the transgender offender is required to have one twice
17 a year according to the PREA standard. So we have written that
18 into our policy as "every six months." Just to make sure they
19 don't do one in January and then February and say they've done
20 it for the year.

21 Q. Right. And you've heard the testimony that Ms. Diamond
22 has been designated as a PREA victim through this screening
23 process for much of her time in this period of incarceration?

24 A. Yes.

25 Q. And that she also has been designated as a PREA

1 victim/aggressor after the point in time where she had the DR
2 that's been discussed?

3 A. Yes.

4 Q. And is that designation proper, according to your
5 understanding of PREA?

6 A. Yes. It is.

7 MR. CHALMERS: Thank you, Ms. Atchison.

8 THE WITNESS: Thank you.

9 EXAMINATION

10 BY THE COURT:

11 Q. Why?

12 A. Why is it correct?

13 Q. Correct.

14 A. Initially when she had her screenings conducted, she
15 didn't have the disciplinary report that's in question on
16 October 31st. So when that disciplinary report and allegation
17 hit, we were required to do another victim screening -- or the
18 facility was. And that DR is what kicked it off to be an
19 aggressor. So if she was found guilty of sexual conduct, then
20 that would put her on that chart as an aggressor as well.

21 Q. Regardless of the circumstances?

22 A. Yes, sir. It just goes by -- because the question says --
23 let me see right here. "Consensual acts." I just saw it
24 earlier. I misunderstood, I thought that was a question on
25 this classification form.

1 Q. It is not, though; is it?

2 A. No, I am not seeing that it is.

3 Q. Could you be mistaken?

4 A. Yes, I could be mistaken, yes, sir.

5 MS. EZIE: Maybe I'll pick up from here, Your Honor.
6 So, um, we can leave this exhibit up.

7 CROSS EXAMINATION

8 BY MS. EZIE:

9 Q. Ms. Atchison, you have before you the standard questions
10 that GDC uses to determine an inmate's PREA classification;
11 correct?

12 A. Correct.

13 Q. People who are designated PREA victims are people who are
14 found to have risk factors for sexual assault in prison;
15 correct?

16 A. Yes.

17 Q. Ms. Diamond has carried that PREA victim designation for
18 most of her incarceration at GDC; correct?

19 A. Yes, that's correct.

20 Q. And a PREA aggressor, that's a label that's applied to a
21 subset of individuals who are viewed as having -- being a risk
22 of assaulting others in prison; is that fair?

23 A. It varies on -- you see the questions here. Not
24 necessarily -- like, you could have a sex offense, prior sex
25 offense, and you would be labeled as that aggressor. But a

1 whole 'nother different person could answer a different
2 question to say yes, and then that would also make them -- it
3 could be either way. But it doesn't necessarily mean that they
4 are a sexual aggressor; it means they have the potential for
5 sexual aggression.

6 Q. Okay. What are the consequences of being labeled a PREA
7 aggressor?

8 A. I am not sure.

9 Q. You are not sure whether it impacts an inmate's housing
10 within GDC to be labeled a PREA aggressor?

11 A. Oh, okay. Yes, because we have to make sure that we don't
12 house potential victims and potential aggressors together. We
13 have to make sure that we separate them.

14 And then also if they are a victim, we have to make sure
15 that -- as Ms. Diamond in her case, put her in the front of the
16 dormitory. The warden made a decision to put her in the front
17 of the dormitory because that's the safest place in that
18 dormitory for her. So, yes, it does factor in housing.

19 Q. Okay. And if someone is designated a PREA aggressor, that
20 is a designation that allows them to be housed with other
21 sexually aggressive individuals?

22 A. Potentially, yes.

23 Q. Okay. And looking at this chart, it does not ask whether
24 an individual has been found, um, guilty of having consensual
25 sex; is that right?

1 A. That's correct. I was mistaken on that.

2 Q. And so being accused of --

3 THE COURT: Excuse me, you're not saying that she was
4 properly classified as a sexual aggressor, then; is that right?

5 THE WITNESS: It all went back to the DR that we were
6 discussing.

7 THE COURT: I understand. This is a classification
8 system.

9 THE WITNESS: Right. So now at this point, after
10 being mistaken, no.

11 BY MS. EZIE:

12 Q. So Ms. Diamond should not be classified as a PREA
13 aggressor to the extent that all she's been accused of is
14 consensual sexual behavior; is that fair?

15 A. Because that case was unsubstantiated, then there would
16 not be a reason for her at this point to be an aggressor.

17 Q. Okay. So she should not be listed as a PREA aggressor?

18 THE COURT: Yes, we have established that.

19 MS. EZIE: I will move on.

20 THE COURT: Take it. It's a win.

21 BY MS. EZIE:

22 Q. So, why don't we talk a little bit about housing within
23 GDC. Um, as you stated earlier, GDC has issued a policy that
24 allows transgender women to be housed at female facilities;
25 correct?

1 A. The policy -- yes.

2 Q. Okay.

3 A. Yes.

4 Q. That's a standard operating procedure within GDC?

5 A. That we consider them for placement in a female facility.
6 Or male facility, based on their status.

7 Q. Okay. And you're supposed to consider what the inmate
8 indicates is their safety preference; right?

9 A. It is their safety preference as well as safety and
10 security for other offenders in our custody.

11 Q. Okay. Ms. Diamond was eligible to be placed at a female
12 facility under that policy when she arrived at GDC on
13 October 29th of 2019?

14 A. Uh-huh.

15 Q. Can you give me a verbal answer, I'm sorry.

16 A. Oh, yes.

17 Q. And has Ms. Diamond ever stopped being eligible for
18 placement at a female facility under that policy, to your
19 knowledge, now that we've addressed the DR?

20 A. The DR is -- at this point in time, the DR -- she was
21 found guilty of those charges. That hasn't changed. So, yes,
22 I would be a little bit concerned having that DR on record with
23 her being placed in a female facility.

24 But I'm also worried about her being placed in a female
25 facility for her safety. Because we have violent female

1 offenders, as well.

2 Q. I am going to stop you right there. So just to confirm,
3 the first reason you indicated and perhaps the primary reason
4 you've indicated that Ms. Diamond may not be eligible for
5 placement at a female facility is the October 31st DR; correct?

6 A. To answer truthfully, and I don't know if this is
7 permitted, but I have heard things as far as, um, her
8 activities in the population that give me concern on whether
9 she would be safe or -- in a female facility or whether the
10 female population would be safe with her there.

11 Q. Okay. When was the date -- approximate date that you
12 heard whatever statements you are referencing?

13 A. I know for a fact, not any dates, but I want to say
14 shortly after we did the classification interview. That
15 recorded interview. Lachesha Smith from GDCP advised me that
16 there were rumors on the dormitory that prostitution was going
17 on. But that necessarily doesn't fall under PREA. So I could
18 not order an investigation on that. But it was information
19 like this that I still have to consider to make sure everybody
20 is safe.

21 Q. Okay. Ms. Diamond, um, was -- when you did your initial
22 interview with -- um, with Ms. Diamond you asked her about her
23 sexual orientation; correct?

24 A. Yes, I did.

25 Q. She indicated she's sexually attracted to males?

1 A. That's correct.

2 Q. You've never received any information contrary to that;
3 have you?

4 A. I have not.

5 Q. You are aware that Lachesha Smith is a defendant in this
6 case; correct?

7 A. Not until this moment.

8 Q. Okay. You indicated earlier that you had spoken to
9 Ms. Diamond as part of the PREA process. Or the intake
10 process. And I'm correct that she indicated that her
11 preference at that time was to be housed at a female facility;
12 is that right? That was at least her initial preference that
13 she stated?

14 A. I believe so, yes.

15 Q. Okay. And, um, she gave some reasons -- additional
16 reasons beyond safety for why she wanted to be housed at a
17 female facility; do you recall that?

18 A. She indicated -- I can't recall specifically what she
19 said, but I understand that she said based on her past
20 experience and her past incarceration of sexual abuse.

21 Q. Okay. That was a reason why a female facility placement
22 would have been proper?

23 A. To my understanding.

24 Q. Okay. Now, you've spoken earlier today that Ms. Diamond
25 referenced placement in a medium security facility as well?

1 You stated that?

2 A. She said based on her security level.

3 Q. Okay. So Ms. Diamond, when you spoke to her, was a medium
4 security offender; right?

5 A. Yes, as far as I know.

6 Q. And she was very concerned about being placed outside of
7 her classification?

8 A. She was concerned...?

9 Q. Concerned about being placed or housed outside of her
10 security classification?

11 A. Oh, yes.

12 Q. Okay. Now, when you spoke to Ms. Diamond during the
13 intake process, after your conversation, is it fair to say that
14 none of her safety requests related to housing were honored?

15 A. Is it fair to say that none of her safety requests were
16 honored?

17 Q. Uh-huh. Yes. As to housing.

18 A. That's hard to say.

19 Q. Well, Ms. Diamond was not placed at a female facility.

20 A. That's correct. But she was placed in the safest place
21 possible.

22 Q. Which is a close security men's facility, Jackson?

23 A. Which is where the warden at that facility has decided to
24 house her.

25 Q. Which facility?

1 A. At Coastal.

2 Q. Okay. Ms. Diamond spoke to you in November of 2019?

3 A. That's correct.

4 Q. Okay. She arrived at Coastal in June of 2020; is that
5 right?

6 A. Um-hum.

7 Q. Okay. So Ms. Diamond was not housed at a medium security
8 facility between November and June of 2020; correct?

9 A. That's correct. And if I can make a clarification. I
10 don't make the decision on where she's housed. I just make a
11 recommendation.

12 Q. Understood.

13 A. Okay.

14 Q. But just fair to say you spoke during the intake interview
15 about how close security facilities were particularly dangerous
16 for Ms. Diamond; right?

17 A. Yes, that was her opinion, yes.

18 Q. And that's where she was housed for the first seven months
19 of her incarceration?

20 A. Yes.

21 Q. Now, you stated earlier today that PREA reports can be
22 made in a few different ways; is that true?

23 A. Several ways, yes.

24 Q. They can be made verbally to staff?

25 A. That's correct.

1 Q. They can be made in writing?

2 A. Yes.

3 Q. And they can be made both anonymously and through third
4 parties; correct?

5 A. Yes.

6 Q. Why is that?

7 A. To -- for a PREA report, are you speaking anonymously? Is
8 that what -- the specific question?

9 Q. Sure. And via third parties.

10 A. Well, to protect -- if the victim wants to remain
11 protected and report anonymously -- or anybody, for that
12 matter -- they have the right to do that so that they don't
13 face any retaliatory actions against them. Not that we would
14 retaliate against them to begin with, but if they feel more
15 comfortable, then they have the right to do that.

16 Q. So the goal is to try to make victims comfortable in
17 speaking about sexual assaults?

18 A. That's correct.

19 Q. Because there is a recognition that it can be very
20 difficult for people to do?

21 A. Yes.

22 Q. Now, when someone makes an anonymous PREA report, does GDC
23 still have an obligation to investigate?

24 A. Yes, we do.

25 Q. They have an obligation to investigate even if there's not

1 a victim's statement that's been identified?

2 A. Yes.

3 Q. And there are ways that you can investigate PREA
4 investigations without a victim's statement; is that right?

5 A. Without -- it depends on the circumstance.

6 Q. You can certainly try?

7 A. Yes, we try, yes.

8 Q. Okay. So a victim's statement is helpful but not required
9 to participate in the PREA process?

10 A. I would say that it is required because the victim is the
11 one who was victimized. It's -- not required, but very helpful
12 to the investigation outcome.

13 Q. Okay. So very helpful, not required.

14 A. Right.

15 Q. If it was required, there wouldn't be the option of having
16 anonymous reports; right?

17 A. Or third report, yes, that's correct.

18 Q. Or third-party reports, okay. Now, your testimony today
19 is that when you receive third-party PREA reports, you never
20 contact the individual or the entity that made that PREA
21 complaint?

22 A. No.

23 Q. Is that a requirement, that those people not be contacted?

24 A. I am required to take the report and any information that
25 the third party is willing to provide to me. But I am not

1 authorized, from our investigative policies, to release or
2 discuss any investigation information with anybody other than
3 the victim.

4 Q. Are you authorized to discuss the allegations that appear
5 in a third-party report with the third party that reported it?

6 A. Not the details of the allegations, no.

7 Q. Can you direct me to the policy that states that.

8 A. It would be our investigation policy. I don't know what
9 that is.

10 Q. Is that your PREA SOP or a different document?

11 A. That's a different document.

12 Q. Okay. I trust that your lawyers will be able to direct me
13 to that document.

14 A. Yes.

15 Q. Now, um, do you know -- am I correct that when
16 Ms. Diamond's PREA reports were submitted by various entities,
17 including Ms. Diamond, to Coastal State Prison, they were
18 marked "unsubstantiated" for one reason and one reason alone;
19 am I right? And that reason was that her attorneys were not
20 made available for an interview and, therefore, she didn't feel
21 comfortable going forward?

22 A. It was marked "unsubstantiated" because we did not have
23 enough information to make a determination on whether the
24 incident did occur or did not occur. That's what
25 "unsubstantiated" means in PREA terms.

1 Q. It doesn't mean that the report is false?

2 A. It doesn't mean it's false, and it doesn't mean it's true.
3 It just means we didn't have enough information to make a
4 determination.

5 Q. Okay. So sitting here today, you're not testifying that
6 Ms. Diamond fabricated numerous PREA reports or allegations of
7 sexual assault?

8 A. Not for the ones that she's requested counsel for. And I
9 am not saying she fabricated any of them, but I am saying that
10 some of the claims that she made are not PREA eligible.

11 Q. Okay. So your testimony today is that while some
12 incidents that Ms. Diamond alleges in your mind do not
13 constitute a PREA incident, that you're aware of no incident
14 where Ms. Diamond has made a PREA statement that's been
15 untruthful; is that right?

16 A. There are a couple of them that we can go through,
17 certainly, that are unfounded. Which means that there -- the
18 preponderance of evidence weighed that the incident likely did
19 not occur.

20 Q. Okay. Why don't we go through your affidavit.

21 A. Okay.

22 Q. Do you have that document or should we pull it up? Let's
23 see. I believe your affidavit is Exhibit 219. Would you like
24 a handwritten copy? Do we have that?

25 A. Yes, please. If it's on the screen, can I look at the

1 screen?

2 Q. As we're getting that up, when you were talking about the
3 third-party process, investigative process, you said you
4 wouldn't discuss the details of that procedure with a third
5 party. But would you indicate to them the policy that they
6 should refer to if you thought that you would not be able to
7 speak with them?

8 A. I haven't in any instance, but if they were to request
9 that information, sure.

10 Q. Okay. Nothing prevented you from indicating to
11 Ms. Diamond that her requests for counsel to be present would
12 not be honored; was there?

13 A. It was my understanding that the SART Team delivered the
14 inmate notification form, which is the part of our policy that
15 lets the offender know the outcome of the investigation.

16 Q. Are you aware of any incident that Ms. Diamond was told
17 that her PREA complaints were going to be marked
18 "unsubstantiated" because she had not made --

19 A. I am not personally aware.

20 Q. Did you ever notify or ask anyone to notify Ms. Diamond
21 that if she asked for her attorneys to be present during
22 interviews that her complaints were going to be marked
23 "unsubstantiated"?

24 A. No.

25 Q. So, let's look at your affidavit, Ms. Atchison. Beginning

1 on Page 6 of that affidavit, and I am just -- to -- to clarify,
2 on Paragraph 21, you state that you're aware of 13 reports
3 that, um, may constitute PREA incidents involving Ms. Diamond;
4 correct?

5 A. (No response.)

6 Q. Is it fair to say that you have received, over the course
7 of Ms. Diamond's incarceration, numerous indications or reports
8 that she has been the victim of sexual violence?

9 A. Yes, yes.

10 Q. Not just one time?

11 A. No.

12 Q. Not just two times?

13 A. Several, yes.

14 Q. Now, under Paragraph 22, the first bullet indicates a PREA
15 allegation concerning an inmate named Nurse -- not an inmate --
16 an officer named Nurse Lucas; do you see that?

17 A. "Nurse Lucas," yes.

18 Q. Okay. Ms. Diamond's allegation was that this -- um, this
19 staff member touched her breasts. If that allegation was true,
20 would that constitute a PREA violation?

21 A. Yes, it would, yes.

22 Q. And that allegation was never proven or disproven?

23 A. Correct.

24 Q. Okay. Now, the next paragraph on May 9th and 10th
25 indicates that Ms. Diamond was locked into a Smith -- I'm

1 sorry, into a closet by an officer named Correctional Officer
2 Arneika Smith and was touched on her thighs, legs, and
3 buttocks. Do you see that?

4 A. I do.

5 Q. If that allegation was true, would you agree that it
6 constitutes sexual abuse under PREA?

7 A. Yes.

8 Q. Let's turn to the next page. Do you see an incident
9 that's described as happening on June 18th, 2020?

10 A. Yes.

11 Q. And in that incident it alleges that a unit manager named
12 Jackson made comments about Ms. Diamond's breasts and genitalia
13 at a dormitory-wide meeting. Do you see that?

14 A. I do.

15 Q. Okay. Would that constitute inappropriate behavior under
16 one or more GDC policies?

17 A. Yes, it would.

18 Q. Okay. Now, you also received allegations, I believe,
19 concerning sexual abuse that allegedly occurred prior to the
20 Nurse Lucas incident in a May 1st, 2020, PREA notification; is
21 that right?

22 A. An incident prior to Nurse Lucas?

23 Q. Yes.

24 A. No, I did not receive that.

25 Q. Okay. Let's take a moment. I am not sure what document

1 this would be in, but I believe it's Defendants' 584.

2 You know what, I have another way to look it up. I'm
3 sorry. Why don't we turn to -- it's our May 1 PREA notice.
4 Now, is this a letter that you've seen in some format before,
5 Ms. Atchison?

6 A. I've received several from SPLC, so I would have to read
7 it in its entirety to --

8 Q. Sure. So you've received -- you say you've received
9 several notices alleging that Ms. Diamond was sexually
10 assaulted from SPLC?

11 A. Yes.

12 Q. Why don't we turn to the second page of this document. I
13 am looking for a specific reference. I'm going to ask you to
14 turn to the next page. Okay. We can scroll on to the page
15 after that. Page after that. Page after that.

16 Do you see that in Paragraph 5 of this document -- not
17 Paragraph 5 -- Section V, it indicates that Ms. Diamond has
18 been sexually assaulted by other people in custody with her.

19 A. Yes, I see that.

20 Q. Okay. That's not an allegation that you recall, sitting
21 here, ever having investigated?

22 A. Not specific information. "Repeatedly sexually assaulted
23 by other incarcerated people after her safety-based housing
24 requests were ignored." That gives me no specific information
25 to initiate an investigation.

1 The first allegation that I am aware of is the Nurse Lucas
2 allegation.

3 Q. Okay. You have spoken to Lachesha Smith at various points
4 in your role?

5 A. Yes, I have.

6 Q. If inmates report sexual assaults to individuals such as
7 Lachesha Smith, should they ultimately be making a PREA report?

8 A. Yes, they should investigate it immediately.

9 Q. Is the same true if the inmate notifies them of
10 threatening letter that they receive from inmates that are
11 alleging physical and other harm?

12 A. If it is physical harm, it goes a different route. If
13 it's sexual harm, it would come through PREA.

14 Q. Okay. So reports should have been made when -- if or when
15 Smith or other individuals received notifications of that form?

16 A. Yes.

17 Q. Now, let's go back to your affidavit, which is -- 219.
18 Okay. If we scroll down to the last paragraph, beginning
19 July 3rd, do you see that this describes you being made aware
20 of, um, a sexual assault that allegedly took place on July 3rd,
21 2020?

22 A. Yes.

23 Q. Am I right that that assault, as alleged, would constitute
24 a PREA violation under GDC policy?

25 A. Yes, if this were true, it would constitute a PREA

1 violation.

2 THE COURT: Is the point of going through these
3 individually to establish that if the allegations were true,
4 they would be PREA allegations --

5 MS. EZIE: Yes, Your Honor.

6 THE COURT: -- violations?

7 MS. EZIE: We will move along a little faster.

8 THE COURT: Ms. Atchison, just look through them, and
9 tell us --

10 THE WITNESS: Just tell you which ones I think are
11 not? Is that where --

12 THE COURT: -- if they were true allegations, which
13 would be PREA violations.

14 THE WITNESS: Okay, yes, sir. I would like to go
15 back to the one with Jackson -- Unit Manager Jackson. Because
16 even though that is a policy violation if it were true, it
17 would not be a PREA violation. Because the PREA definition is
18 very clear on what sexual harassment is, and it specifically
19 says must be a repeated occurrence.

20 So, therefore, that does not fall under the PREA
21 standard, but it is misconduct and should be addressed.

22 BY MS. EZIE:

23 Q. Is one of the reasons it should be addressed is if staff
24 members were to talk about inmates in this manner, it might
25 make them less safe with other inmates?

1 A. I can't answer that. To the truist of my ability.

2 Q. Do you think that language like "a freak is about to enter
3 the dorm" or discussions about the genitalia of transgender
4 inmates promotes their safety and wellbeing within GDC custody?

5 A. As a matter of fact, I think there was something even
6 further to this that said that she was not to be touched. So,
7 yes, this is completely inappropriate, but not PREA --

8 Q. Not PREA?

9 A. -- related. And that officer was moved from that
10 dormitory as a precautionary measure to ensure that, um, that
11 person does not make that mistake again. They were counseled.

12 Q. Okay. Now, did you take the judge's invitation and look
13 to see whether there were any other incidents that did not rise
14 in your mind to sexual --

15 A. Yes, I'm looking now.

16 Q. -- allegations?

17 A. Okay. Okay. September 1st, 2020, Deputy Warden Betterson
18 called her -- this is Page 8 -- called her a cancer to the
19 prison and also addressed her window coverings. This is not a
20 PREA allegation.

21 Q. Do you consider it misconduct for an officer to describe
22 an inmate as a cancer to a prison?

23 A. I would. But that is not -- does not fall under PREA,
24 so --

25 Q. Okay.

1 A. Yes.

2 Q. Am I hearing you testify that anything that relates to
3 misconduct, whether or not it makes an inmate feel unsafe, is
4 not of interest to you?

5 A. No.

6 MR. CHALMERS: Your Honor?

7 THE COURT: Come on, Ms. Ezie, that is not a fair
8 characterization of anything that she has said.

9 MS. EZIE: I was going to say, "unless it's a PREA."

10 THE COURT: Let's move on.

11 MS. EZIE: Sure, I will.

12 BY MS. EZIE:

13 Q. Right below that, Ms. Atchison, I see that you stated that
14 the September 1st, 2020, um, allegation concerning Ms. Diamond
15 being strip searched by male officer, that that was not a PREA
16 incident, either?

17 A. That is correct, that is routine. The PREA standard is
18 very clear that they can conduct strip searches as long as it
19 is within their scope of duties.

20 Q. Is it routine for inmates who are strip -- who are housed
21 in female prisons within GDC to be strip searched by male
22 officers?

23 A. Our GDC policy says that they are to be searched in the
24 manner in which all other offenders at that facility are to be
25 searched.

1 Q. Okay. So your testimony, to be clear, is that if
2 Ms. Diamond was housed at a female facility, strip searches
3 like this would be less common?

4 A. I would not say less common. Strip searches occur for a
5 number of reasons. And, again, that is not --

6 Q. Would they be performed by male officers?

7 A. They would be performed by the officer that is allowed to
8 conduct it at that facility type. For example --

9 Q. At female facilities that's female officers?

10 A. At a female facility, that is a female officer, correct.

11 Q. So the problem that Ms. Diamond complained of here of
12 being a transwoman who is being strip searched by male
13 officers, that is a problem associated with being at a male
14 prison?

15 A. That is a security searching procedure question, but not a
16 PREA allegation.

17 Q. Okay. Now, on September 18th, if we scroll down a little
18 bit --

19 THE COURT: No, no, let her finish going through
20 them.

21 MS. EZIE: Okay.

22 THE WITNESS: I was finished. Oh, to continue going
23 through the --

24 THE COURT: Well, if there are any of these
25 allegations that is not a PREA allegation -- or, violation if

1 true.

2 THE WITNESS: Okay. So the September 18th, if it
3 were true, would constitute PREA.

4 BY MS. EZIE:

5 Q. So, Ms. Atchison, did you personally undertake any steps
6 to investigate the validity or the accuracy of Ms. Diamond's
7 PREA reports that are alleged in this affidavit?

8 A. I do not investigate them. I have oversight where you
9 look to ensure that the investigation was conducted.

10 Q. Okay. And, um, that's also to say that you are describing
11 these reports as unsubstantiated without being able to state or
12 have personal knowledge of what steps were taken to confirm if
13 the PREA allegations could be validated?

14 A. Yes, I do. We have a database in SCRIBE that I created
15 since I've been the PREA coordinator that allows all
16 investigations to come to the PREA unit office. It's a work
17 flow step process. It starts with the PREA investigator, it
18 goes to the PREA compliance manager at the facility, and then
19 it comes to my office for review.

20 Q. Okay. So that's also to say that any PREA allegation that
21 Ms. Diamond has made in the time that she's been at GDC is
22 something that you would have access to and be able to review?

23 A. I would have access to minimal information because the
24 program does not allow us to scan documents such as witness
25 statements and any corresponding documentation. But it does

1 give us a summary of what occurred, so that if there are any
2 red flags, we are able to see that. And to -- we have the
3 option of sending it back to the prison as well, to correct any
4 issues they need to correct.

5 Q. Okay. Now, you've stated today that the main reason that
6 Ms. Diamond's PREA allegations did not move forward was that
7 she requested her lawyers to be present during interviews;
8 correct?

9 A. I think the investigation still went forward. We just had
10 to use the information that we had on hand to make the
11 determination.

12 Q. Okay. Now, is there anything in GDC policy that prevented
13 that request being granted to Ms. Diamond?

14 THE COURT: Asked and answered.

15 MS. EZIE: I think I asked a different version of it,
16 but I will move along.

17 BY MS. EZIE:

18 Q. Are you aware that Ms. Diamond explained the reasons that
19 she was requesting that lawyers be present for these
20 interviews?

21 A. I was not aware at the time specifically of her reasons.
22 Just that she wanted her counsel present.

23 Q. Okay. Are there any steps that you personally undertook
24 or asked others to undertake to make sure that Ms. Diamond was
25 comfortable providing PREA information?

1 A. Yes. I've had a discussion, including that interview that
2 I had with her in the SCC meeting, that there were several ways
3 to report. I made sure that I let her know that if she had any
4 problems, that she could reach out to me via J-Pay directly,
5 and if she did not feel comfortable to do so through the
6 traditional route.

7 Q. What about after she expressed her interest in having
8 lawyers present for safety?

9 A. No, I have not spoken to her since that request.

10 Q. So since those requests, you have done nothing or asked
11 that -- you have made no instructions that others do -- take
12 steps to make her feel more comfortable?

13 A. I have not had any discussions about the care and
14 treatment that the warden provides at Coastal, no.

15 Q. Okay. Now, Ms. Atchison, is it fair to say that your
16 November, 2020, intake interview with Ms. Diamond is not the
17 only time that she's requested placement at a female facility?

18 A. She sent a J-Pay email, to my recollection, to my office
19 requesting to be placed in a female facility.

20 Q. When did she send that message to you?

21 A. I cannot recall. I would have to look.

22 Q. What did you do after you received that message?

23 A. I followed up with the SCC documentation to see where she
24 was housed.

25 Q. Was she housed --

1 A. She was housed at Coastal State Prison.

2 Q. That is not a female facility; correct?

3 A. That's correct.

4 Q. Okay. Was there any action taken on her request at that
5 time?

6 A. No. Just a review.

7 Q. Okay. Now, um, isn't it true that when Ms. Diamond sent
8 letters to your office via her counsel, she also requested a
9 female facility placement at those times?

10 A. Can you repeat that. I'm sorry.

11 Q. When Ms. Diamond sent PREA notices via the third-party
12 PREA mechanism requesting or advising you of PREA allegations,
13 did she request placements at female facilities at that time?

14 A. Yes, the SPLC letters demanded female placement and
15 immediate release.

16 Q. So November, 2020, is not the only time -- or 2019 is not
17 the only time that you've heard Ms. Diamond express an interest
18 in being at a female facility for safety?

19 A. No, it is not.

20 Q. What, if any, consideration has been given to those
21 requests since November of 2019?

22 A. As I testified earlier, I can only make a recommendation
23 to the, um, facilities director, and, um, commissioner. And
24 there is not a time frame in our policy on when we should make
25 that decision. But I can only give a recommendation. I don't

1 make the final determination.

2 Q. Okay. So there's no time frame for your decision. So,
3 these decisions are supposed to be ongoing and dynamic as a
4 prisoner's needs change?

5 A. Yes, and the reason that we put that in the policy is
6 because we need to be able to see how they're going to function
7 in our system. It is very serious to put a, um, transgender
8 female into a female facility, not knowing how they're going to
9 function or how they function in a male facility even. So I
10 did not want to write that into the policy and have us violate
11 our own policies when we weren't sure how that offender was
12 going to adjust.

13 Q. That's also to say that there's supposed to be ongoing
14 consideration to inmates' placement requests --

15 A. That --

16 Q. -- and safety needs?

17 A. That would be correct.

18 Q. Okay. Are you aware that Ms. Diamond also filed a
19 grievance seeking to be placed at a female facility for reasons
20 of safety?

21 A. I am not aware of that.

22 Q. But grievances are a mechanism that inmates also have to
23 notify prison officials of their needs; is that fair?

24 A. That the offender has to notify us of their needs?

25 Q. That's what a grievance serves to do?

1 A. Oh, yes.

2 Q. Okay. So, what consideration has been given to
3 Ms. Diamond's request to be placed at a female facility since
4 the time of her intake?

5 A. I have actually been monitoring Diamond for that purpose.
6 And she's not the only one. Because this transgender policy is
7 a new policy, so we are -- I am, I can speak for myself --
8 going back periodically and checking the status of our
9 transgender offenders.

10 Right now, with the number of PREA allegations that she
11 has and the issues with that disciplinary report, I know we --
12 she still was found guilty of that -- I am hesitant to place
13 her in a female facility for that reason.

14 Q. Okay. The disciplinary report you're referencing was an
15 October 31st, 2020, disciplinary report?

16 A. For sexual activity, yes, ma'am.

17 Q. That's a disciplinary report that alleged that she was
18 seen with her penis in the anus of another offender?

19 A. Any sexual activity, whether the penis was inside of the
20 anus or whether it wasn't. If the pants were down -- I know
21 that the offenders are denying that it ever happened. But I
22 have to be concerned about any sexual activity with the
23 offenders. For not only Diamond's safety but Offender Doe's
24 safety as well.

25 Q. Are you aware of any evidence supporting that allegation

1 at the time it was made other than the lone statement of the
2 Corrections Officer Brown?

3 A. Other than the factual statement of the correctional
4 officer, no, I am not aware of any other evidence.

5 Q. Are you aware that that statement has been withdrawn?

6 MR. CHALMERS: Objection, Your Honor, that
7 mischaracterizes the testimony. The statement has not been
8 withdrawn.

9 BY MS. EZIE:

10 Q. Are you aware that the allegation that Ms. Diamond was
11 seen with her penis in the anus of another offender has been
12 withdrawn?

13 THE COURT: That, too, is a mischaracterization. It
14 was withdrawn and then taken back. I guess we can debate what
15 the status of Officer Brown's version is. But she has given
16 conflicting statements in that regard.

17 A. I am aware through testimony, yes, today, that there are
18 conflicting statements.

19 BY MS. EZIE:

20 Q. Okay.

21 A. But not prior to today.

22 Q. But -- okay. But you have heavily relied on that
23 disciplinary report when determining whether Ms. Diamond is
24 eligible for a facility placement at this time?

25 A. It was one of the factors, yes.

1 Q. And the other factors are what exactly?

2 A. Okay. The PREA standards say that we can't make a
3 decision based on the sole purpose of genital status. But that
4 is a factor. I have to be concerned about 27 other female
5 offenders and what they will potentially do with Ashley, being
6 a victim, in that arena as well.

7 So I have to think about all of those decisions; with
8 that, the disciplinary report, any other institutional
9 behavior, her criminal history. There's just so many factors
10 to name that go into my consideration.

11 Q. Isn't it true that GDC officials have recommended that
12 Ms. Diamond be placed at a female facility?

13 A. I was one that said that it was neutral for me at the
14 beginning. So, yes, I am aware. At least me, as a GDC
15 employee, but not any others.

16 Q. You are not aware of any other people who have made that
17 statement?

18 A. Not that I'm aware of.

19 Q. Can we turn to --

20 THE COURT: No, no, she's not aware of. And I am the
21 one you're trying to convince, remember?

22 MS. EZIE: Okay.

23 THE COURT: I know what the other records show.
24 Showing them to her who hasn't seen them, I -- unless you can
25 explain to me --

1 MS. EZIE: Well, I believe she has seen them, so I
2 was going to show her a record that copies her if that's
3 permitted, Judge.

4 THE COURT: You say she has seen it?

5 MS. EZIE: Yes, Your Honor. Exhibit 1-B.

6 THE WITNESS: I'm sorry, I don't understand that.

7 A. (Witness reviewing document.) Yes, yes, I do recall, yes.

8 BY MS. EZIE:

9 Q. This is a document you've seen before?

10 A. Yes, I have.

11 Q. You stated earlier that you were neutral about the
12 decision; correct? Of whether to place Ms. Diamond in a male
13 or female facility?

14 A. Yes, that's correct.

15 Q. Can we pull up 1-A real quick first.

16 A. I'm sorry, can I look at that one?

17 Q. Sure. Can I just go in sequence. I have -- I'll let you
18 look at that document in a second.

19 A. Okay.

20 Q. Is this a document you recognize, Ms. Atchison?

21 A. Yes, it is.

22 Q. This was a SCC Committee Classification Referral Form?

23 A. That's correct.

24 Q. And it indicates that at this time, two GDC officials are
25 recommending that Ms. Diamond be placed at a female facility?

1 A. That's correct.

2 Q. It indicated that Ms. Diamond expressed a female facility
3 preference?

4 A. Yes.

5 Q. And also that she had a need for female accouterments and
6 gender expression; is that right?

7 A. That's correct.

8 Q. Are those things that are offered to transgender women at
9 men's prisons at this time?

10 A. To outwardly express -- there are limited, but that is a
11 question for the facilities director. Because they make the
12 rules on property and grooming that -- that -- not that I don't
13 care, it just doesn't fall under my umbrella.

14 Q. Even with your role on the state-wide classification
15 committee?

16 A. That's correct.

17 Q. Now, if we can turn to 1-B, please. Now, um,
18 Ms. Atchison, am I correct that this is the only document that
19 was generated at the time of Ms. Diamond's intake determination
20 that indicated that she should not be placed at a women's
21 prison?

22 A. Yes. I can explain this. This was the very first one
23 that the facility completed. And you'll see on this form down
24 here, about the recommendation that says "due to the offender's
25 lower body parts and testicles" they recommend that they go to

1 a male facility.

2 I sent an email immediately to the warden and the PREA
3 compliance manager at this facility and said that we could not
4 base our determination solely on the external genitalia of the
5 offender. So I made them redo it.

6 Q. Can we turn to Exhibit 2. This is the email you're
7 referencing?

8 A. That's correct.

9 Q. And you told them to redo the classification form;
10 correct?

11 A. Yes, with not to have that recommendation, because that
12 would be a violation of our policy.

13 Q. You wanted them to stop mentioning the consideration of
14 the genital status?

15 A. That's correct.

16 Q. Are you aware of any other considerations that have
17 prevented Ms. Diamond from being moved to a female facility
18 between the time of this report and -- let's say October 30th,
19 2020?

20 A. No.

21 Q. Okay.

22 MS. EZIE: Your Honor, I yield.

23 THE WITNESS: I haven't finished my review on that.

24 Do we need to --

25 THE COURT: You may finish.

EXAMINATION

1
2 BY THE COURT:

3 Q. Well, let me ask you a question. Since this is up. Your
4 email back to the facility says, "We cannot make housing
5 decisions based on genital status"; correct?

6 A. Correct.

7 Q. And your Defendants' Exhibit 2, which was the
8 chairperson's summary form, it was -- your recommendation
9 began, "Because the PREA standards forbid decision-making based
10 on genital status..."; correct?

11 A. Correct.

12 Q. And in your testimony you have inserted the word "solely."
13 Can you explain why you said, "solely"?

14 A. Yes, sir. I should have put it in these emails and the
15 documentation, because the standard does say "solely."

16 Q. All right. Now, with regard to your affidavit, I have one
17 question about that.

18 A. Okay.

19 THE COURT: What was that exhibit number?

20 COURTROOM DEPUTY: It's on the screen.

21 BY THE COURT:

22 Q. 219. And that is with regard to Paragraph 23. And this
23 is the incident that led to the -- what we now have determined
24 to be the mistaken designation of PREA aggressor.

25 And in your statement there, you make this comment, "The

1 offender" -- "the other offender," who we have been calling
2 "John Doe" as you know, "has given inconsistent statements in
3 the PREA investigation process." What inconsistent statements
4 by John Doe are you referring to?

5 A. At the time, I believe that these were conversations with
6 the PREA Compliance Manager Betterson. Because when I saw the
7 disciplinary report, I did not see a corresponding PREA
8 investigation with it. So I called the facility and told them
9 that they needed to conduct one, which is standard procedure
10 for every disciplinary. We want to make sure it's -- it was
11 consensual and not forced.

12 So based on the conversation I had with him, he advised me
13 that he was in the process of investigating that and that there
14 were inconsistent statements made by John Doe. So in my notes,
15 going back and looking at this, I want to say that that's where
16 that statement came from.

17 Q. Well, as you sit here today, do you have any knowledge of
18 any inconsistent statements by John Doe?

19 A. I do not today, sir.

20 Q. In fact, on the contrary -- and I can see why -- well, I
21 won't comment on that.

22 But on the contrary, I believe, would you agree that
23 Mr. Betterson has clarified that Mr. Doe did not give
24 inconsistent statements and did not admit to sexual activity?

25 A. Okay.

1 Q. Correct?

2 A. Then that would be incorrect in my --

3 Q. Is that what you heard?

4 A. That's what I heard with -- Betterson's testimony?

5 Q. Yes.

6 A. Yes, sir.

7 Q. So, based upon what you know now, your statement in

8 Paragraph 23 that the other offender gave inconsistent

9 statements is incorrect?

10 A. I would say so, yes, sir.

11 Q. Okay.

12 THE COURT: Any redirect?

13 MR. CHALMERS: Just very briefly.

14 REDIRECT EXAMINATION

15 BY MR. CHALMERS:

16 Q. Ms. Atchison, you mentioned the DR charge of sexual
17 behavior has not been overturned to your knowledge?

18 A. That's correct. To my knowledge.

19 Q. And that charge of sexual behavior was based on an
20 officer's statement that included several parts. One of which
21 was the penetration. Other parts of which were the two
22 offenders in a room together, pants down, both of them,
23 Ms. Diamond on top of the other, and movement that the --

24 Ms. Brown or Officer Brown has described. Do you recall that?

25 A. I do.

1 Q. Based on that information provided by the officer who
2 witnessed it, is that something that gives you concern and
3 would give you concern about placement of Ms. Diamond in a
4 women's facility?

5 A. Yes.

6 MR. CHALMERS: Thank you.

7 MS. EZIE: Briefly, Your Honor?

8 THE COURT: Very quickly.

9 RE CROSS EXAMINATION

10 BY MS. EZIE:

11 Q. Ms. Atchison, that was not a concern you had on, um, on
12 November, 2020, when you did your PREA interview; correct?

13 A. Yes, because she did not have a disciplinary at that time.

14 Q. Okay. And, um, Ms. Atchison, how many transgender women
15 have you placed at female facilities as part of this process?

16 A. Again, I have -- do not place them. I don't make that
17 decision. But I have not recommended, other than Diamond being
18 neutral, female placement for an offender.

19 Q. So you've never recommended that a transgender offender be
20 placed in a female facility?

21 A. No.

22 Q. And are you aware of any transgender offenders who have
23 been placed at female facilities?

24 A. Not in my time as PREA coordinator.

25 Q. And you have been PREA coordinator for four years?

1 A. Four years.

2 Q. Thank you, Ms. Atchison.

3 THE COURT: Thank you, Ms. Atchison. You may step
4 down.

5 (Witness stepped down at 4:26 p.m.)

6 THE COURT: You may call your next witness.

7 MR. CHALMERS: Ahmed Holt.

8 THE COURT: All right.

9 COURTROOM DEPUTY: Do you solemnly swear that your
10 testimony in this case shall be the truth, the whole truth, and
11 nothing but the truth, so help you, God?

12 THE WITNESS: I do.

13 COURTROOM DEPUTY: You can lift that microphone so
14 you can get in there. Can you please state your name for the
15 record.

16 THE WITNESS: Ahmed Holt.

17 COURTROOM DEPUTY: And you're welcome --

18 (Witness removing mask.)

19 COURTROOM DEPUTY: Yeah.

20 THE COURT: Mr. Holt, you are under oath and if you
21 testify falsely, you could be prosecuted for perjury.

22 THE WITNESS: Yes, Your Honor.

23 ///

24 ///

25 ///

1 GDC ASS'T COMMISSIONER OF FACILITIES AHMED HOLT
2 called by Defendants at 4:27 p.m., having first been duly sworn,
3 testified as follows:

4 DIRECT EXAMINATION

5 BY MR. CHALMERS:

6 Q. Good afternoon, Mr. Holt. Can you state your title,
7 please.

8 A. Assistant Commissioner of Facilities Division.

9 Q. How long have you held that position?

10 A. Since January of 2020.

11 Q. And what do your responsibilities include?

12 A. State-wide oversight of all facilities in the Department
13 of Corrections, Special Operations, as well as our
14 administrative support in Facilities Division.

15 Q. Okay. With respect to -- I am going to try to move things
16 along as quickly as we can. You have provided a declaration in
17 this case in connection with the motion that we're discussing.
18 Do you remember that?

19 A. Yes.

20 Q. With respect to Ashley Diamond, what involvement did you
21 have with her placement at Coastal State Prison?

22 A. Um, I was made aware, um, of Ashley Diamond's return to
23 the Georgia Department of Corrections. And after
24 classification, myself, along with Robert Toole, had
25 discussions about the safest placement for her within our

1 Department.

2 Q. Okay. When did you have that discussion or involvement?

3 A. Um, it would have been upon her return. Quite honestly,
4 we -- Ashley Diamond went out to court on two occasions, if I
5 am not mistaken, in between some of the discussion.

6 And upon arrival back to Georgia Diagnostic and
7 Classification Prison, we were walking right into COVID, and so
8 we monitored and held up transfers for a while before we did
9 that. And after that, Coastal State Prison was selected as a
10 facility.

11 Q. So Ms. Diamond came back into GDC custody in October,
12 2019. And then beginning in 2020, between that time period,
13 2019 -- end of 2019 to 2020 is when you're referring to?

14 A. Correct.

15 Q. Okay. And that 2020 time period is when -- obviously,
16 March or April or so -- GDC began to deal with the COVID
17 restrictions?

18 A. Correct.

19 Q. Okay. You heard Ms. Atchison talk about her summary of
20 her meeting with Ashley Diamond and Diamond's indication of
21 preferences for a female facility; but then in the same
22 conversation, of comfort with a men's facility if it was a
23 men's prison. Were you aware of -- made aware of that at some
24 point?

25 A. I was not. Typically, our notification sequence goes

1 through our Offender Administration Unit, and they make proper
2 designation in conjunction with Georgia Diagnostic and
3 Classification Prison.

4 Honestly, because of Ashley Diamond and knowing who Ashley
5 Diamond was, I was made aware that Ashley Diamond was back in
6 the system and began to make consideration for what that
7 facility was. My notification was never given that there was
8 any preference to a male or female facility.

9 Q. Okay. And were you ever notified along the way, as Ashley
10 Diamond came in, that there had been an internal recommendation
11 that she be placed at a female facility?

12 A. I was not made aware of that.

13 Q. With respect to her placement at a men's facility, what
14 were the considerations that were given?

15 A. Honestly, we looked at the mental health status, whether
16 or not the facility was a close security facility or medium
17 security facility. Medium/minimum facility. Whether or not
18 there would be adequate access to hospital services, which
19 Savannah is a major metropolitan area and it's closer to major
20 hospitals. Also the mental health staff there is accustomed to
21 dealing with Level II mental health offenders, which was the
22 designation that I was made aware of at the time.

23 Q. And what level of facility as far as security goes is
24 Coastal State Prison?

25 A. Medium. It is a special mission facility because it also

1 has a drug treatment component as well as some other probation
2 functions. We have probationers that come into the facility
3 and are fast-tracked through that facility and back into the
4 community.

5 Which is another reason why we wanted to utilize that
6 component, because if any drug treatment needs became an issue,
7 we have an RSAT program there. We also are accustomed to
8 dealing with probationers there, and Diamond had just returned
9 from being a parolee. So there were a lot of different things
10 that was considered as relates to that.

11 Q. You've heard the testimony given by Correctional Officer
12 Brown concerning what she discovered when she opened
13 Ms. Diamond's cell door on October 31, 2020?

14 A. Correct. Yes.

15 Q. You were able to listen to that. And you're aware that
16 Ms. Diamond received a DR for sexual behavior in connection
17 with that incident?

18 A. Correct.

19 Q. Based on Ms. Brown's testimony, is it your belief that
20 that DR finding of guilty for sexual behavior is a correct
21 finding?

22 A. It is a correct finding. Honestly, regardless of whether
23 there was penetration or not, the consistent part of her
24 statement was that both offenders' pants were pulled down and
25 there was a back-and-forth motion during that time. So based

1 on her factual statement, that would still be active sexual in
2 nature.

3 Q. Based on Ms. -- or Correctional Officer Brown's further
4 testimony, she provided a witness statement at the time of the
5 incident. You're aware of that?

6 A. Correct.

7 Q. And it had the additional detail about penetration. You
8 are aware of that?

9 A. I am.

10 Q. And then she also provided a declaration in this case.
11 You're aware of that?

12 A. I am.

13 Q. You saw that shown on the screen in the course of
14 testimony?

15 A. I did.

16 Q. Okay. And Ms. Brown indicated in that declaration she
17 couldn't say, looking back today, that there was penetration;
18 she wrote that because of the rest of what she saw. Do you
19 remember that testimony?

20 A. I do remember that.

21 Q. Based on that sequence, the fact that there was an initial
22 statement, um, then a clarifying declaration, do you think
23 there's further inquiry required for the DR?

24 A. My statement would be that if we looked at the declaration
25 alone, that is still sufficient evidence to write a DR for

1 sexual activity. I have no issue with looking at the DR under
2 the scope of what was written in the declaration.

3 Q. Mr. Holt, are you -- are you involved in the PREA or SART
4 process in any way?

5 A. I was not involved in that process prior to my appointment
6 to this position. Since then, I have become a part of it by
7 nature of my position.

8 Q. Okay.

9 A. So when Ashley Diamond arrived back into the system, I was
10 not in my current role. But now as a result of it, I will be
11 included in any decisions moving forward.

12 Q. So during the time period we've been talking about in this
13 case when Ashley Diamond has been at Coastal State
14 Prison--June, 2020, to the present--have you been personally
15 involved in any of the SART --

16 A. I have not.

17 Q. Okay. So the various investigations or reports that we've
18 been talking about, you haven't had a personal involvement in
19 those?

20 A. The extent of my involvement has been receipt of several
21 notifications from Southern Poverty Law Center, and then me
22 forwarding them along to both my legal department and my
23 facility operations in order to investigate and, by nature,
24 down to the facility level to investigate with the SART.

25 Q. What about with the PIC classification or the release date

1 indications for -- on whatever documents those might appear on
2 for Ms. Diamond? Do you have a role in that regard?

3 A. I do not. I am aware, um, that our offenders receive PIC
4 credits for what they do in our system, but we don't have any
5 direct involvement with the review of those PIC credits.

6 Q. Do you know if the wardens or deputy wardens at facilities
7 are involved in setting PIC credits or setting release dates?

8 A. They are not.

9 Q. Do you know who does that?

10 A. The Parole Board is responsible for reviewing all PIC
11 credits. Our staff is responsible for ensuring that offenders
12 are placed in classes or work details and assignments in order
13 to acquire those PIC points. And I -- to my knowledge, I want
14 to believe that Ms. Diamond has received five to seven PIC
15 credits if I am not mistaken.

16 Q. Have the -- when you say she's received five to seven PIC
17 credits..."

18 A. As a result of work and that are on the system. In our
19 system right now. That the Parole Board can review.

20 Q. Who -- who puts the PIC credits into the system? How does
21 that happen?

22 A. Well, the system is -- the PIC credits are determined by
23 when they complete or are involved in those classes. So by
24 nature of the fact that they are involved in those classes or
25 their work schedule, those credits are given. Parole awards

1 those points, not the Georgia Department of Corrections.

2 Q. Okay. So the Georgia Department of Corrections,
3 presumably someone along the way would enter the information or
4 the data that classes had been taken?

5 A. Correct.

6 Q. And then from that data the Parole Board would mark the
7 PIC credits or set the PIC credits?

8 A. Correct.

9 Q. And is it your testimony that over Ms. Diamond's time,
10 this period of incarceration, she has accumulated did you say
11 five to seven credits?

12 A. That's my -- that's what I believe to be true.

13 Q. To your knowledge, that accumulation of credits, was it at
14 any time subtracted from based on the October 31 DR?

15 A. Not to my knowledge. And if they were, it would have been
16 a Parole function, not ours.

17 Q. Okay.

18 A. I am not aware of them removing credits. I am aware of
19 them not granting credits at times. But I am not aware of them
20 ever removing and taking away credits. But I may --

21 Q. And by "them," do you mean the Parole Board?

22 A. Parole Board, I apologize.

23 Q. Those factors or considerations you described in the
24 process of placing Ms. Diamond at Coastal --

25 A. Correct.

1 Q. -- were those for her safety?

2 A. It was definitely for her safety. We took into
3 consideration things like how many close security inmates
4 percentage-wise was at that facility. Coastal, for example,
5 only had 8 percent close security. I want to say that
6 currently there may be 11 STG offenders in N-Building itself,
7 as a whole, when they have approximately 1,300 offenders there.

8 We looked at how that range was made throughout the state.
9 I will give you an example. Georgia Diagnostic and
10 Classification Prison, although it's labeled a close security
11 facility, only has at this time roughly 7 percent close
12 security offenders. It is a diagnostic facility and not a
13 permanent facility. We have very few permanent offenders at
14 that location.

15 As that diagnostic process goes along, we may have close
16 security offenders there, and that designation may go up and
17 down. So we need to have a facility that can maintain. It is
18 simply stating that it is a close security facility.

19 Coastal State Prison is a Mental Health Level II facility,
20 and that was another consideration. And at the time, Coastal
21 State Prison was even lower in close security than Rutledge
22 State Prison. I would tell you right now Rutledge is maybe at
23 13 percent close security offenders, and, again, Coastal is
24 around 8 percent at this moment.

25 Q. Okay.

1 A. And at that moment.

2 Q. And Rutledge is a -- it's a Level III mental health
3 facility?

4 A. It is.

5 Q. Okay. Generally speaking, are there -- well, let me ask
6 you specifically. Are there Level III mental health facilities
7 that have a lower number of close security inmates than Coastal
8 State Prison?

9 A. At this moment, um, to my knowledge, no. Rutledge State
10 Prison is higher. Valdosta State Prison is a close security
11 facility. Phillips State Prison is a special mission, and it's
12 30 percent roughly. Also, Augusta State Medical Prison is
13 roughly 30 percent close security offenders. Baldwin State
14 Prison is roughly 30 percent close security. And Central State
15 Prison is higher. I want to say they are around 10 to
16 12 percent close security at this moment. So, that -- by
17 nature of those, again, they are higher in nature close
18 security facilities by percentage.

19 Q. Okay. The various factors that you considered, they kind
20 of fit into different categories. Some related to medical or
21 mental health treatment, others related to whether it was close
22 or medium security.

23 A. Correct.

24 Q. Was the -- was the overall goal in this placement to make
25 for a general overall wellbeing for Diamond, for Ms. Diamond

1 when you placed her?

2 A. Absolutely. We considered all the different factors that
3 we would be dealing with related to Diamond's stay of
4 incarceration with us. Including mental health, medical. We
5 had to consider her safety at our facilities, as well, and that
6 was a major part of what we did. To include installing
7 additional cameras in that building prior to Ms. Diamond
8 arriving at that location.

9 Q. So you're aware that at this point, in this case,
10 Ms. Diamond has made a lot of allegations of sexual assault
11 occurring over the course of her time at Coastal State Prison?
12 You've heard that testimony?

13 A. I have.

14 Q. And you've also heard the testimony that the allegations
15 have not been substantiated, at least in part because she has
16 not provided information in the SART process?

17 A. Correct.

18 Q. Based on all the testimony that you've heard, have you
19 reassessed or have you determined that Ms. Diamond should be
20 removed from Coastal to another facility?

21 A. I have not made a determination that Ms. Diamond should be
22 moved from Coastal State Prison. It is not to say that we will
23 not continue to evaluate that. I think, as her counsel stated,
24 it's a dynamic process and a fluid process that we're always
25 considering.

1 I would be remiss to state that COVID has limited a lot of
2 our transfers. Not to say that we haven't transferred or we
3 won't transfer for safety reasons, but it has held back the
4 normal process of transfers.

5 Q. Okay. Thank you.

6 MS. LITTRELL: Nothing further.

7 THE COURT: Any cross examination?

8 CROSS EXAMINATION

9 BY MS. EZIE:

10 Q. Mr. Holt, you testified today that one of the
11 considerations you made when deciding where to place
12 Ms. Diamond was the percentage of close security prisoners at
13 that facility; correct?

14 A. Correct.

15 Q. But you do admit that Ms. Diamond was at a close security
16 prison for the first seven months of her incarceration?

17 A. Along with 7 percent close security, which at the time was
18 lower than even Coastal.

19 Q. Jackson only has --

20 A. The designation of close security at Jackson has more to
21 do with the fact that they are a diagnostic facility and they
22 can house any type of inmate in our system because they are a
23 diagnostic facility. It in itself does not mean that we have
24 90 percent close security inmates there.

25 Q. Are there female facilities within the GDC system that

1 have low numbers of close security inmates?

2 A. Yes. We do. Whitworth has a low number, extremely low
3 number, but they do not house Mental Health Level II offenders.
4 Arrendale is actually higher than Coastal State Prison, and
5 they can house Level III offenders, and they have a crisis
6 stabilization unit there.

7 And we have Pulaski State Prison, who hovers somewhere
8 around the same rate as Coastal State Prison in terms of close
9 security offenders, but they themselves -- also, they are
10 Mental Health Level III location as well.

11 Q. Okay. So, Pulaski State Prison and Arrendale Prison are
12 both prisons that would be able to accommodate Mental Health
13 Level III prisoners?

14 A. Absolutely.

15 Q. Okay. And are you aware that Ms. Diamond's medical
16 providers have requested and sought to change her
17 classification to Level III mental health?

18 A. I've heard that through testimony here. I was not aware
19 of that prior to testimony here. I am aware that Ms. Diamond
20 had some movement to a crisis stabilization, at which time
21 their mental health level will go up in order to deal with that
22 mental health level, and then she was transferred back to
23 Coastal at that time.

24 Q. Okay. But there are female facilities where Ms. Diamond
25 could be housed consistent with her request to be at a medium

1 security facility with not too many close security prisoners?

2 A. It would probably limit us to Pulaski, with us trying to
3 consider the security level in terms of close security
4 offenders. But the one consideration that I would -- that I
5 did talk about as it relates to the male facilities was the
6 fact that we were in close proximity to a major hospital. And
7 Pulaski is not as close as you would have as being in Savannah
8 metro area or being in the Metro Atlanta area or the Metro
9 Macon area, or even Albany where we have a major hospital
10 system there.

11 Q. You're aware that Ms. Diamond has requested to be placed
12 at a female facility for safety?

13 A. I am now. I was not aware prior to that.

14 Q. Have you received letters from the Southern Poverty Law
15 Center --

16 A. I have.

17 Q. -- concerning Ms. Diamond? Is it true that those letters
18 made that request on Ms. Diamond's behalf?

19 A. I know that you made that request. I am not aware that
20 Ms. Diamond made that request.

21 Q. So you're aware that the request was made on Ms. Diamond's
22 behalf?

23 A. By you, yes, ma'am.

24 Q. That request was made on May 1st when you received a
25 letter from the Southern Poverty Law Center?

1 A. I would assume. I am not sure of the date.

2 Q. And Ms. Diamond has filed grievances about her desire to
3 be placed at a female facility. Are you aware of that?

4 A. Um, transfer in itself or classification in itself is not
5 a grievable offense. The actual process for requesting a
6 transfer will be done through asking the counselor or whatnot.
7 Say, safety concern is something that can be addressed through
8 the grievance process, but transfer in itself is not.

9 Q. You referenced counselors. Are those mental health
10 counselors and providers?

11 A. They are.

12 Q. Are you aware that Ms. Diamond's mental health counselors
13 and providers have recommended that she receive safety
14 transfers since arriving at Coastal State Prison?

15 A. Through your dialogue. I don't have access to mental
16 health records.

17 Q. Okay. Can we pull up Plaintiff's Exhibit 115-A.
18 Mr. Holt, do you see this document?

19 A. I do.

20 Q. Is it one you've ever seen before?

21 A. It is not.

22 Q. Okay. But it's described as an offender grievance form?

23 A. They have a module, yes.

24 Q. It's a module because it is part of an inmate's
25 institutional file?

1 A. Correct.

2 Q. Let me know if I'm reading correctly. Am I right it
3 states,

4 "I am a transgender woman who has faced
5 repeated sexual and physical assaults in GDC
6 custody as well as a lack of constitutionally
7 required medical care"?

8 Do you see that?

9 A. I do.

10 Q. And it states that she's filed PREAs and vocally requested
11 to be transferred to a female facility and she cites the GDC
12 policy?

13 MR. CHALMERS: Your Honor, what's the point of this?

14 THE COURT: I don't know.

15 MR. CHALMERS: We know that she made a request to be
16 transferred to a female facility. It has been established over
17 and over again. We don't need to redo it with this witness as
18 well.

19 THE COURT: Is there a point, Ms. Ezie?

20 MS. EZIE: I certainly hope so.

21 THE COURT: I do, too.

22 MS. EZIE: Let's see if I get there.

23 BY MS. EZIE:

24 Q. So, Mr. Holt, at any time since Ms. Diamond entered GDC
25 custody, have you considered which female facility placements

1 might be available to her?

2 A. I have. Again, like I said, you know, in the beginning of
3 this process, the whole thought process is where can we house
4 her safely. And as I stated to you before, that approach
5 narrowed when we started talking about the different things and
6 different opportunities that we had to make sure that that
7 offender was safe. Including a camera system that we need to
8 make sure is in place even more so. We installed cameras at
9 Coastal to -- or additional cameras at Coastal. We actually
10 are in the process of upgrading their entire camera system
11 additionally.

12 Q. And you stated that Coastal State Prison was the safest
13 male prison that you identified for Ms. Diamond?

14 A. Not only safest. I think I would be remiss -- it wasn't
15 just the safest. It also provided the most opportunity for
16 resources -- drug treatment, medical care, mental health care.
17 It was able to address a multitude of needs.

18 And not just the safety component, but my request to
19 Mr. Toole was that Ms. Diamond be given an opportunity to
20 succeed, placement in a faith and character or an honor dorm in
21 order to give more opportunity to accomplish that.

22 Q. Okay. And, um, you're aware that Ms. Diamond alleges that
23 she has suffered abuse and attacks within that faith and
24 character or evidence-based dormitory?

25 A. I am now.

1 Q. Okay. So, do you agree that at some point consideration
2 should be given, if Ms. Diamond's PREA allegations are true, to
3 additional placements outside of Coastal State Prison?

4 A. Absolutely. Absolutely. I think the operative word is if
5 they're true.

6 Q. And you have received no information today or otherwise
7 that Ms. Diamond's PREA allegations are false?

8 A. No.

9 Q. Now, um, I want to turn --

10 A. I think we all have a desire to ensure that we investigate
11 fully. We don't go into it looking at it as if they are going
12 to be false. We approach it -- Grace and Karen Jett and
13 everyone else -- Sharon Shavers -- who've talked to us about
14 PREA as an agency encouraged us to look at the holistic
15 approach.

16 Q. And are you -- as you understand it, there's no expiration
17 date for the agency to be investigating PREA allegations?

18 A. No. At any time.

19 Q. So, based on information that you've heard today, it's
20 possible that we could look into Ms. Diamond's PREA allegations
21 further?

22 A. Absolutely. And I would encourage you all to encourage
23 her to talk with us. Even here if it makes her safer. Feel
24 safer.

25 Q. Now, I want to just turn to your declaration briefly. Do

1 we have Mr. Holt's affidavit? I want to turn to Paragraph 8,
2 please. Mr. Holt, do you recognize this document?

3 A. I do.

4 Q. This is your signature on it?

5 A. It is.

6 Q. Okay. And, um, it states at Paragraph 8 that while
7 Ms. Diamond has not been classified as a gang member, that she
8 has been designated a security threat individual; is that
9 correct?

10 A. Correct.

11 Q. And it states that there's just one -- one item in her
12 disciplinary record that was the basis of this charge; is that
13 correct?

14 A. Correct.

15 Q. And that was the report concerning exposure, exhibition,
16 and sexual behavior?

17 A. Correct.

18 Q. Now, Mr. Holt, you've heard, um, some testimony over the
19 course of this proceeding that there have been inconsistent
20 statements with regard to what occurred that appears in that
21 charge; is that right?

22 A. I'm sorry? It's hard to hear you.

23 Q. Sorry. You've heard that there have been some
24 inconsistent and irreconcilable statements regarding the
25 officer's statements that underlie that report?

1 A. Yes, whether or not there was penetration or not.

2 Q. Has there also been testimony that has questioned whether
3 the officer saw the individuals' genitals?

4 A. Yes.

5 Q. And whether -- okay.

6 A. But not whether or not she saw their buttocks.

7 Q. Okay.

8 A. She stated that she saw the pants pulled down. The one
9 thing that I've heard that has been most in question is whether
10 or not she saw penetration of Ms. Diamond to John Doe. I think
11 the one thing that she remained consistent on is that she did
12 see them with their clothes down.

13 Q. Okay. Now, as a GDC officer, do you encourage your
14 staffers to be truthful and accurate?

15 A. Absolutely. They swear an oath.

16 Q. Are there supposed to be consequences when officers make
17 statements that are not actually factual?

18 A. Absolutely.

19 Q. So are you comfortable relying on Ms. Brown's statement as
20 the basis of the decision today to keep Ms. Diamond in the
21 security threat individual classification?

22 A. Quickly, I -- I want to make sure that, um, it's known
23 that STG designation and STI designation are two different
24 things.

25 As it relates to, um, what I've heard from the officer, I

1 don't have anything that shows that she has been untruthful in
2 her career as a correctional officer. She swore an oath and
3 has expressed the truth on multiple occasions. If she has in
4 question whether or not she saw penetration or not, I do take
5 that under consideration. Um, I don't take under consideration
6 as to whether or not -- there's no evidence to say that she did
7 not see them with their clothes down. In an area where John
8 Doe was not supposed to be.

9 Q. Okay.

10 A. There was also testimony that --

11 Q. If an inmate has their clothes down, such that they are
12 revealing their buttocks -- is that what your testimony was --
13 is that preying upon other inmates?

14 A. I am not understanding your question.

15 Q. Is having your pants down in a manner that displays your
16 buttocks preying upon other inmates?

17 A. It could be. It could be. Particularly in a --

18 Q. Can you explain.

19 A. -- in a prison setting. Having -- being completely nude
20 in an area or having your pants down in an area jointly can
21 give the wrong idea inside a facility. Absolutely.

22 Q. What about in one's own cell, in their own room?

23 A. Ms. Diamond was in her own cell, in her own room. John
24 Doe was not in his room. He was in the wrong room.

25 THE COURT: Ms. Ezie, I suggest you pose the question

1 this way: Based upon what you have heard, Mr. Ahmed, have you
2 heard any evidence to support the suggestion that Ms. Diamond
3 preys upon other inmates?

4 THE WITNESS: No, I have not.

5 MS. EZIE: Thank you for the question.

6 No further questions.

7 THE COURT: Any redirect?

8 REDIRECT EXAMINATION

9 BY MR. CHALMERS:

10 Q. Mr. Holt, the DR was based on Correctional Officer Brown's
11 witness statement; correct?

12 A. Correct.

13 Q. And Officer Brown mentioned all the things we've talked
14 about multiple times. The penetration was one piece of what
15 she saw and what she wrote; correct?

16 A. Correct.

17 Q. There were other things that she wrote which ultimately
18 contributed to the DR guilty finding; correct?

19 A. Correct.

20 Q. Is it those other things that still would give you reason
21 to say the DR finding of guilty is appropriate?

22 MS. EZIE: Leading the witness.

23 A. Yes.

24 BY MR. CHALMERS:

25 Q. And having heard the --

1 THE COURT: Overruled. Go ahead.

2 MR. CHALMERS: Thank you, Your Honor.

3 BY MR. CHALMERS:

4 Q. Having heard all the testimony, including the original
5 statement, the declaration, and Ms. Correctional Officer Brown
6 testifying in court, do you believe that she was lying when she
7 said she believed she saw a sex act?

8 MS. EZIE: Calls for speculation.

9 THE WITNESS: No.

10 MR. CHALMERS: The witness has been asked whether he
11 believes the officer.

12 THE COURT: He's asking his beliefs. Go ahead.

13 BY MR. CHALMERS:

14 Q. Do you believe Correctional Officer Brown was lying when
15 she wrote her witness statement?

16 A. I do not.

17 Q. Do you believe Correctional Officer Brown was lying when
18 she reported what she saw when she pushed open the door to
19 Ashley Diamond's cell at 8:00 a.m. in the morning that day?

20 A. I do not.

21 Q. Do you believe she was lying when she called Correctional
22 Officer Mack or when she was talking on the phone with
23 Correctional Officer Mack, according to Lieutenant Reeves, and
24 said exactly what she said in the witness statement?

25 A. I do not.

1 Q. And do you believe when she reported to Correctional
2 Officer -- or Lieutenant Reeves that, "I'm here in the N-Dorm,
3 there's a situation, please come down here," and then told
4 Lieutenant Reeves what was happening -- there was a sexual act
5 between these two offenders -- do you have reason to believe
6 that Correctional Officer Brown was lying?

7 A. I do not.

8 Q. And do you have anything, other than what I've asked
9 you -- because I don't want this to come down to syntax or
10 grammar -- do you have any experience with Correctional Officer
11 Brown or any reason to believe that she would have a reason to
12 go after Ashley Diamond by writing this DR?

13 A. I do not.

14 Q. Do you have any reason to believe that Correctional
15 Officer Brown conspired --

16 MS. EZIE: I am going to object. Now he's been
17 leading the witness for quite a while, and I am not sure why.

18 THE COURT: No. I will allow it. Wrap it up.

19 BY MR. CHALMERS:

20 Q. There's been a lot of speculation that somehow this DR is
21 tied so some grand scheme to retaliate against Ashley Diamond.
22 Do you have any knowledge that Warden Benton, Deputy Warden
23 Betterson, any official at Coastal State Prison has conspired
24 in some way to retaliate against Ashley Diamond?

25 A. I do not. I believe -- I'm sorry.

1 Q. Go ahead.

2 A. I believe that we've been in communication quite often
3 about how to make Ashley Diamond's stay at Coastal State Prison
4 or with the Georgia Department of Corrections as safe as
5 possible and as productive as possible.

6 Q. Okay. Thank you, Commissioner Holt.

7 THE COURT: But, Mr. Ahmed, we have heard Officer
8 Brown give inconsistent testimony under oath. We have had
9 admissions of mistakes made by Department personnel. You have
10 just told us you know of no evidence that Ms. Diamond preys
11 upon other inmates. You have agreed the situation is dynamic
12 and you remain open to considering all this new information.
13 Is that correct?

14 THE WITNESS: Absolutely, Your Honor.

15 THE COURT: Thank you. You may step down.

16 (Witness excused at 5:02 p.m.)

17 THE COURT: Does that conclude the testimony?

18 MR. CHALMERS: Yes, it does, Your Honor.

19 MS. LITTRELL: Your Honor, we just want to ensure
20 that we can tender some depositions. And if you would like for
21 us to let you know what those depositions will show, we will be
22 happy to do that; otherwise, we will submit them with some
23 designations in whatever manner the Court finds most
24 convenient.

25 THE COURT: Okay.

1 MR. CHALMERS: Your Honor, regarding that, can I
2 inquire of plaintiff's counsel of do you have the transcripts
3 of those depositions? Because you've asked, and I've been
4 getting emails about expedited transcripts. Are they available
5 to you now?

6 MS. LITTRELL: They are.

7 MR. McCOY: Yes.

8 MR. CHALMERS: Can we submit them today to the Court?

9 MR. McCOY: Yes, if we can do them with our
10 designations.

11 MR. CHALMERS: Well, we can submit designations if
12 you would like to do that. But what I would like to do is
13 offer into evidence now the testimony of the two folks who you
14 indicated would be backing up this claim of retaliation, and
15 that is Tia Fletcher and Tamara Cantera. I have not seen the
16 transcript, but I have a pretty good memory, and they testified
17 they had no information of retaliation whatsoever.

18 THE COURT: All right. I -- we'll have an
19 opportunity to talk about that. I am going to take a break to
20 let you all confer on the issues such as that.

21 And in addition -- particularly the plaintiffs --
22 you've got to figure out what exhibits you're going to tender.
23 It will be pretty easy for the defendants, I believe.

24 But before we take a break, I'll make this
25 observation. A neutral, objective observer to these

1 proceedings -- and, actually, some observers who aren't
2 neutral -- could conclude that there's been many mistakes made
3 over the past months in this matter by both sides. Some of
4 those mistakes have been acknowledged on the stand today, and I
5 appreciate that. And I've heard a commitment to examine
6 matters based upon what we've learned in the past couple of
7 days.

8 With regard to the plaintiff, I would suggest that
9 serious thought be given to whether not talking to PREA
10 investigators is a good idea going forward. The rationale for
11 that, some would say, doesn't quite hold together.
12 Particularly when the details of those allegations are being
13 made public by the lawyers. The information is out there. I
14 don't quite understand the rationale for not talking about the
15 allegations unless counsel can be present because of a fear of
16 retaliation. It's caused complications, at the very least, in
17 how events have unfolded. So, going forward, both sides I
18 think have a lot to think about.

19 With that, we will take a break. We're concluded as
20 far as the testimony. We've got some details for the lawyers
21 to take care of. And when you're ready, Ms. Tavalero, let me
22 know and I will come back. Thank you.

23 COURT OFFICER: All rise.

24 (Court in recess from 5:06 to 5:36 p.m.)

25 THE COURT: All right. Let's get started. First, I

1 don't know if you all have heard, but the CDC issued new
2 guidance today that if you're vaccinated, they say you need not
3 wear a mask, period. So, I will allow you to be as comfortable
4 in that regard as you want.

5 But they didn't say we could require vaccination
6 cards, but they did say if you are, you don't have to wear a
7 mask.

8 On the depositions, what's the plan with them?

9 MR. McCOY: Your Honor, we have spoken -- we have
10 conferred, and our proposal would be that we file the full
11 Cantera, Fletcher, and Fass transcripts with their exhibits on
12 the ECF record and have them be available as evidence for you
13 to consider as part of these hearings.

14 MR. CHALMERS: And, counsel, did you expedite Roth as
15 well?

16 MR. McCOY: I don't know if we have Roth's yet.

17 MR. CHALMERS: Okay.

18 MR. McCOY: If we do, you know --

19 MR. CHALMERS: Once -- yeah, I guess the -- and the
20 additional part of that is once we get -- two parts of that.
21 The -- as I mentioned before, the transcripts are not
22 finalized. They are going to be read and signed by the
23 witnesses, so there could be something additional to file.

24 And then the other is once the final transcript is
25 prepared, will we be filing those with the -- as -- we're going

1 to get these -- are these completed, expedited transcripts or
2 are they drafts that you have?

3 MR. McCOY: It is the completed expedited transcript.
4 It is not the rough anymore.

5 MR. CHALMERS: I'm sorry, I misunderstood. And the
6 other is do you have the Roth, as well? That was the only --

7 MR. McCOY: Apparently we do I'm told, yes.

8 MR. CHALMERS: We have three of four.

9 MR. McCOY: So we have all four, and we would file
10 them, and the parties have talked about whether or not it would
11 be helpful for you to do designations. We actually have
12 already done designations, to the extent that that's something
13 that would be helpful.

14 I think -- over time, I think Defendants would do
15 that as well. But, um, that would at least make them slightly
16 more accessible to you rather than a full transcript.

17 THE COURT: Are there objections to rule on?

18 MR. CHALMERS: There are not, Your Honor.

19 We have also discussed exhibits. And I believe we
20 have a process in mind for that.

21 MR. McCOY: No, I think what you mean is in the
22 depositions themselves are there objections to rule on? And
23 there are.

24 MR. CHALMERS: Oh, understood.

25 THE COURT: All right. Well, so the transcripts will

1 be filed and then the signature pages with any errata sheets
2 will be filed.

3 MR. McCOY: Will be filed after.

4 THE COURT: You will file your designations, and the
5 defendants may be filing designations.

6 If there are any objections that you continue to
7 think require a ruling, I would file a designation of those as
8 well.

9 All right. That sounds -- and, of course, in your
10 briefing -- and we can talk about that at some point, too --
11 obviously, you can cite to what you think I need to focus on as
12 well.

13 All right. That's a plan for the depositions. Let's
14 turn to the defendants -- or anything else on depositions?

15 MR. McCOY: Not on the depositions, no, Your Honor.

16 THE COURT: On defendants' depositions -- pardon me,
17 exhibits, why don't you just tell me what you want tendered.
18 We've been a little informal.

19 MR. McCOY: Well, Your Honor, we have a proposal for
20 that, too.

21 THE COURT: All right.

22 MR. McCOY: We spoke about that, too. And if I may,
23 the proposal is that, um, um, on -- from both of the
24 defendants' and the plaintiff's exhibit lists, any -- any
25 exhibit that was discussed with and shown to a witness during

1 the course of the 2-day hearing, we would jointly move without
2 objection that those be admitted into evidence. And any
3 document that you, Your Honor, examined a witness with would
4 also be included as coming into evidence without objection.

5 COURTROOM DEPUTY: Do you want me just to show them
6 this?

7 THE COURT: Kim has done her usual excellent job
8 keeping a tally.

9 MR. McCOY: I'm glad someone did.

10 THE COURT: So why don't we do this. Understanding
11 that she's sensitive about her handwriting right now, so
12 don't --

13 COURTROOM DEPUTY: It's just circles.

14 THE COURT: Yeah, safety circles. We'll scan those
15 and email them to you, and you can look at those. And so the
16 agreement is that -- and we will have the transcript, of
17 course, to confirm this at some point.

18 MR. McCOY: Correct. We also were hoping that that
19 would fill in any blanks, because there were also some exhibits
20 that we actually did appropriately ask to be admitted and you
21 made a ruling, so there is a universe of those documents that
22 have already been admitted in evidence.

23 THE COURT: We will scan these and send these to you
24 with the understanding that these are the exhibits that have
25 been admitted without objection. And, again, given our

1 posture, it's a flexible thing anyway.

2 MR. CHALMERS: Your Honor.

3 MR. McCOY: Your Honor, just one little point of
4 clarification. For instance, some of the exhibits that were
5 offered were multi-page exhibits, and the witness was only
6 examined about one particular part of that because of -- some
7 were compound, just because of the rush of the hearing.

8 And our proposal would not be necessarily that every
9 page of the exhibit be necessarily admitted into evidence, but
10 the page that was actually discussed with the witness. Is that
11 something that we could manage?

12 THE COURT: Well, is it necessary to --

13 MR. McCOY: I'll let Defendants --

14 THE COURT: -- do that?

15 MR. CHALMERS: This came from me, Your Honor. It
16 would not be necessary to break up a document that is actually
17 a single document. But, for example, within Plaintiff's
18 exhibits there were things like a medical record identified as
19 one exhibit, and obviously that is comprised of many documents.

20 There are a few exhibits, many more, that were
21 hundreds of pages long. And they include pages, for example,
22 that the witness wasn't asked to talk about or address in any
23 way and that weren't a part of the document that the witness
24 was asked to talk about or addressed. So I think what we
25 talked about is plaintiff's counsel -- I don't want to misstate

1 what we said.

2 MR. McCOY: Go ahead.

3 MR. CHALMERS: I think we talked about plaintiff's
4 counsel making an effort to go through those documents that
5 their witnesses discussed during the hearing and offer into
6 evidence those documents, the actual parts of the exhibit that
7 were part of what was discussed in the testimony. And that --
8 so that the Court can see the context. Reasonably, I think
9 that would include if, for example, a 5-page document was
10 discussed, but the witness only discussed Page 2 of the
11 document, obviously all five pages could be offered into
12 evidence.

13 MR. McCOY: The only difficulty with that, for
14 instance, like, some of the things might have been a witness
15 statement that was three pages long, and we only talked about
16 Page 1 of the witness statement. Obviously, we would want
17 Page 2 and 3 of the witness statement to be included for
18 completeness.

19 THE COURT: Well, what I heard about that, that was
20 appealing to me, was that you all would make the effort to put
21 that in your hands. That's fine with me if you can get us that
22 information however you want to do it. I mean, you can do it
23 on the exhibit sheets, just indicate on an exhibit sheet the
24 pages that you're in agreement will be admitted.

25 COURTROOM DEPUTY: Can we put a time limit on this?

1 Because we have an obligation to docket this fairly quickly. I
2 never go more than a few days to docket something. It's up to
3 you, but --

4 THE COURT: Yeah, no, I wouldn't worry about that.

5 Okay. Well, that -- that's a plan, then. All right.
6 And remember, too, this is, as I've said, Phase I. Primarily
7 we've dealt with one issue. And, as I said, I think we've made
8 some progress on that.

9 So let's talk about that. What do the plaintiffs
10 view to be the next step? Well, let me elaborate first on
11 that, what I view to be the next step, now that we all know a
12 lot more, is that you all talk some and see where this case is
13 based upon what we've learned.

14 But...once that is done, and depending upon what that
15 yields, what do the plaintiffs view to be the next step in the
16 litigation, if we -- as we go forward?

17 MS. LITTRELL: Your Honor, is that a question after
18 the Court rules on this motion in terms of what the next step
19 in the litigation is? Or in lieu of a ruling from the Court?

20 THE COURT: Well, let me tell you this. Here's my
21 view of the case, the bird's eye view: that you all have
22 already indicated you've got a lot of discovery you want to do,
23 and certainly the medical issues, and the placement issues. We
24 just kind of scratched the surface a little bit on the
25 classification issues. It's been a helpful scratch, but a

1 surface scratch nonetheless.

2 But the medical issues, perhaps in this Circuit more
3 than others, are fairly knotty, k-n-o-t-t-y, issues. You've
4 got discovery you've got to do. Quite frankly, I see those
5 issues getting involved in a trial on the merits, done on an
6 expedited basis, within the discovery schedule that you have
7 contemplated already. Among yourselves.

8 And what I view to be potentially on the table now,
9 with regard to preliminary relief, is only the failure to
10 protect issue. And that would only be ready for consideration
11 after you all have taken this information and briefed it fully
12 and I've got a chance to consider it.

13 And, you know, that is a dynamic picture, as we keep
14 hearing. And I probably may need some more information about
15 what the situation is going forward as we consider that issue.
16 I mean, for whatever reason, it does appear that the
17 allegations that concern me the most have tapered off, and we,
18 I think, noted some of the potential issues that might ensure
19 that they not only taper off, but we don't have any more
20 issues. Cameras come to mind for one thing. Dialogue comes to
21 mind for another.

22 So, you know, if the plaintiffs feel that it's
23 necessary to -- after consulting with Defendants to push for
24 preliminary injunctive relief within the scope of the record
25 I've got now, which again is a narrow scope, then we need a

1 briefing schedule, and we'll go from there.

2 What is the discovery schedule, generally speaking,
3 you all have worked out?

4 MS. LITTRELL: Your Honor, initially we talked
5 about -- and this was based on the defendants' requests -- that
6 because of the number of defendants, that we would need a
7 9-month discovery period. The plaintiff is certainly willing
8 to renegotiate that and, you know, in consideration of the
9 urgency and exigencies of Ms. Diamond's situation, if the Court
10 is not ready to rule on the motion before it for preliminary
11 relief, then we can truncate that some, but we are ready to
12 dive into discovery, and we are certainly willing to negotiate
13 with the defendants to come up with a plan that works for both
14 of us.

15 THE COURT: Well, you know, with reasonable notice, I
16 can get a jury in here. I can tell you my thoughts coming into
17 this were that -- given the wildly divergent factual versions,
18 that my inclination would be to let the jury resolve disputed
19 facts and, depending upon what they resolve, see what
20 injunctive relief is or is not appropriate.

21 In other words, we would move expeditiously to get
22 the entire case resolved, injunctive and legal relief. But
23 I -- and I am not -- again, we've narrowed some things, but I'm
24 still inclined to think that given the -- this is a factual
25 case, largely. Medical issues may be a little bit different.

1 But otherwise this is a case, particularly on the failure to
2 protect, we wouldn't argue too much about the law.

3 Although I can see some deliberate indifference
4 issues that I hadn't thought about before, and I won't say
5 anything about that.

6 But it's the facts on -- that really are in hot
7 dispute, I suspect, even after we do some discovery. But I am
8 inclined to be more comfortable to let a jury resolve those
9 facts. I think it's difficult to find on those hotly disputed
10 factual issues. Making a determination of likelihood of
11 prevailing on the merits is difficult when the facts are so
12 disputed. I can figure out the law, but, you know, we defer to
13 juries on factual issues.

14 So I'm open, I will consider whatever the plaintiffs
15 want to propose. But right now, the only potential issue that
16 I see that is close to ripe and not yet briefed for
17 consideration of injunctive relief would be the issues related
18 to failure to protect. And that is very much a -- I hate to
19 say it again, but it appears to be a dynamic situation. And
20 what was highly relevant six months ago, two or three months
21 from now, who knows what we're going to be dealing with.

22 So, that's a bit of a rambling response, but that's
23 kind of the way I see things.

24 MS. EZIE: Your Honor, if I may just make an
25 observation. I don't think I'm mischaracterizing the record if

1 I share that at this point it doesn't seem like there's a real
2 dispute of facts about the allegations that Ms. Diamond has
3 made. There is a claim that notifying the Department in the
4 means that Ms. Diamond did was inadequate.

5 But I'm wondering if there is a path where the
6 parties can be just instructed to mediate amongst themselves or
7 take some other steps that do address our client's, you know,
8 rights and real safety issues.

9 THE COURT: Well, yeah. I didn't use the word
10 "mediate," but I think I used every other synonym. In a way, I
11 view this to be kind of a mediation, what we've been through.
12 We've gotten a lot of facts out on the table. I think both
13 sides -- I know I've learned a lot and y'all have learned a
14 lot. We've clarified some things.

15 I think very much there needs to be some discussions
16 about going forward. We can -- you know, what's happened in
17 the past might well just be an issue for damages to be resolved
18 in the usual way. What's happening in the future, without
19 prejudice in any way to the parties' rights to resolve issues
20 about what has happened in the past, going forward, I would
21 think very much should be something you all should be talking
22 about.

23 MR. McCOY: Your Honor, would it make sense perhaps
24 to continue this part of the proceeding by briefing the issue
25 that you've raised. And then that will also give us the time

1 in the meantime to potentially have conversations with the
2 defendants about what you have just suggested?

3 THE COURT: Yes.

4 MS. LITTRELL: One other question, Your Honor. I
5 mean, one thing that I think is ripe to -- for some kind of
6 direction from the Court on is the issue that's been raised--
7 and I think resolved--around the fact that her -- she has a
8 PREA designation as an aggressor that doesn't comport with the
9 PREA standards. It's -- I have had a chance to look at the
10 regulations themselves, which says directly that consensual sex
11 is not to be considered a PREA violation. I think we got that
12 out as well. And also the fact that there's no evidence to
13 support that she's a security threat.

14 And so to the extent that we can negotiate going
15 forward without those designations clouding their ability to
16 make safety decisions and housing decisions, *et cetera*, I think
17 that that would be in order at this point.

18 THE COURT: Well, yeah. I'll only say this. We all
19 heard the testimony. And you will have the transcript shortly.
20 I very much view that to be a part of what the Department is
21 thinking about. I am not going to give any direction. I don't
22 have to. They've got good lawyers. The people who count were
23 here and heard the testimony that mattered. Let's see what
24 happens. But certainly that's something that I would think
25 needs to be discussed.

1 MS. LITRELL: Okay.

2 THE COURT: But it doesn't need direction or an order
3 from me at this point.

4 MS. LITRELL: It seems like an invitation to come
5 back.

6 THE COURT: It may come to that, but let's see if it
7 needs to.

8 MR. McCOY: Presumably we can address that in the
9 briefing, as well.

10 THE COURT: Pardon?

11 MR. McCOY: Presumably we can address that issue in
12 the briefing as well.

13 THE COURT: Yeah.

14 MR. CHALMERS: Your Honor, if I could just say on a
15 couple of those points. The question -- Ms. Ezie's statement
16 that the facts of sexual assault not being disputed.
17 Obviously, our focus at this stage of the proceedings is
18 showing that there hasn't been a demonstration of a likelihood
19 of success on the merits of the Eighth Amendment claim of
20 deliberate indifference, so it would not be accurate to say
21 from Defendants' standpoint that we've conceded that assaults
22 have occurred. That's not the case.

23 And then the other as to relief relating to security
24 threat group designation, or some of the other issues we've
25 heard about. I think the difficulty here is we have a motion

1 seeking injunctive relief which must show a violation of one of
2 the claims asserted, and that's the Eighth Amendment claim or
3 equal protection claim or a deliberate indifference to medical
4 needs claim. And that particular relief was not sought.

5 So, I -- by saying that -- well, Ms. Littrell, you
6 didn't ask for relief in your motion for a change of the
7 security threat group designation. You asked for a transfer to
8 a female facility and you sought relief on the basis of Eighth
9 Amendment and equal protection and deliberate indifference
10 claims.

11 I am not saying -- I just want to be clear, the
12 record is clear, that I don't go unheard on that point since
13 the comment was made. But I do want to be clear that I'm not
14 saying that -- we certainly hear and understand that there
15 should be discussion on those points among the parties.

16 THE COURT: It is certainly true that I am not taking
17 it as undisputed that the assaults happened. My reference to
18 deliberate indifference is related to that. And that was -- it
19 was related to the -- my comment about what any reasonable
20 observer might conclude from the fact that Ms. Diamond didn't
21 participate, for whatever reason, in the PREA process. And I
22 hope going forward there will be better dialogue in that
23 regard.

24 But, what I think Ms. -- what I am saying in response
25 to Ms. Littrell had nothing to do with judicial relief. It got

1 back to the same point. We heard what we heard during the
2 testimony today, and there are some things for both parties to
3 think about. And after they've thought about it and after
4 y'all have talked about it, we'll see what's in dispute.

5 MS. LITTRELL: Does the Court want to provide any
6 direction with respect to a briefing schedule going forward so
7 that we can -- there is --

8 THE COURT: Well, let me tentatively say when you get
9 the transcript, the plaintiffs -- how much time would you want
10 to submit a brief?

11 MS. LITTRELL: The plaintiffs would ask for 30 days
12 after we are able to take a look at the transcripts.

13 The last thing I want to put on the record, Your
14 Honor, is notwithstanding that there's been -- you know, what
15 we've learned through discovery and with the testimony, our
16 need for urgent relief and our fear that our client is going to
17 be irreparably harmed -- which we think we will have further
18 testimony and evidence of that and will be submitted through
19 depositions -- remains live.

20 And we don't want to lose focus on the fact that we
21 think that her life depends on a ruling from the Court, both on
22 protection and medical care. And I recognize that we're going
23 to -- we're coming up with a plan to mediate and brief those
24 issues, but I want to say for the record that we are -- we are
25 here because we are concerned for the health and safety of our

1 client.

2 THE COURT: Well, on the medical issue, I just don't
3 know enough to even comment about that. I can comment on the
4 law in that regard. I don't need to right now. But I know
5 there's a stack of medical records. I will review some of
6 them. So I can't -- you know, and we -- and I don't know that
7 we even talked about -- are you talking about including in this
8 first round of briefing the medical issues?

9 MS. LITTRELL: Um, I just wanted to put on the record
10 that we were not conceding that this is not an urgent and
11 exigent situation.

12 THE COURT: Absolutely. But I would suspect before
13 you all are ready even for purposes of preliminary injunctive
14 relief to bring the medical issues to a head, you've got expert
15 testimony, you've got depositions, additional depositions, I
16 suspect you're going to want to do. But that's just my
17 assumption. But, no, I mean, it -- I'm -- I understand the
18 plaintiffs still feel those are matters of -- that have
19 urgency. I understand that.

20 Now, with regard to the failure to protect, I'm
21 optimistic that if there was ever any question about this, the
22 Department knows that Ms. Diamond is kind of under a microscope
23 right now. And clearly if anything happens, I'm sure the
24 plaintiffs, Ms. Diamond's lawyers, are going to let me know
25 about it. And depending upon the facts, you know, now I'm in a

1 position to react and move according to what the circumstances
2 require. You know --

3 MR. CHALMERS: Yes, sir.

4 THE COURT: I know they understand that.

5 MR. CHALMERS: They do understand that, yes.

6 THE COURT: So that's one reason why I have some
7 optimism that, going forward, we can narrow a lot of issues.
8 We've got a lot to deal with, I understand. But we are making
9 some progress. So, that -- the current plan is that the
10 plaintiffs will file a brief within 30 days of receipt of the
11 transcript. I'll give the defendants 30 days to respond, and
12 14 days for reply brief.

13 MS. LITTRELL: Thank you, Your Honor.

14 THE COURT: Anything else to discuss today?

15 THE PLAINTIFF: Your Honor, if I may address the
16 Court and you, Your Honor, I just want to --

17 THE COURT: Go ahead.

18 THE PLAINTIFF: I just wanted to say I want to thank
19 the Court for the close attention to this case and everybody's
20 hospitality. I was going to ask at the end if it's okay with
21 Mr. Jackson and the interdiction team and you, I haven't been
22 able to see my mother and sister in a very, very long time and
23 they drove a long way. Can I barely hug them when I leave?

24 THE COURT: That's a security issue that I do not
25 interfere with.

1 THE PLAINTIFF: Do you have any problem with me?

2 THE COURT: You can deal with that later.

3 THE PLAINTIFF: Thank you.

4 THE COURT: And, yes, it is my obligation to give
5 close attention to all parties when they come. And in that
6 regard, I appreciate the efforts that the lawyers have made. I
7 know y'all have been kind of under the gun. I put you under a
8 quick schedule. You've worked hard, accomplished a lot. I
9 thought that everybody did a good job these last two days.

10 I know I pushed hard at times. That's part of my
11 job, too. And given the circumstances of the hearing, I jumped
12 in sometimes probably when you wish I hadn't, but still
13 that's -- in this kind of proceeding, I'm comfortable with
14 doing that as opposed to in front of a jury. But, again, I
15 thank you all for your efforts. You've all done a good job on
16 behalf of your clients and I'm sure they know that as well.

17 MR. McCOY: Thank you, Your Honor.

18 THE COURT: All right. That it?

19 MS. LITRELL: Yes, sir, Your Honor.

20 THE COURT: Then we are adjourned. Thank you all.

21 COURT OFFICER: All rise.

22 (Proceedings concluded at 6:07 p.m.)

23 END OF RECORD

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CERTIFICATE OF OFFICIAL REPORTER

I, Darlene D. Fuller, Federal Official Realtime Court Reporter, in and for the United States District Court for the Middle District of Georgia, do hereby certify that pursuant to Section 753, Title 28, United States Code, that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 24th day of May, 2021

Darlene D. Fuller

Darlene D. Fuller, RPR, CRR, RMR
NCRA No. 5803
Federal Official Court Reporter
Georgia CCR 5641-3440-5157-6832
Michigan Certification CSR-0929