No. 09-3540

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Michael R. Mejia,
Plaintiff-Appellant,

v.

Cook County, Illinois, et al.,
Defendants-Appellees.

Appeal From The United States District Court
For the Northern District of Illinois, Eastern Division
Case No. 1:06-cv-06214
The Honorable Joan Humphrey Lefkow

BRIEF AND REQUIRED SHORT APPENDIX OF PLAINTIFF-APPELLANT MICHAEL MEJIA

Bluhm Legal Clinic
Northwestern University School of Law
375 East Chicago Avenue
Chicago, IL 60611
Phone: (312) 503-0063

Sarah O'Rourke Schrup
Attorney
Nicholas Gamse
Senior Law Student
Richard Hu
Senior Law Student

Counsel for Plaintiff-Appellant,
Michael R. Mejia

No. 09-3540

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Michael R. Mejia, Plaintiff-Appellant, v. Cook County, Illinois, et al., Defendants-Appellees.	Appeal From The United States District Court For the Northern District of Illinois, Eastern Division Case No. 1:06-cv-06214 The Honorable Joan Humphrey Lefkow

---

Disclosure Statement

I, the undersigned counsel for the Plaintiff-Appellant, Michael R. Mejia, furnish the following list in compliance with Fed. R. App. P. 26.1 and Cir. R. 26.1:

1. The full name of every party or amicus the attorney represents in the case:
Michael R. Mejia

2. Said party is not a corporation.

3. The names of all law firms whose partners or associates are expected to appear for the party before this Court:

Sarah O'Rourke Schrup (attorney of record), Richard Hu (senior law student), Nicholas Gamse (senior law student), of the Bluhm Legal Clinic at the Northwestern University School of Law.

The names of all law firms whose partners or associates have appeared for the party in the district court and are not expected to appear:

Blaine C. Kimrey (ARDC 6279625)
Sonnenschein Nath & Rosenthal LLP
7800 Willis Tower

Chicago, Illinois 60606

Jean Maclean Snyder (ARDC 3125196)
Law Offices of Jean Snyder
4845 S. Kenwood Avenue
Chicago, Illinois 60615

Attorney's Signature: _____
Date: November 19, 2010
Attorney's Printed Name: Sarah O. Schrup

Please indicate if you are Counsel of Record for the above listed parties pursuant to Circuit Rule 3(d). Yes X No

Address: 375 East Chicago Avenue, Chicago, Illinois 60611
Phone Number: (312) 503-0063
Fax Number: (312) 503-8977
E-mail Address: s-schrup@law.northwestern.edu

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Journals

Treatises and Books

Statutes

JURISDICTIONAL STATEMENT

The United States District Court for the Northern District of Illinois, Eastern Division, had jurisdiction over Appellant Michael Mejia's civil action for deprivation of constitutional rights pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3) and (4), because the case arose under the Eighth Amendment and 42 U.S.C. § 1983. This jurisdiction was based on an action alleging that the defendants used excessive force in violation of Mr. Mejia's Eighth Amendment right to be free of cruel and unusual punishment.

Mr. Mejia timely filed his § 1983 action on November 14, 2006. (A. 16.)[1] The trial lasted from October 20, 2008 to October 28, 2008. (R-250; R-255.) The jury found in favor of the defendants on October 29, 2008, (R-259), and final judgment was entered on the same day (A. 190).

Mr. Mejia filed a Rule 59 motion for a new trial on November 17, 2008. (R-261.) The district court denied the motion on September 30, 2009, (A. 2), and Mr. Mejia filed a timely appeal on October 14, 2009 (A. 192). This Court has jurisdiction over this appeal pursuant to 28 U.S.C. § 1291 (2006), which grants jurisdiction of "all final decisions of the district courts of the United States" to its courts of appeal.

[1] Citations to documents contained within the attached appendix are designated (A. #). Citations to documents not in the appendix are cited to the district court docket number (R-#).

STATEMENT OF THE ISSUES

I. Whether the district court committed a legal error by requiring that a Rule 59 plaintiff demonstrate that trial "testimony [was] such that reasonable persons could not believe it, because it contradict[ed] indisputable physical facts or laws" in order to win a new trial, rather than applying a traditional "miscarriage of justice" or "shocks the conscience" standard.

II. Alternatively, whether the district court abused its discretion by failing to grant a plaintiff's Rule 59 motion for a new trial, when the jury verdict was incompatible with both medical evidence of the plaintiff's injuries and expert witness testimony.

III. Whether a judge weighing a Rule 59 motion should give less deference to the jury verdict in a case involving escalation of force during a prison strip search, because escalation-of-force issues in the prison context are not intuitively understood by lay jurors.

STATEMENT OF THE CASE

During a strip search at Tier BJ of the Cook County Jail the officer-defendants subdued Plaintiff Michael Mejia with excessive force, resulting in multiple blunt force trauma to his body. (A. 9; 91.) In response, Mr. Mejia filed a § 1983 civil action suit against the defendants on November 14, 2006. (A. 16.) The jury found in the defendants favor on October 29, 2008, (R-259), and final judgment was entered on the same day (A. 190).

Mr. Mejia filed a motion for a new trial on November 17, 2008. (R-261.) The district court denied the motion on September 30, 2009, (A. 2), and Mr. Mejia filed a timely appeal on October 14, 2009 (A. 192).

STATEMENT OF THE FACTS

The Incident at Cook County Jail

On October 9, 2005, Michael R. Mejia, an inmate at the Cook County Jail, was lying on a blanket on the floor of Tier BJ, suffering from blastomycosis.[2] (A. 40:24-25; 41:1-26; 42:6-14.) Mr. Mejia had been coughing up blood and suffering from body chills, tiredness, and weakness. (A. 41:9-10.) Despite regularly taking a cocktail of medicine since August 2005, he had still lost over twenty pounds. (A. 4; 41:19-20.) Suddenly, scores of guards rushed into Tier BJ to begin a prisoner shakedown. (A. 4-7.) As a result of an altercation during that process, Mr. Mejia suffered blunt force trauma over many parts of his body, including his head—injuries that ultimately required an off-site visit to the emergency room. (A. 9; 91-93.) The incident was the focus of Mr. Mejia's § 1983 lawsuit against the defendants, which alleged that the jail guards violated his Eighth Amendment right to be free from excessive force. (A. 16.) The source and cause of Mr. Mejia's injuries became the central issue at trial, where, as set forth below, the defendant officers offered inconsistent and, according to the district court, "barely plausible," accounts of the events. (A. 9.) That the jury nonetheless returned a verdict in the defendants' favor and the district

[2] Blastomycosis is a severe lung infection. (A. 6; 36:3-8; 41:9-10.) At the time of the incident, Mr. Mejia was undergoing treatment with Ibuprofen, Bactrim (an antibiotic), and Benadryl (a decongestant). (A. 6.)

court ultimately denied Mr. Mejia's Rule 59 motion for a new trial is the subject of this appeal. (A. 192.)

The guards rushed onto Tier BJ between 5:30 PM and 6:00 PM, (A. 40:11-20), to begin the shakedown (A. 4-7). The guards said they were responding to a distress call from the Tier BJ officer Kachet Edwards, (A. 95:12-14; 99:3-14), though she later denied ever issuing such an alarm (A. 10).[3]

During the shakedown, the guards initially ordered the inmates of Tier BJ to line up outside of their cells, facing the wall. (A. 6.) Mr. Mejia testified that the guards then ordered the inmates to strip naked.[4] (A. 45:12-20.) After doing so, the inmates were required to hold out each article of their clothing individually, shaking each piece before putting it back on. (A. 43:16-25; 44:1-14.) Some time later, the

---

[3] The events leading up to the shakedown are in dispute. Inmate Paul Cortez Barney testified that Officer Edwards noticed that inmate Gregory Rutledge was "popping" his cell door open, (A. 67:2-5), a daily occurrence on Tier BJ (A. 66:23-24). Both Officer Edwards and Mr. Barney testified that the former spoke to one or more inmates as a result of the "popping." (A. 67:6-12; 116:8-21.) Officer Edwards also denied that she was surrounded by detainees, threatened in any way, or even on Tier BJ on October 9, 2005. (A. 117:7-11.) Mr. Barney confirmed that at the time Officer Edwards placed the call, she was not being threatened in any way. (A. 68:11-25; 69:1-8.) Officer Edwards further testified that there were no other unusual incidents on October 9, 2005, other than the lock-popping incident. (A. 117:4-6.) Officer William Scott's testimony, however, contradicted these accounts; he said that he saw Officer Edwards surrounded and being threatened by approximately eight prisoners. (A. 107:16-25; 108:1-18.)

[4] Whether a strip search occurred prior to the altercation is in dispute. Both Officers Gary B. Grayer and Jermaine Lanier and inmate Paul Cortez Barney confirmed Mr. Mejia's account that a strip search had been initiated. (A. 71:15-16; 72:19-23; 94:9-12; 100:1-10.) However, Officer Scott testified that a strip search had not actually taken place. (A. 109:11-13.)

inmates were ordered to turn from the wall towards the middle of the room, (A. 44:2-4), take the insoles out of their shoes, pick them up by their toes, hold them out, bang them together, and put them back on (A. 44:17-25; 45:1). Because Mr. Mejia was not wearing shoes with removable insoles that day, he had nothing to remove from his shoes in response to this command. (A. 45:5-9; 46:1-4.) Mr. Mejia testified that one of the defendants, Officer Nicholas Paolino, came over and tore the attached insoles out of his shoes, (A. 46:6-17), and that Officer Hart then ordered the inmates to turn around to face the wall (A. 47:6-12). Mr. Mejia began to comply but was slower than the other inmates because of his illness. (A. 47:2-3,14-16; 48:10-14.)

Officer William Scott then repeated Officer Hart's instructions to Mr. Mejia, and again ordered him to turn around and face the wall. (A. 75:14-16; 109:15-19.) Mr. Mejia testified that what happened next was entirely unprovoked. (A. 47:14-16.) He stated that Officer Scott yelled at him to "turn the f**k around," (A. 47:14-16), grabbed him by the back of his neck, and slammed his head into the concrete wall three times (A. 48:1-6). Mr. Elijah Santiago, another inmate who was only five to seven feet away from Mr. Mejia during the line-up, confirmed this version of the attack. (A. 85:12-16; 87:6-8.) Mr. Mejia recounted that Officer Paolino then came over from his right side and

punched him in the ribs while Officer Scott held him in a neck clamp. (A. 48:17-22; 49:7-11.)

The defendants, on the other hand, claimed variously at trial either that Mr. Mejia was never struck, (*see, e.g.*, A. 6; 103:5-14), or that he provoked the physical response by either failing to follow orders or by taking a swing at one of the guards (A. 77:19-25; 78:1-11; 79:1; 96:3-12; 106:6-9; 109:2-9, 20-22). Officers Scott and Gary B. Grayer, another defendant, testified that Mr. Mejia refused Scott's orders to turn around and face the wall. (A. 96:3-12; 109:2-9.) Officer Scott further testified that Mr. Mejia appeared to swing at Officer Paolino with a closed fist, (A. 109:20-22), and that he moved in to assist Paolino by grabbing Mr. Mejia's arm (A. 110:15-17). Officer Paolino himself testified that Mr. Mejia swung at him up to four times with a closed fist and that Mr. Mejia may have landed a punch. (A. 77:19-25; 78:1-25; 79:1.) Likewise, defendant-Officer Brian K. Harris swore in his Internal Affairs Division statement that it was he who was the target of Mr. Mejia's alleged punches, (A. 106:6-9), although he later testified at trial that Mr. Mejia did not swing at all (A. 104:14-15; 105: 13-15).

Despite this testimony, Officer Paolino's own force report never mentioned Mr. Mejia swinging at him during the incident. (A. 79:16-20.) Officer Paolino also suffered no injuries on that day, (A. 79:2-4),

and never produced the disciplinary report he claims to have filed to memorialize Mr. Mejia's aggressive acts (A. 80:14-25; 81:1-7). Furthermore, both Officer Scott's incident report, (A. 114:7-25; 115:1-14), and Officer Paolino's, (A. 79:12-15), say that Officer Paolino attempted to subdue and restrain Mr. Mejia *prior* to Mr. Mejia offering any physical resistance, which directly contradicts Officer Scott's own trial testimony (A. 110:1-17). Additionally, as noted above, Officer Harris testified in court that Mr. Mejia did not throw punches. (A. 104:14-15; 105:13-15.) In fact, Lieutenant Craig Johnson, a supervising guard on Tier BJ, testified that none of the guards involved in the incident mentioned to him that Mr. Mejia had ever swung at anyone. (A. 97:13-16.) Mr. Santiago, the inmate standing near Mr. Mejia during the shakedown, also confirmed that Mr. Mejia did not swing at the guards. (A. 88:20-21.) Finally, Mr. Barney, who was only two inmates away from Mr. Mejia in the lineup, (A. 70:5-17), confirmed that Mr. Mejia did not swing at the guards (A. 73:6-8).[5]

Mr. Mejia testified that once the altercation began, Officer Scott spun him around so that he faced a group of guards that included

[5] Mr. Santiago never saw Mr. Mejia or Mr. Rutledge after the October 9, 2005, incident. (A. 90:3-7.) Likewise, Mr. Barney never saw Mr. Mejia after the incident. (A. 74:12-14.) In contrast, Steve Martin, the use of force and corrections expert, noted that "there [wa]s substantial evidence that the [guards] colluded with each other in writing their reports." (A. 143.) Mr. Martin also found that "there [wa]s substantial evidence to conclude that critical factual detail related to the October 9, 2005, incident was suppressed by both [guards] and the [Internal Affairs Division], consistent with an institutional setting in which a code of silence exists." (A. 149.)

Officers Paolino, Harris, Jermaine Lanier, Scott, Grayer, Clark, Rodriguez, Diallo Mingo, Garcia, and two guards that shared the surname of Lopez. (A. 49:7-25; 50:1-4.) Mr. Mejia said that of that group, Officer Harris was the first to come forward, punching him in the face with his fist. (A. 50:6-7.) Mr. Mejia stated that immediately after, the rest of the pack charged forward at him and began punching his upper body while cursing at him. (A. 50:9-25.) He recounted that the guards never attempted to handcuff him during this initial barrage. (A. 50:21-22.) Throughout the attack, Mr. Mejia struggled to cover his head with his hands in order to deflect the blows. (A. 50:18.)

Mr. Mejia testified that eventually one of the guards threw him to the ground, prompting the group to kick and stomp on him. (A. 50:25; 51:1-13.) Mr. Santiago corroborated this account. (A. 86:22-25; 87:1-8.) Mr. Mejia added that he desperately tried to cover his face and move from side to side to protect himself from the guards' kicks and stomps. (A. 51:14-19.)

According to Mr. Mejia, an unidentified guard then pulled him off the ground by his long hair braid, and threw him towards a second pack of guards that were charging at him. (A. 51:21-22; 52:11-13.) Mr. Mejia stated that he fell to the ground before this second pack of guards, who then proceeded to stomp on and kick him as well. (A. 52:18-19.) Mr. Mejia was unable to individually identify the guards in

this second pack since his hands were still covering his face in self-defense. (A. 52:20-24.) Mr. Mejia testified that this attack by the second pack finally ended approximately thirty seconds after Officer Hart declared "that's enough." (A. 53:20-25; 54:1-2.) Mr. Mejia stated that even after the second pack had stopped their collective assault, Officer Lanier kneed him in the ribs. (A. 54:3-5.)

In total, Mr. Mejia estimated that the beatings lasted at least three minutes, (A. 54:25; 55:1), a time frame independently corroborated by Mr. Santiago (A. 89:3-7). After the primary attacks subsided, the guards handcuffed Mr. Mejia. (A. 54:1.) However, Mr. Mejia stated that some of the guards still continued to kick him in his head and ribs. (A. 56:18-21.)

The guards dispute Mr. Mejia's account. At trial each of the defendant guards denied hitting or seeing others hit Mr. Mejia. (*See*, *e.g.*, A. 111:11-19 (Officer Scott testifying that he did not strike Mr. Mejia); 112:7-12 (Officer Scott testifying that no one other than he and Officer Paolino subdued Mr. Mejia); 101:18-20 (Officer Lanier testifying that he did not see any guard hit Mr. Mejia); 103:5-14 (Officer Lanier testifying that he did not touch Mr. Mejia).) Rather, according to Officers Scott and Paolino, they merely subdued Mr. Mejia by tackling him to the ground and handcuffing him in a standard "takedown" procedure. (A. 82:8-17; 111:11-19.) Although Mr. Mejia

suffered significant injuries, including bruising or abrasions to his cheek, cheekbone, forehead, neck, and bruising and discoloration to both eyes and orbits (A. 133-37; 144-45), Officer Scott testified he did not even use enough force for Mr. Mejia to "bruise his eye or his forehead" (A. 111:22-25).

In contrast, Plaintiffs' witness Steve J. Martin, an expert on staff use of force in a confinement setting[6] and the only expert admitted at trial, opined that Mr. Mejia's injuries could not have resulted from a simple takedown procedure the guards described. (A. 146.) Mr. Martin noted that Mr. Mejia suffered significant injuries, including bruising and discoloration to both of his eyes and orbits, bruising to his cheek, bruising to his cheekbone, bruising to his upper forehead, bruising to the upper part of the back of his neck, multiple bruising to his back, and bruising to his lower leg. (A. 144-45.) Mr. Martin concluded that "[t]he number, nature, and extent of combined injuries sustained by [Mr. Mejia] during the application of force on October 9, 2005[, is] consistent with injuries associated with multiple

[6] Mr. Martin has over thirty-five years of experience in correctional administration and, in additional to general qualifications, has specific expertise in the administration, regulation, and investigation of the use of force by security personnel in correctional settings. (A. 139-40.) Mr. Martin has testified on more than fifty occasions in court in his capacity as an expert on corrections, and has reviewed more than one thousand use-of-force incidents in confinement facilities across the United States. (A. 142; 145.) As part of his analysis of this incident, Mr. Martin reviewed the Cook County Department of Corrections use-of-force protocol. (*See* A. 146 (discussing these standards); 172-80 (the standards themselves).)

hard-impact strikes deliberately and repeatedly delivered and directed at [him]." (A. 143.) Furthermore, Mr. Martin stated that "such hard–impact strikes exceed[ed] the force necessary to control, immobilize or neutralize the actions of [Mr. Mejia]." (A. 143.) Lieutenant Johnson implicitly confirmed the expert's conclusion when he testified that prisoners' heads are supposed to be off-limits to the guards when using force. (A. 98:12-14.)

The Medical Treatment

Although some of the defendants denied that Mr. Mejia suffered any of the injuries that the treating physician, expert witness, and even other guards described at trial, (*compare* A. 102:21-24 (Officer Lanier claiming that Mr. Mejia was uninjured after the incident) *with* 112:16-25 (Officer Scott recalling that Mr. Mejia had cuts and blood on his face)), it is undisputed that he was immediately taken for medical treatment following the incident (*see, e.g.*, A. 57:2-24; 113:7-11). After the attacks, Officer Paolino picked Mr. Mejia up by his arms and walked him towards an elevator to head down to the dispensary. (A. 56:23-25; 57:1-24.) Officers Castro and Rodriguez, who were escorting Mr. Rutledge, (a former co-plaintiff who had also been injured during the strip search), joined Officer Paolino and Mr. Mejia in the elevator (A. 58:3-16). Mr. Mejia and Mr. Rutledge both testified that Officer Paolino threatened them by telling them that if they filed a suit, the

guards would "put a case on them," which the men interpreted as a threat to silence them. (A. 39:20-24; 59:6-25; 60:1-3.)

At the dispensary, a medical technician attempted to treat Mr. Mejia by cleaning his face with alcohol. (A. 60:13-16.) The guards then immediately took him to Cermak Health Services of Cook County, a nearby emergency room. (A. 60:19-23.) Dispensary personnel send patients to Cermak when they have "really serious" injuries. (A. 83:25; 84:1-8.) At Cermak, Dr. Yan Yu attended to Mr. Mejia. Dr. Yu's hospital records show that Mr. Mejia suffered several contusions, lacerations on his face, and blunt force trauma to his forehead, face, and left rib. (A. 9; 91-93.) Dr. Yu later testified that Mr. Mejia's multiple blunt force trauma injuries were consistent with "being struck or hit by some sort of hard object," (A. 93:4-8), "being slammed into a wall or a door," (A. 93:9-11), or from "a punch or a kick" (A. 93:12-14). Dr. Yu rubbed additional alcohol on Mr. Mejia's face to clean his wounds and gave him medication to ease his pain. (A. 61:12-18.)[7]

When Mr. Mejia returned from Cermak Hospital, he was immediately placed in punitive segregation for six days, a deviation from standard prison procedures. (A. 62:9-24; 63:9-22.) An inmate who initiates violence against a guard is typically cited with a

[7] Later, the physician who was treating Mr. Mejia for his blastomycosis offered to X-ray his ribs after he told her about the prison guards' attack. (A. 62:1-8.) They were bruised, but not broken. (A. 62:1-8.)

disciplinary ticket and brought before an adjustment committee to present his defense. (A. 63:9-17.) If the guard's allegation is deemed substantiated, the standard punishment is twenty-five to twenty-nine days in punitive segregation, not the six that Mr. Mejia served. (A. 63:18-20; 183.) Because Mr. Mejia was in punitive segregation, he was unable to document his injuries. In fact, Mr. Mejia's injuries were not photographed until four days after the incident, and only once his lawyer had sought and obtained a court order to allow the photographs. (A. 37:4-5.) On November 14, 2006, Mr. Mejia and Mr. Rutledge filed a § 1983 lawsuit against the defendants in the Northern District of Illinois based on the altercation. (A. 16.)

The Jury Trial and Subsequent Motion for a New Trial

As the case approached trial, both parties filed motions *in limine* to exclude evidence. The district court granted the plaintiffs' motions to exclude any reference to plaintiffs' criminal records, their gang membership, and to the fact of any indemnification by Cook County. (A. 28.)

The jury trial lasted from October 20, 2008 to October 28, 2008. (R-250; R-255.) The district court ruled *in limine* that any references to Mr. Mejia's criminal records and gang membership that "[could] influenc[e] the jury" were prohibited. (A. 34:15-20; 35:13-16.) Despite this warning, the defendants "stepped over the lines [drawn *in limine*]

in several instances" during trial. (A. 9.) For example, the district court noted that defense counsel referenced or implied gang affiliation—a forbidden topic—by asking about "neighborhood" ties between Mr. Mejia and particular witnesses.[8] The district court recognized this as an attempt "to get into issues that had been excluded." (A. 65:8-11.)

In spite of the fact that the district court clearly stipulated that it did not want references to the "horrible things" that people do in prison, (A. 35:13-16), defense counsel emphasized that prison is a "very dangerous [environment] because an inmate–if allowed to leave the cell, [could] hide contraband, [could] hide weapons, or even worse, [could] harm another inmate or staff" (A. 38:10-12). Defense counsel continued to refer to contraband or weapons even though such items were not involved in or relevant to the use of excessive force on October 9, 2005. (*See, e.g.*, A. 76:15-24; 119:13-17).[9]

---

[8] (A. 64:14-25) ("Mr. Mejia, I just want to ask you one more question. Can you just clarify, what is your relationship with Mr. Rutledge? A. Met him on the tier. Q. Would you consider him -- A. He's I friend a guess [sic]. Q. -- a friend? A. That's the word I would use. Q. A friend? Yes? A. Yes. Q. Are you from the same part of the neighborhood? Did you grow up together?").

[9] (A. 76:15-24) ("Q. Okay. And what kind of *weapons* are we talking about? . . . Q. And can you describe to the jury what a shank is? A. A shank is a piece of metal that's filed down like a knife to use to stab somebody with. Q. And that can cause serious harm to somebody, right? A. Yes. It can. Q. And the purpose of ordering a strip search or a shakedown is to try and find those *weapons*, right?"); (A. 119:13-17) ("Q. Now the shanks or shives, these homemade knives, these shanks are designed to hurt other inmates or officers, is that right?").

At the conclusion of the trial, on October 29, 2008, the jury returned a verdict in favor of the defendants. (R-259.) On November 17, 2008, Mr. Mejia and Mr. Rutledge filed a motion for a new trial pursuant to Federal Rule of Civil Procedure 59(a) on the basis that: (1) the verdict was against the weight of the evidence; (2) defense counsel repeatedly violated motions *in limine*, prejudicing their case; and (3) defendants' improper statements confused the jury, prejudiced it, and affected the verdict. (R-261.) On March 11, 2009, Mr. Rutledge settled his claims against the defendants and his action was dismissed with prejudice; Mr. Mejia's new trial motion remained. (R-280.)

On September 30, 2009, the district court ruled on the motion for a new trial. (A. 2.) In the opinion, the district court found that each of the prison guards was "repeatedly impeached with prior inconsistent testimony about the incident." (A. 7-8.) In particular, the court underscored how the guards' accounts varied as to whether force was used against Mr. Mejia, and whether he sustained any injuries. (A. 8.) As a result, the court had trouble believing the prison guards' justification for Mr. Mejia's injuries, finding that "[i]n light of the size and weight of Mejia in contrast to the two officers, defendants' explanation is barely plausible, in that two very large men together taking a small man to the ground, as demonstrated in the courtroom, would not entail blunt trauma to the forehead, face and left rib or

result in superficial cuts or multiple contusions on the face and ribs." (A. 9.) The court summarily declared that "it is a stretch to conclude that the defendants' testimony is consistent with indisputable medical evidence." (A. 9.)

The district court also observed that the comments made by the counsel for the defendants "at least violated the spirit of" an earlier order by the court that instructed defendants' counsel "not to go beyond stating that Tier BJ was a maximum security facility." (A. 10.) The district court also acknowledged that "Mejia is correct that defendants' counsel's conduct stepped over the line in several instances" by hinting at Mr. Mejia's gang membership, the length of his incarceration, and falsely stating that Cook County is not a defendant. (A. 12.)

In ruling on Mr. Mejia's Rule 59 weight-of-the-evidence motion, the district court concluded that "the verdict is inconsistent with the weight of the evidence" and that "[t]he weight of the evidence is that the defendants used excessive force on Mejia." (A. 13.) But after applying what it believed to be the "constraints" of the governing legal standards, the district court held that it was bound to deny Mr. Mejia's motion for a new trial. (A. 14.) This appeal followed. (A. 192).

SUMMARY OF THE ARGUMENT

The district court committed a legal error by applying the wrong legal standard to Mr. Mejia's Rule 59 motion for a new trial. This Court has held that a trial court should grant a Rule 59 motion if the jury verdict "shocks [the] conscience" or would result in a "miscarriage of justice." *Latino v. Kaiser*, 58 F.3d 310, 315 (7th Cir. 1995). Yet the district court applied a completely different standard here, requiring that Mr. Mejia show that "the testimony [wa]s such that reasonable persons could not believe it, because it contradict[ed] indisputable physical facts or laws. (A. 13.) This errant standard stands in direct conflict with this Court's prior precedent, which instructs that the granting of a new trial does not hinge on whether the evidence is incredible and, thus, excludable.

The district court also applied an excessive degree of deference to the jury verdict. Rather than applying the trial-level standard for Rule 59 motions, which requires the court to weigh the evidence for itself, the district court made inferences in the light most favorable to the verdict winner, effectively applying the appellate standard of review for Rule 59 motions. This misapplication of the particularly

deferential appellate standard to trial-level decisions reflects a common mistake among trial courts in this circuit and others.

Alternatively, even if the district court were correct in applying such a lofty standard, it still abused its discretion in denying Mr. Mejia's Rule 59 motion. The jury verdict directly contravened the indisputable medical evidence and the expert testimony delivered at trial. Mr. Mejia suffered multiple injuries, including blunt force trauma to the face, left rib, and forehead. (A. 92:5-10.) These injuries simply could not have been caused by the basic takedown procedure that the prison guards described.

Finally, the district court further abused its discretion by directly applying this Court's heightened jury deference from *Latino* to this factually distinguishable case. As a result, the district court unduly credited the jury verdict. Lay jurors cannot be expected to understand the complex issues in cases involving escalation of force in the prison context. Therefore, less deference should have been given to the jury verdict in Mr. Mejia's case than would have been appropriate for a case involving matters within the jurors' common understanding of the public sphere. As such, this Court should grant a new trial or, alternatively, remand this case back to the district court for application of the proper legal standard.

ARGUMENT

I. The district court applied the wrong legal standard in deciding Mr. Mejia's Rule 59(a) motion for a new trial.

The district court properly recognized that the prison guards attempted to cover up their abuse of force, finding that Mr. Mejia's "witnesses were more credible than the officers as to what occurred" and that, at bottom, "[t]he weight of the evidence is that the defendants used excessive force on Mejia." (A. 13.) Despite these conclusions, which clearly favor a new trial, the district court still denied Mr. Mejia's motion because it applied the wrong legal standard.

Although this Court typically reviews the denial of a Rule 59 motion for abuse of discretion, *Latino,* 58 F.3d at 314, where, as here, the district court's ruling is premised on a legal error, this Court reviews the decision *de novo, Khan v. Gallitano*, 180 F.3d 829, 837 (7th Cir. 1999) ("We review the district court's view of the law *de novo*.") (citing *Jaffee v. Redmond*, 142 F.3d 409, 412 (7th Cir. 1998)). A legal error is a *per se* abuse of discretion. *Id.* *See also, Estate of Enoch ex rel. Enoch v. Tienor*, 570 F.3d 821, 822 (7th Cir. 2009) ("an error of law is, by definition, an abuse of discretion") (citing *Maynard v. Nygren,* 332 F.3d 462 (7th Cir. 2003)). Therefore, this Court should reverse and remand for a new trial or, at a minimum, for the district court to consider Mr. Mejia's motion under the proper legal standard.

A. The proper standard for a Rule 59(a) motion for a new trial is whether a verdict "shocks the conscience" or constitutes a "miscarriage of justice," but the district court applied an incorrect and more stringent test.

Federal Rule of Civil Procedure 59 exists to allow judges to correct problematic jury verdicts. 11 Charles Allen Wright, Arthur R. Miller & Mary Kay Kane, Fed. Practice And Procedure § 2801 (2d ed. 1995 & Supp. 2010) [hereinafter Wright, Miller & Kane]. The rule is based upon a centuries-old understanding that justice requires a court to have the power to correct erroneous verdicts by granting a new trial. *Bright v. Eynon*, (1757), 97 Eng.Rep. 365, 367 (K.B.). Courts generally grant new trials under Rule 59 for three reasons: (1) the verdict goes against the weight of the evidence; (2) the awarded damages are excessive; or (3) the trial was not fair. Wright, Miller & Kane § 2805.

When evaluating Rule 59(a) weight-of-the-evidence motions, trial courts in this circuit should grant a new trial where "the jury's verdict resulted in a miscarriage of justice or where the verdict, on the record, cries out to be overturned or shocks [the] conscience." *Latino*, 58 F.3d at 315 (citing *Williamson v. Consol. Rail Corp.*, 926 F.2d 1344, 1353 (3d Cir. 1991)). Other courts apply similar standards when making weight-of-the-evidence decisions. *See, e.g.*, *Farrior v. Waterford Bd. of Educ.*, 277 F.3d 633, 635 (2d Cir. 2002) (per curiam) (new trial should be awarded because jury verdict is "seriously erroneous" or a "miscarriage of justice"); *Bogosian v. Mercedes-Benz of*

N. Am., Inc., 104 F.3d 472, 482-83 (1st Cir. 1997) (new trial should be awarded if verdict yields a "manifest miscarriage of justice"); *White v. Pence*, 961 F.2d 776, 780 (8th Cir. 1992) ("the true standard for granting a new trial on the weight of the evidence is simply one which measures the result in terms of whether a miscarriage of justice has occurred"); *Poynter v. Ratcliff*, 874 F.2d 219, 223 (4th Cir. 1989) (new trial should be awarded if the "verdict is against the clear weight of the evidence, is based on false evidence or will result in a miscarriage of justice").

Despite the apparent rigors of this standard, judges may grant a new trial even if "substantial" evidence supports the jury verdict, particularly when the case involves complex issues not easily understood by lay jurors. Wright, Miller & Kane § 2806. *See also Latino*, 58 F.3d at 314 (explaining that simple cases deserve greater deference). If a judge has considered the jury's verdict and is still "left with the definite and firm conviction that a mistake has been committed, it is to be expected that he will grant a new trial." Wright, Miller & Kane § 2806.

Here, however, the district court applied a much stricter test in deciding Mr. Mejia's motion, requiring him to show that "reasonable persons could not believe [the verdict] because it contradict[ed] indisputable facts or laws." (A. 13.) The erroneous and unprecedented

application of this standard in the Rule 59 context rested on two legal errors. First, the district court appears to have misapplied a standard that is typically used to remove evidence from the jury. Second, the district court further erred by viewing the facts in the light most favorable to the prevailing party, rather than viewing them neutrally as it should have for a Rule 59 motion. Both of these legal errors set an unnecessarily high bar for Mr. Mejia to win a new trial, which unfairly prejudiced him. Therefore, this Court should reverse and remand.

1. The district court committed a clear legal error by misapplying a standard used to remove testimony from the jury.

Although the district court initially recited the correct Rule 59 "miscarriage of justice" or "shocks the conscience" standard, (A. 3), it ultimately applied a different one, holding that "the court should not set aside the jury's verdict unless the testimony is such that reasonable persons could not believe it, because it contradicts indisputable physical facts or laws" (A. 13). But this standard was misplaced; its proper and intended use is for the removal of testimony from the jury. *See United States v. Washington*, 184 F.3d 653, 657 (7th Cir. 1999) (stating that "testimony should be excluded [from the jury] as incredible only where reasonable persons could not have believed it, such as where the testimony contradicts the physical laws of nature") (citing *United States v. Kuzniar*, 881 F.2d 466, 470-71 (7th Cir. 1989)).

In *Washington*, this Court warned against the precise standard confusion that plagued the district court in the instant case, emphasizing that "[t]he focus in a motion for a new trial is not on whether the testimony is so incredible that it should have been excluded. Rather, the court considers whether the verdict is against the manifest weight of the evidence, taking into account the credibility of the witnesses." 184 F.3d at 657. This Court further elaborated that a motion for a new trial could be granted solely on the basis of the weight of the evidence if "it would be a miscarriage of justice to let the verdict stand." *Id.* at 657-58 (quoting *United States v. Reed*, 875 F.2d 107, 113 (7th Cir. 1989)).

Notably, the district court in this case did initially present the testimony-removal standard in its proper context, quoting *Latino's* passage that "[t]he district judge can take away from the jury testimony that reasonable persons could not believe . . . where the testimony contradicts indisputable physical facts or laws." (A. 3) (quoting *Latino*, 58 F.3d at 315). When the district court ruled seventeen pages later in the opinion, however, it had grafted this evidentiary standard onto Rule 59's standard, which merely looks for a "miscarriage of justice" or verdict that "shocks the conscience." *Latino*, 58 F.3d at 315. The end result was that Mr. Mejia was required to show that testimony contradicted indisputable facts or laws, a

standard that, in the words of *Washington*, abandoned the requisite Rule 59 "focus" on the weight of the evidence.

Because it was significantly more difficult, if not impossible, for Mr. Mejia to show that the jury verdict met the district court's unduly restrictive and misplaced standard than it would have been for him to show that the verdict was merely a "miscarriage of justice" or that it "shocked the conscience," this Court should overturn the district court's decision and order a new trial or, at a minimum, remand for consideration under the proper legal standard.

2. The district court committed a second legal error by making factual inferences in the light most favorable to the defendants when weighing the evidence.

Trial judges evaluating a Rule 59 motion have discretion to neutrally and independently weigh the evidence. Wright, Miller & Kane § 2806 (stating that "[t]he judge is *not* required to take that view of the evidence most favorable to the verdict-winner" in weight-of-the-evidence decisions) (emphasis added); *see also* Cassandra Burke Robertson, *Judging Jury Verdicts*, 93 Tul. L. Rev. 157, 183 (2008) (finding it "surprising" that "not all courts have agreed that the district judge should view the evidence neutrally on a new trial motion"). Thus, unlike appellate review of Rule 59 decisions, under which this Court views the evidence in the light most favorable to the winner and "will not set aside a jury verdict if a reasonable basis exists in the

record to support the verdict," *Kapelanski v. Johnson*, 390 F.3d 525, 530 (7th Cir. 2004), the district court's standard is much less deferential to the jury's fact-finding, *see, e.g., Thomas v. Stalter*, 20 F.3d 298, 304 (7th Cir. 1994) ("In deciding whether to order a new trial, [the district court] was entitled to weigh the evidence for itself."). *See also, Forrester v. White*, 846 F.2d 29, 31 (7th Cir. 1988) (distinguishing that "the trial judge is uniquely situated to rule" on a motion for a new trial).

Despite this Court's seemingly clear demarcation between appellate and trial-level standards of review in Rule 59 cases, some confusion persists among trial courts, which occasionally co-opt the appellate standard at the trial level. *See Lewis v. City of Chicago,* 563 F. Supp. 2d 905, 923 (N.D. Ill. 2008) (applying an appellate standard in ruling that "to obtain a new trial . . . Plaintiff must demonstrate that no rational jury could have rendered a verdict for Defendants . . . [and the district court] must view the evidence in the light most favorable to Defendants, leaving issues of credibility and weight of the evidence to the jury, and must uphold the jury's verdict if it is supported by a reasonable basis in the record") (citing *King v. Harrington*, 447 F.3d 531, 534 (7th Cir. 2006)). *See also Manning v. Miller*, No. 02 C 372, 2005 WL 3078048, at *3 (N.D. Ill. Nov. 14, 2005) ("There is some indication of conflict in the Seventh Circuit's precedents about whether

a court considering a motion for new trial may reweigh the evidence, and whether it must view the evidence in the light most favorable to the party that prevailed.").

In a similar vein, trial courts have errantly applied the standard governing judgments as a matter of law ("JMOL") to Rule 59 inquiries. *See* Wright, Miller & Kane § 2806 (highlighting "the recurrent tendency on the part of the courts to confuse the standard for a new trial with that for a directed verdict or a judgment notwithstanding the verdict," a practice that "puts the new trial standard far too high"); 2-59 Martin H. Redish, Moore's Federal Practice – Civil § 59.13 n.90 (2010) (collecting cases from the Second, Fourth, Seventh and Eighth Circuits to show that the weight-of-the-evidence standard should be "less stringent" than a JMOL standard).[10] This Court has clarified that a JMOL "is proper only if a reasonable person could not find that the evidence supports a decision for a party on each essential element of the case, viewing the evidence in the light most favorable to the nonmovant." *Campbell v. Peters*, 256 F.3d 695, 699 (7th Cir. 2001).

Here, the district court fell prey to exactly this kind of confusion. In reaching its decision, it made factual inferences in a manner that

[10] Indeed, it would be illogical to expect that the same standard should be applied for both Rule 50 and Rule 59 motions. As one court explained, "almost every case that reaches the jury has some evidentiary basis upon which the jury could find for either party, otherwise the court would enter judgment as a matter of law at the close of the evidence under Fed. R. Civ. P. 50. A Rule 59 motion requires a more discriminating review of the evidence." *Henry v. Hess Oil V.I. Corp.*, 163 F.R.D. 237, 243 (D.V.I. 1995).

was inappropriately deferent for a trial court. Far from viewing the evidence in a neutral manner, the court asked whether testimony was so extreme that "reasonable persons could not believe it." (A. 3.) Thus, despite finding that Mr. Mejia's "witnesses were more credible than the officers as to what occurred," the district court nevertheless considered the facts in favor of the defendants, positing that "[i]f the jury believed that Mejia swung at the officers, and if they believed that the officers handled him roughly in taking him down, and if they believed the injuries were in fact minor, they could have inferred that the force was not excessive." (A. 13.) This compound supposition shows that the district court felt obliged to afford the defendants the most liberal interpretation of the facts in their favor, an approach that is contrary to this Court's prior precedent, the weight of national authority, and the guidance of leading federal practice scholars.

B. The jury's failure to find the prison guards liable for their unprovoked beating of Mr. Mejia is wholly inconsistent with the weight of the evidence and shocks the conscience.

If the district court had applied the proper Rule 59 weight-of-the-evidence standard as explained in *Latino*, Mr. Mejia would have been awarded a new trial. Other trial courts have held that similar verdicts warranted new trials. *See, e.g.*, *Busch v. City of New York*, 224 F.R.D. 81, 95-96 (E.D.N.Y. 2004) (finding a "miscarriage of justice" where the plaintiff's testimony was "more credible" than the

defendant's "implausible" (but not impossible) testimony and where the defendants' testimony conflicted with the expert witness); *Ruffin v. Van Fuller*, 125 F. Supp. 2d 105, 110-11 (S.D.N.Y. 2000) (finding verdict "seriously erroneous" and a "miscarriage of justice" where defendant's testimony contradicted that of an expert, and several officer witnesses lacked credibility). Although the district court found "parallels" between Mr. Mejia's case and *Ruffin*, it distinguished *Ruffin* as "not under the constraint of cases such as *Latino*." (A. 13.) Because the standard from *Latino* is indeed the same one used in *Ruffin* (and *Busch*)—"miscarriage of justice"—it is likely that the district court would have granted a new trial if it had correctly applied the law of this circuit.

The jury verdict in this case was a miscarriage of justice. The district court's finding that "the weight of the evidence is that the defendants used excessive force on Mejia," (A. 13), appropriately recognized how Mejia suffered a beating at the hands of several prison guards who then collectively denied any wrongdoing. (*See also* A. 144 (use-of-force expert's report describing the basis for identifying the "code of silence" present in this case).) In reaching that conclusion, the district court found the defendants' account wholly incompatible with Mr. Mejia's injuries. (A. 9) (noting that the takedown that the defendants described "would not entail blunt trauma to the forehead,

face and left rib or result in superficial cuts or multiple contusions on the face and ribs"). The district court further determined that the defendants were comparatively less credible than the plaintiffs, (A. 13), and also that that their version of the incident was inconsistent with expert testimony (A. 13) (analogizing the case to *Ruffin*). Moreover, the district court scolded defense counsel for their conduct at trial, describing their violations of the spirit and letter of several *in limine* rulings as "improper" and "unworthy of the State's Attorney's Office." (A. 12.) If a jury verdict rewarding this collective behavior does not shock the conscience or constitute a miscarriage of justice, then very little will. *See* Wright, Miller & Kane § 2803 ("Rule 59 gives the trial judge ample power to prevent what he considers to be a miscarriage of justice. It is the judge's right, and indeed his duty, to order a new trial if he deems it in the interests of justice."). Accordingly, this Court should reverse and remand for a new trial.

II. The district court abused its discretion even under its own stringent standard because the defendants' testimony in concert with Mr. Mejia's undisputed injuries contradicted the laws of nature.

Alternatively, even if the district court's restrictive standard is applied and the court was correct that it could "not set aside the jury's verdict unless the testimony [was] such that reasonable persons could not believe it, because it contradict[ed] indisputable physical facts or laws," (A. 13), the indisputable physical facts of this case nevertheless

required the district court to grant Mr. Mejia a new trial. No reasonable jury could have believed the defendants because their testimony was irreconcilable with the extent and severity of Mr. Mejia's injuries.

Under this test, the testimony must be unbelievable on its face, such that it must have been "physically impossible for the witness to observe that which he claims occurred, or impossible under the laws of nature for the occurrence to have taken place at all," *United States v. Anderson*, 580 F.3d 639, 646 (7th Cir. 2009), or "where certain other exceptional circumstances exist," *United States v. Hach*, 162 F.3d 937, 942, n.1 (7th Cir. 1998) (referencing *In re Chavin*, 150 F.3d 726, 728-29 (7th Cir. 1998)). *See also Ruffin,* 125 F. Supp. 2d at 108-09 (finding weight of evidence against the verdict where the defendant guards' stories that the inmate was injured by falling on a flat surface or radiator were inconsistent with the indisputable injuries the plaintiff suffered—"multiple trauma to [the inmate's] two teeth, probably as a result of either punching or kicking").

The indisputable medical evidence in this case renders the defendants' version of events "impossible under the laws of nature" and therefore impossible for a reasonable juror to believe. The guards testified that none of them hit or saw any other guards hit Mr. Mejia. (*See, e.g.*, (A. 111:11-19) (Officer Scott testifying that he did not strike

Mr. Mejia); (A. 112:7-12) (Officer Scott testifying that no one other than him and Officer Paolino subdued Mr. Mejia); (A. 101:18-20) (Officer Lanier testifying that he did not see any guard hit Mr. Mejia); (A. 103:5-14) (Officer Lanier testifying that he did not touch Mr. Mejia)). Rather, Officers Scott and Paolino swore that they merely subdued Mr. Mejia by taking him to the ground and handcuffing him. (A. 82:8-17; 111:11-19.) Officer Scott also testified that he did not push Mr. Mejia to the ground with enough force for him to "bruise his eye or his forehead." (A. 111:22-25.)

Some of the guards also disputed the severity of Mr. Mejia's injuries by testifying that they were not severe or even non-existent. Officer Scott recalled that when he picked up Mr. Mejia from the floor after handcuffing him he noticed that Mr. Mejia had cuts and blood on his face. (A. 112:16-25.) On the other hand, Officer Lanier testified that he saw no injuries on Mr. Mejia right after the incident. (A. 102:21-24.)

Mr. Mejia's injuries were inconsistent with the defendants' testimony—that they arose from a simple takedown maneuver where no one struck him. According to Dr. Yu, who attended to Mr. Mejia's injuries, Mr. Mejia suffered "blunt force trauma" to the face, left rib, and forehead. (A. 92:5-10.) Mr. Martin, the force-use expert, also noted that Mr. Mejia sustained bruising and discoloration to both his

eyes and orbits, bruising and abrasion to his cheek and cheekbone, and bruising to his upper forehead, neck, back, and lower leg. (A. 144-45.) Dr. Yu confirmed that these injuries could be characterized as "multiple blunt force trauma," (A. 92:16-18), and discussed at the trial its various possible causes, including "being struck or hit by some sort of hard object," (A. 93:4-8), "being slammed into a wall or a door," (A. 93:9-11), or from "a punch or a kick" (A. 93:12-14).[11]

Thus, the multiple blunt force trauma that covered Mr. Mejia's body simply could not have resulted from the defendants' self-described simple takedown to the floor where, by the defendants' accounts, no one otherwise touched Mr. Mejia. (A. 146) (expert stating that the notion "[t]hat such a pattern of injuries could be sustained by simple takedowns is by any investigatory standard with which I am familiar incredulous"). The physical impossibility of the defendants' account becomes even clearer when considering the extent of injuries to Mr. Mejia's head, a body part that even Lieutenant Johnson, the supervising guard on Tier BJ, noted was off-limits when restraining an inmate. (A. 98:12-14.)

Therefore, the district court abused its discretion by failing to recognize that the indisputable physical evidence regarding the extent

[11] Beyond Dr. Yu's testimony, a notation of the blunt force trauma inflicted upon Mr. Mejia was also recorded on the medical form. (A. 92:11-12.)

and cause of Mr. Mejia's injuries contradicted the defendants' testimony. This Court should reverse and remand for a new trial.

III. The district court should have been less deferential to the jury verdict because Mr. Mejia's case involved complex issues not within a lay juror's common experience.

Even if this Court finds that the district court articulated the correct Rule 59(a) standard and that *Latino* embodies that heightened standard, the district court nevertheless erred in directly applying *Latino* to this factually distinguishable case. Both the defendants' response to the plaintiffs' motion for a new trial and the district court's subsequent decision rely heavily on *Latino*. Although that case similarly dealt with a Rule 59 motion, it had one striking and significant difference from Mr. Mejia's: a lack of issue complexity. This fundamental difference can mean only one thing for Mr. Mejia's legally intricate case: his jury verdict deserves less deference than the *Latino* verdict did.

In *Latino*, police arrested two men for scalping basketball tickets. 58 F.3d at 311. The men sued the officers, claiming false imprisonment and a § 1983 violation of their Fourth and Fourteenth Amendment rights. *Id.* The jury verdict favored the defendants. *Id.* The district court, however, granted a Rule 59 motion for a new trial after finding that some testimony had been perjurious and had prejudicially shifted the weight of the evidence against the plaintiffs.

Id. This Court disagreed, finding that the district court should have been more deferential to the jury's decision. *Id.* at 317. In so doing, this Court distinguished "cases involving simple issues but highly disputed facts" and found that "greater deference should be afforded the jury's verdict than in cases involving complex issues with facts not highly disputed." *Id.* at 314. *See also* Wright, Miller & Kane § 2806 (discussing cases that advance this line of reasoning).

Furthermore, this Court emphasized that the jurors in *Latino* likely had *personal experience* with the rather ordinary occurrence of ticket scalping. *Id.* at 316 (noting "[u]nlike cases involving complicated legal concepts, many jurors would have personal experience with [scalping]"). As a result, this Court found that "[t]he jurors were in the best position to decide the rationality or reasonableness of the scalping charge." *Id.* The jury's decision deserved special deference because of the simple, common nature of the legal issue in question.

That is simply not the case here. There are obvious differences between a jury's insight into a scalping exchange and a jury's natural understanding of the appropriate use of force during a strip search in a maximum security prison. One occurs in public, while the other occurs in a private sphere that is intentionally separated from the public. It is an understatement to say that most jurors do not have "personal experience" with the penal system, much less its "dehumanizing" strip

searches, *see Mary Beth G. v. Chicago*, 723 F.2d 1263, 1272 (7th Cir. 1983), or its sophisticated escalation of force protocol (*see* A. 180 (the Cook County Department of Corrections use of force diagram)). The complexity in this case is borne out by the fact that Mr. Mejia called an expert to help educate jurors about the appropriate use of force in confinement settings. (A. 118:3-7) (district court ruling that Mr. Martin "is an expert in the field of use of force and corrections"). Mr. Martin's testimony was necessary to explain the prison environment's unique codes of conduct and escalation that would have otherwise been completely foreign to the jury.

To be sure, the logic of the *Latino* issue-complexity rule is not in dispute. A judge (and society) should be less concerned about the propriety of jury verdicts when the juries are asked to consider issues that they can easily understand. The issue in this case, however, unlike the one in *Latino*, could not be easily understood by a layperson. Therefore, the district court felt unreasonably bound by *Latino*. Instead, the court should have been empowered with "more freedom to evaluate independently the verdict." *Williams v. Valdosta*, 689 F.2d 964, 974 (11th Cir. 1982). The district court's failure to apply that appropriate flexibility was both costly and prejudicial to Mr. Mejia.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court reverse the district court's order and grant Mr. Mejia's motion for a new trial or, alternatively, remand to the district court for application of the appropriate legal standard.

Respectfully Submitted,

Michael R. Mejia
Plaintiff-Appellant

By:_____
Sarah O'Rourke Schrup
Attorney

Nicholas Gamse
Senior Law Student

Richard Hu
Senior Law Student

Bluhm Legal Clinic
Northwestern University School of Law
375 East Chicago Avenue
Chicago, IL 60611
Phone: (312) 503-0063

Counsel for Plaintiff-Appellant,
Michael R. Mejia

No. 09-3540

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Michael R. Mejia, Plaintiff-Appellant, v. Cook County, Illinois, et al., Defendants-Appellees.	Appeal From The United States District Court For the Northern District of Illinois, Eastern Division Case No. 1:06-cv-06214 The Honorable Joan Humphrey Lefkow

---

Certificate of Compliance with Federal Rule of Appellate Procedure 32(a)(7)

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(b) because this brief contains 8751 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2007 in 12 point Century Schoolbook font with footnotes in 11 point Century Schoolbook font.

Sarah O'Rourke Schrup
Attorney
Bluhm Legal Clinic
Northwestern University School of Law
375 East Chicago Avenue
Chicago, IL 60611
Phone: (312) 503-0063

Dated: November 19, 2010

No. 09-3540

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Michael R. Mejia Plaintiff-Appellant, v. Cook County, Illinois, et al., Defendants-Appellees.	Appeal From The United States District Court For the Northern District of Illinois, Eastern Division Case No. 1:06-cv-06214 The Honorable Joan Humphrey Lefkow

---

Circuit Rule 31(e)(1) Certification

I, the undersigned, counsel for the Plaintiff-Appellant, Michael R. Mejia, hereby certify that I have filed electronically, pursuant to Circuit Rule 31(e), versions of the brief and all of the Appendix items that are available in non-scanned PDF format.

Sarah O'Rourke Schrup
Attorney
Bluhm Legal Clinic
Northwestern University School of Law
375 East Chicago Avenue
Chicago, IL 60611
Phone: (312) 503-0063

Dated: November 19, 2010

Proof of Service

I, the undersigned, counsel for the Plaintiff-Appellant, Michael R. Mejia, hereby certify that on November 19, 2010, two copies of the Brief and Required Short Appendix of Appellant, as well as a digital version containing the brief, were sent by United States mail to the following individual:

James Pullos
Cook County Attorney's Office
Torts/Civil Rights Litigation
500 Richard J. Daley Center
Chicago, IL 60602
(312) 603-6189

_____

Sarah O'Rourke Schrup
Attorney
Bluhm Legal Clinic
Northwestern University School of Law
375 East Chicago Avenue
Chicago, IL 60611
Phone: (312) 503-0063

Dated: November 19, 2010

No. 09-3540

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Michael R. Mejia, Plaintiff-Appellant, v. Cook County, Illinois, et al., Defendants-Appellees.	Appeal From The United States District Court For the Northern District of Illinois, Eastern Division Case No. 1:06-cv-06214 The Honorable Joan Humphrey Lefkow

---

Circuit Rule 30(d) Statement

I, the undersigned, counsel for the Plaintiff-Appellant, Michael R. Mejia, hereby state that all of the materials required by Circuit Rules 30(a), 30(b), and 30(d) are included in the Appendix to this brief.

Sarah O'Rourke Schrup
Attorney
Bluhm Legal Clinic
Northwestern University School of Law
375 East Chicago Avenue
Chicago, IL 60611
Phone: (312) 503-0063

Dated: November 19, 2010

No. 09-3540

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Michael R. Mejia,
Plaintiff-Appellant,

v.

Cook County, Illinois, et al.,
Defendants-Appellees.

DIGITAL APPENDIX OF PLAINTIFF-APPELLANT MICHAEL MEJIA

Bluhm Legal Clinic
Northwestern University School of Law
375 East Chicago Avenue
Chicago, IL 60611
Phone: (312) 503-0063

Sarah O'Rourke Schrup
Attorney
Nicholas Gamse
Senior Law Student
Richard Hu
Senior Law Student

Counsel for Plaintiff-Appellant,
Michael R. Mejia

RULE 30(a) APPENDIX TABLE OF CONTENTS

RULE 30(b) APPENDIX TABLE OF CONTENTS

Opinion and Order Signed [R-283]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

GREGORY RUTLEDGE, et al.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	**Case No. 06 C 6214**
	)	
COOK COUNTY, ILLINOIS, et al.,	)	
	)	
Defendants.	)	

OPINION AND ORDER

This is a civil right case in which Gregory Rutledge, a pretrial detainee, and Michael Mejia, a prisoner, complained that five defendant officers at the Cook County Department of Corrections ("the Department") facility located at California Boulevard and 26th Street in Chicago violated their constitutional rights through the use of excessive force. On October 29, 2008, a jury returned a verdict in favor of all defendants on all claims. Plaintiffs made a timely motion for new trial. Rutledge has since settled with the defendants. Michael Mejia's motion for a new trial is the subject of this decision. For the reasons stated below, the motion for new trial [#261] will be denied.

I. LEGAL STANDARDS

Under Federal Rule of Civil Procedure 59(a), "[t]he court may, on motion, grant a new trial on all or some of the issues–and to any party– . . . after a jury trial, for any reason for which a new trial has heretofore been granted in an action at law in federal court." Fed. R. Civ. P. 59(a). The district court is to consider whether the verdict is against the weight of the evidence,

the damages are excessive, or if for other reasons the trial was not fair to the moving party. *McNabola* v. *Chi. Transit Auth.*, 10 F.3d 501, 516 (7th Cir.1993) (citations omitted) (internal quotation marks omitted). The court may grant a new trial based on substantial errors in the admission or rejection of evidence. 11 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, FED. PRACTICE AND PROCEDURE § 2805 (2d ed. 1995) (citing cases). In considering a motion for a new trial, the court is entitled to weigh the evidence for itself, *Thomas* v. *Stalter*, 20 F.3d 298, 304 (7th Cir. 1994) (citing 11 Charles Alan Wright & Arthur R. Miller, FED. PRACTICE AND PROCEDURE § 2806, at 44-45 (1st ed. 1973),[1] and to assess the witnesses' credibility. *Thomas*, 20 F.3d at 304 (citing *Whalen* v. *Roanoke County Bd. of Supervisors*, 769 F.2d 221, 226 (4th Cir.1985), *overruled on reh'g on other grounds*, 797 F.2d 170, 171 (4th Cir.1986) (per curiam) (en banc)). The court should not grant a new trial based on the weight of evidence unless "the record shows that the jury's verdict resulted in a miscarriage of justice or where the verdict, on the record, cries out to be overturned or shocks our conscience." *Latino* v. *Kaiser*, 58 F.3d 310, 315 (7th Cir. 1995) (hereinafter "*Latino*"). This rule stems from the Seventh Amendment's limitations on the judge's power to reexamine the jury's verdict. *Id.* at 314. "The district judge can take away from the jury testimony that reasonable persons could not believe. However, that exception is a narrow one, and can be invoked only where the testimony contradicts indisputable physical facts or laws." *Id.* at 315 (citations omitted).

[1] The 1995 edition contains the same statement. *See* 11 Wright, Miller & Kane, FED. PRACTICE AND PROC. § 2805, at 67.

II. THE EVIDENCE

On October 9, 2005, Mejia was serving a sentence at Cook County Jail. He was housed in a maximum security area, Division 11, Tier BJ. At approximately 6:00 p.m. that evening, Mejia was in his cell, lying down, as he had been ill. According to medical records in evidence he had been receiving medical care since August for a condition that was at least provisionally diagnosed as blastomycosis. (Blastomycosis is "a rare infection that may develop when people breathe in (inhale) a fungus called *Blastomyces dermatitidis*, which is found in wood and soil." MedlinePlus Medical Encyclopedia, http://www.nlm.nih.gov/medlineplus/ency/article/000102.htm#Definition). The medical records indicated he was being treated with an antibiotic (Bactrim), a decongestant (Benadryl) and ibuprofin. According to Mejia, he weighed 146 pounds, 20 pounds less than his weight in October 2008. Other inmates were present in the day room or in their cells. For reasons that are not clear, a distress call was made–the officer identified as having made it denied doing so–indicating that an officer was "in trouble." In fact, no officer was in trouble, nor was there any alarming disturbance in the area other than that the officer had observed Rutledge "popping" the lock of his cell to place his lunch tray on the floor outside. Assuming an officer was in trouble, however, an unknown number of officers – probably 20 - 30 – went immediately to Tier BJ to assist. All inmates were ordered out of their cells and directed to line up against a wall for a strip search. The strip search proceeded without incident until the inmates were being instructed to put their clothes back on. Here the versions of the facts diverge.

According to Mejia, the inmates were ordered to remove the insoles from their shoes if they "came out." Mejia's insoles didn't come out (because he had not yet received standard

issue shoes) so he left his shoes sitting on the floor. Officer Paolino picked up Mejia's shoes, tore out the insoles and tossed them on the floor. The inmates were ordered to pick up their shoes and bang them together, put them on their feet, then face the wall. Because he was ill, Mejia was slow in performing the tasks. He was in the process of putting his second shoe on when defendant Scott ordered him to "turn the F around." Scott walked up to him, grabbed him by the back of the neck and slammed his head into the wall three times. Paolino then approached him from the right and punched him in the ribs. Scott pulled him back from the wall by the neck and turned him around. Mejia saw Scott, Paolino, Harris and Grayer and several other officers in front of him. Harris then hit Mejia in the face with his fist, followed by punches to the upper body from Lanier, Scott, Grayer, and Paolino, and other officers. Rutledge said Lanier, Paolino, Grayer and Harris all punched or kicked Mejia. One of them threw him to the ground, and officers Grayer, Scott, Paolino, Harris and Lanier and other officers then stomped and kicked him. Mejia attempted to cover his face and move from side to side dodging blows. An officer pulled him to his feet by his braid and pushed him toward another group of about twenty unknown officers who also stomped and kicked him. After this, he was handcuffed and again kicked in the head and ribs.

Other inmate witnesses testified consistently with Mejia's testimony insofar as they described Mejia's slowness to respond to instructions as the officers' provocation to attack him. One inmate witness, Paul Barney, who was standing nearby identified Officer Lanier, rather than Scott, as the officer who slammed Mejia's face into a door or wall. Rutledge and a witness Murchison, however, testified that it was Scott. Plaintiffs' witnesses Elijah Santiago and Barney testified that the beating of Mejia lasted three to seven minutes. Rutledge measured time from

the head banging on the wall until Sgt. Johnson told the officers to stop as 1 to 2 minutes. All of the inmate witnesses testified that Mejia did not swing at or hit an officer. Rutledge said Mejia merely talked back just before his head was banged on the wall by asking, "Is this necessary?"

After the altercation, Mejia was taken to the dispensary for medical care. The medical evidence shows that he suffered from multiple contusions, including on the left side of his forehead, and superficial lacerations on the left side of his face. The treating physician noted "blunt trauma" to Mejia's forehead, face, and left rib. Mejia was cleaned up, given Motrin, and taken back to Tier BJ, where he was placed in segregation for 6 days. Mejia thought his ribs had been broken. The physician treating his blastomycosis ordered x-rays. A report dated October 11, 2005 revealed no broken ribs.

The officers consistently testified that Mejia swung at Paolino and that no officer hit or kicked him, or slammed his head against a wall. The remainder of their testimony was divergent on many facts, including whether any force was applied to Mejia and whether Mejia was injured at all. Officer Paolino testified that during the strip search, he gave Mejia several orders to face the wall, which he ignored. Shortly thereafter, Mejia became combative and took a swing at Officers Paolino and Scott, at which time Officers Paolino and Scott took Mejia to the ground and handcuffed him. Officer Paolino does not recall whether Mejia landed a punch on him at any time, although Mejia did attempt to strike him with a closed fist.

Officer Scott testified that he was one of the first officers to respond to the call. He took a position by the stairs and the closet door, about 15-20 feet away from Mejia, who was by the wall but facing out toward the day room. He observed Officer Scott give Mejia several orders to turn around and face the wall, but Mejia refused. As Mejia continued to disobey orders from

Officer Scott, both Officers Scott and Paolino moved towards Mejia. Officer Paolino motioned to Mejia to turn around. Mejia then swung at Officer Paolino with a closed fist. Officer Scott, who by then was standing 7-8 feet away from Mejia, grabbed Mejia's arm and attempted to subdue him. Officers Scott and Paolino struggled to restrain Mejia, finally taking Mejia to the ground after approximately one minute. At no time did Officer Scott strike Mejia or push him forcibly to the ground. After restraining Mejia, Officer Scott picked Mejia off the ground and noticed cuts and blood on Mejia's face. Officers Scott and Paolino then escorted Mejia out of Tier BJ.

Officer Lanier testified that when he arrived at Tier BJ, most of the inmates were lined up against the wall, and responding officers were ushering those inmates still in their cells out to the wall. At some point, Officer Lanier heard either Officer Scott or Officer Paolino give Mejia several orders to face the wall. At the time, Officer Lanier was standing by the TV and the phones; 30 feet away from Mejia. Officer Lanier did not approach the source of the commotion, nor did he see any officers restrain or hit Mejia at any time.

Lt. Johnson testified that when he entered Tier BJ through the entrance, he saw Mejia handcuffed on the floor near the stairs and closet door. Mejia was subdued and did not appear to be a threat. Lt. Johnson walked in Mejia's direction, stopping for about 20 seconds by Mejia to ask an officer why Mejia was restrained. Lt. Johnson does not recall which officer he addressed or the officer's reply. According to Lt. Johnson, both Rutledge and Mejia were transported to the dispensary after being restrained because it was standard operating procedure, not because either inmate appeared injured.

Each of the officers was repeatedly impeached with prior inconsistent testimony about

the incident. For example, during his deposition, Officer Paolino claimed Mejia swung at him with both fists, but during his testimony Officer Paolino could not recall if this was true. During his deposition, Officer Paolino acknowledged that it was "possible" Mejia swung at him up to four times, but during his testimony Officer Paolino denied this possibility. In his use of force report, Officer Paolino did not mention that Mejia swung at him up to four times and possibly landed a punch. Finally, Officer Paolino claimed to have submitted a disciplinary report regarding the incident with Mejia, but the defense has been unable to locate such a report.

Because two officers did file a use of force report consistent with Department regulations, testimony that no force was used must be rejected.

III. ANALYSIS

Mejia asserts three grounds for a new trial: (1) the verdict was against the weight of the evidence; (2) defense counsel repeatedly violated orders regarding the exclusion of evidence that taken together prejudiced Mejia; and (3) defense counsel's references to excluded evidence and improper statements in closing confused the jury and altered its verdict. The relevant facts are summarized below. To the extent they are not mentioned, the court has reviewed the submissions of the parties and determined that those facts or issues would not change the result of this decision.

A. The Weight of the Evidence

Mejia argues that the officers' testimony, which was inconsistent among the officer witnesses and inconsistent with each defendant's prior statements regarding the incident, was so incredible that, as in *Ruffin* v. *Fuller*, 125 F. Supp. 2d 105 (S.D.N.Y. 2000), permitting the verdict to stand would be a miscarriage of justice. Mejia also contends that the defendants'

accounts of what happened are inconsistent with Mejia's injuries, evidenced by the Department's own medical records created immediately after the events. Mejia argues that the force used against him was excessive even if the jury believed that Mejia failed to comply with a verbal order or swung at Paolino because it is by definition excessive force for an officer to kick an inmate who is handcuffed on the ground or strike an inmate's head under any circumstances.

Citing *Latino*, defendants respond that the court may not substitute its view of the evidence for that of the jury. Defendants contend that the officers' testimony was sufficiently consistent, considering that the events took place three years before the trial; that the witnesses for the plaintiffs were also at times inconsistent and exaggerated the officers' actions and Mejia's injuries; and that the jury could have reasonably believed that Mejia's injuries could have resulted from Officers Scott's and Paolino's taking him to the ground.

In light of the size and weight of Mejia in contrast to the two officers, defendants' explanation is barely plausible, in that two very large men together taking a small man to the ground, as demonstrated in the courtroom, would not entail blunt trauma to the forehead, face and left rib or result in superficial cuts or multiple contusions on the face and ribs. In other words, it is a stretch to conclude that the defendants' testimony is consistent with indisputable medical evidence.

B. Improper Opening Statement

Mejia objects to a number of comments of counsel during his opening statement that, he believes, implied that the plaintiffs were dangerous men because they were in a maximum security tier, even though the court had authorized the defense merely to state the security level

of the tier where the incident occurred.[2] During the first moments of his opening statement, defense counsel told the jury that working for the Department is "a very dangerous job that has many hazards." He added, "The Cook County Jail is a very dangerous place." "You will see that if a detainee acts out and disobeys the rules, other inmates will follow [and] you may have a riot on your hands." He then asserted that the incident of Mejia's (actually Rutledge's, Tr. at 151) popping his cell door created a "very dangerous situation because . . . if an inmate is allowed to leave the cell, he can hide contraband, he can hide weapons, or even worse, he can harm another inmate or staff." Tr. at 149

The evidence, however, was scant of door-popping being the event that led to the call for assistance. The officer on duty, Edwards, testified that she observed Rutledge's conduct but did not call for assistance because of it, while two officers said she made the call. The other officers did not know the precise reason they were summoned to Tier BJ. The evidence was consistent from both sides that inmates popped their cell doors frequently. There was no evidence that any inmate was suspected of or discovered having weapons or contraband. Defendants justify their actions by stating they were merely articulating the necessity of strip searches in a correctional setting.

Because the court had instructed counsel not to go beyond stating that Tier BJ was a maximum security facility, the comments about the dangers of such a place at least violated the spirit of that order, particularly where the evidence that would be forthcoming revealed a fairly

[2] The court had overruled plaintiffs' objection to identifying the facility as a maximum security facility on condition that the evidence was merely descriptive, such as the "Department of Corrections definition of maximum security facility that could be used by your witness to explain where they were. So I would permit that." Tr. at 24.

calm day in the day room where the altercation took place.

C. Violations of Rulings on Admissibility of Evidence

Plaintiffs' *motion in limine* to exclude any reference to or evidence of the plaintiffs' alleged gang membership or affiliation was granted. The court addressed the defendants' argument that the plaintiffs' common gang membership was probative of their credibility. Weighing the probative value against the potential for unfair prejudice, however, the court barred the evidence. Despite the ruling, defense counsel attempted to elicit other names Rutledge used for Mejia. "Q. . . . Out of curiosity, did you refer to him as — in another name or by something else back on October 9, 2005." A. No, Michael. Q. That was — you always referred to him as Michael? A. Uh-huh. Q. Okay. What about yourself? A. I don't understand that question. Q. Do you go by a different name? A. Gregory, Greg. Q. Is that it? A. I got — I have [*sic*] a nickname previously before, but – Q. What is it? Mr. Kimrey. Objection, relevance." Tr. at 248. Defendants do not deny that the effort was to elicit gang names, contend that the evidence was relevant, or explain why, if they thought it was relevant *and important*, they did not seek permission to elicit the evidence. They merely respond that after the court sustained the objection, they refrained from repeating the violation.

In another instance, after a ruling *in limine* barring evidence of the nature of the plaintiffs' conduct that landed them in jail, the length of their incarceration, or the fact that Rutledge had been acquitted and released, defense counsel on cross-examination of Rutledge asked how long he had been incarcerated, leaving the implication that he still was. Defendants justify their conduct by stating it was relevant to Rutledge's status as a worker on the tier. In any event, the court sustained the objection, and they didn't do it again, so defendants argue no harm

done.

During the jury instruction conference, the court rejected defendants' proposed Seventh Circuit Civil Jury Instruction 7.01.[3] This was consistent with the court's earlier ruling against plaintiffs' wishes that Cook County would not be identified to the jury as a defendant. The court rejected the instruction because "the only reason it would be there is to . . . raise an inference that there is not indemnity." Tr. at 889. Yet, defense counsel during closing argument stated, "This is not a suit against Cook County." Tr. at 974. Defendants respond that counsel made the statement to counter plaintiffs' counsel's plea in closing argument that the jury send a message to "them," after saying "This is how things work at Cook County Jail." Defendants argue this was appropriate in light of plaintiffs' burden to prove the case against each individual officer, not Cook County Jail or the officers as a group.

Mejia is correct that defendants' counsel's conduct stepped over the line in several instances. To argue that one violation of an order excluding evidence is permissible, so long as it was not repeated, is unworthy of the State's Attorney's Office, as is an attempt to get before the jury an excluded fact such as gang membership or the length of a plaintiff's incarceration by indirection and insinuation. Once having obtained the favorable ruling *in limine* that the jury would not know that Cook County was in the case, it was improper for counsel to falsely state that Cook County is not a defendant. Counsel have a duty to argue all grounds of relevance during the hearing on the *motions in limine*. Once the court has ruled, counsel are not free to decide for themselves that, in context, the evidence is actually admissible.

---

[3] Instruction 7.01, adapted for this case, states, "Defendants are being sued as individuals. The County of Cook is not a party to this law suit."

IV. CONCLUSION

The issue is whether these facts taken together sufficiently prejudiced the jurors' view of Mejia that the verdict shocks the conscience and must be overturned. The court, having reviewed the arguments of counsel and the supporting transcript portions, concludes that they do not. First, let it be clear that this court agrees with Mejia that the verdict is inconsistent with the weight of the evidence, that plaintiffs' witnesses were more credible than the officers as to what occurred, and the plaintiffs' witnesses' testimony, although to some extent exaggerated, was more consistent with the evidence as a whole. The weight of the evidence is that the defendants used excessive force on Mejia.

At the same time, because the court should not set aside the jury's verdict unless the testimony is such that reasonable persons could not believe it, because it contradicts indisputable physical facts or laws, the court is not persuaded that a new trial is called for. If the jury believed that Mejia swung at the officers, and if they believed that the officers handled him roughly in taking him down, and if they believed the injuries were in fact minor, they could have inferred that the force was not excessive.

This is not like the situation in *Hillard* v. *Hargraves*, 197 F.R.D. 358 (N.D. Ill. 2000), where the prisoner plaintiff represented himself at trial. Mejia was well represented by skilled counsel who ably and thoroughly presented their clients' evidence of excessive force. There are parallels to *Ruffin* in that there the court granted a new trial where the defendant officer's version of the incident as a fall was inconsistent with expert testimony demonstrating the injuries were inconsistent with a fall and, instead, consistent with multiple kicks in the mouth. The court also rejected the credibility of the officer witnesses, noted that critical portions of the surveillance

tape of the inmate's cell had been destroyed, and the court was convinced that the verdict was "seriously erroneous." The district judge in *Ruffin*, however, was not under the constraint of cases such as *Latino*. Finally, the conduct of defense counsel that Mejia cites is not to be praised, but the court is not persuaded that it so negatively infected the proceeding that a new trial is warranted.

ORDER

The motion for new trial is denied.

Date: September 30, 2009

ENTER:

JOAN H. LEFKOW
United States District Judge

Minute Granting/Denying Multiple Plaintiff's and Defendants' *Motions in Limine* [R-238]

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Joan H. Lefkow	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	06 C 6214	**DATE**	10/10/2008
CASE TITLE	RUTLEDGE, ET AL vs. COOK COUNTY, ILLINOIS		

DOCKET ENTRY TEXT

Plaintiffs motions in liminie [159],[161],[162],[163],[164], are granted. Defendants motions in liminie [169], [174],[177], are granted in part and denied in part. Defendants motion in liminie [170] , [172], [173],[175],[176],[178],[179], are granted. Defendants motion in liminie [171] is denied.

■[For further details see text below.] Docketing to mail notices.

STATEMENT

Rutledge v. Cook County, Illinois, No. 06-C-6214 - Pretrial Conference Order

The final pretrial conference in this case was held on October 2, 2008. Enter order regarding motions in limine [#159, 161-64, 169-79], matters raised in Final Pretrial Order [#210] and at the final pretrial conference. (See statement below). The parties are to work together to prepare revised exhibit lists in light of these rulings. Any exhibit that is not opposed on the revised list will be received in evidence. There shall be no need to offer such exhibits at trial. Remaining disputes will be raised before trial and ruled on if possible.

***I. Plaintiffs' Motions in Limine**:*

(1) Plaintiffs' motion to exclude defendants' expert witness [#159] is granted. Under F.R.E. 702, a witness may qualify as an expert based on his knowledge, skill, experience, training, or education. The rule permits expert testimony to be admitted "when the specialized knowledge of the witness will aid the trier of fact in . . . determining a fact at issue." United States v. Ceballos, 302 F.3d 679, 686 (7th Cir. 2002). The Seventh Circuit has held that "field experience can provide 'specialized knowledge' that supports expert testimony." United States v. Moore, 521 F.3d 681, 684 (7th Cir. 2008) (citing Ceballos, 336 F.3d at 646-47 and United States v. Allen, 269 F.3d 842, 846 (7th Cir. 2001).

Plaintiffs assert that Defendants' expert, Larry P. Danaher, does not have the experience requisite to form a specialized knowledge of the use of force in a corrections setting. Plaintiffs argue that Danaher's area of competence does not match the subject matter of his testimony because he has virtually no experience with using force in the corrections setting, the issue in this case, and instead seeks to base his opinion on the use of force in a law enforcement setting. Plaintiffs point out that Defendants have failed to present any evidence that Danaher has any meaningful experience in the corrections setting.[1] Danaher has never worked

inside of a jail or prison, never used force in the corrections setting and has never conducted a "shake down" of inmates. Pls.' Mot. at 5-6.

*In response, Defendants concede that Danaher has scant corrections-specific experience but argue that Danaher's extensive experience in law enforcement provides him with a breadth of expertise on the subject of use of force, which encompasses the correctional setting. Defs.' Resp. at 3-4. Defendants have cited no relevant authority to support their position. Plaintiffs on the other hand, argue that this case should be controlled by the outcome in Catlin v. DuPage County Major Crimes Task Force, which involved the use of force on the street in the arrest setting. No. 04-2590, 2007 United States Dist. LEXIS 44224, at *1-2 (N.D. Ill. June 19, 2007). In Catlin, the court granted the defendants' motion to strike an affidavit prepared by the plaintiff's expert witness on the basis that the expert had experience only in the corrections setting. Id. at 4.*

Defendants seek to distinguish Catlin by arguing that "police officers have training and experience over a wide range of circumstances while a corrections officer does not." Defs.' Resp. at 4. Thus, "a police officer can give an opinion about use of force in a correctional setting as opposed to a correctional officer giving an opinion on use of force in a police setting." Id.

Catlin stands for the well-established proposition that where an expert's testimony is based on his experience, he must have experience with the subject matter at issue. See Carroll v. Otis Elevator Co., 896 F.2d 210, 212 (7th Cir. 1990) ("Whether a witness is qualified as an expert can only be determined by comparing the area in which the witness has superior knowledge, skill, experience, or education with the subject matter of the witness's testimony."). As in Catlin, the court acknowledges that corrections officers and police officers use force differently because the environments in which they operate are significantly different. Accordingly, the court finds that Danaher's extensive police experience does not enable him to render opinion testimony that would be reliable or relevant to the issue in this case, namely whether Defendants' used excessive force on Plaintiffs, two inmates, in the Cook County Jail on October 9, 2005.[2]

(2) Plaintiffs' motion to bar the testimony of any witness who has not been previously identified [#163] is granted (without objection).

(3) Plaintiffs' motion to exclude any reference to or evidence of their alleged gang membership or affiliation [#164] is granted. Gang evidence may be admissible if its probative value outweighs its potential to prejudice the jury. United States v. Irvin, 87 F.3d 860, 864 (7th Cir. 1996). However, the inference that common membership in a gang makes it more likely that two people were involved in a given activity together is weak where the gang is "not somehow connected to the activity at issue." Id. Defendants argue that Plaintiffs' membership in the same gang is relevant to "rebut Plaintiff Rutledge's contention that his involvement was simply altruistic and the he was trying to prevent injustice to Mejia." Defs.' Resp. at 4. It makes no difference, however, why Rutledge assisted Mejia; the relevant fact is that he played that role. Defendants also fail to present any evidence showing that the beatings on October 9, 2005 were gang-related, for instance, by showing that the officers were responding to a gang-related riot. More persuasive is Defendants' argument that the Plaintiffs' gang membership goes to their motive to lie for each other and is therefore probative of their credibility. Defs.' Resp. at 3. Plaintiffs respond that evidence of gang affiliation will unfairly prejudice a jury against them for reasons entirely unrelated to the case.

Weighing the probative value of Plaintiffs' gang affiliation against the potential for unfair prejudice, the court finds that the potential for unfair prejudice is strong. Evidence that the Plaintiffs were or are members of the Latin Counts may lead the jury to conclude that Plaintiffs are bad people or were asking for mistreatment, such that the force used in the beatings was justified. See Irvin, 87 F.3d at 864 ("[G]ang affiliation evidence . . . is likely to be damaging to the [criminal] defendant in the eyes of the jury and that gangs suffer from poor public relations.") (internal citations and quotations omitted); Wallace v. Mulholland, 957 F.2d 333, 336 (7th Cir. 1992) (recognizing the "danger that a jury will conclude that a mentally deficient plaintiff, regardless of his

actual behavior, somehow 'asked for' mistreatment at the hands of two policemen is greater than the value of such evidence to explain the police officers' use of force.") (internal citations omitted). Thus, under Rule 403, the court finds the danger of unfair prejudice substantially outweighs any relevance in this case.

*(4) Plaintiffs' motion to exclude any reference to or evidence of Plaintiffs' criminal records. [#161] is granted. Plaintiff Mejia's felony murder conviction has no bearing on the issue of whether the Defendants' used excessive force. Any such value is substantially outweighed by the danger of unfair prejudice. See F.R.E. 609(a)(1). Plaintiff Mejia's convictions concern a violent crime that has little to do with his credibility as witness. See Advisory Committee Note to 1990 Amendments ("The amendment reflects a judgment that decisions interpreting Rule 609(a) as requiring a trial court to admit convictions in civil cases have little, if anything, to do with credibility reach undesirable results.") (internal citations omitted). Moreover, there is substantial danger that knowledge of Mejia's conviction would lead the jury to deny him an award "not because it doubts [his] veracity, but because it is appalled by his prior conduct that has nothing to do with the events in question." See Jones v. Sheahan, Nos. 99-3669, 01-1844, 2003 United States Dist. LEXIS 11891 at *6 (N.D. Ill. July 14, 2003) (quoting Earl v. Denny's, Inc, 2002 United States Dist. LEXIS 24066, No. 01-5182 at *8 (N.D. Ill. Dec. 13, 2002) (excluding evidence regarding prior murder conviction). Accord Coles v. City of Chicago, No. 02-9246, 2005 United States Dist. LEXIS 14950 at *8 (N.D. Ill July 22, 2005) (excluding evidence regarding armed robbery conviction). Similarly, the probative value of Plaintiff Rutledge's convictions for unlawful possession of a weapon and possession of a stolen motor vehicle, which do not involve crimes of dishonesty or false statement, have little probative value as to his credibility on the issue of whether Defendants used excessive force during the events at issue. Although the jury may be less prejudiced by the disclosure of these crimes than by the disclosure of violent crimes, the court finds the danger of unfair prejudice substantially outweighs their slight probative value. See F.R.E. 403.*

(5) Plaintiff Michael Mejia's motion to be present for the entire trial, to wear street clothes and not to be shackled [#162] is granted (without objection).

***II. Defendant's Motions in Limine**:*

*(1) Defendants' motion to bar reference to CCDOC general orders, policies and training procedures [#169] is granted in part and denied in part. Plaintiffs acknowledge that such evidence is "completely immaterial to the question of whether a violation of the federal constitution has been established." Pls.' Resp. at 1 (quoting Thompson v. City of Chicago, 472 F.3d 444, 454 (7th Cir. 2006). Nonetheless, Plaintiffs argue that evidence of the Defendants' violation of CCDOC orders, rules or training procedures may be relevant to the issue of punitive damages. See Delgado v. Cook County Deputy Sheriff Willie Mak, No. 06-915, 2008 United States Dist. LEXIS 2714 at * 26 (N.D. Ill. Jan. 14, 2008); Hudson v. City of Chicago, 881 N.E.2d 430, 456, 378 Ill. App. 3d 373 (Ill. App. Ct. 1st Dist. 2007) (citing Morton v. City of Chicago, 676 N.E.2d 985, 992, 286 Ill. App 3d 444, 454 (Ill. App. Ct. 1st Dist. 1997) (evidence of violations of police department general orders may be used to determine whether defendants acted wilfully and wantonly). Plaintiffs further argue that its expert may reference the CCDOC materials he used in formulating his opinions. Plaintiffs contend that the a limiting instruction will suffice to prevent confusion between constitutional and procedural violations.*

Plaintiffs may introduce evidence of CCDOC materials subject to a limiting instruction. The parties are ordered to work together to formulate a limiting instruction, such as Seventh Circuit Pattern Jury Instruction - Civil 7.04.

(2) Defendants' motion to bar testimony or argument regarding the investigators' actions after the

incident and of the post-incident investigation [#170] is granted with the exception that any statements made by the Defendants during the post-incident investigation are admissible as admissions of a party-opponent, or for impeachment purposes. To the extent plaintiffs intend to use evidence of the investigation to inform the jury of the basis of the opinions of Steve Martin, their expert, see Nos. 6 and 9 below.

(3) Defendants' motion to bar Plaintiff from making any reference to the CCDOC "Administrative Proceedings Rights" disclaimer signed by officers prior to their IAD statements [#171] is denied. Should Plaintiffs use Defendants' statements made during the investigation to impeach Defendants or as admission, the advice of rights disclaimer is relevant to Defendants' credibility. The disclaimer is evidence of the seriousness of the IAD investigation and that the Defendants recognized their obligation to respond truthfully to the investigators. The parties represent that they may be able to resolve other issues by stipulation.

(4) Defendants motion to bar all non-party witnesses from the courtroom during trial testimony. [#172] is granted (without objection).

(5) Defendants move to bar evidence of prior disciplinary records of any officers involved in the incident [#173] is granted (without objection).

(6&9) Defendants' motion to bar testimony regarding prior incidents of excessive force in the CCDOC [#174] and to bar reference to other publicized incidents [#177] is denied insofar as it is directed at Plaintiffs' expert witness. It is otherwise granted.

Defendants argue that Plaintiffs' expert, Steven J. Martin ("Martin"), should be prohibited from testifying that he reviewed hundreds of CCDOC investigative files in forming his opinion that the CCDOC conceals misconduct through a pervasive "code of silence." Defendants contend that such testimony is irrelevant and highly prejudicial.

Martin's testimony on this subject is appropriate because it may be helpful to the jury to determine whether the Defendants used excessive force. Specifically, the court finds that testimony regarding a "code of silence" is relevant to the issue of the Defendants' credibility. Defendants argument that the lack of a specific relationship between general evidence of a "code of silence" and the specific officers at issue in this case goes to the weight of the evidence, not its admissibility.

*This court and other district courts within the Seventh Circuit have acknowledged that expert testimony on a "code of silence" or other official policy that is alleged to have deprived plaintiffs of their constitutional rights is admissible where it is based on sufficient facts or data. In Woods v. Clay, the court granted summary judgment to defendants where plaintiffs failed to present sufficient evidence to show a genuine issue of material fact existed as to the city's policy of ignoring and improperly disposing of excessive force complaints. No. 01-6618, 2005 United States Dist. LEXIS 343, at *61-62 (N.D. Ill. Jan. 10, 2005). In so doing, the court suggested that plaintiff could have defeated summary judgment by presenting "expert testimony demonstrating contemporary standards for procedures to handle citizen complaints, what could be an expected number of meritorious complaints under proper procedures, or some actual evidence that complaints lodged in the City of Harvey were meritorious." Id. Accord Robinson v. City of Harvey, No. 99-3696, 2001 United States Dist. LEXIS 1930 at *24 (N.D. Ill. Feb. 16, 2001) (denying summary judgment in favor of the city where plaintiff submitted an expert report concluding that the police department's administrative investigations were systematically deficient and led officers to believe that use of unreasonable force would be minimized); see also Fairley v. Andrews, 430 F. Supp. 2d 786, 801-03 (N.D. Ill. 2006) (denying summary judgment in favor of city where plaintiffs produced specific, competent evidence regarding a "code of silence" at the CCDOC); Sanders v. City of Indianapolis, 837 F. Supp. 959, 963-64 (N.D. Ill.*
1992) (granting motion for judgment as a matter of law where plaintiff's expert testified regarding the

STATEMENT

existence of a theoretical "code of silence" based on generalized presumptions, but presented no specific evidence that such a code existed).

Defendants do not challenge Martin's qualifications or competence, or the sufficiency of his report. Furthermore, Defendants do not explain why his testimony would be unfairly prejudicial. It is the court's opinion that Martin's review of over 700 use of force incident reports from the CCDOC and over 100 IAD use of force investigations constitute sufficient facts and data for his "code of silence" opinion. Accordingly, Martin may testify regarding his finding that the "CCDOC conceals corporal mistreatment of inmates through a pervasive code of silence." Ex. 1 to Pls.' Resp. at 6, 11.

(7) Defendants' motion to bar testimony or argument regarding Defendants' and/or Defendants' witnesses' prior conduct or "reputation" [#175] is granted (without objection).

(8) Defendants' motion to bar testimony from Cermak personnel regarding Plaintiffs' treatment and/or policy regarding inmate treatment and/or record keeping [#176] is granted as unopposed with the exception that Cermak personnel may testify as fact witnesses concerning their observations and medical treatment of the Plaintiffs.

*(10) Defendants' motion to exclude reference to indemnification by Cook County and reference to defense counsel as "state's attorneys" [#178] is granted to the extent practicable. Defendants' motion to exclude references to Cook County's obligation to indemnify them is granted as unopposed with the exception that, if Defendants introduce evidence of the Defendant officers' inability to pay compensatory or punitive damages, the Plaintiffs may introduce evidence regarding indemnification. Defendants' motion to exclude references to defense counsel as "state's attorneys" is granted to the extent practicable. See Richman v. Burgeson, 2008 United States Dist. LEXIS 48439 at *16 (N.D. Ill. (rejecting argument that references to defendants' counsel as state's attorneys would lead the jury to believe that indemnification is available as an "unlikely inferential leap" and finding that the affiliation may be relevant to voir dire, but requiring counsel for both parties to refer to each other as "Mr." or "Ms.").*

(11) Defendants' motion to bar reference to Plaintiff Gregory Rutledge's criminal prosecution, length of pre-trial incarceration, and acquittal of first degree murder [#179] is granted. Plaintiffs argue that "failing to introduce evidence regarding Rutledge's criminal prosecution, incarceration at CCDOC and acquittal, coupled with the introduction of evidence regarding Rutledge's felony conviction would paint Rutledge with a broad brush of criminal activity that would severely and irreparably prejudice Rutledge." Pls.' Resp. at 2. As previously discussed, evidence of Rutledge's prior criminal convictions is excluded. Thus, Plaintiffs need not introduce evidence regarding his criminal prosecution and subsequent acquittal to mitigate prejudice resulting from such a disclosure.

1.

The court does not find Danaher's Associate's Degree in Criminal Justice and Corrections, month-long stint in the local county jail while training to be a police officer, and letter confirming two training sessions he purportedly taught for correctional officers in 1996 to be persuasive evidence of experience in the correctional setting.

2.

Because the court grants Plaintiffs' motion to exclude Danaher's testimony, it need not consider the other arguments presented in their motion.

Trial Transcript Excerpts [R-305-312]

Relevant portions highlighted
-Proceedings had in open court [R-306:23-24]
-Terance Gonsalves opening statement [R-307:143]
-Kevin Frey opening statement [R-307:149]
-Testimony of Gregory Rutledge [R-307:185]
-Testimony of Michael Mejia [R-307:254-56, 260-77, 279-81, 310]
-Proceedings had in open court outside of the presence and hearing of the jury [R-308:316]
-Testimony of Paul Barney [R-308:319, 322, 327-28, 330-32, 339-40, 364, 375]
-Testimony of Nicholas Paolino [R-308:426-28, 436-37, 444]
-Testimony of Stephen Murchison [R-308:449-50]
-Testimony of Elijah Santiago [R-308:470-74, 476]
-Testimony of Dr. Yan Yu [R-308:506-08]
-Testimony of Gary Grayer [R-309:537, 562, 568]
-Testimony of Craig Johnson [R-309:605, 613]
-Testimony of Jermaine Lanier [R-309:640, 645, 652, 657, 661]
-Testimony of Brian Harris [R-309-10:692-93, 707]
-Testimony of William Scott [R-310:734-35, 739-40, 744-46, 749-50]
-Testimony of Kachet Edwards [R-310:756-57]
-Testimony of Steve Martin [R-310:775, 839]

MR. KIMREY: Your Honor, may I -- I have got a point of clarification. I'm sorry to interrupt. May I?

THE COURT: Yes.

MR. KIMREY: I'm sorry. There may be one -- there may be one third-party inmate witness who may have been in the same gang. I just wanted to make that clear. I didn't want -- I misstated that.

MR. PULLOS: Judge, just, again, for clarification, Juan Garcia is one of their witnesses, and he admits in the record he is in the same gang as Mejia and Rutledge.

THE COURT: Okay.

MR. KIMREY: But, your Honor, with respect to all of the others, there is nothing in the record suggesting, and I don't think it is the case that they were in the same gang.

THE COURT: All right. If it is true -- we'll deal with this one first. If it is true that there isn't any evidence on the defense side that they can rely on that shows that gang affiliation affected the conduct of any person in this room -- that is, I don't want the aura of gang affiliation to be -- you know, to be influencing the jury.

If there is some evidence that gang affiliation was involved in this altercation, then I would say it is relevant, but I don't see that. So I would guess the suggestion that a proffer would be needed is what we need here.

Now on the issue about the criminal records, I -- you

know, I went through this once with you all, and I think it is the same on that, that the criminal records do not really go to bias unless they have to do with issues like fraud and -- I mean, not bias, but credibility -- they have to do with issues like fraud and dishonesty.

Now on the supermax issue or the fact that the people in this division were charged with violent crimes, I'm not -- I think it would be a factor -- it could be a factor. If this were a minimum security facility, then I would imagine that the plaintiffs would want that brought out, that this was a minimum security facility, thus this reaction was extraordinarily severe.

So if it is a maximum security facility, it seems to me it has at least some relevance to the situation. Now what I don't want is some parade of all the horrible things that people get charged with these serious crimes do. So there must be some, like, Department of Corrections definition of maximum security facility that could be used by your witness to explain where they were. So I would permit that.

MS. MacLEAN SNYDER: Your Honor, if I could just say one thing, which I hadn't thought of with all the rush. I have done litigation of supermaxes and then done a lot of work there. And, by the way, so has Mr. Martin. And Tier BJ in Division 11 is not a supermax. So I mean in supermax --

THE COURT: Well, whatever it was --

individuals like Mr. Rutledge. It also holds those individuals who have been convicted of crime, like Mr. Mejia.

The particular incident in question that you are going to hear about occurred on October 9, 2005, in Division 11. And within Division 11 that are various tiers. And each tier holds a number of inmates. And the evidence will show in this case that the Tier BJ, where this incident occurred, held about 40 inmates.

The beating of the plaintiffs occurred following a strip search of all the inmates on that tier. The strip search of those inmates was precipitated by what is known as an all available call. It is an emergency call for assistance made over the radio by one of the officers.

The evidence will show that a female correctional officer by the name of Officer Edward Kachet made that call. That call is similar to an officer down call. It generally signals that an officer is fighting with an inmate. And when that call goes out over the radio, all available officers are to rush to the aid of that officer.

The evidence will show that Officer Edwards did in fact make that call. However, we expect that she will testify that she did not make that call. We anticipate that she will testify that she was never in danger, that she was never threatened, that the inmates never surrounded her.

It is unclear why Officer Edwards will deny making

took any photographs of these individuals following this incident. All of the photos that you are going to see were taken at our request.

Mr. Mejia, his photos were taken four days later, October 13th, 2005.

Mr. Rutledge, his photos were taken ten days after this incident.

What will be a true measure of the injuries they suffered is the medical testimony and the medical records that you will see. And those records will indicate that Mr. Rutledge suffered the following injuries: Both eyes and orbits were bruised and discolored.

He had a large hematoma on the left side of his forehead. That's a pooling of the blood underneath the skin.

He had ecchymosis to the right temple, which is referred to as deep bruising as well.

He had a bruise to his right cheek, his right arm, and his upper right chest.

And he also suffered multiple contusions.

Mr. Mejia was injured as well. And the evidence will show that he suffered injuries to both eyes and orbits, which are bruised and discolored.

He had a bruise or an abrasion to his left cheek and his cheekbone.

He had a bruise to his forehead.

other inmates are allowed to act out, you may have a riot on your hands. On October 9, 2005, these officers did their jobs to make sure that that didn't happen.

There were 48 inmates on Tier BJ on October 9, 2005. The evidence will show that Michael Mejia was found to be popping his cell. Now what that means is that Michael Mejia was able to open his cell. Somehow, some way the lock was manipulated so he could come out of his cell whenever he wanted to. This creates a very dangerous situation because an inmate -- if an inmate is allowed to leave the cell, he can hide contraband, he can hide weapons, or even worse, he can harm another inmate or staff.

Realizing that there was a breach of security, Officer Edwards made a call of officer needs assistance. Numerous officers responded, including these officers.

When they arrived a shakedown of the tier occurred. A shakedown is just a term used for a search. The inmates were searched, the tier was searched, and their cells were searched.

The inmates were lined up against the wall, and the officers stood behind them. Now because the officers were outnumbered by the inmates, they have to take position. They need to fill a gap. They have a responsibility for a certain number of inmates. They can't be concerned about what's going on to the right of them, they can't be concerned about what's

Q. With whom were you escorted?
A. I was escorted with Michael.
Q. When you say escorted off the tier, what -- what direction -- show the jury with your hand what direct you went in off the tier? You can use the bigger board so we can see the entrance way to the tier.
THE COURT: You can't leave that in front of the door.
MR. KIMREY: I'll move it, your Honor.
BY MR. KIMREY:
Q. Just show the jury by moving your hand which way you went?
A. We went to this direction.
Q. Then where did you go from there?
A. Downtown this way and out the door to the hallway outside.
Q. Where were they taking you?
A. They were taking us to the dispensary downstairs.
Q. What's the dispensary?
A. The dispensary is like a little clinic they have inside the division they take care of inmates' injuries or sicknesses or stuff like that.
Q. On the way to the dispensary, did anyone say anything?
A. Yes. While we're on the elevator going downstairs, Paolino addressed me and Michael, said if we file any lawsuit or anything like that, that he'll put a case on us for battery or trying to hurt the officers.
Q. Okay. At what point did you first see yourself after this

Q. On October 9, 2005, where were you living?
A. Cook County Jail, Division 11.
Q. Why were you there? You were an inmate?
A. Prisoner there, inmate.
Q. Were you at that time a prisoner in the Illinois State Prison system?
A. Yes, ma'am.
Q. You were being held at Cook County Jail at that time, is that right?
A. That's right.
Q. What tier were you living on October 9, 2005?
A. BJ.
Q. Did anything unusual happen that day?
A. Yes.
Q. What was that?
A. I was beaten by some Cook County sheriffs.
Q. What was going on on the tier when the beating occurred?
A. Conducting a shakedown of the tier and inmates.
Q. What time of day was it this occurred?
A. Somewhere between 5:30 and 6:00 p.m.
Q. 5:30 -- between 5:30 and 6:00 p.m. when you were on the tier, before the shakedown occurred, what were you doing?
A. Laying on the top tier, watching TV on top of a blanket.
Q. Why were you laying on top of a blanket?
A. Actually because I was sick.

Q. What were you sick with, Mr. Mejia?
A. Blastomycosis.
Q. What's blastomycosis?
A. It's a fungal infection.
Q. Fungal infection of what?
A. My left upper lung.
Q. What symptoms did you have of blastomycosis on October 9, 2005?
A. I was coughing a lot. I was coughing up blood, had night sweat, chills, was light-headed. I was weak. I was tired.
Q. Did it affect your appetite in any way?
MR. SMITH: Objection, relevance.
THE COURT: Overruled.
BY MS. MacLEAN SNYDER:
Q. Did it affect your appetite in any way, Mr. Mejia?
A. Yes, it did.
Q. Did that have any effect on what you weighed?
A. Yes, it did.
Q. How much did you weigh on October 9, 2005?
A. 146 pounds.
Q. How much do you weigh now?
A. 165.
Q. Now, you said that you were lying on a blanket watching TV, is that right?
A. That's right.

Q. And I want to show -- have you show the jury where you were, using this demonstrative that we have been using in this case before. Were you on the first floor there on the dayroom or on the upper deck?
A. Top deck.
Q. And where were you on the top deck?
A. Little bit past 306.
Q. When you say 306, you mean cell No. 306?
A. Yes.
Q. Whose cell was that?
A. Greg's.
Q. When you say a little bit past, do you mean to the left or the right?
A. To your left.
Q. So you were about here, is that right?
A. That's right.
Q. And the TV that you were watching, where was that?
A. Right there where it says TV.
Q. Right here, right?
A. Correct.
Q. And from that place on the upper deck in front of cell 306 you could see the television, is that right?
A. That's right.
Q. Is there anything else you could see while you were up on the upper tier lying on a blanket?

Q. When -- and you say that when the officer gave the order to get the bleep on the wall, you went onto the wall, right?
A. Right.
Q. And that's where you went -- where we put your initials MM, right?
A. Right.
Q. What did you do on the wall?
A. Put my hands on the wall and faced it like that.
Q. And faced the wall like that?
A. Yes.
Q. What were the other inmates doing?
A. Same thing.
Q. At that time did you see Mr. Rutledge?
A. No.
Q. What generally happens in a shakedown?
A. Generally they tell you strip naked, you know put, your hands in the air, run your fingers through your hair, you know, move your tongue up and down, left to right, turn over, raise your right foot, left foot, squat, and cough.
Q. Anything else?
A. They, you know, tell you to pick up each of your clothing item piece by piece, and they'll call it out tell you to shake it out, and after you're done, put it on.
Q. And when they are asking you to shake out your clothes, what way are you facing?

A. Toward the cells.
Q. So at a certain point they tell to you turn around, is that right?
A. That's right.
Q. And is it -- is one offices giving this order or lots of officers?
A. Sometimes it is one, sometimes it is more than that.
Q. So after they tell you to shake off -- shake each piece of clothing, what happens then?
A. Well, after you get through shaking it out, they tell you to put it on.
Q. Then what?
A. They call out the next item of clothing, tell you to do the same thing with that.
Q. And -- well, what happens after all you get all your clothes on?
A. They say, you know, if you the insoles come out, take them out.
Q. Your insoles of what?
A. Shoes.
Q. What happens if you don't have insoles?
A. Just leave them there until they give you the next order.
Q. And what is the next order after take your insoles out?
A. Pick them out up the toes, stick them out in front of you and bang them together, and then put them on, and then turn

around and face the wall.
Q. And when you say pick them up, are you referring to your shows there?
A. Yes.
Q. Now this particular day, October 9th, 2005, did you have insoles in your shoes?
A. Yes, I did.
Q. Were they removable insoles?
A. No, they weren't.
Q. Do you remember who was calling the orders that day?
A. CO Hart.
Q. Did the strip search go the way you just described it on that day?
A. No.
Q. What was different?
A. I didn't have to do any of the -- any of that or squat and couch or run my fingers through my hair.
Q. They didn't have you do that that day, right?
A. They just said strip naked, and then he started with the clothing.
Q. And did anything happen different when they started with the clothing?
A. That I can recall? Anything different?
Q. There was nothing out of the ordinary then?
A. After we got through with the clothing.

Q. What happened then that was out of the ordinary?
A. You know, after Hart said, you know, if your insoles come out your shows, take them out, mine didn't, so I left them there. And --
Q. And what happened after you left them there?
A. Paolino, Officer Paolino came over there, picked my shoes up and tore both insoles out of them, and just threw it all on the ground.
Q. When you say Officer Paolino came over there, what do you mean over there?
A. Where I was standing.
Q. And were you still standing at the place we marked and labeled MM?
A. Yes.
Q. When Officer Paolino came over and pulled out or ripped out your insoles, did he say anything to you?
A. Not a word.
Q. Did he ask you to cuff up?
A. No, ma'am.
Q. Did he ask you to do anything?
A. Nothing.
Q. What did you do when he said that?
A. Say that.
Q. What did he do when he came up and tore your insoles out?
A. Just stood there.

Q. What happened after in a?
A. That's when Hart said take your shows up by the toes hold them out in front of you an bank them together and put them on.
Q. Was Officer Hart saying that to everyone?
A. Everyone.
Q. So after? I know dent happened with Officer Paolino ripping your insoles out Officer Hart kept going, right?
A. Right.
Q. What did say after he told folks to turn around?
A. Heart?
Q. Yes. Did he say anything?
A. After he told us to turn around, no.
Q. What did you do?
A. I started putting my shows on. I got the left one on and I got the right on one well, I almost got it on and that's when Officer Scott said, turn the F around.
Q. Where was he when he said that?
A. In front of me, I don't know how many feet but in front of me.
Q. In front of you meaning toward the cell side of the dayroom?
A. Right.
Q. So in front of you like here between you and the rest of the dayroom, is that right?
A. That's right.

Q. What did he say -- what did he do after he said this to you?
A. Walked over there to me and grabbed me by the back of my neck.
Q. What did he do then?
A. Slammed my head into the wall three times.
Q. Up until now, Mr. Mejia, were you disobeying anybody who had given an order?
A. No.
Q. Were you having any trouble doing the orders as fast as you could?
A. Yes.
Q. Why is that?
A. Well, I was sick.
Q. After Officer Hart -- I'm sorry -- after Officer Scott hit your head three times against the wall, what happened?
A. I looked to my right, and that's when I seen Officer Paolino come over there and punch me in my ribs.
Q. Were you at that point facing outwards toward the cells or toward the wall?
A. I was facing toward the wall, but I looked to my right like that.
Q. So when you say you looked to your right, you mean you looked this way?
A. Right.

Q. And it was from this way that Officer Paolino came, is that right?
A. That's right.
Q. And what did he do again?
A. Punched me in my ribs.
Q. What happened after that?
A. Scott pulled me back a few steps and turned me around.
Q. Officer Scott was still there --
A. Officer Scott --
Q. -- and --
A. -- still had me by the neck.
Q. And what did he do after he turned you around?
A. Let me go and he actually walked around the right side of me to -- in front of me.
Q. What happened after he was standing in front of you?
A. I seen Paolino and Harris, Lanier, Scott, and Grayer standing there.
Q. Where did you see them?
A. In front of me.
Q. Were there any other officers who you saw in front of you then?
A. Yes.
Q. Do you remember the names of any of them?
A. Yes.
Q. What names do you remember?

A. Clark, Rodriguez, two Lopez guys, Mingo, and Garcia.
Q. And they were standing in front of you, all these officers were standing in front of you, right?
A. Right.
Q. What happened?
A. Harris walked over there and hit me in the face with his fist.
Q. What happened after that?
A. Lanier and Scott and Paolino and Grayer and Harris they all came swinging at me, along with the other officers.
Q. Along with the other officers who you saw there, is that right?
A. That's right.
Q. When you say they were swinging at you, what do you mean by that?
A. Hit me with their fist.
Q. Did you do anything to block these hits?
A. Put my hands in front of my face like that.
Q. Were the officers saying anything while they did this?
A. Just basically using a lot of profanity.
Q. Was anybody telling you to cuff up at this point?
A. Nobody ever told me that, ever.
Q. What happened after these officers came at you and were hitting you with their fists?
A. Just hitting me, you know, basically my upper body. And

after a while one of them grabbed me and threw me to the ground, and he started stomping and kicking on me.

Q. What happened once you were on the ground?

A. They were stomping and kicking on me.

Q. Was that -- and was whose the they?

A. Grayer, Scott, Paolino, Harris, and Lanier, and the other officers.

Q. And when you say stomp, what do you mean by stomp?

A. You know (indicating).

Q. Is that with your foot on the ground?

A. Foot, right.

Q. When you were on the ground and these officers were stomping and kicking you, what were you doing?

A. I was like this, trying to cover my face and trying to move from side to side hoping they will miss some of them kicks and stomps.

Q. And why were you moving from side to side?

A. Hoping they would miss, some of their blows wouldn't hit me.

Q. What happened after that?

A. Well, after a while somebody -- one of them officers grabbed me by my braid and picked me up. And I seen whoever them same officers I just named run toward one cell, lower one cell.

Q. And when you say lower one cell, is that meaning the number

one at the far left upper right corner here? Is this one cell?
A. No, that's not lower one, that's upper one.
Q. Okay.
A. It is underneath that.
Q. Underneath it is lower one, right?
A. Right.
Q. So you saw the officers here, Harris, Lanier, Grayer, Paolino, and Scott go toward one cell, right?
A. Right.
Q. And what happened while they were doing that?
A. I seen some other officers coming running my way. And whatever officer had me by the braid basically pushed me toward them.
Q. Do you know what officer that was who had you by the braid?
A. No, I don't.
Q. When this officer who had you by the braid pushed you toward the other group of officers, what happened?
A. I fell on the ground, and they started stomping and kicking on me too.
Q. Do you know who any of those officers were?
A. No.
Q. Why not?
A. I'm trying to protect my face, I'm not trying to see who they were.
Q. Mr. Mejia, let me ask you, when the officer who grabbed you

by the braid and threw you or pushed you a little bit, where did you go?

A. Just a little bit in front of me towards the cells. That's the way he pushed me.

Q. So this way, is that right?

A. Just a little bit. I didn't go too far.

Q. After you were pushed over a little bit, and the second group of officers were hitting or kicking you, did anything else happen?

A. Anything else? I --

Q. Did any of the officers who were in the room today do anything more?

A. I don't know if they did.

Q. Was there -- was there any other hit, kick or stomp that you remember specifically as occurring?

A. I remember Lanier jumped on my ribs with his knee.

Q. When was that?

A. After that second group finished stomping and kicking on me.

Q. Did there come a time when this stopped?

A. Yes, it did.

Q. Why did it stop?

A. I heard Hart say that's enough.

Q. You heard Officer Hart say that?

A. Yes, Officer Hart.

Q. And after Officer Hart said that, did it stop?
A. It probably lasted 30 seconds more.
Q. And when was it if you recall when Officer Lanier jumped on you with his knees?
A. Right before I got handcuffed.
Q. When were you handcuffed?
A. After the second group of officers stomped and kicked on me.
Q. And that was the group where this was the second time when you were a little farther in the room, and you don't remember who the officers were, is that right?
A. That's right.
Q. During all this time, Mr. Mejia, did you take a swing at any officer?
A. No, ma'am.
Q. Did you refuse any order that any officer gave you?
A. No, ma'am.
Q. Did you kick any of the officers?
A. No.
Q. Did you take any sort of aggressive action towards these officers --
A. No.
Q. -- on that day?
A. No.
Q. In all how long did this beat down last?

A. Probably about three minutes it seemed like.
Q. During this time, this whole time that transpired between the beginning of the shakedown and the end of the beating, were you aware of any other inmate being beaten?
A. Yes.
Q. When did you become aware of that?
A. After that -- well, during when I was getting kicked and stomped on by that second group of officers.
Q. What did you observe at that point?
A. There was another inmate on the ground getting kicked and stomped on.
Q. Did you see where he was?
A. Toward lower one.
Q. I'm sorry, toward?
A. Toward lower one cell.
Q. When you say toward the lower one cell, does that mean over here?
A. That's what it means.
Q. Did you see who that inmate was?
A. At that time, no.
Q. Did you see any of the officers who were beating him?
A. I seen.
Q. Could you identify any of them?
A. No.
Q. Why is that?

A. I'm too busy getting kicked and stomped on my head and all that stuff.
Q. Now while all this was going on, what were the other 40 plus inmates on BJ doing so far as you remember?
A. As far as I know nothing.
Q. Were they on the wall, wandering in the dayroom? Where were they?
A. Pretty sure they were on the wall.
Q. During that time was there a supervisor in BJ so far as you know?
A. Yes.
Q. Who was that?
A. Sergeant Johnson.
Q. When did you see Sergeant Johnson?
A. When I was being escorted off the tier.
Q. Do you know when he came onto the tier?
A. No, I don't.
Q. Now after the beating ended, what happened?
A. Somebody put some handcuffs on me. And I don't know who, some more officers started kicking me on my head and my like ribs and stuff.
Q. And then what happened?
A. After that somebody picked me up by my arms. And I looked, and it was Paolino who picked me up, as a matter of fact.
Q. Officer Paolino picked you up?

A. Right.
Q. At this point were you handcuffed?
A. Yes, I was handcuffed.
Q. After Officer Paolino picked you up, what happened?
A. He started walking me off the tier.
Q. And did you get off the tier?
A. Bumped me into a couple of tables before he took me off. Yeah, I got off the tier.
Q. And eventually though you got off the tier, is that right?
A. That's right.
Q. And can you point out where it was that you left out of the tier?
A. Down there where it says entrance.
Q. So this was the way that you all got out of the tier, is that right?
A. I know I went through them tables.
Q. You went through the tables.
A. I don't recall exactly where, but somewhere through the tables.
Q. And then you eventually came out of this entrance, is that right?
A. That's right.
Q. Where did you go after you got out of BJ?
A. To the dispensary.
Q. Was there any -- well, did Officer Paolino take you there?

A. Yes.
Q. Was there anybody else with you?
A. Greg and Officer Castro and Officer Rodriguez.
Q. When you say Greg, you mean Greg Rutledge, is that right?
A. That's right.
Q. Where is the dispensary?
A. On the lower part of the pod.
Q. Lower part of the pod, meaning the lower part of the -- this area of Division 11, is that what that means?
A. It is -- I don't recall if it is exactly in that pod, because there is different pods, A, B, C, D pod. But somewhere on the lower part of the division I'll put it like that.
Q. To you get to the lower, how did you get lower part?
A. Elevator.
Q. Did everybody who you named go in the elevator?
A. Yes.
Q. Was there anything memorable said by anybody on the elevator?
A. Paolino and Rodriguez.
Q. By Paolino and Officer Rodriguez?
A. Right.
Q. What did they say?
MR. SMITH: Objection, calls for hearsay.
MS. MacLEAN SNYDER: Well --
THE COURT: Overruled.

BY THE WITNESS:

A. At first Paolino looked at his fist, and told Rodriguez, man, I must be losing it.

And Rodriguez said, yeah, I told Lanier I don't discriminate, I get my own kind too.

Then Paolino said, you know, file a suit or anything, and we will put a case on you. And it is on, when I see you in traffic, every time I see you in traffic.

Q. Can you say that last part again what he said when he --

A. Well, he said, if you file a suit or anything, I'm going to put a case on you. And it is on with you every time I see you in traffic.

Q. And the part where you say he said it is on, what exactly is the word?

A. It is on.

MR. SMITH: Judge, object, as it relates to Officer Rodriguez. He's not a party to this lawsuit. It is hearsay.

MS. MacLEAN SNYDER: This is Officer Paolino.

THE COURT: Well, it is not offered for the truth of the matter, so overruled.

BY MS. MacLEAN SNYDER:

Q. Mr. Mejia, you said a phrase like Officer Paolino said something like it is on with you and something about traffic. What was that?

A. His exact words were, it is on with you every time I see

you in traffic.
Q. What did he mean by that based on your understanding?
A. He was going to start some trouble every time he see me.
Q. You eventually got to the dispensary, is that right?
A. That's right.
Q. What did Mr. Rutledge look like? What did Greg Rutledge look like when you saw him?
A. His face looked like it was inside out.
Q. How did it look inside out?
A. He had a knot, the knot he still got, black eyes, blood on his face. It was real red. You know, cut on his lip.
Q. What happened at the dispensary?
A. I seen, I guess, a med tech. Some male, a black guy who was a med tech, I guess. He rubbed some alcohol on my face. I told him I think my ribs are broken. He said, no, they are not broken.
Q. What happened then?
A. They took me back out to the waiting area.
Q. Did you go someplace else after that?
A. Cermak.
Q. What's Cermak?
A. The -- I guess some type of medical treatment place for the prisoners in Cook County Jail.
Q. By the way, were you familiar with this medical treatment area for Cook County Jail, Cermak?

Q. -- 2005, is that right?
A. Correct, yeah.
Q. When you got to Cermak Health Services, did you have a chance to see your own injuries?
A. Yes, I did.
Q. What did you look like?
A. I looked like I just got jumped on by a whole bunch of people.
Q. What did you feel like?
A. I was in pain.
Q. And what happened at Cermak?
A. Cermak I seen some, I guess, a doctor, some type of medical personnel. And he basically did the same thing, rubbed my face with some alcohol. Told him I thought my ribs were broken. I think he put some gloves on, I'm not positive, but he checked my ribs in three different places. And he said, no, they are not broken. And he wrote me a prescription for some Motrin I think it was.
Q. Did you ever have any further tests about the possibility of your ribs being broken?
A. I had them x-rayed.
Q. How did that come about?
A. They said they weren't broken.
Q. How did it happen --
A. Oh. Oh.

Q. -- that an x-ray was ordered for you, Mr. Mejia?
A. The doctor that was treating me for the blastomycosis, she seen how I looked and asked me what happened. I explained. And she put in for the rib x-ray.
Q. And did you learn whether you had broken ribs?
A. Yes.
Q. And the answer was?
A. No.
Q. After you were finished at Cermak, did you go back to Tier BJ?
A. No.
Q. Where did you go?
A. To the hole.
Q. What's the hole?
A. Punitive segregation.
Q. Punitive segregation, is that right?
A. That's right.
Q. That's in Division 11?
A. Yeah, in AD. Tier AD.
Q. Do you know why you were sent to punitive segregation?
A. No.
Q. Did you ever get any notice from anybody at Cook County Jail that you did something wrong on October 9th, 2005?
A. Never.
MR. SMITH: I'm going object, relevancy. The sheriff

is not a party to this case.

THE COURT: Overruled.

BY MS. MacLEAN SNYDER:

Q. When an inmate in Cook County Jail violates a rule, what happens?

MR. SMITH: Objection, speculation.

THE COURT: You have to lay a foundation.

BY MS. MacLEAN SNYDER:

Q. Mr. Mejia, have you ever been aware of an inmate at Cook County Jail who socked an officer?

A. Yes.

Q. Did that inmate get any notice from the jail that he had done something wrong?

A. He got a disciplinary ticket.

Q. And what happened after he got that disciplinary ticket, if you know?

A. He went to the adjustment committee to present his defense.

Q. Do you know what the punishment is for hauling off and socking an officer in Cook County Jail?

A. Twenty-five to 29 days in the hole, in segregation.

Q. How long were you in the hole?

A. Six days.

Q. While you were there, did you have a cellmate?

A. Yes, I did.

Q. Who was that?

Ibuprofen, one of them.
Q. Okay. No stitches?
A. No.
Q. So it was just a cotton rub and Motrin?
A. Either Motrin or Ibuprofen, I don't know.
Q. That's it?
A. Just wiped the alcohol pad on my face, and that was it, checked my ribs.
Q. Okay.
MR. SMITH: Could I have one second, your Honor?
THE COURT: Right.
(Brief interruption.)
BY MR. SMITH:
Q. Mr. Mejia, I just want to ask you one more question. Can you just clarify, what is your relationship with Mr. Rutledge?
A. Met him on the tier.
Q. Would you consider him --
A. He's I friend a guess.
Q. -- a friend?
A. That's the word I would use.
Q. A friend?
Yes?
A. Yes.
Q. Are you from the same part of the neighborhood? Did you grow up together?

THE COURT: Okay.

MR. KIMREY: I just want to make a record of that.

THE COURT: Just a moment here. We have -- our last juror came, and I want you to make a record but I don't want to keep the jury longer.

I will say that to the defense, and it is Mr. Smith who was doing the questioning, I guess here, that on several occasions it seemed to me that there was borderline attempts to get into issues that had been excluded, such as hinting that he was a gang member by asking if they had grown up in the same neighborhood, and that kind of thing.

So I expect to have those orders obeyed. And I don't want any more of that kind of conduct. So if you -- at some break if you want to put more of this on the record, I'll allow you to do so. But that's the basic order of the day.

So let's get started.

I do want to ask you one question though. Do you have a sense of when you're going to be calling the expert witness? What day?

MR. KIMREY: Your Honor, we think that we would probably be calling the expert witness Monday afternoon or Tuesday if the timing of the witnesses is as we anticipate.

THE COURT: Okay. At some point I'd like to sort of get into what the schedule is going to be a little bit more fully. But perhaps we can do that after this morning's

A. We were in the building. Everybody was basically doing what they do, watching TV, playing cards, whatever. And something was going on upstairs on the top deck.
Q. When you say we were watching TV and we were doing a normal course of activities, were you in Tier BJ?
A. BJ.
Q. Does this diagram over here clearly and accurately depict what Tier BJ looked like?
A. Correct.
Q. So at that time were inmates out in what is known as the dayroom?
A. Sure.
Q. At some point was there a strip search conducted?
A. At some point, yes.
Q. What happened prior to the strip search?
A. Prior to the strip search, a confrontation happened with one of the officers that was up top the tier. She noticed somebody doing by the cells, I guess popping themselves in or out by the cells.
Q. Is that what has been referred to or what is commonly referred to as popping their locks?
A. Yes, it is.
Q. How often does lock popping occur on Division 11?
A. On a daily. All the time.
Q. So someone popping their locks is not an unusual

something like that.
Q. Do you know which inmates were popping their locks?
A. Yes.
Q. Which inmates?
A. Inmate Rutledge.
Q. And when Officer Edwards observed the lock popping, what did she do?
A. She called for two other inmates.
Q. Do you know the names of those two other inmates that she called for?
A. I don't know their names, I just know their nicknames. I don't know their full names.
Q. Okay. Where was Officer Edwards when she observed the lock popping incident?
A. She was up in the pod control.
Q. Okay. I see you pointing to our diagram.
A. Yes.
Q. Are you referring to the area right there where it says pod control?
A. Pod control, yes.
Q. Is she out in the dayroom by that or is she behind a wall?
A. Well, she is like -- it is like a tower. You know what I am saying? It is like in the corner, but it is up about that high where she can see down into the dayroom what's going on.
Q. I'm going to show you what's previously been marked at

A. No.
Q. Where is Gregory Rutledge when all of this is occurring?
A. Oh, he was still in his cell.
Q. Okay. What happened or what did Officer Edwards do after that?
A. She gave the guy another order to go into the rec room. He refused. She grabbed her mic, and she spoke into her mic, officer down, officer need assistance, something of that nature. And then she stood there and just swung the mic around like this, like I got you.
Q. When she spoke into her radio microphone --
A. Uh-huh.
Q. -- was she fighting with an inmate?
A. No.
Q. When she spoke into that microphone, was she being threatened by an inmate?
A. Nobody was within her vicinity. Everybody was there like at either card tables or just walking around mumbling to themselves because they were pissed because she cut the TV off and she cut the fan off -- I mean, cut the phones off.
Q. Just so I understand, she gave an order to the inmate, the inmate refused --
A. Right.
Q. -- and she then made the call.
A. She made the call.

Q. So she was not being threatened in any way when she made that call.
A. Nobody threatened her.
Q. After she made that call, what happened next?
A. After she made the call, we all standing around, and we are just mumbling because like -- you know, we know that, you know the guys are coming to come in, you know. And we're like, what the hell, what did she do this for --
Q. You said the guys are going --
A. -- nobody did anything to her.

Okay. We know the guys are going to come in. You know, she made the call, officer down, officer needs assistance. You know, they are going to come in and back up their officers. That's their job. You know, we expect that to happen. You know what I am saying?

But it is fact that she did it, and nothing happened, nothing did anybody to her, so why would you do that?

Q. What happened -- let me ask you this. Did the other officers come into the dayroom?
A. Oh, they came in, man. Yeah, they came in.
Q. How many officers approximately came in?
A. Oh, God, I can't count. I could put it like this, I'll stop at 20, but it was more that came in.
Q. So it may have been more than 20.
A. Oh, yeah.

wall?
A. We all got against the wall.
Q. Can you tell us by looking at this the diagram approximately where it is you got on the wall?
A. Okay. Right where it says closet door, that's where Inmate Mejia was.
Q. Okay.
A. We had two inmates next to him. I was next to the two inmates going down towards the exit door.
Q. Where was --
A. You had two --
Q. I'm sorry.
A. You had two more next to me, and then you had Rutledge at the exit door, like at an angle facing the exit door.
Q. So you are directly in between, including an inmate or two on either side of you, between Mr. Rutledge and Mr. Mejia.
A. I'm in the middle.
Q. Okay. And after you get on the wall and the officers have come into the dayroom, tell the ladies and gentlemen of the jury what happens next.
A. Well, they come in. They get everybody against the wall, you know, which is basically procedure what they do. And they are trying to find out what is going on because the only thing that they got in their minds that I am assuming is officer down, officer needs assistance. And they see she is standing

up. There is nothing wrong with her. So they want to know what the hell is going on.

So they finna do a strip, we already know this. They tell everybody, you know, you know what time it is. Everybody get asshole naked. We get naked, and we take our clothes off, shoes, socks, everything. Okay?

The next step, we got to keep our hands and our faces up against the wall, you know. You know, don't get off that wall, you know, it is trouble. Okay? So that's we doing. Everybody against the wall.

They finna search everybody to find out what the hell is going on. They looking for weapons, they are looking for drugs, they are looking for anything they can find that's contraband or you do not supposed to have in that place.

Q. So the officers then conducted a strip search?

A. Yes, sir.

Q. Did anything unusual happen during the course of that strip search?

A. During the course of that strip search, a couple inmates got threatened by a couple of officers, and then the incident happened.

Q. The -- before we get there, during the strip search, was everything during the course of the strip search orderly?

A. Was it orderly? It pretty much was. I mean, how they conduct they a strip search. They basically tell you after you

got everything off, you picking up an item at a time. Everybody is, you know -- if you pick up your underwear, you got to take it inside out and shake it out and make sure there is nothing in the seams and everything.

And you going piece by piece. And after you do all of this stuff, if you shake out an item, then they tell you to put it on.

You grab your socks, you turn them inside out, then you put them on. So on and forth.

Q. How long did this strip search take, approximately?

A. I can't basically say how long. But if I had to guess a time, I would say anything from 20 minutes maybe a half hour. It depends.

Q. For this search strip?

A. It depends.

Q. During the course of this strip search there no riot going on?

A. No.

Q. You indicated that something happened towards the end of the strip search, is that accurate.

A. Yes, sir.

Q. Could you please tell us what it is that you observed?

A. I observed two inmates get beat down.

Q. Tell us what it is you first observed with respect to the beat down?

Q. And what happened after they were cuffed?
A. They got beat some more.
Q. How long did that last?
A. Like I said, I can't say if it was two minutes, three minutes, four minutes, but it was a while.
Q. Did you observe either Mr. Mejia or Mr. Rutledge throw any punches to of the officers?
A. I'm sorry, man, I don't mean to laugh. No. No, man. No.
Q. Did you see either of them try to kick any of the officers?
A. No, man, they -- listen, they snatched Mejia -- when Mejia got hit in the ribs, the first thing that they -- happen is they snatched him and just floored him to the ground. Okay?

When Rutledge jumped off the exit sign to get to where Mejia was, they caught him in the air, dude, and just slammed him to the ground. There was no kicks, no punches, no weapons. It was bogus.

Q. Did you see or did you hear either Mr. Mejia or Mr. Rutledge do anything that would insight a riot within Tier BJ?
A. Well, I mean, you know, don't get me wrong. Like I said, I'm no friends of neither, you know. And everybody knows that when they are doing a shakedown, stay on the wall. You know what I am saying?

But if you got these guys handcuffed after you done got them off the wall, why are you continuously beating them?

Don't make no sense, man.
Q. After this beating was done --
A. Uh-huh.
Q. -- did you see Mr. Mejia and Mr. Rutledge get taken off the tier?
A. Yes, they got dragged off the tier.
Q. Did you observe whether or not they had suffered any injuries?
A. No, because everybody got rushed up the stairs and locked in their cells. And so I can't say what the extent of their injuries were.
Q. After that incident on October 9, 2005, did you ever see Mr. Mejia again?
A. No.
Q. Outside of today of course.
A. Outside of today.
Q. Okay. After this incident on October 9, 2005, did you ever see Mr. Rutledge again?
A. It was a while, but I did see him.
Q. About how long after did you see him?
A. I spoke with him through a wall, but I didn't see him -- excuse me -- when they released him from segregation. And I can't remember how long he did in seg.
Q. And when you saw him, did you observe any injuries on him?
A. Yeah, his eye was red and bruised up and everything. And,

A. Yes.
Q. And in between each Rutledge and Mejia were two other people; is that right?
A. Yes, sir.
Q. Now the two people that were between you and Gregory Rutledge, what were those people's names or nicknames, whatever?
A. I can't remember all of them.
Q. Okay. You don't know those two people?
A. I can't remember all of them.
Q. Okay. Do you ever have a problem with those two people?
A. Nope.
Q. Okay. Now the two people to your left between you and Mejia, what were those two people's names?
A. I can't remember. I just told you that.
Q. What did they look like?
A. Oh, God. I can't remember who they were.
Q. So you don't know who they were, you don't know what they looked like?
A. I didn't say I can't remember who they were. I said I can't remember what they looked like. I can't remember the people, period. But I know it was two people right there standing there and it was two people here.
Q. Okay. Were they big, were they tall, what did they look

took everything off and we were given orders to shake everything out, to shake a piece at a time, okay, and you start with your socks and your undergarments and then you put your pants on and shoes and stuff like that.

So, like I said, that's why I'm saying I don't know if it was his shoes or his socks he was putting on because they had just started us to shaking our stuff out when all of this happened. Everybody wasn't, like, fully dressed.

Q. Do you know what the officers' purpose is for having people strip searched?

A. Sure.

Q. And what is that?

A. To make sure that there's not any contraband or weapons or drugs or anything like that.

Q. Okay. And what kind of weapons are we talking about?

A. We're talking about shanks, we're talking about guns, if you want to say, or whatever.

Q. And can you describe to the jury what a shank is?

A. A shank is a piece of metal that's filed down like a knife to use to stab somebody with.

Q. And that can cause serious harm to somebody, right?

A. Yes. It can.

Q. And the purpose of ordering a strip search or a shakedown is to try and find those weapons, right?

A. Not just that but contraband as well, you know, marijuana

tell the truth, the whole truth, and nothing but the truth so help you God, correct?
A. Yes, sir.
Q. As you sit here today, you don't remember what you said in the deposition?
A. Not every question, no.
Q. Okay. I'm going to read a series of questions and a series of answers -- which are at Page 57, Lines 15 through 20 -- and ask you whether I've read correctly.
"Question: Is it possible that he swung at you more than three times?
"Answer: Yes, it's possible."
MR. KIMREY: That's Page 56, Line 16 through 17. Actually, I'm sorry. I provided you the wrong page and line cite. I have three: Page 56, Line 16 through 17 and Line 22 is what I just read. Now I'm going to read Page 57, Line 6 through 8.
BY MR. KIMREY:
Q. "So he swung at you four or fewer times, correct?
"Correct."
MR. KIMREY: I'm moving on to another section of the deposition. This is Page 57, Lines 15 through 20.
BY MR. KIMREY:
Q. "But you do recall his having swung at you multiple times?

"Yes.

"And it could have been as many as four times, correct?

"Correct."

Did I ask you those questions and you gave me those responses during your deposition in this case?

A. Yes, sir.

Q. And it's your position that Mr. Mejia swung at you with both fists, right?

A. He swung at me. I can't recall if it was both fists or one fist.

Q. With respect to your deposition -- this is Page 57, Lines 9 through 11 -- I'm going to ask you a question -- or I'm going to read to you a question that I say I asked you in your deposition and I'm going to read you an answer. I'm going to ask you whether you remember giving this testimony.

"Question: Do you remember whether he used both fists when he swung?

"Answer: Yes. I believe he did."

Did I ask you that question and did you give that answer in your deposition?

A. Yes.

Q. Given that it's your position that Mr. Mejia swung at you up to four times with closed fists, according to you he may have landed a punch, correct?

A. Yes, sir.
Q. But you suffered no injuries arising out of this episode, correct?
A. Correct.
Q. Nor did you seek medical assistance as a result of this episode, correct?
A. Correct.
Q. Mr. Paolino -- sorry. Officer Paolino, you submitted an incident report and a use of force report related to this event on Tier BJ on October 9th of 2005, correct?
A. Correct.
Q. In your incident report, you claimed that you attempted to subdue and restrain Mr. Mejia before he became combative, correct?
A. Correct.
Q. In your use of force of report that you filed with respect to this incident that occurred on October 9th of 2005, you said not a single word about Mr. Mejia having swung at you, correct?
A. Correct.
Q. Let's talk about disciplinary reports. It's your position that you submitted a disciplinary report for Mr. Mejia because by swinging at you, allegedly swinging at you, he had violated the jail rules, correct?
A. Correct.

to this case at the -- I don't want to say at the instruction of counsel because I don't want to get into attorney/client communications but did you look for any documents related to this case at any point in time?
A. No.
Q. I just want the record to be perfectly clear: Did you look for any documents related to this case at any point in time?
A. No, sir.
(Mr. Patrick Smith entered the proceedings.)
THE COURT: Mr. Smith has returned.
Let's move on.
BY MR. KIMREY:
Q. With respect to the obligations associated with filing a disciplinary report, did you ever look for a copy of this disciplinary report that you said you submitted to the sergeant in charge as part of this lawsuit?
A. No, sir. I never did.
Q. Do you have a copy of the disciplinary report?
A. No, sir. I do not.
Q. Do you know where we can obtain a copy of the disciplinary report?
A. No, sir. Once I write it, I just hand it in to my immediate supervisor, I no longer see it.
Q. Okay. So you have not provided your attorneys in this

case or me with a copy of a disciplinary report related to Mr. Mejia's purported battery of you on October 9th of 2005, correct?
A. Correct.
Q. At this point in time, do you have any sense of where this disciplinary report is?
A. No, sir. I do not.
Q. Officer Paolino, as a Cook County Jail correctional officer, you're bound by the jail rules, correct?
A. Yes, sir.
Q. And included in those rules is General Order 9.16 which addresses use of force, correct?
A. Yes, sir. It does.
Q. According to General Order 9.16 -- and there are several general orders included in the trial notebooks of the jury, including this one -- you, as a correctional officer, are required to use the minimum amount of force necessary to accomplish the law enforcement purpose and in recognition of the values regarding life, correct?
A. Yes, sir.
MR. KIMREY: Pass the witness, your Honor.
THE COURT: All right.

CROSS EXAMINATION

BY MR. PULLOS:
Q. Mr. Paolino, you were just asked by counsel several

A. Yes, sir. They are.
Q. And are these reports all inclusive reports or are these reports merely a summary of the incident that happened on October 9th of 2005?
A. It's a summary. It's a narrative.
Q. Could you please read your summary on your incident report?
A. On the above date and time, R/O Paolino, Star Number 7674, responded to a call for assistance from an officer on Tier BJ. R/O witness Officer Scott, Badge Number 5986, give detainee Michael Mejia, 2005-0022547, ID number, several orders to turn around and face the wall. At which time R/O attempted to subdue and restrain detainee. At which time detainee became combative and started swinging at R/O Paolino and Officer Scott -- and Officer Paolino. Officer Scott took detainee -- Officer Paolino, Officer Scott took detainee to the ground. Officer Scott then handcuffed detainee.
Q. When you say R/O, what does that mean?
A. Reporting officer.
Q. And who is the reporting officer for that report?
A. That would be me, sir.
MR. PULLOS: If I could withdraw that exhibit, your Honor. If I could withdraw 24.
If I can just have a minute.
THE COURT: Yes.

I'll be asking you some questions today.

Can you introduce yourself to the ladies and gentlemen of the jury?

A. My name is Stephen Murchison. I'm a nurse at Cook County Jail.

Q. Okay. And, Mr. Murchison, your official title is licensed practical nurse?

A. That's correct.

Q. And what are your qualifications to be a licensed practical nurse?

A. I have a diploma from the Chicago Board of Education, practical nursing program.

Q. Okay. And how long have you been a licensed practical nurse?

A. Nineteen years.

Q. And specifically at Cook County Jail, you have been a nurse there since approximately May of 2003, is that correct?

A. Correct.

Q. And you work in the dispensary of the Cook County Jail, correct?

A. Correct.

Q. And that is distinct from the emergency room at Cermak Health Services, correct?

A. Correct.

Q. And can you describe to the jury just the difference

between the dispensary services and the emergency room at Cermak Health Services?
A. The only real difference is that working out of the dispensary we pass medication, administer medication, to the patient. In the emergency room, basically the only thing that comes through there are emergencies. We do handle initial emergency situations in a dispensary. But if it's something, you know, really serious, it goes to the emergency room.
Q. So you initially see inmates if they have been injured, correct?
A. Correct.
Q. And you see and attempt to treat them or pass them on no matter what the source of the injury?
A. Correct.
Q. Okay. And when you would see an inmate, how would you come to see them? How would they come to you?
A. Well, either they would come to us with security, or it may be a situation that we have to go to their location.
Q. Okay. And when they come to you with security, the officer would bring an inmate to you, right?
A. Correct.
Q. And that officer would stay with the inmate at all times while they were being seen and treated, right?
A. That one or another one may be assigned.
Q. And you said you dispense medicine and you can treat most

Q. So you were in between Mr. Mejia and Mr. Rutledge when you were on the wall?
A. That's right.
Q. And the officers had you strip down?
A. Right.
Q. And what happened after that?
A. They had us strip down, and we had to face the wall until they finished the shake. So once they finished, we turned back around. And they had us shake our -- we had to shake our own clothes one at a time. So whatever we shook out, we had to put it back on.
We got to the shoes. Everybody had to put their shoes on. So when we got to the shoes, Mejia was kind of slow putting his shoes on. So at the time he turned around, one of the officers shoved his head into the closet door and hit him in his ribs. And officers started beating him up.
Q. Okay. Let's go back to the point in which you said Mr. Mejia was slow in putting on his shoes. Do you know why he was slow in putting on his shoes that day?
A. From what I remember, he was -- he had some type of illness in his back or something.
Q. And how do you know that?
A. Because he told me one time. He came back from the dispensary, and he let me know.
Q. Okay. And so you said he was slow in putting on his shoes.

And did any of the officers say anything to him at this point in time?
A. From what I remember, no.
Q. Then you said an officer came up and grabbed his head. And what did the officer do?
A. Shoved it into the closet window.
Q. And do you know which particular officer this was who shoved his head into the window?
A. That was Officer Scott.
Q. And do you see Officer Scott in the courtroom here today?
A. No, I don't see him.
Q. Okay. And what happened after Officer Scott slammed Mr. --
A. Slammed his head into the window, hit him in his ribs, and a lot of other officers just started jumping on him. From there Mr. Rutledge tried to tell him he had to be cool. But when he did that, he turned around, got off the wall. And officers beat him up too.
Q. All right. Let's go back a little bit. You say Mr. Mejia -- his head was slammed. You said that he was punched?
A. Right.
Q. And then what happened to Mr. Mejia after he was punched?
A. After he was punched, he kind of bent down. And they start beating him up. Fell to the floor, they started stomping him.
Q. And when you say they started beating him up and they started stomping him, who are you referring to?

A. Officers.
Q. And how many officers in particular?
A. Was around like 15, somewhere from 15 to 20 officers.
Q. Were all on Mr. Mejia?
A. Right.
Q. And how far away were you from Mr. Mejia at this point in time?
A. I was a few feet, somewhere from about five to seven feet.
Q. And were you still on the wall at this time?
A. I got off the wall because I don't want to get hit by officers either.
Q. Okay. And when this is happening, you said that Mr. Rutledge did something. Can you tell us what that was?
A. He turned -- he turned off the wall and was telling Mejia to be cool. When he did that, officers beat him up too.
Q. Okay. Mr. Santiago, do you recognize this person?
A. Yes.
Q. Who is this person?
A. That's Officer Scott.
Q. And is this Officer Scott the one who you saw slam Mr. Mejia's head in the wall?
A. Yes, it is.
Q. And Mr. Scott is not in the courtroom here today?
A. No, he isn't.
Q. Okay. So Mr. Rutledge came off the wall. And you said

officers started beating him up too?
A. That's correct.
Q. Do you know which officers were beating him up?
A. I couldn't see their faces because they -- there were so many officers.
Q. And how many officers would you say were beating Mr. Rutledge up?
A. Well, some got off of Mejia. So the amount of police officers, like 15, 20 police officers. I couldn't really tell you how many was, but it was a lot of them.
Q. When you -- when you say the officers were beating Mr. Mejia and Mr. Rutledge up, what exactly do you mean by beating them up? Specifically what were they doing?
A. They were punching him, kicking him. When he fell to the floor, they start kicking him.
Q. And before Mr. Mejia and Mr. Rutledge were being beaten, did you see Mr. Mejia make any aggressive actions towards any of the officers?
A. No.
Q. Did you see Mr. Mejia take a swing at any of the officers?
A. No.
Q. Did you see Mr. Rutledge take a swing at any of the officers?
A. No.
Q. Did you see Mr. Rutledge act in an aggressive manner

towards any of the officers?
A. No.
Q. And so Mr. Rutledge and Mr. Mejia are on the floor getting beaten up. Can you tell us approximately how long they were beaten up for?
A. Somewhere like around five minutes, three to five minutes.
Q. Three to five minutes.
And you said at this time you had come off the wall because you didn't want to get hit by the officers?
A. That's right.
Q. So were you still in the same position along the wall at that time?
A. Back towards the exit door.
Q. So you backed away from the incident?
A. Right.
Q. And what were the other inmates doing at this time?
A. Backing up, backing away also.
Q. Okay. And what happened after Mr. Mejia and Mr. Rutledge were being beaten?
A. After they were being beaten, they cuffed them, and they started -- officers started sending the inmates back to the cells one at a time.
Q. And were you sent back to your cell at this time?
A. Yes, I was.
Q. And then what happened?

Q. On that day on October 9?
A. Right.
Q. And when did you see them? When did you see Mr. Rutledge after that time?
A. After that I didn't get to see him.
Q. And did you see Mr. Mejia after that time on October 9?
A. No.
Q. And do you know where they went?
A. They went to the hole, seg.
MR. PULLOS: Objection, foundation.
BY MR. DANIELSON:
Q. How do you know they went to the hole?
A. Because other inmates told me that --
MR. PULLOS: Objection, hearsay.
MR. DANIELSON: Okay.
THE COURT: All right. Sustained.
MR. DANIELSON: May I have a moment?
(Brief pause.)
BY MR. DANIELSON:
Q. Mr. Santiago, you said that Mr. Rutledge was saying that this was bogus. Do you know who he was saying that to?
A. Sergeant Johnson.
Q. Sergeant Johnson, was he there on that day?
A. Yes, he was.
Q. And when you -- did you see Sergeant Johnson there the

diagnosis, correct?
A. Yes.
Q. And, doctor, just so we're clear, that was recorded you know, roughly about the same time that you performed the physical examination?
A. Yes.
Q. And based on your personal assessment, doctor, if you want to stop at the top here, you observed that Mr. Mejia suffered from forehead ecchymosis, correct?
A. Yes.
Q. And you also observed left face positive superficial laceration and tenderness?
A. Yes.
Q. And, doctor, can you read to the ladies and gentlemen of the jury what else -- or I guess the rest of your findings for Mr. Mejia?
A. Well, basically I find -- I noticed the patient have ecchymosis on the left forehead, but no swelling, no bleeding.
The left face there is a superficial laceration, and that's about it.
And in terms of his left rib, I feel the tenderness, but I don't feel any deformity, and that's my finding.
Q. Ecchymosis, that refers to --
A. Blue and black.
Q. -- black and blue area?

So Mr. Mejia's forehead was black and blue on October 9, 2005?
A. Just in one spot. Just one spot of his forehead is black and blue.
Q. And based on this examination, your diagnosis is that Mr. Mejia suffered blunt trauma to the face, left face, and lift rib?
A. And forehead -- and head.
Q. And the forehead.
A. Uh-huh.
Q. And this information is recorded here on this form?
A. Yes.
Q. Okay. Now, doctor, blunt trauma, that's force with a solid object, correct?
A. Yes.
Q. And blunt trauma to the face, left face and left rib, and that would be characterized as multiple blunt trauma?
A. Yes.
Q. More than one?
A. Yes.
Q. And so according to what you wrote under diagnosis, you identified at least three separate parts of Mr. Mejia's body where you noticed that he suffered from blunt trauma.
A. Yes.
Q. And, doctor, each of these injuries that you observed on

October 9th, they are all consistent -- they are -- all three are consistent with blunt force trauma, correct?

A. Yes.

Q. And so these injuries on his forehead, face, and left rib, could they have been the result of being struck or hit -- or excuse me -- they were the result of being struck or hit by some sort of hard object.

A. Yes.

Q. And being slammed into a wall or a door, that's consistent with blunt trauma, correct?

A. Yes.

Q. And a punch or a kick, that is also consistent with blunt trauma?

A. Yes.

Q. Okay. Doctor, I'd like to switch gears here and discuss Gregory Rutledge.

Do you recall treating Mr. Rutledge on October 9, 2005?

A. No.

Q. Again is there anything that would refresh your recollection?

A. Yes.

Q. Perhaps more paperwork?

A. Yes.

Q. I am now handing you the second page of Exhibit 5.

I took the liberty of putting our magnets up there.

Do those reasonably depict where the officers were standing with respect to Mr. Mejia and Mr. Rutledge on October 9, 2005?

A. Yes, it depicts it.

Q. Officer Harris, Officer Grayer, Officer Paolino, Officer Scott.

A. Yes.

Q. According to your testimony, the strip search of the inmates on this tier never occurred, is that correct?

A. I stated that when we started the strip search, it was never completed.

Q. And it wasn't completed because of commotion caused by Mr. Mejia, is that correct?

A. That is correct.

Q. You heard Officer Scott giving Mejia a verbal commend, is that correct?

A. Several verbal commands, that is correct.

Q. And Officer Scott never did anything more than continue to give Mr. Mejia verbal commands, is that correct?

A. Yes, it is.

Q. And while Officer Scott is giving Mr. Mejia verbal commands, Officer Paolino changes his position a little bit, is that correct?

A. Yes, he repositioned himself.

A. I responded towards AD.
Q. So if you're the only officer watching BG and you respond to a call, who's watching the inmates?
A. Other officers that do not respond.
Q. How did you get to tier AD?
A. I exited off the B pod. We're on the third floor. I ran to the master control, which has stairs that lead down. You either take the stairs or elevator, but stairs would be a lot faster. You get down to the first floor, and then the A pod is basically right off to the right of the stairwell door.
Q. When you got to the A pod, what happened?
A. As soon as I got towards the corridor of the A pod, that's when the call for assistance for officers to BJ came on the radio.
Q. So you received another call?
A. That is correct.
Q. Now, you were already responding to one call and you received another call. Which call did you choose to respond to?
A. BJ.
Q. And why did you choose to respond to that call?
A. Because the call came for an all assistance. A 10-10 is inmates or inmates fighting. All assistance means there's an officer in trouble with an inmate.
Q. So it doesn't specifically mean an officer's fighting with

call out of the commands. While he was doing the commands, I heard Officer Scott tell Mr. Mejia to turn and face the wall. Mr. Mejia was not complying with Officer Scott's verbal commands. He actually kept turning around and looking at Officer Scott like he was toying with him.

Q. Why did you think he was toying around?

A. Because he kept turning around. He kept saying, oh, this is bullshit, you know. And they always make this (indicating) sound like they don't take us seriously. So he'll keep doing that, turning around, kept turning around. Officer Scott, Dude, put your head up against the wall. Turn around and face the wall.

Q. Now, when an inmate -- can you demonstrate to the jury when an inmate is not complying with orders how -- like Officer Scott, how was he instructing Michael Mejia to turn around?

A. He was sitting there, he was telling -- he was standing behind me and saying turn around and face the wall, turn around, face the wall. Mejia was not complying to the verbal orders.

MR. FRYE: May I have a moment, Your Honor.

(Brief pause.)

BY MR. FRYE:

Q. Now, Michael Mejia would you consider him turning around not obeying orders?

A. Correct.

Q. After you arrived in Tier BJ, you claim you walked toward Mr. Mejia, right?
A. I was walking that way; yes, sir.
Q. And although you stopped by Mr. Mejia to ask an officer what had happened with him, what had lead to his being restrained, you claim you cannot remember who that officer was, right?
A. That is correct, sir.
Q. Nor do you recall what that officer said, right?
A. No, sir.
Q. Am I right about that?
A. Yes. Yes. You're right.
Q. In fact, you don't recall any officer ever having said to you on October 9th of 2005 that Mr. Mejia had been restrained because he swung with a closed fist at an officer, right?
A. That's right.
Q. And it's possible that when you walk across the tier -- were you walking across the tier, were you running across the tier? You were walking, right?
A. Yes, sir.
Q. Okay. It's possible that after you walked across the tier and you stopped at Mr. Mejia to ask the officer what had happened, that you were beside Mr. Mejia for 20 seconds or so, right?
A. I believe I said that, sir.

A. Yes, sir.
Q. And it's your testimony that he was not kicked, correct?
A. Yes, sir.
Q. And it's your position that none of the officers struck Mr. Rutledge in his head in any way whatsoever, correct?
A. I didn't observe that.
Q. Right. It's your testimony that --
A. Yes, sir.
Q. -- nobody struck him in the head, right?
A. Yes, sir.
Q. Okay. In fact, the officers are trained not to strike an inmate's head, correct?
A. That's correct.
Q. And although you know a leg sweep was performed on Mr. Rutledge, you don't remember as you sit here today what officer performed that leg sweep, correct?
A. That's correct.
Q. In fact, you don't remember the name of a single officer who was near Mr. Rutledge at that time including the name of the officer who allegedly told Mr. Rutledge to get back up against the wall, right?
A. That's correct.
Q. Let's talk a little bit about injuries.
According to you, neither Mr. Rutledge nor Mr. Mejia

right?
A. Yes, ma'am.
Q. On October 9th, 2005, you got a call from officer -- heard a call from Officer Edwards asking officers to come to Tier BJ; is that right?
A. Yes, ma'am.
Q. When you got that call, you came to Tier BJ; is that correct?
A. Yes, ma'am.
Q. When you got there, there were already 20 to 30 other correctional officers there; is that right?
A. It was a few. I don't know the exact count.
Q. Was it about 20 to 30?
A. Around 15 to 20, ma'am.
Q. Officer Lanier, do you recall giving a deposition in this case?
A. Yes, ma'am.
Q. And that was a time when, in fact, I asked you some questions and you gave some answers, right?
A. Yes, ma'am.
Q. And that deposition was taken under oath; is that right?
A. Yes, ma'am.
Q. So you swore to tell the truth; is that right?
A. Yes, ma'am.

"As best you can recall up to this point when the inmates stripped and the clothing was searched, was there any problem"?

And your answer was: Not at that point.

And, in fact, Officer Lanier, you also testified in your deposition that when the orders were given for the inmates to put their clothes back on, nothing special happened when they were doing that.

Do you disagree now with that?

A. No, ma'am.

Q. After inmates put on their clothes, the next thing that happens in the normal course is that they turn back toward the wall; isn't that right?

A. In a normal course, yes, ma'am.

Q. And because when they're stripping, their clothes are being searched, they're putting clothes back on, they're facing toward the inside of the day room, right?

A. Yes, ma'am.

Q. And so after they got all their clothes back on, they turned back toward the wall, right?

A. Yes, ma'am.

Q. When that was supposed to happen, your position was -- at least in June 2007 -- that at that point you heard a commotion between an inmate and an officer?

A. Yes, ma'am.

A. Mr. Michael Mejia.
Q. So an officer was giving Mr. Mejia verbal orders and you didn't quite understand what Mr. Mejia was saying, right?
A. Yes, ma'am.
Q. And you saw that from where you were 30 feet away but you didn't see anything else about the commotion; is that right?
A. No, ma'am.
Q. "No" meaning, in fact, you didn't see anything else?
A. I didn't see nothing else at that time.
Q. And you didn't see any officers struggle with Mr. Mejia; is that right?
A. No, ma'am, not at that time.
Q. I'm sorry. I didn't hear.
A. Not at that time.
Q. And you didn't see Mr. Mejia go to the ground, correct?
A. No, ma'am.
Q. And your position is you didn't see any officer hit Mr. Mejia, right?
A. No, ma'am.
Q. And you didn't go over there to where Mr. Mejia was, right?
A. No, ma'am.
Q. You stayed at your post 30 feet away, right?
A. Yes, ma'am.

Q. They were the ones who subdued Mr. Rutledge?
A. Yes.
Q. So you saw some other officers besides Officer Scott and Paolino subdue Mr. Rutledge, right?
A. Yes, ma'am.
Q. You don't know who any of those officers were, right?
A. No, ma'am.
Q. Now eventually Mr. Rutledge and Mr. Mejia were taken off Tier BJ, right?
A. Yes, ma'am.
Q. They were taken to the dispensary?
A. Yes, ma'am.
Q. And you knew that -- you saw them being taken off the tier, right?
A. Yes, ma'am.
Q. You knew they were going to the dispensary?
A. Yes, ma'am.
Q. You saw Mr. Mejia walk out of the dayroom and out the front door at the entrance, right?
A. Yes, ma'am.
Q. But you didn't see any injuries on him, is that correct?
A. No, ma'am.
Q. No, you didn't see any?
A. No, I didn't see any injuries on him.
Q. And you don't remember his making any noise, crying out as

was going on with them, right?
A. Yes, ma'am.
Q. So you weren't even over there, is that correct?
A. Correct, ma'am.
Q. Now you sat in the courtroom, Mr. Lanier, and you have heard testimony from them that you participated in a beat down on them, right?
A. Yes, ma'am.
Q. And that's according to you completely untrue, right?
A. Yes, ma'am.
Q. Because you didn't put your hands on them, right?
A. No, ma'am.
Q. And you weren't even around there, right?
A. No, ma'am.
Q. And you understand that when a correctional officer at Cook County Jail uses force, he has to fill out a use of force report, right?
A. Yes, ma'am.
Q. And that's true even if it is just force necessary to restrain the inmate, right?
A. Yes, ma'am?
Q. And it is true even if you just have to restrain him and put cuffs on him, right?
A. Yes, ma'am.
Q. Even if you just have to put cuffs on him, you have to

correct?
A. That is correct.
Q. And you go over, and the only thing you do is quickly cuff him up, is that correct?
A. That is correct.
Q. During this altercation with Mr. Rutledge, you have no idea what happened with Mr. Mejia, is that correct?
A. That's correct.
Q. And that's because you just weren't looking in that direction, is that correct?
A. Correct.
Q. You stayed focus on the scuffle, is that correct?
A. On the scuffle and the detainees in front of me.
Q. Mr. Mejia never swung at you with a closed fist, did he?
A. No, he did not.
Q. And Mr. Rutledge never swung at you with a closed fist, did he?
A. I would say that he did when I tried -- when I grabbed his arm.
Q. He is face down, right?
A. That is correct.
Q. And he's laying face on the ground, his chest on the floor.
A. Yes.
Q. And you come up and you grab his right arm, right?

A. I don't know what arm I grabbed.
Q. You grabbed an arm to cuff him, right?
A. That is correct.
Q. And he is on the ground --
A. He is moving around to get loose.
Q. And at that time he tried to throw a punch at you?
A. He had his hand -- his hands was in a fist trying to get loose, trying to get the officers off of him.
Q. Okay. That's not my question. My question is when he is face down on the ground, did he try to throw a punch at you?
A. I would say yes.
Q. You would say yes?
But Mr. Mejia certainly never threw a punch at you, is that correct?
A. That is correct.
THE COURT: It is time to stop. See if you can come to a good place to stop.
MR. GONSALVES: Okay.
(Brief interruption.)
MR. GONSALVES: You know what, your Honor, why don't we stop right now.
THE COURT: Okay. Thank you, ladies and gentlemen, for your attention today. We will resume on Monday at 9:30.
(Proceedings had in open court outside of the presence and hearing of the jury:)

there, sir?
A. Yes, it is.
Q. Sir, you told us that Mr. Mejia did not throw any punches at you, correct?
A. That is correct.
Q. And isn't it true, sir, in the second line there that you were asked by Investigator Stella, did Rutledge and Mejia swing at you with a closed fist, and you answered yes.
A. That is correct.
Q. Okay. You did not take Mr. Rutledge off the tier, is that correct?
A. No, I did not.
Q. He was taken off the tier by some other officers?
A. Yes.
Q. Do you know which officers those were?
A. No.
Q. When you stood Mr. Rutledge up, you didn't see any visible cuts, scrapes or bruises on him, did you?
A. No, I wasn't looking to see that. I had to go back to my position because it had -- there is 48 inmates on the deck, so I had to go back to my position to watch the inmates that I were -- that I was in position watching. So I didn't -- just handcuffed him and went back to my position.
Q. You lifted him up though, correct?
A. Yes.

A. Yes.
Q. And after you were there, you received a call for assistance, correct?
A. Yes.
Q. When you received this call, you believe that an officer was in distress, correct?
A. Yes.
Q. That officer making the call, according to you, was Officer Edwards, correct?
A. Yes.
Q. You then responded to Tier BJ?
A. Yes.
Q. It took you approximately two to three minutes to travel from Tier AD to Tier BJ; is that accurate?
A. Yes.
Q. Is it true that you were among the first officers to arrive in Tier BJ?
A. Yes.
Q. Is it also true that when you arrived there, you observed Officer Edwards to be surrounded by eight detainees?
A. I don't recall saying eight detainees.
Q. Do you recall that Officer Edwards was surrounded by a number of inmates?
A. Yes.
Q. Would anything refresh your recollection as to the number

of detainees that had surrounded him?
A. My statement, I gave a statement.
MR. GONSALVES: Your Honor, may I approach?
THE COURT: Yes.
BY MR. GONSALVES:
Q. Sir, I've just handed you a transcript of your deposition and if you would look on Page 25, Lines 19 through 23.
A. This just says approximately eight.
Q. Does that refresh your recollection as to the number of detainees that had surrounded Officer Edwards?
A. Yes, approximately. It could be a little more or a little less. I said approximately.
Q. And is it true that she was surrounded just to the left of the entrance door?
A. Yes.
Q. Based on what you observed, did you conclude that Officer Edwards called for help because she was being threatened?
A. Yes.
Q. You did not recognize these detainees?
A. No.
Q. Is it true that these detainees were just within an arm's length of her?
A. Yes.
Q. Is it also true that when you arrived, these detainees started to walk away from her and walk towards the wall?

where Mr. Mejia was standing by the wall.
Q. Did you give him several orders to turn around and face the wall?
A. Yes.
Q. And when you gave him those orders, was he facing out towards the day room?
A. Yes. He was facing my direction.
Q. And at this point, Mr. Mejia did not respond, is that your testimony or is that accurate?
A. Yes.
Q. And when you are giving these verbal directions to Mr. Mejia, no strip search of the tier had been conducted; is that correct?
A. Yes.
Q. Is it accurate to say that when Mr. Mejia did not turn around, Officer Paolino began to walk towards him?
A. After I had given more orders.
Q. More orders to turn around and face the wall?
A. For Mr. Mejia to turn around and face the wall.
Q. And is it true that as Officer Paolino got closer to him, Mr. Mejia swung at him with a closed fist?
A. Yes, it appeared.
Q. Your view of Mr. Mejia and Mr. -- and Officer Paolino was not obstructed in any way, is it?
A. No, sir.

Q. When Officer Paolino approached Mr. Mejia, he wasn't trying to subdue or restrain Mr. Mejia at this time, correct?
A. I don't know.
Q. Your testimony is as you approached him and got closer to him, Mr. Mejia threw a punch, correct?
A. Yes.
Q. Officer Paolino wasn't trying to grab him in any way or was he?
A. I don't know. He was motioning with his hands.
Q. Motioning with his hands for him to turn around?
A. Yes, sir.
Q. So he wasn't trying to grab him or anything?
A. Not to my knowledge.
Q. Is it correct that when Mr. Mejia swung at Officer Paolino, you moved in to assist and grab Mr. Mejia's arm?
A. Yes.
Q. You initially were about 15, 20 feet away, correct?
A. Yes.
Q. And is it accurate that as you started giving verbal direction, you started to close that gap?
A. Yes.
Q. So when Mr. Mejia threw this punch, you were only a few feet away; is that correct?
A. Yes. I think about seven, eight feet away at this

stairs and intercepts Rutledge, correct?
A. Yes.
Q. And according to you, the only officer you ever saw impeding Rutledge's progress was Officer Harris, correct?
A. Yes.
Q. And thereafter, you did not observe anything with respect to Mr. Rutledge, correct?
A. Yes.
Q. You didn't see Mr. Rutledge after the indent, correct?
A. Yes.
Q. You are struggling with Mr. Mejia and Officer Paolino assisting you, correct?
A. Yes.
Q. It took about one minute to get Mr. Mejia on the ground?
A. Approximately, yes.
Q. At no time during the struggle did you ever strike Mr. Mejia; is that accurate?
A. Yes.
Q. You were not injured in this incident?
A. No.
Q. According to you, you never pushed him forcibly to the ground so that he could bruise his eye or his forehead, correct?
A. No.

Q. According to you, your struggle with Mr. Mejia is more of a wrestling match than fist-to-cuffs?
A. Yes.
Q. Were there any other officers besides you and Officer Paolino struggling with Mr. Mejia?
A. No.
Q. So from the time Mr. Mejia threw this first punch to the time he was handcuffed, the only two officers who had contact with him were yourself and Officer Paolino?
A. Yes.
Q. No other officers touched him in any way?
A. No.
Q. And after Mr. Mejia was handcuffed, you picked him up; is that correct?
A. Yes.
Q. And when you picked him up, you saw that he had injuries to his face; is that correct?
A. Yes.
Q. He had cuts and blood on his face, correct?
A. Yes.
Q. You could see blood on him, correct?
A. Yes.
Q. According to you, it appeared he had a cut over his eye?
A. Yes.

Q. And according to you -- or is it correct that he received that cut in the struggle?
A. Yes.
Q. But you're not exactly sure where in the struggle he received those injuries, correct?
A. Yes.
Q. After he was handcuffed, did you and Officer Paolino escort Mr. Mejia off the tier?
A. Yes.
Q. Did Officer Paolino take him to the dispensary?
A. Yes.
Q. Is it your -- is it accurate that you did, in fact, write a disciplinary report for Mr. Mejia?
A. Yes.
Q. You never produced that report to us, correct?
A. No.
Q. Once that report is completed, you have no idea what happens with it, correct?
A. Yes.
Q. You wrote an incident report, correct?
A. Yes.
Q. You wrote a use of force report, correct?
A. Yes.
Q. Did you consult with anybody in preparing those reports?

Q. That's your handwriting, correct?
A. Yes.
Q. About four lines down, it states: Detainee Mejia, Michael, and then a number. That's his inmate number, correct?
A. Yes.
Q. Didn't turn and face the wall. R/O gave Mejia, Michael, a direct order to turn around and face the wall. Detainee Mejia didn't nor did he turn around. R/O gave detainee Mejia a second order to turn around and face the wall. R/O Paolino attempted to subdue and restrain detainee, Michael -- Mejia, Michael. Detainee Mejia became combative by turning around and swinging closed fists at Officer Paolino. R/O assisted Officer Paolino in subduing detainee by taking him to the floor and handcuffing detainee Mejia.
Did I read that accurately?
A. Yes.
Q. So the order, as indicated in your report, is that Mr. Mejia refused --
A. Yes.
Q. -- orders and then Officer Paolino attempted to subdue him, correct?
A. Yes.
Q. And after that, Mejia became combative and began swinging with closed fists, correct?

A. Yes.
Q. What you have told us happened was that Mr. Mejia refused orders, correct?
A. Yes.
Q. And that when Officer Paolino approached, Mr. Mejia threw a punch, correct?
A. Yes.
Q. And it is only after he threw a punch that Officer Paolino began to subdue and restrain, correct?
A. Yes.
Q. But that's not what's indicated in the report, is it?
A. No.
Q. I'm sorry?
A. No.
Q. Officer Scott, you did not know neither Mr. Rutledge or Mr. Mejia prior to this incident, did you?
A. No.
MR. GONSALVES: Your Honor, I pass the witness.
THE COURT: All right.
MR. FREY: One moment, your Honor.
THE COURT: Does the jury want a break? All right. We'll take a 15-minute recess.
MR. KIMREY: Your Honor, can you instruct the witness not to discuss his testimony with counsel?
THE COURT: It's fine, no. I won't.
(Recess taken.)

Q. Okay. And so it's not an unusual occurrence for someone to pop their locks?
A. It's not unusual, no.
Q. Sometimes you may call the tier officer, correct?
A. Correct.
Q. But a lot of times you just don't do anything, correct?
A. Correct.
Q. On October 9, 2005, do you recall whether or not an inmate popped his lock on Tier BJ?
A. Yes.
Q. And is it correct that when an inmate did that, you went downstairs to the pod control door?
A. Yes.
Q. Okay. Do you see that door in this photograph here?
A. No.
Q. You don't. Okay.
Is that door a door that gives you access to the tier?
A. No.
Q. Okay. On October 9, when you went down to the pod control door, did you call an inmate down to speak with you?
A. I spoke with an inmate, yes.
Q. And after you had a conversation with the inmate, the inmate returned to his tier, correct?
A. Yes.
Q. And the inmate did that with your consent?

A. Yes.
Q. You did not write a report about that incident, did you?
A. No.
Q. On October 9, 2005, other than this lock-popping incident, there was no other unusual incidents, is that correct?
A. That's correct.
Q. You were never surrounded by eight detainees on Tier BJ that day correct?
A. I was never on Tier BJ. So, no.
Q. So no inmates ever threatened you on Tier BJ that day?
A. No.
Q. That would be something you would remember, correct?
A. Yes.
Q. If that happened, you would have wrote a report about it, correct?
A. Yes.
Q. But you didn't write a report because it never happened, did it?
A. I was never on the tier. So, no, I didn't write a report.
Q. So other than this lock-popping, you observed nothing out of the ordinary on October 9, 2005, on Tier BJ, correct?
MR. FREY: Objection, asked and answered.
THE COURT: Sustained.
BY MR. GONSALVES:
Q. At some point a number of officers came onto the tier,

make our objection noted for the record.

THE COURT: All right.

MS. MACLEAN SNYDER: Your Honor, at this point I would like to ask that you rule that Mr. Martin is an expert in the field of use of force and corrections and that he is authorized to give an expert opinion in this case.

THE COURT: I so rule.

MS. MACLEAN SNYDER: Thank you.

BY MS. MACLEAN SNYDER:

Q. Mr. Martin, have you at our request looked at certain materials in connection with the lawsuit brought by Mr. Rutledge and Mr. Mejia?

A. I have.

Q. What have you reviewed in general?

A. In general I reviewed what I referred to as a basic use of force packet which reports on a single incident that typically, and in this case did include reports written by the individual officer participants. So of course you review all the narratives provided by the participants and witnesses. You review any available medical evidence, if that's in play. In other words, if there were injuries sustained by the subjects of the use of force.

Q. And did you review medical evidence here?

A. I did in this case because there were injuries sustained by the two subjects in the instant.

THE COURT: Overruled.

MR. PULLOS: Thank you.

BY MR. PULLOS:

Q. Now, inside the Texas Department of Corrections, you are aware that sometimes inmates will create or make or manufacture weapons, is that right?

A. Correct.

Q. And what are those weapons typically called?

A. Depends on the style of the weapon.

Q. How about a homemade knife, what's that called?

A. It can be called any number of -- shanks, shives, a whole variety of things.

Q. Now, the shanks or shives, these homemade knives, these shanks are designed to hurt other inmates or officers, is that right?

MR. KIMREY: Objection, no facts in evidence, beyond the scope, lack of foundation.

MR. PULLOS: This goes to credibility. He said they have based their case on the fact that he worked in the Texas Department of Corrections.

THE COURT: Let's have a sidebar.

(Sidebar proceedings out of the hearing of the jury:)

THE COURT: Okay. There is no testimony from anybody here that there was fear, even fear of a shive or a shank. None of the officers said that was --