

UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF WASHINGTON

THE ESTATE OF GORDON ("CASEY"))	
POWELL,)	
)	
Plaintiff,)	
)	
v.)	No. 2:16-cv-00352
)	
GARY BARNES, et al.,)	
)	
Defendant.)	

Deposition Upon Oral Examination
of
JAMES HAND

Taken at 818 West Main Street
Monroe, Washington

DATE: June 28, 2016

REPORTED BY: April L. Cook, CCR
CCR No.: 3245

A P P E A R A N C E S

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I N D E X

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* * *

EXHIBITS FOR IDENTIFICATION:

Number		PAGE
Exhibit 1	Monroe Police Department Incident Report M20151191 authored by Officer Hand dated 6/14/15	5
Exhibit 2	Packet of laser color copies of photographs.	9
Exhibit 3	Affidavit for Search Warrant dated 5/13/15.	18

* * * *

MONROE, WASHINGTON; TUESDAY, JUNE 28, 2016

2:27 p.m.

--oOo--

JAMES HAND, deponent herein, having been
first duly sworn on oath, was
examined and testified as
follows:

E X A M I N A T I O N

BY MR. BUDGE:

Q. Could you state your name, please.

A. Officer James Hand.

Q. Okay. Officer Hand, I'll be asking you some
questions today. And the questions that I ask and the
answers that you give will be transcribed by the court
reporter. Do you understand that?

A. I do.

Q. And do you understand that the testimony that you
give today is under oath as it would be if we were in court?

A. I do.

Q. And if you don't understand a question that I ask,
please ask me to clarify it or rephrase it for you and I
will. Okay?

A. Okay.

1 Q. Are you an officer with the Monroe Police
2 Department?

3 A. I am.

4 Q. How long have you been an officer with the Monroe
5 PD?

6 A. Just over three years.

7 Q. And did you have any law enforcement training or
8 experience other than the academy before you became an
9 officer with the Monroe PD?

10 A. I didn't. I did not.

11 MR. BUDGE: All right. So we're going to go
12 ahead and mark an exhibit.

13 (Exhibit No. 1 marked for
14 identification.)

15 Q. And, Officer Hand, we've provided to you through
16 the court reporter a three-page document that has production
17 numbers 000025 through 27 in the upper right-hand corner.
18 Would you please take a minute to review this document and
19 let me know if you recognize it.

20 A. Okay. I do recognize it.

21 Q. You do recognize it?

22 A. Yes.

23 Q. Is this a report that you prepared in connection
24 with an assault that was alleged to have occurred at the
25 Monroe State Reformatory located in Monroe, Washington?

1 A. It is.

2 Q. And did you sign and date the last page of the
3 report?

4 A. I did.

5 Q. Okay. And is that your signature and badge number
6 on the last page of the report?

7 A. Yes.

8 Q. Did you sign the report on June 14, 2015?

9 A. I did.

10 Q. And when you signed and dated the last page of the
11 report, did you certify or declare under penalty of perjury
12 that the information contained within the report was true and
13 correct?

14 A. I did.

15 Q. Did you prepare the report in connection with your
16 regular and official duties as a police officer with the
17 Monroe PD?

18 A. Yes.

19 Q. And does the information in this report truly and
20 accurately describe your observations at the Monroe
21 Correctional Complex on May 9, 2015?

22 A. Yes.

23 Q. I want to take you through some of the information
24 contained in the report and ask you a few questions.

25 Beginning with the first page, is it the case that

1 on May 9th, 2015, at approximately 4:45 p.m. you heard
2 dispatch advise that Monroe paramedics were en route to an
3 assault that had occurred at the Monroe Correctional Complex?

4 A. According to my report, yes.

5 Q. Is that what actually occurred?

6 A. According to my report, yes.

7 Q. Did you immediately go to the Monroe Correctional
8 Complex?

9 A. Yes.

10 Q. And what is your best estimate of the amount of
11 time it took you to arrive at the Monroe Correctional
12 Complex?

13 A. It's not documented in my report. It would be
14 documented in the CAD call that should be included with the
15 whole case packet.

16 Q. Did you receive the call -- or, excuse me, did you
17 overhear the dispatch while you were here at the Monroe
18 Police Department?

19 A. Yes.

20 Q. And did you proceed directly from the physical
21 location of the Monroe Police Department to the Special
22 Offenders Unit at the prison?

23 A. Yes.

24 Q. And did you gain admission to the Special Offenders
25 Unit at the prison?

1 A. Yes.

2 Q. And when you arrived at the Special Offenders Unit
3 at the prison, did you speak with Lieutenant James "A-sin" or
4 "As-in," A-s-i-n. We'll say "A-sin."

5 A. Yes.

6 Q. And did Lieutenant Asin tell you that at
7 approximately 4:37 p.m. an assault had been committed against
8 another offender by an individual named Benjamin Price?

9 A. He did.

10 Q. And then did Lieutenant Asin escort you to the
11 crime scene?

12 A. He did.

13 Q. Did Lieutenant Asin show you where the assault had
14 occurred?

15 A. He did.

16 Q. Did Lieutenant Asin tell you that the crime scene
17 had been cleaned up prior to your arrival?

18 A. He did.

19 Q. Did you observe the location of the crime scene?

20 A. I did.

21 Q. And did Lieutenant Asin tell you his understanding
22 of how the assault occurred?

23 A. He did.

24 Q. Did you bring a camera with you to the crime scene?

25 A. I did.

1 Q. And what was the purpose for bringing a camera?

2 A. To document the crime scene.

3 Q. And did you use the camera to take photos of the
4 now cleaned-up crime scene and the various adjacent and
5 surrounding areas?

6 A. I did.

7 MR. BUDGE: Okay. The next exhibit.

8 (Exhibit No. 2 marked for
9 identification.)

10 Q. Officer Hand, I've handed to you now through the
11 court reporter what's been marked as Exhibit 2, which are a
12 series of six photographs. I'll represent to you that these
13 photos were provided to us by the Snohomish County
14 prosecutor's office and the Monroe PD under a file labeled
15 "Hand." And I'd like you to please take a look at these six
16 photos and tell me if they appear to be photos that you took
17 during your visit to the crime scene on the afternoon of
18 May 9, 2015.

19 MR. SUTHERLAND: And I'm going to object only
20 for the reason that I only have five. So do you have six?

21 MR. KENNY: I have five.

22 MR. BUDGE: Okay. I apologize. I will amend
23 my previous statement to five photographs instead of six.

24 MR. SUTHERLAND: Thank you.

25 Q. And with that amendment, do these five photographs

1 appear to be photos that you took during your visit to the
2 crime scene on the afternoon of May 9, 2015?

3 A. They do.

4 Q. Okay. The first photograph that says HAND-DSCN
5 1703 in the upper right, does that appear to be a photo that
6 you took of the JPay station and adjacent areas?

7 A. Yes.

8 Q. And the second photograph that is labeled 1704 in
9 the upper right, does that appear to be a photo that you took
10 of the interior space known as the dayroom?

11 A. Yes.

12 Q. And the third photograph, bearing number 1705 in
13 the upper right, is that another photo of the same interior
14 space?

15 A. Yes.

16 Q. And in this photo, 1705, can we see doors that lead
17 to a passageway that you -- a passageway where the assault
18 was alleged to have occurred?

19 A. Yes.

20 Q. And directly adjacent to those doors that lead to
21 the passageway, is there an officer's post near where there
22 appears to be a red fire extinguisher?

23 A. Yes.

24 Q. And in the next photograph that says 1706 in the
25 upper right, does that appear to be another photo that you

1 took of the doors leading to the passageway where the assault
2 was alleged to have occurred?

3 A. Yes.

4 Q. And in this photograph do we also see the officer's
5 post?

6 A. Yes.

7 Q. And at the officer's post does it appear that there
8 are two male officers, one of whom has his left hand resting
9 on the desk of the officer's post?

10 A. Yes.

11 Q. These officers that are shown in this photo, 1706,
12 were standing at the officer's post when you were taking
13 these photos; is that correct?

14 A. Yes.

15 Q. And then above the officer's post we have what
16 appear to be two surveillance cameras; is that correct?

17 A. Yeah, they appear to be surveillance camera --
18 cameras.

19 Q. Okay. And then the final, fifth photograph that
20 says 1710 in the upper right, does this appear to be a photo
21 that you took of the location of the crime scene?

22 A. Yes.

23 Q. Okay. I'd like now to draw your attention back to
24 Exhibit 1, which is your report, and in particular I'd like
25 you to turn to the second page. I think you're there. That

1 is Page 26 in the upper right. Are you there?

2 A. Uh-huh. Yes.

3 Q. And approximately one-third of the way down the
4 page, did you record in your report as follows, "As I was
5 photographing the now cleaned-up crime scene, I overheard the
6 correction officers standing by the officer's post that Price
7 had been requesting to talk to a police officer for several
8 days and after some days past, Price then said that if he had
9 to kill someone to get police attention, he would. I asked
10 the correction officers to document these statements in their
11 witness statements"? Did I read that correctly?

12 A. Yes.

13 Q. Okay. It appears that there might be a word
14 missing, and I'd like to ask you whether between -- in the
15 third line up where it says, "officer's post that Price," did
16 you mean to say "officer's post say that Price"?

17 MR. SUTHERLAND: Object to the form.

18 A. What did you think it should be?

19 Q. I'm wondering whether it's a typo when it says, "I
20 overheard the correction officers standing by the officer's
21 post that Price," whether you meant to say, "I overheard the
22 correction officers standing by the officer's post say that
23 Price."

24 A. I don't believe either way is more accurate than
25 the other way.

1 Q. Okay. In fact, did you hear the corrections
2 officers standing by the officer's post say that Price had
3 been requesting to talk to a police officer for several days
4 and that after some days past, Price said that if he had to
5 kill someone to get police attention, he would do so?

6 A. That's what I heard, correct.

7 Q. And you documented what you overheard in this
8 statement, correct?

9 A. Correct.

10 Q. And the statement that you overheard, as documented
11 in this incident report, was overheard by you in the course
12 of your taking the photographs that we've just gone through;
13 is that correct?

14 A. Correct.

15 Q. And the officers who made the statement that you
16 record in your report were in uniform when you heard them say
17 that Price had been requesting to talk to a police officer
18 for several days and that after some days past, Price said
19 that he had that if he had to kill someone to get police
20 attention, he would do so; is that correct?

21 A. Correct.

22 Q. And when you overheard the officers standing by the
23 officer's post say that, how far would you have been from
24 them in relation to where they were?

25 A. I --

1 MR. SUTHERLAND: Object --

2 A. -- don't recall.

3 Q. Looking at the photo that has the number 1706 in
4 the upper right-hand corner where there are two officers, two
5 corrections officers, standing by the officer's post, are
6 these the officers that you overheard saying that Price had
7 been requesting to talk to a police officer for several days
8 and that after some days past, Price said that if he had to
9 kill someone to get police attention, he would do so?

10 A. I don't recall.

11 Q. Do you recall whether they were male or female
12 officers who made the statement?

13 A. Male.

14 Q. Could you please describe them to the best of your
15 recollection.

16 A. I don't have any visual recollection of them
17 because I was taking photos. All I -- all I -- I only heard
18 it.

19 Q. Do you recall where in the -- where you would've
20 been at the time that you overheard it; that is, would you
21 have been in the breezeway, for example, or would you have
22 been in the dayroom?

23 A. To the best of my knowledge, I was in the dayroom.

24 Q. Standing right about where you were when you took
25 the photograph that has No. 1706 in the upper right-hand

1 corner?

2 MR. SUTHERLAND: Object to the form.

3 A. I don't recall.

4 Q. Do you know who Lieutenant Asin is?

5 A. I do.

6 Q. Did Lieutenant Asin make that statement?

7 A. I don't recall.

8 Q. Do you know who Tom Talbot is?

9 A. No.

10 Q. Do you know who Officer Seeley is?

11 A. No.

12 Q. Was anybody else in a position to overhear the
13 officers make the statement that you've just testified about
14 and that you recorded in your incident report?

15 A. I don't know.

16 Q. Do you have any other information for me about the
17 context of the statement? For example, what the officers'
18 demeanor was when they made the statement?

19 MR. SUTHERLAND: I'll object to the form. Go
20 ahead.

21 A. I don't have any additional information. I just
22 overheard it.

23 Q. Were the -- was the officer or officers who made
24 the statement, were they making it to you?

25 A. I don't believe so, no.

1 Q. Okay. Do you think that they were making it to
2 each other; that is, one officer was saying it to another?

3 A. I believe so, yes.

4 Q. All right. Did you ask -- as indicated in your
5 incident report, did you ask the corrections officers to
6 document these statements in their witness statements?

7 A. As documented in my report, yes.

8 Q. Did you regard what you overheard the officers
9 saying as being significant to the question of whether the
10 assault by Price was planned or premeditated?

11 MR. SUTHERLAND: Object to the form.

12 A. What do you mean by "regard"?

13 Q. Did you think in your mind that what you overheard
14 the officers saying was significant?

15 A. At that time?

16 Q. Yes.

17 A. No.

18 Q. But you thought that it should be documented by the
19 officers, correct?

20 A. Yes.

21 Q. Why did you think that they should document it?

22 A. To have an accurate account of what happened.

23 Q. From what you overheard, did you understand the
24 officers to be saying that they had heard Price express that
25 he wanted to talk to law enforcement and that if he had to

1 kill someone to get police attention, he would, before the
2 assault occurred?

3 MR. SUTHERLAND: Object to the form.

4 A. What was the question?

5 Q. Were the officers saying, to your understanding,
6 that they heard Price make this expression before the assault
7 occurred?

8 A. That's my understanding.

9 Q. Did you tell anybody what you heard the officers
10 say?

11 A. I don't recall.

12 Q. Did you make any notes of what you heard the
13 officers say?

14 A. Like written down?

15 Q. Yes.

16 A. In my report.

17 Q. Other than your report. Any handwritten notes or
18 anything of that nature?

19 A. I don't recall.

20 Q. When did you prepare your report that's marked as
21 Exhibit No. 1?

22 A. This report was prepared on June 6th -- June --
23 June 14th, 2015.

24 Q. Okay. All right.
25

(Exhibit No. 3 marked for
identification.)

MR. SUTHERLAND: 4?

MR. BUDGE: 3.

Q. And now we've handed you what's been marked as Exhibit No. 3, which is an affidavit for a search warrant executed by Paul Henderson, an officer of the Monroe Police Department. Do you know Paul Henderson?

A. I do.

Q. Drawing your attention to the following. On the third page, with 79 in the upper right-hand corner, approximately halfway down I'd like to read the following and ask you about it, quote, while Officer Hand was at the scene, he overheard uniformed DOC employees speaking to each other and saying that Price had allegedly been demanding to speak with police for the past few weeks, even if it meant he had to kill someone to make it happen. The employees were directly next to Officer Hand and he was clearly able to understand their conversation.

Is that statement by Paul Henderson, as indicated in his sworn affidavit, accurate?

A. You're asking me if a statement that another officer put in his report is accurate?

Q. No. This is an affidavit. It's a sworn affidavit by Paul Henderson in order to get a search warrant. It was

1 presented to judge.

2 A. Okay.

3 Q. All right?

4 A. (Witness nods head affirmatively.)

5 Q. So I'm asking you whether, when he swears as
6 follows, it is true and correct, quote, while Officer Hand
7 was at the scene, he overheard uniformed DOC employees
8 speaking to each other and saying that Price had allegedly
9 been demanding to speak with police for the past few weeks,
10 even if it meant he had to kill someone to make it happen.
11 The employees were directly next to Officer Hand and he was
12 clearly able to understand their conversation.

13 Is that sworn statement by Officer Henderson
14 correct?

15 A. Yes.

16 Q. Did you provide this information to
17 Officer Henderson so that he could use it as part of his
18 affidavit for a search warrant?

19 A. I believe so, yes.

20 Q. Did you ever gain any additional information from
21 any source that Benjamin Price indicated any intent to kill
22 or assault somebody before the assault took place? Other
23 than what we've gone through today.

24 A. Can you repeat the question, please.

25 Q. Sure. Did you ever gain any additional information

1 from any source that Benjamin Price had indicated an intent
2 to kill or assault somebody before the assault in question
3 actually took place?

4 A. No.

5 Q. Who was the -- excuse me. Did you have any
6 further involvement into the investigation of this assault
7 after May 9th, 2015?

8 A. No.

9 Q. Okay. And have you spoken with anybody at the
10 attorney general's office about this case that you're being
11 deposed in today?

12 A. No.

13 Q. Have you ever spoken with anybody else, other than
14 Officer Henderson, about the information that you received
15 when you were at the Special Offenders Unit taking
16 photographs?

17 A. I'm sure I spoke to my sergeant and Detective Hatch
18 who were also involved in the investigation.

19 Q. And would you have told them the same information
20 that you told Detective Henderson?

21 A. Yes.

22 Q. Excuse me, Officer Henderson.

23 A. Yes.

24 MR. BUDGE: All right. Okay. That's all I
25 have. Thank you very much.

E X A M I N A T I O N

BY MR. SUTHERLAND:

Q. My name's Earl Sutherland. I'm an assistant attorney general for the state.

Officer Henderson, his declaration -- your Exhibit 3 -- is dated May 13, 2015. Do you see that? It's --

A. Yes.

Q. Yeah. And the incident occurred on May 9th; is that correct?

A. Correct.

Q. When did you convey this information to Henderson?

A. To the best of my knowledge, I spoke to him that evening after I had cleared the scene at the prison.

Q. On May 9th?

A. Yes.

Q. Was he at the scene?

A. I don't recall.

Q. Okay. He wasn't there with you?

A. No.

Q. Okay. Your Exhibit 1, the incident report, it's signed -- it's dated and signed by you on the 14th of June, correct?

A. Correct.

Q. Describe for me how this came to be. How does it

1 get typed up?

2 A. It gets typed up in what this program is called, is
3 it's called Justice. And after the report's finalized, it
4 gets printed out and then the officers sign them.

5 Q. Uh-huh. Do you type it?

6 A. Yes.

7 Q. Okay. So you typed it at or about the 14th of
8 June.

9 A. This copy was printed the 14th of June and I signed
10 it.

11 Q. Okay. Would --

12 A. I typed my report that night. Now, I may have had,
13 like, a grammatical error or something to where I changed the
14 error to make it reflect.

15 Q. So "that night," you mean you typed it on May 9th
16 or the night of June 14th? I'm sorry, I didn't -- well, I
17 guess it wouldn't have been that night of June 14th.

18 A. Right. May 9th.

19 Q. So on May 9th, the night of the incident, you
20 would've typed up --

21 A. Yes.

22 Q. -- the narrative?

23 A. Yes.

24 Q. Okay. It just sits in the computer until you --

25 A. Right.

1 Q. -- command it to be printed?

2 A. Correct.

3 Q. Yeah. Okay. What -- how loud was the information
4 being discussed by the two -- the -- what -- first of all,
5 how many corrections officers were discussing this issue with
6 Price?

7 A. I don't recall the number. I believe it was two or
8 three.

9 Q. Okay.

10 A. Like I said, I was taking photographs at the time
11 so I wasn't really paying attention to them, but I -- it was
12 loud enough for me to overhear.

13 Q. Okay.

14 A. But it was -- it wasn't in such a manner that it
15 was clear that they were -- you know, they weren't yelling
16 it.

17 Q. On the other hand, I mean, are you able to say
18 whether they were whispering it? I mean, were they trying
19 to suppress the information, exchanging it just among
20 themselves, or was it -- were you somewhere that it was easy
21 to hear? Does that make sense, the question?

22 A. Yeah. From what I recall, they were -- they were
23 talking amongst themselves.

24 Q. Okay. And where?

25 A. Behind the -- the officer's post.

1 Q. Okay. And so when you heard that, and -- and it's
2 related in your incident report, "I asked the correction
3 officers to document these statements in their witness
4 statements," you went to the -- the desk and asked those
5 officers to do that?

6 A. Yes.

7 Q. Okay. You just don't know who those officers were?

8 A. Correct.

9 Q. And you can't say whether it was those officers who
10 were pictured?

11 A. Correct.

12 Q. And you can't say whether it was two or three or --

13 A. Correct.

14 Q. Correct. But it wasn't just one.

15 A. Correct.

16 Q. Because he wasn't talking to you.

17 A. Right.

18 Q. Okay. Did you ask them any questions about the
19 statements they made about Price?

20 A. I don't recall.

21 Q. You were asked about a typo, and I'm going to ask
22 you about one. The second-to-the-last line of that paragraph
23 on the second page of your incident report, "some days past,"
24 p-a-s-t. Do you mean like possibly p-a-s-s-e-d, as after
25 some days went by?

1 A. Correct.

2 Q. Okay. So that is the sense of that statement,
3 that, after some days went by, Price then said if he had to
4 kill someone to get police attention, he would.

5 A. Correct.

6 MR. SUTHERLAND: Okay. I don't have anything
7 more.

8 MR. BUDGE: That's all I have.

9 MR. KENNY: We're done.

10 (Signature reserved.)

11 (Deposition concluded at 2:59 p.m.)
12
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25

STATE OF WASHINGTON)
) ss
COUNTY OF PIERCE)

JAMES HAND

Date:

STATE OF WASHINGTON)
) ss
COUNTY OF PIERCE)

That the deposition, as transcribed, is a full, true and correct transcript of the testimony, including questions and answers and all objections, motions and examinations and said transcript was prepared pursuant to the Washington Administrative Code 308-14-135 preparation guidelines.

Amit Cool

April L. Cook, Certified Court
Reporter 3245 for the State of Washington
residing at Tacoma, Washington.
My CCR certification expires on 10/11/16.

SRS | PREMIER REALTIME
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July 5, 2016

To: DANIEL KENNY
OGDEN MURPHY WALLACE, PLLC

Case Name: POWELL v. BARNES, et al
Deposition of: JAMES HAND
Date Taken: Tuesday, June 28, 2016
Court Reporter: April Cook, CCR

This letter is to advise you of the following:

Signature was reserved. The Affidavit and correction sheet are being forwarded to you in electronic form. Please have the deponent review the transcript, note any corrections on the corrections page, and return the signed affidavit and correction page to us with 30 days of this notice. According to Court Rule 30(e), the deposition affidavit should be signed within thirty (30) days or signature is considered waived.

Signature was reserved. The transcript is ready for review and signature. Your office did not order a copy of the deposition transcript. Please contact our office to make an appointment for review. Signature must be completed within 30 days of this notice.

(Sent without signature to avoid delay)

April Cook, CCR

cc: ED BUDGE

C O R R E C T I O N S H E E T

PAGE	LINE	CORRECTION AND REASON
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[illegible]

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27 5:17	admission 7:24	Benjamin 8:8 19:21 20:1
28 4:1	advise 7:2	breezeway 14:21
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