

1 IN THE FIRST JUDICIAL DISTRICT COURT
2 IN AND FOR THE PARISH OF CADDO
3 STATE OF LOUISIANA

4
5
6 NATHANIEL R. CODE, JR.

7 VS.

NO. 138,860-A

8 BURL CAIN
9
10

11 APPEARANCES:

12 FOR THE STATE:

13 MR. HOWARD M. FISH
14 MS. CATHERINE M. ESTOPINAL
Assistant District Attorneys

15 FOR THE PETITIONER:

16 MR. GARY CLEMENTS
17 MS. CAROL KOLINCHAK
Attorneys at Law
18 Capital Post-Conviction Project of Louisiana
19

20 PROCEEDINGS HAD in the above
21 entitled matter before Her Honor,
22 RAMONA L. EMANUEL, Judge
23 of the First Judicial District Court,
24 in and for the Parish of Caddo,
25 State of Louisiana,
26 held October 6th, 2004.
27

28 SPECIAL HEARING

29 TESTIMONY OF MARY LABATUT
30

31 Reported by:

32 Joyce A. Wheeler, BA, RPR, CCR
Official Court Reporter

1 this case.

2 MS. KOLINCHAK: Yes, your Honor.

3 MR. CLEMENTS: Yes. Thank you, your
4 Honor.

5 MS. KOLINCHAK: Thank you, your Honor.

6 THE COURT: And you may proceed with that
7 witness.

8 MR. CLEMENTS: We'll call Mary Labatut.
9 She was in the jury waiting room.

10 THE COURT: Okay. I think the bailiff
11 went to get her.

12 MR. CLEMENTS: Went to get her. Thank
13 you.

14 MS. ESTOPINAL: Your Honor, while we're
15 waiting, just to make the record clear, I'm sorry if I
16 didn't say that the defendant is present. He, in fact,
17 is present, your Honor.

18 THE COURT: So noted. I think we
19 indicated by all parties. Counsel is present as well as
20 the defendant. Ma'am, if you will come forward to be
21 sworn.

22 MARY LABATUT,
23 the witness hereinbefore named, having been first duly
24 sworn to testify the truth, the whole truth, and nothing
25 but the truth, was examined and testified under oath as
26 follows:

27 THE COURT: We need the spelling of the
28 witness's name.

29 MR. CLEMENTS: Thank you, your Honor.

30 THE COURT: For the record.

31 DIRECT EXAMINATION

32 BY MR. CLEMENTS:

1 Q. Good morning. Would you please state your
2 full name and spell your last name for the record,
3 please.

4 A. Mary Labatut. L-A-B-A-T-U-T.

5 Q. Thank you. Ms. Labatut, where are you
6 employed?

7 A. Louisiana State Penitentiary Pharmacy.

8 Q. All right. And what is your occupation
9 there?

10 A. I'm a pharmacist.

11 Q. All right. And when did you receive your
12 degree in pharmacy?

13 A. 1984.

14 Q. All right. Do you have any other medical
15 training besides that?

16 A. Not -- well, we do at Angola. CPR and first
17 aid. That would be it.

18 Q. Thank you. And how long, again, have you
19 been employed at Louisiana State Penitentiary?

20 A. Ten years.

21 Q. Thank you. What was your first staff
22 position there?

23 A. Staff pharmacist.

24 Q. Okay. And then has that changed now?

25 A. Pharmacy Supervisor One.

26 Q. Thank you. What are some of your duties as a
27 pharmacist?

28 A. Let's see. Receive prescriptions, put the
29 prescriptions in, fill prescriptions, fill all the
30 orders, because Angola is like a hospital. We have
31 several different units in the hospital. Follow all the
32 pharmacy laws and, of course, follow all the ACA laws,

1 which is the prison association.

2 Q. Okay.

3 A. I mean, I could go on for days.

4 Q. Okay. I would like to very briefly turn to
5 the subject of executions by lethal injection. Have you
6 ever provided any kind of a support function for the
7 prison on the day of an execution?

8 A. Not that I recall. If I would do anything,
9 it would just be to bring the medication to Don, the
10 pharmacy supervisor.

11 Q. I understand. And by those medications, you
12 would mean those that were used in the lethal injection
13 process?

14 A. That's correct. And it is part of my job to
15 check the expiration dates on all the medication. I do
16 check the expiration dates on those.

17 Q. Thank you. Did you receive any documents
18 from myself to Ms. Rabalais and others in the pharmacy
19 about today's testimony, about your appearance?

20 A. Ms. Dora sent me a fax.

21 Q. Okay.

22 A. An e-mail, actually.

23 Q. Okay. Are you familiar with an organization
24 called the Louisiana Board of Pharmacy?

25 A. Yes, sir.

26 Q. Okay. And are you familiar with whether the
27 Board of Pharmacy conducts annual inspections of
28 pharmacies within the state of Louisiana?

29 A. Yes, sir.

30 Q. And have you ever seen reports prepared by an
31 inspector, such an annual report?

32 A. Yes, sir.

1 Q. Okay.

2 MR. CLEMENTS: Your Honor, may I approach
3 the witness, please?

4 THE COURT: You may, Counsel.

5 MR. CLEMENTS: Thank you. May the record
6 reflect that I am showing the witness and providing a
7 courtesy -- you already have a copy -- copies of
8 Petitioner's Exhibit 163, which was already entered into
9 evidence in a previous hearing.

10 Q. (By Mr. Clements) And ask if you would
11 please just take a moment and look through those.

12 A. (Witness complies.)

13 Q. I'm sorry. Ms. Labatut, you had previously
14 -- could you describe generally what those -- are
15 contained in that document?

16 A. What do you mean? I am sorry.

17 Q. What is it? If you would just --

18 A. It's a form that every pharmacy is inspected
19 with. The inspector goes through and inspects all these
20 areas.

21 Q. So those are some of those annual inspection
22 reports we were just referring to?

23 A. Yes.

24 Q. Thank you. Could you turn to the second page
25 of that set of documents, of Exhibit 163? That would
26 appear to be the first actual inspector's report, past
27 the cover sheet in that document. And what is the date
28 on the upper right-hand corner?

29 A. 9/17/96.

30 Q. Okay. Is this the page that was faxed to you
31 earlier for today?

32 A. Yes, sir.

1 Q. Okay. Is this a clearer copy than what you
2 had to work with?

3 A. Yes, sir.

4 Q. All right. Looking down about five or six
5 lines on that page, can you tell us what is reported on
6 there to be the date of the last inspection, No. 16?

7 A. It says 6/8/95.

8 Q. Thanks. To the right of that date is a
9 category entitled, quote, Prior Deficiencies/Conditions,
10 and there is a number that appears, 66. If you refer
11 below to a numbered list towards the bottom of that same
12 page, can you tell what No. 66 refers to?

13 A. Monthly inspection of drug storage areas.

14 Q. Okay. And that is listed as checked off as a
15 compliant subject on this 1996 form?

16 A. Yes, sir. That's what it says.

17 Q. Okay. Do you know if the checked boxes on
18 this form are the same every year, if the numbers of
19 categories of things are the same; or do they appear
20 from your looking at some of these other reports that
21 those categories change?

22 A. I don't know if they do change or not.

23 Q. Okay. Could you turn to the next page, then,
24 and look at the bottom in the compliance section?

25 And --

26 A. It looks like it is changed.

27 Q. Okay. So does the inspection report for June
28 8th, 1995, the prior year's inspection, does that report
29 appear in any of these documents here?

30 A. No, sir.

31 Q. Okay. If you would proceed to the third page
32 where it does -- it has a date in the upper right-hand

1 corner of 10/21/97. If you would go to Box 21, which is
2 about the middle of the page, entitled Deficiencies on
3 Prior Inspection Dates. Can you tell the Court what
4 numbers appear there?

5 A. 64 and 58.

6 Q. All right. Is there a prior inspection date
7 listed to the left of Box 21 on that report? Excuse me.
8 Up on No. 8.

9 A. 9/17/96.

10 Q. Okay.

11 A. That's on No. 20.

12 Q. Right. Let's turn back to the second page
13 again, the 9/17/96 report. And at the bottom of that,
14 there are a number of checked-off boxes; is that not
15 correct?

16 A. That's correct.

17 Q. Okay. And is this list entitled Compliance,
18 are there any that are checked off in the No column?

19 A. There is two, 58 and 64.

20 Q. Okay. And looking at the handwritten
21 inspector's comments appearing after the handwritten
22 No. 58, can you describe what the phrase "repacked drugs
23 (bingo cards) require six-month expiration date" -- can
24 you explain what noncompliance is being addressed there?

25 A. Yes. I actually brought visual aids.

26 Q. Oh, great.

27 A. What had happened was, we just started
28 repacking medications in these bingo cards like this.
29 (Demonstrating.)

30 Q. All right.

31 A. And if you notice on the back, it says
32 expiration date. What we were doing was putting the

1 expiration date of the actual stock bottle, this date
2 that the actual medication expired.

3 Q. Uh-huh.

4 A. So we weren't putting expired medication or
5 anything in there. The Board of Pharmacy wanted us to
6 put a six-month date for the date we packaged it,
7 repackaged it. The only drugs that we repackage at
8 Angola are our fast-moving drugs.

9 Q. I see.

10 A. We average like 709 scripts a day, which is
11 quite a bit. And they stay up on the shelf probably a
12 maximum of one month.

13 Q. All right.

14 A. And as soon as he told us that we were doing
15 this incorrectly, that date we fixed it. And the law
16 has changed since then. It's -- now, it is a year.

17 Q. All right.

18 A. So that's what we had done.

19 MR. CLEMENTS: If I could just with
20 opposing counsel's permission and the Court, just
21 describe that the witness has been holding up a
22 cardboard object with --

23 THE WITNESS: This is a bingo card.
24 That's what he was referring to.

25 MR. CLEMENTS: And that that card is
26 roughly 8 x 10 inches in size, and it has places where
27 pills, I guess, or medication can be placed inside.

28 THE WITNESS: Yes. Our medication.

29 MR. CLEMENTS: And you are describing
30 areas on that card itself where dates can be written in,
31 expiration dates. And that other object that you were
32 holding was actually a sample of a prescription bottle

1 with an expiration date on it, just for, you know,
2 purposes of an example.

3 THE WITNESS: Right. That's correct.

4 MR. CLEMENTS: Okay.

5 THE COURT: So noted.

6 MR. CLEMENTS: Thank you.

7 Q. (By Mr. Clements) Looking now at Boxes 52
8 through 55 on that 1996 form, generally, what do those
9 areas involve?

10 A. I.V.s.

11 Q. All right. And by I.V., you mean an
12 intravenous drug?

13 A. That's correct.

14 Q. And how are those boxes marked, 52 to 55?

15 A. Not applicable.

16 Q. And what does that phrase "not applicable"
17 mean in this situation?

18 A. Our pharmacy does not do I.V.s, so we don't
19 have to meet any of these standards.

20 Q. Okay.

21 A. We don't have an I.V. hood or anything like
22 that.

23 Q. Could you repeat the last part?

24 A. We don't have the hood to make the I.V.s.

25 Q. Okay. Are you familiar with -- but if you
26 say the pharmacy doesn't do this, does somebody else in
27 the facility ever mix medications for injections?

28 MS. ESTOPINAL: Your Honor, I would ask
29 that he first investigate the witness's basis of
30 knowledge so that we don't get into hearsay.

31 MR. CLEMENTS: Thank you, your Honor. I
32 will rephrase the question.

1 THE COURT: You may.

2 Q. (By Mr. Clements) Are you -- Ms. Labatut,
3 are you familiar with whether any other personnel at the
4 prison are familiar in the process of preparing drugs
5 for injectable purposes?

6 A. I would say the way you are asking -- can you
7 ask me the question again to be sure I answer it
8 correctly?

9 Q. Okay. All right. Based on your own personal
10 knowledge, do you know if there are any employees at the
11 prison who ever have occasion to mix drugs in a form to
12 prepare for an injection?

13 A. On my personal knowledge, I have never seen
14 anyone do it. But I would think that it would be the
15 doctors and the RNs.

16 Q. People at the R.E. Barrow Treatment Center,
17 employees that are doctors or nurses is who you are
18 referring to there?

19 A. As far as I know. I have never seen anyone
20 do it.

21 Q. But you don't. Okay. Thank you.

22 A. I am sure they do.

23 Q. Thank you. Focusing on Item No. 63, there is
24 a description "CDS Usage Report." Can you describe what
25 a CDS Usage Report is?

26 A. No.

27 Q. Okay. Do you have any knowledge of what that
28 would be?

29 A. No.

30 Q. Okay. Are you familiar with whether the
31 phrase -- are you familiar with what the initials CDS
32 might refer to?

1 A. No.

2 Q. Okay. Have you ever in the -- your work
3 personally in the pharmacy used an abbreviation for
4 controlled dangerous substance that would be like CDS?

5 A. No. We call them, like, narcotics.

6 Q. I understand. So my understanding -- if you
7 are not familiar with what a CDS usage report is, then
8 you would not be able to testify one way or the other as
9 to what the issue of compliance was on that?

10 A. I don't think you would want me to, no.

11 Q. I understand. Could you look at Item No. 64,
12 noted as Sample Use? What does the phrase "Sample Use"
13 refer to in that? Would you know?

14 A. Sample use is like in a doctor's office. You
15 know, sometimes when you go to get a prescription, he
16 will go to his sample cabinet and get you some samples
17 so you don't have to buy the medication. Sample use.

18 Q. Okay. Are you familiar with the phrase
19 "perpetual inventory"?

20 A. Yes. You said perpetual inventory?

21 Q. I'm sorry?

22 A. That's what it is, a perpetual inventory.

23 Q. Okay. And it is a perpetual inventory of the
24 medications that you have used in -- or all drugs in the
25 pharmacy?

26 A. We keep an inventory of all drugs in the
27 pharmacy.

28 Q. And would this inventory permit you or anyone
29 to be able to determine for a particular type of
30 chemical or medication, you know, how much you had on
31 what date and how much was used on that date or
32 dispensed or discarded?

1 MS. ESTOPINAL: Your Honor, I would like
2 to interpose a relevancy objection here. Unless they
3 have got pancuronium bromide samples that they or
4 dispensing or something else that relates to the actual
5 drugs used in the execution, I don't see the relevance
6 of this line of questioning.

7 THE COURT: Your response, if any,
8 Mr. Clements.

9 MR. CLEMENTS: Yes, your Honor. My
10 response is that the Class III Controlled Dangerous
11 Substance sodium pentathol is a drug, one of the ones
12 that I am referring to, the second being pancuronium
13 bromide, and the third being potassium chloride, those
14 three drugs used in the lethal injection process. My
15 questions are whether the overall process for
16 maintaining inventories of drugs is something that would
17 encompass the inventorying of these particular drugs.
18 And if so --

19 THE COURT: Okay. And you are heading in
20 that direction?

21 MR. CLEMENTS: Yes.

22 THE COURT: Okay. The Court overrules
23 the objection and will give the Petitioner latitude to
24 do that.

25 MR. CLEMENTS: Thank you, your Honor.

26 Q. (By Mr. Clements) Ms. Labatut, a minute ago
27 I mentioned three different chemicals, sodium pentathol,
28 pancuronium bromide, and potassium chloride. Are those
29 three chemicals that you are familiar with at all being
30 present in the pharmacy at Angola?

31 A. Yes.

32 Q. Thank you. Does the perpetual inventory we

1 mentioned a moment ago -- would it apply to those three
2 drugs?

3 A. Yes. There is an inventory every month where
4 they check expiration dates and quantity that's sent to
5 the business office.

6 Q. If I were to request what a particular
7 month's usage was of a drug, one of those three
8 particular drugs, and I made such a request to the
9 pharmacy, that I would get a printout to show the use or
10 discarding or whatever of drugs in a particular month
11 for a particular year? How far back do you keep these
12 perpetual inventory records?

13 A. I don't remember when we started doing them
14 on the computer. They could probably pull the inventory
15 sheets out of the business office. But we don't use
16 those three drugs to where -- no one gets a prescription
17 for those three drugs. That would be considered a stock
18 drug, like for the ward, one, or the emergency room.

19 Q. I understand. So it is not a commonly
20 used -- those three drugs are not something that is --

21 A. Not in our pharmacy, no, sir.

22 Q. That the pharmacy wouldn't have very frequent
23 use of?

24 A. No.

25 Q. And -- but as such, though, they would still
26 show up on that monthly business report that you
27 discussed?

28 A. Yes.

29 Q. If someone were to ask -- if I were to ask
30 for a specific request like that and say I want to see
31 what happened on that month back in 1995, for example,
32 on June or something like that?

1 A. You would have to check with our secretary.

2 Q. And that would be?

3 A. Kim Dickson.

4 Q. Kim Dickson?

5 A. Uh-huh.

6 Q. Okay.

7 MR. CLEMENTS: Just for the record, we
8 have requested every type of document before. But we
9 have not, to my knowledge, received anything of the
10 nature that's being described by this witness at this
11 time as far as inventorying of those three specific
12 drugs. And those requests have been in existence for
13 almost two years now. That concludes my direct
14 examination.

15 THE COURT: The State may proceed when
16 ready.

17 MR. FISH: The State has no questions,
18 your Honor.

19 THE COURT: The witness may step down.

20 MS. ESTOPINAL: Your Honor, ask that the
21 witness is free to be released and to return to her
22 business.

23 THE WITNESS: Thank y' all.

24 THE COURT: Mr. Clements?

25 MR. CLEMENTS: No problem.

26 THE COURT: So ordered. Thank you. The
27 witness is free to go.

28 (END OF TESTIMONY OF MARY LABATUT.)

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