

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION
CASE NO. 24-cr-80103-AMC-1

UNITED STATES OF AMERICA, Fort Pierce, Florida
Plaintiff, February 24, 2025
vs. 9:39 a.m. - 5:34 p.m.
DUSTIN SEAN MCCABE, VOLUME 1
Defendant. Pages 1 to 374

TRANSCRIPT OF JURY TRIAL - DAY 1
BEFORE THE HONORABLE AILEEN M. CANNON
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE GOVERNMENT:

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Official Court Reporter to the
Honorable Aileen M. Cannon
United States District Court
Fort Pierce, Florida

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NONE

1 (Call to the Order of the Court.)

2 THE COURT: Good morning, everybody. You may be
3 seated.

4 Testing.

5 okay. All right. Let's get appearances and call the
6 case, please.

7 COURTROOM DEPUTY: Calling United States v. Dustin Sean
8 McCabe, Case Number 24-cr-80103.

9 Counsel, please make your appearance.

10 MR. KELLER: Good morning, Your Honor. Zachary Keller,
11 Jacob Koffsky, Tanner Stiehl on behalf of the United States,
12 joined by Special Agent Caleb King from the Coast Guard
13 Investigative Service.

14 THE COURT: I do want to get all of your names.
15 All right. Do that again, please, Mr. Keller.

16 MR. KELLER: Yes, Your Honor.

17 So it's Zachary Keller. Tanner Stiehl is to my right;
18 Jacob Koffsky is to his right. And those are the three AUSAs
19 on this case. And then Caleb King is a special agent for the
20 Coast Guard Investigative Service, or CGIS.

21 THE COURT: All right. Good morning to all of you.
22 Let's now hear from Mr. O'Sullivan and Ms. Francis.

23 MR. O'SULLIVAN: Good morning, Your Honor. Terrence
24 O'Sullivan on behalf of the defendant, along with co-counsel
25 Calisha Francis to my left, and then the defendant, who is

1 standing up, Dustin Sean McCabe.

2 THE COURT: All right.

3 MS. FRANCIS: Good morning, Your Honor.

4 THE COURT: Good morning to all of you.

5 Okay. All right. We are here to begin trial which is
6 estimated to last nine days, specifically through March 6th, at
7 the latest. I updated the parties with a few scheduling
8 adjustments, so please be mindful of those and incorporate them
9 into your scheduling.

10 I also reviewed the items submitted since our last
11 hearing, which include the stipulation on pre-admitted
12 exhibits, along with some additional items including the status
13 of Mr. McCabe as an owner and captain of the vessel, and then
14 there is an additional stipulation, I understand, related to
15 the interstate nature of the PPP applications.

16 Is all of that still the case, Mr. Keller?

17 MR. KELLER: Yes, Judge. And, just to be clear,
18 those -- the interstate quality of the PPP, along with the
19 owner and operator in the trial stipulation we filed, as far as
20 the exhibits, I will just move them in at the very beginning of
21 trial. That's not memorialized in the trial stipulation. I
22 just wanted to make that clear.

23 THE COURT: Okay. All right then. Any updates with
24 respect to exhibits or evidentiary issues that I should be
25 aware of as we begin this proceeding, Mr. O'Sullivan?

1 MR. O'SULLIVAN: None from the defense, Your Honor.

2 THE COURT: okay. Mr. Keller?

3 MR. KELLER: Just the one that we wrote about in the
4 pre-admitted exhibits. When we conferred, we reached an
5 accomodation as to some photos that were in the exhibit list.
6 However, with respect to the autopsy photos specifically, the
7 defense maintains their objection and the government wants to
8 use them because our medical examiner specifically asked for
9 these photos to be used in order to explain what he did.

10 THE COURT: okay. But that's not an essential ruling
11 for the opening statements; is that correct?

12 MR. KELLER: Correct, Your Honor, it's not.

13 THE COURT: okay. So at this point is -- at this point
14 is there any dispute with respect to exhibits to be used during
15 opening, Mr. Keller?

16 MR. KELLER: No, Your Honor.

17 THE COURT: Mr. O'Sullivan?

18 MR. O'SULLIVAN: Not for opening, Your Honor. We
19 discussed it and we stipulated to three exhibits that the
20 government is going to use in opening.

21 THE COURT: okay. And those exhibits, Mr. Keller, are
22 which ones?

23 MR. KELLER: well, Judge, just to be clear, in
24 preparing, we decided not to use the exhibits. So I am just
25 not going to use exhibits.

1 THE COURT: okay then. will you be using any exhibits,
2 Mr. O'Sullivan?

3 MR. O'SULLIVAN: No, ma'am.

4 THE COURT: okay then. All right. I think we had
5 settled on 25 minutes per side. So, again, I will give you a
6 five-minute warning. But stay within your allotment.

7 The government's proposed voir dire questions, I think,
8 are acceptable. So you can ask questions from that list, along
9 with any follow-up that may arise.

10 Mr. O'Sullivan, as I instructed you on Tuesday, you and
11 Ms. Francis can ask specific follow up based on answers given,
12 but no introduction of new topics. Understood?

13 MR. O'SULLIVAN: Yes, ma'am. Understood.

14 THE COURT: okay. All right then. we have called 50
15 jurors for today, given the length of the trial.

16 As needed, I will ask for certain jurors to stay behind
17 and do voir dire on an individual basis; so you may prepare for
18 that, but that depends on the answers we get.

19 Now let me ask, are any parties wishing to invoke the
20 rule of sequestration. Mr. Keller?

21 MR. KELLER: Yes, Judge.

22 THE COURT: Then please make sure we keep track of who
23 is in the courtroom when, so we can ensure there is no
24 violation of that rule.

25 okay then. Anything else we should address before we

1 take a brief break to prepare the questionnaires? Mr. Keller?

2 MR. KELLER: Just one brief thing, Judge.

3 I want to flag for Your Honor that Ms. Ghiz-Flynn's
4 father and sister are in the -- in the audience here. I don't
5 know what your -- just given the fact that this is a smaller
6 courtroom than the ones I'm used to, as far as seating goes, I
7 don't know what the situation is with seating 50 people here.
8 But I just wanted to flag that, if they're able to stay. I
9 don't know what your practice is on that.

10 THE COURT: We will be having that first row right
11 behind the defense be our public row while we're doing jury
12 selection. Once jury selection is over, then all rows become
13 fair game for the use of any members of the public.

14 So let me get the correct full name of the victim in
15 this case so that I can pronounce her name properly.

16 MR. KELLER: Mollie, M-O-L-L-I-E, Ghiz, G-H-I-Z is the
17 beginning of the last name, dash or hyphen, Flynn, F-L-Y-N-N.

18 THE COURT: Okay. All right.

19 Okay. All right. As a reminder, we will get to this
20 later, but no back strikes, as I have indicated. We will do
21 for-cause selections first. And I think that's all I have. So
22 stand by for just a few more minutes while we gather the
23 questionnaires and then we will begin promptly after that.

24 Have the parties tested their equipment?

25 MR. KELLER: Yes, Judge. I tested the equipment while

1 we were -- when we got here early.

2 THE COURT: okay. Mr. O'Sullivan, how about you?

3 MR. O'SULLIVAN: I won't be using any equipment.

4 Ms. Francis did test her equipment last week, on February 18th,
5 at the calendar call.

6 THE COURT: okay. All right then. That's all I have.
7 we will let you know when we will begin. Thank you.

8 (A recess was taken from 8:46 a.m. to 9:25 a.m.)

9 (The jury entered the courtroom at 9:25 a.m.)

10 COURTROOM DEPUTY: All rise.

11 (Call to the order of the Court.)

12 THE COURT: Good morning. You may all be seated.

13 Let's call the case.

14 COURTROOM DEPUTY: Calling United States v. Dustin Sean
15 McCabe, Case Number 24-cr-80103.

16 Counsel, please make your appearance.

17 MR. KELLER: Good morning, Your Honor. Zachary Keller,
18 Tanner Stiehl, Jacob Koffsky on behalf of the United States,
19 joined by Special Agent Caleb King for the Coast Guard
20 Investigative Service.

21 THE COURT: Good morning. Thank you.

22 Mr. O'Sullivan.

23 MR. O'SULLIVAN: Good morning, Your Honor.

24 Terrence O'Sullivan, Calisha Francis, and Dustin Sean
25 McCabe for the defense.

1 THE COURT: All right. Good morning.

2 Ladies and gentlemen of the jury, good morning. I want
3 to welcome you to the federal courthouse here in Fort Pierce.
4 My name is Aileen Cannon, and I'm a United States District
5 Judge presiding over this case.

6 Before I begin, I want to extend my sincere gratitude
7 to all of you, on behalf of myself and the entire Southern
8 District of Florida, for your presence here and for your
9 commitment to civil jury service.

10 The right to trial by jury is a cherished right in our
11 constitutional democracy. It is recognized, preserved, and
12 protected by our United States Constitution. And it is one of
13 the most important duties that a citizen is called upon to
14 perform. Our framework permits litigants to choose members of
15 their community to decide the outcome of a case that ends up in
16 court, and your role is indispensable to that system.

17 So although I might appreciate that some of you were
18 not thrilled upon receipt of the juror summons, I want to
19 emphasize to you just how important jury service is and remind
20 you of this solemn obligation.

21 Now, I assume that at least for some of you this
22 process is entirely unfamiliar, and you have never been called
23 for jury service. Perhaps others have been called before and
24 served on juries. Either way, please do not feel apprehensive
25 or uncomfortable or inadequate. I will give you instructions

1 as we go along to help guide you through this process, as will
2 the attorneys.

3 Before we move along, I'm going to start off with some
4 introduction of our court personnel so you know who is who,
5 beginning first with our courtroom deputy for this trial, who
6 is this gentleman to my right, Mr. Jermaine Creary. He is here
7 to assist us in coordinating the day-to-day operations of the
8 court.

9 Directly in front of me to my slight left is Ms. Laura
10 Melton. She is a court reporter. And she will be transcribing
11 and taking down everything that is said in the courtroom,
12 including everything that I'm saying right now. And so it is
13 important that when you're called upon to speak during this
14 voir dire process, that you do so as clearly and as audibly as
15 you can, so that she can take down what you have said and so
16 that we may all hear you properly.

17 We also have, of course, our court security officer,
18 Officer Blanford. His job, as can you see, is to enforce the
19 Court's orders and take charge of the jury. If you need
20 information concerning your personal welfare, please ask
21 Officer Blanford or the courtroom deputy and they will try to
22 help you, but please make sure that you do not ask either of
23 them about the facts concerning the case to be tried.

24 Now, with that, let's please have the venire sworn in.

25 COURTROOM DEPUTY: All jurors please rise and raise

1 your right hand.

2 You and each of you do solemnly swear or affirm that
3 you will well and truthfully answer all questions propounded to
4 you touching upon your qualifications to serve as a juror in
5 this case before the Court. Do you all take this solemn oath?

6 THE VENIRE: Yes.

7 COURTROOM DEPUTY: They have been sworn, Your Honor.

8 THE COURT: All right. Thank you. You may be seated.

9 Now, I'm going to be asking you all several questions
10 touching upon your qualifications to serve as jurors in this
11 matter, and then later on the lawyers will be given some brief
12 time to also ask questions of you.

13 This whole process is called voir dire examination,
14 which is a legal phrase that means essentially to speak the
15 truth. And so the big picture goal here that we're trying to
16 achieve is to choose a jury that is fair and impartial, that
17 will follow the law as given to you by the Court, that will
18 evaluate the issues and the evidence in the case based solely
19 upon what you hear and see in the courtroom without being
20 influenced by any other factors.

21 And so in service of that goal, it is our job to
22 determine whether you would be influenced by some opinion, or
23 by some experience that you have had, or some opinion that you
24 hold, or by some special knowledge that you may have concerning
25 the case to be tried.

1 In many ways this process of jury selection is the most
2 important part of the trial, ladies and gentlemen, because we
3 are about to pick the judges of the facts. I might bear the
4 title of judge, but I will not decide the outcome of this case.
5 My role is to see to it that the rules of the courtroom are
6 followed, but it is the jurors who serve as judges of the
7 facts. So this is a very important role, ladies and gentlemen.
8 I want to stress that to you.

9 This questioning does take some time. So I ask you in
10 advance for your patience. Please also understand that I will
11 be asking some questions that may appear to be intrusive into
12 your personal affairs. That is not my intention, but I do,
13 nevertheless, have to ask various questions, again, for the
14 purpose of determining whether you can be a fair and impartial
15 juror in this case.

16 But if at any point any of my questions make you feel
17 uncomfortable and you would prefer to answer those questions
18 outside the presence of your fellow jurors, then all you have
19 to do is let me know, I will make a note of that, and then we
20 will meet with you individually with the attorneys, but without
21 any of the other jurors. So please feel free to keep that in
22 mind.

23 The only right answer, ladies and gentlemen, is the
24 truth. So I implore you to be candid and complete with
25 any -- with all of your answers. And, ultimately, if at the

1 conclusion of this process you are not chosen to serve on this
2 jury, please don't be offended or feel that your integrity or
3 your honesty has been questioned in any way. It has not.
4 Either side can ask to excuse a juror for no reason, and some
5 persons are better suited for one case rather than another.
6 That is all.

7 And so, with that, why are we here, ladies and
8 gentlemen? We are here because an indictment has been filed
9 informing the defendant in this case, Mr. Dustin Sean McCabe,
10 that he has been accused of certain crimes. But as I will
11 explain to you in more detail in a few moments, an indictment
12 is not evidence. It's simply an accusation. And the defendant
13 has responded to the indictment in this case by saying that he
14 is not guilty of the alleged crimes. So it is the government's
15 burden to prove beyond a reasonable doubt that the defendant is
16 guilty, and that is what you are here to determine.

17 I'm going to go over these concepts in more detail as
18 we go along. But first, I'm going to give you a very brief
19 description of the allegation in this case so you have a frame
20 of reference and some context before we proceed with additional
21 questions.

22 Now, the government's indictment in this case contains
23 five counts or charges against Mr. McCabe. The first of those
24 counts alleges that on March 29th of 2020, while aboard a boat
25 or vessel named the Southern Comfort, and as captain and owner

1 of that vessel, the Southern Comfort, Mr. McCabe caused the
2 life of a person to be destroyed by his alleged misconduct,
3 negligence, and inattention to his duties on said vessel, or by
4 his fraud, neglect, misconduct, or violation of law as the
5 owner or captain of that vessel.

6 The law at issue in Count 1 is -- comes from a statute
7 that we refer to as Title 18, United States Code, Section 1115.
8 And that is a federal statute that criminalizes the misconduct
9 or neglect of ship officers.

10 Now, Count 2 alleges that Mr. McCabe, a few weeks
11 earlier in March of that same year, 2020, made a knowingly
12 false statement to an employee of the United States
13 Coast Guard, saying that he would be using his vessel only for
14 recreational purposes, when in truth and in fact he did not
15 intend to use and did not use the Southern Comfort vessel
16 solely for recreational purposes.

17 Now, Counts 3 through 5 allege that Mr. McCabe
18 committed the federal offense of wire fraud, which is alleged
19 to violate Title 18, United States Code, Section 1343, by
20 submitting false and fraudulent applications for loans made
21 available through the Small Business Administration to provide
22 relief for the economic effects of the COVID-19 pandemic.

23 These submissions, the indictment alleges,
24 misrepresented various aspects of Mr. McCabe's business called
25 Florida Scuba Charters, including its number of employees and

1 the amount of its monthly payroll.

2 So that is a brief summary of the allegations in this
3 case. Again, those are just allegations and they, at this
4 point, have not been proven. So having heard that brief
5 description, let me just ask: Is anybody in this room, having
6 heard those allegations, thinking to themselves, "You know,
7 this is just not the type of case that I think I can be fair
8 on"?

9 I see no hands.

10 Now, I'm going to ask, starting with the United States
11 attorneys, to introduce themselves, then I will ask the defense
12 attorneys to do the same. I'm going to ask also that you
13 please listen carefully to all the names that are being read
14 out loud so that you can tell me later whether you recognize
15 any of the individuals here in the courtroom or whose names
16 will be read out loud.

17 So, with that, Mr. Keller.

18 MR. KELLER: Judge, you want us to read the witness
19 list as well?

20 THE COURT: At this point just -- just your respective
21 teams and then we will get to the prospective witnesses later.

22 MR. KELLER: Yes, Your Honor.

23 Good morning, everybody. My name is Zach Keller. And
24 I'm here on behalf of the United States, joined by
25 Tanner Stiehl, who is a Special Assistant United States

1 Attorney working with the Coast Guard; Jacob Koffsky, who is
2 also an Assistant United States Attorney; and Caleb King who is
3 a special agent with the Coast Guard Investigative Service.

4 THE COURT: Okay. So let me just stop there. You may
5 all be seated.

6 Does anybody here in the courtroom recognize or know
7 any of the people seated at that table who just introduced
8 themselves to you?

9 Okay. I see no hands.

10 Now, Mr. O'Sullivan, please do the same.

11 MR. O'SULLIVAN: Thank you, Your Honor.

12 Good morning again, ladies and gentlemen. My name is
13 Terrence O'Sullivan. This is my co-counsel Calisha Francis.
14 We are criminal defense attorneys, and together we represent
15 Dustin Sean McCabe, who is sitting to my left.

16 THE COURT: Thank you, Mr. O'Sullivan.

17 Same question, ladies and gentlemen. Does anybody here
18 recognize the attorneys in this case or Mr. McCabe?

19 All right. I see no hands.

20 Now, Mr. Keller, if you could do as you indicated and
21 please read out loud the names of any potential witnesses.

22 Ladies and gentlemen, these are people who may be
23 coming into the courtroom to testify in this case. So, again,
24 please listen carefully so that you can determine whether you
25 recognize any of these names.

1 MR. STIEHL: Thank you, Your Honor.

2 Caleb King, United States Coast Guard Investigative
3 Service, special agent. Alan Roth, United States Coast Guard.
4 Lieutenant Commander Andrew Cole, United States Coast Guard.
5 Captain Chris Cederholm, United States Coast Guard.
6 Christopher Mosquera, United States Coast Guard. Sean Goodman,
7 United States Coast Guard. Andrea Walker, United States
8 Coast Guard. David Fowler, Florida Fish and Wildlife
9 Conservation Commission, investigator. Michael Abramczyk,
10 North Palm Beach Police Department, officer. Jason Willems,
11 Florida Fish and Wildlife Commission, investigator.
12 Dr. Terrell Tops, Palm Beach County medical examiner. Paul
13 Alber, Alber Consulting LLC. Althea Harris, Small Business
14 Administration.

15 THE COURT: All right. Let's pause there because there
16 are a number of names.

17 So far, ladies and gentlemen, does anybody here
18 recognize any of the names that were just read out loud?

19 I see no hands. Please continue.

20 MR. STIEHL: Thank you, Your Honor.

21 April Seward, Internal Revenue Service. Spencer Lord,
22 Cross River Bank. Justin Masterman, Celtic Bank. Heather
23 Spurlock, the Maritime Consortium Incorporated. Joshua Steib,
24 Safe Harbor Marinas. Jordan McKenna, Safe Harbor Marinas.
25 Christie Kelly. Shawn Flynn. David Anderson. Kimberly Odom.

1 THE COURT: All right. Let's pause there.

2 Ladies and gentlemen, does anybody here recognize or
3 know any of the names who were read out loud in that second
4 wave?

5 I see no hands. Please continue.

6 MR. STIEHL: Steven Poznak. Sandra Brammier. Carter
7 Honesty. Jennifer Hester. And Carl McManus.

8 THE COURT: All right. Thank you.

9 MR. STIEHL: Thank you, Your Honor.

10 THE COURT: Same question, ladies and gentlemen. Does
11 anybody here recognize or know any of the names who were read
12 out loud?

13 Okay. I see no hands.

14 Now, has anybody here heard about this case in the news
15 media or in any other form of communication?

16 I see no hands.

17 Does anybody here have any relationship or connection
18 of any kind with any of the individuals whose names were read
19 out loud to you or whom you were introduced to this morning so
20 far?

21 I see no hands.

22 Now, let's discuss scheduling for one moment. This
23 case is expected to last approximately nine days, starting
24 today, which, of course, is February 24th. And running
25 continuously, with the exception of weekends, of course,

1 through March 6th, which is next Thursday. Our schedule
2 generally runs from 9:00 in the morning to 5:30 p.m. in the
3 evening, with about an hour or so for lunch each day, plus at
4 least two meaningful breaks, one in the morning and one in the
5 afternoon, although occasionally we have to take additional
6 breaks depending on what's going on.

7 Having heard that anticipated schedule, is there
8 anybody here who has a unique problem with that anticipated
9 schedule? I'm referring to things like nonrefundable airline
10 tickets or scheduled surgeries or medical procedures.

11 Okay. Thank you. I see some hands. Let's keep those
12 up for a moment, please. Oh, I should have mentioned this. We
13 have equipped you all with paddles with your numbers. That
14 helps us keep track of who is speaking when. So I am going to
15 ask that you please use those paddles when you tell us -- or
16 when you raise your hand.

17 So let's start with Juror Number 1, please, Officer.
18 First let me just get your name, ma'am.

19 A PROSPECTIVE JUROR: Margaret Burri.

20 THE COURT: Thank you. What is your scheduling
21 problem, ma'am?

22 A PROSPECTIVE JUROR: I have an elderly cat at home
23 that is in -- very sick, and she needs to get an ultrasound
24 scheduled for this week.

25 THE COURT: Okay. So this is your pet who is in

1 medical distress, I think you said.

2 A PROSPECTIVE JUROR: Yeah.

3 THE COURT: okay. All right. Do you have an
4 appointment scheduled already, ma'am?

5 A PROSPECTIVE JUROR: They're going to text me today
6 when they can line up the ultrasound. The vet just told me
7 this on Friday. And I told him I had to come here.

8 THE COURT: okay.

9 A PROSPECTIVE JUROR: So he said he would text me.

10 THE COURT: All right. Now, is there anybody else in
11 your family who could assist you with the ultrasound?

12 A PROSPECTIVE JUROR: No. My daughter lives in Miami.
13 My son lives on a boat.

14 THE COURT: okay.

15 A PROSPECTIVE JUROR: He is out of the country.

16 THE COURT: okay. All right. Thank you, Ms. Burri. I
17 have taken a note of that.

18 Let's go to the next person who raised their hands on
19 the schedule. That's Juror 14.

20 A PROSPECTIVE JUROR: Thank you.

21 THE COURT: Thank you. Let's start off with your name.

22 A PROSPECTIVE JUROR: Sherry Burke.

23 THE COURT: And you're Juror 14.

24 A PROSPECTIVE JUROR: Juror 14, yes.

25 THE COURT: Thank you. Okay. What is your concern,

1 ma'am?

2 A PROSPECTIVE JUROR: Okay. My concern is my husband
3 fell off a ladder on February the 15th, and broke six ribs and
4 I'm his only caregiver. And he does have some medical
5 appointments that he will need to do in the next nine days.
6 Specifically an MRI which they're working on the scheduling of
7 right now.

8 THE COURT: Okay. And I think you said you were the
9 sole caregiver. Is that correct?

10 A PROSPECTIVE JUROR: That is correct.

11 THE COURT: Okay. All right. Thank you, Ms. Burke.
12 You may be seated.

13 All right. Now, let's head to Juror 27.

14 A PROSPECTIVE JUROR: Hi.

15 THE COURT: Good morning, sir. Please tell your name
16 and your juror number which I already said was 27.

17 A PROSPECTIVE JUROR: Jose Diaz.

18 THE COURT: Okay. What is your issue with the
19 schedule?

20 A PROSPECTIVE JUROR: Me and my wife, we work. So we
21 pick our son, and she picks my daughter. So being here until
22 5:30 and we got nobody else over here, which just me and her.

23 THE COURT: Now, if you were chosen for this jury, sir,
24 could you make arrangements with your wife, just for the
25 duration of this trial, for her to pick up both of your

1 children?

2 A PROSPECTIVE JUROR: They get out at the same time,
3 3:00, so -- and she works in Jensen Beach. By the time she
4 gets to pick up my daughter, there will be no time to pick up
5 my son from the other school.

6 THE COURT: okay. So it's different schools?

7 A PROSPECTIVE JUROR: Yeah, they're different school.

8 THE COURT: okay. All right. Okay. Thank you,
9 Mr. Diaz Vazquez.

10 okay. Let me see your juror paddle. There you go.
11 Thank you. Juror 40, please tell me your name.

12 A PROSPECTIVE JUROR: My name is Tom Fryar.

13 THE COURT: Good morning, Mr. Fryar.

14 A PROSPECTIVE JUROR: Good morning. My issue is I have
15 basically three times a week for the next six weeks for a
16 therapy adjustment for my neck and my back due to an accident
17 December 10th, which may also follow up with another MRI.

18 THE COURT: okay. Are these appointments that you
19 already have scheduled, sir, for your therapy?

20 A PROSPECTIVE JUROR: Yes. It's basically Monday,
21 wednesday, and Friday 5:30. That was the latest one I could
22 get. I had assumed this would be, hopefully, over by 5:00.
23 But, unfortunately, 5:30 is the last one they can have.

24 THE COURT: okay. Where is the clinic?

25 A PROSPECTIVE JUROR: The clinic is in Port St. Lucie,

1 off of Bayshore.

2 THE COURT: So if -- hypothetically, if we were to
3 finish by 5:00 p.m., would that give you enough time to get
4 there?

5 A PROSPECTIVE JUROR: It would be very close.

6 THE COURT: Okay. I have jotted all of that down.
7 Thank you, sir.

8 A PROSPECTIVE JUROR: Thank you.

9 THE COURT: Any other jurors -- I see 44, 49, and 41.
10 Let's -- since we're right there with Juror 49.

11 Let's hear from Mr. Thomas Junior.

12 A PROSPECTIVE JUROR: Julius Thomas. I do home
13 dialysis. And I typically do dialysis four times a week,
14 starting at 3:00.

15 THE COURT: Is this part of your work, sir, or for your
16 own medical care?

17 A PROSPECTIVE JUROR: For my medical care. I'm in
18 kidney failure.

19 THE COURT: Okay. And I didn't quite catch the
20 schedule. Did you say that's -- that's three times per week,
21 sir?

22 A PROSPECTIVE JUROR: Four times a week.

23 THE COURT: Four times per week, and that's at
24 3:00 p.m.

25 A PROSPECTIVE JUROR: Yes.

1 THE COURT: Okay. All right. Thank you, sir. You may
2 be seated.

3 All right. 44.

4 A PROSPECTIVE JUROR: Good morning. Brookelle Perkins.
5 I'm in my third trimester now, so I'm going every two weeks.
6 And occasionally additional ultrasounds do come up, so I don't
7 always have a bunch of notice on that.

8 THE COURT: So sitting here today, as far as anything
9 that's actually been scheduled, do you have any
10 pregnancy-related medical appointments between now and
11 March 6th?

12 A PROSPECTIVE JUROR: No.

13 THE COURT: Okay.

14 Okay. All right. Thank you, Ms. Perkins.

15 A PROSPECTIVE JUROR: Hi. I'm Daphne Robinson,
16 Juror 41.

17 THE COURT: Good morning.

18 A PROSPECTIVE JUROR: Good morning. I'm a school bus
19 driver, and we're already on critical shortage. So the nine
20 days would impact us a lot.

21 THE COURT: And what school district do you work for,
22 ma'am?

23 A PROSPECTIVE JUROR: Indian River County.

24 THE COURT: What is your general schedule?

25 A PROSPECTIVE JUROR: I go to work at 4:50 to 9:20, and

1 then 1:20 to 5:30.

2 THE COURT: Okay. So who is covering for you today,
3 for example?

4 A PROSPECTIVE JUROR: I have no idea. Probably
5 joint -- split the routes up.

6 THE COURT: Okay. If you were summoned to jury
7 service, would there be someone who could stand in your shoes
8 for the duration of this trial?

9 A PROSPECTIVE JUROR: We already on the critical
10 shortage, so they would have to combine routes.

11 THE COURT: Okay. Thank you, Ms. Robinson. You may be
12 seated.

13 All right. Are there any other jurors who have a
14 unique scheduling problem with the timetable I've announced?

15 Okay. I see no hands, or no additional hands.

16 Now, shifting gears a little bit. Does anybody here
17 have any difficulty reading or speaking the English language?

18 Okay. I see no hands.

19 Does anybody here have any physical disabilities or
20 impairments, hearing, sight, or otherwise, that would render
21 you incapable of performing your duty as a juror or which would
22 make it very difficult for you to do so?

23 I see no hands.

24 All right. Now, as I said earlier, we are here today
25 because an indictment has been filed informing the defendant,

1 Mr. McCabe, that he has been accused of certain crimes, and he
2 is called upon to respond to that indictment, which he did in
3 this case by saying that he is not guilty. Those words, ladies
4 and gentlemen, carry a great deal of weight because we are now
5 beginning a jury trial where the government is required to
6 prove beyond a reasonable doubt that the defendant is guilty
7 before he may be found guilty.

8 In other words, the fact that an indictment exists does
9 not mean that what it alleges actually happened. That is what
10 you are here to determine. And that is what the government
11 must prove to you beyond a reasonable doubt. There are several
12 concepts that are fundamental in our criminal justice system,
13 and I'm going to go over three of those with you that lie at
14 the heart of our system.

15 The first is the presumption of innocence; the second
16 is the government's burden of proof, which I have touched upon
17 a little bit so far; and the last is the defendant's right to
18 remain silent.

19 Now, just by a simple show of hands, who in this room
20 has heard of a defendant's presumption of innocence? Don't be
21 shy. Just raise your paddles if you have heard of that
22 concept.

23 Okay. I see a number of folks raising their hands.

24 Now, again, to reiterate, the indictment in this case
25 is merely the accusatory paper which states the charge or the

1 charges to be determined at the trial, but it is not evidence
2 against the defendant or anyone else. Indeed, as I said, the
3 defendant has entered a plea of not guilty and he is presumed
4 by law to be innocent.

5 Every person charged with a crime in this country is
6 presumed innocent. And that right, ladies and gentlemen, is
7 guaranteed by our Constitution. In fact, if I were to send all
8 of you into the jury deliberation room right now and ask you to
9 reach a verdict, the only correct verdict would be not guilty
10 because there has been no evidence presented in this case.

11 Does anybody have any difficulty accepting that
12 proposition as the law? I see no hands.

13 Now, shifting to the government's burden of proof.
14 It's important, ladies and gentlemen, that you all understand
15 that the burden of proving the defendant's guilt rests with his
16 accuser, which in this case is the United States government.
17 And the burden is to prove the charges beyond a reasonable
18 doubt.

19 Has anybody in this courtroom heard the term "proof
20 beyond a reasonable doubt"? If so, raise your paddles. Again,
21 I see a number of folks saying they have heard that before.
22 What I'm going to do now, ladies and gentlemen, to make sure
23 that you understand that legal concept as it will be given to
24 you by me at the conclusion of this case, I'm going to read to
25 you the actual jury instruction on reasonable doubt so that you

1 can listen to it and make sure that you can answer my questions
2 regarding that instruction. So let me read that to you right
3 now.

4 It states as follows: The government's burden of proof
5 is heavy, but it doesn't have to prove a defendant's guilt
6 beyond all possible doubt. The government's proof only has to
7 exclude any reasonable doubt concerning the defendant's guilt.
8 A reasonable doubt is a real doubt based on your reason and
9 common sense after you have carefully and impartially
10 considered all of the evidence in the case. Proof beyond a
11 reasonable doubt is proof so convincing that you would be
12 willing to rely and act on it without hesitation in the most
13 important of your own affairs.

14 Now, hearing that, does anybody here have any
15 difficulty accepting that burden of proof instruction as the
16 law?

17 I see no hands.

18 Now, along the same lines, ladies and gentlemen, the
19 government bears the entire burden of proof in this case. That
20 means that there is nothing left over for the defense. There
21 is nothing for the defendant to prove to you or to disprove to
22 you. Does anybody have any difficulty or hesitation accepting
23 that principle as the law?

24 I see no hands.

25 Now, by a show of hands, how many -- how many of you

1 have heard of a defendant's right to remain silent?

2 Again, a very knowledgeable set of jurors.

3 As I said before, the law does not require the
4 defendant to prove his innocence or to provide any evidence at
5 all. And if a defendant elects not to testify, you cannot
6 consider that in any way, ladies and gentlemen, during your
7 deliberations. Again, it is the government's burden to prove a
8 defendant's guilt beyond a reasonable doubt, and if the
9 government fails to meet that burden, you must find the
10 defendant not guilty.

11 Does anybody have any difficulty accepting what I have
12 just said as the law?

13 No hands.

14 Again, just to go over this one more time, if a
15 defendant chooses not to testify, ladies and gentlemen, you
16 cannot hold that against him. Does anybody have any problem
17 with that instruction?

18 I see no hands.

19 So let me just illustrate this by way of an example.
20 Let's say this case is over, you go back to the jury room, and
21 you don't quite believe the government has proven its case to
22 you beyond a reasonable doubt. At that point you cannot say to
23 yourselves, ladies and gentlemen, "You know, while I don't
24 really believe the government has met its burden of proof, but
25 I'm going to find the defendant guilty anyway because he didn't

1 testify." That maneuver or that decision is improper. You
2 cannot hold a defendant's choice not to present evidence
3 against him. Does anybody have any difficulty accepting that
4 as the law?

5 I see no hands.

6 Now, to reach a verdict, ladies and gentlemen, you may
7 have to decide which testimony to believe and which testimony
8 not to believe. When you are considering a witness's
9 testimony, you can consider various factors, including, for
10 example, the witness's opportunity and ability to see, hear, or
11 know the things the witness is testifying about; the witness's
12 memory is another consideration, of course; the witness's
13 manner while he or she is testifying; any interest the witness
14 might have in the outcome of the case; and any other evidence
15 that contradicts the witness's testimony.

16 You may also, for example, consider the reasonableness
17 of the witness's testimony in light of all of the other
18 evidence that is presented and any other factors affecting
19 believability.

20 I will provide more detailed instructions about
21 weighing witness credibility, but at this point does anybody
22 feel that they would be unable to evaluate the credibility of
23 witnesses as you are hearing the evidence introduced in this
24 case? Okay. I see no hands.

25 Now, through the course of this trial, I may be hearing

1 from government agents and law enforcement officers. Does
2 anybody here think that they will automatically believe what a
3 law enforcement officer has to say just because they work in
4 law enforcement?

5 I see no hands.

6 Now, does anybody here have any particularly negative
7 or positive feelings, good or bad, toward law enforcement that
8 you simply wouldn't be able to put aside if chosen to serve on
9 this jury?

10 And so, what I'm getting at, does anybody here have any
11 experience or any opinion, either good or bad, about law
12 enforcement or government agents in general that you think
13 would be so front and center in your mind that you could not
14 brush it aside and ignore it for purposes of performing your
15 duty as a juror?

16 I see no hands.

17 Now, I earlier gave you a little bit of a description
18 of the allegations in this case. I'm going to go over those
19 with a little bit more detail now.

20 So, with that, the allegations in this case are, as I
21 said, contained within that indictment and they include
22 allegations that Mr. McCabe caused the death of a person on his
23 scuba diving vessel. This person is named Mollie Ghiz-Flynn.
24 And that he caused the death of that person by his negligence
25 to his duties as a captain of the vessel.

1 And so you are expected to hear, ladies and gentlemen,
2 for example, that the defendant failed to report certain
3 malfunctions on the vessel to the Coast Guard; that he failed
4 to repair a propulsion system, despite having been on notice of
5 its malfunctions the day before; and that he failed to warn the
6 passengers on his vessel of the malfunctions so they would know
7 to be precautions of the propulsion system than they otherwise
8 would have been.

9 You will also hear in connection with Counts 3
10 through 5, which I indicated are those allegations of wire
11 fraud, that the defendant, Mr. McCabe, allegedly engaged in
12 loan fraud through the government's Paycheck Protection
13 Program, sometimes referred to as PPP, during the COVID-19
14 pandemic.

15 Again, these are all allegations, and it's important
16 you remember that. But having heard those allegations, is
17 there anybody here thinking to himself or herself that they do
18 not believe they can be fair and impartial to both sides, the
19 government and the defendant?

20 Okay. I see a juror in the front row, Juror Number 5.
21 Let's hear from you, sir. First please tell me your name.

22 A PROSPECTIVE JUROR: Good morning.

23 THE COURT: Good morning, sir.

24 A PROSPECTIVE JUROR: Chris Teeters.

25 THE COURT: So if you could just share with us the

1 hesitation that you might be experiencing.

2 A PROSPECTIVE JUROR: well, I might be a bit jaded on
3 the subject, but not as -- not that I'm assuming that I know
4 that much about the case at this moment. But my sister ran the
5 SBA program for a bank, excuse me, specifically for -- well, I
6 mean, that was her job, but then she was the head of it and
7 involved with the PPP program. So, through her, I have
8 probably heard the intimate details of many fraudulent loans
9 that were given.

10 THE COURT: Okay.

11 Okay. Now, obviously, whatever you may have heard from
12 your sister does not concern this particular defendant, and you
13 would be required to set aside any information that you have
14 obtained outside of this courtroom. Is that something you
15 think you could do, sir?

16 A PROSPECTIVE JUROR: I'm not sure.

17 THE COURT: Okay. Then you may be seated. Thank you,
18 sir.

19 Okay. Does anybody else have a similar reaction to the
20 allegations that I have indicated, thinking they just, perhaps,
21 are not best suited to serve as a juror in this particular type
22 of case?

23 Okay. I see no additional hands.

24 Okay. Now, does anybody here in this courtroom have
25 any specialized expertise or knowledge about boat mechanics or

1 boat machinery?

2 Okay. I see one gentleman in the back, although your
3 paddle was turned the other way, so I couldn't see the number
4 there.

5 Juror 36. Let's hear from Juror 36.

6 A PROSPECTIVE JUROR: Keith Wallace. 11 years in the
7 Navy as a chief petty officer.

8 THE COURT: Wait. One moment, sir. I want to make
9 sure I can hear you. So you said --

10 A PROSPECTIVE JUROR: I was in the Navy for 11 years.
11 I was a machinist mate. Served aboard aircraft carriers. So I
12 have a lot of nautical and boat maintenance scheduling
13 experience.

14 THE COURT: Okay. One moment.

15 Madam reporter, can you help me with the real-time?

16 (Pause in proceedings.)

17 THE COURT: Okay. That's all I have for you,
18 Mr. Wallace.

19 Anyone else in the courtroom have any specialized or
20 unique knowledge or about boat mechanics or boat machinery?

21 Okay. I see no additional hands.

22 All right. All right. Now, ladies and gentlemen, you
23 heard me mention earlier that there are five counts in this
24 indictment -- or five charges that are allegations. I will
25 instruct you later to consider each count separately, based on

1 your review of the evidence relevant to that particular count.
2 So you can't say to yourself, "well, I think the defendant
3 committed one of the crimes, so he must have committed the
4 other crime." Does anybody here believe they would have
5 difficulty following that instruction on this issue?

6 I see no hands.

7 All right. Now, when people apply for things like
8 loans or vehicle registrations, they're often required to
9 provide information in a form and then sign that form under a
10 notice that they can be prosecuted for making a knowingly false
11 statement in the form.

12 Does anybody here believe that making a false statement
13 on these types of loan or registration forms is not a big deal
14 or at least shouldn't be punished criminally?

15 Okay. I see no hands.

16 Now, I earlier read to you the instruction on proof
17 beyond a reasonable doubt. And, as I said, it's proof so
18 convincing that you would be willing to rely and act on it
19 without hesitation in the most important of your own affairs.

20 Does anybody here think that the United States' burden
21 of proof should be higher than beyond a reasonable doubt?

22 Okay. I see no hands.

23 All right. Now, as you will hear, this case concerns
24 events that occurred in the year 2020 and 2021, and that were
25 charged by indictment last year in 2024. Does anybody here

1 believe that the amount of time that passes between the events
2 that happened allegedly and then later being charged for a
3 crime has any bearing on the merits of a case? So we're
4 talking now about the date that certain events took place
5 versus the time they were charged by indictment.

6 Does anybody here think that that amount of time that
7 passes has any bearing on the merits of the case?

8 Okay. I see no hands.

9 All right.

10 All right. Now, I'm going to address the concepts of
11 sympathy and prejudice for a moment. Sometimes we may feel
12 sorry for people in difficult situations, and, unfortunately,
13 sometimes we may also feel prejudice. But neither sympathy nor
14 prejudice can factor into your deliberations in any way. You
15 are the judges of the facts if chosen to serve on this jury,
16 ladies and gentlemen. And if you allow your decisions to be
17 clouded by emotions, you would not be fulfilling your oath as a
18 juror.

19 Is there anybody here who cannot put their personal
20 feelings aside or who could not sit in judgment of others?

21 I see no hands.

22 Now, you will also be asked and instructed to disregard
23 the consequences of any verdict rendered. In other words, do
24 not be concerned with the imposition of any sentence. Because
25 the imposition of sentence is the sole province of the judge,

1 not the jury. Does anybody here have any difficulty accepting
2 that instruction, which will be to ignore any consequences of
3 any verdict rendered?

4 I see no hands.

5 Now, moving on, you as jurors may disagree on what the
6 evidence has shown. One juror might believe everything that a
7 witness says, while another juror might think none of it is
8 true or you might believe part of what a witness says but not
9 another part. That is perfectly acceptable, ladies and
10 gentlemen.

11 After you retire to the jury room, you must all discuss
12 the case together and see if you can reach a unanimous verdict.
13 There is, however, no room for doubt concerning the law. The
14 law is what the judge instructs you it is, and you must be
15 willing to accept the law as it is presented to you.

16 Does anybody have any difficulty accepting the law as
17 given to you by the Court? I see no hands.

18 Now, this is a broad question, but at this point is
19 there anybody here who feels they could not give this case
20 their full and undivided attention?

21 Okay. I see no hands.

22 Is there anybody here -- again, this is another broad
23 question -- who feels they could not be able to render an
24 impartial and fair verdict based solely on the evidence that is
25 presented in the courtroom?

1 I see no hands.

2 Now, what we're going to do is go one by one, and I'm
3 going to try to go as efficiently as I can, so please bear with
4 me. And, again, thank you for your patience. Again, the only
5 right answer, ladies and gentlemen, is the truth. So please be
6 fully candid and complete. And if you choose or feel that you
7 would prefer to answer these questions in private, again, that
8 is available to you. Please just let me know.

9 So, with that, let's begin with Juror Number 1. We
10 spoke briefly earlier -- and this is Ms. Burri.

11 A PROSPECTIVE JUROR: Yes.

12 THE COURT: Good morning.

13 A PROSPECTIVE JUROR: Good morning.

14 THE COURT: What do you do for work, ma'am?

15 A PROSPECTIVE JUROR: I'm a retired restaurateur. I
16 owned a restaurant for 37 years.

17 THE COURT: Have you ever worked in law enforcement?

18 A PROSPECTIVE JUROR: No.

19 THE COURT: Are you married?

20 A PROSPECTIVE JUROR: I was. He passed away.

21 THE COURT: I'm sorry to hear that.

22 Do you have any adult children? And, if so, what do
23 they do for work?

24 A PROSPECTIVE JUROR: My adult daughter, she lives in
25 Miami and she works for my son who has his own company.

1 THE COURT: okay. Have you ever served on a jury
2 before?

3 A PROSPECTIVE JUROR: No. I never -- they never picked
4 me.

5 THE COURT: okay.

6 Okay. So you were summoned but never chosen?

7 A PROSPECTIVE JUROR: (Nods head.) Yes.

8 THE COURT: okay. Have you ever been involved in a
9 criminal proceeding, either as a defendant, a victim or a
10 witness?

11 A PROSPECTIVE JUROR: Not criminal, no.

12 THE COURT: okay. All right. Now, I know you've
13 mentioned the medical situation with your cat. Are there any
14 other items or issues in your life at the moment that you think
15 would impair your ability to serve as a fair or impartial juror
16 in this case?

17 A PROSPECTIVE JUROR: My son lives on a catamaran. So
18 I visit him often on his boat, so -- but other than that, no.

19 THE COURT: when you visit your son on the boat, do you
20 perform any sort of mechanical work or anything?

21 A PROSPECTIVE JUROR: I help him with the anchor, and
22 I'm also the chef.

23 THE COURT: okay. All right. That's all I have for
24 now. Thank you, Ms. Burri.

25 Let's hear from Juror 2. Good morning. Please tell me

1 your name and what you do for work.

2 A PROSPECTIVE JUROR: My name is Jackson Phillips. I
3 am self-employed at this time, although previously in my life I
4 was a fireman paramedic, and now only as a private business
5 owner is what I perform as work now.

6 THE COURT: Okay. So in your current self-employment,
7 what sort of work do you perform?

8 A PROSPECTIVE JUROR: Various amounts with my
9 equipment. I do tree work, hauling debris, storm cleanup,
10 demolition.

11 THE COURT: Okay. Now, other than serving as a
12 paramedic and then doing this -- how would you describe your
13 overall scope of work at the moment?

14 A PROSPECTIVE JUROR: At the moment, I have one driver
15 hauling debris in my grapple truck.

16 THE COURT: Okay. Have you had any other jobs in your
17 career, sir?

18 A PROSPECTIVE JUROR: After high school, I went in the
19 Navy for five years. I come home, I become a fireman paramedic
20 after attending IRSC. Under circumstances you will get to with
21 one of your questions that I will answer, you will see why now
22 I'm a private self-employed businessman.

23 THE COURT: Okay. Thank you. Are you married, sir?

24 A PROSPECTIVE JUROR: I am married.

25 THE COURT: And what does your spouse do for work?

1 A PROSPECTIVE JUROR: My wife is the interim CHRO of
2 human resources at IRSC. She has been there 25-plus years --

3 THE COURT: Okay.

4 A PROSPECTIVE JUROR: -- with a master's degree.

5 THE COURT: Do you have any adult children?

6 A PROSPECTIVE JUROR: My daughter is 37, and she is a
7 registered nurse.

8 THE COURT: Okay. Have you ever served on a jury
9 before?

10 A PROSPECTIVE JUROR: I have not.

11 THE COURT: Have you ever been involved in a criminal
12 proceeding either as a defendant, a victim or a witness?

13 A PROSPECTIVE JUROR: I have.

14 THE COURT: Okay. Is that something you would prefer
15 to discuss in private?

16 A PROSPECTIVE JUROR: It's part of my life. Year 2000,
17 I killed my wife in a DUI manslaughter. Lost my career. Went
18 to prison for five years. And have regained as much to the
19 society as I can.

20 THE COURT: Thank you for your candor, sir.

21 Having gone through that experience, is there anything
22 about that experience that would affect your ability to be fair
23 and impartial if chosen to serve as a juror in this case?

24 A PROSPECTIVE JUROR: No, ma'am. More fair, as I have
25 been on both sides.

1 THE COURT: Now, have you ever worked in law
2 enforcement, sir? I know you said paramedic. Other than that
3 role?

4 A PROSPECTIVE JUROR: No, ma'am. I was a fireman
5 paramedic for ten years, so I worked hand in hand on the
6 streets right here in St. Lucie County with law enforcement. I
7 have lots of friends, not necessarily family but close enough
8 to be family, that worked right here in the -- in
9 St. Lucie County as acting law enforcement.

10 THE COURT: Okay. Now, based on your relationships or
11 associations with those individuals, is there -- is there
12 anything about that, that would affect or inhibit or influence
13 your ability to serve as a fair and impartial juror?

14 A PROSPECTIVE JUROR: No, ma'am. The truth is the
15 truth.

16 THE COURT: Anything else in your background or
17 experiences that would affect your ability to be fair and
18 impartial, sir?

19 A PROSPECTIVE JUROR: None at all, ma'am.

20 THE COURT: All right. Thank you, Mr. Phillips. You
21 may be seated.

22 All right. Let's hear from Mr. -- from Ms. Iglesias,
23 excuse me, Juror Number 3.

24 A PROSPECTIVE JUROR: Hi.

25 THE COURT: Please tell me your full name and what you

1 do for work.

2 A PROSPECTIVE JUROR: Jessica Iglesias. And I work --
3 currently I'm working at Wellmed Medical Group. I'm a PSR,
4 patient -- now I can't say it. It's the front desk, really.

5 THE COURT: okay. would it be fair to say
6 receptionist? Or -- I just want to accurately --

7 A PROSPECTIVE JUROR: It's just -- yeah, whatever.
8 Yeah. Yeah.

9 THE COURT: okay. All right. And just walk me through
10 your professional jobs before you started working.

11 A PROSPECTIVE JUROR: I'm retired from Miami-Dade
12 County. I used to be a manager in a -- one of the branches,
13 library branches. Prior to that, I briefly worked for
14 corrections; I was a correction technician. And prior to that,
15 I was a quality assurance auditor for the Community Action
16 Agency. Previous to that I worked for many nonprofit agencies.

17 THE COURT: okay. Are you married?

18 A PROSPECTIVE JUROR: Yes, I am.

19 THE COURT: what does your spouse do for work?

20 A PROSPECTIVE JUROR: He is retired from Miami-Dade
21 County. He was an assistant director for Miami-Dade Public
22 Library Systems.

23 THE COURT: okay. Do you have any adult children?

24 A PROSPECTIVE JUROR: Yes, I do.

25 THE COURT: And what do they do for work?

1 A PROSPECTIVE JUROR: I will only talk about one. The
2 other one I would prefer talking in private.

3 THE COURT: okay.

4 A PROSPECTIVE JUROR: The -- my youngest
5 is -- she's -- she's married, and she's -- she works for
6 Pediatrics Associates. And she's a manager there in Weston.

7 THE COURT: okay. Have you ever served on a jury
8 before?

9 A PROSPECTIVE JUROR: No. I have been summoned many
10 times, but I have never served.

11 THE COURT: okay. Have you ever been involved in a
12 criminal case either as a defendant, a victim or a witness?

13 A PROSPECTIVE JUROR: No.

14 THE COURT: Have you ever worked in law enforcement?

15 A PROSPECTIVE JUROR: well, corrections.

16 THE COURT: okay. Has your spouse ever worked in law
17 enforcement?

18 A PROSPECTIVE JUROR: No.

19 THE COURT: okay. Is there anything in your background
20 or experiences, ma'am, that would affect your ability to be a
21 fair and impartial juror in this case?

22 A PROSPECTIVE JUROR: I have never been one, so, I
23 mean -- I'm one of those people that -- very truthful. I mean,
24 so -- but I have never been.

25 THE COURT: And I think a lot of folks in this room

1 have never served on a jury. My question is really a bit
2 broader than that. Do you think you could be a fair and
3 impartial juror if chosen to serve as one in this case?

4 A PROSPECTIVE JUROR: I think I've always been a very
5 fair person in everything that I do in my life.

6 THE COURT: okay.

7 A PROSPECTIVE JUROR: That's why it's so hard for --
8 for being who I am.

9 THE COURT: okay. All right. Then I have made a note
10 about the private conference, so we will tend to that in a few
11 moments.

12 A PROSPECTIVE JUROR: okay.

13 THE COURT: Thank you for now, Ms. Iglesias.

14 I will hear from Juror 4. Good morning. Please tell
15 me your name and what you do for work.

16 A PROSPECTIVE JUROR: Sandra Hinsley, and I'm a
17 stay-at-home.

18 THE COURT: okay. Have you ever held any positions
19 outside of the home?

20 A PROSPECTIVE JUROR: Yes.

21 THE COURT: And what are those?

22 A PROSPECTIVE JUROR: Prior to having children, I was
23 an environmental consultant. I handled the public outreach
24 and -- pretty much for oil and gas pipeline. And I also --
25 prior to that, I worked for a collection agency when I was in

1 college, and I worked closely with the local district court in
2 civil cases.

3 THE COURT: And when you say you "worked closely with
4 the local district court," what type of role was that?

5 A PROSPECTIVE JUROR: It was just filing the papers for
6 basically, what -- judgments for, like, nonpayment.

7 THE COURT: Okay. All right. Let's see. Have you
8 ever served on a jury before?

9 A PROSPECTIVE JUROR: I have not. I have been summoned
10 several times, but never served.

11 THE COURT: Do you have any adult children?

12 A PROSPECTIVE JUROR: No.

13 THE COURT: Are you married?

14 A PROSPECTIVE JUROR: Yes.

15 THE COURT: And what does your spouse do for work?

16 A PROSPECTIVE JUROR: We own our own business. And he
17 is also a consultant, but he teaches other consultants and
18 project management engineers. Honestly, I don't know exactly
19 what it all entails.

20 THE COURT: Okay. So you said you own a business with
21 your husband. What kind of business is that?

22 A PROSPECTIVE JUROR: He -- he teaches to project
23 managers, like engineers, architects. And he just teaches them
24 best consulting management plans or something.

25 THE COURT: Okay. Are you personally involved in his

1 work?

2 A PROSPECTIVE JUROR: No.

3 THE COURT: okay. All right then. Have you ever been
4 involved in a criminal case as a defendant, victim or witness?

5 A PROSPECTIVE JUROR: No.

6 THE COURT: Is there anything in your background or
7 experiences that would affect your ability to be fair and
8 impartial, if chosen to serve as a juror?

9 A PROSPECTIVE JUROR: I do not believe so.

10 THE COURT: All right. Thank you. You may be seated.

11 Let's hear now from Juror Number 5, Mr. Teeters. What
12 do you do for work, sir?

13 A PROSPECTIVE JUROR: I'm retired.

14 THE COURT: And before you retired, what did you do for
15 work?

16 A PROSPECTIVE JUROR: I was in electronics, primarily
17 on the sales side my entire career.

18 THE COURT: Any law enforcement experience?

19 A PROSPECTIVE JUROR: No, ma'am.

20 THE COURT: All right. Any involvement in criminal
21 cases?

22 A PROSPECTIVE JUROR: No -- well, once as a defendant.

23 THE COURT: okay. And briefly, what was the nature of
24 that proceeding?

25 A PROSPECTIVE JUROR: It was basically a bar fight in

1 college.

2 THE COURT: okay.

3 okay. I think that's all I have for now, sir. I will
4 come back to you if I have additional questions.

5 Let me hear from Juror 6.

6 A PROSPECTIVE JUROR: Yes, Your Honor.

7 THE COURT: Good morning, sir.

8 A PROSPECTIVE JUROR: Good morning.

9 THE COURT: Please tell me your name and what you do
10 for work.

11 A PROSPECTIVE JUROR: My name is George Sealy, and I'm
12 retired.

13 THE COURT: And what did you do before you retired?

14 A PROSPECTIVE JUROR: Before I retired, I worked on
15 Capitol Hill in Washington, D.C., for 21 1/2 years. I worked
16 for three different senators as an office manager and systems
17 administrator.

18 THE COURT: okay. And when did you retire, sir?

19 A PROSPECTIVE JUROR: 2007.

20 THE COURT: okay. Are you married?

21 A PROSPECTIVE JUROR: Yes, ma'am.

22 THE COURT: what does your spouse do for work?

23 A PROSPECTIVE JUROR: She's a retired reporter, and
24 presently she does film documentaries.

25 THE COURT: Have either of you ever worked in law

1 enforcement?

2 A PROSPECTIVE JUROR: No.

3 THE COURT: Do you have any adult children?

4 A PROSPECTIVE JUROR: One daughter. She lives in
5 Virginia. She's a nurse.

6 THE COURT: Have you ever served on a jury before?

7 A PROSPECTIVE JUROR: I was summoned twice to the court
8 across the way (indicating). The first time, I came in for two
9 days and they let us go. The second time, we went upstairs and
10 sat like how we are now, and I wasn't chosen.

11 THE COURT: Okay. Have you ever been involved in a
12 criminal case as a defendant, victim or witness?

13 A PROSPECTIVE JUROR: No. But when I got upstairs
14 serving on the jury over there, there was a guy on trial for
15 child molestation, and we sat through what we're doing now, and
16 he was there. And I don't know if that qualifies to --

17 THE COURT: well, thank you. Thank you. I'm glad you
18 provided that information.

19 Other than that jury service, have you ever been
20 involved in a criminal case as a defendant, a witness or a
21 victim?

22 A PROSPECTIVE JUROR: No. No.

23 THE COURT: Okay. Is there anything in your background
24 or experiences, sir, that would affect your ability to be fair
25 and impartial if chosen to serve as a juror in this case?

1 A PROSPECTIVE JUROR: No, Your Honor.

2 THE COURT: All right. Thank you, Mr. Sealy.

3 Let's hear from Juror 7. Good morning.

4 A PROSPECTIVE JUROR: Good morning.

5 THE COURT: Please tell me your name and what you do
6 for work.

7 A PROSPECTIVE JUROR: Gina Hart. I'm a paralegal and a
8 bail bondsman.

9 THE COURT: Okay. And where do you work as a
10 paralegal?

11 A PROSPECTIVE JUROR: I work for Matthew Lemakos Law;
12 we are a plaintiff property insurance law firm. And then I
13 also work for Jeff Gorman Law Offices, a criminal defense
14 attorney in Stuart.

15 THE COURT: Okay. And then how long have you been
16 working as a bail bondsman?

17 A PROSPECTIVE JUROR: I have been doing that for just
18 over a year.

19 THE COURT: Did you hold many jobs prior to starting as
20 a paralegal or a bail bondsman?

21 A PROSPECTIVE JUROR: I was also a criminal court clerk
22 over at the courthouse across the street. And then I also have
23 done some receptionist work for an investigation agency right
24 here in Fort Pierce.

25 THE COURT: Okay. Have you ever worked in law

1 enforcement?

2 A PROSPECTIVE JUROR: No, ma'am.

3 THE COURT: Are you married?

4 A PROSPECTIVE JUROR: Yes.

5 THE COURT: And what does your spouse do for work?

6 A PROSPECTIVE JUROR: He is a stay-at-home father.

7 THE COURT: Okay. Do you have any adult children?

8 A PROSPECTIVE JUROR: No, ma'am.

9 THE COURT: Have you ever served on a jury before?

10 A PROSPECTIVE JUROR: No.

11 THE COURT: Have you ever been involved in a criminal
12 case as a defendant, victim or witness?

13 A PROSPECTIVE JUROR: No.

14 THE COURT: Anything in your background or experiences
15 that would affect your ability to be fair and impartial
16 evaluating the evidence presented in the courtroom and the law
17 as it is presented to you by the Court?

18 A PROSPECTIVE JUROR: No, ma'am.

19 THE COURT: All right. Thank you, Ms. Hart.

20 Let me hear from Juror 8.

21 A PROSPECTIVE JUROR: Good morning.

22 THE COURT: Good morning.

23 A PROSPECTIVE JUROR: Adele Menendez.

24 THE COURT: Thank you. What do you do for work?

25 A PROSPECTIVE JUROR: I work at the clerk of courts

1 down in St. Lucie West as a records clerk.

2 THE COURT: How long have you been working there?

3 A PROSPECTIVE JUROR: It will be six months now.

4 THE COURT: Okay. And what did you do before that
5 position?

6 A PROSPECTIVE JUROR: Been a Realtor. I have also
7 worked as a loan processor for a mortgage company. I worked in
8 a -- two banks over a span of 23 years, all sorts of positions;
9 teller, head teller, loan officers.

10 THE COURT: Okay. Have you ever worked in law
11 enforcement?

12 A PROSPECTIVE JUROR: No.

13 THE COURT: Are you married?

14 A PROSPECTIVE JUROR: Divorced.

15 THE COURT: Do you have any adult children?

16 A PROSPECTIVE JUROR: Yes, two of them.

17 THE COURT: And what do they do for work?

18 A PROSPECTIVE JUROR: One works as a teller in a bank
19 in Lake Worth, and the other one owns her own business with her
20 husband of -- doing floors.

21 THE COURT: Okay. Have you ever served on a jury
22 before?

23 A PROSPECTIVE JUROR: I did, twice.

24 THE COURT: Okay. Now, without telling me what the
25 verdict was, did the jury in those cases reach a verdict both

1 times?

2 A PROSPECTIVE JUROR: Yes.

3 THE COURT: And in either case were you the foreperson?

4 A PROSPECTIVE JUROR: No.

5 THE COURT: Do you know if those were federal cases or
6 state cases?

7 A PROSPECTIVE JUROR: One was a DUI, another one was
8 fraud.

9 THE COURT: okay. All right. Then, now, have you ever
10 been involved in a criminal case as a defendant, victim or
11 witness?

12 A PROSPECTIVE JUROR: No.

13 THE COURT: All right. Anything in your background or
14 experiences that would impair your ability to be fair and
15 impartial if chosen as a juror?

16 A PROSPECTIVE JUROR: No.

17 THE COURT: All right. Thank you, Ms. Menendez.

18 A PROSPECTIVE JUROR: Thank you.

19 THE COURT: we will do the back row and then take a
20 break for the restroom, and then we will resume the process.

21 So let me hear now from Juror Number 9.

22 A PROSPECTIVE JUROR: Hello. I'm Luther walker.

23 THE COURT: Good morning, sir. What do you do for
24 work?

25 A PROSPECTIVE JUROR: I'm a certified building

1 contractor.

2 THE COURT: How long have you done that work?

3 A PROSPECTIVE JUROR: On my own, 25 years.

4 THE COURT: And what about before that?

5 A PROSPECTIVE JUROR: I was a carpenter for local
6 companies.

7 THE COURT: Are you married?

8 A PROSPECTIVE JUROR: Yes, I am.

9 THE COURT: And what does your spouse do for work?

10 A PROSPECTIVE JUROR: She's a bookkeeper and secretary.

11 THE COURT: Does she work for your company?

12 A PROSPECTIVE JUROR: No.

13 THE COURT: Okay.

14 A PROSPECTIVE JUROR: well, actually, yes. She helps
15 me with my book work, yes.

16 THE COURT: Okay. Have either of you ever worked in
17 law enforcement?

18 A PROSPECTIVE JUROR: No, ma'am.

19 THE COURT: Do you have any adult children?

20 A PROSPECTIVE JUROR: Yes. Two.

21 THE COURT: And what do they do for work?

22 A PROSPECTIVE JUROR: My youngest daughter is a
23 paralegal, and my oldest daughter is a librarian.

24 THE COURT: Do you know what sort of law your youngest
25 daughter -- the kind of law firm, perhaps, that she works for?

1 A PROSPECTIVE JUROR: It is personal injury in Pompano.

2 THE COURT: Okay. Now, have you ever been on a jury
3 before?

4 A PROSPECTIVE JUROR: I was summoned, but I was
5 never -- I was let go.

6 THE COURT: Have you ever been involved in a criminal
7 case as the defendant, victim or witness?

8 A PROSPECTIVE JUROR: Yes. I had a possession of a
9 controlled substance charge against me in 19 -- '99.

10 THE COURT: And how was that proceeding resolved?

11 A PROSPECTIVE JUROR: It was pretrial intervention, and
12 I had 18 months of probation.

13 THE COURT: Okay. Is there anything about going
14 through that experience that would affect your ability to be
15 fair and impartial if chosen to serve as a juror in this case?

16 A PROSPECTIVE JUROR: No.

17 THE COURT: Anything else, sir, in your background or
18 experiences that would impair your ability to be fair and
19 impartial?

20 A PROSPECTIVE JUROR: No, ma'am.

21 THE COURT: Okay. All right. Thank you. You may be
22 seated.

23 Let's hear from Ms. Shipley. Good morning. Please
24 tell me what you do for work.

25 A PROSPECTIVE JUROR: Right now I'm a retired

1 housewife.

2 THE COURT: And what did you do before that point?

3 A PROSPECTIVE JUROR: Tutor, teaching grades K
4 through 12.

5 THE COURT: Did you ever teach in a formal school
6 environment or was it mostly tutoring?

7 A PROSPECTIVE JUROR: Tutoring at home.

8 THE COURT: okay.

9 A PROSPECTIVE JUROR: They came to my home.

10 THE COURT: okay. Are you married, ma'am?

11 A PROSPECTIVE JUROR: Yes.

12 THE COURT: And what does your spouse do for work?

13 A PROSPECTIVE JUROR: He is a house framer.

14 THE COURT: Have either of you ever worked in law
15 enforcement?

16 A PROSPECTIVE JUROR: No, ma'am.

17 THE COURT: Do you have any adult children?

18 A PROSPECTIVE JUROR: Yes. I have four.

19 THE COURT: okay. And what do they do for work?

20 A PROSPECTIVE JUROR: The oldest one does house
21 framing; the second one which is another boy, he is an auto
22 mechanic; the third one is a girl, and she's a nurse
23 practitioner; and the fourth one is a boy, and he also does
24 house framing.

25 THE COURT: okay. Thank you.

1 Now, have you ever served on a jury?

2 A PROSPECTIVE JUROR: No, ma'am. I have been summoned
3 about four times, but I have never served.

4 THE COURT: Okay. Have you ever been involved in a
5 criminal proceeding as a defendant, victim or witness?

6 A PROSPECTIVE JUROR: No, ma'am.

7 THE COURT: Is there anything in your background or
8 experiences that would affect your ability to be fair and
9 impartial if chosen to serve as a juror?

10 A PROSPECTIVE JUROR: No.

11 THE COURT: Okay. Thank you, Ms. Shipley.

12 Let's hear from Juror Number 11.

13 A PROSPECTIVE JUROR: Good morning.

14 THE COURT: Good morning.

15 A PROSPECTIVE JUROR: My name is Pam Hiler. I work at
16 St. Sebastian River Preserve State Park as an admin assistant,
17 for the last ten years. Prior to that, I was a stay-at-home
18 mom.

19 THE COURT: Okay. And do you have any adult children
20 at this point?

21 A PROSPECTIVE JUROR: I do. I have a son who has just
22 turned 18.

23 THE COURT: Is he in school or working?

24 A PROSPECTIVE JUROR: He is. He is still in school.

25 THE COURT: Okay. So I think you said you work for a

1 state park.

2 A PROSPECTIVE JUROR: I do.

3 THE COURT: okay. What sort of work do you do?

4 A PROSPECTIVE JUROR: Admin assistant. Front desk
5 reception, visitor services.

6 THE COURT: Got it. Thank you. Are you married?

7 A PROSPECTIVE JUROR: I am divorced.

8 THE COURT: okay. Have you ever served on a jury
9 before?

10 A PROSPECTIVE JUROR: No. I was called to serve on a
11 jury, but they dismissed the case right before we were ready to
12 go to trial.

13 THE COURT: okay. Have you ever been involved in a
14 criminal proceeding as a defendant, victim or witness?

15 A PROSPECTIVE JUROR: No.

16 THE COURT: I take it from your answers that you have
17 never worked in law enforcement. But, to be clear, have you
18 ever worked for a law enforcement agency?

19 A PROSPECTIVE JUROR: No, I have not.

20 THE COURT: okay. Anything in your background or
21 experiences that would affect your ability to be fair and
22 impartial?

23 A PROSPECTIVE JUROR: No.

24 THE COURT: All right. Thank you, Ms. Hiler.

25 A PROSPECTIVE JUROR: Thank you.

1 THE COURT: You may be seated.

2 Juror 12, let me please hear your name, sir, and what
3 you do for work.

4 A PROSPECTIVE JUROR: Michael Higgins. I'm a cruise
5 line travel agent.

6 THE COURT: Do you work for a particular cruise line or
7 multiple?

8 A PROSPECTIVE JUROR: Multiple. It's a travel agency.

9 THE COURT: Got it.

10 Have you had any other jobs other than the travel
11 agency work?

12 A PROSPECTIVE JUROR: I served eight years in the
13 Marine Corps.

14 THE COURT: Thank you for your service.

15 All right. Now, are you married?

16 A PROSPECTIVE JUROR: I am.

17 THE COURT: And what does your spouse do for work?

18 THE WITNESS: She's a respiratory therapist.

19 THE COURT: Have either of you ever worked in law
20 enforcement? I know you have that prior military service.
21 Other than that, any law enforcement experience?

22 A PROSPECTIVE JUROR: I was military police also.

23 THE COURT: And when was that approximately?

24 A PROSPECTIVE JUROR: 2002, 2006. Approximately.

25 THE COURT: And when you performed that military police

1 work, where were you located? what part of the country?

2 A PROSPECTIVE JUROR: Camp Holton (phonetic) in
3 California.

4 THE COURT: Is there anything about that military
5 police work that would affect your ability to be fair and
6 impartial if chosen to serve as a juror in this case?

7 A PROSPECTIVE JUROR: No, ma'am.

8 THE COURT: I think I might have neglected to ask.
9 what does your spouse do for work?

10 A PROSPECTIVE JUROR: She's a respiratory therapist.

11 THE COURT: Okay. Thank you.

12 Do you have any adult children?

13 A PROSPECTIVE JUROR: I do not.

14 THE COURT: Have you ever served on a jury before?

15 A PROSPECTIVE JUROR: No, ma'am.

16 THE COURT: Have you ever been involved in a criminal
17 proceeding as a defendant, victim or witness?

18 A PROSPECTIVE JUROR: No, ma'am.

19 THE COURT: Now, for example, in your military police
20 role, were you ever called to testify?

21 A PROSPECTIVE JUROR: No, ma'am.

22 THE COURT: Okay. All right. Anything in your
23 background or experiences, sir, that would impair your ability
24 to be objective, fair and impartial?

25 A PROSPECTIVE JUROR: No, ma'am.

1 THE COURT: Okay. Thank you.

2 Let me hear from Mr. Phelan. Good morning. Please
3 tell me your name and what you do for work.

4 A PROSPECTIVE JUROR: Good morning. I am Jared Phelan.
5 I work retail at Best Buy.

6 THE COURT: Okay. How long have you worked at Best
7 Buy?

8 A PROSPECTIVE JUROR: Almost three years.

9 THE COURT: Okay. What did you do before that job?

10 A PROSPECTIVE JUROR: I worked customer service at
11 Winn-Dixie.

12 THE COURT: Any other jobs?

13 A PROSPECTIVE JUROR: I also worked at Home Depot.

14 THE COURT: Okay. Are you married?

15 A PROSPECTIVE JUROR: No.

16 THE COURT: Do you have any adult children?

17 A PROSPECTIVE JUROR: No.

18 THE COURT: Have you ever served on a jury before?

19 A PROSPECTIVE JUROR: I was summoned, but not picked.

20 THE COURT: Have you ever been involved in a criminal
21 case?

22 A PROSPECTIVE JUROR: No.

23 THE COURT: Anything in your background or experiences
24 that would impair your ability to be fair and impartial?

25 A PROSPECTIVE JUROR: Not that I could think of.

1 THE COURT: Okay. Do you have any hesitation at all in
2 your ability to be fair and impartial?

3 A PROSPECTIVE JUROR: I don't think so, no.

4 THE COURT: Okay. Thank you. All right. That's all I
5 have for now.

6 Okay. Let me hear from Ms. Burke, Juror 14. We spoke
7 briefly earlier. Let me just inquire, are you currently
8 employed, ma'am?

9 A PROSPECTIVE JUROR: No, I'm retired. I do sell
10 online on Amazon and eBay and some other platforms, but I'm
11 formally retired.

12 THE COURT: Okay. That's all I have for now. Thank
13 you very much. Let's hear from Juror 15.

14 A PROSPECTIVE JUROR: Yes, ma'am. Michael Coulon. I'm
15 required from Nassau County Sheriff's Department in New York
16 since 2013. I was a correction officer there.

17 THE COURT: So can you just walk me through your career
18 as a correctional officer in terms of the different roles that
19 you might have had.

20 A PROSPECTIVE JUROR: Sure. I ran the court desk for
21 many years and also did criminal investigations into any crime
22 that happened in the facility.

23 THE COURT: As part of that role, did you ever get
24 called to testify as a witness in a criminal case?

25 A PROSPECTIVE JUROR: I have many times, grand juries,

1 and, yeah, many trials.

2 THE COURT: would you be able to fully set aside all of
3 your prior experience doing criminal investigative work and
4 consider this case only on the evidence presented in the
5 courtroom?

6 A PROSPECTIVE JUROR: Yes, ma'am.

7 THE COURT: Now, aside from your work testifying in
8 those proceedings, have you personally ever been a victim of a
9 crime or had to testify in a criminal proceeding?

10 A PROSPECTIVE JUROR: Nothing. Just civil lawsuit for
11 a sidewalk and a broken leg. That's about it.

12 THE COURT: okay. And then any involvement in a
13 criminal case as a defendant?

14 A PROSPECTIVE JUROR: Yeah, I've been through grand
15 jury. You know, inmates always trying to get as much money as
16 they could from us. So I have sat through grand juries.

17 THE COURT: Have you ever been personally accused of a
18 crime?

19 A PROSPECTIVE JUROR: I never lost a case.

20 THE COURT: okay. Are you married?

21 A PROSPECTIVE JUROR: Yes, ma'am.

22 THE COURT: And what does your spouse do for work?

23 A PROSPECTIVE JUROR: She's an RN with the Veterans
24 Administration.

25 THE COURT: Do you have any adult children?

1 A PROSPECTIVE JUROR: Two. One is a New York City
2 union plumber; the other sells supplies to the U.S. government,
3 nuclear agencies.

4 THE COURT: Have either of them ever worked in law
5 enforcement?

6 A PROSPECTIVE JUROR: No, ma'am.

7 THE COURT: Okay. Have you ever been a juror before?

8 A PROSPECTIVE JUROR: No.

9 THE COURT: Okay. Anything in your background or
10 experiences that would affect your ability to be fair and
11 impartial if chosen to serve as a juror?

12 A PROSPECTIVE JUROR: No, ma'am.

13 THE COURT: All right. Thank you, Mr. -- and how do I
14 pronounce your last name?

15 A PROSPECTIVE JUROR: Coulon.

16 THE COURT: "Coulon."

17 A PROSPECTIVE JUROR: "Cool off, cool on."

18 THE COURT: Thank you. That's an easy mnemonic.
19 Okay. And for now, Juror 16, please tell me your name.

20 A PROSPECTIVE JUROR: Axel Mendoza.

21 THE COURT: Just to make sure the court reporter can
22 take down everything that I'm saying and, also, just let me
23 fully finish my question and then please answer.

24 Okay. What do you do for work, Mr. Mendoza?

25 A PROSPECTIVE JUROR: High school security.

1 THE COURT: which high school do you work for?

2 A PROSPECTIVE JUROR: Port St. Lucie High School.

3 THE COURT: How long have you been doing that work?

4 A PROSPECTIVE JUROR: Five. Five years.

5 THE COURT: And before that position, did you have any
6 other jobs?

7 A PROSPECTIVE JUROR: Landscaping.

8 THE COURT: Are you married?

9 A PROSPECTIVE JUROR: No.

10 THE COURT: Do you have any adult children?

11 A PROSPECTIVE JUROR: No.

12 THE COURT: Have you ever been on a jury before?

13 A PROSPECTIVE JUROR: No.

14 THE COURT: Have you ever been involved in a criminal
15 case as a defendant, a victim or a witness?

16 A PROSPECTIVE JUROR: No.

17 THE COURT: Have you ever worked in law enforcement?

18 A PROSPECTIVE JUROR: No.

19 THE COURT: And is there anything in your background or
20 experiences, sir, that would affect our ability to be fair and
21 impartial if chosen to serve as a juror?

22 A PROSPECTIVE JUROR: No.

23 THE COURT: Okay. Thank you, Mr. Mendoza.

24 with that, we're going to take a 10- to 15-minute
25 break, but please don't leave just yet. I ask that you keep

1 your paddles where they are so we don't misplace them. And, of
2 course, do not leave the courthouse.

3 Also, ladies and gentlemen, it is very important -- and
4 you will hear me repeat this over and over again -- that you
5 cannot discuss this case with anybody, you cannot google it on
6 your phone or on any other internet application or do any form
7 of research of any kind. If you happen to see any of the
8 attorneys or the folks on either of the counsel tables, they
9 will have no contact with you and you are prohibited from
10 having any contact with them. So they're not trying to be
11 rude, they're just prohibited from engaging with you at all.

12 So please make sure that you do no research of any kind
13 and that you do not discuss the case at all with anyone, and
14 that includes your fellow prospective jurors.

15 with that, I will permit you to go to the restroom. Do
16 not leave the courthouse. And we will resume in approximately
17 10 to 15 minutes.

18 All rise for the jury.

19 (The prospective jurors exited the courtroom at
20 10:45 a.m.)

21 THE COURT: Please be seated. We will take a brief
22 break. I do think it might be easier and have a little bit
23 more flexibility with space for the government attorneys to,
24 just for purposes of the jury selection, move their chairs to
25 this side so that you aren't crowding the jurors. So please

1 accommodate your seating during the break. And I think we are
2 okay on the defense side. It doesn't seem to be as full over
3 there.

4 Any other items to address before we take a brief
5 break? Mr. Keller.

6 MR. KELLER: Judge, I don't know if you want us to ask
7 about this, with Juror Number 2, but given that he served five
8 years in prison, I would think that he is a convicted felon.
9 Unless he has had his civil rights restored, I'm not sure he
10 should be empanelled here. I didn't know if you wanted to ask
11 him about that in private or --

12 THE COURT: well, I think that it would make sense to
13 address these topics privately with him. So why don't you make
14 a note. I have a list, a running list, of folks who have
15 indicated an interest in speaking privately, so let's add him
16 to that list.

17 Any other items, Mr. Keller?

18 MR. KELLER: No, Your Honor.

19 THE COURT: Mr. O'Sullivan?

20 MR. O'SULLIVAN: Judge, I do have one issue with
21 regards to Juror Number 7.

22 During her question-and-answer period with you, she
23 said that she worked as a paralegal for Jeff Gorman law. I
24 have never met Jeff Gorman, but his office, in the past, has
25 called my office to cover cases for him in Brevard, and my

1 office has called his office to cover cases for him in this
2 part of Florida. I have also referred cases to him.

3 THE COURT: Okay. Why don't we take up any specific
4 juror issues when we're having a discussion about any for-cause
5 challenges --

6 MR. O'SULLIVAN: Sure.

7 THE COURT: -- rather than try to do those
8 individually.

9 But you should raise that with the Court if you think
10 it warrants any sort of strike or other court action. So
11 that's Juror 7.

12 Okay. All right. Please return to the courtroom in
13 10 minutes. Thank you.

14 (A recess was taken from 10:49 a.m. to 11:00 a.m.)

15 (The prospective jurors entered the courtroom at
16 11:00 a.m.)

17 THE COURT: Hello again. You may be seated, ladies and
18 gentlemen. You remain under oath and we will resume our
19 questioning, starting first with Juror Number 17.

20 Let's get the microphone to Mr. Willems. Please tell
21 me your full name, sir, and what you do for work.

22 A PROSPECTIVE JUROR: Hi. My name is Kristian Willems.
23 I work for the City of Port St. Lucie as a project manager for
24 Parks and Recreation.

25 THE COURT: And what sort of projects do you work on or

1 do you manage?

2 A PROSPECTIVE JUROR: Various. Anything from replacing
3 awnings at the parks or like right now we're designing and
4 building new parks in Traditions right now, Tradition Regional
5 Park, and just various...

6 THE COURT: Okay. What did you do before working for
7 the City of Port St. Lucie?

8 A PROSPECTIVE JUROR: I worked at Publix.

9 THE COURT: Okay. And what kind of work did you do for
10 Publix?

11 A PROSPECTIVE JUROR: I was a stocker.

12 THE COURT: Okay. Any other jobs?

13 A PROSPECTIVE JUROR: No.

14 THE COURT: Are you married?

15 A PROSPECTIVE JUROR: Yeah.

16 THE COURT: What does your spouse do for work?

17 A PROSPECTIVE JUROR: She works for Wells Fargo as a
18 teller.

19 THE COURT: Have either of you ever worked in law
20 enforcement?

21 A PROSPECTIVE JUROR: No.

22 THE COURT: Have you ever served on a jury before?

23 A PROSPECTIVE JUROR: Yes. Did petit jury for a civil
24 case two years ago.

25 THE COURT: Okay. All right. Was that in state court

1 or federal court, if you remember?

2 A PROSPECTIVE JUROR: Just right here at the county
3 court.

4 THE COURT: okay. All right then. Have you ever been
5 involved in a criminal proceeding, either as a defendant, a
6 victim or a witness?

7 A PROSPECTIVE JUROR: No.

8 THE COURT: okay. Is there anything in your background
9 or experiences that would affect your ability to be fair and
10 impartial, sir?

11 A PROSPECTIVE JUROR: No.

12 THE COURT: okay. Thank you, Mr. Willems. You may be
13 seated.

14 Let's hear from Juror 18. Good morning.

15 A PROSPECTIVE JUROR: Good morning.

16 THE COURT: Please tell me your full name and what you
17 do for work.

18 A PROSPECTIVE JUROR: Lynn Campbell. Retired.

19 THE COURT: And what did you do before you retired?

20 A PROSPECTIVE JUROR: I worked at the Department of
21 Energy in Washington, D.C.

22 THE COURT: And what was your role for that department?

23 A PROSPECTIVE JUROR: I was a business operations
24 manager.

25 THE COURT: How many years did you work for the

1 Department of Energy?

2 A PROSPECTIVE JUROR: 32, 33.

3 THE COURT: Any positions before that career?

4 A PROSPECTIVE JUROR: No. I lived in Central America,

5 so...

6 THE COURT: Okay. Are you married?

7 A PROSPECTIVE JUROR: Yes.

8 THE COURT: And what does your spouse do for work?

9 A PROSPECTIVE JUROR: He is a retired judge.

10 THE COURT: Okay. What part of the country did your
11 husband do judicial work for?

12 A PROSPECTIVE JUROR: DC.

13 THE COURT: DC. Okay. All right. Now, do you have
14 any adult children?

15 A PROSPECTIVE JUROR: No.

16 THE COURT: Have you ever served on a jury before?

17 A PROSPECTIVE JUROR: Two.

18 THE COURT: Do you remember approximately when that
19 was?

20 A PROSPECTIVE JUROR: Oh.

21 THE COURT: It's okay if you don't. Do you remember if
22 it was a federal case or a state case?

23 A PROSPECTIVE JUROR: Well, DC is not a state, but...

24 THE COURT: That's correct. Thank you for stating
25 that.

1 So in those proceedings, do you recall if the juries
2 reached verdicts?

3 A PROSPECTIVE JUROR: Yes, we did.

4 THE COURT: Okay. Do you remember if you were the
5 foreperson?

6 A PROSPECTIVE JUROR: I was not.

7 THE COURT: Okay. Have you ever been involved in a
8 criminal proceeding as a defendant, victim or witness?

9 A PROSPECTIVE JUROR: No.

10 THE COURT: Anything in your background or experiences
11 that would impair your ability to be fair and impartial?

12 A PROSPECTIVE JUROR: No.

13 THE COURT: Okay. All right. That's all I have for
14 now. Thank you, Ms. Campbell.

15 Let's hear from Juror 19.

16 Okay. Good morning. Please tell me your name and what
17 you do for work.

18 A PROSPECTIVE JUROR: Lindsey Smith. I'm an account
19 executive at a radio group.

20 THE COURT: How long have you worked there?

21 A PROSPECTIVE JUROR: About four years.

22 THE COURT: Okay. What did you do for work prior to
23 that position?

24 A PROSPECTIVE JUROR: Mostly retail and restaurant
25 management, but I have also worked for, like, a zoo, and a pet

1 hospital, and tried to get away from doing the people thing for
2 a little while.

3 THE COURT: Okay. Have you ever worked in law
4 enforcement?

5 A PROSPECTIVE JUROR: No, ma'am.

6 THE COURT: Are you married?

7 A PROSPECTIVE JUROR: No.

8 THE COURT: Do you have any adult children?

9 A PROSPECTIVE JUROR: Yes.

10 THE COURT: And what do they do for work?

11 A PROSPECTIVE JUROR: My oldest is a district manager
12 for Dunkin Donuts and is also a server at night. And my two
13 boys are both in the Marine Corps.

14 THE COURT: All right. Have you ever been involved in
15 a criminal proceeding as a defendant, victim or witness?

16 A PROSPECTIVE JUROR: I have.

17 THE COURT: Is that something you're comfortable
18 sharing openly?

19 A PROSPECTIVE JUROR: One time I was 19 years old
20 living with the wrong roommates and came home to, about
21 five minutes later a surprise, and multiple of us were arrested
22 for a misdemeanor drug charge because they couldn't figure out
23 who it was. I pled no contest to get out of it so I could keep
24 my job and not keep going to court cases. And paid my fines
25 and went on my way.

1 And I am currently a victim in a case that has not been
2 finished yet.

3 THE COURT: okay. Let me address first the misdemeanor
4 drug charge that was resolved with a no contest plea. When did
5 that happen? I think you said many years ago.

6 A PROSPECTIVE JUROR: It was like 2000.

7 THE COURT: okay. Is there anything about that
8 experience, ma'am, going through that that would affect your
9 ability to be fair and impartial in this case if chosen to
10 serve as a juror?

11 A PROSPECTIVE JUROR: No, ma'am.

12 THE COURT: okay. Now, with respect to the current
13 proceeding, is that a case that has actually been filed in a
14 court of law? In other words, has it actually started?

15 A PROSPECTIVE JUROR: Yes.

16 THE COURT: okay. And is that a case in federal court
17 or state court?

18 A PROSPECTIVE JUROR: The state is trying somebody, I
19 guess, on my behalf, you would say.

20 THE COURT: okay. Do you know where in the sequence
21 the case currently sits?

22 A PROSPECTIVE JUROR: It's been postponed countless
23 amount of times. I'm not sure what's going on at this point in
24 time. I was told by the state attorney that they may come to a
25 plea next month --

1 THE COURT: okay.

2 A PROSPECTIVE JUROR: -- but they're not sure yet.

3 THE COURT: And briefly, what is the nature of the
4 case?

5 A PROSPECTIVE JUROR: My ex decided to attack me. And
6 I ended up in the hospital, and the state and the cops got
7 involved.

8 THE COURT: okay. I'm sorry to hear that, ma'am.
9 Anything about that experience as a victim in this pending case
10 that would impair your ability to be fair and impartial if
11 chosen to serve as a juror?

12 A PROSPECTIVE JUROR: I don't believe so.

13 THE COURT: It's important, of course, as we're going
14 through this process to make sure that all the jurors chosen
15 can be fair and objective and impartial. Do you have any
16 hesitation in your ability to be a fair and impartial juror?

17 A PROSPECTIVE JUROR: No, ma'am.

18 THE COURT: okay. All right. Anything else in your
19 background or experiences that would affect your ability to be
20 a fair and impartial juror?

21 A PROSPECTIVE JUROR: Nothing that I can think of.

22 THE COURT: All right. Thank you, Ms. Smith.

23 Let's hear from Juror 20.

24 A PROSPECTIVE JUROR: James Hulsey.

25 THE COURT: Good morning, sir. What do you do for

1 work?

2 A PROSPECTIVE JUROR: Retired.

3 THE COURT: Okay. What did you do before retiring?

4 A PROSPECTIVE JUROR: Medical technologist.

5 THE COURT: What is that exactly?

6 A PROSPECTIVE JUROR: Working in the department in the
7 hospital. You know, the laboratory covers multiple blood work,
8 blood bank, hematology.

9 THE COURT: Sorry. I'm having a little trouble hearing
10 you. Can you try that again. Just describe for me in everyday
11 words what it is that you did in the hospital as a medical
12 technologist.

13 A PROSPECTIVE JUROR: I did testing on patient samples.
14 Laboratory.

15 THE COURT: I'm sorry?

16 A PROSPECTIVE JUROR: Laboratory.

17 THE COURT: Laboratory. Okay. And how long did you
18 serve in that role?

19 A PROSPECTIVE JUROR: Four decades.

20 THE COURT: Okay. Any other jobs prior to that long
21 career?

22 A PROSPECTIVE JUROR: Cutting grass, doing things you
23 do when you're a teenager --

24 THE COURT: Okay.

25 A PROSPECTIVE JUROR: -- trying to make your dad happy.

1 THE COURT: Are you married, sir?

2 A PROSPECTIVE JUROR: Yes, ma'am, I am.

3 THE COURT: And what does your spouse do for work?

4 A PROSPECTIVE JUROR: She too is a retired medical
5 technologist.

6 THE COURT: Have either of you ever worked in law
7 enforcement?

8 A PROSPECTIVE JUROR: No, ma'am.

9 THE COURT: Do you have any adult children?

10 A PROSPECTIVE JUROR: No, ma'am.

11 THE COURT: Have you ever served on a jury before?

12 A PROSPECTIVE JUROR: No, ma'am.

13 THE COURT: Have you ever been involved in a criminal
14 proceeding as a victim, defendant or witness?

15 A PROSPECTIVE JUROR: No, ma'am.

16 THE COURT: Okay. Anything in your background or
17 experiences that would affect your ability to be fair and
18 impartial?

19 A PROSPECTIVE JUROR: No, ma'am.

20 THE COURT: Okay. Thank you, Mr. Hulsey. You may be
21 seated.

22 Let's hear from Juror 21. Please tell me your name and
23 what you do for work.

24 A PROSPECTIVE JUROR: Marlon Arvin. I work for the
25 City of Port -- Fort Pierce.

1 THE COURT: And what do you do for the City of
2 Fort Pierce?

3 A PROSPECTIVE JUROR: work for solid waste.

4 THE COURT: How long have you done that work?

5 A PROSPECTIVE JUROR: It's been a couple of weeks.

6 THE COURT: So you're new to this position?

7 A PROSPECTIVE JUROR: Yes.

8 THE COURT: okay. What did you do before this current
9 role?

10 A PROSPECTIVE JUROR: worked for Giant Food, a grocery
11 store chain in Maryland.

12 THE COURT: when did you move to Florida?

13 A PROSPECTIVE JUROR: Four years ago.

14 THE COURT: So what did you do for work, if anything,
15 after leaving Maryland and starting for the City of
16 Fort Pierce?

17 A PROSPECTIVE JUROR: working for a farmer, Colvin
18 and -- Camel Farms.

19 THE COURT: okay. And what did you do for that farmer?

20 A PROSPECTIVE JUROR: A driver.

21 THE COURT: okay. Thank you.

22 Are you married, sir?

23 A PROSPECTIVE JUROR: Yes, but my wife is deceased.

24 THE COURT: okay. I'm sorry to hear that, sir.

25 Do you have any adult children?

1 A PROSPECTIVE JUROR: Yes.

2 THE COURT: what do they do for work?

3 A PROSPECTIVE JUROR: One of them is self-employed, and
4 one of them works for a spa in Stuart.

5 THE COURT: And your child who is self-employed, what
6 does he or she do?

7 A PROSPECTIVE JUROR: She started her own
8 business -- starting to start her own business of selling
9 T-shirts and --

10 THE COURT: okay. Now, have you or your adult children
11 ever worked in law enforcement?

12 A PROSPECTIVE JUROR: No, ma'am.

13 THE COURT: okay. All right. Now, have you ever
14 served on a jury before?

15 A PROSPECTIVE JUROR: No.

16 THE COURT: Have you ever been involved in a criminal
17 case as a victim, a defendant or a witness?

18 A PROSPECTIVE JUROR: No, ma'am.

19 THE COURT: Anything in your background or experiences,
20 Mr. Arvin, that would impair or affect our ability to be fair
21 and impartial?

22 A PROSPECTIVE JUROR: None.

23 THE COURT: Thank you. You may be seated.

24 Let's hear now from Juror 22. Good morning. Please
25 tell me your name and what you do for work.

1 A PROSPECTIVE JUROR: My name is Dori Middlebrook. I'm
2 a certified medical assistant in HCA St. Lucie Medical
3 Specialists.

4 THE COURT: How long have you been a medical assistant?

5 A PROSPECTIVE JUROR: Three years.

6 THE COURT: Now, walk me through any jobs you held
7 before that position.

8 A PROSPECTIVE JUROR: I'm also a licensed
9 cosmetologist, independent contractor.

10 THE COURT: Any other jobs outside of the medical field
11 or the cosmetology field?

12 A PROSPECTIVE JUROR: Before I moved back to
13 Port St. Lucie during the real estate crash, I was a manager at
14 JCPenney. I was a department store manager for seven years.

15 THE COURT: Okay. Have you ever worked in law
16 enforcement?

17 A PROSPECTIVE JUROR: No.

18 THE COURT: Are you married?

19 A PROSPECTIVE JUROR: Yes.

20 THE COURT: What does your spouse do for work?

21 A PROSPECTIVE JUROR: He is an independent contractor,
22 drywall hanger, painter, knockdown ceilings, punchout.

23 THE COURT: Have either you or your spouse ever worked
24 in law enforcement?

25 A PROSPECTIVE JUROR: Uh-uh. No, ma'am.

1 THE COURT: Okay. Do you have any adult children?

2 A PROSPECTIVE JUROR: Yes, ma'am.

3 THE COURT: What do they do for work?

4 A PROSPECTIVE JUROR: My daughter works in
5 San Francisco. She is the HR director for the Carnegie
6 Foundation. And my son is also an air conditioning technician.
7 He is studying for his journeyman's license right now.

8 THE COURT: Okay. Thank you. All right. Have you
9 ever served on a jury before?

10 A PROSPECTIVE JUROR: No.

11 THE COURT: Have you ever been involved in a criminal
12 proceeding as a defendant, victim or witness?

13 A PROSPECTIVE JUROR: (Shakes head.)

14 THE COURT: Anything in your background or experiences
15 that would affect your ability to be fair and impartial if
16 chosen to serve as a juror?

17 A PROSPECTIVE JUROR: No, ma'am.

18 THE COURT: All right. Thank you, Ms. Middlebrook.

19 Let's hear from Juror 23. Good morning. Please tell
20 me your name and what you do for work.

21 A PROSPECTIVE JUROR: Amanda Tucker. I'm a data
22 specialist.

23 THE COURT: What sort of data do you study?

24 A PROSPECTIVE JUROR: Engineering at Piper.

25 THE COURT: How long have you worked for Piper?

1 A PROSPECTIVE JUROR: 14 years.

2 THE COURT: And Piper, is that an aircraft company?

3 A PROSPECTIVE JUROR: Yeah, yes.

4 THE COURT: Okay. Did you hold any positions prior to
5 working for Piper in engineering or in data analysis?

6 A PROSPECTIVE JUROR: Just like a coordinator before,
7 and then I just moved up to a specialist. So same thing.

8 THE COURT: Okay. Are you married?

9 A PROSPECTIVE JUROR: Yes.

10 THE COURT: What does your spouse do for work?

11 A PROSPECTIVE JUROR: He is an A&P mechanic.

12 THE COURT: And what is an A&P?

13 A PROSPECTIVE JUROR: Aircraft mechanic.

14 THE COURT: Have either of you ever worked in law
15 enforcement?

16 A PROSPECTIVE JUROR: No.

17 THE COURT: Do you have any adult children?

18 A PROSPECTIVE JUROR: No.

19 THE COURT: Have you ever served on a jury before?

20 A PROSPECTIVE JUROR: No.

21 THE COURT: Have you ever been involved in a criminal
22 case?

23 A PROSPECTIVE JUROR: No.

24 THE COURT: Anything in your background or experiences
25 that would affect your ability to be fair and impartial if

1 chosen to serve as a juror, Ms. Tucker?

2 A PROSPECTIVE JUROR: No.

3 THE COURT: Thank you. You may pass the microphone on
4 to Juror Number 24.

5 Good morning.

6 A PROSPECTIVE JUROR: Good morning, Your Honor.

7 THE COURT: Good morning. Please tell me your name and
8 what you do for work.

9 A PROSPECTIVE JUROR: My name is Wei Cai, and I work as
10 an accounting supervisor.

11 THE COURT: And what company do you work for?

12 A PROSPECTIVE JUROR: It's a -- the company's name is
13 Bernard Egan company. It's a citrus company.

14 THE COURT: How long have you worked there?

15 A PROSPECTIVE JUROR: Almost 25 years.

16 THE COURT: Now, prior to working for that citrus
17 company in accounting, did you have any other positions?

18 A PROSPECTIVE JUROR: I was a stay-at-home mom.

19 THE COURT: Okay. Now, do you have any adult children?

20 A PROSPECTIVE JUROR: Yes, I do.

21 THE COURT: what do they do for work?

22 A PROSPECTIVE JUROR: I have a son and a daughter.
23 Both of them are currently in graduate school.

24 THE COURT: okay. what are they studying?

25 A PROSPECTIVE JUROR: My son is studying actually

1 atomic physics at University of Chicago, and my daughter is
2 actually studying chemical engineering at MIT.

3 THE COURT: Very smart children it sounds like.

4 A PROSPECTIVE JUROR: Thank you.

5 THE COURT: All right. Are you married? And, if so,
6 what does your spouse do for work?

7 A PROSPECTIVE JUROR: Yes, I am. And my husband is
8 teaching at a -- a local college as a professor in physics.

9 THE COURT: Okay. Now, have you ever served on a jury
10 before?

11 A PROSPECTIVE JUROR: I have. The county -- I have
12 been called for the county summon, you know, for jury duty, and
13 just -- several times, but I was picked once as an alternate
14 juror.

15 THE COURT: Okay. All right. Thank you.

16 Have you ever been involved in a criminal proceeding?

17 A PROSPECTIVE JUROR: No. It was a civil case.

18 THE COURT: And, well, thank you. The civil case, that
19 was for your jury service; is that right?

20 A PROSPECTIVE JUROR: That's correct.

21 THE COURT: Okay. Now separate from the jury service,
22 have you ever been involved in a criminal case as a defendant,
23 a victim or a witness?

24 A PROSPECTIVE JUROR: No.

25 THE COURT: Okay.

1 A PROSPECTIVE JUROR: No.

2 THE COURT: Anything in your background or experiences
3 that would affect your ability to be fair and impartial?

4 A PROSPECTIVE JUROR: The only thing I wanted to say is
5 English is my second language.

6 THE COURT: And when did you learn to speak English?

7 A PROSPECTIVE JUROR: I -- we -- I emigrated to the
8 United States about 30 years ago.

9 THE COURT: Now, so far in this proceeding, have you
10 been able to understand everything I have said and that your
11 fellow jurors have said?

12 A PROSPECTIVE JUROR: Most of it.

13 THE COURT: Was there something that you -- that you
14 missed, if you can remember?

15 A PROSPECTIVE JUROR: I can't think of anything.

16 THE COURT: Okay. All right. We may visit with you a
17 bit later, Ms. Cai. Did I pronounce your last name correctly?

18 A PROSPECTIVE JUROR: That's correct, Your Honor.

19 THE COURT: Okay. All right. Then for now, thank you.
20 we will ask some questions later on. You may pass the
21 microphone on to Juror 25.

22 All right. Good morning. Please tell me your name and
23 what you do for work.

24 A PROSPECTIVE JUROR: Good morning. My name is
25 Ovalesca Hurley. I am a program analyst for the Department of

1 Defense.

2 THE COURT: okay. And is that the federal Department
3 of Defense?

4 A PROSPECTIVE JUROR: Yes.

5 THE COURT: okay. Just to be clear.

6 Okay. Now, how long have you worked for DOD?

7 A PROSPECTIVE JUROR: As a civilian, for the last
8 eight years and a contractor for five years prior to that.

9 THE COURT: Any work in law enforcement outside of your
10 DOD work?

11 A PROSPECTIVE JUROR: No, ma'am.

12 THE COURT: Any other jobs prior to joining the federal
13 department?

14 A PROSPECTIVE JUROR: Yeah, I was an HR manager prior
15 to that. And prior -- mostly HR work.

16 THE COURT: Now, for the Department of Defense, what is
17 your job title?

18 A PROSPECTIVE JUROR: officially it's program analyst.

19 THE COURT: okay. Are you married?

20 A PROSPECTIVE JUROR: Yes.

21 THE COURT: what does your spouse do for work?

22 A PROSPECTIVE JUROR: He also works -- sorry. He also
23 works for the Department of Defense. He is an electrical
24 engineer.

25 THE COURT: okay. Do you have any adult children?

1 A PROSPECTIVE JUROR: No. All under age.

2 THE COURT: Okay. And have you ever served on a jury
3 before?

4 A PROSPECTIVE JUROR: No, ma'am. This is the first
5 time I have been called.

6 THE COURT: Have you ever been involved in a criminal
7 case?

8 A PROSPECTIVE JUROR: No.

9 THE COURT: Anything in your background or experiences
10 that would affect your ability to be fair and impartial?

11 A PROSPECTIVE JUROR: No, ma'am.

12 THE COURT: All right. Thank you, Ms. Hurley.

13 Let's hear from Ms. Adrian, Juror 26.

14 A PROSPECTIVE JUROR: Hi.

15 THE COURT: Good morning. Please tell me your name,
16 your full name, and what you do for work.

17 A PROSPECTIVE JUROR: Michelle Adrian. I'm a digital
18 innovation specialist for the school district of Indian River
19 County, which basically means I train teachers on using
20 technology in their classrooms.

21 THE COURT: Okay. Now, prior to serving in this
22 teaching/training role, did you have any other positions?

23 A PROSPECTIVE JUROR: Yes. I -- this is -- I have been
24 in this role for 8 years. Before that, I was a teacher in
25 St. Lucie County for 20 years.

1 THE COURT: okay. Did you teach high school? Middle
2 school? Elementary?

3 A PROSPECTIVE JUROR: Elementary school. I actually
4 taught her children (indicating).

5 THE COURT: wow. Well, so, it's all -- you have some
6 credit in the whole process then.

7 A PROSPECTIVE JUROR: I wish.

8 THE COURT: All right then. Are you married?

9 A PROSPECTIVE JUROR: Yes.

10 THE COURT: And what does your spouse do for work?

11 A PROSPECTIVE JUROR: He is the director of educational
12 technology of Martin County --

13 THE COURT: okay.

14 A PROSPECTIVE JUROR: -- schools.

15 THE COURT: Do you have any adult children?

16 A PROSPECTIVE JUROR: I have two.

17 THE COURT: what do they do for work?

18 A PROSPECTIVE JUROR: My oldest is a lineman for Duke
19 Energy in Indiana, and my youngest is a senior at Florida
20 state.

21 THE COURT: okay. Now, have you ever served on a jury
22 before?

23 A PROSPECTIVE JUROR: No.

24 THE COURT: okay. Have you ever been involved in a
25 criminal proceeding as a defendant, victim or witness?

1 A PROSPECTIVE JUROR: No.

2 THE COURT: Have either you or your spouse ever worked
3 in law enforcement?

4 A PROSPECTIVE JUROR: No.

5 THE COURT: Anything in your background or experiences
6 that would affect your ability to be fair and impartial?

7 A PROSPECTIVE JUROR: No.

8 THE COURT: All right. Thank you, Ms. Diaz -- no.
9 Excuse me. I mispronounced. Ms. Adrian, thank you.

10 All right. Juror 27. We spoke a bit earlier, Mr. Diaz
11 Vazquez. What do you do for work?

12 A PROSPECTIVE JUROR: I'm a warehouse worker.

13 THE COURT: Okay. And which warehouse is that?

14 A PROSPECTIVE JUROR: TEMCO, Tradition, an electrical
15 company.

16 THE COURT: And what did you do -- what other jobs have
17 you had besides working at that factory -- or that warehouse,
18 excuse me?

19 A PROSPECTIVE JUROR: Well, I worked at CVS
20 distribution center in Vero Beach, but mostly it's been
21 warehouse and manufacturing.

22 THE COURT: Okay. All right. That's all I have for
23 now.

24 Just to keep things moving, sir, let me hear from Juror
25 28. This is Ms. Scott, I believe?

1 A PROSPECTIVE JUROR: Yes, ma'am.

2 THE COURT: Please tell me your name.

3 A PROSPECTIVE JUROR: My name is Marlowe Scott, and I
4 am a retired teacher and a stay-at-home mom.

5 THE COURT: And when you were teaching, where did you
6 teach and what did you teach?

7 A PROSPECTIVE JUROR: Elementary, and for the
8 Department of Defense in Puerto Rico.

9 THE COURT: Okay. All right. And when did you retire
10 approximately?

11 A PROSPECTIVE JUROR: When we had kids.

12 THE COURT: Okay.

13 A PROSPECTIVE JUROR: A few years back.

14 THE COURT: Okay. At this point do you have any adult
15 children?

16 A PROSPECTIVE JUROR: Yes, we have three.

17 THE COURT: And what do they do for work?

18 A PROSPECTIVE JUROR: The oldest is a financial
19 planner; the middle one is an oncology nurse; and the youngest
20 is a civil engineer -- I'm sorry, geotechnical engineer.

21 THE COURT: And are you married? And what does your
22 spouse do for work?

23 A PROSPECTIVE JUROR: I am married, and he is a civil
24 engineer.

25 THE COURT: Okay. Have you ever served on a jury

1 before?

2 A PROSPECTIVE JUROR: No, ma'am.

3 THE COURT: Have you ever been involved in a criminal
4 case?

5 A PROSPECTIVE JUROR: No, ma'am.

6 THE COURT: Have you ever worked in law enforcement at
7 any point in your career?

8 A PROSPECTIVE JUROR: No, ma'am.

9 THE COURT: what about your husband?

10 A PROSPECTIVE JUROR: No, ma'am.

11 THE COURT: okay. Anything in your background or
12 experiences that would impair your ability to be fair and
13 impartial?

14 A PROSPECTIVE JUROR: No, ma'am.

15 THE COURT: okay. All right. Thank you.

16 Let's hear from Juror 29.

17 A PROSPECTIVE JUROR: Good morning, Your Honor.

18 THE COURT: Good morning. Please tell me your name and
19 what you do for work.

20 A PROSPECTIVE JUROR: I'm Alexandra Seits. I am a
21 licensed clinical social worker in private practice.

22 THE COURT: How long have you worked in social work?

23 A PROSPECTIVE JUROR: I graduated in 2020.

24 THE COURT: okay. Are you married?

25 A PROSPECTIVE JUROR: No.

1 THE COURT: Do you have any adult children?

2 A PROSPECTIVE JUROR: No.

3 THE COURT: Have you ever served on a jury before?

4 A PROSPECTIVE JUROR: No.

5 THE COURT: Have you ever been involved in a criminal
6 case as a defendant, victim or witness?

7 A PROSPECTIVE JUROR: No.

8 THE COURT: In your social -- in your work as a social
9 worker, have you ever been called to testify in a court
10 proceeding?

11 A PROSPECTIVE JUROR: No.

12 THE COURT: Now, have you ever worked in law
13 enforcement?

14 A PROSPECTIVE JUROR: No.

15 THE COURT: Anything in your background or experiences
16 that would affect your ability to be fair and impartial?

17 A PROSPECTIVE JUROR: I'm one of four, and two of us
18 are boat captains.

19 THE COURT: Have you ever worked as a boat captain?

20 A PROSPECTIVE JUROR: No.

21 THE COURT: Now, knowing that your siblings work as
22 boat captains, is there anything about their -- their
23 profession that would affect your ability to weigh the evidence
24 in this case, based solely on what you hear and see in the
25 courtroom?

1 A PROSPECTIVE JUROR: I believe not.

2 THE COURT: okay. I think that's all. But let me just
3 confirm. Have you ever been involved in a criminal proceeding?
4 I think you answered that question, but please remind me.

5 A PROSPECTIVE JUROR: No, but I have been involved in a
6 civil case.

7 THE COURT: okay. Is that civil case concluded?

8 A PROSPECTIVE JUROR: Yes.

9 THE COURT: okay. Is there anything about that civil
10 case that would influence your ability to be fair and impartial
11 in this proceeding?

12 A PROSPECTIVE JUROR: I believe not.

13 THE COURT: okay. All right. Thank you, Ms. Seits.
14 Let me hear now from Juror 30.

15 A PROSPECTIVE JUROR: Hi, Your Honor. Karen Dram.

16 THE COURT: Good morning. Please tell me what you do
17 for work, Ms. Dram.

18 A PROSPECTIVE JUROR: The last six years I have been in
19 retail for home decor for a few different companies selling
20 custom window treatments --

21 THE COURT: okay.

22 A PROSPECTIVE JUROR: -- and furniture.

23 THE COURT: And what about prior to that role?

24 A PROSPECTIVE JUROR: My career was in global travel
25 management.

1 THE COURT: what does that mean?

2 A PROSPECTIVE JUROR: It means I had multiple accounts
3 across the U.S. who also had business in other countries being
4 global, so I managed their corporate travel program.

5 THE COURT: Thank you.

6 Are you married?

7 A PROSPECTIVE JUROR: widow.

8 THE COURT: Do you have any adult children?

9 A PROSPECTIVE JUROR: Yes.

10 THE COURT: what do they do for work?

11 A PROSPECTIVE JUROR: He works in a restaurant in Vero
12 as an expediter.

13 THE COURT: Okay. Now, have you ever been on a jury
14 before?

15 A PROSPECTIVE JUROR: No.

16 THE COURT: Have you ever been involved in a criminal
17 proceeding as a defendant, victim or witness?

18 A PROSPECTIVE JUROR: No.

19 THE COURT: Have you worked in law enforcement at any
20 point?

21 A PROSPECTIVE JUROR: No. But my daughter-in-law does.

22 THE COURT: Okay. And what does she do for work?

23 A PROSPECTIVE JUROR: She's a police officer in
24 Hollywood PD, Florida.

25 THE COURT: Is there anything about her work as a

1 police officer that would influence your ability to be fair and
2 impartial if chosen to serve as a juror?

3 A PROSPECTIVE JUROR: No.

4 THE COURT: Okay. Anything in your background or
5 experiences, ma'am, that would affect your ability to be fair
6 and impartial?

7 A PROSPECTIVE JUROR: No.

8 THE COURT: All right. Thank you, Ms. Dram.
9 Let's hear from Gabriel Ayala.

10 A PROSPECTIVE JUROR: Good morning.

11 THE COURT: Good morning, sir. Please tell me your
12 full name again and what you do for work.

13 A PROSPECTIVE JUROR: I am -- my name is Gabriel Ayala.
14 I am retired.

15 THE COURT: You are retired. Okay. And, to be clear,
16 this is Juror 31.

17 what did you do, Mr. Ayala, before you retired?

18 A PROSPECTIVE JUROR: I'm an aeronautical engineer. I
19 work for the airspace business, with -- specialized in military
20 programs. worked for a little over 30 years.

21 THE COURT: Okay. Are you married?

22 A PROSPECTIVE JUROR: Yes, I am.

23 THE COURT: And what does your spouse do for work?

24 A PROSPECTIVE JUROR: she also is retired, and she's a
25 professional grandma. And she works for a retail, part-time

1 for TJ Maxx.

2 THE COURT: Okay. Thank you. Do you have any adult
3 children?

4 A PROSPECTIVE JUROR: Yes. I have three.

5 THE COURT: And what do they do for work?

6 A PROSPECTIVE JUROR: The older one, it is -- right now
7 he is a -- a Brazilian jujitsu trainer, and he lives in
8 North Carolina. He studied criminology, never worked on that
9 profession.

10 The next one is an architect.

11 And then my daughter, she is a registered nurse.

12 THE COURT: Okay. Thank you.

13 Have you ever served on a jury before?

14 A PROSPECTIVE JUROR: Yes. I have been summoned six
15 times. The last time was selected, but the judge declared a
16 mistrial, so we were dismissed.

17 THE COURT: Okay. Thank you.

18 Now, have you ever been involved in a criminal
19 proceeding as a defendant, a victim or a witness?

20 A PROSPECTIVE JUROR: No, Your Honor.

21 THE COURT: Okay. Is there anything in your background
22 or experiences, Mr. Ayala, that would impair your ability to be
23 fair and impartial?

24 A PROSPECTIVE JUROR: No.

25 THE COURT: Okay. Thank you, sir. You may be seated.

1 Let's hear from Juror 32.

2 A PROSPECTIVE JUROR: Good morning.

3 THE COURT: Good morning.

4 A PROSPECTIVE JUROR: Good morning. My name is
5 Jacqueline Pearson. I work as a property manager for 19 years
6 in Stuart.

7 THE COURT: what sort of buildings do you manage?

8 A PROSPECTIVE JUROR: Homes.

9 THE COURT: Homes.

10 A PROSPECTIVE JUROR: Private, vacation.

11 THE COURT: okay. And have you ever worked in law
12 enforcement?

13 A PROSPECTIVE JUROR: No, ma'am.

14 THE COURT: Thank you. Are you married?

15 A PROSPECTIVE JUROR: Yes, ma'am.

16 THE COURT: what does your you spouse do for work?

17 A PROSPECTIVE JUROR: The same as me.

18 THE COURT: Has he ever worked in law enforcement?

19 A PROSPECTIVE JUROR: No, ma'am.

20 THE COURT: Do you have any adult children?

21 A PROSPECTIVE JUROR: Yes, ma'am, two. One is a senior
22 chief in the U.S. Navy, and the youngest is a welder.

23 THE COURT: Have you ever served on a jury before?

24 A PROSPECTIVE JUROR: No, ma'am.

25 THE COURT: Have you ever been involved in a criminal

1 proceeding?

2 A PROSPECTIVE JUROR: I have.

3 THE COURT: And was that as a defendant, a victim or a
4 witness?

5 A PROSPECTIVE JUROR: A victim.

6 THE COURT: Now, briefly, if you're comfortable sharing
7 openly, what was the nature of that incident or that
8 experience?

9 A PROSPECTIVE JUROR: Actually twice.

10 In '93, '94, I had a cousin that was killed. And then
11 in 2016 my sister was killed.

12 THE COURT: Okay. So were you called to testify in
13 those proceedings?

14 A PROSPECTIVE JUROR: No, ma'am.

15 THE COURT: Now, having gone through those cases --
16 well, actually, let me ask, are those cases -- I know they
17 happened in the '90s -- are they fully concluded?

18 A PROSPECTIVE JUROR: Yes.

19 THE COURT: One was in the '90s and one was in 2016, I
20 think you mentioned.

21 Okay. Is there anything about those experiences that
22 would affect your ability to set that fully aside, if chosen to
23 serve as a juror, and focus only on what is presented in this
24 courtroom?

25 A PROSPECTIVE JUROR: I don't think so.

1 THE COURT: Do you have any doubt about your ability to
2 set all of that aside and focus only on the evidence presented
3 in this case?

4 A PROSPECTIVE JUROR: No doubt.

5 THE COURT: okay. Anything else in your background or
6 experiences, ma'am, that would affect your ability to be fair
7 and impartial?

8 A PROSPECTIVE JUROR: I don't think so.

9 THE COURT: okay. Thank you, Ms. Pearson.
10 Let's hear from Juror 33.

11 A PROSPECTIVE JUROR: I'm Darrell Goudge, a retired
12 Marine Corps officer, college professor. In the Marines I
13 served on amphibious ships and aircraft carriers. I'm familiar
14 with propulsion systems.

15 THE COURT: And what are you teaching now?

16 A PROSPECTIVE JUROR: I'm retired.

17 THE COURT: okay. When you were teaching as a college
18 professor, what were you teaching?

19 A PROSPECTIVE JUROR: Statistics and marketing.

20 THE COURT: Thank you for your service, sir. How long
21 were you in the Marine Corps?

22 A PROSPECTIVE JUROR: Nine years. I was injured.

23 THE COURT: okay. Are you married?

24 A PROSPECTIVE JUROR: widower.

25 THE COURT: Do you have any adult children?

1 A PROSPECTIVE JUROR: I have three. One works for the
2 Department of Defense in Omaha, not really sure what he does;
3 it's classified. Another one is a teacher. And the youngest
4 is a medical lab tech.

5 THE COURT: Okay. Now, other than your military
6 service, have you ever worked in law enforcement at any point?

7 A PROSPECTIVE JUROR: I was a military policeman for a
8 time period. We worked with CID, Criminal Investigation
9 Division, for the Navy.

10 THE COURT: As part of that, were you ever called to
11 testify in any sort of court proceeding?

12 A PROSPECTIVE JUROR: I was -- I did serve as a
13 character witness in one courts-martial. I have also served on
14 court-martials.

15 THE COURT: Is there anything about those experiences
16 that would affect your ability to be fair and impartial if
17 chosen to serve as a juror in this case?

18 A PROSPECTIVE JUROR: Never -- never served on a
19 civilian jury, but I don't think so.

20 THE COURT: Do you have any doubt about your ability to
21 be fair and impartial, sir?

22 A PROSPECTIVE JUROR: I will try.

23 THE COURT: Okay. All right. Now, anything else in
24 your background or experiences that would affect your ability
25 to be fair and impartial?

1 A PROSPECTIVE JUROR: An investigating officer on some
2 shipboard accidents.

3 THE COURT: So what I have heard is that you
4 investigated certain shipboard accidents.

5 A PROSPECTIVE JUROR: Yes.

6 THE COURT: Is --

7 A PROSPECTIVE JUROR: When accidents occur on a ship,
8 an officer is assigned to investigate that and report --
9 you know, write up a report on the results, and then sometimes
10 you have to testify to the courts-martial.

11 THE COURT: Okay. Now, obviously all those incidents
12 have nothing to do with this case. So it would be imperative
13 that you not permit any of that information or knowledge to
14 carryover in your assessment of the evidence in this case. Is
15 that something that you think you could do? Or do you have
16 doubts about that?

17 A PROSPECTIVE JUROR: No, it's been a long time ago.

18 THE COURT: So what is your view? Could you be fair
19 and set all of that prior experience and knowledge aside, sir?

20 A PROSPECTIVE JUROR: I think so.

21 THE COURT: Okay. Thank you.

22 Let me hear now from Juror 34.

23 A PROSPECTIVE JUROR: Good morning.

24 THE COURT: Good morning. This is Juror 34. Please
25 tell me your name and what you do for work.

1 A PROSPECTIVE JUROR: Helen Kutukyan. I'm a customer
2 service account manager for a printing company.

3 THE COURT: How long have you worked there?

4 A PROSPECTIVE JUROR: 11 years.

5 THE COURT: And what did you do before that?

6 A PROSPECTIVE JUROR: I have been in customer service
7 for 25 years.

8 THE COURT: what kinds of businesses did you work for
9 before the printing company?

10 A PROSPECTIVE JUROR: Telemarketing.

11 THE COURT: Have you ever worked in law enforcement?

12 A PROSPECTIVE JUROR: No.

13 THE COURT: Are you married?

14 A PROSPECTIVE JUROR: Yes.

15 THE COURT: what does your spouse do for work?

16 A PROSPECTIVE JUROR: Custom cabinetry.

17 THE COURT: Has he or she ever worked in law
18 enforcement?

19 A PROSPECTIVE JUROR: No.

20 THE COURT: okay. Do you have any adult children?

21 A PROSPECTIVE JUROR: No.

22 THE COURT: Have you ever served on a jury before?

23 A PROSPECTIVE JUROR: No.

24 THE COURT: Have you ever been involved in a criminal
25 proceeding as a victim, defendant or witness?

1 A PROSPECTIVE JUROR: No.

2 THE COURT: Anything in your background or experiences
3 that would impair your ability to be fair and impartial if
4 chosen to serve as a juror?

5 A PROSPECTIVE JUROR: No.

6 THE COURT: All right. Thank you. And how do I
7 pronounce your last name?

8 A PROSPECTIVE JUROR: Kutukyan.

9 THE COURT: Kutukyan.

10 A PROSPECTIVE JUROR: Uh-huh.

11 THE COURT: Okay. Thank you. Perfect.

12 we're now at Juror 35. Please let me know your full
13 name and what you do for work.

14 A PROSPECTIVE JUROR: My name is Mark Myers. I'm a
15 manufacturing supervisor at Piper Aircraft.

16 THE COURT: How long have you worked there?

17 A PROSPECTIVE JUROR: 7 years.

18 THE COURT: what jobs did you hold before that
19 position?

20 A PROSPECTIVE JUROR: within Piper?

21 THE COURT: And then also any -- any positions before
22 Piper too.

23 A PROSPECTIVE JUROR: Okay. I was a lead in one of the
24 manufacturing areas. Before that, I worked for eight years at
25 ABC Fine Wine and Spirits as several things; assistant manager,

1 wine consultant.

2 THE COURT: okay.

3 A PROSPECTIVE JUROR: Before that, I worked as a
4 facilities operator at Oak Harbor, a retirement community.

5 THE COURT: okay. Are you married?

6 A PROSPECTIVE JUROR: Yes.

7 THE COURT: what does your spouse do for work?

8 A PROSPECTIVE JUROR: she's the event director at
9 Riverside Theater.

10 THE COURT: Do you have any adult children?

11 A PROSPECTIVE JUROR: No, ma'am.

12 THE COURT: Have you ever served on a jury before?

13 A PROSPECTIVE JUROR: Yes. About a year and a half
14 ago. It was a state murder trial, but in the end I was an
15 alternate.

16 THE COURT: okay.

17 Have you ever been involved in a criminal proceeding as
18 a defendant, victim or witness?

19 A PROSPECTIVE JUROR: No.

20 THE COURT: Have either you or your spouse ever worked
21 in law enforcement?

22 A PROSPECTIVE JUROR: No.

23 THE COURT: Is there anything in your background or
24 experiences that would affect your ability to be fair and
25 impartial?

1 A PROSPECTIVE JUROR: No.

2 THE COURT: All right. Thank you, Mr. Myers.

3 And let's hear now from Juror Number 36.

4 A PROSPECTIVE JUROR: Keith wallace. I'm a
5 superintendent for a residential construction company.

6 THE COURT: And I think you told me earlier that you
7 spent 11 years in the U.S. Navy. Is that right, sir?

8 A PROSPECTIVE JUROR: Yes, ma'am.

9 THE COURT: Thank you for your service.

10 Tell me a little bit about the work that you did as a
11 machinist in the Navy.

12 A PROSPECTIVE JUROR: Operation of the propulsion
13 plant. Operating nuclear reactor, all the different systems
14 that go with it, lube oil, you know, everything. Make sure the
15 boat goes.

16 THE COURT: Okay. All right. Now, have you ever
17 worked in law enforcement?

18 A PROSPECTIVE JUROR: No.

19 THE COURT: Are you married?

20 A PROSPECTIVE JUROR: Yes.

21 THE COURT: what does your spouse do for work?

22 A PROSPECTIVE JUROR: She's a nurse practitioner.

23 THE COURT: Any adult children?

24 A PROSPECTIVE JUROR: No.

25 THE COURT: Any prior jury service?

1 A PROSPECTIVE JUROR: No.

2 THE COURT: Any involvement in a criminal case?

3 A PROSPECTIVE JUROR: No.

4 THE COURT: Anything in your background or experiences
5 that would impair your ability to be fair and impartial?

6 A PROSPECTIVE JUROR: No.

7 THE COURT: Okay. Thank you.

8 Let's hear from Juror 37.

9 A PROSPECTIVE JUROR: Hi, yes, my name is Anthony
10 Yannucci. I work for sales. I sell cell phones for Verizon.
11 Before that, I worked for very many big box retail stores.

12 THE COURT: Have you ever worked in law enforcement?

13 A PROSPECTIVE JUROR: No.

14 THE COURT: Are you married?

15 A PROSPECTIVE JUROR: Yes.

16 THE COURT: what does your spouse do for work?

17 A PROSPECTIVE JUROR: She's a teacher in Tradition.

18 THE COURT: Have you or your spouse ever worked in law
19 enforcement?

20 A PROSPECTIVE JUROR: No.

21 THE COURT: okay. Do you have any adult children?

22 A PROSPECTIVE JUROR: No.

23 THE COURT: Have you ever served on a jury before?

24 A PROSPECTIVE JUROR: Summioned, but not served.

25 THE COURT: Have you ever been involved in a criminal

1 proceeding?

2 A PROSPECTIVE JUROR: Yes. I was subpoenaed to be a
3 witness for a motor vehicle accident which included a fatality.

4 THE COURT: Okay. Did you end up testifying?

5 A PROSPECTIVE JUROR: No.

6 THE COURT: Is there anything about that experience,
7 although you weren't ultimately called to testify, that would
8 impact your ability to be fair and impartial if chosen to serve
9 as a juror in this case?

10 A PROSPECTIVE JUROR: I don't believe so.

11 THE COURT: Are you feeling any hesitation in that
12 regard?

13 A PROSPECTIVE JUROR: It brings up some feelings, but I
14 believe I can be fair.

15 THE COURT: Okay. Now, that accident that you
16 mentioned, were you in the vehicle?

17 A PROSPECTIVE JUROR: No, I was not.

18 THE COURT: Okay. Did that accident involve any of
19 your family members or friends?

20 A PROSPECTIVE JUROR: No, it did not.

21 THE COURT: Okay. All right. Let's see. Anything
22 else in your background or experiences, Mr. Yannucci, that
23 would affect your ability to be fair and impartial?

24 A PROSPECTIVE JUROR: I don't believe so.

25 THE COURT: Okay. Thank you.

1 Let's hear from Juror 38.

2 A PROSPECTIVE JUROR: Good morning.

3 THE COURT: Good morning, sir.

4 A PROSPECTIVE JUROR: James Herfy.

5 THE COURT: what do you do for work?

6 A PROSPECTIVE JUROR: Right now I just have rental
7 properties.

8 THE COURT: Are those in Florida?

9 A PROSPECTIVE JUROR: Yes.

10 THE COURT: okay. And do you own those?

11 A PROSPECTIVE JUROR: Yes.

12 THE COURT: what did you do for work before managing
13 rental properties?

14 A PROSPECTIVE JUROR: I own a dealership, and before
15 that I owned restaurants.

16 THE COURT: okay. Are you married?

17 A PROSPECTIVE JUROR: Passed away.

18 THE COURT: Have you ever worked in law enforcement?

19 A PROSPECTIVE JUROR: No.

20 THE COURT: Do you have any adult children?

21 A PROSPECTIVE JUROR: I have two, live in Canada. And
22 I have two step kids which is -- one, he is a Marine in
23 California; and one, she's in New York.

24 THE COURT: okay. Now, have you ever served on a jury
25 before?

1 A PROSPECTIVE JUROR: I got called once, but never went
2 to the court.

3 THE COURT: Have you ever been involved in a criminal
4 case?

5 A PROSPECTIVE JUROR: No.

6 THE COURT: Anything in your background or experiences
7 that would affect your ability to be fair and impartial?

8 A PROSPECTIVE JUROR: No.

9 THE COURT: Okay. Thank you, Mr. Herfy.

10 Let's hear from Juror 39.

11 A PROSPECTIVE JUROR: Maureen Kielian. I'm retired.
12 Previously I was the -- worked in health information management
13 data. I had my own business. I was a professor at Broward
14 College. That's mostly relevant.

15 THE COURT: Okay. And what did you teach when you were
16 a professor?

17 A PROSPECTIVE JUROR: ICD-9 coding.

18 THE COURT: ICD-9?

19 A PROSPECTIVE JUROR: Uh-huh.

20 THE COURT: Okay.

21 A PROSPECTIVE JUROR: It's ICD-10 now. So it was a
22 long time ago.

23 THE COURT: Okay. And are you married?

24 A PROSPECTIVE JUROR: No.

25 THE COURT: Okay. Do you have any adult children?

1 A PROSPECTIVE JUROR: I do. He is a nurse.

2 THE COURT: okay. Have you ever been called to jury
3 service?

4 A PROSPECTIVE JUROR: Summoned, but never served.

5 THE COURT: Have you ever been involved in a criminal
6 case?

7 A PROSPECTIVE JUROR: I have a misdemeanor with
8 adjudication withheld, and victim of personal injury.

9 THE COURT: The misdemeanor charge, what was the charge
10 involved?

11 A PROSPECTIVE JUROR: Resisting arrest without
12 violence.

13 THE COURT: And when did that case take place?

14 A PROSPECTIVE JUROR: Probably around 2009, 2010 maybe.

15 THE COURT: okay. Is there anything about going
16 through that criminal misdemeanor proceeding that would affect
17 your ability to be fair and impartial?

18 A PROSPECTIVE JUROR: No.

19 THE COURT: And then I think you also mentioned being a
20 victim of personal injury. Can you tell us briefly what that
21 involved?

22 A PROSPECTIVE JUROR: In 1984 I was a pedestrian that
23 got hit by a car.

24 THE COURT: Did that result in a court case of any
25 kind?

1 A PROSPECTIVE JUROR: Settled without trial -- or I
2 don't know what you call it. It settled. I didn't have to go
3 to court.

4 THE COURT: Okay. Do you remember if that was a civil
5 case?

6 A PROSPECTIVE JUROR: I -- I -- honestly, I really
7 don't know. It was the car and me and --

8 THE COURT: That's fine. Thank you. All right.
9 Anything in your background or experiences, Ms. Kielian -- if
10 I'm pronouncing your last name correctly -- that would impair
11 your ability to be fair and impartial if chosen to serve as a
12 juror?

13 A PROSPECTIVE JUROR: No.

14 THE COURT: Okay. Thank you.

15 Let's now hear from Juror 40, Mr. Fryar. We spoke
16 briefly earlier today. What do you do for work, sir?

17 A PROSPECTIVE JUROR: I kind of wear multiple hats, but
18 my primary is computer network and cyber security engineer.

19 THE COURT: Okay. That's all I have for you now,
20 Mr. Fryar, but the attorneys may have some additional
21 questions.

22 Let's hear from Juror 41. Good morning. Please remind
23 me of your name.

24 A PROSPECTIVE JUROR: Daphne Robinson.

25 THE COURT: Thank you. And I think you told me earlier

1 you work as a school bus driver.

2 A PROSPECTIVE JUROR: Yes, correct.

3 THE COURT: How long have you been doing that?

4 A PROSPECTIVE JUROR: 26 years.

5 THE COURT: okay. Any other positions that you have
6 held, ma'am?

7 A PROSPECTIVE JUROR: Before then I was working in a
8 packinghouse.

9 THE COURT: okay. And what were you packing?

10 A PROSPECTIVE JUROR: Citrus fruit.

11 THE COURT: Do you have any adult children?

12 A PROSPECTIVE JUROR: I have four.

13 THE COURT: what do they do for work?

14 A PROSPECTIVE JUROR: The oldest is the head over
15 memory care. The next one is self-employed, lawn service. One
16 work at an airplane place in Melbourne. And the youngest is
17 insurance for Allstate.

18 THE COURT: okay. Thank you.

19 Are you married?

20 A PROSPECTIVE JUROR: He is deceased.

21 THE COURT: Have you ever been on a jury before?

22 A PROSPECTIVE JUROR: Yes.

23 THE COURT: And when was that, if you remember?

24 A PROSPECTIVE JUROR: 2017, 2018.

25 THE COURT: Now, without telling me whether the jury

1 reached a verdict, did the jury reach a verdict?

2 A PROSPECTIVE JUROR: Yes, we did.

3 THE COURT: Were you the foreperson?

4 A PROSPECTIVE JUROR: No.

5 THE COURT: Have you ever been involved in a criminal
6 proceeding as a defendant, victim or witness?

7 A PROSPECTIVE JUROR: Not me myself, but my son. And I
8 was there in court with him.

9 THE COURT: Now, in your son's case, is there anything
10 about going through that experience with him that would affect
11 your ability to be fair and impartial if chosen to serve as a
12 juror in this case?

13 A PROSPECTIVE JUROR: I don't know if we can compare
14 the two. Mines was a drug case, so I don't know.

15 THE COURT: So it's important, of course, that any
16 juror chosen to serve in this case can be fair and impartial
17 without considering any information or knowledge or influence
18 obtained outside of this courtroom. And so my question is
19 designed to understand, and please be as candid as you can, is
20 there anything about that prior case with your son that would
21 have -- have any impact on your ability to be a juror in this
22 case?

23 A PROSPECTIVE JUROR: I didn't like the way it went,
24 so, yeah.

25 THE COURT: Okay. All right. Thank you. That's all I

1 have for now, Ms. Robinson.

2 Let's hear from Juror 42.

3 A PROSPECTIVE JUROR: Good morning.

4 THE COURT: Good morning. Please tell me your name and
5 what you do for work.

6 A PROSPECTIVE JUROR: William Gustavson Junior.

7 THE COURT: And what do you do for work?

8 A PROSPECTIVE JUROR: I work at the CVS Distribution
9 Center for ten years, forklift driver.

10 THE COURT: Any jobs before that one?

11 A PROSPECTIVE JUROR: A bunch of warehouses in
12 New York.

13 THE COURT: Okay. Are you married?

14 A PROSPECTIVE JUROR: Yes.

15 THE COURT: What does your spouse do for work?

16 A PROSPECTIVE JUROR: Medical transcription.

17 THE COURT: Have either of you ever worked in law
18 enforcement?

19 A PROSPECTIVE JUROR: No.

20 THE COURT: Do you have any adult children?

21 A PROSPECTIVE JUROR: No.

22 THE COURT: Have you ever served on a jury before?

23 A PROSPECTIVE JUROR: No.

24 THE COURT: Have you ever been involved in a criminal
25 case?

1 A PROSPECTIVE JUROR: No.

2 THE COURT: Anything in your background or experiences
3 that would impact your ability to be fair if chosen to serve as
4 a juror in this proceeding?

5 A PROSPECTIVE JUROR: No.

6 THE COURT: Thank you, Mr. Gustavson.

7 Let's hear from Juror 43.

8 A PROSPECTIVE JUROR: Good morning.

9 THE COURT: Good morning. Please tell me your name and
10 what you do for work.

11 A PROSPECTIVE JUROR: Kelly Lauder. Customer service
12 manager.

13 THE COURT: And where do you work specifically?

14 A PROSPECTIVE JUROR: It's for a New England company.
15 I work remotely.

16 THE COURT: What type of company is that?

17 A PROSPECTIVE JUROR: A retail, Ocean State Job Lot.

18 THE COURT: Okay. What is -- if you could just tell me
19 briefly what that is. Ocean State Job Lot is what I heard.

20 A PROSPECTIVE JUROR: Yes. It's a retailer,
21 like -- like a Christmas tree shop or a Big Lots or something
22 like that, but larger.

23 THE COURT: Okay. Thank you.

24 Have you ever worked in law enforcement?

25 A PROSPECTIVE JUROR: No.

1 THE COURT: Are you married?

2 A PROSPECTIVE JUROR: Yes.

3 THE COURT: what does your spouse do for work?

4 A PROSPECTIVE JUROR: A regional manager for Cumberland
5 Farms.

6 THE COURT: Has he ever worked in law enforcement?

7 A PROSPECTIVE JUROR: No.

8 THE COURT: Do you have any adult children?

9 A PROSPECTIVE JUROR: Four.

10 THE COURT: what do they do for work?

11 A PROSPECTIVE JUROR: My oldest is a technical designer
12 for electric boat. My son is a -- in the Air Force, and he
13 owns his own plumbing company. My daughter is a travel agent.
14 And my youngest son is -- works for a millwork company.

15 THE COURT: okay. Now, I think you said that your --
16 one of your children works as a technical designer on a boat.
17 Is that correct?

18 A PROSPECTIVE JUROR: It's a submarine for general
19 dynamics.

20 THE COURT: okay. Is there anything about his work or
21 maybe information you've acquired in speaking to him about his
22 work that would carryover into your evaluation of this case if
23 chosen to serve as a juror?

24 A PROSPECTIVE JUROR: No. She's not allowed to talk
25 about it. It's confidential.

1 THE COURT: Okay. Got it. Thank you.

2 Have you ever had any prior jury service?

3 A PROSPECTIVE JUROR: Three times; twice settled and
4 one time went to deliberations.

5 THE COURT: Okay. Without telling me what the verdict
6 was, did the jury reach a verdict in that one case?

7 A PROSPECTIVE JUROR: Yes.

8 THE COURT: Were you the foreperson?

9 A PROSPECTIVE JUROR: No, I wasn't.

10 THE COURT: Okay. Have you ever been involved in a
11 criminal proceeding?

12 A PROSPECTIVE JUROR: No, I haven't.

13 THE COURT: Anything in your background or experiences
14 that would impair your ability to be fair and impartial?

15 A PROSPECTIVE JUROR: No, there isn't.

16 THE COURT: Thank you, Ms. Perkins [sic].

17 Let's hear from Juror 45. Good morning.

18 A PROSPECTIVE JUROR: 44.

19 THE COURT: Oh, thank you. Thank you. I misread the
20 numbers there. We were just with Ms. Lauder, 43, and now we're
21 with Ms. Perkins, 44, is that correct?

22 A PROSPECTIVE JUROR: Yes.

23 THE COURT: Okay. Thank you.

24 What do you do for work, Ms. Perkins?

25 A PROSPECTIVE JUROR: I'm the director of marketing for

1 a real estate company, residential.

2 THE COURT: okay. And have you held any other
3 positions?

4 A PROSPECTIVE JUROR: Prior to that, I was selling real
5 estate and then waitressing jobs, hostessing jobs.

6 THE COURT: okay. Are you married?

7 A PROSPECTIVE JUROR: Yes.

8 THE COURT: what does your spouse do for work?

9 A PROSPECTIVE JUROR: Residential real estate sales,
10 but then prior to that he was an attorney.

11 THE COURT: okay. What sort of work did your husband
12 do?

13 A PROSPECTIVE JUROR: He represented large insurance
14 companies against lawsuits, and then medical malpractice.

15 THE COURT: Do you know if he ever did any criminal
16 work?

17 A PROSPECTIVE JUROR: I'm not sure.

18 THE COURT: okay. Have you ever been involved in a
19 criminal case as a defendant, victim or witness?

20 A PROSPECTIVE JUROR: No.

21 THE COURT: Have you ever served on a jury before?

22 A PROSPECTIVE JUROR: No.

23 THE COURT: Do you have any adult children? I know you
24 are expecting. Congratulations.

25 A PROSPECTIVE JUROR: Future adult children. Not

1 currently.

2 THE COURT: Okay. All right. And anything in your
3 background or experiences more generally that would impact your
4 ability to be fair and impartial?

5 A PROSPECTIVE JUROR: No.

6 THE COURT: Okay. Thank you.

7 Let's turn to Juror 45.

8 A PROSPECTIVE JUROR: Good morning, Judge.

9 THE COURT: Good morning. Please tell me your name and
10 what you do for work.

11 A PROSPECTIVE JUROR: My name is Sonal Batista, and I'm
12 a paralegal for the state attorney's office.

13 THE COURT: And where do you work in terms of location?

14 A PROSPECTIVE JUROR: I work out of the Indian River
15 County office.

16 THE COURT: Okay. How long have you worked as a
17 paralegal for the state attorney's office?

18 A PROSPECTIVE JUROR: 30 years.

19 THE COURT: All right. Now, have you ever been called
20 to testify in a criminal case?

21 A PROSPECTIVE JUROR: No.

22 THE COURT: Have you ever been involved in a criminal
23 case as a defendant or a victim?

24 A PROSPECTIVE JUROR: No.

25 THE COURT: Have you ever served on a jury before?

1 A PROSPECTIVE JUROR: No.

2 THE COURT: Have you ever worked in law enforcement,
3 besides your state attorney's work as a paralegal?

4 A PROSPECTIVE JUROR: Just the state attorney's.

5 THE COURT: okay. Are you married?

6 A PROSPECTIVE JUROR: Yes.

7 THE COURT: what does your spouse do for work?

8 A PROSPECTIVE JUROR: He is a family law attorney,
9 former prosecutor.

10 THE COURT: okay. And when he served as a prosecutor,
11 was that for the United States Attorney's Office or for the
12 state?

13 A PROSPECTIVE JUROR: State attorney.

14 THE COURT: okay. All right. Thank you.

15 Anything in your background or experiences that would
16 impact your ability to be fair and impartial?

17 A PROSPECTIVE JUROR: No. Other than just working for
18 the prosecution for 30 years.

19 THE COURT: Do you think with that duration in the
20 prosecution side of things that would cause you to perceive the
21 evidence in one way or another, perhaps not fully objectively?

22 A PROSPECTIVE JUROR: I would like to think that it
23 wouldn't, but possibly it would be somewhat challenging. I
24 have never served before as a juror, so hard -- you know, can't
25 really say.

1 THE COURT: Okay. Thank you. That's all I have for
2 you.

3 Now let's hear from Juror 46.

4 A PROSPECTIVE JUROR: Hi. Good morning.

5 THE COURT: Good morning. Please tell me your full
6 name and what you do for work.

7 A PROSPECTIVE JUROR: Amanda Holmes, and I am an office
8 manager for a structural engineering company in Martin County.

9 THE COURT: Okay. Are you personally an engineer?

10 A PROSPECTIVE JUROR: No.

11 THE COURT: Okay. What sorts of jobs besides the
12 office manager have you had?

13 A PROSPECTIVE JUROR: I did some restaurant management
14 before that for ten years.

15 THE COURT: Are you married?

16 THE WITNESS: Yes.

17 THE COURT: Do you have any adult children?

18 A PROSPECTIVE JUROR: No.

19 THE COURT: What does your spouse do for work?

20 A PROSPECTIVE JUROR: He is a stay-at-home parent.

21 THE COURT: Have you ever served on a jury before?

22 A PROSPECTIVE JUROR: Yes.

23 THE COURT: And when was that roughly?

24 A PROSPECTIVE JUROR: In 2009.

25 THE COURT: Okay. Do you remember if the jury reached

1 a verdict?

2 A PROSPECTIVE JUROR: Yes.

3 THE COURT: Do you remember if you were the foreperson?

4 A PROSPECTIVE JUROR: No.

5 THE COURT: And do you remember if that was a civil or
6 a criminal case?

7 A PROSPECTIVE JUROR: I'm not sure.

8 THE COURT: okay. All right. Now, have you ever been
9 involved in a criminal proceeding as a defendant, victim or
10 witness?

11 A PROSPECTIVE JUROR: No.

12 THE COURT: Have you ever worked in law enforcement?

13 A PROSPECTIVE JUROR: No.

14 THE COURT: what about your spouse?

15 A PROSPECTIVE JUROR: No.

16 THE COURT: okay. Anything in your background or
17 experiences that would impair your ability to be fair and
18 impartial?

19 A PROSPECTIVE JUROR: No.

20 THE COURT: All right. Thank you, Ms. Holmes.

21 Let's hear from Juror 47. Good morning.

22 A PROSPECTIVE JUROR: My name is Estela Olejniczak.

23 THE COURT: Thank you. And what do you do for work?

24 A PROSPECTIVE JUROR: I'm retired.

25 THE COURT: what did you do before retiring?

1 A PROSPECTIVE JUROR: I was a secretary for the School
2 Board of Broward County in the Psychological Services
3 Department.

4 THE COURT: Did you hold any jobs outside of this
5 education field as a secretary?

6 A PROSPECTIVE JUROR: Yes. Before that, after my first
7 divorce, I had my own business doing window treatments and
8 stuff. And I also -- I was working three jobs. I also did
9 customer service for a company house in Miami. It was American
10 Check Management. When we used to pay with checks, we had to
11 approve checks on the phone with the system from home.

12 THE COURT: okay. I'm going to ask that you just raise
13 the microphone a tad so our court reporter --

14 A PROSPECTIVE JUROR: Sorry about that.

15 THE COURT: That's okay. Thank you. Are you married?

16 A PROSPECTIVE JUROR: Divorced.

17 THE COURT: Do you have any adult children?

18 A PROSPECTIVE JUROR: Yes. One.

19 THE COURT: what does your child do?

20 A PROSPECTIVE JUROR: And she's a wedding photographer.

21 THE COURT: okay. All right. Now, have you ever
22 served on a jury before?

23 A PROSPECTIVE JUROR: I was called, but we were
24 dismissed.

25 THE COURT: Have you ever been involved in a criminal

1 proceeding?

2 A PROSPECTIVE JUROR: No.

3 THE COURT: Anything in your background or experiences
4 that would affect your ability to be fair and impartial if
5 chosen to serve?

6 A PROSPECTIVE JUROR: Probably, yes, but I would like
7 to discuss that privately.

8 THE COURT: okay. We will arrange for that. Thank
9 you.

10 A PROSPECTIVE JUROR: Uh-huh.

11 THE COURT: okay. Let's hear from Juror 48.

12 A PROSPECTIVE JUROR: My name is Ronald Dolak.

13 THE COURT: Good morning, sir. Please tell me what you
14 do for work.

15 A PROSPECTIVE JUROR: Auto body technician.

16 THE COURT: And do you work for yourself or for a
17 different company?

18 A PROSPECTIVE JUROR: I'm currently at a Ford
19 dealership.

20 THE COURT: Ford dealership.

21 A PROSPECTIVE JUROR: Yes.

22 THE COURT: How long have you been working there?

23 A PROSPECTIVE JUROR: Two years at this dealership.

24 THE COURT: what about before that dealership?

25 A PROSPECTIVE JUROR: Another private shop for

1 20 years.

2 THE COURT: okay. So would you say your career has
3 been in the auto body technician field all together?

4 A PROSPECTIVE JUROR: I've worked at Publix
5 supermarkets for 17 years before that.

6 THE COURT: And what were you doing there?

7 A PROSPECTIVE JUROR: Stock clerk and management.

8 THE COURT: Got it.

9 Are you married?

10 A PROSPECTIVE JUROR: Yes, I am.

11 THE COURT: what does your spouse do for work?

12 A PROSPECTIVE JUROR: She's a schoolteacher.

13 THE COURT: Have either you or your spouse ever worked
14 in law enforcement?

15 A PROSPECTIVE JUROR: No.

16 THE COURT: Have you ever served on a jury?

17 A PROSPECTIVE JUROR: No.

18 THE COURT: Have you ever been involved in a criminal
19 proceeding?

20 A PROSPECTIVE JUROR: No.

21 THE COURT: Is there anything in your background or
22 experiences that would affect your ability to be fair and
23 impartial if chosen to serve as a juror?

24 A PROSPECTIVE JUROR: No.

25 THE COURT: Thank you, Mr. Dolak. You may be seated.

1 We are now with Juror 49. Do you currently work, sir?

2 A PROSPECTIVE JUROR: Yes.

3 THE COURT: what do you do?

4 A PROSPECTIVE JUROR: I'm a supervisor for the City of
5 Fort Pierce.

6 THE COURT: And what do you do for the city?

7 A PROSPECTIVE JUROR: A supervisor for solid waste. I
8 lead nine side load drivers in the City of Fort Pierce.

9 THE COURT: okay. So you lead the drivers in
10 Fort Pierce?

11 A PROSPECTIVE JUROR: Yes, I organize they route and
12 send them out every day.

13 THE COURT: Is that something you can do from home?

14 A PROSPECTIVE JUROR: No, I do it -- I go in, in the
15 morning. I go at 5:30.

16 THE COURT: okay. All right. I take it that doesn't
17 interfere, though, with your medical procedures in the
18 afternoon?

19 A PROSPECTIVE JUROR: No.

20 THE COURT: Sorry. I can't hear you.

21 A PROSPECTIVE JUROR: No, ma'am.

22 THE COURT: okay. Thank you. All right. That's all I
23 have for you, sir, Mr. Thomas.

24 Let's hear now from Juror 50, Ms. Cynthia Ernst.

25 A PROSPECTIVE JUROR: Good morning. My name is Cynthia

1 Ernst. I'm currently retired. My previous jobs, pet cemetery,
2 tour guide, meat department, bakery department, deli, grocery
3 store server, bartender.

4 THE COURT: A lot of variety.

5 A PROSPECTIVE JUROR: Yes.

6 THE COURT: okay. Are you currently married?

7 A PROSPECTIVE JUROR: I'm married, but we haven't been
8 living together for 12 years.

9 THE COURT: okay. Have you or your spouse ever worked
10 in law enforcement?

11 A PROSPECTIVE JUROR: No.

12 THE COURT: Do you have any adult children?

13 A PROSPECTIVE JUROR: I have two. One is a
14 stay-at-home mom, and my son is in the insurance business. I
15 don't know what exactly he does for them.

16 THE COURT: okay. Have you ever served on a jury
17 before?

18 A PROSPECTIVE JUROR: No.

19 THE COURT: Have you ever been involved in a criminal
20 case as a defendant, victim or witness?

21 A PROSPECTIVE JUROR: I was charged in '97 for
22 possession of narcotics, and that was adjudicated. I went
23 through a first time offender program, completed it, and then
24 it was adjudicated.

25 THE COURT: okay. So was that a withhold adjudication?

1 A PROSPECTIVE JUROR: I don't even know what
2 adjudication means.

3 THE COURT: Okay. Fair enough. All righty. And that
4 was when again, you said?

5 A PROSPECTIVE JUROR: '97.

6 THE COURT: Is there anything about that proceeding,
7 having gone through that criminal case that would impair your
8 ability to be fair and impartial if chosen to serve as a juror
9 in this case?

10 A PROSPECTIVE JUROR: Not at all. I'm sorry. Not at
11 all. I'm sorry.

12 THE COURT: No. That's okay. Thank you. Okay.
13 Anything else in your background or experiences that would
14 affect your ability to be fair, ma'am?

15 A PROSPECTIVE JUROR: The only thing I have a problem
16 with right now is I could barely hear next to me. My hearing
17 is not that good.

18 THE COURT: Okay. Were there aspects of my discussion
19 today that you could not hear fully?

20 A PROSPECTIVE JUROR: No. You I could hear perfectly.
21 But it's like -- like, this woman here (indicating), I could
22 hardly hear her.

23 THE COURT: Okay. Now, if you were chosen, we would
24 all be using microphones.

25 A PROSPECTIVE JUROR: Okay.

1 THE COURT: If you had the benefit of a microphone
2 sitting in that juror box, if chosen, do you think you could
3 hear everything fully and completely?

4 A PROSPECTIVE JUROR: Yes.

5 THE COURT: okay. All right. Thank you very much,
6 Ms. Ernst.

7 what I'm going to do now is turn it over to the
8 attorneys for the same amount of time. They will ask you
9 questions.

10 Again, the same admonition applies. Please be fully
11 candid and complete in your answers. If you prefer to speak in
12 private, please let me know. I have jotted down the folks that
13 want to speak in private, so we will handle that later.

14 But I do now want to turn it over to Mr. Keller -- or
15 excuse me.

16 MR. KOFFSKY: Your Honor, again, my name is
17 Jacob Koffsky.

18 THE COURT: Thank you, Mr. Koffsky. You may begin. I
19 will give you a five-minute warning.

20 MR. KOFFSKY: Thank you, Your Honor.

21 And hello, everybody. I'm one of the attorneys for the
22 government. I want to start by first thanking you, as
23 Judge Cannon did, for your service today. I also want to thank
24 you for your candor in answering Judge Cannon's questions.
25 There are a couple of things that I'm here to follow up on. I

1 do think her questioning was very thorough, so I don't
2 anticipate being up here very long.

3 A couple of themes that I want to follow up on in
4 general. Many of you have been jurors before, and so I will
5 follow up with a couple of general questions on prior jury
6 service. A couple of you have talked about prior experience
7 with boats or vessels, and as you have heard, that's part of
8 this case, so I will follow up on that.

9 And then the third is prior involvement with or
10 connection to law enforcement and the criminal justice system.
11 Those are the general topics that I would like to talk about,
12 and I will start with a general question to the panel about
13 prior jury service.

14 Many of you have said you have been jurors before, some
15 of you have talked about reaching verdicts on those juries. So
16 the question to the general panel is, for cases where no
17 verdict was reached, do any of you have experiences where
18 jurors were clashing or were unable to talk to each other? Do
19 any of you have experiences like that where you could not be
20 part of a group to reach a decision in those cases?

21 I see no hands. I will move on from that topic.

22 Now, to the question about prior experiences with
23 vessels or with boats. Many of you have mentioned in your
24 professional experiences that you have experiences with
25 understanding the mechanics of vessels, understanding how they

1 work. A couple in particular, I believe, really talked about
2 having several years of experiences. Mr. Wallace, I believe
3 you were one of those.

4 So to those jurors in particular who have experiences
5 with vessels, is there anything in connection with your prior
6 experiences of understanding how vessels work, understanding
7 how they're supposed to function, that would make you feel a
8 certain way about this case, either positively or negatively?

9 A PROSPECTIVE JUROR: No.

10 No.

11 MR. KOFFSKY: And, Mr. Wallace, let me ask you a
12 follow-up question there. Do you anticipate that your
13 experience working with vessels and understanding vessels would
14 cause you to influence one of the other jurors on the panel
15 about this case in particular?

16 A PROSPECTIVE JUROR: No.

17 MR. KOFFSKY: Let me ask the same question to -- and
18 forgive me if I mispronounce the last name, but Mr. Goudge --
19 this is Juror Number 33.

20 Sir, you were asked the same question by Judge Cannon,
21 and I think your answer was that you think you could be fair.
22 I just want to follow up. Is there anything about your
23 experience that you think might cause you to view the evidence
24 in this case with any sort of bias?

25 A PROSPECTIVE JUROR: I think it would be difficult if

1 we were discussing things in the jury room and I had some
2 technical knowledge, not to share that about propulsion
3 systems, et cetera, you know, shipboard things.

4 MR. KOFFSKY: I understand. And --

5 A PROSPECTIVE JUROR: It would be difficult just to sit
6 there when that information might be helpful.

7 MR. KOFFSKY: I understand, sir. And do you still feel
8 that way even if the facts of this case have nothing to do with
9 whatever substantive incidents that you may have investigated
10 in your prior experience?

11 A PROSPECTIVE JUROR: I'm not really sure I understand
12 your question.

13 MR. KOFFSKY: Sure. Let me rephrase.

14 I think you mentioned during your questioning that you
15 have been an investigator and that you have investigated ship
16 incidents; is that correct?

17 A PROSPECTIVE JUROR: Yes.

18 MR. KOFFSKY: My question --

19 A PROSPECTIVE JUROR: whenever -- whenever an accident
20 appears -- occurs on board a Navy ship, an officer is assigned
21 to investigate it.

22 MR. KOFFSKY: Understood. And my question to you is,
23 because this case is a totally separate occurrence, to the
24 extent the vessel is unrelated to the vessels that you have
25 previously investigated, do you think those facts would allow

1 you to keep your prior experiences tucked away and that you
2 would allow to -- you would be able to decide this case
3 impartially?

4 A PROSPECTIVE JUROR: Propulsion systems are --
5 you know, makes the boat go.

6 MR. KOFFSKY: I understand, sir. Thank you very much
7 for your response.

8 I will now turn to the third topic that I addressed
9 earlier, which is prior involvement with or connection to law
10 enforcement or the criminal justice system. Many of you talked
11 about that. Judge Cannon asked each of you in these instances
12 whether your experiences would allow you -- you would still be
13 impartial in this case; many of you answered you would.

14 I wanted to pose a follow-up question to the general
15 panel. Do any of you think that in your prior cases you were
16 treated, or the person you know who was involved was treated
17 unfairly, either negatively or positively, in connection with
18 those experiences?

19 I believe Juror 41 has a question -- or a response,
20 excuse me.

21 THE COURT: Five minutes.

22 MR. KOFFSKY: Thank you, Your Honor.

23 A PROSPECTIVE JUROR: Yeah, I believe my son was
24 treated unjust in his case.

25 MR. KOFFSKY: Ma'am, I'm so sorry. Do you mind

1 repeating what you said.

2 A PROSPECTIVE JUROR: I believe my son was treated
3 unjust in his case.

4 MR. KOFFSKY: And can I ask you to elaborate on that.
5 why do you feel that way?

6 A PROSPECTIVE JUROR: Because the way he was treated.
7 He was -- wasn't treated well, and the attorney that he was
8 given really didn't do any work for him.

9 MR. KOFFSKY: Thank you for sharing that, ma'am. And I
10 understand. Do you think the experience with your son would
11 cause you to not be able to be fair if you were a juror
12 selected in this case?

13 A PROSPECTIVE JUROR: It did give me a bad taste in my
14 mouth about it, being in court, yes.

15 MR. KOFFSKY: Judge Cannon referred to jurors being the
16 deciders of the facts in this case, and your task would be, as
17 a juror, to evaluate all of the facts on their own merit and
18 apply the law as Judge Cannon instructs you to.

19 with that prior experience that you're talking about,
20 do you think you could follow the assignment in this case and
21 be a juror and decide the facts as they stand?

22 A PROSPECTIVE JUROR: Yeah.

23 MR. KOFFSKY: Thank you.

24 I also want to follow up with Juror Number 45; that is
25 Ms. Batista. Good afternoon, Ms. Batista.

1 A PROSPECTIVE JUROR: Hello.

2 MR. KOFFSKY: You mentioned that you have worked with
3 prosecution for several years. I want to follow up about that.
4 You know, as I'm mentioning, it's important that you
5 don't -- well, jurors cannot favor law enforcement one way or
6 the other. As I just talked about, it's important to decide
7 the case on its own facts.

8 You did talk about your prior experience. Do you
9 think, even with that prior experience, you could put it away
10 and decide the case based on solely the evidence?

11 A PROSPECTIVE JUROR: As I stated earlier, I -- I would
12 like to think that I can. I have never had to serve on a jury
13 before in order to decide both sides, so to speak. So it would
14 just -- I -- I worry that it might be a little bit challenging
15 for me just because I have worked side by side with prosecutors
16 for 30 years.

17 MR. KOFFSKY: And I know you have worked with many
18 people in law enforcement. Assuming all of those folks are
19 unconnected to this case --

20 A PROSPECTIVE JUROR: Uh-huh.

21 MR. KOFFSKY: -- do you think that that's a legitimate
22 enough difference where you could, again, try to put your prior
23 experiences aside?

24 A PROSPECTIVE JUROR: Yes.

25 MR. KOFFSKY: Okay. Thank you very much.

1 I would also like to follow up quickly, before my time
2 concludes, with Juror Number 15.

3 THE COURT: Two minutes.

4 MR. KOFFSKY: I believe that it's Mr. Coulon, if I'm
5 pronouncing that correctly.

6 Good afternoon, sir.

7 A PROSPECTIVE JUROR: Good afternoon.

8 THE COURT: Just a follow-up question on your response
9 to Judge Cannon. I believe you were asked both on the written
10 questionnaire and then in follow up whether you have ever been
11 involved with a criminal case. Please correct me if I'm wrong.
12 I believe I heard Judge Cannon ask you whether you have ever
13 been a defendant in a case -- in a criminal case, and I think
14 your answer was "I have never lost a case." Please correct me
15 if I'm misremembering. My question is to follow up on that.
16 Have you ever been a defendant in a criminal case?

17 A PROSPECTIVE JUROR: Yes.

18 MR. KOFFSKY: Okay.

19 A PROSPECTIVE JUROR: with the corrections -- pretty
20 much every correction officer wind up a defendant in a case at
21 sometime.

22 MR. KOFFSKY: Do you feel you were treated fairly in
23 those instances?

24 A PROSPECTIVE JUROR: Yes, I have no -- no opposition
25 either for or against the court system.

1 MR. KOFFSKY: And do you think that prior experience
2 would impact you in any way if you were selected as a juror?

3 A PROSPECTIVE JUROR: No.

4 MR. KOFFSKY: Thank you. Just a moment, Your Honor.

5 THE COURT: Thank you.

6 And, sir, can you please remind me of your juror
7 number.

8 A PROSPECTIVE JUROR: I'm sorry. 15.

9 THE COURT: 15. Thank you.

10 MR. KOFFSKY: Your Honor, I know my time is short, so I
11 will conclude. Thank you.

12 THE COURT: Thank you. Let's hear from Mr. O'Sullivan.

13 MR. O'SULLIVAN: Thank you, Your Honor.

14 Good afternoon again, ladies and gentlemen. My name is
15 Terrence O'Sullivan. And I just have a couple of quick follow
16 ups with a few specific jurors. The judge did a very thorough
17 job and asked a lot of questions, and the government did some
18 follow up.

19 So I would like to ask Juror Number 37, Mr. Yannucci, a
20 couple of follow-up questions, if I may, sir. And I will wait
21 until you get the microphone.

22 You talked a little bit earlier that you were a witness
23 to a motor vehicle accident.

24 A PROSPECTIVE JUROR: Yes.

25 MR. O'SULLIVAN: And what year was that?

1 A PROSPECTIVE JUROR: Around 2014.

2 MR. O'SULLIVAN: Okay. So about 10, 11 years ago?

3 A PROSPECTIVE JUROR: Yes, sir.

4 MR. O'SULLIVAN: And were you summoned to be a witness
5 in a case involving that motor vehicle accident?

6 A PROSPECTIVE JUROR: I was summoned -- I was given a
7 written subpoena, yes.

8 MR. O'SULLIVAN: Was that for a civil or a criminal
9 case?

10 A PROSPECTIVE JUROR: I don't recall.

11 MR. O'SULLIVAN: Do you recall if someone was suing for
12 money or if there was, like, a defendant who was potentially
13 looking at jail time for a crime for causing the fatality?

14 A PROSPECTIVE JUROR: I believe they were looking for
15 jail time because of the fatality.

16 MR. O'SULLIVAN: Okay. So it was in criminal court?

17 A PROSPECTIVE JUROR: Like I said, I was subpoenaed,
18 but never, like, given an actual court date to show up and
19 testify.

20 MR. O'SULLIVAN: Okay. Now, you testified earlier that
21 when you think about that case, that it -- and I think I'm
22 going to quote you correctly -- it brings up some feelings.

23 A PROSPECTIVE JUROR: Yes.

24 MR. O'SULLIVAN: Could you just kind of expound on
25 that? What kind of feelings does it bring up?

1 A PROSPECTIVE JUROR: It's just, like, living in the
2 moment again, going through the whole situation, anxiety, just
3 for me and my -- my wife.

4 MR. O'SULLIVAN: Is that because of the seriousness of
5 what you saw as a witness to a fatality?

6 A PROSPECTIVE JUROR: Yes.

7 MR. O'SULLIVAN: Okay. Do you think that you could be
8 fair and impartial in this case, knowing that, once again,
9 there is going to be testimony of a fatality?

10 A PROSPECTIVE JUROR: I believe so.

11 MR. O'SULLIVAN: When you say you believe so, both
12 sides, the government and the defense, want a fair trial. Are
13 you sure that you can? Or you just think that you can? I
14 don't want to put words in your mouth.

15 A PROSPECTIVE JUROR: I think that I can.

16 MR. O'SULLIVAN: You think that you can?

17 A PROSPECTIVE JUROR: Yes.

18 MR. O'SULLIVAN: Okay. I appreciate your candor, sir.
19 I have no further questions for you.

20 And then I just have a couple of follow ups for Juror
21 Number 45. Ms. Batista -- and, again, I will wait until you
22 get the microphone.

23 A PROSPECTIVE JUROR: Yes.

24 MR. O'SULLIVAN: So you have been a paralegal for the
25 State Attorney's Office for 30 years; correct?

1 A PROSPECTIVE JUROR: Yes.

2 MR. O'SULLIVAN: And that's the 19th Judicial Circuit?

3 A PROSPECTIVE JUROR: Correct.

4 MR. O'SULLIVAN: And that covers from, what, Indian
5 River down to --

6 A PROSPECTIVE JUROR: Indian River, St. Lucie,
7 Okeechobee, and Martin.

8 MR. O'SULLIVAN: And what office do you work in?

9 A PROSPECTIVE JUROR: Indian River County.

10 MR. O'SULLIVAN: Okay. Do you work in a specific unit
11 like narcotics or sex crimes?

12 A PROSPECTIVE JUROR: Primarily the misdemeanor
13 division, but I assist all the divisions within the office.

14 MR. O'SULLIVAN: So you would handle felonies as well
15 as misdemeanors?

16 A PROSPECTIVE JUROR: I do, yes.

17 MR. O'SULLIVAN: Okay. And you have been there
18 30 years?

19 A PROSPECTIVE JUROR: Yes.

20 MR. O'SULLIVAN: And you have never worked for the
21 public defender or for a defense attorney?

22 A PROSPECTIVE JUROR: No.

23 MR. O'SULLIVAN: Okay. And I think you testified that
24 you think you could be fair in a criminal jury trial.

25 A PROSPECTIVE JUROR: I would like to think that I

1 could, yes.

2 MR. O'SULLIVAN: what, if anything, would be holding
3 you back from being fair?

4 A PROSPECTIVE JUROR: Just -- just having worked for
5 the one side for so long, you know, sort of -- that's
6 just -- and the prosecutors that I worked with, I, you know,
7 respect them a lot, and -- I don't know. It's hard to explain.
8 It's like I don't want to say it's in my blood, so to speak,
9 but that's my business, right, in a sense that --

10 MR. O'SULLIVAN: So you have worked for that one side
11 for 30 years?

12 A PROSPECTIVE JUROR: Correct.

13 MR. O'SULLIVAN: And your -- your views on the criminal
14 justice system, is it fair to say, are shaped by that, kind of,
15 one side, since you have worked with them for so long?

16 A PROSPECTIVE JUROR: I -- I believe just -- yes, it
17 sort of defines me, I guess, if that's a good way to put it,
18 just because that's been my life for so long.

19 MR. O'SULLIVAN: And then you just mentioned that you
20 have good relationships with the prosecutors that you have
21 cultivated over the years?

22 A PROSPECTIVE JUROR: Correct.

23 MR. O'SULLIVAN: And you find them to be credible men
24 and women?

25 A PROSPECTIVE JUROR: Yes.

1 MR. O'SULLIVAN: Okay. I don't have any other
2 questions.

3 Your Honor, I don't have any other questions for
4 anyone.

5 THE COURT: Okay. Thank you. I will see the attorneys
6 briefly at sidebar.

7 Please hang tight, ladies and gentlemen.

8 (Conference at bench.)

9 THE COURT: All right. I'm going to read out loud the
10 names of folks who asked for private conferences. If there are
11 any specific jurors that I have left off my list that you think
12 merit a one-on-one discussion, please let me know because this
13 will be your last chance to ask any specific questions by any
14 jurors.

15 Do you have your paperwork?

16 MR. KOFFSKY: Can I grab it?

17 MR. O'SULLIVAN: Can I go grab mine, Your Honor?

18 THE COURT: Okay. The folks that I have on the list
19 are Juror 2, Jackson Phillips; Juror 3, Jessica Iglesias; Juror
20 15, Michael Coulon.

21 MS. FRANCIS: I'm sorry, Judge.

22 THE COURT: Juror 15. Juror 24, Wei Cai; Juror 29,
23 Alexandra Seits; Juror 33, Juror 37, and Juror 47.

24 Any other names you wish to add?

25 MR. KOFFSKY: None from the government, Your Honor.

1 MR. O'SULLIVAN: The defense doesn't have any.

2 THE COURT: Can you all -- never mind. Thank you.

3 (Conference at bench concluded.)

4 THE COURT: Okay. Ladies and gentlemen, there are some
5 folks that asked to speak in private, so that's what we're
6 going to do next. I'm going to read out loud the names of the
7 jurors who should stay back for those private conferences. If
8 I do not call your juror number, then you are free to go to
9 lunch until 1:40 p.m. Please make sure that you return
10 promptly at that time, no later than 1:40, to the courthouse.

11 My admonitions from before, just as emphatic. Do not
12 conduct any investigation about this case in any way, shape or
13 form. Have no discussions about this case with anybody, have
14 no contact with any of the attorneys or anybody that you see at
15 the attorney tables, and make sure that you do not conduct,
16 again, any research or post any information about this case on
17 the internet.

18 If you need to tell an employer where you are, you can
19 tell your employer that you're here for jury service, but you
20 cannot provide any substantive case information.

21 So, with that, I'm now going to call out the names of
22 the folks who should stay back. Everybody else stay in your
23 seats, please, so that we can have an orderly exit. Make sure
24 to leave all those paddles where they are so we do not misplace
25 them.

1 The folks who should stay back for the conferences are
2 as follows: Juror Number 2, Mr. Phillips; Juror Number 3,
3 Ms. Iglesias; Juror Number 15, Mr. Coulon; Juror Number 24,
4 Ms. Wei Cai; Juror Number 29, Ms. Seits; Juror Number 33,
5 Mr. Goudge; Juror Number 37, Mr. Yannucci; and finally,
6 Juror 47, Ms. Olejniczak. And I'm sorry if I have completely
7 butchered your last name.

8 So if I have not called your name, please stand and you
9 may orderly, in an orderly way, exit the courtroom, but
10 remember please return no later than 1:40 p.m.

11 (The prospective jurors exited the courtroom at
12 12:26 p.m., minus the named jurors.)

13 THE COURT: All right. Thank you. Jermaine, if you
14 could help us so that we start with Juror 2.

15 Everybody else should just hang tight right outside of
16 this courtroom, and we will summon you in one at a time so we
17 can have private meetings starting with Juror 2. So anybody
18 other than Juror 2, please stand right outside. Do not stray
19 from that area. Thank you. Because we will be moving quickly.

20 (The remaining prospective jurors exited at 12:28 p.m.)

21 THE COURT: Okay. All right. Thank you.

22 We're now with Mr. Jackson -- excuse me, Mr. Phillips.
23 Is that correct? Okay. Let's get a microphone to you.

24 You told us earlier, sir, about a prior conviction that
25 resulted in the death of your former wife; is that correct?

1 A PROSPECTIVE JUROR: That's correct.

2 THE COURT: Okay. Now, I assume that is a felony
3 because you served more than a year in prison.

4 A PROSPECTIVE JUROR: Second degree, yes, ma'am.

5 THE COURT: Okay. Now, let me turn it over to
6 Mr. Keller and then Mr. O'Sullivan for any additional
7 questioning.

8 MR. KELLER: So, Mr. Phillips, my question is just, did
9 you have your civil rights restored after you left prison?

10 A PROSPECTIVE JUROR: My mother filled the paperwork
11 out so I could vote. I was able to vote. Proud to say that I
12 can do that. I have not went any farther with that.

13 When I received the summons, I filled out the
14 questionnaire. I was straightforward that I have not went any
15 farther. Right now I have two -- two -- after the accident, I
16 was distraught. I left town and went and worked an ice storm
17 in Arkansas. That time it was about four months after the
18 accident, three to four months. And just got where I didn't
19 care anymore, not knowing if criminal procedures was going to
20 happen, not knowing.

21 I was -- at that time I was put on probation -- or no,
22 excuse me -- administrative leave without pay from the fire
23 district. So I -- my life was in shambles. I went away.
24 Arkansas. I got a DUI. Very -- it was a stupid thing how it
25 happened, but it happened.

1 So come back home. June, after the following year, in
2 2001, I finally got arrested. I went to -- through the
3 procedures of what I could do, anything I could do, definitely
4 was sorry for what happened, but I was sentenced. I -- I did a
5 plea deal. I was sentenced in 2002, February of 2002. And I
6 received five years' incarceration, three years' probation.

7 I did my time. I come out. I went right back into
8 society. So I lost not only my wife, I lost my career,
9 my -- my daughter grew up without her father for the time being
10 gone. And since then I have restored my life. I live right.

11 I have a lawyer reserved in Arkansas to see if I could
12 get that charge somewhat covered. If I got that covered, I
13 felt that I could at least maybe ask for a hardship license.
14 It's hard to be a professional, upstanding citizen and have to
15 be hauled around or pay someone to drive you.

16 So I am working on trying to restore my driver's
17 license. Same time, I have retained a lawyer in Tallahassee.
18 My wife at this time has really put my life together so we can
19 present it to ask for forgiveness.

20 So that's where I stand with that at this time, that I
21 have two open things I want to do. I'm trying -- I am a very
22 upstanding citizen in St. Lucie County. Ten years fireman
23 paramedic. I run these streets for this county. I born and
24 raised here. I have done everything I can do. I'm very much a
25 business owner, small business owner. I -- the only thing I

1 didn't present, to start with, was I also applied in 2000, and
2 I got a couple of small SBA loans, not PPPs. I am
3 re -- currently paying it back at this point.

4 So I am involved in the small business thing to go with
5 my criminal history. I'm sorry for what I did. I will tell
6 anybody the wrong person died, but I'm left here on this Earth
7 to try to be productive to society.

8 THE COURT: Thank you very much. Thank you very much.

9 Mr. O'Sullivan, do you have any questions or
10 Ms. Francis?

11 MR. O'SULLIVAN: I have no questions, Your Honor.

12 THE COURT: Anything further, Mr. Keller?

13 MR. KELLER: So you did have your voting rights
14 reinstated?

15 A PROSPECTIVE JUROR: Voting, yes, sir. Voting.

16 MR. KELLER: So the only question I would ask,
17 Your Honor, if I may is -- and I want to acknowledge that I
18 hear your pain. I hear this was incredibly traumatic.

19 A PROSPECTIVE JUROR: Yes, sir.

20 MR. KELLER: Do you think it's appropriate or do you
21 think you can really be impartial in a case that is involving
22 manslaughter, that is involving some --

23 A PROSPECTIVE JUROR: Yes, sir. Yes, sir. I live day
24 by day, every day, with what I done, and what is right, and how
25 I raised my kid, and how I raised a grandkid, right is right,

1 and I am very open to being a sincere person for what is just
2 and right.

3 THE COURT: Thank you very much. You may be excused.
4 You can return at 1:40 with all of your other fellow jurors,
5 sir. Please be on time at 1:40. Do not discuss this case with
6 anyone or do any research of any kind.

7 we will now hear from Juror 3, please.

8 COURTROOM DEPUTY: Yes, Your Honor.

9 (Prospective juror exited the courtroom.)

10 (Prospective juror entered the courtroom.)

11 THE COURT: Good morning, Ms. Iglesias. You can take a
12 seat, but we will give you a microphone. This will be brief.

13 A PROSPECTIVE JUROR: Okay.

14 THE COURT: If you could walk over to the officer,
15 please.

16 Ms. Iglesias, my notes indicate that you requested a
17 private conference, but I can't remember exactly --

18 A PROSPECTIVE JUROR: Because you were asking about my
19 children.

20 THE COURT: Okay. Is there something about one of your
21 children that gave you pause?

22 A PROSPECTIVE JUROR: Yeah, and I don't need for
23 everybody else to know that I have a daughter that is in
24 prison --

25 THE COURT: Okay.

1 A PROSPECTIVE JUROR: -- as of June of last year.

2 THE COURT: Thank you.

3 And what is he or she in prison for?

4 A PROSPECTIVE JUROR: It's stupid. She, unfortunately,
5 went through a hard divorce, and she stole from her employer.

6 THE COURT: okay. Did you have to testify in her case
7 in any way?

8 A PROSPECTIVE JUROR: No, no, no, not at all. I wasn't
9 even involved in it. I mean, I found out after she was taken
10 to jail. I mean, she turned herself in.

11 THE COURT: okay.

12 A PROSPECTIVE JUROR: okay. But then she got out.
13 And, I mean, she -- they didn't, just until last year -- this
14 happened in 2020. They didn't until -- last year was when they
15 finally -- you know, it was decided she would be five years in
16 prison.

17 THE COURT: okay.

18 A PROSPECTIVE JUROR: They're still waiting for
19 restitution, for what the restitution is going to be --

20 THE COURT: okay.

21 A PROSPECTIVE JUROR: -- that's the only thing that's
22 pending.

23 THE COURT: Do you know whether she was prosecuted by
24 the state of Florida or by the United States?

25 A PROSPECTIVE JUROR: I believe the state of Florida.

1 It was in Broward County.

2 THE COURT: Okay. And is there anything about that
3 experience that would impact your ability to be fair and
4 impartial if chosen to serve?

5 A PROSPECTIVE JUROR: well, like I said earlier, I'm a
6 very honest person, I'm a very truthful person. I'm very -- I
7 mean, my -- my grandfather was a lawyer, so you can imagine.
8 So no, no, no, I'm -- no. Just -- it's just bothers me, it
9 bothers me the fact that my daughter is, you know, in prison,
10 obviously.

11 THE COURT: Okay.

12 A PROSPECTIVE JUROR: I mean, what I --

13 THE COURT: Thank you. I'm sorry. We do have some
14 time constraints. So I just want to give Mr. Keller a chance
15 to ask any questions and then Mr. O'Sullivan.

16 MR. KELLER: No questions, Your Honor.

17 THE COURT: Mr. O'Sullivan.

18 MR. O'SULLIVAN: No questions, Your Honor.

19 THE COURT: Okay. All right. Thank you very much.

20 Let's turn to Juror Number 15.

21 A PROSPECTIVE JUROR: Thank you.

22 (Prospective juror exited the courtroom.)

23 (Prospective juror entered the courtroom.)

24 THE COURT: Hello. Let's try to speed this up. So
25 let's give Mr. Coulon a microphone.

1 Any questions for Mr. Coulon, Mr. Kelly?

2 Jermaine, can you help us with that door, please.

3 Thank you.

4 Mr. Coulon, let's see. Is there anything in your
5 experiences or in your beliefs that would impair your ability
6 to be fair and impartial if chosen to serve as a juror in this
7 case?

8 A PROSPECTIVE JUROR: No, I don't think so.

9 THE COURT: Okay. Mr. O'Sullivan, any questions?

10 MR. O'SULLIVAN: I have no questions, Your Honor.

11 THE COURT: Okay. Mr. Coulon, do you have any
12 hesitation in your response? Obviously, the goal here is to
13 just ensure that we have fair and impartial jurors. So if
14 you're feeling any heartburn with my questions, and you have
15 some doubts with your ability to be fair, this would be the
16 time to tell us that.

17 A PROSPECTIVE JUROR: Yes, no, I don't have any -- no
18 ambitions, no inhibitions.

19 THE COURT: Okay. All right. So you feel very
20 confident, sir, that you can be fair and impartial?

21 A PROSPECTIVE JUROR: Yes.

22 THE COURT: All right then. Thank you. We can now
23 hear from Juror Number 24.

24 (Prospective juror exited the courtroom.)

25 (Prospective juror entered the courtroom.)

1 THE COURT: Nice to see you again, ma'am. If you could
2 walk over to where the officer is and get the microphone from
3 him.

4 Yes. I thought it would be worthwhile -- I know you
5 indicated that English is your second language. Have you been
6 able to understand everything I have said today?

7 A PROSPECTIVE JUROR: So far. But, you know, there are
8 certain times, certain vocabulary or phrase that I might need
9 to, you know, check the dictionary or have a translator, if
10 that's allowed.

11 THE COURT: Okay. All right. Let me ask you, in your
12 role as an accountant, I believe you indicated, do you work in
13 the English language or in some other language?

14 A PROSPECTIVE JUROR: English language. And we -- I
15 deal with number a lot, which is like a universal; so that's
16 not a problem for me.

17 THE COURT: Okay. And -- all right. Any additional
18 questions, Mr. Keller or Mr. Koffsky?

19 MR. KELLER: No, Your Honor.

20 THE COURT: Mr. O'Sullivan?

21 MR. O'SULLIVAN: Just a couple of questions.

22 Earlier -- and, correct me if I'm wrong -- I think that
23 you told us that you understood most of what we were saying.

24 A PROSPECTIVE JUROR: Correct.

25 MR. O'SULLIVAN: And just now, you told the judge that

1 you understood everything?

2 A PROSPECTIVE JUROR: I understood everything
3 Judge Cannon had asked.

4 MR. O'SULLIVAN: Okay.

5 A PROSPECTIVE JUROR: But as far as everyone's answer,
6 I think I understood most of it.

7 MR. O'SULLIVAN: Most of it.

8 If some witnesses testified to, maybe, some very
9 technical things, do you think that may present some challenges
10 for you?

11 A PROSPECTIVE JUROR: It could be. That's what I'm
12 saying. I might need some certain phrase or things that I
13 might need to check the dictionary or Google translator.

14 MR. O'SULLIVAN: Okay. I appreciate your time, ma'am.
15 Thank you.

16 I have no further questions, Your Honor.

17 THE COURT: Anything further, Mr. Keller?

18 MR. KELLER: No, Your Honor.

19 THE COURT: Okay. Thank you. You may be excused. And
20 please return at 1:40.

21 Let's now hear from Juror 29.

22 (Prospective jurors exited and entered the courtroom.)

23 THE COURT: All right. Ms. Seits, if you could please
24 just stand there for one moment. You can set aside your
25 belongings.

1 I just wanted to circle back. I asked you whether you
2 believed you could be fair and impartial, and I think you said
3 you believe you can. Do you have any hesitation at all in your
4 ability to be fair and impartial and to weigh the evidence in
5 this case, based just on what you hear in the courtroom and the
6 instructions on the law that I were to give you, if chosen?

7 A PROSPECTIVE JUROR: I -- I believe I would hope to
8 be. However, my training as a social worker is such that we
9 don't fully believe in the carceral system, and that we believe
10 in restorative justice models.

11 And then given that two of my brothers are captains who
12 have their own bus- -- small businesses, I do worry that that
13 would influence my ability to be impartial.

14 THE COURT: Okay. Thank you.
15 Anything from the government?

16 MR. KELLER: No, Your Honor.

17 THE COURT: Mr. O'Sullivan?

18 MR. O'SULLIVAN: Knowing that this case involves a boat
19 captain, are you going to hold my client to a higher standard
20 because maybe you have more intimate knowledge of how boat
21 captains operate and what their responsibilities are since you
22 have two siblings engaged in that type of business?

23 A PROSPECTIVE JUROR: I think safety -- I would hold
24 them to a high standard of safety.

25 MR. O'SULLIVAN: would you hold my client to a higher

1 standard than what the Court tells you to, though, because you
2 know how important safety is?

3 A PROSPECTIVE JUROR: A higher standard than?

4 MR. O'SULLIVAN: Than other witnesses or the law that
5 the -- that Judge Cannon provides to you.

6 A PROSPECTIVE JUROR: I don't believe so.

7 MR. O'SULLIVAN: And, I guess, on the other side of the
8 coin, would you give the government a fair shot even though, as
9 a social worker, the incarceration system is not your favorite,
10 will you still give the government a fair shot and put out
11 penalties out of your mind and just judge the facts on -- or
12 judge this case just on the facts and the law that Judge Cannon
13 provides?

14 A PROSPECTIVE JUROR: I would hope so.

15 MR. O'SULLIVAN: Okay. I have no further questions.

16 Your Honor, thank you, ma'am, for your time.

17 THE COURT: Okay. Thank you. Let's now turn to
18 Juror 33.

19 Please return at 1:40, ma'am.

20 A PROSPECTIVE JUROR: Thank you.

21 (Prospective jurors exited and entered the courtroom.)

22 THE COURT: All right. Good afternoon, sir. We are
23 now with -- are you Juror 33, sir?

24 A PROSPECTIVE JUROR: I am.

25 THE COURT: Okay. Any additional questions for

1 Juror 33?

2 MR. KELLER: None from the government, Your Honor.

3 THE COURT: Mr. O'Sullivan?

4 MR. O'SULLIVAN: Yes. Thank you, Your Honor.

5 Is it Mr. Goudge?

6 A PROSPECTIVE JUROR: "Goudge."

7 MR. O'SULLIVAN: "Goudge."

8 Mr. Goudge, you said that you were familiar with naval
9 propulsion systems?

10 A PROSPECTIVE JUROR: I am.

11 THE COURT: If you were a part of the jury in this case
12 and other jurors kind of looked to you to ask questions because
13 you have specialized knowledge about how a propulsion system
14 works, would you be obliged to talk to them about that and
15 impart your knowledge to other jurors about propulsion systems?

16 A PROSPECTIVE JUROR: You know, having knowledge that I
17 have that might be useful is hard to hold back.

18 MR. O'SULLIVAN: It would be hard to hold back.

19 And then I also think, correct me if I'm wrong, that
20 you used to investigate shipboard accidents.

21 A PROSPECTIVE JUROR: Yes.

22 MR. O'SULLIVAN: Do you recall approximately how many
23 shipboard accidents you would have investigated during the
24 course of your career?

25 A PROSPECTIVE JUROR: Four.

1 MR. O'SULLIVAN: Four.

2 And did you testify in four trials or --

3 A PROSPECTIVE JUROR: well, the procedure is the -- the
4 investigating officer gathers information, talks to the
5 witnesses, writes up a report. And then that information is
6 used to determine whether there is going to be a -- follow up
7 on any kind of charges.

8 THE COURT: All right. Thank you.

9 A PROSPECTIVE JUROR: Sometimes --

10 THE COURT: Anything further?

11 A PROSPECTIVE JUROR: Sometimes do end up testifying.

12 MR. O'SULLIVAN: Just briefly, Your Honor.

13 would you give the government's witnesses, who
14 basically are going to be ship investigators, doing the same
15 thing you did, would you give them more credibility than other
16 witnesses?

17 A PROSPECTIVE JUROR: There is -- there is one thing I
18 probably should say that's perhaps related to this.

19 In investigating, we're looking whether the rules were
20 followed or not. And I'm not sure I could be fair with
21 civilian shipowners because I just think, with my experience in
22 the Navy and in the Marines, they're just sloppy with rules and
23 that causes problems.

24 MR. O'SULLIVAN: Okay. Thank you. I have no further
25 questions, Your Honor.

1 THE COURT: All right. Thank you. Please return at
2 1:40, sir.

3 Let's hear from Juror 37.

4 (Prospective jurors entered and exited the courtroom.)

5 THE COURT: All right, sir. If you could walk over to
6 the officer, he will equip you with a microphone. Are you
7 Juror 37?

8 A PROSPECTIVE JUROR: Yes.

9 THE COURT: okay.

10 A PROSPECTIVE JUROR: Yes.

11 THE COURT: Any questions for Juror 37 that we have not
12 covered, Mr. Keller?

13 MR. KELLER: None from the government.

14 THE COURT: Mr. O'Sullivan?

15 MR. O'SULLIVAN: Nothing further, Your Honor.

16 THE COURT: All right then. That was quick. No more
17 questions, sir. But please come back at 1:40 and follow all
18 the Court's instructions. Thank you.

19 A PROSPECTIVE JUROR: Thank you.

20 THE COURT: And, finally, Juror 47.

21 (Prospective jurors exited and entered the courtroom.)

22 THE COURT: All right. Hello again, ma'am. We're just
23 going to have a couple of questions for you. You can just stay
24 standing to make this brief.

25 Any questions for Juror 47, Mr. Keller?

1 MR. KELLER: Yeah, Judge, I believe that we called
2 Juror 47 back because there was something she did not want to
3 speak about in public.

4 THE COURT: Okay.

5 A PROSPECTIVE JUROR: Yes.

6 THE COURT: Yes, that's correct.

7 what would you like to share, ma'am?

8 A PROSPECTIVE JUROR: I was a victim of domestic
9 violence. And as I came into the court today, I didn't realize
10 that everything was going come back to me. It happened in my
11 first marriage, and it's been a long time. There was a
12 restraining order against my ex-husband. And -- but I don't
13 think I can be neutral. I don't think I can be balanced.

14 THE COURT: Okay.

15 A PROSPECTIVE JUROR: I think my emotions have gotten
16 to me, and I don't know if I would be fair to either one,
17 either side.

18 THE COURT: Okay. All right. Thank you.

19 Any questions, Mr. Keller?

20 MR. KELLER: No, Your Honor.

21 THE COURT: Mr. O'Sullivan?

22 MR. O'SULLIVAN: No, Your Honor.

23 THE COURT: All right. Thank you. Please return at
24 1:40 and make sure to follow the Court's instructions. But we
25 will see you at 1:40. Thank you.

1 A PROSPECTIVE JUROR: Thank you.

2 (Prospective juror exited the courtroom.)

3 THE COURT: All right. We're going to take a
4 five-minute break so you all can use the restroom and get your
5 notes in a row, so that we can move directly into jury
6 selection. As I indicated, we will have the for-cause strikes
7 first.

8 Does the government have a view on the number of
9 alternates we should choose?

10 MR. KELLER: Judge, just given the length of the trial,
11 we would ask for three.

12 THE COURT: Mr. O'Sullivan, do you agree with that?

13 MR. O'SULLIVAN: I think that makes sense, Your Honor,
14 just because there is so many witnesses and the length of the
15 trial.

16 THE COURT: Okay. Well, then this is what we will
17 have. We will have the standard six peremptories for the
18 government, ten for the defense, until we get to 12. At that
19 point, then each side will be given two peremptories for the
20 selection of the three alternates. You cannot save any unused
21 peremptories that you didn't use for the first 12 to use for
22 the alternates.

23 Any questions?

24 MR. O'SULLIVAN: No questions.

25 MR. KELLER: No, Your Honor.

1 THE COURT: Okay. Then a five-minute break. We will
2 begin expeditiously after that.

3 MR. O'SULLIVAN: Yes, ma'am.

4 (A recess was taken from 12:51 p.m. to 12:57 p.m.)

5 THE COURT: All right. We will get started in just a
6 few seconds, so please get settled behind the table.

7 I will give each side another minute.

8 All right. Let's get started. I have some individuals
9 who, I think, would be for-cause worthy. So I'm going to try
10 to speed things along here and start with -- any objection to a
11 for-cause challenge as to Ms. Seits? She seemed to be unable
12 to answer with any degree of certainty that she could be fair
13 and impartial? This is Juror 29.

14 Mr. Keller?

15 MR. KELLER: No objection.

16 THE COURT: Mr. O'Sullivan?

17 MR. O'SULLIVAN: No objection.

18 THE COURT: Ms. Seits, Juror 29, will be stricken for
19 cause.

20 Any objection to for cause as to Juror 33, Mr. Goudge,
21 who has specialized experience in mechanics and also, I think,
22 repeatedly indicated he would be using his personal
23 knowledge and -- Ms. Francis, do you want to take a moment?

24 MS. FRANCIS: (Nods head.)

25 THE COURT: Okay. I do need to keep things along,

1 though. So if you want to take a break, you are welcome to
2 come back --

3 MS. FRANCIS: Judge, yes.

4 THE COURT: Okay. Thank you.

5 Any objection to proceeding at this point?

6 MR. O'SULLIVAN: No objection to proceeding and no
7 objection to 33 for cause.

8 THE COURT: Okay. Any objection, Mr. Keller?

9 MR. KELLER: No, Your Honor, no objection.

10 THE COURT: Okay. 33 was stricken for cause.

11 Any objection to for cause as to Mr. Yannucci,
12 Juror 37, Mr. Keller?

13 MR. KELLER: No, Your Honor.

14 THE COURT: Mr. O'Sullivan?

15 MR. O'SULLIVAN: No objection, Your Honor.

16 THE COURT: 37 will be stricken for cause due to his
17 inability to be fair in this case based on his statements.

18 Any objection to for cause as to Mr. Fryar, Juror 40,
19 who has the MRI appointment and also the therapy weekly?
20 Mr. Keller?

21 MR. KELLER: No, Your Honor.

22 THE COURT: Any objection --

23 MR. O'SULLIVAN: No objection.

24 THE COURT: 40 will be stricken for cause.

25 Now, returning to the earlier numbers, and I will get

1 to the later ones if I have missed any, but Juror Number 1 had
2 the cat issue with the ultrasound and no one to help her. Any
3 objection to for cause as to Juror 1?

4 MR. KELLER: No, Judge, we don't have an objection.

5 MR. O'SULLIVAN: No objection.

6 THE COURT: Okay. Juror 1 will be stricken for cause
7 due to the health issues of her animal.

8 Okay. Any objection to for cause as to Mr. Diaz
9 Vazquez, Juror 27, who indicated he has to pick up at least one
10 of his children and there would be no one else to assist with
11 that, Mr. Keller?

12 MR. KELLER: No, Your Honor.

13 MR. O'SULLIVAN: No objection, Your Honor.

14 THE COURT: Any objection to for cause for
15 Ms. Robinson, Juror 41, who works as a bus driver for the
16 school district and said there were -- they were in a critical
17 shortage situation with insufficient bus drivers? Mr. Keller?

18 MR. KELLER: No objection, Your Honor.

19 THE COURT: Mr. O'Sullivan?

20 MR. O'SULLIVAN: No objection, Your Honor.

21 THE COURT: Okay. Then I will strike Ms. Robinson, 41,
22 for cause.

23 Any objection to for cause as to Ms. Batista, Juror 45,
24 Mr. Keller?

25 MR. KELLER: No objection, Your Honor.

1 THE COURT: Mr. O'Sullivan?

2 MR. O'SULLIVAN: No objection, Your Honor.

3 THE COURT: She was the paralegal, 30 years at the
4 State Attorney's Office, and I think her answers indicate she's
5 not the right juror for this case.

6 All right. Any objection to for cause as to Juror 47,
7 Ms. Olejniczak? Mr. Keller?

8 MR. KELLER: No, Your Honor.

9 MR. O'SULLIVAN: No objection.

10 THE COURT: Mr. O'Sullivan?

11 MR. O'SULLIVAN: No objection, Your Honor.

12 THE COURT: Okay. Ms. Olejniczak will be stricken for
13 cause.

14 Any objection to for cause as to 49, Mr. Thomas Junior,
15 who has dialysis in the afternoons, Mr. Keller?

16 MR. KELLER: No, Your Honor.

17 THE COURT: Mr. O'Sullivan?

18 MR. O'SULLIVAN: No objection, Your Honor.

19 THE COURT: Juror 49 will be stricken for cause.

20 Any other for-cause challenges to raise? I will start
21 with Mr. Keller and then I will go to Mr. O'Sullivan.

22 MR. KELLER: Yes, Your Honor. So the first for-cause
23 we would raise for Your Honor's consideration is as to Juror
24 Number 5, Mr. Teeters, who testified that his sibling, I
25 believe it was, works for the Small Business Administration,

1 that he had heard a lot of information about that and that he
2 did not feel that he would be able to put that aside because of
3 how much he had heard about it.

4 THE COURT: Okay. Any objection, Mr. O'Sullivan?

5 MR. O'SULLIVAN: No, Judge. I would stipulate. I was
6 going to move for cause on that person as well for the same
7 reasons.

8 THE COURT: Okay. So Juror Number 5 with the
9 experience, knowing intimate details about the PPP program, and
10 his beliefs will be stricken for cause.

11 Any other for-cause challenges, Mr. Keller?

12 MR. KELLER: Yes, Your Honor. We would move for
13 for-cause as to Juror Number 2, Mr. Phillips. And while I
14 understand that Mr. Phillips has been through something very
15 traumatic and that he very much wants to exercise his civic
16 right to be a member of a jury, and I respect that, in this
17 particular case, where we're talking about the same type of
18 crime that he ended up committing and that he obviously feels
19 very strongly about, we just think it would be inappropriate
20 for him to serve on a jury here, that he would not be able to
21 be fair and impartial.

22 THE COURT: Mr. O'Sullivan.

23 MR. O'SULLIVAN: I would have no objection, Your Honor,
24 to being struck for cause.

25 THE COURT: Okay. Well, then in light of the absence

1 of any objection, we will strike Mr. Phillips for cause.

2 okay. Any other for-cause challenges? Let me hear now
3 from Mr. O'Sullivan. I will come back to you, Mr. Keller.

4 MR. O'SULLIVAN: Judge, I'm not sure if we addressed
5 Juror Number 24, Wei Cai. I think, based upon her answers, her
6 lack of English, I think -- while her English is very passable
7 conversationally, I think I asked her specifically if there was
8 some technical things, and she said she would understand most
9 of it; I think she said that twice. I think, especially in
10 this case, the jury instructions are going to be highly
11 technical, not to mention there is going to be a lot of
12 witnesses testifying to technical aspects of marine systems,
13 marine transmissions, scuba diving. I think with her --
14 English being her second language, I don't think she's going to
15 get 100 percent of this testimony.

16 THE COURT: Okay. Mr. Keller?

17 MR. KELLER: Your Honor, when it comes to this expert
18 testimony, most of the jurors are not going to understand. In
19 fact, I didn't understand most of this stuff before I actually
20 started learning about it through prepping these witnesses.

21 Ms. Cai, she speaks as good of English, if not better,
22 than I do. So I don't really think it would be appropriate to
23 exclude her from serving on a jury based upon language deficit
24 when she speaks perfectly fluent English.

25 THE COURT: Final argument, Mr. O'Sullivan.

1 MR. O'SULLIVAN: I mean, I agree that she speaks
2 perfect English as far as conversations go, but when we get
3 into, you know, highly technical things, even when the Court
4 explains them, there is going to be things where she even said
5 herself, you know, "I understood what the judge said, but I
6 didn't understand everything that the other jurors said." And
7 I didn't hear anything very technical from other jurors. It's
8 only going to get more technical from here.

9 THE COURT: Okay. I think, ultimately, although it
10 seems that she is very adept in the English language, there was
11 still some hesitation in her answers. I think she is probably
12 holding herself to a higher standard than is necessary. But
13 out of an abundance of caution, because she did indicate that
14 she didn't fully understand what had been said today, I am,
15 then, I think, ultimately constrained to agree with
16 Mr. O'Sullivan that Ms. Cai should be stricken for cause due to
17 her stated limitations in English. So 24 will be stricken for
18 cause.

19 Any others, Mr. O'Sullivan?

20 MR. O'SULLIVAN: No further cause challenges from the
21 defense, Your Honor.

22 THE COURT: Mr. Keller?

23 MR. KELLER: So Juror Number 14, her husband fell from
24 a ladder recently. And --

25 THE COURT: Oh, yes. Okay. Any objection to striking

1 Ms. Burke due to her sole caregiver status and having these
2 appointments for her husband who had a severe accident, it
3 appears?

4 MR. O'SULLIVAN: I would so stipulate with no
5 objection.

6 THE COURT: Okay. Then Ms. Burke, Juror 14, will be
7 stricken for cause.

8 MR. KELLER: And then the final juror is Juror
9 Number 7, who Mr. O'Sullivan had raised as working for a law
10 firm that does business with his law firm.

11 THE COURT: Okay. What is your view, Mr. O'Sullivan?

12 MR. O'SULLIVAN: Judge, I just raised it just to be
13 transparent with the Court. I don't think that it rises to
14 cause. I don't know this person. I don't think that she knows
15 me. But just when she said that she works for Jeff Gorman Law,
16 I mean, once in a while my assistant will call an assistant in
17 that law firm for coverage. I don't know, honestly, if money
18 has ever exchanged hands, but I know that I have referred that
19 law firm business.

20 So if that rises to the level of cause, it does. But
21 with specifics, just directly with this juror, I mean, I don't
22 know her name or anything about her. I don't recognize her
23 email address or anything like that.

24 THE COURT: Mr. Keller, what's your view? Should she
25 be stricken for cause or not?

1 MR. KELLER: Our view would be that she should be
2 stricken for cause based upon the conflict that she works for a
3 business that does business with his law firm.

4 THE COURT: All right. I will agree with that.
5 Although there wasn't anything on the face of her presentation
6 that gave me concern, there was a possibility of that, which
7 has been explained by counsel. So I think it is more prudent
8 to strike Juror 7 for cause.

9 Any final for-cause challenges? This is the time.
10 Mr. Keller?

11 MR. KELLER: No, Your Honor.

12 THE COURT: Mr. O'Sullivan?

13 MR. O'SULLIVAN: None from defense, Your Honor.

14 THE COURT: Okay. We will now shift into the
15 peremptories. We will alternate, starting with the government.

16 Mr. Keller, do you accept or reject Juror Number 5?

17 MR. KELLER: Your Honor, just to ask, may we do this
18 seated?

19 THE COURT: Yes. But normally everything else should
20 be standing.

21 MR. KELLER: So --

22 THE COURT: So, yes, the answer to your question is
23 yes.

24 MR. KELLER: Yes, Your Honor. And this is for Juror
25 Number 5 you said?

1 THE COURT: Yes. No.

2 MR. KELLER: Or 3?

3 THE COURT: All right. This is getting messy. I asked
4 for Juror 3 because 1 and 2 have been stricken for cause.

5 MR. KELLER: Yes, Your Honor.

6 THE COURT: So let me ask you, Mr. Keller, do you
7 accept or reject Juror Number 3?

8 MR. KELLER: The government accepts Juror Number 3.

9 THE COURT: Mr. O'Sullivan, accept or reject Juror
10 Number 3?

11 MR. O'SULLIVAN: Reject 3.

12 THE COURT: All right. Defense will use its first
13 peremptory on Juror Number 3.

14 All right. Mr. O'Sullivan, accept or reject Juror
15 Number 4?

16 MR. O'SULLIVAN: Accept 4.

17 THE COURT: Mr. Keller, accept or reject Juror 4?

18 MR. KELLER: Government accepts.

19 THE COURT: Juror 4 will be accepted as Juror Number 1.

20 All right. We're skipping over Juror Number 5,
21 Mr. Teeters, who was stricken for cause. I will now ask,
22 Mr. Keller, do you accept or reject Juror Number 6?

23 MR. KELLER: The government accepts.

24 THE COURT: Mr. O'Sullivan, do you accept or reject
25 Juror 6?

1 MR. O'SULLIVAN: Accept 6.

2 THE COURT: Juror Number 6 will be accepted and be our
3 second juror.

4 we're skipping Juror 7 who was stricken for cause.

5 Mr. O'Sullivan, do you accept or reject Juror 8?

6 MR. O'SULLIVAN: Accept 8.

7 THE COURT: Mr. Keller, accept or reject 8? This is
8 Adele Menendez.

9 MR. KELLER: The government accepts 8.

10 THE COURT: Juror Number 8 will be accepted and will be
11 our third juror.

12 Mr. Keller, do you accept or reject Juror 9?

13 MR. KELLER: The government accepts.

14 THE COURT: Mr. O'Sullivan, do you accept or reject
15 Juror 9? This is Luther Walker.

16 MR. O'SULLIVAN: We accept.

17 THE COURT: Juror 9, Luther Walker, will be accepted
18 and be our fourth juror.

19 Mr. O'Sullivan, do you accept or reject Juror 10?

20 MR. O'SULLIVAN: Reject 10.

21 THE COURT: Defense has used its second peremptory.

22 Mr. Keller, do you accept or reject Juror 11? This is
23 Pamela Hiler.

24 MR. KELLER: The government accepts.

25 THE COURT: Mr. O'Sullivan, accept or reject Juror 11?

1 MR. O'SULLIVAN: Reject 11.

2 THE COURT: Defense has used its third peremptory.

3 Mr. O'Sullivan, accept or reject Juror 12?

4 MR. O'SULLIVAN: Reject 12.

5 THE COURT: Defense has used its fourth peremptory.

6 Mr. Keller, accept or reject Juror 13, which is Jared
7 Phelan?

8 MR. KELLER: The government will exercise its first
9 peremptory.

10 THE COURT: All right. Government has used its first
11 peremptory on Mr. Phelan.

12 we would skip 14, who was stricken for cause. And now
13 I ask, Mr. O'Sullivan, do you accept or reject Juror 15?

14 MR. O'SULLIVAN: Reject 15.

15 THE COURT: Defense has used its fifth peremptory.

16 Mr. O'Sullivan -- excuse me, Mr. Keller, do you accept
17 or reject Juror 16?

18 MR. KELLER: The government will exercise its second
19 peremptory.

20 THE COURT: The government has exercised its second
21 peremptory.

22 Mr. O'Sullivan, accept or reject Juror 17? This is
23 Kristian Willemms.

24 MR. O'SULLIVAN: Accept.

25 THE COURT: Mr. Keller, accept or reject Juror 17?

1 MR. KELLER: The government accepts.

2 THE COURT: Juror 17, Kristian willems, will be our
3 fifth juror.

4 Mr. Keller, accept or reject Juror 18, Lynn Campbell?

5 MR. KELLER: The government will exercise its third
6 peremptory.

7 THE COURT: All right. Government has now exercised
8 its third peremptory on Lynn Campbell.

9 Mr. O'Sullivan, accept or reject Juror 19?

10 MR. O'SULLIVAN: Accept.

11 THE COURT: Mr. Keller, accept or reject Juror 19?
12 This is Lindsey Smith.

13 MR. KELLER: The government accepts.

14 THE COURT: Juror 19 will be accepted and be our Juror
15 Number 6.

16 Mr. Keller, accept or reject Juror 20?

17 MR. KELLER: The government accepts.

18 THE COURT: Mr. O'Sullivan, accept or reject Juror 20?

19 MR. O'SULLIVAN: Reject 20.

20 THE COURT: Okay. Defense will use its sixth
21 peremptory.

22 Mr. O'Sullivan, accept or reject Juror 21,
23 Marlon Arvin?

24 MR. O'SULLIVAN: Reject 21.

25 THE COURT: Defense will use its seventh peremptory.

1 Mr. Keller, accept or reject Juror 22?

2 MR. KELLER: Government accepts Juror 22.

3 THE COURT: Mr. O'Sullivan, accept or reject Juror 22?

4 MR. O'SULLIVAN: We accept.

5 THE COURT: Juror 22 will be accepted and be our Juror

6 Number 7.

7 Mr. O'Sullivan, accept or reject Juror 23,

8 Amanda Tucker?

9 MR. O'SULLIVAN: Accept.

10 THE COURT: Mr. Keller, accept or reject Amanda Turk,

11 Juror 23?

12 MR. KELLER: The government accepts.

13 THE COURT: Ms. Tucker will be accepted and be our

14 Juror Number 8.

15 Skipping over 24, who was stricken for cause.

16 Mr. Keller, accept or reject Juror 25?

17 MR. KELLER: The government accepts.

18 THE COURT: Mr. O'Sullivan, accept or reject Juror 25?

19 MR. O'SULLIVAN: We accept.

20 THE COURT: Juror 25 will be accepted and be our Juror

21 Number 9.

22 Mr. O'Sullivan, accept or reject Juror Number 26?

23 MR. O'SULLIVAN: We accept.

24 THE COURT: Mr. Keller, accept or reject Juror 26?

25 MR. KELLER: The government accepts.

1 THE COURT: Juror 26, Michelle Adrian, will be our
2 Juror Number 10.

3 Skipping over 27, who was stricken for cause.

4 we will now ask Mr. Keller if he accepts or rejects
5 Juror 28.

6 MR. KELLER: The government accepts.

7 THE COURT: Mr. O'Sullivan, accept or reject Juror 28?

8 MR. O'SULLIVAN: Accept.

9 THE COURT: Juror 28 will be accepted as our Juror
10 Number 11.

11 MR. O'SULLIVAN: I'm sorry, Judge. Could you repeat
12 that. I apologize.

13 THE COURT: Juror Number 28, Marlowe Scott, will be
14 accepted as Juror Number 11.

15 MR. O'SULLIVAN: Thank you.

16 THE COURT: Skipping over 29, who was stricken for
17 cause.

18 Mr. O'Sullivan, will you accept or reject Juror 30?

19 MR. O'SULLIVAN: Reject 30.

20 THE COURT: Defense has used its eighth peremptory.

21 Mr. Keller, accept or reject Juror 31?

22 MR. KELLER: The government accepts Juror 31.

23 THE COURT: Mr. O'Sullivan, accept or reject Juror 31?

24 MR. O'SULLIVAN: Accept.

25 THE COURT: Juror 31 will be our Juror Number 12. That

1 concludes our 1 through 12.

2 So each side now has two peremptories for the selection
3 of the three alternates.

4 Mr. O'Sullivan, accept or reject Juror 32 as alternate
5 number 1?

6 MR. O'SULLIVAN: Reject 32.

7 THE COURT: Skipping over 33, who was stricken for
8 cause. Mr. Keller, accept or reject Juror 34 as our first
9 alternate?

10 MR. KELLER: The government accepts, Your Honor.

11 THE COURT: Mr. O'Sullivan, accept or reject Juror 34
12 as our first alternate?

13 MR. O'SULLIVAN: Accept 34.

14 THE COURT: Juror 34 will be alternate number 1.

15 Mr. O'Sullivan, accept or reject Juror 35 as our
16 alternate number 2?

17 MR. O'SULLIVAN: Accept.

18 THE COURT: Mr. Keller, accept Juror Number 35 or
19 reject 35 as our alternate number 2?

20 MR. KELLER: The government will use its first
21 peremptory.

22 THE COURT: Mr. Keller, accept or reject Juror
23 Number 36, Keith Wallace, as alternate number 2?

24 MR. KELLER: The government accepts.

25 THE COURT: Mr. O'Sullivan, accept or reject Juror

1 Number 36, Mr. Wallace, as alternate number 2?

2 MR. O'SULLIVAN: Reject 36.

3 THE COURT: Defense will use its final peremptory for
4 the alternates on Juror 36. We will skip juror 37 who was
5 stricken for cause. You have no further peremptories
6 available, Mr. O'Sullivan.

7 So I will ask Mr. Keller whether he accepts or
8 rejects -- whether he accepts or rejects Juror Number 38, James
9 Herfy, as our second alternate.

10 MR. KELLER: The government accepts.

11 THE COURT: Mr. James Herfy will be our second
12 alternate.

13 Mr. Keller, accept or reject Maureen Kielian, Juror
14 Number 39, as our third and final alternate?

15 MR. KELLER: The government accepts.

16 THE COURT: With no additional peremptories, that
17 concludes and means that Juror 39, Maureen Kielian, is our
18 third alternate.

19 I'm going to read back the names now of all of the
20 jurors, all total 15. So please check your lists and make sure
21 we're all on the same page.

22 The jurors chosen for this trial are as follows:
23 Sandra Hinsley, George Sealy, Adele Menendez, Luther Walker,
24 Kristian Willems, Lindsey Smith, Dori Middlebrook, Amanda
25 Tucker, Ovalessa Hurley, Michelle Adrian, Marlowe Scott,

1 Gabriel Ayala. Helen Kutukyan, as alternate number 1; James
2 Herfy, as alternate number 2; and Maureen Kielian as alternate
3 number 3.

4 Is that correct, Mr. Keller?

5 MR. KELLER: Yes, Your Honor.

6 THE COURT: Mr. O'Sullivan?

7 MR. O'SULLIVAN: That is correct, Your Honor.

8 THE COURT: okay. All right. well, then please return
9 to the courtroom at 1:45. So the lunch will be abbreviated
10 today. Get ready for your openings, but I will read the
11 preliminary instructions to the jury before then. Thank you.

12 MR. O'SULLIVAN: Judge, may I address the Court briefly
13 before we adjourn?

14 THE COURT: Briefly.

15 MR. O'SULLIVAN: It's been brought to my attention -- I
16 have not had time to flesh it out -- that the victim's family
17 is sitting directly behind us. And from what my client has
18 just told me via a note, and I have not had time to flesh it
19 out, they are discussing the facts of the case very loudly,
20 loudly enough for my client to hear it. And if he can hear it,
21 a lot of the potential jurors could hear it.

22 Again, I have only just got a note from my client.
23 They're talking about certain things that I have not had a
24 chance to speak to my client about it yet due to the jury
25 selection.

1 THE COURT: All right.

2 MR. O'SULLIVAN: I think Ms. Francis may have a little
3 additional background because she is sitting next to
4 Mr. McCabe.

5 MS. FRANCIS: Yes, Judge.

6 what was happening is the victim's family, they're
7 sitting directly in -- behind several jurors. During jury
8 selection, the victim's sister, in particular, was speaking
9 very thoroughly about the case, the facts of the case, even
10 mentioned a boat, mentioned sister. In addition to that,
11 pointed at Mr. McCabe at least twice.

12 Mr. McCabe also has a family member present today. He
13 has a sister who was sitting directly next to them, so she also
14 reported and she heard all of these things. Again, she saw
15 jurors listening. And the defendant's sister -- I'm sorry --
16 the victim's sister was really going through the facts of the
17 case, referring to the boat, and referring and pointing to
18 Mr. McCabe.

19 So we just wanted to alert the Court that it's very
20 possible that the jurors, at least the ones that were sitting
21 directly in front of the victim's family, may have heard some
22 tainted information.

23 Thank you, Judge.

24 THE COURT: Mr. Keller.

25 MR. KELLER: So, Judge, to start, I think we would want

1 to -- we can ask the jurors who are selected whether they heard
2 anything that's being referred to. But at the end of the day,
3 your instructions are going to be that what they hear here,
4 from witnesses, is going to be the evidence in this case, and
5 that that is all they're allowed to consider.

6 So I'm not aware of anything that was actually said or
7 heard. I didn't see anything myself back there. But our
8 position would be that there is no evidence of tainting. There
9 is just allegations of them having said something, and that, at
10 the end of the day, they're going to be told to only weigh the
11 evidence that is presented.

12 THE COURT: Okay. To the extent there is some sort of
13 amorphous request presented, I'm going to deny it. Although I
14 will, before advising the jurors of whether they have been
15 chosen, ask all of the members of the venire whether they can
16 be fair and impartial and follow the Court's instructions.

17 If that questioning does prompt some additional need
18 for attorney discussion, then we will cross that bridge when we
19 get there. But at this point I don't see a basis, given what I
20 have heard, which included a reference to a boat, which I too
21 referenced the existence of a boat, I also referenced the
22 existence of a defendant in this case, and everybody knows that
23 Mr. McCabe is the defendant in this case.

24 So those two facts are not, in and of themselves,
25 anything that would warrant rewinding these proceedings, but I

1 will, at the end, ask that more broad question.

2 So, with that, anything further before we take our very
3 brief lunch break? Mr. Keller.

4 MR. KELLER: May we leave our computers?

5 THE COURT: Yes, you can.

6 Mr. O'Sullivan.

7 MR. O'SULLIVAN: Nothing further from the defense,
8 Your Honor.

9 THE COURT: Okay. Thank you.

10 MR. O'SULLIVAN: Yes, ma'am.

11 (A recess was taken from 1:26 p.m. to 1:45 p.m.)

12 (The jury entered the courtroom at 1:45 p.m.)

13 THE COURT: Thank you, ladies and gentlemen. You may
14 be seated. You remain under oath from before. I hope you all
15 had a pleasant lunch. I just have a couple of additional
16 questions for you and then we will get moving along.

17 Has anybody heard or read anything about this case
18 other than what I have said today in the courtroom or than what
19 the attorneys have said in the courtroom? I see no hands.

20 As I indicated earlier, jurors may disagree about what
21 the evidence has shown, but there is no room for doubt about
22 what the law is. Does anybody have any doubt that they would
23 follow the law as given to them by the Court? I have -- I see
24 no hands. I will briefly see the attorneys at sidebar. I ask
25 that everybody please stay silent.

1 (Conference at bench.)

2 THE COURT: Any additional questions you propose,
3 Mr. O'Sullivan?

4 MR. O'SULLIVAN: No, ma'am.

5 THE COURT: All right. Any from the government?

6 MR. KELLER: No, Your Honor.

7 THE COURT: Thank you.

8 (Conference at bench concluded.)

9 THE COURT: Okay, ladies and gentlemen, at this time
10 I'm going to read out loud the names of the jurors who have
11 been chosen to serve on this jury. As we did before, please
12 stay in your seats for the duration of this process.

13 And, again, if you have not been chosen, do not feel
14 that your integrity or honesty has been questioned in any way.
15 This is a process by which parties can ask to excuse a juror
16 for any reason, and that is all.

17 So, with that, the jurors chosen for this case are as
18 follows: Sandra Hinsley, Juror Number 4. George Sealy, Juror
19 Number 2 -- excuse me -- Juror Number 6. Adele Menendez, Juror
20 Number 8. Luther Walker, Juror Number 9. Kristian Willem's,
21 Juror 17. Lindsey Smith, Juror 19. Dori Jean Middlebrook,
22 Juror Number 22. Amanda Tucker, Juror Number 23. Ovalessa
23 Hurley, Juror Number 25. Michelle Adrian, Juror Number 26.
24 Marlowe Scott, Juror Number 28. Gabriel Ayala, Juror
25 Number 31. Helen Kutukyan, Juror Number 34. James Herfy,

1 Juror Number 38. And Maureen Kielian, Juror Number 39.

2 So if I called your name, please stay seated.

3 Everybody else, just a couple more words of gratitude. Thank
4 you all for being here. And it's always a pleasure to see
5 members of our community show up for jury service.

6 So, again, on behalf of the entire Southern District,
7 thank you. I will ask that you leave those paddles where they
8 are and that you go downstairs to the second floor jury room,
9 which is where you started your morning, to receive any further
10 instructions.

11 So, with that, let's rise for the jurors who are
12 departing.

13 (The nonselected prospective jurors exited the courtroom
14 at 1:53 p.m.)

15 THE COURT: Okay. Then I'm going to ask our courtroom
16 deputy, with the help of Officer Blanford, to please situate
17 all of our jurors in the seats in the jury box, starting first
18 with Sandra Hinsley who should be seated in that first seat.

19 COURTROOM DEPUTY: Mr. Willems. Leave a spot.
20 Ms. Middlebrook.

21 A JUROR: Yes.

22 COURTROOM DEPUTY: Ms. Tucker. Ms. Hurley. Adrian.
23 Scott. Ayala. Kutukyan. Herfy and Kielian.

24 THE COURT: All right. Thank you, ladies and
25 gentlemen. Before you sit down, I'm going to ask that you stay

1 standing so that Mr. Creary can swear you in as the jurors in
2 this case.

3 COURTROOM DEPUTY: Please raise your right hand.

4 You and each of you do solemnly swear or affirm that
5 you will well and truthfully try the issues herein in the case
6 before the Court and a true verdict render according to the
7 evidence and the law presented to you by the Court. Do you all
8 take this solemn oath?

9 JURORS: I do.

10 COURTROOM DEPUTY: They have been sworn, Your Honor.

11 THE COURT: Thank you. Let's be seated.

12 For any folks in the gallery, I'm going to ask that you
13 stay fully silent for the duration of the trial.

14 Members of the jury, we are now going to begin. I'm
15 going to read to you some preliminary jury instructions. You
16 have been sworn, as you know. And at the end of the trial, I
17 will give to you additional jury instructions.

18 As you know, the defendant in this case is Mr. Dustin
19 Sean McCabe. The indictment that I talked about earlier, as I
20 indicated, has five counts or charges. It will be your duty as
21 jurors to decide what happens so that you can determine whether
22 the defendant is guilty or not guilty of the crimes charged in
23 the indictment.

24 At the end of the case, I will explain the law that you
25 must follow to reach your verdict. You must follow the law as

1 I explain it to you, even if you do not agree with the law.

2 Now, it is imperative that you decide the case solely
3 on the evidence that is presented in the courtroom. Evidence
4 can come in many forms. It can be testimony about what
5 somebody saw, or heard, or smelled. It can be an exhibit that
6 is admitted into evidence. It can be someone's opinion.

7 Some evidence proves a fact indirectly, like a witness
8 who saw wet grass outside and people holding umbrellas, but may
9 not have actually seen it rain. Indirect evidence, sometimes
10 called circumstantial evidence is simply a chain of
11 circumstances that proves a fact. As far as the law is
12 concerned, there is no difference between direct evidence or
13 indirect evidence. You may choose to believe or disbelieve
14 either kind and you should give every piece of evidence
15 whatever weight you think it deserves.

16 Now, certain things are not evidence and shouldn't be
17 considered as evidence, and I will list those for you now.

18 Statements and arguments of the lawyers. You will hear
19 the attorneys in a few moments give their opening statements.
20 And at the end of the case, you will hear them make closing
21 arguments. Those remarks, ladies and gentlemen, are not
22 evidence; so you should not construe them as evidence.

23 Now, questions and objections of the lawyers. The
24 lawyers' questions are not evidence either, only the witnesses'
25 answers are evidence. You shouldn't think that something is

1 true just because a lawyer's question suggests that it is. So,
2 for example, if a lawyer asks a witness: Mr. Jones, you saw
3 the defendant hit his sister, didn't you? That question, in
4 and of itself, is not evidence of what the witness saw or what
5 the witness -- or what the defendant did, unless the witness
6 actually agrees with the question. So just be careful as
7 you're listening to the questions and the answers.

8 Now, there are rules of evidence that control the
9 evidence that can be admitted in the proceeding and the
10 evidence that cannot be admitted. As you will come to see,
11 when a lawyer asks a question or offers an exhibit into
12 evidence, a lawyer on the other side, if he or she thinks there
13 is a problem with the evidence, can lodge an objection. When
14 that happens, the Court has to make a ruling. If I overrule
15 the objection, then my question -- then the question asked can
16 be answered or the exhibit can be received into evidence. If I
17 sustain the objection, however, the question cannot be answered
18 and the exhibit cannot be received.

19 whenever I sustain an objection to a question or to a
20 piece of evidence, you must ignore the question and not try to
21 guess at what the answer might have been.

22 Sometimes also I might order that evidence be stricken,
23 and that you disregard or ignore evidence. That means that
24 when you're ultimately deciding the case in the jury
25 deliberation room, that you must not consider that evidence.

1 Sometimes, also, I might admit evidence for a limited
2 purpose only. And when that happens, I will tell you exactly
3 what purpose you're permitted to consider it for. And if that
4 happens, then you would consider it only for that limited
5 purpose and no other purpose.

6 Now, on the subject of credibility of witnesses, we
7 talked about that in general strokes earlier today. In
8 reaching your verdict you may have to decide what testimony to
9 believe and what testimony not to believe. As I said earlier,
10 you may believe everything a witness says or part of it or none
11 of it at all. In considering the testimony of any witness, you
12 may take into account the following factors: The opportunity
13 and ability of the witness to see or hear or know the things
14 which the witness is testifying to; the witness's memory; the
15 witness's manner while testifying; any interest the witness
16 might have in the outcome of the case; any bias or prejudice
17 you perceive from the witness's testimony; whether other
18 evidence contradicts the witness's testimony; the
19 reasonableness of the witness's testimony when you're
20 considering it in light of all of the evidence presented; and
21 any other factors that bear on a witness's believability.

22 I will give you further, more detailed instructions
23 about determining credibility of witnesses at the end of the
24 case.

25 Now, as you know, this is a criminal case, and there

1 are some basic rules that apply. As I said at the beginning,
2 the defendant is presumed innocent until proven guilty. The
3 defendant against the defendant -- excuse me, the indictment
4 against the defendant is, as I said, only an accusation, not
5 evidence, and it shouldn't be considered as such. It's not
6 proof of guilt or anything else. The defendant, therefore,
7 starts out with a fully clean slate.

8 Second, the burden of proof is entirely on the
9 government. In other words, the defendant has no burden to
10 prove his innocence or to present any evidence whatsoever.
11 Since the defendant has the right to remain silent and may
12 choose whether to testify, you cannot legally put any weight on
13 a defendant's decision to testify or not testify. That is not
14 evidence.

15 Finally, the government must prove the defendant's
16 guilt beyond a reasonable doubt. I read to you all that
17 instruction earlier today, and I will give you instructions on
18 that later as well. But bear in mind that that level of proof
19 is high.

20 Now, with respect to your overall conduct and the
21 expectations that we have for jurors. It is imperative, as I
22 have already said, that you do not talk, either amongst
23 yourselves or with anybody else, about anything related to the
24 case. You can tell people with whom you work or with whom you
25 live that you're here for jury service, but, again, you may not

1 discuss the case with them or with anybody else, anything
2 related to the case.

3 During the trial, do not request, accept, agree to
4 accept, or discuss with any person any type of payment or
5 benefit in return for supplying any information about the
6 trial. You must promptly inform me about any incident you know
7 of involving an attempt by any person to improperly influence
8 you or any member of the jury. Do not view or visit any of the
9 premises or the places that you hear discussed during the
10 trial, and that includes not using internet maps or Google
11 Earth or anything of the sort to try to acquire any
12 information. Again, the only evidence you can consider is what
13 is presented to you in this courtroom.

14 Do not read, watch or listen to any accounts or
15 discussions of this case that may or may not be reported by
16 newspapers, television, radio, the internet, or any other news
17 media. Don't research or try to research any fact, issue or
18 law related to the case, whether by discussing with others, by
19 library, or internet research, or by any other means or source.

20 Now, of course, we all live in the age of constant
21 texting and I-messaging and having our phones at our disposal.
22 So this makes my warnings even more important. You cannot go
23 on any social networking site or blog or any website
24 whatsoever, post any information related to this case. And you
25 can't use any similar technology of social media, even if I

1 haven't specifically mentioned it. So just to name a few,
2 things like Facebook, Instagram, Snapchat, YouTube or Twitter,
3 those, of course, would be completely off limits, as would
4 anything on the internet.

5 All right. Now, the reason why we have all of these
6 rules is to ensure a fair trial. We want to make sure that
7 nobody reaches any premature decisions, and so it's important
8 that you keep a fully open mind until the very end of the case.

9 All right. Now, finally, on the subject of taking
10 notes. You will all be given note pads.

11 Mr. Creary, do we have those handy?

12 COURTROOM DEPUTY: Yes. They are right over there,
13 Your Honor.

14 THE COURT: You will all be given notepads which you
15 can use, if you'd like, to take notes, but you're not required
16 to take any notes. And please listen carefully to my
17 observations and instructions regarding note taking.

18 Don't let note taking, if you take notes, distract you
19 from hearing what the witnesses have to say in court. And when
20 you leave the courtroom, your notes should be left in the jury
21 room. Whether or not you take notes, you should rely on your
22 own memory of what was said. Notes are there to assist your
23 memory, but they're not entitled to any greater weight than
24 your memory or impression about the testimony.

25 Also, if you take notes, keep them to yourself and do

1 not share them with your fellow jurors. Again, the idea here
2 is that nobody is talking with each other about this case until
3 you are allowed to commence your deliberations at the very end
4 of the case.

5 This trial will now begin. Just to give you an overall
6 lay of the land of what we're going to do in order, the
7 government will make an opening statement, which is really just
8 an outline to help you understand the evidence as it will be
9 presented.

10 Next, the defense will have an opportunity to present
11 an opening statement. But remember, opening statements are not
12 evidence, so you shouldn't consider them as evidence.

13 At that point then, the government will start calling
14 its witnesses one by one. And counsel for the defendant can
15 cross-examine the government witnesses.

16 Following the government's case, the defendant may, if
17 he wishes, present any witnesses, whom the government may then
18 cross-examine. But, again, the defense has no obligation to
19 present any evidence in this case whatsoever. The burden lies
20 entirely with the government.

21 And then, finally, after all of the evidence has been
22 presented, the lawyers will have an opportunity to present
23 their closing arguments to you, to help summarize and interpret
24 the evidence for you. And I will instruct you on the law.
25 After that is when you're allowed to commence your

1 deliberations.

2 So, with that, let me turn it over to the United States
3 for opening. Each side, ladies and gentlemen, has the same
4 amount of time. So you can rest assured that I'm monitoring
5 that time and making sure it's equal.

6 MR. KELLER: And, Your Honor, may I approach and grab a
7 lapel mic?

8 THE COURT: Yes.

9 MR. KELLER: Test. Test.

10 THE COURT: Ladies and gentlemen, can you hear
11 Mr. Keller? That's a good point.

12 If at any point you have trouble with the audio, and
13 eventually you may see exhibits presented to you through our
14 monitor system -- and each of you is equipped with one.
15 Occasionally those sometimes falter. And so it's important
16 that you raise your hand and let me know if you can't hear
17 something or see something so I can try to rectify that.

18 Please proceed.

19 MR. KELLER: Thank you, Your Honor.

20 "You need to call the Coast Guard because I just killed
21 somebody." Those were this defendant's words (indicating)
22 after passengers and deckhands on his scuba charter boat, the
23 one he owned, the one he operated, pulled Mollie Ghiz-Flynn's
24 mangled body out from underneath it, where the defendant's
25 propeller, the spinning blades that move a vessel forward and

1 backward in the water, chopped her up and drowned her right in
2 front of her husband, Sean.

3 Now, Mollie and Sean, when this was happening, were
4 being picked up at the end of a scuba dive, which you will hear
5 involves getting back on the boat from the back where the
6 propellers are. And you will hear that captains, that
7 passengers, that everybody knows that propellers are dangerous,
8 for the obvious reason that they're these spinning blades
9 powered by an engine. And there were -- Mollie and Sean took
10 precautions that day, the normal ones. They waited until the
11 all clear sign and they approached.

12 But Mollie and Sean didn't know what this defendant
13 knew that day because they hadn't seen what he had seen the day
14 before, the day before she was killed, when this defendant took
15 out a different group of scuba passengers and had problem after
16 problem with this boat that he had just bought, including one
17 passenger being sucked under the boat by the same propeller and
18 narrowly escaping, and doing what anyone would do when
19 something like that happened, telling this defendant about it,
20 showing him a broken spear gun that had saved her.

21 But the defendant did nothing. He didn't report it to
22 the Coast Guard like he was required to. He didn't warn
23 people. He didn't fix it. And the next day, Mollie was
24 killed. And I'm not going to show you the pictures of this
25 now, but you're going to see them during trial. And it's bad.

1 It's bad. It's awful. But it's important for you to see, not
2 just what happened to Mollie, but also to know the danger that
3 these things are, these propellers. And that's what lies at
4 the heart of this case. This case is about the defendant's
5 negligence and his lies. His negligence and, in particular,
6 three things that he did that led to Mollie's death.

7 Number 1, knowing that he had this problem, which you
8 will hear there were other problems too, like that he ran the
9 vessel aground the day before he took Mollie out, had all of
10 these problems and didn't report them to the Coast Guard like
11 he was required to.

12 Number 2, that the defendant didn't warn Mollie, didn't
13 warn any of these passengers the day after this other passenger
14 escaped with her life, about the danger this boat presented,
15 this boat that he had just bought.

16 And, number 3, that the defendant didn't fix the boat,
17 brought out a whole different set of passengers with this boat
18 that had this dangerous propeller that could engage, could turn
19 on at any point, just like it had to the passenger the day
20 before and just like it did to Mollie. And that's why this
21 defendant, through his negligence, is charged with Mollie's
22 death.

23 Now, during this trial you're also going to see and
24 hear about lies the defendant told that surround Mollie's
25 death. You're going to hear about lies before and lies after.

1 Before you're going to hear about the defendant and you're
2 going to see that the defendant had bought this boat recently,
3 had bought it earlier in the month, that he -- same month that
4 he killed Mollie. And that he filled out paperwork for the
5 Coast Guard, which they require of these boats, for what's
6 called a certificate of documentation, and that he lied about
7 its purpose, the purpose of the boat. He said it was just for
8 recreational use when, in fact, it was for paying customers.

9 And you will hear that that matters because different
10 rules apply when you're bringing out paying passengers on a
11 boat. You will hear from witness after witness about the
12 expectations that these paying passengers have for boat
13 captains. So that's before he killed Mollie.

14 And then after he killed Mollie, you're going to hear
15 that the defendant was put out of business. He couldn't
16 operate this boat anymore that he had just killed Mollie with.
17 And that, as this happened -- he killed Mollie on March 29th of
18 2020, right as COVID was firing up -- and that Paycheck
19 Protection Program loans became available.

20 what did the defendant do? He filled out two loan
21 applications for Paycheck Protection Program loans, and he lied
22 on them. He lied about the payroll that he had for this
23 business, way more than he ever had. In fact, he never had
24 payroll, never real payroll. He provided fake tax documents.
25 He lied about the fact that the business was out of business,

1 claiming that it was still going when it wasn't. And then he
2 spent the money -- and this is number 4 -- on things he wasn't
3 allowed to spend it on. These loans were for businesses to pay
4 payroll, to pay operating expenses. He was buying golf
5 club -- a golf club membership. He was writing checks to cash
6 for himself. That's what this case is about.

7 And with the rest of my time, this afternoon, during
8 this opening statement, I want to talk about the types of
9 evidence you're going to see over the next several days, maybe
10 week and a half or so. And it's basically going to fall into
11 five categories. The first category is going to be from
12 March 28th of 2020, the day before Mollie was killed, showing
13 you that this defendant had every reason to know that the
14 propeller that killed Mollie was dangerous, needed to be fixed,
15 needed to be reported to the Coast Guard, and that he didn't do
16 any of it.

17 The second category of evidence you're going to hear is
18 going to be about the day Mollie was killed, about what
19 happened.

20 The third category is going to be experts that we're
21 going to bring you to talk more about scuba diving, talk more
22 about Coast Guard regulations, talk more about these vessels,
23 how you know it is that Mollie was killed by that propeller.
24 And then you're going to hear the final expert witness is going
25 to be a medical examiner, who will talk about his examination

1 of Mollie's body and how he knew that she died from drowning,
2 with the awful chop wounds that she sustained on her legs
3 contributing to her death at 37 years old right in front of her
4 husband.

5 So to talk more about each of these, I'm going to start
6 with the first category. These first witnesses you're going to
7 hear -- and you're going to hear about a handful of witnesses
8 for each of these five categories of evidence. The first
9 witness you're going to hear from that witness box right there
10 (indicating) is going to be the passenger from the day before.
11 And she's going to tell you what happened to her. She's going
12 to show you photos of the bruise she got when she narrowly
13 escaped from this boat's propellers. And she will explain that
14 she has been scuba diving, at that point, more than 15 years,
15 extremely experienced. This was like any other scuba dive
16 until she got back to that dive platform, after getting the
17 all-clear signal.

18 And that's when everything went wrong, when something
19 happened that had never happened to her before or since. That
20 she felt herself being sucked under. That the only thing that
21 saved her is that she happened to have a spear gun by her side
22 that got sucked under faster than she did, that ended up
23 discharging with the butt of the gun striking her in the leg,
24 and you will see the giant bruise that resulted, and striking
25 her away from the boat, letting her escape.

1 And you're going to hear about her going to the
2 defendant after she got back on the boat and telling him what
3 happened, giving him the spear gun, the broken spear gun.
4 which she will tell you she couldn't bend that thing with her
5 bare hands only something like a propeller could have done
6 this. And what did he do? She will tell you he hid the gun.
7 There was a spear rack, a spear gun rack where all of the guns
8 go. He didn't put it there. He put it down below. And after
9 this witness -- and she will talk about other incidents too,
10 she will talk about later in the day when she was swimming
11 towards the boat and she saw that propeller activating again,
12 activating when the other propeller was still. This one
13 propeller engaging, the other one still.

14 And she will -- you will see the Facebook Messenger
15 messages that she sent the defendant and that he responded to
16 that same day telling him: Your propeller is engaging when it
17 shouldn't. This is a problem. This needs to get fixed. And
18 you will see him blow her off. And you will hear about a third
19 incident from the same day with this same witness at the end of
20 this trip, when they were going back to the marina.

21 when this vessel lost its steering controls, this
22 defendant couldn't go in reverse. He ends up running the
23 vessel aground in order to avoid colliding with a bridge
24 because he couldn't pull into the marina. And you're going to
25 hear the -- and you will hear other witnesses who were there

1 that day, who saw this, who were on the boat, who were at the
2 marina. And then you will hear, the last the witness in this
3 category, from the person who -- who cosigned on the boat with
4 the defendant. Because, remember, he had just bought it a few
5 weeks before, and the defendant told him about the spear gun
6 incident. And the person who bought the boat with him told him
7 what anyone would: Thank God she wasn't hurt. You got lucky.
8 You have to get that boat fixed. You have to get that boat
9 tested.

10 But then with the next category of evidence, the
11 March 29th evidence, you will see that he didn't. He didn't
12 report it. He didn't fix it. He just brought out another crew
13 of passengers so they could pay him more money for this boat
14 that he just bought.

15 And that's when you are going to hear about Mollie's
16 death. And the first witness in this category is going to be
17 her husband Sean. He is going to go to that witness stand and
18 tell you about what happened. He is going to tell you about
19 Mollie being sucked under. He is going to tell you about
20 himself being sucked under right behind her, in the same way
21 that first passenger that you will have heard testify talked
22 about. And he will tell you about the struggle, about being
23 under that boat, struggling with all of his might to pull her
24 out. Being unable to.

25 He will tell you about her grabbing at him, desperately

1 trying to escape, and being unable to. And he will tell you
2 about going back under to get her out with a knife and seeing
3 that she wasn't moving anymore, that she was going with the
4 current at that point. She had stopped struggling. And when
5 they got her up on the boat, you are going to hear from another
6 passenger, you are going to hear from a deckhand, she was dead.
7 She was chopped up. She was not even bleeding by that point.

8 with these awful gash wounds, what the medical examiner
9 will tell you are called chop wounds, in her leg -- in her
10 legs, her knee nearly chopped off on one of her legs.

11 After this, to round out this category of evidence,
12 you're going to hear from the investigation that -- about the
13 investigation that ensued; the law enforcement officers who
14 arrived on scene, what they did and what they didn't do.
15 You're going to hear that they didn't keep the boat. And why?
16 They will explain because they had no idea what had happened
17 the day before because this defendant hadn't reported it like
18 he was required to. They didn't know he had run the vessel
19 aground. They didn't know he had had another passenger get
20 sucked under in the same way.

21 In their mind at that moment, as he is telling them
22 that he lives on this boat, it seems like an accident. But
23 you're going to hear that they started putting the pieces
24 together, that they started realizing that this had happened
25 just the day before. They started looking at the boat and

1 seeing that this defendant had been refitting it for scuba.
2 Because the vessel wasn't really for scuba. It was a fishing
3 vessel. So he had done all of this stuff to it, including
4 removing a set of engine controls.

5 So you're going to hear about the investigation as we
6 lead into the third category of evidence. You're going to hear
7 from the experts. They're going to tell you about scuba.
8 They're going to tell you about Coast Guard regulations.
9 They're going to tell you about that vessel. And they're going
10 to tell you that this -- they're going to tell you what you
11 heard from every other passenger who had testified -- from
12 every passenger who had testified that the captain is
13 responsible. The captain is responsible for having a working
14 vessel, for having it in a safe condition. The captain is
15 responsible for reporting to the Coast Guard when incidents
16 like running aground, like having a propulsion issue arise, and
17 that the captain's responsible for warning passengers, paying
18 passengers, about the dangers their boats present.

19 Those experts are also going to tell you about the
20 types of wounds that Mollie sustained, about the types
21 of -- about the photos that they reviewed, of the spear gun
22 getting bent. And they're going to tell you that there is no
23 way this could have happened without that propeller being
24 engaged mechanically by the diesel engine that that boat had on
25 it. Even though the defendant had the boat in neutral, that it

1 was malfunctioning, that it was turning on when it shouldn't on
2 both those days. And that you will know that because only that
3 type of a force could have caused these injuries. That there
4 are concepts like windmilling, which means the propeller is
5 turning with the current, but that that couldn't possibly cause
6 this type of injury. That there were other issues like having
7 a battery problem, that that couldn't possibly cause this
8 engine to turn on because batteries just affect whether the
9 engine turns on or off, not whether it activates through its
10 transmission.

11 The last of these experts is going to be the medical
12 examiner, who I have already alluded to before, who is going to
13 tell you about how she died.

14 And that's going to bring us into the fourth category
15 of evidence. That's going to be about the defendant's false
16 statement to the Coast Guard. We are going to be transitioning
17 from the manslaughter charge, from the use -- the negligent
18 killing of Mollie to the false statement. And there you are
19 going to hear from Coast Guard witnesses who will explain the
20 documentation. And they will show you how it is that you mark
21 recreational or you can mark you're a passenger vessel, for
22 example, which means that you have paying passengers. And
23 they're going to tell you the difference.

24 That when you're a recreational vessel, you're not even
25 barely subject to Coast Guard regulation. You hardly ever get

1 inspected. But that when you are a commercial, you are on the
2 Coast Guard's radar. And there are different rules applied to
3 you.

4 And you will have heard of witness after witness, by
5 this point in the trial, that this defendant had every
6 intention of using this boat for paying customers. He told
7 anyone who would listen that he was buying this boat to do this
8 scuba business that he had been running since 2014.

9 And you will see from these Coast Guard witnesses that
10 the reason he didn't put that it was a paying vessel is because
11 he would have been subject to the rules.

12 with that -- and that will be the shortest category of
13 evidence -- we are going to get to the fifth and final, which
14 is going to be about the loans that the defendant lied to get.
15 And you're going to hear from the banks who are going to show
16 you the applications this defendant submitted for Florida Scuba
17 Charters, his scuba charter business that was out of business.
18 And you're going to see the lies that he told. You are going
19 to see the payroll that he claimed.

20 And you will hear from his ex-wife who ran the business
21 with him that he wasn't -- they weren't paying payroll in that
22 amount. You will see the tax forms that he submitted. And you
23 will hear from an IRS witness that he never submitted these
24 forms to the IRS. They were fake, sent to the bank to justify
25 him getting this money.

1 You will see the way he spent the money; on the golf
2 club membership I mentioned, on writing checks to cash for
3 himself. When you will see in his bank records that he had
4 never done that before he got these loans. This was all new.

5 And when you have seen all of this evidence, we are
6 confident that you will see that the unifying theme of all of
7 these crimes is the defendant disregarding the safety,
8 disregarding the needs of others, whether it was putting Mollie
9 on that boat, taking her money, out onto this passenger vessel,
10 out onto his scuba boat, knowing that this boat was dangerous,
11 knowing that a person the day before had been sucked under it
12 by this propeller with this risk of causing such carnage,
13 whether it's lying on this form that he completed earlier that
14 same month in March of 2020. Because he didn't want to be
15 subject to the rules. Because the rules are for other people.

16 And whether it meant capitalizing on a pandemic,
17 capitalizing on an emergency by lying on bank loan applications
18 to get what he thought was free money, to get these loans that
19 he had forgiven so that he could walk away with about \$40,000.

20 And when you have seen all of this evidence, we're
21 confident that you are going to return the only verdict that
22 supports the only verdict that gives justice to Mollie, gives
23 justice to Sean, gives justice to this community, and that is
24 he is guilty of all five counts in this case.

25 THE COURT: All right. Thank you.

1 Mr. O'Sullivan or Ms. Francis.

2 MS. FRANCIS: Thank you, Your Honor. May I use the
3 podium mic?

4 THE COURT: You may.

5 MS. FRANCIS: Thank you.

6 Good evening, ladies and gentlemen of the jury.

7 Today we are here to address a very grave and tragic
8 incident that has not only affected those involved, but your
9 lives as well. My client, Mr. Sean McCabe, he is sitting
10 before you right now, charged with a very serious crime of
11 seaman's manslaughter, as well as the wire fraud charges and
12 the charge of providing false statements.

13 Jury, as we begin these proceedings, it is important to
14 approach the facts with a clear and objective mind, free from
15 any preconceived notions and biases.

16 Now, throughout the trial you will hear evidence and
17 testimony from various witnesses. What we ask is that you
18 listen carefully to each piece of evidence and consider the
19 context in which the events occurred.

20 Now, what we will demonstrate is that the incident in
21 question was a tragic accident, rather than the result of
22 recklessness or neglect or inattention to duties on behalf of
23 Mr. McCabe.

24 So you will learn about my client's background, his
25 dedication to his profession, his commitment to the safety and

1 well-being of his crew. And Mr. McCabe has spent years at sea
2 building this reputation as a responsible and conscientious
3 seaman.

4 Now, I would like to introduce you to him. He is
5 sitting there (indicating). He is a licensed and certified
6 boat captain. He is a skilled diving instructor. He has
7 dedicated a significant portion of his adult life to working on
8 and with boats. He is also a knowledgeable and passionate golf
9 instructor.

10 Now, Mr. McCabe does not take his responsibilities
11 lightly as the owner and captain of his vessels, the Southern
12 Comfort and the Sea Scout. He has invested years perfecting
13 his skill to ensure the safety and well-being of his crew and
14 passengers. Those who know Mr. McCabe can vouch for his
15 dedication to his duties and his reputation of being
16 responsible.

17 Now, the charges that are alleged against Mr. McCabe,
18 they stem from the operation of one of his vessels, the
19 Southern Comfort. And this incident occurred on March 29,
20 2020, during a scuba diving excursion in Palm Beach County,
21 where one of the passengers was deceased. The government, now
22 they're going to claim that Mr. McCabe's negligence led to this
23 tragic drowning of the deceased, Mollie. Additionally, they're
24 going to allege that after the tragic death, Mr. McCabe applied
25 for two Paycheck Protection Program loans, the PPP loans, and

1 he also sought forgiveness for both of those loans which, in
2 their view, constitutes wire fraud.

3 They're going to tell you that Mr. McCabe's loan and
4 forgiveness applications included significant
5 misrepresentations regarding his businesses, monthly payroll,
6 and the amount of employees that he had.

7 So we have Count 1. That's the one that accuses
8 Mr. McCabe of seaman's manslaughter. We have Count 2. That is
9 the count that charges him with making false statements to a
10 federal agent. And Counts 3, 4, and 5, those allege that he
11 committed the wire fraud.

12 So as we move forward today and throughout this trial,
13 it's essential to keep in mind that Mr. McCabe, like any other
14 accused individual, is entitled to, as the judge mentioned
15 before, a presumption of innocence until proven guilty. The
16 responsibility for proving the evidence rests with the
17 prosecution. It is they that must demonstrate the facts that
18 substantiate their claims that they are making to you today.
19 Facts. Not merely their beliefs about what happened, what
20 transpired, but the actual events that took place.

21 Now, I want to talk a little bit about the seaman's
22 manslaughter charge. Now, the seaman's manslaughter statute,
23 it criminalizes misconduct and negligence, inattention to
24 duties by a captain of a vessel. And that captain may be
25 liable for manslaughter if his conduct is considered negligence

1 and a fatality exists.

2 Now, I want you to pay close attention to some key
3 terms. Misconduct. Negligence. Inattention to duties. The
4 government has to demonstrate that Mr. McCabe's misconduct,
5 negligence, or inattention to duties caused this tragic death.
6 They simply cannot. We will show the opposite.

7 Mr. McCabe did not engage in any conduct that led to
8 the tragic loss of life. He was not negligent. And there was
9 certainly no misconduct. He was fully alert and attentive to
10 his responsibilities that day in every way. We will present
11 testimony that Mr. McCabe diligently investigated and did not
12 find any issues with the propulsion systems. The issues that
13 he did find he repaired before the incident that resulted in a
14 loss of life; testimony will reveal that.

15 Now, the government will try to convince you that there
16 were incidents that should have alerted Mr. McCabe to problems
17 with his propulsion system. However, we are going to provide
18 evidence that, once these issues were brought to his attention
19 by the witness that the government mentioned earlier, he
20 engaged his mechanic, conducted a thorough investigation. They
21 actually went out under the boat. He tested the boat, started
22 the engine, waited about 15 minutes in between each test. He
23 wanted to ensure that there were no problems with the
24 propulsion system that could cause the propellers to engage.

25 Now, Mr. McCabe will testify that he started the boat

1 while it was in the water, meticulously checked the engine and
2 the propulsion system. What he found was an issue with the
3 battery, the vessel's battery on the starboard side, which he
4 promptly rectified. Where is the misconduct? Where is the
5 negligence? Where is the inattention to his duties? It
6 doesn't exist. He did the exact opposite of what he is being
7 accused of.

8 So, testimony is going to reveal that Mr. McCabe is
9 consistent and dedicated to safety and integrity of his boat as
10 a captain and as a captain's owner.

11 Now, the government's theory is that Mr. McCabe's
12 negligent actions are connected to the malfunctions of the
13 propulsion systems, the failure to repair the issues, and then,
14 as I mentioned, the lack of notification to the passengers
15 about the propulsion issues. However, ladies and gentlemen,
16 there is a glaring absence of evidence. The government has no
17 mechanical reports from any investigation or any review that
18 clearly identifies the cause of the vessel's mechanical
19 failures that occurred on March 28th and March 29th. The
20 investigators did not even try to start the engine to find out
21 whether or not the malfunction could have stemmed from some
22 other issue outside of the propulsion system. They merely took
23 photographs that they're going to show you of the boat
24 following the incident. That's it. They will present that as
25 evidence.

1 Additionally, as I mentioned before, Mr. McCabe was
2 even allowed to return the vessel to his original slip that
3 same day. So they can't provide the boat.

4 They can't provide any videos of -- showing the
5 propellers engaging on their own, no footage, no images of the
6 boat being started and running, nothing at all. So despite the
7 lack of a thorough examination of the vessel post-incident, the
8 government has reached a definitive conclusion which they told
9 you today.

10 without conducting any appropriate investigation of the
11 boat itself, they reached the conclusion that this incident was
12 the result of a propulsion issue. They're going to try to
13 present evidence based on that unfounded assumption.

14 So, again, they did not inspect the boat. They did not
15 test the engine. They did not evaluate the propulsion system
16 that resulted in a mistaken linkage between the incident and
17 the alleged propulsion problems.

18 So as the government mentioned before, they're going to
19 really depend on the testimony of that one witness who claimed
20 that she informed Mr. McCabe of the propulsion issues. This
21 witness has been diving with Mr. McCabe at least over 50 times.
22 She is not a mechanic. She did not inspect the boat. She did
23 not assist in any repairs of the boat itself after she alerted
24 Mr. McCabe of the propulsion issues.

25 In contrast, Mr. McCabe plans to present testimony that

1 demonstrates that the issues that he encountered were not
2 linked to the propulsion system. And following reports of the
3 potential mechanical problems, Mr. McCabe and his mechanic,
4 again, as I said, performed a comprehensive inspection of the
5 boat, and that was on the evening of March 28th, when
6 everything was reported to him. They found no issues before
7 the incident on the 29th. Instead, again, as I said, they
8 identified a problem with the vessel's battery. He addressed
9 it promptly. And it was ultimately unrelated to any propulsion
10 systems.

11 Once again, ladies and gentlemen of the jury, I have to
12 pose the question: where is the misconduct? where is the
13 neglect of his duties? where is the negligence?

14 The government theory fails. They cannot establish
15 that Mr. McCabe's alleged negligent actions are tied to the
16 claims of malfunctions of his propulsion systems or the
17 inability to repair and failure to inform the passengers of any
18 propulsion issues. Testimony, instead, will reveal that he
19 took immediate action after being alerted, investigated any
20 potential mechanical issues with his mechanical engineer, and
21 resolved any problem that was actually found. He cannot report
22 on an issue that does not exist, and the government cannot
23 definitively identify the cause of the issue.

24 How will they respond to the testimony that after the
25 incident, he actively investigated and repaired any problems?

1 How will they respond to that? Once again, I have to ask you,
2 where is Mr. McCabe's misconduct? Where is his inaction?
3 where is the negligence?

4 Ladies and gentlemen, the evidence will unmistakably
5 demonstrate that Mollie Flynn did indeed tragically lose her
6 life that day. However, it is crucial and critical to
7 emphasize that this was not due to any action, inaction,
8 negligence, misconduct, oversight on Mr. McCabe's part. In
9 fact, he took every step to resolve responsibly and effectively
10 once he learned of any issues. Only Mr. McCabe and his
11 engineer conducted a comprehensive inspection of the vehicle
12 after the reported malfunctions.

13 Following the incident, again, investigators even
14 allowed him to return his vessel to the slip after they
15 captured just a few photographs.

16 At no point, again, did they start the boat, inspect
17 the engine, or engage the propellers.

18 Now, they expect you to accept beyond a reasonable
19 doubt an unverified opinion that Mr. McCabe's vessel
20 experienced propeller issues and that he failed to address it
21 and that ultimately caused the death of Ms. Flynn. That is
22 what they want you to believe.

23 So you will not see the vessel. You will see
24 photographs, but you won't see any videos of the propulsion
25 system being engaged. They can't provide that to you to

1 support the claim that, again, they said even today that it was
2 a propulsion issue that Mr. McCabe failed to address.

3 So, again, their case is relying on that one witness,
4 who is an active diver with Mr. McCabe, went out with him
5 numerous occasions, over 50 times. So if there is any
6 reasonable doubt at all, it would be unjust to convict
7 Mr. McCabe of manslaughter. The evidence simply does not
8 support such a claim.

9 Now, second, the government's going to try to convince
10 you that Mr. McCabe committed wire fraud due to the
11 circumstances surrounding his application and his forgiveness
12 application for the PPP loan. So they are alleging that he
13 inaccurately reported the amount of employees and the total
14 amount of his payroll.

15 So they're going to try to convince you that
16 Mr. McCabe's business was not operational at the time that he
17 acquired the PPP loan. However, Mr. McCabe's business was not
18 shut down. He continued to work in his other capacity as a
19 dive instructor, offering his services to individuals that
20 needed to hire him for instruction. So he continued his
21 operations after the accident; albeit in a modified way, his
22 business was still up and running.

23 So the indictment alleges that the aim of his alleged
24 PPP fraud scheme was for Mr. McCabe to unlawfully enrich
25 himself, that he submitted fraudulent loan applications,

1 diverted those proceeds from the fraud for personal use to
2 sustain his scheme, and that he made false statements on the
3 loan applications to ensure that they would be forgiven.

4 Mr. McCabe is going to testify and present evidence
5 demonstrating that he did not make any misleading statements
6 regarding the information on the PPP loan application and the
7 forgiveness applications; that his business was indeed
8 operational, up and running, at the time that he secured the
9 loan. He will confirm that he employed staff, including those
10 that earned tips. He provided uniforms for the staff and
11 equipment.

12 Mr. McCabe is going to testify that he actively worked
13 as a dive instructor and trainer. He is going to testify that
14 although his business adopted -- had to adapt to new
15 circumstances after the accident, that it still remained
16 operational.

17 So Mr. McCabe's business, again, was not effectively
18 shut down after the death of Ms. Mollie Flynn. He is going to
19 provide evidence and show that he continued to be responsible
20 for various fees, boat payment fees, boat slip fees, utility
21 costs, all other operational expenditures. He still had these.

22 So in support of his claim, Mr. McCabe is going to
23 present evidence of financial documents such as bank
24 statements, and that's going to corroborate his regular
25 business transactions. So, ultimately, regarding the false

1 statements, the government will need to prove beyond a
2 reasonable doubt that Mr. McCabe misled a United States
3 Coast Guard official, this occurred on or about March 5th of
4 2020, by claiming that he would use his vessel exclusively for
5 recreational activities. However, this aligns perfectly with
6 how he actually utilized his vessel. He is going to testify
7 that he refurbished and modified his boat specifically for
8 recreational use. We are going to present testimony and
9 evidence that illustrate the significant modifications made to
10 the vessel, that it enhanced its recreational abilities, that
11 it was refitted and refurbished. He is going to provide
12 testimony that supports all of these claims.

13 He will be able to tell you about various recreational
14 trips from fishing excursions to sunset cruises. He is going
15 to demonstrate that the vessel was, indeed, used for the
16 enjoyment and recreational use of Mr. McCabe and his guests.

17 So through this evidence what we hope is to eliminate
18 any uncertainties regarding his intentions, his actions, and we
19 want to underscore that his statements were in no way
20 inaccurate. It aligns with his behavior and his conduct.

21 So, ladies and gentlemen, the prosecution, the
22 government, they want you to believe that Mr. McCabe committed
23 a crime here, but the evidence is going to tell you a very,
24 very different story. You'll hear from Mr. McCabe. You will
25 hear testimony that will contradict the government's claims.

1 This case is not about assumptions or hasty
2 conclusions. It is about the facts, and the facts will show
3 that Mr. McCabe is innocent.

4 So in closing, I urge you to remember the principles of
5 justice that guide our legal system, the presumption of
6 innocence, and the necessity of proving guilt beyond a
7 reasonable doubt. As you hear from the witnesses and you
8 examine the evidence, please keep these principles at the
9 forefront of your deliberations.

10 And we are confident, once all of the facts have been
11 presented, you will see that my client is not guilty of the
12 charge that he is being accused of. I thank you for your time
13 and attention in delivering a fair and impartial verdict.

14 THE COURT: All right. Ladies and gentlemen, it is
15 nearly 3:00, so we will take a brief afternoon break. This
16 time you will walk outside that door and use the restrooms that
17 are provided for our jurors. So, with that, we will resume in
18 approximately 10 minutes.

19 All rise for the jurors.

20 (The jury exited the courtroom at 2:48 p.m.)

21 THE COURT: Please be seated. Mr. Keller, do you have
22 your first witness available?

23 MR. KELLER: Yes, Your Honor.

24 THE COURT: Okay. Now, there was a stipulation
25 regarding pre-admitted exhibits or exhibits as to which neither

1 party has an objection. Do the parties wish to go through
2 those numbers now and admit them into the record without
3 objection?

4 MR. KELLER: I will go through them now, Your Honor.

5 THE COURT: Okay. One moment.

6 MR. O'SULLIVAN: Your Honor, may Ms. Francis be excused
7 while we do the exhibits?

8 THE COURT: Yes.

9 MR. O'SULLIVAN: Thank you.

10 THE COURT: Okay. I'm referring now to your latest
11 exhibit list, Mr. Keller. This is docketed at entry 61. Will
12 your numbers correspond with that document?

13 MR. KELLER: Yes, Your Honor.

14 THE COURT: Okay. Then, Mr. O'Sullivan, please keep
15 track of the numbers. And remember, if you have any objection
16 to these being pre-admitted, let me know right away.

17 So please give me your first set of exhibits.

18 MR. KELLER: Yes, Your Honor. So the first block is 1
19 through 12.

20 THE COURT: Okay. Any objection, Mr. O'Sullivan, to
21 admission of Government's 1 through 12?

22 MR. O'SULLIVAN: No objection, Your Honor.

23 THE COURT: Okay. You should rise when you are
24 addressing the Court.

25 MR. O'SULLIVAN: I apologize. No objection.

1 THE COURT: Okay. So Government's 1 through 12 will be
2 admitted without objection. One moment.

3 (Government Exhibits 1-12 were received in evidence.)

4 THE COURT: Okay. Next set.

5 MR. KELLER: 14 through 39.

6 MR. O'SULLIVAN: No objection, Your Honor.

7 THE COURT: Government's 14 through 39 will be admitted
8 without objection. One moment.

9 (Government Exhibits 14-39 were received in evidence.)

10 THE COURT: Okay. Next group.

11 MR. KELLER: 44 and 45.

12 THE COURT: Any objection to admission of 44 and 45,
13 Mr. O'Sullivan?

14 MR. O'SULLIVAN: No objection, Your Honor.

15 THE COURT: Okay. 44 and 45 will be admitted without
16 objection.

17 (Government Exhibits 44-45 were received in evidence.)

18 MR. KELLER: 47 through 50.

19 THE COURT: Okay. Any objection to those,
20 Mr. O'Sullivan?

21 MR. O'SULLIVAN: No objection, Your Honor.

22 THE COURT: Government's 47 through 50 will be admitted
23 without objection. Next group.

24 (Government Exhibits 47-50 were received in evidence.)

25 MR. KELLER: 53 through 70.

1 THE COURT: Any objection to admission of
2 Government's 53 through 70?

3 MR. O'SULLIVAN: No objection, Your Honor.

4 THE COURT: Government's 53 through 70 will be admitted
5 without objection.

6 (Government Exhibits 53-70 were received in evidence.)

7 MR. KELLER: Next group is 72 through 108.

8 THE COURT: Any objection to those numerous exhibits,
9 Mr. O'Sullivan?

10 MR. O'SULLIVAN: No objection, Your Honor.

11 THE COURT: And, Mr. Keller, to be clear, these include
12 any subparts for those exhibits?

13 MR. KELLER: Yes, Your Honor.

14 THE COURT: Okay. Those exhibits, which you just
15 indicated, 72 through 108, including any sub-exhibits with
16 letters will be admitted without objection. Next group.

17 (Government Exhibits 72-108 were received in evidence.)

18 MR. KELLER: The final group is 110 through 121.

19 THE COURT: Any objection, Mr. O'Sullivan, to
20 Government's 110 through 121?

21 MR. O'SULLIVAN: No objection, Your Honor.

22 THE COURT: Okay. Those Exhibits 110 through 121,
23 Government's Exhibits will be admitted without objection.

24 (Government Exhibits 110-121 were received in evidence.)

25 THE COURT: Now, Mr. Keller, you mentioned a

1 stipulation you wish to read to the jury. Do you have that
2 ready?

3 MR. KELLER: I do, but we were going to actually do it
4 later because the -- we are going to do it during the wire
5 fraud portion of the trial.

6 THE COURT: Okay. Then we will hold off on that.
7 Anything further before our brief break, Mr. Keller?

8 MR. KELLER: No, Your Honor.

9 THE COURT: Please make sure your witness is ready.
10 Anything further, Mr. O'Sullivan?

11 MR. O'SULLIVAN: Nothing from the defense, Your Honor.

12 THE COURT: Okay. We're in a brief break. Please
13 return in five minutes. Thank you.

14 (A recess was taken from 2:54 p.m. to 3:05 p.m.)

15 THE COURT: Please be seated. Let's call in the jury.

16 COURTROOM DEPUTY: Remain standing for the jury.

17 THE COURT: Mr. Keller, you can get started with your
18 witness, bringing her in, please.

19 MR. KELLER: Thank you. I can call her?

20 THE COURT: No, not yet. Just make sure she's ready to
21 walk in.

22 MR. KELLER: Yes, Your Honor. She is.

23 (The jury entered the courtroom at 3:06 p.m.)

24 THE COURT: All right. Thank you, ladies and
25 gentlemen.

1 Mr. Keller, please call your first witness.

2 And everybody else may be seated.

3 MR. KELLER: Yes, Your Honor. The United States calls
4 Jennifer Hester.

5 THE COURT: Good afternoon, Ms. Hester. Please walk
6 over here to the witness stand and remain standing to be sworn
7 in. Mr. Creary will swear you in now.

8 COURTROOM DEPUTY: Please raise your right hand.

9 Do you swear or affirm that the testimony you are about
10 to give is the truth, the whole truth, and nothing but the
11 truth, so help you God?

12 A PROSPECTIVE JUROR: I do.

13 COURTROOM DEPUTY: Please be seated. State and spell
14 your first and last name for the record.

15 A PROSPECTIVE JUROR: Jennifer Hester, J-E-N-N-I-F-E-R,
16 H-E-S-T-E-R.

17 THE COURT: Thank you. You may begin.

18 JENNIFER HESTER,
19 having been sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. KELLER:

22 Q. Good afternoon, Ms. Hester. You might want to pull that
23 mic up closer to you.

24 A. (Complies.)

25 Q. There you go.

1 And, Ms. Hester, just to introduce yourself to the jury,

2 can you just tell the jury where you live?

3 A. West Palm Beach.

4 Q. And what do you do for a living?

5 A. Administrative manager with business.

6 Q. And, Ms. Hester, do you scuba dive?

7 A. Yes.

8 Q. How long have you been a scuba diver?

9 A. About 21 years.

10 Q. And about how many scuba dives would you say you have been
11 on?

12 A. I lost count many years ago, but I would say it's in the
13 thousands.

14 Q. Could you explain to the jury what you mean by a full scuba
15 dive?

16 A. Like what we do?

17 Q. Or just what a scuba dive is.

18 A. Basically, we don some scuba equipment and gear, breathing
19 tank and breathing apparatus strapped to us, with masks, fins,
20 wetsuit, and we use that equipment to survive under water.

21 Q. And we will talk more about that a bit later. Do you have
22 any certifications as a scuba driver?

23 A. Yes.

24 Q. Can you describe the certifications you have.

25 A. I have my open water. I have my nitrox. And I have my

1 advanced diver.

2 Q. In real basic terms, can you just explain to the jury what
3 those mean?

4 A. Your open water certification is what is required just for
5 entry-level, general scuba diving, recreational diving.

6 Nitrox allows you to use tanks that have air that are
7 enriched with oxygen so it can increase your bottom times,
8 gives you more time to dive.

9 And then advanced allows you to do more advanced things
10 like it sounds. You can do more wrecks, deeper dives, that
11 kind of thing.

12 Q. And do you know the defendant, Dustin Sean McCabe?

13 A. Yes.

14 Q. Is Mr. McCabe sitting in the courtroom?

15 A. Yes.

16 Q. Can you identify him by an article of clothing?

17 A. A gray jacket.

18 MR. KELLER: Let the record reflect that the witness
19 has identified the defendant.

20 THE COURT: All right. The record so reflects.

21 Ladies and gentlemen, please ensure that all your
22 phones are on silent.

23 Please continue.

24 MR. KELLER: Thank you, Your Honor.

25 ///

1 BY MR. KELLER:

2 Q. And, Ms. Hester, have you ever gone scuba diving with the
3 defendant?

4 A. Yes.

5 Q. About how many times would you say you have gone scuba
6 diving with the defendant?

7 A. Probably many dozens.

8 Q. And what was the defendant's primary role when you would go
9 scuba diving with him?

10 A. Captain.

11 Q. And what do you mean by "captain"?

12 A. He was the captain of the vessel.

13 Q. And probably obvious, but can you just describe what a
14 captain does on a scuba charter trip?

15 A. They drive the boat.

16 Q. And were these paid trips or were they free? Was he just
17 driving you around for free?

18 A. They're paid.

19 Q. And when you were diving with the defendant, did you
20 typically dive on boats he owns or someone else's boat?

21 A. Mostly boats that he owned.

22 Q. And what date is the last time you went scuba diving with
23 the defendant?

24 A. March 28, 2020.

25 Q. And where did that trip take place?

1 A. Off the coast of West Palm.

2 Q. Were you injured during that scuba diving trip?

3 A. Yes.

4 Q. And was there a particular part of the vessel that led to
5 the injury?

6 A. Yes. The propeller.

7 Q. And was it a particular propeller?

8 A. The port side propeller.

9 Q. Okay. So we're going to talk more about that in just a
10 bit, but I want to start with some questions about scuba
11 diving.

12 You gave, kind of, a big picture of what it is, but just to
13 start, is scuba diving usually the sort of thing -- bless
14 you -- the sort of thing you do by yourself on your boat, or is
15 it usually something you do with a charter?

16 A. It depends. But it's typically through a charter.

17 Q. And would you typically pay for the trip?

18 A. Yes.

19 Q. And what is the process that you used to buy a chartered
20 scuba trip?

21 A. It's changed over the years. Nowadays, the most common is
22 to go to the dive shop's website and book online on. If you
23 personally know the operator, you can contact them to schedule
24 directly.

25 Q. And what type of a vessel do you actively go scuba diving

1 on?

2 A. A dive boat.

3 Q. And can you just describe what a dive boat is?

4 A. Sure. It's a -- a boat that is designed and equipped to --
5 specifically for the purpose of scuba diving from. So it has,
6 you know, space for your tanks and a lot of deck space so that
7 you can get you and your equipment in -- on and off.

8 Q. And prior -- prior to March 2020, had you gone scuba diving
9 with the defendant on one of these dive boats?

10 A. Yes.

11 Q. And what was that vessel called?

12 A. Prior to the 28th?

13 Q. Yes.

14 A. Well, technically I was on the same vessel the 27th. So
15 prior to the 27th, it would have been the Sea Scout.

16 Q. And when did you start diving with the defendant on the Sea
17 Scout?

18 A. I don't remember exactly when, but I believe it was 2016.

19 Q. And how does a typical dive boat power itself through the
20 water?

21 A. Through propulsion.

22 Q. And what specifically is what creates the propulsion?

23 A. The propellers create the propulsion.

24 Q. And can you just briefly describe what propellers are?

25 A. Sure. They're comprised of metal blades that spin at a

1 rapid rate and in the water. And as those blades are passing
2 through water, they provide the propulsion.

3 Q. And if I could make use of the HDMI.

4 COURTROOM DEPUTY: And this is in evidence?

5 MR. KELLER: Yes. Publishing Government's Exhibit 25,
6 which is in evidence. So it can be published to the jury and
7 to the witness.

8 THE COURT: Ladies and gentlemen, outside of the
9 presence of the jury the parties agreed that certain exhibits
10 can come into evidence without objection. And so to speed
11 things along and make things a bit more efficient, this is one
12 of those exhibits which is Government's Exhibit 25 that has
13 already been admitted into the record.

14 Please proceed to publish.

15 MR. KELLER: Thank you, Your Honor.

16 BY MR. KELLER:

17 Q. And what --

18 MR. KELLER: And are the jurors able to see?

19 THE JURORS: (Head nods.)

20 BY MR. KELLER:

21 Q. So, Ms. Hester, what does Government's Exhibit 25 depict?

22 A. A propeller blade.

23 Q. And then going to 26. What does this depict?

24 A. A propeller.

25 Q. And is this the typical look for a propeller?

1 A. Yes.

2 Q. And perhaps obvious, but how are propellers powered? What
3 causes them to spin?

4 A. They're engine powered.

5 Q. And are propellers dangerous?

6 A. Inherently, yes.

7 Q. And can you explain why?

8 A. Because they're very sharp and they are -- when they're
9 engaged, they're moving and spinning very quickly, so naturally
10 that provides a hazard.

11 Q. And in your years of experience, is the danger that
12 propellers present well understood by scuba divers?

13 MR. O'SULLIVAN: Objection. Lack of foundation.

14 THE COURT: Sustained.

15 BY MR. KELLER:

16 Q. Do you know, are propellers -- does the danger of
17 propellers present -- is it well understood by you as a scuba
18 diver?

19 MR. O'SULLIVAN: Same objection. Lack of predicate.

20 THE COURT: All right. I will overrule the objection.
21 But restate the question limited to this witness only.

22 MR. KELLER: Yes, Your Honor.

23 BY MR. KELLER:

24 Q. So, Ms. Hester, based on your experience scuba diving, do
25 you understand propellers to present a danger to scuba divers?

1 A. Yes.

2 Q. And are propellers, again, from your experience, more of a
3 hazard to scuba divers than for people who are fishing or
4 sightseeing on a boat?

5 A. Yes.

6 Q. And why is that?

7 A. Because scuba divers are in and out of the water, and so
8 they have the potential to come directly in contact with
9 propellers.

10 Q. And when you're going on a scuba dive, do you personally
11 inspect whether the vessel is in proper working order --

12 A. No.

13 Q. -- before you go on a charter boat?

14 A. No.

15 Q. And when you go out on a trip, who do you trust to have the
16 vessel in proper working condition?

17 A. The captain.

18 Q. And do you expect captains to obey Coast Guard regulations?

19 A. Yes.

20 Q. And when you're scuba diving, do you expect a captain to
21 warn you of any unusual dangers that a boat might present while
22 you're on it?

23 A. Yes.

24 Q. Now, when you go on a scuba diving trip, do you bring your
25 own equipment?

1 A. I do, yes.

2 Q. And what type of equipment do you bring?

3 A. My typical equipment would be an air tank, a BCD, like --
4 it's like a vest that you wear, regulator, fins, mask, gloves,
5 spear gun.

6 Q. And are you out in a bathing suit or wearing something else
7 typically?

8 A. Typically a wetsuit.

9 Q. And can you explain to the jury what a wetsuit is?

10 A. Sure. A wetsuit is pretty much a full -- most of the time
11 a full-body covering that protects you, provides protection
12 that you wear. Sometimes they can be short. I really only use
13 full length.

14 Q. And what is a wetsuit protecting you from?

15 A. Temperature. It can also be protective if you come in
16 contact with any marine life.

17 Q. And on a normal day of scuba diving on a charter trip, how
18 many dives do you do?

19 A. Typically two, sometimes three.

20 Q. Okay. So, now that we have talked a little bit about the
21 trips, I want to talk a little bit about what an actual scuba
22 dive consists of. So once you're out on the boat, what's the
23 protocol for getting ready to enter the water?

24 A. Once we're approaching the dive site, usually the captain
25 will call "10 minutes." It gives you a heads-up that we're

1 approaching the dive site and that gives you 10 minutes to gear
2 up and get ready to enter the water. At that point you would
3 put all of your equipment on and get ready to hit the water.

4 Q. And how do you enter the water?

5 A. There is usually two ways, two main ways. You can either
6 take a giant step forward from the platform into the water or
7 you can roll backwards.

8 Q. And when you're in the water, how long do you typically
9 dive for once you have exited the boat?

10 A. It depends on what air mix you are breathing, what depth
11 range you are in, but it can be anywhere from 20 to 55 minutes.

12 Q. And what are you doing when you're down there, once you're
13 scuba diving?

14 A. It depends on what you are doing. A lot of people are just
15 there recreationally, looking, sightseeing, looking at marine
16 life. Some take cameras and, you know, take pictures, video.
17 I hunt, so I have a spear gun.

18 Q. And we will talk more about the hunting in a few minutes,
19 but when you're under water, how do you know that it's time to
20 surface?

21 A. Either your computer tells you that you are out of bottom
22 time; you notice that you are getting low on air; or you are
23 reaching the end of your allowed dive time that the captain
24 gives.

25 Q. And what is the first step in the process for surfacing,

1 once you have done your dive?

2 A. The first thing that I do typically, when I leave the
3 bottom, is to deploy my surface marker.

4 Q. And can you explain what a surface marker is.

5 A. Sure. It's an inflatable tube. Mine is, oh, 6, 7 feet
6 long. You unclip it from your gear. You unravel it a little
7 bit, and you use your -- usually your OCTO hose, a spare
8 breathing hose, to inflate it. And it's on a reel, on a long
9 line, and it floats to the surface.

10 Q. And does it, like, pull you up or is it just something that
11 goes up?

12 A. No. That's the purpose of the line. It goes to the
13 surface while you ascend at your own rate.

14 Q. And when you surface, how do you let the captain of the
15 vessel know it's time to pick you up?

16 A. The -- he will usually see the surface marker before you
17 even get close to the surface. And depending on where he is
18 and what he is doing, he will work his way over in your
19 direction. Once you actually hit -- your head hits the water,
20 you would give an "okay" sign.

21 Q. And what is the okay sign?

22 A. It is your fist over your head (indicating).

23 Q. And once you have gotten to this part in the process of a
24 scuba dive, what does the captain do once they spot you?

25 A. Brings the vessel over to pick you up.

1 Q. And when the vessel is coming to pick you up, what do you
2 do as you're waiting for it to get there?

3 A. Wait.

4 Q. Okay.

5 A. Not much you can do.

6 Q. Yeah. And then -- and what does the vessel do to get
7 closer to you?

8 A. Once the vessel gets within closer range, they will usually
9 spin around and then back the last few feet or so up, so that
10 you don't have to swim too far.

11 Q. And about how far away does the vessel typically get away
12 from you?

13 A. Usually about 10 feet or so.

14 Q. And once the vessel is in position, does anything happen to
15 tell you that it's safe to approach?

16 A. Yes. The dive master will give you verbal and hand cues
17 telling you it's okay.

18 Q. And what type of a hand cue do you receive?

19 A. Usually a waving you in (indicating).

20 Q. And once you are getting back on, what part of the boat do
21 you get back on from?

22 A. The dive platform.

23 Q. And where is the dive platform situated?

24 A. At the rear of the vessel.

25 Q. And why is that captain signal and the -- the dive master

1 signal necessary?

2 A. Because the -- it's important that the propellers are in
3 neutral before a diver approaches the vessel.

4 Q. And why is that?

5 A. Because if they're not in neutral, they're spinning and
6 they are a hazard.

7 Q. And so what do you do once you receive the all-clear sign?

8 A. Swim to the platform and eventually the ladder.

9 Q. And just to paint the picture, are you still wearing your
10 flippers and everything at that point?

11 A. Yes, everything is on.

12 Q. And is it important to get ahold of the dive platform
13 quickly once you get back?

14 A. You do want to grab ahold of it quickly just because of
15 ocean currents. You don't want to get pulled away by a current
16 because then the vessel will have to re-approach to repick you
17 up again. So, yeah, you do want to grab onto it at some point.

18 Q. And just to complete our typical scuba dive, when you are
19 getting picked up, do you get on board wearing all your scuba
20 equipment or do you do something else?

21 A. Typically you would hand some of it up. I would normally
22 hand up, first, my surface marker and reel, and then I would
23 unclip and hand up my gun. Sometimes I will hand up my fins
24 and sometimes I will just carry them up the ladder myself.

25 Q. And is the ladder how you get back on?

1 A. Yes.

2 Q. And how many different boats would you say you have done
3 scuba diving off of?

4 A. Dozens.

5 Q. And how many captains would you say you have had managing
6 your trips?

7 A. Dozens.

8 Q. And is everything you have described about scuba diving
9 pretty standard throughout your experience with all these
10 dozens of dates and vessels?

11 A. Yes.

12 Q. Was this the general process that you used when you would
13 dive with the defendant?

14 A. Yes.

15 Q. Including on March 28th of 2020?

16 A. Yes.

17 Q. Okay. So now I want to bring us to March 28th of 2020 on
18 this final scuba dive that you had with the defendant. And
19 let's start here. How did you end up going on the trip with
20 the defendant that day?

21 A. How do you mean?

22 Q. How did you end up getting in contact with him about this
23 trip in the first place?

24 A. It had been planned for some time, but it -- there were
25 delays in the actual trip date. So there was a lot of back and

1 forth leading up to it, but then it was just -- it was time.

2 Q. And what capacity was the defendant acting in on March 28th
3 of 2020 on this vessel?

4 A. Captain.

5 Q. Did the defendant organize this trip?

6 A. Yes.

7 Q. And what was the name of the vessel that the defendant took
8 you out on March 28th?

9 A. Southern Comfort.

10 Q. And publishing to the witness what's already been
11 admitted -- and to the jury, I should say -- as Government's
12 Exhibit 2. What does Government's Exhibit 2 depict?

13 A. The Southern Comfort.

14 Q. And is this the vessel you were on that day?

15 A. Yes.

16 Q. And before March 2020, had you ever dove on this boat
17 before?

18 A. Before March, no.

19 Q. Did you know who owned this boat when you went out on
20 March 28th?

21 A. Yes.

22 Q. Who owned it?

23 A. The defendant.

24 Q. And is this Southern Comfort, this vessel that we're
25 looking at here, a typical dive vessel?

1 A. No.

2 Q. What type of vessel is it?

3 A. It looks like an ocean yacht, which is more of a leisurely
4 recreational vessel.

5 Q. And how does this vessel differ from the typical dive
6 vessel that you would go on?

7 A. It's not originally designed for diving from. It is, like
8 I said, a leisure, ocean cruising vessel -- would be fished
9 from or just cruised from, not typically designed for diving.

10 Q. And had you spoken to the defendant about this vessel
11 before you first got on it?

12 A. Yeah, in conversation, sure.

13 Q. And what, if anything, did the defendant say about how
14 recently he had acquired the vessel?

15 A. I knew it was newly acquired.

16 Q. And what, if anything, did the defendant say about
17 modifications he had made to the vessel?

18 A. He was working on modifying it to become a dive vessel. I
19 know there had been a lot of cosmetic things on the inside
20 done, and then, of course, the things that you would need to do
21 to make it a dive boat. You would need to have the benches
22 that will hold the scuba tanks. You would need a dive
23 platform, a dive ladder, that type of thing.

24 Q. And how many propellers did the vessel have?

25 A. I believe two.

1 Q. And did the defendant tell you anything about removing
2 throttle controls?

3 A. Not that I recall.

4 Q. And looking at this picture, where did you get on and off
5 the boat to scuba dive?

6 A. So you would enter the water from the dive platform, and
7 you would get back on the vessel climbing the ladder.

8 Q. And I think you should be able to use the touchscreen on
9 your screen. Can you mark where the dive platform is on this
10 image.

11 A. The dive platform is here (indicating).

12 MR. KELLER: Let the record reflect the witness marked
13 in the center bottom of the screen.

14 BY MR. KELLER:

15 Q. And do these type of sport fisher boats typically have this
16 type of a dive platform or ladder?

17 A. No.

18 Q. And where are the propellers relative to the ladder and
19 dive platform?

20 A. Directly in front of.

21 MR. KELLER: Now, moving to and publishing to the
22 witness and to the jury Government's Exhibit 23.

23 THE COURT: which has already been admitted without
24 objection.

25 MR. KELLER: Yes, Your Honor.

1 BY MR. KELLER:

2 Q. And, Ms. Hester, what does Government's Exhibit 23 depict?

3 A. The prop, propellers.

4 Q. Of this vessel?

5 A. Yes.

6 Q. And looking at the -- directing your attention to the left
7 side of this image, can you see the ladder?

8 A. Yes.

9 Q. Can you mark where it is.

10 A. (Complies.)

11 Q. Let the record reflect the witness marked in the center
12 left of the screen.

13 And is this the ladder you climb up?

14 A. Yes.

15 Q. Okay. So now that we've talked about the vessel a little
16 bit, let me ask where did you meet the defendant on March 28th
17 to go on this trip?

18 A. North Palm Beach marina.

19 Q. And about what time?

20 A. I believe it was an 8:00 a.m. departure. So I would have
21 showed up for roughly around 7:30.

22 Q. And did you pay the defendant for this trip?

23 A. Yes.

24 Q. How much?

25 A. \$60.

1 Q. And showing you Government's Exhibit 1, publishing to the
2 witness and the jury, this exhibit that has already been
3 admitted into evidence. What does this depict?

4 A. The North Palm Beach marina.

5 Q. And what significance does this have for your trip on
6 March 28th?

7 A. That's where we departed from.

8 Q. And can you mark on the screen where it is that you met the
9 defendant.

10 A. Oh, I don't remember the slip number, but it would have
11 been somewhere over here (indicating).

12 MR. KELLER: And let the record reflect the witness
13 marked in the center left of the screen.

14 BY MR. KELLER:

15 Q. And up to this March 28th trip, were you and the defendant
16 friends, by your estimation?

17 A. Yes.

18 Q. And when the defendant had discussed the purchase of this
19 vessel, had he talked about his plans for it?

20 A. Yes.

21 Q. And what were the plans?

22 A. He was planning to do luxury scuba diving on the vessel.

23 Q. For pay or not for pay?

24 A. For pay, yes.

25 Q. And just to paint the picture a little bit, when you got to

1 the North Palm Beach marina, was the Southern Comfort already
2 in the water?

3 A. Yes.

4 Q. And how many fellow divers were with you on the trip?

5 A. I believe there were two others, plus two crew members.

6 Q. Was Carl McManus a passenger as well?

7 A. Yes.

8 Q. And about what time did y'all set out to dive? About what
9 time did y'all drive out of the marina?

10 A. If we left on time, probably would have been leaving the
11 slip around 8:00 a.m.

12 Q. And where did the defendant bring you to scuba dive?

13 A. Out to Lake Worth inlet to -- right off the coast of
14 West Palm.

15 MR. KELLER: And publishing to the witness and the jury
16 what's already been admitted as Government's Exhibit 69.

17 BY MR. KELLER:

18 Q. And direct your attention to where the pins are on this
19 image. Does this depict about where you were scuba diving on
20 March 28th?

21 A. Yes.

22 Q. And when you arrived at the site to scuba dive, what did
23 you do?

24 A. We would have been given the 10-minute warning, so that
25 would have given us time to gear up. And that's probably what

1 we did.

2 Q. And focusing on the Southern Comfort in particular, I'm
3 going to publish Government's -- what's been admitted as
4 Government's Exhibit 29 to the witness and to the jury.

5 Ms. Hester, what does Government's Exhibit 29 depict?

6 A. The deck of the Southern Comfort.

7 Q. And what are these tanks for, just in general?

8 A. Scuba tanks for diving.

9 Q. And is this area in the center where you get off?

10 A. Yeah. The opening, yes.

11 MR. KELLER: And then moving to what's been admitted as
12 Government's Exhibit 30, which I will publish to the witness
13 and to the jury.

14 BY MR. KELLER:

15 Q. What does this image depict?

16 A. The ladder.

17 Q. And is this where you departed that day?

18 A. Yes.

19 Q. And so on March 28th, on this first dive, at about -- about
20 how long did you dive for?

21 A. I had a short dive. I don't recall why, but it was a
22 particularly short dive. I'm not sure why. I don't remember.

23 Q. And so what relative time frame do you mean?

24 A. A matter of minutes. It wasn't my typical 30-, 40-,
25 50-minute dive.

1 Q. And what were you doing on this first dive?

2 A. Hunt -- I always have my gun, so I'm always hunting.

3 Q. And what type of gun?

4 A. An Ocean Rhino spear gun.

5 Q. And is that to shoot lobsters with? Or what do you use
6 that for?

7 A. It's to shoot fish. You can't shoot lobster.

8 Q. And for those who have never seen a spear gun before, can
9 you just explain what it consists of?

10 A. Sure. It's comprised of a barrel that holds a steel shaft
11 that you would be using to shoot the fish. It has a handle
12 with a trigger mechanism. And it has bands that you use to
13 pull back and lock, which is what gives you the propulsion
14 power.

15 MR. KELLER: And publishing to the witness and to the
16 jury what's been admitted as Government's Exhibit 10.

17 BY MR. KELLER:

18 Q. What does this depict?

19 A. My spear gun.

20 Q. And can you mark for the jury where the actual spear is.

21 A. So -- well, the tip of the spear is -- is here
22 (indicating).

23 Q. And --

24 A. The shaft. Sorry. The shaft is this long piece
25 (indicating).

1 Q. Thank you.

2 MR. KELLER: And let the record reflect the witness
3 marked across the center of the screen.

4 BY MR. KELLER:

5 Q. And we will come back to this picture in a few minutes.

6 So you go on this dive. It's a short dive. How do you
7 know that it's time for you to surface?

8 A. There -- something made me surface. I don't know. I could
9 have shot a big fish and then wanted to get it safely to the
10 boat, or I could have landed in the sand and seen nothing and
11 wanted to get a redrop. I'm not sure. I don't recall exactly
12 what the reason was.

13 Q. And what did you do when it came time to surface?

14 A. I would send my surface marker first. And then I would
15 ascend at a safe rate.

16 Q. And for the rest of this first dive, I just want to go step
17 by step. Once you deployed the surface marker, what did you do
18 next?

19 A. I ascended to the surface.

20 Q. And what did you do, if anything, to signal that it was
21 time to be picked up?

22 A. I probably would have gotten to -- my head above water and
23 given the okay sign.

24 Q. And once you signalled that it was time to be picked up,
25 what did the defendant do?

1 A. He brought the vessel over to pick me up.

2 Q. And how did the vessel come towards you? Can you describe
3 it?

4 A. He would have driven the vessel towards me, and usually,
5 kind of, do, kind of, a little bit of a loop around and then
6 back up the last bit.

7 Q. And when he finished backing up, about how far away from
8 the vessel were you?

9 A. Oh, probably 10 feet or so.

10 Q. And at this point up to this point, was there -- were there
11 any obvious problems with the vessel?

12 A. No.

13 Q. And once the defendant finished backing the vessel up to
14 you, what did you do at that point?

15 A. I would have handed up my reel.

16 Q. Well, let me take a step back from that. So once the
17 vessel is backed up, did you receive any type of a signal or
18 did you --

19 A. Sure.

20 Q. -- just begin --

21 A. Yes.

22 Q. -- swimming?

23 A. The dive master would have given me the hand signal that it
24 was okay to come in.

25 Q. And so up to this point, was it a typical dive?

1 A. Yes.

2 Q. And what did you do after you received the all-clear sign?

3 A. Hand up my surface marker and reel.

4 Q. So did you swim to the boat?

5 A. Oh, sure, yes.

6 Q. And did you reach the boat?

7 A. Yes. Grabbed hold of the platform.

8 MR. KELLER: And showing you Government's Exhibit 2,
9 and showing the witness and the jury what's been admitted as
10 Government's Exhibit 2.

11 BY MR. KELLER:

12 Q. Can you mark on the screen where you reached the vessel and
13 where you grabbed on?

14 A. So I would have grabbed onto the dive platform handlebars
15 (indicating) in that area.

16 Q. And is that -- what is that -- those -- what are those
17 metal bars underneath the platform?

18 A. They're literally handlebars to grab hold of.

19 Q. And shifting to --

20 MR. KELLER: Publishing Government's Exhibit 23 to the
21 jury and to the witness.

22 BY MR. KELLER:

23 Q. Can you mark on this screen where it is that you were
24 situated once you reached the --

25 A. Sure.

1 Q. -- platform?

2 A. You can't see the platform, but I would have been in that
3 same spot (indicating).

4 Q. And up to this point, is it all routine?

5 A. Yes.

6 Q. And once you reached the platform, once you grabbed onto
7 the rail, what happened?

8 A. Once I grabbed ahold of the platform, I would have
9 held -- handed up my surface marker and reel.

10 Q. And then going step by step, what happened after you handed
11 up your surface marker?

12 A. The next step would have been to unclip my gun, however --
13 in order to hand it up as well. However, I was unable to
14 because I felt like I was being drug under the vessel.

15 Q. And, just to be clear about what the weather was like and
16 these types of things, what was the weather like that day?

17 A. It was a typical, normal March day.

18 Q. And was it a clear day?

19 A. There might have been some clouds, but it wasn't stormy or
20 anything.

21 Q. Can you explain to the jury what it felt like as you were
22 being sucked under.

23 A. It just felt like a rush of water dragging you under the
24 vessel.

25 Q. Had you ever experienced anything like that before?

1 A. No.

2 Q. Have you experienced anything like it since?

3 A. No.

4 Q. And as you felt yourself being sucked under the boat, what
5 happened next?

6 A. I was fighting it. I was bracing against, holding on to
7 the handlebars, trying to just pull myself back up, thinking
8 maybe it was a rogue wave that had come and was just, you know,
9 just trying to wash me under. But I quickly realized it was
10 too strong and it was going to overpower me, so I moved to the
11 port side stern of the vessel, pushing off the side of the boat
12 with my -- bracing with my hands because I knew I didn't want
13 to go under.

14 Q. And can you explain what you mean by you went to the port
15 side stern. You can mark on the screen --

16 A. I just kind of --

17 Q. -- if it's helpful.

18 A. I just kind of shifted --

19 THE COURT: One moment. One moment. It's important,
20 because our court reporter is trying to take down everything,
21 that you just wait for him to fully finish the question and
22 then answer, please.

23 So, with that, re-ask your question.

24 MR. KELLER: Yes, Your Honor.

25 ///

1 BY MR. KELLER:

2 Q. If you just want to use the screen to mark where it is you
3 shifted to -- from where you marked in the center of the screen
4 once this sucking began.

5 A. So I just worked my way over to the port side stern corner.

6 Q. And could you tell in that moment what direction you were
7 being sucked in?

8 A. Under the boat.

9 Q. But was it towards a particular propeller?

10 A. I wasn't aware at the time, but, yes, it would have been in
11 that vicinity, yeah.

12 Q. And can you circle the propeller that you were being sucked
13 towards?

14 A. (Complies.)

15 Q. And so as you moved over on the back of the boat, what
16 happened next?

17 A. Well, I was trying to push off and get away from the vessel
18 so that he could pick me up again and try that again. But as I
19 was bracing, I felt a -- a strong force grab hold of what had
20 to be my gun, and because I was bracing so hard to not go under
21 the vessel, that created quite a bit of resistance, and at some
22 point the bands were severed, and that made the gun shoot me
23 backwards into my leg.

24 Q. And did the gun itself strike you?

25 A. The butt of the gun did.

1 Q. And what's going through your mind as all of this is
2 happening?

3 MR. O'SULLIVAN: Objection. Relevance.

4 THE COURT: Overruled.

5 THE WITNESS: Just trying -- my only thought at the
6 time was to avoid going under the boat.

7 BY MR. KELLER:

8 Q. And perhaps obvious, but why was that your number 1
9 priority?

10 A. Because that's where the props are.

11 Q. And how long had you been at the platform, at this dive
12 platform grabbing onto the rails when all of this started
13 happening?

14 A. It all happened in a matter of seconds.

15 Q. And what happened to the spear gun as this all was
16 unfolding?

17 A. It had to have gotten engaged with the port side prop.

18 Q. And what do you mean by that?

19 MR. O'SULLIVAN: Objection. Speculation.

20 THE COURT: Sustained.

21 MR. KELLER: Publishing Government's Exhibit 10 to the
22 witness and -- what's been admitted as Government's Exhibit 10
23 to the witness and the jury.

24 BY MR. KELLER:

25 Q. We talked before, Ms. Hester, about what this is. Does

1 this depict the spear gun after this incident?

2 A. Yes.

3 Q. And what is this spear made of?

4 A. The barrel is coated -- it's a wooden barrel, but it's
5 coated in graphite, and the shaft is a steel shaft.

6 Q. And focusing on the end of the spear, is this what the
7 spear normally looked like?

8 A. No.

9 Q. How is it different than what its normal condition is?

10 A. Normally the spear shaft would be straight, and here it has
11 been bent at approximately 60 degrees.

12 Q. And when did the spear take on this bent shape?

13 A. When it engaged with the prop.

14 Q. And, just to be clear, this type of bending, is this
15 something you could have done with your bare hands?

16 A. No.

17 Q. Is this steel spear solid and difficult to bend?

18 A. Absolutely.

19 MR. O'SULLIVAN: Objection. Lack of foundation.

20 THE COURT: Overruled.

21 MR. KELLER: And moving to -- publishing Government's
22 Exhibit 9.

23 BY MR. KELLER:

24 Q. Is this -- what is this?

25 A. The same spear gun.

1 Q. And when this gun struck you, were you still wearing your
2 wetsuit?

3 A. Yes.

4 Q. And did you say before that a wetsuit protects you from
5 being struck?

6 A. No. It can't protect you from being struck. It can
7 protect you from temperature and from, you know, coming in
8 contact with marine creatures. But if you're going to be hit
9 by something, you're still going to be hit through the wetsuit.

10 Q. I will rephrase the question. Does the wetsuit protect you
11 in any way from the force of whatever is striking you?

12 A. No.

13 Q. Okay. And in this case, did the -- did the spear gun
14 striking you cause an injury?

15 A. Yes.

16 Q. And what type of injury?

17 A. A large bruise to my left thigh.

18 MR. KELLER: And publishing to the witness and to the
19 jury what's been admitted as Government's Exhibit 6.

20 BY MR. KELLER:

21 Q. What does Government's Exhibit 6 depict, Ms. Hester?

22 A. The bruise on my leg.

23 MR. KELLER: And then publishing to the jury what's
24 been admitted and to the witness what's been admitted as
25 Government's Exhibit 7.

1 BY MR. KELLER:

2 Q. What does this depict, Ms. Hester?

3 A. The same bruise.

4 Q. And how long were these pictures taken after this happened?

5 A. Within days. That looks like that photo was taken at my
6 work office, so it would have been the following day.

7 Q. And when the butt of the gun struck you, did it help you
8 escape?

9 A. Sure. The force of being struck by the gun pushed me away
10 from the boat.

11 Q. Okay. And now we're moving another step in this process of
12 what happened. So did you ultimately get away from the
13 propeller?

14 A. Yes, because of the gun.

15 Q. And where did you end up once you --

16 MR. KELLER: And I will move to Government's Exhibit 2
17 again, publishing to the witness and to the jury.

18 BY MR. KELLER:

19 Q. Can you mark just where you ended up relative to the boat.

20 A. Relative to the boat, I -- after being pushed back from the
21 gun, I would have been, like, somewhere over here (indicating).

22 MR. KELLER: And let the record reflect that the
23 witness marked to the left-hand side, bottom quarter or --
24 bottom quarter of Government's Exhibit 2.

25 ///

1 BY MR. KELLER:

2 Q. And so what did you do once you ended up out there?

3 A. Then I waited for the vessel to come back again.

4 Q. And did it?

5 A. Yes.

6 Q. And were you able to get back on the vessel?

7 A. Yes.

8 Q. And how did you do that?

9 A. I swam to the dive platform, and I went specifically to --
10 directly to the ladder, to the -- on the starboard side.

11 Q. So were you trying to stay as far away from that propeller
12 as possible?

13 A. Sure, yes.

14 Q. And so once you got back on the boat, what did you do?

15 A. When I reached the ladder, I would have first handed up my
16 gun to one of the dive masters, and then either my fins,
17 or would have carried them up the ladder.

18 Q. And did you tell people on the boat about what had just
19 happened?

20 A. Well, yeah. They were all right there watching.

21 Q. And did you tell the defendant?

22 A. He was there watching as well.

23 Q. And what did you tell the defendant?

24 A. That the port side prop had destroyed my spear gun.

25 Q. And did you show him the spear gun?

1 A. Yes.

2 Q. And --

3 A. Well, I technically didn't.

4 Q. Okay. Can you explain.

5 A. Yeah, when I had handed up the spear gun, one of the dive
6 masters had held it up and showed the captain.

7 Q. And what did the captain, the defendant, do when he saw
8 that spear gun?

9 A. He seemed surprised.

10 Q. And did he take it?

11 A. Yes, he took it and laid it at the -- at the -- on the
12 bridge at the helm.

13 Q. And was that unusual to you?

14 A. Yes. Because that's not typically where they're kept.

15 Q. And when you say he laid it on the bridge, can you mark on
16 the screen here where it is that he put it.

17 A. It's hard to see in the photo, but it would have been laid
18 across somewhere up here (indicating).

19 Q. And where do the spear guns typically go?

20 A. Well, you can see one in the photo here. Here it was
21 attached to behind the ladder, out of the way.

22 Q. And what did you understand him to be doing when he put the
23 gun up there instead of where it was supposed to go?

24 MR. O'SULLIVAN: Objection. Calls for speculation.

25 THE COURT: Sustained.

1 BY MR. KELLER:

2 Q. Were other divers picked up after this?

3 A. Yes.

4 Q. And did you tell them about what had happened?

5 A. No.

6 Q. And why not?

7 A. It wasn't my place.

8 Q. Did the defendant tell them about what happened?

9 A. Not to my knowledge.

10 Q. Did the defendant show them that spear gun?

11 A. Not to my knowledge.

12 Q. And is your job as a passenger to manage the safety of
13 other passengers?

14 A. No.

15 Q. Whose responsibility is that?

16 A. The captain's.

17 Q. Now, in that moment after this had happened, did you
18 appreciate the significance of it --

19 A. Not immediately, no.

20 Q. -- yourself?

21 And did the group -- did you go on a second dive that day?

22 A. Yup.

23 Q. And on this second dive, did you exit the normal way?

24 A. You mean beginning the dive, jumping in the water, yeah, it
25 was the same.

1 Q. And did you have a normal scuba dive?

2 A. Yes.

3 Q. And did you surface safely the same way you always have?

4 A. Yes.

5 Q. Now, on this second dive, did the vessel pull up as close
6 to you as it did the previous time?

7 A. No.

8 Q. And why not?

9 A. I didn't know why.

10 MR. O'SULLIVAN: Calls for speculation.

11 THE COURT: Sustained. Move on.

12 BY MR. KELLER:

13 Q. How far away was he from you when he pulled up?

14 A. A significant distance.

15 Q. And was that highly unusual in your estimation?

16 A. Sure. Because normally he would back up to me.

17 Q. And so how did you get to the boat?

18 A. I had to swim.

19 Q. And while you were swimming, did you go under water?

20 A. Yeah, I had my regulator in my mouth and my mask on my
21 face, so as I'm swimming facedown in the water, I was going
22 directly towards the back of the vessel.

23 Q. And as you were swimming towards the vessel, did you see
24 the same propeller act irregularly again?

25 MR. O'SULLIVAN: Objection. Leading.

1 THE COURT: All right. Sustained. Rephrase the
2 question. I will sustain the leading objection.

3 MR. KELLER: Yes, Your Honor.

4 BY MR. KELLER:

5 Q. So as you were swimming back to the boat, what did you see?

6 A. I saw the starboard prop was -- appeared to be in neutral.
7 It was moving a little bit, but not noticeably. However, the
8 port side prop was engaging and disengaging repeatedly.

9 MR. KELLER: And I'm going to shift us back, and I'm
10 going to publish to the witness and to the jury Government's
11 Exhibit 23.

12 THE COURT: 23 has been admitted previously.

13 BY MR. KELLER:

14 Q. And, Ms. Hester, I just want to make sure we're all on the
15 same page about the starboard versus -- can you mark what you
16 mean by the starboard?

17 A. So in this instance the starboard would be here
18 (indicating).

19 Q. And what did you see the starboard doing during this swim?

20 A. Very little. The blades might have been passively moving
21 in the current, but, you know, not quickly.

22 Q. And can you explain what you meant by port side?

23 A. Port side is here (indicating).

24 Q. And what did you see that propeller doing?

25 A. It was spinning very quickly. And when I say engaging,

1 that means spinning under power very quickly. And then it
2 would stop. So engage, stop, engage, stop.

3 Q. And is this the same propeller as the one that sucked you
4 in earlier?

5 A. Yes.

6 Q. Now, for this second incident, did you tell the defendant
7 about what you saw immediately after you got back on the boat?

8 A. I don't recall if I had said anything in person.

9 Q. But did you tell him later in the day about it as well?

10 A. Yes.

11 Q. How did you tell him?

12 A. Because I couldn't remember if we had spoken about it.

13 There was just so much commotion, so much going on, I -- when I
14 left the boat for the day, I sent him a message on Facebook
15 Messenger.

16 Q. And we will take a look at that in a few minutes, but for
17 now, was that second dive the last dive of the day?

18 A. Yes, for me.

19 Q. And where did the boat go with you on it after the second
20 dive?

21 A. Back to the slip at North Palm Beach marina.

22 Q. And did another incident occur at the end of the trip that
23 involved the vessel's propulsion system?

24 A. Yes.

25 Q. Did the defendant run the Southern Comfort aground?

1 A. Yes.

2 Q. Where did the incident occur?

3 A. Just in the mangroves, just to the west of the North Palm
4 marina.

5 MR. KELLER: And I'm going to clear the screen and
6 publish what's already been admitted to both the jury and the
7 witness, Government's Exhibit 1.

8 BY MR. KELLER:

9 Q. Ms. Hester, does this depict where the incident happened at
10 the end of the day?

11 A. Yes.

12 Q. Can you mark it on the screen.

13 A. The grounding?

14 Q. Yes, ma'am. Where it happened.

15 A. The grounding would have been right in here (indicating).

16 Q. And is there a bridge in the area?

17 A. Yes.

18 Q. Can you circle that on the screen.

19 A. (Complies.)

20 MR. KELLER: Let the record reflect the witness circled
21 the bridge in the top left-hand corner and made a mark slightly
22 underneath it.

23 And now I'm going to move to Government's Exhibit --
24 and I'm going to publish to the witness and the jury what's
25 been admitted as Government's Exhibit 84.

1 BY MR. KELLER:

2 Q. Ms. Hester, what is Government's Exhibit 84?

3 A. It's a zoom-in of the marina.

4 Q. And does this depict where the grounding occurred?

5 A. Yes.

6 Q. Can you mark on the screen.

7 A. (Complies.)

8 Q. And can you explain how this happened? Paint the picture
9 for us, using this screen.

10 MR. O'SULLIVAN: Objection. Calls for speculation.

11 THE COURT: Overruled.

12 THE WITNESS: So we would have come in to -- typically,
13 we would come in the same direction that these two boats are
14 moving towards the marina. We would normally come in this
15 little opening here on the bottom (indicating), because further
16 down there is where the slip is for the boat. However, it was
17 obvious that the captain was trying to dock the boat at -- I
18 believe it was the fueling dock.

19 And there was a little bit of urgency and some phone
20 calls, and -- not really sure what was going on, but it became
21 obvious that he -- well, there was a boat there. There was a
22 boat at the fuel dock. It was in the way. And he was making
23 calls to try to get that boat to leave so that he could dock.
24 However, it didn't. And he -- by the time he came in and
25 basically missed the turn, he would have -- he had to go closer

1 towards the -- the bridge.

2 BY MR. KELLER:

3 Q. And where do you mean when you say "he missed the turn"?

4 A. He would have -- well, to come in -- can I mark?

5 Q. Yes, you can.

6 A. So he normally would come in here to go into the slip

7 (indicating). But because he was trying to go to the fuel

8 dock, he would have tried to come in here and just pull up at

9 the fuel dock. But because there was a vessel in the way at

10 the dock, he couldn't. So he maintained course (indicating).

11 Q. And were there problems with his ability to maneuver at

12 that point?

13 A. Yes. Well, there was imminent fear that we were going to

14 collide with the bridge. He, at some point, started to make a

15 circle, but it became obvious that he had no reverse in either

16 engine, so he had difficulty maneuvering the vessel.

17 Q. And so when he ran aground, can you explain what that

18 consisted of?

19 A. The inability to maneuver the vessel, not having those

20 reverse propulsion systems in working order basically meant

21 that he lost control of the vessel and that's why we ran

22 aground.

23 Q. Have you ever had something like this happen in your

24 15 years of scuba diving?

25 MR. O'SULLIVAN: Objection. Relevance.

1 THE COURT: Sustained.

2 BY MR. KELLER:

3 Q. Now, after running aground, were you able to get safely off
4 the boat?

5 A. Yes.

6 Q. And was that the end of your March 28th scuba trip?

7 A. Yes.

8 Q. And you mentioned before that you communicated with the
9 defendant on Facebook Messenger. Did he respond to the
10 message?

11 A. Yes.

12 MR. KELLER: Publishing to the witness and to the jury
13 what's been admitted as Government's Exhibit 11.

14 BY MR. KELLER:

15 Q. Ms. Hester, what is Government's Exhibit 11?

16 A. That would be the conversation.

17 Q. Okay. So I want to start with where you say in this first
18 message "after second dive, I was watching the props." Just to
19 be clear, what do you mean by "the props" here?

20 A. That that was when I was -- had that long swim up to the
21 boat and I was watching -- because I had a clear view and had
22 nothing to do but swim and look, I was watching the behavior of
23 the propellers.

24 Q. So now I'm asking just what you mean by the word "props"?

25 A. Props is short for propeller.

1 Q. And when you say that the, quote, "port side is engaging
2 and releasing, engaging and releasing, starboard side was
3 still," what do you mean by that?

4 A. What I explained before. Where the port side appeared to
5 be under power and spinning at a high rate of speed and then
6 releasing and stopping; compared to the starboard side which
7 was just, you know, passively moving in the current.

8 Q. And were the defendant's responses the same day?

9 A. Yes.

10 Q. And when the defendant wrote to you "port side was the one
11 with the short," why did you respond, quote, "it shouldn't be
12 shorting in neutral"?

13 A. Because it just didn't make sense to me. It didn't add up
14 to what I had seen. But, I mean, I'm no mechanic, but, to me,
15 it didn't seem like a shorting issue.

16 Q. And when he responded, did you insist that it was engaging?

17 A. What do you mean?

18 Q. Just, when you responded to him by saying it was engaging?

19 A. Yes. I was trying to drive home the point that it -- it
20 was engaging, that this is a big deal.

21 Q. And were you on the defendant's vessel the following day?

22 A. No.

23 Q. Did you later learn about a fatality involving the Southern
24 Comfort's port side propeller?

25 A. Yes.

1 Q. And what was your reaction to learning that the propeller
2 had killed somebody?

3 MR. O'SULLIVAN: Objection. Relevance.

4 THE COURT: I will see the parties at sidebar.

5 (Conference at bench.)

6 THE COURT: why do you think this is irrelevant?

7 MR. O'SULLIVAN: She wasn't on the boat the next day,
8 and her reaction to what happened is not relevant to whether my
9 client's guilty of negligence or wire fraud. She was on the
10 boat on March 28th. And she can testify to what she heard,
11 what she saw, and, to a certain extent, what her impressions
12 were and what happened on the 28th, but her reaction to a death
13 that happened on the 29th, where she was not present for it,
14 what bearing does that have on a jury?

15 THE COURT: Mr. Keller.

16 MR. KELLER: Yes. And my response would be that what
17 it bears on is her reaction to the exact same issue occurring,
18 showing that he should have been aware that it was an obvious
19 problem that would cause someone to have wanted to do something
20 about it.

21 THE COURT: Okay. I think the question --

22 MR. O'SULLIVAN: Can I respond briefly? If she was
23 tendered as an expert, I think maybe what Mr. Keller said would
24 carry some weight, if she was an expert, an expert's reaction
25 to what happened, but she's not.

1 MR. KELLER: Her being an expert has no bearing because
2 this is lay testimony about someone who has been scuba diving
3 with him for years. She can testify about particularized
4 knowledge she has gained over the course of her years scuba
5 diving without being a qualified expert, just like a law
6 enforcement officer could testify to what they have learned
7 about investigating narcotics. That's a more typical example
8 of what you see.

9 THE COURT: Okay. All right. I'm going to overrule
10 the relevance objection. I do believe that this witness's
11 reaction to hearing about the death on the same vessel within a
12 short time frame of her personal observations on the vessel is
13 relevant and doesn't warrant exclusion. So I will permit the
14 question. And then we will move on. Thank you.

15 MR. O'SULLIVAN: Yes, Your Honor.

16 (Conference at bench concluded.)

17 THE COURT: All right. The relevance objection is
18 overruled. Please state your question again.

19 MR. KELLER: Thank you, Your Honor.

20 BY MR. KELLER:

21 Q. So, Ms. Hester, the question was: What was your reaction
22 to learning that the propeller that had injured you had killed
23 somebody?

24 A. I was horrified.

25 Q. And given what you had experienced on March 28th, was it

1 obvious the vessel needed to be fixed?

2 A. Yes.

3 Q. Did the port side propeller present a real danger to you
4 that day as it sucked you towards it?

5 A. Yes.

6 Q. Whose responsibility was it to make those fixes?

7 A. The captain's.

8 Q. And whose responsibility was it to make the boat safe?

9 A. The captain.

10 MR. KELLER: Nothing further, Your Honor.

11 THE COURT: All right. Ladies and gentlemen, are you
12 in need of a break or are you okay to continue? I'm just
13 trying to get a sense of the room.

14 Okay. Cross-examination.

15 MR. O'SULLIVAN: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. O'SULLIVAN:

18 Q. Good afternoon, Ms. Hester.

19 A. Hi.

20 Q. You consider yourself an experienced diver; correct?

21 A. Yes.

22 Q. You're not a certified marine mechanic; correct?

23 A. Correct.

24 Q. You do not have any formal training in mechanic -- marine
25 mechanics, do you?

1 A. No.

2 Q. You're not qualified to repair any type of electrical
3 systems on a boat, are you?

4 A. No.

5 Q. You're not qualified to repair any type of transmission
6 systems on a boat; correct?

7 A. Correct.

8 Q. Have you been boating for a long time as part of your
9 diving hobby?

10 A. Yes.

11 Q. Have you ever performed repairs on a boat by yourself?

12 A. No.

13 Q. Okay. And I think you said you have dove with Mr. McCabe
14 on, I think you said, dozens of occasions?

15 A. Yes. That would have been the prior vessel.

16 Q. And the prior vessel was called the Sea Scout?

17 A. Yes.

18 Q. Okay. And over the course of -- those dives were over the
19 course of several years?

20 A. Yes. Since 2016.

21 Q. So it would be fair to say that you were diving with him
22 dozens of times over a four-year period?

23 A. Yes.

24 Q. And during the course of that four-year period, did you
25 ever --

1 THE COURT: One moment. All electronic devices need to
2 be turned off.

3 MS. FRANCIS: Your Honor, may I approach, please?

4 THE COURT: Yes. I will see the attorneys briefly at
5 sidebar.

6 MS. FRANCIS: Thank you.

7 (Conference at bench.)

8 MS. FRANCIS: Your Honor --

9 THE COURT: Hold on.

10 MS. FRANCIS: Yes.

11 THE COURT: All right.

12 MS. FRANCIS: Thank you, Your Honor.

13 It's the defendant's ankle monitor. He has been out
14 all day and it has not been charged, and it is alerting.

15 THE COURT: Okay. One moment. Jermaine, can you turn
16 off the --

17 (Conference at bench concluded.)

18 THE COURT: Ladies and gentlemen, so that I can have
19 enough time to discuss this issue with the attorneys, rather
20 than have you wait, I'm going to ask you to go take a break,
21 please.

22 Ms. Hester, you remain under oath and you are
23 prohibited from discussing the substance of your testimony with
24 anybody.

25 All rise for the jury.

1 (The jury exited the courtroom at 4:03 p.m.)

2 THE COURT: All right. Please return to counsel table.

3 Ms. Hester, you may exit the courtroom. We will call
4 you back when we're ready.

5 All right. I have been advised that the beeping is
6 coming from the ankle monitor. Is there a way to shut it off?

7 MS. FRANCIS: No, Your Honor.

8 THE COURT: Okay. A few ground rules. If you're
9 addressing the Court, you have to stand. I have been seeing
10 that not actually happening on a regular basis.

11 Number 2, Ms. Francis, there have been a couple of
12 occasions where you have signaled something to me during the
13 presentation of trial; I think one time because you needed a
14 break because you were coughing. I don't want to be signaled
15 in any way. Anything you need to say must be on the record
16 through the microphone, standing up for the Court.

17 All right. Now, with respect to the beeping, is there
18 anybody here -- any deputy marshal here who could perhaps
19 assist with deactivating the ankle monitor?

20 A MARSHAL: I doubt that, Your Honor, but let me see if
21 we can have the ability to charge it.

22 THE COURT: Okay. We are going to take a five-minute
23 break to try to obtain the help from someone in probation to
24 help with this issue. So please stand by. We're in a recess
25 until further notice which, hopefully, will be brief.

1 Thank you.

2 (A recess was taken from 4:05 p.m. to 4:29 p.m.)

3 THE COURT: All right. Let's call in the jury, please.

4 Mr. Keller, if you can bring Ms. Hester back in the
5 courtroom.

6 MR. KELLER: Yes, Your Honor. She's coming in right
7 now.

8 THE COURT: Ms. Hester, thank you. Please make your
9 way back to the witness stand. You remain under oath.

10 (The jury entered the courtroom at 4:30 p.m.)

11 THE COURT: All right. Please be seated. We will
12 resume with the cross-examination of Ms. Hester.

13 Ladies and gentlemen, thank you for your patience.
14 It's not unusual for us to have these breaks and time for the
15 Court to discuss matters with the attorneys.

16 So let's move on. Thank you.

17 MR. O'SULLIVAN: Thank you, Your Honor.

18 BY MR. O'SULLIVAN:

19 Q. Hello again, Ms. Hester. I think where we left off was,
20 fair to say that from, like, 2016 to 2020, you did dozens or
21 scores of dives with Mr. McCabe?

22 A. Yes.

23 Q. Okay. And on those dives, did you ever bring family with
24 you?

25 A. Yes.

1 MR. KELLER: Objection. Relevance.

2 THE COURT: Overruled.

3 Ms. Hester, I'm going to ask that you speak up a little
4 bit so that we all can hear you. Thank you.

5 BY MR. O'SULLIVAN:

6 Q. On any of those dives, did you also invite friends along?

7 A. Yes.

8 Q. Okay. And on March 28th of 2020, I believe you testified
9 on direct that you did two dives?

10 A. On March 28th?

11 Q. Yes, ma'am.

12 A. I believe it was two dives.

13 Q. That's pretty standard for a morning dive, is that you do
14 one dive and then you have --

15 A. You are doing --

16 THE COURT: Again, let him finish the question and then
17 answer.

18 BY MR. O'SULLIVAN:

19 Q. Would you agree with me that it's pretty standard that on
20 a -- just a recreational dive, you do one dive, there is about
21 a 30- to 45-minute waiting period, somewhere in there, and then
22 you do your second dive?

23 A. Yes.

24 Q. And that's fairly standard?

25 A. Yes.

1 Q. Assuming you're not using like Nitrox or doing, you know,
2 some type of -- just your regular recreational dive?

3 A. You mean "nitrox"?

4 Q. Nitrox, yes.

5 A. Two dives is standard.

6 Q. Two dives is standard.

7 Okay. And so you testified on direct that after the first
8 dive is when you saw some irregularities between the port side
9 and the starboard side engine?

10 A. The -- coming up from the first dive was when I believe the
11 incident with the gun happened.

12 Q. Okay. So that was dive number 1. That's the incident
13 where the gun was somehow under the boat?

14 A. Yeah.

15 Q. Now, are you sure that it was bent by the propeller or
16 could it have gotten bent by the keel or the rudder or the dive
17 platform?

18 A. I'm not sure.

19 Q. Okay. So we're not sure if it was actually hit by the
20 propeller, but we know that the gun was damaged; is that fair?

21 A. The gun was definitely damaged.

22 Q. When we saw pictures of it, it was bent at what looked like
23 a 60-degree angle?

24 A. And had slice marks on the barrel.

25 Q. But you don't know if it was hit by a propeller or if it

1 was, you know, bouncing around under the keel or the rudder or
2 the dive platform?

3 A. The marks on the gun certainly indicate that it came in
4 contact with the prop blade.

5 Q. Okay. But you still went for a second dive?

6 A. I did.

7 Q. Knowing that -- or testifying that "my gun was sucked
8 under" by a -- what you say is a propeller?

9 A. Yes.

10 Q. And you said that it was scary and dangerous?

11 A. Yes.

12 Q. But you still went for a second dive that morning?

13 A. Yes.

14 Q. Okay. So it couldn't have been that dangerous if a very
15 experienced diver like yourself, with thousands of dives, went
16 right back in the water on the same boat?

17 A. I certainly reboarded the vessel differently after that.

18 Q. But you still went in the water?

19 A. Yes, and steered clear of the prop.

20 Q. Speaking of reboarding the vessel, after this you were
21 interviewed by several investigators; correct?

22 A. Sometime later.

23 Q. One of them would be a gentleman named Investigator Fowler
24 from the Fish and wildlife Commission?

25 A. I don't recall.

1 Q. Okay. But you do recall some authority figures, law
2 enforcement people, interviewing you, more than one; correct?

3 A. I don't recall.

4 Q. Was one Agent King, who is in the courtroom today?

5 A. At some point I spoke with him.

6 Q. Okay. And these interviews took place a few days after
7 the -- after the accident; correct?

8 A. I believe so.

9 Q. So would it be fair to say they happened on or about
10 April 3, 2020?

11 A. I don't recall the date.

12 Q. Okay. Do you recall making a statement to
13 Investigator Fowler that on the second -- or on the first
14 dive -- I'm sorry. On the second dive, the second dive, this
15 is after the spear gun incident, that you came up on the port
16 side?

17 A. On the second dive?

18 Q. Correct.

19 A. I believe I intentionally came up on the starboard side.

20 Q. Okay. Do you recall making a statement that you came up on
21 the port side?

22 A. No.

23 Q. And then do you recall making a statement to a different
24 investigator that you came up on the starboard side?

25 A. No. I would have -- on the second dive I had to swim to

1 the boat, so I had a long time to watch, and I intentionally
2 steered away from the port side.

3 Q. Okay. So if you -- if an investigator testifies that you
4 said you came up on the port side, they would be incorrect?

5 A. On which dive specifically?

6 Q. The second dive, after the spear gun incident.

7 A. The second dive, I would have been more on the starboard
8 side, intentionally avoiding the port side.

9 Q. Okay. So if someone testifies that you came up on the
10 second dive on the port side, they would be incorrect?

11 A. I don't know what they would be testifying to.

12 Q. Okay. But you never made that statement to an
13 investigator --

14 A. I don't recall.

15 Q. -- three or four years ago, or actually five years ago?

16 A. If it was five years ago, I really don't recall.

17 Q. Okay. Would you agree, then, what you said five years ago
18 was going to be more fresh in your head than -- than it is five
19 years later?

20 A. Naturally.

21 Q. Okay. Did Mr. McCabe, did he provide gear to the paying
22 customers?

23 A. When?

24 Q. At all during his dive trips that you were with him on?

25 A. Occasionally I believe he did.

1 Q. Okay. Did he provide air tanks to them -- to paying
2 customers as well?

3 A. Again, when?

4 Q. Just during -- during the course of --

5 A. 2016 to '20?

6 Q. Yes, ma'am.

7 A. Yes, I believe he did.

8 Q. Okay. So now you testified that there was a grounding of
9 the boat near the marina; correct?

10 A. Yes.

11 Q. And that was outside the channel in the mangroves?

12 A. Yes.

13 Q. And that was before you went to the Parker Bridge?

14 A. Yes. It would have been, yes, before the bridge.

15 Q. So you're coming from the Lake Worth inlet. You would hit
16 the marina first and then the bridge. The grounding happened
17 between the marina and the bridge?

18 A. Yes.

19 Q. Okay. After the grounding was -- was resolved, was the
20 mechanic, John Miller, was he waiting at the marina?

21 A. He was at the marina.

22 Q. So were you there when Mr. McCabe called the mechanic
23 John Miller, and said, "hey, we're grounded" or something to
24 that effect?

25 A. That had to have happened before because John Miller was

1 already standing at the marina when we were approaching.

2 Q. Okay. And do you know John Miller?

3 A. I do.

4 Q. I should backtrack a little bit. Who is John Miller to
5 you?

6 A. Diver friend.

7 Q. Okay. He is also a very experienced mechanic; correct?

8 A. Yes.

9 Q. Okay. So after the grounding, there is already a mechanic
10 standing by?

11 A. Yes.

12 Q. Okay. After this dive trip on March 28th, the boat gets
13 back into the slip in the marina. Do you stick around or is
14 that the end of your day and you go about your business?

15 A. After we made it back to the slip, I was tired. That had
16 been a lot of commotion, a lot of things had gone awry that
17 day, and I just wanted to leave. So I gathered my gear and
18 left.

19 Q. Okay. While you were gathering your gear because it takes
20 a few minutes, there is a little bit of gear, did you see
21 Mechanic John Miller starting to inspect the boat?

22 A. He was at the dock.

23 Q. Did you see --

24 A. He had already been on the boat.

25 Q. Did you see him starting to inspect the boat to see,

1 you know, what was going on?

2 A. I didn't pay attention to what he was doing.

3 Q. Okay. And you said that you took -- once you parked in the
4 marina -- or docked in the marina, long day, you're done,
5 you're going about your business?

6 A. What was the question?

7 Q. You left --

8 A. I left, yes.

9 Q. -- pretty much once the boat was docked?

10 A. Yes.

11 Q. So you're not aware of how long Mechanic Miller was there
12 inspecting and possibly repairing the boat?

13 A. I'm not.

14 Q. Okay. So would you agree the conditions that day,
15 March 28, 2020, the wind speed was about 10 miles an hour?

16 A. I don't recall the actual wind speed. It was a typical
17 day.

18 Q. I mean, it wasn't like glass flat; correct?

19 A. No. I would say the seas were maybe 2 to 3 feet, pretty
20 average.

21 Q. So it's a little bumpy for diving. It's not rough
22 conditions --

23 A. Pretty normal.

24 Q. -- by any means?

25 A. It's not rough.

1 Q. Okay. The current was probably going about one and a half,
2 two knots, in that part of Palm Beach, in that depth?

3 A. That would be the typical, and I -- I think it was a
4 typical day, so there would have been probably a mild to
5 moderate north current.

6 Q. Okay. And when you're diving at that depth, the boat
7 doesn't have an anchor; correct?

8 A. Correct.

9 Q. It just -- it's floating, so it's subject to -- it's
10 floating; correct?

11 A. It's not anchored.

12 Q. It's not anchored.

13 So it's subject to current, it's subject to wind?

14 A. And its own power.

15 Q. And its own power.

16 Okay. Toward the end of your testimony, you testified
17 about some Facebook communications; correct?

18 A. Yes.

19 Q. And you stated that you did not have the chance to tell
20 Mr. McCabe that the port side was engaging and releasing?

21 A. Yes. Meaning, I didn't have the chance while I was on the
22 boat.

23 Q. How long does it take to get from the dive site back to the
24 marina?

25 A. About 20, 30 minutes maybe.

1 Q. So in that 30 minutes' span, with only five people on a
2 relatively small boat, you didn't think that it was important
3 enough -- or you didn't have the chance to tell the captain,
4 "hey, the boat is turning on by itself"?

5 A. I don't think he would have appreciated me discussing it
6 with his customers.

7 Q. But he's -- he operates the boat from the bridge, which is
8 upstairs; correct?

9 A. But it's perfectly within earshot of everyone else.

10 Q. Out on the open ocean, when the boat is doing 20, 30 knots,
11 you can't have a private conversation with the captain?

12 A. You can.

13 Q. And you chose not to?

14 A. I did not.

15 Q. Okay. That's a pretty important thing to let the captain
16 know that, "hey, the transmission is engaging by itself, it
17 almost sucked me under the boat"?

18 A. We had already discussed that. When my gun incident had
19 happened, we had discussed what was going on with the prop.

20 Q. But you told me, and you put in writing, that you did not
21 have a chance to tell him that.

22 A. No. What I did not have a chance to tell him was after the
23 second dive, when I was approaching and I had a clear view of
24 both props. And I could see one was engaging and disengaging
25 repeatedly. That's what I hadn't had a chance to discuss with

1 him.

2 Q. So between dive number 1 and dive number 2, you did talk to
3 the captain, Mr. McCabe, about the engagement? And you weren't
4 worried about --

5 A. Yes.

6 Q. You weren't worried about the paying customers hearing
7 about that conversation, though?

8 A. I don't believe they were on the boat yet. I had a short
9 dive and was the only one on the boat other than the crew.

10 Q. Understood.

11 THE COURT: Okay. I'm going to ask that you guys just
12 slow down a tad for the benefit our reporter.

13 MR. O'SULLIVAN: Judge, I actually have no further
14 questions.

15 THE COURT: Okay. Well then, any redirect?

16 MR. KELLER: Briefly, Your Honor.

17 REDIRECT EXAMINATION

18 BY MR. KELLER:

19 Q. Ms. Hester, I just want to begin by asking again about your
20 decision to go on the second dive. Can you explain why it is
21 that you went on a second dive that day, despite that first
22 incident happening?

23 MR. O'SULLIVAN: Objection. Asked and answered.

24 THE COURT: Overruled.

25 THE WITNESS: I didn't quite grasp the severity of what

1 had occurred on the first -- well, coming up from the first
2 dive yet, when you're exerting a lot of energy, you're -- you
3 get a lot of adrenaline buildup and all of that. And I had
4 been injured, all of that, didn't even realize that I was going
5 to have a bruise yet. It all happened relatively quickly. And
6 it takes a little bit of time to process. So when I chose to
7 do the second dive, it really -- the severity of it hadn't
8 quite hit me yet.

9 BY MR. KELLER:

10 Q. And once you reached the marina, with respect to
11 Mr. Miller, did you know him to be just your dive friend or was
12 he, to your knowledge, a certified boat mechanic?

13 A. To my knowledge, he, I think, was a diesel mechanic. I'm
14 not sure if his specialty was boats or not. But, yeah, we
15 were -- we were diver friends.

16 Q. And what was his relation to the defendant?

17 A. He would dive on the boat as well. They were also friends.
18 And he was a mechanic that worked on the boat at times.

19 MR. KELLER: And I'm just going to close by publishing
20 to the jury and to the witness Government's Exhibit 11 from the
21 HDMI at counsel table -- or not at counsel table, but at
22 the --

23 BY MR. KELLER:

24 Q. And I just want to focus in on this first message that you
25 sent the defendant because there was some cross-examination

1 about which dive you were talking about. And so on the third
2 line of your text, which dive do you specify?

3 A. What do you mean "the third line" of my text?

4 Q. Of the first text.

5 A. Oh, second dive. I clearly state "second dive."

6 MR. KELLER: Nothing further, Your Honor.

7 THE COURT: All right. Thank you, Ms. Hester. You may
8 be excused.

9 Mr. Keller, please call your next witness.

10 MR. KOFFSKY: Your Honor, the government calls Carl
11 McManus to the stand.

12 THE COURT: Excellent. Let's bring in Mr. McManus.

13 MR. KELLER: And I'm going to be using the counsel
14 table connection.

15 THE COURT: Good afternoon, sir. Stay standing when
16 you get here. Mr. Creary will swear you in.

17 COURTROOM DEPUTY: Please raise your right hand.

18 Do you swear or affirm that the testimony you are about
19 to give is the truth, the whole truth, and nothing but the
20 truth, so help you God?

21 THE WITNESS: I do.

22 COURTROOM DEPUTY: Please be seated. State and spell
23 your first and last name.

24 THE WITNESS: My name is Carl, C-A-R-L, middle initial
25 C, McManus, M-C-M-A-N-U-S.

1 THE COURT: Please begin.

2 MR. KOFFSKY: Thank you, Your Honor.

3 CARL MCMANUS,

4 having been sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. KOFFSKY:

7 Q. Mr. McManus, good afternoon.

8 A. Good afternoon.

9 Q. Where do you live?

10 A. Merritt Island, Florida.

11 Q. What do you do for work?

12 A. I am a chief financial officer for a medium-sized aerospace
13 company.

14 Q. How long have you worked there?

15 A. 13 years.

16 Q. Do you scuba dive as a hobby?

17 A. I do.

18 Q. How long have you been scuba diving for?

19 A. Since I was 28. So over 30 years.

20 Q. About how many scuba dives have you done in your life, if
21 you just had to estimate?

22 A. A little over 600.

23 Q. And are you certified to be a scuba diver?

24 A. I am, yes.

25 Q. And please tell the jury what type of trainings or

1 certifications that you have received.

2 A. PADI is the authorizing certifying agency. And I have an
3 open water and an advanced open water training certificate.

4 Q. Are you familiar with scuba diving in the Palm Beach area?

5 A. Very. Yes.

6 Q. And have you ever been on a scuba diving trip with the
7 defendant in this case, Mr. Dustin Sean McCabe?

8 A. I have, yes.

9 Q. Okay. I want to ask you some questions about your
10 relationship with Mr. McCabe. When did you meet him?

11 A. Probably 2015 or '16.

12 Q. How did you meet him?

13 A. We -- my son and I came aboard his vessel, the Sea Scout,
14 and we did a number of scuba trips on the vessel.

15 Q. How did you learn in the first place that Mr. McCabe took
16 out scuba divers?

17 A. Word of mouth at the marina, at Riviera Municipal Marina.

18 Q. Did Mr. McCabe, to your knowledge, operate a scuba
19 business?

20 A. Did he? Yes.

21 Q. Do you remember the name of the business?

22 A. Florida Scuba Charters, and the vessel Sea Scout.

23 Q. How many scuba diving trips did you go on with Mr. McCabe,
24 from when you met him until 2019 approximately?

25 A. 35 trips, accounting for about 70 -- over 70 dives.

1 Q. And when you do that math, how many dives per trip?

2 A. Typically it's what is called a two-tank trip. It takes,
3 you know, half a day.

4 Q. would you pay for those trips?

5 A. I would, yes.

6 Q. How would you pay for them?

7 A. Credit card through the app. Through his app on his phone.

8 Q. would you pay Mr. McCabe directly?

9 A. Correct. Yes.

10 Q. I want to fast forward to March of 2020. Did you take a
11 scuba dive trip with Mr. McCabe in March of 2020?

12 A. Correct. I did on the 28th.

13 Q. And let me actually back up. Did you -- was there any gap
14 in your scuba diving trips with Mr. McCabe from the period you
15 just spoke about until March of 2020?

16 A. well, there were lots of gaps over the four years. But it
17 had been about over a year since I had dove with Mr. McCabe.

18 Q. Focusing on your March 2020 trip, did you pay for that
19 trip?

20 A. I did, yes.

21 Q. what date was the trip?

22 A. March 28th.

23 Q. March 28th. Okay. what vessel was used for that trip?

24 A. A sport fisherman boat. I guess the name is Southern
25 Comfort.

1 Q. Different vessel than the trips you had taken previously?

2 A. Affirmative, yes.

3 Q. And please tell the jury what the differences in the
4 vessels are.

5 A. Well, sport fisherman vessel.

6 I mean, between the old boat and this boat? The old boat
7 was, I believe, a 30-foot boat outfitted for scuba diving and
8 it had a flybridge. And the new boat was probably 45, 46 feet.
9 It had an indoor -- a cockpit, an open deck area in the very
10 aft of the boat, an enclosed salon with a flybridge on top,
11 with outriggers for fishing, and a high-flared bow for rough
12 water.

13 MR. KOFFSKY: I'm now going to show the witness and the
14 jury what's already been admitted as Government's Exhibit 2.

15 THE COURT: All right. Let's publish Government's
16 Exhibit 2.

17 Ladies and gentlemen, since we are contending with the
18 rain, if at any point you can't hear the witness, please,
19 again, let me know.

20 And, Mr. McManus, you are welcome to move that
21 microphone closer to you. Thank you.

22 THE WITNESS: Happy to do so.

23 BY MR. KOFFSKY:

24 Q. Are you able to see the screen, Mr. McManus?

25 A. Yes.

1 Q. And what does Government's Exhibit 2 show?

2 A. That's the vessel Southern Comfort.

3 Q. And is this -- this is the vessel you took the March 28,
4 2020, trip on?

5 A. Yes, that's correct.

6 Q. Okay. You mentioned that this vessel is a sport fish-type
7 of vessel. What does that mean?

8 A. People that -- well, you can -- it has cabin space, so you
9 can spend the night on it. And you would go offshore and catch
10 game fish with a boat like this. But it -- you can dive from
11 it as well.

12 Q. In your experience as a diver, have you taken scuba diving
13 trips on a vessel like this?

14 A. I have not, no.

15 Q. And why is that?

16 A. Because the -- I mean, I dive on probably half a dozen
17 different vessels, but I'm familiar with all -- many of the
18 vessels in the West Palm area and the Jupiter area, and they
19 tend to be configured more like the Sea Scout or perhaps larger
20 than the Sea Scout and don't have -- they have more passenger
21 space and not as comfortable as a larger boat like this.

22 Q. In your experience, what purpose is a vessel like the
23 Southern Comfort typically used for?

24 A. Well, I think people can use it for cruising, family
25 activities, and, of course, sport fishing.

1 Q. Do you know when Mr. McCabe began using the Southern
2 Comfort for dive trips?

3 A. I understood that I was on the kickoff or the inaugural
4 trip, the first trip.

5 Q. And where were -- where were the dives that you did that
6 day on March 28, 2020?

7 A. Off of Palm Beach Island in an area known as Breakers Reef,
8 which is a reef system not far offshore from The Breakers
9 Hotel. But it really speaks to that whole area.

10 Q. Okay. And who was, to your recollection, on the March 28,
11 2020, dive trip with you?

12 A. A young gal named Jennifer, and a gentleman named Don, a
13 crew of two, and Mr. McCabe.

14 Q. What position was Mr. McCabe -- or what role was he
15 playing --

16 A. Captain.

17 Q. -- during the trip?

18 Okay. And when you take a dive trip, who do you rely on
19 for safety purposes during the trip?

20 A. Myself. Well, I guess the captain has responsibility for
21 safety.

22 Q. When you're --

23 A. I mean, diving is -- go ahead.

24 Q. Let me rephrase the question.

25 When you're taking a dive trip out on a vessel, who do you

1 rely on for safety purposes with respect to the vessel that
2 you're taking the trip on?

3 A. Yeah, the captain and crew.

4 Q. Understood.

5 MR. KOFFSKY: And if I can just pull Government's
6 Exhibit 2 back up onto the screen here. It's already been
7 admitted.

8 BY MR. KOFFSKY:

9 Q. Let me ask just a couple of specific questions about the
10 dive trip that you took on this vessel. When you took the
11 dives on the March 28, 2020, trip, what part of the vessel did
12 you dive from?

13 A. This transom door.

14 Q. And you can actually use your finger to mark on the screen.

15 A. (Indicating).

16 MR. KOFFSKY: And let the record reflect that the
17 witness marked the bottom center of Government's Exhibit 2 at
18 the back of the boat.

19 BY MR. KOFFSKY:

20 Q. Is it common in your experience, Mr. McManus, to dive from
21 the back of a vessel?

22 A. Well, yes. Yes.

23 Q. In your experience, have you dove from any other part of a
24 vessel?

25 A. Always off of the aft. Unless it's a long-term,

1 live-aboard dive trip, you might have -- you might be climbing
2 down a ladder into, like, Zodiac boats from a ship, but, yeah,
3 all of the boats in West Palm, that's the profile.

4 Q. Okay. And focusing your attention on the back part of the
5 vessel, do you know if that platform, towards the back of the
6 vessel, was that an addition to the boat?

7 A. Oh, an addition -- the dive platform?

8 Q. Correct.

9 A. It's a dive platform. I don't know if it was an
10 aftermarket dive platform or not.

11 Q. But let me ask a more general question. Do you know if any
12 modifications were made to the vessel at all?

13 A. No.

14 Q. Okay. Let me ask, where were the crew members stationed
15 during your March 28, 2020, trip?

16 A. At what point during the -- we're talking about the ride
17 out to the reef and the ride back? Is that what you mean?

18 Q. I was actually referring to, like, specifically during the
19 dive, while you're in the water. And we will get to the dives
20 in a second.

21 A. Oh, okay.

22 Q. But where did the crew members operate from?

23 A. Well, typically there is one on the vessel and one in the
24 water.

25 Q. And is -- to your recollection, is that what was happening

1 on the March 28th trip?

2 A. I was solo diving that day, so I don't recall if we had
3 anyone in the water or not.

4 Q. Okay. And where did Mr. McCabe operate from during your
5 dives on March 28, 2020? It's --

6 A. For this dive it was Safe Harbor Marina.

7 Q. Let me rephrase. If I can direct your attention to
8 Government's Exhibit 2. Which part of the vessel would
9 Mr. McCabe be stationed during your dives?

10 A. On the flybridge.

11 Q. And is that the -- the upper portion of the vessel?

12 A. (Nods head.)

13 MR. KOFFSKY: Yes, and let the record reflect that the
14 witness marked the second-story of the vessel.

15 BY MR. KOFFSKY:

16 Q. And from your perspective, would Mr. McCabe and the crew
17 members coordinate and speak to each other during the dive?

18 A. On any typical dive? Yes. The captain would say "dive,
19 dive, dive," indicating that his electronics showed that we're
20 right on the -- on the reef or right at the drop point --

21 Q. Okay.

22 A. -- favorable for divers hitting the reef and not sand.

23 Q. So let's talk about your actual dives. What time on the
24 day of March 28, 2020, was your first dive approximately?

25 A. Approximately 10:00 a.m., 9:30 or 10:00.

1 Q. How long was the first dive for you?

2 A. I would estimate 45 minutes, which is a pretty standard
3 dive time, 45 to 50 minutes.

4 Q. And how many other divers were also diving at that time?

5 A. Two other divers. So three in total.

6 Q. Okay. And with respect to the other divers, when did you
7 surface from that first dive?

8 A. I know I was on the first dive. I was the second one
9 picked up. I -- I don't know when -- the order of when people
10 surfaced, but I know I was the second one picked up.

11 Q. And if you could briefly describe for the jury the process
12 of surfacing from a scuba dive. How does that work?

13 A. As a diver, you complete your dive. Your computer
14 indicates the elapsed time, how much air you have remaining in
15 your tank. You do a 3-minute safety stop. And at some point
16 during the ascent, you deploy a marker buoy, inflatable marker
17 buoy, with a string. And you hang onto the string and the boat
18 can find you that way.

19 And once you've completed your safety stop, you make an
20 ascent carefully, look around, and then you inflate your
21 buoyancy compensator. And now you are buoyant on the water,
22 and wait for the boat to pick you up.

23 Q. And for this first dive, how was the process of getting
24 picked up for you after that first dive?

25 A. There was a couple trial and errors to back up to me. It

1 took a few tries, but then I got on the boat and climbed up the
2 ladder that you see.

3 Q. In your diving experience, once you surface, is it typical
4 for a vessel to approach you and back up to you to pick you up?

5 A. It is, yes.

6 Q. And in the course of your diving experience, have
7 you -- have there been issues in that process?

8 A. Not that I can remember.

9 Q. And if you could just describe what -- the issues you just
10 referred to on this day, what were those like?

11 A. Backing up the vessel and getting the -- the aft end lined
12 up with the diver, so that the diver can maybe make one or two
13 or three swimming strokes to get to the ladder.

14 Q. Did you have to swim to get to the ladder after that first
15 dive?

16 A. Yes.

17 Q. Okay.

18 A. Yeah.

19 Q. Were you able to climb the ladder once you got there?

20 A. Yes.

21 Q. Any issues with climbing that ladder?

22 A. None that I can recall.

23 Q. After you finished that first dive, do you go right into
24 the water for dive number 2?

25 A. No. There is a mandatory surface interval, typically 30 to

1 40 minutes. Typically from the last diver that surfaces,
2 they -- you know, we -- the computer, depending on the depth
3 that you have been diving, depending on the mix of your nitrox,
4 there is a defined surface interval.

5 Q. Did you speak to Mr. McCabe during that -- during that
6 interval?

7 A. Yes. Yes.

8 Q. What did you speak to him about?

9 A. Well, we probably talked about the vessel itself. He did,
10 as a matter of conversation, mention that he was having trouble
11 backing up the boat, that it was favoring the starboard side as
12 he sought to back it up.

13 Q. Where specifically on the vessel -- and you still have
14 Government's Exhibit 2 on the screen. Where specifically was
15 that conversation, if you recall?

16 A. In this small deck area that we can see, it's the -- I
17 think they call it the cockpit or the deck.

18 Q. Were other people present during that conversation?

19 A. Yeah, there is really nowhere to go. And usually
20 there -- you change over your tanks and then there is -- you
21 chitchat a little bit among divers.

22 Q. And the comment you just testified about, Mr. McCabe
23 saying -- did he elaborate on that? Did he explain why he
24 thought he was having these issues?

25 A. Not at that time.

1 Q. was it a comment that he made in passing, or did he
2 elaborate on it at all?

3 A. well, he -- the diver after me had a rope thrown to him
4 after, after several --

5 MR. O'SULLIVAN: Objection. Nonresponsive.

6 THE WITNESS: Oh, okay.

7 THE COURT: Overruled. Please answer the question,
8 sir.

9 THE WITNESS: I was diver number 2. Diver number 3
10 was -- again, several attempts were made to pick up that diver.
11 The crew was -- after that was unsuccessful, lining up the
12 vessel, the crew was instructed to just throw him a rope, and
13 they pulled him in.

14 So it was with a frustration of, oh, this new boat, it
15 pulls to the right, it -- you know, it -- it doesn't back up.
16 You know, he was obviously having trouble with it.

17 BY MR. KOFFSKY:

18 Q. You mentioned frustration. Did -- when you were speaking
19 to Mr. McCabe about this issue, did he appear frustrated to
20 you?

21 A. Mildly. Not, you know...

22 Q. Okay. But did he -- is it fair to say he acknowledged some
23 sort of issue with --

24 A. Affirmative, yes.

25 Q. -- the vessel?

1 Okay. Let's go to your second dive. Did you take the
2 second dive that day?

3 A. I did.

4 Q. And did the same divers that took the first dive also take
5 the second dive?

6 A. Yes.

7 Q. And same question as before. When you surfaced after the
8 second dive, what was your -- how many other divers had been
9 picked up already at that point?

10 A. All three divers were still in the water. I was number 3
11 to be picked up.

12 Q. You were the last picked up of the three?

13 A. Correct, correct.

14 Q. Okay. And please --

15 A. I was south of the other divers.

16 Q. When you surfaced, how far away from the vessel were you at
17 that time? Approximately.

18 A. Several hundred yards. I could see the vessel. I was
19 comfortable waiting for my pickup.

20 Q. And please tell the jury what that process was like as you
21 waited to be picked up. How did it unfold?

22 A. I waited -- the interval was much longer than normal, maybe
23 10 or 15 minutes. But when the vessel arrived, they just threw
24 the rope. And I pulled in on the rope. There was no attempt
25 to position the vessel, as is customary for a diver pickup.

1 Q. Let me ask a couple of follow ups about that.

2 so you testified about 10 to 15 minutes between surfacing
3 and getting picked up; is that correct?

4 A. Yeah, surfacing -- I could see the boat. I could see it
5 was working with other divers, but it -- I wasn't close enough
6 to know, you know -- you know, it took a while. That -- that
7 was my observation. I --

8 Q. And you have a lot of diving experience. Is that amount of
9 time longer than normal? Shorter than normal?

10 A. Longer than normal.

11 Q. Okay. And then you also testified that you were thrown a
12 rope to get picked up. Is that normal, in your experience, to
13 get picked up by a line?

14 A. No, that is not.

15 Q. And just so I can understand and the jury can understand
16 what that was like, how far away from the vessel were you when
17 the line was thrown to you?

18 A. Oh, probably 15 feet. The vessel would have just pulled
19 up, and -- rather than backing up, he pulled up, and one of the
20 crew members threw a rope to me.

21 Q. Were you told at all why you were being picked up by a
22 line?

23 A. Not specifically that I can recall.

24 Q. When you grabbed ahold of the line, did you use that to get
25 back to the ladder?

1 A. That's correct.

2 Q. Any issues getting up the ladder?

3 A. Not that I can recall. No.

4 Q. And before I ask about the conclusion of your dive that
5 day, did you -- did you learn at all whether other divers that
6 day had issues getting back into the boat?

7 A. Not at that time, no.

8 Q. Did you later learn?

9 A. I did later. Yes.

10 Q. Okay. And I will follow up on that in a few minutes. We
11 will start with the -- with the conclusion of your dive --

12 A. Okay.

13 Q. -- of the trip, I should say.

14 Did you return to the marina after your second dive?

15 A. Yes, we did.

16 MR. KOFFSKY: And I would now want to show the witness
17 and the jury what has already been admitted into evidence as
18 Government's Exhibit 1.

19 BY MR. KOFFSKY:

20 Q. What does Government's Exhibit 1 show?

21 A. Well, this is the marina. If you will, I
22 can -- right -- you come in this (indicating) -- this would be
23 the intended return to the boat slip.

24 MR. KOFFSKY: And let the record reflect that the
25 witness marked the center of Government's Exhibit 1.

1 BY MR. KOFFSKY:

2 Q. Mr. McManus, if I can ask you, from -- if you marked on
3 Government's Exhibit 1, where are you coming from -- before you
4 even get to the marina, where on Government's Exhibit 1 are you
5 coming from after your dives?

6 A. We would have been -- come in the inlet and then come
7 north, and then come in (indicating).

8 Q. I see.

9 A. That's more complete.

10 Q. And before we talk about actually arriving at the marina,
11 when you were traveling back on the vessel, what was the
12 vessel's speed like?

13 A. It was -- it was subdued. We were under a much lower
14 power. On the way out we went under a high power setting. I
15 remember that because I -- I do have a tendency to like this
16 style of boat. And when they're up on the -- they get up on
17 plane. And then on the way back, we just sort of putted back.

18 Q. Did Mr. McCabe mention anything to you as to why you were
19 going more slowly?

20 A. No.

21 Q. No.

22 A. I would have been down in the cockpit and he would have
23 been up on the flybridge with his crew.

24 Q. Okay. And now let's talk about -- as you got into the
25 marina, please tell the jury what that process was like of

1 arriving to the marina.

2 A. My recollection is that -- I have just pointed the left
3 turn, and I will -- we were unable to execute a left turn
4 (indicating) to come into the marina, and continued this way
5 (indicating), and were having trouble turning the boat. We got
6 close to this bridge. And there are two outriggers on the
7 sides of the boat. And the captain said get the -- you know,
8 fearing that we were going to drift under the bridge, he, in a
9 little frustrated manner, commanded his crew to go ahead and
10 lower the outriggers, but I don't believe we ever did make
11 contact. But, ultimately, the boat ended in -- facing the
12 bank, like that (indicating).

13 Q. As that was happening, were you able to, from your vantage
14 point on the vessel, see that you were heading towards the
15 bridge?

16 A. Yeah. Well, yes, it was obvious there was a control
17 problem. I can't tell you if it was, you know, which part of
18 the propulsion system or, you know, twin engines. I -- but,
19 yeah, clearly there was a problem.

20 Q. Okay. And is it your testimony -- you indicated on
21 Government's Exhibit 1 that the vessel did a turn before
22 arriving at the bridge; is that correct?

23 A. Yes.

24 MR. KOFFSKY: I'm now going to show the witness and the
25 jury what's already been admitted as Government's Exhibit 84.

1 BY MR. KOFFSKY:

2 Q. Are you able to see Government's Exhibit 4 [sic],

3 Mr. McManus?

4 A. This is a close-up of the same image.

5 Q. And if you could please mark on the screen where exactly

6 the vessel made that turn that you referred to earlier.

7 A. Well, we ran aground about right up here (indicating). So,

8 you know, I don't need to retrace my line, but there. There,

9 and it goes off the screen and then back on (indicating).

10 Q. Understood. And I want to highlight the term "ran

11 aground." Not much of a boater. What does that mean?

12 A. We did -- at this point, the vessel -- there is shallow

13 water there. So that it was hung up on the -- on the shallows.

14 Q. Did the boat get stuck?

15 A. At that point, yes. Well, normally you would put it in

16 reverse and just back out of there. But there was something

17 going on mechanically that there was a control problem.

18 Q. How long was the vessel aground for?

19 A. 10, maybe 15 minutes.

20 Q. What were you doing during that process?

21 A. I guess sitting there. I remember there was some people on

22 the bank taking videos of us, a number of people on this lawn,

23 and just waiting.

24 Q. You have a lot of diving experience. Has something like

25 that happened frequently during your experience?

1 A. No. No.

2 Q. What was Mr. McCabe doing while the boat was aground?

3 A. Well, he was -- I can't tell you specifically. You know,
4 he was working systems, trying to get it to work. And I
5 believe he was in touch with a fellow that helps him with the
6 mechanical work. Because he appeared on the shore and came out
7 to the vessel, pushed it so that now (indicating) it would be
8 facing this way. Climbed on and he, one -- made some
9 adjustments to what I understood was the right engine. And we
10 limped back to the dock here (indicating).

11 MR. KOFFSKY: And let the record reflect that the
12 witness is marking Government's Exhibit 84.

13 THE WITNESS: To this fuel dock right here
14 (indicating).

15 BY MR. KOFFSKY:

16 Q. Understood.

17 Do you know who the person who got aboard the vessel to
18 make those modifications or adjustments was?

19 A. John Miller. I -- I was acquainted with him from other
20 dives.

21 Q. You also testified that -- I believe the word you used was
22 that the boat "limped" to the fuel dock. Did I hear you
23 correctly?

24 A. That's correct.

25 Q. And what do you mean by that?

1 A. well, from here, we just sort of puttered, and enough to --
2 I don't even know if we rounded this corner, you know, or if
3 they pulled us in, but we got to that dock and certainly did
4 not continue further into the marina to return to the normal
5 docking slip. We just left it right there. And we all removed
6 our gear there, where normally we would remove it back at the
7 assigned parking space or boat slip.

8 Q. Did the vessel ever make it back to the assigned parking
9 space?

10 A. It did not. We -- we offloaded right there at the fuel
11 dock.

12 Q. Understood.

13 I now want to follow up. You mentioned that you had later
14 learned about other divers having issues during the March 28,
15 2020, dive. Please tell the jury what you mean by that.

16 A. well, I think we all know there was a tragedy the next day.
17 And the other -- another diver had mentioned that there was
18 trouble at her pickup, and her -- I don't know what happened,
19 but her spear gun went into the props. I don't know if she was
20 pushing away. I just simply wasn't there -- or I was
21 too -- too far away from being there. And she had sent me a
22 picture of a bruise that she got and of her spear gun.

23 Q. And this diver, do you know -- what is her name?

24 A. Jennifer Hester. She's a quite accomplished spearfisher
25 and diver.

1 Q. without telling me what she told you, when did you learn
2 that that had happened to her?

3 A. It would have been after learning of the tragedy. I think
4 maybe I -- I received a text and -- two, three weeks later
5 maybe. I submitted the text, but I -- I don't recall the
6 specific date. And when I say "text," it was through the
7 Messenger app.

8 Q. Did Mr. McCabe, as the captain of the vessel on your trip,
9 did he ever say anything about what had happened to Ms. Hester?

10 A. No.

11 Q. As a diver on Mr. McCabe's vessel, would you have wanted to
12 be informed about any issues that affected other divers that
13 might put you at risk?

14 A. I would say yes.

15 MR. KOFFSKY: Just a brief moment, Your Honor.

16 Nothing further. Thank you, Your Honor.

17 THE COURT: Mr. O'Sullivan, you may begin your
18 cross-examination and take as much time as you need, but we
19 will close around 5:30 today. So please begin.

20 MR. O'SULLIVAN: Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. O'SULLIVAN:

23 Q. Good afternoon, Mr. McManus.

24 A. Good afternoon.

25 Q. I just have a couple of questions for you, and I think we

1 can probably finish by 5:30.

2 A. wonderful.

3 Q. So you testified on direct that you met Mr. McCabe around
4 2015, 2016?

5 A. Correct.

6 Q. And between the years 2015 to 2016, through 2020, you did
7 about 70 dives total with him?

8 A. Correct.

9 Q. And most of those dives, a vast majority, would have been
10 on his previous boat called the Sea Scout?

11 A. That's correct.

12 Q. And the Sea Scout was a different type of boat. It's built
13 specifically for diving; correct?

14 A. I think it's a -- I don't want to get into the business
15 of -- I'm not a boat expert. But I think you can use that for
16 fishing or, you know, it's depending how you outfit it.

17 Q. Does the term "Island Hopper" sound familiar to you?

18 A. Yes, yes. I know that to be the brand of it.

19 Q. So it has, like, built-in storage for air tanks and
20 built-in benches for --

21 A. It was -- yes, it was outfitted for scuba diving.

22 Q. And despite it being a smaller boat than the
23 Southern Comfort, it actually holds more passengers just
24 because it's kind of wide open?

25 A. well, because every inch of deck space is -- is set up with

1 seats and -- yeah, there is a much larger deck. There is no --

2 Q. There is no salon?

3 A. No salon. No berths to sleep in or anything.

4 Q. And berths, of course, are bedrooms; correct?

5 A. Yes.

6 Q. And there is no bathroom on the Sea Scout. It's

7 just -- it's set up just for diving?

8 A. Yes.

9 Q. Okay. And you testified that while on the Southern

10 Comfort, they had to throw a rope out to you to pull you back

11 in; correct?

12 A. Yes, that's correct.

13 Q. And that's because this is a sport fisher boat, correct,

14 the Southern Comfort?

15 A. Oh, I believe it was because they -- there were mechanical

16 or proficiency problems --

17 Q. well, the style --

18 A. -- in the pickup.

19 Q. The style of the boat, it's a sport fisher; correct?

20 A. That, I -- I would -- yes.

21 Q. Okay. And, again, the Sea Scout, you wouldn't really need

22 a tag line because it's a boat set up specifically for scuba

23 diving; right?

24 A. well, I think families that own these sport fisherman boats

25 dive from them.

1 Q. Have you ever dove from a sport fisher before?

2 A. No, I have not.

3 Q. Are you familiar with the boat called The Deep Obsession,
4 out of Palm Beach County?

5 A. Yes. Yes.

6 Q. Have you dove off that boat before?

7 A. I believe I have, once or twice.

8 Q. And that's a sport fisher; correct?

9 A. Oh, oh, then that's -- there is one called Ocean Obsession
10 maybe. I have never dove from a sport fisherman.

11 Q. Never dove from a sport fisher before. This was the first
12 time?

13 A. Correct, correct.

14 Q. Okay.

15 A. And I have logged every single dive.

16 Q. Okay. And you're an experienced diver; correct?

17 A. I am.

18 Q. So I just want to ask you a couple of questions about the
19 conditions, the weather conditions that day, March 28th. Would
20 you agree with me the winds were about 10 miles per hour?

21 A. I don't recall the -- I logged in my book the water temp
22 which was very relevant to me.

23 Q. Do you remember what that was?

24 A. I think it was 73. So that's just cold.

25 Q. Pretty chilly for diving?

1 A. Well, I had a 5-mill wetsuit, yeah.

2 Q. A full body wetsuit?

3 A. Yes.

4 Q. Long sleeves, long pants?

5 A. Yes, yes.

6 Q. Do you recall, would it be fair to say, that the current

7 wasn't too strong, but it was about one and a half to two

8 knots?

9 A. I think that -- two knots is pretty strong. I -- I don't

10 think it -- you know, I think it would be under a knot, but

11 I --

12 Q. Okay. As far as the seas, do you recall the seas that day?

13 A. I don't recall a real heavy sea.

14 Q. Would it be fair to say they were would 2 to 3, 2 to

15 4 feet?

16 A. 2 to 3 is nice for diving.

17 Q. Okay. That's not like --

18 A. It's not flat.

19 Q. It's not flat like glass, but there is some movement;

20 correct?

21 A. Yes.

22 Q. And in 2- to 3-foot seas, when you're getting back on the

23 boat, you kind of have to grab the ladder and hang onto it

24 because the boat is going to be going up and down; correct?

25 A. Yes.

1 Q. It's not thrashing you or anything, but it is moving you?

2 A. Yes.

3 Q. Okay. Now, you said you suspected there was some engine
4 issues that day; correct?

5 A. Well, I say mechanical because, you know, they have
6 transmissions; they have, you know, twin engines, rudder.

7 Yes, there was some sort of a mechanical issue.

8 Q. Okay. Are you a boat mechanic?

9 A. No. No. You would never want me to work on your boat.

10 Q. You're in the finance world; right?

11 A. That's correct.

12 Q. You do CFO stuff; correct?

13 A. That's correct.

14 Q. Any type of formal or informal training in boat mechanics?

15 A. No.

16 Q. Okay. So, obviously, I think I know the answer to this,
17 but no certifications in any type of boat mechanics or
18 transmissions; correct?

19 A. I have been a boat owner, but that's -- nothing more than
20 that.

21 Q. Okay. So you live in Merritt Island; correct?

22 A. That's correct.

23 Q. And that's Brevard County?

24 A. Yes, sir.

25 Q. And that's, what, about an hour, hour and 15 minutes north

1 of here?

2 A. From here, hour and a half plus.

3 Q. There is not much diving in Brevard County; correct?

4 A. Correct.

5 Q. So you come down to Palm Beach where, obviously, the diving
6 is better?

7 A. Exactly right.

8 Q. Did you dive exclusively with Mr. McCabe during that time
9 period that we talked about? Or did you dive with other
10 captains?

11 A. With other captains as well. When the goal was
12 spearfishing and lobstering, Mr. McCabe's boat catered to those
13 divers, and it was a good option.

14 Q. During those dives, did you have any safety issues, any
15 accidents, any -- any problems?

16 A. Oh, on the other --

17 Q. In the previous four years of diving on the Sea Scout.

18 A. No. I mean, I had an injury once, but that was not
19 relevant to the operation of the vessel.

20 Q. Anything that would cause the Coast Guard to come and do an
21 investigation, anything like that, on the previous dives?

22 A. No. No. We -- you know, some -- some breakdowns, and I
23 think the tow boat came out and got us, but towed -- if you
24 board other than your original vessel, it triggers a
25 Coast Guard event. But the sea tow came out and towed the

1 Sea Scout, and the Sea Scout made the pickup, so that wouldn't
2 be necessary.

3 Q. Okay. As a boat owner, it's fairly common for a boat to
4 break down here and there; correct?

5 A. It happens.

6 Q. Okay. Now, we said there is not much diving in Brevard
7 County; correct?

8 A. Well, there is. You have to go 30 miles out. I will say
9 there are no commercial dive operators there because the
10 conditions --

11 Q. It's murky water up there?

12 A. Correct. And, yeah, the reef is not beautiful like the
13 tropical reef in Palm Beach County.

14 Q. But there are dive shops; correct?

15 A. There are, yes.

16 Q. Were you referred to Mr. McCabe originally from a place
17 called Hats in Melbourne?

18 A. No.

19 Q. Was it a dive master named Jim Stansbury? Does that name
20 ring a bell?

21 MR. KOFFSKY: Your Honor, I would object to relevance.

22 THE WITNESS: I --

23 THE COURT: One moment, sir.

24 Overruled.

25 You may answer the question, sir.

1 THE WITNESS: I know the name -- I have heard of the
2 name from -- I was never referred by Hats because that's not my
3 local dive shop. That's about 45 minutes --

4 BY MR. O'SULLIVAN:

5 Q. Okay.

6 A. -- from my house.

7 Q. How did you first become acquainted -- or how did you know
8 of Mr. McCabe?

9 A. The dive boat my son and I planned to use one day wasn't
10 going out, and we had saw someone we had dove with before and
11 they said, hey, try this guy.

12 Q. You tried him, and then you used him again another 70 or so
13 times?

14 A. Well, 35 trips, yeah.

15 Q. 35 trips, 70 dives?

16 A. Correct.

17 Q. Okay. After the grounding, Jonathan Miller was there. He
18 was the mechanic; correct?

19 A. Well, he did the work on the boat.

20 Q. Okay.

21 A. Yeah.

22 Q. When you guys got back to the fuel slip, you said that you
23 offloaded there as opposed to the normal slip where you would
24 dock?

25 A. Correct.

1 Q. And how long did you stay with the boat?

2 or did you just kind of get your gear and get off the boat
3 and go about your business?

4 A. Right. Right. Because I would have a 2-hour drive home.

5 Q. So you weren't aware how long -- or if Mr. Miller did
6 repairs or inspections on the boat on the afternoon of
7 March 28, 2020?

8 A. I wouldn't have been there. I mean, it was obvious repairs
9 were needed. He did make one repair when we were stranded.

10 But, yeah, I -- I assume they were -- I left and -- on my merry
11 way.

12 Q. So Mechanic Miller, he could have been there for an hour
13 doing repairs, he could have been there 12 hours doing repairs,
14 you just don't know; correct?

15 A. I would not know.

16 MR. O'SULLIVAN: I thank you for your time,
17 Mr. McManus. I have no further questions.

18 THE COURT: Thank you. Any redirect?

19 MR. KOFFSKY: Very briefly, Your Honor.

20 THE COURT: Okay.

21 REDIRECT EXAMINATION

22 BY MR. KOFFSKY:

23 Q. Hello, again, Mr. McManus.

24 On cross-examination you were asked whether you have any
25 mechanic experience with vessels, and your answer was you do

1 not; is that right?

2 A. That's correct.

3 Q. When you think back to the issues that you talked about
4 with regard to the Southern Comfort, given that you don't have
5 any mechanic experience, what makes you say that the vessel was
6 experiencing issues? How could you tell?

7 A. Well, it couldn't be controlled. Or it -- it couldn't be
8 backed up to reach its intended target.

9 Q. Did you need mechanic experience to perceive that?

10 A. No. No.

11 Q. And when you -- when you testified that Mr. Miller came
12 onto the vessel to help it get back to the marina and you
13 testified that it limped back, do you know how exactly
14 Mr. Miller was able to get the vessel out from its spot
15 aground?

16 A. Well, he physically pushed it, pushed us back to deeper
17 water as he walked out in the shallow. And then he went into
18 the -- he made some adjustment in the engine compartment. But
19 that's all I know. And I know that from the conversation, not
20 from actually watching him.

21 MR. KOFFSKY: No further questions, Your Honor.

22 THE COURT: All right. Thank you very much,
23 Mr. McManus. You may be excused.

24 THE WITNESS: Thank you.

25 THE COURT: In the meantime, I will address the jury.

1 Thank you very much, ladies and gentlemen, for your
2 patience today. We got done with a minute to spare, so the
3 timing worked out.

4 We will resume trial tomorrow at 9:00 a.m. So
5 please -- please be here on time.

6 All of the warnings and cautionary instructions I
7 provided earlier continue to apply. So please make sure that
8 you abide by those in full. That means no research of any
9 kind, no discussion with anybody about this case in any way,
10 shape or form, no posting on the internet, no googling, no
11 visiting any of the premises. I think you get the idea.

12 Also, as I indicated earlier, if you happen to see any
13 of the attorneys or the parties in this case, please remember
14 that they are prohibited from engaging with you, as you are
15 with them.

16 So, with that, I wish you a pleasant evening. We will
17 rise for the jury and see you tomorrow at 9:00 a.m. Thank you.

18 (The jury exited the courtroom at 5:29 p.m.)

19 THE COURT: All right. Please be seated. Anything to
20 address before tomorrow? Mr. Keller.

21 MR. KELLER: Nothing before tomorrow, Your Honor.

22 One thing I will just bring to your attention is that,
23 given the way that Mr. Miller is factoring into the defense, we
24 may explore filing some type of a trial brief suggesting an
25 additional jury instruction. Just given the fact that

1 Mr. Miller has taken the Fifth Amendment, it puts us in a kind
2 of awkward position in how to call -- so typically we would
3 have an equal availability instruction, but here he is actually
4 not equally available; he is just not available.

5 So we're going to have to look at what we might propose
6 for that.

7 THE COURT: Okay. All right. Look into that, please.
8 If necessary, confer with Mr. O'Sullivan. But supply whatever
9 it is you think is helpful as soon as possible.

10 As far as witness lineup for tomorrow, Mr. Keller, what
11 do you envision for your first three witnesses?

12 MR. KELLER: So, Your Honor, if I could just have a
13 moment.

14 Our first witness tomorrow is going to be Mr. McKenna,
15 Jordan McKenna, who is a pretty short witness. Then it will be
16 Mr. Poznak. I'm just trying to pull up my -- so then it will
17 be Mr. Poznak, and then Mr. Flynn, Ms. Ghiz-Flynn's husband.
18 Those will be the first three.

19 THE COURT: Okay. Do you think those will consume all
20 day tomorrow?

21 MR. KELLER: No, Your Honor. We're bringing six
22 witnesses tomorrow. Really, frankly, just given the length of
23 the crosses here, we're more concerned about running out of
24 witnesses than we are not finishing those witnesses. The
25 problem is we've just been doing flights --

1 THE COURT: I understand.

2 MR. KELLER: So we're going to do the best we can.

3 THE COURT: All right. Well, we will see how tomorrow
4 goes, but you may need to start adjusting some of the travel
5 arrangements to ensure that we are continuing to move forward
6 with witness testimony within the Court's schedule.

7 Now, for these witnesses for tomorrow, just finish out
8 the other three folks that you have coming.

9 MR. KELLER: Yes, Your Honor.

10 So after Mr. Flynn will be Mr. David Anderson who was
11 another passenger. And then Kimberly Odom. And then David
12 Fowler who is the FWC investigator. And actually, I believe
13 we're bringing Mr. Willems tomorrow just in case because he is
14 a dive photographer; so he will be a pretty short witness.

15 THE COURT: Okay. Now, a lot of exhibits were admitted
16 today without objection. Are there any exhibits you plan on
17 introducing through these witnesses that still have live
18 objections, to your knowledge?

19 MR. KELLER: Judge, the only exhibits that are objected
20 to at this point are the autopsy photographs which are through
21 Mr. -- Dr. Tops, who we anticipate being on the 27th.

22 THE COURT: Okay. So we have a few more days for that.
23 And what are the exhibit numbers for those?

24 MR. KELLER: Exhibits 109 through 109N, I believe.

25 THE COURT: Okay. And images or copies of those are in

1 the binder you provided?

2 MR. KELLER: Yes, Your Honor.

3 THE COURT: Okay. So with respect to tomorrow, do you
4 anticipate any material evidentiary disputes?

5 MR. KELLER: No, Your Honor.

6 THE COURT: Okay. All right, then, Mr. O'Sullivan, I
7 want to give you a chance to flag any issues for the Court that
8 you anticipate for tomorrow.

9 MR. O'SULLIVAN: I don't believe we have any issues for
10 tomorrow. The only remaining objectionable exhibits are just
11 the autopsy, which we can address, you know, prior to Dr. Tops,
12 but tomorrow I think should be pretty smooth. There is really
13 no objectionable material for tomorrow that I'm aware of.

14 THE COURT: Okay. All right then. Well, then have a
15 good evening. I will see everybody tomorrow. Please be in the
16 courtroom 10 minutes until 9:00 so we can sort out any
17 last-minute items.

18 MR. O'SULLIVAN: Yes, ma'am.

19 THE COURT: Have a good evening, and I will see you
20 tomorrow for day 2 of trial.

21 Thank you to our court reporter and to our court
22 personnel for working with limited breaks today.

23 Thank you.

24 (These proceedings concluded at 5:34 p.m.)

25

C E R T I F I C A T E

I hereby certify that the foregoing is an accurate transcription of the proceedings in the above-entitled matter.

DATE: 05-06-2025 /s/Laura Melton
LAURA E. MELTON, RMR, CRR, FPR
Official Court Reporter
United States District Court
Southern District of Florida
Fort Pierce, Florida

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