

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 25, 2025

vs. 8:55 a.m. - 3:49 p.m.

DUSTIN SEAN MCCABE,

Defendant. Pages 1 to 259

TRANSCRIPT OF JURY TRIAL - DAY 2
BEFORE THE HONORABLE AILEEN M. CANNON
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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United States District Court
Fort Pierce, Florida

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1 (Call to the Order of the Court.)

2 THE COURT: Good morning. You may be seated, unless
3 you're addressing the Court.

4 Mr. Creary, are all the jurors here?

5 COURTROOM DEPUTY: We are waiting on two, I believe.

6 THE COURT: Okay. Well, then let us address any issues
7 prior to the jurors arrival.

8 Mr. Keller, anything to raise with the Court?

9 MR. KELLER: Judge, I just want to give you an update
10 on our scheduling. Because we did take Your Honor at your word
11 and we began working on moving witness travel, to the extent we
12 can. Today we are going to have, I think, nine witnesses lined
13 up, and we hope to get through them. If we don't, I mean,
14 we're being kind of overcautious in terms of having that many
15 here today. Our plan is, though, to have that many today.
16 Tomorrow we have seven that we're arranging to be here. The
17 following day we're arranging for another seven to be here, is
18 what we're working on.

19 Some of these people are flying from across the
20 country, Utah, Washington. We're still working on confirming
21 they can come. There is also some issues relating to, for
22 example, one witness, his company observes the Jewish Sabbath,
23 and he is in Washington. So we have to make it so he can get
24 back to Washington before the evening that day. So there is a
25 lot of, kind of, moving parts, but our hope is to arrange it to

1 finish our case on the 28th, on Friday. That's kind of what
2 we're trying to get to.

3 THE COURT: Okay. Thank you for making those efforts,
4 and we will keep moving along expeditiously.

5 officer, do you know if our jurors are here?

6 COURT SECURITY OFFICER: One more we're waiting for.

7 THE COURT: Okay. All right. Any other items to
8 raise, Mr. Keller?

9 MR. KELLER: The only other item just relates to the
10 John Miller Fifth Amendment issue. I do have some case law on
11 that. I have not had time to confer with the defense, though.
12 So I wanted to raise to Your Honor that we do anticipate
13 seeking a pretty simple instruction, after conferring with the
14 defense to see what their position is on it. I wanted to ask,
15 and I know that you said this in the charge conference, but I
16 just -- not the charge conference, but the calendar call. And
17 I don't think I wrote it down. What day are we doing the
18 meeting in the evening?

19 THE COURT: I had anticipated either the Wednesday or
20 Thursday of this week as for our initial charge conference. So
21 I was sort of playing it by ear to see how much was achieved in
22 the first few days of trial. So I haven't fully decided
23 whether it will happen tomorrow evening or Thursday evening.

24 MR. KELLER: So I will confer with the defense today
25 after trial about what we're looking for. We have some DC

1 circuit law, some Seventh Circuit published law about what
2 might be appropriate, and then we will file either a trial
3 brief or some type of supplemental jury instruction once we
4 have had that opportunity to confer, and we will do it before
5 the charge conference.

6 THE COURT: Okay. That sounds good.

7 okay. Mr. O'Sullivan.

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

9 THE COURT: Good morning.

10 MR. O'SULLIVAN: The only thing that I would offer this
11 morning is Ms. Francis will not be with us today because she
12 was sick.

13 THE COURT: Okay. All right, well, I wish her our
14 best. Is that going to present any sort of issue with your
15 trial preparation?

16 MR. O'SULLIVAN: No, ma'am, none at all.

17 THE COURT: All right then. Okay. well, it is a
18 minute shy of 9:00. I will stay on the bench since I think
19 we're going to get started soon, rather than take a recess.
20 But you're welcome to work or review anything.

21 MR. KELLER: Yes, Your Honor.

22 One other thing I just wanted to mention on scheduling
23 is -- that I neglected to mention before, is we do have one
24 witness, and I had noted this in my filing about the status of
25 witnesses -- named Carter Honesty, who is out of town this week

1 and is coming in on Monday. If it is that we decide, after the
2 evidence is played out, that we need to call him, then we would
3 ask the ability to do -- about for the ability to do that. But
4 we're in conferral. We're going to see if we can avoid calling
5 him, if we do move expeditiously. And so, you know, if you
6 will give us the latitude of permitting us to present about
7 that in the future.

8 THE COURT: Okay. So just so I understand, this is
9 somebody who would have normally testified on the 27th of
10 February?

11 MR. KELLER: This is someone who is currently in
12 Colorado, away from the ability to get here, who would have
13 testified kind of -- we were planning on calling him out of
14 order in the first place because of his availability.

15 THE COURT: Just how about this? What day was he
16 supposed to testify?

17 MR. KELLER: He was supposed to testify on the 3rd.

18 THE COURT: The 3rd of March. Okay. Monday.

19 All right. Well, what I do want to make clear is,
20 certainly there is an important element to moving along
21 expeditiously, but if there is a witness that you feel is
22 necessary to your case, I do not want you to think you must
23 sacrifice any witnesses. Because I still have allotted the
24 days for this trial, as I indicated at the outset. So I don't
25 want to prejudice either side's presentation, if there are

1 witnesses that need to be called. So to the extent this
2 gentleman needs to come in on the 3rd, then I don't see that
3 posing a scheduling problem. Although, of course, any
4 adjustments you can make to bring him earlier would also be
5 welcome. Does that answer your question?

6 MR. KELLER: It does, Judge. And we will update you as
7 the day progresses, or maybe at the end of the day, because
8 today is going to be the confirming with the witnesses they can
9 travel and everything. So we hope to have an update at the end
10 of the day.

11 THE COURT: Okay.

12 Any luck, Officer? Still with one.

13 Okay. Well, as we wait, then I will step off the bench
14 and return. You can take a brief restroom break and be ready
15 to start, hopefully in less than five minutes. Thank you.

16 COURT SECURITY OFFICER: All rise.

17 (A recess was taken from 9:01 a.m. to 9:03 a.m.)

18 COURTROOM DEPUTY: All rise for the jury.

19 (The jury entered the courtroom at 9:03 a.m.)

20 THE COURT: Good morning. Ladies and gentlemen, I hope
21 you had a nice, pleasant evening. We will resume trial today.

22 Mr. Keller, please call your next witness.

23 MR. STIEHL: Thank you, Your Honor. The United States
24 would like to call Jordan McKenna.

25 THE COURT: All right. And thank you, Mr. Stiehl.

1 Let's invite Mr. McKenna into the courtroom.

2 Good morning, sir. You can walk over here, please, to
3 the witness stand.

4 All right. Stay standing for just a brief moment while
5 you're sworn in.

6 COURTROOM DEPUTY: Please raise your right hand.

7 Do you swear or affirm that the testimony you are about
8 to give is the truth, the whole truth, and nothing but the
9 truth, so help you God?

10 THE WITNESS: Yes, sir.

11 COURTROOM DEPUTY: Please be seated. State and spell
12 your first and last name for the record.

13 THE WITNESS: Name is Jordan McKenna. First name is
14 J-O-R-D-A-N, last name is M-C-K-E-N-N-A.

15 JORDAN MCKENNA,
16 having been sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. STIEHL:

19 Q. Good morning, Mr. McKenna. Thank you for being here today.
20 Let's start out with some background questions about yourself.
21 So where do you currently live?

22 A. Currently I'm in York, Maine.

23 Q. What do you do for a living?

24 A. I'm the dockmaster at Safe Harbor, Wentworth by the Sea.

25 Q. And what is that?

1 A. It's a marina located up in New Hampshire, and I'm
2 basically the assistant manager there.

3 Q. And just briefly, can you tell me a little bit more about a
4 marina.

5 A. Yeah. A marina basically is specifically designed, kind
6 of, set of docks or moorings that cater to boat owners.

7 Q. And how long have you been working for your company? Is it
8 "Safe Harbor" or "Safety Harbor"?

9 A. Safe Harbor. I have been working for them since 2018, I
10 believe.

11 Q. And where were you working before Safe Harbor in March of
12 2020?

13 A. I was working for Safe Harbor in North Palm Beach.

14 Q. And what position were you in at that time?

15 A. I was the dockmaster there.

16 Q. And can you tell me the role of the dockmaster at a marina.

17 A. Yes. The dockmaster is basically the assistant manager,
18 and I kind of work hand in hand with my manager, my GM. And I
19 kind of manage the day-to-day operations of the marina.

20 Q. So can you talk about, a little more, like, what do those
21 day-to-day operations look like for the dockmaster?

22 A. Yes. At that location, we simply had a fuel dock and wet
23 slips; so those two aspects I managed. I did a lot of the
24 maintenance around the location. I wrote a lot of the
25 contracts, did the billing, and I managed a few dockhands

1 underneath me as well.

2 Q. And so just for the jury's understanding, can you tell me
3 what a wet slip is?

4 A. Yeah, there are some marinas that they do haul boats and
5 store them on land. But my marina down there was simply -- all
6 of the slips were in the water, so the boats did stay in the
7 water.

8 Q. Okay. Let's talk about the defendant, Mr. Dustin McCabe.
9 Do you know the defendant?

10 A. I know him as a member of the marina.

11 Q. And how long have you known him?

12 A. I believe I started working there in July of 2019. And he
13 was currently a member when I started working there.

14 Q. And how often did you interact with him in that role?

15 A. Fairly often. He would come to the fuel dock every now and
16 then, or I would see him when I was doing my dock checks.

17 Q. And what was your relationship like at that time?

18 A. I didn't know Mr. McCabe on a personal level, but he was
19 just simply a member at the marina.

20 Q. Okay. Let's move to the events just before March of 2020.
21 what kind of vessel did Mr. McCabe have at that time?

22 A. Before the incident?

23 Q. Yes.

24 A. Mr. McCabe had a -- a dive vessel.

25 Q. And were there a lot of dive or charter vessels at your

1 marina?

2 A. No, not at my marina.

3 Q. And do you know why that is?

4 A. We tended to -- I believe Safe Harbor tended to stay away
5 from dive boats or any kind of businesses, as it kind of
6 created complications with insurance and contracts, and
7 everything had to be written a little bit differently.

8 Q. And around March of 2020, did Mr. McCabe get a new vessel?

9 A. Yes.

10 Q. Was the new vessel similar to the old one?

11 A. No.

12 Q. What can you tell me about the new vessel?

13 A. The new vessel was -- I would categorize it as a sport
14 fish.

15 Q. And do you know if Mr. McCabe made any modifications to
16 this vessel?

17 A. I knew when he -- it was a new boat, a new boat to him, but
18 I think it was fairly old and -- he was doing a fair amount of
19 cosmetic work or maintenance work on the boat.

20 MR. STIEHL: I want to show the witness and the jury
21 what has already been admitted as Government's Exhibit
22 Number 2. Mr. Keller will be pulling those up here shortly.

23 BY MR. STIEHL:

24 Q. Can you tell me what is pictured in front of you as the
25 document marked Government's Exhibit 2?

1 A. Yes. That is Mr. McCabe's new boat.

2 Q. So is this the same vessel that you previously mentioned?

3 A. That's correct.

4 Q. And is this a vessel you saw Mr. McCabe operating in March
5 of 2020?

6 A. Yes.

7 Q. Now, in your experience as a dockmaster, is this the type
8 of vessel usually used for diving?

9 A. Not to my knowledge, no.

10 Q. And, in fact, in your experience have you ever seen someone
11 use this type of vessel for a diving charter?

12 A. No.

13 MR. O'SULLIVAN: Objection. Relevance.

14 THE COURT: Overruled.

15 BY MR. STIEHL:

16 Q. And what is this type of vessel -- vessel usually used for?

17 A. It's mostly categorized as a sport fishing boat, so
18 offshore fishing.

19 Q. Okay. Before we get to the events of March 28, 2020, I
20 want to talk about the location of your marina. I want to show
21 the witness and the jury what has already been admitted as the
22 exhibit marked Government's Exhibit 1.

23 Can you tell me what's in this picture?

24 A. Yes. That's an overview of North Palm Beach marina.

25 Q. And this is the marina where you worked in March of 2020?

1 A. Yes, that's correct.

2 Q. Is this approximately how the marina looked in March of
3 2020?

4 A. Yes. I believe so.

5 Q. And can you show me where Mr. McCabe typically docked his
6 boat.

7 A. Of course.

8 Q. I think you can draw on it, or circle it as well.

9 A. Okay. Can I zoom in at all? Nope.

10 Q. We have another zoomed-in map we will show you in a second.

11 A. Okay. He was -- his slip was one of the first -- 1 through
12 5, I believe, as you entered the marina on the right-hand side.

13 Q. And was that spot assigned to him?

14 A. Yes, it was.

15 Q. And, again, we will probably go over this again on the
16 zoomed-in map.

17 THE COURT: There is a feature, sir, on that screen
18 where if you want to clear a mark you have made before, you can
19 hit "clear".

20 Okay. Thank you.

21 BY MR. STIEHL:

22 Q. And can you show me where the bridge is?

23 A. Yes. The Parker Bridge is located just west of the marina.

24 MR. STIEHL: And, for the record, the witness marked
25 the red -- the bridge at the top left-hand corner of the

1 screen.

2 BY MR. STIEHL:

3 Q. Okay. Let's discuss the events of March 28th of 2020. Do
4 you remember Saturday, March 28, 2020?

5 A. Yes, I do.

6 Q. Were you working on that date?

7 A. Yes, sir.

8 Q. And where were you working on that date?

9 A. I was in the office at -- at the marina.

10 Q. Do you remember anything significant about your workday
11 that day?

12 A. Yes. I believe Mr. McCabe has -- was having some engine
13 issues or mechanical issues of some sort.

14 MR. STIEHL: I want to show the witness and the jury
15 what has already been marked as the exhibit marked as
16 Government's Exhibit 84.

17 And --

18 THE COURT: Just one moment. Has this exhibit been
19 admitted already?

20 MR. STIEHL: Yes, Your Honor, the exhibit has been
21 admitted already.

22 THE COURT: Okay. I heard you say "marked." I wasn't
23 quite sure. This is in evidence?

24 MR. STIEHL: Yes, Your Honor.

25 THE COURT: All right. Thank you.

1 MR. STIEHL: My apologies.

2 BY MR. STIEHL:

3 Q. And can you tell me exactly how you remember the events of
4 that day occurring?

5 A. Yes. The picture located is our fuel dock. Am I able to
6 draw on this map?

7 Q. Yes.

8 A. Okay. So we had a floating dock that was located here, and
9 also this seawall was used for fueling as well. And normally,
10 on the weekends, we have -- that seawall and that floating dock
11 are filled throughout the day, maybe a lot of customers there.

12 And I believe Mr. McCabe came up looking for fuel, but the
13 fuel dock was full. And normally when that kind of situation
14 occurs, boaters circle and wait for their turn, which is what
15 he was doing. But I believe he had some kind of mechanical
16 issue at that time.

17 Q. And how was your interaction with Mr. McCabe initially when
18 he approached the dock?

19 MR. O'SULLIVAN: Objection. Relevance, Your Honor.

20 THE COURT: Overruled.

21 THE WITNESS: When he approached the dock, I believe he
22 was -- he was angry. He couldn't get in right away. He had to
23 kind of fend off and circle. And when he was -- began having
24 some kind of issue, he seemed to be kind of in panic mode at
25 that point.

1 BY MR. STIEHL:

2 Q. And can you show me specifically on the map kind of how
3 that went.

4 A. Yeah. I believe the fuel dock was filled, and I believe he
5 was located in this region (indicating) waiting for a space to
6 open up.

7 Q. And then what happened?

8 A. He had some sort of issue. I'm not sure if he lost
9 steering or propulsion, but he started to slowly drift into
10 this direction (indicating). And the boat made contact with
11 this land here (indicating).

12 Q. And let the record reflect that the witness had made
13 several marks on the screen, particularly noting a point
14 located on the exhibit.

15 And how long did that last?

16 A. It was probably about 20 to 30 minutes before he was able
17 to get back up and running and back to the slip.

18 Q. And did you see how he was able to get the vessel back up
19 and running?

20 A. I did not. I was in the office catering to the customers
21 that were on the fuel dock. I did send a dockhand over
22 to -- to check on him to see if he needed any assistance, but
23 he did not.

24 Q. And was this in the same vessel that we've already
25 discussed?

1 A. That's correct.

2 Q. And was this sort of mechanical malfunction typical at your
3 marina?

4 A. Typical for him or typical in general?

5 Q. I would say typical for him.

6 A. No. This was the first time I had seen a mechanical issue.

7 Q. And what happened after that?

8 A. After he was able to gain control of the vessel and get it
9 off that beach there, he was able to go back to his slip.

10 Q. And were you working the following day, Sunday, March 29,
11 2020?

12 A. I was not.

13 Q. And did you ever see Mr. McCabe again after that day?

14 A. I did, but very briefly, probably months, months later.

15 Q. And did you have any interactions with him after that?

16 A. I did not.

17 Q. And did you see him operating his scuba business ever again
18 after that?

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

20 Q. And one other thing you previously said, is that typical
21 for him or is that typical in general, as far as running
22 aground. Is that typical for other vessels at your marina?

23 A. Not vessels per se in my marina, but people coming up to
24 the fuel dock, I do see mechanical issues from time to time.

25 MR. STIEHL: Okay. Thank you.

1 The government has no further questions.

2 THE COURT: Cross-examination?

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

4 CROSS-EXAMINATION

5 BY MR. O'SULLIVAN:

6 Q. Good morning, Mr. McKenna.

7 A. Good morning.

8 Q. I just have a few questions for you.

9 So you're the dockmaster; correct?

10 A. Yes, sir, I was.

11 Q. And on March 28th of 2020, you were the dockmaster at the
12 North Palm Beach marina?

13 A. That's correct.

14 Q. Okay. So that means that you're pretty much in charge of
15 the operations as far as the wet slips and the boats coming and
16 going?

17 A. Yes, sir.

18 Q. Okay. Did you get a call from Mr. McCabe that day asking
19 him to have a boat moved from the floating dock?

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

21 Q. Before he -- his boat was grounded or it kind of brushed up
22 against the mangroves, he didn't call you and say, "Hey, there
23 is a boat on the floating dock. I need it moved so I can dock
24 my boat there"?

25 A. I don't -- on the phone or on the radio?

1 Q. It could have been the phone or the radio. Either way, did
2 he make a call to your marina asking that boat be moved?

3 A. Possibly.

4 Q. And that boat was a police boat; correct?

5 A. It could have been, sir.

6 Q. And that boat was at the floating dock?

7 A. It could have been, yes, sir.

8 Q. And if you have a slip inside the marina, you have to
9 maneuver past the floating dock; correct?

10 A. That's correct.

11 Q. So if you're having mechanical issues, it would make sense
12 that you would want to dock your boat at the closest port -- or
13 the closest point from the inlet by either the seawall or the
14 floating dock; correct?

15 A. Depending on the issue, yes, sir.

16 Q. So when he made that call to the dock and asked for that
17 boat to be moved so he could get a safe place to dock, that
18 boat was never moved; correct?

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

20 Q. Do you know why that boat was never moved?

21 A. When they're in fueling procedures, you can't move a boat.

22 Q. Well, if it's a police boat that's at the floating dock not
23 being fuelled, just sitting there, do you know why that boat
24 was never moved?

25 A. I don't believe it was just sitting there. If it was

1 sitting there, it was being fuelled.

2 MR. STIEHL: Objection, Your Honor. He is asking the
3 witness to speculate. He doesn't remember any of that.

4 THE COURT: Overruled. You can redirect on this
5 subject.

6 BY MR. O'SULLIVAN:

7 Q. Are you guessing or you just don't remember?

8 A. I don't remember if there was a vessel on the fuel dock;
9 normally they're being fuelled.

10 Q. And you knew that Mr. McCabe was running a charter out of
11 that marina; correct?

12 A. Yes, sir.

13 Q. Like, you saw customers coming and going?

14 A. Yes, sir.

15 Q. And you testified that while you guys don't like it, you do
16 adjust your contracts for commercial businesses within the
17 marina?

18 A. Yes, sir.

19 MR. O'SULLIVAN: Okay. I have no further questions,
20 Your Honor.

21 THE COURT: Thank you.

22 Redirect.

23 MR. STIEHL: Just a few, couple questions, Your Honor.

24 REDIRECT EXAMINATION

25 BY MR. STIEHL:

1 Q. Mr. McKenna, do you remember how the boats were
2 specifically moored on that day?

3 A. I do not.

4 Q. And do you have any recollection of receiving a call or a
5 radio transmission from Mr. McCabe?

6 A. No.

7 MR. STIEHL: Okay. Thank you.

8 THE COURT: All right. Thank you, Mr. McKenna. That
9 is all. You may be excused.

10 THE WITNESS: Thank you.

11 MR. STIEHL: Your Honor, the United States would like
12 to call officer Michael Abramczyk.

13 THE COURT: All right. Thank you.

14 Good morning, Officer.

15 Good morning, Officer. Right here, please.

16 COURTROOM DEPUTY: Please raise your right hand.

17 Do you swear or affirm that the testimony you are about
18 to give is the truth, the whole truth, and nothing but the
19 truth, so help you God?

20 THE WITNESS: Yes, sir.

21 COURTROOM DEPUTY: Please be seated. State and spell
22 your first and last name, for the record.

23 THE WITNESS: Yes, sir.

24 My name is Officer Michael Abramczyk,

25 A-B-R-A-M-C-Z-Y-K.

1 MR. STIEHL: I'm sorry, Your Honor. My computer...

2 THE COURT: That's okay. Take a few moments to gather
3 your notes and you can get started.

4 MR. STIEHL: Okay. It just opened right up.

5 OFFICER MICHAEL ABRAMCZYK,
6 having been sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. STIEHL:

9 Q. Good morning, Officer Abramczyk. Thank you for being here
10 today. Where do you currently live?

11 A. I live in the City of Stuart.

12 Q. And what do you do for a living?

13 A. I work for the North Palm Beach Marine Unit.

14 Q. And what do you do for the North Palm Beach Marine Unit?

15 A. I'm assigned to the marine unit full-time.

16 Q. And what does that mean? What does your day-to-day look
17 like in that role?

18 A. I enforce marine laws as well as Florida state laws,
19 federal laws, and assist in immigration and smuggling with
20 Homeland Security.

21 Q. And were you part of that unit in March of 2020?

22 A. Yes, sir.

23 Q. And where was your vessel kept in March of 2020?

24 A. During that time our vessel was kept at the North Palm
25 Beach Marina.

1 Q. And do you know the defendant, Mr. Dustin McCabe?

2 A. Yes, sir.

3 Q. And how do you know him?

4 A. Just from interactions at the marina.

5 Q. And did you have any interactions with him prior to March
6 of 2020?

7 A. Yes, off and on.

8 Q. Okay. Let's move to the events of March 28th of 2020.

9 Were you on duty on Saturday, March 28th of 2020?

10 A. Yes, I was.

11 Q. Okay. I want to bring your -- I want to show you and the
12 jury what's already been admitted as Government's Exhibit 84.

13 Can you tell me what's pictured in the document marked
14 Government's Exhibit 84?

15 A. It appears to be the North Palm Beach Marina's office, fuel
16 docks at our seawall in the adjoining community.

17 Q. Is this the same marina where your vessel was kept in March
18 of 2020?

19 A. Yes, sir.

20 Q. And can you tell me what happened on March 28th of 2020
21 when you went to the North Palm Beach Marina?

22 MR. O'SULLIVAN: Objection. Calls for a narrative.

23 THE COURT: Overruled. You may answer.

24 THE WITNESS: So that day I had exited my marine unit
25 vessel, got in my marked police pickup truck and drove up to

1 the marina office, which I do from time to time to use the
2 restroom or go to the bathroom. Upon approaching the office, I
3 parked in one of the parking spots, and I just heard a loud
4 commotion, yelling and screaming out loud from the rear of the
5 office towards the water.

6 BY MR. STIEHL:

7 Q. And what did you see when you approached the situation?

8 A. I was standing near the white building where it says "North
9 Palm Beach Marina" on it, in that shadowy area.

10 Q. And --

11 A. Yeah.

12 Q. You can write on the map, if that's helpful.

13 A. Oh, I guess I was standing approximately right here
14 (indicating). When I walked around the corner from where I
15 parked and I observed the marina staff over in this area
16 (indicating) yelling out loud, I couldn't tell exactly what
17 they were saying, but there was a vessel up against the wall
18 here (indicating). And they were assisting it in some way with
19 ropes or lines, trying to pull on it.

20 MR. STIEHL: Let the record reflect that the witness
21 has marked three spots on the map, one by the marina and two by
22 the same point that the prior witness marked.

23 BY MR. STIEHL:

24 Q. And do you know what happened to that vessel?

25 A. I was told when I asked people standing around, watching

1 what was going on, and they had informed me that it was having
2 difficulties, and the staff was trying to bring it back to the
3 dock.

4 Q. And do you know who was operating the vessel at that time?

5 A. Mr. McCabe was.

6 Q. And how do you know he was operating the vessel?

7 A. I saw him on the helm.

8 MR. STIEHL: I would like to publish to the witness and
9 the jury what's already been admitted as Government's
10 Exhibit 1 -- excuse me -- Government's Exhibit 2. Thank you.
11 Let me get it cleared.

12 BY MR. STIEHL:

13 Q. Can you tell me what this photo is?

14 A. That's the vessel I saw with Mr. McCabe behind the helm up
15 top.

16 Q. And did you have any other interactions with Mr. McCabe on
17 that date?

18 A. No, I did not.

19 Q. Okay. Let's move to the events of March 29th and
20 thereafter. Are you aware of any events that occurred on
21 March 29th of 2020?

22 A. Yes, sir.

23 Q. And did you respond to those events at all?

24 A. No, I did not respond to them.

25 Q. And did you ever see Mr. McCabe after March 29th of 2020?

1 A. Briefly.

2 Q. And what happened then?

3 A. The day or two after I was in the marina office talking to
4 the marina manager about just day-to-day operations and getting
5 a drink of water, and Mr. McCabe came in through the backdoor.

6 Q. And did you have a conversation with him?

7 A. It was very brief, yes.

8 Q. And what was that conversation regarding?

9 A. The media was on scene but standing on the public property
10 in the parking lot. And that was part of the conversation I
11 was having with the marina manager, of making sure they don't
12 cross over, and to call us if they do cross onto private
13 property and we will have them step back onto public property.

14 And Mr. McCabe had wanted to retrieve his pickup truck from
15 the slip where his boat was parked where they were filming. He
16 had asked us to try and block him from the media's vision, and
17 which I told him I cannot do that.

18 Q. And after that date, did you ever see Mr. McCabe running
19 his scuba charter business at all?

20 A. No.

21 MR. STIEHL: Okay. Thank you, Officer Abramczyk. No
22 further questions.

23 THE COURT: Cross-examination.

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

25 ///

1 CROSS-EXAMINATION

2 BY MR. O'SULLIVAN:

3 Q. Good morning, Officer.

4 A. Good morning, sir.

5 Q. On the 28th, did Dockmaster McKenna ever ask you to move
6 your boat?

7 A. In regards to what?

8 Q. Did Dockmaster McKenna ever say, "Hey, we have a call from
9 an incoming vessel and you need to move your boat from the
10 floating dock so that he can get safe -- safe dockage"?

11 A. Not that I recall.

12 Q. Okay. Is it possible that he did that, you just don't
13 recall because it was five years ago?

14 A. Absolutely.

15 MR. O'SULLIVAN: Okay. I have no further questions,
16 Your Honor. Thank you.

17 THE COURT: Redirect.

18 MR. STIEHL: Just one quick question, Your Honor.

19 REDIRECT EXAMINATION

20 BY MR. STIEHL:

21 Q. Officer Abramczyk, to be clear, do you remember anything
22 about moving vessels on that day?

23 A. No, I do not recall that.

24 MR. STIEHL: Okay. Thank you. No further questions.

25 THE COURT: Thank you, Officer. You may be excused.

1 THE WITNESS: Thank you.

2 MR. KELLER: Your Honor, the United States calls Steven
3 Poznak.

4 THE COURT: All right. Let's bring Mr. Poznak in,
5 please.

6 Good morning, sir. If you'd walk right here to my
7 left. Thank you. Now you will be sworn in.

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 THE WITNESS: Yes.

13 COURTROOM DEPUTY: Please be seated. State and spell
14 your first and last name for the record.

15 THE WITNESS: Steven Poznak. S-T-E-V-E-N, P-O-Z-N-A-K.

16 STEVEN POZNAK,
17 having been sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. KELLER:

20 Q. Good morning, Mr. Poznak.

21 A. Good morning.

22 MR. KELLER: And can I have the HDMI from the -- this
23 table?

24 A moment, Your Honor.

25 THE COURT: In all likelihood, ladies and gentlemen, we

1 will take a break after this witness, so you can plan on that,
2 I think.

3 BY MR. KELLER:

4 Q. Okay. And so, Mr. Poznak, can you tell the jury where you
5 live.

6 A. Palm Beach.

7 Q. And what do you do for a living?

8 A. I own my own import company.

9 THE COURT: Mr. Poznak, just to ensure that everybody
10 can hear you, you are welcome to move the base of that
11 microphone closer to you.

12 THE WITNESS: Sorry, guys.

13 THE COURT: Thank you.

14 BY MR. KELLER:

15 Q. You can bring it up real close because you're kind of a
16 softer speaker.

17 A. I will move closer. There we go.

18 Q. Can you repeat the last answer. What do you do for a
19 living?

20 A. I have my own import company.

21 Q. Now, do you work in the business of buying vessels --

22 A. No.

23 Q. -- or selling vessels?

24 A. No.

25 Q. Do you know the defendant, Dustin McCabe?

1 A. Yes.

2 Q. And how do you know the defendant?

3 A. Through diving. I met him through a Boynton Beach dive
4 shop.

5 Q. And how long have you known Mr. McCabe?

6 A. Probably 10 years, maybe.

7 Q. And you said you met him through the dive shop. So did you
8 end up going scuba diving with him?

9 A. Yes.

10 Q. And what was the defendant, Mr. McCabe's role, when you
11 would go scuba diving with him?

12 A. He was the captain of his own boat.

13 Q. And what type of a boat was he captaining?

14 A. A standard dive boat.

15 Q. And we will talk a little bit more later about the boat,
16 but for now, are you a scuba diving hobbyist?

17 A. Yes.

18 Q. How long have you been a scuba diver?

19 A. About ten years.

20 Q. And do you have certifications as a scuba diver?

21 A. Yes.

22 Q. And can you just describe those.

23 A. well, basic recreational, open water, night diving,
24 deepwater, wreck, navigation, drysuit, and advanced open water.

25 Q. And do those all involve classes and the like?

1 A. Yes.

2 Q. And about how many scuba diving trips have you been on?

3 A. 150-plus.

4 Q. And did you end up becoming friends with the defendant,
5 Mr. McCabe?

6 A. Yes.

7 Q. And during the time that you were one of the defendant's
8 scuba passengers, did the defendant discuss the purchase of a
9 new boat with you?

10 A. Yes.

11 Q. And about when did those discussions begin?

12 A. Around 2018.

13 Q. And did you eventually assist the defendant, Mr. McCabe, in
14 purchasing a vessel?

15 A. Yes.

16 Q. And when did the purchase happen?

17 A. That's a good question. I believe it was 2019, or early
18 '20. I don't remember. I think it's '19.

19 Q. So early -- late '19 or early '20?

20 A. Right.

21 Q. And what was your role in purchasing the vessel?

22 A. Cosigning the boat loan.

23 Q. And given that you're not in the business of buying and
24 selling vessels in your real work, why did you cosign on this
25 one?

1 A. Friendship, and I liked his business idea.

2 Q. And what was the vessel called that you cosigned on?

3 A. The original name of it before? Or --

4 Q. After.

5 A. Southern Comfort.

6 Q. And what do you mean by "the original name"?

7 A. Well, it was a used boat, so it had another name. So I
8 don't remember the other name.

9 Q. Okay. So I'm going to -- I want to talk about your role in
10 the purchase of the Southern Comfort. So to start, you
11 mentioned a business plan. Did you talk with the defendant
12 about his purpose in buying the Southern Comfort before he
13 cosigned on the vessel?

14 A. Yes.

15 Q. And about when did those discussions occur?

16 A. Well, 2018, when he started talking about the idea.

17 Q. And did the defendant pitch a business plan to you about
18 the vessel?

19 A. Not --

20 MR. O'SULLIVAN: Judge, objection. Relevance.

21 THE COURT: Overruled.

22 MR. O'SULLIVAN: May I approach sidebar, Judge?

23 THE COURT: Okay. Briefly.

24 Let's turn on the white noise, please.

25 (Conference at bench.)

1 THE COURT: One moment.

2 MR. O'SULLIVAN: Yes, ma'am.

3 THE COURT: I want to make sure everybody is here.

4 MR. O'SULLIVAN: Sorry.

5 From reading the accident report, I have a pretty
6 good -- from reading the accident report, I have a pretty good
7 idea of what this whole line of questioning is, and I'm going
8 to object to all of it as relevance. It has nothing to do with
9 any of the charges of the indictment.

10 THE COURT: well --

11 MR. O'SULLIVAN: He is --

12 THE COURT: -- it doesn't count, really, to the purpose
13 of the vessel and what he represented it to be. And,
14 therefore, the discussions about the vessel would be not
15 relevant to Count 2.

16 MR. O'SULLIVAN: Not to this witness, no. I mean, this
17 witness is going to talk about cosigning a boat. He is going
18 to talk about bad credit. He is going to talk about the
19 interest rate of the loan, but I don't see how that is relevant
20 to anything.

21 THE COURT: So far, we haven't been talking about
22 interest rates or credit. I don't know if that was the plan
23 today, but so far, I haven't seen any issues with relevance.
24 But let me hear from Mr. Keller.

25 MR. KELLER: Sure. The only thing -- we're not going

1 to be talking about interest rates. We're not going to be
2 talking about credit. The one thing that we are going to
3 front, because I assumed that the defense would be getting into
4 this on cross, is the fact that Mr. Poznak ended up essentially
5 holding the bag for the boat.

6 He lost like \$100,000 on this boat. So I assume that
7 they are going to be crossing him on that because it speaks to
8 bias, that he has it out for him, or whatnot. So I was going
9 to get into that. But that's the limit of -- there is not
10 going to be -- like, the mortgage is going to come up, but it's
11 not going to be about the interest rate. It's just going to be
12 the fact that he cosigned on it.

13 THE COURT: Do you have a live relevance objection to
14 any question that actually has been asked?

15 MR. O'SULLIVAN: Just relevance so far, Judge, which,
16 obviously, I have been overruled.

17 THE COURT: Right. Well, because the questions so far
18 are geared towards the purpose for which the vessel was
19 purchased, and I think that is clearly relevant to Count 2. If
20 there is a specific relevance issue with any future question,
21 then raise a normal objection contemporaneously.

22 MR. O'SULLIVAN: Yes, ma'am.

23 THE COURT: All right. Thank you.

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

25 (Conference at bench concluded.)

1 BY MR. KELLER:

2 Q. And so, Mr. Poznak, I will repeat the question. Did the
3 defendant --

4 THE COURT: One moment.

5 MR. KELLER: Oh, yes, Your Honor.

6 THE COURT: Madam reporter, can you read back the
7 question.

8 (The last question and/or answer was read back.)

9 THE WITNESS: Not a written one, but, yes, a verbal
10 one.

11 BY MR. KELLER:

12 Q. And can you explain what that plan was for the vessel?

13 A. The concept was to have a better experience, a diving
14 business, more boutique. Instead of 12 divers, you know, 6
15 divers on a -- on a big, more comfortable vessel, having the
16 galley so you can come in and have food and drinks between
17 dives, have air conditioning, have onboard heads, be able to
18 take trips to the Bahamas and back for diving, or down to the
19 keys. So I thought it was a really good idea.

20 Q. And how does that differ from a typical dive experience?

21 A. A typical dive boat, you have 10 to 12 divers on a boat.
22 Very uncomfortable, in my opinion, but you jump in, you come
23 out, you sit around for 40 minutes before you go in for the
24 second dive. And that's it. This was more of a boutique
25 experience, which I thought was different, and I thought he

1 would do well with it.

2 Q. And are dive boats usually slow moving?

3 A. No. I wouldn't say slow moving, but, you know, not super
4 fast.

5 Q. And was the defendant looking to buy a faster vessel than
6 the typical dive boat to do these types of trips?

7 A. More powerful boat, especially for the Bahama trips.

8 Q. And did you go look at potential vessels with the
9 defendant?

10 A. Yes.

11 Q. And when were you doing that?

12 A. Probably starting in '19.

13 Q. And was the -- was the plan to do paid scuba charting --
14 charters the reason you were shopping the whole time?

15 A. Yes.

16 Q. Now, in cosigning on this vessel, were you in any way
17 playing a role in the actual business of scuba chartering?

18 A. No.

19 Q. And in cosigning the vessel, did you expect yourself or the
20 defendant to pay the monthly payments on the boat?

21 A. The defendant.

22 Q. And how did you expect the defendant to earn the income to
23 pay the monthly note?

24 A. Through his business, I guess. Through diving trips.

25 Q. And did you see the vessel that you ultimately cosigned on?

1 A. Yes.

2 Q. And did you complete paperwork for the purchase?

3 A. Just the application for the loan.

4 Q. Okay. So at this time I'm going to publish to the witness
5 and to the jury what has already been admitted as Government's
6 Exhibit 74.

7 Mr. Poznak, what is this document in front of you?

8 A. The original mortgage for the boat.

9 Q. And directing your attention to page 3 of Government's
10 Exhibit 74, is this your signature on the left?

11 A. Yes.

12 Q. And as a cosigner on the mortgage, what were you becoming
13 responsible for?

14 A. Hopefully nothing, but obviously if he missed payments,
15 then I -- they would come after me.

16 Q. Now, moving to what's been admitted as Government's
17 Exhibit 78, which I will publish to the witness and to the
18 jury. Mr. Poznak, what is Government's Exhibit 78?

19 A. Looks like the original bill of sale.

20 Q. And is your name on this document?

21 A. No.

22 Q. Did you have any role in completing Coast Guard paperwork
23 relating to this purchase?

24 A. No.

25 Q. And who is the name of the person who received the interest

1 in the boat?

2 A. Dustin McCabe.

3 Q. And moving to Government's Exhibit 77, which has already
4 been admitted, which I'm publishing to the witness and to the
5 jury. Mr. Poznak, had you seen this document before I showed
6 it to you when we first met?

7 A. No.

8 Q. Do you know what it is?

9 A. No, I do not.

10 Q. And turning to -- are you familiar with certificates of
11 documentation?

12 A. In certain things, but not in boats, no.

13 Q. And turning to page 3 of Government's Exhibit 77, and
14 zooming in on the center of the document, did you sign this
15 document, Mr. Poznak?

16 A. No.

17 Q. Who signed the document?

18 A. Dustin McCabe.

19 Q. And what is the date of the signature?

20 A. March 5, 2020.

21 Q. And what does the form say right above his signature?

22 A. "Potential penalties for false statements or
23 representations by owner or representatives, civil monetary
24 vessel, forfeiture, fine or imprisonment."

25 Q. And moving to page 1 of Government's Exhibit 77, and

1 focusing on sections J and K.

2 A. J. Okay. Okay. Okay.

3 Q. Starting with J, what endorsements did the defendant check
4 for this vessel?

5 A. "Recreational."

6 Q. And moving to "primary service," what did the defendant
7 check as to the primary service of this vessel?

8 A. "Recreational."

9 Q. And do you see where it says "passenger barge, six or
10 fewer"?

11 A. Yes.

12 Q. Do you see where it says "passenger six or fewer"?

13 A. Yes.

14 Q. Did the defendant mark any of these?

15 A. No.

16 Q. And moving to and publishing what's been admitted as
17 Government's Exhibit 72 to the witness and to the jury,
18 Mr. Poznak, do you recognize this document?

19 A. I don't, no. Sorry.

20 Q. And what vessel name is on the top left corner?

21 A. "Southern Comfort."

22 Q. And whose name is listed under owners?

23 A. Dustin McCabe.

24 Q. Is your name listed on this?

25 A. No.

1 Q. And what is the operational endorsement for the vessel?

2 A. Where would that be? "Remarks. None." I'm trying to find
3 it. I don't see it on there.

4 Q. And I will direct the witness's attention to the center of
5 the page.

6 A. I'm not seeing -- oh, here it is. "Recreational." I'm
7 sorry.

8 Q. And focusing on the bottom of this, what date was this
9 document issued?

10 A. May 19, 2020.

11 Q. Okay. And now moving to the vessel you purchased. So we
12 just looked at the paperwork. Now I'm going to ask you some
13 questions about the vessel.

14 what type of a vessel was it?

15 A. 48-foot sport fisherman.

16 Q. And showing the witness and the jury what's been admitted
17 into evidence as Government's Exhibit 5, do you recognize this
18 vessel, Mr. Poznak?

19 A. Yes.

20 Q. And publishing to the witness what's been admitted -- and
21 to the jury what's been admitted as Government's Exhibit 31.
22 what does Government's Exhibit 31 depict?

23 A. Where he operates the boat.

24 Q. And was this vessel different in type from the one that you
25 had previously gone scuba diving with the defendant on?

1 A. Yes.

2 Q. And how was it different?

3 A. This was a bigger, wider, more powerful boat, the sport
4 fisherman; where the original boat was a standard
5 30-something-foot dive boat.

6 Q. And were the propellers on this vessel different from the
7 other vessel?

8 A. Yes.

9 MR. O'SULLIVAN: Objection. Lack of foundation.

10 THE COURT: Overruled.

11 BY MR. KELLER:

12 Q. How are they different?

13 A. The original boat was a single engine. The propeller was a
14 smaller propeller. This boat had two Detroit diesel engines,
15 and they were much bigger propellers, obviously, to propel a
16 boat at much faster speeds and cutting through the waves, and,
17 I guess, and everything.

18 Q. At least as a matter of theory, do larger propellers
19 present a greater danger if someone were to come in contact
20 with them when it was engaged?

21 A. In theory, yes.

22 Q. And does having more power pushing the propellers create a
23 greater danger if someone comes into contact with them while
24 engaged?

25 A. In theory, yes.

1 Q. And after purchasing the vessel, did you discuss with the
2 defendant taking any measures to test out the vessel?

3 A. Yes.

4 Q. And why did you do that?

5 A. Completely different boat. I wanted to make sure that
6 Dustin was comfortable handling it.

7 Q. And what measures did you discuss doing with him?

8 A. I recommended that we run a simulation in the intercoastal
9 with me jumping in and just seeing what the boat can do when it
10 was in neutral, and how long it would take to back up and
11 completely shut down before it would be safe for me to get in
12 the boat, learn the drag, learn about how long it would take to
13 see if we needed a pull line or not.

14 Q. And why are those things important?

15 A. Safety.

16 Q. And is it important to ensure the vessel works properly?

17 A. Yes.

18 Q. Did the defendant end up testing the vessel with you?

19 A. No.

20 Q. And why not?

21 A. I have no idea.

22 Q. And after this vessel was purchased, were you aware of
23 modifications the defendant was making to it?

24 A. Only from the cosmetics of it for changing it from a sport
25 fisherman into a dive boat, adding the benches, the bigger

1 platform in the back.

2 Q. And so going and publishing to the witness and to the jury
3 what's been admitted as Government's Exhibit 5, and zooming in
4 on the bottom of the vessel, was this platform and ladder new
5 or did -- were they already there when you bought it?

6 A. Well, there was a platform there when we bought it, but he
7 added a new one, a bigger one that had -- that you had to have
8 for diving.

9 Q. So was this platform that we see here in Government's
10 Exhibit 5 new?

11 A. Yes.

12 Q. And then publishing to the witness and to the jury what's
13 been admitted as Government's Exhibit 68, Mr. Poznak, were you
14 aware of engine controls on the -- on the bottom portion of the
15 vessel?

16 A. No.

17 Q. Were you aware of the defendant removing engine controls
18 from the bottom of the vessel?

19 A. No.

20 Q. Now, once the vessel purchase was complete, did you have
21 anything to do with the defendant's decision to take out
22 passengers in March of 2020?

23 A. No.

24 Q. But did the defendant tell you about an incident involving
25 a spear gun that occurred on March 28th of 2020?

1 A. Yes.

2 Q. Okay. So I'm going to talk about that.

3 So to start, when did you speak with the defendant about
4 this incident?

5 A. I called him Friday afternoon just to check in on him. I
6 did not know he actually went out diving.

7 Q. So you just happened to call him that day?

8 A. See what was going on, how the boat was coming along.

9 Q. And what did the defendant tell you about the spear gun
10 incident?

11 A. He said that he took out some divers, some of his regulars,
12 and that the -- one of the divers' spear gun got dragged under
13 the boat and got caught under and was damaged, and that he had
14 to replace it.

15 Q. And did he say anything about issues with the boat?

16 A. He said that the starboard engine wasn't shutting down
17 completely in neutral.

18 Q. And so the defendant specified that he had an issue with
19 the starboard engine?

20 A. Yes.

21 Q. And that there was a problem when the vessel was in
22 neutral?

23 A. Yes.

24 Q. Now, did the defendant tell you that the propeller shot the
25 spear gun --

1 MR. O'SULLIVAN: Objection.

2 BY MR. KELLER:

3 Q. -- back into --

4 THE COURT: Sustained.

5 BY MR. KELLER:

6 Q. Were you aware of whether Ms. Hester had been injured,
7 based upon what you spoke with the defendant about?

8 A. No.

9 Q. Did the defendant tell you anything about running the
10 vessel aground that day?

11 A. No.

12 Q. And were you speaking with him on the same day that the
13 spear gun incident had happened?

14 A. Yes.

15 Q. He didn't tell you -- the defendant didn't tell you
16 anything about colliding with mangroves or anything like that?

17 A. No.

18 Q. And as the cosigner on this vessel, is running the vessel
19 aground the kind of thing you would have expected him to tell
20 you in light of that?

21 A. Yeah, I would hope so, yes.

22 Q. And when the defendant told you about the spear gun
23 incident, how did you respond to him?

24 A. I said to him, "Dustin, you got lucky that the spear gun
25 got pulled under." And I said, "Obviously, you need to get

1 this boat out of the water and fix the issue before you go out
2 again."

3 Q. And how did the defendant respond to that?

4 A. He agreed and said he was -- got his mechanic, John, coming
5 over to look at it.

6 Q. And did you end up doing any testing of the vessel with the
7 defendant that day?

8 A. No.

9 Q. And are you aware of what happened after the spear gun
10 incident?

11 A. Yes.

12 Q. What happened?

13 A. I called Dustin Saturday afternoon to check in on him, see
14 if he found what the issue was with the engine. He told me he
15 can't talk, that he was at the marina with the Coast Guard and
16 that he went out diving and there was an accident and the young
17 lady got killed.

18 Q. And were you surprised that the defendant had taken the
19 boat out?

20 A. Yes.

21 Q. Why is that?

22 A. Just because he had issues the day before, and I didn't
23 think it would take one day to fix the problem that -- you
24 know, that serious.

25 Q. And after the young lady was killed, what happened to the

1 vessel?

2 A. The Coast Guard released it, and it went back to his
3 marina, and that's...

4 Q. To your knowledge, did the defendant conduct any more scuba
5 charters with the vessel after the woman was killed?

6 A. No.

7 Q. And as cosigner on the vessel, would you have been privy of
8 knowing about his operating it?

9 A. No, I wouldn't.

10 Q. And after the woman was killed on March 29, 2020, did the
11 defendant discuss taking out Paycheck Protection Program loans?

12 A. He just told me -- I asked him how he was going to -- after
13 they suspended his license, and with COVID, I asked him how he
14 was going to pay for the loan and the insurance and the
15 dockage. And he told me he had some money left over from the
16 loan, and that he had -- he was applying for a PP loan for his
17 business, to cover him for a few months.

18 Q. And were the -- were the loans because his business was no
19 longer operating?

20 A. Well, he said "loan." He didn't say "loans," but, yes.

21 Q. And how long after the death of the young lady, as
22 you -- as you had put it, did these conversations occur?

23 A. Just the once.

24 Q. About how long after?

25 A. Within a week, I would say.

1 Q. Now, did you eventually come to acquire the Southern
2 Comfort?

3 A. Yes.

4 Q. And when did you acquire it?

5 A. If -- I'm guessing sometime end of October, early November
6 of 2020.

7 Q. I don't want you to guess. So what I will do is I'm going
8 to publish to the witness and to the jury what's been already
9 admitted as Government's Exhibit 83.

10 A. Ah, end of November.

11 Q. Mr. Poznak, do you recognize this document?

12 A. Yes.

13 Q. And what is it?

14 A. A bill of sale.

15 Q. And who does this -- and for what vessel?

16 A. Southern Comfort.

17 Q. And can you just mark on the screen where you see that.
18 You can use your finger to...

19 A. (Complies.)

20 MR. KELLER: And let the record reflect the witness
21 marked at the top of the screen.

22 BY MR. KELLER:

23 Q. And who is the vessel being transferred from and then who
24 got the vessel?

25 A. From Dustin McCabe to me, Steven Poznak.

1 Q. And did you pay the defendant for the boat?

2 A. No.

3 Q. And why did you acquire the boat?

4 A. Because they -- the boat lender came to me looking for
5 payment because there hasn't been payments in months. And as
6 the cosigner, I am responsible.

7 Q. And publishing to the witness and to the jury what's
8 already been admitted as Government's Exhibit 83A.

9 And, Mr. Poznak, what is this document?

10 A. The release of the mortgage.

11 Q. And what date is this executed?

12 A. Looks like 11/25/2020. No. I'm sorry. It looks like
13 12/3 -- no, no, I'm sorry. A different date there. That's it.
14 11/25/2020.

15 Q. And is it safe to say that cosigning on this vessel cost
16 you a lot of money?

17 A. Yes, a few shekels.

18 Q. And how much did it cost you?

19 A. A hundred thousand.

20 Q. And when you took possession of the vessel, what condition
21 was it in?

22 A. Not good.

23 Q. And can you elaborate? what do you mean by "not good"?

24 A. There was 3 feet of water in the engine room. There was
25 some holes in the side -- inside the galley, inside of the

1 boat.

2 Q. Was it in any condition to be operating?

3 A. No.

4 Q. And what did you have to do to the engines?

5 A. First, drain them out. Then I hired a mechanic to get the
6 engines operating. And he was at a private marina at that
7 time, and the owner of the home and the marina asked me to move
8 the boat because Dustin didn't make any payments there. And I
9 made that payment to catch him -- make him whole, and then we
10 moved the boat to a marina in Stuart.

11 Q. And in the condition you received it in, could the Southern
12 Comfort in November of 2020 possibly have been used for taking
13 passengers scuba diving?

14 A. The way I saw it, no. Not with water in the engine room.

15 MR. KELLER: A moment, Your Honor.

16 Nothing further.

17 THE COURT: Mr. O'Sullivan.

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

19 CROSS-EXAMINATION

20 BY MR. O'SULLIVAN:

21 Q. Good morning, sir.

22 A. Good morning.

23 Q. You testified that you have a lot of diving certifications;
24 correct?

25 A. Yes.

1 Q. Open water diving, night diving, drysuit diving, et cetera.

2 But you're not a boat mechanic, are you?

3 A. No.

4 Q. Do you have any type of mechanic certifications?

5 A. No.

6 Q. Have you ever taken any formal training in boat systems,

7 boat transmissions, anything like that?

8 A. No.

9 Q. Have you ever done any repairs on a boat?

10 A. No.

11 Q. Okay. For those type of things, you hire a mechanic;

12 correct?

13 A. Yes.

14 Q. Okay. When you cosigned for this loan, did you expect to

15 be a co-owner or just helping him be responsible for the

16 payments?

17 A. Just helping him be responsible for the payments.

18 Q. Okay. So you weren't trying to be, like, a co-owner where

19 it would be 50-50, and you would get the boat certain days and

20 he would get the boat certain days; correct?

21 A. Correct.

22 Q. Okay. You testified on direct that you suggested that you

23 guys do a safety test run in the Intracoastal?

24 A. Yes.

25 Q. And you testified on direct that that never happened with

1 you; correct?

2 A. Correct.

3 Q. Are you aware that that did happen with other people?

4 A. No.

5 Q. Okay. So it's possible that he did safety runs with other
6 people, just not you?

7 A. Yes.

8 Q. And, again, you're not, like, the half owner of the boat,
9 you're just kind of the finance guy in the background; correct?

10 A. Correct.

11 Q. So he is not obligated to do safety runs with you; correct?

12 A. Correct.

13 Q. He can do safety runs with the crew that he works with and
14 that he has worked with for the past four or five years;
15 correct?

16 A. Correct.

17 Q. And it would probably make sense to do safety runs with the
18 crew that he is going to be working with on a daily or a weekly
19 basis; correct?

20 A. Correct.

21 Q. Okay. Now, you testified a little bit about the removal of
22 engine controls; right?

23 A. Yes.

24 Q. Okay. So on a sport fishing boat, there is controls on the
25 flybridge which is, like, the second-story; right?

1 A. Yes.

2 Q. And those controls push the boat forward and backward, and
3 power and no power; correct?

4 A. Yes.

5 Q. And there is also controls on -- in the cockpit, on the --
6 I guess we will call it the outdoor area where the divers would
7 be; correct?

8 A. I'm guessing. I didn't -- don't know. I didn't see any.

9 Q. Well, that's -- normally on a sport fishing boat, that's
10 where the second set of controls would be; correct?

11 A. I don't --

12 MR. KELLER: Objection.

13 THE COURT: Hold on. What's the objection?

14 MR. KELLER: That he has already asked and answered,
15 that he has already said he doesn't know.

16 THE COURT: I will overrule the objection. You can
17 restate the question which is: well, that's -- normally on a
18 sport fishing boat, that's where the second set of controls
19 would be; correct?

20 You may answer.

21 THE WITNESS: I don't know anything about the sport
22 fisherman boats.

23 THE COURT: Move on, please.

24 BY MR. O'SULLIVAN:

25 Q. On direct a few minutes ago, the government showed you a

1 picture where you said, yes, those controls were removed. Do
2 you remember that?

3 A. Yeah, just showed me that -- the picture that they were
4 removed. And I'm just saying that I didn't know they were
5 removed, I didn't know they were there.

6 Q. Okay. So if you knew they were removed, logically they
7 would have had to have been there first; right?

8 A. No. They were -- I was showed a picture that they were
9 removed. I didn't say I knew they were removed.

10 Q. As an experienced diver, wouldn't it make sense to have
11 controls not be anywhere near where the diving public would be,
12 and had the controls maybe upstairs where only the captain can
13 access them?

14 A. Yes. I --

15 Q. Because you don't want a diver to either accidentally bump
16 into a control or a novice diver to maybe, you know, push the
17 lever back and forth; right?

18 A. Correct.

19 Q. So it would make sense to not have any controls on the
20 bottom part where the public is, only where the captain can
21 control it?

22 A. Yes.

23 Q. Okay.

24 A. Correct.

25 Q. As far as the grounding, this wasn't like a high-speed

1 grounding into a coral reef or anything like that; correct?

2 A. I was -- I wasn't aware.

3 Q. I mean, you're familiar with the North Palm Beach marina;
4 correct.

5 A. Yes.

6 Q. In between the marina and the Parker Bridge, there is just
7 a small, little bit of mangrove; correct?

8 A. I don't pay attention, but I guess.

9 Q. Okay. The boat didn't need, like, a Sea Tow to get it out
10 of the mangroves; correct?

11 A. I wasn't there. Don't know.

12 Q. Okay. So when we say that there was a grounding, there was
13 no damage to the boat; correct?

14 A. Again, I wouldn't know.

15 Q. Okay. Well, you do have a financial interest in the boat;
16 right?

17 A. Not a -- I just cosigned as for a friend.

18 Q. Well, you testified that you eventually acquired the boat
19 and had a loss of \$100,000; correct?

20 A. Yes, after no payments made, so they came looking for me.

21 Q. So after the grounding, did you inquire as to whether there
22 was any damage to the boat?

23 A. Didn't know he grounded the boat.

24 Q. Okay. Did you acquire the boat in October of 2020?

25 A. November of 2020.

1 Q. November of 2020.

2 what did you do with the boat after that?

3 A. Got it fixed and moved up to Stuart. And then tried
4 to -- was trying to sell it for a couple of years.

5 Q. Did you eventually ever sell it?

6 A. Yes.

7 Q. And what did you sell it for?

8 A. 50,000.

9 Q. But you had it -- you had possession of it for several
10 years before you sold it; correct?

11 A. A couple of years, yes.

12 MR. O'SULLIVAN: Okay. Thank you, sir, for your time.

13 I have no further questions, Your Honor.

14 THE COURT: Mr. Keller or Mr. Stiehl?

15 MR. KELLER: I have no redirect, Your Honor.

16 THE COURT: All right. Thank you very much,
17 Mr. Poznak. You may be excused.

18 Ladies and gentlemen, we are going to take a morning
19 break at this time for about 15 minutes.

20 All rise for the jury.

21 (The jury exited the courtroom at 10:04 a.m.)

22 THE COURT: All right. We will be in a recess unless
23 there are any pressing issues to discuss, Mr. Keller.

24 MR. KELLER: No, Your Honor, I don't think there are.

25 THE COURT: Mr. O'Sullivan?

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

2 THE COURT: Okay. Then we will resume at 10:20.

3 (A recess was taken from 10:05 a.m. to 10:21 a.m.)

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

5 Let's call in the jury. And please have your next witness

6 ready.

7 MR. KELLER: Yes, Your Honor.

8 (The jury entered the courtroom at 10:22 a.m.)

9 THE COURT: Please be seated. Mr. Keller, please call
10 your next witness.

11 MR. KELLER: Thank you, Your Honor. The United States
12 calls Sean Flynn.

13 THE COURT: Thank you.

14 Mr. Flynn, good morning. Please walk over here to be
15 sworn in. Right here, sir. And then Mr. Creary will swear you
16 in, so you can please remain standing.

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: Yes, sir.

22 COURTROOM DEPUTY: Please be seated. State and spell
23 your first and last name, for the record.

24 THE WITNESS: Sean Flynn. S-E-A-N, F-L-Y-N-N.

25 SEAN FLYNN,

1 having been sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. KELLER:

4 Q. Good morning, Mr. Flynn.

5 A. Yes, sir.

6 Q. And, Mr. Flynn, where do you live?

7 A. Melbourne, Florida.

8 Q. And what do you do for a living?

9 A. I'm a production planner for a government contractor.

10 Q. And, Mr. Flynn, do you know why you are here to testify?

11 A. Yes, sir.

12 Q. And you know that we're going to be talking about some
13 tough things?

14 A. Yes, sir.

15 Q. So if you need a moment, you can feel free to let me know,
16 and we all understand.

17 And let me start here. Were you married in March of 2020?

18 A. Yes, sir.

19 Q. And who was your wife?

20 A. Mollie Ghiz-Flynn.

21 Q. And how long had you been married to Mollie as of March of
22 2020?

23 A. Three, going on four years.

24 Q. And was Mollie killed in March of 2020?

25 A. Yes, sir.

1 Q. what day was she killed?

2 A. March 29th.

3 Q. And were you with her when she was killed?

4 A. Yes, sir.

5 Q. And where did it happen?

6 A. West Palm Beach, outside of Riviera inlet.

7 Q. And what were you all doing that day?

8 A. Scuba diving.

9 Q. And before we talk about that, I want to talk just about a
10 little bit of your background and Mollie's background. And so
11 where were you and Mollie living in 2020?

12 A. Melbourne, Florida.

13 Q. And how old was Mollie?

14 A. 37.

15 Q. What did Mollie do for a living at the time?

16 A. She was a general manager of a landscape company.

17 Q. And did Mollie and you do outdoor activities?

18 A. Yes, sir.

19 Q. And what was your main hobby?

20 A. Mainly scuba diving.

21 Q. And as of 2020, were you a recreational scuba diver?

22 A. Yes, sir, I was.

23 Q. Did you have any scuba certifications?

24 A. Yes, sir. PADI, open water, and advanced open water
25 certifications.

1 Q. And just real briefly, can you explain what that means?

2 A. PADI is a certifying agency for scuba diving. Their basic,
3 like, entry-level would be open water, which limits some of the
4 stuff you can do. Advanced open water opens that up to just
5 about everything within recreational -- within recreational
6 depths.

7 Q. And as of 2020, how long had you been scuba diving?

8 A. Over 15 years.

9 Q. And would you scuba dive in Palm Beach bay?

10 A. Yes, sir.

11 Q. And about how many scuba trips would you say you had been
12 on by that point?

13 A. Well over 30.

14 Q. And did Mollie scuba dive with you?

15 A. Yes, sir.

16 Q. And how long had Mollie been scuba diving?

17 A. A few years, three or four years.

18 Q. And did Mollie have scuba certifications?

19 A. Yes, sir. She had the same certifications.

20 Q. And had you and Mollie gone scuba diving on chartered
21 vessels before?

22 A. Yes, sir.

23 Q. And about how many times, if you were to estimate?

24 A. In excess of 30 together.

25 Q. And what would y'all do when you were going scuba diving?

1 A. Either lobstering or sightseeing, for the most part.

2 Q. And the jury has heard a little bit about those things
3 before, but can you just briefly explain what lobstering is.

4 A. We would go, like I said, during lobster season. You go
5 down with a catch bag and either a tickle stick or a snare, and
6 look for lobsters in holes, take them home and eat them.

7 Q. And when you go on a chartered vessel, do you rely on the
8 captain to operate the boat safely?

9 A. Yes, sir.

10 Q. Do you rely on the captain to have the vessel in proper and
11 safe working condition?

12 A. Yes, sir.

13 Q. When you get on a vessel to go scuba diving, do you inspect
14 it yourself?

15 A. No, sir.

16 Q. And when you go scuba diving, do you rely on the captain to
17 follow Coast Guard rules and regulations?

18 A. Yes, sir.

19 Q. And when you are on a scuba vessel, what part of the boat
20 do you get on and off from?

21 A. Usually the stern area, the back of the boat.

22 Q. And the jury has heard about scuba diving at this point,
23 but can you just briefly describe the process of getting back
24 on the vessel after -- at the end of a scuba dive?

25 A. Back on?

1 Q. Back on at the end of the scuba dive.

2 A. Once you're -- from the time you reach the surface? Or how
3 detailed, sir?

4 Q. From the time you reach the surface, that's fine.

5 A. Okay. From the time you reach the surface, you look
6 around, notify -- once you make contact with the captain of the
7 boat, let them know that you are okay (indicating). They will
8 then bring the boat up to you, alongside of you, and then turn
9 the boat, in some way, shape or fashion to kind of put the
10 stern of the boat towards you, a distance away from you.

11 And then once the captain makes that determination that
12 it's okay to swim in, you will be notified that it's safe to
13 swim in to the boat the remaining 15 to 20 feet.

14 Then once you get to the back of the boat, you will hand up
15 any gear that you need to hand up to make it easier, whether
16 it's fins, bags, or whatnot, and then climb up onto the boat
17 and sit down and take everything off.

18 Q. And why is it important, if it is, to wait until you
19 receive an instruction to approach?

20 A. Just from a -- I mean, you have a boat that's in the water
21 moving at you, and you don't want to swim towards it when it's
22 unsafe. A lot of bad things can happen.

23 Q. And is there a particular part of the boat that is
24 dangerous as you approach?

25 A. The propellers.

1 Q. And about how many times would you say you and Mollie had
2 done that process, getting on the back of a boat after a scuba
3 dive, prior to March 29th?

4 A. In excess of 30 to 40 times, easily.

5 Q. So now I want to turn to March 29th of 2020. And to get us
6 situated, had you ever scuba dove with the -- Dustin McCabe,
7 the defendant, before that day?

8 A. Yes, sir.

9 Q. About how many times had you dove with him before?

10 A. Again, that's going to be in the 30 to 40 range, sir.

11 Q. And had Mollie dove with the defendant before?

12 A. Yes, sir.

13 Q. And when you went scuba diving with the defendant
14 previously, was he always the captain or was he in some other
15 role?

16 A. Always the captain.

17 Q. And before March 29th, what type of vessel would you
18 typically dive with him on?

19 A. It was a dedicated dive boat, one that had been
20 manufactured and set up for diving, larger back deck.

21 The -- the helm and everything is a little bit more farther
22 forward and up top, but it's a -- a -- totally set up for
23 diving.

24 Q. And whose boat was it?

25 A. The -- Mr. McCabe's.

1 Q. And how in the first place did you end up connecting with
2 the defendant?

3 A. When Mollie was certified, we were certified through a
4 local agency where we live -- or a dive shop where we live.
5 They had contracted through Florida Scuba Charters, Mr. McCabe,
6 for the checkout dives for the open water advanced
7 certification, that kind of thing.

8 And basically what that is, is once you -- you would get
9 certified, you do a certain amount of dives in a pool, you do a
10 certain amount of dives in a lake. And for your final
11 certification at that level, you would go out on a boat and do
12 your checkout dives. And just as a creature of habit, after
13 her checkout dives, after she had been certified, she just
14 preferred to maintain status quo.

15 Q. And when you would go on these trips on this dive boat,
16 would you pay the defendant?

17 A. Yes, sir.

18 Q. And at some point on the dive boat, did the defendant ever
19 discuss buying a new boat with you?

20 A. Summer, fall of the previous year there was talk about him
21 getting rid of the boat that he had and getting a different
22 type of boat to set up to do kind of a different type of
23 diving. Whereas, the diving historically had been, like, a
24 couple of tanks. You go out in the inlet, you do a couple of
25 tanks and you come back. He had talked about doing that, but

1 then also extending it to, like, day or overnight trips over to
2 the Bahamas.

3 Q. And when you said the year before, what year are you
4 referring to?

5 A. This would have been 2019.

6 Q. So you had talked to him about this in 2019?

7 A. Yes, sir.

8 Q. Was he talking to other passengers about this as well?

9 A. From my knowledge, yes, sir.

10 Q. And was that going to be a trip that -- that people would
11 pay for?

12 A. Yes, sir.

13 Q. Now, when you and Mollie would go on trips with the
14 defendant, who would pay?

15 A. Mollie would.

16 Q. And on March 29th, where did you end up meeting the
17 defendant?

18 A. At the marina where the boat was docked in the Riviera
19 Beach area.

20 Q. And publishing to the witness and to the jury what's
21 already been admitted as Government's Exhibit 1. Mr. Flynn, do
22 you recognize this document -- or this -- what this image is?

23 A. Yes, sir.

24 Q. And can you mark on the screen where you met the defendant
25 on March 29th?

1 A. It would have been right around this area where the
2 (indicating) -- that area.

3 Q. And let the record reflect that Mr. Flynn circled where it
4 says "Marina Drive."

5 And about what time on March 29th did you meet with the
6 defendant?

7 A. 8:00ish in the morning.

8 Q. And was Mollie with you?

9 A. Yes, sir.

10 Q. And about what time did you arrive at the defendant's boat?

11 A. Like I said, that would have been about 8:00ish in the
12 morning.

13 Q. And had you ever been on this boat before?

14 A. This particular boat, no, sir.

15 Q. And how did you know it was the defendant's boat?

16 A. It was the same name that he had talked about, plus he said
17 that it was his boat.

18 Q. And what was the name of the boat?

19 A. Southern Comfort.

20 Q. And publishing to the witness and to the jury what's been
21 admitted as Government's Exhibit 3, and then publishing what's
22 been admitted as Government's Exhibit 5.

23 what do those images depict?

24 A. That is the boat.

25 Q. And what type of boat was the Southern Comfort?

1 A. It's a fishing -- sport fisher kind of boat.

2 Q. And had you ever scuba dove off a sport fishing boat before
3 this day?

4 A. No, sir.

5 Q. And what was the defendant's role on the boat on
6 March 29th?

7 A. Captain.

8 Q. And did you know whether he owned the boat?

9 A. By his statement that he did.

10 Q. And did the defendant tell you when he bought the boat?

11 A. Like I said, it would have been sometime in that summer to
12 fall to -- time frame. I know there was some modifications
13 that he said that he had to get done to the boat beforehand.

14 Q. And what modifications?

15 A. To make it divable. Things like adding the swim platform
16 on the back, the seats for the dive tanks, that kind of thing.

17 Q. And once you got to the vessel, did the defendant give you
18 any kind of safety talk?

19 A. No, sir, not as normally would.

20 Q. And what do you mean by "not as normally would"?

21 A. Historically, anytime that I have ever been on a dive boat,
22 the captain will give you a briefing similar to, like, when you
23 get on an airplane; that this is a Coast Guard-certified
24 vessel, this is where life jackets are, the name of the vessel,
25 first-aid equipment, that kind of information.

1 On this day, once everything was on the boat and we were
2 about to depart, it was something to the effect of, "Normally I
3 would say this is a Coast Guard-inspected vessel, but it's not.
4 So let's go."

5 Q. And was that the first time he had ever done something like
6 that --

7 A. Yes.

8 Q. -- on your --

9 A. Yes.

10 Q. And just make -- sorry. Just make sure that we're not
11 talking over each other.

12 A. I apologize.

13 Q. And I will do the same.

14 And as this was happening, as the defendant was saying that
15 and then taking you out, did the defendant tell you there was
16 anything dangerous about the boat?

17 A. No, sir.

18 Q. Did the defendant tell you anything to take particular care
19 about?

20 A. No, sir.

21 Q. Did the defendant tell you anything about someone getting
22 injured the day before?

23 A. No, sir.

24 Q. Is that the type of thing, as a scuba passenger, you would
25 expect to be warned about?

1 A. Yes, sir.

2 Q. Did the defendant tell you anything about the vessel having
3 run aground the day before?

4 A. No, sir.

5 Q. And is that the type of thing you would expect to be warned
6 about from a boat if that happened the day prior?

7 A. Yes, sir.

8 Q. Now, as you are going out, did someone on the boat say
9 something to you in passing?

10 A. Yes, sir.

11 Q. And what did that person say?

12 A. One of the mates --

13 MR. O'SULLIVAN: Calls for hearsay.

14 THE COURT: Sustained.

15 MR. KELLER: So, Judge, can we go sidebar briefly?

16 THE COURT: No. Move on.

17 MR. KELLER: Yes, Your Honor.

18 BY MR. KELLER:

19 Q. And once you got out on the vessel, about what time do you
20 recall the defendant taking y'all out to dive?

21 A. 9:30ish. 9:15, 9:30ish.

22 Q. Did the defendant say -- oh, I'm sorry.

23 A. I apologize. That's when we would have actually been out
24 on the water to -- like I said, the boat would have left the
25 dock right around 9:00. My apologies.

1 Q. And as this was happening, did the defendant tell you
2 anything about being unable to go into reverse properly?

3 A. No, sir.

4 Q. And as you went out to dive -- so once you got to the dive
5 site, what were you wearing?

6 A. Wetsuit, mask, fins, buoyancy compensator with the tank,
7 regulator, standard things, lobster catch bag, and I believe a
8 tickle stick.

9 Q. And what is a -- I'm sorry. What was the last of those?

10 A. A tickle stick for catching the lobsters, to go under the
11 ledges to get them to come out.

12 Q. What is a tickle stick?

13 A. Just a little piece of metal (indicating). Like a lobster
14 snare.

15 Q. And publishing what's been admitted as Government's
16 Exhibit 69 to the witness and to the jury, and drawing your
17 attention to the center of this exhibit where you had pins, is
18 that the general area where the incident -- or where the dives
19 were occurring?

20 A. Yes, sir.

21 Q. And what is this location?

22 A. Just outside of Palm Beach inlet in Riviera Beach.

23 THE COURT: One moment, Mr. Flynn. I'm going to ask
24 that you bring the microphone a tad closer to you so that we
25 can hear you better. And you can pick it up and move the base.

1 THE WITNESS: Is that better?

2 THE COURT: Yes. Thank you.

3 THE WITNESS: Yes, ma'am.

4 BY MR. KELLER:

5 Q. And as far as the gear you were wearing, is this your gear
6 or is this gear that the defendant provided you?

7 A. This was personally-owned gear.

8 Q. For both you and Mollie?

9 A. Yes, sir.

10 Q. And now publishing to the witness and to the jury what's
11 already been admitted as Government's Exhibit 28 and
12 Government's Exhibit 29. Mr. Flynn, what do these two exhibits
13 depict?

14 A. In the foreground of the picture where it says mermaid
15 gang, those were two of our tanks. And the back of the picture
16 you can see a set -- one of my fins, Mollie's BC, you can see
17 my red BC on top of the tank as well.

18 Q. And what do you mean by a BC?

19 A. That's the buoyancy compensating device that would -- it
20 holds the -- or the tank is strapped to that -- regulator is
21 strapped to the tank. You wear that somewhat like a backpack
22 and strap it to you and that's what provides you with your
23 buoyancy when you are under water as well as your breathing
24 gas.

25 Q. And showing you Government's Exhibit 30, and showing the

1 jury as well what's been admitted as Government's Exhibit 30.

2 what does this depict, Mr. Flynn?

3 A. That's the stern of the boat.

4 Q. And just because I want to take us kind of step by step
5 through this dive on March 29th, can you just explain the
6 process you and Mollie used for getting off the boat to go on
7 your scuba dive.

8 A. Once we were a close distance to where we were going to be
9 diving, we got the notification to suit up, put all of our gear
10 on. Once all of our gear was on and everything was good, we
11 were then given notification to get up towards the stern of the
12 boat and stand onto the swim platform. And then once we were
13 given the all clear, we jumped in.

14 Q. And on March 29th for this first dive, what type of scuba
15 diving were you doing?

16 A. Just recreational diving. Like I said, we were lobstering
17 that day.

18 Q. And did you do the whole dive with your wife Mollie?

19 A. Yes, sir.

20 Q. And how did you know that the dive was coming to an end as
21 you were down there?

22 A. As a general rule of thumb, you surface within 60 minutes
23 and/or whenever you are running low on air. I believe on that
24 dive it was a combination fairly similar of both plenty of air
25 left in the tank, but nearing the 60-minute mark. So...

1 Q. And did you or Mollie have spear guns on you?

2 A. No, sir.

3 Q. And why not?

4 A. As a general rule, I try to be as courteous to other
5 people; so I would not spearfish around people who are not,
6 especially not my wife.

7 Q. And probably obvious, I can hear it from the last, but can
8 you just explain why.

9 A. It's -- it adds an element of uncertainty that I think is
10 not good for other people. It's one thing if you're
11 spearfishing and you have -- and you're willing to accept the
12 uncertainties that it is, but it's not right to put somebody
13 else in that position.

14 Q. And about what time did the dive end?

15 A. 10:00ish. Yeah, 10:30ish.

16 Q. And what did you do once the -- once you -- or can you
17 describe the surfacing process?

18 A. Yes, sir.

19 So once we neared that time, we were 15, 20 feet apart, get
20 a little bit closer together, give each other a signal that
21 everything is okay. And we start our ascent to the surface.
22 Once we got to 30 or so feet, I would send up a safety
23 marker -- or I sent up a safety marker, and then we came up to
24 15 to 20 feet and kind of hung out for a little bit, did a
25 standard safety stop. And then once that was done, came up

1 underneath that surface marker.

2 Q. And what did you do once you surfaced?

3 A. Look around, inflate your -- inflate the BC, look around to
4 make sure that the -- locate where the boat is and grab ahold
5 of her and make sure that she's as close to me as possible.
6 And then once we were able to locate the boat -- signal to the
7 boat that we were both okay and then waited for the boat to
8 come to us.

9 Q. And why do you make sure that Mollie is close to you?

10 A. As a safety precaution. You don't want to get separated.
11 It creates a lot of undue risk, and there is all kinds of other
12 issues that can go along with it. So when you are surfacing,
13 once you are getting on the boat, you try to huddle up as tight
14 as possible a target, make as small as target.

15 Q. And what type of a signal did you give to the defendant's
16 boat?

17 A. would have just been the standard (indicating) tap on your
18 forehead.

19 Q. what does that signify?

20 A. It signifies that you are okay, that you have got
21 everything under control, that there is no issues, you're
22 not -- there is no panic, there is no immediate danger, that
23 you're -- that you're okay, everything is under control.

24 Q. And what did the boat do relative to you after you
25 signaled?

1 A. The boat came up to us. Like I said, they would -- he came
2 up to us. Once he got a certain distance away from us, turned
3 the boat to kind of put the stern of the boat towards us, and
4 then we were given the signal. Once we were given the signal,
5 it was clear to come in.

6 Q. And when you received the signal that it was clear to come
7 in, about how far away from the vessel were you?

8 A. 20 feet. 15 to 20 feet.

9 Q. What about Mollie? Was she -- how close was she to you at
10 this point?

11 A. She would have been right next to me. Like I said, from
12 the distance to the boat -- probably the distance from me to
13 you.

14 Q. And you talked about this a little bit before. But as you
15 were getting ready to board, why did you wait for the signal?

16 A. To make sure that the -- that everything is disengaged,
17 that the -- that it is safe to come in.

18 Q. And once you -- or what did you do once the vessel stopped
19 and you received the signal?

20 A. Once we -- once the boat stopped to receive the signal, I
21 had told Mollie to make sure that she stays on my right side
22 because of what we had been told previously. Swam up to the
23 boat. I grabbed ahold of the boat. If you're looking at this
24 picture right above the ladder, she would have grabbed ahold of
25 the railing right below the ladder.

1 Q. And can you mark where you're talking about. So you can
2 actually use your finger to mark on the screen. Can you mark
3 first where were you?

4 A. So I would have been right about there (indicating).

5 MR. KELLER: So, let the record reflect the witness
6 marked around the center of the screen as to where he was.

7 BY MR. KELLER:

8 Q. And then can you mark where Mollie was?

9 A. She would have been right about there (indicating).

10 MR. KELLER: And let the record reflect that the
11 witness marked at the bottom of Government's Exhibit 30.

12 BY MR. KELLER:

13 Q. And when you approach like this, are you depending on the
14 captain to know if it's safe?

15 A. Yes, sir.

16 Q. And is the captain responsible for it being safe?

17 A. Yes, sir.

18 Q. And at this point, once you have reached this dive
19 platform, is there any thought about the propellers turning on?

20 A. No, sir, none whatsoever.

21 Q. Had you ever had anything like that happen before?

22 A. No, sir.

23 Q. So you've gotten to the platform. You've grabbed ahold.
24 what happened next?

25 A. I was waiting on the outside, like I said, just on

1 the -- above the ladder in the picture, for Mollie to get on
2 the boat. Just as a standard practice, she would always get on
3 before me. Was at that time, like I said, waiting for her to
4 take her fins off, make it to where she could get onto the
5 ladder and get up into the boat. And before any of that could
6 happen, it went downhill with a quickness.

7 Q. And to use your phrase "going downhill," about how long
8 were you at the rail before things started happening?

9 A. No more than a few seconds.

10 Q. And I know this is probably a painful thing to do, but I
11 want to go slow through --

12 A. Yes, sir.

13 Q. -- what happened.

14 So as this process began, as things began going downhill,
15 what's the first thing that happened?

16 A. You could start to feel water pressing against your back.
17 I looked over at her. I could see the panic. And then she got
18 sucked under.

19 Q. And as she got sucked under, what was happening to you?

20 A. Like I said, I could feel the water getting pushed against
21 my back. Very shortly after she got sucked under, I got sucked
22 under as well.

23 Q. And where were you getting sucked under towards?

24 A. Towards the center of the boat, towards the propellers.

25 MR. KELLER: And I'm going to clear the screen and

1 publish to the witness and to the jury what's been admitted as
2 Government's Exhibit 23.

3 BY MR. KELLER:

4 Q. And Mr. Flynn, does this image depict where Mollie was
5 sucked towards?

6 A. Yes, sir. Can I draw on it?

7 Q. You can draw on it.

8 A. Okay. It would have been in this area (indicating).

9 Q. And so we've gone through her being sucked under, you
10 seeing it, and then you're sucked under. What happens next?
11 What is the very next thing that happens?

12 A. As I got sucked under, I was able to grab ahold of her. I
13 did what I could at the time to try to pull her free. I
14 thought -- and to just grab ahold of her, to pull her out.

15 Q. And can you explain what that consisted of? And you can
16 use this image to kind of paint the picture for the jury.

17 A. Yes, sir. From the way it happened, Mollie was here and I
18 was here (indicating). She got sucked under and crossed in
19 front of me. And then, like I said, I -- shortly thereafter,
20 within seconds, I got sucked under as well.

21 As I went under the boat, I was able to see her, feel her,
22 hear her. I grabbed ahold of her because I was still getting
23 pushed free. I came to a sudden stop because once I grabbed
24 ahold of her, she no longer was moving -- or her motion
25 underneath the boat was no longer happening. I did what I

1 could at that time. I thought that she might have just been
2 hung on something, part of her gear or something might have
3 been hung on it, hung on something. While this is happening, I
4 can hear her screaming. She knocked the regulator out of my
5 mouth, ripped my mask off as she was trying to get free. I
6 then got pushed out, came up to the surface, yelled for help,
7 told everybody that she was stuck and that I needed help. Was
8 able to swim towards the back of the boat, yelled for a mask
9 and something to cut her free with.

10 In that time, a divemaster had jumped into the water. Told
11 her that I needed to make sure -- or that she needed to make
12 sure that the regulator was in her mouth because I knew that it
13 had gotten popped out.

14 Once I got a mask and a knife, I swam back over to the side
15 of the boat. The divemaster then came up, said things -- said
16 that she believed things were okay. I said, Is the regulator
17 in her mouth? And she said yes. I then swam back down.

18 At that time I remember that Mollie had a pair of EMT
19 shears, trauma shears on her BC. I dropped the knife because I
20 didn't want to cut her with it because just the way everything
21 was happening. As I went under water, I could see the
22 regulator leave her mouth and her movement stopped. I then
23 swam over towards her, wedged myself into where the drive shaft
24 is -- or the prop shaft, and began cutting everything that I
25 could cut that I thought I needed to cut to get her free. It

1 was at that time that I realized that her leg had been totally
2 spun around the -- this part (indicating) or in that area of
3 the propeller, kind of like if you took a -- a rope with two
4 weights on it and threw it against a fence pole how it would
5 kind of spin around it, that's what her leg had done.

6 Once I was able to cut everything free, I then spun her leg
7 back around and pulled her up to the surface, swam her over to
8 the dive platform where they pulled her on.

9 Q. Thank you for explaining that, Mr. Flynn. I can't
10 imagine --

11 A. Yes.

12 Q. -- how difficult that was.

13 So I'm going to -- I'm going to bring us to Government's
14 Exhibit 5, which has already been admitted, and publish it to
15 the witness and to the jury.

16 And, Mr. Flynn -- and, you know, I'm sorry to have to ask
17 any more questions about this, but just to -- just so the jury
18 kind of understands from a different angle, can you mark where
19 it is where you emerged?

20 A. So I would have popped up there (indicating) once I got
21 kicked out, in that area. And also when I was able to free
22 her, that's the area where I came up.

23 Q. And where -- where were you able to get her back on the
24 boat from?

25 A. We, like I said, swam her around and got her up to there,

1 where the people on the boat were able to pull her on.

2 Q. And were you able to get her on the boat?

3 A. With assistance, yes, sir.

4 Q. And what happened once y'all were able to get back on the
5 boat?

6 A. She got -- they pulled her on the boat, pulled all of her
7 gear off of her. I was still in the water. I then scrambled
8 to get on as quick as I could. And then at that time we
9 started performing CPR. I could see that -- the massive wound
10 on her inner thigh much more visibly than I could under water.
11 But, like I said, all of her gear got taken off, her wetsuit
12 got cut to where we could perform CPR and start doing chest
13 compressions and breathing.

14 Q. And were you able to see her as this was happening? Like,
15 did you --

16 A. I was doing the chest compressions.

17 Q. Yeah. And was -- was Mollie bleeding at this point?

18 A. At this point, minimally.

19 Q. And what, if anything, did that signal to you?

20 A. Quite frankly, at -- my mind, at that time, I -- all I
21 could think about was doing chest compressions, trying to bring
22 her back. In hindsight, the minimal bleeding meant that --
23 massive blood loss under water.

24 Q. And we're not going to look at any images of this or
25 anything, but just for the jury, did you see other things about

1 her leg besides the wound that you referred to?

2 A. I could see down where the bone -- I could see the bone
3 broken in half, her entire inner thigh cut, almost all the way
4 through.

5 Q. And so as you were doing these chest compressions, what
6 happened next?

7 A. Like I said, at some point during that, like I said, yelled
8 to the captain to make sure the Coast Guard was contacted. Was
9 notified that the Coast Guard was contacted and they were on
10 their way, and that we were heading in. We then started
11 heading in towards the inlet. At some point in time before we
12 cleared -- before we made it to the inlet, the Coast Guard was
13 able to meet up with us. The boat slowed down. Two
14 Coast Guard officers got on the boat at that time. And then we
15 followed the Coast Guard in the inlet, the entire time doing
16 chest compressions, breathing, CPR, alternating between
17 parties, and made it to the marina -- the closest marina.

18 Q. And taking a step back to when the boat is still not going
19 towards the marina yet, where was the defendant during this
20 time?

21 A. At the helm.

22 Q. And what was he doing?

23 A. Captaining the boat.

24 Q. And did you tell him to do anything?

25 A. "Make sure you call the Coast Guard and get us there as

1 quick as you can."

2 Q. And then bringing us to the marina, what happened when you
3 got to the marina?

4 A. Once we got to the marina where this picture was taken, we
5 were met by law enforcement, paramedics, an officer -- I can't
6 say whether it was an enforcement officer or a paramedic, but
7 an officer got on the boat then at that time, told everybody to
8 back away from her, and then made the announcement or called
9 her at that time.

10 Q. And I know this is difficult to talk about, but what do you
11 mean by "called her"?

12 A. Pronounced her dead.

13 Q. And, Mr. Flynn, can you explain the effect that this has
14 had on you?

15 A. Kind of hard to quantify, but stoic, not in a good way.
16 Very detracted from a lot of people emotionally. Do my best to
17 keep a distance.

18 MR. KELLER: Nothing further, Your Honor.

19 THE COURT: Cross-examination.

20 MR. O'SULLIVAN: I have no questions, Your Honor.

21 THE COURT: Thank you, Mr. Flynn. You may be excused.

22 THE WITNESS: Thank you.

23 THE COURT: Mr. Keller, Mr. Stiehl, please call your
24 next witness.

25 MR. KOFFSKY: This is Mr. Koffsky, Your Honor. The

1 government calls David Anderson to the stand.

2 THE COURT: All right. Mr. Anderson, please walk over
3 here to the witness stand. Just remain standing to be sworn
4 in.

5 COURTROOM DEPUTY: Please raise your right hand.

6 Do you swear or affirm that the testimony you are about
7 to give is the truth, the whole truth, and nothing but the
8 truth, so help you God?

9 THE WITNESS: I swear.

10 COURTROOM DEPUTY: Please be seated. State and spell
11 your first and last name for the record.

12 THE WITNESS: David Anderson. D-A-V-I-D,
13 A-N-D-E-R-S-O-N.

14 THE COURT: You may begin.

15 MR. KOFFSKY: Thank you, Your Honor.

16 DAVID ANDERSON,
17 having been sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. KOFFSKY:

20 Q. Mr. Anderson, good morning.

21 A. Good morning.

22 Q. Where do you live?

23 A. I live here in Port St. Lucie.

24 Q. How long have you lived in Florida for?

25 A. Seven years now.

1 Q. what do you do for work?

2 A. I'm retired.

3 Q. Do you scuba dive?

4 A. I do.

5 Q. when did you begin to scuba dive?

6 A. 2012.

7 Q. And are you certified to scuba dive?

8 A. I am.

9 Q. Can you tell the jury what certifications and training that
10 you've received?

11 A. I am an advanced scuba diver instructor. I hold many
12 certifications in scuba diving.

13 Q. How many scuba dives would you say you have done in your
14 lifetime?

15 A. I have between 750 and 1,000 scuba dives.

16 Q. Have some of those dives been in the Palm Beach area?

17 A. Most of them have been in the Palm Beach area.

18 Q. Are you familiar with the waters in the Palm Beach area?

19 A. Very familiar, yes.

20 Q. Okay. Have you gone on scuba diving trips with the
21 defendant in this case, Mr. Dustin McCabe?

22 A. Yes, sir, I have.

23 Q. And let's talk about how you met Mr. McCabe. when did you
24 meet him for the first time?

25 A. July of 2018.

1 Q. How were you introduced to him?

2 A. We had a mutual friend on Facebook. And I moved to my home
3 in Port St. Lucie and was looking for a new crew to take
4 out -- take me out diving, and he was suggested.

5 Q. And how was he suggested to you? What did you learn that
6 Mr. McCabe did?

7 A. That he was a licensed scuba operator -- or licensed --

8 Q. Did you reach out to him and schedule a trip?

9 A. Yes, that is correct.

10 Q. Approximately when did that occur?

11 A. July of 2018.

12 Q. And between that date and the end of 2019, approximately
13 how many diving trips did you take with Mr. McCabe?

14 A. I'd say probably five in total.

15 Q. Did you also go out with other diving captains during that
16 period?

17 A. Yes.

18 Q. And I should say, what position did Mr. McCabe hold when
19 you went out on his vessel?

20 A. Captain.

21 Q. In your experience as a scuba diver, who do you rely on
22 with regard to the safety of the vessel that you're diving on?

23 A. The captain.

24 Q. When you were going on scuba diving trips with Mr. McCabe,
25 during that time, 2018, 2019, do you remember what vessel

1 Mr. McCabe used at that time?

2 A. I don't recall the exact vessel name, but I believe it was
3 a 35-foot scuba charter boat.

4 Q. would you pay Mr. McCabe to take those dive trips?

5 A. Yes, I did.

6 Q. And was that every time?

7 A. Every single time, yes.

8 Q. I see.

9 So I now want to fast forward to March of 2020. Did you
10 take a scuba dive trip with Mr. McCabe in March of 2020?

11 A. Yes, I did.

12 Q. would that have been on March 29th?

13 A. That is correct.

14 Q. what vessel was used for that trip?

15 A. The Southern Comfort.

16 MR. KOFFSKY: And I would now want to show the witness
17 and the jury what's already been admitted as Government's
18 Exhibit 2.

19 BY MR. KOFFSKY:

20 Q. Mr. Anderson, are you able to see the screen?

21 A. I am.

22 Q. what does Government's Exhibit 2 show?

23 A. That is the boat, the Southern Comfort.

24 Q. Is that the vessel you went on, on March 29th --

25 A. Yes, that is correct.

1 Q. To your knowledge, did Mr. McCabe own that vessel?

2 A. To my knowledge, yes, he had just purchased that vessel.

3 Q. Did he discuss the purchase with you?

4 A. Yes, he did. I met him prior to that to buy a scuba tank
5 from him in which he told me he sold his other boat and was
6 purchasing that one.

7 Q. And what did he say was the purchase -- or the purpose,
8 excuse me, of that -- of that purchase? Did he explain why he
9 got a new boat?

10 A. Yes, he did. He most certainly did. The boat was going to
11 be converted into what the industry calls a six-pack dive boat
12 which only allows six divers and crew on it for a more intimate
13 diving experience with less crowds.

14 Q. Do you have experience going on various types of vessels
15 and boats?

16 A. That is correct, yes.

17 Q. What type of vessel is the Southern Comfort?

18 A. That is a fishing boat.

19 Q. In your experience, is it traditionally used for diving?

20 A. No, it is not.

21 Q. Do you recall whether Mr. McCabe made modifications to the
22 Southern Comfort to make it more suitable for diving?

23 A. Yes. He informed me he was making several modifications to
24 the boat.

25 Q. What modifications do you recall him making?

1 A. He stated he was going to remove I believe what's called a
2 tuna tower from the top of the boat, as well as converting the
3 back deck area there with racks to hold the scuba tanks and
4 seats to hold equipment.

5 MR. KOFFSKY: I'm now going to show the witness and the
6 jury what's already been admitted as Government's Exhibit 28.

7 BY MR. KOFFSKY:

8 Q. And you mentioned just now outfitting the vessel to hold
9 equipment. What does Government's Exhibit 28 show?

10 A. That is a rack that shows harnesses to hold the scuba
11 diving equipment and a bench so that you can sit down and --
12 sit down.

13 Q. And just to follow up on the term "six-pack" that you
14 mentioned, can you explain what that means in the context of
15 scuba diving trips?

16 A. Yes. Most boat -- most dive boats hold between 15 to 20
17 divers, and a six-pack vessel is a more smaller vessel that
18 only allows six divers on it with a crew. So it's a more
19 personal experience on a dive boat.

20 Q. From your perspective, was this a commercial scuba charter
21 trip?

22 A. Yes.

23 Q. And let's talk about the trip that you took that day.

24 You testified earlier that you paid Mr. McCabe to travel on
25 his scuba trips. Did you pay for this trip as well?

1 A. Yes, I did.

2 Q. What time was the trip supposed to depart on March 29th?

3 A. 8:00 a.m.

4 Q. Did you communicate with Mr. McCabe during the lead-up to
5 that trip?

6 A. Yes, I did.

7 Q. In what ways?

8 A. I had texted Dustin McCabe at least prior to the night
9 before, letting him know that I saw on the ticker on the news
10 channel that the marinas, all Palm Beach marinas, were closed
11 due to the COVID order, and he said that that did not affect
12 our dive because it was only recreational boating that was
13 affected.

14 MR. KOFFSKY: Now I'm going to publish to the witness
15 and the jury what's already been admitted as Government's
16 Exhibit 15.

17 BY MR. KOFFSKY:

18 Q. What is Government's Exhibit 15, Mr. Anderson?

19 A. That is my text to Dustin.

20 Q. And can you read, for the record, Mr. McCabe's reply.

21 MR. KOFFSKY: Excuse me just a moment, Your Honor.

22 BY MR. KOFFSKY:

23 Q. If you can just read for the record, Mr. McCabe's reply to
24 your text.

25 A. He says, "Yeah, to recreational boating."

1 Q. Did the trip on March 29, 2020, proceed as scheduled?

2 A. Yes, it did.

3 Q. Okay. And I will have Government's Exhibit 15 removed from
4 the screen.

5 what time did you depart on the -- on the 29th?

6 A. Roughly at 8:00 a.m.

7 Q. Who was on the dive trip with you?

8 A. I believe there was Dustin McCabe, the captain. There was
9 a non-diving friend/mechanic. There were two divemasters;
10 myself; and at least four other divers.

11 Q. I think the jury has heard this term before, but what is a
12 divemaster?

13 A. A divemaster is a person that helps out on the boat for the
14 dives. And also, if they choose to, they can lead the
15 dive -- lead a group of divers on a dive.

16 Q. What was Mr. McCabe's role on the trip?

17 A. Captain.

18 Q. And I asked you earlier whether you rely on the captain for
19 the safety of a particular vessel. In this instance, who did
20 you rely on to assure that the vessel was safe?

21 A. The captain.

22 Q. And who was the captain, just for clarity of the record?

23 A. Dustin McCabe.

24 Q. Now, as you departed from the -- from the dock, did

25 Mr. McCabe give you any sort of safety briefing on the vessel?

1 A. No, he did not.

2 Q. Is it typical for you to receive, as a diver, safety
3 briefing on these trips?

4 A. Absolutely.

5 Q. Did Mr. McCabe say anything at all about a safety briefing?

6 A. Yes, he most certainly did.

7 Q. What did he say?

8 A. Mr. McCabe informed me that this was not a
9 Coast Guard-inspected vessel, therefore, he did not have to
10 give the standard safety briefing.

11 Q. Who did he say that to?

12 A. He said that to me.

13 Q. Did he say that to you specifically or to the group?

14 A. I can't recall. I believe it was to me specifically.

15 Q. Okay. And I will now show the witness and the jury what's
16 already been admitted as Government's Exhibit 2 which was on
17 the screen earlier.

18 And specifically as to this discussion with Mr. McCabe, do
19 you recall where on the vessel you were?

20 A. I was -- oh, yes, I was on the bridge.

21 Q. Can you mark on the screen with your finger where the
22 bridge is?

23 A. (Complies.)

24 Q. Were you the only diver up there on the bridge at that
25 time?

1 A. Yes.

2 Q. Where did Mr. McCabe operate from during the course of the
3 trip?

4 A. From the bridge.

5 Q. Is that where the captain operates on this vessel?

6 A. Yes.

7 Q. Where were you for most of the trip?

8 A. Here (indicating) where my equipment is.

9 Q. And why did you venture up there to the bridge?

10 A. As I was excited about the boat, the purchase of the boat,
11 and some of the trips that he was going to be on. I asked if I
12 could come up to the bridge and look around to show me what he
13 has -- the modifications that he was making and some of the
14 things, just because I was interested in the boat.

15 Q. During that conversation you had with Mr. McCabe on the
16 bridge, did he mention any mechanical issues that he had
17 encountered with the Southern Comfort the day before?

18 A. Yes.

19 Q. What did he say?

20 A. He said that there were a couple of divers who were -- when
21 they went to pick them up, that they were pushed around the
22 back edges of the boat during pickup, and that I should be
23 aware of that when I was getting back on the boat.

24 Q. Did he say that to the rest of the group?

25 A. I do not recall.

1 Q. Did what he said -- did what he say on that subject concern
2 you in any way?

3 A. No.

4 Q. Did he mention whether any of those divers who had been
5 influenced by those issues, did he mention whether they had
6 been injured in any way?

7 A. No.

8 Q. Did he mention whether those divers had objects that had
9 been struck by propellers?

10 A. No.

11 Q. Would you have wanted to know that information as a diver
12 on that vessel?

13 A. Yes.

14 Q. Let's talk about the dive, the actual dive on the trip.
15 How many dives were you scheduled to take on this trip?

16 A. Two.

17 Q. When was the first dive supposed to start?

18 A. Immediately at departure when we got to the first dive
19 site; 8:30, 9:00.

20 Q. And, generally speaking, do you remember where the location
21 of the dive was?

22 A. Just south of the inlet there in West Palm Beach.

23 Q. Okay. How were the conditions that day, to your memory?

24 A. The conditions were probably 3- to 4-foot rolling seas and
25 the visibility was poor.

1 Q. How was your dive?

2 A. It was -- it was not very good. The visibility was poor.

3 There was a -- there was a pretty strong current, and so I -- I
4 stopped my dive pretty quickly, probably after about
5 30 minutes.

6 Q. And describe the process of stopping your dive. What does
7 that include?

8 A. That includes ascending to the surface slowly and safely,
9 and getting to 15 feet of depth, and deploying what is called a
10 surface marker buoy, which -- you stay down for three extra
11 minutes; it's called a safety stop. You deploy your surface
12 marker buoy so that the boat and captain can locate you on the
13 water and come retrieve you.

14 Q. Did Mr. McCabe maneuver the boat to come and retrieve you?

15 A. Yes.

16 Q. From your perception, did he have any issues coming to
17 retrieve you?

18 A. No.

19 Q. I should have asked this earlier. Did he -- did he mention
20 anything about the vessel having run aground the day before?

21 A. No.

22 Q. Would you have wanted to know that, as a passenger on the
23 vessel?

24 A. Yes.

25 Q. Okay. Did he eventually come to maneuver to pick you up?

1 A. Yes.

2 Q. Were you able to get into the boat?

3 A. Yes.

4 Q. And where, on the screen, did you enter -- or reenter the
5 boat?

6 A. (Indicating).

7 Q. Okay. And then I'm just going to clear the screen. Thank
8 you.

9 Did you have any issues at all as you scaled up the ladder
10 that's depicted in Government's Exhibit 2?

11 A. No, no issue.

12 Q. What happened next?

13 A. I moved over to my location on the boat where my equipment
14 was and took my equipment off. I was the first diver onto the
15 boat. I removed my BC and tank and fins and gear, and left my
16 wetsuit on, and then I moved to the back of the boat to assist
17 the divemasters in retrieving the other divers. Because
18 equipment is -- sometimes it's a little tricky, especially
19 during rough seas, to get your equipment -- you know, you're
20 wearing a lot of dive gear. So I always try to help out as
21 best I can, if I'm the first person on the boat.

22 Q. Who were the next divers to surface?

23 A. The next two divers to surface was the -- the couple that
24 had the accident.

25 Q. And please tell the jury, from your perspective, what

1 happened.

2 A. The boat maneuvered around the divers to pick them up. And
3 what is pretty standard in South Florida, they -- they come
4 around -- the divers are in the water and they come around, and
5 then they back up to a certain point to the divers. The crew
6 will tell you, you know, once you're surfaced and you give them
7 the (indicating) all safe sign, that -- to stay where you are,
8 so the boat gets maneuvered. And then once the boat is in
9 position and is safely out of gear, in neutral, then you are
10 allowed to approach the boat and do that.

11 We -- I was at the back of the boat with the two
12 divemasters ready to help, and we were approaching the two
13 divers in the water. The boat never slowed down. It was
14 moving rearward towards the divers, and then the divers
15 disappeared around what I thought was the sides of the boat.
16 Immediately I started looking onto the sides of the boat to see
17 where the divers were, and I noticed some equipment in the
18 water, floating equipment. I know how expensive dive equipment
19 is and I wanted to help, and I was fully buoyant in my wetsuit,
20 so I immediately dove into the water to help retrieve the
21 equipment, so -- in case, you know, they didn't lose it and I
22 would be able to help.

23 At that time the husband surfaced onto the backside of the
24 boat, and he was a panicked diver. As a scuba instructor, you
25 are taught to learn what a panicked diver looks like. He was

1 screaming "regulator, regulator" and he was finning
2 erratically. He didn't have his mask and he had spit out his
3 regulator. So I immediately dropped everything that I had in
4 my hands and swam over to him and inflated his BC, his buoyancy
5 compensator, so he was buoyant in the water. And then I
6 grabbed his regulator and jammed it into his mouth. He spit
7 the regulator back out and he said, "Not me, her."
8 (Indicating). I looked down to where he was pointing at the
9 rear of the vessel and I could see probably the top third of
10 her -- her face and probably the top third of her body, and she
11 was reaching out (indicating). I immediately grabbed her arm
12 with my hands and started to pull, and she was stuck. So I
13 then inverted up onto my back, placed my feet onto the sides of
14 the boat, and pulled with all my might. She was stuck. I
15 tried several times.

16 At that point, since I was the only person besides the
17 divers in the water, I started yelling at the crew of the boat
18 to -- to get some gear on, to get into the water, because she
19 was stuck. The crew at that time -- one of the crew members
20 was able to put together some dive gear hastily -- a BC,
21 you know, regulator -- and was able to jump into the water. I
22 can't remember how much time passed.

23 She was -- by the time that she got into the water and was
24 underneath there, I went ahead -- and since there was nothing
25 else that I could do there, I went ahead and moved around back,

1 to the back of the boat, and got out to assist in any way that
2 I could.

3 A few minutes passed and the divemaster surfaced and said,
4 "I got her regulator in, but we need a tourniquet." So there
5 was no first aid kit available or oxygen available on the boat.
6 So I can't remember who did it, but we had to cut some type of
7 a nylon strap to give to her for a tourniquet. And she went
8 back underneath the water for an amount of time -- I cannot
9 recall the amount of time, but it was -- it was a lengthy, a
10 lengthy amount of time that she was underneath there.

11 After a while, she surfaced and -- with -- with the victim,
12 and started to bring her around to the back of the boat. When
13 we got her -- she got around to the back of the boat, we
14 immediately pulled her into the back of the boat, got her
15 on -- on the deck of the boat and started performing CPR.

16 There was, again, no first aid kit available, so we had
17 to -- to use towels and anything that we could grab to help
18 out, even though the victim was not bleeding, to cover up. She
19 had several very large gashes on her leg and a compound
20 fracture of one of her legs. We covered up and -- but we gave
21 CPR because that's what you do.

22 During -- we were switching off giving CPR. And at that
23 time I remember hearing Dustin calling somebody on the phone,
24 I'm not sure exactly who it was, trying to tell them that they
25 needed to call the Coast Guard, and he said that he had just

1 killed somebody.

2 We continued giving CPR. And then at that time, like I
3 said, my focus was primarily just -- we were taking our turns,
4 you know, giving CPR. And after an amount of time, it was -- I
5 couldn't tell you how long it was, it was a good amount of
6 time, the Coast Guard vessel finally arrived on-site.

7 The Coast Guard instructed that the seas were too rough to
8 pass -- to move the victim over to their boat. And that he
9 needed to move into port. He said that he still had divers in
10 the water and that he was unable to move. At that time
11 two -- I believe two Coast Guard personnel came onto our boat
12 and took over to -- CPR. The Coast Guard vessel then signaled
13 that it was going to look for the other divers that were still
14 in the water.

15 The engines were then turned back on and we went to port at
16 a high rate of speed at that time. Then we got into the port.
17 That's when the EMS and the rest of the Coast Guard and law
18 enforcement officers were waiting for us.

19 Q. As you performed CPR on the victim, was she responsive in
20 any way?

21 A. No.

22 Q. You testified that Mr. McCabe said "I just killed
23 somebody"?

24 A. That is correct.

25 Q. Did you -- you remember hearing that?

1 A. I remember hearing that.

2 Q. Do you remember where he was when he said that?

3 A. He was on the bridge.

4 Q. Did you -- did you see Mr. McCabe ever operate the Southern
5 Comfort after -- after this incident?

6 A. No.

7 Q. Have you spoken to him since this incident?

8 A. No.

9 MR. KOFFSKY: Just a moment, Your Honor.

10 Mr. Anderson, thank you. Nothing further.

11 THE COURT: Cross-examination.

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

13 CROSS-EXAMINATION

14 BY MR. O'SULLIVAN:

15 Q. Good morning, sir.

16 A. Good morning.

17 Q. I just have a couple of questions for you. Do you recall
18 back in March 29th of 2020 you gave a statement to Florida Fish
19 and Wildlife Investigator Fowler?

20 A. Yes.

21 Q. And you told him that Mr. McCabe gave a, quote, limited
22 safety briefing on that dive trip? Do you remember giving that
23 statement?

24 A. I do.

25 Q. And you testified today to this jury five minutes ago that

1 he gave no safety briefing at all?

2 A. That is correct.

3 Q. So did he give no briefing or a limited briefing?

4 A. The briefing was, "I am not a Coast Guard-inspected vessel,
5 therefore, I do not have to give you a safety briefing."

6 Q. And that's a true and correct statement --

7 A. That is a true --

8 Q. -- under the law; correct?

9 A. -- and correct statement.

10 Q. Okay. So he put you on notice of the previous day's issues
11 as well; correct?

12 A. He had mentioned that somebody had moved around the --
13 moved -- got moved around the back of the boat, if that's what
14 you're referring to.

15 Q. So he put you on notice that there was an issue the day
16 before?

17 A. Yes.

18 Q. Okay. He wasn't trying to hide it. He told you
19 voluntarily what happened the day before?

20 A. That is correct.

21 Q. Okay. And there was a mechanic on board the day of the
22 incident; correct?

23 A. I believe.

24 There was another person, a friend or mechanic, never
25 identified to me.

1 Q. Did you recognize his name as Jonathan Miller?

2 A. I do not recognize that name.

3 Q. You have been diving with Mr. McCabe previously; correct?

4 A. That is correct.

5 Q. And hadn't this gentleman been on the boat previously?

6 A. Not to my knowledge, no.

7 Q. Okay. But he wasn't diving that day; correct?

8 A. He was a non-diver, that's correct.

9 Q. He was there strictly in the capacity as a mechanic on
10 board that day?

11 A. He was a passenger.

12 Q. Okay. You also testified a few minutes ago that there was
13 no first aid kit on board.

14 A. That is correct.

15 Q. Did you go into the cabin? Did you go in the cabin at all?

16 A. Yes.

17 Q. You didn't see a 3-foot Pelican first aid kit there?

18 A. No, I did not.

19 Q. You didn't see the two oxygen tanks there?

20 A. I did not.

21 Q. At what point did you go in the cabin?

22 A. When he was showing -- showing the -- galley of the boat.

23 Q. Okay. Did you inspect the entirety of the cabin?

24 A. No.

25 Q. Okay. Had you inspected the entirety of the cabin, is it

1 possible you would have seen this 3-foot first aid kit?

2 correct?

3 A. Definitely.

4 Q. Okay.

5 MR. O'SULLIVAN: I have no further questions,

6 Your Honor. Thank you.

7 MR. KOFFSKY: Briefly on redirect, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. KOFFSKY:

10 Q. Mr. Anderson, you testified on cross about the first aid
11 kit. I just wanted to follow up with a couple of questions on
12 that.

13 To the extent there was a first aid kit in the interior of
14 the vessel, was that ever made available to you
15 during -- during the incident on March 29, 2020?

16 A. No.

17 Q. Were you ever made aware of the first aid kit?

18 A. No, I was not.

19 Q. To -- excuse me. Go ahead.

20 A. Sorry. That is part of a standard dive briefing that you
21 get on all operating scuba boats, is they say, here is the
22 radio, here is the first aid kit, here is the oxygen, here are
23 the things that, you know, in case of an emergency, that you
24 need to do -- or to locate and get.

25 Q. Did Mr. McCabe, as the captain of the vessel that day, did

1 he say any of those things to you?

2 A. No, he did not.

3 MR. KOFFSKY: No further -- no further questions,
4 Your Honor. Thank you.

5 THE COURT: Thank you. You may be excused, sir. I
6 will see the attorneys at sidebar.

7 (Conference at bench.)

8 THE COURT: Is your next witness here?

9 MR. KELLER: Yes, Your Honor.

10 THE COURT: How long do you think that would take?

11 MR. KELLER: She is going to be -- I'm sorry.

12 MR. O'SULLIVAN: I didn't hear what you said.

13 MR. KOFFSKY: Ms. Odom will testify for about an hour.

14 MR. O'SULLIVAN: Oh, okay.

15 THE COURT: Okay. Then we're going to take our lunch
16 now. Thank you.

17 MR. KELLER: And, Judge, can I also, just briefly.
18 These references to Mr. Miller, like we're just -- we want to
19 strike them as they're improper. Like, he should not be making
20 references to Mr. Miller when he is not able to testify here.
21 He is not available to either side.

22 THE COURT: We need to take this up during a real
23 argument session, not at sidebar. And I will address it
24 comprehensively.

25 MR. KELLER: Yes, Your Honor.

1 THE COURT: We will take our lunch now. So you can
2 anticipate -- if you're ready to present argument on this
3 issue, we can handle it now; or if you need to first confer, we
4 can do so after -- after lunch.

5 MR. KELLER: We will confer.

6 THE COURT: Okay.

7 MR. KELLER: Thank you.

8 (Conference at bench concluded.)

9 THE COURT: Thank you, ladies and gentlemen. Rather
10 than start a lengthy witness now, I think it makes sense to
11 take our lunch break; so we're going to break now. It's 11:25,
12 and we're going to be in recess until 12:45. So we have a bit
13 of an extended lunch today, about an hour and 20 minutes.

14 All rise for the jury.

15 (The jury exited the courtroom at 11:25 a.m.)

16 THE COURT: All right. Thank you. You may be seated.
17 The lawyers should be back in the courtroom here at 12:15,
18 following conferral on the Mr. Miller issue that was just
19 raised at sidebar. Thank you.

20 MR. KELLER: And, Judge, just briefly, as a travel
21 update, I was informed by our witness travel people that they
22 are securing flights, but the problem is right now that there
23 are no hotels in Fort Pierce that are government rate for
24 tomorrow night. So we're working on that. We're trying to get
25 hotels, but that's just where we are.

1 THE COURT: Okay. Well, I'm sure that there are some
2 areas in this community, either in Indian River County or
3 Martin County, that might accommodate the government rates. So
4 I urge you to continue looking. Thank you.

5 MR. KELLER: Thank you, Your Honor.

6 (A recess was taken from 11:27 a.m. to 12:22 p.m.)

7 THE COURT: All right. Please be seated unless you're
8 addressing the Court. We are here a few minutes early to
9 address an issue with the, I guess, missing witness -- for lack
10 of a better term -- Mr. Miller.

11 what would you like to argue, Mr. Keller?

12 MR. KELLER: Judge, I don't think there is any argument
13 necessary. I have conferred with the defense, and we agree
14 that they can make reference to the fact that Mr. Miller was
15 present. They can make reference to who he was, to these
16 people's knowledge. They cannot make reference to any
17 statements he made. And they cannot make reference in closing
18 to his availability.

19 And we are going to agree to a supplemental jury
20 instruction relating to his unavailability, which I will be
21 sending Mr. O'Sullivan at the end of the day today, that I hope
22 that we will have filed by tomorrow morning, is my hope and
23 expectation.

24 THE COURT: Okay. All right. Mr. O'Sullivan, do you
25 agree with that accommodation or understanding?

1 MR. O'SULLIVAN: Yes, Judge, that accurately reflects
2 what we discussed, and I'm in full agreement with the
3 government's position.

4 THE COURT: Has -- at this point, has there been any
5 testimony elicited about what Mr. Miller said?

6 MR. KELLER: Not yet, Your Honor. We're just noting
7 that as we move forward.

8 THE COURT: Okay. So, what's okay is to say that he
9 was there, assuming the witness has personal knowledge about
10 that. Anything beyond just his presence?

11 MR. KELLER: Also, they can testify to what they know
12 him to be. So, for example, Ms. Hester had testified she knew
13 him as a fellow diver. Whereas, someone else might testify
14 they knew him as someone who was handy with vessels.

15 THE COURT: Okay. All right. Well, then I think I
16 understand the guardrails.

17 Are you in agreement, Mr. O'Sullivan?

18 MR. O'SULLIVAN: To -- mostly, yes. I mean,
19 they -- the witness should be able to testify to their personal
20 knowledge of who he is, also what -- perhaps what he did. If
21 they personally observed him perhaps making a repair, they can
22 say, yes, we saw Mr. Miller, you know, working on a freshwater
23 pump.

24 But I definitely agree that no statements that Miller
25 made can come out. They would be hearsay and not subject to

1 cross. So, absolutely, I agree with that.

2 THE COURT: okay. Now, I assume that a grant of
3 immunity is not in the picture, Mr. Keller.

4 MR. KELLER: That's correct, Your Honor.

5 THE COURT: okay. All right then. well, then I think
6 there is nothing else to discuss. We will resume our lunch
7 break until 1:45. Please return at that time. Thank you.
8 Excuse me. 12:45.

9 MR. KELLER: Yes, Your Honor.

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

11 (A recess was taken from 12:25 p.m. to 12:47 p.m.)

12 THE COURT: Good afternoon. Please be seated. Let's
13 call in the jury.

14 MR. KELLER: Judge, can I give you a scheduling witness
15 update before the jury? I'm sorry.

16 THE COURT: Is it necessary?

17 MR. KELLER: We can wait.

18 THE COURT: okay. Let's call in the jury.

19 (The jury entered the courtroom at 12:48 p.m.)

20 THE COURT: Good afternoon, ladies and gentlemen. You
21 may all be seated. We are resuming trial.

22 Mr. Keller or Mr. Koffsky or Mr. Stiehl, please call
23 your next witness.

24 MR. KOFFSKY: Thank you, Your Honor. The government
25 calls Kimberly Odom to the stand.

1 THE COURT: All right. Good afternoon, Mrs. Odom.
2 Right here. If you could please make your way to the witness
3 stand. Mr. Creary will swear you in.

4 COURTROOM DEPUTY: Please raise your right hand.

5 Do you swear or affirm that the testimony you are about
6 to give is the truth, the whole truth, and nothing but the
7 truth, so help you God?

8 THE WITNESS: I do.

9 COURTROOM DEPUTY: Please be seated. State and spell
10 your first and last name for the record.

11 THE WITNESS: My first name is Kimberly,
12 K-I-M-B-E-R-L-Y. My last name is Odom, O-D-O-M.

13 THE COURT: You may begin.

14 MR. KOFFSKY: Thank you, Your Honor.

15 KIMBERLY ODOM,
16 having been sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. KOFFSKY:

19 Q. Ms. Odom, good afternoon.

20 A. Hi.

21 Q. I would like to start with a couple of questions about you
22 and your background. Where do you live?

23 A. I live in Tequesta, Florida.

24 Q. How long have you lived there for?

25 A. Four years roughly.

1 Q. what do you do for work?

2 A. I work as a boat captain and deckhand.

3 Q. And please tell the jury what that work consists of.

4 A. I currently only work for private boats. I have a primary
5 boat, a 60-foot Hatteras sport fish that I work for a family,
6 and then I also work rotational crew on a 97-foot Nordhavn,
7 also for a private family.

8 Q. Just to start, how -- how long have you been around boats
9 for?

10 A. Since I was about 12 years old, on and off. My family had
11 charter boats, shrimp boats.

12 Q. So you are very experienced with -- with captaining vessels
13 and being on vessels?

14 A. I haven't captained that long. I mainly work as a deck
15 mate and a fishing mate.

16 Q. And let's start with the deck mate and fishing mate
17 responsibilities. What do those responsibilities consist of?

18 A. Constant maintenance of the vessel.

19 Q. Okay.

20 A. Assisting in docking, assisting in fishing, anything else
21 that the family is interested in that's possible on whatever
22 vessel we're working on at that time. We also have smaller
23 tenders. I normally am in charge of the tenders to the larger
24 vessels.

25 Q. And could you just explain to the jury what is a tender.

1 A. For instance, the 97-foot Nordhavn has a 28-foot center
2 console, and it also has a rib on the bow that is 12 feet. So
3 we have two other boats that are in the water at the same time
4 we have the 97. It's used to tender the family back and forth
5 to islands, to dinners, to grab their guests from airport
6 docks, to go diving, to go fishing, to go sightseeing, and
7 sandbaring.

8 Q. And let me follow up on your captaining experience. You
9 said that that is more recent that you have been a captain?

10 A. Yes.

11 Q. Do you have a captain's license?

12 A. I do.

13 Q. Okay. And how many vessels do you currently captain?

14 A. One.

15 Q. In your experience as a captain yourself and just being a
16 deckhand on other vessels, is the captain primarily tasked with
17 keeping the vessel safe?

18 A. Yes.

19 Q. Okay. Do you have scuba diving experience?

20 A. I do.

21 Q. Please tell the jury about your scuba diving experience.

22 A. I started diving with my family when I was younger, 10, 12,
23 13. When I moved to this area, I went to start diving out of
24 the Palm Beach area on charter dive boats. To do that, you
25 need your certificates. And I started with my open water

1 certificate at that point for just my personal recreational
2 diving, but I currently hold a divemaster and a rescue diver.

3 Q. And have you been a deckhand on scuba boats and scuba
4 diving vessel trips?

5 A. I have.

6 Q. Is some of your experiences as a scuba diving deckhand with
7 the defendant in this case, Mr. Dustin McCabe?

8 A. It is.

9 Q. When did you meet Mr. McCabe?

10 A. I met Mr. McCabe towards the end of 2018. I don't know the
11 exact date. It would be late October or sometime in November,
12 I believe.

13 Q. How did you meet him?

14 A. He had a post on Facebook looking for people that were
15 interested in advancing their dive knowledge and working as an
16 assistant on the boat, primarily as a deckhand, and then to
17 further into divemaster.

18 And I responded to that through the DMS of Facebook, the
19 Messenger app, to him. Said I was interested in meeting him.
20 I -- that was probably in early October.

21 I had to work a fishing tournament in Cabo for two and a
22 half weeks and said that when I get back from working that
23 tournament, I would love to meet him and discuss the
24 opportunity.

25 Q. And what happened next? Did you eventually meet him?

1 A. I did. He responded back. He said that was fine. Let him
2 know when I was back in town. So...

3 Q. And what happened when you met him?

4 A. I did -- I did go down to meet him, and he wanted me to go
5 out diving with him, experiencing the boat and get to know the
6 other people that were on the boat and his customers, and spend
7 a day with him out diving.

8 Q. When you spoke to Mr. McCabe at this initial stage, did you
9 know whether he had some sort of business?

10 A. No.

11 Q. What vessel did you -- did you go out on that first -- that
12 first occasion?

13 A. It was an island hopper named the Sea Scout.

14 Q. Okay. And that would have been in late 2018?

15 A. Yes.

16 Q. Did you continue working with Mr. McCabe after that?

17 A. I did.

18 Q. How often would you work with Mr. McCabe?

19 A. I didn't really keep a record. It's hard to tell. Several
20 times each month. I was really only available on Saturday and
21 Sundays, which is usually the busiest times. But there was
22 other people that had more seniority than I did in order to
23 grab those trips up and get the experience. So it was off and
24 on, whenever he would contact me.

25 Q. And what --

1 A. Several times a month.

2 Q. What types of trips were these trips that you were taking
3 with Mr. McCabe?

4 A. Dive trips.

5 Q. Dive trips.

6 What was -- what was the official title or role that you
7 played on the trips?

8 A. Usually deckhand. As I became more accustomed to being
9 able to handle the navigation under water and the abilities
10 that a divemaster would be able to do, I would lead the groups.
11 I would be a dive leader.

12 Q. What role did Mr. McCabe play on these trips?

13 A. He's the captain.

14 Q. Were you a formal employee of Mr. McCabe's under this
15 arrangement?

16 A. I was not.

17 Q. Why do you say that?

18 A. I was not paid by Mr. McCabe or anyone that I knew with any
19 ownership in the boat. And I never had an employment
20 application. We never had a contract of any type of agreement
21 on paper. My pay was -- consisted of the tips that I received
22 from our paying customers.

23 Q. I want to fast forward to March of 2020. If you think back
24 to that time, were you still working with Mr. McCabe at that
25 time?

1 A. I was.

2 Q. I want to focus on March 20th -- later end of March of
3 2020.

4 what vessel was Mr. McCabe using at that time?

5 A. He had sold the sea scout and had acquired a sport fish
6 vessel that he named Southern Comfort.

7 MR. KOFFSKY: And I would like to show the witness and
8 the jury what's already been admitted as Government's
9 Exhibit 2.

10 THE COURT: Ms. Odom, you are welcome to move the
11 microphone closer to you so that we can all hear you.

12 THE WITNESS: Okay. Let me -- maybe I can just pull it
13 up a little bit. Is that better?

14 THE COURT: Yes. Thank you.

15 THE WITNESS: Thank you.

16 BY MR. KOFFSKY:

17 Q. And, Ms. Odom, I'll direct your attention to the screen in
18 front of you. This is Government's Exhibit 2. What does that
19 show?

20 A. That's the sport fish that he had purchased and began
21 running at the end of March.

22 Q. Are sport fishes typically used for diving, in your
23 experience?

24 A. This is the first one I had ever been on as a charter dive
25 boat. They're typically used for offshore fishing.

1 Q. And why is that, in your experience? Is there a reason for
2 that?

3 A. I really wouldn't be able to say, other than it's a little
4 cumbersome. This is the only sport fish I have ever known that
5 there was a swim platform on the back that I have worked on.

6 Q. Do you recall whether Mr. McCabe, when he began using this
7 vessel, whether he modified it in any way for diving purposes?

8 A. He did modify it.

9 Q. And what do you recall specifically about those
10 modifications?

11 A. I specifically called [sic] the discussion about adding the
12 dive benches and the cockpit of the boat so people would have
13 an area to sit down to -- so we could secure their tanks and
14 their equipment, and the ladder railing on the swim platform.

15 Q. I'm now going to show the witness and the jury what's
16 already been admitted into evidence as Government's Exhibit 53.

17 And what does Government's Exhibit 5 show, Ms. Odom?

18 A. That is the cockpit of the boat after the incident.

19 Q. And you just testified about dive benches. Are those
20 present in this photograph?

21 A. They are. Those are the two benches where you see the
22 tanks up on the top and the dive equipment on both sides.

23 Q. Okay. Do you recall whether any modifications were made to
24 the interior of the vessel?

25 A. There was.

1 Q. There was. And please describe what you recall about those
2 modifications.

3 A. It was just a modification of, I believe, the liner behind
4 the galley. And there was a cooler -- freezer, I should say,
5 inside that Dustin had asked if I wanted it to take home,
6 because I keep bait frozen in coolers and freezers in my garage
7 for fishing trips and different things that I rig. And it was
8 filled with a mixture of food from the previous owners, I
9 believe, and some bait.

10 we emptied it out and he helped me get it off the boat. I
11 took it home and put it in my garage and started using it as a
12 bait -- additional bait freezer.

13 Q. Did you learn why Mr. McCabe modified the interior of the
14 vessel?

15 A. He said he wanted the experience to be more concierge level
16 diving. He wanted the divers to feel comfortable to come into
17 the interior, so they could get out of the sun, and just more
18 of a concierge experience. Maybe we would have snacks or lunch
19 on board for them some days.

20 Q. I'm now going to show the witness and the jury what's been
21 already admitted into evidence as Government's Exhibit 66. And
22 briefly, Ms. Odom, what does Government's Exhibit 66 show?

23 A. That's the salon of the sport fish.

24 Q. And does this show the modifications that were made?

25 A. It does.

1 MR. KOFFSKY: Okay. So if I can pull back up
2 Government's Exhibit 2 on the screen. That's already been
3 admitted, Your Honor.

4 BY MR. KOFFSKY:

5 Q. So I want to talk about while you were working on this
6 vessel, where you're stationed, you know, during -- during a
7 dive trip. You're able to mark on the screen with your finger.
8 If you can just use that marker to show the jury where you were
9 typically working during these dive trips.

10 A. In the cockpit, which would be this whole area right here
11 (indicating).

12 Q. And where was Mr. McCabe during the dive trips?

13 A. He was at the helm (indicating).

14 Q. Would you communicate with Mr. McCabe during the dive
15 trips?

16 A. Yes.

17 Q. Orally, by speaking to each other, or in any other way?

18 A. Orally.

19 Q. Okay. And for divers that were participating on these
20 trips, how would they start their dive and finish their dive?
21 From what part of the vessel would they do that?

22 A. Well, when they would first get -- board, their dive
23 equipment, they would assemble it in those locations at the
24 dock. Once we were out to a dive site, the captain would let
25 us know when we were in the right spot to line up the divers

1 and verify that all of the divers had their air turned on, on
2 their tanks, and all the equipment that they were going to use;
3 if they were hunters, if they had their guns; if they had their
4 bags; if they had everything they needed for whatever they were
5 doing. And then assemble them in a line to go out the tuna
6 door. And stage, on the back, one or two divers at a time.
7 There wasn't that much room on that swim platform.

8 Q. And would you be stationed in the -- I believe "cockpit" is
9 the term -- while they were doing this process?

10 A. I would.

11 Q. Okay.

12 A. I would -- I would hold the stem valves of their tanks to
13 make sure -- because they have fins on at this point -- to make
14 sure they were stable in the cockpit.

15 Q. Understood.

16 And we will talk more about this process. I just wanted to
17 make sure I understood how it works.

18 I want to talk about your first couple of trips on the
19 Southern Comfort. Do you recall when -- when your first trip
20 on the Southern Comfort was?

21 A. I don't recall the exact date. It was very close to this
22 time frame.

23 Q. Was it the date of the incident or was it before then?

24 A. No, it was before then.

25 Q. Okay. And I want you to think about the first instance

1 before the date of the incident, who was on the vessel on that
2 first day that you were on it.

3 A. The first day that we had divers in the water on this
4 vessel that I remember would -- Jennifer Hester was a diver,
5 and I believe Katie Reed was assisting me on deck.

6 Q. And I want to ask you a couple of questions about that
7 date. Do you recall any mechanical issues with moving the boat
8 on that date?

9 A. We had an issue when we came back to dock, that I know of.
10 we ended up in the mangroves located just to the west of the
11 North Palm Beach -- North Palm Beach marina fuelling dock.

12 Q. And please describe what happened during that incident from
13 your perspective.

14 A. It was some type of mechanical failure, and we were
15 drifting into the Parker Bridge, and somehow was able to get
16 the boat into the mangroves to stop the drift. I remember he
17 was concerned because we still had riggers on that boat that
18 hadn't been lowered and the riggers were going to possibly
19 scrape off into the bridge if we had had to float through the
20 bridge. The bridge was not open at that time.

21 Q. How long did it take to maneuver the boat out of those
22 mangroves?

23 A. I think it was a while because we had to get someone to
24 come down and come on the boat and assist to get the boat to
25 the point where we could get it back out of there.

1 Q. And I know you mentioned you don't recall the exact date --

2 A. I don't.

3 Q. -- of that.

4 To your mind, how long before the date of the incident was
5 that?

6 A. It was the day before or a few days before. Seems like it
7 was right in the same time frame.

8 Q. Okay. I want to shift to the date of the incident. As you
9 think back to that date, were you on the vessel during that
10 date?

11 A. I was.

12 Q. Were there other deckhands on the vessel as well?

13 A. There was.

14 Q. And can you just list who was included.

15 A. Siri was on -- was the other deckhand on that day.

16 Q. And who is Siri?

17 A. She was a divemaster and a deckhand when I got there
18 originally, back in 2018. And I worked with her consistently
19 through that time period on that boat.

20 Q. Was she, to your knowledge -- let me ask you it this way.
21 You mentioned that you were not paid by Mr. McCabe and that you
22 were paid from customers in tips. Do you know if Siri was paid
23 the same way?

24 A. I believe she was only paid by tips.

25 Q. Okay. As to who else was on the vessel on March 29, 2020,

1 was Mr. McCabe the captain of the vessel that day?

2 A. He was.

3 Q. Even though you're a deckhand and a person who is working
4 on the vessel, were you relying on Mr. McCabe to ensure that
5 the vessel was operating in a safe manner?

6 A. Yes.

7 Q. Who were the customers on the dive of March 29, 2020?

8 A. There was Judy and her husband. Judy was a regular
9 customer of ours. And there was another man that I believe had
10 dove with us several times. I believe his name was John. I
11 really didn't personally know him. And Sean and Mollie were on
12 board. We had a total of five divers that day.

13 Q. Do you remember where you went diving on that day?

14 A. We were specifically lobster diving, as far as I knew that
15 day, and spearfishing if they wanted. And we had been around
16 the area of Nuns Reef, but I'm not sure that we were exactly on
17 that reef because I was not at the helm. I did not have
18 the -- I wasn't looking at the electronics. All the
19 electronics were up top.

20 Q. I'm now going to show the witness and the jury what's
21 already been admitted as Government's Exhibit 69.

22 And, Ms. Odom, I will direct your attention to the yellow
23 pin that says "incident location." On Government's 69 there is
24 also a pin for Nun's Reef.

25 A. Uh-huh.

1 Q. Do those pins generally depict where you were traveling
2 that day?

3 A. They do.

4 Q. Okay. What time did you depart from the marina on
5 March 29, 2020, to begin the dive trip?

6 A. I believe it was around 8:30, it seems. My memory -- it
7 would have normally been an 8:00 departure, but we left a
8 little late.

9 Q. And how many dives were the customers supposed to do on
10 this trip?

11 A. Two, that I was aware of.

12 Q. Okay. And I want to start with the morning dive. Were
13 there any issues during the customers' dives? Like, once they
14 went out on the vessel, once the dive began, had any issues
15 arose up to that point?

16 A. The single gentleman came back from his dive early, earlier
17 than we would have expected. He was -- stated that his dive
18 computer was going into deco and that would necessitate a diver
19 to come up, back to the boat.

20 Q. Was he able to reboard the vessel safely?

21 A. He was.

22 Q. Who were the next divers to surface and board the boat?

23 A. The next two divers that appeared on the surface marker was
24 Sean and Mollie.

25 MR. KOFFSKY: I would like to show the witness again

1 Government's Exhibit 2 as well as the jury. This exhibit has
2 already been admitted.

3 BY MR. KOFFSKY:

4 Q. So, earlier we talked about kind of where you're stationed
5 as divers are coming back on the vessel. And now I want to
6 talk about that with respect to Mollie and Sean. Please mark
7 on the screen where you were on the vessel when Mollie and Sean
8 approached the vessel to try to come aboard.

9 A. I was in the cockpit (indicating). Right at the X.

10 Q. And please --

11 A. Towards the back of the vessel, back of the cockpit.

12 MR. KOFFSKY: And, just for the record, the witness has
13 marked the back left side of the vessel on the deck.

14 BY MR. KOFFSKY:

15 Q. Where were Mollie and Sean in the water, to your memory?

16 A. They were on their surface marker.

17 Q. Could you see them yet at that point?

18 A. I saw the surface marker first, then I saw Sean appear --
19 we call it "ahead on the marker," and then I saw Mollie appear
20 right next to him.

21 Q. And when you saw them come up and you could see their heads
22 out of the water, how far away from the vessel were they?

23 A. I would estimate about a hundred feet or so, maybe a little
24 more.

25 Q. Did you inform Mr. McCabe that you now saw them?

1 A. I did.

2 Q. And what was the next step as for -- as for picking them
3 up?

4 A. He acknowledged that he also saw the surface marker, and he
5 was maneuvering the boat to go pick them up.

6 Q. Okay. And as the vessel got close to Mollie and Sean, how
7 close did the vessel get to Mollie and Sean, as you're watching
8 them, as you see them in the water?

9 A. They were, once he got the vessel ready to pick them up,
10 probably 10 to 12 feet away from the stern of the vessel.

11 Q. Okay. And if you could tell the jury -- well, before we
12 get there.

13 How were you -- how were you communicating with Mollie and
14 Sean when they're 10 and 12 feet away from the vessel?

15 A. As the vessel approaches the divers, we use a stop hand
16 (indicating), the palm of the hand is always out, and we
17 instruct the divers not to approach the vessel, do not approach
18 the vessel.

19 Q. And why do you do that?

20 A. Because the vessel is still maneuvering to get into a
21 position to actually pick them up. It's not safe for them to
22 be near the vessel while it's maneuvering --

23 Q. And --

24 A. -- and in gear.

25 Q. And why is it not safe?

1 A. They could go under the vessel. They could get hit by the
2 vessel. Our visibility would not be good enough for us to
3 maneuver the vessel if they didn't stay away from the vessel.

4 Q. Is there any part of the vessel in particular that poses a
5 danger, in your experience?

6 A. All of the vessel poses a danger to someone in the water
7 next to the vessel, but running gear, of course. The ladder
8 could be also a danger.

9 Q. And could you just explain what running gear is?

10 A. Running gear is the propulsion of the vessel. It would be
11 the propellers --

12 Q. I see.

13 A. -- underneath the vessel.

14 Q. And so, as you have --

15 A. And the shafts is all running gear underneath the vessels.

16 Q. As you have your hand out, telling Mollie and Sean to stay
17 away, what happened next?

18 A. They were floating out there, and Dustin maneuvered the
19 vessel so they would have the ability to swim into the vessel.
20 And once the vessel was in location close enough for them to
21 swim in, Dustin gave me the okay. I started -- you turn your
22 hand this way (indicating) and you're like, "Come on. Swim to
23 the vessel. Swim to the vessel." And you encourage them to
24 swim into the vessel and grab onto the grab bar underneath the
25 swim platform.

1 Q. And just a couple of follow-up questions on that.

2 when Mr. McCabe gives you the okay, as you said, how does
3 he do that? what does he -- what does he say?

4 A. He says, "Okay." And sometimes he says, "Okay. Bring them
5 in."

6 Q. what has to happen, as far as the vessel is concerned, for
7 that to occur?

8 A. The vessel has to be close enough to them to where they are
9 able to swim in those final 10 feet or so. The vessel needs to
10 be in neutral for it to be safe for them to approach the
11 vessel. And the vessel needs to be in a position, where if
12 there is a lot of waves out there, that the waves aren't going
13 to wash them off once they get there.

14 Q. In that moment, was it your understanding that the vessel
15 was in neutral?

16 A. Correct.

17 Q. And you mentioned the waves. what were the waves like on
18 that day?

19 A. 2 to feet -- 2 to 3 feet. Nothing significant that I
20 remember.

21 Q. So now let's talk about the moment where Mollie and Sean
22 are at the boat, at the back of the boat. were they able to
23 climb up aboard the boat?

24 A. Mollie and Sean were hanging onto the underside of the
25 rail, closer to where you can see, like, the "U" and the "T"

1 and the "H" on the name of the boat (indicating), holding onto
2 the rail. I was still in position inside the cockpit. Sean
3 lifted up his surface marker, and it was so long it came all
4 the way into the cockpit, so I just grabbed it first and pulled
5 it on in. And they were hanging onto the rail. And then, as I
6 stepped around to come through the tuna door to assist them,
7 before I got out -- all the way out onto the platform, they
8 just disappeared off the back of the boat.

9 Q. From your perspective, could you tell why they disappeared
10 in that moment?

11 A. I could not at that moment. I had never seen -- I have
12 seen plenty of divers wash off. They usually wash off towards
13 the back. You see them where they are, they wash off the back,
14 and, you know, to the side. But they just went all the way
15 under the boat.

16 Q. When did you next -- well, what happened next? When did
17 you see them next?

18 A. I looked to the -- to my side of the boat. Siri was over
19 there. I said, "They have washed off." And then I'm, like, "I
20 can't find them. I can't find them." And then I looked out to
21 the side, and I saw -- the first thing I noticed was -- Mollie
22 always has pink dive gear. Her -- I saw a fin and a mask and a
23 headband that belonged to her. And about that time I saw Sean.
24 He was closer to the back of the boat, but still on the port
25 side of the boat in the water.

1 And I just -- my mind couldn't figure out what had just
2 happened. It just happened so fast. And I put a foot up on
3 the bench right where I was standing and ripped my glasses and
4 my hat off. I put a foot on the boards, which were the wood
5 boards on the outside of the sport fish, and I looked up, I
6 told Justin -- Dustin that, "I'm going in. I'm going in," to
7 make sure he knew that I was also now going to be in the water.
8 Because I had just -- I couldn't find -- I couldn't figure
9 out -- and Siri was already looking down the starboard side
10 towards the bow, and I had already looked down the port side
11 towards the bow.

12 And the second I jumped in, Siri looked at me and she
13 jumped in on the other side also. She went in on the other
14 side to try and figure out what was going on.

15 And about that time, that's when Sean looked over at me and
16 he said, "She's still under the boat. She's still under the
17 boat." And I grabbed the side of the boat and I dove under the
18 boat. I didn't have a mask or any -- any kind of dive gear or
19 anything, but I just free-dove under the boat, and I could see
20 that she was still under the boat.

21 And Siri had already come back to the boat -- or was headed
22 back to the boat, and she started donning dive gear from, I
23 believe it was John's dive gear. I was still in the water at
24 this point. But from what I could tell, she had grabbed his
25 dive gear. And I was, like, okay, that's okay, because he came

1 up so early, I knew he probably still had a ton of air in his
2 tank. And I was -- I was screaming, "I need a mask. I need a
3 mask." And someone gave me a mask and then I looked under
4 there, and I could see that she was wedged in the shafts. Her
5 whole -- from my perspective, what I could see, the back hip
6 was wedged in the shaft on that side of the boat. And Siri
7 came over, and Sean, and they both were -- went under -- back
8 under the boat. I don't know what happened to Sean's mask. I
9 had to give him the mask I had, and then I asked for another
10 mask and the head gear. And they were trying to get her
11 unwedged from the running gear of the boat. And there was
12 blood everywhere when I first jumped in the water.

13 Q. what happened next?

14 A. I stayed on the side of the boat to assist them. The
15 underside of any boat -- to be under a boat in open water, with
16 it going up and down, is also very dangerous. You could get
17 knocked out; you could get cut; anything could happen. I had
18 two divers now, Siri and Sean, under the boat. So I had to
19 stay and assist, and I could also reach one of Mollie's legs.
20 And Siri was -- I could see Siri holding the regulator in
21 Mollie's mouth, which is a standard rescue procedure. And they
22 were furiously trying to get her out of her gear because the
23 gear was jammed in the same running gear. And I was holding
24 onto the side of the boat underneath the water trying to make
25 sure that they didn't need anything.

1 I went back to the boat at some point to try and get a
2 knife and hand off to them. And then I also went back up into
3 the boat to try and find a tourniquet. And I just -- I knew I
4 had a surface marker in my gear that had a long leash on it
5 that could be used as a tourniquet. But it -- it really wasn't
6 able to be used in that situation under the boat at all, with
7 them still trying to get her out from the boat.

8 And then they were able to finally dislodge her. And I
9 still had a hold of that one leg. Every time I was -- I was
10 there, I was holding that leg out of the way so they could see
11 what they were doing while they were under the water. And she
12 just popped out. They finally were able to get whatever it was
13 lodging her, and her -- she popped out. And then they popped
14 out immediately. And I was already swimming her back to the
15 boat. And Siri and Sean were exhausted and shocked. And they
16 were, like, just looking at me. And I said, "Just come back to
17 the boat. I've got her. I've got her. I've got her."
18 Because they were already exhausted.

19 And I swam her to the boat, and she was pulled up into the
20 boat. And then Siri was the second back out of the water onto
21 the boat. And I made sure that she was going to get up there
22 because she's the one with some medical experience.

23 And then Sean boarded, back up the ladder, to the boat.
24 And they were working on Mollie. And I was starting to come
25 back up the ladder, and I think I got halfway up the ladder and

1 looked out, and I saw Mollie's gear floating out there. So I
2 just turned really quick, swam, grabbed the gear, pulled the
3 gear to the back of the boat, and then someone lifted the gear
4 up into the back of the boat. I don't even know, maybe it was
5 John. I don't know. It had to have probably been John, but I
6 don't remember at this point at all.

7 And then I got up on the boat and started assisting with
8 counting for CPR and trying to apply pressure to the wound on
9 her leg, on her -- towards her inner thigh area.

10 Q. As Mollie is on the deck -- you just mentioned a wound.
11 what were the nature of the wounds that she suffered?

12 A. She had deep slashes on the lower half of her body that I
13 could see at that point.

14 Q. Were there -- was there one or more than one?

15 A. There was more than one.

16 Q. From your perspective, what caused those wounds?

17 A. It looked like propeller strikes to me.

18 Q. Was she bleeding at that point when she was on the deck?

19 A. I was holding pressure to what -- at that point I
20 could -- thought was the largest wound. And I did look at one
21 point and picked the towel up, and there was just barely any
22 blood from a very large deep wound in her leg.

23 Q. You talked about assisting with CPR. Was Mollie responsive
24 to the CPR at all?

25 A. She was not. She was blue. Her lips and everything were

1 blue.

2 Q. Were you able to use a first aid kit as you tried to handle
3 the situation?

4 A. No.

5 Q. Did you know of a first aid kit on the vessel?

6 A. I did not know if one had been on there.

7 Q. What was Mr. McCabe doing during this process?

8 A. He was up at the helm. And we were waiting on the
9 Coast Guard. He had called the Coast Guard and they were
10 sending some -- a Coast Guard cutter out to help.

11 Q. How long did it take for the Coast Guard to arrive, if you
12 had to estimate?

13 A. Seemed like a very long time to me. Maybe 20 minutes or
14 more.

15 Q. At any point was Mollie responsive at all to your efforts
16 to save her?

17 A. No.

18 Q. Ms. Odom, I'm going to show you, as well as the jury,
19 what's already been admitted into evidence as Government's
20 Exhibits 38, 39, 44, 45, 47 through 50. These are a series of
21 photographs that I'm going to show you one after the other.

22 This is Government's Exhibit 38.

23 MR. KOFFSKY: And, Your Honor, I will just mention each
24 one as it shows onto the screen for the record.

25 This is Government's Exhibit 39. Now for Government's

1 Exhibit 44. And now for Government's Exhibit 45. Government's
2 Exhibit 47. Government's Exhibit 48. Government's Exhibit 49.
3 Government's Exhibit 50. And I will have Government's
4 Exhibit 50 taken off the screen.

5 BY MR. KOFFSKY:

6 Q. Ms. Odom, do those photographs depict what you saw when you
7 were trying to assist Mollie on the deck of the Southern
8 Comfort?

9 A. I could see multiple lacerations, and I particularly
10 remember several of them. Several of them I also could not see
11 because she still had a wetsuit on. So I could not see all of
12 those. But the ones I was trying to hold pressure on were
13 exposed, and it was some of the worst ones.

14 Q. I see.

15 when you arrived -- or when the Coast Guard arrived, what
16 happened next?

17 A. When the Coast Guard arrived, they had trouble positioning
18 their boat to the side of our boat. And I grabbed a boat hook
19 and latched it onto the railing or part of their vessel and
20 held them, front quadrant of their vessel to our rear -- rear
21 quad on the port side, to enable someone to be able to board
22 our boat.

23 Q. And after the Coast Guard boarded the vessel, was an effort
24 made to take the Southern Comfort back to -- back to port?

25 A. Yes. As soon as they boarded, CPR continued and we all

1 headed in as quickly as possible.

2 Q. And without -- you know, just generally when you got back
3 to the port, what happened once you all arrived there?

4 A. Emergency crews were already there. Emergency crews
5 boarded the boat. I was trying to assist to get us tied up
6 because we -- our dock lines were back at our dock. And there
7 was some dock lines available. The Coast Guard assisted with
8 some dock lines.

9 And Dustin held the boat to the dock until the emergency
10 crews were able to get on and we were able to secure the boat.

11 Q. And just, generally speaking, did an investigation occur at
12 that point after that?

13 A. It did.

14 Q. After March 29, 2020, did you ever go scuba diving with
15 Mr. McCabe again?

16 A. I did not.

17 Q. Did you continue to frequent the area as a diver as a
18 deckhand?

19 A. Not on dive boats.

20 MR. KOFFSKY: Okay. Just a moment, Your Honor.

21 No further questions. Thank you.

22 THE COURT: Cross-examination.

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

24 ///

25 ///

1 CROSS-EXAMINATION

2 BY MR. O'SULLIVAN:

3 Q. Good afternoon, Ms. Odom.

4 A. Good afternoon.

5 Q. I just have a couple of follow-up questions to what the
6 government asked you.

7 After this incident, you gave a statement to a Fish and
8 wildlife investigator on March 29th at about 1:00 p.m.?

9 A. They issued us a handwritten form to fill out. And then
10 there was a -- I would consider it a formal interview where it
11 was several different agencies.

12 Q. Do you remember, the day after the incident, giving a
13 formal interview with a couple of different agencies under
14 oath?

15 A. The day after --

16 Q. Yes.

17 A. -- the incident?

18 Q. Or the day of the incident.

19 A. I remember doing it the day of the incident.

20 Q. At about 1:00 p.m.?

21 A. (Nods head.)

22 Q. You gave a statement --

23 A. That was the day of the incident.

24 Q. Correct.

25 A. I believe.

1 Q. Okay. The day of. Okay.

2 Now, Siri was also a deckhand; correct?

3 A. Correct.

4 Q. Was she considered, like, the main deckhand or the most
5 senior deckhand?

6 A. She -- I considered her the most senior deckhand because
7 she was there when I began working on the boat.

8 Q. Okay. And she's also trained as an EMT; correct?

9 A. That was my understanding.

10 Q. Okay. So the seas were about, you testified, 2 to 3, 2- to
11 4-foot seas?

12 A. Seemed 2 to 3 to me.

13 Q. 2 to 3 to you, okay.

14 And when you waved the divers back onto the boat, you
15 believed the boat was in neutral; correct?

16 A. Correct.

17 Q. And you can tell, based on your lifelong experience of
18 boating, that you hear the engine engaged if it was in gear;
19 correct?

20 A. Correct. I -- I should have heard the engine in gear.

21 Q. And you did not hear the engine in gear?

22 A. I do not remember hearing the engine in gear.

23 Q. And if the engine was in gear, it would give -- the boat --
24 the vessel would give off a little bit more exhaust than it
25 would in neutral; correct?

1 A. It would.

2 Q. Because it would be burning more gas and --

3 A. Correct.

4 Q. -- expelling more exhaust; correct?

5 So when you waved the divers in, you believed, in your
6 mind, that the boat's in neutral?

7 A. When the divers were waved in, I believed the boat was in
8 neutral, and I believed the boat was in neutral when they were
9 holding onto that rail.

10 Q. Okay. And you would not have waved them in, of course, if
11 the boat was not in neutral?

12 A. Correct.

13 Q. Okay. And at the point that you're waving them in, you're
14 able to see Captain McCabe on the flybridge; correct?

15 A. My back is to the captain at that point. I'm focused on
16 the divers in the water (indicating).

17 Q. Okay. Did -- at any point while the -- while the divers
18 were within like, say, that 10-foot range, did you look at the
19 captain at all?

20 A. When he said, "Okay," I would have looked back.

21 Q. Okay. When he says "okay," he kind of physically steps
22 away from the controls; correct?

23 A. I don't know that one way or the other.

24 Q. Okay. In the statement that you made, do you recall
25 telling Investigator Fowler that a wave washed the divers away?

1 A. I said there was a wave that came, like, diagonally across
2 the swim platform.

3 Q. And that's the point that they went under the boat, when
4 the wave washed them off, do you recall saying that?

5 A. The wave came at the same time that they went under the
6 boat.

7 Q. Okay.

8 A. But they didn't wash off in the direction that the wave
9 went across the swim platform.

10 Q. So in your statement to Investigator Fowler, you never said
11 the wave washed them off the boat?

12 A. I said there was a wave that came across the swim platform
13 at the moment that I was stepping out of the cockpit, and
14 that's when they just disappeared.

15 Q. Okay.

16 A. I don't know why -- what happened in that moment.

17 Q. Okay.

18 A. They just -- it was something I have never seen before.

19 Q. And in your experience as a boat -- now a boat captain and
20 as a divemaster, can props on a boat spin when the boat is in
21 neutral?

22 A. The current can make them spin slowly.

23 Q. So I'm going to ask you, do you know what the word
24 "freewheeling" means?

25 A. That would be an incident -- I do believe that would be if

1 the props were continuing to spin without, say, a gear engaged
2 correctly.

3 Q. If a current is pushing a boat and the boat is in neutral,
4 the props would be spinning; correct?

5 A. Correct.

6 MR. O'SULLIVAN: Okay. I don't have any other
7 questions for you, Ms. Odom. I thank you for your time, ma'am.

8 MR. KOFFSKY: Very briefly on redirect, Your Honor.

9 REDIRECT EXAMINATION

10 BY MR. KOFFSKY:

11 Q. Hello again, Ms. Odom. I just want to follow up.

12 You were asked on cross-examination about you believing
13 that the vessel was in neutral at the time of the pickup. And
14 you testified about you don't recall hearing the engine being
15 particularly loud.

16 Did you also rely on Mr. McCabe's operation of the vessel,
17 in believing that it was in neutral?

18 MR. O'SULLIVAN: Objection. Outside the scope.

19 THE COURT: Overruled. Please answer the question.

20 THE WITNESS: Thank you.

21 Yes. He is the only one that can tell us that it's in
22 neutral. He is the captain.

23 MR. KOFFSKY: No further questions.

24 THE COURT: Thank you, Ms. Odom. You may be excused.

25 THE WITNESS: Thank you.

1 THE COURT: Mr. Keller, are you prepared for your next
2 witness or do you need a few moments to gather him or her?

3 MR. KOFFSKY: Your Honor, I believe we're ready.

4 THE COURT: Okay, then. Let's call in the next witness
5 please and ensure that moving door is open for him. Thank you.

6 MR. KOFFSKY: Your Honor, the government calls David
7 Fowler to the stand.

8 THE COURT: All right. Good afternoon, Mr. Fowler.
9 Please walk over here.

10 Remain standing for just a moment while you're sworn
11 in, please.

12 COURTROOM DEPUTY: Please raise your right hand.

13 Do you swear or affirm that the testimony you are about
14 to give is the truth, the whole truth, and nothing but the
15 truth, so help you God?

16 THE WITNESS: I do.

17 COURTROOM DEPUTY: Please be seated and state and spell
18 your first and last name for the record.

19 THE WITNESS: David Fowler. So D-A-V-I-D. F as in
20 foxtrot, O-W-L-E-R.

21 THE COURT: You may begin.

22 FWC INVESTIGATOR DAVID FOWLER,
23 having been sworn, testified as follows:

24 DIRECT EXAMINATION

25 ///

1 BY MR. KOFFSKY:

2 Q. Mr. Fowler, good afternoon. I want to start with some
3 questions about who you are and your background. Where do you
4 work?

5 A. I work for Florida Fish and Wildlife Conservation
6 Commission, Division of Law Enforcement.

7 Q. Is that "FWC" for short, as an abbreviation?

8 A. Yes.

9 Q. Okay.

10 A. Typically we will tell everybody, "I work for FWC."

11 Q. And what does the FWC do, just as a general description of
12 their duties?

13 A. For the most part, we enforce hunting, fishing laws,
14 general conservation, but also boating safety, and, you know,
15 different waterway issues.

16 Q. How long have you worked for the FWC?

17 A. I started with FWC in 2007, so about 18 years.

18 Q. And please tell the jury -- you can just generally
19 summarize here -- but what roles have you had during your time
20 with the FWC?

21 A. I started off as a coastal and marine officer running twin
22 engine boats offshore in the Intracoastal waterways doing
23 fishery inspections and then boating safety and minor boating
24 accidents.

25 In 2011, I promoted to investigator and handled critical

1 incidents which are serious bodily injury and death
2 investigations for hunting incidents, large animal attacks, and
3 then boating accidents or incidents.

4 Q. And if you could just summarize the roles that you -- your
5 responsibilities that you currently have in investigating
6 critical incidents.

7 A. So for critical incident investigator, if I'm lead on an
8 accident, I am the one that's in charge of what's going on with
9 it. So I get notified of the incident. I am coordinating with
10 the officers that are on scene or responding to it to determine
11 where assets need to go, so where the different officers need
12 to go regarding, you know, location of where the boat's going
13 to where the accident actually occurred, where people are being
14 transported to, if there is hospital or injuries involved.

15 In addition to that, we're looking for evidence and
16 photographing the vessels, photographing injuries, doing
17 interviews of witnesses and participants in the incident, and
18 collecting other, you know, evidence as it goes along.

19 Q. And we will talk more about that.

20 I also want to ask about any diving experience that you may
21 have. Do you have scuba diving experience?

22 A. Yes. I -- originally, when I moved down here in '92 to go
23 to school at FAU, I was looking at a marine bio degree. So I
24 got my open water dive certification in '94 and dove pretty
25 heavily through college. And then, you know, that has tapered

1 off as I have gotten older, had kids, and, et cetera.

2 Q. Where would you typically dive when you would go scuba
3 diving?

4 A. Offshore. Mostly in Palm Beach County. A little bit in
5 Broward or the Keys.

6 Q. And about how many scuba dives do you think you have done
7 cumulatively?

8 A. I wasn't keeping track, but hundreds.

9 Q. Okay. And you mentioned being familiar with the Palm Beach
10 area. Do you live in Palm Beach County?

11 A. Yes.

12 Q. Okay. I want to get back to your responsibilities in your
13 role with the FWC. When you're investigating an incident, how
14 often is it that you actually witness the incident itself?

15 A. Hardly ever. As a critical incident investigator, we deal
16 with serious bodily injury and death. So it's -- serious
17 bodily injury is protracted -- you know -- you know, injuries
18 serious enough that it might cause death or loss of limb or
19 permanent disfigurement, something along those lines.

20 So usually it's the patrol officers that show up on scene
21 first or closer, and then once the extent of injuries is
22 determined, they will call in one of the critical incident
23 investigators.

24 Q. And how are you initially made aware of an incident like
25 this occurring?

1 A. Typically I get a phone call or I'm contacted over the
2 radio by dispatch.

3 Q. And where is your office that you actually work from?

4 A. I work out of our West Palm office, off of Northlake and
5 Beeline.

6 Q. And if you get a call like this, do you have to respond to
7 a scene?

8 A. Yes.

9 Q. I see.

10 with regard to these types of incidents involving serious
11 bodily injury or death, how many of these do you think you have
12 investigated in your career?

13 A. Typically I do two to three a year, with assisting on
14 another two to three, so 40 to 50.

15 Q. Is it fair to say they're generally rare occurrences, if
16 it's only two to three a year?

17 A. The -- yes. And there is still enough of them out there,
18 but it's not an everyday occurrence.

19 Q. Okay. I want to focus on an incident that occurred on
20 March 29, 2020. Did you participate in an investigation on
21 that day?

22 A. Yes, I did.

23 Q. Did the incident result in death, do you remember?

24 A. Yes.

25 Q. What was the name of the vessel that was involved in that

1 incident?

2 A. Southern Comfort.

3 Q. Who was the captain of that vessel on that day?

4 A. Dustin McCabe.

5 Q. And can you identify Mr. McCabe by a piece of clothing, if
6 he is in the courtroom.

7 A. It's been a number of years, so I wouldn't be able to pick
8 him out.

9 Q. Okay. Do you know Mr. McCabe at all?

10 A. No, I do not.

11 Q. Did you ever meet him on that day?

12 A. I met him that day, but that was the only -- I was only
13 involved with him with this case.

14 Q. Let me ask another question. Did you meet him before that
15 day at all?

16 A. No.

17 Q. Have you ever seen him since that day of the investigation?

18 A. Just as part of the investigation.

19 Q. Okay. How did you learn about the investigation?

20 A. I was contacted or by our dispatch who notified me of the
21 incident and some of the initial specifics that we had.

22 Q. What did you do when you were contacted?

23 A. I started heading towards -- basically, dispatch had told
24 me there was an incident, and the vessel was heading back to
25 Riviera Beach Marina to meet up with EMS. So I started heading

1 towards Riviera Beach Marina.

2 Q. Did you learn, generally speaking, what had happened?

3 A. Yes. So dispatch gave basic information of a diver struck
4 by a propeller offshore of West Palm. And then as I was
5 en route to it, I contacted some other officers that were
6 either present following the vessel or on scene once they got
7 to Riviera Beach Marina, and learned of a female diver that had
8 been struck by a propeller. She was transported back to
9 Riviera Beach Marina where they met up with EMS, and EMS
10 declared her deceased at that time.

11 Q. Did you see the deceased victim when you went to the scene?

12 A. Yes. She was still on the back of the boat at that point
13 covered by a sheet.

14 Q. And I want to walk through your crime scene investigation
15 on that day. So when you get there, what was the -- what was
16 the first thing you did?

17 A. I met with the patrol lieutenant that was on scene and my
18 investigative lieutenant who had also just arrived.

19 Once I got there, that -- the patrol lieutenant walked me
20 out to the end of the dock where the vessel was tied up, and
21 identified the passengers and crew members that had been on
22 board the vessel, that had been separated out on the dock.

23 Q. Was FWC the only agency that was investigating this
24 incident?

25 A. No. While en route to the incident, I received a call from

1 my investigative captain that said that Coast Guard Marine
2 Safety Detachment, so "MSD" in case I end up abbreviating them
3 later, was also going to be investigating the incident because
4 it involved a commercial dive vessel.

5 Q. And why is that? why does a joint investigation happen in
6 a scenario with a commercial dive vessel?

7 A. Coast Guard regulates the licensing for the captains of
8 those vessels. And, depending on the type of vessel, they do
9 additional inspections along those lines.

10 Q. So for this vessel, for the vessel that was involved in the
11 incident, was it identified by law enforcement on that day as a
12 commercial vessel?

13 A. Yes. It was identified as a commercial dive charter --

14 Q. Okay.

15 A. -- for the day.

16 Q. You mentioned identifying the people who were aboard the
17 vessel. What was done as part of the investigation with those
18 individuals?

19 A. So before my arrival, when I was speaking to the officers
20 on board that were on scene, they removed the passengers and
21 crew from the vessel and had them spaced out so they wouldn't
22 be talking to each other before we could, you know, interview
23 them. And then went ahead and had them start writing out
24 written statements of what had happened that day.

25 Q. Is that a standard technique for an investigation like

1 this?

2 A. Yes.

3 Q. Did you -- did you interact with the vessel at all during
4 the course of your investigation?

5 A. So upon my arrival, once I -- the people had been
6 identified, I looked at the vessel and started taking photos of
7 it, basic overall photos, so that we could identify the vessel.
8 Again, looking for any type of damages that may have been a
9 result of the incident, and then the controls and electronics
10 that were on board it.

11 Q. I want to show you some photographs, a couple in a row
12 here. I want to start by showing the witness and the jury
13 what's already been admitted as Government's Exhibit 2.

14 Mr. Fowler, what does this show?

15 A. Shows the stern or back of the Southern Comfort, the dive
16 vessel involved.

17 MR. KOFFSKY: Okay. And now I want to show the witness
18 and the jury what's been already admitted as Government's
19 Exhibit 53.

20 BY MR. KOFFSKY:

21 Q. And what does this show, Mr. Fowler?

22 A. This shows the lower deck area of Southern Comfort where
23 the -- you can see where the benches were set up for the dive
24 gear and the divers to get ready before they went into the
25 water.

1 Q. Do you remember whether there was an interior of the
2 vessel?

3 A. Yes. This type of vessel does have a salon area and a
4 living area.

5 Q. Do you recall whether you entered into that part of the
6 vessel during your investigation?

7 A. Very briefly. It wasn't part of the main investigation.

8 MR. KOFFSKY: Okay. I would like to show the witness
9 and the jury what's already been admitted as Government's
10 Exhibit 66.

11 BY MR. KOFFSKY:

12 Q. What does this show?

13 A. This shows the salon area of the vessel.

14 MR. KOFFSKY: Okay. And I would now show the witness
15 and the jury Government's Exhibit 31. It's already in
16 evidence.

17 BY MR. KOFFSKY:

18 Q. What does this photograph show?

19 A. These would be the helm controls up on the flybridge. So
20 you have the wheel that turns the rudders, and then throttle
21 and shift levers on both sides of the wheel.

22 MR. KOFFSKY: Now showing the witness and the jury
23 what's already admitted as Government's Exhibit 32.

24 BY MR. KOFFSKY:

25 Q. And what does this photograph show?

1 A. This is a Furuno GPS and radar unit. It was mounted above
2 the helm area.

3 Q. Is this device significant to your investigation?

4 A. Yes. These devices are used by boaters to track where they
5 have been or where they're going, kind of like a map, so they
6 could put in wave points where they could -- you know, for
7 certain dive points, dive positions that they want to go to.
8 Or it will show track lines of where they have been before, so
9 that if -- say they're going through a shallow area and there
10 was a narrow channel, they would know where that channel was.

11 And these do record that information, so it is something
12 that we would obtain to show what that vessel did that day.

13 Q. And I'm going to ask you more about that in a minute.

14 MR. KOFFSKY: Now, showing the witness and the jury
15 what's already been admitted as Government's Exhibit 33.

16 BY MR. KOFFSKY:

17 Q. And can you tell what that shows?

18 A. That would be the Garmin GPS unit. That was also mounted
19 above the helm controls.

20 Q. And you mentioned that you -- that these devices can track
21 the position of a vessel, and that typically during an
22 investigation you would try to obtain that data. Did you do
23 that in this investigation?

24 A. Yes. Typically with this type of data it requires either a
25 warrant or permission or consent from the owner of the vessel.

1 So I did speak to Mr. McCabe, and he gave permission to search
2 on that. I had a signed form for that. And then we had a --
3 our consultant come out and download those.

4 Q. And do you recall the consultant that you used during this
5 investigation?

6 A. His name is Paul Alber with Alber Consulting.

7 Q. Why do you rely on a consultant?

8 A. It's a third party, so non-biased. So there is nothing
9 that -- you know, no question comes up as to either how the
10 data is interpreted or how it was obtained.

11 Q. Is that a typical step to take in these types of
12 investigations?

13 A. Yes.

14 MR. KOFFSKY: Okay. Now showing the witness and the
15 jury what's already been admitted as Government's Exhibit 68.

16 BY MR. KOFFSKY:

17 Q. What does this show, Mr. Fowler?

18 A. This would be the location for the lower throttle and shift
19 controls or, you know, transmission controls for this vessel.

20 Q. And what did you ultimately learn about -- about these
21 controls during your investigation?

22 A. So through the course of the investigation, I learned that
23 Mr. McCabe had removed these controls. They are located on
24 that lower deck area where the divers are, just outside the
25 salon and can be used to control the forward and backwards

1 motion of the vessel.

2 And I was informed that they were removed so that nobody
3 could accidentally or intentionally mess with those while
4 divers were in the water.

5 Q. You mentioned that you had been made aware of the general
6 nature of the incident and what happened to the victim. Did
7 you see any of the victim's gear that was used during your
8 investigation?

9 A. Yes. After -- or after a couple of the interviews, we
10 identified the victim's dive gear, and then came back out and
11 it was pointed out to us, and reviewed those for any type of
12 damage or, you know, markings on that dive gear.

13 MR. KOFFSKY: I'm now going to show the witness and the
14 jury what's already been admitted into evidence as Government's
15 Exhibits 53 through 57. And I will announce them as they
16 appear on the screen in order.

17 This is Government's Exhibit 3.

18 BY MR. KOFFSKY:

19 Q. Mr. Fowler --

20 THE COURT: 3 or 53?

21 MR. KOFFSKY: I'm sorry. This is Government's
22 Exhibit 53.

23 BY MR. KOFFSKY:

24 Q. Mr. Fowler, I believe you already saw this, but just for
25 the record, what does Government's Exhibit 53 show?

1 A. The lower deck area, showing the dive gear for where
2 the -- the divers had either stored it, or the seats or benches
3 where they would put it on before going in the water.

4 MR. KOFFSKY: Now showing the witness and the jury
5 Government's Exhibit 54.

6 BY MR. KOFFSKY:

7 Q. And do you know what this shows?

8 A. Yes. This is the dive gear that was identified as
9 belonging to the victim. We looked it over and could not find
10 any type of visible damage to that dive gear.

11 MR. KOFFSKY: Now showing the witness and the jury
12 Government's Exhibit 55.

13 BY MR. KOFFSKY:

14 Q. What does Government's 55 show?

15 A. These are the dive fins that she was wearing at the time of
16 the incident. And this one does have a distinctive cut on the
17 fin, which is a typical curve slice that we usually see from a
18 propeller.

19 Q. Now showing Government's Exhibit 56. And what does
20 Government's Exhibit 56 show?

21 A. This is that -- the distinct curved slice.

22 Q. And now Government's Exhibit 57. And what does this show?

23 A. This is the strap that goes to the back of the fin. That
24 was either severed or cut. It's a result of the incident.

25 Q. Was any --

1 MR. KOFFSKY: And I will have Government's Exhibit 57
2 removed from the screen.

3 BY MR. KOFFSKY:

4 Q. was part of the investigation -- or did the investigation
5 also include going under the vessel and looking at the
6 underside of the vessel?

7 A. Yes. We called out our dive team. So FWC has a dive team
8 to do underwater surveillance and, you know, surveys of
9 incidents like this, or recovery of evidence that's under
10 water. So we did have them come out. Two of our divers did go
11 in the water to photograph and, you know, inspect the prop and
12 the bottom of the vessel.

13 Q. And that was done in this case?

14 A. Yes.

15 Q. Is that a standard practice in this type of investigation?

16 A. Yes. If it's -- involves anything that's under water that
17 can't be easily removed from the water or loss of evidence,
18 you know, from sinking, we do call our dive team for that.

19 Q. Was anything found, any item found during that part of the
20 investigation?

21 A. Yes. The divers found the black wetsuit material wrapped
22 up in the port side shaft and prop of the vessel.

23 MR. KOFFSKY: And I'm now going to show the witness
24 what's already been admitted into evidence as Government's
25 Exhibit 108.

1 This was a physical exhibit, Your Honor. May I
2 retrieve it and approach the witness?

3 THE COURT: Yes, you may.

4 MR. KOFFSKY: Approaching the witness, Your Honor.

5 BY MR. KOFFSKY:

6 Q. And, Mr. Fowler, please identify for the record what is
7 Government's Exhibit 108.

8 A. This would be the dive suit material that was cut loose
9 from the prop and shaft of the vessel, and then later,
10 you know, placed into evidence.

11 MR. KOFFSKY: Your Honor, if I may approach the witness
12 to collect Government's Exhibit 108.

13 THE COURT: Yes.

14 MR. KOFFSKY: Thank you.

15 BY MR. KOFFSKY:

16 Q. Now I want to, Mr. Fowler, move to the conclusion of your
17 investigation on the day of the incident, March 29, 2020. So
18 let me ask you this. Did you learn on that day whether the
19 Southern Comfort had had any mechanical issues in the --
20 you know, in the past, right before the day of the incident?

21 A. I didn't hear of anything before that incident, but during
22 the course of the interviews, I learned that the starboard
23 motor did not have reverse.

24 Q. Did you -- did you know whether the vessel -- did you learn
25 on that day -- and I'm asking about the -- the day of the

1 incident in particular. Did you learn that the vessel had run
2 aground the day before?

3 A. No, I did not.

4 Q. Did you learn that there was a passenger on the Southern
5 Comfort the day before who had been injured?

6 A. No.

7 Q. Would those facts have been significant to your
8 investigation?

9 A. Yes.

10 Q. And why is that?

11 A. It would have brought further question into the state of
12 the mechanics of the vessel. And would have led to a little
13 bit further investigation into the motors and transmissions.

14 Q. Did you learn where Mr. McCabe lived when you were
15 investigating the scene on that day?

16 A. Yes. When I had originally asked him for permission to
17 search the vessel, Mr. McCabe told me that he had been -- he
18 was now living on the vessel since he had separated with his
19 wife. And he brought that up again a couple of other times
20 when I was discussing it with him.

21 Q. Was that fact that he lived on the vessel significant to
22 your investigation?

23 A. Yes.

24 Q. And why is that?

25 A. Typically for a boating accident, we will seize the vessel

1 so that we have the chance to go back -- you know, once it's
2 placed into evidence, nothing has changed on it since the time
3 of the incident. So we will seize the vessel so that we have
4 that chance and ability to go back and do further inspections
5 of parts and pieces on it, as further information comes up.

6 Q. And was the vessel seized in this case?

7 A. No, it was not.

8 Q. And why is that?

9 A. Based on the time of day -- so it was a Sunday after 6:00,
10 so all of the marinas and mechanics that would have been able
11 to look at or service this type of vessel were already closed;
12 the fact that Mr. McCabe was living on the vessel, so it was
13 his residence. And it's kind of hard to take somebody's home
14 away from them. And then, finally, and kind of what sealed us
15 not seizing the vessel was the boat was operated after the
16 incident.

17 Q. And what do you mean by that?

18 A. So when Coast Guard made it out to the scene of the
19 incident where they were actively trying to save Ms. -- the
20 victim's life, Coast Guard decided it was too rough offshore
21 for them to transfer her to their vessel, and so told
22 Mr. McCabe to operate his vessel back into the marina.

23 By operating that vessel, he has now changed the
24 transmission and engine from the time of the actual incident.
25 So anything could have either happened to it in that resultant

1 rush to the marina, or just the fact that he touched the
2 controls again has altered what it was at the time of the
3 incident.

4 Q. And does that change -- would that -- how does that affect
5 your investigation? why is that important?

6 A. Because any -- like I said, at any point, any question --
7 you know, anything we found broken after that point could have
8 been brought into question as to when exactly that breakage or
9 malfunction occurred.

10 So, with that question being -- and, like I said, the time
11 of day and, you know, trying to take away Mr. McCabe's house,
12 it was determined just to release the vessel.

13 Q. Was the investigation eventually transferred to the
14 Coast Guard in this case?

15 A. Yes.

16 MR. KOFFSKY: Your Honor, just a brief moment.

17 BY MR. KOFFSKY:

18 Q. And just one more follow up on that last point.

19 why was the investigation transferred to the Coast Guard?

20 A. It was determined that they had -- basically, that the
21 charges were more pertinent to Coast Guard.

22 MR. KOFFSKY: Okay. No further questions, Your Honor.
23 Thank you.

24 THE COURT: Cross-examination.

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

1 CROSS-EXAMINATION

2 BY MR. O'SULLIVAN:

3 Q. Good afternoon, sir.

4 A. Good afternoon.

5 Q. Do you go by "investigator" now or "Officer Fowler"?

6 A. Investigator.

7 Q. Investigator.

8 Okay, Investigator, as part of your investigation you
9 authored a 60-page report; correct?

10 A. Correct.

11 Q. And that report is titled "Boating Incident Involving a
12 Fatality"; correct?

13 A. Correct.

14 Q. Okay. And in that report you memorialized basically
15 everything that you did in the investigation; correct?

16 A. Yes.

17 Q. And that includes dozens of interviews?

18 A. It was close to a dozen, yes. I don't know how many
19 specifically, but --

20 Q. A lot of interviews?

21 A. Yes.

22 Q. Most of the relevant parties you have interviewed; correct?

23 A. Correct.

24 Q. And at some point during the investigation some of those
25 relevant parties were also interviewed by Agent King; correct?

1 A. I do not know of what interviews he did.

2 Q. Are you aware that some of the witnesses or people that
3 were involved in the case were interviewed by more than one
4 investigator?

5 A. Yes.

6 Q. Okay. You initially met Mr. McCabe for the first time on
7 the 29th of March 2020; correct?

8 A. Correct.

9 Q. And is it fair to say that he was completely cooperative
10 with you on that date?

11 A. Yes.

12 Q. Okay. I think you testified earlier about what's called a
13 permission to search.

14 A. Correct.

15 Q. He voluntarily -- he voluntarily signed that; correct?

16 A. Yes, he did.

17 Q. And that was for you to gather all of the historical data
18 from his Furuno and his Garmin GPS machines?

19 A. Yes, it was.

20 Q. He didn't ask for a lawyer, did he?

21 A. No, he did not.

22 Q. Okay. He could have requested a lawyer and "lawyered up"
23 as they say on television; right?

24 A. Yes.

25 Q. He could have made you try to get a warrant for that

1 information; correct?

2 A. Yes.

3 Q. But, again, he voluntarily said, hey, you can have whatever
4 you need on the boat?

5 A. Except for he mentioned about having lived on the vessel,
6 so...

7 Q. He didn't preclude you from looking in his living quarters,
8 did he?

9 A. No, he didn't specifically say that. I explained to him
10 that we were not looking in the living quarters.

11 Q. So you didn't even want to look in the living quarters?

12 A. No.

13 Q. But he made the whole boat available to you?

14 A. Yes.

15 Q. And he made his crew available to you while you were
16 investigating on the 29th?

17 A. Yes.

18 Q. Okay. And you learned, during the course of your
19 investigation, that as soon as this incident happened,
20 Captain McCabe called the Coast Guard immediately; right?

21 A. Yes.

22 Q. And that's proper protocol, is when there is an incident
23 like this, the first thing you need to do is get the
24 Coast Guard involved?

25 A. Yes.

1 Q. Or some other agency?

2 A. Notify some sort of law enforcement, yes.

3 Q. And he did that immediately; correct?

4 A. Correct.

5 Q. He didn't try to hide the incident or spend any --

6 A. Not this incident, no.

7 Q. Okay. You learned during the course of your investigation
8 that the crew that Mr. McCabe had assembled, they had been
9 together for a couple of years?

10 A. Yes.

11 Q. And that they told you that they had good communication
12 throughout their previous dive trips?

13 A. Yes.

14 Q. Okay. And you also interviewed a young lady by the name of
15 Kimberly K. Odom?

16 A. Yes, I did.

17 Q. Okay. And you learned from that interview that the
18 transmission of the boat was in neutral during the time that
19 the divers were entering the boat?

20 MR. KOFFSKY: Your Honor, I would object. This is
21 information based on hearsay.

22 THE COURT: Sustained.

23 BY MR. O'SULLIVAN:

24 Q. Now, the dive suit material that we saw that the government
25 just showed you, that was physically cut from the props;

1 correct?

2 A. Cut from the shaft and the props, yes.

3 Q. So that that material, that was not in the exact condition
4 it was when the incident happened? It had to be removed
5 using -- using scissors of some sort; correct?

6 A. Yes.

7 Q. So that material, again, is not in the condition that it
8 was when the young lady passed; correct?

9 A. Correct.

10 Q. It's in a different form, in a different shape?

11 A. Yes.

12 Q. It was cut up; correct?

13 A. Yes. And it was cut off of the props and shaft.

14 Q. Okay. We talked a little bit about the lower level
15 transmission and controls being removed.

16 A. Yes.

17 Q. And I think that you testified that because divers,
18 you know, public divers, you know, maybe novices were going to
19 be on the boat, those were removed so that they didn't play
20 with them, engage them?

21 A. That is the information that I learned from Mr. McCabe.

22 Q. Okay. Just common sense would tell you, if you have
23 controls on the flybridge, which is up top, and then the
24 cockpit below, if you remove the controls from below, there is
25 going to be limited access to who can move the boat; correct?

1 A. Correct.

2 Q. So that way you don't have amateur divers, you know,
3 accidentally or purposefully, you know, putting the boat in
4 gear or giving the boat power?

5 A. I believe that was the intent.

6 Q. So it's not a bad thing that those things were removed;
7 correct?

8 A. No.

9 Q. And, actually, because this boat was being used for diving,
10 it actually made the boat more safe to have only the captain up
11 top with limited access to have control of the boat?

12 A. Can you rephrase that for me, what you're asking there.

13 Q. Because this boat -- generally, this boat would be used for
14 fishing, correct, a sport fish?

15 A. Correct.

16 Q. And because this particular boat was modified for divers,
17 Mr. McCabe -- or someone removed the lower controls; correct?

18 A. Correct.

19 Q. And that would probably make the boat more safe because
20 less people had access to the power and the transmissions of
21 the boat. Only the captain had access?

22 A. The only person with access to it would be the person
23 behind the helm --

24 Q. Okay.

25 A. -- on the flybridge.

1 Q. Now, you testified that you didn't seize the vessel because
2 it was Sunday night, among other things?

3 A. Among other things.

4 Q. And you testified that that was because marinas were
5 closed, et cetera?

6 A. Correct. And based on our understanding of the -- you
7 know, or lack of knowledge of any other issues with the
8 vessel --

9 Q. At that time.

10 A. -- at that time, it was not an issue.

11 Q. I mean, you could have seized it if you wanted to 24/7;
12 correct? You have that power?

13 A. Correct, yes.

14 Q. It doesn't matter if it's Sunday, at 3:00 in the morning,
15 you could still seize the vessel; right?

16 A. Yes, as long as there is enough cause to do that.

17 Q. And up to this point, Mr. McCabe was completely
18 cooperative; right?

19 A. Correct.

20 Q. So you had no reason to believe, or you never even asked
21 him to say, Hey, if we seize your vessel, is he going to
22 challenge me on that? You never even got to that point;
23 correct?

24 A. No.

25 Q. Okay. So it is Sunday night at 5:00, but you could have

1 seized the vessel and had it inspected Monday morning at 9:00;
2 right?

3 A. Correct. As long as we had the cause and belief that there
4 was something else that needed to be checked.

5 Q. Or his permission. He could have said, Yes, you can have
6 my vessel and you can do a mechanical survey on it and you can
7 tell a jury in five years everything that's gone on with this
8 boat?

9 A. Yes.

10 Q. And that never happened in this investigation?

11 A. Because of the -- there was not a reason for it based on
12 the information we had at that time.

13 Q. Well, a young lady passed away on the boat that day;
14 correct?

15 A. Correct.

16 Q. And it was pretty obvious that the boat was the cause of
17 the death to some degree?

18 A. To some degree, but we did not know what the -- what that
19 cause was because there was no --

20 Q. So wouldn't it make sense --

21 A. Mr. McCabe had stressed -- or learned through our
22 discussions with Mr. McCabe that there was no issues with the
23 motors.

24 Q. So you took him at his word?

25 A. Yes.

1 Q. Okay. You had no reason to believe that he was being
2 untruthful to you in any way?

3 A. Correct.

4 Q. Had you wanted to, you could have seized the vessel and had
5 it tested -- all the systems tested?

6 A. Yes, as long as there was cause for that.

7 Q. But the only things that were essentially tested were the
8 GPS by I think you said Alber Consulting?

9 A. Alber Consulting.

10 Q. Okay.

11 A. And then the props and the shafts and the -- the bottom of
12 the vessel were inspected.

13 Q. Did you ever take pictures of the props or the shafts of
14 the bottom of the vessel?

15 A. I personally did not because I'm not a diver but our dive
16 team did.

17 Q. Okay. Did you incorporate those pictures as part of your
18 investigation?

19 A. Yes, I did.

20 Q. Okay. When you were at the North Palm Beach marina, did
21 you even start the boat at all?

22 A. I was not at North Palm Beach marina.

23 Q. I'm sorry. Riviera Beach Marina?

24 A. No, we did not.

25 Q. Did you attempt to even put the boat in gear at all?

1 A. No. Because, like I said, the boat had already been
2 altered and had been placed in gear and driven in from the
3 point of the incident.

4 Q. Well, it would be unrealistic to do an inspection of the
5 boat several miles offshore; correct? I mean, right?

6 A. So our typical procedure would be to tow that vessel back
7 to the marina.

8 Q. Okay. So it would just be unrealistic that, if there is a
9 boating incident, whether it's minor or serious or, in this
10 case, you know, the ultimate, a fatality, the boat is going to
11 move some; correct? I mean, it's floating out on the water?

12 A. Correct. But we would have the motors turned off and the
13 boat would be towed from that location.

14 Q. I mean, that's in a perfect world, living in a vacuum;
15 correct?

16 A. Most of our incidents, we tow the vessels.

17 Q. Okay. But in this incident, there was a young lady who
18 was --

19 A. Correct.

20 Q. -- losing her life, so the captain made the decision, I
21 need to get her in land to medical attention immediately;
22 right?

23 A. Correct. Coast Guard informed him to operate the vessel
24 back to the marina.

25 Q. The Coast Guard told him to move the boat?

1 A. Yes.

2 Q. If he just sat there doing nothing, we probably would be
3 having a different conversation; right?

4 A. I don't understand the point of your question there.

5 Q. I mean, the point is this young lady needed medical
6 attention, my client called the Coast Guard immediately,
7 followed their instructions, and brought her to the nearest
8 marina to get her that help as quick as possible; correct?

9 A. Correct.

10 Q. You could still have the boat inspected, and perhaps,
11 you know, someone down the road, maybe a defense attorney like
12 myself, would say, hey, the boat moved, it's not in the same
13 condition, but at least you would have had a baseline report of
14 what was going on with these systems; correct?

15 A. At the time of the incident and the time that we were
16 discussing it, it was not a factor that was being considered.

17 Q. Okay. So the transmissions were never tested?

18 A. No.

19 Q. The shafts were never tested?

20 A. No.

21 Q. The propellers were never tested?

22 A. No.

23 MR. O'SULLIVAN: Okay. I have no further questions.

24 Thank you for your time, sir.

25 THE COURT: Redirect?

1 MR. KOFFSKY: Yes, Your Honor.

2 THE COURT: Ladies and gentlemen, we will take a break
3 after this witness.

4 REDIRECT EXAMINATION

5 BY MR. KOFFSKY:

6 Q. Officer Fowler, I want to follow up on a couple of things
7 that were elicited during cross-examination. One of the things
8 you mentioned is that in most of your investigations a vessel
9 is towed. Did I get that right?

10 A. Correct.

11 Q. What do you mean by that? Explain to the jury what happens
12 in a typical scenario.

13 A. So in a typical scenario, an accident occurs, the vessels
14 are -- or officers respond to the location where the incident
15 occurred and then take control of the vessel at that point.
16 The vessel is then towed back to the marina, or boat ramp,
17 where it's then, depending on the size of the vessel, placed on
18 a trailer and removed from the water for additional inspection.

19 Q. And if you contrast that scenario to the scenario in this
20 case, why is it preferable for your investigation to tow a
21 vessel directly from that point out at sea?

22 A. Because at that point, nobody has touched the controls,
23 nobody has altered what condition those things are in. So
24 towing it back gives you as close to the actual, you know,
25 incident as possible, with those controls and that -- mechanics

1 of that vessel.

2 Q. So if an inspection is done of the vessel in that scenario,
3 does that mean -- does that make it more likely that that
4 inspection is more indicative of what the vessel was like at
5 that point?

6 A. Correct.

7 Q. Okay. One of the other things you -- that was talked about
8 on cross-examination was taking Mr. McCabe at his word that he
9 lived on the vessel. Is that something you did during your
10 investigation?

11 A. Yes, I did.

12 Q. Did you have any reason to not believe him about living on
13 the vessel?

14 A. No.

15 Q. And that fact -- why was that fact significant?

16 A. Because as it's his residence, it's his home, it provides a
17 little bit more protection and security under the law for,
18 you know, his residence.

19 Q. And just along the same lines, taking Mr. McCabe at his
20 word, did he ever tell you about the vessel running aground the
21 day before?

22 A. No.

23 Q. So on that day, did you have any idea that that happened?

24 A. No, I did not.

25 MR. KOFFSKY: No further questions, Your Honor.

1 THE COURT: All right. Thank you, Investigator. You
2 may be excused.

3 Ladies and gentlemen, we are going to take a 20-minute
4 break. So we will resume at 2:40.

5 All rise for the jury.

6 (The jury exited the courtroom at 2:19 p.m.)

7 THE COURT: Thank you, sir. You may exit the
8 courtroom.

9 Mr. Keller, what were your scheduling updates?

10 MR. KELLER: Oh, and, yes, I'm sorry, Judge, to have
11 jumped in. So we have been able to accommodate all of our
12 witnesses that we needed to schedule here. The only exception
13 is for a witness who is listed on our exhibit list as
14 Spencer Lord, it's witness number 15, for Cross River Bank. We
15 have been informed that his supervisor, who was present during
16 the witness preps, is available to come in. I have conferred
17 with the defense about it. They don't object to us switching
18 out the witness so that we can call him.

19 And if the Court is amenable to this, what we
20 would -- can do from a travel perspective is that, tomorrow we
21 are scheduled to have seven witnesses present, the following
22 day we can have six present. And then we should be done on
23 Friday morning with one very brief witness who is flying in the
24 night of the 20 -- or in the evening of the 27th, is my
25 understanding, and then our case agent which should be,

1 you know, an hour or so. So if we move at that schedule, then
2 we would conclude on Friday morning.

3 THE COURT: Okay. That seems acceptable to me.

4 Any concerns, Mr. O'Sullivan?

5 MR. O'SULLIVAN: No, ma'am, no concerns. I consulted
6 with Mr. Keller about that, and that's fine.

7 THE COURT: Okay. Do you plan on presenting any
8 testimony? If you're not prepared to answer now, that's fine.
9 I'm just trying to understand what our week number 2 looks
10 like.

11 MR. O'SULLIVAN: I mean, we would make our final
12 decision insofar as Mr. McCabe testifying, but I think it's
13 safe to say that he will.

14 THE COURT: Okay. All right then.

15 Anything further for now, Mr. Keller?

16 MR. KELLER: And just as to week 2, we are going to cut
17 Carter Honesty, who was the witness who was not available until
18 the 3rd. So we think we can rest on Friday.

19 THE COURT: Okay. You're not required to rest, as I
20 said earlier. If you wish to call this witness, you may do so
21 on Monday. We are ahead of schedule, obviously.

22 Anything further before we take our break?

23 MR. KELLER: No, Your Honor.

24 THE COURT: All right.

25 MR. O'SULLIVAN: Judge, may I just address one

1 scheduling issue -- not issue -- just we had expected this
2 trial to take longer. So we really haven't gone over my
3 client's potential testimony.

4 would the Court be inclined to do that Friday afternoon
5 or Monday?

6 THE COURT: Well, Friday afternoon was already going to
7 be a short day due to a court function.

8 MR. O'SULLIVAN: That's right.

9 THE COURT: So I plan on breaking that day around 12:30
10 anyhow, which means you would have that afternoon to prep your
11 client, if necessary.

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

13 THE COURT: All right then. Thank you. We will resume
14 at 2:40.

15 (A recess was taken from 2:22 p.m. to 2:41 p.m.)

16 THE COURT: All right. You may be seated until the
17 jurors come in.

18 Let's call the jury.

19 COURTROOM DEPUTY: Yes, Your Honor.

20 THE COURT: Keeping count, Mr. Keller, are there two
21 more witnesses for today?

22 MR. KELLER: Yes, Your Honor.

23 (The jury entered the courtroom at 2:42 p.m.)

24 THE COURT: All right. Please be seated.

25 Ladies and gentlemen, we are going to resume now. We

1 anticipate two additional witnesses today, so there is a
2 possibility we will break slightly early. I also want to let
3 you know that this Friday will be a half day, which means we
4 will be in session during the morning, approximately until
5 12:30.

6 Just for your awareness, we remain on track or ahead of
7 schedule based on the anticipated schedule I advised you all at
8 the beginning of jury selection.

9 So, with that, please call your next witness,
10 Mr. Keller or Mr. Koffsky -- or Mr. Stiehl. Excuse me.

11 MR. STIEHL: Thank you, Your Honor.

12 Your Honor, the United States would like to call
13 Investigator Jason Willems of the Florida Fish and Wildlife
14 Commission.

15 THE COURT: All right. Mr. Willems, if you could
16 please make your way to the witness stand to be sworn in.

17 Good afternoon, sir. Mr. Creary will swear you in.

18 THE WITNESS: Okay.

19 COURTROOM DEPUTY: Please raise your right hand.

20 Do you swear or affirm that the testimony you are about
21 to give is the truth, the whole truth, and nothing but the
22 truth, so help you God?

23 THE WITNESS: I do.

24 COURTROOM DEPUTY: Please be seated, and state and
25 spell your first and last name, for the record.

1 THE WITNESS: My first name is Jason, J-A-S-O-N. Last
2 name is Willems, W-I-L-L-E-MS.

3 INVESTIGATOR JASON WILLEMS,
4 having been sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. STIEHL:

7 Q. Good afternoon, Investigator Willems, and thank you for
8 being here.

9 A. Thank you.

10 Q. First off, where do you live?

11 A. I live in Indiantown, Florida.

12 Q. And what do you do for a living?

13 A. I'm a law enforcement investigator for the Florida Fish and
14 wildlife Conservation Commission.

15 Q. And can you briefly tell me what the Florida Fish and
16 wildlife Conservation Commission does?

17 A. We enforce the laws of the state, but our core focus is on
18 resource law for fishing, hunting, wildlife, boating, and
19 waterway safety.

20 Q. And how long have you been working there?

21 A. 12 years.

22 Q. And what did you do before becoming an officer with the
23 Florida Fish and wildlife Commission?

24 A. I was in the Navy on submarines, '94 through '98, and then
25 I worked for a submersible company in Jupiter, Florida, for

1 11 years. Owned my own business for a few years before I
2 joined the FWC.

3 Q. And what were you doing for the FWC in March of 2020?

4 A. March of 2020, I was an officer and I was a member of the
5 dive team.

6 Q. And what are your typical duties and responsibilities as a
7 diver for the FWC?

8 A. The divers, we're trained in underwater search and rescue
9 and underwater crime scene investigation.

10 Q. So what kind of incidents would you typically investigate?

11 A. Boating accidents. Retrieve evidence -- or boating
12 accidents where we have to do a search and rescue, anything
13 under water that needs to be documented or retrieved, we would
14 do that.

15 Q. And do you have any diving certifications or training?

16 A. Yes. I was first certified in '93. So 32 years. I was a
17 certified diver, and then with the FWC we were certified cavern
18 divers. We're certified rescue divers. And we also have
19 200 hours of underwater crime scene investigation certificate.

20 Q. Okay. Let's talk about a case where you were called out on
21 March 29th of 2020. Do you remember being called to an
22 investigation on that date?

23 A. Yes, I do.

24 Q. And why were you called to that scene?

25 A. As a member of the dive team, they had evidence that they

1 wanted to document under water on a prop of a vessel.

2 Q. And so what did you do?

3 A. I entered the water and I documented the props on the
4 vessel, and brought the GoPro back up to the surface, showed it
5 to the investigators. We went back down. We documented it
6 again, took some video, took some measurements of the props,
7 video'd that, and then again showed that to the investigators.
8 And then the third time we went down and retrieved wetsuit
9 material from the prop that was entwined in the prop.

10 Q. Okay. I have a few pictures from that day I want to show
11 you, and then we may show you the actual wetsuit itself.

12 MR. STIEHL: I want to show the witness and the jury
13 what has already been admitted as Government's Exhibit 20, and
14 I would like to play that video.

15 (A video and/or audio was played.)

16 BY MR. STIEHL:

17 Q. Now, did you take this video?

18 A. Yes, I did.

19 Q. And can you tell me what you are showing in that video.

20 A. The overall video is just of the props, but also the main
21 focus is on the port prop. You can see the hull. There was
22 rub marks where the algae had been scraped away, and the
23 prop -- the prop itself, the port prop, had been scraped.

24 There was a ding in the prop from hitting something hard,
25 and then the wetsuit material that was caught in the shaft hub,

1 and then in the shaft in front of the propeller.

2 Q. Okay. Let's talk about the scratches first. Can you tell
3 me what those scratches are from?

4 A. I'm not sure exactly what they're from. I'm assuming they
5 were from the diver that got caught in there. But the -- the
6 algae -- normally, if something had happened, the algae gets
7 rubbed away by the -- by something within a day or so. There
8 would have been a film of algae back there already, but it was
9 clean. So just that -- the rubbing and the scratches, that is
10 significant that something happened that day or the day before.

11 Q. And so from your training and experience, what could have
12 caused those scratches?

13 MR. O'SULLIVAN: Objection. Lack of foundation. Lack
14 of predicate.

15 THE COURT: Sustained.

16 You can attempt to build that foundation, Counsel.

17 BY MR. STIEHL:

18 Q. Just tell me a little bit more about what you saw on the
19 bottom of the vessel and what was shown in that video.

20 A. The bottom of the vessel, you could see the -- the rub
21 marks, the algae had been rubbed away by something, probably
22 something that had got caught between the props and the hull
23 and tumbled and was scraping or scratching that algae away.

24 Q. And, again, how recently do you think that could have
25 happened?

1 A. within the day.

2 MR. STIEHL: Okay. And the next thing I want to show
3 the witness and the jury has already been admitted as evidence
4 as Government's Exhibit 21.

5 BY MR. STIEHL:

6 Q. Did you take this picture?

7 A. I did.

8 Q. And can you tell me what is happening in this picture?

9 A. That's my finger pointed at a dent in the prop. The metal
10 on it, I remember it was shiny. It had struck something hard
11 within that day probably, maybe the day before, but...

12 Q. And what --

13 A. Very recent.

14 Q. Thank you.

15 what are these propellers made of?

16 A. Some sort of metal. Usually they're nickel copper blends
17 or a nickel brass. Sometimes they're stainless. But these
18 were painted; I don't think they were stainless.

19 Q. And how could a propeller have gotten a dent like that?

20 A. Hit something hard.

21 MR. O'SULLIVAN: Objection. Speculation.

22 THE COURT: Sustained.

23 Next question.

24 BY MR. STIEHL:

25 Q. So based on your training and experience, was that dent

1 recent?

2 A. Yes, it was shiny metal. There was no algae buildup on it.

3 Q. And from your training and experience, how would that dent
4 have been caused?

5 A. By hitting something hard under power.

6 Q. How can you tell that?

7 A. The -- what do you mean? As far as being under power?

8 Q. Yes.

9 A. If it would have hit something hard, it would have just
10 stopped the propeller, if it wasn't under power. It was
11 engaged.

12 Q. Thank you.

13 MR. STIEHL: I want to show the witness and the jury
14 what has already been marked or what has already been admitted
15 as Government's Exhibit 22.

16 BY MR. STIEHL:

17 Q. And -- did you take that picture?

18 A. I did.

19 Q. And can you tell me what is being highlighted in this
20 picture?

21 A. This picture is showing the wetsuit material that is lodged
22 in the shaft, the port propeller, the left propeller.

23 Q. And, again, from your training and experience, how could
24 that wetsuit have gotten there?

25 A. It was -- the propeller had to be under power and wounded

1 up into the shaft.

2 Q. And what did you ultimately do with that wetsuit?

3 A. We unwound it. I unwound it and retrieved it, brought it
4 up to the investigators.

5 Q. And do you recall how it was getting the wetsuit out of the
6 prop?

7 A. Difficult. It was in there good. It wasn't easy to
8 remove.

9 Q. And why do you think it was not easy to remove?

10 A. Because it was wound under power. The prop was spinning,
11 and once -- when that prop is under power, it's not going to
12 stop. It's going to keep going and wind up whatever in
13 there -- wedged -- wedge it into the shaft.

14 MR. STIEHL: And I want to show the witness and the
15 jury what has already been admitted as Government's
16 Exhibit 108. It's the physical exhibit of the wetsuit.

17 THE COURT: You may approach.

18 MR. STIEHL: Thank you, Your Honor.

19 BY MR. STIEHL:

20 Q. Investigator Willems, can you tell me what this is?

21 A. A black wetsuit.

22 Q. From your recollection, does that appear to be the same
23 wetsuit from the images?

24 A. Yes.

25 Q. And can you tell me what is significant about that wetsuit?

1 A. It's a large amount of wetsuit that was -- from the picture
2 you can see how tightly wound it was around the shaft. So it
3 just proves that the shaft was under power, that it is a lot of
4 force to get it that compressed on the shaft.

5 Q. Thank you, Investigator Willems.

6 MR. STIEHL: Your Honor, I would like to show the
7 members of the jury.

8 THE COURT: You may.

9 (Exhibit published to the jury.)

10 MR. STIEHL: Thank you, Your Honor. I am just going to
11 leave it here, if we have to look at it again.

12 BY MR. STIEHL:

13 Q. I want to show the witness and the jury what has already
14 been admitted as Government's Exhibit 23.

15 Investigator Willems, did you take this picture?

16 A. I did.

17 Q. And can you tell me what is shown in the picture?

18 A. This is me at the forward part of the vessel looking aft,
19 both props. The port prop's on your right with the wetsuit
20 material in it; the starboard prop is on your left. And
21 directly behind that is the dive ladder.

22 Q. And just for those with less of a nautical sensibility, can
23 you say what aft is?

24 A. Aft is the back of the boat, the area where the dive ladder
25 is where the divers would have entered next to the boat.

1 Q. And can you tell me the significance of this picture?

2 A. It just shows that they were boarding the dive ladder
3 there. That's where the incident occurred.

4 Q. Thank you.

5 MR. STIEHL: And I want to show the witness and the
6 jury what has already been marked as Government's Exhibit 24.

7 BY MR. STIEHL:

8 Q. And did you also take this picture?

9 A. Yes, I did.

10 Q. And what can you tell me about this picture?

11 A. Same picture. Just overall picture of the props.

12 MR. STIEHL: Okay. I want to show the witness and the
13 jury what has already been admitted as Government's Exhibit
14 Number 25.

15 BY MR. STIEHL:

16 Q. And did you take this picture?

17 A. I did.

18 Q. Can you tell me what is shown in this picture?

19 A. This is the blade of the port prop, approximately 9 1/2
20 inches.

21 Q. And is it standard practice for you to measure propellers?

22 A. Yes. The investigators requested this, and we measured the
23 prop.

24 Q. Now, why do you take those measurements?

25 A. Probably due to the fact that there may be -- if -- the

1 person that was injured, using this prop, they might have used
2 that to take the measurements of the prop cuts in the
3 individual.

4 MR. STIEHL: And I want to show the witness and the
5 jury what has already been admitted as Government's Exhibit
6 Number 26.

7 BY MR. STIEHL:

8 Q. And can you tell me what is shown in this picture?

9 A. Same port prop, just overall measurement of the total
10 width, approximately 20 inches.

11 Q. Is there anything else pictured here besides the prop?

12 A. The rudder is directly behind the prop that is used for
13 steering of the boat. When the captain turns the wheel left or
14 right, the rudder turns to steer the vessel.

15 Q. Thank you.

16 Is there anything else significant about this picture?

17 A. It also shows the wetsuit material on the cotter key in the
18 front, and then the shaft in front of the propeller.

19 Q. And, quickly, what is a cotter key?

20 A. The cotter key is in the end of the shaft. It's used
21 to -- it goes through the shaft to keep the nut from backing
22 off.

23 MR. STIEHL: And I want to show the witness and the
24 jury what has already been admitted as Government's Exhibit
25 Number 27.

1 BY MR. STIEHL:

2 Q. Did you take this picture?

3 A. I did.

4 Q. And can you tell me what's shown in this picture?

5 A. Same picture. Overall measurement of the prop. Port prop
6 with the wetsuit material.

7 MR. STIEHL: Thank you, Investigator Willems. No
8 further questions.

9 THE COURT: Cross-examination?

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

11 CROSS-EXAMINATION

12 BY MR. O'SULLIVAN:

13 Q. Good afternoon, Investigator.

14 A. Good afternoon.

15 Q. These pictures that we just looked at, they were taken in
16 shore; correct?

17 A. At the dock, yes, sir.

18 Q. Okay. And you're aware that the incident occurred several
19 miles offshore; correct?

20 A. Yes, sir.

21 Q. So necessarily the boat was under power when the wetsuit
22 material was between the shaft and the propeller for several
23 miles; correct?

24 A. Yes, sir.

25 Q. Okay. So the longer -- the longer the distance the boat

1 goes, the more the shaft of the props spin; correct?

2 A. Correct.

3 Q. And the tighter and tighter the wetsuit is going to get?

4 A. Up to a point, yes, sir.

5 Q. So obviously it's not in the same condition -- that wetsuit

6 and its tightness is not in the same condition as it was two

7 miles offshore during the incident; correct?

8 A. Probably not, no.

9 Q. It traveled under power for several miles through

10 conditions; right?

11 A. Well, it got tightened on the shaft to a point and then at

12 some point it's just going to spin -- the shaft is going to

13 spin --

14 Q. But that's --

15 A. -- and that's going to be fixed on the shaft.

16 Q. But it is going to get tighter as you go through conditions

17 under power; correct?

18 A. Up to a point. I don't think it would get tighter. After

19 a certain amount of winding, it just is going to slip on the

20 shaft.

21 Q. Okay. And then this is an older boat; correct? The

22 Southern Comfort was an older boat?

23 A. I believe so, yes.

24 Q. Okay. So it's not unusual to have a ding in a prop in an

25 older boat, is it?

1 A. It's not unusual. But it was -- it was documented because
2 it was recent. It was a new ding.

3 Q. Okay. And it happened within a day, or maybe even less, of
4 the incident?

5 A. Yes.

6 Q. It could have happened from a grounding the day before;
7 correct?

8 A. Could have.

9 Q. Okay.

10 MR. O'SULLIVAN: I don't have any other questions.
11 Thank you, sir, for your time.

12 THE WITNESS: Thank you.

13 THE COURT: Redirect?

14 MR. STIEHL: No redirect, Your Honor.

15 THE COURT: Okay. Thank you, sir. You may be excused.

16 THE WITNESS: Thank you.

17 THE COURT: Please call your next witness.

18 MR. STIEHL: Thank you, Your Honor. The United States
19 would like to call Sean Goodman of the United States
20 Coast Guard.

21 THE COURT: All right. Mr. Goodman, if you could
22 please walk over here, sir, to be sworn in.

23 COURTROOM DEPUTY: Please raise your right hand.

24 Do you swear or affirm that the testimony you are about
25 to give is the truth, the whole truth, and nothing but the

1 truth, so help you God?

2 THE WITNESS: I swear.

3 COURTROOM DEPUTY: Please be seated. State and spell
4 your first and last name for the record.

5 THE WITNESS: Sean Goodman. It's S-E-A-N,
6 G-O-O-D-M-A-N.

7 SEAN GOODMAN,
8 having been sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. STIEHL:

11 Q. Thank you for being here, Mr. Goodman.

12 where do you currently live?

13 A. I live in Tampa, Florida.

14 Q. And what do you do for a living?

15 A. I am a Coast Guard civilian marine inspector.

16 Q. And how long have you worked for or with the United States
17 Coast Guard?

18 A. A little over 27 years.

19 Q. And what do you do for the Coast Guard in your current
20 position?

21 A. A marine inspector for -- I inspect commercial vessels.

22 Q. And what were you doing for the Coast Guard in March of
23 2020?

24 A. I was active duty Coast Guard marine inspector.

25 Q. And by "active duty," what do you mean by that?

1 A. I was active -- active duty in the United States
2 Coast Guard, and I was conducting marine inspections at that
3 time.

4 Q. And what was your military rank?

5 A. I was a chief warrant officer.

6 Q. And so what type of responsibilities did that job entail?

7 A. It was -- basically, you are inspecting all types of
8 commercial vessels from passenger vessels to freight vessels,
9 the gambit of all commercial vessels that are on the water.

10 Q. And what office were you working in?

11 A. I was working out of the marine safety detachment, Lake
12 Worth, which is a subunit of Coast Guard Sector Miami.

13 Q. And what area does the Lake Worth office cover?

14 A. It covers up to around Melbourne, Florida, down to around
15 Lantana, Florida, approximately.

16 Q. In that position did you ever have to stand any sort of
17 duty?

18 A. Yes.

19 Q. And other than that, do you have any other mechanical or
20 engineering experience with the Coast Guard?

21 A. Yes.

22 Q. Can you please explain to me what that is.

23 A. Yes. Prior to becoming a Coast Guard marine inspector, I
24 was a machinery technician for approximately 17 years.

25 Q. And can you tell me what a machinery technician does.

1 A. Basically fixing all type of engineering components on
2 Coast Guard cutters, which are the big ships and small vessels,
3 all types of vessels, and engineering components.

4 Q. And do you know the defendant, Mr. McCabe?

5 A. Yes.

6 Q. Okay. Let's talk about a case where you were called out
7 on -- on March 29th of 2020. Do you remember being called to
8 the scene of an investigation on March 29th of 2020?

9 A. Yes.

10 Q. And why were you called to that scene?

11 A. I was on duty at that time.

12 Q. And what did you do once you got to that scene?

13 A. I had -- when I arrived, I discussed with -- I
14 believe there were -- sheriffs and FWC were on scene prior to
15 my arrival, and discussed where they were at as far as
16 investigating what -- the situation.

17 At that time I believe I issued Mr. McCabe a -- basically,
18 a sheet of paper where you would document a statement on.

19 Q. And what did you find had occurred at that scene?

20 A. I had found out that there was a death involved on the
21 vessel during a scuba diving.

22 Q. And did you continue to investigate the incident beyond
23 that day?

24 A. Yes.

25 Q. And in the days after the incident, did you communicate at

1 all with the defendant, Mr. McCabe?

2 A. Yes.

3 Q. Do you know what your communications were about?

4 A. I believe it was -- a majority was text messaging,
5 regarding the requirements of the paperwork that needs to be
6 filed after a marine incident.

7 Q. Okay. I have a screenshot to show you. I want to show
8 you, the witness, and the jury what has already been admitted
9 as Government's Exhibit 82. Can you tell me what is pictured
10 on the screen?

11 A. A text message.

12 Q. Do you know who the text message is to or from?

13 A. That is from Mr. McCabe to myself with the -- would be I
14 believe is my duty phone at the time.

15 Q. And what did you ask Mr. McCabe for?

16 A. I asked him for a Coast Guard 2692 which is a report of a
17 marine casualty which is a marine incident.

18 MR. STIEHL: And can we move to the next page of the
19 exhibit.

20 BY MR. STIEHL:

21 Q. And can you tell me whose email is listed right there?

22 A. That at the time was my work email, my Coast Guard email.

23 THE COURT: I will see the attorneys briefly at
24 sidebar.

25 (Conference at bench.)

1 THE COURT: I just want to confirm, the redactions,
2 were those pursuant to the order on the motion in limine?

3 MR. KELLER: Yes, Your Honor.

4 So what we have done is cut out any -- we have cut out
5 anything bearing on drug testing. We have prepped Mr. Goodman.
6 He knows not to talk about drug testing. The main emphasis
7 here is going to be on the text message about him being out of
8 business and having no income.

9 MR. STIEHL: We are also going to talk about the
10 reporting form itself, like other information besides the drug
11 testing.

12 THE COURT: Okay. I'm going to advise the jury that
13 there have been redactions pursuant to a court ruling, and they
14 should not speculate as to any redaction.

15 Any objection to that?

16 MR. KELLER: No, Your Honor.

17 MR. O'SULLIVAN: No objection.

18 THE COURT: All right. Thank you.

19 (Conference at bench concluded.)

20 THE COURT: Ladies and gentlemen, as you can see, this
21 exhibit has some areas that have been redacted. Those are
22 redacted pursuant to a court ruling. You should not concern
23 yourself or speculate as to what is redacted on those pages.

24 Please continue.

25 MR. STIEHL: Can you move to the next page.

1 And then, I guess, one more page.

2 BY MR. STIEHL:

3 Q. Can you basically summarize or tell me what this text
4 message from the defendant to you was explaining?

5 A. Mr. McCabe was explaining why he was not able to send me
6 the required documentation.

7 Q. And what did he say about the status of his business?

8 A. At the end it says business being shut down, is what it
9 states there.

10 Q. And what did you understand him to mean by that?

11 A. As far as his business, I would think that would be his
12 commercial -- the commercial vessel.

13 Q. And do you know what the name of the business was?

14 A. The -- I do not recall the vessel's name.

15 Q. And do you know if the defendant was operating his vessel
16 in the days after the incident?

17 A. I do not, no.

18 Q. Okay. You mentioned earlier you were on duty on Sunday,
19 March 29, 2020?

20 A. Yes.

21 Q. Were you also on duty the previous day, Saturday,
22 March 28th, 2020?

23 A. Yes.

24 Q. Can you tell me what it means to be on duty.

25 A. Sure. On duty you're on call. Basically, any call

1 received for myself or Sector Miami regarding any commercial
2 vessel incident, I would be the one to respond.

3 Q. So what kind of casualties or incidents?

4 A. It can be loss of life, the loss of the vessel, damage to
5 the vessel up to a certain amount of money, a vessel losing
6 propulsion, steering, running aground, a collision or allision,
7 which is a vessel hitting something that -- an object that is
8 not moving like a bridge, for instance. And anything on the
9 water, like flooding or fire that would affect the vessel's
10 seaworthiness.

11 Q. And are recreational vessels required to report marine
12 casualties?

13 A. No.

14 Q. And why not?

15 A. They're not commercial vessels. There is no --

16 Q. And on what waterways does the Coast Guard investigate
17 vessels?

18 A. All navigable waterways.

19 Q. And did the events of the 29th occur on a navigable
20 waterway?

21 A. Yes.

22 Q. So what types of vessels does the Coast Guard investigate?

23 A. All commercial vessels.

24 Q. Would an uninspected passenger vessel be required to report
25 certain types of casualties to the Coast Guard?

1 A. Yes.

2 Q. And why is that?

3 A. They have paying passengers on board.

4 Q. Well, can you tell me what an uninspected passenger vessel
5 is?

6 A. Sure. That's what we call a six-passenger vessel. So they
7 could have up to six passengers and no more. Above that, they
8 would have to get a certificate of inspection from the
9 Coast Guard.

10 Q. Is an uninspected passenger vessel also referred to as a
11 six-pack vessel?

12 A. Yes.

13 Q. And what is the difference between an inspected and an
14 uninspected passenger vessel?

15 A. Uninspected, the Coast Guard will not be out there annually
16 to conduct an inspection and issue a certificate of inspection.
17 Uninspected, they still have regulations, but we do not issue
18 any certificate of inspection.

19 Q. And based on your knowledge of the vessel that the
20 defendant was operating, was this an uninspected passenger
21 vessel?

22 A. Yes.

23 Q. And are uninspected passenger vessels required to have a
24 licensed captain?

25 A. Yes.

1 Q. And who issues a captain's license?

2 A. The NMC, which is the Coast Guard.

3 Q. And would an uninspected passenger vessel be required to
4 report propulsion irregularities or losses of propulsion to the
5 Coast Guard?

6 A. Yes.

7 Q. Did you, as the duty stander, receive any reports of
8 propulsion irregularities or losses of propulsion on either
9 Saturday, the 28th, or Sunday the 29th?

10 A. No.

11 Q. Would an uninspected passenger vessel be required to report
12 a situation where the vessel was unable to turn into a marina
13 and had to run in mangroves to prevent it from hitting a
14 bridge?

15 A. Yes.

16 Q. And did you receive any report of that on March 28th or
17 March 29th?

18 A. No.

19 Q. And would an uninspected passenger vessel be required to
20 report a grounding to you?

21 A. Yes.

22 Q. And did you receive any reports of groundings on March 28th
23 or March 29th?

24 A. No.

25 Q. And going back to the March 29th incident and the

1 conversation we referred to, did you ever receive a 2692 report
2 related to that casualty?

3 A. Say that again. Which casualty?

4 Q. The casualty on the 29th, the death.

5 A. After, yes.

6 Q. Did you receive a 2692 report for the casualty on the
7 previous -- or any casualty on the previous day?

8 A. I did not receive that, no.

9 MR. STIEHL: Okay. I want to show the witness and the
10 jury what has already been admitted as Government's Exhibit 81.

11 Your Honor, this document also has redactions, so I
12 just wanted to make you aware.

13 THE COURT: The same instruction I provided earlier
14 continues to apply. Thank you. Let's show the exhibit.

15 MR. STIEHL: Can you move to the second page.

16 BY MR. STIEHL:

17 Q. And can you tell me what this document is.

18 A. This is the form, the 2692, which is a report of a marine
19 casualty or incident.

20 Q. And was this the document Mr. McCabe sent to you or someone
21 from your office?

22 A. It looks to be, yes.

23 Q. And can you tell me the name of the vessel?

24 A. Southern Comfort.

25 Q. And can you tell me what it says in block 7?

1 A. Block 7. "Dive charter."

2 Q. And can you tell me who is listed as the owner in block 13?

3 A. "Dustin McCabe."

4 Q. And can you read to me the list of items on block 10.

5 A. That's tough.

6 Number 1, unintended grounding or an unintended strike or
7 allision with a bridge; intended grounding or intended strike
8 of a bridge that created a hazard to navigation; the
9 environment or safety of the vessel, or the criteria in 3
10 through 8 below. 3, loss of main propulsion, primary steering
11 or any associated component or control system that reduces the
12 maneuverability of the vessel. 4, occurrence, materially and
13 adversely affected the vessel's seaworthiness or fitness for
14 service or route. 5, loss of life. 6, injury that requires
15 professional medical treatment, treatment beyond first aid, and
16 if the person is engaged or employed on board a commercial
17 service that renders the individual unfit to perform his or her
18 routine duties. 7, occurrence causing property damage in
19 excess of \$75,000. 8, occurrence involving significant harm to
20 the environment.

21 Q. And going back, can you tell me what it says at the top of
22 number 10?

23 A. 10. "The above vessel was involved in a marine casualty
24 consisting," and the CFR cite.

25 Q. Moving down to block 24. Oh, and can you explain what a

1 CFR cite is?

2 A. It's the Code of Federal Regulation. It's where we get
3 law. It's where we get our regulations.

4 Q. And what do you do with those regulations as a vessel
5 inspector or investigator?

6 A. That's what we use to -- that's the law. The regulations
7 that we use, that's how we get the -- basically, any
8 deficiencies on a vessel, we go to the regulations.

9 MR. STIEHL: And moving to the bottom of this page.
10 Sorry. I request that we move to the next page.

11 BY MR. STIEHL:

12 Q. And can you tell me what's listed in block 24 of this page
13 at the very bottom?

14 A. 24. It's hard to see. I'm not sure which 24 is.

15 Q. It's at the very, very bottom of the page. There is like
16 three lines at the bottom.

17 A. 24. That's Dustin McCabe's name, and looks like the
18 signature and date.

19 Q. And what is the title under block 27?

20 A. Title is captain.

21 Q. Okay. Moving to the next page of the document. And can
22 you tell me what it says under block 2, towards the top of the
23 page, under A and B.

24 First, I guess, read 2.

25 A. "2, vessels. If you are the owner, agent, master, operator

1 or person in charge of a vessel other than a public service or
2 an uninspected recreational or state numbered vessel, you must
3 submit a report, if your vessel, A, is involved in a marine
4 casualty or accident that occurs upon the navigable waters of
5 the United States, its territories or possessions, and meets
6 any of the criteria in block 10; or, B, is a United States
7 vessel involved in a marine casualty or accident.

8 wherever such casualty or accident occurs that meets any of
9 criteria in block 10. Or C, is a foreign vessel engaged in OCS
10 activities, as defined in 33CFR140.10" --

11 (Court Reporter requested clarification.)

12 THE WITNESS: Sorry. "As defined in 33CFR140.10, and
13 is involved in a marine casualty or accident that meets any of
14 the criteria in block 10; or, D, is a foreign tank vessel
15 operating in waters subject to the jurisdiction of the
16 United States, including the exclusive economic zone, EEZ,
17 which involves significant harm to the environment or material
18 damage affecting the seaworthiness or efficiency of the
19 vessel."

20 BY MR. STIEHL:

21 Q. Okay. Now, why does the Coast Guard require reports of
22 marine casualties?

23 A. Well, they are commercial vessels, so they have to abide by
24 law due to the commerce. So -- and that comes from the CFR, as
25 the Code of Federal Regulations.

1 Q. And what does the Coast Guard do when it receives a report
2 of marine casualty?

3 A. We investigate.

4 Q. And what do you mean by that?

5 A. We will discuss with the owner-operator, captain, whoever
6 makes the report, whoever is the point of contact is for the
7 vessel -- we want to find out what happened, why it happened,
8 and ensure that any issues on the vessel are corrected.

9 Q. And what does the Coast Guard usually do in the immediate
10 time when they get that report?

11 A. We respond. If needed, depending on the casualty or the
12 incident, we will respond or we will discuss over a phone,
13 depending on the casualty.

14 Q. And who has a duty to report a marine casualty to the
15 Coast Guard?

16 A. Ultimately, it lies on the master of the vessel, the
17 captain of the vessel.

18 Q. And do you know who the owner and master of the Southern
19 Comfort are?

20 A. From what I understand, it was Dustin McCabe.

21 Q. And what other duties and responsibilities do the owners
22 and captains of uninspected passenger vessels have?

23 MR. O'SULLIVAN: Objection. Calls for a narrative.

24 THE COURT: Overruled.

25 You may answer.

1 THE WITNESS: The master or the captain, they're in
2 charge of everything on the vessel, including the vessel
3 itself, crew and passengers, the safety of the vessel, safety
4 of the environment.

5 MR. STIEHL: Thank you, Mr. Goodman. No further
6 questions.

7 THE COURT: Cross-examination.

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

9 CROSS-EXAMINATION

10 BY MR. O'SULLIVAN:

11 Q. Good afternoon, sir.

12 A. Good afternoon.

13 Q. The reporting requirements that you were just testifying to
14 are for unintentional groundings; correct?

15 A. Could be intentional or unintentional.

16 Q. Okay. If you look at the exhibits, though, that the
17 reporting requirements that you testified to today were for
18 unintentional groundings; correct?

19 A. I believe that's what I read.

20 Q. Okay. And there is -- obviously, unintentional grounding
21 means happened an accident, intentional means I did it on
22 purpose; correct?

23 A. Yes.

24 Q. Were you present for the intentional grounding on
25 March 28th at the North Palm Beach marina?

1 A. No.

2 Q. Okay. Are you aware, based upon your investigation and the
3 five years that have gone by, that on the 28th, Mr. McCabe, or
4 I should say Captain McCabe, intentionally put his boat in the
5 mangroves so as not to hit the bridge?

6 A. That's from what I understood.

7 Q. Okay. So he would not be required, under the CFR, to
8 report anything if he intentionally grounded his boat; correct?

9 A. I believe there is an intentional and unintentional
10 reporting. I would have to have the regulation.

11 Q. And then there is a -- there is exceptions. If there is no
12 hazard to navigation, environment, and safety on an intentional
13 grounding, there was no reporting requirement; correct?

14 A. I'm unsure. I would have to have the regulation.

15 Q. Okay. And you're aware that Mr. McCabe has a captain's
16 license; correct?

17 A. Yes.

18 Q. And the Coast Guard gave him the captain's license;
19 correct?

20 A. Yes. We issue merchant mariner credentials.

21 MR. O'SULLIVAN: Thank you, sir. That's all the
22 questions I have.

23 THE COURT: Redirect?

24 MR. STIEHL: Yes, Your Honor. Just a quick redirect
25 going back to the exhibit we previously pulled up. I believe

1 that is 81. I want to show the witness and the jury what has
2 already been admitted as Government's Exhibit Number 81.

3 REDIRECT EXAMINATION

4 BY MR. STIEHL:

5 Q. And I would like you to read that again, Mr. Goodman,
6 starting with number 10.

7 THE COURT: Please -- sorry, sir. If you -- when you
8 are reading, please make sure you do so slowly enough for our
9 court reporter.

10 THE WITNESS: Okay, yes, sorry. Sorry about that.

11 Number 10. "The above vessel was involved in a marine
12 casualty consisting in 46CFR4.05-1 and 4.05-10.

13 "Number 1, unintended grounding or an unintended strike
14 of, allision with a bridge. Two, intended grounding or
15 intended strike of a bridge that created a hazard navigation,
16 the environment or the safety of the vessel, or that meets any
17 of the criteria in 3 through 8 below.

18 "Loss of main propulsion, primary steering, or any
19 associated component or control system that reduces the
20 maneuverability of the vessel. 4, occurrence materially and
21 adversely affected the vessel's seaworthiness or fitness for
22 service or route. 5, loss of life. 6, injury that requires
23 professional medical treatment, treatment beyond first aid, and
24 the person is engaged or employed on board a vessel and
25 commercial service that renders the individual unfit to perform

1 his or her routine duties. 7, occurrence causing property
2 damage in excess of \$75,000. 8, occurrence involving
3 significant harm to the environment."

4 BY MR. STIEHL:

5 Q. so if a vessel lost propulsion, even one of the engines,
6 would that be a reportable marine casualty?

7 A. Yes.

8 Q. And if a vessel was unable to properly steer and had to
9 navigate into the bank, would that be a reportable marine
10 casualty?

11 MR. O'SULLIVAN: Objection, Your Honor. Outside of the
12 scope of cross.

13 THE COURT: Overruled.

14 Please answer.

15 THE WITNESS: Yes.

16 BY MR. STIEHL:

17 Q. And if a grounding happened because of a loss of propulsion
18 or steering, would that be an intentional or unintentional
19 grounding?

20 A. Unintentional.

21 MR. STIEHL: Thank you. No further questions.

22 THE COURT: Thank you, sir. You may be excused.

23 THE WITNESS: Thank you.

24 THE COURT: Thank you, ladies and gentlemen.

25 As I foreshadowed earlier, we are going to be done

1 earlier today, at approximately 3:30. Please listen carefully.
2 You are reminded that you are not to discuss this case with
3 anyone or permit anyone to discuss it with you. Until you
4 retire to the jury room at the end of the case to deliberate on
5 your verdict, you simply aren't to talk about this case.

6 Remember that you aren't permitted to read or listen to
7 anything touching on this case in any way. If anybody should
8 try to talk to you about it, bring it to my attention promptly.
9 Keep in mind that you must not do any research or make any
10 investigation about the case on your own. The only evidence is
11 this -- is the testimony of the witnesses that you hear in
12 court and the evidence that is introduced during the official
13 proceedings in the courtroom.

14 Also, remember that you shall not have any contact with
15 the attorneys, parties or witnesses in the case. If you should
16 see them, keep in mind that they aren't being rude to you,
17 they're just required to avoid all contact with you, just as
18 you are not permitted to talk to them.

19 And, finally, please remember that you aren't to form
20 any opinion about this case until all of the evidence has been
21 presented. You are required to keep an open mind until you
22 start your deliberations at the end of the case.

23 So, with that, I wish you a pleasant evening. And we
24 will resume tomorrow at 9:00 a.m.

25 All rise for the jury.

1 (The jury exited the courtroom at 3:27 p.m.)

2 THE COURT: Please be seated.

3 All right. Let's just regroup and go through the
4 witnesses that you have scheduled for tomorrow, Mr. Keller.
5 One moment as I retrieve the witness list.

6 All right. Please start with your first witness that
7 you have for tomorrow.

8 MR. KELLER: Yes, Your Honor. The first witness
9 tomorrow is going to be Christopher Mosquera from the
10 Coast Guard --

11 THE COURT: okay.

12 MR. KELLER: -- who is witness number 5. Second will
13 be Paul Alber who is witness number 12. Third will be
14 Lieutenant Commander Andrew Cole who is witness number 3.
15 Fourth will be Alan Roth of the Coast Guard who is witness
16 number 2. Fifth will be Dr. Terrill Tops who is witness
17 number 11. Sixth will be Althea Harris who is witness
18 number 13. And then seventh will be Kristy Kelly who is
19 witness number 20.

20 THE COURT: And who is Kristy Kelly?

21 MR. KELLER: She is Mr. McCabe's ex-wife.

22 THE COURT: okay. All right. So that's for a total of
23 seven witnesses tomorrow; is that correct?

24 MR. KELLER: Yes, Your Honor.

25 THE COURT: okay. All right then. Any evidentiary

1 issues that we haven't yet addressed? Is tomorrow the day for
2 the ME for the photos that are still in dispute?

3 MR. KELLER: Yes, Your Honor.

4 THE COURT: Okay. So let's take that up now. Which
5 exhibits should I refer to for this discussion?

6 MR. KELLER: 109 through 109N.

7 THE COURT: Okay. So is it the entire 109 series?

8 MR. KELLER: Yes, Your Honor.

9 THE COURT: How many total photographs are in this set?

10 MR. KELLER: 15.

11 THE COURT: Okay. Let me just review them. One
12 moment.

13 MR. KELLER: Yes, Your Honor.

14 THE COURT: Okay. Before I hear from Mr. Keller,
15 Mr. O'Sullivan, are you objecting to all 15 or a portion of the
16 15?

17 MR. O'SULLIVAN: I'm objecting to all 15, Your Honor.

18 THE COURT: And that would include, for example, the
19 last of these which is a handwritten sheet?

20 MR. O'SULLIVAN: would -- are you referring to 109N?

21 THE COURT: Yes. This is a handwritten sheet on a
22 clipboard. It's not a photograph. And it appears to be some
23 notes from the medical examiner.

24 MR. O'SULLIVAN: My 109N shows an internal picture.
25 Perhaps I'm looking at the wrong -- I do not object to that

1 one.

2 THE COURT: okay. So 109N is not at issue.

3 Mr. O'Sullivan?

4 MR. O'SULLIVAN: That's correct, Your Honor.

5 THE COURT: okay. All right. So let's -- I'm not
6 going to admit any exhibits at this point, Mr. Keller. You
7 should plan on doing it the old-fashioned way tomorrow. But
8 for our purposes for now, let me shift to the photographs which
9 are in dispute.

10 Mr. Keller, why don't you first give me some context
11 for these photographs and then I will take it from there.

12 MR. KELLER: Yes, Judge. And I think that the most
13 important piece of context in these photos -- and this is
14 something that the defense knows because we turned this over in
15 our Jencks Act disclosures -- is that I did not play, really,
16 any role in choosing these photos. They were chosen by the
17 medical examiner, who has more than 20 years of experience
18 testifying and doing these examinations. He specifically
19 requested these photos in order to walk the jury through his
20 examination.

21 In terms of the number of photos, which I know is --
22 you know, at 14, is more than you probably are used to. What I
23 will note here is that the cause of death and the exacerbating
24 factors here or the contributing factors are more complex than
25 the typical case that you might see in court where someone got

1 shot or someone had, you know, some other type of clear injury
2 that was the sole cause.

3 Here, what the medical examiner is going to be
4 explaining is, to the two phases of his examination, the
5 external examination, which revealed the, you know, obvious
6 chop wounds that we saw earlier in court -- and what he is
7 going to be explaining is that those wounds actually did not
8 cause her death, that actually it was that she drowned. And
9 that's going to lead him to the internal part of his
10 examination, which is not only going to talk about the weight
11 of the lungs, which is something that's memorialized in the
12 109N that has already been admitted, but he is also going to be
13 showing -- and just to direct your attention to, for example,
14 Government's Exhibits 109J, K, L, and M --

15 THE COURT: One moment.

16 MR. KELLER: Yes, Your Honor. So those final four
17 images.

18 THE COURT: Those are internal organs; correct?

19 MR. KELLER: So -- yes, Your Honor. So "I" is, I
20 believe, her diaphragm. "K" is the area that connects to the
21 lungs, I believe. "L" is a part of the lungs. And then "M"
22 is, of course, Ms. Ghiz-Flynn's facial area.

23 And what he is going to be explaining as to how he
24 determined that she drowned is that when he did this internal
25 examination, the first thing he noticed was foam when he cut

1 into the diaphragm. And that was what he referred to as like a
2 telltale sign of potential drowning. And as he progressed in
3 his examination, moving to N -- or, I mean, I'm sorry, moving
4 to K and L, that showed him more foaming in the lung area, the
5 lung tissue, which, again, is consistent with drowning.

6 And then as he was doing this -- so -- and, you know,
7 obviously it's a grizzly thing to imagine, but as he was moving
8 organs around to do this examination, one thing that often
9 happens in people who have drowned is that when you push on the
10 organ, it pushes the foam up the throat, and it typically will
11 come out the nose, which is how -- that was kind of like the
12 last confirmation for him that she -- that Ms. Ghiz-Flynn died
13 by drowning.

14 So that's what those last set of images for the
15 internal examination consist of. The ones before that are
16 showing the wounds themselves. And he is actually going to be
17 explaining that she -- that these were not fatal wounds. Had
18 she not drowned, she could potentially have survived from these
19 wounds, and that that is significant because she -- it kind of
20 corroborates that she was conscious while this was happening,
21 as people have testified.

22 So that's why we have the number here is because there
23 are kind of two phases of this examination that involve two
24 different sets of, on the one hand, contributing factors which
25 are the wounds that are external, and then the actual full

1 cause of death which is from the internal examination.

2 THE COURT: Okay. So what is the nature of your
3 objection, Mr. O'Sullivan?

4 MR. O'SULLIVAN: There is a couple of reasons why I'm
5 objecting, Judge. As far as the external photos go, number 1,
6 they're cumulative because we've already seen the crime scene
7 photos and they're the same. They're the outside of this young
8 lady's body.

9 THE COURT: well, they're not entirely the same.

10 MR. O'SULLIVAN: Not entirely, but substantially
11 similar. But I think more importantly is -- you know, overall
12 we're going to have a medical examiner who is going to testify
13 that she drowned; that is corroborated by basically all of the
14 testimony. I'm not going to challenge the cause of --

15 THE COURT: well, who else has testified that she died
16 due to drowning so far?

17 MR. O'SULLIVAN: I think the jury can make a reasonable
18 inference that she drowned because she was stuck under a boat
19 for so long.

20 THE COURT: well, I don't think anybody has testified
21 to that. Perhaps they could infer, but I haven't heard any
22 specific testimony to date about drowning as the cause of
23 death.

24 MR. O'SULLIVAN: well, we know the medical examiner is
25 going to say that, and I'm not going to challenge it. In fact,

1 I would even stipulate to it.

2 Potentially -- I mean, when the jury today saw the
3 pictures of the crime scene, three or four of them were crying.
4 And those were from external chop wounds. There is no -- there
5 is no evidence that's being challenged, there is no controversy
6 of -- or there is not going to be any controversy as to how she
7 died.

8 THE COURT: well, earlier I believe there was some
9 suggestion that this could have been due to windmilling; in
10 other words, just the natural movement of propeller due to a
11 wave hitting the boat. So I do think that there has been at
12 least some degree of a defense raised that this wasn't an
13 active propeller situation, in which case images of the actual
14 chop wounds would be relevant to rebut this notion that the
15 propeller was actually in neutral.

16 MR. O'SULLIVAN: That goes -- in my opinion,
17 Your Honor, that goes to the transmission itself, not to the
18 cause of death. But, again, we saw pictures of her body. We
19 saw chop wounds in the crime scene photos. And in my -- in my
20 view there is kind of two different classes of pictures in the
21 autopsy. There is the external and the internal.

22 There is not going to be any controversy or challenge
23 on the cause of death. You know, my question is, what is the
24 purpose for this jury to see -- and I think what Mr. Keller
25 said -- grizzly pictures of the internal organs of this young

1 lady. It's really being introduced for shock value and to draw
2 sympathy for this young lady.

3 The jury doesn't want to see these organs. A lot of
4 people, myself included, get kind of squeamish when they see
5 this kind of stuff. It's not really relevant to the case.
6 It's not relevant to the government's offer of proof as to
7 whether or not my client is guilty. It's -- I think it's meant
8 to inflame the jury and make them look at the inside gory
9 pictures of a body. And it's -- it just -- I think it's going
10 to inflame certain jurors. I know it is because I already saw
11 three or four of them crying, just looking at the external.
12 when they see the internal, you know, it's just going to draw
13 unnecessary sympathy toward this young lady who tragically
14 passed away.

15 We are going to have a medical doctor, who Mr. Keller
16 says has been testifying for 20 years, so he is very
17 experienced. He can testify to what the cause of death is. He
18 can show reports. He does not need to show internal organs
19 that are not in controversy.

20 And that would be the extent of my objection,
21 Your Honor.

22 THE COURT: Okay. Response.

23 MR. KELLER: Just that at the end of the day -- and
24 this is something that you talked about, how this victim -- how
25 Ms. Ghiz-Flynn died is at the center of this case. It's one of

1 the elements, that she has to have been killed by the
2 defendant's negligence, by this vessel activating, and we need
3 to be able to show that the propeller killed her. And that's
4 what this is doing.

5 And the other thing I would just note, Your Honor, is
6 that one of the things that we should be allowed to do as the
7 government when we're putting on a witness is for that witness
8 to be able to explain their process. Here, the defense is
9 proposing that this expert witness just comes up and says,
10 well, I did an examination and I decided it was drowning. We
11 should be able to show the jury how he conducted his
12 examination, how he went step by step, like he always does, and
13 in the end found those telltale signs -- those telltale signs
14 of drowning and made a determination that she died by being
15 underneath that boat. So that's really our position.

16 THE COURT: What do you say to Mr. O'Sullivan's view
17 that the internal photos of the organs themselves are too
18 inflammatory?

19 MR. KELLER: Judge, I would say that, if anything, the
20 external photos are the things that are the more upsetting
21 part. The internal photos are more biological. Like, it's
22 this person showing foam. That's really the purpose of this.

23 So I just would, frankly, disagree with the defense
24 about that view on -- if you look at Government's
25 Exhibits 109I, J -- or, I'm sorry -- J, K, L, and then,

1 ultimately M, that these not only lie at the heart of proving
2 how it is that we know that she drowned, but also are pictures
3 of internal organs that don't show her -- well, the ones that
4 are internal organs don't show her face, don't show her body.

5 So that's what our position would be, is that there is
6 no gross prejudice here, particularly prejudice that outweighs
7 the probative value of being able to show these jurors the
8 examination that our expert did.

9 THE COURT: what is your response, Mr. Keller, to
10 the -- to the argument that there is no dispute about cause of
11 death?

12 MR. KELLER: It's that we still are able to prove our
13 case, that we still should be able to show that our expert did
14 the work in the same way that when we brought up
15 Investigator Fowler, like, part of what we're doing here is
16 showing the jury the care that went into this investigation,
17 the steps that our people took in order to do the work, to show
18 that Ms. Ghiz-Flynn drowned.

19 And I will just note, Your Honor, that one of the
20 things that's come out in opening, as an argument they're going
21 to be using, is inadequate investigation, that this didn't get
22 the attention that it was supposed to get. And every one of
23 our witnesses, showing the work they did, becomes all the more
24 important when that type of a defense is being used, such that
25 we're able to say to the jury, here is all of the investigation

1 you saw here, including here, when the medical examiner went
2 step by step to determine that Ms. Ghiz-Flynn had died by
3 drowning.

4 THE COURT: Okay. All right. Based on the arguments,
5 I'm going to overrule the defense objection with one exception.
6 I think the image at 109 -- it's either I or L. It's the full
7 body internal organ sweep that shows all of the organs in
8 kind of an exposed form. That one, I do think, is -- is over
9 the top, but the remaining exhibits, I think, are relevant to
10 an essential element of this case, which is the death that
11 resulted. And I think it would be proper for the government's
12 witness to be able to use visual images to describe his or her
13 medical process in arriving at his or her opinions.

14 Obviously, the images, by the nature of the injuries,
15 are graphic, but there cannot be full-blown sanitation of the
16 evidence under the circumstances because it is relevant,
17 ultimately, given the charges at issue.

18 I would also note again no objection to that final
19 paper exhibit which is 109N. So I will note that.

20 And with respect to the external chop wounds, I think
21 those also go to the cause of death with respect to the
22 propulsion mechanism being either in neutral or not in neutral,
23 and there has been a suggestion that it happened or could have
24 happened simply by the natural movement of the propeller in a
25 stormy or choppy water situation.

1 So for those reasons, you should go ahead and admit
2 these in the normal course tomorrow, Mr. Keller. But the legal
3 challenge has been addressed with the exception of that 109L or
4 I. I can't quite tell which letter that is.

5 MR. KELLER: It's I, Judge.

6 THE COURT: I. Okay.

7 All right then. Anything further to discuss with
8 respect to exhibits for tomorrow?

9 MR. KELLER: Not from the government, Your Honor.

10 THE COURT: Okay. Mr. O'Sullivan?

11 MR. O'SULLIVAN: Not with respect to exhibits,
12 Your Honor.

13 THE COURT: Okay. And then I will formally make a
14 point that I conducted the 403 balancing, and found that the
15 high bar for exclusion under 403 has not been satisfied. So
16 for those reasons, I think we're complete with this discussion.

17 I have the witnesses for tomorrow.

18 Any other items to discuss before we break, Mr. Keller?

19 MR. KELLER: No, Your Honor.

20 THE COURT: Mr. O'Sullivan?

21 MR. O'SULLIVAN: Just as far as scheduling goes, Judge,
22 I know that we had discussed having the evening meeting either
23 wednesday or Thursday. And just for my personal childcare
24 issues, I was trying to determine which day it would be so I
25 can make the proper arrangements.

1 THE COURT: okay. which day are there more witnesses,
2 Mr. Keller, or which day do you think would go longer?

3 MR. KELLER: I think that the 26th will go longer. I,
4 frankly, think that we will finish early both days, given how
5 fast things have been going.

6 THE COURT: okay. well, then we will plan on our
7 charge conference Thursday, the 27th. So you should come
8 prepared with any authorities that you think are relevant to
9 your presentation, along with any additional instruction that
10 you will be proposing for the mechanic. But we can anticipate
11 that charge conference on Thursday, February 27th, at
12 approximately 5:00, depending on the time that we break for the
13 day.

14 That's all I have. Thank you. we will resume tomorrow
15 at 8:50 with the attorneys.

16 (These proceedings concluded at 3:49 p.m.)

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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: 05-07-2025 /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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