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 27, 2025

vs. 9:32 a.m. - 4:26 p.m.

DUSTIN SEAN MCCABE, Volume 4

Defendant. Pages 1 to 207

TRANSCRIPT OF JURY TRIAL - DAY 4
BEFORE THE HONORABLE AILEEN M. CANNON
UNITED STATES DISTRICT JUDGE

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

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(Call to the Order of the Court.)

THE COURT: Good morning. Let's call the case.

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

Counsel, please make your appearance.

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

THE COURT: Good morning. You may all be seated, unless you are addressing the Court.

MR. O'SULLIVAN: Good morning, Your Honor. Terrence O'Sullivan, Calisha Francis, and Dustin Sean McCabe, two defense counsel and defendant.

THE COURT: All right. Good morning to you as well.

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

THE COURT: We will proceed with trial today.

Mr. Creary, do we have our jurors?

COURTROOM DEPUTY: We're missing, I think, three.

THE COURT: Three. Okay.

All right. Any issues to address while we wait for the jurors? Mr. Keller?

MR. KELLER: No, Your Honor.

THE COURT: Mr. O'Sullivan?

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

THE COURT: Okay.

MR. KELLER: And yes, Your Honor, let me just apologize. We thought we were supposed to be here at 9:30, and I think that we all were just on the wrong page about that. So I understand we might have -- supposed to be here at 9:15.

THE COURT: That's okay.

MR. KELLER: I just wanted to apologize.

THE COURT: Thank you.

Mr. Keller, in terms of the schedule for tomorrow, you have two witnesses; is that correct?

MR. KELLER: Yes, Your Honor.

THE COURT: How long do you think the total time will take?

MR. KELLER: The first witness is very short. It's the Internal Revenue Service employee who is just testifying to what -- the documents not having been filed, the IRS documents.

The second witness is going to be Special Agent King. His will be lengthier. I believe it will probably be 45 minutes on direct, and then, you know, whatever the cross consists of. So, I guess, in total between those two, I would guess an hour and 15 minutes to an hour and 30 minutes, perhaps.

THE COURT: Okay. Thank you. That's helpful.

Remember that we won't be -- we won't be beginning trial on Monday until 1:00 p.m., or perhaps 12:45, due to other court hearings.

Are the exhibits that have been admitted organized and ready to provide to the jury?

MR. KELLER: I do have them both in physical and in electronic. One thing that -- in speaking with the IT people in our U.S. Attorney's Office here in Fort Pierce, our understanding is that the Court has a trial tablet that goes with the jury.

THE COURT: I'm not sure about that. I think we have a laptop, perhaps, but typically the government has provided a clean laptop. It seems like maybe they're shifting over to tablets. I'm not exactly sure what the latest format is, but you should look into that.

MR. KELLER: Yes, Your Honor. I will make inquiries to our office and tell them that we have been informed that there is no court laptop or tablet.

THE COURT: Okay. We're still missing our three -- three jurors. So we will wait a few more minutes.

MR. KELLER: Your Honor, if we could just mention for today, we are going to publish the trial stipulation with our first bank witness who we anticipate will be Justin Masterman.

MR. KOFFSKY: That's right, Your Honor.

MR. KELLER: Or if it's Pollack, if we can't get Masterman here first, then that will be when we will do the stipulation.

THE COURT: Is that a numbered exhibit?

MR. KELLER: Yes, Your Honor. It's Government's Exhibit 14, although they -- I believe it's in the binder, just in unsigned form.

THE COURT: Okay. Thank you.

Mr. O'Sullivan, where is Rockledge, Florida?

MR. O'SULLIVAN: It is in Brevard County, just -- it's a suburb of Melbourne. It's a northern suburb of Melbourne.

THE COURT: Okay. Thank you.

MR. O'SULLIVAN: It's fairly close to Cocoa Beach. It's just Cocoa Beach is on the beachside, and I'm across the bridge on the land side.

THE COURT: Nice.

Mr. Creary, any updates?

COURTROOM DEPUTY: Yes. Two of them are just walking in, and I will go find out where the last one is.

(Pause in proceedings.)

THE COURT: Mr. Creary, can you call him or her.

COURTROOM DEPUTY: Yes.

THE COURT: Thank you. We are still waiting on one juror who will be contacted now.

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

THE COURT: I want to make sure that Mr. McCabe's monitor is charged.

MR. O'SULLIVAN: It is fully charged, Your Honor.

THE COURT: Okay. So the beeping I just heard --

MR. O'SULLIVAN: I think he was removing the extra battery pack. Just we were charging it to the last second, so there would be no issues again today, Your Honor.

THE COURT: Okay. Thank you.

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

(Pause in proceedings.)

THE COURT: All right. Let's call in the jury, please.

(The jury entered the courtroom at 9:47 a.m.)

THE COURT: Please be seated.

Good morning, ladies and gentlemen. We will resume trial this morning.

Mr. Keller or Mr. Stiehl or Mr. Koffsky, please call your next witness.

MR. STIEHL: Thank you, Your Honor. The United States would like to call Andrea Walker.

THE COURT: All right. Good morning, Ms. Walker. Mr. Creary will swear you in once you get over here.

COURTROOM DEPUTY: Please raise your right hand.

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

THE WITNESS: I do.

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

THE WITNESS: Andrea Walker. A-N-D-R-E-A, W-A-L-K-E-R.

ANDREA WALKER,

having been sworn, testified as follows:

DIRECT EXAMINATION

BY MR. STIEHL:

Q. Good morning, Ms. Walker, and thank you for being here with us today.

Can you just start out with a little bit of background about yourself. Can you please tell the jury where you live.

A. I live in Martinsburg, West Virginia. I started with the Coast Guard 29 years ago, so I'm in my 30th year. I actually started in the mail room and have worked my way up to my position right now. I am the chief of the commercial vessel division.

Q. Okay. And let's break that down a little bit. So you said you work for the Coast Guard. Specifically, what Coast Guard office do you work in?

A. I work for the National Vessel Documentation Center. We are the unit that is responsible for the documentation of vessels and maintaining those records.

Q. And you said you were in the commercial vessel section -- or the commercial vessel supervisor. Can you tell me what, particularly, that means.

A. That -- I'm the head of the division for all of the officers that issue certificates of documentation for the commercial vessels. I primarily answer -- if there is any inquiries, I answer questions regarding commercial vessels, but I also can oversee recreational transactions as well.

Q. And what do your typical duties look like, as far as day to day?

A. Day to day, I facilitate transactions that are more complex in nature. I deal with a lot of external agencies, answering questions, responding to inquiries regarding coastwise laws.

Q. Okay. And do you know the defendant in this case?

A. I do not.

Q. Okay. Let's talk more specifically about the National Vessel Documentation Center. Can you tell me broadly what the National Vessel Documentation Center is.

A. We are a unit of the Coast Guard that's responsible for documenting vessels, particularly those that are in the coast-wide trade because they are required to being documented. But recreational vessels, it's a choice if the owner chooses to document.

We are responsible for maintaining that -- those vessels, a list of those vessels, that are available in case of wartime, and we also issue the certificates of documentation. We are kind of equivalent to the DMV for the State.

Q. You're the DMV of commercial vessels?

A. We're the DMV of all vessels that want to be documented. Commercial vessels are required; recreational, it's optional.

Q. So does that require paperwork for a lot of vessels?
A. Yes.
Q. And you mentioned commercial vessels. What specifically do you mean by that?
A. Commercial vessels are those that are engaged in coastwise trade or fisheries. So coastwise trade would be your tugboats, your barges, your charter fishing, passenger vessels. And fisheries would be those that harvest, catch, sell, and prep -- process fish.
Q. So does NVDC maintain files for all commercial U.S. vessels?
A. All commercial vessels that are documented, yes, we do.
Q. Okay.
A. They're all supposed to be documented, but we have the files for those.
Q. Okay. Let's talk about the documents related to the vessel with the official number 930158. Have you reviewed the file on this vessel?
A. Yes, I have.
Q. And is this the file maintained by your office?
A. Yes, it is.
Q. Specifically, have you viewed the vessel's files from a period of March to December of 2020?
A. Yes, I have.
Q. And do you recall the name of the vessel at that time?

A. Southern Comfort was on the paperwork.
Q. Okay. I want to go through some of these documents from your file. I want to show the witness and the jury what has already been admitted as Government's Exhibit Number 77.
And, Ms. Walker, can you tell me what type of document this is.
A. This is the CG-1258. This is the application for documentation.
Q. And are you familiar with this form through your normal duties and responsibilities?
A. Yes, I am.
Q. And zooming in on blocks -- block A, can you tell me the name of the vessel listed in block A.
A. Southern Comfort.
Q. And can you tell me the name of the person listed in block F.
A. Dustin S. McCabe.
Q. Okay. Moving down to block J, a little bit further down the page, I will wait until we get the zoom for that one.
Can you tell me what endorsement is indicated in block J.
A. "Recreational."
Q. And can you tell me the difference between these types of endorsements that are shown in block J.
A. Recreational would, of course, be just for a vessel that's only going to be used for pleasure use. "Fishery," again, is

considered a commercial endorsement, and that would be used for any vessel that would be catching, harvesting, processing fish. "Coastwise" would be another commercial endorsement, and that's your tugboat, your barges, your passenger vessel, your freight barge. And "registry" is any vessel that would be used in foreign trade, and that's also a commercial endorsement.

Coastwise, boat waters, oil spill, and under charter, those are exemptions. Those are special coastwise endorsements; so they're exemptions and they normally involve an exemption to the citizenship laws.

Q. So if you were operating a small passenger vessel, which block would you mark in this section?

A. From my experience, we would see the coastwise endorsement marked.

Q. And what does the recreational block imply?

A. That the vessel is only being used recreationally for pleasure use.

Q. And what block is checked here?

A. In J? Section J is recreational only.

Q. And what box would be required if the vessel was engaged in commercial fishing?

A. In section J, it would be fishery.

Q. And can a vessel have multiple boxes checked in this category?

A. Yes.

It can have all of the recreational, fishery, coastwise, and registry endorsements checked.

Q. And is there any additional costs associated with having extra blocks checked?

A. The coastwise endorsement has a fee of $29, and the fishery endorsement has a fee of 12, but if you request both, you only pay the higher fee for the endorsement. So...

Q. Okay. Let's move to block K. Can you tell me what primary service is when it comes to this application.

A. The primary service selected is "recreational."

Q. And can you tell me what that means in this context.

A. Primary services is something we use to issue the certificate of documentation. It's information that we gather for other units in the Coast Guard. I would say "recreational" selected there tells me that the vessel is going to be primarily used for recreational purposes only.

Q. And what box would be checked here if the vessel was primarily engaged in commercial fishing?

A. Commercial fishing. We would expect to see "commercial fishing boat" or a "fish processing vessel."

Q. And what box would be required if the vessel was operating as an uninspected passenger vessel?

A. We would expect to see "passenger, 6 or fewer" selected.

Q. So how does your office, the National Vessel Documentation Center, verify that the information in these boxes is true?

A. Well, it -- in a situation as the one shown in front of us, there is no -- there is nothing abnormal or a red flag, but if an owner would select "recreational," and then they would select "passenger, 6 or fewer," we would then inquire and seek clarification.
Q. So do you or does your office rely on the attestations made in this form by the person who filled the form out?
A. Yes. It's a self-certifying form, and we assume the form is filled out truthfully.
Q. Okay. Let's move down to block L on the next page. What is this block for?
A. Section L is citizenship of the owner, and the selection made here is "one or more individuals." And that indicates that the owner listed on the front is a U.S. citizen.
Q. Okay. Let's move down to block M at the bottom of this page or on the next page, I believe.
A. Next page. Uh-huh.
Q. Okay. Block M. First, I want to read you the section that's right above the signature line. So right above -- yeah, right above the signature line.
A. You want me to read it?
Q. Yes.
A. "Potential penalties for false statements or representations by owner or representative: Civil, monetary, vessel forfeiture (46 USC 12151), fine and/or imprisonment

(18 USC 1001)."
Q. And can you read to me the printed name, signature, and date on this document.
A. The printed name is "Dustin S. McCabe." The date is "March 5, 2020."
Q. And can you read to me the capacity.
A. "Sole owner."
MR. STIEHL: Okay. Let's move on to the next form. I want to show the witness and the jury what has already been admitted as Government's Exhibit Number 78.
BY MR. STIEHL:
Q. Are you familiar with this form?
A. Uh-huh. This is the Coast Guard's Bill of Sale form. It is used to transfer ownership of a vessel.
Q. And can you tell me what block 4 says.
A. Block 4 has the name and address of the buyers, and it has "Dustin S. McCabe" and an address.
Q. And can you tell me what that means specifically.
A. It means that 100 percent of the vessel was transferred to Dustin S. McCabe from Leaf Properties Inc.
Q. And can you tell me the date on this form.
A. The date it was signed by the seller was March 10th of 2020, and the date it was acknowledged was also March 10th, 2020.
Q. Thank you.

MR. STIEHL: I want to show the witness and the jury what has already been admitted as Government's Exhibit 74.

BY MR. STIEHL:

Q. Can you tell me what this document is?

A. It's a First Preferred Ship's Mortgage.

Q. And what does that mean?

A. It means that a lender, a bank listed here as a mortgagee, has loaned money to the mortgagor or the vessel owner, and they are filing this mortgage with our office to secure their debt.

Q. And can you tell me the value of the mortgage.

A. $60,000.

Q. And can you tell me who the mortgagor is.

A. The mortgagor is Dustin S. McCabe.

Q. And what does it mean to be a mortgagor?

A. The mortgagor is the owner of the vessel, and the mortgagor is also the individual to whom the bank or the mortgagee loaned the money.

Q. Okay. Moving to the next page. At the very top, you see a number 7. Can you read to me what number 7 says.

A. "Federal documentation and right to own and operate. You are and shall continue to be entitled to own and operate this vessel under her United States Coast Guard certificate of documentation in accordance with the endorsements thereon. You will continue to keep the vessel's certificate of documentation in full force and effect."

Q. And can you tell me what that means.
A. I mean, they have to operate the vessel as it is documented on the certificate of documentation with -- and how it is endorsed. And they need to keep the certificate of documentation valid.
Q. And why would this type of language be included?
A. I know I see on occasions, just experience, where individuals obtain a loan with the vessel for purposes of using it recreational, and then they attempt to then change, and the bank refuses to agree to that. We call it an exchange of a certificate of documentation. And that -- if there is an outstanding mortgage, we require the bank to approve of that exchange.
And I have seen on occasions where the individuals have taken upon themselves to change the endorsements, and the bank does not consent or the mortgagee does not consent to that change or that exchange of certificate. It also happens if they try to change ownership as well.
MR. STIEHL: Okay. I want to show the witness and the jury what's already been admitted as Government's Exhibit 73.
BY MR. STIEHL:
Q. Can you tell me what this document is?
A. This is the general index or abstract of title. This is the history of the vessel while it's been documented. We record build information, title changes, preferred mortgages,

encumbrances, and liens, as well as name changes on the abstract.
Q. And is this a standard form you use in your day-to-day job?
A. Yes, it is.
MR. STIEHL: Okay. Can we move to page 5 of this document.
BY MR. STIEHL:
Q. And can you tell me who is listed on the section marked "bill of sale"?
A. The bill of sale, just filed December the 4th, 2020, shows the seller as Dustin McCabe to Steven Poznak.
Q. Okay. And I want to show the witness and the jury what's already been admitted as Government's Exhibit 72. Can you tell me what this document is.
A. This is the actual certificate -- a copy of the actual Certificate of Documentation that our office, the National Vessel Documentation Center, would issue upon review of the documents, the application for documentation, the bill of sale, and the preferred mortgage.
Q. And just for the jury's awareness, why does it say "deleted" in large letters on the page?
A. It says "deleted" because after the vessel was documented, we received notification that it was sold and a bill of sale was filed. And, therefore, the vessel was deleted and removed from documentation. And a "deleted" stamp is placed on the

certificate of documentation once the vessel is deleted.
Q. And can you tell me who is listed as the owner on this form.
A. Dustin S. McCabe.
MR. STIEHL: And can we scroll down and look at the bottom of the page. We might have to scoot back up in a second.
BY MR. STIEHL:
Q. Can you tell me the date that this was issued?
A. May 19, 2020.
Q. And do you know if this vessel had a valid certificate of documentation prior to this date?
A. It did not.
Q. Is the vessel allowed to operate without a valid certificate of documentation?
A. It is not, no.
Q. And moving back up to the middle of the page, could you tell me what operational endorsements are listed?
A. Only one. "Recreational."
Q. And, again, what does that mean from your perspective?
A. That this vessel is only to be operating for recreational purposes only.
Q. And this endorsement is made based on the application that we just looked at from your office?
A. That is correct.

Q. And would a vessel with this endorsement be permitted to operate as a small passenger vessel?
A. No.
MR. STIEHL: Thank you, Ms. Walker. No further questions.
THE COURT: Cross-examination?
MS. FRANCIS: Your Honor, we have no further questions for this witness. Thank you.
THE COURT: All right. Thank you very much, ma'am. You may be excused.
Please call your next witness.
MR. STIEHL: Thank you, Your Honor.
The United States would like to call Captain Chris Cederholm of the United States Coast Guard.
THE COURT: Good morning, sir. Please walk over here.
Good morning, Captain. Mr. Creary will swear you in.
COURTROOM DEPUTY: Please raise your right hand.
Do you solemnly swear or affirm that the testimony you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?
THE WITNESS: I do.
COURTROOM DEPUTY: Please be seated. State and spell your first and last name for the record.
THE WITNESS: My name is Captain Chris Cederholm. C-H-R-I-S, last name, C-E-D-E-R-H-O-L-M.

THE COURT: You may begin.

CHRIS CEDERHOLM,

having been sworn, testified as follows:

DIRECT EXAMINATION

BY MR. STIEHL:

Q. Good morning, Captain. And thank you for being here today. Can you please first tell us who you work for.

A. The U.S. Coast Guard.

Q. And what is your rank in the United States Coast Guard?

A. I'm a Captain.

Q. And what is your current role with the Coast Guard?

A. I'm the Commander and Captain of the Port for Sector Miami.

Q. And how long have you been the Captain of the Port of Miami?

A. Three years, come April.

Q. And can you explain what you mean by "Sector Miami."

A. So Sector Miami is one of the 36 regional sectors that the Coast Guard has. We're essentially the field elements for all missions of the Coast Guard. And my area runs from, essentially, the beginning of the Keys to about an hour and a half north of here towards the middle of the state, and then to the territorial boundaries of the U.S. and the Bahamas or 200 nautical miles offshore.

Q. And we have had some previous witness from Marine Safety Detachment, Lake Worth. Does that office also fall under your

purview?
A. They work for me, yes.
Q. And, to be clear, does the coverage include the North Palm Beach area?
A. It does.
Q. And can you tell the jury what your responsibilities are in your role as the Captain of the Port.
A. So I have -- internally, I'm the commanding officer for all my units, subordinate units that work for me. I also have five externally facing authorities, Captain of the Port, officer -- officer in charge of marine inspections, SAR mission coordinator, federal coordinating officer, and federal on-scene coordinator.
Q. And what types of measures are you empowered to do with your authority as Captain of the Port?
A. Issue Captain of the Port orders and, essentially, anything -- control maritime trade and traffic inside any port subject to U.S. jurisdiction.
Q. Okay. I want to talk to you about those orders. When you issue an order, what effect does that have on a vessel?
A. Essentially, they have to comply or they face penalties; it can be civil or criminal, depending on what the event is.
Q. And can those orders apply to just vessels or people or both?
A. It's people, vessels, or some facilities shoreside.

Q. And why would you, as the Captain of the Port, issue an order on a vessel or a person?
A. It's all based off of the Magnuson Act and the Safety Act. So, essentially, it's to protect the safety, security, and environment of a port area.
Q. And once an incident happens, what is the process that leads you to actually issuing a Captain of the Port order?
A. So if it's a threat to the safety, security, or the environment within that port area, my team will review the Code of Federal Regulations for the appropriate issue or concern, draft up a Captain of the Port order, bring it to me, brief the -- whatever the case is, the event. And then I will sign it out, and it will get sent to the individual, the facility, or the -- whoever owns the vessel.
Q. And is this something that you're authorized to do by law?
A. Yes.
Q. And are these orders enforceable if someone does not comply with them?
A. They are.
Q. What steps can you take or can your staff take to enforce these orders?
A. It would start with warnings, but essentially, it runs into -- you move from warnings to, essentially, they get fined on the civil side. And if it -- it elevates eventually to criminal.

Q. And do you know when it would elevate to a criminal violation?
A. Essentially, willfully, depending on what the event is, if it goes to a certain level, something very bad happens, or if it -- it's willfully broken.
Q. And when you issue an order, does it have a specific expiration date?
A. It does not.
Q. So when is it effective until?
A. Until we issue a rescission order to that -- the original order.
Q. And how would you go about issuing a rescission order?
A. There would be a -- essentially, a write-up, say, "this Captain of the Port order is hereby rescinded on such and such date."
Q. So when you became Captain of the Port in April of 2022, did the orders issued before you were in that position remain in effect?
A. They do.
Q. And can you describe the procedure for the previous Captain of the Port transferring to you as the Captain of the Port.
A. So during the change of command -- which, our supervisor, who is the district commander, the admiral, we actually salute, and all authority, responsibilities, and orders remain intact. And actually, at the end of my speech during that event in

front of my entire crew and any witnesses who wish to attend, there is actually a section where I say to the assembled of "all policy regulations and orders remain in effect."
Q. And are you aware of a Captain of the Port issued on April 9th of 2020 affecting the defendant, Dustin McCabe?
A. I am.
Q. And is this order still in effect?
A. It is.
MR. STIEHL: Okay. Your Honor, I would like to introduce what is -- or show you and the jury what has been previously admitted as Government's Exhibit Number 12.
THE COURT: All right. Please proceed.
MR. STIEHL: And, Your Honor, this is another document with redactions.
THE COURT: Same instruction applies, ladies and gentlemen.
BY MR. STIEHL:
Q. And, Captain, looking at the top of the page here, who is this order issued to?
A. Dustin S. McCabe.
Q. And what date was the order issued?
A. 9 April 2020.
Q. Now, does this look like a typical Captain of the Port order from your perspective?
A. It does.

Q. Okay. And to start on the second page, before we talk about what's in it, I wanted to direct your attention to the signature block. Who is J.F. Burdian who has signed this document?
A. So that was my predecessor, Captain Burdian.
Q. And, just to be clear, as you described earlier this authority has passed to you?
A. It has.
Q. And was this order signed by the defendant?
A. Yes, it was.
Q. And can you show where. You can, like, circle it or underline it.
A. (Indicating).
Q. And was he served by a Coast Guard representative?
A. He was.
Q. And do you know who that was?
A. It -- yes. Christopher, I think that's Mosquera.
Q. And can you circle where Mr. Mosquera signed the form.
A. (Indicating).
Q. And what date is this signed?
A. 10 April 2020.
Q. Okay. Let's go back to the first page of this order. Directing your attention to the first paragraph.
Can you explain what the order means when it says "the Coast Guard conducted a casualty investigation"?

A. So, my investigators go out -- and for this vessel, the motor vessel "Persistence," and at that location -- essentially after the investigation, they were deemed to be operating in a legal passenger-for-hire vessel.
Q. And can you explain what it means when the vessel was deemed to be operating as a passenger-for-hire vessel?
A. So, essentially, they were working as a -- people would rent out a vessel. Renting it out on its own is not -- they aren't following the appropriate regulations and rules for safety and security.
Q. And just to be clear, the name "Persistence" -- are you aware if the name of this vessel later changed?
A. I believe it has.
Q. And, just for the record, can you read what the official number is associated with the vessel?
A. 930158.
Q. And would that official number stay with the vessel if the name was to change?
A. It would.
Q. Okay. Let's move down to the third paragraph of Government's Exhibit 12. What does that order the defendant to stop doing?
A. You know, "I hereby order you to cease any operations, whether as an inspected or uninspected vessel, until such time as it can be shown to the satisfaction of the Coast Guard that

your vessel is being operated in compliance with all applicable federal laws and regulations."

Q. And, just to be clear, if the defendant was to buy or to have bought another vessel after this order was issued, would he be allowed to operate for hire?

A. No.

Q. And what does the next paragraph do?

A. So it essentially outlines my authorities and then goes through the various civil penalties and/or felony issues if he was to violate those Captain of the Port orders or this Captain of the Port order.

Q. And, finally, what does the final paragraph do here?

A. Essentially, it allows them to -- if they don't believe that this order was issued appropriately, that they can appeal the decision up the chain of command, which would be to Admiral Schofield at District 7.

Q. And are you aware of any appeals related to this order?

A. I am not.

Q. And from your awareness, is this order still in effect --

A. It is.

Q. -- today?

And so one last question I have. I should have mentioned it at the top. But what types of waterways do your authorities extend over?

A. Essentially, any navigable waterway that is deemed

accessible. All federal waterways, essentially.
Q. And would that include the Atlantic Ocean?
A. It would.
Q. And would that include the Intracoastal Waterway in Palm Beach, Florida?
A. It would.
MR. STIEHL: Okay. Thank you, Captain. No further questions.
THE COURT: Any cross-examination?
MR. O'SULLIVAN: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. O'SULLIVAN:
Q. Good morning, Captain.
A. Good morning.
Q. I just have a couple of questions just to clarify. So on April 9th of 2020, an order was issued against Mr. McCabe; correct?
A. That's correct.
Q. And that order prohibited him from operating that vessel which has now become the Southern Comfort; correct?
A. That is correct.
Q. Okay. And you testified on direct examination that not following these orders could lead to civil or criminal penalties; correct?
A. That's correct.

Q. And it's your understanding that Mr. McCabe has followed that order to the T; correct?
A. I'm not aware of that, one way or the other, sir.
Q. Have you ever pursued any civil penalties against Mr. McCabe?
A. I don't know off the top of my head, sir.
Q. Have you ever pursued any criminal penalties against Mr. McCabe?
A. I'm not aware of that, sir.
Q. Are you able to offer any evidence to this jury today that Mr. McCabe did not follow this order?
A. I'm not aware of that, sir.
Q. Okay. So it's fair to say that he did follow this order and continues to follow this order?
A. I'm not aware of that, sir.
Q. But you're not aware of anything that says he did not follow this order, correct, Captain?
A. I am not.
MR. O'SULLIVAN: Okay. Thank you for your time, sir. I appreciate it.
THE COURT: Mr. Stiehl.
MR. STIEHL: Thank you, Captain. No further questions from the United States.
THE COURT: Thank you very much, sir. You may be excused.

THE WITNESS: Thank you.

THE COURT: We will proceed to your next witness.

MR. STIEHL: Thank you, Your Honor. The United States would like to call Joshua Steib.

THE COURT: Good morning, sir. Please walk over here, and then stay standing for a moment so you can be sworn in.

COURTROOM DEPUTY: Do you solemnly swear or affirm that the testimony you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

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

THE WITNESS: Name is Joshua Steib. J-O-S-H-U-A, Steib, S-T-E-I-B, as in boy.

JOSHUA STEIB,

having been sworn, testified as follows:

DIRECT EXAMINATION

BY MR. STIEHL:

Q. Good morning, Mr. Steib, and thank you for being here with us today.

We're going to start out with a little bit of background about you, and then we're going to get into some specifics. So can you just start out and tell the jury where you live.

A. Yes. So I live in Jupiter, Florida.

Q. And what do you do for a living?

A. So I'm a general manager of the Safe Harbor North Palm Beach.

Q. And can you tell me what Safe Harbor North Palm Beach is.

A. So, it's a marina. We hold about 120 slips, fuel dock, boat lifts, a little mixture of a food truck on-site. And so, just a, kind of, basic marina.

Q. And again, I know one of our other witnesses mentioned this, but can you just clarify what a marina is.

A. Yeah. So a marina is a spot where you can bring boats in, store boats, moor boats, repair services, and things like that. It's kind of your general spot where you can store a vessel if you can't keep it on land somewheres. So it's just a mooring spot for vessels.

Q. And how long have you been working at this marina?

A. I have been at North Palm now for almost 14 years now, almost -- yeah, coming up on 15, actually.

Q. So were you working there in March of 2020?

A. I was.

Q. And can you describe your role at North Palm Marina.

A. So as a general manager, you oversee the whole aspect of the marina operations, from business side of it to, you know, finances, to the employees, the staffings, the members that come in and out. So, yeah, a general manager does a little bit of everything.

Q. And how long have you been in that position as a general

manager?
A. I have been in that position for about five years now.
Q. Okay. And, again, you were in that position in March of 2020?
A. I was.
Q. Okay. Let's talk about the defendant, Mr. McCabe. Do you know Mr. McCabe?
A. Yes, I know of Mr. McCabe. He was a member of ours back in the -- in time.
Q. Do you recall when he was a member or --
A. I don't recall.
Q. So do you know how long ago you first met him?
A. Got to be, I would say, about four years, maybe, give or take. Around there.
Q. And how did you first get to know him?
A. He just came as a member. He had a dive boat. And my previous manager before me signed him up as a member. And, yeah, he was just a member into the marina.
Q. And what was your relationship with him at that time?
A. Just normal conversations with -- as normal members. Brief conversations throughout the day, coming through. You know, slips, storage license and things like that, insurance, those kinds of conversations, just normal conversations with -- as members that we ask for documents and things.
Q. And what type of documents would you and the defendant, I

guess, work with?
A. So you have slip license agreements and things like that. You have payments, you know, and how to, you know, pay the bills and stuff, the insurance, those -- those kind of things.
Q. And would you ever help him print or scan documents?
A. Yeah. I mean, most members, you know, don't have printers and scanners on their boats, so, yes, we would.
Q. So do you know what kind of things you would print?
A. No. I mean, members send us stuff all the time. We just print it out. Since we have a printer at the office, we just -- they send it to our emails and we print it.
Q. And can you tell me how that works with your printers and scanners.
A. Yeah, so a member would send us an email or --
(Court Reporter requested clarification.)
THE WITNESS: I'm sorry.
A member would send us an email or a document and send it to our email personally, and then we would just print it on our printer at the office.
BY MR. STIEHL:
Q. Okay. Let's move to the events just before March 2020. Prior to March of 2020, what kind of vessel did Mr. McCabe have?
A. I think it was a 30-foot vessel. I can't remember the make, but it was called Sea Scout.

Q. And what type of vessel was this?
A. A normal kind of dive boat.
Q. Were there a lot of dive vessels at your marina?
A. No.
Q. Why not? Is there any particular reason?
A. No. We just -- it wasn't the kind of community (phonetic) that we had at the marina. It was more of your mom-and-pop, you know, like, local patrons, you know, going out on their boats. We didn't have many commercial vessels at the marina; so I think he was actually the only one.
Q. And in the months prior to March of 2020, had Mr. McCabe ever mentioned to you purchasing a new vessel?
A. Yes, he talked about, you know, purchasing something new. I just -- didn't really pan out at the time. He was looking at something, just didn't have anything on -- at the mind.
Q. And do you know why he wanted to purchase a new vessel?
MR. O'SULLIVAN: Objection. Calls for speculation.
THE COURT: Overruled.
THE WITNESS: I don't recall.
BY MR. STIEHL:
Q. Okay. So what happened in early March of 2020?
A. What -- what are you referring to?
Q. Well, did Mr. McCabe get a new vessel?
A. Yes.
Q. And was the new vessel the same size as the old one?

A. I think it was a little bit bigger.
Q. And did Mr. McCabe tell you when he was getting that new vessel?
A. There might have been a brief conversation that he was looking at a new vessel, just not a direct conversation to say, hey, I bought this vessel.
Q. And was it typical for a member to get a new vessel without giving you advanced notice?
A. It's not typical, but members do that on a whim. They buy vessels, you know, and they get a good price. And then they buy a vessel, and then we get word of it.
Q. And what do you do when a member gets a new vessel?
A. Usually, we have to redo the contract because the contract is stated to that vessel. And then we have to get the updated insurance.
Q. And were you aware of the events that occurred with Mr. McCabe in -- on March 28th and 29th of 2020?
A. What are you referring to?
Q. An incident that occurred on his vessel on the, I guess, it was on the weekend of March 28th and 29th.
A. Yes, I was aware of it, yes.
Q. Were you working on those days?
A. I was not.
Q. And do you know why Mr. McCabe got this new vessel?
A. I don't.

Q. Okay. Let's move to the events just after those late March 2020 dates. Did you see Mr. McCabe again after the events of March 28th and 29th, 2020?
A. Yes.
Q. In what context did you see him?
A. Printing and scanning some items.
Q. Would you recognize these documents if I showed them to you?
A. I -- maybe.
MR. STIEHL: Your Honor, I want to show the witness and the jury what has already been admitted as Government's Exhibit 79.
BY MR. STIEHL:
Q. Is that your email address on the "to" line?
A. Yes.
Q. And who is the email from?
A. Florida Scuba Charters.
Q. And do you know what this document is?
A. I don't.
Q. And do you know who would send you emails from the Florida Scuba Charters account?
A. Usually, it would be Dustin.
Q. Do you know why this document was sent to you?
A. I don't.
Q. And can you tell me what the date and timestamp is here.

A. Date says, Friday, April 3, 2020, at 2:53 p.m.
Q. And do you know if this is a document that you printed for Mr. McCabe?
A. It is.
Q. And can you tell me what the attachment says.
A. Attachment says "Borrower Paycheck Protection" -- pro-something. It just went away.
"Borrower Paycheck Protection Program Application V1033120, SBA Loan CARES Act Calculation Sheet."
Q. And then what does the last line say?
A. "PPP borrower information fact sheet 033120.pdf."
Q. And so, do you known what this document is?
A. I did not.
Q. Were you able to print this document for Mr. McCabe?
A. I'm sure I was.
Q. Okay. Let's move to the next document. Or I guess we can show the -- show the full document to the jury here. So now that you have seen this, do you know what the document is?
A. No. It's just a document that I printed.
MR. STIEHL: Okay. I want to show the witness and the jury what has already been admitted as a Government's Exhibit 80.
BY MR. STIEHL:
Q. Is that your email address on the "from" line?
A. Yes.

Q. And can you tell me what the attachment says.
A. "Dustin1.pdf."
Q. And do you know what this document is?
A. No.
Q. Can you tell me the date and timestamp on this document.
A. Friday, April 3, 2020, 3:07 p.m.
Q. Do you know why you would have the email for this document?
A. So when we have to print things and scan things back to members, we would have to send it through our email and then send it back to that member's email. So that's why.
Q. So is this -- are you saying -- is this a document that you scanned?
A. This is a scanned document that I must have sent back to Dustin.
Q. Okay. Let's move on to the next page of the document.
Can you tell me what is listed as the average monthly payroll.
A. 7,300.
Q. And then what does it say in the next box of the 2.5 equals --
A. 18,250.
Q. And can you now tell me the name of the business.
A. Florida Scuba Charters Inc.
Q. And the name of the individual listed?
A. Dustin McCabe.

Q. Okay. Let's go through the rest of this document for the jury. Can you tell me whose initials those are on the bottom.
A. I believe that's Dustin McCabe's.
Q. Okay. And can you tell me whose signature, and the date on the bottom.
A. Dustin McCabe. Looks like April 3, 2020.
MR. STIEHL: Okay. I want to show the witness and the jury what's already been admitted as Government's Exhibit 81.
BY MR. STIEHL:
Q. Is that your email address on the "from" line?
A. Correct.
Q. Can you tell me what the attachment says.
A. Dustin.pdf.
Q. And do you know what this document is?
A. I don't.
Q. Is this also a document that would have been scanned?
A. Correct, yeah.
MR. STIEHL: And can we show the jury and the witness what the document is here.
BY MR. STIEHL:
Q. Can you read what this document is?
A. Report of Marine Casualty, Commercial Diving Casualty or OCS-related Casualty.
Q. Okay. We will just -- we can go through the rest of this document for the jury, but...

Okay. Now, after you printed and scanned these documents for Mr. McCabe, did you ever see him again?
A. Once.
Q. And do you recall that interaction?
A. Yeah. It was just a brief interaction with him coming up -- he asked me and another officer to block his vehicle, just because a bunch of media was there at the time.
Q. So you mentioned earlier that a new contract was required for his new boat. Did he ever renew that contract?
A. No.
Q. And did he ever make payments to your marina after those dates at the end of March 2020?
A. No.
Q. And did he continue to operate a scuba charter out of your marina after those dates?
A. He did not.
Q. And are you aware if he was operating a scuba charter or a scuba business anywhere else in the area?
A. I was not.
MR. STIEHL: Okay. Thank you, Mr. Steib. No further questions.
THE COURT: Cross-examination?
MR. O'SULLIVAN: Thank you, Your Honor.
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CROSS-EXAMINATION

BY MR. O'SULLIVAN:
Q. Good morning, Mr. Steib.
A. Good morning.
Q. At the time that Mr. McCabe was at the marina, do you recall approximately what his slip rent would be monthly?
A. Around that time, maybe between 17- and $1,800.
Q. Okay. And how many years was he at your marina?
A. I think around three or four --
Q. Okay.
A. -- give or take.
MR. O'SULLIVAN: Those are the only questions I have, Your Honor.
Thank you, sir.
THE WITNESS: Of course.
THE COURT: Redirect?
MR. STIEHL: No further questions, Your Honor.
THE COURT: Thank you, Mr. Steib. You may be excused.
THE WITNESS: You are welcome.
THE COURT: Ladies and gentlemen, we are going to take a 15-minute break.
All rise for the jury.
(The jury exited the courtroom at 10:33 a.m.)
THE COURT: All right. Please return to the courtroom at 10:45.

(A recess was taken from 10:34 a.m. to 10:47 a.m.)

THE COURT: All right. Let's call in the jury, please.

(The jury entered the courtroom at 10:47 a.m.)

THE COURT: Please be seated.

All right. Mr. Koffsky, let's hear from your next witness.

MR. KOFFSKY: The United States calls Adam Pollack to the stand.

THE COURT: Good morning, sir. If you can walk over here to be sworn in, please.

COURTROOM DEPUTY: Right up here, sir, (indicating). Please raise your right hand.

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

THE WITNESS: I do.

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

THE WITNESS: My first name is Adam. My last name is Pollack. A-D-A-M, P-O-L-L-A-C-K.

THE COURT: Thank you. You may begin.

MR. KOFFSKY: Thank you, Your Honor.

ADAM POLLACK,

having been sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KOFFSKY:
Q. Mr. Pollack, good morning.
A. Good morning.
Q. Thank you for being here. I know you have had to make arrangements to get here today. I appreciate it.
I want to start with some questions about your background. Where do you work, sir?
A. I work for Cross River Bank.
Q. And where is Cross Bank -- Cross River Bank, excuse me, located?
A. It's located in Fort Lee, New Jersey.
Q. Where are you based?
A. I am based in Fort Lee, New Jersey.
Q. I see. What type of bank is Cross River Bank? Does it have a specialty of any sort?
A. It has a couple cross specialties. Commercial loan lending; fintech; and they specialized, during the pandemic, in PPP loans.
Q. Okay. How long have you worked there for?
A. I have worked at the bank for four years, with a short stint a few months ago where I was on furlough and then came back.
Q. What roles have you had since you've been at Cross River Bank?
A. I was the head of recruiting for technology for IT; and

that was my role. I was the IT recruiter. And now I am the PPP manager.
Q. PPP manager?
A. Yeah.
Q. And if you could --
A. The program manager for PPP.
Q. If you could just state, what does PPP stand for?
A. The -- I forget the -- but it was the pandemic relief program for -- during the -- during COVID pandemic to assist the local businesses and the businesses in New York and -- not in New York, sorry -- in the U.S. to be able to pay their payroll. So it was a payroll protection program.
Q. Did Cross River participate in that program?
A. Yes, they did.
Q. Is the program still active?
A. Define "active."
Q. When was the program established? Let's start there, from Cross River's perspective.
A. The program was established in 2020. And I would say it's still active in the fact that we are still in the midst of servicing the loans to people, recovering the loans.
Q. And what was Cross River's role with respect to the PPP program?
A. We were both an -- we were an originator.
Q. What does "originator" mean?

A. We would originate the loans. So we would get the documents. The borrowers would apply to us through our portal.
There were two ways. There was direct through third parties, which we had contracts with, which would bring in the loans, or they would apply direct to us through our portal.
And through our portal, they were able to put their information in, apply, upload their documents. And then we were able to fund the loans to -- and approve the loans with the approval of the SBA, and then fund them, make the payments to the borrowers.
Q. Is "lender" another term for originator?
A. I would say, yes, we were a lender.
Q. Okay. And just for context, how many loans -- if you know -- and just an estimate -- how many loans did Cross River Bank make throughout the PPP program?
A. On our portfolio, we have, if I'm not mistaken, a little over 500,000 loans.
Q. In your role as the PPP manager for Cross River Bank, are you familiar with how the program works?
A. Yes.
Q. And are you familiar with Cross River Bank's policies for evaluating and approving loans -- applications for loans, I should say?
A. Yes, I'm familiar with how the PPP process ran in order to

approve the loans for that and what went through with that.
Q. Okay. So let's talk about that process. You have already testified a little bit about it. I think you mentioned one of the ways a borrower could apply is directly to Cross River Bank?
A. Yes, through our portal.
Q. And you also mentioned third parties. Please explain to the jury what you meant by that.
A. So there were other companies. One of them was Kabbage, which was case servicing. They -- they did loans on our behalf and then gave us the information and then we funded loans. Some of those loans that they did we also purchased on their half. So some of them were originating loans and some of them were purchase loans that they were doing on our behalf.
Intuit also did loans on our behalf. And then the rest of the loans were done through us. And then there were people, third-party people, who would bring in potential borrowers and they would get -- go through us. But it all went through our portal.
Q. And by "portal," did someone have to walk into a Cross River Bank to actually apply?
A. No, they did not.
Q. What was the way in which it was done?
A. They were able to do it online.
Q. Online. I see. Okay.

And you mentioned the total number of loans that Cross River Bank has given out. At the time the program was in effect, how many loans a month on average, if you would estimate, was Cross River Bank analyzing?
A. I would say in the tens of thousands, if not more.
Q. How did Cross River Bank review the information in a loan application to determine whether it was true and correct?
A. We relied on the -- well, for documents, the government allowed us to rely -- or requested, I would say, to rely on the attestation of the borrower that the documents that they, in fact, supplied were accurate and were not -- were not fraudulent documents. So we -- we relied on the attestation from the borrower that these were legitimate documents.
Q. Did Cross River Bank ever communicate with borrowers as they were applying for a PPP loan?
A. There were comms back and forth. Borrowers would reach out, you know, "What is the status of my loan application?" "When am I getting my DocuSign?" "Did you receive my DocuSign?" "When am I getting my funds?" So there was, you know, communication back and forth with that.
Q. In what manner would those communications be exchanged? Phone? Email?
A. All of the above.
Q. Email. Oh, all of the above, you said?
A. Yeah. There were -- some borrowers would call. Obviously,

email is an easier way to communicate and faster when you are doing that volume of loans.
Q. And let's say a loan is actually approved. How does the money go from Cross River Bank to a borrower? What's the mechanism for actually transferring the funds?
A. When the borrower puts -- fills out his application for the loan, his or her application for loan through the portal, part of the thing is they put in their bank account, their routing number for the bank accounts and that, and then the money is done through, I believe, an ACH process -- pathway straight to their bank account.
Q. And just for the jury's knowledge, what is an ACH?
A. It's an electronic fund transfer standard in the banking industry. There is multiple ways of transferring money; ACH is one of them.
Q. Okay.
A. It's a wire, basically, almost.
Q. And in your role, do you know where the bank infrastructure for Cross River Bank is located?
A. The infrastructure for Cross River?
Q. Yeah, as far as the account and where the money comes out from. Do you happen to know where that is?
A. I mean, our -- our physical location is on -- in Fort Lee, New Jersey, in the building that I work in. And we have one branch now in -- also in New Jersey, but all of the technology

is done through the building -- through our -- you know, office buildings.
Q. Understood.
Okay. I want to shift -- thank you for that information about your background and your company. I want to shift focus to this case.
Let me start here. Do you know the defendant in this case, Mr. Dustin McCabe, at all on a personal level?
A. No, I do not.
Q. Do you know anything about businesses that he operated?
A. I do not.
Q. Are you here because you have been subpoenaed to testify today?
A. Yes, I am.
Q. Did Cross River Bank receive a subpoena in the course of this case to produce documents?
A. Yes, we did.
Q. Did you review those documents prior to your testimony here today?
A. I have reviewed those documents several times.
Q. Okay. And let's go to some of these documents.
MR. KOFFSKY: I want to show the witness and the jury what's already been admitted into evidence as Government's Exhibit 92.
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BY MR. KOFFSKY:
Q. And before we begin, Mr. Pollack, are you able to see the document on the screen?
A. Yes, I am.
Q. And just to let you know, as we talk through these documents, you're able to use your finger to mark on the screen. We also can zoom in on the text. And so, as we go through each document, we will zoom in and you can mark as well.
Let's -- let me start off with a general question. What is this document?
A. It is the electronic record of the loan application. So this is the -- I guess we will call it the cover page for it. And it says the -- it was the loan application submitted and accepted by Dustin McCabe, signed by him with his email, virtually, on January 21, 2021, at 1:12 in the afternoon.
Q. Thank you.
A. And it shows his IP address that he used to submit it.
Q. Thank you.
I want to go to page 2 of Government's Exhibit 92. And what information does page 2 of Government's Exhibit 92 contain?
A. So it contains the name of the legal company that the -- I guess the defendant put down. It shows where it's located; the address; his email address; the type of entity it was, which

was a C-Corp; the state that it was incorporated in; the year the company started. It shows the number of employees he's saying -- stating he has, which was one on there; his pre-adjusted payroll monthly, which was 8,154, which, coincidentally, is his average monthly payroll; and his total loan request, which was a calculation -- a standard calculation -- I believe it's a multiplication of 2.5.

Q. And let me jump in there. Just for the record, can you read the business that this application is associated with.

A. Yes. The legal name on there is Florida Scuba Charters Inc., and it had a DBA of Florida Scuba Charters.

Q. Okay. And then I want to move to -- and we will talk more about the payroll calculation in a moment. I want to turn to page 3 of Government's Exhibit 92. And, generally speaking, what is this section of Government's Exhibit 92 talking about?

A. These are the check boxes that he is attesting for several terms and conditions of the loan that were a requirement for the PPP program.

Q. And I just want to underline a particular part of the document that I will ask you to read into the record (indicating). Can you read what that first bullet point says.

A. Yes. It says, "To the best of my knowledge, the business information I provided in this application is accurate and complete. And..."

Q. And if you go to the bottom of that section of text, what

is the last -- and I will mark it for you. I just would like you to read this into the record as well (indicating).
A. "I am electronically signing the authorization above that I give permission to Cross River Bank to obtain my personal credit report."
Q. Thank you. And then one last portion I will ask you to read from this document.
THE COURT: When you read, sir, if you could do so slowly so our court reporter can hear you.
THE WITNESS: I'm sorry. No problem.
BY MR. KOFFSKY:
Q. (Indicating).
A. "I confirm that I have not applied for a PPP loan with another lender."
Q. And why is that significant?
A. That's significant because you are only allowed to have one loan at a time. And sometimes borrowers would apply for a loan with one vendor, and then while it was getting approved, they would apply for another loan with another vendor and, therefore, they would end up with two loans which they were not allowed to have.
Q. I see. Okay.
MR. KOFFSKY: And I will have Government's Exhibit 92 taken off the screen.
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BY MR. KOFFSKY:
Q. Mr. Pollack, would borrowers have to submit supporting documentation with an application for a loan?
A. Yes.
Q. What types of documentation generally would be included?
A. Depending on the type of business, it would be tax reports. So, like, if it was a personal loan for like an LLC, it would be, like, a 1040. For a Schedule C, it would be a Schedule C report, an 1140, and those type of documents. They would also supply -- for bank proof, they would supply, you know, voided checks, bank records, and the like.
MR. KOFFSKY: I now would like to show the witness and the jury what's already been admitted as Government's Exhibit 93.
BY MR. KOFFSKY:
Q. Can you tell what Government's Exhibit 93 is?
A. Yes. It's the 1120, which is the corporate -- the U.S. Corporation Income Tax Return for 2020.
Q. Would this be a document that might be submitted in support of a loan application?
A. This would very much be.
Q. What is the business that's referenced in this document?
A. Florida Scuba Charters Inc.
Q. Do you have any personal knowledge of the figures that are included in this document?

A. The only personal knowledge is what I can see on the paper, so, yes.
Q. Do you happen know if the numbers in there are true and correct?
A. I can only base it on the attestation of the borrower that it was correct.
Q. And would Cross River Bank have relied on the numbers in this document as being correct?
A. For the PPP program, yes.
MR. KOFFSKY: Okay. And now I want to show the witness and the jury Government's Exhibit 94 already in evidence.
BY MR. KOFFSKY:
Q. And what is Government's Exhibit 94?
A. It's a voided check for the Florida Scuba Charters Inc.
Q. And is this a document that a borrower might have to submit in support of a loan application?
A. Yes.
Q. Why is that?
A. Well, it shows that they have a bank account that's valid, so that they're in business. It also is -- helps with the ACH processing and the account of which it would be used for to -- to fund the money.
Q. And if you could just read for the record, the bank that is referenced in this voided check.
A. Knoxville TVA Employees Credit Union.

Q. Thank you.

MR. KOFFSKY: I now want to show the witness and the jury Government's Exhibit 96.

BY MR. KOFFSKY:

Q. And just briefly, what is this document?

A. This is a Florida State driver's license for the -- for Dustin Sean McCabe.

Q. And same question. Would -- would a borrower have to submit something like this in support of an application?

A. Yes, for ID purposes.

Q. I'm sorry. Let me repeat the question. Is this a document that a borrower would have to submit in connection with the PPP loan application?

A. Yes. These are one of the ways we would identify that the borrower was, in fact, who they claim to be.

Q. And just to clarify, Government's Exhibits 93, 94, and 96 that I just showed you, are those all documents that Mr. McCabe submitted in connection with the application he submitted to Cross River Bank?

A. Yes.

MR. KOFFSKY: Okay. I will now ask for Government's Exhibit 91 to be shown to the witness and the jury, also in evidence.

BY MR. KOFFSKY:

Q. Mr. Pollack, what is Government's Exhibit 91?

A. This is the cover page or -- for the overall loan package that was sent to the borrower for review.

Q. And if I can have you read the first sentence of that paragraph that I just marked on the screen.

A. "Cross River Bank is happy to let you know that your loan request has been approved by the SBA. The enclosed DocuSign includes several important documents that need to be executed for your loan to fund."

Q. And just down the first page here, what documents are included in this -- in this package?

A. So the documents included are: The 2483, which is the completed application; the settlement sheets, which is the SBA Form 1050 which will show everything that's the responsibility of the borrower going forward; the borrower resolution, which allows them to understand any and all references for the loan; the privacy notice, the GLBA privacy notice which is the standard privacy notice that banks have to provide to borrowers; the promissory note, which is the bank note that is DocuSigned which shows what the terms are; all third-party disclosure forms for anybody else who would have accessed any of the files; the 4506-T form, which is another form that shows information; and then the applicant certification which is where the applicant signs.

Q. And we will go through some of those documents in a moment.

If you see the text on the bottom of the first page of

Government's Exhibit 91, what does that first sentence say? If you could read that into the record.
A. "After your documents are fully executed, it can take 7 to 10 business days for the funds to post to your bank account."
Do you want me to continue?
Q. That's okay. And let me just ask a question about that. Was that timing standard for, on the one end, a loan being approved, on the other, someone actually receiving the loan?
A. On average, it took about 10 days. There were exceptions to that. There was a lot of money going out and a lot of funding and a lot of paperwork. So sometimes, it was a little bit longer than that. And Cross River did its best to honor the government's commitment and get the funds out as quickly as possible.
Q. Understood. I'm going to go through a couple of pages in Government's Exhibit 91. I would like to turn to page 2 of the exhibit.
If you can tell the jury -- bless you -- if you can tell the jury what's included on this page.
A. This is the numbers that we saw earlier, the qualifying payroll amount. That's where they're putting down the average monthly payroll. That he had any existing EIDL, which is a different type of loan; he did not. The approved amount which was $20,385. The payments that would be monthly if the loan was not forgiven. The SBA loan number which is the number

provided by the SBA once the loan is approved. The interest rate which is 1 percent. And the term of the loan, which was 60 months.
Q. And just for clarity for the record, if I can ask you to read what the loan number is into the record.
A. Yes. The loan number is 4387648301.
Q. Thank you.
And I will now move to page 3 of the document of Government's Exhibit 91. And before we kind of dive into this document, generally speaking, what is this document?
A. This is the actual application form. This is like the 2483. This is what is taken from the portal from what the borrower entered, and then transcribed into this form.
Q. Was this a standard form that was used throughout the PPP program?
A. This form was for the second-round loans. There was a similar form for the first-round loans.
Q. How many rounds of the program were there?
A. There were two.
Q. Two rounds.
If I can zoom into the top third of the document. And this will be page 3 of Government's Exhibit 91.
We will move through this part of it somewhat quickly. What is the business that's referenced in the 2483 form?
A. The Florida Scuba Charters.

Q. And who is listed towards the right of the screen as the primary contact?
A. Dustin McCabe.
Q. And if can you read into the record his email address.
A. Dmccabe, C-A-B-E, 10 -- 1075@gmail.com.
Q. And I will now move to the calculations just below where you were reading. You briefly spoke about this earlier. Just starting on the left side, the average monthly payroll. Who put in that amount?
A. He did it based on -- the borrower would have done it based on the tax forms that they provided.
Q. Was that information that was provided to Cross River Bank?
A. Yes.
Q. Did Cross River Bank rely on that information being accurate?
A. Yes.
Q. Moving to the right where you have this calculation -- was that calculation standard for every loan?
A. The total value, the 20,000?
Q. I'm sorry. In between the payroll figure and the 20,000, if you could explain to the jury how that calculation worked.
A. Yes. So that calculation was the calculation that was allowed for the loan. So it was multiplied by 2.5, or there was higher for certain category of applicants. Multiplied that by 2.5 is what gave you the loan amount.

Q. Okay. And moving to the right even further. "Number of employees," what's included in that -- in that column?
A. That is what the borrower would have attested to having as the amount of current employees the borrower had at the time of the loan.
Q. How many employees are referenced here?
A. One.
Q. Okay. And is that number supposed to be at the time -- does that number reference at the time the loan is being made how many employees exist?
A. Yes.
Q. Okay. And just briefly, what are the purposes of the loan? What's included there?
A. The purposes of the loan are to pay payroll for those employees, to cover operating expenses for those employees. That is the purpose of the loan as selected.
Q. Could loan proceeds be used for other purposes that are not listed here?
A. They were not allowed to be used for other purposes.
Q. I will now scroll down to the second half of the page.
And if I can zoom in on the question chart. Generally speaking, what are these questions designed to -- what are these questions geared at getting, what type of information?
A. These -- there are certain exclusions that would make someone ineligible for a loan based on the criteria that the

government set. So these were the questions that were selected to verify that the person was -- the borrower was, in fact, eligible for the loan.

Q. And you've talked about attestations. Does a borrower have to make those same attestations in answering these questions?

A. Yeah.

Q. How does a borrower actually do that in completing this form?

A. By initialling next to -- on line 4 and on line 5.

Q. And --

A. Yeah.

Q. Excuse me. I didn't mean to cut you off.

Do you see initials on the document?

A. I do.

Q. What initials do you see?

A. DM.

Q. I will now ask to go -- let's see, I will now ask to go to page 9. I'm sorry. Let me scroll back up to page 4, please.

So this is page 4 of Government's Exhibit 91. If you could please describe generally, what's on this document?

A. Again, this was a borrower making representation, authorization, and certifications towards the loan and then initialling on those lines to verify that it was correct. And they agreed.

Q. And if I can just mark a couple of things for you to read

into the record. I will start with this one.
A. Sorry. How do I zoom that in?
Q. If we could zoom in on that.
A. There we go.
Q. Let me clear the screen for you.
A. "I have read the statements included in this form, including the statements required by law and executive orders, and I understand them."
Q. And how about that second bullet point?
A. "The applicant is eligible to receive a loan under the rules in effect at the time this application is submitted that have been issued by the Small Business Administration (SBA) and the Department of Treasury (Treasury), implementing second draw Paycheck Protection Program loans under Division A, Title I of the Coronavirus Aid, Relief, and Economic Security Acts" -- which was known as the CARES Act -- "and the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, the Paycheck Protection Program rules."
Q. And if you had to boil that down, what does that mean?
A. That means these are the rules that the Treasury Department, that the government, that everybody put together, and the applicant understands the rules that are in effect and is agreeing to them.
Q. And when it says, "The applicant is eligible," the beginning of that bullet point, what does that mean?

A. That means that all those things before that he checked off, that he checked "no" to, that he didn't -- they weren't ineligible for the loan.
Q. Okay. And I'm going to ask you to read just a little more. (Indicating).
A. "All loan proceeds will be used only for business-related purposes as specified in the loan application and consistent with the Paycheck Protection Program rules, including the prohibition on using loan proceeds for lobbying activities and expenditures. If applicant is a news organization that became eligible for a loan under Section 317 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, proceeds of the loan will be used to support expenses at the component of the business concern that produces or distributes locally-focused or emergency information."
Q. And if I -- if you focus on that, the first part of that bullet point, what is that getting at?
A. That the proceeds can only be used for the business-related purposes that were specified on that previous page -- document we saw.
Q. And if I can zoom out on page 4 of Government's Exhibit 91.
And down at the second half of that page, what do you see on that part of the page?
A. I see the initials "DM" down by all the rules and signatures and statements for the loan.

Q. Thank you. If I can flip to the next page of Government's Exhibit 91.
And what do you see at the bottom of page 5 of Government's Exhibit 91?
A. I see the borrower's signature.
Q. And what name is listed there?
A. Dustin McCabe.
Q. What's the date?
A. 2/2/2021.
Q. Thank you.
If I can jump to page 9 of Government's Exhibit 91.
The text is cut off at the top of the screen here. Just, generally speaking, what is this document?
A. This is the Resolution to Borrow. It's basically that he certifies that he is -- that -- his existence, the name of his company, that -- that he is a duly formed company, and that -- all the resolutions adopted to it, and the office, and that he's the officer of the company, his title, and signature.
Q. Is the document signed?
A. Yes, it is.
Q. And who signed it?
A. It's signed by D. McCabe.
Q. I will jump to page 16 of Government's Exhibit 91.
And what is page 16 of Government's Exhibit 91?
A. This is the bank note, the standard loan bank note for the

loan.
Q. And if you could just explain, what is a bank note?
A. Basically, a promissory note to -- this is what you're signing; this is what you will pay back.
Q. And does this document -- does it come with the loan? Is it part of the loan package?
A. It is part of the loan, every loan package.
Q. Okay. And if a loan was forgiven, what happens to this note?
A. Disappears.
Q. Okay. What's the loan date on this, just for the record?
A. The loan date on this was January 23, 2021.
Q. And what's the business that's referenced in there?
A. Florida Scuba Charters Inc.
Q. Okay. And then last, but not least, for Government's Exhibit 91, if I can go to page 21.
And, just briefly, if you could describe what this document is.
A. This is basically the -- saying that the applicant's aware of the rules, a full set of the guidelines, that the signature of the applicant is a qualified representative of the applicant -- of the application, actually, but, yes, the applicant. What -- what they were applying for, the type of loan, that information.
Q. And if I can direct your attention to number 4. What does

number 4 say?
A. Number 4 says, "The average monthly payroll that applicant reported in the application was calculated in accordance with instructions for the Paycheck Protection Program application form, SBA Form 2483, or the Paycheck Protection Program second draw borrower application form, which is SBA Form 2483-SD, as applicable."
Q. Were there, to your knowledge, specific instructions on how payroll was to be calculated?
A. Yes.
MR. KOFFSKY: Okay. And if I can just flip to the next page of Government's Exhibit 91. And one more. And just one more. There should be a signature page, is what I'm looking for.
BY MR. KOFFSKY:
Q. And just for the record, what business is listed on this page?
A. Florida Scubas Charters Inc. -- sorry, Florida Scuba Charters Inc.
Q. And who is it signed by?
A. D. McCabe.
Q. Thank you.
MR. KOFFSKY: And I will take Government's Exhibit 91 off the screen.
///

BY MR. KOFFSKY:
Q. Earlier you testified that -- one more question for the record. What's the date of this document?
A. The date of this document is the 2nd day of February, 2021.
Q. Okay. Thank you so much.
And I want to shift gears. Earlier you talked about that Cross River Bank would sometimes communicate with borrowers during a pending application; is that correct?
A. Yes.
Q. Do you know if communications were exchanged with Mr. McCabe during this application?
A. There were some comms that were communicated back and forth to the borrower regarding this loan.
MR. KOFFSKY: Okay. I will now show the witness and the jury what's already been admitted as Government's Exhibit 97B.
BY MR. KOFFSKY:
Q. And we can just look at particular parts of this document. I will direct you first (indicating) to that section. What's the date -- well, let me ask first, what type of communication are we looking at here?
A. This was an email request from the borrower regarding the status of the loan.
Q. Okay. And what's the business? If you look right at the top of the document, what business is being discussed?

A. Florida Scuba Charters.
Q. And where I directed your attention, who does it appear is sending this email?
A. Dustin McCabe.
Q. Okay. And generally, what is he asking?
A. He is asking, "When am I getting the DocuSign so I can sign it and get the money?"
Q. And if Cross River gets an inquiry like this, how does it respond?
A. As best as we can. And usually, in a case like that, we advise them of any potential delays that are going on or advise them that it will be out there shortly; you know, there is a process of steps to get the loan information and the DocuSign created and then out to the borrower.
Q. Based on your review of the records in connection with this case, did Mr. McCabe eventually receive the funds with this loan?
A. He did.
Q. Okay. And I now want to shift gears again, and I will have Government's Exhibit 97B taken off the screen.
We briefly touched earlier on forgiveness. Can you explain to the jury what forgiveness is.
A. The government -- the purpose of the PPP program was to help out small businesses in the U.S. It was not to burden them. It was not to punish them. It was to help them. And

one of the ways the government did that, that if the borrower used the money in the appropriate manner that it was given, it allowed the borrower to submit an application to be forgiven for the loan. And in that case, the borrower would not have to pay back the money.
Q. Was an application for forgiveness a separate application all together?
A. Yes.
Q. And would it come after the application for the original loan?
A. Yes.
Q. Okay. And as far as information, like, generally, what information needed to be included in a forgiveness application?
A. It was similar information to what was in the application. It would ask for things like, you know, the money, what you spent it on, what your payroll was, how many employees you had then, how many employees you now have, because it was at a later time, and the hope was that this was -- businesses were able to grow or at least continue at that point.
Q. Uh-huh.
A. That sort of information.
Q. And if you think back to the application that we just looked at, how many employees were -- were in existence for Florida Scuba Charters?
A. On the 2483, they put down -- the borrower put down, there

was one employee.
Q. How did you -- with -- regarding forgiveness, how did you know that the information in the forgiveness application was true and correct?
A. Documents that they would have to provide.
Q. And would -- in the same way for an application, would a borrower need to certify representations made in a forgiveness application?
A. They would.
MR. KOFFSKY: Okay. I now want to show the witness and the jury what's already been admitted into evidence as Government's Exhibit 98.
And let's work our way down on this document.
BY MR. KOFFSKY:
Q. First, just generally, what is this document?
A. This is a 3508, which is the forgiveness application.
Q. Was this a standard form used for forgiveness applications?
A. Yes.
Q. What's the business that's referenced at the top of the screen?
A. Florida Scuba Charters Inc.
Q. And who is listed as the primary contact?
A. Primary contact is Dustin McCabe.
Q. And I will work down to the loan number. If you could read, for the record, what the loan number is.

A. The loan number is 4387648301.
Q. Is that the same loan that we were just looking at the application for?
A. I believe so.
Q. What's the loan amount?
A. The loan amount is $20,385.
Q. And just below the loan amount, it seems there is employees at the time of loan application. What number is included in this forgiveness application?
A. In this application, there is -- it's listed as five employees at the time -- at the time of the original application.
Q. Is that question asking the same question that's being asked in the original loan application?
A. It is asking for that exact data.
Q. Is the information in this forgiveness application the same?
A. No, it is not.
Q. If it's -- in your experience, is that supposed to be the same if it's asking the same question?
A. Yes.
Q. Okay. Moving to the right, how many employees are listed at the time of this forgiveness application?
A. At the time of the forgiveness application, it's now listing as five employees.

Q. Okay. And now moving down to the center of the page, what does it say there?
A. It says the amount of the loan that was spent on payroll costs.
Q. And what amount is included there?
A. $20,385.
Q. And what does that -- what does that mean?
A. That means the PPP loan that was funded was for $20,385, the borrower was supposed to use that for payroll costs, and according to this form, the borrower spent that exact amount on payroll costs.
Q. And how do you know -- as Cross River Bank, when you're evaluating this application, how do you know that's true?
A. Because the borrower signs that that's what they spent.
Q. Okay. We will move down to the second half of the page, and if I can zoom in on that second half.
And if I can ask you to read -- let me clear the screen. If I can ask you to read that sentence into the record (indicating).
A. "The borrower has complied with all requirements in the Paycheck Protection Program rules, Section 7(a)(36), 7(a)(37), and 7(a) of the Small Business Act. The PPP interim final rules and guidance issued by the SBA through the date of this application, including the rules related to eligible uses of PPP loan proceeds, the amount of PPP loan proceeds that must be

used for payroll costs, the calculation and documentation of the borrower's revenue reduction, if applicable, and the calculation of the borrower's requested loan forgiveness amount."
Q. And I will ask you to boil that down. What is that saying?
A. That's saying that the borrower followed all the rules, used the money for payroll costs, and all the proceeds that must be used, payroll cost, the calculations, and documentation of how it was calculated, and the calculation of -- how he calculated the borrower's requested loan amount.
Q. Is this -- is this certification initialed in any way?
A. Yes. "DSM" on the left.
Q. Okay. And I will move to the second certification, and I will ask you to just summarize that as opposed to read it. What is the second certification getting at?
A. This is the borrower saying that all of the material that was submitted is true and correct, that they understand that making false statements is a -- is punishable by law, and the effective punishments that can happen from fraudulently doing it.
Q. And is this certification initialed as well?
A. Yes, it is.
Q. By who?
A. By DSM.
Q. Is this forgiveness application signed?

A. Yes, it is.
Q. What is the signature included below?
A. Dustin Sean McCabe.
Q. And what is the date of the forgiveness application?
A. August 9, 2021.
Q. Do you know if it was granted?
A. It was.
MR. KOFFSKY: I have no further questions, Your Honor.
THE COURT: Cross-examination.
MS. FRANCIS: Yes, Your Honor.
I'm sorry, Your Honor. I seem to have lost power. May I collect my charger?
THE COURT: Yes.
MS. FRANCIS: Thank you. Your Honor, I will proceed.

CROSS-EXAMINATION

BY MS. FRANCIS:
Q. I only have a few questions for you. Good morning again, Mr. Pollack.
A. Good morning.
Q. Are there any red flags or indicators that would indicate to the bank that an application possibly contained fraud?
A. If we were to -- if the loan -- if the loans were, you know, had -- the name on the -- on the ID didn't match up to the tax documents, that would be an obvious fraud. Those dates -- we were relying on the documents as being accurate

and, you know...
Q. Okay. Is there a process? For bank employees that do find fraud, is there a process as far as to discover it, report it? What happens when a bank employee does uncover fraud?
A. We have a fraud department that reviews all of those, and they go through the entire fraud review of the loan and go from there.
Q. Okay. Thank you, sir.
As far as your review of Mr. McCabe's application, did your bank uncover any indication of fraud?
A. I believe there was a fraud flag on this --
Q. And --
A. -- post the loan being given.
Q. And what was that flag fraud you said? That flag?
A. Just a tag that it was suspected of being fraud.
Q. Did it give any indication of what the suspected fraud would be?
A. I don't have that information.
Q. Okay. Are you aware -- you mentioned earlier that sometimes customers would call in to receive assistance with their application. You said that you did receive comms from Mr. McCabe. That was post-application; correct?
A. Post application submission, yes.
Q. Okay. Are you aware of any telephone calls that Mr. McCabe had with any of your bank employees?

A. I believe I did see one phone call that was made.
Q. Okay. Is it customary for banking employees to assist customers in filling out their PPP loan applications?
A. It is customary to guide them to the regulations and the rules that are in the program.
Q. Okay. And are you aware of whether or not Mr. McCabe received help and assistance from a banking employee in filling out his application?
A. I am not.
MS. FRANCIS: Okay. No further questions, Your Honor.
THE COURT: Any redirect?
MR. KOFFSKY: No redirect, Your Honor.
THE COURT: Thank you very much, sir. You may be excused.
THE WITNESS: Thank you.
THE COURT: All right. Please call your next witness.
MR. KOFFSKY: Your Honor, the United States calls Justin Masterman to the stand.
THE COURT: Good morning, sir. Once you get here, Mr. Creary will swear you in.
COURTROOM DEPUTY: Please raise your right hand.
Do you solemnly swear or affirm that the testimony you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?
THE WITNESS: I do.

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

THE WITNESS: Justin Masterman. J-U-S-T-I-N, M-A-S-T-E-R-M-A-N.

MR. KOFFSKY: Thank you, Your Honor.

JUSTIN MASTERMAN,

having been sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KOFFSKY:

Q. Mr. Masterman, good morning.

A. Good morning.

Q. Thank you for being here today.

I want to start with some questions about your background. Where do you work?

A. Celtic Bank.

Q. Where is Celtic Bank based?

A. Salt Lake City, Utah.

Q. Is that where you are based as well?

A. Correct.

Q. Okay. What type of specialty, if any, does Celtic Bank have?

A. We're a industrial bank, specializing in commercial lending.

Q. How long have you been with Celtic Bank?

A. Seven years.

Q. And what roles have you had since you have been there?
A. I was a BSA compliance manager, and now I am the Bank Secrecy Act officer.
Q. And what type of responsibilities have you had in performing that work?
A. I protect the bank from fraud and anti-money laundering.
Q. And please tell the jury what that entails.
A. Investigating potential criminals that are trying to launder money through the bank or use our institution to facilitate illegal activity through money.
Q. Okay. And did Celtic Bank participate in the PPP program?
A. We did.
Q. And just for the record, that's the Paycheck Protection Program.
And please describe what Celtic Bank's role was.
A. We were a lender.
Q. When did Celtic Bank participate in the program?
A. Since the inception. So it was April 2020.
Q. In your roles at Celtic Bank, did you become familiar with the Paycheck Protection Program?
A. Yes.
Q. And were you involved in Celtic Bank's participation in that program?
A. I was.
Q. Okay. And let's talk about that.

How would a borrower apply to Celtic Bank for a PPP loan?
A. Online.
Q. And would it be directly to Celtic Bank or were there other ways?
A. You could apply directly with Celtic, or you could apply through one of our agents that would offer loans on our behalf.
Q. And when you say "agents," how did that process work?
A. So in order to get money out to businesses quickly, the Small Business Administration said that lenders could utilize technology companies or financial technology companies to issue loans faster. So Celtic partnered with several of these different technology companies to accept applications from across the country on our behalf.
Q. And when you say, on your behalf, like, how did that relationship work?
A. So an applicant would go to one of our agent's website. They would fill out their information. They would have the authority to approve or decline a loan on behalf of Celtic, but ultimately, Celtic was the one that was issuing the funds.
Q. Got it. And just for context, while the program was going on, if you had to estimate, how many applications was Celtic Bank getting on a monthly basis?
A. Thousands.
Q. And how was Celtic Bank reviewing the information in those applications?

A. Quickly. It was all based on attestations from the borrower.
Q. Were additional documents required to be submitted from a borrower?
A. They were.
Q. What types of documents would those have been?
A. Payroll information, justification that the business was legitimate, and that they had employees, and that they were paying them.
Q. Were employees like yourself reviewing these applications by hand?
A. Not all the time.
Q. What were the other mechanisms for review?
A. We utilized third-party vendors to kind of read the documentation that was uploaded online to pick out the pieces of information of importance that would look at payroll, employee count, who the information was for. But internally, at Celtic, we also looked at that information manually with our own eyes.
Q. Okay. So let's -- thank you for that information about the process. Let's actually talk about this case.
Let me start here. Do you know the defendant in this case, Mr. Dustin McCabe, personally?
A. I do not.
Q. Do you know anything about businesses that he operated?

A. I do not.
Q. Were you subpoenaed for your testimony here today?
A. I was.
Q. Was your organization subpoenaed to produce documents in connection with this case?
A. They were.
Q. Did Celtic Bank produce those documents?
A. We did.
Q. And have you reviewed those before your testimony here today?
A. I have.
MR. KOFFSKY: I now want to show the witness and the jury what's already been admitted into evidence as Government's Exhibit 86. And just generally, I want to -- I want to start at the top of the document.
BY MR. KOFFSKY:
Q. And I noticed there is a term in there, Bluevine. What is Bluevine?
A. Bluevine is one of the agents that I talked about earlier that accepted PPP loans on behalf of Celtic.
Q. And based on your review of the documents in this case, what role did Bluevine play with regard to this application?
A. Borrowers could apply through Bluevine for a PPP loan from Celtic.
Q. Okay. And I'm going to mark on the screen, and you can

mark as well, a couple of things I would like for you to read, for the record (indicating). What's the business listed in Government's Exhibit 86?
A. Florida Scuba Charters Inc.
Q. And who is just below that, the authorized person, and what's -- what's the full name there?
A. Dustin McCabe.
Q. Okay. And I now want to go -- do you know if Mr. McCabe was required to submit any additional documents in connection with this application?
A. They did.
Q. Do you know which documents were submitted?
A. A bank statement and a 2019 Schedule C form.
Q. Okay.
MR. KOFFSKY: I now want to show the witness and the jury what's already been admitted as Government's Exhibit 121.
BY MR. KOFFSKY:
Q. And what is this document?
A. It's a profit and loss form, a Schedule C or Form 1040 from 2019.
Q. And if I can direct your attention to block -- well, just above block A. Who is the person listed in this document?
A. Dustin McCabe.
Q. And in block C, what's the business?
A. Florida Scuba Charters.

Q. And let me just clear the screen here.
Is this a document that was submitted in connection with Mr. McCabe's loan application?
A. It was.
Q. And for a document like this, how do you -- how does Celtic Bank determine that this is an accurate, legitimate document?
A. We're relying on the borrower's attestation that this is a legitimate document for the business.
MR. KOFFSKY: I now want to show the witness and the jury what's already been admitted as Government's Exhibit 90.
BY MR. KOFFSKY:
Q. And what is Government's Exhibit 90?
A. It's a Florida driver's license.
Q. Was this something that Mr. McCabe submitted to Celtic Bank?
A. It was.
Q. Were driver's license -- driver's licenses, were they always submitted by a borrower?
A. Not necessarily, no.
Q. Why, in this case, did Mr. McCabe submit a driver's license?
A. I can't speak to the exact reason, but we have third-party vendors that verify identity through third-party sources. So when somebody applies for a loan, the company would take the name, social, date of birth, and address, and match that with

third-party sources to determine the legitimacy of the identity.

If the logic was less than perfect, there could be a reason for additional documentation to be provided. So it's likely that Bluevine may have requested the applicant to provide a driver's license to verify their identity.

MR. KOFFSKY: And I will now show the witness and the jury Government's Exhibit 85 which is in evidence.

BY MR. KOFFSKY:

Q. Generally, what is Government's Exhibit 85?

A. It's a Paycheck Protection Borrower Application Form.

Q. And was this -- is this a standard form that you've seen in connection with the PPP program?

A. Yes.

Q. Starting at the top of the document, what business is included in this form?

A. Florida Scuba Charters Inc.

Q. And who is the primary contact?

A. Dustin McCabe.

Q. And let's go down to the next section. The jury has heard a little bit about these forms. But what is -- what is the average monthly payroll?

A. $7,500.

Q. And were there specific instructions on, like, how to calculate payroll for this program, do you know?

A. Yes.
Q. And do you know what type of instructions were provided to borrowers for that?
A. Yeah. They were supposed to take, essentially, their average monthly payroll, times it by 2 1/2 -- or times it by 2 1/2, and that would get your loan amount.
Q. And if you move to the right from the average monthly payroll, what is the total loan amount for this loan?
A. $18,750.
Q. What's the number of employees that are referenced for this business?
A. Zero.
Q. In your experience, could there be -- can you have payroll with zero employees?
A. You could.
Q. How would that work?
A. You're paying yourself. I mean, if you're self-employed, you are eligible for payroll.
It also covers things like mortgage, interest, rental, utility payments, other business expenditures such as utilities, et cetera.
Q. Okay. And then for the average monthly payroll amount, how do you -- how do you know, as Celtic Bank, that there are $7,500 worth of payroll expenses for this business?
A. We're relying on what the borrower provided us. But you

could get there from the Schedule C form that you showed previously. You take the tentative profit that was listed there, you divide that by 12, because the business was in operation for a year, you get $7,500, and then you times that by 2 1/2, which gets you your -- your loan amount.
Q. Okay. But -- but to a certain extent, is it fair to say you're relying on the representation from Mr. McCabe?
A. Yes.
Q. Okay. And then you talked briefly about the purpose of the loan. Could proceeds from a loan be used for any other reason at all?
A. It has to be for the business for payroll, whether that be for insurance, benefits, sick time, leave, any of that. But it has to be designated for the business.
Q. Okay. And now getting towards the bottom half of the document. Generally speaking, based on your experience with handling the Paycheck Protection Program, what are these questions at the bottom half of the document designed to do?
A. They're eligibility questions.
Q. And what do you mean by that?
A. So if somebody has a prior record, they're a felon, they have defaulted on a government-guaranteed loan before, those would disqualify them from eligibility from the PPP program.
There is also questions about do they have other businesses that have received PPP loans? The government wanted to know

about that. That's not necessarily something that would make them ineligible, but we needed to be aware of other businesses that were owned by the applicant and that -- if they were the owner and operator of the business, and was the business in the United States? Was it for representatives of the United States, not for international operations? And then, was it a franchise?

Q. And how does a borrower answer these questions using this form?

A. They're just checkmarks on the online application, followed by initialling.

Q. And what initials do you see for some of these questions on this document?

A. A "D" and an "M."

Q. Okay. And you mentioned the word "eligibility." When you say that these questions are designed to determine eligibility, what does a -- what does that mean? What does -- what is eligibility in this context?

A. So PPP money was finite; it wasn't out there for just everybody. You had to prove that this was -- there was a need for it, so you weren't taking away from a business that actually needed it.

So the way they did that was create questions to determine if you could qualify for a loan. Because you're not underwriting it as a normal credit perspective. But if you had a former record, if you are a felon, or if you have defaulted on a government loan before, they weren't going to give you one.

Q. And is eligibility for a borrower determined on how that borrower answers these questions?

A. Yes.

Q. I'll flip to the second page of Government's Exhibit 85.

And what is this second page? What information does this have?

A. There are certifications just stating that everything is true and accurate, that everything is going to be used for the business, the applicant is going to comply with the letter of the law, and that they're essentially attesting that everything is true and accurate.

Q. And I will scroll to the bottom of the page. This is page 2 of Government's Exhibit 85.

And do you see initials on this document?

A. Yes.

Q. And what are those initials?

A. DM.

Q. Do you see a signature on the document?

A. I do.

Q. Whose signature do you see?

A. Dustin McCabe.

Q. And what's the date on this document?

A. May 11, 2020.
Q. Do you know if this application was approved?
A. It was.
MR. KOFFSKY: Okay. I now want to show the witness and the jury Government's Exhibit 88, which is in evidence. And if I can zoom into the bottom, bottom third of the document.
BY MR. KOFFSKY:
Q. And I just want to ask a couple of questions about the movement of the funds after a loan is approved.
How would that work, generally speaking? How are the funds moved from Celtic Bank to a borrower?
A. It's through ACH. So the borrower getting approval through Bluevine, Bluevine would then send us the approval file, a bunch of 1s and 0s, basically computer code. Our accounting department would look at the bank information that's on the screen here, and we would initiate the transfer from our accounts in Salt Lake City.
Q. And would the funds be directed to -- where would they be directed to?
A. Wherever the borrower told us.
Q. Okay. And do you see bank information on Government's Exhibit 88?
A. I do.
Q. Can you read, for the record, the bank name.
A. TVA Credit Union.

Q. And as to Celtic Bank, do you know where Celtic Bank's infrastructure is located?

A. Salt Lake City, Utah.

Q. Is that where the funds were transferred from?

A. Yes.

Q. Okay.

MR. KOFFSKY: Your Honor, at this time, I would like to publish to the witness and the jury Government's Exhibit 14, which is in evidence. These are the trial stipulations I would like to read into the record.

THE COURT: Okay. One moment.

Ladies and gentlemen, sometimes parties agree that certain facts are true. This agreement is called a stipulation, and you must treat these facts as proved for this case. So Mr. Koffsky now will read out loud a stipulation that has been agreed to by the parties.

Please proceed.

MR. KOFFSKY: Thank you, Your Honor. If I can ask to use the ELMO for this.

I will read -- I will read into the record: "The United States of America, by and through the undersigned Assistant United States Attorney and the defendant, Dustin Sean McCabe, personally and through his attorney, stipulate and agree to the following facts which the jury must accept as having been proved beyond a reasonable doubt:

"1, the defendant, Dustin Sean McCabe, was the owner and captain of the M/V Southern Comfort on March 28 and 29, 2020.

"2, the disbursement of Paycheck Protection Program loan number 5224667409 from Celtic Bank, identified in the indictment as Bank Processor 1, in the approximate amount of $18,750, by Automated Clearing House, ACH, transferred to Knoxville TVA Employees Credit Union, identified in the indictment as Credit Union 1, as well as the attending loan forgiveness application were wire communications transmitted in interstate commerce. Among other things, Celtic Bank is headquartered in Utah, and Knoxville TVA Employees Credit Union is headquartered in Tennessee.

"3, the disbursement of Paycheck Protection Program loan number 4387648301 from Cross River Bank identified in the indictment as Bank Processor 2, in the approximate amount of $20,385, by ACH transfer to Knoxville TVA Employees Credit Union, identified in the indictment as Credit Union 1, as well as the attending loan forgiveness application were wire communications transmitted in interstate commerce.

"Among other things, Cross River Bank is headquartered in New Jersey, and Knoxville TVA Employees Credit Union is headquartered in Tennessee."

And I will just note, for the record, that the stipulations are signed by an attorney for the United States, an attorney for the defendant, and by the defendant himself.

Thank you, Your Honor. And I will ask for the HDMI to be reconnected.

And I will ask for Government's Exhibit 88 to be removed.

BY MR. KOFFSKY:

Q. Mr. Masterman, I want to shift gears. We talked about a PPP loan application from the defendant. I want to talk about forgiveness. Can you explain to the jury what forgiveness is.

A. Yeah. So these PPP loans were 100 percent forgiven; that was what kind of allowed for or incentivized borrowers to get them, knowing that they -- if they used the loan for the purposes in which they attested to, that they wouldn't have to pay it back, that the government would forgive the loan 100 percent. And all PPP loans were eligible for 100 percent forgiveness.

Q. Do you know, based on your review of the documents in this case, whether Mr. McCabe applied for forgiveness with respect to the loan we just talked about?

A. He did.

MR. KOFFSKY: I now want to show the witness and the jury what's already been admitted into evidence as Government's Exhibit 87.

BY MR. KOFFSKY:

Q. And what is Government's Exhibit 87?

A. It's a Paycheck Protection loan forgiveness application form for $150,000 or less.
Q. Why is the -- what is that dollar threshold? Is that significant at all?
A. Yes. The SBA, the Small Business Administration, said that all loans that were under $150,000 were eligible for auto-forgiveness, meaning that they did not have to provide any supporting documentation to evidence that they actually used the money for payroll. They were eligible to just get away with attestations stating they used the money for the business.
Q. Would a borrower still have to fill out the form on the screen, Government's Exhibit 87, truly and correctly?
A. They would.
Q. Okay. What's the business that's referenced in Government's Exhibit 87?
A. Florida Scuba Charters Inc.
Q. And who is the primary contact?
A. Dustin McCabe.
Q. And what loan is referenced here in this document?
A. It's a first draw PPP loan.
Q. Was this the loan that we just talked about that was applied for by Mr. McCabe?
A. For Celtic, yes.
Q. What's the loan amount?
A. $18,750.

Q. And when was it disbursed?
A. May 12, 2020.
Q. If you think back to the loan application we just talked about -- and I can pull it up -- how many employees were listed as part of Florida Scuba Charters at the time of the application?
A. Zero.
Q. How many employees are listed at the time of the loan application here?
A. Five.
Q. Are those two questions asking for the same information?
A. They are.
Q. In your experience, are they -- is the answer supposed to be the same?
A. It is.
Q. How many employees are listed at the time of the forgiveness application?
A. Five.
Q. And so, if -- if the number at the time of forgiveness application is five, and the number at the time of the loan application was zero, what would that mean with respect to Florida Scuba Charters?
A. There is some sort of misrepresentation, whether it was on the initial application or the forgiveness application.
Q. And going to the second half of the document, what is

the -- the bottom portion of the document? What information is contained there?
A. It's more certifications stating that the information that has been applied for is true and accurate, and that the loan was used for the intended purposes from the Paycheck Protection Program.
Q. Could loan proceeds be used on anything other than what is permitted, based on these applications?
A. No.
Q. Is the representation -- or the certifications, are they signed in this document?
A. Yes.
Q. And are they initialled?
A. Yes.
Q. What are the initials that you see?
A. DM.
Q. And what is the signature that you see?
A. Dustin McCabe.
Q. What's the date of the document?
A. May 14, 2021.
Q. Do you know if this forgiveness application was approved?
A. It was.
MR. KOFFSKY: Just a moment, Your Honor.
Mr. Masterman, thank you. I have no further questions.
THE COURT: Cross-examination?

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

CROSS-EXAMINATION

BY MR. O'SULLIVAN:

Q. Good afternoon, Mr. Masterman. You testified a few times that the PPP loan is for payroll; correct?

A. Correct.

Q. And it's also -- in addition to payroll, it's also for covered operational expenses; correct?

A. Correct.

Q. And that includes rent, utilities, mortgage, as well as some other operational expenditures?

A. Correct.

MR. O'SULLIVAN: Okay. Thank you.

I have no further questions, Your Honor.

THE COURT: Any redirect?

MR. KOFFSKY: No redirect, Your Honor.

THE COURT: Thank you, sir. You may be excused. Safe travels.

I will see the attorneys at sidebar.

(Conference at bench.)

THE COURT: All right. Who is your next witness?

MR. KELLER: Our final witness for the day is Sandra Brammeier.

THE COURT: And who is she?

MR. KELLER: She's a boat captain who was in the Palm

Beach area at the time of the incident. And --

THE COURT: Which incident?

MR. KELLER: Oh, the March 29th incident. But she knew Mr. McCabe before and after the incident.

THE COURT: Okay. How long do you anticipate her testimony?

MR. KELLER: 20 to 30 minutes.

THE COURT: Okay. So we cannot end this early. You have an agent that can you call. Why can't he be called today?

MR. KELLER: We can call him today.

THE COURT: Okay. So my proposal would be to have an extended lunch so you can do any preps, since I don't think you were planning on calling him today, but I can't -- I can't consume an entire trial day with no witness in the afternoon.

Is Ms. Brammeier here already?

MR. KELLER: Yes, Your Honor.

THE COURT: All right.

MR. O'SULLIVAN: Judge, I don't mean to butt in. I wasn't planning on crossing Agent King until tomorrow.

THE COURT: I understand that, but your crosses are very short, if they're at all, and we have a trial that we're here to conduct. I have a jury, so we're not going to just basically do nothing for the afternoon other than the charge conference.

MR. O'SULLIVAN: I understand that.

THE COURT: So we're going to proceed. I'll do an extended lunch so you can prepare.

Has any Jencks or any other documentation been provided?

MR. KELLER: Yes, Your Honor, for this witness -- for all our witnesses, we have already produced our Jencks.

THE COURT: Okay. All right. Then we are going to break now for an hour-and-forty-minute lunch. That should give you a little bit more time, and then we will proceed.

Thank you.

MR. KELLER: Judge, the only thing I will just flag, just because of your concern about the jury. I just want to note that Ms. Seward, tomorrow, will be very short, probably 25 minutes.

THE COURT: She's the IRS?

MR. KELLER: Yes, Your Honor, and we just couldn't get her here today.

THE COURT: What's the point of her testimony?

MR. KELLER: So with respect to the IRS documents that we have shown, she's going to be testifying that those documents were never filed. In other words, they were not actual IRS documents that were real filings for the -- so she's a very important witness. We just couldn't get her here today.

THE COURT: Is there a stipulation on this subject, potentially, that these tax returns were never filed?

MR. O'SULLIVAN: We can certainly discuss it.

MR. KELLER: If they want to stipulate to that, then we can cut the witness.

THE COURT: All right. Well, why don't the parties confer over lunch on this issue --

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

THE COURT: -- because it may be unnecessary to call her. But otherwise, we will permit her, of course, to be called as your final witness then.

MR. KELLER: Yes, Your Honor.

THE COURT: Okay. Thank you.

MR. KELLER: Thank you.

(Conference at bench concluded.)

THE COURT: All right. Ladies and gentlemen, we are going to take our lunch break now. But it is going to be a little bit longer today because I have some additional matters to discuss with the attorneys. So we are going to be in recess until 1:40.

Please continue to follow all of my instructions with respect to no discussion, no research, no investigation, no contact with anybody in the case. And continue, of course, to keep an open mind.

All rise for the jury.

(The jury exited the courtroom at 12:04 p.m.)

THE COURT: All right then. We will be in recess until

1:35. So please return to the courtroom at that time. Please confer over the break regarding the IRS witness, and please be prepared to call your next witness -- which is Ms. Brammeier; is that correct?

MR. KELLER: Yes, Your Honor.

THE COURT: Okay. Then thank you.

MR. O'SULLIVAN: Your Honor, may I address one scheduling concern before lunch?

THE COURT: You may.

MR. O'SULLIVAN: If, over lunch -- if the defense and the government agree to stipulate to that IRS testimony, that would leave no witnesses for tomorrow. We had been -- the defense had been under the impression that my client has not made a decision whether or not to testify yet. That meeting was going to happen in my office on Saturday, and I would need some time to prepare him.

Would the Court be pushing his testimony tomorrow if he chose to testify? Because that would kind of eliminate, essentially, all of Friday if we stipulate.

THE COURT: Is there a way that you can meet with your client this evening and decide what you wish to do, and conduct any preparation prior to tomorrow?

MR. O'SULLIVAN: Judge, that would -- that would not be enough time. I mean, for the last week and a half, we have dedicated Saturday to a, you know, full-day meeting. There is a lot of testimony, obviously, to go over. There is 20-plus witnesses that I would have to discuss with my client, and I don't think we would be able to do it tonight, especially since we live in different counties and different cities.

THE COURT: At this point, do you know whether Mr. McCabe wants to testify?

MR. O'SULLIVAN: I would say it's very likely that he does, in all candor, but there is just a lot that we still have to go over; and we have dedicated all of Saturday in my office in Rockledge to do that.

THE COURT: Okay, well, then I have considered your arguments. I will give it some thought.

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

THE COURT: And I will address it upon returning from lunch. Thank you.

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

MR. KELLER: Thank you, Your Honor.

(A recess was taken from 12:07 p.m. to 1:37 p.m.).

THE COURT: Please be seated, unless you're addressing the Court.

Any updates, Mr. Keller?

MR. KELLER: We do have a stipulation. It's marked, now, as Government's Exhibit 122. So I will add that to the witness exhibit list and file and update it.

THE COURT: What did it say?

MR. KELLER: I'm sorry?

THE COURT: What does the stipulation say?

MR. KELLER: So the stipulation consists of two paragraphs. The first relates to the Form Schedule C relating to the first PPP loan; the second stipulation relates to the Form 1120.

And what both say is that the IRS form, which Mr. McCabe submitted to the bank -- you know, we have the bank in connection with the PPP application, in month and year, which is marked and admitted as Government's Exhibit "blank," was never filed with the IRS.

THE COURT: Okay. And has Mr. McCabe executed this?

MR. KELLER: Yes, Your Honor. This is an executed copy that can be entered into evidence.

THE COURT: Okay. Mr. O'Sullivan, is all of that correct?

MR. O'SULLIVAN: Yes, Judge, it's 100 percent correct.

THE COURT: Okay. So obviously, the government is going to call off its witness, and that means that the stipulation will hold. I don't want any surprises because I'm directing the government to move things along. Understood?

MR. O'SULLIVAN: Yes, ma'am. Understood, Your Honor.

THE COURT: Okay, then, the witness is ready, I presume?

MR. KELLER: Yes, Judge.

THE COURT: Mr. Creary, do we have our jurors?

COURTROOM DEPUTY: We're waiting on one more to come back, I believe.

Yes, the last ones are coming up the elevators now.

MR. KELLER: Your Honor, while we're waiting, may I ask, if we rest today, are we going to do Rule 29 arguments at the end of court today? Mr. Stiehl is going to do it for us, but he has never done one before, so he is kind of preparing. So I just wanted to let him know whether he is going to do it or not.

THE COURT: It depends what time it is. Priority for today is the charge conference. So I'm willing to hold off on the Rule 29, but if there is time, then, yes, I would like to do that. So we will see how the timing plays out.

MR. KELLER: Yes, Your Honor.

THE COURT: Okay.

All right. Let's call in the jury.

(The jury entered the courtroom at 1:40 p.m.)

THE COURT: I think we're waiting on one additional juror. Do any of the jurors need any of their belongings? Is there anything you are missing?

A JUROR: I don't have my (indicating). Do I have time to get my pad?

THE COURT: Yes, sir.

While we're waiting for the other juror, let's call in the next witness.

MR. KELLER: Yes, Your Honor. The United States calls --

THE COURT: Well, before you call the witness, I just want him or her to come into the courtroom.

MR. KELLER: Oh, I see. I'm sorry. Okay.

THE COURT: Okay. We are all here. Please call your next witness.

MR. KELLER: Yes, Your Honor. The United States calls Sandra Brammeier.

THE COURT: Good afternoon, ma'am. If you could walk over to where I am here, and then just stand right there next to the officer. Now stay standing for just one moment so you can be sworn in.

COURTROOM DEPUTY: Please raise your right hand.

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

THE WITNESS: Yes, sir.

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

THE WITNESS: My name is Sandra Brammeier. First name is S-A-N-D-R-A, last name is B, as in boy, R-A-M-M-E-I-E-R.

SANDRA BRAMMEIER,

having been sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KELLER:

Q. Good afternoon, Ms. Brammeier.

A. Good afternoon.

Q. Can you just introduce yourself to the jury real quick. Just tell them who you are.

A. Sure. I'm -- I basically was a dive boat owner and operator in West Palm Beach for the last 25 years. And I recently sold that business, so now I'm going back and forth a little bit between my home in Colorado and here.

Q. And, Ms. Brammeier, what was the name of the business that you operated here in West Palm?

A. I owned Ocean Quest Scuba Charters.

Q. What was Ocean Quest Scuba Charters in the business of?

A. Primarily, we offered daily dive trips to the reefs and wrecks offshore, and then we did a lot of teaching.

Q. And did y'all mostly operate in West Palm?

A. Yes. Strictly in West Palm.

Q. And how many years did you say that you operated that business?

A. Well, I had my own business for 21 years, and I owned my boat for 20.

Q. And when did you stop owning the business?

A. July 1st of 2024.

Q. And is that when you stopped operating charters in that

area?
A. Yes.
Q. And how long have you been working on boats?
A. Well, I was with the United States Coast Guard for a few years, and I have owned some ski boats and bass boats, that kind of thing. And then prior to buying my own boat, I was an operations manager for Jim Abernethy Scuba Adventures. So I worked around his boats for three years, and then I bought my own.
Q. And what years were you in the Coast Guard?
A. '86 to '90, actively.
Q. And after that, you were working on boats professionally?
A. Not immediately, no. I went to Arizona where I worked in a research laboratory and I did law enforcement, and then I decided I wanted to go back to Florida and be close to the ocean.
Q. And are you licensed as a boat captain?
A. Yes, sir. I'm a -- I hold a 100-Tons Master's license.
Q. Do you have a Merchant Mariner license?
A. Yes, I do.
Q. And can you describe what you had to do to get a Merchant Mariner license.
A. So for the ratings, they're different -- anywhere from, like, 25-ton to a 500-ton license. In my case, mine is 100-ton, which allows me to operate vessels that weigh less

than 100 ton. And pretty much, it could be any kind of different type of deal.

But to qualify for that, I had to have a minimum of 720 days of sea time working as a crew member of some sort on a boat. And then there is a course that you take that is pretty intense, and then there is a two-day test following that. And I did all of that in addition to the prior Coast Guard training that I had received.

Q. Yes, ma'am. And, Ms. Brammeier, do you know the defendant, Dustin Sean McCabe?

A. Yes, I do.

Q. And how did you get to know Mr. McCabe?

A. When he first bought his first boat, coincidentally, they put his boat next to mine in the same marina. So that's how we met there.

Q. And what boat do you mean?

A. His first boat was called Sea Pup.

Q. And did he get another boat after that?

A. Yes, his second boat was called Sea Scout.

Q. And were you familiar with the Sea Scout as well?

A. Yes.

Q. And about how long ago did Mr. McCabe get the Sea Scout?

A. Let's see. I can't give you an exact, but it's been quite a few years.

Q. And were you familiar with Mr. McCabe's scuba charter

business?
A. Yes.
Q. And what was his scuba charter business called?
A. Florida Scuba Charters.
Q. And so I want to talk a little bit about Florida Scuba as a business. So, Ms. Brammeier, were you familiar with the defendant's vessels before 2020? Was it just the Sea Scout and the Sea Pup?
A. I know he -- he's had three total.
Q. But --
A. Oh, before then, yes, it was just the two that I'm aware of, yes.
Q. And what type of vessels were the Sea Pup and Sea Scout?
A. So, again, coincidentally, his boat is the same make and model as mine, a 30-foot Island Hopper.
Q. Is that like a typical dive boat?
A. It's very common, yes.
Q. And are you familiar with the defendant's purchase of a vessel in 2020 for his scuba business?
A. Yes.
Q. Had you discussed that purchase with the defendant before he made it?
A. Yeah. He had been talking about get a new boat and running a different type of charters, like a concierge, kind of a little more upscale type of charter.

Q. And what month and year, about, did you talk with the defendant about this purchase?
A. I would say it was towards the end of 2019, early 2020, somewhere in there.
Q. And what type of vessel did the defendant ultimately purchase?
A. I'm not sure of the actual make and brand, but the model is -- it would be a sport fisherman.
Q. And what was the vessel called?
A. Southern Comfort.
Q. And is a sport fish like that typical for scuba diving?
A. Not generally, no.
Q. And did Mr. McCabe and you discuss modifications to that sport fish that he was going to make to help with scuba?
A. I did see the vessel out of the water. By coincidence, I was in the marina working on -- in the yard working on mine. And they pulled that boat and had it up. So I walked over and visited with him a little bit, and I asked him what he was going to do as far as getting his divers back on the board, as far as like a ladder or a platform, something like that.
Q. Did it not have a ladder when you saw the boat?
A. No.
Q. Did it not have a typical scuba platform?
A. No, but he told me he was having one made.
Q. And did the defendant also discuss the throttles of the

vessel?
A. He had just mentioned it had the two-system throttle like my boat did. And that was the difference between his Island Hoppers and mine. I had a dual station on mine, one from -- on the main deck, and then one on the bridge. So he said he was going to be, you know, changing his around. He would be driving from up on top.
Q. And did he say he was going to remove one of them?
A. I don't know if he specifically told me he was going to remove one of them, just that he was going to alter it and run it from the top.
Q. And can altering those engine controls cause problems with the engine?
MR. O'SULLIVAN: Objection. Lack of foundation. Lack of predicate.
THE COURT: Sustained.
BY MR. KELLER:
Q. As you have worked on boats as you were in the Coast Guard, did you -- are you familiar with boats and how their engines operate as -- terms of the throttle controls?
A. Yes, absolutely.
Q. And what type of experience do you have with that?
A. So, as far as, like, my engine goes and my little business, I couldn't afford to pay $130 hour for a mechanic; I just couldn't. So I utilized all the knowledge I had, and I did

most of the work by myself with a little bit of help once in a while. And so I changed the throttle cables twice over the 20 years of owning my vessel. And the first time I did it, I discovered that they're pretty -- it's not just unplug one and then plug another one back on. There is quite a bit of adjusting to do to make sure that they're in the proper position.
Q. And as you talked with the defendant about this purchase of this vessel, did the defendant talk about being in need of money?
A. Well, at the time, we were all discussing that because we were in the process of being really concerned about what COVID was going to do for all of us. And I had just did extensive amount of money into my repairs on my boat. So we -- on more than one occasion, we all talked about it. I'm sure Dustin and I visited about -- I knew I needed to make money, and at the same time, he had just purchased a new boat, and he was needing to make money as well.
Q. And moving forward from where we were just talking about -- you know, when you were talking about the -- with him about the boat, when you saw it out, did you see the vessel in late March of 2020?
A. Yes, I did.
Q. And what day did you see it?
A. So it was March 29th.

Q. And do you know what happened on that boat, March 29th, in general?
A. Yes, I do.
Q. Okay. So I want to talk about March 29th. And let me begin here. Do you know the victim who was ultimately killed that day?
A. Yes, I do. She dove on my boat as well.
Q. And did she, in your experience, have the habits of a safe scuba diver?
A. Yeah, I would think so. Mollie and Sean were good divers in my professional scuba instructor opinion.
Q. And on the 29th, when did you first see the defendant?
A. So we were going out the inlet. So I had divers on my boat, and we were going out that day as well. And I actually had two guys on my boat that were -- they're like, "Oh, there's Dustin's new boat."
So we seen them. They were coming out behind me. We visited a little bit about the boat, and then I turned and went north, and Southern Comfort turned and went south. So we were diving opposite directions of the inlet.
Q. And did you see the defendant later that day?
A. I did see him later that day.
Q. And what led you to seeing the defendant later that day?
A. I was picking up divers, and we were getting ready to head in, and I received a call from Kristy McCabe. And we were all

friends, and so she had called me and told me that there had been an accident --

MR. O'SULLIVAN: Objection. Hearsay.

THE COURT: Sustained.

THE WITNESS: Okay. I received a call from Kristy, and she told me that there --

MR. O'SULLIVAN: Objection. Hearsay.

MR. KELLER: I'm sorry. Sorry, Ms. Brammeier --

THE WITNESS: Oh, I'm sorry.

BY MR. KELLER:

Q. We can move ahead, because, really, we're not trying to get into what someone told you for the truth of it --

A. Oh, okay.

Q. -- we're just trying to explain how you ended up at the scene.

A. Oh.

Q. So let me just ask this: Did you end up near Mr. McCabe after this incident happened?

A. Yes, I did.

Q. And where were -- did you come up to them, this group of people?

A. Yeah.

Q. Okay. And once you got to them, what happened? What did you do?

A. I saw Dustin was sitting on a dock box on the dock, and I walked over. And he was obviously shooken. And we visited for a minute, and I was just basically trying to be there as support for a friend.

Q. And did you tell him anything at that point?

A. I suggested to him that -- because nobody seemed to know what really had happened, so I suggested to him that he went over to the Coast Guard crew and ask which one of them was the engineer, because all Coast Guard crews have engineers. And then ask the engineer maybe to go with him, if they would allow it, and check out the boat and see if maybe something was wrong with the boat.

Q. And did he do what you suggested?

A. Not that I'm aware of. I don't believe so.

Q. Did he respond in a way that suggested that he was going to do it?

A. No.

Q. Now, have you yourself ever reported incidents on your vessels to the Coast Guard?

A. Yes.

Q. And is it hard to do?

A. No. Generally, you make a phone call to the nearest unit, which, in our case would be Station Lake Worth Inlet. And then it's followed up by -- you fill out -- there is a standard form that we're required to fill out. And then they will generally tell you to bring it immediately or to drop it by, depends on

what the incident is.
Q. And what types of things do you have to report?
A. So, there's three categories. One is if there is a -- something happens to the vessel, that you lose power or you lose steerage, or there is an electrical failure, something that could interrupt your activities that could endanger anyone who is on board, so, like, losing your power, losing steerage. And then the second category is if there is someone who is injured, if there is an injury of some sort. And then the third category is, like, if there is a major catastrophe like a death.
Q. And do you learn about these types of reportable incidents while you're getting your Merchant Mariner license?
A. Yeah. Oh, yeah.
Q. And can you explain how. Do you take a class in it? How do you do it?
A. Yeah. Like you say, it goes back to the captain's courses and stuff.
Q. And if a vessel runs aground, is that something you would have to report?
A. Yes.
Q. What about if something with a propeller causes an injury? Is that something you need to report if it's a malfunction?
A. Yes.
Q. And moving past March 29th of 2020, after what happened

that day happened, did you see Mr. McCabe again after that?
A. Yes, I did.
Q. And after the incident, the tragic death of Ms. Flynn -- Ghiz-Flynn, did you discuss a way to get money from the federal government with Mr. McCabe?
A. Yeah. We had conversations about what programs were starting to come out and what was going to be offered to business owners and stuff that were forced to shut down due to the COVID restrictions.
Q. And did the topic of Paycheck Protection Program loans ever come up?
A. Yes, it did.
Q. And I want to be clear about this. Did you discuss Paycheck Protection Program loans before or after Ms. Ghiz-Flynn was killed?
A. I would believe that it would have been after.
Q. And had you tried yourself to apply for a PPP loan at some point? Did you investigate it?
A. I did after I got a phone call from Dustin. He shared some information with me.
Q. And once you investigated, were you able to apply for a PPP loan?
A. No, I wasn't.
Q. And why not?
A. Because my --

MR. O'SULLIVAN: Objection. Relevance.
THE COURT: Overruled.
THE WITNESS: My operation is very similar, in that it's owner-operated, meaning that I didn't have any W-2 employees. I didn't have any employees on payroll. It was myself and my business partner and a few volunteers. And then we had, like, contract labor that could come in. Like I would pay a dive instructor maybe to come teach a class or something for me. We didn't have any official qualifying employees that would enable me to qualify for that loan.
BY MR. KELLER:
Q. And did Mr. McCabe, in speaking with you about this, talk about having himself gotten a PPP loan?
A. Yes, he did.
Q. And how much did he tell you that he was getting?
A. Well, I don't know the total amount that he got, but I believe that -- when he first contacted me and I said, "Are you sure?" -- because I was excited because I thought maybe possibly I could then. And he said, yes, that they had already sent him, like, a partial payment.
Q. And how much in total did he expect to be getting?
A. I think somewhere around 20,000 is what he received.
Q. And did the defendant claiming 20,000 in proceeds from a PPP loan seem unusual to you once you had investigated?
A. Well, if anything, I felt a little, you know, more sad for

myself that I didn't qualify.
Q. And how much longer after 2020 did you continue operating in this Riviera area?
A. Until July 1st of 2024.
Q. And did you ever see Mr. McCabe operating a scuba charter vessel after Ms. Ghiz-Flynn's death?
A. No.
MR. KELLER: Nothing further, Your Honor.
THE COURT: Cross-examination.
MR. O'SULLIVAN: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. O'SULLIVAN:
Q. Good afternoon, ma'am.
A. Good afternoon.
Q. So you operated a dive charter business as well; correct?
A. Yes, sir, I did.
Q. And was that in the same marina or a different marina than Mr. McCabe?
A. Originally, we were in the same marina side by side.
Q. And what years was that?
A. Honestly, I cannot tell you exactly the dates. I did move my boat to Newport Cove Marina due to some parking issues at Riviera.
Q. Do you recall about what year you moved marinas?
A. It was definitely more than 10 years ago.

Q. Okay. So you were never in a marina next to Mr. McCabe when he bought the new boat, the Southern Comfort?
A. Absolutely, no. No, I was not.
Q. Have you ever been on the Southern Comfort?
A. I have been under it.
Q. Have you ever been on it or, like, out for a ride or a sea trial or anything?
A. No, none of that.
Q. Okay. So you said you had a 30-foot Island Hopper?
A. Yeah, I have a 30-foot Island Hopper.
Q. Did you have to make payments on that Island Hopper monthly?
A. Yeah, I did.
Q. What were your monthly payments?
A. My monthly payment was approximately -- they were 694, I believe.
Q. And then what does it cost to dock your -- at the marinas, either Riviera or the other marina, like, the slip fee a month?
A. Right. So the marina that I'm in when I sold my boat, it cost me $853 a month.
Q. So 853 month for a 30-foot boat; correct?
A. Yes.
Q. And how many gallons of gas does that boat hold?
A. My boat held 200 gallons.
Q. Okay. And what was gas, marine gas back in 2020? About 4

or $5 a gallon?
A. I believe it had come down. A little less than that.
Q. So would it be fair to say it was about 8- or $900 for a fill-up, somewhere in that neighborhood?
A. I would say it was probably between 6- and $700.
Q. Okay. And then what -- what would your average maintenance, monthly, cost to run a 30-foot Island Hopper?
A. So my Island Hopper, because I did all the work myself, would have been just random parts and things. So, unless I was doing a major, major overhaul, I probably spent less than 250, 300 a month on filters and random bilge pump or an electric switch or something.
Q. So that's just, kind of, monthly stuff that you just have to pay, absent, like, a major breakdown or something like that?
A. Right. It's hard to say. Like, you wouldn't buy a battery for your car every month, but you might need one once a year, or something like that.
Q. So there are obviously just some big, unexpected expenses, but then there is going to be some expenses that you just know that they're going to hit you every month on a boat?
A. Indefinitely, because saltwater and electronics don't go together.
Q. Yeah.
A. So we replace radios more often than you might think and that kind of stuff.

Q. Okay. So you're not, like, personally aware of Mr. McCabe's expenses; correct?
A. No.
Q. Okay. Like, you guys -- you guys visited, as you said, and talked and maybe compared, you know, notes and stories, but you weren't involved in his business as far as how it was set up or his personal expenses?
A. No. I -- I knew what he charged his divers. We -- we comparatively charged about the same rates.
Q. Okay. Was your business set up as an LLC?
A. Yes.
Q. And you're aware that my client's business was set up as a corporation?
A. Yes.
Q. Okay. So those are different -- different business structures; correct?
A. Right. Yes, sir, they are.
Q. Okay. I know that you said that you were in the Coast Guard actively for, I think, at least four years; right?
A. Yes.
Q. Okay. As part of your training in the Coast Guard, did you get, like, a mechanic's license or a mechanic's certification?
A. No, I did not.
Q. Okay. Subsequent to that, have you ever been certified as a mechanic?

A. No.
Q. Okay. I know that you testified on direct that marine mechanics are charging, like, around $130 an hour?
A. Currently, now, the couple that I know, yeah.
Q. So it makes sense to do as many repairs as possible yourself; right?
A. If you can, yeah.
Q. Okay. And you said that you changed the throttles on your boat; correct?
A. Yes.
Q. Did anyone supervise you, or was that just something you did on your own?
A. I did that on my own.
Q. And after you changed those throttles, did you have anyone inspect the boat or approve it to make sure that they were done correctly?
A. I had a Coast Guard inspection.
Q. Okay. Was that immediately after the throttles?
A. It was. Because I replaced them prior to my inspection because I knew that one of them was starting to look pretty stiff and a little corroded, so I went ahead and did the repairs so that my boat would be ready.
Q. How did you know how to replace throttles if you've never had any formal training in marine mechanics?
A. Well, you don't -- I mean, I'm mechanically inclined. I

know that when you push the throttle cable forward, the engine goes forward, and when you pull it back, it goes back. And I know that that throttle moves a little lever on the transmission, and the two are connected together.

I mean, there is YouTube. There is all kinds of ways to research and learn how to do things.

Q. So it doesn't seem like it's that complex. If you're an avid boater, it's -- by your testimony, it seems a rather simple thing to change yourself; correct?

A. It's simple to get it all changed, but you have to make sure that the settings and everything are correct.

Q. Okay.

A. You have to test it.

Q. And you don't need formal training to do that; correct?

A. No. I mean, I -- I double-tied my boat to the dock. And at idle speed, I would put it in forward and count how many seconds it took the transmission to engage; then I would count how many seconds it took to disengage. And I did that both in -- in forward and reverse many times.

And then sometimes you would do it, and it would take -- there would be too long of a delay. So you'd have to go and you have to take it, and you have to move something forward and move something back, and then you go try again.

So there is -- there is quite a bit of time invested. It's not necessarily a hard process, but it does take some -- some

effort and some time to make sure that it's exact.
Q. But you don't need formal training? If you kind of know what you're doing and you take the time, you can do it yourself and --
A. Exactly. If you know what you doing.
Q. And you never had problems with your throttles after you did those self-repairs; correct?
A. No, not after I correct -- I made sure they were correctly adjusted; no, I never had any problems.
Q. But you never had any accidents that needed to be reported to the Coast Guard or anything like that?
A. Not related to throttle cables, no.
Q. You were able to repair your throttles and then successfully go about your business, and no issues with the throttles?
A. Yes, after I --
Q. Okay.
A. -- made sure that they were adjusted correctly, and tested them time and time again.
Q. Did Mr. McCabe ever do any, like, general maintenance or work on your boat?
A. Yeah, sure, he helped me quite a bit.
Q. Did he -- him and his mechanic, John Miller, did they change the turbos in your engines?
A. Yeah, he did.

Q. Okay. Is that -- that's more complex than a throttle cable; correct?
A. No, it's not more complex. But if -- I could explain if you don't mind.
Q. Sure.
A. I could simply show you my arms (indicating). You can visually see that my right arm is very swollen; right? So I'm a survivor of stage IV breast cancer, and one of the things that -- a residual effect of that is they removed all of the lymph nodes from underneath my collar bone and my right armpit and stuff. So my arm swells, and I don't have as much strength in my right arm anymore as I would.
So there was often time that, yes, I would call on my male friends that had big muscles to come and help me lift things like turbos, but it didn't have anything to do that I didn't -- anything to do with me not knowing how to do it myself. It's just with my arm, I was slightly handicapped in doing so.
Q. Thank you for sharing that.
When you called Mr. McCabe, he would come and he would help you?
A. He would, yeah. He is a good guy.
Q. Did he ever charge money for this, or was he just there to help out a fellow business owner?
A. Yeah, just there to help out. We helped out each other.

Sometimes his divers would come on my boat; sometimes my divers would go on his; sometimes I would take my students and dive off his boat. We helped each other back and forth, the same as all of us do.

Q. You said he was a good guy. Was he also a good captain?

A. I -- I wouldn't say that he was not a good captain.

Q. You brought your paying customers on his boat, and he brought them on your boat, and you were kind of in a community together?

A. Sure. All of us.

MR. O'SULLIVAN: Okay. I have no further questions. I thank you for your time, ma'am.

THE WITNESS: Thank you very much.

THE COURT: Redirect?

MR. KELLER: Thank you, Your Honor. Just a few questions.

THE COURT: Actually, I will see the parties briefly at sidebar before you begin.

MR. KELLER: Yes, Your Honor.

THE COURT: Mr. O'Sullivan, sidebar, please.

MR. O'SULLIVAN: I'm sorry, Your Honor.

(Conference at bench.)

THE COURT: All right. During direct, there was a question about whether manipulating cables could have an impact on the vehicle. Defense objected for lack of foundation. I sustained that. A foundation was later built, but no subsequent question related to the original question.

Then on cross, there was substantial questioning of the witness related to her repairs of cables, et cetera. So I just want to make clear that if there is an interest in the line of inquiry with respect to the cables, that, at this point, seems to me, is fair game. Any questions?

MR. KELLER: No, Your Honor.

MR. O'SULLIVAN: Nothing from the defense, ma'am. Thank you.

THE COURT: Thank you.

(Conference at bench concluded.)

REDIRECT EXAMINATION

BY MR. KELLER:

Q. Hi, Ms. Brammeier.

A. Hello.

Q. I just have a few questions for you.

A. Okay.

Q. Just to start kind of broad, who is responsible for keeping your boat in proper working order?

A. Me.

Q. And when Mr. McCabe would come help you work on your boat, or someone else -- a friend would come help you work on your boat, who was responsible for the boat being in working order at the end of that?

A. Me.

Q. And when you fixed your throttle controls on that -- on the vessel you were talking about, who was responsible for it being fixed properly?

A. Me.

Q. And after you fixed those throttle controls, who was responsible for the safety of the passengers on your boat next time that you took it out with paying passengers?

A. Myself.

MR. KELLER: Nothing further, Your Honor.

THE COURT: Thank you very much, ma'am. You are all done. Thank you. You may be excused.

THE WITNESS: Thank you, ma'am.

THE COURT: Please call your next witness, Mr. Keller.

MR. KELLER: Yes, Your Honor. The United States calls Special Agent Caleb King.

COURTROOM DEPUTY: Do you swear or affirm that the testimony you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

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

THE WITNESS: Caleb King. C-A-L-E-B, K-I-N-G.

MR. KELLER: I'm going to connect to the HDMI.

SPECIAL AGENT CALEB KING,

having been sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KELLER:

Q. Good afternoon, Special Agent King.

A. Good afternoon.

Q. And just to start, where do you work?

A. I am a supervisory special agent with the U.S. Coast Guard Investigative Service in Miami, Florida.

Q. And what is a supervisory special agent?

A. So, I'm the first-line supervisor for an office with Coast Guard special agents who are federal criminal investigators.

Q. And how long have you been a special agent, more generally?

A. I first became a special agent in 2010, and I worked for another agency. And I came to the Coast Guard Investigative Service in 2020.

Q. And were you a special agent before you were a supervisor?

A. Correct.

Q. And what does a special agent do?

A. So you can think of it like a federal detective, so to speak, a little bit different than a local police detective, but that's basically -- a detective in federal law enforcement is usually called a special agent.

Q. And what did you do before being a special agent?

A. So I was a police officer in Volusia County, Florida, for three years. And I served on active duty in the U.S. Marine Corps for eight years, and then became a special agent in 2010.

Q. And can you describe the training you did to become a special agent.

A. Sure.

In addition to the training I had prior to becoming a special agent -- which, a lot of it was law enforcement related -- I attended the U.S. Army Criminal Investigation Division Academy in 2010. Then I worked for the Defense Criminal Investigative Service, and I attended the Defense Criminal Investigative Service special agent basic training at the Federal Law Enforcement Training Center. And I have been to a variety of courses related to financial crime, death investigation. And I'm a graduate of the FBI National Academy, and I'm also a licensed attorney in Florida and Washington, D.C.

Q. And with the Coast Guard, what types of crimes do you investigate?

A. So I like to say that the Coast Guard Investigative Service, which we call CGIS, is kind of like NCIS but just for the Coast Guard, and we don't have a TV show.

So our primary mission is to investigate violations of the Uniform Code of Military Justice committed by active duty members of the Coast Guard. And then after that, it's all manner of crimes within the maritime jurisdiction of the

Coast Guard, which range from pollution, frauds against the Coast Guard, crimes related to Coast Guard vessels, Coast Guard licenses, drug-trafficking, human-trafficking, and certain violent crimes or deaths that may occur within jurisdictions that are subject to federal law.

Q. And the jury has seen you sitting at counsel table the last couple days with us. So what part of the investigation team are you? What is your role in it?

A. So I'm the -- what we call the case agent. The case agent is sort of the main detective. In some investigations, you may have multiple agencies involved. In this case, as far as the federal criminal investigation, I have been the only case agent.

Q. And do you coordinate with other law enforcement agencies, like the Florida Fish and Wildlife, like we saw before?

A. Yes. So the case agent will coordinate and sort of serve, sort of, like the quarterback for the investigative process, if there was a related regulatory or state investigation or if you have a joint investigation with another federal agency. And then, we're doing that in hopes to bring a sound investigative product to the U.S. Department of Justice to evaluate if something needs to be charged.

Q. And do you also participate in securing records relating to the investigation, and reviewing those records?

A. Yes. This investigation, we picked it up after there had already been sort of a regulatory and investigation by the State. So when I picked this up, one of the things we did was to look at what other information we did not have, and part of that was to secure records from various business entities through the use of subpoenas.

Q. And we will talk about the investigation in just a minute. But just to start with talking about how the investigation got to you at the Coast Guard, does the Coast Guard Investigative Service or CGIS automatically get involved in incidents involving recreational vessels?

A. No, we don't automatically. The Coast Guard has the authority to investigate any recreational boating accident in federal waters, but typically, we don't. And the Coast Guard initial process from a marine safety standpoint, the investigation is just to sort of determine what happened, make recommendations. And if that regulatory investigation identifies indications that there was an actual crime -- so a violation of federal law, not just regulation -- then that crime is referred to the Coast Guard Investigative Service because we are the criminal investigators for the Coast Guard.

Q. And is it different for commercial vessels?

A. So commercial vessels are very regulated by the Coast Guard. So if there is a certain crime or a serious casualty or a death involving a commercial vessel, the Coast Guard is going to be more involved in that than we would

with the recreational vessel accident in most cases.
Q. Okay. So now I want to move to the investigation you did conduct, and I want to talk about the business entity, Florida Scuba Charters.
Did the records that you secured and reviewed include records from the Maritime Consortium Incorporated?
A. Yes. That is a consortium that manages drug and alcohol testing for covered -- a covered entity -- which, people in safety-sensitive positions on boats, commercial boats, have to be enrolled in that program.
Q. And did the defendant submit names of deckhands as people who needed to be tested?
A. Yes, the Maritime Consortium gave us a list of what -- what we would call his covered employees. And these are people operating as -- as crew, whether they're paid or not, just functioning as crew in a safety-sensitive position that would be required to be covered by that chemical-testing program.
MR. KELLER: And I'm going to publish to the witness and to the jury what has been admitted as Government's Exhibit 114.
BY MR. KELLER:
Q. Special Agent King, what is Government's Exhibit 114?
A. So this is a list of the terminated employees of Florida Scuba Charters that was provided by the Maritime Consortium.
Q. And are there any employees, aside from the defendant,

listed after March 31st of 2020?
A. No. You can see here that there is not.
Q. And now moving to -- and to shift to what we're looking at just a little bit. Publishing what's been admitted as Government's Exhibit 87. What is this document, Special Agent King?
A. So this is the Paycheck Protection Program, also known as PPP, a loan forgiveness application form for one of the two loans that Florida Scuba Charters Incorporated obtained.
Q. And how many employees did the defendant list as being in the company at the time of the application at the time of forgiveness?
A. On this form it's five employees at the time of application, as well as five employees at the time of forgiveness application.
Q. Thank you. And then moving to Government's Exhibit -- what's been admitted as Government's Exhibit 98, which I'm publishing to the witness and the jury, is it the same for this other PPP loan application as to the number of employees?
A. Yes. You can see in the same space that I circled before, five and five.
Q. Thank you.
Now, as you subpoenaed records, as you secured evidence, did you also secure records from banks?
A. I did.

Q. And you saw Cross River Bank and Celtic Bank testify earlier. Did you secure records from them?
A. I did.
Q. And is there another bank you subpoenaed where the defendant held a business account?
A. Yes. That was at the Knoxville TVA Employees Credit Union.
Q. And publishing to the witness what's been admitted -- and to the jury what's been admitted as Government's Exhibit 100. And the jury saw this document yesterday.
Special Agent King, what is this?
A. So this is the signature card for the Knoxville TVA Employees Credit Union business account for Florida Scuba Charters' account number ending in 3600.
Q. And who are the authorized signers at this time?
A. At this time, it was the defendant, Mr. McCabe, and his wife at the time, Ms. Kristy McCabe.
Q. And what is the date that this account was opened?
A. The opening document --
Q. And I will zoom in to make it easier for the jury to see.
A. Sorry about that. It's November 21, 2019.
MR. KELLER: And moving to Government's Exhibit 113 which has been admitted into evidence. Publishing it to the witness and to the jury.
BY MR. KELLER:
Q. What is Government's Exhibit 113, Special Agent King?

A. So this is a notice to terminate a joint owner, also an authorized signatory, for the same business account.
Q. Is this the document we looked at with Ms. Kelly yesterday?
A. Yes. She saw the same document.
Q. And what again is the date that Ms. Kelly was removed from the account?
A. She removed herself from the account on March 25, 2020.
Q. And Special Agent King, we have a variety of documents listed as Government's Exhibits 100A through 100V. What are those records?
A. Those are the monthly statements for the business account from Knoxville TVA Employees Credit Union for Florida Scuba Charters.
Q. And are you familiar with those records?
A. I am familiar.
Q. And are you going to summarize what you saw in those records with the exhibits being available to the jury?
A. Yes, as best I can.
Q. So I want to talk about the records from Government's Exhibit 100A through V. And to start and to situate us, when did the defendant receive his first Paycheck Protection Program loan proceeds?
A. Based on the date I know the loan proceeds were transferred to the account, it was in May of 2020.
Q. And what bank account were those proceeds deposited into?

A. So the -- as many credit unions are set up, you will have sort of a checking and a savings side to the same account. You can think of one as a sub-account. So the funds were deposited to one of the two business accounts for Florida Scuba Charters at Knoxville TVA.

Q. And publishing to the witness and to the jury what has been admitted as Government's Exhibit 100G, what is Government's Exhibit 100G?

A. So this is the monthly statement for the period of May 2020 for the Florida Scuba Charters Incorporated business account at the Knoxville TVA Credit Union.

Q. And directing your attention to the second page of this account, Special Agent King, do you see the PPP deposit in May of 2020?

A. I do.

Q. And can you circle it.

A. (Complies.)

MR. KELLER: And let the record reflect that the witness is circling right around the center of the screen.

BY MR. KELLER:

Q. And how much is the deposit into this account for, Special Agent King?

A. So it was $18,750 and no cents.

Q. And what was the balance in this account immediately before the deposit?

A. So just before you look up here, right above it, and you will see it was $1,157.29 the day prior.
Q. And do you see four deposits right above the first PPP -- this first PPP loan deposit?
A. I do.
Q. And were those deposits significant to your investigation?
A. They were.
Q. And what are these deposits?
A. So I recognize these deposits from other investigations I have conducted. FLDO is the Florida Department of Economic Opportunity. And "UI Benefit" is typically how I see Florida Unemployment Insurance benefits payments made. So these are unemployment payments that were made into the business account from the State of Florida.
Q. And was the defendant receiving unemployment insurance from the State while receiving PPP loans from the federal government significant to your investigation?
A. It was.
Q. And why is that?
A. Typically, you wouldn't see both. It could be a scenario where you might be able to receive both. But for someone that was only operating one business to receive a paycheck protection loan, to keep the business operating while you're also receiving unemployment benefits from the State of Florida, you know, you shouldn't have both of those together.

Q. And do the records from Knoxville TVA also include a personal bank account for the defendant?
A. Yes. The defendant had a personal bank account at Knoxville TVA that we also obtained records for.
MR. KELLER: And publishing to the witness and to the jury what's been admitted as Government's Exhibit 115.
BY MR. KELLER:
Q. Special Agent King, what is Government's Exhibit 115?
A. So this is the monthly statement for May of 2020 for the defendant's personal bank account at Knoxville TVA Credit Union.
Q. And directing your attention to page 2, what was the balance on this account at the beginning of the month?
A. So the balance, you can see right here, at the beginning of the month was $88.52 as of May 1, 2020.
Q. And directing your attention to the $900 deposit that occurs on May 15th, where does that deposit come from?
A. This was a counter deposit. So that's -- typically, a counter deposit is something that you may make at a bank teller. Some banks, this will show up as an ATM deposit. You could also mail it in, but when you see a deposit that doesn't reflect a wire or ACH transfer or a check, that's typically what that indicates on a bank statement.
Q. And so I'm going to move us back to -- and, oh, just ask one more question.

Did this deposit which happened on May 15th happen before or after that first PPP loan was deposited?
A. I was just after.
Q. I'm going to clear the screen and bring us back to Government's Exhibit 100G, what's already been admitted as Government's Exhibit 100G. And Special Agent King, I'm going to bring us back to page 2 of Government's Exhibit 100G.
So we talked about the PPP loan and what's above it. Now I want to talk about what is below the PPP loan. So what date does the PPP loan get deposited into this account?
A. May 13, 2020.
Q. And what happens the following day?
A. So the following day, we -- we see a series of transfers to the other side of the business account in the amount of $1,875. It goes on to the second page as a series of quite a few of them.
Q. And how many in total?
A. I forget the exact number in total, but if we go to the second page, we will see it. But it was basically almost the entire loan amount divided among ten.
Q. And I will ask it this way. How many loan transfer or deposit transfers are on page 2 of Government's Exhibit 100G?
A. Six, if I'm counting properly.
Q. And then moving to the second page. How many more?
A. Two more. So a total of eight.

Q. And how does the number 1,875, the amount of the transfers, relate to the total amount of the loan?
A. Well, that's 10 percent of the loan. So 1,875 is 10 percent of one thousand eight hundred and seven fifty dollars [sic].
Q. And based on your training and experience, when people transfer funds like this, who writes the memos on the transfer line like you see here?
A. So it will be done one of two ways. If an authorized signatory on the account is logging into -- if you have, like, a mobile app on your phone or you're on a website, when you put in the transfer, the bank will sometimes require some -- sometimes they will require to put a memo what it is.
You can make a transfer like this on the phone or in person at a bank. And in that case, it would be the bank employee inputting the information based on what the customer told you.
Q. And at this point in May 2020, who was the only authorized signatory on this account?
A. So this was in May. So this was after March when we saw Ms. McCabe removed herself as a signatory from the account, I believe, based on their pending divorce. So in May, Mr. McCabe was the only signatory on this account.
Q. And here is where I'm going to be summarizing earlier exhibits. So based on your review of the defendant's activity from November 2019, and Government's Exhibit 100A, up to

Government's Exhibit 100G, May of 2020, had the defendant ever transferred money like this that he designated as payroll?

A. No, I had not seen anything that looked like a consistent regular payroll payment or anything was labeled as one.

Q. Thank you, Special Agent.

And now turning our attention to page 5 of Government's Exhibit 100G, and directing your attention specifically to the middle of the page, can you explain what these payroll entries are?

A. So this is the -- what I said before, the business account had two sides to it. This is the other side of the business account. This was -- one was like his savings, this was like the checking. And you can see here, this is the money (indicating) coming in. You see on the deposits, most bank ledgers will have deposits, withdrawals, and then a running balance. So this is just seeing from the other side where we saw the money leaving the account, going to this account. This is the money coming in, showing up in it.

Q. And what was the balance of this checking before the defendant transferred these PPP funds into it?

A. So if you look on May 14th, the balance just before the first transfer of 1,875 came in, it was $2,019.51.

MR. KELLER: And now I want to turn to what's been admitted, and I'm going to publish this to the witness and the jury as Government's Exhibit 100H. And I will clear the screen as well.

BY MR. KELLER:

Q. Special Agent King, what is Government's Exhibit 100H?

A. So this is a monthly statement for the same business account we've been looking at for Florida Scuba Charters, at the Knoxville TVA Employee Credit Union for the month of June of 2020.

Q. And turning to page 2 of Government's Exhibit 100H, what does this information contain?

A. It shows you the beginning balance, and it also shows some checks that were written, and we also see another payment from the Small Business Administration.

Q. And how much is the payment from the Small Business Administration?

A. You can see it here on June 23rd (indicating). We can see $4,500 comes into the account.

Q. And are the deposits above it transfers from the checking account?

A. Correct.

Q. So how many actual deposits that are not from the SBA or from the checking account are there this month?

A. Looks like we've got one on June 1st for 230; then we have one on the 17th for 1,775; and then on the 29th, you see that last one for $1,100.

Q. And is the $1,100 the only actual -- only actual cash

deposit in the -- into the account this month?
A. Yeah. The other ones were internal bank transfers.
Q. And I will ask this question again to not painstakingly go through every single month of these bank statements. What do the rest of the Government's Exhibit 100 series contain, from 100H that we're looking at here, to 100V?
A. These are the rest of the monthly statements for these -- for this account for the relevant time period. So you will see a monthly statement for each month that looks like this, just different transactions, different dates.
Q. And do these accounts reflect deposits made into the account, including cash deposits?
A. They do.
Q. And do they also include records relating to checks written?
A. They do.
Q. And is there a TVA bank record that contains all deposits made into this account?
A. Yes. So, earlier, when I was talking about counter deposits, some banks will give you sort of a separate sort of record. And so, within the monthly statements, you will see just blank deposit. This other document from the bank has a record of what those counter deposits were, which are usually going to be cash because it's not associated with a check or anything like that.

MR. KELLER: And publishing to the witness and to the jury what has been admitted as Government's Exhibit 116, and I will clear the screen as well.

BY MR. KELLER:

Q. What is Government's Exhibit 116, Special Agent?

A. So this is an example from that sort of counter deposit ledger showing, you know, a cash -- a counter transaction.

Q. And directing your attention to page 10 of Government's Exhibit 116, what is reflected on page 10 here?

A. So this is the bank's sort of record of a receipt for a cash deposit that was made into the account on May 26 of 2020 for $300.

Q. And then turning to page 11, and clearing the screen, what is on page 11?

A. So here we see the same thing. It's just on June 29th for $1,100.

Q. And is this the $1,100 deposit that we just looked at?

A. Yeah, you can see the date matches up. This is just the bank saying that this was cash and not a check or a wire transfer. So this was basically what you would call money coming across the counter.

Q. And at this time, I'm going to cycle from page 11 to page 23, and I'm going to do it relatively quickly, just because I'm going to have you summarize --

THE COURT: Ladies and gentlemen, all of the exhibits that have been admitted during this trial will be in your possession during deliberations. So you will have hard copies of these items to review if you wish to.

MR. KELLER: And just two more. And, yes, I'm doing this in an effort not to put anyone to sleep.

BY MR. KELLER:

Q. So, Special Agent King, what do these records reflect?

A. So these are just all of the counter deposits. A couple of them, the way they're done by the bank, I believe probably could have been ATM transactions. But those are just summaries of cash deposits made into the account that are not a check, not a wire transfer, things like that.

Q. And do those deposits reflect less than $5,000 deposited during this period?

A. Correct.

Q. And after the defendant's first PPP loan in May of 2020, but before the second one, did the defendant write checks to himself from the Florida Scuba bank account?

A. Yes, he wrote a series of checks to himself from that account.

MR. KELLER: And I'm going to begin by publishing Government's -- what's been admitted as Government's Exhibit 117 to the witness and the jury.

BY MR. KELLER:

Q. So, Special Agent King, what is Government's Exhibit 117?

A. This is a check drawn from that same 3600 account, from the -- the Florida Scuba Charters business account that was made payable to himself.

Q. And when you look at the endorsement on the back, which account is this being deposited into?

A. This went over to the personal account that he had at Knoxville TVA.

Q. And now moving to Government's Exhibit 118 -- and actually, let me just also ask -- so I'm not sure that we said it. What is the date of this check?

A. This was May 15th, 2020. You can see the check was for $900.

MR. KELLER: And now publishing to the witness and to the jury what's been admitted as Government's Exhibit 118.

BY MR. KELLER:

Q. Special Agent King, what is Government's Exhibit 118?

A. Another check that was the same, from the business account, payable to himself. This one is just for 4,000 on July 7th, 2020.

Q. Thank you.

MR. KELLER: And now moving to publishing Government's Exhibit -- what's been admitted as Government's Exhibit 119.

BY MR. KELLER:

Q. Special Agent King, what is Government's Exhibit 119?

A. Another one of the same. This one was just

September 4, 2020, for $2,700, made payable to himself.

MR. KELLER: And then moving to publishing what's been admitted as Government's Exhibit 120.

BY MR. KELLER:

Q. Can you tell us what Government's Exhibit 120 is?

A. Yeah. Same thing. This one is $700, October 6, 2020. Basically wrote a check to himself. So more of the same.

Q. And does the total of this amount well exceed the amount that there were cash deposits of into that account during this same period?

A. Yeah, if you add it all up. I don't have the number memorized anymore, but that is correct.

Q. And based on your review of the records, before the defendant received his first PPP loan, had he ever written a check to himself for a dollar amount similar to what we've seen here?

A. No. Nothing -- nothing close to these amounts we saw.

Q. And when did the defendant receive his second PPP loan proceeds into this TVA bank account?

A. So he received the proceeds for what they call the draw 2 loan. That was -- there was two draw periods -- and he received that in February of 2021.

Q. And directing the witness's attention to Government's Exhibit 100P, what is Government's Exhibit 100P?

A. So this is the same business account we have been looking at for Florida Scuba Charters at Knoxville TVA, and this is just for the -- this is the monthly statement for February of 2021.

Q. And moving to page 2 of Government's Exhibit 100P, what was the beginning balance? And directing your attention to the top of the page, the top quarter. What was the beginning balance of the account this month?

A. $48.87 was the balance of this account as of February 1, 2021.

Q. And before, when we looked at the earlier records from 2020, and we saw a business savings account and then a checking account. What happened to the savings -- the savings account? Is there any money left in that?

A. No.

Q. So there is just this checking account?

A. Yes.

Q. And based on the fact that there is just this checking account, what, if anything, does that lead you to conclude about the PPP funds from the first loan at this point?

A. That all of the proceeds of that loan were either spent or moved to other bank accounts.

Q. And do you see the PPP loan deposit for the second PPP loan in this bank statement?

A. Yes. We see this on February 9th. Easy to identify because it says "SBA loan," and the amount was $20,385.

Q. And how much of this PPP loan had the defendant withdrawn by the end of the month?
A. Almost all of it, about $18,000. You can see there was two checks written that was almost all of the loan.
Q. And how many -- how many checks was it?
A. You can see a Check 1011 and then Check 1012. And so, basically, all but 26- -- $2,500 and change was drawn on those checks.
MR. KELLER: And let the record reflect that the witness has circled all over Government's Exhibit 100P on page 2.
And I'm going to shift our focus to these checks, and I'm going to start with the first of those checks by publishing to the witness and to the jury what's been admitted into evidence as Government's Exhibit 101.
BY MR. KELLER:
Q. And, Special Agent King, what is Government's Exhibit 101?
A. This is a check from the business account, payable to Mr. McCabe on February 22, 2021.
Q. And how much is it for?
A. $9,500.
Q. And what did the defendant write in the memo line?
A. So on this check, we see on the memo line a notation that it says "payroll."
Q. So the defendant didn't bother to do the structured

transfers this time?
A. It would appear not, no.
Q. And moving from the first check to the second -- and I'm going to clear the screen by going from Government's Exhibit 101 to publishing what's been admitted into evidence as Government's Exhibit 99.
Special Agent King, what is Government's Exhibit 99?
A. So this is another check from the Florida Scuba Charters business account. This one is dated May 19, 2021. I think this is the day after the loan hit the account.
Q. And I'm sorry. You said May 19th?
A. I'm sorry. February. Thank you.
Q. How much is this check for?
A. $8,774.00.
Q. And who is this check written to?
A. So this one is different than the previous ones we saw in that this one is paid to the order of the PGA National Members Club.
Q. And during the course of your investigation, did you learn what the PGA National Members Club is?
A. I did. And I already knew what it was. I'm actually from Daytona Beach which is the headquarters for the LPGA, so I knew that the PGA is headquartered in Palm Beach Gardens, just because the LPGA is in my hometown. So I already knew what this was.

Q. Okay. And can you just explain to the jury what PGA National Members Club is.
A. So this is a very nice country club, basically, a golf -- golf club/resort type of place.
Q. And what does the memo line say for this check?
A. So just a number that says 40624.
Q. And I'm going to clear the screen.
And, Special Agent King, did you secure records from PGA National Members Club?
A. We did.
MR. KELLER: And publishing to the witness and the jury what has been admitted into evidence as Government's Exhibit 111.
BY MR. KELLER:
Q. Special Agent King, what is Government's Exhibit 111?
A. So this is a hand-filled-out application, a membership application for the PGA National Members Club.
Q. And is this record we're going to be looking at only records that the PGA had as to Mr. McCabe?
A. There is a series of pages, but, yes, this was the responsive record they had.
Q. And I want to ask a couple of things about this first page. The first thing I want to ask is, what is the number in the top right?
A. So it's the same number we saw on that check, 40624, which

is like a membership -- I've come to learn it was like a membership number.

Q. And just to illustrate that -- so I'm going to go from the -- I'm going to go from publishing Government's Exhibit 111 where you see the 40624, back briefly to Government's Exhibit 99, and just to illustrate the 40624.

And then, bringing us back to Government's Exhibit 111, and directing your attention to the middle of the page, Special Agent, what is the business name that Mr. McCabe, the defendant, listed for his business?

A. So you can see there, it's FSC, which, I believe is an abbreviation for Florida Scuba Charters.

Q. And what type of business does he say that he operates?

A. It says "charter."

Q. Does he say anything about being a dive instructor or anything like that?

A. No.

Q. And turning your attention back to the top of the page, what was the date you said this was filled out?

A. So on the top right, you will see there, it's January 12, 2020.

Q. Now, is that before or after the PPP loans?

A. So this -- if you remember, this was when the pandemic was barely even discussed. This is well before the PPP loans, I think, even had been thought of. This was January. PPP wasn't a thing until, like, March or April.

Q. And clearing the screen and directing your attention to the bottom of Government's Exhibit 111, what is the defendant applying in January 2020 for access to at this country club?

A. So you can see interest, checks all that apply: The Men's Golf Association and the fitness center is what's checked here.

Q. And now moving to the second page of Government's Exhibit 111, and directing your attention to the second line in this. As to the total joining cost to join this country club, what is the amount of money that the defendant was going to have to pay in order to join the country club?

A. So you can see after these other amounts were crossed out, but the amount that's left that's not crossed out is $8,774.

Q. And turning to page 3 of this country club application, did the defendant sign the country club application?

A. Yes.

Q. And when did he sign it?

A. January 12, 2020.

Q. And turning to page 4, what is page 4 laying out, Special Agent?

A. This talks about the rules about the country club attire. You know, you've got to dress nice going to the golf course. Talks about unacceptable attire and different rules of conduct for going to the country club.

Q. And does the defendant sign the bottom of this page as

well?
A. He does, also, on January 12th of 2020.
Q. And turning to page 5 of this country club application, what does page 5 contain?
A. This is a copy of Mr. McCabe's Florida driver's license.
Q. Now, this application portion was filled out in January 2020. Does -- do the records reflect that Mr. McCabe bought the membership in January 2020?
A. No.
Q. And looking at the final page of Government's Exhibit 111, what is this final page?
A. So this is the -- you can see there it says "membership sales office to billing," and we see the same 40624 number, and this shows that there was a payment made.
Q. And directing your attention to the bottom of the page. What is the amount that Mr. McCabe had to pay?
A. It's that $8,774 that we saw as the -- what the cost was in the January 2020 application fee.
Q. And focusing here on what's listed above that 8,774 number, what are initiation fees?
A. I have never been a member of a country club, but --
MR. O'SULLIVAN: Objection. Outside of this witness's scope of knowledge.
MR. KELLER: Your Honor, we would be -- ask that he just be able to complete laying the foundation, because I think

he was about to do that.

THE COURT: All right. I will overrule the objection.

Answer the question, sir.

Madam reporter, please read it back.

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

THE COURT: All right. Now answer, sir.

THE WITNESS: Initiation fee is the fee to be initiated into something like a membership of an organization or a club.

BY MR. KELLER:

Q. Is it a one-time expense?

A. In my experience, initiation fee is the thing you pay at initiation, and then you may have a renewal after that.

Q. And what is indicated about whether the total was paid at the time of enrollment in this document?

A. There is a checkmark.

Q. And what is the notation made at the bottom of this page?

A. At the bottom right you see 2/19, which, I believe, is February 19th.

Q. And turning your attention -- and then publishing to the witness and the jury what's already been admitted as Government's Exhibit 99 -- how does the 2/19 on the date of the billing or on the billing form, rather, compare to the date that Mr. McCabe actually paid for the golf club membership?

A. It's the same date; and the amount of the check is the same that was listed on that billing document.

Q. So while the defendant applied initially before the PPP loans, did he pay for it before or after the PPP loans?
A. Based on the records from the country club, he paid for it after.
MR. KELLER: Nothing further, Your Honor.
THE COURT: Cross?
MR. O'SULLIVAN: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. O'SULLIVAN:
Q. Good afternoon, Agent King.
A. Good afternoon, sir.
Q. When did you first get involved in this investigating Mr. McCabe?
A. It -- it would have been sometime in 2022. I can't -- I can't point you to an exact month or date right now, but it was in 2022.
Q. Do you recall, was it towards the beginning of the year, middle, or end? If you could just give your best guess.
A. I'm going to -- so I know that this matter was formally referred to the United States Attorney's Office by Coast Guard District 7 in the late summer of 2021. I know that because I was mobilized by the U.S. Army. I'm an Army reservist. I was mobilized when it was referred. And when I came back from mobilization, I knew that this referral had been sort of sitting, you know, there.

So, late 2021. So that would probably be early 2022.
Q. Okay. So the referral from the Coast Guard came, at a minimum, 18 months after the incident?
A. I think it -- I think the referral came under 18 months. I think it was between 12 and 18. But if you say 18, you're pretty close.
Q. Okay. So at that point, of course, you never had access -- well, let me just back up a little bit. As case agent, you're the lead; correct?
A. Yes.
Q. And you have been here for the last week, obviously; right?
A. I have.
Q. You have interviewed pretty much all of the witnesses that we have seen; correct? Almost all of them?
A. There may be one or two that I didn't interview, but, yeah, pretty much everyone I have interviewed at least once.
Q. Okay. So you're, kind of, the quarterback. You're in charge of this investigation?
A. I don't know if I'm in charge, but I'm the main criminal investigator.
Q. You're the main investigator; correct?
A. Yes.
Q. Okay. And since you didn't come on until either late '21 or early '22, you never had access to the Southern Comfort itself; correct?

A. No. I wouldn't -- I wouldn't agree with -- you mean access at the time of the fatality?
Q. Just access to the boat itself.
A. No. I have access to the boat today.
Q. I mean -- well, let me rephrase that.
Once you came on as the investigator, the boat had transferred title from Mr. McCabe to Steve Poznak; correct?
A. Yes.
Q. And a lot of time had gone by?
A. Correct.
Q. And you were here. Mr. Poznak said that the boat had, you know, suffered some decay, for lack of a better word, the engine rooms were full of water and it was in rough shape?
A. Right.
Q. So, I guess, what I'm getting at is that there was never an investigation done the day of the incident of that boat; correct?
A. Just the investigation done the day of, that you have -- that you heard about, that was what was done.
Q. So, basically, we hit -- saw four photographs. That was the extent of that investigation, was four photographs of the exterior of the boat that we saw every day this week?
A. I didn't even work for the Coast Guard in March of 2020. So I only know what the documents show that was done. But, yeah, if -- if we saw four photographs, that was -- those are

the four photographs that were shown from that. But I didn't even work for the Coast Guard in March of 2020.

Q. So from the information you received from the Coast Guard and from Mr. Fowler from Fish and Wildlife, from Officer Abramowitz from North Palm Beach, just everyone that we heard about and everyone that you interviewed, no one inspected the boat on March 29, 2020; correct? The date of the incident?

A. Inspection means, you know, something very specific to the Coast Guard --

Q. I can be more clear.

A. Sure.

Q. I know people got on the boat and they looked around. I'm talking about, did anyone look at the throttles or the engines or the transmission?

A. Other than the pictures we saw of the controls that were moved. And I do know that FWC did look at the engines; I know that.

Q. Who testified to that? Because I don't recall that.

A. Well, you just asked me if I knew.

Q. Okay. Did anyone testify about looking at a transmission this week?

A. I -- I think Mr. Fowler said they looked -- they would have looked at the engines. I know that they did, but --

Q. Okay. Was a mechanical survey ever done on this boat?

A. A mechanical survey?

Q. Any type of survey?
A. Yeah, there was a survey done.
Q. Okay. Who testified to that this week, if anyone?
A. I don't remember if anyone testified to it, but I know there was a survey that was done.
Q. So if there was a survey of the boat done, and one of the issues of this case is, was there negligence in the maintenance of the boat, why wasn't that mechanical survey brought to the jury's attention?
A. Well, because this was a -- it wasn't a mechanical survey. It was a survey done of the vessel that is typically done when you are going to sell a vessel, kind of like a real estate appraisal. And that survey was done prior to the sale when we have already heard testimony about modifications that were made to the boat. So that survey is prior to the modifications.
Q. So I'm not talking about a real estate survey where, you know, we can put this in the boattrader.com. I'm talking about, there is a criminal investigation.
A. Uh-huh.
Q. A young lady died. How come no one inspected this boat to find out exactly what happened so that five years later a jury would know for sure and not have to rely on 15 different witnesses?
A. You're asking me -- I'm sorry. Could you ask the question again, sir.

Q. Why did no investigative official really look at this boat on the day after the incident? It was there and available. Mr. McCabe had it in the slip. Why did no one look at the boat?
A. I can -- I can tell you what Mr. Fowler said on the stand as to that, and I can also speculate as to why I think no one did the day of, if you would like.
Q. I don't want you to speculate. And I think the jury will rely on their own recollection of what Mr. Fowler said.
But from your point of view as -- as, you know, one of the leads, a young lady died on this boat, the boat's available, how come no one looked at the boat on March 29th of 2020?
A. They did look at the boat.
Q. Okay. But no one testified to anything other than that "we walked around and took four pictures of the back."
A. You heard testimony from the FWC diver that took extensive video underneath the boat. So it was more than just look at the boat. They dove the boat, looked at the propeller.
Q. They didn't drive the boat, did they?
A. No, they did not drive the boat.
Q. They didn't turn the boat on, did they?
A. I don't believe they turned the boat on, no.
Q. They didn't put the boat in forward, did they?
A. No.
Q. They didn't put the boat in reverse, did they?

A. No.
Q. They took some pictures of the boat and threw a diver and took some pictures of the prop. That's the extent of the investigation of this manslaughter case; correct?
A. No, I don't -- as someone that's been doing this for several years, this case -- that's not the extent of it, no.
Q. Well, okay. We will leave it at that.
At the beginning of your testimony today, you started your testimony discussing a Maritime Consortium.
A. Yes.
Q. Could you just expand a little bit so the jury knows what a Maritime Consortium is.
A. So the commercial vessels regulated by the Coast Guard, one of the things that is required is the -- anyone in a safety-sensitive position on the boat -- that's basically anyone that could handle a line, a life jacket, operate controls -- so, basically, if you had, like, a bartender and they were only a bartender and served no safety function, they don't have to be enrolled in the program. But anybody that serves a sensitive safety position has to be enrolled in a random -- you have a preemployment chemical-testing program and also a random. And there is a couple of organizations that will manage this, and the Maritime Consortium is one of them. And they basically just have the list of folks that are subject to this, and they will maintain the randomized testing.

Q. Okay. I just want to be very clear that you have been a part of this investigation and trial now for about three years, give or take? Several years?
A. Yeah, pretty close to three, yes, sir.
Q. Okay. Drugs and alcohol were never a part, at all, of this investigation; correct?
MR. KELLER: Objection, Your Honor. Pretrial rulings.
THE COURT: All right. I will see the parties at the sidebar.
(Conference at bench.)
THE COURT: I thought we weren't going to talk about drugs in this case.
MR. O'SULLIVAN: I didn't either. I was kind of surprised that Mr. Keller started his direct talking about the Maritime Drug Consortium. I was -- kind of blew me way that he talked about that. It was a pretrial ruling. That was literally one of the first questions, and that kind of leaves an inference to the judge -- or the jury that maybe there are drugs involved in this case.
MR. KELLER: It was --
MR. O'SULLIVAN: I have to -- sorry.
That door was wide open. You cannot leave that hanging in front of a jury, that -- and then he even showed exhibits talking about, you know, exempt and not exempt. He -- basically making an inference to the jury that, hey, there

could be chemicals involved in this.

I never would have mentioned that but for the government's opening that door, first thing out of their mouth.

MR. KELLER: Those records -- that record was clearly just about who was listed employees. That was the purpose of the record. That was what was introduced as a record about his listed employees --

THE COURT: But wasn't there at least one question related to the Consortium and this notion of a drug-testing program? I think that did get referenced somehow.

MR. KELLER: He just explained what the business is, but then I asked him just "What employees are listed after March 31st of 2020?" And he said, "There are no employees." And then we moved on -- "except for Mr. McCabe." And then we moved on. Because that was the purpose of that record, was just to show that Mr. McCabe had no employees, because that's why I then showed the forgiveness applications that showed five employees.

THE COURT: Okay. But you don't disagree that there was a reference to a drug-testing program by the witness; correct?

MR. KELLER: There was the -- yes, there was the existence of a drug-testing program.

THE COURT: Okay. Well, then given that, wouldn't it be fair for the defense to ask the question that was just asked, which is that there was no connection to drugs in this case?

MR. KELLER: Well, again, the issue is that we don't know that because these -- these people who were his deckhands never got tested.

So when you asked me at the motion in limine hearing if there was any evidence, it's true that there is no evidence of drugs being involved because of the fact that there never will be because there was no testing done on those people.

MR. O'SULLIVAN: My client was tested that night and he passed, and the government knows that.

THE COURT: I recall that. Okay.

Because there was some degree of testimony on direct related to the existence of the drug program, I'm going to overrule the government's objection to the question and permit you to ask it. I don't believe the witness yet answered, but I will check the transcript. And then after that, I want this topic over with.

MR. O'SULLIVAN: Absolutely. Just one question. That's it.

THE COURT: Okay. Thank you.

(Conference at bench concluded.)

MR. O'SULLIVAN: May I proceed, Your Honor?

THE COURT: One moment.

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

THE COURT: All right. The question, sir, was: "Drugs and alcohol were never a part at all of this investigation; correct?"

The objection has been overruled.

Answer that question.

THE WITNESS: So drugs and alcohol, I'm not aware of them being a factor in any way in the circumstances of this case, if that's what you're asking.

BY **MR. O'SULLIVAN:**

Q. Yes. Let's move on.

Okay. We looked -- during your direct, we looked at some records from, I think, the TVA bank. Is that the Knoxville bank?

A. Yeah, the Knoxville TVA Employees Credit Union.

Q. Correct. And we looked at exhibits going from the year 2020, going forward.

A. Yes.

Q. We never looked at anything from 2019, 2018, 2017; correct?

A. We looked at some of them from 2019.

Q. But we looked at a very short snapshot picture in time of his financial history; correct?

A. We looked at -- yes. We -- we looked at the -- a relevant period, but it was --

Q. Relatively short?

A. I would agree with that, yeah.

Q. You know, given that this business that been around for lots of years, and we only saw a little snapshot of just, kind of, maybe a month before the PPP loan, and then a couple of months after?

A. Yes, I would agree with that.

Q. And that's not really giving the jury a full financial picture of the business. It's just if we had the business timeline like this, we're just kind of looking like this, just at a real short timeline; correct?

A. I think Mr. Keller said we were summarizing the records. So that's what a summary is.

Q. Mr. McCabe, he sold his boat, the Sea Scout, in 2020, March 9th of 2020?

A. It sounds right. I think --

Q. And that boat was owned for -- free and clear. Did you learn that as part of your investigation?

A. I'm sorry. Could you repeat?

Q. I'm sorry. My voice is a little hoarse.

He owned that boat free and clear. Did you learn that as part of your investigation?

A. No. We didn't -- didn't look into the ownership or financing of that vessel because it wasn't -- I don't know.

Q. Okay. But you agree with me, he did sell it in March of 2020, March 9th?

A. Yes.

Q. And he sold it for $67,500?
A. I had looked at the bill of sale documents for that. I -- I have no reason to dispute that -- if you say it's 67, I -- I don't -- I don't doubt that, no.
Q. Okay. And he has more than one bank account; correct?
A. Yes.
Q. He has personal bank accounts, plural, and a business account at several different banks?
A. At least, yes.
Q. Okay. As part of your investigation, do you also learn that he received insurance settlement checks for, like, a motorcycle accident for a substantial sum?
A. I don't remember that, but I don't -- I don't remember that, no.
Q. Okay. I just want to just talk a little bit about the PGA. You're aware that he's a golf teacher, correct, a certified golf teacher?
A. You mean, like, a golf pro?
Q. Yes.
A. Yes.
Q. So on direct, it kind of sounded like he was spending the company money to belong to a rich, fancy country club, is what it was portrayed as. PGA --
THE COURT: Is there a question?
BY MR. O'SULLIVAN:

Q. You testified that he was -- paid membership fees to PGA National; correct?
A. Yes.
Q. In the amount of 8,774?
A. Yes.
Q. Okay. And you're aware that he is a golf pro?
A. Yes.
Q. And you're aware that he taught golf at that -- at that country club in order to provide an income for himself?
A. I know he is a golf pro. I know he had worked at other country clubs. I -- I don't know for certain that he was a golf pro there, but I -- I would not -- it wouldn't surprise me.

MR. O'SULLIVAN: Okay. I don't have any other questions, Agent King. I appreciate your time, sir.

THE WITNESS: Yes, sir.

THE COURT: Redirect?

MR. KELLER: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MR. KELLER:
Q. Good afternoon again, Special Agent.
A. Yes, sir.
Q. Special Agent, were you at the scene of Ms. Ghiz-Flynn's death on March 29th?
A. No, I was working at the Pentagon on March 29th of 2020.

Q. So do you know exactly what the officers who arrived did to the boat or didn't do to the boat?
A. Only that I can learn from their reports and from speaking to them. I wasn't there. I didn't even work for the Coast Guard in March of 2020.
Q. And in terms of the records that you did receive from them, and because there was a little talk on cross about four photographs, which, I guess, is a reference to some of the photos we've seen in trial, did FWC take many more photographs than this?
A. FWC, as well as the Palm Beach medical examiner, took a significant -- a lot of photographs, yes.
Q. And are the 25 or so photographs in this case as exhibits, just a subset of the photographs that were taken during this investigation?
A. Yeah. At some point, when you have crime scenes and autopsy and photography -- at some point, the photographs just sort of become repetitive. So, you know, I have seen all of it, but 25, I think, tells the story.
Q. And in terms of the level of investigation that Investigator Fowler did and such, you were not part of those conversations or anything like that?
A. No.
Q. And as far as the marine survey, I want to just be clear because there was kind of a little confusion in the back and

forth. When was the marine survey that you have access to completed?
A. It was done prior to the purchase of the vessel by Mr. McCabe. So this was -- it is like a real estate appraisal. It is -- you know, buyer of a vessel is doing the survey to kind of see the condition of the boat, the engines, structural issues, engine hours. That's -- that's the one I looked at.
Q. And shifting gears to Florida Scuba Charters and its finances, you testified that the records that you have only go back to 2019?
A. We looked at records in 2019, but I think we have -- I think we have records that go a little bit farther back than that, but we did look at records, say, from 2019.
Q. Well, for the business accounts specifically, when did those records begin?
A. The TVA account was opened in 2019.
Q. And when in 2019?
A. Was that October?
Q. And I can direct the witness's attention. I will publish to the witness and to the jury --
A. I think it was October 16th.
Q. -- what's been admitted as Government's Exhibit 100.
A. I'm sorry. November 21st, 2019.
Q. So this is the very beginning of records existing for this business account?

A. Correct.
Q. And are you aware of any other business accounts that came before this?
A. I'm not aware. There is personal accounts, but this is the first time we saw business account.
Q. And when did Florida Scuba Charters officially go -- or officially unincorporate itself?
A. I think they failed to file their annual report in 2021, maybe.
MR. KELLER: And the government will publish to the witness and to the jury what's been admitted as Government's Exhibit 103.
THE WITNESS: Yeah, they -- it wasn't -- sorry.
BY MR. KELLER:
Q. Yeah. Let me ask a question.
So, Special Agent King, what is Government's Exhibit 103?
A. So these are the articles of the dissolution. I was incorrect when I said they failed to file the annual report. They actually dissolved the company.
Q. And what are articles of dissolution, just to be clear?
A. So when you have a corporation and you dissolve it, you're filing articles of dissolution. These are filed on May 13th, with the Secretary of State of Florida, 2021.
Q. And as far as Mr. McCabe being a, quote/unquote, "golf pro," and speaking to what you actually know about, your

knowledge, was Mr. McCabe a golf pro after this -- these PPP loans or before?

MR. O'SULLIVAN: Objection. Asked and answered.

THE COURT: Overruled.

THE WITNESS: So I know he was a golf pro off and on, before and after. I do know that.

BY MR. KELLER:

Q. And do you have any personal knowledge of Mr. McCabe being a golf pro at the PGA club that we have here?

A. I -- I don't specifically know that he was working as a golf pro there. I do know other golf courses that I can recall, but I don't specifically know at the PGA National Master's Club, no.

Q. And publishing to the witness and to the jury what's been admitted as Government's Exhibit 111, and focusing on the bottom of the page, what is Mr. McCabe looking for a membership into?

A. So there is two things --

MR. O'SULLIVAN: Objection. Calls for speculation. Outside the scope. Relevance.

THE COURT: I will sustain the objection, but you can -- may rephrase your question, Counselor, on the basis of the information in the exhibit.

MR. KELLER: Yes, Your Honor.

BY MR. KELLER:

Q. So, Special Agent King, what interests does the defendant indicate in this golf application?
A. So there is two things checked here: Men's Golf Association and the fitness center.
Q. Is there anything in this application relating to the defendant providing paid golfing services?
A. I don't know unless a fitness center or Men's Golf Association --
MR. O'SULLIVAN: Judge, I'm going to object to outside the scope of this witness's knowledge.
THE COURT: Overruled.
Please answer.
THE WITNESS: Unless it's one of these two things that pertains to being golf pro, I don't know.
BY MR. KELLER:
Q. But is there anything specifically in these document -- in this document saying "terms for providing services," anything like that?
A. We saw terms on the rules about clothing and conducting business, but I didn't see anything that jumped out at me that said this was to be a golf pro. I -- I just -- I don't know.
MR. KELLER: Nothing further, Your Honor.
THE COURT: All right. Thank you, Agent. You may return to counsel table.
Any additional exhibits to present?

MR. KELLER: Your Honor, at this time, if we could have access to the ELMO, we would want to publish what's been -- what we will move into evidence as Government's Exhibit 122 which is a trial stipulation.

THE COURT: All right. Ladies and gentlemen, as we did before, I instructed you that a stipulation is an agreement between the parties. You must accept it as true and proven in this case.

So Mr. Keller will now read into the record a stipulation agreed to by the parties, which is marked as Government's Exhibit 122, and which has been admitted.

MR. KELLER: Thank you, Your Honor.

So this has the same preamble as the last stipulation, so I will spare you reading it again. So there are two stipulations here: Number 1, that the Internal Revenue Service form Schedule C, quote, "Statement of Profit or Loss from Business Tax Document -- for the year -- for tax year 2019, which the defendant submitted to Celtic Bank in connection with Paycheck -- with the Paycheck Protection Program application in May of 2020, and which is marked and admitted as the United States' Exhibit GX121, was never filed with the IRS.

"And Number 2, that the IRS Form 1120, U.S. Corporation Income Tax Return Tax Document for the tax year 2020, which the defendant submitted to Cross River Bank in connection with a PPP application in February 2021, and which is marked and admitted as the United States' Exhibit GX93, was similarly never filed with the IRS."

And, as you see, this, like the other stipulation, is signed by the parties.

THE COURT: All right. I will let you, Mr. Keller, arrange yourself back at counsel table.

Anything further for today?

MR. KELLER: No, Your Honor. The government rests.

THE COURT: All right. Ladies and gentlemen, it is 3:20, and we are done early again for the day. We have also been moving a bit more quickly than initially anticipated. And so while I was going to have you all come tomorrow morning for trial, it appears that the schedule of witnesses won't accommodate that. And so, tomorrow, you will be off and you will not be expected to come, but the trial will resume on time, promptly on Monday. Except there is additional change for the Monday schedule, and that is that we are going to start at 11:30 on Monday rather than the standard 9:00 a.m.

So just to recap so there is no confusion, you aren't expected to be here tomorrow. That will permit the parties and the Court to tend to additional matters. But we will expect your appearance on time at 11:30 a.m. on Monday.

So I'm going to instruct you again, as I normally do, that you shall not discuss this case with anyone or permit anyone to discuss it with you. Until you retire to the jury room at the end of the case, you are prohibited from talking about this case in any way. Also, remember not to read or listen to anything touching on this case in any way. If anybody should try to talk to you about it, please bring it to my attention promptly. Do not conduct any research or make any investigation about the case on your own. It's imperative that you understand that the only evidence in this case is the testimony of the witnesses that you hear in court and the evidence that is introduced during the official proceedings in the courtroom.

Remember not to have any contact with the attorneys, witnesses, or parties. And finally, do not form any opinion about this case until all of the evidence has been presented. You must keep an open mind until you start your deliberations at the end of the case.

So happy Friday and have a great weekend. We will see you at 11:30 on Monday.

All rise for the jury.

(The jury exited the courtroom at 3:20 p.m.)

THE COURT: All right. Please be seated. I'm going to step off the bench for 15 minutes. So we will have a break. Following that, I would like to segue directly into the charge conference unless there's a preference to do the Rule 29 first. I will hear from the parties on the sequence.

MR. KELLER: No preference, Your Honor.

THE COURT: Mr. O'Sullivan?

MR. O'SULLIVAN: Judge, I would prefer to do the charge conference. I was anticipating to do the Rule 29 on Monday, so I would love to do the jury instruction -- or the jury charge conference first, if that's acceptable to the Court.

THE COURT: Yes. Okay. Then we will proceed as scheduled with the charge conference in 15 minutes. Thank you.

(A recess was taken from 3:22 p.m. to 3:46 p.m.)

THE COURT: All right. Please be seated.

I have the parties' joint proposed jury instructions and verdict form. This is docket entry 54. So we will be working off of that. I reviewed that. And I have some questions and comments to address. But for now, let's start at the end, which I think should be an easy topic, and that's the verdict form. Any objection -- it doesn't appear -- to the verdict form submitted? This is pages 42 and 43 of the proposal. Mr. Keller?

MR. KELLER: No objections, Judge.

THE COURT: Mr. O'Sullivan?

MR. O'SULLIVAN: No objection, Your Honor.

THE COURT: Okay. Well, then let's get back to the beginning.

All right. So the first page is introductory; no disagreements there. Let's shift to the duty-to-follow-instructions instruction. The one that was submitted is B2.1, and there are no changes there. We should be using B2.1 in this case, correct, assuming Mr. McCabe chooses to testify, Mr. Keller?

MR. KELLER: Yes, Your Honor, if he does testify.

THE COURT: Okay. Mr. O'Sullivan?

MR. O'SULLIVAN: I agree, Your Honor.

THE COURT: Okay. So for now, given what I have heard is a high likelihood we'll presume to be using the B2.1 instruction, but we will adjust as necessary.

Okay. Anything to discuss so far, Mr. Keller?

MR. KELLER: No, Your Honor.

THE COURT: Mr. O'Sullivan?

MR. O'SULLIVAN: No, Your Honor.

THE COURT: Okay. Then let's inquire. Any objection to the pattern definition of reasonable doubt, Mr. Keller?

MR. KELLER: No, Judge.

THE COURT: Mr. O'Sullivan?

MR. O'SULLIVAN: No objection.

THE COURT: Any objection to the B4 pattern, Mr. Keller?

MR. KELLER: No, Your Honor.

THE COURT: Mr. O'Sullivan?

MR. O'SULLIVAN: No objection, Your Honor.

THE COURT: Okay.

Okay. Any objection to the standard credibility of witnesses instruction, Mr. Keller? This is B5.

MR. KELLER: No, Your Honor.

THE COURT: Mr. O'Sullivan?

MR. O'SULLIVAN: No objection, Your Honor.

THE COURT: Okay. Now, we're at the identification testimony. Is this a necessary instruction in this case, Mr. Keller?

MR. KELLER: I don't think it is. We had some people identify Mr. McCabe, but it was never really an issue of evidence. So I think we can go without it.

THE COURT: All right. Mr. O'Sullivan, what's your position?

MR. O'SULLIVAN: I'm fine taking it out in an interest of economy and less instructions to the jury. That's not an issue of the trial.

THE COURT: Okay. So are the parties in agreement that we no longer need this identification testimony instruction?

MR. KELLER: Yes, Your Honor. It hasn't been a subject of the trial.

THE COURT: Okay. Well, then this one will be removed then. Mr. O'Sullivan, do you agree?

MR. O'SULLIVAN: I agree, Your Honor.

THE COURT: Okay. We next had a proposal for something called "equally available witness" instruction, then later we discussed a separate joint proposal related to Mr. Miller, and that one was called "unavailable witness."

So my question is whether we still need the equally available witness instruction, Mr. Keller.

MR. KELLER: And so, Judge, I conferred with the defense prior to this charge conference about this instruction, and I will just join it with the next one, Persons not on trial, that the defense and the government agree that equally available witness -- that there has been no argument in this case about someone should have been here. So -- and the defense has represented that they're not going to be making that type of argument in closing. So we don't think that instruction is necessary.

THE COURT: Okay. So, "Equally available," Mr. O'Sullivan, you agree should be removed?

MR. O'SULLIVAN: I agree, Judge, after conferring with Mr. Keller.

THE COURT: Okay. And there is a commitment not to raise this sort of argument in closing?

MR. O'SULLIVAN: Absolutely, Judge.

THE COURT: Okay. So then let's shift to the next one, Persons not on trial. Mr. Keller?

MR. KELLER: So, my understanding, in conferring with the defense, is they do not object to this instruction. And when it comes to the Mr. Miller supplemental, our suggestion would be that it be added at the end of this, since they're kind of, related concepts.

THE COURT: Okay. Well, I had already done that. So I guess we're on the same page. One instruction will be a hybrid, Persons not on trial, plus the John Miller joint instruction.

Do you agree to that, Mr. O'Sullivan?

MR. KELLER: I do agree, Your Honor.

THE COURT: Okay. All right. We have, then, next, two pattern instructions: B6.1 for Impeachment of witnesses because of inconsistent statements; and then a B6.3 for Impeachment of witnesses because of inconsistent statements.

And so, let me just hear from Mr. Keller on which of these we should use.

MR. KELLER: Well, kind of using the same approach that you were using earlier with respect to, I believe, it was 2 -- or B2.1 and B2.2, then, assuming that Mr. McCabe testifies, then it would be B6.3. So I guess we would have that one right now as the standard, and then if he chooses not to, then we would revert to B6.1.

THE COURT: Okay. Agreed, Mr. O'Sullivan?

MR. O'SULLIVAN: Yes, Your Honor, that makes sense.

THE COURT: Okay. Then let's shift to the -- this T2. Is that submitted by both parties, Witness's prior statement or testimony explanatory instruction?

MR. KELLER: Yes, Judge, and it's because there has been some cross about prior statements, which is why we thought it was appropriate.

THE COURT: Okay. Mr. O'Sullivan, do you agree to have T2?

MR. O'SULLIVAN: Judge, I really take no position on T2. There wasn't a whole lot about it, but I'm fine either way. I have no position on this one.

THE COURT: Okay. Well, in light of the absence of any objection, this is a pattern instruction, so I will include it.

MR. O'SULLIVAN: No objection.

THE COURT: Okay. Then, next is the transcript of tape-recorded conversation. I don't think we've had any transcripts, at least not yet. So is there a need for this one, Mr. Keller?

MR. KELLER: No, Your Honor, there is not.

THE COURT: Okay. Mr. O'Sullivan, do you anticipate a need for this?

MR. O'SULLIVAN: I do not anticipate a need now or potentially in the future.

THE COURT: Okay. So T3 will be removed.

Expert witness is a pattern. I see no objection. Is that correct, Mr. O'Sullivan?

MR. O'SULLIVAN: Correct. No objection, Your Honor.

THE COURT: Okay. Then let's now get to the introduction to offense instructions. I see no disagreements there. So, Mr. Keller, any challenge to that intro language?

MR. KELLER: The only thing I would raise, Your Honor, just in light of the way that you instructed the jury at the beginning, I know that you're using the more precise term of "negligence" on a -- aboard a ship. So I think we would suggest, just to be consistent with that, that we replace the use of the common term "seaman's manslaughter" with the description that you used before of --

THE COURT: From the statutory title?

MR. KELLER: Yes, Your Honor.

THE COURT: Okay. Any objection to that, Mr. O'Sullivan?

MR. O'SULLIVAN: What's the exact language that we're talking about?

THE COURT: The statutory title is -- it says -- one moment.

MR. O'SULLIVAN: I'm trying to look it up in the indictment as well.

THE COURT: It's titled "Misconduct or neglect of ship officers."

MR. O'SULLIVAN: And just to refresh my recollection, was that read to the jury at the beginning of the case?

THE COURT: Well, in the description of the charges, I did use the statutory language because it comes from the statute. But the proposal by the parties does contain "seaman's manslaughter," and the indictment as a descriptor does use the word "seaman's manslaughter."

MR. O'SULLIVAN: Judge, generally, I would prefer to track the language of the indictment since that's the actual charging document. While the statute, of course, is the law, the indictment is what the jury is going to see, and that's what Mr. McCabe is charged with. So I always prefer that the jury instructions track the exact language or as close as possible to what's in the charging document.

THE COURT: Okay.

MR. O'SULLIVAN: So "seaman's manslaughter" is, I think, the appropriate language for that.

THE COURT: Mr. Keller.

MR. KELLER: Judge, we really don't have a strong view on this. I think it can go either way. If the defense feels strongly about that, then we're fine with using the term we used in the indictment.

THE COURT: Okay. Then we will stick with that, although I don't think that descriptor in the indictment changes the statutory language or the charge itself. I will agree with that shorthand and keep things as is. So B8 will be used in the form submitted on page 17 of docket entry 54.

Let's turn now to the -- to the pattern instruction for Knowingly and willfully. Any challenge to that, Mr. Keller?

MR. KELLER: No, Your Honor.

THE COURT: Mr. O'Sullivan?

MR. O'SULLIVAN: No challenge. No objection.

THE COURT: Okay. Then we have B10.2, which is a "Caution: Punishment." That's a pattern too.

Any objection, Mr. Keller?

MR. KELLER: No objection, Your Honor.

THE COURT: Mr. O'Sullivan?

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

THE COURT: Okay. Then now, let's get to the more difficult subject which is the substantive instruction for 1115; that's the seaman's manslaughter. So we will call it seaman's manslaughter. I will put, probably, Count 1, maybe at the top there, but the title will be the same. I have seen the government's proposal and I also see the defense proposal.

I will hear argument first on the question of the mens rea that applies. I see the defense has opted for a "gross negligence" terminology along with the use of the words "wanton or reckless disregard for human life." I don't see that anywhere in the text of the statute, but I do want to give you a chance to raise your argument and preserve it.

Ms. Francis?

MS. FRANCIS: Yes. Thank you, Your Honor.

We did confer with the government's attorneys, and we have decided that we will go ahead and go with their proposed jury instruction that tracks the language from the Eleventh

Circuit. So we have reached an agreement on that instruction, Your Honor. There is no objection from the defense.

THE COURT: Okay. All right. So that's out of the way. I do, though, want to then just better understand the government's proposal which is unobjected to, and in particular, Element 3, which seems to have two options. It seems to me like that's potentially confusing. And although you are correct that the brute facts don't need to be unanimous, the element does, and I'm a little concerned that having these options will create an issue there.

MR. KELLER: Yes, Your Honor. And I think that what our -- I mean, one of the ways that we could, perhaps, make this simpler would be to consolidate into a listing of owner/captain. And, really -- and I believe in the indictment we only describe him as a few of those things. I believe it's only describing him as the owner or captain, which is always stipulated to in the stipulation. So we could simplify, that way, number 1, by cutting some language.

And then number 2, really, this all comes back to the standard of negligence. So maybe one way we could deal with, kind of, the verbiage here is to simplify that by just going with "engaged in negligent conduct," and have the definition of negligence reflect inattention to duties, et cetera.

THE COURT: From the statute?

MR. KELLER: Yes.

THE COURT: Okay. I think that makes more sense. The way I see things is: Element 1 is he's an owner or captain and that's stipulated. Element 2 is somebody died. Element 3 is the defendant was negligent -- using the statutory terms. And then Element 4, his negligence, misconduct or inattention to his duties upon the vessel proximately caused the person's death.

But that's just me. I see this as a four-element case to make it more simple. But why don't the parties confer for a few moments off the record on some potential language to simplify at least Element 3, and I will just wait here.

MR. KELLER: Yes, Your Honor.

THE COURT: Mr. Creary, can you put the white noise on for me.

COURTROOM DEPUTY: Yes, Your Honor.

(Inaudible discussion amongst counsel.)

MR. KELLER: And, Your Honor, we are prepared to --

THE COURT: Okay. Let me hear from Mr. Keller.

MR. KELLER: And this is kind of working within the four -- four-element structure that you were proposing or saying we were going to do.

THE COURT: You don't have to do that. I'm just -- to me, conceptually, it made more sense, but I am open to what the parties recommend first, and then I will consider whether it makes sense.

MR. KELLER: So, well, I guess -- okay. So we will do this then for the -- in the three-element scheme. So we would have the first two elements as they are. The third element would be, the loss of life was proximately caused by the defendant's negligence.

And then what we had proposed is that, at the end of the definition of negligence, there be a sentence added that says, "Negligence also includes misconduct, inattention to duties upon a vessel, fraud, connivance, or violation of law," which are the -- are the aspects of -- that are listed in the statute that are not already contained within negligence.

THE COURT: Okay. What's the defense view?

MS. FRANCIS: Your Honor --

MR. KELLER: Did I not say "misconduct"? Sorry.

THE COURT: I believe you did, yes.

Ms. Francis?

MS. FRANCIS: Yes, Your Honor. Our only thought process here is that the indictment alleged acts that the defendant committed in his capacity as a sea captain. There was nothing alleged that would implement him in his capacity as a ship owner. Again, it would all have to lead to a loss of life. Fraud, neglect, conveyance, misconduct, violation of law, none of those apply and nothing was alleged in the complaint that would say that he was acting in his capacity as a ship owner.

Violation of law. Judge, he was not charged, nor was he convicted of violating any of the ordinances that they are trying to add onto the -- that they did add onto the evidence. So the violation of law was not proven. The misconduct --

THE COURT: Hold on. Hold on. I'm sure the government would disagree with that. But the indictment does say "owner and charter of a vessel by his fraud, neglect, connivance, misconduct, and violation of law on said vessel, caused the life of victim to be destroyed." So it's very clearly there.

MS. FRANCIS: Yes, Your Honor. I would say that it's there, but it also says "or." Count 1 charges the defendant with seaman's manslaughter in his capacity as a captain "or" in his capacity as an owner. All of the allegations alleged negligence or inattention to duties while he was on the ship in his capacity as a captain. None of the neglect, fraud, conveyance, misconduct or violation of law that they allege they put in their indictment as the owner.

THE COURT: I'm confused. The allegations are what's in the indictment.

MS. FRANCIS: Yes, Your Honor.

THE COURT: And I'm looking at the indictment, and it says "owner and charter," everything I just said a moment ago. So it's there.

MS. FRANCIS: Yes, Your Honor. I would agree that it is there. So they did list the statute. They tracked the language of the statute.

THE COURT: Okay. So then we should just formulate the elements based off the statutory language in conjunction with what was charged.

MS. FRANCIS: Yes, Your Honor, I agree.

THE COURT: So then what is your specific proposal?

MS. FRANCIS: Your Honor, I did agree with the one that you advised that we should have; I did like that idea. I believe that would be sufficient. I believe that wouldn't confuse the jury. But --

THE COURT: Well, I didn't really come up with any final language. It was just a concept that it could be broken down into four elements. I think the trickier question is what to put into the elements themselves, specifically, the one that has all of these various words from the statute.

Let me do this. One thing I want to clarify, there is no dispute from the defense that gross negligence and recklessness, as you had in your proposal, does not apply to this statute; correct?

MS. FRANCIS: That's correct, Your Honor, we have conceded that.

THE COURT: Okay. Well, then I'm going to direct the parties to confer on specific language with respect to Element 3, and then come prepared to discuss that. As far as when, specifically, we will have that discussion, that's something I will decide before the close of today. But I don't want to just be on the record floating different options and then confusing the transcript. So confer on this substantive instruction, most especially that third element, and we will take it from there.

Any objection to the remainder of the government's proposal, Ms. Francis?

MS. FRANCIS: No, Your Honor.

THE COURT: Okay. So the definition of negligence and the proximate causation is also all there and correct.

Anything further to discuss about this proposal at this time, Mr. Keller?

MR. KELLER: No, Judge. I apologize. I thought we were agreed when I ended that conferral, but I guess we weren't. So we will just have to talk more about it.

THE COURT: Okay. All right. Then let's -- let's move past the defense proposal on Count 1, which is no longer being offered, and let's address the CFR regulations.

Mr. Keller, I see you put these in here. What's your thought process for including them as separate instructions?

MR. KELLER: So, Judge, the idea here is that because these are laws, because these are statutes that are codified, that they, just like any other law that is at issue here -- regulations -- just like any other law regulation at issue here should be memorialized officially by the Court to say that this is what the law is, these were the obligations of the defendant, and -- and we, you know, acknowledge that the drug-testing requirements are not coming in and that the chemical testing are not coming in. But with respect to the 4.05 CFRs, they were a major feature of trial. The fact that he violated them is a huge aspect of this case in proving his negligence.

So our position is that this Court should be endorsing or should be speaking to what the actual law is so that the jury has that available to them to make a decision about whether he violated them.

THE COURT: Okay. Ms. Francis or Mr. O'Sullivan?

MS. FRANCIS: Yes, Your Honor.

We would say that it would be inappropriate to read the Coast Guard regulations as part of the jury instructions. Mr. McCabe was not charged with violating those regulations. Those regulations were already introduced as evidence in this case. So there is no reason to repeat this particular evidence to the jury. It's like that of all the other evidence that was presented to the jury. So we believe that doing so would unduly prejudice and undermine the limiting instructions that you will already be providing. So we -- as far as the regulations being provided, they are evidence, they were already presented to the jury. We feel that adding those back in and putting it a part of the jury instructions would definitely prejudice the jury.

THE COURT: All right. You mentioned that it would undermine the limiting instructions that I will be providing. What are you referring to?

MS. FRANCIS: The instructions for the seaman's manslaughter, Judge. Like they just said and what we will be speaking about, in his capacity as an owner, there are instructions that say "if he violated any law." I believe that adding these in, which would be -- everything but the drug testing. So that would be the notice of marine casualty, of the regulations concerning vessel operations.

Adding those in with what we already have, which is a seaman's manslaughter limiting instruction, we feel that not only will it be overkill, it would pretty much be saying that, yes, he did violate these laws. There is no indication of that. They did not prove that he violated, was charged, or convicted of any of those offenses that they're trying to add in. So as of this point, what is the purpose --

THE COURT: Hold on. Hold on. Let's say they did prove that he violated -- or they at least presented evidence that he violated this particular CFR provision requiring notice. Then what is your argument?

MS. FRANCIS: Well, at that point, I would have no argument. But at this time, Judge, they have not proved or even shown any evidence that he, in fact, did violate those ordinance. He wasn't charged --

THE COURT: Okay, okay. But you're blending things.

There were multiple witnesses who testified that he would have been required to advise the Coast Guard of the events for March 28th and that he did not. I know you have a different view about whether he was required to, but there is certainly evidence in the record that he was required to notify and he did not notify.

So in light of the evidence in the record, then what's your argument for why this should be removed?

MS. FRANCIS: Yes, Judge.

There are many witnesses that did testify of what he should or should not have done. That's contested. However, there is no witness that presented any evidence that the government actually charged him with violating these ordinances. Which they could have done. They could have given him a civil ticket. He could have gotten a fine. That did not happen here. There is no ticket. There is no fine. There is no penalty. No one charged him with violating these ordinances.

THE COURT: Everything you just said you could argue, but what's offered here in the language just says persons employed on a vessel are required to comply with the law.

And then it goes on to say that the jury can consider the law as one of the circumstances in evidence in the case surrounding the conduct of the defendant. And then it goes on to describe what the law is.

So it's not -- it's not referencing being charged with a violation of that law in particular.

Let me just hear from Mr. Keller on this.

MR. KELLER: Yes, Your Honor.

And I will start by responding to Ms. Francis referring to this instruction as evidence. It's not evidence of anything.

The discussion during closings is going to be exactly what Ms. Francis is doing right now, which is trying to persuade you that there was no violation here; whereas, we say there was a violation here. And that's because this issue lies at the center of this case. And when it comes to what it is the Court is presenting here, it's not saying the things are necessarily relevant or not. It's just telling the jury what the law is.

THE COURT: Let me ask you something. Let's say there was a violation of this CFR, and that's all you had, would that be enough to convict on Count 1?

MR. KELLER: Yes, because in this specific context, because of the fact that what -- the testimony that we've had -- this is what we would argue: The testimony that we've had is that, if this reporting had been made for this type of issue, so a grounding or a loss of steerage or propulsion, then there would have been an intervention. And our argument would be in that case that the intervention that the -- or the lack of an intervention, the lack of the ability for the Coast Guard to do something proximately caused the vessel being unsafe when it was brought out the next morning.

THE COURT: Are you concerned at all that that theory makes it so that a single civil violation turns into a criminal violation?

MR. KELLER: Judge, it all depends on the context. So there can be civil violations that caused huge, awful issues like we have here; there can be ones that don't. It's really a matter of how dangerous the situation we're talking about is.

One of the key aspects of this case -- one of the almost unique aspects of this case, compared to other types of boating incidents, is that we're talking about scuba diving here. We're talking about an activity that inherently involves going near the propellers, and all of that context plays into what we're talking about when we talk about a civil violation.

But because it's scuba instead of fishing -- if it were fishing, then the propeller issue would not be nearly the kind of big deal that it is in this specific context.

THE COURT: Why do you need to have this written out? I mean, there are multiple exhibits in the record that I believe went through these requirements, and you went over those with some of the witnesses. Couldn't you just use those documents in closing to describe to the jury what the law is, and then refer them back to the witness testimony about what he was supposed to report and under what circumstances?

MR. KELLER: Judge, the issue with that is just the fact that when it comes to the law, what the law is, the jurors are supposed to rely on the Court and what the Court says the law is.

So our position would be that when it comes to being clear about what the law is, that this Court should be who tells them what the law is, instead of expecting them to look at a Coast Guard form and rely on that. So it's really the fact that this is a legal question; that's why we suggest that the Court give an instruction about it.

MS. FRANCIS: Your Honor, if I may respond?

THE COURT: One moment.

MS. FRANCIS: Thank you.

THE COURT: Okay, Ms. Francis.

MS. FRANCIS: Yes, Your Honor, thank you.

We feel that the regulations should be treated as any other piece of evidence that has been treated for the jury to evaluate. They should not be presented to the jury as part of the Court's instruction on the law of the case. That's not the charge he's facing. And especially just after they hear the elements of the crime. That kind of instruction would elevate the regulations above the remainder of all of the evidence -- other evidence that has been introduced at trial. It could give a misleading impression this those regulations are a part of the crime that's been charged. So we don't believe that they should be able to add those regulations in. Treat it as evidence as it has been presented.

Thank you, Your Honor.

THE COURT: All right. Thank you.

I will take this issue under advisement. I think I'm inclined to agree with Ms. Francis that highlighting this instruction without any additional language would be problematic, and that there is sufficient evidence in the record from which the government can reference the notice requirements. But I will give it some additional thought.

What we do know without a doubt is that the drug testing items will be removed per the Court's order on the motion in limine, as will the chemical-testing portion. So we will leave that somewhat unresolved for now, and then shift to the 1001 charge.

Any objection to that pattern, Mr. Keller?

MR. KELLER: No, Judge.

THE COURT: Mr. O'Sullivan or Ms. Francis?

MR. O'SULLIVAN: No objection, Your Honor.

THE COURT: Okay. Then let's look at the substantive wire fraud count. I see the defense wishes to add some language that's not part of the pattern. Please explain to me what your authority is and why you think this is a correct statement of the law.

MS. FRANCIS: Thank you, Your Honor.

We have conferred with the government's attorneys, and we have conceded and we would like to go with their instructions for wire fraud.

THE COURT: Okay. Then we will do that and use the pattern. And that will be -- the defense proposal will be removed.

Okay. All right. Let's look now at page 39 of docket entry 54, which is entitled, "No defense, blaming victim."

I see no objection. Is this agreed to by the parties, Mr. Keller?

MR. KELLER: That's my understanding, Judge. When we conferred, there was no objection.

THE COURT: Mr. O'Sullivan?

MR. O'SULLIVAN: I agree. Are we on page 39? I just want to make sure that I'm following along accurately.

THE COURT: Yes, 39. I'm using the blue banner on the top.

MR. O'SULLIVAN: I must have a different page 39.

MR. KELLER: You can't see the blue banner.

MR. O'SULLIVAN: Oh, that's why. I heard it orally and, yes, I agree we have talked about this.

THE COURT: This is the "No defense, blaming victim."

MR. O'SULLIVAN: Absolutely. I agree with that.

THE COURT: You agree to it. Okay. Then it will be included.

Duty to deliberate and verdict. Anything to comment on those pattern instructions, Mr. Keller?

MR. KELLER: No, Your Honor.

THE COURT: Mr. O'Sullivan?

MR. O'SULLIVAN: No objection, Your Honor.

THE COURT: And we already talked about the verdict form.

All right. Okay. Then anything else to discuss regarding the instructions, Mr. Keller?

MR. KELLER: No, Your Honor.

THE COURT: Mr. O'Sullivan?

MR. O'SULLIVAN: Not insofar as the instructions, no, ma'am.

MR. KELLER: Actually, Judge, when it comes to the -- us conferring, do you want us to do like we did with the supplemental jury instruction and file something, or do you want us to just be prepared to discuss?

THE COURT: Yes, I think there should be a joint filing noting any disagreement, and that should be done -- can that be done this evening?

MR. KELLER: If that's what Your Honor wants, that's what we will do.

THE COURT: Yeah, okay. Okay. Then that will be due by 9:00 p.m. this evening.

MR. KELLER: Your Honor --

THE COURT: We are talking about the substantive offense instruction for Count 1.

MR. KELLER: Yes, Your Honor. Could we have until midnight?

THE COURT: Sure.

MR. KELLER: Thank you. Because we're going to drive back to Miami.

THE COURT: Okay. Then midnight today or tomorrow I will receive the proposal following conferral on that one issue.

I heard you say you're driving, but I never released trial for tomorrow, only the jury so far. Were you all planning on not being here tomorrow?

MR. KELLER: We will be here tomorrow if there is court tomorrow, Your Honor.

THE COURT: Okay. Well, I do want to do the Rule 29 argument, and I want to finalize the instructions. So there is still work to do tomorrow morning, which is why I am asking for this joint proposal.

We will, therefore, be in session tomorrow from approximately 10:00 to noon. And so please prepare for your Rule 29 argument, along with finalization of the jury instructions. I want to have everything squared away for Monday morning.

All right. Mr. McCabe, over the weekend, you should consider your decision whether to plead guilty. I will put you under oath and inquire about your decision because it's important that you personally make that decision after consulting with counsel. But, ultimately, it is your decision to make. So you can anticipate me asking you some questions under oath regarding that decision. Do you understand?

THE DEFENDANT: Yes, ma'am.

THE COURT: Okay. All right.

Anything further before we close for the day?

MR. KELLER: Judge, I'm sorry. Did you say "plead guilty" or "testify"?

THE COURT: I'm sorry. If I said "plead guilty," I meant to say "testify." And it must be a long day. I retract that statement. I just mean "testify."

Do you understand, sir?

THE DEFENDANT: Yes, ma'am.

THE COURT: Okay. I did not mean to imply that.

Okay. That's all I have for now. I will see you all tomorrow at 10:00 a.m.

(These proceedings concluded at 4:26 p.m.)

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: 05-05-2025

/s/Laura Melton
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Fort Pierce, Florida