

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, March 3, 2025

vs. 11:16 a.m. - 5:22 p.m.

DUSTIN SEAN MCCABE, Volume 6

Defendant. Pages 1 to 247

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TRANSCRIPT OF JURY TRIAL - DAY 6  
BEFORE THE HONORABLE AILEEN M. CANNON  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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STENOGRAPHICALLY REPORTED BY:

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

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1 (Call to the Order of the Court.)

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

3 COURTROOM DEPUTY: Calling case number 24-cr-80103, the  
4 United States of America v. Dustin Sean McCabe.

5 Counsel, please state your appearances, beginning with  
6 the government.

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

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

12 MR. O'SULLIVAN: Good morning, Your Honor. Terrence  
13 O'Sullivan and Calisha Francis on behalf of the defendant,  
14 Sean -- Dustin Sean McCabe, who is standing to our left.

15 THE COURT: All right. Excellent. Good morning to you  
16 as well. You may be seated.

17 The rule remains invoked. So let's ensure that that  
18 gets complied with. I did review the parties' final proposed  
19 jury instruction as to Count 1, along with the alterations to  
20 the verdict form, that is Docket Entry 75, and I have  
21 incorporated that modification into the Court's instructions.

22 I just had one final question, and that is whether the  
23 "or" that is between the two subparts in element 3 should be  
24 and/or or or/and?

25 MR. KELLER: Judge, I think that I actually considered

1 adding that. It's just that in the 924(c), they had the "or,"  
2 but I think that and/or would actually make it less confusing,  
3 so I think that would be reasonable and appropriate.

4 THE COURT: well, let me hear from Mr. O'Sullivan or  
5 Ms. Francis.

6 MS. FRANCIS: Your Honor, we also did consider the  
7 and/or and we do believe that it should be "or." And that's  
8 just based on the instructions that we're giving in other  
9 districts as well. We don't believe that adding and/or would  
10 make it less confusing. We believe that, in fact, it may add  
11 to the confusion.

12 THE COURT: Okay. Well, at this juncture, I'm just  
13 going to go with the parties' proposal because there is no  
14 agreement and this was filed as a joint submission. So we will  
15 stick with that language.

16 All right. Before I colloquy Mr. McCabe, let me  
17 inquire of Mr. O'Sullivan. Can you update the Court on  
18 Mr. McCabe's decision to testify?

19 MR. O'SULLIVAN: Yes, Your Honor. Mr. McCabe will be  
20 testifying today.

21 THE COURT: Okay. Now, from my understanding, I know  
22 in the motion to sever there was a suggestion that he may wish  
23 to testify on some counts and not others.

24 Can you provide any indication as to whether the  
25 anticipated direct will be limited in any substantive way?

1           **MR. O'SULLIVAN:** The anticipated direct is going to  
2 cover all five counts of the indictment, Your Honor.

3           **THE COURT:** Okay. All right then. Any other items or  
4 issues to bring forward at this time, Mr. O'Sullivan?

5           **MR. O'SULLIVAN:** Just two things, Your Honor. One, I'm  
6 going to be using the ELMO as part of my direct to show about  
7 six or seven, maybe eight exhibits that have already been  
8 entered into evidence.

9           **THE COURT:** Okay.

10          **MR. O'SULLIVAN:** And number two is, during part of my  
11 direct, about a third or a halfway in, I'm going to ask leave  
12 of court to allow my client to leave the witness stand and to  
13 draw on this canvas for a demonstrative aid. It will not be  
14 entered into evidence. But it's basically -- and I told  
15 Mr. Keller this, this morning. Basically, he is going to be  
16 drawing a position of the boat during the May -- or March 29th  
17 incident, where the boat was positioned, where certain divers  
18 were positioned. He is going to use that to explain how the  
19 Gulf Stream works in conjunction with the seas, and current,  
20 and winds.

21          **THE COURT:** Okay. A couple of questions. Number  
22 one --

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

24          **THE COURT:** -- I understand Mr. McCabe has an ankle  
25 monitor; is that correct?

1           **MR. O'SULLIVAN:** That is correct, Your Honor.

2           **THE COURT:** Is that visible at all underneath -- over  
3 his clothing?

4           **MR. O'SULLIVAN:** I had him walk around the hallway, I  
5 didn't look at it, but I would certainly welcome the Court to,  
6 you know, make your own observations because, obviously, we  
7 don't want the jury to see that. The way it's being worn and  
8 the suit that he is wearing today, I did not notice it. But,  
9 of course, I would welcome the Court to --

10          **THE COURT:** Okay. I will do that in just a moment.

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

12          **THE COURT:** Any objection to the demonstrative issue,  
13 Mr. Keller?

14          **MR. KELLER:** I raised the same issue about the ankle  
15 monitor that Your Honor did. Also, I don't have an objection  
16 to him doing that because I think it's his right to be able to  
17 draw, just like we had our witnesses do. I would ask that if  
18 that does happen, that I be permitted to go sit over there so  
19 that I can see what's happening.

20          **THE COURT:** That's fine. You can arrange yourself so  
21 you can have proper visibility.

22          Mr. McCabe, can you, at this time, just walk over here  
23 to the well of the courtroom so that I can make sure that your  
24 monitor is not visible.

25          **THE DEFENDANT:** (Complies.)

1 THE COURT: Okay. Turn around, please, sir.

2 THE DEFENDANT: (Complies.)

3 THE COURT: All right. Counsel for the government,  
4 same -- same exercise. Just ensure -- I don't see anything.

5 MR. KELLER: I don't see anything, Judge.

6 THE COURT: Okay. All right then. I think we're okay,  
7 sir.

8 And it's charged, Mr. O'Sullivan?

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

10 THE COURT: Okay.

11 Okay. Any other items we should take up before we  
12 inquire about our jurors?

13 MR. KELLER: No, Your Honor, none from the government.

14 THE COURT: Mr. O'Sullivan?

15 MR. O'SULLIVAN: Judge, just for logistical  
16 considerations, when I do have the tripod up there, where do  
17 you want Mr. McCabe and where do you want me and where do you  
18 want the tripod set up --

19 THE COURT: Okay.

20 MR. O'SULLIVAN: -- just so we don't have to do a  
21 sidebar or anything and we can do it quickly and judiciously.

22 THE COURT: So we should bring the easel over so that  
23 it's visible to the jurors, and also, Mr. Keller, back there.  
24 I should be able to see it so long as it's slightly tilted.  
25 You should equip Mr. McCabe with a lapel microphone or a

1 handheld so that he can speak while he is drawing. And then as  
2 soon as he is done doing his demonstrative, he should return to  
3 the witness stand.

4 Does that answer your question?

5 MR. O'SULLIVAN: Yes, ma'am. Once he returns, do you  
6 want me to leave the tripod up or should I return it back to --  
7 behind defense counsel?

8 THE COURT: You can leave it here for the duration of  
9 the direct.

10 MR. O'SULLIVAN: Okay.

11 THE COURT: And then we can determine whether it needs  
12 to be set aside for the cross.

13 MR. O'SULLIVAN: Yes, ma'am. That answers my  
14 questions.

15 THE COURT: Okay. All right.

16 Ms. Alexander, do you know if our jurors are here?  
17 Five are missing?

18 COURT SECURITY OFFICER: Yes, Your Honor.

19 THE COURT: Okay. Then while we're waiting, are all of  
20 the exhibits ready to go in order, nicely organized for the  
21 jury?

22 MR. KELLER: Yes, Your Honor. We have the jury tablet  
23 loaded and we have the physical exhibits loaded. And we have  
24 removed everything that was not admitted.

25 THE COURT: Excellent. Now, what about a redacted

1 indictment?

2 MR. KELLER: We do not have a redacted indictment. We  
3 could prepare one over lunch, if that's Your Honor's  
4 preference.

5 THE COURT: Yes. Please do that. Okay.

6 Okay. Then anything else? I'm going to take a brief  
7 break to await our jurors.

8 Mr. O'Sullivan.

9 MR. O'SULLIVAN: Judge, there was one other thing that  
10 we had thought about. Depending on how the direct goes, there  
11 is a possibility that we may ask for leave of court to recall  
12 Agent King. I don't know. It just kind of depends on how the  
13 direct is going to come out.

14 THE COURT: Okay.

15 MR. O'SULLIVAN: I did advise Mr. Keller of that, I  
16 think, on Friday or Saturday. I'm not sure if that's going to  
17 happen. I just -- I just kind of -- it's going to work itself  
18 out during direct.

19 THE COURT: Okay. Well, make sure to bring that up to  
20 the Court, but I will keep that in mind as I instruct the jury  
21 on what to expect for the day.

22 As I indicated on Friday, we will have the 90 minutes,  
23 although you're certainly not required to use that, for  
24 closing. I hope to get to at least a portion of the closings,  
25 if not all of them, today, but it will depend on the length of

1 Mr. McCabe's testimony.

2 At this point, Mr. McCabe, I'm going to swear you in to  
3 ask you some questions about your decision whether to testify  
4 in this matter.

5 Ms. Alexander.

6 **COURTROOM DEPUTY:** Please raise your right hand to be  
7 sworn.

8 Do you solemnly swear or affirm that the testimony that  
9 you are about to give in this cause will be the truth, the  
10 whole truth, and nothing but the truth so help you God.

11 **THE DEFENDANT:** Yes.

12 **THE COURT:** Okay. Mr. McCabe, the decision whether to  
13 testify is an important one and I want to make sure that you  
14 have carefully thought through that decision. Have you had  
15 enough time to consider that matter, Mr. McCabe?

16 **THE DEFENDANT:** Yes, ma'am.

17 **THE COURT:** You can move the microphone closer to you  
18 so you don't have to lean in like that every time.

19 Have you consulted with your attorney about your  
20 decision whether to testify?

21 **THE DEFENDANT:** Yes, ma'am.

22 **THE COURT:** Do you need any more time to consult with  
23 your attorney regarding your decision to testify?

24 **THE DEFENDANT:** No, ma'am.

25 **THE COURT:** Okay. Now, as skilled and as experienced

1 as your attorney is, ultimately this decision is your decision  
2 to make.

3 Do you understand that, sir?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: And so having thought about whether to  
6 testify, what is your decision in this matter?

7 THE DEFENDANT: I will testify.

8 THE COURT: Okay. Now, have you made that decision  
9 knowingly and voluntarily?

10 THE DEFENDANT: Yes.

11 THE COURT: Has anybody coerced you, harassed you, or  
12 pressured you in any way with respect to your decision about  
13 testifying?

14 THE DEFENDANT: No, ma'am.

15 THE COURT: And is this a decision that you have  
16 personally made at the end of the day because you believe that  
17 this is the best decision for your case?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: All right then.

20 Anything further with respect to the colloquy of  
21 Mr. McCabe, Mr. Keller?

22 MR. KELLER: Nothing as to that, Your Honor.

23 THE COURT: Mr. O'Sullivan?

24 MR. O'SULLIVAN: Nothing for the defense, Your Honor.

25 THE COURT: Okay. And, Mr. O'Sullivan, just to

1 confirm, you conferred with Mr. McCabe about his rights  
2 regarding testifying; correct?

3 MR. O'SULLIVAN: That's correct, Your Honor. We  
4 conferred in person over the weekend at length.

5 THE COURT: Okay. Thank you.

6 All right. We are going to break briefly. We are  
7 awaiting still four jurors. So hang tight, use the facilities,  
8 if necessary, and we will resume as soon as possible.

9 Thank you.

10 (A recess was taken from 11:26 a.m. to 11:47 a.m.)

11 THE COURT: Be seated. Everybody is here. You may all  
12 be seated. Let's call in the jury.

13 COURT SECURITY OFFICER: Yes, Your Honor.

14 (The jury entered the courtroom at 11:47 a.m.)

15 THE COURT: Good morning. Everyone may be seated.

16 Ladies and gentlemen, I hope you had a wonderful  
17 weekend. We will resume trial in this case. As you may  
18 recall, on Thursday the government rested its case in chief.  
19 So I will now turn it over to Mr. O'Sullivan.

20 MR. O'SULLIVAN: Thank you, Your Honor. At this time  
21 the defense calls Dustin Sean McCabe.

22 THE COURT: All right. Thank you. Mr. McCabe, please  
23 walk over to the witness stand, remain standing to be sworn in.

24 COURTROOM DEPUTY: Please raise your right hand to be  
25 sworn.

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

4           **THE WITNESS:** Yes, ma'am.

5           **THE COURT:** Thank you. Mr. McCabe, please be seated.  
6   You can scoot the chair in, and also the microphone towards you  
7   to make sure we can hear you. Please begin.

8                           **DUSTIN SEAN MCCABE,**  
9   having been sworn, testified as follows:

10                           **DIRECT EXAMINATION**

11   **BY MR. O'SULLIVAN:**

12   **Q.** Good morning, Mr. McCabe.

13   **A.** Good morning.

14   **Q.** Can you introduce yourself to the jury.

15   **A.** Dustin Sean McCabe.

16   **Q.** Okay. And, Mr. McCabe, can you give the jury a little  
17   background information about yourself.

18   **A.** Sure. I grew up in east Tennessee. I was -- I was married  
19   when I was in east Tennessee; I'm divorced now. I -- when I  
20   was married, I adopted my three kids. My oldest daughter, my  
21   youngest son are in the Air Force; the youngest daughter is at  
22   college.

23   **Q.** Okay. And when did you move to Florida?

24   **A.** 2000 -- or 1998.

25   **Q.** Okay. And just briefly, how long have you been operating

1 and been around boats?

2 A. About 41 years.

3 Q. Okay. And when did you obtain a Coast Guard license  
4 from -- in the state of Florida?

5 A. End of 2013 or sometime early 2014.

6 Q. Okay. And why did you get a Coast Guard license?

7 A. To have a dive charter.

8 Q. Okay. And prior to having the Southern Comfort, did you  
9 have a dive charter?

10 A. Yes.

11 Q. Could you tell the jury a little bit about that, the name  
12 of the boat and how the -- how the business ran?

13 A. So my boat name was Sea Scout. It was an inspected vessel.  
14 It held 14 passengers. We ran two trips Sunday, usually a  
15 Tuesday, Wednesday trip, a Friday trip, and then two trips on  
16 Saturday as well.

17 Q. And were those all ran out of South Florida?

18 A. Yes.

19 Q. And how long did you have the Sea Scout?

20 A. Up until 2020.

21 Q. Okay. So moving to 2020, when did you start thinking about  
22 getting the Southern Comfort?

23 A. It had been a long time. It -- middle of 2019. I had  
24 devised the idea because all of the charters in the area  
25 were -- it was kind of a price war where everybody just kept

1 discounting the price. So I thought if I offered more of a  
2 concierge, more of a luxury-type trip, then I would be  
3 different than -- than all of the rest. All of the other  
4 charters are -- they all do the same thing.

5 And so I wanted a bigger boat, a faster boat, something  
6 that was nicer so I could also take trips -- it's two hours  
7 from Lake worth to the Bahamas, so we could also take trips to  
8 there.

9 Q. And is that where the idea was born to get the Southern  
10 Comfort?

11 A. Yes.

12 Q. And that's not a typical dive boat, is it?

13 A. You can -- you can dive from any boat. And so it  
14 was -- the boat was normally built -- not really built but  
15 the normal -- it was set up for fishing, for saltwater fishing,  
16 a sport fish boat. But you can dive from any boat. There are  
17 a couple three other boats in the area that are sport fish  
18 boats that are -- that are actually used as dive charters.

19 Q. Do you recall the names of those sport fish boats that are  
20 used as dive charters?

21 A. One of them is Deep Obsession; I think it's almost 60 feet  
22 long. And it's used as overnight dive boat that does local  
23 trips as well. And mostly they go to Bahamas and -- which they  
24 don't do it very often.

25 Q. Okay. And when did you actually purchase the Southern

1 Comfort?

2 A. Toward the end of February of 2020.

3 Q. Okay. What did you do once you got physical possession of  
4 the Southern Comfort?

5 A. So in March of 2020, the first part of March, end of  
6 February is when I separated from my now ex-wife; so I was  
7 living on the boat while my condo was being finished. It was a  
8 new building so they were finishing trim and painting and stuff  
9 like that. So I would stay on the boat. I was just tinkering  
10 around, improving some stuff and getting it set up to be -- to  
11 be what it was.

12 Q. Can I just ask you just to slow down a little bit, just so  
13 the recording can be accurate.

14 A. Sure.

15 Q. When you moved onto the boat, can you give the jury some  
16 specifics as to, you know, what modifications or upgrades you  
17 made on the boat?

18 A. Okay. So in the salon, which is inside the cabin, I  
19 upgraded to granite countertops. I redid the shade in  
20 the -- the shade in the forward part of the salon. I redid  
21 flooring. I added galley equipment, as far as a different --  
22 basically I had a stove and an oven, and I added a cooler for  
23 drinks for the divers. Obviously, new furniture. We upgraded  
24 the latches, things like that, new flooring.

25 Q. As far as diver-specific upgrades and modifications, like

1 on the transom and the cockpit, can you tell the jury what you  
2 did?

3 A. So when I went out to the cockpit, we upgraded the cooler  
4 system on the live wells. So any lobster, any fish that were  
5 caught or shot, we could make sure that they were kept fresh  
6 and cold. And then I added the dive benches. I upgraded the  
7 swim platform. It already had a swim platform on it, but I  
8 upgraded it to a bigger one that was much more durable, and  
9 added the railing system underneath it that had handrails for  
10 people to hold on to as they were -- as they were taking off  
11 their fins to reboard the boat.

12 Q. Did you do these upgrades yourself or did you have the  
13 assistance of someone else?

14 A. I did them myself.

15 Q. Okay. How did you know how to do all these upgrades?

16 A. I have been working on boats for 40 years. And if there  
17 was something that I didn't know how to do, I would call and  
18 I -- sometimes I even went to -- went to -- went to places that  
19 did these upgrades and asked, Okay, how do I do this?

20 And, you know, you can learn anything on YouTube. You  
21 can -- ask questions of other captains, how -- you know, How  
22 did you set up your, you know, your platform and the support  
23 system under it? And -- but it was just knowledge that I  
24 already -- mostly that I already had.

25 Q. When you took physical possession of the Southern Comfort,

1 in February of 2020, how many sets of engine controls were on  
2 that vessel?

3 A. There were two controls.

4 Q. Okay. And at some point did -- was that reduced?

5 A. Yes. I removed the lower helm for -- mainly for a safety  
6 purpose.

7 Q. Can you explain, why would you remove the engine controls  
8 on the lower helm?

9 A. So from the flybridge, there were controls; and that was  
10 the only place I wanted to be able to control the boat. So if  
11 there is -- if there is a helm station at the -- on the  
12 cockpit, that allows a customer who might not know what it is,  
13 Oh, I want to see what these levers do, and they could move  
14 them, and that would -- that would control the boat. You can't  
15 turn them off. And so they're either there or they're not  
16 there.

17 So it was a safety feature to keep people from -- maybe  
18 they didn't do it on purpose, maybe the -- a wave hit the boat  
19 and they weren't ready for it and they stumbled into it and hit  
20 that. So I wanted to be -- the only way to control the vessel  
21 was from the flybridge, where I was.

22 Q. Are the controls on the flybridge and the controls on the  
23 helm, are they connected or are they two separate systems?

24 A. No, they're two totally separate system. One doesn't have  
25 anything to do with the other.

1 Q. Okay. And you removed the helm controls?

2 A. Yes. The actual levers are just bolted onto fiberglass  
3 where the helm is, and there are cables that run through  
4 the -- through the salon, you know, under the flooring and down  
5 into the engine room, and they connect to a lever on the  
6 transmission.

7 Q. Did you remove the cables from the helm controls?

8 A. From the helm controls, I totally removed them from the  
9 vessel --

10 Q. So you removed both the levers --

11 A. -- yes.

12 Q. -- or the throttle controls and the cables?

13 A. Yes.

14 Q. And can you explain to the jury a little bit the difference  
15 between a cable system and an electric system?

16 A. So a cable system is -- it's as basic as you can get.  
17 There is -- it's old-school. That's what I like because there  
18 is nothing to break. Electronics and saltwater don't mix. And  
19 so the more electronics you have on the boat, the more likely  
20 that something is going to break. And so I liked the  
21 old-school stuff.

22 If -- if you tied two cables -- two strings to a door, and  
23 you pull on one string, it's going to shut the door. You open  
24 the door again and pull on the other string, it's going to shut  
25 the door. You untie one of those strings, it doesn't affect

1 the other one; that string is still going to shut the door.

2 That's how they operate. They're that simple.

3 It's simply you push the forward -- you push the -- the  
4 lever forward and it puts the boat in forward, and the boat  
5 goes forward. You pull it back into reverse, and it puts it  
6 into reverse and the boat goes backwards. It's as simple as it  
7 gets.

8 Q. Did you have any issues in the removal of the helm  
9 controls?

10 A. No.

11 Q. Okay. So now, once you get possession of the boat, you  
12 make these modifications and upgrades, do you take the boat out  
13 for sea trials?

14 A. Yes. We took it out three times with my crew.

15 Q. When you say "we," let's go through --

16 A. Oh, me and my crew.

17 Q. Okay. So how many people are on the crew?

18 A. So I have five people on the crew. Only two of the other  
19 crew, myself, and two other crew are on the boat at one time.

20 And --

21 Q. So just tell the jury about how the sea trials went, what  
22 you were looking for and -- well, let's back up. What is a sea  
23 trial?

24 A. So a sea trial is basically a test drive.

25 Q. Okay.

1 A. Just like you would in your -- in a car, you know, after  
2 your -- after a mechanic fixes your car, he goes and drives it  
3 to make sure that it's not doing what you brought it there to  
4 have repaired.

5 Q. Okay.

6 A. So that -- that's basically what we did, is we went and we  
7 drove the boat around. We threw buoys overboard, and, okay,  
8 that's a diver, let's -- let's pick it up. So then we would  
9 back up -- you know, back up the boat to the diver and  
10 practice. This is what we do. This is how we do it.

11 And we did it -- the same process that we did on Sea Scout.  
12 It was just a little bit bigger boat. But it was the exact  
13 same process that we had been doing for, you know, six,  
14 seven years.

15 Q. Did you take -- for sea trials, do you go in the  
16 Intracoastal or do you go out to the ocean as well?

17 A. Both.

18 Q. Okay. And how many times did you do the sea trials with  
19 the crew?

20 A. I took the crew out three times. And then I did six or  
21 seven sea trials on my own.

22 Q. Okay. And what was your feeling about how -- the operation  
23 of the boat after these, approximately, ten sea trials?

24 A. They -- everything was like it was supposed to be. There  
25 were going to be latches and hinges and things like that

1 that -- that need to be replaced and just -- to be upgraded to  
2 a little more durable stuff, but the -- the overall vessel did  
3 exactly what it was supposed to do.

4 Q. So at some point in March 2020, did you take out paying  
5 customers on a dive trip?

6 A. Yeah, we -- our first trip was on the 27th. On the Friday,  
7 I took Jen Hester and one of her friends out. We -- typical  
8 dive trip. We drove down the Intracoastal. About 22 knots,  
9 heading down the Intracoastal, we get -- go under Blue Heron,  
10 make a left, go to -- a couple hundred yards, make a right, go  
11 in front of Sailfish Marina and out the inlet.

12 Q. Okay. I should have asked you this earlier, but how long  
13 have you been certified or qualified to instruct people in  
14 scuba diving?

15 A. 14, 15 years.

16 Q. Okay. Is there anything that you tell your customers  
17 that's kind of part of your regular business prior to a dive  
18 trip, once they're on the boat?

19 A. Yes. So when the customers arrive, the crew loads their  
20 boats -- loads their gear onto the boat. We -- you know,  
21 usually we're -- I'm hanging out, talking to them, that just  
22 kind of chitchat, just getting to know them and that sort of  
23 stuff.

24 So after everybody is on the boat and we're almost ready to  
25 go, I come down and give my safety briefing, and this is where

1 we're going, this is kind of what we're going to do, and this  
2 is how to do it. And then we untie the boat and leave.

3 Q. Okay. Can you tell the jury that safety briefing?

4 A. Yeah. I have done it so many times. So I would -- I would  
5 come down: Ladies and gentlemen, welcome aboard. Everything  
6 that is required to be on board this vessel is on board and  
7 located in the salon. In the aft part of the salon, you will  
8 see a built-in cabinet with a first aid marker on it, inside  
9 there, there is two O2 bottles and there is an EMT-quality  
10 first aid kit.

11 we dive very close to the Gulf Stream. The boat will be  
12 adrift while we're diving. I do put a crew in the water to  
13 guide you; they will be carrying that buoy right over there.  
14 You're welcome to dive with them and follow them along, or you  
15 can dive on your own.

16 The maximum time limit for this dive is 50 minutes or 500  
17 PSI, whichever happens to come first. Safety markers are  
18 required in these waters. Please mark yourself before you get  
19 to the surface, whether you launch a marker from the bottom or  
20 launch your marker from your safety stop.

21 If, while you're on the surface, another vessel looks like  
22 it's coming towards you or that it doesn't see you, please let  
23 go of your safety marker and descend down to 10 feet to make  
24 sure that the boat could go over you without hitting you.

25 Once you are on the bottom, hands, fins, gear, off of the

1 reef, please, do not touch turtles. Enter the water on "dive,  
2 dive, dive" only.

3 Q. Do you do that prior to every single dive?

4 A. Every single trip, yes.

5 Q. Okay. And you did that on the 27th?

6 A. Yes.

7 Q. Did you do that on the 28th and the 29th as well?

8 A. Yes.

9 Q. Okay. So now I want to bring your attention to March 28th.

10 A. Okay.

11 Q. Tell me what happened that morning.

12 A. So I got up on the -- I got -- I was on the boat working at  
13 6:00 or so, doing my engine checks and getting everything  
14 prepared for the dive, early that morning. So your engine  
15 checks, you're just going over everything, I'm checking the  
16 oil, checking both engines, the genset. I'm going through  
17 checking the impellers. I'm --

18 Q. What's -- what's a genset?

19 A. Just a generator that creates power for the rest of the  
20 boat, so the boat has lights, like in here. And where a  
21 building gets power through the electric system, a boat needs a  
22 generator in order to do that, so a genset is the generator.

23 So you're checking all of the -- all the electrical  
24 connections, everything like that through the -- through the  
25 motors, through the genset. You're looking at, is the

1 transmission fluid right? Is the oil right? Is -- did you  
2 drain the water out of the Racors, check your impellers.

3 And then I go up to the helm and I check all of my  
4 electronics, to make sure that they're working properly. I  
5 check the weather to see conditions. And about that time,  
6 I'm -- the crew starts to arrive. Tell the crew where they're  
7 going to go, you know, as far as the dive site, so they can  
8 start getting prepared for -- they know the dive sites as well  
9 as I do -- so that they can get prepared. And then the -- then  
10 the customers start arriving.

11 Q. So you're doing these checks between like 0600 and 0800 in  
12 the morning?

13 A. Yes.

14 Q. Okay. On this date, were any red flags raised after you  
15 did these -- all these tests or checks?

16 A. No.

17 Q. Okay. And about what time did the divers start to show up?

18 A. About 8:00. 8:00, 7:45, 8:00, they start to arrive. We  
19 load their boat -- load their gear onto the boat. On the dive  
20 benches, there is bungee cords that you bungee their tank in so  
21 it doesn't fall off and dent the floor or hurt their gear. And  
22 so you bungee their tanks in, put their gear underneath the  
23 benches. And as soon as everybody is on board and everybody  
24 has a waiver signed, we head out.

25 Q. Okay. Can you just tell the jury, where do you go? How

1 long does it take to get there?

2 A. So when I leave the marina, it's -- you know, it's -- we're  
3 going down the Intracoastal. Depending on traffic, if there is  
4 a lot of traffic, we're not going as fast. If there is no  
5 traffic, we're going a lot faster.

6 So normally, if there is no traffic there, I'm going about  
7 20, 22 knots. We get out of the dive site. And it just  
8 depends on where we go. I have gone -- the Jupiter is about  
9 2 1/2 miles to the reefs up in Jupiter from the inlet. There  
10 is reefs off of Mar-a-Lago that we can go down and dive to. So  
11 anywhere between, you know, say Mar-a-Lago and mid-part of  
12 Jupiter Island there, we can go anywhere that -- anywhere in  
13 between there, just depends on where the other dive boats are  
14 at, who is on board.

15 I keep a captain's log that I write down everything that I  
16 have done, everything that I do, and the -- I even keep the  
17 manifest in there so I can make sure that I don't take the same  
18 people to the same reefs over and over again.

19 Q. Do you recall, on the Saturday dive, March 28th, do you  
20 recall what dive site you went to?

21 A. Saturday we went to -- in the morning it was a reef -- I  
22 think the second dive was off of Rybovich. The first dive was  
23 just a little offshore of the Governor's River walk, which is  
24 a -- which is a wreck system. But we were on a reef out there  
25 because we had mostly people who were looking to catch lobster

1 and hunt fish.

2 Q. Just, generally speaking, or exact, if you know, how far  
3 offshore are these dive sites?

4 A. Some -- some of them, there is -- there is a couple that  
5 are really close, but most of them are a couple of miles  
6 offshore.

7 Q. Like 2 miles offshore?

8 A. Yeah. A mile to 2 miles, 2 1/2, somewhere in there.

9 Q. So on the 28th, there was actually two dives?

10 A. Yes.

11 Q. A morning and an afternoon dive?

12 A. Yes. There was a morning dive that we went on that had  
13 each -- that trip had two dives as well. And then we had a PM  
14 dive trip that started at 2:00.

15 Q. Okay. We're going to talk about them separately.

16 And, again, I want to remind you to kind of slow down just  
17 so that the court reporter --

18 A. Sure.

19 Q. -- can accurately get everything.

20 Now, Jen Hester testified about an incident that happened  
21 on Saturday the 28th. Was that on the morning dive?

22 A. Yes.

23 Q. Okay. And, just to be clear, when I say AM and PM dive,  
24 those are two separate groups of people?

25 A. Yes, two separate groups of people.

1 Q. And each group does two separate dives; correct?

2 A. Correct.

3 Q. So there would actually be four dives on Saturday the 28th?

4 A. That's correct.

5 MR. KELLER: Objection, Judge. Leading.

6 THE COURT: Overruled. Please continue.

7 MR. O'SULLIVAN:

8 Q. I want to talk a little bit about the morning dive. We'll  
9 call it dive 1, AM dive 1. Do you recall who the crew was that  
10 day?

11 A. I believe it was Kay and Siri were the two crew that day.

12 Q. Okay. Was Ms. -- anyone else -- who were the divers?

13 A. Judy Gallahart and her husband; Dave Anderson was on the  
14 boat -- no, Dave was on -- wasn't on Saturday. Jen Hester was  
15 on the boat. The -- I don't remember all of them.

16 Q. So tell me how that dive went.

17 A. So that dive was pretty typical. The only thing that was  
18 odd that day is, as I left the inlet, the voltage meter on my  
19 starboard side, which is the right -- which is the right side  
20 engine, was kind of bouncing up and down, up and down. And so  
21 in order to -- just precaution, I shut the whole starboard side  
22 down.

23 Q. What is a voltage meter? What's the purpose of that? What  
24 does it do?

25 A. Same thing in your car. Just tells you what the battery is

1 doing as far as sending the voltage to the motor.

2 Q. Okay. And you just testified that you shut down the  
3 starboard engine?

4 A. Yeah.

5 Q. How does the boat operate with just a port side engine?

6 A. The same.

7 Q. Okay.

8 A. I just can't go 20 knots. I -- you know, it slows me down  
9 to 16, 17, somewhere around in there, if I -- if I'm at full  
10 throttle.

11 Q. Okay. So how long did the AM, dive 1, last minute-wise?

12 A. So dive 1 was 50 minutes -- or, you know, it was all the  
13 same, 50 minutes, 500 PSI.

14 Q. Okay. And what are you doing when the divers are  
15 underwater for that 45 minutes?

16 A. So once I call "dive, dive, dive" in the water -- and the  
17 divers get in the water, I'm at the helm. Usually one of the  
18 crew is in the water, guiding the divers. And then the other  
19 one is up on the helm with me; we are looking for surface  
20 markers.

21 Q. Okay. And then as the first diver starts to ascend, what's  
22 your protocol? What do you do?

23 A. So while we're -- if there is a divemaster in the water,  
24 they are carrying a buoy. A divemaster -- if there is a  
25 divemaster in the water, they're carrying a buoy. So I'm kind

1 of hanging out around the buoy as far as the boat goes. And if  
2 there happens to not be a divemaster in the water, then I can  
3 see their bubbles from the helm. So I hang around the bubbles  
4 until the surface marker comes up.

5 when the surface marker comes up, I get 30, 40 yards away  
6 from it, and depends on what the seas are doing, or where the  
7 traffic is. So I won't -- I want my boat to be fairly close,  
8 you know, 30, 40 yards away from that marker, to ensure that  
9 other boaters stay away, and so -- while that person is -- is  
10 surfacing.

11 So when they get to the surface, you know, you  
12 are -- you're worried about, Okay, I just got to the surface --  
13 they're not cognizant of what is -- of -- you know, maybe a  
14 boat is coming from behind them and that sort of thing. So  
15 it's more of a protection for the divers that I put the boat  
16 where they are. Once they hit the surface, they give me the  
17 okay symbol, and --

18 Q. I want to stop you just for a second because I'm going to  
19 republish and show the witness what has previously been entered  
20 as Government's Exhibit 5.

21 THE COURT: Jurors, can you see this?

22 THE JURY: (Shakes head.)

23 THE COURT: Okay. How about now?

24 THE JURY: (Nods head.)

25 BY MR. O'SULLIVAN:

1 Q. Okay. When you say "the helm," can you just point to where  
2 the helm is?

3 A. Okay. So the helm is anywhere up here on the flybridge.  
4 This is the helm right there.

5 Q. I think it's a touchscreen, so you can probably --

6 A. Yeah, it won't let me draw on it.

7 Q. Well, just --

8 THE COURT: Hold on. Hold on. Hold on, sir. You  
9 should be able to touch the screen and activate the pencil  
10 feature.

11 Ms. Alexander, can you assist the witness, please.

12 All right. Well, we will rectify this at the next  
13 available break. But for now, let's go without the feature and  
14 you can either use a demonstrative, as -- as you indicated  
15 later, or otherwise reframe your questions.

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

17 MR. O'SULLIVAN:

18 Q. Mr. McCabe, again, I'm just going to ask that both of us  
19 slow down a little bit --

20 A. Okay.

21 Q. -- just so the court reporter can get everything  
22 accurately.

23 A. Okay.

24 So the helm --

25 Q. Let me ask the question.

1 A. Okay.

2 Q. Just describe what part of the boat is the helm. I see  
3 three seats up there.

4 A. Okay. So the helm is at the -- at the very top, underneath  
5 the canopy there. There is three seats. The helm is actually  
6 located in the middle one. And so that's where the controls  
7 are.

8 Q. Do you still have your picture? Oh, it's back.

9 A. Now it's back.

10 So the controls are in the middle seat. So that's where I  
11 am at when I'm controlling the vessel.

12 Q. Okay. So when the diver first -- when the divers first  
13 ascend or come to the surface from their dive --

14 A. Uh-huh.

15 Q. -- what position of that -- of that flybridge, which is the  
16 top of the boat, where are you at?

17 A. Okay. So I'm in the middle seat and I'm moving the boat  
18 into position to pick them up. Once I get into the position to  
19 pick them up, I -- I get them where I want them as far as their  
20 position behind the boat. I call "clear" to the crew to let  
21 them know that the boat is -- is ready for them to communicate  
22 with the divers to come get on board.

23 And then I walk all the way to the left-hand side, over as  
24 far as I can go, to the rail, and on the back of the boat -- on  
25 the stern side of that seat -- that's over there -- and I stand

1 there until the crew tells me that the boat is clear.

2 Q. why do you walk from the middle seat, where the controls  
3 are, to the left or port side of the boat?

4 A. Just like I removed the lower helm, I don't want a wave to  
5 trip me or something happen and knock me into the controls  
6 while there is somebody trying to get on the vessel. So it's a  
7 safety feature. And plus, there is -- there is two spots on a  
8 vessel that I cannot see, and that's directly below where I'm  
9 at on the mid-ship side of the port and starboard side.

10 So if you can see the tuna door there, where the ladder is  
11 and everything, the -- the crew is on the starboard side. So  
12 that's why I go to the port side. Before -- the last thing  
13 that they do before they tell me that it -- that the platform  
14 and the -- that the ladder are clear, is they look down the  
15 starboard side at the waterline to make sure a diver hasn't  
16 come up mid-ship, thinking they're under water, oh, the boat is  
17 right above me. I will just come up there.

18 And then once they tell me it's clear, I look down the port  
19 side at the waterline to make sure there is no diver there, and  
20 then I go back to the helm.

21 Q. So you are looking at the port side and the crew is looking  
22 at the starboard side?

23 A. Yes.

24 Q. Okay. With respect to Ms. Hester on that first dive, did  
25 anything unusual happen?

1 A. So she came up and grabbed the handrail on the port side,  
2 over on the -- on the picture there, if you -- just about where  
3 the "S" is in the name of the vessel. And as she was  
4 getting -- she always dives with a ton of gear, and so as  
5 she's --

6 Q. You say a "ton of gear." Could you elaborate for the jury,  
7 please?

8 A. She has her spear gun, she has a pole spear, she has a huge  
9 PVC container that's about 2 1/2 feet long to hold lionfish.  
10 She has a stringer with any fish that she shoots. She has a  
11 bag attached to her to put lobster in. And so all of this  
12 stuff is attached to her while she's diving.

13 And so the first thing that she wants to hand up is her  
14 gun. It's on a rope. Her gun sinks, so it points down while  
15 she's coming to the surface, is where the -- where the tip of  
16 the shaft is.

17 Q. Are you able to see that from your vantage point up above  
18 on that flybridge?

19 A. Yeah.

20 Q. How many feet up is that flybridge, do you think, from the  
21 water's surface?

22 A. Oh, I'm standing 15 feet or so. I mean, if you think of a  
23 normal ceiling, the salon ceiling is 8 1/2 feet, 7 -- 7 1/2 to  
24 8 1/2 feet.

25 Q. So you are up pretty high and your vantage point is --

1 A. Yeah.

2 Q. Are you able to see the divers getting in the boat and what  
3 is going on?

4 A. I can see the platform. I can't see right up against the  
5 platform in the transom, but I can see the platform where the  
6 divers are holding on.

7 Q. Okay. With respect to Ms. Hester getting back on board the  
8 boat, can you tell me what you saw?

9 A. So as she was getting back on board the boat, the first  
10 thing that she wants to do is hand up her gun. So her gun is  
11 attached to her with a fairly long rope. And so when she's  
12 coming to the surface, when she's vertical, the gun is actually  
13 hanging below her feet. And so she has to pull the rope up,  
14 and as she's pulling the rope up, she gets her gun caught  
15 between the transom and swim platform.

16 Q. Can you just define the transom again for the jury in  
17 case --

18 A. So the transom is basically the back wall of the boat.

19 Q. Is that where it says the word "Southern Comfort"?

20 A. Yes.

21 Q. Okay.

22 A. And so -- but you have to remember, that goes -- that's  
23 also -- it goes under the waterline. And so the transom is the  
24 whole back and -- and so in between that platform and where the  
25 transom is, she gets her gun caught there.

1 Q. Are you familiar with spear guns?

2 A. Yes.

3 Q. How are you familiar with spear guns?

4 A. I spearfish.

5 Q. And how long have you been spearfishing?

6 A. 41 years.

7 Q. Okay. Are spear guns indestructible?

8 A. No.

9 Q. What, if anything, would make a shaft of a spear gun bend?

10 A. Tons of things could make -- I can bend the shaft of a  
11 spear gun with my hands. They're not that -- they're not that  
12 durable. If I miss a fish and I hit the reef, it can bend  
13 the -- it can bend a shaft. If I shoot a big enough fish and  
14 it starts thrashing around, it can bend the shaft.

15 Q. Okay. Well, was Ms. Hester ultimately successfully able to  
16 get back aboard the vessel?

17 A. Yes.

18 Q. Okay.

19 A. And so her -- her gun was trapped. The boat went down a  
20 wave, she was still on top of the wave, it kind of moved her  
21 out to the side of the port side. It bent the shaft on  
22 her -- on her gun, but she was -- she got back on boat safely.

23 Q. I should have asked you this a little bit earlier to be  
24 more chronological, but what were the conditions that morning  
25 on March 28th, Saturday, March 28th?

1 A. So they were, as I was going out, when I get to the -- when  
2 I get to the dive site to come downstairs, down to the cockpit,  
3 and I give them a dive briefing of "this is how deep the water  
4 is, this is how fast the current is moving, this is the -- the  
5 water temperature," things like that, so that day the seas were  
6 3 to 4 feet, wind was about 10 knots, and the current was a  
7 knot and a half, 2 knots.

8 Q. Okay.

9 Okay. So how long did you generally wait between the two  
10 morning dives?

11 A. It's anywhere from 50 minutes to an hour.

12 Q. Okay. And on that date, did you wait the -- the requisite  
13 50 minutes?

14 A. Yes.

15 Q. Did all of the divers who did dive 1 in the AM, did they  
16 also do a second dive in the AM?

17 A. Yes.

18 Q. Okay. Just briefly tell the jury how that dive went.

19 A. That dive went perfect. It was -- there were no issues.  
20 Divers, after about 45 minutes, I tell them they have got  
21 10 minutes. So they start -- most of them, as soon as they get  
22 back on board, they move their gear from one tank to their  
23 second tank, and -- but then they start gearing up when I tell  
24 them they've got 10 minutes. They start getting their gear on,  
25 cleaning their mask, and getting things ready.

1           And then they get geared up. And I tell them they have got  
2   two minutes and the crew gets them off the dive benches and  
3   lines them up on the platform and through the cockpit. And  
4   then when it's -- the boat is in position, and I call "dive,  
5   dive, dive," they jump in the water.

6   Q.   Okay.

7   A.   So on that particular dive, they got in the water.  
8   They -- they went down, they saw some cool stuff. They caught  
9   some lobster, shot some fish, and come back to the boat.

10   Q.   Anything unusual happen on that dive?

11   A.   No.

12   Q.   Okay. So now I'm going to republish for the jury what's  
13   previously been entered as Government's Exhibit 1.

14   A.   Okay.

15   Q.   So, Mr. McCabe, I want -- Mr. McCabe, I want to direct your  
16   attention to returning to the inlet after dive 2, the Saturday  
17   morning dive.

18   A.   Okay.

19   Q.   Anything unusual happen?

20   A.   So as I was returning from the inlet, I happened to call my  
21   mechanic, John, and told him, "Hey, the voltage meter is  
22   bouncing around." And he said, "I'm not doing anything, so I  
23   will -- I will come to the -- to the marina."

24   Q.   Okay. Why did you want him to come to the marina?

25   A.   Just to check it out in between trips and see what was

1 going on because I preferred to use both engines. I mean,  
2 it's -- the boat is perfectly fine with one, but I prefer to  
3 use them both.

4 Q. So on the return trip, are you still just running the one  
5 engine?

6 A. Yes.

7 Q. Okay.

8 A. Yeah, the whole trip I only ran the port side. After I got  
9 through the inlet, and was in the no-wake zone around Sailfish  
10 and Peanut Island there, I called Jordan McKenna at the marina  
11 and told him that I needed the floating dock free.

12 Q. Okay. What's the floating dock?

13 A. The floating dock is the --

14 Q. If you can refer to the exhibit.

15 A. So on the exhibit, if you see Safe Harbor North Palm Beach  
16 Marina, there in the, kind of, the middle left -- if you want  
17 to increase the size. The floating dock is actually a dock  
18 that moves up and down with the tide. And so it is just to  
19 the -- it is just to the right of the actual marina building.  
20 And --

21 THE COURT: Mr. McCabe, you can use your finger to  
22 indicate anything you wish to on this document, and then  
23 counsel will indicate on the record what you are doing. So go  
24 ahead, if you wish, and you can use your hand to point out  
25 anything in your testimony.

1           **THE WITNESS:** So if you look -- if you look where it  
2   says North Palm Beach -- Safe Harbor North Palm Beach, and you  
3   see the big green circle, just to the -- just to the right of  
4   that there is a seawall. And you see a little -- a 90-degree  
5   turn, that's the floating dock right there.

6   **MR. O'SULLIVAN:**

7   **Q.** I am going to put my pen where that is.

8   **A.** Yes.

9   **Q.** And that's toward the upper left-hand side --

10   **A.** A little bit lower. A little bit -- but, yeah, right  
11   there; that's where the floating dock is.

12   **Q.** What is a floating dock, the purpose of it?

13   **A.** And so it goes up and down with the tide. It's used as a  
14   fuel dock as well. So that's where most of the -- that's  
15   where -- there is one fuel pump on the other side, on the  
16   seawall. But that's where most of the fuel pumps are.

17   **Q.** Okay. Why did you call Dockmaster McKenna to ask that that  
18   floating dock be clear?

19   **A.** So at that time of day -- I was in the incoming tide.

20   **Q.** What's an incoming tide mean?

21   **A.** So that means the tide is coming in from offshore and  
22   it -- in this particular instance, it would have been moving  
23   from the lower right of your screen toward the -- toward the  
24   marina in the upper left.

25   **Q.** So it's kind of like pushing with you?

1 A. Yes.

2 Q. Okay. So --

3 A. And so that's where the -- there is more water coming in  
4 from offshore. The gravity from the moon pulls the water in.

5 Q. Okay. So just tell me about as you're coming in from, say,  
6 passing the word "Old Port Cove," as we're coming in this way,  
7 just tell me what's going on with you and the boat.

8 A. Okay. So because I only have the -- the port side engine  
9 operating, and I don't keep dock lines on the boat --

10 Q. But -- just stop there for a second. What are the dock  
11 lines?

12 A. So the dock lines are what tie the boat up when we get back  
13 to our slip.

14 Q. Okay. And those dock lines, they can either be on the boat  
15 or on the wooden --

16 A. They can be --

17 Q. -- poles in water?

18 A. Right. So they can be on the boat or on the dock and the  
19 mooring poles. So I keep them on the dock.

20 Q. Why?

21 A. I -- because they're specific lengths, and I -- it's -- my  
22 slip is -- is almost as wide as the -- it is just barely wider  
23 than the boat. And so, as I'm coming in, I -- the crew just  
24 grabs them with a dock hook and then puts them on the -- on the  
25 cleats because they're the right length.

1           If I kept them on the boat, then the crew would have to get  
2 off of the boat while it's still moving, get on the dock and  
3 tie them up that way.

4   Q.   So is it a convenience and a safety feature to --

5   A.   It's a --

6   Q.   -- to get them on the --

7   A.   Yeah, it's a safety feature and a convenience. And with  
8 the dock -- with the dock lines on the boat, you run the risk  
9 of one of them coming loose and then fouling the props or  
10 something like that. So I just leave them on the dock. It's  
11 just how I've always done it. It's not right one way or the  
12 other; it's however you prefer.

13   Q.   Okay.

14   A.   So as I'm coming in with an incoming tide, the North Palm  
15 Beach police boat was on the floating dock.

16   Q.   And you are coming this way?

17   A.   Yes.

18   Q.   Which is -- I'm just -- on the exhibit, it's from the right  
19 side to the left side, heading toward the Parker Bridge from  
20 the ocean.

21           Tell me what happens next.

22   A.   So I get -- I get where I can see the floating dock, and I  
23 see the police boat is still on there. And so Jordan is out on  
24 the -- he is out on the seawall, motioning me for -- motioning  
25 to me to dock on the seawall. I tell him I can't. He is,

1 obviously, not in the building, so I can't call him on the  
2 phone or call him on the radio, so I have to, like, scream at  
3 him.

4 Q. why didn't you want to dock on the seawall?

5 A. I can't. I would be going too fast with the tide. And  
6 without dock lines -- so if I had dock lines on the boat, you  
7 could have thrown them to the -- to Jordan and he could have --  
8 you had a lot of slack in it and cleated the boat off and it  
9 would -- the line would have stopped it. But because I didn't  
10 have dock lines on the boat, he would have had to throw the  
11 crew a line, and they basically would have had to hold on to  
12 the line until the boat stopped. That's just going to tear up  
13 their hands, it's not very safe. You can break fingers and  
14 stuff that way.

15 Q. And you had it -- you testified that you had an incoming  
16 tide pushing you from --

17 A. I had an incoming tide so --

18 THE COURT: Okay. Hold on. It's important that we  
19 don't talk over one another.

20 THE WITNESS: Oh, okay, sorry.

21 THE COURT: So let counsel finish his question --

22 THE WITNESS: Okay.

23 THE COURT: -- and then answer.

24 THE WITNESS: I'm sorry.

25 ///

1 BY MR. O'SULLIVAN:

2 Q. Okay. So once you made the determination that I'm not  
3 going to dock on the seawall, what happened next?

4 A. So I swung the boat out toward the top of the screen there,  
5 and then made a little turn to the -- to the south that would  
6 be more toward -- where it says Safe Harbor. Once I got past  
7 the seawall and outside of the channel, outside of the main  
8 channel, I dropped the anchor. And once the anchor caught, of  
9 course, the tide is going to the north, so it swung the boat  
10 around so the stern was facing the U.S. 1.

11 Q. Now, I'm going to switch momentarily from Government's  
12 Exhibit 1 to what's previously been marked or entered as  
13 Government's Exhibit 31.

14 Do you recognize that, Mr. McCabe?

15 A. Yes, that's my helm.

16 Q. Okay. And I want you to focus on the Coca-Cola can.

17 A. Yes.

18 Q. What is that black switch to the right of the Coca-Cola  
19 can?

20 A. That's my windlass.

21 Q. Can you explain to the jury what a windlass is?

22 A. So in marine stuff, a windlass is basically a wench. And  
23 so that's what controls my anchor. The wench pulls the anchor  
24 up -- up out of the -- out of the water, or it drops it down  
25 into the water.

1 Q. So you don't have to physically walk to the front of the  
2 boat and throw anchor?

3 A. No. I did have to in Sea Scout. We had to go to  
4 the -- there was a -- there was a chock out there that was just  
5 a big square block, and that's what it was tied off to. And  
6 then there was a port that the line went down into the v-berth.  
7 And so we literally had to go out there, untie it and, by hand,  
8 drop it down into the water. On this particular vessel, it was  
9 all electric.

10 Q. Okay. I'm going to put back what's been previously entered  
11 as Government's Exhibit 1. So when you dropped the anchor,  
12 does the anchor -- does it rest in the channel or does it rest  
13 outside the navigable channel?

14 A. No, so that's why I turned it a little to the left and got  
15 myself outside of the navigable channel, because I didn't want  
16 to hold up traffic. And I dropped the anchor. And then the  
17 boat swung around, right where -- kind of where the -- kind of  
18 where those -- there was a little sandbar in the mangroves  
19 there.

20 Q. And when we are talking about the little -- the little  
21 sandbar in the mangroves, is that just north of or to the top  
22 of where it says "Safe Harbor"?

23 A. Yeah, so, if you see the word "Safe," and then you see the  
24 little -- the condo building right there, the little green  
25 above that is where the mangroves are, and I was right there.

1 Q. Is that where I'm pointing right now (indicating)?

2 A. Yes.

3 Q. And this is just to the right of the U.S. 1 Parker Bridge?

4 A. Yes.

5 Q. Tell me what happens when -- when you drop the anchor and  
6 what happens with the boat.

7 A. The boat just stops. And so, because the incoming tide,  
8 the anchor was to my south -- southeast, and the stern was  
9 facing Parker Bridge there. And the boat just stops. And so  
10 we were just floating there, waiting on the police boat to get  
11 moved.

12 Q. Okay. You testified a few minutes ago that you called John  
13 Miller to meet you at the marina?

14 A. Yes.

15 Q. At some point did he get on the vessel?

16 A. Yes. So he was standing there on the grass, when we got  
17 there, when I dropped the anchor. He waded out and hopped on  
18 the boat.

19 Q. Okay. What did he do?

20 A. Basically he went down into the -- into the engine room to  
21 figure out why the voltage meter was bouncing, and saw that one  
22 of the battery terminal nuts was loose. And so that wire was  
23 bouncing up and down in the seas, and causing the voltage to do  
24 that. And so all he did was tighten the nut.

25 Q. Okay. And then did you operate both engines after that?

1 A. Yeah, then we cranked up both engines and went to the -- or  
2 went to the fuel -- the floating dock.

3 Q. Okay. And then did --

4 A. The police boat had been moved.

5 Q. Did you dock the boat?

6 A. Yeah.

7 Q. Okay. And then what happened with the morning divers after  
8 that?

9 A. So the divers got off the boat. They all got into their  
10 cars and left. And then John and I moved the boat to my slip.

11 Q. Okay. Using how many engines?

12 A. Using them both.

13 Q. Okay. Why didn't you report that incident to the  
14 Coast Guard?

15 A. So, according to the Coast Guard regulations, if the boat  
16 is grounded, then you -- intentionally or unintentionally,  
17 you're supposed to report that. But because the boat wasn't  
18 grounded, the boat was on anchor, then there was nothing for me  
19 to report. I don't have to report if I anchor the boat.

20 Q. Was there any damage to the boat?

21 A. No.

22 Q. Did you have to call a towboat to help get you out of that  
23 situation?

24 A. No.

25 Q. Okay.

1 A. As a matter of fact, when I was pulling up the anchor, John  
2 was standing -- we were in 4 feet of water, maybe a little  
3 more. John was standing there with his hands on the transom,  
4 just to make sure that the tide didn't push me into the -- into  
5 the mangroves. So we were in enough water that he was able to  
6 push the boat without --

7 Q. Okay. So now I want to direct your attention -- you said  
8 that you go back to your slip. The morning divers are gone.

9 A. Yes.

10 Q. Do you have another dive trip scheduled for that afternoon?

11 A. Yeah, about an hour and a half or so later.

12 Q. What did you do in that hour and a half?

13 A. So John and I went down into the engine rooms and we  
14 checked hose clamps, nuts, bolts, cables. We checked  
15 everything that we could possibly think of that might come  
16 loose during the -- during the dive. And then we also -- about  
17 that time is when Jen Hester texted me that -- where she  
18 thought the port side was engaging and disengaging while we  
19 were out off of -- offshore --

20 Q. Based upon that -- based upon that text that we saw last  
21 week, was there anything specific that you did?

22 A. Yeah. So once I got that text message, John and I -- we  
23 were -- obviously, we had the engine hatches open. So the  
24 little photo that the -- that they showed you, which is the  
25 small one, that wasn't the engine hatch. Half of the salon

1 floor came -- was a hatch that came open; so I could see the  
2 entire engine standing up there.

3 So we opened the port side -- actually, they were both  
4 open -- and I cranked on the port side motor, and we stood  
5 there and watched it for half hour, 45 minutes, and nothing  
6 moved.

7 Q. What are you looking for when you are looking at it for a  
8 half hour to 45 minutes?

9 A. So the prop is connected to the shaft. The shaft moves  
10 through the hull and connects to the transmission. So if the  
11 prop moves, if it's engaging and disengaging like she thought,  
12 the shaft inside of the engine compartment would move; I would  
13 be able to see it. You don't do that offshore because the  
14 boat -- because the prop windmills and spins, but in the marina  
15 there is no water movement. And so there is nothing in the  
16 marina to make the boat -- to make the prop spin.

17 And so we sat there for 30, 45 minutes watching it, and it  
18 didn't move. So then we loosened the dock lines. I went up to  
19 the helm. I put the boat in forward, I put the boat in  
20 reverse, four, five, six times, and then we went back down,  
21 with the engine still running and in neutral, to see if I can  
22 make it happen again. And --

23 Q. Were you able to make it happen?

24 A. No.

25 Q. Okay. At some point, then, on Saturday afternoon, does a

1 second round of new divers come?

2 A. Yes.

3 Q. And without going into great detail, just generally, how  
4 did those two dives go on that Saturday PM trip?

5 A. Safety briefing, leave the dock, down the Intracoastal. We  
6 went to -- Governor's River walk, was the first one, and I  
7 think we went to -- Rybovich was Dive Number 2. And everybody  
8 got off the boat, saw some cool stuff, caught some lobster, got  
9 back on the boat. We back to the marina, went to our slip, and  
10 everybody went home happy.

11 Q. So just to recap on Saturday. There was four total dives?

12 A. Yes.

13 Q. Two in the morning, two in the afternoon?

14 A. Yes.

15 Q. Okay. So after everyone leaves on Saturday, the fun is  
16 over for them, what do you do as the captain and owner of the  
17 boat?

18 A. So I wash the boat. I clean up stuff. I start getting it  
19 prepared as -- for the next day. And at that particular time,  
20 I -- we -- I check everything again, as far as clamps, hoses,  
21 things like that to make sure that there isn't anything that  
22 came -- that might have happened in the second trip. Again, I  
23 start the boat. I let -- I watch the shaft for another half  
24 hour, 45 minutes, and nothing. Nothing moved.

25 Q. Okay. Now I want to direct your attention to Sunday

1 morning, on March 29th.

2 A. Uh-huh.

3 Q. And without going into great detail because -- you know --  
4 did you follow the same protocols for --

5 A. Exactly the same. Exactly the same. I have a checklist  
6 that I keep in a clipboard up on the helm, and so it -- I  
7 follow it exactly the same every day.

8 Q. Okay. So let's talk about, just generally, how did the  
9 dive start and where were you guys heading to?

10 A. So we -- we went out -- the dive started, everything was  
11 good. We left, we went out to just a little bit south -- a  
12 couple miles offshore, a little bit south of the inlet.

13 Q. Okay. What were the conditions on Sunday, were they  
14 similar to Saturday or --

15 A. 3- to 4-foot seas. Wind was about 10 knots. Current was a  
16 knot and a half to 2 knots. There was a 7-second interval in  
17 between the waves.

18 Q. As an experienced diver, can you tell me, what does a 1 1/2  
19 to 2-knot current underwater mean?

20 A. So a 1 1/2 to 2 knots -- like 2 knots is -- would be  
21 2.3 miles an hour. And that doesn't seem like very fast in  
22 your car, or you could probably even walk that, but underwater,  
23 it will tear the mask off your face.

24 Q. Okay. Would you have to be facing the current head-on or  
25 if you turn sideways -- how -- how would that current be able

1 to rip your mask off?

2 A. Yes. So divers every now and then, actually probably more  
3 often than that, we -- you have to dive in pretty strong  
4 currents, and the only thing that you don't do is try to, like,  
5 grab ahold of something and stop. Because that's when it  
6 gets -- you're basically a flag.

7 And as long as you're facing the current, or you're going  
8 down current, you're fine. But if you turn your face sideways,  
9 it will -- it can move your mask to the -- and break the seal  
10 and your mask will flood and things like that.

11 So in a strong current, you just -- you just float along  
12 with it. You know, you don't try to stop and -- if you see a  
13 turtle under a ledge, then you get to see it as you fly by.  
14 But on a slow current day, you would be able to stop and stare  
15 at it a little bit and that sort of thing. So on a day like  
16 that, you just -- you just float. And --

17 Q. But these conditions are still perfectly fine to dive in?

18 A. Perfectly fine to dive in.

19 Q. Okay. And did everyone get in the water?

20 A. Yes.

21 Q. Could you just tell the jury just -- you know, without  
22 great detail, just generally, you know, how that entrance on  
23 Dive Number 1 went?

24 A. Everything went just normal. Normal. Came down, gave the  
25 dive briefing, this is how deep, this is -- this is what the

1 current is doing, this is where I'm going to be, this is where  
2 to go, how to find the -- as far as this part of the reef, this  
3 is where the lobster are going to be, this is where the bigger  
4 fish are going to be, this is where the nurse sharks and the  
5 turtles and stuff are going to be hanging out.

6 Everybody got in the water just fine.

7 Q. And how long was this dive expected to last?

8 A. 50 minutes.

9 Q. Did someone -- well, who was the first person to surface?

10 A. Dave Anderson was the first person to surface after about,  
11 I would say, 20, 25 minutes.

12 Q. And why did he come such a short amount of time -- why did  
13 he surface early?

14 A. He said he was having problems staying on the reef. So you  
15 get pushed off of the reef, and then you're just diving in sand  
16 and there is nothing to look at, so then he just came to the  
17 surface.

18 Q. Okay. And so you're currently about how many miles  
19 offshore?

20 A. A couple.

21 Q. And what -- what reef were you at at this point?

22 A. We were just south of the Nun's Reef. Somewhere near --  
23 offshore of Governor's. The reef, really, it's just a little  
24 ledge. We changed the name of it every now and then.

25 Q. Okay. And who were the next divers to surface?

1 A. The Flynns were the next two to surface.

2 Q. Okay.

3 MR. O'SULLIVAN: Judge, at this point, I'm going to ask  
4 permission to use the tripod and to have Mr. McCabe, as a  
5 demonstrative aid, kind of draw a little bit about what  
6 happened next.

7 THE COURT: Okay. That's granted. Please bring the  
8 easel over.

9 Ladies and gentlemen, Mr. McCabe will step off the  
10 witness stand and use this easel. Mr. Keller will move over  
11 there so he has a proper view of what's being drawn.

12 I do want to advise you, ladies and gentlemen, that  
13 this drawing is not, in and of itself, evidence to be admitted  
14 in the case. It's simply an aid in presenting Mr. McCabe's  
15 testimony.

16 MR. O'SULLIVAN: Your Honor, is this in a position  
17 where the Court can see it?

18 THE COURT: Yes.

19 Let me ensure -- Jurors, can you see that easel  
20 properly? Yes. Okay. That's fine.

21 MR. O'SULLIVAN: Mr. Keller?

22 MR. KELLER: I'm good.

23 MR. O'SULLIVAN: Your Honor, can I invite Mr. McCabe  
24 to --

25 THE COURT: You can.

1 Mr. McCabe, please equip yourself with one of those  
2 microphones.

3 THE WITNESS: Okay. Can you hear me?

4 THE COURT: I can hear you, Mr. McCabe, but you are  
5 going to want to just turn and generally face the jury.

6 THE WITNESS: All right. Thank you.

7 BY MR. O'SULLIVAN:

8 Q. Are you an artist, Mr. McCabe?

9 A. No.

10 Q. Okay.

11 MR. KELLER: Can he stand over there?

12 THE WITNESS: Is this better?

13 BY MR. O'SULLIVAN:

14 Q. Let's -- could we do -- just in the upper corner, could we  
15 do a north and south, just so we have an orientation of where  
16 everything is?

17 A. (Complies.)

18 Q. And then I'm going to ask you just to draw a basic diagram  
19 of your boat.

20 A. Okay.

21 Q. Okay. Now, why would your boat be facing in what appears  
22 to be a north, northwest direction?

23 A. Okay. So when I go to pick up drivers, I always put the  
24 boat in a north, northwest position, so, one, the current and  
25 the waves will push me away from people as I back to them. And

1 so I want them on the starboard side over here (indicating)  
2 once I start backing the boat up. And if something happens,  
3 then everything is going to -- if they let go, everything is  
4 going to push me away from them. And so that's why I put the  
5 boat in that particular -- in that particular --

6 Q. Could you draw some arrows as to which way the current  
7 would be going and affecting the boat?

8 A. Okay. So you're going to get...

9 THE COURT: One moment. I'm going to ask that you tilt  
10 the easel a little bit towards the gallery as well, so any  
11 members of the public can observe this as well.

12 Okay. That's good.

13 Jurors, can you still see this?

14 JURORS: (Head nods.)

15 THE COURT: Okay.

16 THE WITNESS: Okay. So the current and the seas are  
17 coming from the southeast, moving to the northwest.

18 BY MR. O'SULLIVAN:

19 Q. Absent any other conditions, just assuming current, which  
20 way would the current push the boat?

21 A. So the current would be pushing the boat to the north,  
22 northwest.

23 Q. And that would be to the top left of that demonstrative  
24 aid?

25 A. Yes.

1 Q. Okay. Now, how about seas? Those are different than  
2 current; correct?

3 A. The seas are a little bit different than current. Our  
4 current -- we dive in the Gulf Stream. And so the Gulf  
5 Stream -- at about a half a mile north of Palm Beach inlet, the  
6 Gulfstream is as close as it gets to land on the planet. And  
7 so it's moving a little more -- a little more west than normal.  
8 And then after it passes the inlet, it turns out to the east  
9 and goes way, way offshore. So by the time it gets up here, it  
10 is 30, 40 miles offshore. The seas are moving a little more  
11 east to west.

12 Q. Can you draw some arrows in the direction that the seas  
13 were moving on that date?

14 A. And so the seas are going to be moving in that direction  
15 (indicating) in a 3- to 4-foot pattern with 7 seconds of  
16 interval.

17 Q. Now, what does 7 seconds of interval mean?

18 A. So that means -- 7 seconds of interval is from the crest of  
19 one wave to the crest of another. For both of those two things  
20 to pass the same point, took 7 seconds.

21 Q. So does that mean the boat is going to be going up and down  
22 and back up again every 7 seconds?

23 A. Yes, yes. The boat will sit on a crest, and then  
24 7 seconds, it will go down to the trough and then back up to  
25 the crest of the next wave in 7 seconds.

1 Q. And how many pounds does the Southern Comfort weigh?

2 A. 45,000.

3 Q. And that's about 22.5 tons?

4 A. That's lot.

5 Q. And so by that math, is it fair to say that the boat is  
6 going up and down --

7 THE COURT: Counsel, leading.

8 MR. O'SULLIVAN: Sorry.

9 BY MR. O'SULLIVAN:

10 Q. How many times a minute is the boat going up and down?

11 A. 56.

12 Q. Okay. So at this point you testified that Dave Anderson is  
13 on the boat?

14 A. Yes.

15 Q. Okay. Who are the next two divers to ascend?

16 A. The Flynns are the next two divers to ascend.

17 Q. Could you put an "S" where Sean was and an "M" where Mollie  
18 was? Could you do it a little bit bigger because --

19 A. (Complies.)

20 Q. And just for clarity purposes, who is on the left and who  
21 is on the right?

22 A. So Sean is about mid- -- is about mid- -- midway through  
23 the swim platform on the left, if I'm looking at the -- at the  
24 easel here. And then on the starboard side, Mollie is on the  
25 corner of the boat on the starboard side.

1 Q. Okay. What happened next?

2 A. And so at this point is when the crew tells me that -- I  
3 tell them -- you know, I back the boat up and I put the -- I  
4 put everything in -- in neutral. I walk way over here, this is  
5 about where the helm is. The crew tells me that a wave washed  
6 her off of the boat.

7 Q. When you say a wave washed who -- who are we referring to?

8 A. And so a lot of times, if you're -- you're hanging onto the  
9 handrail, and the boat is moving up and down, sometimes a wave  
10 will -- will hit you when you're not paying attention to it or  
11 maybe it hits you in the face or something and it causes you to  
12 let go of the handrail. And so that's where you have washed  
13 off. So now you're not attached to the boat anywhere.

14 Q. Is that what Ms. Odom testified to last week, that word  
15 "washed off"?

16 A. Yes.

17 Q. Okay. When that happens, what do you do?

18 A. I do nothing.

19 Q. Why not?

20 A. Because I don't know where the diver is at at that point.

21 And so until the crew tells me where the diver is at, or until  
22 I see the diver again, and they give me the -- and they give me  
23 the okay sign, I do nothing. I -- I stand on the far port side  
24 of the boat until I see either one of those things.

25 Q. And at this point, or when did you realize that something

1 was going wrong?

2 A. The crew told me that the wave had washed her under the  
3 boat.

4 Q. Without using the exact words that they told you, tell me  
5 what happened next.

6 A. So basically I don't leave this area right here  
7 (indicating). And so the seas and the current would have --  
8 would have moved her that direction (indicating).

9 Q. So --

10 A. Across the boat from the port -- from the starboard side to  
11 the port.

12 Q. Would a boat or a diver just floating -- who is going to be  
13 more affected by current and conditions?

14 A. The boat.

15 Q. So would the boat then -- well, with these seas and these  
16 currents, which direction is the boat heading?

17 A. The boat is moving in a similar -- in a similar direction  
18 as -- as the diver. We're on the surface, the diver is under  
19 water. Once the diver is under water, then they're going to  
20 drift a little bit faster than the boat is. If you're both on  
21 the surface, the boat is going to drift faster.

22 Q. Okay. At some point did the crew get in the water because  
23 there was an issue?

24 A. Yes.

25 Q. Okay.

1 A. So Dave Anderson got in the water. And then Sean was still  
2 in the water. He was over here (indicating). And then both of  
3 my crew got in the water.

4 Q. Okay. What did you learn was happening at this point?

5 A. So Sean comes up here (indicating) and tells me that she's  
6 stuck between the shaft and the boat. And then that's when the  
7 crew and everything got in the water. I still haven't left the  
8 side of the helm. And the -- and they were trying to get her  
9 out from underneath the -- from being stuck between the shaft  
10 and the boat.

11 Q. Do you make a phone call to any type of emergency  
12 personnel?

13 A. Yes. As soon as he comes up and tells me that  
14 she's -- that she's wedged between the hull and the shaft, I  
15 call the Coast Guard.

16 Q. Do you call via the ship's radio or your cell phone?

17 A. No. I have to call by my -- by my cell phone because the  
18 radio is back over here at the helm, and I don't want to get  
19 close to the helm.

20 Q. Okay. Did you ever engage any gears or anything?

21 A. No. I never went back to the helm until the Coast Guard  
22 told me to drive the boat to the Riviera Beach marina.

23 Q. Who did you call? Who is the first call? When there was  
24 something happening, who was the first call?

25 A. I called the Marine Safety Detachment Lake Worth.

1 Q. Okay. And where are they physically located?

2 A. So if you see Blue Heron, maybe 2 miles away from where I  
3 was at; 2, 2 1/2 miles, I would say.

4 Q. Okay. And what happened when you called that safety  
5 detachment?

6 A. I had to go through their automated system first. And then  
7 once I was in their automated system, the guy finally answered  
8 the phone. I told him where I was, GPS locations, what was  
9 going on. He said, "Hold on," and transferred me to marine  
10 safety -- or the Marine Sector Miami for the Coast Guard.

11 Q. Okay. And what happened -- what happened next?

12 A. While I was on hold, waiting for them to answer, they  
13 actually called me. And so I disconnected that phone and  
14 answered the call where they called me.

15 Q. Okay. When you say "they called me," who was it that  
16 called you?

17 A. U.S. Coast Guard Sector Miami.

18 Q. And without telling me what they told you, did you -- what  
19 did you tell them about your situation?

20 A. I told them exactly what was going on, that I had someone  
21 trapped under the boat, I needed the small boat from marine  
22 safety detachment out to -- to give us assistance and render  
23 any first aid that might be needed.

24 The gentleman that was there then transferred me to a  
25 trauma surgeon in Miami.

1 Q. To a trauma surgeon in Miami?

2 A. Yes.

3 Q. What did you do when you were transferred to a doctor in  
4 Miami?

5 A. I hung up the phone and called Marine Safety Detachment  
6 Lake Worth back.

7 Q. And what -- why?

8 A. Because the trauma surgeon in Miami doesn't do me any good.

9 Q. Okay. What were you looking to get from the Coast Guard in  
10 Palm Beach?

11 A. The Coast Guard to send out their RIB, which is a rigid  
12 inflatable, they're small boat is what they call it. And I  
13 needed them to send that out with -- with their -- with their  
14 personnel aboard.

15 Q. Okay. And with these phones calls going back and forth,  
16 how long was it until the Coast Guard showed up on scene?

17 A. It took 18 minutes for me to get somebody on the phone.  
18 Every time I called Marine Safety Detachment Lake Worth, I got  
19 the same guy. And finally, the last time, I told him not  
20 to -- don't put me on hold again. I need you to send somebody  
21 out here right now, which he -- he finally did. All of that  
22 took 18 minutes.

23 And then after he was going to dispatch the small boat, it  
24 took him 26 minutes to get to the scene.

25 Q. So during that time period, what's happening in the

1 cockpit?

2 A. They were actually -- they had gotten her back on board and  
3 they were doing CPR.

4 Q. Okay. I can ask that -- you can return that lapel speaker  
5 or microphone to me and you can return to your seat.

6 A. Thank you.

7 Q. Were you on the flybridge the entire time that the crew was  
8 working on -- doing the CPR?

9 A. Yes. I was on the flybridge, still on the port side.

10 Q. And just tell me about what you saw. What was going on?

11 A. They had -- they were -- compressions on -- on any wounds,  
12 and they were doing CPR. I was more watching -- I was more on  
13 the phone, trying to get the Coast Guard out in -- as far as  
14 watching them, I was -- I was on the phone.

15 Q. Do any of your crew members -- did they have any  
16 specialized medical knowledge?

17 A. Yes. So Siri is one of my -- was one of my crew. She was  
18 an EMT for a -- the firehouse on Singer Island.

19 Q. Okay. Once the Coast Guard arrives, tell me what happens.

20 A. So the Coast Guard little boat gets there, and they  
21 can't -- they don't have dock lines, they don't have any kind  
22 of lines on their boat, so they weren't able to drive right up  
23 to mine and tie off. So I had to go down into my -- into the  
24 salon and get my extra lines that -- a couple lines that I had  
25 in order to get them tied off to my boat. Two of their guys

1 get on board and -- excuse me -- they take over CPR.

2 Q. Okay. How long did that last?

3 A. 15 minutes or so. They wouldn't move her to their boat.

4 They said the sea conditions wouldn't allow it. So that's when  
5 they told me to drive into Riviera Beach marina.

6 Q. You normally dock at North Palm Beach marina; correct?

7 A. Yes, but Riviera Beach is the closest.

8 Q. Okay. How long did it take you to get from where the  
9 incident occurred to the Riviera Beach marina?

10 A. 6, 7 minutes.

11 Q. Okay. Tell me what happens when you get there.

12 A. So I get there and I swing the boat around so the bow is  
13 facing to the south, and I docked the boat. The EMTs are  
14 there. FWC is there. The Coast Guard is there. Palm Beach  
15 police is there. Once the boat gets docked, I stay on the helm  
16 for another -- on the -- for another half hour or so.

17 Q. Now, you testified that FWC, North Palm Beach police, and  
18 the Coast Guard were present at the Riviera Beach marina?

19 A. Yes.

20 Q. Did they make contact with you?

21 A. Yes. After about a half hour, I came down from the helm.  
22 FWC came and the Coast Guard came. They made contact, asked  
23 for a written statement. And I wrote out basically what I just  
24 told you.

25 Q. Was that -- FWC, was that Officer Fowler?

- 1 A. Yes.
- 2 Q. And did he ask you to do any specific things?
- 3 A. He asked for permission for him to be on the boat and to
- 4 take the -- the SD cards from -- from the electronics, and if
- 5 he could go inside the cabin, and things like that.
- 6 Q. Did you allow him on the boat?
- 7 A. Yeah. I told him he could go wherever he wanted to.
- 8 Q. What are SD cards?
- 9 A. The storage card from the -- that they showed -- as far as
- 10 the evidence goes, that they showed that stored all of the data
- 11 from the -- from the Garmin and from the Furuno.
- 12 Q. And so you gave that to Investigator Fowler?
- 13 A. Yeah, I told him he could take it. And I think he called
- 14 the guy that -- who came and got it, but I told him I had no
- 15 problem with him taking it.
- 16 Q. Did he physically go around or in your boat?
- 17 A. He walked on the cockpit. And I think he poked his head
- 18 inside the salon, but they didn't -- they didn't do any kind of
- 19 investigation. They didn't start the boat. They didn't move
- 20 it. They didn't do anything.
- 21 Q. How long were these initial investigators on the scene?
- 22 A. I was there about six hours.
- 23 Q. Okay. Was Fowler and the Coast Guard and/or the Palm
- 24 Beach, they were there for six hours?
- 25 A. Yes.

1 Q. Did they ever open the engine hatches?

2 A. No.

3 Q. Did they ever ask you to start the boat?

4 A. No.

5 Q. Did they ever start the boat themselves?

6 A. No.

7 Q. Did they ever put the boat in forward?

8 A. No.

9 Q. Did they ever put the boat in reverse?

10 A. No.

11 Q. What were they doing for six hours there?

12 A. Fowler was inside the building, recording statements from  
13 everybody that was on board. And everybody else was standing  
14 around watching the guy get in the water and take photos of the  
15 props.

16 Q. Okay. So after six hours go by, you're still at the  
17 Riviera Beach marina; correct?

18 A. Correct.

19 Q. And that's not your home base?

20 A. No.

21 Q. Did at some point any of these investigators tell you or  
22 allow you to get back on your boat and go back home?

23 A. Yeah, Agent Fowler and, I think it's Captain Mosquera from  
24 the Lake Worth detachment, the Marine Safety Detachment Lake  
25 Worth, they told me that I could drive the boat back to the

1 slip.

2 Q. So at this point, you know, six hours have gone by since  
3 you got to the Riviera Beach. Who was on the boat besides you?

4 A. Me and John.

5 Q. John, what's his last name?

6 A. John Miller.

7 Q. Okay. So you guys -- what do you do from Riviera Beach  
8 marina?

9 A. Once we just -- I turned the boat around, floated  
10 through -- floated past Peanut Island, went under Blue Heron  
11 Bridge and went right back to my dock.

12 Q. Okay. What did -- what time, about, did you return to your  
13 dock?

14 A. 7:00. 6:00 -- 6:00, 7:00, somewhere in there.

15 Q. Okay. And at this point, you testified earlier that you  
16 were kind of living on your boat --

17 A. Yes.

18 Q. -- due to the separation?

19 A. Yeah.

20 Q. Did you remain on your boat that entire evening?

21 A. Not the whole evening. We -- but mostly, yeah.

22 Q. Okay. Did any other investigators come visit you on that  
23 evening?

24 A. No.

25 Q. Did any other investigators call you?

1 A. No.

2 Q. Okay. But you were available should they have called?

3 A. Uh-huh, yeah, they had my cell number, and they knew where  
4 I was at.

5 Q. Okay. I want to kind of switch gears and talk about a  
6 different topic. Can you tell the jury what a six-pack vessel  
7 is? We heard a little testimony about that last week.

8 A. So a six-pack vessel is someone that takes -- is a boat  
9 that can only have six or fewer passengers.

10 Q. So can you expand a little bit about that? What does that  
11 mean?

12 A. So a passenger, what they -- what the Coast Guard defines  
13 as a passenger is any -- is anyone who gives consideration to  
14 the captain, the owner, or anyone that has interest in a  
15 vessel, if you give them consideration for passage or for  
16 carriage from point A to point B and back to point A, is --  
17 you're considered a passenger.

18 Q. Is consideration just money?

19 A. Anything. It could be if -- if you and your buddy are  
20 going fishing out for the weekend for -- on a Saturday  
21 afternoon, and you bring him -- here is some -- here is some  
22 beer and some bait, you have given him consideration.  
23 According to the Coast Guard, you would be a paying passenger.

24 Q. Okay. And what's the significance of a paying passenger  
25 being onboard a vessel?

1 A. So according to the -- what the -- Lieutenant Mosquera and  
2 Commander Cole testified to, a paying passenger should cause  
3 that particular vessel to be documented as a commercial vessel.

4 Q. So does that mean that everyone that brings a buddy on  
5 board their boat and their buddy chips in for gas, that is now  
6 a commercial vessel?

7 A. That's the way that they -- that they explained it. But in  
8 1993, they created six-pack regulations. And the six-pack  
9 regulations state that it's for the safety of uninspected  
10 passenger vessels, and it says that these vessels are typically  
11 recreational vessels for charter scuba diving, charter fishing,  
12 and charter tour cruises.

13 Q. As a captain of -- well, 10 year -- 10, 11 years ago, you  
14 got a captain's license; correct?

15 A. Uh-huh.

16 Q. As a boat captain in Florida, where do you get your  
17 guidance on recreational versus commercial, where do you get  
18 that guidance from?

19 A. You get it from the U.S. Coast Guard. There are -- right  
20 now, if you call the -- if you call the Marine Sector Miami or  
21 Marine Safety Detachment Lake Worth, you don't get people on  
22 the phone. You have to ask questions -- or answer their  
23 questions, and then they send you to a specific part of the web  
24 page.

25 And so on that web page, I found three -- I went and

1 reviewed all of the six-pack regulations when I bought the  
2 vessel. I knew them, but I wanted to update myself on them.  
3 You can find three different documents on the same web page  
4 that state the same thing, that have three different  
5 definitions of things and three different requirements. And  
6 none of them state whether or not this is the actual one or  
7 this is not the actual one.

8 So I went back to the original 1993 definition that stated  
9 a six-pack vessel is a recreational vessel, typically a charter  
10 scuba diving, charter fishing, or charter tour cruises.

11 Q. I want to show you what's previously been entered by the  
12 government as Exhibit 77.

13 MR. O'SULLIVAN: Can everyone see that?

14 THE COURT: All right. You have to wait a moment.  
15 Okay. I think now the screens are visible. Please continue.

16 BY MR. O'SULLIVAN:

17 Q. Mr. McCabe, I want to direct your attention to block J,  
18 which is about two-thirds of the way down this exhibit.

19 A. Yes.

20 Q. Why did you check "recreational"?

21 A. Because of that definition I found on the Coast Guard's web  
22 page.

23 Q. Under Exhibit J [sic], is there a box that says  
24 "commercial"?

25 A. No.

1 Q. I would like to direct your attention to block K.

2 A. Yes.

3 Q. It says "primary service" and "horsepower"?

4 A. Yes.

5 Q. Who filled out that horsepower?

6 A. I -- I did.

7 Q. Okay. And why did you check "recreational"?

8 A. Going back to that same definition on the Coast Guard's web  
9 page.

10 Q. Under block K, does it -- does it say "ever use" or just  
11 "primary use"?

12 A. Just says "primary use."

13 Q. When you filled out these documents, did you fill them out  
14 as accurately as you understood them to be at the time?

15 A. Yes.

16 Q. Okay. I want to switch gears a little bit and move on to a  
17 different subject.

18 MR. O'SULLIVAN: May I just have one moment,  
19 Your Honor?

20 THE COURT: Yes.

21 MR. O'SULLIVAN:

22 Q. Okay. Mr. McCabe, do you recall last week when Agent King  
23 testified about some government moneys, some unemployment that  
24 you received in May of 2020?

25 A. Yes.

1 Q. Okay. And do you recall how much that was?

2 A. I believe it totaled \$1,700.

3 Q. Okay. And I'm going to republish to the jury and show  
4 what's previously been marked as Government's Exhibit 100G.

5 Do you recognize this document from last week?

6 A. Yes.

7 Q. And could you tell me the date that's on the top where it  
8 says "statement period."

9 A. May of 2020.

10 Q. Okay. And I'm going to switch now -- not switch. I'm  
11 going to move down to page 2 of that document. Can you point  
12 out to the jury where any -- any unemployment was paid to you?

13 A. About halfway down the page, if you look at the date, it  
14 will be on 5/11 and 5/12.

15 Q. Okay. And is that the total amount of unemployment you  
16 received that month?

17 A. That's the total amount of unemployment I received total.

18 Q. Okay. So we only saw the May statement; correct?

19 A. Correct.

20 Q. Did we see an April or a June statement?

21 A. No.

22 Q. Did you receive any unemployment in April or June?

23 A. No. That unemployment wasn't state benefits. That was  
24 what was called pandemic unemployment and -- assistance. It  
25 was for anyone who wasn't eligible for state unemployment

1 assistance.

2 If you remember back at the COVID days, when they talked  
3 about the \$600 a month, that's what that was for. It was for  
4 self-employed workers, gig workers, freelance people, people  
5 that worked part-time, things like that.

6 Q. How many times did you get that particular payment?

7 A. Just those -- that you see right there.

8 Q. Just in May of 2020?

9 A. Yes.

10 Q. No other times?

11 A. No. After I got the paycheck loan, the PPP loan, it  
12 was -- I had -- I had the funds that I needed to support the  
13 business, so I took myself off of that PUA unemployment, even  
14 though the PPP and the PUA said I could collect them both at  
15 the same time.

16 Q. Okay. At some point did you -- I'm going to remove this  
17 exhibit for now.

18 At some point did you apply for a PPP loan?

19 A. Yes.

20 Q. And what was your understanding what the purpose of the PPP  
21 loan was?

22 A. To cover business expenses, payroll, rent; in my case, slip  
23 rent, utilities, insurance, basically business expenses to keep  
24 the business afloat during COVID.

25 Q. Okay. Did you have a monthly note or a mortgage on the

1 Southern Comfort?

2 A. Yes.

3 Q. How much was your mortgage on the boat?

4 A. I think it was \$1,810.

5 Q. And I want to talk about some other expenses. How much was  
6 the slip rent?

7 A. Slip rent was 17, I believe.

8 Q. Other expenses, insurance?

9 A. Insurance and utilities equalled another 400.

10 Q. Okay. What other expenses were associated with the monthly  
11 costs of just the Southern Comfort without -- without fuel,  
12 just sitting in the slip?

13 A. Just for that boat, just sitting in the slip, I had  
14 the -- the insurance, I had the utilities that you had to pay,  
15 the boat payment, the slip rent, plus you had anything that  
16 broke while I was out there, so you had maintenance as well.

17 Q. Generally -- I know you can't pinpoint it because it's  
18 different every month, but generally what would the maintenance  
19 on a boat, without even leaving the slip, what would that be --  
20 or what could it be?

21 A. 200 to \$500.

22 Q. Okay. And we heard some testimony that Steve Poznak had  
23 some financial interest in the boat. Did he chip in for any of  
24 these expenses?

25 A. No.

1 Q. whose responsibility was it to pay these expenses every  
2 month?

3 A. Mine.

4 Q. Okay. And just ballparking, the testimony that you just  
5 did, how much a month are you shelling out to keep this boat in  
6 the slip?

7 A. Anywhere 3,500 to \$4,000 a month.

8 Q. Okay. And that doesn't include gas, obviously; correct?

9 A. Correct.

10 Q. Is it fair to say that the more you use the boat, the more  
11 maintenance you're going to have to perform on it?

12 A. Yes.

13 Q. Okay. And this -- strike that.

14 How did you initially apply for the PPP loan?

15 A. So you -- it took forever to find an institution that was  
16 actually participating in the program, and my -- my banks  
17 didn't. A lot of the -- a lot of the bigger banks did, but  
18 they were only for people who had accounts with them. So I --  
19 you had to call around and find somebody that -- that  
20 participated.

21 Q. I think Ari Pollack, he testified that there was 5,400  
22 banks across the country that were participating.

23 A. I think that sounds about right.

24 Q. Was there a database that showed those? Or how did you  
25 come across --

1 A. Making phone calls. Google searches and phone call.

2 Q. Okay. And at some point, were you connected with Cross  
3 River?

4 A. Yes.

5 Q. And Celtic Bank?

6 A. Yeah, Cross River first, Celtic was second. They were -- I  
7 think they're -- it's -- I think they're under the same  
8 conglomeration.

9 Q. So --

10 A. I know they're connected somehow.

11 Q. If you could tell the jury, how do you initially --  
12 you know, how do you -- do you -- do you download forms? Do  
13 you talk to a loan officer? Like, how -- how do you start the  
14 process of getting a PPP loan?

15 A. So I guess you could do it online. I didn't. I didn't do  
16 it online. I called the -- I called over and over and over  
17 until I got a person on the phone. He had told me that the  
18 applications were closed at that particular time, that they had  
19 run out of funds, but then he would contact me the day before  
20 the applications were going to open again.

21 Q. Was that consistent with --

22 A. Masterman's.

23 Q. I think it was Jason Masterman who testified that the first  
24 round was gone within a couple of weeks --

25 A. Yes.

1 Q. -- due to the big interest in it?

2 A. Yeah, that's correct.

3 Q. Okay. So I kind of cut you off. What was the next step  
4 that you did in trying to secure a PPP loan?

5 A. So he contacted me the day before the applications opened  
6 again and told me that they were going to open tomorrow. I  
7 called him in the morning and he said he was going to email me  
8 the application -- the link to the application, and he told me  
9 how to fill it out.

10 Q. Okay. Was the link emailed to you?

11 A. Yes.

12 Q. Did you fill that application out?

13 A. I did fill that application out, as he -- as I was  
14 instructed.

15 Q. Okay. Did you get a PPP loan?

16 A. Yes.

17 Q. Okay. When was the first one that you got?

18 A. I believe the application was in May of 2020.

19 Q. Okay. And there was no issues with that loan; correct?

20 A. No.

21 Q. Okay. No one has testified about that loan; correct?

22 A. No. In the indictment there were three of the  
23 applications, both of the forgiveness application, and the  
24 second loan application listed -- the first loan application  
25 was not listed, even though it's basically the same as the

1 second.

2 Q. Okay. So that loan application is not part of this case?

3 A. No.

4 Q. Okay. Let's talk about the second loan application.

5 A. Okay.

6 Q. Tell me about -- same questions. How did you first start  
7 to apply for that loan?

8 A. The exact same way. I didn't have to make as many phone  
9 calls. At that time they -- at that point, I had done enough  
10 research prior to know who -- you know, who was still doing the  
11 program for the second draw. And I didn't have to make as many  
12 phone calls, but I -- the same -- the same deal. I called  
13 them, I got them on the phone. They told me how to fill out  
14 the application. They emailed me the application. I clicked  
15 the link, went through all of their things, and then submitted  
16 it to them.

17 Q. Okay. And were you ultimately approved for a paycheck  
18 protection loan?

19 A. Yes. The only difference in the two applications was Cross  
20 River told me not to -- not to count myself as an employee and  
21 Celtic told me to count myself.

22 Q. So on one of the applications that we saw, there was --  
23 listed zero employees?

24 A. Correct.

25 Q. And the other application, how many employees were listed?

1 A. One.

2 Q. And that's for the application?

3 A. That's for the loan application.

4 Q. Okay.

5 A. Correct.

6 Q. And both applications, as opposed to forgiveness, the  
7 applications themselves, were ultimately approved?

8 A. Yes.

9 Q. And did you receive those funds?

10 A. Yes.

11 Q. And what did you spend the money on?

12 A. Slip rent, payroll, insurance, boat payment, what I was  
13 supposed to spend it on.

14 Q. Payroll can include paying yourself; correct?

15 A. Correct.

16 Q. I mean, you're the owner of the company; correct?

17 A. Correct.

18 Q. And you're allowed to be paid for your work; correct?

19 A. Correct.

20 Q. And there is still work to do on the boat, even if there is  
21 not active divers?

22 THE COURT: These are leading questions.

23 MR. O'SULLIVAN: I'm sorry.

24 THE COURT: Next question.

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

1 BY MR. O'SULLIVAN:

2 Q. Did your payroll increase at all over the course of the  
3 second and the -- first, second, or third?

4 A. From the first draw to the second draw, my payroll  
5 increased by about \$650.

6 Q. Is that per year or per month?

7 A. Per -- total. Or per month.

8 Q. Okay. Your ex-wife Kristy, she testified that she did the  
9 books for the business?

10 A. Before -- yes.

11 Q. Did she -- did she do the books for the business?

12 A. Before '17, she did. After '17, when she was hurt, she  
13 didn't do them totally, but did them mostly. I -- I helped out  
14 as well when -- when -- when needed.

15 Q. Did she also have an external source of income?

16 A. Yes. So at '17 she got a job at where she works now. And  
17 so at that point, she was paying all of our household expenses  
18 through March of 2020. And anything that the boat made was  
19 going back into the -- was going back into the business to help  
20 it grow.

21 Q. Okay. Did the Coast Guard issue you any specific orders in  
22 April?

23 A. Yeah, they issued me a port order that basically told me I  
24 couldn't use the boat.

25 Q. What's a port order?

1 A. So it comes from the -- it comes from the master of the  
2 port that tells me that you -- you can't use your vessel  
3 until -- and gives you a list of "these are the things that you  
4 need to do in order to be able to use your vessel."

5 Q. Did you comply with the port order?

6 A. Yeah, I didn't use the boat.

7 Q. How were you making a living?

8 A. I was -- I was teaching diving. I was taking my customers  
9 down to, like, Boynton or Boca, or down to the Keys and -- on  
10 dive trips. I was teaching people how to navigate underwater,  
11 how to spearfish, things like that.

12 Q. whose boat would these lessons have been taught on or whose  
13 pools would they have been taught in?

14 A. The pool I used was the North Palm Beach golf club pool,  
15 which is the -- across the street from the marina. And any  
16 instruction that I did, I did it basically off Sandy's boat.

17 Q. And that's Ms. Brammeier --

18 A. Yes.

19 Q. -- who testified last week?

20 A. Yes.

21 Q. Okay. At some point did you apply for forgiveness for  
22 these loans?

23 A. I did.

24 Q. why?

25 A. Because that's what -- that's what they were there for. I

1 was able to apply for forgiveness for them. It was -- I  
2 qualified to be able to do that, so that's what I did.

3 Q. why do you say that you qualified?

4 A. Anybody that got one of the PPP loans was able to apply for  
5 forgiveness. It didn't necessarily mean that you were going to  
6 be approved for it.

7 Q. Okay. I want to show you what's previously been entered  
8 into evidence as Government's 91.

9 Can we all see that? Can you see it Mr. McCabe?

10 A. Yes. Yes.

11 Q. Okay. I want to direct -- I want to direct your attention  
12 to about a quarter of the way down, where it says number --  
13 well, number of employees.

14 A. Yeah. That says one.

15 Q. Okay. Did you use the Southern Comfort for dive trips  
16 after this accident on March 29th of 2020?

17 A. No.

18 Q. what happened to the boat in the ensuing months?

19 A. I moved it to a private slip in the Intracoastal because  
20 the media kept showing up at the marina. And so it was hard  
21 for me to get there to do any -- well, you know, routine  
22 maintenance. You still have to make sure that the bilge pumps  
23 are working and things like that. And so it made it hard for  
24 me to get there to do that without getting bombed by the media,  
25 so I moved it to a private slip.

1 Q. Were you able to afford all these expenses with no divers  
2 bringing income in?

3 A. Once I had the PPP loans, I could -- and I was making -- I  
4 was doing okay teaching and things like that. So somewhat,  
5 yeah, I was getting money from family, using savings.

6 Q. Do you recall Steve Poznak testifying that when he took  
7 possession of the Southern Comfort, it was in not so great  
8 repair?

9 A. Yes.

10 Q. Tell the jury about how that came to be.

11 A. And so when -- after -- after a while -- so the Coast Guard  
12 was investigating my credentials, as well as the boat. And so  
13 even if I had cleared the port order from the -- from the  
14 Coast Guard, I still wouldn't have been able to use the boat  
15 until they got finished with their investigation into my  
16 credentials.

17 And so that's why I never cleared the port order. I was  
18 waiting on them to finish their investigation into the  
19 credentials, then I would have cleared the port order and then  
20 I would have been able to use the boat again. And so after a  
21 while, after the payroll, and it -- there just wasn't enough  
22 money for me to do -- afford all of my personal expenses and  
23 all the boat expenses.

24 Q. And at the same time, what was the marital status of you  
25 and your --

1 A. We were -- we were in -- we had split, we were separated.  
2 And so I no longer had her income paying the personal expenses,  
3 so now I had my -- my own rent, my own car payment, my own  
4 insurance to do.

5 Q. Okay. And at some point you did apply for loan  
6 forgiveness; correct?

7 A. Correct.

8 Q. And do you remember the name of the form that is used to  
9 apply for the loan forgiveness?

10 A. So I got a standard email that was, you know, one that you  
11 get from places, "Dear Customer," things like that. So it  
12 wasn't from any particular person, it was an automated one that  
13 said it was time to apply for loan forgiveness and gave you a  
14 link to the application. So once I got that, I filled it out  
15 and sent it in.

16 Q. Do you remember the number of the form?

17 A. 3805S.

18 Q. I'm now going to show -- republish for the jury and show  
19 the witness what's previously been entered as Government's  
20 Exhibit 98.

21 Do you recognize that document?

22 A. Yeah, that is -- that is the loan forgiveness application,  
23 3805S.

24 Q. Okay. And did you fill this out?

25 A. I did.

1 Q. And is this for the -- is this for the first or the second  
2 draw of the PPP loan app -- forgiveness application?

3 A. I believe this is for the first one.

4 Q. Okay. About a quarter of the way down, toward the right,  
5 it says that -- employees at time of forgiveness.

6 A. Correct.

7 Q. who filled out that number 5?

8 A. I did.

9 Q. why did you put the number 5?

10 A. Because once I got that email, again, I called the same guy  
11 because I had his direct number to his desk and told him the  
12 story of, okay, I had this accident. I'm not able to use the  
13 boat right now. The business isn't closed. Even though a  
14 closed business could still file for forgiveness from the PPP  
15 program, I told him the business wasn't closed, but I'm not  
16 using the boat right now, so all of my crew isn't working for  
17 me.

18 And he asked me -- or he said -- instructed me that if --  
19 when I'm filling out that number, if I were to be able to use  
20 the boat tomorrow, how many of my crew would come back. And so  
21 all of my crew were just waiting on me to tell them that we  
22 were working.

23 Q. And how long have you had that crew with you?

24 A. Three, four years.

25 Q. was it your expectation that, once you were back in

1 business, that you would resume operations?

2 A. Yes.

3 Q. Okay. Did you have more than one business account?

4 A. Yes.

5 Q. why?

6 A. One, I was -- I had to open some accounts as I was looking  
7 for -- for people that would do the loan, there was -- velocity  
8 would do -- they were doing it, but you had to have an account  
9 for X-number of years; but I opened up an account there. I was  
10 actually -- it was difficult for me to -- as I was teaching, if  
11 people paid cash, if I sold some tanks or sold some gear and  
12 people paid me cash, I would have to mail it to the Knoxville  
13 TVA credit union in Tennessee in order to get that deposit.  
14 And so I wanted a local bank so I could deposit cash and I  
15 didn't have to carry it around.

16 Q. Now, you testified that the business was still technically  
17 open but just not serving divers; correct?

18 A. The business was open. I was still -- I was still doing  
19 marketing and stuff, like, online for instruction and different  
20 classes; as you heard some of the testimony, say, where people  
21 would be wreck divers and things like that or -- and so I was  
22 teaching navigation, I was teaching people how to spearfish.  
23 And the business was open, but it wasn't -- I just couldn't use  
24 the boat.

25 Q. Now, as far as your separation from your now ex-wife, on

1 the articles of incorporation, she originally was listed as  
2 a -- I believe two positions.

3 Do you recall those?

4 A. The -- I know one of them was the secretary. And then I'm  
5 not sure of the other one, what she was listed at.

6 Q. When you guys, in your personal life, separated, did  
7 something happen with her interest in the business?

8 A. She wanted her interest in the business to be removed. I  
9 didn't -- that didn't happen. If you look on Sunbiz right now  
10 and look up Florida Scuba Charters, you will see that she is  
11 still listed as a secretary.

12 Q. Was she involved in any of the operations of -- after March  
13 of 2020 of the business?

14 A. No.

15 Q. Okay. Did you -- did you switch banks in that time period?

16 A. Yes, yes.

17 Q. And what was the reason for that, as it relates to your  
18 ex-wife?

19 A. I didn't want her to have access to any of the accounts.

20 Q. Okay.

21 A. And so -- because she was still on the articles and she  
22 still had access to the accounts.

23 And so I didn't want her to have access to the accounts.  
24 So some -- I would switch the banks -- I switched banks to  
25 basically keep her from having access.

1 Q. Okay.

2 A. With her name still on the -- she could have called and  
3 said, "I need to reset my password," and they would  
4 have -- they would sent her a link to reset her password.  
5 So...

6 Q. Do you know what a Captain's Log is?

7 A. Yes.

8 Q. I should have asked you this earlier. But just tell the  
9 jury, what's a Captain's Log?

10 A. So a Captain's Log is a book that I kept at the helm. Just  
11 about every boat on -- as far as a ship or any kind of vessel,  
12 you wouldn't keep one on a weekend fishing boat. But anything  
13 bigger than that, you would have a boat [sic] at the helm that  
14 would have "these are my engines, these are my transmissions,  
15 this is my standard RPMs, this is all of the operating stuff."

16 And then on a daily basis, you would write down, this is  
17 what I do, this is where I go, this is -- this is the repairs I  
18 have made, this is what I'm noticing.

19 Q. What's the point of having a Captain's Logbook?

20 A. So you would look at a Captain's Logbook to notice, Oh,  
21 today I'm -- I'm at 2,000 RPMs, but yesterday I was at 24. Why  
22 did I lose 400 RPMs? Or, you know, that sort of thing.

23 In my case, it was: This is what I checked and this is  
24 what was broken. These are my observations about the boat.  
25 This is where I took divers. This is who was on board. And so

1 just -- the more information you have about your vessel, the  
2 better.

3 Q. And do you keep this Captain's Logbook as part of your  
4 regularly --

5 A. Yes.

6 Q. -- run business?

7 A. Yes.

8 MR. O'SULLIVAN: May I have one moment, Your Honor, to  
9 confer with co-counsel.

10 THE COURT: You may.

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

12 Thank you, Your Honor. I have no further questions.

13 THE COURT: All right. Thank you.

14 Ladies and gentlemen, because we started late this  
15 morning, we are going to take an abbreviated lunch today, and  
16 it will be 40 minutes in length. So we will be resuming at  
17 2:10 in the afternoon. Please be prompt in your arrival.

18 And continue to abide by all of my instructions  
19 regarding no discussion about the case, no investigation, no  
20 interaction with any of the attorneys, parties or witnesses in  
21 the case and, of course, maintain an open mind until all of the  
22 evidence has been presented.

23 Let's rise for the jury.

24 (The jury exited the courtroom at 1:26 p.m.)

25 THE COURT: Thank you.

1           Mr. McCabe, you may return to counsel table. You may  
2 all be seated.

3           Any issues to address before we recess for lunch,  
4 Mr. Keller?

5           **MR. KELLER:** No, Your Honor.

6           **THE COURT:** Mr. O'Sullivan?

7           **MR. O'SULLIVAN:** Nothing for the defense, Your Honor.

8           **THE COURT:** Okay. Then please return to the courtroom  
9 at 2:10. Thank you.

10           (A recess was taken from 1:27 p.m. to 2:13 p.m.)

11           **THE COURT:** All right. Let's call in the jury.

12           Mr. McCabe, please return to the witness stand.

13           Just a couple more minutes as they finish their break.

14           Ms. Alexander, can you check on the jurors, please.

15           **COURTROOM DEPUTY:** Yes, Judge.

16           (The jury entered the courtroom at 2:15 p.m.)

17           **THE COURT:** Please be seated.

18           Mr. McCabe, you remain under oath. Please begin your  
19 cross-examination.

20           **MR. KELLER:** Yes, Your Honor.

21                               **CROSS-EXAMINATION**

22           **BY MR. KELLER:**

23           **Q.** And, Mr. McCabe, you and I have never spoken before, have  
24 we?

25           **A.** No.

1 Q. And you know that I work for the United States, that I'm  
2 the prosecutor in this case?

3 A. Yes.

4 Q. Excuse me. And you know that I will be asking you what are  
5 called leading questions during this cross-examination, where  
6 it's usually a yes or a no?

7 A. Yes.

8 Q. And if you don't understand a question, you can just ask  
9 me, you know, to rephrase it, to explain it better.

10 A. Yes.

11 Q. And I know y'all were going fast during the direct. If you  
12 need to slow down, if you need a second, then feel free.

13 And I'm going to start by just asking, before Mollie's  
14 death, you operated a business called Florida Scuba Charters;  
15 is that right?

16 A. Yes.

17 Q. And I want to start by asking you some questions about  
18 Florida Scuba Charters, then we will move on to, you know,  
19 March 28th, March 29th, that sort of thing. But I want to  
20 start with Florida Scuba Charters.

21 You started operating Florida Scuba Charters in 2014?

22 A. I believe so.

23 Q. And you continually ran it through March of 2020.

24 A. Yes.

25 Q. And for the business, you became a licensed merchant

1 mariner.

2 A. Yes.

3 THE COURT: Are you asking questions, Counsel?

4 MR. KELLER: Yes, Your Honor.

5 THE COURT: I'm not hearing a question. So just make  
6 sure what you are asking are questions, not statements.

7 MR. KELLER: Yes, Your Honor.

8 MR. KELLER:

9 Q. And when you became a licensed merchant mariner, isn't it  
10 correct that you took an oath?

11 A. Yes.

12 Q. And publishing for the witness and for the jury what's been  
13 marked and admitted as Government's Exhibit 110, Mr. McCabe,  
14 can you see that in front of you?

15 A. Yes.

16 Q. And is it -- isn't it right that this is the oath that you  
17 swore?

18 A. Yes.

19 Q. And you swore that oath to follow the laws of the  
20 United States; right?

21 A. Correct.

22 Q. And you did that after you took classes on the Coast Guard  
23 regulations and the laws; is that right?

24 A. Correct.

25 MR. KELLER: And moving to and publishing Government's

1 Exhibit -- what's been admitted as Government's Exhibit 58.

2 BY MR. KELLER:

3 Q. And, Mr. McCabe, this is your merchant mariner license;  
4 right?

5 A. Yes.

6 Q. And you renewed this license in 2019; is that correct?

7 A. Yes. You have to renew it every five years.

8 Q. And as a merchant mariner, you knew, isn't it right, that  
9 the rules were different for captains who took out paying  
10 passengers as compared to recreational boats?

11 A. It depends on how many people are on your boat and what the  
12 purpose of using the boat for that particular time is.

13 Q. So I will just ask the question again. The rules are  
14 different, isn't it right, between paying passenger commercial  
15 boats on the one hand and then recreational boats on the other?

16 A. It depends on how many people are on board and what the  
17 purpose of using the vessel for that particular day is.

18 Q. And you were sitting over at counsel table last week when  
19 Sean Goodman, when Chris Mosquera testified, that just having  
20 one paying passenger makes you a passenger vessel; is that  
21 right?

22 A. That's what they said.

23 Q. And your testimony today is that they were incorrect?

24 A. My testimony today is that the statement that the U.S.  
25 Coast Guard regulations, on their web page, states that the

1 six-pack rules were -- or the six-pack regulations were  
2 designed for recreational vessels that typically are charter  
3 scuba diving vessels, charter fishing vessels, or charter tour  
4 cruises.

5 Q. Yes, sir. And I'm not trying to be rude by re-asking a  
6 question, but it's just that I need you to answer the question  
7 I asked.

8 So when it comes to Mr. Goodman and Mr. Mosquera testifying  
9 last week, where they said just having one passenger on that  
10 boat makes it a passenger vessel and things were different, is  
11 your testimony today that they were wrong about that?

12 A. My testimony is that -- exactly what I told you. They said  
13 one paying passenger -- one paying customer on -- one person  
14 that gives you consideration creates a passenger for hire.

15 Q. And is your testimony that they were wrong about that, that  
16 it makes you into a passenger boat as soon as you've got one?

17 A. As soon as you have one person on board, it makes you a  
18 passenger vessel. You're still an uninspected passenger  
19 vessel, and those regulation [sic] on the Coast Guard web page  
20 states what I just said before.

21 Q. Yes, sir. So were Mr. Mosquera and Mr. Goodman right or  
22 wrong?

23 MR. O'SULLIVAN: Objection, Your Honor. Asked and  
24 answered.

25 THE COURT: Overruled. Answer the question.

1           **THE WITNESS:** They didn't give you the full story of  
2 the question. They gave you bits and pieces.

3 **BY MR. KELLER:**

4 **Q.** Okay. So your testimony is that they were just giving  
5 half-truths?

6 **A.** They didn't talk about the number of passengers aboard.  
7 They didn't talk about whether or not you were an inspected  
8 vessel, an uninspected vessel, how many people that were  
9 onboard during that time, or what the regulations were between  
10 the two.

11 **Q.** Yes, sir. I'm going to go ahead and move us on from this  
12 issue.

13           So I'm going to bring us to Florida Scuba Charters. And  
14 that was a scuba charter business; is that right?

15 **A.** We did charters. We did teaching. We did trips. We did a  
16 lot more than just take out charters.

17 **Q.** But you were a scuba charter business; is that right?

18 **A.** I have a business, yes.

19 **Q.** And so by running that business, Florida Scuba Charters,  
20 isn't it right that you would take scuba passengers out for  
21 pay?

22 **A.** Yes.

23 **Q.** And you knew, as a licensed merchant mariner, that taking  
24 passengers out for pay made you a passenger vessel; right?

25 **A.** Again, it depends on the -- on the -- what I'm doing that

1 day, but most of the time, yes.

2 Q. And you ran Florida Scuba also with a vessel called the Sea  
3 Pup for a time; is that right?

4 A. Yes.

5 Q. And then after that, you ran Florida Scuba with a vessel  
6 called the Sea Scout for a time?

7 A. Correct.

8 Q. And isn't it right that these were both typical dive boats?

9 A. They were both the same boat, yes.

10 Q. And on both of these boats, you would have even more than  
11 six passengers at a time on them; correct?

12 A. Yes. They were both inspected for 14 passengers.

13 Q. And they were -- when you say "inspected," you mean that  
14 they had to be Coast Guard investigated, checked, all that?

15 A. They had -- the rules for a six-pack versus an inspected  
16 vessel are different, so, yes, they were inspected vessels.

17 Q. And through that process, you learned about getting  
18 inspected by the Coast Guard; is that right?

19 A. For boats that took more than six people, yes.

20 Q. And when you had a Coast Guard inspected vessel, you would  
21 give the safety warning that you talked about before; is that  
22 right?

23 A. The exact same safety briefing, except the first sentence  
24 said, "This is a Coast Guard inspected vessel."

25 Q. Okay. And up until March of 2020, Kristy Kelly, your now

1 ex-wife, ran the business with you; is that right?

2 A. She stopped running the business in '17.

3 Q. And -- but you testified that she continued to keep the  
4 finances, watch the books; right?

5 A. For -- somewhat. For -- depends on what she had going on  
6 at work and how she felt as far as her injury.

7 Q. And would you agree with me that minding the books,  
8 watching the finances is part of running a business?

9 A. It is.

10 Q. And showing you Government's Exhibit 114, publishing what's  
11 been admitted into evidence -- make that 104, rather.

12 Mr. McCabe, this is the document that y'all were talking about  
13 on direct, the articles of incorporation; is that right?

14 A. That is the articles of incorporation for Florida Scuba  
15 Charters.

16 Q. And at the bottom of this, it says -- and this is what I  
17 think you were looking for on direct -- that Ms. Kelly was also  
18 the registered agent of the company; right?

19 A. Correct.

20 Q. And she testified that as the registered agent, she would  
21 be the one who accepted service for the company; right?

22 A. Yes.

23 Q. And then on the next page is where it says that she was the  
24 secretary; is that correct?

25 A. Yes.

1 Q. And publishing to you what's been marked and admitted as  
2 Government's Exhibit 100, this is the Knoxville TVA bank  
3 account signature page for Florida Scuba Charters; is that  
4 correct?

5 A. That is to get a new bank card account, to take her off of  
6 the bank card so she didn't have access to Florida Scuba  
7 Charters' bank account.

8 Q. And, sir, I think you may be thinking about a different  
9 record. Is this the one that was -- where the account was  
10 opened?

11 A. I'm not sure. I believe it is a new bank card account.  
12 It's not an opening of an account. We had an account with TVA  
13 since 2014.

14 Q. And who are the listed authorized signers on this account?

15 A. Myself and my ex-wife.

16 Q. And Ms. Kelly knew Florida Scuba's payroll information in  
17 2019; right?

18 A. No.

19 Q. So Ms. --

20 A. It depends on what time in 2019. Are you -- do you mean  
21 toward the end of the year, or do you mean toward the beginning  
22 of the year?

23 Q. Is your testimony that she had different knowledge during  
24 different times of 2019?

25 A. Toward the end of '19, we separated and we had to split

1 everything up; so then she would not have had access to what  
2 the payroll was.

3 Q. And, sir, do you see that this record is from November 21st  
4 of 2019? Do you see that at the top?

5 A. Uh-huh.

6 Q. And do you see that this is a document where you're opening  
7 a bank account, a joint account, for Florida Scuba Charters?

8 A. So the way TVA does things, if you change anything on  
9 the -- on the bank account, then they don't just change it,  
10 they give you a new number, a new -- a new everything. So this  
11 was not opening a new account. Florida Scuba Charters had an  
12 account since 2014. This was just adjusting the account to  
13 a -- a different type of account, a different number,  
14 something -- I don't recall what -- what this form was for, but  
15 it is not for a brand-new account. I have had an account  
16 since -- with TVA credit union for 30 years. And the business  
17 opened an account in '14.

18 Q. Yes, sir. And did you open a personal account in '14?

19 A. I have had -- I have had a personal account -- as I just  
20 testified, I have had a personal account with TVA for 30 years.

21 Q. And were you -- and you were sitting there last week when  
22 Ms. Kelly testified that this is opening the Florida Scuba  
23 Charter business account; right?

24 A. I -- that's what she said. But --

25 Q. And is it your testimony that she was lying about that?

1 A. I -- I'm -- my testimony is I'm not sure what -- what the  
2 nature of this -- of this form is, why it was, but this was not  
3 a new account. We had a -- we already had a bank account at  
4 TVA.

5 Q. So is it your testimony that Ms. Kelly was mistaken or  
6 confused about the fact that -- when she testified that this is  
7 the first business account y'all had owned?

8 A. That is totally incorrect, yes. Because we had business  
9 accounts at Sun -- at SunTrust, at Bank of America, at other  
10 banks as well, long before in -- back in 2008, 2006, 2000 -- so  
11 no, it's not the first business account that her and I have  
12 opened.

13 Q. And you said that you had accounts for Florida Scuba in  
14 2008 and 2006?

15 A. No, I did not say that. I said that we had business  
16 accounts in those years.

17 Q. And moving past that. So Ms. Kelly, she knew whether  
18 Florida Scuba had employees that year; right? 2019?

19 MR. O'SULLIVAN: Objection. Calls for speculation.

20 THE COURT: Sustained. But you may rephrase the  
21 question.

22 MR. KELLER: Yes, Your Honor.

23 MR. KELLER:

24 Q. Ms. Kelly testified that she -- last week that she knew  
25 whether Florida Scuba had employees in 2019; right?

1 A. I believe so.

2 Q. And is it your testimony that she was incorrect about  
3 having that knowledge?

4 A. I -- I believe she did know, but I -- there is no way for  
5 me to know if she did or if she didn't.

6 Q. Okay. So we are going to come back to that. So for now,  
7 though, I want to keep us, kind of, moving along the timeline a  
8 little bit.

9 So in March of 2020, you bought a vessel called the  
10 Persistence; right?

11 A. I believe that was the -- the original name, yes.

12 Q. And you renamed it the Southern Comfort?

13 A. That was --

14 Q. Correct?

15 A. -- the name of my vessel, yes.

16 Q. And you testified on direct about buying the Southern  
17 Comfort to operate a concierge scuba diving business; is that  
18 right?

19 A. To -- to operate a more luxury-type of a diving charter,  
20 yes.

21 Q. And you talked to people about doing this, about buying the  
22 boat for this purpose in 2019; correct?

23 A. Yes.

24 Q. And you bought the Southern Comfort to take out paying  
25 passengers; is that right?

1 A. Not solely, but, yes.

2 Q. And you bought the boat to continue operating your Florida  
3 Scuba Charters business; is that right?

4 A. Yes.

5 Q. And when you bought the Southern Comfort, that was the only  
6 boat that you owned; correct?

7 A. Yes.

8 Q. You sold the Sea Scout, and you used that money to help buy  
9 the Southern Comfort; is that right?

10 A. Among other things, but, yes.

11 Q. And you had your friend, Steve Poznak, cosign on the  
12 purchase; is that correct?

13 A. I believe he did, yes.

14 MR. KELLER: And publishing to the witness and for the  
15 jury what's been admitted as Government's Exhibit 74.

16 BY MR. KELLER:

17 Q. This is the mortgage that Mr. Poznak and you signed on  
18 March 5th of 2020; is that right?

19 A. It looks right.

20 Q. And using the Southern Comfort, you were going to have to  
21 make enough money to pay your note on that boat; is that right?

22 A. Among other expenses, but, yes.

23 Q. And when you bought the Southern Comfort, you completed  
24 paperwork for the boat with the Coast Guard; right?

25 A. Yes, I documented the boat.

1 Q. And you said on direct that you filled out that Coast Guard  
2 Form 1258 that is Government's Exhibit 77; right?

3 A. I'm not sure what the -- what the number is.

4 Q. Sure. So at this time the government will publish what's  
5 been admitted as Government's Exhibit 77. So, Mr. McCabe, you  
6 recognize this document; right?

7 A. Yes.

8 Q. And this is your application for the -- the certificate of  
9 documentation, like you talked about on direct; correct?

10 A. Correct.

11 Q. And on page 3, this is your signature; right?

12 A. Yes.

13 Q. And you saw right above it where it says potential  
14 penalties for a false statement include that you could get in  
15 trouble for lying on it; correct?

16 A. Yes.

17 Q. And moving back to page 1, looking at part J, you only  
18 checked "recreational"?

19 A. Correct.

20 Q. And you know that you could have made additional  
21 endorsements?

22 A. No.

23 Q. And on part K, you selected "recreational" again.

24 A. Correct.

25 Q. You did not check where it says "passenger six or fewer" on

1 the form?

2 A. It didn't tell me that I could check more than one.

3 Q. But you knew at the time that you filled out this form that  
4 you were going to have paying passengers on that boat?

5 A. But I also went back to the definition that -- the six-pack  
6 regulations of the U.S. Coast Guard that state that a  
7 six-pack -- the rules and regulations for a six-pack, created  
8 in 1993, were recreation for vessels used for chartering scuba  
9 diving, chartering fishing, and chartering tour cruises.

10 So based on that definition from the Coast Guard,  
11 "recreational" is what I should have checked.

12 Q. And you were sitting at counsel table last week when  
13 Ms. Walker testified about this form and about the  
14 documentation rules for this form; correct?

15 A. I was at the table, yes.

16 Q. And she testified that she has been working for the  
17 Coast Guard for some 30, 20 years doing this documentation  
18 work; correct?

19 A. I don't know. I don't remember how many years she said.

20 Q. And she said and she testified that anytime you have paying  
21 passengers on a boat, you have to be coast-wide documented;  
22 isn't this right?

23 A. I don't know if she said that or not.

24 Q. What about Mr. Mosquera and Mr. Goodman? Is your testimony  
25 today that you don't remember whether they said that you have

1 to be documented, you have to register in order to have paying  
2 passengers?

3 A. Again, I'm not sure. They didn't give you the whole story.  
4 They were giving you regulations for an inspected vessel  
5 instead of an uninspected vessel. And they weren't using the  
6 definition from the U.S. Coast Guard's rules of a six-pack that  
7 is on the U.S. Coast Guard's web page.

8 Q. And you don't deny that, when you filled this out, though,  
9 that you intended to bring paying passengers on this boat?

10 A. The -- among other things.

11 Q. And you don't deny that before you filled out this form,  
12 you had already bought things like dive benches, in order to  
13 refit this boat for your scuba charter business?

14 A. That -- yes, I don't deny that.

15 Q. And --

16 A. That's -- I could also dive off of dive benches personally.  
17 I can also take friends. I -- there is lots of things that I  
18 can do with a dive bench.

19 Q. Yes, sir. And just weeks after you filled out this form,  
20 you were already taking out paying passengers; correct?

21 A. Yes.

22 Q. And that includes paying passengers you took out on  
23 March 28th of 2020; correct?

24 A. Correct.

25 Q. And that includes paying passengers you took out on

1 March 29th of 2020; correct?

2 A. Correct.

3 Q. And on March 29th, when you were setting up the trip where  
4 Mollie died, David Anderson sent you a text message asking  
5 whether y'all were allowed to go out that day; isn't that  
6 right?

7 A. That's correct.

8 Q. And publishing to the witness Government's Exhibit 15, and  
9 for the jury what's been admitted as Government's Exhibit 15,  
10 Mr. Anderson wrote that he, quote, "just saw the ticker at the  
11 bottom of the screen on ABC that said all Palm Beach County  
12 ramps and marinas are closed." And you responded, quote,  
13 "Yeah, to recreational boating"; isn't that right?

14 A. To recreational individual boating.

15 Q. And by that -- isn't it right that you meant that your boat  
16 is not recreational, so it doesn't have to abide that rule?

17 A. That's not what I meant by that.

18 Q. Okay. You meant something else than what you said right  
19 there?

20 A. Than what I said on that text message?

21 Q. Because here you did say that the -- Southern Comfort was  
22 not a recreational boat, and that's why you were able to go  
23 out; isn't that right?

24 A. That's not why I was -- why I was able to go out. I was  
25 able to go out because I had a saltwater fishing license. So

1 had we caught enough -- shot enough fish and caught enough  
2 lobsters, we would have had the opportunity to sell them to  
3 local restaurants, which allowed us to go out.

4 But if you remember Sandy's testimony, she also said that  
5 all of the other dive boats were going out because we were  
6 able. Because of that -- because of that license where I -- I  
7 could have sold fish to local restaurants, therefore, we were  
8 considered essential and we could go out.

9 So to recreational boating, what that means is, you taking  
10 your jet ski out to ride around in the Intracoastal, yeah, they  
11 were shut down for that, but it did not -- that statement  
12 didn't re- -- it didn't reply to -- didn't mean recreational  
13 versus commercial, like you're trying to switch the words up.

14 Q. Yes, sir, I understand. And I will move us on because I'm  
15 going to bring us past March 28th and 29th, and I want to stay  
16 on the business.

17 And I want to start by asking, so after March 29th, after  
18 this text message where you said that you were not a  
19 recreational boat, isn't it right that you exchanged text  
20 messages with Sean Goodman from the Coast Guard?

21 A. I don't recall. I'm -- what they -- I'm sure I did after  
22 the accident, but I don't recall what they were.

23 Q. And you heard Mr. Goodman testify last week about those  
24 text messages?

25 A. I believe so.

1 Q. And publishing to the witness and to the jury what's been  
2 admitted as Government's Exhibit 82. Mr. McCabe, this is your  
3 text message with Mr. Goodman; right?

4 A. I don't know whose -- I don't know who that is. It doesn't  
5 have a phone -- it doesn't have a phone number. It doesn't  
6 have a name. It just says somebody had saved my number in  
7 their account -- or on their phone. And it doesn't say who  
8 it's from.

9 Q. Yes, sir, but you were here last week when Mr. Goodman  
10 testified about this text message, right; correct?

11 A. I was here.

12 Q. And you remember -- and as we're looking at on page 2 --  
13 when he said this was his and that that was his email,  
14 seantgoodman@uscg.mil; right?

15 A. That is what he said.

16 Q. And the date of this text thread is at the end of March, is  
17 that right, of 2020?

18 A. That one particular date says March 31st, but there is no  
19 way to know if all of these threads are connected.

20 Q. Okay. So let's focus on this March 31st one. You would  
21 agree with me that this text message was sent two days after  
22 Mollie was killed; right?

23 A. Correct.

24 Q. And directing your attention to the bottom of this text  
25 message, isn't it right that on March 31st of 2020, you said

1 the business was shut down and that you had no income?

2 A. At that -- at that particular time, yeah, it wasn't -- I  
3 wasn't focused on teaching, I wasn't focused on doing that, but  
4 that doesn't mean that the business was shut down. The  
5 business was not closed.

6 Q. But my question is just, isn't that what you said that day?  
7 You said, quote, "the business being shut down and no income";  
8 right?

9 A. That's correct.

10 Q. And three days after this text message is when you  
11 completed the first PPP loan application that you had Josh  
12 Steib email; is that right?

13 A. I'm not sure of the date, but I thought it was May 11th.

14 Q. Sure. So why don't I bring us to and publish what's been  
15 admitted as Government's Exhibit 81. And, Mr. McCabe, do you  
16 recognize this document from last week?

17 A. It's an email from Josh to me on April 3rd.

18 Q. April 3rd of 2020?

19 A. Yes.

20 Q. And I just want to note -- so you sent this email -- or  
21 this email was sent to you at 2:52 p.m.; is that correct?

22 A. That's what the timestamp says.

23 MR. O'SULLIVAN: Your Honor, I'm going to object. This  
24 is outside the scope of direct.

25 THE COURT: Overruled.

1 BY MR. KELLER:

2 Q. And, just to be clear, what this document is -- and I'm  
3 going to get us to the PPP application in just a second. But  
4 this is the marine casualty report that you submitted for  
5 Mollie's death; correct?

6 A. That looks like the form, yes.

7 Q. So 2:52 p.m. on April 3rd.

8 Now, turning to Government's Exhibit 79, isn't it right  
9 that this email was sent from you to Mr. Steib the minute after  
10 you submitted your -- or that you received your casualty report  
11 for Mollie?

12 A. The -- the timestamp on that email is 2 -- yes. One  
13 minute.

14 Q. So the minute after you -- you received the hand-filled-out  
15 casualty report for Mollie's death, for killing Mollie, you  
16 were forwarding Mr. Steib a PPP loan application for him to  
17 print for you; is that right?

18 A. Yeah, I'm -- I'm able to work on multiple things at the  
19 same time.

20 Q. And Mr. Steib sent this scan to you, and Mr. Steib sent  
21 you, then, the hand-completed form, isn't that right, after you  
22 filled it out, after this?

23 A. If you are talking about the form that you just --

24 Q. For the PPP.

25 A. I -- I would -- I believe so.

1 Q. And publishing Government's Exhibit 80. This is the email  
2 that was sent where you are having your PPP loan application  
3 sent back to you; right?

4 A. I -- that email says nothing.

5 Q. And I'll -- I'll show you the second page so that you can  
6 see. So is that right?

7 A. I don't know if those two documents are connected.

8 Q. Okay. So let me ask you this. Isn't it right that this  
9 email was sent at 3:07 p.m.?

10 A. That was sent at 3:07.

11 Q. So 15 minutes after you sent him the PPP loan application  
12 to complete?

13 A. I would think so.

14 Q. And turning to page 2 of this form that you completed, you  
15 initialled this form, is that right, at the bottom?

16 A. Yes.

17 Q. And moving to page 3 of Government's Exhibit 80, isn't it  
18 right that you emailed next to saying -- or that you  
19 initialled, rather, next to saying "economic uncertainty makes  
20 this loan request necessary to support the ongoing operations  
21 of the applicant"?

22 A. Yes.

23 Q. And that was two days after you said that the business was  
24 shut down; isn't that right?

25 A. That's -- that's correct.

1 Q. And you initialled next to where it says, "The funds will  
2 be used to retain workers and maintain payroll, to make  
3 mortgage payments, lease payments," et cetera, two  
4 days -- three days, rather, after you just texted Mr. Goodman  
5 that your business was shut down; is that right?

6 A. Yes. But, again, like I said, the business wasn't  
7 completely shut down. I just hadn't been marketing for -- for  
8 instruction or trips or anything like that. So it was going to  
9 take a little bit of time to find students.

10 Q. Yes, sir. But what I'm asking you is just that, this day  
11 that's what you swore; right?

12 A. Yeah, that the funds would be used to make the boat  
13 payment, the lease payments, the utilities.

14 Q. And you signed this document; right?

15 A. Yes.

16 Q. You dated the document April 3rd?

17 A. Yes.

18 Q. And this is right underneath where it -- again, like with  
19 the Coast Guard form says, that you can be punished for lying  
20 on this form?

21 A. Yes.

22 Q. And turning back to page 2 of Government's Exhibit 80, you  
23 listed \$7,300 per month as the payroll for Florida Scuba  
24 Charters; correct?

25 A. Correct.

1 Q. And the payroll amount you listed in this application IS  
2 what is set, how much money you can get; correct?

3 A. Yeah, it was 2 1/2 times your payroll.

4 Q. And here it let's you get \$18,250; correct?

5 A. That's correct.

6 Q. And you got that number by doing the formula that's on the  
7 page; right?

8 A. Correct.

9 Q. Now, that's on April 3rd. But on April 9th, so less than a  
10 week later, you received a Captain of the Port order; is that  
11 right?

12 A. I believe it was April 9th.

13 Q. And the Captain of the Port order said you weren't allowed  
14 to operate the vessel; is that right?

15 A. That's correct.

16 Q. And you didn't operate the vessel, you testified on direct,  
17 after this March 9th -- or April 9th, rather, order; correct?

18 A. I did not.

19 Q. And, in fact, by November 2020, the Southern Comfort had  
20 water in the engine room; is that right?

21 A. At November, I did not -- I don't recall.

22 Q. Now, you did not file this handwritten PPP loan  
23 application; is that right?

24 A. I don't believe so.

25 Q. But you did file a PPP loan application in May of 2020; is

1 that correct?

2 A. Is that the first one? Is that the first  
3 application -- the application for the first loan? The one  
4 that's not included in the indictment?

5 Q. Sir, we will talk about that in a few minutes, but what I'm  
6 asking right now is, was your first PPP loan application that  
7 you submitted in May of 2020?

8 A. I believe so.

9 Q. And so I'm going to move to Government's Exhibit 85.  
10 Mr. McCabe, this is the PPP loan application that you filed in  
11 May of 2020; is that right?

12 A. It looks like it, yes.

13 Q. And in this application, you stated that your payroll was  
14 \$7,500 per month; correct?

15 A. Correct.

16 Q. That \$7,500 per month is \$200 per month more than the  
17 handwritten form that you completed just the month before; is  
18 that right?

19 A. Correct.

20 Q. And you knew, when you completed this form, that the higher  
21 the payroll amount, the higher the amount of money that you can  
22 get for this loan; right?

23 A. The formula would state that, yes.

24 Q. And, in fact, you calculated the loan amount yourself;  
25 right?

1 A. I did.

2 Q. And this time you were able to get \$18,750; is that right?

3 A. That's correct.

4 Q. And that's \$500 more of PPP loans than you would have  
5 gotten with your April 3rd one; right?

6 A. My utility costs went up. So that means my payroll had to  
7 go up.

8 Q. Your utility cost goes up, so, therefore, your payroll  
9 figure goes up? That's your testimony?

10 A. I'm a business owner. I'm able to pay myself.

11 Q. And moving to page 2 of Government's Exhibit 85, you  
12 initialled next to several things you were affirming, again the  
13 same stuff from the last application; correct?

14 A. That's correct.

15 Q. And in the first item, you affirmed that you had employees  
16 you paid salaries; is that right?

17 A. I'm sorry?

18 Q. In the first item here, that you initialled next to, you  
19 said that you had employees for whom you paid salary or paid  
20 independent contractors; is that right?

21 A. That's correct.

22 Q. You affirmed in the second initial that the PPP loan,  
23 again, was necessary to support ongoing operations; is that  
24 right?

25 A. That's correct.

1 Q. But you heard Ms. Kelly testify last week that Southern --  
2 that the -- that Florida Scuba Charters had no payroll; isn't  
3 that right?

4 A. That's what she said.

5 Q. And is it your testimony today that she was lying about  
6 that?

7 A. No. It's her testimony that she didn't pay herself.

8 Q. No, sir. Her testimony was that she -- that Florida Scuba  
9 Charters had no payroll; right?

10 A. Because she didn't pay herself.

11 Q. And --

12 A. She didn't pay us. She commingled funds. I don't  
13 commingle funds, it's illegal.

14 Q. So your testimony is that your wife was doing illegal stuff  
15 with the money but you were not?

16 A. She didn't pay us a salary. I paid myself a salary. And  
17 so I'm able to -- I'm a business owner. I can pay myself a  
18 salary.

19 Q. And you also affirmed in this loan application that you had  
20 spent the PPP funds on -- that you would spend them on approved  
21 expenses; right?

22 A. I spent them on a boat payment, slip rent, utilities,  
23 insurance, on approved expenses, yes.

24 Q. Yes, sir. But, again, I just need you to answer the  
25 question I ask. So I'm just asking about the form. So it says

1 that you -- you have to initial that you were going to do that;  
2 right?

3 A. Yes. And that's what I did.

4 Q. Yes, sir. But what -- I'm just asking about what it says  
5 on the form, if I could just have you just answer that  
6 question, I would appreciate that.

7 So -- and also on this form, like the last one, you  
8 initialled next to a paragraph about the penalties you would  
9 face for a false statement; is that right?

10 A. That's correct.

11 Q. And looking at the bottom, you signed this document on  
12 May 11th of 2020?

13 A. That's correct.

14 Q. And publishing to you Government's Exhibit 121 -- what's  
15 been admitted as Government's 121, Mr. McCabe, you submitted  
16 this Schedule C tax document in support of your application for  
17 this first PPP loan; right?

18 A. I don't recall.

19 Q. You were sitting there last week when the witness from this  
20 bank testified that this document was submitted with the loan  
21 application; right?

22 A. I was at the table.

23 Q. And you heard that person testify to that?

24 A. I do, but I'm not sure if this is the same document or not.

25 Q. So are you saying that that person was mistaken?

1 A. I -- I'm not saying anything. I'm saying that I don't have  
2 any way to tell if this is the same document that was submitted  
3 or if it's not.

4 Q. And -- but you admit that this document was never submitted  
5 to the IRS?

6 A. The -- again, Kristy did the -- the taxes. And if this  
7 wasn't included in my business tax return, then I -- I don't  
8 know. I haven't seen my 2019 business tax returns in five  
9 years. So I don't know if it was or if it wasn't.

10 Q. And isn't it right that you were sitting at counsel table  
11 when Ms. Kelly testified that she had never seen this document  
12 in her life?

13 A. I -- I was -- I was at the table. I don't recall what she  
14 said.

15 Q. Is it your testimony that she would be lying about that?

16 A. I don't recall what she said.

17 Q. But you're saying that you did not submit this document?

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

19 THE COURT: Sustained. Next question.

20 BY MR. KELLER:

21 Q. And directing your attention to line 31 of Government's  
22 Exhibit 121. Mr. McCabe, on this document you have stated that  
23 Florida Scuba had \$90,000 of net profit or loss; is that  
24 correct?

25 A. That's what line 31 says.

1 Q. But you, Florida Scuba, did not have \$90,000 in profit in  
2 2019; is that right?

3 A. I -- it's been five years since I saw this or had the books  
4 open from -- from 2019. So I don't -- I wouldn't recall.

5 Q. So you just don't remember whether Florida Scuba Charters  
6 made \$90,000 in profit in 2019?

7 A. I -- it's very possible that we did, but I have no -- I  
8 don't recall. It's been five years.

9 Q. And you were sitting at counsel table when Ms. Kelly  
10 testified that there is no way that Florida Scuba made that  
11 amount of money; right?

12 A. That's -- I'm not sure if that's what she said, but I was  
13 at the table, yes.

14 Q. Were you sitting there when she said that she would  
15 remember paying taxes on this amount?

16 A. The -- I was at the table. I don't remember if that's what  
17 she said.

18 Q. But your testimony is that she would be lying about that if  
19 that's what she said?

20 A. I -- I'm saying I don't recall what she said.

21 Q. And shifting gears to Government's Exhibit 100G.  
22 Mr. McCabe, y'all looked at this on direct; right?

23 A. That is the May bank statement from Florida Scuba Charters,  
24 yes.

25 Q. And this is the month when you got the first PPP loan

1 deposit; correct?

2 A. That's correct.

3 Q. And turning to page 2. Y'all said on direct that this  
4 18,750 is the deposit for that PPP loan; right?

5 A. That's correct.

6 Q. And immediately after that, you did eight transfers of  
7 \$1,875; is that right?

8 A. Correct.

9 Q. You made all those transfers the next day?

10 A. Correct.

11 Q. And you labeled them as payroll for given weeks; right?

12 A. Because that's what they were.

13 Q. But isn't it right that you had never transferred money you  
14 listed as payroll in this business account ever before?

15 A. That we had never -- I'm sorry?

16 Q. That this is the first time in this bank account that you  
17 ever did transfers like this, that you listed as payroll?

18 A. That's -- we probably didn't do transfers. We -- we took  
19 cash if -- we took cash from our trips and used that as our  
20 payroll. There is a hundred ways we could have paid ourselves,  
21 but...

22 Q. And, again, sir, I'm just -- if you could just answer my  
23 question. So my question is: Isn't it right that you have  
24 never done a transfer where you listed on the memo line  
25 "payroll" like this before that first PPP loan?

1 A. To say the word "never" is an absolute phrase. I don't  
2 know.

3 Q. Now, after you transferred these funds, isn't it right that  
4 you began writing checks to yourself in cash?

5 A. I did write checks to myself.

6 Q. And publishing Government's Exhibit 117. You wrote  
7 yourself a \$900 check; is that right?

8 A. Okay. Yes.

9 Q. And you transferred this money to your personal bank  
10 account; is that right?

11 A. Yes.

12 Q. And going to Government's Exhibit 115, and looking at the  
13 second page, isn't it right that when you transferred this  
14 money to yourself, to your personal account, you only had \$46  
15 in that account?

16 A. That's not the only account that I had.

17 Q. But, again, my question is, for this account, isn't it  
18 right that you only had \$46?

19 A. That's correct.

20 Q. And publishing Government's Exhibit 118. Isn't it right  
21 that, then, on July 7th of 2020, you wrote yourself a check for  
22 \$4,000?

23 A. That's correct.

24 Q. And turning to Government's Exhibit 119. On September 4th  
25 of 2020, you wrote yourself a check for \$2,700; is that right?

1 A. That's correct.

2 Q. And then, finally, on October 7th -- October 6th of 2020,  
3 you wrote yourself another check for \$700; is that right?

4 A. That's correct.

5 Q. And that's \$8,300 in checks that you wrote to yourself;  
6 right?

7 A. I don't know the math. I didn't add it up. But if your  
8 math is correct, then that would be right.

9 Q. And isn't it right that these are the first checks you had  
10 written to yourself, in cash like this, from this business  
11 account?

12 A. Again, there -- you're looking at a three- or four-month  
13 period, when the account was open from '14 to -- to 2020. So I  
14 can't say if that's the first time ever.

15 Q. But that's not what I'm asking, sir. I'm just asking, in  
16 this account, which Ms. Kelly had testified is the only bank  
17 account y'all had opened, Florida Scuba Charters, were these  
18 the first checks to cash you had written to yourself?

19 A. Again, I don't -- I don't recall if they're the first or if  
20 they're not the first.

21 Q. Yes, sir. So after this first PPP loan, so I have brought  
22 us to October, you transferred the Southern Comfort to Steve  
23 Poznak in November of 2020; is that right?

24 A. I believe that's when he did that, yes.

25 Q. And Mr. Poznak did not pay you anything for this boat; is

1 that right?

2 A. That's correct.

3 Q. And, in fact, he testified that he had to take it because  
4 he owed money on the boat because you weren't paying for it; is  
5 that right?

6 A. That's what he said but that's not what I -- I -- I don't  
7 know. I never got any kind of documentation from any of the  
8 lenders, so I'm not -- I'm not sure what he received.

9 Q. Well, sir, you would know if you were paying for the boat;  
10 right?

11 A. I was. So -- but I don't know what he received from the  
12 lender. It was never presented or it was never -- he never  
13 told me about it, he never showed me any documentation, and you  
14 didn't have it here.

15 Q. So, sir, are you testifying that Mr. Poznak didn't lose  
16 \$100,000 on this boat like he testified?

17 A. I -- I would have no idea about that.

18 Q. Now, after you transferred the Southern Comfort, after you  
19 lost that boat, you no longer had a boat to do scuba charters  
20 with; right?

21 A. No, I had to go back to my original career, which was  
22 teaching golf.

23 Q. But you did file for another PPP loan for this Florida  
24 Scuba Charters business in February of 2021; right?

25 A. Yeah, because I was teaching golf and I was still teaching

1 diving and different courses and taking people on trips.

2 Q. Sir, again, when I'm asking you a question, if you would  
3 just answer my question. I understand that you want to talk  
4 about other things, but you're going to have the opportunity on  
5 the redirect to do that.

6 So when I ask you, you filed for another PPP loan in  
7 February 2021 for Florida Scuba Charters, is that right?

8 A. That's correct.

9 Q. Okay. Thank you.

10 And so now I will turn to Government's Exhibit 91. And I'm  
11 going to direct your attention, Mr. McCabe, to page 3. This is  
12 the second PPP loan application that you submitted; is that  
13 right?

14 A. That's correct.

15 Q. And in the second PPP loan, you listed your monthly payroll  
16 as \$8,167 per month; is that right?

17 A. That's correct.

18 Q. And you testified on direct that this is a higher payroll  
19 than you'd listed in the year before; is that right?

20 A. That's correct.

21 Q. The year before you had listed \$7,500 as your monthly  
22 payroll, and now it's bumped up more than \$600; is that right?

23 A. That's correct.

24 Q. And so, after losing your boat for your Florida Scuba  
25 business, your testimony and your statement here is that you

1 somehow had higher payroll?

2 A. I was still making -- I was still making payments. I still  
3 had -- I still had payroll.

4 Q. And --

5 A. I was still paying myself. I was -- still had -- I still  
6 had the same expenses, they were \$654 higher.

7 Q. And multiplying by 2.5, that's more than \$1,500 extra in  
8 loan money you got for the second loan compared to the first  
9 one; right?

10 A. I would -- I would have to do the math, but I would  
11 imagine.

12 Q. And you listed this higher amount because you knew that you  
13 would get more money for it; right?

14 A. I listed the higher amount because that's what it was, the  
15 expenses for the month.

16 Q. And going from your April form with \$7,300 to now 8,100,  
17 your payroll has gone up almost a thousand dollars within a  
18 year; is that right?

19 A. My expenses went up.

20 Q. And directing your attention to the middle of page 3 of  
21 this document, you claim on the -- on this form that Florida  
22 Scuba made \$68,400 in gross receipts in the third quarter of  
23 2019; correct?

24 A. That's correct.

25 Q. And you listed that number?

1 A. I -- I would think so.

2 Q. But you made -- Florida Scuba made nothing like that in the  
3 third quarter of 2019; isn't that right?

4 A. No, that's not right.

5 Q. So --

6 A. I did make that.

7 Q. And you heard Kristy Kelly testify last week that Florida  
8 Scuba made nothing like that, didn't you?

9 A. I don't recall what she said, but she wouldn't -- she  
10 wouldn't know.

11 Q. Did you just block out her testimony? Like you've  
12 forgotten all of it?

13 A. She is my ex-wife.

14 Q. And on page 4 of Government's Exhibit 91, you initialled  
15 next to a bunch of things you were affirming, just like in the  
16 first loan; is that right?

17 A. That is correct.

18 Q. You again swore that the loan was for an ongoing business  
19 in February 2021; right?

20 A. That's correct.

21 Q. You again swore that the loan was necessary to continue  
22 operations; is that right?

23 A. That's correct.

24 Q. You again swore that you would use the PPP funds for  
25 approved payroll and business expenses; is that right?

1 A. That's correct.

2 Q. And you again signed the document, on page 5 of this  
3 exhibit, on February 2nd of 2021; is that right?

4 A. That's correct.

5 Q. And for this application -- I'm going to publish  
6 Government's Exhibit 93. You submitted this tax document;  
7 isn't that right?

8 A. I -- it's -- I don't know. Just like the last tax  
9 document, I don't know if this is what was submitted or not.

10 Q. You were the one who submitted the application; correct?

11 A. I did submit the application. This might not be the same  
12 form.

13 Q. So your testimony is that the bank has some different  
14 record than what you actually submitted?

15 A. I'm saying that I -- there is no way for me to know if this  
16 is what was submitted. It's not stamped by the bank. It's not  
17 signed. It's -- there is no way of knowing.

18 Q. And looking at page -- or at line 13 of this document, here  
19 in the middle, this document says \$90,000 in salaries; right?

20 A. That's what it says.

21 Q. And at the top of the document, this says Florida Scuba  
22 Charters, Incorporated, doesn't it?

23 A. That's what it says.

24 Q. It lists 803 Promenade Way, Number 104, as the address; is  
25 that right?

1 A. That's correct.

2 Q. And is that the correct address?

3 A. I don't know if that was my address back then or not.

4 Q. Was this ever your address for Florida Scuba Charters?

5 A. Not for the company. That's my personal address.

6 Q. That's your personal address.

7 So is it your testimony that someone else made up this  
8 document?

9 A. No. I couldn't get mail at the marina, where the marina  
10 is. So that would -- that could have been my address, but I  
11 don't know if it was my address when that was filled out. I  
12 had moved a couple of times down in Jupiter. So...

13 Q. Sir, that's not the question I'm asking you. What I'm  
14 asking you is: You testified that you don't -- can't say for  
15 sure if this is your tax record; right?

16 A. There is no way of knowing if that's my tax record; it's  
17 not stamped or signed.

18 Q. Yes, sir, so your testimony is you can't say for sure?

19 A. I can't say for sure.

20 Q. So you heard the bank say that this was what came with  
21 them. Is it your testimony that someone else made up this  
22 document, someone besides you?

23 A. No, that's not my testimony. My testimony is that I can't  
24 determine whether or not that is the actual document or not.

25 Q. And you would agree that a tax document that came with the

1 bank application would have been submitted by you; right?

2 A. If they asked for it.

3 Q. And looking at this \$90,000 number on payroll for 2020,  
4 that just so happens to match the amount that you had said that  
5 you get from multiplying what you listed the year before,  
6 \$7,500, times 12; is that right?

7 A. I would imagine that's the right math if -- I don't  
8 have -- I don't -- I don't have a calculator in front of me, so  
9 I would imagine, if that's what the math equals, then yes.

10 Q. So you listed on this form this exact same payroll  
11 information that you claimed in the last PPP loan application;  
12 is that right?

13 A. The -- if that's what the math equals then, yeah.

14 Q. And this was all for 2020, the year that you killed Mollie;  
15 is that right? You're claiming to have had this type of  
16 income?

17 A. The -- that is for the -- if that's a tax document for 2020  
18 then, yes.

19 Q. And turning to Government's Exhibit 100P, Mr. McCabe, this  
20 is your Florida Scuba Charters bank statement for February of  
21 2021; is that right?

22 A. It looks like it, yes.

23 Q. And turning to page 2 of Government's Exhibit 100P, this  
24 shows where your Florida Scuba account received the PPP loan  
25 proceeds; right?

1 A. Yes.

2 Q. You received \$20,385 of PPP loan proceeds on February 9th  
3 of 2021; is that right?

4 A. That's correct.

5 Q. And the balance before that deposit was \$539; is that  
6 right?

7 A. That's what it says.

8 Q. And you cashed out more than \$18,000 of those -- of that  
9 \$20,000 PPP loan by the end of the month; is that right?

10 A. Yes.

11 Q. Publishing Government's Exhibit 101. Mr. McCabe, you wrote  
12 yourself a \$9,500 check right after you got this PPP deposit;  
13 is that right?

14 A. For payroll, yes.

15 Q. And that's what you labeled it as, as payroll; is that  
16 right?

17 A. That's correct.

18 Q. And that's the first check you had written yourself where  
19 you labeled it as payroll like this; is that right?

20 A. I can't determine -- I don't know if that's the first one.

21 Q. If the jury goes back there and looks at these other bank  
22 records, are they going to see any other check that has  
23 "payroll" written on it like that?

24 MR. O'SULLIVAN: Objection. Calls for speculation.

25 THE COURT: Sustained. Next question.

1 BY MR. KELLER:

2 Q. And after this check, you wrote yourself another one for  
3 \$8,774; is that right?

4 A. I believe that was the number on the statement.

5 Q. And that's the one that you paid to the PGA members club  
6 right; right?

7 A. That's correct.

8 Q. Publishing Government's Exhibit 99. This is the check that  
9 you wrote just a couple of weeks after getting the second PPP  
10 loan to the PGA members club; is that right?

11 A. That's correct.

12 Q. And this gave you membership to a country club; is that  
13 right?

14 A. It did.

15 Q. And turning to Government's Exhibit 111, this is the  
16 loan -- this is the PGA members application that you filled out  
17 in January of 2020; right?

18 A. That's correct.

19 Q. And you initially submitted it in January 2020, but you  
20 didn't pay for it then; right?

21 A. I don't -- I'm not sure when --

22 Q. You don't remember when you paid \$8,700 for a golf club  
23 membership?

24 A. I don't remember if it was -- that's January of 2020, is  
25 when that was dated, but I'm not sure if that's when

1 the -- when it was paid or when it wasn't.

2 Q. And on this application, you write "FSC" next to business  
3 name; is that right?

4 A. That is correct.

5 Q. And what -- and you wrote that it's a charter business?

6 A. That's correct.

7 Q. You didn't write that it was giving dive instructions;  
8 right?

9 A. Florida Scuba Charters is -- dive instruction is part of  
10 that.

11 Q. Sir, I'm just asking, you didn't write on this form that  
12 you gave dive instructions; is that right?

13 A. It didn't ask for what all we did. It asked for the type  
14 of business.

15 Q. You didn't write on this form that you were giving golf  
16 lessons, did you?

17 A. That was the business name. I didn't have a business name  
18 for my golf lessons.

19 Q. Sir, again, I just need you to answer my questions. So if  
20 I say, did you write golf instructor --

21 THE COURT: Counsel, he can answer the question and  
22 provide context. Next question.

23 MR. KELLER: Yes, Your Honor.

24 BY MR. KELLER:

25 Q. And you paid for this application in February 2021; right?

1 A. The -- I'm not sure if it was February or if it wasn't.

2 Q. And just --

3 A. I'm not sure why I would have filled out the application a  
4 year earlier.

5 Q. And so going to page 6, would one reason be that you didn't  
6 have the money when you initially wanted to apply?

7 A. No. That wouldn't be the reason.

8 Q. And is it right that this 2/19 at the bottom right-hand  
9 corner matches the date that you wrote the check in 2021?

10 A. I would imagine.

11 Q. And going back to page 1 of Government's Exhibit 111, isn't  
12 it right that this was to get access to the golf association  
13 and the fitness center?

14 A. That was to get access to the club so I could teach.

15 Q. And moving past February of 2021, isn't it right that you  
16 dissolved Florida Scuba Charters on May 13th of 2021?

17 A. That sounds about right.

18 Q. And I will just show you Government's Exhibit 103. Doesn't  
19 this show that you dissolved the company on May 13th of 2021?

20 A. Yes.

21 Q. And showing you Government's Exhibit 102. The state of  
22 Florida recognized that you dissolved the company Florida Scuba  
23 Charters on May 13th of 2021 as well; correct?

24 A. That's correct.

25 Q. Now, you submitted two PPP loan forgiveness applications

1 after dissolving the company; is that right?

2 A. I believe so. That was perfectly allowed by the PPP  
3 regulations.

4 Q. And your submitting the loan forgiveness applications is  
5 what made those loans free money for you; right?

6 A. They were --

7 MR. O'SULLIVAN: Objection to the form of the question.

8 THE COURT: Overruled. Answer the question.

9 THE WITNESS: I wouldn't call it -- saying free money  
10 is -- it was what the program was intended for. Oh, I did what  
11 the -- I did what the program was allowed.

12 BY MR. KELLER:

13 Q. And you submitted your first PPP loan forgiveness  
14 application the day after you dissolved Florida Scuba Charters;  
15 is that right?

16 A. As I said, the regulations for the PPP program allowed it.

17 Q. Yes, sir, but it's a yes or a no question. So is it right  
18 that you submitted your first PPP loan forgiveness application  
19 the day after you dissolved Florida Scuba Charters?

20 A. I don't recall the date that I submitted that form.

21 Q. Yes, sir. So I will show you. And I will publish  
22 Government's Exhibit 87 to the witness and to the jury, what's  
23 been admitted into evidence.

24 Mr. McCabe, this is the first PPP loan forgiveness  
25 application you submitted; right?

1 A. That is the first loan -- that is the loan application that  
2 was submitted, but that is not the application that was used to  
3 obtain the forgiveness.

4 Q. So you're saying that this -- there is a different  
5 application out there is your testimony?

6 A. Yes.

7 Q. And you were sitting here last week when the bank testified  
8 that this is the forgiveness application that they approved?

9 A. This is the one that they sent me. But this is the one  
10 that got kicked back and said that I had to use a different  
11 form.

12 Q. Sir, this application is for a loan for \$18,750; correct?

13 A. That's correct.

14 Q. And in this loan application, you say that you have five  
15 employees at the time you filed the original loan application;  
16 is that right?

17 A. That's what it -- that's what this form says. That's what  
18 I was instructed to do by the guy at Celtic Bank.

19 Q. And that's what you testified about on direct; correct?

20 A. Correct. I did as instructed. But, again, this is not the  
21 form that was used to obtain forgiveness.

22 Q. And you claim here that you have five employees at the time  
23 of the forgiveness application; is that right?

24 A. Well, the gentleman at Celtic Bank said that if I were  
25 to -- if I were to open and be able to run a charter or do

1 whatever I needed to do tomorrow, how many of my crew would  
2 come back. I said five, all of them. He said that's what you  
3 should put down.

4 Q. And this is some person whose -- who gave you information  
5 that's different than what the bank representative testified to  
6 last week?

7 A. I believe the bank representative guy that was here last  
8 week was not the one on the telephone.

9 Q. Yes, sir. So your testimony is that you talked to someone  
10 at the bank who said to do something completely different than  
11 what the bank representative testified to last week?

12 A. Uh-huh. I was told -- I did as instructed from the bank.

13 Q. But you would agree with me that you listed that you have  
14 five employees at the time of this application when, in fact,  
15 you had dissolved the company the day before?

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

17 THE COURT: Overruled. Answer the question.

18 THE WITNESS: Again, I was -- done as I was -- the  
19 gentleman on the phone knew that the company was dissolved, he  
20 knew all of the details about what the -- what the status of  
21 the company was, and he told me that during the time period how  
22 many people -- how many crew did you have? I said five. He  
23 said put five. I did as instructed.

24 BY MR. KELLER:

25 Q. would you agree with me that a dissolved corporation has no

1 employees?

2 A. He said to put five, I put five. He knew all of the  
3 information.

4 Q. Sir, again, I just need you to answer the question that I  
5 asked. So I'm just asking if you will agree with me that a  
6 dissolved corporation has no employees?

7 A. At the time that -- if you're talking about the day after  
8 it's dissolved, no. But if you're talking about a time period,  
9 then it could have.

10 Q. I'm talking about the day after it was dissolved. No  
11 employees; correct?

12 A. Correct.

13 Q. Okay. Thank you.

14 And, now, you testified on direct that you were using these  
15 PPP funds for -- for the slip, for insurance, for gas; is that  
16 right?

17 A. Not for fuel, but for the approved expenses.

18 Q. But isn't it right that on this form you say that you spent  
19 every nickel of it on payroll costs?

20 A. Yes.

21 Q. That's every dollar of your PPP loan on payroll, on this  
22 form; correct?

23 A. So my slip rent, the utilities, the boat loan, the  
24 insurance, all of my -- all of my expenses were in a personal  
25 name. And you cannot use a business account to pay personal

1 expenses, so I had to pay myself and then make all of those  
2 payments through my personal accounts.

3 Q. And you state in this form that you paid that amount, the  
4 \$18,750, in just payroll between May and October of 2020;  
5 right?

6 A. I paid myself between those dates.

7 Q. And I want to address just when you talked about  
8 how -- where -- what's charged in the indictment. So on these  
9 forgiveness applications, isn't it right that you reaffirm  
10 getting the PPP loan and complying with all of its regulations  
11 in securing the loan here at this first initial?

12 A. Yes.

13 Q. And, again, like with the first loan application, you  
14 initialled next to where it says you can be punished for false  
15 statements?

16 A. That's correct.

17 Q. And then moving to the second PPP loan forgiveness  
18 application, you filled that one out in August of 2021; is that  
19 right?

20 A. I'm not sure of the date.

21 MR. KELLER: I will publish to the witness and to the  
22 jury what's been admitted as Government's Exhibit 98.

23 BY MR. KELLER:

24 Q. Mr. McCabe, this is the second PPP loan forgiveness  
25 application you filed; correct?

1 A. That is correct.

2 Q. And this is the one for \$20,385; correct?

3 A. That is correct.

4 Q. And like with the last forgiveness application, you swore  
5 on this form that you had five employees at the time of the  
6 forgiveness application; correct?

7 A. Like on the last application, this is not the one that was  
8 used for forgiveness.

9 Q. So you're claiming that the bank representatives were just  
10 wrong about using these forms?

11 A. I'm saying I got an automated email from them that said  
12 this is the form you fill out. Loan forgiveness applications  
13 are due. These are the forms you fill out. I filled out that  
14 form. It gets kicked back to me. A bank representative called  
15 and said, because on your application you put 0 or 1 employee,  
16 you have to use a different form.

17 And so this is not the form that was used in the  
18 forgiveness. So it doesn't matter how many employees were on  
19 there because it's not -- it's -- it's garbage.

20 Q. So your testimony is it doesn't matter whether you were  
21 honest on this form because it doesn't matter and this form was  
22 never used?

23 A. That form is -- that form was never used. It wasn't the  
24 form that they used to make a decision for loan forgiveness.

25 Q. And you claim in this form, like the last one, that you

1 spent all of the loan on payroll again; correct?

2 A. I had to pay myself, yes.

3 Q. And that was after you had written a check to the PGA golf  
4 club for \$8,774; correct?

5 A. My membership to the PGA golf club was paid for by a Harley  
6 crash. I was hit by a fire truck on Blue Heron Boulevard.

7 Q. Again, sir, just with -- my question is: This -- you  
8 filled this out after the \$8,774 check; correct?

9 A. I believe so.

10 Q. Thank you.

11 And like with the other forms, you initialled next to where  
12 it says you could be punished for lying on the form, and you  
13 signed it; correct?

14 A. Correct.

15 Q. Okay.

16 A. But, again, that wasn't the form used for forgiveness.

17 Q. Yes, sir. So I want to shift gears and move from the PPP  
18 loans, which the jury may appreciate, to talking about being a  
19 captain of a vessel.

20 So on direct, y'all didn't talk as much about this, but I  
21 just want to ask, Mr. McCabe, you would agree with me that the  
22 captain of a vessel is responsible for the vessel being in  
23 proper working order; correct?

24 A. Not necessarily. If the vessel has a full-time mechanic,  
25 then that's who it would be. But on my particular vessel, yes.

1 Q. So on your particular vessel, you were responsible for the  
2 vessel being in proper working order?

3 A. That's correct.

4 Q. And your testimony is that, in general, the witnesses from  
5 the Coast Guard who testified last week about the captain being  
6 responsible were wrong?

7 A. Well, if you take a boat that's 300 feet long, it's going  
8 to have an entire crew that's -- deals with maintenance, the  
9 captain is not going to have anything to do with it.

10 Q. But that's -- my question is, isn't it right that the  
11 captain is responsible?

12 A. No, not -- it depends on the vessel. As I said, it depends  
13 on the vessel.

14 Q. And so your testimony is the people who testified last week  
15 to the exact opposite were all wrong?

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

17 THE COURT: Sustained.

18 Let's move on, Counsel.

19 MR. KELLER: Yes, Your Honor.

20 MR. KELLER:

21 Q. You would agree with me, Mr. McCabe, that the owner of a  
22 vessel is responsible for the vessel being in proper working  
23 order as well; correct?

24 A. The owner of the vessel would make the payments. You are  
25 asking very broad questions, when it doesn't -- it needs to be

1 more specific. The owner -- the owner of the M/V Aquarius is  
2 Steve Wynn. He is not responsible for the condition of that  
3 vessel; his entire maintenance crew is.

4 So it -- which vessel are you talking about? How many  
5 people? How big is it? It's -- all matters. On a smaller  
6 vessel, the owner, if the owner is the captain, if the owner is  
7 there, then, yeah, they're going to be responsible. On a  
8 bigger vessel, then no, they're not. If you have a -- do you  
9 have a maintenance crew? Do you not have a maintenance crew?  
10 So it needs to be a more specific question.

11 Q. Yes, sir. So I'm actually just going to move us on from  
12 that question. Let me ask you this: When someone helps a  
13 captain fix a vessel, or even fixes it for the captain, isn't  
14 it right that the captain is responsible for the vessel  
15 actually being fixed and in proper working order?

16 MR. O'SULLIVAN: Objection. Your Honor. This is  
17 outside the scope of any direct examination.

18 THE COURT: I will see the parties at sidebar.  
19 (Conference at bench.)

20 THE COURT: All right. What's your objection?

21 MR. O'SULLIVAN: It's outside the scope. I never once  
22 asked a question about whose responsibility it is for  
23 maintenance on a boat, whether it's captain versus owner.  
24 Those questions never came out of my mouth. The word  
25 "responsibility," I never used once on direct.

1           **THE COURT:** Right. Right. Right. But you are taking  
2 quite a narrow view. You did introduce subject matter about  
3 this mechanic on the vessel and things of that nature. So  
4 wouldn't it be appropriate, reasonably, within the bounds of  
5 that testimony, to talk about who is ultimately in charge, even  
6 if a mechanic is on the vessel?

7           **MR. O'SULLIVAN:** I think that's up to Your Honor. I  
8 know my -- my -- my view is that it really wasn't elicited from  
9 me on direct, other than very generally. And the government's  
10 going very specifically and repetitively over, you know, who is  
11 responsible. He has answered the question.

12           **THE COURT:** All right. Mr. Keller.

13           **MR. KELLER:** I think that he acknowledges that this  
14 goes to the heart of what their testimony is primarily about,  
15 which is the responsibility of this defendant for what happened  
16 on that boat. I'm sorry.

17           **THE COURT:** Finish up.

18           **MR. KELLER:** Just to say that, almost all of his  
19 testimony concerned whether and what happened on that boat.  
20 Here we're talking about seaman's manslaughter. We should be  
21 able to establish whether he was responsible, whether he  
22 himself testifies that he was responsible.

23           **THE COURT:** Okay. I'm going to overrule the objection.  
24 I do think that this is permissible cross based on the subject  
25 matter raised during direct. But, Mr. Keller, try not to beat

1 a dead horse so we can move this along.

2 MR. KELLER: Yes, Your Honor.

3 THE COURT: Thank you.

4 (Conference at bench concluded.)

5 THE COURT: One moment, Counsel.

6 All right. The objection is overruled. This is the  
7 question you shall answer: when someone helps a captain fix a  
8 vessel, or even fixes it for the captain, isn't it right that  
9 the captain is responsible for the vessel actually being fixed  
10 and in proper working order?

11 THE WITNESS: Again, that depends on the vessel.

12 BY MR. KELLER:

13 Q. And isn't it right that a captain is responsible for  
14 warning passengers of known hazards?

15 A. It depends on the vessel.

16 Q. And you --

17 A. The captain of a cruise ship never speaks to the  
18 passengers.

19 Q. And you were sitting at counsel table last week when all of  
20 the Coast Guard witnesses and even the passengers testified  
21 that a captain is responsible for the safety of their vessel;  
22 right?

23 A. Oh, they're also speaking in -- they're making an  
24 assumption of everything. You're speaking in too broad of a  
25 term, so be a little more specific as to the type of vessel,

1 and you will get a little bit better answers. If you're just  
2 saying vessels, then, no, the captain of a cruise ship is not  
3 responsible for that. The captain of a huge -- of a huge  
4 yacht, the captain of even a small yacht is not -- is not  
5 responsible for that.

6 Q. So it's your testimony that those Coast Guard witnesses  
7 were wrong and being overbroad?

8 A. They were being overbroad.

9 Q. And a captain of a vessel with paying passengers has to  
10 report incidents to the Coast Guard when they qualify as a  
11 marine casualty; is that right?

12 A. If it qualifies, yes.

13 Q. And when a marine casualty is reportable to the  
14 Coast Guard, that report is supposed to be made immediately or,  
15 you know, right after dealing with an emergent -- an emergency;  
16 is that right?

17 A. Yes.

18 Q. And you know what a marine casualty is?

19 A. Yes.

20 Q. You learned about marine casualties during your merchant  
21 mariner training?

22 A. Yes.

23 Q. And you reported killing Mollie Ghiz-Flynn; right?

24 A. I reported --

25 MR. O'SULLIVAN: Objection to the form of the question.

1 It calls for a conclusion.

2 THE COURT: Overruled. Ask the question.

3 BY MR. KELLER:

4 Q. You -- you reported, as a marine casualty, killing Mollie  
5 Ghiz-Flynn; correct?

6 A. I reported the incident.

7 Q. And a captain who experiences a loss or a modification of  
8 propulsion needs to report that to the Coast Guard; isn't that  
9 right?

10 A. Yes.

11 Q. And a captain who experiences a loss of steerage needs to  
12 report that to the Coast Guard; isn't that right?

13 A. That's correct.

14 Q. And a captain who experiences an unintended grounding is  
15 required to report that to the Coast Guard; correct?

16 A. That would be correct.

17 Q. And a captain who experiences an intended grounding after a  
18 loss of steerage or propulsion needs to report that to the  
19 Coast Guard as well; is that right?

20 A. That's correct.

21 Q. And you knew all of these things on March 28th of 2020;  
22 correct?

23 A. That's correct.

24 Q. And when something is reported to the Coast Guard, one of  
25 these marine casualties, they investigate; is that right?

1 MR. O'SULLIVAN: Objection. Calls for speculation.

2 THE COURT: Overruled.

3 THE WITNESS: It depends on the -- depends on the  
4 inspector. The inspector that was at Marine Safety Detachment  
5 Lake Worth before Inspector Goodman would -- he wanted a -- I  
6 could text him a photo, and he would tell me if it was okay or  
7 if it was not. So it depends on the inspector.

8 BY MR. KELLER:

9 Q. And your Florida Scuba Charters business was tailored to  
10 providing scuba charters; is that right?

11 A. Among other things.

12 Q. And "scuba" is literally in the name; right?

13 A. Yes.

14 Q. And captaining scuba charters was your specialty at this  
15 business; right?

16 A. That's what I did.

17 Q. And you had been doing it since at least 2014, when this  
18 happened in 2020; right?

19 A. Correct.

20 Q. So for about six years you had been captaining scuba  
21 charters; right?

22 A. That's correct.

23 Q. And as a boat captain for a scuba charter business, you  
24 knew on March 28th and 29th, 2020, the hazards of scuba diving;  
25 right?

1 A. That's correct.

2 Q. On March 28th of 2020, you knew that divers get back on the  
3 boat on a scuba trip from the -- from the back, right near the  
4 propellers; correct?

5 A. That's correct.

6 Q. On March 28th of 2020, you knew that propellers are a set  
7 of metal blades fixed to a shaft that spin to make the boat go  
8 forward and backward; right?

9 A. That's correct.

10 Q. And as a captain of a scuba charter vessel, you would give  
11 divers and divemasters a signal that it was safe to approach  
12 before they reboarded your scuba diving boat; correct?

13 A. I didn't. The crew did.

14 Q. You would give the crew a notification; correct?

15 A. Correct.

16 Q. And you gave that notification because you knew that the  
17 propellers on the boat were dangerous; correct?

18 A. I told -- I gave the crew the okay. The crew would tell  
19 them that because the boat was in the correct position and the  
20 boat was in neutral, yes.

21 Q. But the reason you did it is because the propellers are  
22 dangerous; right?

23 A. Not the sole reason.

24 Q. But was -- is a reason; correct?

25 A. Correct.

1 Q. And you know that propellers present a much greater danger  
2 to scuba passengers than they do to passengers for activities  
3 like staying -- like fishing or other activities that involve  
4 staying on a boat; right?

5 A. That would be correct.

6 Q. And you know that having the propulsion system or -- in  
7 neutral or turned off entirely is important because passengers  
8 need to be safe from the propeller when they board; correct?

9 A. That's correct.

10 Q. And you know and you knew, as a boat captain on March 28th  
11 of 2020, that there -- if there was a malfunction with the  
12 propeller, that it would present a greater danger to scuba  
13 divers than to other types of passengers because they get back  
14 on the boat near the propeller; correct?

15 A. Repeat the question.

16 Q. Yes, sir.

17 So you knew, as a scuba charter captain, that if there was  
18 a malfunction with the propeller, that it presented a greater  
19 danger to scuba divers on your boat than it would to other  
20 types of passengers, like a fishing passenger, because they get  
21 near the propellers; correct?

22 A. That is correct.

23 Q. And you know that, as an operator of a scuba boat, it was  
24 even more important for you to be sure that your propulsion  
25 system didn't have any malfunctions because of that danger;

1 correct?

2 A. That is correct.

3 Q. And you knew, as a scuba passenger -- or as a scuba charter  
4 operator, that malfunctions in the propulsion system on a scuba  
5 dive could lead to serious injury or even death of passengers;  
6 correct?

7 A. The -- that's correct.

8 Q. And you knew that on March 28th and 29th of 2020; correct?

9 A. Correct.

10 Q. Now I want to talk about those two trips, and I want to  
11 start with a couple questions about the Southern Comfort. So  
12 when you bought the Southern Comfort, it was a sport fish, you  
13 said on direct; correct?

14 A. Correct.

15 Q. And you bought the items you talked about on direct. You  
16 bought dive benches, a platform, a ladder, stuff to refit the  
17 Southern Comfort for scuba diving; correct?

18 A. Correct.

19 Q. And you talked about removing throttle controls from the  
20 lower portion on the boat; is that right?

21 A. Uh-huh.

22 Q. And showing the witness and the jury Government's  
23 Exhibit 68, this is where you removed the controls; correct?

24 A. That was the lower helm station, yes.

25 Q. And you testified on direct that this helm station doesn't

1 communicate with the other set of engine controls; correct?

2 A. That's correct.

3 Q. And you testified that once you got rid of these, that that  
4 was no big deal because they don't communicate with anything  
5 else; correct?

6 A. They are independent of all the other systems.

7 Q. Okay. And do you remember giving a statement to the  
8 Coast Guard, a recorded statement the same day as the death of  
9 Ms. Ghiz-Flynn?

10 A. I was -- yes.

11 Q. Do you remember talking about these engine controls and  
12 removing them?

13 A. No.

14 MR. KELLER: Your Honor, at this time I would like to  
15 publish -- and I don't want to admit this into evidence. I  
16 just want to use it for impeachment purposes -- Mr. McCabe's  
17 prior statement.

18 MR. O'SULLIVAN: I am going to object, Your Honor.  
19 First of all, it's outside the scope and it's improper  
20 impeachment.

21 THE COURT: All right. We are going to take a break,  
22 so the jury can stretch its legs and use the facilities for  
23 15 minutes.

24 All rise for the jury.

25 (The jury exited the courtroom at 3:30 p.m.)

1           **THE COURT:** Mr. McCabe, for now you can return to  
2 counsel table, please.

3           All right. What's your response, Mr. Keller?

4           The gallery members can remain seated or exit the  
5 courtroom.

6           **MR. KELLER:** The first thing I want to note is that  
7 this is Government's Exhibit 52, that the defense has had  
8 access to this record for a long time. They even anticipated  
9 that we would be using it in our case in chief.

10           Our response is, number one, that Mr. McCabe literally  
11 testified about the removal of the throttle controls on direct  
12 and -- sorry -- and I just didn't know -- and told the jury  
13 that it didn't make a difference by removing them.

14           And here, in this statement, this sworn statement that  
15 he gave to the -- the FWC and the Coast Guard, the day of, he  
16 said the exact opposite; that the removal of the controls had  
17 caused problems, including his starboard engine not being able  
18 to go into reverse.

19           So our position is that I should be able to, and be  
20 permitted to, publish about a minute and a half of this, where  
21 he is asked this exact question about the engine controls and  
22 he gives this completely different answer from what he said on  
23 direct.

24           **THE COURT:** Okay. Mr. O'Sullivan.

25           **MR. O'SULLIVAN:** Judge, on direct Mr. McCabe testified

1 to the removal of cables. He never testified about giving a  
2 statement to the Coast Guard. This statement, from what I  
3 remember of this exhibit, is referring to, first of all, a  
4 different engine. So it's going to be confusing to the jury  
5 because we're not even talking about the same engine.

6 Second of all, during my direct I never asked if he  
7 made prior statements to the Coast Guard. No testimony was  
8 elicited from Mr. McCabe that he made a statement five years  
9 ago to the Coast Guard regarding this specific engine -- or  
10 specific issue of engine controls. So not only is it outside  
11 the scope --

12 THE COURT: But hold on. You agree that during direct  
13 he testified about altering the controls and the cables;  
14 correct?

15 MR. O'SULLIVAN: Removing. Removing the cables --

16 THE COURT: All right. And you --

17 MR. O'SULLIVAN: -- but not a statement.

18 THE COURT: And you agree that he testified that such  
19 an alteration or modification had no effect on the vehicle in  
20 his view; correct?

21 MR. O'SULLIVAN: That is correct.

22 THE COURT: Okay. So then why wouldn't it be perfectly  
23 within the scope of direct to ask questions about his prior  
24 statements on those exact topics?

25 MR. O'SULLIVAN: Because I never talked about a

1 Coast Guard statement. I think Mr. Keller has free rein to  
2 talk about his testimony, but not to a prior statement that I  
3 did not question him on direct. It's -- by definition, it's  
4 outside the scope of direct.

5 THE COURT: All right. Mr. Keller, final argument.

6 MR. KELLER: Just that, Judge, I have laid the  
7 foundation for this. I -- I reiterated to him, this was your  
8 testimony on direct, and he says, Yes, that was my testimony.  
9 So I should be permitted to play a statement where he says the  
10 opposite. It affects his credibility.

11 And it also affects -- and this is one thing that, kind  
12 of, makes it even more important in this particular instance,  
13 it's -- not only affects his credibility, but also lies at the  
14 heart of this case, because this issue is central to what  
15 happened here.

16 THE COURT: Okay. I'm going to overrule the objection  
17 for the reasons stated by Mr. Keller. I think the subject  
18 matter on direct is closely related to the statements by the  
19 defendant in a prior statement, giving the -- given the  
20 inconsistencies identified. I disagree that it's outside the  
21 scope. And I also agree with Mr. Keller that it is quite  
22 relevant to Mr. McCabe's credibility.

23 So for those reasons, you may play that portion of the  
24 exhibit. Make sure, over the break, to identify which exact  
25 segment you're using. We will be in recess for five minutes.

1 Please return promptly to the courtroom. Thank you.

2 (A recess was taken from 3:35 p.m. to 3:41 p.m.)

3 THE COURT: Thank you. You may be seated. Let's call  
4 in the jury. Please rise when they enter the room.

5 Ms. Alexander, can you make sure the audio is at its  
6 highest volume, please, for the playing of this excerpt.

7 MR. O'SULLIVAN: And, Your Honor --

8 THE COURT: And, Mr. McCabe, if you can please return  
9 to the witness stand.

10 MR. O'SULLIVAN: That's what I was going to ask.

11 THE COURT: Thank you.

12 Ms. Alexander, can you just see if our jurors are  
13 ready.

14 COURTROOM DEPUTY: Okay.

15 THE COURT: Thank you.

16 COURT SECURITY OFFICER: All rise for the jury.

17 (The jury entered the courtroom at 3:42 p.m.)

18 THE COURT: Please be seated.

19 Mr. McCabe, you remain under oath.

20 Mr. Keller, you may proceed. The objection was  
21 overruled.

22 MR. KELLER: Yes, Your Honor. So -- so at this time --

23 THE COURT: Oh, excuse me. Let's lower that volume  
24 back to where it was.

25 MR. KELLER: Test, test. Test, test, test. There we

1 go.

2 okay. So at this time the government is going to  
3 publish what has been only marked for identification, not  
4 admitted into evidence, as Government's 52. And I'm going to  
5 publish beginning at timestamp 23:58, this interview between  
6 the defendant and David Fowler.

7 Is it -- I will try to use a different...

8 Is it turned on?

9 COURTROOM DEPUTY: The HDMI is on.

10 MR. KELLER: So it's not --

11 (A video and/or audio was started.)

12 MR. KELLER: There we go. So I will publish 23:58.

13 (A video and/or audio was played.)

14 BY MR. KELLER:

15 Q. And, Mr. McCabe, you gave that statement on March 29th of  
16 2020; correct?

17 A. That was on March 29, 2020. But it was not to the  
18 Coast Guard. I believe you were mistaken. That was to FWC.

19 Q. Yes, sir. And weren't Coast Guard, eight officers, present  
20 for this?

21 A. I'm not sure. They were present for some of them.  
22 Present -- not present for some of them. But David Fowler  
23 works for FWC.

24 Q. Yes, sir. And in this statement, you acknowledge that  
25 removing throttle controls can have an effect on the way the

1 engine operates; right?

2 A. Not necessarily all of the details. When I said that they  
3 needed to be adjusted, when I put the boat in reverse,  
4 they -- that particular boat in reverse goes 1,700 RPMs. When  
5 I was putting it into reverse, I was only getting like 1,550,  
6 or somewhere in there. So it just needed to be tweaked tiny  
7 to -- to make sure that I was getting full RPMs.

8 And I don't -- and I'm -- I don't know if it was doing that  
9 before or after I removed them. It could have been doing it  
10 before. There is no way to determine that. But it was never  
11 inspected.

12 Q. But, sir, in this statement you just said that when you  
13 removed the controls, it messes with how the system works, and  
14 that because of that, the engine wasn't working properly;  
15 correct?

16 A. That's -- that's the gist of the words, but that wasn't the  
17 meaning. The meaning is that I wasn't getting full RPMs in  
18 reverse, and I needed to -- I needed to figure out how to get  
19 full RPMs in a reverse.

20 Q. And you would agree with me that removing throttle controls  
21 can cause a boat like the Southern Comfort to have its engine  
22 not work properly now? You agree with that; right?

23 A. No.

24 Q. Okay. So even though you said it on March 29th, you no  
25 longer agree with it?

1 A. I don't agree with your question. And there is no way to  
2 determine whether or not removing those cables caused any  
3 problem or not. That would -- I would imagine that that  
4 particular helm station didn't get into full reverse from the  
5 day that I got it.

6 Q. Yes, sir. But my question is not whether you know it for  
7 certain. My question is whether it's possible. You testified  
8 before that it couldn't possibly happen because they don't talk  
9 to each other. But now are you testifying that actually it can  
10 alter the way that the engine controls work?

11 A. No, it's not possible. They're totally separate of each  
12 other.

13 Q. And you were sitting at counsel table last week when Allan  
14 Roth and Sandra Brammeier testified that removing throttle  
15 controls, like you did, absolutely could cause problems with  
16 the engine; right?

17 A. Yes, I was at the table.

18 Q. And it's your testimony that what they testified to was  
19 incorrect or not true?

20 A. There is -- again, you are asking a very broad question.  
21 It depends on the -- the -- some -- some dual controls are  
22 connected, some are not. And so you're asking a broad  
23 question. If they're connected, then, yes, you can -- removing  
24 one could cause a problem. If they're totally independent of  
25 each other, then no, they're independent of each other.

1 Q. And you said in the statement that I just played that the  
2 Southern Comfort's were connected?

3 A. No, I did not.

4 Q. Yes, sir. So I'm going to move us on to talk about  
5 March 28th of 2020. And isn't it right that you took out  
6 paying passengers on March 28th of 2020?

7 A. On March 28th of 2020, I had two dive trips, yes.

8 Q. And Jennifer Hester was on that boat; correct?

9 A. That's correct.

10 Q. And on her first dive, you and the divemasters gave her the  
11 okay to approach, like any other dive; is that right?

12 A. That's correct.

13 Q. You put the boat in neutral like you're supposed to;  
14 correct?

15 A. That's correct.

16 Q. And then you told her it was okay to come; is that right?

17 A. I told the crew that the boat was cleared, the crew -- the  
18 crew told her that it was fine for her to move in.

19 Q. And publishing Government's Exhibit 5 to the witness and to  
20 the jury. Mr. McCabe, you recognize this picture; right?

21 A. That's correct.

22 Q. And you said that Ms. Hester swam up to the "S." Is that  
23 right?

24 A. Yeah, she was hanging on the very side of the swim  
25 platform. She wasn't even on the back of it. She was hanging

1 on the side.

2 Q. And she was on the railing; right?

3 A. She was holding on to the -- to the handrail that's  
4 underwater.

5 Q. And you testified that you could see her clearly?

6 A. Yes.

7 Q. That you could see what happened on March 28th; is that  
8 right?

9 A. I could see where her gun was. I could see her.

10 Q. Now, I'm going to publish to you Government's Exhibit 36,  
11 which is a picture from the helm station where you  
12 were -- where you were?

13 A. Correct.

14 Q. Now, Mr. McCabe --

15 THE COURT: Just to confirm, is this in evidence?

16 MR. KELLER: Yes, Your Honor. I'm sorry.

17 BY MR. KELLER:

18 Q. So what has been admitted into evidence as Government's  
19 Exhibit 36.

20 And, Mr. McCabe, isn't it right that from this vantage, you  
21 can't see the platform at the "S" where Ms. Hester would have  
22 been?

23 A. Well, Mr. Keller, that picture is taken just above a helm  
24 chair on the starboard side of the boat. At that particular  
25 time, and as I am right now, I'm 6'3", which is much taller

1 than those helm chairs, and I was on the port side of the boat,  
2 leaning out over the side, looking down the port side  
3 waterline. I could see Jennifer Hester hanging on the side of  
4 the platform.

5 Q. So your testimony is that you could see over the back of  
6 this boat?

7 A. No. My testimony is that Jennifer Hester was hanging on to  
8 the side of the swim platform. I was on the port-hand side,  
9 looking down the port waterline. She was actually hanging on  
10 to the side. If you look at the -- right there (indicating),  
11 if you go down to the waterline right there, that's where she  
12 was at on the boat. So she's actually out to the side of the  
13 boat. She's not behind the boat.

14 Q. And --

15 A. And remember, I'm taller and my head is hanging outside of  
16 the port side. So I could see down the port waterline.

17 Q. And, Mr. McCabe, you testified on direct that Ms. Hester's  
18 gun, her spear gun was broken by the bottom of the boat; is  
19 that right?

20 A. No. I testified that her gun got caught between the  
21 transom and the swim platform. And when the boat went down,  
22 while she was still on the top of a wave, the weight of the  
23 boat bent her -- bent her -- bent the shaft of her spear gun.

24 Q. So your testimony is that that movement is what bent her  
25 spear instead of the propeller like she testified?

1 A. Correct. But she also testified that she wasn't  
2 100 percent sure that the prop hit her gun.

3 Q. And your testimony is that Ms. Hester was never sucked  
4 towards the port side propeller; is that right?

5 A. When her boat got -- when her gun got damaged, it put her  
6 beside -- she was beside the prop, but she was not under the  
7 boat. She was out to the side of the boat.

8 Q. And you heard Ms. Hester testify last week; correct?

9 A. That's correct.

10 Q. And you heard her describe being sucked from the back down  
11 towards the propeller area; correct?

12 A. I -- yes.

13 Q. And is it your testimony today that she was mistaken?

14 A. It's my testimony that I saw what happened with her because  
15 I was on the port side of the boat, looking at the port  
16 waterline to make sure nobody else surfaced right there. I saw  
17 that her gun was caught between the transom and the swim  
18 platform.

19 And when the boat went down, it was -- she wasn't able to  
20 hang on to the -- to the handrail as she was trying to take all  
21 of her gear off, and it's -- it pushed her up against the side  
22 of the boat, and then she kicked away from the boat. That's  
23 what happened. She didn't get pulled under the boat. The boat  
24 went down a wave. And she is holding on to it, so yeah, it  
25 pulled her down, but it didn't pull her toward the prop.

1 Q. And you're testifying -- so you're testifying that she was  
2 wrong about that, that she was lying about it?

3 A. I didn't say that she lied. I said I saw what happened.  
4 The boat went down a wave. It pulled her down. As she only  
5 had one hand on the handrail, it pulled her down, and then the  
6 boat started going back up a wave. And as the boat moves to go  
7 back up a wave, she might have felt like she was under the  
8 boat, but at no time she was ever under the boat. She was out  
9 to the side of it.

10 Q. And you would agree with me that Ms. Hester is a very  
11 experienced scuba diver; correct?

12 A. Ms. Hester has done a lot of dives, but Ms. Hester is  
13 dangerous.

14 Q. And would you agree with me that she is an experienced  
15 scuba diver?

16 A. She has done a lot of dives, yes.

17 Q. And you would agree with me that she would know if she was  
18 being sucked under a boat versus swept out, like you are  
19 describing?

20 MR. O'SULLIVAN: Objection. Calls for speculation.

21 THE COURT: Sustained. Move on.

22 MR. KELLER: Yes, Your Honor.

23 BY MR. KELLER:

24 Q. And when Ms. Hester escaped the propeller, she got back on  
25 the boat; is that right?

1 A. She didn't escape the propeller, but, yes, after the  
2 incident, she got back on the boat.

3 Q. And when she got back on the boat, she handed you the spear  
4 gun; correct?

5 A. No. She laid the spear gun on the floor of the flybridge,  
6 just like it was when we went out that morning.

7 Q. And Ms. Hester told you that the port propeller had broken  
8 her spear; correct?

9 A. No, she didn't tell me that. In her testimony she even  
10 said she didn't tell me that until after the trip, when she  
11 testified -- when she texted me about it.

12 Q. Well, we're going to get to the second dive in a bit, but  
13 for now I'm talking about her testimony about that first dive.

14 A. She told me that her gun had been damaged. She didn't tell  
15 me why or how. And I offered her mine that was on board down  
16 below.

17 Q. And these spears are made of metal; correct?

18 A. They are a fairly thin piece of -- some of them might be  
19 aluminum, some of them might be of -- it's an alloy metal, it's  
20 not stainless steel.

21 Q. And your testimony is that just the boat itself would cause  
22 that type of a bending?

23 A. If you wedge a piece of metal between a -- the transom and  
24 the swim platform and a 45,000-pound boat goes down, yeah, it's  
25 going to bend the shaft.

1 Q. And when you received -- or when Ms. Hester put the spear  
2 gun down, you did not return it to the normal rack; isn't that  
3 right?

4 A. There was no rack on this boat. All of the guns, as we  
5 left the inlet, laid on the flybridge floor.

6 Q. So Ms. Hester was testifying falsely about that too?

7 A. There wasn't a rack on the boat. You can see the -- you  
8 have seen photos of the entire cockpit. There is no gun rack  
9 there.

10 Q. And -- but you would agree with me that your propeller  
11 engaging when it isn't supposed to would be a problem with the  
12 boat's propulsion system; correct?

13 A. If that was happening, it probably would be, but that's not  
14 what was happening.

15 Q. And you would agree with me that that type of a problem  
16 would be reportable to the Coast Guard; correct?

17 A. If that -- if a vessel had that problem, and was an  
18 inspected vessel or not just a -- I mean, the guy's center  
19 console that he puts on a trailer and takes back to his house  
20 is not reportable to the Coast Guard. But on my particular  
21 vessel, if that's what was happening, then that would have been  
22 reportable.

23 Q. And I understand that you're saying Ms. Hester was just  
24 wrong about the whole incident. So let's move past it and talk  
25 about after the first dive. So after the first dive, you were

1     unable -- and you, in the Southern Comfort, were unable to  
2     travel in reverse, correct, on March 28th?

3     A.   On March 28th?

4     Q.   Correct.

5     A.   I could travel in reverse.

6     Q.   And so you were sitting at counsel table when Carl McManus  
7     testified that you couldn't go in reverse; correct?

8     A.   I believe he said something like that. But he wasn't at  
9     the helm, he didn't -- he is not a mechanic. He doesn't know  
10    what the boat could do and what it couldn't do. I had full  
11    reverse.

12    Q.   And you were sitting at counsel table when Jennifer Hester  
13    said that you weren't able to go in reverse; is that correct?

14    A.   Again, that's what they said, but that's -- they weren't at  
15    the helm.

16    Q.   And you were at counsel table when Jordan McKenna testified  
17    that you were unable to go into reverse as you got back to  
18    the marina; correct?

19    A.   Jordan McKenna wasn't even on the boat, so how does he know  
20    what I could do and what I couldn't do?

21    Q.   So all these people were just mistaken about your inability  
22    to go into reverse; is that your testimony?

23    A.   All these people are speculating what they thought might  
24    have been what was going on, but none of them were at the helm.  
25    None of them moved the controls. None of them saw the RPMs.

1 None of them have any kind of -- have any kind of experience  
2 driving a vessel. So it's -- what they said is all  
3 speculation; that doesn't make it true.

4 Q. And would you agree with me that being unable to go in  
5 reverse affects the boat's propulsion?

6 A. If that happened to be the case, then it would, but that's  
7 not the case.

8 Q. And you would agree with me that because it affects the  
9 boat's propulsion, that would be reportable to the Coast Guard  
10 as well?

11 A. If that had been the case, then, yes, but that was not the  
12 case.

13 Q. And all of these people are lying about this --

14 A. I didn't -- never said that they lied --

15 Q. -- is that your testimony?

16 THE COURT: Okay. Again, there is some talking over  
17 one another.

18 Next question. Slow down.

19 MR. KELLER: Yes, Your Honor.

20 BY MR. KELLER:

21 Q. And, just to be clear, with these first two times we're  
22 talking about -- you never reported anything to the Coast Guard  
23 on March 28th; is that right?

24 A. An incident -- there was no incident that would cause me to  
25 have to report anything.

1 Q. And during this second dive, you had to throw a rope for  
2 people to get back on the boat; is that correct?

3 A. The seas were 4 feet and getting bigger.

4 Q. Again, sir, just if you could answer my question. Isn't it  
5 right that you had to throw a rope in order to get people back  
6 on the boat on the second dive?

7 A. I -- that -- that -- that is. But the reason was that the  
8 current was a little stronger, the seas were a little bigger,  
9 so it was a little bit easier for the divers to get to the  
10 boat.

11 Q. And moving to the end of this dive trip on March 28th, your  
12 testimony on direct is that you never ran aground; correct?

13 A. I did not run aground.

14 Q. Your testimony, as I understood it, was that you actually  
15 just threw your anchor and actually never collided with  
16 mangroves or anything like that; is that right?

17 A. I dropped the anchor once I was out of the channel. And  
18 the tide moving forward moved the stern of the boat toward  
19 the -- toward the little sandbar in the mangroves, but I was  
20 always floating, I was never -- I never hit anything. I never  
21 was -- I was not aground.

22 Q. So your testimony today is that Jordan McKenna,  
23 Officer Abramczyk, Carl McManus and Jennifer Hester were all  
24 mistaken about your vessel, the Southern Comfort, running  
25 aground that day, all four of them were mistaken?

1 A. Two of them weren't even on the vessel. They were standing  
2 on the ground. And I believe the North Palm Beach police  
3 officer testified that he wasn't anywhere near there; he was  
4 standing up by the building. There is no way for either of  
5 them to know that -- what happened, what was going on, how deep  
6 a water that I was in.

7 Q. And after this happened, which I would call it a grounding,  
8 but you obviously don't, you went back to the marina; correct?

9 A. After John got on the boat and tightened the terminal nut,  
10 I started both engines. I pulled up the anchor and we drove to  
11 the fuel dock, the floating dock.

12 Q. And that same day, you said on direct, Jennifer Hester sent  
13 you a Facebook Messenger message about the port side propeller  
14 engaging and disengaging when in neutral; correct?

15 A. That's what she perceived was happening, but that was not  
16 what was happening.

17 Q. And this was something she reported from the second dive  
18 that day; correct?

19 A. No. That's what she reported -- she was telling me from  
20 her first dive is, I believe, what she was talking about.

21 MR. KELLER: And at this time the government will  
22 publish to the witness and the jury what's been admitted as  
23 Government's Exhibit 11.

24 BY MR. KELLER:

25 Q. Mr. McCabe, do you see in this first --

1 A. Okay. So I was mistaken.

2 Q. Mr. McCabe, if you could just wait until I ask a question,  
3 please.

4 So when it comes to this first message, isn't it right that  
5 Ms. Hester says to you, "Swimming up to the boat after the  
6 second dive, I was watching the props"; is that right?

7 A. That's what she says, yes.

8 Q. And so she's talking about the second dive she went on;  
9 correct?

10 A. That's -- that's correct, yes.

11 Q. And then she says, quote, "port side is engaging and  
12 releasing, engaging and releasing. Starboard side was still";  
13 correct?

14 A. Correct.

15 Q. And you told her that it was a short; right?

16 A. That was all speculation on my thought that -- at that  
17 point I didn't know what it was. We hadn't investigated it  
18 yet.

19 Q. But that's what you told her --

20 A. That's --

21 Q. -- that day; correct?

22 A. That's -- that's what I told her.

23 Q. And she told you again insistently that it was engaging,  
24 didn't she?

25 A. Yeah, but I did an inspection and it -- there wasn't

1 anything wrong with it.

2 Q. And this same afternoon -- so you received these messages  
3 from Jennifer Hester. You also told Steve Poznak, the same  
4 day, that the propeller was activating when the boat was in  
5 neutral, didn't you?

6 A. I told Steve Poznak that that's what Jen Hester said.

7 Q. And Mr. Poznak told you that you got lucky and you needed  
8 to get the vessel fixed, didn't he?

9 A. That's -- I believe so.

10 Q. And so you had noticed on March 28th, you admit, that your  
11 port side propeller was malfunctioning; correct?

12 A. No, I don't admit that because what you're omitting is the  
13 fact that I spent at least an hour and a half, after I got  
14 these -- after I knew, checking out the port -- the port side,  
15 trying to make it happen, seeing what was going on, and we  
16 found no problem.

17 Q. But, sir, that's a different question than what I'm asking  
18 you. What I'm asking you is: You had noticed, correct, that  
19 there was a problem with your port side propeller on  
20 March 28th, yes or no?

21 A. I didn't have notice. I had speculation that there was a  
22 problem from people who were not marine mechanics, who weren't  
23 on the boat, who weren't at the helm, who have no idea how to  
24 control a vessel. So I had speculation that that was, and I  
25 did an inspection for at least an hour and a half to make sure

1 that that speculation wasn't accurate. So, no, I wasn't put on  
2 notice that there was a problem.

3 Q. And you would agree with me, Mr. McCabe, that you were  
4 responsible for getting your boat in proper working condition  
5 after this message you received; correct?

6 MR. O'SULLIVAN: Objection. Asked and answered several  
7 times.

8 THE COURT: Sustained. Next question.

9 BY MR. KELLER:

10 Q. And isn't it right that by the time you put -- took on new  
11 passengers, you would be responsible for having the boat in  
12 proper working order?

13 A. The boat was in proper working order.

14 Q. And you brought the vessel out. So after you received --  
15 after you spoke with Mr. Poznak, after you received the message  
16 from Ms. Hester, you brought the vessel out the following  
17 morning, correct, on March 29, 2020?

18 A. After I spoke with all of them and after I did my  
19 inspection, I actually took the vessel out on the 28th for an  
20 afternoon trip, that everything went perfectly fine.

21 Q. And you took money from paying passengers on March 29th of  
22 2020; correct?

23 A. That's correct.

24 Q. And those paying passengers included Mollie Ghiz-Flynn,  
25 Sean Flynn, and David Anderson; correct?

1 A. That's correct.

2 Q. So now let's talk about March 29th. So on the first dive  
3 of the day on March 29th, Mollie Ghiz-Flynn and Sean Flynn were  
4 diving together; correct?

5 A. I -- that's -- I don't have -- I don't know. I would  
6 imagine. They usually do.

7 Q. And your testimony on direct was that you gave everyone a  
8 safety brief; correct?

9 A. I gave a briefing before we left the dock, yes.

10 Q. You were sitting at counsel table last week when Sean Flynn  
11 and David Anderson testified that you did not, weren't you?

12 A. So divers as -- as divers get more comfortable and as  
13 divers get more experienced, they get less safe. And after you  
14 have heard the dive briefing so many times, you stop listening.

15 Do you listen to how to buckle your seat belt on an  
16 airplane?

17 Q. So your testimony is that Sean Flynn and David Anderson  
18 both just didn't hear you as you gave the safety -- the safety  
19 talk?

20 A. I have given a safety -- I have given my safety briefing,  
21 and all six of the passengers get off of the boat and walk  
22 around on the dock while I'm giving it and not listen. I have  
23 had to tell them to stop talking while I was giving my safety  
24 briefing. So it's very possible that neither one of them  
25 listened.

1 Q. And that they --

2 THE COURT: Next question.

3 MR. KELLER: Yes, Your Honor.

4 BY MR. KELLER:

5 Q. And so, Mr. McCabe, after this -- after y'all went out,  
6 isn't it right that Mollie and Sean Flynn were picked up  
7 together?

8 A. They surfaced together, yes.

9 Q. And you drove the Southern Comfort to them; correct?

10 A. I would have moved the boat into position to pick them up.

11 Q. And you backed up to them; is that right?

12 A. I would have gotten within 20 feet or so of them, and then  
13 the crew would have told them to swim to the platform.

14 Q. And you told the crew that the boat was in neutral;  
15 correct?

16 A. The boat was in neutral, yes.

17 Q. You disengaged the propellers and the motors; right?

18 A. I put the boat in neutral and I walked to the port side.

19 Q. And then you heard the crew yell "she's under the boat";  
20 correct?

21 A. I heard Kay yell that she had been washed off, and then  
22 they tell me that she's under the boat.

23 Q. So you did hear that she's under the boat?

24 A. Uh-huh.

25 Q. And isn't it right that Mollie had been sucked into the

1 port side propeller?

2 A. No.

3 Q. So your testimony is that Mollie Ghiz-Flynn was not killed  
4 by the port side propeller?

5 A. I'm saying that she wasn't sucked into the port side  
6 propeller. I'm saying that the seas and the current pushed her  
7 there.

8 Q. And that when the seas and current pushed her there, they  
9 twisted her wetsuit into the propeller; is that your testimony?

10 A. I'm saying that I'm not sure how her -- I wasn't there. I  
11 can't -- I can't definitively say that the props were  
12 spin -- how her wetsuit got twisted in there.

13 Q. Mr. McCabe, you testified on direct that you have been on  
14 boats for 41 years. Is that the number that you said?

15 A. I believe so.

16 Q. And on motorized boats with propellers?

17 A. Yes.

18 Q. And your testimony -- and you -- you were sitting at  
19 counsel table last week when we had to look at the wounds that  
20 Ms. Ghiz-Flynn, that Mollie, sustained; right?

21 A. That's correct.

22 Q. And I'm not going to show those again, but I just have to  
23 ask you, sir, your testimony right now is that those wounds  
24 could have been caused by something other than the propeller  
25 being under power? Is that your testimony right now?

1 A. That's correct.

2 Q. And you heard Allan Roth testify, you heard Dr. Tops  
3 testify that the propeller had to be under power to have caused  
4 those types of awful wounds, and your testimony is that they're  
5 wrong?

6 A. So I heard the medical examiner say that -- called them  
7 chop wounds, instead of cut wounds. So I would say chop wounds  
8 are more like a butcher knife getting -- chopping you, and a  
9 cut wound is a cut wound.

10 And the -- the seas were 4 to -- or 3 to 4 feet at  
11 7 seconds, 7-second waves apart. That means when the boat is  
12 on the crest of a wave, it takes you 7 seconds to go from the  
13 crest of one wave down to the trough and up to the crest of  
14 another one.

15 I'm saying that what happens is, that happens 7 -- they're  
16 7 seconds apart. That's 56 times in a minute that the boat  
17 moves up and down. A prop could move up and down 56 times and  
18 cause those same wounds.

19 The ME -- the medical examiner says that they were  
20 cut -- or that they were chop wounds. If the boat was under  
21 power, you heard Dr. -- you heard Mr. Roth say that the gear  
22 was a 2-to-1 ratio. And what that means is when the boat is in  
23 reverse, or when the boat is in forward -- say, the boat is  
24 in -- my boat, when it was in reverse, it was at 1,700 RPMs. A  
25 2-to-1 ratio means that the prop is spinning at 850 RPMs.

1 All right. So at 850 RPMs, if you break -- with a  
2 three-blade prop, if you break that down into seconds, that  
3 means that one blade of that prop passed one specific point 14  
4 times a second. That means that the entire -- that the entire  
5 prop would have passed that one specific spot 42 times a  
6 second.

7 All right. So in the 8 minutes of the accident, that would  
8 have been more than 20,000 cuts.

9 Q. And, Mr. McCabe, your testimony is -- and you heard  
10 Allan Roth talk about the currents, and he told you -- and he  
11 testified, rather, that that couldn't possibly have caused  
12 this. Your testimony is that he is wrong about that?

13 A. My testimony is that Allan Roth didn't know -- is  
14 Allan Roth a diver? He doesn't know -- he also said that  
15 4-foot seas in a 2-knot current is typical Palm Beach  
16 current -- typical Palm Beach conditions, and that's just  
17 simply not so.

18 Q. And you heard Sean Flynn testify about Mollie's leg being  
19 wrapped around the shaft like a rope with two weights tied at  
20 the end, and your testimony is that could have happened from  
21 the currents?

22 A. I'm saying that that could happen from the boat moving up  
23 and down 56 times in a minute.

24 Q. And, Mr. McCabe, after this happened, you drove the  
25 Southern Comfort back to the marina; is that right?

1 A. I did what the Coast Guard instructed me to do.

2 Q. And you met with the Coast Guard and with FWC just like we  
3 heard before; right?

4 A. That's correct.

5 Q. And you did not tell them about the Jennifer Hester  
6 incidence from the day before, the text message she sent you,  
7 the Facebook message, or your conversation with Steve Poznak;  
8 is that right?

9 A. I did not. They weren't relevant to the situation.

10 Q. And you gave them a statement that was under oath; right?

11 A. Yes.

12 Q. And we heard before, you acknowledged that you had a  
13 problem with the starboard transmission because of removing  
14 those engine controls; right?

15 A. No. I didn't say there was a problem with -- there. I  
16 said that they didn't go fully into reverse.

17 Q. And that problem you didn't fix on March 29th, it was still  
18 a problem that day; right?

19 MR. O'SULLIVAN: Objection. Facts not in evidence.

20 THE COURT: Overruled. Answer the question, sir.

21 THE WITNESS: There -- it -- it's not a problem. It's  
22 a preference. If I want the boat to go fully in reverse, then  
23 that's easier on the transmission, but it's not a problem, so  
24 to say, like you're trying to make it out. It's just simply a  
25 preference.

1           It's like the idle speed of your car. If you want  
2 to -- if you want your car to idle faster, then you adjust the  
3 throttle so that it gives more fuel while the boat [sic] is in  
4 idle. That doesn't mean that your car is broken. It means  
5 it's a preference. I preferred that my -- that the boat is in  
6 1,700 RPMs when it goes in reverse, not 1,550. So it's a --  
7 simply a preference. That doesn't mean it's broken.

8 **BY MR. KELLER:**

9 **Q.** And, sir, when you were asked -- so after you gave that  
10 answer about the engine controls being removed and explaining  
11 that problem, when you were asked if there were any other  
12 mechanical issues with the boat, you said nothing besides a  
13 water pump issue; right?

14 **A.** Yeah, the freshwater pump wasn't spraying water strong  
15 enough to rinse out everyone's mask before they got in the  
16 water.

17 **Q.** And you told him, the FWC investigator, Mr. Fowler, quote,  
18 "the motors and the props and the transmissions and all of that  
19 is sound"; correct?

20 **A.** All of that was -- was sound, yes.

21 **Q.** And you told him, quote, "there is nothing mechanically  
22 wrong with the boat. It operates like it's supposed to, other  
23 than that one little lever and it just needs to be adjusted."  
24 Talking about that issue that we were talking about before;  
25 right?

1 A. Yeah. It -- like I said a few times now, it just simply  
2 wasn't to my preference.

3 Q. And when they asked you, based on all your years of  
4 experience, how Mollie could have gotten such serious injuries,  
5 you told them you had no idea; isn't that right?

6 A. I didn't have any of the facts at that point. I mean, you  
7 are talking about a few hours. I had zero facts about what was  
8 going on. All I knew was the sea conditions and somewhat of  
9 what happened. So -- it was a little traumatic at that time,  
10 so, yeah, I -- I had no idea at that point.

11 Q. And when the person interviewing you said you're the only  
12 person who would have the answer for them, you said you had no  
13 idea; right?

14 A. Again, it -- it was a few hours afterwards. If you had  
15 noticed, in all of their investigation, in Agent King's  
16 investigation, not one of them came and spoke with me.

17 Q. And they asked you if you believed it was possible that  
18 someone could just bump up against a propeller in neutral or  
19 the bottom of a boat and get those injuries, and you said you  
20 had no idea; correct?

21 A. So I -- I -- I would think so. If that's in the -- if  
22 that's in that synopsis that FWC did, when their investigation  
23 ended.

24 Q. And you told all of this to law enforcement, about this  
25 port side propeller, the day after you called Steve Poznak to

1 tell him you had the spear gun incident with Jennifer Hester  
2 involving that same propeller; correct?

3 A. The -- I told Steve Poznak, again, that she thought that it  
4 hit the prop, but that I saw it get bent from the platform. He  
5 said you don't need to go out until it -- until it is fixed.  
6 we did the investigation. There wasn't a problem. So that's  
7 when we went back out.

8 Steve had no clue how to operate a vessel. He is not a  
9 mechanic. Just because he says, Don't go out until you get it  
10 fixed, well, if there is nothing to fix, then there is nothing  
11 to fix.

12 Q. So now you're saying that Jennifer Hester did tell you  
13 about the prop. Because before you said she didn't tell you  
14 about that, just about the spear --

15 A. She -- in her text message is when she told me about the  
16 prop.

17 Q. And I'm glad you mention that because you also told law  
18 enforcement you have no idea how this happened, just today,  
19 after Jennifer Hester sent you a text message telling you about  
20 the very propeller that killed Mollie; isn't that right?

21 MR. O'SULLIVAN: Judge, objection. Asked and answered  
22 several times now.

23 THE COURT: All right. Answer this question and then  
24 we will move on. Answer the question, sir.

25 THE WITNESS: The -- again, the prop wasn't broken. I

1 don't know how many times I have to tell you the prop wasn't  
2 broken. I inspected the vessel after that incident and nothing  
3 was wrong. The same as you take your car to a mechanic. They  
4 fix it, they go drive it around to see if -- to see if it's  
5 fixed properly or if they can recreate the same problem. And  
6 if they can't recreate the same problem, they're going to call  
7 you and tell you your car is not broken.

8 She told me about it. We looked at it. We looked at  
9 it for half an hour. Then we put the boat in forward and  
10 reverse four or five times to try to make it do it again. And  
11 then we looked at it again for another half an hour.

12 And you keep forgetting that I did an afternoon trip on  
13 Saturday, after the Jennifer Hester incident, and no problems.

14 THE COURT: Next question.

15 MR. KELLER: A moment, Your Honor.

16 Nothing further, Your Honor.

17 THE COURT: All right. Thank you. Redirect.

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

19 REDIRECT EXAMINATION

20 BY MR. O'SULLIVAN:

21 Q. Mr. McCabe, I just want to go over some of the Government's  
22 cross-examination of you, and I will be as brief as possible.

23 A. Okay. Take your time.

24 Q. At the beginning of Mr. Keller's presentation, he was  
25 talking about a text message that you sent to Coast Guard

1 Officer Goodman. And I'm not going to spend time going through  
2 the exhibits.

3 Do you recall that text message?

4 A. Yeah, I recall sending text messages, yes.

5 Q. And it said "the business is shut down"?

6 A. Correct.

7 Q. Now, you have testified and the jury has heard, was diving  
8 trips the only part of Florida Scuba Charters?

9 A. No.

10 Q. Were you -- what were you referring to when you said "this  
11 business is shut down"?

12 A. So I meant my -- the boat was shut down.

13 Q. Okay.

14 A. So I still -- I sold gear.

15 Q. You could still do other things?

16 A. I could teach. I could sell gear. I could take people  
17 to -- to trips. I took people down to Boca Raton. I took them  
18 over to the west coast -- or -- yeah, to the west coast, we  
19 went to the keys. People would call me and ask, "Hey, can you  
20 get me this gear?" And I would order it for them. So I sold  
21 gear. I taught. I --

22 Q. Were you still in business?

23 A. The business was still open and we were still operating.  
24 we just couldn't use the vessel. That -- I could use anybody's  
25 else's. I could take divers to other vessels. And that's what

1 we were doing during COVID. We were doing whatever we could do  
2 to try to -- to try to stay afloat.

3 Q. In the state of Florida, do you have to incorporate a  
4 business?

5 A. No.

6 Q. On Sunbiz, do you have to file articles of incorporation?

7 A. No. For -- we were a corporation; I believe we had to.

8 Q. And then at some point, you -- you dissolved this  
9 corporation; correct?

10 A. That's correct.

11 Q. When you sent this text message to Goodman saying the  
12 business is down, you had not filed any --

13 A. No.

14 Q. -- articles of -- let me finish.

15 You hadn't filed any articles of dissolving, have you?

16 A. No.

17 Q. Okay. So let's move on.

18 So the government asked you questions about two different  
19 facets of the PPP loans. The actual application, do you  
20 remember that?

21 A. Yes.

22 Q. And then the forgiveness; correct?

23 A. Correct.

24 Q. Now, necessarily these two will have to happen at different  
25 times; correct?

1 A. Correct.

2 Q. I mean, common sense is you apply for the loan first;  
3 right?

4 A. Correct.

5 Q. And then did you receive funds?

6 A. Yes.

7 Q. You used funds for the -- for what?

8 A. For boat payment, slip rent, utilities --

9 Q. Okay.

10 A. -- the approved expenses.

11 Q. And then time goes on; correct?

12 A. Correct.

13 Q. And then part of the PPP program is now it's time to  
14 forgive the loan; right?

15 A. Correct.

16 Q. So the government was talking about dates of when you  
17 applied for forgiveness.

18 A. Correct.

19 Q. That date was after the business was dissolved; correct?

20 A. Yes. According to the PPP regulations, I -- you didn't  
21 need to still be in business for it to be able to file for  
22 forgiveness.

23 Q. So we're talking about forgiveness was after the dissolving  
24 of the company?

25 A. Correct.

1 Q. You never -- did you ever apply for a new loan after the  
2 business was closed?

3 A. No.

4 Q. Okay. You applied for forgiveness in due course?

5 A. Correct. When they --

6 Q. Okay.

7 A. When the banks would send you an email and say, you know,  
8 your time period -- it's now time for you to apply for  
9 forgiveness.

10 Q. Okay. Just briefly, because we've talked about it a lot  
11 today and during the week, on March 28th, the Saturday, did you  
12 lose propulsion?

13 A. No.

14 Q. Did you lose steering?

15 A. No.

16 Q. Because of that, did you need to report anything to the  
17 Coast Guard?

18 A. No.

19 Q. And why is that?

20 A. Because there wasn't a marine casualty.

21 Q. Okay. You were operating on the other engine; correct?

22 A. I was operating on the port side. And I still had  
23 propulsion, I still had steering.

24 Q. So if you turn off one engine, do you have to call the  
25 Coast Guard and say, "Hey, Coast Guard, I turned off one engine

1 and I'm just using the other engine"?

2 A. No.

3 Q. That's a fairly common thing in boating; correct?

4 A. Yeah, it's a precaution thing. If you turn off a  
5 single-engine boat and decide to paddle, you don't have to call  
6 the Coast Guard.

7 Q. Okay. You gave a statement to Florida -- FWC, Florida Fish  
8 and Wildlife Conservation Commission?

9 A. Uh-huh.

10 Q. Do you recall -- I know it's been five years. Do you  
11 recall about how long that statement was?

12 A. I do not. It was pretty long.

13 Q. We -- today we heard about 30 seconds, maybe 40 seconds of  
14 that statement?

15 A. Yeah, it was at least a half hour, 45 minutes.

16 Q. Okay. So we saw -- and I'm not great at math, which is why  
17 I'm a lawyer, but we heard about, what, 1 percent of that  
18 statement?

19 A. I would say less than that.

20 Q. Okay. And that statement was selected by the government;  
21 correct?

22 A. That is correct.

23 Q. Okay. Did removing the cables on the helm station  
24 contribute to Ms. Flynn's untimely death?

25 A. No.

1 Q. Okay. I know we testified about it, but just to be very  
2 clear for the jury, because this is important. The incident  
3 with Jennifer Hester was Saturday, in the morning; correct?

4 A. That's correct.

5 Q. Okay. You took the boat out Saturday in the PM; correct?

6 A. That's correct.

7 Q. Two dives?

8 A. Yes.

9 Q. From the marina out to the ocean?

10 A. Yes.

11 Q. Okay. There was a little testimony that you had to throw a  
12 rope out to get the divers.

13 A. Yes. That was --

14 Q. Did you --

15 A. That was done because the current had picked up a little  
16 stronger.

17 Q. Can you tell the jury what the definition of the -- of the  
18 scuba term "tag line" is?

19 A. Okay. So a tag line is a -- is a line -- however long you  
20 want to make it. You can make it a hundred feet or 20 feet,  
21 it's however -- whatever your preference is. And it has a buoy  
22 on the end of it. And every so many feet there are knots that  
23 you tie into it. And so as you come -- as you come to a diver,  
24 you throw them the line, and they hold on to the line, and then  
25 they can pull themselves, knot by knot, up to the boat.

1           So it helps them swim through a strong current. It helps  
2           them deal with bigger waves, that sort of thing. And it's just  
3           easier for them to get on the boat in certain conditions.

4           Q. Is it common, in retrieving a scuba diver, as -- as seas  
5           are building and current is increasing, is it common to throw a  
6           tag line?

7           A. The boats south of Palm Beach do it in -- do it every dive.

8           Q. Oh.

9           A. And the ones in Palm Beach do it -- we do it, I wouldn't  
10          say often, but we do it occasionally.

11          Q. So some boats, just as a matter of course, have a tag line  
12          every time?

13          A. Yes.

14          Q. Okay. Last question, Mr. McCabe. Based on the absolute  
15          perfect dive that you had Saturday afternoon, did you have any  
16          reason to think that there was a mechanical issue with that  
17          boat that would have prevented you from taking customers out  
18          Sunday morning?

19          A. No. We did the inspection in between the two trips. We  
20          found zero problems. During the afternoon trip, all the  
21          gauges, all the RPMs, everything was where they were supposed  
22          to be, with the -- with the exception of the 150 RPMs in  
23          the -- with the cable, but that wasn't broken. That was a  
24          preference. I preferred it to be a little -- a little more.

25          with -- the difference was cavitation. And so there is a

1 little more cavitation. And it got the crew a little wetter.  
2 And so they didn't like to get soaked, so a little more -- a  
3 little more RPMs seemed to fix that problem.

4 Q. As a boater of 41 years and a boat captain, did you feel  
5 comfortable taking divers out on Sunday, March 29th?

6 A. Yes.

7 MR. O'SULLIVAN: I have no further questions,  
8 Your Honor.

9 THE COURT: All right. Thank you, Mr. McCabe. You may  
10 return to counsel table.

11 THE WITNESS: Thank you.

12 THE COURT: And I will see the attorneys at sidebar.

13 (Conference at bench.)

14 THE COURT: Mr. O'Sullivan, do you have any additional  
15 witnesses?

16 MR. O'SULLIVAN: No. We are going to rest.

17 THE COURT: Okay. Any additional exhibits to  
18 introduce?

19 MR. O'SULLIVAN: No, ma'am. We're going to fully rest.

20 THE COURT: Okay. Thank you.

21 Any additional witnesses, do you envision, on a  
22 rebuttal case?

23 MR. KELLER: No, Your Honor.

24 THE COURT: Okay. Thank you.

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

1 (Conference at bench concluded.)

2 THE COURT: Mr. O'Sullivan, anything further?

3 MR. O'SULLIVAN: Your Honor, at this time the defense  
4 rests.

5 THE COURT: All right. Does the government rest on its  
6 entire case?

7 MR. KELLER: Yes, Your Honor.

8 THE COURT: Okay. Ladies and gentlemen, I have a few  
9 items to address with the parties so I'm going to ask you to  
10 take an additional break, and we will visit with you in just a  
11 few moments.

12 All rise for the jury.

13 (The jury exited the courtroom at 4:25 p.m.)

14 THE COURT: Please be seated.

15 Okay. It is 4:30. It's too late to try to do the  
16 closings today, but I think we can probably achieve the reading  
17 of the instructions.

18 So, with that, I'm going to retire to chambers to  
19 finalize those instructions. Please stay in the courtroom so  
20 that you can receive copies of those final instructions and  
21 then lodge any final objections to the ultimate language.

22 Thank you.

23 (A recess was taken from 4:26 p.m. to 4:45 p.m.)

24 THE COURT: Please be seated. Before we turn to the  
25 instructions, I do want to give defense counsel an opportunity

1 to raise any additional motions.

2 MR. O'SULLIVAN: May I have one moment, Your Honor?

3 THE COURT: You may.

4 MR. O'SULLIVAN: Judge, pursuant to Federal Rule of  
5 Criminal Procedure 29, I would again ask the Court to dismiss  
6 the indictment against Mr. McCabe. I would just incorporate  
7 the arguments that I made Friday, telephonically, as the only  
8 arguments, as there would be no additional arguments. So I'm  
9 not going to redo the exact arguments. Everything would be the  
10 same.

11 So I would just renew any objections that I made Friday  
12 and incorporate all arguments from Friday into, now that we  
13 have rested, our Rule 29 motion for judgment of acquittal.

14 THE COURT: Okay. For the same reasons stated on the  
15 record on Friday, I'm going to deny that renewed motion, which  
16 raises the same arguments as stated by counsel.

17 So, with that, you were provided a copy of the final  
18 jury instructions. Please advise the Court whether you have  
19 any objections to those, Mr. Keller.

20 MR. KELLER: Judge, I'm almost done and I do not see  
21 anything that is objectionable.

22 THE COURT: Okay. Let me give you a few more minutes  
23 to ensure that both sides have enough time to review those  
24 final instructions.

25 And I will just add one additional point on the renewed

1 motion, that the defendant's testimony does not alter the  
2 Court's ruling and reinforces that all the counts should be  
3 submitted to the jury for its consideration.

4 MR. O'SULLIVAN: Thank you for that clarification,  
5 Your Honor.

6 MR. KELLER: Judge, the government has reviewed and has  
7 no alterations.

8 THE COURT: Okay. Mr. O'Sullivan and Ms. Francis, any  
9 objections to the final instructions?

10 MR. O'SULLIVAN: Your Honor, we have had the  
11 opportunity to review the final instructions and we voice no  
12 objection at this time.

13 THE COURT: Okay. All right. Well, then let me  
14 provide a copy of these instructions to the court reporter.

15 Ms. Alexander, here, I have an extra one.

16 Let me also inquire whether there are any objections to  
17 the final verdict form. Mr. Keller.

18 MR. KELLER: No objections, Your Honor.

19 THE COURT: Mr. O'Sullivan.

20 MR. O'SULLIVAN: No objections, Your Honor.

21 THE COURT: Okay. Then how many total copies,  
22 Ms. Alexander, do we have of the printed jury instructions and  
23 the printed verdict form?

24 THE LAW CLERK: We have nine copies, Your Honor.

25 THE COURT: Okay. We will take a very brief break to

1 print full sets for the jurors. Please stand by. Thank you.

2 MR. KELLER: Your Honor, we have a redacted indictment.  
3 Should we email that to chambers or should we print our copies?

4 THE COURT: Print them, please.

5 MR. KELLER: Four copies.

6 THE COURT: I think that's sufficient.

7 MR. O'SULLIVAN: Can we have one?

8 MR. KELLER: We are going to get one for you.

9 MR. O'SULLIVAN: I just want one.

10 THE COURT: So five total copies. So one can go to  
11 defense counsel. That's it.

12 (A recess was taken from 4:51 p.m. to 4:55 p.m.)

13 THE COURT: Everybody is here. Let's call in the jury.

14 COURT SECURITY OFFICER: All rise for the jury.

15 (The jury entered the courtroom at 4:56 p.m.)

16 THE COURT: Please be seated.

17 Okay, ladies and gentlemen, both sides have rested. So  
18 what happens next is I will be reading to you the Court's final  
19 jury instructions, and you will be given hard copies of these  
20 instructions so you can follow along with me.

21 Please note that you will have these instructions with  
22 you during deliberations so you need not try to memorize  
23 everything I am saying out loud. At this time, the courtroom  
24 deputy will provide copies of the final jury instructions.

25 COURTROOM DEPUTY: I need one more copy.

1           **THE COURT:** That's okay. If you don't have a copy of  
2 the verdict form, then just follow along with one of your  
3 fellow jurors.

4           And we will proceed now with the reading of the Court's  
5 instructions.

6           Members of the jury, it is my duty to instruct you on  
7 the rules of law that you must use in deciding this case.  
8 After I have completed these instructions, you will go to the  
9 jury room and begin your discussions, what we call  
10 deliberations. You must decide whether the government has  
11 proven the specific facts necessary to find the defendant  
12 guilty beyond a reasonable doubt.

13           Duty to follow instructions and the presumption of  
14 innocence. Your decision must be based only on the evidence  
15 presented here. You must not be influenced in any way, either  
16 by sympathy for or prejudice against the defendant or the  
17 government. You must follow the law as I explain it, even if  
18 you do not agree with the law. And you must follow all of my  
19 instructions as a whole. You must not single out or disregard  
20 any of the Court's instructions on the law.

21           The indictment or formal charge against the defendant  
22 is not evidence of guilt. The law presumes every defendant is  
23 innocent. The defendant does not have to prove his innocence  
24 or produce any evidence at all. The government must prove  
25 guilt beyond a reasonable doubt; if it fails to do so, you must

1 find the defendant not guilty.

2 Definition of reasonable doubt. The Government's  
3 burden of proof is heavy but it does not have to prove a  
4 defendant's guilt beyond all possible doubt. The Government's  
5 proof only has to exclude any reasonable doubt concerning the  
6 defendant's guilt.

7 A reasonable doubt is a real doubt based on your reason  
8 and common sense, after you have carefully and impartially  
9 considered all the evidence in the case. Proof beyond a  
10 reasonable doubt is proof so convincing that you would be  
11 willing to rely and act on it, without hesitation, in the most  
12 important of your own affairs. If you are convinced that the  
13 defendant has been proven guilty beyond a reasonable doubt, say  
14 so. If you are not convinced, say so.

15 Consideration of direct and circumstantial evidence,  
16 argument of counsel, and comments by the Court. As I said  
17 before, you must consider only the evidence that I have  
18 admitted in the case. Evidence includes the testimony of  
19 witnesses and the exhibits admitted, but anything the lawyers  
20 say is not evidence and is not binding on you.

21 You should not assume from anything I have said that I  
22 have any opinion about any factual issue in this case. Except  
23 for my instructions to you on the law, you should disregard  
24 anything I may have said during the trial in arriving at your  
25 own decision about the facts. Your own recollection and

1 interpretation of the evidence is what matters.

2 In considering the evidence, you may use reasoning and  
3 common sense to make deductions and reach conclusions. You  
4 shouldn't be concerned about whether the evidence is direct or  
5 circumstantial.

6 Direct evidence is the testimony of a person who  
7 asserts that he or she has actual knowledge of a fact, such as  
8 an eyewitness. Circumstantial evidence is proof of a chain of  
9 facts and circumstances that tend to prove or disprove a fact.  
10 There is no legal difference in the weight you may give to  
11 either direct or circumstantial evidence.

12 Credibility of witnesses. When I say you must consider  
13 all of the evidence, I do not mean that you must accept all the  
14 evidence as true or accurate. You should decide whether you  
15 believe what each witness had to say and how important that  
16 testimony was. In making that decision, you may believe or  
17 disbelieve any witness in whole or in part. The number of  
18 witnesses testifying concerning a particular point doesn't  
19 necessarily matter.

20 To decide whether you believe any witness, I suggest  
21 that you ask yourself a few questions: Did the witness impress  
22 you as one who was telling the truth? Did the witness have any  
23 particular reason not to tell the truth? Did the witness have  
24 a personal interest in the outcome of the case? Did the  
25 witness seem to have a good memory?

1           Did the witness have the opportunity and ability to  
2 accurately observe the thing he or she testified about? Did  
3 the witness appear to understand the questions clearly and  
4 answer them directly? And did the witness's testimony differ  
5 from other testimony or other evidence?

6           Persons not on trial and unavailable witness. Some of  
7 the people who may have been involved in these events are not  
8 on trial. This does not matter. There is no requirement that  
9 all persons be charged and prosecuted in one proceeding. You  
10 may not draw any inference, favorable or unfavorable, towards  
11 the government or the defendant on trial from the fact that any  
12 person in addition to the defendant is not on trial here. You  
13 may also not speculate as to the reasons why other persons are  
14 not on trial.

15           Finally, you heard references during the trial to an  
16 individual by the name of John Miller. You should draw no  
17 inference from Mr. Miller's absence from this trial because he  
18 was not available to either side.

19           Impeachment of witnesses because of inconsistent  
20 statements. You should also ask yourself whether there was  
21 evidence that a witness testified falsely about an important  
22 fact, and ask whether there was evidence that at some other  
23 time a witness said or did something or didn't say or do  
24 something that was different from the testimony the witness  
25 gave during this trial. But keep in mind that a simple mistake

1 does not mean a witness wasn't telling the truth as he or she  
2 remembers it. People naturally tend to forget some things or  
3 remember them inaccurately.

4 So if a witness misstated something, you must decide  
5 whether it was because of an innocent lapse in memory or an  
6 intentional deception. The significance of your decision may  
7 depend on whether the misstatement is about an important fact  
8 or about an unimportant detail.

9 A defendant has a right not to testify, but since the  
10 defendant did testify, you should decide whether you believe  
11 the defendant's testimony in the same way as that of any other  
12 witness.

13 Expert witnesses. When scientific, technical, or other  
14 specialized knowledge might be helpful, a person who has  
15 special training or expertise in that field -- excuse me --  
16 experience in that field is allowed to state an opinion about  
17 the matter, but that does not mean you must accept the  
18 witness's opinion. As with any other witness's testimony, you  
19 must decide for yourself whether to rely upon the opinion.

20 Introduction to offense instructions. The indictment  
21 charges five separate crimes called counts against the  
22 defendant. And you will be provided a copy of this indictment  
23 during your deliberations. Each count has a number. You will  
24 be given a copy of the indictment to refer to during your  
25 deliberations. And remember, ladies and gentlemen, an

1 indictment is not evidence and it is not proof of guilt.

2 Count 1 charges the defendant with seaman's  
3 manslaughter. Count 2 charges the defendant with making a  
4 false statement within the jurisdiction of an agency of the  
5 United States. Counts 3, 4, and 5 charge the defendant with  
6 wire fraud. These five counts charge the defendant with  
7 committing what are called substantive offenses. And I will  
8 now explain the law governing each of those substantive  
9 offenses.

10 On or about, knowingly, willfully. You will see that  
11 the indictment charges that a crime was committed, quote, "on  
12 or about" a certain date. The government doesn't have to prove  
13 that the crime occurred on an exact date. The government only  
14 has to prove beyond a reasonable doubt that the crime was  
15 committed on a date reasonably close to the date alleged.

16 The word "knowingly" means that an act was done  
17 voluntarily and intentionally and not because of a mistake or  
18 by accident. The word "willfully" means that the act was  
19 committed voluntarily and purposefully with the intent to do  
20 something the law forbids; that is, with a bad purpose to  
21 disobey or disregard the law.

22 while a person must have acted with the intent to do  
23 something the law forbids before you can find that the person  
24 acted willfully, the person need not be aware of a specific law  
25 or rule that his conduct may be violating.

1 Caution, separate counts, and punishment. Each count  
2 of the indictment charges a separate crime. You must consider  
3 each crime and the evidence relating to it separately. If you  
4 find the defendant guilty or not guilty of one crime, that must  
5 not affect your verdict for any other crime.

6 And I caution you that the defendant is on trial only  
7 for the specific crimes charged in the indictment. You are  
8 here to determine from the evidence in this case whether the  
9 defendant is guilty or not guilty of those specific crimes.  
10 You must never consider punishment in any way to decide whether  
11 the defendant is guilty. If you find the defendant guilty, the  
12 punishment is for the judge alone to decide later.

13 Count 1, Seaman's Manslaughter, Title 18, United States  
14 Code, Section 1115. Count 1 charges the defendant with  
15 seaman's manslaughter. It is a federal crime for a captain,  
16 engineer, pilot or other person employed on a vessel to engage  
17 in misconduct, negligence, or inattention to his duties that  
18 proximately causes the loss of life, or for an owner or charter  
19 of a vessel to engage in fraud, neglect, connivance,  
20 misconduct, or violation of law that proximately causes the  
21 loss of a life.

22 The defendant can be found guilty of this crime only if  
23 all of the following facts are proven beyond a reasonable  
24 doubt:

25 Number 1. The defendant was an owner, charter,

1 captain, engineer, pilot, or other person employed on the  
2 M/V Southern Comfort.

3 Number 2. A person lost his or her life.

4 And, number 3. The defendant was a captain, engineer,  
5 pilot or other person employed on the vessel, and a loss of  
6 life was proximately caused by the defendant's misconduct,  
7 negligence, or inattention to his duties on the vessel. Or,  
8 the defendant was an owner or charter of the vessel, and a loss  
9 of life was proximately caused by the defendant's fraud,  
10 neglect, connivance, misconduct, or violation of law as the  
11 owner or charterer of the vessel.

12 Negligence is a breach of duty which means an omission  
13 to perform some duty or a violation of some rule or standard of  
14 care which is made to govern and control one in the discharge  
15 of some duty. Negligent conduct proximately causes a loss of  
16 life if the loss of life resulted from the negligence and it  
17 was reasonably foreseeable that the negligent conduct was or  
18 could be a threat to the lives of others.

19 As you will see in the verdict form, when evaluating  
20 the third element for Count 1 -- I just read that to you,  
21 ladies and gentlemen -- you must decide each of the two  
22 subparts separately.

23 First, if you unanimously decide that the defendant was  
24 a captain, engineer, pilot or other person employed on the  
25 vessel, then you must decide whether a loss of life was

1 proximately caused by the defendant's misconduct, negligence,  
2 or inattention to his duties on the vessel.

3 Second, if you unanimously decide that the defendant  
4 was an owner or charterer of the vessel, then you must decide  
5 whether a loss of life was proximately caused by the  
6 defendant's fraud, neglect, connivance, misconduct, or  
7 violation of law as the owner or charterer of the vessel.

8 Turning to Count 2, False Statement to a Federal  
9 Agency, Title 18, United States Code, 1001. It is a federal  
10 crime to willfully make a false or fraudulent statement to a  
11 department or agency of the United States. The defendant can  
12 be found guilty of this crime only if all of the following  
13 facts are proved beyond a reasonable doubt:

14 Number 1. The defendant made the statement as charged.

15 Number 2. The statement was false.

16 Number 3. The falsity concerned a material matter.

17 Number 4. The defendant acted willfully, knowing that  
18 the statement was false.

19 And, number 5. The false statement was made or used  
20 for a matter within the jurisdiction of a department or agency  
21 of the United States.

22 A statement is false when made or used if it is untrue  
23 when made and the person making or using it knows it is untrue.  
24 The government doesn't have to show that the governmental  
25 agency or department was, in fact, deceived or misled. The

1 United States Coast Guard is an agency of the United States.  
2 Filing documents with that agency relating to a vessel's use or  
3 status is a matter within that agency's jurisdiction.

4 The making of a false statement is not a crime unless  
5 the falsity relates to a material fact. A material fact is an  
6 important one, not some unimportant or trivial detail, that has  
7 a natural tendency to influence or is capable of influencing a  
8 decision of a department or agency in reaching a required  
9 decision.

10 Now we are on page 15. These -- this is the  
11 instruction for Wire Fraud, Counts 3, 4, and 5. Title 18,  
12 United States Code, Section 1343.

13 It is a federal crime to use interstate wire, radio, or  
14 television communications to carry out a scheme to defraud  
15 someone else. The defendant can be found guilty of this crime  
16 only if all of the following facts are proven beyond a  
17 reasonable doubt:

18 Number 1. The defendant knowingly devised or  
19 participated in a scheme to defraud someone by using false or  
20 fraudulent pretenses, representations, or promises.

21 Number 2. The false pretenses, representations, or  
22 promises were about a material fact.

23 Number 3. The defendant acted with the intent to  
24 defraud.

25 And, number 4. The defendant transmitted or caused to

1 be transmitted by wire some communication in interstate  
2 commerce to help carry out the scheme to defraud.

3 A scheme to defraud means any plan or course of action  
4 intended to deceive or cheat someone out of money or property  
5 by using false or fraudulent pretenses, representations, or  
6 promises.

7 A statement or representation is false or fraudulent if  
8 it is about a material fact that the speaker knows is untrue or  
9 makes with reckless indifference to the truth, and makes with  
10 the intent to defraud. A statement or representation may be  
11 false or fraudulent when it is a half-truth, or effectively  
12 conceals a material fact, and is made with the intent to  
13 defraud.

14 A material fact is an important fact that a reasonable  
15 person would use to decide whether to do or not do something.  
16 A fact is material if it has the capacity or natural tendency  
17 to influence a person's decision. It doesn't matter whether  
18 the decisionmaker actually relied on the statement or knew or  
19 should have known that the statement was false.

20 To act with intent to defraud means to act knowingly  
21 and with a specific intent to use false or fraudulent  
22 pretenses, representations, or promises to cause -- excuse me,  
23 cause loss or injury. Proving intent to deceive alone, without  
24 the intent to cause loss or injury, is not sufficient to prove  
25 intent to defraud.

1           The government does not have to prove all the details  
2   alleged in the indictment about the precise nature and purpose  
3   of the scheme. It also doesn't have to prove that the material  
4   transmitted by interstate wire was itself false or fraudulent;  
5   or that using the wire was intended as the specific or  
6   exclusive means of carrying out the alleged fraud; or that the  
7   defendant personally made the transmission over the wire. And  
8   it doesn't have to prove that the alleged scheme actually  
9   succeeded in defrauding anyone.

10           To use interstate wire communications is to act so that  
11   something would normally be sent through wire, radio, or  
12   television communications in the normal course of business.

13           Each separate use of the interstate wire communications  
14   as part of the scheme to defraud is a separate crime.

15           No Defense to Blame Victim. It is not a defense to the  
16   crime of wire fraud that the victim could have done something  
17   more than it did to prevent the offense. In other words, if  
18   you find that the government has proven all of the elements of  
19   wire fraud beyond a reasonable doubt, it is no defense that  
20   such fraud might not have occurred if the victim had acted with  
21   greater care.

22           Therefore, any evidence that the victim could have done  
23   something to prevent any fraud which you find occurred, or  
24   evidence that its procedures were somehow deficient, should not  
25   be considered by you as an excuse or defense to any wire fraud

1 which you find has been proven beyond a reasonable doubt.

2 Duty to Deliberate. Your verdict, whether guilty or  
3 not guilty, must be unanimous. In other words, you must all  
4 agree. Your deliberations are secret, and you will never have  
5 to explain your verdict to anyone. Each of you must decide the  
6 case for yourself, but only after fully considering the  
7 evidence with the other jurors. So, you must discuss the case  
8 with one another and try to reach an agreement.

9 while you are discussing the case, do not hesitate to  
10 reexamine your own opinion and change your mind if you become  
11 convinced that you were wrong, but do not give up your honest  
12 beliefs just because others think differently or because you  
13 simply want to get the case over with.

14 Remember, ladies and gentlemen, that, in a very real  
15 way, you are judges, judges of the facts. Your only interest  
16 is to seek the truth from the evidence in this case.

17 Now Verdict. When you get to the jury room, choose one  
18 of your members to act as foreperson. The foreperson will  
19 direct your deliberations and will speak for you in court. A  
20 verdict form has been prepared for your convenience, and I will  
21 go over that briefly in just a moment.

22 Take the verdict form with you to the jury room. When  
23 you have all agreed on the verdict, your foreperson must fill  
24 in the form, sign it, date it, and carry it. Then you will  
25 return it to the courtroom.

1           If you wish to communicate with me at any time, please  
2     write down your message or question and give it to the marshal.  
3     The marshal will then bring it to me and I will respond as  
4     promptly as possible, either in writing or by talking to you in  
5     the courtroom. But I caution you not to tell me how many  
6     jurors have voted one way or the other at that time.

7           Now, looking briefly at the verdict form, I'm not going  
8     to read this out loud. But, ladies and gentlemen, just note  
9     that it is two pages long. It has a signature block and a date  
10    for the foreperson on page 2. And it goes sequentially from  
11    1A, 1B, through 2, 3, 4, and 5. And it has boxes there for you  
12    to check guilty or not guilty, depending on your conclusions.

13          So, with that, given the time, ladies and gentlemen, it  
14    is almost 5:30. It is too late to get started with the closing  
15    arguments. So what we're going to do is adjourn for the day,  
16    resume tomorrow on time, at 9:00 a.m. Please make sure you are  
17    here promptly. At that point, we will begin with the closing  
18    arguments.

19          Just so you are aware, each side is given the same  
20    amount of time, but because the government has the entire  
21    burden of proof in this case, the sequence is as follows:  
22    First the government goes and presents its closing argument,  
23    then you hear the defense counsel present a closing argument,  
24    and then the government has a final opportunity to address you.  
25    But the full time is the same as between both sides.

1           So as I have done every day, I will caution you again  
2   not to discuss this case, even amongst yourselves; and that is  
3   because you have not been permitted to begin your  
4   deliberations. So maintain all of those instructions. In  
5   other words, do not conduct any investigation, don't talk about  
6   this case with anybody, don't form any ultimate opinions until  
7   the case has been submitted to you for deliberations, have no  
8   contact with any of the attorneys, parties, or witnesses in the  
9   case, and, of course, do not engage online in any way, shape,  
10   or form with respect to this case.

11           So, with that, have a pleasant evening. We will see  
12   you promptly at 9:00 a.m. tomorrow.

13           All rise for the jury.

14           (The jury exited the courtroom at 5:19 p.m.)

15           **THE COURT:** Please be seated.

16           Okay. Anything to address before we recess for the  
17   evening, Mr. Keller?

18           **MR. KELLER:** Your Honor, I have copies of the proposed  
19   redacted indictment.

20           **THE COURT:** Okay. Please hand those over to  
21   Ms. Alexander.

22           **MR. KELLER:** (Tendering document.)

23           **THE COURT:** Okay. Mr. O'Sullivan, any objections to  
24   the redacted indictment?

25           **MR. O'SULLIVAN:** Judge, it just appears that the

1 forfeiture allegations have been redacted, so I have no  
2 objection.

3 THE COURT: Okay. That is correct.

4 Have any other items been redacted, Mr. Keller, beyond  
5 the forfeiture allegations?

6 MR. KELLER: No, Your Honor, just the forfeiture in the  
7 back, and then the statute for the forfeiture on the first  
8 page.

9 THE COURT: Okay. All right then. So we will maintain  
10 these and provide them to the jury tomorrow.

11 And with that, I wish you all a pleasant evening.  
12 Please be here promptly at 8:50 so you can get situated before  
13 we begin with the jury. Thank you.

14 MR. KELLER: I'm sorry, Judge. Can I ask one question  
15 for tomorrow?

16 THE COURT: Yes.

17 MR. KELLER: What is your policy with respect to  
18 submitting an exhibit list with the jury, if we were to agree  
19 with the defense on one that makes appropriate redactions?

20 THE COURT: You can confer with counsel to see if there  
21 is agreement on that. I will make any decisions about that  
22 once that happens. So...

23 MR. KELLER: Yes, Your Honor.

24 THE COURT: Okay.

25 MR. KELLER: Thank you.

1 (These proceedings concluded at 5:22 p.m.)  
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C E R T I F I C A T E

I hereby certify that the foregoing is an accurate transcription of the proceedings in the above-entitled matter.

DATE: 05-06-2025 /s/Laura Melton  
LAURA E. MELTON, RMR, CRR, FPR  
Official Court Reporter  
United States District Court  
Southern District of Florida  
Fort Pierce, Florida



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