

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 4, 2025
vs. 9:01 a.m. - 2:49 p.m.
DUSTIN SEAN MCCABE, Volume 7
Defendant. Pages 1 to 106

TRANSCRIPT OF JURY TRIAL - DAY 7
BEFORE THE HONORABLE AILEEN M. CANNON
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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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. Please be seated. Let's
3 call the case.

4 COURTROOM DEPUTY: Calling Case Number 24-cr-80103,
5 United States of America v. Dustin Sean McCabe. Counsel,
6 please state your appearances beginning with 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.

11 THE COURT: Good morning to all of you.

12 MR. O'SULLIVAN: Good morning, Your Honor. May it
13 please the Court. On behalf of the defense,
14 Terrence O'Sullivan, Calisha Francis. And standing to my left
15 is the defendant, Dustin Sean McCabe.

16 MS. FRANCIS: Good morning.

17 THE COURT: All right. Good morning to you all as
18 well. Thank you. You may be seated.

19 MR. O'SULLIVAN: Thank you, ma'am.

20 THE COURT: We are waiting on one juror who I think is
21 arriving momentarily.

22 Any items to address before we proceed with closing
23 arguments? Mr. Keller.

24 MR. KELLER: No, Your Honor. I will just note that I
25 did circulate to the defense a copy of the witness/exhibit

1 list, and I assume we can deal with that after.

2 THE COURT: Is there any objection, Mr. O'Sullivan, to
3 providing the jurors with that list of admitted exhibits in
4 conjunction with the stack of admitted exhibits?

5 MR. O'SULLIVAN: No objection, Your Honor. Mr. Keller
6 did provide that to me prior to the Court coming on the bench,
7 and we have no objection.

8 THE COURT: Okay. Are all of the descriptions of the
9 exhibits neutral? In other words, what I don't want to see are
10 advocacy-oriented descriptions or annotations or references.

11 MR. KELLER: I always try to be neutral in my
12 descriptions; I believe that every single one of them is. So I
13 don't think there are any issues with the descriptions that I
14 have.

15 THE COURT: Okay. Mr. O'Sullivan.

16 MR. O'SULLIVAN: Your Honor, based upon the trial this
17 week, I don't foresee any issues whatsoever.

18 THE COURT: Okay then. All right. So -- so that's
19 that. We will just hang tight momentarily.

20 Are we all here?

21 COURT SECURITY OFFICER: Yes, Your Honor.

22 THE COURT: Okay. Then one moment. What breakdown
23 would you like, Mr. Keller, with your 90 minutes?

24 MR. KELLER: 60 and 30, Your Honor.

25 THE COURT: And who is going to be doing opening versus

1 close?

2 MR. KOFFSKY: I'm open and close, Your Honor.

3 THE COURT: And then who does rebuttal close?

4 MR. KELLER: I will be, Your Honor.

5 THE COURT: Okay. Mr. O'Sullivan, what is the
6 defense -- who is going to be doing the closing?

7 MR. O'SULLIVAN: Ms. Francis will be doing the closing,
8 Your Honor, and we estimate approximately 30 minutes,
9 depending, of course, on the government's. But we're looking
10 at probably 30 minutes.

11 THE COURT: Okay. Well, that is significantly less
12 than what you asked for before. I had allotted 90, but if
13 you're only going to use 30, then is there really a need for
14 90?

15 MR. O'SULLIVAN: No, ma'am. We -- just based on the
16 testimony and our conference last night, we're probably looking
17 at about 30, give or take.

18 THE COURT: I don't want to shortchange the government,
19 though, because perhaps it had planned on the 90.

20 Mr. Keller, do you still request the 90?

21 MR. KELLER: Judge, we had -- originally had requested
22 75 minutes, and I think that we can easily get below -- we will
23 get to 75 minutes or below. So, I mean, if we could be cut to
24 that?

25 THE COURT: Okay. Then if it were to go down to 75,

1 what would be your breakdown at that point?

2 MR. KELLER: 50 and 25.

3 THE COURT: Okay. We will go with that, and I will
4 give each side a 5-minute warning.

5 Let's call in the jurors, please.

6 COURT SECURITY OFFICER: Yes, Your Honor.

7 MR. KELLER: Thank you, Your Honor.

8 MR. O'SULLIVAN: Thank you, Judge.

9 (The jury entered the courtroom at 9:05 a.m.)

10 THE COURT: Please be seated.

11 Good morning. Everyone may be seated. Nice to see you
12 again, ladies and gentlemen. As promised, we will start today
13 with closing arguments.

14 Mr. Koffsky.

15 MR. KOFFSKY: Thank you, Your Honor.

16 Testing, testing.

17 Mollie Ghiz-Flynn was sucked underneath the Southern
18 Comfort, pulled into its port side propeller which chopped up
19 her legs, filled the water with her blood, entangled her
20 wetsuit, and shredded it to pieces, and held her down until she
21 drowned. Her husband, Sean Flynn, sat on this witness stand
22 (indicating) and told you he saw the whole thing. It happened
23 right in front of his eyes. He lost the very person he was
24 trying to protect. And he told you how he has been changed
25 ever since, how he is quieter, how he is more reserved, how he

1 is less able to enjoy life. You could see it in his eyes.
2 Nothing will ever bring Mollie back. Nothing will ever make
3 her family whole. Nothing will ever make Sean Flynn the person
4 he once was. That's impossible. But justice can be done.
5 Justice can be done. That is why we are here. That is why
6 this trial is happening, for justice for Mollie. And it's not
7 our decision as the lawyers. It's not Judge Cannon's decision.
8 This is your decision. It is your job to decide whether
9 justice is done.

10 was Mollie's death a tragic accident or were there
11 signs? Was there one sign? Was there more than one sign?
12 There was more than one sign.

13 who is responsible? who is responsible for her death,
14 if anybody? Is anybody responsible? There is somebody
15 responsible. Who were you told is responsible by witness after
16 witness after witness who came into this courtroom? They all
17 told you the same thing. The owner of a vessel is responsible
18 for keeping it safe. The captain of a vessel is responsible
19 for keeping it safe.

20 And who was the owner of the Southern Comfort? who was
21 the captain of the Southern Comfort on the day Mollie died? It
22 was that man (indicating). It was the defendant. It was
23 Sean -- Dustin Sean McCabe was responsible. He had seen all
24 the signs. He knew his boat was not working. He took her out
25 anyway. She lost her life. That's what this case is about.

1 But don't just hold Mr. McCabe responsible for his
2 negligence. Hold him responsible, too, for his lies. So many
3 lies in this case.

4 He lied to the Coast Guard about the purpose of the
5 Southern Comfort. Said he was going to use it only for
6 recreation when he operated Florida Scuba Charters for
7 five-plus years before he bought that boat. But he took it out
8 for commercial charter after commercial charter. That was a
9 lie to the Coast Guard. Hold him accountable for that.

10 And there were lies to the Small Business
11 Administration, an agency that was tasked with helping
12 hardworking Americans through a once-in-a-century pandemic. He
13 lied to them too. Lied to their lenders. Said he had payroll
14 when his business had been shut down.

15 Hold him accountable for his lies, his negligence and
16 his lies. It is your decision, members of the jury. The way
17 to hold him accountable, and what we are asking you to do in
18 this case is to find him guilty, to find him guilty of all five
19 counts in the indictment. The first count, the seaman's
20 manslaughter count, for his negligence in causing Mollie
21 Ghiz-Flynn's death; for Count 2, the false statement to the
22 Coast Guard about the purpose of the Southern Comfort; and for
23 Counts 3 through 5, the wire fraud charges for his lies to the
24 Small Business Administration and to its lenders.

25 Members of the jury, my job today is to explain to you

1 how the government, how the United States has met each element
2 of each of these crimes. And you'll notice I have what looks
3 like a checklist on this slide. That's all elements are. They
4 are a checklist for each crime. And what we will do today,
5 what I will do, specifically, is go through each element of
6 each crime, and I will explain to you the evidence that we have
7 shown you to meet those elements. That's what my presentation
8 will be about today. For the most part, I'm going to go in
9 order.

10 And we will start with Count 1, the seaman's
11 manslaughter charge. As I just mentioned, this is about the
12 defendant's negligence on March 29, 2020, and how that
13 negligence caused Mollie Ghiz-Flynn's death. Now, let's be
14 clear. We're not saying that the defendant hopped on the boat
15 that day and said, "I'm going to kill somebody." We're not
16 saying he had the intent to kill Mollie Ghiz-Flynn. We're
17 saying he had an obligation, a duty to keep the vessel safe,
18 and that he failed in that duty, utterly failed, and that that
19 failure, that negligence caused Mollie's death. That's the
20 theory of this charge.

21 So let's go through the elements of the charge. The
22 first element: That the defendant was an owner, charterer,
23 captain, engineer, pilot, or other person employed on the
24 Southern Comfort. You will see I have a checkmark there
25 already. why? Because there was a stipulation on that point.

1 There was an agreement on that point. The defendant has
2 already agreed, as he should, that he was the owner and captain
3 of the Southern Comfort on the day Mollie died. So we don't
4 need to spend any time on that. You know that he is the owner
5 and captain of that vessel.

6 what about the second element: That a person lost his
7 or her life. There is no agreement on this point. But can it
8 really be disputed that somebody lost her life? Can it really
9 be disputed that Mollie Ghiz-Flynn is no longer on this Earth?

10 A medical examiner, Dr. Tops, took the stand and
11 testified about the cause of her death, about the chop wounds
12 and the drowning. You saw photos of her corpse. There is no
13 dispute about the second element either. I won't spend any
14 more time on it.

15 Let's talk about the third element, the crux of this
16 charge. And there is, as you can see, more language to this
17 element. I'm going to break down each piece of this with you
18 now.

19 So Element 3 asks you to decide two separate scenarios.
20 The first scenario is about whether the defendant -- well, not
21 whether the defendant -- but it's about the defendant's job as
22 a captain, engineer, pilot, or other person employed on the
23 vessel. That's in the top paragraph on the screen.

24 On the bottom paragraph, you are asked to evaluate his
25 performance of his duties as an owner or a charterer, okay. So

1 there are two separate scenarios for this crime that you have
2 to evaluate separately. Keep that in mind, and that's in the
3 jury instructions that Judge Cannon read to you yesterday.

4 But then the questions become the same in each of these
5 scenarios. And the questions that you're asked to evaluate
6 are: whether the loss of life was proximately caused,
7 Number 1, by the defendant's negligence.

8 And you see all of these words in the jury instruction:
9 "Misconduct," "negligence," "inattention to his duties" on the
10 one hand, "fraud," "neglect," "connivance" on the other. All
11 of these terms, they really mean the same thing, and you're
12 really asked to decide the same questions: was the defendant
13 negligent? Did he have a duty under the law that he failed to
14 perform? Of course, he did.

15 And then the second question: Did that failure
16 proximately cause Mollie Ghiz-Flynn's death? Did the
17 defendant's negligence result in her death? And was it
18 reasonably foreseeable that his negligence would result in her
19 death?

20 And let's go through the evidence on this point. And
21 there is plenty. There is plenty.

22 There really are three theories that we have shown you
23 as to why the defendant was negligent, three ways in which he
24 led to -- his neglect led to Mollie's death.

25 Number 1, all of the events of March 28, 2020, all of

1 the ways in which the Southern Comfort was not performing as it
2 needed to, he totally failed to report those events to the
3 Coast Guard as the law requires him to do. That's one theory
4 of negligence, his failure to report. We will talk more about
5 that.

6 Number 2. He failed to fix it. He took the vessel out
7 on March 28, 2020. It couldn't drive, it couldn't reverse. He
8 ran into mangroves. It hurt a passenger. She told him that
9 the propeller was engaging. He didn't fix it. He took it out
10 the very next day. The same issue occurred. That failure also
11 caused Mollie Ghiz-Flynn's death, and we will talk more about
12 that.

13 And lastly, on March 29, 2020, he didn't say a word to
14 Mollie Ghiz-Flynn. He didn't say a word to Sean Flynn. They
15 had no idea about this propeller issue. And what are we
16 talking about? We are talking about propellers, these spinning
17 blades that are razor-sharp, that are under power, that can
18 take somebody's limbs off. There was no warning whatsoever
19 from the defendant. There was no safety briefing on that day,
20 and so he failed to warn them as well.

21 Let's talk more about these three theories. Let's talk
22 about the failure to report first. These are all reporting
23 requirements that you heard about from long-time members of the
24 Coast Guard, Lieutenant Commander Cole, Mr. Mosquera. They
25 told you that what's required to be reported are certain things

1 that may or may not happen on a vessel. And that did happen on
2 March 28th for the Southern Comfort. A grounding, whether
3 unintended or intended, loss of propulsion or steering, or
4 anything that affects maneuverability, or something that occurs
5 that affects the vessel's seaworthiness. And all of these
6 circumstances unfolded on March 28th. Each one of those
7 circumstances is required to be reported to the Coast Guard.
8 And think about how that makes sense. When something is
9 reported to the Coast Guard, as Mosquera told you, as Cole told
10 you, they can step in. They can intervene. They can look at
11 the vessel. They can examine it. They can figure out what's
12 going on. They can keep the vessel off the water.

13 You heard the members of the Coast Guard say this
14 phrase: That their regulations are written in blood. Think
15 about what that means. They write these regulations. They
16 establish these reporting requirements because people have been
17 hurt, people have been killed. Those regulations are designed
18 to take that away, to help people, to save people. It's why
19 it's so important for a captain like the defendant to abide by
20 them. And he didn't. He didn't.

21 These are all things that should have been reported
22 from March 28th, the loss of propulsion, the effect on
23 maneuverability. How do we know that that occurred? The very
24 first witness in the case, Jennifer Hester. And she told you
25 two things. She told you, number 1, that she was sucked under

1 the vessel in the same way Mollie was the next day, and that
2 she was saved only by her speargun which got jammed into the
3 propeller, as Ms. Hester testified, and which ricocheted back
4 into her leg causing a bruise.

5 And then, after the second dive on March 28, 2020, she
6 texted the defendant, and what did she say? She said, quote,
7 "Port side is engaging and releasing, engaging and releasing."

8 A propeller is what propels a vessel. If a propeller
9 is not under control, there is a loss in propulsion. That is
10 something that was required to be reported to the Coast Guard.
11 It makes perfect sense.

12 The defendant didn't report this despite
13 Jennifer Hester telling him explicitly what she had seen. And
14 the defendant testified yesterday that Jennifer Hester wasn't
15 sucked under the boat, that her gun was jammed into the transom
16 of the vessel, as opposed to being snapped by a spinning
17 propeller.

18 But Jennifer Hester lived it. He is saying he saw it.
19 She lived it. It happened to her. Her testimony is what you
20 should trust, not his. It was -- it was a loss of propulsion,
21 that's what happened.

22 what about the grounding? Let's talk about the
23 grounding. Think about how many witnesses marched into this
24 courtroom and told you about this grounding, Jennifer Hester,
25 Carl McManus. Carl McManus, by the way, also said that after

1 he came up from his dive on March 28th, he was sitting in the
2 water for, like, 15 minutes because the vessel couldn't reverse
3 to him. The vessel couldn't back up properly and get situated
4 to pick him up. He needed to be picked up by a line being
5 thrown. So that's a loss of propulsion.

6 But as to the grounding, all of these witnesses,
7 Hester, McManus, the long-time deckhand, Kay Odom, and then
8 people on the dock at the marina, Jordan McKenna and
9 officer Abramczyk, they all told you that from their
10 perception, the defendant could not control the vessel, he
11 could not direct it to where he wanted it to go, that he was
12 headed towards the Parker Bridge, and that in order to avoid
13 the bridge, he had to turn the vessel and crash it into some
14 mangroves. And then after he crashed into the mangroves, a
15 mechanic came out into the water, waded into the water to try
16 to fix it.

17 And then, remember Kay Odom's testimony. She sat here
18 (indicating). She said the vessel limped back to the dock.
19 That's the words she used, "limped back to the dock."

20 The vessel had been grounded and then needed to be
21 pushed back to the dock. That's a grounding. Whether he
22 meant -- whether the defendant meant to turn it into the
23 mangroves and it was intentional, or whether he had no control
24 at all and it just slid into the mangroves, it was a grounding.
25 The notion that he dropped his anchor into the mangroves just

1 doesn't make any sense whatsoever. That doesn't make any
2 sense. It was a grounding, and it needed to be reported, and
3 he didn't report it.

4 And how do you know that he knew about these reporting
5 requirements? How do you know that he had this knowledge, "I
6 need to call the Coast Guard"?

7 There are a couple of reasons. I will direct your
8 attention to the screen, to the merchant mariner credential
9 that the defendant had. To get a merchant mariner -- merchant
10 mariner credential -- excuse me -- you have to take tests. You
11 have to learn Coast Guard regulations. You heard about this
12 testimony from the Coast Guard. You have to study these
13 things. And he took this -- he originally got it in 2014,
14 which is when he took this oath.

15 The oath, by the way -- I shouldn't forget the oath.
16 It says: I will faithfully and honestly carry out the lawful
17 orders of my superior officers. I will perform all duties
18 required of me by the laws of the United States.

19 He took that oath when Florida Scuba Charters was
20 incorporated in 2014, and renewed it five years later in 2019.
21 So that's how you know that he knew about these reporting
22 requirements.

23 How else do you know? Because he filed a report the
24 very next day when the stakes were a little bit higher. On
25 March 29th, when Mollie died, he knew to file a report.

1 So, again, all of these things: The grounding, the
2 loss of propulsion, the loss of maneuverability needed to be
3 reported to the Coast Guard, and they were not. The defendant
4 did not report these things. That is negligence, a duty that
5 he failed to uphold. And that failure, that negligence, caused
6 Mollie's death. Because, had he reported these things, as the
7 Coast Guard told you, they could have intervened. They could
8 have kept the vessel in the marina and Mollie might never have
9 died. So that's the first theory.

10 Let's talk about the failure to fix, probably the most
11 straightforward of these three theories. Again,
12 Jennifer Hester said the port side propeller is engaging and
13 releasing, and engaging and releasing.

14 Pay close attention to what the defendant texted her
15 back. The defendant said, "I will let John, the mechanic, know
16 tomorrow and see what he says." Tomorrow, of course, from that
17 text, being the day of March 29th. If you look at that text,
18 if you think about what that text says, what that really may
19 mean is that there was no attempt to fix it on the night of the
20 28th, that there was no attempt at all, that he neglected to
21 fix it, and that he just said, Let's just deal with it
22 tomorrow. That is neglect. That is misconduct.

23 But let's assume you believe him, and let's assume you
24 believe the defendant when he said that he stayed on March 28th
25 and looked at the vessel and checked the vessel. Was it fixed?

1 we have the benefit of hindsight. Was it fixed?

2 of course, it wasn't fixed. This same thing that
3 happened to Jennifer Hester happened to Mollie and Sean. They
4 were dragged from the ladder, from the platform. They were
5 sucked underneath into the port side propeller.

6 Jennifer Hester's testimony -- she sat here. She told
7 her -- the feeling of the water pulling her down, about how she
8 was sucked under. And then Sean Flynn came here and took this
9 stand and said the same thing. He said the same thing. And
10 these are experienced divers. They all testified to having
11 been certified as scuba divers, to having done dozens, hundreds
12 of dives. Jennifer Hester said, I had never felt that feeling
13 before, of the water sucking me under and pulling me under.

14 what happened on March 29th is the same thing that
15 happened on March 28th, and that's how you know that the
16 propeller wasn't fixed. And had the propeller been fixed, had
17 the defendant taken the time to realize that a propeller is
18 incredibly dangerous, had he taken the time to get the vessel
19 inspected and evaluated, Mollie might not have died. But
20 because he didn't, because he took it out on March 29th, that
21 proximately caused her death. So that's the second theory of
22 negligence that the government has established.

23 And I should say each of these theories on their own is
24 sufficient. You can find the failure to
25 report -- failure-to-report theory more convincing than the

1 failure to fix or vice versa. And we will talk about the
2 failure to warn in a second. You can find that one more
3 convincing. All of these are sufficient.

4 But let me make one more point on the failure to fix.
5 You heard testimony about what might the cause have been for
6 the propeller problem. Was it a voltage issue like the
7 defendant claimed? Did it have to do with his modification of
8 the cables that he took -- as you can see in Government's
9 Exhibit 68 that he removed? Was that the cause?

10 The truth is, it doesn't matter what the cause was. It
11 doesn't matter why the propeller didn't work. It's more likely
12 than not that it had to do with the modifications that he made,
13 but it really doesn't matter. What matters is that it did not
14 work. What matters is that it was just spinning under power, a
15 threat to every single diver that hopped on that vessel. So
16 keep that in mind. It does not matter why. It matters what.
17 It matters that the propeller was an inherent danger to anybody
18 aboard the Southern Comfort.

19 Let's talk about the failure to warn. I have held the
20 wetsuit a couple of times, but I'm going to hold it again.
21 This is how Mollie found out about this issue. She found out
22 when she was entangled in the propeller. There -- there was no
23 comment to Mollie or to Sean whatsoever. There was no
24 explanation from the defendant, you know, I had these issues
25 with the propeller yesterday. I just want you to be aware of

1 it because a propeller is very dangerous.

2 It wasn't said. In fact, there was no safety briefing
3 given on March 29th at all. And you know who told you that?
4 Two people. Sean Flynn told you that he recalled no safety
5 briefing having been given at all. And then David Anderson,
6 the other passenger on that morning dive, on March 29th, he
7 recalled not only that a safety briefing wasn't given, but more
8 specifically that the defendant said, I don't have to give a
9 safety briefing because this isn't a Coast-Guard-inspected
10 vessel.

11 That was Dave Anderson's testimony. There was no
12 warning. There was no warning. Mollie found out when it was
13 too late, when her wetsuit was entangled and shredded, when her
14 pink scuba fin was sliced, when her legs were chopped, when the
15 water was bloodied, and when she was on her way to drowning.
16 That's when Mollie learned.

17 And that's a failure. That is negligence. That is
18 misconduct, that is a violation of law. It is all of the
19 above, and it caused her death. Had Mollie been warned, had
20 Mollie known of the danger of the propeller, she could have
21 done a number of things. She could have exercised more caution
22 when returning to the vessel, to Southern Comfort. She could
23 have said, I'm going to stay all the way on the port side. I'm
24 going to try to board from the front. She could have not gone
25 in the water at all. She could have said, I'm not going on

1 this vessel. I don't trust it.

2 she didn't have that opportunity because she wasn't
3 warned. The defendant's negligence caused Mollie's death in
4 all three of these ways: Because he failed to report what
5 happened on March 28th; because he failed to fix the propeller;
6 and because he failed to warn his passengers of the imminent
7 danger to their lives.

8 For all of those reasons, that third element is met.
9 The United States has shown that that third element is met, and
10 that requires you to find the defendant guilty of Count 1. We
11 have met our burden of proof. By all means, hold us to our
12 high standard of proof. The judge instructed you on what
13 reasonable doubt means, how it's the highest burden in our
14 legal system. Hold us to that. But we've met it. We've met
15 it on Count 1. Let's talk about the others.

16 what is Count 2 about, this false statement to the
17 Coast Guard? Chronologically, it actually precedes, comes
18 before what happened on March 29th. And what it has to do with
19 is this statement that the defendant made that he was going to
20 use the Southern Comfort for recreational purposes, when, of
21 course, as he told everybody in his orbit, including many of
22 the witness you heard from today -- or not today, during this
23 trial, that he was going to use the vessel to create a luxury
24 scuba charter experience. The person who cosigned on the
25 vessel, Steven Poznak, knew about it. All of the divers that

1 he took out knew about it. Sandy Brammeier, who worked at the
2 marina near him, knew about it.

3 His business was called Florida Scuba Charters. The
4 whole point of this vessel was to be commercial, not
5 recreational. That's what Count 2 is about.

6 Let's go through the elements. First, that the
7 defendant actually made the statement, that he actually said,
8 I'm going to use this vessel for recreational purposes.
9 Second, that the statement was false, that it was not true.
10 Third, that the falsity concerned a material matter, an
11 important matter. Fourth, that the defendant acted willfully,
12 knowing that the statement was false. Fifth, that the
13 statement was made or used for a matter within the jurisdiction
14 of a department or agency of the United States.

15 The first two elements, we can take together. And the
16 evidence is from the Application for Certification of
17 Documentation. This is Government's Exhibit 77. And you know
18 that count -- that Element 5 is met because this application
19 was made to the Coast Guard. The Coast Guard is an agency of
20 the United States. Element 5 is really that simple.

21 And Element 1 is just as simple, that the defendant
22 made the statement. You have the vessel on the application,
23 you have his name on the application, you have his signature on
24 the application, and you have the statement where he checked
25 not once but twice that the vessel was going to be used

1 recreationally. So Elements 1 and 5 are met.

2 what about Element 2, that it was false, the statement
3 was false? A statement is false, not only when it is made is
4 it untrue, but the maker of the statement has to know it's
5 untrue. How would he have known that it was untrue? For all
6 the reasons I just mentioned.

7 You are talking about someone who has a scuba charter
8 business, who had been taking divers out by pay for years. We
9 asked each of the witnesses who had dived with the defendant
10 how long they had been diving with the defendant. Since 2016,
11 said Carl McManus. For years, said Jennifer Hester. The
12 Flynn's had gone on multiple dives, and they all talked about
13 how they paid. This is someone who ran a commercial dive
14 business. That's how you know that he knew when he made the
15 statement, it was false. He had been doing it for years. So
16 Element 2 is met.

17 what about the material, the materiality element? A
18 fact is material if it's important and can influence the
19 agency's decision.

20 Here you have to -- you have testimony from many
21 members of the Coast Guard, including Andrea Walker, who works
22 for the National Vessel Documentation Center which is part of
23 the Coast Guard, and she talked about this process for filling
24 out the application for certification and how someone's
25 representations in the application are relied on when the

1 certification is issued. That's what she talked about. And
2 she talked about how it matters what somebody fills out, that
3 it influences her agency's decision as to whether to issue that
4 certification. That was express testimony that you got from
5 Andrea walker.

6 You also heard from other members of the Coast Guard,
7 like Lieutenant Cole, Lieutenant Commander Cole,
8 Captain Mosquera, and what they told you was there are
9 differences between recreational vessels and commercial
10 vessels, that the Coast Guard has to inspect commercial
11 vessels, whereas, it's optional for recreational vessels.

12 Those are important facts. That the Coast Guard relied
13 on what the defendant represented his vessel to be, that's
14 important. That influences the agency's decision. And it's
15 also important about the investigation piece. Because by
16 checking "recreational," the Southern Comfort would be subject
17 to less inspections by the Coast Guard. And we know why, in
18 hindsight, that that was all too important.

19 Here is the actual certification that was issued. And
20 look at what the certification says. This is -- this
21 corroborates Andrea walker's testimony. She says, we rely on
22 the representations of the person applying. He applied as
23 recreational. The certification is issued as recreational.
24 That corroborates her testimony. And according to Mosquera and
25 to Cole, what should have been checked is "coastwise" and

1 "passenger."

2 You heard about this term "six-pack." If there is even
3 one passenger on the vessel who is paying, just one, it's a
4 coastwise endorsement that was required. They all testified
5 about that. Even one.

6 The defendant was talking about looking up some
7 regulations from 1993. Could have just called the Coast Guard
8 and asked. They would have told him just like they told you
9 here in court. The right things for him to check would have
10 been "coastwise" and "passenger." He was operating a six-pack
11 vessel. He had paid passengers on every trip that he took.
12 That's relevant to this case. And so, for all of those
13 reasons, you know that the materiality element of this second
14 charge has been met.

15 And lastly, the fourth element, the willful element,
16 that he knew the statement was false. Willfully means that the
17 act was committed voluntarily and purposefully with the intent
18 to do something that the law forbids. How do you know? What
19 is the evidence that he had this intent, that he was trying to
20 do something that the law forbid?

21 You know for a couple of reasons. Before he makes the
22 statement to the Coast Guard, which was on March 5th, what did
23 he do? He bought dive benches. Why did he buy dive benches?
24 Because he was on his way to completing his plan of creating a
25 luxury diving experience for paying passengers. You heard

1 plenty of testimony about his modifications to the vessel for
2 the purpose of creating a commercial scuba charter. The dive
3 benches is just one example.

4 There is another. On March 16th, a couple of days
5 after he made the statement, he bought a ladder to modify the
6 platform. Again, for the same purpose, to make his vessel a
7 commercial enterprise.

8 Lastly, but certainly not least, you have this text
9 that he sent to David Anderson on the morning of March 29th,
10 where he says in response to David Anderson's concern that the
11 marinas are closed -- he says, "Yeah, to recreational boats."

12 That statement tells you that he knows he is not
13 operating a recreational vessel. It shows you his intent. It
14 shows you his willfulness of making the statement to the
15 Coast Guard that was false at the time and that he knew was
16 false. So Element 4 is met.

17 And this second count, because we've met all of these
18 elements, again, we ask you to find him guilty. We ask you to
19 find that he made a false statement to the Coast Guard with
20 regard to the purpose of the Southern Comfort. He said it was
21 recreational, he knew well that he was going to operate a
22 commercial scuba charter. He lied to the Coast Guard. We ask
23 for a guilty verdict on Count 2.

24 I will now go to the final three counts of the
25 indictment, the wire fraud charges. What are the wire fraud

1 charges about? They're about the lies, as I said, at the
2 beginning, to the Small Business Administration and to its
3 partner lenders. And it's worth repeating because you heard a
4 lot of this testimony as well from Althea Harris, from the
5 Small Business Administration, from members of each lender what
6 type of time that was at the beginning of the pandemic. You
7 heard about the creation of the Paycheck Protection Program,
8 what it was for, how frantic it was for the SBA and the lenders
9 to evaluate who really deserved a loan, how their whole goal
10 was trying to help Americans whose businesses were stopped in
11 their tracks by the pandemic to stay afloat. That's the timing
12 in which all of this occurs.

13 The aim of that program was true. It was virtuous.
14 But the defendant took advantage of it. He took advantage of
15 it by telling lies, one of which as you can see, of course, was
16 using loan proceeds for a golf membership. And we will talk
17 more about that.

18 Let's start with the elements. First, that the element
19 knowingly -- excuse me -- that the defendant knowingly devised
20 or participated in a scheme to defraud by using false or
21 fraudulent pretenses, representations, or promises. I will
22 explain more about that in a moment.

23 Number 2, that the false pretenses, representations, or
24 promises were about a material fact. You've seen that word
25 "material." It means important, able to influence a

1 decisionmaker's decision.

2 Number 3 that the defendant acted with intent to
3 defraud.

4 And number 4 -- and you will see I have a checkmark
5 here -- that the defendant transmitted or caused to be
6 transmitted by wire some communication in interstate commerce
7 to help carry out the scheme to defraud.

8 Let's take care of Element 4 right now. There is an
9 agreement on that point too. You will recall I read the trial
10 stipulations between the defendant and the government. And one
11 of those stipulations was that the loans that Celtic Bank and
12 Cross River Bank made to the defendant were made in interstate
13 commerce from one state to another. That's what Element 4
14 talks about. There is an agreement on that point. You don't
15 need to concern yourself with Element 4. I won't spend any
16 more time on it here. We will focus on the first three
17 elements because, by that agreement, Element 4 is met.

18 So what is a scheme to defraud? What is a scheme to
19 defraud? Any plan or course of action intended to deceive or
20 cheat someone out of money or property. And what was the
21 defendant's scheme to defraud? I talked a little bit about it
22 already. The scheme was to defraud the Small Business
23 Administration and its lenders. How did he do that?

24 well, for starters -- and we will talk about this --
25 his business was shut down. After Mollie Ghiz-Flynn was

1 killed, his business was shut down. He was not operating. The
2 Southern Comfort was not in the water. That's the starting
3 point.

4 From there, the defendant compiled these documents,
5 applications for loans, applications for forgiveness, saying,
6 My business is operating. I have payroll expenses. I need
7 money.

8 He supported these applications with tax documents that
9 the defense has agreed were never filed with the IRS, that
10 weren't real. And then how did he spend the money? He spent
11 the money on himself, not on employees that he didn't have, not
12 on a business that wasn't running. He spent it on himself.
13 That's the scheme to defraud in this case.

14 What about the material facts? Why are these facts
15 important? Why is what the defendant said to the Small
16 Business Administration and to the lenders important? Again,
17 these are all critically important for the Payroll Protection
18 Program.

19 You heard the representatives from the lenders. You
20 heard Althea Harris. They sat on this stand and they told you
21 that the very purpose of the program was to help with payroll,
22 was to help with payroll. And what is required to have
23 payroll? Your business has to be operating. You have to have
24 employees who are working. These are all representations that
25 the defendant made to the Small Business Administration, that

1 "my business is in good order," when it wasn't. It was gone.

2 And you remember in these applications, all of the
3 places where the defendant had to initial, DM, DM. All of
4 these certifications that each of those people, Ms. Harris,
5 Mr. Masterman, Mr. Pollack, they told you without fail, all in
6 agreement, that these institutions relied on these
7 representations. By initialling that "I will use this money on
8 payroll," that's what caused them to grant the loan or to grant
9 the forgiveness. If he had answered honestly, "My business is
10 shut down, don't have any employees," those loans aren't
11 getting granted. These are all material facts.

12 And what about the intent? How do you know that the
13 defendant had the specific intent to use these pretenses, to
14 use these lies to cause loss or injury? It has everything to
15 do with the timing of all of this, which follows and is
16 alongside his business being shut down, of course. And it also
17 has to do with how he used the money.

18 we will talk more about this right now. Let's go
19 through a timeline. On March 31st, two days after
20 Mollie Ghiz-Flynn was killed, the defendant sent this text to
21 Sean Goodman of the Coast Guard, saying, "My life is in
22 shambles," and at the bottom of the text -- quoting, that "his
23 business was being shut down with no income."

24 That's what he said. Those are -- those are his words.
25 Those are his words, and that's two days after the incident,

1 well before either of these loans were applied for.

2 what happens next? On April 3rd, a few days later --
3 you heard from Joshua Steib, that he had traded emails with the
4 defendant about applying for PPP loans, and that the defendant
5 filled out this handwritten application which didn't end up
6 being the application that he filed. But this is days after
7 saying, "My business is shut down. I have no income." He has
8 already started to gear up to apply for the Paycheck Protection
9 Program.

10 what happens next? This is the Captain of the Port
11 Order. A Captain of the Coast Guard in a -- in his uniform,
12 with all of his medals, took that stand and told you what a
13 Captain of the Port order means, the authority behind it. And
14 what did he say for this Captain of the Port order? It said to
15 the owner of the Southern Comfort, that the Southern Comfort
16 must not operate. It must immediately cease operations.

17 So for Florida Scuba Charters, which as the evidence
18 shows you, there is only one boat, the Southern Comfort, which
19 had replaced another boat before. But this only boat that
20 Florida Scuba Charters has, that is under order to not hit the
21 water. That happened on April 9th.

22 Then a month later, he files his first loan application
23 with Celtic Bank. So a month after a Captain of the Port order
24 is issued, Your boat cannot hit the seas, that's when the first
25 loan application goes in. This is not one of the charges in

1 the indictment, but, of course, it's relevant to this whole
2 scheme to defraud.

3 And what does he say in this application? That my
4 payroll was \$7,500. And he also says, and keep this in mind,
5 that he has zero employees at the time of this loan. So that's
6 on May 11th.

7 Back to the fake tax documents. This was submitted in
8 connection with the loan. Kristy Kelly, the defendant's
9 ex-wife, took that stand and said, "Never seen the document
10 before." Couldn't tell you one thing about the figures, the
11 numbers that are listed in that document. So this document was
12 submitted in connection with that loan application.

13 And then how did he spend the money? Checks to cash.
14 Checks to himself in July, two months after the loan; in
15 September; in October, checks to himself. Not payments to
16 employees, not payments from the business account of Florida
17 Scuba Charters, just checks to himself.

18 And that leads us to what is Count 3 of the indictment,
19 the forgiveness application to Cross River Bank which occurred
20 on February 2, 2021, where he says my payroll has increased to
21 \$8,100. I'm sorry. This is not the forgiveness application.
22 I misspoke. This is the second loan application to Cross River
23 Bank. This is the second lender, where he says now my payroll
24 has gone up to \$8,100, and now I have one employee. Again, a
25 fake tax document was submitted in support of this application.

1 Kristy Kelly said never seen this before.

2 when my colleague questioned her on the figures in this
3 document, the \$90,000 in salaries and wages, her response was,
4 "I would have remembered paying taxes on that." The 90,000
5 wasn't real. This document was not real.

6 THE COURT: Five minutes on this segment.

7 MR. KOFFSKY: Thank you, Your Honor.

8 And how did he spend the money? Days later, this is
9 when the check goes to the golf club for a golf membership.
10 Membership at a golf club has nothing to do with operating a
11 charter business. He spent the money on himself.

12 Then on May 13th, his business was dissolved. And this
13 is Government's Exhibit 102, official dissolution from the
14 State of Florida. So not only was the boat ordered to be kept
15 off the water, the business was dissolved.

16 Then comes the application for forgiveness. This is
17 Count 4, forgiveness to Celtic Bank, where he says, I have used
18 the entire loan amount on payroll, where I now have five
19 employees at the time of this forgiveness application. And he
20 says, I had five employees at the time of the loan application,
21 when in the loan application, he said he had zero.

22 All of this is fraudulent. The applications themselves
23 were fraudulent, the forgiveness applications are fraudulent.

24 Let's go to Count 9 -- or I'm sorry, Count 5. On
25 August 9th, this is the forgiveness application for the second

1 loan, and it's the same -- it's the same deal that he had five
2 employees at the time of the loan application, when at the loan
3 application, he said he had one. That he had five employees at
4 the time of the forgiveness application, when his business had
5 been dissolved, when his vessel had been ordered off the seas,
6 that he had used the entire amount of the loan on payroll, when
7 he had purchased a golf membership. These are all lies. And
8 hold him accountable for these lies.

9 All four of these elements for Counts 3 through 5 are
10 met. I'm making the same request as I did for the first two
11 counts. Find him guilty on these counts. Find him guilty.

12 I have a couple of minutes left. I want to talk about
13 this specific instruction that you got yesterday from
14 Judge Cannon, the credibility of witnesses instruction. It's
15 important in this case, because you heard the defendant testify
16 yesterday for several hours. And I'm going to read from the
17 instruction for a minute.

18 "To decide whether you believe any witness" -- I'm at
19 the middle of this page -- "consider the following: Did the
20 witness impress you as one who was telling the truth? Did he
21 have any reason to not tell the truth? Does he have a personal
22 interest in the outcome of the case? Does he seem to have a
23 good memory? Could he observe the things he testified about
24 and others?"

25 The defendant checks all of these boxes in a very

1 notable way. Did he impress you as telling the truth when he
2 said that the propellers didn't cause Mollie's death, they
3 weren't spinning under power, it was the boat rocking back and
4 forth? Did that strike you as being truthful? Does he have a
5 personal outcome in the case? I don't think I need to say any
6 more about that.

7 Did he have a good memory? Did he have a good memory
8 about giving the safety briefing? Was his memory contradicted
9 by all of the witnesses that the government marched in the week
10 of February 24th? About the grounding, for example, when the
11 defendant said, I dropped the anchor, and when five witnesses,
12 Hester, McManus, Odom, McKenna, Abramczyk said he ran into the
13 mangroves and ran aground?

14 Is his memory accurate? I submit to you it's not. I
15 submit to you, you should ignore everything that he said
16 because the real evidence we have shown you through every other
17 witness in this trial, members of the Coast Guard, long-time
18 scuba divers, boat incident investigators, former friends of
19 the defendant who still walked in to testify against him, his
20 ex-wife who wanted no part -- who didn't want to remember this
21 part of her life, she walked in and testified. That's the
22 evidence in this case.

23 And for all of these reasons, the only verdict that is
24 consistent with this evidence, the only verdict that brings
25 justice for Mollie Ghiz-Flynn and her husband and her family is

1 a verdict of guilty on Counts 1, Counts 2, Counts 3, 4, and 5.
2 The United States asks you to return the verdict of guilty.
3 Thank you.

4 THE COURT: You have reserved 24 1/2 minutes.

5 All right. Ladies and gentlemen, we're going to take a
6 five-minute break to allow Ms. Francis to get set up for her
7 presentation.

8 All rise for the jury.

9 (The jury exited the courtroom at 9:57 a.m.)

10 THE COURT: All right. We will resume in five minutes.
11 Thank you.

12 (A recess was taken from 9:57 a.m. to 10:10 a.m.)

13 THE COURT: Let's call in the jury.

14 (The jury entered the courtroom at 10:11 a.m.)

15 THE COURT: All right. Please be seated.

16 Ms. Francis.

17 MS. FRANCIS: Thank you, Your Honor.

18 Good morning, ladies and gentlemen of the jury. The
19 key question today, as I told you when we first met last week
20 and I'm going to tell you again now, the judge is going to ask
21 you to determine whether the evidence you have been shown
22 clearly demonstrates beyond a reasonable doubt that Mr. McCabe
23 fulfilled all aspects of the crimes that were presented to you.

24 Now, you have the jury instructions with you today.
25 The judge provided them on yesterday. She read through them

1 thoroughly. It is essential, just like the government said,
2 that you verify each and every element of the charges that are
3 outlined on those instructions.

4 Now, through a great part of this case, the government
5 has gone back and forth. It could have happened this way, it
6 could have happened that way. But the burden on the government
7 is not to show what could have happened, it's not to show what
8 might have happened. Ladies and gentlemen, it's not even to
9 show what probably happened. Their burden is to show you what
10 did happen and to convince you of that beyond a reasonable
11 doubt.

12 Now, if there is a reasonable doubt in your mind after
13 looking at all of this evidence, listening to the judge's
14 instructions, after hearing Mr. McCabe's testimony on
15 yesterday, and, of course, all the witnesses that the
16 government presented to you -- I believe, it was at least 25 --
17 if there is a reasonable doubt -- if you find that the
18 government has not convinced you beyond a reasonable doubt,
19 then the law requires that you find Mr. McCabe not guilty.

20 Now, the only thing that the government has proved to
21 you is that, yes, an incident did happen. It was a tragic
22 incident; however, it was not the result of the behavior or
23 neglect or inaction on Mr. McCabe's part. There is a lot more
24 than a little reasonable doubt here.

25 This is a case that has been filled with a lot of

1 emotion. There are a lot of technical details. The
2 circumstances are tragic. But this is not just about the
3 events that transpired on that night in March in 2020. But
4 what we need to do is understand the truth behind what
5 happened.

6 Today, we are asking you to consider the facts, the
7 logic, and the human element that is involved in this case.
8 The fact that what took place here was tragic remains that, a
9 fact. There is a lot of sadness in this courtroom today and
10 almost every day last week. That still doesn't answer the
11 question of whether Mr. McCabe's actions caused the death of
12 Ms. Mollie Flynn.

13 There is not a shortcut around this legal requirement.
14 It doesn't -- that can't get us to the point of guilty just by
15 saying what happened was sad and tragic, because it was. It
16 was awful. But the sad job that you have today, we all have
17 today -- the sad job is that we have to sort through this
18 evidence, and we need to hear and determine, no matter how
19 unpleasant it may be, no matter how difficult it may be -- but
20 if you still ask yourself, Has the government proved that
21 Mr. McCabe caused the death of Mollie Flynn, you must not
22 convict him.

23 Now, there is no question, ladies and gentlemen -- I
24 want to say again, as I said before, it is a tragedy. I don't
25 dispute that for one minute. What I do dispute is that what

1 happened out there was criminal, that Mr. McCabe violated our
2 laws.

3 Now, the job that you have is to sort through this
4 tragedy and determine whether the crime of seaman's
5 manslaughter has been established, as the judge has defined it
6 to you.

7 Now, yesterday, Mr. McCabe testified and he told a
8 story, and it's a different story than what you heard from the
9 government's attorneys. In March 2020, Mr. McCabe did move
10 onto his boat, the Southern Comfort. You have seen dozens of
11 pictures of the Southern Comfort, his boat. He spent time to
12 ensure its safety and functionality. He did carry out
13 extensive refitting. He did upgrade the salon. He added the
14 necessary equipment. And most important, he ensured that all
15 aspects of the boat was safe for operation. He conducted
16 numerous personal and crew-assisted trips. He demonstrated his
17 capability as a prudent mariner to handle his vessel safely.

18 Mr. McCabe has been sailing for 41 years without
19 incident. Now, last week, Sandra Brammeier, she testified.
20 She shared her thoughts about Mr. McCabe. She testified that
21 she believed Mr. McCabe was a good guy, and this was without
22 prompting. We didn't solicit this information. She
23 highlighted not only his good character, but also mentioned the
24 numerous times that he helped her in repairing her own vessel.
25 This clearly demonstrates that Mr. McCabe is not only a skilled

1 and reliable captain, but he is also a very experienced seaman.

2 Now, on the morning of March 28th, as with every trip,
3 Mr. McCabe testified that he meticulously prepared his vessel.
4 He conducted the safety briefings which he has done hundreds of
5 times before. You heard him recite it in front of you on the
6 witness stand. He ensured that all waivers were signed, and he
7 provided a guided experience for his divers.

8 Now, the conditions on that day, they were not unusual.
9 He had navigated them safely countless times before.

10 Now, the government presented testimony from
11 Jennifer Hester last week. Ms. Hester experienced an incident
12 with her speargun that she testified to. That experience led
13 her to believe what she thought -- remember, what she thought
14 could be an issue with the boat's propellers.

15 Now, the government is aiming to convict Mr. McCabe
16 based on her testimony. Jennifer Hester's testimony is the
17 foundation of their entire case. Now, their case relies
18 heavily on Jennifer Hester's account. And also they brought in
19 some investigators. But remember, those investigators that
20 testified could only testify about their interviews with
21 Jennifer Hester. They didn't have any firsthand knowledge.
22 None of those investigators attempted to start the boat, to
23 check the propellers. None of them verified Jennifer Hester's
24 claims.

25 Now, it's important to remember that Jennifer Hester

1 testified that she is not a mechanic. She is a diver. She
2 never worked on boats. She did mention, though, that she had
3 gone diving with Mr. McCabe over 50 times. She had even
4 participated in a second dive on the same day, the same boat,
5 the same captain. Despite her telling you that she had
6 concerns about potential issues, she still went out. That's
7 how much she knew and trusted Mr. McCabe and his ability to
8 offer her a safe charter.

9 Now, during her testimony, she recounted the incident
10 with her speargun. We all heard it. She said that it was
11 drawn into the propellers, and that it was shot back out at
12 her, and that, in turn, bent the shaft.

13 Now, Mr. McCabe clarified with his testimony that he
14 saw everything that happened. In his decades of experience
15 with speargun fishing, he knows that a speargun can become
16 easily bent. It can be bent by shooting a fish, by shooting a
17 reef. Mr. McCabe testified that the shaft of the gun was bent
18 between the rudder and the hull.

19 Remember, Jurors, the government needs to prove their
20 theory beyond a reasonable doubt. This incident that
21 Jennifer Hester experienced does not indicate a clear
22 propulsion issue, nor does it prove that Mr. McCabe was
23 negligent.

24 Now, the government called Captain Cederholm as a
25 witness to share his perspective on Jennifer Hudson -- Hester's

1 bruise that she said was caused by the speargun. Although he
2 lacked any kind of medical expertise, Captain Cederholm
3 testified that a speargun requires significant force to bend,
4 similar to the force of an engaged propeller.

5 Now, he suggested that the only possible explanation
6 for the incident that Jennifer Hester had must have been a
7 propulsion issue. And after reviewing -- interviewing
8 Ms. Hester, he concluded that it was likely the cause.

9 However, once I questioned him, he admitted that he was
10 merely relaying what he was told by Jennifer Hester after their
11 interview. Most importantly, he acknowledged that day that he
12 had not been involved in any speargun fishing since he was a
13 young child. Is that testimony enough for the government to
14 convince you that it was indeed a propeller issue?

15 Now, Jennifer Hester's account, which does not include
16 an inspection of the boat to actually determine the actual
17 cause, alongside the investigators who interviewed her and
18 reported exactly what they learned from her, lacks any kind of
19 independent investigation.

20 Now, the government just told you that it doesn't
21 matter. I heard him say it twice, the why doesn't matter.

22 Yes, it does. Mr. McCabe's life is at stake here
23 today. So I would say, although the government told you that
24 the why doesn't matter, it does. The same narrative keeps
25 repeating, Jennifer Hester's testimony that the propellers were

1 engaged and the investigators reiterating and regurgitating her
2 statements. There is no substantial evidence to support their
3 claims.

4 Now, the government also presented testimony that
5 Mr. McCabe, after seeing the bent speargun, tried to hide it,
6 like he took it off of the deck and tried to stow it away. I
7 am going to urge you -- and I wanted to clear this up here --
8 not to be misled by any claim that he was attempting to hide
9 the gun or ignore the issue. He had numerous spearguns on his
10 vessel. He testified to that -- functional and nonfunctional.

11 Now, why would he place a bent, nonworking speargun
12 back in the same place with the functional working spearguns?
13 The government is exerting considerable effort to persuade you
14 of wrongdoing. None exist.

15 When Mr. McCabe was informed about the incident, he
16 responded to Jennifer Hester each time she raised an issue.
17 You saw it yourself. You saw the messages. Were they ignored?
18 No. He responded. There was no negligence. There was no
19 inaction on his part. He acted as any responsible sea captain
20 would have after he was made aware of a possible issue.
21 Investigate it and seek to repair it. That is what he did.
22 Where is the negligence there? Where is the inaction there?
23 It doesn't exist.

24 Now, the following day, March 29th, the vessel, once
25 again, was functional without any issues. Dave Anderson, he

1 testified -- the first diver -- that his charter went on
2 without incident. No mechanical failures were reported. The
3 alleged malfunction that the prosecution claims happened, they
4 were just not evident there. And that's based on their
5 witnesses' testimony.

6 Now, think about that for a second. The prosecution
7 has suggested that the boat had a propulsion and a steering
8 issue and was broken on September 28th. Right? And they also
9 claimed that Mr. McCabe failed to fix it. Negligence. They're
10 very sure about this.

11 So what I want to know is, if the boat was broken on
12 Saturday the 28th, how is it that it was miraculously fixed and
13 became functioning on March 29th, the day after? No propulsion
14 issues, no steering issues. I believe the government
15 mentioning that it was -- the boat, on the prior day, was
16 inching along. That was not present the next day. So what
17 happened? Was it miraculously fixed, or did Mr. McCabe and his
18 engineer get on the boat and fix the boat after investigating
19 its issues?

20 Now, that vessel was capable of completing its trip on
21 both days without any issues at all. There was no loss of main
22 propulsion, as the government's one witness who all the
23 investigators are basing their claims on has stated.

24 Now, Mr. McCabe sat before you and he testified to the
25 contrary. You heard from Sandra Brammeier that Mr. McCabe is a

1 respectable seaman. He has helped her repair her vessel on
2 numerous times. He has plenty of experience.

3 Now, Mr. McCabe testified that he was prudent after
4 experiencing those issues on the 28th. He employed his
5 mechanic, John -- you have heard his name a couple of times --
6 to come on board immediately and correct and repair.

7 He clarified -- Mr. McCabe -- why he didn't report the
8 alleged grounding. The grounding, ladies and gentlemen, simply
9 did not occur. Now, the Coast Guard regulations do mandate
10 reporting of groundings; that is true. But Mr. McCabe was
11 anchored at the time. He testified that he dropped his anchor.
12 There was no damage to the boat. A tugboat wasn't necessary.
13 His engineer was able to push his boat (indicating) back into
14 steering. There was no report of a grounding because it did
15 not occur.

16 Now, the government wants you to believe that the boat
17 was grounded and that Mr. McCabe's failure to report that
18 grounding constitutes negligence. Not only negligence, they
19 mentioned the disregard for regulations. However, I encourage
20 you to consider one important question. What evidence did they
21 give to you? What evidence did you see? What evidence did you
22 hear that substantiates their claims of a grounding?

23 Nothing. They have offered no conclusive or definitive
24 proof that a grounding occurred. He wasn't ticketed. He
25 wasn't fined. There was no official determination that he was

1 grounded. He testified himself that he was grounded, contrary
2 to one person testifying that he was; again, Jennifer Hester.

3 That, ladies and gentlemen of the jury, gives you
4 reasonable doubt. The only testimony regarding the grounding
5 came from Jennifer Hester. Again, the government brought out
6 its investigators as witnesses, but they offered you nothing
7 beyond what they had been informed by Jennifer Hester, who is
8 neither a captain, nor a mechanic.

9 Now, in contrast, Captain McCabe testified that he and
10 his mechanic conducted a thorough testing of the boat and found
11 no issue with the propulsion. Even Jennifer Hester confirmed
12 in her testimony that the mechanic arrived promptly.

13 where is the negligence in that? Now, this is the only
14 piece of information that is 100 percent consistent with each
15 witness who shared their account of the grounding. The divers
16 who testified last week, each one of them stated to you that
17 Mr. McCabe called his mechanic to address any problems. Each
18 one of them, every one of them saw his mechanic on the boat
19 working. This is an undisputed fact. Again, I'm asking you to
20 show me the negligence, show me the inaction on Mr. McCabe's
21 part.

22 Now, it's crucial to understand that there is no way
23 that the government can claim that Mr. McCabe, after being made
24 aware of possible issues, summoning his mechanic to the boat,
25 could then be labeled as negligent or inattentive to his

1 responsibilities. He acted precisely as he should have,
2 precisely as any reasonable sea captain would have.

3 Now, if Mr. McCabe had failed to resolve the problems,
4 then he could be deemed negligent and inattentive to his
5 responsibilities. But that is not the case here. Especially
6 when, as I said, every witness that you heard testified that he
7 reached out to his mechanic, and they reported to you that they
8 saw his mechanic come onboard the vessel and initiate repairs.

9 Mr. McCabe testified that he started the boat. While
10 it was in the water, he carefully inspected the engine and the
11 propulsion system. He did discover an issue, a separate issue,
12 and that was with the starboard side battery, which was
13 promptly fixed, hence he was able to go out the next day.

14 How can they claim that he did not address any issues?
15 If the vessel had indeed been in disrepair, it would not have
16 performed successfully during the dives as confirmed by the
17 divers that testified.

18 Sandra Brammeier, she testified that boats often
19 experience issues, boats break, they break down frequently.
20 And again, she often relies on Mr. McCabe for assistance in
21 repairing her boat when any problems arose. Again, he is
22 experienced.

23 It is also crucial to note that Mr. McCabe is a careful
24 seaman. He takes great pride in his vessel and in his
25 business. He is trusted by fellow seamen, sea women to work on

1 their boats. However, today his freedom and his life, they're
2 in jeopardy. And this is due to the government's claims,
3 claims that they have made without any evidence that he
4 neglected to address any problems, when all of their witnesses
5 testified to the contrary.

6 Jurors, do not accept this. This -- the witnesses have
7 confirmed that his mechanic was already on the boat and
8 performing repairs.

9 Now, there is a reason why the government can't provide
10 any clear and sure evidence of the boat's alleged malfunction
11 and propeller issues, one glaring reason they have been
12 attempting to ignore. The vessel, the Southern Comfort, which
13 is key and central to their case, it is unavailable for
14 inspection.

15 without any physical examination, the government cannot
16 definitively prove or demonstrate that the propeller
17 malfunction took place. This is the main, crucial part of
18 their argument. Now, the absence of this vessel, it leaves a
19 significant gap in the evidence. And remember, the standard is
20 still beyond a reasonable doubt. Ladies and gentlemen, there
21 is substantial doubt regarding the vessel's condition. You
22 haven't observed it, nor have you heard any testimony about the
23 identified issues. You haven't heard any testimony about the
24 repair efforts aside from that of Mr. McCabe's account. How
25 can anybody be certain without this essential piece of evidence

1 which the government has built their entire theory on if it's
2 not available?

3 Notice that whenever a witness or one of the defense
4 attorneys mentions that Mr. McCabe had his mechanic on the boat
5 right away, it's overlooked and dismissed. They failed to
6 address this fact because it undermines their entire case that
7 Mr. McCabe was negligent, inattentive, or failed to report or
8 provide warnings.

9 Now, the prosecution, they didn't even inspect the
10 vessel when they were able to, when it was available. They
11 lacked due diligence, and it undermines their ability to
12 present a credible case regarding any fact about any mechanical
13 fault of that vessel.

14 Now, the government's narrative, it didn't take into
15 account the dynamic and ever-changing nature of marine
16 environments. Mr. McCabe, he provided testimony regarding the
17 waves and the wind conditions. Additionally, and most
18 important, the medical examiner presented crucial evidence to
19 you.

20 Now, while the injuries look and appear serious, the
21 medical examiner testified and clarified that Mollie Flynn's
22 wounds were, in fact, superficial and not life-threatening.
23 This is the testimony from the medical examiner. And I want to
24 say that again. He testified that Mollie Flynn's wounds were,
25 in fact, superficial and not life-threatening. He emphasized

1 that with the appropriate medical care, that she would have
2 likely survived.

3 Mr. McCabe testified that it took 26 minutes for the
4 United States Coast Guard to arrive after he called. Now,
5 Mr. McCabe also indicated that the presence of the waves could
6 explain the injuries classified by the medical examiner as
7 superficial, rather than attributing them to the propeller as
8 claimed by the government.

9 Now, Mr. McCabe explained to you that if the propeller
10 had indeed been engaged, it would have rotated at a speed of 42
11 times a minute, potentially causing over 20,000 wounds.

12 According to the medical examiner, such a high number
13 of wounds could not be deemed superficial. There is a
14 discrepancy. This discrepancy between the government's claims
15 and the medical examiner's findings has certainly provided you
16 with substantial doubt about the true circumstances surrounding
17 the incident.

18 Now, the government has also attempted to persuade you
19 that Mr. McCabe committed wire fraud based on the circumstances
20 surrounding his application, his forgiveness request for the
21 Paycheck Protection Program. Now, they showed you his
22 applications, and they claimed that he misreported both the
23 number of employees and the total payroll amount.

24 However, Mr. McCabe testified that he meticulously
25 followed the bank's instructions. He reached out in realtime.

1 He had realtime assistance while filling out this application.
2 And he testified that he was advised to report the number of
3 employees who would have returned had the boating segment of
4 his business been operational. Now, he maintained that he was
5 told this and that this was the correct way to complete the
6 form. The bank representative that testified also stated that
7 Mr. McCabe did have a phone call, did have a comm, did
8 provide -- did ask essential questions for filling out his
9 Paycheck Protection application.

10 Now, the government claims that this alleged PPP fraud
11 scheme was for Mr. McCabe to unlawfully enrich himself. The
12 evidence doesn't show this.

13 Mr. McCabe testified about his business expenses, his
14 payroll, his slip rent, utilities, maintenance, and a host of
15 other expenses that he was still responsible for. Once more,
16 again, he reached out to the bank representatives and received
17 assistance in completing these applications.

18 Now, Mr. McCabe testified and presented evidence
19 demonstrating that he did not make any misleading statements
20 regarding the information on the PPP loan, and that his
21 business was indeed operational at the time he secured the
22 loan. He confirmed that he employed five staff; they have been
23 with him for over four years.

24 Mr. McCabe testified that he actively worked as both a
25 dive instructor and trainer. So although his business adapted

1 to new circumstances after the accident, it remained
2 operational. It was not shut down following the tragic
3 accident.

4 I would like to note that the government also provided
5 forgiveness application 3805S. I believe they showed you this
6 form over and over again. But they failed to mention that
7 that's not the form that he submitted with his Paycheck
8 Protection form. Mr. McCabe filled out an entirely different
9 form that you haven't seen, 3805EZ application for forgiveness.
10 The government failed to provide the proper form.

11 Now, after acquiring the Southern Comfort, Mr. McCabe
12 testified that he researched extensively the requirements for
13 his new vessel. He testified that he contacted the
14 United States Coast Guard sector in Miami. He contacted the
15 Marine Safety Detachment in Lake Worth to verify his
16 understanding. He testified that the United States Coast Guard
17 representative informed him that the six-pack regulations were
18 designed to ensure the safety of uninspected recreational
19 vessels used for chartered scuba diving. This is why
20 Mr. McCabe classified the boat as recreational in the
21 documentation, and this was according to his research and
22 information he received directly from the Coast Guard.

23 Ultimately, the government just -- they have not proved
24 beyond a reasonable doubt that Mr. McCabe misled any official
25 by asserting that he would be using his vessel for recreational

1 purposes. His claim aligns perfectly with his actual use of
2 the vessel. He testified that his boat was specifically
3 refurbished, modified, updated for recreational activities.

4 Now, Mr. McCabe's testimony yesterday, it dispelled any
5 doubts regarding his intentions and his actions. The alleged
6 false statement was not only accurate, but it was consistent
7 with his behavior and on point with what he was able to
8 research and confirm through phone calls to the United States
9 Coast Guard. He asked for and received assistance in
10 completing that form that the government showed you.

11 Now, Mr. McCabe presented evidence that highlighted the
12 substantial changes that he made to improve his boat for
13 recreational use. The boat underwent refitting, refurbishment,
14 and he shared different experiences, including fishing trips,
15 cruises with family and friends for which he received no
16 payment for.

17 Now, this clearly illustrates that the vessel was
18 intended for the enjoyment and relaxation of Mr. McCabe and his
19 guests. The government has supplied his application as
20 evidence -- that's it -- which he completed with assistance
21 from the Coast Guard.

22 Now, yesterday, they argued that Mr. McCabe should have
23 selected a different option, or he should have selected
24 multiple options on that form to classify his vessel; however,
25 that application that they showed you, it does not indicate

1 that more than one option should or could be selected. He
2 adhered strictly to the regulations as he understood them. He
3 followed the guidance provided by the United States
4 Coast Guard. This, ladies and gentlemen of the jury, again,
5 establishes reasonable doubt.

6 Now, the burden of proof, as the judge told you, lies
7 with the government to demonstrate to you beyond a reasonable
8 doubt that Captain Dustin Sean McCabe's actions were negligent.
9 There is plenty of doubt. Plenty of doubt. What has been
10 shown throughout this trial is that while the outcome was
11 tragic, the actions leading up to it, they were not criminal.

12 The prosecution has failed to meet this burden, and the
13 evidence presented -- even their evidence supports the
14 conclusion that this was an unfortunate accident, not a case of
15 manslaughter.

16 They failed to fulfill their responsibility in
17 persuading you, the jurors, that there was a fraudulent scheme,
18 and that he provided misleading statements regarding how he
19 classified his boat.

20 Mr. McCabe successfully presented testimony and
21 evidence that countered each and every single one of their
22 false accusations.

23 Now, the prosecution has presented fragments of the
24 story rather than the complete narrative, and this is to
25 persuade you regarding the PPP issues. They have referenced a

1 few bank statements from 2019.

2 Mr. McCabe testified that he has several bank accounts
3 dating back to 2024. They just showed you three checks, only
4 three checks made out to cash to Mr. McCabe. And they want you
5 to believe this constitutes fraud, that he spent the money on
6 himself. He testified he is a businessman. He is allowed to
7 pay himself. They showed you, again, a few bank statements
8 from 2019 and three checks.

9 They even brought in his ex-wife. And they brought her
10 in to share insights about his business dealings during the
11 very year that they were separated. Think about that. When
12 the defense attorneys asked her basic questions, very basic
13 about the business operations, she was unable to provide any
14 answers.

15 Additionally, they let you hear a brief clip
16 yesterday -- I believe they let you hear maybe, 15 to
17 20 seconds of it -- of an interview with Mr. McCabe that lasted
18 at least 35 to 40 minutes. Again, they're showing you bits and
19 pieces, fragments of the story instead of the whole picture.

20 There is no way that you can convict Mr. McCabe based
21 on their incomplete story. On the contrary, Mr. McCabe, he has
22 been honest in his testimony, he has been transparent in his
23 testimony, and he has been very clear and concise about his
24 intentions and about the actual events that transpired.

25 So Jurors, as you deliberate, I urge you to consider

1 the totality of the circumstances, and the character of the man
2 sitting over there, Dustin Sean McCabe. He is not just a
3 seasoned seaman. He is a man who has dedicated his life to the
4 sea. 41 years, no incidents. He has dedicated his life to the
5 safety of those that sail with him. Jennifer Hester, 50 times
6 she's gone out with him.

7 To hold him criminally responsible for an accident
8 would not only be an injustice to him, but also to the
9 principles of fairness and truth that our justice system stands
10 for.

11 In closing, Jurors, I am asking that you find
12 Mr. McCabe not guilty. Recognize the distinction between this
13 tragic accident and negligence. Your decision will not only
14 affect his life, but will also serve as a testament to the
15 integrity of our judicial process. Thank you, jurors.

16 THE COURT: Thank you, Ms. Francis.

17 Mr. Keller, 24 1/2 minutes.

18 MR. KELLER: Yes, Your Honor. We just need to get set
19 up a little bit. Test, test, test. Okay?

20 May I proceed, Your Honor?

21 THE COURT: You may.

22 MR. KELLER: The defense said over and over again that
23 this is a tragedy. And it is. It's tragic. But this is
24 not -- and Mollie was not struck by lightning. She wasn't
25 stricken by disease. She was slaughtered. There is no other

1 way to talk about it. She was chopped up and she was held
2 under the water. And you heard from Dr. Tops that she
3 suffered.

4 And you heard from her husband who sat right there
5 (indicating) a week ago, that she was panicking, that she was
6 afraid, that that's how she died, right across from her
7 husband. And I told you in the opening statement that you were
8 going to have to see what that looked like. And you did. And
9 it was awful. But I also told you why it was important, why
10 it's important for me to say this to you now. Because it's the
11 stakes when this defendant takes out scuba passengers onto this
12 boat. It's telling you, it's showing you the risks that are
13 involved, and why these rules are like they are, why they're
14 written in blood, like the Coast Guard explained.

15 And that's why the negligence standard is so important
16 here. Because what this case is about is the defendant being
17 responsible, being in charge of that boat, and of the fact that
18 he knew about the problems on this boat from the day before,
19 about the fact that he didn't report them, about the fact that
20 he didn't fix them, which you know because the exact same thing
21 happened to Mollie that happened to Jennifer Hester. But it
22 just ended differently.

23 Think back to those two sitting on that stand, talking
24 about what happened, Sean Flynn and Jennifer Hester, one day
25 after the other. The same experience.

1 Now, I'm going to talk a little bit about the jury
2 instructions before I talk about the evidence and respond to
3 what Ms. Francis talked about.

4 As you go back there to deliberate, what you're
5 considering is the evidence you've seen and heard. The 25
6 witnesses or so that we brought up there last week, and
7 Mr. McCabe's lies yesterday, lie after lie, ridiculous lies
8 about Mollie being under the boat from a current, about the
9 current wrapping her leg around the shaft of this boat.
10 Ridiculous. And you, as the jury, are the ones who decide
11 that. You can say it's ridiculous, and you can put it in the
12 garbage where it belongs. And you can look at the witnesses
13 you saw last week and know that those are the ones that you
14 should be following. Those are the ones who are telling you
15 the facts. These people who are his friends who have no reason
16 to lie -- and we will look at this instruction in a minute --
17 these people who knew him. Sandra Brammeier said, He used to
18 help me carry things, but she was there testifying that the
19 boat captain's responsible.

20 Think back on redirect when I asked her, "If someone
21 helps you fix that boat, who is responsible?" She was looking
22 over at him. And she looked at you and she said, "I am. I am
23 responsible," because she knows how important this is. She
24 knows how high the stakes are for her as a boat captain, and
25 how high they were when this defendant decided to take those

1 people out on that boat on March 29th, including Mollie who
2 paid the price.

3 The next thing I want to say, as I get us to the
4 evidence and talk about it more, is that what I tell you right
5 now and what Ms. Francis just told you is not evidence. That
6 if you didn't hear it from that witness stand (indicating),
7 then you put it in the garbage just like you should
8 Mr. McCabe's testimony. That Ms. Francis said, "41 years, no
9 incidents." Put that in the garbage. That's not in evidence.

10 So what you should be paying attention to when you go
11 back there is what you heard right there (indicating). All I'm
12 trying to do right now and all any lawyer should be trying to
13 do is just to help guide what that evidence was and what's
14 important.

15 And to talk a little bit more about what you're
16 supposed to do with this evidence. You've heard Ms. Francis
17 talk about: where is the boat?

18 well, you heard where the boat is. That what happened
19 that day is Florida Fish and wildlife had no idea about what
20 happened on March 28th because this defendant had never
21 reported it, and he never mentioned it when he was being
22 interviewed by them. Instead, he told them, "well, I live on
23 this boat. I need it back." So they let it go.

24 why does that not matter? well, because as you see
25 here, there are different types of evidence that you hear in

1 court, and the reason for that is because we live in the real
2 world where things play out differently than on the TV, where
3 sometimes, all that you have -- and this is not the case
4 here -- is witness testimony. Ms. Hester might not have taken
5 a picture of her bruise, but she could still get up on that
6 stand and say to you, "I had a massive bruise on my leg." And
7 if I believe her, that is evidence that you credit to do your
8 job. And that's called -- there is direct and there is
9 circumstantial evidence. And any of those are enough for you
10 to consider and to decide what happened here as the factfinder.

11 Now, witnesses. Witnesses are a particular type of
12 evidence, a particular type of testimony that you heard time
13 and again last week, and then with Mr. McCabe this week. And
14 you get this list in your instructions about what to think
15 about.

16 Did the witness impress you as one who was telling the
17 truth? Think about those people who came up last week. His
18 friends. His ex-wife. Members of the Coast Guard who have
19 been doing these jobs for decades. People who have been scuba
20 diving for decades, like Carl McManus. Are these people who
21 came up here to lie? Of course not.

22 Did any of these witnesses -- to look at the second
23 one, have a -- have a particular reason not to tell the truth?
24 Of course not. This was their friend. In contrast, this
25 defendant when he took that stand had every reason to lie. The

1 jury instructions tell you to consider that because it matters.
2 And that's why he gave you these ridiculous stories that he
3 gave you time and again about every single issue in this case.

4 Couldn't admit to anything. You heard five witnesses
5 tell you about him grounding that boat. He couldn't even eat
6 that. That's the kind of testimony you heard yesterday for
7 hours. And you see here in the instructions why it is you
8 should throw that in the garbage. It's because this is why he
9 was doing it, because he is just trying to save his own skin.

10 Again, the third one. Did the witness have a personal
11 interest? Of course, he did. Unlike all these 25 witnesses
12 you heard last week, who have nothing to gain and were his
13 friends.

14 The last jury instruction I want to talk about before I
15 start talking about some of the evidence and responding to
16 Ms. Francis is reasonable doubt. Because you heard Ms. Francis
17 talk about what that is, and I want to show you the instruction
18 and have you see that it is not beyond all possible doubt.
19 That what you're supposed to do here is use your reason and
20 common sense. And I bolded and underlined that because it's so
21 important. And you will see in the jury instructions that
22 reason and common sense come up a lot, because that's what you
23 as jurors are doing. That's why you have been chosen to serve
24 on a jury, to do your duty.

25 Now, let's talk about each of these charges and what

1 you just heard Ms. Francis talk about. Because, again, what
2 she said is not evidence. What you should be concerned about
3 is what happened in that witness box last week and this week.
4 Let's start with Ms. Hester.

5 Ms. Francis suggested that Ms. Hester is our whole
6 case, is all that you saw. But think back to last week. She
7 testified on Monday afternoon. You heard witness after witness
8 after that, including people who were on the boat,
9 Carl McManus, Kimberly Odom, all telling you about the same
10 stuff, that this defendant lost the ability to go in reverse in
11 this boat, when he testified yesterday that it was a perfect
12 dive, the second dive. Ridiculous.

13 They all testified about the boat being grounded.
14 Ms. Hester told you about the speargun incident. Who else told
15 you about that? Steve Poznak did, that the defendant called
16 him up, told him that the propeller was activating when it was
17 supposed to be in neutral, and that Ms. Hester got hit by
18 her -- the butt of her speargun, and that Mr. Poznak told him,
19 "You've got to fix that. That is dangerous."

20 But then this defendant took the stand yesterday and
21 told you that was all lies, that all this was just made up by
22 all these people.

23 Again, go back into the instructions. Your decision is
24 who to believe. I would submit to you, Members of the Jury,
25 that you throw Mr. McCabe's testimony in the garbage on that

1 point. That those people who took the stand last week, who had
2 nothing to gain, who had no reason to lie, were telling you
3 what happened. For the grounding, it was five people.

4 Ms. Francis suggested it was just Ms. Hester. It was Jennifer
5 Hester, it was Carl McManus who complained about how long he
6 was on the -- stuck on the boat. He made that up? Of course
7 not. It's ridiculous.

8 You heard from Jordan McKenna. You heard from
9 Kimberly Odom. You even heard from the North Palm Beach Police
10 officer, Mr. Abramczyk, about this same thing.

11 And this defendant got up on that stand, sat right
12 there (indicating) and looked at you and said they all made it
13 up. No. Members of the Jury, you throw that right in the
14 garbage.

15 As far as these witnesses go, Ms. Brammeier, who
16 the -- who Ms. Francis was talking about, think back on her
17 testimony about the defendant. You can remember Ms. Francis
18 had asked her about him being a good guy, and she said, "He's a
19 good guy."

20 Think about the next question, "Is he a good captain?"
21 Think about how she responded. She sat there. She froze. She
22 thought to herself, what do I do in this situation? And do you
23 remember her answer? It was, Uh, he is not not a good captain.
24 That was all she could bring herself to say about this man that
25 she had been working with alongside for about a decade. That's

1 the nicest thing she could say about him.

2 what about the Coast Guard employees? One of the
3 things that Ms. Francis didn't talk about is these Coast Guard
4 employees saying what the obligations of a captain are, which
5 are the same thing that Ms. Brammeier talked about. And
6 Ms. Brammeier's testimony was important because it echoed what
7 they told you, which is that this defendant was responsible, as
8 the owner, as the captain. That once he knew there was an
9 issue on that boat, it was his responsibility to get it fixed,
10 it was his responsibility to report it, and it was his
11 responsibility to warn passengers about a known danger. And
12 you heard that from the passengers too.

13 And one thing to remember, Members of the Jury, is that
14 these weren't just any scuba divers. These weren't people who
15 had just started. These aren't people who were on their third
16 scuba diving trip. These are people who had been doing it for
17 over a decade, some two decades. And you heard from every
18 single one of them, the same thing about what this defendant's
19 responsibility was as the captain, as the owner of that boat.
20 And it was the same thing you heard from the Coast Guard. It
21 was the same thing you heard from Captain Sandy Brammeier. The
22 same thing.

23 And then he gets up on the stand. He looks at all of
24 you while he is under oath, and he says, well, I mean, they're
25 giving half truths. They don't really know what's going on.

1 It's more complicated than that.

2 Folks, it's not. It's very simple. As you heard from
3 Ms. Brammeier, that when you are doing something like this
4 that's dangerous, when you have paying passengers, that you are
5 the person who is responsible, just like this defendant was for
6 what happened to Mollie. That's what this case is about. And
7 you saw through those witnesses about the failure to report,
8 about the failure to fix the boat, which you know because the
9 exact same thing happened the next day. It's not rocket
10 science.

11 Jennifer Hester gets up, says, I had this bizarre,
12 crazy experience. I got sucked under a boat. I have been
13 diving for 20 years. This has never happened to me before. I
14 got so lucky.

15 The next day, Sean Flynn comes up, a week ago today,
16 describes the exact same thing. Even the sensations he felt.
17 Remember what they talked about. What did it feel like?
18 Remember when I asked them those questions?

19 "It felt like I was getting sucked from the back. It
20 felt like water was kind of disappearing behind me, and then I
21 felt myself getting sucked down."

22 They even felt the same thing, because it was the exact
23 same experience that resulted from the exact same thing
24 happening, which is that port side propeller sucking them
25 under. It's an incredibly dangerous thing that happened on

1 March 28th, and that Jennifer Hester told this defendant about.
2 And he blew it off. He didn't want to deal with it. He had
3 just bought this boat. He wanted to have fun. He wanted to
4 bring out some paying passengers to pay his boat note. That's
5 what this defendant had in mind at the expense of Mollie's
6 life. And that's why we're in federal court and that he is
7 facing charges for it, because he was responsible. Now,
8 moving -- that's why he is guilty.

9 Moving us to Count 2, where the defendant trotted out
10 something you heard over and over again as he testified all day
11 yesterday, which is this: If he can't come up with a story, he
12 does one of two things. He either blames somebody else which
13 is what he did here. "Oh, I called somebody, and they told me
14 this, and, you know, then I just did it. I looked it up on a
15 website."

16 When you heard from Coast Guard member after
17 Coast Guard member that these rules are clear. They are
18 important. They determine whether someone is even investigated
19 by them.

20 And he is expecting you -- this defendant is expecting
21 you to believe that he talks to somebody and they were confused
22 about it and they gave him confusing information. No, Members
23 of the Jury. Throw that in the garage.

24 Just like when we get -- when we get to the wire fraud,
25 he did with the bank. That's the one play. "Oh, I called

1 somebody, and they told me I could lie. I called somebody, and
2 they gave me the wrong information."

3 And, by the way, the defendant would tell you and have
4 you believe, the people who came and testified, they didn't
5 really know what they were talking about. They were giving
6 half truths.

7 Because they have it out for him or something? Again,
8 go back to the jury instruction on witness credibility, because
9 this defendant would either make up a story, blame it on
10 somebody else or -- and we'll get to this on the tax
11 documents -- tell you, "well, maybe those aren't even the
12 documents. I mean, who really knows whether that's the actual
13 thing they looked at?" well, the bank representatives do. And
14 they came and testified last week, and they told the members of
15 the jury that this is what they looked at.

16 So we would submit to you that you can't credit
17 anything he said about that registration, and that what you can
18 credit is the actual evidence you saw which is that he was a
19 merchant mariner, he had been one for years. You heard from
20 Sandy Brammeier, to become a merchant mariner, you are taking
21 class after class on Coast Guard regulations.

22 You've heard from Andrea walker about how important
23 these regulations are, about how important this registration
24 is. And you even heard the defendant tell you, "I know about
25 Coast Guard regulations." He knew. But now that he's -- now

1 that he's facing accountability for it, he is doing what he
2 can. He is blaming other people.

3 No, Members of the Jury. Follow the evidence that you
4 have, the knowledge that he had as a merchant mariner, as a
5 person who swore an oath to know these rules, who swore an oath
6 to follow them, when the simple fact is he did this because he
7 didn't want to be subject to the rules.

8 You heard about FWC coming out to the scene that day,
9 well, if it's recreational, then usually, we, like, take a look
10 at it. Whereas, once it's commercial, it's serious. Once it's
11 commercial, the Coast Guard is involved.

12 The defendant didn't want any bit of that. And you
13 know why when you saw what happened on the 29th, because he is
14 taking this boat out no matter how broken it is, just to get
15 these paying passengers.

16 Now, let me now move on to the wire fraud, and to tell
17 you you should find him guilty of Count 2 as well.

18 Remember, there are three counts to this wire fraud.
19 The first is the second PPP loan application, the one where he
20 claims \$8,100 in payroll; the second is the first PPP loan
21 forgiveness application.

22 And I want to note, Members of the Jury, in those loan
23 forgiveness applications -- and this is important, and you
24 heard testimony about this -- Mr. McCabe re-swears to all of
25 this stuff that he did on the application to get the money in

1 the first place. That's the first block that he initials in
2 that application.

3 So this idea that the first application doesn't matter
4 just because it's not a count here is nonsense. That's how he
5 got the money in the first place. It's absolutely relevant to
6 see how he got it by lying about the payroll information in the
7 first place.

8 THE COURT: Five minutes.

9 MR. KELLER: Yes, Your Honor.

10 The first thing I want to talk about is this idea that
11 everybody else is lying, and that Mr. McCabe is somehow giving
12 you the real scoop on this Florida Scuba business. That
13 Ms. Kelly, who testified last week, who said we never had any
14 payroll. We were -- they were just struggling to get by. She
15 was the one who was paying for their family. She was working a
16 real job while the defendant was out on the scuba boat
17 basically making tips. And she's like, I don't know where you
18 would get the idea that we had employees.

19 Mr. McCabe comes and testifies and says, "Oh, she
20 doesn't know what she's talking about."

21 Really? When she's the one who's paying the bills, she
22 doesn't know what she's talking about? He says, "Oh, well, she
23 got hurt. After that, she doesn't know the business." She was
24 keeping the books. The notion that she didn't know the
25 business makes no sense.

1 And then, think about when she took the stand and I
2 showed her those tax documents. "Have you ever seen these?"
3 And, by the way, Ms. Francis said -- I'm getting him -- her to
4 testify about 2020. It was a 2019 tax form, when she was still
5 working for the business, when she was still married to him.

6 "Ms. Kelly, have you ever seen this document?"

7 "No. Absolutely not."

8 "Ms. Kelly, do you remember making \$90,000 in profit,
9 like this tax document says?"

10 "No. I would have paid taxes on that. I think I would
11 remember."

12 And then this defendant takes the stand. I show him
13 the same document. He can't even bring himself to acknowledge
14 that he made it when we just had a bank witness say we got this
15 with our application.

16 So, what, is the tax document fairy manufacturing this
17 for you, Mr. McCabe? Of course not. He made it. He made this
18 fake tax document so that he could get some money. It's really
19 that simple.

20 The same is true when it comes to claiming these
21 employees. Think back on Mr. McCabe's testimony. It's
22 basically like, "Listen, I called the bank and they told me to
23 lie on the application." That's what this defendant is
24 suggesting you believe. And then maybe realizing that that
25 wasn't going to fly, he says to you, well, Members of the Jury,

1 this isn't even the form they looked at. Don't even worry
2 about it. I mean, it says \$20,000, but, like, what's \$20,000?
3 This isn't even the form. When you just heard from the bank,
4 This is the form we took. This is the form we accepted. This
5 is why we gave him this free money.

6 Members of the Jury, your job is to evaluate who is
7 telling the truth. Your job is to think back on this defendant
8 sitting right there (indicating) yesterday, just yesterday, and
9 telling you lie after lie after lie, and sitting there
10 thinking, they're probably buying it. No.

11 You saw a week's worth of evidence before he testified
12 that shows you that everything he told you, just about, is a
13 lie. I mean, literally, he told lie after lie after lie. He
14 wouldn't acknowledge anything, even the grounding.

15 And Members of the Jury, we submit that once you throw
16 Mr. McCabe's testimony in the garbage, once you look at the
17 real evidence that is telling you the truth, that you will do
18 justice to this case. You will do justice to Mollie, you will
19 do justice to Sean, you will do justice to this community, and
20 you will convict this defendant of all five counts in the
21 indictment. Thank you.

22 **THE COURT:** Thank you.

23 Ladies and gentlemen, a few instructions at this time.

24 You will be permitted now to commence your
25 deliberations. In a few moments, you will be presented with

1 the exhibits that were admitted in evidence for your review.
2 Take all the time that you need and follow the instructions
3 carefully.

4 In addition to that, I do want to make a point
5 regarding our alternate jurors. We have had three alternates
6 during this trial, and they are as follows: Helen Kutukyan,
7 James Herfy, and Maureen Kielian. They will not be
8 deliberating with you. So I apologize if you were looking
9 forward to that process. But I will caution you to stay at
10 least within 45 minutes of the courthouse because occasionally
11 things do take place that are outside of our control and
12 require us to call our alternate jurors back.

13 And so to the alternates, do not discuss this case with
14 anybody. Do not conduct any investigation. And continue to
15 abide by all of the instructions that I have indicated
16 throughout the course of this trial to the extent we do need to
17 call you back. For your comfort, we will call you as soon as
18 possible once we know that you can be officially released.

19 For the jurors who are deliberating, we will make sure
20 that you have lunch so that you do not have to leave the
21 courthouse during this process. And that concludes my
22 instructions to you at this time.

23 So what will happen now is we will ask our alternates
24 to first leave so that you do not commence deliberations until
25 they have left. To our alternates, I will also advise you that

1 you will be given a certificate signed by me which is merely a
2 small token of the Court's appreciation for your time and
3 effort over the course of the last week and change.

4 So, with that, thank you. We will now permit you to
5 return to the jury deliberation room to commence your
6 deliberation after the alternates have exited.

7 (The jury exited the courtroom at 11:17 a.m.)

8 THE COURT: All right. Thank you. Are the exhibits
9 ready?

10 MR. STIEHL: Your Honor, I gave them to --
11 Mr. O'Sullivan, are they -- have you reviewed them?

12 THE COURT: All right. Just on the record,
13 Mr. O'Sullivan, have you had a full chance to review the
14 exhibits, and are you confident that no exhibit is in that set
15 that has not been admitted into evidence?

16 MR. O'SULLIVAN: Yes. Mr. Keller gave them to me prior
17 to court commencing this morning prior to 9:00. I have had a
18 full opportunity to look at them, and I have no objection and
19 full confidence that everything is as it should be.

20 THE COURT: Okay. Mr. Keller, same question.

21 MR. KELLER: Yes.

22 MR. STIEHL: Yes, Your Honor, I have reviewed the
23 evidence, and it is everything. And again, Mr. O'Sullivan
24 reviewed it as well.

25 THE COURT: Okay. And the -- the index is there too?

1 MR. KELLER: We are including an index, and we can
2 provide Your Honor a copy if you would like, or no?

3 THE COURT: Yes, please.

4 MR. O'SULLIVAN: I have received a copy of the index
5 from Mr. Keller this morning prior to court commencing. I have
6 had a chance to review it and I have no objection.

7 THE COURT: Okay. I will ask my law clerk to add the
8 redacted indictment into that box. Please leave your cell
9 phones, Counsel, on a piece of paper on the ledge there so we
10 can reach you in the event of a question or any notice from the
11 jury. The Court will be in recess, of course, while the jury
12 deliberates.

13 Anything further at this time, Mr. Keller?

14 MR. KELLER: No, Your Honor.

15 THE COURT: Mr. O'Sullivan?

16 MR. O'SULLIVAN: Nothing from the defense, Your Honor.

17 THE COURT: Okay then. All right. Please give those
18 exhibits to court staff, along with the redacted indictment.
19 There is also -- that's the tablet for playing of any
20 audio/visual exhibit, is that correct, Mr. Stiehl?

21 MR. STIEHL: Your Honor, there is digital copies of all
22 the exhibits on the tablet, so the video, but also just more --
23 a second copy of all of the physical exhibits.

24 THE COURT: Okay. And are you sure that there is
25 nothing else on this laptop that should not be viewed by the

1 jury?

2 MR. STIEHL: I have reviewed it, Your Honor, and I
3 didn't see anything of that nature.

4 THE COURT: Okay then. All right. Well, we have
5 everything we need then. Please stay within 15 minutes of the
6 courthouse and leave your cell phones, as I said, with
7 Ms. Alexander.

8 (A recess was taken from 11:21 a.m. to 2:31 p.m.)

9 THE COURT: Good afternoon. Please be seated. We
10 received a note that the jury has reached a verdict, so we will
11 now call the jurors in, please.

12 COURT SECURITY OFFICER: Yes, Your Honor.

13 THE COURT: I will note for the record that everybody
14 is present.

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

16 (The jury entered the courtroom at 2:32 p.m.)

17 THE COURT: Please be seated. Good afternoon, ladies
18 and gentlemen. I understand you have reached a verdict. Is
19 that correct?

20 A JUROR: Yes, Your Honor.

21 THE COURT: All right. Did you say, yes, sir?

22 A JUROR: Yes.

23 THE COURT: Okay. Is the verdict unanimous?

24 A JUROR: Yes, Your Honor.

25 THE COURT: Okay. I'm going to ask that you please

1 hand the verdict over to Ms. Alexander so that I may review it
2 before it is published.

3 Okay. I will now hand it back to Ms. Alexander to be
4 published. And, ladies and gentlemen, please listen carefully
5 to the verdict as it is being read, because I'm going to do
6 what's called polling the jury, which means going one by one,
7 asking each of you whether the verdict as read is your true and
8 accurate verdict.

9 So, with that, Ms. Alexander.

10 **COURTROOM DEPUTY:** The United States of
11 America v. Dustin Sean McCabe, verdict form. Number 1, We, the
12 jury, as to Count 1 of the indictment unanimously find the
13 Defendant, Dustin Sean McCabe, A, that the defendant was a
14 captain, engineer, pilot, or other person employed on the
15 vessel, and that a loss of life was proximately caused by the
16 defendant's misconduct, negligence, or inattention to his
17 duties on the vessel. Guilty. B, that the defendant was an
18 owner or charterer of the vessel and that a loss of life was
19 proximately caused by the defendant's fraud, neglect,
20 conveyance [sic], misconduct, or a violation of the law.
21 Guilty.

22 Number 2. We, the jury, unanimously find the
23 Defendant, Dustin Sean McCabe, as to Count 2 of the indictment,
24 guilty.

25 we, the jury, unanimously -- number 3. We, the jury,

1 unanimously find the Defendant, Dustin Sean McCabe, as to
2 Count 3 of the indictment, guilty.

3 Number 4. We, the jury, unanimously find the
4 Defendant, Dustin Sean McCabe, as to Count 4 of the indictment,
5 guilty.

6 Number 5. We, the jury, unanimously find Defendant,
7 Sean -- Dustin Sean McCabe, as to Count 5 of the indictment,
8 guilty.

9 So say we all, signed by the foreperson on March 4,
10 2025.

11 THE COURT: Thank you, Ms. Alexander.

12 All right. Juror Number 1, is the verdict as read your
13 true and accurate verdict?

14 A JUROR: Yes, it is.

15 THE COURT: Juror Number 2, is the verdict as read your
16 true and accurate verdict?

17 A JUROR: Yes, Your Honor.

18 THE COURT: Juror Number 3, is the verdict as read your
19 true and accurate verdict?

20 A JUROR: Yes, Your Honor.

21 THE COURT: Juror Number 4, is the verdict as read your
22 true and accurate verdict?

23 A JUROR: Yes, ma'am.

24 THE COURT: Juror Number 5, is the verdict as read your
25 true and accurate verdict?

1 A JUROR: Yes.

2 THE COURT: Juror Number 6, is the verdict as read your
3 true and accurate verdict?

4 A JUROR: Oh, I thought I was 7. Yes, ma'am.

5 THE COURT: Juror number -- I want to make sure. I
6 will just use the names then.

7 what is your name, ma'am?

8 A JUROR: Middlebrook.

9 THE COURT: Perhaps you all -- there it is.

10 You are Juror Number 7, correct, ma'am?

11 Ms. Middlebrook, is the verdict as read your true and
12 accurate verdict?

13 A JUROR: Yes, Your Honor.

14 THE COURT: Juror number -- Ms. Tucker, is that your
15 name? Ms. Tucker, is the verdict as read your true and
16 accurate verdict?

17 A JUROR: Yes.

18 THE COURT: All right. Now, shifting to Juror --
19 Ms. Hurley, is the verdict as read your true and accurate
20 verdict?

21 A JUROR: Yes, ma'am.

22 THE COURT: Are you Ms. Adrian?

23 A JUROR: (Nods head.)

24 THE COURT: Ms. Adrian, is the verdict as read your
25 true and accurate, verdict?

1 A JUROR: Yes, Your Honor.

2 THE COURT: Ms. Scott, is the verdict as read your true
3 and accurate verdict?

4 A JUROR: Yes, ma'am.

5 THE COURT: Mr. Ayala, is the verdict as read your true
6 and accurate verdict?

7 A JUROR: Yes, Your Honor.

8 THE COURT: And then because some of the seating is
9 changed to be -- sir, your last name, if you don't mind
10 reminding me of it.

11 A JUROR: Mr. Willems.

12 THE COURT: Yes. Thank you.

13 Mr. Willems, is the verdict as read your true and
14 accurate verdict?

15 A JUROR: Yes, Your Honor.

16 THE COURT: All right. With that, I want to thank the
17 ladies and gentlemen of the jury for their time and attention
18 this week. Jury service, as I indicated at the outset of this
19 process, is a fundamental part of our criminal justice system,
20 and without jurors like you willing to perform their civic duty
21 in a diligent way, our system could not function. So I want to
22 thank you on behalf of the entire Southern District of Florida
23 for your work in this case.

24 As I did with our alternates, I'm going to give you a
25 small token of my appreciation in the form of a signed

1 certificate, which you will receive in just a few moments from
2 the courtroom deputy. Thank you again. You may now rise for
3 the final time as our jury in this case.

4 (The jury exited the courtroom at 2:39 p.m.)

5 THE COURT: Thank you. Ms. Alexander, if you can
6 please go send our jurors off with their certificates, and I
7 will continue to handle matters in the courtroom.

8 COURTROOM DEPUTY: Yes, Judge.

9 THE COURT: All right. You may all be seated.

10 All right. In light of the jury's verdict, Mr. McCabe,
11 I will now adjudicate you guilty of all five counts of the
12 indictment as reflected in the verdict form which will be
13 docketed on the public docket.

14 with respect to deadlines for posttrial motions, those
15 will be set under the standard guidelines set forth in the
16 Federal Rules of Criminal Procedure.

17 Let's discuss, now, the matter of release pending
18 sentencing, Mr. O'Sullivan.

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

20 In light of the jury's verdict, we are still going to
21 ask that Mr. McCabe be released pending a presentence
22 investigation and a sentencing. The incidents for which the
23 jury found Mr. McCabe guilty have been five years ago. He has
24 never fled the jurisdiction. He has been under investigation
25 for five years. He has been on an ankle monitor. As far as I

1 know, there has never been a violation whatsoever. He has
2 strong ties to the community. He has family here. He is
3 certainly not a danger to the community. There is no reason to
4 take him into custody today. He is not a flight risk.

5 Again, he has been on a monitor for -- since the
6 indictment. And he has also been under either cloud or actual
7 investigation for five years. He is not going anywhere. We
8 have family in the -- in the gallery that's been here for the
9 entirety of the trial. There is no reason to take him into
10 custody. He is not violent.

11 THE COURT: Okay. What's the government's position?

12 MR. KELLER: Your Honor, we think that remand is
13 appropriate here, partly because Mr. McCabe has spent his
14 entire life on boats and around boats, and we -- our position
15 is that now that he has been adjudicated guilty after fighting
16 this tooth and nail, that he may flee. He may go on a boat and
17 go God knows where.

18 So our position is that in light of the burdens here,
19 which, I believe are needing the defense to show that he, by
20 clear and convincing, is not a flight risk, that based upon,
21 again, the nature of the circumstances here, the nature of the
22 crime that inherently involves this transportation, this
23 vessel, that we think it's appropriate to remand Mr. McCabe.

24 THE COURT: Do you know, in terms of estimated
25 guideline range, what the sentencing exposure might look like

1 from an advisory standpoint?

2 MR. KELLER: It is over five years; I can tell you that
3 for sure. I don't have the exact numbers in front of me right
4 now, though.

5 MR. O'SULLIVAN: Your Honor, may I be heard?

6 THE COURT: You may, but in one moment.

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

8 THE COURT: With respect to any criminal history, can
9 you alert the Court, Mr. Keller, to any such information?

10 MR. KELLER: We -- there is no such information.
11 That -- Mr. McCabe is a first-time felon at this point.

12 THE COURT: Okay. All right.

13 Mr. O'Sullivan, final word?

14 MR. O'SULLIVAN: Judge, I think most importantly is
15 that Mr. McCabe is a 49-year-old man with zero criminal
16 history. He is charged with a general intent crime,
17 negligence. He is not charged with a specific intent crime.
18 He is not a flight risk. His profession as a captain or a
19 divemaster should not matter. He does not have a boat. He is
20 not going to sail off to Aruba. He has strong ties to this
21 community. He has lived here for a very long time. He has
22 zero criminal history. He has been on a monitor for a very
23 long time. He is not a flight risk. He is not a danger to the
24 community. He is not engaging in what he was just convicted
25 of.

1 There is absolutely no reason to remand him today. He
2 should absolutely be free to work on his sentencing while the
3 presentence investigation is out there. The Court has very
4 many tools in her toolbox to make sure that he is where he is
5 supposed to be, when he is supposed to be. He can remain on an
6 ankle monitor and he can -- should be free to, you know, work
7 on his defense for sentencing.

8 **THE COURT:** All right. Thank you.

9 with respect to the matter of release or detention
10 pending sentencing, I'm going to deny the motion for release
11 and direct that Mr. McCabe be ordered into the custody of BOP
12 pending sentencing. I find that there has not been a showing
13 by clear and convincing evidence that he is not likely to flee,
14 and given the adjudication of guilt and the surrounding
15 circumstances of the offenses which include three counts of
16 substantive wire fraud, along with the seaman's manslaughter,
17 and the 1001 count, I do think remand is appropriate,
18 notwithstanding the arguments made by defense counsel.

19 So, with that, Mr. McCabe, I will see you at sentencing
20 which we will schedule in a hearing notice to follow. This
21 will be at least three months from today's date.

22 The process, Mr. McCabe, that is to follow is for
23 probation to prepare a Presentence Investigation Report. As
24 part of that process, they will ask to meet with you. You may
25 have your attorney present when you meet with probation, of

1 course. After that PSI, or PSR, as we sometimes call it for
2 short, is published, you and the government will have an
3 opportunity to file any objections within a certain time
4 period. We then will have our sentencing hearing, at which
5 time it will be my obligation to determine a reasonable
6 sentence that is not greater than necessary to achieve the
7 statutory purposes.

8 If you wish to have any family members or friends
9 present at sentencing, you may do so, with the time and date to
10 be announced by a future court order. And with respect to your
11 preparation for sentencing, that, of course, shall continue,
12 although you will be detained pending sentencing.

13 Anything further, Mr. O'Sullivan?

14 MR. O'SULLIVAN: Judge, is pretrial detention with or
15 without prejudice?

16 THE COURT: If you wish to file a motion, you may. But
17 at this time, the Court has made its finding that there has
18 been no showing by clear and convincing evidence in light of
19 the adjudication of guilt.

20 MR. O'SULLIVAN: Your Honor, I understand --

21 THE COURT: Thank you, Mr. O'Sullivan. The ruling has
22 been made.

23 Ms. Alexander, can you please provide a sentencing
24 date, now that we're all here, within 90 days of today's date.

25 COURTROOM DEPUTY: Yes, Judge. June the 9th.

1 THE COURT: At what time?

2 COURTROOM DEPUTY: At 10:00 a.m.

3 THE COURT: One moment.

4 Can you provide a date that is a little bit later
5 during that week of June 9th.

6 COURTROOM DEPUTY: June the 12th.

7 THE COURT: Okay. Any conflicts with June 12th,
8 Mr. O'Sullivan or Ms. Francis?

9 MR. O'SULLIVAN: No conflict, Your Honor.

10 THE COURT: Okay. Mr. Keller, any conflict with
11 June 12th?

12 MR. KELLER: No, Your Honor, that should be fine.

13 THE COURT: Okay. And the time, Ms. Alexander?

14 COURTROOM DEPUTY: 10:00 a.m.

15 THE COURT: Sentencing will be set in this matter for
16 June 12th at 10:00 a.m.

17 As I indicated, Mr. McCabe, you should advise any
18 friends or family members of that date and time so they can be
19 present if they wish. The same holds true for the government's
20 notification of any relatives of the deceased victim. I would
21 also wish to note for Mr. McCabe that you will be given an
22 opportunity to allocute or make a statement to the Court at
23 sentencing. So if you wish to prepare a statement in advance,
24 you may do so.

25 That concludes our hearing and our trial in light of

1 the adjudication of guilt. I will see you in June, Mr. McCabe.

2 The Court is in recess.

3 MR. O'SULLIVAN: May I make one inquiry?

4 THE COURT: Yes.

5 MR. O'SULLIVAN: Physically, will Mr. McCabe be in FDC
6 Miami, or will he be local? Just so I can visit him this
7 weekend.

8 THE COURT: You should consult with the U.S. Marshals
9 with respect to his location. That information, I cannot
10 provide. Thank you.

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

12 (These proceedings concluded at 2:49 p.m.)

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C E R T I F I C A T E

I hereby certify that the foregoing is an accurate
transcription of the proceedings in the above-entitled matter.

DATE: 05-07-2025

/s/Laura Melton
LAURA E. MELTON, RMR, CRR, FPR
Official Court Reporter
United States District Court
Southern District of Florida
Fort Pierce, Florida

\$	2024 ^[1] - 55:3	5	absolutely ^[4] - 69:5 _{_,} 70:7 _{_,} 83:1 _{_,} 83:2
	2025 ^[1] - 77:10		accept ^[1] - 48:6
\$20,000 ^[2] - 71:2	24 ^[2] - 36:4 _{_,} 56:17	5 ^[10] - 8:23 _{_,} 22:18 _{_,} 22:20 _{_,} 23:1 _{_,} 33:24 _{_,} 34:9 _{_,} 36:1 _{_,} 77:6 _{_,} 77:7 _{_,} 77:24	accepted ^[1] - 71:4
\$7,500 ^[1] - 32:4	24-cr-80103 ^[1] - 3:4		accident ^[6] - 7:10 _{_,} 52:1 _{_,} 52:3 _{_,} 54:14 _{_,} 56:7 _{_,} 56:13
\$8,100 ^[3] - 32:21 _{_,} 32:24 _{_,} 68:20	24th ^[1] - 35:10	5-minute ^[1] - 6:4	according ^[3] - 24:24 _{_,} 50:12 _{_,} 52:21
\$90,000 ^[2] - 33:3 _{_,} 70:8	25 ^[4] - 6:2 _{_,} 37:16 _{_,} 58:5 _{_,} 61:11	50 ^[3] - 6:2 _{_,} 41:3 _{_,} 56:5	account ^[6] - 32:16 _{_,} 40:18 _{_,} 42:15 _{_,} 46:15 _{_,} 48:24 _{_,} 49:15
1	26 ^[1] - 50:3	5th ^[1] - 25:22	accountability ^[1] - 68:1
	28 ^[3] - 11:25 _{_,} 12:7 _{_,} 14:5	6	accountable ^[4] - 8:9 _{_,} 8:15 _{_,} 8:17 _{_,} 34:8
1 ^[12] - 9:10 _{_,} 11:7 _{_,} 11:25 _{_,} 13:25 _{_,} 21:10 _{_,} 21:15 _{_,} 22:21 _{_,} 23:1 _{_,} 36:1 _{_,} 76:11 _{_,} 76:12 _{_,} 77:12	28th ^[14] - 13:2 _{_,} 13:6 _{_,} 13:22 _{_,} 15:1 _{_,} 17:20 _{_,} 17:24 _{_,} 18:15 _{_,} 21:5 _{_,} 40:2 _{_,} 44:8 _{_,} 44:12 _{_,} 45:4 _{_,} 59:20 _{_,} 66:1	6 ^[1] - 78:2	accounts ^[1] - 55:2
1/2 ^[2] - 36:4 _{_,} 56:17	29 ^[2] - 9:12 _{_,} 12:13	60 ^[1] - 4:24	accurate ^[16] - 35:14 _{_,} 53:6 _{_,} 76:8 _{_,} 77:13 _{_,} 77:16 _{_,} 77:19 _{_,} 77:22 _{_,} 77:25 _{_,} 78:3 _{_,} 78:12 _{_,} 78:16 _{_,} 78:19 _{_,} 78:25 _{_,} 79:3 _{_,} 79:6 _{_,} 79:14
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