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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Diane Schafer Goodstein, Circuit Court Judge

Case No. 2012-CP-07-03782

Rebecca Delaney, as Personal
Representative of the Estate of
Justin Nicholas Miller,

Appellant,

v.

CasePro, Inc.,

Respondent.

Record on Appeal: Volume IV
PAGES 1501-2000

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1 A No, sir, because at the time that I wrote these
2 notes, it's what I believed to be true, based on the
3 information I had. Subsequently, I have been supplied
4 with additional information that clearly has
5 demonstrated that Ms. Pope and Nurse Smith were
6 employees of the Naval base.

7 Q So, in the nine or ten months that you had been
8 involved in this case before authoring this report, you
9 didn't try to verify or clarify any of these things?

10 A First off, these are notes that were designed to
11 assist me through the deposition, and this is not a
12 report that was ever published to anybody until today.

13 Q Well, it was published to Mr. Hoyle and Mr.
14 Mackelcan and to a whole bunch of lawyers that relied
15 upon it as a they questioned to you, was it not?

16 A No. I'm not sure that the attorney who was asking
17 me questions in my deposition, I'm not -- I did not see
18 him referencing it or -- or using it, no.

19 Q It was an exhibit to your deposition, was it not?

20 A It was made an exhibit, but I don't believe it was
21 ever used by Counsel to question me.

22 Q Further on, you state:

23 *During interviews with the staff of*
24 *NHB, Kalvin Hunt stated, in the presence*
25 *of Edward Ray, that he did want to hurt*

1 *himself.*

2 And again, we're talking about while he's up at the
3 managed care intake paragraph, correct?

4 A Yes, while they're with Nurse Smith, clearly, Mr.
5 Hunt declares that he has thoughts of wanting to hurt
6 himself and hurt others to Nurse Smith, and Mr. Ray was
7 sitting in the room.

8 Q Show me where, in the medical records of Nurse
9 Smith, it says Calvin Hunt wants to hurt other people.

10 A That was the deposition testimony.

11 Q So, it's your recollection from Ms. Smith's
12 testimony that you relied upon, that she said Calvin
13 Hunt told her he had thoughts of hurting other people,
14 correct? Is that what I just heard you say?

15 A It is clearly in the medical records. We -- we
16 just read it off the medical records that Mr. Hunt had
17 thoughts of wanting to harm himself and others.

18 Q That was not my question, Doctor. I asked, in Ms.
19 Smith's testimony, you just told us that it was your
20 understanding that's what he told her.

21 A It's my understanding that he declared he wanted to
22 hurt himself and others, yes.

23 Q Okay. And that's something you relied on in
24 forming all these opinions you've been giving our jury
25 today, correct?

1 A That is correct, because it is well-stated in the
2 record that those are the thoughts that he had.

3 Q Now, Doctor, I'm going to show you -- I think
4 Plaintiff's counsel will show to you one record, or the
5 records when Nurse Janice McDonald. I'd ask you --
6 you've got them right in front of you, still?

7 A No, I don't.

8 Q Oh, you don't? It's Plaintiff's Exhibit 20 --
9 22. No, the Plaintiff's -- the medical chart, 20.
10 There you go. I apologize.

11 A Thank you.

12 Q In Nurse Janice McDonald's records, she, nowhere,
13 records that this patient had any thoughts of hurting
14 other people, correct? Take your time and look at it.
15 But she has no indication anywhere that this patient
16 would hurt other people.

17 A That is correct. She checked suicidal. She does
18 not check homicidal.

19 Q And homicidal and suicidal have definitions that
20 you rely on. Homicidal -- well, let's talk suicidal is
21 I have thoughts to hurt myself, a plan to do so, and
22 intent to do something, right?

23 A Yes.

24 Q Homicidal, same thing; I have thoughts of hurting
25 other people, presumably seriously; a plan to hurt other

1 people; and an intent to hurt other people, correct?

2 A That is correct.

3 Q That's how Dr. Baker defines those terms.

4 A Yes.

5 Q So, we have no homicidal ideations. In fact, in
6 the area where ideations are questioned in Nurse
7 McDonald's triage -- she's, I think, the second page --
8 she has the option to check homicidal or has plan, and
9 she hasn't checked either, correct?

10 A She checked suicidal.

11 Q Yeah, but not homicidal, and not has plan, correct?

12 A Correct.

13 Q And you understand that, at no point, from the time
14 this gentleman walked into the E.R. or triage, or even
15 the managed care -- well, I better not ask that, because
16 you have a different recollection. So, let me focus on
17 E.R. only.

18 A Okay.

19 Q The E.R., from the time that Nurse McDonald or the
20 clerk first sees him, Ms. McDonald interacts with him,
21 Mr. McDonald interacts with him, Dr. Jansen interacts
22 with him, Mr. Manning interacts with him; they leave the
23 facility; at no point did he ever tell anybody that he
24 had a plan to hurt himself or hurt other people. You
25 understand that?

1 A Yes, no specific plan. He did tell Dr. Jansen that
2 he thoughts of hurting himself and others, and Dr.
3 Jansen specifically says no specific plan.

4 Q Right. And is your understanding that he also,
5 that this gentleman, his plans to hurt himself, the
6 suicidal ideation, or the thoughts -- start my question
7 over. That the thoughts this gentleman expressed to Dr.
8 Jansen wavered a bit? Do you have that understanding?

9 A I think the patient was identified as being
10 unstable, yes. So, I would agree he was unstable, and
11 his thoughts were waxing and waning, yes.

12 Q Sometimes he might say, you know, I have thoughts
13 sometimes of hurting myself, and occasionally I think
14 about hurting others. And then, sometimes he'd be
15 asked, and he'd say, no, I really don't.

16 A I disagree with that, because he's described as --
17 as not communicating well. And we talked about being
18 non-communicative. He wasn't saying much about details
19 about what he was thinking at all, and that's one of the
20 problems.

21 Q Well, he was communicative to people; was he not?
22 He was talking to Nurse Janice, and he spoke to Nurse
23 Joe McDonald, and he spoke to Dr. Jansen, and he spoke
24 to Mr. Manning, right?

25 A Yes. And we talk about the incompleteness of the

1 information that is collected, the incompleteness of the
2 information that is provided. And we talked about the
3 details of when did these feelings start, how long had
4 they been going on, how serious are they. Those kind of
5 detailed questions aren't asked. They aren't recorded.

6 Q Look at Dr. Jansen's medical record, please,
7 Doctor, real quick. Do you see, on the first page of
8 this, where he talks about how long these issues have
9 been going on with this gentleman?

10 A Yes.

11 Q Couple of weeks?

12 A Several weeks.

13 Q Okay.

14 A He's been -- medication. He's there for a
15 medication refill. He's having depression thoughts,
16 suicidal thoughts, and they started several weeks ago.

17 Q And gradual in onset. Right?

18 A Continues in the emergency room, severe, associated
19 with situational problems, including being dishonorably
20 discharged.

21 Q Gradual in onset?

22 A Yes. Gradual onset is circled.

23 Q Dr. Jansen told us that, when a person walks in
24 with suicidal ideations, under that severity scale, they
25 automatically check it as severe. Do you agree that's

1 the proper way to do it?

2 A I disagree with that.

3 Q You assume that's not how they do it?

4 A Correct.

5 Q When you look at the only person that recorded any
6 thoughts of hurting others was in Dr. Jansen when he
7 interviewed the patient, correct?

8 A Dr. Jansen documents thoughts of harming himself
9 and others.

10 Q And that was right after he had asked this
11 gentleman questions about the circumstances surrounding
12 his military situation and the impending dishonorable
13 discharge, right?

14 A Yes.

15 Q And that was also -- the notation of angry was
16 right after Dr. Jansen had a discussion with this
17 gentleman about his circumstances surrounding discharge
18 from the military, correct?

19 A Yes, it was. But I would note that the reason he's
20 been court marshaled is because he struck, attacked,
21 other people in -- in the earlier -- earlier time.

22 Q Not in any of these records here, is it? Do you
23 see that in any of these medical records in front of
24 you, Doctor?

25 A The reason for his discharge?

1 Q What you just said.

2 A Not in the E.R. record, no.

3 Q Thank you. Let's talk about a couple other little
4 medical things. When a patient is extremely agitated,
5 extremely tense, extremely upset, the respiration rate
6 tends to go up because they are perhaps breathing
7 heavier or faster, or whatever the word is?

8 A It may or may not. Some people get very quiet.
9 The angrier they get, the more quiet they get, and the
10 slower they breath. So, no, there's no relationship.
11 The most accurate relationship is heart rate.

12 Q Blood pressure tends to go up when you get upset or
13 angry or extremely agitated?

14 A Not somebody who's physically fit, no. Not in
15 somebody physically fit, like a corporal in the Marines,
16 no.

17 Q A heart rate of 103 is barely tachycardic, as you
18 doctors use to test the question, right?

19 A For you or me, that might be true, sir. But for a
20 -- for a corporal in the Marines who is physically fit,
21 their heart rate is typically going to be in that 50 to
22 70 range. And so, 103 is very high, significantly high,
23 for a conditioned corporal in the Marines.

24 Q But if he's a conditioned corporal in the Marines,
25 and his heart rate is elevated, then, you would also

1 expect his respiration rate and his blood pressure to be
2 elevated; would you not?

3 A That is not true. That's not correct.

4 Q Okay. Under the triage nurse's observations of
5 him, he was alert to place, person, and time.

6 A Correct.

7 Q He is able to communicate with her. His pulses are
8 present. At least she's finding them, right?

9 A Yes.

10 Q Breathing is unlabored.

11 A Yes.

12 Q Not having any problems there, right?

13 A Correct.

14 Q Her assessment of neurologic, he's not agitated.
15 He's not combative. He's not uncooperative. He doesn't
16 smell of alcohol. His speech is not slurred. In fact,
17 she listed it as clear, correct?

18 A That -- that is correct. He's flat. He's
19 depressed. He's withdrawn.

20 Q He's not incoherent.

21 A Correct.

22 Q And he's also not silent. He's talking to her,
23 correct?

24 A In a limited way, based on her documentation. He's
25 flat. He's depressed. He's withdrawn.

1 Q Well, he's already told her a good bit about his
2 medical history, his surgical history, how he's feeling
3 that day; has he not?

4 A I disagree. The nurse had access to past medical
5 records. It's not clear that this past medical history
6 came from Mr. Hunt.

7 Q Not clear to you.

8 A It -- it's not clear that -- it's not clear to
9 anybody, based on her deposition. And of course, I
10 haven't read her trial testimony.

11 Q When she examined him and looked at him, he was not
12 flushed, he was not sweaty, he was not diaphoretic, the
13 medical term, I guess, which is for sweaty, correct?

14 A Yes.

15 Q And she also, in her conversation and observation
16 noted that, while he was depressed, he wasn't hyper or
17 labile, was he?

18 A Correct.

19 Q He wasn't uncooperative. Again, he wasn't
20 agitated. He wasn't restless. Although, he was
21 withdrawn.

22 A He was flat. He was withdrawn. He was depressed.

23 Q She noted, no homicidal, no previous attempt, and
24 no plan.

25 A Right. Suicidal ideations.

1 Q Same thing with Dr. Jansen. His exams showed a
2 patient who, in general experience, is in modest
3 distress, correct?

4 A Dr. Jansen reports he's in minor distress and he's
5 anxious.

6 Q But he's not in severe distress. He's not
7 lethargic. He's not obtunded, and he's not
8 uncooperative for exam, right?

9 A That's correct, but he is depressed, and he's not
10 stable.

11 Q Came in depressed.

12 A He came in depressed.

13 Q Been depressed for a couple of weeks, with a
14 gradual onset?

15 A Correct, but he's mentally not stable.

16 Q Patient knew where he was, according to day of
17 week, day of month, month, place, person.

18 A Dr. Jansen says he's disoriented.

19 Q To his Social Security Number. Doesn't recall his
20 Social Security number, right?

21 A Correct. But he does not check the box normal
22 mental status examination or normal orientation. He
23 does not check that box.

24 Q Doesn't have diaphoresis, pallor, or skin
25 abnormalities suggesting that he's in distress, does he?

1 A That's correct, but he's still tachycardic.

2 Q These are complex issues when you're assessing a
3 patient that presents with mental health challenges like
4 this patient did; are they not?

5 A Yes, they are, but no more complex than working
6 with a patient having a heart attack or a stroke. It's
7 in that same level of seriousness.

8 Q Still requires the person interacting with him,
9 within the four walls of the E.R., whether it's Janice
10 McDonald, Joe McDonald, or Dr. Jansen, to exercise some
11 degree of judgment and skill in assessing that patient;
12 does it not?

13 A Yes, and we talked about that, yes.

14 Q Are you aware of Mr. Ray ever going to anyone
15 before he and Mr. Hunt walked outside -- yeah, when he
16 and Mr. Hunt walked outside to get a breath of fresh
17 air, and saying, I'm concerned about this gentleman;
18 something's changed; he's different than when I saw him
19 this morning? Anything to that effect?

20 A No, I'm not aware of anything recorded about Mr.
21 Ray expressing concern.

22 Q You're not even aware of anything not recorded
23 about Mr. Ray expressing concerns, right?

24 A That's correct, although Mr. Ray is -- is deceased.
25 And so, we -- there's a lot we don't know.

1 Q You mentioned rabbit syndrome. Now, I did a little
2 medical research. What I found for rabbit syndrome
3 wasn't somebody taking off. It was, and tell me if I'm
4 wrong. You said it's your term. I'm not a doctor,
5 obviously. Rabbit syndrome is a medication-induced
6 rhythmic motion of the mouth and lips resembling the
7 chewing motion of a rabbit. Is that rabbit syndrome in
8 medical parlance?

9 A That would be rabbit syndrome as applying to
10 neurological diseases and illness. Rabbit syndrome, in
11 this case, has to do with the elopement or flight of a
12 patient with suicidal or homicidal ideations, who
13 believe that they're going to be admitted to a
14 psychiatric facility, and have made a decision that they
15 want to flee from that.

16 Q Did you bring with you any medical literature or
17 research that says that is what it is?

18 A That's a Dr. Baker -- that's a Dr. Baker-ism.

19 Q Okay.

20 A It's something I teach my residents, my nurse
21 practitioners, and it's a way for them to remember a
22 very important principle.

23 Q Well, let's talk about that for a second. Now, you
24 know from looking at Plaintiff's -- well, I shouldn't
25 have said that. 19.

1 A Okay.

2 Q I assume things I shouldn't, Doctor.

3 A Right. Thank you.

4 Q This is Plaintiff's Exhibit 19, which is a document
5 that, I think, came through Nurse Smith. You would
6 agree with me -- or let me ask you if you will agree
7 with me, that this was a man, who, according to his
8 chronic problem list as reflected on 19, had been
9 seeking and getting medical care for different mental
10 health challenges for some period of time. We don't
11 know exactly how long, right?

12 A You are correct.

13 Q I mean, he had things, -- if I stop at the bottom,
14 and I assume bottom's probably the oldest and goes to
15 the top. Is that sort of how it works in medicine?

16 A Yes.

17 Q You all kind of do it backwards from everybody
18 else.

19 A I understand.

20 Q But it starts at the bottom: alcohol use; major
21 depression, single episode; patient education about
22 medication, depression; patient education about proper
23 diet; psychiatric diagnosis or condition deferred on
24 Axis I.

25 Administration evaluation series: adjustment

1 disorder, nicotine dependent. No psychiatric diagnosis
2 or condition on Axis I. Personality disorder;
3 delusional disorder; insomnia; alcoholism; anxiety
4 disorder; NOS, not otherwise specified. Adjustment
5 disorder with anxious mood, adjustment insomnia,
6 anxiety, adjustment disorder with disturbance of
7 emotions and conduct, cannabis dependence, conditions
8 influencing health status, conditions influencing health
9 status. And that's sort of the ends of the ones that we
10 could somewhat attribute.

11 A Yes.

12 Q So, this is a guy who clearly has been involved in
13 going to the doctor, relating to them problems he's
14 experiencing from the mental health thing, getting
15 evaluations, getting treatment plans, getting
16 medications, going back to the doctor, on and on and on
17 and on, at least for however long this is going on, on
18 this particular document, right?

19 A This is as long as he's been service-related, yes.

20 Q And we clearly -- somebody at some point has talked
21 to him about medications and what to do, because he's
22 coming back for medication refills.

23 A It is apparent that he has been treated
24 successfully in the past with medications to treat these
25 -- these diagnoses.

1 Q And from everything, this wasn't his first rodeo at
2 a hospital E.R., getting evaluated for mental health
3 challenges, getting assessed by E.R. doctors, nurses,
4 even psyche techs; and the psychiatrist didn't come
5 down, but presumably, psychiatrists, right?

6 A That's significant. Mr. Hunt had a significant
7 past medical psychiatric history. That's, you know,
8 that's well known. It's well established.

9 Q So, when he comes in at whatever time Nurse Janice
10 sees him; and she does her evaluation, and tells him,
11 hey, I'm finished with my evaluation; I'm going to put
12 you over here in Room Number 4 in our empty E.R.; I'm
13 going to -- you're going to be seen by Dr. Jansen; he
14 will evaluate you and decide what's next; that's not
15 something new to this gentleman, correct? Most likely.

16 A He has been in the emergency room more than one
17 time previously, correct.

18 Q And so, when Nurse -- I mean, when Dr. Jansen comes
19 in and does his evaluation and talks to the gentleman,
20 however he does it; evaluates him; does his physical
21 exam; talks to him about his history; and says to the
22 gentleman, okay, we're done now; I'm going to ask the
23 psychiatric tech to come see you and evaluate you
24 further; and Dr. Jansen walks out; that, again, is
25 nothing new to this gentleman, right?

1 A I don't know about that. I -- I don't know about
2 those details.

3 Q Well, it's clear that the medications he's getting,
4 the Seroquil and the other anti-depressant-type
5 medication, those are some that a doctor with some
6 background in psychiatric or mental health has to
7 prescribe, right?

8 A Yes. Most of it appeared to be outpatient
9 treatment, though, previously.

10 Q Outpatient-type, psychiatric-type treatment?

11 A Correct.

12 Q Right, but that's something that a doctor would
13 have to give, then, and the patient who comes back
14 saying I want my medicines because I need them, knows
15 that, that's a good thing.

16 A Yes. A doctor, a P.A., or a nurse practitioner,
17 that's correct.

18 Q And so, when the psyche tech comes down and does
19 his evaluation, while he may not -- we don't know if
20 he's seen a psychiatric tech before. We know he's seen
21 somebody from that type of department before this.

22 A Yes.

23 Q Again, nothing new for Mr. Hunt, right?

24 A No. In general, that's correct. Although, he's --
25 he's not been to the Beaufort facility before. But in

1 general, he has seen healthcare providers, including
2 psychiatric healthcare providers.

3 Q When somebody is in a new facility, they might be
4 just a little bit anxious because they're in a new
5 facility. They don't know these people; they don't know
6 what's going to happen and how it happens in that
7 particular facility, right?

8 A Correct.

9 Q And that might make their little heart rate go up
10 just a little smidgen.

11 A It's possible, but it doesn't make all these other
12 factors that are well documented, red flags that I've
13 shown you today, it doesn't make all these other red
14 flags occur.

15 Q Well, none of those things are red flags if this
16 guy's not going to continue to cooperate, as he has done
17 all along in this process that he's familiar with,
18 correct?

19 A He has cooperated with the features and the
20 behaviors that are well documented. Cause, you recall,
21 this all starts upstairs in managed care, where he
22 starts rocking, starts verbalizing sounds, and starts
23 acting as if he's not, you know, acting correctly. And
24 Nurse Smith asked Mr. Hunt additional screening
25 questions, out of which come the fact that he has

1 thoughts of harming himself and harming others, because
2 she plans to make an appointment for him for Monday
3 morning for the outpatient clinic, until Mr. Hunt begins
4 acting bizarre.

5 Q Well, and your characterization of what he was
6 doing up there, was this rocking back and forth and
7 rocking back and forth, and verbalizing and verbalizing
8 and verbalizing, right?

9 A That is what -- that is what is testified to and
10 documented.

11 Q And that's important for you in your opinions about
12 how significant that event was that Ms. Smith observed,
13 correct?

14 A Yes. It was significant enough that, in Ms.
15 Smith's deposition, she clearly remembers that she's
16 scheduling an outpatient appointment for Mr. Hunt.
17 Happy for him to been seen as an outpatient. Mr. Hunt
18 says that's satisfactory, preparing to let him go, leave
19 the building, when he begins rocking, verbalizing, and
20 not acting -- acting unusual. And that's when she asked
21 him additional questions, when he reveals that he plans
22 to hurt himself and others.

23 Q And others.

24 A Yes.

25 Q And your opinions are sort of dependent on the

1 accuracy of your interpretation of Nurse Smith's
2 interaction with him?

3 A If -- if the jury were to find that the facts
4 demonstrate that he only planned to hurt himself, it
5 wouldn't change my opinions at all. This is a man who
6 is acting strange. He is rocking. He is a corporal.
7 He is a Marine corporal. He's acting strangely,
8 abnormally, enough that it makes Nurse Smith stop what
9 she's doing. She stops booking the appointment, and she
10 asked him additional questions, and she takes -- as soon
11 as he tells her about wanting to harm himself and/or
12 others, she takes him and Mr. Ray directly to the
13 emergency room.

14 Q My question, though, Doctor, was, your opinions
15 are, in large, dependent upon your characterization of
16 Nurse Smith's description of his reaction to her, the
17 rocking and the moaning and those things, right?

18 A Yes.

19 Q Okay.

20 A And regardless of my characterization of Nurse
21 Smith's observations, she clearly observed a change in
22 behavior that worried her. She stopped booking the
23 appointment for Monday, and she took -- asked additional
24 questions, and took Mr. Hunt directly to the emergency
25 room, where she told Janice McDonald that this is a

1 patient who came in for a medication refill, but she had
2 discovered he had plans to hurt himself.

3 Q Plans to hurt himself.

4 A He had thoughts to hurt himself.

5 Q Now, people can be frustrated when they're not able
6 to get their medications refilled immediately, and find
7 out it's going to be Monday that the earliest they can
8 do it, and just be frustrated, correct? with the
9 process.

10 A It's possible, but that's never documented.

11 Q This idea that the patient had no knowledge of what
12 was going on in his medical care, do you have any
13 information suggesting that the patient didn't cooperate
14 with Nurse Janice McDonald when she suggested that he
15 get into the bed, or with Dr. Jansen when it was implied
16 that he should stay there so the psyche tech could come
17 and do his evaluation? Any evidence to suggest that?

18 A No. The first time that anyone documents concerns
19 about Mr. Hunt's behavior being aggressive or agitated
20 comes from Mr. Manning, who documents that.

21 Q And you agree that Mr. Manning never spoke to Dr.
22 Jansen, Joe McDonald, Janice McDonald, or anybody else,
23 other than, maybe, Dr. Hendelman, about what his
24 observations were, right?

25 A I think that's a point that's not -- not in

1 agreement. Mr. Manning doesn't remember the details of
2 his visit and who he spoke to that day. And I testified
3 in my deposition that the standard would be is, that,
4 after a psychiatric staff member evaluates a patient and
5 plans to go the department and return, that, that is
6 communicated to one or more members of the team, so that
7 the E.R. understands what's going on.

8 Q And if Mr. Manning didn't do that, he didn't meet
9 whatever his duties were with regard to patient, or Mrs.
10 McDonald, Mr. McDonald, or Dr. Jansen, correct?

11 A Well, --

12 Q That's a yes or no, Doctor, and then, you can
13 explain it.

14 A Yes, if the jury were to find that, that's true.
15 But I would point out that, during this period of time,
16 Dr. Jansen's on the telephone, calling the local area
17 Beaufort Memorial Hospital in order to make a transfer
18 of a psychiatric patient, Mr. Hunt, and checking to see
19 if they have a bed, and speaks to a counselor by the
20 name of Elizabeth. And so, it's obvious that -- that
21 Dr. Jansen knows that Mr. Hunt, however he knows, he
22 knows that Mr. Hunt is going to be in agreement with
23 admitting this patient involuntarily to Beaufort
24 Memorial Hospital, which is the nearest psychiatric
25 facility.

1 Q So, Dr. Jansen couldn't simply be calling over to
2 see if Beaufort Memorial's medical floor has beds
3 available, in case they need to admit this guy after the
4 psychiatric consult. That couldn't possibly be
5 happening?

6 A That's possible, but that's not consistent with the
7 testimony.

8 Q And the decision on whether the patient will be
9 admitted versus committed, those are two different
10 things, right? If he's involuntarily committed, he's
11 going against his will. He could voluntarily agree to
12 be admitted, correct?

13 A I disagree. From the time that he told Dr. Jansen
14 that he had plans -- I'm sorry -- thoughts, thoughts to
15 harm himself and others, he becomes an involuntary
16 committed patient.

17 Q Okay. That's your opinion on that, right?

18 A No, sir. I disagree. It's not only the standard
19 of care, but you're never -- the difference between
20 voluntary admission is that, if a patient voluntarily
21 signs themselves in to a psychiatric physician --
22 facility, they had the ability to sign themselves out at
23 any time. A physician is never going to allow a patient
24 who's actively having homicidal and suicidal thoughts to
25 sign themselves out involuntarily [sic]. That patient's

1 going to be required to have a minimum three-day
2 evaluation, and perhaps longer, depending upon the needs
3 of the patient.

4 Q And that's in your opinion, regardless of whether
5 the patient ever cites that they have a plan to hurt
6 themselves or a plan to hurt others, an intent to do so?

7 A That's correct. In a patient like Mr. Hunt, with
8 his extensive past medical history, which Counsel was
9 kind enough to read to you, and the face of the signs
10 and symptoms that Nurse Smith sees upstairs in managed
11 care, that Dr. Jansen sees when he examines the patient,
12 and Technician -- Psychiatric Technician Manning sees
13 when he sees the patient, this is a patient who has an
14 active psychological medical condition requiring
15 intervention.

16 Q Couple points you made earlier about this patient
17 needing to be put into a gown, so that he did not have a
18 weapon or something on himself to hurt himself or
19 others. You have no evidence that Mr. Hunt ever had a
20 gun, knife, or something else that he used to hurt
21 himself or others, right?

22 A That is correct. That is correct that -- at least
23 in terms of the listing of articles of clothing that
24 were found out by the road. Because you recall, Mr.
25 Hunt went out to the loading dock; he took off running;

1 he went out to the main road; he took off all his
2 clothes; ran through the front gate. Based upon a log
3 of the, you know, based upon a log of the clothing, no
4 weapon was found. It doesn't mean he didn't throw one
5 away, but -- but nothing was found at the place where he
6 disrobed.

7 Q The purpose of having him put on a gown, I thought
8 I heard you say, was that it might discourage him from
9 leaving the facility.

10 A One purpose is to discourage patients from leaving
11 the facility. Another purpose is to make sure the
12 patient doesn't have any weapons on the person. Number
13 three is, it identifies the person as a emergency room
14 patient, hospital patient. That is, when the patient's
15 you know, running outside, and they have a hospital gown
16 on, that's going to allow the M.P.s and security to
17 recognize that this is a patient, and it's going to
18 assist the M.P.s to act.

19 Q Well, once he got outside, and he was in his
20 clothes, and he shucked down to his underwear and his
21 socks, he's pretty much in the same clothing he would
22 have been in underneath his gown, correct?

23 A If, in fact, that's what he did. But in reality,
24 as a physician, when a physician intervenes, that is,
25 when a physician takes action, we remove the patient's

1 clothing, and we provide them with one of our gowns,
2 that resets the whole stage. That -- that -- that's an
3 intervention. That's what we do in medicine. We
4 provide a treatment and we see a response. You're
5 having a heart attack, I give you aspirin and
6 nitroglycerin, you get better. You're having -- you're
7 having psychiatric problems, like homicidal and suicidal
8 thoughts, I put you in a safe room. I put you with a
9 sitter, somebody to work with you, to keep you calm and
10 meet your needs. I put you in a gown. It completely
11 resets the environment. It provides a secure, safe
12 environment in which the patient is calmer, more
13 relaxed, more secure, and has a better understanding.
14 Because remember, we're going to warn the patient, we're
15 going to instruct the patient through warnings as to
16 what's going on.

17 Q The patient was told, when he was put into Room
18 Number 4 that -- well, obviously, Mr. Ray's in there
19 with him the whole time, correct?

20 A That's correct. It turns out Mr. Ray was there not
21 officially, but as a friend or family friend. That's
22 correct.

23 Q He's sitting there with him the whole time.

24 A That's correct.

25 Q Even when Dr. Jansen examines the patient.

1 A That's correct, but not in an official capacity,
2 but as a friend or a companion.

3 Q Even when Dr. Jansen asks the patient, and gets the
4 response about the wavering thoughts of hurting other
5 people and himself, right?

6 A Correct. Mr. Ray, my understanding, he stays at
7 bedside throughout that period of time as a friend of
8 the family.

9 Q And Mr. Ray, during the whole rest of the time,
10 from then on, to your knowledge, stays with this
11 gentleman, with the exception of the short trip to the
12 bathroom, and never indicates to anyone there's
13 something wrong with this gentleman, correct?

14 A Correct. We've talked about there's no
15 documentation of that.

16 Q And then, when Mr. Ray gets up, and he and the
17 patient walk up to Joe McDonald, and they say, may we go
18 get some air, or words to that effect, doesn't that tell
19 you that, at that point, the patient knew that he had
20 some restrictions on his ability to come and go, and
21 that he should stay, remain engaged in this diagnostic
22 process, come back and get worked up, and complete what
23 had been started earlier in the day, at 10:30 in the
24 morning, when they started going over there? Doesn't
25 that tell you, the fact that he's asking permission,

1 doesn't that tell you he knows he's supposed to stay
2 there?

3 MR. HOYLE: Objection, your Honor. Assumes facts
4 not in evidence.

5 THE COURT: Sustained.

6 BY MR. LOVELL:

7 Q When Mr. Ray is standing there, within earshot of
8 the patient, and asks that, doesn't that suggest to you
9 that the patient knows you need to stay here and need to
10 be worked up, but I could go out and get some air and
11 find out --

12 MR. HOYLE: Objection, your Honor. Assumes facts
13 not in evidence.

14 THE COURT: When you get to a point, I need to see
15 Counsel at sidebar.

16 MR. LOVELL: This is as good as any, your Honor.
17 I'm almost finished. Very close to finishing.

18 OFF-THE-RECORD BENCH CONFERENCE, OUT
19 OF HEARING OF JURORS. PRESENT: THE
20 COURT, MR. HOYLE, MS. CASTLEBERRY,
21 MR. LOVELL, AND MR. MACKELCAN.

22 END BENCH CONFERENCE.

23 MR. LOVELL: I think that's all, your Honor.

24 THE COURT: All right. Any re-direct?

25 A Thank you, sir.

1 DR. TERRENCE L. BAKER

2 RE-DIRECT EXAMINATION, BY MR. HOYLE:

3 Q Dr. Baker, I'm putting this board up that Mr.
4 Lovell didn't show you. Looks to be the last page of a
5 letter that you wrote the morning of your deposition,
6 correct?

7 A Right. It's a copy of my notes for the deposition
8 that morning, yes.

9 Q All right. And let's read, so the people on this
10 court -- people on this jury and the Court know the last
11 sentence that you put in your thoughts and when you were
12 organizing that day.

13 A Yes, the last sentence in my notes reminds myself
14 and anyone reading my notes:

15 *I reserve the right to add to,*
16 *subtract from, and supplement this report*
17 *as new evidence comes into discovery and*
18 *new opinions are formulated.*

19 Q All right. Now, I wasn't fortunate enough to be
20 with you at your deposition. I had someone else from my
21 office there. Do you recall that?

22 A Yes, I do.

23 Q Okay. A very fine lawyer and a wonderful person.
24 I think we can all agree on that. Did you send me this
25 letter, or your notes, or your thoughts, however you

1 want to frame them, a week before your deposition?

2 A No, they -- these notes were done in the early
3 morning hours, between 4:00 a.m. and 6:00 a.m., prior to
4 my deposition at 10:00 a.m. And again, these notes were
5 simply to serve to me as a reminder of things that I had
6 learned so far in discovery.

7 Q And did I dictate this letter to you or these
8 notes?

9 A No. These are -- these are my notes, and I don't
10 think you ever saw them until a week or two after my
11 deposition.

12 Q So, clearly, I couldn't have told you what to have
13 said in there. Is that fair?

14 A No one told me what to say.

15 Q Okay. And certainly, this has been an evolving
16 process, as you've gotten new information and read new
17 things and looked at new evidence. Kind of like what
18 our jury's been doing over the past week or so.

19 A Yes, the jury is going through the same process
20 that I've been going through for the last several
21 months.

22 Q Okay. So, there's been a lot of discussion about
23 these thoughts and this letter and all that. But at the
24 end of the day, Doctor, are your opinions based on the
25 fact that Calvin Hunt presented to the emergency room on

1 February 24, 2012 with thoughts of harming others?

2 A Yes.

3 Q That's a cold, hard truth, correct?

4 A Yes, himself and others, that's correct.

5 Q And on that fateful day, on that Friday, Calvin
6 Hunt was somebody presenting with serious mental health
7 issues.

8 A Yes, he was. Many red flags, many signs and
9 symptoms of a patient getting ready to explode. That
10 is, a patient getting ready to act out.

11 Q And there's a lot of information that's available
12 that day in an emergency room. And what's your
13 understanding of what Dr. Jansen's view is as to who is
14 in charge of that itty-bitty, 800-square-foot, emergency
15 room on that day?

16 A I have an understanding that it's Dr. Jansen. Dr.
17 Jansen is the captain of the ship. Dr. Jansen was in
18 charge of the team in the emergency room that day.

19 Q And because of these serious mental health issues,
20 because of his own admissions, your testimony here today
21 has been that he needed to be warned. In response to
22 prior questioning, I just want to make sure. Does the
23 fact that Calvin Hunt has gone to see a lot of medical
24 providers during his career in the military, even if he
25 has an inch-and-three-quarter-inch stack of medical

1 records, does that change the fact that he needed to be
2 warned that day, that fateful Friday, February 24, 2012?

3 A No, not at all. If, in fact, the past medical
4 history would amplify the need to warn. It would make
5 the need to warn even greater, because of the patient's
6 past medical history, including attempts and gestures to
7 hurt himself previously. So, the past medical record
8 would amplify what's going on, on the 24th.

9 Q And when you were at the Dorn Veterans Affairs
10 Hospital, in the capitol city of Columbia, you actually
11 treated folks who'd been in the service.

12 A Yes.

13 Q Did you ever see folks come in who were former
14 active-duty military members with a paper copy of their
15 medical records?

16 A Usually not. Occasionally, they would. If they
17 just transferred to the area, they would bring their
18 file with them, but most veterans did not bring their
19 file.

20 Q Okay. I believe I heard this earlier when you and
21 I were talking this afternoon, that you actually looked
22 at some of Calvin Hunt's past medical records?

23 A I did.

24 Q These were things that predate February the 24th,
25 2012.

1 A Yes.

2 Q And do you believe that the information contained
3 within those past records should have been reviewed by
4 one or more of the persons working in the emergency room
5 that day?

6 A Yes, either the records themselves or the summary
7 page, such as Counsel had me -- actual Counsel read from
8 it. Counsel read to us a psychiatric diagnoses from the
9 past. That sheet, that summary sheet, was available.

10 Q I think I heard, in response to some questioning by
11 Mr. Lovell, that your understanding is Edward Ray was a
12 family friend?

13 A Correct.

14 Q Okay. And there was a big production early on in
15 prior Counsel's questioning about how you've been
16 testifying all these years, you get paid for sitting up
17 there on the witness stand, all that kind of stuff. In
18 all your years of doing that, have you ever been called
19 upon to give opinion as to responsibility based on a
20 friendship?

21 A No.

22 Q You're not holding yourself out in advertisements
23 or on the Internet or anything like that as an expert in
24 friendship liability, are you, Doctor?

25 A No, I'm not.

1 Q There's no such thing, is there?

2 A No.

3 Q Okay.

4 A Not to my knowledge.

5 Q You're a board-certified, emergency room doctor
6 who, I think I heard, is the president is one of the
7 professional associations for E.R. doctors. And you're
8 coming here today, not to talk about friendship, but to
9 talk about three persons, correct?

10 A Correct.

11 Q And while we're on the subject of what you do, in
12 part, for your living, I don't know that I elicited this
13 testimony or prior Counsel elicited this testimony, but
14 I think this jury is entitled to know. How much are you
15 sending me a bill for, for testimony today, per hour?

16 A \$500.00 an hour.

17 Q Okay. Is that what you charge both lawyers like
18 me, who represent persons who have been injured or had
19 loved ones killed, as well as people and corporations,
20 like those represented by the Defendant?

21 A Yes. I would send the same -- the same \$500.00 an
22 hour to Mr. Lovell and his firm.

23 Q Okay. And have you actually done that in the past?

24 A I have worked for Mr. Lovell's firm in the past.

25 Q Okay. There were some questions by prior Counsel

1 about whether this was some big, complex, impossible-to-
2 understand issue. Will you agree with me that it's not
3 a complex issue when a patient tells you that he has
4 thoughts of hurting himself and thoughts of hurting
5 others?

6 A That's correct. It is not complex. It is very
7 straightforward. And I talked about the fact that it's
8 no different than a patient coming in with a heart
9 attack or a stroke, or any other serious medical
10 condition. You use the same skills and knowledge to
11 diagnose those conditions that you use to treat a
12 patient who's having suicidal and homicidal thoughts.

13 Q Do you believe that Calvin Hunt could have been
14 treated appropriately February 24, 2012, if he had been
15 told, no, and warned that he couldn't be let out?

16 MR. LOVELL: Calls for speculation. Objection.

17 THE COURT: Sustained.

18 BY MR. HOYLE:

19 Q Doctor, based on your education, training, and
20 experience, and your review of the facts in this case,
21 do you believe that, if a good doctor had warned Calvin
22 Hunt, on February 24, 2012, that he shouldn't leave the
23 emergency room, that the events which bring us here
24 would have taken place?

25 MR. LOVELL: Objection. Speculation.

1 THE COURT: Sustained.

2 BY MR. HOYLE:

3 Q Based on Calvin Hunt's state of mind on that
4 fateful Friday, do you believe he required warning from
5 a medical provider?

6 A Yes, he did.

7 Q And was that warning provided?

8 A No, it wasn't.

9 Q And that failure to provide that warning, that
10 instruction, do you believe that, that omission by
11 multiple persons who had superior knowledge and
12 information was a deviation from some sort of standard?

13 A Yes. I believe it was careless and reckless and a
14 deviation.

15 Q And certainly, Edward Ray, as a friend, isn't held
16 to that same standard.

17 A That's correct. Mr. Ray had no official capacity.
18 He was there as a friend of the grandmother, friend of
19 the family, who had -- and that's why she had called him
20 earlier in the day to see if she [sic] would see her
21 grandson.

22 MR. HOYLE: Doctor, I think we'll get you back to
23 Baltimore in time for the evening news. Thank you very
24 much for your testimony here today.

25 A Thank you, sir.

1 DR. TERRENCE L. BAKER

2 RE-CROSS EXAMINATION, BY MR. LOVELL:

3 Q Two questions. In your report, Doctor, you agree
4 you were critical of Mr. Ray in not doing something when
5 he had the knowledge that this patient had issued an
6 indication of hurting himself, thoughts of hurting
7 others?

8 A Yes. At the time that I wrote my notes, that was
9 the facts that I had.

10 MR. LOVELL: That's it. Thank you.

11 ITEM IDENTIFIED AS SEAK DOCUMENT

12 REGARDING DR. TERRENCE L. BAKER

13 MARKED DEFENDANT'S EXHIBIT NUMBER 27

14 FOR IDENTIFICATION.

15 ITEM IDENTIFIED AS SEAK DOCUMENT

16 REGARDING SUPPLEMENTAL INCOME FOR

17 PHYSICIANS

18 MARKED DEFENDANT'S EXHIBIT NUMBER 28

19 FOR IDENTIFICATION.

20 BY THE COURT:

21 THE COURT: Very well. You may come down. Any
22 objection to this witness being excused?

23 MR. LOVELL: None.

24 THE COURT: Very well. You are free to go.

25 A Thank you, your Honor.

1 THE COURT: All right. Call your next witness.

2 MR. HOYLE: Your Honor, there have been some
3 scheduling issues, as you are aware. And I believe the
4 Defendant wishes to call their expert witness at this
5 time.

6 THE COURT: Very well. Ladies and gentlemen, let
7 me tell you what has occurred. These lawyers have
8 worked together, obviously scheduling multiple, many
9 witnesses. It's quite a task. And these lawyers have
10 agreed that, because of scheduling issues, that there
11 will be a witness called, or perhaps two witnesses
12 called it's called out of turn. Not out of turn. What
13 do you all call it?

14 MR. HOYLE: Out of order.

15 MR. LOVELL: Out of order, I guess, your Honor.

16 THE COURT: Out of order, because, normally, the
17 witness you're about to hear would be called in the
18 Defendant's case. Well, you and I know we're not to the
19 Defendant's case. But they've agreed to do that. So,
20 what I will tell you is that Mr. Lovell is about -- I
21 gather you're the one out here. It depends, huh? I
22 think you're calling the witness.

23 MR. LOVELL: I'm ready to go, your Honor.

24 THE COURT: That Mr. Lovell is about to call a
25 witness that would normally not be called until the

1 Defendant's case. But because of scheduling, they've
2 agreed to call this person out of order. Everybody
3 understand that? Wonderful, wonderful. And so, do it.

4 BAILIFF: I think some of the jurors may need a
5 comfort break, your Honor.

6 THE COURT: Comfort breaks are good. When you all
7 are finished with your comfort break, knock on the door
8 and return. Let me tell you, I must mention this before
9 you leave. I can't help but notice, because I'm sitting
10 here, be careful. You guys have been together. You
11 have really spent so much time together. You are
12 becoming friends. You might even decide you're related
13 by the time you leave here. But you all are becoming
14 friends. Be careful. You cannot discuss this matter.
15 You cannot discuss anybody that has anything to do with
16 it. That is not allowed. It is communicating about
17 this case. It is deliberating before you are allowed to
18 deliberate.

19 I simply admonish you, do not talk about this case
20 or anything or anyone that has anything to do with it.
21 Don't gesture, don't act, don't mmm, mmm. All of that
22 is not allowed. It is not permitted. That is
23 deliberation. I simply admonish you and I remind you,
24 it is difficult at this point, I understand, because you
25 really are together, you're together with this case, but

1 you cannot do that. So, please be mindful of that.
2 Enjoy your break. Don't discuss the matter or allow
3 anybody to discuss it with you. And let us know when
4 you all have completed your comfort break, and we will
5 re-convene.

6 JURORS LEAVE COURTROOM 4:40 P.M.

7 THE COURT: Counsel, we have jurors that are
8 counting on being out of here at 5:30.

9 MR. LOVELL: I can do a 20-minute direct.

10 THE COURT: Huh?

11 MR. LOVELL: I can do a 20-minute direct.

12 BAILIFF: I can talk to them, but, I mean, that is
13 a conversation at lunchtime.

14 THE COURT: That they --

15 MR. HOYLE: Judge, I think we may just need to come
16 back tomorrow.

17 THE COURT: Huh?

18 MR. HOYLE: We may just need to come back tomorrow.
19 I mean, he got an extensive cross on Dr. Baker. That
20 cross-examination lasted about an hour.

21 THE COURT: Well, I mean, we're going to do what
22 we're going to do. I mean, we're going to try this
23 case. Tell me what I'm concerned on about the witness.

24 MR. LOVELL: He can't be here tomorrow. That's the
25 main concern.

1 THE COURT: How about day after tomorrow? How
2 about like, uh-oh, I think that's like Friday.

3 MR. LOVELL: I don't think we'll be here Friday. I
4 mean, I think the evidence will be done by Friday.

5 THE COURT: Huh? You think?

6 MR. LOVELL: I do. I do.

7 THE COURT: You're a positive person. This
8 gentleman cannot be here but today? Well, what are we
9 doing?

10 MR. LOVELL: He's right there. We'll ask.

11 THE COURT: Hi. What you got going on tomorrow?

12 DR. ERIK OBERG: I'm working.

13 THE COURT: Oh, you're working?

14 DR. ERIK OBERG: Yes, ma'am.

15 THE COURT: Great. He can come back tomorrow. He
16 can pick.

17 MR. LOVELL: I'm sorry, your Honor?

18 THE COURT: He can pick. We just have juror
19 issues, 5:30, and we're going to accommodate you.
20 You've been here all day. We're going to do everything
21 we can to accommodate you. Is earlier better than
22 later?

23 DR. ERIK OBERG: What day?

24 THE COURT: Tomorrow.

25 MR. LOVELL: What time do you go to work?

1 DR. ERIK OBERG: 3:00 o'clock.
2 MS. CASTLEBERRY: He goes to work at 3:00 o'clock.
3 MR. HOYLE: He can come first thing tomorrow.
4 THE COURT: Wait a minute. That might be ideal.
5 MR. LOVELL: Your Honor, I think he come can first
6 thing in the morning. He said 3:00 p.m. is his shift.
7 Is that right, Doctor?
8 THE COURT: Okay.
9 MR. HOYLE: Judge, by way of reminder, there's a
10 juror with a medical appointment in the morning, I
11 think, at 8:00.
12 BAILIFF: She changed it to Monday.
13 MR. HOYLE: Oh, perfect. Perfect.
14 BAILIFF: We get cake on Monday.
15 MS. CASTLEBERRY: We don't.
16 THE COURT: Do not worry about 3:00. Do not worry
17 about 3:00 o'clock tomorrow. Okay? Absolutely. Don't
18 worry about 3:00. Do you work tonight?
19 DR. ERIK OBERG: No, I don't work tonight.
20 THE COURT: Okay. So, you get to sleep tonight.
21 DR. ERIK OBERG: That's great.
22 THE COURT: You probably were at work today. So,
23 you took off today, right? Because ordinarily, you'd
24 have been there at 3:00, right?
25 DR. ERIK OBERG: Yes, ma'am.

1 THE COURT: So, now is when we're really bugging
2 you, because it's in your working time. Don't worry
3 about 3:00 o'clock tomorrow. We're good to go. We're
4 good. We're going to --

5 MR. LOVELL: Just hang around, and we'll talk to
6 you in a minute. So, just hang around.

7 THE COURT: Yeah, and keep smiling. Just because
8 our jurors turn into pumpkins at 5:30, that's our
9 problem, just so you know. Okay.

10 MR. LOVELL: Our decision on this next witness,
11 Judge, is something you might be able to answer the
12 question to.

13 MR. HOYLE: Are we going to be on the record, or
14 off?

15 MR. LOVELL: Let's put this one on the record. We
16 have Dr. Moore here.

17 THE COURT: Okay.

18 MR. LOVELL: Dr. Moore performed a peer review, as
19 we've already heard, on the deceased Marine issue. We
20 had findings on that, which have been elicited.

21 THE COURT: What kind of peer review?

22 MR. LOVELL: The Naval peer review thing.

23 THE COURT: Is it done pursuant to our statute?

24 MR. LOVELL: I don't think so. I think it's done
25 pursuant to some federal something or another.

1 THE COURT: Whatever. Does it have the same
2 protections as ours does?

3 MR. LOVELL: I don't know the answer to that. But
4 the question really is, he also did a similar one on
5 this incident, and we anticipate his testimony would be
6 like the testimony that was elicited earlier, that he
7 found a negative peer review on the dead Marine thing;
8 that, when he reviewed this one and did a peer review,
9 he found no deficiencies in what was done. That's the
10 reason we're going to call him. I think they have an
11 objection to that testimony. So, your ruling on that
12 decides whether we need him or not. And he's only
13 available this afternoon. And he's here.

14 THE COURT: Okay. I understand.

15 MR. HOYLE: Your Honor, we just passed up a letter
16 from Mr. Mackelcan, invoking the State statute
17 previously in an email from an assistant United States
18 Attorney, referencing a federal statute in some
19 administrative guidance about peer review.

20 THE COURT: The Greetings All? Greetings All.

21 MR. HOYLE: Mr. Babitsky's very flamboyant in his
22 salutations.

23 MR. HOYLE: But let me say this, Judge. I think,
24 irrespective of --

25 THE COURT: That was the unfortunate death of a

1 U.S. Marine that's come up.

2 MR. HOYLE: Yes. Okay.

3 THE COURT: It is prohibited.

4 MR. HOYLE: BUMED.

5 THE COURT: That's bummed.

6 MR. HOYLE: I think we're all bummed, Judge.

7 THE COURT: So, is he going to testify?

8 MR. LOVELL: He's here, ready to go. The question
9 is, Judge, I mean, you've already -- they've already
10 been allowed to get into peer review from peer review
11 number one. So, kind of the goose/gander rule is, we
12 would like to have this witness testify about his
13 results from peer review number two, on this, about this
14 particular incident, and --

15 THE COURT: Well, let me ask you this question. It
16 was my understanding that it wasn't a protected peer
17 review. I don't --

18 MR. LOVELL: Well, we argued against that.

19 THE COURT: Huh?

20 MR. LOVELL: We argued that it was protected. Then
21 you -- then, you let him go into it.

22 THE COURT: And all I -- now, here's my memory.
23 Now, help me. My memory was, was, if it is the
24 protected peer review, and it hasn't been used as a
25 sword and a shield, then, it's protected. If it has

1 been used as a sword and a shield or it's not a
2 protected peer review, it's some in-house peer review,
3 it's not a peer review. My understanding was, was that
4 this was not a protected -- whatever they were talking
5 about, wasn't a protected peer review.

6 MR. LOVELL: I don't know the answer what the
7 answer is.

8 COURT REPORTER: I'm sorry, I'm sorry. One at a
9 time. I don't know the answer, and what?

10 MR. LOVELL: I don't know. Your Honor, I think the
11 way it happened, what happened that I believe was the
12 way that you allowed it in was because CasePro has to
13 hire these people, Dr. Moore, and he has to, then, do a
14 peer review, which is really as an employee of CasePro.
15 But all of the results go directly to the Navy, who
16 then, keep it all privileged and confidential, and never
17 communicated, even back to CasePro, who's paid for the
18 thing. Am I right on that, Doug?

19 MR. MACKELCAN: Right. But the email, it was
20 referenced, and it was referenced in Craig Martin's
21 testimony on the control issue. And that was what we
22 had talked about, and it gave the --

23 THE COURT: So, it came out in another -- it came
24 out in somebody else's email.

25 MR. MACKELCAN: The 2010 peer review, the negative

1 peer review, it has already come out.

2 THE COURT: Yeah, and it came out, thought, because
3 it wasn't -- it wasn't -- that information had been
4 given to somebody else.

5 MR. MACKELCAN: Correct.

6 THE COURT: And that was outside of the peer review
7 protection, yes?

8 MR. MACKELCAN: I think that was your ruling, yeah.
9 That was --

10 THE COURT: Well, if it was somebody outside the
11 peer -- I mean, you know, if it's a peer review, it's
12 protected. You can't go chatting around about it. And
13 as I under -- my understanding was, was that this was
14 not the state-protected peer review.

15 MR. LOVELL: Correct.

16 THE COURT: That this was not any other kind of,
17 you know, peer -- those peer review committees are very
18 stylized, statutorily, governed things, and they are
19 protected. And unless -- in my mind, they're used as a
20 sword and a shield, and that's a whole different
21 situation. But that wasn't my understanding of any of
22 this. Let me ask you this question. There was an
23 email, and the email -- whose email?

24 MR. MACKELCAN: It was Craig Martin's email. He
25 emailed a lady by the name of Amanda Wright back in 2010

1 about a dead United States Marine who died from sepsis,
2 and you allowed that testimony and the documents in,
3 with a limiting instruction solely as to the issue of
4 control. Because, if Craig Martin knows about it and
5 he's emailing about it, then, that could be some
6 evidence that this jury could look at with respect to
7 the respondeat superior issues.

8 THE COURT: Well, Craig Martin was not the peer
9 review person.

10 MR. HOYLE: He was not. He was not. He had not --
11 the privilege had already been broken, because he had
12 notice of it.

13 THE COURT: Yeah.

14 MR. HOYLE: But this peer review that they want to
15 talk about is dealing with Calvin Hunt. They want
16 somebody to come in here and essentially serve as an
17 expert. There has been no documents produced, because
18 those documents belong to the Navy, with respect to
19 whatever peer review he did or didn't do about Calvin
20 Hunt; presumably offer testimony to the jury that I
21 believe goes to the ultimate issue as to whether or not
22 --

23 THE COURT: Okay.

24 MR. HOYLE: Okay. Well, I'll walk that back, since
25 I'm getting looks in the room.

1 THE COURT: Okay.

2 MR. LOVELL: There's a whole bunch of that.

3 MR. HOYLE: But this gentleman, Scott Moore, has
4 never been identified as an expert.

5 MR. MACKELCAN: That's not true. He has been
6 identified as an expert.

7 THE COURT: So, but we can hold it and you can go
8 find all of that stuff. Let me ask this question. I
9 don't want Mr. Steve Babitsky coming down here with
10 something more, because I'm opening up their peer
11 review. Can you all tell me that this is -- that what
12 you all are eliciting is not the peer review stuff?
13 Because I can't get into the --

14 MR. MACKELCAN: We cannot. Your Honor, we cannot
15 tell you that.

16 MR. LOVELL: No, I don't think we can do that.

17 THE COURT: Huh?

18 MR. MACKELCAN: We cannot tell you that.

19 MR. LOVELL: No. No.

20 MR. MACKELCAN: We don't know one way or the other.

21 THE COURT: Well, did he email -- did somebody
22 email somebody else about something?

23 MR. MACKELCAN: I mean, I got that same email that
24 he got.

25 MR. LOVELL: The question, is there an email about

1 this Mr. Hunt.

2 MR. MACKELCAN: Oh. No, we're not aware of any
3 about this particular peer review, no.

4 THE COURT: Can I ask you a question? Come here a
5 minute.

6 OFF-THE-RECORD BENCH CONFERENCE, OUT
7 OF PRESENCE OF JURORS. PRESENT: THE
8 COURT, MR. HOYLE, MS. CASTLEBERRY, MR.
9 LOVELL, MR. MACKELCAN.

10 END BENCH CONFERENCE.

11 BAILIFF: Jury is entering the courtroom, your
12 Honor.

13 THE COURT: Wonderful.

14 JURORS ENTER COURTROOM 5:02 P.M.

15 THE COURT: Ladies and gentlemen, see, you all did
16 so good. You have a new comfort break. I'm so excited
17 that you had your comfort break. It gave us an
18 opportunity to handle a couple of matters. It gave me
19 an opportunity to confer with Counsel in your absence,
20 and it has been ascertained that the witness is not
21 needed.

22 So, ladies and gentlemen, we will begin in the
23 morning at 9:00 o'clock. Now, please be mindful, do not
24 discuss this matter or allow anyone to discuss it with
25 you. And I really -- if you all have any questions, I

1 want you to write them down and let me know, because,
2 believe it or not, any kind of -- if I was to look at,
3 like Ryan about something we had talked about or thought
4 about, and I went like this, after having heard
5 something, that's deliberation. It's really that --
6 it's that particular. Or if I went, looked at him in
7 any way, shape, or form; or, if I heard -- if I heard
8 something, and that meant an inside joke, and I looked
9 at him and went mmm, mmm, believe it or not, that's
10 deliberation. It's that extensive.

11 Let me share with you why. I want to go back to
12 the beginning, since we've been at this now in excess of
13 a week. The reason for that is because, the way that we
14 are put together as human beings, and we cannot help it,
15 the way that we are put together as human beings, if we
16 begin to discuss a matter, and gesturing to each other,
17 looking at each other, communicating about individuals
18 that have anything to do with this case, or about what
19 you're hearing, that actually is conversation. It is
20 communication about it. And when you do that, what
21 happens is that you yourself begin to form an opinion;
22 the person you are communicating with begins to form an
23 opinion; and I need you not to do that.

24 The reason that I need you not to do that is that
25 we're still in the Plaintiff's case. You haven't even

1 heard from the Defendant and the Defendant's case. And
2 so, it's very important that I have you continue to be
3 very vigilant and very careful with regards to what
4 you're doing and what your fellow jurors are doing,
5 because you cannot do anything; you can't talk about
6 this case; you can't talk about anybody that has
7 anything to do with it. That's the reason for that,
8 because, because, you have to, as part of your duties,
9 you will evaluate the credibility of these witnesses.

10 And if there's some kind of communication going on,
11 that, in any way, is a comment on what you might think
12 about that individual, that person, what you're doing
13 is, that you are weighing in on the credibility of the
14 witness. And that, you cannot do. So, therefore, let
15 me just -- yeah.

16 JUROR: Just to make myself clear, are you
17 referring to while we're sitting here in the jury and
18 this is going on?

19 THE COURT: Oh, absolutely. Absolutely. Yes.
20 Absolutely. It is absolutely inappropriate. And the
21 reason that it is, is, that this -- for, really, a
22 couple reasons. Number one, it's the same if you do it
23 in here as if you do it anywhere else.

24 Secondly, secondly, as you are looking, if you are
25 looking at somebody else, you're missing something as

1 it's coming, potentially, from the witness stand. So,
2 yes, it's absolutely not appropriate.

3 The fact is, there's no haven because you are here
4 in the open court. You must keep your thoughts to
5 yourself; you must keep your opinions to yourself; and
6 you must listen. Your focus, as a juror, is to control
7 yourself, to cause yourself to be your own counsel, to
8 be sure that you are listening, open-mindedly, to all
9 the evidence that is presented to you.

10 Ladies and gentlemen, I will tell you that, after
11 eighteen-and-a-half years of doing what I get to do
12 every single day, knowing what I know, that evidence
13 comes in one piece at a time, one piece at a time, it's
14 the only way it can. It's impossible to do it
15 otherwise. It comes in one piece at a time. That's why
16 you have to listen open-mindedly to everything, and not
17 make up your mind about anything, until you've heard
18 everything. Because of the unique nature that you are
19 listening to evidence, or you're listening to testimony,
20 you're receiving evidence, it can only come in one piece
21 at a time. And you never -- it is impossible for you to
22 know what the end is going to be when you are in the
23 middle. It is impossible for you to know what will be
24 most important to you at the end of the day. You can't
25 possibly -- it's humanly impossible. You would have to

1 be clairvoyant. You cannot possibly know. That's why
2 it is so important that you not make up your mind about
3 anything until you have heard everything.

4 I get to listen to motions. I get to listen to
5 lawyers from both sides. And I don't mind telling you,
6 when I was a very -- when I was a baby lawyer, and I
7 would be listening to a guilty plea, for example, I'd
8 listen to one side, I'm like, arr, arr, arr, arr, in my
9 head. And then, I'd listen to the other side, and I'm
10 like, arr, arr, arr, arr, arr, arr, arr, on the other
11 side. And then, when I was a baby judge, I would think
12 to myself, wow, wonder what the judge is going to do?
13 Oh, my. Hold on. That's me.

14 So, seriously, what I will tell you from my
15 experience is, is, it's impossible for you to know. It
16 is impossible for you to know. So, as a juror, to do
17 your duty, you have to remind -- if I was a juror
18 sitting over there, I'd be saying don't make up your
19 mind about anything; listen attentively to everything;
20 listen open-mindedly to everything; don't make up your
21 -- and if I felt that little voice in my head, going,
22 mmm, it would be important for me as a juror to remind
23 myself that this is a process; Judge Goodstein has told
24 me this is a process; Judge Goodstein has shared with me
25 that I must not make up my mind about anything until I

1 hear everything; and if I make up my mind about this,
2 that may keep me from being able to do my duty and
3 listening appropriately to that, and I don't even know
4 what that is yet.

5 So, that's the reason for it. That's the reason
6 you must keep your own counsel. You must keep your own
7 counsel. It's not appropriate to talk about what you're
8 hearing, what you are seeing, or anyone that has
9 anything to do with this case. It's really, really --
10 and that is very difficult to do. That's why we have
11 you all. That's why we have you, is because we know, we
12 know that you can do this. But it is different, because
13 we're human, you know, we like to talk, it matters.
14 You've spent lots of times getting to know each other.
15 You're becoming friends. You're becoming acquaintances.
16 And it's very difficult when this is the focus your
17 being here, not to say, oh, my God, what happened to
18 Goodstein's hair today? That's just an example, but
19 that's the kind of thing you have to keep your own
20 counsel.

21 You can talk about lots of other things, but you
22 cannot talk about anything you're hearing or seeing or
23 feeling or thinking or anyone that has anything to do
24 with this case. It's very important. When you do that,
25 you just open your own space, your own space to listen

1 open-mindedly to everything. And when you deliberate,
2 let 'er rip.

3 But I promise you that, until that time has come,
4 and I'm going to tell you, I'm going to specifically
5 say, now is the time for you to begin your
6 deliberations. There will be no question in your mind
7 when that time has come. But until then, you must be
8 very circumspect about your conduct. You must be very
9 circumspect, and be mindful that you must be listening
10 open-minded everything. I think that's enough.

11 Although, I am going to remind you, do not listen
12 to anything, read anything about this matter. No
13 Internet. No Columbo. You must receive all the
14 information from which you will make up your minds here
15 in court while court is in session. Again, it's coming
16 in one piece at a time, and it will continue to come in
17 one piece at a time. That's the only way evidence can
18 be received.

19 And it's got to be getting tough at home. Blame it
20 on the judge. Say, this is the slowest judge; you're
21 like molasses; I am so sorry; I will be able to talk
22 about this case when I am discharged from my service on
23 the jury by the judge.

24 I will talk about that, too. I will tell you when
25 you can talk about it. We'll talk about that. Now is

1 not the time, but I don't want anybody upset with my
2 jurors. I want you to put it on the judge.

3 Remember, don't do any research. Don't listen to
4 anything. Don't read anything about this case, radio,
5 television, Internet, newspaper. Leave your
6 communication devices away from the courthouse. Cell
7 phones, away from the courthouse. If you forget, let us
8 know. We will keep them safe until you are able to take
9 them away from the courthouse. Have a lovely evening.
10 Nine o'clock, nine bells. See you in the morning.

11 JURORS LEAVE COURTROOM 5:13 P.M.

12 BAILIFF: Jury is clear, your Honor.

13 THE COURT: All right. Any objection or additions
14 to my comments to the jury from the Plaintiff?

15 MR. HOYLE: Nothing from the Plaintiff, your Honor.

16 THE COURT: From the Defense?

17 MR. MACKELCAN: No, your Honor.

18 THE COURT: Let me just tell you -- let me tell you
19 what that was about. And let me just share with you
20 that, at one point, I don't even remember when, I really
21 don't remember when, I just saw one juror turn and look
22 at another juror. And I'm very -- I'm probably hyper-
23 sensitive. As a matter of fact, I know I'm hyper-
24 sensitive about juries, given my experience very
25 recently, I am hyper-sensitive about them doing that, to

1 the point of probably being obnoxious.

2 But given the Internet, it is more and more and
3 more of a challenge for us to stop jurors from talking
4 about cases and going on the Internet. It's just
5 getting to be more difficult. And I find myself
6 becoming, really, more and more stronger and stronger
7 with them about it, because you all work too doggone
8 hard, and you all work too hard for jurors to not follow
9 that instruction. So, I'm just --

10 And even after this period of time, I'm trying to,
11 quite frankly, to up the ante on them a little bit, and
12 push them a little bit harder. And when I saw that, I
13 thought, no, I'm going for it. I'm going to tell them
14 to stop it. And given that juror's comment, I am
15 delighted I did. All right. Now, they're probably
16 thinking if something funny happens, they can't chuckle,
17 but I'd rather them be on that side than otherwise.
18 Anything else?

19 MR. HOYLE: Nothing from the Plaintiff.

20 THE COURT: From the Defense?

21 MR. LOVELL: No, your Honor.

22 THE COURT: All right. Approximately how many more
23 witnesses do you believe you have?

24 MR. HOYLE: I believe we have one live witness, Ms.
25 Delaney, and we have two videotaped depositions left,

1 and we believe we'll play only one of those two.

2 THE COURT: Okay.

3 MR. HOYLE: And we may not even play that one.

4 THE COURT: And how long is that one?

5 MR. HOYLE: How long was Ms. --

6 MR. HOYLE: 1:20.

7 THE COURT: 1:20. Great.

8 MR. LOVELL: We have cut our portion of the Meaut
9 one down.

10 THE COURT: Okay.

11 MR. LOVELL: And with Dr. Oberg, it may be our last
12 -- our only other witness.

13 THE COURT: Okay.

14 MR. LOVELL: So, I think tomorrow we'll get the
15 evidence done for sure.

16 THE COURT: I agree. Okay. Great.

17 MR. LOVELL: We have a couple videos that we're
18 probably not going to play, unless I --

19 THE COURT: Okay. Well, let me just -- we're off
20 the record, Wanda.

21 **END DAY SEVEN, WEDNESDAY,**

22 **OCTOBER 14, 2015, 5:15 P.M.**

23 **BEGIN DAY EIGHT, THURSDAY,**

24 **OCTOBER 15, 2015, 9:15 A.M.**

STATE OF SOUTH CAROLINA
14TH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT
COURT OF COMMON PLEAS
CASE NUMBER 2012-CP-07-03782

REBECCA DELANEY, AS PERSONAL
REPRESENTATIVE OF THE ESTATE
OF JUSTIN NICHOLAS MILLER

PLAINTIFF

VOLUME FOUR

ORIGINAL

VERSUS

CASEPRO, INCORPORATED

DEFENDANT

OCTOBER 7 THROUGH 16, 2015
PRETRIAL MOTIONS AND TRANSCRIPT OF TRIAL
BEAUFORT, SOUTH CAROLINA

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Wanda H. Rowe, CVR-M
Official Court Reporter

1 OBJECTIONS/RULING REGARDING FINDINGS
2 AND ORDER OF NOT GUILTY BY REASON OF
3 INSANITY, BY THE COURT:

4 THE COURT: Good morning. Please be seated.

5 MR. HOYLE: We've got a little bit of housekeeping
6 we need to take up before we bring the jury in. Your
7 Honor, yesterday, Plaintiff's Exhibit Number 23, the
8 redacted, edited videotape from the Fire Engine Number
9 5, was shown to this jury. That document was received
10 into evidence over the objection of the Defendant. We
11 have rendered what was played here in open court
12 yesterday to a disc, marked it and handed it to the
13 court reporter. I just want to make sure that the
14 record is clear, that this Exhibit, Plaintiff's 23,
15 remains subject to the injunction issued by the
16 Honorable Carmen Mullen here in Beaufort County, in the
17 case of State v. Calvin Hunt.

18 Any objection or exception to what I just said,
19 Doug or Gary?

20 MR. MACKELCAN: No.

21 MR. LOVELL: No. That's an accurate statement.

22 THE COURT: All right. Two things about that.
23 Number 1, has the Defendant had an opportunity to look
24 at the redacted C.D. to make sure?

25 MR. MACKELCAN: Not yet.

1 MR. LOVELL: Not yet. We'll do that some time.

2 THE COURT: When you get a moment to look at it,
3 just more eyes on it to confirm that, that is, in fact,
4 what the jury saw is a good thing, subject to any
5 objection that I might hear from the Defense, but if I
6 do not hear one from the Defense, then, it's in. I'll
7 conditionally admit it at this point.

8 Secondly, however, I need to put the burden on
9 the Defense to let me know if there's a problem.

10 MR. LOVELL: We'll do that, yes.

11 THE COURT: And if not, it's certainly in. With
12 regards to the injunction of Judge Mullen, this is my
13 position. I will take no action that will interfere
14 with countermand or abdicate in any regard Judge Mullen's
15 order. Whatever that order is, is applicable in this
16 action. I will take no position that will alter that
17 which she has done. I don't think that's appropriate
18 for one circuit court judge to unilaterally disturb the
19 action taken by another circuit court judge. I will not
20 do that. So, whatever it is that Judge Mullen has done,
21 it will be the action.

22 And Mr. Hoyle, you tell me that she issued an
23 injunction. It will continue just as she has done it in
24 this case. At such time as Judge Mullen might alter
25 that injunction in any regard, then, it would alter the

1 injunction in this case.

2 To be specific, as I understand, it is Judge Mullen
3 that heard the criminal matter, and that she adjudicated
4 the NGRI. And because she is chief administrative judge
5 here in Beaufort, it is anticipated that any review of
6 that will come to her. And therefore, if she alters the
7 injunction applicable to this tape, which is, of course,
8 the dashcam from the fire engine, that will be
9 applicable in this case, as well. All right?

10 MR. HOYLE: Thank you, your Honor. While we're on
11 this subject of NGRI, if I may hand this up, your Honor.

12 THE COURT: Okay.

13 MR. HOYLE: Plaintiffs, pursuant to Rule of
14 Evidence 201, the Court to take judicial notice of the
15 finding --

16 THE COURT: Okay.

17 MR. HOYLE: -- of the Beaufort County Court of
18 General Sessions, which held, by a preponderance of the
19 evidence, that, at the time of the commission of the
20 alleged offenses of murder and grand larceny, Calvin
21 Hunt, as a result of mental disease or defect, did not
22 have the capacity to distinguish moral or legal right
23 from moral or legal wrong, and was found not guilty by
24 reason of insanity for the offenses charged.

25 Attached to our written request for judicial notice

1 is a form copy of the finding of not guilty by reason of
2 insanity entered by the Court of General Sessions of
3 this County on December the 18th, 2014, as well as the
4 indictments that were true billed by the grand jury in
5 this county in connection with those criminal
6 proceedings in State v. Calvin Hunt, and an exhibit,
7 which was received here in Court during the trial of
8 Calvin Hunt, a capacity -- I want to get the title
9 correct here, Judge -- A Criminal Responsibility and
10 Capacity to Conform Evaluation, done pursuant to statute
11 by the South Carolina Department of Mental Health,
12 contracted through the Medical University of South
13 Carolina, for the Court's consideration with respect to
14 this request.

15 THE COURT: It is the *M'Naughten* NGRI, not guilty
16 by reason of insanity, that you seek it, yet, you
17 include the other things. I gather they're, also, a
18 part of the order in this case?

19 MR. HOYLE: Yes. It's for your Honor's
20 consideration so that you have complete information here
21 from which you can take judicial notice of the facts as
22 we seek for the Court to take judicial notice therefrom.

23 THE COURT: Yes. Let me hear from you.

24 MR. LOVELL: Your Honor, --

25 THE COURT: Yes.

1 MR. LOVELL: -- with regard to this, we object to
2 it coming into evidence in this case. All of the
3 charges that were there that were subject to the
4 criminal hearing involved murder with malice
5 aforethought where they claimed the defendant, Mr. Hunt,
6 did kill the victim by striking him with a stolen fire
7 truck; assault and battery first degree, where he struck
8 an EMT in the face during the theft of a fire truck;
9 assault, beating, or wounding a police officer while
10 resisting arrest, while being arrested and after the
11 wreck of the fire truck: hit and run; grand larceny of
12 a fire truck; hit and run times five.

13 All of these things occurred, as we all now know,
14 some period of time after this gentleman had eloped from
15 the E.R. The issue this jury is faced with is what was
16 the mental state and condition of this gentleman while
17 he was in the E.R. The only duty we owe is to warn of
18 what's going on at that time.

19 This is, in essence, injecting hindsight into the
20 jury's deliberations and all of the findings that none
21 of these parties were part to the finding of criminal
22 insanity. And we think it's not relevant to the issues
23 in this case, and would be highly prejudicial to allow
24 this in. It relates to events that occurred well after
25 the gentleman departed from the E.R., and thus, the

1 finding of not guilty by reason of insanity would, in
2 essence, be precluding this jury from considering what
3 this gentleman's condition was in the E.R. at the time
4 all of our client's employees were evaluating him, and
5 also relates to things that occurred after he departed
6 the emergency department. So, we think they're just not
7 relevant to the issues in the case.

8 THE COURT: All right. Let's go to the rule of
9 judicial taking -- the taking of judicial notice. Let's
10 go there, first of all. All right. Rule 201.

11 So, it is appropriate, we can all agree, to take
12 judicial notice of an order which has previously been
13 entered in the Court. Now, your concern is -- underlies
14 that, as I understand it.

15 MR. LOVELL: Right, your Honor. I think --

16 THE COURT: Okay.

17 MR. LOVELL: 201(b) says the judicially noticed
18 fact must be one not subject to reasonable dispute that
19 has either been only all in the territory of this
20 jurisdiction or capable of accurate and ready
21 determination by resort to sources whose accuracy cannot
22 be reasonably determined.

23 THE COURT: Questioned.

24 MR. LOVELL: The issue in this case that we're in,
25 what's his condition at the time he's in the E.R.

1 THE COURT: Well, what I'm being asked to take
2 judicial notice of simply is an order. As I understand
3 your concern, it is your concern with regards to the
4 underlying order.

5 MR. LOVELL: Yes, your Honor.

6 THE COURT: And the underlying order -- now, focus
7 with this for me. The grand larceny occurred, of this
8 fire truck, occurred within -- the whole incident, as I
9 understand, was within 17 minutes of the time of the
10 first 911 call, is my understanding, give or take. So,
11 we're talking probably -- it's clearly about a time
12 inside of 30 minutes. Probably a time more closer to
13 inside of 20 minutes, as I understand the information
14 which has been provided.

15 So, we are talking about the state of mind, the
16 adjudicated state of mind, of Mr. Hunt within minutes
17 after his having left this emergency room. Isn't that
18 correct, Mr. Hoyle?

19 MR. HOYLE: Yes, your Honor.

20 THE COURT: Very good.

21 MR. HOYLE: And with respect to two additional
22 thoughts, while we're on this subject, (1) I believe I
23 have the burden with respect to foreseeability. I
24 think, certainly, you know, with -- Mr. Lovell raised
25 the relevance of this request for judicial notice. I

1 think it addresses the foreseeability, but also goes to
2 the issue raised by the Defendant in their answer as to
3 intervening superceding cause.

4 The case law is clear in this state that a court
5 can take judicial notice of that own court's order, and
6 that's all we're asking here. But it certainly goes to
7 both an issue that the Plaintiffs have raised by filing
8 a complaint, and an issue raised by the Defendant by
9 filing certain affirmative defenses in their answer.

10 So, I do not see any prejudice, if this Court were
11 merely to take judicial notice and advise the jury of
12 the finding of this Court in this very courtroom some
13 eleven months ago. The facts cannot be in dispute, your
14 Honor. The certified -- the order from Judge Mullen is
15 attached for your review. The original is literally
16 down the hall in a file.

17 THE COURT: All right. Case law, anybody got any
18 case law for me? Particularly the Defense.

19 MR. LOVELL: Your Honor, we have no cases on point.
20 If I might add one additional thing. If you look at the
21 information that Plaintiff's counsel has attached, I
22 guess, his guidance to what occurred prior to the
23 issuance of this order, there was a mental health
24 evaluation by the Medical University of South Carolina
25 personnel. They outlined the various things they looked

1 at in arriving at this decision -- or recommendation, I
2 presume, that was provided the Court.

3 Those include interviews of Mr. Hunt and numerous
4 other people about things that occurred both well before
5 the incident we're here about today and subsequent to
6 then. And our position, your Honor, would be that the
7 court order and finding was based upon a lot of evidence
8 and information that has not been presented in this
9 court by Plaintiff about this gentleman's psychiatric
10 condition. And to allow this order to come in as a
11 judicially noticed order, would then interject into this
12 case a ton of, in essence, sort of -- I don't want to
13 say through the back door, but I can't think of another
14 word -- but it would interject evidence that hasn't
15 been put before this jury that obviously was part of the
16 basis of the Court's determination of insanity at the
17 time this gentleman committed these events, whatever
18 number of minutes it was after this presentation and
19 departure from the emergency department.

20 Plaintiff had the opportunity to bring psychiatric
21 witnesses to testify about the patient's condition at
22 the time he was in the E.R., and didn't do it. To try
23 to now use a judicially issued order that did rely upon
24 a lot of that information would be, in essence, unfair
25 to the Defense and interjection of evidence that hasn't

1 been presented in this case.

2 MR. MACKELCAN: We attempted to communicate with
3 the MUSC doctors who prepared this report, and were told
4 that this was confidential; and that they were not
5 allowed to talk about it; that it was specifically for
6 the criminal case.

7 MR. HOYLE: And your Honor, on that issue, I was
8 here. I sat right there when the NGRI hearing was held,
9 and Judge Mullen received the criminal -- let me get the
10 words right. I hope I never have to have one of these
11 evaluations.

12 THE COURT: Yes, you do.

13 MR. HOYLE: A Criminal Responsibility and Capacity
14 to Conform Evaluation. Judge Mullen received that into
15 evidence as Exhibit Number 1, and it's a part of the
16 jacket down in the clerk's office. She also received
17 victim impact statements from the family. Those were
18 received as court's exhibits. But this was Exhibit
19 Number 1 received at that trial. It certainly is
20 something that Judge Mullen relied upon.

21 If your Honor, after from the objection of the
22 Defendants, believes that solely the order is
23 appropriate for judicial notice, I'll sit down, but this
24 is certainly a part of what Judge Mullen considered.

25 THE COURT: Oh, yeah. I'm only looking -- I'm

1 sorry. I'm only looking at the order. I'm not looking
2 at anything beyond the order. It's interesting. And
3 the question is -- I think it is appropriate for me to
4 take judicial notice of an order of the Court, and the
5 reason that I think that it is relevant to these
6 proceedings is because of the temporal connection
7 between the time Mr. Hunt was in the E.R., and then, the
8 time of these events. I think that the Plaintiff has
9 established it.

10 And it's very clear that it certainly is a document
11 of a circuit court judge, and one that I certainly would
12 certainly take judicial notice of. It is not capable of
13 any sort of dispute. The question is whether or not
14 there's any other reason to exclude it from these
15 proceedings. And because it is an order, which
16 addresses the events that occurred and a finding of the
17 mental state of Mr. Hunt at the time that these events
18 occurred, I believe it has relevance, and the relevance
19 exists because of the temporal closeness in time.

20 And Mr. Hoyle, you probably know to the second the
21 temporal -- what is the time between the 911 call and
22 when the -- approximate time when the 911 call is made
23 and when the engine is stolen? Because, as I understand
24 it, that's your first ability to have cameras and 911
25 calls, because -- do you know what the time is between

1 the time he left the emergency room and the time that --

2 MR. HOYLE: We can tell you with precision
3 momentarily.

4 THE COURT: Okay.

5 MR. HOYLE: It is certainly less than 17 minutes.
6 That, as I can state as an officer of this Court,
7 unequivocally. The exact minutes, we will tell you
8 momentarily.

9 THE COURT: Yes. Yes, sir.

10 MR. MACKELCAN: As far as Mr. Hoyle's last
11 statement, I would agree with that, that it would be
12 less than 17 minutes, but I -- you had made --
13 initially, your question was related to the 911 call,
14 but then, you went back and said when he left the
15 emergency room.

16 THE COURT: I went back to the E.R.

17 MR. MACKELCAN: So, I think the time is from --
18 which we don't know the exact time that they left the
19 emergency room. We think about 4:00 o'clock, and the
20 fire truck was stolen some time after 4:10.

21 MR. HOYLE: In the video we saw yesterday, Mr.
22 Knowles told me last night at dinner, that we spent
23 about an hour, little over an hour, editing two seconds
24 out of that video. That video that was played here in
25 open Court was how many minutes?

1 MR. KNOWLES: Seven minutes and, like, 55, seconds.

2 MR. HOYLE: 7:55.

3 THE COURT: 7:55.

4 MR. HOYLE: So, from the time the fire engine left
5 the fire house, until it makes impact, is less than
6 seven minutes. This is a very, very narrow period of
7 time.

8 THE COURT: And you're talking about the impact to
9 the decedent.

10 MR. HOYLE: These entire events. We know that,
11 from the last 911 call and from the death certificate
12 signed by the coroner of this county, Mr. Ed Allen, that
13 death was pronounced at 4:17. So, we certainly know
14 that all of these events took place with less than 17
15 minutes.

16 THE COURT: Very well. And the first -- and I'm
17 sure there was some -- wasn't there some notation made
18 about --

19 MR. HOYLE: There was testimony -- there was
20 testimony by Ms. Melanie --

21 MR. LOVELL: Smith.

22 MR. HOYLE: -- Smith on the record. Ms. Leyimu
23 asked her on direct examination when the first call was
24 and when the last one was about there's somebody come
25 into the bowling alley. I just don't recall that

1 precision as we --

2 THE COURT: And in the medical records, is there an
3 entry regarding when that request to leave was made?

4 MR. LOVELL: We know, your Honor, from Mr.
5 MacDonald's notes that, at 1612, he notes the patient
6 ambulated to the bathroom; returned; patient with
7 Veterans Affairs rep, Edward Ray, states we're getting
8 some air. His testimony was that the bathroom trip
9 happened first; the request to get air happened second.
10 And he wrote them all as one note, and he timed it 1612,
11 but he said his times could be off a bit.

12 The call to Dr. Hendelman was noted as -- by Dr.
13 Jansen was at 1605, 4:05. And we think it's somewhere
14 in that period of time, plus or minus some number of
15 minutes that, that go-get-a-breath-of-fresh-air
16 conversation was occurring. But nobody knows with any
17 more specificity than that.

18 And we're also working with people's different
19 plots and different, you know, one person's plot might
20 say 4:00 and one might say 4:02. So, we really don't
21 know.

22 THE COURT: Okay. But it is -- the period of time
23 is -- because 1612, I just say 4:12.

24 MR. LOVELL: Right.

25 MR. HOYLE: And Judge, my co-counsel is looking for

1 Exhibit 1-A. That was the CAD sheet that the record
2 custodian from the Sheriff's Office brought here with
3 her, and that should -- okay. Ms. Castleberry could
4 find it a lot quicker than I could.

5 MR. LOVELL: Your Honor, with regard to your ruling
6 on taking judicial notice of this, one question I have
7 is, on the second page, it incorporates the report from
8 MUSC as part of the order. We would request that, that
9 report not be included in whatever is made a part of our
10 official record.

11 THE COURT: I'm not going to.

12 MR. LOVELL: Okay.

13 THE COURT: It is just the order. It is Judge
14 Mullen's three-page order would be all that I intend to
15 take judicial notice of. One of the -- and the order is
16 what the order is. And I'm not going to include -- I
17 don't think it's appropriate to include indictments. I
18 think the information -- because what's requested is, is
19 the finding of NGRI, not guilty by reason of insanity,
20 for the events that occurred beginning -- the first
21 crime that was committed was the grand larceny of the
22 fire engine.

23 MR. HOYLE: Judge, the first 911 call was at nine
24 minutes past the hour of 4:00. That'd be about eight
25 minutes prior to the decedent's death.

1 THE COURT: Okay. Very well.

2 MR. HOYLE: And that's from Exhibit 1-A.

3 THE COURT: And so, it's clear to me that the time
4 of his presence, Mr. Hunt's presence, in this E.R., to
5 the time referred to in Judge Mullen's order is
6 literally a matter of maybe four minutes, three minutes.
7 Very short period of time. Okay.

8 MR. LOVELL: We, just for the record, take
9 exception to the order.

10 THE COURT: I do, I get it, absolutely. Now, with
11 all of that, it's the Judge's order only.

12 MR. HOYLE: That's fine, your Honor.

13 THE COURT: Very well. All right. Anything else
14 before we bring the jury out?

15 MR. LOVELL: No, we've got Dr. Oberg ready to go.

16 THE COURT: And I'll just tell the jury you're
17 going to call a witness out of order.

18 MR. LOVELL: That's correct.

19 THE COURT: Wonderful. And then, the order that
20 you're asking me to take judicial notice of I think is
21 -- it doesn't matter. If it should be a plaintiff's
22 order or court's order. I don't care.

23 ITEM IDENTIFIED AS PLAINTIFF'S

24 REQUEST FOR JUDICIAL NOTICE

25 MARKED PLAINTIFF'S EXHIBIT NUMBER 24,

1 FOR IDENTIFICATION.

2 ITEM IDENTIFIED AS FINDINGS AND ORDER
3 OF NOT GUILTY BY REASON OF INSANITY
4 MARKED PLAINTIFF'S EXHIBIT NUMBER 25,
5 FOR IDENTIFICATION.

6 BY THE COURT:

7 ON-THE-RECORD BENCH CONFERENCE, OUT
8 OF PRESENCE OF JURORS. PRESENT: THE
9 COURT, MR. HOYLE, MS. CASTLEBERRY,
10 MR. MACKELCAN, MR. LOVELL:

11 THE COURT: We have a note from a juror. It poses
12 a question.

13 MR. HOYLE: Oh, dear.

14 THE COURT: They pose a question. Now, you know,
15 juror questions, what the law says about that is that
16 they are to be discouraged. I thought -- if you need to
17 communicate with me for whatever reason, I should never
18 had said that. I've said it for 18 years. It's the
19 first time I've gotten this little nugget encouraged,
20 but I'll handle that when they come out.

21 And I'll just tell them what the case law says is
22 that, juror questions with regards to content are to be
23 discouraged. And so, I'm going to discourage them from
24 doing it, but it's out. I got it.

25 Okay. There's a question. I think you're entitled

1 to what the question is. It said:

2 Jury Foreman Number 213 is submitting
3 a question by Juror Number 232 as follows:
4 are the results of ALK, ALCA, and toxic tests
5 for Mr. Hunt after the incident?

6 There's your question.

7 MR. LOVELL: I assume they mean alcohol and drugs.

8 THE COURT: Yeah, I think so, too.

9 MS. CASTLEBERRY: Because there's been testimony
10 about the issues related to that.

11 THE COURT: Yeah. Right. So, you have it. I'm
12 sharing that with you.

13 MR. LOVELL: Okay.

14 THE COURT: Again, I'm going to admonish them that
15 they must receive all of the information from which they
16 will make up their minds here in court while court is in
17 session, and that our case law says that substantive
18 questions from the jury are to be discouraged. I'm
19 discouraging that. That these lawyers -- you must trust
20 that these lawyers will give you all of the information
21 that you need to make up your minds. Okay? Yes, yes?

22 MR. HOYLE: Yes, Judge.

23 THE COURT: Any problems with that?

24 MR. LOVELL: Very well.

25 END BENCH CONFERENCE.

1 MR. MACKELCAN: You want jury charges from us?

2 THE COURT: Yeah.

3 MR. MACKELCAN: Not to change the subject.

4 THE COURT: Yeah, sure. Okay. We'll mark this as
5 a court's exhibit, and now we'll have our jury.

6 ITEM IDENTIFIED AS NOTE WITH

7 QUESTION FROM JUROR

8 MARKED COURT'S EXHIBIT NUMBER 13

9 RECEIVED BY THE COURT.

10 MR. HOYLE: Your Honor, I'm told that we handed our
11 proposed jury instructions to your law clerk.

12 THE COURT: You did.

13 MR. HOYLE: Do you need an additional copy, or are
14 you happy to go?

15 THE COURT: No. You did. You did. And I thank
16 you for it.

17 MR. HOYLE: So, Judge, for purposes of the record,
18 the request for judicial notice is 24, and the three-
19 page order signed by Judge Mullen is Plaintiff's 25.

20 THE COURT: Very well. Great.

21 COURT REPORTER: They're both Plaintiff's exhibits.

22 THE COURT: And I'll do the judicial notice after
23 we've heard from this witness, because I'm goosing it.

24 MR. HOYLE: Thank you, your Honor.

25 THE COURT: He's got to get up -- you've got to get

1 to work by 3:00, and I'm really concerned about his
2 time.

3 MR. LOVELL: He actually has to be there about
4 1:30, he found out.

5 THE COURT: Oh.

6 MR. LOVELL: So, we're going to --

7 THE COURT: He's got to leave here by 1:30 or be
8 there?

9 MR. LOVELL: He's got to be there by 1:30, so we'll
10 be pushing it.

11 THE COURT: You'll be rocking and rolling. Let's
12 come on.

13 BAILIFF: Yes, ma'am.

14 Jury's entering the courtroom, your Honor.

15 JURORS ENTER COURTROOM 9:49 A.M.

16 THE COURT: Good morning, ladies and gentlemen.

17 RESPONSES FROM JURORS.

18 THE COURT: I'm not going to be here Saturday
19 either. So, if you all worried about Saturday, don't
20 worry about Saturday. Right. We're not going to be
21 here Saturday. Did somebody say can't be? Me either.
22 That was my comment: me either.

23 Now, ladies and gentlemen, I have your note, and
24 it's like, everybody, obviously, in Beaufort County is
25 brilliant. I get that. I've known that. I actually

1 have known that now for decades.

2 Let me share with you that here's what our case law
3 says about juror questions. And again, there's a
4 magnificent debate that goes on all over our country.
5 Arizona is known for being the best, forward-thinking,
6 progressive state with regards to juries. I think
7 that's very interesting. Okay. That's it. Fun facts
8 to know and tell you. You have your trivia for today.

9 But what our case law says is that the courts are
10 to discourage juror questions when it goes to the
11 substance. But when I said if you need to communicate
12 with me for whatever reason, I think that it is
13 absolutely a hundred percent reasonable for you to think
14 that I violated what my court has told me to do, and
15 that is to discourage juror questions, because I told
16 you that, I said it.

17 So, I'm going to now amend what I said earlier.
18 Anything with regards to if you have housekeeping
19 matters, needs that you might have. With regards to
20 question that go to the substance of the case, those are
21 to be discouraged, which simply means that I am not
22 allowed to answer your question, which is the long
23 explanation to tell you that.

24 Here's what I do want you to know. You all are
25 listening intently, and I'm so proud of you and so

1 grateful to you for that. Continue to do that. And
2 trust that these lawyers will provide you all of the
3 information from which you will make up your mind. So,
4 continue to do what you are doing, and that is give your
5 undivided attention to these matters. Do not let your
6 thoughts wander. Observe the witnesses. Listen to the
7 attorneys, and of course, listen to the Court. And
8 trust that the evidence which is presented in this court
9 while court is in session will be that from which you
10 will make up your minds.

11 Any objection to my comments? Any additions
12 needed?

13 MR. HOYLE: None from the Plaintiff, your Honor.

14 MR. LOVELL: None, your Honor.

15 THE COURT: Very well. Now, ladies and gentlemen,
16 these lawyers have cooperated. There is a witness that
17 they need to take out of turn, as we talked about
18 yesterday. And we're going to be doing that. This is a
19 witness that, in the normal progression of a case, would
20 be called in the Defendant's case. However, because of
21 scheduling concerns, because these lawyers are
22 cooperating and have agreed to work together in this
23 regard, which I appreciate them and acknowledge them;
24 having told you that, at this time, we will be calling a
25 witness what is called out of order.

1 Mr. Lovell, are you going to call the witness? Or
2 is it you, Mr. Mackelcan?

3 MR. LOVELL: He's ready to go. Dr. Erik Oberg.

4 THE COURT: Thank you. And I was explaining to the
5 jury --

6 MR. LOVELL: Oh, I'm sorry.

7 THE COURT: -- that he would normally be called in
8 the Defendant's case.

9 MR. LOVELL: In our case, yes, your Honor. I
10 apologize.

11 THE COURT: Thank you, sir. Come on.

12 MADAM CLERK: Please place your left hand on the
13 Bible and raise your right. Do you solemnly swear or
14 affirm that the testimony that you give this Court in
15 this trial shall be the truth, so help you God?

16 DR. ERIK DONALD OBERG: I do.

17 MADAM CLERK: You may be seated. And please state
18 your full name and spell your last name.

19 DR. ERIK DONALD OBERG: My name is Erik Donald
20 Oberg. Spelled O/b/e/r/g.

21 DR. ERIK DONALD OBERG

22 DIRECT EXAMINATION, BY MR. LOVELL:

23 Q Good morning, Dr. Oberg.

24 A Good morning, sir.

25 Q I know you've got to be at work this afternoon, so

1 we're going to move through this. Tell us what you do
2 and where you do it.

3 A I'm an emergency medical physician, board certified
4 by the American College -- American Board of Emergency
5 Medicine. I currently work at -- for the Trident Health
6 System in North Charleston. It's Trident Medical
7 Center, Summerville Medical Center.

8 Q Have you ever, in your experience, have you ever
9 served our country in the military?

10 A I have. I started my adult working career in the
11 United States Air Force.

12 Q All right. And have you been in the Air Force how
13 long?

14 A It was a little over twelve years. I graduated
15 from the United States Air Force Academy in 1998. From
16 the Academy, I went to medical school. And then, I
17 served -- served my country until March 1st of this
18 year, where I was honorably discharged and separated
19 from the military.

20 Q Now, when you were serving in active duty, were you
21 serving in the military as a physician?

22 A I was.

23 Q Okay. Were you ever deployed overseas to go to any
24 wars or battles in your role as a physician?

25 A I did.

1 Q When was that?

2 A At least five times. Most recently, I was medical
3 director at Bagram Air Force Base in Afghanistan, which
4 is a Level I trauma center. They took the sickest of
5 the sick, the worst trauma that our soldiers have in
6 Afghanistan.

7 Q What did you do at that Air Force Base? What was
8 your title?

9 A I was the medical director of the emergency
10 department and serving as emergency room medicine
11 physician there.

12 Q So, how many years, in your emergency medicine
13 experience have you been serving where you were you
14 treating activity duty military folks who come to the
15 E.R. with mental health problems?

16 A From -- from the emergency medicine standpoint, it
17 would have been since 2006. Prior to that, I was a
18 flight surgeon that took care of patients, both in the
19 clinic and on the battlefield.

20 Q And did that involve treating patients who
21 presented with mental health challenges, including
22 anxiety, depression, post-traumatic stress disorder?

23 A Yes. Absolutely.

24 Q And other types of mental health issues?

25 A Correct.

1 Q I want to back up a little now. You mentioned that
2 you got your undergraduate education at the Air Force
3 Academy. How did you come to go there?

4 A I was born and raised in Bangor, Maine, and I
5 played several different sports, one of them being ice
6 hockey. I was actually recruited to play ice hockey.
7 It's a Division I program at the Air Force Academy. And
8 that's how I ended up at the Air Force Academy and in
9 the military.

10 Q And what was your highest rank in the military?

11 A Lieutenant colonel.

12 Q After you graduated your four years at the Air
13 Force Academy, where did you go to medical school?

14 A I went right here in the great state of South
15 Carolina at Medical University in Charleston.

16 Q And how many years were you at the Medical
17 University of South Carolina?

18 A It's a four-year program. I was there for four
19 years.

20 Q And what areas were you studying there?

21 A You know, in your medical training, you get,
22 essentially, a sampling of all different specialties,
23 from surgery, OB/GYN, internal medicine, family
24 practice. And psychiatry would be one of them, as well.

25 Q Now, during your period of school, the four years

1 of medical school, what was your next step after you
2 graduated from medical school at MUSC?

3 A When I -- the Medical University was a very unique
4 place for obstetrics and gynecology, and I had a great
5 experience. It was not a mandatory rotation at that
6 time to do emergency medicine. So, I left after
7 graduating from medical school, I went to Travis Air
8 Force Base, and started an OB/GYN program there.

9 Q Okay. And did you stay in OB/GYN?

10 A I did not. My first year as an intern, I actually
11 had an opportunity to rotate through an emergency
12 department, and I realized that's really what I wanted
13 to do with my life.

14 Q So, what did you do next to further your skill,
15 development, and education in emergency room medicine
16 specifically?

17 A After completing that intern year in OB/GYN, I
18 became a flight surgeon. I was a practicing flight
19 surgeon in the Air Force for roughly three years before
20 I went back and did my emergency room medicine
21 residency.

22 Q Where did you do that emergency medicine residency?

23 A That was in San Antonio, Texas.

24 Q And how long did that occur?

25 A That was a three-year program.

1 Q And during that three years, are you focusing
2 specifically on treating patients and working on
3 patients in an E.R. setting?

4 A Absolutely. So, that's the -- the bulk, probably
5 90, 95 percent of your training is dealing with the
6 trauma, the sickest of the sick, that come into the
7 emergency room.

8 Q Okay.

9 A During your first year, again, I did another intern
10 year, what they call it. And during that year, you'd
11 rotate through other specialties again. But the
12 majority of your training is -- is obviously in
13 emergency medicine, because that's the field I'm board
14 certified in.

15 Q And since you completed your residency training in
16 emergency room medicine, those three years, have you
17 been practicing medicine in the field of emergency room
18 medicine continuously since then?

19 A Continuously.

20 Q And is that your area of specialty?

21 A That's my area of specialty.

22 Q Do you do family medicine or any of that type
23 stuff?

24 A No. I am board certified by the American Board of
25 Emergency Medicine to practice emergency medicine.

1 Q When did you become board certified in emergency
2 medicine?

3 A I graduated in 2009, and then, I became board
4 certified in 2010.

5 Q And have you had to renew those boards yet?

6 A Not yet.

7 Q Tell us what states you've been in and licensed to
8 practice medicine in.

9 A I've been licensed in Indiana; out of the state of
10 Texas, South Carolina, and Virginia.

11 Q And is your South Carolina license still active?

12 A It is. I obtained that in roughly the springtime
13 of 2014.

14 Q Have you, in your experience, ever served in the
15 teaching capacity in the field of medicine or
16 subspecialty fields?

17 A Yes.

18 Q Tell us about that.

19 A In the time period of 2009 to roughly 2012, I was
20 at Langley Air Force Base. I was the medical director
21 there. But additionally, the military allowed us to
22 work in civilian hospitals that had higher acuity,
23 higher trauma patients, than some of the -- that you
24 would find on a military installation. So, I worked at
25 a capacity at Riverside Hospital. They taught both

1 emergency medicine residents, who are training to be
2 emergency medicine physicians; family practice
3 residents, who are training to be family practice
4 residents. So, in that capacity, when I worked shifts
5 at that hospital, I'd be teaching those folks.

6 Q Now, Doctor, when did you leave the military
7 medicine field to go into private practice?

8 A I start -- in the military, as you end your career,
9 whether it be ready to be retired or separate, you
10 accumulate leave, and you can take terminal leave. I
11 took terminal leave, is what the military calls it, as
12 of January 1st, and my specific out date as far as I was
13 out of the military was March 1st of this year. So, I
14 started at Trident January 1st.

15 Q Of calendar ready 2015?

16 A That's correct.

17 Q So, in your years in the E.R. in the military
18 facilities, did you have experience in evaluating,
19 coming up with treatment plans, diagnosing, patients who
20 presented with mental health challenges similar to what
21 you've seen with this there patient?

22 A Absolutely.

23 Q And have you done that in the civilian world, as
24 well?

25 A Yes, absolutely. Not only -- not only in the years

1 of experience I have in the civilian hospitals, but I
2 worked for the largest Department of Defense military
3 hospital, which is in San Antonio. It's the San Antonio
4 Military Medical Center. In the emergency department,
5 we have 60-plus beds there. We treat eighty to a
6 hundred thousand patients a year, both civilian and
7 military. And that was the major referral center for
8 military personnel, to include those with PTSD,
9 depression, all the other psychiatric diagnoses.

10 Q You mentioned San Antonio. CasePro's corporate
11 office is in San Antonio. Did you know anything about
12 CasePro before this case?

13 A No. The first time I've ever heard the name
14 CasePro was -- was in preparing for this case.

15 Q What hospitals have you had privileges to practice
16 emergency medicine in over the years?

17 A I've had privileges to work at Lang -- we'll go in
18 chronological order. When I was a flight surgeon, I was
19 actually back here stationed at Charleston Air Force
20 Base, which a hospital -- it's really a clinic. After
21 that, I did my residency in San Antonio. Then, went to
22 Virginia. Langley Air Force Base would be a hospital I
23 was privileged at. And then, Riverside Hospital, which
24 was the local Level II trauma center referral center.

25 After that, went back to San Antonio. I was

1 credentialed at the San Antonio Military Medical Center;
2 and then, two local hospitals in San Antonio, one being
3 the Methodist Hospital System, which is probably in the
4 top five largest hospital systems in the country. And
5 then, a small, rural hospital in Jourdanton, Texas,
6 called the South Regional Medical Center. And then,
7 now, I'm credentialed at Trident Medical Center.

8 Q Are you a member of any professional organizations
9 in the area of emergency medicine?

10 A I'm not only a member, but I'm also a fellow of the
11 American College of Emergency Physicians.

12 Q Everybody that is a member of that organization
13 fellows in that organization?

14 A No.

15 Q How do you get to be one of those?

16 A You have to demonstrate to the college that you've
17 gone above and beyond just practicing emergency
18 medicine. You actually have to have done something for
19 the field, such as teaching. For me, specifically, it
20 was in the realm of being a medical director, serving as
21 a medical director in the emergency department, and
22 then, teaching both residents in family practice and
23 emergency medicine.

24 Q Doctor, from your education, training, and
25 experience, are you familiar with the duties of

1 emergency room physicians in general when they're
2 interacting with patients with mental health challenges
3 like Mr. Hunt had and presented in February of 2012?

4 A Yes, sir.

5 Q And in your training and your work experience as an
6 emergency room physician, have you had an opportunity,
7 have you learned the roles and responsibilities of
8 nurse's working in the triage and treatment areas of an
9 emergency department when they're faced with patients
10 with mental health challenges like Mr. Hunt did in
11 February of 2012?

12 A I have.

13 Q Have you been involved in working with nurses over
14 the years such that you sort of know what they do and
15 are supposed to do? E.R. nurses.

16 A Well, as has already been put towards the Court,
17 you know, it's a team approach. So, you know, working
18 with a team, both nurses and technicians, the unit
19 secretaries, I know what they do. But specifically, in
20 my role as a medical director, I supervise everything
21 that happened in the emergency department. I was
22 responsible for the care that was received in the
23 hospital. So, I was supervising docs, nurses, techs.

24 MR. LOVELL: Your Honor, at this time, we would
25 tender Dr. Oberg as an expert in the field of emergency

1 medicine.

2 THE COURT: Any objection?

3 MR. HOYLE: No objection from the Plaintiff, your
4 Honor.

5 THE COURT: No voir dire, then. Very well.

6 MR. HOYLE: None is needed, your Honor.

7 THE COURT: He is so qualified. You may proceed.

8 BY MR. LOVELL:

9 Q All right, Doc, let's move along. Have you ever
10 served as an expert witness in a case like this before?

11 A I have not.

12 Q Before your involvement in this case, had you ever
13 given a deposition in a case like this?

14 A No, this -- that was my first experience.

15 Q Now, we retained you, our law firm did, and
16 provided you with information about this case. Tell us,
17 did you review medical records relating to the E.R. care
18 and the care at Beaufort Naval Hospital?

19 A I did. I've -- I've reviewed all of the records
20 from the day of -- of -- of February 24th. I've
21 reviewed the medical records of Calvin Hunt. I've
22 reviewed the depositions of Saundra Smith, Joe and
23 Janice McDonald, Dr. Jansen, Mr. McCabe. I've reviewed
24 the autopsy report from -- from that day. I've reviewed
25 the forensics psychiatry evaluation of Mr. Hunt that was

1 done at MUSC.

2 Q Did you review the deposition that was done of Dr.
3 Hendelman, the psychiatrist, and Arthur Manning, the
4 psychiatric tech?

5 A Yes, I did.

6 Q How about the deposition of Ms. Delaney, the
7 Plaintiff?

8 A I did.

9 Q From your review of all of that information, did
10 you get an understanding, from either the records or the
11 depositions of what transpired with Mr. Hunt from the
12 time he was seen by Ms. Smith upstairs, 'til the time he
13 was seen in the E.R., 'til the time he eloped and left?

14 A I did.

15 Q Now, have you ever -- I got to ask this question.
16 Have you ever worked through any expert witness services
17 where you've looked at cases and gotten paid for looking
18 at them?

19 A I've -- I've done a case reviewing for a law firm,
20 Bluestein & Nichols, in Columbia, South Carolina, to
21 review a case so a veteran could obtain V.A. benefits.

22 Q Is that the extent of your work as a reviewer of
23 anything?

24 A That's correct.

25 Q Let's talk about your opinions in this case about

1 the duties of care to the patient by these E.R. folks.
2 After your review, with all the medical records you had
3 from the E.R., and Nurse Smith from the hospital
4 upstairs, the depositions you talked about relating to
5 Mr. Hunt on February the 24th, did you arrive at any
6 opinions that you can give our jury about with Nurse
7 Janice McDonald, Nurse Joe McDonald, and Dr. Jansen met
8 and complied with all of the duties that were required
9 of them in their roles that they were serving in the
10 E.R. on that February 24th of 2012?

11 A Yes, absolutely.

12 Q All right. And what is your opinion in that
13 regard?

14 A So, after reviewing the medical records from that
15 day from both Saundra Smith, Joe and Janice McDonald,
16 and Dr. Jansen, there's no way that these folks were
17 careless or reckless in any way. They were astute.
18 They recognized that this patient needed help. He
19 needed to be admitted for psychiatric care, and that's
20 what -- exactly what they were headed to do.

21 Q And do those, are those opinions that you hold,
22 Doctor, to a reasonable degree of medical certainty as a
23 medical doctor in the E.R. field?

24 A Yes, sir.

25 Q Now, I want to ask you a couple of general

1 questions. When in an emergency room scenario, E.R.
2 doctors, E.R. nurses like the McDonald's, when they are
3 evaluating and assessing patients who present with
4 requests for medication refills, mental health
5 challenges that you saw referenced for Mr. Hunt, are
6 those providers having to use their professional
7 knowledge, training, experience, and judgment in
8 determining what to do with a patient?

9 A Absolutely.

10 Q Is that exercise of what they do in assessing a
11 patient something that can be done without all of the
12 knowledge that you did in training as an E.R. doctor or
13 a nurse?

14 A No, it can't. The -- the expertise that -- that
15 the three nurses, and I'm going to include Sandra Smith
16 in there, as well, and Dr. Jansen, they are highly
17 trained professionals. And when they are at their place
18 of work, they are using all of their professional
19 knowledge, skill, and training to take care of patients.

20 Q Now, when a patient presents with mental health
21 challenges, as this patient did, what's the most
22 important thing for the E.R. staff, the nurses and the
23 doctors, and we'll put even Ms. Smith in there, to do in
24 assessing the patient and determining what to do?

25 A I think not only for psychiatric patients, but

1 anybody that prevents -- presents to the emergency
2 department, the most important thing that you need to do
3 is look at the patient on how they are presenting at
4 that time. It is helpful to look at past medical
5 records and past history. It's helpful to kind of -- it
6 paints a picture in the background, but the most
7 important thing is you are seeing that patient for that
8 encounter at that time. You've got to see what is going
9 on and treat that patient accordingly.

10 Q And when you say at that time, you mean as the
11 patient's sitting in front of you at the different
12 periods of your assessment?

13 A That's correct.

14 Q Does this observation include listening, looking,
15 and then, feeling, touching, if you're doing a physical
16 exam.

17 Q Well, and -- and that goes back to being a
18 professional on the medical field, both nursing and
19 doctors that we are -- part of our training is the power
20 of observation. It's not -- we don't base everything on
21 just the physical exam. It is the totality of that
22 patient encounter. It's talking to the patient, looking
23 at their body language, looking at the eye contact,
24 listening to what they say, how they say it. And then,
25 other things that would be supportive would be the

1 physical exam, any lab work that was done, et cetera, et
2 cetera. And that's for any patient, not just
3 psychiatric patients.

4 Q In a psychiatric patient who presents with mental
5 health challenges, is the role of the E.R. team, the
6 nurses and the doctors, to come up with a long-term
7 treatment plan for this gentleman?

8 A No, definitely not.

9 Q What is their role?

10 A The role is -- is just like I said, you see them on
11 that day for their given complaint. You decide what
12 course of action should be taken. And specifically, for
13 a psychiatric patient, you look at things that, you
14 know, is this patient safe to go home and get outpatient
15 counseling or outpatient psychiatric care, or is this
16 patient better served in an inpatient setting with a --
17 with a psychiatrist in a very intensive program.

18 Q And with regard to that second part, an inpatient
19 setting, does the E.R. staff, do they have to make a
20 determination whether the patient is being cooperative
21 and voluntarily going forward with this evaluation
22 process to determine how it is they get to the inpatient
23 setting?

24 A Absolutely. When we're talking specifically about
25 psychiatric patients, one of the things I know was

1 mentioned yesterday, was a voluntary versus involuntary.
2 Okay? And that's a very important distinction, and I
3 think the jury really needs to understand what we --
4 what we are saying.

5 So, if -- if I thought that somebody in this
6 courtroom needed to be admitted to the hospital, and I
7 talked to the patient and everything they did agreed
8 with that decision, then, that's a voluntary admission.
9 If, in a psychiatric patient that I think is a harm to
10 themselves or others, or having thoughts of hurting
11 themselves or others, I think they need to be admitted
12 to the hospital, if that patient says no, I don't want
13 to go to the hospital, then, as a medical provider, I
14 need to make a decision at that point, is this patient
15 safe to go home or not. In that specific example where
16 I talk about suicidal ideations, most of the time, that
17 patient is going to be admitted to the hospital. If
18 they say no, or are showing any action where they're not
19 cooperative or not doing what I ask them to do, then, I
20 would go down the road of an involuntary commitment.
21 That is a legal proceeding. That requires paperwork to
22 be filed, signatures to be obtained to actually commit
23 somebody against their will. It is not taken lightly.
24 It is a very serious thing. People have rights. All
25 right. I'm not going to violate your right unless I

1 think I need to do that. And I -- and I will do that,
2 and I have done that as an emergency physician.

3 Q From your review of everything you saw, the records
4 and deposition testimony that you looked at, Doctor, do
5 you have an opinion whether Calvin Hunt, at any point in
6 time, from when Ms. Janice first -- McDonald laid eyes
7 on him and interacted with him, until the time he went
8 outside with Mr. Ray to go get some fresh air, do you
9 have an opinion at any time there was an indication that
10 he was not going to cooperate with the work up, the
11 diagnostic process, the medical work up, and whatever
12 decisions were going to be made as a result of that?

13 A When you review the medical record and review the
14 depositions of those providers that are involved, there
15 is, at no point in time, where I could reasonably say,
16 as an emergency physician, where I would be concerned
17 that this patient would not cooperate with me. At each
18 stage, he cooperated. He answer questions from -- when
19 the time he was with Sandra Smith, he followed her
20 downstairs to the emergency department. He followed the
21 instruction of Janice McDonald. He came back to the
22 triage area; vital signs were taken. He -- you know, he
23 was escorted to the back to the emergency. At no point
24 did I see any evidence, either in the -- in the medical
25 record or in the depositions, that he resisted any part

1 of that.

2 Q And did that include his interactions with Dr.
3 Jansen, with Joe McDonald, and with Psyche Tech Manning?

4 A That's correct.

5 Q We heard some testimony yesterday about red flags
6 that were supposedly seen in the medical information
7 that was gathered. When you reviewed the medical
8 information about this patient, do you have an opinion
9 what you saw from the signs, the symptoms, the findings,
10 the things that were noted in the chart, about what was
11 going on with him?

12 A Well, I -- I think the -- the thing that stands out
13 in my mind are several items that both in the
14 depositions and in the medical records. In the -- in
15 the medical records, you know, on that first sheet,
16 there's a reference to PTSD; there's a reference to
17 depression. The medications that he's seeking to be
18 refilled would fit with those diagnosis of depression,
19 maybe PTSD.

20 There's, you know, a couple of instances -- you
21 know, somebody with depression, there's a very set
22 diagnostic criteria that we, as physicians, use to
23 diagnose somebody with depression. And major depression
24 is diagnosed like this. You have to have symptoms for
25 two weeks straight or more. You have to have a

1 depressed mood. That is the standard criteria. Then,
2 you have to have five of -- a list of nine different
3 things to be -- to be diagnosed with major depression.
4 Of those nine things, several of them Mr. Hunt was
5 exhibiting. So, the --

6 I know -- you know, I was in the -- I was not privy
7 to the testimony of the other witnesses, but I was here
8 yesterday afternoon, as you know. Rocking back and
9 forth, that was told from Saundra Smith. That's in her
10 note. The first time that I read that, and I saw that
11 Calvin Hunt had a history of depression, I said, well,
12 that's psychomotor agitation. That is actually one of
13 the diagnostic criteria for depression, psychomotor
14 agitation. That is defined as somebody that is doing
15 purposeless movements or motions with their body. So,
16 rocking back and forth, using their hands gesturing,
17 that is actually one of the criteria for diagnosing
18 somebody with depression.

19 Q Now, Doctor, in the other things that go with
20 depression, does that include flat affect?

21 A Yes. Absolutely.

22 Q Does that include being perceived as withdrawn?

23 A Well, that would speak to a depressed mood. If, in
24 jury -- if the jury could think about a depressed mood,
25 how would you think somebody would act that has had --

1 that has a depressed mood? They would have a flat
2 affect. You know, I have a lot of inflection in my
3 voice. I'm speaking with my hands. I'm animated.
4 Somebody that's depressed is going to have a very kind
5 of monotone voice; they're going to be withdrawn; they
6 may not want to look at you. That's poor eye contact.
7 Those are all signs and symptoms that can be attributed
8 to depression. They're diagnostic of depression.

9 MR. LOVELL: Your Honor, may I have the Doctor step
10 down and point at some of these things?

11 THE COURT: Sure. The only thing I would ask you
12 to do is to remember you don't have benefit of the
13 microphone, and you're going to have to --

14 A Use my booming voice?

15 THE COURT: Yeah. Use your outside voice.

16 BY MR. LOVELL:

17 Q Doctor, what we'll do is, you stand where I'm
18 standing, and I'll move over. And talk loud enough --
19 stand, if you don't mind, on this side, so your voice
20 goes towards our court reporter.

21 Can you kind of point to --

22 THE COURT: And you are blocking one of our jurors.

23 MR. LOVELL: Sorry.

24 THE COURT: Yeah, I'd be great if I could hang you
25 from the ceiling.

1 MR. LOVELL: Let me get some of this stuff out of
2 the way.

3 BY MR. LOVELL:

4 Q See that? All right. Point out to us things on
5 here that suggest to you depression. And this is -- we
6 are looking at the physical exam report completed by Dr.
7 Jansen.

8 A All right. So, in the chronological order of this
9 being done, this would have been after he was triaged by
10 Nurse Janice. Okay? You know. So, up here, we look at
11 the patient was anxious. You know, is there distress.
12 Moderate distress. That is for a physician looking at a
13 patient. That is a subjective thing. Is this patient
14 in distress or not.

15 You know, I think we look at the astuteness of Dr.
16 Jansen. You know, he actually said that, you know, this
17 patient is severe. And I think that's correct. Anybody
18 with suicidal ideations. And on his note where we first
19 look, we first see somebody documenting he's having
20 thoughts of hurting others, would be a severe thing.
21 Okay? I don't think that Dr. Jansen took that lightly.
22 I don't think that, that was a careless attitude that he
23 had.

24 When we look at here, we look at, he had a
25 depressed affect, so that's a depressed mood. This

1 person wasn't animated, you know. He may not have been
2 talkative, and his voice was monotone.

3 Suicidal ideations and homicidal ideations, when I
4 talk about those diagnostic criteria for depression,
5 that is actually on the diagnostic criteria for
6 depression. If you have suicidal ideations or homicidal
7 ideations, then, that is one of those things you can use
8 to diagnose somebody with depression.

9 Q As you go down the list, we note here, he's
10 disoriented to Social Security Number, doesn't recall
11 Social Security Number. What does that tell you about
12 this gentleman?

13 A I'm not -- you know, difficulty in thought process
14 can be part of it. You know, is this gentleman nervous,
15 you know, under stress sometimes; I am forgetful on
16 things. And I think you would agree that you forget
17 things from time to time. I'm not sure that you could
18 really say much about it, other than he didn't know his
19 Social Security Number at that time.

20 Q Thank you, Doctor. We'll move to some other
21 questions. Head back up there for now. From what you
22 saw in any of this, Doctor, did those findings ever
23 suggest to you, as an emergency doctor with your
24 experience, that this was a patient who was on the verge
25 of a mental health breakdown?

1 A No. I -- I -- I think there's no question that --
2 that Mr. Hunt needed psychiatric care, and I think
3 that's -- the team recognized that, from the astuteness
4 of Saundra Smith, recognizing, you know, -- she has a, I
5 believe, a doctorate in Christian counseling. And her
6 years of experience as an R.N., noticed the rocking back
7 and forth, and was astute enough to say, you know,
8 because she very well would know that, that is a
9 criteria for depression.

10 And when somebody is coming in for concerns of
11 depression, you have to ask the question, and it's a
12 difficult question to ask. But if somebody is depressed
13 in front of you, as a medical provider, you have to ask
14 depression -- ask the question, are you having thoughts
15 of hurting yourself, are you having thoughts of hurting
16 others. That's what she did. She was very astute about
17 it, and everything proceeded from there.

18 Q Do you have an opinion, Doctor, whether or not the
19 presentation that was in front of the E.R. folks that
20 day was suggestive that this was a gentleman who might
21 have a propensity for violent acts that day?

22 A No. He -- he had, you know, previous diagnosis of
23 PTSD. He had previous diagnosis of depression. He was
24 cooperative at every step of the way, from Saundra
25 Smith, to when Dr. Jansen evaluated him. Nothing to

1 suggest that this patient would go on and commit the
2 horrible atrocity that occurred later on.

3 Q Now, do you have experience, Doctor, in your
4 background in assessing and evaluating patients,
5 military patients, who present with mental health
6 issues, who are on the verge of a mental health
7 breakdown?

8 A Yes.

9 Q Are there some signs or symptoms, or things you see
10 in those types of patients, that are sort of commonly
11 expected, and what you would expect to see in somebody
12 who's about to have a breakdown of sorts?

13 A When I -- when I'm evaluating a patient, if I see
14 somebody in front of me that is not cooperating, is
15 escalating in their responses to the healthcare team,
16 nurses, docs, techs, meaning that they're getting more
17 angry, they're not doing what you ask them to do,
18 they're visibly upset, they're throwing things,
19 obviously, that is a time that I am very concerned for
20 that patient and the safety of that patient and for the
21 safety of others. That's the time to act.

22 Q Do patients who are on the verge of a mental health
23 breakdown, do their voices change, the way they talk to
24 people that are interviewing them?

25 A I would -- I would say that not all patients are

1 the same, but somebody that is escalating in their
2 responses, usually, you know, they elevate their voice;
3 they're more animated; they're not following what you
4 want them to do.

5 Q Do they lie to you?

6 A Not necessarily, no.

7 Q Do they tend to get obnoxious and loud?

8 A Correct.

9 Q And you mentioned something about verbal, I mean, a
10 physical aggression. Do they become verbally aggressive
11 if they're on the verge of a breakdown?

12 A They can, yes.

13 Q Anything you saw, from your review of the testimony
14 you read and the records you saw, to suggest that Mr.
15 Hunt ever became aggressive to interventions, not
16 following directions, loud, obnoxious, all the other
17 things you said you normally see in someone who's on the
18 verge of a breakdown?

19 A No, not necessarily. When we look back at the
20 record, there are several instances along the way that
21 have been pointed out in both the deposition, and then,
22 yesterday afternoon. The rocking back and forth,
23 holding his hands over his ears, you know, the -- I
24 believe it was Mr. Manning, the psyche tech, said that
25 he was agitated, but that was never communicated to Dr.

1 Hendelman. And Dr. Hendelman had no recollection or
2 hearing of Manning saying that he was on the verge of
3 breakdown, that he needed to be escorted, as far as, you
4 know, with security, because of worry that, you know, he
5 would harm other people or himself.

6 Q From what you saw of the records from Janice and
7 Joe McDonald and Dr. Jansen, was there any indication
8 the patient was ever aggressive or physically violent,
9 or otherwise, to them?

10 A No. I think it's just the opposite. He was -- he
11 was following direction, you know. He was there
12 voluntarily with Mr. Ray. He followed Sandra Smith and
13 Mr. Ray voluntarily down to the E.R. He voluntarily
14 went with Ms. -- or Janice McDonald into triage to get
15 his vital signs taken and asked more questions. He
16 voluntarily went to the -- back to the emergency room.
17 He was polite when asking could he use the -- I think he
18 said used the head, or however he said it. Basically,
19 essentially, he asked to use the bathroom. Joe McDonald
20 said he, you know, was polite. He was asked if he
21 needed something to drink, and declined it.

22 Q And did he return back to the E.R. bed after he
23 declined the request for fluid?

24 A He did.

25 Q Was there any evidence that you saw that Mr.

1 McDonald, Nurse Janice McDonald, or Dr. Jansen ever
2 noted this patient to be aggressive to every
3 intervention, or not following directions, or loud,
4 obnoxious, verbally or physically aggressive in the way
5 he responded to them?

6 A No. There's -- there's nothing that indicates
7 that.

8 Q Anything that you saw, same question as to Psyche
9 Tech Manning?

10 A No.

11 Q How about Mr. Ray? Any indication that he ever
12 informed anybody that the patient had become loud,
13 obnoxious, physically aggressive, anything of those
14 sorts?

15 A No. You know, unfortunately, Mr. Ray has -- has
16 died since this all occurred, so we don't have any
17 deposition from him. So, all we have is the depositions
18 from others, you know, whether they testified about Mr.
19 Ray or not. But there was no mention in any of the
20 depositions that I read, or -- or in the chart, from
21 Saundra Smith through Dr. Jansen, that Mr. Ray had
22 concern -- expressed any concerns about an escalation of
23 his patient's attitude, or being angry, or not following
24 commands, what -- what the other ones wanted him to do.

25 Q I'd like to walk you, briefly, sort of

1 chronologically, through what all occurred with this
2 gentleman. When he was with Nurse Smith, and you've
3 already told us a little bit about their interaction,
4 when the patient, after disclosing to her that he had
5 suicidal thoughts at times, when he went with her down
6 the stairs, and Mr. Ray, also, to the E.R., what did
7 that tell you about his mental condition at that point?

8 A Well, that tells you he -- he was voluntarily
9 following instruction and following commands; that he
10 seemed to be there wanting help. He -- he was there,
11 seeking medication refills. He voluntarily told people
12 that he was having thoughts of hurting himself. And the
13 fact that he followed her down to the emergency
14 department tells you that he wasn't resisting any of
15 that.

16 Q In light of the fact that he had had the rocking
17 and the moaning episode, as Ms. Smith, Nurse Smith,
18 described it, his actions in going down with her, does
19 that tell you he's on the verge of a mental health
20 breakdown?

21 A No, like -- like I said before, somebody that I --
22 I would be more concerned about that is ready to explode
23 or is unstable, I would expect them to, you know, this
24 gentleman rocking back and forth, but it escalates from
25 there. I would expect him to become more angry, more

1 agitated, you know, not helpful in answering questions
2 or following directions, following them down to the
3 emergency department. And that's just the opposite.
4 This guy, from what the records state, rocked -- was
5 rocking back and forth, but he stopped; and after that,
6 he was cooperative. He was calm. I would not expect
7 somebody to do that, if -- if I was concerned about them
8 getting ready to explode or act out.

9 Q In a depressed patient like Mr. Hunt, when he's
10 getting these questions from the nurse about getting an
11 appointment to get his medications, and it gets set for
12 Monday or he can go to the E.R., is it unusual for them
13 to have a response, as he did in this case with her, to
14 those types of questions?

15 A Well, like I said, the first -- my first blush when
16 I read that is, well, that's psychomotor agitation.
17 That's -- he's depressed. This is what you see with
18 depressed patients. But then, you know, anybody that
19 has been in the bureaucracy of the military, the
20 Department of Defense, government in general, you know
21 that it can be overwhelming sometimes. And you're
22 talking about a gentleman who came in to seek medication
23 refill. That's what he was there for. And then, to be
24 told, well, we don't have a provider right now, it's
25 roughly 3:00-ish o'clock in the afternoon, 2:00 o'clock

1 in the afternoon, we will schedule an appointment to do
2 it later.

3 Q Is that response that he presented to Ms. Smith
4 something that would be consistent with a depressed
5 patient who is just a bit frustrated?

6 A It definitely could be, yes.

7 Q Now, let's go to the downstairs. When he's down
8 with Nurse Janice McDonald, interviewed by her, and
9 then, she walks him over into the E.R., was there
10 anything about that interaction that suggested that he
11 was on the verge of a mental health breakdown?

12 A Well, the only thing that you could really point
13 to, and I know it was in the depositions, and what we
14 talked -- or what was talked about in trial yesterday,
15 is putting the hands over the -- over the ears. You
16 know, but again, just like the rocking-back-and-forth
17 episode, right after that, he was calm. He followed
18 directions. And -- and again, I'm going to go back to
19 this, this is psychomotor agitation. That is not
20 necessarily somebody that's going to explode. That is
21 some -- that is something that you can expect to see
22 with somebody that has clinical depression.

23 Q Is that consistent with a depressed patient now
24 understanding that it's going to be even a little bit
25 longer before he finishes this work-up process?

1 A It -- it definitely could be.

2 Q Let's talk about vital signs. The blood pressure
3 was taken, the pulse rate, everything else on this
4 patient. I'm going to stick it up over here, so you can
5 all kind of watch it.

6 Pulse rate was 103. Temperature was 99.5. And
7 then, you saw his respiration and all of those.

8 A Correct.

9 Q On the board. I'm sorry. Did any of that suggest
10 to you that this was a patient who was on the verge of a
11 mental health breakdown?

12 A No.

13 Q Why not?

14 A Well, I think it's, you know, just from my
15 experience of how things would work in this setting, and
16 as an emergency medicine physician, this is a gentleman
17 who had just walked down a flight of stairs. I have not
18 toured Naval Hospital, so I think it's a flight of
19 stairs down to the emergency room. He essentially gets
20 to the emergency room, and is taken right into triage,
21 and vital signs are taken.

22 You know, if you were to walk me down the
23 courthouse steps, and immediately take my heart rate, it
24 may well be elevated. The question is, you know, did it
25 come down after that. What I -- what we see on the

1 chart is that Dr. Jansen astutely noted that, that was
2 an abnormal vital sign, and he carried that -- that --
3 that value, 103, from Nurse Janice McDonald's note onto
4 his note. You notice that he didn't put any other vital
5 signs except the 103, because he was astute enough to
6 note that, that is an abnormal vital sign.

7 The temperature of 99.5, I think it was, you know,
8 you look at any medical textbook, a fever is documented
9 at 100.4 or higher. All right? A -- a temperature of
10 99.5 is not considered abnormal, although most people
11 would say, you know, I have a low-grade fever. That,
12 actually, in the medical literature, is not a fever.
13 That is not an abnormal vital sign.

14 Q When you combine the heart rate with the blood
15 pressure, the pulse rate, and the respiration rates that
16 were seen, does that suggest that this is a gentleman
17 who is now on the verge of a mental health breakdown at
18 the point in time when those vital signs are taken or
19 carried forward?

20 A No. Unlike what I heard yesterday, I would expect
21 somebody that is agitated, on the verge to what people
22 have used the word explode, that their heart rate would
23 be elevated; their blood pressure would be elevated;
24 their respiratory rate would be elevated.

25 Think -- think of the times that you have been

1 scared or nervous or angry. What do you think your
2 blood pressure is at that point? It's high. It's
3 elevated. Your heart rate is elevated. You're --
4 you're breathing faster. We do not have that in the
5 case. The only abnormal thing that I could really point
6 to is a heart rate of 103. And again, anything above
7 100 is considered abnormal. So, we're just barely above
8 what's normal.

9 Q Now, there was a question about this gentleman
10 being really fit and in shape, and that 103 would be a
11 lot higher if it was in somebody, you know, like me or
12 somebody less in shape. Your thoughts on that?

13 A Well, I don't -- I don't think that's necessarily
14 true. I think at a resting heart rate, so somebody
15 that's sitting there, you know, I'm not sure if any of
16 you have the pleasure to have your blood pressure taken
17 in a doctor's office. But really, the standard to
18 diagnose hypertension is to sit for five minutes in a
19 chair, and have your blood pressure taken in a sitting
20 position. It's not, you know, sit down in a chair, and
21 immediately take it, or lay down in the stretcher and
22 immediately take it. That's not how you diagnose
23 hypertension.

24 So, you know, I think that, what we see here is,
25 you know, while he may have an elevated heart rate at

1 103, this is a young, healthy person that has a normal
2 blood pressure. He has a normal respiratory rate.

3 Q In a young, healthy guy like him, if he was on the
4 verge of an emotional breakdown or mental health
5 breakdown, would you expect the heart rate to be
6 significantly higher than 103?

7 A It can be. It can be. I -- I have certainly seen
8 those that are very agitated, with heart rates in the
9 130s, 140s, much higher than 103.

10 Q Would you expect that blood pressure to be a lot
11 higher than what we see?

12 A I would, and it goes back to physiology. When you
13 are angry, when you are agitated, your blood pressure
14 rises. Your heart rate rises. Your respiratory rate
15 rises. Those are things that we do not see in this
16 case, other than the -- the heart rate of 103.

17 Q Moving on, Doctor. There was some testimony about
18 patients being put in gowns. When Nurse Janice McDonald
19 got this gentleman in the triage room, or when she moved
20 him over to the E.R., Bed Number 4, did she have a duty
21 to place him into a hospital gown, as opposed to letting
22 him stay in his street clothes?

23 A No.

24 Q Why not?

25 A Not at that time.

1 Q Why not?

2 A Well, at that time, the Dr. Jansen hadn't evaluated
3 him. This disposition of the patient, whether he was
4 going to go home, whether he was going to be admitted to
5 the hospital, hadn't really occurred yet. It's Dr.
6 Jansen to make that decision. I think what -- what
7 happened is that she brought him right back to Bed
8 Number 4; Joe McDonald was there; and Dr. Jansen
9 immediately came to evaluate the patient.

10 Q And when you all are in -- you all.. I say you all
11 from the perspective of an E.R., when you're in the
12 process of working up a patient, determining are they
13 going to go outpatient or are they going to go
14 admission, are there occasions to where you leave them
15 in their street clothes, because of where they may end
16 up going?

17 A Yes.

18 Q Tell us about that.

19 A Well, I -- I -- I think it comes back to, you know,
20 there was a statement that was said yesterday about, you
21 know, finding fault with you can't do a proper physical
22 exam in -- in your street clothes; that you have to be
23 in a gown. That is just not true. And I -- I would
24 submit to the jury, how many times have you gone to the
25 doctor's office where they've done an exam, and you were

1 stripped naked and put in a gown? It's probably very
2 few.

3 I, as a medical doctor, I can get an adequate exam
4 with your street clothes on. Okay? Listen to your
5 heart, I can go around your collar. I can pull up your
6 shirt, and touch under your belly. I can lift up your
7 shirt in the back and listen to the lungs. I can see
8 the skin exam when I do those things, unless it's
9 something specific where I need to fully examine, you
10 know, to a pelvic exam or genital exam on a male, or a
11 knee exam, and I -- the patient's pants are too tight to
12 pull up, then, that would be -- that would necessitate a
13 -- to put that patient in a gown to complete a adequate
14 exam.

15 Q What about this concept that you need to put them
16 in a gown? Nurse McDonald, Janice and Joe, and I guess
17 Dr. Jansen, needed to put him in a gown, so they could
18 make sure he didn't have things on him to hurt himself
19 or hurt others?

20 A Well, I think that is -- that is looking at
21 protocol. A lot of hospitals have protocols now that,
22 once it's determined that this patient, you know, has
23 mental illness, the concern has been, and -- and we've
24 seen recently a number of people carrying weapons, and
25 it happened in the military, carrying -- I mean, I've

1 seen guys carrying RPGs under their street clothes, into
2 the emergency room. So, you know, the fact that you put
3 somebody in a gown is essentially looking to see if they
4 have weapons; that they don't have shoelaces that they
5 can use to hang themselves or hurt other people.

6 Q At what point do you make that decision that you
7 need to do those things, though, in a patient who
8 presents with mental health challenges, who's depressed,
9 and now says I have thoughts of hurting myself?

10 A It's usually -- it's usually not when the patient
11 immediately arrives to the emergency department. It is
12 usually after the doctor has -- has made the disposition
13 that, yes, this patient absolutely needs to be admitted
14 to the hospital, and we're going to go forward with
15 that. Because there -- quite frankly, there are some
16 people that present, and, you know, for the general
17 public, there are people walking around in the general
18 public that are having thoughts of hurting themselves,
19 but they don't have a specific plan of doing it.

20 They're under care of a psychiatrist, and it's deemed
21 that they're safe for themselves and the general public.

22 Q Did this patient ever communicate a specific plan
23 to do anything to hurt himself or others?

24 A From -- from the notes that were obtained that day
25 and the depositions that I have to base this on, he

1 never communicated any plan. In fact, in Dr. Jansen's
2 note is the first time he annotates suicidal -- or
3 homicidal ideations. But he backslashes the intent,
4 meaning he had to have specifically asked Mr. Hunt are
5 you -- do you have a plan to hurt somebody, and he had
6 to have communicated, no. And that's what prompted the
7 backslash, meaning that, that's a negative response, no,
8 he did not have a plan.

9 Q And in this case, had they gotten to the point
10 where the definite decision to admit the patient had
11 been made between Doctors Jansen and Hendelman before
12 this gentleman left the facility to go outside?

13 A No. It seemed to be protocol in this hospital, and
14 -- and I saw protocol like this at Langley Air Force
15 Base, which is -- it was an eight-bed facility, as
16 opposed to a four-bed facility at Beaufort Naval. Our
17 protocol would be that we would get a psychiatry team
18 involved. Now, team, I say we had psychiatry techs, as
19 well. We had psychiatrists on staff. The protocol
20 would be that, if you thought somebody needed to be
21 admitted to the hospital, that you would have psychiatry
22 involved.

23 Now, in the bigger, broader sense of emergency
24 medicine, whether it's psychiatry or cardiac disease, or
25 renal failure, kidney failure, it is always helpful when

1 you admit a patient to talk to that specialist. Now,
2 usually, in today's -- today's medicine, that the, you
3 know, say, one of the jurors came in with kidney
4 failure, you need to be admitted to have that worked up.
5 Usually, the nephrologist, who's the kidney doctor, is
6 not going to admit you to the hospital. You're either
7 going to be admitted by your private doctor, family
8 practice doctor, or what we call a hospitalist now.
9 That's somebody that specializes in inpatient medicine.
10 They will then consult that provider. Right?

11 So, my first call usually will be to the organ
12 system that's involved. So, cardiology, I will call
13 cardiology, and say, you know, so and so has, you know,
14 concerns for heart disease; he's in congestive heart
15 failure; what we need to do; this, that, and the other
16 thing. He would -- they would say, yes. It is very
17 rarely that, that cardiologist will then admit that
18 patient.

19 I will then talk to the internist, or that -- that
20 patient's regular provider, and say, look, I talked to
21 the cardiologist; they think they need to be admitted,
22 as well; and this is what we talked about. They need
23 fluids; they need, you know, nitroglycerine, aspirin,
24 you know, whatever we talked about.

25 And it -- and it looks like that's the protocol for

1 this, where you have a -- you have a concern for a
2 psychiatric patient; Dr. Jansen thought that this
3 patient probably needed to be admitted to the hospital;
4 and he was following up that with what the protocol was
5 for that hospital.

6 Q Was Dr. Jansen's actions in following that protocol
7 careless, reckless, or beneath some duty that he owed?

8 A No, absolutely not. In fact, some point, you know,
9 they made the extra step of seeing if there was a bed
10 available at Beaufort Memorial Hospital. Now, I can
11 tell you that the reason why that was done, and I don't
12 know if it came out in testimony or not, but the reason
13 I would do that as an E.R. doc is to speed up the
14 process.

15 Dr. Jansen was concerned about this guy. He wanted
16 to expedite the handling of Mr. Hunt. And so, the call
17 was made to see if there was a bed. Because, if there
18 is no bed there, then, there's no -- you have to
19 understand, I can't -- if I am at Beaufort Naval
20 Hospital as an E.R. doctor, and I have a patient that
21 needs to be admitted, and I don't have admitting
22 privileges in the hospital that I work at.
23 Nevertheless, Beaufort Memorial Hospital or Savannah or
24 any other hospital, right? I have to get, by law, an
25 accepting physician to do that.

1 There's a number of steps there. They need, you
2 know, a lot of background, basic information on the
3 patient. And so, there's a -- there's a stepwise
4 approach to how that happens, but it's not an immediate
5 thing that I pick up the phone and call a doctor at the
6 other hospital. That's the last thing that occurs, and
7 that, that doctor has to accept the patient.

8 So, if we go through all of this, and I talk to the
9 doctor, and then, there's no bed, we've just wasted an
10 hour, two hours, three hours, four hours, of that
11 patient being stuck in the emergency department. And
12 for psychiatric patients, you want to expedite that.
13 You want to get them where they need to go.

14 Q And it was clear in this case, he could not be
15 admitted to the Beaufort Naval Hospital for psychiatric
16 care over the weekend, right?

17 A That's correct. They had no psychiatric capability
18 for inpatient over the weekend.

19 Q The call that was made by Dr. Jansen, after he
20 spoke with Dr. Hendelman about admission, would that
21 have been a call to the people at Beaufort to say, hey,
22 this guy's now going to be coming over to see you?

23 A No. From what I gather, it was somebody named
24 Marilyn, and I'm not sure who Marilyn was. But from my
25 understanding of reviewing everything, that call was

1 made to see is there a bed available.

2 And I'd also like to point out that, in Dr.
3 Hendelman's disposition [sic], that she said that
4 patients cannot be admitted, or do not get admitted to
5 Beaufort Memorial Hospital for psychiatric reasons if
6 they are involuntary. Now, I didn't follow up on that.
7 I didn't call Beaufort Memorial Hospital to see if
8 that's true.

9 You know, she will later go on to say that those
10 patients that are involuntary have to go somewhere else.

11 So, my assumption would be, and Dr. Jansen may or
12 may not have known that, but my assumption would have
13 been, everything up until the point that he eloped from
14 the emergency department, he was of in an involuntary
15 status, meaning that he was cooperative and agreed with
16 the steps that were going on to get him care.

17 Q Okay. We heard some testimony that, when Mrs.
18 Janice McDonald walked the patient into the E.R., and he
19 sat down at the bed, she then spoke to Dr. Jansen and
20 Nurse Joe McDonald about the patient telling them words
21 to the effect that he was not suicidal; he just seemed
22 to be angry. Assuming that conversation occurred, at
23 that point, did the duty require this E.R. staff to do
24 something other than what they did in this case?

25 A No. You know, and -- and this -- first of all, I

1 think this goes back to that they were using their
2 professional skills and judgment to take care of this
3 patient. You know, it was the professional skill and
4 judgment that Janice McDonald interviewed Mr. Hunt, and
5 thought, you know, maybe he's not suicidal; maybe he's
6 more angry than anything else. That means that she
7 would have used her professional training and knowledge
8 to answer that question, or -- or state that to Joe
9 McDonald and Dr. Jansen.

10 Q But you told us a little while ago that anger can
11 be one of those things that -- is it one of those things
12 you see in depressed patients at times?

13 A It can be, certainly.

14 Q But at that point, should they have suspected this
15 guy's on the verge of a mental breakdown?

16 A Well, and -- and it goes back to the escalation of
17 the -- of the patient that I said before. If that
18 patient remained angry, and if that patient became more
19 angry, more agitated through the visit, then, I would be
20 -- I would definitely be concerned about it. But that's
21 not what happened. So, he was, you know, Janice said
22 that he was angry. But then, what we have afterwards is
23 a cooperative patient with Dr. Jansen, answering
24 questions. Somebody that went to the bathroom. He
25 asked permission to go to the bathroom. He went to the

1 bathroom, came right back to the bed. That -- that
2 speaks to me that, you know, while Janice may have
3 thought he was angry, he -- he wasn't escalating while
4 he was in the department after that time.

5 Q Was that bathroom trip, and then, the question from
6 Mr. Ray, and presumably the patient, to go out and get
7 fresh air, was that this rabbit syndrome thing we heard
8 about? Does that indicate to you that this patient was
9 somehow now communicating, or coming up with an idea,
10 I'm taking off, I'm getting out of here?

11 A So, there is -- you will find no reference
12 whatsoever to a rabbit syndrome in the medical
13 literature. That is purely made up. The fact is, is
14 that, this patient, Mr. Hunt, was cooperative while he
15 was in the emergency department. He answered questions.
16 He asked permission to go to the bathroom. He went to
17 the bathroom, he did his business, and he came back. He
18 was -- he was even asked if he needed refreshments, or I
19 don't know how Joe McDonald quite put it, but he was
20 asked if he wanted something to drink, and he politely
21 declined.

22 Q Now, let's talk about Dr. Jansen's interaction.
23 And we're getting towards the end. When Dr. Jansen was
24 in there with the patient, doing his talking and looking
25 and physical exam, did you see anything that he wrote or

1 noted or testified about that suggested that this
2 patient has now escalated to the point he's on the verge
3 of a mental health breakdown?

4 A No.

5 Q What about when Dr. Jansen made the notes in there,
6 I think his questioning went, I'll paraphrase. Doctor.
7 I'm going to -- I'll put it over here where you can see
8 it a little bit. During his testimony that he talked to
9 the patient, and got this history that, you know, it all
10 started a couple weeks, several weeks ago; it's gradual
11 onset; continues in the E.R.; and then, he asks him
12 about situational issues; and the patient told him about
13 his pending dishonorable discharge; and he was appealing
14 that; and he was visiting his grandmother; and that she
15 had called Mr. Ray about the depression.

16 And then, the next thing he notices is he's
17 depressed and angry; he's got the suicidal thoughts and
18 thoughts of hurting others. Why aren't those things, in
19 that sequence of events, something that should have
20 suggested to Dr. Jansen, this gentleman is about to have
21 a mental health breakdown?

22 A Well, I, you know, in my military capacity as an
23 emergency medicine physician, I have seen lots of
24 patients that were being separated from the military for
25 various reasons, medically, dishonorably, those kind of

1 things. It's definitely -- as a flight surgeon, I had
2 the power to end pilots' careers, based on their medical
3 problems. That was nothing that was taken lightly. And
4 the -- the anger and the embarrassment that ensues when
5 somebody is losing their career is incredible. So, you
6 know, I look at this and say, this guy is being
7 dishonorably discharged. This is something that's going
8 to be on his permanent record for the rest of his life;
9 that every job that he goes to get, he's going to have
10 to tell them why were you dishonorably discharged. That
11 will affect him for the rest of his life. He has every
12 right to be angry about that. He has every right to be
13 depressed about that. But that -- that -- from the
14 series of questions here, and in the physical exam on
15 the, looks like the next page would be, there's nothing
16 to suggest this patient was escalating in his anger. He
17 was angry.

18 Q Would you have expected, if he was on the verge of
19 a breakdown, that, at this point, he would have said,
20 I've got an intent or a plan to go hurt somebody or hurt
21 myself?

22 A Well, not necessarily. I mean, he -- he expressed
23 he was having thoughts of hurting people or hurting
24 other -- hurting himself, but he never -- he never said
25 a specific plan, and that really is significant in the

1 world of medicine and the world of psychiatry. If -- if
2 somebody is expressing a plan to hurt themselves or
3 others, and they have a specific plan; I'm going to take
4 a bunch of aspirin and try to hurt myself; I'm going to
5 take a gun and go shoot my friend; that is absolutely
6 the most serious thing. You have to intervene on that
7 quickly. But that wasn't the case here.

8 There's nothing that suggests that this guy had a
9 plan, and he was asked. You see in Dr. Jansen's note is
10 that he backslashed the intent. He specifically asked
11 him. He was concerned. He was a caring provider that
12 asked the question, do you have a plan to hurt somebody
13 else. And he had to -- Hunt had to have said, no,
14 because he backslashed that in his note.

15 Q And Doctor, we heard some testimony from Dr. Jansen
16 that, as he continued this process and doing his exam
17 and taking history and interacting with the patient,
18 that the patient wavered a little bit on his thoughts of
19 hurting others or thoughts of suicidal ideation whether
20 he had them. Is that consistent with a patient who is
21 depressed, as opposed to someone who is on the verge of
22 a mental health breakdown?

23 A Well, I think somebody that depressed can have
24 waxing and waning thoughts of hurting -- hurting
25 themselves and others. But what you don't see is that

1 he's stuck with that and had a specific plan to hurt
2 peoples or a specific plan to hurt himself. I think
3 that is very important, not only in this case, but also,
4 this afternoon, when I'm working, and I'm seeing
5 psychiatric patients, somebody that comes in and says
6 they're having passive thoughts of hurting themselves,
7 that's a serious thing. And you saw Dr. Jansen write
8 severe. There it is right there. Severity is severe.
9 He didn't take that lightly. This-- this was a caring
10 provider.

11 But what -- what is different is that, if I have a
12 patient in front of me this afternoon that has a
13 specific plan, the hairs, as a provider, on the back of
14 my neck, go up, and I'm much more careful with that
15 patient. They absolutely need to be admitted to the
16 hospital. We need to be expeditious in handling this
17 patient. And you saw none of that in this case.

18 Q Was there any duty, when Dr. Jansen was finished
19 with his evaluation and he walked out to request the
20 psychiatric folks come down, was there any duty for Dr.
21 Jansen, at that point, to instruct Joe McDonald, Janice
22 McDonald, or anybody else in the E.R., that this patient
23 needed to be confined to the E.R. space in any way?

24 A No. I -- I think -- I think what you have here is
25 somebody, from the start of when they came to the Naval

1 Hospital, he had an escort, Mr. Ray. Mr. Ray escorted
2 him through the whole process from the time that he got
3 down to the emergency department. And I think it's -- I
4 think it's very important that the jury understands,
5 when we have -- when we talk about a medical escort for
6 psychiatric reasons.

7 Now, yesterday, we said it usually is a nurse or a
8 tech that's assigned. Not necessarily that's correct.
9 Sometimes that is correct. Sometimes we have the family
10 there in the room. Now, the role of the escort is not
11 to intervene. I don't expect a, you know, a small nurse
12 or a tech to intervene on somebody and tackle them, if
13 they're trying to get away, or to try to stop them from
14 hurting themselves. Their job as an escort is to alert
15 us, in the emergency department, the department team, so
16 we can get some security there if it's needed. We can
17 physically restrain them as needed. We, we can use
18 medications to restrain those people.

19 Q Alert you as to what?

20 A To alert that, at that moment, that patient needs a
21 active intervention, meaning that, that patient is
22 trying to hurt themselves, or he's trying to hurt
23 somebody else.

24 Q Or that he's changed; he's gone from calm to
25 violent or whatever?

1 A Correct.

2 Q Question about Mr. Joe McDonald. There were some
3 questions asked yesterday that, when the patient was
4 allowed to go to the restroom on his own, that Mr.
5 McDonald or someone should have accompanied him into the
6 restroom and observed him, and made sure he didn't hurt
7 himself. Is that the way it works?

8 A No. No. That's -- if -- if a hospital has that
9 setup, that's hospital policy. And I can tell you, at
10 Trident Medical Center where I practice, where we
11 practiced in Texas, that I did not, you know, I didn't,
12 the nurse didn't, the chaperone didn't, the escort
13 didn't go into the bathroom with the patient. Now, they
14 were standing there. They were waiting for the patient
15 to come out. If it took a long time, then, they would
16 be -- they would raise concern. But from what I
17 understand, Joe McDonald was standing, essentially,
18 outside the room the whole time.

19 Q Could he hear what's going on, and use that as a
20 way of observing?

21 A I would -- I would assume so, yes.

22 Q The breath-of-fresh-air conversation that was had,
23 from what you saw, was there any indication from the
24 description of the patient in everything you've read, up
25 until the point where he and Mr. Ray are having this --

1 where the communication is had about going outside,
2 anything to indicate that Mr. Hunt was not going to
3 continue to cooperate and participate in this diagnostic
4 work-up process that had been going on that day?

5 A No, there was nothing to suggest that at all.

6 Q Anything indicating at that point that this
7 gentleman was a person who was about to have a mental
8 health breakdown, and not come back after going outside?

9 A No, no. I mean, what you have to look at is the --
10 is the information that was available to the provider,
11 to the provider team, the doctor, the nurses at that
12 time. This patient was not, in any way, showing any
13 signs that he was on the verge of exploding, or on -- on
14 the verge of committing the terrible tragedy that
15 happened afterwards.

16 Q Was there any cause in your mind, as an E.R.
17 doctor, that this patient, at that point, presented in
18 such a manner that suggested that he was a risk of
19 violence to himself or anyone else?

20 A No. He had thoughts of hurting himself, but again,
21 there was no plan, and that was documented in both the
22 deposition and the notes available.

23 Q In your opinion, was it reasonable for Mr. --
24 Nurse Joe McDonald to allow Mr. Hunt to go outside,
25 fully clothed, and escorted by his friend, Mr. Ray?

1 A That's correct. So, the -- the -- the thing here
2 is that he was escorted. He was in the presence of Mr.
3 Ray, you know. And using a hypothetical, I think if Mr.
4 Ray was not present, I would not say it would be
5 appropriate to just let Mr. Hunt go out by himself. But
6 in this case, you know, it is a very small E.R. Mr. Ray
7 accompanied him. There was nothing to suggest that he
8 was going to explode, as what we heard yesterday. I
9 think, in the given information, it was reasonable for
10 Joe McDonald to let Mr. Hunt go outside, accompanied by
11 Mr. Ray.

12 Q Now, Doctor, if Mr. Hunt had ever resisted the
13 process that he had been going through, the evaluations,
14 the being transported from one part of the hospital to
15 another, had become aggressive, loud, boisterous,
16 obnoxious, any of the things you've told us about
17 before, would those have been red flags, suggesting that
18 he didn't need to be going outside, escorted or not?

19 A Yes, absolutely.

20 Q Do we have any of that here?

21 A We did not.

22 Q If Mr. Hunt had ever resisted the evaluation
23 attempts by Nurse McDonald or Dr. Jansen, the psyche
24 tech, and said, no, I'm not going to let you do it, or
25 anything to that effect, would those have been red flags

1 suggesting that something else needed to be done with
2 this gentleman?

3 A Well, those red flags would suggest that I needed,
4 as a medical provider, to go down the involuntary
5 commitment paperwork, and to -- because, you know, I'm
6 concerned about this individual. They are not
7 cooperating. He needs to be admitted to the hospital.
8 That the fact that he is now not cooperating, getting
9 more aggressive, now -- now is the time that I actually
10 need to write up paperwork, and commit this patient to
11 the hospital, instead of him going voluntarily.

12 Q Did we have any of that with this patient in this
13 E.R. on February 24, 2012?

14 A We did not.

15 Q Finally, I'm going to talk about duty to warn, and
16 then, I'll be done. In your experience, Doctor, when
17 does a duty for an emergency room doctor or emergency
18 room nurse come about to talk to the patient about the
19 consequences of him leaving the E.R. and not coming back
20 to cooperate?

21 A Well, I -- I think, as an emergency medicine
22 physician, at the time where you have gathered all of
23 the facts, and you have made the final determination
24 that this patient needs to be admitted to the hospital,
25 whether it's voluntary or against their will, that's the

1 time that you talk to the patient. It's -- it's -- I've
2 never heard of this warning a patient to not leave the
3 emergency department when they first get to the -- their
4 room, without having the full facts and full information
5 available to you.

6 Q If a patient has, though, either through their
7 express words or through their actions, been cooperative
8 in the whole process; they've been going through the
9 evaluations; they've been going where they're told to go
10 and you know, allowed to do things and things; if
11 they've been doing that, is there any reason for a
12 medical provider to suspect they won't continue to do
13 it, even if they go outside to have a smoke or whatever?

14 A No. No, there's nothing.

15 Q And this duty to discuss with the patient the risks
16 or the consequences of going outside the E.R. and not
17 coming back, does that require that the doctor or the
18 nurse have some suggestion that the patient is not going
19 to come back and continue to cooperate and go along with
20 this whole work-up process?

21 A That's correct.

22 Q In this case, did you see any evidence to support
23 that, at any point in time, Nurse McDonald, Joe
24 McDonald, or Janice McDonald, or Dr. Jansen, ever had
25 information to suggest that Calvin Hunt was not going to

1 continue to cooperate in the medical diagnostic and
2 work-up process that had started from, really, from when
3 Ms. Smith first saw him, up until the time he walked out
4 of the door with Mr. Ray to go get fresh air?

5 A Right. There's -- there's no information available
6 that would suggest that, you know, up to the point that
7 he eloped from the emergency room, that, that would
8 happen.

9 Q The questions were all asked yesterday in terms of
10 a duty to warn. Do you ever warn your patients when
11 you're talking with them about all these issues, about
12 cooperating with treatment and stuff?

13 A No. No. It sounds like a threat to me. What I --
14 what I do, and what a lot -- all emergency medicine
15 physicians do, and this gets back to the *Patient Bill of*
16 *Rights*, is that it is a -- it is a one-on-one
17 conversation between the treating physician or the
18 provider and the patient, and so that they cooperate
19 with their care, you know.

20 If -- if Calvin Hunt started not to cooperate, if
21 he started to say, no, I'm not going to -- I don't want
22 to be admitted to the hospital, and as a -- you have a
23 duty at that point to go down the involuntary pathway,
24 to start paperwork to do legal things that need to be --
25 to occur to commit somebody against their will.

1 But they never got to that point. There was
2 nothing to suggest that he was involuntary or was
3 resisting anything that they were doing, up until the
4 time that he eloped from the emergency room.

5 Q I'm going to ask you to do one thing. As an
6 expert, you obviously get involved in these cases, and
7 you know what happened. You know what happened when
8 this gentleman eloped and everything horrific that
9 happened after that. But I want you to take hindsight
10 out of the picture. In a situation like Mr. Hunt
11 presented with at the time he came to the E.R., and was
12 seen and evaluated by the McDonalds and Dr. Jansen,
13 without the benefit of hindsight, and knowing what
14 ultimately happened, do you have an opinion whether any
15 duty owed by the E.R. staff should have prevented them
16 or prohibited them from ever allowing Mr. Hunt to go
17 outside of this E.R. with Mr. Ray to get fresh air, in
18 the condition he was in at the time?

19 A Yes, I have an opinion.

20 Q What is it?

21 A My opinion is that there was nothing to suggest
22 that this patient was going to do what he did. There
23 was nothing to suggest that this patient was going to
24 run from the emergency department, not cooperating with
25 the things that they were trying to do.

1 Q Anything to suggest that he shouldn't be allowed to
2 go outside because he might not come back and continue
3 to cooperate? Anything to suggest that a duty
4 associated with that was in existence at the time?

5 A No. I think if -- if you really want to argue the
6 point, is that, the duty was to make sure that he was
7 accompanied, he was escorted, and that's what occurred.
8 I think it would be a totally different matter if they
9 allowed him to go out by himself, but that's -- that's
10 not the case here. The case is that, Mr. Ray, who he
11 had some acquaintance with, had been with the majority
12 of the whole encounter so far, was going with him.

13 Q In your opinion, Doctor, as an expert in the field
14 of emergency medicine, and your background with the
15 military, would most emergency room doctors and most
16 emergency room triage and treatment nurses have acted in
17 a similar fashion to what was done by Dr. Jansen, Joe
18 McDonald, and Janice McDonald, in a patient like this,
19 under the circumstances that they were confronted with
20 that day?

21 A Yes.

22 Q And did they comply with all duties required of
23 them by law, as you know them?

24 A Yes.

25 MR. LOVELL: Thank you. That's all. Thank you,

1 your Honor.

2 THE COURT: You're done. This was a block. You're
3 finished.

4 MR. LOVELL: I'm done, yes, ma'am.

5 THE COURT: Very well. Cross-examination.

6 DR. ERIK DONALD OBERG

7 CROSS-EXAMINATION, BY MR. HOYLE:

8 Q Doctor, I still think I have the pleasure of saying
9 good morning to you.

10 A Good morning, sir.

11 Q My understanding of your testimony is this is the
12 first time you've ever come into a courthouse anywhere
13 in the United States of America and testified about the
14 appropriateness of the physician's conduct. Is that
15 correct?

16 A That's correct.

17 Q My understanding, when I took your deposition, is
18 that you were charging \$500.00 through this testimony.
19 Is that correct?

20 A That's correct.

21 Q Okay. I believe that's the number we heard, also,
22 yesterday.

23 A That is correct.

24 Q Okay. My understanding is that you're here today
25 because you have an interest in the defense of doctors;

1 and that, when lawsuits are brought against physicians,
2 you think you have the knowledge and expertise to lend a
3 hand, correct?

4 A That's correct.

5 Q You've told me that before, correct?

6 A That's correct.

7 Q You want to lend a hand for doctors, correct?

8 A That's correct.

9 Q Okay. And specifically, with respect to how it is
10 you got to Beaufort County to testify in this
11 courthouse, you know Mr. Lovell's nurse, the nurse,
12 Terry Levin, who works at his firm, correct?

13 A That's correct.

14 Q Okay. What medications was Calvin Hunt seeking a
15 refill for on February 24, 2012?

16 A He was on Seroquil. He was on Levitra, Celexa.

17 Q All right. And are any of the medications that you
18 just told us what would generally be thought of as anti-
19 psychotic medication?

20 A They can, but they could also be used for
21 depression.

22 Q All right. Now, you're not disputing that Calvin
23 Hunt suffered from depression. Did I hear that
24 correctly in your prior testimony?

25 A That's correct, sir.

1 Q Okay. But with respect to Seroquil, have you
2 yourself, as a medical doctor, ever actually prescribed
3 somebody Seroquil?

4 A No. It's commonly not done from the emergency
5 department.

6 Q But that would be a, no, you've never prescribed
7 that medication to any patient, correct?

8 A Not that I'm aware of, no.

9 Q And while we're on that subject, by my math, you've
10 been a board-certified, emergency room physician for
11 five years, correct?

12 A That's right.

13 Q And you told us a few minutes ago, in examination
14 by prior counsel, that you were a fellow of the American
15 Board of Emergency Medicine, correct?

16 A A fellow of the American College of Emergency
17 Physicians.

18 Q I apologize. All these anachronisms, they just
19 confuse me. But have you ever been an officer in any of
20 these learned societies with which doctors in a
21 particular field associate and join together?

22 A No, that's not a requirement to be a fellow.

23 Q That would be a, no, you've never been an officer
24 in such an organization?

25 A That's correct, sir.

1 Q Doctor, I heard some testimony that you think
2 there's lots of people walking the streets, perhaps even
3 here in Beaufort County, that might have thoughts in
4 their heads about hurting themselves. Did I hear that
5 correctly?

6 A That's correct.

7 Q Will you agree with me that just seeing a
8 psychiatrist as an outpatient, if you're having thoughts
9 of hurting yourself or a thought of others, might not
10 always work?

11 A That's correct.

12 Q Do you agree with me that thoughts of self-harm and
13 thoughts of hurting others need to be taken seriously?

14 A Absolutely.

15 Q And some of these folks who might be walking the
16 streets with thoughts of hurting others or thoughts of
17 hurting themselves, they sometimes act on those
18 thoughts. Is that right, Doctor?

19 A That is correct.

20 Q And we've had examples recently of a pilot crashing
21 a plane into the French Alps, correct?

22 A That's true.

23 Q We've had somebody go into a movie theater in
24 Colorado and shoot up a *Batman* movie, correct?

25 A That's correct.

1 Q We even had the man who killed the American Sniper
2 do the horrific things, correct?

3 A That's correct.

4 Q Sometimes thoughts that people who have mental
5 health issues have actually turn into action. You'll
6 agree with that, Doctor,

7 A They can, yes.

8 Q They can and do. Is that right?

9 A They can turn. Doesn't mean they always do.

10 Q I heard you reference that you were relying, in
11 part, on Dr. Hendelman for some of your testimony here
12 today. Is that correct?

13 A That's correct.

14 Q Are you aware that Dr. Hendelman testified that
15 Calvin Hunt should not have been let out of the
16 emergency room?

17 A Well, if you look back to Dr. Hendelman's
18 disposition [sic], is that she was very clear that she
19 could not comment on what happens in the emergency
20 department. She was clear on, if he had been in her
21 office, that she would have been -- that he would have
22 been escorted down to the emergency department. That
23 was her protocol.

24 Q My question was a little bit different, Doctor, so
25 I need you to listen to me. Do you agree that Dr.

1 Hendelman has provided testimony that Calvin Hunt should
2 not have been let out of the emergency room? Yes or no.

3 A I am -- I am telling you that the deposition from
4 Dr. Hendelman is that she could not comment on what
5 occurred in the emergency department. She said that to
6 you again and again.

7 Q All right, sir. You've been talking a little bit
8 with prior counsel about, I think I heard the term as
9 professional judgment. Do you recall talking about
10 that?

11 A Absolutely.

12 Q Professional judgment can sometimes be wrong.
13 Would you agree with that?

14 A It can be. Mistakes happen.

15 Q Just because somebody is a professional, they're a
16 doctor, they're a lawyer, they're an accountant, doesn't
17 mean that they get a free pass when something bad
18 happens. Is that correct?

19 A That's correct.

20 Q And just because a doctor or a nurse uses
21 professional judgment, doesn't excuse their judgment if
22 it is careless, negligent, or reckless. Will you agree
23 with that?

24 A Well, I think you have to look at what are you
25 considering careless and reckless. You have a case here

1 where I think that it was just the opposite. I think
2 they are very caring, very concerned about Mr. Hunt.

3 Q Caring and concerned. But let's use a
4 hypothetical, Doctor. If, hypothetically speaking, a
5 doctor or a nurse uses professional judgment in a given
6 situation, that situation can still turn out to have
7 been careless, negligent, or reckless, correct?

8 A That's not for me to decide. That's for the courts
9 to decide.

10 Q That's a jury decision. Is that what you're
11 telling me?

12 A That's correct.

13 Q When somebody admits, just comes out with it and
14 admits, that they have thoughts of wanting to hurt
15 themselves or others, does it take medical training to
16 know that, that person needs to be helped?

17 A I think what you're separating is just regular
18 knowledge versus professional knowledge. What we have
19 here are a case of three professionals that are highly
20 trained, very experienced, using their medical judgment
21 when somebody comes in saying that they need help.

22 Q Doctor, I'm going to ask my question again. Will
23 you agree with me that -- I'll ask the question
24 differently. I'll actually rephrase it a little bit,
25 Doc. You have two choices, yes or no. Okay? Does it

1 take medical training to know that a person needs to be
2 helped when he or she, by his own admission, has
3 thoughts of hurting others?

4 A No. I think it's obvious that somebody that is
5 having thoughts of hurting themselves needs help. But
6 it takes a medical professional to weed out what kind of
7 help that is. It's the years of training, years of
8 experience that we have in the medical profession to try
9 to figure out how do we help this patient the most? Is
10 it inpatient care? Is it outpatient care? Is it
11 counseling with a psychologist, or is it with an
12 intensive care with a psychologist? That's where we --
13 we come into play when we're talking about our
14 professional care in the medical setting.

15 Q Will you agree with me that Calvin Hunt, based upon
16 the prior medical records that you reviewed, had
17 serious, multiple, psychological problems?

18 A Calvin Hunt had PTSD. He was diagnosed with
19 depression. Whether they're serious or not, you know,
20 that is something to be determined, but at that -- that
21 was his diagnosis. That was his past medical history.

22 Q Doctor, I'm going to hand you what has previously
23 been moved in as evidence in this case as Plaintiff's
24 Exhibit Number 19. Have you seen that document prior to
25 today?

1 A I have.

2 Q Is this something you reviewed in preparation for
3 your testimony here?

4 A That's correct.

5 Q Okay. And that's a medical record that was
6 generated within the Naval Hospital in Beaufort, on
7 February 24, 2012, correct?

8 A That's what the date is on it, yes.

9 Q And you're not going to dispute that, that's when
10 the document was created.

11 A No. I have no reason to.

12 Q Okay. All right. What psychological problems do
13 you see listed on that list of problems on the left-hand
14 side of that document?

15 THE COURT: And this is Exhibit?

16 MR. HOYLE: It's Exhibit 19, your Honor.

17 BY MR. HOYLE:

18 A So, I'll go from the bottom, just like it was done
19 yesterday. Alcohol abuse.

20 Q Yes, sir.

21 A Major depression. Single episode. Depression.
22 Psychiatric diagnosis or condition deferred on Axis I.
23 So, there's actually not a diagnosis there. Adjustment
24 disorder. Again, we have a no psychiatric diagnosis or
25 condition on Axis I. That's not a diagnosis.

1 Personality disorder. Delusional disorder.

2 Insomnia, you can claim, sometimes that's organic versus
3 psychiatric. Alcoholism. Anxiety. And it's anxiety
4 disorder. NOS is not otherwise specified. So, they
5 really didn't clarify why he has anxiety. Adjustment
6 disorder with anxious mood, adjustment insomnia. So,
7 there you have insomnia from adjustment.

8 Malinger. Malinger is -- is a psychiatric
9 diagnosis. Anxiety. Adjustment disorder, with a
10 disturbance of emotions and conduct. Cannabis
11 dependence, and that's all I see there.

12 Q Doctor, those mental health problems that you just
13 read to us from Calvin Hunt's medical records, are any
14 of those what you would term serious?

15 A I'd say they're medical conditions. Whether
16 they're serious or not depends on how the patient is
17 presenting in front of you. Because you have a history
18 of something in your past, doesn't mean it's present at
19 the current time.

20 Q Well, let's walk through some of these, Doctor.
21 What is an adjustment disorder with anxious mood?

22 A So, an adjustment disorder would be somebody that's
23 exhibiting problems from something that's occurring in
24 their life at the time. So, they're having trouble
25 adjusting to it, meaning that they don't meet criteria

1 for depression; they don't meet criteria for
2 schizophrenia; they don't meet criteria for anything
3 else; so it's adjustment disorder, and it's obvi -- with
4 anxious mood, meaning that they're anxious, their mood
5 is anxious.

6 Q Let's go above that, oh, seven or eight lines to
7 adjustment disorder with disturbance of emotions and
8 conduct. What's that, Doctor?

9 A Well, I think it's just what it said. It's
10 adjustment disorder, which I just said, and emotion and
11 conduct, meaning, you know, he has either, you know,
12 poor emotions or exited emotions and conduct.

13 Q Is he able to regulate his emotions and conduct
14 with that disorder?

15 A At the time of diagnosis, no. But the question is,
16 how is he presenting on that day of February 24.

17 Q We'll get to that day, Doctor.

18 A Good.

19 Q We're just looking at the past medical history
20 right now.

21 A Good.

22 Q With respect to some of these others, oh, goodness,
23 let's talk about delusional disorder. What is
24 delusional disorder, Doctor?

25 A So, if somebody is delusional, they have false,

1 fixed beliefs. So, it could be somebody saying that,
2 you know, the government is -- is spying on me, you
3 know. Unless that's actually true, that would be a
4 false, fixed belief.

5 Q Would another example be somebody seeing, I don't
6 know, a black cat or a werewolf that's not really there?

7 A Sure.

8 Q With respect to personality disorder that's also in
9 Mr. Hunt's personality records, what's a personality
10 disorder, Doctor?

11 A Personality, you know. So, when we go back, and
12 look at how the psychiatrists classify things, we're now
13 on what we call DSM-5, which is the diagnostic and
14 statistic manual. It's how their -- it was developed
15 initially in the thought that you have to treat the
16 whole patient, just not the psychiatric diagnosis
17 sitting in front of you. So, I through V.

18 Axis I would be current psychiatric diagnoses. So,
19 that would be -- major depression would be an Axis I.
20 Axis II would be personality disorders. So, that would
21 be, you know, somebody that has personality disorder
22 that can't get along in society, that's angry, those
23 kind of things.

24 The third -- the third one on the DSM-5 would be
25 medical problems. So, somebody that's had heart

1 disease, for example, hypertensive diabetes, it would be
2 listed there.

3 Q Is that something that's a concern? Is that a
4 serious mental health issue?

5 A Well, it's a mental health issue. Whether it's
6 serious or not depends on how the patient is presenting.

7 Q Adjustment disorder, that's also on Mr. Hunt's past
8 medical records, correct?

9 A We've talked about adjustment disorder. It's been
10 repeated several times on that list.

11 Q Do you have an opinion one way or the other as to
12 whether or not Calvin Hunt's past medical records should
13 have been consulted by personnel in the emergency room
14 on February 24, 2012?

15 A I do.

16 Q And what is that opinion?

17 A I think that, just like we said yesterday, it's
18 helpful to look at the past medical history.

19 Q Is it helpful for other persons in the emergency
20 room, on February 24, 2012, who are treating Calvin
21 Hunt, to know that Nurse Janice McDonald developed a
22 fear, and was afraid of Calvin Hunt during the triage
23 process?

24 A Was it important for others to know that?

25 Q Yes.

1 A I don't think so, and the reason why is that she
2 didn't think that it was most important to tell others.
3 If she had -- was really that concerned about it on that
4 day, I would assume that she would have passed that on
5 to her team members.

6 Q That's an assumption, Doctor?

7 A Absolutely.

8 Q While we're talking about some of these words that
9 came out of various CasePro employees' mouths that day,
10 will you agree with me that angry is not the same thing
11 as calm?

12 A Yes.

13 Q Those are opposites, aren't they?

14 A Yes, sir.

15 Q Kind of like the Navy's not really the Air Force.

16 A That's correct, sir.

17 Q There was some discussion with prior Counsel about
18 a vital sign and a heart rate. How many times was
19 Kalvin Hunt's pulse checked, according to the medical
20 records, in the emergency room?

21 A As far as I can tell, and what I've said already,
22 is that, that heart rate of 103 was taken in triage.
23 And then, Dr. Jansen astutely noted that, that was an
24 abnormal vital sign, and that's the only one he put on
25 his note, because that -- it was abnormal.

1 Q Doctor, I'll ask my question again. How many times
2 was Calvin Hunt's pulse checked in the emergency room,
3 according to the records? Was it one time?

4 A As far as I know, one time, sir.

5 Q In some two hours, correct?

6 A That's correct.

7 Q So, it's fair to say, you don't know what Calvin
8 Hunt's heart rate was when he stepped outside for a
9 breath of fresh air?

10 A No, that's correct.

11 Q There was some discussion with prior Counsel about
12 this gown versus street clothes issue. Do you recall
13 that?

14 A Yes, sir.

15 Q I believe you testified that it was your opinion
16 that no duty existed to put Calvin Hunt in a gown. Did
17 I hear that correctly?

18 A Not at that time.

19 Q Okay. What about once he was going to be admitted;
20 did he need to be put in a gown at that point in time?

21 A At that point, yes.

22 Q You told me -- or told prior Counsel about an
23 experience you had where somebody came in with and RPG
24 under his or her clothes in an emergency room?

25 A That's correct.

1 Q How did you all figure out in the emergency room
2 that he had an RPG under his clothes?

3 A Well, this was somebody that was brought in by
4 Trauma. Standard protocol is that we basically cut
5 their clothes off, and it was discovered that there was
6 an RPG in the clothing.

7 Q Found that out by taking his clothes off?

8 A We cut them off as protocol.

9 Q Now, let's talk a little bit in generalities for a
10 few minutes, Doctor. Will you agree with the premise
11 that psyche patients, by their very nature, may
12 sometimes be very unpredictable?

13 A No, I don't agree with that.

14 Q You think they are predictable?

15 A I think, in the most part, they are, yes.

16 Q For the most part, but not always?

17 A Well, there are -- there are no absolutes in
18 medicine, sir. And again, I want everybody to
19 understand this: the most important thing, when you
20 treat any patient, especially psychiatric patients, is
21 how they are presenting on that day. They may have a
22 history of heart attack in the past. Doesn't mean
23 they're having a heart attack today. Just like
24 psychiatric patients, they may have a history of anxiety
25 or major depression in the past. May not be -- they may

1 not be anxious or having an anxiety attack while you see
2 them in the emergency room.

3 Q But the records that you've reviewed from that
4 fateful Friday show that some of Calvin Hunt's
5 psychological issues were persisting there in the
6 emergency room, correct?

7 A Yes. I've said that.

8 Q Okay. Well, you told us a moment ago you wanted
9 the jury to understand a few things. On that day, there
10 was a flat affect with that patient, correct?

11 A Yes, sir.

12 Q There was an elevated heart rate, correct?

13 A That's correct.

14 Q This was a gentleman who was described by the
15 doctor in the records as poorly communicative, correct?

16 A Yes.

17 Q There's indication in the plain text of the records
18 that he was disoriented, at least to his Social Security
19 Number, correct?

20 A That's correct.

21 Q I'll ask you this, Doctor, since you told us about
22 your military service. Is it common or uncommon for the
23 members of the uniform services to know or not know
24 their Social Security Number?

25 A Actually, I would say that I've seen both, the

1 people that actually remember their Social Security
2 number, and -- and members that don't.

3 Q And do the medical records reflect that, on that
4 day, Calvin Hunt was anxious?

5 A The medical records state that he was rocking back
6 and forth; and then, cooperative; that he put his hands
7 over his ears at one point; and then, was cooperative.

8 Q And the testimony from various persons, including
9 Janice McDonald and her husband, and Nurse -- excuse me
10 -- Dr. Jansen, was that this man was angry, correct?

11 A I was actually not here in the testimony.

12 Q So, that might be information you don't have. Is
13 that fair?

14 A That's fair.

15 Q Doctor, you told us earlier that you could look up
16 in any medical textbook and find out information about
17 heart rate. Did hear that correctly?

18 A Yes.

19 Q Okay. And --

20 A Actually, I think that was referencing the
21 temperature, but you can also reference what is a normal
22 heart rate in various ages, from newborns to adults.

23 Q And certainly, when you went to the Medical
24 University of South Carolina, you actually had some
25 books that you would have used in school, correct?

1 A Yes, sir.

2 Q And I know, from your deposition, that you actually
3 keep a textbook on emergency medicine on your iPad,
4 correct?

5 A Yes.

6 Q Do you also have it on your iPhone?

7 A I believe I can access it on my iPhone. Although,
8 it's very difficult to read in a very small screen.

9 Q And that's the Tintinalli's -- I may not be saying
10 that correctly.

11 A It's Tintinalli's.

12 Q There you go. And it's a textbook on emergency
13 medicine.

14 A It's one of the authoritative texts on emergency
15 medicine, yes.

16 Q No dispute from you it's authoritative, correct?

17 A That's correct.

18 Q You actually keep it on your iPad, and you actually
19 consult it when you're doing emergency medical work
20 there in the Trident Hospital at North Charleston.

21 A That's correct.

22 Q Okay. Are we plugged in? How frequently do you
23 pull your iPad out, Doctor, and look at that textbook?

24 A I would say several times a week, at least.

25 Q How many times a week do you actually go to work?

1 A Several times a week, at least.

2 Q So, fair to say you look at this book every day
3 you're --

4 A I wouldn't -- naw, that would be a mis-
5 classification. I don't work -- I don't look at it
6 every day I go to work.

7 Q How frequently do you look at it? I mean, every
8 other day you're at work? I heard several times a week.
9 I'm just trying to get a sense of how frequently you're
10 picking up your iPad and looking at this book.

11 A I think it would be -- it would vary on any given
12 day, but on, let's say, a given month that I work 14 to
13 15 shifts, I'm accessing it several times at least.

14 Q All right. And I've got my iPad out, Doctor.

15 A Okay.

16 Q And is this the book we're referring to?

17 A That's correct.

18 Q All right. Does your app that you have on your
19 iPad look something like mine?

20 A Yes, sir.

21 Q Okay. I actually book marked a chapter in the
22 book. See if I can pull this off. A little more
23 complicated than writing on a board. There's a chapter
24 in the book on emergency psychiatric assessment. Are
25 you familiar with that chapter?

1 A Yes.

2 Q And is that something you've consulted in the past
3 as a board-certified, emergency room physician, doing
4 your work as an E.R. doctor?

5 A In the past, yes.

6 Q Okay. And let's see what this book tells us.
7 Right -- we'll just start at the beginning. It says:

8 *Safety first: seclusion, restraint in*
9 *the violent patient.*

10 Do you see that in red letters?

11 A I do, yes.

12 Q Do you agree with the general premise that the
13 first duty of an emergency room doctor is to keep the
14 patient safe?

15 A Well, it looks right there, it says:

16 *Safety first: seclusion, restraint in*
17 *the violent patient.*

18 So, somebody that is violent, that absolutely needs
19 to be restrained, either medically or physically, needs
20 to happen quickly, yes.

21 Q Irrespective of whether they're violent or not
22 violent, Doctor, do you believe that patient safety is
23 the number one goal of a physician?

24 A I -- I think that's part of what we do as medical
25 professionals. We want our patients to be safe. We

1 want to make the diagnosis. We want to help people.
2 That's why we went into medicine.

3 Q And that's part of the oath that you take in order
4 to become a doctor, correct?

5 A That's correct.

6 Q All right. There's a section on here that says,
7 *suicidal patient*. Do you see that?

8 A Yes.

9 Q In big, red letters. Okay. And we've got a
10 sentence that says:

11 *Patients who present with suicidal*
12 *ideation, suicide plans, or suicide attempts,*
13 *require specific measures for protection.*

14 Did I read that correctly?

15 A Yes.

16 Q I read that out of an authoritative textbook that
17 you yourself keep on your own iPad, correct?

18 A That's correct.

19 Q All right. And do you agree with that statement
20 that patients who present with suicidal ideation require
21 specific measures for patient protection?

22 A That's correct. And the question here that
23 everybody needs to understand is the -- the timing when
24 you would put those into measure.

25 Q All right. We'll talk about that in a minute,

1 Doctor. The next sentence of this chapter in the book
2 you keep on your iPad says:

3 *Personal and clothing items that could*
4 *be used for self-injury or a suicide attempt*
5 *should be removed from the patient and from*
6 *the treatment room.*

7 Did I read that correctly?

8 A Yes, sir.

9 Q That's a sentence in a book that you keep on your
10 iPad, correct?

11 A That's correct. And again, it's the timing when
12 you do that.

13 Q We'll just skip to last sentence of your paragraph,
14 Doctor. I know you've got to get to work. Agitated
15 patients, we'll stop right there. Agitated patients.
16 Was Calvin Hunt agitated that day? Yes or no.

17 A No. Based on the information there Calvin Hunt was
18 not agitated.

19 Q Okay. And those expressing suicidal ideation.
20 We'll stop right there, Doctor. Was Calvin Hunt
21 indicating to persons employed by CasePro, Incorporated,
22 on February 24, 2012, he had suicidal ideations? Yes or
23 no.

24 A He did, yes.

25 Q So, that's a yes. So, we know that somebody like

1 Kalvin Hunt is expressing suicidal ideations. Let's
2 read what follows:

3 *Should not be allowed to leave the E.D.*
4 *before a medical or psychiatric evaluation is*
5 *completed.*

6 Did I read that correctly, Doctor?

7 A That's correct, sir. And I -- I'd like -- I'd like
8 to point out that leave the E.D.; so, does that mean
9 leave at all; or does that mean to go home? So, the
10 question is to the author, what did they mean by that?
11 Kalvin Hunt wasn't allowed to leave the emergency
12 department, meaning that he was discharged home. He
13 left to get a breath of fresh air with an escort. The
14 assumption is that he's coming back to finish the work
15 up.

16 Q Doctor, did Calvin Hunt leave the emergency room,
17 yes or no, at the Beaufort Naval Hospital on February
18 24, 2012?

19 A Yes, he stepped out, yes.

20 Q He stepped out. That means he left, correct?

21 A That's correct.

22 Q He left the four walls of the hospital.

23 A Sir, there's no doubt about it.

24 Q Okay. Well, sir, I wanted to make sure, in light
25 of your comments.

1 Let's see what else we can find. There's a section
2 that says *history*. Do you see that?

3 A Yes, sir.

4 Q And let's go to the last sentence there: *the*
5 *history of previous --*

6 A The last sentence, where, sir?

7 Q In the history section of the text.

8 A Okay.

9 Q You with me so far?

10 A Yes.

11 Q Says:

12 *The history of previous psychiatric*
13 *illness and treatment should be determined to*
14 *identify patterns of relapse.*

15 That's what the text says, correct?

16 A That's correct.

17 Q What's your understanding of how much time Nurse
18 Janice McDonald spent reviewing Calvin Hunt's past
19 medical records?

20 A In her desposition [sic], she said she briefly
21 reviewed what Mr. Ray had with him.

22 Q All right, Doctor. I think we've looked enough at
23 this. Bottom line, you've come here today to say that
24 these medical examiners did nothing wrong, correct?

25 A I'm here to say that the actions that Dr. Saundra

1 Smith -- or Nurse Saundra Smith, Nurse Janice and Joe
2 McDonald, and Dr. Jansen did on that day is consistent
3 with any other reasonable qualified emergency medicine
4 physician, given the information available.

5 Q You told us earlier that you had looked at the
6 totality of the patient encounter with Calvin Hunt with
7 the three persons, Nurse Janice, Nurse Joe, and Dr.
8 Jansen, correct?

9 A That's correct.

10 Q And it's your testimony that, with all they knew
11 about an angry man with a history of PTSD; who was
12 disoriented with respect to his Social Security Number;
13 he had a sad affect; who was seeking a refill of anti-
14 psychotic drugs, including Seroquil; and by his own
15 admission, had thoughts of harming others; that there
16 was no way for anyone to foresee what would have
17 happened. Is that your testimony?

18 A Yes, it is.

19 Q And going back to your reliance on Dr. Hendelman
20 and what she said, do you have a recollection of Dr.
21 Hendelman testifying: *no, he shouldn't have been*
22 *allowed to leave?*

23 A Well, I wasn't here during -- if Hendelman
24 testified. I'm not sure if she did or not.

25 Q You're going to leave that for the jury, correct?

1 A I wasn't here during her testimony.

2 Q That's a correct, you're going to leave it for the
3 jury.

4 A Yes, sir.

5 MR. HOYLE: Those are all the questions I have.
6 Thank you, sir.

7 A Thank you, sir.

8 BY THE COURT:

9 THE COURT: Re-direct?

10 MR. LOVELL: No re-direct, your Honor.

11 THE COURT: Very well. Is this witness free to
12 leave?

13 MR. LOVELL: Yes, your Honor.

14 THE COURT: Any objection?

15 MR. HOYLE: None from the Plaintiff.

16 THE COURT: Very well. You are free to go, and we
17 will take our morning break. Ladies and gentlemen,
18 please step to your jury room. Do not discuss this
19 matter or allow anyone to discuss it with you. Leave
20 your notes in your seats, and we'll take about, maybe,
21 about 15.

22 JURORS LEAVE COURTROOM 11:36 A.M.

23 BAILIFF: Jury is clear, your Honor.

24 THE COURT: Thank you. All right, you all enjoy
25 your break. And just, before we start back, and once

1 you're done, you all get together and come on back and
2 let me see you five minutes before we come back in.

3 MR. HOYLE: Thank you, your Honor.

4 THE COURT: Uh-huh.

5 OFF THE RECORD 11:37 A.M.

6 BACK ON THE RECORD 12:01 P.M.

7 OBJECTIONS TO DEPOSITION OF

8 DEBORAH MEAUT, AND RULING:

9 BAILIFF: All rise. Court is now back in session.

10 THE COURT: Thank you so much, and please be
11 seated. All right. Now, the deposition.

12 MR. HOYLE: Your Honor, while I look at that, I'll
13 just place on the record that Mr. Mackelcan and his
14 partner, during the last break --

15 THE COURT: Yes.

16 MR. HOYLE: -- looked up Plaintiff's 23. The fire
17 truck clip that's being redacted in my office,
18 represents what was shown in court yesterday. They
19 reviewed it, and have no objection to it being placed
20 into the custody of the court reporter, and
21 subsequently, the clerk of court.

22 THE COURT: Wonderful. Thank you. All right.
23 Now, there are objections in the depo. Let's go to
24 them. All right. What's the first one for the
25 Plaintiff? The objections -- let's deal with the

1 submittals of the Plaintiff first. So, I guess it'll be
2 the Defendant's objections to the order of submittal.

3 MR. MACKELCAN: Okay, your Honor. We're looking at
4 Page 87, Lines 7 -- 87, 7 through 89, 3. And the
5 objection there, your Honor has already ruled that in
6 evidence, but it's cumulative. We've talked about the
7 numbers in the task order a number of times already, and
8 that's the basis of the objection at this point.

9 THE COURT: Okay. All right.

10 MS. CASTLEBERRY: Your Honor, I don't think that
11 the actual figure was admitted into evidence. We talked
12 about the task order, so I don't think it's cumulative.
13 The evidence is already --

14 THE COURT: Do what, now?

15 MS. CASTLEBERRY: The evidence is already in, but
16 not the actual number that we asked her about, the
17 amount on the contract, et cetera. So, these are just
18 more details. Although the task order was referenced in
19 a few questions with another witness, and I don't think
20 this is cumulative.

21 THE COURT: Tell me who this witness is.

22 MR. HOYLE: Deb Meaut is the contracting officers
23 representative at the Naval Hospital here in Beaufort.
24 She's essentially the counterpart to Craig Martin.
25 They're -- they're the -- can I use the word *liaison*?

1 That's one way to --

2 MR. MACKELCAN: That's what she called herself.

3 MR. HOYLE: Yeah.

4 THE COURT: Okay.

5 MR. MACKELCAN: She's a government worker at the
6 Naval Hospital.

7 THE COURT: Give me the actual -- I'm looking for
8 the text which you actually move to exclude. And I'm
9 looking. I've got it.

10 MR. MACKELCAN: It's the, let's see, it's our
11 second set, our second objection, and our --

12 THE COURT: In your sheets, what page are we
13 looking at?

14 MR. MACKELCAN: 24. It starts 24, and it goes into
15 25.

16 THE COURT: I thought that the -- excuse me -- I
17 thought that the contract was in evidence.

18 MS. CASTLEBERRY: It is, and so is the task order
19 itself. These are just questions about that. Questions
20 about those areas.

21 THE COURT: I gotcha. I'm going to sustain the
22 objection for this reason, if I may, for this reason.
23 The best evidence is the contract itself. It's in
24 evidence, and I don't love the question in Number 11,
25 because the question, it says, that's how much the

1 United States government, through our tax dollars, are
2 going to pay CasePro, Inc., and Company, out in Texas,
3 blah, blah, blah. In other words, I think there is -- I
4 think there is an obligation on behalf of the Court to
5 have some sensitivity to items that can be somewhat
6 inflammatory to the jury, and in that, the best evidence
7 is already in, I'm going to sustain.

8 MS. CASTLEBERRY: Okay.

9 THE COURT: What's next?

10 MS. CASTLEBERRY: Let's take a look and see if
11 anything else goes along with that. I don't think so,
12 Judge.

13 MR. MACKELCAN: I don't think so. I think all
14 those are different. So, the next one, your Honor,
15 starts on 29. It goes to the next page. 123, 17
16 through --

17 THE COURT: 125, 50?

18 MR. MACKELCAN: Yeah. Although, I've broken it up,
19 as well.

20 THE COURT: Okay.

21 MR. MACKELCAN: If you take that first section,
22 just through 124, 8, it calls for speculation as to what
23 she would do if the commanding officer called her. And
24 she also says in there that it's not her place to give
25 an order to terminate an employee.

1 MS. CASTLEBERRY: And your Honor, once again, this
2 goes to control, whether or not she had the, you know,
3 authority to fire anybody, even if the commanding
4 officer told her to do it.

5 THE COURT: Overruled. It goes to control. I
6 mean, it goes to, you know, it absolutely goes to the
7 issue of respondeat superior, so. Yeah. And where it
8 becomes relevant is right here:

9 *Because it's not my place to do that.*

10 *It's not my place to give an order to*
11 *terminate an employee.*

12 *Particularly somebody who doesn't work*
13 *for you, correct?*

14 *Correct.*

15 And you all have conceded that these people work
16 for CasePro. So, I think it's inadmissible on the issue
17 of respondeat superior.

18 MR. MACKELCAN: The line of questioning continues,
19 but it shifts a little bit, because the question then
20 becomes who a contractor hires or doesn't hire is up to
21 the contractor. And again, she now doesn't have any
22 knowledge of a contractor. She's a government employee
23 contracting officers representative. That calls for
24 speculation as to what a contractor is going to do.

25 MS. CASTLEBERRY: Well, she's the liaison between

1 them. I think she can give this testimony.
2 THE COURT: That's what she does.
3 MS. CASTLEBERRY: Yeah, that's what she does.
4 THE COURT: Overruled.
5 MR. MACKELCAN: Okay. Next one is on Page 30,
6 starting at 132, Line 22.
7 THE COURT: Okay.
8 MS. CASTLEBERRY: We'll withdraw that.
9 THE COURT: Yeah, that's not relevant. That's not
10 relevant.
11 THE COURT: It's 132, 22 through 133, 4, right? Or
12 right now it's --
13 MR. MACKELCAN: 132, 25.
14 THE COURT: Yeah.
15 MR. MACKELCAN: Because we had taken out some other
16 things.
17 THE COURT: Yeah, 22 through 25, right? That's it.
18 MR. MACKELCAN: And it's the same objection in our
19 last --
20 MS. CASTLEBERRY: We'll withdraw that.
21 MR. MACKELCAN: -- last one, which is 136, 12 to
22 21.
23 THE COURT: Okay, that's out. Take that out. It's
24 out by consent. And what's next?
25 MS. CASTLEBERRY: And it's our objections next,

1 right, Judge?

2 THE COURT: Is that it for you guys?

3 MR. MACKELCAN: Yes.

4 THE COURT: Okay. How about you all?

5 MS. CASTLEBERRY: Your Honor, if you would give me
6 just a second, I'm going to take a look at these, to
7 make sure I'm not --

8 THE COURT: Thank you. Okay. That's good.
9 That'll give me a chance to get there, too.

10 All right. You all ready to tell me if you're
11 ready?

12 MS. CASTLEBERRY: We have an agreement, your Honor.

13 THE COURT: Got it? Got it? Thank you all so
14 much.

15 MS. CASTLEBERRY: That's the good news. And the
16 bad news is, now, Mr. Knowles has to do all those clips.

17 THE COURT: Hi, Mr. Knowles. You can do it.

18 MR. KNOWLES: Yes, ma'am.

19 THE COURT: Chop, chop. You're not doing it.

20 MR. KNOWLES: She's got to give them to me.

21 MS. CASTLEBERRY: No, I've got to explain. We had
22 a lot of mind changing going on. There's a lot of
23 marking out.

24 THE COURT: Well, hurry, because the jury is, like,
25 waiting.

1 MS. CASTLEBERRY: I will.

2 THE COURT: I'd rather just have you all read it,
3 but hurry. Can you chop off a part of it, and we can
4 start it; and then, you all could do the back part, and
5 have a little break.

6 OFF-THE-RECORD DISCUSSION.

7 THE COURT: Please.

8 BAILIFF: Jury is entering the courtroom.

9 THE COURT: Great.

10 JURORS ENTER COURTROOM 12:21 P.M.

11 BY THE COURT:

12 THE COURT: Ladies and gentlemen, two things I want
13 to do. I want to explain to you where we are
14 procedurally, and then, just give you a little bit of an
15 update. The first thing that I want to say to you is,
16 there's another deposition for you to listen to and to
17 see. And Counsel have completed the matters that I
18 needed to listen to, review, and rule on, and they are
19 now in the process of now making those changes, so it
20 can be shown to you. That's going to take a little bit
21 of time. That deposition's going to down to probably
22 from an hour and a half to about 45 minutes or so. And
23 it's going to take a little bit of time to do that. So,
24 if you don't mind, I'm going to send you all to lunch.
25 I'd rather you all go do lunch, and then, come on back,

1 and see this deposition.

2 Just to give you an update, because I am aware that
3 we are still in the Plaintiff's case, but you've been
4 here, and you know that there have been people that
5 would have been called in the Defense case, no doubt,
6 that were called in the Plaintiff's case. And the
7 reason, the only reason I mention that to you is for
8 scheduling purposes, so you'll know where we are in this
9 trial.

10 I anticipate, I anticipate that you will receive
11 this case for your deliberations, probably, in the
12 morning. Just so you know. Just so you can know where
13 we are, because I know there have been some questions
14 about, okay, Judge, what's going on next week; I've got
15 doctors' appointments; where are we; what's going on?
16 But just for your informational purposes, there is a --
17 I just think that's reasonable.

18 I mean, there is a slight possibility that you
19 could receive it this afternoon. I do not think that
20 you will, so I want to be generous with that time. But
21 I anticipate that you will receive this case for your
22 deliberations in the morning. And I think I would,
23 yeah, that just sort of gives you an idea of where we
24 are.

25 So, ladies and gentlemen, I'm really contemplating

1 -- I think what I'm going to do is, there is a little
2 bit of work that we need to do, and then, we need to get
3 lunch. I'm going to ask you to be back in your jury
4 room at a quarter 'til 2:00, at 1:45, at 1:45. At that
5 time, ladies and gentlemen.

6 Of course, the same admonitions. I keep waiting
7 for somebody to say it with me. Do not discuss this
8 matter. Do not allow anyone to discuss it with you. Do
9 not read anything, listen to anything about this matter,
10 radio, television, newspaper, Internet. Don't do any
11 Columbo. Don't do any investigation. You must receive
12 all of the information from which you will make up your
13 minds here in court while court is in session. Do not
14 bring your cell phone or other communication device with
15 you to the courthouse. If you forget, let our bailiffs
16 know, and they'll take good care of it.

17 All right. Very well. Have a grand lunch. Leave
18 your notebooks in your seats.

19 JURORS LEAVE COURTROOM 12:21 P.M.

20 OFF THE RECORD 12:25 P.M.

21 BACK ON THE RECORD 2:10 P.M.

22 THE COURT: Okay. Yeah? Yeah? Yeah? Yeah?
23 We're ready, ready?

24 MR. HOYLE: We're ready, your Honor. We would
25 request that, when the jury returns, you take judicial

1 notice of Plaintiff's Exhibit Number 25, which was
2 introduced this morning.

3 THE COURT: Now, how do you want me to do that? I
4 mean, do you want me to read it to them? Do you want me
5 to say, here. How do you want me to -- how do you want
6 me to do it? Hand it to them and let them read it?

7 MR. HOYLE: Do you want me to --

8 THE COURT: I don't know. How do you want to do
9 it?

10 MS. CASTLEBERRY: I have an idea. I think it
11 should just be the finding itself. I don't think the
12 whole thing needs to be read.

13 THE COURT: Well, it is as it is. I would either
14 hand it to them or read it. I'm not going to opine
15 about it.

16 MS. CASTLEBERRY: Okay.

17 THE COURT: You know what I mean? I'm not going to
18 add anything.

19 MR. HOYLE: Well, we're happy to publish it to
20 them.

21 MR. LOVELL: Why don't you read it, your Honor, and
22 that would be the end of it.

23 THE COURT: Okay.

24 MR. LOVELL: It doesn't go back with them as a
25 piece of evidence.

1 THE COURT: Okay. All right. That works for me.
2 Okay. Do you want me to do that next?

3 MR. HOYLE: I think that would be appropriate. And
4 then, we'll call Ms. Deb Meaut by videotape. And then,
5 we'll call Mrs. Delaney.

6 THE COURT: Okay.

7 MR. HOYLE: That's the plan. There are no more
8 surprise witnesses. In our case-in-chief.

9 THE COURT: Gotcha.

10 BAILIFF: Are you ready, your Honor?

11 THE COURT: Yeah.

12 BAILIFF: Jury is entering the courtroom, your
13 Honor.

14 JURORS ENTER COURTROOM 2:13 P.M.

15 JUDICIAL NOTICE OF FINDINGS

16 AND ORDER OF NOT GUILTY BY REASON

17 OF INSANITY, BY THE COURT:

18 THE COURT: Ladies and gentlemen, I hope you had a
19 good lunch. I apologize for a little bit of delay. I'm
20 getting another case, and I had a pretrial conference on
21 it. It's going to take a couple of weeks, in about a
22 week, so. I figure you all could appreciate that. It
23 took a little bit longer than we had anticipated, so I
24 thank you for your patience.

25 Ladies and gentlemen, I have been asked to take

1 what is called judicial notice of a document, and it is
2 a document that is readily ascertainable. Sometimes
3 judges are asked to take judicial notice of a fact that
4 is readily ascertainable, and it is one of those facts
5 that you can't -- it's really not for dispute. For
6 example, what time was sundown on such and such a date.
7 Well, the National Meteorological Association keeps up
8 with that data, and we know what that is.

9 Now, sometimes judges are asked to take judicial
10 notice of other judicial documents, and I have been
11 asked to take judicial notice of a document. And that
12 document is an order by another circuit court judge, and
13 I have taken judicial notice of that document. It is a
14 finding, an order. And what I am going to do is, I'm
15 simply going to read it to you. And I'm going to
16 publish it to you, but I will tell you that I am taking
17 judicial notice. In other words, ladies and gentleman,
18 I tell you that this is an existing order. It is an
19 existing order in this county, and it is an order of
20 Judge Mullen, who is a colleague of mine, another
21 circuit court judge here. She is one of the two
22 resident judges here in the Fourteenth Circuit, and I am
23 taking judicial notice of Judge Mullen's order.

24 The caption or the title for this case is:

25 *State of South Carolina, County of*

1 Beaufort, in the Fourteenth Judicial Circuit.

2 Beaufort is in the Fourteenth Judicial Circuit.

3 In the Court of General Sessions.

4 Indictment Number 2012-GS-07-00573, 00579,
5 02588. The State of South Carolina versus
6 Kalvin Hunt, the Defendant. Finding of Not
7 Guilty by Reason of Insanity, Initial Order
8 of Commitment for a Period Not to Exceed
9 120 days.

10 This matter comes before me for trial
11 on December the 18th, 2014. The defendant is
12 charged with murder; assault and battery,
13 first degree; assault, beat or wound a police
14 officer while resisting arrest (times two);
15 hit and run; duties of driver involved in
16 accident with minor personal injury (times
17 six); grand larceny, value \$10,000.00 or
18 more.

19 The State is represented by Solicitor
20 Duffie Stone, and Defendant is represented
21 by Attorney Cory Fleming.

22 Both Prosecution and Defense waived a
23 jury trial, pursuant to Rule 14 of the South
24 Carolina Rules of Criminal Procedure, and
25 proceeded with a bench trial.

1 Pursuant to a previous order from
2 this Court, the South Carolina Department
3 of Mental Health, hereinafter, SCDMH, evaluated
4 Defendant's criminal responsibility and
5 capacity to conform conduct to the requirements
6 of the law on or about February the 24th, 2012,
7 (date of alleged offenses), pursuant to South
8 Carolina Code Annotated, Section 17-24-10
9 (1976) and M'Naughten.

10 In the evaluation report, the SCDMH
11 examiners found that Defendant, at the time
12 of the commissions of the acts charged, as
13 a result of mental disease or defect, lacked
14 the capacity to distinguish moral or legal
15 right from moral or legal wrong, or to recognize
16 the particular acts charged as morally or
17 legally wrong.

18 Without objection, this report was
19 entered into evidence, and a copy of the
20 report is attached hereto.

21 That is what the order says. I will not be going
22 through, nor will it be information provided, but was --
23 that's sufficient.

24 After reviewing all the evidence, I
25 find that, at the time of the commission of

1 the alleged offense, the defendant, as a
2 result of mental disease or defect, did not
3 have the capacity to distinguish moral or
4 legal right from moral or legal wrong.

5 Therefore, it is ordered that the
6 defendant is found not guilty by reason of
7 insanity of the charges.

8 It is further ordered, pursuant to
9 South Carolina Code Annotated, Section
10 17-24-40, the defendant is hereby committed
11 to a facility designated by South Carolina
12 Department of Mental Health for a period of
13 hospitalization not to exceed 120 days.

14 During that time, South Carolina
15 Department of Mental Health shall examine
16 Defendant to determine Defendant's need for
17 continued hospitalization, and provide such
18 treatment as is beneficial and necessary,
19 pursuant to the standards set forth in
20 South Carolina Code Annotated, Section
21 44-17-580. The South Carolina Department
22 of Mental Health shall make a report of
23 its finding to the Chief Administrative
24 Judge of this Judicial Circuit, the clerk
25 of court for filing, the defendant's attorney,

1 and the solicitor.

2 Thereafter, the Chief Administrative
3 Judge shall conduct a hearing to determine
4 Defendant's ongoing custody status.

5 It is further ordered that the defendant
6 shall immediately be taken into custody by
7 the Sheriff, and the Sheriff's Office is hereby
8 authorized and required to transport Defendant
9 to the facility designated by the South Carolina
10 Department of Mental Health, following
11 confirmation that a bed is available.

12 Filing, Service, and Transmittal of this
13 Order:

14 It is the responsibility of the Solicitor
15 to file and serve this order as outlined
16 herein. After being signed by the Court, the
17 original order must be immediately filed with
18 the clerk of court, and a certified copy
19 served upon the opposing party.

20 Further, within five business days, a
21 certified copy of this order must be served
22 upon the examining agency at the address
23 listed below. To expedite the agency's ability
24 to implement this order and prepare for legal
25 proceedings, the Solicitor is instructed to

1 immediately contact the examining agency to
2 advise of the issuance of this order and
3 forthcoming service upon the agency.

4 Information for the Service of Order
5 on Agency:

6 Department of Mental Health
7 Forensic Evaluations Service, Paralegal,
8 South Carolina Department of Mental Health,
9 CBHS Forensic Center, 7901 Pharaoh Road,
10 Columbia, South Carolina, 29203-3220.

11 Phone number: 803-935-5540, phone.

12 803-935-5544, fax. Email:

13 fes-paralegal@scdmh.org.

14 It is so ordered.

15 The date: 12-18-14. Carmen T. Mullen,
16 Presiding Judge, Fourteenth Judicial Circuit.

17 Solicitor's name: Duffie Stone,

18 Telephone 843-255-5893. Email:

19 ldelahunty@bcgov.net.

20 Defense Counsel: Cory Fleming.

21 Telephone: 843-986-6379. Email:

22 cory@mossandkuhn.com.

23 SCCA 220(a). And then, (03/2013).

24 That is the order of Judge Mullen. I have taken
25 judicial notice, ladies and gentleman, that, that is, in

1 fact, Judge Mullen's order, and have now published that
2 to you.

3 Call your next witness, please.

4 MR. HOYLE: Thank you, your Honor, at this time,
5 Plaintiff calls, by videotaped deposition, Deborah
6 Meaut.

7 THE COURT: Will it be on all the monitors?

8 MR. HOYLE: It should be.

9 THE COURT: Okay.

10 DVD OF VIDEOTAPED DEPOSITION OF

11 DEBORAH MEAUT PLAYING.

12 END PLAYING OF DVD OF VIDEOTAPED

13 DEPOSITION OF DEBORAH MEAUT.

14 ITEM IDENTIFIED AS DVD OF VIDEOTAPED

15 DEPOSITION OF DEBORAH MEAUT

16 MARKED COURT'S EXHIBIT NUMBER 14

17 RECEIVED BY THE COURT.

18 MR. HOYLE: Your Honor, thus ends the deposition by
19 videotape of Deborah Meaut.

20 BY THE COURT:

21 THE COURT: All right. Very well. Call your next
22 witness, please.

23 MR. HOYLE: Your Honor, at this time, Plaintiff
24 calls Rebecca Delaney to the stand.

25 THE COURT: Yes, ma'am. Please come forward.

1 MADAM CLERK: Place your left hand on the Bible,
2 and raise your right. Do you solemnly swear or affirm
3 that the testimony you give this Court in this case
4 shall be the truth, so help you God?

5 REBECCA ANN DELANEY: I do.

6 THE COURT: Okay. You may have a seat.

7 MADAM CLERK: And please state your full name, for
8 the record, and spell your last name.

9 REBECCA ANN DELANEY: Rebecca Ann Delaney,
10 D/e/l/a/n/e/y.

11 THE COURT: Ladies and gentlemen, I tell you,
12 before we begin this testimony, we're going to take a
13 very short break. I'm going to ask you to just step to
14 your jury room. Do not discuss this matter or allow
15 anyone to discuss it with you. We're going to take
16 about ten minutes, ten minutes, and that's all. Please
17 step to your jury room.

18 JURORS LEAVE COURTROOM 3:27 P.M.

19 BAILIFF: Jury is clear, your Honor.

20 THE COURT: Thank you so much. Counsel, I asked
21 the jury to leave, really, for two reasons. Number one,
22 I wanted you to have a minute to sit there, to be quite
23 frank with you. And number two, I wanted to give -- I
24 wanted to have an opportunity just to chat with you for
25 a moment before your testimony. And then, Counsel, if

1 you have any concerns, additions, or exceptions, I want
2 you to certainly be free to raise that.

3 The first thing I really wanted you to do is, I
4 wanted you to have just a moment just to sit there.

5 REBECCA ANN DELANEY: And gather my thoughts?

6 THE COURT: Well, just to sit in that spot.

7 REBECCA ANN DELANEY: Okay.

8 THE COURT: I don't know that -- you may have sat
9 in before, but I don't know that you've sat in with the
10 jury present.

11 REBECCA ANN DELANEY: No, I haven't.

12 THE COURT: I wanted you to have an opportunity to
13 do that. And the other piece of this that I want to
14 just discuss with you very, very briefly.

15 You all can sit down.

16 Understanding that, to a certain extent, I'm asking
17 you to do the impossible, and it's appropriate to
18 testify. You certainly have every right to testify.
19 And this jury must be able to make it's mind up, and
20 this jury must be able to do their work, free from, I
21 think the case law calls it, passion and prejudice. And
22 so, I'm going to ask you to do the impossible. I'm
23 going to have to ask you, as much as you can, to try to
24 keep your heart in check and your emotions in check, as
25 impossible as that is.

1 REBECCA ANN DELANEY: Okay.

2 THE COURT: As much as you can.

3 REBECCA ANN DELANEY: Um-hmm.

4 THE COURT: Having said that, this is not a
5 marathon. If you need to take a break, if you just need
6 to take a break, I want you to feel very comfortable.
7 You can tell your lawyer, or you can tell me, I need to
8 take a break.

9 REBECCA ANN DELANEY: Okay.

10 THE COURT: We can take a little minute, because
11 that's absolutely okay. All right. So, with all of --
12 yeah, go ahead. Go ahead, because as much as this jury
13 can, I need the jury to be able to make its decision --

14 REBECCA ANN DELANEY: Okay.

15 THE COURT: -- based on the cold, hard facts.
16 Yeah.

17 REBECCA ANN DELANEY: All right.

18 THE COURT: I get it. I get it. And I ask you to
19 just do the best you can do.

20 REBECCA ANN DELANEY: Okay.

21 THE COURT: I ask you to be mindful that you are
22 not captive, and if you need to take a break, just say,
23 Judge, you all, I need to take a little break. It's
24 okay. All right?

25 REBECCA ANN DELANEY: Okay.

1 THE COURT: All right. Any addition or exceptions
2 from the Plaintiff?

3 MR. HOYLE: None by the Plaintiff, your Honor.

4 THE COURT: From the Defense?

5 MR. MACKELCAN: None, your Honor.

6 THE COURT: Very well. All right.

7 REBECCA ANN DELANEY: Okay. I'm ready.

8 THE COURT: Bring them around. Grab you a tissue.
9 Make sure you can get your water. And tell the jury,
10 when they are ready, we are ready.

11 MR. HOYLE: Judge, can we go ahead and move it into
12 evidence just so that we have it in?

13 THE COURT: Sure.

14 MR. HOYLE: Thank you. I'm going to go ahead and
15 give this to you. He's not going to object to them.
16 Okay?

17 REBECCA ANN DELANEY: Okay.

18 MR. HOYLE: Okay.

19 THE COURT: Okay, this -- okay. Mr. Lovell's here.
20 Go ahead and put the in evidence when we thought to do
21 that. Let's do that now. Mr. Lovell, okay? You all
22 want to object to these photos?

23 MR. LOVELL: No objection.

24 THE COURT: And they are Plaintiff's exhibits?

25 MR. HOYLE: They're Plaintiff's 20 -- Becky, what

1 number does it have on the front?

2 REBECCA ANN DELANEY: PL 26.

3 MR. HOYLE: 26.

4 ITEM IDENTIFIED AS FAMILY PHOTOGRAPHS

5 MARKED PLAINTIFF'S EXHIBIT NUMBER 26,

6 ADMITTED AS EVIDENCE.

7 THE COURT: Ms. Delaney, turn those photos until
8 you're called to look at them.

9 REBECCA ANN DELANEY: All right.

10 MR. HOYLE: And I'm serious, as the Judge told you,
11 if it gets too hard, you let her know, you let me know,
12 you let anybody know. We'll do whatever we can.

13 REBECCA ANN DELANEY: Okay.

14 MR. HOYLE: And it's going to be as short, as short
15 as I can make it. Okay?

16 REBECCA ANN DELANEY: Okay.

17 THE COURT: We can't wait. We will watch that,
18 now. We'll watch the genius, brilliant Mr. Hoyle be
19 short.

20 MR. HOYLE: Be short and to the point. I'm not
21 going to point a stick at you or jab my finger at you.

22 THE COURT: I'm going to tell you what, you almost
23 infected the brilliant and marvelous Mr. Lovell.

24 MR. LOVELL: Thank you for the compliment. Not
25 justified, though.

1 THE COURT: Yes.

2 REBECCA ANN DELANEY: Okay.

3 MR. HOYLE: You're going to be fine. You're going
4 to be fine.

5 REBECCA ANN DELANEY: Okay.

6 THE COURT: Wonderful.

7 MR. HOYLE: You're going to order fine.

8 REBECCA ANN DELANEY: Okay.

9 THE COURT: All right. And they're back.

10 REBECCA ANN DELANEY: Okay.

11 BAILIFF: Jury is entering the courtroom, your
12 Honor.

13 JURORS ENTER COURTROOM 3:39 P.M.

14 THE COURT: All right. Thank you, ladies and
15 gentlemen. All right. Mr. Hoyle, you may proceed.

16 MR. HOYLE: Thank you, your Honor.

17 REBECCA ANN DELANEY

18 DIRECT EXAMINATION, BY MR. HOYLE:

19 Q Becky, can you re-introduce yourself to the Court
20 and jury.

21 A Rebecca Ann Delaney, D/e/l/a/n/e/y.

22 Q And Ms. Delaney, where are you from?

23 A Parkersburg, West Virginia.

24 Q How long have you lived up there at Parkersburg?

25 A All my life, 54 years.

1 Q And where, specifically, in Parkersburg, West
2 Virginia do you reside today?

3 A 2408 Highland Road.

4 Q And how long have you lived in that home on
5 Highland Road?

6 A Well, I was born there. Well, not -- not there,
7 but yeah. And well, here lately, about since 2004 to
8 now.

9 Q This is the family home?

10 A Yes.

11 Q Tell us a little bit about your background. I take
12 it you were born in Parkersburg.

13 A Yes.

14 Q And you grew up there.

15 A Yes.

16 Q Okay. Tell us about your childhood. Did you have
17 siblings? Who were your parents?

18 A Yes, I have -- I have one sister and two older
19 brothers. Everybody's older than me.

20 Q All right. And what'd your parents do for a
21 living?

22 A They had a steak house.

23 Q What was the name of the steak house?

24 A Dewitt's Stake House on 7th Street.

25 Q And that family business, did you actually work in

1 the business?

2 A Oh, yes.

3 Q Tell us a little bit about it.

4 A Well, they'd start me out doing little things, like
5 helping Dad, you know, prep work and stuff like that.

6 And as the years go by, you know, you're into just about
7 everything. You have the waitressing and cooking,
8 dishwashing, you know, all kinds of stuff. I did
9 everything. I even bartended for awhile.

10 Q Okay.

11 A Um-hmm.

12 Q A little bit of everything in that family business.

13 A Um-hmm.

14 Q Is that yes?

15 A Yes. I'm sorry.

16 Q Tell us a little bit about your education. Where
17 did you go to school?

18 A Parkersburg South High School.

19 Q And did you start dating a gentleman while you were
20 in high school?

21 A Yes.

22 Q Tell us his name.

23 A Ronald Douglas Miller.

24 Q And how much -- what was the age difference between
25 you and Mr. Miller?

1 A He was born in December of '60, and I was born in
2 March of '61.

3 Q So, you all were roughly the same age?

4 A Yeah.

5 Q And I never ask a lady her age, but it may be
6 important later. How old are you?

7 A Fifty-four.

8 Q You and Mr. Miller were spending time together in
9 high school. Did you and Mr. Miller end up having and
10 children together?

11 A Yes.

12 Q How many children did you and Mr. Miller have?

13 A Two.

14 Q And tell us your oldest child.

15 A Christopher Douglas Miller.

16 Q And when was Chris born?

17 A April 10, 1979.

18 Q And Chris is your oldest, and he was born in
19 Parkersburg?

20 A Yes.

21 Q And Doug was his father.

22 A Yes.

23 Q Okay. And how old were you when that happened?

24 A 18.

25 Q And where were you living with Christopher was

1 born?

2 A 1912 Market Street.

3 Q There in Parkersburg?

4 A Yes.

5 Q Okay. And were you working?

6 A Not when I was pregnant, no.

7 Q Okay. Okay. A couple years later, did you end up
8 having another child?

9 A Yes.

10 Q Okay. And what was his name?

11 A Justin Nicholas Miller.

12 Q And when was Justin born?

13 A August 9, 1983.

14 Q And when Justin was born, where were you living?

15 A Well, when he was born, we moved to a trailer --

16 COURT REPORTER: I'm so sorry. I need you to speak
17 up a little.

18 A When he was born, we moved to a trailer in
19 Parkersburg, in a trailer court. I can't remember the
20 name of it. Sorry.

21 Q That's okay.

22 A Hillcrest or something.

23 Q That's okay.

24 A I don't know.

25 Q That's okay. We're just trying to walk through a

1 story.

2 A Okay.

3 Q And when Justin was born, were you and Doug
4 married?

5 A Oh, yes.

6 Q Okay. You all had been married for a couple years.

7 A Yeah.

8 Q Since before Chris was born.

9 A Right.

10 Q Okay. And we've gone ahead and you've got some
11 photographs there in front of you.

12 A Yes, sir.

13 Q And these are Exhibit 26, which were moved into
14 evidence while the jury was out of the room. We'll just
15 go through these one at a time, as I kind of walk
16 through a time line, Becky.

17 What are we looking at here on the very first
18 photograph that's contained within Exhibit 26?

19 A This is me, Christopher, with the red hair; and
20 Justin when he was a baby, probably six weeks. He was
21 big.

22 Q He was a big boy.

23 A He was a big, yeah.

24 Q Do you remember how big he was when he was born?

25 A Yeah. He was twenty-two-and-a-half inches long, so

1 almost two foot tall.

2 Q When he was born?

3 A Yeah. Yeah. Yeah. Plus, he was eight pounds,
4 twelve ounces.

5 Q He was a big boy.

6 A Yes.

7 Q And when Justin's little, and you and Doug are
8 still married, are you working outside the home, or what
9 are you doing?

10 A Well, I worked at Shoney's for a little bit, but he
11 worked in a cemetery, digging graves.

12 Q You're talking about --

13 A And I did a lot of work for Mom and Dad, you know,
14 off and on. It was like, you know, whenever they needed
15 a waitress or a cook or, you know. And sometimes I
16 would do like a part-time Saturday, you know, when it
17 was busy and they needed me. Yeah.

18 Q So, it sounds like Doug was out there working in a
19 cemetery, and you were working some waitressing work,
20 taking care of the kids.

21 A Yes.

22 Q Okay. At some point in time in your marriage with
23 Doug Miller, did circumstances change with respect to
24 your relationship?

25 A Yes. Yes. We divorced when -- let's see, '89.

1 Q 1989.

2 A Yeah.

3 Q Okay. So, Justin would have been how old when that
4 divorce took place?

5 A Six, going on seven.

6 Q About six, going on seven.

7 A Yeah.

8 Q And let's look at the next page of the photographs
9 that we have in front of us. Who are the two children
10 in this picture?

11 A Christopher in the red, and Justin in the blue.
12 And that's me in the butterfly chair at my house.

13 Q This is the house we've been talking about?

14 A Yeah.

15 Q The family home on Highlands Road?

16 A Yeah.

17 Q Okay. And how old are the boys in this picture?

18 A Let's see. Christopher -- Chris is about four and
19 a half. And Justin, I think, five months. Something
20 like that. He's sitting up, so.

21 Q He's got a smile on his face.

22 A Yeah, he always did.

23 Q So, this is a photograph from before the divorce.

24 A Oh, yeah.

25 Q Let's look at the next photograph. What's this a

1 picture of, Becky?

2 A Christmas morning, 1988.

3 Q And was Santa Claus good to the boys that year?

4 A Yes. Fire trucks.

5 Q And is that Justin there in this photograph?

6 A Yes.

7 Q And in the next photograph in our sequence, when
8 was this taken?

9 A That was taken on Easter. It was really warm that
10 day, and we had a big picnic. He was four, something
11 like that. It was a big family gathering. It's not
12 that -- he always wore hats, always. He would steal
13 your hat. If you were around him, he would take your
14 hat. You know, and he liked that one.

15 Q I don't want to dwell on unpleasant things, but I
16 know that, if I don't ask the questions, someone else
17 might.

18 A Yeah, it's okay.

19 Q What was the reason that you and Mr. Miller got a
20 divorce?

21 A His drinking.

22 Q And when you all got divorced, I assume you all had
23 to go to the courthouse?

24 A Yeah, but we got the papers ourself and did it, you
25 know. We went to the library and got the papers, and

1 filled them out, and then, sent them in.

2 Q And in the paperwork that got filled out, how was
3 custody going to be shared between the two boys, between
4 Chris and Justin, and you and Doug?

5 A We had -- we had joint custody, but -- but I took
6 them with me for awhile. And that's -- that's maybe a
7 year.

8 COURT REPORTER: I'm sorry, I took them with me for
9 awhile?

10 A Yeah, awhile. A year. Maybe a year. Close to a
11 year, I'm thinking. Yeah.

12 Q And during that year, Becky, that you -- this is
13 after your divorce to Doug, and you're living with the
14 boys, where are you and the boys living? You all living
15 in a good neighborhood, a bad neighborhood?

16 A Well, at first, we lived in an apartment on Elder
17 Street, which was just a one-bedroom efficiency, and I
18 put bunk beds in their -- their bed, you know, on my bed
19 on one side. And I thought it was too small. So, we
20 moved to a complex, apartment complex, on 1927 Gladstone
21 Street.

22 Q And what kind of apartment complex was that?

23 A Low income.

24 Q Did you have problems raising two boys there?

25 A Yeah. They -- they had -- see, they're -- the boys

1 have problems communicating. They -- they're on the
2 autism spectrum, you know. And they, well, were -- and
3 they had trouble with other, you know, communicating
4 with other kids. And Chris was getting -- they were
5 getting into fights, you know, and it wasn't really a
6 good neighborhood. But I couldn't afford anything else,
7 you know, and but I would let Doug see them. And he
8 would see them on the weekend.

9 And with the girl he was seeing, their kids would
10 walk Chris home, because they were afraid them other
11 kids would jump on him, and they would sit in the living
12 room and play for awhile. And then, sometimes the boys
13 would go down there, because there's just -- Doug and
14 his girlfriend live down -- just down the street, and
15 they played a lot. They were all like brothers. You
16 know, they were all protective.

17 Q At some point in time, did Doug get re-married?

18 A Yes. He -- he married Randa LeDeaux. She was a
19 good friend of ours.

20 Q And did you let Justin and Christopher go live with
21 Doug and Randa?

22 A Yes. Here's how it went.

23 Q All right.

24 A My dad wanted to move to Florida to live with my
25 brother, and my sister lived down there, too. So, Doug

1 and Randa -- this was after I was living down there with
2 the boys -- took over the house.

3 Q Can you talk up just a little bit.

4 A Oh. Took over the house, and they got married
5 February 14th. And they all -- it's a big house.

6 Q It is the house on Highland Road.

7 A Yes. It's got, gosh, one, two, three, four -- four
8 bedrooms, three bathrooms, and a full basement, so,
9 yeah, they all lived together up there.

10 Q All right. Let me just stop you right there.

11 A Okay.

12 Q So, the house that you grew up in, that your daddy
13 built, --

14 A Yes.

15 Q -- he decides to move to Florida.

16 A Yes.

17 Q And he allows Doug and his new wife to purchase the
18 house, as long as they're paying the mortgage. And
19 then, you let Justin and Chris go leave there.

20 A And if the boys lived there. See, that's the
21 thing, he wanted the house to go to the boys, you see?
22 And that was the opportunity for Doug and Randa to do
23 that, and we was all together.

24 Q And why did you move out? Why did you let the boys
25 leave your house and go spend most of the nights at the

1 house of your ex-husband and his new wife?

2 A Well, we were all friends, you know. That's -- I
3 mean, I could come and see them anytime I wanted, and I
4 had to work. I had to work, so it was more like a --
5 they were at school all day. And then, instead of him
6 coming and getting them on the weekend, they just stayed
7 there. You know what I'm saying? And then, while I
8 worked, you know, at -- at night, I would have had to
9 got a babysitter. You understand?

10 Q It just made sense.

11 A Right, yeah.

12 Q It worked for you and your family.

13 A It did.

14 Q Okay. And you never felt like you were a bad
15 mother or anything because you had let your kids go live
16 with this ex-husband.

17 A Absolutely not.

18 Q Okay. All right. Let's kind of keep walking
19 through things. During this time frame that the kids,
20 the boys, Justin and Chris, are living with Doug and
21 Randa, are you still seeing them?

22 A Oh, yeah.

23 Q Still going over there to the house you grew up in?

24 A Yes. Matter of fact, I worked at Long John
25 Silver's, just, like, maybe a block away, and I would

1 walk up Broadway Extension, stop at the house, and then,
2 walk down to the apartment, because it was only, like,
3 across from the park a couple of blocks away. Yeah.

4 So, I saw them all the time.

5 Q Saw them all the time.

6 A Yes.

7 Q Were you going to school functions?

8 A Yeah. There were some things like Christmas shows
9 and stuff like that.

10 Q Taking the kids to the doctor?

11 A Games. Yeah. Doctor, yeah, definitely, because
12 Justin got really -- well, that was before. Justin got
13 really sick with meningitis when I had him, and that was
14 before they moved in with Doug and Randa. And I was
15 working there, too. I was working at -- flipping eggs
16 for -- at the old folk's home. That's what I did.

17 COURT REPORTER: Flipping eggs where?

18 A Flipping eggs at the -- like, it's an old folk's
19 home. Yeah. Like a -- a plaza for the elderly. I'll
20 be nice. Okay.

21 Q Now, at some point in time, did you give birth to a
22 third son?

23 A Yes.

24 Q And what's his name?

25 A Donovan Alexander Delaney.

1 Q And when was Delaney -- or when was Donovan born?

2 A He was born on June 9, 1991.

3 Q Okay. Let's go to the next photograph in our
4 exhibit. Tell us who are in this photograph.

5 A Okay. That's Donovan. I don't know, he was
6 probably a couple weeks. And Christopher in the
7 stripes, and Justin there to the side. They had come
8 over to see the new baby.

9 Q And we'll just kind of go through a few photographs
10 here.

11 A Okay.

12 Q Kind of get the kids, at least Justin and Chris, up
13 to age 18.

14 A All right. Yeah.

15 Q Let's look at this next photograph.

16 A Oh, yeah.

17 Q Did you take them to some sort of bar? What is
18 this?

19 A No, that's the family room. Well, that's when they
20 lived there with Doug and Randa. And you go downstairs,
21 down the steps that way, and around, and there's like
22 the entertainment area right there, and there's a pool
23 table right beside it. And then, you walk in, and
24 there's Chris' -- Chris' bedroom, and with a bathroom.
25 And it's got sliders on the back. And then, there's

1 sliders on this side when you go around that way.
2 There's sliding doors that way, out to the patio and the
3 back yard. Oh, there's also a laundry room behind it.
4 Q How old are the boys, your two oldest boys, in this
5 picture? How old are Chris and Justin?
6 A I'm going to say eight and ten. Could be eight and
7 ten. That's just an estimate.
8 Q And we actually spent some time, you and me, going
9 through the family photo book to cull through the
10 photographs that we have in Exhibit 26.
11 A Yeah.
12 Q And let's just turn to the next page. Who are we
13 looking at here?
14 A That's Justin right after he had his feet operated
15 on, and he has the leg braces like I have.
16 Q All right. Let me stop you right there.
17 A Okay.
18 Q You told us earlier, I think, about Chris and
19 Justin being diagnosed with being on the autism
20 spectrum.
21 A Yes.
22 Q Is Donovan also on the autism spectrum?
23 A Yes.
24 Q And it sounds like that Justin also had some other
25 disabilities.

1 A Yes, he had cerebral palsy.

2 Q And you told us that this photograph's right after
3 he had some sort of surgery or operation?

4 A Yes. They were trying to get him to walk a little
5 better, you know. With that -- with that disease, it's
6 a little bit of a gait, and a different gait, and he was
7 trying to fix that. But I don't know if it ever worked,
8 and he hated those braces, just like I hate mine, but
9 yeah.

10 Q You told us, I think I heard that you've got some
11 braces now.

12 A Um-hmm.

13 Q Do you have some physical limitations as far as
14 your ability?

15 A Yes. Yes. I have -- my left foot is paralyzed
16 from back surgery, and I was paralyzed from the waist
17 down, but it got better as time went by, and a lot of
18 physical therapy, and my foot doesn't move. I mean, it
19 moves -- I don't move it. The muscle in the front here
20 is -- is dead, atrophied. It's gone. And there's one
21 in the back that doesn't work. But I can feel my toes,
22 and that's the only reason I can walk, really, that and
23 the brace. But I can barefoot, inside, because I'm not
24 afraid of tripping over it, because I trip over it all
25 the time. That's how I broke my hip. But anyway.

1 Q Is this what's known as a drop foot?

2 A A drop foot, yes, but it won't go that way, either,
3 (indicating). And if you put anything on it without the
4 brace, it's just going to fall.

5 Q Going back to Justin and some of his challenges
6 that he experienced, how was he, as far as -- I hate
7 this term, and you know from my own personal experience
8 why I hate this term -- but how would you describe him
9 as functioning? How functioning was Justin?

10 A He had a hard time at school. I think it was the
11 people, you know, that he doesn't like -- he doesn't
12 like to be around a lot of people, and he didn't -- he
13 had a hard time getting along with the kids, you know.

14 But other than that, I mean, they're smart kids.
15 Always on the computer. And when he was home, he was --
16 I didn't have no problem. He was always happy. You
17 know, he was a very loud boy, very loud, you know. But
18 he did good on the computer, but as far as school, he
19 had to go through special school over on the other side
20 of town. I took him to it once in a while. When he
21 didn't have a ride, I would take him over there and pick
22 him up, and they would do, you know, standardized tests
23 and stuff like that, you know, but.

24 Q School was a challenge for him.

25 A Yes.

1 Q Socialization-type thing?

2 A Yes.

3 Q Let's look at the next photograph that we have in
4 Exhibit 26. What are we looking at here in this
5 photograph?

6 A Well, that's my sister, and Christopher in the
7 middle. Justin's on the end. And she's holding my son,
8 Donovan. He looks to be about one and a half.

9 Q All right. And how old -- we can do the math, but
10 how old do you think Justin is in this picture?

11 A Well, he was born in '83, and Donovan was born in
12 '91.

13 Q So, about 11?

14 A Yes.

15 Q Something like that.

16 A They had come to my apartment that day to
17 celebrate. Oh, wait a minute. He's turned two.

18 Q Donovan's turned two in that picture?

19 A Yeah, that's his birthday.

20 Q That was Donovan's second birthday, and his
21 brothers were there.

22 A Yeah. I just now realized that.

23 Q Okay. Let's look at the next picture, and tell us
24 who the people in this picture are.

25 A That's Donovan peeking out there on the bottom.

1 That's Justin on the left, Christopher in the middle,
2 and that's me. And I believe we had just got back from
3 Florida, me and Christopher and Donovan.

4 Q And how old do you think Justin is in this picture?

5 A He was 14.

6 Q Okay, so he's --

7 A Going on 14.

8 Q Going on -- 13, going on 14?

9 A Yes.

10 Q And was he really a Detroit Lions fan?

11 A Yeah.

12 Q So, he was loud and boisterous and funny, and a
13 Lions fan.

14 A Yeah, see him smiling. He was always smiling.

15 Q And let's go to the next photograph. I think when
16 you enter the State of West Virginia, the welcome sign
17 says *Wild and Wonderful*.

18 A Yeah.

19 Q What wild and wonderful view are we looking at?

20 A That's New River Gorge Bridge.

21 Q Okay. And how old are the boys in this picture?

22 A I'm going to say Christopher was 20, and Justin was
23 probably 16, and Donovan looks about -- I don't know.
24 He's hard to tell, because he's had a little -- yeah,
25 he's has -- he only has one kidney. He didn't grow very

1 tall. You know, he's gosh, I could say six or seven,
2 but he might be older than that. I don't know.

3 Q But this was a family outing.

4 A Yeah, right, yeah. We went to the bridge day,
5 where they jump off the bridge and parachuting and
6 bungee jumping. And me and Peg drove them up there. Me
7 and Peg and the boys drove up there, yeah.

8 Q And I think you said this, but Donovan's also on
9 the autism spectrum.

10 A Yes. Donovan has a lot of problems. He has double
11 idiopathic scoliosis.

12 Q And Donovan's always lived with you?

13 A Oh, yeah. Always.

14 Q So, just in case people are lost or confused, or
15 someone else wants to ask you questions about it, at
16 this time this picture was taken, Chris is 20, and
17 Justin's about 16. They were still living with Doug and
18 Randa, primarily.

19 A Yeah, at that -- well, it was Doug. I don't know
20 who he was --

21 Q Randa might be gone at this point.

22 A I think so.

23 Q Okay. They're still living with their dad, but
24 you're obviously still seeing them, still involved in
25 their lives.

1 A Oh, yeah. Yes, sir.

2 Q Let's just kind of -- you okay to keep going?

3 A Yes. I'm fine.

4 Q Let's briefly go through those remaining
5 photographs, most of the remaining photographs; then,
6 we'll talk about Justin and Christopher as adults.
7 Okay?

8 A Okay.

9 Q Where was this picture taken?

10 A This picture was taken at Chi-Chi's Mexican
11 Restaurant. I used to work there, and we decided to go
12 up and eat, because me and Chris and Donovan were going
13 to move to Florida. Justin didn't want to go, but
14 Christopher wanted to experience a different school and
15 what it was like down there, and he went to Cypress Lake
16 High School, down there in Florida, in Fort Myers. And
17 Donovan went to -- I don't remember the name of the
18 school.

19 Q But Justin was going to stay up there in West
20 Virginia with his dad.

21 A Yes.

22 Q And Chris and Donovan, you actually all lived
23 together, down in Florida for a little period of time.

24 A Yes. My dad was still down there, and so was
25 Peggy, so.

1 Q Okay. And then, this next photograph, is this back
2 at the family home on Highlands Road?

3 A Yes.

4 Q And are these --

5 A They're saying goodbye.

6 Q Oh, okay. And let's look at this photograph. What
7 is this a picture of?

8 A We -- we saw this Budweiser McDonald's race car on
9 the way down there, and we had to stop -- we had to stop
10 and take a picture.

11 Q I understand. Let's keep kind of going through
12 these.

13 A Yeah, that's -- that's me and Donovan and
14 Christopher.

15 Q And who's in this picture?

16 A That's Justin at Chi-Chi's.

17 Q All right. And then, in the next photograph.

18 A Oh, okay. These are Randa's boys, I believe, Cody
19 and Zach.

20 Q So, kind of sounds like this was -- I mean this in
21 a loving, respectful way, Becky -- this wasn't some
22 1950s-type family. This was a modern family that you
23 and Doug and Randa --

24 A Yeah. Yes.

25 Q -- and Justin were all a part of.

1 A Yes.

2 Q Let's go to the graduation picture.

3 A Um-hmm. Yeah. There it is.

4 Q What are we looking at here?

5 A All right. This is Christopher's graduation.

6 That's Justin, and that's me. I was sick with back
7 trouble. That was right -- right before my major back
8 surgery, one of them.

9 Q How many back surgeries have you had?

10 A Altogether?

11 Q Yes, ma'am.

12 A Five.

13 Q Subsequently, did Justin also graduate from high
14 school?

15 A No, he did not.

16 Q So, Christopher was able to graduate. And Justin,
17 for whatever reasons, wasn't able to. Okay. Once
18 Justin is 18, over the age of 18, and is there ever a
19 period of time in which he and you and Christopher and
20 Donovan are all living together?

21 A What? Could you repeat that, please.

22 Q Sure. Once Justin's an adult, is there ever a
23 period of time when he's actually living with you?

24 A Yes. Okay. I lived -- I lived right down -- a
25 couple blocks down the road on Broadway. And I had had

1 these back surgeries, these three back surgeries, and I
2 was in physical therapy, in a rehab center for a month,
3 and they had come down to see me a lot. And one day,
4 Doug wanted to know if I would take over the house while
5 he went to Myrtle Beach.

6 Q All right. Let me stop you right there. The
7 house, we're talking about the house on Highland Road.

8 A Yeah, my home. Yeah, my home.

9 Q All right. Family home.

10 A Family home.

11 Q Okay. So, Doug's going to come down here to South
12 Carolina, and he wants you to purchase the house on
13 Highlands. How much did you have to pay him for the
14 house? Do you remember?

15 A I -- I don't remember, but I know that we went down
16 to the bank and signed papers. And Randa -- Randa was
17 even still on it for some reason. I don't know if they
18 just didn't take care of it, but it was March, and we
19 just went down to the bank, and I put my name on it, and
20 that's how that went.

21 Q That's how that went. Okay. And so, you moved
22 back into the house that you grew up in, on Highlands
23 Road.

24 A Yeah.

25 Q The house that you live in now.

1 A Yes.

2 Q And what year do you think that was?

3 A It was 2004.

4 Q 2004. And were are Christopher and Justin living
5 at that time?

6 A With me.

7 Q So, the family's back together.

8 A Yeah. Yeah.

9 Q And with Donovan also?

10 A Yes, Donovan lived with us, too.

11 MR. HOYLE: Your Honor, may we take a break?

12 A I -- I'm -- it's all right.

13 Q You're okay?

14 A Yeah.

15 Q What are we looking at in this photograph?

16 A Well, this one's a little messed up, but this is
17 Chris and Justin at my house when I was sick from the
18 back surgeries, for Christmas. So, that would have been
19 -- I had it in June. So, six months after my surgery.

20 Q I see a Christmas tree in the foreground.

21 A Yeah. That was a small house.

22 Q During the time frame that you and Justin and
23 Christopher and Donovan are all living together,
24 everybody's getting along.

25 A Yes.

1 Q Everybody's happy.

2 A Yes.

3 Q All right. And I believe you mentioned that Doug's
4 moved down, I think you said, to Myrtle Beach?

5 A Yeah, that's -- that's what he told me, yeah.

6 Q And at some point, did Doug come back up to West
7 Virginia?

8 A Yeah. I hadn't heard from him in awhile. I mean,
9 it was like, eight months. And then, one day, he called
10 me and said he wanted the boys to come down for
11 vacation. I said, sure; I'm just glad you finally
12 called; and come and get them, if you want. I said,
13 sure; I don't care; they'd love to see the beach.
14 Because I don't think Justin ever saw the beach, but I
15 know Chris didn't when he lived with me.

16 Q You don't think at that point in time Justin had
17 ever seen the Atlantic Ocean.

18 A I don't think so.

19 Q So, you thought it'd be a good opportunity for them
20 to come to South Carolina.

21 A Right.

22 Q And you thought it was going to be for a vacation.

23 A That's what he told me.

24 Q Did he bring the boys back?

25 A No.

1 Q Now, even though Chris and Justin were over the age
2 of 18, given their disabilities --

3 A Oh, yeah, they were 21 and 25. They were way over
4 18.

5 Q They were way over 18.

6 A Yeah.

7 Q But mentally, cognitively, were they well-
8 functioning adults?

9 A Yeah. Just cause you have that disability doesn't
10 mean you're stupid.

11 Q No, no. I understand.

12 A Yeah. I mean, you're -- you're -- you can
13 function; you just don't get along with society, and you
14 have trouble communicating. And it's not anything that
15 makes them childish. It's in their own way how they --
16 how they act and how they respond to things. You know?

17 Q How they respond to things. So, when Doug takes
18 the boys, does he tell you an address in South Carolina?

19 A All I had was Pinetops Drive, Conway, South
20 Carolina, and I don't even know if he gave me that. I
21 think his sister might have told me that.

22 Q And which sister told you that?

23 A Susan.

24 Q And she lives up there, in the Parkersburg area?

25 A Yeah, she lives in Ravenswood.

1 Q And what year does this happen?

2 A 2004, in October.

3 Q And at that point in time, you'd undergone a number
4 of back surgeries.

5 A Yes. I had two more. Wait. One more, and -- one
6 more.

7 Q After that?

8 A Yes.

9 Q How were you able to get along at that point in
10 time, in 2004, 2005?

11 A It was an on-and-off, wheelchair therapy. I've
12 been in a lot of physical therapy. I mean, I -- I spent
13 like, three days a week for awhile, and three more days
14 a week for a while. I had to learn to walk again. I
15 was paralyzed. And I had to learn to, you know, get
16 that feeling back in my legs. And then, I had to learn
17 how to, you know, mobilize and do things in the home,
18 you know, and every time I have a surgery.

19 Q And was there a lot of pain, physical pain,
20 associated with that?

21 A Yeah. I mean, the first time, I almost died. I
22 had staph infection in my spine, and they had sent me
23 home with -- on Vancomycin, and I lost a lot of blood
24 during every single surgery.

25 Q So, you were dealing with some significant health

1 issues, it sounds like.

2 A Yeah. And also, diabetic, and I have a bad heart
3 valve. I have mitral valve prolapse.

4 Q Now, in this 2004-2005 time frame, when Doug took
5 Chris and Justin down to South Carolina, were you able
6 to drive, or drive any great distance? Help me
7 understand that.

8 A I have a lot of back pain for like, a while, until
9 it started shooting down my leg, you know, until I
10 couldn't walk at all. Then, I mean, that lasts -- you
11 know, they don't do surgery just because you want them
12 to, you know. They -- it takes months, you know, for
13 them to decide, and set it up and, you know, things like
14 that. And then, when you do have it, there's a lot of
15 rehabilitation after that. And the one I had recent,
16 the last one, they put rods in my back, screws, and
17 cadaver vertebrae, and cages in between them. It was a
18 mess. But it's better now. Does that answer your
19 question? I kind of got carried away.

20 Q Sure. Sure.

21 A I'm sorry.

22 Q That's okay. You're not the first witness on that
23 witness stand to do that.

24 A Yeah, I got a little carried away. Yeah.

25 Q Now, sounds like you had a tough time physically

1 getting around.

2 A Oh, yeah. I went from wheelchair, to walker, cane,
3 and back to wheelchair, to walker, to cane a lot.

4 Q Let me just go ahead and ask you a question. So,
5 in 2004, when Doug brings -- comes to get Chris and
6 Justin, --

7 A Um-hmm.

8 Q -- and they're going to come down here to South
9 Carolina, --

10 A Um-hmm.

11 Q -- you were originally told it was a vacation.

12 A Yes.

13 Q Is that the last time you saw Justin while he was
14 still alive?

15 A Physically.

16 Q Physically.

17 A Not technologically.

18 Q But physically.

19 A Yes.

20 Q But technologically, were you able to communicate
21 with him and his brother through other means?

22 A Yes.

23 Q Once they came down here to South Carolina?

24 A Yes.

25 Q Now, at some point, did Doug himself get sick?

1 A Yes. I was talking to Christopher on the Internet,
2 and he said, Mom, Mom, we're coming up to Blackwater
3 Falls for the 4th of July. And I said, good, that's
4 great; you can stop and see me. And that's -- while
5 Justin's waving in the other room, hi, Mom, I'm coming
6 up. And I never heard from them. So, I called his
7 sister, Sue, and she had told me that Doug had had an
8 attack, and his chest attack, and they didn't know -- it
9 was lung cancer. He passed away May 5th of 2011.

10 Q Once Doug passed away in May 5th of 2011, were you
11 able to communicate on the Internet or electronically or
12 on the telephone or anything with Justin and
13 Christopher?

14 A No.

15 Q That communication just kind of stopped?

16 A Yes.

17 Q Why?

18 A It's not like I tried -- you know, I tried to find
19 out where they had moved to. I didn't know if they had
20 even -- I knew, because letters were coming back. I
21 didn't know where they went to. I didn't know where
22 they went. I knew they were with a half-aunt, but that
23 was taken -- and I knew there was an apartment that they
24 were living in, across from them when Doug was sick, but
25 I didn't know if they moved, or moved back in with the

1 aunt, or. Nobody told me, and I --

2 But I did talk to Sue, and she had told me, she
3 even send me pictures of them in their suits, going to
4 the church, you know, where they, you know, did work for
5 the children, you know, teaching them, you know, Bible
6 School and stuff like that. They wanted to be elders in
7 the church, and I have that picture somewhere of them.

8 Q It's the last page.

9 A Yeah, Sue sent me that. So, I knew they were in
10 good hands, you know, but I really didn't know their
11 address, and she wasn't going to give it to me. She got
12 mad at me.

13 Q Now, help me understand that. This is your ex-
14 husband's sister, who is not giving you the address.

15 A Yeah, both of them are half-sisters, yeah, Sue and
16 Jenny are half-sisters.

17 Q Well, let me just ask this. Was there some bad
18 blood there between you and these half-sisters?

19 A I didn't really do anything to them. I don't know
20 if they just -- I don't know why they wouldn't let me --
21 they thought I was going to take them back, I guess.
22 They probably just didn't want me to bring them home,
23 because -- I don't know.

24 Q Would you have wanted them to have been home?

25 A Yeah, I wanted them home. I even went to the

1 Social Security office, and they wouldn't give me their
2 address. They -- they're grown men, you know. They'll
3 come home when they want to. And I knew that they were
4 working at the church, but I didn't have the opportunity
5 to go down and search all over South Carolina to find
6 them. I would have, if I could have.

7 Q You weren't physically able to.

8 A No.

9 Q Didn't have the money for a private investigator.

10 A No.

11 Q And at the same time, you're caring for Donovan
12 during all of this.

13 A Yes.

14 Q And caring for yourself.

15 A Yes.

16 Q There is someone else we probably need to talk
17 about, just so the rest of the story makes sense. You
18 were married a second time after you got married to
19 Doug.

20 A Yes, yes. For ten years.

21 Q And that marriage, how did it end?

22 A Well, yeah, we -- we did divorce, but we have
23 grandchildren, two son -- two grandsons, you know, and
24 they would come up every weekend to visit. So, Troy
25 would bring them up to see me, and we didn't really tell

1 them we were divorced. And then, in February, his mom
2 was in a house fire.

3 Q Let me stop you right there.

4 A Okay.

5 Q February of 2012?

6 A February 2nd.

7 Q Troy, your second ex-husband's mother, is in some
8 sort of house fire.

9 A Yeah. She woke up and the house was on fire, and
10 she ran outside, and the neighbors threw blankets on
11 her, and they took her to Huntington Burn Unit..

12 Q And at this point in time, you and Troy, Troy Sams,
13 you're divorced.

14 A Yeah.

15 Q But are you helping Troy through this difficult
16 time?

17 A I had to -- I drove him to Huntington, I think it
18 was every other day. And she had like, seven surgeries,
19 skin grafts, you name it. It was horrible. It was
20 horrible.

21 Q Let me stop you right there. You're dealing with
22 one tragedy with your second ex-husband's mother.

23 Direct your attention to February 24, 2012.

24 A Okay.

25 Q How does that day begin?

1 A I -- I took Troy down to see him mom at the Burn
2 Unit in Huntington, in the Intensive Care Burn Unit. It
3 was like, she was burnt all over, 80 percent. I come --
4 we drove -- I drove him home. It was like, 5:00,
5 something like that, and I got in the shower, and Troy
6 ran in and handed me the phone.

7 Q What happened next?

8 A It was Stacy Earl Handlin, Jennifer's daughter.
9 Jennifer is Doug's half-sister, who was staying here
10 with the boys.

11 Q In Beaufort?

12 A Yeah.

13 Q And what did you learn from that phone call.

14 A I didn't believe her. I didn't believe her. I
15 mean, she was talking -- a fire truck, how could
16 someone, you know. I'm going, no way. By the time I
17 got out of the shower and my clothes on, my sister-in-
18 law and brother-in-law were at the door. They were Mike
19 and Kelly Taylor, Doug's sister. And then, I knew it
20 was real.

21 Q What happens next?

22 A We got in the car. Well, after they got me calmed
23 a little bit down, while I was calling Jenny and trying
24 to figure out what in the heck's going on, you know,
25 what -- she wouldn't let me talk to Christopher, you

1 know. I -- I know she was probably going through the
2 same thing I was, probably even worse, you know. Okay.
3 We try to go down there. We got in the car. Was it my
4 car? I don't remember. I don't remember the trip,
5 really. All I remember is, we hit a snow storm in the
6 mountains. This was February. You don't travel --

7 Q Yes, ma'am.

8 A -- Virginia, Blue Ridge Mountains, in February,
9 unless you've got good tires. So, we came back. I
10 called Jenny and told her that our tires were not going
11 to make it, so we turned around, came back. I believe
12 it was the next day, my brother sent me money, and we
13 went to WalMart and got new tires, and it was taking him
14 forever, I remember that, cause I was freaking out on
15 the bench outside, waiting on them tires, and we drove
16 straight down here.

17 Q Was that the first time you'd ever come to South
18 Carolina?

19 A Well, I've drove through it to Florida, but I've
20 never stopped.

21 Q So, you make your way here to Beaufort.

22 A Yeah. Yes.

23 Q And you get here. And what happens when you get to
24 Beaufort?

25 A Don't remember a whole lot about it. I mean, what

1 time. Me and my -- my sister flew up here. I don't
2 know if she flew or drove -- drove. I don't know, but
3 my sister came up here. We got -- she got us a hotel,
4 and -- what do you want to know next? They wouldn't --
5 Jennifer wouldn't let me come over there and find out
6 what was going on. Well, my sister saw, in the *Savannah*
7 *Times*, that my son was having a funeral.

8 Q You didn't even know from Ms. Earl when the funeral
9 was.

10 A No. I went down to get his body. That's why I
11 went. And then, I was informed --

12 Q You wanted to take him.

13 A Yeah. And then, I was informed that there was a
14 funeral, so. I went down -- I went across the street to
15 the courthouse, and I thought, what am I going to do.
16 So, I called Ms. Castleberry. Well, I had talked to her
17 before that, too, and I asked her, what do I do, and she
18 helped me get the execu -- executive [sic] of the estate
19 that the judge awarded me, then. Because I didn't -- I
20 thought I had to go to the coroner's office. I didn't
21 know. I'm unfamiliar with it. That's why I asked
22 Crystal about it. I got her to help me.

23 Q Because you wanted to be the personal
24 representative of the estate.

25 A I am the personal representative. I am his mother,

1 and he was not married. He didn't have any children.
2 His father's deceased.

3 Q And did you end up going to the funeral?

4 A Well, I got -- my sister and I went to the funeral
5 home to find out what was going on; why there was a
6 funeral. I said, I would like to have a moment with my
7 son, and they said, well, he's already been cremated.
8 And I said, what do you mean, he's already been
9 cremated? And she said, well, some woman came in with
10 some papers. My sister went off. She said, how can you
11 do that; we're his family; I don't know who ordered
12 these papers, you know, this cremation. And I said,
13 well, can I have a moment with his ashes? I was
14 hysterical. I had been that way since it happened,
15 because there's so many things that I don't remember of
16 what happened, I mean, you know, but I do remember that.
17 I do remember that.

18 Q And you're obviously dealing with a lot in that
19 situation.

20 A Yeah. I mean, I could barely walk. They had to
21 carry me out of there. I'm going, my son's been
22 cremated without my permission. She said, well, he was
23 sent to the family. I said -- I pulled out my papers
24 out of my pocketbook; I said, I'm the family.

25 Q Okay.

1 A Yeah, I'm family. I don't know how this happened.

2 Q If you want to --

3 A Oh, God. Excuse me.

4 Q That's all right. So, this was a challenging time.

5 A Very. As is now.

6 Q Tell us, in your own words, if you can, what you've
7 been dealing with emotionally and as a mother since that
8 fateful day in February?

9 A I've had some emotional problems. I've been going
10 to grief counseling. But I've been going to my
11 therapist for a long, you know, a good while. I had
12 anxiety problems when they were there. I have anxiety,
13 depression. I have panic attacks, and I have what's
14 called Post-Traumatic Stress Disorder.

15 Q And have these symptoms gotten worse since
16 everything happened involving Justin?

17 A The -- the -- the stress disorder is pretty bad. I
18 mean, it's like I'm -- trucks, loud noises, especially
19 highway. I mean, I can drive, but I do it slowly, and
20 just around town. On the interstates, scare me to
21 death. I have trigger issues. Do you know what trigger
22 issues are?

23 Q Why don't you tell us.

24 A Anything can just like -- I don't even know what it
25 would be can trigger me, and I'll have -- freak out, you

1 know. End up, pretty much not doing anything but
2 staring. And staring. Staring. I've caught myself
3 doing it, and the, Troy will say what are you doing; I
4 mean, you've got to get out of your room today. And I'm
5 going, what are you talking about, you know. Things
6 like I would want to hide from situation to like take
7 off or just leave, or something upsets me really bad.
8 And I will just, like, I try to avoid that situation and
9 leave the room. I do that a lot. Where, if I'm at a
10 restaurant, and something triggers it, like, I'll see a
11 boy with a hat, that'll do it. I've been going to my
12 grief counselor. I don't know. It started out a couple
13 times a month, and then, it'll change to another woman.
14 She's a lot better.

15 Q So, these are issues you're still dealing with.

16 A There's way more than that. I mean, I have
17 nightmares, and I have a time -- I have trouble
18 sleeping. But weird nightmares, you know. Not like
19 normal. I -- I have a tremor -- it's -- they don't know
20 if it's Parkinson's, but that my dad had Parkinson's.
21 And I have -- that's why I do this all the time, and to
22 keep from shaking. And I think it's from the anxiety.
23 It's not from depression. They're not sure it's
24 Parkinson's. It's tremor, a neurological tremor, and
25 she doesn't know why, but she gives me Requip for it,

1 and it seems to help. Helps me not shake in my sleep.

2 Q While we're going through these photos, Becky, one
3 photo that stood out to us when we were talking, next to
4 the last photo. Tell us about this picture.

5 A Tell you about that picture. I think that's third
6 grade.

7 COURT REPORTER: I need you to speak up.

8 A Oh. I think that's third grade. That's one of m
9 favorites.

10 Q And why is this picture one of your favorites?

11 A Cause he's smiling.

12 Q How do you remember Justin?

13 A Happy, loud, boisterous. He was very smart on the
14 computer. And so many things from birth to 21, you
15 know? Everything. He didn't like the water. My dad had
16 that the -- we had a pool in the back yard. My dad had
17 to carry him around the pool. He hated it. He hated
18 water. And Dad would carry him around the pool, just so
19 he wouldn't feel left out. Lots of things, you know.
20 He loved playing cards when he was little, and hats.
21 And he loved to dress up in costumes, Indians, cowboys
22 and Indians. And I did -- I only had one trouble with
23 him one time. He'd hide and seek, and he kept hiding,
24 and wouldn't come out, and I had the whole neighborhood
25 looking for him, but he didn't know. He was young. He

1 didn't know any better. But he was always with
2 Christopher, so, you know, that -- always, from birth to
3 death.

4 Q Always with Christopher. Do you worry more about
5 Christopher?

6 A Absolutely. This is what goes through my head,
7 when Christopher turned around, I worry about it all the
8 time. I mean, that has got to be the hardest thing any
9 person could ever go through. Ever. That's --

10 Okay.

11 MR. HOYLE: Becky, I know this wasn't easy, and I
12 thank you for answering my questions. I think Mr.
13 Mackelcan may have some questions for you.

14 A Okay.

15 THE COURT: Cross-examination.

16 REBECCA ANN DELANEY

17 CROSS-EXAMINATION, BY MR. MACKELCAN:

18 Q Ms. Delaney, did I hear you say you got divorced
19 from Doug Miller because of his drinking?

20 A Yes.

21 Q So, you got divorced from him because of his
22 drinking. And then, you had your children go live with
23 it?

24 A He had stopped when he met Randa, and she had three
25 boys, and she wouldn't put up with it. You know, not

1 around the children. And that was a year later, anyway.
2 My mom had also died, too. She died in January of that
3 year, and a lot of things changed when she wasn't
4 around.

5 MR. MACKELCAN: I'd like to mark a couple of
6 documents for identification.

7 MR. HOYLE: Your Honor, I believe we're going to
8 have a matter of law.

9 THE COURT: I'm sorry?

10 MR. HOYLE: I believe we're going to have a matter
11 of law.

12 THE COURT: Oh. All right. Very well. Ladies and
13 gentlemen, please step to your jury room. Do not
14 discuss this matter or allow anyone to discuss it with
15 you. And leave your notebooks in your seat. We'll be
16 with you shortly.

17 JURORS LEAVE COURTROOM 4:40 P.M.

18 BAILIFF: The jury is clear, your Honor.

19 ON-THE-RECORD BENCH CONFERENCE, OUT
20 OF PRESENCE OF JURORS. PRESENT: THE
21 COURT, MR. HOYLE, MS. CASTLEBERRY,
22 MS. LEYIMU, MR. MACKELCAN, MR. LOVELL:
23 BACK ON THE RECORD.

24 THE COURT: All right. Do you need to take a
25 little break?

1 MR. HOYLE: I would ask Ms. Delaney to be excused
2 from the courtroom.

3 THE COURT: You don't have to be with us, if you
4 want to take a little break, get a little --

5 A Okay.

6 THE COURT: Stretch your legs, where you didn't get
7 chance to go a little bit ago.

8 A Thank you.

9 THE COURT: You're welcome.

10 PLAINTIFF REBECCA ANN DELANEY

11 LEAVES COURTROOM.

12 MR. HOYLE: Okay. I don't know which document's
13 been marked as which, so I'll -- which one -- what have
14 they been marked as, Doug?

15 COURT REPORTER: We started with 5.

16 MR. MACKELCAN: The agreement is 5. The Family Law
17 Master Report is 6. Judgment is 7, and the appointment
18 of P.R. is 8.

19 THE COURT: Okay. What are we doing?

20 MR. HOYLE: Well, I think that's my question. The
21 Defendant has marked, for identification, as Defendant's
22 Exhibit 5, what appears to be some sort of document
23 dated May 15, 1989, signed by Ronald D. Miller and a
24 Rebecca A. Miller. I assume that the Defendant's
25 counsel is going to question her about said document.

1 It appears to be a document dealing with the divorce
2 that Ms. Delaney had already testified about.

3 Similarly, Defendant's Number 6 is a Family Law
4 Master's Report from the Circuit Law Court. It's styled
5 Circuit Court of Wood County, West Virginia. It is not
6 file stamped or have any type of certification with it.

7 Defendant's 7 says it's a Circuit Court of Wood
8 County, West Virginia. It's a judgment of the Court.
9 It's not file stamped, but it does have an attestation
10 on the second page of it.

11 And then, the Defendant's 8 is the Petition for
12 Application of Appointment for Personal Represented here
13 in the Beaufort County Probate Court.

14 THE COURT: Okay. And what are we doing? Mr.
15 Mackelcan.

16 MR. MACKELCAN: Well, 5 is an agreement reached
17 between Ms. Delaney and her husband. The Family Law
18 Master's Report was signed by her. It contains factual
19 information in it that is different from what she has
20 testified today as to the circumstances surrounding her
21 divorce, who the children were living with at that time,
22 who had custody, or who was -- yeah, they were living
23 with at the time, and also, fitness -- fitness to the
24 physical custody. The question -- you know, these are
25 impeachment information that's directly related to her

1 testimony.

2 THE COURT: Okay. So, you want to use this
3 document; you want to have her authenticated it; and
4 then, you want to impeach her with it.

5 MR. MACKELCAN: I mean, that's what I was marking
6 them for.

7 THE COURT: Okay.

8 MR. MACKELCAN: I was going to ask her about the
9 documents and --

10 THE COURT: Okay. All right.

11 MR. MACKELCAN: Your Honor, two of the three that I
12 initially marked, she has signed. The order from the
13 Court, she did not sign, but.

14 THE COURT: Okay. Well, you all come up here, and
15 let me see them.

16 MR. HOYLE: I think that's a good idea, Judge.

17 OFF-THE-RECORD BENCH CONFERENCE, OUT
18 OF PRESENCE OF JURORS. PRESENT: THE
19 COURT, MR. HOYLE, MS. CASTLEBERRY,
20 MR. MACKELCAN, MR. LOVELL.

21 END BENCH CONFERENCE.

22 OFF THE RECORD 4:45 P.M.

23 BACK ON THE RECORD 4:55 P.M.

24 BY THE COURT:

25 THE COURT: Okay. Let's have the jury. Quick, go

1 get them.

2 JURORS ENTER COURTROOM 4:56 P.M.

3 THE COURT: Thank you. Mr. Mackelcan, you may
4 continue.

5 REBECCA ANN DELANEY

6 CONTINUE CROSS-EXAMINATION, BY MR. MACKELCAN:

7 Q Ms. Delaney, I think you testified that your first
8 time visiting South Carolina was a few days after your
9 son's death. Is that right?

10 A I drove through.

11 COURT REPORTER: *I drove through?*

12 A I drove through.

13 Q Okay. And you filed your petition to be the P.R.
14 of Justin's estate prior to the funeral. Is that right?

15 A The day before. I believe it was the day before.

16 THE COURT: We're having trouble understanding you.
17 You just back a little bit up from the microphone.

18 A Okay. It was either day before -- is this even on?
19 Can you hear me?

20 THE COURT: It is.

21 A It was soon as I got here. Ms. Castleberry helped
22 me out with that.

23 Q Okay. So, as soon as you got to South Carolina,
24 you came to the courthouse to file your petition to be
25 P.R., with the help of your lawyer.

1 A Yes, sir.

2 Q How long had Justin been living in South Carolina
3 before his death?

4 A Since 2004.

5 Q So, about seven-and-a-half years?

6 A Um-hmm.

7 COURT REPORTER: Is that yes?

8 THE COURT: You have to say yes.

9 A Yes. Yes, ma'am.

10 Q And you hadn't been out here to visit him?

11 A No.

12 Q I think you said that you didn't actually know he
13 was living in Beaufort. Is that right?

14 A No, I didn't. My last -- I heard it was Port
15 Royal, but I didn't know the difference between the two.
16 And then, there was Conway and Pinetop -- Pinetops
17 Drive. And I had been really sick, and I couldn't
18 travel down here.

19 Q Do you know when Justin and Chris and all of them
20 moved from Conway to Beaufort?

21 A No, I don't.

22 Q Please correct me, but it's my understanding that
23 Justin and Chris spent some time in West Virginia in
24 2011, up in Parkersburg. You're aware of that, right?
25 When their father was sick?

1 A Yes.

2 Q And you didn't see Justin during that time, either,
3 did you?

4 A I called Cheryl Stonacker's house, and they never
5 would answer their phone. We wanted to take them to a
6 Cinderella concert in Columbus, and we tried -- my
7 sister tried several times, and I tried several times to
8 get a hold of them, to take them to this concert. And I
9 also went to the hospital a couple of times to see Doug.
10 But he was really sick, and he wasn't even allowed to
11 have the germs around him, you know? And he was doing
12 the chemo, stuff like that.

13 Q But Justin wasn't ever there when you went there?

14 A No.

15 Q How big a place is Parkersburg, West Virginia?

16 A 30,000 people.

17 Q And you've described a lot of your growing up, and
18 as it sounds like everybody lived close by. Is that
19 right?

20 A Yeah. When -- yeah. To the house, yes. But his
21 sisters all live far away. Cheryl lives in Ohio, and
22 Kelly lives in Lubeck, and Susan lives in Ravenswood.
23 And I don't know where Mitch was living. Michael lives
24 in Mineral Wells.

25 Q How far a drive is it from Parkersburg, West

1 Virginia, to Huntington, West Virginia where the Burn
2 Unit was?

3 A Two hours.

4 Q Two hours?

5 A Yeah, in traffic, yeah.

6 Q Since Justin's death, how many times have you been
7 to South Carolina to visit?

8 A Four since then.

9 Q So, five times?

10 A I've been here five times altogether.

11 Q We saw a picture, and you'd talked about moving to
12 Florida for a period in the mid-nineties. Do you
13 remember that?

14 A Yeah, I did move to Florida, twice.

15 Q You've moved to Florida twice.

16 A Um-hmm.

17 Q When were those two times?

18 A When Donovan was in kindergarten, me and him lived
19 down in Fort Myers on Fifth Avenue. And for about,
20 gosh, I don't know how long we were there. Maybe a
21 year. And then, me and Chris and Donovan moved to Fort
22 Myers. See, my family lived down there, and he was in
23 high school. He went to Cypress Lake High School. He
24 had a little bit of trouble there, and decided to go
25 back to South. Plus, we missed Justin.

1 Q Why didn't Justin go to Florida with you?

2 A He didn't want to.

3 Q Why didn't he want to?

4 A I don't know.

5 Q If I understood you correctly, Doug told you that
6 he was picking up the boys to take them for a vacation,
7 and then, you never saw them again? Is that what you
8 said?

9 A Well, he had called that evening and said that the
10 boys wanted to go with him. And I said, well, I guess.
11 I said, you just come up here, and we'll take the stuff,
12 the clothes from Justin's room, whatever he needs, that
13 were upstairs, and take them downstairs in Chris's room,
14 and you can pull up in the driveway, and get it that
15 way. It would be a lot easier, instead of, you know,
16 the boys running around getting their stuff. But yeah,
17 they went.

18 Q So, they cleared out their closets, and left with
19 him?

20 A Actually, I did it. Yeah. I mean, they were old
21 enough to go. It was their decision.

22 Q Did I hear you say that you tried to get Justin's
23 Social Security check after their father died?

24 A No.

25 Q You said you went to the Social Security office.

1 A Yeah. After their father died, I wanted to know
2 where they were living, that's all.

3 Q Do you recall your deposition in this case?

4 A That was a long time ago. I mean, this has been a
5 long, drawn-out process. It was three-and-a-half years
6 ago this happened. But you know, I might not get
7 something right, you know. I'm all over the place. You
8 know?

9 Q Do you think it's possible that you could have
10 asked to be their payee at that time?

11 A I might have threw that in there, but I basically
12 wanted to know where they were. And I told them that I
13 was their mother, and that I didn't know if they had a
14 payee or not, because no one will tell me. And it's
15 usually better if the mother or the father takes care of
16 the money for a child on the autism spectrum, and you
17 know, as I do for Donovan.

18 Q During those seven-and-a-half years, where you were
19 not around Justin, --

20 A Um-hmm.

21 Q -- was he supporting you financially in any way?

22 A Was he supporting my financially?

23 Q Yes.

24 A I think -- I don't -- I'm confused. No.

25 Q Okay.

1 A I don't understand.

2 Q So, he was not supporting you financially?

3 A No.

4 Q Okay. And then, you weren't supporting --

5 A He was supporting himself.

6 Q Okay. And you weren't supporting him financially?

7 A I sent him money. I have where I sent him \$100.00
8 one time. And then, sometimes, it would come back.

9 Q I heard you mention that -- you talked a lot about
10 your own health issues, physical and emotional. Is that
11 correct?

12 A Yes.

13 Q When you were talking about your anxiety and
14 depression, how long had you been dealing with that?

15 A I've had anxiety, well, it started when I was a
16 teenager. I didn't have it too bad when I had kids,
17 but.

18 Q But you had been seeing a mental health
19 professional prior to Justin's death?

20 A Yes, you know, yes.

21 Q With some regularity, for prescribing medications
22 and that sort of thing.

23 A Yes.

24 Q Okay. And I think you had mentioned that you had
25 had, again, prior to Justin's death, you had panic

1 attacks?

2 A Yes.

3 Q Anxiety attacks?

4 A Yes.

5 Q Difficulty sleeping?

6 A Yes.

7 Q Nightmares?

8 A Yes.

9 Q Poor concentration?

10 A At times, yes.

11 MR. MACKELCAN: I don't have any further questions.

12 Thank you.

13 A Okay.

14 THE COURT: All right. Re-direct. All right.

15 REBECCA ANN DELANEY

16 RE-DIRECT EXAMINATION, BY MR. HOYLE:

17 A Hi.

18 Q Hi, Becky. Good afternoon again.

19 A Good afternoon.

20 Q We looked at some photographs earlier that have
21 been moved into evidence. The past couple of days,
22 we've also been going through a few videos, as well. Is
23 that fair?

24 A Yes.

25 Q Now, did you ever actually own a video camera?

1 A Well, yeah. When my husband's father died, he had
2 a video camera, and that was the first time I really had
3 a camera. I mean, I had -- other than portable ones
4 that you buy at the store.

5 Q Disposable-type cameras?

6 A Yeah.

7 Q That's where a lot of the pictures we looked at
8 came from.

9 A Yeah. And there, and my brothers and sisters.

10 Q So, this will be Plaintiff's Exhibit 27, which Mr.
11 Mackelcan's indicated he has no objection to.

12 THE COURT: Okay.

13 ITEM IDENTIFIED AS DVD OF HOME VIDEO
14 MARKED PLAINTIFF'S EXHIBIT NUMBER 27
15 ADMITTED AS EVIDENCE.

16 PLAYING HOME VIDEO VIDEOTAPE,
17 PLAINTIFF'S EXHIBIT NUMBER 27.
18 END PLAYING VIDEOTAPE MARKED PLAINTIFF'S
19 EXHIBIT 27.

20 BY MR. HOYLE:

21 Q What were we just seeing in the video that's going
22 to be marked Plaintiff's Exhibit 27?

23 A I was putting a new roof on the house, and I had
24 been outside recording it. And I had walked inside, and
25 Donovan had gotten new eye teeth. I mean, he was late

1 getting everything. But he had a fever, and the way he
2 said it to me was sick. I'm -- that's just the way
3 they did things. And so, I was going to send this video
4 to Peg, and show her that we got a new roof, and the
5 boys were okay, doing great. And we were teasing him
6 about their teeth. I always made them brush their
7 teeth. I was always telling them, brush your teeth;
8 they're turning green.

9 Q And that was Justin?

10 A That was Justin. The tall one. He was very tall.

11 Q Becky, were you a good mother?

12 A Yes.

13 Q Do you love your children?

14 A Very much.

15 Q Do you miss Justin?

16 A Very much.

17 Q Did your heart break on that fateful day?

18 A Yes, it did.

19 MR. HOYLE: Those are all the questions I have.

20 THE COURT: All right. Re-cross.

21 MR. MACKELCAN: Nothing for the Defense, your
22 Honor.

23 THE COURT: Very well. You may come down. Call
24 your next witness, please.

25 A Thank you, your Honor.

1 THE COURT: Yes.

2 ITEM IDENTIFIED AS AGREEMENT

3 DATED MAY 15, 1989

4 MARKED DEFENDANT'S EXHIBIT NUMBER 5

5 FOR IDENTIFICATION.

6 ITEM IDENTIFIED AS FAMILY LAW

7 MASTER'S REPORT

8 MARKED DEFENDANT'S EXHIBIT NUMBER 6

9 FOR IDENTIFICATION.

10 ITEM IDENTIFIED AS JUDGMENT

11 MARKED DEFENDANT'S EXHIBIT NUMBER 7

12 FOR IDENTIFICATION.

13 ITEM IDENTIFIED AS PETITION FOR

14 APPOINTMENT OF PERSONAL REPRESENTATIVE

15 MARKED DEFENDANT'S EXHIBIT NUMBER 8

16 FOR IDENTIFICATION.

17 THE COURT: Call your next witness, please.

18 MOTIONS AND RULINGS:

19 MR. HOYLE: Your Honor, at this time, Plaintiff
20 moves to amend her complaint to conform to the evidence
21 that's been offered at trial. And subject to your
22 ruling on that motion, we'll subsequently rest.

23 THE COURT: Okay. All right. Come here.

24 OFF-THE-RECORD BENCH CONFERENCE, OUT

25 OF HEARING OF JURORS. PRESENT: THE

1 COURT, MR. HOYLE, MS. CASTLEBERRY,
2 MR. LOVELL, MR. MACKELCAN, MS. SABER.
3 END BENCH CONFERENCE.

4 ON-THE-RECORD BENCH CONFERENCE, OUT
5 OF HEARING OF JURORS. PRESENT: THE
6 COURT, MR. HOYLE, MS. CASTLEBERRY,
7 MR. LOVELL, MR. MACKELCAN.

8 THE COURT: We have motions that I want to hear,
9 and it's my understanding that, at this juncture, the
10 Defense does not believe that the Defense will have any
11 additional witnesses.

12 MR. LOVELL: That is correct.

13 THE COURT: Just given the procedurally where we
14 are, may I -- and I won't, if you don't want me to, by
15 the way. Do you object to me telling the jury that I
16 believe, that, because of the manner in which this trial
17 has proceeded, the witnesses, some witnesses being
18 called out of turn, that I believe, it's my belief we
19 have received all the evidence; there's work that I must
20 do; but I believe that, again, I believe -- it is my
21 belief, and if it's error, it's my fault, that we will
22 have argument and charge in the morning. Any concern
23 about that? I'd love to be able to tell them that.

24 MR. HOYLE: None from the Plaintiff.

25 MR. LOVELL: None at all. None at all.

1 THE COURT: But I don't want anybody resting at
2 this point.

3 MR. LOVELL: No, that's fine.

4 THE COURT: Is that cool? Is that cool?

5 MR. HOYLE: That's fine.

6 THE COURT: Okay. Great. Good.

7 END BENCH CONFERENCE.

8 THE COURT: Ladies and gentlemen, it's ten minutes
9 after 5:00, and Counsel has worked out what we have to
10 do at this juncture. And so, if this was tomorrow
11 morning, I would be sending you to your jury room while
12 we do that work. It's not. It's ten minutes after
13 5:00.

14 I do want to share with you that it does appear
15 that what I told you a little bit ago is correct.
16 Counsel is allowing me -- and let me just tell you, now,
17 if I'm not being correct, I don't want you upset with my
18 lawyers. I want you upset with me, because it would be
19 my jump of the gun, certainly not them. But I believe
20 that we have now reached the stage of these proceedings
21 where you have heard all of the witnesses that you will
22 hear, and that you have received the evidence, which you
23 will. Some of it has to do with, as you will remember,
24 there were some witnesses called out of -- that would be
25 called in the Defense case that were, in fact, called

1 during the Plaintiff's case; some by cooperation, and
2 some were called in the Plaintiff's case. So that, I
3 believe that, that is correct. So, I believe that, when
4 you return in the morning, that you will hear the
5 arguments of Counsel, and then, my charge on the law.
6 And then, you will receive this case for your
7 deliberations. I wanted to share that with you. That's
8 where I believe we are.

9 There is work that remains for us to be done this
10 evening. We'll be here for a little while. I don't
11 know how long we will be staying, because I don't like
12 to keep, quite frankly, I don't like to keep court
13 personnel late and keep the courthouse open late. So,
14 we will probably come in the morning. I am, therefore,
15 going to ask that you all arrive in the morning at
16 10:00, a little bit later, because I don't want you -- I
17 don't want you cooling your heels, and I want to be sure
18 that we are prepared for you when you come in the
19 morning. So, I'm going to ask you to arrive at 10:00.

20 It is my believe that, when you arrive at 10:00,
21 that you will hear the arguments of Counsel, and then,
22 my charge or instruction on the law. Now, and then, you
23 will receive this case for deliberations.

24 However, even though you have received the
25 testimony and the evidence in this case, you are not

1 prepared to deliberate. You are not prepared to
2 deliberate, because you have not heard the arguments of
3 Counsel. You have not heard my charge on the law. You
4 are not in a position to deliberate. So, every single
5 admonition that has existed remains. Do not discuss
6 this matter. Do not allow anyone to discuss it with
7 you. Don't listen to anything. Don't read anything
8 about this matter. That's the radio, the television,
9 the Internet. Do not do any Columbo. Do not do any
10 research. You still must receive all of the information
11 from which you will make up your minds, here in court,
12 while court is in session.

13 Cell phones still remain away from the courthouse.
14 If you forget, give it to our bailiffs, who will, in
15 turn, will give that to us. All of the same admonitions
16 remain in effect as they have every evening, because you
17 are not prepared to deliberate. Leave your notebooks in
18 your seats. We'll secure them for the evening, and
19 then, replace them to you in the morning. And I'll see
20 you at 10:00 o'clock a.m. Thank you so much.

21 JURORS LEAVE COURTROOM 5:17 P.M.

22 CONTINUE MOTIONS AND RULINGS:

23 BAILIFF: The jury's clear, your Honor.

24 THE COURT: Thank's so much. All right. All
25 right. Let me hear about the motion to amend that's

1 been made.

2 MS. CASTLEBERRY: It's his.

3 THE COURT: You've already done it. From you guys.

4 MR. LOVELL: Your Honor, I wasn't a hundred percent
5 sure what I heard was included within the motion to
6 amend. I thought he said negligent hiring, training,
7 supervision, and something else.

8 THE COURT: Retention.

9 MR. HOYLE: Retention.

10 MR. LOVELL: Retention. I'm not sure there's been
11 any evidence that even could conform on the issue of
12 supervision and training. I think the evidence was that
13 somebody other than CasePro did all the training and
14 supervised all the day-to-day stuff. So, I don't know
15 that there's any evidence from which the pleadings could
16 be amended in that regard. I think he already -- you
17 already pled negligent hiring, did you not? in the
18 complaint?

19 MS. CASTLEBERRY: Yeah.

20 MR. HOYLE: Correct. In paragraphs 44 and 54
21 (iii), we pled that the Defendant failed to ensure the
22 employees or agents had or received adequate experience,
23 training, and supervision.

24 THE COURT: Whoa, whoa, whoa.

25 MR. HOYLE: I'm sorry. I'll start over.

1 COURT REPORTER: Slower. Thank you.

2 MR. HOYLE: In Paragraph 44 (iii), which was the
3 survival count, and Paragraph 54, (iii), which was the
4 wrongful death count, Plaintiff's pled, as one of the
5 particulars of the Defendant was negligent by failing to
6 ensure employees or agents had or received adequate
7 experience, training, or supervision.

8 There was a concern raised pretrial that we had not
9 properly pled a negligent retention count. That's
10 really our concern at this point, by that particular
11 allegation of negligence. To the extent that the Court
12 views that we have not properly pled a negligent
13 retention, specifically, with respect to Dr. Chris
14 Jansen, we would move, under Rule 15(b) to amend the
15 complaint to conform to the evidence with respect to
16 that negligent retention cause of action.

17 MR. LOVELL: We heard a ton of evidence on that.
18 We would agree that it is a disputed issue. We do not
19 concede that it was anything other than disputed, but
20 they got in a bunch of stuff on that, and I think it's
21 an issue.

22 THE COURT: Okay. Yeah. Thank you. Yeah. It's
23 amended. I think it probably is needed to be amended,
24 and it is amended on retention. Not the others.

25 MR. HOYLE: Thank you, your Honor.

1 THE COURT: All right. Now, okay, motions. Could
2 we stop just a second. This is a lawyer, I'm pretty
3 sure. Now, your client is -- I don't see her. I don't
4 see that she's present. Does she understand you're
5 going to follow up with a motion?

6 MR. HOYLE: Yes, your Honor.

7 THE COURT: Very well. Okay.

8 MR. HOYLE: We actually thought, given the
9 examination that took place here, we thought it was
10 appropriate for her to go gather her thoughts.

11 THE COURT: Okay. No problem. All right. Yes,
12 sir, motions. Mr. Mackelcan, yeah.

13 MR. MACKELCAN: Your Honor, at this time, the
14 Defendant would move for a directed verdict.

15 THE COURT: Or an involuntary non-suit with
16 prejudice. If you had known a judge by the name of
17 Walter Bristow, who passed away last year, you would
18 know exactly from whence I come. He called it an
19 involuntary non-suit with prejudice. Yes, sir, he did.

20 MR. MACKELCAN: You know, I know we're all anxious
21 to talk about duty, and I hate to keep us on the edge of
22 our seats, but I want to start with the survival cause
23 of action.

24 THE COURT: Me, too. Thank you. I get it. I get
25 it. Milliseconds. Very, very, very, very short period

1 of time. Yes?

2 MR. MACKELCAN: Correct.

3 THE COURT: Talk to me about that.

4 MR. MACKELCAN: Your Honor, the standard is whether
5 or not there's any evidence in the record --

6 THE COURT: Taking the evidence in the light --
7 taking the evidence --

8 MR. HOYLE: In the light most favorable.

9 THE COURT: And all inferences --

10 MR. HOYLE: That are reasonable therefrom.

11 THE COURT: -- in the light most favorable to the
12 non-moving party, is it reasonable that a jury could
13 make a determination? It's the reasonable. This is not
14 scintilla.

15 MR. HOYLE: I agree with that, your Honor. But I
16 still believe that there is evidence in this record from
17 which a reasonable jury could find that there is
18 conscious pain and suffering, with respect to the
19 decedent, such that damages should be awarded to the
20 estate for those damages.

21 We had Dr. Michael Caplan on the stand, as you
22 recall. Dr. Caplan offered testimony about a number of
23 injuries that took place while blood was still flowing.
24 We know that he gave unequivocal testimony that he was
25 conscious for some period of time. He later quantified

1 that in terms of milliseconds. I think there were three
2 verys.

3 THE COURT: There were three verys.

4 MR. HOYLE: There were three verys.

5 THE COURT: One millisecond.

6 MR. HOYLE: That, in light of the totality of Dr.
7 Caplan's testimony, with respect to the injuries that
8 were sustained, prior to Justin Miller's death, coupled
9 with the testimony as to his expert opinion as to the
10 conscious pain and suffering, as well as the entirety of
11 the --

12 THE COURT: Now, I don't think he testified he
13 thought he was conscious.

14 MR. HOYLE: Actually, he did. If we can --

15 THE COURT: That he was conscious to the pain. I
16 don't -- I remember listening for that, and --

17 MR. HOYLE: Your Honor, if I can beg your
18 indulgence for one moment, --

19 THE COURT: Sure.

20 MR. HOYLE: -- we actually have a transcript of
21 that testimony. I know we have one.

22 MR. LOVELL: Your Honor, we have a transcript. Do
23 you need one?

24 MR. HOYLE: Yes, that would be helpful.

25 THE COURT: This is testimony at trial?

1 MR. LOVELL: Yeah.

2 MR. HOYLE: We record -- we requested a -- I don't
3 know if it's a certified copy or not, but we requested a
4 dirty copy. There is a provision under the rule that
5 allows for the ASCII disc print out.

6 THE COURT: Oh, good.

7 MR. HOYLE: We can't seem to find our copy, but.

8 COURT REPORTER: It'll be in a red folder.

9 MS. CASTLEBERRY: I know. I'm looking for the red
10 --

11 COURT REPORTER: And yes, it is a certified copy.

12 MR. LOVELL: It says copy, copy.

13 COURT REPORTER: You've got copy. He's got the
14 original. But it has my signature on it. It's good to
15 go.

16 THE COURT: I got one.

17 MR. HOYLE: Okay. Good.

18 THE COURT: You want to look with me?

19 MR. HOYLE: I, apparently, paid for it, but my
20 people can't seem to find it.

21 THE COURT: Very well. Here you go.

22 MR. HOYLE: Okay. Hot dog.

23 THE COURT: Okay. All right.

24 MR. HOYLE: You have the transcript, your Honor?

25 THE COURT: I do.

1 MR. HOYLE: All right. There is testimony that
2 Justin Miller remained conscious for some period of time
3 following the initial impact. That testimony is
4 contained on page 30. That's where the doctor used the
5 very, very, very short period of time. I asked him the
6 basis for that opinion. He said that there is -- he
7 goes on to say:

8 *Consciousness means awareness of one's*
9 *self, one's environment, but there's no*
10 *specification as to a time of that awareness.*

11 I asked him if that was qualitative versus
12 quantitative assessment.

13 He said: Yes, it is.

14 I then, later, I think, confused everyone in this
15 courtroom, perhaps, even myself, when I was asking about
16 whether or not he could sequence these injuries.

17 THE COURT: Yep.

18 MR. HOYLE: And he said he was unable. So, the
19 question actually is asked.

20 THE COURT: Because we're talking about such
21 infinitely small time period, there is no
22 reasonable way, scientifically, to ever
23 verify that. We're talking about a much
24 too narrow window of time to ever be able
25 to make a conclusion of sequence of events

1 there.

2 MR. HOYLE: That is correct. That is the
3 testimony.

4 THE COURT: That's correct.

5 MR. HOYLE: And I think that is with respect to the
6 sequencing of events, whether or not the heart was
7 avulsed first or last, or whether the kidney was avulsed
8 before the spleen came out, or whether --

9 THE COURT: Whether the brain stem was ripped away.

10 MR. HOYLE: The brain stem was ripped away. That
11 was the cause of death listed in the autopsy report, and
12 the cause of death reflected on the death certificate.
13 But we certainly know, from his prior testimony, that,
14 while certain injuries were taking place, blood was
15 still circulating in the body, meaning that the heart
16 was still pumping.

17 THE COURT: But that isn't the standard. And of
18 course, I cite for you the case against DOT out of
19 Orangeburg County, that is, the *Rutland*, R/u/t/l/a/n/d.
20 It's the *Rutland versus South Carolina DOT* case. And in
21 that case, the Supreme Court talks about it's
22 insufficient even that life continues. It must be
23 conscious pain and suffering. Conscious. Conscious.
24 It must be evidence of conscious pain and suffering.
25 And this is --

1 And in the Rutland case, the testimony is that the
2 passenger died instantaneously. And I think that
3 instantaneously, if it doesn't mean an infinitely small
4 time period, or a millisecond, or a very, very, very
5 short period of time, which would be a millisecond --
6 here's -- I think that it would be unreasonable for a
7 jury to return a verdict in a survival action in this
8 case. I simply do. And I thought about it. I thought
9 long and hard about it, but genuinely believe, given the
10 nature of these overwhelming injuries, this young man
11 was struck head-on, straight up, by a fire engine
12 traveling at approximately 56 miles an hour. I simply
13 believe that, that millisecond, and in that millisecond,
14 there was no conscious pain and suffering. And I note
15 your exception to it, too.

16 MR. HOYLE: If I can just take exception, and just
17 note a few additional piece of evidence for that record.

18 THE COURT: Go right ahead.

19 MR. HOYLE: Plaintiff certainly respects that
20 ruling, but does take exception to it.

21 THE COURT: I know.

22 MR. HOYLE: We'd also mention that the fire truck
23 video, in it's entirety, not the one that was played
24 here in open court, but the video in it's entirety was
25 received as a Court's exhibit. I believe it was Court's

1 Exhibit --

2 COURT REPORTER: 12 is the unredacted version.

3 MR. HOYLE: I'll just say it this way, so that we
4 don't waste time. It was received as a Court's exhibit.
5 It is a part of the Court's exhibit.

6 THE COURT: It is.

7 MR. HOYLE: And in addition, Plaintiff marked for
8 identification purposes, Plaintiff's 4, which were
9 autopsy photos, as well as two additional photographs,
10 Plaintiff's 5 and 6 for identification. We would ask
11 that those three exhibits be received at this time,
12 those Court's [sic] exhibits, since they were --

13 THE COURT: Does that include Number 12? Number
14 12? Or not?

15 MR. HOYLE: It includes 5 and 7.

16 THE COURT: Okay.

17 MR. HOYLE: And then, all of the photographs that
18 Dr. Caplan took, we would ask that those be received as
19 an additional Court's exhibit.

20 THE COURT: Sure, sure.

21 COURT REPORTER: That's Exhibit 12, Court's Exhibit
22 12. Sorry.

23 MR. HOYLE: Court's Exhibit 12.

24 COURT REPORTER: Yes.

25 THE COURT: Yes. I'm sorry, Mr. Mackelcan. I just

1 presumed that we would have -- I've thought a lot about
2 that. I really have, as this trial has progressed, and
3 I apologize for taking your scintillating argument away
4 from you, but.

5 MR. MACKELCAN: I apologize for sitting down while
6 you --

7 THE COURT: No, sir. I just -- I just -- it's one
8 of those matters that I've just been thinking about
9 quite a bit. Okay. Next.

10 MR. MACKELCAN: Your Honor, the next grounds would
11 be a request to dismiss the punitive damages claim. The
12 Defense submits to the Court that there has not been
13 clear and convincing evidence of willful, wanton,
14 reckless, gross negligence as to the actions of the
15 CasePro employees in the emergency department on
16 February 24, 2012.

17 See, this is a bit of a difficult one to argue,
18 because I put it in front of the duty, and but. But
19 specifically, --

20 THE COURT: That's okay.

21 MR. MACKELCAN: -- what we're talking about is a
22 failure of a duty --

23 THE COURT: That's another one that I've given a
24 lot of thought to.

25 MR. MACKELCAN: Okay.

1 THE COURT: If you don't mind, I'm going to
2 respectfully deny your motion, noting your exception,
3 too.

4 MR. MACKELCAN: Okay.

5 THE COURT: The doctors testified that it was
6 reckless, and I do believe that there's evidence in this
7 record from which a jury could make a determination of
8 recklessness and gross negligence.

9 Now, and I know it. I know it's before duty, too.
10 Yeah. I'm kind of ready there, too.

11 MR. MACKELCAN: I know. This is the moment we've
12 all been waiting for.

13 THE COURT: Yeah. Let me just tell you where we
14 are with duty, and then, you tell me where I'm wrong.

15 MR. MACKELCAN: Okay.

16 THE COURT: Okay. This is not a malpractice case,
17 but it is a negligence case that arises out of medical
18 context. I believe that, if you meld -- I hope that's a
19 word -- together the *Hardee* case and the *Bishop* case --
20 I keep wanting it to be *Bailey* or something -- the
21 *Bishop* case, this is what I believe, after having heard
22 all of the evidence. I believe, taking the evidence in
23 the light most favorable to the non-moving party, which
24 would be the Plaintiff, I believe that a jury could
25 reasonably render a decision, and I do believe that the

1 Plaintiff has made out that a duty existed to Mr. Hunt.
2 And under the language of *Hardee*, and under the language
3 -- coupled with the language from *Bishop*, there was a
4 duty to warn Mr. Hunt not to leave the emergency room,
5 under -- taking the evidence in the light most
6 favorable.

7 And put whatever you additionally need to put on
8 the record, but that's where it is for me. And
9 therefore, I believe that the duty that existed for Mr.
10 Hunt to warn is the duty -- is the duty that also
11 existed, and I think the language is the zone of danger
12 toward the people of the public, the pedestrians
13 crossing, and the motorists.

14 MR. MACKELCAN: Your Honor, just --

15 THE COURT: Yeah. Or the general field of danger,
16 is what the case law says. The general field of danger.
17 I believe that Plaintiff's decedent was in the general
18 range of danger, and I think that the issue of
19 foreseeability is for the jury. I think if somebody
20 with this, particularly with this gentleman's history,
21 what was, not only should have been known, but was, in
22 actuality known to this company, because this company's
23 got employees; he's got a lot; he's probably got a bunch
24 of knowledge; that it was foreseeable that, when
25 somebody says, I'm going to go kill people -- I mean,

1 not kill -- I'm going to go harm people, that it is
2 foreseeable that they will, in fact, harm people. And
3 given all of the information, given the -- taking the
4 evidence in the light most favorable to the Plaintiff, I
5 believe, just as I have set forth.

6 Now, you may put whatever you need to put on the
7 record. That's where this case is for me.

8 MR. MACKELCAN: Well, your Honor, I'll start with,
9 I think there are some factual distinctions. And not to
10 correct your Honor at this late hour, but there's no
11 testimony that Calvin Hunt said that he intended to hurt
12 others or was going to hurt others. He said he had
13 thoughts of hurting others. I think that's different.

14 THE COURT: Not for me.

15 MR. MACKELCAN: Okay.

16 THE COURT: I will give you and grant you that it's
17 worse to have a plan. Without question. But when you
18 ask somebody in an emergency room, do you have thoughts
19 of hurting yourself, and they say, apparently,
20 repeatedly, uh, yes; and you ask them, you take it to
21 the next level, do you have thoughts of hurting others?
22 oh, yes, or yes.

23 MR. MACKELCAN: In the *Hardee* case, --

24 THE COURT: Yeah.

25 MR. MACKELCAN: -- and we've been talking about

1 this, it's just a duty to warn.

2 THE COURT: Sure, sure.

3 MR. MACKELCAN: And I think it's important to read
4 the full duty to warn.

5 THE COURT: Yes.

6 MR. MACKELCAN: Because it says that the duty that
7 they found, the Court found, was a duty to warn of the
8 dangers associated with medical treatment.

9 THE COURT: Yep.

10 MR. MACKELCAN: And in that case in particular,
11 this was medical treatment that those providers,
12 presumably, that's all they do. It's a dialysis center.
13 They do that all day, every day. They give treatment,
14 dialysis, to patients that need it. They know what
15 they're doing to their patients when they do it, and
16 they talk about actually warning the patient before they
17 get the treatment yet. So, here, we're really talking
18 about a duty to warn, not to do something that they
19 apparently think there may be a propensity to do that,
20 which I think is different from treatment in this case
21 that is given to the patient, meaning, they are giving
22 you a chemical or blood or whatever it is that is going
23 to -- they know is going to impact your ability to
24 function in certain ways.

25 In the *Bishop* case, this case doesn't fall within

1 *Bishop* of a duty to warn. *Bishop* is very clear that
2 South Carolina doesn't recognize a general duty to warn
3 of the dangerous propensity of others. The exceptions
4 require that a specific threat to a specific person must
5 be made. That clearly was not made in this case. So,
6 that's not there.

7 I also think it's interesting, in *Bishop*, that the
8 Court found that there was no duty in terms of an
9 improper diagnosis allegation. And but I don't think --
10 I guess I would like some clarification from the Court
11 is how this *Bishop* fit into *Hardee*, when you say that
12 they're melding together.

13 THE COURT: That's wonderful. Well, this is what's
14 interesting. If your reading of *Bishop* is correct, and
15 a person walked into an emergency room, and they're not
16 specific, but they say I'm walking out of here, I'm
17 going to kill people, you hear me; do you hear me; I'm
18 going to go kill people; I'm leaving right now, and I'm
19 going to kill me some people; and they say, have a nice
20 day, that can't possibly, can't possibly be the law. In
21 my judgment, that cannot possibly be the law. It just
22 can't.

23 I don't think we're there, because you -- and he,
24 this gentleman, Mr. Hunt, did exactly what he said he
25 was going to do; or he did exactly what he said he had

1 contemplated doing, was hurting people. He just hurt
2 people, in general. He went, oh. And all you need to
3 do is look at that video. He guns that fire engine
4 some, probably, six, seven, eight minutes later, down
5 Ribaut Road, right at the juncture of the Lady's Island
6 Bridge. And he -- there are -- there are a number of
7 cars at the light, and he just guns right through them.

8 Taking the evidence in the light most favorable to
9 the Plaintiff, I believe -- and if you will remember,
10 here's a problem, I think, also, for the Defendant. If
11 you will recall, your employee said, if I had known it,
12 I wouldn't have let him leave. I wouldn't have let him
13 leave. If I had known it, I would not have let him
14 leave. They're all your employees. So, if I take the
15 evidence in the light most favorable to the non-moving
16 party, then, in fact, what we have is, we have a
17 gentleman with all of this history that is -- it's not
18 should have known -- it's known. I mean, it's known.
19 And you've got your employee that says I would never
20 have let him leave. I wouldn't have let him leave.
21 Wouldn't have let him leave.

22 And then, you've got another employee says, I was
23 scared of him; I moved; I was very frightened of him.
24 And taking the evidence in the light most favorable to
25 the non-moving party, she told her husband that she was

1 afraid of him. That was communicated to him. So, you
2 have, you know, despite -- and this is disputed
3 testimony -- I think you've got Mr. McDonald says, I
4 would have loved to have him come home to dinner. Even
5 though he says that, somehow, I don't think Ms. McDonald
6 would let him do that, based on her testimony. But he
7 wanted him to come home for supper.

8 But taking the evidence in the light most
9 favorable, I believe that -- I believe that our law is
10 such that there was a duty to warn. And your doctor
11 says there's a duty to not let him leave, but.

12 MR. MACKELCAN: But is that the same thing? I
13 mean, here, they didn't think he was leaving.

14 THE COURT: Well, I think that's a bigger -- I
15 actually think that's a greater duty. I think that's a
16 -- that's a duty to take a greater act, and I think --
17 let me tell you what I -- I'm a real stare decisis kind
18 of girl, and I got to tell you, I'm uncomfortable with
19 the duty to warn. But I think, yes, there may have been
20 a duty to hold onto him. But, and I may be in error by
21 not making that determination that there was duty to
22 more than warn. That may be my error, but our law
23 speaks in terms of a duty to warn, and quite frankly,
24 I'm quite comfortable going there. I'm not comfortable
25 to say they got a duty to hold onto him, though.

1 Yes, sir.

2 MR. HOYLE: It's always dangerous at this point for
3 me to stand up.

4 MR. LOVELL: I'm putting one thing -- I just want
5 to make sure we perfect that record, because we're at
6 that directed verdict stage.

7 THE COURT: You are.

8 MR. LOVELL: We had moved early on that this case
9 truly should have been a case for professional
10 negligence and malpractice, and you obviously had denied
11 that motion. We just want to renew it for purposes of
12 the record at this point, because I think many of the
13 issues you've touched on about should they have known
14 that he had propensities to do this, that, or the other,
15 do rise to the level of exercising professional
16 judgment. And we elicited a lot of testimony both from
17 Dr. Baker, their expert witness, and others. And I
18 understand and respect the Court's earlier ruling, but I
19 want to make sure our record's clear and we don't waive
20 that.

21 THE COURT: Does that -- well, okay. Well, that's
22 just where he happened to go. I mean, he just happened
23 to go there. I mean, he happened to go to an E.R. I
24 mean, if he'd gone somewhere else, maybe I'd think we
25 got a duty, too. But these people had a duty. They got

1 a common --

2 Interestingly enough, in the Delaware -- there's a
3 Delaware case, and the Delaware case, says -- there
4 were two people dead. There was a -- the patient was
5 dead and somebody else was dead. And so, with regards
6 to the patient, it was malpractice; but with regards to
7 the other dead person, it was ordinary negligence. And
8 so, I'm certainly mindful of that, too.

9 I believe that there -- given the knowledge that
10 the Defendant had, and interestingly enough, the
11 Defendant is not a doctor, not a hospital. I don't even
12 know if it's a medical provider. I don't know what they
13 are. All I know is they are a corporation, that they
14 don't train, don't run by doctors, not owned by doctors.
15 They just -- they're a staffing company. They staff
16 places. That's what they do. So, I believe that this
17 company, taking the evidence in the light most -- taking
18 the evidence in the light most favorable to the non-
19 moving party, I believe that there was a duty and an
20 ordinary negligence to warn.

21 MR. HOYLE: Your Honor, I'll stand up again, and
22 I'll reiterate. It's probably dangerous for me to do
23 so. I certainly respect the reasoning of the Court with
24 respect to this being an ordinary negligence cause of
25 action, and an ordinary negligent duty to warn. For our

1 purposes, you referenced a case from Delaware. I
2 believe that's the *Naidu v. Laird* case, --

3 THE COURT: Yes.

4 MR. HOYLE: -- reported at 539 Atlantic 2nd 1064, a
5 1988 case from the Delaware Supreme Court, which found
6 not only a duty to warn, but also, a duty to control the
7 actions of the mentally ill.

8 Also, I respectfully draw the Court's attention to
9 a case from the Supreme Court of Alabama, decided in
10 2004. It is *Taylor v. Smith*, the case reported at 892
11 Southern 2nd, 887. I certainly understand that the
12 safest reading of *Hardee* is solely as a duty to warn.
13 But the case, the *Hardee* case, states that the duty owed
14 to third parties is identical to the duty owed to the
15 patient. I personally believe that, as other states
16 have held that, that, if a foreseeable, non-patient,
17 third-party plaintiff can show to a jury, by a
18 preponderance of the evidence, what a duty owed to the
19 patient was, that, under my view, an expansive view,
20 perhaps, of *Hardee*, that, that duty would extend to that
21 foreseeable non-patient third party.

22 THE COURT: And you very may well have an
23 opportunity to argue that.

24 OFF THE RECORD.

25 BACK ON THE RECORD.

1 THE COURT: And let me tell you, I have certainly
2 -- I have -- I considered that, and I'm comfortable
3 being exactly where I am with the warning. Yes. Okay.

4 MR. HOYLE: Thank you. Thank you, your Honor.

5 THE COURT: And I note -- and I want both sides to
6 understand that we are as far out there as I have ever
7 been in a case. We really are. But as odd as it is, I
8 am as comfortable as I've ever been, as far out there as
9 I feel that I am. I really -- and the exceptions that
10 you all raised on behalf of the Defense, you absolutely
11 do that. I think -- I one hundred percent understand
12 it. It is -- it is a place, I believe, that our law is
13 developing, and I think that this very much my -- and I
14 wish I could tell you who it was, and I have watched so
15 much baseball in the last two weeks, I cannot tell you
16 the game -- but I can tell you that -- I want to say it
17 was Toronto, and it was a kid that got a run, and hit
18 the foul pole on the right side on the -- so that it was
19 in, instead of out. If it had hit on the other side of
20 the pole, it would have been a foul ball, but because it
21 hit on the inside of the pole, it was a home run.

22 Let me just tell you, I think the case, in my mind,
23 is that close, but I'm comfortable and confident, and
24 believe that it hits the inside of the pole, not the
25 outside. That's where -- and that's where it is for me.

1 Now, you want to do, like, negligent hiring stuff?
2 We're almost at 6:00 o'clock. You want to save that for
3 in the morning?

4 MR. HOYLE: Sure. Be fine.

5 MR. MACKELCAN: Save that 'til morning, yeah.

6 THE COURT: Because that way, I can --

7 MR. HOYLE: And your Honor, --

8 THE COURT: I've been so -- I've been so focused at
9 this, I've got to look at it.

10 MR. HOYLE: And your Honor, we also have a directed
11 verdict motion with respect to the respondeat superior
12 issues, as well, at the close of their case.

13 THE COURT: We'll just wait.

14 MR. HOYLE: Okay.

15 THE COURT: 'Til they close their case.

16 Now, here's what I need to do on the charge,
17 because I am -- that's what I'm working on this evening.
18 And what I'd like to do, with your permission, is, I'd
19 like to do a draft and email it to you, if that's okay.
20 I know that's not -- probably that's kind of gruesome to
21 do that to you and make you look at it this evening.
22 Can I just give you a little bit of a hint? If there's
23 an obvious typo or problem in the first part of the
24 charge, please, please let me know that. Whoever's
25 going to be -- I'm looking at everybody. I don't know

1 who's going to be in charged of that responsibility. I
2 figured that, you know. There you go. Yes. All right,
3 madam genius. The first part of it, I've been doing it
4 for a very long time, and those are -- it's pretty
5 stuck. So, kind of look at -- I almost -- don't look at
6 that when you're a little bit tired tonight. Begin
7 looking where it says, *wrongful death*.

8 MS. LEYIMU: Okay.

9 THE COURT: That's where I want you to start
10 looking. Okay?

11 MS. LEYIMU: Okay.

12 THE COURT: All right. You, too, because I know
13 you're going to look at it. I know you'll look at it.

14 MR. LOVELL: It probably will be me that'll be
15 looking at it. He's doing closing tomorrow.

16 THE COURT: Okay. We had a wrongful death. You
17 know.

18 MR. LOVELL: Unless I change my mind.

19 THE COURT: Begin looking from wrongful death,
20 forward. That's where I'm really looking for your all's
21 help in the informal charge conference we will start at
22 8:30 in the morning. Everybody get a Starbuck's, come
23 on over.

24 MR. LOVELL: 8:30?

25 THE COURT: Yeah. We're going to be back here,

1 because we're going to have an informal charge
2 conference, and I'm looking for wrongful death, and
3 let's just make -- we'll bring it back to you, because
4 it's an obvious problem. And the first part, I've been
5 doing it for, I mean, the witnesses and all that,
6 preponderance of the evidence. I'm not going to -- I've
7 just been doing it for so long, I'm not going to change
8 that. Oh, yes, you've got other things to do. So, but
9 look from wrongful death, forward.

10 MR. HOYLE: Your Honor, do you wish for us to
11 prepare a proposed form of verdict, or do you have
12 something already in mind with respect to that?

13 THE COURT: Do you want interrogatories?

14 MS. CASTLEBERRY: No.

15 MR. HOYLE: No, no, no. We want it as simple as
16 possible, Judge.

17 THE COURT: How about you guys? You all think you
18 need interrogatories?

19 MR. LOVELL: No.

20 THE COURT: Yeah, go ahead and do what you can. Do
21 a proposed, you know. Why not? Just simple.

22 MR. HOYLE: I want it as simple as possible.

23 MR. LOVELL: Will you be instructing them on the
24 punitive damages aspect?

25 THE COURT: No.

1 MR. HOYLE: Not yet.

2 MR. LOVELL: This will just be the negligence, yes
3 or no, and that's all?

4 THE COURT: I'm not playing -- I'm not -- none of
5 it. No, I'm not doing that for you to do that. I'm
6 telling you, here's what I'm not going to charge. I'm
7 not charging recklessness, willfulness, wantonness. I'm
8 not charging gross. I'm not charging -- I'm not
9 charging clear and convincing evidence. I'm charging
10 nothing to do with punitive damages, because it doesn't
11 matter, unless they find actual damages. I'm not doing
12 that.

13 MR. LOVELL: Perfect.

14 THE COURT: I'm just not going to do it. And then,
15 my -- and I've had -- and my thought is to do this. Is,
16 if we get a verdict, then, we will come back, and I will
17 charge them on willfulness, recklessness, --

18 MR. HOYLE: Gross negligence.

19 THE COURT: Yeah. Right. And clear and convincing
20 evidence. I'll do that. And then, I'll give them the,
21 you know, the elements that they must look at, if they
22 are considering punitive damages.

23 Oh, let me ask you this question. Are there any
24 specific statutes? Yeah, I think so. Have you pulled
25 the statutes?

1 MR. LOVELL: I don't think there are any specific
2 to our case.

3 THE COURT: I don't think there are any. None of
4 that's going to matter, is it?

5 MS. CASTLEBERRY: Not violation of statute.

6 THE COURT: No, it's not. I mean, there's no
7 statutory violation in this anywhere.

8 MR. HOYLE: No. No.

9 THE COURT: Okay. Good.

10 MR. HOYLE: Your Honor, could we talk about
11 additional witnesses in that phase?

12 THE COURT: What? Yes.

13 MR. HOYLE: We've retained Perry Woodside, your
14 good friend, my good friend, Mr. Mackelcan's new friend.
15 He has prepared a report in this case with respect to
16 ability to pay. I produced the revised report to
17 Defendant's Counsel this morning.

18 THE COURT: Okay. So, you would propose to call
19 him?

20 MR. HOYLE: I would propose to call him with this
21 problem that I'm going to state.

22 THE COURT: Okay.

23 MR. HOYLE: And we can maybe figure out or not
24 figure out. I don't know. Dr. Woodside is not
25 available to testify live tomorrow. He is out of the

1 state at the moment. He asked me if I would raise, in
2 open court, the possibility of him appearing by Skype or
3 telephone, or something of the sort, or whether or not
4 any -- or any potential testimony could be heard on
5 Monday.

6 THE COURT: Oh. We'll deal -- this -- we'll wait
7 'til verdict.

8 MR. HOYLE: It's premature, Judge, and I'm
9 certainly not counting any chickens before they hatch.

10 THE COURT: Don't, yeah.

11 MR. HOYLE: I'm just putting that out there, cause
12 that's what he told us.

13 THE COURT: Right. We're done with this. We're
14 off the record, Wanda.

15 OFF THE RECORD 5:57 P.M.

16 END DAY EIGHT, THURSDAY

17 OCTOBER 15, 2015, 5:57 P.M.

18 BEGIN DAY NINE, FRIDAY,

19 OCTOBER 16, 2016, A.M.

20 MOTIONS AND RULINGS:

21 BAILIFF: All rise. Please come to order.

22 THE COURT: Thank you very much, and please be
23 seated. Jury ready? Bring us the jury.

24 MR. HOYLE: Your Honor, we need to make a directed
25 verdict motion.

1 THE COURT: Oh, I'm sorry. I forgot about the
2 motions, yeah. I'm listening. Yes.

3 MR. MACKELCAN: Not to interrupt, but I think we
4 were also going to discuss the negligent hiring,
5 retention, and supervision on our side of the directed
6 verdict.

7 THE COURT: Right. Oh, yeah. Go ahead.

8 MR. MACKELCAN: Before I do that, your Honor, we
9 had prepared a memo in support. I don't know if you
10 want that.

11 THE COURT: Yeah, of course.

12 MR. MACKELCAN: I had forgotten to give it to you
13 yesterday.

14 THE COURT: Great.

15 MR. MACKELCAN: Your Honor, on the negligent hiring
16 claim, we would submit to the Court that the Plaintiff
17 has not submitted any evidence as to negligent hiring,
18 in that, you know, in this case, the only evidence is
19 that the Navy provided CasePro a list of people to hire.

20 THE COURT: Stop. What about negligent hiring?
21 And training, while you're up.

22 MR. HOYLE: Judge, we'll withdraw everything except
23 negligent retention. They should have told Dr. Jansen
24 to get gone, and they didn't. There's evidence of that.
25 That, I'm sure of.

1 THE COURT: Okay. Okay.

2 MR. MACKELCAN: Okay. So, --

3 THE COURT: Unfurl your brow.

4 MR. MACKELCAN: So, hiring and supervision are out?
5 Is that -- and training?

6 THE COURT: And training, hiring, supervision.

7 MR. MACKELCAN: Okay. As to retention, this is
8 limited to Craig Martin's testimony in an email. I
9 think, if you read Craig Martin's email, he was actually
10 an advocate for Dr. Jansen in that email. Now, he's a
11 former employee working for a competitor, and he's
12 changed his mind a little bit that he wanted Dr. Jansen
13 fired. But that email says we need more information;
14 how about due process for E.R. doctors. And that's it.
15 That is the only piece of information CasePro had
16 regarding Dr. Jansen. There's been no evidence in this
17 case as to whether an employer's supposed to fire
18 somebody if they hear of a negative peer review.

19 Your Honor, we know that there are doctors working
20 in every hospital in this state that have had a negative
21 peer review, and they haven't gotten fired. So, you
22 know, is the jury supposed to believe that a negative
23 peer review automatically means you get fired? There's
24 been no testimony as to what the standard is.

25 CasePro has no ability to review actual medical

1 records. So, it's just a small piece of information
2 that, you know, is -- we just don't believe that a
3 reasonable inference can be made by the jury that they
4 were negligent in retaining Dr. Jansen.

5 THE COURT: Thank you so much. That was
6 appropriate for possibly wonderful closing argument, but
7 I do think there's -- taking the evidence in the light
8 most favorable to the Plaintiff, I think there is
9 evidence on negligent retention, and would respectfully
10 deny that motion.

11 Any other motions?

12 MR. MACKELCAN: No, your Honor. Okay. Yes, sir.

13 MR. HOYLE: Your Honor, I believe I have three
14 directed verdict motions to make on behalf of the
15 Plaintiff, --

16 THE COURT: Okay.

17 MR. HOYLE: -- since the Defendant has now closed
18 its case without calling any additional witnesses.

19 First, with respect to respondeat superior, we
20 would move that, in light of all the evidence in this
21 record, in light of all the testimony that has been
22 heard, the only reasonable inference that can be drawn
23 with respect to Dr. Christian Jansen, Nurse Janice
24 McDonald, and Nurse Joe McDonald is that all three
25 persons were, in fact, employees of CasePro,

1 Incorporated; and that on February 24, 2012, they were
2 acting within the scope of that employment; and that the
3 master in this situation, CasePro, is responsible for
4 the actions of their servants; because it is without
5 question that CasePro unequivocally paid these persons
6 cash money; determined their benefits; determined what
7 their salary was going to be; scheduled them to go to
8 work; and had the absolute, unequivocal ability to fire
9 these persons at any time.

10 We submit that, in light of all of the evidence in
11 this record, the only reasonable inference that can be
12 drawn from that evidence is that the jury must find that
13 there is respondeat superior liability with respect to
14 those three employees, Nurse Joe McDonald, Nurse Janice
15 McDonald, and Dr. Chris Jansen.

16 I'm going to make the other two motions and let the
17 Defendant respond, or we do it piece --

18 THE COURT: No. No. Tell me about that.

19 MR. MACKELCAN: Your Honor, we have certainly heard
20 testimony, we have exhibits in the form of the contract
21 and the task order, which clearly state that the
22 government has the sole authority to supervise and
23 control these workers, Janice, Joe, and Dr. Jansen while
24 they are at the Naval Hospital.

25 What we're talking about in this case is 2:15 to

1 about 4:00 p.m. There is no question, in that time
2 period, that a jury could reasonably decide that it was
3 the government, and not CasePro, that had the ability to
4 control the activity of those workers. Their supervisor
5 was a lieutenant.

6 THE COURT: Let me ask this question. Do you
7 maintain, then, that despite -- do you maintain that
8 these individuals were not employees of CasePro, meaning
9 Dr. Jansen and the two nurses, that they were not
10 employees of CasePro?

11 MR. MACKELCAN: We don't maintain that. Okay? But
12 the contract specifically, in a number of different
13 places, says it's part of what is negotiated in the
14 contract is that the government has assumed the sole
15 right to supervise and control --

16 THE COURT: Well, let me ask you this question,
17 because the issues of control, based on my review of the
18 law and how -- based on my review of the law, when you
19 begin to look at the issues of control, you look at the
20 issues of control to ascertain whether, in fact, not in
21 may, but in fact, the relationship of employer/employee
22 exists between the individuals. And once it is
23 ascertained that the relationship of employer and
24 employee, irrespective of what they call each other,
25 once that's established, then, respondeat superior, the

1 relationship of master and servant, attaches, and
2 respondeat superior applies.

3 I am not aware of case law, that, once it is
4 established to that, in fact, not in name, but once it
5 is established that, in fact, the employer/employee
6 relationship exists, then, respondeat superior attaches.
7 That's why I'm having difficulty. I'm having difficulty
8 with this idea that, while CasePro and these individuals
9 are employer/employee, that respondeat superior doesn't
10 attach.

11 Now, let me just finish my thought processes. I
12 don't pretend to get into the issue of whether or not
13 there is some sort of indemnification, either equitable
14 or otherwise, because that's not before me. But I'm
15 having difficulty dividing respondeat superior away from
16 the in fact, the in fact, employer/employee
17 relationship, master/servant. Help me with that.

18 MR. MACKELCAN: Your Honor, I know you don't want
19 to hear about federal law in a state courthouse, but in
20 that contract it states if, in this case, Dr. Jansen and
21 Joe McDonald and Janice McDonald were sued in their
22 individual capacities, as often is the case of medical
23 malpractice cases, they were named individually, the
24 contract directs everyone to a process by which the
25 government assumes their defense. And it refers you to

1 C.F.R.s that say that; that there is an
2 employer/employee relationship created between the
3 government and those employees, which allows the
4 government to defend those cases under the federal tort
5 claims act.

6 Now, that has been circumvented in this case by
7 only suing CasePro. And but, if you read that contract,
8 and you recognize that what they're talking about is
9 these healthcare workers, it's there. It's in the law
10 that the government has that employee/employer
11 relationship with those workers, and if they're sued in
12 their individual capacities, the government has -- it
13 says explicitly that it's the law that they have
14 respondeat superior for them.

15 THE COURT: Okay. But that's if they're sued in
16 federal court under the tort claims act individually.

17 MR. MACKELCAN: If they're sued individually
18 anywhere. But that's what we're talking about here.
19 We're talking about the acts and omissions of these
20 healthcare workers. And so, I think that, that is
21 indication of the fact that there could be a reasonable
22 inference that it's the government. It's in the
23 contract that it's the government that is the
24 appropriate party, to the extent that there is one, to
25 have that vicarious liability.

1 THE COURT: So, is it -- but here's my problem. My
2 problem is, at the point in time that you say to me that
3 the relationship of employee/employer exists between
4 CasePro and these employees, you don't have to tell me
5 that. I mean, you can tell me that they're just a pass-
6 through, and my charge, as it exists, can address that.
7 But it's a different circumstance when you tell me that,
8 no, no, no, that we do not contest that these
9 individuals are employees of CasePro.

10 MR. MACKELCAN: Maybe I should be more specific
11 that not employees for the purposes of respondeat
12 superior and, you know, tort acts while they're at work.
13 I mean, at least that is what was contracted for. I
14 mean, I can pull out the federal court suit that Ms.
15 Delaney has filed against the federal government where
16 they made claims of negligent hiring, negligent
17 retention, negligent supervision for the government and
18 the acts of Dr. Jansen -- I mean, not the acts, I'm
19 sorry -- but Dr. Jansen in this federal court suit. So,
20 clearly, the Plaintiff also believes that the federal
21 government has that respondeat superior, as well.

22 MR. HOYLE: Judge, I want to be heard on that,
23 because that is a gross misstatement of what was filed
24 by the estate in federal court.

25 THE COURT: Time out. Plaintiffs are allowed to do

1 that. It's okay. Sit down.

2 MR. HOYLE: Okay. Thank you, Judge.

3 MR. MACKELCAN: And we're not a defendant in that
4 case, so I do not, obviously, have that complaint
5 memorized, so I apologize if I made a misrepresentation.

6 THE COURT: Just practicing law. I don't care
7 about that. Now, so, so, is it -- tell me, just kind of
8 tell me, what's the position now of CasePro. Just tell
9 me what that position is with regard to these folks vis-
10 a-vis the employer/employee relationship.

11 MR. MACKELCAN: Under the contract, when these
12 workers are at the Naval Hospital performing services,
13 it clearly states the government is the party
14 responsible for supervising and control, controlling
15 these employees; that there's employer/employee
16 relationship created by the government in that instance;
17 and they have taken on responsibility for acts or
18 omissions of these employees while they're working at
19 the Naval Hospital.

20 It's a unique situation, your Honor. Clearly, the
21 contract is a -- it's a government contract. It's a
22 unique situation in the way that, that is negotiated.
23 But certainly, because of that, we believe that the jury
24 can reasonably infer that this is a case that should
25 have been brought against the federal government, not

1 against CasePro.

2 THE COURT: If I take the evidence in the light
3 most favorable to the Defendant, --

4 MR. HOYLE: It would still be an employee/employer
5 relationship. With respect to case law in this state,
6 *Armstrong v. Food Lion, Incorporated*, the cite is at 371
7 S.C. 271, pinpoint cite 276 at 2006, South Carolina
8 Supreme Court case, our Supreme Court said a Plaintiff
9 seeking recovery from the master for injuries must
10 establish that the relationship existed at the time of
11 the injuries, and also, that the servant was then about
12 his master's business and acting within the scope of his
13 employment.

14 There was testimony from Nurse Janice McDonald,
15 Nurse Joe McDonald, Dr. Jansen, and even Mr. McCabe, the
16 chief executive officer of CasePro, Incorporated, that
17 all of the three persons present in the emergency room
18 that day were employees of CasePro, and that they were
19 all acting within the scope of their employment.

20 I think the inquiry at this juncture ends. There
21 may be some ability in federal court somewhere to also
22 have liability against someone else for these persons.
23 I don't know. But what I do know is that, under South
24 Carolina law, respondeat superior is premised upon the
25 relationship.

1 We've been going around and around and around in
2 circles about this whole issue of control. Control is
3 typically an issue in cases where it's not crystal clear
4 that somebody is an employee. Here, we have an employee
5 handbook that these people signed and said, yeah, I'm
6 going to follow your policies and procedures. We have
7 paychecks. We actually got a paycheck stub into
8 evidence through Dr. Jansen's personnel file showing
9 that he was getting paid.

10 THE COURT: Let me stop you for a minute, Mr.
11 Hoyle, because I think that the record needs to reflect
12 that it was my understanding, when we began this case,
13 that there was an issue regarding respondeat superior,
14 and I think that our record needs to reflect that,
15 because I -- and I think that continues to this moment.

16 And the reason that I allowed the testimony in on
17 the issue of control was because that was in context.
18 But I think that the record also needs to reflect that,
19 in that, and in allowing that, that I believe that,
20 because respondeat superior was in contest, that, that
21 meant that whether or not the relationship was also in
22 contest between Plaintiff and Defendant regarding
23 whether these individuals were employees of CasePro.
24 Because I believe that, once you establish that you have
25 an employer and employee relationship and folks are

1 acting within the course and scope of their employment,
2 that respondeat superior attaches as a matter of law.

3 And I am simply not aware of, for purposes of
4 negligent responsibility, I'm not aware of the ability
5 by contract of an employer's ability in contracting with
6 third parties and those third parties are not the
7 plaintiffs, of being able to contract away respondeat
8 superior.

9 Now, having said that, I didn't mean
10 indemnifications rights, that somebody can't step into
11 somebody's shoes, or that other relationships'
12 contractual rights may exist on behalf of CasePro vis a
13 vis other individuals. But in terms of the Plaintiff
14 and these individuals, I believe that respondeat
15 superior applies, because I believe that they are
16 employees of Defendant. They being the two Nurse
17 McDonalds and Dr. Jansen. Because I don't believe,
18 under state law, we have divided respondeat superior as
19 it relates to the employer and the employee
20 relationship.

21 Once the employer/employee relationship is
22 established, and the courts discover it's established, I
23 believe respondeat superior follows. All right. And
24 that's just a ruling of the Court. So, I will grant
25 your motion for that.

1 MR. HOYLE: Thank you, your Honor. Two additional
2 motions for directed verdict. In its answer, and
3 through the testimony, Defendant has asserted the
4 negligence of third parties. I believe that the third
5 parties that the Defendant is seeking to identify -- I
6 don't know where their trial brief went -- is Edward
7 Ray, who was a family friend, but also an employee of
8 some state or county agency, doing veterans' affairs
9 work; Calvin Hunt, who was adjudicated not guilty by
10 reason of insanity in the Court of General Sessions in
11 this County; and the Beaufort/Port Royal Fire
12 Department.

13 With respect to all three of those potential third
14 parties, I do not believe that those claims can survive.

15 With respect to the -- I'll work backwards. With
16 respect to the Fire Department, the fire chief, Sammy
17 Negron, came into this courthouse and testified that
18 they complied with all applicable standards, both here
19 locally, here within the state, and here nationally.
20 There has been no contrary evidence offered by the
21 Defendant that the Beaufort/Port Royal Fire Department
22 violated any such standard. There's been no duty
23 established with respect to the reasonable manner in
24 which a fire truck responding to a non-fire emergency
25 call should be left operating.

1 With respect to Calvin Hunt, I believe his
2 adjudication of not guilty by reason of insanity
3 precludes him from being a potential -- a potential
4 criminal intervening cause, because he did not lack --
5 he lacked the capacity to distinguish from moral -- a
6 legal right from moral and legal wrong.

7 And with respect to Edward Ray, we've heard no
8 testimony whatsoever about the duty of care owed by
9 either a friend to someone who's in the emergency room
10 for psychiatric issues or the duty of care owed by some
11 employee of a governmental agency doing Veterans Affairs
12 work.

13 I believe those same arguments that I've just made
14 will also support my additional motion for directed
15 verdict with respect to intervening cause, as I do not
16 believe the Defendant has come forward with any evidence
17 that any of those three persons and/or entities, Edward
18 Ray, Calvin Hunt, and the Fire Department, were, in
19 fact, a superceding, intervening cause.

20 THE COURT: Gotcha. Well, let me ask -- let me
21 tell you -- hold on. Now, they don't have the burden of
22 proof, negligence of third parties, okay? acts of third
23 parties. They do have the burden to prove intervening
24 cause.

25 You're talking about criminal acts of the third

1 party. Acts of the third party. It's out there. It's
2 just out there. It's in this case, and I'm not going to
3 restrict these people from being able to argue
4 intervening acts of third parties. Nor am I going to
5 keep them from being able to argue sole acts of third
6 parties. I'm just not going to do that. And I note
7 your exception for the record.

8 MR. HOYLE: Thank you, your Honor. We certainly
9 respect your ruling.

10 THE COURT: Thank you so much. All right. Any
11 other motion for the Plaintiff? Any other motion for
12 the Defendant?

13 MR. LOVELL: Nope. Just our exception to the
14 Court's ruling on respondeat superior, for the record.

15 Judge, I did a have one question about a charge
16 thing that I forgot about.

17 THE COURT: Yeah, now I've got to go back and
18 change the charge with respondeat, the
19 employer/employee, I got to take all that out.

20 MR. LOVELL: We had asked for a hindsight charge.

21 THE COURT: Huh?

22 MR. LOVELL: A hindsight charge.

23 THE COURT: Oh, gosh. Oh, yes, yes.

24 MR. LOVELL: I have two of those we submitted, and
25 neither were in there.

1 THE COURT: Oh, I'm sorry. Daggone. And that's my
2 fault, because Ryan talked about that. And we're going
3 to put -- thank you so much for -- oh, yeah, it goes in.

4 MR. LOVELL: That's the one.

5 THE COURT: Oh, yeah. Any other ones like that;
6 because, absolutely, hindsight's going in there. And we
7 mentioned -- yeah, it goes after the defenses. It goes
8 after the defenses.

9 MR. LOVELL: I think you had the sympathy charge
10 that Doug was asking about. I seem to recall seeing
11 that.

12 THE COURT: No sympathy, passion, or prejudice for
13 or against any party in weighing the evidence?

14 MR. LOVELL: Yes.

15 THE COURT: If it's not in there, it's going to be
16 in there.

17 MR. LOVELL: Okay.

18 THE COURT: You know, this is not a total script.
19 You know, you going to think, oh, my, why did we go back
20 there; she's not deviating from it.

21 MR. LOVELL: Okay.

22 THE COURT: I'm not an Episcopal lay leader.

23 MR. HOYLE: With respect to the hindsight charge
24 that my friend Mr. Lovell just raised, I noticed that he
25 submitted two. One was just a general hindsight charge.

1 The other was a malpractice hindsight charge. I don't
2 think the malpractice one's appropriate, your Honor.

3 THE COURT: I changed -- yeah, I changed -- I
4 changed those. I actually played with it. Is that the
5 one I changed? All right, you all listen, because I
6 changed:

7 *In considering whether the Defendant*
8 *has exercised reasonable care in a given*
9 *case, you must consider Defendant's actions*
10 *and omissions, and/or omissions, as they*
11 *relate to the facts existing at the time*
12 *these events occurred, and not in light of*
13 *what hindsight may later reveal.*

14 That's the charge.

15 MR. HOYLE: That's fine from the Plaintiffs.

16 THE COURT: Okay.

17 MR. HOYLE: And your Honor, just since we're all in
18 here on the record, we did have an informal conference
19 this morning, as you know. There is going to be a
20 charge, unless you change your mind, there is going to
21 be a charge given to the jury today with respect to duty
22 specifically relating to the Court's view of the *Bishop*
23 and *Hardee* cases. I'm just going to go ahead and put it
24 out there. I know I have to say it again later, but I
25 at least want to have a record today here, so that, when

1 someone else more brilliant than myself argues this,
2 there's a good record.

3 While I acknowledge that there is a duty to warn a
4 patient, and that, that duty extends to a reasonably
5 foreseeable, non-patient third party within the general
6 zone of danger, it is Plaintiff's position that, based
7 upon the evidence in this case, including the testimony
8 of Dr. Terrence Baker, who was qualified as an expert
9 witness here in this courthouse, that the duty owed to
10 non-patient, third parties is, in fact, broader than
11 merely a duty to warn; and that, under the case law in
12 this state, specifically the *Hardee* case, which states
13 the duty owed to third parties is identical to the duty
14 owed to the patient, that any obligation that a
15 plaintiff brings forth evidence of with respect to a --

16 THE COURT: Yep.

17 MR. HOYLE: -- medical provider and a patient,
18 flows to a non-patient, third party who's reasonably
19 foreseeably in the zone of danger.

20 And so, we would respectfully and understandably,
21 but respectfully, take exception to any charge that you
22 give that merely limits the law of this state with
23 respect to non-patient, third parties as solely as a
24 duty to warn.

25 THE COURT: Thank you so much. I'm not going to

1 change the charge as it is. I'm just not going to do
2 it.

3 MR. LOVELL: We'll just make our exceptions at the
4 end, after the charge. Thank you, your Honor.

5 MR. HOYLE: Judge, a point of clarification for my
6 closing.

7 THE COURT: Yeah.

8 MR. HOYLE: In light of the directed verdict motion
9 on respondeat superior, and the fact that you will not
10 be charging the jury on that, will the Court address the
11 jury at any point in time to advise them that, that is
12 no longer an issue in this case, or how?

13 THE COURT: We will.

14 MR. HOYLE: Okay. I will undertake that.

15 THE COURT: And you got to be really careful, now,
16 that the evidence that came in under limited
17 instructions that you don't jump out and use it for
18 something else. You've got to be very careful. While
19 some of it's delicious and you're going to want to talk
20 about it, the negligent retention, you're going to have
21 to be really careful.

22 MR. HOYLE: Negligent retention, that's right,
23 Judge.

24 THE COURT: So be very careful. Okay. Because
25 they're not going to be sleeping over here. They're

1 going to be paying attention.

2 MR. HOYLE: You think they'll be paying attention,
3 Judge?

4 THE COURT: I know they will. Okay.

5 You can bring them in.

6 What we're going to do, -- let me just make this
7 announcement. We're going to lock the doors, and the
8 only person that's going to be allowed to come and go is
9 going to be the Plaintiff. If she needs to leave, she
10 gets to leave. She gets to come back. Okay.

11 MR. HOYLE: Thank you, your Honor.

12 MS. DELANEY: Thank you.

13 THE COURT: And if there are other family members
14 who are present -- I'm sorry. I'm so sorry. I just
15 know that she has been here, but certainly, certainly,
16 if you're comfortable, most assuredly. Okay?

17 MR. HOYLE: Judge, also, for clarification, --
18 good.

19 THE COURT: I just did that.

20 THE COURT: What it's going to say is:

21 *Ladies and gentlemen, --*

22 MR. HOYLE: I love it.

23 THE COURT: -- the evidence that you should
24 give the most weight to is in the preponderance
25 charge. The evidence that you should give

1 the most weight to is that which convinces
2 you of its source, regardless of from whom
3 or what source it comes. However, you should
4 not consider sympathy, passion, or prejudice
5 for or against either of these parties in
6 weighing the evidence.

7 MR. LOVELL: Very good. Thank you, your Honor.

8 THE COURT: Okay. Yep. All right. We're up.

9 MR. HOYLE: Point of clarification --

10 THE COURT: Hold on.

11 MR. HOYLE: One clarification, your Honor.

12 Yesterday, informally, we discussed times. I just want
13 to make sure I have the times correct in my head.

14 THE COURT: No.

15 MR. HOYLE: Okay.

16 THE COURT: You argue. You do your thing.

17 MR. HOYLE: Okay. Do what I need to do. Thank
18 you, Judge.

19 BAILIFF: Jury is entering the courtroom, your
20 Honor.

21 THE COURT: Wonderful.

22 JURORS ENTER COURTROOM 11:10 A.M.

23 THE COURT: Ladies and gentlemen, good morning.

24 RESPONSES FROM JURORS.

25 THE COURT: I want to tell you how we are going to

1 be proceeding. The first thing that's going to occur is
2 that you're going to hear closing argument on behalf of
3 the Plaintiff in this case, by Mr. Hoyle. The Plaintiff
4 is Ms. Rebecca Delaney. You'll hear his principle
5 closing argument. You're then going to hear from Mr.
6 Mackelcan on behalf of CasePro, Inc., the Defendant in
7 this case. You are then going to hear a -- it's called
8 a reply or rebuttal argument from Mr. Hoyle. And that
9 will be the concluding closing argument.

10 So, first from Mr. Hoyle, then from Mr. Mackelcan.
11 And then, rebuttal or reply argument from Mr. Hoyle on
12 behalf of the Plaintiff. Ladies and gentlemen, that
13 will then conclude the closing arguments.

14 We're then going to have a recess, a break at that
15 point, for a little comfort break. You're going to
16 control the comfort break. And when you have finished
17 your comfort break, at that point, you won't be -- you
18 can't deliberate then. You just take your comfort
19 break. And then, you're going to come back, and I'm
20 going to deliver the charge or the instruction on the
21 law to you. I believe that, that will take me about 30
22 minutes max to do that. And then, there will be another
23 very short break. And I'll explain that to you, the
24 purpose of it when we come to that point.

25 And then, ladies and gentlemen, you are going to

1 receive this case for your deliberation. You have
2 ordered your goodies from Alvin Ord. So, I contemplate
3 that you will be deliberating and eating at the same
4 time. So, that is our plan as we go forward this
5 morning, ladies and gentlemen, and some approximate
6 times that I think we'll be dealing with.

7 Ladies and gentlemen, you are free to take notes if
8 you choose to. Again, don't let the taking notes keep
9 you from being able to listen to the closing arguments
10 of the attorneys. All right?

11 But at this time, I ask that you please draw close
12 as we listen to the closing arguments of our attorneys.

13 MR. HOYLE: May it please the Court?

14 THE COURT: Yes, sir.

15 CLOSING ARGUMENT ON BEHALF OF

16 PLAINTIFF, BY MR. HOYLE:

17 MR. HOYLE: Semper fidelis declares the Marine
18 Corp, meaning always fair. Words that, in this
19 community, have meaning. Words that, in this community,
20 have a meaning regardless of the good, the bad, the
21 ugly. Words that have meaning regardless of one's
22 station in life. Words that sometimes are signified and
23 represented by an oath, a solemn vow, a promise.

24 Calvin Hunt took an oath as part of the oath of an
25 enlisted man to defend this country and to serve under

1 the officers appointed. A solemn vow. Dr. Chris Jansen
2 took an oath, an oath to do no harm; to put patient
3 safety first.

4 Nine days ago, when we first began this process,
5 each of you took an oath, an oath as a juror to consider
6 all the evidence in a search for the truth. And that is
7 what we have done over the past nine days.

8 You will recall that, when I first spoke to you, I
9 tried to give you a sense of a tragedy that had taken
10 place, and I told you in my opening remarks that this
11 was a tragedy that could have been prevented. In the
12 days that followed, you saw first-hand evidence of that
13 tragedy.

14 Corporal Jamie Perry, from the Highway Patrol, came
15 and sat on the witness stand. He was the first witness.
16 And he showed you photographs and walked you through
17 that horrific scene that he found on a Friday afternoon
18 on Ribalt Road.

19 You later, with your ears, heard from Ms. Melanie
20 Smith, an employee of the Sheriff's Office, who came
21 into this courtroom with the original 911 recordings of
22 that fateful Friday, and you heard a sequence of events,
23 a sequence of events that began with somebody in his
24 underwear, then he was suddenly naked, then he was
25 driving a fire truck.

1 And you heard call after call after call, a sense
2 of panic, a sense of fear, a sense of terror of what was
3 transpiring on Ribalt Road. And those calls ended less
4 than 20 minutes after the first one began, with a call
5 from a man reporting that someone had come into a
6 bowling alley reporting that his brother had been run
7 over by a fire truck.

8 On that first day of trial, you heard from a
9 pathologist who talked to you about some things. And
10 then, we began the testimony of almost 20 witnesses,
11 many of whom were there at the Naval Hospital, Beaufort
12 on that fateful Friday. And testimony from others who
13 were far away, all in an effort to help piece together
14 the puzzle of why this tragedy happened.

15 You, each of you, by becoming jurors in this case,
16 became participants in a search for the truth. You are
17 here on behalf of this entire community, on behalf of
18 all of Beaufort County, to try and ascertain what
19 happened on that tragic, fateful Friday.

20 This community, for more than three years, has had
21 questions. Questions about how such a tragedy could
22 have happened, and whether or not it could have been
23 prevented. And each of you, each of you now know more
24 than virtually anyone else in this community what
25 happened, why it happened, and will be called upon later

1 today, as far as your deliberations, to answer some
2 questions.

3 Our first witness was a lady by the name of Koren
4 Pope. First witness from the Naval Hospital. And Ms.
5 Pope really didn't know all that much. Ms. Pope really
6 didn't spend all that much time with Calvin Hunt. I
7 think we played some 20 minutes of testimony for maybe a
8 three- or four-minute interaction. But a few salient
9 points came forward for Ms. Pope. She wasn't able to
10 find this man in the computer. If you go type my name
11 into the system at the Naval Hospital and don't have the
12 matching Social Security Number, nothing's going to come
13 up. Doesn't matter what kind of identification I have
14 or who I am or who I'm not, if you don't have that
15 combination, you're not going to be able to find any
16 records. That's what Ms. Pope told us.

17 But more importantly, Ms. Pope interacted with this
18 man for just a very few minutes, and she knew that he
19 needed some help. And so, she went and got Registered
20 Nurse Sandra Smith from the back, and had Ms. Smith
21 come out to see Mr. Hunt. Mr. Hunt went back, along
22 with Edward Ray, his friend, somebody Grandma had
23 thought of, and they go back to Ms. Smith's office. And
24 you'll have back with you in the jury room as an
25 exhibit, the note that Ms. Smith typed up that day.

1 Ms. Smith told you on the videotape that she had an
2 inner sense that something just wasn't right, something
3 wasn't right with this man, Calvin Hunt. She'd been a
4 nurse for a good, long while. She'd gone up at A&T in
5 Greensboro for school. She'd come back here to her home
6 county of Beaufort. Been nursing for a good, long
7 while.

8 And she was able to count the times she had to ask
9 this question on one hand. It was either two or three
10 times. But she felt the urge to ask Calvin Hunt,
11 because of the way he was behaving in her presence, do
12 you have thoughts of hurting yourself. And she got a
13 simple answer back -- yes. And rather than do nothing,
14 rather than ignore it, rather than just assume that it's
15 just one of those Fridays, Sandra Smith acted
16 immediately. She got Mr. Hunt up, told Edward Ray to
17 come along, and they walked downstairs to the emergency
18 room.

19 And Ms. Smith told you on the videotape that she
20 knew this man needed to be seen by a doctor. In her own
21 note, which she typed up that afternoon and put into the
22 computer system, she noted that the patient, in her
23 presence that day, began to moan and rock back and
24 forth. That is not normal behavior, folks. You don't
25 need to be an astronaut to know that. You don't need to

1 go to medical school to know that. If you've got
2 somebody moaning and rocking back and forth, they might
3 need some help.

4 And that's what Ms. Smith did. She escorted this
5 man, a member of our armed forces, who had gotten into
6 some trouble, downstairs to the emergency room, and
7 provided the nurse, who she handed care off to, a report
8 of what it was she had observed and what it was that had
9 happened.

10 At about 17 minutes past the hour of 2:00 on that
11 fateful Friday, Nurse Smith makes the handoff. Calvin
12 Hunt's now in the emergency room. He's now the
13 emergency room's responsibility. Nurse Smith, she works
14 for the federal government, and the folks downstairs in
15 the emergency room, they work for somebody else. And I
16 know you all heard a lot about that, and we'll talk
17 about that in a little bit.

18 But at 2:17 in the afternoon, a lady by the name of
19 Janice McDonald, who came up here and sat on that
20 witness stand, made an assessment of the man who was in
21 front of her. And the chief, primary assessment that
22 this nurse made was suicidal ideation. In other words,
23 that this man, at that point in time, had thoughts of
24 hurting himself. Thoughts of hurting himself.

25 Now, there was some testimony about some paper

1 records that came on into the emergency room that day
2 with Mr. Hunt. And Nurse Janice said, oh, they were
3 about an inch thick; maybe they were an inch-and-three-
4 quarters thick. You didn't get to see any of those
5 records, because Nurse Janice, she really didn't look
6 through whatever it is that was brought in that day.
7 She spent about 60 seconds looking through an inch-to-
8 an-inch-and-three-quarter stack of medical records.

9 Now, Calvin Hunt wasn't some eighty-year-old who
10 had been spending ten years in the nursing home. This
11 was a young, fit, United States Marine. Somebody in the
12 prime of his life. And he had an inch-and-three-
13 quarter-inch stack of medical records. Makes you wonder
14 what was in it.

15 But Nurse Janice, she looks through them records
16 enough to find some medications, because she knows that
17 Mr. Hunt wants some pills. So, she looks through those
18 records just enough to find some list of medication that
19 she can write on this form she's got filled out. And
20 she realizes -- she knows that two of those medications
21 that Mr. Hunt has been previously prescribed and needs a
22 refill of are anti-psychotic, mental health medications.
23 She doesn't know how long he's been out of the pills,
24 but she knows he needs them. And she knows that he
25 suffers from depression and PTSD.

1 She knows he's a Marine, but she doesn't bother to
2 ask whether or not that PTSD is service-related. We
3 don't really know why. And the only time this man's
4 vital signs are ever taken on that fateful Friday in the
5 emergency room are done shortly after he gets there.
6 And he's got a slightly elevated heart rate of 103.

7 There's been some testimony, it's up to you to
8 decide whether or not you believe it, that 103 might be
9 slightly elevated on somebody like me who's a little out
10 of shape; but testimony that a fit, young, United States
11 Marine had a heart rate of 103 might be a red flag.

12 Regardless, Nurse Janice doesn't spend all that
13 much time with Mr. Hunt. She takes him into a little
14 room, and she sees him doing some odd things. She sees
15 him put his hands over his ears. She knows that's not
16 normal. Anybody with good, old-fashioned common sense
17 knows that's not normal. Not right.

18 She knows from the information she has that the
19 grandma, Calvin Hunt's people, have sent him over to the
20 emergency room -- or, excuse me -- sent him over to the
21 Naval Hospital where the emergency room's located,
22 because he needs some help. But she doesn't want to
23 spend all that much time with him in that itty-bitty
24 emergency room, specifically in the itty-bitty triage
25 room, because he's between her and the door. And

1 there's testimony from Nurse Janice herself that she got
2 a little afraid of him, got a little scared.

3 So, Nurse Janice keeps filling out her forms,
4 making sure she documents this encounter the way she's
5 supposed to. And she notes that he has, among other
6 things, a flat affect or affect. She sat up there on
7 the witness stand and compared that -- I want to get
8 these words right -- she compared that to a sense of
9 almost death. That's the way he looked to her.

10 She described his demeanor and his actions as a
11 slow simmer. She knew he was angry, but she thought,
12 rather than being a frying pan with some bacon, he was
13 more like a pot boiling some eggs.

14 But nevertheless, she fills out her paperwork,
15 checks her boxes. And in that short, brief period of
16 time that Calvin Hunt's her responsibility, she does
17 what she needs to, to make sure the records are clear
18 that this man is depressed, withdrawn, and suicidal.
19 And then, she walks him down the hall and passes him off
20 to her husband, Joe McDonald.

21 Now, she tells her husband some of what she knows,
22 even though she's got Mr. Hunt to answer some questions
23 about how he's been doing in the past two weeks, whether
24 he was down, depressed, or hopeless; whether he had a
25 little interest or pleasure in doing things; she says,

1 you know, I don't think -- I don't think he's suicidal;
2 I think he's angry. Angry.

3 There's been a lot of testimony in this case from a
4 couple of witnesses that angry does not mean the same
5 thing as calm. I think we can all agree on that. I
6 think we all know that. This was an angry man, off his
7 medications, reporting to an emergency room with
8 thoughts of hurting himself.

9 Now, even though Nurse Janice is afraid of the man,
10 really doesn't want to spend all that much time with
11 him, we heard testimony from Nurse Janice's husband, Joe
12 McDonald, who was treatment nurse, and there was some
13 sort of nonsense said in here about how he would have
14 Kalvin Hunt over for dinner. I don't know if his wife
15 would like that too much or not.

16 But he fills out his paperwork, too, although, he
17 admits that, even though he's the only patient there in
18 the emergency room, Kalvin Hunt, the only patient there
19 in the emergency room, the only patient that Nurse Joe
20 McDonald has to tend to, that, well, you know, some of
21 the times might be a little off. Wasn't real detailed
22 in my record keeping that day. All right, we said.

23 What did Nurse Joe McDonald say. He received the
24 report from triage, so he at least acknowledges in the
25 record that his wife told him some things about this

1 man, about Calvin Hunt. He noted that a medical doctor,
2 Dr. Jansen, went in and started talking the man. And he
3 notes, importantly, somewhere around 3:10 or 3:20, that
4 Dr. Jansen makes a telephone call over to Beaufort
5 Memorial to the psyche ward to see if they've got a bed
6 available.

7 Subsequent entries down here, Nurse Joe says, well,
8 the times might be a little off; even this time, it's
9 1510, 1520; not really sure. But he told you that he
10 was writing these as a sequence. So, at least according
11 to the sequence, that telephone call that Dr. Jansen
12 made, according to the record, was made before Psyche
13 Tech Manning ever showed up.

14 Let's talk a little bit about Psyche Tech Manning.
15 This is an enlisted man in the Marine Corps. He's not a
16 doctor, not a nurse. He's a corpsman. That's what he
17 went to A School to learn to do. And when his
18 deposition was taken, his deposition was actually taken
19 out in Hawaii. I didn't get to go. None of us actually
20 got to go. We did that by telephone.

21 But Mr. Manning testified that he didn't spend all
22 that much time with Calvin Hunt, but when he interacted
23 with him, he thought he was agitated. And he went
24 upstairs to share with others his report of what it was
25 he had observed how his own two eyes about Calvin Hunt.

1 He made clear he wanted to come back downstairs with
2 somebody else, because he didn't want to be alone with
3 Calvin Hunt.

4 Now, Nurse McDonald, Nurse Joe McDonald, though,
5 keeps writing things up as if everything's hunky dory.
6 Notes that Psyche Tech Manning's evaluation's in
7 progress. Notes that Calvin Hunt goes by himself fully
8 clothed to the bathroom.

9 Nurse Joe McDonald had access to his wife's medical
10 records. Had access, presumably, to everything it was
11 his wife knew. There's some evidence in this record
12 that he could have pulled up the records from Sandra
13 Smith. But inexplicably, some 50 minutes after a phone
14 call is made to see if there was a bed on the psyche
15 ward that Calvin Hunt can rest his head on later that
16 day, Nurse Joe McDonald gets asked a question, and you
17 all know that question is: can we go outside for a
18 breath of fresh air.

19 And Nurse McDonald didn't channel Nancy Reagan; he
20 didn't use good, old-fashioned common sense. He didn't
21 say no. He said yes.

22 You heard testimony from Joe McDonald himself that,
23 if he had known certain things, his answer would have
24 been different. It wouldn't have been a simple yes;
25 that he would have told him no.

1 We'll come back to Dr. Jansen in a minute. He was
2 our next witness. I'm sure you all have forgotten about
3 Dr. Jansen.

4 Nurse Joe McDonald had the opportunity,
5 unequivocally, to give direction to Calvin Hunt a few
6 minutes before the hour of 4:00 on February 24, 2012, as
7 to whether or not he could leave the emergency room.

8 You heard testimony from a man who's been
9 practicing medicine for 40 years. He's got a whole
10 bunch of credentials after his name. He's the current
11 president of one of the largest societies that emergency
12 doctors belong to. He practiced here in South Carolina.
13 He practiced up in Maryland. Still treating patients in
14 the emergency room. Actually treated patients in the
15 E.R. this week. And he also makes a little bit of money
16 testifying in cases like this.

17 Dr. Baker took the witness stand and was pretty
18 clear that Nurse Joe McDonald simply needed to say no,
19 and that he needed to warn Calvin Hunt of why he was
20 answering the question in the no. That he needed to
21 tell Calvin Hunt that you are here in the emergency
22 room; off your anti-psychotic medications; and you have
23 thoughts of harm; and if you leave the safety and
24 security of the emergency room, you might do those
25 things; so, let's just stay here.

1 That's what Dr. Baker said Nurse Joe McDonald
2 needed to do. Said that it was careless and reckless
3 for this nurse to say yes, when he should have said no.

4 Now, shortly after Dr. Baker testified, the
5 defendant brought in a nice, young fellow, a Dr. Oberg
6 from North Charleston. You heard testimony from Dr.
7 Baker that he had previously done some work for Mr.
8 Mackelcan and Mr. Lovell's firm, but I guess he wasn't
9 available for this case. So, the Defendant brought in
10 Dr. Oberg.

11 And Dr. Oberg's been a board-certified, emergency
12 room doctor for five years. And as a good, young
13 professional ought to do, he still consults the books
14 from time to time. He told you about how he takes his
15 iPad to work, and he looks on his iPad when he needs
16 certain information. And even though Dr. Oberg sat up
17 there on that witness stand, and for a good long while,
18 defended what Nurse Joe McDonald said, you saw on this
19 screen right here yesterday the plain text of a textbook
20 that Dr. Oberg first read in medical school, a textbook
21 he keeps on his iPad to this day, consults a couple of
22 times a week. And the text of that book was clear,
23 that, until the patient is admitted or discharged,
24 somebody with suicidal ideations cannot leave the
25 emergency room. Suicidal ideations is a baseline

1 matter. If that's what the patient is in for, until
2 they are admitted or discharged, you don't let them
3 leave.

4 Now, that's not all that was known in the emergency
5 room on that fateful Friday. Many of you all remember
6 Dr. Jansen. I don't know if Dr. Jansen likes me or not.
7 I don't think he does. But regardless, Dr. Jansen came
8 here and testified about what it was he did that day,
9 what it is he knew.

10 He knew that this man, at 2:50 in the afternoon,
11 had suicidal thoughts; had depression; and was in need
12 of some medication. Dr. Jansen didn't consult any past
13 medical records to find out why it was this man had been
14 prescribed Seroquil. He just relied on what Nurse
15 Janice had written in the previous record. But he did
16 note that these thoughts continued in the emergency
17 room; that they had charted several weeks ago with a
18 gradual onset; and that they were severe. He noted that
19 this young man was appealing a dishonorable discharge
20 from the service; and that he was depressed and angry.

21 I believe this is now the third person in the
22 emergency room to describe Calvin Hunt as angry. And
23 Dr. Jansen notes that, in addition to having thoughts of
24 hurting himself, this man, Calvin Hunt, also has
25 thoughts of hurting others.

1 Now, a lot of questioning and a lot of time has
2 been spent on whether or not Kalvin Hunt had a specific
3 plan. My friends who represent the Defendant in this
4 case have asked a lot of questions about a plan. But
5 just looking at our time line, we know that the thoughts
6 of harming others was entered at 2:50 in the afternoon,
7 and that the permission granted by Joe McDonald for
8 Kalvin Hunt to leave was almost an hour later.

9 There's nothing that says you can't develop a plan
10 in an hour. More importantly, there is nothing,
11 nothing, that suggests that Kalvin Hunt didn't have a
12 plan and just didn't tell anybody about it. Because the
13 records also show in this case that Kalvin Hunt didn't
14 recall his Social Security Number; that he was
15 disoriented with respect to that; and according to Dr.
16 Jansen, was poorly communicative. In Dr. Jansen's mind,
17 this was somebody that he could not get a sufficient
18 history from. Kalvin Hunt didn't tell him.

19 Apparently, according to this record typed up at
20 4:40, after the horrific events out on Ribalt Road, all
21 Mr. Hunt could say was that he wanted his medications
22 refilled, medications that, at least according to the
23 testimony in this courthouse, Mr. Hunt wasn't able to
24 fully identify.

25 Dr. Jansen was unable to get that sufficient

1 medical history, even though he wrote, *see prior medical*
2 *notes from Mr. Ray.* Were those the inch-to-an-inch-and-
3 three-quarter stack of records that Nurse McDonald
4 recalled? We don't know. Dr. Jansen tried very hard
5 from that witness stand to distinguish medical records
6 from the medical notes. At the end of the day, I don't
7 think it matters, because whatever they were, Dr. Jansen
8 didn't look at them. He kept filling out his paperwork.

9 He noted that Mr. Hunt appeared anxious. He noted
10 that elevated heart rate. He noticed the depressed
11 affect. And he noted that this man, a then active duty
12 Marine, suffered from depression and PTSD.

13 Now, you subsequently heard testimony, after Dr.
14 Jansen finally left the witness stand, from Dr.
15 Hendelman, the staff psychiatrist. Dr. Hendelman never
16 actually laid eyes on Calvin Hunt. According to her,
17 she didn't need to. And the reason was, it was obvious
18 that this patient needed to be admitted. That was her
19 testimony. Her unequivocal testimony that you heard was
20 that the second that Nurse Janice McDonald noted
21 suicidal ideations, that, that, in and of itself, was a
22 requirement for admission.

23 According to Dr. Handelman, this man needed to go
24 to an inpatient psychiatric bed, based on that
25 information alone.

1 The fact that Dr. Jansen also noted that he had
2 thoughts of hurting others, that also was a requirement
3 for admission. Dr. Hendelman identified three states of
4 mind that require admission of a person to a psychiatric
5 bed in a hospital: suicidal ideations, homicidal
6 ideation, or gravely disabled. Don't need all three.
7 Don't need two of the three. You just need one. And
8 this man had two to them.

9 Dr. Hendelman thinks it's obvious that this man
10 needed to be admitted. She also offered some testimony,
11 which you heard, about whether or not this man needed to
12 be kept under close watch until such time as he could be
13 admitted. There was testimony from Dr. Hendelman as to
14 whether or not he should have been allowed to leave the
15 emergency room. And she concurred with that textbook
16 that Dr. Oberg keeps on his iPad. She concurred with
17 Dr. Baker. And she concurred with what I submit is
18 good, old fashioned common sense; that the answer as to
19 whether or not this man needed to be turned loose was a
20 simple no. He needed to be kept safe. He needed to be
21 told no. He needed to be warned.

22 Now, we talked earlier about some times perhaps
23 being off on Nurse Joe McDonald's time line. And we
24 know that two of those times don't always match up with
25 Dr. Jansen's notes. Nurse Joe McDonald says there was a

1 telephone call to the hospital over at Beaufort Memorial
2 to see about a bed at 10 or 20 minutes after the hour of
3 3:00. Dr. Jansen, in his record, reflects that, that
4 was an hour later. But yet, when Dr. Jansen realizes
5 that something horrific, horrible, and traumatic has
6 happened out on Ribalt Road, and he decides to type up a
7 memorandum at 4:40 in the afternoon, about 23 minutes
8 after Justin Miller was pronounced dead, he puts his
9 thoughts in order and he notes that, even before Mr. Ray
10 came back to say that Calvin Hunt had run away,
11 presumably in his underwear, out the front gate of the
12 Naval Hospital, he had figured out that Calvin Hunt
13 wasn't in that itty-bitty emergency room. And he asked
14 his nurses, Joe and Janice, and the psyche tech to look
15 for the patient, and to notify security and the front
16 desk.

17 Why would Dr. Jansen do that? Edward Ray hadn't
18 come back. All Dr. Jansen would have known at that
19 point in time is that Nurse Joe McDonald had said that
20 the patient could leave. But Dr. Jansen wanted him
21 tracked down and brought back.

22 You'll be charged, ladies and gentlemen of this
23 jury, later, hopefully this morning, more likely this
24 afternoon, about certain matters of law, and I'm not
25 going to presume to do what the Judge has the solemn

1 obligation according to her oath that she needs to do.
2 But one or more of the charges that you will hear will
3 deal with the issue of foreseeability, the question of
4 whether or not the events that transpired on Ribalt Road
5 involving Calvin Hunt could have been reasonably
6 foreseen.

7 Now, I will tell you that, in the charge you will
8 hear from the Judge, there is not going to be any
9 requirement that the specific harm, in other words,
10 Justin Miller being hit and killed by a fire truck, had
11 to be reasonably foreseen. Rather, the harm that had
12 to be foreseen was the general harm, the harm of hurting
13 others. The harm that Calvin Hunt, at 2:50 in the
14 afternoon, informed Dr. Jansen he was having thoughts
15 of.

16 Quite frankly, ladies and gentlemen, it doesn't
17 matter for purposes of the law whether or not Calvin
18 Hunt, after he expressed those thoughts, left the
19 hospital and hurt somebody with a gun, a knife, or the
20 strap of a lady's pocketbook. The central question with
21 respect to foreseeability is whether or not, in light of
22 all of the information that the three people in that
23 emergency room knew or should have known, whether or not
24 they could have reasonably foreseen that a United States
25 Marine, trained to be resourceful when needed, trained

1 to improvise when needed, who was off his anti-psychotic
2 medication, who was agitated, angry, and just not acting
3 right, would actually follow through with what it was he
4 said he had thoughts of doing, and that's hurting
5 others.

6 The others, of course, weren't identified by name.
7 Calvin Hunt didn't show up to the emergency room at the
8 Naval Hospital in Beaufort with a Beaufort phone book.
9 He didn't have names highlighted. But ladies and
10 gentlemen, other than perhaps members of the grand jury
11 and law enforcement in this community, you are the only
12 people who have seen the video that was shown the other
13 day here in court of the carnage and rampage that Calvin
14 Hunt brought about on Ribalt Road.

15 Do you recall that horrific video that starts off
16 with the fire engine traveling at a normal rate of
17 speed, because it's being driven by firemen, people who
18 serve this community by fighting fire and tending to
19 people in need. It's driven at a normal speed.

20 And then, after the firemen leave to go do their
21 medical call, the truck just sits there for some period
22 of time, and then, something changes. It's no longer
23 being driven by a fireman. It's, apparently, being
24 driven by Calvin Hunt, someone who, minutes earlier, had
25 been in an emergency room looking for help, looking for

1 care. He was in a safe place, or a place that should
2 have been safe.

3 Calvin Hunt is in a fire truck, making a three-
4 point turn in a tight apartment complex parking lot
5 before he goes out on Ribalt Road. And he's driving,
6 initially, at a high rate of speed before, if you'll
7 think back to the video, making a sudden u-turn.

8 He then drives down Ribalt Road, past the Laurel
9 Hill Apartments, which he obtained the fire truck. And
10 then, you see him approach the intersection of Lady's
11 Island. And you saw him not one, not two, not three,
12 but some five vehicles that he struck with that fire
13 truck. This was a man off his medication, with severe
14 mental illness, who was doing exactly what he had told
15 medical providers less than two hours earlier he was
16 having thoughts of doing, and that's hurting other
17 people.

18 Our video that we played here in court stopped a
19 few minutes before impact. I shouldn't say a few
20 minutes. I apologize. A few seconds before impact.
21 But the video that you all saw, and this is the last
22 screen shown here in court, clearly showed the fire
23 truck crossing the centerline to strike a pedestrian.
24 Somebody literally walking across the street. An
25 innocent person.

1 This wasn't an accident. This was intentional.
2 And you heard yesterday the Court take judicial notice
3 of an order, an order that was entered right here in
4 this very courtroom by one of the resident judges here
5 in this circuit, an order that stated that, at the time
6 Kalvin Hunt did this, he did not know the legal
7 difference, did not know the difference between legal
8 right from legal wrong or moral right from moral wrong.
9 And therefore, as a matter of law, was not guilty by
10 reason of insanity.

11 The coroner, on the death certificate, which Dr.
12 Caplan had with him here, said that death occurred at 17
13 minutes past the hour of 4:00. If you believe Nurse
14 Jansen's [sic] notes about when Dr. Jansen called over
15 to Beaufort Memorial to inquire about a psyche bed,
16 that's almost exactly an hour later.

17 Now, the claims in this case are pretty simple.
18 You've heard from others, both in opening statement and
19 through some of the testimony, that Plaintiff did not
20 plead this as some sort of standard-of-care case,
21 whatever that is, but rather pled this case as what's
22 known as an ordinary negligence. And the Judge, in her
23 charge to you, will talk to you about what negligence
24 is.

25 In addition, one of the claims that Plaintiffs have

1 pled in this case, is that the Defendant not only was
2 negligent by and through its three employees, but that
3 the Defendant was negligent in continuing to retain, or
4 hire, keep on the payroll, keep getting paid, Dr.
5 Jansen.

6 There has been a lot, a lot, of testimony in this
7 case, and I apologize for it, about this whole issue of
8 employment. That's actually going to be one of the
9 questions that you all aren't going to have to decide,
10 because of some legal matters that were addressed here
11 in this courtroom earlier this morning, before you all
12 came out to the jury box.

13 Nurse Joe, Nurse Janice, and Dr. Jansen are all
14 employees of CasePro. I think that's been shown to you
15 all repeatedly through the personnel records and through
16 their testimony. But the bigger issue, I think, with
17 that is that, up until this morning, CasePro,
18 Incorporated, the Defendant that's involved in this
19 case, didn't want to take responsibility for the three
20 people that they were giving a paycheck to, to be in
21 that E.R. that fateful Friday.

22 I would submit to you that a reasonable person
23 could wonder if those three people did nothing wrong,
24 Nurse Janice, Nurse Joe, and Dr. Jansen, then, why does
25 it matter who's responsible for what they did or didn't

1 do? But that was one of the big fights that took place
2 in this courtroom. That was the reason some of these
3 witnesses that you all heard from the witness stand and
4 on the televisions had to testify. That's the reason
5 certain documents had to come into evidence. Because
6 there was a dispute as to whether or not this company
7 that had a contract that had its employees present in
8 the emergency room, could wash their hands of these
9 three people and say we have no responsibility for them.
10 In other words, we just want to keep the economic
11 benefit and have no responsibility.

12 I'm reminded of a story. It's actually a story
13 about a good friend of mine who was a trial lawyer in
14 the state. He did what I did. He did it a lot better,
15 I'll be honest with you. And he had a case where a
16 child had gotten bit by a dog. And the defendant came
17 into court, said, well, my dog don't bite. And when
18 that got proved up through the testimony and the
19 documents and the evidence that just wasn't true, there
20 was just no way to defend that.

21 The defendant then decided, well, maybe, maybe the
22 child didn't get bit by a dog; that it also got bit by
23 somebody else's dog.

24 And then, after testimony and evidence and
25 witnesses, when that turned out not to be true either,

1 the third thing the defendant said, well, my dog may
2 have bit you, but you didn't get hurt all that bad.

3 I think that's some of what's been going on here.
4 There has been a dispute about whether or not these
5 three people belonged to CasePro. And ladies and
6 gentlemen, based on the ruling here today, that dog's
7 not going to hunt, because, it's without question that
8 all three of these people are CasePro's employees, and
9 that CasePro is responsible for what they did or didn't
10 do.

11 Now, let's talk a little bit more about Dr. Jansen.
12 Dr. Jansen talked a little bit about the oath he took to
13 be a good doctor. But he, apparently, also took an oath
14 at some point in time to be a citizen. He just doesn't
15 remember when, and wouldn't put it past me to,
16 apparently, doctor up his citizenship papers.

17 But Dr. Jansen wasn't one of these incumbent
18 employees who just carried over from the prior
19 contractor with CasePro at the Naval Hospital. He had a
20 break in service. He had to work somewhere else. He
21 had to go over to Varnville in Hampton County and be an
22 E.R. doctor there for some period of time.

23 And Dr. Jansen, after he completed the citizenship
24 course he tells which he couldn't remember or didn't
25 recall or something like that, gets hired on by CasePro.

1 And he works for them for a year and a half, almost two
2 years, getting his paycheck from them, sending them
3 emails about his 401(k) match, and how much time off
4 he's going to get, and how much money they're going to
5 reimburse, so that he can keep his license up to date
6 with his continuing medical education criteria, all
7 sorts of stuff. That is in his personnel file as
8 Exhibit 22.

9 And then, something happens. Something happens
10 long before our story and our case begins. There's
11 information that you all heard about from Craig Martin
12 on the videotape and from documents and that exhibit I
13 just held up, that Dr. Jansen was involved in the
14 unfortunate death of a United States Marine. This
15 Marine came into the emergency room in 2009, and he
16 didn't come on with some sort of invariably fatal
17 disease, like mesothelioma, which you see advertised on
18 the television. He didn't come in with some rare form
19 of cancer that was going to require him to be sent to MD
20 Anderson or Harvard or some sort of world-renowned
21 treatment center. He came in with an infection. It's
22 called sepsis, an overwhelming infection of the body.
23 And Dr. Jansen actually laid hands on that young Marine,
24 but he didn't diagnose the infection; he didn't
25 prescribe any antibiotics. And that young man, that

1 United States Marine, passed away.

2 A chart review is done, kind of like what you all
3 are doing. A chart review is done right here in
4 Beaufort by another one of CasePro's employees. Gets
5 his paycheck just like Dr. Jansen does. By a fellow by
6 the name of Scott Moore. And Scott Moore is so bothered
7 and concerned and worried about what it is he sees in
8 those charts that belong to this United States Marine
9 that he just doesn't fill out paperwork, he doesn't just
10 check boxes, he calls somebody on his cell phone. Calls
11 Craig Martin, who testified that he was traveling back
12 from somewhere back to the corporate office in Texas.
13 And he tells Craig Martin that he has grave concerns
14 about Dr. Jansen. He believes that Dr. Jansen, in this
15 particular instance, all the way back in 2009, wasn't
16 able to meet the standard of care.

17 Now, if you remember Craig Martin's testimony, he
18 told you all on the videotape that, prior to Scott Moore
19 calling him up about this dead United States Marine,
20 there had been some complaints from a nurse about how
21 Dr. Jansen was sleeping too much. And then, he said,
22 well, there are beds, you know, for the physicians. You
23 all were paying attention to the testimony. Just about
24 everybody who came up here said that this was a four-bed
25 E.R. Dr. Jansen referred to it as a five-bed E.R. I

1 guess one of those beds was for him.

2 But having previously gotten complaints about Dr.
3 Jansen doing more sleeping than being a doctor, Mr.
4 Martin takes these concerns seriously. A dead United
5 States Marine is not a good thing. And he goes right to
6 the president of the company, his boss, down the hall,
7 Mr. McCabe, and talks to him.

8 And you heard testimony both from Mr. McCabe and
9 from Craig Martin. Now, there was no impeachment of Mr.
10 Martin on the videotape. Everybody accused him in his
11 deposition of having an ax to grind or of making things
12 up. You didn't hear any of that. Instead, what came
13 out from Mr. Martin was cold, hard truth.

14 Mr. Martin told you all that he didn't want his
15 wife to be treated by Dr. Jansen. He didn't want to be
16 treated by Dr. Jansen. He wouldn't want Mr. McCabe to
17 be treated by Dr. Jansen. He wouldn't even want a
18 uniformed member of our service treated by Dr. Jansen;
19 and that, if the decision had been up to him, as the
20 program manager, instead of the chief executive officer
21 of the company, in 2010, he would have told Dr. Jansen
22 to get gone.

23 But as we know, that didn't happen. No good
24 explanation has been brought forth in this courtroom
25 from any witness, including the president of the

1 company, as to why they didn't get rid of him, of this
2 bad doctor.

3 I respectfully submit to you, ladies and gentlemen,
4 that, because Dr. Jansen didn't get gone in 2010, that's
5 why Justin Miller is no longer with us today.

6 Dr. Jansen told you from this witness stand up here
7 that he and he alone was the person in charge of that
8 emergency room on that fateful Friday. He told you that
9 he was analogous to the captain of the ship. Didn't
10 quite know what a quarterback was, but he was the
11 captain of the ship. Any decisions that were going to
12 be made in that emergency room about the care and
13 treatment of the patients, they weren't coming from some
14 other doctor elsewhere in the emergency -- elsewhere in
15 the Naval Hospital. There was nobody there holding his
16 hand, telling him what diagnosis to make or what
17 treatment to give or what medications to prescribe. He
18 was clear. It was his decision. And that would be true
19 with respect to whether or not to admit a patient.

20 There's lots of E.R. doctors out there, but you saw
21 through his personnel file how much Dr. Jansen was
22 getting paid. And you also saw in the task order how
23 much CasePro was getting paid by the government to have
24 him there. I respectfully submit that you all are smart
25 enough to reach your own conclusions as to why CasePro

1 kept Dr. Jansen on the payroll, instead of telling him
2 to get gone.

3 Mr. McCabe, though, wanted more proof. Just wasn't
4 enough proof.

5 We're talking about that three-dog story. Dog
6 doesn't bite; bit by someone else's dog; didn't get hurt
7 all that bad. Let's talk a little bit more about this
8 somebody else's dog. We know that these folks were
9 CasePro employees. They're getting their paycheck from
10 them. They're really not, somehow, the Navy's
11 responsibility. But there's been testimony elicited in
12 this courtroom that, either explicitly or implicitly,
13 tries to blame other people.

14 Let's start with the 911 dispatchers. Did you all
15 hear some funny questions asked of her? How quickly was
16 help dispatched? Where was help sent to? It's not the
17 Sheriff's Office fault that they couldn't set up some
18 sort of massive roadblock to keep a fire truck from
19 going down Ribalt Road. Nobody there had knowledge
20 about Calvin Hunt and about all of his mental health
21 issues, and that he had thoughts that day, that
22 afternoon, within mere hours, if not minutes of this
23 horrific tragedy occurring, that he had thoughts of
24 hurting others. Those three did, but nobody answering
25 911 calls at the Dispatch Center.

1 There were some questions asked of the fire chief
2 of this community, perhaps either to implicitly or
3 explicitly blame the fire department. And our fire
4 chief told us that, if the fire truck had been cut off,
5 the battery had been powered down, the Dispatch units of
6 the two firemen attending to a medical call in the
7 senior housing wouldn't have worked. Not a good thing
8 to have firefighters who can't communicate.

9 So, I guess the only other person left for the
10 Defendant to blame would be Calvin Hunt, somebody that
11 was brought to their facility, to the emergency room
12 they were staffing, for help.

13 You heard the Court take judicial notice of certain
14 matters. I've already talked to you about those.

15 But who was in a better position that day? Those
16 three? Or Calvin Hunt? Somebody who got committed to
17 the Department of Mental Health subsequent to a
18 proceeding here in this courthouse? Or persons who took
19 an oath to keep people safe? People who had knowledge
20 that this was a man looking for a refill of something
21 known as Seroquil. Hadn't been on it for quite some
22 time. Somebody who had PTSD and alcohol and drug
23 dependent issues.

24 Now, we've been looking at these records, gosh,
25 almost for nine days, it seems like. Dr. Jansen didn't

1 order any type of tests to figure out what drugs or
2 alcohol Calvin Hunt might have been on that day, so we
3 don't know. But they knew he suffered from depression;
4 there'd been a prior suicide attempt; that he had an
5 altercation with his superior; and that, as a result of
6 that, he was appealing a dishonorable discharge from the
7 service.

8 They knew he was angry, anxious, and partially
9 disoriented, at least with respect to his Social
10 Security. We've seen before this record that he was
11 poorly communicative.

12 Who was in a better position? A mentally ill man?
13 Or the people who should have helped him? The people
14 whose obligation was to keep him safe and to warn him
15 that he needed to stay exactly where he was.

16 In a few moments you will hear from the Defendant's
17 counsel, and then, I will get the opportunity to speak
18 to you again. The Judge will charge you on the law.
19 Then, you will go back to that jury room and begin your
20 deliberations.

21 I've never been on a jury. I really would like to
22 be on a jury some day, but I don't know that I could
23 make it through the process that you all went through
24 last Tuesday. They'd probably have me out of here by
25 11:00 o'clock or so.

1 But back there in that jury room, you're going to
2 have all of the evidence, the paper evidence that has
3 been put forward at this trial. You're going to have
4 all these records. You're going to have all the
5 personnel files. You're going to have a lot of things
6 that you're looking at in front of you here. And each
7 of you are going to have the ability to talk to each
8 other, and to form the consensus to speak as one voice
9 as the conscience of this community.

10 When you're back there in that jury room, and
11 someone tries to tell you that the CasePro personnel
12 were somehow justified or right to not warn Calvin Hunt
13 he needed to stay there, I want to remind you of the red
14 flags.

15 He was poorly communicative. He was going through
16 a rough patch as a result of a dishonorable discharge.
17 he was depressed and angry. He had severe suicidal
18 thoughts, depression that had been going on for several
19 weeks. The last two weeks he felt down, depressed,
20 hopeless, had little interest or pleasure in things, and
21 he was out of his depressed, moody meds. All the
22 information was there.

23 And then, at some point in your deliberations, I
24 imagine that some people might start discussing the
25 concept of money. And I apologize for that. I really

1 wish that, instead of awarding some sort of money
2 damages, that juries in a wrongful death case could
3 bring a loved one back to life. I wish that was
4 possible. I wish that there was something more that
5 twelve jurors could do than merely indicate on a line
6 that someone or some entity is responsible for a
7 specific harm and reflects that responsibility by
8 putting a specific number on a line.

9 But that's the task that you all are going to be
10 given to do, subject to your oath, sitting here on
11 behalf of the community.

12 And you will hear later from the Judge about the
13 elements of the damages in a case like this, a case
14 involving the wrongful death of an innocent person.
15 You're going to hear about elements such as shock,
16 suffering, wounded feelings, grief, and sorrow.

17 Those are emotional damages, emotions that take
18 place regardless of your educational level, regardless
19 of where you grew up, regardless of how sophisticated
20 you are, regardless of who you might be, those are
21 emotions that are as natural and as human as anything
22 that we know.

23 You heard testimony about the shock of finding out
24 that this terrible tragedy had taken place, the
25 disbelief, the horror, the inability to comprehend that

1 someone's life could come to an end by making contact
2 with a fire truck.

3 You have heard about a broken heart. You've heard
4 about love that continues. You've heard about the
5 inability to say goodbye.

6 I wish we weren't talking about money. And I'm not
7 going to stand up here and look you in the eye and tell
8 you any kind of number or anything like that, but I'm
9 going to remind you of this. That this whole discussion
10 of money began when a decision was made, gosh, some five
11 years ago, when a decision was made that it was better
12 for a corporation to keep a doctor on its payroll than
13 to tell him to get gone.

14 And I respectfully submit to each of you ladies and
15 gentlemen that the verdict that you all return in this
16 case, the form that you fill out and that you walk back
17 through that door later today, will send a message. It
18 will send a message on behalf of this community with
19 respect to how you --

20 MR. MACKELCAN: Objection, your Honor. Improper.

21 THE COURT: Sustained.

22 BY MR. HOYLE:

23 MR. HOYLE: When you return that verdict later
24 today, it will be published here in open court, and it
25 will be heard by all of those present. It will be heard

1 by the Plaintiff --

2 MR. MACKELCAN: Objection, your Honor. Same
3 objection.

4 THE COURT: Overruled, but be careful. Just people
5 will hear it in the courtroom. I mean, it will be
6 announced, but beyond that.

7 BY MR. HOYLE:

8 MR. HOYLE: It'll be heard by everyone here in the
9 courtroom. I even believe it'll be heard, maybe
10 directly or indirectly, by the three people on February
11 24, 2012, who had all of the information that they knew,
12 all of the information that they should have known, to
13 prevent this terrible tragedy from taking place.

14 Thank you.

15 THE COURT: Ladies and gentlemen, it's a stand-and-
16 stretch. Oh. Is that enough? Do you all need to take
17 a -- does anybody need to take -- some of you all? Who
18 needs a break? Morning break? Need a comfort break?

19 You are not prepared to deliberate. We're in
20 closing arguments. Do not discuss this matter or allow
21 anyone to discuss it with you. When you have finished
22 your comfort break, ladies and gentlemen, I wait on your
23 return. Leave your notebooks in your seat.

24 JURORS LEAVE COURTROOM 12:20 P.M.

25 THE COURT: All right. We'll take our comfort

1 break. But don't go far, because we'll be able to start
2 right up when our jury let's us know we are ready --
3 they are ready.

4 OFF THE RECORD 12:21 P.M.

5 BACK ON THE RECORD 12:36 P.M.

6 BAILIFF: All rise. Court is now back in session.

7 THE COURT: Okay.

8 BAILIFF: Are you ready, your Honor?

9 THE COURT: Yes.

10 BAILIFF: Jury's entering the courtroom now.

11 THE COURT: Great.

12 JURORS ENTER COURTROOM 12:38 P.M.

13 THE COURT: All right. Ladies and gentlemen, Mr.
14 Mackelcan.

15 CLOSING ARGUMENT ON BEHALF

16 OF DEFENDANT, BY MR. MACKELCAN:

17 MR. MACKELCAN: Ladies and gentlemen of the jury,
18 the issue in this case is not whether Calvin Hunt had
19 mental health issues. He did. All of the medical
20 witnesses testified to that. The issue in this case is
21 also not whether Calvin Hunt had his wits about him when
22 he stole that fire truck and caused all the harm that he
23 caused. It's fairly clear that, at that time, he
24 didn't.

25 The issue in this case is whether, upon

1 presentation to the emergency department at the Naval
2 Hospital at 2:15 in the afternoon, during that time and
3 4:00 o'clock, whether the signs and symptoms were
4 present for the average, ordinary person off the street
5 to reasonably foresee that Calvin Hunt would walk out of
6 that emergency room to get a fresh air with his escort
7 and not come back for the remainder of his treatment.
8 That's the issue in this case.

9 There's a lot out here to confuse you about what
10 this case is about. That's what this case is about.

11 When we started, Gary talked about some of our
12 themes. Medical judgment versus ordinary care. This
13 has been pled as an ordinary care case. You've heard
14 Mr. Hoyle talk about that. What that means is the
15 standard by which you hold the conduct of Joe McDonald
16 and Janice McDonald and Dr. Jansen is to that of the
17 ordinary person in the same or similar circumstances.
18 It's not a standard -- you do not hold the McDonald's to
19 the standard of an R.N. with 20 years of experience.
20 You're not holding Dr. Jansen to the standard of a
21 board-certified medical doctor with 35 years of
22 experience. It's a standard of the average person.

23 Next, we're going to talk about the signs and
24 symptoms present versus not present. And we've heard
25 witness after witness. Plaintiffs have had their boards

1 with their things highlighted. Defendant has had their
2 board highlighted.

3 But again, the issue is not whether or not Calvin
4 Hunt had mental illness. He had depression. He had had
5 medication. That's why he was there. The issue is
6 whether he presented on that day, February 24, 2012, as
7 someone who was a flight risk; as someone who didn't
8 want treatment; as someone who was such a threat of harm
9 to others, that this duty to warn may have been created
10 or this duty to keep him under close watch.

11 Plaintiff's expert got up here and said that -- I
12 think he used the term *careless disregard*. I think one
13 of the things you have to think about was Janice
14 McDonald carelessly disregarding Calvin Hunt? Was Joe
15 McDonald carelessly disregarding Calvin Hunt? Was Dr.
16 Jansen carelessly disregarding?

17 Patients' rights. Mr. Hunt was a Marine. He was
18 there to get help. He was there voluntarily. He was
19 there with a family friend. He had met that family
20 friend at 10:30 that morning, and they had gone their
21 separate ways, and gotten back together at about 1:30 at
22 the Naval Hospital for treatment.

23 Mr. Ray was the Veterans Affairs Officer for
24 Beaufort County. He had dealt with veterans. That was
25 his job. He knew what to look for, and he was there to

1 help Calvin Hunt. He was with Calvin Hunt every step of
2 the way. The only time he was not physically able to
3 see Calvin Hunt was when Dr. Jansen was evaluating. I
4 believe they said that the curtain was pulled. When
5 Manning was evaluating Hunt, I believe the curtain was
6 pulled. But Mr. Ray was standing right outside of the
7 curtain.

8 They calmly walked outside together after Mr. Ray
9 asked Joe McDonald if they could step outside for a
10 breath of fresh air.

11 Foreseeability, I've already talked about that. I
12 won't repeat myself. The key is being able to
13 reasonably foresee that Calvin Hunt was not going to
14 come back in and continue his treatment.

15 You heard at the beginning about the burden of
16 proof. Plaintiff has the burden of proof. We talked
17 about tipping the scales, the preponderance of the
18 evidence. The Plaintiff must prove the case to a
19 preponderance of the evidence. And keep that in mind on
20 every issue.

21 When you go back and you start deliberating, you're
22 going to have a series of decisions to make. And if, at
23 every step of the way, you say no, you have to find for
24 the Defense. We can all go home.

25 And that first question that you have, we talked

1 about already. Is this a medical negligence case, or is
2 this an ordinary negligence case? If you decide that
3 this is a medical negligence case, we go home.

4 If you decide that it was not reasonably
5 foreseeable under the circumstances, that Calvin Hunt
6 would run away from Mr. Ray at some point after they
7 stepped outside of the E.R., race through the gate of
8 the -- the security gate at the Naval Hospital, and
9 cause harm, there's no duty. We go home. We're going
10 to come back to that.

11 We talked a little bit about -- and you've heard
12 this over and over, over the last couple of weeks.
13 Calvin Hunt and Mr. Ray walk in; they go up to the
14 second floor to see if Calvin Hunt can speak with the
15 doctor about getting some medication. They come in.
16 They speak with Koren Pope. Her words that she used to
17 describe him, he was neat, he was calm, he was normal,
18 he was quiet, he followed direction, and he had normal
19 voice volume and tone. None of this behavior concerned
20 her about her safety.

21 Sandra Smith testified that Mr. Hunt stood up when
22 she entered the room, and they went back. He indicated
23 that he needed medication refills for sleep and anxiety.
24 She asked him, do you want to have an appointment for
25 Monday, or do you want to go to the E.R. right now. He

1 said I'll take the appointment Monday.

2 She didn't think there was anything abnormal about
3 that until he -- and using her words -- one slight
4 rocking motion and sigh of exasperation.

5 She followed up and asked if he had thoughts of
6 hurting himself. He said that he did. And she said,
7 well, let's go down to the E.R. There was no
8 resistance. There was no disagreement. Calvin Hunt
9 simply got up with Edward Ray. They walked from the
10 Medical Homeport on the second floor, down to the
11 emergency room, where they stood outside of the
12 emergency room in the hallway.

13 Saundra Smith makes the hand-off to Janice
14 McDonald. Importantly, you've seen, and you saw early
15 this morning, the note that Saundra Smith created.
16 There's been a lot of talk about that and a lot of talk
17 about the problem list on the first page.

18 That note was generated at 3:56 p.m. on February
19 24, 2012. The emergency room did not have that note.
20 Saundra Smith only told Janice McDonald that Calvin Hunt
21 needed medication refills and had thoughts of hurting
22 himself. She didn't say anything about the rocking and
23 the moaning.

24 Janice McDonald brings Calvin Hunt back into
25 triage. Plaintiff counsel seemed to indicate that she

1 didn't spend enough time with him. But the triage is
2 not supposed to be an extended evaluation. The purpose
3 of a triage, as you have heard, is to take some vital
4 signs, see what's happening with the patient, and get
5 them back into the bed. And that's what Janice McDonald
6 did.

7 We go back and talk about the medical versus
8 ordinary negligence. Janice McDonald identified what
9 his ESI scale was. Took his vital signs. She actually
10 asked him if he was currently having thoughts of hurting
11 himself, and he said no, at that time.

12 Janice, who has 30 or 40 years experience as a
13 registered nurse, said Mr. Hunt was calm; he was well-
14 kept; he was polite. Strictly military, I think, is
15 what she said. He made eye contact with her. He was
16 flat. He was withdrawn. As you heard Dr. Oberg say, he
17 was depressed. Depressed people are often flat and
18 withdrawn.

19 After Calvin Hunt put his hands over his ears,
20 Janice McDonald did what a good nurse would do and asked
21 him are you hearing voices. He responded no. She takes
22 him back to the bed in Bay 4, and that's about 2:30 in
23 the afternoon. From 2:30 to 4:00, Joe McDonald has eyes
24 on Calvin Hunt and Edward Ray, except for when the
25 screen is pulled when Dr. Jansen is evaluating him, and

1 Psyche Tech Manning is evaluating him. He can hear him.
2 It's from me to the wall. There's never any indication
3 that Calvin Hunt raised his voice or that there was any
4 sort of combative behavior.

5 As Joe McDonald said, Calvin Hunt was calm, he was
6 quiet, he communicated appropriately. For Joe, there
7 was significance in the communication that he had with
8 Calvin Hunt at 10 'til 4:00, or whatever time that was
9 when Calvin Hunt got up to go to the bathroom. He got
10 up and he looked at Mr. McDonald and said, can I have a
11 head call, or whatever the military term was.

12 He gets out. Joe McDonald offers him something to
13 drink or something to eat. He politely declines. Goes
14 back. And a few minutes later, Edward Ray asked if they
15 could step outside for a breath of fresh air. They
16 don't run out the door after Joe McDonald says can we
17 step out -- or says that you can go. They don't run
18 out. They don't go out the side where the ambulances
19 come in. They go out into the door that goes into the
20 hallway. That goes out here, as opposed to out here.
21 So, from that, we know that Calvin Hunt, at some point,
22 ran away from Mr. Ray. We don't really know -- and
23 there's the gate.

24 Joe McDonald's note indicates a call to the
25 hospital about bed availability. That seems like good

1 nursing to me. There's some thought that Friday
2 afternoon there's no inpatient mental health at the
3 Naval Hospital. If this patient is going to get help
4 today, it's not going to be there. We know Dr.
5 Hendelman wasn't going to leave her office. She
6 testified, well, we see patients 'til about 3:00, and
7 then, call starts; but when we've got a call, we don't
8 really come in. They knew that. Dr. Jansen had been
9 working at the Naval Hospital since 1989. Joe McDonald
10 had been there since 2006. That's long before CasePro.
11 Janice McDonald, 2005.

12 They'd been working for other companies at the
13 Naval Hospital doing the same job. They understood that
14 they may need to find somewhere for Calvin Hunt to go.
15 No decision had been made. Doesn't sound like careless
16 disregard, does it? Sounds proactive.

17 So, Dr. Jansen goes in to see Calvin Hunt at about
18 2:50. Does this look like a careless medical note?
19 It's filled out in just about every section you could
20 fill out. He's asked questions regarding why he's
21 there, when it started. Asked him about a situational
22 problem, saying, what's going on with you. Clearly asks
23 a follow-up question about his suicidal thoughts to get
24 that information out of Calvin Hunt that he did have
25 thoughts of hurting others, but no specific plan,

1 specifically/suicide attempt/wanted to escape/confused/
2 hallucinating.

3 But Dr. Jansen's not a psychiatrist. He recognized
4 that, at the Naval Hospital, if you need a specialist,
5 or any hospital, in the emergency room, you request that
6 help, and he did that. So, after about a 20-minute
7 visit with Mr. Hunt, Dr. Jansen requests a specialist,
8 not because he thought Calvin Hunt was going to run out
9 of the emergency room and hurt somebody, but because he
10 needed help diagnosing Calvin Hunt, deciding what to do
11 with him. Was he going to give him medication and send
12 him on his way; was he going to send him to the
13 emergency room; was he going to send him to a psyche
14 ward? He didn't know. He needed help, and he did that.
15 And he asked for a psychiatry consultation.

16 Psyche Tech Manning comes down. Records indicate
17 that he's there between 3:25 and 3:40 in the afternoon.

18 Psyche Tech Manning testified that he has done
19 mental health evaluations, exactly the same as the one
20 he did on Calvin Hunt, over 1,500 times. He's not
21 really the ordinary person in this case either. And
22 although he's not a registered nurse or a doctor, it's
23 impossible to ignore the level of experience and
24 training that he had for the specific patient that he
25 was talking to.

1 He said that he had experience with patients with
2 suicidal ideation, with suicidal plans, with suicidal
3 attempts, with homicidal ideations, homicidal plans,
4 homicidal attempts. And Psyche Tech Manning was very
5 clear that, if Hunt presented any indication to him that
6 he was a threat or in some way combative, I think his
7 words were, it would have been a different situation.
8 And he said that twice that you heard earlier this week.

9 It would have been a different situation. He would
10 have called security. He didn't do that. Psyche Tech
11 Manning left and said I'm going upstairs. And that was
12 it.

13 Nothing changed. Nothing abnormal at that point
14 when Psyche Tech Manning goes up to report his findings
15 to Dr. Hendelman.

16 Dr. Hendelman testified that, what she recalls of
17 her conversation with Psyche Tech Manning were no
18 unpredictable demeanor and no safety concern. And we
19 heard Dr. Hendelman say many, many times that he needed
20 to be admitted. But she did say no unpredictable
21 behavior and no safety concern.

22 And there's been a lot made about the use of the
23 word obvious in Dr. Jansen's note. Obvious. We've got
24 a psychiatrist with 40 years experience, talking to a
25 board-certified emergency room doctor with 40 years

1 experience. What may be obvious to them, certainly not
2 obvious to the ordinary person.

3 But more importantly, she wasn't talking about
4 involuntary commitment. She made that distinction. You
5 heard her say that. She was talking about admission.
6 What she was saying there was, hey, it's 4:00 o'clock on
7 Friday; it's obvious he can't stay here; he's going to
8 have to go somewhere else to get help. It's obvious I'm
9 not coming down to see him; and it's obvious that he
10 can't stay in the emergency room; he's got to go
11 somewhere else.

12 I want to talk a little bit about this judicial
13 notice that the Plaintiff's requested that the Judge
14 read to you. Calvin Hunt was charged with some crimes
15 following this incident, and those crimes began with the
16 grand larceny of the fire truck at approximately 10
17 after 4:00 on that day. Those crimes that he was
18 charged with went from then, until the intentional
19 directing of the fire truck into Justin Miller.

20 This is not the issue in this case. We've talked
21 about that. This is a criminal finding. There's no
22 jury trial.

23 Frankly, I don't know a whole lot about it. It was
24 the State v. Calvin Hunt. Didn't involve CasePro.
25 Didn't involve Rebecca Delaney. Don't be confused by

1 what this means.

2 Going back to this board, if you do find that this
3 is an ordinary negligence case, and you find that it was
4 reasonably foreseeable, based on Mr. Hunt's presentation
5 to the emergency room to an ordinary person that he
6 would do those things that he did on that day, you've
7 got to decide that Joe and Janice and Dr. Jansen
8 breached that duty to him. If there was no breach, you
9 go home.

10 Next, you look at causation. When Mr. Ray and
11 Calvin Hunt walked out of that Naval Hospital, a lot of
12 things happened after that. We know that Mr. Ray
13 followed him for some period of time, because he didn't
14 come back into the E.R. immediately and say Hunt took
15 off. He didn't go to the quarterdeck and say, hey, Hunt
16 took off on me. He came back about 25 minutes later
17 saying that he had run through the gate, which is over
18 here. Again, this is Mr. Ray. Mr. Ray was with Calvin
19 Hunt all day long. He was experienced with veterans.
20 He was experienced with the issues that they face.
21 Never did Mr. Ray ever indicate to Joe McDonald, Janice
22 McDonald, or Dr. Jansen that Calvin Hunt's condition was
23 changing in the emergency room; that he was concerned
24 that he might elope; that he was concerned for Calvin
25 Hunt's safety; that he was concerned for his own safety.

1 There were four guards at that gate. You heard the
2 911 call from Merced. Calvin Hunt ran right through the
3 gate, partially clothed. He gets into a fire truck
4 that's running and unattended.

5 But most importantly, this was Calvin Hunt doing
6 these things. You've got to find, if you get to this
7 point, that it's CasePro that caused it, not all of
8 those other people. And if you can't do that, you go
9 home.

10 Before we talk about damages, let's talk about the
11 experts. You're going to get a jury charge talking
12 about credibility. We really put forth two experts that
13 couldn't be more different. It's not always like that
14 in cases. It is in this case. It's stark. Our expert,
15 he'd never ever given a deposition until a few months
16 ago. He'd never testified in court. He's a graduate of
17 the Air Force Academy. He's a twelve-year veteran. He
18 was the emergency room director at a base in
19 Afghanistan.

20 Plaintiff's expert has got a lot on his resume.
21 He's an expert in a whole lot, according to him. Never
22 worked at a Naval facility. Primarily worked in
23 civilian hospitals.

24 He didn't really know the facts very well either.
25 I think that's important when you're determining

1 credibility. The facts are important. Every little
2 fact makes a difference, and if you're going to get up
3 in court and give your opinion based on facts, you
4 better know what those facts are.

5 Stood up there a couple of times and said Calvin
6 Hunt told Sandra Smith he wanted to hurt himself.
7 That's just not true. Never has been true. Not in any
8 documentation. That's a big deal. That's the first
9 medical professional Calvin Hunt saw on that day. How
10 can that not influence the way that you look at a case,
11 if you don't even know what the patient said to the very
12 first medical professional that Calvin Hunt saw? Yet,
13 he's willing to say careless disregard, reckless,
14 everything's a red flag. That's for you to decide.

15 What he did do, though, he conceded a few things
16 that are very important in this case. When we talked
17 about what is the issue and what's not the issue, Dr.
18 Baker conceded that there was no evidence Calvin Hunt
19 was ever uncooperative.

20 Now, again, if the issue is whether or not a
21 reasonable person would expect that Calvin Hunt would go
22 outside with Mr. Ray and not come back, there's no
23 evidence that he was uncooperative. He was following
24 instruction every step of the way. And Dr. Baker also
25 conceded that Psyche Tech Manning, to the extent he had

1 concerns about Calvin Hunt, he should have conveyed
2 those to the emergency department. He didn't do it.

3 Dr. Oberg, on the other hand, has seen hundreds of
4 patients like Calvin Hunt. His lack of experience as an
5 expert witness shouldn't impact his credibility.

6 He said there's no indication that Hunt wasn't
7 going to cooperate. He said Calvin Hunt needed care,
8 and that's what he was getting. He was getting care.
9 They were in the process of doing what they needed to do
10 to get him admitted to the hospital. He had never heard
11 of a duty to warn a patient not to leave. Never heard
12 of it. Langley Air Force Base. Other, San Antonio,
13 Virginia. Multiple places that he's worked, he's never
14 heard of that duty. No duty to confine Calvin Hunt or
15 to instruct the staff to do so.

16 Dr. Oberg found it important that Mr. Ray was with
17 him at all times. He had an escort. Again, not to keep
18 him from leaving; but just to tell the staff. It's an
19 extra set of eyes on the patient.

20 We've already talked about Mr. Ray never said
21 anything to anyone that would indicate he felt Calvin
22 Hunt was not going to continue to cooperate with the
23 process that had been going on now in the emergency room
24 for nearly two hours.

25 You heard two different employees of the federal

1 government by video deposition say that the Navy
2 evaluated this incident. And we know from the email
3 that they evaluate the treatment provided in the
4 emergency department.

5 Ms. Mayo and Lieutenant Brannon both testified that
6 they were not aware of anything that was done wrong by
7 Dr. Jansen, Joe McDonald, or Janice McDonald on February
8 24, 2012. We know the Navy, pursuant to the contract,
9 was the entity that reviewed the medicine. The medical
10 records were their property. CasePro didn't get medical
11 records. CasePro didn't get peer reviews. This was
12 done by the Navy. The Navy decided who performed
13 medical services at the Beaufort Naval Hospital. Dr.
14 Jansen had his privileges, and he remained. Those
15 privileges remained.

16 And that's a good segue into this negligent
17 retention claim. We really don't know much about this
18 situation in 2009-2010. We know that Scott Moore called
19 Craig Martin at that time, expressed some concerns about
20 a conflict of interest. We know that Craig Martin's
21 email, if you read it -- and I think you probably all
22 will when you go back into the deliberation room.
23 Although Craig Martin, in his deposition, after he had
24 already left CasePro and was working for a competitor,
25 was critical of Dr. Jansen, you read that email? He was

1 advocating for Dr. Jansen. He was saying, hey, we need
2 more information; what's the deal with this; all we know
3 is that there was a standard of care wasn't met; we
4 don't know anything else; we know nothing; please give
5 us some more information. That certainly is a
6 reasonable thing to do for an employer to want to know
7 more information, not just go fire somebody.

8 The last, I believe it was Number 7 of that email,
9 talks about due process. Now, if this is somebody that
10 wants Dr. Jansen fired, why is he writing an email to
11 the Navy Logistics Command and telling them about due
12 process? Due process indicates that they wanted the
13 Navy to look at this again; not that they want to fire
14 him; they want the Navy to look at it.

15 So, this idea that CasePro should have fired Dr.
16 Jansen at that point, based on that tiny bit of
17 information, it's just unsupported by the evidence. The
18 Plaintiff has not met its burden as to that allegation.

19 Let's talk about the damages here. You've seen a
20 lot of pictures, you've seen a lot of videos. Those are
21 out there so you feel sympathy, which is inappropriate.
22 You don't award damages based on sympathy. And you're
23 going to get a jury charge about that.

24 It's impossible not to have sympathy. It's a
25 terrible, terrible thing that happened. There is no

1 question, any one of us in this room would bring back
2 Justin Miller if we could. That's not what we have
3 here. This is a lawsuit for the wrongful death, and
4 you, if you get to the point where you've decided that
5 you want to allocated damages, it's for Rebecca
6 Delaney's emotional loss.

7 This is not Chris Miller. This is not Donavan
8 Delaney. This is not Aunt Jennifer, who had been taking
9 care of Justin Miller before he died. This is Rebecca
10 Delaney. It's her damages. It's her loss. And you
11 have to decide what's that worth.

12 You may see more pictures. You may see more
13 videos. Keep that in mind when you're looking at those
14 videos and those pictures. They're intended to evoke
15 sympathy. That is not the way you measure damages in a
16 wrongful death case.

17 Going back to where we started, what's the issue in
18 this case? The issue is whether the ordinary person,
19 with the knowledge that Joe McDonald, Janice McDonald,
20 and Dr. Jansen had, could have reasonably foreseen that
21 Calvin Hunt and Edward Ray would not come back into the
22 emergency room and continue their treatment. That's
23 what you have to decide.

24 Thank you.

25 THE COURT: Thank you. Mr. Hoyle.

1 CLOSING ARGUMENT IN REBUTTAL

2 ON BEHALF OF PLAINTIFF, BY MR. HOYLE:

3 MR. HOYLE: It's been about two hours since I first
4 stood in front of you today. Remember -- you might
5 remember some of the things I had to say. I talked to
6 you a little bit about the difference between frying up
7 bacon and boiling up eggs. A few hours ago I made
8 reference to the idea of putting some eggs in a pot on
9 the stove and putting it on a low simmer.

10 It's two hours later. Has our pot boiled over? I
11 want you to think about that as you go back to that jury
12 room. Janice McDonald described this man as an angry,
13 low-simmering individual. And he sat in this itty-bitty
14 emergency room for two hours. Two hours. He was the
15 only patient there. The only patient. They've got an
16 inch-to-an-inch-and-three-quarter stack of medical
17 records and that nobody reads. They can't even keep
18 their couple of pages of records straight with respect
19 to what happens when. Not only do they disagree with
20 each other about when certain events occurred, one of
21 the witnesses, Joe McDonald, sat right up there and told
22 us, yeah, those times aren't all that right.

23 How good of attention were these folks really
24 paying, ladies and gentlemen? What else were they doing
25 in that itty-bitty emergency room? given the fact that

1 they just had one patient. Were they on their phones
2 looking at Facebook? Were they twittering? Was Dr.
3 Jansen catching some shade in Bed Number 5? I don't
4 think we'll ever know. I really don't.

5 But Mr. Mackelcan is correct, the credibility of
6 the persons that came into this courtroom and placed
7 their hand on the Bible and swore an oath is absolutely
8 for you to determine. The same is true of those persons
9 who were sworn by a notary public to tell the truth in a
10 deposition that was recorded on videotape. Credibility
11 is absolutely something for each of you to determine as
12 we go forward in this case.

13 And my friend, Mr. Mackelcan, references this idea
14 of foreseeability. Could a reasonably prudent person
15 have foreseen that Calvin Hunt would do what it was he
16 was talking about doing? I think the best evidence of
17 that actually came from the man who turned him loose.
18 Joe McDonald sat right up there, and not in response to
19 my questions, but in response to Mr. Lovell's question,
20 said that he was sitting there at the nurses' station.
21 Obviously, had the scanner on behind him. It was right
22 up against his head. And when he heard these reports
23 out there on Ribalt Road involving a fire truck, the
24 thought passed his mind that it was Calvin Hunt. It
25 doesn't get any clearer than that, ladies and gentlemen.

1 If it wasn't foreseeable that Calvin Hunt could have
2 gone and harmed people like he was talking about doing,
3 that thought wouldn't have entered Joe McDonald's mind.

4 If you actually get to quit being a juror in this
5 case at some point, and you were to run into me at
6 Walmart on a Sunday afternoon, would you actually think
7 that I might go out and steal a fire truck and start
8 driving it down Ribalt Road? How many people in your
9 life have you ever heard such a crazy story about and
10 associated somebody in your mind as, oh, that must have
11 been so and so, or Calvin Hunt doing it. But within
12 minutes of turning him loose, within minutes, when Joe
13 McDonald heard that from the consolidated dispatch on
14 the scanner, he associated it with Calvin Hunt.

15 I think it's important, with respect to this idea
16 of warning, to think about all the witnesses that sat up
17 there that testified by videotape that told us that, if
18 they knew all the facts, that they would have warned Mr.
19 Hunt to stay right where he was.

20 Dr. Hendelman said that. Dr. Jansen said that.
21 Dr. Baker said that. The book that Dr. Oberg keeps on
22 his iPad says that. And most importantly, Joe McDonald
23 himself says that.

24 The Defendant did not bring but one witness to tell
25 you that they didn't do anything wrong. They brought

1 Dr. Oberg. And if you heard Dr. Oberg's testimony, he
2 got contacted because he knows somebody who works for
3 the Defendant's law firm, a nurse.

4 And there's all this talk about how Dr. Baker makes
5 a little money testifying. If you recall, Dr. Baker
6 told you all that he was going to send me a bill for
7 \$500.00 an hour. That's the same amount that he's sent
8 Mr. Lovell's firm in the past for testifying. \$500.00
9 an hour. It's a lot of money, folks. I have to pay it.
10 I'll admit it's a lot of money.

11 But did you hear Dr. Oberg, who's been a board-
12 certified physician for five years, tell you how much he
13 was charging the Defendant to come down here to
14 Beaufort? He's charging \$500.00 an hour, as well. Just
15 something for you to think about, now, that this
16 question of credibility has been raised.

17 Dr. Oberg, when he testified yesterday, didn't even
18 know that Dr. Hendelman had testified that she wouldn't
19 let Calvin Hunt out. And I seem to recall standing up
20 here at this podium, turned facing that way, using my
21 iPad, going through the book that Dr. Oberg uses on his
22 iPad, looks at it virtually every single day he goes to
23 work, and seeing a lot of inconsistencies with what Dr.
24 Oberg had sat right up here and told Mr. Lovell.

25 I think Dr. Oberg said, oh, no, you don't need to

1 put people in a gown. Don't need to search them for
2 weapons. Oh, but the book Dr. Oberg keeps on his iPad
3 says you do those things.

4 Dr. Oberg told Mr. Lovell, oh, no, you don't need
5 to tell somebody with Calvin Hunt's presentment and
6 history that they can't leave. But yet, the book that
7 he keeps on his iPad says you don't let them leave.
8 That's another thought, since this issue of credibility
9 has been raised.

10 Now, if you think back to the Defendant's opening
11 statement, they drag the flip chart over here when Mr.
12 Lovell talked to you all nine days ago. And there was a
13 list of things on that flip chart that you didn't see
14 today. In opening statement, the Defendant told you
15 that these folks weren't their employees. I'm not
16 talking about that anymore. On the flip chart, they had
17 some reference to the fact that they were going to
18 destroy, annihilate, throw stones at something, I don't
19 really remember, with respect to Dr. Baker. But today,
20 in their closing argument, they drag the flip chart over
21 here, and they want to talk about professional medical
22 judgment versus ordinary care. That's something they
23 tried to talk about in opening, as well. And it's
24 interesting that, that's on the board, because I think
25 Mr. Mackelcan's statement that medical provider services

1 are not an issue in this case is simply wrong.

2 Later, the Judge is going to charge you on the law
3 in this case, and I want you to listen carefully to that
4 charge. She'll tell you to listen carefully, too. She
5 is the sole judge of the law, and she will tell you what
6 the law in this state is, and she will charge you that,
7 under the law, that there is a duty to warn that certain
8 medical providers have in certain situations.

9 I'm not going to be so presumptuous as to tell you
10 what I think that charge that she is going to tell you
11 is going to say word for word, but I want you to listen
12 to it, because that is the law in this state, and a law
13 that all of us as citizens here must follow.

14 You'll recall that the Judge qualified two experts
15 at my request in this case. Dr. Caplan, who was here on
16 the first day. And then, later, she qualified Dr.
17 Baker. And she will instruct you, as well, in those
18 jury charges that you may consider the evidence that an
19 expert brings forth.

20 And with respect to Dr. Baker, Dr. Baker has been a
21 practicing doctor for 40 some years. He used the word
22 *careless*. He used the word *reckless*. But he was very
23 clear in his testimony that the persons working for
24 CasePro in the emergency room didn't do what they should
25 have done, and that they should have warned Calvin Hunt,

1 and they should have said no, instead of yes.

2 Whether that's a careless, reckless, a violation of
3 the standard of care or merely violative of negligence,
4 you will see a simple verdict form back in your jury
5 room as part of your deliberations. If you decide that
6 Nurse Joe McDonald, Nurse Janice McDonald, and Dr.
7 Jansen breached a duty, and that, that breach caused an
8 injury, which proximally caused the death of Justin
9 Miller, as part of your oath, you will have to find for
10 the Plaintiff.

11 Now, there's another claim that the Plaintiff has
12 set forth, and that's the claim involving Dr. Jansen.
13 And we still, still, have not heard any good explanation
14 for why they didn't tell Dr. Jansen to get gone. Maybe
15 one dead United States Marine wasn't enough. But what
16 we know is that doesn't take any specialized knowledge
17 or advanced degree or some sort of state license to have
18 good, old fashioned common sense, and know that, if you
19 have medical doctors that aren't up to par treating our
20 men and women in uniform, and the men and women who
21 served this country are dropping dead because of a bad
22 doctor in an emergency room, that the bad doctor needs
23 to get gone. That is a simple concept, ladies and
24 gentlemen.

25 I'm going to ask you, in my final thoughts, my

1 final opportunity to talk to you, to listen closely to
2 the Judge's charge, not only with respect to liability,
3 but also with respect to damages, because, if -- and I
4 underscore the word if -- if you believe that wrong was
5 done, and the Plaintiff has met her burden, and if you
6 consider damages, listen carefully to what the Judge
7 tells you about those items.

8 The Defendant has suggested that we are merely
9 here, that I am merely here and my co-counsel, my
10 colleague, and my wonderful paralegal, and my wonderful
11 trial technology specialist, are here trying to evoke
12 sympathy. We're not asking for sympathy, ladies and
13 gentlemen. Rebecca Delaney didn't come from West
14 Virginia, she and her family didn't hire a team of
15 lawyers to ask for sympathy. She's gotten plenty of
16 sympathy. What she's come here is to find that search
17 for truth. To find out why this tragedy happened. to
18 answer the question as to whether or not this tragedy
19 could have been avoided, and to seek justice. Not
20 partial justice, not half justice, but complete and
21 total justice for the loss of her son.

22 I thank you very much for paying attention these
23 past nine days. I can tell you, I've looked jurors in
24 the eyes in the past who have nowhere near the attention
25 span and dedication that each of you have brought here

1 to the courthouse. I know that nine days is a long
2 time. I've been away from my family, as well. Many of
3 you have been away from your places of employment, from
4 your businesses, from your avocations, from your
5 friends, from your family, and you've been here for nine
6 days. And I want to say, from the bottom of my heart,
7 thank you for doing that. Thank you for coming here and
8 being the voice of this community.

9 I suspect that, when this trial ends, you all are
10 going to go back to your normal lives, and people are
11 going to ask you, they're going to take you aside,
12 whether it be at the supermarket or the drugstore, or
13 when you're dropping your kids off at school, they're
14 going to ask you what you've been doing. And I hope and
15 I pray that the answer for each of you is that we
16 listened to the evidence, we considered the testimony,
17 and we answered the question of why this event happen,
18 and did our reasonable best to bring full and complete
19 justice with respect to our verdict.

20 Thank you all for your time and attention. We look
21 forward directly to hearing from you.

22 THE COURT: Thank you, Mr. Hoyle. Just stand up.
23 Is that going to be enough? My charge is 15 pages and a
24 verdict form. Is it sufficient? Do you all need a
25 comfort break? Okay? We can go? Just move around,

1 wiggle around, stretch. And when you're ready to be
2 seated, be seated. And oh, by the way, if you need to
3 wiggle around, stand during the course of the charges to
4 stay awake and listen at us, absolutely okay.

5 JURY CHARGE:

6 THE COURT: Mr. Presiding Juror, ladies and
7 gentlemen of our jury, you have now heard the evidence.
8 You have received the evidence. You have listened to
9 the arguments of counsel. It is now my duty to explain
10 to you the law applicable to this case.

11 I remind you, that during this trial, you and I
12 have had certain duties to perform. As the trial judge,
13 it is my responsibility to preside over the trial of
14 this case. And I also have the duty to rule on the
15 admissibility of the evidence offered during this trial.

16 Ladies and gentlemen, you are, of course, to
17 consider only the sworn testimony which has been
18 presented and any exhibits that have been made a part of
19 the record in this case, matters of judicial notice, and
20 the inferences which you can reasonably draw from the
21 evidence which has been presented in this case.

22 I have the additional duty to charge you regarding
23 the law applicable to this case. It is your duty, as
24 jurors, to accept and apply the law exactly as I state
25 it to you. If you think you have any idea as to what

1 the law is or what it ought to be, and it should differ
2 from what I should tell you what the law is, you are
3 now, by your oath, sworn to accept and to apply the law
4 exactly as I state it to you.

5 Now, if your preconceived ideas should differ from
6 what I tell you the law is, feel free one day to have a
7 conversation with your legislature. But for our system
8 to work correctly, you must accept and you must apply
9 the law exactly as I state it to you.

10 Ladies and gentlemen, in every case tried in this
11 Court before a jury, the jury becomes the sole, the
12 only, the exclusive finders, the exclusive judges of the
13 facts. A trial judge cannot comment on or make any
14 statement about the facts in the case. Since you are
15 the sole, the only, the exclusive judge of the facts in
16 this case, please do not think by anything I may have
17 said or done during the course of this trial that I have
18 any opinion regarding the facts in this case. The law
19 doesn't allow me to have an opinion about the facts. I
20 don't have an opinion regarding the facts in this case.

21 Ladies and gentlemen, the way that our duties will
22 work together is that you will make the findings of fact
23 from the evidence in this case, and you will make those
24 findings as you find them to be. You will then take the
25 law as I give it to you, and you will apply the law to

1 those facts, and that is how you will reach your
2 verdict, which will then be a true and just verdict.

3 Ladies and gentlemen, in our courts, I remind you
4 that there's no distinction made between corporations
5 and natural persons or individuals. A corporation is a
6 person in the eyes of the law. A corporation is
7 entitled to the same fair and impartial consideration
8 and to justice by the same legal standards as a natural
9 person or individual.

10 Ladies and gentlemen, you're going to hear me use a
11 term throughout this charge *person*. When I use the term
12 *person*, I am not only referring to a natural individual;
13 I am anyone referring to corporations. So, persons, be
14 mindful. Corporations are persons in the eyes of the
15 law, as of course, are natural individuals.

16 Ladies and gentlemen, we're now going to talk about
17 the burden of proof that is applicable, that is
18 applicable, in this matter to these claims and to the
19 affirmative defense.

20 Ladies and gentlemen, the burden of proof, burden
21 of proof, in this case is by what we call the greater
22 weight or the preponderance of the evidence. The
23 greater weight or the preponderance of the evidence. A
24 preponderance of the evidence simply means that, simply
25 means the greater weight of the evidence. It is

1 evidence, which, as a whole, shows that a fact sought to
2 be proved is more likely true than not true.

3 This can be illustrated by imagining a set of
4 scales. When the case begins, the scales were even.
5 And after all the evidence has been presented, if the
6 scales should remain even, or if they should tip in
7 favor of the Defendant, Plaintiff will simple have
8 failed to meet their burden of proof, and your verdict
9 will be for the Defendant.

10 If, however, when you have considered the
11 Plaintiff's claim and the Defendant's defenses, those
12 scales should tip ever so slightly in favor of the
13 Plaintiff, then, she will have met her burden of proof,
14 and your verdict will be for the Plaintiff.

15 Ladies and gentlemen, there is one defense, there
16 is a defense, which has been presented by the Defendant,
17 and it is an affirmative defense. And we're going to
18 talk about that. With regards to that affirmative
19 defense, the Defendant has the burden of proof of
20 proving that defense. But again, by the greater weight
21 or the preponderance of the evidence.

22 Now, ladies and gentlemen, the preponderance of the
23 evidence is not determined by counting the number of the
24 witnesses presented by each side. Instead, the
25 preponderance of the evidence is determined by the

1 greater weight of all the evidence.

2 Ladies and gentlemen, you should weigh all the
3 evidence in this case. The evidence that you should
4 give the most weight to is that which convinced you of
5 its truth, regardless of from whom or what source it
6 comes. However, ladies and gentlemen, you must not
7 consider sympathy, passion, prejudice, for or against
8 either of these parties when weighing the evidence.

9 Now, ladies and gentlemen, there are typically two
10 types of evidence generally presented during a trial.
11 One type is called direct evidence, and the other is
12 called circumstantial evidence. And I'm going to define
13 those for you and give you an example of each.

14 Direct evidence is the testimony of a person who
15 claims to have actual knowledge of a fact, such as an
16 eye witness. It is evidence which immediately
17 establishes the main fact to be proved.

18 Circumstantial evidence is proof of a chain of
19 facts and circumstances indicating the existence of a
20 fact. It is evidence which immediately establishes
21 collateral facts from which the main fact may be
22 inferred. Circumstantial evidence is based on
23 inference, and not on personal knowledge or observation.
24 It is proof that does not actually establish the fact in
25 question, but that asserts or describes something else

1 from which you may either reasonable infer the truth of
2 the fact or at least reasonably infer an increase in the
3 probability that the fact is true.

4 For circumstantial evidence to be sufficient to
5 warrant the finding of fact, circumstances must lead to
6 that act with reasonable certainty. The facts and
7 circumstances should be considered in light of ordinary
8 experience and common sense. The existence of a fact
9 cannot be based on speculation, surmise, or conjecture.

10 Examples: February, cold outside, snow is
11 forecast, walk outside and you get smacked in the eye
12 with some snow. You literally are an eyewitness when
13 you go inside and say it's snowing outside. You know
14 that directly from your observation. That knowledge is
15 direct. That is direct evidence.

16 Let me give you an example of circumstantial
17 evidence. February, cold outside, snow is forecast.
18 You go outside before you go to bed and all you see is
19 your poor, old, pitiful brown, crunchy grass. Well,
20 that's what you know. You know that directly. You know
21 those collateral facts. It's February, it's cold. Snow
22 is forecast. Pitiful, poor, brown, crunchy grass. You
23 know all that. Those are collateral facts that you know
24 of your observation.

25 The next morning, you wake up and snow covers

1 everything as far as the eye can see. I don't know
2 who's the T.V. personality, but they on the television
3 telling you everything's been canceled, we have a snow
4 day.

5 Here's what you know. You have the collateral
6 facts the evening before, and you know there's snow
7 covering everything the next morning. You can, by
8 inference, then say and testify, it snowed over night.
9 You didn't see it snow. You didn't observe it snow, but
10 you know that it snowed over night because all of the
11 collateral facts that you do know point to, and by
12 inference, you know it snowed over night. That's
13 circumstantial evidence.

14 The law makes absolutely no distinction between the
15 weight or the value to be given to either direct or
16 circumstantial evidence. Nor is a greater degree of
17 certainty required of circumstantial evidence than of
18 direct evidence.

19 Ladies and gentlemen, you should consider all of
20 the evidence in this case. And again, the evidence you
21 should give the most weight to is that which convinces
22 you of its truth, regardless from or what source it
23 comes. And remember, you did not drop your common sense
24 off at the courthouse door. It came right on in here
25 with you. It is right there with you in your jury box,

1 and will be with you, of course, in your jury room.

2 And you must not consider sympathy, passion,
3 prejudice for or against either of these parties when
4 weighing the evidence.

5 Now, ladies and gentlemen, necessarily, in order to
6 make the findings of fact that you must make, you must
7 determine the credibility of the witnesses who have
8 testified in this case. What does that mean,
9 *credibility*? It simply means believability. It becomes
10 your duty as jurors to evaluate the evidence and to
11 determine which evidence convinces you that it's true.

12 In determining the believability of witnesses who
13 have testified in this case, you may believe one witness
14 over several witnesses, or several witnesses over one
15 witness. You may believe a part of the testimony of a
16 witness, and reject the remaining part of the testimony
17 of the same witness. You may believe the testimony of a
18 witness in its entirety, or you may reject the testimony
19 of a witness in its entirety.

20 You may consider whether the witness has any
21 interest in the result of the trial; whether the witness
22 is prejudice towards the Plaintiff or the Defendant; the
23 opportunity for the witness to have seen the matters and
24 things about which the witness may testify; and of
25 course, you may consider the way in which the witness

1 acts, not only during the witness stand, but acts on the
2 video as they are being questioned under oath.

3 Ladies and gentlemen, in this case, you have heard
4 a witness that was deemed to be an expert witness. The
5 *Rules of Evidence* ordinarily do not permit witnesses to
6 testify regarding their opinions or conclusions, and
7 there is an exception for this rule, which exists for
8 those witnesses determined to be expert witnesses, and
9 those witnesses are witnesses who, by education and
10 experience, have become an expert in some art, science,
11 or profession, and they may give an opinion regarding
12 the subject in which the witness claims to be an expert.
13 And they may give the reasons for the opinion or
14 opinions.

15 You should consider any expert opinion given by a
16 witness, and like any evidence, give it the weight you
17 think it deserves. If you decide that an expert
18 witness's opinion is not based on sufficient education
19 and experience, or if you decide that the reasons given
20 in support of the opinion are not sound, or that the
21 opinion is outweighed by other evidence, you may
22 disregard the opinion entirely.

23 Ladies and gentlemen, an expert witness's testimony
24 is to be given no greater weight than that of other
25 witnesses simply because the witness is an expert. And

1 you do not have to accept an expert's opinion, even
2 though it is uncontradicted.

3 Expert witness testimony is given for the purpose
4 of helping you consider the evidence, and not for the
5 purpose of controlling your judgment.

6 Now, ladies and gentlemen, I charge you, I instruct
7 you, that a corporation can only act through its agents
8 or employees. Therefore, a corporation is responsible
9 for any negligent acts or omissions of its agents or
10 employees while they are acting within the scope of
11 their employment which proximately causes injury to
12 another person. I am going to define for you negligence
13 and proximate cause.

14 Ladies and gentlemen, this is a wrongful death
15 action. In this wrongful death action, the Plaintiff,
16 as the personal representative of the deceased estate
17 claims that the deceased wrongfully died as a result of
18 the negligent acts or omissions of the Defendant.

19 In a negligence cause of action, the issues are
20 raised in papers which are called pleadings. The filing
21 of a complaint is the beginning of an action. The
22 filing is by what we call a plaintiff, meaning a person
23 has brought an action against a defendant who has, in
24 turn, filed an answer.

25 Ladies and gentlemen, here are the elements which

1 the Plaintiff must prove by the greater weight or the
2 preponderance of the evidence.

3 The first element is negligence. Ladies and
4 gentlemen, negligence means that a person has done
5 something that a reasonable person would not have done,
6 or has failed to do something that a reasonable person
7 would have done under the same situation, under the same
8 circumstances, or both.

9 Carelessness means the same thing.

10 Next, the Plaintiff must prove by the greater
11 weight or the preponderance of the evidence that the
12 injuries or damages were proximately caused by the
13 Defendant's negligence. What do we mean by proximate
14 cause? To prove proximate cause, I will begin -- I'm
15 going to withdraw that, because I want to start in a
16 little bit different place. I want to define it for
17 you, and then, talk about how one proves it. I'm going
18 to define it for you.

19 Proximate cause is something that produces a
20 natural chain of events, which, in the end, brings about
21 the injury and/or death. It is a direct cause.

22 Ladies and gentlemen, to prove that the Defendant's
23 negligence proximately or directly caused a decedent's
24 death, a plaintiff must prove causation in fact. And
25 this is proven by showing that the death would not have

1 occurred but for, but for, the Defendant's negligence.
2 this is a concept that you learn in law school that I
3 thought I would never learn, until I heard the but for
4 test. I thought this one was going to float right past
5 me. But for the negligence of the Defendant,
6 Plaintiff's decedent would not have died. But for test
7 is what that's called.

8 A plaintiff must also show legal cause. He must
9 show causation in fact and legal cause. Legal cause is
10 proven by showing that the death was reasonably
11 foreseeable. This means that the death occurred as a
12 natural and probable consequence of the defendant's
13 negligence or carelessness.

14 A plaintiff must prove that some injury from the
15 defendant's negligence was reasonably foreseeable, but
16 does not have to prove the particularity, the
17 particulars, but that, as a result of the defendant's
18 negligence, some injury, some death, was reasonably
19 foreseeable.

20 Ladies and gentlemen, a defendant, however, cannot
21 be held responsible for things which could not be
22 expected to happen. Proximate cause does not mean the
23 only cause. A defendant's act or omission can be a
24 proximate cause of the decedent's death if it was at
25 least one of the direct concurring causes of the death.

1 There may be more than one cause of an injury
2 and/or death. More than one person may be responsible
3 for the injury and/or death. If the negligence of two
4 or more persons combines to cause an injury or death,
5 each person involved may be held responsible, as if that
6 person alone caused the injury and/or death.

7 Causes are concurrent if the individual acts of
8 negligence combine to cause the injury and/or death. If
9 an injury and/or death occurs through the concurrent
10 negligence of two or more persons and would not have
11 happened without the negligence of either person, the
12 negligence is the proximate cause of the injury and both
13 persons are responsible.

14 Now, ladies and gentlemen, I'm going to -- when I
15 talk to you about the defenses, I'm going to talk to you
16 about what's called an intervening cause, an intervening
17 cause. But because the Defendant has pled that as a
18 defense, and it is an affirmative defense, I will talk
19 to you about that in just a few moments when I talk to
20 you about the Defendant's defenses.

21 Now, I'm going to talk about the acts that the
22 Plaintiff claims were negligent. The Plaintiff
23 maintains that there are several acts of negligence for
24 you to consider. These include the duty to warn, what
25 I'm going to talk about in just a moment; and negligent

1 retention. I think I said several. I should have said
2 two. One act that the Plaintiff alleges is duty to
3 warn, and the other is negligent retention.

4 Ladies and gentlemen, Plaintiff does not have to
5 prove both acts of negligence, but if the Plaintiff
6 fails to prove one act of negligence, at least one act
7 of negligence, then your verdict must be for the
8 Defendant.

9 And again, burden of proof is by the greater weight
10 or the preponderance of the evidence.

11 First, I'm going to talk to you about the duty to
12 warn. And then, I'm going to talk to you about
13 negligent retention.

14 Ladies and gentlemen, when a person provides
15 medical services to another person, a duty to warn may
16 arise. This duty to warn arises when a reasonably
17 prudent person, under the same or similar circumstances
18 would have provided a warning. The duty to warn a
19 patient flows to foreseeable persons in the general
20 field of danger.

21 Negligent retention. The basis for an employer's
22 liability for negligent retention is direct liability.
23 To invoke the theory of liability based upon negligent
24 retention, the Plaintiff must show that the employer
25 knew or should have known that its employee behaved in a

1 dangerous or otherwise incompetent or unfit manner; and
2 that the employer knew or should have known of the
3 behavior; and that the employer failed by retaining the
4 employee.

5 And in order to prove negligent retention, you
6 should compare the evidence which you have seen and
7 heard, and you should compare that with the way in which
8 a reasonably prudent employer, armed with what you deem
9 this employer knew or should have known, because the
10 Defendant is charged to use the same degree of care that
11 an ordinarily prudent employer would have used under the
12 same or similar circumstances in the retention of an
13 employee.

14 Now, ladies and gentlemen, the negligent retention
15 cases, generally, they turn on two fundamental elements:
16 knowledge of the employer and foreseeability of harm to
17 third parties. These elements, from a factual
18 perspective are not necessarily mutual exclusive, as a
19 fact bearing on one element may also impact the
20 resolution of another element, or the other element.
21 From a practical standpoint, the elements analyzed
22 should be analyzed in terms of the number and nature of
23 prior acts of wrongdoing by the employee, and the nexus
24 or similarity between the prior acts and the ultimate
25 harm caused.

1 Ladies and gentlemen, of course, I remind you that
2 these are the allegations of negligence. And I remind
3 you that is the first element. Second element, of
4 course, is proximate cause. Negligence, proximate
5 cause. Plaintiff must sustain her burden to prove both
6 negligence and proximate cause by the greater weight or
7 the preponderance of the evidence.

8 Now, ladies and gentlemen, I'm going to turn and
9 talk to you about the Defendant's defenses.

10 Ladies and gentlemen, the Defendant has answered
11 the Plaintiff's complaint and has pled defenses. The
12 first defense is called a general denial. And by that,
13 the Defendant may admit certain facts such as where the
14 Defendant may do business or the fact that something may
15 have happened on a particular occasion, but the
16 Defendant denies each and every allegation that would
17 cause the Defendant to be responsible to the plaintiff,
18 to be liable to the plaintiff. The Defendant denies
19 those allegations.

20 Because of the general denial -- when, I should
21 say, a defendant enters a general denial, that places
22 upon the plaintiff the burden of proving each element of
23 her claim.

24 Now, ladies and gentlemen, the defendant also has
25 pled and claims that the decedent's death was not

1 proximately caused by the alleged or any alleged
2 negligence on behalf of the Defendant, but was caused
3 solely by the negligence of another person. The
4 Defendant does not have the burden of proving that the
5 negligence of the other person caused the Plaintiff's
6 injury. Instead the burden remains on the Plaintiff to
7 prove that the Defendant's negligence was a proximate
8 cause of the injury and/or death. And wrongful death is
9 obviously a death.

10 Now, ladies and gentlemen, the Defendant has also
11 pled the defense of intervening negligence of a third
12 party. The Defendant has the burden of proving this
13 defense by the greater weight or the preponderance of
14 the evidence. In pleading this defense, the Defendant
15 alleges that the chain of causation -- remember that we
16 talked about causation when we talked about proximate
17 cause -- that the chain of causation between the alleged
18 Defendant's negligence and the decedent's death was
19 broken.

20 The chain of causation between the alleged
21 Defendant's negligence in the death may be broken by the
22 independent intervening acts, or act or omission, or
23 omissions by another person over whom the Defendant has
24 no control.

25 In order to decide whether an intervening act

1 breaks the chain of causation, you must determine
2 whether the intervening act or omission, or acts or
3 omissions, was or were reasonably foreseeable. If the
4 intervening act or omission was a probable consequence
5 of the Defendant's negligence, the Defendant is
6 responsible for the decedent's death. If however, you
7 find that the intervening act or acts or omission or
8 omissions was not foreseeable, the Defendant is not
9 liable, unless the Defendant's acts alone would have
10 caused the decedent's death, even with the intervening
11 act or omission.

12 Ladies and gentlemen, when you consider whether the
13 Defendant has exercised reasonable care, you must
14 consider the Defendant's actions and/or omissions as
15 they relate to the facts then and there existing,
16 meaning those facts, the facts existing at the time that
17 the events occurred, and not in light of what hindsight
18 may later reveal.

19 Ladies and gentlemen, when you have considered the
20 Plaintiff's claims and the Defendant's defenses, if you
21 determine that the Plaintiff has met her burden of
22 proof, and you determine that the Plaintiff is entitled
23 to a verdict, then your next consideration would be that
24 of damages, would be that of damages, how much money,
25 which is the form that you have to award for damages,

1 ought be received by the Plaintiff in this case.

2 Ladies and gentlemen, whenever the death of a
3 person is proximately caused by the wrongful act or
4 neglect of another, and the act or neglect is one which
5 would have entitled the deceased to have recovered
6 damages if the deceased had not died, the personal
7 representative of the estate of the deceased may bring
8 an action for wrongful death. The personal
9 representative has a right to recover compensatory
10 damages for the wrongful death.

11 The following are damages in an action for wrongful
12 death upon which a recovery may be based. Even though
13 these damages may be deemed to be emotional in nature, a
14 recovery for them is allowable if proven by the
15 Plaintiff by the greater weight or the preponderance of
16 the evidence.

17 These would be the elements of damages recoverable
18 by the Plaintiff if met by the greater weight or the
19 preponderance of the evidence: wounded, shock, and
20 suffering. Excuse me. It's wounded feelings, mental
21 shock, and suffering.

22 So, let me begin again. Mental shock and
23 suffering, wounded feelings, grief and sorrow, loss of
24 companionship. Those are the elements.

25 Ladies and gentlemen, it is not necessary for the

1 Plaintiff to show the exact amount of damages suffered
2 by the beneficiary, or that the beneficiary suffered a
3 monetary loss. As I say, these elements are emotional
4 in nature.

5 It is not necessary to show the monetary value of a
6 deceased's life, since direct proof of the value of
7 human life is not possible.

8 What is reasonable compensation, ladies and
9 gentlemen, is left to your sound discretion and
10 judgment. The Plaintiff has the burden of proving the
11 damages by the greater weight or the preponderance of
12 the evidence. But as I say, that does not mean you must
13 deduce the precise amount of those damages.

14 Now, I'm going to go over the verdict form, ladies
15 and gentlemen. And before I go over the verdict form
16 with you, I want to tell you that there are two possible
17 verdicts. I have written them on this paper. They are
18 in an order. One is first and one is second. There is
19 no hidden meaning, now, in the order in which these
20 things have been put on paper. It's just that we have
21 two things to put on paper; one has to be first and one
22 has to be second. I could have just as easily put the
23 second one first, and the first one second. Please
24 don't take any intended hidden meaning, because there is
25 no intended hidden meaning. It's just that I've got to

1 put this on paper, and there's two of them, and one's
2 got to be first.

3 The other thing that I want to talk to you about
4 before going over it with you is to tell you your
5 verdict must be unanimous. And that means, this verdict
6 must be the verdict of each and every one of you. The
7 majority doesn't rule, and nobody is the queen or king
8 of the jury. This verdict must be the verdict of each
9 and every one of you. It must be unanimous. It must be
10 the verdict of each and every one of you.

11 Now, ladies and gentlemen, -- and that should be a
12 hint for my alternates to stay with me when my jury
13 leaves me on this next occasion, please.

14 Ladies and gentlemen, there are two possible
15 verdicts, irrespective of what your verdict is, I want
16 to instruct you, so there isn't any question what is the
17 unanimous verdict of this verdict.

18 The first possible verdict states as follows:

19 *We, the jury, unanimously find for the*
20 *Plaintiff in the amount of blank dollars*
21 *actual damages.*

22 If this verdict is found to be the unanimous
23 verdict of this jury, first of all, I want you to circle
24 it. And then, I want you to determine unanimously what
25 are the actual damages, and then, write in those actual

1 damages. And I'd ask that you use numbers and words,
2 like you do a check, so you can double check the amount.
3 So, use numbers and words as you would on a check, in
4 the event that this is the unanimous verdict of the
5 jury.

6 The second possible verdict is:

7 *We, the jury, unanimously find for the*
8 *Defendant.*

9 Now, irrespective of what is the unanimous verdict
10 of this jury, again, I want you to circle it, so there's
11 no question what is the unanimous verdict, which of
12 these two verdicts is the unanimous verdict of this
13 jury.

14 Now, when you have completed your deliberations,
15 and you have filled out your verdict form, you will sign
16 here, as the presiding juror, and you know who you are.
17 And I'm going to ask you, also, to date the verdict
18 form. Just for your informational purposes, today is
19 the 16th.

20 Now, when you have completed your deliberations,
21 and you have filled out your verdict form, then you
22 knock on the door, and you will return to the courtroom,
23 and you will hand the verdict form to either our bailiff
24 or our clerk, who will, in turn, hand it to me. You do
25 not publish the verdict. You hand it off.

1 Now, ladies and gentlemen, when you step back to
2 your jury room on this next occasion, I'm going to tell
3 you exactly what's going to happen, because I'm going to
4 give you this instruction: do not discuss this matter
5 or allow anyone to discuss it with you. And you ought
6 to be saying what; come on; this is when you told us,
7 now, in nine days we would get our deliberation.

8 I'm going to tell you exactly what's going to
9 happen when you go back to your jury room on this next
10 occasion. Ladies and gentlemen, I'm going to turn to
11 these lawyers and I'm going to ask them two questions:
12 have I given this jury all of the law that they need for
13 their deliberations, and have I stated it for them
14 correctly.

15 Now, sometimes, and it's my fault, sometimes I fail
16 to give a jury all of the law that they may need for
17 their deliberations, and sometimes I need to invite a
18 jury to come back out so that I may give them an
19 additional part of the law, because I failed to give
20 them all of the law that they may need.

21 In the event that I need to bring you back out for
22 that reason, I ask you in advance, please do not
23 consider that piece of the law, that instruction, with
24 any emphasis. In the event that I need to bring you
25 back out, because I have stated something incorrectly,

1 sometimes it'll pop out wrong unintendedly. Goodness
2 knows it's unintended, but sometimes it does happen. In
3 the event that I need to bring you back out to correct
4 an error that I have made, I'm going to ask you in
5 advance to please allow me to correct my error in your
6 mind, because, you see, this is my one chance to get
7 this right, to give you all of the law that you may need
8 for your deliberations, and state it for you correctly.

9 Now, in the event that I do not need to bring you
10 back out, you will be brought the exhibits and the
11 verdict form and a specific instruction to begin your
12 deliberations.

13 Now, ladies and gentlemen, you will not have these
14 exhibits and this verdict form unless it is time for you
15 to begin your deliberations.

16 Now, when you begin your deliberations, I need you
17 to be mindful that all twelve of you must be present to
18 deliberate. So, if somebody needs to take a comfort
19 break, stop the deliberations, take your comfort break.
20 And then, just reconvene your deliberations when all
21 twelve of you are together again.

22 Your lunch is going to be brought back to you.
23 It's okay to eat and deliberate. In fact, I'm going to
24 ask you just as to not -- I think your lunch might be
25 back there. If it is, just hold up a minute, because,

1 if I need you to come back out, I'd like you to come on
2 back out, let me do what I might need to do, and then,
3 when you begin your deliberations, go ahead and begin
4 your lunch, as well. If you choose. Now, if you don't
5 want to do it, don't do it that way, but you certainly
6 can, if you wish. You can eat and deliberate, if you
7 choose, so long as all twelve of you are together.

8 Now, ladies and gentlemen, I want to leave you with
9 this last thought. And it is this. The word *verdict*
10 comes from the Latin phrase *verum dictum*, which means to
11 speak truth. To speak truth.

12 Ladies and gentlemen, that is now your task.
13 Please step to your jury room, except the alternates.
14 Do not discuss this matter or allow anyone to discuss it
15 with you. And we will be with you shortly.

16 JUROR: Can we take our books?

17 THE COURT: Nope. Leave them right there. We'll
18 bring them to you. I just said that. We'll bring your
19 verdict form, the exhibits, and your books.

20 JURORS LEAVE COURTROOM 2:21 P.M.

21 BY THE COURT:

22 BAILIFF: Jury's clear, your Honor.

23 THE COURT TO ALTERNATE JURORS:

24 THE COURT: Thank you so much. Here's what I'm
25 going to ask you all to do for me. First of all, I want

1 you to eat, so you can get your lunch. I'm going to ask
2 you all to give me about 30 minutes after the jury
3 begins its deliberations. And the reason for that is,
4 that, in the event somebody should fall out quick, I
5 think I can stop those deliberations and seek an
6 alternate and begin them anew. So, hold up. But you
7 got to eat anyway.

8 So, what's going to happen, we're going to put you
9 in a whole different -- you all go together, but you got
10 to go now separate from the jury. And but once the jury
11 begins their deliberations, we'll keep up with it. And
12 I'm going to ask you for 30 more minutes, because we've
13 come a long way, and I'd hate to lose the opportunity to
14 save the case. So, if you'll give me that amount of
15 time. Once the 30 minutes is up, you know, if you're
16 not seated, then we'll chat very quickly. I'll give you
17 some instruction before you leave. So, bye. Leave your
18 little notebooks right there.

19 ALTERNATE JURORS LEAVE COURTROOM 2:23 P.M.

20 THE COURT: Any exceptions or additions from the
21 Plaintiff?

22 MR. HOYLE: One addition, your Honor.

23 THE COURT: All right.

24 MR. HOYLE: We believe that the Hardee case sets
25 forth the duty owed to third parties is identical to the

1 duty due to the patient. We, therefore, we would
2 request that your Honor add to the medical providers
3 duty to warn charge to include it's not merely a duty to
4 warn, but it is any duty owed to the patient is also
5 owed to the reasonably foreseeable non-patient in the
6 general zone of danger.

7 THE COURT: Thank you so much. I'm satisfied with
8 it as it exists, but thank you so much. Noting your
9 exception for the record.

10 MR. HOYLE: Thank you, your Honor.

11 THE COURT: Anything further?

12 MR. HOYLE: Not at this time, your Honor.

13 THE COURT: From the Defense.

14 MR. LOVELL: Your Honor, our only exceptions would
15 be one. We had submitted a foreseeability charge, which
16 you didn't give, and that's fine. That was our Number
17 9. And then, as we discussed in our conference, the
18 giving of the duty of warn charge -- duty to warn, we
19 just contend that wasn't applicable law to this case or
20 adjusted to the evidence.

21 THE COURT: Thank you so much. And again, I thank
22 you all so much for the charge conference, but I'm
23 satisfied with the charges given. I note your exception
24 for the record.

25 Would you guys do me a favor, please -- guys and

1 ladies, do me a favor. Take a look at what is going,
2 please, back to this jury, and be sure that what's going
3 back is supposed to be going back.

4 I have a bit of a sensitivity, because I tried a
5 case a number of years ago, and a piece of evidence -- a
6 criminal case -- a piece of evidence was a pair of
7 pants, and the confession of the defendant was in that
8 pocket. So, would you all do me a favor. And since
9 then, I ask my lawyers to please look at what's going
10 back is supposed to be going back, And we will then be
11 in recess until we hear from our jurors.

12 JURORS RECEIVE EXHIBITS AND VERDICT

13 FORM FOR DELIBERATION 2:39 P.M.

14 OFF THE RECORD 2:39 P.M.

15 BACK ON THE RECORD 4:06 P.M.

16 VERDICT:

17 THE COURT: Thank you so much, and please be
18 seated.

19 BAILIFF: All rise.

20 THE COURT: All right. It's my understanding that
21 the jury as reached its verdict. Anything from the
22 Plaintiff before we bring the jury out?

23 MR. HOYLE: Nothing from the Plaintiff, your Honor.

24 THE COURT: From the Defense?

25 MR. LOVELL: Nothing from the Defendant, your

1 Honor.

2 THE COURT: Very well. Thank you.

3 BAILIFF: Ready, your Honor?

4 THE COURT: I am.

5 BAILIFF: Jury's entering the courtroom.

6 JURORS ENTER COURTROOM 4:07 P.M.

7 THE COURT: All right. It is my understanding the
8 jury's reached its verdict. Is that correct?

9 PRESIDING JUROR: Yes, ma'am. Yes, your Honor.

10 THE COURT: Pass it, please. Thank you, sir. The
11 verdict is in due form. Will you please publish it.

12 MADAM CLERK: *In the case of Rebecca Delaney*
13 *versus CasePro, Incorporated, we, the jury,*
14 *unanimously find for the Defendant.*

15 And it's signed by the foreman.

16 THE COURT: Presiding juror, Mr. Lawrence?

17 MADAM CLERK: Mr. Lawrence.

18 THE COURT: Very well. If this was your verdict in
19 your jury room and it continues to be your verdict here
20 in the courtroom, please indicate by raising your right
21 hand. Let me observe for the record, all of our jurors
22 have their hands raised. Thank you. You may put your
23 hands down.

24 Anything from the Plaintiff before we dismiss the
25 jury?

1 MR. HOYLE: Nothing from the Plaintiff, your Honor.

2 THE COURT: Anything from the Defense?

3 MR. LOVELL: Nothing, your Honor.

4 THE COURT: Very well. Ladies and gentlemen, I
5 want to thank you for your service on this jury. I
6 certainly hope that you have found it interesting and
7 informative. I can assure you, it has been critical to
8 our system of justice, to our way of life.

9 Ladies and gentlemen, there are a couple of things
10 that I promised you we would talk about, and so, I want
11 to do that.

12 First thing I want to tell you is that you are now
13 at liberty to talk about this case, if you wish. You
14 can go home and talk about it. You can talk about it
15 with your family, your friends, and anybody that you
16 choose to talk about it with.

17 Let me share with you that, occasionally, and maybe
18 once in 18 years, maybe, arguably, once in 18 years,
19 there has been somebody that wanted to talk to a juror
20 about a case, and they said, I don't want to talk about
21 it. I'm not absolutely certain that did it really
22 happen quite in those terms, but I have always told
23 jurors that, in the event that somebody wants to talk
24 about this case with you, and you tell them I don't want
25 to talk about it, and they persist, what you should do

1 is contact the clerk's office, and they will contact me,
2 and I will intercede on your behalf. Again, I really
3 don't -- I'm quite confident that's not going to happen.

4 And, you know, the practice of law is an art, and
5 not a science. And you may be contacted to say, okay,
6 what worked, what didn't work, what was helpful, what
7 wasn't helpful. And again, if you're comfortable
8 talking about it, that's fine. If not, just tell them
9 you don't want to talk about it. They will absolutely
10 honor your request, I'm quite confident.

11 Ladies and gentlemen, do let me remind you that you
12 have an exemption for your jury service in a court
13 record for the calendar 2016 and 2017, 2017, 2016,
14 should you choose to exercise that exemption. You are
15 not eligible now to serve on a jury in a court of record
16 during the rest of 2015. I feel your pain. I get it.
17 But please keep that in mind.

18 I used to tell jurors that the check was in the
19 mail. It's not quite in the mail, but it will be in the
20 mail to you next week, I'm quite confident. This
21 clerk's office is most efficient. But as you will learn
22 when you receive it, it is a very small token of all
23 that you've given to us, which is your dear and precious
24 time. I'm afraid to tell that you your check will get
25 you to Garden's Corner on a trip to Tahiti for your

1 service in the last nine days.

2 I would tell you that any of you that you need
3 something for your employer so they will know where you
4 have been and what you have been up to, we will be happy
5 to get that for you.

6 BAILIFF: They already have it, your Honor.

7 THE COURT: You already have it. Wonderful. I'm
8 trilled about that. And thank you all so much. So, I'm
9 delighted that you have that.

10 And I will just conclude by saying it's been an
11 honor and a privilege. And again, and finally, thank
12 you so very much for every tick of the clock that you
13 have given to us. And have a lovely weekend. And you
14 are free to go. Thank you so much for being here.

15 JURORS LEAVE COURTROOM 4:12 P.M.

16 BAILIFF: Jury is clear, your Honor.

17 THE COURT: Thank you so much. All right.
18 Anything further at this time from the Plaintiff?

19 MR. HOYLE: Not at this time, your Honor.

20 THE COURT: From the Defense?

21 MR. LOVELL: None, your Honor.

22 THE COURT: Very well. Thank you all kindly.
23 Thank you for hard work. Thank you for all of your
24 time, all of your energy and efforts. And we will be
25 adjourned. Sine die. Thank you kindly.

1 MR. LOVELL: Your Honor, will you prepare a Form 4,
2 or do you want us to -- oh.

3 THE COURT: I'm doing it as we speak.

4 MR. LOVELL: Excellent. Thank you, Judge.

5 END DAY NINE, FRIDAY, OCTOBER

6 16, 2015, END TRIAL 4:12 P.M.

CERTIFICATE OF REPORTER

OCTOBER 7 THROUGH 16, 2015

PRETRIAL MOTIONS AND TRANSCRIPT OF TRIAL

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

I, Wanda H. Rowe, CVR-M, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing October 7 Through 16, 2015 Pretrial Motions and Transcript of Trial is a true, accurate, and complete record of the proceedings had and exhibits admitted on said dates, in the case of Rebecca Delaney, as Personal Representative of the Estate of Justin Nicholas Miller versus CasePro, Incorporated, Beaufort County, South Carolina, Court of Common Pleas, Case Number 2012-CP-07-03782; that I am of neither kin, counsel, nor interest to any party hereto.

THIS CERTIFICATE OF REPORTER CONTAINS MY ORIGINAL SIGNATURE AND IS ATTACHED TO THE ORIGINAL OF THIS TRANSCRIPT. PURSUANT TO SCACR 607, REQUESTS FOR COPIES OF THIS TRANSCRIPT MUST BE MADE TO THE COURT REPORTER. UNAUTHORIZED COPYING OF THIS TRANSCRIPT IS PROHIBITED.

Witness my signature January 31, 2016.


Wanda H. Rowe, CVR-M
Official Court Reporter

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