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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Diane Schafer Goodstein, Circuit Court Judge

Unpublished Opinion No. 2018-UP-221 (S.C. Ct. App. filed May 30, 2018)
Appellate Case No. 2015-002466
Case No. 2012-CP-07-03782

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

Petitioner,

v.

CasePro, Inc.,

Respondent.

Appendix: Volume 3

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1 Q Is one of the things that you do as a forensic
2 pathology -- is one of the things you do as a forensic
3 pathologist is conduct autopsies?

4 A Yes, it is.

5 Q Approximately how many autopsies have you conducted
6 in your career as a forensic pathologist?

7 A I would estimate that I've either conducted or
8 personally supervised, directly supervised, somewhere
9 between 2,300 and 2,500 autopsies. Somewhere in that --
10 in that range.

11 Q More than 2,000.

12 A Yes, more than 2,000.

13 Q Doctor, in a very general sense, what is an
14 autopsy?

15 A So, an autopsy comes from the Greek word, which
16 means to see for oneself or see with one's own eyes.
17 And it's an examination that's performed by a
18 pathologist, where that pathologist is seeing, with his
19 or her own eyes, the disease and injuries on a deceased
20 body. So, sometimes, you'll hear the word *necropsy*,
21 which means a decedent's body. But autopsy and necropsy
22 are similar terms.

23 And so, an autopsy is the examination of the
24 external surface of that person's body, which involves
25 documenting any identifying features, scars, tattoos,

1 moles, and any injuries that may be present on the
2 outside. And for a forensic pathologists, if there's
3 clothing, then, the clothing would be examined, also,
4 because that may be -- have some value for evidence.

5 Then, after the external examination is done, then,
6 an internal examination is performed where, usually, a
7 Y-shaped incision is made in the body; the rib cage is
8 removed; and then, the organs and the chest and the
9 abdomen are examined, also, for evidence of disease and
10 injury. And also, the organs in the neck are examined.

11 And also, the scalp is reflected, and the top of
12 the skull is removed to allow examination of the brain
13 and it's coverings, also for disease and injury. And
14 also, as part of an autopsy is that fluids and tissues
15 are collected to look at under the microscope, possibly,
16 for additional diagnoses; and also, to collect for
17 examination for evidence of sort of intoxication or
18 poisoning for toxicology testing.

19 And then, finally if infection is suspected,
20 samples might be submitted to the microbiology
21 laboratory. So that, in essence, is -- summarizes an
22 autopsy.

23 Q And thank you for that answer, Doctor. What is the
24 objective that you're trying to accomplish by doing
25 those things you just told this jury about in an

1 autopsy?

2 A I would say that the objective in an autopsy is to
3 assist in reconstructing the events which led to a
4 person's death; that you are trying to help form the
5 picture of what that individual was doing at the time
6 before they died. So, -- so, you're really trying to
7 help work in the context of all the other information to
8 give that picture. You're trying to record a person's
9 underlying diseases, any underlying injuries, any
10 intoxications, and to help decide what combination of
11 those injuries, diseases, led to that person's death.

12 Q Now, Doctor, when did you become the chief medical
13 examiner up there at Suffolk County, New York?

14 A I started in July of 2014.

15 Q And prior to July of 2014, where did you work?

16 A Prior to that, I was working at Medical University
17 of South Carolina, MUSC, from 2011 to 2014.

18 Q I thought I detected a little bit of a southern
19 accent there. Doctor, what was your job title at the
20 Medical University?

21 A At the Medical University, I was an associate
22 professor in the Department of Pathology and Laboratory
23 Medicine.

24 Q Now, Doctor, were you the attending forensic
25 pathologist who conducted the autopsy on Justin Miller?

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Record on Appeal: Volume II
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1 A Yes, I was.

2 Q And do you actually recall doing that autopsy?

3 A Yes, I do.

4 Q Does this autopsy stand out among the more than
5 2,000 autopsies that you have conducted in your career
6 as a forensic pathologist?

7 A Yes, it does.

8 Q How soon after Justin's death, did you perform the
9 autopsy?

10 A I performed the autopsy the next day, on February
11 25, 2012. He passed away on February 24, 2012.

12 Q Before you began the dissection of Justin's body
13 there at MUSC, what did you do?

14 A Before the dissection, what -- what we did is, I
15 was informed by Mr. Edward Allen, who is the coroner of
16 Beaufort County, that he had accepted the jurisdiction
17 of Justin Miller's death, and that his body was going to
18 be transported up to -- I'll use MUSC for short -- up to
19 MUSC for an autopsy.

20 So then, what happened was that Justin Miller's
21 body was brought up for an autopsy. I don't remember
22 specifically whether it was brought up the night of the
23 24th or early morning the 25th. But I do know that,
24 beginning at around 9:00 o'clock in the morning on the
25 25th of February, we started the autopsy.

1 And so, before the dissection began, -- when we do
2 an autopsy, we document, really, by three complementary
3 ways. One is that we take photographs. And that
4 includes taking photographs of a person's body as they
5 were received, with the clothing on, without anything
6 being washed. So, we took full body photographs of
7 Justin Miller's body, with all of his clothing on.

8 Then, after the clothing was removed, then, we also
9 describe the clothing, and also, any personal items that
10 would have been contained as part of the clothing.

11 Then, when we -- after his -- the clothing was
12 removed, then, another set of photographs is taken of --
13 of the body. And then, the body is eventually washed.
14 And he had a lot of dirt on the clothing and on his
15 body. And then, it was washed. And the reason it's
16 washed is because, many times, dirt will obscure the
17 injuries or other, tattoos or other findings that are
18 present on the skin.

19 So, the external examination really began after all
20 of those procedures occurred; the body being clothed;
21 and then, unclad; and then, the dirt being removed.

22 And then, when we do the external examination,
23 which was the next part, I had -- I described all my
24 findings. And then, I had a -- a worksheet with a body
25 diagram, where I could document the various findings.

1 Then, -- and then, after that, all that -- all the
2 external injuries are documented. Then, at that point,
3 we were ready to begin the dissection, which would be
4 the internal examination.

5 Q Now, Doctor, did you, yourself, actually take
6 photographs of Justin Miller's body before the beginning
7 of dissection?

8 A Yes. I -- I know that, either myself and Eowyn
9 Corcrair, who was the pathologist assistant working with
10 me, I don't remember exactly which ones we took, but,
11 between the two of us, we took all the pictures.

12 Q And do you know how many photographs you took that
13 day?

14 A I don't know how many, but I would estimate that it
15 was extensive, probably well over a hundred.

16 Q Doctor, before we get a little further into your
17 work on this specific case, I want to get your help
18 defining a few terms. Okay?

19 A Okay.

20 Q Can you tell the jury what a hemorrhage is.

21 A Yes. So, a hemorrhage is just a fancy term for
22 bleeding. And all we mean by that is that, it's blood
23 that's not where it's supposed to be. Blood is supposed
24 to be inside of a blood vessel, where it travels.
25 Anytime blood is outside of a blood vessel, by

1 definition, that's hemorrhage, or bleeding.

2 Q And Doctor, what is a contusion?

3 A A contusion is hemorrhage that's created by a
4 direct blunt force. So, it's a bruise, but it's due to
5 a direct impact in that area of the body.

6 Q Now, Doctor, based on your education and training
7 and experience, does evidence of either a hemorrhage or
8 a contusion make it more likely than not that
9 circulation was present in the body when a particular
10 injury occurred?

11 A Yes, it does. The presence of bleeding hemorrhage
12 or contusion does make it more likely that circulation
13 was going on.

14 Q And certainly, Doctor, in your field, you don't
15 have the luxury of asking the decedent what happened or
16 didn't happen. Is that fair?

17 A That is correct. Not directly, that's correct.

18 Q I want to get a few more definitions, Doctor. What
19 does the term *avulsed* mean, or *avulsed*?

20 A Avulsion is a term which means an actual physical
21 separation of a part of the body from where it's
22 supposed to be. So, it can be a partial avulsion,
23 meaning where it's partially torn away from its
24 attachment, but still, something is still keeping it to
25 its original attachment in the body. Or a complete

1 avulsion is when that organ is completely separated from
2 the area, the anatomic area, where it's supposed to be
3 in the body. So, it's -- so, either partial or
4 complete, and it's -- and it's an extension of an injury
5 that we call a laceration, which is a tear in the skin
6 or a part of the -- or an organ in the body.

7 Q And last term, Doctor. Didn't realize you were
8 going to have to bring your dictionary with you. So, I
9 appreciate your patience here.

10 A Sure.

11 Q What does the phrase *traumatically absent* mean in
12 the context of forensic pathology?

13 A Traumatically absent means that, that organ or
14 tissue is not found in the body, because it was removed
15 by an injury, by trauma, as opposed to surgically
16 absent, such as the appendix, which is not there because
17 it was removed by a surgical procedure. So, we mean --
18 I mean specifically, that an injury was responsible for
19 a recent or immediate injury for that organ or tissue
20 not being present where it's supposed to be.

21 Q Now, Doctor, if a body part is avulsed, and there
22 is evidence of a hemorrhage or a contusion in a
23 particular part of the body, what does that mean to you
24 as a forensic pathologist?

25 A What that means to me is that, it's more likely

1 than not, that circulation was going on at the time
2 that, that avulsion occurred.

3 Q Now, Doctor, before we continue our examination, I
4 just want to ask you a foundational question about
5 Justin Miller. As the forensic pathologist at the
6 Medical University who did the medical, legal autopsy on
7 this young man, do you have an opinion as to whether or
8 not Justin Miller had anything other than a normal life
9 expectancy, prior to his tragic death?

10 A Yes, I do.

11 Q And what is that opinion, Doctor?

12 A My opinion is that -- that there was nothing, from
13 what I could examine that was available to me, or from
14 the history that I had, that indicated that he had any
15 other disease process that would have given him anything
16 other than a normal life span.

17 Q Doctor, you and I spoke a little while earlier, and
18 I understand that you have three, let me call, general
19 opinions with respect to this autopsy and this young
20 man. And I want to walk through, slowly, each of those
21 three opinions. Okay?

22 A Okay.

23 Q You told us a little bit about the connection
24 between hemorrhages and contusions and body parts being
25 avulsed.

1 A Yes.

2 Q Okay. In this particular case involving Justin
3 Miller, do you have an opinion, as a forensic
4 pathologist, as to whether or not blood was circulating
5 in his body when certain fractures and avulsions
6 occurred?

7 A Yes, I do.

8 Q And what is that opinion?

9 A My opinion is that, at least some of the injuries
10 that I'm seeing, because I'm seeing hemorrhaging, I'm
11 seeing bleeding, in my opinion, circulation was going on
12 when those injuries occurred.

13 Q In other words, blood was flowing.

14 A That's correct. That's the meaning of circulation.

15 Q And you're able to give us that opinion, to a
16 reasonable degree of certainty, meaning it's more likely
17 than not.

18 A That's correct.

19 Q What injuries do you believe occurred to Justin
20 Miller's body during the time frame in which blood was
21 continuing to circulate?

22 A The ones that I can say with the greatest degree of
23 -- of confidence would be, he had multiple bruises on
24 his scalp. And so, when we reflect the scalp, we do it
25 forward and backward, and that exposes a surface that we

1 call galea, g/a/l/e/a, and that's -- and I was able to
2 see contusions, bruises, on the deep surface of the
3 scalp in multiple areas, in the front, in the back, and
4 on the sides.

5 And other areas where I was able to see hemorrhages
6 or bleeding was, there was also bleeding that was coming
7 out of the left ear canal, and that was at the site
8 where there was a fracture of the base of his skull.
9 And the ear canal runs through the base of the skull.
10 And there was a fracture that we call -- I call a hinge
11 fracture, because it -- it went across both sides of the
12 base of the skull, and the middle ear -- ear canal was
13 contained within that area. We call that the temporal
14 bone. And there was blood that was coming out of that
15 -- that side, on the left. On the right side, there was
16 some dried blood.

17 Q All right. I want to stop you right there, and
18 we'll continue through the list of injuries in a moment.
19 I believe you told me earlier that you believe there are
20 more than a hundred photographs that you or someone at
21 your direction took during this autopsy? Did I hear
22 that correctly?

23 A That is correct.

24 Q Okay.

25 MR. HOYLE: Your Honor, may I approach the witness?

1 THE COURT: You may.

2 BY MR. HOYLE:

3 Q Doctor, I am approaching you with two photographs
4 that I have marked for identification purposes as
5 Plaintiff 5 and Plaintiff Number 7. I'm going to show
6 these to you.

7 I'm also bringing over, in case we need it, a big
8 stack of photographs that I've marked for identification
9 purposes as Plaintiffs Exhibit Number 4.

10 ITEMS IDENTIFIED AS COMPLETE SET

11 OF AUTOPSY PHOTOGRAPHS

12 MARKED PLAINTIFF'S EXHIBIT NUMBER 4,

13 FOR IDENTIFICATION.

14 Q With respect to the photographs that I've taken out
15 of the package and showed you, that being the
16 photographs I've marked for identification purposes as
17 Plaintiff's 5 and Plaintiff's 7, do you recognize these
18 photographs?

19 A Yes, I do.

20 Q And what are these photographs of?

21 A These are photographs of the body of Justin Miller,
22 identified by the autopsy number FA-12-00117. And this
23 is when he was still in his clothing and dirt was still
24 on his body. One is a view from the left side, a
25 profile where I'm looking at the left side of his -- his

1 face and his body. And one is a view from the right
2 side of his face and his body. He's lying on the
3 autopsy table, in the autopsy room at MUSC.

4 Q And do these fairly and accurately depict the
5 condition of Justin Nicholas Miller's body before you
6 began your dissection portion of the autopsy?

7 A Yes, they do.

8 Q And you were telling us earlier about being able to
9 see blood in one of the ears as part of your findings
10 and basis for conclusion that certain injuries took
11 place while his blood was still flowing. Do you recall
12 that?

13 A Yes, I do.

14 Q And does one of these photographs that I've marked
15 for identification purposes that I'm showing you here
16 today reflect that?

17 A Yes, it does.

18 Q Is that a photograph that you're relying on to
19 assist in explaining your opinions here today?

20 A Yes, it is.

21 MR. HOYLE: Your Honor, reluctantly, at this time,
22 I'm going to move to admit the photographs that have
23 been marked Plaintiff's 5 and Plaintiff's 7 into
24 evidence.

25 MR. LOVELL: Your Honor, we re-assert the objection

1 we made earlier.

2 THE COURT: At this time, I'm going to sustain that
3 objection.

4 MR. HOYLE: Thank you, your Honor.

5 THE COURT: Yes.

6 BY MR. HOYLE:

7 Q Doctor, returning to the list of injuries that we
8 have been discussing, you told us about the fracture in
9 the skull. Are there any other injuries that you
10 believe Justin Miller sustained while blood was still
11 flowing?

12 A Yes, there are.

13 Q What are those, sir?

14 A One of the other injuries that I observed in the
15 head, but this was under the microscope, was that there
16 was some bleeding hemorrhages in the brainstem. What I
17 had noted -- and the brainstem is the lower part of the
18 brain that connects the brain to the spinal cord,
19 controls all the involuntary movements. What I had
20 noted was that the brainstem was completely separated
21 from the upper part of the brain.

22 Now, because that can't be an artifact of just
23 removing the brain, it could be a post-mortem artifact,
24 one of the things I did is, I looked at the area that
25 was separated, that complete avulsion. I looked at the

1 area under the microscope, and I did see some bleeding
2 of -- of areas of red blood cells outside of blood
3 vessels at that site. That was another indication, in
4 my opinion, that circulation was going on, however
5 brief.

6 Moving down to the body, I saw that there was some
7 bruises in some of the neck muscles, the muscles that
8 attach the lower part of the neck up to the jaw that are
9 involved in swallowing. I also saw that there was a
10 fracture of the third cervical vertebrae. There are
11 seven cervical vertebrae in the neck, and at the third
12 one, there was a fracture. And then, around that
13 fracture, there was bleeding in the soft tissues of the
14 muscles and the connective tissues around there.

15 Moving down into the torso area, I noted that there
16 was some bleeding in multiple parts of the -- of the
17 torso. And I'm just going to refer specifically to -- I
18 just wanted to make sure that this was accurate. I saw,
19 specifically there, that there were multiple avulsions
20 of the organs. The heart was completely separated from
21 its position in the center of the chest, and was
22 actually sitting in the left lung cavity, below the left
23 lung.

24 I did not see any bleeding in the body cavities
25 themselves. I did see some small areas of bleeding in

1 the -- in the testes, in the testicular tissue down in
2 the pelvic region.

3 Q And what's the significance of the bleeding in the
4 pelvic region?

5 A The same -- the same significance. Again, that
6 there was more likely than not, that circulation was
7 going on at the time those injuries were sustained.

8 Q Injuries of the pelvic region.

9 A Correct.

10 Q Okay. Let's transition to the second broad
11 category of your opinion. We've been talking about
12 blood continuing to circulate through the body.

13 Doctor, do you have an opinion as to whether or not
14 Justin Miller remained conscious for some period of time
15 following the initial impact involved in this case?

16 A Yes, I do.

17 Q And did Justin Miller maintain consciousness for
18 some period of time immediately following impact?

19 MR. LOVELL: Your Honor, we object. There's been
20 no foundation laid as to the appropriate standard for
21 that.

22 ON-THE-RECORD BENCH CONFERENCE, OUT
23 OF HEARING OF JURORS. PRESENT: THE
24 COURT, MR. HOYLE, MS. CASTLEBERRY,
25 MR. LOVELL, MR. MACKELCAN.

1 MR. LOVELL: He's asking a causation, which
2 requires a more likely than not or a probable standard.
3 He hasn't qualified that at all.

4 THE COURT: Okay. I just want to make sure that's
5 what you're talking about instead of something else.
6 Okay.

7 MR. HOYLE: I'm not.

8 THE COURT: Got it. Okay.

9 MR. HOYLE: Sustained?

10 THE COURT: Sustained.

11 MR. HOYLE: Okay. So I understand the objection,
12 you want me to ask him more likely than not? I just
13 don't want to come back up here.

14 MR. LOVELL: I'm saying, he hadn't laid the
15 foundation.

16 MR. HOYLE: We may be coming back up here, Judge.

17 THE COURT: I don't care.

18 END BENCH CONFERENCE.

19 BY MR. HOYLE:

20 Q Doctor, I understand that you have formed an
21 opinion with respect to consciousness. Did I hear that
22 correctly?

23 A Yes, that's correct.

24 Q Okay. Let me stop you right there. With respect
25 to that opinion, is that an opinion that you, as a

1 board-certified, forensic pathologist, formed to a
2 reasonable degree of medical and professional certainty
3 under the more-likely-than-not standard?

4 A Yes, it is,

5 Q Okay. Doctor, is it your opinion that Justin
6 Miller remained conscious for some period of time
7 following the initial impact involved in this incident?

8 A Yes. A very, very, very short period of time.

9 Q And certainly, Doctor, I think we can all, on some
10 level, understand that. But let's make sure we all
11 understand it. Okay? What's the basis for that
12 opinion?

13 A The basis for that opinion is, unless death is
14 truly instantaneous, that -- that, unless that, when the
15 injury occurs, that there is absolutely no time in
16 between when the injury occurs and when consciousness is
17 lost, that's the only way that you could say, more
18 likely than not, that there was no awareness of
19 conscious -- of the injury.

20 Consciousness means awareness of one's self and
21 one's environment. There's no -- but there's no
22 specification as to the time of that awareness.

23 Q Is that a qualitative versus quantitative
24 assessment, Doctor?

25 A Yes, it is.

1 Q In accordance with the scientific method in your
2 training, education, and experience as a forensic
3 pathologist?

4 A That's correct.

5 Q Okay. Now, Doctor, we were talking a moment ago
6 about some of these injuries that took place to Justin
7 Miller while blood was still flowing. Okay. That was
8 Opinion 1. And then, in Opinion 2, you told us that,
9 for some brief period of time, Justin Miller is
10 conscious following initial impact.

11 Are you able to sequence for us the injuries that
12 you've described here today, the avulsion -- avulsion of
13 the various body parts, the fractures and everything,
14 and tell us, to a reasonable degree of medical
15 certainty, whether or not those injuries, although they
16 took place while blood was circulating, did or did not
17 take place while Justin Miller was still conscious?

18 A No, I am not.

19 Q And why is that, Doctor?

20 A It is because we're talking about such infinitely
21 small time periods that there is no reasonable way,
22 scientifically, to ever verify that. There's -- we're
23 talking about a much too narrow window of time to ever
24 be able to make a conclusion regarding sequence of
25 events there.

1 Q Doctor, can you go through a list for us of the
2 body parts that were avulsed from Justin Miller's body,
3 to the extent you've not described them thus far in your
4 testimony.

5 A Yes. So, some of the body parts that were
6 completely avulsed -- I mentioned that the heart was
7 completely avulsed, but it was found in the left lung
8 cavity. Other organs that were completely avulsed
9 included the liver; the -- the spleen, which, the liver
10 sits on the right side, the spleen on the left side; the
11 pancreas; the stomach; the entire small intestine; the
12 aorta; the part of the aorta carrying blood to the rest
13 of the body that sits in the abdomen; and also, one
14 kidney and one adrenal gland. I can't -- I could not
15 identify which one. One kidney and one adrenal gland
16 was in the body. The other kidney and other adrenal
17 gland was -- was out.

18 So, liver, spleen, pancreas, abdominal aorta, one
19 kidney, one spleen, one adrenal gland were all
20 completely outside of the body; and also, the entire
21 small intestine and a good part of the colon. The large
22 intestine. There was a small part of the large
23 intestine that remained in the body.

24 Q You were telling us earlier about some hemorrhaging
25 in the testes. Did I hear that correctly?

1 A That's correct.

2 Q Were there any other injuries in that part of the
3 body that you observed as part of your autopsy?

4 A Yes, there were.

5 Q What was that, Doctor?

6 A There were also multiple, multiple, fractures of
7 the pelvic bones, which includes -- the -- the --
8 includes the hip bones; includes the sacrum, which is
9 the lower part of the spine. Includes the pubic bone.
10 So, there were fractures of -- of, in essence, there was
11 -- we use a term -- I use the term *hemisection*, meaning
12 it was almost that the -- that the upper and the lower
13 parts were almost completely in half at the level of the
14 pelvis. There was also a complete fracture of -- of one
15 of the lumbar vertebral bodies in the lower spine.

16 Q And for these injuries that you've told us about,
17 even though you can tell us that some of those injuries
18 occurred while blood was circulating, you can't tell us
19 one way or the other as to whether or not Justin Miller
20 was conscious. Is that fair?

21 A That is fair.

22 Q More likely than not, Doctor, in this period of
23 consciousness, however brief, was Justin Miller
24 suffering?

25 MR. LOVELL: Objection. Calls for speculation on

1 the part of this witness.

2 THE COURT: Sustained.

3 BY MR. HOYLE:

4 Q I'll ask the question again. Doctor, as you sit
5 here today, as a board-certified, forensic pathologist,
6 have you developed any opinions on the more-likely-than-
7 not basis, as to whether or not Justin Nicholas Miller
8 suffered during a period of consciousness, however
9 slight, immediately following the initial impact?

10 MR. LOVELL: Objection. Speculation.

11 THE COURT: Let me see Counsel.

12 ON-THE-RECORD BENCH CONFERENCE, OUT

13 OF HEARING OF JURORS. PRESENT:

14 THE COURT, MR. HOYLE, MS. CASTLEBERRY,

15 MR. LOVELL, MR. MACKELCAN.

16 THE COURT: I thought I heard him say that he
17 cannot tell us if he was conscious or not, if he had a
18 period of consciousness or not. I thought I heard him
19 testify to that. Did I miss that? Did I get that
20 wrong?

21 MR. HOYLE: He said there was a period of
22 consciousness, is my recollection, Judge.

23 MR. LOVELL: Your Honor, he also said, though,
24 whatever, how very, very, very short it was, he couldn't
25 say, which, if the injuries occurred during that period

1 or not, before or after, and that's where the
2 speculation comes from.

3 THE COURT: I know. What the sequence was.

4 MR. LOVELL: He's already said I can't say one way
5 or another; and now, he's asking him was he suffering,
6 which will be him now coming back and say, oh, I can
7 say.

8 END BENCH CONFERENCE.

9 BY THE COURT:

10 THE COURT: Ladies and gentlemen, I need you to
11 step to your jury room for a moment. There is a matter
12 I need to hear outside your presence. Please remember,
13 do not discuss this matter, and do not allow anyone to
14 discuss it with you.

15 JURORS LEAVE COURTROOM.

16 THE COURT: Wanda, I need -- I need that last
17 statement.

18 MR. HOYLE: I would -- I would like to hear that,
19 too, Judge.

20 COURT REPORTER: Wait, don't say anything. We're
21 not on the record.

22 MR. HOYLE: I apologize.

23 COURT REPORTER: Was that on the record?

24 MR. HOYLE: It was not.

25 THE COURT: He did -- yeah.

1 BAILIFF: Jury's clear, your Honor.

2 COURT REPORTER: I'm going to go ahead and start
3 looking for it. Is that right? You want me to.

4 THE COURT: Yes, it was -- yes. Just before the
5 question was objected to.

6 COURT REPORTER: We're talking about fractures of
7 the pelvic bones, and then, okay, we go on up just a
8 second.

9 THE COURT: Just after that.

10 COURT REPORTER: Um-hmm. Um-hmm.

11 *And for these injuries that you've*
12 *told us about, even though you can tell us*
13 *that some of those injuries occurred while*
14 *blood was circulating, you can't tell us*
15 *one way or the other as to whether or not*
16 *Justin Miller was conscious. Is that fair?*

17 *Answer: That is fair.*

18 *Question: More likely than not, Doctor,*
19 *in this period of consciousness, however brief,*
20 *was Justin Miller suffering?*

21 *Objection. Calls for speculation.*

22 THE COURT: Okay. Sustained.

23 MR. LOVELL: Thank you, your Honor.

24 MR. HOYLE: Your Honor, if we could have just a
25 brief moment to re-focus before we bring the jury back?

1 THE COURT: Sure. Sure.

2 END BENCH CONFERENCE.

3 THE COURT: I want to be clear. I sustained your
4 objection. And everybody's clear about that.

5 MR. LOVELL: Yes, I did get that. Thank you.

6 THE COURT: Okay. Are you ready? Everybody ready?

7 MR. HOYLE: No, Judge. If I could just beg your
8 indulgence for one moment.

9 THE COURT: Yes, yes, yes, yes, yes. Why don't we
10 take a little comfort break, since the jury's out?

11 MR. HOYLE: That would be ideal.

12 THE COURT: Ideal? I like ideal. Would you like
13 to take a comfort break?

14 DR. CAPLAN: I'm fine, thanks.

15 THE COURT: That's what they call it in Beaufort
16 County, call it a comfort break. And I take it with me
17 all over South Carolina.

18 OFF THE RECORD.

19 BACK ON THE RECORD 3:35 P.M.

20 BY THE COURT:

21 THE COURT: We simply are where we are. That's one
22 question. It's an objection. It's been sustained.

23 MR. HOYLE: Thank you, Judge. I respect that.

24 THE COURT: Everybody clear about that? Yeah.
25 Okay. Great.

1 BAILIFF: You ready, your Honor?

2 THE COURT: I am ready.

3 JURORS ENTER COURTROOM 3:37 P.M.

4 BAILIFF: The jury is seated, your Honor.

5 BY THE COURT:

6 THE COURT: Thank you so much. All right. You may
7 proceed.

8 DR. MICHAEL JEFFREY CAPLAN

9 CONTINUE DIRECT EXAMINATION, BY MR. HOYLE:

10 Q Doctor, now that the jury is come back to the
11 courtroom, I just want to ask a few additional
12 questions, and then, allow Mr. Lovell to cross-examine
13 you.

14 Doctor, you traveled a long way to be here. You've
15 been a forensic pathologist for a good long while. As
16 you sit here today, as a board-certified, forensic
17 pathologist, who did the autopsy on Justin Nicholas
18 Miller the day after he died, do you have an opinion, to
19 a reasonable degree of medical certainty, under the
20 more-likely-than-not standard, one way or the other, as
21 to whether or not Justin Nicholas Miller experienced
22 conscious pain and suffering prior to death?

23 MR. LOVELL: Objection. Speculation.

24 THE COURT: Sustained.

25 BY MR. HOYLE:

1 Q Doctor, as you sit here today, I believe you may
2 have already told us this, as you sit here today, as a
3 board-certified, forensic pathologist who conducted the
4 autopsy on Justin Nicholas Miller, do you have an
5 opinion of reasonable medical certainty, under the more-
6 likely-than-not standard, as to whether or not Justin
7 Nicholas Miller was conscious for some period of time,
8 following initial impact?

9 MR. LOVELL: Objection. Asked and answered.
10 Speculation.

11 THE COURT: Not sustained on speculation. It has
12 been asked and answered, but I'll allow him to answer.
13 You may proceed.

14 BY MR. HOYLE:

15 A Yes, I do.

16 Q And what is that opinion, Doctor?

17 A That he was, in my opinion, and more likely than
18 not, that he was conscious for a very, very, very short
19 period of time.

20 MR. HOYLE: Doctor, those are all the questions
21 that I have. Please answer any questions that Mr.
22 Lovell has.

23 THE COURT: Cross-examination.

24 DR. MICHAEL JEFFREY CAPLAN

25 CROSS-EXAMINATION, BY MR. LOVELL:

1 Q Hi, Doctor. We meet again for the second time
2 today, but this is the first time I think we've met.

3 A very, very, very short period of time. I think
4 another time you used the word *infinitesimal*. You're
5 talking milliseconds, right?

6 A That's correct.

7 Q So, if I had a stopwatch, I couldn't even click it
8 fast enough to show that, right?

9 A That's probably correct.

10 Q Brainstem is completely avulsed at the
11 pontomesencephalic junction, pons, and mid-brain.
12 That's in your autopsy report, right?

13 A Yes, it is.

14 Q And that's a part of the brain that's the
15 brainstem, that's right here. It sort of connects the
16 brain and the spinal court.

17 A Yes. I had testified to that.

18 Q And once that's avulsed, there's no signals going
19 from anywhere below that area to the brain, right?

20 A That's correct.

21 MR. LOVELL: Thank you, sir.

22 THE COURT: That concludes --

23 MR. LOVELL: I'm sorry. Yes, your Honor. I did
24 not mean to turn my back, your Honor.

25 THE COURT: That's okay. I just needed to know if

1 you were finished. All right. Re-direct?

2 MR. HOYLE: No re-direct from the Plaintiff, your
3 Honor.

4 THE COURT: Is this witness free to leave?

5 MR. HOYLE: He is excused for the Plaintiff.

6 THE COURT: Any objection?

7 MR. LOVELL: No.

8 THE COURT: Very well. Doctor, you are free to go.
9 Thank you.

10 Call your next witness, please.

11 MR. HOYLE: Your Honor, while the next witness is
12 approached, you asked me a question earlier. If Counsel
13 and I may briefly approach?

14 THE COURT: Sure.

15 OFF-THE-RECORD BENCH CONFERENCE, OUT
16 OF HEARING OF JURORS. PRESENT: THE
17 COURT, MR. HOYLE, MR. LOVELL.

18 THE COURT: Ready, set, go.

19 MS. LEYIMU: May it please the Court?

20 THE COURT: Yes.

21 MS. LEYIMU: Plaintiffs call our next witness, Ms.
22 Melanie Smith.

23 MADAM CLERK: Ms. Smith. Put your left hand on the
24 Bible, and raise your right. Do you solemnly swear or
25 affirm that the testimony you're about to give in this

1 matter is the truth, the whole truth, and nothing but
2 the truth, so help you God?

3 MELANIE SMITH: I do.

4 MADAM CLERK: Good. Have a seat here. Tell us
5 your name, and also, spell your name.

6 MELANIE SMITH: Okay. My name is Melanie Smith,
7 M/e/l/a/n/i/e. S/m/i/t/h.

8 MELANIE SMITH

9 DIRECT EXAMINATION, BY MS. LEYIMU:

10 Q It's afternoon, I suppose, now, Ms. Smith..

11 A Yes. Yes.

12 Q Could you tell us where you live.

13 A I live in Beaufort.

14 Q And could you tell us where you work.

15 A I work for the Beaufort County Sheriff's Office 911
16 Dispatch Center.

17 Q Okay. And how long have you worked for the
18 Beaufort County --

19 A Dispatch Center?

20 Q Dispatch Center?

21 A Seventeen years.

22 Q Okay. And what are your duties now, or what's your
23 job title?

24 A My job title now is, I'm the E-91 -- E-911 training
25 coordinator, so I do the training for the dispatchers.

1 Q And how long have you worked in this sort of
2 section or division?

3 A That, I have been doing for a year now.

4 Q And prior to that, what was your job role?

5 A My job role was E-911 records custodian.

6 Q And was that your job role on February 24, 2012?

7 A Yes.

8 Q Okay. And what did your duties include on February
9 24, 2012?

10 A The majority of it was, I would respond to requests
11 for either written reports or audio requests from the
12 911 center, and that includes phone calls and radio
13 transmission requests.

14 Q Okay. And this might be a sort of basic question,
15 but what is 911?

16 A 911 is the public safety, basically, answering
17 point. We answer emergency and non-emergency calls for
18 all of the county.

19 Q And when someone calls 911 from a telephone in
20 Beaufort County, where does that call go?

21 A It goes to the phone system, and then, it's
22 automatically routed, depending on where the call is
23 coming from, to our center, and it's -- it just comes
24 right in to us.

25 Q And what happens when it comes into the call

1 center?

2 A When it comes into the call center, it goes through
3 a 911 trunk line, and then, it hits our recording
4 system. We have a digital recording system, so it's
5 automatically recorded before it gets to the dispatcher,
6 who picks up the phone.

7 Q Okay. And what sort of actions do your dispatchers
8 take when someone calls 911?

9 A They promptly answer the phone. They process the
10 call. They find out the -- the problem, the main
11 complaint, the location. They put that information into
12 our CAD system. And CAD stands for Computer Aided
13 Dispatch, and that's how they keep track of everything.
14 And then, they dispatch appropriate response.

15 Q And are all of these sort of 911 telephone calls
16 that come into the call center that you've described for
17 us recorded?

18 A Yes, ma'am. Everything's recorded, anything
19 incoming our outgoing from the center.

20 Q And is it automatically recorded?

21 A Yes, ma'am.

22 Q So, in its original form, could it be altered in
23 any way?

24 A No.

25 Q And is it in the regular practice of the Beaufort

1 County Sheriff's Office to make these recordings, these
2 911 dispatches?

3 A Yes.

4 Q And that's in the regular course of your business?

5 A Yes.

6 Q And are these kept within the regular course of
7 your business, as well?

8 A Yes.

9 Q Was it the regular course of your business on
10 February 24, 2012, to do the same?

11 A Correct.

12 Q To record these automatic 911 dispatch calls?

13 A Yes.

14 MS. LEYIMU: Your Honor, may I approach the
15 witness?

16 THE COURT: You may.

17 BY MS. LEYIMU:

18 Q Ms. Smith, I am showing you now what has been
19 marked for identification purposes as Plaintiff's
20 Exhibit 1.

21 A Okay.

22 Q Do you recognize that?

23 A Yes.

24 Q And could you tell us what that tape is.

25 A It's a disc of the 911 calls that occurred on

1 February 24, 2012, concerning the -- Kevin -- I'm sorry,
2 Kalvin Hunt case.

3 Q And did you listen to the recordings on that day,
4 February 24, 2012?

5 A Yes.

6 Q In their entirety?

7 A Yes.

8 Q Is this a true and accurate copy of the tapes from
9 that day?

10 A Yes, of the recordings.

11 Q Of the recordings. Okay. And one more thing about
12 these tapes, are they recorded in a sequential manner?

13 A Correct. They come in -- whatever time frame they
14 came -- come in, that's how they're recorded. So, if --

15 Q Could you tell us -- okay.

16 A So, -- because sometimes, we'll get a call right on
17 top of a call. Of course, you don't have a call; and
18 then, finish the call; and the next call comes in. The
19 recorder looks at the time the call comes in, and
20 whatever call comes first, that's the one it records
21 first. So.

22 Q Okay.

23 MS. LEYIMU: And your Honor, may I approach the
24 Bench, please?

25 THE COURT: Sure.

1 MS. LEYIMU: Thank you.

2 ON-THE-RECORD BENCH CONFERENCE, OUT
3 OF HEARING OF JURORS. PRESENT: THE
4 COURT, MS. LEYIMU, MR. HOYLE, MR.
5 LOVELL, MR. MACKELCAN.

6 MS. LEYIMU: We have the redacted version of the
7 call as we talked about, without the jury's presence.
8 And so, I just wanted to make sure I was entering --

9 THE COURT: This is what you're going to do.

10 MS. LEYIMU: Sure.

11 THE COURT: You will admit the one that she has
12 authenticated.

13 MS. LEYIMU: Okay.

14 THE COURT: That will be the Court's Exhibit. And
15 you will play the redacted one.

16 MS. LEYIMU: Understood.

17 MR. HOYLE: And we need to mark that for
18 identification.

19 THE COURT: Precisely. You'll mark both of them.
20 So, you mark the original, and she's identified the
21 original.

22 MS. LEYIMU: Yes, ma'am.

23 THE COURT: And then, what you'll do is, you will
24 play the one you'll play, and then, that will be marked
25 for the next number.

1 MS. LEYIMU: Great.

2 THE COURT: Okay?

3 MS. LEYIMU: Thank you.

4 THE COURT: And --

5 COURT REPORTER: We mark the redacted Court's --

6 no, we mark the original Court's 1; and the redacted,

7 Plaintiff's 1.

8 MR. HOYLE: Okay.

9 THE COURT: Perfect.

10 MR. HOYLE: Perfect.

11 THE COURT: You're so good. I think you should put

12 in for a raise.

13 MR. HOYLE: Does she need to do anything else with

14 the CAD sheet?

15 THE COURT: Now, the CAD sheet, where is -- what's

16 happened with the CAD sheet?

17 MS. LEYIMU: She brought -- she brought the CAD

18 sheet.

19 THE COURT: Yes, you need to put the CAD sheet in.

20 Go ahead and say, have you also brought a sheet called

21 the CAD. You've talked about what that is. Have you

22 brought the CAD sheet. And go ahead and get that

23 marked.

24 MS. LEYIMU: Okay.

25 THE COURT: Okay? Maybe -- and we'll call that

1 Plaintiff's 1-A.

2 MS. LEYIMU: Okay.

3 THE COURT: Okay?

4 MR. LOVELL: May we approach, your Honor?

5 THE COURT: Yes. The reason that we do it that
6 way, so, if it's Court, it won't go back to the jury.

7 END BENCH CONFERENCE.

8 BY MS. LEYIMU:

9 MS. LEYIMU: At this time, Plaintiffs move to offer
10 Court's 1 into evidence.

11 THE COURT: Yes. I won't go into evidence, but it
12 is marked as Court's 1.

13 MS. LEYIMU: Yes, your Honor.

14 THE COURT: Okay. This is now the Court's 1.

15 MS. LEYIMU: It is now the Court's 1? Thank you.

16 THE COURT: Just give it to Wanda. Perfect.

17 Perfect.

18 MS. LEYIMU: Thank you.

19 THE COURT: All right. Yes. And I believe you
20 also have now Plaintiff 1, correct?

21 MS. LEYIMU: We do, Plaintiff's 1. I took it up
22 here with me.

23 THE COURT: It may be in the machine, correct? It
24 may -- oh, you already have the --

25 MS. LEYIMU: I do.

1 THE COURT: Yes. Mark this. I don't know if it's
2 been marked. We'll mark that one as the Plaintiff's,
3 yes.

4 MS. LEYIMU: You'll mark, okay, mark this as
5 Plaintiff's 1, please.

6 THE COURT: Got it. Great. Very well.

7 ITEM IDENTIFIED AS REDACTED C.D. OF
8 AUDIO RECORDING OF 911 CALLS
9 MARKED PLAINTIFF'S EXHIBIT NUMBER 1
10 ADMITTED AS EVIDENCE.

11 ITEM IDENTIFIED AS UNREDACTED C.D.
12 OF AUDIO RECORDING OF 911 CALLS
13 MARKED COURT'S EXHIBIT NUMBER 1
14 RECEIVED BY THE COURT.

15 ITEM IDENTIFIED AS CAD SHEET
16 MARKED PLAINTIFF'S EXHIBIT NUMBER 1-A,
17 ADMITTED AS EVIDENCE.

18 BY MS. LEYIMU:

19 Q And Ms. Smith, I saw up there that you had with you
20 a series of papers.

21 MS. LEYIMU: Your Honor, may I approach the
22 witness?

23 THE COURT: You may.

24 BY MS. LEYIMU:

25 Q Now, you talked about a system called C.A.D., I

1 believe?

2 A Correct.

3 Q Could you, sort of, explain that to me and the
4 jury, please.

5 A Yes. CAD stands for Computer Aided Dispatch, and
6 it's the computer program that we use to basically
7 record everything. So, when a 911 call or a non-
8 emergency call comes in, the dispatcher will type in the
9 CAD; the -- like I said, the location of the call;
10 what's going on; the caller's name; the caller's phone
11 number; any remarks that a caller will say. That's all
12 time/date stamped. And then, the system will send it to
13 the appropriate dispatcher, depending on, like I said,
14 the call nature and the location of the call. And as
15 she dispatches response unit, she then types in her
16 actions; the officers' actions or the fire actions. And
17 then, we can run reports from that. And everything's
18 time/date stamped when it's entered into the system.

19 Q Okay. Great. I was just going to get to that.

20 A Okay.

21 Q So, the time/date stamp, now, does that correlate
22 with the video -- or the -- I'm sorry -- audio recording
23 of the 911 tape?

24 A It runs around the same time. It's -- this is all
25 manually entered, so as soon as the dispatcher -- it's

1 not as soon as she picks up the phone. The system
2 doesn't time/date stamp on the CAD report. The
3 dispatcher will enter the call, and that's when it's
4 time/date stamped, but normally, it run seconds apart.

5 Q Thank you.

6 MS. LEYIMU: Please mark this as Plaintiff's 1-A,
7 please.

8 And your Honor, at this time, Plaintiffs wish to
9 offer Plaintiff's Exhibit 1-A [sic] into evidence.

10 THE COURT: Any objection?

11 MR. MACKELCAN: No objection.

12 THE COURT: Very well.

13 ITEM IDENTIFIED AS REDACTED C.D.

14 AUDIO OF 911 RECORDINGS

15 MARKED PLAINTIFF'S EXHIBIT NUMBER 1,

16 ADMITTED AS EVIDENCE.

17 MS. LEYIMU: Your Honor, Plaintiffs now request
18 that Plaintiff's 1 be published.

19 THE COURT: It's going to be Plaintiff's 1.

20 MS. LEYIMU: No, just Plaintiff's 1.

21 THE COURT: Plaintiff's 1.

22 MS. LEYIMU: Plaintiff's 1.

23 THE COURT: With a pause.

24 MS. LEYIMU: That's right.

25 THE COURT: Be published to the jury.

1 MS. LEYIMU: Be published to the jury.

2 THE COURT: Any objection?

3 MR. LOVELL: None.

4 MR. MACKELCAN: None.

5 THE COURT: Very well. All right.

6 PLAINTIFF'S EXHIBIT NUMBER 1,

7 REDACTED C.D. AUDIO OF 911

8 RECORDING PLAYING.

9 END PLAYING PLAINTIFF'S EXHIBIT

10 NUMBER 1, REDACTED C.D. AUDIO

11 OF 911 RECORDING:

12 BY MS. LEYIMU:

13 BY MS. LEYIMU:

14 Q Okay. Ms. Smith, we've talked about the reports.
15 When was it the first call me in?

16 A I would have to look at the report. I don't know,
17 right off the top of my head.

18 Q All right. I'll get it for you.

19 THE COURT: And for our record, can you tell us the
20 exhibit you're reviewing.

21 A Yes, this is Plaintiff, P.L., Plaintiff 1-F -- or

22 A. Sorry. Looks like it came in 16 -- or 1609, which
23 is 4:09 p.m.

24 Q And could you tell us when the last call came in.

25 A The last call, that one came in at 1617, or 4:17

1 p.m.

2 Q Thank you for being here today with us, Ms. Smith.

3 A Okay.

4 MS. LEYIMU: Your Honor, I have no further
5 questions.

6 THE COURT: Cross-examination.

7 MELANIE SMITH

8 CROSS-EXAMINATION, BY MR. MACKELCAN:

9 Q Good afternoon, Ms. Smith.

10 A Hello.

11 Q Just a few questions. How many people work in the
12 call center?

13 A It varies. We are supposed to have a staff of 48,
14 so it depends on --

15 Q Is that 48 actual dispatchers?

16 A It's 12 per shift, but 48 total. So, 12 on a
17 shift.

18 Q Okay. So, at any given time, there should be 12
19 dispatchers at the call center.

20 A Correct.

21 Q Actually picking up the phone, talking to people.

22 A Correct.

23 Q Okay. How close do those 12 people sit to each
24 other?

25 A Roughly in a space that is probably this carpeted

1 area, and where the jury's sitting.

2 Q You were describing entry into the computer system
3 also talking to people. How does that work, in terms --
4 are they entering things in the computer while they're
5 talking to people?

6 A Correct.

7 Q Okay. Is it automatic that the police or fire are
8 dispatched when they enter it into the computer?

9 A Yes.

10 Q So, they don't have to make another call for that.

11 A No.

12 Q But you did say it was automatic, so when they put
13 it in the computer, whoever goes where they go.

14 A Right. When a dis -- when a call taker takes the
15 call, she determines the nature of the call. So, prime
16 examples of this would be, with the accident, if it was
17 an accident with injury, you put in the nature. So, it
18 would be accident with injury. You put the location.
19 The computer-aided dispatch is programmed to look at
20 what type of call and where the location is, and it
21 automatically goes to the department. And the
22 dispatcher that's working that radio will see it on
23 their screen, and dispatch response units to that call.
24 Does that clarify it more? Yeah.

25 Q Well, does it say on this CAD where they're

1 dispatched to?

2 A They're dispatched to the incident location that
3 was put in.

4 Q So, for the first call, for example, off -- M.A.
5 Merced, I believe, is how he introduced himself; he was
6 calling the Naval Hospital, Beaufort. So, they would be
7 dispatched to the Naval Hospital, Beaufort?

8 A Correct.

9 Q Even though he had told him that Calvin Hunt was
10 already gone?

11 A They would be dispatched and be in the area
12 looking. They'd be -- basically said the location of
13 the incident was at the Naval Hospital, and the subject
14 was in the area. Now, where the responders respond to
15 is up to the responder.

16 Q Would the same be true for Ms. Edward's call, the
17 second call? She was calling from the Laurel Hill
18 Apartments. Would the dispatch send the police or fire,
19 ambulance to the Laurel Hill Apartments?

20 A Correct.

21 Q When the call center folks are working together, is
22 there any communication among the two of them, or are
23 they sort of each with headphones and operating in a
24 vacuum?

25 A No, they're all in the same center, communicating,

1 via the information in the CAD. And as you can tell on
2 the recording, yelling across the room to each other.

3 Q If we look at the first page of this CAD, is the
4 time that you gave, 4:09, is that on that page?

5 A Actually, I don't have that call that you have in
6 your hand. I don't have that in this pack.

7 Q What are you looking at?

8 A You said you had one that says, Officer Merced.

9 MR. MACKELCAN: May I approach the witness?

10 THE COURT: Sure.

11 A Sorry.

12 MR. MACKELCAN: Make sure we're looking at the same
13 thing.

14 BY MR. MACKELCAN:

15 A Yeah. Yeah, the first I have is the Monique
16 Edwards call. Sorry.

17 MR. MACKELCAN: Your Honor, can we approach?

18 O-THE-RECORD BENCH CONFERENCE, OUT

19 OF HEARING OF JURORS. PRESENT: THE

20 COURT, MR. HOYLE MS. LEYIMU, MR.

21 MACKELCAN.

22 BY THE COURT:

23 MR. MACKELCAN: So, your Honor, I was given a
24 three-page document when she first took the stand. It
25 only has Merced on it. And when I approached the Bench,

1 she has Monique Edwards, but she also has a stack of CAD
2 papers. So, I think we're talking about two different
3 things.

4 MR. HOYLE: I apologize, your Honor. It's
5 completely my mistake. I was told that -- it was my
6 understanding that, that was a copy to give to Mr.
7 Mackelcan, and that's what I gave him. I did not
8 realize it was out of the original set.

9 THE COURT: Okay. What you want to do? You don't
10 have the exhibit.

11 MR. MACKELCAN: I don't have the exhibit. I'd like
12 a chance to look at the exhibit.

13 THE COURT: I'm not so sure she has the exhibit.

14 MR. MACKELCAN: I don't know what is -- is this the
15 exhibit?

16 THE COURT: I don't know. I don't think so. I
17 think yours might be more extensive than what she's got.
18 Uh, hmm, well.

19 END BENCH CONFERENCE.

20 THE COURT: Ladies and gentlemen, we're going to
21 need to take a very short break. Step to your jury
22 room. Do not discuss this matter. Do not allow anyone
23 to discuss it with you. Got a little sorting out, a
24 little bit of paperwork to do. We won't be long.

25 JURORS LEAVE COURTROOM 4:16 P.M.

1 CONTINUE BENCH CONFERENCE.

2 THE COURT: Now, you all can figure it out.

3 MR. HOYLE: Yes, Judge.

4 THE COURT: I'm concerned that -- I'm concerned she
5 doesn't have the first call, and then, she has the
6 exhibit.

7 MR. HOYLE: I think that's accurate.

8 THE COURT: And you have the first call.

9 MR. MACKELCAN: And nothing else.

10 THE COURT: Oh, my. I detect a bit of a snarl.
11 You all can figure it out.

12 MR. HOYLE: We'll go figure it out and solve it.

13 THE COURT: Yes. Thank you.

14 END BENCH CONFERENCE.

15 OFF THE RECORD 4:17 P.M.

16 BACK ON THE RECORD 4:35 P.M.

17 BY THE COURT:

18 THE COURT: I just want to be clear that Exhibit 1
19 is the original tape that was offered into evidence, to
20 which there were objections. Some of which, not all,
21 but some of which I sustained. And from my ruling,
22 there was a redacted tape that was entered as 1-A. And
23 I just wanted to --

24 COURT REPORTER: No. No, not --

25 THE COURT: No? That was Plaintiff's Exhibit 1.

1 The original tape was the Court's Exhibit 1. So, for
2 appellate purposes, it is part of the record. The
3 redacted version, which was played to the jury, is the
4 Plaintiff's Exhibit 1. And the CAD is Plaintiff's
5 Exhibit 1-A. I just wanted the record to be clear.
6 Does the Plaintiff agree that, that's correct, accurate?
7 Yes?

8 MS. LEYIMU: Yes, your Honor. Yes, your Honor.

9 THE COURT: And that's correct?

10 MR. MACKELCAN: Yes.

11 THE COURT: Okay, you agree, too. Now, have you
12 had an opportunity to review --

13 MR. MACKELCAN: I haven't seen it yet.

14 MR. HOYLE: The copies are still being made, your
15 Honor.

16 MR. MACKELCAN: The good news is, I don't have any
17 questions.

18 THE COURT: I'm sorry?

19 MR. MACKELCAN: I said, the good news is, I don't
20 have any questions for the witness.

21 THE COURT: Okay. Heaven forbid I should be
22 encouraging you to have questions. Okay. Wonderful.
23 So then, I can't release you until we get the exhibit,
24 in case there's a hiccup with that. But you might be
25 wanting to get your next witness ready.

1 MR. HOYLE: Your Honor, the next witness is going
2 to be played by videotape. It's a lady by the name of
3 Koren Pope. I do not believe there is any dispute as to
4 the page and lines for that deposition.

5 THE COURT: Okay.

6 MR. HOYLE: But I believe, once we play Ms. Pope,
7 we will be at a point where we'll have to discuss some
8 page and line issues for any further witnesses.

9 THE COURT: Did I hear -- I heard a harrumph? Was
10 that an inadvertent harrumph, maybe?

11 MR. LOVELL: I was looking at -- I think it -- give
12 me one minute, Judge. By the time they get all that
13 done, I'll have looked through this, and I can probably
14 say it's okay.

15 THE COURT: Not a problem at all.

16 MR. HOYLE: Judge, I think everyone in this room
17 knows the logistics sometimes are the hardest part of
18 trial.

19 THE COURT: I agree. I absolutely agree.

20 MR. HOYLE: Your Honor, for planning purposes --
21 and Mr. Knowles, I think, is trying to encourage the
22 copier that we brought with us and putting that little
23 ring faster than it might be capable of doing.

24 This next witness we're going to play by videotape.
25 I believe it's 20 minutes?

1 MR. KNOWLES: Twenty-six minutes.

2 MR. HOYLE: Twenty-six minutes, I'm told. The next
3 logical witness that we would play by videotape is in
4 excess of an hour. So, this, once we've played Ms.
5 Koren Pope's videotaped deposition, once Mr. Lovell --

6 MR. LOVELL: It is good.

7 MR. HOYLE: He says it's good.

8 THE COURT: Do we have any retract of our harrumph?

9 MR. LOVELL: I did. I apologize, your Honor.

10 THE COURT: That is absolutely not a problem.

11 MR. HOYLE: Then, I think we might be at a logical
12 stopping place.

13 THE COURT: I think you probably are. Now, you
14 want your harrumph back?

15 MR. LOVELL: No, there's no problem.

16 THE COURT: Okay.

17 MR. LOVELL: Just thinking that makes me go
18 harrumph.

19 MR. HOYLE: I hear beeping from the anteroom. I
20 hope that --

21 COURT REPORTER: I hear beeping, too. And I think
22 it's --

23 THE COURT: Well, I think -- this is what I think.
24 Because -- here's what we can do. Let's do this. Let's
25 do this. We've messed up your whole day, anyway, right?

1 MELANIE SMITH: I'm used to it.

2 THE COURT: You're so kind.

3 MELANIE SMITH: I've been doing this for how long
4 now?

5 THE COURT: I know you are, but typically not
6 civilly. On the criminal side.

7 MELANIE SMITH: I know. I was, like. I was, like,
8 oh, something new.

9 THE COURT: It really is. It really is. So, since
10 -- could we do this? Could we let the copies be made,
11 go ahead and play the tape. We'll pardon Ms. Smith to
12 stay here with us, in the event she's needed. And then,
13 whenever the copies are ready, you'll have the copies,
14 because you've already -- you already know what's going
15 to be on the tape. So, you can look at copies. And
16 then, if Ms. Smith is needed, she'll be here.

17 MR. MACKELCAN: Okay.

18 THE COURT: And then, you can question her at that
19 point. Is that okay?

20 MR. MACKELCAN: That's great. That's great. Yes,
21 that's perfect. Thank you.

22 THE COURT: Does that work?

23 MR. LOVELL: Yeah, that's great.

24 THE COURT: All right. Thank you for being so
25 kind. I'd like to have the option, but I don't. So,

1 you go and have a seat.

2 MELANIE SMITH: Okay.

3 THE COURT: Get comfy. And we'll have the jury, I
4 guess, when you're ready to fire up.

5 MELANIE SMITH: So, I stay here, or I can go out?

6 THE COURT: When you're ready to fire, as well. I
7 mean fire up the tape.

8 MR. HOYLE: John needs just a moment. And then,
9 your Honor, will you explain the logistical issue with
10 the -- not in detail, but the -- why this witness is --

11 THE COURT: I will.

12 MR. HOYLE: Okay.

13 THE COURT: And hopefully, I'll do it halfway
14 decent.

15 MR. HOYLE: May I approach, your Honor? I want to
16 return one of your cat toys.

17 THE COURT: Yes.

18 JURORS ENTER COURTROOM 4:35 P.M.

19 BAILIFF: The jury is seated, your Honor.

20 THE COURT: Ladies and gentlemen, let me tell you
21 what we're doing. We were needing to work on some
22 documents. Here's what I'm going to do. We're going to
23 still work on those documents, and Ms. Smith's been kind
24 enough -- she's going to stay with us, while we just
25 work through those documents, to see if there are any

1 additional questions of her, which there may be.

2 But while we're doing that, we wanted to continue
3 to work. And so, we are going to call the next witness,
4 which I understand is a witness who is called by
5 videotape, and we're going to do that now, while they
6 continue to work, we continue to work through the
7 documents. You all can continue to listen to testimony.
8 And as I understand, you are going to call this next
9 witness by video?

10 MR. HOYLE: Yes, your Honor. Mr. Knowles is
11 working to queue this up.

12 THE COURT: While he's doing this, I want to
13 explain to the jury what they'll be seeing.

14 MR. HOYLE: Thank you, your Honor.

15 THE COURT: Ladies and gentlemen, this is a de bene
16 esse deposition. Or is it discovery?

17 MR. HOYLE: Your Honor, it was a deposition taken
18 for all purposes under the rules and the parties have
19 agreed that this witness is unavailable, pursuant to
20 Rule 32 of the *South Carolina Rules of Civil Procedure*.

21 THE COURT: Yes. Yes. Ladies and gentlemen, there
22 is a process that occurs during a period of time called
23 the discovery. It happens after the filing of a summons
24 and complaint and a responsive answer, and the period is
25 called the period of discovery. It allows both sides to

1 discover the claim and the defenses. During that period
2 of time, lawyers can ask questions such as, who do you
3 believe your witnesses will be, to what do you believe
4 that they will say. And then, the lawyers are given an
5 opportunity to depose, is the term, to depose witnesses.
6 And what typically happens is that, the lawyers will
7 gather in one office or another office. Sometimes, if
8 it's a healthcare professional, maybe their office. And
9 a court reporter, very much like Ms. Rowe here, will be
10 present. That court reporter will place that witness
11 under oath, and the lawyers are given an opportunity to
12 ask questions of the witness, and to receive those
13 answers.

14 And under our rules, there are certain instances
15 when those depositions may be played for the jury.
16 Depositions can be in writing, solely. This is a
17 deposition that is solely in writing. They can be in
18 writing, and also, be videotaped. And what I understand
19 you are about to see is that, you are about to see a
20 videotaped deposition.

21 What's important for you to know is that the
22 witness is placed under oath, and that person is under
23 oath, same as someone is under oath here in the
24 courtroom. So, what you are about to see is sworn
25 testimony. Any objections or additions to my

1 explanation to the jury?

2 MR. HOYLE: No objections, your Honor.

3 THE COURT: Okay.

4 MR. MACKELCAN: No, your Honor.

5 THE COURT: Very well. And if you'd introduce who
6 this is the video deposition of and the witness who is.

7 MR. HOYLE: Your Honor, at this time, Plaintiffs
8 call, by videotape, Koren Pope.

9 THE COURT: Koren Pope. Great.

10 DVD OF VIDEOTAPED DEPOSITION

11 OF KOREN POPE PLAYING.

12 END PLAYING DVD OF VIDEOTAPED

13 DEPOSITION OF KOREN POPE.

14 ITEM IDENTIFIED AS DVD OF

15 VIDEOTAPED DEPOSITION OF KOREN POPE

16 MARKED COURT'S EXHIBIT NUMBER 3

17 RECEIVED BY THE COURT.

18 ITEM IDENTIFIED AS CLIP SHEET TO

19 9-8-14 KOREN POPE DEPOSITION

20 MARKED COURT'S EXHIBIT NUMBER 2

21 RECEIVED BY THE COURT.

22 MR. HOYLE: That ends the testimony, your Honor.

23 THE COURT: All right. Very well. Now, with
24 regards to the exhibit, Mr. Mackelcan, have you had a
25 chance now to look at it?

1 MR. MACKELCAN: I have, your Honor, and I believe
2 all my questions were answered by the document. So, I
3 have no further questions for the witness.

4 THE COURT: Very well. And is Ms. Smith then free
5 to go?

6 MS. LEYIMU: Yes, your Honor.

7 THE COURT: Any objection?

8 MR. MACKELCAN: No, your Honor.

9 THE COURT: Very well. You are free to go, and
10 thank you very much. All right.

11 Ladies and gentlemen, that will conclude the work
12 that we're going to do today. I'm going to ask you to
13 please leave your notebooks in your seat, and we will
14 collect them, and we will guard them over the evening.

15 Again, when you go home this evening, be mindful
16 that you must not discuss this matter. You must not let
17 anyone discuss it with you. And if the curiosity is
18 heightened, remember to put it on the judge. Don't you
19 let anybody get upset with you. I don't want you going
20 to work this evening. I need you to rest this evening,
21 again. And if your employer develops concern, please
22 get me a number, and I'm happy -- and a name -- and I'm
23 happy to speak to that person on your behalf. I need
24 you rested for tomorrow.

25 Ladies and gentlemen, we are going to begin in the

1 morning at 9:30. 9:30. And remember to leave your cell
2 phone or other communication devices away from the
3 courthouse tomorrow. If you forget, our bailiffs will
4 keep it for you.

5 Remember not to do any sort of investigation.
6 There may be some publicity about this matter, so please
7 be on the lookout, so that you do not read anything or
8 listen to anything about this matter on the radio, on
9 the television, or on the Internet.

10 You must receive all of the information from which
11 you will make up your minds here, while court is in
12 session.

13 And have a very pleasant evening. I'll see you in
14 the morning at 9:30.

15 JURORS LEAVE COURTROOM 5:07 P.M.

16 BAILIFF: Jury is clear, your Honor.

17 THE COURT: Thank you. Now, you have depositions
18 for which you have objections?

19 MR. LOVELL: Yes, your Honor. We did have some.

20 THE COURT: Great. I think what's appropriate is
21 -- have you got them just right, the ones you object to?

22 MR. HOYLE: Yes, your Honor.

23 THE COURT: Yeah? You all are so good. Well, the
24 best thing to do is just let me have them.

25 MR. HOYLE: Okay.

1 THE COURT: And let me do a review, and --

2 MR. LOVELL: This is just our objections. Judge,
3 our objections were combined with our line and page
4 designations, but our objections are in there, and I
5 think we've quoted the testimony that's relevant.

6 THE COURT: Okay.

7 MR. LOVELL: And then, the reason for the
8 objection, 403 or -- this is an ordinary case, a
9 standard ordinary care case, and this is the
10 professional testimony, et cetera, et cetera.

11 THE COURT: Okay.

12 MR. LOVELL: It's all kind of outlined in there.

13 THE COURT: I gotcha. So, where will I find the
14 objections?

15 MR. LOVELL: The way it's set up, Judge, is, it
16 will start with the evidence.

17 THE COURT: Okay.

18 MR. LOVELL: And then, the testimony we object to,
19 which is kind of level, and you don't have to go back to
20 the depo, but it runs, you know, it falls with the
21 objection. And then, you will go to the next testimony.

22 COURT REPORTER: I'm sorry. I can't hear.

23 MR. LOVELL: And then, it follows. That's a long
24 one, a really long one. Must be one big -- oh, I know,
25 that was -- yeah. And it does have an objection there

1 on -- but it encompasses everything, mine and -- the
2 main thing is, it's the very beginning.

3 THE COURT: Is this all the depositions, or just
4 one?

5 MR. LOVELL: That's everything that the Plaintiffs
6 told us they were going to do, so that's all of them.

7 THE COURT: Okay. Great. Have you seen it?

8 MR. HOYLE: Yes, yes, they've got it. These are
9 our objections to the Defendant's designations, and our
10 counters, as well. And this is going to be the first
11 one that we'll try to play tomorrow, Judge.

12 THE COURT: Okay.

13 MR. HOYLE: This will be the easiest way to read.
14 I apologize. I don't have this with the other
15 depositions; but I think this will be the only one we'll
16 try to get in, in the morning. This has everything that
17 we designated and they designated, an hour and 23
18 minutes.

19 MR. LOVELL: And that's from only, I think, two
20 areas of objectoins from our side. There was just a
21 couple of them on this deposition, so hers is relatively
22 short.

23 THE COURT: Okay. So, why do I need this, if I've
24 got it already in here?

25 MR. LOVELL: Either, or.

1 MR. HOYLE: That's everything that has been
2 selected.

3 THE COURT: Got you.

4 MR. HOYLE: I don't know if that's easier or not,
5 Judge.

6 THE COURT: Okay. I'll figure it out.

7 MR. HOYLE: And how would you -- do you want us to
8 give you the remaining transcripts? Do you want us to
9 give you the remaining clip sheets for those depositions
10 past Ms. Smith?

11 THE COURT: Yes. That's just Ms. Smith. I thought
12 that was for everybody.

13 MR. LOVELL: Well, no. You've got all of our
14 objections for every deposition.

15 THE COURT: Got you.

16 MR. HOYLE: You don't have the entire transcript,
17 is what I'm saying. Do you not.

18 THE COURT: I don't want the whole thing. I don't
19 need the whole thing.

20 MR. LOVELL: Those certain parts are in one of
21 them.

22 THE COURT: Right. Exactly. If I need anymore,
23 you all let me know.

24 MR. HOYLE: Okay.

25 THE COURT: Does that work?

1 MR. HOYLE: Judge, that works.

2 THE COURT: Perfect.

3 MR. HOYLE: We'll bring you a stack of all the clip
4 sheets tomorrow for the other witnesses.

5 THE COURT: Oh, okay.

6 MR. HOYLE: But I do intend -- I would like for Ms.
7 Smith to be our first witness tomorrow, before we get
8 into other witnesses.

9 THE COURT: Correct. Sure, sure, sure, sure.

10 MR. HOYLE: I anticipate tomorrow there will be
11 three witnesses to follow her, for planning purposes?

12 THE COURT: Okay. Sure. Great. So, we'll start
13 at 9:00, and jury's coming at 9:30. So, you all be
14 ready to go. So, you all are ready to go.

15 MR. HOYLE: Thank you. Judge.

16 THE COURT: Now, I have a concern, and the concern
17 is, I am concerned about 1-A, because I want to be sure
18 that the first phone call that was testified to is
19 included in 1-A. So, will you all just check on that
20 this evening for me, just to be sure it's in.

21 MR. HOYLE: I will go look.

22 THE COURT: That would be perfect. And that's all
23 that I have. And I will see you all in the morning at
24 9:00, and thank you all so much.

25 MR. LOVELL: Thank you, Judge.

1 THE COURT: Great work.

2 END DAY TWO, WEDNESDAY,

3 OCTOBER 7, 2015, 5:12 P.M.

4 BEGIN DAY THREE, THURSDAY,

5 OCTOBER 8, 2015, 9:32 A.M.

6 OBJECTIONS AND RULINGS:

7 BAILIFF: All rise. This court is in session. The
8 Honorable Diane Goodstein presiding.

9 THE COURT: Yes. Thank you so much. Everyone
10 please be seated. All right. Now, we're two jurors
11 short, at this moment.

12 And I'm sure that you all had a few moments that
13 you all have met and conferred and have agreements about
14 all of the lines and pages, right? No. I'm so sad.
15 Okay. Not a problem.

16 Now, tell me, after the first deposition this
17 morning, you're going to have two live witnesses. And
18 then, who is the next deposition?

19 MR. HOYLE: This morning, we would like to begin by
20 playing the deposition of Saundra Smith.

21 THE COURT: There are no objections to Saundra
22 Smith, as I understand.

23 MR. LOVELL: We have two short ones.

24 THE COURT: Oh, two short ones. Okay. I thought

1 that -- okay. Well, let me take a look at Saundra
2 Smith. I remember that.

3 MR. LOVELL: They were on Pages 173, and the end of
4 175. And the first is Line 20.

5 THE COURT: Oh, okay.

6 MR. HOYLE: What pages, Gary?

7 MR. LOVELL: The first one started at 173, Line 20,
8 and ran through 174, Line 19.

9 THE COURT: Okay. Here it is. Okay. I do have
10 this one.

11 Okay. Right. Sir, I got your objection. Got it.
12 You don't think it's relevant information, relevant
13 testimony. All right. What about the first one as part
14 of the work-up on the patient?

15 MR. HOYLE: Yes. Good morning, your Honor.

16 THE COURT: Good morning.

17 MR. HOYLE: I would submit that, that information
18 is relevant. There's going to be testimony later,
19 hopefully, later today, from Dr. Jansen, that he
20 couldn't get a good history on this patient. It
21 certainly goes to this issue that Mr. Lovell raised in
22 his opening, that Calvin Hunt was calm, cool, and
23 collected, and this wasn't foreseeable. If you've got
24 someone who can't tell you what medication they're on,
25 they can't tell you all their problems, and a medical

1 provider just gives up, as opposed to looking at other
2 types of available information, we would submit that,
3 that is relevant, particularly to this case. I don't
4 think that, that's asking for any type of impermissible
5 opinion or anything of that sort in this testimony.

6 THE COURT: Let me ask you this question, Mr.
7 Hoyle. The jury is going to be asked to assess
8 carelessness in this case, negligence. And the act of
9 carelessness or negligence alleged by the Plaintiff,
10 articulate those.

11 MR. HOYLE: Oh, I think they're numerous, your
12 Honor. I think at a very 30,000-foot level, it's the
13 inability to supervise this patient, once a decision was
14 made that he needed to be admitted to a mental health
15 facility. But I also think, given that we have the
16 burden of proving that these were foreseeable acts,
17 there's information that comes right out of the Calvin
18 Hunt's medical records that goes to that foreseeability.
19 And I think with that, it's a knew-or-should-have-known
20 standard; that these medical providers could have looked
21 in Calvin Hunt's medical records, which he had with him
22 that day, and known that he had --

23 THE COURT: Stop.

24 MR. HOYLE: Yes, ma'am.

25 THE COURT: See, I don't know that.

1 MR. HOYLE: Okay. So, he came in with an-inch-and-
2 three-quarter stack of medical records. That's the
3 testimony, and in those medical records, there was
4 actually statements in there that he had persistent
5 thoughts, nightmares, and memories of his mother running
6 over his grandmother with an automobile when he was six
7 years old.

8 If foreseeability's an issue in this case, which I
9 think we all agree it is, I think that is certainly
10 relevant information that goes to that foreseeability.
11 And it goes to the heart of the case, because that
12 information was available, both on the computer and in
13 hard copy to persons at the Naval Hospital on this
14 particular day.

15 I think whether they looked or not, the witnesses
16 can tell us. But I think the -- whether others who were
17 involved in the sequence think they should have looked,
18 I think is also relevant.

19 THE COURT: Okay. Yes, sir.

20 MR. LOVELL: Your Honor, this case, as you pointed
21 out, is pled as an ordinary negligence case. This
22 testimony from this nurse goes specifically to standards
23 of care of nursing. The questions are asked, is it a
24 general rule of nursing and things like that. That goes
25 to a professional negligence standard, which is, at this

1 point, barred by the statute of limitations in this case
2 and the failure of the Plaintiffs to properly plead it.

3 Additionally, this is also personal preferences in
4 practices of an individual healthcare provider, which
5 have been deemed irrelevant. And I cited the case of
6 *Clark versus Ross* in that regard. So, this information
7 goes to a standard that's not in issue in this case.
8 Whether or not these records were available or not
9 available to the various healthcare providers is a fact
10 that can be elicited from those healthcare providers.
11 And if the Plaintiff brings witnesses in that can prove
12 what records were available to them, either
13 electronically, or, allegedly, in documentation brought,
14 that doesn't need to come out of these types of
15 witnesses. This would be speculation from this witness
16 as to what was actually available on the system to the
17 people in the E.R. at the time of this patient's care.

18 The standard in this case is what would an
19 ordinary, prudent person do, as the Plaintiff has chosen
20 to plead it.

21 THE COURT: Who is Sandra Smith?

22 MR. HOYLE: Sandra Smith is a registered nurse who
23 is a civilian employee of the Navy. She was the second
24 person at the Naval Hospital that Calvin Hunt saw. When
25 Calvin Hunt met with Ms. Smith, he began moaning,

1 rocking back and forth, and indicated he had thoughts of
2 hurting himself, and she is the one who took him to the
3 emergency room, as in her clinic, there was not a
4 licensed medical doctor present.

5 She met with him very, very briefly. But This
6 testimony -- I asked her is it important information to
7 have. Goes exactly to a factual issue. Is it
8 information you want; is it information you don't want.
9 And I think that the availability or desirability is
10 really a factual issue here. Again, going back to that
11 know-or-should-have-known standard, which is a part of
12 ordinary negligence. It's certainly a part of a case in
13 which negligence is pled, as well as part of a punitive
14 claim.

15 THE COURT: All right. Now, the case that you're
16 talking about, the Clark case, do you have it with you?

17 MR. LOVELL: Perhaps, your Honor. I will get you a
18 copy.

19 THE COURT: Okay.

20 MR. HOYLE: Your Honor, I have a copy, if you'd
21 like for me to hand it up.

22 THE COURT: Yeah. Let me look at that. Thank you.

23 MR. LOVELL: Your Honor, I believe the portion we
24 talked about is in part number 4 of that particular
25 opinion.

1 THE COURT: Okay. Have you got a page number that
2 you want to refer me to, just because --

3 MR. LOVELL: I'm sorry. It begins on Page 553, and
4 it runs over into the first part of 594.

5 THE COURT: Okay.

6 MR. LOVELL: Sorry, your Honor.

7 THE COURT: That is not a problem. Okay. And tell
8 me why you think this case has relevance.

9 MR. LOVELL: Well, your Honor, I think that goes to
10 show that the rule is the personal preference of an
11 individual healthcare provider. And of course, these
12 are all medical malpractice cases where the issue is
13 professional negligence.

14 THE COURT: Right.

15 MR. LOVELL: Don't set forth the standard of care,
16 necessarily. You have to talk about what would a
17 reasonably competent provider do under the circumstance.
18 That's not how this question's asked. It's like, what
19 would you do. Well, what I do or what some other nurse
20 does, it doesn't matter.

21 But the big picture on this, your Honor, is what
22 the Plaintiff is trying to do through this witness and a
23 whole bunch of others that we'll have for the following
24 rest of the day and tomorrow, who are healthcare
25 providers, is ask them what are the rules; what do

1 nurses do; what do doctors do; what do other healthcare
2 providers do under these circumstances. That's
3 professional negligence. That's not the case we've got
4 in front of us. So now, we're going to put in front of
5 a jury a standard that they're trying to elicit through
6 these witnesses that's not a standard that's applicable
7 in this case. So, this is irrelevant on the issue of
8 ordinary negligence.

9 It's highly prejudicial to my client to have these
10 witnesses giving their personal preferences, and I
11 suspect they're going to have an expert who is going to
12 come in and talk about standard of care and those
13 issues, to put that in front of the jury as the standard
14 by which they're to be judged, because that's not how
15 this case is pled.

16 We filed a motion to dismiss and summary judgment
17 on that. The judge said there may be issues of fact.
18 So, that's what we're here today to do.

19 But to allow this jury to hear testimony from
20 nurses, medical technicians, psychiatric technicians
21 about what the standards are in an E.R. under those
22 circumstances of these hypothetical questions, whether
23 it relates to the records or the symptoms or the signs,
24 is asking questions on the standard of care of a medical
25 professional that is not what this jury is going to

1 decide at the end of the day.

2 THE COURT: Mr. Lovell, the motion for summary
3 judgment, I spent not a lot of time, a little bit of
4 time just looking at it, because you all made reference
5 to it yesterday. As I understand it, it was not made on
6 the basis that you're arguing here. It was made on the
7 basis of an employment; that these people were not
8 employed by the Defendant; and therefore, summary
9 judgment ought be granted. There's some discussion in
10 there about this issue. This was not the underlying
11 basis of the motion for summary judgment.

12 MR. LOVELL: And you're correct on the written
13 pleas. We raised it as we were discussing it with the
14 judge at the hearing, your Honor. And in essence, she
15 felt that there were fact issues that --

16 THE COURT: No. As I understand it, you all said,
17 yeah, we'll bring a motion to dismiss on that basis.

18 MR. LOVELL: I'm sorry, your Honor. Excuse me.

19 THE COURT: That's okay. That's okay. But my
20 understanding is that conversation, you said, yeah,
21 yeah, yeah, we'll bring a motion to dismiss on that
22 basis.

23 MR. LOVELL: Right. And at this time, I think, for
24 purposes of where we are today, our argument is that
25 this case involves ordinary negligence. Any evidence

1 relating to professional negligence is not an issue in
2 this case. In their complaint, the Plaintiff
3 specifically said this case is not a case of medical
4 negligence. Medical negligence is professional
5 negligence, unless it's the ordinary negligence claim,
6 like a slip-and-fall thing. But in this case, when you
7 start asking questions about duties to review medical
8 records, duties to do assessments, duties to do
9 supervision, duties to do all these things of medical
10 providers, that is a medical negligence/professional
11 standard-of-care question, and it's just irrelevant to
12 the plea, to where we are today.

13 THE COURT: All right. Here's what I understand.
14 I understand that what is alleged: there's a duty; it's
15 negligent retention, negligent supervision, as well as
16 the ordinary negligence and alleged duty to supervise
17 this particular individual at the point in time he says,
18 I believe that -- or I have had thoughts of hurting
19 myself and others. That's how I understand this case.

20 Now, and the context in which these things
21 occurred, it happens to be in the medical context.
22 That's how I understand this case at this point.

23 Obviously, as I understand this testimony, this
24 first section of the testimony, it would be, is it
25 reasonable for you to know what you have the ability to

1 know about a person that information which is at hand.
2 And this person says, yeah, that's reasonable.

3 MR. HOYLE: I think that's fair, Judge.

4 THE COURT: I mean, I don't think what they're
5 asking is it the standard of care and that one would --
6 this person, obviously, has not testified as an expert
7 and qualified as an expert, at least, that I can tell in
8 this excerpt.

9 MR. LOVELL: Your Honor, I would point to Line 12,
10 the question:

11 *That's a general rule of nursing,*
12 *isn't it?*

13 *Answer: Yes, sir, that's a general rule*
14 *that any licensed, degreed, medical*
15 *practitioner should try to follow, correct?*

16 *If they're conscientious, it would be*
17 *a good rule to follow.*

18 That's standard care if ever. Rules of nursing,
19 the only people that know about rules of nursing are
20 people who have been trained in that field; not your
21 average, ordinary person on the street.

22 THE COURT: Well, conscientious could also mean to
23 care. I mean, that's the problem. I mean, that's
24 difficult with the fact that this is -- all right. So,
25 I'm going to -- with regards to the objection, number

1 one, I'm going to allow that testimony. Let's go on to
2 the next one.

3 MR. LOVELL: The next one, your Honor, beginning on
4 Page 175, Lines 24 through 25, and ending on 176, at
5 Line 2. She is now being asked to give an opinion about
6 what would be expected of a physician.

7 THE COURT: No, it says, *did* you. Who cares? Do
8 you know what I mean? That's interesting that she would
9 expect a doctor -- I agree with you completely. That's
10 irrelevant. Who cares what she expected a doctor to do?
11 That's interesting.

12 MR. LOVELL: Right.

13 THE COURT: But she'd have to be an expert for
14 that, though, to have any relevance.

15 MR. LOVELL: Sure. Yes, your Honor.

16 THE COURT: She's not an expert, and I'm going to
17 exclude that. I agree with you completely. That
18 doesn't have any relevance.

19 MR. HOYLE: So, for Mr. Knowles purposes, I'm just
20 going to repeat this, so that I think we're all on the
21 same page.

22 THE COURT: Sure. Page -- 24, 25, at 175-176; 1,
23 2, and 3 out.

24 MR. LOVELL: Just for the record, your Honor, we
25 would except that ruling.

1 THE COURT: The first part, but you love the
2 second.

3 MR. LOVELL: I love the second.

4 THE COURT: Yeah, two thumbs up on the second part.
5 Two thumbs down on the first part.

6 MR. HOYLE: 175, 24 and 25. And then, onto the
7 next page at 176, 1, 2, and 3 are out.

8 THE COURT: Yes.

9 MR. HOYLE: Maybe you can make those edits. I'm
10 sure everyone will be appreciative.

11 THE COURT: Yeah.

12 MR. HOYLE: Judge, we're in a bad spot, if Mr.
13 Knowles decides to get up and just run away. We'd be in
14 bad shape.

15 THE COURT: Oh, you should have never told him
16 that, because he grinned this wicked grin.

17 All right, now, -- all right, now, so, that gets
18 Smith, the first deposition, done. Two thumbs up. All
19 right. Let's go, because we've got one deposition, two
20 witnesses.

21 MR. HOYLE: And Judge, just briefly on that point,
22 we'll have some exhibits to admit after we play this
23 deposition. But your Honor, yesterday, you charged the
24 jury about deposition testimony, and you asked if we had
25 any exception to that charge. I forgot to stand up and

1 say, I don't have an exception to that charge, but I
2 have a suggestion.

3 The parties agreed, before we began trial, that,
4 rather than Plaintiff play their deposition page and
5 lines; and then, I stand up and say no more questions;
6 and then, the Defendant stand up, and they play their
7 page and lines, that we would just merge them into one
8 sequence, so that it was all in context and all logical.

9 I'm sure there were some jurors yesterday wondering
10 why there were certain things said by these persons, if
11 they were a part of my case in chief. And so, I would
12 respectfully ask that, perhaps, the Court, when it
13 explains that depositions are being played, state that
14 portions of this deposition transcript are being played
15 at the request of both the Plaintiff and the Defendant.

16 MR. LOVELL: That's fine.

17 THE COURT: Okay.

18 MR. HOYLE: I just think that will help them with
19 their understanding, because it was clear that it had
20 been edited.

21 THE COURT: Well, the only way that I would do that
22 is just explain to the jurors -- this is what I would
23 do, and you all tell me how you feel about it. What I
24 would do is that, I would do it in terms of praise for
25 both sides, and say, ladies and gentlemen, I want you to

1 know that, as you hear these depositions, that, one of
2 the options that Counsel has is to play what they want,
3 and then, in another side's case, and they can play what
4 they want. These lawyers have cooperated to make it
5 make sense to the jury, to you, and to put it all
6 together. And I commend them to doing that. They
7 wanted me to share that with you, is, rather than have
8 some of it in one case and some of it, perhaps, the
9 Defendant's case, they put them all together.

10 Any objection to that instruction?

11 MR. MACKELCAN: No objection.

12 MR. HOYLE: No objection. Very well-crafted, your
13 Honor.

14 THE COURT: Very well. I'd rather do it like that,
15 and just let them know that they're doing this for you
16 all. Okay. Ready to go. Yeah.

17 Jurors are concerned about whether we're going into
18 the weekend and next week. I'm going to go ahead and
19 share with them we're going into next week.

20 MR. HOYLE: I think that's patently obvious, Judge.

21 THE COURT: Oh, yes. Like shoes. Hopefully, we'll
22 be able to start on Monday.

23 You ready to go? Cool.

24 MR. HOYLE: And your Honor, just for housekeeping,
25 we will need to address not only moving some exhibits

1 into evidence, but there are one or two objections to
2 the exhibits we'll need to discuss after we play this
3 deposition before we call the next witness.

4 THE COURT: Okay.

5 BAILIFF: Jury is entering the courtroom, your
6 Honor.

7 JURORS ENTER COURTROOM 9:57 A.M.

8 BY THE COURT:

9 THE COURT: And as you have your seat or take your
10 seat, would you just confirm that the notebook is, in
11 fact, your notebook? Awesome.

12 Good morning, ladies and gentlemen.

13 RESPONSES BY JURORS.

14 THE COURT: I wanted to share with you, and it's
15 just a comment, just information. When the deposition
16 was played yesterday, and those depositions are playing
17 in the remainder of the trial, I wanted you to
18 understand what these lawyers have done. And part of
19 the work that they have done to work together to make
20 the trial move, perhaps, a little quicker, but probably,
21 more important to make these depositions be more
22 complete. What they have done is this. Under our rules
23 where depositions are played or read during the course
24 of a trial, the way that, that works is, the side that
25 wishes to use that deposition just tells the other side,

1 these are the pages and the lines that I want to use.
2 And obviously, even though we have a video, there's also
3 a writing, and that's how we know what the pages and the
4 lines are, and they share that with each other. And
5 when one side, irrespective of which side, says, I'd
6 like to play these pages and lines, then, the other side
7 can also say, well, I'd like to play these pages and
8 lines. And they inform each other.

9 One of the ways that can be played to a jury is
10 that, in each side's case, they can play those or read
11 those pages and lines to the jury, and they only get
12 part of it. And then, they'll wait, potentially,
13 several days, and then, get the other part. Well, while
14 it may have the jury focus on one side's case, and then,
15 the other sides's case, what happens to juries is, wait
16 a minute, I remember seeing this with this person
17 several days ago and remember hearing something. And
18 now, I'm hearing something else.

19 These lawyers -- and remember, they are
20 professionals. And while they are advocates, they are
21 advocates in the search for the truth and to assist you
22 in that regard. But they are advocates. So, when they
23 work together to help juries, I think juries need to
24 know that. And what they have done in this case, what
25 they have done in this case, rather than hold the parts

1 of depositions and play it, the parts that they, one
2 side wants, and then, wait; and then, play the parts
3 that the other side would want, rather than doing that,
4 these lawyers have gotten together and have agreed and
5 have worked together to put the pages and the lines
6 requested by each side. So that, when you're seeing the
7 deposition, you're seeing what both sides would put into
8 the deposition.

9 It is so much more efficient that way. I think it
10 makes it so much more understandable, and makes it
11 complete. But what you're doing, if you will, is,
12 you're getting pages and lines that both sides would
13 want.

14 I tell you that because I think it's helpful. I
15 think that's informative for you to know that. And I
16 also think -- and I would like for jurors to know when
17 lawyers work together, so that the presentation is
18 complete and more efficient in terms of time. And I
19 think it's important for jurors to know that, as well.
20 So, I share that with you. Any objection to my
21 comments?

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

23 MR. LOVELL: None, your Honor.

24 THE COURT: Very well. And now, for the segue into
25 the next witness.

1 MR. HOYLE: Your Honor, at this time, Plaintiff
2 calls, by deposition, Saundra L. Smith.

3 THE COURT: Very well. By video deposition, yes.
4 And of course, Counsel, I want you to make the original
5 tape the Court's exhibit. Very well.

6 ITEM IDENTIFIED AS DVD OF VIDEOTAPED
7 DEPOSITION OF SAUNDRA LORRAINE
8 GREEN SMITH,
9 MARKED COURT'S EXHIBIT NUMBER 3-A
10 RECEIVED BY THE COURT.
11 DVD OF VIDEOTAPED DEPOSITION OF
12 SAUNDRA LORRAINE GREEN SMITH,
13 COURT'S EXHIBIT NUMBER 3-A, PLAYING.
14 END PLAYING DVD OF VIDEOTAPED
15 DEPOSITION OF LORRAINE GREEN SMITH,
16 COURT'S EXHIBIT NUMBER 3-A.

17 BY THE COURT:

18 THE COURT: All right. Is that the conclusion of
19 the deposition?

20 MR. HOYLE: That concludes the videotape deposition
21 of Saundra Smith, which has been played here at trial.
22 Your Honor, at this time, Plaintiff is going to move
23 Exhibit Number 7 from Ms. Smith's deposition. We will
24 mark it for identification as Plaintiff's 19. And I
25 understand the Defendant does not have any objection.

1 MR. MACKELCAN: No objection, your Honor.

2 THE COURT: Very well.

3 MR. HOYLE: We will move Exhibit Number 19 into
4 evidence, your Honor.

5 ITEM IDENTIFIED AS CHRONOLOGICAL
6 RECORD OF MEDICAL CARE
7 MARKED PLAINTIFF'S EXHIBIT NUMBER 19,
8 ADMITTED AS EVIDENCE.

9 THE COURT: Any other exhibits coming in from the
10 deposition?

11 MR. HOYLE: Not from Ms. Smith.

12 THE COURT: Very well. We will take a morning
13 break. Ladies and gentlemen, please step to your jury
14 room. Do not discuss this matter or allow anyone to
15 discuss it with you. Put your notepads in your seats.
16 We'll take about 15 minutes. Thank you.

17 JURORS LEAVE COURTROOM 11:27 A.M.

18 BAILIFF: Jury's clear, your Honor.

19 THE COURT: Anything?

20 MR. HOYLE: Your Honor, we do need to address two
21 matters before we call the next witness. We can either
22 do that now or immediately before that witness takes the
23 stand.

24 THE COURT: I'll see you all in ten minutes.

25 MR. HOYLE: Thank you, your Honor.

1 OFF THE RECORD 11:28 A.M.

2 BACK ON THE RECORD 12:07 P.M.

3 BY THE COURT:

4 BAILIFF: All rise, court is now in session.

5 THE COURT: Thank you, and please be seated. So,
6 yes. So, all right. All right. You were telling me,
7 before we called the next witness?

8 MR. HOYLE: We're going to call Janice McDonald.
9 But before we get to that, your Honor, I would like to
10 invoke sequestration. We have witnesses in the
11 courtroom. Yesterday, when we had witnesses, we asked
12 them to sit outside. They were under my subpoena. We
13 also have three witnesses here today that are under my
14 subpoena. I would respectfully ask the Court to invoke
15 the rule, and ask witnesses to leave, until such time as
16 they are called to the witness stand.

17 THE COURT: Okay. Now, I don't know who your
18 witnesses are or who your witnesses will be, but there
19 are, obviously, folks in the courtroom that I don't
20 know. Are you telling me that, at no point yesterday
21 did you have witnesses in the courtroom?

22 MR. HOYLE: Yes, Judge.

23 THE COURT: Okay.

24 MR. HOYLE: I will make that representation as an
25 officer of the Court. I knew the identity of all the

1 persons in the courtroom yesterday.

2 THE COURT: Okay. All right. What says the
3 Defense?

4 MR. LOVELL: The trial was started yesterday, your
5 Honor. The rule has to be invoked at the beginning, and
6 not mid-way through.

7 THE COURT: We don't have a rule of -- we do not
8 have a rule of sequestration. We really don't. There
9 isn't any rule.

10 MR. LOVELL: Well.

11 THE COURT: It's just --

12 MR. HOYLE: Custom?

13 THE COURT: It's just, lawyers make it, but there
14 is no rule of sequestration, and it happens as a matter
15 of course. I have no problem with the witnesses being
16 sequestered, other than, other than, you know, you've
17 got to be able to relay, because I can't stand that
18 let's wait 15 minutes while I go track down a witness.

19 MR. LOVELL: That shouldn't be a problem as far as
20 getting them here and there. We've told them what to
21 expect.

22 THE COURT: Absolutely. And the only other one is,
23 if you have a -- if you do an expert, and for whatever
24 reason, that person needs to hear whatever testimony,
25 for goodness sakes, let me we know about.

1 MR. LOVELL: Okay.

2 THE COURT: Because I certainly don't want you at a
3 disadvantage, if you are planning on having your
4 witness, your expert witness here or whatever. But
5 other than that, I'll sequester. But if it's sauce for
6 the goose, it's sauce for the gander. So, it would
7 apply to both. Okay?

8 MR. HOYLE: And we're certainly fine with that,
9 your Honor. Thank you.

10 THE COURT: Okay.

11 OBJECTIONS AND RULINGS:

12 MR. HOYLE: All right, we have issues with two
13 documents that I need to deal with before we call this
14 next witnesses.

15 THE COURT: Okay.

16 MR. HOYLE: I have marked for identification
17 purposes -- and Gary, if you just want to walk right up
18 there, that might be easier. Plaintiff's Exhibit Number
19 18 is an inch-and-three-quarter stack of documents that
20 there's been some concerns raised as to their
21 authenticity. These were documents that were originally
22 shown to Janice McDonald at her deposition.

23 THE COURT: Okay.

24 MR. HOYLE: And they were an exhibit to that
25 deposition. I have an affidavit that goes with this

1 witness from Solicitor Duffie Stone, explaining how he
2 got these documents; how they became a part of his
3 investigatory file; how they were maintained in ordinary
4 course of business; how they were subsequently produced
5 to us, pursuant to the *South Carolina Crime Victims'*
6 *Bill of Rights* and the state *Constitution*, as well as an
7 order of the Court of General Sessions. So, I think
8 that's a sufficient foundation for their admissibility,
9 for their authenticity and admissibility.

10 MR. LOVELL: Judge, here's our objection to these.
11 These records purport to be the medical chart that was
12 available on the AHTLA system at the time of this
13 patient's treatment. That's what they purport to be.
14 We know these aren't, because what we've got here are
15 some -- these contain medical records that post-date
16 this accident. This gentleman was seen at the Naval
17 Hospital twice after this on I think 29th and maybe the
18 28th. So, we know on the face these aren't the ones
19 that were there.

20 Secondly, I have questions about -- I don't recall
21 any witness that testified that this table of contents,
22 as it is set forth here, was part of the AHTLA record.
23 This table of contents references different page
24 numbers, which go on and on and on through the length of
25 these. But clearly, we know this table of contents

1 wasn't there, because it also references the two
2 subsequent visits that wouldn't have been there on the
3 24th. And I don't know that there's any proof that this
4 table of contents, as it sits here, was part of the
5 AHTLA record.

6 THE COURT: Well, all right, so, -- all right, so
7 let me -- first of all, here's what I understand the
8 issue to be. This was a stack of documents that were --
9 these documents, this stack, was shown to a witness,
10 yes?

11 MR. HOYLE: Correct.

12 THE COURT: And -- so? Who cares?

13 MR. HOYLE: Well, it does matter.

14 THE COURT: Okay.

15 MR. HOYLE: She said that the stack of medical
16 records in hard copy that were brought in with Calvin
17 Hunt were an inch-and-three-quarter inches, as are
18 these. She went through and found certain information
19 in the medical records that, when these were marked at
20 her deposition, and said I saw this, I saw this, but I
21 only spent 60 seconds that day, that fateful Friday,
22 looking through this stack of documents; I didn't read
23 all of it.

24 We know that these are Calvin Hunt's medical
25 records. We, you know, the Solicitor sets forth in his

1 affidavit that they came directly from the Navy. I
2 agree with Mr. Lovell that these were clearly printed
3 subsequent to the event, but certainly, there's
4 information contained herein that would have been
5 available on February 24, 2012, all of records from
6 2011, 2010, 2009, 2008, so on and so forth.

7 I think we can -- we've laid a sufficient
8 authenticity and admissibility basis in the Solicitor's
9 affidavit. And certainly, I'm not going to question her
10 about documents that post-date the date of this
11 incident. And I'll even consent to have those documents
12 removed from this exhibit, the records from, you know,
13 five days after Calvin Hunt was at the Naval Hospital
14 that brings the basis of this lawsuit.

15 THE COURT: Okay. So, let me ask this question.
16 Is the next witness -- are you talking about -- is
17 McDonald here, live?

18 MR. HOYLE: She's actually here in the courtroom
19 right now while we're having this argument.

20 THE COURT: Okay. Well, if she is sequestered, she
21 needs to leave, first and foremost. I mean, you know,
22 you're violating the rules of sequestration that you
23 just got.

24 Okay. Now, so. Okay. So, this witness testifies
25 that, at the time of this event, she was shown a stack

1 of documents that was approximately one-and-three-
2 quarters-inch thick?

3 MR. HOYLE: That were Calvin Hunt's past medical
4 records.

5 THE COURT: They were Calvin Hunt's past medical
6 records, and she knows that.

7 MR. MACKELCAN: Well, she said it was a stack of
8 documents that were handed to her that she flipped
9 through in 60 seconds. I mean.

10 THE COURT: Okay. And then, you showed her this
11 stack of documents.

12 MR. HOYLE: Yes, your Honor.

13 THE COURT: Well, that's two different things. I
14 mean, it's just two different things. And I gather, out
15 of the stack of documents that you showed her, that
16 there was a -- there were certain documents that she
17 could put her hands on that she knew she had reviewed.

18 MR. HOYLE: Correct. She knew that she was able to
19 identify what medications he'd previously had; that he
20 had a past suicide attempt; that he had thoughts --

21 THE COURT: Is that a yes or no?

22 MR. HOYLE: Yes.

23 THE COURT: Okay.

24 MR. HOYLE: Some, but not all.

25 THE COURT: Okay.

1 MR. HOYLE: Yeah.

2 THE COURT: All right. And okay. So, your
3 objection is, you have concerns about this stack being
4 represented to this jury as being the stack that was
5 brought in by Mr. Hunt on the date in February and given
6 to this witness.

7 MR. MACKELCAN: Correct.

8 MR. LOVELL: That one, and the -- the contents of
9 this particular stack were all available on this AHTLA
10 system.

11 THE COURT: I know that, but that's a whole
12 different issue.

13 MR. LOVELL: I understand that, but you're right.

14 THE COURT: You all have a tendency to put eight
15 issues in one question.

16 MR. HOYLE: I'm sorry.

17 MR. LOVELL: Issue number one, you're absolutely
18 correct.

19 THE COURT: Okay.

20 MR. LOVELL: This was -- we do not know that this
21 was the stack.

22 THE COURT: This document -- this stack is what the
23 stack is.

24 MR. HOYLE: Correct.

25 THE COURT: It's all it is.

1 MR. HOYLE: Correct.

2 THE COURT: This stack cannot be represented to
3 this jury as being the stack of documents that's the
4 stack that was handed to this person on this occasion.

5 MR. HOYLE: I understand that.

6 THE COURT: All right.

7 MR. HOYLE: But the issue is, she testified that he
8 had his past medical records that measured an inch-and-
9 three-quarters thick.

10 THE COURT: I don't care about that.

11 MR. HOYLE: Okay.

12 THE COURT: That's fine. That's testimony.

13 MR. HOYLE: That's testimony. I can get that by
14 testimony. And we have the affidavit of the Solicitor
15 setting forth how he got them and how he's maintained
16 them and how he produced them to us.

17 THE COURT: Wait. Stop.

18 MR. HOYLE: All right.

19 THE COURT: Stop. Okay. So, you've got that
20 testimony.

21 MR. HOYLE: Um-hmm.

22 THE COURT: So, are you attempting to put in this
23 stack of documents through this witness? Yes or no.

24 MR. HOYLE: Not through this witness, but prior to
25 this witness.

1 THE COURT: With an affidavit?

2 MR. HOYLE: Yes.

3 THE COURT: At trial? Well, how do you do that?
4 How does that happen?

5 MR. HOYLE: I agree with your Honor.

6 THE COURT: Okay. Great. Now, if the witness can
7 identify certain pages from this stack and says, yeah, I
8 recognize that, I saw it on that occasion, I don't care.

9 MR. HOYLE: Okay.

10 THE COURT: Yeah. Because she's authenticated,
11 yeah, I saw that document. Where it came from is of no
12 moment, if she's going to look at it and say, yep, I saw
13 it on that occasion and know that document.

14 MR. HOYLE: But I guess the only way for me to
15 establish that is to go through a number of these pages
16 and ask her did you see this that day.

17 THE COURT: Right.

18 MR. HOYLE: Okay.

19 THE COURT: Right.

20 MR. HOYLE: I can live with that, Judge.

21 THE COURT: Yeah. Absolutely. If she can
22 authenticate it, fine. If she can't, fine.

23 MR. LOVELL: And your Honor, I would have to ask
24 this question only from some of the other questioning.
25 But can we caution -- and I'll object at the appropriate

1 time, but when he is showing a document and saying did
2 you see this, not to read the whole thing into evidence
3 as he's handing it to her.

4 THE COURT: Well, it can't be published until it's
5 in evidence.

6 MR. LOVELL: Correct.

7 MR. HOYLE: But I can certainly ask the question.

8 THE COURT: No. You recognize that. Yeah. And
9 then, you ask a question. It isn't to be -- you don't
10 say, do you recognize Plaintiff's response to opposition
11 and Defendant's motion in limine. You can't identify
12 anything on this document until it's in evidence. I'm
13 going to show you what has been marked as Exhibit 14 for
14 identification. Right now, that's the most you can do.
15 Do not talk about what it is. Do not publish it until
16 it's in evidence.

17 THE COURT: Lawyers tend to do that, and I love it
18 when they do it, because it's like, oh, did you see
19 that; did you see that. No. You get called out on it,
20 so you've got to be careful about it. Okay? Cool?

21 MR. HOYLE: Okay. Okay.

22 THE COURT: Yeah? Right?

23 MR. LOVELL: Thank you, your Honor.

24 THE COURT: Okay. All right.

25 ITEM IDENTIFIED AS JOE MCDONALD

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PERSONNEL FILE

MARKED PLAINTIFF'S EXHIBIT NUMBER 14,
ADMITTED AS EVIDENCE, BY AGREEMENT.

MR. HOYLE: Oh, we need to discuss an issue.

THE COURT: Oh, my, my.

MR. LOVELL: This is a little one, but.

MR. HOYLE: There's nothing little in this case,
Judge.

THE COURT: Thank you.

MR. MACKELCAN: This was one of our motions in
limine, so.

MR. LOVELL: Judge, on the bottom, these were
documents that were produced. We got all this from a
lot of different sources, but one set of them came from
the Fourteenth Circuit Solicitor's Office, and they have
their Bate stamp.

THE COURT: Oh, my, my.

MR. LOVELL: State versus Calvin Hunt.

THE COURT: Oh, my, my. Oh, my, my.

MR. LOVELL: We would just like for that to be
redacted.

THE COURT: You think? You think? Yeah. You
think? Absolutely.

MR. LOVELL: Thank you, your Honor.

THE COURT: Yeah, absolutely. It's got to be. Got

1 to get some white paint.

2 MR. HOYLE: I would just note for the record, your
3 Honor, we do intend, at a later point in time, prior to
4 the close if our case in chief, to seek judicial
5 admission of the order finding Calvin Hunt not guilty by
6 reason of insanity, for purposes of --

7 MR. MACKELCAN: We object to that.

8 MR. HOYLE: I knew you would.

9 THE COURT: Really? Seriously? Truly?

10 MR. HOYLE: Thank you, Judge.

11 THE COURT: Come here and I -- I feel like I need
12 to --

13 ON-THE-RECORD BENCH CONFERENCE, OUT
14 OF PRESENCE OF JURORS. PRESENT:
15 THE COURT, MR. HOYLE, MS. CASTLEBERRY,
16 MR. MACKELCAN, MR. LOVELL.

17 THE COURT: I only mention this to you because I
18 have this information, and because I have this
19 information, there are certain times when a judge has
20 information that you need to share it with Counsel. I
21 am aware that the 120-day review for this gentleman was
22 talked about being next week. It is no longer going to
23 be next week. I have that information. I got nothing
24 to do with that. I got no dog in that fight. I don't
25 care. But because that is information that I am privy

1 to, I believe that, that is information that I needed to
2 tell you guys.

3 Now, having said that, I have no earthly idea if it
4 would happen or not happen. So, hear me, I don't know.
5 I'm not in control. I just showed up here from
6 Dorchester County. But because I am aware that it may
7 have been scheduled, it may now be continued. I'm just
8 sharing that with everyone. Okay? Is everybody clear
9 about that?

10 MR. MACKELCAN: Yes, Judge.

11 MR. HOYLE: Yes, Judge.

12 THE COURT: Very good. All right.

13 END BENCH CONFERENCE.

14 COURT REPORTER: May I ask you? They put the video
15 in.

16 THE COURT: Oh, yeah.

17 COURT REPORTER: Also, doesn't the transcript need
18 to go in?

19 THE COURT: It needs to go in.

20 Let me ask you. Guys, let me ask you all this, and
21 this might be as much of a question as anything. When
22 we put in the video as a Court's exhibit, don't we also
23 put in -- shouldn't we also put in the original
24 transcript?

25 MR. HOYLE: The original transcripts have already

1 been filed with the clerk's office, but we can append
2 them to this record.

3 THE COURT: You don't have to do that, but they
4 have been filed?

5 MR. HOYLE: Yes, Judge.

6 THE COURT: Well, if they've been filed, they've
7 been filed. They're in the file. Then, that means you
8 don't have to deal with them. So, in the event -- is
9 that true for all of them? Is that true for all of the
10 original transcripts?

11 MR. HOYLE: All the original transcripts that
12 Plaintiff took and has custody of have been filed.

13 THE COURT: Okay.

14 COURT REPORTER: And there they are.

15 THE COURT: Can we bring the jury out?

16 MR. HOYLE: Judge, just beg the Court's indulgence
17 just to get us some white-out.

18 So, Judge, just to know, --

19 THE COURT: Okay. Let me have the jury.

20 BAILIFF: Yes, ma'am.

21 THE COURT: Yes.

22 MR. HOYLE: Your Honor, at this time, the Plaintiff
23 is going to move Exhibit Number 20 into evidence. It is
24 the medical records from February 24, 2012, from the
25 emergency department of the Naval Hospital, Beaufort. I

1 understand there is no objection from the Defendant, now
2 that Bates labels and other identifying information have
3 been redacted.

4 MR. LOVELL: That's true.

5 THE COURT: And you've looked at this particular
6 one?

7 MR. LOVELL: Yes, I have, your Honor. It's fine.

8 THE COURT: Okay. Very well. All right. Now, as
9 long as it has one sticker on it, how many pages is it?
10 Only because it is an important exhibit, I think it
11 needs to be --

12 COURT REPORTER: I'll fix it.

13 THE COURT: How many?

14 COURT REPORTER: Ten at first count, so. Double
15 check it. I'll mark each page. I'll mark on each page
16 that it's an exhibit.

17 THE COURT: Okay.

18 COURT REPORTER: You know, which one.

19 THE COURT: Yes. That's my purpose at this point.
20 It goes ten sheets of paper, with printed front and
21 back. Yes?

22 MR. HOYLE: Correct. It's not printed front and
23 back. It is single file.

24 COURT REPORTER: No, it's 12 sheets. Second count
25 was 12 sheets, so.

1 THE COURT: Oh, okay. Not front and back, but it's
2 10 sheets of paper.

3 COURT REPORTER: Twelve sheets.

4 THE COURT: Twelve sheets.

5 COURT REPORTER: Sorry.

6 ITEM IDENTIFIED AS KALVIN HUNT'S
7 2-24-12 NAVAL HOSPITAL MEDICAL
8 RECORDS, CONSISTING OF 12 PAGES,
9 MARKED PLAINTIFF'S EXHIBIT NUMBER 20,
10 ADMITTED AS EVIDENCE.

11 BY THE COURT:

12 THE COURT: May we have the jury?

13 BAILIFF: Yes, ma'am.

14 THE COURT: We're waiting on them. Yeah.

15 BAILIFF: Jury is entering the courtroom, your
16 Honor.

17 THE COURT: Wonderful.

18 JURORS ENTER COURTROOM 12:30 P.M.

19 THE COURT: All right. Thank you so much. Ladies
20 and gentlemen, we will continue now with today's case.
21 Start your next witness.

22 MR. HOYLE: Plaintiff calls Janice McDonald to the
23 stand.

24 THE COURT: All right.

25 BAILIFF: This way, ma'am.

1 THE COURT: Thank you, Ms. Saber.

2 BAILIFF: Go forward to be sworn, please.

3 MADAM CLERK: Would you raise your right hand. Do
4 you solemnly swear or affirm that the testimony you give
5 to the Court in this trial shall be the truth, so help
6 you God?

7 JANICE MCDONALD: I do.

8 MADAM CLERK: Would you state your name, for the
9 record.

10 JANICE MCDONALD: Janice McDonald.

11 MADAM CLERK: And would you spell your last name?

12 JANICE MCDONALD: It's capital M/c, capital D,
13 o/n/a/l/d.

14 MADAM CLERK: Thank you. Please be seated.

15 JANICE MCDONALD

16 DIRECT EXAMINATION, BY MR. HOYLE:

17 Q Good afternoon, ma'am.

18 A Good afternoon.

19 Q You've introduced yourself to the jury as Janice
20 McDonald, correct?

21 A That's correct.

22 Q What do you do for a living?

23 A I'm a registered nurse.

24 Q And where are you currently employed?

25 A Currently, I'm at Beaufort Memorial, and I also

1 just took another job at Navy PRN.

2 Q What are you doing at the Naval Hospital today?

3 A I haven't started yet. It will start probably
4 sometimes toward the ends of the month, but it will be
5 in their -- their clinic.

6 Q How long have you been employed at Beaufort
7 Memorial?

8 A Approximately a year and a half.

9 Q Where did you work before that?

10 A Prior to that, I worked at the Naval Hospital.

11 Q And how many years were you at the Naval Hospital?

12 A Nearly eight.

13 Q During the eight years that you were at the Naval
14 Hospital, did you work for the United States government,
15 the Department of Defense, or did you work for
16 contractors?

17 A We worked for the Naval Hospital.

18 Q Ma'am, in February of 2012, you were employed by a
19 company called CasePro, correct?

20 A That's correct.

21 MR. HOYLE: Permission to approach the witness,
22 your Honor.

23 THE COURT: Yes.

24 ITEM IDENTIFIED AS JANICE MCDONALD

25 PERSONNEL FILE FROM CASEPRO

1 MARKED PLAINTIFF'S EXHIBIT NUMBER 13

2 ADMITTED AS EVIDENCE BY AGREEMENT.

3 BY MR. HOYLE:

4 Q Ms. McDonald, I'm giving you what's been marked as
5 Plaintiff's Exhibit Number 13 to this trial.

6 A Okay.

7 Q I hand that big stack of documents to you. I
8 represent to you that, that is your personnel file from
9 CasePro, Incorporated.

10 A Okay.

11 Q When did you first become employed by CasePro, if
12 you know?

13 A It was July -- I believe I started -- oh, for
14 CasePro? Gosh. The first contract was by Fly America.
15 I really don't remember the year that CasePro took over.

16 Q Now, it sounds like when you started working at the
17 Naval Hospital, you worked for a company called Fly
18 America, correct?

19 A That's correct.

20 Q And then, at some point in time, the contract
21 transitioned between Fly America and CasePro. Is that
22 correct?

23 A That's correct.

24 Q When you were working for both Fly America and
25 CasePro, were you physically doing your work in the

1 emergency room at the Naval Hospital?

2 A That's correct.

3 Q How long have you been an E.R. nurse, ma'am?

4 A I was an E.R. nurse eight years.

5 Q Solely during the time you were at the Naval
6 Hospital.

7 A Yes.

8 Q Let's get a little bit of background about you.
9 Where did you grow up?

10 A I grew up in Philadelphia.

11 Q And give the Court and the jury the benefit of your
12 education.

13 A I started -- I got a late start going to school. I
14 had two young children. I didn't start school until the
15 early eighties. I proceeded to take college courses
16 ahead of time, because it was too difficult to go -- go
17 to college courses and take nursing classes, with having
18 young kids. So, I went back and got -- I went back and
19 got my nursing degree at -- it's not even a degree,
20 actually. It was like more like associates from a
21 Episcopal Hospital School of Nursing.

22 Since then, I've enrolled in R.N. to B.S.N. to
23 M.S.N. program online with Chamberlain College of
24 Nursing.

25 Q And do you currently hold either a bachelor of

1 science degree in nursing or a master of science in
2 nursing?

3 A No. I still -- I have nearly my bachelor's. I'm
4 shy probably about 18 credits.

5 Q And where do you currently live? Generally. What
6 community?

7 A We live on Lady's Island.

8 Q Here in Beaufort County?

9 A Yes.

10 Q And you say we. Who are you referring to?

11 A My husband and I.

12 Q And folks here in this courtroom have heard a
13 little bit about your husband. Tell us who your husband
14 is.

15 A My husband is Joseph McDonald. He's actually your
16 next witness.

17 Q That's what I hear.

18 A Yes.

19 Q When did you and Mr. McDonald move here to Beaufort
20 County?

21 A We moved here in April of 2005.

22 Q When you moved here in April of 2005, it doesn't
23 sound like you were working at the Naval Hospital at
24 that time.

25 A No, I was not.

1 Q Where did you start working in April of 2005?

2 A In 2005, I was in Beaufort Memorial's Intensive
3 Care Unit.

4 Q Now, it sounds like, at some point in time, you
5 went to work at the Naval Hospital, where you were
6 actually getting your paycheck from a company called Fly
7 America, correct?

8 A I got my paycheck from Fly America, yes.

9 Q And then, how is it that you came to be employed by
10 CasePro?

11 A When I was an employee of Fly America, you
12 automatically were just kind of grandfathered in as the
13 contractors changed. So, it went from one contract to
14 another.

15 Q Now, Ms. McDonald, isn't it true that you told me
16 at your deposition in this case that, when the contract
17 transitioned between Fly America and CasePro, that there
18 were some persons who didn't make that transition.

19 A There was one.

20 Q A lady by the name of Fran.

21 A Fran. That's correct.

22 Q And she was a registered nurse, correct?

23 A She was.

24 Q And Registered Nurse Fran, even though she had been
25 working for Fly America, she wasn't working for CasePro

1 when CasePro took over the contract, correct?

2 A No. No, she was not.

3 Q Ma'am, if you'll look at the document you have in
4 front of you, and there's some writing in the lower,
5 right-hand corner. We call those Bate stamps. Okay?

6 A Okay.

7 Q Turn to the Bate Stamp Page 713, in the exhibit you
8 have in front of you. Let me know when we're on the
9 same page.

10 A Okay. Got it.

11 Q This is an application for employment with CasePro,
12 Incorporated, correct?

13 A That's correct.

14 Q And is your handwriting contained on the
15 application, correct?

16 A It is.

17 Q And it has your name on it, and your address on
18 Lady's Island, correct?

19 A That's correct. Yeah.

20 Q If you would turn to the next page, it looks like
21 it's got some past employment history. And is that in
22 your handwriting, ma'am?

23 A That is. It is.

24 Q And turn to the page that follows, it looks like
25 you list your skills and qualifications, as well as your

1 educational background, correct?

2 A That's correct.

3 Q That's also part of your handwriting, correct?

4 A Correct.

5 Q If you will turn to the last page of that
6 application, the page with Bate Stamp 716, do we have a
7 signature on that page?

8 A Yes.

9 Q Whose signature is that?

10 A That's my own.

11 Q And according to the document, that's dated
12 September 5, 2007, correct?

13 A That is correct.

14 Q So, you actually applied to work for CasePro on
15 September the 5th, 2007, correct?

16 A Yes, yes.

17 Q If you will turn to the page in your personnel file
18 that is Bate stamped in the lower, right-hand corner,
19 Bates Page 685. We're going a little bit forward in the
20 document.

21 A Okay. Got it.

22 Q Now, it appears that CasePro made a written offer
23 of employment to you on August the 29th of 2007. Is
24 that correct?

25 A That's correct.

1 Q This offer of employment was to work at the Naval
2 Hospital here in Beaufort, correct?

3 A Correct.

4 Q If you'll look on the document, about mid-way
5 through the page, it says:

6 *By accepting employment with CasePro,*
7 *Incorporated, you will be subject to the*
8 *company's policies as set out in the 'Employee*
9 *Manual' and the requirements of the subject*
10 *contract.*

11 Did I read that correctly?

12 A That's correct.

13 Q That was your understanding when you signed this
14 document on September 5, 2007, correct?

15 A Correct.

16 Q And did you, in fact, ever receive a copy of the
17 *CasePro Employee Handbook*?

18 A I may have. I don't -- I don't quite remember.

19 MR. HOYLE: Permission to approach, your Honor.

20 THE COURT: Yes.

21 BY MR. HOYLE:

22 ITEM IDENTIFIED AS CASEPRO

23 EMPLOYEE MANUAL

24 MARKED PLAINTIFF'S EXHIBIT NUMBER 15,

25 ADMITTED AS EVIDENCE.

1 Q Ms. McDonald, I'm handing you what has been marked
2 as Plaintiff's Exhibit Number 15? And ask if you
3 recognize that document?

4 A Honestly, I don't.

5 Q For purposes of the Court and jury, can you read
6 the cover page on that exhibit, ma'am.

7 MR. LOVELL: Objection, your Honor.

8 THE COURT: Sustained.

9 BY MR. HOYLE:

10 A Case --

11 Q Going back to the earlier exhibit out of your
12 personnel file, to the page Bate that's stamped 685.

13 A Yes.

14 Q It sets forth the hourly compensation that you're
15 going to be paid, correct?

16 A Correct.

17 Q There's also language on that document that says
18 your employment with CasePro is at will, meaning it may
19 be terminated by you or CasePro, with or without cause,
20 at any time, correct?

21 A That's correct.

22 Q That was your understanding when you signed this
23 document on September 5, 2007, correct?

24 A Yes.

25 Q And with respect to that hourly compensation that's

1 set forth on the page, does this document also state
2 that all base wage and benefits allowance amounts are
3 earned and paid on actual hours worked and the hourly
4 rate?

5 A Yes.

6 Q And that was your understanding when you signed
7 this document.

8 A Yes.

9 Q Did you understand from this document and the
10 language that we've read here today, from the document
11 that you signed on September the 5th, 2007, that
12 CasePro, Incorporated, had the ability to fire you?

13 A Well, they -- they only fired people if it came
14 from the military. If -- say, if our head nurse had an
15 issue with -- it was basically at the military's
16 discretion.

17 Q But again, going back to the plain text of this
18 document, ma'am, you'll agree with me that CasePro had
19 the ability to terminate your employment.

20 A Yes.

21 Q At will, correct?

22 A Correct.

23 Q That's what the document you signed said, correct?

24 A Correct.

25 Q Correct?

1 A Um-hmm. Yes, correct. I'm sorry.

2 Q Now, as part of your employment with CasePro, you
3 had to fill out something known as a W-4, correct?

4 A That's right.

5 Q And if you turn to the page with Bate stamp 709 in
6 this stack of papers, --

7 A Okay. I have it.

8 Q I apologize.

9 A That's not it.

10 Q I sent you to the wrong page. I sent you to the
11 wrong page, ma'am. 682. I apologize.

12 A Okay.

13 Q We actually see a W-4 that bears your signature on
14 the date of September the 5th, 2007, correct?

15 A That's correct.

16 Q And this enabled CasePro, Incorporated, to withhold
17 income taxes from your paycheck, correct?

18 A Yes.

19 Q While we're on the subject of your paycheck, will
20 you turn to Page 697 of this document. We have some
21 benefit options that CasePro, Incorporated, provides its
22 employees, correct?

23 A That's correct.

24 Q And it bears your signature and the date of
25 September the 6th, 2007, correct?

1 A That's correct.

2 Q Some of the benefits offered included health
3 insurance, correct?

4 A Yes.

5 Q Dental insurance, correct?

6 A Yes.

7 Q Life insurance, correct?

8 A Yes.

9 Q Long-term disability, correct?

10 A Yes.

11 Q Short-term disability, correct?

12 A Yes.

13 Q And some of those benefits you actually
14 affirmatively elected to receive, correct?

15 A That's right.

16 Q Let's talk about some policies. Turn to the page
17 Bate stamped 708 in your personnel file, ma'am.

18 A Okay. I have it.

19 Q This purports to be an employee acknowledgment of
20 the alcohol and controlled substances policy of CasePro,
21 Incorporated, correct?

22 A That's correct.

23 Q And you signed this document, correct?

24 A I did.

25 Q You dated it October the 2nd, 2007, correct?

1 A Yes.

2 Q You provided your name and Social Security number
3 on that document, correct?

4 A That's right.

5 Q Similarly, turn to the page that's Bate stamped
6 711. We've got an acknowledgment of receipt and
7 understanding of CasePro, Incorporated, sexual abuse
8 policy, correct?

9 A That's right.

10 Q And it has your signature, correct?

11 A It does.

12 Q And a date of October the 2nd, 2007, correct?

13 A That's right.

14 Q Go to the next page. That being the page Bate
15 stamped up in the lower, right-hand corner 712, we have
16 a receipt and acknowledgment of CasePro HIPAA privacy
17 documents, correct?

18 A That's right.

19 Q And it has your name, correct?

20 A It does.

21 Q Your signature, correct?

22 A Yes, it does.

23 Q Your job title of R.N., correct?

24 A Yes.

25 Q And a date of October the 2nd, 2007, correct?

1 A Yes.

2 Q Turn with me to the page that's Bate stamped in the
3 right-hand corner, at 745 of this document.

4 A Okay.

5 Q And it looks like, at that time frame -- are we on
6 the document that has the logo of Wells Fargo on it?

7 A Yes.

8 Q It looks like at some period in time, you and your
9 husband were getting a mortgage or refinancing through
10 Wells Fargo, correct?

11 A That's right.

12 Q And on the pages that follow, we have a request for
13 verification of employment, correct?

14 A Yes.

15 Q And in fact, it looks like, when you were applying
16 for a mortgage, you told the lender that CasePro,
17 Incorporated, was your employer, correct?

18 A That's where our paycheck came from, but yes.

19 Q While you were working for CasePro, CasePro would
20 pay for your continuing education courses, correct?

21 A They offered compensation for BLS certificates,
22 cause we had to -- we weren't able to take those in the
23 hospital. BLS, ACLS, PALS, Pediatric, yes, they would
24 -- they would compensate us for that.

25 Q For the continuing education courses, correct?

1 A Right.

2 Q That's a yes?

3 A Yes.

4 Q All right, ma'am. Let's look at two additional
5 things from your personnel file, and then, we'll start
6 talking about something else. Go to the page that is
7 Bate stamped 758.

8 A Okay. I have it.

9 Q And does this appear to be an email from a contact
10 administrator at CasePro, Incorporated?

11 A Hermelynda.

12 COURT REPORTER: I'm sorry, your answer?

13 A Her name is Hermelynda.

14 Q An email from Hermelynda out of CasePro corporate
15 office to you concerning the future expiration of your
16 ACLS credentials?

17 A Yes. They would always remind us when it was
18 coming up, and when we needed to take another course.

19 Q They made sure your credentials were up to date,
20 correct?

21 A Yes.

22 Q And similarly, on the next pages, the pages Bate
23 stamped 759, Hermelynda wrote a letter to the State
24 Board of Nursing to certify that your employment with
25 CasePro began on September the 30th, 2007, correct?

1 A That's correct.

2 Q All right. Let's focus a little bit on the
3 emergency room at the Naval Hospital, Beaufort. Okay?

4 A Okay.

5 Q How many years, cumulatively, did you actually work
6 within the emergency room at the Naval Hospital,
7 Beaufort?

8 A Nearly worked eight years. In fact, it probably
9 was eight years.

10 Q And my understanding today is that the emergency
11 room at the Naval Hospital of Beaufort no longer exists,
12 correct?

13 A That's correct.

14 Q During the time that you were there in those eight
15 years in the emergency room, can you describe it for us?
16 How big was it?

17 A It was small. Couldn't have been more than
18 probably 800 square feet. It was a relatively very
19 small E.R., for an E.R.

20 Q Was it itty-bitty?

21 A It was.

22 Q I believe you've told me before that, if somebody
23 were to sneeze in one part of the emergency room,
24 somebody else in a different part could say bless you.

25 A That's probably correct.

1 Q Wasn't much privacy in that emergency room,
2 correct?

3 A No, there was not. We had one private room, and
4 that was the only privacy we actually had.

5 Q And that private room, which private room was that
6 referencing?

7 A What? I'm sorry?

8 Q You said there was one private room. Is that a
9 private room for a patient or a private room for a staff
10 member?

11 A No. It was a private room for a patient.

12 Q How many beds did this emergency room contain
13 during the years you were there?

14 A Initially, it had seven. It was cut back. They
15 took the back half of the E.R. and put their CAT scan
16 machine in there. So, it knocked us down to four beds
17 from seven.

18 Q Was it seven beds or four beds in February of 2012?

19 A In 2012, four.

20 Q So, on the day that brings us here in the Court
21 today, the emergency room at the Naval Hospital in
22 Beaufort had four beds, correct?

23 A That's right.

24 Q And my understanding is that you were working
25 February 24, 2012, correct?

1 A That's correct.

2 Q What time did you report to the Naval Hospital on
3 February 24, 2012?

4 A Approximately at 10 of 7:00, 6:50. Our shift
5 stopped at 7:00. We would have to get turnover.

6 Q My understanding is that, the two registered nurses
7 working in the emergency room that day were you and your
8 husband, correct?

9 A That's correct.

10 Q And your husband also would have reported to work
11 at 0700, correct?

12 A Yes.

13 Q Were there any other registered nurses in the
14 emergency room on February 24, 2012?

15 A No.

16 Q And on February 24, 2012, your husband was also
17 receiving his paycheck from CasePro, Incorporated,
18 correct?

19 A That's correct.

20 Q On February 24, 2012, was Christian Jansen the only
21 medical doctor in the emergency room?

22 A Yes.

23 Q We've heard reference in this courtroom, ma'am, to
24 something known as a triage nurse. Can you tell they
25 Court and the jury what a triage nurse is.

1 A A triage nurse actually take -- brings the patient
2 in; does a quick assessment; identifies the problem that
3 the patient, their complaint, their main complaint;
4 assigns something called an ESI number; and gets them
5 into the back as quickly as possible.

6 Q And what is the ESI?

7 A ESI stands for Emergency Severity Index. They use
8 it on battlefields; they use it for mass casualties; and
9 they use it pretty much in every emergency room in the
10 country.

11 Q Including at the Naval Hospital, Beaufort?

12 A That's correct.

13 Q And my understanding is that this is a five-point
14 scale, correct?

15 A That's right.

16 Q And with respect to that five-point scale, 3 would
17 be urgent, correct?

18 A 3 is urgent, non-emergent, yes.

19 Q Someone who has an Emergency Severity Index rating
20 of 3 would need to be seen within 30 minutes, correct?

21 A That's correct.

22 Q Fair to say that a patient with an ESI of 3 is not
23 someone who could go to the urgent care?

24 A Oh, certainly not. Hmm-um.

25 Q It's appropriate for someone with an Emergency

1 Severity Index scale to be seen in an emergency room,
2 correct?

3 A I'm sorry?

4 Q My question is, it's appropriate for someone with
5 an Emergency Severity Index scale of 3 --

6 A To be seen in the emergency room, yes, it is.

7 Q Okay. Let me direct your attention back to
8 February 24, 2012.

9 A Okay.

10 Q You were involved with the treatment of Calvin Hunt
11 that day, correct?

12 A That's correct.

13 Q At what time did you first encounter Mr. Hunt?

14 A He came in approximately 2:15 in the afternoon,
15 which is 1415, military time.

16 Q Now, around 2:00 o'clock that afternoon, were you
17 working as the triage nurse in the emergency room?

18 A Yes.

19 Q What was your husband, as the other registered
20 nurse in the emergency room, doing?

21 A He was the treatment nurse.

22 Q And what's the difference? You told us what the
23 triage nurse does. What is the treatment nurse going to
24 do?

25 A The treatment nurse, once they receive the patient,

1 would do whatever the physician orders. He may order
2 lab work, blood draws, I.V. fluids, urinalysis. He may
3 have to take the patient up to the X ray department or
4 ultrasound. It depend on what was ordered for that
5 particular patient.

6 Q And shortly after 2:00 o'clock on February 24,
7 2012, how many patients were in the emergency room at
8 the Naval Hospital, Beaufort?

9 A We had none at the time, when Mr. Hunt came in.

10 Q So, just to make sure I understand this. When
11 Calvin Hunt shows up, you don't have any other patients
12 in the emergency room.

13 A No. We had discharged someone. They went out by
14 ambulance to another institution. And no, at the time,
15 it was totally empty.

16 Q What time did you leave your shift that day at the
17 Naval Hospital?

18 A Our shift's over at 1900, 7:00 o'clock in the
19 evening.

20 Q In between the time Calvin Hunt arrived at the
21 Naval Hospital emergency room and the time he left, were
22 there any other patients in the emergency room at the
23 Naval Hospital, Beaufort?

24 A I -- I can only recall one, and he came in from an
25 accident outside, you know. He came in, and he had,

1 like, a -- a -- he had sprained his foot or something,
2 but nothing severe, nothing out of the ordinary.

3 Q And this other patient, ma'am, was that someone who
4 came into the emergency room before or after Calvin
5 Hunt?

6 A After.

7 Q Okay. So, fair to say then, that, during the time
8 Calvin Hunt was there in the emergency room at the Naval
9 Hospital, he was the only patient there?

10 A That's correct.

11 Q And on staff at that time would have been yourself
12 and your husband, correct?

13 A That's right.

14 Q Two registered nurses, correct?

15 A Um-hmm. Yes.

16 Q And one medical doctor, correct?

17 A That's right. There was also an LPN on duty, but
18 she was not in the E.R. at the time. She was there when
19 Calvin came in, but had gone upstairs to do training or
20 look at her schedule, because she also worked on the
21 fifth floor in the medical unit.

22 COURT REPORTER: Worked on what?

23 A The fifth floor.

24 COURT REPORTER: Floor medical unit?

25 A It's a medical unit, yeah.

1 Q And I don't think you've said it yet, so, tell the
2 Court and jury who the medical doctor was who was
3 present during the time Calvin Hunt was in the emergency
4 room at Naval Hospital, Beaufort.

5 A Dr. Jansen.

6 Q Could you explain the circumstances as to how Mr.
7 Hunt came to the emergency room on February 24, 2012. I
8 believe you said it was around 2:15.

9 A It was. He was brought down by someone. Now that
10 I know her last name, at time of my deposition, I didn't
11 know her last name, but her name was Saundra Smith. She
12 was from Family Practice. And she escorted him
13 downstairs. And also, Mr. Ray. So, it was Mr. Ray, Mr.
14 Hunt, and Ms. Smith.

15 Q Have you ever met Ms. Smith before?

16 A I've seen her, but you know, when you work in -- in
17 a closed unit such as that, a lot of times, you don't
18 know people's names, but you recognize faces.

19 Q Can you describe Ms. Smith for us.

20 A She was a middle-aged, like 40. Mid- to late
21 forties. Light-skinned, black woman. Average build.

22 Q And Mr. Ray, had you ever met him, prior to that
23 occasion?

24 A I had met him on several occasions, yeah.

25 Q And what were the occasions with which you had the

1 occasion to meet Mr. Ray previously?

2 A He was actually a patient.

3 Q At the Naval Hospital.

4 A Yes.

5 Q Did you ever know Mr. Ray separate and apart from
6 him receiving treatment at the Naval Hospital?

7 A I've seen him on the outside occasionally. I knew,
8 you know, where his off -- like, he was -- he was the
9 Veterans liaison or -- I knew of him, but -- and I'd
10 seen him, certainly, in stores. And we always would
11 speak, like hello, pleasantries, but no real
12 conversation.

13 Q About how old was Mr. Ray?

14 A Probably late -- late sixties, maybe seventies.

15 Q And how would you describe him to this Court and
16 jury?

17 A He's an African-American male. He was on the
18 shorter side. Just -- and he was -- he was dark-
19 skinned. That's all.

20 Q Your understanding was that these three persons
21 that came from upstairs, downstairs to the E.R.,
22 correct?

23 A That's correct.

24 Q How did you obtain that understanding?

25 A Well, our clerk had taken a phone call. Someone

1 apparently called the emergency room and said we're
2 going to bring a patient downstairs. And the clerk at
3 the time, I believe it was Dreama -- I'm not even sure.
4 There were two clerks. Change of shift. She told me
5 that they were going to bring a patient down from Family
6 Practice, and that was pretty much the extent of it.

7 Q What did you do when you learned that there was
8 going to be a patient coming from Family Practice, down
9 to the emergency room?

10 A Well, I looked for them. We had a large glass
11 window, and you could sit at the front desk, and you
12 could see everything that was going on, on the hallway.
13 You know, in the immediate hallway.

14 Q When you first saw these three persons, were they
15 all together?

16 A Yes.

17 Q And what information did you obtain when all three
18 of those persons, Saundra Smith, Kalvin Hunt, and Edward
19 Ray, first approached the emergency room?

20 A Well, I had difficulty hearing her, which wasn't
21 uncommon. We had a pretty thick pane of glass with just
22 a keyhole to speak through. And with it being
23 wintertime, with the heating system on, it was really
24 difficult. So, I motioned to her. I just put my finger
25 up, like, wait a minute; I'm going to come out and speak

1 to you.

2 Q So, you actually went out in the hallway.

3 A I went out in the hallway with them, yes.

4 Q And who did you speak to?

5 A Well, Ms. Smith started to tell me why she was
6 bringing him down, cause I had not a clue why he was
7 coming down there to begin with. She said --

8 Q And -- well, continue, ma'am.

9 A She said that he came in mainly for prescriptions.
10 That was his -- his chief complaint. And that his
11 grandmother had gotten a hold of Mr. Ray, and was
12 concerned about him. And that was pretty much the
13 extent of our interaction in the hall.

14 Q Did you have an understanding, from the
15 conversation in the hallway, as to whether or not there
16 was a mental health concern with respect to Calvin Hunt?

17 A Yes. She did say that the grandmother stated that
18 he -- she was afraid that he would hurt himself.

19 Q Calvin Hunt's grandmother was worried about him.

20 A Yes.

21 Q And as a result, Mr. Hunt came to the Naval
22 Hospital.

23 A Yes.

24 Q Following that initial conversation, you took
25 Calvin Hunt back to the triage room, correct?

1 A I took him immediately back, yes.

2 Q And when you first took Mr. Hunt into the triage
3 room, did Edward Ray come with you, or was it just you
4 and Mr. Hunt?

5 A No, Mr. Ray came along, as well, and I asked him to
6 step out into the hallway, because it's a HIPAA
7 violation, basically. But when I say the hallway, I
8 mean, like, right around the corner hallway.

9 Q It's an itty-bitty E.R.

10 A It is.

11 Q Okay. Let's focus on when you were in that triage
12 area with Calvin Hunt.

13 A Um-hmm.

14 Q How would you describe his presentation?

15 A He was remarkably -- for a psyche patient
16 presentation, he was calm, he was neat, he was well-
17 kept. His shirt was ironed. He was polite.

18 Q With respect to that triage -- strike that. When
19 you were in the triage room with Mr. Hunt, and this is
20 while Mr. Hunt is still in the hallway, did you ask Mr.
21 Hunt any questions?

22 A I did.

23 Q What question or questions did you ask him?

24 A Well, generally, we try to make them feel
25 comfortable. So, in my initial, you know, greeting with

1 him was him was hi, what can we do for you today, you
2 know; tell me what's going on. And he didn't respond at
3 first. But then, -- then, he started to talk.

4 Q Did you ask him if he was on any medications?

5 A I did.

6 Q And what was his response?

7 A He said, ma'am, I've been -- I -- that's why I'm
8 here; I have been out of my medication; I tried to make
9 them last as long as possible. He had been cutting his
10 pills in half.

11 Q Was Calvin Hunt able to tell you the name of the
12 medications he was on?

13 A No.

14 Q He didn't know the names of those pills?

15 A No, he did not.

16 Q When you're having this conversation with him, when
17 you describe him -- how would you describe his affect?

18 A He was flat. I mean, he had no -- he had lost,
19 like, the joy. You could tell he was just flat and a
20 little withdrawn, but he was appropriate when he spoke
21 to me. His, you know, speech was clear. It was not
22 slurred. Everything was strictly military -- yes,
23 ma'am; no ma'am.

24 Q But you described him now as withdrawn?

25 A He was withdrawn, yes. Slightly withdrawn. It was

1 difficult to have a, you know, conversation with him
2 without pulling it out of him, but he did speak, and he
3 answered everything that I asked of him.

4 Q When you were alone with Mr. Hunt in the triage
5 room, are you comfortable or uncomfortable?

6 A I was comfortable.

7 Q Being alone with him?

8 A And I was alone with him. I mean, even the clerks
9 had stepped away.

10 Q I just want to make sure. Let's focus on this
11 triage room. When you were interacting with Mr. Hunt in
12 that triage room, --

13 A Um-hmm.

14 Q -- who was closer to the door? You or Mr. Hunt?

15 A He was.

16 Q And I believe I heard this testimony, but I want to
17 make sure. Were you comfortable or uncomfortable with
18 Mr. Hunt sitting between you and the door?

19 A That part never crossed my mind. There was one
20 point in our -- towards the end of my triage time with
21 him where he put his hands over his ears and shook his
22 head. And I investigated further, and asked him if he
23 had any -- like, was he hearing voices, which is, you
24 know, it could be, like, a psychotic thing, and -- and
25 they would hear voices or see things that aren't there.

1 And his response to me was, no.

2 Now, I know they do that as well with -- with
3 frustration. Some people don't vocalize frustration,
4 but they have -- their body language does things like
5 that, like, they don't want to hear it anymore, you
6 know, whatever.

7 Q And I appreciate that answer, and we'll come back
8 to that in a moment. I want to go back to my question,
9 because I want to make sure.

10 It's your testimony as you sit here today that,
11 when Mr. Hunt was between you and the door of the triage
12 room, --

13 A Right.

14 Q -- that the thought never crossed your mind as to
15 whether you were comfortable or uncomfortable, correct?

16 A That -- it did not cross my mind until the very
17 end, and that's when I took him in the back. Because,
18 if he wanted to leave, he certainly had places to go.

19 Q And when you say, *until the very end*, did you
20 develop a sense of either being comfortable or
21 uncomfortable with him?

22 A I was just slightly afraid of him at that point.

23 Q You were uncomfortable?

24 A A little bit.

25 Q And what were you worried about when you say that

1 you were afraid or slightly afraid of him?

2 A I was afraid of my own safety. My head was, you
3 know, facing a brick wall, so. Or a concrete wall.

4 Q You didn't --

5 A Go ahead.

6 Q Sounds like you didn't want to be alone with this
7 man. Is that fair?

8 A No, that's when I began to feel a little
9 uncomfortable. And everyone has always told me, cause
10 they would say, don't do that up there by yourself, you
11 know, like, especially when you have a psyche patient,
12 because you never know. We saw lots of psyche patients,
13 but.

14 Q And with respect to this particular psyche patient,
15 did you think he was angry or not angry?

16 A I thought he was frustrated. That and -- and he
17 and -- and certainly, frustration. With frustration
18 comes anger.

19 Q Have you ever described Calvin Hunt's presentation
20 to you that day as being one of anger?

21 A I mentioned it to Dr. Jansen, and I said it to the
22 treatment nurse, Joe. I said --

23 Q That day, that Friday?

24 A That day. I said, when I'd finished my assessment,
25 I said, I don't believe he's suicidal; I think he's

1 angry and frustrated. And that was mainly over
2 medications, inability to get medications.

3 Q Medications he couldn't even tell you the names of,
4 correct?

5 A No, but that's not uncommon. That happens every
6 day.

7 Q My understanding is that there is a computer in the
8 triage room, correct?

9 A That's right.

10 Q Did you access that computer at all with Mr. Hunt
11 while you were in the triage room?

12 A The clerk apparently tried. Because he wasn't in
13 our system, it was very difficult. We couldn't even
14 access his files, anything on him at the time.

15 Q But you yourself made no attempt to do that,
16 correct?

17 A No, I did not, because the clerks are right on top
18 of it. If I ask them for something, and I'm triaging,
19 they generally will pull it up for me.

20 Q Now, were you able to consult any medical records
21 of Calvin Hunt on that Friday, February 24th? Yes or
22 no?

23 A Yes.

24 Q And we've already salvaged that those past medical
25 records did not come off the computer, correct?

1 A That's correct.

2 Q Those past medical records were in hard copy that
3 Calvin Hunt or Edward Ray had brought with them,
4 correct?

5 A That's correct.

6 Q And you asked to see those records, correct?

7 A I did, because I tried to identify the medication
8 that he got last.

9 Q And my understanding is that those records were in
10 a file folder, correct?

11 A Yes.

12 Q And how thick was that file folder, ma'am?

13 A Between an inch, and an inch-and-three-quarters.
14 I, you know, I couldn't be certain. It was quite a
15 sizeable stack of papers.

16 Q It was a large stack of papers. Is that fair?

17 A Yes.

18 Q Based on your experience, do you agree that
19 military personnel often have a hard copy of their
20 military medical records, correct?

21 A Yes.

22 Q That's something they'll take with them from one
23 duty station to another, correct?

24 A Correct.

25 Q But with respect to an inch, to an inch-and-three-

1 quarter-inch file, you didn't go through that entire
2 file, did you?

3 A No. I couldn't possibly, and get him back there
4 within 30 minutes.

5 Q And that answer that you just gave is with respect
6 to when he's in the triage room. But at any point in
7 time that day, did you review that, in its entirety, the
8 one, to one-and-three-quarter-inch file of medical
9 records that had been brought with Mr. Hunt?

10 A No, sir. That's really not the nurse's
11 responsibility.

12 Q Whose responsibility is that?

13 A The physician or the psychiatrist.

14 Q A medical doctor?

15 A Right.

16 Q Not a nurse.

17 A Not a nurse.

18 Q Okay. But with respect to that file, you actually
19 held that file in your own hands, correct?

20 A I did.

21 Q Okay. And how much time do you believe you spent
22 looking at that stack of papers?

23 A I basically flipped through the beginning of the
24 chart, 'til I could find a record of the last
25 medications, which were some time in 2011. And I

1 believe it might have been August of 2011. I can't be
2 certain. It's been so long now, but.

3 Q From this brief review of Calvin Hunt's past
4 medical records, let's walk through what you were able
5 to figure out. Okay?

6 A Okay.

7 Q What medications for Calvin Hunt -- strike that.
8 What were you aware of Calvin Hunt's past medications?

9 A He was on Celexa, which is an anti-depressant. He
10 was on Levitra, which was for erectile dysfunction. He
11 was on the nicotine patch. And he also was on Seroquil,
12 which is -- they use it for several different kinds of
13 mental illness. Bipolar disorder, psychosis, like, with
14 schizophrenia. They use it for a massive, like, a major
15 depression, as well.

16 Q Fair to say that, by simply reviewing his
17 medication list, you knew that Calvin Hunt had been
18 prescribed anti-psychotic medications in the past,
19 correct?

20 A It could have been for that.

21 Q But Celexa, that's an anti-depressant. That's what
22 you told us, correct?

23 A That's correct.

24 Q And then, you told us a little bit about the
25 various things that Seroquil is used to treat, correct?

1 A That's right.

2 Q You knew what Seroquil was that day, correct?

3 A Yes.

4 Q And your testimony here today, is it fair to say
5 that all the understanding that have about Seroquil is
6 that it is used to treat some significant form of mental
7 health concern? Is that fair?

8 A Yes.

9 Q Okay. What else did you learn from your brief
10 review of the inch, to inch-and-three-quarter-inch stack
11 of medical records that Calvin Hunt brought with him?

12 A He was married; was now divorced. He had a young
13 son. He was stationed down in -- his last duty station
14 was in San Diego. He had a history of PTSD, and he had
15 alcohol and drug dependence. Depression. Prior suicide
16 attempt in 2010.

17 Q Anything else?

18 A He had -- he was -- he was in the process -- they
19 were in the process of separating him from the military,
20 or attempting to. I don't know the exact words, how
21 that's worded, but due to an altercation with his -- one
22 of his superior officers.

23 Q And by altercation, you mean he actually assaulted
24 his superior officer.

25 A No, it didn't -- it just said an altercation. It

1 could be a fight and -- certainly.

2 Q But nevertheless, it was an altercation, correct?

3 A That's right.

4 Q And was it with an officer? Did I hear that
5 correctly?

6 A With his superior. I don't know whether it was --
7 I would imagine it was a sergeant, at least.

8 Q Either an NCO or commissioned officer. Is that
9 fair?

10 A That's fair.

11 Q Do you agree that schizophrenics who aren't on
12 their medication can hallucinate?

13 A That's a possibility.

14 Q Schizophrenics that aren't taking their medicine
15 can see things that aren't there, correct?

16 A That's a possibility.

17 Q That's a yes?

18 A Yes.

19 Q Schizophrenics that aren't taking their medication
20 can hear things that aren't really happening, correct?

21 A Correct.

22 Q And if someone is hallucinating, if they're acting
23 out of context, if they're mumbling or talking to
24 themselves, that would concern you, correct?

25 A That -- that would concern me.

1 Q Just like you would be concerned about a patient
2 reporting seeing a werewolf on his bed, correct?

3 A Yes, unless he was telling a joke. I don't know.

4 Q Do you agree with me, it's probably not a good
5 thing for someone diagnosed with schizophrenia not to be
6 taking their medicine?

7 A I agree with that, yes.

8 Q Hearing voices is not a good thing, correct?

9 A That's correct.

10 Q Hallucinating's not a good thing, is it?

11 A No.

12 COURT REPORTER: I'm sorry, your answer?

13 A No.

14 MR. HOYLE: Permission to approach, your Honor.

15 THE COURT: Yes.

16 BY MR. HOYLE:

17 Q Ms. McDonald, I'm handing you a document that a
18 prior witness, a Sandra Smith prepared on February 24,
19 2012. I'm going to ask you some questions, ma'am.

20 A Okay.

21 Q Were you aware, on February 24, 2012, that Calvin
22 Hunt had a problem with delusional disorder?

23 A No, I was not.

24 Q Were you aware, on February 24, 2012, that Calvin
25 Hunt had a problem with personality disorder?

1 A I -- I didn't know what the extent of his
2 psychiatric history was, no.

3 Q On February 24, 2012, were you aware that Calvin
4 Hunt had a problem with adjustment disorder, with
5 disturbance of emotions and conduct?

6 A No, I did not.

7 Q On February 24, 2012, were you aware that Calvin
8 Hunt had had a problem with anxiety?

9 A No.

10 Q Would any of those conditions or problems that I
11 just read to you be of concern?

12 A Many people walk around with that. As long as they
13 -- they are on their medication, it's controlled. It
14 depends on their behavior at a particular time, so. It
15 wouldn't concern me if he were sitting in front of me
16 and was calm, no, it would not.

17 Q And on February 24, 2012, you knew that Calvin Hunt
18 was not on his medicine, correct?

19 A That's right.

20 Q And that medicine included both Seroquil and an
21 anti-depressant, correct?

22 A That's correct.

23 Q If someone presents to you with a past history of
24 committing violent acts, is diagnosed with
25 schizophrenia, and they report that they're out of their

1 medicine, is that a concern to you?

2 A It's concerning. I think he need quite -- you
3 know, would have to be seen. It depends on his behavior
4 at the time. I would certainly be concerned, though.

5 Q Do some of these anti-psychotic medications keep
6 someone with a mental health issue, like schizophrenia,
7 level or regulated?

8 A With schizophrenia, maybe they would need an
9 additional medication, certainly. From what I gather
10 here, he was really bi -- he was bipolar, or borderline
11 personality, and that's different than schizophrenia.
12 Certainly, they can have a break, but. I'm going to
13 look and see.

14 COURT REPORTER: I'm sorry?

15 A I'm going to look and see, because I don't remember
16 even seeing that. No, I don't see it on here.

17 Q Are there any other specific problems that you
18 recall for Calvin Hunt during the brief time that you
19 reviewed a substantial stack of medical records that he
20 had?

21 A That he had? No, I'm not aware of anything else.

22 Q You were telling me a moment ago, I think I heard
23 this, that, at some point in time, Mr. Hunt put his
24 hands over his ears.

25 A He did. Yes, he did.

1 Q Was he shaking his head when he did that?

2 A He just rocked it back and forth, like that. It
3 was brief, and that's when I questioned him, and the
4 behavior stopped.

5 Q And he was still in triage, or was he back in a bed
6 in the emergency room?

7 A You know, I don't -- I don't honestly remember. I
8 -- I believe it was up -- probably up front, because at
9 that point, I took him in the back; because everyone
10 else's voice kept telling -- you know, it's -- I
11 remember people that triage up there, and they said, you
12 should never sit up there by yourself, but. And at that
13 point, I took him in back.

14 MR. HOYLE: Judge, do you want us to keep going, or
15 is this a good stopping place?

16 THE COURT: Is this a good stopping place for you?

17 MR. HOYLE: I think so. I think it's a logical
18 place.

19 BY THE COURT:

20 THE COURT: Very well. Perfect. All right.

21 Ladies and gentlemen, we are now going to take our lunch
22 break. I'm going to ask you to be back in your jury
23 room, where we'll continue with this matter at 2:30.

24 Please be mindful, over the lunch break, do not
25 discuss this matter, or allow anyone to discuss it with

1 you. Do not do any sort of research. Don't listen to
2 anything. Don't read anything about this matter, radio,
3 television, Internet, newspaper.

4 Leave your communication devices, cell phones,
5 someplace other than the courthouse. Again, you must
6 receive all of the information from which you will make
7 up your minds here in court while court is in session.
8 And leave your notes in your seat. And I will see you
9 at 2:30. Have a very good lunch. We will secure your
10 notes over lunch.

11 JURORS LEAVE COURTROOM 1:21 P.M.

12 THE COURT: All right. Now, Ms. McDonald.

13 JANICE MCDONALD: Um-hmm.

14 THE COURT: I'm going to ask you to be very, very
15 mindful not to discuss your testimony with anyone over
16 lunch, since you're on the witness stand. Doesn't mean
17 you can't have a conversation. Doesn't mean you can't
18 talk about how sadly and pitifully the Yankees played
19 the other night or anything else.

20 A Oh, goodness.

21 THE COURT: But you cannot discuss your testimony,
22 and do have a pleasant lunch.

23 A Thank you.

24 THE COURT: And we'll see you right back here at
25 2:30.

1 A Okay. Thank you.

2 THE COURT: Thank you kindly. All right. Anything
3 from the Plaintiff?

4 MR. HOYLE: Not at this time, your Honor.

5 THE COURT: All right. From the Defense?

6 MR. LOVELL: Nothing, your Honor.

7 THE COURT: Let me ask this question, because I'm
8 trying to stay ahead of you on your video depositions.
9 Next witness is?

10 OFF-THE-RECORD DISCUSSION.

11 THE COURT: All right. I want to see you all for
12 just a moment. Just a moment.

13 OFF THE RECORD 1:23 P.M.

14 BACK ON THE RECORD 2:41 P.M.

15 BY THE COURT:

16 BAILIFF: All rise. This court is back in session.

17 THE COURT: Thank you so much. Please be seated.
18 All right. Ready?

19 MR. HOYLE: You got me with my mouth full, Judge,
20 but yes, yes, we are.

21 THE COURT: Ready?

22 MR. LOVELL: We are ready.

23 THE COURT: Wonderful. Oh, we need a witness. We
24 need a witness. Come on down.

25 BAILIFF: Are you ready, your Honor? The jury is

1 entering the courtroom, your Honor.

2 JURY ENTER COURTROOM 2:43 P.M.

3 THE COURT: Ladies and gentlemen, I certainly hope
4 that you had a very pleasant lunch. Take a moment and
5 check to be sure that your notepad is, in fact, the
6 notepad that you had. And at this time, we're going to
7 continue with the Plaintiff's case. You may proceed.

8 MR. HOYLE: Thank you, your Honor. Permission to
9 approach?

10 THE COURT: Yes.

11 JANICE MCDONALD,

12 CONTINUE DIRECT EXAMINATION, BY MR. HOYLE:

13 Q Mrs. McDonald, I'm handing you what has been moved
14 into evidence as Plaintiff's Exhibit Number 20. I'm
15 going to ask if you recognize that document.

16 A I do.

17 Q These are the medical records of Calvin Hunt on the
18 day in question, correct?

19 A That's correct.

20 Q I'm going to direct you specifically, for purposes
21 of the next line of questioning, to Pages 2 and Pages 3
22 of Exhibit 20.

23 A Okay.

24 Q Let's look at Page Number 2 first. Is that your
25 handwriting on that page?

1 A It is.

2 Q And same is true with respect to Page Number 3?

3 A Yes.

4 Q All right.

5 MR. HOYLE: Your Honor, may I publish via board and
6 screen?

7 THE COURT: In evidence?

8 MR. HOYLE: Yes.

9 THE COURT: Certainly.

10 BY MR. HOYLE:

11 Q Let's look at Exhibit Number 20, Page Number 2.

12 MR. HOYLE: Madam Clerk can you put it on the big
13 screens, as well, for the gallery and the Judge.

14 BY MR. HOYLE:

15 Q All right. Let's start at the top of the page.
16 That seems like the logical place to start. Is that
17 fair?

18 A That's fair.

19 Q We have an arrival time on here of 2:17 p.m.

20 A That's correct.

21 Q On 2/24/12, correct?

22 A Yes.

23 Q That's when Kalvin came into the itty-bitty
24 emergency room at Naval Hospital, Beaufort?

25 A That's correct.

1 Q And you would have gotten that time of 2:17 p.m.
2 from either your watch or the computer, correct?

3 A That's correct.

4 Q So, you believe that would been the accurate time
5 that Calvin Hunt came into the emergency room at Naval
6 Hospital, Beaufort, correct?

7 A Yes.

8 Q Now, we talked earlier about the ESI Scale. Do you
9 recall that conversation?

10 A Yes.

11 Q And you told me that it was a 1-to-5 scale.

12 A Yes.

13 Q 1-to-5, with 1 being a patient who needs the most
14 urgent care, correct?

15 A Well, depends on the circumstance. If you had a
16 mass -- mass casualty, they would just tag them, because
17 there's not a whole lot that can be done for that
18 individual.

19 Q Is that a near-death-type situation?

20 A Yes.

21 Q Okay. How -- strike that. What are the most
22 common ESI triage categories that you would circle on a
23 day-to-day basis in the E.R. Naval Hospital?

24 A At Navy, most 4's and 5's.

25 Q But for Calvin Hunt, you rated him as a 3, correct?

1 A That's right.

2 Q So, this meant that Calvin Hunt was a patient that
3 needed urgent treatment, correct?

4 A That's correct.

5 Q Isn't that because you thought that, since Calvin
6 Hunt was without his medication and he had some
7 psychiatric problems, he was urgent and needed
8 attention, correct?

9 A We try -- that's correct.

10 Q All right. Immediately underneath that, we've got
11 a signature. And is that your signature?

12 A It is.

13 Q And coming down, we have something that says *chief*
14 *complaint*. Do you see that?

15 A Um-hmm.

16 Q That's a yes?

17 A Yes. I'm sorry.

18 Q It's all right. The court reporter occasionally
19 has to chastise me about things, too.

20 With respect to the nursing assessment that you
21 made on February 24, 2012, what was the chief complaint,
22 based on your observations and assessment of Calvin
23 Hunt? What's reflected in the record?

24 A He's had suicide ideation or suicidal thoughts.
25 And he needed his medication, which I don't have written

1 there, but.

2 Q Okay. And so, basically, what that means is, that
3 Kalvin Hunt had thoughts of killing himself, correct?

4 A He had thought about it, yes.

5 Q And you knew that, because the person who brought
6 Kalvin Hunt down to the emergency room told you. And
7 then, you confirmed that by asking Calvin Hunt, correct?

8 A That's right. We always ask if they're going to --
9 if they have any idea if they're going to hurt
10 themselves or someone else.

11 Q And Calvin Hunt told you, yes, he did have thoughts
12 about killing himself, correct?

13 A He has thought about it, yes.

14 Q And that would have concerned you, because you knew
15 that he had already tried to kill himself once before,
16 correct?

17 A Yes.

18 Q I believe you previously told me that it's your
19 belief that anytime anyone who has a previous attempt of
20 suicide, they're likely to follow through again,
21 correct?

22 A That's correct.

23 Q What else did you write, as far as nursing
24 assessment?

25 A Basically, what I saw in his chart: that he had a

1 history of depression, and previous suicide attempt, and
2 also, PTSD.

3 Q And I think most of our jurors know what that is,
4 but what is PTSD, ma'am?

5 A It's Post Traumatic Stress Disorder.

6 Q And that information, the history, the history of
7 the alcohol and drug dependency, depression, and PTSD,
8 that's information that you got from an inch, to an
9 inch-and-three-quarter-inch stack of paper medical
10 records, correct?

11 A That's correct.

12 Q And you thought that was important information,
13 didn't you?

14 A I did.

15 Q You believe, do you not, that depression and PTSD
16 makes a person prone to anxiety, correct?

17 A It does.

18 Q But you didn't write delusional disorder on this
19 assessment.

20 A No.

21 Q Correct?

22 A That's correct.

23 Q And you had read through most of the records --

24 A No.

25 Q -- that were available to you that day, correct?

1 A No, I didn't read through most of the records. I
2 skimmed through, primarily to find out his medications
3 and what he had been on. And that gave me some
4 indication, just turning a few of those pages, you know,
5 that he had a history of depression and so forth.

6 Q That there were some mental health concerns,
7 correct?

8 A There was, yes.

9 Q But you didn't write on this document that we're
10 looking at, the nursing assessment, you didn't write
11 adjustment disorder with disturbance of emotions and
12 conduct, correct?

13 A No.

14 Q But you believe that persons with schizophrenia
15 have adjustment disorder with disturbance of emotion and
16 conduct, correct?

17 A I do, but I didn't see anywhere in that chart, in
18 that record, on that day, that he was schizophrenic. I
19 saw bipolar.

20 Q In 60 seconds of looking at an inch, to an inch-
21 and-three-quarter-inch stack of medical records, you saw
22 the word *bipolar*, correct?

23 A I saw bipolar.

24 Q But in that cursory review, you didn't see the word
25 *schizophrenic*, correct?

1 A I did not.

2 Q Do you believe that the medication you told us
3 about earlier, specifically the medicine Seroquil,
4 alerted you to the possibility, or the reality, that
5 Calvin Hunt was a schizophrenic?

6 A It was a possibility, but like I said before,
7 Seroquil is also given for borderline personalities, as
8 well as severe depression.

9 Q Would you agree with me that -- by Calvin Hunt,
10 we're going to focus solely on what you knew.

11 A Okay.

12 Q Not what other things were in that big, old stack
13 of records you didn't look at, but solely on what you
14 knew. Will you agree with me that, based on the fact
15 that Calvin Hunt had previously been prescribed Seroquil
16 and Celexa, that he was a patient with multiple mental
17 health issues, not just one in particular?

18 A I thought he had mental health issues, yes,
19 certainly. But I -- to what extent, I really didn't
20 know.

21 MR. HOYLE: Permission to approach, your Honor.

22 THE COURT: Yes.

23 MR. HOYLE: Your Honor, I am approaching the
24 witness with a document that's been marked for I.D. only
25 as Plaintiff's Exhibit Number 18.

1 ITEM IDENTIFIED AS INCH-AND-THREE-
2 QUARTER STACK OF MEDICAL RECORDS
3 OF KALVIN HUNG
4 MARKED PLAINTIFF'S EXHIBIT NUMBER 18
5 FOR IDENTIFICATION.

6 MR. HOYLE: May I hand the witness a ruler, your
7 Honor.

8 THE COURT: You may.

9 BY MR. HOYLE:

10 Q I'm going to hand you a ruler, ma'am.

11 A Okay.

12 Q The document that's been marked for identification
13 as Plaintiff's 18 is in a manila folder, correct?

14 A That's correct.

15 Q And I handed you a ruler. And using the ruler, can
16 you tell the jury the thickness of the folder that
17 contains Plaintiff's 18?

18 A They're an inch and three-quarter.

19 Q I'm going to ask you to open that folder up,
20 please, ma'am. You can set the ruler aside.

21 A Sure.

22 Q And spend some time acquainting yourself with those
23 documents.

24 A Double-sided. Okay, how far do you want me to go
25 through this?

1 Q Well, I'm just going to ask you a question.

2 A Okay.

3 Q And I didn't time you, so I don't know if you spent
4 60 seconds with those documents or not, but do these
5 look like the stack of documents Mr. Hunt and Mr. Ray --

6 A Honestly, --

7 Q -- had with them on February 24, 2012?

8 A Some of the things in here do, certainly, but his
9 record was much smaller than this. Like, as far as, it
10 was not double-sided papers.

11 Q What looks familiar about those records to you,
12 ma'am?

13 A Well, some of the problems that are on here, I
14 remember seeing the alcoholism, and you know, that he
15 had some shoulder problems, some shoulder issues, and
16 family -- like, his family problems. And it does state
17 that he was from San Diego and Miramar.

18 Q Ma'am, as you go through those, there are little
19 numbers in the lower, right-hand corner. Don't read
20 anything about those little numbers, but do you see
21 there is a three-digit number on them, on each page?

22 A Yes.

23 Q Can you read those out for the record, as you turn
24 that exhibit, please, ma'am?

25 A 568, 569, 570, that's just his problems. 571, 572,

1 573, 574, through '76.

2 Q Through 576?

3 A Um-hmm.

4 Q That's a yes?

5 A Yes. I'm sorry.

6 Q Okay. Is there anything else in that big stack of
7 documents that's contained within the folder that's been
8 marked for identification only as Plaintiff's 18, that
9 looks familiar to you, ma'am?

10 A I did remember bursa, the knee bursa.

11 Q What page is that on, ma'am?

12 A 580. And the alcoholism, that was on 582. But I
13 don't remember sheets like this. They were not like
14 this, so.

15 Q And by *sheets like this*, you mean they weren't
16 printed on paper?

17 A They weren't in order like this. They were -- they
18 were just, like, a visit and what that visit contained,
19 and you know, whether he had gotten any kind of
20 medications or -- and so forth.

21 Q While we're on the topic of medication, if a
22 patient like Calvin Hunt is having problems getting his
23 pills, you'd agree with me that's something you just
24 can't stop, because you might end up with a poor result.

25 A He -- yeah, he -- he was even aware of that. He

1 knew he needed to get that medication.

2 Q And when you -- I'm sorry, ma'am.

3 A Even though he didn't know the name of it, he knew
4 he -- he needed it.

5 Q He knew he needed some pills.

6 A Yes.

7 Q And when you saw Calvin Hunt that fateful Friday,
8 you had no idea how long it had been since he had last
9 taken those anti-psychotic pills, correct?

10 A That's correct.

11 Q You specifically asked him, but he didn't know.

12 A I did.

13 Q Could be three months, six months, or a year. You
14 just didn't know.

15 A I didn't know.

16 Q When you were skimming through that stack of
17 documents that had Mr. Hunt's medical records in it, did
18 you see anything in there about impulse control issues?

19 A I did not, at the time. No, I didn't.

20 Q Do persons with impulse control issues act out and
21 have trouble regulating their behavior?

22 A Yes. Generally, they can't resist urges or
23 tendencies to act out.

24 Q And again, you didn't read all the hard copy
25 medical records that were there in front of you that

1 day, correct?

2 A I did not.

3 Q Even though you held them with your own two hands,
4 correct?

5 A I did.

6 Q Would you like to have known whether or not there
7 were reports in the medical records of impulse control
8 issues?

9 A I certainly would have liked to know a little more
10 about his history.

11 Q And why is that, ma'am?

12 A Well, it gives you a better understanding of what
13 they're actually -- what's going on, you know, with
14 them, and what -- what they potentially could do, even
15 though he didn't do anything that day, so, at the
16 hospital.

17 Q Let's go back to the triage records. I believe you
18 told us about this a little while earlier. Calvin Hunt
19 had a flat effect or affect, correct?

20 A Right. Right.

21 Q What does that mean?

22 A They're not -- there's no -- there's little or no
23 emotion. They're -- they're just not forthcoming. They
24 don't initiate -- initiate a conversation with you,
25 unless you specifically ask them something. They just

1 are -- a good way to describe it, like dead, flat.

2 Q You also noted that he was depressed, correct?

3 A Yes.

4 Q That meant that he was withdrawn and didn't want to
5 talk, correct?

6 A Right.

7 Q And you checkmarked that specific box on these
8 records, correct?

9 A Yes.

10 Q When Calvin Hunt was with you, and the two of you
11 alone in triage room, it's true that Calvin Hunt kept
12 his head down a lot and looked away most of the time,
13 correct?

14 A He kept his head down, but he would -- when I spoke
15 directly at him, he would lift his head and make eye
16 contact with me.

17 Q In addition to the triage papers that you filled
18 out, you also helped Mr. Hunt with a questionnaire,
19 correct?

20 A I did.

21 Q All right. Let's talk about that. And first off,
22 what page of the exhibit are we looking at? Are we
23 looking at Page 9?

24 A 3. Or hold on. I don't have that. I have so much
25 here. That would be Page 9, yes.

1 Q This is a questionnaire, correct?

2 A Um-hmm. Yes.

3 Q Can you read for us what the questionnaire asks.

4 A We ask: *have you been feeling down, depressed, or*
5 *hopeless within -- we usually state that within the last*
6 *one to two weeks.*

7 And the second question is: *little interest or*
8 *pleasure in doing things that you normally would enjoy.*

9 Q Now, Calvin Hunt didn't fill this out himself, did
10 he?

11 A No, no.

12 Q Did you ask him these questions, and then, circle
13 the box?

14 A I did.

15 Q And with respect to the question of whether or not
16 over the last two weeks has Calvin Hunt been bothered by
17 any of the following problems, which answers did you
18 circle?

19 A Yes.

20 Q Going back to the stack of medical records that you
21 looked at that day, you skimmed through them, were you
22 able to find a complete list of his medications therein?

23 A No. They were fragmented, as well. It went by
24 each -- it looked like it went by a particular visit.
25 So, I tried to retrieve the most recent that I could

1 find in the folder, which looked like, like I had stated
2 before, was August of 2011.

3 Q When you and Mr. Hunt are still in the triage room,
4 did you ask Mr. Hunt to change to any sort of gown or
5 change out of his street clothes?

6 A No. No, he was fully dressed.

7 Q And yet, when you were alone with him in that
8 triage room, you got afraid of him, correct?

9 A Towards the end, I was slightly frightened. I
10 can't say I was afraid of, you know, of him, where I
11 would call, like, Joe to come up front, or the physician
12 to come up front. I just felt a little uncomfortable,
13 and that's when I moved him to the back.

14 Q Did you move him to the back at that moment because
15 you were afraid of him, or because you were done with
16 your triage?

17 A Well, I was pretty much finished with the triage.
18 However, I -- like I stated before, I was slightly, you
19 know, uncomfortable around him at that point, after that
20 one episode where he put his hands to his ears. And he
21 answered me, you know. It certainly wasn't his answer.
22 And I -- like I said, I know that, when people are
23 frustrated, they can also have -- they can like, try to
24 block out whatever. So, I figured it would be best if I
25 put him in the back. At least I would have someone else

1 up there besides myself.

2 Q You'd be a little safer.

3 A I -- yeah.

4 Q Now, after you completed your triage of Calvin
5 Hunt, you took him to Stretcher Bay Number 4, correct?

6 A That's correct.

7 Q And I believe you told us earlier that the itty-
8 bitty emergency room at the Naval Hospital in Beaufort
9 back in 2012 was only about 800 square feet, correct?

10 A That's approximately right, yeah.

11 Q So, really, where you were going, to Stretcher Bay
12 Number 4, was really only a few steps away from where
13 you'd been in the triage room, correct?

14 A Yes.

15 Q And you specifically chose Bay Number 4. I presume
16 the other bays were empty, based on your choice.

17 A They were empty, yes.

18 Q You put him in Stretcher Bay Number 4 because that
19 was the closest stretcher bay to the doctor's office and
20 the E.R. nurse, correct?

21 A Well, all those bays are directly across from the
22 nurse. Room Number 4 is directly across from the
23 physician's office, as well. But yeah. There was
24 really no rhyme or reason why I chose 4. They were all
25 empty, and I -- we never use 1. 1 is an OB/GYN room,

1 and we put pediatrics in there, just because it has a
2 closed door. But the other three are just separated by
3 a curtain, and they're right on top of each other, so.

4 Q Ma'am, you've previously told me that you placed
5 Mr. Hunt in the bed closest to the doctor and nurse
6 because you believed that, anytime you have a psyche
7 patient, you want to put them somewhere where they can
8 be seen by everyone involved. Isn't that correct?

9 A Well, we -- we -- we do. There are certainly many
10 times that we have people in Bay Number 4, already, but
11 we put them in 2 or 3, but they're all right across from
12 each other. They're right there in front of the
13 physician and Joe or whoever's back there.

14 Q Now, on that particular day, the physician was Dr.
15 Jansen, correct?

16 A That's right.

17 Q And on that day, was Dr. Jansen's office door open
18 or closed?

19 A It was slightly ajar. That's all I remember. It
20 was open when I got back there, and I had to go in his
21 office, so it was partially open. It wasn't completely
22 open, wide open.

23 Q But if you were in any of those bays, you would
24 have been able to hear what Dr. Jansen was saying,
25 correct?

1 A Not necessarily. He would -- if he had a
2 conversation with anyone, he would close the door.
3 Their doors were rather thick. They weren't just, you
4 know, like, a plywood door. It was a solid wood door.
5 So, if you kept your voice down, not everything could be
6 heard. But certainly, if he talked in a louder voice
7 with the door ajar, you know, then, it would be -- then,
8 everyone would be able to hear it, right in the
9 immediate area.

10 Q You specifically ask Calvin Hunt, as part of your
11 triage, as to whether or not he was hearing voices,
12 correct?

13 A I did.

14 Q In other words, you had a concern that he might be
15 hallucinating, correct?

16 A When he put his hands up to his ears, yes.

17 Q Which really isn't that far out of a question to
18 ask when you know that someone had presented for a need
19 for refill of medications associated with various mental
20 health disorders, such as bipolar disorder,
21 schizophrenia, so on and so forth.

22 A Correct.

23 Q That's a reasonable question to ask, correct?

24 A Yes.

25 Q And when you took Calvin Hunt to Stretcher Bay

1 Number 4, did he remain fully dressed?

2 A Yes.

3 Q Did there come a time when you left Calvin Hunt in
4 Bay Number 4 alone?

5 A I -- I left him -- I left the bedside. Joe was in
6 the back, and Dr. Jansen was in his office.

7 Q When you leave Mr. Hunt in Stretcher Bay Number 4,
8 what do you do next?

9 A I go back to triage.

10 Q You didn't talk to your husband Joe?

11 A Oh, I did. I'm sorry. Yeah. I went to Dr. -- I
12 spoke to Joe and I spoke to Dr. Jansen. And I said that
13 my perception of the patient was that he was not
14 suicidal, but angry.

15 Q What made you think that Calvin Hunt was angry, and
16 not suicidal?

17 A Just from his -- he was frustrated, and certainly,
18 frustration, with that, comes anger. It wasn't what he
19 spoke or said. He never raised his voice or anything
20 like that. It was pretty much -- it was his body
21 language. He like, bit on his bottom lip. He put his
22 hands to his ears, which is body language consistent
23 with frustration, so.

24 Q When we spoke previously, I believe you
25 characterized Calvin Hunt as a slow simmer, as far as

1 anger goes. Is that true?

2 A Yeah, I think that's probably pretty accurate.

3 Q What did that mean, a slow simmer?

4 A I think he -- you know, from what he told me that
5 day, he was -- he had tried many, many -- well, he -- I
6 don't know how many, but he told me he tried several
7 times to get his medications filled. He told me -- I
8 told -- about cutting pills in half. And he had made a
9 call to the hospital earlier that day, and he still
10 wasn't able to get his medication, so, and he knew he
11 needed them. And I think at that point, he was -- he
12 was just angry with the whole system.

13 Q You would agree with me that too much heat, too
14 much time, a slow simmer could still burn?

15 A It could. Yes, it could.

16 Q Now, what, specifically, did Calvin Hunt say to you
17 to make you believe he was frustrated with the system?

18 A Well, he voiced his -- you could tell by the -- the
19 way he said it; that he had called several times; he had
20 gone to different places; and was unable to get his
21 medication. You know, about cutting them in half. This
22 is a guy who, to me, really wanted to get well. He --
23 he knew he needed that medication to stay level. And he
24 was he was frustrated. That's all I can say, just from
25 the way his mannerisms were, his body language.

1 Q And at that day, you didn't know how long it had
2 been since he had last had his medicines?

3 A I do not know.

4 Q But you would agree with me, if a person has a
5 prescription to take a whole pill for something, it's
6 not a good idea to cut that pill in half.

7 A Well, I know people do it. Even the elderly do
8 that nowadays, so, unfortunately.

9 Q Well, let me ask it this way. If a person is
10 prescribed Seroquil for some psychotic disorder, they're
11 prescribed a whole pill, a whole tablet, is it a good
12 idea or a bad idea to take just half?

13 A It's a bad idea to take half, but it's also -- if
14 you -- you have -- if you have to be on the medication,
15 and you don't have access to it, you're going to make it
16 last. And probably half would be better than none, so.

17 Q Did you warn Calvin Hunt that he shouldn't do that?

18 A I told him he should not do that. But he, you
19 know, was long gone, I don't know how long out of the
20 medication to begin with.

21 Q So, you tell your husband, Nurse Joe, that you
22 think he's angry.

23 A Um-hmm.

24 Q Did you relay any additional information to Nurse
25 Joe McDonald at that time?

1 A I told him that he had a previous suicide attempt;
2 that his -- that Mr. Ray was called by his grandmother.
3 I basically told him the whole -- the whole story that I
4 -- of what I knew. That his grandmother had called Mr.
5 Ray, either that day or the previous day. And I don't
6 know what their relationship was, but she knew him, and
7 knew that he was with the Veterans Affairs, and he could
8 possibly either get him through the front gate.

9 I don't even know whether he had his I.D. card,
10 because you can't get in without a CAC card. So, I
11 don't know if his capacity was to get him through the
12 front gate, or to get him through the system, somehow.
13 But you know, I told -- I told him that, and that his
14 grandmother was frightened that he would hurt himself.

15 Q So, your husband knew that there was an issue, with
16 respect to Calvin Hunt's thoughts of self harm, correct?

17 A Yes.

18 Q You've just told us information you told your
19 husband, Nurse Joe. What specific information did you
20 tell Dr. Jansen?

21 A Basically, the same thing.

22 Q You told him he was suicidal?

23 A I told him that his grandmother was afraid that he
24 would harm himself, and that he had thought about
25 harming himself when I asked him, but had no specific

1 plan.

2 Q On February 24, 2012, in the 12 hours that you were
3 working that day, for all of the patients who reported
4 there that day, patients who were ultimately were seen
5 by Dr. Jansen?

6 A Yes. Well, I don't know about the night shift. It
7 starts at midnight, but.

8 Q I'll ask my question again, so I make sure we're on
9 the same page.

10 A From 7:00, yeah. From 7:00 to 7:00.

11 Q From 7:00 to 7:00.

12 A Yes.

13 Q Okay. And the 12 hours that you were there, was
14 there somebody came in at 7:01, or left at 6:59 p.m.,
15 Dr. Jansen was the doctor that they treated with?

16 A That's right.

17 Q While you were doing your triage of Calvin Hunt,
18 was there anybody wearing a military uniform physically
19 present, watching over you as you did that?

20 A No.

21 Q While you were doing your triage of Calvin Hunt
22 that day, was there any civilian employee of the United
23 States government, the Department of Defense, the Navy,
24 who was in there watching over you, do that triage?

25 A Do the triage? No.

1 Q Did you ever receive any instruction from Dr.
2 Jansen to keep Calvin Hunt in the emergency room on
3 February 24, 2012?

4 A No.

5 Q Dr. Jansen never told you that it was a bad idea
6 for Calvin Hunt to leave the emergency room on that day,
7 correct?

8 A That's correct, but they typically don't talk to
9 the triage nurse after the patient's in the back, so.

10 Q Did Dr. Jansen ever tell you that you needed to
11 tell Calvin Hunt, if you saw him walking towards the
12 door, to stay put?

13 A No.

14 Q So, I take it, then, that Dr. Jansen never told
15 you, as one of the two nurses there that day, that
16 Calvin Hunt should not leave, because he had thoughts of
17 hurting himself, correct?

18 A That's correct.

19 Q Ma'am, thank you very much for coming in today.

20 A You're welcome.

21 MR. HOYLE: Those are all the questions I have at
22 this time. Thank you.

23 A Thanks. Thank you.

24 THE COURT: All right. Cross-examination.

25 MR. LOVELL: Thank you, your Honor.

1 THE COURT: Yes.

2 JANICE MCDONALD

3 CROSS-EXAMINATION, BY MR. LOVELL:

4 Q Ms. McDonald, tell us your employment history
5 before you came here to the Beaufort area. Had you ever
6 worked in situations involving mental health patients,
7 or people with mental health challenges?

8 A I worked in -- well, like, the beginning of my
9 career was just a med-surg floor, but we had a lot of --
10 it was -- it was in a very poor, depressed neighborhood.
11 We had a lot of drug-addicted, alcohol-addicted
12 individuals that lived on the poverty level. A lot of
13 them were HIV-positive. So, that was the beginning of
14 my career.

15 And then, after that, I went to an intensive care
16 unit that in a specialty hospital, a cancer institute,
17 much like Sloan-Kettering or MD Anderson. And I was
18 there for nearly 17 years.

19 And as you all probably know, you're not just
20 dealing with the cancer patient, you're not dealing with
21 the patient; you have the family. They have financial
22 issues, childcare issues. They're depressed. They're
23 going through these horrible treatments.

24 So, I think, really, every aspect of nursing you
25 touch some kind of psychological cord. Everyone has an

1 issue, so.

2 Q And in your training as a nurse, as you were coming
3 up to become licensed as you are, were you also trained
4 on recognition of mental health issues?

5 A Yes.

6 Q When you came here to Beaufort, before you went to
7 the working at the E.R. at the Naval Hospital, you
8 mentioned you worked at Beaufort Memorial Hospital?

9 A I worked in their intensive care unit, as well.

10 Q How many years over there?

11 A Well, I spent my year and a half down in Beaufort,
12 at Beaufort Memorial. And then, I transferred over to
13 the Navy. And now, I'm back at Beaufort, so.

14 Q Let me ask you just a couple of questions about
15 your employment situation. As I heard you said earlier,
16 when you first went from the Beaufort Memorial Hospital
17 to working in the Naval Hospital, you worked through a
18 placement company called, was it?

19 A Fly America.

20 Q Okay. Fly America. And they wrote your paychecks.
21 They wrote the checks for you.

22 A Yes.

23 Q As far as, though, when you were with Fly America,
24 who controlled what you did in the E.R.; how you could
25 do it? Who did you report to as far as the nursing

1 things that you did in the emergency department?

2 A That was our lieutenant, who was our head nurse.

3 Q A lieutenant employed by the Department of the
4 Navy?

5 A Department of Defense, yes.

6 Q Department of Defense.

7 A Whatever.

8 A And when the Fly America contract ended, did you
9 then start getting your paychecks from CasePro?

10 A Yes. It was just a matter of filling out -- we
11 didn't have to re-apply for the job. Like I said, we
12 had to fill out a form, you know, basically do an
13 employment -- re-apply for our -- our employment, but we
14 were grandfathered in.

15 Q And as far as when you were working at CasePro, up
16 until even including February 24, 2012 time frame, when
17 you were working at the hospital through CasePro, who
18 controlled the day-to-day operations that you did as a
19 registered nurse? Who did you report to?

20 A Our lieutenant. Actually, there were two, I think,
21 when CasePro was there. Would have been Lieutenant Red
22 and Lieutenant Johnson.

23 Q Same employees of the Department of Defense, Navy?

24 A Um-hmm. Yes.

25 Q Had you ever met Mr. McCabe before today in the

1 courtroom?

2 A I don't believe I have. Hmm-um.

3 Q Could the Navy folks terminate your position, if
4 they wanted to?

5 A Most definitely.

6 Q While you worked there through CasePro or Fly
7 America?

8 A Yes. And it happened recently with the new
9 contract, DeLuke and Associates, so.

10 Q Now, before February 24, when Mr. Hunt came under
11 your care at the hospital, had you seen patients who
12 presented with similar complaints as he had?

13 A Unfortunately, more times than I can count. At
14 least -- we saw at least three to four psyche patients a
15 week.

16 Q And we talked; you were asked a lot of questions
17 about this ESI Triage Category Number --

18 A Um-hmm.

19 Q -- 3 that you assigned to this patient. Is that an
20 unusual category to assign to someone who presents as he
21 came through the door of your triage area, with the
22 complaints that he had?

23 A No. Just because someone doesn't have a physical
24 symptom, like, a physical ailment, certainly, any kind
25 of psychological problem, you can't see it, and you have

1 to adjust, assume that, you know, Grandmom says he has a
2 -- he could hurt himself. Well, certainly, he could
3 have, and you have to just take it like that.

4 Q Now, you had also mentioned that, with an ESI 3,
5 the goal is to have the patient in front of the doctor
6 within half an hour. Did I hear that correctly?

7 A That's correct.

8 Q He came in, according to your note, at least at
9 what?

10 A 417.

11 Q 1417?

12 A 1417, yeah.

13 Q And then, according to the second page of what you
14 have in front of you --

15 A I believe I put him in the back close to 4:30 -- or
16 2:30. I'm sorry. I'll get it right.

17 Q So, was he in front of Dr. Jansen within that half
18 an hour window of time?

19 A Yes.

20 Q I hate to ask it, but I've been hearing you talk
21 about the layout of the emergency room. I'm going to
22 ask you if you could draw a picture. So, let me grab
23 easel real quick.

24 A Hmm. I'm a really bad artist.

25 Q We've talked about it, and I think people may have

1 different pictures in their heads. It might be just
2 easiest --

3 MR. LOVELL: Your Honor, may she step down?

4 THE COURT: She may.

5 A Oh, I'm sorry.

6 THE COURT: When you speak, you've got to be
7 mindful that you don't have benefit of a microphone.
8 And our court reporter, Ms. Rowe, must be able to hear
9 you. So, keep your voice way up.

10 MR. LOVELL: Let me move this back a little bit,
11 and flip this over a couple of sheets.

12 BY MR. LOVELL:

13 A I apologize. I'm a really bad drawer.

14 Q She has to hear you, so.

15 A Okay. All right.

16 Q Whenever you say something, I'm going to -- I may
17 even just ask you, just please turn there. All right.
18 If you want me to do the drawing, I'll do it.

19 A Okay. You draw.

20 Q So, you tell me what to draw.

21 A So, the E.R. opens from the hall, the main hallway.
22 There's an -- there's an entry door there. And then,
23 when you walk into the E.R., to the left would have been
24 triage. Okay. It's a room where the clerk sits. And
25 then, in the back of that is a little desk for the

1 triage nurse, with a chair, which is actually a chair
2 scale, and you know, blood pressure cuff. Just basic
3 nursing things.

4 Q Is the room generally rectangular in shape?

5 A The -- the triage area?

6 Q No, I'm talking about the E.R. area in general,
7 with the triage.

8 A It's a weird -- it's rectangular, yes.

9 Q All right. So, tell me if I draw it incorrectly,
10 but I'm drawing a rectangular box.

11 A Okay.

12 Q Is that generally correct?

13 A Yeah. Um-hmm.

14 Q All right, now, point us to landmarks here.

15 A So, you have a door here, an entry door.

16 Q Let me put a little -- I'll put a little circular
17 thing.

18 A Then, you have an ambulance bay on the back of this
19 wall.

20 Q I'm going to put --

21 A Oh, and then, this goes this way. Sorry about
22 that.

23 Q I'm sorry?

24 A It would have to come out this way. This is the
25 hall that -- the entrance and the ambulance bay. This

1 is triage.

2 Q Triage is on the left side, as you face our --

3 A As you walk into the door. No, as you walk into
4 the main door.

5 Q Okay.

6 A Over here, when you come out of this -- this
7 hallway goes -- there's another hallway that goes that
8 way. There's a bathroom here. Maybe I should draw it.

9 Q Maybe you should draw it. Let's do that.

10 A Maybe I should.

11 Q This is not working very well. I apologize. I'm
12 not a good artist.

13 A Okay. So, it's --

14 Q Speak up a little for our court reporter.

15 A All right. Let me -- let me just draw first. This
16 is the ambulance bay. And -- so, there's a big exit
17 here, like a big exit out for the trucks. And then,
18 this would be -- this is your door from the hall. This
19 is the hallway. And then, this is triage. It's not
20 quite that big, though.

21 Q Okay.

22 A And so, if you continue down this hallway, this
23 here, there's a bath -- a very small bathroom here. And
24 then, you hit the nurses' station. This is the nurses'
25 station. Okay. And directly across from here, this is

1 -- there's a -- oh, and there's Room 1, that room I told
2 you about, that just -- we put GYN patients in and
3 children, pediatric. So, this is Room 1.

4 Q I'm going to ask a question about Room 1 while
5 you're there. Room 1, does it have a door that closes?

6 A Yes.

7 Q And why does it have a door that closes?

8 A Mainly cause we're doing OB/GYN exams in there.
9 And we put little children in there, and they tend to
10 make a large noise when you have a 700-foot space.

11 Q So, --

12 A So, this would be Bay 2. And then, 3. And then,
13 over here is the physician's office, so I'll put M.D.
14 And this is Bay 4.

15 Q And does the doctor's office have a door on it, as
16 well?

17 A Yes.

18 Q Show us where the door is.

19 A The door faces out to Bay 4.

20 Q So, thank you, ma'am. Let me make sure that --

21 A That's really horrible, though.

22 Q That's okay. It's perfect. So, when a patient
23 comes in to see you in the triage area, can you draw us
24 a little bit about where your -- how that room would be
25 set up, please.

1 A This room, you have the main window here that faces
2 out to the hallway. Again, this is the hall. This is a
3 big glass window, with a keyhole. And then, behind that
4 glass, you have two clerks. And then, there's a little
5 space in between here with some supplies that we might
6 need, if we have someone who's bleeding or whatever.
7 And there's a cot, like a stretcher over here, in case
8 we have someone that comes in that can't sit. So, this
9 is a cot. And then, right across from that, there's the
10 nurses' desk and a scale chair that they can actually
11 sit in, and we can get their weight without them
12 standing.

13 Q When Mr. Hunt was under -- when you were talking
14 with him, can you put an X where he was, and maybe a Y
15 where you were?

16 A He would have been in -- this is the nurses' desk,
17 which around in that direction. We had a chair, but in
18 order to actually visualize and talk to the patient, who
19 was sitting over here, I would turn my chair against the
20 wall.

21 Q So, he would have been sitting to your right, and
22 you would have been sort of facing caddy-corner towards
23 him?

24 A I would -- I would have been sitting -- let's see.
25 Yes, he would have been to my right.

1 Q Okay. Thank you.

2 A Um-hmm.

3 Q You can go back. All right. So, the clerk that
4 was out front, you mentioned there might have been two.

5 A There was two.

6 Q Are they employees of somebody other than
7 affiliated with CasePro?

8 A Yes. They had a different contract.

9 Q You've told us earlier what you were told by the
10 folks that brought this gentleman down from upstairs.
11 Did that person tell you he had been -- put his hands
12 over his ears and had moaned up there?

13 A Yes, she did.

14 Q Did they tell you that he came down -- or came up
15 there specifically to get medications refilled?

16 A No. But I knew that, that's what he had, cause as
17 we were talking further in the hallway, she mentioned
18 that.

19 Q So, she told you he needed medication refilled; you
20 knew that.

21 COURT REPORTER: Is that yes?

22 A Yes.

23 Q I'm sorry. Did that person who you interacted with
24 that brought Mr. Hunt down from -- the nurse from
25 upstairs, did she tell you anything about whether she

1 felt threatened by him or concerned about being around
2 him? Anything of that sort?

3 A Not -- not at all. She -- she said she had -- she
4 had tried to make him an appointment, but he couldn't
5 get in until Monday, and he wanted his medications. So,
6 she brought him down.

7 Q And she told you, also, that, when she had talked
8 to him, he had expressed having had suicidal ideations,
9 correct?

10 A Yes.

11 Q Now, Mr. Ray, we've kind of left him out of the
12 picture, but was he there, standing next to Mr. Hunt
13 when you were talking with the person from upstairs?

14 A Yes.

15 Q Ms. Smith. And when you went back into the triage
16 area, you mentioned that Mr. Ray sat somewhere outside
17 of the room.

18 A Well, yeah. He had initially come in, and I asked
19 him to step out, just because it's a HIPAA violation to.

20 Q And you and I may know what HIPAA is, but our jury
21 may not.

22 A It's the Privacy Act. You know, it's -- you want
23 to protect patients' information, so you don't really
24 have them talk.

25 Q Do patients who come into a hospital E.R. triage or

1 the treatment area, from your experience as an E.R.
2 nurse, do they have some rights as a patient?

3 A Yes.

4 Q And you mentioned privacy. Is that one of them?

5 A It is.

6 Q And when they voluntarily come in -- first, I'll
7 ask. Did this gentleman come in voluntary?

8 A Most definitely.

9 Q Did he come into your triage area voluntarily?

10 A Yes, he did.

11 Q And when you were with him and you walked him over
12 to the E.R. treatment area, did he go voluntarily with
13 you?

14 A Yes, he did.

15 Q And as far as you know, from your interaction that
16 day, was he in the E.R. on his own free will and his own
17 volition?

18 A He could have left anytime he wanted, because we
19 have a no-restraints policy. He didn't act out. He sat
20 on the bed. And there were two exits he could surely
21 just run, but he didn't.

22 Q The no-restraint policy, is that part of a
23 patients' right?

24 A It is.

25 Q And tell us what that is. At that time, --

1 A Well, the only patients that we are required, if
2 they come in and we -- we've had patients we've had to
3 put restraints on, and we've had to use chemical
4 restraints, as well. But he certainly did not require
5 that at all.

6 Q Chemical restraints means?

7 A Drugs.

8 Q Is that something a doctor has to do?

9 A The doctor would order it. I would put the I.V. in
10 and give it.

11 Q So, in addition to what we've talked about -- and
12 you've been asked a lot of questions. I'm going to walk
13 every -- through them again. But when you went to the
14 triage room, back to the treatment room, did Mr. Ray
15 then go into the treatment area to Bay Number 4?

16 A He did.

17 Q Did he, from your recollection, go sit with Mr.
18 Hunt in Bay Number 4?

19 A He -- he talked with him, chatted with him.

20 Q Sitting in that room? Or, I guess it's that room?

21 A Yeah, they were just sitting on -- I mean, cause
22 Mr. Hunt never actually got in the bed. He was just
23 sitting on that side of the bed.

24 Q I did mean to ask one other question. I hate to do
25 it on this. But you've drawn in sort of lines between

1 2, 3, and 4.

2 A Right.

3 Q Are those walls?

4 A They're curtains.

5 Q So, other than a curtain separating those, is there
6 a curtain at the front?

7 A No.

8 Q All right.

9 A I mean, it pulls around, certainly, for privacy,
10 but we -- we leave them open if -- especially if we have
11 someone who is a psyche patient, we keep them open, so
12 we can actually visualize what's going on with them.

13 Q So, when a doctor or maybe a psyche tech is in
14 there?

15 A They close it up, yeah.

16 Q And then, when they walk out, they open it back up?

17 A Yes.

18 Q When you were in the room with this gentleman, I
19 want to go into some of the things that you've written
20 down on your notes. And I'm going first, ma'am, to the
21 first part of the triage note, which was, I think, the
22 first page you were asked about earlier. And it's
23 Exhibit 1, but I don't know the sub-page.

24 A Found it.

25 Q We've got the time. We've got your assessment. Up

1 here, I have highlighted barriers to communication. Did
2 he exhibit any problems in communicating with you?

3 A No. His speech was clear. He didn't slur his
4 speech. He was appropriate. He didn't speak in word
5 salads, which a lot of psyche patients do. They call it
6 word salads. Just, they can't organize their -- their
7 speech.

8 Q You noted arrival via, and you have checked what
9 appears to be ambulatory.

10 A Um-hmm.

11 Q What's the significance of that with a mentally
12 health-challenged patient?

13 A Well, he -- he walked in on his own accord, so that
14 tells you something right there.

15 Q Now, you have written under, chief complaint, it
16 says, *nursing assessment: suicidal ideation*. Tell us
17 what ideation means, as you used it.

18 A Suicidal thoughts.

19 Q Is there a difference between a suicidal thought or
20 ideation and a plan to do something?

21 A Yes. Because you -- nurses always ask, do you have
22 -- do you have any intentions, do you have any thoughts
23 about hurting yourself or hurting someone else. That
24 comes up immediately. If they have a plan, that means
25 they've given it great thought, and they're likely to

1 carry it out. But when I asked Calvin, he said that he
2 had thought about it, but had no specific plans.

3 Q Did you ask him if he had thoughts of hurting
4 anyone else?

5 A I did.

6 Q And his response?

7 A With -- he had not.

8 Q You write up here, H.O. What does that mean,
9 history of?

10 A History of.

11 Q Alcohol, drug dependence, depression, and PTSD.
12 Where did that information come from?

13 A From the chart that Mr. Ray carried.

14 Q Okay. Under here -- and I'm apologizing that ours
15 are a little bit marked out. But can you read the two
16 blocks that are checked on the one you have.

17 A Oh. Flu vaccine and --

18 Q Last tetanus?

19 A Last tetanus.

20 Q Where did you get that info?

21 A He actually -- I know he's active -- he was active
22 duty up 'til 2011, so I knew his tetanus was fine. And
23 they -- they make them all get flu vaccine.

24 Q And did he tell you that he was current on those
25 things?

1 A He told me he was current on the flu vaccine. He
2 wasn't sure about the tetanus; but he had -- I mean, if
3 he was still active duty military, and at that point he
4 was, they got their tetanus.

5 Q You keep using the word he. Is that Mr. Hunt?

6 A Yes.

7 Q You've made some vital sign notations here. Tell
8 us what those mean and what the significance of those
9 were.

10 A That was his -- the first is his temp. He had,
11 like, a low-grade temperature. It was 99.5. That can
12 be from a variety of things. His heart rate was a
13 little on the elevated side. It was 103. Normal is
14 between 60 and 100. But really not much to be concerned
15 about, because a lot of individuals get upset when they
16 have to come to an E.R.

17 His blood pressure was normal. He was 120 over 64.
18 His sat -- oxygen saturation was a hundred percent on
19 room air. And his respiratory rate was 18, which is
20 normal.

21 Q In your experience in seeing patients with
22 psychiatric challenges or mental health challenges, if
23 they are in an agitated state, do these vital signs look
24 like these you see here?

25 A No.

1 Q What would you expect to see different, if they
2 were in an agitated state?

3 A His heart rate would be very high. Generally
4 around -- at least 120.

5 Q What about blood pressure?

6 A Blood pressure would be higher, as well. And the
7 respiratory rate, as well, because they're anxious.

8 Q You have the medications you were asked about
9 earlier. That information came from where?

10 A The chart.

11 Q And this chart thing you were looking at, do you
12 know what else was in there, besides medical records?

13 A No.

14 Q Could there have been other documents about whether
15 he's eligible to come to your hospital, or other things
16 in there?

17 A No. They strictly carry, you know, they carry that
18 paper chart with them, especially when they're on --
19 like, stationed on the opposite side of the country. I
20 mean, they carry it -- most of them carry them, anyway,
21 but especially, that's an important reason to carry it.
22 Because like, we had a very difficult time that day,
23 even putting him in the system, finding him.

24 Q West coast, east coast difference?

25 A Right.

1 Q All right. Past medical history that you listed.
2 You told us about depression. Now, you've written
3 something else, cigarettes, and there's a squiggly mark.
4 What is that?

5 A That's a one-pack-per day for seven years.

6 Q Where did that come from?

7 A He did. He gave it to me.

8 Q Above it, there are checkmarks by HTN, and what
9 appears to be D.M. What are those?

10 A I'm trying to find what you're talking about.

11 Q It's right up above depression wording.

12 A Oh. Hypertension. That just stands for -- D.M. is
13 a medical abbreviation for diabetes mellitus. And CVA
14 is a stroke. HTN is hypertension. And then, of course,
15 FC. Seizure. Cancer.

16 Q Which ones did you check that day?

17 A He had -- he had a family history of diabetes and
18 hypertension.

19 Q And where did you get that info?

20 A From his chart.

21 Q Now, you've got under here, airway, and checked
22 patent. What does that mean in your assessment?

23 A He had no problems breathing. His sat was a
24 hundred percent. He could speak.

25 Q You've got his breathing effort as unlabored. What

1 is the significance of that as you're assessing this
2 gentleman with a mental health issue?

3 A Well, it would be -- they would be tachypneic,
4 which means they would be breathing at a much faster
5 rate.

6 Q Did you check tachypneic?

7 A No.

8 Q All right. Further down, you've got pulse is
9 present. What's the significance of that as you're
10 assessing this gentleman?

11 A Well, in addition to checking their pulse. It's
12 like checking their heart rate. And if they have them
13 bilaterally in both arms, you can visualize any bruising
14 or cuts or whatever, so.

15 Q Did he have any of that?

16 A No, he did not.

17 Q Skin coloring, you have checked WNL. What does WNL
18 mean?

19 A Within normal limits for his race..

20 Q Race. All right. Is there anything about looking
21 at a person's skin color that might give you some idea
22 about their mental health state?

23 A Well, if they were flushed, they could, you know --
24 it's an idea that there's something going on; they're
25 anxious; they're blood pressure's high, you know.

1 Whether their skin turgor is good. Certainly, imbalance
2 of electrolytes can cause mental conditions.

3 Q Did he have any of those things that day?

4 A No, he did not. No.

5 Q All right. Further down you have, under
6 disability, you've got, alert checked.

7 A Right.

8 Q As opposed to verbal pain on response. What was
9 the significance of that as you assessed this gentleman?

10 A He was awake, alert. He was oriented. He knew the
11 president. He knew -- he knew where he was, like, in
12 the hospital at Beaufort Naval Hospital. There were
13 things that he didn't remember, but there were things
14 that some other people probably would have difficulty
15 with, as well.

16 Q What would those kind of things be?

17 A Well, he didn't remember his medication. I see --
18 I can't tell you how many people we see that really
19 don't know what meds they're taking, and they don't know
20 the doses. And they'll say, well, the doctor gave me
21 this for my blood pressure; what is it; I don't know.
22 So, that's kind of a common -- that's a common thing.

23 And he didn't know his whole entire Social Security
24 number, which is -- hmm, some people don't know the
25 whole thing, you know.

1 Q Over next, you've got oriented to -- you checked
2 person, place, time. What's the significance of that
3 with this gentleman's assessment?

4 A He knew where he was. He was -- he was cognitive
5 of where he was, and he knew who he was. He knew his
6 name. He knew he had come from -- he lived in Sumter.
7 I mean, he -- he gave me enough information. He knew
8 that his -- he was married. He was -- he's now
9 divorced. And he had a young son.

10 Q Was there anything on this particular page of your
11 note that suggested to you that this gentleman was, at
12 that time, a risk to you or anybody else, as far as
13 doing anything to harm himself or others, as he sat in
14 front of you?

15 A As he sat in front of me, no, not at all that day.
16 And I did question -- I got a little fear -- fearful at
17 the end of our triage about when he put his ears --
18 hands up to his ears. But that was for my own safety,
19 and I had been warned several times, don't sit up there
20 by yourself, so that kind of crossed my mind.

21 Q But when he put his hands up to his ears, how long
22 was that gesture that he did that?

23 A It was brief, because, when I questioned him, when
24 I went further to ask him if he was hearing anything, he
25 -- he said, no, and he immediately stopped the behavior.

1 But he -- and then, he walked freely back with me to Bay
2 4.

3 Q When you asked him, are you hearing voices, and he
4 said, no, did he look you in the eye when he answered?

5 A Yes. For sure, he did that time.

6 Q I want to ask you some questions about this sheet.
7 Now, this one is the second page, Nurse McDonald.

8 A Okay.

9 Q What do you all call this second page of the two-
10 page triage sheet?

11 A This is basically a more -- like, a -- a checklist
12 for neuro and different systems of the body.

13 Q All right. Under neurologic mental status, you've
14 checked alert and awake.

15 A That's correct.

16 Q And person, place, and time, you've already told us
17 about those. I notice that you do not have checked,
18 agitated, combative, stuporous, unconscious,
19 uncooperative, or ETOH, alcohol odor. Are those things
20 you ask or assess the patient about?

21 A You don't even have to ask. You can assess those
22 just pretty much by looking at them. And he was totally
23 with it that day, and his speech was clear. He never --
24 he didn't slur his speech at all.

25 Q And just to cover the part of speech, you checked

1 clear, but not coherent, slurred, or silent, correct?

2 A That's right. You really by omission what you
3 leave out.

4 Q Under the respiration, you've again checked that it
5 was unlabored.

6 A Right.

7 Q Was that for the reason you told us about earlier?

8 A Yes.

9 Q If he had been in extreme distress or anxious or
10 whatever, would those findings have been different?

11 A They would have been different. I would have
12 checked tachypneic.

13 Q And we talked a minute ago about the skin color,
14 that, when you did your formal exam, you checked that
15 it's normal for race.

16 A Yes.

17 Q Nothing else --

18 COURT REPORTER: I'm sorry, normal for?

19 A Race.

20 Q Race. Excuse me, Madam Court Reporter.

21 Nothing about the way he looked. He wasn't sweaty
22 or?

23 A He wasn't diaphoretic or sweaty. He, you know, had
24 no bruising. He didn't -- he had good skin turgor,
25 which is when you pull -- if they're -- someone's

1 dehydrated, and you pull up their skin, it sticks. It
2 stays together, and you count the seconds, how long it
3 takes to go back to normal.

4 Q In the right-bottom corner of this document, it
5 says, psycho social, and it has several things: escort,
6 security, standby, contract for safety. What do those
7 mean in terms of what you're doing with the patient at
8 that time?

9 A Escort is that they have to be escorted. They --
10 that's just a given there, that they were not -- they
11 had to be with someone. It didn't have to be military
12 at the time, but someone had to be with -- with the
13 patient.

14 Contact for safety, you usually ask if someone has
15 an active plan to commit suicide, you know. Say, well,
16 you know, and we want you to stay here, be examined, and
17 if they're willing to do that, they'll contract for
18 safety.

19 And a lot of recruits, we would actually see and
20 needed a psyche eval, and say it was a Friday night, you
21 would give them their medication, but they had an
22 appointment for the following morning over at Parris
23 Island to see a psychiatrist. So, then, we would get
24 them to contract for safety, they promise they won't
25 hurt themselves in that 24-hour period.

1 Q And does that come back into play when they have
2 expressed a plan?

3 A When they have a plan, generally, we do that. But
4 with the recruits and, you know, when they were -- we
5 always did it with them, no matter what.

6 Q And you didn't feel it necessary to check any of
7 those with this gentleman. Is that fair?

8 A No.

9 Q You mentioned and talked about his affect was flat,
10 but I also noticed you didn't check broad or blunted.
11 Why not have checked those two things with him?

12 A Well, he wasn't like -- manics will go all over the
13 place. They will be, you know, talking about one thing,
14 and then, the next. They can't even follow what they're
15 trying to tell you. He was -- he was appropriate in
16 every way when he spoke.

17 Q Mood, you have depressed, and we talked about it.
18 But you didn't check hyper or labile. What do those
19 mean, and why weren't those applicable to this
20 gentleman?

21 A He wasn't labile where he wouldn't speak to me at
22 all. He wasn't catatonic where some psyche patients
23 won't speak or whatever, And he was not hyper at all,
24 either, so. He was a little withdrawn; not real
25 forthcoming with speech; but he did speak and answer

1 questions.

2 Q And under behavior, you have checked and told us
3 about the withdrawn part; but you didn't check
4 cooperative, uncooperative, agitated, or restless. Tell
5 us what significance those had on that day.

6 A Well, I should have checked cooperative. He was
7 cooperative. He was not restless at all. He wasn't
8 agitated. He sat in the chair. He never tapped his
9 foot. He never spoke loudly, or he wasn't abrasive in
10 any way. He was polite. I can only describe him as
11 polite. He was cooperative. He was not fidgeting. He
12 was not anxious, and just was appropriate.

13 Q Under the last column here, ideations, you've
14 checked, suicidal, but not homicidal, no previous
15 attempt, and not has a plan. Tell us why those weren't
16 --

17 A Well, I should have also checked previous attempt.
18 He was not -- he -- he denied being -- he denied any
19 kind of homicidal thoughts. He did discuss that he had
20 thought about hurting himself, so.

21 Q No plan?

22 A No plan.

23 Q When we use the word *homicidal thoughts*, what does
24 that encompass? Hurting others?

25 A Hurting others.

1 Q So, at the conclusion of this documentation -- and
2 I do need to ask, were you doing the documentation as
3 you were talking with him?

4 A Oh, most definitely. We do that all day. All day
5 long, yeah.

6 Q Do you come back after the fact and fill this back
7 in or anything?

8 A Generally, I try not to.

9 Q Okay. And at the very top, I overlooked. The top
10 corner has that he was in the room 1430, Room Number 4.
11 Is that when you walked into Bay 4?

12 A That's when I put him in Bay 4. Um-hmm.

13 Q And it has provider at bedside 1450, Jansen. Did
14 you write that in?

15 A No, I didn't.

16 Q Would that have been Joe?

17 A Either Joe or Dr. Jansen. Let me see it again
18 right here. It looks like -- actually, it looks like it
19 might be Dr. Jansen.

20 Q We probably should have asked you this question
21 earlier, but how is it you and your husband both are
22 working in the same E.R.?

23 A Well, it's a long story. Nursing, as you know, has
24 all different shift work, and we had had -- well, we
25 spent more than 20 years in nursing, and never would get

1 the same weekend. You know, it was hard to get the same
2 weekends and days off, or -- so, a lot of times, we
3 would pass each other. In fact, his last job, he worked
4 3:00 p. to 3:00 -- 3:00 a. to 3:00 p., and I worked --
5 he worked -- I'm sorry. He worked 3:00 p. -- 3:00 a. to
6 3:00 p.; and I worked 7:00 a. to 7:00 p. So, we, like,
7 passed each other asleep, and it was kind of crazy. So,
8 I went to Navy first, and he started there with the PRN
9 position. And they asked him, if he -- there was an
10 opening, would he be willing to work, and they'd switch
11 us so we could work the same -- basically, the same
12 schedule. There were days that we didn't work together,
13 but for the most part, we did.

14 Q And when you all were working together, you were at
15 triage this day; he was treatment nurse this day.

16 A Right.

17 Q Sometimes, would those roles reverse?

18 A Um, yeah.

19 Q All right. And spouses sometimes can communicate
20 in ways without using words. When you and your husband
21 were working and interacting with patients, like this
22 patient, I mean, would you all talk to each other about
23 safety concerns or things like that, if it occurred?

24 A Certainly. Certainly.

25 Q Now, I'm almost done, ma'am. I'm going to ask you

1 one question. You were asked about Seroquil, and I
2 believe one of the other medications he was on --

3 A Celexa?

4 Q Celexa. Can some people who have mental health
5 challenges be placed on more than one of these mental
6 health medications, so that the medications work
7 together?

8 A Yes. See, sometimes they -- potential, they help
9 certain things. You know, like some of the side effects
10 from one drug might not be ideal, and they put you on a
11 different drug, and the two --

12 Q The Seroquil that you told us about can be used for
13 more things than just psychosis, correct?

14 A It can be done -- used for schizophrenia, bipolar
15 disorder, or borderline personality, they call it,
16 sometimes, or a major depression.

17 Q And the Celexa anti-depressant, is for, obviously,
18 anti-depression. Can it also cover other mental health
19 challenges?

20 A Not as much as, like, the Seroquil has broad use.

21 Q When Dr. Jansen, from your working with him, when
22 he would be in that little room in his office, if he was
23 on the phone talking to the psychiatrist or some other
24 hospital, would he generally close the door?

25 A He would close the door.

1 Q And if the door is closed, can people standing
2 outside in the area hear what's going on?

3 A No, not unless he screamed.

4 Q Did this patient ever tell you at any point in time
5 while he was there in that E.R. that he saw things that
6 were not there?

7 A No, he did not.

8 Q Heard things that were not there?

9 A No. He denied it.

10 Q Was having any issues of hallucinating or acted in
11 a way that made you think he might be hallucinating?

12 A No, he told me none of that.

13 Q Anything out of context while he was there?

14 A Not while he was there.

15 Q Ever mumbling to himself?

16 A Not while he was there.

17 Q Ever hearing voices while you were with him?

18 A He denied it. I have to believe him, because he's
19 the patient.

20 Q Now, when he came in and interacted with you, and
21 when you walked him over to the E.R. Bay Number 4, you
22 walked away from him, and were finished from your
23 interaction, was there any doubt in your mind that, (1)
24 he came in there for help?

25 A Yes, he did.

1 Q (2) that he came there voluntarily?

2 A For sure.

3 Q And (3) that, when you took him to the E.R., that
4 he still wanted to be there for help and voluntarily?

5 A He could have left at anytime of his own
6 recognizance.

7 Q And you know, I have young kids, and sometimes when
8 I have to take them to the doctor, you got to drag them
9 into the doctor's office. Did you have to do that with
10 him?

11 A No. And he, you know, he was an adult, a
12 responsible -- although he was an adult, I don't know if
13 he was responsible. I don't know that much about the
14 man, but he had every right to -- to refuse care, but he
15 didn't. He stayed voluntarily.

16 MR. LOVELL: Thank you, ma'am. That's all the
17 questions I have. Thank you.

18 THE COURT: Okay. Before we break -- let's take
19 ten minutes for our afternoon break. Ladies and
20 gentlemen, step to your jury room. Leave your notebooks
21 in your seat. Do not discuss this matter or allow
22 anyone to discuss it with you. We'll take about ten
23 minutes.

24 JURORS LEAVE COURTROOM 3:55 P.M.

25 THE COURT: Ms. McDonald, this is just ten minutes.

1 Do not discuss --

2 JANICE MCDONALD: Can I go out?

3 THE COURT: Do not discuss your testimony.

4 JANICE MCDONALD: Sure. Sure. Sure.

5 THE COURT: Go take a break. This is just ten
6 minutes. All right. Everyone, ten minutes.

7 BAILIFF: Jury's clear, your Honor.

8 THE COURT: You all be at ease. I'm going to stay
9 here. You all be at ease. Go take a break.

10 OFF THE RECORD 3:55 P.M.

11 BACK ON THE RECORD 4:17 P.M.

12 BY THE COURT:

13 THE COURT: Let me have the jury. Is everybody
14 ready? And my witness. Got to have a witness.

15 JURY ENTERS COURTROOM 4:19 P.M.

16 THE COURT: All right, ladies and gentlemen. At
17 this time, we will continue with Plaintiff's case. You
18 may continue, sir.

19 MR. HOYLE: Thank you, your Honor.

20 JANICE MCDONALD

21 RE-DIRECT EXAMINATION, BY MR. HOYLE:

22 Q Mrs. McDonald, you were kind enough to assist prior
23 Counsel in drawing a diagram of the emergency room at
24 the Naval Hospital, Beaufort, correct?

25 A Correct.

1 Q And this is the ambulance bay here, correct?

2 A Yes.

3 Q We've got some exam rooms, and we've got a nurse's
4 desk and a doctor's office, correct?

5 A That's right.

6 Q Okay. And then, a hallway, correct?

7 A Um-hmm.

8 Q That's a yes?

9 A Yes.

10 Q Actually, within the walls of the emergency room
11 itself, okay? The four walls of the emergency room.

12 A Right.

13 Q Were there -- you mentioned, I think, earlier,
14 somebody by the name of Lieutenant Brannon. Did I hear
15 that correctly?

16 A She was -- yeah, she was our lieutenant at the
17 time.

18 Q Was Lieutenant Brannon's office within the four
19 walls of the emergency room?

20 A No.

21 Q So, Lieutenant Brannon, she didn't have an office
22 there. Did you have to check in with her somewhere else
23 in the Naval Hospital every time you showed up to work a
24 shift?

25 A No.

1 Q What about when you left for the day? Did you ever
2 have to check in the Naval Hospital with Nurse
3 Lieutenant Brannon?

4 A No, I did not.

5 Q Would there be days during the shift where you'd
6 have no interaction with Lieutenant Brannon at all,
7 whatsoever?

8 A There were days like that, yes.

9 Q And Lieutenant Brannon, she didn't have a decision-
10 making role with you, as to how you treat a patient when
11 a patient comes into the E.R. Is that fair?

12 A That's fair. She -- basically, the policies and
13 procedures of the institution. And she was available,
14 if we had any questions.

15 Q Now, available if you had any questions. Now, when
16 Calvin Hunt was there in the emergency room of the Naval
17 Hospital, Beaufort, did you call Lieutenant Brannon on
18 the telephone and ask her any questions about Calvin
19 Hunt?

20 A No. We called her after -- after he had left.

21 Q After he was gone.

22 A Yes.

23 Q But while Calvin Hunt was still there, within the
24 four walls of the emergency room, did you call
25 Lieutenant Brannon and ask her any questions about how

1 to treat this patient?

2 A No. No, we did not.

3 Q Didn't ask her how to do the triage, correct?

4 A No, that's correct.

5 Q Didn't ask her any questions about the forms that
6 both prior and I Counsel showed you earlier, that you
7 filled out that paper Friday, correct?

8 A That's correct.

9 Q Are you aware of whether or not your husband or Dr.
10 Jansen called Lieutenant Brannon that fateful Friday,
11 and ask her any questions about what they should have
12 done or not done with respect to Calvin Hunt?

13 A No, they did not.

14 Q Okay. Just so this record's clear, at any time
15 between 1417 and 1612 that day, did you yourself have
16 any reason whatsoever to call Lieutenant Brannon? Yes
17 or no?

18 A No.

19 Q And just so we're clear, did anybody working along
20 beside you, Dr. Jansen or your husband, Nurse Joe, in
21 between 1417 and 1612, that fateful Friday, call
22 Lieutenant Brannon for any reason, to your knowledge?
23 Yes or no.

24 A Not to my knowledge.

25 Q We'll broaden things out to any date prior to

1 February 24, 2012. Okay? So, we're looking backwards.
2 Prior to that fateful Friday, had you ever had the
3 occasion during a shift in which you were earning a
4 paycheck for each hour that you worked there, did you
5 ever have occasion to call Lieutenant Brannon to seek
6 some sort of advice or consultation during one of your
7 performances of your licensed obligations as a nurse?
8 Yes or no.

9 A I probably have, but I couldn't tell you the
10 instance. But basically, no. We had a lot in that E.R.

11 Q And who, within the four walls of the emergency
12 room, on that fateful Friday, between you, your husband,
13 Nurse Joe, and Dr. Jansen, was ultimately responsible
14 for the patient or patients that were in there?

15 A Who was responsible?

16 Q Yes, ma'am.

17 A For treatment?

18 Q Yes, ma'am.

19 A It would be the physician who orders the treatment.

20 Q That was Dr. Jansen.

21 A Correct.

22 Q Now, there were some questions by prior counsel
23 about whether or not Mr. Hunt knew that he was in
24 Beaufort. Do you recall that?

25 A Yes.

1 Q Could Mr. Hunt, on February 24, 2012, tell you
2 exactly how long he'd been here?

3 A No. I didn't -- in fact, I didn't ask him. He
4 said he had been -- because he voluntarily said he had
5 come to visit his grandmother, and he had been there a
6 few days. That's all he gave me, so I didn't ask what
7 day did you get here. I know that he knew he was in
8 Beaufort, and he came to visit his grandmother.

9 Q Did he volunteer to you, on that fateful Friday,
10 that he couldn't remember exactly how long he had been
11 here?

12 A No, he did not.

13 Q That's your testimony as you sit here today?

14 A That's what I remember of it.

15 Q Do you recall giving a deposition in this case?

16 A I do.

17 Q Do you recall that deposition being on August the
18 19th, 2014?

19 A I know it was in the summer months. That's all I
20 know.

21 Q And you recall, when you gave that deposition, just
22 like we have a court reporter here today taking down
23 everything that's said, and just like you took an oath
24 here today in open court, do you recall subscribing an
25 oath before that deposition began?

1 A Yes.

2 Q And you swore that day, on August the 19th, 2014,
3 in your deposition, to give an accurate testimony. You
4 recall that?

5 A I do.

6 Q And you were given a copy of your deposition by the
7 court reporter, after it all got typed up into a nice,
8 little book. Do you recall that?

9 A I do.

10 Q Did you review that deposition transcript that you
11 were provided to see if it was accurate or inaccurate?

12 A I honestly read some of it. I didn't -- I didn't
13 read any more, because I was in school full-time, and
14 working full-time, and no, I didn't read the whole,
15 entire deposition.

16 Q Ma'am, on Page 94 of your transcript, I asked this
17 question to you.

18 A Okay.

19 Q Question: What else did Mr. Hunt tell you
20 during that time frame?

21 Your answer, beginning at Line 12, was as follows:

22 Just that he had -- I asked him what
23 -- what his -- did he have a wife, did he
24 have a family. And he told me he was here
25 visiting his grandmother. I believe he

1 *said he came from Sumter.*

2 A Sumter.

3 Q *He must have been staying in Sumter, and*
4 *came down to visit his grandmother, but*
5 *couldn't remember exactly how long he had*
6 *been here.*

7 Question: --

8 -- had been there.

9 Question: 'There' being Beaufort?

10 Answer: Yes.

11 Do you recall giving that testimony?

12 A Yes.

13 Q Is it fair to say that Calvin Hunt couldn't
14 remember exactly how long he had been in Beaufort?

15 A No, he really didn't know. He said a few days, so
16 I'm assuming -- that's what he told me.

17 Q Your testimony here today is that he told you a few
18 days?

19 A Said he didn't know exactly how long it was, right.

20 Q Well, ma'am, there's a difference between not
21 remembering and not being precise. You agree with that?

22 A There is.

23 Q On that day, did Calvin Hunt just couldn't
24 remember, like you told me in your deposition, or was he
25 just not precise, like you're telling us here today?

1 A Well, he wasn't precise. He knew he was in
2 Beaufort. He come -- he came to -- from Sumter to visit
3 his grandmother, but he didn't know what day that he
4 came here. So, yes, I guess I wasn't being precise, but
5 he was here for a few days.

6 Q Do you recall, in your deposition, that my next
7 question was:

8 *Did that concern you that he didn't*
9 *know how long he'd been in Beaufort, South*
10 *Carolina?*

11 And your answer was:

12 *A little bit, yes.*

13 Do you recall that question and answer in your
14 deposition?

15 A Yes. Yes. I do.

16 Q So, your concerns at that time, on that fateful
17 Friday in February of 2012, was because he was imprecise
18 with when he got here, or was it a concern, because he
19 couldn't remember?

20 A He couldn't -- he was imprecise in exactly how long
21 he had been here, which is a little upsetting. It can
22 be a little upsetting, but his stress level could have
23 been high, as well, so.

24 Q Ma'am, with respect to a mental health patient, if
25 you were aware that, that patient was going to be

1 admitted, an in-patient admission of some sort, and you
2 saw that person walking towards the door of the
3 emergency room, would you let them go, or take steps,
4 even as simple as talking to them, to not let them go?

5 A It would depend -- seriously, it would really
6 depend on their demeanor and what they were doing. Some
7 -- if you keep someone -- you try to keep them as
8 relaxed as possible. You don't want them to act out.
9 There's no T.V.; there's nothing there. He had been
10 there for several hours, but I would have probably let
11 him go, as long as -- it wasn't my choice.

12 Doctor -- or, you know, or, Mr. Ray went with him,
13 to the outside. He was escorted. He wasn't alone. He
14 wanted to, from my idea, he wanted to walk in the
15 hallway. There's vending machines there. It's -- he
16 had -- it wasn't unreasonable, because he was there for
17 nearly two hours, already.

18 Q As the only patient in the E.R., correct?

19 A Correct.

20 Q And when Mr. Hunt left the emergency room that day,
21 did you know or did you not know that he was going to be
22 admitted? Yes or no.

23 A No, I did not.

24 Q You didn't know he was going to be admitted.

25 A No.

1 Q Let me ask my question. If you had known that he
2 was going to be admitted, and you had seen what you saw
3 that day of Calvin Hunt walking out the door of the
4 emergency room, would you have taken any affirmative
5 step to tell him to stop?

6 A No. Because at the time, he was just like you and
7 I.

8 Q Even though, when he was sitting between you and
9 the door in triage, you got a little afraid of him,
10 correct?

11 A Well, that's normal. I was told not -- not to
12 triage someone up there by myself.

13 Q Have you ever triaged a patient in this triage area
14 of the emergency room by yourself before?

15 A Yes, on occasion, I have. I was notorious for
16 that, and I never had any problems with it. I never
17 felt uncomfortable.

18 Q Until that day, with Calvin Hunt?

19 A Well, I was slightly afraid of him, just because of
20 that behavior. But you know, like I said, frustration
21 can do that, as well. And he had -- if he wanted to go,
22 he could have went through -- I mean, triage is right
23 there. There's no one, except in the back. He could
24 have run out the ambulance back or the hall door, which
25 is right across there.

1 Q But you thought he was following directions that
2 day.

3 A He was.

4 Q You asked him to come from the hallway to the
5 triage, correct?

6 A I did.

7 Q You asked him to go to Bay Number 4, correct?

8 A That's correct.

9 Q You asked him to sit on the side of the bed in
10 Bay Number 4, correct?

11 A That's right.

12 Q Based on your dealings with Calvin Hunt that day,
13 did you believe he would adhere to the instructions of
14 the other folks working in there?

15 A Yes.

16 Q Do you have any reason to believe otherwise?

17 A I do not.

18 Q There was discussion earlier about how Mr. Hunt had
19 come in voluntarily. Do you know who had driven him
20 that day to the Naval Hospital, Beaufort?

21 A Well, I found out last week that his sister drove
22 him there. I had no idea. I thought Mr. Ray brought
23 him in.

24 Q Will you agree with me, ma'am, when patients come
25 into an emergency room voluntarily, they may need to be

1 warned against leaving, if they may post a danger of
2 harm to themselves?

3 A They -- no, you wouldn't warn them, because they
4 wouldn't listen to you. You know, they -- they're not
5 -- he was competent at the time. If they're incompetent
6 or they're acting out or they're belligerent, you would
7 call the front gate, and we would send the -- well, the
8 guards and the PMO. Or you know, you could get an order
9 from the physician that, that was -- for restraints or
10 chemical restraints. But that wasn't required that day.

11 Q So, you believe no warning was required, correct?

12 A Right.

13 Q If Calvin Hunt, who was waiting on admission to a
14 psychiatric bed, had asked you if he could leave, would
15 you have warned him not to leave the premises of the
16 Naval Hospital?

17 A You cannot stop him. He was not committed at that
18 time. He was not -- I would let him go out. With the
19 knowledge that I had at that moment, I didn't know he
20 was going to be admitted. He needed blood work yet. He
21 needed orders for lab work and urinalysis, which were
22 not done and not ordered. And that doesn't happen until
23 the physician speaks with the psychiatrist, and she
24 says, okay, we're going to admit him. You know, we'll
25 try to get a bed. That's -- that process doesn't even

1 start 'til after the fact.

2 Q Ma'am, it's been a long day.

3 A It has.

4 MR. HOYLE: I have no -- I have no further
5 questions.

6 BY THE COURT:

7 THE COURT: Okay. Re-cross?

8 MR. LOVELL: No, your Honor.

9 THE COURT: All right. And is this witness free to
10 leave?

11 MR. HOYLE: This witness is released from her
12 subpoena, your Honor.

13 THE COURT: Very well. Any objection?

14 MR. LOVELL: No.

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

16 Ladies and gentlemen, we are about 25 minutes until
17 5:00, and we have two choices: to begin the next
18 witness, which we will not --

19 JANICE MCDONALD: I'm sorry.

20 THE COURT: I know, it's very gracious of you not
21 to walk in front of the jury while I was speaking. I
22 appreciate that.

23 And we would not, of course, conclude that.

24 I do need you to stop for that, if you would. If
25 you'd wait for me just one second, please. Just one

1 second, please.

2 But and there are matters that I need to attend to.
3 So, in scheduling the next witness or scheduling the
4 rest of our day, it seems, rather than begin a witness,
5 and probably not complete the direct examination, it
6 just makes sense for us to do some work that we must do,
7 and let you begin when you can hear the entire testimony
8 of the witness in the morning. It just makes sense.
9 And we'll take it up early.

10 There are some things that I can attend to that
11 you'd have to probably wait a little bit of time while
12 we did that. We would probably come in early, but you
13 might need to wait a little bit, also, while we
14 accomplish that work. So, scheduling this matter, it
15 just makes sense to let you all go just a few minutes
16 early, and beat the 5:00 o'clock traffic, maybe.

17 So, with that in mind, ladies and gentlemen, we're
18 going to be back at 9:00 o'clock. At 9:00 o'clock.

19 Oh, yeah, people want to know are we coming in
20 Saturday. We're not going to come in Saturday. Let me
21 tell you why. Because the lights and the heat and the
22 air conditioning are controlled in Tahiti in this
23 building. I'm teasing. It's not Tahiti, but it's done
24 by a computer guru in, like, Atlanta somewhere. Yeah,
25 like, Atlanta. A computer in Atlanta, and the computer

1 in Atlanta thinks we won't be here on Saturday. So, you
2 know, it would kind of be interesting for us to have
3 trial by candlelight or flashlight, you know. It's
4 October, I suppose. But it never works out well. It
5 really doesn't, so, to get a building of this size up
6 and operational, is just, honest to goodness, not worth
7 it. Because it just doesn't seem to work very well.

8 So, we will not be here Saturday. We will be here
9 Monday, probably. And so, for those of you that wanted
10 to know that information, there you have it. We will
11 not be here over the weekend, because it's practically,
12 if not impossible, it's extraordinarily difficult. So,
13 I share that with you.

14 Now, curiosity, of course, is going to be high.
15 And remember, put it on the judge. I don't want anybody
16 upset with my jurors. You must not discuss this matter
17 or allow anyone to discuss it with you. You must not
18 read anything. You must not listen to anything about
19 this case as to radio, the television, the newspaper,
20 Internet. You must not do any investigation. You must
21 not do any Columbo. Do not go to the Internet looking
22 up words, looking up phrases, doing any sort of
23 investigation. You must receive all of this information
24 from which you will make up your minds, all of it, here
25 in court, while court is in session.

1 So, ladies and gentlemen, with that admonition,
2 please remember to leave your notebooks in your seat.
3 We will secure them over the evening, and we will return
4 them to you in the morning. Have a lovely evening. I
5 look forward to seeing you in the morning at 9:00
6 o'clock.

7 JURORS LEAVE COURTROOM 4:39 P.M.

8 BAILIFF: Jury is clear, your Honor.

9 THE COURT: Wonderful, wonderful. Ms. McDonald?

10 JANICE MCDONALD: Yes?

11 THE COURT: I need to -- we are really not putting
12 you in a very comfortable situation, because obviously,
13 your husband is our next witness, and it's not
14 appropriate for you to talk about your testimony, and
15 that's just awkward. I'm going to take the blame bus in
16 a minute, because I'm going to explain that to him,
17 instead of causing you to have to do that.

18 JANICE MCDONALD: You know, to be honest, Judge, he
19 doesn't really want -- he doesn't talk about it.

20 THE COURT: I understand that, but you know what?
21 I just don't want to be -- I'm uncomfortable putting you
22 in that position, so I'd rather be the one to say,
23 honey, we can't talk about that this evening. So, I'll
24 be doing that.

25 JANICE MCDONALD: Okay.

1 THE COURT: Instead of you. Not -- exactly, not --
2 it's just unfair to you, and I'm going to do that. I'm
3 going to be the person to deliver that exciting news to
4 him. And again, it puts you in a difficult position,
5 but I am sure that, in your lives together, you have a
6 lot more that you can talk about than this.

7 JANICE MCDONALD: This is true.

8 THE COURT: I could offer up a number of topics.
9 The sadness at which the Yankees played in that game two
10 nights ago. It was so sad. It could -- it's worthy of
11 conversation for many hours. It was so sad that the
12 Yankee fans themselves, who are true blue, began to boo
13 their own players. It was so very sad. That's
14 heartbreaking. It was heart-wrenching. But in any
15 event, I'm just going to invite him to come on in. And
16 you can stay here, too. Yeah, absolutely.

17 MR. HOYLE: Your Honor, may I personally be excused
18 for a comfort break?

19 THE COURT: Of course.

20 MR. HOYLE: Thank you.

21 THE COURT: Anybody else can, too. I'm just -- Mr.
22 McDonald, how are you?

23 JOE MCDONALD: Fine. How are you?

24 THE COURT: You look remarkably fresh to have been
25 here all day, let me say.

1 JOE MCDONALD: I took a catnap out there.

2 THE COURT: I'm Diane Goodstein. Obviously, I am
3 the presiding judge in this trial, and your lovely bride
4 has been with us, obviously, for a while, and she still
5 looks remarkably beautiful and fresh. So, we haven't
6 caused her too much angst, because she looks lovely and
7 wonderful. But because we are about to -- you all are
8 about to leave for the evening. You will return in the
9 morning. She will not, because she doesn't want to come
10 back. She hasn't told me that, but I just presume she
11 has other things to do. You, on the other hand, we're
12 just so excited to see you in the morning at 9:00
13 o'clock.

14 JOE MCDONALD: Yes.

15 THE COURT: Because I am mindful that we are
16 putting a couple in a really kind of creepy position
17 where you cannot talk to your wife about something
18 that's just happened in her life that she's testified in
19 this case. And I wanted to be the person to take that -
20 - to do that, to say, honey, we can't talk about that
21 tonight. In other words, you are not -- she is not
22 allowed to discuss with you her testimony today. And I
23 wanted to be the one to deliver that, instead of her,
24 just so you would know it's coming from me, and not from
25 her.

1 And the reason for that, just so you know, is that
2 I issued an order earlier today sequestering witnesses,
3 which is at my discretion. And so, that puts the two of
4 you in a really awkward situation. But as I mentioned,
5 before you walked in here, I am quite confident that the
6 two of you have many other topics that you can talk
7 about, rather than her testimony today or this
8 particular trial. I am quite confident of that.

9 I even -- I offered up a topic, the miserable
10 nature in which the Yankees played two nights ago, to
11 the extent that their own loyal, true-blue fans were
12 booing their own players. It was -- it was really sad.
13 I witnessed it all. I saw it all. I offer that up as a
14 topic for you this evening, but I'm quite confident for
15 you all can come up with that, or many other topics.

16 But you may even be asked under oath tomorrow
17 morning whether or not you all discussed this case, so I
18 wanted to just let you know in every way that I knew
19 that it is not appropriate for you all to talk about
20 your testimony, the two of you to talk about your
21 testimony.

22 JOE MCDONALD: Okay.

23 THE COURT: Having said that, I know of nothing
24 that would keep Counsel, if they choose to talk to you,
25 talk to you. I think that's -- there's no prohibition

1 in that at all. But the witnesses are sequestered,
2 whether or not lawyers -- you choose to talk to lawyers
3 is up to you. So, I did want to share that with you.
4 But with regard to your bride, you all cannot talk about
5 this case or this testimony, her testimony here today,
6 this evening. So, please keep that in mind.

7 JOE MCDONALD: Okay. See you tomorrow.

8 THE COURT: You all have a lovely day. I'll see
9 you in the morning.

10 JANICE MCDONALD: Good night.

11 THE COURT: All right. Any additions or exceptions
12 from the Plaintiff?

13 MR. HOYLE: None from the Plaintiff.

14 THE COURT: From the Defense?

15 MR. LOVELL: None for the Defense, your Honor.

16 DEPOSITION OBJECTIONS:

17 THE COURT: All right. Depositions. All right.

18 Okay. Page and line designations. All right,
19 which one do you all -- you want to go to the
20 Plaintiff's or the Defendant's first? Let's do the
21 Defendant's objections to the Plaintiff's first. That
22 way, we'll get the Plaintiff's.

23 MR. MACKELCAN: Your Honor, should we just go in
24 order of the document?

25 THE COURT: I think so, because you all have got --

1 well, no. Let's just do it -- let's just all give out.
2 Let's go with who the order of witness, order of battle,
3 as it's called.

4 MR. HOYLE: And with the caveat that we may need to
5 deviate from this.

6 THE COURT: Absolutely.

7 MR. HOYLE: And I just don't like being in boxes.

8 THE COURT: Not a problem. Not a problem.

9 MR. HOYLE: So, I think that the logical person to
10 start with would be Arthur Manning.

11 THE COURT: Who, now? Mr. Manning?

12 MR. HOYLE: Mr. Manning.

13 MR. MACKELCAN: It didn't happen.

14 THE COURT: Huh?

15 MR. MACKELCAN: It didn't happen.

16 THE COURT: Okay. Who's next? Oh, yeah. So, with
17 Mr. Manning, with the designations that Defendant gave
18 you for Mr. Manning, do you have -- does the Plaintiff
19 have any objections to the designations that the
20 defendants have propounded for Mr. Manning's deposition?

21 MR. HOYLE: And that's what we're trying to
22 ascertain right now, Judge.

23 THE COURT: I know. I know.

24 COURT REPORTER: Mr. Hoyle, I didn't understand
25 that. Do you what? I didn't understand what you said.

1 MR. HOYLE: I said, no. I said, no, that's the
2 easiest answer here, no.

3 THE COURT: Okay. Good. That works.

4 MR. HOYLE: And just for planning purposes, we do
5 not have a video of Mr. Manning. I think, in the 30-
6 plus depositions taken in this, this is the only one not
7 on video. And so, it will need to be read.

8 THE COURT: Sounds good. All right.

9 MR. HOYLE: This will be the first time we've
10 agreed on anything.

11 MR. MACKELCAN: You didn't find any? You don't
12 have that, either? I'm kind of flipping.

13 THE COURT: Shh, shh, shh, shh. Don't ask again.
14 Next.

15 MR. HOYLE: There are objections to Dr. Hendelman,
16 your Honor.

17 THE COURT: Do what, now?

18 THE COURT: There are objections with respect to
19 Dr. Hendelman.

20 THE COURT: Okay. That would be the next witness,
21 then, is Doctor?

22 MR. HOYLE: Beverly Hendelman.

23 THE COURT: Hendelman. Dr. Beverly Hendelman.
24 Gotcha. Gotcha.

25 MR. HOYLE: It's late in the day. I apologize,

1 Judge. I'll speak up.

2 THE COURT: No. No problem. Do you have the --
3 I'm looking for the page.

4 MR. LOVELL: It's on Page 47 of -- I think I gave
5 you our one yesterday.

6 THE COURT: Got it. Yes. I'm there. All right.

7 MR. LOVELL: And Judge, these all go to sort of
8 what we talked about earlier, that is an ordinary
9 negligence case, and that this doctor is being asked
10 repeatedly through all this line of testimony to give an
11 opinion as a psychiatrist of either what she would do
12 individually in her office, if someone showed up; or,
13 what she, as a psychiatrist, you know, would do, under
14 the certain twist of hypothetical that are sort of asked
15 in this line of questioning.

16 And again, the standard of care of a medical doctor
17 or psychiatrist is not the standard for which or by
18 which this case is going to be decided. So, our
19 objection to, really, the whole line of testimony with
20 Dr. Hendelman in general was that she's asked a lot of
21 questions about whether it's appropriate to admit this
22 guy, or should he be admitted, or what she would do if
23 security, if somebody, presented in her office like
24 this. And it's all a psychiatrist giving opinions on
25 what a psychiatrist would do, not an ordinary person.

1 THE COURT: Okay. I got it.

2 On Page 26 it says:

3 *Based on this document alone, is it*
4 *your testimony that it was a requirement*
5 *that Calvin Hunt be admitted?*

6 What document are you referring to?

7 MR. HOYLE: It is the physician record, your Honor,
8 where -- where when --

9 THE COURT: Okay.

10 MR. HOYLE: -- when Dr. Jansen -- I'll show it to
11 you, if you want, but it's come to me. That, when Dr.
12 Jansen writes, and *thoughts of hurting others*, that's
13 what is being referenced.

14 THE COURT: Okay. Is it testimony in this case
15 when Dr. Jansen wrote that note?

16 MR. HOYLE: The testimony is that he wrote that
17 note beginning at 1450, or 2:50 in the afternoon, on
18 this Friday.

19 THE COURT: Okay.

20 MR. HOYLE: And Dr. Hendelman was actually
21 consulted by Mr. Jansen on the telephone that Friday.
22 And Dr. Jansen subsequently writes in the records that
23 Dr. Hendelman had told me the patient obviously needed
24 to be admitted.

25 There's a line of questioning that begins a few

1 pages earlier about, you know, well, what does obvious
2 mean?

3 THE COURT: Oh, clear.

4 MR. HOYLE: Clear.

5 THE COURT: Clear.

6 MR. HOYLE: You know, what's the opposite of
7 obvious?

8 MR. LOVELL: The psychiatrist knows it's clear.
9 I'm not so sure that somebody off the street would think
10 so, but that's the whole point we're trying to make.

11 THE COURT: Yeah, I got it.

12 MR. LOVELL: There's only one that's a little bit
13 outside of that, and it's the reptile thing.

14 THE COURT: Reptile?

15 MR. LOVELL: The needless endangerment question at
16 the very end of all this.

17 THE COURT: Gotcha. Gotcha. Gotcha.

18 MR. HOYLE: And Judge, I think that the issue there
19 is, if you go back to Hardee, Chief Justice Toal talks
20 about the duty to the patient -- or, excuse me, the duty
21 to the foreseeable third party being the same as the
22 duty to the patient. And the line of questioning there
23 goes directly to that, about whether or not you would
24 keep somebody in there to protect others.

25 And Dr. Hendelman says, yes, you don't want to let

1 him out, because they can needlessly endanger the
2 public, but they can also hurt themselves. She makes
3 clear, at that point, that it's a -- you're doing those
4 -- you're keeping the mental health person present
5 within the facility to protect not only the themselves,
6 but also to protect those foreseeable third persons.

7 THE COURT: I gotcha. And tell me where that is.

8 MR. HOYLE: Bear with me, your Honor.

9 THE COURT: All right.

10 MR. HOYLE: This is here. Can you help me with the
11 page and line.

12 MR. LOVELL: Page 61, I think, at Line 7. This is
13 when they are talking about impulsiveness. The question
14 was asked:

15 *Would you proceed differently,*
16 *regardless of whether you recommend*
17 *admittance or not, would you proceed*
18 *differently if you knew he had a history*
19 *of impulsiveness, a history of violence,*
20 *multiple personality disorders? Would you*
21 *proceed differently with respect to the*
22 *patient who has all of those problems?*

23 *My concern would be to get them*
24 *admitted as soon as possible for*
25 *treatment.*

1 Then, it continues on over. I mean, she kind of --
2 in fairness to the doctor, she just basically says, I
3 admit, I admit, I admit, over and over and over and
4 over, regardless of what question you ask. But she was
5 asked this:

6 *Would it have been a safe thing to do*
7 *to have kept Calvin Hunt under close*
8 *supervision?*

9 Her answer:

10 *I would prefer to keep my patients*
11 *under close supervision when they tell*
12 *me that kind of information.*

13 And that was the hurt myself or others.

14 *When they say they have thoughts of*
15 *hurting others, --*

16 Yes.

17 -- would it be a reasonable thing to
18 do to take precautions to prevent someone --

19 THE COURT: Slow down a little bit.

20 MR. LOVELL: I'm sorry.

21 THE COURT: That is okay.

22 MR. LOVELL: It's on 77 at 8, your Honor.

23 *Would it be reasonable and the safe*
24 *thing to do to take precautions to prevent*
25 *someone like Calvin Hunt from leaving the*

1 facility, prior to him being admitted,
2 after he has indicated thoughts of harming
3 others?

4 She says:

5 I prefer to keep them under close
6 supervision, and stay right with them when
7 they have suicidal or homicidal thoughts.

8 And I think what you're talking about is on the
9 next page of my document at, it looks Line 211, Number
10 16. I'm sorry, Page 211, Line 16.

11 Should Calvin Hunt have been allowed
12 to leave the facility prior to being
13 admitted in Beaufort Memorial?

14 Answer: No, he shouldn't have been
15 allowed to leave.

16 Question: If someone comes to your
17 office and says that they have thoughts of
18 hurting others, and they have a history of
19 depression and a history of violence, been
20 in the psyche ward for prior occasions of
21 striking individuals, would you let that
22 person walk right out of your office
23 and go out to the public?

24 Answer: No.

25 Question: Because that would be

1 *needlessly endangering the public, wouldn't*
2 *it?*

3 *Answer: Yes. And the persons themselves.*

4 Of course, that's what she would do in her office.
5 That's a professional opinion.

6 THE COURT: Okay. In the prior sections, where
7 she's talking about I would admit them; I would admit
8 them; I believe that person should be admitted; I think
9 the person should be admitted; in the predicate
10 question. And there are a number of them. Such as, if
11 somebody is suicidal; somebody is suicidal/homicidal;
12 somebody is suicidal/homicidal/has PTSD; if somebody is
13 suicidal/homicidal/PTSD, and has anti-social behaviors.
14 I mean, there are a number of those questions for
15 predicates. Are there any that you object to because
16 the predicate includes something that is not shown in
17 terms of a record or something else in this case?

18 MR. LOVELL: No, your Honor.

19 THE COURT: Okay. Okay.

20 MR. LOVELL: The last set of the questions I read
21 were that he was -- the endangerment question was asked;
22 does have information that's not in the chart.

23 THE COURT: Okay. Well, no need to talk about
24 that.

25 MR. LOVELL: Right.

1 THE COURT: So, the first part there in -- they are
2 asked in terms of reasonable -- the questions are not
3 asked, interestingly enough, as you would an expert.
4 They're at is it reasonable, which is what's important.

5 Now, now, let me ask you this question. Did you
6 qualify the doctor as an expert, or is the doctor a fact
7 witness? And take some time to look at the deposition,
8 if you need to.

9 MR. HOYLE: Yeah.

10 OFF-THE-RECORD DISCUSSION.

11 END OFF-THE-RECORD DISCUSSION.

12 THE COURT: Was she qualified as an expert?

13 MR. LOVELL: Your Honor, I will start out just
14 saying, at the very beginning, Mr. Berlinsky was the
15 attorney for her.

16 THE COURT: Okay.

17 MR. LOVELL: She was asked:

18 *Did Mr. Berlinsky tell you any*
19 *questions you may be asked here today?*

20 Her answer was:

21 *Only that I would be asked about the*
22 *case, and asked what I know about the case,*
23 *and that's pretty much what he told me.*

24 And then, Page 19, Line 8, question:

25 *Dr. Hendelman, is it your understanding*

1 you're here testifying today regarding --

2 THE COURT: Yes, you know you have to slow down.

3 See? Remember brilliance?

4 MR. LOVELL:

5 -- regarding the events that transpired
6 involving Calvin Hunt on February 24, 2012 at
7 the Naval Hospital?

8 And she said yes. And she goes on to talk about
9 what her job was. But more importantly, at several
10 different times and occasions, she was asked about what
11 the E.R. people should have done.

12 THE COURT: Yes.

13 MR. LOVELL: There's a couple of them. I'll just
14 go to Page 78, Line 12. She goes -- she was asked the
15 question:

16 Based upon your knowledge, training,
17 and experience as a licensed medical doctor,
18 and as a psychiatrist, can you tell me
19 everything that Dr. Jansen should have done,
20 from the moment he learned that Calvin Hunt
21 had thoughts of harming others?

22 There was an objection.

23 Her answer was:

24 I can only tell you what I would do.

25 I can't tell you what he should have done.

1 He functions -- functions as an emergency
2 room doctor, and has a protocol that he
3 functions with. My function as a
4 psychiatrist, we have a protocol under
5 which I function with. So, I cannot tell
6 you what he should have done. He was an
7 emergency room doctor. I am a psychiatrist.

8 So. That kind of goes back to my objection. She's
9 testifying about what psychiatry would do, which is a
10 standard of care issue that, if this was a med mal case,
11 I'd probably be objecting she's not qualified to testify
12 about E.R. actions, because she doesn't know what they
13 do. And this is not a med/mal case, but she certainly
14 doesn't know what the common person does, because she's
15 not a common person. So, I don't think that --

16 THE COURT: Neither is Dr. Jansen either. Neither
17 is the nurse. Nurses aren't, either, common persons,
18 based on your objection.

19 MR. LOVELL: That's right. That's basically why
20 we've objected to all of this testimony.

21 THE COURT: Yeah, I get it. Yeah. So, she would
22 -- I don't know, would she qualify as an expert or not
23 qualify as an expert? I don't know. Survey says?

24 MR. HOYLE: Your Honor, I think, certainly --
25 certainly, I think we can agree she's a fact witness.

1 THE COURT: Exactly.

2 MR. HOYLE: She gave --

3 COURT REPORTER: I'm sorry, certainly you all think
4 she?

5 THE COURT: A fact.

6 MR. HOYLE: We can agree she is a fact witness.

7 THE COURT: Yes.

8 MR. HOYLE: I'll slow down. I'm sorry, Judge. I'm
9 sorry, Madam Court Reporter.

10 But this line of questioning that Mr. Lovell just
11 referenced on Page 78 about can you tell me everything
12 that Dr. Jansen should have done from the moment he
13 learned Calvin Hunt had thoughts of hurting others. I
14 think, based on her answer, any answer that she gave in
15 response to that may not have the appropriate
16 foundation. But I think there are other areas within
17 this transcript in which, even though she was not
18 formally qualified, we didn't stop the deposition and,
19 you know, say, at this time we move to qualify her as an
20 expert. That was not done.

21 I think that there are times here, based on her
22 education, training, and experience, she could be
23 qualified to render an expert opinion, if that was even
24 necessary. But I think what we've heard earlier today,
25 if I remember correctly, when we were talking about

1 these issues, was Saundra Smith, is that people can
2 comment about what their expectations are. And I don't
3 know that, that expectation is the same thing as a
4 standard of care. It's not the setting forth this is
5 the professional standard by which all other baseball
6 players or nurses or psychiatrists must hold themselves
7 out in order to be a competent professional. They can
8 offer what their expectation is, as to whether or not
9 another person involved had a particular factual
10 scenario, would or would not do.

11 THE COURT: Let me ask you this question. It
12 happened, somebody told me, at some point, that this
13 doctor was consulted?

14 MR. HOYLE: Yes. Dr. Jansen -- Dr. Jansen called
15 her on the telephone. He was relying on her expertise
16 as a consultant. That's how he refers to her, as a
17 consultant.

18 THE COURT: Okay. And so, she's a doctor. She's
19 there. She's -- okay. So, here's what -- here's what I
20 think that she absolutely can testify to. She's there.
21 She is a fact witness. And as a fact witness, she has
22 expectations about what should be happening. She's
23 called, she asked. She says this guy should have been
24 admitted. That's coming in.

25 What I'm concerned about, and I'm hoping that you

1 all can help me in this regard, I don't think it
2 matters, and I don't think it's admissible what some guy
3 walking in off the street some day in her office that
4 might say this and might say that, that might be
5 appropriate. Then, I think you have morphed into her
6 being an expert witness, and I don't know if she's
7 qualified to be an expert witness.

8 However, she is there; she has been consulted; she
9 is a doctor; that she is a fact witness. She can
10 absolutely testify, I was there; I was called; I knew
11 what was -- I knew this guy was on the premises; I got
12 called; he should have been admitted; he should have
13 been admitted; he should have been admitted. He should
14 have been admitted; he should have been watched; he
15 should have been admitted. And I think that's what
16 she's saying.

17 And so, that testimony, I think it's appropriate to
18 come in. I think it comes in under what -- and at one
19 point, the question is -- I love the question that says
20 what is reasonable and safe. All right. What's
21 reasonable? What's safe is okay. What is reasonable
22 and safe? If you've got somebody who's this guy, Calvin
23 Hunt, and she says, he's got to be admitted; he's got to
24 be admitted, so. And then, so, I hope you all -- with
25 that, I'm going to let you all sort of work through

1 this, this business about somebody come into your
2 office. How about the guy that comes, you know, in my
3 office, he's going to be admitted, I don't care about
4 that.

5 But based on your recollection of the events of
6 February 24, 2012, is it obvious to you that Calvin Hunt
7 needed to be admitted? It was clear that he had a
8 danger to self. Therefore, he needed to be admitted.
9 It was also clear that he presented a danger to others,
10 correct? I was aware of danger of self. I had not
11 heard of danger to others. Danger to self, danger to
12 others, gravely disabled requires admission to the
13 hospital.

14 So, I, you know, that's just ought to be admitted,
15 and that is my ruling.

16 Now, let me tell you -- let me go into what I --
17 based on this document alone -- you meant that document
18 right there, correct? When it says Page 26:

19 *Based on this document alone, is it*
20 *your testimony it would be a requirement*
21 *that Calvin Hunt be admitted?*

22 *Yes.*

23 *Based on the fact that he was a danger*
24 *to himself and danger to others, he needed to*
25 *admitted.*

1 Yes.

2 Why?

3 Because he was a danger to self and a
4 danger to others by his own admission. That
5 makes him in need of hospitalization. Somebody
6 comes into the E.R. with suicidal ideations,
7 and they have thoughts of hurting others,
8 it is obvious to you that the person needs
9 to be kept under close supervision.

10 I have no control over what goes on in
11 the emergency room. All I can do is say that he
12 needs to be admitted.

13 All right. Now, look at Page 27. We start talking
14 about this hypothetical person:

15 Now, ma'am, let me ask you this
16 question. I'm not asking about the emergency
17 room.

18 Then, when you start doing that, this person
19 becomes an expert. See what I'm saying? See the
20 difference?

21 Now, ma'am, let me ask you the question,
22 so it's clear. Let's say a patient came to
23 you and has thoughts of hurting others, has a
24 history of depression.

25 All of the sudden, we've got a hypothetical, and I

1 don't believe that you can ask -- and I might need to go
2 back and look, quite frankly. It's been a while since
3 I've looked it up, hypothetical. I know that each of
4 the facts has to be established, or will be established.
5 But I think hypotheticals being asked of experts, that's
6 the piece of it, that, that -- and I think that's
7 correct.

8 Remember when we used to play that game -- you all
9 don't remember that; you weren't born. You might have
10 been around.

11 MR. LOVELL: I was probably around.

12 THE COURT: We had to -- remember, you had to ask
13 the hypothetical, because you couldn't ask the ultimate
14 issue?

15 MR. LOVELL: Oh, yeah.

16 THE COURT: Yeah. So, you spent half a day arguing
17 over whether or not it had been established. Now that's
18 not the rule.

19 MR. LOVELL: I was so glad when that rule changed.

20 THE COURT: Yeah, me, too. So. All right. And
21 then, we go through if a patient came to my office. No,
22 I don't care about the patient in the office.

23 And then, 27, the truth is, when he really starts
24 to examine it, you could have even had an objection to
25 asked and answered. What is clear, and clearly

1 admissible, is when, after the point where it says,
2 based on this document alone, at Page 26, to:

3 *Yes, based on the fact that he was a*
4 *danger to himself and a danger -- that he*
5 *needed to be admitted, yes.*

6 Okay? Got it? Why? Because he is a danger to
7 himself and a danger to others by his own admission.

8 MR. HOYLE: And that continues, your Honor.

9 *And that's pretty obvious, correct?*
10 *because it is by his own admission.*

11 *Answer: That makes him in need of*
12 *hospitalization.*

13 THE COURT: Yep.

14 MR. HOYLE: So, we draw the line there.

15 THE COURT: Well, and you know, I don't know that,
16 that's where I'm going to stop the testimony, but what
17 I'm trying to explain to you all and trying to go
18 through it, is this business about this mythical patient
19 that's going to show up in her office. But when she's
20 talking about him and what ought to happen with regards
21 to his hospitalization; and he probably finds himself
22 talking about the fact, if she doesn't -- she doesn't
23 control his emergency room. Okay? But her testimony
24 that he needed to be admitted; he needed -- and she says
25 that in about 45 different ways. But when she is

1 referring to him that he needed to be admitted, and
2 she's talking about him, she is a fact witness. That
3 testimony is admissible.

4 If someone comes to a medical facility with
5 thought, hmm, out, because she's not -- again, because
6 she hasn't been qualified as an expert. And all of the
7 sudden, we're starting with these mythical people.

8 MR. HOYLE: In the future, we'll name our mythical
9 people. I'm teasing.

10 THE COURT: Call them Goodstein. Or Goldstein.
11 Both will work just fine.

12 Okay. Now. And of course, you're down in here on
13 Page 14. I mean, on 51 in Defendant's objections. It
14 really is shifted. Can you tell me what was discussed.
15 I gather these are conversations between the witness and
16 Jansen? Yes? No? Maybe? At Line 14, can you tell me
17 what was discussed.

18 MR. HOYLE: What is the page, Judge?

19 THE COURT: 44 in the depo.

20 MR. HOYLE: 44. I apologize. We're on the wrong
21 page.

22 THE COURT: I did that to you.

23 MR. MACKELCAN: I'm sorry. I think it's probably
24 Manning.

25 THE COURT: Oh, now, I've turned to somebody else.

1 MR. MACKELCAN: No, no. I think the person that
2 she is referring to is the psyche tech, Manning; not Dr.
3 Jansen.

4 MR. LOVELL: The psyche tech came to her; gave her
5 a history; she made the decision. And then, she talked
6 to Dr. Jansen, and said he needs to be admitted.

7 MR. HOYLE: And for predicate purposes, Judge, it
8 would be my intentions that we would read Mr. Manning's
9 transcript before we dealt with Hendelman, before we
10 played Hendelman.

11 THE COURT: Okay.

12 MR. LOVELL: So, your Honor, I think we can
13 probably withdraw that one on 44, Lines 14 through 25,
14 so.

15 THE COURT: Okay. And what significance -- see,
16 now, here we go. Let me ask you, what significance is
17 it that someone has a history of impulsiveness when they
18 have thoughts of harming? You're back to being an
19 expert. She's back to being an expert at this point.
20 She ain't going to qualify as an expert. What's the
21 significance of it? It's like, well, who cares? I'm
22 sorry, that's not fair to you, is it? Page 16. I think
23 everybody's arguing with me.

24 MR. HOYLE: 16. Your Honor, we could hook you up
25 to the big T.V., if you want, and then, we could all see

1 it.

2 THE COURT: I know. Then, we can all see what I'm
3 looking at. Exactly. See, did you all think -- I got
4 this cute little cheat sheet, and it's all the -- it
5 really is great. I would have never thought to have
6 done this when I practiced law with you all, I'm so
7 embarrassed to tell you. It makes all the sense in the
8 world. These are all the -- hello -- these are all the
9 lines and pages that I want; and then, these are my
10 objections to what you have. It's like, so brilliant.
11 You put it in one place, I don't know how to handle it.
12 I'm telling you, it really is --

13 MR. LOVELL: It's the world of E-Tran. You can
14 really do it, you can use the E-Tran cut-and-paste. It
15 works.

16 THE COURT: Oh, it's ridiculous, you all. I don't
17 even know what that is. Right. You have to understand
18 that, when I left, the word processor was still pretty
19 hot. That's not quite true, but Westlaw was a baby.

20 MR. LOVELL: Oh, yeah.

21 THE COURT: And laptops were remarkable, yeah. And
22 couldn't type. But I can now, a little bit.

23 MS. CASTLEBERRY: Your Honor, what page are you on?

24 MR. HOYLE: Can you tell us the page number of
25 Defendant's brief you're looking at?

1 THE COURT: Yeah. Have you got that? 52.

2 MR. HOYLE: Yes. So, we'll literally be on the
3 same page.

4 THE COURT: Literally.

5 MR. HOYLE: Literally.

6 THE COURT: All right. And then, see where it says
7 on Page 60.

8 MR. HOYLE: Judge, I would just note that the
9 Defendants have also designated similar testimony,
10 asking about what significance prior problems in the
11 medical records would have on the fact that someone who
12 presents a danger to others.

13 THE COURT: Got it. But guess what? You're out.
14 And then, look on -- see here, on Page 60, Line 25?
15 What significance is it that someone has a history of
16 impulsiveness, where they have thoughts of harm? That
17 really is asking for an expert opinion, and she's not
18 qualified as an expert. So, those will come out.

19 MR. HOYLE: Judge, I think, in light of these
20 rules, I think we can confer as --

21 THE COURT: I think so, too. I think you can, too.
22 In other words, if it has to do with, he should have
23 been admitted; he should have been watched; I knew it; I
24 was there; they called me; I tried to tell them; this is
25 what -- I don't control his emergency room; however, he

1 should have been admitted, should have been watched.

2 MR. HOYLE: That's what I expected.

3 THE COURT: That's what I expected; that's what I
4 thought would happen. That's what ought to happen.
5 Should have happened. Didn't happen. Okay.

6 MR. HOYLE: A mythical Joe Blow coming in off the
7 street as to someone, --

8 THE COURT: Right.

9 MR. HOYLE: We'll cut all that out.

10 THE COURT: And then, where it says, well, okay,
11 what if you knew this, what if you knew that, what if
12 you knew this. She's not qualified to as an expert.

13 MR. HOYLE: But conversely, just so we're all
14 clear, if someone said, did you know this about Calvin
15 Hunt, that would be in?

16 THE COURT: Absolutely.

17 MR. HOYLE: Okay. I think we're all on the same
18 page.

19 THE COURT: He's just a fact witness. Remember,
20 she is a fact -- whatever it is that she knew from her
21 five senses, whatever it was that she knew from having
22 been there that day clearly comes in.

23 MR. HOYLE: Judge, we've got a clip sheet of the
24 entire -- for Dr. Hendelman, it's an hour and 28 minutes
25 and 50 seconds. We will provide this to them, and we'll

1 go through and mutually agree what Mr. Knowles will cut
2 out tonight, so there will be no issue or delay.

3 THE COURT: That's sounds great. And let me tell
4 you what I think we need to do, because this was a
5 little bit of an issue, and my wonderful bailiffs helped
6 me again today. During the longer deposition this
7 morning, which I thought was a good idea to have a
8 longer deposition to play in the morning, to keep people
9 from getting groggy; but I thought, if you ever want to
10 keep them awake, that's the best time. So, I thought
11 that was smart planning.

12 I have absolutely no problem with -- and I think
13 that you should, both sides, because I know you all will
14 be in this situation, as well. About 45 minutes into
15 it, you can look at them, and when people start looking,
16 you know, like they've been out too late, it's time to
17 stop the deposition, even if they just stop, and just
18 say, your Honor, pursuant to your instruction yesterday,
19 we're pausing the deposition, just to let everyone
20 breathe for a minute. You know, blame it on me.

21 In other words, put it up here, because I don't
22 want the jurors to have an opinion about you doing that
23 from your instruction. So, 45 minutes or so, for you
24 all to just stop and let everybody -- because I mean,
25 just have them stop and stand up, and move around a

1 little bit, and sit back down. I'm not saying we're
2 going to take a big break, unless they need to.

3 MR. HOYLE: Judge, without dealing with any of the
4 objections, I think the longest deposition is Angelina
5 Brannon. She's the lieutenant you heard about earlier
6 this morning. We actually took her deposition on a
7 Sunday.

8 THE COURT: Okay.

9 MR. HOYLE: Two Sundays ago, before the flood.
10 She's an hour and 46 minutes currently. Hopefully, when
11 we go through and work through some of those objections,
12 that we'll trim down.

13 THE COURT: Okay. And just keep a watch out.

14 MR. HOYLE: That's why we brought this monitor,
15 because we do worry about their comfort.

16 THE COURT: Yeah. Yeah. Right. Well, unless that
17 monitor zaps little electrical currents or whatever,
18 probably need to stop.

19 MR. HOYLE: Can we install that in the chairs,
20 Judge? As long as I control the button, I'm fine with
21 it.

22 THE COURT: No. However, having said that, we can
23 make them stop and break, which will be great. I just
24 noticed that day, and our bailiffs were just kind enough
25 to remind them, please don't concentrate with your eyes