

1 going to happen with traffic and you're going to be
2 15 to 20 minutes late and then we don't start at 9.
3 Okay? So everybody in here at 8:45 and you'll come
4 in that back door. Thank you guys and be careful
5 going home.

6 (PROCEEDINGS ADJOURNED)

7 (3-3-23) (JURY NOT PRESENT)

8 THE COURT: Anything, guys, before we bring the
9 jury in?

10 MS. RICH: Yes, sir. We have a video of the
11 Comfort Inn that the Defendant stipulated to
12 yesterday. However, this additional video from the
13 Comfort Inn that we did not know about and
14 Detective McCullough had that we became aware of
15 yesterday, so we're going to introduce it.

16 And we asked the Defendant if they wanted to
17 introduce it and they said they might. So we
18 provided them to the Defense when we first knew
19 about them and we are now trying to -- we let the
20 person who would authenticate the video go. So now
21 we're trying to determine if those videos, if they
22 stipulate to the authenticity of those additional
23 Comfort Inn videos --

24 MR. JAFFE: May it please the Court? Judge, I
25 think this is very important to us and to the
26 Court, so I need to put it in some context. We did

1 get this yesterday. And while reviewing it, I
2 wanted to know when the detective testifies had it
3 because under a case I need to cite to you, it's a
4 Seminole United States Supreme Court case and it's
5 Kyles Versus Whitley and it was argued in 1994.

6 The opinion came out in 1995 and my reading
7 and I think most courts, all courts reading of
8 Kyles Versus Whitley says this that if the police
9 have it, then it doesn't matter, that they failed
10 to turn it over to the prosecutor. It's the same
11 thing as the prosecutor having it, but I wanted to
12 know more.

13 So I saw McCullough while we were arguing
14 about getting it 10 hours or so ago of the contents
15 and I saw him reading a report. And I said, can I
16 have a copy of the report and see it and he said
17 no.

18 THE COURT: A report?

19 MR. JAFFE: Yes, a report of the videos.

20 THE COURT: That he prepared?

21 MR. JAFFE: And he said it's work product. No,
22 because I wanted to know when McCullough got it,
23 Judge. Because under Kyles, U.S. Supreme Court
24 case, if Detective McCullough had it, then the
25 prosecutor, according to this case which I would

1 ask the Court to review again, he wouldn't tell us.
2 But we figured out from the tapes that we can't go
3 through 10 hours that quickly but Stephen --

4 THE COURT: How long is the additional tape?

5 MS. RICH: It's not long at all, and we can
6 show it to Your Honor.

7 MR. KNIZLEY: Seven and-a-half hours.

8 THE COURT: Seven and-a-half hours? You're
9 talking about sometime before the accident and way
10 after the accident?

11 MR. JAFFE: No, sir, immediately before and
12 immediately after, that's correct, different camera
13 angles. Let me just get the crux of our argument,
14 seven and-a-half hours. But regardless of whether
15 the prosecution had them or not, two things to say
16 about that please, Judge. It's not imputed that
17 they have under Kyles V. Whitley --

18 THE COURT: We will revisit that concept, but
19 get to the point.

20 MR. JAFFE: Whether they have the seven
21 and-a-half hours of video or not, they had the
22 report. There was a report that Detective
23 McCullough surely handed over, I guess I can
24 assume. I think we need to examine him so
25 presumably the prosecution at least has the written

1 report of what was on them and the times. I
2 haven't reviewed them, but Stephen has and Dennis
3 has.

4 MR. KNIZLEY: To a limited degree.

5 MR. JAFFE: To a limited degree. What I said
6 is it's extremely Brady material and Giglio
7 material, it's exculpatory and impeachment material
8 and that we cannot investigate now because we don't
9 have the opportunity to and therefore, we wouldn't
10 be able to adequately examine Mr. Davis which
11 Dennis is going to do.

12 And if you'll allow Dennis to explain why
13 it's exculpatory and why the investigation is
14 essential to our effective rendering of the Sixth
15 Amendment, Counsel, I would appreciate it.

16 THE COURT: Mr. Knizley.

17 MR. KNIZLEY: Your Honor, at about 6 p.m.
18 last night, we were wrapping up and as Mr. Jaffe
19 said, they asked for the stipulation they're asking
20 for this morning as to the three Comfort Inn
21 videos. We're only aware of one, the one the Court
22 has seen with the cars on the street. And not
23 getting into all the conversations that took place
24 there, I said, well, I want to see the other videos
25 and some discussion and then eventually Detective

1 McCullough downloaded on a hard drive of Mr.
2 Yeager's that video and we left around 6:15 or so.

3 Mr. Yeager, who is the information technology
4 assistant for us in this case, began to examine the
5 video to determine there were three different
6 camera angles. We had never seen it, not of what
7 we have seen before. This is inside the hotel, in
8 and out, inside the hotel, but that Your Honor has
9 seen.

10 And he alerted me to the evening what he was
11 discovering that he thought would be relative to
12 the matter at that point, the whole hard drive to
13 look at, and I'm relying on Stephen to do that.
14 But what he uncovered and I think Richard has
15 mentioned it, of course the foundation of the
16 Defense in this case is it was an intervening
17 factor by another driver, an operator of a vehicle
18 in a fashion that caused this wreck regardless of
19 the speed for intoxication or at least impact speed
20 and intoxication and the degree of recklessness
21 that Dr. Nakhla, whatever, engaged if there was a
22 mitigating factor. Of course Your Honor has seen
23 the video and Your Honor can assess that.

24 But then this video which has Mr. Davis on it
25 and his compadres on it -- and I say compadres, I

1 think that's what the video tells us --

2 THE COURT: Standing and walking around, or
3 are you talking about in the car pulling in?

4 MR. KNIZLEY: Standing, walking around in and
5 out of the hotel it appears.

6 THE COURT: After the incident?

7 MR. KNIZLEY: Immediately before and I think
8 the time range of the videos from Stephen, I
9 understand, is about 11 a.m. to 2 a.m. That's the
10 time range of the video. 11:30, I think, whatever
11 Detective McCullough felt appropriate to draw from
12 the videos at the Comfort Inn that he felt was
13 relevant to the issues which we now think they've
14 become extremely relevant to the issues.

15 We already had before this, in discovery,
16 some Facebook exchanges and what I said is Facebook
17 Messenger, a group text of sorts or phone-type
18 communication between Mr. Davis and Harry Matthews
19 who was here yesterday who is going to be offered
20 as a witness and Harry Matthews is in these videos
21 as well.

22 But what happens and there is language in
23 those Facebook videos where they talk about
24 somebody's alcohol use and drug use. But that, in
25 and of itself, may not have been enough to make a

1 reasonable circumstantial evidence -- to make a
2 reasonable deduction that Mr. Davis may have been
3 partaking in alcohol before or after this wreck.

4 But what we find in the videos is that Mr.
5 Davis is communicating with this group of people
6 that he socialized with throughout the course of
7 the evening which I think a reasonable subject on
8 the videos all going into the hotel rooms are right
9 by one another. That actually happens at 12:40,
10 okay.

11 About 11:30, there's a video, and of course
12 Mr. Davis is in communication with these people.
13 There is a video of -- I'm not sure Mr. Harry is in
14 that, but the group of compadres or someone appears
15 to be incapacitated, can't stand up, is being
16 helped down the hall, is being sat down and is
17 being taken into this hotel room where Mr. Davis
18 soon comes into. And then we have a depiction of
19 another individual at a later time coming down the
20 hall that seemed to be very very unsteady on his
21 feet.

22 THE COURT: Is that the driver Davis?

23 MR. KNIZLEY: It's not -- we don't know, but
24 I'll get to driver Davis in a moment. And then we
25 have a bunch of comradery and Mr. Davis is in the

1 videos.

2 THE COURT: Now, these are surveillance vidoes
3 from inside the hotel, like, in the lobby or
4 hallway area?

5 MR. KNIZLEY: Yes, sir, two different hallway
6 shots.

7 THE COURT: The additional video provided is
8 not of the incident with Mr. Nakhla's car but
9 really internal things happening inside the hotel,
10 that's what you're talking about?

11 MR. KNIZLEY: Yes, sir, and we would like to
12 play them and mark them as a Court's Exhibit to
13 this hearing if necessary. The reason they're
14 relevant and important to the Defense of the case
15 is whether or not Mr. Davis operated a vehicle in
16 such a fashion that a reasonable person, such as
17 Dr. Nakhla, driving on the highways would have
18 taken the actions no matter what the circumstances
19 would have been or the culpability of recklessness
20 that's alleged in this case. Also, in the
21 e-mail -- excuse me, in the Facebook that we
22 already had at about one hour after the wreck,
23 there is a photograph, and I don't know if it was
24 taken by Mr. Davis or not. Mr. Davis sees the
25 photograph, he's in the loop of the social media

1 exchange where a person is in the bed, in a bed. I
2 don't know what bed, okay, apparently unconscious
3 or sleeping with regurgitation, vomit around that
4 person.

5 THE COURT: Who is that? It's not the driver,
6 Davis?

7 MR. KNIZLEY: Perhaps it does appear to be
8 him and another person in the loop saying that's to
9 the effect that's why I don't use alcohol, I smoke
10 weed or something.

11 THE COURT: Is Davis in the picture at that
12 point?

13 MR. KNIZLEY: He's not in that picture. He's
14 apparently in the conversation is all we can say.

15 THE COURT: How do you know that?

16 MR. KNIZLEY: Because McCullough produced it
17 from Mr. Davis's Facebook account, and of course we
18 know Mr. Davis, in these videos we got last night,
19 we saw him with these people in and out these rooms
20 where this activity is going on. And then we know
21 Mr. Davis left the scene, we know Mr. Davis was
22 reluctant to talk to law enforcement.

23 Today we know that Mr. Davis had an uncle, a
24 police officer that we think would have some
25 investigations and counseled him not to speak to

1 police which certainly gives rise to a reasonable
2 concern that needs to be thoroughly investigated as
3 to maybe the reason is because he was associated
4 with these individuals we know for the first time
5 ever seeing last night.

6 THE COURT: Is Davis here?

7 MS. RICH: Yes, sir, he's going to be a
8 State's witness, so is Harry Matthews that had the
9 party and rented the room, Your Honor.

10 THE COURT: Go ahead, Mr. Knizley. I'm about
11 to tell you where we're headed but go ahead.

12 MR. KNIZLEY: Yes, sir. Your Honor, what a
13 portion of seven and-a-half hours was and when we
14 say seven and-a-half hours and Stephen Yeager, such
15 as in doing that, you don't look at something like
16 this once and he really has every frame of seven
17 and-a-half hours. You don't look at it twice. You
18 look at it three or four times in order to
19 determine what was going on with the critical
20 person that is a part of this case, Mr. Davis. And
21 we have to send investigators out to talk and
22 understand this is three and-a-half years, after
23 two and-a-half years after this happened.

24 The State has had this two and-a-half years.
25 If we had had it two and-a-half years ago, we would

1 be doing that investigation and further developing
2 the cross-examination, an investigation that is
3 relevant to this.

4 But it's blatantly unfair for us to be given,
5 at 6 o'clock in the evening, seven and-a-half hours
6 of stuff that's pertinent and relevant to the core
7 of the Defense's case and then expect to go forward
8 with the rest of the case without going back and
9 finding out, well, what is this all about.

10 And it is, you know, exculpatory. It's
11 impeachment material. It's Giglio and impeachment
12 material. It's Brady material, and there is so
13 much investigation that needs to be done and we
14 would have done it.

15 The Defendant has invested so much time and
16 resources in investigations and lawyers and
17 everything else that if it had have been Davis's
18 investigation and had we had this or weeks of
19 investigation, we would have to finally say how do
20 you -- where, what did you do, was the detective
21 there before when he -- or did he just go out and
22 come in, was he intoxicated or straight, what were
23 you people doing there.

24 And the last thing I will say is I have a
25 generation of disconnect with what young people may

1 do on Friday night that all live in a town -- that
2 live in one town and go rent a hotel room for
3 recreational purposes, I suppose. I don't know.
4 It may be some other person, I don't know, in an
5 area which I suggest is going to be demonstrated as
6 a drug area, a prostitution area and high crime
7 area. I don't know.

8 I think the evidence is going to show that
9 because of the generational disconnect or maybe
10 cultural, I don't know. But I'm inquiring of
11 people that age and I think in what people do most,
12 I think there is a reasonable assumption and
13 conclusion that if young people go congregate by
14 renting a hotel room in a town that they live in
15 and late night hours and compare that with the
16 videotape footage, that it's going to be a
17 reasonable conclusion with their investigation that
18 there may have been some consumption of the people
19 in that room, including Mr. Davis, a consumption of
20 either alcohol, drugs or something that would have
21 impaired their ability to operate a motor vehicle
22 and that is the crux of this case. We can't
23 go forward with any parts of the case without
24 investigating this. And for instance, we might be
25 able to determine why he fled the scene and why he

1 was reluctant to talk to the police when we can't
2 go forward with a 6 p.m., seven and-a-half hour
3 video that we really -- and Judge, Mr. Jaffe and I,
4 it's not something that we took lightly that we
5 have all been -- I have been in this situation with
6 Your Honor before. And I've been in this situation
7 in many many other cases and Mr. Jaffe has too and
8 it's very important and the Court has invested
9 time. Everybody has invested time in this case.

10 We feel our certain positions -- how the case
11 may come out, but we have to stop at this point and
12 say the remedy, it's very very unfortunate in this
13 case is a mistrial, and we're going to move for a
14 mistrial on the foundation of the cases that Mr.
15 Jaffe is appointed in, Judge. And that's the best
16 I could do factually from 6 p.m. last night to
17 basically 9 o'clock this morning.

18 THE COURT: I've got a plan for us there, and
19 I want to get to it because I want to get the jury
20 and get this plan under way. Go ahead, Mr. Jaffe.

21 MR. JAFFE: This case I was involved in
22 personally, Your Honor, it's State of Alabama
23 Versus Drinkard and I don't recall if it's Padgett
24 --

25 THE COURT: State Versus Padgett.

1 MR. JAFFE: In that case, Judge, the
2 prosecution had a type of blood sample, it's not a
3 DNA but a type of blood typing. And they waited
4 until a week into the trial and they disclosed it
5 then to the Defense and the Alabama Court reversed
6 that case for a new trial. I handled the trial
7 because of the late disclosure. I would like to
8 also cite the --

9 THE COURT: What is the cite on Padgett? I
10 want to go ahead to the plan that I've got. Go
11 ahead.

12 MR. JAFFE: State Versus Ellis, 165 So. 3d.
13 576, Alabama 2014. And please let us quote this,
14 and I'm not sure where it comes from. The Brady
15 Rule encompasses evidence known only to the police
16 and not to the prosecution and that's Kyles Versus
17 Whitley. Let me give you a good cite on that, 514
18 U.S. 419 (1995). So we don't have a choice, but I
19 agree with Mr. Knizley.

20 MR. KNIZLEY: Judge, I know you're in a hurry
21 --

22 THE COURT: I'm not in a hurry. I just have a
23 plan to address that, and I want to get underway
24 before we use up a clock this morning.

25 MR. JAFFE: At the very least, we believe Mr.

1 Yeager told us the State mentioned Mr. McCullough
2 had this in September and August of 2020 and his
3 worksheet that he would not give and we're not
4 faulting him for that. We think the Court should
5 look and make it a Court's Exhibit and it will show
6 how long the State has had this information.

7 MS. RICH: What we're talking about is video
8 and what we intend to introduce today is Channels 8
9 and 20. We do not intend to produce -- introduce
10 the other three videos, and we do have those videos
11 and they were not produced to the Defense until
12 this week.

13 THE COURT: Did the police have it though?

14 MS. RICH: Yes, sir, the police did have it,
15 absolutely, and the police provided it to Ms.
16 Wright way back when. And I'll make this a Court's
17 Exhibit, Your Honor, as his work product and the
18 other three channels, 6, 7 and 19 and what they
19 depicted. Okay. Channel 8 -- it's very
20 important to understand what is going on here, Your
21 Honor. Channel 8 depicts a vehicle that's
22 traveling, I submit, in front of Christopher Davis
23 going down the roadway.

24 And then you see Chris Davis enter the
25 screen. This is the front of the Comfort Inn, and

1 then you will see Chris Davis pull into the Comfort
2 Inn and drive through the front entrance. Then you
3 see Chris Davis run along the fence line to the
4 crash because we submit today that you'll hear
5 evidence that he doesn't go to the hotel room at
6 all. He goes out to his car.

7 The four individuals that were in the hotel
8 room come running down and meet him and they all
9 run to the front of the Comfort Inn because they've
10 heard a loud bang and they think it's a crash, and
11 they run out to the car. They see the crash.
12 There's all kinds of people there, so they don't
13 call 911 and they come back into the hotel.

14 15 minutes into the video you see the three
15 friends who are with Chris Davis -- I'm sorry, 21
16 minutes you see all four of the males walking back
17 from the front where the crash occurred to the rear
18 of the hotel from the crash scene. Okay.

19 And then on the second view that we provided
20 to the Defense, you see a vehicle pass and the
21 second vehicle is Chris Davis. You see the
22 Defendant's vehicle come into view and you see
23 Chris Davis enter the parking lot and he stops a
24 vehicle for driving to the rear parking lot, those
25 have already been seen in the Daubert hearing as

1 well.

2 The other three videos show the same four
3 people, the same four males, that's important,
4 okay, the same four males. And all they see is the
5 three males leaving the hotel room and running to
6 the stairwell. Okay. And then you see the four
7 males walking back, three males exit the room, come
8 out, meet Chris Davis in Channel 20 which they have
9 and then see those four males walking back to the
10 hotel room, Chris Davis and the same three males.

11 Okay. Channel 7 which we did not produce is
12 -- frankly, I didn't know about this until it was
13 shown to me yesterday.

14 THE COURT: Is this the one they're talking
15 about?

16 MS. RICH: Yes, sir. The officer had it,
17 that's the same three males running down the hall
18 to the stairwell.

19 THE COURT: The three males to include driver
20 Davis?

21 MS. RICH: No, that's the three males from
22 the apartment complex. The video they have shows
23 them leaving the complex.

24 THE COURT: Same unidentified three people?

25 MS. RICH: Yes, and the video they don't have

1 shows them running down the hall. And then the
2 video they don't have shows them running to the
3 stairwell, and then the video they do have shows
4 them at the stairwell meeting Chris Davis and then
5 the four of them running. So the only thing they
6 were missing, Your Honor, is the view of them
7 running after they came out of the hotel door,
8 running down the hall and running through the
9 stairwell, okay, and then exiting the stairwell and
10 then walking down the hallway going back to the
11 hotel room.

12 We have them walking back to the hotel room
13 in the video that was produced to them, the same
14 males -- and this is important, Judge. That's why
15 I need to put it on the record. Then the last view
16 that was not produced to them, you see the same
17 three males running down the stairs. We have them
18 coming out of the room, that was introduced to
19 them.

20 The only thing, they see them running down
21 the hall, running down the stairs coming out of the
22 stairwell. Okay. That's it, Your Honor. And
23 they've had all these Facebook records, the
24 throw-up and all that which the State concludes
25 that is not even relevant because Chris Davis is in

1 none of those photographs, and that's what it's all
2 about.

3 THE COURT: In terms of alleged new facts,
4 actually, there aren't any. They are not present
5 just because they have other views, essentially the
6 same conduct you say?

7 MS. RICH: That is exactly right, Your Honor.
8 And Your Honor, I think what's important is we were
9 not planning to introduce these all out of an
10 abundance of caution. We gave them to the Defense
11 last night, and that's where this issue came up,
12 and that is exactly what is identified in these
13 videos.

14 THE COURT: All right.

15 MS. RICH: Also, Your Honor, in regards to
16 him leaving the hotel that Mr. Knizley is saying
17 this has some bearing on, there's another video
18 that obviously Mr. Knizley and them haven't
19 discovered that shows Officer Estes at the scene
20 that actually shows Chris Davis leaving the hotel
21 in his car at 1:20 a.m., and it has already been
22 introduced in evidence.

23 And it shows Chris Davis leaving the hotel at
24 1:20 a.m. He's not at the party, the room, none of
25 those things, and he is going to be here to

1 testify. So Harry Matthews is the person that
2 rented the room, spent the night in the room, knows
3 about the drunk guys, and I submit it's irrelevant
4 about the drunk guys.

5 But if the Defense wants to ask them about
6 the drunk guys, he certainly can and one of them
7 lying in the throw-up, if he wants to ask him that,
8 of those individuals or whatever they want to make
9 it out to be, it has anything to do with Chris
10 Davis because he leaves at 1:20.

11 MR. KNIZLEY: Your Honor commented that she's
12 suggesting we had this video or from a different
13 angle that is 100 percent. I'm not saying that
14 that's true. I'm saying that is what she's
15 arguing. I'm trying to summarize her argument.

16 MS. RICH: I will say that that argument is
17 blatantly incorrect.

18 THE COURT: Look, verbally, both sides are
19 verbally arguing, guys, what's in the videos there.
20 I've got to look at the videos. We're spinning the
21 clock right now. And so what we've got to do --
22 look, just hold it. I'm not going to have a jury
23 sit in here for hours while we do this.

24 MS. RICH: I submit to Your Honor it wouldn't
25 take longer than 30 minutes.

1 THE COURT: Is it seven and-a-half hours of
2 new video?

3 MR. KNIZLEY: We got it at 6 o'clock last
4 night, six hours, seven and-a-half.

5 THE COURT: Judge Brooks is going to watch all
6 six hours of it today in open court, that's what
7 we're about to do. I'm going to place this jury in
8 recess and they're not going to come back until
9 Monday or Tuesday, that's what I'm about to do.

10 I'm not going to have either side -- I'm not
11 going to make any comments. The mission of this
12 case, the journey of this Court is to get at the
13 truth in the manner that the law requires us to
14 pursue the case. I am aware of Brady and Giglio.

15 There's nobody that respects the constitution
16 anymore than I do. I respect it as much as
17 anybody. I'm going to make sure the constitution
18 and the law are followed. I'm very familiar with
19 Brady and Giglio. I've got to look at the video
20 and I've got to look at it and the witnesses are
21 here right now.

22 So I'm going to give the Defense this option,
23 it's totally your option. You can bring all three
24 of these folks in, Davis, his father and his uncle
25 and Harry Matthews. You can bring them in this

1 morning before we play the video and it's totally
2 in your control. And then I'll watch the
3 video and then you can call them again and ask them
4 more questions this afternoon or Monday. I'm going
5 to allow you to call Detective McCullough this
6 morning or afternoon or both before and after we
7 watch the videos. I will recess the jury by
8 Tuesday if necessary. I'm not going to have a jury
9 sit here for eight hours -- it's wasting
10 everybody's time.

11 We've got to look at the videos to make a
12 decision. You're both arguing -- I don't know what
13 is in them until I look. And both of you are good
14 advocates, I will say this about the State and the
15 Defense. I've known Mr. Knizley for over 30 years,
16 almost 40 years, Ms. Rich, I've known for probably
17 25 years. I know both sides to be people of
18 integrity.

19 And there's no question in my mind as we
20 enter this process as we're doing the thing the
21 constitution requires us to do, and there's no
22 question in my mind about the integrity of either
23 side.

24 I don't think anything unethical probably was
25 done, but there may be evidence to the contrary,

1 we'll see, but I'll travel on the assumption there
2 was an inadvertent failure to disclose even if it's
3 inadvertent or Brady or Giglio.

4 There is still an issue that I've got to
5 figure out, I've got to work through and I'm going
6 to work through it and take those -- like, I'm not
7 going to try to get it fast, I'm going to try to
8 get it right. I will give you time to talk
9 privately if you would like.

10 And Counsel, just think about what you want
11 to do, do you want to look at the videos with Judge
12 Brooks and everybody else in open court and then
13 take depositions of the three people together that
14 are here now and I'll put them on hold? And
15 Detective McCullough, would you like to do all of
16 them, look now at the videos? I'll give you that
17 option. I do think I'll tell the jurors to come
18 back at 1 o'clock Monday if we do some things today
19 and then I'll determine, well, whatever is
20 remaining to be done by the Defense to avoid
21 prejudice could be done over the weekend.

22 I'm not saying I will determine that. I
23 don't know I'll determine it, it takes months of
24 work. And then we've got a situation we've got to
25 deal with listening to what the witnesses say, his

1 tone, what Detective McCullough says. Whatever the
2 Defense needs to do to rearrange their argument,
3 their examinations would be done over the weekend.

4 Then, you know, we could have the jury come
5 in Monday afternoon at 1 o'clock, resume the trial
6 at that point or if you think might need the
7 holiday Monday, we can start the trial back on
8 Tuesday. That's what we'll do. So I would ask the
9 Defense counsel privately what would you defer to
10 do. Do you want to look at the video now or exam?

11 MR. KNIZLEY: Again, we would like to have
12 five minutes on one other matter, on the Facebook
13 disclosure, the video link, the videos that are
14 taking -- this is from Mr. Davis's Facebook. There
15 are video links that says Chris Davis plays video
16 and they're not active on our end. They may not
17 have been active when Detective McCullough got
18 them. I don't know, but Detective McCullough is
19 shaking his head negatively. So I'm assuming that
20 he could not activate the videos.

21 THE COURT: Look, I'm going to have to look
22 at all that you're arguing. What's in it, I don't
23 know. We're doing the same thing again. I
24 understand you're doing your jobs. But there's
25 several layers here, is it Brady or Giglio material

1 and if so, has prejudice just occurred. If so,
2 that's the remedy, you know, so I've got to go
3 through this analysis.

4 And the first step for me is to understand
5 what has happened. I've got argument as to what
6 has happened, but that's argument. That's not the
7 evidence, that's the lawyers' argument. I've got
8 to look at it and hear what Detective McCullough
9 says, what the witnesses say.

10 My thoughts are that's the best process. I
11 will just tell you let's look at the videos, first
12 to examine the videos. We're waisting the morning.
13 We're not making time. I would rather get on to the
14 videos, look at it and put this jury in recess.
15 What I would say is plan on 1 o'clock Monday. I'm
16 going to ask every one of them to call my office
17 Monday morning at 10 to make sure we're still on
18 for 1.

19 I'm going to tell them it might be 1 o'clock
20 Tuesday and explain this to them. I'm not going to
21 say anything substantially about what happened
22 except I've got to take care of some matters that
23 have arisen during the course of the trial and it
24 can't be done for them waiting for hours and that's
25 all I'm going to say to them.

1 MR. KNIZLEY: Can we proceed with the videos
2 first?

3 MS. RICH: Your Honor, can we have them come
4 back at 9 on Monday?

5 THE COURT: Well, the problem is I don't know
6 what the future holds. I'm trying to build myself
7 some options depending on where this takes us.

8 MS. RICH: Could we have them call in Sunday
9 night?

10 THE COURT: How do I have them call me at my
11 house? I really don't think -- that would be
12 improper because I don't want to become a witness
13 of some sort as to people calling me at my house as
14 I have to work Sunday.

15 MS. RICH: Could they call Monday morning?

16 THE COURT: 9 or 10 o'clock, it's possible of
17 getting everybody here to start, like, the
18 situation did not arise because of the Defendant's
19 conduct. I'm trying to respond to a variable which
20 has been thrown into the middle of the trial
21 without the Court being able to prepare for it.

22 I've got to have some applicability to where
23 if the Defense hears -- I'm going to -- so we spend
24 six hours today looking at video, two hours in
25 testimony with Detective McCullough and the three

1 witnesses, so then I've got to make some decisions.

2 The Defense goes out and does this this
3 weekend, they're going to come back Monday morning.
4 No matter what I or you say, they're going to come
5 back Monday morning, we need to do more stuff, and
6 we're going to have argument Monday morning. It's
7 going to happen. We all are big boys. It's going
8 to happen.

9 I don't want the jury sitting back there for
10 three hours the way it's going right now -- I'm not
11 angry at anybody. There's no point in whining.
12 I'm going to have the jury down here at 9 on Monday
13 morning. They will come down and we'll argue about
14 it -- I know that's coming. I've been around here
15 too long.

16 So I'm going to put people in recess until 1
17 o'clock Monday. I'm going to ask them to call into
18 the office. Darlene will be in my office from 9
19 until 11 Monday. I'm going to tell them and I will
20 follow up, but I'm going to tell them to check in
21 about whether they know for sure they need to come
22 in Monday or Tuesday afternoon.

23 It may be that the Defense says, well, Judge,
24 we've done everything else outside in candor to the
25 Court, now we still want to talk to the witnesses

1 again, we want to take McCullough again and the
2 witnesses Davis and the other guy again based on
3 what we have done that weekend. I'm going to give
4 you that chance. Look, I have to abide by the law.

5 I have to make sure there's not a Brady issue
6 or Giglio issue and if there is, has the Defense
7 been prejudiced. I have to make sure that did not
8 happen. It's not taking sides one way or the
9 other, so it's the solution I have. So let's do
10 this.

11 (JURY PRESENT)

12 THE COURT: Come on in, everybody. Please be
13 seated, everybody. I hope everybody had a good
14 break overnight. I apologize for the delay.

15 I will tell you that, you know, whether it's
16 our justice system or simply human relations, in
17 the world of human affairs things are often fluid
18 and unpredictable. And so some things -- in that
19 context, I tell you that some things have been
20 brought to my attention which I've got to deal with
21 related to this case.

22 I'm not going to discuss with you what those
23 are. Nobody on either side has done anything
24 wrong, it's not for you to interpret that one way
25 or another. These things happen in trials.

1 After all this is over, I'll explain the
2 whole process to you, but I'm bound as the neutral
3 during the course of the trial. As I told you, I
4 have to be able to protect your state of mind as it
5 was at the beginning the case, you can render a
6 decision based only on what's presented in the
7 courtroom. So I don't want to talk to you about
8 extraneous things that are of no concern to you.

9 But some things have come up that I think are
10 going to take some time for me to deal with today.
11 And again, nobody has done anything wrong on either
12 side, and so I don't want you to leave with that
13 perception at all. That's not the case. It's on
14 me, this is my responsibility. Whatever is going
15 on now is my responsibility to make sure that
16 things are done according to the law.

17 And so rather than have you guys sit back
18 there for some hours, I just need to deal with
19 this. It is Friday, and you guys have worked
20 really hard. I want to really thank you, all of
21 you. You know, I'm approaching 150 jury trials
22 right now, 148 or something like that, 147 at this
23 point as a Judge. You've been as attentive
24 and hard-working and patient and cooperative as any
25 jury that I've had. So I thank you for that, and

1 I'm very sincere in saying that. You've paid
2 attention throughout and you followed every
3 instruction. You've been here on time every day.
4 I really appreciate it. But I'm not going to keep
5 you here while I have to take up some matters that
6 may take a good part of the day today. I'd just
7 rather you go on and be about your business, take
8 care of your personal affairs.

9 So what my plan is is I'm anticipating that
10 there may even still be some things for me to deal
11 with Monday morning. Again, I can't get into what
12 it is because I want you to base your decision
13 based solely on what's presented in this courtroom
14 from the witness stand and what's in the exhibits.
15 Okay? Bear with me. I've seen a lot of things, so
16 I'm trying to protect your status as it is now.

17 So what I'm going to do is place the trial in
18 recess until 1 o'clock Monday, okay, 1 o'clock
19 Monday. I'm going to ask you to call in to my
20 office Monday morning at about 10 o'clock. Okay.
21 My JA is going to get you a little piece of paper
22 with our phone number on it.

23 I'm going to get you just to wait in the jury
24 room here in a minute. She's going to give you our
25 office phone number and I'm going to get you to

1 call in Monday morning and confirm are we still on
2 for 1 o'clock. Because, frankly, I'm not even
3 going to have you come down Monday if it looks like
4 these things I've got to deal with may take beyond
5 1 o'clock. Once we get going again, I want to move
6 and move efficiently. I'm not going to apologize
7 to you.

8 You know, in the justice system, as I told
9 you, our mission is to do it right, it's not to do
10 it fast and that's what this is about. Okay. I
11 want to make sure things are done right, and so
12 we're going to take our time and we're going to get
13 it right.

14 So you'll call in about 10 o'clock Monday.
15 And if I believe by then that it looks like we're
16 not going to really start up with the testimony
17 promptly at 1 o'clock Monday, I'm just going to
18 have you come in Tuesday at 9 and just go on that
19 way.

20 I told you at the start of the case that this
21 was going to be a two to three-week trial, and
22 that's going to be the case. I didn't mince any
23 words about it. It is what it is. It's an
24 important case to both sides, and I appreciate your
25 patience.

1 So if you would, I will give you one
2 instruction as you leave. This case is receiving
3 intense media coverage, it is. And as I told you,
4 I sat right here where the lady is sitting right
5 here in the blue jacket. I told you in the same
6 exact chair in this very courtroom 25 years ago as
7 a juror in a capital murder case. I was the juror.

8 Amazingly, now, I'm the judge in the same
9 courtroom and that case received intense publicity.
10 I told you what I had to do. I did not watch the
11 evening news, the morning news. You can't do it.
12 I'm telling you. There's going to be a story on
13 these TV stations every morning, at the noon news
14 and the evening. You can't watch it. I'm
15 instructing you to not watch the news. You're
16 going to have to do it. You can do it.

17 Stay off of social media. Stay off the
18 social media. You will see something about this
19 case on it. People are going to ask you about it.
20 You cannot talk about it. Please help me protect
21 this process and let's keep your status just as it
22 is now. You've been religious about it for me,
23 you've done a great job. Let's keep it going.
24 Let's be strong, okay.

25 So I'm going to get you guys to wait in the

1 jury room, and then I'm going to give you a little
2 printed up piece of paper with my office phone
3 number and then you guys will call in at 10 o'clock
4 Monday.

5 Remember all the rules that I told you when
6 you were first seated that apply to your status as
7 jurors continue to apply to you. Don't talk about
8 this case with anybody. All right. Don't look up
9 anything about the case in any form or don't go to
10 the scene where these things allegedly happened.
11 Protect your state of mind the way it is now. And
12 I really appreciate your patience, okay. All
13 right, guys. I say guys, men and women.

14 (JURY EXITS THE COURTROOM)

15 MS. RICH: Your Honor, we're ready for the
16 video. And for the times that there's nothing
17 showing on the video, will we be allowed to fast
18 forward?

19 THE COURT: Say what?

20 MS. RICH: For the times where there's --
21 this is hallway footage, Your Honor, and stairwell
22 footage, so there's a lot of time where there is
23 nothing happening, no humans whatsoever. Are we
24 allowed to fast forward --

25 THE COURT: I assumed that.