

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.