

1 MR. KNIZLEY: Pass the witness.

2 THE COURT: Ms. Rich, Cross-Examination just
3 about the topics here?

4 MS. RICH: No.

5 THE COURT: Nothing? All right. Thank you,
6 Mr. Golson. You may step down.

7 THE COURT: Would you play that interview with
8 Detective McCullough and the guy on the morning of
9 the 1st which was the Sunday morning, play that
10 again for me?

11 MS. RICH: Just to be clear, it's the 2nd,
12 the morning of the 2nd.

13 THE COURT: It was the 2nd?

14 MS. RICH: Yes.

15 THE COURT: Okay. Yeah, I had the date
16 wrong.

17 (PLAYING VIDEO)

18 THE COURT: Ms. Rich, the Defense says, look,
19 we didn't have any notice at all that there would
20 be a potential that a witness would say -- that Mr.
21 Davis would say that he saw a drop-top, a
22 convertible, that's the first we heard of it, and
23 that was only after getting the videos Thursday
24 night.

25 What's your response to that? That's at the

1 heart of what they say caused them prejudice.

2 MS. RICH: Judge, they had every opportunity
3 to interview Christopher Davis. They had every
4 opportunity to interview Harry Matthews. Those
5 names have been known as well as all of these names
6 that they are claiming they have knowledge of. And
7 they could have interviewed them, including Roman,
8 the one that's offshore until March 15th. They had
9 the Facebook records.

10 The Facebook records were given to them,
11 there's 900 pages of it. I mean, there's a
12 plethora of Facebook records, they had all those
13 records. They could have interviewed every single
14 one of these names that was being communicated with
15 by Christopher Davis on or around the time of this
16 particular crash. They didn't, that's their
17 choice. But they can't now say that they're
18 prejudiced in some way when they had that
19 information to begin with. Absent the video, they
20 had that information.

21 THE COURT: Mr. Knizley, what's your response?

22 MR. KNIZLEY: Well, Judge, many, many names
23 on Facebook, many, many other names. We see from
24 this video where this gentleman identifies himself
25 in the hoodie who's actually Devin we think, now we

1 don't know. But the point of the prejudice from
2 the -- and by the way, Mr. Matthews, by their
3 exhibit, their exhibit they filed with the Court in
4 response to this motion is that Kobe Matthews was
5 not on Facebook. If you'll see their exhibit they
6 have -- where they talk about Kobe Matthews --

7 THE COURT: Okay.

8 MR. KNIZLEY: I'm going to give the Court a
9 moment to look at that.

10 MS. RICH: May I respond, Your Honor?

11 MR. KNIZLEY: I'm not through with the
12 argument.

13 THE COURT: Well, I'm going to let you
14 respond in a minute. I've got their page Doc. 214.
15 I can read it, but go ahead.

16 MR. KNIZLEY: That's not the point. The
17 point, Judge, is he comes up and interviews these
18 people and he's looking for Chris Matthews. And
19 this is not --

20 THE COURT: Chris Davis.

21 MR. KNIZLEY: Chris Davis, excuse me. This is
22 not Saturday morning. This is Sunday morning.

23 THE COURT: Sunday morning.

24 MR. KNIZLEY: We don't know what the
25 gathering of all these people are but when we get

1 the video, things change.

2 THE COURT: But you know there are vomit
3 pictures on August 1st, Saturday.

4 MR. KNIZLEY: There's vomit pictures, we're
5 not sure where the vomit pictures are. We may be
6 able to guess that there was a party there and they
7 should be vomiting. But I think what we do know,
8 though, when we get the videos, whoa, people can't
9 even stand up and are walking down the hall, they
10 had to drag him down the hall, maybe that vomit
11 picture is a lot more important now.

12 Let's go back and look at it, because all we
13 know, there was a vomit picture that somebody
14 vomited maybe, probably, probably around August.
15 But now things have totally changed, totally
16 changed.

17 When we get that morning -- not only did we
18 find out there's a party going on at 12:30 before
19 he gets there and there's some, you know, a good
20 deal of alcohol use apparently from this, then we
21 find out from the video that the driver that we are
22 focused on participates in the party. Whoa. Well,
23 wait a minute, that's after the wreck. We don't
24 know.

25 What happened before the wreck. Well, did he

1 go leave it -- there's a party with a lot of
2 drinking and throwing up and it's up here and he
3 goes up there and he joins that party for 40
4 minutes. Was he there already? It's 12:40 at
5 night, 12:40 at night. Maybe he was there before.
6 We don't know that. Now we need to go investigate
7 that.

8 We also go, wait a minute, this guy is
9 buddies with these people. We didn't know all that
10 beforehand because none of that came from that
11 video. We just know that he didn't even know his
12 brother-in-law's last name he said. Okay. Roman
13 doesn't even know him. Okay. But we went from the
14 witness stand up here and we find out he does know
15 Roman, that was the reason he was going there,
16 according to him.

17 If we would have known there was a gathering
18 going on up there of the nature that was going on
19 and Chris Davis was involved in it, participated in
20 it and we would have known that he may have talked
21 about that wreck with them and he may have had some
22 -- he may have been impaired in some fashion from
23 that -- and Judge, it's not only that, there's a
24 lot more investigation that arises from the
25 disclosure of the seven hours.

1 We just scratched the surface. And when we
2 scratched the surface, we made some progress in
3 saying, wait a minute, one of the guys there is now
4 telling us Chris Davis thought it was Matthews in
5 his convertible which certainly undermines his
6 testimony and certainly even without that testimony
7 puts him in very close proximity to the vehicle to
8 the extent he saw a convertible go past him. And I
9 don't think it's reasonable to say he saw it by
10 turning around looking. He was back there in the
11 ditch. He saw that convertible going past him, and
12 we don't know what else anybody knew.

13 We don't know what one of these other people
14 who may not have talked to Harry and went up and
15 said, oh, yeah, Chris came by about 8 and he had a
16 few drinks and went on. We don't know yet, he ran
17 out there to check it out.

18 THE COURT: All right. Anything else from
19 either side?

20 MS. RICH: Yes, Your Honor. This video is
21 proof-positive that La'jerric and Roman were
22 identified as being in those rooms that night,
23 okay, being in those rooms staying at this
24 gathering, get-together or whatever. So for them
25 to say we never knew about La'jerric and Roman,

1 it's right here on this video. They could have
2 asked Harry Matthews about this. They could have
3 asked Christopher Davis about this, and they could
4 have explored all of this and who else was at that
5 party from just this particular video alone, Your
6 Honor.

7 THE COURT: Anything else from either side?

8 MR. KNIZLEY: Judge, I think there was some
9 legal argument but factually I think that's it.

10 THE COURT: Okay.

11 MR. KNIZLEY: Of course, you know, I think
12 the prosecutor has already -- and the Court's aware
13 that the prosecutor has represented that Mr. Davis
14 wasn't cooperating with either side earlier --

15 THE COURT: Say that again.

16 MR. KNIZLEY: The prosecutor has told the
17 Court early on that Christopher Davis was not
18 cooperating with either side.

19 THE COURT: Right. I think you both have
20 pretty much agreed on that.

21 MR. KNIZLEY: Yes.

22 THE COURT: He wouldn't talk to anybody.

23 MR. KNIZLEY: But she mentioned I could have
24 talked to Chris Davis --

25 THE COURT: He went to his uncle who's a

1 former police officer.

2 MR. KNIZLEY: Right.

3 MR. JAFFE: Can we have about a 10-minute
4 break to talk about this?

5 THE COURT: Sure.

6 (BRIEF RECESS)

7 THE COURT: Some argument? Yes, sir. Please,
8 go ahead.

9 MR. JAFFE: Judge, just briefly, I think Mr.
10 Knizley did an excellent job of presenting the
11 facts that have been quickly developed, although
12 not in the manner that we needed development and
13 there's a lot more to develop.

14 But I'll start off by saying that in the 900
15 pages of Facebook, even isolating the portions the
16 Court has played, I don't think there's any way
17 that we could have known the significance of what
18 went on inside Comfort Inn and if anything did go
19 on involving the driver.

20 But I think 100 percent, without any
21 qualification, we can say without any hesitation
22 that had we received the videos, the three camera
23 videos, we would have immediately connected what
24 was going on in that Facebook exchange, Chris Davis
25 and those seven people involved in the rooms, and

1 then the investigation would have been paramount
2 and it would have been a top priority because it is
3 -- and there's never been a secret about this from
4 the beginning, our entire defense is what Mr.
5 Knizley expressed, which is either Mr. Davis
6 significantly contributed or even caused the wreck
7 that occurred irrespective of the speed of the
8 automobile, and that's our whole defense and it's
9 never been a secret.

10 So I want, just for a moment, to point out
11 and I won't belabor, beat over what we argued in
12 our brief that we submitted by 10 yesterday. But I
13 want to just mention a case that I have, not that
14 it matters, but I have a personal familiarity with
15 because I was the lawyer that handled the case on
16 the retrial that was reversed on the fact that in
17 Padgett V. State, it is in our brief. And in that
18 particular case, the State waited four days, four
19 days while they had evidence of a potentially
20 different blood type of Mr. Padgett.

21 The Court, the trial court, wonderful man, I
22 don't know if you know Judge Jeton in his lifetime
23 when he was an extraordinary judge --

24 THE COURT: That was the trial judge?

25 MR. JAFFE: Yes, sir. He's an extraordinary

1 trial judge, he's amazing, and we got to be very
2 close after the trial, of course. But we spent
3 two-a-half years spending a lot of time together,
4 with all mutual respect and stayed close. But what
5 happened was Judge Jeton, J-e-t-o-n, he said, look,
6 to the Defense, you've had a thorough and sifting
7 cross-examination of this person, this scientist or
8 forensic person that saw the two different typings
9 and that's all you needed.

10 And the Court who wrote the initial opinion,
11 Judge Monteil, not known to reverse a lot of cases,
12 but in that particular case he talked about -- and
13 every single day was a crucial day that the Defense
14 needed this information. That was four days, and
15 we didn't get this information until the middle of
16 the trial two and-a-half years later.

17 THE COURT: You got it four days before trial?

18 MR. JAFFE: I'm sorry, Judge?

19 THE COURT: In Padgett, you got it four days
20 before trial?

21 MR. JAFFE: I wasn't there. I was the lawyer
22 on the retrial, Judge. It was reversed. So the
23 lawyers got it four days--

24 THE COURT: Before trial?

25 MR. JAFFE: You know, that's a little

1 sketchy. I think it might have been in trial.

2 THE COURT: Okay.

3 MR. JAFFE: I think it was maybe after
4 openings.

5 THE COURT: Something like that.

6 MR. JAFFE: Early on in the trial, Judge. It
7 was probably a six-week trial. In Padgett, which
8 cites a number of different cases, and I want to
9 cite two or three cases in addition to Padgett. In
10 this case, the record shows the prosecution knew
11 the results of the second test four days before
12 telling the appellant. Because the trial was
13 already in progress when the State became aware of
14 the test results, each day the prosecution delayed
15 in telling the appellant was critical.

16 Also, the State's case hinged on the results
17 of the DNA. And skipping down two or three lines,
18 if the appellant could show that the blood base of
19 DNA would have affected or could have crossed on
20 how it might not be his DNA or blood, then that was
21 very important. And that's when they talked about
22 -- and then further down in quoting Ex Parte
23 Williams, Padgett was '95. Ex Parte Williams is
24 '93, and it's the Alabama Supreme Court, so I'm
25 quoting Williams.

1 Here, however, the failure to disclose the
2 evidence totally prevented appellant's counsel --
3 and Mr. Knizley made this argument -- from
4 preparing portions of the Defense, Judge, portions
5 of the Defense. And in that case, it's our whole
6 defense. Furthermore, this Court has previously
7 rejected the argument now made by the State about
8 the sifting and thorough cross-examination.

9 In this case, the State's failure to timely
10 disclose the exculpatory evidence denied the
11 appellant the opportunity to prepare what would
12 have been a key portion of his Defense.

13 And in Padgett, the Court went on to say
14 conflicting evidence is always a question for the
15 finder of fact to determine, and a verdict rendered
16 herein will not be disturbed on appeal.

17 So having said that, Your Honor, I'd like to
18 mention that I think there's no reason -- the Court
19 has acknowledged, I think on the record that, you
20 know, we didn't have it, and I think that it's
21 pretty clear from Detective McCullough's testimony,
22 they had it and they had it for a while I think his
23 testimony was, at least back when the Grand Jury
24 met.

25 And then you get into this Strickler versus

1 Greene, a U.S. Supreme Court case cited in our
2 brief. Rather, the question is whether the
3 favorable evidence could reasonably be taken to put
4 the whole case in such a different light as to
5 undermine the confidence of the verdict.

6 Now, I'd like to stop there just for a minute
7 because according to where -- and it did come up
8 briefly on opening statements, that the lesser
9 included offenses, Judge, manslaughter and whatever
10 you charge him, Criminally Negligent Homicide,
11 Vehicular Homicide, that this credibility of Chris
12 Davis affects in how they perceive him and his
13 conduct, whether he was drinking or not, put it
14 aside.

15 What we say is we've got to discredit his
16 version of what happened which I think we've
17 already done and will again, but also him. That
18 would and could affect how the jury, the prism the
19 jury sees the evidence and could affect lesser
20 included offenses as well.

21 Going on though for a moment, Judge, with
22 rather the questions when favorable evidence could
23 reasonably be taken to put the whole case in a
24 different light as to undermine the confidence of
25 the verdict.

1 In this case, and I'm quoting, the State's
2 failure to timely disclose the exculpatory evidence
3 denied the appellant the opportunity to prepare
4 what would be a key portion of his Defense, and
5 then we've cited Padgett on that.

6 Just as importantly, we talked about how
7 memories would have been much fresher. Mr. Davis,
8 Your Honor heard his testimony and he probably said
9 I don't remember or I don't know, I didn't count
10 them, I'm guessing two dozen times. The witnesses,
11 even on this video that we just saw, couldn't
12 remember Chris Davis's last name.

13 The interview that Mr. Golson took, Your
14 Honor heard the witness, interview was played, say,
15 look, it's been a minute ago, basically two
16 and-a-half years, I don't remember a lot of these
17 things. I don't remember exactly what Chris Davis
18 said.

19 However, what Chris Davis -- he remembered
20 enough to say that Chris Davis said that he
21 thought, as Dennis argued, he thought it was his
22 cousin, Harry Matthews' convertible that he turned
23 in front of that had flipped in the ditch because
24 it was at night. It was similar and that's what
25 prompted that phone call. That would have been a

1 key portion of our preparation, our Defense, my
2 opening statements, the whole thing.

3 Fresh memories would not have been in
4 question had we got the videos of the inside of the
5 room timely and promptly. We desperately need --
6 it's Kobe, right, the gentleman that's in the Navy
7 that can't be back until the 15th. But even so, we
8 don't have adequate time to continue to develop our
9 Defense, our cross-examination of him even if we
10 got a recess until the 15th. I think with our
11 prejudice, it's too material for us to recover.

12 And then finally, citing Jefferson V. State,
13 and it's interesting because the Alabama Supreme
14 Court or the Alabama Court of Criminal Appeals
15 adopted actually a dissent, but they cited Giles v.
16 Maryland about the State's obligation is not to
17 convict.

18 But we highlighted this: Moreover, the
19 existence of any small piece of evidence favorable
20 to the Defense may, in a particular case, create
21 just the doubt that prevents the jury from
22 returning a verdict of guilty. And again, I'm now
23 inserting that could be to any of the offenses
24 charged here.

25 The private whys and wherefore the jury

1 deliberations pose an impenetrable barrier to our
2 ability to know just what piece of information
3 might have made a difference.

4 Our position is, is that this is not clear.
5 I mean, I don't think anybody would dispute that
6 this is Giglio. This is significant material
7 favorable to Giglio, but I think it's also Brady.
8 In this incident it supports our theory of defense
9 by showing that the real huge contributor of this
10 accident was Chris Davis who would not cooperate
11 with the State, would not cooperate really with
12 anybody and only did in the last week or so after
13 receiving the subpoena.

14 That's our defense, that's our focus, and we
15 believe we've been severely prejudiced and we
16 cannot recover from it. It has affected our trial
17 presentation and our cross-examinations in
18 developing our theory of defense immensely and our
19 preparation in this trial. Thank you, Judge.

20 THE COURT: Anything further from either
21 side?

22 MS. RICH: Your Honor, the only thing that we
23 would argue is of course what's in our brief and
24 that this particular evidence could have been
25 discovered by interviewing Harry Matthews, could

1 have been discovered by a sifting and thorough
2 examination of the Facebook records.

3 And the Defense alleged in their opening
4 statements, you know, that Christopher Davis was
5 driving inappropriately. That's not anything new,
6 and there's nothing in any of this newly discovered
7 evidence that changes that particular fact, that
8 there's been no evidence whatsoever that
9 Christopher Davis was under the influence of
10 anything at the time that he turned into the
11 Comfort Inn, and that's the bottom line. This is
12 not a Brady or a Giglio violation, and it should
13 not result in a mistrial.

14 MR. KNIZLEY: Judge, all we have is we'd like
15 to offer Defendant's D, the exhibit, the recording.

16 THE COURT: The recording, that's going to be
17 Defense Exhibit D.

18 (COURT'S EXHIBIT L MARKED AND ADMITTED IN
19 EVIDENCE)

20 MS. RICH: Since we only heard that one time,
21 is the State allowed to hear that again, Your
22 Honor.

23 THE COURT: Yes.

24 MR. KNIZLEY: Of course, she can but --

25 THE COURT: It's in evidence now as a part of

1 this hearing.

2 MS. RICH: All right. We'll play it at lunch,
3 Your Honor.

4 MR. KNIZLEY: Judge, we offer Court's Exhibit
5 L to this hearing.

6 THE COURT: Yes, sir. Court's Exhibit L is
7 the audio of the interview with Kobe Matthews.

8 Just to summarize where we are, we took a
9 full day Friday after the verbal motion for a
10 mistrial and went through the evidence, this Court,
11 this Judge, in very detailed fashion. In all of
12 my trials, I don't think I've spent this much time
13 on a motion made during the course of trial to get
14 at the truth to make sure that that search
15 continues in an appropriate way as the law requires
16 it to. Then we've taken almost three hours today
17 and I've been very patient. I'm not upset with
18 anybody. My tone of voice is low key as we speak
19 now, not upset with anybody. Both sides are
20 asserting a good faith position. This matter was
21 initiated by the State's failure to disclose the
22 video, and so that's why we had to take as much
23 time in the middle of trial. This Court is
24 prepared if the Defense requested to take
25 additional time, including days this week or a

1 delay of a week or two, if necessary, for you to
2 conduct additional discovery. If the Defense
3 decided it wanted to do that, then we would do
4 that. I don't think that's necessary, but if
5 the Defense wanted some time, then I would give the
6 Defense time. I don't feel that at the end of the
7 day that the elements required to be established on
8 a motion for mistrial have been established in
9 total. It's going to be the Court's ruling, it is
10 the Court's ruling that the motion for mistrial is
11 denied. I do that with all respect to both sides.

12 I'm considering, depending on what happens
13 with the evidence, some other ideas that I have
14 about potential -- I'll call it evidentiary
15 remedies, we can talk about that later. I want to
16 get going with the trial here in 45 minutes. The
17 jury is coming at 1 o'clock. It's now 12:15. We
18 started this hearing, I guess, about 9:30 today.

19 But the bottom line is the Court denies the
20 motion for mistrial. We'll start the testimony at
21 1 o'clock. I'll talk more with the lawyers as the
22 trial proceeds if I have some ideas about ways we
23 can remedy if the Defense feels that there's some
24 disadvantage.

25 The problem is this fundamentally; all of the

1 witnesses that allegedly could have been contacted
2 had the videos been disclosed were available before
3 trial to the Defense. Now, obviously, you didn't
4 have a statement of Kobe Smith before because you
5 chose not to take the statement of Harry Matthews,
6 Jaquarius Matthews and Chris Davis wouldn't talk.

7 But had you taken those statements, you would
8 have found the names of everybody in the hotel that
9 night. We know that the videos reflect that
10 there's nothing in the videos to visually suggest
11 that the driver, Chris Davis was at the hotel
12 before the accident happened.

13 So anything that the Defense would assert in
14 that regard would be driven by testimony, would be
15 driven by witness testimony. So the Defense would
16 have to get the names of the other people in the
17 video, then take statements to try to establish the
18 circumstances of what happened, whether Chris Davis
19 was at the hotel partying before or not. This is
20 going to be driven by witness testimony, not by the
21 video. And the Defense had ample opportunity for
22 many months to take the statements of all of these
23 witnesses, all of them could have been identified
24 had the statements been taken.

25 The Defense hasn't done anything wrong, but

1 the Defense chose not to take the statements,
2 perhaps for a strategic reason, but that is a
3 significant part, not all of the reason that the
4 Court denies the motion for mistrial, but that's a
5 part of it. And I just wanted to just summarize it
6 that way.

7 So we'll start at 1 o'clock with the
8 witnesses. Your first witness is going to be the
9 three that were here Friday?

10 MS. RICH: Pursuant to Your Honor's
11 instructions, yes, sir.

12 MR. KNIZLEY: Judge, I don't know if I
13 understood you. You said that the Court was
14 willing to allow additional time for investigation?

15 THE COURT: Yes.

16 MR. KNIZLEY: If requested?

17 THE COURT: Yes.

18 MR. KNIZLEY: Before the commencement of the
19 proceeding at 1 today?

20 THE COURT: Yes. And I say this because, you
21 know, I do this out of deference to what I know are
22 good and honorable lawyers for the Defense. I
23 don't find that what has happened by the State, in
24 totality, rises to the level of requiring me to
25 grant a motion for mistrial.

1 But at the same time, the ultimate mission
2 here is the search for truth. And if the Defense
3 felt that well, you know, I've learned something
4 that I -- maybe I should have looked at it before.
5 I'm not saying somebody did something wrong, guys,
6 I'm not suggesting that.

7 But maybe inside you're thinking, well, wow,
8 I wish I would have talked to Harry Smith before or
9 I wish I'd have talked to Harry Matthews, I wish
10 I'd have talked to Jaquarius Matthews before. But
11 if you need some time to do that over the next
12 couple of days, then we can arrange that and I'll
13 tell the jury.

14 MR. KNIZLEY: And we may, Judge, and I think
15 we will. A couple of things and Richard and I both
16 mentioned to the Court, one reason we needed time
17 is we dedicated this weekend solely to this and
18 witness preparation and stuff did not take place.
19 We still got more investigation relative to this to
20 do.

21 Carol has done the best she could giving us
22 the transcript of Mr. Davis's Friday testimony --
23 is almost through. And yes, I think I would like
24 to confer with co-counsel with the Court's
25 permission and let the Court know whether we'd like

1 some additional time and if so, how much.

2 THE COURT: Well, you're saying that this
3 weekend's work interfered with whether there was a
4 mistrial issue or not, interfered with you just
5 continuing to get ready for trial?

6 MR. KNIZLEY: We dedicated some time for
7 witness preparation, time for witness mock
8 examinations. That did not take place because we
9 dedicated the entirety of the weekend to the --

10 THE COURT: I understand. Well, when I talk
11 about potential remedies, that is squarely one of
12 the things I was considering. The reality is, and
13 I know the State doesn't want to hear this, but the
14 reality is that this failure to disclose generated
15 this issue. It generated this issue. And so they
16 had to do their lawyer obligations in pursuing the
17 motion for mistrial which I've denied, but it was
18 not something I think done flippantly or in bad
19 faith on the part of the Defense. It was a good
20 faith motion, though, again, I don't feel it meets
21 the requirements under the law which would be
22 required for a Brady or Giglio-based motion.

23 But having said that, it took your weekend
24 away from you to deal with this issue and I
25 understand that. I've been in multi-week trials as

1 a lawyer and as a Judge, and I understand how
2 precious time is. So, if you needed the rest of
3 the day today and tomorrow, we could start
4 Wednesday morning or something like that. Then if
5 that's what you need to kind of give that time back
6 to you, then that would be something that I'd be
7 willing to consider.

8 MR. KNIZLEY: Judge, there would be no effort
9 to delay it any longer than possible, but may I
10 talk to co-counsel and see how much time we think
11 we're going to need?

12 THE COURT: If your idea, though, is we need
13 time to replace the time we lost, that's going to
14 mean we start Wednesday.

15 MR. KNIZLEY: Yes, sir. We'll try to do both
16 at the same time. We'll replace the time we lost
17 and we'll do further investigation. Could we have a
18 moment, Judge, or would you like to know right now?

19 THE COURT: Sure.

20 (BRIEF RECESS)

21 THE COURT: Also, I want to put on the
22 record, a consideration that needs to be on the
23 record. I do it out of all respect. I will say
24 that in terms of equality and experience of Defense
25 counsel and there could not be a better team -- I

1 can show you -- I've tried nearly 150 jury trials,
2 there's none better. This case couldn't be tried
3 anymore professional than the Defense lawyers have
4 done it.

5 Having said that, the reason that the judge
6 is offering and the Defendants accepted some
7 additional time to prepare and continue with the
8 investigation is that there's a proceeding in the
9 criminal justice system called a Rule 32 Petition
10 which is where a Defendant -- which is where the
11 Defense is presumed innocent -- and we are in
12 chambers now.

13 If a conviction were to happen, all
14 Defendants have the right to file what is called a
15 Rule 32 proceeding. And the most common grounds of
16 a Rule 32 proceeding is arguing that counsel was
17 ineffective and that's been my experience in all
18 cases when they file a Rule 32 Petition.

19 I've had a number of very prominent and
20 excellent attorneys, like Jeff Deen, and I may have
21 had one with Knizley, I don't remember that right
22 now, but the Defendant will very often argue if
23 their lawyer was ineffective for doing or not doing
24 something. That's the reason for the Court offering
25 to the Defendants the chance to conduct -- to have

1 additional time to conduct discovery and do
2 additional investigation as to avoid even an
3 argument that there's grounds for a Rule 32
4 Petition. I'm saying that straight up. I am not
5 -- I have not and am not, I want the appellate
6 courts to understand my mental operation.

7 I'm not offering additional time for
8 investigation because I believe that it's a Brady
9 or Giglio issue, and I've been over the grounds of
10 my ruling on the motion for mistrial. I am merely
11 offering that time, and I'm making sure it's clear
12 on the record to avoid an argument that there is a
13 Rule 32 issue. I don't think there's a Rule 32
14 issue here. I don't think there is, but this is my
15 effort to avoid even an argument that that was out
16 there, and I just want that to be on the record.

17 And again, my thought is at this point that
18 the State and the Defense have done a thorough and
19 completely effective, professional job, but this
20 will protect against even that sort of argument
21 down the road.

22 If Mr. Nakhla was convicted of something and
23 decided to appeal, traditionally, very often, an
24 appellate lawyer is different from the trial lawyer
25 and certainly a Rule 32 lawyer is different from

1 the appeal of the trial lawyer, and they always
2 look at any possible argument that they would have
3 to advocate for their respective clients.

4 So that's the context in which the Court
5 offers the additional time for investigation, and
6 that's the only reason. And I just felt that
7 needed to be on the record, and that is part of the
8 reason I asked the lawyers back here was
9 scheduling.

10 As I told you, one of the jurors we have not
11 been able to contact, Mr. Rosser. He's on the
12 third from the left front row. I don't know if
13 he's going to be able to show up today, but the
14 jury is here. Why don't you guys hang around a few
15 minutes and let me get them dismissed.

16 In terms of scheduling, we will start
17 Thursday, that's after talking with both sides.
18 One side wants less time, one side wants a little
19 more time, and I'm somewhere in the middle of the
20 two.

21 As best I can predict, if you're here
22 starting on Thursday as we can calculate the time,
23 it will carry us past the 15th which is the date on
24 which Mr. Kobe Matthews would be back. So if there
25 were an issue, this will carry the trial past the

1 15th now, which will achieve that goal if that is a
2 vision, and it may depend on what Mr. Davis says
3 and what Mr. Harry Matthews says on whether you
4 want to call him.

5 You may decide if you call Chris Davis and
6 Harry Matthews, the Defense may decide
7 strategically we don't want to reopen, we got what
8 we need on the case. So that will carry us past
9 the 15th, so that would not be an issue. 9 o'clock
10 Thursday will be starting time.

11 MS. RICH: You need to call in Harry and Mr.
12 Davis and talk to them, and then the nurse that's
13 here, so by the time Thursday comes around, the
14 Defense will have four extra days, two business and
15 two weekend days to do additional investigation,
16 five full days by the time Thursday comes around.

17 MR. KNIZLEY: I'm contemplating issuing a
18 subpoena for Mr. Kobe Matthews, also it's figuring
19 out how that may be transported across the Gulf of
20 Mexico to him.

21 THE COURT: Where is he, out of New Orleans
22 if I remember, but that's where we are. I have an
23 additional thought. So, first of all, I have great
24 empathy, not sympathy -- every case is different.
25 Every case is just like people, the dynamics of

1 witness management, the scheduling, like Mr.
2 Frazer, who is an experienced civil trial attorney,
3 he said that every case is different. Some cases
4 are a day long or a few hours. Some cases are
5 weeks long. Some cases you think are going to be a
6 day and end up being a case that's two days, it's
7 just like that.

8 This case is no different from any other in
9 that it's just unpredictable. I believe there are
10 lots of witnesses that both sides are considering
11 calling, you're just one of probably over 40 names
12 that they identified. Your life experience is an
13 important one and your schedule is important to me
14 as the neutral.

15 At the end of the day, though, I've got to
16 make sure that both sides are heard and that the
17 opinions they give are pertinent to the issues, and
18 it's their one time they have in this case to
19 present to a jury. Your testimony is one piece of
20 that total presentation. So at the end of
21 it all, I have to make sure that the constitutional
22 rights and interests of the State and of the
23 Defendant are protected as the neutral. I have to
24 make certain the proceedings are fair and balanced
25 so it's the same as other witnesses.

1 I sent them, the jurors home. I'm about to
2 tell a jury of 16, there are 16 people that they
3 are to come back on Thursday. I've got 16 that are
4 going to say some things like what you're about to
5 say, I got a lot of issues I'm managing right now.
6 I'm trying to get this case tried and get all the
7 facts and testimony presented in a minimum amount
8 of time or whatever is necessarily.

9 What I'm going to ask you to do is to be
10 back, say, at 10:30 Thursday, on Thursday. It's
11 all I can do. This is an important case for both
12 the State, the victim's family and the Defendant's
13 family. It's important for both sides, and both
14 sides need and want you to be here to make sure
15 that the testimony -- the significance of this to
16 both sides of the case, and I'm doing all that I
17 can do.

18 And we've rearranged a lot of witness
19 testimony to make sure that you and people
20 similarly situated will have a definite day,
21 medical type personnel because it's harder to
22 schedule. We can get all that done Thursday, and
23 Friday sounds like what the priority is right now.

24 The State will put you up on Thursday. We
25 will pay for your mileage coming down here and

1 back. We will issue you a check for your mileage.
2 Christopher Davis and Harry Matthews, right? And
3 then, ma'am, you're Chante Lawson?

4 MS. RICH: That's Mr. Davis's fiance, Your
5 Honor.

6 THE COURT: We'll deal with some scheduling
7 issues here. I really don't want to talk about the
8 substantive issues because your state of mind needs
9 to be preserved, just as it is right now. I'm not
10 going to get into that with you except to say that
11 we're going to have your testimony on Monday,
12 that's a week from today.

13 I understand that is a great inconvenience on
14 your personal schedule, but we're in the middle of
15 this trial and which is very important to both
16 sides in the case, it's fluid and unpredictable,
17 and I'm the neutral in trying to manage the jury.

18 There are over 40 witnesses, you're just a
19 few of the over 40 witnesses that have been
20 identified. Both sides have a lot of work that
21 they're doing. I ask for your understanding. You
22 don't have to agree with it and I know it's a
23 hardship.

24 I will do anything by way of talking openly
25 with your bosses at your jobs and explain the

1 situation. If anybody needs me to call somebody
2 before you're under subpoena, tell them it's my
3 court order that is requiring you to be here, I
4 will personally talk to them today.

5 And Officer Davis, if you will coordinate.
6 If they need me to call, if you call me and tell me
7 the name of the person that needs that call, just
8 you, Officer Davis, let's keep it through you.

9 And so we're going to have you back at 9
10 o'clock Monday, the 13th. So you're under a court
11 order to return on Monday, the date is the 13th for
12 your testimony. We're trying to streamline it or
13 really -- get really tight so you could come up
14 first thing in the morning and then you would be
15 done. That's our plan, so I hope understand. But
16 otherwise, I'll see you guys Monday. Be here at
17 least a quarter of 9 or be early before 9, so be
18 here 8:45 Monday, all of you, okay.

19 Final instruction to not talk to anybody
20 about this case. It's one thing to say I can't be
21 there, I've got to be in a trial, that's all right,
22 but don't talk about the facts of this case, what
23 your testimony may be, what happened to who, where
24 were you, who was there, what somebody said and did
25 what. You didn't see nobody talking about that.

1 Officer, help me enforce that.

2 Young people, sometimes they don't understand
3 quite as much to not talk about this case. We want
4 your state of mind, each of you to be right where
5 it is, nobody interfering with witnesses. If you
6 bring up this case with anybody, I would remind you
7 don't bring up this case with anybody. Don't bring
8 up, hey, I've got to go testify, don't talk about
9 it. Okay. If somebody asked if you're a witness,
10 Judge ordered me not to talk about it, I'll find
11 you in contempt of court. You could be put in jail
12 for three days.

13 Make sure people understand that you cannot
14 talk about this case. I don't want to get backed
15 into that position where you have to find somebody
16 in contempt, put them in jail about three days
17 because they violated an order. All right, guys, I
18 will see you Monday at 9 o'clock.

19 THE COURT: Mr. Rosser, which is the juror
20 third from the left on the front, we've never been
21 able to get him on the phone. He won't pick up the
22 phone when we call. I'm going to call the other 15
23 to be here at 9 o'clock Thursday. We'll continue
24 to try to get Mr. Rosser.

25 Do you want me to just to consider Mr. Rosser

1 discharged, or do you want to me to continue to try
2 my efforts to get him here? Defense, do you prefer
3 to get Mr. Rosser here?

4 MR. KNIZLEY: Yes, sir.

5 MS. RICH: We do too. We don't think there
6 is any prejudice to that.

7 THE COURT: We're recessed until Thursday.

8 (JURY PRESENT)

9 THE COURT: Attendees, parties, please be
10 seated. Ladies and gentlemen, just to cut to the
11 chase, by the way, Mr. Rosser, we have tried to get
12 in touch with this juror here in that empty seat.
13 Cannot get him on the phone, just cannot. So we've
14 got to get going with what we're going to do and
15 get information to you.

16 Bottom line is this, I've got to continue
17 with the recess of this trial at least for a couple
18 of more days. I just, again, cannot get into the
19 reasons why. It is not an issue which ultimately
20 will affect your deliberations. I have to look at
21 the law and the constitution and make sure that it
22 is applied fairly and equally to both sides in the
23 case and to all the witnesses and parties and
24 that's all I'm doing. I'm doing my job. And I've
25 seen a lot of things. I've tried a lot of cases

1 and this what I'm required to do. I would apologize
2 to you for it except that it is just part of the
3 process. I do ask you to understand and have some
4 empathy with the scheduling. I'm managing a lot of
5 people, a lot of people on the jury, parties,
6 witnesses, several dozens of people that the Court
7 is trying to manage.

8 And this delay is not the fault of either
9 side. You should not hold it against either side.
10 Ultimately, it's my responsibility to move the case
11 along and I accept responsibility for it and I am
12 working hard to do that. Once the case is all
13 over, I'll explain in more detail why delays
14 happen, you can ask me.

15 Once the case is over, you'll be able
16 privately, once the verdict is in and you're
17 discharged, you can ask me, Judge, back when we
18 were trying the case and this happened, what was
19 going on about that, what was behind the scenes.
20 You can ask me those things later, but right now
21 this is of no concern for you. It does not affect
22 your deliberations. It won't affect your ultimate
23 decision that you make or don't make in the case.

24 And so we're going to recess the trial until
25 Thursday at 9 o'clock, Thursday at 9. I know a

1 couple of you have expressed some concerns with
2 your work and I respect that. Again, and I don't
3 know how many judges would offer to give their
4 personal office number to your employer, but I'm
5 going to give it to you now. Write it on a blank
6 piece of paper on your notepad if you need it. If
7 you need me to speak with your employer, you call
8 my office, and I will talk with your bosses and
9 explain this situation, that this is simply a
10 matter of scheduling, and that we just have to have
11 you there to continue the trial.

12 At the end of the day, both sides, this is an
13 important case for both sides of this case, and
14 your role, as jurors, is obviously vitally
15 important to the trial of this case. My number
16 at the office is (251) 574-5977, 5977. You know,
17 try to work it out if you can because that's 16
18 different bosses I'd have to deal with, you know.
19 But if you can't and it's really significant, I
20 will be glad to talk with your boss. So just have
21 him call, tell me I'm the boss for Joe Smith -- I
22 made that name up. There's not a Joe Smith on the
23 jury, you know, and then I'll call the person back
24 and talk to them. Okay?

25 In the meantime, remember all the

1 instructions that I gave you on the very first day
2 of trial once you were seated as a jury. They
3 continue to apply to you, and you'll have to make a
4 very special effort to avoid exposure to media.
5 There is intense media coverage on this case, there
6 is. Make no bones of it. I've been through this,
7 it's hard. You've got to be proactive. You've got
8 to be proactive, preemptive about what you allow
9 yourself to see in the media.

10 I would recommend and direct you to stay off
11 of social media. Don't watch the evening news,
12 just avoid watching regular TV. Watch shows on DVD
13 or something. Watch Turner Classic movies or
14 something like that, TCM, but just try to stay off
15 the regular TV.

16 If something pops in front of you that looks
17 like it's about this, just turn it off, turn the
18 channel. Do that for me. This is very important.
19 You're all so patient and so attentive. Again, I
20 really appreciate it. In the meantime, leave your
21 notepads facedown on the desk in there and you'll
22 be back at 8:45 on Thursday to start at 9. I do
23 expect we'll start back with testimony sharp at 9
24 o'clock on Thursday, okay? Thank you guys for your
25 understanding for your empathy. Okay. Thanks.