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APPEARANCES

Ms. Amanda Maxfield-Green and Mr. Charles Brown, Assistant United States Attorneys, U.S. Attorney's Office, 210 West Park Avenue, Suite 400, Oklahoma City, Oklahoma 73102, appearing for the United States of America.

Mr. William Earley and Mr. Kyle Wackenheim, Assistant United States Public Defenders, 215 Dean A. McGee, Suite 124, Oklahoma City, Oklahoma 73102, appearing for the defendant.

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1 (The following record was made in open court on March 25,
2 2019, in the presence of all parties, counsel, and in the
3 presence and hearing of the jury.)

4 THE COURT: Good morning. Welcome back.

5 This is the case of United States of America vs. Joseph
6 Maldonado-Passage, Case No. CR-18-227.

7 Parties could please make your appearances for the record.

8 MS. MAXFIELD-GREEN: Amanda Green for the United States
9 and Charles Brown for the United States.

10 MR. EARLEY: William Earley and Kyle Wackenheim for
11 Mr. Maldonado-Passage, and he's present, Your Honor.

12 THE COURT: Good morning. I don't have much more voice
13 than I had when we last parted, but I will get past this thing
14 before this trial concludes, I can assure you.

15 Welcome back. As I -- as may have been explained to you, we
16 are going to be hearing this case in this courtroom as opposed to
17 where we started out. That's to accommodate for evidence that
18 may be admitted to you in various electronic forms. My usual
19 courtroom, where we started out, is a bit dated in terms of
20 electronics. I assume none of the evidence is coming in by
21 eight-track tape, so it's not going to happen down there. So we
22 have relocated down here to the chief's courtroom, which is a
23 little bit more -- has already been upgraded in terms of
24 technology, so we'll be here for the duration of the trial.

25 I would, first of all, like all of you-all to reflect on the

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1 questions and the preliminary instructions that I gave you as we
2 went through jury selection week before last. And I would like
3 to ask you as a panel, since the last time you were here, and
4 this is for all of you, have any of you seen, heard or read any
5 information about this case at all?

6 Any of you at all?

7 (No response.)

8 THE COURT: That would include media accounts, social
9 media information, online commentary in blogs or forums.
10 Anything like that? Anyone?

11 (No response.)

12 THE COURT: Have any of you discussed this case with
13 anyone, or has anyone discussed or attempted to discuss the case
14 with you?

15 (No response.)

16 THE COURT: Thank you.

17 If you will all please rise, the clerk will administer the
18 oath to the jury.

19 (Jury panel sworn.)

20 THE COURT: Members of the jury, now that you have been
21 sworn, I will give you some preliminary instructions to guide you
22 as jurors in this case. Some of these are ones that you have
23 heard before, but they're very important and it's important that
24 I go through them with you again.

25 You and I have very sharply defined divisions of

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1 responsibilities in this trial. My responsibility is to
2 determine the rules of law that apply in this case. It will be
3 your duty and responsibility to find from the evidence what the
4 facts are. You and you alone are the judges of the facts. You
5 will then have to apply to those facts the law as I give it to
6 you. You must follow that law, whether you agree with it or not.
7 Nothing I say or do during the course of the trial is intended to
8 indicate nor should be taken by you as indicating what your
9 verdict should be.

10 The evidence from which you will find the facts will consist
11 of the testimony of witnesses, documents and other things
12 received into the record as exhibits, and any facts the lawyers
13 agree or stipulate to or that I may instruct that you find.
14 Certain things are not evidence and must not be considered by
15 you, and I'll list those for you now. Statements, arguments and
16 questions by lawyers are not evidence.

17 Objections to questions are not evidence. Lawyers have an
18 obligation to their client to make an objection when they believe
19 evidence being offered is or may be improper under the rules of
20 evidence. You should not be influenced by the objection or by my
21 ruling on it. If it is overruled, you treat the answer just like
22 you would any other. If you are instructed that some item of
23 evidence is received for a limited purpose only, you must follow
24 that instruction. Testimony that I have excluded or told you to
25 disregard is not evidence and must be not -- must not be

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1 considered. Anything you may have seen or heard outside the
2 courtroom is not evidence and must be disregarded. You are to
3 decide this case solely on the evidence presented here in the
4 courtroom.

5 It will be up to you to decide which witnesses to believe,
6 which witnesses not to believe, and how much of any witness's
7 testimony to accept or reject. I will give you some guidelines
8 for determining the credibility of witnesses at the end of the
9 case.

10 As you know, this is a criminal case. There are three basic
11 rules about a criminal case that you must keep in mind. First,
12 the defendant is presumed innocent until proven guilty. The
13 indictment against the defendant brought by the government is
14 only an accusation, nothing more. It is not proof of guilt or
15 anything else. The defendant, therefore, starts out with a clean
16 slate.

17 The burden of proof is on the government to prove its case.
18 The defendant has no burden to prove his innocence or to present
19 any evidence or to testify. Since the defendant has the right to
20 remain silent, the law prohibits you, in arriving at your
21 verdict, from considering that the defendant may not have
22 testified or presented evidence. The government must prove the
23 defendant's guilt beyond a reasonable doubt. I will give you
24 further instructions on this point later, but bear in mind that
25 in this respect, a criminal case is different from a civil case.

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1 The burden is beyond a reasonable doubt.

2 The superseding indictment charges the defendant with two
3 counts of the use of facilities of interstate commerce in the
4 commission of the murder for hire of a person named C.B. In
5 brief, Count 1 alleges that in or about November 2017, defendant
6 paid Individual 1 money in exchange for Individual 1's promise to
7 commit the murder of C.B. It is further alleged that the
8 defendant caused Individual 1 to travel in interstate commerce
9 and also that the defendant used the mail and facilities of
10 interstate commerce, all with the intent that the murder of C.B.
11 be committed.

12 Count 2 alleges that on or about December 8th of 2017, the
13 defendant promised and agreed to pay an undercover FBI agent a
14 sum of money to commit the murder of C.B. and that the defendant
15 used facilities in interstate commerce with the intent that the
16 murder of C.B. be committed.

17 The superseding indictment also charges the defendant with
18 five counts of violating the Endangered Species Act by shooting
19 tigers, one count of violating the Endangered Species Act by
20 offering tiger cubs for sale, three counts of violating the
21 Endangered Species Act by selling tiger cubs, and ten counts of
22 creating false records concerning wildlife, namely tigers, lions
23 and a lemur.

24 The superseding indictment is simply a description of the
25 charges made by the government against the defendant. It is not

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1 evidence of guilt or anything else. The defendant has pleaded
2 not guilty and is presumed innocent. The defendant may not be
3 found guilty by you unless all 12 of you unanimously find that
4 the government has proved his guilt beyond a reasonable doubt.

5 A few more instructions about your conduct as jurors.
6 Again, some of these will sound familiar.

7 First, I instruct you that during the trial, you are not to
8 discuss this case with anyone or permit anyone to discuss it with
9 you. Until you retire to the jury room at the end of the case to
10 deliberate on your verdict, you are simply to not talk about the
11 case. Also, you must not have any conversations of any kind on
12 any subject with any of the parties or the attorneys or the
13 witnesses. This prohibition on communicating about the case
14 includes communications about the case or about any aspect of
15 your work as jurors by email, texting, blogs, Twitter and all
16 other methods of communication. You must not communicate about
17 this case by any means until after you have been discharged from
18 your service as jurors in this case.

19 Do not read, watch or listen to anything touching on this
20 case in any way. If anyone should try to talk to you about it,
21 bring it to my attention promptly. Do not do any research or
22 make any investigation of your own about the case or about any
23 issues in the case or about any person or organization involved
24 in the case. This includes Internet research of any kind about
25 the case or about any issues in the case or about any person or

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1 organization involved in the case, no matter how curious you may
2 be and no matter how tempting it may be to undertake any such
3 research.

4 Finally, do not form any opinion until all the evidence is
5 in and I have instructed you on the law and the case has been
6 given to you for your deliberations and verdict. Keep an open
7 mind until you start your deliberations at the end of the case.
8 Among the many reasons for which you should keep an open mind
9 about the issues in this case until the case has been given to
10 you for your deliberations and verdict, please consider this: In
11 this court, jury verdicts must, under the law, be unanimous.
12 Each juror must concur with the verdict or there is no verdict.
13 For that reason, you should listen to the evidence in this case
14 with full awareness that in reaching your unanimous verdict, it
15 will be necessary for you to consider the evidence from the point
16 of view of other members of the jury.

17 As we proceed here, please let Marcia know if there's
18 anything any of us can do to make your service more pleasant. I
19 know this is a very solemn and important occasion for everyone,
20 and I know that your presence here is a major disruption in your
21 lives. We will make this as easy on you as we can. As I
22 mentioned before, water in the jury box is okay as long as it's
23 contained in something with a lid or a cap. If you're ever
24 unable to hear, please let me know. One of the benefits of this
25 courtroom is that we are able to make a number of adjustments to

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1 sound, lighting, things like that.

2 For the two alternates, seated on the risers, please be
3 careful. I believe that while those seats can be adjusted up and
4 down, anytime you stand, they raise back to their previous level.
5 I also tried them out last week. I won't describe what happened,
6 but what happens in the courtroom stays in the courtroom. Be
7 very careful if you unlock the part where it lets you lean back.
8 It leans back pretty far, which -- to my surprise. Please just
9 don't be startled.

10 As we did during the jury selection, please feel free to
11 stand and stretch during bench conferences. We'll still be in
12 session, so please don't leave the courtroom and please keep the
13 tone down, but you can visit amongst yourself. But we do have
14 sometimes to be able to hear up here, but it is perfectly okay to
15 stand and stretch.

16 As you can see, we have placed notebooks in each of your
17 seats there in the jury box. If you would like to take notes
18 during the course of the trial, you may do so. On the other
19 hand, you are certainly not required to take notes, if you choose
20 not to do so. That is something that is entirely up to you. If
21 you choose to take notes, you must leave your notes on your chair
22 at the end of the day. Just -- you don't have to take them out.
23 Just leave them in the notebooks. Marcia will collect them and
24 they'll be locked up overnight and their confidentiality will not
25 be compromised. No one will read those. They'll be returned to

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1 your chair each morning in the notebooks. At the end of the
2 deliberations, you'll be directed to leave your notes in the
3 wastebasket there in the jury room, and we will see to their
4 destruction. Their confidentiality is never compromised.

5 During the trial, you may note some instances in which I
6 quickly review the testimony on one of these screens up here.
7 The screen only provides a preliminary record of the testimony,
8 and any transcript which could be made available to any person
9 for any purpose would have to be a certified transcript. The
10 preparation of a certified transcript can and usually does take a
11 considerable amount of time. For that reason, it is generally
12 not practical to prepare transcripts for the use of the jury
13 during deliberations. This is one of the many reasons why you
14 should listen very carefully to the testimony as it's presented
15 during the course of the trial.

16 I'll remind you that our general plan will be, throughout
17 the trial, to begin at 9:00 in the morning. We'll take a
18 mid-morning break and then break for lunch around noon. We'll
19 also take one afternoon break and normally recess close to 5:00.
20 Sometimes we try to be -- sometimes a witness may -- if we're
21 getting close to finishing up, it may be five minutes after 5:00
22 or something like that. Other than those times, please signal me
23 or Marcia if you need to take a break outside of one of those
24 times. Again, we want to be sure that we're seeing to your
25 needs. Please also remember that for any of those breaks, as

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1 well as for our overnight recess, you return -- come and go from
2 the jury assembly room. And Marcia will escort you as a group.
3 Please don't return directly to the courtroom.

4 Also, the instructions on the -- you know, what we call the
5 admonition about not discussing the case, that applies all
6 through the trial. I will not repeat that every time. I'll
7 probably just give you a reminder that the admonition applies.

8 In terms of the course of the trial, the trial will start
9 and now begin this morning. First, the government will make an
10 opening statement. The opening statement is simply an outline to
11 help you understand the evidence as it comes in. Next, the
12 defendant's attorney may, but does not have to, make an opening
13 statement. Opening statements are neither evidence nor
14 arguments. The government will then present its witnesses, after
15 which the counsel for the defendant may cross-examine them.
16 Following the government's case, the defendant may, if he wishes,
17 present witnesses whom the government may then cross-examine.

18 After all the evidence is in, I will instruct you on the law
19 and then the attorneys will present their closing arguments to
20 summarize and interpret the evidence for you. After that, the
21 case will be given to you for your deliberations and verdict.

22 Does either party intend to invoke the rule?

23 MR. BROWN: Yes, Your Honor, we would.

24 MR. EARLEY: We would, as well.

25 THE COURT: And are there either -- do you-all have an

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1 agreement in terms of exceptions to the rule for your
2 investigators or --

3 MR. WACKENHEIM: No, Your Honor.

4 THE COURT: No request for -- government?

5 MS. MAXFIELD-GREEN: Your Honor, the government's made
6 the defense team aware of one exception to that rule.

7 MR. WACKENHEIM: Can we approach to discuss that, Your
8 Honor?

9 THE COURT: Sure.

10 (The following proceedings were had at the bench and out of
11 the hearing of the jury.)

12 MS. MAXFIELD-GREEN: Your Honor, we have notified the
13 defense that we believe the victim may intend to watch the trial
14 as well as testify at trial. She is going to testify. I believe
15 she intends to watch some portion of the trial. Under the
16 victim -- the Victims' Rights Act, she has the right to do that.
17 That is an exception from the rule.

18 THE COURT: How about either of your two case agents?
19 Are they witnesses?

20 MS. MAXFIELD-GREEN: They are. Special Agent Farabow
21 is a witness and we would like him to be excepted from the rule
22 as well.

23 THE COURT: How about --

24 MS. MAXFIELD-GREEN: He is not a government witness.
25 Special Agent Matt Bryant is not a government witness.

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1 THE COURT: So the two exceptions would be the --
2 Ms. Baskin and Agent Farabow?

3 MR. WACKENHEIM: Your Honor, we specifically object to
4 classifying Ms. Baskin as a victim. I would note that a victim
5 is -- under 18 USC (a)(2) a victim is someone who, quote,
6 "Directly and proximately was harmed as a result of the
7 commission of an offense." There's been no allegation that she
8 has been harmed. I think -- as alleged in the indictment and as
9 the evidence will show, there was no real risk to her, so we
10 don't think she meets the definition of a crime victim.

11 THE COURT: Is she here yet?

12 MR. WACKENHEIM: Yes. I saw her and her husband.

13 MS. MAXFIELD-GREEN: May I respond, Your Honor? The
14 indictment specifically states that she was not physically harmed
15 by the Counts 1 and 2 alleged in the indictment. We certainly
16 think that there has been emotional harm to her. She was
17 notified during the case that her safety was at risk. She
18 took -- the emotional harm from that, I believe, is obvious. She
19 also took on extra security precautions at that time. And so we
20 do believe she qualifies as a victim. And the defense counsel's
21 statement that she was never actually at risk is simply not true.
22 Mr. Glover, the Individual 1 in the indictment, had been paid
23 money, had represented to Mr. Maldonado that he was planning to
24 go forward with it. So it's -- I believe that's a -- an accurate
25 statement of the events at the time.

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1 THE COURT: Okay. Mr. Wackenheim, is there any
2 objection to the case agent being exempted from the rule?

3 MR. WACKENHEIM: No. I would just, for purposes of the
4 record, note that the government is using two case agents, which
5 is further reason for the support why we wanted to sever these
6 two separate trials, as we see them. But, no, we don't have any
7 objection to that.

8 THE COURT: Agent Farabow will be excepted from the
9 rule. I'm also going to permit Ms. Baskin to stay in the
10 courtroom. I understand the argument. I think certainly she's
11 subject to cross-examination in terms about whether or not she's
12 been -- I assume there's enough statements out there that if her
13 statements appears to be -- have -- based on another witness's
14 testimony, it will be subject to cross-examination, but I'm going
15 to permit her to stay in the courtroom. The remaining witnesses
16 will be excused and admonished to not discuss their testimony.
17 If you-all will please monitor your own various witnesses to be
18 sure that they're not in the courtroom.

19 MR. EARLEY: Your Honor, Agent Bryant is a witness, but
20 I understand he's at the table with counsel.

21 THE COURT: Thank you.

22 (The following record was made in open court, in the
23 presence of all parties, counsel, and in the presence and hearing
24 of the jury.)

25 THE COURT: Government may proceed with their opening

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1 statement.

2 MR. BROWN: Thank you, Your Honor.

3 Revenge. Revenge is about retaliation. And it has been
4 said that to seek revenge out of hatred and anger is something
5 that will devour your very soul. Now, that simple but powerful
6 statement about human nature best describes what is at the heart
7 of this case. The evidence will show that in late 2017
8 Mr. Passage, the defendant, he sought revenge when he paid a hit
9 man to kill Carole Baskin, the person he blamed for all of his
10 problems.

11 Now, throughout this trial you are going to hear and see a
12 substantial amount of evidence about large animals. But at the
13 end of the day, this is a case about people; and two people in
14 particular, Mr. Passage, of Wynnewood, Oklahoma, and Carole
15 Baskin, of Tampa, Florida.

16 Carole, she's a conservationist. She's the founder and CEO
17 of Big Cat Rescue. It's a sanctuary. It's located down in
18 Tampa, Florida. Sits on about 67 acres. Her organization
19 rescues abandoned and abused tigers, lions and other big cats.
20 You will hear that she is an outspoken critic of cub breeders,
21 and you will also hear that it is her mission to stop what she
22 believes to be the exploitation and the mistreatment of big cats
23 at roadside zoos.

24 Mr. Passage, he founded an exotic animal park, 1999. It's
25 located right off of I-35, just south of Pauls Valley. And at

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1 his park he exhibited hundreds of animals, but he prided himself
2 on his tigers and his lions. You will hear that he was a
3 prolific cub breeder, so much so that he became known as the
4 "Tiger King."

5 Now, at his park, they charge for admission, they charge for
6 tours, but they also charged for cub playtimes and cub pettings,
7 and this is where a customer would pay a fee to have a few
8 minutes of hands-on interactive playtime with a very young cub,
9 sometimes as young as a few weeks old.

10 You're going to learn from Carole Baskin that she was deeply
11 opposed to these cub playtimes, so much so that in the early
12 2000s, once she learned about Mr. Passage and his zoo, she began
13 her activism against him. She would organize protests. She
14 would organize online campaigns. She would run online ads
15 arguing that his zoo and his treatment of the animals was
16 inhumane. She urged regulators, as well as the public, to shut
17 him down.

18 And, initially, he retaliated by renaming one of his
19 businesses to Big Cat Rescue Entertainment, kind of a play on her
20 sanctuary's name. You will learn that Carole then sued
21 Mr. Passage for trademark infringement in 2011. And in 2013, she
22 won a \$1 million judgment against him and against his zoo. And
23 soon after she wins this judgment, he restructured his zoo. He
24 tried to open it up under a different name. He ultimately filed
25 bankruptcy and he made other efforts to try to avoid paying

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1 Carole the \$1 million judgment.

2 That judgment devastated his zoo and him financially, so
3 much so that by 2016, he had to let the zoo go. And you're going
4 to learn that the zoo, in 2016, went to new owners, Jeff and
5 Lauren Lowe, a couple out of South Carolina. They paid off some
6 of his outstanding debt, some of his bills. But when they took
7 over the zoo, they allowed him to remain living at the zoo. He
8 kept his animals there and he continued running the daily
9 operations at the zoo. For all intents and purposes, he still
10 remained the face of the zoo. In exchange, they paid him a
11 salary of a couple hundred dollars a week.

12 Now, what you will see throughout this case is that when you
13 span all the way back to the early 2000s, when their decade-long
14 feud began, Mr. Passage versus Carole Baskin, he was an outspoken
15 critic of her online, and he was consistently posting online
16 threats squarely targeted at Carole. And you'll see these
17 threats. Rifles, Tannerite explosives, caskets, even
18 rattlesnakes were oftentimes the subject matter of the threats
19 that he was making against Carole Baskin.

20 You will see and hear other threats, videos, where he is
21 telling Carole she's going to take her last breath. There's a
22 video you will see where he is sitting next to a blowup doll that
23 has been dressed to depict Carole, and on that video he warns
24 Carole that they better never see each other again. He pulls out
25 a loaded revolver and he shoots that doll in the head.

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1 By 2017, as you watch these videos and as you listen to
2 these threats, you're going to sense his growing anger and
3 contempt for Carole. And by 2017, he's lost his park. He's
4 filed bankruptcy. He's trying to do everything he can to avoid
5 having to pay her the \$1 million judgment that she's still trying
6 to collect. His life's work since 1999 of building up that park
7 in Wynnewood, his kingdom, is falling apart. And it's in 2017
8 when his anger escalates from online threats to action.

9 You're going to hear, in the fall of 2017, Mr. Passage
10 approaches a guy named Alan Glover. He's an employee at the zoo.
11 He does odd jobs around the zoo, some maintenance, cleans up
12 after the animals. Mr. Glover also lives on the zoo -- he lives
13 at the zoo, one of the small trailers. He's a native South
14 Carolinian. He's worked outdoors most of his life. He has a
15 strong Carolina accent. But he also has a small teardrop tattoo
16 under his left eye. And it's that teardrop tattoo that led
17 Mr. Passage to begin courting him and to eventually ask him to
18 kill Carole. And Glover told him he'll do it.

19 Mr. Passage told Glover he'll pay him between 10 and
20 \$15,000, with a few thousand dollars down and the rest when she's
21 dead. They discuss specific details of how Glover should kill
22 Carole. Mr. Passage described the fact that she oftentimes used
23 a bike path to ride to work, to her sanctuary. Mr. Passage told
24 Glover he should wear camouflage, hide in the woods along that
25 bike path and kill her as she approached. Mr. Passage suggested

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1 using a rifle, and you will hear that he even took Glover out for
2 target practice at the zoo. And Glover, Glover tells him he'll
3 do it, but Glover tells Mr. Passage he will kill Carole by
4 cutting her head off.

5 Soon after this meeting, you're going to hear that
6 Mr. Passage sends Glover down to Dallas to get a fake ID. And he
7 goes down there to get a fake ID so that he can get to Florida
8 and remain undetected under that alias while he's in Florida.
9 About two weeks after getting the fake ID, right around
10 Thanksgiving of 2017, Mr. Passage calls Glover into his office
11 there at the zoo. Glover comes in and Mr. Passage hands him an
12 envelope that has \$3,000 cash inside, the down payment for the
13 murder.

14 Mr. Passage then takes Mr. Glover's personal phone from him.
15 And you will hear that this phone is mailed out to Las Vegas,
16 where Jeff and Lauren Lowe were living at the time, with the
17 expectation that that phone would be turned on in Vegas so it
18 pinged off the cell towers, making it appear that Mr. Glover was
19 in Vegas, when in reality he would be in Florida.

20 While they're still inside the office, Mr. Passage hands
21 Glover a new phone to take to Florida. But before he gives him
22 the phone, Mr. Passage takes the new phone, walks over to his
23 computer screen, which is displaying photos of Carole Baskin, and
24 with that new phone he snaps a picture of the computer screen.
25 He then pulls up the website for Big Cat Rescue, and at the

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1 bottom of that website is the address, the physical address to
2 her sanctuary in Tampa. Mr. Passage snaps another photo with the
3 phone. He then hands the phone to Glover to take to Florida,
4 ensuring that Glover knows exactly what Carole looks like and
5 that Glover knows exactly where to find her.

6 They agree that Glover will fly out of Oklahoma City to his
7 home in South Carolina and then drive to Florida and murder her.
8 And you'll hear from Glover. He does fly out of Oklahoma City,
9 does go back home to South Carolina, and he does drive to
10 Florida. But he will tell you he did not go there to murder her.
11 He went there to hang out on the beach.

12 Now, at the same time that Mr. Passage is negotiating with
13 Glover to go kill Carole, he doesn't realize that one of his
14 friends, a guy named James Garretson, is actively working with
15 law enforcement agents and trying to introduce an undercover
16 agent posing as a hit man. And you'll hear from James Garretson.
17 At the time, he was living in Ringling, Oklahoma. He's a tiger
18 guy. He owns several tigers. And he was kind of a constant
19 presence around the park there in Wynnewood.

20 And the evidence will show that by the summer of 2017,
21 Mr. Passage had been complaining constantly to James about
22 Carole. And James was concerned that Mr. Passage was serious
23 about trying to have her killed, and that's what led him to begin
24 working with law enforcement agents and recording all of his
25 phone calls and all of his interactions with Mr. Passage.

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1 And you'll hear one of these phone calls, when he calls
2 Mr. Passage and he tells him, hey, I got a friend who just got
3 out of jail. His name is Mark. He could kill Carole for you.
4 And then on December 8 of 2017, right about two weeks after
5 Glover had been paid and had left Oklahoma for South Carolina, en
6 route to Florida -- on December 8, 2017, you're going to hear
7 that James Garretson, his friend, the guy named Mark, who's
8 actually an undercover FBI agent, they go to the zoo and they
9 meet with Mr. Passage inside his office. And that conversation
10 is recorded. You will hear the conversation.

11 You will hear Mr. Passage complaining about Carole and her
12 litigation. You will hear Mr. Passage ask the undercover agent
13 how much he would charge to kill Carole. And you will hear
14 Mr. Passage provide details about Carole. He mentions the bike
15 path again. He describes the layout of her sanctuary, the fact
16 that it has a front entrance and a rear gate. But, ultimately,
17 Mr. Passage tells this undercover agent, you should just follow
18 her to a parking lot, pull up next to her, shoot her and drive
19 away. Mr. Passage then tells this undercover agent that he can
20 get \$5,000 easy and he will get it to James.

21 And during that same conversation you're going to hear
22 Mr. Passage ask the undercover agent, how long -- or how late is
23 it that you can get to Florida? The evidence will show that at
24 the time that Mr. Passage is negotiating with this undercover
25 agent to kill Carole, he's still confident that Glover's actually

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1 going to kill her. The Glover plot is by far the primary plot.
2 That's the main plot. That's option one. Option two, which is
3 using this undercover agent, that's his backup plan. That's his
4 insurance policy. Option one is Count 1 of the indictment.
5 Option two is Count 2 of the indictment. Two separate plots
6 using two separate hit men to kill one target, Carole Baskin.

7 Now, as central as Carole is to the two murder-for-hire
8 counts, she's just as central to the remaining wildlife charges
9 that are in the indictment in Counts 3 to 21. Again, it was
10 Carole's outspoken activism and criticism against Mr. Passage,
11 against his zoo and his breeding practices that led him to want
12 her killed. And it was her activism that cut into his profit,
13 into his money, and that made him struggle financially, which
14 resulted in him engaging in the conduct that's outlined in
15 Counts 3 to 21.

16 What the evidence will show is that between November of 2016
17 and June of 2018, Mr. Passage routinely sold lions, tigers and
18 other wildlife throughout the country. And when he sold these
19 lions, tigers and other wildlife, he would have accompanying
20 documents with him. And you'll hear about the documents. You'll
21 see them. They're known as disposition forms and CVIs. But what
22 Mr. Passage did with these documents is he would falsify them by
23 indicating on the documents that the animals being transported
24 were donated, when, in reality, he was selling them. That's the
25 crime.

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1 You will also see evidence that he actively sold animals
2 that are protected by the Endangered Species Act, lions and
3 tigers and other animals. And he sold those across state lines.
4 That's the crime.

5 And then, finally, what you will see is that in October of
6 2017, Mr. Passage killed five tigers. And those tigers are
7 protected by the Endangered Species Act. And what the evidence
8 will show is that in October of 2017 a circus needed to house
9 three of their big cats. They didn't have room, so they called
10 Mr. Passage. He says, oh, yeah, I'll take them in. I'll board
11 them for a few months. I'll charge you \$5,000, which he does.
12 But he didn't have the space. He needed the space. And the
13 evidence will show that he had an employee gather five of his
14 tigers, put them in a specific area there at his park. And then
15 one night he goes to where those five tigers are with a .410
16 shotgun and he shoots all five tigers, killing them. He walks
17 away. He looks at another employee, he says, load up the
18 carcasses, take them out back and bury them.

19 The evidence will show that those tigers were healthy when
20 he killed them. Ladies and gentlemen, the evidence will show
21 that he killed those tigers because he needed that \$5,000. He
22 needed the money. He was breeding all these cubs because he
23 needed the money. And he was selling these animals in interstate
24 commerce because he needed the money. And he needed the money
25 because Carole Baskin had ruined him financially. And it's that,

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1 that is exactly what ultimately consumed him and led him to seek
2 his revenge against her by trying to have her murdered.

3 Now, you're going to hear and see this evidence. The
4 Court's going to instruct you on the law. Most important, you're
5 going to get to use your common sense and your intelligence to
6 determine truth and justice. The United States, we have the
7 burden to prove Mr. Passage guilty beyond a reasonable doubt. We
8 accept that burden and we will meet that burden.

9 At the end of the trial, we will ask you to return the only
10 plausible verdicts on all 21 counts: Guilty.

11 THE COURT: Does the defense wish to make an opening
12 statement at this time?

13 MR. EARLEY: Yes, Your Honor.

14 Well, ladies and gentlemen, I agree in one respect with
15 Mr. Brown. This case is about two individuals who are very
16 passionate about their beliefs. They each believe in their own
17 cause and each of them has used social media and other forms of
18 Internet chat to further their cause. Carole Baskin has aligned
19 herself with several large animal rights organizations that want
20 more and stricter federal laws and regulations concerning the
21 exhibition and breeding of large cats. In this case, we'll talk
22 about tigers and lions.

23 Joseph Passage aligns himself with small businessmen and
24 women who own private zoos, sanctuaries and small roadside
25 petting zoos. These individuals believe in their right to be

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1 free from additional restrictive and burdensome federal laws and
2 regulations. Mr. Passage believes he should be allowed to
3 continue to engage in a completely legal activity; that is,
4 breeding and cub petting, using animals that, for the most part,
5 are generations removed from animals in the wild that this
6 Endangered Species Act is supposedly there to cover.

7 Now, Ms. Baskin, she administered a number of websites
8 spreading her message and soliciting donations for her cause.
9 Mr. Passage did the same. The evidence will show that each
10 goaded the other; Ms. Baskin, via her 911 Animal Abuse website,
11 where she identified Mr. Passage as one of her most wanted.
12 Mr. Passage goaded Carole Baskin via his Joe Exotic TV and other
13 media websites. Oddly, I think the evidence would show, each was
14 probably beneficial to the other in raising awareness for their
15 respective causes.

16 In 2011, Mr. Passage's zeal to goad Ms. Baskin opened him up
17 to civil liability. As Mr. Brown told you, he infringed a
18 copyright that Ms. Baskin had on the term "Big Cat Rescue," and
19 she successfully got a lawsuit going and won a million-dollar
20 judgment. Once that judgment was enforceable in the state of
21 Oklahoma, she took every legal procedure she could think of to
22 try to collect on that judgment, with the purpose, as Mr. Passage
23 believed, to bankrupt him. Hundreds of thousands of dollars in
24 legal fees were spent on both sides over a five or six-year
25 period.

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1 And it was during the period from 2011 to 2016 that
2 Mr. Passage posted some of these YouTube videos and other social
3 media posts ramping -- or disparaging Ms. Baskin. You're going
4 to see a number of those. Mr. Passage's theatrics in some of
5 these bordered on the ridiculous. They went on for years without
6 drawing the attention of law enforcement. Apparently, for years,
7 no one took them seriously.

8 Baskin's relentless legal maneuvering had the desired
9 effect. Mr. Passage was unable to keep up with the legal fees.
10 His efforts to avoid her taking his business couldn't keep it
11 from failing. He brought in another person, Jeff Lowe. You're
12 going to hear a lot about Jeff Lowe during the course of this
13 trial. Around February 2016, Lowe became the new owner of the
14 park. By 2017, Lowe's efforts to separate himself from
15 Ms. Baskin's judgment and her legal maneuvering failed. He was
16 unable to withstand Baskin's well-funded legal assault on the
17 park.

18 In the summer of 2017, Lowe had had it. The evidence will
19 show his investment in the park was going nowhere financially.
20 The evidence will show he got together with another disgruntled
21 investor, James Garretson, to contact Baskin to see if there was
22 some way she would just buy the park out for about a half a
23 million dollars. In exchange, he'd walk away and he'd give her
24 some documents to show that maybe Mr. Passage had violated some
25 rules and regulations consistent with his license. Garretson,

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1 you'll hear, had loaned the park \$10,000 and he too was not
2 getting any return on his investment.

3 Well, the plan to sell the park to Carole Baskin didn't gain
4 any traction, so the focus switched to getting rid of
5 Mr. Passage. If Mr. Passage is gone, surely Ms. Baskin will turn
6 her attention to her next most wanted person. Well, the easiest
7 way to get rid of Mr. Passage was to exploit the very thing that
8 drew attention to him in the first place, his inability to
9 control his mouth.

10 The crude antics Mr. Passage engaged in repeatedly on the
11 Internet and social media had an effect on Mr. Passage. The
12 evidence will show it removed any filter that Mr. Passage may
13 have had. After bashing Baskin year after year, over and over,
14 he lost awareness of the limits to criticism and good sense.
15 Fueled by the unbridled license that the Internet affords anyone
16 who wants to spout off anything, Mr. Passage just did that over
17 and over.

18 The loss of awareness and good sense on his part crept into
19 his life at the zoo. Mr. Passage's mouth didn't turn off when
20 the lights in the studio turned off. When prompted, when
21 prompted, he routinely spouted off his dislike for Ms. Baskin to
22 anybody who would listen. As you will hear, on several
23 occasions, mostly out in the open and around a number of people,
24 he would claim that he wanted Ms. Baskin dead. No one ever took
25 him seriously, not even a man who is now a police officer took

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1 him seriously.

2 Apparently no one filed charges over this five-year period
3 of time where he was spouting all this stuff and no one asked for
4 an investigation into any of these rants. It was understood that
5 these rants and rages were just a part of the filterless Joe
6 Exotic.

7 Well, simultaneously, and perhaps coincidentally, two very
8 similar plans were hatched to get rid of Mr. Passage. First,
9 Lowe's plan. Well, Lowe had this hapless crony of his, Alan
10 Glover, who had come to South Carolina. He had known him for
11 years -- come from South Carolina. He had known him for years.
12 Lowe and Glover phoned up this scam to have Baskin killed, and
13 they tried to involve Mr. Passage in their plan. The evidence
14 will show that Lowe sought to have Passage get involved in this
15 plan to kill Carole Baskin, and it didn't seem to make a whole
16 lot of sense. Glover hated Mr. Passage, and I'm sure you'll hear
17 that when he testifies.

18 What Lowe and Glover didn't really know at the time,
19 however, was that Mr. Passage was on to them. He played along
20 with them in an effort to gather information about what they were
21 seemingly doing to try to harm Ms. Baskin. He played along with
22 the fake ID. He played along with sending a phone. He played
23 along with giving money to Mr. Glover. Why would he do that?
24 Well, the evidence will show Mr. Passage wanted the net benefit
25 of this whole phony scheme that Jeff Lowe had cooked up, and that

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1 was Glover's going to be gone. He's going back to South
2 Carolina. He's out of my hair. My problems are solved with that
3 particular person.

4 The evidence will show that Passage's plan worked out about
5 how he envisioned it would. Glover did go back to South
6 Carolina. And that was the end of it. Nothing more was
7 expected. Nothing more happened. That was all there was to it.

8 Now, the evidence will show that Mr. Passage -- if you were
9 going to hire a hit man, you would not hire Alan Glover. No one
10 in their right mind would hire Alan Glover to do any task. The
11 evidence will also show Mr. Passage had already decided, during
12 this period of time, to exit from the park. He already had his
13 exit plan in place. He was tired of it. He was tired of the
14 park. He was tired of the legal business. And so he had already
15 made his own plan.

16 He had actually -- you'll hear evidence that he cozied up to
17 PETA, the People for Ethical Treatment of Animals, a very large
18 animal rights organization. Mr. Passage got with PETA and he
19 started unloading his animals at the park in the fall of 2017.
20 Again, he had had it. He was ready to go. He joined the enemy
21 and he started getting rid of his inventory, which is completely
22 inconsistent with wanting to bring any harm to anyone.

23 Now, again, simultaneously, and maybe coincidentally, the
24 federal government hooked up with Mr. Garretson. And, you know,
25 after his phone call trying to tip off Carole Baskin,

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1 Mr. Garretson was contacted by the federal government, Agent
2 Bryant. Garretson was asked to try to get some information on
3 Mr. Passage, about him violating some of these wildlife rules and
4 regulations. They had been investigating Mr. Passage since 2015
5 and didn't have a prosecution to show for it.

6 So somehow, though, during the course of this, Mr. Garretson
7 becomes aware of this plot that Lowe and Allen have to set up
8 Mr. Passage for a murder for hire. And he apparently believed it
9 was for real. Seizing on an opportunity to get something on
10 Mr. Passage, Garretson's job then became to set up a
11 murder-for-hire scheme involving an undercover FBI agent. The
12 problem was, Mr. Passage just really wasn't interested. Oh,
13 sure, when he was approached by Garretson and eventually the
14 undercover FBI agent, Mr. Passage ran his mouth, as expected, but
15 his follow-through with their plan to kill Baskin was pretty much
16 nonexistent.

17 The evidence will show that after this initial meeting with
18 the undercover agent on December 8, 2017, Mr. Passage made no
19 real effort to follow through on any of it. In fact, for months
20 the government, the agents, tried to engage Mr. Passage into
21 having another meeting with this undercover FBI agent. It never
22 happened. Mr. Passage never went through with any of the things
23 that the undercover agent suggested that he needed to do, get a
24 burner phone, find a firearm, do these other things. He never
25 came up with money. He never did anything. Why? Because he

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1 wasn't interested in their plan.

2 Now, I anticipate the judge will instruct you, at the end of
3 the trial, about the essential elements of the murder-for-hire
4 charges that are in Counts 1 and 2. And the judge will instruct
5 you, you must find each one of those elements beyond a reasonable
6 doubt. I think after you listen to the evidence and you consider
7 it carefully with the instructions that the judge will give you,
8 you will find that Mr. Passage did not cause someone to travel in
9 interstate commerce or use a facility in interstate commerce with
10 the intent that a murder be committed. The evidence will fall
11 well short of that.

12 Now, separately you will hear testimony about these, what
13 I'll call animal regulations law violations that Mr. Passage is
14 accused of. I think you will find, after you listen to the
15 evidence and you look at the law that the Court instructs you on,
16 that essentially all of those remaining counts are the
17 government's effort to cobble together laws and regulations that
18 really have no application to Mr. Passage, and that their only
19 effort is to assist Ms. Baskin and her fellow big-money animal
20 rights organizations to close down small businesses who are
21 engaging in completely legal activity that they just don't like.

22 I want you to pay close attention to how this case was
23 investigated, pay close attention to who was investigated and who
24 was not investigated. And pay attention to the techniques that
25 were used. And I think that you will find, at the conclusion of

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1 all of the evidence, all of the evidence, that the government has
2 failed to establish any of these crimes, as they're required to
3 do, beyond a reasonable doubt. Thank you.

4 THE COURT: Ladies and gentlemen, the parties have
5 invoked the rule of sequestration. I would ask any witnesses
6 that are in the courtroom, you are to be excused from the
7 courtroom. Do not discuss your testimony with any other witness.
8 With the exception of those witnesses that have been excused from
9 the rule that the parties have previously addressed, I would ask
10 the parties to please monitor their own witnesses to be sure that
11 nobody's in the courtroom.

12 With that, government, you may call your first witness.

13 MS. MAXFIELD-GREEN: Thank you, Your Honor. The
14 government calls Erik Cowie.

15 (WITNESS SWORN.)

16 **ERIK COWIE**

17 **DIRECT EXAMINATION**

18 **BY MS. MAXFIELD-GREEN:**

19 Q. Good morning, Mr. Cowie. Could you please state your name
20 for the record?

21 A. Erik John David Cowie.

22 Q. Mr. Cowie, do you know a person named Joseph Schreibvogel,
23 who also goes by the name as Joseph Maldonado-Passage or Joseph
24 Passage?

25 A. Yes, ma'am.

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- 1 Q. How do you know Mr. Passage?
- 2 A. I worked out at the G.W. Zoo for him for about five years.
- 3 Q. And where is the G.W. Zoo?
- 4 A. Wynnewood, Oklahoma.
- 5 Q. Do you see Mr. Passage here in the courtroom?
- 6 A. I do.
- 7 Q. Could you describe, just for the record, what he's wearing,
8 please?
- 9 A. Looks like a leather jacket, white T-shirt.
- 10 Q. How did you come to work for Mr. Passage at the G.W. Zoo?
- 11 A. Found an ad on Craigslist.
- 12 Q. All right. Did you apply online?
- 13 A. Sent an email and then they came out and got me the next
14 day.
- 15 Q. All right. When was that?
- 16 A. 2014. March, I believe.
- 17 Q. Who hired you?
- 18 A. Joseph.
- 19 Q. Now, in total, how -- I think you referenced this earlier,
20 but, in total, how long did you work for the G.W. Zoo?
- 21 A. Almost five years.
- 22 Q. When did you stop working there?
- 23 A. I believe October of last year. September, October of last
24 year, I believe.
- 25 Q. What were you originally hired to do?

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- 1 A. Work the big cat crew.
- 2 Q. What were your job responsibilities on the big cat crew?
- 3 A. Anything from doing water checks, placing meat down for
4 them, putting vitamins on it, observing their behaviors, seeing
5 if they're injured or anything like that, securing cages,
6 shifting cats. Picking up poop, obviously. All-around
7 maintenance, cage inspections. Pretty much everything.
- 8 Q. Prior to working at the G.W. Zoo, did you have any
9 experience with exotic cats?
- 10 A. None whatsoever.
- 11 Q. At some point during your time there, did you get promoted
12 to a crew leader of some kind?
- 13 A. Yes. I was big cat lead.
- 14 Q. Big cat lead?
- 15 A. Yes, ma'am.
- 16 Q. And how long were you the big cat lead?
- 17 A. Oh, probably three or so years.
- 18 Q. What was your job schedule like?
- 19 A. Some -- some months I'd go three or four months straight
20 without a day off. I mean, we'd get there at 8:45 in the morning
21 and leave whenever we got done with everything.
- 22 Q. All right. So six -- six or seven days a week, would you
23 say?
- 24 A. Yes.
- 25 Q. Where did you live during this time?

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- 1 A. On the park.
- 2 Q. What kind of accommodations did the park have?
- 3 A. Trailer houses.
- 4 Q. How much were you paid?
- 5 A. I got 150 bucks a week, plus I didn't have to pay any bills
- 6 or anything like that.
- 7 Q. And were you paid by cash or by check?
- 8 A. By check.
- 9 Q. Now, as the big cat crew leader, did you interact with the
- 10 cats at the zoo on a daily basis?
- 11 A. Every day.
- 12 Q. And over time -- well, first of all, how many cats, big
- 13 cats, were at the zoo during your tenure?
- 14 A. So the population fluctuated a lot. Our inventory has
- 15 changed almost on a monthly basis, so some months we'd have maybe
- 16 200 big cats out there, sometimes we'd have maybe about 100 to
- 17 150.
- 18 Q. Now, that's a lot of animals. Over time did you get to know
- 19 each one of them so that you could tell them apart from each
- 20 other?
- 21 A. Absolutely, yes.
- 22 Q. Did you play a role in raising baby cubs that were born at
- 23 the park?
- 24 A. A lot of times, yes.
- 25 Q. What does that entail?

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1 A. Just a feeding schedule, cleaning up their nurseries, doing
2 private playtimes with the public, you know, when they come in
3 and pay for a private playtime.

4 Q. How are those animals fed? Are they allowed to -- do their
5 mothers nurse them, or how are they fed?

6 A. No, ma'am. We pulled them pretty much day, day after
7 they're born. There's just too many things that can go wrong
8 inside the cage. Usually there's a male in there. So they were
9 pretty much all bottle-fed.

10 Q. Did you enjoy working at the park with the big cats?

11 A. Absolutely.

12 Q. When you started working at the zoo, what did you observe
13 Mr. Passage's role to be?

14 A. Entertainment director.

15 Q. And what did that -- what were his responsibilities and his
16 duties?

17 A. Pretty much had his hand in everything. I mean, I -- I --
18 cannot slow him down.

19 Q. So he was pretty much involved in the day-to-day activities
20 of the park?

21 A. Yes, ma'am.

22 Q. Did he act as a boss over the employees?

23 A. Well, he had to, yes.

24 Q. Over the course of your time there did Mr. Passage stay
25 actively involved in the daily activities of the park?

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1 A. Kind of more and more towards the end was less and less on
2 the park itself. But he was always present, always there
3 doing -- if he wasn't in the office, he was out running around,
4 buying stuff for -- for the park.

5 Q. We were talking earlier about the baby cubs that were born
6 at the park. While you were there, were cubs frequently born at
7 the park?

8 A. Yes.

9 Q. About how many cubs were born per year?

10 A. Anywhere from 30 to 50.

11 Q. 30 to 50 cubs per year?

12 A. Yes.

13 Q. And you referenced this earlier, were some of those cubs
14 used for playtimes at the zoo?

15 A. Yes, ma'am.

16 Q. Describe for us a playtime. What do you get with a
17 playtime?

18 A. Well, get a cub -- we try to rotate them out so we're not
19 burning them out all the time, but they're anywhere up to about
20 16 weeks of age. People come in and just sit down on the floor
21 with them, and they pet them and scratch their bellies and, you
22 know, stuff like that. And my duties in there was to make sure
23 nobody was going to get bit or scratched. That was my job, to
24 get bit and scratched, but, you know, they're tigers, so.

25 Q. What did the park charge for a playtime?

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1 A. I think it was 55 bucks for eight minutes, per person, and
2 five dollars for each additional person.

3 Q. So with 30 to 50 cubs being born a year at the park, did --
4 and some of those were used for playtimes, correct?

5 A. Correct.

6 Q. Okay. Now, did some of those cubs leave the park?

7 A. Most of them did.

8 Q. What percentage would you say left the park?

9 A. Upwards of 95 percent.

10 Q. To your knowledge, based on working there, was Mr. Passage
11 selling lion and tiger cubs?

12 A. I had nothing to do with all the paperwork. I just handled
13 the animals. So I couldn't tell you for any degree of accuracy.

14 Q. When the cubs left the park, was it your job to prepare them
15 to travel?

16 A. Sometimes.

17 Q. What goes into that?

18 A. Get a -- get a couple of bottles, you know, baby bottles,
19 get some KMR, which is Kitten Milk Replacer, the powder form.
20 Keep that refrigerated. Get a kennel, put towels inside of it.
21 Depending on the size of the cub, if they need water or not, you
22 know, things like that.

23 Q. Did you ever hear Mr. Passage talk about selling the cubs
24 for money?

25 A. Couple of times.

Emily Eakle, RMR, CRR

1 Q. What do you recall him saying?

2 A. We had a litter of five lions born, and he said he had just
3 pulled the park out of the winter rut right then and there, which
4 is about \$25,000.

5 Q. He believed the five cubs would be worth \$25,000; is that
6 what you said?

7 A. Yeah. Total, yeah.

8 Q. Based on your observation of Mr. Passage over the years that
9 you worked there, did he use social media, like Facebook,
10 YouTube, Twitter, Instagram?

11 A. Habitually.

12 Q. That was going to be my next question. Can you describe the
13 frequency that he would use social media?

14 A. Since I don't use social media -- I don't even have a cell
15 phone -- I couldn't tell you. But I -- every day it was
16 something about Facebook this, Facebook that.

17 Q. To your knowledge, was he maintaining and updating his
18 social media accounts himself?

19 A. Sometimes I think he did, and then also he had people on the
20 side just dedicated to -- to filling out Facebook pages or -- I
21 don't know how that all works, but --

22 Q. All right. Let's talk about the summer of 2017. At that
23 time, about how many cats were housed at the zoo?

24 A. Upwards about 150 or so, maybe 180.

25 Q. Okay. And those 180 -- 150 to 180 tigers, were they all in

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1 individual cages?

2 A. No.

3 Q. How were they housed?

4 A. Usually, if they're all males, we'll keep them together.

5 You can have two females and a male in a cage and you'll be good,
6 but for the most part it would be male, female.

7 Q. At that time were the big cat cages full to capacity or were
8 there any empty cages?

9 A. There was a couple times we were completely full.

10 Q. In July of 2017 did the G.W. Zoo receive a shipment of more
11 cats?

12 A. Yes.

13 Q. What were the circumstances -- circumstances of that?

14 A. They'd come up from Florida. It was 22 of them. And,
15 evidently, the lady who had them got sued or something like that,
16 I'm not really exactly sure, but that's where they came from.

17 Q. Where did you put them?

18 A. In the cages we had open.

19 Q. Okay. And at that point were there any empty cages?

20 A. Yes.

21 Q. Are you familiar with the Merriweather Circus?

22 A. Yes, ma'am.

23 Q. How are you familiar with the Merriweather Circus?

24 A. Trey, who is the cat handler there, he rents space at the
25 zoo every winter, so it's -- cats have -- basically, they go on

Emily Eakle, RMR, CRR

1 vacation. They don't tour in the summertime.

2 Q. So would he bring his cats to the zoo?

3 A. Yes, ma'am.

4 Q. When did Trey Key's animals typically arrive each year?

5 A. Usually around October.

6 Q. Were you working at the zoo in October 2017?

7 A. Yes, ma'am.

8 Q. In October 2017, did you see Mr. Passage shoot some of the
9 zoo's tigers?

10 A. I didn't see it, but I knew what was going on.

11 Q. Tell us about what you remember about that event.

12 A. We had some new employees and I had to keep them off park,
13 which basically means we kept them in the commissary, which is a
14 food preparation area for our herbivores and omnivores. And we
15 keep them there because he didn't want them knowing what's going
16 on.

17 Q. Who didn't want them knowing?

18 A. Joe and Reinke, John Reinke. And -- well, they tranquilized
19 them and then I heard the gunshots.

20 Q. Okay. Let's break that down a little bit. What time of day
21 was it?

22 A. It was after dark.

23 Q. And you say they "tranquiled" the animals. You mean
24 tranquilized them?

25 A. Yes, ma'am.

Emily Eakle, RMR, CRR

1 Q. Did you assist -- well, first, who tranquilized them?

2 A. I wasn't physically there, so I really can't tell you with
3 specifics, but the only people who had access to the drugs and
4 the weapons was Joe and John Reinke.

5 Q. Did you assist in any way in getting the animals ready to be
6 tranquilized?

7 A. No, ma'am. I was watching the other employees.

8 Q. Did you assist in any way in gathering the animals together?

9 A. No.

10 Q. All right. Did the park have a veterinarian?

11 A. At that time, yes.

12 Q. Who was it?

13 A. Doc Green.

14 Q. Was she there that night?

15 A. I don't think so.

16 Q. Now, you said you were with the employees at that point in
17 the commissary, correct?

18 A. Uh-huh.

19 Q. How did you know what was about to happen?

20 A. Well, it had been discussed and they were asking me which
21 cats were -- were not breeders.

22 MR. EARLEY: Your Honor, I'll object, unless there's
23 some directive as far as who's saying what.

24 THE COURT: Sustained.

25 Q. (By Ms. Maxfield-Green) Mr. Cowie, who was saying this?

Emily Eakle, RMR, CRR

1 Who did you hear these conversations from during that day?

2 A. From Joe and Reinke.

3 Q. Okay. So you can go ahead. From -- what did you hear from
4 Mr. Passage about what was happening that day?

5 A. Basically, we needed to make cage space and we were looking
6 for cats who weren't producing any cubs. And I kept getting
7 asked if these cats here have had cubs or these cats here have
8 had cubs since I'd been there. And they had not, and so
9 apparently they were dispensable.

10 Q. So you say you didn't see the tigers being shot, correct?

11 A. Correct.

12 Q. Did you hear gunshots?

13 A. Yes, ma'am.

14 Q. How many?

15 A. Five all day.

16 Q. Which tigers were shot?

17 A. There was two cats in cage 40, two cats in cage 42. It was
18 Samson and Delilah, two white Bengals. There was also Trinity
19 and Lauren in cage 40. And then Cuddles, who was in cage 81.

20 Q. All right. Tell me about Cuddles. What kind of tiger was
21 he?

22 A. Siberian.

23 Q. What kind of health was he in?

24 A. He was an old cat, but he was actually in really good
25 health. He was kind of a clown, so he was -- he was in good

Emily Eakle, RMR, CRR

1 spirits. He was just a single male, old male by himself.

2 Q. Okay. You mentioned Samson and Delilah. Is that a male and
3 female?

4 A. Yes, ma'am.

5 Q. What was their health like?

6 A. They were good, just not producing any cubs.

7 Q. Were they limping?

8 A. No.

9 Q. What about -- you mentioned Lauren and Trinity. Is that a
10 male and female?

11 A. Yes, ma'am. Lauren is the male. He did limp.

12 Q. He did or did not?

13 A. He did.

14 Q. He did limp?

15 A. Uh-huh.

16 Q. What about Trinity?

17 A. No, she was good.

18 Q. What was their overall health like?

19 A. Great.

20 Q. Had they been producing cubs?

21 A. No, ma'am.

22 Q. What did you hear Mr. Passage say about why he shot these
23 five tigers?

24 A. Well, it was just --

25 MR. EARLEY: Your Honor, I think that's asked and

Emily Eakle, RMR, CRR

1 answered.

2 THE COURT: He can answer.

3 THE WITNESS: Could you repeat the question, please?

4 Q. (By Ms. Maxfield-Green) What did you hear Mr. Passage say
5 about why he shot the five tigers?

6 A. Make room for the cats coming from Merriweather Circus.

7 Q. Now, these five tigers were chosen. Were there other
8 animals with health problems that he did keep?

9 A. Uh-huh.

10 Q. Why did he keep those animals?

11 A. 'Cause they were making babies.

12 THE COURT: Sir, you need to answer yes or no. It's
13 hard for the court reporter to take down uh-huh and huh-uh, so if
14 you would please answer yes or no.

15 THE WITNESS: Yes, sir.

16 Q. (By Ms. Maxfield-Green) Can you say that again?

17 A. One more time.

18 Q. Why did he keep other animals that might have had limps or
19 health problems?

20 A. I couldn't say.

21 Q. During or immediately after you heard the gunshots, did you
22 hear Mr. Passage say anything about what had just happened?

23 A. I did. I was walking down the backside of the park and he
24 was coming up from Cuddles' cage. And he says, "Jesus, if I knew
25 it was this easy, I'd just go blast them all."

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1 Q. What happened to the tiger carcasses?

2 A. They dug a big hole with a skid steer in the back pasture
3 and buried them.

4 Q. Did you dig that hole?

5 A. No, ma'am.

6 Q. Who did?

7 A. Dylan West.

8 Q. Now, after those carcasses had been pulled to the back, did
9 you let the employees go?

10 A. Yes, ma'am.

11 Q. And did they -- did the employees know what had happened?

12 A. Not really.

13 Q. When the cages for Samson and Delilah and Lauren and Trinity
14 and Cuddles were empty, what animals went into them?

15 A. There was two -- two of Trey's tigers went to cage 40 and
16 cage 42, and then Francis, the lion, went out to cage 81, where
17 Cuddles was.

18 Q. And were those all Trey Key's tiger -- animals from the
19 Merriweather Circus?

20 A. Yes, ma'am.

21 MS. MAXFIELD-GREEN: Pass the witness.

22 THE COURT: Cross-examination.

23 **CROSS-EXAMINATION**

24 **BY MR. EARLEY:**

25 Q. So you referred to Mr. Passage as the "entertainment

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- 1 director."
- 2 A. That's what he liked to call himself, yes.
- 3 Q. All right. And was there a studio on site at the park?
- 4 A. Yes, sir.
- 5 Q. And did you ever go into the studio?
- 6 A. Every once in a while, yes.
- 7 Q. All right. What would take place in the studio?
- 8 A. There for a while, he had a Internet TV show, Joe Exotic TV.
- 9 They'd do a lot of editing up there. You know, the photographers
- 10 and the cameramen would follow the crews around some days, and
- 11 they'd do all their editing up in there.
- 12 Q. So this TV show that was produced there, were you ever there
- 13 while it was being produced?
- 14 A. Not the production process, no, sir.
- 15 Q. Were you ever on the show?
- 16 A. Yes, sir.
- 17 Q. All right. So tell me about that. Who was -- how many
- 18 people were involved in the production of this show?
- 19 A. Sometimes it was one guy, sometimes there was up to five or
- 20 six of them.
- 21 Q. All right. And were you there when Mr. Passage did any of
- 22 these shows where he was talking about Carole Baskin?
- 23 A. I've seen them.
- 24 Q. Well, were you there?
- 25 A. No, sir.

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1 Q. All right. Now, was there a standard meeting of all
2 employees at the park?

3 A. Yes, sir. 8:45 in the morning, then whenever we got done at
4 night.

5 Q. All right. So who was required to attend these morning
6 meetings?

7 A. Everybody.

8 Q. And were they every morning?

9 A. Yes, sir.

10 Q. And during any of these morning meetings, what would be
11 discussed?

12 A. It all depends on what was lined up for the day, you know,
13 what side of the park are you going to be cleaning today, who's
14 going to be doing water checks. Just normal park business.

15 Q. All right. Was there anything that you would consider not
16 related to park business that was discussed in these meetings?

17 A. Oh, sure.

18 Q. Okay.

19 A. You know, just discussing the news or, you know, who had a
20 birthday or stuff like that.

21 Q. All right. Anything that you recall over the four years you
22 were there that struck you as anything unusual being discussed at
23 these meetings?

24 A. Well, lot of times he'd bring up Carole Baskin.

25 Q. Okay. What would he say about her?

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- 1 A. Just sick of her, tired of it. I don't even know all
2 these -- going to court, lawyer bills. Just constantly.
- 3 Q. Just complaining about --
- 4 A. Yes, sir.
- 5 Q. -- generally what's happening between Ms. Baskin and him in
6 the legal arena, correct?
- 7 A. Yes, sir.
- 8 Q. Anything else?
- 9 A. Well, he did mention the fact that he'd -- he'd like to see
10 her dead.
- 11 Q. Okay. Did he say that on a number of occasions?
- 12 A. Yes, sir.
- 13 Q. And did he say that in front of all of these employees?
- 14 A. Several of the employees, yes, sir.
- 15 Q. Now, your job description, I guess you said, at least -- you
16 were mostly dealing with the large cats; is that correct?
- 17 A. All carnivores, yes.
- 18 Q. And I take it that your experience with them was movement
19 from one cage to another? Is that true?
- 20 A. Sometimes, yes. We'd have shift pens. We don't go in there
21 and clean with the big cats. We shift them in these little
22 lockdowns, and then I'd go in and then let the rest of the crew
23 in. We'd clean it up and put meat down, let the cats back in.
24 Usually takes about 20 minutes.
- 25 Q. So how often did you have an opportunity to observe these

Emily Eakle, RMR, CRR

- 1 cats close-up?
- 2 A. Every day.
- 3 Q. And --
- 4 A. All of them.
- 5 Q. -- when Dr. Green was out there, were any of those cats, you
- 6 know, tranquilized for treatment purposes?
- 7 A. Yes, sir.
- 8 Q. Were you present during that time?
- 9 A. Several -- several times, yes.
- 10 Q. And you mentioned that the inventory changed pretty much
- 11 monthly, correct?
- 12 A. Almost, yeah.
- 13 Q. So cats would come in and cats would go out; is that right?
- 14 A. Yes, sir.
- 15 Q. Okay. And you talked a little bit about this playtime that
- 16 was there. People, I guess -- who were these people that would
- 17 come in and pay that money for playtime?
- 18 A. Ninety percent of the customers up there come in from the
- 19 Dallas-Fort Worth region. And we did tours twice a day, 11:30
- 20 and 2:30, so that also entailed a playtime with a baby tiger.
- 21 But then throughout the day, people can still go to the nursery
- 22 by themselves and --
- 23 Q. Did you conduct any of these tours?
- 24 A. Yeah.
- 25 Q. So what's the subject matter of these tours?

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1 A. Basically, just lining out our mission statement, what we're
2 all about, the preservation of tigers, what we can do to
3 contribute to the -- the propagation of the species, working with
4 hybrid cats as well, and --

5 Q. All right. So your message was given out during these
6 tours, correct?

7 A. Yes, sir.

8 Q. And so these people that were coming in to do this playtime
9 with these -- these cubs are just regular folks off the street,
10 right?

11 A. Yes, sir.

12 Q. Okay. Who, for whatever reason, wanted to have an
13 opportunity to get close to one of these small cubs, correct?

14 A. Yes.

15 Q. All right. Now, Dr. Green was the park veterinarian; is
16 that right?

17 A. Yes, sir.

18 Q. And she was the person who authorized, I guess, treatment
19 and -- and was the one to call if there was something wrong,
20 correct?

21 A. Yes, sir.

22 Q. Have you had any formal training in veterinary care?

23 A. No, sir.

24 Q. So you're not allowed to make any sort of medical decision
25 with respect to any of these cats on your own, correct?

Emily Eakle, RMR, CRR

- 1 A. Except for reporting injuries and irregular behaviors, yes.
- 2 Q. Sure. But you don't have any decision-making authority?
- 3 A. No, sir.
- 4 Q. Now, were there USDA inspectors that would come to this
5 park?
- 6 A. Yes, many times.
- 7 Q. All right. So was that on a regular basis?
- 8 A. Well, they'd just kind of pop in. All depends. One year,
9 we got inspected, I think, like eight or nine times.
- 10 Q. All right. So what would they do when they came in?
- 11 A. They would walk from one end of the park, inspecting every
12 single cage. They're looking for how tall your grass is.
13 They're looking for how big the wells are inside the cage, how
14 tall the cages are. And if they find an infraction, they'll
15 either give us some time to correct that or slap us with a fine.
- 16 Q. All right. So those inspections occurred frequently?
- 17 A. Yes.
- 18 Q. And did you have any interaction with these individuals when
19 they were there inspecting?
- 20 A. Very, very little.
- 21 Q. Okay. Did you know who they were?
- 22 A. Yes.
- 23 Q. All right. Now, you were interviewed about these things
24 that you have testified to about the -- your observations of what
25 happened in October 2017. You were interviewed about that

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- 1 August 3rd, 2018; isn't that right?
- 2 A. I believe so.
- 3 Q. All right. That was after Mr. Passage had left the park,
4 correct?
- 5 A. Yes.
- 6 Q. And who was running the park at that time?
- 7 A. Jeff and Lauren Lowe.
- 8 Q. All right. So when the agents in this case came out to talk
9 to you about this matter, you were working for Mr. Lowe?
- 10 A. Yes, sir.
- 11 Q. Okay. And you knew that Lowe and Mr. Passage had had a
12 falling out, correct?
- 13 A. Yes.
- 14 Q. All right. And Lowe made you available to these folks to
15 talk to them about these matters, correct?
- 16 A. Yes, sir.
- 17 Q. All right. And prior to August 3rd, 2018, when Mr. Lowe had
18 you come in and speak to these people, you hadn't mentioned to
19 anyone your concerns about euthanasia of these animals back in
20 October 2017, had you?
- 21 A. No, sir.
- 22 Q. You didn't mention it to USDA inspectors, did you?
- 23 A. No, sir. Again, I didn't handle any of the paperwork.
- 24 Q. You didn't mention it to Dr. Green, did you?
- 25 A. I don't believe so, no.

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1 Q. Okay. You didn't mention any perceived wrongdoings that
2 were supposedly maybe going on at the park to any law enforcement
3 agent, did you?

4 A. I did not.

5 Q. And you didn't mention anything that you might have thought
6 was going on that might have been wrong to any other
7 organization, did you?

8 A. No, sir.

9 Q. All right. And you didn't attempt to pass any of this
10 information that you told these people about in August 2018, you
11 didn't attempt to pass that along anonymously even to anyone, did
12 you?

13 A. Not really, no.

14 Q. Okay. So the first time that any mention is made of putting
15 down these animals in October 2017, by you, is when Lowe
16 presented these people to you, correct?

17 A. Yes.

18 Q. Are you still working at the park?

19 A. No, sir.

20 Q. Why did you leave?

21 A. Because I knew all this was going on and it was going to be
22 bad. I had to walk away.

23 Q. So you left Mr. Lowe?

24 A. Yes.

25 Q. All right. Now, you mentioned that these Merriweather

Emily Eakle, RMR, CRR

1 animals were coming in in October 2017. How many were there?

2 A. Three; two tigers and a lion.

3 Q. Okay. And you mentioned that based on your observation of
4 what happened with these five tigers, there would be, what, three
5 empty -- empty cages, correct?

6 A. Correct.

7 Q. So how many cages were necessary for the Merriweather Circus
8 tigers?

9 A. Three cages.

10 Q. And was that because the two tigers were kept separate?

11 A. Yes.

12 Q. And how many animals were on the park at that specific time,
13 do you know?

14 A. We were pretty much at capacity, so --

15 Q. Do you know that for a fact?

16 A. All my cages were full, yes.

17 Q. Well, were there other cages?

18 A. Not capable of handling the tigers, no.

19 Q. You mentioned to Ms. Green that there were other animals
20 that were, I guess, maybe not in good health that were left
21 alone. Did you -- did you hear that question?

22 A. Yes.

23 Q. And -- but you don't have any experience with those other
24 animals?

25 A. I do not, except for day-to-day observations.

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1 Q. And, again, you're not trained to determine whether there's
2 an animal who might be in pain, correct?

3 A. Correct.

4 Q. You're not trained in any scientific capacity to judge
5 whether or not an animal needs to be euthanized, correct?

6 A. You are correct.

7 MR. EARLEY: May I have just a moment?

8 THE COURT: Sure.

9 Q. (By Mr. Earley) You mentioned in your testimony that toward
10 the end Mr. Passage was less involved in the park, correct?

11 A. Correct.

12 Q. And isn't it true, in the fall of 2017, Mr. Passage was busy
13 doing other things outside the park?

14 A. Yes.

15 Q. In fact, he was probably absent from the park regularly,
16 correct?

17 A. At least once, twice a day, yes.

18 Q. All right. And -- now, did Mr. Passage at one point fire
19 you?

20 A. Yeah.

21 Q. And when was that?

22 A. I can't remember the exact date.

23 Q. Was it in 2016?

24 A. Probably correct, yes.

25 Q. Why did he fire you?

Emily Eakle, RMR, CRR

- 1 A. You know, actually a big misunderstanding, because I'd been
2 working for three months straight without a day off. And I was
3 getting a day off and I knew I was getting a day off, and I got
4 wasted. And I was still drunk in the morning and I didn't go
5 into work. And he was going to fire me, so --
- 6 Q. So you were intoxicated at work, correct?
- 7 A. It was my day off.
- 8 Q. You work around large cats, correct?
- 9 A. I don't work drunk, sir.
- 10 Q. But you were drunk at the park, correct?
- 11 A. Yes.
- 12 Q. And he fired you, correct?
- 13 A. Yes.
- 14 Q. And then he gave you an opportunity to come back after you
15 cleaned yourself up, correct?
- 16 A. Yeah.
- 17 Q. Now, did Mr. Lowe provide you any benefits when you were
18 working for him, outside of your regular pay?
- 19 A. No.
- 20 Q. Did he provide you with any free dental work?
- 21 A. He talked about it.
- 22 Q. All right. What was he offering you?
- 23 A. Just to fix my teeth.
- 24 Q. And how was that going to be done?
- 25 A. I don't even know.

Emily Eakle, RMR, CRR

1 Q. He didn't discuss the particulars with you --

2 A. No, sir.

3 Q. -- about how that would be paid for?

4 A. He just said I needed to go set up the appointment and they
5 would take care of the rest.

6 Q. That he would take care of it?

7 A. Yes, sir.

8 MR. EARLEY: Nothing further.

9 THE COURT: Ms. Green, we're knocking on the door of
10 our morning break. Do you have much in the way of redirect?

11 MS. MAXFIELD-GREEN: No, Your Honor, a few minutes.

12 THE COURT: Please proceed.

13 **REDIRECT EXAMINATION**

14 **BY MS. MAXFIELD-GREEN:**

15 Q. All right. Mr. Cowie, Mr. Earley just talked to you about
16 an incident where you were drunk at the park on your day off. Do
17 you remember that?

18 A. Uh-huh. Yes.

19 Q. Where did you live?

20 A. On the park.

21 Q. So your residence was on the park as well?

22 A. Yes, ma'am.

23 Q. And so if you are drunk on your day off at your own
24 residence, you're also still at the park, correct?

25 A. Correct.

Emily Eakle, RMR, CRR

- 1 Q. And you said -- told Mr. Earley that you never worked drunk?
- 2 A. No, ma'am. Head on a swivel.
- 3 Q. Explain that. What would be the downside of trying to work
- 4 drunk?
- 5 A. Getting ate.
- 6 Q. By a tiger, correct?
- 7 A. Yes. Hopefully a tiger.
- 8 Q. Why do you say "hopefully a tiger"?
- 9 A. A lion would just rip you apart all day long.
- 10 Q. Fair enough.
- 11 All right. Now, Mr. Earley asked you, and you admitted you
- 12 have no formal training in veterinary medicine, correct?
- 13 A. Correct.
- 14 Q. Now, over the course of five years of working at the park --
- 15 you testified earlier that you interacted with these animals on a
- 16 daily basis, correct?
- 17 A. Yes, ma'am.
- 18 Q. Did you feel close to these animals, like you knew them?
- 19 A. Yeah. More like a companion. I wasn't just the meat guy.
- 20 Q. Did the animals respond well to you?
- 21 A. Yes.
- 22 Q. How so?
- 23 A. Put it to you this way: I've actually thought about
- 24 sneaking on the park at night just to go see my babies, but
- 25 they'd give me away within about ten seconds.

Emily Eakle, RMR, CRR

- 1 Q. How do you think they would give you away?
- 2 A. Because they'd start meowing at me.
- 3 Q. Do they recognize you?
- 4 A. Yeah. They can tell your stride, by the way you walk, your
5 voice.
- 6 Q. So based on the relationship you built with these cats, do
7 you think you would have known if one was sick?
- 8 A. Oh, yeah.
- 9 Q. Do they sound different when they're sick?
- 10 A. They do. They actually become lethargic. It's not like
11 they can talk to you or anything like that, but, I mean,
12 obviously from -- injuries from fighting with another cat, that's
13 painfully obvious. But, you know, when they're not acting the
14 right way like they're supposed to be, they're not running up to
15 you like they normally do, you know there's something wrong.
- 16 Q. And you would have noticed if these animals were limping,
17 correct?
- 18 A. Correct.
- 19 Q. Mr. Earley, he referred to it as euthanasia. Do you
20 consider what Mr. Passage did in shooting the tigers to be
21 euthanasia?
- 22 A. In a matter of speaking, yes.
- 23 Q. Did you believe they needed to be put down for health
24 purposes?
- 25 A. Not all at the time, no.

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- 1 Q. I'm talking about the five tigers.
- 2 A. The five?
- 3 Q. Yes.
- 4 A. No, they shouldn't have. But the deal is, it's not my park.
- 5 Q. You weren't -- you didn't own the park, did you?
- 6 A. No.
- 7 Q. You didn't own those cats, did you?
- 8 A. No.
- 9 Q. Who did?
- 10 A. Joseph Maldonado.
- 11 Q. Who made all the decisions for the park?
- 12 A. Yes.
- 13 Q. Now, Mr. Earley asked you had the -- he established with you
- 14 that you didn't say anything to anyone about what had happened
- 15 until August of 2018, correct?
- 16 A. Correct.
- 17 Q. Why not?
- 18 A. It's always been a policy on the park, what happens on the
- 19 park stays on the park. It's nobody else's business but our own.
- 20 Q. Who made up that policy?
- 21 A. I believe Joseph did. And, actually, when you filled out
- 22 your paperwork for an application, you would sign a waiver for
- 23 \$1 million to not discuss what's going on on the park.
- 24 Q. There was a written --
- 25 A. Yes, ma'am.

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1 Q. -- nondisclosure agreement?

2 A. Like a contract kind of thing, yeah.

3 Q. And what was it about the \$1 million? How did that play in?

4 A. Possible lawsuit against you, if you talked about what's
5 going on in the park.

6 Q. And Mr. Earley asked you -- established with you that you
7 were working for Mr. Lowe at the time that you spoke to federal
8 agents about what had happened. Did the fact that you worked for
9 Mr. Lowe influence what you told the government on that day or
10 any other day?

11 A. No, not at all.

12 MS. MAXFIELD-GREEN: That's all for the government,
13 Your Honor.

14 THE COURT: Mr. Earley, you have more than just a
15 couple?

16 MR. EARLEY: No, I don't.

17 THE COURT: Okay.

18 **REXCROSS-EXAMINATION**

19 **BY MR. EARLEY:**

20 Q. Okay. So I believe you have established that you were very
21 close to these animals that were put down in October of 2017,
22 correct?

23 A. Correct.

24 Q. So close that you would think about sneaking in to visit
25 with them at night, correct?

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1 A. No, this is after I've left the park. I'm talking about
2 just going back and seeing my babies.

3 Q. Okay. So close enough that, even to this day, you would
4 have gone back to visit with them --

5 A. Yes.

6 Q. -- if you could?

7 A. Yes.

8 Q. Correct? All right. So -- and your testimony is there was
9 absolutely nothing wrong with these animals and that they should
10 not have been put down. Is that pretty much what you're saying?

11 A. Pretty much, sir, yes.

12 Q. All right. And so if you're that close to them and you felt
13 that something that wrong had happened, why didn't you tell
14 somebody?

15 A. First of all, I signed that agreement. Secondly, if --
16 whenever we had to put any cats down, if I wasn't there to help
17 them do this, then my -- my only solace I get out of this, at
18 least they're close to me and, you know, they trust me. And so
19 it made me feel -- you know, if I wasn't there to do it, somebody
20 else would be.

21 Q. But you never did anything. You never called anyone. You
22 only said anything when these people showed up, correct?

23 A. Correct.

24 MR. EARLEY: Nothing further.

25 THE COURT: Thank you, Mr. Cowie. You may step down.

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1 Ladies and gentlemen of the jury, we will take our morning
2 break. Fifteen minutes. The court will remain in recess -- I
3 mean in attendance and stay seated, please, as the jury leaves.

4 (Jury exited.)

5 THE COURT: Court will be in recess for 15 minutes. If
6 I could see lead counsel in chambers, please.

7 (Break taken.)

8 (The following record was made in open court, in the
9 presence of all parties, counsel, and in the presence and hearing
10 of the jury.)

11 THE COURT: Court will come back to order. The record
12 will reflect the jury has returned in the jury box.

13 Government, next witness.

14 MS. MAXFIELD-GREEN: Government calls Dylan West.

15 (WITNESS SWORN.)

16 MS. DAVIS: Please take a seat.

17 DYLAN WEST

18 DIRECT EXAMINATION

19 BY MS. MAXFIELD-GREEN:

20 Q. Good morning, Mr. West. Could you state your name for the
21 record, please?

22 A. Dylan West.

23 Q. Mr. West, where do you currently live?

24 A. Elmore City.

25 Q. Is that here in Oklahoma?

Emily Eakle, RMR, CRR

- 1 A. Yes.
- 2 Q. Are you from Oklahoma?
- 3 A. Yes, ma'am.
- 4 Q. Do you have a job?
- 5 A. Yes.
- 6 Q. What do you do?
- 7 A. Working at a welder fabricating place.
- 8 Q. Mr. West, do you know a person named Joseph Schreibvogel,
- 9 who also goes by the names Joseph Maldonado-Passage or Joseph
- 10 Passage?
- 11 A. Yes, ma'am.
- 12 Q. And how do you know Mr. Passage?
- 13 A. He gave me a job at the G.W. Exotic Animal Zoo.
- 14 Q. Okay. Do you see him here in the courtroom today?
- 15 A. Yes, ma'am.
- 16 Q. Can you just describe briefly for the record what he's
- 17 wearing?
- 18 A. Looks like a gray jacket and a tie.
- 19 Q. Now, you said that Mr. Passage gave you a job at the G.W.
- 20 Zoo. Is that in Wynnewood, Oklahoma?
- 21 A. Yes, ma'am.
- 22 Q. And when was that, that you started working at the zoo?
- 23 A. I'm going to say February the 24th.
- 24 Q. Of what year?
- 25 A. 2017.

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1 Q. Okay. And how did you find that job? How did you come to
2 find the job and get to working there?

3 A. I was with a girl that was working there. And I was three
4 weeks without a job and she told me that they needed help, to put
5 an application in. So I went up front and put an application in,
6 and within 30 minutes he -- Mr. Joe pulled me to the back and
7 gave me an interview and gave me a date to start.

8 Q. In total, how long did you work for the G.W. Exotic Animal
9 Park?

10 A. Probably about a year and a half to two years.

11 Q. About when did you stop working there?

12 A. October of 2018.

13 Q. When you got hired, what was your first job? What were you
14 hired to do?

15 A. To work on a crew on small animals.

16 Q. And did you have that same job the whole time or did you
17 take on different responsibilities?

18 A. I took on different responsibilities.

19 Q. What else did you end up doing?

20 A. Within three or four days of starting, I ended up getting
21 moved to the cat crew, working under Erik. And then I was on cat
22 crew for about seven months, and then I ended up taking over the
23 crew leading over small animals.

24 Q. When you say "Erik," was that Erik Cowie?

25 A. Yes.

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- 1 Q. What was your job schedule like?
- 2 A. I worked every day except for Wednesday.
- 3 Q. Okay. And did you have set hours?
- 4 A. 8:45 to whenever everything got done and we had our nightly
5 meeting and Mr. Joe would tell us to go home.
- 6 Q. Where did you live during this time?
- 7 A. We -- I stayed at the trailer house that were at the
8 property of the zoo.
- 9 Q. Okay. How much were you paid?
- 10 A. 300 a week.
- 11 Q. Now, during your time at the zoo, what did you observe Joe's
12 role to be?
- 13 A. Be the boss and to be -- to make sure we got the -- got the
14 staff the things they needed to be able to take care of the
15 animals.
- 16 Q. Was he pretty much there on a daily basis?
- 17 A. For the most part, yes, unless he had to go and -- to the
18 store and get us stuff. Or there was a lot of times that he
19 would go and -- you know, to Texas, to a wrestling match on some
20 Fridays, like once a month or so.
- 21 Q. Were you working at the zoo in October of 2017?
- 22 A. Yes, ma'am.
- 23 Q. In October of 2017, did you see Mr. Passage shoot some of
24 the zoo's tigers?
- 25 A. Yes, ma'am.

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1 Q. Can you tell us what happened?

2 A. We was there and he had one gentleman put them asleep. And
3 then he walked over there with -- after they got them into the
4 catch pen, he had them put to sleep and then he walked over there
5 with a .410 and put it up against the head and pulled the
6 trigger.

7 Q. Did you see him do it?

8 A. Yes, ma'am.

9 Q. How many tigers were in that catch pen?

10 A. One. Because there was two catch pens, so the pairs were in
11 each catch pen.

12 Q. Okay. Now, to the best of your recollection, which tigers
13 did he shoot?

14 A. I'm not sure what their names were. I know -- I know -- I
15 think four of them was orange and one was a white one.

16 Q. Do you remember their -- the sex of the animals at all?

17 A. I know they're -- the fifth one was a male, and then the
18 other four were pairs, a female and male pairs.

19 Q. Now, in your opinion, just in your observation of the cats
20 by working there, did they appear to be in poor health?

21 A. No.

22 Q. The pairs, the male/female pairs, to your knowledge from
23 working at the park, had they ever produced cubs?

24 A. The two females that were killed, no. I do not remember
25 them having -- ever having cubs the whole time I was there.

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1 Q. Did Mr. Passage say anything about why he was shooting the
2 tigers?

3 A. To make more room for other animals coming in.

4 Q. To your knowledge, based on what you heard him say, was
5 there any reason he picked those five as opposed to any other
6 five?

7 A. Because they were old and some of them were limping.

8 Q. Did the zoo have a veterinarian?

9 A. Yes.

10 Q. Who was the vet?

11 A. Doc Green.

12 Q. Was she there when the tigers were shot?

13 A. No, ma'am.

14 Q. To your knowledge, had she come by maybe the day before to
15 examine them or --

16 A. No, ma'am.

17 Q. Once Mr. Passage shot the tigers, did he ask you to do
18 something?

19 A. Yes. He asked me to load them up in the bucket of the skid
20 steer and to haul them to the back of the property and bury them.

21 Q. Did you do that?

22 A. Yes, ma'am.

23 Q. And so explain for us, what is a skid steer and how did you
24 use it to get the animals back to the property -- back of the
25 property?

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1 A. It's like a bucket. It has a little cab. It's four wheels.
2 You sit in it. And it has feet controls and arm controls. The
3 arm controls makes you move back and forth and turn, and then you
4 can move them side to side to make -- to work the bucket, make
5 the bucket go up or tilt the bucket.

6 Q. Okay. And so you were able to scoop up the animals in the
7 bucket?

8 A. It was me and one other zookeeper that helped me pick up the
9 tigers and put them in the bucket.

10 Q. Is that something you had to do one at a time, or could you
11 get all five of them in there?

12 A. One at a time.

13 Q. So you said you took them to a place on -- was it on the zoo
14 property?

15 A. Yes.

16 Q. What was that property -- that piece of property used for?

17 A. Mainly to dump trash.

18 Q. Okay. And did you use the skid steer to dig a hole?

19 A. Yes, ma'am.

20 Q. How deep did you bury the tigers?

21 A. Estimate, I would probably have to say about 5 feet.

22 Q. How did you position them? Were they, like, all on top of
23 each other, in a row, otherwise?

24 A. They were laid out one by one in a row.

25 Q. And then after you put them in the hole, did you put dirt

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1 back on top of them?

2 A. Yes, ma'am.

3 Q. Now, in October of this past year, of 2018, were you
4 contacted by Special Agent Matt Bryant with the U.S. Fish &
5 Wildlife Service?

6 A. Yes, ma'am.

7 Q. And did he ask you questions about this incident as well?

8 A. Yes, ma'am.

9 Q. And did you tell him the same things then that you told us
10 here today?

11 A. Yes, ma'am.

12 Q. Did he ask you to show him where you'd buried the tigers?

13 A. He did, but I was not able to take off work and be there the
14 day that they were digging them up, so I went out there the
15 weekend before and flagged them.

16 Q. Okay. Did you -- explain what you did by -- what you mean
17 by flagging them.

18 A. I put stakes down in the ground and tied ribbons around the
19 areas that they were in.

20 Q. And at that time did you still remember where you'd buried
21 them?

22 A. Yes, ma'am.

23 MS. MAXFIELD-GREEN: Government passes the witness.

24 THE COURT: Thank you.

25 Cross-examination?

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1 CROSS-EXAMINATION

2 BY MR. EARLEY:

3 Q. Now, you stated you went to work at the park in February
4 of 2017; is that right?

5 A. Yes, sir.

6 Q. So you were there, obviously, much less than a year when
7 this incident took place, correct?

8 A. Yes.

9 Q. All right. And with respect to your knowledge of whether
10 any of these female tigers had ever had cubs, was that based on
11 just your experience during those few months?

12 A. Yes, just in the time that I was there.

13 Q. Right. So your knowledge about whether or not they had been
14 breeding prior to February 20 -- 2017 -- well, you just had no
15 knowledge, correct?

16 A. I had no knowledge.

17 Q. All right. So -- and you said it was four orange and one
18 white; is that right?

19 A. If I am correct.

20 Q. Okay. Now, as I understand it, before the animals were
21 shot, they were tranquilized; is that correct?

22 A. Yes, sir.

23 Q. Is it your understanding that that's the normal method for
24 how the euthanasia is conducted at the park; tranquilizer first?

25 A. Yes.

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- 1 Q. All right. Had you actually seen that before?
- 2 A. Being -- tranquilizing them and putting them to sleep to --
- 3 Q. Yes.
- 4 A. -- doctor them and stuff, yes.
- 5 Q. Yes. Okay. So -- and that was just a normal thing.
- 6 They're shot with a tranquilizer gun, correct?
- 7 A. Yes.
- 8 Q. They're put to sleep and then, if the doctor is present,
- 9 they're euthanized, correct?
- 10 A. Yes.
- 11 Q. All right. With respect to these particular cats, did you
- 12 interact with them on a daily basis?
- 13 A. When I worked -- when I worked on the cat crew, I was around
- 14 them because we -- we -- we cleaned their cages every other day,
- 15 and then we fast fed them the days that we didn't clean them.
- 16 Q. And when was -- when was that, that you worked in that
- 17 capacity?
- 18 A. I would probably have to say at least the day before.
- 19 Q. All right. So were you on the cat crew the latter part of
- 20 your employment?
- 21 A. By that time, no.
- 22 Q. Okay.
- 23 A. I was -- I took over the small animal crew.
- 24 Q. Okay. So you were with the small animal crew at the time
- 25 that this incident took place?

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- 1 A. Yes, sir.
- 2 Q. Okay. Now, have you had any formal training in veterinary
3 medicine?
- 4 A. No, sir.
- 5 Q. All right. So you have no ability to discern whether or not
6 there's something medically wrong with a particular animal,
7 correct?
- 8 A. I have no idea -- if I thought something was wrong, I took
9 it to someone that was over me.
- 10 Q. Correct. But you didn't make any decisions on your own as
11 to whether or not a particular animal needed some sort of
12 treatment?
- 13 A. No, sir.
- 14 Q. Okay. And are you familiar with USDA inspectors coming to
15 the park?
- 16 A. I know we -- we was -- we'd get told the days when they were
17 there, but when it comes to rules or anything, I don't know.
- 18 Q. Well, did you see USDA inspectors at the park?
- 19 A. Yes.
- 20 Q. How often would they come?
- 21 A. Probably within like -- I know they was -- they showed up
22 probably ten times in that whole time that I was there.
- 23 Q. All right. And did you have any interaction with them at
24 all?
- 25 A. No.

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1 Q. Did they ever ask you any questions on occasion?

2 A. No, sir.

3 Q. What was it that you observed them doing?

4 A. Walking around, looking at the cages, looking at the
5 animals. And if -- pretty much, that's all I would observe them
6 doing, is walking around, talking about the cages, picking out
7 what needed to be fixed or, you know, what animal, you know,
8 needed to look at.

9 Q. Okay. Now, with respect to what happened in October
10 of 2017, did you think there was something wrong going on?

11 A. I had no idea.

12 Q. Okay. I mean, did it come to your mind that maybe something
13 that was taking place was not supposed to be taking place? Did
14 you question it?

15 A. I didn't question it because I was just doing what I was
16 told and I don't know the rules.

17 Q. Well, did anybody else who was there -- for example, Erik
18 Cowie or John Reinke -- did any of them express to you that, hey,
19 this isn't right?

20 A. No.

21 Q. So to your knowledge, it was just another part of your job,
22 correct?

23 A. Yes.

24 Q. All right. Now, you're aware that Mr. Passage left the park
25 at some point, correct?

Emily Eakle, RMR, CRR

- 1 A. Yes.
- 2 Q. And that was while you were still employed there, right?
- 3 A. Yes.
- 4 Q. And so you were working for Jeff Lowe; is that right?
- 5 A. Yes.
- 6 Q. And when did you leave work there at the park?
- 7 A. October of 2018. I could not tell you what day.
- 8 Q. All right. Did you just leave for a better job or --
- 9 A. I started looking for another job and Jeff Lowe found out
- 10 that I had an interview and he told me I was free to go, to pack
- 11 my stuff and get off the park.
- 12 Q. So he let you go before you had another job?
- 13 A. Yes.
- 14 Q. During this period of time, from October 2017 until you met
- 15 with these agents -- do you remember when you met with these
- 16 agents?
- 17 A. I couldn't tell you exactly what day it was.
- 18 Q. Was it -- if I told you it was August 3rd of last year,
- 19 2018, would that be about right?
- 20 A. Yes, that would be about right.
- 21 Q. It was after Mr. Passage had already left, correct?
- 22 A. Yes.
- 23 Q. So between the time that this incident happened in October
- 24 up until the time that you met with this agent -- the agents, had
- 25 you expressed to anybody any concern about what happened in

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1 October with these five tigers?

2 A. No, because it was in the rules that we don't -- we didn't
3 talk to any other employees about what was going on. We signed a
4 contract, if we said anything to anybody, we could be sued.

5 Q. But did you think anything was wrong?

6 A. I didn't really think of anything.

7 Q. Okay. So Mr. Lowe made you available to these folks to talk
8 to, did he not?

9 A. Yes.

10 Q. And, in fact, during the time that you were being
11 interviewed back in August of 2018, did you actually have a group
12 discussion with the agents and other employees of the park?

13 A. It was just Jeff, his wife, me, Erik and Matt.

14 Q. Who was there?

15 A. That talked in the group, it was me, Erik, Jeff Lowe, Lauren
16 and Matt.

17 Q. Okay. So the agents talked to you alone, right?

18 A. Yes.

19 Q. Okay. But there was some discrepancy, was there not, about
20 when this -- what we have identified, I guess, now as the October
21 incident -- there was some discrepancy about when that may have
22 occurred. Do you remember that?

23 A. I don't know exactly what day in October that happened.

24 Q. But was there some recollection by one of these people that
25 it may have happened earlier on, in a completely different month?

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- 1 A. No. It happened in October.
- 2 Q. No. I understand that you -- you say that. But what was
3 the purpose of the group meeting?
- 4 A. Oh, of the -- talking to the agent?
- 5 Q. Yes.
- 6 A. It was to -- they were asking me questions about the
7 incident that happened in October and was asking me some
8 questions on some of the information, trying to figure out if I
9 knew some information on other things, and I didn't.
- 10 Q. So -- but that took place with Jeff Lowe, Lauren Lowe, the
11 two agents and Erik Cowie, correct?
- 12 A. Yes.
- 13 Q. All of you together?
- 14 A. Yes.
- 15 Q. So each one of you could hear what the other person was
16 saying?
- 17 A. Yes.
- 18 Q. All right. And part of that was to see if you could figure
19 out or knew anything else about any wrongdoing about Mr. Passage,
20 correct?
- 21 A. Yes.
- 22 Q. Because that was their whole goal, was to find out from you,
23 Mr. Cowie or anybody else if there was anything dirty going on
24 with Mr. Passage, correct?
- 25 A. Yes.

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1 Q. All right. Now, during your time at the park, did
2 Mr. Lowe -- or if Mr. Passage was there at the time -- were you
3 offered any benefits besides your salary?

4 A. I was offered dental work.

5 Q. Okay. How did that come about?

6 A. Joe was starting to talk to me and was offering to do my
7 dental work done if I would get with him.

8 Q. Did he tell you how that dental work would be paid for?

9 A. All I know is he was trading a tiger and a guy named James
10 Garretson was paying for it.

11 Q. Do you know how Mr. Garretson was paying for it?

12 A. I do not know. Later on, afterwards, I was told that he
13 paid for it with fraud credit cards, but I don't know the truth
14 about it.

15 Q. You were told that Garretson was paying for it with
16 fraudulent credit cards, correct?

17 A. That's what I was told, but I -- I couldn't tell you how
18 true it was.

19 MR. EARLEY: May I have just a moment?

20 THE COURT: You may.

21 Q. (By Mr. Earley) During this period of time that you were
22 working at the park, were you on probation?

23 A. Yes. I'm on probation right now.

24 Q. For a felony?

25 A. Yes.

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1 MR. EARLEY: I don't have any further questions.

2 THE COURT: Thank you.

3 Redirect?

4 MS. MAXFIELD-GREEN: Yes, Your Honor.

5 **REDIRECT EXAMINATION**

6 **BY MS. MAXFIELD-GREEN:**

7 Q. Now, Mr. West, you said that -- that Joe offered to get you
8 some dental work, and you said -- you told Mr. Earley, "if I
9 would get with him." What does that -- what do you mean by that?

10 A. To get in a relationship with him.

11 Q. Like a romantic relationship?

12 A. Yeah. Something like that, yes.

13 Q. Did that ever happen?

14 A. No.

15 Q. But did --

16 A. He -- he also tried to give me a four-door crew cab Dodge
17 dually and anything else I wanted, and I wouldn't take the offer.
18 Granted, I -- I did go and stay a couple of nights at his house
19 with him because it was during the time shortly after his husband
20 ended up passing -- you know, passing away. And he was depressed
21 and I stayed down there to give him company.

22 Q. But you never entered into a romantic relationship with
23 Mr. Passage?

24 A. No, ma'am.

25 Q. Okay. And the dental work, you did end up having that

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1 dental work done?

2 A. Yes.

3 Q. Do you still owe money on that dental work?

4 A. Yes, ma'am.

5 Q. How much?

6 A. Little over \$1,400.

7 Q. All right. Now, you mentioned that as an employee of the
8 zoo you signed some kind of an agreement to not ever tell
9 anything that happened at the park, correct?

10 A. Yes, ma'am.

11 Q. Who -- whose requirement was that?

12 A. Joe's.

13 Q. And it sounds like at some point you also worked for Jeff
14 Lowe, correct?

15 A. Yes.

16 Q. Did he ever have you sign a nondisclosure agreement?

17 A. No, ma'am.

18 Q. And Mr. Earley also asked you about a group meeting with you
19 and Erik Cowie and the special agents and Mr. Lowe and his wife
20 to try to discuss some of the timing of the incidents. Was there
21 anything about that meeting that -- that influenced your ability
22 to remember when this happened, when the tigers were shot?

23 A. No. I -- that day when he asked me, I remember it clear.

24 Q. You remembered it was in October at that time as well, and
25 you still today remember it was in October of 2017?

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1 A. Yes, ma'am.

2 MS. MAXFIELD-GREEN: That's all for the government,
3 Your Honor.

4 THE COURT: Mr. Earley?

5 **RECCROSS-EXAMINATION**

6 **BY MR. EARLEY:**

7 Q. So let me make sure I'm clear on this with respect to the
8 benefit that you got from Mr. Garretson. Were you -- did you end
9 up having to pay for the whole dental work that you received from
10 Garretson?

11 A. No, sir.

12 Q. So what you owe is just a portion of what was provided to
13 you?

14 A. Yes.

15 Q. Now, you stated that you were to sign some sort of
16 nondisclosure-type agreement as an employee at the park, correct?

17 A. Yes.

18 Q. Do you know who owned the park in 2017?

19 A. I could not tell you exactly who.

20 Q. Would it surprise you to find out that Jeff Lowe was
21 actually the owner of the park when you came to work there?

22 A. I do not know that.

23 Q. So if there was paperwork that you needed to sign and
24 nondisclosure agreements, that would be a company policy,
25 correct?

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1 A. Yes.

2 Q. Because it applied to everybody, correct?

3 A. Yes.

4 Q. And if the owner was Jeff Lowe, it was probably his
5 requirement, correct?

6 A. Yes.

7 MR. EARLEY: Nothing further.

8 THE COURT: Thank you, Mr. West. You may step down.

9 MS. MAXFIELD-GREEN: Your Honor, could I have just one
10 extra follow-up?

11 THE COURT: Briefly.

12 MS. MAXFIELD-GREEN: Thank you.

13 **FURTHER REDIRECT EXAMINATION**

14 **BY MS. MAXFIELD-GREEN:**

15 Q. Mr. West, Mr. Earley described it as that Mr. Garretson paid
16 for your dental work. Did you ever see Mr. Garretson pay for
17 your dental work?

18 A. No.

19 Q. Mr. Garretson ever tell you he was paying for your dental
20 work?

21 A. No.

22 MS. MAXFIELD-GREEN: That's all, Your Honor.

23 THE COURT: That bring anything else up, Mr. Earley?
24 I'll give you the opportunity.

25 MR. EARLEY: That's it, Your Honor.

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1 THE COURT: Mr. West, you may step down.

2 Government, call your next witness, please.

3 MS. MAXFIELD-GREEN: Government calls Trey Key.

4 (WITNESS SWORN.)

5 EUGENE "TREY" KEY,

6 DIRECT EXAMINATION

7 BY MS. MAXFIELD-GREEN:

8 Q. Good morning, Mr. Key. Could you state your full name for
9 the record, please?

10 A. My name is Eugene E. Key, III, and I go by Trey.

11 Q. What do you do for a living?

12 A. I am owner and president of Key Equipment Company, and we
13 operate as Culpepper & Merriweather Circus, which I'm general
14 manager and I present our big cat act in the show.

15 Q. And I can see our court reporter struggling. What's the
16 name of the circus?

17 A. Culpepper, C-U-L-P-E-P-P-E-R, and Merriweather,
18 M-E-R-R-I-W-E-A-T-H-E-R, Circus. And it's also a great combined
19 circus. I bought the longest show title in the business.

20 Q. Okay. So you -- the circus, is it a traveling circus or
21 does it have a location?

22 A. We are in our 34th season, traveling eight months out of the
23 year, from mid March until late October.

24 Q. All right. And where all do you go with the circus? Is it
25 regional?

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- 1 A. Generally, from the Mississippi west.
- 2 Q. And I'm sorry, say again, how much of the year do you
3 travel?
- 4 A. About 31 to 32 weeks every year.
- 5 Q. What's home base for you?
- 6 A. Hugo, Oklahoma.
- 7 Q. Does your circus involve exotic animals?
- 8 A. Yes, ma'am.
- 9 Q. What kind?
- 10 A. We have one African lion, who's a male, and we have two
11 tigers, a male and a female.
- 12 Q. Now, in order to use exotic animals in your circus, do you
13 have a license from the USDA?
- 14 A. Yes, ma'am.
- 15 Q. Do you know a person named Joseph Schreibvogel, who's now
16 known as Joseph Maldonado-Passage or Joseph Passage?
- 17 A. Yes.
- 18 Q. How do you know him?
- 19 A. He was -- ran the G.W. Exotic Zoo. And as of the fall of
20 2009, we started boarding our cats there, the three -- the lion
21 and the two tigers there, for during the winters.
- 22 Q. Do you see Mr. Passage here in the courtroom?
- 23 A. Yes, I do.
- 24 Q. And can you describe, just for the record, what he's
25 wearing?

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1 A. Appears to be a dark tie with a white shirt and a -- a
2 carefully -- very carefully highlighted mullet.

3 Q. About how many years did you board your animals at
4 Mr. Passage's park?

5 A. We would drop them off in the fall, late October, the first
6 time was 2009, and we would pick them up in March of the
7 following year. And the last time we did that was March of 2018.

8 THE COURT: Mr. Key, if you could, please, slow down
9 just a little bit. The court reporter has got to take down
10 everything you say.

11 THE WITNESS: Yes, sir.

12 Q. (By Ms. Maxfield-Green) All right. Now, did Mr. Passage
13 charge you to board the animals at the park?

14 A. There wasn't a charge. When we first discussed the
15 arrangements for boarding my animals there, I offered a donation
16 to the zoo. At the time, my wife and I felt like it was a
17 facility that was -- that was doing good work as far as taking in
18 animals that didn't have any other place to go, and we felt it
19 was a worthy cause to support and we offered money up front.

20 Q. Okay. So each year, how much would you donate to the park?

21 A. Each fall, when we dropped the cats off, I would give
22 \$5,000.

23 Q. Now, while your animals were being boarded at the G.W. Zoo,
24 did you allow Mr. Passage to exhibit them to the public?

25 A. Yes.

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1 Q. And are your tigers of a different color than normal tigers?

2 A. Yes. They're called Golden Tabby Tigers. They're a cross
3 between white tigers and orange-and-black tigers. At the time in
4 2009, when we first started working with G.W., they didn't have
5 any Golden Tabbies, so they were quite excited to be exhibiting
6 them.

7 Q. Now, you stated that you started doing this in 2009, all the
8 way up to 2017. Did you have a consistently positive opinion of
9 the park over time?

10 A. It -- it was good at first, and then management became more
11 uncertain and personnel at the park became more uncertain. And
12 after March of 2018, we decided to -- to not board them there in
13 the future.

14 Q. Okay. I'm going to have you look in a book in front of you
15 there at Exhibit 3.1. It should be marked "Government's
16 Exhibits." It should be behind Tab 3. 3.1. You there?

17 A. Yes, ma'am.

18 Q. Okay. Are you familiar with this document?

19 A. Yes, ma'am. It's a transfer document. The USDA considered
20 the park as our home facility. Since we travel, we have
21 traveling sites, per their records, and a home facility. This
22 wasn't necessary to do, since it was our home facility, but when
23 you have to turn in your itinerary pretty exactly to the USDA,
24 it's a good document to have to show what date the animals
25 arrived at the facility. And we would do one when we picked them

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1 up in March to show what day they left the facility.

2 Q. Okay. So on this particular form that you're looking at,
3 were you -- did you assist in filling that out?

4 A. I was there when it was filled out. I received a copy of it
5 and I have a copy of it in my records. I didn't keep as good of
6 records as the park manager there at the time, but we did this
7 every fall and every March when we picked them up.

8 Q. Who created that form?

9 A. John Reinke.

10 Q. You said that you did keep a copy in the business records of
11 the zoo?

12 A. Yes. They kept a copy and we kept a copy in our USDA
13 folder.

14 MS. MAXFIELD-GREEN: Government moves to admit
15 Exhibit 3.1.

16 THE COURT: Any objection?

17 MR. WACKENHEIM: No, Your Honor.

18 THE COURT: Be admitted.

19 Q. (By Ms. Maxfield-Green) Okay. Now that we're all looking
20 at the same thing here. So this is a transfer form; is that what
21 you testified to?

22 A. Yes, ma'am. That's what we used as our transfer form to
23 show that we had actually dropped the cats off and again when we
24 picked them back up.

25 Q. And in the field where it says "Seller/Donor, Key

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1 Equipment," that's you, right?

2 A. Yes, ma'am.

3 Q. And is that address in Hugo, Oklahoma, your home base
4 address?

5 A. Yes, ma'am. That's our mailing address.

6 THE COURT: Counsel, approach, please.

7 (The following proceedings were had at the bench and out of
8 the hearing of the jury.)

9 THE COURT: I may be missing something. I thought we
10 were talking about 3.1. I have 3, a 3 that's being displayed,
11 but not 3.1.

12 MS. MAXFIELD-GREEN: That's supposed to be 3.2, and
13 then we'll get --

14 THE COURT: And on the list it's 3.1.

15 MS. MAXFIELD-GREEN: Yeah, but it's not -- okay. It
16 should have gotten page numbers on it. I wonder if they got cut
17 off. Sorry about that.

18 THE COURT: That's okay. I just wanted to be sure that
19 we had the same exhibit.

20 MS. MAXFIELD-GREEN: Yeah, that's what we're supposed
21 to be looking at.

22 THE COURT: So is there going to be a 3.2?

23 MS. MAXFIELD-GREEN: Yes, which is the next page.

24 THE COURT: Okay. So this --

25 MS. MAXFIELD-GREEN: We can get that fixed in all the

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1 books.

2 THE COURT: Okay.

3 (The following record was made in open court, in the
4 presence of all parties, counsel, and in the presence and hearing
5 of the jury.)

6 Q. (By Ms. Maxfield-Green) Okay. Let's see. Where were we?
7 Okay. Under buyer/receiver, it shows Key Equipment and then
8 address in Wynnewood, Oklahoma. Is that the address of the G.W.
9 Zoo?

10 A. Yes, ma'am.

11 Q. And is that your USDA license that's listed there?

12 A. Yes, ma'am.

13 Q. And these animals, one lion, two tigers, is that the animals
14 you testified about earlier?

15 A. Yes, ma'am.

16 Q. And what's the date on this form?

17 A. It's October 24th, 2017.

18 Q. Okay. And so is -- would you have dropped off those animals
19 on or about that date?

20 A. Yes, ma'am, that would have been that day.

21 Q. Okay. So on or about the same date would you have paid
22 Mr. Passage the \$5,000 that you typically donated when you
23 dropped off your animals?

24 A. It would have been that day or -- or close to it. I can't
25 say that I maybe forgot the check as I was going and mailed it

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1 later, but there would have been -- that would have been the time
2 of year that would have been done.

3 Q. And how would you have paid him for this in October of 2017,
4 cash or a check?

5 A. Check.

6 Q. Take a look at Government's Exhibit 3.2, which should just
7 be the second page of Exhibit 3 in your book.

8 Got it?

9 A. Yes, ma'am.

10 Q. Are you familiar with that document?

11 A. Yes, ma'am.

12 Q. And what is it?

13 A. It's the check dated October 24, 2017, that I wrote them for
14 that year's contribution.

15 Q. Did you pull that check from your own bank records?

16 A. Yes, ma'am. I -- yes, ma'am, I did.

17 Q. And how did you go about doing that?

18 A. I called our bank manager and I asked her to pull all the
19 checks that I had written G.W. that they had on record, and they
20 had seven years' worth.

21 Q. And is that check an accurate reflection of your memory of
22 what you paid that year?

23 A. Yes, ma'am.

24 MS. MAXFIELD-GREEN: Government moves to admit
25 Exhibit 3.2.

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1 THE COURT: Any objection?

2 MR. WACKENHEIM: No, Your Honor.

3 THE COURT: Be admitted.

4 Q. (By Ms. Maxfield-Green) Okay. Looking at it a little
5 closer. Okay. So is this check made out from Key Equipment
6 Company?

7 A. Yes, ma'am.

8 Q. To Greater Wynnewood Exotic Animal Park?

9 A. Yes, ma'am.

10 Q. And what's the date on that check?

11 A. It is October 24th, 2017.

12 Q. And how much was it for?

13 A. \$5,000.

14 MS. MAXFIELD-GREEN: Government passes the witness.

15 THE COURT: Cross-examination?

16 **CROSS-EXAMINATION**

17 **BY MR. WACKENHEIM:**

18 Q. Mr. Key, who would you arrange the boarding of your animals
19 with at the G.W. park?

20 A. Usually, in September of each year, I would either get a
21 call from -- from Joe or from John Reinke. Sometimes we would
22 show -- our circus would be performing close to Wynnewood and
23 they would bring their folks out to see the show after the park
24 had closed in the evening. And we would usually discuss the
25 date -- or confirm that we were bringing them back and discuss

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- 1 the date that we would be bringing them back the next month.
- 2 Q. So it would be either Mr. Passage or Mr. John Reinke?
- 3 A. Yes, sir.
- 4 Q. And this was an annual tradition, so to speak?
- 5 A. Yes, sir.
- 6 Q. You would board your animals there, correct?
- 7 A. Yes, sir.
- 8 Q. So this was revenue to be expected by the park? They knew
- 9 that they would have this with you each year, correct?
- 10 A. Yes, sir.
- 11 Q. You don't do it anymore, correct?
- 12 A. Correct.
- 13 Q. But at the time, you did?
- 14 A. Yes, sir.
- 15 Q. And roughly about the same time every year; is that right?
- 16 A. Yes, sir.
- 17 Q. Okay. And I think you said you've stopped in March of 2018?
- 18 A. Yes, sir.
- 19 Q. Have you constructed your own facility so you can house
- 20 those animals yourself?
- 21 A. Yes, sir.
- 22 Q. And who watches those animals, or at least who did this past
- 23 season?
- 24 A. During our winter months, John Reinke was our -- basically,
- 25 our cat sitter for about two months and helped build -- construct

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1 our facility. And I was there the rest of the time.

2 Q. I think you have talked about Mr. Passage a little bit. Do
3 you recall speaking with the United States Fish & Wildlife
4 earlier this year?

5 A. Yes, sir.

6 Q. And you had described Mr. Passage a bit. Do you -- tell me
7 what your opinion of him on -- and social media is.

8 A. Joe cares a great deal about animals, and his sincerity
9 about that is very impressive. Unfortunately, in our business,
10 we have a lot of agitators and what commonly known in social
11 media are trolls, and Joe did a lot to aggravate those trolls
12 instead of ignoring them.

13 Q. He had a big mouth on social media; yes?

14 A. I don't think I could deny that. I believe he did have a
15 big mouth on social media. I don't -- yeah, that's a very
16 accurate representation.

17 MR. WACKENHEIM: May I have a moment, Your Honor?

18 THE COURT: Yes.

19 MR. WACKENHEIM: Nothing further. Thank you.

20 THE COURT: Redirect?

21 MS. MAXFIELD-GREEN: No, Your Honor.

22 THE COURT: You may step down. Thank you, sir.

23 Government's next witness.

24 MR. BROWN: James Markley.

25 (WITNESS SWORN.)

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1 A. November 9th -- I mean, October 25th, 2000 -- I'm sorry.
2 I've got my dates wrong. 2017 -- October 25th -- October 25th,
3 2018. I'm sorry.

4 Q. Okay. October 25th, 2018?

5 A. Sorry. Little nervous.

6 Q. Take your time. There's water as well, if you need it.
7 How many folks participated in the search on that particular
8 day?

9 A. Approximately ten.

10 Q. And what type of equipment did you-all have?

11 A. We had some big equipment, some backhoe equipment, and also
12 some small shovels, spades, stuff like that.

13 Q. And when you arrived at -- I'll call it the park. When you
14 arrived at the park, had an area been marked off for you?

15 A. It was.

16 Q. Okay. And did you know what -- what exactly were you
17 looking for?

18 A. We had information that five tigers had been buried out
19 there in the area that was marked off and that we were looking
20 for those tigers that were -- we had been told were lined up like
21 sausages or hot dogs.

22 Q. Okay. If you don't mind, please, grab that book in front of
23 you and flip to Government's Exhibit 1 under Tab 1, and then flip
24 all the way through, 1.1 -- there's not a 1.2. So it's 1.1 and
25 then 1.3 through 1.11. When you're done looking at those, let me

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1 know.

2 A. 1.1?

3 THE COURT: Counsel, again, the exhibit list, I'm
4 showing just 1, and in the book I'm showing an Exhibit 1 and then
5 there's some sub-markings on there for 1.1 on. But there's only
6 one exhibit sticker on there, and that's 1. And on the exhibit
7 list, there's just a 1.

8 MR. BROWN: Yes, Judge, and they're consecutive and I
9 would be prepared to lay the foundation and offer it as Exhibit 1
10 and then have him testify to each one, if possible.

11 THE COURT: Okay.

12 THE WITNESS: So make sure we're on the right -- we're
13 on the pictures we're looking at here?

14 Q. (By Mr. Brown) Yes. Do you recognize all those pictures?

15 A. Yes.

16 Q. What are those pictures of?

17 A. Do you want me to go through them?

18 Q. No, just tell me generally what --

19 A. It was of the day of the excavation, or the search.

20 Q. Okay. And were you present when those photographs were
21 taken?

22 A. I was.

23 Q. So do you recognize the scene that's contained or depicted
24 in each photograph?

25 A. Yes.

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1 Q. And does each photograph fairly and accurately depict the
2 subject matter therein as it was on October 25th of 2018?

3 A. It does.

4 MR. BROWN: Judge, we would move for admission of
5 Exhibit 1 at this time.

6 THE COURT: And when you say "Exhibit 1," are you
7 talking about collectively all of those photos?

8 MR. BROWN: Yes, Your Honor.

9 THE COURT: Any objection?

10 MR. WACKENHEIM: Your Honor, there are a variety of
11 photographs. I'm not sure each one is independently relevant.
12 So we would submit -- yes, we do object on the cumulative nature
13 of all of these photographs.

14 THE COURT: It will be sustained up until the point the
15 foundation is laid for each.

16 Q. (By Mr. Brown) Okay. Let's look at Exhibit 1.1. What
17 exactly does that reflect?

18 A. Okay. That first picture is the -- the area, G.W. Exotic.
19 There's the tractor or the backhoe that we brought. Looks like
20 it's moving some garbage.

21 Q. So are you participating in the search that's reflected in
22 Exhibit 1.1?

23 A. Yes.

24 Q. And what day was that, again?

25 A. October 25th.

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1 Q. All right. So you were present when that photograph was
2 taken?

3 A. Yes.

4 Q. Okay.

5 MR. BROWN: We'd move for admission of 1.1.

6 THE COURT: Any objection?

7 MR. WACKENHEIM: No objection.

8 THE COURT: Be admitted.

9 Q. (By Mr. Brown) Okay. Explain exactly what we are looking
10 at.

11 A. Are we on the next picture or --

12 Q. No. We're still on -- it should be up on your screen now.

13 A. Okay. That is a backhoe. The area was covered in garbage
14 or carcasses and trash, and it was just kind of clearing the
15 area.

16 Q. So is this the area that had been marked off?

17 A. Yes.

18 Q. Okay. Approximately how large was that area that was marked
19 off?

20 A. Approximately 50 by 30 feet.

21 Q. Okay. And so once you removed all the trash, explain what
22 your next step was in the search.

23 A. Next step was to use the backhoe and just start to kind of
24 move the dirt gently --

25 Q. Okay.

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1 A. -- as not to disrupt anything. We know we're looking for
2 tigers, and specifically skulls, so we were careful not to damage
3 that with the equipment.

4 Q. And so in your book, now look at 1.3. And does that picture
5 depict what you just testified to?

6 A. Yes.

7 MR. BROWN: We'd move for admission of 1.3.

8 MR. WACKENHEIM: No objection.

9 THE COURT: 1.3 will be admitted.

10 Q. (By Mr. Brown) And it's now -- should be displayed on your
11 screen, Agent. And just explain again, what exactly are you
12 doing?

13 A. We have one of the backhoe operators is running the piece of
14 equipment, and he's just using the dump there to just kind of
15 move the dirt gently, looking for the tigers that we were told
16 were there.

17 Q. Okay. And at any point in time while using the backhoe, did
18 you and your search team come upon anything of significance?

19 A. Yes.

20 Q. What was that?

21 A. We found the group of tigers.

22 Q. And once you initially located those, what did you do?

23 A. Once the backhoe kind of got onto the first -- the first
24 piece of carcass or skin, we kind of backed off with the heavy
25 equipment and started to excavate it with the smaller tools.

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1 Q. Okay. And if you can look in the book at Government's
2 Exhibit 1.4 and 1.5. And are you familiar with those
3 photographs?

4 A. I am.

5 Q. What exactly do those depict?

6 A. That is my hand and my glove. I'm using a brush to kind of
7 brush the dirt off the carcass.

8 Q. How about 1.5?

9 A. That is myself in the middle there of Agent Bryant and the
10 captain game warden, in the hole, excavating the carcass.

11 MR. BROWN: We'd move for admission of Government's
12 Exhibits 1.4 and 1.5.

13 THE COURT: Any objection?

14 MR. WACKENHEIM: No, Your Honor.

15 THE COURT: 1.4 and 1.5 will be admitted.

16 Q. (By Mr. Brown) All right. So 1.4 is showing on the screen.
17 And is that fur or something else of significance that's
18 reflected in that picture?

19 A. It is. It's fur.

20 Q. Okay. And so once you located the fur, is that when you
21 pulled the backhoe out?

22 A. Yes.

23 Q. And then began using hand tools?

24 A. The hand tools, small tools.

25 MR. BROWN: Can we go to the next, 1.5, please.

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1 Q. (By Mr. Brown) And so explain just in detail what it is
2 you-all are doing.

3 A. We are trying -- after we found the carcass, we were trying
4 to locate the skulls. The information we had were that the
5 tigers were shot, so we were looking to find the skulls and
6 remove the skulls.

7 Q. Okay. And did you ultimately locate more than one tiger?

8 A. We did.

9 Q. And can you describe their positioning within the dig site?

10 A. We -- we found five tigers lined up side by side, kind of
11 like hot dogs in a pack. They were just kind of laid right next
12 to each other.

13 Q. Okay. And were they -- how was the decomposition?

14 A. The skin was still intact. The heads were still intact.
15 They had been in the ground, I guess, about a year or so, or
16 less. I'm not sure. But it was still pretty stinky. It was
17 really bad.

18 Q. Okay. And did you and your search team actually exhume all
19 five tigers?

20 A. We exhumed the skulls off of all five tigers.

21 Q. And explain how you would separate the skulls from the
22 actual tiger carcass.

23 A. To separate the head off of the carcass with a reciprocating
24 tool, and then also like a saw or a knife to separate the head
25 from the vertebrae.

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1 Q. And is there a reason you did not remove the entire tiger
2 carcass?

3 A. We were looking for gunshot wounds in the head, so we didn't
4 have a reason to remove the entire carcass from the ground.

5 Q. Okay. Can you look at Exhibit 1.6. And what exactly does
6 that depict?

7 A. That is a skull of a tiger. You can see the bottom -- you
8 can see the four canines, top and bottom.

9 Q. And is that how it was in the ground when you began exhuming
10 it?

11 A. Yes.

12 Q. Okay.

13 MR. BROWN: We'd move for admission of 1.6.

14 THE COURT: Any objection?

15 MR. WACKENHEIM: No, Your Honor.

16 THE COURT: 1.6 will be admitted.

17 Q. (By Mr. Brown) And so were -- this is one of the five,
18 correct?

19 A. Yes.

20 Q. Okay. Were the -- the remaining tigers similarly situated
21 to this one?

22 A. Yes.

23 Q. Okay. And did you remove each skull from each tiger?

24 A. Yes.

25 Q. And what did you do after that?

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1 A. Skulls were removed. They were placed on plastic and taken
2 to an evidence collection site where they were wrapped.

3 Q. Okay. Look at Exhibit 1.7, please. In the book, 1.7.

4 A. Uh-huh.

5 Q. And what does that picture reflect?

6 A. It reflects the evidence collection area that we had set up.
7 There's a white tarp laid out with five individual black plastic
8 bags with skulls.

9 Q. Okay.

10 MR. BROWN: We'd move for admission of 1.7.

11 THE COURT: Any objection?

12 MR. WACKENHEIM: No, Your Honor.

13 THE COURT: 1.7 will be admitted.

14 Q. (By Mr. Brown) So this white tarp that's -- that we are
15 looking at, where in relation to the actual dig site is the white
16 tarp located?

17 A. It was behind the dig site, going back towards the main
18 facility approximately 20 feet.

19 Q. Okay. So the skulls are removed and then taken over to this
20 white tarp?

21 A. Yes.

22 Q. Photographed?

23 A. Yes.

24 Q. Inventoried?

25 A. Yes.

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1 Q. Look at Exhibit 1.8, please. And describe what's depicted
2 in 1.8.

3 A. In 1.8, this is the hole where the -- or the pit where the
4 tigers' head -- the heads were removed. So the carcasses are
5 still in the ground. The yellow flags represent where the heads
6 were removed from the carcasses.

7 MR. BROWN: We'd move for admission of 1.8.

8 THE COURT: Any objection?

9 MR. WACKENHEIM: No, Your Honor.

10 Q. (By Mr. Brown) And I meant to ask, approximately how deep
11 were these five tigers?

12 A. Three to five feet.

13 Q. And, again, I -- explain the five yellow flags that we are
14 looking at in this photo. What exactly is significant about
15 these flags?

16 A. Stuck the flags where the heads were removed from the rest
17 of the carcass, so each flag represents where a head would have
18 been laid.

19 Q. Okay.

20 A. You can see the three together on the bottom and then the
21 one on the other side and then the one on the top.

22 Q. Okay. And with respect to the tiger skulls, after you had
23 exhumed them and placed them on that white tarp and taken your
24 photos, how were they packaged?

25 A. They were wrapped in plastic, wrapped in evidence tape and

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1 then put in coolers, eventually, and that was it.

2 Q. And after they were placed in coolers, do you know if they
3 were frozen?

4 A. They were frozen.

5 Q. Okay. And where -- were they ever mailed to a lab?

6 A. They were mailed to a National Fish & Wildlife forensics lab
7 in Ashland, Oregon.

8 Q. And did you leave -- what exactly did you do with the five
9 carcasses?

10 A. They were left in the pit.

11 Q. All right. Now I want to transition over into Endangered
12 Species Act permits. What is an Endangered Species Act permit?

13 A. A permit for an Endangered Species Act would give you the
14 ability to do something that was contrary or prohibited under the
15 Endangered Species Act.

16 Q. And what is a captive-bred wildlife registration?

17 A. It was implemented to mainstream the permitting system under
18 Endangered Species Act, and this was geared more towards
19 endangered and threatened species that are live, exotic to the
20 U.S. and born in captivity.

21 Q. Does your agency actually administer this permit and this
22 registration program?

23 A. It does.

24 Q. Okay. And is an ESA permit or a captive-bred wildlife
25 registration required to take an endangered species?

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- 1 A. Yes, it is.
- 2 Q. And do you understand, when I say "take," I mean to kill --
- 3 A. Yes.
- 4 Q. -- an endangered species?
- 5 A. Yes.
- 6 Q. Okay. Same question regarding to sell in interstate
- 7 commerce. Is an ESA permit or a captive-bred wildlife
- 8 registration required before you can sell in interstate commerce
- 9 an animal protected by the Endangered Species Act?
- 10 A. Yes.
- 11 Q. Now, what is the process that is required to apply for and
- 12 obtain one of these permits, the permit or the registration?
- 13 A. We have a -- under U.S. Fish & Wildlife Service, it's called
- 14 Division of Management Authority. You have to fill out a form or
- 15 an application to them, kind of telling what you're planning on
- 16 doing or why you're doing that. They're the ones who kind of
- 17 receive the application process and grant the permits.
- 18 Q. Okay. And if a permit or a registration had been approved,
- 19 issued or granted, how long would it be kept?
- 20 A. At least five years, if not further -- or more.
- 21 Q. And would that be maintained with that sub agency within
- 22 your agency?
- 23 A. Yes.
- 24 Q. And refresh my memory. It's the Division of?
- 25 A. Division of Management Authority.

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1 Q. And during your investigation, did you submit a query to the
2 Division of Management Authority?

3 A. I did.

4 Q. And were there any records indicating that Mr. Passage ever
5 received an ESA permit or a captive-bred wildlife registration?

6 A. No.

7 Q. Did your search reveal that Mr. Passage had ever applied for
8 any other permit, other than those two that we just described?

9 A. Yes.

10 Q. Explain that, please.

11 A. The search showed that he had applied and received some
12 import/export licenses years back.

13 Q. And describe what an import/export license is.

14 A. Import/export license is used in the commercial trade to
15 move animals in and out of the country.

16 Q. So does it apply to any type of transfers within the United
17 States?

18 A. Does not.

19 Q. And there is a -- an application that is required to be
20 submitted?

21 A. Yes.

22 Q. All right. And you said he initially applied for it in
23 2012?

24 A. 2012.

25 Q. Was it approved?

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- 1 A. Yes.
- 2 Q. And did Mr. Passage renew that import/export application or
3 permit?
- 4 A. According to the query, he renewed it for a few years after
5 that, yes.
- 6 Q. Okay. And based on the database search, at any point in
7 time did he actually import or export anything under that permit?
- 8 A. Yeah. In the query, he did export an animal in 2015.
- 9 Q. What kind of animal?
- 10 A. I believe it was a tiger-lion hybrid.
- 11 Q. And where was that exported to?
- 12 A. UAE, or Dubai.
- 13 Q. And is a liger protected by the Endangered Species Act?
- 14 A. It is not.
- 15 Q. Okay. So it would not have required any type of ESA permit?
- 16 A. No.
- 17 Q. Okay. Just that import/export permit?
- 18 A. Right.
- 19 Q. All right. Now I want to direct your attention to November
20 of 2017. Did you assist investigators with an investigation down
21 in Dallas?
- 22 A. Yes.
- 23 Q. All right. Did you -- explain that investigation and what
24 you did, please.
- 25 A. I was contacted to serve a -- some papers to a business in

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- 1 Dallas.
- 2 Q. And did you visit that actual business?
- 3 A. I did.
- 4 Q. What was the date of your visit?
- 5 A. November 9th, 2017.
- 6 Q. What was the name of the business you visited?
- 7 A. Smith Electric and Sign.
- 8 Q. Okay. And what's the nature of the business for Smith
- 9 Electric and Sign?
- 10 A. Appeared to be an electric type of business, but also they
- 11 did make some type of IDs, once we got inside.
- 12 Q. So once you went inside, it appeared they offered additional
- 13 services?
- 14 A. Yes.
- 15 Q. And were these authentic IDs, or what kind of IDs were they?
- 16 A. They were novelty IDs.
- 17 Q. Okay. Go ahead and flip to what's been marked as
- 18 Government's Exhibit 30. And there are one, two, three, four
- 19 pages. So we have 30.1, 30.2, 30.3 and 30.4. And just review
- 20 all four of those, please.
- 21 A. Okay.
- 22 Q. Have you reviewed them?
- 23 A. Yes.
- 24 Q. Okay. Were you present when these photographs were taken?
- 25 A. I was.

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1 Q. Were they taken at Smith Electric and Signs?

2 A. They were.

3 Q. And were they taken on November 9th of 2017?

4 A. Yes.

5 Q. Do you recognize the scene in each of the photographs?

6 A. I do.

7 Q. All right. And does each photograph fairly and accurately
8 depict the subject matter therein as it was on November 9th of
9 2017?

10 A. Yes.

11 MR. BROWN: We'd move for admission for 30.1 through
12 30.4.

13 THE COURT: Any objection?

14 MR. WACKENHEIM: No, Your Honor.

15 THE COURT: Be admitted.

16 Q. (By Mr. Brown) All right. If we could look at 30.1. What
17 exactly is reflected in 30.1?

18 A. This was a display that was in the business, kind of
19 representing the type of IDs that could be purchased.

20 Q. Okay. And did this particular business, Smith Electric and
21 Signs, did they -- do you know if they offered IDs for all 50
22 states?

23 A. Not all 50 states, but definitely the ones here represented.

24 Q. Okay. So they did offer an ID for Arizona?

25 A. Yes.

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1 Q. And 30.2, what does that reflect?

2 A. It was a sign that was taped to the desk where the customer
3 would fill out for the ID. It just basically talks about that
4 they're novelty IDs.

5 Q. So they're not genuine. They're not authentic. You can't
6 use them, really, for much?

7 A. Correct.

8 Q. And then in 30.3, what exactly -- when you-all were taking
9 this picture, what are you taking a picture of?

10 A. This was a camera that was set up in the area where the IDs
11 were being made. It was a camera used to take pictures for the
12 IDs. And this is one of the pictures that was on the camera.

13 Q. So this is a -- the viewfinder for a camera that belonged to
14 Smith Electric and Signs?

15 A. Yes.

16 Q. And it contains a digital image of a photograph that had
17 been taken using that camera?

18 A. Yes.

19 Q. All right. And finally, 30.4. Explain this picture,
20 please.

21 A. That was the computer screen at Smith Electric and Sign, of
22 the last few pictures that had been taken to make IDs.

23 Q. So that's -- again, that's the Asus computer monitor that
24 belonged to the business you visited on November 9th of 2017?

25 A. Yes.

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1 Q. And the pictures that are depicted there are of customers
2 who had recently obtained a novelty ID from Smith Electric and
3 Signs?

4 A. Yes.

5 MR. BROWN: Pass the witness, Judge.

6 THE COURT: Cross-examination?

7 **CROSS-EXAMINATION**

8 **BY MR. WACKENHEIM:**

9 Q. Agent Markley, how long have you been investigating
10 Mr. Passage?

11 A. I'm not the case agent on this case.

12 Q. Who is the case agent on this case?

13 A. Agent Matt Bryant.

14 Q. Where is he seated?

15 A. Right here at the desk.

16 Q. Prosecutors' table?

17 A. Yes.

18 Q. At the head of the table?

19 A. Uh-huh.

20 Q. Yes?

21 A. Yes.

22 Q. But you're -- I'm not asking whether or not you are the case
23 agent, but how long have you personally been involved in the
24 investigation of Mr. Passage?

25 A. I have assisted Agent Bryant in this case for a few years.

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- 1 Q. As far back as 2015?
- 2 A. I would say 2015, 2016.
- 3 Q. And you're out of kind of the northern Texas district,
4 correct?
- 5 A. Fort Worth, Texas.
- 6 Q. Do you and Agent Bryant have the same job, just in
7 different --
- 8 A. Same job, just different area of responsibility.
- 9 Q. And that initial investigation of Mr. Passage, what was it
10 for?
- 11 A. I'm not familiar with why it was originally opened, but I
12 think it was for -- obviously with cats.
- 13 Q. So violations of -- or alleged violations of the Endangered
14 Species Act, correct?
- 15 A. Sure, yes.
- 16 Q. And also something called the Lacey Act; is that right?
- 17 A. Okay. Yes.
- 18 Q. Well, I'm asking you. Was he being investigated for Lacey
19 Act violations?
- 20 A. Yeah. Like I said, I didn't open the original
21 investigation, so I'm not familiar where -- exactly where it
22 started from.
- 23 Q. Are you familiar with the Lacey Act?
- 24 A. Yes.
- 25 Q. What is the Lacey Act?

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- 1 A. It's one of our acts or laws that we enforce. It
2 basically -- when there's a violation of state, federal or
3 foreign law, and also in interstate commerce, it can trigger the
4 Lacey Act.
- 5 Q. Right. That's one part. Is there also a mislabeling
6 violation of the Lacey Act?
- 7 A. Yes.
- 8 Q. Are you familiar with that?
- 9 A. Uh-huh.
- 10 Q. Is that a "yes"?
- 11 A. Yes.
- 12 Q. So if I transport a load of fish across state lines, but I
13 mislabel the fish in a material way, that's a violation of the
14 Lacey Act?
- 15 A. If you fraudulently or falsely mislabel wildlife and it
16 crossed state lines, yes.
- 17 Q. So a paperwork violation?
- 18 A. Well, a violation of the Lacey Act. False labeling.
- 19 Q. On paperwork?
- 20 A. Could be.
- 21 Q. How many investigations have you been involved in under the
22 Lacey Act relating to generic tigers?
- 23 A. Myself personally, I haven't had any cases.
- 24 Q. Does Texas permit this cub petting that occurs in Oklahoma?
- 25 A. I'm sorry. Repeat the question.

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1 Q. Does Texas permit cub petting, like here in Oklahoma?

2 A. I'm not familiar.

3 Q. How many investigations have you been involved in under the
4 Endangered Species Act relating to generic tigers?

5 A. I have had cases involving endangered species with lions,
6 tigers. Actually saying generic tigers, no.

7 Q. How many of those investigations resulted in criminal
8 prosecutions?

9 A. We had a case just prosecuted last year involving lions and
10 tigers.

11 Q. How many others?

12 A. That's the only one I have had personally. We also
13 investigate many different things.

14 Q. Mr. Brown jumped right to the visit to the Dallas electrical
15 store that also sold fake identifications. Do you recall that
16 testimony?

17 A. Yes.

18 Q. Okay. But before that, were you present with a meeting with
19 James Garretson and Agent Bryant in September of 2017?

20 A. I was not.

21 Q. So you don't recall meeting with -- at a Two Frogs
22 restaurant in Ardmore, Oklahoma --

23 A. Oh, okay. Yes. Okay. Yeah.

24 Q. That's --

25 THE COURT: Agent, be sure you let him -- Agent, be

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1 sure you let him finish his question before you answer. Okay?

2 Q. (By Mr. Wackenheim) Two Frogs --

3 THE WITNESS: Okay. Yes. Yes.

4 THE COURT: Not at the same time, please.

5 Q. (By Mr. Wackenheim) Do you remember that -- that meeting
6 now?

7 A. I do.

8 Q. Okay. So as far back as September of 2017, you, working
9 with Agent Bryant, were communicating with James Garretson,
10 correct?

11 A. Correct.

12 Q. And you had learned that Mr. Garretson had attempted to
13 contact Carole Baskin; is that right?

14 A. I'm not familiar with that part of it. I was -- I was
15 there, but I don't remember exactly that.

16 Q. Okay. Have you reviewed reports relating to this
17 prosecution?

18 A. Yes.

19 Q. Particularly reports that include your name as someone
20 involved?

21 A. I have reviewed reports, yes.

22 Q. If I were to show you a report dated November 15th, 2017,
23 could you review it and see if it refreshes your recollection?

24 A. Sure.

25 MR. WACKENHEIM: May I approach, Your Honor?

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1 THE COURT: You may.

2 Counsel, would this be a good time for our lunch break?

3 MR. WACKENHEIM: I think it might be, Your Honor.

4 THE COURT: Ladies and gentlemen of the jury, we're
5 going to take our lunch break now. We'll break for an hour and
6 15 minutes.

7 I remind you of the Court's instructions and your admonition
8 that you're not to discuss this case amongst yourselves or with
9 anyone else. Don't reach any conclusions. Don't develop any
10 opinions yet. The case hasn't been submitted to you for
11 deliberation at this point in time.

12 We'll reconvene in an hour and 15 minutes. Court will
13 remain in attendance as the jury exits the courtroom.

14 (Jury exited.)

15 (The following record was made in open court, in the
16 presence of all parties, counsel, and out of the presence and
17 hearing of the jury.)

18 THE COURT: Record will reflect that the jury is out of
19 the courtroom.

20 Counsel for the government, this exhibit issue is -- this is
21 a mess. Did I not suggest at the pretrial that the exhibits
22 should be numbered consecutively, no decimals? If I didn't say
23 that, I intended to, but --

24 MS. MAXFIELD-GREEN: Your Honor, I don't recall that
25 discussion, but --

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1 THE COURT: Well, in any event, even absent that, the
2 exhibit list -- we're now dealing with some exhibits that have an
3 exhibit sticker on them, and then the decimal ones don't have an
4 exhibit sticker. And so, for instance, on Government's
5 Exhibit 30, which has actually been referred to as Government's
6 Exhibit 30.1 -- so we're now showing the jury an Exhibit 30 and
7 we have got a 30.1 that is in evidence.

8 You know, the -- the exhibit list says -- I mean, there's
9 not even any reference to anything other than an Exhibit 30, but
10 then there's others that we have got a -- an A and a B. It's
11 just -- it's problematic to keep track of. We are scrambling.

12 I am going to order the government to resubmit their exhibit
13 list with them numbered as they should be in the book. And these
14 exhibits that we have referred to and entered, they don't even
15 have an exhibit sticker on them. And I -- I -- and I understand
16 that they -- for instance, 30.2 is indicated down near the page
17 number, but there's no exhibit sticker on there.

18 So in any event, I want that to get corrected as soon as
19 possible. Is there any questions about the exhibits?

20 MS. MAXFIELD-GREEN: No, Your Honor. And we apologize
21 for the confusion and we will have it fixed by tomorrow.

22 THE COURT: Counsel, please approach.

23 (The following record was made at the bench.)

24 THE COURT: My understanding, government wanted to
25 make a record about the plea offer prior to trial.

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1 MS. MAXFIELD-GREEN: Yes, Your Honor. Thank you.

2 On October 17th of 2018, the government contacted defense
3 counsel and made the following plea offer: That the government
4 would accept a plea to Count 1 of the indictment and one wildlife
5 trafficking count if Mr. Maldonado would proffer information on
6 other wrongdoing, and that the government would evaluate all the
7 proffered information for a possible 5K, and that offer was
8 rejected.

9 On June -- sorry -- February 19th of 2019 the government
10 contacted defense counsel. We offered that the government was
11 willing to allow Mr. Maldonado to plead to one count of killing a
12 tiger and one count of a Lacey Act false documentation in
13 exchange for dismissing the remaining wildlife counts, the --
14 thus offering, essentially, that we would only proceed to trial
15 on Counts 1 and 2, the murder-for-hire counts. In fact, we
16 offered that if Mr. Maldonado took such a plea, we would
17 stipulate to a motion in limine that no reference would be made
18 to the fact that he had pled guilty to those crimes, including in
19 the event that he testified in his own defense. And that offer
20 was also rejected.

21 THE COURT: Okay. So those were both oral or were
22 those --

23 MS. MAXFIELD-GREEN: Those were both oral.

24 THE COURT: Mr. Earley, does that square with your
25 understanding of all the offers?

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1 MR. EARLEY: Yes, Your Honor.

2 THE COURT: And I assume that you conveyed all that to
3 Mr. Passage?

4 MR. EARLEY: Yes, we did.

5 THE COURT: Do you want to take a minute and confer
6 with him so that we can confirm? I'm going to ask him. I'm not
7 going to go into the detail of the offers, but just to ask him to
8 confirm that you relayed this to him and that he has chosen to go
9 to trial.

10 MR. EARLEY: Yes, Your Honor.

11 MR. BROWN: Judge, we anticipate after lunch Dr. Viner
12 testifying, and I'm not sure what the Court's practice is with
13 respect to tendering her as an expert. I know Judge Friot will
14 not allow us to ever use the word expert when --

15 THE COURT: I would prefer you not request that I
16 recognize her as an expert. I think her credentials can speak
17 for themselves.

18 MR. BROWN: Sure. Fair enough. Thank you.

19 MR. EARLEY: I think we should maybe address one more
20 aspect of the plea offers. I think it was just prior to
21 Ms. Webster's deposition last Tuesday --

22 MS. MAXFIELD-GREEN: Yes.

23 MR. EARLEY: The government did advise us that based on
24 some information that they had obtained through a phone call,
25 that they did not believe that Mr. Maldonado would be of any use

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1 to them if he did not, in fact, enter a plea to the wildlife
2 counts, and if he insisted on going to trial, then they would no
3 longer consider him as a person that they could use for
4 cooperation purposes.

5 THE COURT: Okay.

6 MS. MAXFIELD-GREEN: That's correct.

7 THE COURT: Okay.

8 (The following record was made in open court, in the
9 presence of all parties and counsel, and out of the presence and
10 hearing of the jury.)

11 THE COURT: You ready, Mr. Earley?

12 MR. EARLEY: Yes.

13 THE COURT: Just as a matter of housekeeping,
14 Mr. Earley, at the bench conference we discussed that prior to
15 trial and today's -- leading up to trial, the -- I wanted to
16 confirm, the government had extended to you a couple of different
17 potential offers of -- for a plea; is that correct?

18 MR. EARLEY: That's correct. As is in -- the norm in
19 almost every case, there are discussions with respect to trying
20 to resolve it prior to trial. And that did happen in this case,
21 yes, Your Honor.

22 THE COURT: And did you convey all those discussions to
23 Mr. Passage?

24 MR. EARLEY: Yes, we did, Your Honor.

25 THE COURT: And it was his decision to decline those

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1 and go to trial; is that correct?

2 MR. EARLEY: That is correct.

3 THE COURT: Mr. Passage, I'll ask you, without
4 commentary, Mr. Earley present to you the different options that
5 were presented to you by the government?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: And it was your decision to not take those
8 offers and go to trial; is that correct?

9 THE DEFENDANT: Absolutely.

10 THE COURT: Thank you.

11 Anything further from either party in that regard?

12 MS. MAXFIELD-GREEN: No, Your Honor.

13 MR. EARLEY: No, Your Honor.

14 THE COURT: We'll be in recess until, I believe, 1:35.

15 (Lunch break.)

16 (The following record was made in open court, in the
17 presence of all parties, counsel, and in the presence and hearing
18 of the jury.)

19 THE COURT: Mr. Wackenheim.

20 MR. WACKENHEIM: Thank you, Your Honor.

21 Q. (By Mr. Wackenheim) Agent Markley, I believe we last
22 discussed the meeting you had with James Garretson and Agent
23 Bryant in September of 2017 in Ardmore.

24 A. Yes.

25 Q. Did you have a chance to review that report?

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- 1 A. I did.
- 2 Q. Did that refresh your memory of the event?
- 3 A. It did.
- 4 Q. What was discussed at that meeting?
- 5 A. In part of this meeting -- I was called up to help and
6 assist Matt with this meeting he had with this new informant,
7 kind of a lot of the minutiae details and whatnot of the meeting.
8 I'm more of an assistant there, but -- so the details that were
9 discussed, I did read the report, but I'm not intimately -- you
10 know, knowledge of the details.
- 11 Q. Did you meet the cooperating private individual that day?
- 12 A. We did.
- 13 Q. So CPI?
- 14 A. Yes.
- 15 Q. That's Mr. Garretson?
- 16 A. Yes.
- 17 Q. And did you learn that he had reached out to Ms. Baskin?
- 18 A. Yeah. According to the report, that's what he did. He
19 advised Agent Bryant that there was a -- some talk between -- he
20 tried to get ahold of Ms. Baskin, but I guess he did not.
- 21 Q. And do you know why he attempted to get ahold of Ms. Baskin?
- 22 A. Again, I'm not completely familiar with the details of
23 the --
- 24 Q. Okay.
- 25 A. I was there more of an assistance to make sure he was safe

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1 during the interview.

2 Q. And you have offered that assistance at various steps
3 of this investigation?

4 A. We do that all the time. There's very few of us around the
5 country. Matt's the only one in Oklahoma. So just to make sure
6 for safety reasons, sometimes we'll come up and -- just to make
7 sure he's okay. But as far as the general workings of the case,
8 if it's his case, I'm more there just to kind of facilitate and
9 make sure he's good to go.

10 Q. So if we have questions about the specifics, we should speak
11 with Agent Bryant?

12 A. I am not the in-depth knowledge on the complete -- in the
13 interview, no.

14 Q. But he would? He is?

15 A. Yeah.

16 Q. Okay. Do you recall staking out a bus station in November
17 of 2017?

18 A. I do.

19 Q. What were the circumstances of that?

20 A. We were advised that an individual might be going to travel
21 out of town, and so we were -- performed some surveillance to see
22 if we could locate that person.

23 Q. Who was with you?

24 A. There was a couple of other agents in our office. I believe
25 we had some agents out of Houston and also Fort Worth.

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- 1 Q. Do you remember which bus station you surveilled?
- 2 A. I believe -- there was two bus stations. I believe it was
- 3 Ardmore, maybe.
- 4 Q. Was the other one Pauls Valley?
- 5 A. Yes.
- 6 Q. And it could have been either?
- 7 A. Could have been either.
- 8 Q. But there were agents at both of those stations?
- 9 A. We went back and forth.
- 10 Q. Is that right, there were agents at both?
- 11 A. We had agents in the area that were looking at both
- 12 stations, yes.
- 13 Q. I suspect we'll learn more, but at that moment did you
- 14 believe that someone was going to board a bus in furtherance of
- 15 this accusation of this murder for hire?
- 16 A. We had information to believe that somebody was going to
- 17 possibly get on the bus.
- 18 Q. And who gave you that information?
- 19 A. That was given to me by the case agent.
- 20 Q. Okay. So you don't know if it was the CPI or someone else?
- 21 A. Again, I'm not familiar with that.
- 22 Q. Okay. You traveled to Dallas to serve a subpoena. Do you
- 23 remember that testimony?
- 24 A. I do.
- 25 Q. And is that in kind of your backyard, where you normally

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1 operate?

2 A. Yes.

3 Q. Do you know how agents became aware to serve a subpoena at
4 that location?

5 A. As far as the back story, I was contacted by the case agent
6 to serve some papers, and that's what I did.

7 Q. Now, turning to the park exhumation that you testified
8 about. You recall that testimony?

9 A. Yes.

10 Q. Who gave you permission to dig on that land?

11 A. We were there under the operation with the case agent. And
12 from the case agent, he had a consent form signed by, I guess the
13 owners or the -- or the new owners of the park.

14 Q. Jeff Lowe?

15 A. Yes.

16 Q. Did you observe Jeff Lowe taking personal photographs during
17 the exhumation of these bodies -- of these animals?

18 A. I was in the hole, so I did not -- I didn't watch Jeff Lowe
19 or what he did.

20 Q. And did you say you had at least ten agents or ten personnel
21 assisting you?

22 A. Ten personnel that were comprised of Oklahoma game wardens
23 and some refuge staff that were operating the equipment and then
24 some special agents.

25 Q. So you personally observed the five animals?

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- 1 A. Yes.
- 2 Q. What color were the bodies of those animals?
- 3 A. Well, they were covered in dirt for the most part, but as we
4 exhumed them, you could see the stripes and what a tiger would
5 look like.
- 6 Q. Were you able to observe the different colors of tiger?
- 7 A. As far as being -- other than what a tiger looks like?
- 8 Q. Well, are you familiar with different colors of tigers?
- 9 A. Sure. Like white tigers or --
- 10 Q. Sure. And were you able to discern the colors of these
11 tigers in the pit?
- 12 A. We didn't completely exhume the animals, so I didn't look
13 for any specific white tigers. We just looked for the heads. We
14 removed the heads.
- 15 Q. Right. So the purpose there was to take the heads of these
16 five tigers, correct?
- 17 A. Yes.
- 18 Q. And how did you get the heads off of the tigers?
- 19 A. We removed them with saws, knives.
- 20 Q. You cut them off?
- 21 A. Yes.
- 22 Q. And you were not interested in the bodies of these animals,
23 correct?
- 24 A. The information we had were that the animals were shot in
25 the head, so we -- that's what we were there for.

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1 Q. Okay. So your investigation was tunnelled at that point
2 just to the heads of these animals, correct?

3 A. The information we had is they were shot in the head, and we
4 removed the heads. That was what we were there for.

5 Q. So you were not interested in the bodies, correct?

6 A. We did not remove the bodies.

7 Q. And so those bodies have never been analyzed by a Fish &
8 Wildlife Service laboratory, correct?

9 A. No, not that I know of.

10 Q. Is there someone that would know?

11 A. Well, we covered them back up with dirt. So unless somebody
12 else went back out there and dug them up, they have not been
13 looked at.

14 Q. And to your knowledge, no one's done that?

15 A. No.

16 Q. Do you recall your testimony regarding the captive-bred
17 wildlife permit?

18 A. Yes.

19 Q. Are you responsible in any way for the issuance of those
20 permits?

21 A. I am not.

22 Q. Are you made aware of who does have those permits?

23 A. No, not unless I query the system and specifically look for
24 somebody with one.

25 Q. Do you have any personal knowledge of how many of those

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1 permits have been granted in the past calendar year?

2 A. We ran a query, actually, two days ago, and there's a
3 thousand records, I believe. So I don't know if some of those
4 are still good or some are expired, but there are other permits,
5 yes.

6 Q. So let's talk about this thousand CBWs.

7 A. Yes. Thousand -- a record for, whether applications or
8 whatnot. A thousand records, in general.

9 Q. So those could encompass people who have attempted to get
10 this permit but have been unsuccessful, correct?

11 A. Yes.

12 Q. So that doesn't mean there are over a thousand of these
13 permits floating around?

14 A. Doesn't mean that, yes.

15 Q. Is it difficult to get one of these permits?

16 A. I have never personally applied for one. What I have read
17 about them, it doesn't seem like it's that big of a process.
18 It's an application you fill out, send to the -- we talked about
19 earlier the Division of Management Authority, and then they're
20 the ones that approve or deny.

21 Q. Do you know what the criteria for getting one of those
22 licenses is?

23 A. The application itself has, you know, the name -- name, the
24 business, the species, the -- what the permit is for. All that's
25 filled out by the applicant and --

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1 Q. Have you reviewed the federal regulations on what's required
2 to get one of these permits? Are you familiar with those
3 regulations?

4 A. I'm familiar with the captive wildlife breeding
5 registration, yes.

6 Q. Right. But if I'm understanding your testimony, you know
7 there's an application process?

8 A. Yes.

9 Q. My question is, what qualifications does a facility have to
10 have to get one of these licenses?

11 A. I would have to look at it and -- I mean, verbatim to repeat
12 it back to you, but --

13 Q. And if you don't have one of these licenses, is it your
14 testimony that you would be in violation of the Endangered
15 Species Act by taking an animal that's been listed as an
16 endangered species?

17 A. As far as I have been taught and told, without that permit
18 and the endangered species permit, you can't take an animal, yes.

19 Q. So anytime an animal is even euthanized, that would be in
20 violation, if you did not have one of these CBWs. Is that your
21 understanding?

22 A. Technically, yes.

23 MR. WACKENHEIM: Could I have a moment, Your Honor?

24 THE COURT: You may.

25 MR. WACKENHEIM: Nothing further. Thank you.

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1 THE COURT: Any redirect by the government?

2 MR. BROWN: No, Your Honor.

3 THE COURT: Thank you, Agent. You may step down.

4 THE WITNESS: Thank you.

5 THE COURT: Government's next witness.

6 MR. BROWN: Tabitha Viner.

7 (WITNESS SWORN.)

8 TABITHA VINER,

9 DIRECT EXAMINATION

10 BY MR. BROWN:

11 Q. Good afternoon, ma'am.

12 A. Hello.

13 Q. Please introduce yourself.

14 A. My name is Tabitha Copley Viner.

15 Q. Where do you work?

16 A. I work at the National Fish and Wildlife Forensics Lab in
17 Ashland, Oregon.

18 Q. And what is your current position?

19 A. I am a veterinary forensic pathologist.

20 Q. How long have you worked at that lab?

21 A. For eight and a half years.

22 Q. Do you have a particular field of expertise?

23 A. I am board certified in veterinary anatomic pathology and am
24 working in forensics.

25 Q. All right. And how long have you worked in the field

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1 overall?

2 A. I have been a veterinary forensic -- or veterinary
3 pathologist since 2003.

4 Q. And, Dr. Viner, what is your educational background?

5 A. I went to vet school at the Virginia-Maryland Regional
6 College of Veterinary Medicine and did three years of residency,
7 two at the National Zoo and one with the Armed Forces Institute
8 of Pathology. And I am board certified in veterinary pathology.

9 Q. All right. Have you published any scientific articles on
10 pathology?

11 A. Yes, I have.

12 Q. Approximately how many in the last five years?

13 A. About six or seven.

14 Q. Okay. Do you belong to any -- do you have any professional
15 positions previously that you have held? Can you describe those?

16 A. I was the veterinary pathologist at the National Zoo for
17 seven years prior to coming to Oregon.

18 Q. All right. And as a veterinary pathologist in the pathology
19 section at the national lab in Oregon, what exactly do you do?

20 A. We get animals and animal parts from the special agents in
21 the field, from law enforcement agents. And in pathology, we are
22 asked to determine a cause of death for these animals. And so we
23 perform a postmortem examination on them, which includes taking
24 X-rays and fully examining the outside and the inside of the
25 animals.

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1 Q. Okay. And in approximately how many law enforcement cases
2 have you actually performed a postmortem evaluation?

3 A. I have been the case coordinator on about 644 cases
4 involving about -- or over 2,000 individual animals.

5 Q. All right. And the lab in Oregon, is it accredited?

6 A. It is accredited by ANAB, ANSI National Accreditation Board.

7 Q. And are you -- did you say you were certified?

8 A. I am board certified, yes.

9 Q. And approximately how many veterinary pathologists are board
10 certified in the United States?

11 A. There are about 2,600.

12 Q. All right. Were you asked to conduct a veterinary forensic
13 pathology examination in this case?

14 A. Yes.

15 Q. What were you asked to examine?

16 A. I was asked -- we received five bags containing the heads of
17 tigers.

18 Q. And what were you asked to determine?

19 A. We were asked to determine a potential cause of death, if
20 possible.

21 Q. Did you conduct a forensic pathology examination on each
22 tiger head?

23 A. Yes, I did, individually.

24 Q. And were you able to reach a conclusion as far as cause of
25 death for each tiger head that you examined?

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1 A. I could determine an immediate cause of death for each tiger
2 head examined, yes.

3 Q. Okay. Can you provide that, please?

4 A. For four of the five tiger heads, the immediate cause of
5 death was gunshot with a shotgun. And for one tiger head, it was
6 blunt force trauma.

7 Q. All right. And let's discuss the actual forensic pathology
8 examination of Tiger Head 1. All right. Explain to the jury
9 your first step in conducting that exam.

10 A. Okay. So we first received the item in its packaging, its
11 soft packaging, and I X-rayed the item in that soft packaging
12 first. Then I took the soft packaging out, observed and
13 photographed what the item looked like just out of the bag.

14 Q. Okay. Dr. Viner, let me back up a little bit. I apologize.
15 When -- how did the skulls arrive to your lab in Oregon?

16 A. They came to us in three hard coolers.

17 Q. And were the skulls still frozen at that time?

18 A. Yes.

19 Q. All right. Prior to you conducting the initial radiographic
20 examination, did you thaw the skulls out?

21 A. Yes.

22 Q. All right.

23 A. They were totally thawed.

24 Q. And what date did you actually conduct your forensic
25 examination?

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1 A. I did the forensic exam on the first four heads on the 31st
2 of October, and then the last one on the 1st.

3 Q. Okay. And with respect to the initial radiographic
4 examination, what, if anything, are you looking for?

5 A. We're looking for bony fractures and for any metal density
6 objects that might be consistent with ballistic material.

7 Q. Okay. And, again, regarding Lab 1 or Skull 1, after
8 conducting that initial radiographic examination, were there any
9 metal irregularities?

10 A. Yeah. The radiographs did show that there were about 44 --
11 upwards of 44 little metal particles within the item in the bag.

12 Q. So after the initial radiographic examination, what's your
13 next step?

14 A. After the X-rays, we put it on the table and unwrapped it
15 from its soft packaging, from the plastic bag that was
16 surrounding it, photographed the item as it came out of the bag
17 and then cleaned off the item so that we could better see the
18 soft tissues that were left over and the bones of the skull.

19 Q. Okay. Let me ask you, if you don't mind, to look into that
20 exhibit book right in front of you marked government's exhibits.

21 A. Uh-huh.

22 Q. And look for Government's Exhibit -- it's at the very end.
23 It should be marked Government's Exhibit 113, 114 and 119.

24 A. Uh-huh.

25 MR. BROWN: And may I approach, Your Honor, just to

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1 ensure that --

2 THE COURT: Yes.

3 MR. BROWN: Thank you.

4 Q. (By Mr. Brown) Do you recognize Government's Exhibits 113,
5 114 and 119?

6 A. Yes, I do.

7 Q. And what are they?

8 A. These are pictures that I took of the skull as it was just
9 coming out of the bag.

10 Q. Okay. So does each photograph fairly and accurately depict
11 the subject matter as it was on the date of your examination?

12 A. Yes, it does.

13 MR. BROWN: Your Honor, we would move for admission of
14 113, 114 and 119.

15 THE COURT: Any objection?

16 MR. EARLEY: No, Your Honor.

17 MR. BROWN: If we could see 113 --

18 THE COURT: The exhibits will be admitted.

19 MR. BROWN: Thank you, Your Honor. I'm sorry.

20 If we could see 113, please.

21 Q. (By Mr. Brown) And it should appear on your screen,
22 Dr. Viner.

23 A. Yes.

24 Q. Okay. Can you explain what this picture shows?

25 A. This is showing the left side of the skull. So the nose is

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1 pointing off to the left side of the picture, the back of the
2 head is pointing off to the right side of the picture. And so
3 the -- and the top of the skull is at the top.

4 Q. And is this Skull No. 1?

5 A. This is Skull No. 1.

6 Q. And is this when you are first unwrapping the skull after
7 conducting the initial radiographic examination?

8 A. Yes, that's true.

9 Q. Okay. And once you unwrap it, do you do a general visual
10 observation?

11 A. Right. So I note what is on the skull, either its soft
12 tissue or the dirt substrate that's attached to it.

13 Q. And was this skull, Skull No. 1, just based on your visual
14 observation, was it markedly autolysed?

15 A. Oh, yes.

16 Q. Okay. And explain kind of the layman's terms what that
17 means.

18 A. Autolysis is just tissue decomposition, the process of
19 breaking down tissues.

20 Q. What's the significance of this particular skull being
21 autolysed?

22 A. It just indicates that the animal had been dead for a very
23 long time.

24 Q. Okay. Now, after unwrapping it initially, what's your next
25 step?

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1 A. The next step is I would wash the items off to remove any
2 kind of debris or tissues that were still attached to the skull
3 so that I could visualize the bones themselves.

4 Q. Okay. And if we could look at 114, please, and just briefly
5 explain -- I think I'm jumping ahead on you. I apologize. But
6 regarding 114, what does that show?

7 A. So this is a photograph of the top of the skull. The nose
8 is pointing down to the bottom of the screen and the back of the
9 head to the top of the screen.

10 Q. Now, regarding the next step, you just testified, was to
11 actually clean the skull?

12 A. Yes.

13 Q. And describe that process. How do you go about cleaning it?

14 A. Basically, I just took a hose and regular water from the
15 sink and hosed it down, wiped off whatever I could wipe off, and
16 then sharply -- took a knife and sharply dissected off any
17 tissues that might have been on the skull so I could see the bone
18 easier.

19 Q. And was there any fur or anything remaining on this skull?

20 A. On this skull, there was a little bit of black and orange
21 striped fur.

22 Q. Okay. And how much -- approximately how much tissue was
23 remaining on the skull?

24 A. There was still a chunk at the -- at the top right of this
25 image, you can see a chunk of soft tissue remaining at the back

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1 of the head on the -- on that one side.

2 Q. Any excess muscle?

3 A. That was the soft tissue that was remaining, was muscle.

4 Q. Okay. If you could look at Government's Exhibit 120,
5 Dr. Viner.

6 A. Uh-huh.

7 Q. Same questions. Do you recognize that photograph?

8 A. I do.

9 Q. And did you take that photograph?

10 A. I did.

11 Q. And did you take it during your examination?

12 A. Yes, I did.

13 Q. And does the photograph fairly and accurately depict the
14 subject matter therein as -- on the date that you examined it,
15 which was October 31st of 2018?

16 A. Yes.

17 MR. BROWN: We would move for admission of Exhibit 120.

18 THE COURT: Any objection?

19 MR. EARLEY: No objection.

20 THE COURT: 120 will be admitted.

21 Q. (By Mr. Brown) Okay. So you just testified about the
22 cleaning process. If you could look at Exhibit 120 on the
23 screen, Dr. Viner, and explain what we are now looking at.

24 A. So this view is similar to the previous view, that we're
25 looking at the top of the head. The nose is pointing up and the

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1 back of the head is pointing down. The arches around the eyes
2 are to the sides, and there is a hole that's approximately
3 16 millimeters in diameter just above where the right eye would
4 be.

5 Q. Okay. So this is still Skull No. 1?

6 A. Yes.

7 Q. This is after you have cleaned it?

8 A. Uh-huh.

9 Q. And did you analyze -- the hole that you just discussed, did
10 you analyze that in more detail?

11 A. Yes. I looked at it closely to determine -- because it
12 appears to be a ballistic wound -- to determine whether that was
13 an entry or an exit point. I looked at the edges of the skull
14 bevelling, which is sort of a differential layering of the skull,
15 can indicate whether a bullet went in or came out. And I
16 determined at that particular point, because of the lack of
17 bevelling on the outside, that that was an entry point of the
18 projectile.

19 Q. So is it -- would it be fair to characterize the bevelling
20 as if it was a piece of paper and something went through it and
21 then the shards of the paper were underneath, you could tell the
22 entry came from above?

23 A. Correct.

24 Q. Is that fair?

25 A. Yes.

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1 Q. Okay. Can you look at Exhibit 121, please? Same question.
2 Do you recognize that photograph?

3 A. Yes, I do.

4 Q. And did you take this photograph during your examination?

5 A. I did.

6 Q. And does it fairly and accurately depict the subject matter
7 on the date that you examined the skull?

8 A. Yes, it does.

9 MR. BROWN: We would move for admission of 121, Your
10 Honor.

11 THE COURT: Any objection?

12 MR. EARLEY: No objection.

13 THE COURT: 121 will be admitted.

14 Q. (By Mr. Brown) Are we still looking at the same skull?

15 A. Yes, we are.

16 Q. Is this just a magnified image of that -- what you described
17 as an entry wound?

18 A. Yes. It's closer.

19 Q. Okay. Is there anything else of significance regarding this
20 particular picture?

21 A. Just the -- you can better see the lack of bevelling around
22 the edge of the hole, and a little bit of scalloping around the
23 edge.

24 Q. Now, would you consider that hole in Exhibit 121 well
25 defined?

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- 1 A. Yes. Yes, I would.
- 2 Q. And what's the significance of the hole being well defined?
- 3 A. Well, because shot pellets were found in the skull,
4 indicative of a shotgun injury, this well-defined nature
5 indicates that the barrel of the shotgun was held very close to
6 the animal's head. Because when a shot -- when a gunshot wound
7 (sic) comes out of a shotgun, the pellets spread. And so the
8 further away from the target the barrel of the gun is, the wider
9 the spread of those shot pellets. So because it's so well
10 defined and small, it indicates that it was very close.
- 11 Q. Okay. Now, with respect to the metallic shot pellets that
12 you found within the skull, were they lodged in both the actual
13 skull, the bone and the soft tissue?
- 14 A. Yes. Yes, they were.
- 15 Q. And approximately how many in Skull 1 did you find?
- 16 A. About 44 or greater.
- 17 Q. Okay. Did you find any hard plastic in Skull 1?
- 18 A. Yes. There was a shot cup that had been splayed open. A
19 used shot cup, basically, that was present with the tissues.
- 20 Q. And any significance with a shot cup being found in the
21 skull?
- 22 A. That also indicates that there was very close range of fire,
23 because the shot cup is usually discarded if there's a distance
24 between the barrel of the gun and the target.
- 25 Q. Okay. Let's look at -- if you don't mind, can you look at

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1 Government's Exhibit 122, 123 and 124?

2 A. Okay.

3 Q. Same questions. Do you recognize those photographs?

4 A. I do.

5 Q. And did you take these three photographs?

6 A. Yes, I did.

7 Q. During your forensic exam?

8 A. Yes.

9 Q. And do they fairly and accurately depict the subject matter
10 on the date that you actually took the photographs?

11 A. Yes.

12 MR. BROWN: We would move for admission of Exhibits 122
13 through 124.

14 MR. EARLEY: No objection.

15 THE COURT: They'll be admitted.

16 Q. (By Mr. Brown) Okay. Regarding Exhibit 122, Dr. Viner,
17 tell the jury what we are looking at.

18 A. Okay. This is a close-up view of the top of the skull. The
19 nose is facing off the left side of the screen, and we're looking
20 at a fracture of the bones over the snout.

21 Q. And what's the significance, if any, of the fracture above
22 the snout?

23 A. The fracture just indicates that there was a concussive
24 force, probably from the shotgun.

25 Q. And can we go to 123, please?

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- 1 A. Okay.
- 2 Q. All right. Same question. What's the significance of
3 Exhibit 123?
- 4 A. So this is exhibiting a large hole in the skull underneath
5 the eye that was associated with the projectile's path.
- 6 Q. Okay. And then 124?
- 7 A. And this is just another view. We're looking -- the
8 snout -- the nose is off to the right of the screen, and we're
9 looking at -- there's a tooth there at the right side of the
10 screen. We're also looking at another view of that large defect
11 underneath the eye.
- 12 Q. So regarding Skull No. 1, were you able to identify an
13 actual exit wound?
- 14 A. Yes. It is that large defect that was about 6 centimeters
15 diameter underneath the eye.
- 16 Q. And is that consistent with a shotgun?
- 17 A. Yes, it is.
- 18 Q. All right. If you don't mind, look at Government's
19 Exhibit 129, please.
- 20 A. Okay.
- 21 Q. And do you recognize that picture?
- 22 A. I do.
- 23 Q. Did you take that picture during your exam?
- 24 A. Yes, I did.
- 25 Q. And does that fairly and accurately depict the subject

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1 matter on the date that you actually photographed this?

2 A. Yes.

3 MR. BROWN: We'd move for admission for Exhibit 129.

4 THE COURT: Any objection?

5 MR. EARLEY: No objection.

6 THE COURT: 129 will be admitted.

7 Q. (By Mr. Brown) All right. Can you explain to the jury
8 exactly what you did with the skull in this picture?

9 A. All right. So the -- the blue rod I placed through the
10 wound tract from the entry wound at the top of the head through
11 the exit wound at the bottom of the head to show the trajectory
12 of the projectile.

13 Q. And you testified that your conclusion with regard to
14 Skull 1, at least, was that it was a fatal gunshot that was the
15 cause of death, correct?

16 A. Yes.

17 Q. And with a gunshot, is it your opinion that the gunshot
18 would have been fatal immediately?

19 A. Yes.

20 Q. Okay. Now, in addition to determining the cause of death,
21 did you conduct any analysis on the teeth and other parts of the
22 skull, looking for tooth wear and other abnormalities?

23 A. Yes. I noted during the examination any kind of
24 abnormalities in the teeth.

25 Q. And regarding Skull No. 1, was there anything of

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1 significance that you noted?

2 A. There were a couple of slab fractures on some of the
3 premolars and a little bit of wear of the incisors, which are the
4 front teeth.

5 Q. And what's the significance of the -- did you say slab
6 fractures?

7 A. Slab fractures off of the teeth are just sort of -- like I
8 said, the slab has just been taken off one part of the tooth
9 above the gum line. They can be -- if the slab takes off a
10 portion down to the root, they can predispose to infection, but
11 these did not appear to have affected the bone around the teeth.
12 So it didn't appear to be a chronic infection.

13 Q. And how were the canines on Skull 1?

14 A. The canines were in fairly good shape. There was one canine
15 that was slightly displaced down, but it was stable and it did
16 not have any wear.

17 Q. And what about the incisors?

18 A. The incisors had a little bit of wear.

19 Q. Okay. And can you look at Exhibits 127 and 128, please?

20 A. Okay.

21 Q. All right. Do you recognize those pictures?

22 A. I do.

23 Q. And did you actually take these photos on October 31st of
24 2018, during your forensic examination?

25 A. Yes, I did.

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1 Q. And do the photos fairly and accurately depict the subject
2 matter as they were on that date?

3 A. Yes.

4 MR. BROWN: We would move for admission of 127 and 128,
5 Your Honor.

6 THE COURT: Any objection, Mr. Earley, to 127 and 128?

7 MR. EARLEY: No, Your Honor.

8 THE COURT: 127 and 128 will be admitted.

9 Q. (By Mr. Brown) Okay. We're looking at Exhibit 127. Can
10 you explain the significance of this particular photo?

11 A. So this view is looking at the roof of the mouth, so the
12 head is upside down and the canine teeth are at the top of the
13 picture. There's a fracture that extends from the upper -- from
14 the canine tooth in the upper right of the screen, which is the
15 upper left canine, and that particular canine is slightly
16 asymmetrical.

17 Q. And regarding the, I guess they would be the front incisors,
18 or the interior incisors, do they appear to be worn down?

19 A. They are worn down, yes.

20 Q. And that was reflected in your report, correct?

21 A. Yes.

22 Q. And any explanation as to what would cause the interior
23 incisors to be worn down?

24 A. Just normal wear and tear is common. It can be a behavioral
25 problem as well, but it is a normal wear and tear.

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1 Q. And a behavioral problem, how so?

2 A. In some animals, they can exhibit abnormal chewing on
3 things, but -- yeah.

4 Q. Okay. Fair enough.

5 Did you conduct the same forensic examination of the
6 remaining four skulls?

7 A. Yes, I did.

8 Q. And did you have similar findings with respect to the
9 remaining four skulls?

10 A. For three of the remaining four skulls, I determined it was
11 also a shotgun injury to the head. In one of the remaining
12 skulls, Lab 3, I determined the animal had been shot because
13 there were pellets in the soft tissues, but that the fatal injury
14 was a blunt-force trauma.

15 Q. Okay. And were there any, with respect to the -- was that
16 Lab 3, or Skull No. 3, you're referring to?

17 A. Yes.

18 Q. And with respect to Skull No. 3, were there any metallic, I
19 guess, gunshot particulates within the skull?

20 A. There were five shot particulates within the soft tissues
21 around the skull.

22 Q. And so there was not an entry wound or an exit wound that
23 you found?

24 A. Correct.

25 Q. Now, describe the -- I guess, in more detail describe the

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1 actual cause of death for Skull No. 3.

2 A. So Skull No. 3 had a fracture of the skull that went from
3 the right side, over the top of the skull, to the left side.

4 Q. And can that fracture be caused from the concussive force of
5 a shotgun blow?

6 A. Potentially. It can be caused by either an object or
7 potentially the -- the percussive and concussive force of a
8 shotgun.

9 Q. And did any of the skulls display -- or were you able to
10 determine whether or not they displayed any evidence of disease,
11 such as arthritis?

12 A. No. There was no evidence of arthritis in the joints of the
13 base of the skull or in the two skulls that had neck vertebrae
14 attached to them.

15 Q. And going back to the teeth, did you analyze, and were you
16 looking for, any tartar accumulation?

17 A. Yes. And I noted minimal to mild tartar in several of the
18 skulls.

19 Q. And why is that significant?

20 A. It can -- tartar builds up if you don't brush your teeth, on
21 anything that has teeth, just over time because food gets stuck
22 in there and it just hardens into tartar. So it's kind of an
23 indication of the age of an animal.

24 Q. And regarding the age of the animals, were you able to
25 determine an approximate age of each of these five tigers?

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1 A. Because the sutures, the linings between the skull plates,
2 were sealed and pretty much closed over, and because there wasn't
3 a lot of wear on the teeth and not a lot of tartar, I
4 determined -- I estimated that these tigers were early to mid
5 adults.

6 Q. And an early to mid adult tiger in captivity would be what,
7 exactly?

8 A. Relatively speaking, because tigers can live, you know, mid
9 to upper teens in captivity, an early to mid adult would be
10 somewhere around three to ten.

11 Q. Okay. And during your forensic examination, were you able
12 to determine approximately how long the tigers had been actually
13 buried?

14 A. I couldn't determine an exact length of time, but they had
15 been buried for greater than a few months.

16 Q. Okay. And, finally, I know you have testified about Skull 1
17 and the tooth loss or tooth wear. Regarding the remaining four
18 skulls, describe the tooth wear, please.

19 A. They also had minimal to mild wear of the incisors.

20 Q. And, again, that's indicative of?

21 A. It could just be life experience, basically.

22 Q. Okay. Thank you, Dr. Viner.

23 THE COURT: Cross-examination?

24 **CROSS-EXAMINATION**

25 **BY MR. EARLEY:**

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1 Q. Okay. Dr. Viner, so according to, I guess, your testimony,
2 the cause of death for each one of these animals was a gunshot
3 wound to the head; is that correct?

4 A. For four of the five animals, a gunshot wound to the head.

5 Q. All right. And what's the -- the issue on the last one?

6 A. There were no entry or exit wounds in the skull, so I
7 couldn't determine that it had died of a gunshot wound.

8 Q. Okay. But you did find pellets that were consistent with a
9 shotgun --

10 A. Yes.

11 Q. -- in the tissue surrounding the skull, correct?

12 A. Correct.

13 Q. So my guess would be, those probably don't get there unless
14 you're shot with a shotgun.

15 A. Yes.

16 Q. Would that be correct?

17 A. Yes. The animal had been shot.

18 Q. Okay. And the blunt-force trauma -- and let's just, you
19 know, assume that it was because of a concussive effect from a
20 firearm. Okay? What's the effect on the animal, as far as the
21 concussive effect?

22 A. The fracture of the skull would have also caused tearing of
23 the blood vessels over the brain, and that tearing and damage of
24 the brain would have been fatal.

25 Q. All right. So each one of these animals died as a result of

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- 1 a gunshot wound to the head, correct?
- 2 A. I can only say that definitively for four of the animals.
- 3 Q. All right. Now, with respect to the -- your evaluation of
- 4 the teeth -- if you could pull up 127. And I know you talked
- 5 about it, but I wasn't quite sure what we were talking about.
- 6 When you noted some wear on the teeth, you were discussing, I
- 7 think, this and this; is that correct?
- 8 A. No. I was discussing the incisors, which are at the very
- 9 top, the front of the teeth.
- 10 Q. So right here --
- 11 A. Correct.
- 12 Q. -- this area is what you were talking about?
- 13 A. Yes.
- 14 Q. And there appears to be some significant deterioration
- 15 there?
- 16 A. There is some wear, moderate wear.
- 17 Q. That's moderate?
- 18 A. Mild to moderate, uh-huh.
- 19 Q. All right. Now, your testimony is that you have been, what,
- 20 licensed since 2003; is that right?
- 21 A. Board certified in 2003, yes.
- 22 Q. Okay. If you would, turn to the other book. And go to
- 23 what's tabbed No. 3, Defendant's Exhibit 3. Do you recognize
- 24 this particular publication?
- 25 A. I do.

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1 Q. And what is it?

2 A. It is the Guidelines for the Euthanasia of Animals put out
3 by the American Veterinary Medical Association in 2013.

4 Q. And who's the American Veterinary Medical Association?

5 A. They are the overarching entity that accredits vet schools
6 and oversees licensing of veterinarians.

7 Q. All right. So do they provide guidance and best practices
8 to veterinarians?

9 A. Yes, they do.

10 Q. All right. And are you familiar with these guidelines on
11 euthanasia?

12 A. Yes.

13 Q. If you would -- the whole article is not there. I'm sure
14 it's pretty lengthy. If you would, just look at the pages that
15 follow, please.

16 A. Uh-huh.

17 Q. And do you recognize those?

18 A. Yes, I do.

19 Q. And what are they?

20 A. They regard euthanasia for free-ranging wildlife.

21 Q. Okay. And there are methods of euthanasia for, I guess, all
22 sorts of animals, correct?

23 A. Uh-huh. Yes.

24 Q. And with respect to wildlife -- and if you -- if you want to
25 call these free ranging, I guess they wouldn't -- they would

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1 probably be out in a large area, correct?

2 A. They would be not captive, meaning they would have free
3 range of whatever environment they chose.

4 Q. Okay. And with respect to the methods of euthanasia, the
5 American Veterinary Medical Association recognizes a gunshot
6 wound to the head as a legitimate way to euthanize an animal,
7 does it not?

8 A. Yes, it does.

9 Q. And that would not be inconsistent with the gunshot wounds
10 that you saw when you evaluated these particular skulls, correct?

11 A. The guidelines outline the direction that the projectile
12 should take, which was not seen in any of the skulls that I
13 looked at.

14 Q. Well, what was different about these?

15 A. The trajectory of the projectile in two of the skulls was
16 over the -- through the back of the head.

17 Q. Uh-huh.

18 A. Lab 1, which we looked at, was through the top of the head.
19 And another one was through the back.

20 Q. All right. With respect to the use of a gunshot wound to
21 the head, why is it an authorized method?

22 A. Because it is quick if it is done properly.

23 Q. Well, in each one of these cases, I believe that you have
24 concluded, with respect to Lab 1, that one, that it would have
25 been immediately fatal?

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- 1 A. Yes.
- 2 Q. That wound, correct?
- 3 A. Yep.
- 4 Q. All right. And I believe that you also concluded, based on
5 your examination in Lab 2, that that would have been immediately
6 fatal, correct?
- 7 A. Yes.
- 8 Q. Lab 3 is the one that you testified to about the concussive
9 effect, correct?
- 10 A. Yes.
- 11 Q. All right. And with respect to that particular injury,
12 would it have been immediately fatal?
- 13 A. The gunshot wound would not have been immediately fatal if
14 that was not what caused the fracture of the skull, because I
15 could not definitively determine that the concussive effect of
16 the projectile caused the skull fracture.
- 17 Q. Well, did the animal immediately die?
- 18 A. From the blunt force trauma, whether that was an object that
19 hit it or something else.
- 20 Q. Okay. Well, we have already established that there were
21 pellets around the skull, correct?
- 22 A. Correct.
- 23 Q. All right. And so I understand you're not willing to say
24 that there was a shotgun blast to the head, correct?
- 25 A. Correct.

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1 Q. Just because you didn't see a hole or any other evidence,
2 right?

3 A. Right.

4 Q. But assuming that those pellets got there by a shotgun
5 blast, the concussive effect of that blast caused immediate
6 death?

7 A. I can't say that.

8 Q. Well, did the animal die immediately?

9 A. From blunt force impact.

10 Q. All right. That's good enough.

11 And the other animals that you -- the other skulls you
12 evaluated, did they die immediately?

13 A. Yes.

14 Q. All right. Now, you have been provided only the skulls in
15 this case, correct?

16 A. Correct.

17 Q. And I believe you testified, at least with respect to one of
18 these, you did see some orange and black fur; is that right?

19 A. Yes.

20 Q. Could you tell what color the other animals were?

21 A. There were a few of the animals that had orange and black
22 fur on them; the other ones were just covered in dirt.

23 Q. So you couldn't tell what color they were?

24 A. No.

25 Q. All right. And you couldn't tell what sex they were?

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1 A. No.

2 Q. And that's because you only got the skulls, correct?

3 A. Correct. Yes.

4 Q. And with respect to an evaluation for any sort of illnesses
5 or other medical issues these animals may have had, you were
6 limited to a review of the skull only, correct?

7 A. Yes.

8 Q. And had you been provided the bodies of these particular
9 animals, you would have done a full evaluation, correct?

10 A. Yes.

11 Q. In fact, I think, if I recall your testimony, you do full
12 exams inside and out, correct?

13 A. Yes.

14 Q. All right. So if you were provided the bodies of these
15 animals, you would have been able to determine whether or not
16 there were any issues with, for example, their paws, correct?

17 A. Because the animals were so decomposed, soft tissues may not
18 have been present that would have helped us determine if the
19 animal had, for example, clone disease. If there was arthritis,
20 it would have shown up in the bones, yes.

21 Q. And with respect to evaluating the animal's spine, for
22 example, for any sort of degenerative issues, you could have been
23 able to determine that as well, correct?

24 A. If it showed up in the bones, yes.

25 Q. Okay. And as far as the setup of your lab is concerned, is

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1 there any reason why you couldn't have performed those
2 examinations in this case?

3 A. There is -- I would have been able to perform it, yes.

4 Q. Had you been asked to?

5 A. Yes.

6 Q. Now, I want you to look in defendant's exhibit book, please,
7 at Exhibit 4. And I believe there's a series of three
8 photographs in Defendant's Exhibit 4. Do you recognize those?

9 A. Yes, I do.

10 Q. And what are those?

11 A. These are pictures of the teeth of Lab 1 that I took after I
12 rechecked out the item.

13 Q. All right. And go to Defendant's Exhibit 5.

14 A. Uh-huh.

15 Q. And what is that?

16 A. This is a similar set of photographs from Lab 2.

17 Q. And with respect to both Exhibits 4 and 5, as far as the
18 photographs, did you take those photographs?

19 A. Yes, I did.

20 Q. Do they accurately display what you saw?

21 A. Yes.

22 Q. And Defendant's Exhibit 6?

23 A. This is also a set from Lab 3.

24 Q. And did you take that photograph?

25 A. Yes.

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1 Q. And Defendant's Exhibit 7?

2 A. Photograph from Lab 4.

3 Q. All right. And, again, did you take that photograph?

4 A. Yes.

5 MR. EARLEY: Your Honor, I'll move to admit Defendant's
6 Exhibits 4 through 7.

7 MR. BROWN: No objection.

8 THE COURT: Well, Mr. Earley, the -- all of those will
9 be admitted. I have the same concern that I addressed with the
10 government, that the individual pictures don't have individual
11 exhibit numbers on them for clarity of the record, but -- but
12 they'll be admitted.

13 MR. EARLEY: Thank you.

14 May I have just a moment?

15 THE COURT: You may.

16 MR. EARLEY: Nothing further.

17 THE COURT: Mr. Brown, redirect?

18 MR. BROWN: One moment, please, Judge.

19 No further questions, Judge.

20 THE COURT: Thank you, Doctor. You may step down.

21 Government's next witness.

22 MR. BROWN: We would call Joanne Green. And, Your
23 Honor, at this time, we would also offer to read the stipulations
24 into the record.

25 THE COURT: Do I have that up here?

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1 MR. BROWN: It has not been filed yet, Judge. I
2 apologize.

3 THE COURT: May I see a copy of it, please?

4 MR. BROWN: May I approach?

5 THE COURT: You may.

6 And you may proceed, Mr. Brown.

7 (WITNESS SWORN.)

8 MR. BROWN: I apologize, Your Honor. Did you say I
9 could proceed with the stipulations?

10 THE COURT: Yes, you may.

11 MR. BROWN: At this time I will read the stipulations
12 into the record.

13 The defendant, Joseph Maldonado-Passage, his counsel,
14 William Earley and Kyle Wackenheim, and the United States, by and
15 through Assistant U.S. Attorneys Amanda Green and Charles Brown,
16 stipulate as proven the following facts: One, on or about
17 October 30th, 2018, the National Fish & Wildlife Forensics
18 Laboratory received five animal skulls that had been excavated
19 from the property of the Greater Wynnewood Exotic Animal Park,
20 located in Wynnewood, Oklahoma. Teeth from each of the five
21 animal skulls were subjected to DNA testing. The results showed
22 that all five animals were tigers, *Panthera tigris*; two, the
23 forensic analytical crime lab received metal and plastic
24 fragments that had been removed from the five animal skulls. The
25 fragments were examined by a forensic scientist with a specialty

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JOANNE GREEN - Direct by Mr. Brown

1 in ballistics. The forensic scientist determined that the metal
2 and plastic fragments were consistent with ammunition fired from
3 a .410 shotgun. The jury may take these facts as if they were
4 proven by the United States at trial.

5 Signed by Amanda Green, William Earley and Joseph
6 Maldonado-Passage.

7 Thank you, Your Honor.

8 JOANNE GREEN

9 DIRECT EXAMINATION

10 BY MR. BROWN:

11 Q. Good afternoon, ma'am.

12 A. Good afternoon.

13 Q. Would you mind pulling the microphone a little bit closer,
14 please. Thank you.

15 Can you introduce yourself, please?

16 A. I am Joanne Green.

17 Q. And, Ms. Green, explain what you do for a living.

18 A. I'm a veterinarian.

19 Q. And do you have your own practice?

20 A. Yes, I do.

21 Q. Where is your practice located?

22 A. Wynnewood, Oklahoma.

23 Q. Dr. Green, how long have you had your practice in Wynnewood?

24 A. Approximately 20 years.

25 Q. What type of practice is it?

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1 A. It's a mixed animal practice.

2 Q. What's your educational background?

3 A. I was born in Alabama. I went to Auburn University in
4 undergrad and in veterinary school. I moved here for my
5 internship, and then I acquired my Oklahoma license and began
6 practicing.

7 Q. And are you familiar with a person named Joseph
8 Schreibvogel, now known as Joseph Maldonado-Passage?

9 A. Yes.

10 Q. Do you see him here in the courtroom?

11 A. Yes, I do.

12 Q. Can you describe for the record, please, where he is sitting
13 and what he is wearing?

14 A. He's sitting right over there and he's got a white button-up
15 shirt on.

16 MR. BROWN: Your Honor, may the record reflect that the
17 witness has identified the defendant?

18 THE COURT: So reflect.

19 Q. (By Mr. Brown) How are you familiar with Mr. Passage?

20 A. He was a client of mine for 20 years.

21 Q. Okay. When did he first become one of your clients?

22 A. In 1999.

23 Q. Okay. And at that time what kind of work were you doing for
24 him?

25 A. He asked me to help him with some tigers that he needed to

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1 rescue.

2 Q. Okay. And did he own any tigers at the time?

3 A. Not that I was aware of.

4 Q. And when you first started working with Mr. Passage, did he
5 operate -- was the park already up and running?

6 A. No.

7 Q. Okay. Did you continue your relationship with Mr. Passage
8 from 1999 forward?

9 A. Yes, I did.

10 Q. And over time did Mr. Passage build and develop an exotic
11 animal park?

12 A. Yes, he did.

13 Q. All right. And did you continue to provide veterinary
14 treatment to Mr. Passage and his animals?

15 A. Yes, I did.

16 Q. All right. Do you have any specific training with respect
17 to exotic animals, such as large cats?

18 A. I learned that part of my profession from continuing
19 education and from knowledge with other veterinarians and other
20 parks.

21 Q. Okay. And with respect to treating Mr. Passage's animals,
22 would you treat them both at your clinic as well as on site at
23 his park?

24 A. Yes.

25 Q. Okay. And when you would go to his park, did you have a --

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1 a standing vet visit, or would you go as -- as required or as
2 needed?

3 A. I went as required or needed.

4 Q. So someone from the park would give you a call and say,
5 Dr. Green, we need you to come over?

6 A. Yes.

7 Q. Okay. Now, approximately how far is the exotic park from
8 your practice?

9 A. It's the next exit up on the interstate, so three or four
10 miles.

11 Q. So if you were to drive -- if you were to leave your
12 practice and drive over to the park, how long would it take you
13 to get there?

14 A. Five to seven minutes.

15 Q. All right. Now, with respect to the large exotic cats in
16 particular, are there any particular ailments or diseases that
17 tend to afflict them more?

18 A. These are large cats in captivity, and they tend to suffer
19 from ailments that any other feline would; respiratory diseases,
20 funguses on the skin, injuries, things of that nature.

21 Q. And when you first started working with Mr. Passage, you
22 indicated he had -- he had rescued a few cats. Did that number
23 increase over time?

24 A. Yes, it did.

25 Q. At its peak, can you estimate approximately how many cats he

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1 housed at his park?

2 A. There would have been over a hundred.

3 Q. Now, are you familiar with a document or, I guess, a form
4 that's known as a certificate of veterinary inspection?

5 A. Yes.

6 Q. What exactly is a certificate of veterinary inspection?

7 A. It is a state certificate that lists the owner of the animal
8 and where the animal is going to go. The veterinarian is to
9 examine the animals and certify that they are healthy and able to
10 travel, and then we call the state of destination and ask them
11 for their entry requirements. And we fulfill those requirements
12 and then the animal can go.

13 Q. Okay. And are these certificates of veterinary inspections
14 oftentimes referred to as CVIs?

15 A. Yes.

16 Q. And is the CVI required only if it involves interstate
17 travel of the animal?

18 A. Yes.

19 Q. All right. Now, did you prepare and sign CVIs during your
20 time providing treatment to Mr. Passage's park?

21 A. Yes.

22 Q. Okay. Can you -- do you know approximately how many you
23 would have prepared over the years, going back to 1999?

24 A. There would have been hundreds.

25 Q. Hundreds? Okay. And who usually prepared the body of the

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1 CVI?

2 A. My secretary.

3 Q. And would your secretary prepare the body of the CVI based
4 on information provided from somebody at the park?

5 A. Yes.

6 Q. All right. Now, with respect to the animals covered in each
7 CVI, would you examine those animals before certifying and
8 signing off on the CVI?

9 A. Yes.

10 Q. And did you ever refuse to certify an animal, to certify
11 that it was healthy enough for interstate treatment, after
12 examining it at his park?

13 A. There would have been certain examples, yes.

14 Q. So over the years, approximately how many?

15 A. Maybe a handful, a few. Most of the animals were very
16 healthy.

17 Q. All right. And the ones that you might have been reluctant
18 to certify, is that something that -- you know, a particular
19 ailment that can be treated and then Mr. Passage or someone from
20 the park can bring the animal back maybe a week or two later?

21 A. Yes.

22 Q. And then at that time you re-examine it?

23 A. Yes.

24 Q. And if it's healthy, you can certify it --

25 A. Yes.

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1 Q. -- for interstate travel?

2 Okay. Please look at Government Exhibit 136. It will be in
3 the black binder. It should be -- I apologize. Not 136. Bear
4 with me, please.

5 Go ahead and look at Government's Exhibit 5 and 6, and you
6 let me know if you recognize those.

7 A. Yes.

8 Q. Okay. And what are they?

9 A. This is a CVI.

10 Q. But is this a CVI that was prepared at your practice?

11 A. Yes.

12 Q. And signed by you?

13 A. Yes.

14 Q. And does it fairly and accurately -- or does it appear to be
15 in the same condition now as it was when you signed it on the two
16 respective dates?

17 A. Yes.

18 Q. All right.

19 MR. BROWN: Your Honor, we'd move for admission of
20 Government's 5 and 6.

21 THE COURT: Any objection?

22 MR. WACKENHEIM: Yes, Your Honor, hearsay, lack of
23 foundation. I can elaborate, if we approach.

24 THE COURT: Please.

25 (The following proceedings were had at the bench and out of

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1 the hearing of the jury.)

2 MR. WACKENHEIM: Your Honor, we're objecting to both
3 Government's Exhibits 5 and 6. We anticipate that -- well, we
4 have heard testimony from the witness that other individuals
5 would sign -- or excuse me -- would fill out portions of this
6 certificate done by other members of her staff. These concern
7 elements of the offense. We submit that whoever marks donation
8 needs to be brought here. I think, upon further questioning,
9 she'll indicate that she is unaware of who filled that out. And
10 so we -- we'll stand on lack of foundation and hearsay to this
11 exhibit.

12 MR. BROWN: Your Honor, we did believe we had a
13 business record certification for it, but we do not. So I could
14 re-establish that foundation with respect to it being a business
15 record, assuming that it is, indeed, maintained at her office.
16 And with respect to preparing it, she's already indicated that
17 her staff prepared these forms based on information related to
18 them by folks at the park, to include whether or not it was a
19 donation or a sale.

20 THE COURT: Well, I would ask that you do go back
21 through the foundation, absent the certification. Given that,
22 they'll be admitted. I think it's going to have to be covered on
23 cross-examination in terms of the source of the information.

24 MR. BROWN: Thank you, Judge.

25 (The following record was made in open court, in the

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1 presence of all parties, counsel, and in the presence and hearing
2 of the jury.)

3 Q. (By Mr. Brown) Okay. Dr. Green, let me ask you this:
4 With --

5 MS. MAXFIELD-GREEN: I'm sorry to interrupt, Your
6 Honor.

7 (Brief interruption.)

8 MR. BROWN: I apologize, Judge.

9 Q. (By Mr. Brown) Okay. Dr. Green, I'm sorry. With respect
10 to Government's Exhibits 5 and 6, you indicated that you
11 recognized it. Each of these CVIs that you certify and that you
12 signed, are they made at or near the time that you would have
13 signed this document?

14 A. Yes.

15 Q. And is it the regular practice of your vet practice to make
16 these CVIs and then to retain them as part of your practice?

17 A. Yes.

18 Q. Okay. And were these two CVIs records that are kept in the
19 course of the regularly conducted business activity of your vet
20 practice?

21 A. Yes.

22 MR. BROWN: Your Honor, we'd move for admission of
23 Exhibits 5 and 6.

24 MR. WACKENHEIM: Same objection.

25 THE COURT: The objection will be overruled.

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1 MR. BROWN: Thank you, Your Honor.

2 THE COURT: Government's 5 and 6 will be admitted.

3 Q. (By Mr. Brown) Okay. Exhibit 5 should be on your screen,
4 Dr. Green.

5 Now, with respect to the very top portion of the exhibit,
6 does that indicate the consignee, or the owner, of the animal?

7 G.W. Zoo?

8 A. The -- the upper left, yes.

9 Q. Okay. And what -- the next box over, the name of the
10 consign -- I guess that's the consignee. Who was the consignee
11 in this form?

12 A. Monterey Zoo.

13 Q. All right. And if you go down underneath Monterey Zoo,
14 where it indicates "purpose of movement," what is checked?

15 A. "Other."

16 Q. Okay. And then how about regarding "intrastate or
17 interstate"?

18 A. "Interstate."

19 Q. All right. Which means it's going across state lines,
20 correct?

21 A. Correct.

22 Q. And with respect to this CVI, what type of animal did you
23 examine?

24 A. A lion.

25 Q. How old was that lion?

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1 A. Five years.

2 Q. And then going back to the purpose of movement, you
3 indicated "other" was checked. What is written in next to that?

4 A. "Donation."

5 Q. And then if you look at the very bottom, is that your
6 signature?

7 A. Yes.

8 Q. And does that indicate you examined this animal on
9 December 16th of 2016?

10 A. Yes.

11 Q. All right. And then if you would go to the -- the body,
12 which I just circled, are those your notes?

13 A. Yes.

14 Q. And can you read those, please?

15 A. "This lion is healthy and ready to travel."

16 Q. All right. And is that the standard practice for issuing a
17 CVI to allow an animal to travel across state lines?

18 A. Yes.

19 Q. So you would have physically examined this particular lion.
20 You confirmed it was healthy. You certified that it could be
21 transported in interstate travel?

22 A. Yes.

23 Q. Now, other than your signature at the bottom and the note
24 that I have circled, who would have prepared the rest of that
25 document?

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1 A. My secretary at the time.

2 Q. Okay. And would your secretary at the time prepare that
3 document based -- I mean, would she have come up with this
4 information or would she have received this information from
5 somewhere else?

6 A. She would have received a call from the park.

7 Q. Okay. And was that pretty standard practice?

8 A. Yes.

9 Q. All right. Did that -- did that enable a more efficient
10 examination for you and certification for you?

11 A. Yes.

12 Q. That way, if you had to go out and visit the park and
13 examine this five-year-old female lion, you didn't have to worry
14 about completing the form once you got there?

15 A. Correct.

16 Q. All right. Can we look at Exhibit 6, please?

17 Dr. Green, same questions with Exhibit 6. This CVI, where
18 were the animals going?

19 A. Animal Haven Zoo.

20 Q. And where is Animal Haven located?

21 A. Wisconsin.

22 Q. What animals did you examine on this CVI?

23 A. A male and a female lion.

24 Q. And what date did you certify that they were healthy for
25 transport?

Emily Eakle, RMR, CRR

1 A. 6/12 of '18.

2 Q. And then, according to your notes -- can you read those,
3 please?

4 A. "These lions are healthy and ready to travel."

5 Q. And same questions. These -- the majority of this document
6 would have been prepared by your secretary?

7 A. Yes.

8 Q. All right. And based on information relayed from someone at
9 the park?

10 A. Yes.

11 MR. WACKENHEIM: Objection. That's a series of leading
12 questions, Your Honor.

13 THE COURT: Sustained.

14 Q. (By Mr. Brown) Now, let me ask you, Dr. Green, about your
15 euthanasia practice with respect to Mr. Passage. Okay? Did you
16 have a program of veterinary care in place with Mr. Passage?

17 A. Yes.

18 Q. All right. And when was that program first, I guess,
19 enacted or first put in place?

20 A. Probably 2004.

21 Q. And what was the purpose of the veterinary program -- the
22 program of veterinary care? Sorry.

23 A. It is a contract between the licensee and the veterinarian
24 and the USDA.

25 Q. Can you look at Government's Exhibit 4, please?

Emily Eakle, RMR, CRR

1 Do you recognize Exhibit 4?

2 A. Yes.

3 Q. And what is it?

4 A. That is my program of animal care.

5 Q. And is this -- was this executed by you? Was it signed by
6 you?

7 A. Yes.

8 Q. And Mr. Passage?

9 A. Yes.

10 Q. And was it maintained at your vet practice?

11 A. Yes.

12 Q. And did you provide this to the government during the
13 investigation?

14 A. Yes, I did.

15 Q. And is this a fair and accurate representation of the
16 program of veterinary care?

17 A. Yes.

18 Q. All right.

19 MR. BROWN: We'd move for admission of Exhibit 4.

20 THE COURT: Any objection?

21 MR. WACKENHEIM: No, Your Honor.

22 THE COURT: Government's Exhibit 4 will be admitted.

23 Q. (By Mr. Brown) Okay. Just explain, I guess generally, what
24 is this form? I mean, given that it -- is this a government
25 form?

Emily Eakle, RMR, CRR

1 A. Yes.

2 Q. Okay. Is this required by the Department of Agriculture?

3 A. Yes.

4 Q. And why is it required?

5 A. Because Joe had an exhibitor's license. And to exhibit
6 animals, you have to maintain a program of veterinary and animal
7 care.

8 Q. Okay. And I know earlier you testified that -- that you
9 began treating exotic cats around 1999 for him. Is there a
10 reason that this program of vet care was not signed or was not
11 entered until July of 2004?

12 A. He may not have been exhibiting animals at that time.

13 Q. Okay. So if he didn't have a USDA exhibitor's license
14 before July of '04, he didn't need one of these, correct?

15 A. Correct.

16 Q. All right. So once he obtained an exhibitor's license, he
17 was required to basically enact one of these?

18 A. Yes.

19 Q. And you assisted him with that?

20 A. Yes.

21 MR. BROWN: If we can go to Page 2, please. Section E,
22 if you can enlarge that.

23 Q. (By Mr. Brown) Okay. Can you explain what Section E on
24 Page 2 covers?

25 A. Euthanasia.

Emily Eakle, RMR, CRR

1 Q. All right. And what does Block 1 of Section E indicate?

2 A. It indicates that the veterinarian is to be the first line
3 of euthanasia.

4 Q. All right. And then how about Block 2?

5 A. That is our method of euthanasia.

6 Q. And that is sedation, then IV euthanasia solution?

7 A. Yes.

8 Q. All right.

9 MR. BROWN: Let's go to Page 3, please. If we could
10 expand Section D, please.

11 Q. (By Mr. Brown) All right. And with respect to Page 3,
12 what's the distinction between the euthanasia provision on Page 2
13 and the euthanasia provision on Page 3?

14 And if you want us to back out, Dr. Green, so you can see
15 the entire page, that might assist.

16 A. Yeah. I think I just elaborated a little bit more on
17 Page 3, indication this is for wild and exotic animals.

18 Q. Okay. And so Page 3 was more specific or more tailored to
19 wild and exotic animals?

20 A. Yes.

21 Q. All right.

22 MR. BROWN: Let's enlarge Section B again, please, on
23 Page 3.

24 Q. (By Mr. Brown) Again, Dr. Green, according to Block 1, what
25 does that indicate regarding who administers the euthanasia?

Emily Eakle, RMR, CRR

1 A. A veterinarian.

2 Q. And then Block 2, explain that, please.

3 A. We would first sedate the cat with a dart filled with
4 anesthesia solution. And once the cat was sedated, then the cat
5 is humanely euthanized with an IV dose of euthanasia solution
6 or -- euthanasia solution. There's several different solutions.

7 Q. And are these euthanasia solutions, generally speaking, do
8 they essentially just stop the heart?

9 A. Yes, they do.

10 Q. And approximately how long from the time that you inject
11 that solution into the exotic animal until the time that the
12 heart stops beating?

13 A. Around 20 to 30 seconds.

14 Q. Okay. Now, once the animal is sedated, with respect to the
15 euthanasia, according to this protocol, prior to actually
16 administering the euthanasia solution, the animal will be
17 sedated?

18 A. Yes.

19 Q. All right. And once an animal is sedated, do they
20 experience any suffering once you inject the animal with the
21 euthanasia solution?

22 A. There can be certain minor reactions to the solution.

23 Q. Okay.

24 A. It has to all reach the heart before the heart will stop.

25 Q. All right. Now, that vet program was enacted in 2004. At

Emily Eakle, RMR, CRR

- 1 any point in time forward during your association with
2 Mr. Passage, was that program amended?
- 3 A. Yes.
- 4 Q. And when was it amended?
- 5 A. I believe in 2016.
- 6 Q. Okay. And at whose request?
- 7 A. Joe's request.
- 8 Q. All right. Did Mr. Passage explain why he wanted to amend
9 the vet program?
- 10 A. In case I was out of town or he could not get ahold of a
11 veterinarian, that he needed provisions and permission to do
12 certain things to the tigers that usually a veterinarian would
13 do.
- 14 Q. All right. I'm going to ask you to look at Exhibit 135.
15 And I apologize for bouncing around, but I believe it will likely
16 be in the rear of that binder there, Dr. Green.
- 17 Okay. Have you found Exhibit 135?
- 18 A. Yes.
- 19 Q. Do you recognize it?
- 20 A. Yes.
- 21 Q. What is it?
- 22 A. This is the amendment veterinary protocol that Joe came up
23 with, actually in 2014. I'm sorry.
- 24 Q. And do you -- did you provide this to the government?
- 25 A. Yes, I did.

Emily Eakle, RMR, CRR

1 Q. And is this kept at your vet practice?

2 A. Yes.

3 Q. And does this fairly and accurately depict the vet protocol
4 that was enacted on April 23rd of 2014?

5 A. Yes.

6 Q. All right.

7 MR. BROWN: We would move for admission of Exhibit 135.

8 THE COURT: Any objection?

9 MR. WACKENHEIM: No, Your Honor.

10 THE COURT: 135 will be admitted.

11 Q. (By Mr. Brown) All right. So with respect to this vet
12 protocol dated April 23rd of 2014, this -- this appears to be
13 typewritten. It's not on a government form.

14 A. Yes.

15 Q. All right. Did you produce this document?

16 A. No, I did not.

17 Q. All right. Who did?

18 A. Joe.

19 Q. And did he ask you to sign it?

20 A. Yes.

21 Q. Okay.

22 MR. BROWN: Now, if we can go to the middle, right
23 around here, please.

24 Q. (By Mr. Brown) Okay. Regarding euthanasia, under this
25 amended protocol, who was responsible -- who was the primary

Emily Eakle, RMR, CRR

1 party responsible for euthanizing animals at the park?

2 A. I was.

3 Q. And that's reflected in -- probably right about the middle
4 of that highlighted area?

5 A. Yes.

6 Q. All right. Now, the next bullet down, can you explain that,
7 please?

8 A. That -- that statement was put on this document in case I
9 was out of town and a tiger or a lion or any of the other animals
10 on the park had suffered a major injury or was bleeding to death
11 or had somehow escaped their enclosure and needed to be -- the
12 suffering needed to be ended immediately.

13 Q. All right. And is that why it's described as an extreme
14 emergency?

15 A. Yes.

16 Q. Okay. And from the time that this was enacted on -- or from
17 the time you signed it on April 23rd of 2014, was this extreme
18 emergency exception, was it ever invoked?

19 A. Yes, one time.

20 Q. One time. Explain that, please.

21 A. One of the tigers that had been in a cage for over 15 years
22 somehow managed to get over the top and was in the vicinity of
23 humans and Joe had to put it down.

24 Q. And there was a community safety concern?

25 A. Yes.

Emily Eakle, RMR, CRR

- 1 Q. Okay. And do you know how Mr. Passage put that animal down?
- 2 A. With one gunshot to the head.
- 3 Q. Okay. And did -- after Mr. Passage put that one animal
- 4 down, did he notify you?
- 5 A. Yes.
- 6 Q. Okay. Other than that one occasion, any other occasions of
- 7 that extreme emergency exception being invoked?
- 8 A. No.
- 9 Q. All right. Now, when this was amended or -- or modified in
- 10 April of 2014, did you have any concerns with the extreme
- 11 emergency language?
- 12 A. No.
- 13 Q. Okay. If -- if possible, going back to 1999, approximately
- 14 how many animals have you had to euthanize at his park?
- 15 A. I can't remember.
- 16 Q. Would you say it was fewer than a hundred?
- 17 A. Since 1999?
- 18 Q. Yes.
- 19 A. It's probably around a hundred.
- 20 Q. Okay. If I could direct your attention to the summer
- 21 of 2017, do you -- did you respond to several large cats that
- 22 were in need at the park at that time?
- 23 A. Yes.
- 24 Q. Okay. And approximately how many?
- 25 A. I'm not sure.

Emily Eakle, RMR, CRR

- 1 Q. Okay. Did you examine more than one cat in --
- 2 A. Yes.
- 3 Q. -- the summer of 2017?
- 4 A. Yes.
- 5 Q. Did you have to sedate and euthanize any?
- 6 A. I probably did, yes.
- 7 Q. Okay. But you can't remember?
- 8 A. No.
- 9 Q. All right. Fair enough.
- 10 Let me ask you about October of 2017. Do you recall whether
- 11 or not you conducted any examinations at the park in October
- 12 of 2017?
- 13 A. Yes, I did.
- 14 Q. Okay. Approximately how many?
- 15 A. I can't recall.
- 16 Q. All right. Do you know what the nature of the examinations
- 17 were?
- 18 A. At this point, I -- probably some for health certificates
- 19 and maybe some for pain and suffering. I'm not sure.
- 20 Q. Okay. And can you recall whether or not there were any
- 21 animals you examined in October of 2017 that had to be
- 22 euthanized?
- 23 A. I'm sure there were, but I don't have my records in front of
- 24 me.
- 25 Q. Okay. Fair enough.

Emily Eakle, RMR, CRR

1 Have you had to put down big cats that were suffering with
2 skin disorders?

3 A. Yes.

4 Q. All right. And have you --

5 THE COURT: Mr. Brown, let me interrupt you for a
6 minute. I think we need to take our afternoon break.

7 Court will be in recess for 15 minutes. The court will
8 remain in attendance and seated while the jury leaves the
9 courtroom.

10 (Jury exited.)

11 THE COURT: Court will be in recess until 3:15.

12 (Break taken.)

13 (The following record was made in open court, in the
14 presence of all parties, counsel, and in the presence and hearing
15 of the jury.)

16 THE COURT: Mr. Brown, you may proceed.

17 MR. BROWN: Thank you, Judge.

18 Q. (By Mr. Brown) Dr. Green, prior to the break I asked you if
19 you had ever put down any big cats at Mr. Passage's park that
20 were suffering from skin disorders.

21 A. Yes.

22 Q. How about any big cats that were limping or had other issues
23 related to a -- an improper declawing process?

24 A. Yes.

25 Q. Would either of those conditions qualify as an extreme

Emily Eakle, RMR, CRR

1 emergency under the revised vet protocol dated 2014?

2 A. No.

3 Q. Okay. Final question. Describe the billing arrangement
4 between your clinic and Mr. Passage's park.

5 A. He would -- I would provide services and medications and
6 things like that, and we would keep him a running total at the
7 clinic. And he would pay me as he had money come available.

8 Q. And was he always current?

9 A. No.

10 Q. Okay. Is he still in arrears to you?

11 A. Yes.

12 MR. BROWN: Pass the witness, Your Honor.

13 THE COURT: Cross-examination?

14 **CROSS-EXAMINATION**

15 **BY MR. WACKENHEIM:**

16 Q. Dr. Green, could you open defendant's notebook in front of
17 you to Tab 10? Do you recognize that document?

18 A. Yes.

19 Q. Is that your signature at the bottom of the document?

20 A. Yes.

21 Q. And is that your letterhead at the top?

22 A. Yes.

23 Q. What is this document? Well, strike that.

24 MR. WACKENHEIM: Defendant moves for admission of
25 Defendant's Exhibit 10.

Emily Eakle, RMR, CRR

1 THE COURT: Any objection?

2 MR. BROWN: No objection.

3 THE COURT: Defendant's 10 will be admitted.

4 Q. (By Mr. Wackenheim) Can you describe to the jury what this
5 document entails?

6 A. This is just a statement that I came up with for the park
7 that if these animals are found lame and you could see that there
8 was a toenail coming from the pad -- it's pretty obvious when
9 these toenails start growing out of the top of the foot. It's
10 extremely painful for them, and we wanted to be able to provide
11 care, some type of pain relief for them, if that occurred.

12 Q. So you entrusted certain park staff to administer pain
13 medication to the animals; is that --

14 A. Absolutely, yes.

15 Q. So who on the park staff did you trust to care for the
16 animals in your absence?

17 A. John Reinke. And Joe, of course. And --

18 Q. So you have been working at this park for years, correct?

19 A. Yes.

20 Q. Did you trust Mr. Passage's judgment when it came to the
21 treatment of his animals?

22 A. Yes.

23 Q. Did you also trust the judgment of Mr. Reinke?

24 A. Yes.

25 Q. Are you currently employed at the zoo?

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1 A. No.

2 Q. Why not?

3 A. It has changed ownership and I don't -- I'm not working for
4 the new owner.

5 Q. Who is that new owner?

6 A. Jeff Lowe.

7 Q. You talked briefly about your experience. Is it also true
8 that you have worked with Oklahoma State University?

9 A. Yes.

10 Q. Just wanted to make sure that we accurately described your
11 experience.

12 Speaking to captive tigers, you talked a little bit about
13 your experience with them and how they're different than wild
14 tigers. Can you talk a little bit about what happens as they get
15 older?

16 A. When these tigers and large cats are in their native
17 environment, say in Africa, you know, their life expectancy
18 typically might be around seven, eight years old. When they are
19 born in a cage and raised in an enclosure, they tend to live
20 twice that long. And their skeletons can develop problems that
21 they never would have experienced had they been in the wild.

22 Q. Is it true to say they outgrow their skeletons?

23 A. I wouldn't say they outgrew their skeletons, but maybe
24 outlive their skeletons. They can develop arthritis. They can
25 develop problems with their mouths, their teeth, everything

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1 related to being in an enclosed environment.

2 Q. We have heard some testimony about the practice of removing
3 cubs from the mother early. Can you talk about your experience
4 with that practice?

5 A. When these baby cubs are born in an enclosed environment, in
6 a cage, the mothers are typically not in an environment where
7 they would take care of their cubs normally. The practice of
8 removing the cubs is for the cubs' own safety. They probably
9 would not survive with their mothers.

10 Q. Turning to the CVI forms, can you reference Government
11 Exhibit 6? Do you see that in front of you?

12 A. Yes.

13 Q. And you have answered questions about this form, and I'm not
14 going to go line by line, but is that your handwriting that says,
15 "These lions are healthy and ready to travel"?

16 A. Yes.

17 Q. Is that --

18 A. Yes.

19 Q. Okay. Do you know who checked the box that says "interstate
20 and exhibition" on that form?

21 A. That would be my secretary.

22 Q. And where did she get the information to check that?

23 A. From whoever called in the -- the animals that were going to
24 be placed on this certificate from the park.

25 Q. So for this particular form dated June 12th, 2018, do you

Emily Eakle, RMR, CRR

1 have any knowledge who instructed your secretary to mark those
2 boxes?

3 A. I don't remember who it was.

4 Q. Exhibit 5. Similar questions. In the box checked "other"
5 that says "donation," is that your handwriting?

6 A. No.

7 Q. Is that your secretary's handwriting?

8 A. Yes.

9 Q. Do you know who told her to mark donation on that form?

10 A. No, I do not.

11 Q. In fact, is that information even required in these forms?

12 A. Some states do ask us why the animals are traveling to their
13 state; others do not. Sometimes that box is left blank. It just
14 depends on what the -- what the requirements are of the state
15 that is receiving the animals.

16 Q. And is it your practice, or your office's practice, to call
17 the receiving state to determine what information is required?

18 A. Absolutely.

19 Q. And so I think you testified what's required generally is
20 the type of animal; is that right?

21 A. Yes.

22 Q. The age of the animal?

23 A. Yes.

24 Q. Who owns it?

25 A. Uh-huh.

Emily Eakle, RMR, CRR

- 1 Q. Is that a "yes"?
- 2 A. Yes.
- 3 Q. Who gets it?
- 4 A. Yes.
- 5 Q. And is the animal healthy?
- 6 A. Yes.
- 7 Q. We have had a lot of discussion about euthanasia, the
8 practice of putting down animals. Do you recall that testimony?
- 9 A. Yes.
- 10 Q. Is a gunshot to the head an accepted form of euthanasia?
- 11 A. Yes.
- 12 Q. Are you familiar with the USDA?
- 13 A. Yes.
- 14 Q. And their inspections on the park?
- 15 A. Yes.
- 16 Q. Have you had conversations with employees of the USDA about
17 euthanasia of animals on this park?
- 18 A. Yes.
- 19 Q. And have you ever been told that you are not permitted to
20 euthanize any of these animals?
- 21 A. No.
- 22 Q. Do you have a captive-bred wildlife license?
- 23 A. No, I do not.
- 24 Q. Did you trust the judgment of Mr. Reinke and Mr. Passage on
25 when they advised that an animal required euthanasia?

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1 A. Yes.

2 Q. Have you ever been second-guessed by the USDA for your
3 decision to euthanize an animal?

4 A. No.

5 Q. Has Mr. Passage ever asked you to put down an animal for any
6 reason other than one related to the physical condition of the
7 animal?

8 A. There was one tiger that I was asked to euthanize that was
9 extremely aggressive. And we discussed it and we talked about it
10 at length, and we ultimately decided that for human safety and
11 protection, that animal needed to be euthanized.

12 Q. If you could turn to Defendant's Exhibit 4. That will be in
13 the book. Could you review those photographs and give an
14 estimate of the -- well, let me ask: Are you able to, upon
15 reviewing Defendant's Exhibit 4, estimate the age of that tiger?

16 A. I see that there are some incisor teeth missing and there is
17 wear on the enamel of the canine teeth. I would guesstimate this
18 cat to be around 10 to 11 years old.

19 Q. Could you review Defendant's Exhibit 5? Same question. Are
20 you able to estimate the age of this tiger?

21 A. This tiger possibly could be a little bit older than the
22 first one. Same problem with the incisor teeth, one is trying to
23 come out. There is a lot of wear and tear on the premolars. I
24 would say probably same age, around 10 to 11, if not older.

25 Q. Could you review Defendant's Exhibit 6? Are you able to

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1 estimate the age of the tiger based on that photograph?

2 A. Here we have a chipped premolar tooth and some wear and tear
3 on the canines. I would say this cat was probably easily over
4 ten years old.

5 Q. And, finally, Defendant's Exhibit 7. Same question. Are
6 you able to estimate the age of that tiger?

7 A. There is some wear on the -- on the molar and the premolar.
8 Some wear on the enamel. This cat's probably similar in age.

9 Q. So about ten years or older?

10 A. Yes.

11 Q. And is that consistent for those four tigers that I showed
12 you?

13 A. Yes.

14 Q. On direct examination you were asked questions about the
15 practice of lethal injection through intravenous drugs. Do you
16 remember that testimony?

17 A. Yes.

18 Q. Okay. And do you remember being asked whether or not there
19 is any pain or reaction associated with the intravenous drug? Do
20 you remember that question?

21 A. Yes.

22 Q. And is there -- can there be pain associated with that form
23 of euthanasia?

24 A. I'm not sure the degree of pain. I know that sometimes they
25 will seizure. Sometimes it will stretch out. It depends on how

Emily Eakle, RMR, CRR

1 long it takes for the entire amount of drug to reach the cardiac
2 muscle. And this is a very large volume of fluid, takes a while
3 for it to get there. So once I inject the medication, I cannot
4 predict how that's going to go.

5 Q. And do you know whether or not animals who are euthanized
6 with a gunshot to the head are aware of any pain or feel any
7 pain?

8 A. I'm not sure.

9 MR. WACKENHEIM: May I have a moment, Your Honor?

10 THE COURT: You may.

11 MR. WACKENHEIM: Thank you, Doctor.

12 No further.

13 THE COURT: Redirect, Mr. Brown?

14 **REDIRECT EXAMINATION**

15 **BY MR. BROWN:**

16 Q. Dr. Green, regarding Defendant's Exhibit 10, if you could
17 flip to that, please. And what's the date of this document?

18 A. I don't see a date on it.

19 Q. Do you know when you drafted it?

20 A. I believe it was a few years ago, but I can't remember.

21 Q. Okay. And what's the overall purpose of the document?

22 A. For the park staff to be able to medicate animals that were
23 in pain.

24 Q. All right. And would any animals being treated under the
25 provisions of this document fall within the extreme emergency

Emily Eakle, RMR, CRR

1 exception in the revised vet protocol dated 2014?

2 A. I'm sure that they would.

3 Q. That they -- I'm sorry?

4 A. I'm sure that they would.

5 Q. Okay. So if an animal was receiving treatment from the
6 medicine that you authorized the folks at -- the staff to
7 provide, you're saying that an animal receiving that type of
8 treatment would qualify under Government's Exhibit 135 as
9 authorizing either Mr. Passage or John Reinke to euthanize the
10 animal with a bullet?

11 A. No.

12 Q. Okay. So just to back up to make sure I understand your
13 testimony. Is it your testimony that an animal being treated
14 under Defendant's Exhibit 10, the protocol that you believe you
15 enacted a few years ago --

16 A. Uh-huh. Yes.

17 Q. -- would not qualify under the extreme emergency exception
18 for euthanasia as amended in April of 2014?

19 A. Not unless we discussed it, but this is not an extreme
20 emergency. This is a program of veterinary care that we are
21 treating the pain.

22 Q. Okay. Thank you.

23 Now, Mr. Wackenheim reviewed Defendant's Exhibits 4 through
24 7, and those are the photographs of the teeth.

25 A. Yes.

Emily Eakle, RMR, CRR

1 Q. Do you recall your testimony regarding those?

2 A. Yes.

3 Q. I believe you testified there was some incisor wear?

4 A. Yes.

5 Q. And there were some issues with maybe a couple of cracked
6 teeth and some misplaced or displaced canines; is that correct?

7 A. Correct.

8 Q. And animals with that type of -- those type of tooth
9 problems, based on your experience, is that something that would
10 have happened overnight?

11 A. No.

12 Q. Okay. That's something that would have progressively
13 happened over time?

14 A. Yes.

15 Q. And in a situation like that, would that have been a
16 situation where the park would have reached out to you in the
17 event that they believe the animal should have been euthanized?

18 A. Yes.

19 Q. Thank you, Dr. Green.

20 MR. BROWN: No further questions.

21 THE COURT: Any recross, Mr. Wackenheim?

22 MR. WACKENHEIM: No, Your Honor.

23 THE COURT: Thank you, Doctor. You may step down.

24 Government call their next witness.

25 MS. MAXFIELD-GREEN: Government calls Darleen

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1 Cervantes.

2 (WITNESS SWORN.)

3 **DARLEEN CERVANTES**

4 **DIRECT EXAMINATION**

5 **BY MS. MAXFIELD-GREEN:**

6 Q. Good afternoon, Ms. Cervantes. Could you state your full
7 name for the record, please?

8 A. Darleen Denise Cervantes.

9 Q. Ms. Cervantes, where do you currently live?

10 A. In the state of Indiana.

11 Q. What do you do there?

12 A. Well, currently unemployed. I was a zookeeper right before
13 that.

14 Q. Do you know a person named Joe Schreibvogel, now known as
15 Joseph Maldonado-Passage or Joseph Passage?

16 A. Yes, I do.

17 Q. Do you see him here in the courtroom today?

18 A. Yes, I do.

19 Q. Could you describe for the record what he's wearing?

20 A. A white shirt and a tie, a blue tie.

21 Q. All right. How did you first get to know or know of
22 Mr. Passage?

23 A. Social media.

24 Q. Did you interact with him at first on social media or just
25 see postings he had made?

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- 1 A. I just seen postings he had made.
- 2 Q. At that time that you had first started to see his postings
3 on social media, did you have an interest in exotic animals?
- 4 A. Yes, I always have.
- 5 Q. And what was your interest?
- 6 A. Well, I had Savannah cats and I had always wanted to have a
7 larger cat.
- 8 Q. And about when would you say that you started to become
9 aware of Mr. Schreibvogel or Mr. Passage via social media?
- 10 A. Give or take, 2015.
- 11 Q. After you'd seen some of his videos and gotten familiar with
12 him, did you reach out to him through the Internet or social
13 media?
- 14 A. Yes, I did.
- 15 Q. And did he respond to you?
- 16 A. Yes, he did.
- 17 Q. And did you eventually get his phone number and have phone
18 calls or text messages with him?
- 19 A. We text.
- 20 Q. Did you eventually meet him in person?
- 21 A. Yes, I did.
- 22 Q. What were the circumstances of that?
- 23 A. He was running for president.
- 24 Q. Okay. And where did you meet him?
- 25 A. In Ohio.

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- 1 Q. Okay. About what year would that have been?
- 2 A. The year he ran for president, so last year, I believe it
3 was.
- 4 Q. Well, if the last presidential campaign was in 2016, would
5 that have been closer to that time --
- 6 A. Yeah. It would have, yeah.
- 7 Q. Okay. All right. And did you have a position in -- in the
8 campaign?
- 9 A. Yes. I was his representative for the state of Kentucky.
- 10 Q. Now, in August of 2017, flashing forward a little bit, did
11 you buy an animal from Mr. Passage?
- 12 A. Yes, I did.
- 13 Q. What did you buy?
- 14 A. Bobcat.
- 15 Q. How did you get that animal?
- 16 A. I reached out to him and I knew that he had -- you know,
17 that he deals in animals. I was always impressed with what I had
18 seen on social media, and I reached out to him as opposed to one
19 of the other breeders that I knew had one for sale.
- 20 Q. Did you travel to Oklahoma to get it?
- 21 A. Yes, ma'am.
- 22 Q. Did you visit the zoo at that time?
- 23 A. Shortly.
- 24 Q. And did you pay for that animal?
- 25 A. Yes, ma'am.

Emily Eakle, RMR, CRR

- 1 Q. How much was it?
- 2 A. \$2,500.
- 3 Q. Was it a baby or an adult?
- 4 A. It was a baby.
- 5 Q. Now, a few months later, in October of 2017, did you reach
- 6 out to Mr. Passage about buying some tigers?
- 7 A. Yes, ma'am, I did.
- 8 Q. How did you communicate with him about that?
- 9 A. Via text.
- 10 Q. And when you were looking to buy a tiger, why did you think
- 11 of Mr. Passage, as opposed to other zoos that might be nearer to
- 12 you?
- 13 A. Simply because I knew that he had tigers available and I had
- 14 dealt with him in the past.
- 15 Q. Let's take -- have you take a look at Exhibit 21. There's a
- 16 book in front of you marked government's exhibits, and if you'll
- 17 look at 21.
- 18 A. Okay.
- 19 Q. And what is in that? What are you looking at? And let me
- 20 ask it this way: Are you looking at a DVD, like a CD, DVD?
- 21 A. Yeah, I'm looking at like just a report number thing here.
- 22 THE COURT: Counsel, does she have both books up there?
- 23 MS. MAXFIELD-GREEN: I think she --
- 24 THE WITNESS: I may have the wrong thing.
- 25 Q. (By Ms. Maxfield-Green) I think you have got defendant's.

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- 1 Yeah. If you can look in the other book, the black one.
- 2 A. Okay.
- 3 Q. Are you looking at a CD or DVD?
- 4 A. No. Actually, I'm looking at somebody's driver's license.
- 5 Q. Okay. Well, that's not what I'm asking you to look at then.
- 6 A. I'm wondering why I'm looking at that.
- 7 Q. Are you looking at 21? Right behind --
- 8 A. Okay. Right behind it? There we go.
- 9 Q. Yes, behind.
- 10 A. Yes, there's a CD.
- 11 Q. Behind it --
- 12 A. That's what we're looking for.
- 13 Q. Okay. Now, let's -- sometime in the past year, did you
- 14 review your text messages with Mr. Passage on your own phone?
- 15 A. Did I review my messages with him?
- 16 Q. Did you look back through them?
- 17 A. Yes. I have looked back through them, yes, personally.
- 18 Q. And you have reread them?
- 19 A. Yes, I have.
- 20 Q. And while you were talking to -- did you talk to a member of
- 21 law enforcement about those text messages?
- 22 A. Yes, ma'am, I did.
- 23 Q. And while you were talking to a member of law enforcement,
- 24 did you show that -- that member of law enforcement your -- those
- 25 text messages?

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1 A. Yes, ma'am, I did.

2 Q. And did you allow the -- the law enforcement officer to take
3 a video of you scrolling your text messages so that they could be
4 read?

5 A. Yes, ma'am, I did.

6 Q. Okay. And have -- did you allow her to provide that video
7 of your scrolling text messages to the government in this case?

8 A. Yes, ma'am, I did.

9 Q. And have you and I talked about that before?

10 A. Never have met you before.

11 Q. What's that?

12 A. Nope. We have never talked.

13 THE COURT: One at a time, please.

14 MS. MAXFIELD-GREEN: Sorry about that.

15 THE WITNESS: Sorry.

16 Q. (By Ms. Maxfield-Green) Do you recall a phone conversation
17 involving Special Agent Matt Bryant of the Fish & Wildlife
18 Service?

19 A. Yes, I have.

20 Q. Where you discussed that same text conversation with
21 Mr. Passage?

22 A. Yes.

23 MS. MAXFIELD-GREEN: The government moves to admit
24 Exhibit 21.

25 THE COURT: Any objection?

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1 MR. WACKENHEIM: Yes. May we approach?

2 THE COURT: You may.

3 (The following proceedings were had at the bench and out of
4 the hearing of the jury.)

5 MS. MAXFIELD-GREEN: I thought she had a screenshot of
6 it, so --

7 MR. WACKENHEIM: Your Honor, we're objecting on hearsay
8 grounds. It's my understanding that she is going to show a
9 conversation in text message form that might be on Facebook, it
10 could be text, I'm not sure, but it's her statements made out of
11 court, not under oath, and it does not meet a hearsay exception.
12 We submit that her statements in those text messages are hearsay.

13 THE COURT: The witness's?

14 MR. WACKENHEIM: Correct.

15 THE COURT: I think the testimony was it's texts,
16 correct?

17 MS. MAXFIELD-GREEN: Correct.

18 THE COURT: Okay. Response from the government?

19 MS. MAXFIELD-GREEN: The text messages are a
20 back-and-forth conversation between her and Mr. Passage.
21 Therefore, his statements are admission of a party opponent, and
22 her statements are necessary to show the context or his knowledge
23 of the meaning of the conversation.

24 THE COURT: Okay. Objection will be overruled.

25 (The following record was made in open court, in the

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1 presence of all parties, counsel, and in the presence and hearing
2 of the jury.)

3 MS. MAXFIELD-GREEN: And, Your Honor, can we admit
4 Government's Exhibit 21?

5 THE COURT: Yes. 21 will be admitted.

6 MS. MAXFIELD-GREEN: Okay. And I'm going to have this
7 brought up for you to look at on your screen.

8 Okay. And if you can pause it right there, Jane. Just
9 pause it. Whoops. Can you run it back just slightly.

10 Q. (By Ms. Maxfield-Green) Okay. Now, that we're all looking
11 at something here, does this look familiar to you?

12 A. Yes, ma'am.

13 Q. Is this your phone?

14 A. Yes, ma'am.

15 Q. Or a video of your phone?

16 A. It's a video.

17 Q. All right. And based on your memory of your phone and this
18 conversation, who were you talking to?

19 A. Joseph Maldonado.

20 Q. Okay. And based on your history of communications with
21 Mr. Passage, or Mr. Maldonado, are you confident that the contact
22 information shown here was, in fact, Mr. Passage?

23 A. Yes, ma'am.

24 Q. All right. Okay. So if we look at that first block -- now,
25 the -- the text in blue, that would be you talking, correct?

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- 1 A. Yes, ma'am.
- 2 Q. And the text in gray would be him, correct?
- 3 A. Yes, ma'am.
- 4 Q. All right. So if you could just read in these -- these
5 exchanges for the record, please.
- 6 A. Sure.
- 7 "What are you charging for a tiger or other cat? Would be
8 for me."
- 9 "Tigers 2K."
- 10 "When will they be ready?"
- 11 "Now. Two weeks old."
- 12 "On bottle feeding?"
- 13 And he says, "Yes."
- 14 Q. Okay. And if you can see the date there at the very
15 beginning of the next message, what is the date?
- 16 A. October 29th, 2017.
- 17 MS. MAXFIELD-GREEN: And, Jane, if you could let it
18 scroll up a little bit. And pause it there.
- 19 Q. (By Ms. Maxfield-Green) Okay. Could you read the text
20 below October 29, 2017, at 15:08? What does Mr. Passage say to
21 you?
- 22 A. "Two others interested. Let me know."
- 23 Q. Okay. And what do you respond to him, in blue?
- 24 A. "Okay. I will most likely need to wait two weeks, so go
25 ahead. Thank you."

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1 Q. Okay.

2 MS. MAXFIELD-GREEN: And if we can scroll a little
3 more, Jane. Pause it there.

4 Q. (By Ms. Maxfield-Green) Okay. And underneath October 30th
5 at 14:08, what do you say to Mr. Passage?

6 A. "Do you have any older tigers for sale, like five" -- I'm
7 sorry. It looks like it -- "six -- six or four months -- six
8 months or for sale?"

9 Q. And what does he respond to you?

10 A. "Yep, two 5-month males. A thousand dollar pair."

11 Q. And what do you respond back to him?

12 A. "Okay. Let me work on this."

13 Q. Okay.

14 MS. MAXFIELD-GREEN: And pause it, Jane.

15 Q. (By Ms. Maxfield-Green) Okay. And what do you say to him
16 on October 30th?

17 A. "So a thousand dollars, right? Can we do this this weekend?
18 Cash."

19 Q. And what does he respond?

20 A. "Yes."

21 Q. And what do you respond?

22 A. "Okay. Thank you."

23 Q. All right.

24 MS. MAXFIELD-GREEN: Pause it there, Jane.

25 Q. (By Ms. Maxfield-Green) Okay. What does he respond back to

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- 1 you?
- 2 A. A thumbs up.
- 3 Q. And then what do you say to him?
- 4 A. I say, "Do you know this kid, right?" And then it's a face
5 shot of Michael Voorhees.
- 6 Q. Okay.
- 7 MS. MAXFIELD-GREEN: And if you'll pause it there,
8 Jane.
- 9 Q. (By Ms. Maxfield-Green) Is that a photo of Mr. Voorhees and
10 Mr. Passage?
- 11 A. Yes, ma'am.
- 12 Q. Okay. And what does it say underneath that photo?
- 13 A. "We want to do this together. You okay with that?"
- 14 Q. And what does he say?
- 15 A. "What do you mean?"
- 16 Q. And what do you respond?
- 17 A. "Buying them together."
- 18 Q. What does he respond?
- 19 A. A thumbs up.
- 20 Q. All right. And what do you say?
- 21 A. "Thanks. We will see you Saturday. You're the best." I
22 responded --
- 23 Q. And then you respond?
- 24 A. "Love you -- love you more than this. I hope I -- you
25 and -- you I hope you it."

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1 Q. All right. And on October 31st at, looks like 7:57, what do
2 you say to him?

3 A. I say, "Good morning. We are excited. Any way get a
4 picture of the new kids?"

5 Q. And does Mr. Maldonado respond to you?

6 A. Yes.

7 Q. What does he respond with?

8 A. A tiger and a picture of an employee.

9 Q. Okay.

10 MS. MAXFIELD-GREEN: Scroll on up a little bit.

11 Q. (By Ms. Maxfield-Green) What do you ask him?

12 A. "Do they have names?"

13 Q. And what else do you say to him?

14 A. "Just wanted to be clear, the pair is a thousand dollars."

15 Q. Okay. And what's the next one?

16 A. "What is the hotel nearby the park? We will be there
17 Saturday, a little after noon."

18 Q. And what does he respond to you on October 31st?

19 A. "Kent's."

20 Q. And to your knowledge, is Kent's the name of a hotel?

21 A. It was, yeah. He told me that.

22 Q. Okay.

23 MS. MAXFIELD-GREEN: And if you'll let it scroll a
24 little, Jane.

25 Okay. If you'll pause it.

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- 1 Q. (By Ms. Maxfield-Green) And what does he say underneath
2 Kent's?
- 3 A. "I need to get permits to export, so I need the name and
4 address if someone has a USDA number."
- 5 Q. And what do you tell him?
- 6 A. "Okay. We are set. Bringing a thousand dollars."
- 7 Q. What does he respond?
- 8 A. Thumbs up.
- 9 Q. And then what do you tell him next?
- 10 A. "I don't have a USDA permit because my county, Nevada,
11 doesn't care about -- and is private ownership. What do you
12 think? Can we still do this?"
- 13 Q. And what does he respond to you?
- 14 A. "Yep. I have to have time to get a health certificate to
15 enter Nevada. These are going where?"
- 16 Q. Okay.
- 17 A. "My house, Nevada, Nye County."
- 18 Q. Okay. And what's that a picture of?
- 19 A. My driver's license.
- 20 Q. And what does he say to you on October 31st?
- 21 A. "You know you have to have a special use permit to have
22 tigers there. That's why Karl Mitchell is always in trouble."
- 23 Q. All right. And what do you respond to him?
- 24 A. "Didn't they just allow him? Stephanie Zane, AK -- animal
25 control, AC, has not given trouble in the past. Okay. So

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- 1 no-go?"
- 2 Q. And what else do you say?
- 3 A. "I'm checking on it right now."
- 4 Q. All right. What does he say?
- 5 A. "Make sure you can."
- 6 Q. And you respond?
- 7 A. "Yes."
- 8 Q. Little bit later, on October 31st at 10:03, what do you say
- 9 to him?
- 10 A. "So we a go then?"
- 11 Q. And what does he respond to you?
- 12 A. "It's on you if you get in trouble."
- 13 Q. And what do you respond back to him?
- 14 A. "I will get all I need, I promise."
- 15 Q. And what does he respond?
- 16 A. "Okay."
- 17 Q. And then a couple -- an hour or so later on October 31st,
- 18 what does he send to you?
- 19 A. He asks for my phone number. It says, "Phone number?"
- 20 Q. Did you provide that to him?
- 21 A. Yes.
- 22 Q. And then what does he say next?
- 23 A. "They require a USDA number for Nevada. Can't get health
- 24 paper. Can you use your old address and health papers will go
- 25 for 30-day travel?"

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- 1 Q. And what do you respond?
- 2 A. "Yes."
- 3 Q. And what's right underneath the "yes"?
- 4 A. "My Kentucky one," question mark.
- 5 Q. What does he say?
- 6 A. "Well, they won't issue one for Nevada. I told you they
7 wouldn't."
- 8 Q. What do you respond?
- 9 A. I said, "Okay. My Kentucky address is."
- 10 Q. What does he respond?
- 11 A. Thumbs up.
- 12 Q. Okay. October 31st, what does he ask you?
- 13 A. My ZIP code.
- 14 Q. Do you provide it to him?
- 15 A. Yes.
- 16 Q. All right. Now, it looks like we've moved on to
17 November 2nd. What does he ask you?
- 18 A. "So you still coming to get the cats?"
- 19 Q. What do you say?
- 20 A. "Yes."
- 21 Q. What does he respond?
- 22 A. A thumbs up.
- 23 Q. All right. Moving on -- I'll let it scroll a minute up to
24 November 3rd.
- 25 Okay. What's that first text there at the top?

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- 1 A. It says, "Can I come up next weekend?"
- 2 Q. And what is the next line?
- 3 A. "At chemo and -- chemo and sicker than I thought." I have
- 4 no idea.
- 5 Q. Were you undergoing chemotherapy treatment?
- 6 A. I was interested in starting -- I had cancer. So we were
- 7 talking about it.
- 8 Q. What does Mr. Passage say to you on November 3rd at 12:08?
- 9 A. "They will not issue a health certificate without a USDA
- 10 number."
- 11 Q. What do you respond to him?
- 12 A. "Okay. Well, give me time. I will get it."
- 13 Q. What does he say to you?
- 14 A. And he tells me to call him.
- 15 Q. All right. And right there on November 10th, do you send a
- 16 message to him?
- 17 A. Yes, ma'am.
- 18 Q. What do you say?
- 19 A. "Can I call you?"
- 20 Q. What does he say back to you?
- 21 A. "Yes."
- 22 Q. All right. And coming back again on November 10th, what do
- 23 you text to him?
- 24 A. "Sorry. Just seen this. Still okay?"
- 25 Q. Okay. And what does it say under that?

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- 1 A. "Hey, won't let me call that number. Anyway, want to talk
2 about picking up the boys."
- 3 Q. And what's the next message on November 10th?
- 4 A. "It's my phone, not yours."
- 5 Q. Were you having trouble getting ahold of him?
- 6 A. Obviously.
- 7 Q. On November 10th does he provide you a different phone
8 number?
- 9 A. He provides a home number, yes.
- 10 Q. And on November 14th, 2017, at 8:15, what does he text to
11 you?
- 12 A. "Any luck on money? I'm in a hell of a bind."
- 13 Q. And what do you respond back on November 18th?
- 14 A. "I will get you something this week. Miss you."
- 15 Q. What does he respond to you on the same day?
- 16 A. "Need to pay lawyers. Could really use it."
- 17 Q. What do you respond?
- 18 A. "I understand. I'm on it."
- 19 Q. Does this reflect that -- does it say Joseph missed a call
20 from you?
- 21 A. Yes.
- 22 Q. Were you again attempting to contact him?
- 23 A. I think I butt-called him, because it says, "Sorry."
- 24 Q. Okay. November 23rd, 2017, what do you text to him?
- 25 A. "Happy Thanksgiving."

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- 1 Q. What does he text back?
- 2 A. "Same to you."
- 3 Q. And let's see. On December 7th, what do you text to him?
- 4 A. "Congratulations. I have your back. Love you."
- 5 Q. Do you remember why you congratulated him?
- 6 A. I don't remember.
- 7 Q. Okay. And what does he respond to you?
- 8 A. A thumbs up.
- 9 Q. What does he say next?
- 10 A. "Go bash them on the lost" -- I'm not sure what that word
- 11 is. Angle?
- 12 Q. Ogle?
- 13 A. Ogle. Maybe, yes.
- 14 Q. Do you know what The Lost Ogle is?
- 15 A. I have no idea.
- 16 Q. What do you respond to him?
- 17 A. "I'm here for you. Can you talk?"
- 18 Q. And what does he say?
- 19 A. "Not right now."
- 20 Q. And then what do you say back to him?
- 21 A. "Okay. I love you, Joe."
- 22 Q. And what does -- what do you say to him in that block there
- 23 in the middle?
- 24 A. "I'm gonna try to send you some money here in a few. I
- 25 would like to come up after new year."

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- 1 Q. All right. And what does he respond to you on December 7th
2 of 2017?
- 3 A. "For a tiger?"
- 4 Q. And what do you respond back to him?
- 5 A. "To help you."
- 6 Q. And then what do you ask him?
- 7 A. "Do you have a female?"
- 8 Q. And what does he say?
- 9 A. He says, "No. Call me."
- 10 Q. And do you ask for numbers?
- 11 A. Yes.
- 12 Q. All right. And a couple of minutes later do you say,
13 "Called you"?
- 14 A. Uh-huh.
- 15 Q. Does he then provide you with another phone number?
- 16 A. Yes, ma'am.
- 17 Q. And then what do you ask him?
- 18 A. "Now," question mark, "or morning?"
- 19 Q. What does he say?
- 20 A. "Now."
- 21 Q. Do you recall what that conversation was about? Or did you
22 get ahold of him on the phone?
- 23 A. The only time I talked to him thereafter was when he was
24 with his now to-be husband, and I congratulated him for that.
25 That's what I recall.

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1 Q. And that was in December of 2017?

2 A. That's what I recall.

3 Q. And it looks like December 25th, Christmas day, what do you
4 send to him?

5 A. A picture with a tiger, a Christmas card.

6 Q. Okay. I'm going to stop there.

7 Was this entire conversation, or most of it at least, a back
8 and forth about potentially purchasing tiger cubs?

9 A. It was actually for purchasing an older cub, yes.

10 Q. Older animals? Juveniles?

11 A. Yes.

12 Q. Did you follow through on buying these cubs?

13 A. No, I did not.

14 Q. Why not?

15 A. The person that I was talking with about getting a cub
16 actually found some cubs from another source and we went with
17 that person.

18 Q. Who was that?

19 A. Tim Stark.

20 Q. And where does he have a zoo?

21 A. Indiana.

22 MS. MAXFIELD-GREEN: Government passes the witness.

23 THE COURT: Cross-examination?

24 CROSS-EXAMINATION

25 BY MR. WACKENHEIM:

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1 Q. Ms. Cervantes, how did you get involved in this
2 investigation?

3 A. I was working for another zoo in the state of Illinois as a
4 zookeeper, and the licensing officers spoke to me about that zoo.
5 They came out to do an inspection. And the conversation then
6 turned to me and my -- my relationships with having tigers.

7 Q. So is there more than one relationship about getting tigers?

8 A. Relationship as in having tigers, working with tigers. So
9 having previously owned tigers and so forth.

10 Q. How about buying tigers?

11 A. No -- yes, it did. Yes, it did.

12 Q. When was the last time you bought a tiger?

13 A. I never purchased one. The one that I was given in the
14 picture there, that tiger was given to me.

15 Q. Donated?

16 A. Yes, sir.

17 Q. You mentioned that you are currently unemployed. Do you
18 recall that testimony?

19 A. Yes, sir.

20 Q. Prior to that you were a zookeeper?

21 A. Yes, sir.

22 Q. What was the name of that zoo?

23 A. Paws and Claws.

24 Q. Paws and Claws?

25 A. Uh-huh.

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1 Q. Is that a "yes"?

2 A. Yes, sir.

3 Q. Is that in Illinois?

4 A. Yes, sir.

5 Q. Prior -- how long were you employed at Paws and Claws as a
6 zookeeper?

7 A. Approximately seven months.

8 Q. What did you do before that?

9 A. I actually worked in security before that. I worked
10 training other animals, canines. Basically worked for myself and
11 did a few other jobs, such as security, working in a hospital,
12 working with animals.

13 Q. And at some point, you worked on Mr. Maldonado-Passage's
14 presidential campaign?

15 A. Yes, sir.

16 Q. And you said you were a Kentucky representative? Did I get
17 that right?

18 A. Yes, sir.

19 Q. Yes? And you met him in Ohio; is that right?

20 A. Yes, sir.

21 Q. What were the circumstances -- what was going on in Ohio?

22 A. He was announcing his presidency at that time, that he was
23 running.

24 Q. But prior to that, all of your contacts were through social
25 media; is that right?

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- 1 A. Yes, sir.
- 2 Q. So would that be through Facebook?
- 3 A. Yes.
- 4 Q. How about Twitter?
- 5 A. No.
- 6 Q. Instagram?
- 7 A. No.
- 8 Q. WhatsApp?
- 9 A. Huh-uh.
- 10 Q. Is that a "no"?
- 11 A. That's a "no," sir.
- 12 Q. So just Facebook?
- 13 A. Yes, sir.
- 14 Q. Okay.
- 15 MR. WACKENHEIM: And if you could boot up the exhibit
- 16 that we were just looking at. We don't need to scroll. Just the
- 17 top of it would be fine.
- 18 Thank you.
- 19 Q. (By Mr. Wackenheim) Is this a text message exchange with
- 20 Mr. Maldonado-Passage?
- 21 A. No, sir. I believe it's a PM from Facebook.
- 22 Q. So whether you're -- perhaps you're using the Facebook
- 23 application on your mobile device to have this conversation?
- 24 A. Yes, sir.
- 25 Q. And how do we know that this is Joseph Passage?

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- 1 A. Because that's who I was speaking to, sir.
- 2 Q. Okay. You were -- and to figure that out --
- 3 A. Okay.
- 4 Q. -- you're conversing with an account with the title "Joseph
- 5 A. Maldonado-Passage," correct?
- 6 A. Yes, sir.
- 7 Q. And it has an avatar, which is that little picture, right?
- 8 A. Right.
- 9 Q. Are you aware that Mr. Passage has numerous accounts?
- 10 A. Actually, yes.
- 11 Q. Did you ever operate some of his accounts for him?
- 12 A. No.
- 13 Q. Did you ever know anyone else who operated his accounts for
- 14 him?
- 15 A. No.
- 16 Q. Were you aware that other people operated his accounts?
- 17 A. Yes.
- 18 Q. I won't go through it again, you did a very good job reading
- 19 it through, but it seems as though the terms were not agreed to.
- 20 Is that fair?
- 21 A. Yes.
- 22 Q. In fact, Mr. Maldonado-Passage was attempting to warn you
- 23 about some of the regulatory burdens that come with owning a
- 24 tiger, correct?
- 25 A. Yes.

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1 MR. WACKENHEIM: May I have a moment, Your Honor?

2 THE COURT: You may.

3 MR. WACKENHEIM: Nothing further.

4 THE COURT: Redirect?

5 MS. MAXFIELD-GREEN: Just briefly, Your Honor.

6 **REDIRECT EXAMINATION**

7 **BY MS. MAXFIELD-GREEN:**

8 Q. Now, Ms. Cervantes, you just told Mr. Wackenheim that the
9 terms were not agreed to. But based on your understanding of
10 that conversation you were having, was the price agreed to?

11 A. By the texts, yes, ma'am.

12 Q. And was it -- had you agreed to a thousand dollars for the
13 pair?

14 A. Yes, ma'am.

15 Q. And the animals were agreed to, correct?

16 A. By the text, yes, ma'am.

17 Q. And what animals were those?

18 A. Tigers.

19 MS. MAXFIELD-GREEN: That's all, Your Honor.

20 THE COURT: Anything else, Mr. Wackenheim?

21 MR. WACKENHEIM: No, Your Honor.

22 THE COURT: Thank you, Ms. Cervantes. You may step
23 down.

24 THE WITNESS: Thank you.

25 THE COURT: Ladies and gentlemen of the jury, this will

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1 be -- as I mentioned, this will be the exception to the rule,
2 that we're going to break for the day today. I have another
3 matter, a hearing, that was somewhat urgent. We will typically
4 go all the way up until 5:00, but I'm going to excuse you at this
5 time.

6 Remember, please go to the jury assembly room. Don't
7 discuss the case with anyone. Don't form any opinions yet. All
8 of the admonitions I have given you before still apply. The case
9 has not been submitted for your deliberation.

10 The courtroom will remain seated as the jury leaves the
11 court.

12 (Jury exited.)

13 (The following record was made in open court, in the
14 presence of all parties, counsel, and out of the presence and
15 hearing of the jury.)

16 THE COURT: The record will reflect that the jury has
17 left the courtroom.

18 Counsel, let me ask, do you-all anticipate -- I know that we
19 have the Rule 15 matter to address. Do you-all anticipate
20 standing on your submissions or do you anticipate needing some
21 argument? It will -- to the extent it makes a difference, I
22 expect what we could do is take that up first thing in the
23 morning, maybe early before the jury gets here. I don't want the
24 jury waiting on us, so what your answers are will dictate how
25 early we're going to start.

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1 MS. MAXFIELD-GREEN: Your Honor, from the government's
2 perspective, because we designated the entire transcript and our
3 responses to the defendant's objections are on that transcript, I
4 think we're pretty comfortable with just submitting it that way.

5 THE COURT: Mr. Wackenheim?

6 MR. WACKENHEIM: Your Honor, some of the objections
7 were not stated on the record, allowing the testimony to go
8 forward with the understanding that you would rule on some
9 objections. We have noted those. We have tried to put those
10 together. As long as the Court feels that's sufficient, we won't
11 elaborate much further than that.

12 THE COURT: Well, I'll say this: I think this -- the
13 Rule 15 issue is going to turn on the availability issue. So my
14 anticipation is we'll get that out. I'll either rule this
15 evening by written order, I -- or I may address it first thing in
16 the morning. But if you're not going to represent -- as long as
17 you're representing that there's not additional argument. I
18 don't want to take that opportunity from you, should you want to
19 do that. But if you're going to stand on the submissions, then
20 we'll just take care of it that way. We'll start at 9:00.

21 MS. MAXFIELD-GREEN: Sounds good to the government,
22 Your Honor.

23 MR. EARLEY: Just -- I moved to introduce Defendant's
24 Exhibit 1 at that deposition, Your Honor. It was a text exchange
25 between the agent and Ms. Webster. So as long as the Court takes

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1 that into consideration, I just --

2 THE COURT: At the time of the -- okay. We'll address
3 that as well.

4 Anything else from either party?

5 MS. MAXFIELD-GREEN: No, Your Honor.

6 MR. EARLEY: No, Your Honor.

7 THE COURT: Court will be in recess.

8 (Court adjourned.)

9 REPORTER'S CERTIFICATION

10 I, Emily Eakle, Federal Official Realtime Court
11 Reporter, in and for the United States District Court for the
12 Western District of Oklahoma, do hereby certify that pursuant to
13 Section 753, Title 28, United States Code that the foregoing is a
14 true and correct transcript of the stenographically reported
15 proceedings held in the above-entitled matter and that the
16 transcript page format is in conformance with the regulations of
17 the Judicial Conference of the United States.

18 Dated this 6th day of March 2020.

19

20

21

/S/ Emily Eakle
EMILY EAKLE, RMR, CRR
Federal Official Court Reporter

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