

REPORTER'S RECORD

Volume 15 of 22 Volumes

Trial Court Cause No. 12-003034-CV

Court of Appeals No. 10-15-00066-CV

WILLIAM PAUL CRISP, JR. : IN THE DISTRICT COURT OF
AND J. NICOLE CRISP, :
INDIVIDUALLY AND AS :
REPRESENTATIVES OF THE :
ESTATE OF LAUREN BAILEY :
CRISP :
AND :
DENISE WHITAKER, : BRAZOS COUNTY, T E X A S
INDIVIDUALLY AND AS :
REPRESENTATIVE OF THE :
ESTATE OF DENTON JAMES :
WARD :
V. :
LITTLE SYKNECK, INC., :
AND THE McDONALD'S :
CORPORATION : 361ST JUDICIAL DISTRICT

CLOSING ARGUMENTS and VERDICT

On the 30th day of July, 2014, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Steve Smith, Judge presiding, held in Bryan, Brazos County, Texas.

Proceedings reported by computerized stenotype machine.

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P R O C E E D I N G S

July 30, 2014

(Jury seated.)

THE COURT: Be seated, please.

Good morning, ladies and gentlemen.

Each of you should have a copy of the Court's instructions to follow.

Along with as I read it to you.

First of all, does the Defense rest.

MR. ROSENBERG: Yes, Your Honor.

THE COURT: And Plaintiff rests and closes?

MR. HAMILTON: Yes, Your Honor.

THE COURT: All right. Thank you.

CHARGE OF THE COURT

Members of the Jury: This case is submitted to you by asking questions about the facts, which you must decide from the evidence you heard in this trial. You are the sole judges of the credibility of the witnesses and the weight to be given their testimony, but in matters of law you must be governed by the instructions in this Charge. In discharging your responsibility on this jury, you will observe all of the instructions that have been previously given you. I shall now give you

1 additional instructions that you should carefully
2 and strictly follow during your deliberations.

3 Do not let bias, prejudice or
4 sympathy play any part in your deliberations.

5 In arriving at your answers,
6 consider only the evidence introduced here under
7 oath and such exhibits, if any, as have been
8 introduced for your consideration under the rulings
9 of the Court, that is, the evidence seen and heard
10 in this courtroom, together with the law as given
11 you by the Court. In your deliberations, you will
12 not consider or discuss anything that is not
13 presented by the evidence in this case.

14 Since every answer that is required
15 by these instruction is important, no juror should
16 state or consider an answer is not important.

17 You must not decide who you think
18 should win, and then try to answer the questions
19 accordingly. Simply answer the questions, and do
20 not discuss or concern yourselves with the effects
21 of your answers. That is a matter for the Court
22 exclusively.

23 You will not decide questions by
24 lot or drawing straws, or by you any other method of
25 chance. Do not return a quotient verdict. A

1 quotient verdict means that the jurors agree to
2 abide by the results reached by adding together each
3 juror's figures and dividing by the number of
4 jurors.

5 To get an average. Do not do any
6 trading on your answers; that is one juror should
7 not agree to answer a certain question one way if
8 others will agree to answer another question another
9 way.

10 You may render your verdict upon
11 the vote of ten or more members of the jury. The
12 same ten or more of you must agree upon all of the
13 answers made and to the entire verdict. You will
14 not, therefore, enter into an agreement to be bound
15 by a majority or any other vote of less than ten
16 jurors. If the verdict and all of the answers
17 therein are reached by unanimous agreement, the
18 presiding juror shall sign the verdict for the
19 entire jury. If any juror disagrees as to any
20 answer made by the verdict, those jurors who agree
21 to all findings shall each sign the verdict.

22 These instructions are given you
23 because your conduct is subject to review the same
24 as that of the witnesses, parties, attorneys, and
25 the Judge. If it should be found that you

1 disregarded any of these instructions, it will be
2 jury misconduct and it may require another trial by
3 another jury; then all of our time will have wasted.

4 The presiding juror or any other
5 juror who observes a violation of the Court's
6 instructions shall immediately warn the one who is
7 violating the same and caution the juror not to do
8 so again.

9 Answer "yes" or "no" to all
10 questions unless otherwise instructed. A "yes"
11 answer must be based upon a preponderance of the
12 evidence unless otherwise instructed. If you do not
13 find that a preponderance of the evidence supports a
14 "yes" answer, then answer "no." If the question
15 directs you to give an answer other than "yes" or
16 "no," you must still base your answer on a
17 preponderance of the evidence, unless otherwise
18 instructed.

19 When the words are used in this
20 Charge in a sense that varies from commonly
21 understood meaning, you are given a proper legal
22 definition, which you are bound to accept in place
23 of any other meaning. The Court now gives you
24 certain definitions of terms used in this Charge, by
25 which you will be governed in arriving at your

1 answer to the questions submitted to you.
2 Additional definitions and instruction may appear
3 with specific questions, and should be read before
4 answering the questions.

5 Preponderance of the evidence. The
6 term preponderance of the evidence means the greater
7 weight and degree of credible evidence, including
8 testimony, introduced before you and admitted in
9 this case.

10 You are instructed that a fact may
11 be established by direct evidence or by
12 circumstantial evidence, or by both. A fact is
13 established by direct evidence when proved by
14 documentary evidence or by witnesses who saw the act
15 done or heard the words spoken. A fact is
16 established by circumstantial evidence when it may
17 be fairly and reasonably inferred from other facts
18 proved.

19 Now, bearing in mind the foregoing
20 instructions and definitions, you will answer the
21 questions set forth herein.

22 When you go into the jury room to
23 answer questions, you will select your own presiding
24 juror and then you will deliberate upon your answers
25 to the questions asked.

1 The presiding juror has these
2 duties: preside over your deliberations, meaning
3 manage the discussions, and see that you follow
4 these instructions; give written requests or
5 comments to the bailiff which you desire to have
6 delivered to the Judge; vote on the questions; write
7 down the answers you agree on; get the signatures
8 for the verdict certificate; notify the bailiff that
9 you have reached a verdict.

10 You may answer the questions on a
11 vote of ten jurors. This means the same ten jurors
12 must agree on every answer in the instructions.
13 This means you may not have one group of ten jurors
14 agree on one answer and a different group of ten
15 jurors agree on another answer. If ten jurors agree
16 on every answer, those ten jurors sign the verdict.
17 If 11 jurors agree on every answer, those 11 jurors
18 will sign the verdict. If all 12 of you agree on
19 every answer, you are unanimous and only the
20 presiding juror will sign the verdict.

21 After you have retired to consider
22 your verdict, no one has any authority to
23 communicate with you except the bailiff of this
24 court. You should not discuss the case with anyone,
25 not even other members of the jury, unless all are

1 present and assembled in the jury room. Should
2 anyone to talk to you about the case before the
3 verdict is returned, whether at the courthouse, at
4 your home, or elsewhere, please inform the Judge of
5 this fact.

6 You have been permitted to take
7 notes during the testimony in this case. In the
8 event any of you took notes, you may rely on your
9 notes during deliberations. However, you may not
10 share your notes with the other jurors and you
11 should not permit the other jurors to share their
12 notes with you. You may, however, discuss the
13 contents of your notes with the other jurors. You
14 shall not use your notes as authority to persuade
15 your fellow jurors. In your deliberations, give no
16 more and no less weight to the views of a fellow
17 juror because that juror did or did not take notes.
18 Your notes are not official transcripts. They are
19 personal memory aides, just like notes of the Judge
20 and the notes of the lawyers. Notes are valuable as
21 a stimulant to your memory. On the other hand, you
22 might make an error in observing or might make a
23 mistake in recording what you have seen or heard.
24 Therefore, you are not to use your notes as
25 authority to persuade fellow jurors of what the

1 evidence was during the trial.

2 During your deliberations, you must
3 communicate with or provide any information to
4 anyone by any means about this case. You may not
5 use any electronic device or media, such as a
6 telephone, cell phone, smart phone, iPhone,
7 Blackberry, or computer, the Internet, any Internet
8 service, or any text or instant messaging service;
9 or any Internet chat room, blog, or website such as
10 Facebook, My Space, LinkedIn, YouTube or Twitter, to
11 communicate to anyone any information about this
12 case or to conduct any research about this case
13 until I accept your verdict.

14 When you have answered all of the
15 questions which you are required to answer under the
16 instructions of the Judge, and your presiding juror
17 has placed your answers in the spaces provided and
18 signed the verdict as presiding juror or obtained
19 the signatures, you will advise the bailiff at the
20 door of the jury room that you have reached a
21 verdict, and then you will return into court with
22 your verdict.

23 Additional definitions and
24 admonitory instructions: McDonald's means
25 McDonald's Restaurants of Texas, Inc.; McDonald's

1 USA, LLC and The McDonald's Corporation.

2 Question No. 1: Did the
3 negligence, if any, of those named below proximately
4 cause the death of Denton James Ward?

5 With respect to condition of the
6 premises, McDonald's was negligent if:

7 1. The condition posed an
8 unreasonable risk of harm; and.

9 2. McDonald's knew or reasonably
10 should have known of the danger; and.

11 3. McDonald's failed to exercise
12 ordinary care to protect Denton James Ward from the
13 danger, by both failing to adequately warn Denton
14 James Ward of the condition and failing to make the
15 condition reasonably safe.

16 "Ordinary care," when used with
17 respect to the conduct of McDonald's as an owner or
18 occupier of the premises, means that degree of care
19 that would be used by an owner or occupier of
20 ordinary prudence under the same or similar
21 circumstances.

22 "Negligence," when used with
23 respect to the conduct of Samantha Bean, Tanner
24 Bryce, Marcus Jamal Jones, and John Does, means
25 failure to use ordinary care, that is, failing to do

1 that which a person of ordinary prudence would have
2 done under the same or similar circumstances or
3 doing that which a person of ordinary prudence would
4 not have done under the same or similar
5 circumstances.

6 "Negligence," when used with
7 respect to the conduct of Hurricane Harry's, means
8 failure to use ordinary care, that is, failing to do
9 that which an establishment of ordinary prudence
10 would have done under the same or similar
11 circumstances or doing that which an establishment
12 of ordinary prudence would not have done under the
13 same or similar circumstances.

14 "Ordinary care," when used with
15 respect to the conduct of Samantha Bean, Tanner
16 Bryce Giesen, Marcus Jamal Jones, and John Does
17 means that degree of care that would be used by a
18 person of ordinary prudence in the same or similar
19 circumstances.

20 "Ordinary care," when used with
21 respect to the conduct of Hurricane Harry's means
22 that degree of care that would be used by an
23 establishment of ordinary prudence under the same or
24 similar circumstances.

25 If Samantha Bean was confronted by

1 an "emergency" arising suddenly and unexpectedly,
2 which was not proximately caused by any negligence
3 on her part and which, to a reasonable person,
4 requires immediate action without time for
5 deliberation, her conduct in such an emergency is
6 not negligence or failure to use ordinary care, if,
7 after such emergency arises, she acts as a person of
8 ordinary prudence would have acted under the same or
9 similar circumstances.

10 "Proximate cause," means a cause
11 that was a substantial factor in bringing about an
12 event, and without which cause such event would not
13 have occurred. In order to be a proximate cause,
14 the act or omission complained of must be of such
15 that a person using ordinary care would have
16 foreseen that the event, or some similar event,
17 might reasonably result therefrom. There may be
18 more than one proximate cause of an event.

19 Answer "yes" or "no" for each of
20 the following listed entities and individuals.

21 If you answered "yes" to Question
22 No. 1 for more than one of those named below, then
23 answer the following Question. Otherwise, do not
24 answer the following Question.

25 Question No. 2: Assign percentages

1 of responsibility only to those you found caused or
2 contributed to the death of Denton James Ward. The
3 percentages you find must total 100 percent. The
4 percentages must be expressed in whole numbers. The
5 percentage of responsibility attributable to anyone
6 is not necessarily measured by the number of acts or
7 omissions found. The percentage attributable to
8 anyone need not to be the same attributed to that
9 one in answering another question.

10 For each person you found caused or
11 contributed to cause the death of Denton James Ward,
12 find the percentage of responsibility attributable
13 to each.

14 You are given names to consider in
15 that question.

16 Question No. 3: Did the
17 negligence, if any, of those named below proximately
18 cause the death of Lauren Bailey Crisp?

19 With respect to the condition of
20 the premises, McDonald's was negligent if:

21 With respect to condition of the
22 premises, McDonald's was negligent if:

23 1. The condition posed an
24 unreasonable risk of harm; and.

25 2. McDonald's knew or reasonably

1 should have known of the danger; and.

2 3. McDonald's failed to exercise
3 ordinary care to protect Lauren Bailey Crisp from
4 the danger, by both failing to adequately warn
5 Lauren Bailey Crisp of the condition and failing to
6 make the condition reasonably safe.

7 "Ordinary care," when used with
8 respect to the conduct of McDonald's as an owner or
9 occupier of the premises, means that degree of care
10 that would be used by an owner or occupier of
11 ordinary prudence under the same or similar
12 circumstances.

13 "Negligence," when used with
14 respect to the conduct of Samantha Bean, Tanner
15 Bryce Giesen, Marcus Jamal Jones, Lauren Bailey
16 Crisp, and John Does, means failure to use ordinary
17 care, that is, failing to do that which a person of
18 ordinary prudence would have done under the same or
19 similar circumstances or doing that which a person
20 of ordinary prudence would not have done under the
21 same or similar circumstances.

22 "Negligence," when used with
23 respect to the conduct of Hurricane Harry's, means
24 failure to use ordinary care, that is, failing to do
25 that which an establishment of ordinary prudence

1 would have done under the same or similar
2 circumstances or doing that which an establishment
3 of ordinary prudence would not have done under the
4 same or similar circumstances.

5 "Ordinary care," when used with
6 respect to the conduct of Samantha Bean, Tanner
7 Bryce Giesen, Marcus Jamal Jones, Lauren Bailey
8 Crisp and John Does means that degree of care that
9 would be used by a person of ordinary prudence in
10 the same or similar circumstances.

11 "Ordinary care," when used with
12 respect to the conduct of Hurricane Harry's means
13 that degree of care that would be used by an
14 establishment of ordinary prudence under the same or
15 similar circumstances.

16 If Samantha Bean and Lauren Bailey
17 Crisp were confronted by an "emergency" arising
18 suddenly and unexpectedly, which was not proximately
19 caused by any negligence on her part and which, to a
20 reasonable person, requires immediate action without
21 time for deliberation, her conduct in such an
22 emergency is not negligence or failure to use
23 ordinary care, if, after such emergency arises, she
24 acts as a person of ordinary prudence would have
25 acted under the same or similar circumstances.

1 "Proximate cause," means a cause
2 that was a substantial factor in bringing about an
3 event, and without which cause such event would not
4 have occurred. In order to be a proximate cause,
5 the act or omission complained of must be of such
6 that a person using ordinary care would have
7 foreseen that the event, or some similar event,
8 might reasonably result therefrom. There may be
9 more than one proximate cause of an event.

10 Answer "yes" or "no" for each of
11 the following listed entities and individuals.

12 If you answered "yes" to Question
13 No. 3 for more than one of those named below, then
14 answer the following Question. Otherwise, do not
15 answer the following Question.

16 Question No. 4: Assign percentages
17 of responsibility only to those you found caused or
18 contributed to the death of Lauren Bailey Crisp.
19 The percentages you find must total 100 percent.
20 The percentages must be expressed in whole numbers.
21 The percentage of responsibility attributable to
22 anyone is not necessarily measured by the number of
23 acts or omissions found. The percentage
24 attributable to anyone need not to be the same
25 attributed to that one in answering another

1 question.

2 For each person you found caused or
3 contributed to cause the death of Denton James
4 Ward -- that's incorrect, isn't it? That should be
5 Lauren Bailey Crisp.

6 For each person you found caused or
7 contributed to cause the death of Lauren Bailey
8 Crisp, find the percentage of responsibility
9 attributable to each.

10 You're given 1 through 7 for you to
11 use in that question.

12 Answer the following question if
13 you answered "yes" to Question No. 1 for McDonald's.
14 Otherwise, do not answer the following question.

15 Question No. 5: What sum of money,
16 if paid now in cash, would fairly and reasonably
17 compensate Denise Whitaker for her damages, if any,
18 resulting from the death of Denton James Ward?

19 Consider the elements of damages
20 listed below and none other. Consider each element
21 separately. Do not award any sum of money on any
22 element if you have otherwise, under some other
23 element, awarded a sum of money for that same loss.
24 That is, do not compensate twice for the same loss,
25 if any. Do not include interest on my amount of

1 damages you find.

2 You are instructed that any
3 monetary recovery is not subject to federal or state
4 income taxes.

5 Answer separately in dollars and
6 cents for damages, if any. In answering this
7 question, do not consider any answer to any other
8 question.

9 1. Loss of companionship and
10 society. "Loss of companionship and society" means
11 the loss of the positive benefits flowing from the
12 love, comfort, companionship, and society that
13 Denise Whitaker, in reasonable probability, would
14 have received from Denton James Ward had he lived.

15 You're asked to consider loss of
16 companionship and society sustained in the past and
17 that a reasonable probability might be sustained in
18 the future by Ms. Whitaker.

19 2. Mental anguish. "Mental
20 anguish" means the emotional pain, torment, and
21 suffering experienced by Denise Whitaker because of
22 the death of Denton James Ward.

23 You are asked to consider mental
24 anguish sustained in the past by Ms. Whitaker and to
25 consider mental anguish that, in reasonable

1 probability, would be sustained in the future by Ms.
2 Whitaker.

3 In determining damages for elements
4 1 and 2, you may consider the relationship between
5 Denton James Ward and his mother, their living
6 arrangements, any extended absences from one
7 another, the harmony of their family relations, and
8 their common interests and activities.

9 Answer the following question is
10 you answered "yes" to Question No. 1 for McDonald's.
11 Otherwise, do not answer the following Question.

12 Question No. 6: What sum of money
13 would have fairly and reasonably compensated Denton
14 James Ward for:

15 1. Pain and mental anguish. "Pain
16 and mental anguish" means the conscious physical
17 pain and emotional pain, torment, and suffering
18 experienced by Denton James Ward before his death as
19 a result of the occurrence in question.

20 And you are to answer in dollars
21 and cents for any damages.

22 Answer the following question if
23 you answered "yes" to Question No. 3 for McDonald's.
24 Otherwise, do not answer the following Question.

25 Question No. 7: What sum of money,

1 if paid now in cash, would fairly and reasonably
2 compensate William Paul Crisp, Jr. And J. Nicole
3 Crisp for their damages, if any, resulting from the
4 death of Lauren Bailey Crisp?

5 Consider the elements of damages
6 listed below and none other. Consider each element
7 separately. Do not award any sum of money on any
8 element if you have otherwise, under some other
9 element, awarded a sum of money for that same loss.
10 That is, do not compensate twice for the same loss,
11 if any. Do not include interest on my amount of
12 damages you find.

13 You are instructed that any
14 monetary recovery is not subject to federal or state
15 income taxes.

16 Answer separately in dollars and
17 cents for damages, if any. Do not reduce the
18 amounts, if any, in your answers because of the
19 negligence, if any, of Lauren Bailey Crisp. Any
20 recovery will be determined by the Court when it
21 applies the law to your answers at the time of
22 judgment.

23 1. Loss of companionship and
24 society. "Loss of companionship and society" means
25 the loss of the positive benefits flowing from the

1 love, comfort, companionship, and society that
2 William Paul Crisp, Jr. and J. Nicole Crisp, in
3 reasonable probability, would have received from
4 Lauren Bailey Crisp had she lived.

5 And you're given spots to consider
6 loss of companionship and society sustained in the
7 past by those individuals and loss of companionship
8 and society that in reasonable probability would be
9 sustained in the future.

10 2. Mental anguish. "Mental
11 anguish" means the emotional pain, torment -- pardon
12 me -- emotional pain, torment, and suffering
13 experienced by William Paul Crisp, Jr. and J. Nicole
14 Crisp because of the death of Lauren Bailey Crisp.

15 And you're asked as to mental
16 anguish sustained in the past by either of those two
17 individuals and mental anguish that, in reasonable
18 probability, would be sustained in the future by
19 those individuals.

20 In determining damages for elements
21 1 and 2, you may consider the relationship between
22 Lauren Bailey Crisp and her parents, their living
23 arrangements, any extended absences from one
24 another, the harmony of their relations, and their
25 common interests and activities.

1 Attached to the instructions is a
2 verdict certificate, which is signed by the
3 presiding juror if the verdict is unanimous. If the
4 verdict is a verdict of 11 or 10 people, each of
5 those 11 or 10 people signs on the next page -- and
6 I've had this problem before -- but if the verdict
7 is less than unanimous and the presiding juror is
8 one of those 10 or 11 people, the presiding juror
9 signs with the people, not as the presiding juror.
10 Is everybody clear on that?

11 Counsel, one thing I did not do is
12 I did not ask the jury if they are prepared to stay
13 for two hours. And let me ask before we start:
14 Does everybody feel comfortable staying in place for
15 two hours without taking a bathroom break? Anybody
16 need to?

17 All right. If it happens, let me
18 know.

19 The Plaintiff has the burden of
20 proof in this case. They are entitled to begin
21 final arguments. Then the Defense will make their
22 final arguments and the Plaintiff has an opportunity
23 to finally close.

24 **CLOSING ARGUMENTS BY MR. LANGDON**

25 MR. LANGDON: Ladies and gentlemen

1 of the jury. May it please the Court: This is
2 always the hard part of a trial. This is the last
3 time anybody gets to speak on behalf of Bailey Crisp
4 and Denton Ward, on behalf of these families.

5 I want to thank you for your
6 service for the last week and a half and the
7 attention that you paid in this case. You know,
8 without people willing to do that our system doesn't
9 work. And the families want to thank you for that.

10 It's been an honor to represent
11 these two families. This is a very trying time for
12 them. It has been for the last several years.

13 You know, corporations make
14 decisions. And they take actions and they have to
15 be responsible in our society for the actions and
16 the decisions they make. And there are two things I
17 don't want to hear from the Defense lawyers for
18 these corporations. One, I'm sorry. For over two
19 years nobody apologized to these families, I don't
20 want it to happen today.

21 Another thing is sympathy.
22 Sympathy cheapens justice. And you're not here,
23 ladies and gentlemen, for sympathy. These families
24 are here for justice. That's what they're here for.

25 You know, most things we do in

1 life, we vote. Doesn't really matter very much. I
2 know, one of a thousand, one of a million. But your
3 vote here today is going to count. Your vote here
4 today will determine what these two young people's
5 lives are worth to their families.

6 Four college students going to a
7 concert. Stopped for food. Going to the restroom
8 at McDonald's. That was a choice they made. And
9 that choice cost two of them their lives.

10 We told you in opening that
11 McDonald's had choices to make when they decided
12 back in their offices in Illinois, when they decided
13 that northern Delaware and College Station was going
14 to be their test market for their 12:00 to 4:00
15 menu.

16 Folks, these corporate executives,
17 their marketers, their bean counters back in their
18 home office, they knew the type of customers that
19 they were going to have from 12:00 to 4:00 in the
20 morning. And it wasn't 60-year-old people like me.
21 They knew that they were going to have young people.
22 They knew some of them would be drinking.

23 Now, the Defendants, McDonald's and
24 its executives, they had choices to make. They
25 could have decided to put on security during these

1 hours. Protected their customers. But they chose
2 to save money and not to have security, leaving
3 people in College Station no more than unprotected
4 human guinea pigs. You saw yesterday that cost
5 wasn't an issue when it came to McDonald's
6 protecting themselves here in the Court. McDonald's
7 hired five experts and they brought one in. She
8 charged \$110,000 for six months. She's paid bonuses
9 by how well she testifies, not how good an engineer
10 she is.

11 How many security officers and
12 security guards at \$45 an hour would that \$110,000
13 pay for, plus all these other experts pay for? How
14 many years could we do that for?

15 So how did McDonald's with 16
16 cameras, fifty gang fights at this location, not
17 know about this? That's another choice McDonald's
18 made at this time that you heard about. What they
19 did, they said, we're going to stop our central
20 security reporting system. We'll have one guy, one
21 guy cover half of the United States for security
22 reporting.

23 How is one person going to cover
24 the tens of thousands of stores in this area? What
25 does that tell us about McDonald's? Are they

1 interested in security or are they interested in the
2 size of their bank account?

3 Look at the University store.
4 Sixteen cameras, 16 cameras pointed at their assets.
5 Not one pointed to the safety of their customers in
6 the parking lots. Not one. They're marketers.
7 Advertisers. They're bean counters.

8 They all knew who they were
9 targeting there. They knew who was coming to the
10 store from 12:00 to 4:00. The only thing they
11 didn't know, they didn't know what day the fights
12 would happen. They didn't know the names of the
13 victims. And they didn't know the extent of the
14 injuries. We know all of those today as we sit
15 here.

16 In Texas and everywhere else in the
17 United States, one of the great things we have is
18 this courtroom. You walk through those doors,
19 everybody is the same whether you're an individual
20 or a corporation. And you have the same
21 responsibility for your actions or lack of your
22 actions.

23 Mr. Hamilton will talk to you about
24 the law as His Honor has given it to you and how it
25 applies in this case.

1 I want to ask one question: How
2 out of all of the McDonald's employees they've got,
3 don't you think, don't you think that one should
4 have sat on that stand and looked you folks in the
5 eyes and said, "You know what, we're not
6 responsible. We're not responsible for these two
7 individuals. Kids just being kids."

8 How about the executives that
9 thought this idea up. Think about all the planning
10 they had to do for this 12:00 to 4:00 to increase
11 their sales. All those ideas. Don't you think one
12 could have sat in that witness chair and looked you
13 folks in the eyes and said it. It was not offered.
14 Just one.

15 Now, I'll turn it over to Chris
16 Hamilton. Thank you.

17 **CLOSING ARGUMENTS BY MR. HAMILTON**

18 MR. HAMILTON: Thank you.

19 Thank you for the attention you
20 paid during this case. Thank you. Your service is
21 important. It's important. I think that you
22 understand that. The way that you fulfill your
23 service and complete your service in this case is
24 through this Charge. This is how you make the
25 ultimate statement that you want to make in this

1 case.

2 My time is limited, so this is what
3 I would like to talk about. The critical thing
4 here, what you'll hear from the lawyers is not the
5 law. The only thing that is the law for you to
6 consider in this case is what's right here. What's
7 so important about this is that everyone who gets to
8 speak up and tries to tell you to do something that
9 is contrary to what is in this document right here,
10 what they're asking you to do is to disregard the
11 law. This is the law. This is what the Court wants
12 you to apply and these are the questions that the
13 Court is asking you to answer and the law that the
14 State of Texas wants you to answer.

15 So what I'm going to do now is go
16 through this and talk about some of the evidence in
17 the case that will apply to the law. As a practical
18 matter, you all have seen it on TV, one thing you
19 need to do is select a presiding juror. There's a
20 little reference to that on a few pages. I won't
21 spend a bunch of time on it.

22 But the first thing you probably
23 will want to do when you get in the room is pick a
24 presiding juror. That's just going to kind of help
25 move things along.

1 The other important point is, on
2 that same page you see regarding the presiding
3 juror, all of the questions that you answer here are
4 going to be answered on a vote of ten jurors. The
5 same ten jurors have to agree to everything. Only
6 ten. None of these questions have to be unanimous.
7 They may be, but it's not required. Because of
8 that, one little suggestion I would make, sometimes
9 there's a bunch of blanks here and sometimes there's
10 one little blank, if you come to a question where
11 you don't all agree, there's nothing that says you
12 have to reach your answers to this in order to
13 answer them all before you are done and sign it.

14 If there's a disagreement on one,
15 you're always welcome to move on to the next one and
16 come back to it. That's something that may make
17 things a little easier.

18 The last thing, before I get to the
19 questions that you're going to be asked, is the
20 burden of proof, preponderance of the evidence.
21 This is very important. Mr. Langdon did this in the
22 jury selection phase. He showed you two stacks of
23 paper and moved one piece of paper to the other
24 side. That's the greater weight of the evidence.
25 That's the law.

1 The reason this is so important and
2 the reason we talked about it in voir dire, we asked
3 if there was any one of you that had a problem that
4 this is a case involving millions of dollars, tons
5 of lawyers, if anybody had a problem with that
6 burden of proof, you could have gotten yourself off
7 the jury in this case.

8 And so if there's anybody that gets
9 in the jury room that wants to make a higher burden
10 of proof, please remind that juror that they took an
11 oath to follow this law and this is the law that
12 you're being provided.

13 As we go through these questions,
14 that's always the burden of proof. When there's
15 debate in the jury room always remember that the
16 standard is only an extra piece of paper. That's
17 it.

18 Let's go to Question One. I want
19 to go through these on the ELMO. So, first
20 question: Did the negligence, if any, of those
21 named below proximately cause the death of Denton
22 James Ward? With respect to the conditions of the
23 premises, McDonald's was negligent if the condition
24 posed an unreasonable risk of harm.

25 There's three parts. Let's go

1 right through it. Go to the first line of the Power
2 Point. The condition posed an unreasonable risk of
3 harm. Play this, please.

4 "Okay. So you aren't aware of any
5 fights at the 801 University at
6 McDonald's prior to this incident where
7 kids got killed?

8 "No?

9 "Am I correct?

10 "You're correct.

11 "You were aware of no fight?

12 "I was aware of no fights.

13 "Are you aware ever any incidents --
14 prior to this incident where the kids
15 got killed, were you aware of any
16 incident where the police were called to
17 your store at 801 University McDonald's?

18 "No, sir.

19 "So prior to this incident where the
20 kids got killed after the fight, you
21 weren't aware of a single incident where
22 the police had ever come out to the 801
23 University McDonald's?

24 "No, sir."

25 Does anybody in this courtroom

1 believe that that testimony was true? What you have
2 to ask yourself is, "Well, with all of the evidence
3 why would he give that testimony? The reason is
4 this: Because the question you're going to be asked
5 is unreasonable risk of harm. All those incidents
6 establish unreasonable risk of harm.

7 So rather than admit that they just
8 did this. We know from Assistant Chief Couch --

9 "I mean, you could have based -- I
10 would make an assessment based on call
11 volume. If there was a lot of calls, it
12 would tend to suggest that there may be
13 a reason -- a terrible end result if we
14 don't take control of that, you know --

15 "Okay.

16 "-- just based on call volumes."

17 "Yeah, I would just equate it to
18 risk.

19 "Okay.

20 "If we're handling a lot of calls,
21 the risk is high that we're going to
22 have a big problem.

23 "A big problem like what? Somebody
24 getting hurt or --

25 "If we have a disturbance involving

1 lots of people and alcohol, then we need
2 to get control of that, if we can.

3 "Okay. Because that's -- could
4 create an unreasonable risk of injury to
5 people?

6 "Well, yeah. And the officers are
7 responding into it.

8 The evidence is conclusive. They
9 said they were going to call the police. They never
10 had this. This is unrefuted evidence from the
11 assistant police chief in College Station.

12 Unreasonable risk of injury, not
13 just for the customers, he's worried about his
14 officers. This is not customers, those people had
15 guns. This unreasonable risk of injury. This is
16 conclusively answered without any responsive
17 evidence from McDonald's at all. Nothing.
18 Unreasonable risk.

19 "Had you been to this McDonald's
20 before?

21 "Yes, I have.

22 "Had you seen it this out of control
23 before?

24 "Yes.

25 "Tell me about that.

1 "I mean, any time we go -- I don't
2 go to that school -- but any time I've
3 been out there, we go to the McDonald's
4 it's always over capacity in there with
5 lots of people -- it's just not
6 controlled.

7 "Tell me about that. I mean, have
8 you seen fights there before?

9 "Yes.

10 "Tell me about that.

11 "I've seen fights -- the semester
12 that I was there, I saw at least three
13 fights up there.

14 "Before this incident?

15 "Yes, before this incident.

16 "In the one semester before this
17 incident?

18 "Yes. Because I was there a lot
19 that semester. I seen, like I said,
20 three fights. The nobody -- nobody was
21 controlling the fights. Nobody
22 breaks -- the people that break up the
23 fights actually are like the students
24 around there. It's not anybody that has
25 any authority there like people that

1 work there or a police office because
2 they're -- there wasn't any there -- any
3 time that I've been there."

4 It was not reasonable. That's the
5 standard.

6 Officer Yargo, we don't need to go
7 through this again. He testified this is the scene.
8 We've seen it multiple times before. We quite often
9 get called for large fights in that parking lot.

10 The evidence here on this element
11 is just completely conclusive. In this case there's
12 no debate that's been presented, no contrary
13 evidence. If they had it, they would have brought
14 it to you. They don't have it.

15 Next. McDonald's knew or
16 reasonably should have known of the danger -- you
17 notice I highlighted the other part. What they
18 denied was, "Oh, we didn't know. We didn't know.
19 We didn't know."

20 Well, with the Judge's instruction,
21 what you see here, that's not a defense. If you
22 should have known, you're on the hook. You can't
23 say, "No, we're not guilty." If you should have
24 known, you're responsible. That makes sense doesn't
25 it?

1 "Okay. And when you said Mr. Butler
2 indicated that he may have some way to
3 predict certain events, talk to me about
4 that. Explain to me what you recall, if
5 anything.

6 "I remember him saying that there
7 may be some hesitancy with corporate
8 providing security full-time and -- as
9 if it was a revenue issue. And I said,
10 I understand that. He said, however, I
11 might be able to -- I have sources. I
12 may be able to find out when these
13 events are going to occur in town. And
14 if we know that an event is occurring,
15 then I may know that they're going to
16 end up at my restaurant.

17 "I remember thinking it was perhaps
18 he knew of some DJ website that he
19 followed perhaps."

20 So we don't have to prove they
21 actually knew. The assistant chief of police said
22 the general manager of the store admitted to him
23 that he can predict when these events would occur.
24 Again, that's conclusive evidence on this particular
25 issue.

1 Here's the should have known. We
2 know that they were doing a test market from 12:00
3 to 4:00 a.m. for the after-midnight menu. We know
4 those executives in Illinois are looking at that
5 field data. They didn't spin that thing out never
6 having known how many transactions. You heard
7 Carlos Butler's testimony, how many transactions in
8 an hour, two to 300 transactions.

9 And the assistant chief is
10 testifying that a bunch of those people in the
11 parking lot aren't even going inside the store. 300
12 transactions, you don't think those people in
13 Illinois know the level of activity that was going
14 on at this particular store.

15 And then what do they do? Should
16 have known. They've got a guy covering territory
17 that big across the United States who says he didn't
18 even know Carlos' face, said I thought he was
19 Caucasian. That's what he testified. No idea.
20 He's got no security incident reporting system.
21 He's going off his memory when he comes and says in
22 his deposition under oath, "I didn't know about
23 anything." Going off his memory.

24 Now, about what they knew. It's
25 what they didn't want to know that's what's going

1 on. They didn't want to know. They want to know
2 how many transactions are there, they want to know
3 how successful it is, but they don't want to know --
4 they had a security incident reporting system but
5 they got rid of it, they canceled it. They didn't
6 want to know.

7 What else did they know? They knew
8 they had security from 2005 to 2008. They knew
9 that. They knew they had security for the test
10 market. They knew that. The answer here isn't
11 reasonably subject to dispute, but what happens when
12 you don't have a security incident reporting system?
13 You have this. You have this guy saying, "Well, I
14 didn't know anything about it. I didn't know
15 anything about it."

16 That's the defense. "I didn't know
17 anything about it." Well, you knew you didn't have
18 a security incident reporting system. You know
19 hundreds of transactions an hour. "I didn't know
20 anything about it." They knew they didn't have a
21 reporting system. That was a decision they made.
22 We talked about decisions. That was a decision --
23 that wasn't a decision made by somebody facing a mob
24 in a parking lot. That was a decision made by
25 somebody sitting in an office with years to think

1 about it.

2 Next part. McDonald's failed to
3 make the conditions reasonably safe. McDonald's
4 failed to exercise ordinary care to protect Denton
5 James Ward from the danger, both by failing to
6 adequately warn of the conditions and failing to
7 make the conditions reasonably safe.

8 "That's a fair summary of really --

9 "Yeah, that's sort of what we spoke
10 about, is that the McDonald's was
11 creating a situation where we needed a
12 lot of resources. And it was problems
13 they didn't need and problems we didn't
14 want. So if they would have just hired
15 the security, they would have been able
16 to probably push the crowd away and
17 maintain the order without us having to
18 respond."

19 Again, this is felt like a broken
20 record. This is unrefuted, undisputed evidence.
21 It's consistent with what the assistant chief says,
22 this works if they had the security, if they had
23 pushed the crowd away, the police wouldn't have
24 needed to respond.

25 They had an opportunity to call

1 experts. They said they called security, but they
2 never showed up. They had an opportunity to call
3 any witness. They don't have any McDonald's
4 employees. Nobody showed up. This is unrefuted,
5 undisputed evidence.

6 So when you're applying the
7 standard of one piece of paper versus another, you
8 hear this evidence, you follow this law, they make
9 the choices for you. There's no other stack of
10 paper.

11 Here's what he had, Sosa had to
12 say. This is the current guy, the guy -- their
13 excuse, the one and only person you heard from.
14 They didn't bring him, we subpoenaed him. The only
15 person you heard from, he says, "Well, then I didn't
16 know. I didn't know. I didn't know."

17 Well, this time he investigated it
18 all. What did he say:

19 "You recently conducted a security
20 review of this particular McDonald's on
21 University Drive in College Station,
22 right?

23 "Yes.

24 "Are you going to hire security at
25 that McDonald's on Friday and Saturday

1 night between 2:00 to 3:00 a.m. while
2 school is in session?

3 "It's not my decision to hire.
4 However, based on what I -- what I
5 observed, there's no need to hire a
6 security guard during that time period.

7 "Okay. I just want to be clear for
8 the record that after you reviewed the
9 police call logs, police incident
10 reports and the depositions of the
11 College Station police officers
12 regarding this McDonald's, that it was
13 the decision of McDonald's that it is
14 not necessary to hire security guards on
15 Friday and Saturday night or Saturday
16 and Sunday morning between 2:00 and 3:00
17 a.m.; is that correct?

18 "It was my recommendation that we do
19 not need to hire security guards at that
20 time.

21 "Do you agree that on the evening in
22 question where Denton James Ward was
23 attacked outside the McDonald's, that
24 there was a crowd control problem in the
25 parking lot?

1 "No, I do not.

2 "You don't agree as the regional
3 security manager that having an off-duty
4 police officer present at your store
5 could prevent large crowds of people
6 from regularly congregating in the
7 parking lot between 2:00 to 3:00 a.m. on
8 Saturday and Sunday morning?

9 "I can't speak in an absolute on
10 whether or not it does or doesn't.

11 "Could it reduce the risk and
12 likelihood of that problem?

13 "I can't say yes or no to that.

14 "What's the reason not to hire
15 security at this McDonald's between 2:00
16 to 3:00 a.m. on Saturday and Sunday
17 morning?

18 "There's no reoccurring pattern of
19 violence at this store."

20 Y'all agree with that? That's what
21 they're telling you: There's nothing we can do
22 about it. Beaten to death in our parking lot;
23 doesn't matter. How many times every weekend -- we
24 went through the incidents over and over and over
25 again, 400 people in the parking lot. There's

1 nothing we can do about it. That's what they're
2 telling you.

3 That guy is from McDonald's
4 Corporation. There's just nothing we can do. Enter
5 McDonald's parking lot at your own peril. There's
6 nothing we can do to protect the customers when
7 they're walking inside the store. Might work, might
8 not. Nothing we can do.

9 Failure to use ordinary care, I
10 won't replay this, but here's what ordinary care
11 says so we can move that -- owner or occupier of
12 ordinary prudence under the same or similar
13 circumstances. And Chief Couch said a handful a
14 restaurants all used security in that area. He said
15 they don't have problems with 24-hour restaurants.
16 They can't identify a single 24-hour restaurant
17 other than McDonald's that didn't use security.

18 Chief Couch says the other ones do
19 it, they don't have a problem. That's the unrefuted
20 evidence as to what ordinary care means.

21 The last part I want to cover
22 briefly, but let's play this next clip before we do
23 that. What we just talked about is the prior
24 incident and their failure to have security, which
25 is unrefuted evidence. That requires a "yes" answer

1 as to McDonald's on this question. I don't know if
2 you caught this. This is critically important here
3 too.

4 "So when Eddie Sosa and H. Steven
5 Smith interviewed Lindsay Ives, she
6 admitted that there was an incident
7 prior to 2:00 a.m. where some black
8 males had an altercation inside the
9 store and a gun was brandished, correct?

10 "That's correct."

11 Denton Ward was stomped to death at
12 2:24 a.m. More than 25 minutes before that there
13 was an incident inside the store involving an
14 altercation with some African males where a gun was
15 brandished in connection with that incident. That's
16 what she just told you. That's Lindsey Ives.
17 That's what she told Officer Yargo. And they didn't
18 call the police.

19 You heard Assistant Chief Couch's
20 testimony, yeah, he was asked that question pre-2:00
21 a.m. incident, yeah, they should call the police.
22 That manager, she said, in deposition, "I told them
23 to take it outside," where Denton Ward was stomped
24 in the parking lot. That alone is enough to cause a
25 "yes" answer to McDonald's as to this question.

1 Proximate cause. I'm going to --
2 with regard to proximate cause, I'll put this to you
3 real quick. Okay. Proximate cause means a cause
4 that was a substantial factor in bringing about an
5 event, and without which cause such event would not
6 have occurred. In order to be a proximate cause,
7 the act or omission complained of must be such that
8 a person using ordinary care would have foreseen
9 that the event, or some similar event, might
10 reasonably result therefrom. There may be more than
11 one proximate cause of an event.

12 Let's play this real quick.

13 "Would this fight have happened if
14 there was a police officer standing
15 right next to you?

16 "No.

17 "Why don't people fight in front of
18 the police?

19 "Because they don't want to go to
20 jail."

21 That's proximate cause. Hire a
22 police officer, put out security, it doesn't happen.
23 It's just that simple. Undisputed evidence.

24 Second part of that now, there's --
25 I'll try to be brief here -- but as I get to Lauren

1 Bailey Crisp, there's no requirement that you've
2 heard -- you've probably been given the impression
3 that we have to prove that Denton Ward was killed in
4 the fight in order for McDonald's to be liable.
5 That's not what this says. We only have to prove is
6 that what happened in the parking lot was a
7 substantial factor in bringing about the event. And
8 that if that attack in the parking lot had never
9 occurred, Denton Ward and Bailey Crisp would still
10 be alive. There may be more than one proximate
11 cause. That's what the law is.

12 But this is still important.
13 McDonald's expert testified that the reason -- to be
14 clear, the reason this is important is when you get
15 to the percentages this may impact, that is because
16 the evidence is that Denton Ward suffered fatal
17 injuries in the parking lot and if that's the case,
18 duty and means, all of those is completely
19 irrelevant. That's the significance here, not
20 McDonald's responsibility if he wasn't killed in the
21 parking lot. That's not what this law says.

22 Now, here they have an expert. I
23 told you at the beginning I believe there's
24 conclusive scientific medical evidence as to what
25 happened. They had an expert, Dr. DiMaio, he says

1 at least 29 miles an hour, 35 to 40 causes this
2 fracture, if he hit something soft. They have an
3 accident reconstructionist, he says at most 25 miles
4 an hour. So they don't bring either of them.

5 That's conclusive medical
6 scientific evidence. It's evidence from their own
7 experts. You saw the testimony. They didn't bring
8 them. Now, what did they bring? We have Dr. Z.
9 Let's play this clip here real quick.

10 "This is flexion. This is
11 extension. If you hit, we'll say, on
12 your forehead where the skull is pushed
13 backward, while the skull -- while the
14 base of the -- well, while the vertebral
15 column is going forward, then you would
16 have a hypertension.

17 "And so you believe, with a
18 reasonable degree of medical
19 probability, that this was a blow to the
20 front top of the skull that caused this
21 fracture?

22 "It's most likely to either the top
23 of the head or towards the front, with
24 hyperextension of the neck."

25 THE COURT: Time signal, Counsel.

1 MR. HAMILTON: I need to move
2 along. Here's the issue. DiMaio and Burton agreed
3 this is an injury that's caused by hypertension of
4 the neck. Period. Whether it's a blow to the front
5 forehead or a blow to the chin, he said it could be
6 that, too, this is a hyperextension injury. There's
7 no medical evidence to the contrary.

8 They brought you Ms. Corrigan.
9 This is rotation. Well, there may have been
10 rotation. That's what her testimony was. There was
11 rotation in the car. There may have been rotation,
12 but there is not a speck of medical evidence from a
13 medical doctor that this injury can be obtained in
14 that way. Their doctor says it's like this.

15 Can you get that from somebody's
16 head on the ground. They get kicked in the jaw.
17 Yeah. But there's no medical evidence that allows
18 you to rely on what Corrigan says. There's no
19 doctor that says that's possible. I guess your
20 head -- use your common sense, it's going to break
21 your neck. It's not going to break the base of your
22 skull twisting your head. No medical doctor that
23 says that's possible. And there's nobody ever
24 discussed this.

25 How does two quarts of blood end up

1 on the floorboard of this car when his body was in
2 the back wicking up through the carpet. Unrefuted
3 evidence.

4 They want to talk about this
5 witness said that or this witness' testimony or that
6 witness' testimony. First of all, they don't have
7 some medical expert that tells you that what any of
8 those witnesses say matters.

9 The lawyers are talking about it,
10 but they don't have an expert to say that. What we
11 do have is unrefuted, uncontested evidence there's a
12 volume of blood in that backseat that could not be
13 created from the fine blood in the nose.

14 You heard Dr. Dolinak even say he
15 had blood all through his lungs. Even in the
16 parking lot there was blood. Everywhere there was
17 blood. Everywhere there was blood. Everywhere,
18 that's what everybody described. That's what this
19 injury caused.

20 I only want to address it briefly.
21 Dr. Dolinak, he just didn't have all the facts. He
22 thought his head hit the pole. He didn't have
23 Edick's deposition. He didn't have any of the
24 girls' depositions. He didn't have any of that. He
25 didn't have any of the photos. He just didn't have

1 any of that.

2 You could see when he came back
3 that he wasn't sure. He said, "I don't rule out
4 that it was caused by the fight." This is
5 conclusive evidence. Forensic evidence. Unrefuted.

6 Now, proximate cause, the
7 foreseeability could not be disputed. He said he
8 could see -- I want to get to this part quickly. I
9 said at the beginning: Did McDonald's accept
10 responsibility? No, they had excuses and blame. We
11 are not blaming anybody.

12 What all these blanks in here are
13 for, these blanks are for the people, the only one
14 in this case is McDonald's. That's the only
15 defendant in this courtroom. These people aren't
16 here. They're not going to assess blame to them.
17 They're not going to find out about it. That's
18 abating. That's what that's about, period.

19 Marcus Jones. They want you to
20 blame Marcus Jones. Blame Marcus Jones for the
21 whole thing. Blame the whole thing, why did you
22 hire him. You hired him three months ago. Gave him
23 a pay check at the time -- the date of his
24 deposition on Thursday, July 17th, they gave him a
25 paycheck that said McDonald's Corporation. That's

1 the testimony.

2 How do you end up employed by
3 McDonald's Corporation? Then he comes in with this
4 new thing, they get him to drop the "N" word, trying
5 to suggest to you with no evidence that one of these
6 two kids was responsible because they said the "N"
7 word. Then he comes back in and says, "I can't say
8 it was one of them."

9 So he's on their payroll. In all
10 the things I heard in this case there's nothing that
11 gets me more than that this guy is on their payroll,
12 comes in here with this kid's death, nobody can say
13 did a darn thing wrong. They want to go to the
14 restroom, or come in and suggest somebody said the
15 "N" word. Where's the evidence of that?

16 Then he backs off of it, says,
17 "Well, I don't who said it." Why did you even
18 interject that? She says, "I heard Marcus Jones
19 said he was going to start the fight." I mean,
20 Tanner Giesen said, "I heard Marcus Jones was
21 looking to start a fight." That's the evidence.

22 Now, I said before the -- before I
23 get there, I want to briefly address Hurricane
24 Harry's. All I say is look at the ordinary care for
25 Hurricane Harry's. Hurricane Harry's violated

1 ordinary care. There's nothing. The kids had a
2 couple of drinks, their hands were stamped. That
3 was the evidence. There's just no evidence --
4 expert testimony or otherwise -- that they did
5 something any different than what any establishment
6 in town was doing, period. There's no evidence
7 that's blaming somebody else. That's not what the
8 cause -- what happened here.

9 Now, with regard to proximate cause
10 for Bailey Crisp, this is what I said earlier. It's
11 substantial factor. That's what the Judge is asking
12 you. Was that a substantial factor that brought
13 about her death and would she have died if that
14 fight hadn't occurred? That answer is clearly no.
15 Clearly no.

16 First of all, unrefuted medical
17 scientific testimony that if she had stayed in the
18 front seat where she was when she left McDonald's,
19 hadn't crawled in the backseat to render aid, that
20 she'd still be alive. Period. That alone, the
21 unrefuted evidence, obligates you under a
22 preponderance of the evidence to find McDonald's
23 responsible for her death. Unrefuted.

24 Two, Samantha drove by their house
25 on the way to the hospital. She made it to the

1 house. If she's not going to the hospital, if she's
2 not in this terrible position, Bailey Crisp would
3 still be alive. That's the question.

4 They want to blame Samantha,
5 whoever else, but says there may be more than one
6 proximate cause of the event. Doesn't have to be
7 the sole proximate cause. This is the law from the
8 Court, which is what the evidence shows.

9 The other thing I want to offer
10 here on Lauren Bailey is there's an instruction
11 under Question 3. No. 3 says -- and I'll just read
12 it: If Samantha Bean and Lauren Bailey Crisp were
13 confronted by an emergency. The reason the Court is
14 asking about this is if they were confronted by an
15 emergency arising suddenly and unexpectedly, which
16 was not proximately caused by any negligence on
17 their part and which to a reasonable person requires
18 immediate actions without further time for
19 deliberations, their conduct in such an emergency is
20 not negligence or failure to use ordinary care, if
21 after such emergency arises, they act as a person of
22 ordinary prudence would have acted under the same or
23 similar circumstances.

24 What this means were it not for
25 Denton getting stomped by 20 guys in the parking

1 lot -- no, they did what any brave -- frankly, more
2 than you could expect, they get out in front of that
3 man, dragged him into the car. Then what would a
4 reasonable person do? Get them to the hospital.
5 That's it.

6 If you believe that a reasonable
7 person would try to get the kid to the hospital
8 after that, she's not negligent. That's what this
9 instruction is saying. Even if she does something
10 wrong on the way there, she is not negligent for
11 trying to go to the hospital. That's the only
12 question.

13 In rebuttal we'll deal with that
14 some more about that issue of if she saw the police.
15 Listen to that evidence real closely when we talk
16 about it, see what that evidence really is. You saw
17 what the witnesses said. We'll talk about that some
18 more. I need to conclude here.

19 Here's a sudden emergency. Officer
20 Yargo, the only person who you actually heard
21 testimony from, not snippets from opening statement,
22 but that you heard testimony during the trial who
23 said she was not intoxicated. Samantha wasn't
24 intoxicated. Said her blood alcohol was below the
25 legal limit. They told you .08. I don't know where

1 that came from. Where was that evidence that she
2 was over the legal limit? That she was intoxicated?
3 Where was that? He said she was below the legal
4 limit. She was not intoxicated.

5 This portion I'll allow Mr. Langdon
6 to take over and talk about the damages here.

7 **FURTHER CLOSING ARGUMENTS BY MR. LANGDON**

8 MR. LANGDON: Ladies and gentlemen,
9 I think the hardest part of this case is damages. I
10 don't think there's any question that Marcus is
11 responsible for the deaths of Bailey and Denton.
12 They didn't bring anybody in here, not one.

13 One, I want to make one thing clear
14 is that these families didn't have any children to
15 sell out there that day. These children were their
16 first born. Those, both of them. And these
17 children were loved and taught how to love and be
18 kind to others.

19 They were the kind of children that
20 Texas and the United States are not only proud of,
21 but we need more of. We need more kids like this.
22 We need more kids of faith and hard work and who
23 want to live the American dream. Bailey just wanted
24 to help others. She wanted to be a nurse. Denton
25 wanted to go to Texas A&M, have a family, have

1 children, just like his family.

2 You know, when you lose a parent,
3 it's like losing your past. Lose a spouse, it's
4 like passing the present. When you lose a child,
5 you lose your future. You lose a chance to share
6 graduations, marriages, grandchildren. You lose a
7 chance for somebody to talk to, to see their dreams.

8 And then we live in such a
9 wonderful country we have so many things to share
10 with our children and our grandchildren.

11 The damages in this case are really
12 about what the parents won't ever share. Neither of
13 these two adults, never heard any evidence about
14 them wanting to make money, that wasn't their goal
15 in life. They wanted to have a life and help
16 others.

17 On the other hand, McDonald's has
18 never stopped thinking about money. We'll get
19 creative and raise our sales 6 percent, cut costs by
20 cutting security.

21 Folks, there's nothing wrong with
22 corporations making money. That's our system and
23 that's our way of life, but there is something wrong
24 when they put cost over safety, when they start
25 cutting costs, cutting the safety of the customers.

1 That's when people in our country come in -- that's
2 where people make decisions. I always hate to tell
3 juries what I think a case is worth. If I'm saying
4 too much, I'll turn them off. If I say too low I do
5 a disservice to my client. But I can tell you,
6 representing these two families, that 10, 20, 30
7 million dollars to these two wonderful human beings
8 is not too much.

9 That, ladies and gentlemen, will be
10 up to you. I know one thing, I know that children
11 in Texas and the children in Missouri where I come
12 from are worth such just as much as those kids in
13 New York and California.

14 In fact, I always think the kids in
15 the middle are the ones that hold this country
16 together. Those are the kids that will make a
17 difference.

18 When you look at what the Judge has
19 given you on the evidence and you look at what you
20 need to look at, when you talk about damages, when
21 you talk about what comfort and aid these two
22 parents have lost by losing their children, you will
23 see, you will remember what these parents said to
24 you: It's a living nightmare.

25 When you look at the next section

1 talking about the emotional distress, that's the
2 hardest thing in the world to go through that. It's
3 like a daze. They want to see their children. The
4 mother wants to see her children even though they're
5 not here, because she needs to say good-bye.

6 The police come to your house and
7 you just have to think back to one thing, folks, one
8 thing. This was a business decision. This all
9 happened because of the business decision they made
10 back in Illinois at the corporate office. College
11 Station was an unprotected human being. Let's save
12 money. Let's see if we can go without security
13 because that way we won't have to when they make
14 this go nationwide. It's a business decision.

15 We're saying it never stops.
16 They're all saying the same thing, "When I go to bed
17 I dream about her. I think about her when I wake
18 up." One of those parents. It's the same thing.
19 Paul Crisp said that.

20 Lovely kids. You see their
21 pictures. They're lovely kids. They're our future.
22 What a future, what a dream they had. I'll be
23 waiting to hear what these Defense lawyers say that
24 the damages are because there's no defense to this.
25 McDonald's chose to do a business decision. Folks,

1 if there was, they would have lined them up and
2 brought them up. And you know when you blame others
3 for what you're doing, they're refusing to accept
4 personal responsibility. This corporation has
5 refused as we sit here today to accept corporate
6 responsibility.

7 And that's why our system --
8 because corporate people get to say you've got
9 corporate responsibility for what you did to this
10 town, what you did to College Station. You've got
11 corporate responsibility.

12 The police, time after time after
13 time after time, telling you you need security at
14 your restaurant. We don't have problems. We can't
15 keep sending 13 police cars out there. We can't
16 keep doing it. What they do is they bring a guy
17 like Sosa in that says there's no problem, there's
18 no pattern.

19 Now is the day. Now is the day.
20 Thank you.

21 **CLOSING ARGUMENTS BY MR. ROSENBERG**

22 MR. ROSENBERG: May it please the
23 Court, Ladies and Gentlemen.

24 This is a tragic, tragic accident.
25 This is a case about something that's very dear to

1 me personally. I have a teenager. I don't want to
2 ever have to go through what we went through in this
3 case again, hearing about 18, 19-year-olds drinking
4 and driving, leaving after the police arrived,
5 continuing to drive past police stations, whatnot.

6 Use your common sense, ladies and
7 gentlemen. What is the reason they kept going?

8 I want to take you to the very
9 first question you'll be asked, and that is, what
10 caused the death of Denton Ward.

11 There was an autopsy performed by
12 the only true independent witness in this case, the
13 Travis County Medical Examiner. I watched all of
14 you taking notes when he was testifying as to what
15 he could find, what he could determine the injuries
16 were, both as to the assault and the car wreck.

17 It was very clear. This courtroom
18 is not about possibilities or probabilities. One, a
19 million dollar chance is, it's about reasonable
20 medical probability.

21 "Tell the ladies and gentlemen of
22 the jury based upon a reasonable medical
23 probability the injuries you believe
24 Mr. Ward sustained in the assault at
25 McDonald's.

1 "D" and "e."

2 "Okay. Will you explain to us what
3 "d" and "e" is referenced in your
4 report, what those are?

5 "Okay. "D" is fracture of the nose
6 and "e" is scalp and facial contusions
7 and abrasions.

8 "And what injuries that you have
9 listed in your findings section do you
10 attribute to the assault other than
11 those two that you've just given us, if
12 any?

13 "I think those are the -- the two
14 that are the most reasonable --
15 reasonably attributed to the assault.
16 All of the others -- well, "i," the
17 blood aspiration, bilateral, that
18 could -- that's probably easily
19 attributed to the assault --

20 "Okay.

21 "-- also.

22 "So based upon a reasonable medical
23 probability, what are the three injuries
24 that you believe Mr. Ward sustained at
25 the McDonald's?

1 "The nose fracture, the scalp and
2 facial contusion and abrasion and the
3 blood aspiration.

4 "All right. Are any of those
5 injuries fatal in nature?"

6 "No.

7 "Okay. And can you give me the
8 basis for that opinion?

9 "Well, they're -- they're not severe
10 injuries, basically. They're easily
11 survivable without much compromise of
12 one's health.

13 "So -- so based upon a reasonable
14 medical probability, if you take the car
15 accident out of the equation, what
16 treatment would Mr. Ward have required
17 to heal?

18 "Well, the -- the nose would
19 continue to hurt for a while. And he
20 might have some disfigurement from
21 the -- the bruising. When you say
22 "return to normal lifestyle" --

23 That's what every expert that came
24 in this courtroom agrees. Dr. Corrigan, who came
25 and talked to you -- the first slide and the last

1 slide. We know where they finished, every expert
2 agreed on that.

3 Lauren Bailey Crisp was sitting
4 right next to Denton and both died at the time of
5 the collision. She explained to you how it
6 occurred. He was sitting in the backseat, massive
7 force to the side of the vehicle, it spun around, he
8 went over the backseat, cantilevered out, all
9 experts agreed as to the first slide.

10 All of the experts also agreed that
11 Denton Ward died of blunt force trauma. The death
12 that's again confirmed by the Travis County Medical
13 Examiner.

14 "Going to the findings on 00328 --
15 do you see that?

16 "Yes.

17 "You list under Category I, "blunt
18 force injuries." Do you see that?

19 "Yes.

20 "And first of all, are there any of
21 these items under "blunt force injuries"
22 that you've identified "a" through "j"
23 that could not under any circumstance be
24 caused by a severe beating or stomping?

25 "Yeah. I would not expect "a" to

1 occur with the beating/stomping
2 mechanism of injury. "J" I think would
3 be highly unlikely also.

4 "Okay. So when we look at the blunt
5 force injuries that you've identified in
6 your findings on Crisp 001238, are there
7 any of them other than "a" or "j" that
8 in your mind couldn't be caused by a
9 severe beating or stomping?

10 "I think "b" would be highly
11 unlikely also. And I think that would
12 be it."

13 Denton Ward died of tragic
14 injuries. He died of the head trauma that he
15 sustained.

16 He spent much of this case counter
17 to what the other lawyers said. The other lawyers
18 said in the deposition of Brian Edick, he had the
19 photographs in front of them, spent months and
20 months on this. He was charged by the Travis County
21 Medical Examiner to conclude what happened here.
22 And he's said exactly what he told us here.

23 This was an accident, a tragic
24 accident that was caused by a car accident.
25 Horrible head trauma. Denton Ward and Bailey Crisp

1 were sitting right next to each other, they died at
2 the point of impact tragically.

3 They brought you the expert from
4 Atlanta, you know, and if you buy his story, you
5 have to discount every one of the statements that
6 were taken by the College Station Police Department
7 at or near the time of this event. They played you
8 depositions from two years later, but we know
9 Dr. Burton sat right up there and said, "Well, if
10 the statements from Samantha are to be believed, they
11 happened, he was able to walk, talk, take some
12 voluntary actions, I guess I'm just wrong." He
13 conceded that to you.

14 And we know -- you can play the
15 video, the next clip, Samantha Bean acknowledged to
16 you that Denton, when she was all the way around on
17 Texas Avenue had been in the car for eight, nine,
18 ten minutes. She said at one point Denton --

19 MR. HAMILTON: Objection --

20 THE COURT: Objection overruled.

21 MR. ROSENBERG: This is in
22 evidence, Your Honor.

23 MR. HAMILTON: No, it's not.

24 MR. ROSENBERG: Denton was
25 screaming don't take me to the hospital. If he was

1 able to do that, I think it says two things, common
2 sense. What were the kids really thinking about?
3 They were scared they were going to get in trouble.
4 No matter how hurt he was, I'm sure he was beat up,
5 they were scared they were going to get in trouble.

6 But with respect to this issue, you
7 have to totally disbelieve that and discount all of
8 it because if he was able to talk, walk or do
9 anything in the statements that we talked about at
10 the time of the accident, then he couldn't have died
11 because of anything that happened at McDonald's.

12 This is really hard for me to get
13 up and say. I have a kid just like Denton. Very
14 hard for me. They brought you these experts from
15 Atlanta and from South Dakota and whatnot. But all
16 that aside, use your common sense, ladies and
17 gentlemen. It's hard for me. It's hard for you.

18 What I would like for you to do, is
19 you heard from Brian, "His face looked like mush," I
20 think the word was. Exhibit No. 44, you'll see is
21 the photograph that the medical examiner took. He
22 said after I cleaned up his face you could see what
23 it looked like and what was really going on here.
24 It wasn't as Mr. Edick described. It was dark out
25 in the parking lot, using a WiFi, whatnot.

1 Looking at that photograph, No. 44,
2 does it look like what Brian Edick said. That's
3 what the medical examiner told us. What we also
4 know is if you look on that slide that talked about
5 you have to disprove everybody, you have to forget
6 about all the statements at the time to by Burton's
7 theory. That's not what common sense is.

8 No. 2, look at the photograph from
9 the autopsy. No. 3, what did all the police
10 officers tell us about the severity of this impact?
11 What they told us, what Dr. Corrigan said first in
12 studying this, all these types of accidents that in
13 the universe of accidents this is in the 95th
14 percentile. That's what she told you. That's not
15 anything different that what Jason Summers told us,
16 the officer, he's investigated thousands of
17 accident.

18 Go to the next, Helen.

19 So that was the third part.

20 Where does this collision compare
21 to in the universe of accidents like this? Did the
22 College Station Police Department or any officers
23 you've seen after an incident involving a massive
24 impact with a pole, which is what the officer tells
25 us in his personal experience after having seen

1 these situations for ten years.

2 "Would you agree with me this is a
3 massive collision?

4 "Yes, I would.

5 "Very severe impact between the
6 Toyota and the pole?

7 "That's correct.

8 "Massive damage to the rest of the
9 vehicle?

10 "Yes, sir.

11 Were you able to observe that with
12 your own eyes?

13 "Yes, sir.

14 "In the scale of severity that
15 you've seen over the years as far as the
16 amount of crush impact to the rear of a
17 vehicle and a pole, have you ever seen
18 impact as severe as this during your
19 career?

20 "Is this one of the most severe that
21 I've seen. I've seen similar ones.

22 "Out of how many do you think you've
23 looked at over the years?

24 "Of that severity, probably no more
25 than five.

1 "Out of a universe of how many?

2 "Out of ten years of being a police
3 officer.

4 "Hundreds or thousands?

5 "Probably in the thousands of
6 crashes, yes, sir."

7 Described to you took minutes and
8 the length and height of the pole, I think, it was
9 29, 30 inches back into the car. Again, this is
10 relevant because it does support exactly what
11 Dr. Dolinak was saying that Lauren died as a result
12 of the impact. And sitting right next to her,
13 Denton died as a result of the impact at the
14 intersection.

15 Please don't leave your common
16 sense. This is hard for all of us, but you have to
17 go upon what the evidence is, the experts, the
18 photographs, the documents and the testimony.

19 You've seen that photograph. It
20 just shows a different angle. That's exactly what
21 it looked like that night.

22 We talked about it in opening. We
23 talked about it in voir dire. This is a hard
24 subject for us all to talk about. This is
25 organizations and businesses. Tough decisions. We

1 are talking about drinking and driving, whether
2 you're 18, 19 or 60, if you drink and drive and you
3 know about it, bad things happen. Bad things can
4 happen.

5 I'm not making excuses. We'll talk
6 about McDonald's in a minute. But we know that this
7 accident, this fatality didn't occur at McDonald's.
8 It occurred about halfway around College Station
9 after they left, when they knew the police arrived.

10 I think Ms. Bean did an admirable
11 job. She accepted responsibility. The police
12 officers even acknowledged she did a very good job
13 being a good person admitting responsibility. That
14 doesn't mean you're also not negligent.

15 I mean, she admitted within hours
16 or days after the incident that she had made a
17 mistake.

18 We know the group had been
19 drinking -- at least some of the group had been
20 drinking since 4:00 o'clock, continued to drink and
21 the bar closed down at 2:00. The boys had purchased
22 an 18 pack of beer, 14 of the beers had been
23 consumed. The testimony is unclear as to who, but
24 we know 14 of the 18 pack.

25 They went to Hurricane Harry's, who

1 had absolutely -- you will see no precautions. They
2 had a stamp, one of them washed off in about ten
3 seconds. Hurricane Harry's provided -- allowed
4 these young people to drink. There's going to be a
5 blank where you can apportion responsibility.

6 After they left at 2:00 o'clock
7 they proceed to go to McDonald's.

8 Talk about the fight, and we know
9 that 38 minutes later they died at the intersection
10 of Texas and Holleman. We talked about, said
11 something about .083 or no blood alcohol level but
12 Bailey -- Ms. Bean, she acknowledged to everybody at
13 the time what this was all about, what she knew was
14 in her mind, how she felt.

15 "What was your involvement in the
16 investigations?

17 "Being an expert in on-scene
18 intoxication, I am summoned to bad
19 crashes such as this one and other
20 things of the nature in order to help
21 provide guidance and help conduct the
22 investigation.

23 "Did you follow standard protocol
24 for an accident of this type?

25 "Yes, sir.

1 What do you attribute in this
2 statement?

3 "It is clear that she is accepting
4 responsibility for drinking and driving
5 and being intoxicated, correct?

6 "Yes, sir."

7 She accepted responsibility.
8 They're going to talk to you about the weather. The
9 detectives were acknowledging you did the right
10 thing, you accepted responsibility, but she admitted
11 herself that she was intoxicated to the officer. I
12 think this took place at about 4:00 o'clock the next
13 morning.

14 Go ahead, please.

15 Every lawyer said listen there will
16 be evidence. Did they know the police had arrived.
17 He said that we'll bring you more evidence. I
18 wanted to bring you three separate pieces of
19 evidence to show you that they knew the police
20 officers really are there, are arriving. It's not
21 whether they're right in front of them, they know
22 they're around, there was a police presence, because
23 common sense dictates what we've all taught our
24 kids.

25 If you do something wrong, if

1 there's a mistake, if you're hurt, it's your fault
2 or someone else's, if the police are there, stop,
3 get help from the police, stop, get help from the
4 police. If they had done that we would not be here
5 today.

6 Go ahead.

7 "So the driver of the vehicle,
8 Ms. Bean, actually did see the -- the
9 police officers in the parking lot?

10 "Yes, she did. She did state she
11 saw the -- some officers in the parking
12 lot.

13 "Would you agree with me in fairness
14 to everybody that the appropriate,
15 reasonable thing to do would have been
16 to try and seek help from the
17 authorities as soon as possible?

18 "Yes, sir.

19 "And there was certainly an
20 opportunity for Ms. Bean to do that
21 while she was in the parking lot,
22 correct?

23 "Yes.

24 "And that occurred by virtue of
25 Ms. Bean seeing the -- one or more of

1 the bicycle police officers, correct?"

2 That's one detective that she told
3 that to. Not just one, again, she was honest. She
4 told it to another detective, another police
5 officer. We'll talk about that in a minute. But
6 the evidence itself from the video cameras said --
7 the video of the parking lot, that's what the lawyer
8 told you.

9 Next screen, please.

10 This is what the parking lot -- we
11 don't have video at this point. We do have video
12 back in the area where the cars were going. What
13 the video still shows is not only did they know the
14 police were there, but the police had actually
15 arrived.

16 This depicts at least one had
17 arrived about 21 seconds before they left. They
18 literally passed each other. The vehicle arrives at
19 2:27:11. The car didn't leave until 24 seconds
20 later. Right in the same area of the parking lot.

21 Go ahead.

22 She was accepting responsibility
23 for leaving the McDonald's parking lot after the
24 police had arrived.

25 "Either as the police were arriving

1 or after they had arrived, yes, sir.

2 "But it's clear that she was aware
3 that police were either there or
4 arriving. She knew that?"

5 It appeared that she knew. We all
6 teach our kids, no doubt, what's going on with a
7 16-year-old about ideals, just like this accident.
8 He thinks he's invincible. He's a great kid.
9 Denton was a great kid. I talked to him, if there's
10 a problem, if the police are there, stop, call mom,
11 use your cell phone, call dad, we'll be there in a
12 minute. Don't leave because you're scared, whether
13 or not you did anything wrong, doesn't matter, the
14 police aren't going to drag you down to talk to you
15 about it, just seek out and get help. That's
16 exactly what occurred here.

17 Go ahead. I'll show you the
18 evidence to support it. Basically kind of car --
19 what we talked about.

20 Go ahead, please.

21 Another trooper will tell you, show
22 all four had cell phones and no one reached out
23 during that ten, 11 minutes they were driving around
24 College Station. I think this is important because,
25 again, we've talked about proximate cause,

1 foreseeability. Is it foreseeable that someone
2 would be in a real -- I'm not saying anything other
3 than what the evidence is, a real fight and a real
4 injury, period, end of discussion. That's what
5 occurred in the parking lot.

6 The experts can tell you, talk to
7 you about the significance of it. No one will get
8 up and say he wasn't badly hurt. But we know the
9 prudent thing to do, the foreseeable thing that you
10 would expect someone to do is call 9-1-1. They all
11 had cell phones.

12 Go ahead, please.

13 "Even after you prepared this
14 report, did you get any information from
15 any of the officers that anyone in
16 Ms. Bean's car ever attempted to make
17 contact with law enforcement before the
18 collision?

19 "No calls to 9-1-1 or any
20 nonemergency dispatch line was noted by
21 Brazos County or College Station from
22 any one of these four people. And
23 according to Officer Sullivan, Pritchett
24 and Yargo, no one in this vehicle
25 attempted to make contact with them.

1 "And when you say "made contact,"
2 you mean as the vehicle was exiting the
3 McDonald's parking lot?

4 "Nobody -- they did not stop. They
5 did not acknowledge the officers or
6 attempt to speak with the officers."

7 Please don't leave your common
8 sense at that front door. You guys had to listen to
9 this for a week. I wish I could have been there to
10 tell Denton and Lauren, please stop, call 9-1-1, do
11 something, pull over.

12 My wife won't let me show the
13 pictures. You're going to look at a 16-year-old. I
14 wish I could, because you don't want to talk to 12
15 other people about facts like this ever.

16 Go ahead, please.

17 The last trooper was the first
18 responder actually. His name is Steven Taylor. He
19 was the first responder at the intersection.

20 Go ahead and play. "Okay. And
21 then another event that occurred after the physical
22 altercation is Ms. Bean continued to drive for
23 approximately 11 minutes?" The answer was yes.

24 "And during that 11 minutes she
25 certainly had many opportunities to seek assistance

1 from law enforcement or simply -- excuse me -- or
2 just simply stop the car, correct?"

3 And the first gentleman says yes.
4 Passes right by the College Station Police
5 Department. You're familiar with the route they
6 went, Wellborn Road all the way down, came back, and
7 we're talking about either ten or 11 minutes.

8 It's one thing, I totally
9 understand, you're scared, you're 19, you pull -- I
10 get that. I would be the same thing if I was
11 scared, probably that exact same situation they're
12 talking about once they got out they continued to
13 drive and drive and drive. They stopped at
14 intersections, went by the apartment, they didn't
15 stop. They went by H-E-B. The Walmart, that's if
16 they were open. But this big parking lot where they
17 stopped, anywhere given these decisions, any one of
18 these, we would not be here today if the group -- if
19 Ms. Bean had made any of these decisions different,
20 one of them, we wouldn't be here in this trial
21 today.

22 I tried really hard, I talked to my
23 wife, I talked to Paul, how do you describe what 11
24 minutes is like. I couldn't think of a good
25 example. Eleven minutes in a car driving is an

1 eternity. There are so many parking lots, so many
2 places to stop.

3 Common sense tells you why. They
4 were scared. They were scared because Denton was
5 hurt. He was bleeding. And they were concerned
6 about something they hadn't done right, had been
7 drinking, someone involved in a fight, they were
8 scared because they didn't want to be stopped.

9 That's the true facts. I think
10 everyone agreed.

11 So I'll speed through this. It's
12 based on uncontested testimony that Samantha Bean
13 was going through the intersection. She was
14 speeding at 65 to 70 miles per hour, I believe it's
15 a 40, maybe 45 zone. They were going about 50
16 percent over the speed limit.

17 The crash report, you'll have it
18 back there with you, provided by the College Station
19 Police Department is exactly consistent with what
20 Ms. Corrigan described as far as the vehicle
21 spinning around, going back into that pole. This is
22 not from an expert, this is from the College Station
23 Police Department.

24 As Unit 2, that's the white Toyota,
25 approached the intersection of Texas and Holleman,

1 driving northbound, the traffic signal turned red.
2 Undisputed.

3 Unit 2, traveling at a high rate of
4 speed. You saw the diagram. Dr. Z talking about
5 60, 70. That's undisputed.

6 Unit 2, the Toyota, then entered
7 the intersection without stopping at the red light.
8 We don't need to talk anything about this. This is
9 from the police department. Undisputed.

10 Again, what is more likely than
11 not -- the plaintiffs have the burden of proof.
12 What is more likely than not. What we know is had
13 any of these decisions been made differently, y'all
14 would be back with your family, at work, I would be
15 back dealing with another lawsuit, the Judge would
16 be dealing with other issues, we wouldn't be here in
17 this courtroom having to deal with any of this if
18 these kids had made a different decision that night.

19 Go ahead.

20 Talked about reasonably
21 foreseeable. You will see that in the proximate
22 cause instruction. Is it reasonably foreseeable all
23 of these things would -- is there a nexus all of
24 these things would have occurred. There's no doubt.
25 But is it foreseeable for McDonald's or any business

1 owner that all of these things would happen: There
2 would be a fight. The police would arrive. They
3 would leave. They wouldn't use their cell phone.
4 They continue to drive and drive and drive,
5 ultimately run through a red light halfway around
6 College Station.

7 I would submit to you, ladies and
8 gentlemen, that that's not reasonably foreseeable.
9 If he had died, if there had been an injury where he
10 died on the premises, that's a different lawsuit.
11 That's not a wrongful death case we're dealing with
12 here.

13 "Okay. Another intervening event
14 that occurred between the time the kids
15 were killed and when they left the
16 McDonald's was that she went through a
17 red light, correct?

18 "Yes, sir.

19 "There's no doubt about that?

20 "No doubt.

21 "Okay. So what we know for sure is
22 that at least in the minute before the
23 point of impact, Ms. Bean was speeding,
24 she ran a red light, and she was not
25 looking in the direction that she was

1 going, correct?

2 "Yes.

3 "And all of the information in your
4 investigation is consistent in that
5 regard, correct?

6 "Yes, sir."

7 Okay. Thank you. Next slide.

8 Okay. He spent a lot of time
9 talking about McDonald's. There's a big stack of
10 9-1-1 calls. This is the Northgate area. I'm not
11 going to dispute anything about what these calls for
12 service are about. You can look at them.

13 It's hard when you work HR and
14 people aren't honest with you. They're not
15 forthcoming. It takes you way too long to figure
16 that out sometimes. It takes way too long.

17 And here's the problem. Here's the
18 problem. Here are these two individuals, Carlos
19 Butler, Lindsey Ives. You don't report the
20 information. It's almost impossible for corporate
21 to know. These individuals told you what they said.
22 It's very hard as a company if the people you're
23 relying upon don't supply the information and
24 actually withhold it. But, you know what, I agree
25 with a lot. There are a lot of fights in the

1 parking lot, injuries in this parking lot, and
2 that's -- I'm sorry about that. I'm sorry about
3 that.

4 That didn't cause the death of
5 these two individuals on this day.

6 These two individuals, he's not the
7 manager and she's not assistant manager with
8 McDonald's, period, end of discussion. That has
9 been rectified, period.

10 We talked about -- you will be
11 given lots of names to apportion responsibility.
12 Heard from Tanner Giesen, Denton's friend, who had
13 supplied the alcohol when he was able to procure it
14 through whatever means he was. And you remember his
15 testimony, hey, dude, hey, man, whatever. We went
16 through that in his deposition and he admitted that
17 he had procured the alcohol and supplied it for the
18 18, 19-year-olds.

19 Go to the next one.

20 We don't know exactly what happened
21 that night in the parking lot. I mean, either side
22 would have brought it to you if we could.

23 Well, you know exactly what
24 happened, Tanner Giesen was at the epicenter, so to
25 speak, of what happened. There's a verbal

1 altercation going on and then Tanner was there and
2 then Denton walked out. We'll never know exactly
3 what happened.

4 But listen closely to the way he
5 testified and think about whether or not you think
6 he was involved in it or not. What's more likely or
7 not is the standard.

8 "Okay. And did the fight itself,
9 did that take place outside?

10 "Yes. I remember hitting concrete,
11 yes.

12 "Okay. And what's the first thing
13 you remember about the fight starting?

14 "It was like 30 on two, dude,
15 like -- I mean, I don't remember.

16 "Okay.

17 "I mean, if you would listen, I just
18 said I hit the ground.

19 "Before you hit the ground, do you
20 remember any -- yelling at anybody or
21 anybody yelling at you?

22 "I mean, no. I mean, I don't know,
23 dude. I really don't."

24 They talked about medical amnesia.
25 Now, while it's medical amnesia, you don't want to

1 say something, but he was able to recall the things
2 that the lawyer wanted him to recall. It's medical
3 amnesia when the lawyer, defense lawyer is trying to
4 do his job, get information, "I don't remember. I
5 can't recall, dude."

6 When it's convenient to help the
7 other side, he can remember things.

8 I would submit to you the evidence
9 has shown that this gentleman, he was at the
10 epicenter. You guys will visit, see what the
11 evidence is, but at the center of all this, there
12 was, you know, a punch thrown, a verbal altercation.
13 I submit to you the evidence shows that he was in
14 the epicenter of it.

15 Then, we know Marcus Jones got
16 involved and we know exactly what happened.

17 THE COURT: Time signal, Counsel.

18 MR. ROSENBERG: After that what
19 happened next.

20 "So when you walked out that front
21 door, what happened next?

22 "I walked to Andre and that's when
23 it -- well, that's when I heard all that
24 yelling, but Andre was in the mix, like,
25 he was in -- over there yelling and

1 going back and forth, and I walked over
2 to tell him, "Let's go," and when I was
3 over there, I heard somebody say, "You
4 want something, too, Nigga," and that's
5 how it all started, the whole fighting,
6 and that's -- I remember me and a dude
7 fought, and I did take the first swing.

8 "You took the first swing?

9 "Yeah."

10 That's when he heard all the
11 yelling back and forth and he walked over there to
12 Tanner when he hears somebody say -- and that's the
13 time he started fighting. He remembers me and the
14 dude fighting.

15 Now, he admitted he took the first
16 swing. He said he works for a bakery. He works for
17 a bakery. He admitted he threw the first punch.
18 There's no reason, we should never acknowledge that
19 he doesn't have responsibility when the man threw a
20 punch, when there's kids screaming at each other,
21 whatever the verbal altercation between Denton and
22 the other group, he was responsible. He admitted
23 it.

24 I would submit you should apportion
25 an appropriate responsibility on it. There was kids

1 screaming at each other, but this guy took the first
2 swing. After that we know what happened. There was
3 a fight and they left the parking lot.

4 Go ahead.

5 McDonald's doesn't serve alcohol.
6 They're not experts in alcohol. The security
7 issues, there's a big stack of fights right there.
8 We talked about it. Should there be security out
9 there that night? I think probably so. We're not
10 going to disagree with anybody. There's a lot of
11 fights out there.

12 But the experts in alcohol, that's
13 really the core issue, is the bar right across the
14 way. They're the experts in alcohol. What are you
15 supposed to do? What we know is those kids had been
16 there since I think about midnight until about 2:00
17 o'clock. Look at your notes. You had them in the
18 notes.

19 The evidence was that either Tanner
20 or Denton -- I think it was Tanner was served five
21 drinks or more, five of these large drinks. They
22 had no mechanism to prevent drinking by people
23 over 21 -- or under 21. You heard the evidence,
24 they all had a stamp and Lauren we know real
25 quick -- these people are about making money. The

1 more people you have at a bar under 21 -- over 21,
2 the more money you make. They had no meaningful
3 mechanism in place to prevent these kids from
4 drinking as much alcohol as they did.

5 Tanner, Marcus Jones and this bar,
6 this business, you're going to get an opportunity to
7 apportion responsibility.

8 I don't have a lot of time. Go
9 back. You have good notes. Look at what the
10 evidence was about each of these entities: The bar,
11 Tanner, Jones, McDonald's, John Does. What that
12 means is the other people there with Jones that hit
13 Tanner. John Does. Those are the people the police
14 never caught, but the law permits -- the Judge will
15 instruct you, you can apportion responsibility. And
16 those other people, we don't have their names, but
17 that is what the John Does mean.

18 This is a car accident, a tragic,
19 tragic car accident that occurred ten minutes later
20 on the other side of College Station. Had the kids
21 made any of these decisions differently, we wouldn't
22 be here today.

23 Paul is a member of your community.
24 I live in Houston now. I'll ask Mr. Murphy to talk
25 to you a little bit about what damages are

1 appropriate in your community if you get to that
2 point. He'll talk to you about his perspective on
3 things.

4 I'm a lawyer that has been dealing
5 with this two years, putting the facts together. I
6 want him to visit with you about how this is
7 important. I appreciate your time over the last
8 week, more than a week. Thank you.

9 MR. MURPHY: If it please the
10 Court, Your Honor.

11 **CLOSING ARGUMENTS BY MR. MURPHY**

12 MR. MURPHY: All right. Folks,
13 I've been silent for a week and a half and it's hard
14 for lawyers to be silent for a week and a half. My
15 wife probably would tell you that.

16 This is a serious case. It's got
17 serious issues. I'm going to tell you what I saw in
18 this courtroom. Some of it I saw with you live.
19 I've never seen a lot of this testimony. In fact,
20 most of it I have not. So I'll give you a very real
21 feel for the evidence.

22 I want to go over it briefly and
23 I'm going to make a statement. I get about 15
24 minutes. I'll be open and honest with you. You may
25 not like me for it. It's an occupational hazard.

1 I'll tell you the truth as best I can.

2 Okay. Alcohol and consumption of
3 alcohol by teenagers was the root cause of the
4 events leading to the death of those two teenagers.
5 And that's the truth. You can call it whatever you
6 want. You can call it the root cause. You can call
7 it a substantial factor. But I'm not going to do a
8 disservice to anyone who comes to this courtroom and
9 this former sanctuary and come down here and agree
10 to some alternate reality. I'm not doing it.

11 Let me explain. The plaintiffs,
12 what they've done in this case, is going to blow
13 this cover here. What they have attempted to do is
14 get you angry with the situation, frustrated with
15 the situation, and transfer that anger to
16 McDonald's. That's what they've done. And they've
17 been successful. They've been successful with some
18 of you, I'm certain. Okay.

19 Let me explain it a little further.
20 The circumstances of the evening. Teenagers
21 drinking in this town is epidemic. They know that
22 we look out for one another in this community and
23 they know that, too. Mr. Hyde, I think I saw you
24 helping Ms. Hsieh all week with that last step.
25 That was a doozy, helping her back and forth up the

1 steps.

2 It's obvious. It's evident how we
3 take care of each other, how we watch out for each
4 other. They noticed it and so they say there's a
5 problem: It's McDonald's. It's not the teenagers
6 who decided to consume alcohol.

7 I want you to look over there.
8 That's not the problem. I want you to consider the
9 events of the night. I'll go through it real quick.
10 I've just got a short period of time.

11 Here we go. 4:00 o'clock in the
12 evening. They go to an apartment. Unfortunately
13 the liquor cabinet is raided. There's no liquor at
14 the house. That's what Ms. Bean is upset about.
15 She's upset because the liquor cabinet got raided
16 earlier.

17 This is a young lady who
18 experimented with alcohol and she's graduated. Her
19 friend brings over a box, that's what she calls it,
20 a box of alcohol. The box of alcohol was 18, 14 of
21 them knocked out, saving four.

22 Now, Ms. Bean tells you that she
23 didn't partake. I guess she's still upset about the
24 lack of her liquor in the cabinet or whatever. She
25 doesn't partake. Sober as a Judge. She goes down,

1 she climbs into the car, doesn't drive the car from
2 the apartment to Hurricane Harry's. I wonder who
3 did? I wonder what condition they were in. I'll
4 betcha had they followed the rule that you don't
5 drink and drive -- my kids have already heard
6 that -- I'll bet you, if they had never left the
7 apartment that evening, if they had never made it to
8 Hurricane Harry's. Nothing would have happened.

9 But somebody got in the vehicle who
10 had been drinking and drove from there to Hurricane
11 Harry's. It's time to go out on the town after
12 drinking from 4:00 to about 10:30, 11:00 at night.

13 I've got an axe to grind about
14 Hurricane Harry's preventive measures. You want to
15 hear it? Wait for it. The scarlet letter that they
16 put on people who are under 21 who want to drink
17 alcohol in an establishment is a stamp on the
18 underside of the teenager's wrist, that one of them
19 goes and washes off in the bathroom as they're
20 entering the club.

21 Is it conspicuous? Is it durable?
22 Didn't work. Ms. Bean said that she has hers on.
23 The others didn't worry about it, walking around
24 Harry's drinking alcohol, Jack and Coke. Her
25 testimony.

1 What about Harry's? Who's talking
2 about them? Who's outraged over that? Focus on the
3 Golden Arches. The Golden Arches. After that they
4 leave the club, right? Who drives from the club,
5 Hurricane Harry's to McDonald's? Not the first
6 place they didn't follow the rule that you don't
7 drink and drive. Went from Harry's to McDonald's.

8 They go to the Golden Arches. They
9 get in the parking lot at McDonald's. What happened
10 there? Ms. Bean testified -- and I heard her say
11 the parking lot looked dangerous, people there
12 looked thuggish. That's what she said.

13 Now, the boys aren't as concerned
14 about it as the girls. Nonetheless, they get out of
15 the vehicle and go into McDonald's. Okay. You
16 heard testimony that the parking lot was not
17 emotionally charged when the boys walked through the
18 parking lot. That's the testimony.

19 The boys go into McDonald's despite
20 some other testimony from two witnesses that say
21 they blocked them at the door, knocked their hat
22 off. That's where the whole thing started.
23 Nonsense, look at the evidence. Look at the
24 pictures. They walked right through the middle of
25 McDonald's. They go back to the restroom, use the

1 restroom, they walk back out. Guess what happens.
2 Nothing.

3 They go back into the parking lot
4 where there's this crowd that's now emotionally
5 charged and something happens. What's more likely
6 than not, that's for you to decide what happened in
7 the parking lot.

8 What do you think the medical
9 amnesia guy says what happened? We walked out, they
10 said, wrong neighborhood cowboy at the McDonald's on
11 University Drive, okay, maybe, I don't know, that's
12 for you to decide. Medical amnesia guy -- the other
13 guy who I'm not about to defend is the other guy,
14 though, has no right to sticks and stones, you can't
15 throw a punch at somebody, okay. He says they use
16 the "N" word.

17 All of a sudden this not
18 emotionally charged becomes very emotionally
19 charged, and this guy gets punched and there's a
20 fight about to ensue between a bunch of guys
21 stomping and kicking him, doing whatever they're
22 doing.

23 A crowds draws around, outraged at
24 these people, outraged at the guy that threw the
25 punch in the first place. Are you kidding me? All

1 right. So what's next.

2 Then they get in the vehicle, drive
3 off into the night. Ms. Bean said at least three
4 different things as to why she was speeding off into
5 the night.

6 You want me to go? Here we go.

7 Number one, I thought that they may
8 be chasing us. That's what she says. I thought
9 they may be chasing us. She never looks in the rear
10 view mirror, stops for pedestrian traffic as she's
11 crossing Northgate over to A&M. Stops at every
12 single red light along the way except for the one at
13 Holleman and Texas Avenue. That's her testimony.
14 She's afraid they're chasing her.

15 Okay. That's version number one.

16 Version number two. Let me think,
17 the police pull her over. That's trying to get the
18 police to pull me over. How about you go to the
19 police station, pull in the parking lot, call 9-1-1
20 from there. I bet they catch you. Her plan was to
21 speed around influenced by alcohol, influenced by
22 being intoxicated, perhaps. When did that happen?
23 When did this intoxication happen? When did the
24 introduction of alcohol happen?

25 It happened at the McDonald's

1 parking lot? No. It didn't happen at the
2 McDonald's parking lot.

3 Third, they're trying to get her
4 friend help. That's the most reasonable excuse I've
5 heard so far probably with that one. They leave the
6 parking lot, one of the girls is waist high out of
7 the moon roof, did you catch that? Pulling out of
8 McDonald's parking lot, moon roof wide open, how
9 about you stop and let the people know my friend's
10 hurt in the back, somebody help. No evidence of
11 that.

12 What about at the various
13 stoplights, they stop at all the red lights they
14 stop at, how about that. How about you get out and
15 say, "Can you get some people, my friend is hurt."
16 How about the numerous places along the way that you
17 can stop, places that are open 24 hours a day? What
18 about places that just have big parking lots,
19 Ringer's Library, go to the College Station High
20 School, go to Consolidated, wherever, stop
21 somewhere, call 9-1-1 if you're so concerned about
22 your friend that he's hurt. When did this concern
23 arise?

24 Did it happen when you were driving
25 intoxicated? You ran a red light and slammed into a

1 pole and two people who should not be dead died? Is
2 that when that story came up?

3 I'm not going to sit here and agree
4 to some alternate reality where facts don't matter.

5 Apportionment. So why would you do
6 that, why would you transfer all that frustration
7 and anger over to McDonald's? Because of money.
8 Because of money. Golden Arches. People see them
9 like -- there are some people that see them like
10 they're trucking companies. Truck drivers, that's
11 my day job. I have to deal with it all the time.
12 They see money.

13 Why do you talk about an expert
14 that's just paid \$100,000 or whatever the expert
15 writes up the word. What's that all about? What's
16 the import of saying companies like BP and Exxon
17 Valdez and different manufacturers trying to lump
18 them all in together. You know what you get, you
19 get good and angry at McDonald's. That's it.

20 Just answered the question. Get
21 good and angry at McDonald's. Forget about alcohol.
22 It's magical mystique. Don't look over here, I'm
23 pulling a rabbit. That's all it is. So we're too
24 intelligent for that. We're too smart. I know this
25 community. How do you do it?

1 I've already talked about it in
2 part, put Carlos Butler and Lindsey Ives or any
3 other -- to work over there at McDonald's. They
4 were actively concealing information. These were
5 people that were -- I think they were actively
6 concealing. That guy got up in a deposition and
7 lied under oath, under a penalty of perjury.

8 Lindsey Ives, you heard her saying
9 that College Station police officers had lied. What
10 do you think they're telling their employer? That's
11 why you say two-year spotless record, you're not
12 telling them anything. They have no idea. What's
13 more likely than not, that's for you to decide.

14 We never get into corrective
15 measures talking about, you know, what McDonald's
16 has done internally. We're here to decide what
17 caused the death of Denton Ward and Lauren Crisp.
18 We've got to defend that case.

19 Now, I'll talk to you about
20 everything else after the trial, but I can't right
21 now.

22 Apportionment, we talked about that
23 a little bit and let's start talking about Tanner
24 Giesen now. Okay. That pillar of society, provided
25 alcohol to all of his buddies, right? Talking about

1 these kids, I'm talking about the guy that came
2 back, that brought the 18 pack of beer to them and
3 served to it them. That's who I'm talking about.

4 I'm talking about the bar that
5 really doesn't care whether you drink or not. They
6 stamp underneath your wrist, oh, well that takes
7 care of that. Enjoy. That's who I'm talking about.

8 I'm talking about a little girl
9 that should have never gotten behind the wheel of
10 the car anyway because she shouldn't have had
11 alcohol in her system, period. That's what I'm
12 talking about.

13 I'm talking about the guy that
14 threw the first punch in the parking lot.
15 Absolutely no excuse. Call it the "N" word. I
16 don't care. I don't care. It's an awful word.
17 Nobody should be called the "N" word. There's a
18 time to walk away. There's a time to be the bigger
19 person. It's just ignorance. There's a time where
20 you've got to suck it up.

21 I heard plenty of it. My mother,
22 grandmother, I heard it. Okay. You've got to walk
23 away, be mature. I've got news for you, too, folks.
24 Maturity is a big issue in this case. Big issue in
25 this case. It's the issue in this case if we're

1 just being honest with each other.

2 The guy that threw the punch and
3 those others in the crowd that kicked him, beat him
4 while he was down, 15, 20 people on one, got to be
5 kidding me. Absolutely cowards. Let's not make
6 excuses. Let's not blame or point the finger at
7 anybody. That's being honest.

8 And what I want you guys to do when
9 you go back to the jury room, the way you were
10 selected in jury selection, you were selected
11 because we wanted you to be honest, however it comes
12 out.

13 My son asked me last week, my 13,
14 soon to be 14-year-old tomorrow, asked me during
15 this trial last week, "Dad, who's going to win this
16 case?" I said, "Son, no one is going to win this
17 case. No one. Those parents are without their
18 children forever. Nobody is going to win this
19 case."

20 But as long as we're here to
21 determine legal issues in a case, I want you to be
22 honest with yourselves too. Sometimes that may be
23 standing alone. That's the truth. I don't mind.
24 I've lost a lot of friends being honest with them.
25 That's what love is. Love is somebody, your honest

1 with them. You love yourself, you have to be honest
2 with yourself.

3 Back in the jury room in
4 deliberations they just get to the point somebody
5 leaning on you, "Well, I don't know." You do know.
6 You do know. Be honest with yourself that day.
7 Stick to your convictions. Stick to what you like
8 and what is true and what is honest.

9 Don't follow this magical
10 misdirection. Don't go through this. It's transfer
11 all your anger and frustration or sympathy to the
12 families and let's go pick up the Golden Arches.
13 That's all that's going on in this room and I can't
14 stand it.

15 I thought about damages just
16 briefly and that's what Marshall asked me to do and
17 I've gone on other topics. I just can't, I can't
18 sit there and not say it. Okay. Damages. What's
19 10, 20, 40 million dollars, my friends. You've got
20 to be kidding me. You've got to be kidding me.

21 I know in voir dire he got up said
22 well, we'll be asking for millions of dollars in
23 this case. Millions of millions doesn't surprise me
24 in the least.

25 Okay. Let's talk about what a

1 human life is worth. I'm not going to criticize
2 them and tell them they weren't worth everything.
3 Sure. They were absolutely. I'm not going to take
4 his suggestion and not say I'm sorry these kids'
5 families don't have their children. I'm sorry that
6 those families don't have their children and I'm not
7 going lie to them and tell them it's because
8 something other than what it is.

9 I'm not. And you shouldn't. You
10 should absolutely refuse, though. I won't be part
11 of that. With my kids I'm brutally honest with
12 them. Sometimes it's tough, but I love my kids.
13 I've got to be honest with them when they make
14 mistakes, when they get in circumstances and
15 situations they shouldn't be in. I'm not going to
16 lie to them. I'm not going to lie to anybody else.

17 And you 12 jurors can't lie to
18 these families who's talking about sending messages.
19 Be careful the message you send. It's epidemic in
20 this town and I'm sick of it. We're not going to
21 sit here and ignore the epidemic, the root cause and
22 real problem, what precipitated all of the events of
23 this night because they're the Golden Arches, they
24 can afford it, they spend billions of dollars on
25 advertising.

1 You remember that little sound like
2 it wasn't accidental. It was a plan. What's
3 appropriate? The answer is I don't know. A quarter
4 of a million dollars per family for the damages?
5 Half a million dollars for a family? I wrote down
6 don't be surprised if they ask for a million dollars
7 for a family.

8 Obviously wasn't expecting the 10,
9 20, 40, whatever. Look at the nature of the
10 damages. You can assess for the nature of the
11 damages, you can assess for failure and reasonably
12 compensate, not punish. Not pound the flesh. I
13 mean, to teach somebody a lesson. That's probably
14 what you will hear in a few minutes.

15 I urge you to look at the Jury
16 Charge. I trust the people of this community. My
17 family has lived here for generations. I chose this
18 for a reason. We hold each other accountable. We
19 hold each others decision and actions. And it's
20 incredible to me that the only thing we hear from
21 the plaintiff's table over here is responsibility.
22 Corporate responsibility. What about personal
23 responsibility? What about that?

24 What about an 18, 19-year-old that
25 makes a decision, a conscious decision, and now

1 conveniently at the courthouse they want to call it
2 something else? This is just all McDonald's. This
3 is all about a busted security system. That's what
4 it is. Absolutely nonsense.

5 Careful with the message you send.
6 I don't have anything else. I appreciate your
7 attentiveness. I appreciate you coming down here
8 and serving on this jury. It's invaluable to this
9 community. Jury service comes up, we all get
10 called, Judge Smith doesn't let you go home when we
11 get called. I'll be here. I can't tell you how
12 much I appreciate you.

13 I've been watching the jury this
14 whole week, each one of you, because I chose you and
15 I would be disappointed if every single one of you
16 hadn't paid attention and every single one of you
17 hadn't focused on the oath. I saw people taking
18 notes. If you had to do that, by all means.

19 Continue to listen to all of the
20 attorneys from Dallas and attorneys from out of
21 state. Listen to all of the evidence. I want you
22 to make a good decision.

23 I know that this case is in good
24 hands when you will be back there deliberating. Be
25 honest with yourselves. Be honest with yourselves.

CLOSING ARGUMENTS BY MR. HAMILTON

MR. HAMILTON: Ladies and gentlemen, I told you the law that you apply is right here. And if anybody stands up and tries to get you to do something that's different than what is in this document, they are asking you to disregard the law. And that's what I expected would happen.

Mr. Murphy is an excellent lawyer. Very talented lawyer and he's a local lawyer. But what you're being asked to do -- he's not the only local lawyer in this case. What you're being asked to do is to apply the facts that you heard in this courtroom to the law that you have been provided.

I'm not the one that stood up and played on emotion on the liability questions. I didn't do that. I walked you through the evidence and the facts in this case. And that's what you have to decide this case on. Period. That's all you're allowed to consider.

The other considerations, I didn't say send a message. I said answer the questions that are right here. That's not in here. Send a message to who? That's not what you're being instructed to do. You didn't sit here for two weeks

1 to throw this in the trash because of some emotional
2 thing somebody told you to do.

3 I could do that, too, but we're
4 here to talk about the facts and the evidence in
5 this case.

6 Now, they admit for the first time
7 that they need security. Good to hear it. Good to
8 hear it. It's not what the regional security
9 manager says. How long is that going to last? Good
10 to hear. So for two years we hear, no, it's not our
11 fault. Disregard it. No, nothing to do about it.
12 Now today we hear they should have had security.

13 Let's go to Samantha. I told we
14 talked about Samantha's issue of seeing the police.
15 Now, you notice what they did. The testimony, very,
16 very important. You were instructed, the Charge
17 says what you are to consider is only the evidence
18 you hear in this trial. They played you snippets
19 that weren't played during the trial, that I didn't
20 get a chance to hear the whole testimony. Did they
21 have any officer who said, "I was on the scene and I
22 saw Samantha"? No, they don't have that. They have
23 other officers and a photograph.

24 Do they have an officer that says,
25 "I'm the one in the photograph that's a police

1 officer"? No. That's their argument.

2 There's no evidence of that.

3 Here's what the evidence is. This is Officer Yargo,
4 the first police car on the scene, the first police
5 car on the scene.

6 "Did you ever see the 4Runner on
7 site?

8 "No. I -- I don't recall seeing it.

9 "Okay. So the 4Runner was already
10 gone by the time you got there?

11 "Yes."

12 Officer Pritchett on the bicycle.

13 "Did you see the 4Runner drive off?

14 "I honestly don't remember."

15 The only other officer, Officer
16 Sullivan. They never brought you Sullivan. There's
17 no testimony from Sullivan as to what he saw. So
18 what they've done is told you over and over and over
19 again in this trial, over and over and over again
20 the snippets of testimony from officers who weren't
21 there without any statement from Samantha Bean.
22 Never heard a statement from Samantha Bean saying,
23 "I saw the police." There's no evidence of that.

24 They told you over and over, there
25 are these three officers and they left. Only two

1 officers that have testified said no. One said "I
2 don't remember." The one with the car flashing
3 lights said no.

4 Here's what the other witnesses
5 said. Let's go back.

6 "Do you remember whether or not the
7 police had arrived by the time the car
8 left? I'm talking about --

9 "No. The car -- the car -- I think
10 the car was already gone when the police
11 arrived.

12 "Do you remember specifically?

13 "They were -- she -- they were gone
14 by the time the police arrived.

15 "Before that you said, "By the time
16 the officers got there, Denton and them
17 had already left." And you said, "Yes."

18 "Yes.

19 "Okay. Do you remember the bicycle
20 police officers being in the parking
21 lot?

22 "Yes.

23 "Okay. Do you remember in
24 relationship to the time of the car
25 leaving when they got there?

1 "Maybe within two minutes."

2 "Okay. And how much time had passed
3 between when they were driving off and
4 the police showed up?

5 "It was shortly after, like -- I
6 don't -- I don't know if I should say
7 like an exact time or an estimate of
8 time.

9 "No. No. Seconds? Minutes?

10 "I would say probably minutes."

11 Every eyewitness at the scene --
12 what did Samantha see? The same thing. Every
13 eyewitness at the scene, the police came afterwards.
14 You don't have to check your common sense at the
15 door, I agree with that.

16 If they had testimony from an
17 officer that said "I saw this car at the scene," you
18 would have heard it. If they had a statement from
19 Samantha Bean saying "I saw the car at the scene,"
20 you would have heard it.

21 Instead what they do is play an
22 officer in a photo that showed them but they don't
23 let you see the rest of the testimony. We never
24 heard from them. This is the evidence in the case,
25 what Samantha Bean said over and over again. "Did

1 you see the police?" "No, no, no. I saw the police
2 station."

3 We'll talk about that later. Then
4 they never came back to that. That's what she
5 testified was, she saw the police station. They
6 told the officer and the officer said -- I
7 understand people from small towns, they don't know
8 those are open at night. Okay.

9 Now, what this is all about, this
10 discussion of confusion and misdirection, that's not
11 about the Charge. It's an effort to keep the
12 verdict down. That's what they're doing. That's
13 why they have all these lawyers. They don't want to
14 be held fully accountable. That's what this is
15 about. You see, they want to say we will accept
16 responsibility. We need security, but look over
17 here, look over here, other people that aren't in
18 this case, they should have accepted personal
19 responsibility.

20 Ladies and gentlemen, there's not a
21 question in this Charge that says was Denton Ward
22 negligent. This is what the Court is asking you to
23 do. There is no evidence that Denton Ward was
24 negligent. Nothing.

25 And, in fact, for all this talk,

1 the Court's instruction that the Court read to you,
2 when they tried to get into this evidence you were
3 instructed that you are to disregard any comments
4 you may have heard about either Ms. Crisp or
5 Mr. Ward being under the influence of alcohol.

6 And they're trying to tell you he
7 was drunk driving. That's not evidence. You've
8 been instructed not to consider it. They're asking
9 you to disregard the law. You have taken an oath.
10 Ms. Bean was never going to drive. That's why the
11 sudden emergency instruction is in there. She
12 didn't get behind the wheel until Bailey dragged
13 Denton into the car. That's when she got behind the
14 wheel.

15 The evidence was that she was below
16 the legal limit. They told her -- I won't have time
17 to play it. You remember the testimony of these
18 witnesses saying she said they weren't safe here.
19 Remember the three African-American females, "Get
20 out of here, you're not safe here."

21 What does a reasonable person do?
22 And what did the detective -- they didn't show you
23 the rest of this. Play this clip, please.

24 "And then a couple of more things.

25 You state, "Could you have done

1 things" -- "a few things differently?
2 Yes, but you were doing the best you
3 could given the situation. Do you see
4 that part?

5 "Yes, sir.

6 "What -- explain what you mean by
7 that statement.

8 "Based on the totality of the
9 circumstances that -- and also taking
10 into account her age, maturity level, I
11 felt that she was doing everything that
12 she could given that situation and her
13 level of maturity. I mean, we're all
14 humans and we make mistakes. And that's
15 basically what -- what I was getting at
16 there.

17 "Okay. And then you -- you state at
18 the very bottom, "Anyhow, you did great
19 and I am impressed with your honesty.
20 Most people your age would not have had
21 the courage to be as honest as you
22 were." And then that's the end of your
23 e-mail to Samantha; is that correct?

24 "Yes, sir."

25 THE COURT: Time signal, Counsel.

1 MR. HAMILTON: The police didn't
2 say she made a mistake, she did the best she could
3 under the circumstances. That's what the sudden
4 emergency instruction is. That's what the law is.
5 That's what it is.

6 Now, I want to turn to the issue of
7 the cause of death of Denton Ward. Dr. Dolinak did
8 the best job he could. But here's the one fact that
9 you need to know with Dr. Dolinak. All the experts
10 agree there was a blunt force trauma. Everybody
11 except Dr. Corrigan. Dr. Dolinak said he believed
12 that Denton Ward's head hit the pole. That was what
13 he believed. That's what he testified to.

14 And all of the experts agree that
15 that was not correct. That was not a correct fact.
16 It's not Dr. Dolinak's fault. These are the facts.
17 They don't contend that Denton Ward hit the pole.
18 No one has explained where all that blood came from.
19 Dr. Dolinak explained that he didn't have all of the
20 facts.

21 To say that this kid just had a
22 broken nose and maybe didn't need medical treatment,
23 I don't think there was a lawyer that can stand up
24 and say that. He just didn't know what the -- at
25 the time he did that -- and you could hear him on

1 the phone call with the Detective Cooper saying
2 that -- I'm having a difficult time. And it's hard
3 without a better account of the assault. But we
4 just go with what we have. That's what he said.

5 But the real thing that ends this
6 is forensic evidence of the amount of blood. You
7 think somebody that has that much blood, that's
8 3 inches up the carpet, doesn't need to go to the
9 hospital.

10 I mean, we've all seen people with
11 a bloody nose. You can use your common experience
12 on that. I've seen a lot of blood from a bloody
13 nose. Fill up 3 inches of carpet in the backseat of
14 the car?

15 Dr. Dolinak said you have blood in
16 his lungs. He couldn't get the skull fracture plus
17 the broken jaw or just the broken nose and lungs
18 full of blood and carpet full of blood. Blood
19 everywhere. That's what the witnesses said. No
20 more likely than -- more likely than not, that's the
21 standard.

22 I think the evidence is, is that
23 Denton Ward had fatal injuries from what happened at
24 McDonald's. He had a fractured skull. There's only
25 one explanation that's consistent with the evidence.

1 And that's that he received a kick to the jaw that
2 drove the bones of the jaw up into the base of the
3 skull, caused the fracture exactly where they
4 occurred, hyperextended the neck and caused those
5 other injuries. That's the only explanation that's
6 consistent with this.

7 If it's to the top of the head, how
8 does he get the broken jaw. He has a broken jaw, a
9 broken base of the skull and all of the medical
10 experts agreed that the blow can occur when you get
11 hit right here driving these bones into the skull
12 and twisting the head back and causing those other
13 injuries to the brain stem.

14 That's what the article that
15 Corrigan read from said. That's what the medical
16 article -- that's the hyperextension injury. Here's
17 what you have to do. Dr. Dolinak did say he
18 believed some of his head hit the pole, that's what
19 killed him. We know that being true, Dolinak had
20 one photo that showed his head near the pole but the
21 other photo you saw where his head was a foot away
22 from the pole.

23 Every single expert said his head
24 never touched the pole. They said that very
25 clearly. His head never touched the pole.

1 Dr. Corrigan says it was -- (unintelligible) --
2 there's no medical evidence that could possibly
3 work. You have to hear the evidence. There's no
4 medical evidence that that can cause this injury.

5 And they want to say, oh, look at
6 Corrigan, look at technology. They're saying two
7 different things. Dr. Burton is the only one who
8 gave an explanation that was consistent with the
9 forensic physical evidence.

10 And I want to -- I do want to
11 address this. They showed a statement from
12 Samantha. Samantha was a wreck. Can we go the --
13 here's the original statement from Samantha. I
14 can't get it to zoom properly. It says "I was a,
15 like, you know, asking some questions because Denton
16 kept trying to fall asleep. Well, Tanner got mad
17 that we were taking him to the hospital. Tanner got
18 mad that we were taking him to the hospital and I
19 was, like, I screamed back -- the last thing I
20 remember screaming, Denton saying, like, I told him
21 to shut up, that we had to take Denton."

22 That's what the original statement
23 was that Samantha gave to the police. So they want
24 to take a snippet here, a snippet there and say, oh,
25 that has to negate Dr. DiMaio who said Denton was

1 walking, Tanner was the one laid up. If they didn't
2 know these two guys -- said over and over again,
3 they pointed to it.

4 Detective Cooper interviewed her.
5 She got the names mixed up the first thing she said
6 when she came in the deposition. Why do they have
7 to rely on bogus evidence like that if they really
8 think their story lines up. That's a fair question.

9 Last thing, making a call.
10 Samantha, why didn't you make a call? Why didn't
11 the four of them get on their cell phones and make a
12 call.

13 THE COURT: Time, Counsel.

14 MR. HAMILTON: Make a call.
15 Samantha is driving the car. Bailey is tending to
16 her boyfriend who's unconscious, going in and out of
17 consciousness. Tanner's been stomped too. Who's
18 supposed to make a call.

19 Let's talk about who else had a
20 cell phone. Eddie Sosa. Michael Ray. Jesse Perez.
21 Mamadi Douno, did any of them make a call to get
22 security at this restaurant to fix this problem?
23 And now they just want to point at these kids for
24 decisions they made in a sudden emergency.

25 As the instruction is for the

1 11-minute-time period, all of that, if that's the
2 only reason we're here, they showed you a time line.
3 What's missing from the time line? McDonald's.
4 They say, oh, they started at 4:00 p.m. That wasn't
5 the evidence. They didn't show up until 6:00 or
6 7:00, that's what Samantha said. There's no
7 evidence that Denton had any meaningful amount of
8 alcohol and he's not on the chart, period.

9 In conclusion here's the issue. I
10 appreciate your service. I thank you for your time.
11 This is very, very important. You can see that it's
12 very important. They don't have this many lawyers
13 and this many clerks. This system is important.
14 They don't have lawyers, this many experts if they
15 don't think that there's a lot of people out there
16 that would rightfully think they ought to have to
17 pay fully. Not half justice. Half justice is half
18 injustice. Whole justice is justice for the loss of
19 these kids. And I would respectfully submit to you
20 that McDonald's has not been responsible, that they
21 don't respect the value of human life.

22 I showed you -- I'm not going to
23 touch it. How would Mr. Murphy -- for a quarter of
24 a million dollars would he hand over one of his
25 kids? Half a million dollars? Who would do that

1 among you? What does that say? What does that say?
2 Who would do that? Would anybody at that table do
3 that? Who would do that?

4 I get to ask the questions I do.
5 What would it take for one of us? What would I
6 want? Nothing. It wouldn't matter. So they're
7 going to come in and make these types of decisions,
8 not decisions in a car 11 minutes from the scene.
9 Not decisions in the parking lot.

10 Talk about explaining the courage
11 to get out of the car, getting them into the car
12 away from a mob, not those decisions, decisions
13 about defending themselves, preventing this.

14 The one thing that happened here,
15 that stops all of it. The one thing -- that's what
16 we're talking about. McDonald's. It's the one
17 thing that keeps us out of this courtroom. They
18 don't want to be here. Again: Hire security. You
19 don't hear the story. Again: Hire security.

20 It's because it's the one thing.
21 Everything else could be the same. Prior nights.
22 The same kids making it home. Denton stays behind
23 the wheel. They make it just fine, period.

24 The thing that sets all of this in
25 motion and that's the cause test, is McDonald's.

1 That's why we're here. They know that's why we're
2 here. I'm asking you to follow the law, follow the
3 evidence, apply the law to the evidence and give
4 full justice to these parents and these families.
5 And when you come back in here hold your head up
6 high that you have done something important for your
7 community, for the State and your country and give a
8 verdict that you can be proud of. Thank you.

9 THE COURT: Ladies and gentlemen of
10 the jury, that concludes this portion of the trial.
11 You now have the evidence, the Court's instructions
12 and the arguments before you. You may retire to the
13 jury room. Once you are assembled there together,
14 you may begin your deliberations.

15 The original of the Court's
16 instructions, which will be given to the Presiding
17 Juror, are the one that has blue back attached and
18 has my signature on it. You may retire to the jury
19 room.

20 *(Jury retired for deliberations.)*

21 THE COURT: All right. We're off
22 the record outside the presence of the injury.

23 MR. HAMILTON: The Defense in
24 closing played a tape of Samantha Bean and I
25 objected to it not being in evidence and so at the

1 very least I want to be sure -- I'm not asking for a
2 mistrial, but I want to be clear that that is not in
3 evidence. And that it doesn't go back to the jury
4 under any circumstance. I mean, I don't know if
5 there's an appropriate instruction that should be
6 given to the jury. There's nothing we can do now --
7 that was not in evidence. It was completely
8 inappropriate --

9 *(Off-the-record discussion.)*

10 *(Proceedings in recess awaiting*
11 *jury verdict.)*

12 *(Jury seated.)*

13 THE COURT: All right. Have a
14 seat, please.

15 Ladies and gentlemen, have you
16 reached a verdict?

17 FOREPERSON: Yes, sir.

18 THE COURT: All right. If you will
19 please hand the verdict form to Pat.

20 *(Foreperson complied.)*

21 THE COURT: The verdict appears to
22 be an 11-to-1 verdict.

23 The answer to Question No. 1 -- the
24 jury's answers are: As to No. 1, yes; No. 2, yes;
25 No. 3, yes; No. 4, no; No. 5, no; No. 6, no.

1 The jury's answers to Question
2 No. 2: As to No. 1, 97; as to No. 2, 2; as to
3 No. 3, 1. And there are dashes in 4, 5 and 6.

4 Answer to Question No. 3: No. 1,
5 yes; No. 2, yes; No. 3, yes; No.4, no; No. 5, no;
6 No. 6, no; No. 7, no.

7 Question No. 4: No. 1, 97;
8 No. 2, 2; No. 3, 1. And the balance of 4 through 7
9 have a dash.

10 Question No. 5: As to 1, loss of
11 companionship and society sustained in the past:
12 One million dollars; as to loss of society in the
13 future: Two million dollars.

14 As to No. 2, mental anguish
15 sustained in the past: Four million dollars. As to
16 mental anguish sustained in the future: Four
17 million dollars.

18 Question No. 6: As to No. 1: Five
19 million dollars.

20 Question No. 7, as to No. 1, loss
21 of companionship and society sustained in the past:
22 \$500,000 as to each named individual.

23 Loss of companionship and society
24 and the reasonable probability will be sustained in
25 the future, as to each party: One million dollars.

1 Mental anguish sustained in the
2 past as to each party: Two million dollars.

3 Mental anguish sustained in the
4 future as to each party: Two million dollars.

5 Does either side wish to have the
6 jury polled?

7 MR. ROSENBERG: No, Your Honor.

8 MR. HAMILTON: No.

9 THE COURT: All right. Ladies and
10 gentlemen of the jury, with the acceptance of your
11 verdict by this Court, you are now free from the
12 instructions that I have previously given you. You
13 can talk about this case with anybody you want to
14 talk with.

15 I would like, if you wouldn't mind,
16 to just remain a moment so I can talk to you about
17 what we can do to improve jury service in our
18 county.

19 I know the attorneys might wish to
20 speak with you. I will tell you this, that some of
21 the best lessons I ever learned about trying
22 lawsuits, I gained from jurors' observations of my
23 performance. But I want to tell you this, that you
24 don't have to stay to talk to them. You don't have
25 to talk to me. You can keep right on walking. But

1 if you would be willing to do that, I would
2 appreciate it.

3 Please leave your badges and your
4 notebooks in the jury room. You can do one of two
5 things with your notes, if you wish. You may take
6 your notes with you or you may leave them with us
7 and we will shred them this afternoon. So that's
8 your choice.

9 And with my thanks for your work in
10 a very difficult case and my special thanks for your
11 kindness and your willingness to be prompt and to
12 work long days, you have my very, very sincere
13 thanks. You're free to go to the jury room.

14 *(Jury retired and released.)*

15 *(Proceedings concluded.)*

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1 THE STATE OF TEXAS :

2 COUNTY OF BRAZOS :

3
4 I, FELIX THOMPSON, Official Court Reporter
5 in and for the 361st District Court of Brazos
6 County, Texas, do hereby certify that the above and
7 foregoing contains a true and correct transcription
8 of all portions of evidence and other proceedings
9 requested in writing by counsel for the parties to
10 be included in this volume of the Reporter's Record,
11 in the above-styled and numbered cause, all of which
12 occurred in open Court or in Chambers and were
13 reported by me.

14
15 I further certify that this Reporter's
16 Record of the proceedings truly and correctly
17 reflects the exhibits, if any, admitted by the
18 respective parties.

19
20 I further certify that the total cost for
21 the preparation of this Reporter's Record is
22 \$ TBD and was paid or will be paid by
23 the Defendants.

24
25 WITNESS MY OFFICIAL HAND on this the 23rd
day of November, 2015.

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