

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenville County

Honorable J. Derham Cole, Circuit Court Judge

KEVIN MARK WILLSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-000161

APPENDIX

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	)	2017-GS-23-7089
COUNTY OF GREENVILLE	)	2017-GS-23-7090
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	)	2017-GS-23-7094
	)	2017-GS-23-7095
STATE OF SOUTH CAROLINA,	)	
PLAINTIFF,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
KEVIN MARK WILLSON,	)	
DEFENDANT.	)	
_____	)	

December 3rd and 4th, 2018
Greenville, South Carolina

B E F O R E:

THE HONORABLE EDWARD W. MILLER, JUDGE

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EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVD</u>

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1*	Files from Defendant's Computer (Flash Drive)	80	98
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P R O C E E D I N G S

MONDAY, DECEMBER 3, 2018

(WHEREUPON, proceedings commenced at 11:32 a.m.)

THE COURT: Y'all got voir dire or witness lists?
Did you already put it up here?

MR. BANNISTER: It should be, Your Honor, from me,
from the defense.

MR. COLLIER: Your Honor, I haven't handed my voir
dire up yet.

(Pause in proceedings.)

THE COURT: All right. Anything before we bring the
panel up here?

MR. BANNISTER: Nothing from the defense, Your Honor.

MR. COLLIER: Nothing from us, Your Honor.

THE COURT: I'm not going to read all these questions
y'all put up here. The only one that caught my eye was
Defense Number 5. That's about strong moral, you know,
issues. You want to talk about your voir dire?

MR. COLLIER: Your Honor, Number 5, yeah. I mean, if
you could -- we'd be okay with it as long as -- the
qualifier at the end, that it wouldn't interfere with
their ability to be fair and impartial, but maybe we can
soften the introductory language as well. I certainly
don't mind a question about child pornography, you know,

1 their feelings about it, but it seems that Number 5 could
2 really wipe out a lot of them.

3 THE COURT: Yeah. I don't know about ability to be
4 fair and impartial, but, I mean, that's what -- what do
5 you want to tell me?

6 MR. BANNISTER: Well, I'd like for you to ask
7 Number 5. It's probably out of all of them the most
8 important one to us. It's just like guns or drugs.

9 THE COURT: Used to be alcohol.

10 MR. BANNISTER: DUI.

11 THE COURT: All right. We'll -- I think that one --
12 I think I don't have any trouble with that.

13 Any -- most of them are just in the general
14 questioning, so . . .

15 MR. BANNISTER: Well, I'll say most of the ones I
16 have pulled out are coming out of the standard sort of
17 written voir dire you get over at Federal Court. So it's
18 nothing too crazy.

19 THE COURT: Where?

20 MR. BANNISTER: In Federal Court.

21 THE COURT: Federal Court.

22 MR. BANNISTER: Yes. Where they send out ---

23 THE COURT: Oh, are we following Federal Court now,
24 Mr. Bannister?

25 MR. BANNISTER: --- voir dire to the -- no. But I

1 thought they had a pretty good idea about it, gave you
2 some relevant information to make informed strikes of
3 jurors.

4 How many do I have?

5 MR. COLLIER: Six.

6 THE COURT: Do they try cases over in Federal Court?
7 I wasn't sure if they did that or not.

8 MR. BANNISTER: Not recently.

9 THE COURT: All right. Anything in your voir dire
10 that you all think is essential? Most of it, I think, is
11 covered -- I cover almost -- I cover it all in the
12 standard stuff.

13 MR. COLLIER: Well, Your Honor, if it's all covered,
14 then no.

15 THE COURT: Okay. All right.

16 And I will tell you, Mr. Collier, I do -- I don't
17 think I've ever tried one with you. I do, after I
18 introduce the case, ask you all to stand and introduce
19 yourself so the jury can look at you.

20 (WHEREUPON, the jury panel entered the courtroom at
21 11:45 a.m.)

22 THE COURT: All right. Ladies and gentlemen, welcome
23 up to Courtroom 4. It's good to see you again.

24 We are -- as I told you downstairs, the next step is
25 that we are going to qualify you to serve for this

1 particular case. You've been qualified to serve generally
2 as jurors for the week, and now we are here to ensure that
3 we can have a fair and impartial panel from which to
4 select the jury. So remember, please, that you're under
5 oath, and please give us full, complete and truthful
6 answers to the questions which I will propound to you.

7 Before we get started, ladies and gentlemen, let me
8 introduce this case to you. There are seven indictments
9 in this case. The first indictment is the State of South
10 Carolina vs. Kevin Mark Willson. This is an indictment
11 for sexual exploitation of a minor, third degree. This
12 indictment alleges that Kevin Mark Willson did, on or
13 about August 18, 2015, willfully and knowingly commit the
14 crime of sexual exploitation of a minor, third degree,
15 that is, Kevin Mark Willson, while knowing the character
16 or content of the material, did possess material that
17 contains a visual representation of a minor engaging in
18 sexual activity or a minor appearing in a state of
19 sexually explicit nudity when a reasonable person would
20 infer the purpose is sexual stimulation in the file titled
21 "Pthc Pedo 5Yo Vaginal Penetration - Rca 5Y mpg" at his
22 residence in the county of Greenville as defined in the
23 code of laws in the State of South Carolina.

24 The next indictment is the State of South Carolina
25 vs. Kevin Mark Willson. This indictment alleges that

1 Kevin Mark Willson did, on or about August 18, 2015,
2 willfully and knowingly commit the crime of sexual
3 exploitation of a minor, third degree, in that, while
4 knowing the character or the content of the material, he
5 possessed material containing a visual representation of a
6 minor engaging in sexual activity or a minor appearing in
7 a state of sexually explicit nudity when a reasonable
8 person would infer the purpose is sexual stimulation in
9 the file titled "Kinderkutje Pthc Hc-c4G - Compile 4 Girls
10 - All Small and Loving It - 9.08 9Yo Mpg 7Yo Girl Try to
11 Fuck Ptsc Hussyfan Kingpass Kleuterkutje.mpg" at his
12 residence located in Greenville county defined in our
13 laws.

14 The next indictment, State of South Carolina vs.
15 Kevin Mark Willson, this indictment alleges that Kevin
16 Mark Willson did, on or about August 18, 2015, willfully
17 and knowingly commit the crime of sexual exploitation of a
18 minor, third degree, in that he did possess material
19 containing a visual representation of a minor engaging in
20 sexual activity or a minor appearing in a state of
21 sexually explicit nudity when a reasonable person would
22 infer the purpose is sexual stimulation in the file titled
23 "pedo_family Pthc - Two Young Boys 12-13Yo & Two Young
24 Girls 12-13Yo Suck & Fuck 23min.avi" at his residence
25 located in the county of Greenville as defined in our laws

1 in the State of South Carolina.

2 The next indictment alleges that -- the State vs.
3 Kevin Mark Willson did, on or about August 18, 2015, did
4 knowingly and willfully commit the crime of sexual
5 exploitation of a minor, third degree, in that, knowing
6 the character or content of the material, he possessed
7 material containing a visual representation of a minor
8 engaging in sexual activity or a minor appearing in a
9 state of sexually explicit nudity when a reasonable person
10 would infer the purpose is sexual stimulation in the file
11 titled "Pthc 2013 - 7Yo Gina Mvi 1858 04m32s.mp4" at his
12 residence in the county of Greenville as defined by the
13 laws of the State of South Carolina.

14 The next indictment, the State vs. Kevin Mark
15 Willson, this indictment alleges that he did, on or about
16 August 18, 2015, willfully and knowingly commit the crime
17 of sexual exploitation of a minor, third degree, in that,
18 knowing the character or content of the material, he
19 possessed material containing a visual representation of a
20 minor engaging in sexual activity or a minor appearing in
21 a state of sexually explicit nudity when a reasonable
22 person would infer the purpose is sexual stimulation in
23 the file titled "sdpa compilation babyj - nena de 5 a_os
24 cojida por enorme pija cbaby ptsc pthc nablot frifam.avi"
25 at his residence in Greenville county in violation of

1 statutes and laws of our state.

2 The next indictment, State of South Carolina vs.
3 Kevin Mark Willson, alleges he did, June 6, 2015, commit
4 the crime of sexual exploitation of a minor, second
5 degree, in that he did knowingly distribute, transport,
6 exhibit, receive, sell, purchase, exchange and/or solicit
7 material in the video file titled "V-15-Valya
8 8yo-pthc-fuck masturb and cum-pthc-good quality.avi" that
9 contains a visual representation of a minor engaged in
10 sexual activity or a minor appearing in a state of
11 sexually explicit nudity when a reasonable person would
12 infer the purpose is sexual stimulation as defined in our
13 laws of the State of South Carolina.

14 Finally, the State of South Carolina vs. Kevin Mark
15 Willson, this indictment alleges that Kevin Mark Willson
16 did, on or about June 4, 2015, willfully and knowingly
17 commit the crime of sexual exploitation of a minor, second
18 degree in that he did knowingly distribute, transport,
19 exhibit receive, sell, purchase, exchange, and/or solicit
20 material in the video file titled "Pthc Showstars Oxi &
21 Jenny 11Yo & 10Yo Topless.avi" that contains a visual
22 representation of a minor engaged in sexual activity or a
23 minor appearing in a state of sexually explicit nudity
24 when a reasonable person would infer the purpose is sexual
25 stimulation as defined in the code of laws in the State of

1 South Carolina.

2 Now, to these indictments, Kevin Mark Willson has
3 pled not guilty, and as such, certain rights attach which
4 belong to each and every person charged with a criminal
5 offense in this country, and that is he is presumed to be
6 innocent unless and until the State, who is the charging
7 body in this case, can prove to a jury beyond any
8 reasonable doubt each and every element of each offense
9 that is charged. Please keep that in mind throughout the
10 course of these proceedings.

11 Additionally, the documents which I have read to you
12 or published to you are nothing more than they appear to
13 be, and that is they are pieces of paper which contain the
14 allegations against this individual which allow this case
15 to wind its way through our system for adjudication here
16 in court, and you should make no presumption or take any
17 inference from the fact that these indictments have
18 issued.

19 JURY QUALIFICATION

20 THE COURT: All right. Ladies and gentlemen, please
21 keep all that in mind throughout the course of these
22 proceedings. And before I proceed to the questioning, I
23 would ask the attorneys to stand and introduce their
24 various cohorts. Thank you.

25 MR. COLLIER: Good morning, ladies and gentlemen. My

1 name is David Collier. I'm the prosecutor with the South
2 Carolina Attorney General's Office. This is my colleague,
3 Kyle Senn, also a prosecutor with the Attorney General's
4 Office.

5 THE COURT: All right. Thank you very much.

6 Mr. Bannister.

7 MR. BANNISTER: Thank you, Your Honor. If it please
8 the Court. My name is Jim Bannister. I practice with the
9 law firm of Bannister, White and Stalvey here in
10 Greenville, South Carolina. This is my client, Kevin Mark
11 Willson. This is one of the lawyers in our office,
12 Marcelo Torricos.

13 THE COURT: All right. Thank you very much.

14 All right. Ladies and gentlemen, is there any member
15 of the jury panel who is related by blood or marriage or
16 who has a business, personal or social relationship with
17 any of the attorneys here in the courtroom or any member
18 of the South Carolina Attorney General's Office or
19 Mr. Bannister's law firm? If so, please stand.

20 (No response.)

21 THE COURT: Is there any member of the jury panel
22 related by blood or marriage or who has a business or
23 personal relationship with Mr. Kevin Mark Willson? If so,
24 please stand.

25 (No response.)

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1 Yes, ma'am. Your name and juror number, please.

2 JUROR NUMBER 122: Candace Kuykendall, 122.

3 THE COURT: Okay. And please briefly tell me who.

4 JUROR NUMBER 122: I'm a victim of child sexual
5 abuse.

6 THE COURT: All right. Thank you very much. All
7 right. Would the fact that you have been that victim,
8 would that impair your ability to be fair and impartial in
9 this case?

10 JUROR NUMBER 122: It might.

11 THE COURT: Okay. Thank you very much.

12 All right. Is there any member of the jury panel or
13 family member who is a member of law enforcement? If so,
14 please stand.

15 Is there any member of the jury panel who is -- oh,
16 all right. Your name and number, sir?

17 JUROR NUMBER 251: Patrick Dean, Juror 251.

18 THE COURT: And tell me.

19 JUROR NUMBER 251: My uncle is a sheriff's deputy,
20 Greenville County.

21 THE COURT: Okay. All right.

22 And yes, sir. Your name and number?

23 JUROR NUMBER 21: Michael Burns, Number 21.

24 Brother-in-law is a deputy in Horry County.

25 THE COURT: Yes, ma'am. Your name and number for the

1 record?

2 JUROR NUMBER 122: Candace Kuykendall, 122. I'm a
3 former Greenville County Sheriff's Office employee.

4 THE COURT: Okay.

5 JUROR NUMBER 122: And I still have family with the
6 sheriff's office and Greenville City.

7 THE COURT: Okay. Would the fact that you all have
8 those relationships impair your ability to be fair and
9 impartial in this case to either the State or the defense?
10 And what I want to know is whether or not you could judge
11 this case based solely on the evidence and the law
12 presented in this courtroom in a fair and impartial
13 fashion. If you cannot do that, please let me know right
14 now.

15 (No response.)

16 THE COURT: All right. Thank you very much.

17 I might re-ask this question. I can't remember if I
18 asked it or not. Is there any member of the jury panel
19 who's aware of any bias or prejudice towards either the
20 State or the defense? If so please stand.

21 (No response.)

22 THE COURT: Is there any member of the jury panel who
23 is a member of or a contributor to a group whose primary
24 concern is the promotion of law enforcement or victims
25 rights? MADD, SAD or CAV would be examples. If so,

1 please stand.

2 (No response.)

3 THE COURT: All right. I would tell you, as you
4 heard from the indictment, is there any member of the jury
5 panel who has such strong personal, religious or
6 philosophical feelings about the subject matter of child
7 pornography that you could not judge this case based
8 solely on the merits of the evidence presented in this
9 courtroom and the law as I would give it to you? If you
10 can't do that, please let us know right now.

11 (No response.)

12 THE COURT: Is there any member of the jury panel who
13 knows of any reason whatsoever why you should not serve in
14 this case with particular emphasis on your ability to
15 judge this case based solely on the merits of the evidence
16 presented in the courtroom and the law presented in the
17 courtroom? If you can't do it, please let us know right
18 now.

19 (No response.)

20 THE COURT: All right. Thank you.

21 Anything further from the State?

22 MR. COLLIER: Nothing further, Your Honor.

23 THE COURT: Defense?

24 MR. BANNISTER: No, Your Honor.

25 THE COURT: Okay. All right. Ladies and gentlemen,

1 we're going to strike the jury at this time. When your
2 name is called, please stand in place and await further
3 instructions.

4 Wait a second. Let me talk to the two lead lawyers
5 in this right now.

6 (WHEREUPON, a bench conference was held off the record.)

7 THE COURT: All right. Ladies and gentlemen, I know
8 downstairs -- I believe this case is going to take more
9 than a day, and I know downstairs that I granted
10 protection requests to certain people for tomorrow. If I
11 did that -- or tomorrow or Wednesday or today. If I did
12 that, please stand.

13 Okay. All right. Yes, ma'am. If you would, your
14 name and number?

15 JUROR NUMBER 14: Patricia Block, Number 14.

16 THE COURT: 14. And when did I grant you protection?

17 JUROR NUMBER 14: Wednesday morning, 9 a.m.

18 THE COURT: For -- at 9 a.m. And that was for an
19 hour or two?

20 JUROR NUMBER 14: Yes.

21 THE COURT: Okay. All right. Thank you very much.

22 Anybody else? Okay. All right. Go ahead.

23 JURY SELECTION

24 THE CLERK: Juror Number 15, Michael Booth. Please
25 stand.

1 (WHEREUPON, Michael Booth, a white male, stood.)

2 THE CLERK: What says the State?

3 MR. COLLIER: Please seat this juror.

4 THE CLERK: What says the defendant?

5 MR. BANNISTER: Seat Mr. Booth.

6 THE CLERK: Sir, you may bring your things to the
7 jury box.

8 Juror Number 48, Melody Curtis.

9 (WHEREUPON, Melody Curtis, a white female, stood.)

10 THE CLERK: What says the State?

11 MR. COLLIER: Please seat this juror.

12 THE CLERK: What says the defendant?

13 MR. BANNISTER: Please seat Ms. Curtis.

14 THE CLERK: Please bring your things to the jury box.

15 Juror Number 21, Michael Burns.

16 (WHEREUPON, Michael Burns, a white male, stood.)

17 THE CLERK: What says the State?

18 MR. COLLIER: Please excuse Mr. Burns.

19 THE CLERK: Sir, you may take a seat.

20 Juror Number 175, Heather Reback.

21 (WHEREUPON, Heather Reback, a white female, stood.)

22 THE CLERK: What says the State?

23 MR. COLLIER: Please seat this juror.

24 THE CLERK: What says the defendant?

25 MR. BANNISTER: Please excuse Ms. Reback.

1 THE CLERK: Ma'am, you may take a seat.
2 Juror Number 133, Daniel Lyvers.
3 (WHEREUPON, Daniel Lyvers, a white male, stood.)
4 THE CLERK: What says the State?
5 MR. COLLIER: Please seat this juror.
6 THE CLERK: What says the defendant?
7 MR. BANNISTER: Please seat Mr. Lyvers.
8 THE CLERK: Sir, please bring your things to the jury
9 box.
10 Juror Number 243, Willie Willingham.
11 (WHEREUPON, Willie Willingham, a black female, stood.)
12 THE CLERK: What says the State?
13 MR. COLLIER: Please seat this juror.
14 THE CLERK: What says the defendant?
15 MR. BANNISTER: Please excuse Ms. Willingham.
16 THE CLERK: Ma'am, you may take a seat.
17 Juror Number 241, Priscilla Williams.
18 (WHEREUPON, Priscilla Williams, a white female, stood.)
19 MR. COLLIER: Please seat this juror.
20 THE CLERK: What says the defendant?
21 MR. BANNISTER: Please excuse Ms. Williams.
22 THE CLERK: Ma'am, you may take a seat.
23 Juror Number 82, Geoffrey Gill.
24 (WHEREUPON, Geoffrey Gill, a white male, stood.)
25 THE CLERK: What says the State?

1 MR. COLLIER: Please seat this juror.

2 THE CLERK: What says the defendant?

3 MR. BANNISTER: Please seat Mr. Gill.

4 THE CLERK: Please bring your things to the jury box.

5 Juror Number 63, Mark Efird.

6 (WHEREUPON, Mark Efird, a white male, stood.)

7 THE CLERK: What says the State?

8 MR. COLLIER: Please excuse this juror.

9 THE CLERK: Sir, you may take a seat.

10 Juror Number 49, Olivia CuvIELlo.

11 (WHEREUPON, Olivia CuvIELlo, a white female, stood.)

12 THE CLERK: What says the State?

13 MR. COLLIER: Please seat this juror.

14 THE CLERK: What says the defendant?

15 MR. BANNISTER: Please seat Ms. CuvIELlo.

16 THE CLERK: Please bring your things to the jury box.

17 Juror Number 57, Curtis Duckett.

18 (WHEREUPON, Curtis Duckett, a black male, stood.)

19 THE CLERK: What says the State?

20 MR. COLLIER: Please seat this juror.

21 THE CLERK: What says the defendant?

22 MR. BANNISTER: Please seat Mr. Duckett.

23 THE CLERK: Sir, please bring your things to the jury
24 box.

25 Juror Number 186, Sheila Shockley.

1 (WHEREUPON, Sheila Shockley, a white female, stood.)

2 THE CLERK: What says the State?

3 MR. COLLIER: Please seat this juror.

4 THE CLERK: What says the defendant?

5 MR. BANNISTER: Please excuse Ms. Shockley.

6 THE CLERK: Ma'am, you may take a seat.

7 Juror Number 54, Jeffrey Douglas.

8 (WHEREUPON, Jeffrey Douglas, a white male, stood.)

9 THE CLERK: What says the State?

10 MR. COLLIER: Please seat this juror.

11 THE CLERK: What says the defendant?

12 MR. BANNISTER: Please seat Mr. Douglas.

13 THE CLERK: Sir, please bring your things to the jury
14 box.

15 Juror Number 198, Brittany Sprayberry.

16 (WHEREUPON, Brittany Sprayberry, a white female, stood.)

17 THE CLERK: What says the State?

18 MR. COLLIER: Please seat this juror.

19 THE CLERK: What says the defendant?

20 MR. BANNISTER: Please seat Ms. Sprayberry.

21 THE CLERK: Please bring your things to the jury box.

22 Juror Number 128, Amber Lenger.

23 (WHEREUPON, Amber Lenger, a white female, stood.)

24 THE CLERK: What says the State?

25 MR. COLLIER: Please seat this juror.

1 THE CLERK: What says the defendant?

2 MR. BANNISTER: Please seat Ms. Lenger.

3 THE CLERK: Please bring your things to the jury box.

4 Juror Number 73, Brenda Ferro.

5 (WHEREUPON, Brenda Ferro, a white female, stood.)

6 THE CLERK: What says the State?

7 MR. COLLIER: Please seat this juror.

8 THE CLERK: What says the defendant?

9 MR. BANNISTER: I'm sorry. What was that number
10 again?

11 THE CLERK: 73.

12 MR. BANNISTER: Oh, 73. I'm sorry. I thought you
13 said 173.

14 Please excuse Ms. Ferro.

15 THE CLERK: Ma'am, you may take a seat.

16 Juror Number 179, Cameron Ross.

17 (WHEREUPON, Cameron Ross, a white male, stood.)

18 THE CLERK: What says the State?

19 MR. COLLIER: Please excuse this juror.

20 THE CLERK: Sir, you may take a seat.

21 Juror Number 39, Renato Condor.

22 (WHEREUPON, Renato Condor, a Hispanic male, stood.)

23 THE CLERK: What says the State?

24 MR. COLLIER: Please excuse this juror.

25 THE CLERK: Sir, you may take a seat.

1 Juror Number 92, Kimberly Greig.

2 (WHEREUPON, Kimberly Greig, a white female, stood.)

3 THE CLERK: What says the State?

4 MR. COLLIER: Please seat this juror.

5 THE CLERK: What says the defendant?

6 MR. BANNISTER: Seat the juror.

7 THE CLERK: Ma'am, please bring your things to the
8 jury box.

9 Juror Number 64, Gail Ensley.

10 (WHEREUPON, Gail Ensley, a white female, stood.)

11 THE CLERK: What says the State?

12 MR. COLLIER: Please seat this juror.

13 THE CLERK: What says the defendant?

14 MR. BANNISTER: Your Honor, this is one of the folks
15 I had down. She had protection for Thursday. I don't
16 know that we'll get to Thursday, but I just . . .

17 THE COURT: Okay. We're good.

18 MR. BANNISTER: Okay. Seat Ms. Ensley.

19 THE CLERK: Please bring your things to the jury box.

20 Juror Number 227, Robert Vaughn.

21 (WHEREUPON, Robert Vaughn, a white male, stood.)

22 THE CLERK: What says the State?

23 MR. COLLIER: Please excuse this juror.

24 THE CLERK: Sir, you may take a seat.

25 Juror Number 230, Jessica Wall.

1 (WHEREUPON, Jessica Wall, a white female, stood.)

2 THE CLERK: What says the State?

3 MR. COLLIER: Please seat this juror.

4 THE CLERK: What says the defendant?

5 MR. BANNISTER: Please seat Ms. Wall.

6 THE CLERK: Ma'am, please take your things to the
7 jury box.

8 THE COURT: Two alternates, one and one on each.

9 THE CLERK: Juror Number 86, Jessica Godfrey.

10 (WHEREUPON, Jessica Godfrey, a white female, stood.)

11 THE CLERK: What says the State?

12 MR. COLLIER: I'm sorry. Is this 186?

13 THE CLERK: 86.

14 MR. COLLIER: Oh, 86. I'm sorry.

15 Please seat this juror.

16 THE CLERK: What says the defendant?

17 MR. BANNISTER: Please excuse Ms. Godfrey.

18 THE CLERK: Ma'am, you may take a seat.

19 Juror Number 187, Tracy Shook.

20 (WHEREUPON, Tracy Shook, a white female, stood.)

21 THE CLERK: What says the State?

22 MR. COLLIER: Please seat this juror.

23 THE CLERK: What says the defendant?

24 MR. BANNISTER: Please seat the juror.

25 THE CLERK: Ma'am, please take your things to the

1 jury box.

2 Juror Number 251, Patrick Dean.

3 (WHEREUPON, Patrick Dean, a black male, stood.)

4 THE CLERK: What says the State?

5 MR. COLLIER: Please seat this juror.

6 THE CLERK: What says the defendant?

7 MR. BANNISTER: Please seat Mr. Dean.

8 THE CLERK: Sir, please take your things to the jury
9 box.

10 THE COURT: All right. Any exception or objection to
11 the jury as empanelled pursuant to Batson or J.E.B., from
12 the State?

13 MR. COLLIER: No, Your Honor.

14 THE COURT: From the defense?

15 MR. BANNISTER: No, Your Honor.

16 THE COURT: Okay. All right. Ladies and gentlemen,
17 we have two groups in here, and one group thinks they won
18 the lottery and one group thinks they lost. I think the
19 group that's been selected has won the lottery, and I will
20 tell you that it is a rare event to be called to the
21 courthouse to sit in a jury panel pool, rarer still to
22 come up to the courtroom to sit on a jury panel, but very
23 rare to be selected to serve on a jury. And it is one of
24 the most important civic functions that any citizen can
25 perform. And so you all might have a sense of relief that

1 you weren't selected, but I can assure you and I hope that
2 you do get a chance to serve as a juror. I have not
3 spoken to any jurors that I know of who have ever served
4 on a jury who did not get a deep sense of satisfaction and
5 reward for the hard work that they put in for their fellow
6 citizenry.

7 So with that, ladies and gentlemen, I'm going to
8 excuse you all back down to the jury assembly room, and
9 they will tell you what comes next. Okay. Thank you.

10 (WHEREUPON, the remaining jury panel exits the courtroom
11 at 12:16 p.m.)

12 THE COURT: Let me ask, is there any reason not to
13 swear the jury before we break, let them go?

14 MR. COLLIER: Yes, Your Honor. We prefer to argue
15 the motion before the jury is sworn.

16 JURY INSTRUCTIONS

17 THE COURT: Okay. All right. Ladies and gentlemen,
18 I'm sincere when I say I think you all are the fortunate
19 ones to have been selected to serve. It's a great
20 privilege and a great responsibility to serve on a jury,
21 and we appreciate the sacrifices that you've made to come
22 up here and fulfill that civic duty.

23 I want to tell you, we have a dispute about the facts
24 in the case which can't be resolved in any other fashion
25 other than to ask a jury to come up and listen to the

1 evidence presented in the courtroom -- and normally, we
2 have the door closed, but I guess we're all right -- and
3 listen to the evidence presented in this courtroom and the
4 law as I would give it to you and come to a decision that
5 resolves that dispute.

6 I would remind you once again that you should make no
7 presumption or take any inference from the fact that those
8 indictments issued. They are not evidence, and please
9 don't assume because they issued one way or another with
10 respect to guilt or innocence. Guilt or innocence is
11 determined from the presentation of the evidence based on
12 the law that you'll hear in this courtroom.

13 I also remind you that every citizen charged with a
14 criminal offense in this country and in this state and in
15 this county is presumed to be innocent unless and until
16 the charging body, in this case the State of South
17 Carolina, can prove to a jury beyond any reasonable doubt
18 each and every element of each offense that is alleged and
19 brought to court. Please keep that in mind throughout the
20 course of the proceedings.

21 I want to tell you, I break a trial into five parts
22 so that you all have a procedural road map as to where you
23 are and what's coming next. So the first part we're
24 really going to get started on after lunch. We have a
25 number of legal issues to discuss, so I'm going to, in a

1 few minutes, excuse you until 2:30. I think that's --
2 hopefully, that will be sufficient. And we'll stay here
3 and get the job done on this other stuff. But the first
4 part will be the opening statements to you from the
5 attorneys. And opening statements are brief and
6 nonargumentative statements to you by the attorneys about
7 how they perceive the case.

8 The second part of the trial is the meat and potatoes
9 of each and every trial, and that is the presentation of
10 the testimony and the evidence in the case.

11 Now, the evidence will come to you generally in one
12 of three ways. The most commonly thought of way in my
13 mind is through oral testimony from the witness stand.
14 The second most common way is through the presentation of
15 tangible items or documents. And the third most common
16 way is when the parties agree that some fact is so beyond
17 dispute that you should accept it as being true, and
18 that's what we call a stipulation of the parties. So I
19 don't know what combination the evidence will come to you
20 in, but generally, it will come to you in one of those
21 three ways.

22 The third part of the trial is after all of the
23 evidence has been presented, the attorneys make their
24 closing arguments to you. So you've got an opening
25 statement, and you have a closing argument. And in the

1 closing argument, the attorneys argue the facts and the
2 law to you and advocate their position.

3 The fourth part of the trial will be when I charge
4 you as to what the law is as it applies to this case.

5 And then the fifth part of the trial will be when you
6 all retire to your jury room to deliberate this case, come
7 to a decision and resolve the dispute.

8 So the parts are not of equal length, but you'll have
9 an idea about where you are and what's coming next if you
10 can remember that little map.

11 I'm sure I'm going to ask you to do many things
12 throughout the course of the trial, but there are three
13 main things I ask you to do. The first one is to keep an
14 open mind. We go through all the questioning to ensure
15 that we have a fair and impartial jury that will judge
16 this case based solely on the merits of the evidence and
17 the law as it is presented in this courtroom. So don't
18 make a decision now or after the first witness or after
19 the last witness. Wait until you're deliberating in your
20 jury room to come to a decision about how to resolve this
21 dispute.

22 The second thing I ask you to do seems a little
23 simple, and it is, but can be very difficult, and that is
24 to pay attention throughout the course of the trial. If
25 you let your mind wander off, you might miss something

1 that was said from the witness stand or the way the
2 witness answers a question, and what we call a witness's
3 demeanor, and in your deliberations, if you weren't paying
4 attention, you would be at a disadvantage if you missed
5 out on that. So I ask y'all to pay attention throughout
6 the course of the trial.

7 The third thing I ask you to do and instruct you to
8 do, and this is vital and essential, and you will swear an
9 oath to do this, is not to do -- not to do any independent
10 research, don't talk about this case with anyone. The
11 facts of the case, when you're going to lunch, you're not
12 going to know anything about the facts of the case really,
13 but don't discuss the facts of the case. Even an innocent
14 comment from someone who you like and trust or someone
15 even who you don't like might have an impact on your state
16 of mind, and that would not be fair to the parties here in
17 this case, it wouldn't be fair to your fellow jurors, and
18 most importantly, it wouldn't be fair to you to allow
19 someone who is not making the sacrifices that each of you
20 are making to have any input in the outcome of this case.
21 Those people are not watching the witnesses, they're not
22 in here, and they don't know what's going on, and they
23 should have no input in how this case is decided. So that
24 includes, ladies and gentlemen, going on the Internet and
25 doing research. That includes social media. Do not get

1 on social media about this case. If you protect -- just
2 ensure that everything that you base your decision on is
3 here in the courtroom, which is constitutionally
4 protected. So I implore you not to discuss the case.

5 I'll tell you, y'all are the sole judges of the
6 facts. The trial judge by law is not allowed to have an
7 opinion about the facts of the case, so don't think by
8 anything I say or do throughout the course of the trial
9 that I have such an opinion. It is up to you all to
10 determine and decide what to believe, what not to believe,
11 what you feel is true and what you feel is not true.
12 That's entirely up to you all.

13 That same law makes me the sole judge of the law. So
14 if you have any idea as to what you think the law is or
15 what you think the law ought to be and it differs from
16 what I tell you the law is throughout the course of the
17 trial and at the conclusion of the trial, you must set
18 aside your own opinion and apply the law precisely as I
19 state it to you, and that ensures that everyone tried in
20 this courthouse is tried under the same law. So I'm going
21 to instruct y'all to do that.

22 A couple other things that I'll just tell you about.
23 From time to time, you saw me ask the lawyers to come up
24 and talk to me. And we call that a bench conference.
25 There might be times when we have what we call an

1 in-camera hearing where we excuse you all to your jury
2 room where we discuss some legal issue or whether or not
3 some piece of evidence should or should not be admitted.
4 And if it shouldn't be admitted, I think you can
5 understand why we wouldn't want you in here to hear it.
6 We also talk about other logistical things about how long
7 a witness is going to take, what's coming next and those
8 sort of things. We are not trying -- we may be trying to
9 keep something from you, but we are not trying to deceive
10 you. I promise you that.

11 So with that, ladies and gentlemen, I'm going to
12 excuse you and ask you to be back at 2:30. And when you
13 get back, I would ask you to do one other thing for me,
14 and that is decide, if you can, from among the first 12
15 chosen who you would like to be the foreperson of the
16 jury. And the foreperson is the moderator of the
17 discussions during your deliberations at the conclusion of
18 the trial and the jury spokesperson here in court should
19 that become necessary.

20 So with that, ladies and gentlemen, I'll excuse you
21 till 2:30 and hope you have a pleasant lunch. Thank you.
22 And the bailiffs will show you the back way in and out.

23 (WHEREUPON, the jury exits the courtroom at 12:25 p.m.)

24 THE COURT: Motions. All right. What have you got?

25 MR. BANNISTER: Your Honor, in speaking just briefly

1 with Mr. Collier, I understood that it might make the most
2 sense to go through my motion to suppress for the
3 warrantless search first.

4 THE COURT: Okay.

5 MR. BANNISTER: And the basis for that motion is, as
6 I understand it, the way in which law enforcement began to
7 target the IP address, which is the computer that
8 ultimately was located at [REDACTED] Watkins Circle and
9 ultimately had the videos and the photographs that are at
10 issue in the case or was connected to it.

11 So as I understand it, this was a warrantless search
12 conducted from the Attorney General's Office by special
13 investigators in the Attorney General's Office. It was
14 conducted by virtue of a program that was being run
15 through the Attorney General's Office on their computers
16 that crawls out and looks on the Internet for hash values
17 of known child pornography. The hash values represent --
18 I've heard it called a photo DNA, a fingerprint of a video
19 or a file. In this particular case, the computer notified
20 Special Investigator Atkins that there was a hash value of
21 interest. It was within the BitTorrent clientele
22 peer-to-peer file-sharing network that exists on the
23 Internet. It is, as I understand it, somewhat separate
24 from the Internet in the sense that BitTorrent allows
25 clients of that software to access a library that exists

1 in a BitTorrent server called a tracker. So in this case
2 when Special Investigator Atkins received a notice that
3 there was a file of interest, he then had to go into or
4 seek information from the BitTorrent tracker, that is, the
5 server for BitTorrent, in order to find an IP address that
6 potentially was associated with that file. It was at that
7 point, having found an IP address, that the investigator
8 then connected to -- directly from his computer to the IP
9 address that was the target to then start acquiring
10 information from the target IP address which he then later
11 downloaded, reviewed and determined it was child
12 pornography.

13 So as an initial matter, in this particular case, I
14 would assert that the search of the IP address that was
15 the target was a warrantless search and therefore was
16 subject to being beyond the requirements of our
17 constitution, it was unlawful and anything acquired at
18 that point would and should be suppressed.

19 THE COURT: Hmmm. That's interesting. Kind of like
20 searching a garbage can. It's public domain.

21 MR. BANNISTER: Well, and that's the -- that's where,
22 Your Honor, I take issue with it being in the public
23 domain in the sense that if I understand it correctly, he
24 is -- or an investigator is connecting with the IP address
25 in more than what would be the typical peer-to-peer in the

1 BitTorrent network.

2 I'm doing a lot of explanation here about how this
3 works. And I am certainly not the expert on it, so at
4 some point, I need to get Investigator Atkins on the stand
5 to kind of go through this. But I think what you'll hear
6 him say, Judge, is that the BitTorrent network is designed
7 to be a file-sharing network between clients of
8 BitTorrent. And the difference here between something
9 being in the public domain is that Special Investigator
10 Atkins, when he's hooking up with one particular computer
11 from his computer, he's doing something different than
12 what is permitted or normal in the BitTorrent client
13 software world.

14 THE COURT: According to who?

15 MR. BANNISTER: Well, according to how BitTorrent
16 normally works. I believe that -- well, I've been told
17 that the special investigator's software has been
18 modified, particularly for law enforcement, so that they
19 can have this sole connection between their computer and a
20 target computer. The way it will normally work for
21 BitTorrent clients is that their computer is connected
22 with thousands of other computers.

23 And just by way of example, if you're going to use
24 BitTorrent to download a movie, let's just say Star Wars,
25 that file exists amongst hundreds if not thousands of

1 different computers in the BitTorrent network. And so
2 when you as a client of BitTorrent want to watch Star
3 Wars, you enter the query into their server, BitTorrent
4 server, you get presumably a number of hits, and then you
5 choose one. And when that file comes into your computer,
6 it is coming from lots of different computers. They're
7 each delivering a smaller portion of the whole. It's why
8 BitTorrent is the preferred peer-to-peer file sharing when
9 you're talking about very large shares because it can move
10 very fast.

11 In just layman's terms, the way I think about it, if
12 you can remember the old reel-to-reel movies, they're
13 actually thousands of frames of a picture that are rolled
14 sequentially and fast enough so that it appears that
15 there's movement on the screen. That's the same way with
16 these bits of data that exist out there in BitTorrent
17 world. You may have one frame on a computer over here,
18 You may have one picture frame over there, and your
19 computer is then assembling all of these picture frames in
20 the correct order as they come in from thousands of
21 different computers. And so by changing the software, by
22 changing the nature of the connection, if you will, in the
23 BitTorrent software, the investigator is conducting a
24 search that would not normally be available to somebody in
25 the public. That's why I think it's different than the

1 public domain.

2 THE COURT: Yeah. Tell me.

3 MR. SENN: Judge, I think we might be able to help
4 flesh this out a little bit more if we put Kevin Atkins on
5 the stand, Special Investigator Kevin Atkins.

6 THE COURT: Well, first, I mean, he's -- he's -- it
7 sounds to me like he's not sure that this is really a
8 search. What do you think? If I think it's not a search,
9 then the fact that it's warrantless or there's a warrant
10 is of no meaning. So . . .

11 MR. SENN: Judge, we believe this is all publicly
12 available. We believe that no one has an expectation of
13 privacy in their IP address or these files that they
14 publicly put out there. One of my favorite cases on this
15 is U.S. v. Stoltz. I can give you the cites for these if
16 necessary. But my favorite quote is "one who gives his
17 house keys to all his friends who request them should not
18 be surprised should some of them open the door without
19 knocking." And there is extensive amount of case law on
20 -- that no one has a reasonable expectation of privacy in
21 publicly shared files and that this is not actually a
22 search at all.

23 THE COURT: Okay. So he hasn't shifted the burden
24 yet. You've got to convince me this is a search.

25 MR. BANNISTER: Well, when he's connecting to -- when

1 the investigator is connecting to the IP address, the
2 purpose of that is to determine what is on the other
3 computer, and that connection and that search then on the
4 other computer is the search. I don't know how else you
5 could call it that. I mean, ultimately, what happened was
6 he downloaded an entire file on -- the special
7 investigator did to his computer from that sole source, or
8 at least the data transferred from that sole source ---

9 THE COURT: What difference does it make?

10 MR. BANNISTER: --- to the investigator.

11 THE COURT: What difference does that make as opposed
12 to getting Star Wars from a million different computers?

13 MR. BANNISTER: Well, because ---

14 THE COURT: I'll say this. When he requested that --
15 the Star Wars movie with all these computers, if what
16 you're telling me is accurate and correct, and I'm sure it
17 is, there are -- how many other millions of computers that
18 are on this same -- what did you call it? The torrent ---

19 MR. BANNISTER: BitTorrent network.

20 THE COURT: --- BitTorrent network ---

21 MR. BANNISTER: Yes, sir.

22 THE COURT: --- who don't have Star Wars on their
23 computer? So he didn't get anything from them.

24 MR. BANNISTER: That's correct.

25 THE COURT: Right. So there's no -- how is this any

1 different? It may be a little -- a smaller field of
2 choice when he's receiving the files at issue in this
3 case. But why is the fact that just because he narrows
4 where he's looking, why is that different from the Star
5 Wars when all these other computers who don't have it,
6 he's asked them too but they're not sending him anything?
7 How is that any different?

8 MR. BANNISTER: Well, because he has changed the
9 dynamic of what you agree to if you're going to enter into
10 the BitTorrent network.

11 THE COURT: Who says that? Who says that? You're
12 making that statement. Who -- show me where the contract
13 is.

14 MR. BANNISTER: So that's -- well, I guess I need to
15 call Investigator Atkins to the stand then and we'll go
16 from there.

17 THE COURT: Well, that's what I'm driving at. You're
18 just telling me stuff, and I don't know.

19 MR. BANNISTER: Well, I presumed they were going to
20 call him in response to my motion.

21 THE COURT: Well, you haven't -- in my mind, have not
22 established this as a search to shift the burden.

23 MR. BANNISTER: Well, if we're going to call him to
24 the stand, we might as well go on into the second motion
25 to suppress as well, which relates to the conduct of

1 actually downloading the file to -- from this single
2 source to his computer. I mean ---

3 THE COURT: Okay. Yeah. I agree with you.

4 MR. BANNISTER: Okay. All right. Then I'll call
5 Special Investigator Brian Atkins to the stand. Kevin.
6 I'm sorry.

7 THE CLERK: Please place your left hand on the Bible
8 and raise your right hand.

9 WHEREUPON,

10 KEVIN ATKINS

11 After having been duly sworn, testified as follows:

12 THE CLERK: Thank you. Please take a seat and state
13 your name for the record.

14 THE WITNESS: It's Kevin Atkins, A-T-K-I-N-S.

15 DIRECT EXAMINATION

16 BY MR. BANNISTER:

17 Q Investigator Atkins, so let me start with some of the
18 things that I was representing to the Court. One, am I
19 correct that the search that generated the hit, if you
20 will, that started your investigation in this particular
21 case came from a computer program that was being run at
22 the Attorney General's Office which was looking for known
23 hash values of child pornography?

24 A Looking for hash values that had been made publicly
25 available ---

1 Q Okay. So ---

2 A --- for download.

3 Q All right. But we're talking about known child
4 pornography.

5 A Well, we call them "files of interest" because in one
6 state it may be illegal, another state it's not, so we --
7 they're files of interest to people conducting child
8 pornography investigations is how we classify it.

9 Q Right. But, I mean, you're not going to call up Star
10 Wars with your search program.

11 A No, sir.

12 Q Okay. All right. So these files of interest, then
13 your program is looking for those. And in this particular
14 case, somewhere on or about late March/early June of 2015,
15 there was a hit or a notification to you, the
16 investigator, that the search engine had generated a hash
17 value of interest.

18 A What I was made aware of that somebody had this file
19 available for download.

20 Q Okay. And the way -- and so what I was saying was
21 that the library of where these files of interest existed
22 is -- in this particular case was on a BitTorrent -- they
23 call it a tracker. Am I correct about that?

24 A The way I understand it, a tracker would be a
25 computer that would be designated as a tracker to help

1 generate the flow to where you need to go to get the file.

2 Q Okay. So is that where the library is that says,
3 okay, look, this is where this file of interest is?

4 A I don't think so. I don't know if I understand the
5 question entirely.

6 Q All right. So -- well, let me back up for just a
7 second for what a file of interest is in terms of the hash
8 value that's associated with it.

9 A Yes, sir.

10 Q Am I correct in saying that files of interest, there
11 is a database of files of interest for child pornography
12 investigations?

13 A Yes, sir.

14 Q And that database includes the different categories
15 that maybe the videos fall into and therefore whether they
16 correspond to legal standards in various states.

17 A That's pretty close. Yes, sir.

18 Q And that the value, the hash value for a particular
19 file typically is a 128 alphanumeric number that is
20 associated with a particular file.

21 A Yes, sir.

22 Q All right. And that alphanumeric number works just
23 like DNA would for an individual in terms of trying to
24 identify a specific file.

25 A Yes, sir.

1 Q And so what your computer program at the Attorney
2 General's Office does is it takes that hash value that
3 comes out of the known database, and then it searches on
4 the Internet for those known hash values?

5 A Well, for people who have made the file available on
6 the network.

7 Q All right. And that's in particular to the
8 BitTorrent network, or BitTorrent clients, I should say.

9 A Yes, sir. That's what this case is, BitTorrent.
10 Yes, sir.

11 Q So in other words, your computer can't get into
12 somebody's computer that hasn't permitted some form of
13 access.

14 A If he had not made the file available, then I'm not
15 going to be able to download it.

16 Q All right. So working from making the file
17 available, so we had an IP address that was -- was that
18 also part of the initial notification that you got from
19 your search?

20 A The way my program is set up is I'm querying for IP
21 addresses that would geo locate to the State of South
22 Carolina.

23 Q Okay.

24 A So I'm not searching for people in California or
25 Utah. I'm trying to narrow my scope down to South

1 Carolina.

2 Q All right. But the notification includes -- would
3 include the IP address. In other words ---

4 A I would be able to see the IP address, yes.

5 Q All right. So how do you -- so this is what I don't
6 understand. How do you get the IP address from the
7 notification that comes to you? Do you have to take
8 another step, or is that part of the notification that you
9 get from the program?

10 A It's part of the notification, but it's also included
11 in the log files in the report it generates that has the
12 hash value, the dates, the times. It also has the IP
13 address in that as well.

14 Q All right. Your search program has the log files?

15 A Yes.

16 Q Okay. And so ---

17 A Well, I mean, what I download includes the log files
18 to do the download, and it has the IP address in it.

19 Q All right. One second. I've just got to grab -- all
20 right. So I had asked you a couple of questions back at
21 the preliminary hearing that were relevant to what might
22 be indicated by the search with the IP address and the
23 hash value. And I want to say -- let's see. I want to
24 say that as I understood or as I thought you had described
25 BitTorrent to me, that at that moment when you're notified

1 of the IP address that's making this hash value available
2 is that it's impossible to know how much of that file
3 might exist on the IP address that is with the hash tag --
4 I'm sorry -- with the hash value of interest.

5 A I don't know how I answered the question, but
6 sometimes people are in possession of only part of a file.

7 Q Right.

8 A And so if I download a partial -- if I complete a
9 partial download of the file, I may not get 100 percent of
10 the file that the person has or they may not have had
11 100 percent of the file, but if that portion still
12 contained -- sometimes I download a file that I recognize
13 that as being child pornography ---

14 Q Right.

15 A --- but I did not download a portion that contained
16 child pornography. Does that make sense?

17 Q It does. And that's kind of what I was getting back
18 to. So when I was describing that out in BitTorrent world
19 there are pieces of files that can reside in hundreds if
20 not thousands of different computers ---

21 A Yes, sir.

22 Q --- what I'm hearing you say is, yes, that's true,
23 and some of those pieces may or may not actually be the --
24 well, those pieces don't make up the whole file. In the
25 case of if it was a video, you might have one of the

1 picture frames from one computer, one of the picture
2 frames from another computer, and they're being assembled
3 at the other end. That's the reason you do the
4 BitTorrent. That's why you're in BitTorrent to begin
5 with.

6 A In some cases, people don't have a complete file, if
7 that's what you're asking me.

8 Q That is what I'm asking. And I'm saying isn't that
9 sort of typical of the BitTorrent network? I mean, that's
10 why it works so fast is because when you're accessing from
11 your computer a video file, it is pulling those bits and
12 pieces from lots of different computers.

13 A The computers may or may not have 100 percent of the
14 file, but it's building what it can just to build the
15 file.

16 Q Right. Okay. So when you get the hashtag value and
17 the notice that it is -- sorry. I keep saying hashtag.
18 When you get the hash value and its associated with a
19 particular IP address, in this case, is it fair to say
20 that you don't know whether or not that hash value is, in
21 fact, going to contain enough data to be the portion of a
22 child pornographic video or picture to fit the legal
23 definition?

24 A Yeah. I may not necessarily know what they have
25 until once I've completed the download, then either I

1 downloaded it or I didn't.

2 Q When you have a hash value, do you know the
3 descriptor of what type of video it is? Not type, but in
4 the indictments, we had a number of descriptions that were
5 given about the actual name of these files. I assume that
6 those file names oftentimes go with or are similar to
7 videos that have these known hash values.

8 A What's the question?

9 Q Well, I'm asking, does the description of the file
10 become part of the information you get when you've got a
11 notification on your computer that there's a hash value of
12 interest?

13 A No. Once I make the download based on the hash
14 value, and then I would have to review the downloads to
15 see what's contained therein.

16 Q Could you review the information about the hash value
17 anywhere else other than having to download it to your
18 computer? In other words, if there's a data set of hash
19 values that are of interest and that data set has more
20 information than just here's the hash value and it's a
21 file of interest, can you go back and reference the hash
22 value and get more information about it? That is, okay,
23 this is, you know, a description of what's actually going
24 on in that particular hash value.

25 A So you're saying if I had not downloaded a complete

1 hash value -- if download a torrent, only got part of it,
2 could I go somewhere else and see what maybe was ---

3 Q Right, right.

4 A Yeah. I could contact the National Center for
5 Missing and Exploited Children or some other law
6 enforcement agency and potentially find out what all was
7 in that file.

8 Q All right. So how do you affect hooking -- in this
9 case, how did you affect hooking up your computer to the
10 IP address that was in the notification you got towards
11 the end of March, June in 2015?

12 A He made the file available that had been determined
13 to be a file of interest to child pornography
14 investigators, and he offered it for download.

15 Q Okay. But this is what I'm asking. So you got --
16 your computer is hooking up to his computer through what
17 medium, through what -- how is it happening?

18 A Well, he's on the BitTorrent network and then my law
19 enforcement computer is on the BitTorrent as well, and
20 they conduct -- go ahead.

21 Q And his -- I'm sorry. Don't let me interrupt you.

22 A And then I make a single-source download. That's
23 where the single source, we talked about multisource
24 versus single source ---

25 Q Right.

1 A --- so my computer makes the single-source download.
2 I'm not going into his computer. I'm looking for all the
3 files he has. He just made that file available for share.

4 Q So the single-source download, is that normal for the
5 BitTorrent software?

6 A It could be. If you are on the BitTorrent network
7 and you wanted some rough cut of Star Wars and you were
8 directed to a -- only one computer maybe that you had been
9 directed to had that file, then your program would then do
10 a single-source download of that torrent.

11 Q Is your software modified in any way, shape or form
12 in order to permit you to do it as a single-source
13 download?

14 A Yes. I mean, that's the point of the program is I
15 don't share to the network. I share no files with anyone.
16 And I don't do a multisource download.

17 Q And that's different than what you get into if you're
18 just a consumer in the public downloading BitTorrent.

19 A Yes. It's a different program.

20 Q All right. Is there any way to go into -- well,
21 sorry. When you -- so what happens next? You're now
22 hooked up to his computer through the BitTorrent software.
23 You've got your computer configured so that you're going
24 to do a single-source download from that IP address. Am I
25 correct to say that then the data travels from that

1 computer to your computer?

2 A Yes, sir.

3 Q And do you know whether or not it is your -- well,
4 whether or not BitTorrent, if his computer, that is the IP
5 address you're targeting is missing pieces of the file
6 because it's a partial file, do you know whether the
7 BitTorrent network will then supplement that with other
8 files that are in the BitTorrent clientele to his computer
9 that then comes to yours?

10 A It's just a single -- it's whatever he's making
11 available, single-source download, my computer to his
12 computer.

13 Q This is what I'm getting at. How do you know that's
14 all you're getting from his computer? How do you know
15 that BitTorrent isn't recognizing that this is a larger
16 file, grabbing pieces from the other BitTorrent network
17 users, bringing that to the IP address you targeted, and
18 then what you're getting is a full file when, in fact,
19 what was on his computer initially when you hooked up to
20 it was a smaller subset?

21 A I just know that's how the program worked. When you
22 review the log files for the download, you see where I'm
23 connected to his computer and he's transmitted the pieces
24 of it.

25 Q How do you know his computer is not connected to

1 other computers that are grabbing ---

2 A I -- I -- I don't know. I would assume that it
3 probably would be, it being on the network. If he's
4 sharing with me, then he's probably sharing with anybody
5 else that also wants the file.

6 Q Okay. So then it's possible that part of the file
7 you ended up with was coming from other sources than just
8 his.

9 A No. That's not what I'm saying.

10 Q Okay. So the computer program, if you've only got a
11 partial file, and, again, I'll just use the Star Wars
12 analogy, and all I've got is the preamble with the
13 rolling, scrolling screen, when I go to it through
14 BitTorrent, if the file is incomplete, you're telling me
15 that BitTorrent won't use that -- its information out
16 there in the remainder of the network to fill the gaps in.

17 A I have never used it as a consumer, so I'm not -- I
18 don't know what the multisource -- I don't use it as a
19 consumer and know how it worked on a multisource platform.
20 I just get whatever he's made available. That's all I can
21 tell you.

22 Q I know. And that's where I'm picking a little bit
23 here because I want to be sure that we're talking about
24 what you know, not what you think might happen.

25 A That's where the log file shows my connectivity from

1 my computer to his computer. And you can see where the
2 pieces get transmitted as part of the download.

3 Q Right. I don't have any issue with the transmission
4 from his computer to your computer. What I'm saying is we
5 don't know who he's logged in with from his computer. I
6 mean, obviously, he's logged in with your computer, but
7 he's also logged in potentially with the rest of the
8 BitTorrent network.

9 A Yeah. I don't think it has any bearing on my case,
10 though.

11 Q Okay. But do you know?

12 A I don't think it has any bearing on my -- I mean, I'm
13 trying to answer it repeatedly, but I keep giving you the
14 same answer.

15 Q Okay. So it's impossible then.

16 A I can't say it's impossible. That's what I'm saying.
17 I can't tell you. Based on my training and experience, I
18 say it's not possible, but it's a computer. I'm not aware
19 of it being possible. How about that?

20 Q All right. Fair enough.

21 And so then once you get that file to your
22 computer ---

23 A Yes, sir.

24 Q --- so you -- and I want to kind of list the things
25 that you can say you would know about. One, it's been

1 tagged as a hash value of interest for child pornographic
2 investigation, correct?

3 A Yes, sir.

4 Q Two, that's likely coming from the database that you
5 have imported into your search engine to go out and find
6 it anyway.

7 A Yes, sir.

8 Q Three, if it's been imported into your search engine,
9 then there -- as you described, there might be other
10 information available about it from other places like the
11 -- what do we call it? --- NCMEC ---

12 A Yes, sir.

13 Q --- and some of the other federally funded programs
14 that keep track of all this stuff.

15 A Yes, sir.

16 Q And then with it on your computer at that point, it's
17 still necessary for you to open it up and look at it to
18 determine whether or not it is, in fact, child
19 pornography.

20 A Yeah. I need to see if it's in violation of South
21 Carolina law.

22 Q Okay. All right. So what, if anything, gives you,
23 as a special investigator, the authority to duplicate the
24 hash value when you do so connecting to this particular IP
25 address?

1 A I think I'll quote me from the prelim. I can't quote
2 a statute.

3 MR. BANNISTER: Okay. All right. Judge, give me
4 just one second. Let me look at my notes.

5 BY MR. BANNISTER:

6 Q So would it be fair to say that the -- so you
7 downloaded two videos through -- one on June the 4th, one
8 on June the 6th of 2015, correct?

9 A Yes, sir.

10 Q Both of those came from the IP address that was
11 produced by the notice that you got from your service
12 provider.

13 A Yes, sir.

14 Q And you made copies of those on your computer through
15 the BitTorrent network.

16 A Yeah. I downloaded the files, yes, sir, onto my
17 computer.

18 Q So at that point, in order to discover what or where
19 the physical location was of the IP address, you filled
20 out an application for what I understand to be a 2703(d)
21 order?

22 A Yes, sir.

23 Q And that's very similar to a search warrant or a
24 request. It just goes through federal statutes.

25 A It's a court order for -- I consider it more like a

1 subpoena, just getting subscriber records. I'm not asking
2 for content, just solely account information.

3 Q All right. So you've got to get the location,
4 though, from -- in this case it was Charter
5 Communications.

6 A Yes, sir.

7 Q And part of the application and part of the reason
8 for saying -- I think you had to assert that there was an
9 ongoing investigation at this point that was going to
10 require that information. Isn't that part of the
11 application?

12 A That sounds about right. Yes, sir.

13 Q Okay. So the basis for saying there was an ongoing
14 investigation was the two downloads you had made on June
15 the 4th and June the 6th.

16 A Yes, sir.

17 Q Once you got the information about where the IP
18 address was located, that is the customer service
19 information, am I understanding correctly that you then
20 made an application for a search warrant to the magistrate
21 up in Greenville county, I want to say it was
22 August 18, 2015?

23 A Yes, sir.

24 Q Is it fair to say part of the basis for the search
25 warrant that got issued on August the 8th, 2018, asserting

1 there was evidence of a crime likely located at
2 ████ Watkins Circle, was based entirely on the two
3 downloads you had made back on June 4th and June 6th?

4 A Yes, sir.

5 Q All right. And then there was a search conducted at
6 that location, that is █████ Watkins Circle.

7 A ████. Yes, sir.

8 Q ████. You're right.

9 Through the search, there was initially -- I want to
10 -- now, were you the one that accessed the files of
11 interest at the search at █████ Watkins Circle?

12 A No, sir.

13 Q Okay. Did you see who did that?

14 A Well, I was not outside when they were conducting the
15 examination, but I know who was out there. Yes, sir.

16 Q Okay. But in any event, through that search at the
17 location, you were able to confirm at least two files that
18 you had downloaded.

19 A Just that they -- what the investigators told me was
20 there were hundreds if not thousands of files of child
21 pornography on some of his equipment.

22 Q But that was through them going through it there on
23 the site.

24 A Yes, sir.

25 Q And then when you -- the devices were -- there were

1 multiple devices that were taken from the residence,
2 correct?

3 A Yes, sir.

4 Q Those were taken back to Columbia.

5 A Yes, sir.

6 Q And then another search warrant was requested dated,
7 I want to say, October 12, maybe, 2015. Yeah.

8 October 12, 2015.

9 A Yes, sir.

10 Q And part of the basis of that search warrant was the
11 two files that had been previously downloaded on June the
12 4th and June the 6th.

13 A That information was included. Yes, sir.

14 Q Okay. And then also included was what was discovered
15 during the search back in August 18, 2015.

16 A I believe so. Yes, sir.

17 Q All right. And then if I understand correctly, now,
18 did you conduct the search of the devices?

19 A I did not. I had not done any forensic examinations.

20 Q That was ---

21 A Investigator Bomar did in regards to that search
22 warrant that you're talking about.

23 MR. BANNISTER: All right. And I don't have any
24 further questions.

25 THE COURT: Okay.

CROSS EXAMINATION

BY MR. SENN:

Q Special Investigator Atkins, have you been through any training in regards to the BitTorrent program that you use?

A Yes, sir.

Q Okay. Through that training, are you aware if it connects to any other user other than the user you're trying to download files from at the time?

A I'm not aware of that.

Q Okay. Just generally, are file-sharing programs, specifically BitTorrent clients, are these freely available to members of the public?

A It's a publicly available program. Yes, sir.

Q Okay. Are the files that are shared on these programs, are they available to only certain people or available to the public?

A If the user is sharing them, they're -- they're out there.

Q Okay. And can a user choose whether or not to share those files?

A Yes.

Q Okay. So if they chose not to share them, would you be able to access them?

A No, sir.

1 Q Would you be able to download them?

2 A No, sir.

3 Q Okay. And so when you download, you're only
4 downloading from that one particular user?

5 A Yes, sir.

6 Q And so you view the files once you've downloaded
7 them. Why do you do that?

8 A I need to determine if they do contain child
9 pornography and are in violation of South Carolina law.

10 Q Okay. So you don't know for sure what's in the file
11 until you view it.

12 A Yes, sir.

13 Q Okay. So once you download the files, what do you do
14 to identify that user that's sharing the files?

15 A I then take the IP address information that's
16 recorded during the download, and then I send the court
17 order to the Internet service provider.

18 Q Okay. And this user, this IP address is just sent to
19 you as part of the program?

20 A Yes.

21 Q Are you doing anything special to obtain that IP
22 address?

23 A No, sir.

24 Q Okay. Is that a feature that would be available to
25 the public?

1 A I've never used it as a consumer, but I can't -- I
2 don't know. I'm not sure.

3 MR. SENN: Okay. Beg the Court's indulgence.

4 BY MR. SENN:

5 Q Special Investigator Atkins, can any user other than
6 law enforcement modify their program to only download from
7 one user at a time?

8 A Not that I'm aware of.

9 Q Okay. But they can have it where they only download
10 from one user at a time?

11 A If there was a particular -- you wanted a file and
12 other users didn't have it, you could have a single-source
13 download as a consumer.

14 Q Okay. So if a file is available, whether you're in
15 law enforcement or another user, you can still download
16 that file; is that correct?

17 A Yes.

18 MR. SENN: Nothing further from the State.

19 THE COURT: When you say a file is available, is that
20 synonymous with sharing the file?

21 THE WITNESS: Yeah. You've made the file available
22 to share as being on the network, so if the file wasn't
23 available for share, then I can't ---

24 THE COURT: Access.

25 THE WITNESS: --- access it. Yeah. I can't go into

1 your computer and look for what I want. You had to have
2 made the file available for that connection to take place.

3 THE COURT: Okay. So Mr. Bannister's analogy with
4 the Star Wars thing where he said you want to download
5 this Star Wars movie and it comes from a million different
6 -- or thousands of computers ---

7 THE WITNESS: Yes, sir.

8 THE COURT: --- each of those computers has made the
9 movie available?

10 THE WITNESS: That's what drives the network. You
11 share, I share, we all share.

12 THE COURT: So how do you not share? If you ---

13 THE WITNESS: You mean as my program or as a consumer
14 would, as the defendant would?

15 THE COURT: Well, in Mr. Bannister's analogy, if
16 someone has Star Wars on their computer and does not want
17 to share it, can they do that?

18 THE WITNESS: Yes, sir.

19 THE COURT: How do they do that?

20 THE WITNESS: You just move the file to maybe an
21 external drive or somewhere else on your computer not
22 related to the program.

23 THE COURT: Okay. And which program -- what's the
24 name of this thing?

25 THE WITNESS: BitTorrent.

1 THE COURT: Is it -- does it just come on every
2 computer?

3 THE WITNESS: No. You need to go out and download
4 the program and install it on your machine.

5 THE COURT: Oh. Okay. All right. Anything else?

6 MR. BANNISTER: Just brief follow-up.

7 REDIRECT EXAMINATION

8 BY MR. BANNISTER:

9 Q So a consumer who downloads BitTorrent, how do they
10 avoid putting themselves in a position where everything
11 they do is going to be shared? I mean, it doesn't have --
12 is there a choice that you're given when you download the
13 software?

14 A I've never installed it as a consumer. That's how
15 the program works. If nobody shares, then you wouldn't be
16 able to obtain any files.

17 Q All right. So do you know if any notice or anything
18 that comes to a person who downloads the software that
19 says your computer is now going to be part of and open to
20 the BitTorrent public?

21 A As part of a previous trial, I know we did an
22 installation for the Court, and it talked about you'd be
23 sharing files. But I haven't downloaded the program he
24 was running, so I can't tell you what it said when he
25 installed it.

1 Q Okay. So as far as some affirmative act is necessary
2 on behalf of the person who's downloading BitTorrent, and
3 in particular in this case, you can't say that there has
4 or was -- been an affirmative act to say, okay, I open it
5 up for file sharing other than downloading the program.

6 A If you download the program and you make the file
7 available -- if you took the file and moved it somewhere
8 else, then you're taking it to a place where it's not then
9 available for public consumption.

10 Q Right. Would you agree you have to know that you've
11 got to do that in order for it not to be available?

12 A I'd have to see what it looked like when he installed
13 the program to what it told him. I don't know if it gave
14 him a warning or ---

15 Q Well, would that be based on the version of the
16 software? I mean, how would you do that?

17 A You'd have to install the program and then see what
18 it told you as you're installing it. I know we've done it
19 in a previous trial, and it tells you that you're going to
20 be sharing files, but I haven't downloaded and installed
21 his version because I just don't use it as a consumer.

22 Q Do we know what his version is?

23 A I'd have to look at the log files.

24 Q But if we did, then we can know whether or not or
25 what popped up when it was downloaded.

1 A Yeah. I know it's Shareaza. I don't know what -- I
2 don't remember what version.

3 MR. BANNISTER: Okay. All right. I don't have any
4 further questions.

5 THE COURT: Okay. Shareaza?

6 THE WITNESS: Yes, sir.

7 THE COURT: Is that like Microsoft? What is that?

8 THE WITNESS: Shareaza is a publicly available client
9 that allows you to connect to different users on different
10 file-share networks. Shareaza is kind of a hybridized
11 client, so you can use -- you could be available in the
12 BitTorrent network, the eMule network, the Gnutella
13 file-share network.

14 THE COURT: Okay. Makes perfect sense to me. Thank
15 you.

16 THE WITNESS: Yes, sir.

17 THE COURT: Okay. Anything else? Okay. Thanks.

18 THE WITNESS: Yes, sir.

19 THE COURT: All right. What else do you got?

20 MR. BANNISTER: Your Honor, I just call briefly
21 Investigator Bomar.

22 THE COURT: Briefly. Okay. We'll see what he means
23 by that. Come on around.

24 THE CLERK: Please place your left hand on the Bible
25 and raise your right hand.

1 WHEREUPON,

2 CHRIS BOMAR

3 After having been duly sworn, testified as follows:

4 THE CLERK: Thank you. Please take a seat and state
5 your name for the record.

6 THE WITNESS: My name is Chris Bomar, B-O-M-A-R.

7 DIRECT EXAMINATION

8 BY MR. BANNISTER:

9 Q All right. Mr. Bomar, how did you come to be
10 involved in this particular investigation?

11 A I'm employed with the Attorney General's Office. I
12 do the forensics. So basically, I'm the one who goes out
13 there and analyzes the devices, accounts for the devices
14 and takes the devices into custody.

15 Q As a forensic analysis on the devices, what's your
16 first step?

17 A What is my first step?

18 Q Yes.

19 A Well, in this particular case, because each case is
20 different, when we saw the devices, they were Apple
21 devices. At that time, I did not have the capabilities of
22 looking at Apple computer systems in a safe and sound
23 environment without making any changes to the devices.
24 That is when Greenville offered their devices, which they
25 had in their vehicles at the time, and they were able to

1 look at the devices in their manner which they claim was
2 safe.

3 Q Okay. When you said Greenville had their devices,
4 we're talking about a program? Or what do you mean?

5 A We're talking -- we're talking both sets. You're
6 talking about a computer, an Apple computer, and you're
7 talking about forensic software on that computer system.

8 Q And the computer and the software is separate from
9 the actual devices that have been seized?

10 A That's correct.

11 Q And so just to make this easier, we're talking about
12 at least a MacBook Pro and a MacBook Air.

13 A We're talking -- you're talking about for the agency
14 or are you talking about for where we seize the devices
15 from?

16 Q I'm talking about this case in particular.

17 A I believe there was a MacBook Pro seized and a
18 MacBook Air seized from -- among devices seized from the
19 location.

20 Q And primarily, if I understand correctly, most of the
21 files of investigative interest were found in one of three
22 places: the MacBook Pro, the MacBook Air and then a hard
23 drive that was detectable.

24 A That is my understanding as well.

25 Q So let's just talk about those three devices. I

1 understand there were other ones that were there, but in
2 terms of analyzing these three devices, what I'm hearing
3 you say is that the Attorney General's Office couldn't get
4 into them because they were Apple, but Greenville County
5 did have the software that permitted a forensic review of
6 the devices.

7 A The Attorney General's Office didn't have the
8 equipment to look in it in a forensically sound
9 environment.

10 Q Okay. And so what kind of equipment did Greenville
11 County have?

12 A They had Macs.

13 Q Okay. So when you say they're going to look into it,
14 did they plug their Macs up to the Mac Pro and the Mac Air
15 and then the external hard drive?

16 A Well, in this particular situation, they only plugged
17 into the external hard drive.

18 Q But they plugged directly into it?

19 A They took the external hard drive and plugged that
20 device into their Mac.

21 Q Okay. Are we talking about the search that took
22 place at [REDACTED] Watkins Circle?

23 A At the residence itself.

24 Q Okay. And when they plugged their device -- sorry.
25 When they plugged the hard drive into their Mac, was there

1 any kind of password security, anything you had to bypass?

2 A You would have to ask them.

3 Q Okay. All right. So other than at the residence, I
4 understand there was a search there. How about once we
5 got all the devices back to the Attorney General's Office?

6 A Okay.

7 Q All right. Are you the one that was doing the
8 forensic review of those devices at the Attorney General's
9 Office?

10 A Not all of them. The only device that I was
11 interested or at the time was that Kevin needed some file
12 names off of the device, and so I obtained a search
13 warrant for the external storage device, external hard
14 drive, so I could give him the files that he needed for
15 his pretrial.

16 Q All right. And then how do you extract those files
17 off the hard drives?

18 A I use a write blocker. So basically, at this time,
19 we knew now that the external hard drive was not any type
20 of Mac journal, so a PC would be able to read it. It was
21 in a FAT32. I know that's a little high, but basically,
22 that's a file system that is written in, and so Windows is
23 able to read that. We have a write blocker that keeps us
24 from writing to the suspect drive, and then we read it and
25 image it.

1 Q What is imaging it?

2 A Imaging is basically making a copy, exact copy of the
3 suspect's device.

4 Q So you're taking all the data out of, in this case
5 we're talking about the external hard drive, you're making
6 a copy of it and putting it on a subsequent device.

7 A On one particular drive in this case, not subsequent.

8 Q I'm sorry. Okay. A different one. Maybe I should
9 say it that way.

10 A Yes. We are making a copy of an image of that drive
11 to another drive.

12 Q And then is the actual search done from the copy, the
13 forensic search?

14 A Correct. And then we do the actual search from the
15 copy.

16 Q Now, the write blocker, I assume that there -- was
17 there a forensic search done of the MacBook Pro and the
18 MacBook Air as well?

19 A It was, but that was done by another forensic
20 examiner.

21 Q All right. So the write blocker is the way in which
22 you avoid changing any data on the device you're examining
23 when you're plugged up directly to it.

24 A That is one way, yes.

25 Q Are there other ways?

1 A There are software write blockers too. I was not
2 utilizing software write blockers. I was utilizing
3 hardware. But there are software write blockers out there
4 as well.

5 Q And the idea being that whatever you're going to
6 examine, you don't want to change the data set that exists
7 at the time of the examination.

8 A Basically, yes. Anything that you plug in a foreign
9 device into your thing, it would give you the option to
10 block it so that way you don't make any changes to it.

11 Q All right. And so it was the search of the
12 duplication of the external hard drive that resulted in a
13 number of files of interest in this particular case; would
14 that be correct?

15 A I believe five, yes.

16 MR. BANNISTER: All right. I don't have any further
17 questions.

18 THE COURT: Okay. Y'all have anything you want to
19 ask him?

20 MR. SENN: Nothing from the State, Judge.

21 THE COURT: Okay. Thanks. You can step down. Thank
22 you, sir.

23 THE WITNESS: Thank you.

24 THE COURT: Okay. Anything else?

25 MR. BANNISTER: No evidence. No, Your Honor.

1 THE COURT: Okay. What do you want to tell me?

2 MR. BANNISTER: So, Judge, if I could, I'll move kind
3 of into the motion to suppress for what I've called the
4 illegal conduct. And when I say that, I don't mean to
5 disparage in any way any of the law enforcement officers
6 that were involved in this. The best I can tell, this is
7 the first time this argument has been made, and the State
8 -- certainly aren't any written opinions on it, and I
9 can't -- I can't understand why it hasn't been because it
10 seems so obvious to me.

11 16-15-410 is the statute which makes it illegal to
12 possess pornography -- child pornography in all its forms.
13 And of particular interest, Judge, 16-15-410 has a
14 Subsection D which creates an exception for law
15 enforcement, which makes sense. If you're going to be law
16 enforcement doing your official duties and you find child
17 pornography, you've got to be able to seize it, you've got
18 to be able to possess it so you can bring it to court, use
19 it as evidence and go forth from there.

20 16-15-405 is the statute that prohibits -- I call
21 this generally the proliferation of child pornography:
22 copying it, developing it, duplicating it. There are a
23 number of verbs that are used in this, but certainly
24 "duplicate" is one that is used specifically. Of
25 particular importance, there is no law enforcement

1 exception to Section 16-15-405.

2 Your Honor, I've cited to a number of cases which say
3 that statutory construction, when you've got a
4 specifically stated exclusion to a statute in one part and
5 you don't have it in the other part, then the statutory
6 interpretation, the correct one is that the Legislature
7 did not intend to include an exclusion in the part that
8 doesn't have it. So if they are prohibited from
9 duplicating child pornography, then the act of attaching
10 the Attorney General's computer to the IP address that was
11 the target and downloading the file to the Attorney
12 General's computer is a duplication of that pornography.
13 And so it would be an unlawful act, and as a result of
14 being an unlawful act, everything that goes from that
15 point would be fruit of the poisonous tree.

16 I've also cited to a case in there which involved it
17 was an opinion issued by Justice Kittredge which discusses
18 that the unlawful arrest of an individual ended up
19 suppressing his confession that he gave them after he was
20 arrested. In essence, those officers did not have the
21 authority, the legal authority to affect the arrest. It
22 was unlawful for them to do so, therefore, what came after
23 that was fruit of the poisonous tree.

24 So in its simplest form, Judge, I don't think there's
25 any real dispute over the fact that the child pornography

1 got duplicated. That pornography became the basis for the
2 request for the IP address, the search itself at the
3 location, █████ Watkins Circle, and then subsequently the
4 search down at the Attorney General's Office, the forensic
5 search. So if I'm correct, then I think all of that
6 evidence must be suppressed.

7 THE COURT: With respect to all seven indictments?

8 MR. BANNISTER: Yes.

9 THE COURT: Well, there is an exception for the five
10 indictments for third degree, right?

11 MR. BANNISTER: There is. You're allowed to possess
12 it, but you're not allowed to duplicate it. And if the
13 warrant to go into the home or to the residence of
14 █████ Watkins Circle was a warrant that was obtained
15 unlawfully, then everything that comes out of that is
16 fruit of the poisonous tree. And you don't get into the
17 home without the two videos that got downloaded. I mean,
18 they're tied one to the other.

19 THE COURT: Okay. All right. What do y'all want to
20 tell ne?

21 MR. SENN: Thank you, Judge.

22 First of all, the State's position is that Special
23 Investigator Atkins did not engage in illegal conduct.
24 The statute reads that you have to know the character or
25 content of the material to violate the statute when you

1 knowingly receive them, duplicate them, plenty of other
2 verbs. Special Investigator Atkins did not know that
3 until he received and viewed them as he testified to. The
4 hash values were provided to him, but he stated that he
5 had to view the file to determine whether it violated
6 South Carolina law, so he doesn't even know whether he
7 could be violating South Carolina law until he sees that.

8 Secondly, Judge, this interpretation of the statute
9 would violate fundamental principles of statutory
10 interpretation. Defense counsel did not mention the word
11 "receive," but that is one of the major words in
12 16-15-405. And under defense counsel's interpretation,
13 law enforcement would be violating this portion of the
14 statute.

15 The defendant's argument is basically that if a law
16 enforcement officer seized an individual sharing child
17 pornography publicly available, law enforcement cannot
18 obtain that evidence or preserve the evidence of a crime.
19 And to follow the defense argument to its conclusion,
20 there's no way law enforcement could ever seize evidence
21 in any child pornography case ever once they learned that
22 the evidence is, in fact, child pornography because they
23 will be receiving the evidence knowing the character or
24 content of the material. The State could not even
25 prosecute the case because you simply asking to review the

1 evidence would be soliciting child pornography and, again,
2 a violation of the statute.

3 Judge, I have a couple of different cases that I can
4 give you the cites for. Lancaster County Bar Association
5 vs. The South Carolina Commission of Indigent Defense
6 where basically the Court said that in construing a
7 statute, the Court will reject an interpretation which
8 leads to an absurd result that could not have been
9 intended by the General Assembly.

10 We have Gordon v. Phillips Utilities, Incorporated
11 where it says it is presumed that the General Assembly
12 attempted to accomplish something by its choice of words
13 and would not do a futile thing.

14 I have an interesting quote from it looks like it's
15 1868 from U.S. v. Kirby where I'm going to paraphrase
16 because of the language. Basically, they say that if a
17 law stated whoever drew blood in the street should be
18 punished with the utmost severity, that did not extend to
19 a surgeon who basically has to do work on an individual.
20 And the same common sense applied that if a prisoner broke
21 out of prison, he should not be guilty of a felony because
22 the prison is on fire.

23 The State would argue that a scenario where law
24 enforcement is unable to obtain evidence of a crime when
25 individuals, in making contraband files of children

1 sexually abused publicly available, it is an absurd result
2 that cannot be the intent of the Legislature. In this
3 case and all like it, law enforcement conducts these
4 investigations in an effort to prevent the widespread
5 distribution of files of child victims being sexually
6 abused. Obtaining these files and then further
7 identifying that person that sent them and made them
8 available in an effort to prevent their further
9 dissemination is almost certainly not the type of behavior
10 the Legislature nor society wants to prevent.

11 Again, the third argument, Judge, we also believe,
12 the State does not believe this is in violation of the
13 defense's Fourth or Fourteenth Amendment rights. Those
14 amendment rights protect individual's right to privacy and
15 prevent unreasonable intrusions by the government. The
16 defendant has no right to privacy in a file made publicly
17 available as the files were made available in this case.
18 And even if the Court accepts the defendant's statutory
19 interpretation that law enforcement violated the law, the
20 defendant made these files available on the Internet, and
21 this would not change the fact that the law enforcement
22 did not intrude on the defendant's privacy rights by doing
23 so.

24 And finally, Judge, the defendant's request of
25 suppression is an inappropriate application of the

1 exclusionary rule. Evidence is only suppressed if an
2 individual's constitutional rights are violated. The
3 State contends that the defendant's rights were not
4 violated by obtaining files he made available to anyone
5 who was looking for them. There's many quotes throughout
6 case law that exclusionary rule is harsh medicine,
7 exclusion should be applied only where deterrent is
8 clearly subserved, and the State would argue there's no
9 lesson to teach law enforcement to deter further behavior
10 other than creators, distributors and possessors of child
11 pornography are off-limits for any investigation
12 whatsoever.

13 And finally, even if the Court accepts the
14 defendant's statutory interpretation, the appropriate
15 result is to require law enforcement to investigate and
16 determine whether to bring criminal charges against those
17 who violate the law, not exclusion of evidence against the
18 defendant in an unrelated matter who has had no violations
19 of his constitutional rights. The State would ask you to
20 deny the motion.

21 THE COURT: Okay. What?

22 MR. BANNISTER: Just briefly. I would say, Judge,
23 just for the record, the idea that they can't do this
24 without copying the file doesn't make any sense to me.
25 You have a database of known files of interest that are

1 associated with child pornography that's generating the
2 hit to begin with.

3 Number two, you've got access to the database itself
4 to then learn what does this hash value mean in terms of
5 what kind of movie is it, what does it involve, is it, in
6 fact, legal or illegal. You don't ever have to copy the
7 file to know that the hash value, if you take the next
8 step, is, in fact, child pornography. So the idea that
9 suddenly you're going to be unable to investigate anybody
10 in the world of child pornography just because you can't
11 copy the files is a strawman argument. It doesn't hold
12 water.

13 Thank you, Your Honor.

14 THE COURT: Okay. Motion denied.

15 What about this Jackson v. Denno thing?

16 MR. BANNISTER: Your Honor, when I filed the motion,
17 and I assume I'm still right, Mr. Collier said, "we don't
18 have any statements we intend to introduce that come from
19 the defendant." If that's the case, then I withdraw the
20 motion.

21 MR. COLLIER: That's the case, Your Honor.

22 THE COURT: Okay. Good.

23 All right. Let me see the two lead lawyers up here
24 real quick.

25 (WHEREUPON, a bench conference was held off the record.)

1 THE COURT: All right. We'll break till 2:30.

2 (WHEREUPON, a recess is taken at 1:30 p.m.)

3 THE COURT: Are we ready to go?

4 MR. BANNISTER: Yes, sir, Your Honor.

5 MR. COLLIER: Yes, Your Honor. But are we still
6 going to meet in your chambers to review the video files?

7 THE COURT: Yeah. I guess we have to.

8 MR. COLLIER: I think we should.

9 THE COURT: What do you have to play it on?

10 MR. COLLIER: I've got my computer.

11 THE COURT: Okay. Come on.

12 (WHEREUPON, a recess is taken at 2:38 p.m.; State's
13 Exhibit Number 1 was marked for identification.)

14 THE COURT: All right. Well, when I ruled on the
15 suppression motion, I just said I denied the motions. I'm
16 not sure if I made that reference to each individual
17 motion to suppress, but my ruling is as to both of them.
18 Do you need anything more specific than that?

19 MR. BANNISTER: No, sir, Your Honor. I don't need
20 anything more specific. It'll just -- obviously, the
21 Jackson v. Denno hearing was muted by the idea that
22 there's not going to be any statements introduced from the
23 defendant, so I think that's the end of those.

24 THE COURT: Okay. Do y'all need to put anything on
25 the record?

1 MR. COLLIER: No, Your Honor.

2 THE COURT: Okay. All right. Let's go. Let's get
3 them.

4 Oh, and Amber -- well, Juror Number 128 is your
5 forelady.

6 (WHEREUPON, Court's Exhibit Number 1 was marked for
7 identification.; the jury entered the courtroom at
8 3:05 p.m.)

9 THE COURT: All right. Ladies and gentlemen, welcome
10 back. And I hope you had a pleasant lunch.

11 Ms. Lenger, thank you for agreeing to serve as the
12 foreperson.

13 At this time, I'll ask you to stand and take the
14 oath.

15 THE CLERK: Please raise your right hands. The
16 correct answer is "I will."

17 (WHEREUPON, the jury is duly sworn.)

18 THE COURT: All right. Ladies and gentlemen, we're
19 ready to commence the trial. I will turn it over to the
20 attorneys for their opening statements.

21 OPENING STATEMENTS

22 MR. COLLIER: Ladies and gentlemen, this trial is
23 about children. This trial is about children who were
24 sexually exploited, sexually abused and about those sexual
25 exploitations and abuses being videotaped and

1 photographed, and about those files being collected and
2 then distributed over the Internet. This trial is not
3 about the people who actually did the abuse to the
4 children. This is about someone who collected the files
5 and then shared them with others.

6 In June of 2015, Special Investigator Kevin Atkins
7 with the South Carolina Attorney General's Office was
8 conducting a proactive investigation where he was looking
9 for people sharing these types of files on the Internet.
10 He downloaded two files from Greenville County, one was
11 June 4th and one on June 6th. He then asked Charter
12 Communications, the Internet service provider for
13 Greenville County, what address did these come from. I
14 need the subscriber information. Charter gave him
15 subscriber information for the defendant, Kevin Willson.

16 Investigator Atkins then got a search warrant for the
17 home of Mr. Willson where he was going to look for
18 electronic devices that contained these files. And when
19 he was at the search warrant, he was joined by Special
20 Investigator Chris Bomar with the Attorney General's
21 Office and Deputy Hal Harris, who was then with the
22 Greenville County Sheriff's Office.

23 When he was at the scene, Investigator Bomar -- I'm
24 sorry -- Deputy Harris looked at a hard drive that was
25 seized, and he found five child pornography videos.

1 Later, Investigator Bomar examined the same device, it was
2 an external hard drive, and he found those same five
3 files. Along with the hard drive, two laptop computers
4 and one DVD disc were seized.

5 After the seizure, forensic investigator David Grubbs
6 with the South Carolina Attorney General's Office examined
7 all four of those devices, and he found thousands of child
8 pornography videos and files.

9 Mr. Willson is charged with two counts of sexual
10 exploitation of a minor in the second degree and five
11 counts of sexual exploitation of a minor in the third
12 degree.

13 You're going to hear testimony from Special
14 Investigator Atkins, Special Investigator Bomar, Deputy
15 Harris and Investigator Grubbs. At the conclusion of the
16 trial, after you've heard -- you're also going to have to
17 -- I'm sorry. You're also going to have to view the
18 videos. I'm sorry. They're going to be uncomfortable,
19 but they are an element of the crime. We have to show a
20 portion to you.

21 Once you've heard the testimony and you've seen the
22 videos, I'm confident that you will return a verdict of
23 guilty on all charges and find that Mr. Willson did, in
24 fact, possess and distribute these child pornography
25 files.

1 Thank you.

2 THE COURT: All right. Mr. Bannister.

3 MR. BANNISTER: May it please the Court.

4 This case, in a nutshell, is about assumptions,
5 assumptions that an individual is responsible for
6 everything that is on a device that they are associated
7 with. They are responsible for every single file that's
8 located on the device, they're responsible for knowing
9 what each of those files contain.

10 Before I get into some of the issues I think that
11 will be before you in the facts of the case, I just want
12 to take a little step back and talk about something that
13 is a subtle difference that has changed from when you were
14 in what we call the venire out here on the panel and when
15 you stepped into this box and now you've taken an oath to
16 well and truly try the case. So I feel certain that there
17 might have been at least a little bit of expectation that,
18 well, if I get to be part of a criminal trial, maybe it
19 will be something interesting and neat and I'll get to
20 learn some new stuff, and that this probably was a
21 significant disappointment to find out that we were going
22 to be dealing with a topic such as child pornography.

23 And child pornography itself can be so emotional that
24 it can cause you to lose track a little bit of what the
25 law requires of you where you're sitting right now. I

1 mean, there was a reason we asked is there anybody out
2 here who, because of the subject of child pornography,
3 would just be unable to follow the law and render
4 impartial jury service. Because when you took your oath,
5 what you agreed to do is to follow the law. Remember the
6 judge says I give you the law, you find the facts. And
7 the law in the case is that Kevin Mark Willson is presumed
8 to be innocent. Kevin Mark Willson cannot be considered
9 anything other than innocent unless and until that
10 innocence has been stripped away by proof beyond any
11 reasonable doubt. That's the oath that you get, that's
12 the oath that you gave, that's why you're here in part is
13 because both sides believe you will follow your oath as
14 difficult a case this may be to sit through.

15 Just for a second I want to spend a little bit of
16 time talking about the presumption of innocence and what
17 proof beyond a reasonable doubt means. I'm standing in
18 front of you. I've introduced myself as a lawyer. I've
19 got on a tie. I say I have a client. The presumption is
20 that I'm an attorney. But you don't have my bar card,
21 you've never seen my license to practice law. You presume
22 that I am, in fact, a lawyer.

23 Now, the presumption of innocence is equally as
24 strong right now as it applies to Kevin Mark Willson
25 despite what the charges are in this case. If, as you

1 internalize that, you get to a point where you say, you
2 know what? I don't know that I really can be a fair juror
3 in this case. I'm already past that. That's why we have
4 alternatives [sic]. You need to let the judge know.

5 Proof beyond a reasonable doubt means exactly what it
6 says. We hear it all the time, but I don't know that we
7 talk about just exactly what does that mean in our court
8 system. There are different levels of proof, depending on
9 what kind of case it is and what the legal situation is.
10 If you can think of the scales of justice and how much
11 evidence is on one side versus the other, because you've
12 been told that Kevin Mark Willson is presumed innocent at
13 this point, the scales are tipped completely in his favor.
14 And if, at this point, you were asked are you still
15 neutral, you would have to say no because I've taken an
16 oath to follow the law, I've been told to presume he's
17 innocent, and therefore, I would have to find him not
18 guilty at this point. Probable cause is a level of proof
19 that would describe a little bit of evidence being put on
20 the scale. It's the level of evidence that's necessary to
21 pull somebody over, to obtain a search warrant, to get --
22 for law enforcement to take some activity and for an
23 arrest.

24 The next level of proof you may be familiar with is
25 called a preponderance of the evidence or more likely than

1 not. That proof of evidence, if you took the scales and
2 put just a little bit more on one side, in other words,
3 the scales tip past 50 percent, some people call it
4 getting over the 50 yard line if you want to use a
5 football analogy, that's proof that's considered
6 preponderance of the evidence or more likely than not.

7 Now, here's how this works. If you were to find at
8 the end of the case after deliberation with all of your
9 fellow jurors that there was a preponderance of the
10 evidence of guilt, your verdict would still be not guilty
11 because the case would not be proven beyond a reasonable
12 doubt.

13 There's another level of proof in our jurisprudence.
14 It's called clear and convincing evidence. It's used in a
15 fraud case, a civil fraud case where the issue is somebody
16 misrepresented something intentionally and they got my
17 money because of that. Clear and convincing evidence must
18 be proved in order to sufficiently state that case. So
19 that's different still from proof beyond a reasonable
20 doubt.

21 Even if you were clear and convinced of the guilt of
22 Kevin Mark Willson at the end of this case, you would
23 still be required to find him not guilty because that's
24 not proof beyond any reasonable doubt. Reasonable doubt
25 can be some of the things that I intend to suggest to you

1 during the questioning of my case, this opening, the
2 trial, but you as jurors have an obligation to look at the
3 evidence and say to yourself is there a doubt that's been
4 created in my mind, and has that been sufficiently
5 eliminated by the evidence that's been produced by the
6 State, which comes back around to -- for me at least in
7 this case the idea that an individual is responsible for
8 everything that's inside a computer that they are
9 associated with.

10 The hole that you will see in the presentation of
11 evidence is that the State can never put Kevin Mark
12 Willson at the computer screen, on the mouse, on the
13 keyboard at the moments when the files that he's charged
14 with, knowing the content and character of, were put on
15 his devices or potentially viewed on his devices. There
16 simply is no evidence to tie him particularly to that
17 moment.

18 Now, you're going to and you have heard that there
19 are thousands of files. That -- don't let that -- well,
20 before we got here we took a look at that, and most if not
21 the majority of those files reside on a detachable hard
22 drive. It's a device. All of these devices are very
23 portable. And I think you will see portable means access,
24 access in a lot of different ways. It can be different
25 people, it can be through the wireless Internet connection

1 that you're there, could be through your workplace.
2 There's just a lot of ways to get into computers these
3 days other than the user being on the computer.

4 So the hole I believe and the evidence here that
5 leaves reasonable doubt open is that access. And the
6 number of files I believe you will see once you can get
7 into the computer, you have a purpose for being there,
8 then the number kind of becomes irrelevant.

9 So, ladies and gentlemen, we've got a long way to go.
10 I will say this. I will offer to stipulate to the
11 character and content of the videos so we don't have to
12 watch them, but I don't get to do that. I mean, that's
13 not my call. That's their call. So you don't have to.
14 That's their choice.

15 At the end of the case, I believe you're going to
16 find that there is reasonable doubt, and I'm going to be
17 asking you to return a verdict of not guilty. Thank you.

18 THE COURT: Okay. Call your first witness.

19 MR. COLLIER: Your Honor, the State calls Special
20 Investigator Kevin Atkins.

21 THE CLERK: Please place your left hand on the Bible
22 and raise your right hand.

23 WHEREUPON,

24 KEVIN ATKINS

25 After having been duly sworn, testified as follows:

1 THE CLERK: Thank you. Please take a seat and state
2 your name for the record.

3 THE WITNESS: It's Kevin Atkins, A-T-K-I-N-S.

4 DIRECT EXAMINATION

5 BY MR. COLLIER:

6 Q Where are you currently employed, Investigator
7 Atkins?

8 A I'm with the South Carolina Attorney General's
9 Office, and I'm currently assigned to the Internet Crimes
10 Against Children section.

11 Q What are your duties?

12 A I'm an investigator in Internet Crimes Against
13 Children. So my primary focus is file-sharing
14 investigations, specifically child pornography, child
15 pornography related files that are being shared over the
16 Internet.

17 Q How long have you been employed by the AG's office?

18 A About four and a half years.

19 Q Please describe your general law enforcement training
20 and education.

21 A I graduated from the University of South Carolina,
22 Aiken, with an associate degree in criminal justice, and
23 then from the University of South Carolina in Columbia
24 with a bachelor's degree in criminal justice. That was in
25 1999. And then that summer I immediately went into law

1 enforcement. While I was working law enforcement, I got
2 my master's degree in criminal justice from the University
3 of South Carolina. And I've also graduated from the FBI
4 National Academy, the 236th session in Quantico, Virginia.
5 During that time, I've been to countless trainings from
6 accident reconstruction to interview and interrogation, to
7 basic detective, crime scene, fingerprint.

8 Q Thank you. With the South Carolina Internet Crimes
9 Against Children task force, have you received any
10 specialized training?

11 A Yes, sir. Been to classes on child abuse to run
12 different file-sharing programs such as BitTorrent, Aries,
13 Freenet, GigaTribe, eMule, Gnutella. That's about it.

14 Q Thank you. Did you conduct any investigations with
15 the task force in 2015?

16 A I did.

17 Q Okay. What types of investigation?

18 A File-sharing investigations involving child
19 pornography.

20 Q Okay. What is a file-sharing network?

21 A A file-sharing network is a program you would install
22 on your computer as a consumer that allows you to upload,
23 download, share files directly from your computer to other
24 users that have the BitTorrent program or file-sharing
25 program other than BitTorrent.

1 Q Okay. How would someone access that?

2 A It's a publicly available program. You go on the
3 Internet, pick out which program you want to download and
4 you put it on your computer, and then you're active on the
5 network.

6 Q Okay. So can anyone do it?

7 A Yes. Anybody. It's publicly available.

8 Q Are the file-sharing programs freely available?

9 A Yes.

10 Q Do you use any programs to conduct these
11 investigations?

12 A I do run several programs at the Attorney General's
13 Office.

14 Q Okay. You mentioned BitTorrent earlier. What is
15 BitTorrent?

16 A BitTorrent is one of the file-sharing programs that
17 you can use and put on your computer to allow you to share
18 and trade, download files on the Internet with other users
19 of the BitTorrent network.

20 Q How does the software that you use work?

21 A For a consumer, you would download BitTorrent, and
22 then you're downloading files from other users. What
23 makes BitTorrent work well for consumers is you're getting
24 pieces of files from lots of different computers so you
25 have a download more quickly. My program operates on a

1 single-source download, which means I only download a file
2 from the user. I direct connect to their computer, so
3 we've got a connection of my computer to their computer,
4 and that's how I'm getting the file from someone.

5 Q Okay. Does the user get to choose whether or not
6 they share files on their computer?

7 A Yes.

8 MR. BANNISTER: I'm going to object to that question.
9 I don't believe that he's laid a foundation for it.

10 THE COURT: Well, ask him how he knows it.

11 BY MR. COLLIER:

12 Q How do you know?

13 A If someone's not making the file available, then it's
14 not going to be shared out on the network.

15 THE COURT: Okay. You can examine him about it,
16 Mr. Bannister. I'm going to allow it.

17 BY MR. COLLIER:

18 Q Does an individual have to be physically at their
19 computer to share files?

20 A No, they do not.

21 Q Okay. Tell me more about how your software, how your
22 software helps you conduct your investigations.

23 A My software, my program is designed strictly for law
24 enforcement so as that I'm not sharing files back out to
25 the community on the BitTorrent network. And I'm doing

1 that single-source download where I'm downloading files
2 that people have made available, and I'm specifically
3 searching for files that -- we call them files of interest
4 to child pornography investigators.

5 Q When you download a file in one of your
6 investigations, you download the complete file from just
7 one user, correct?

8 A Well, I download a file, whether it's complete or
9 incomplete, from one individual user.

10 Q Okay. And that's what a single-source download is?

11 A Yes, sir.

12 Q Okay. You mentioned hash values. What's a hash
13 value?

14 A A hash value is a file picture video. It's DNA.
15 It's a digital fingerprint. It's a sequence of
16 characters, long numbers, characters that identify a file.

17 Q And how does your program that you use use hash
18 values?

19 A Hash values are extremely accurate, and they collect
20 a data base of files, particular sets of hash values that
21 have been determined to potentially be in violation of
22 different states' laws or to contain child pornography.
23 We see files of interest because they may be of interest
24 to people conducting child pornography investigations.

25 Q Okay. Do you view files once you download them from

1 a user?

2 A Yes.

3 Q Why?

4 A I need to see if they are, in fact, violation of
5 South Carolina law, because one state's laws may be
6 different from our laws. So I download the file and watch
7 it and try to see if it does violate our statute.

8 Q Okay. Once you've downloaded and view the files and
9 determine that they are child pornography under the
10 statute, what do you do to identify the user sharing the
11 files?

12 A At that point, I would see that it violated the law
13 and contain child pornography. And then I would identify
14 the IP address associated with the case, and then at that
15 point, I would submit a court order to the Internet
16 service provider who was controlling that net range of IP
17 addresses.

18 Q All right. What's an IP address?

19 A An IP address is kind of like the address for your
20 house or it's how an Internet service provider such as
21 Charter, Time Warner, Comcast, AT&T, whoever you get your
22 Internet service with is able to track you. They've got
23 these net range of IP addresses. When you conduct traffic
24 on the Internet, it would kind of be like your return
25 address on your envelope that allows things to come back

1 to your computer.

2 Q Okay. Can an IP address be assigned to more than one
3 physical location at one time?

4 A No.

5 Q Okay. So who assigns the IP address again?

6 A Well, the Association -- American Registry for
7 Internet Numbers assigns IP addresses, but a company may
8 have a net range or a block of IP addresses, and that's
9 how they dole those out to customers.

10 Q Okay. And when you say a company, you mean ---

11 A Charter, Time Warner, AT&T.

12 Q Okay. Thank you.

13 And that's -- and what are those companies? Those
14 are the Internet service providers?

15 A Internet service providers.

16 Q How do you determine which Internet service provider
17 the IP address is associated with?

18 A My program runs it. And a lot of times I'll
19 authenticate that, but the main site used is the American
20 Registry for Internet Numbers, or ARIN.

21 Q So if your program said that a file was shared with
22 you from a certain IP address, it will say, oh, and this
23 IP address is associated with Charter or Spectrum or AT&T?

24 A Yes, sir.

25 Q It will tell you who the ISP is, but then you

1 double-check it.

2 A Yes, sir.

3 Q Once you determine which service provider assigned an
4 IP address, then what do you do?

5 A I would then obtain a court order that was signed by
6 a Circuit Court judge, and then I would send that court
7 order to the Internet service provider and would be
8 requesting subscriber information.

9 Q Okay. And what does that subscriber information tell
10 you? What's the important information?

11 A It usually had the account number, a name on the
12 account and then a physical address.

13 Q So name and address ---

14 A Yes, sir.

15 Q --- is what you would get from the Internet service
16 provider.

17 A Yes, sir.

18 Q Okay. Were you involved in a file-sharing
19 investigation in June of 2015?

20 A Yes, sir.

21 Q Okay. Did you find any users sharing child
22 pornography files during that investigation?

23 A I did.

24 MR. COLLIER: Permission to approach, Your Honor.

25 THE COURT: Yep.

1 BY MR. COLLIER:

2 Q I'm showing you what's been premarked for purposes of
3 identification as State's Exhibit 1.

4 A Yes, sir.

5 Q Do you recognize it?

6 A Yes, sir.

7 Q Okay. What does it contain?

8 A It's a USB that contains the files that I downloaded
9 as part of this investigation.

10 Q Okay. How is it generated?

11 A I downloaded the files and made a copy of it.

12 Q Okay. Does this contain accurate representations of
13 the information generated when you downloaded the files in
14 June of 2015?

15 A Yes, it does.

16 MR. COLLIER: Okay. Your Honor, the State would like
17 to offer State's Exhibit 1 for admission as evidence.

18 MR. BANNISTER: Subject to my previous objection.

19 THE COURT: All right. Admitted.

20 (WHEREUPON, State's Exhibit Number 1 was admitted into
21 evidence.)

22 MR. COLLIER: Your Honor, we'd like to ask for
23 permission to publish Exhibit Number 1 to the jury.

24 THE COURT: Yes.

25 MR. COLLIER: I'm going to slide over to the computer

1 here.

2 MR. BANNISTER: And, Judge, if I may, just for the
3 record, I have and will on the record offer to stipulate
4 that what they have is, in fact, child pornography in
5 violation of state statute.

6 THE COURT: Okay.

7 MR. COLLIER: I'm hoping the jury can see over my
8 head here. I might need to ---

9 THE COURT: If y'all have trouble viewing it when it
10 comes up on the screen, just wave at me.

11 (Pause in proceedings.)

12 MR. COLLIER: Your Honor, may we approach?

13 THE COURT: Yes. Come on.

14 (WHEREUPON, a bench conference was held off the record.)

15 BY MR. COLLIER:

16 Q Investigator Atkins, do you recognize this document?

17 A Yes, sir.

18 Q What is it?

19 A It's the log files that were generated for one of the
20 downloads.

21 Q Okay. I'm going to highlight several lines of the
22 file and ask you about them.

23 Do you recognize this? What is this?

24 A That's the file title of one of the files I
25 downloaded.

1 Q Can you please read it.

2 A It says "Pthc Showstars Oxi & Jenny live and 10Yo
3 Topless.avi."

4 Q Would you rather ---

5 A Yeah. My eyes aren't what they used to be. I ain't
6 -- not getting any younger.

7 Q If you could read it one more time for the record,
8 that would be great.

9 A "Pthc Showstars Oxi & Jenny 11Yo & 10Yo Topless.avi."

10 Q Okay. Do you recognize any of the abbreviations used
11 in the name?

12 A Yes, sir.

13 Q Okay. Can you tell us about those abbreviations and
14 what they mean?

15 A Yes, sir. "PTHC" is a common term used in child
16 pornography investigation. It stands for "preteen
17 hard-core." "11Yo" would be "11 years old," and "10Yo,"
18 the "Y-O" is for "years old," so 11 years old and 10 years
19 old.

20 Q Okay. Can you tell us what this is?

21 A That's an IP address.

22 Q Okay. Was the file sent to you -- that I just
23 highlighted sent to you from this IP address?

24 A That's -- that's the IP address where the BitTorrent
25 client was being used at. Yes, sir.

1 Q Okay. What is this?

2 A It says "Shareaza." That's a file-sharing program.

3 Q Okay.

4 A It's the program being used by the person who shared
5 the file.

6 Q So the person that shared the file, that's saying the
7 name of the program was Shareaza.

8 A Yes, sir.

9 Q Okay. What is this?

10 A That's the date and time that the download began.

11 Q Okay. And what is -- what is this?

12 A That's the date and time that the download was
13 completed and stopped.

14 Q I'm sorry. I'll go back to the date and time the
15 download began. Can you just read this to us?

16 A June 4, 2015; 3:59.

17 Q So at 3:59 on June 4, 2015, you started the file?

18 A Yes, sir.

19 Q And then what is this?

20 A It says that it ended on June 4, 2015, at 16:23.

21 Q So about 23 minutes it took for you to download the
22 file.

23 A Roughly, yes, sir.

24 Q Okay. Okay. What is this?

25 A That's the file that was downloaded.

1 Q Okay. I'm going to play about 15 seconds of the
2 16-plus minute file that was shared. I'm going to do it
3 with the sound turned off. But first I'm going to unplug
4 the screen real quick while I queue the video up so the
5 jury doesn't have to see more than is necessary.

6 MR. BANNISTER: Again, Judge, I would offer to
7 stipulate this is child pornography. It's illegal.

8 THE COURT: Okay. Noted for the record.

9 MR. BANNISTER: Okay.

10 (WHEREUPON, a portion of State's Exhibit Number 1 was
11 played in open court.)

12 BY MR. COLLIER:

13 Q Let the record reflect that I just played from the
14 13 minute and 10 second mark to the 13 minute and
15 25 second mark.

16 I'm going to show you one more report. Do you
17 recognize this?

18 A Yes. That's the ARIN Whois report.

19 Q Okay. And what is that report?

20 A It indicates to me that the IP address associated
21 with the case was in the net range of Charter
22 Communications.

23 Q Okay. So the IP address that shared the file with
24 you was in this range? That's what it showed?

25 A Yes, sir.

1 Q So this was the report that you told me about earlier
2 that the program, after it downloads the file, it will
3 tell you -- it will tell you the IP address.

4 A It lets me know what Internet service provider is in
5 charge of that IP address and who I need to send the court
6 order to.

7 Q Okay. Thank you. One more file.

8 A Yes, sir.

9 Q Do you recognize this?

10 A That's the title of the second file I downloaded from
11 that IP address.

12 Q Okay. Could you read it, please.

13 A It says "Valya 8yo-pthc-fuck masturb and
14 cum-pthc-good quality.avi."

15 Q Okay. And I forgot to ask you, Investigator. Can
16 you tell me what this file is, what this document is?

17 A This is the log file for the second file that was
18 downloaded.

19 Q Okay. Do you recognize any of the abbreviations in
20 this file name?

21 A "Valya" is a known series of child pornography, and
22 then "8Yo" for "8 years old," "PTHC" is "pre-teen
23 hard-core," and, again, PTHC, good quality.

24 Q Okay. What is this?

25 A That's the IP address that the file was downloaded

1 from.

2 Q Okay. And was the file sent to you from that IP
3 address, this file?

4 A Yes, it was.

5 Q Okay. And is this the same IP address as the one
6 from the earlier file?

7 A Yes, sir.

8 Q Okay. How about this? Do you recognize this?

9 A That's the file-sharing program the user was
10 utilizing, which is, again, Shareaza.

11 Q Okay. Shareaza, again, was the program that shared
12 the file with you?

13 A Yes, sir.

14 Q Okay. What's this?

15 A It lists the date and time of Saturday, June 6, 2015.
16 That's the date and -- at 7:12 p.m. That's the date and
17 time the download began.

18 Q Okay. And then what is this?

19 A It's June 6, 2015, at 19:26 p.m. That indicates the
20 date and time the download completed.

21 Q Okay. So that's when the file was -- that's when you
22 finished the download.

23 A Yes, sir.

24 Q Okay. Let me show you a portion of this.

25 MR. BANNISTER: Same thing, Judge. We offer to

1 stipulate ---

2 THE COURT: You don't have to. You've already done
3 it.

4 MR. BANNISTER: Okay.

5 BY MR. COLLIER:

6 Q Can you tell me what this is?

7 A That's the file, the second file that was downloaded
8 as part of this investigation.

9 Q Okay. I'm going to play a portion of the file. I'm
10 going to queue it up first so the jury doesn't have to
11 see.

12 (WHEREUPON, a portion of State's Exhibit Number 1 was
13 played in open court.)

14 BY MR. COLLIER:

15 Q Okay. Please let the record reflect that I just
16 played from the 8 minute and 25 second mark to the
17 8 minute and 40 second mark.

18 Okay. Investigator, do you recognize this?

19 A That's a ARIN Whois report.

20 Q Okay. Can you tell us what it is?

21 A It's the report from the second download. It tells
22 me that that IP address would be in the net range of
23 Charter Communications.

24 Q Okay. And is this the same IP address net range as
25 the download from June 4th?

1 A Yes, sir.

2 Q Okay. And after you got that IP address that we saw
3 on that document, did you request information from Charter
4 about that IP address?

5 A I did. I sent them the court order.

6 Q Okay. Did they provide you any information?

7 A They did. They indicated the account was in the name
8 of Kevin Willson at [REDACTED] Watkins Circle in the Taylors area
9 of Greenville County.

10 Q Okay. Taylors, Greenville County. Okay.

11 Before visiting this address, did you do any other
12 investigation?

13 A I had driven by the residence to take a picture of
14 the house. I think I made an extra video as I drove by.
15 I checked to see if they had Wi-Fi, if any of it was
16 secure, unsecure, and then I had -- I ran things like
17 drivers licenses, property tax information to corroborate
18 that Kevin Mark Willson did live at the residence.

19 Q Okay. What did you do then? What did you do next?

20 A I got a search warrant for the residence.

21 Q Okay. What day did you execute the search warrant?

22 A It was August 18th of 2015.

23 Q Okay. Did you also obtain an arrest warrant?

24 A Not prior to my investigation. I got the search
25 warrant first and executed it.

1 Q Okay. Why didn't you get the arrest warrant?

2 A I need to corroborate the investigation.

3 Q Okay. Make sure you have the right guy?

4 A I wanted to see who all -- if anybody else lived in
5 the house, if he lived there by himself, and also to see
6 if there was any evidence of the crime of -- or anybody
7 was in the possession of child pornography at the house.

8 Q Okay. Who was living at the location in Taylors?

9 A Kevin Willson.

10 Q Okay. Is he in the courtroom today?

11 A He is. He's sitting over there with the glasses on
12 top of his head in the suit and goatee.

13 Q Was anyone else living there?

14 A No, sir.

15 Q Was there any evidence of anyone else living there?

16 A No, sir.

17 Q Did you arrest Mr. Willson that day?

18 A I did.

19 Q Okay. Why did you arrest him?

20 A We -- there were several forensic examiners on scene,
21 and they looked at some of his electronic devices and
22 indicated to me he had hundreds if not thousands of files
23 containing child pornography.

24 MR. COLLIER: Okay. Thank you, Investigator. Please
25 answer any questions the defense may have.

1 THE WITNESS: Yes, sir.

2 MR. BANNISTER: Judge, may I have just a moment? I
3 want to set up my easel.

4 THE COURT: Okay.

5 (Pause in proceedings.)

6 MR. BANNISTER: Your Honor, may I have a copy of the
7 indictments? Thank you.

8 THE COURT: Those are the originals. Don't do
9 anything with them.

10 MR. BANNISTER: I won't.

11 CROSS EXAMINATION

12 BY MR. BANNISTER:

13 Q Investigator Atkins, if I could, let me turn for just
14 a moment to some of the phrases that are included in the
15 indictment for second degree, and also ask just a couple
16 of quick questions. I think this was made clear in the
17 opening, but let's let me make sure I understand.

18 So there's no allegation in this case that Kevin
19 Willson was in any of these videos, correct?

20 A No, sir.

21 Q There's no allegation that Kevin Willson created or
22 at least initiated the video, in other words, set it up,
23 photographed it, that kind of thing, is there?

24 A No, sir.

25 Q So the sole or the reason that he is part of the

1 indictment is because these videos were, as you said, on a
2 device that was offered, it was offered for sharing files,
3 and the devices were in [REDACTED] Watkins Circle where he was
4 located.

5 A Yes, sir.

6 Q Okay. All right. So in terms of when the indictment
7 says that Kevin Mark Willson knowingly distributed, what
8 we're talking about at that moment are distributed in this
9 particular case is the two video downloads that you
10 acquired on June 4th and June the 6th, correct?

11 A The two we just played. Yes, sir.

12 Q Are there any other distributions that are involved
13 in the case?

14 A That he was charged with, no, sir.

15 Q Okay. And in terms of we don't have any evidence
16 that he's transported these videos?

17 A No, sir.

18 Q Okay. And other than the fact that you were able to
19 pull the two downloads from this device, this IP address,
20 is there any indication that we're alleging that he
21 actually exhibited these videos?

22 A As in he played them for somebody or ---

23 Q Yeah. I mean, it says -- the terminology is
24 "exhibit," so if there's some part of this case that
25 involves Kevin Willson exhibiting the videos, then I want

1 to know what it is.

2 A I'm not aware of any time he's played them for
3 anybody other than -- so no.

4 Q Okay. All right. And any allegation that he sold
5 these videos? I mean, you didn't have to pay money in
6 order to download them to your computer, did you?

7 A No, sir.

8 Q All right. Any allegation that he purchased these
9 videos?

10 A No, sir.

11 Q Let's see. Okay. So when you first began the
12 investigation, it was because you got notice at your
13 office down in Columbia that there was a file of
14 investigative interest, as you've described it, correct?

15 A Had been made available for sharing on the BitTorrent
16 network.

17 Q Okay. So just for a minute I want to talk about how
18 we get to a file of interest, okay?

19 A Yes, sir.

20 Q Now, you mentioned that the hash value of a file is
21 -- if I'm correct, it's like a photo DNA, maybe a
22 fingerprint of an actual video or a photograph ---

23 A Yes, sir.

24 Q --- right? All right.

25 And so it's 128 either letters or numbers or

1 characters, correct?

2 A Yes, sir.

3 Q And so if I understand correctly, so -- and we're
4 just going to make this easy for purposes of being able to
5 explain it to me at least. Let's just -- so if we've got
6 a hash value of, let's say, 1, and then we've got another
7 one, 2, we got another, 3, and another, 4, those different
8 hash values, if they're a file of investigatory interest,
9 then in some form or fashion y'all already know that
10 they're associated with child pornography, correct?

11 A Yes, sir.

12 Q All right. And as I understand it, the federal
13 government has a couple of databases which keep libraries,
14 if you will, of these known hash values that are the DNA
15 of the child pornographic videos. Am I right about that?

16 A There are databases, yes, sir.

17 Q Okay. And your software at Columbia takes those
18 databases and uses them to then crawl out on the Web and
19 find places where they might exist.

20 A I look for people who are sharing files with those
21 hash values.

22 Q Okay. So -- all right. But that's -- the
23 information, the way you get a hit is your computer
24 software program has a known set of hash values, and it's
25 comparing those in this case inside the BitTorrent network

1 to see if it can find one that matches.

2 A Yes, sir.

3 Q Okay. And so the database is maintained by who?

4 A There are several different -- the National Center
5 for Missing and Exploited Children has a database.

6 Q All right. And you called the National Center for
7 Missing and Abused Children NCMEC?

8 A Yes, sir.

9 Q Okay.

10 A That's one of several.

11 Q Right. Okay. So there's more than one. But NCMEC
12 is definitely one that you use as an investigator at the
13 Attorney General's Office.

14 A Well, I don't get the stuff. It populates the
15 database to show these are files that may be of interest
16 to child pornography investigation. I don't like go to
17 them and download files from them, but ---

18 Q Okay. So if I understand it, on your computer, what
19 you've got is you've got a program that can search
20 probably for lots of different hash values. They don't
21 necessarily have to be related just to child pornography?

22 A That's all it's searching for.

23 Q But in your case, all you're searching for is child
24 pornography, and that's the database you downloaded ---

25 A Right. Yes, sir.

1 Q --- into that software.

2 A Yes, sir.

3 Q Okay. And so then it goes out. In this case it was
4 going through the BitTorrent network to see if it could
5 find these hash values.

6 A Yes, sir.

7 Q Right?

8 A Yes, sir.

9 Q Okay. And you said that the program that was being
10 offered -- or the program in this case was Shareaza?

11 A Shareaza. Yes, sir.

12 Q Shareaza. And is Shareaza part of the BitTorrent
13 network?

14 A It's a hybrid client, so you could use it on the
15 eMule network or the BitTorrent network or the Gnutella
16 network.

17 Q Okay. But it's still a file sharing type of
18 software, right?

19 A Yes, sir.

20 Q Okay. And so if a video is -- if a file is a video,
21 and let's just say to make it easy it's 60 minutes long,
22 as I understand it, if you're a client of BitTorrent or
23 the Shareaza -- Shareaza, if you downloaded the software
24 onto your computer ---

25 A Yes, sir.

1 Q --- so you're the client of BitTorrent, in this case,
2 you're saying the IP address that was the target was, in
3 fact, a client of Shareaza and BitTorrent, right?

4 A Yes, sir.

5 Q All right. And then if you want to watch a movie
6 that's 60 minutes long, the reason that BitTorrent and
7 Shareaza is sort of a go-to for watching these large files
8 is because it's connecting through the software to tens,
9 hundreds, maybe thousands of other computers that are
10 within this network of computers.

11 A Yes, sir.

12 Q So -- now, you correct me if I'm wrong here, because
13 I -- this is a little bit new to me. If you take
14 60 minutes of the movie and you try to download from a
15 single source to watch the movie, sometimes the problem is
16 it just takes so long because the file is so big; is that
17 a fair way to put it?

18 A It takes longer to do a single-source download.

19 Q So the way BitTorrent/Shareaza solves that problem
20 for people who want to watch a movie is their software
21 permits the BitTorrent customer to receive different
22 segments of the 60-minute movie from different computers,
23 correct?

24 A Yes, sir.

25 Q And so while sometimes it's hard for a file that big

1 to travel from one source, when you've got lots of
2 sources, it makes it easy to put it together quickly on
3 your computer and watch it in, I guess, realtime.

4 A Yes, sir.

5 Q All right. Would -- so if I got on and I was looking
6 for a movie and I downloaded a movie and then I clicked on
7 it and I pressed play, if I sometimes see that little
8 buffering symbol, is that sort of what we're talking about
9 in terms of how it can -- the amount of data that's moving
10 is taking a while to get assembled and put together on the
11 computer and this sort of networking system solves that
12 problem, or am I talking about two totally different
13 things?

14 A I'm not sure I understand the question.

15 Q All right. Well, then let me back up to where we
16 were. So in my little hypothetical here with the
17 60-minute movie, when the BitTorrent/Shareaza client
18 starts watching a movie, they might get ten minutes from
19 up here, ten minutes from another one, ten over here, ten
20 over here and ten over here. And they could all be
21 different segments of that 60-minute movie that are coming
22 into the BitTorrent/Shareaza client?

23 A Yes, sir.

24 Q That's correct? Okay.

25 A Yes, sir.

1 Q All right. And if I understood you correctly when
2 you were talking about one of the reasons that you have to
3 look at the files is because sometimes only a segment
4 resides on a particular given computer that gets tagged by
5 your software; is that fair? Or an incomplete file.
6 Maybe that's ---

7 A I can do an incomplete download, yes, sir, only
8 obtain a partial download of the file. Yes, sir.

9 Q All right. So let me ask this. The two videos that
10 we saw portions of, and I'm talking about is there any
11 segment of those videos that is not child pornography,
12 that is, like, I don't know, the first minute or two that
13 there's maybe a camera on the room and the children are
14 getting ready to walk in there, or then there's a segment
15 where everybody's gone and there's just a blank screen?
16 Is there any segment of either one of those videos, even
17 if it was just for a moment, that would not necessarily be
18 child pornography, it was just that segment?

19 A I'd need to watch them again, maybe. Without viewing
20 it again, I'm not sure.

21 Q Okay. All right. So as a user in this file-sharing
22 software, especially on Shareaza, I think -- did you have
23 the version -- was that on the report?

24 A It was in the log file that was put up on the screen.
25 Yes, sir.

1 Q All right. Can you say of your own knowledge what a
2 client who downloads Shareaza is going to see when they go
3 through that process?

4 A I've never done it.

5 Q Okay. Based on your training and experience, you had
6 June the 4th and June the 6th were the dates that you were
7 getting the downloads from the IP address, right?

8 A Yes, sir.

9 Q All right. And so the IP address -- now, I thought I
10 heard you say that you can go to Charter Communications
11 and you can find out if the IP address is hooked up to the
12 Wi-Fi -- when it's hooked up to Wi-Fi, that helps you
13 identify the location of it.

14 A You mean as far as getting records for that IP
15 address?

16 Q Right, right, right.

17 A Yes.

18 Q Okay. And I also heard you say that the IP address
19 is pretty much unique to the device.

20 A Be unique to that -- I can tell you that an
21 electronic device was using the wireless or Internet at
22 that residence, not so much the device.

23 Q All right. So I saw that -- so let me -- well, let
24 me ask you this. So if I've got a device and I'm at my
25 home and I hook up to my device, then my Wi-Fi, my

1 provider is going to show the IP address of my device
2 using it at my home at that moment, correct? Or at least
3 you can get records showing that your IP address is at
4 that ---

5 A Somebody was -- if you had a device connected to the
6 Internet?

7 Q Yes.

8 A Then it would be hooked to that IP address. So you
9 could have, I guess, multiple computers. Is that what --
10 if you had three computers, I wouldn't necessarily know
11 which computer. I just know that an electronic device at
12 that IP address which comes back to a house is using the
13 Internet.

14 Q So here's my question. So let's say I go over to
15 McDonald's and I get a cup of coffee and I want to use the
16 same device with the same IP address over at McDonald's.
17 Now, if you got the Charter Communications from
18 McDonald's, are they going to show my IP address over
19 there at that other Wi-Fi station?

20 A No. It would be McDonald's IP address.

21 Q Right. So the IP address that we've got in this case
22 so far is good for the moment in time when you hooked your
23 computer up to that IP address, right?

24 A Yes, sir.

25 Q Okay. So it wouldn't -- you wouldn't have

1 information about where else those devices might have been
2 other than at that connection with Charter over history in
3 time.

4 A No, sir.

5 Q All right. And I thought I also heard you say that
6 the IP address is sometimes assigned by the manufacturers?
7 In other words, whoever makes the computer gives it its IP
8 address.

9 A No. I didn't say that.

10 Q How do they get an IP address? How does it get built
11 into the ---

12 A No. The IP address isn't coming from the device.
13 It's coming from -- it's your Internet. You've got your
14 router at the house, and it's assigned this IP address, so
15 each device you had connected to the Internet at your
16 house ---

17 Q Right.

18 A --- would all have the same IP address. The IP
19 address isn't for the device.

20 Q I thought the IP address was the actual computer that
21 was -- I thought the IP address was associated with the
22 device itself.

23 A All I can tell you is that an electronic device is
24 connected to the Internet on that IP address.

25 Q All right. So anybody's device that goes into

1 105 Watkins Circle is going to show the same IP address?
2 In other words, if I've got five devices at one address,
3 they're all going to have the same IP address?

4 A It should during that particular time.

5 Q Okay. All right. Thank you for clearing that up.

6 So would there be any way to take an IP address -- or
7 let's just take -- I mean, y'all seized the devices,
8 right? I mean, there was ---

9 A Yes.

10 Q --- ones that are of interest in this case was a
11 MacBook Pro, a MacBook Air, and then there was a portable
12 hard drive.

13 A Yes, sir.

14 Q Right? Is there any way to go back and look at the
15 serial number, the manufacturer and figure out who
16 purchased those devices?

17 A I've never done it. Potentially, but I can't say for
18 sure.

19 Q All right. So in this case, that was not -- that's
20 not evidence we're going to have in this case.

21 A No.

22 Q All right. I think the next thing you testified to
23 had to do with the reports that we saw on the screen. The
24 logs, I guess?

25 A Yes, sir. The log files.

1 Q Okay. So as I understand it, you correct me where
2 I'm wrong, okay, that log is showing that your computer at
3 that moment is hooked up to one of the devices at the IP
4 address that was indicated.

5 A Yes.

6 Q All right. And so when you initiated the download of
7 the two files, one on June 4th and one on June 6th, that
8 was you doing something from your end. There wasn't
9 anything affirmative that had to be done at the other end
10 where the IP address was, was there?

11 A I mean, somebody had to make the file available for
12 sharing.

13 Q Okay. So do we know when that was done?

14 A When they made it available? No, sir.

15 Q Okay. I guess then let's just talk about that moment
16 on June 4th and June 6th when you're actually doing the
17 download, does the computer screen on the IP address
18 that's the target pop up something and say, hey, will you
19 share this file with, and then, you know, your address,
20 Attorney General's Office or anything like that?

21 A There's no -- there's no dialogue where I'm chatting
22 with the person saying, "Will you share this file with
23 me?"

24 Q Okay. So as far as the evidence is concerned then,
25 there's -- we shouldn't expect to see any that would show

1 that whoever was in █████ Watkins Circle knew at the moment
2 you hooked up to the computer that that file was being
3 downloaded to your computer, correct?

4 A There's no text or emails or anything like that.

5 Q All right. I think I asked you this, but just let me
6 say it a different way. So as I understand it, part of
7 the way BitTorrent normally works, and I'm not saying it
8 can't do it other ways, but normally BitTorrent works, it
9 allows you to download because you're getting so fast
10 because you're getting pieces of information from lots of
11 different computers and people.

12 A As a normal consumer, that's how it would work. Yes,
13 sir.

14 Q And so your investigative BitTorrent -- or I should
15 say is it a BitTorrent software that you're using to hook
16 up with the target IP address?

17 A It's an investigative program. We have it for
18 different versions, but this one is for the BitTorrent
19 network.

20 Q Okay. So BitTorrent didn't create this. Law
21 enforcement did.

22 A Yes, sir.

23 Q All right. And one of the things that your software
24 does is it gives you the ability to make sure that you're
25 just hooked up to one computer, right?

1 A Yes, sir.

2 Q All right. And so if -- well, I'm trying to think
3 how -- see if I can understand this exactly. When you
4 hook up to the IP address that's the target of your
5 investigation for the purposes of using that download of
6 BitTorrent, do you know what other computers that that
7 target may be hooked up to in the BitTorrent network?

8 A I do not.

9 Q Okay. So we talked a little bit -- or you discussed
10 a little bit about the file name that was -- sort of all
11 of them started with "PTHC."

12 A They had that in it. Yes, sir.

13 Q Had that in it. At least the two we're talking
14 about. And you said that stood for "preteen hard-core"?

15 A Yes, sir.

16 Q All right. So is it possible that that could stand
17 for something else? Like instead of preteen, it would
18 just be pretty? I mean, if all you've got is PTHC, we're
19 making a little bit of an assumption that it is
20 particularly for preteen hard-core, correct?

21 A All I can tell you is PTHC as it goes for preteen
22 hard-core is just a common acronym in the child
23 pornography world.

24 Q Okay. So -- but if you weren't familiar with that
25 and you did not know that, PTHC could mean a lot of

1 different things, correct?

2 A Sure.

3 Q Okay. Would it be -- so as -- let me ask you if you
4 know. If you do a search to find out what's out there in
5 BitTorrent/Shareaza world, let's say I want to watch Star
6 Wars, I guess I go into the file and I type in "Star Wars"
7 and it shoots me a list of potential places I can download
8 it?

9 A I've never used it as a consumer, so I -- but I
10 assume, yeah, you would search for what you want to
11 download and then have some options and then download what
12 you wanted to.

13 Q Okay. And does it work like maybe other files where
14 you get a list of files and you can click on, you know,
15 one, two, whatever you want to do and then you download it
16 first?

17 A I'm not sure. I've never used it as a consumer uses
18 it, so . . .

19 Q Is one of the reasons that you've never used it as a
20 consumer because it's a little bit dangerous from a
21 security standpoint to have this on your computer to begin
22 with?

23 A I mean, I guess it's all in what your intent to use
24 it for is.

25 Q Well, I mean, aren't you ---

1 A If you're downloading copyrighted material, it could
2 be a problem. If you -- you can use it for other things,
3 I guess.

4 Q Would it be fair to say that what you've done if you
5 download it, whether you knew it or not, is you've opened
6 your computer up to a lot of other computers at least
7 within this network?

8 A I mean, that's how file sharing works. Yes, sir.

9 Q All right. And so if, I guess, then from a security
10 standpoint, the potential exists that stuff that you're
11 getting downloaded could contain lots of things that your
12 -- you know, you wouldn't want in your computer like
13 malware or other types of software that gives other people
14 more control than you want over your own computer.

15 A Potentially. Yes, sir.

16 Q In fact, I saw that the -- let's see. The computer,
17 the IP address listed a port outside. It said Port 6346.
18 What is a port?

19 A A port is like a channel for your -- I guess it would
20 be like opening different doors at your house but on your
21 computer, and that 6346 is a common port that's used for
22 some of these file-sharing programs.

23 Q Okay. So it's a way in, I guess, to get to the files
24 that are in the computer.

25 A The way I understand it. Yes, sir.

1 Q Okay. When you were able to get in through the port
2 and look at the files, were you able to determine what
3 other computers those files had come from?

4 A I mean, I don't go into the computer. I don't search
5 anything that he has. His computer makes the file
6 available, it's out there for download, and then I
7 download it. I'm not -- I know what you're saying about
8 the direct connect where I'm connected to his computer,
9 but I'm not diving in and seeing his mortgages and
10 checking accounts and things like that.

11 Q Okay. Well, I guess maybe subsequent to the initial
12 download of the two files, were you able to go in and
13 figure out how those files got from the Internet world
14 into this device?

15 A I don't know how he acquired them. Is that what
16 you're asking?

17 Q That's what I'm asking.

18 A Yeah. I'm not sure how he acquired them.

19 Q And, now, I assume that when you're asking -- when
20 your computer's doing its search to find these hash values
21 that are out there that are of investigatory interest,
22 there's got to be some limitations that you're putting on
23 at least maybe geographically. Do I understand correctly
24 that you limit your response, that is, your notifications
25 to just the geographic area of South Carolina?

1 A Yeah. I've tried to narrow my focus to South
2 Carolina -- well, IP addresses that have a rough
3 geolocation for the State of South Carolina.

4 Q Okay. And you use the -- are there other -- well, so
5 as I understand it, there are ways that you can take an IP
6 address and then put that into -- well, go on the Internet
7 and find out rough locations for where these IP addresses
8 may reside.

9 A Yes, sir.

10 Q And is that something the public can do? It is,
11 isn't it?

12 A Yes, sir.

13 Q Okay. And is Whois, that file you were talking
14 about, is that a public file that you can go in, like if I
15 had ---

16 A Anybody could do it.

17 Q Anybody could do it. Okay.

18 All right. So once you decided on focusing on this
19 IP address and you got the information from Charter
20 Communications about the location, you said you did some
21 other things to investigate that particular location. You
22 said it was a house that you drove by, took some pictures,
23 and you did a Department of Motor Vehicles records search,
24 correct?

25 A Yes, sir.

1 Q Isn't it true that in the customers at the same
2 address, you pulled up the name John Holman?

3 A I'll have to look at it again, but there may have
4 been somebody else on there.

5 Q Let me go get it right quick, because that's kind of
6 important. I've got it right here. I've just got to find
7 it right quick.

8 All right. So let me see if this helps refresh your
9 recollection a little bit. I think what I'm showing you
10 is -- take a look right there. And this is this.

11 A Yes, sir.

12 Q All right. So ---

13 A The report from the DMV. Yes, sir.

14 Q So there were actually two addresses that popped --
15 sorry -- two individuals that popped up with this address
16 at the DMV, correct?

17 A Yes, sir.

18 Q All right. And is it your understanding you have to
19 get your license renewed roughly every ten years?

20 A Supposed to. Yes, sir.

21 Q And isn't it state law that if you change your
22 address, you've got to change your address on your
23 driver's license?

24 A You're supposed to.

25 Q Was John Holman ever contacted?

1 A No, sir.

2 Q All right. So when you got to this residence,

3 [REDACTED] Watkins Circle, how many bedrooms were there?

4 A I think there was one room with a bed in it, and I
5 think the other one was set up as an office.

6 Q That wasn't a spare bedroom?

7 A I don't recall. There was only two rooms I remember.

8 Q I should say a room -- all right. So let me just
9 show you.

10 A Let's see. Yeah. I don't remember which room was
11 which.

12 Q Okay. I haven't taken a look at the -- I guess the
13 evidence inventory sheet. Is there -- does that help you?
14 Were there more than one bedroom?

15 A I would feel for sure a house that size there's more
16 than one bedroom.

17 Q Okay. So do we have any pictures of the other
18 bedroom? Do we have any pictures of either bedroom?

19 A I'm not sure.

20 Q Okay. All right. So you said one office -- sorry --
21 one room was set up as a home office; is that correct?

22 A As I recall. Yes, sir.

23 Q Okay. So it's possible some business was being done
24 out of the residence?

25 A I mean, he could have just had his computer set up in

1 there.

2 Q All right. Roughly how long were you all -- so when
3 you went to the house, as I understand it, you initially
4 went by, took a picture, you looked up to see if it had a
5 wireless connection to the house, correct?

6 A Yes, sir.

7 Q All right. And how long were you there roughly at
8 that moment?

9 A When I just drove by the house?

10 Q Yeah.

11 A I checked the Wi-Fi. I mean, I just drove by very
12 quickly.

13 Q Okay. And after you did that, is that when you went
14 and got your search warrant for the house?

15 A It was not the same day. No, sir.

16 Q Okay. All right. So the next time you come to the
17 home, how long were you there?

18 A To execute the search warrant?

19 Q Yes, sir. Well, if that's the next time you were
20 there. I'm just looking to see ---

21 A Yeah. That would be the next time I visited the
22 house. I don't recall how long we were there. Maybe
23 three hours, two, two to three hours.

24 Q All right. Was this during kind of normal business
25 hours of the day?

1 A Yeah. It was around -- I'd have to look at the
2 search warrant -- 8:30, 9:00 in the morning.

3 Q Okay. So y'all were maybe there till roughly lunch?

4 A That sounds about right. It'd be -- I don't
5 necessarily recall exactly.

6 Q All right. So when -- I'm going to take you back for
7 a moment again to when you're at your desk and you get --
8 your search pops up and says, okay, I've got a hash value
9 of interest and I've got an IP address. We're talking
10 about a hash value that, one, was on a database relevant
11 to child pornography, correct?

12 A A hash value that we knew was associated with child
13 pornography, yes.

14 Q Okay. And am I correct in saying that over in
15 NCMEC's database, if you choose to, you can ask them about
16 a particular hash value and they may be able to give you
17 other information like how old the children potentially
18 are, who they are, where it occurred, a description of the
19 video, things of that nature?

20 A Potentially.

21 Q Okay. And so in order to know the content of the
22 file that your computer had noticed you about, even with
23 that information, you still had to get it and you had to
24 download it and then open it up, correct?

25 A Yes, sir.

1 Q And if I understand correctly, the download is one
2 step, then you've got it on your computer, right?

3 A Yes, sir.

4 Q And I'm talking about, you know, you when you're
5 looking at it.

6 A Yes, sir.

7 Q Then I guess you double-click on it and it pops up?

8 A I played the same video you all saw earlier.

9 Q All right. And it's not until that moment that you
10 know what's in the file from a legal standpoint.

11 A Yes, sir.

12 Q Okay. So if I use the term "cedar" or "source" in
13 the framework of BitTorrent, do you -- does that word have
14 any meaning to you?

15 A It's a word used in talking about how BitTorrent
16 tracks the traffic.

17 Q Okay. So it sounds to me like in BitTorrent, if the
18 way file-sharing system works is that you can end up with
19 one device with one file becoming the seed for that file
20 to then be shared out over different users. Am I correct
21 about that?

22 A It would have to start somewhere. Yes, sir.

23 Q Okay. How sophisticated -- that's too broad a
24 question. Would it be fair to say that in some instances,
25 illegal pornographers have gotten very sophisticated at

1 trying to avoid detection?

2 A Legal [sic] pornographers have gotten sophisticated?

3 Q Yeah. They're sophisticated from a -- especially a
4 computer technology standpoint. In other words, they know
5 what they're doing is illegal, so they're doing everything
6 they can to cover their tracks or hide where they really
7 are.

8 A Yes, sir. I assume they don't want to get caught if
9 they're making illegal pornography.

10 Q Right. Do they have the ability -- so I don't know
11 if you're like me, but my cell phone now I start getting
12 these calls that come in, and it's got the first three
13 numbers of my phone number but it's not anywhere close.
14 Some telemarketer. Do you have -- as I understand it, you
15 can take -- there's a program that let's you kind of
16 project a number that's not really yours. Can you do that
17 with an IP address?

18 A Not that I'm aware of.

19 Q Have you ever seen that?

20 A No, sir.

21 Q Is it impossible?

22 A I've never seen it.

23 Q Okay. Have you heard anything about that in your
24 training or otherwise?

25 A No, sir.

1 Q In other words, disguising an IP address in some form
2 or fashion?

3 A I'm not familiar with it.

4 Q Okay. Now, I realize that there are databases that
5 cover the known child pornography. Are there also -- is
6 there a way to do searches to see if there is a network of
7 illegal pornographers who are sharing back and forth, in
8 other words, they're doing these that's now connecting
9 them back and forth?

10 A Is there a network that tracks people who produce it
11 or ---

12 Q Well, let me ask you this way. So were you part --
13 did you run the software called AXIOM on any of the
14 computers or is that a question for the other guys?

15 A No. That's a forensic question.

16 Q All right. I'm sorry. Let me go on from that.

17 Did you have any information about what Mr. Willson's
18 occupation was?

19 A Just Google searches.

20 Q Okay. What did that discover?

21 A I thought he might be a Realtor.

22 Q Realtor. Okay.

23 So at the house itself when you were there, you said
24 there was wireless access. Was this a Wi-Fi that was
25 operating in the house, or was it a hard connection to a

1 cable inside the house, or do you know?

2 A I believe he had a router that would have had Wi-Fi
3 connectivity.

4 Q Okay. And do you know how far that router was
5 projecting the access to the Wi-Fi?

6 A No, sir. I don't know the range of it.

7 Q Okay. So if you knew what it was and you're on your
8 cell phone when you're in front of the house, would you
9 have been able to look, see is this the ---

10 A I mean, that's what I -- what I did when I drove by
11 the house. And I've got in my search warrant about me
12 checking for wireless access point. I think I found that
13 they were secure, I'm pretty sure, just driving by.

14 Q That's really what I'm asking, because I've got two
15 different pictures on my mind. One is you see this box up
16 on the telephone pole, and you're like, ah, that's
17 wireless access; or two, you're looking at the device
18 that's telling you, ah, there's when I -- I'm seeing it on
19 my phone. I can't get into it, but I'm seeing it there.

20 A I don't know if it's even that person. It could be
21 the neighbor's. All I can see is what as I'm driving by
22 is being made available to me.

23 Q Right. And so that's what I'm getting at. So we can
24 at least say that the Wi-Fi at 105 Watkins Circle was
25 available out to the street.

1 A Yes, sir.

2 Q Okay. And so it's projecting well beyond the
3 boundaries of the house itself.

4 A Yes, sir.

5 Q Okay. Now, there was a scan I saw called a netstat
6 scan?

7 A Yes, sir.

8 Q That you -- I think you did on your computer to, I
9 guess, show that you were connected to the target IP
10 address; do you remember that?

11 A There's a netstat log that comes with the -- as part
12 of the download.

13 Q Right. Hold on. I thought I had that right here.
14 While I look for it, let me just -- so that netstat log,
15 though, the one that was produced in this case, is coming
16 from your computer, right?

17 A If it's in that case file, it would be -- yeah, it
18 would be generated by my computer.

19 Q All right. So it's not the netstat log from any of
20 the devices that were at █████ Watkins Circle.

21 A No, sir.

22 Q But the netstat log has the ability to tell you,
23 okay, here's what foreign addresses are attached right now
24 through a port to your computer.

25 A The network traffic, yes, sir.

1 Q Okay. And so is that something that you can run as a
2 -- it doesn't take any professional skill to do that on
3 your own computer at home? I mean, is that something you
4 could have done at the house to look and see what's the
5 netstat log for all these devices that are here at

6 [REDACTED] Watkins Circle?

7 A It's not something -- I don't know how to do it.

8 Q Okay. Do you know whether it was done?

9 A No, sir.

10 Q All right. Were you the one that made the
11 application to Charter?

12 A Yes, sir.

13 Q Okay. And they sent you back a record, correct?

14 A Yes, sir.

15 Q All right. Let me just get this marked as an
16 exhibit.

17 (WHEREUPON, Defendant's Exhibit Number 1 was marked for
18 identification.)

19 BY MR. BANNISTER:

20 Q Let me hand the investigator Defendant's Exhibit
21 Number 1, just ask you if you're familiar with that
22 document.

23 A It appears to be some of the data that Charter
24 returned in response to my court order.

25 MR. BANNISTER: Okay. So, Your Honor, I move this

1 into evidence.

2 THE COURT: Any objection?

3 MR. COLLIER: None, Your Honor.

4 THE COURT: Okay.

5 (WHEREUPON, Defendant's Exhibit Number 1 was admitted into
6 evidence.)

7 BY MR. BANNISTER:

8 Q Okay. So as I understand it, this document is as a
9 result of a request to Charter for information about the
10 IP address that was the target of your search, correct?

11 A Yes, sir.

12 Q And then they sent you back a host of information
13 about IP addresses that were associated with 105 Watkins
14 Circle.

15 A Yes, sir.

16 Q Correct? Okay.

17 And so what's listed as the target IP address, but
18 would you agree with me that there are two other IP
19 addresses that are also listed?

20 A Yes, sir.

21 Q Okay. Do you know the location of those or did you
22 look to see what the location of those other IP addresses
23 were?

24 A They weren't associated with the two downloads, so I
25 wouldn't think that I'd have any reason to do any further

1 research or obtain records on those IP addresses.

2 Q Okay. So the answer would be no?

3 A No.

4 Q Investigator, would it make any difference to you in
5 terms of whether or not we should figure out where these
6 other two IP addresses were located that were associated
7 with this account with Charter? It looks like the date
8 range that they were associated were July 31, 2015,
9 through August 4, 2015, and July 29, 2014, through
10 March 15, 2015. Those are roughly in the time frame prior
11 to when your downloads occurred, correct?

12 A Do they appear to be around the same time?

13 Q Yeah. And just so you know, I'm getting these dates
14 from over here on this part, so check me if I'm wrong.

15 A (Review's exhibit) There's some in 2015 and some in
16 2014.

17 Q Right. All right. The three devices that you took
18 from 105 Watkins Circle, would you agree that all those
19 devices are portable?

20 A Yes, sir.

21 Q There were two devices there that were, let's say,
22 less portable, but did I understand there were two like
23 the old Dell towers that used to be the old computers that
24 have the big boxy things that sometimes sit and hold the
25 hard drive when you put the disc in and take it out?

1 There were two of those at the residence too, correct?

2 A I don't -- I don't recall.

3 Q Okay. If they were, though, you agree that there
4 wasn't any evidence of value that was found on those?

5 A If we didn't take them, I would probably say not.
6 No, sir.

7 MR. BANNISTER: Okay. Judge, let me check one more
8 thing and I may be finished with this witness. I think
9 that's all I have for this witness. Thank you, Your
10 Honor.

11 THE COURT: Any redirect?

12 MR. COLLIER: Just a couple questions, Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. COLLIER:

15 Q Investigator, does the program that you use in your
16 investigation somehow force the other user to download
17 child pornography files from other computers?

18 A No.

19 Q Okay. So what you downloaded only comes from this
20 one user.

21 MR. BANNISTER: Judge, I'm going to object to that.
22 I'm not sure he's laid a foundation for that. How does he
23 know that it doesn't force him to do that?

24 THE COURT: Well, ask him if he knows. I mean, he
25 can ask him if he knows. You opened the door.

1 MR. BANNISTER: I'd like to know how he knows. Yeah.
2 That's fine. I just want to know how he knows.

3 THE COURT: Okay. All right. Go ahead.

4 BY MR. COLLIER:

5 Q Based on your experience in child porn file-sharing
6 investigations, does the program that you use in your
7 investigation somehow force the other user to download
8 child pornography files?

9 A Based on my training and experience, I have not found
10 that to be the case.

11 Q Okay. So what you downloaded only comes from one
12 user?

13 A It's a single-source download. Yes, sir.

14 Q Okay. Why didn't you contact ---

15 MR. BANNISTER: Judge, I'm sorry to be a stickler
16 about this, but I do have an objection at this time. If
17 it's based on ---

18 THE COURT: He hasn't even asked the question yet.

19 MR. BANNISTER: Well, I'm rejecting the previous
20 answer. Sorry.

21 THE COURT: Approach the bench. Come up here.

22 (WHEREUPON, a bench conference was held off the record.)

23 THE COURT: Ladies and gentlemen, we're going to take
24 a short break. Y'all don't discuss the case. We'll get
25 back with you very shortly. I promise.

1 (WHEREUPON, the jury exits the courtroom at 4:28 p.m.)

2 THE COURT: All right. Mr. Bannister, state your
3 objection.

4 MR. BANNISTER: Judge, so let me state first what I
5 believe the question was, and then I'll say what my
6 objection to it was. I believe the question was what
7 happens at the IP address that's the target when he
8 requests the file. And the question was more specifically
9 does your software force the IP address to then go out and
10 grab information from BitTorrent.

11 THE COURT: Cheryl, can you back up to the question.

12 (WHEREUPON, the previous question was read back.)

13 MR. COLLIER: I think I asked it twice. The first
14 time I asked it, Your Honor, was a little more specific.
15 Like I said, does the program that you use in your
16 investigation somehow force the other user to download
17 child pornography files from other computers.

18 THE COURT: All right. Mr. Bannister, what's your
19 objection? Go ahead.

20 MR. BANNISTER: I object to the second half of the
21 question where it's forced the other user to download
22 child pornography files. What I'm saying is the only way
23 you would know that the Shareaza/BitTorrent software isn't
24 going out on the Internet and grabbing the portions of the
25 file that it doesn't have in that file is if you know

1 something about that somewhere. And he said, "I don't run
2 that software. I haven't used it. I haven't done the
3 user side of it."

4 THE COURT: Well, what is the basis of the objection?
5 You're going to the credibility of his answer.

6 MR. BANNISTER: I think the objection is that he's
7 basing his answer on hearsay. He's basing his answer on
8 hearsay because he's saying in his training and
9 experience, which there is no experience. It's just he's
10 being told this is what happens. I mean, that's what I --
11 that's what I see is the foundation.

12 THE COURT: You are conjuring up that thought.
13 You're speculating as to that.

14 MR. BANNISTER: I think -- no. He's offering that
15 for the truth of the matter asserted, and I want to talk
16 to somebody who understands that software, and he doesn't.

17 THE COURT: Well, you can -- I'll allow you to
18 recross him on that issue. That's like asking a surgeon
19 how he knows to cut -- or a researcher -- yes, it is --
20 how he knows that that's a cancer cell, it was because
21 somebody else told it to him. So based on -- what he
22 said, based on his experience and training, that is his
23 answer. If you want to attack his training and
24 experience, you certainly are welcome to do that.

25 MR. BANNISTER: Okay. I understand. Thank you.

1 THE COURT: All right. Does anybody need to take a
2 short recess before we get the jury back or do we want to
3 keep going?

4 MR. BANNISTER: How long are we going until?

5 THE COURT: How much redirect do you have?

6 MR. COLLIER: Just a few questions. Three, four
7 maybe.

8 MR. BANNISTER: Then let's just keep going.

9 THE COURT: Keep going. All right.

10 (WHEREUPON, the jury entered the courtroom at 4:36 p.m.)

11 THE COURT: All right. Mr. Collier.

12 MR. COLLIER: Thank you, Your Honor.

13 BY MR. COLLIER:

14 Q Investigator Atkins, does the program that you use in
15 your investigation somehow force the other user to
16 download child pornography files from other computers?

17 A From other users?

18 Q Does the ---

19 A My program does not. No, sir.

20 Q Okay. So what you downloaded -- the only file you
21 downloaded comes from that one user.

22 A Yes, sir.

23 Q Okay. Why didn't you contact John Holman, who was
24 the previous owner of [REDACTED] Watkins Circle?

25 MR. BANNISTER: Judge, I object to the leading nature

1 of that question.

2 THE COURT: Overruled. Go ahead.

3 BY MR. COLLIER:

4 Q Why didn't you contact John Holman, the previous
5 owner of [REDACTED] Watkins Circle?

6 A To determine he -- I mean, if he -- I'd have to look
7 at the property tax sheet that's in my case file, but if
8 that -- I could jog my memory, but I don't recall him just
9 being a necessary part of the investigation.

10 Q Okay. And, again, can IP addresses change from time
11 to time? IP addresses that Internet service providers
12 assign to a subscriber, can they change over time?

13 A Yes, sir.

14 Q Okay. But the IP address -- this IP address was the
15 same on June 4, 2015, as it was to June 5th --
16 June 6, 2015.

17 A The IP address was the same for both of my downloads.

18 Q Okay. And the order that you got from the circuit
19 judge just covered that period, June 4, 2015, to
20 June 6, 2015.

21 A Yes, sir. That's what was relevant to my
22 investigation.

23 MR. COLLIER: Okay. Beg the Court's indulgence.

24 BY MR. COLLIER:

25 Q Investigator, when you go on a search warrant, you

1 find child pornography at an address, you generally look
2 -- investigate the previous owners of the address of the
3 property?

4 A No, sir.

5 MR. COLLIER: Thank you, Investigator. No further
6 questions.

7 THE COURT: All right. Any recross?

8 MR. BANNISTER: Yes, please. Briefly.

9 RECROSS EXAMINATION

10 BY MR. BANNISTER:

11 Q Investigator Atkins, so you were asked does a program
12 -- does your program somehow force the user to download
13 child pornography files. Let me ask it a little
14 differently. Does your program -- when you connect
15 directly to a target IP address, does your program prevent
16 the IP address from continuing to download information
17 while you're acquiring your download?

18 A Can you ask -- say it one more time?

19 Q Yes.

20 A I did not understand.

21 Q Does your program prevent the target IP address from
22 downloading other information from other sources while you
23 are downloading the file you're interested in?

24 A No, sir.

25 MR. BANNISTER: Thank you. I don't have any further

1 questions.

2 THE COURT: All right. Thanks, sir. You may stand
3 down.

4 Is your next witness going to take less than
5 30 minutes?

6 MR. COLLIER: Yes, Your Honor.

7 THE COURT: Oh, okay. Great. Call them.

8 MR. COLLIER: Your Honor, the State calls Harold
9 "Hal" Harris.

10 THE CLERK: Please place your left hand on the Bible
11 and raise your right hand.

12 WHEREUPON,

13 HAROLD "HAL" HARRIS

14 After having been duly sworn, testified as follows:

15 THE CLERK: Thank you. Please take a seat and state
16 your name for the record.

17 THE WITNESS: Harold Lee Harris. I go by Hal.

18 DIRECT EXAMINATION

19 BY MR. COLLIER:

20 Q Mr. Harris, with whom are you currently employed?

21 A Booz Allen Hamilton.

22 Q How long have you been employed with Booz Allen
23 Hamilton?

24 A January of this year, sir.

25 Q Where were you employed prior to that?

1 A Prior to that, I worked for Greenville County
2 Sheriff's Office from September -- or, excuse me, December
3 1998 to September 2015. After that I worked for Black Bag
4 Technologies, a digital forensic software company based
5 out of Silicon Valley, and then for a short period of time
6 SUMURI, a company also digital forensic software based out
7 of Delaware.

8 Q Can you describe your general law enforcement
9 training and education?

10 A Yes, sir. I have an associate's of criminal justice
11 from Spartanburg Methodist College, and I attended the I
12 think Class 376 of the South Carolina Criminal Justice
13 Academy, and then numerous classes outside of that that
14 were law-enforcement related.

15 Q Are you familiar with the South Carolina Internet
16 Crimes Against Children task force?

17 A Yes, sir. I was assigned to the task force during my
18 time at -- or during some of my time at Greenville County
19 Sheriff's Office when I was attached to the Computer
20 Crimes Unit.

21 Q Have you received any specialized training associated
22 with the task force?

23 A Yes, sir. I received -- well, yes and no. Not
24 specific training through them. I attended numerous
25 meetings and such items as that. But most of my training

1 was through either vendor specific software companies,
2 vendor specific through training through software
3 companies or through the National White Collar Crime
4 Center.

5 Q Okay. But you have been trained in the area of
6 Internet Crimes Against Children?

7 A Or specifically digital forensics.

8 Q Okay. Were you involved in a sexual exploitation of
9 a minor investigation involving Kevin Willson?

10 A Yes, sir, I was.

11 Q Okay. How did you become involved in the
12 investigation?

13 A South Carolina Attorney General's Office initiated
14 the case due to it being within the confines of Greenville
15 county. Myself and other folks within the Computer Crimes
16 Unit assisted with the execution of a search warrant.

17 Q What date was the execution of that search warrant?

18 A I don't recall off the top of my head.

19 Q What was your role during the search?

20 A I was to assist with securing the other residents,
21 and I also previewed at least one device.

22 Q Okay. Which device did you examine?

23 A The external hard drive.

24 Q Okay. How did you examine it?

25 A I connected it to a county-issued computer.

1 Q Okay. Did you use any extra software?

2 A Yes, sir. The specific computer that I would have
3 used at the time was a Mac, or an Apple computer. Apple
4 computers by nature in and of itself, because of the file
5 system, do not write to a Windows file. It's capable of
6 reading it, but it doesn't write to it. In addition to
7 that, I would have been running software called SoftBlock.
8 It is a software write blocker.

9 Q What's the purpose of the write blocker?

10 A Prevent essentially writing to the drive or to the
11 external media in and of itself. Whenever a computer is
12 turned on, unless there's a block put in place, there's
13 writes made to that hard drive or to the media.

14 Q Okay. So you were making sure you weren't writing to
15 the disk as you were examining it.

16 A Absolutely. I was able to read it. Essentially, the
17 easiest way to explain it is if you think of a new snow,
18 you have the snow falls down, you've got little blades of
19 grass sticking up. What a write blocker does, whether it
20 be hardware or software, essentially lays a sheet of glass
21 over the top of that. So we're able to walk and actually
22 look down in the snow and see the blades of grass sticking
23 up or see the rock that hasn't been covered up all the
24 way, but we're not making footprints in that snow ourself.

25 Q Okay. Did you find anything during your exam of the

1 hard drive?

2 A Yes, sir. I found numerous items that appeared to be
3 child pornography.

4 Q What did you do after that?

5 A The hard drive itself was given to Bomar and --
6 Special Agent Bomar, and he was advised, hey, I think I
7 found some files on here that you may want to specifically
8 look at.

9 Q Okay. Did you create a report?

10 A I did not, sir.

11 Q Okay. Why didn't you create a report?

12 A It wasn't our case. We were there simply to back up
13 -- to lend assistance, and also Bomar was going to go
14 through and look at it anyway.

15 MR. COLLIER: Okay. Thank you, Mr. Harris.

16 THE WITNESS: Yes, sir. Thank you.

17 THE COURT: Yep. Cross.

18 CROSS EXAMINATION

19 BY MR. BANNISTER:

20 Q Mr. Harris, as a Greenville County sheriff officer,
21 back then were you issued body cams?

22 A No, sir. We were not.

23 Q Were you -- did you participate in taking pictures or
24 anything of that nature?

25 A No, sir, I did not.

1 MR. BANNISTER: I don't have any further questions.
2 Thank you.

3 THE COURT: All right. Thanks. You can stand down.

4 MR. BANNISTER: Your Honor, may I approach real
5 quick?

6 THE COURT: As long as you bring Mr. Collier with
7 you.

8 (WHEREUPON, a bench conference was held off the record.)

9 THE COURT: All right. Ladies and gentlemen, we
10 don't punch a time clock so we're not going to make you
11 wait till 5:00. The next witness I think is going to be
12 pretty lengthy, so we're going to break and ask you to be
13 back tomorrow morning at about 9:30, okay?

14 Remember, don't discuss the case. You're going to go
15 home, you're with family or friends, they're going to want
16 to know. It's human nature to want to talk about it, and
17 it might be human nature on your part to want to go do
18 some form of research. When the case is all said and done
19 and you finished your duty, you can do all that kind of
20 research you want. But right now everything you need to
21 know to decide this case comes from this courtroom, okay?
22 So y'all have a great night. We'll see you tomorrow at
23 9:30. Thank you.

24 (WHEREUPON, the jury exits the courtroom at 4:46 p.m.)

25 THE COURT: All right. Can we do anything before we

1 break? Anything else?

2 MR. COLLIER: Your Honor, just one thing. We're
3 finished with Hal Harris. It's all right with us if it's
4 all right ---

5 THE COURT: Release him from subpoena.

6 MR. BANNISTER: Yes, please.

7 THE COURT: Okay. Thank you. Released.

8 All right. Mr. Willson's bond has come to an end, so
9 we're going to take him into custody.

10 (WHEREUPON, proceedings adjourned at 4:48 p.m., to be
11 reconvened on Tuesday, December 4, 2018.)
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1 TUESDAY, DECEMBER 4, 2018

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3 (WHEREUPON, State's Exhibit Numbers 2 and 3 were marked
4 for identification; proceedings commenced at 10:06 a.m.)

5 THE COURT: How hard would it be for you to put the
6 segments that you're playing onto one flash drive?

7 MR. COLLIER: Your Honor, the segments that I'm going
8 to play today will be on one flash drive. You mean
9 combine them into one file?

10 THE COURT: No. I mean take each file, the
11 15 seconds or 20 seconds that you're playing, make it a
12 file and put it on a flash drive, the next one, same flash
13 drive, for the purposes of evidence.

14 MR. COLLIER: You mean actually edit the videos and
15 take those excerpts out?

16 THE COURT: Yeah.

17 MR. COLLIER: I could do it.

18 THE COURT: You've got some pros back there.

19 MR. COLLIER: Yeah. We could do it.

20 THE COURT: Otherwise, you're going to be putting
21 into evidence ---

22 MR. COLLIER: The long videos.

23 THE COURT: And if the jury wants to look at it,
24 okay, in their deliberations, it's got to be part of the
25 record. So ---

1 MR. COLLIER: Your Honor, we can do it. I can do it.

2 THE COURT: Okay.

3 MR. COLLIER: It might take me 30 minutes or so to do
4 it.

5 THE COURT: You don't have to do it right now, but
6 just for purposes of admission into evidence so that
7 there's -- if the jury wants to look at these things,
8 there's no chance that they're going to see more than what
9 was admitted, okay?

10 MR. COLLIER: We can do that. We can do that.

11 THE COURT: Any objection from the defense on that?

12 MR. BANNISTER: No, sir, Your Honor.

13 THE COURT: Okay. All right. We'll ---

14 MR. COLLIER: When the time comes, just let me know
15 and I can do it.

16 THE COURT: Okay. All right. Maybe at a break.

17 All right. Anything before we get the jury in? We
18 had one juror whose child was sick which is why she had to
19 wait for her husband to come home which is why they were a
20 little late getting in. Okay? All right, guys.

21 (WHEREUPON, the jury entered the courtroom at 10:09 a.m.)

22 THE COURT: All right. Ladies and gentlemen, welcome
23 back. Hope you had a pleasant evening, and we are ready
24 to resume the trial. Okay.

25 MR. COLLIER: Your Honor, the State calls

1 Investigator Chris Bomar.

2 THE COURT: All right.

3 THE CLERK: Please place your left hand on the Bible
4 and raise your right hand.

5 WHEREUPON,

6 CHRIS BOMAR

7 After having been duly sworn, testified as follows:

8 THE CLERK: Thank you. Please take a seat and state
9 your name for the record.

10 THE WITNESS: My name is Chris Bomar, B-O-M-A-R.

11 DIRECT EXAMINATION

12 BY MR. COLLIER:

13 Q Investigator Bomar, where are you currently employed?

14 A I'm currently employed with the South Carolina
15 Attorney General's Office.

16 Q What are your duties?

17 A My primary duties are doing the forensics and digital
18 recovery for any type of evidence off these digital
19 devices for the agency.

20 Q How long have you been employed by the Attorney
21 General's Office?

22 A I've been employed with the Attorney General's Office
23 since 2013 of August, so a little over five years.

24 Q Okay. Please describe your general law enforcement
25 training and education.

1 A I started law enforcement in 1996. Started on the
2 road just like many officers do. Worked my way into the
3 Violent Crimes Unit, which I worked sex crimes, homicides
4 and then also with the ICAC task force for the York County
5 Sheriff's Office.

6 Q Okay. Have you received any specialized training
7 associated with Internet Crimes Against Children?

8 A I have. I've got over thirteen years doing digital
9 forensics. Performed over a thousand different forensic
10 exams on different devices from cell phones, computers,
11 from tablets. Also received diversified training in the
12 software we utilize such as FTK, AXIOM, Cellebrite and
13 others forensic tools that we utilize to extract the data
14 off these digital devices.

15 Q Were you involved in a sexual exploitation of a minor
16 investigation involving Kevin Willson?

17 A I was.

18 Q How did you become involved in that investigation?

19 A I assisted Special Investigator Kevin Atkins since I
20 was the forensic -- primary forensic examiner for the
21 Attorney General's Office during that time. So I was
22 asked to assist if we came across any digital devices on
23 scene that if I could view them, look at them for any
24 potential evidence so they could make some type of
25 determination on scene as well as taking custody of the

1 evidence that we seized from the residence.

2 Q Okay. So you were involved in executing the search
3 warrant?

4 A Yes, I was.

5 Q Okay. Who was at the home when you arrived?

6 A The suspect, Mr. Willson, there with glasses on top
7 of his head and goatee.

8 Q Okay. Did it appear to you that anyone else lived at
9 the home?

10 A It did not. There were three bedrooms inside the
11 house that I recall: master bedroom, two spare bedrooms.
12 One was utilized as an office where the computers were set
13 up, the other one appeared to be just like a storage room
14 where a bunch of stuff was just crammed into.

15 Q Okay. Did you see any electronic devices at the
16 home?

17 A I did. We saw several laptop computers, which is the
18 MacBook Pro, MacBook Air, an external hard drive, DVD and
19 some various other digital items that we seized.

20 Q Okay. Did you remove any of the devices from the
21 home?

22 A We did when we seized them.

23 Q Okay. You talked about an external hard drive.
24 What's an external hard drive?

25 A The external hard drive is a storage device, this one

1 being just a regular hard drive where you can store any
2 type of digital information such as pictures, videos, file
3 documents, those such things.

4 Q Okay. Who gave the drive to you?

5 A Hal Harris with the Greenville County Sheriff's
6 Office.

7 Q Okay. After Hal Harris gave you the drive at the
8 residence, where did you take it?

9 A I then took all this equipment back with me to the
10 South Carolina Attorney General's Office in Columbia,
11 South Carolina.

12 Q Okay. Did you then examine that hard drive?

13 A Once we had gotten the evidence back there, several
14 months had passed. Kevin Atkins, special investigator,
15 was doing a preliminary, and he actually needed some
16 particular of those files since a report was not done on
17 scene, that he needed some of those files for his
18 preliminary. So I extracted -- I imaged the device
19 through a write blocker, which is a hardware write
20 blocker, which keeps anything being written to the device,
21 imaged it and then extracted five videos from the device.

22 Q Okay. So you prepared this report for Kevin Atkins
23 for a preliminary hearing that he had associated with this
24 case.

25 A That is correct.

1 Q Okay. You said you imaged the device. What is
2 imaging?

3 A Basically, that is making an exact duplicate of the
4 device so I do not have to work off the original evidence
5 any longer. So I duplicated that device and then worked
6 off the image and then extracted the five videos, which
7 these five videos were in the main root directory, so as
8 soon as you open up the hard drive, you would see these
9 files.

10 Q Why is it necessary for you to image a drive?

11 A Basically, I can sit there and do whatever I need
12 without having any type of accidents occur. Our thing is
13 protecting the integrity of the evidence, and that's just
14 one way to protect the integrity of the evidence.

15 Q Are there other ways to protect the integrity of the
16 evidence?

17 A Well, there's different processes that you can use.
18 Write blockers is one. How you handle the evidence while
19 you're on scene is another way. And then what you do
20 during the exam is another way of protecting the integrity
21 of the evidence.

22 Q What's write blocking?

23 A Write blocking, basically, how Hal explained it is a
24 way of keeping you from writing back to the device. Every
25 operating system that you utilize on the computer system

1 wants to make changes, and those changes you do not want
2 to make on evidence that you're using because the defense
3 will say in some situations that you put it there, or how
4 do we know you didn't do it. So this is the one way that
5 we can ensure that nothing changed.

6 So it takes a hash value of the drive before we image
7 it, and then takes another hash value, because we talked
8 about hash values yesterday, which is basically an
9 algorithm that says, hey, this is exactly the same
10 contents. And we take it during and then after, and then
11 if they're the same, then we can assure that nothing has
12 changed on that device.

13 Q So you used a write blocker in this case when you
14 made an image of this hard drive.

15 A I did.

16 Q Okay. What sort of programs did you use to create an
17 imaged copy of the hard drive?

18 A The program that we use is called FTK Imager.
19 There's many programs that are out there, but this is one
20 of our primary tools. So basically, what it does is it
21 asks us for the drive that we want to image it, whether it
22 be a logical or a physical.

23 And the difference between a physical and a logical
24 is this: when I do a physical image, basically, and I'm
25 taking from the very zero sector of the hard drive and

1 imaging all the way through. It is the preferred way to
2 do an image; however, there are times that we can only do
3 a logical.

4 The best way to explain a logical is, is if you put
5 your thumb drive into a computer system, you see a drive
6 letter pop up with that association of that thumb drive
7 such as G, D, E or whatever. That is a logical.
8 Basically, it's saying from that time that hard drive
9 opens, I'm taking the information from the directories and
10 then making an image of that. It is not an entire drive
11 from the zero to the very end, but it is the contents of
12 the drive.

13 So like I said, we do physicals, we prefer the
14 physicals, but there's sometimes we can only do a logical.
15 In this situation, we did a physical.

16 Q Okay. And it's preferred standard procedure to do a
17 physical?

18 A Correct.

19 Q So you were able to successfully create a physical
20 image of the external hard drive that was seized at
21 Mr. Willson's home?

22 A I was.

23 Q Okay. Once you image the drive, then what did you
24 do?

25 A Once I imaged the drive, basically, then I opened up

1 that image, looked at the structure of the hard drive,
2 which is basically there are several files written in the
3 main directory of that hard drive, and then there's
4 multiple folders on that hard drive.

5 By just looking at titles, I can really tell that
6 there were a lot of titles that were associated with what
7 I considered child pornography terminology. And some of
8 those file titles you'll see a little bit later. But I
9 chose five. I could have chosen thousands, but to write
10 thousands of indictments is redundant. You would not want
11 to sit in this courtroom and hear the judge read out a
12 thousand indictments, nor would he want to.

13 MR. BANNISTER: Judge, I'm going to object.

14 THE COURT: Yeah. Don't -- don't talk directly to
15 the jury. And you're also getting beyond the scope of --
16 you're speculating, so just don't go there.

17 Okay. Go ahead.

18 BY MR. COLLIER:

19 Q Investigator, what were you looking for in your
20 forensic examination of this drive?

21 A Any files violating the state statute dealing with
22 sexual exploitation of a minor.

23 MR. COLLIER: Okay. Permission to approach, Your
24 Honor?

25 THE COURT: Yeah.

1 BY MR. COLLIER:

2 Q Investigator, I'm showing you what's been premarked
3 as State's Exhibit Number 2. Do you recognize it?

4 A I do. This is my forensic report that I gave to the
5 investigator.

6 Q Okay. Is this an accurate representation of your
7 findings from your forensic analysis of the hard drive?

8 A It is.

9 MR. COLLIER: Okay. Your Honor, the State would like
10 to offer State's Exhibit 2 for admission into evidence.

11 MR. BANNISTER: Can I see that right quick?

12 Judge, just let me state here so I don't have to
13 interrupt Mr. Collier.

14 THE COURT: Well, wait a minute. Come up here.
15 We're not going to do speaking objections.

16 (WHEREUPON, a bench conference was held off the record.)

17 THE COURT: Okay. What's your objection?

18 MR. BANNISTER: Thanks, Judge. I would object to the
19 cumulative nature of what they're getting ready to put in.
20 It becomes unduly prejudicial under Rule 403 analysis. I
21 also would offer to stipulate, again, to each of these
22 files, that they are child pornography and they are
23 illegal, and then I won't have to interrupt Mr. Collier as
24 he goes through them later.

25 THE COURT: Okay. Denied. I'm admitting it into

1 evidence.

2 (WHEREUPON, State's Exhibit Number 2 was admitted into
3 evidence.)

4 MR. COLLIER: Thank you, Your Honor. We ask for
5 permission to publish this to the jury.

6 THE COURT: Yes.

7 BY MR. COLLIER:

8 Q Investigator Bomar, if you need to come down and get
9 closer to see this, that's fine.

10 Investigator, what's this document?

11 A This document is the list of the files that I
12 extracted from the hard drive.

13 Q Okay. I'm going to put my mouse pointer next to the
14 first line and ask if you can read this.

15 A The title of -- it's basically you're pointing to the
16 title of one of the files. The first part of the title is
17 "sdpa compilaho babyJ - nena de 5 a_os cojida por enorme
18 pija cbaby ptsc pthc nablots frifam," and then there's some
19 other indicators to the file, dates and times of the file
20 written and then what type of file it is.

21 Q Okay. Can you tell us about the terminology and
22 abbreviations used in the title?

23 A There's several terminologies known in our
24 investigation dealing with child pornography. One of
25 them, of course, you've heard about the PTHC. The other

1 part is the PTSC which means "preteen softcore." The
2 other thing is the "babyj" is a known series which deals
3 with a child being -- it just deals with a baby in a
4 sexual explicit way.

5 Q Okay. I'm pointing to this. Can you tell us what
6 this (indicating) is?

7 A That basically says it's an AVI file, which is a
8 video. It's an indicator of what type of file it is.

9 Q Okay. So this type of file is an AVI file?

10 A Yes. It's the AVI extension.

11 Q Okay. What's this (indicating)?

12 A That is the created date, basically, when that file
13 was written to that external device. It says 4/4 of 2015
14 around 5:32 a.m.

15 Q Okay. What is this last entry?

16 A That is the size of the file, which I believe says 95
17 something kilobytes.

18 Q Okay. Open one more folder. I'm pointing to this.
19 What is this (indicating)?

20 A When I did my report, I had to rename the file
21 because the length becomes also hard to -- we can only
22 accept so much length size in a title, so to make it
23 short, I renamed all those videos Video 1, Video 2,
24 Video 3, Video 4, Video 5 to correspond with those titles
25 you just saw on the other page.

1 Q Okay. So is Video 1 that I'm highlighting right now,
2 is that the file that we just reviewed?

3 A That is the file of the one we just went over with
4 the title.

5 Q Okay. I'm going to play 15 seconds of the 21-plus
6 minute file that we shared -- that you found with the
7 sound off. And I'll unplug the computer while I'm queuing
8 up the file.

9 (WHEREUPON, a portion of State's Exhibit Number 2 was
10 played in open court.)

11 BY MR. COLLIER:

12 Q Okay. Let the record reflect that I played from the
13 1 minute and 5 second mark to the 1 minute and 20 second
14 mark of that video called Video Number 1.

15 THE COURT: You've got to keep your voice level up a
16 little bit.

17 MR. COLLIER: Sorry, Judge.

18 BY MR. COLLIER:

19 Q Okay. What's this?

20 A This is the second file I found on the external
21 device there in the root directory, main directory of the
22 computer.

23 Q Can you read it, please.

24 A "Kinderkutje Pthc Hc-c4G - Compile 4 Girls - All
25 Small And Loving It - 9.08 9Yo Mpg 7Yo Girl Try to Fuck

1 Ptsc Hussyfan Kingpass Kleuterkutje" -- I can't even
2 prounounce that.

3 Q Can you tell us about some of the abbreviations used
4 in that file?

5 A Of course alluded before, the 9Yo is a common
6 terminology discussing age, so we refer that they're
7 talking about a 9Y -- year old child, along with a 7Yo is
8 also another reference of an age. "PTHC," which we've
9 talked about before. "Hussyfan" is also another
10 terminology that's commonly used in child pornography. It
11 distinguishes certain types of titles and series that you
12 can find out there.

13 Q Okay. What is this? Can you please read this and
14 tell us what it is?

15 A Basically, it's signifying what type of media player
16 can play it. It says "VLC." If you extend it a little
17 bit further out, if I had, it would say "MPEG." But the
18 VLC part is telling you which video player you can
19 actually play that file.

20 Q Could you read this and tell us what that is?

21 A That is the creation date when the file was written
22 to the external storage device, 11/4/2014, around 8:30 in
23 the morning.

24 Q Okay. And what's this again?

25 A And then that, again, is the size, around

1 150 kilobytes. 160. Excuse me.

2 Q Okay. Is this that file that I'm highlighting here?

3 A It is.

4 Q Okay. Why is the name different?

5 A I changed it due to the same circumstances before.
6 Trying to replicate that name, it's easier just to call it
7 Video 2.

8 Q Okay. I'm going to play ten seconds of the nine-plus
9 minute file that you found on the drive, so I'll unplug it
10 while I queue it up.

11 (WHEREUPON, a portion of State's Exhibit Number 2 was
12 played in open court.)

13 BY MR. COLLIER:

14 Q Okay. Let the record reflect that I played from the
15 0 minute and 0 second mark to the 0 minute and 10 second
16 mark.

17 Investigator Bomar, do you recognize -- can you read
18 this file and tell us what it is? Read us this and tell
19 us what it is.

20 A The third file that I found, it says "pedo_family
21 Pthc - Two Young Boys 12-13Yo & Two Young Girls 12-13Yo
22 Suck & Fuck 23 minutes" -- "23 min."

23 Q Okay. Can you tell us about some of the terminology
24 in that file?

25 A Here, again, you've got more age determinations in

1 the file. You also have another common term used in the
2 child pornography, "pedo," which signifies boys, little
3 boys. The other thing also, of course, is the PTHC, which
4 seems to be a common terminology we're seeing. And then,
5 of course, some very descriptive words in that title.

6 Q And what is this?

7 A That's AVI, also just shows what type of video file
8 it is.

9 Q Okay. And can you read this and tell us what it is?

10 A Yeah. A little faint, but I'll try my best. You
11 might can see it better than I can, actually.

12 Q You can come back to look at the computer if you need
13 to.

14 A 1/22 of 2015, around 12:58 in the morning.

15 Q Okay. And what's that?

16 A That's the creation date when that file was written
17 to that storage.

18 Q Okay. And what is this?

19 A That is also the size of the file, which it looks
20 like it's 71,410 kilobytes.

21 Q Okay. Is this that file?

22 A That is -- Video 3 is that file.

23 Q And why is the name different?

24 A Here, again, just easier to determine because of all
25 the different language and the length of the file name.

1 Q Okay. I'm going to play 15 seconds of that 22-plus
2 minute file, and I'm going to unplug the computer to queue
3 it up before I show it to the jury.

4 (WHEREUPON, a portion of State's Exhibit Number 2 was
5 played in open court.)

6 BY MR. COLLIER:

7 Q Okay. Let the record reflect that I played from the
8 1 minute and 20 second mark to the 1 minute and 35 second
9 mark of that file.

10 Okay. Could you read this, please.

11 A The fourth file I found, the title of it is "Pthc
12 Pedo 5Yo Vaginal Penetration - Rca 5Y."

13 Q Can you tell us something about that terminology?

14 A Basically, you've got some of the other descriptors
15 in there. Now you've got the PTHC, the Pedo, which I've
16 described before, the 5Yo determining age, and then some
17 other descriptive characters.

18 Q Okay. And what is this? Can you read it and tell us
19 what it is?

20 A VLC media player. It's also an MPEG saying what
21 media player can play that file. And then the date --
22 creation date that was put on that storage device of
23 10/23/2014, around 5:12 in the morning.

24 Q Okay. And what's this last entry?

25 A The last entry is the size, saying 92,555 kilobytes.

1 Q Okay. What's this? Is this that file?

2 A Video 4 is that file.

3 Q Okay. And why is the name different?

4 A Here, again, same situation dealing with the size,
5 characters and such. Easier to name the video file.

6 Q Okay. I'm going to play 15 seconds of the file, but
7 I'm going to unplug the computer while I queue it up.

8 (WHEREUPON, a portion of State's Exhibit Number 2 was
9 played in open court.)

10 BY MR. COLLIER:

11 Q Okay. Let the record reflect that I played ten
12 seconds of a portion of that file; however, that file does
13 not have a time index so I played a portion of the file
14 that I thought was perfect for the jury to see to see that
15 the file met the statute.

16 THE COURT: Okay. How long did it last?

17 MR. COLLIER: Ten seconds.

18 THE COURT: Okay. And that was video what number?

19 MR. COLLIER: 4.

20 THE COURT: All right.

21 BY MR. COLLIER:

22 Q Investigator Bomar, could you read this last file
23 title?

24 A The last file that I extracted titled "Pthc 2013 -
25 7Yo." I may have to look on your screen because the ---

1 Q That's fine. You can look at my screen.

2 A "Gina," G-I-N-A, "Mvi 1858" and then some numbers in
3 parentheses.

4 Q Okay. Can you tell us about the terminology in that
5 file?

6 A Basically, you have another age determinator in
7 there, the 7Yo, and then the PTHC, again, which seems to
8 be common among all those titles, and then the mp4 showing
9 that it is a video on the storage device, and then with
10 the creation date of 1/23 of 2015 around 5:40 p.m.

11 Q Okay. And then, again, what's this last entry?

12 A And then the last entry, of course, is the size of
13 the file, which is 43,291 kilobytes.

14 Q Okay. Is this that file?

15 A Video 5 is that file.

16 Q Okay. Why is the name different?

17 A Changed it due to the same reasons for the other
18 files, shortening it.

19 Q I'm going to play a portion of the file but I'm going
20 to unplug the computer while I queue it up.

21 (WHEREUPON, a portion of State's Exhibit Number 2 was
22 played in open court.)

23 BY MR. COLLIER:

24 Q Let the record reflect that I played from the
25 4 minute and 5 second mark to the 4 minute and 20 second

1 mark.

2 Investigator Bomar, after you prepared your report,
3 what did you do with the hard drive?

4 A After the hard drive was imaged and I'm done with my
5 forensics, I stuck it back into evidence at the AG's
6 office.

7 Q Okay. And where is the evidence kept?

8 A The evidence room is in our office there at the AG's.

9 Q Okay. Is that a secure room?

10 A It is. It's a secured room.

11 MR. COLLIER: Thank you, Investigator Bomar. Please
12 answer any questions defense may have.

13 CROSS EXAMINATION

14 BY MR. BANNISTER:

15 Q Investigator Bomar, when you were looking initially
16 at the file directory to look for names on the files that
17 might be of investigatory interest, did those names alone
18 from a legal standpoint indicate to you or confirm for you
19 what was actually going to be on the video?

20 A No, sir. The files just gave me a point of
21 direction. It wasn't until I viewed them that I found out
22 the contents of the files.

23 Q And do those files also have an info hash value
24 associated with them, the ones that we've seen the
25 particulars on in this last exhibit?

1 A Every file can have a hash. I didn't perform a hash
2 value on those files. You have to run a separate program
3 to run those hash values as an algorithm, but they do have
4 hash values. It's just that there are none associated
5 until you run that program.

6 Q And does the Attorneys General's Office have that
7 program?

8 A They do have a program that can do hash values, yes,
9 sir.

10 Q All right. And assuming that the hash value was run,
11 is it likely, in your experience, that those videos would
12 have appeared in the library of hash values that we've
13 talked about that are maintained by some of the federal
14 government's different agencies?

15 A Yes, sir. They -- if other agencies have come across
16 them and submitted those videos and their hash values,
17 yes, they would have been a part of that library.

18 Q Does the Attorney General's Office submit hash values
19 with descriptors to these databases themselves?

20 A We do.

21 Q And so if -- but do you know whether or not these
22 particular videos were submitted to these national
23 databases or not?

24 A This one you would have to actually talk to the
25 forensic examiner who did the forensics. I did not submit

1 any of the things in the five videos I had run because I
2 didn't run hash values.

3 Q All right. The information that you described that
4 you obtained in terms of the file itself, does that tell
5 you what IP address the device was at when the file was
6 created?

7 A No. The file descriptor that I just read is going to
8 show the file name, what I've given you the information
9 of, the created date and then the size of the file and
10 what type of file it is. That's the only type of
11 information I captured. And even in the forensic world,
12 it would not have captured the IP address.

13 Q All right. And so that device, when the file was
14 created on those dates, you don't have -- there's no way
15 to know where the device itself was when the files were
16 created, if I'm understanding that correctly.

17 A You could, but you would have to probably ask the
18 forensic examiner who did other further examination. I
19 did a very -- what I call a very shallow dive in doing the
20 forensics. There's a deeper dive that possibly can show
21 associations. Whether that was done or not, I can't say.

22 Q The shallow dive, were you able to determine what
23 program the device was using or engaged in when the files
24 were created?

25 A Not in my forensic analysis, no.

1 Q All right. And how about on the hard drive itself,
2 I'm assuming there were other files that were non -- that
3 were not of investigative interest on this hard drive; is
4 that a fair statement?

5 A Yes, sir. I did come across other files on that
6 device that did not meet our state statute.

7 Q All right. And were the files themselves organized
8 in directories? subdirectories? subfile folders?

9 A I did see subdirectories and what I call multiple
10 subdirectories within those directories, yes, sir.

11 Q When you were reviewing the videos themselves to
12 learn, acquire the knowledge of the content of the
13 videos, would it have been possible just to take a screen
14 shot?

15 A Of the video itself?

16 Q Yes.

17 A Well ---

18 Q Just yes or no, and then you can explain your answer.
19 I don't want to interrupt you.

20 A Okay.

21 Q But is it possible you could have taken a
22 screenshot?

23 A Oh, yes. I could have taken a screenshot. Yes, sir.

24 Q All right. You can explain your answer if there's
25 anything else you need to say.

1 A Okay. The reason I choose not to do screenshots, it
2 becomes more work on our part. It's just easier to grab
3 the whole file so that way you have the whole contents of
4 the file.

5 Q Maybe your screenshot works a little different than
6 mine, but isn't it just like Control S or something of
7 that nature?

8 A You can, but all it does is put it in the clipboard
9 and then you've got to paste it somewhere else.

10 Q Okay. Having reviewed the entire video of the five
11 that you referenced here today in your testimony, can you
12 say that there is no part of those videos, however small,
13 that would not necessarily be illegal? In other words,
14 like an introductory scene where everybody's got their
15 clothes on or an ending scene where everybody's off the
16 camera shot? In other words, if I took the video and ran
17 it out and said, okay, frame by frame, this is what we've
18 got, I mean, clearly, there's child pornography on the
19 portions y'all are showing, but is it possible there's
20 other portions that are not?

21 A To answer that accurately, I can't remember. But
22 it's possible, yes.

23 Q Okay. Let's see. How many years did you say you had
24 special training in digital forensics for child sex
25 crimes?

1 A 2006.

2 Q So about 10, 11, 12, somewhere in there?

3 A Almost 13 years.

4 Q 13 years. I'm sorry. I missed that when you said
5 it.

6 Okay. Did you take any photographs of 105 Watkins
7 Circle?

8 A I took some. I did not take most. Mostly I was
9 looking for devices.

10 Q All right. And did you take any photographs of the
11 two spare bedrooms?

12 A I was not taking photographs of the spare bedrooms,
13 no.

14 Q When Mr. -- back then I guess he was an investigator,
15 Investigator Harris handed you the device that contained
16 these videos, did he tell you specifically where he had
17 gotten it from?

18 A I know exactly where the device was from. It came
19 from the office area.

20 Q Okay. And do you know where in the office area?

21 A It's near the laptop computers.

22 Q In order for it to -- that device to actually acquire
23 files, does it not have to be plugged up to another
24 device, a computer?

25 A If you want to put them at that point in time, yes.

1 Q I understood you imaged the device, that is, you
2 basically created a duplicate of all the data on this
3 external hard drive?

4 A Yes, sir.

5 Q And at the time you did that, you already knew,
6 though, that there was child pornography on the device
7 itself.

8 A I did. Yes, sir.

9 Q So no question when you duplicated it, you knew you
10 were capturing those videos also.

11 A Yes, sir.

12 Q In other words, you didn't leave those and say, okay,
13 we're going to check the rest of it.

14 A No, sir.

15 Q Does a -- I'm sorry. I forgot to ask you this. Was
16 there any password associated with the hard drive?

17 A No, sir.

18 Q Was there any security whatsoever associated with the
19 hard drive?

20 A None that I know.

21 MR. BANNISTER: Thank you. I don't have any further
22 questions.

23 THE COURT: Any redirect?

24 MR. COLLIER: Just a couple questions, Your Honor.

25 THE COURT: Okay.

REDIRECT EXAMINATION

BY MR. COLLIER:

Q Investigator Bomar, for the purposes of your exam, was it necessary for you to run hash values?

A No, sir.

Q Why not?

A One, because I wasn't determining whether it was child porn through hash values. It was determined by my actual visual depiction of what those videos were.

Q So the hash values would help you determine whether or not someone else had thought it was child porn.

A Correct. It helps forensic examiners if they're -- if I'm doing a full forensics to cut down on time because it would categorize it. Since I was just selecting a few files for the case, it was not necessary.

Q Okay. Were these files relatively easy for you to find?

A Yes, they were. As soon as I opened up the drive, it's in the main directory. They're right there in plain view.

MR. COLLIER: Okay. Beg the Court's indulgence.

THE COURT: Yeah.

MR. COLLIER: No further questions, Your Honor.

THE COURT: All right.

MR. BANNISTER: I don't have anything further.

1 THE COURT: Huh?

2 MR. BANNISTER: I don't have anything further.

3 THE COURT: Okay. All right. You can stand down.

4 Thank you, sir.

5 MR. SENN: Can the State call our next witness?

6 THE COURT: Yeah.

7 MR. SENN: Judge, the State calls Special

8 Investigator David Grubbs.

9 THE CLERK: Please place your left hand on the Bible
10 and raise your right hand.

11 WHEREUPON,

12 DAVID GRUBBS

13 After having been duly sworn, testified as follows:

14 THE CLERK: Please take a seat and state your name
15 for the record.

16 THE WITNESS: My name is David Grubbs, G-R-U-B-B-S.

17 DIRECT EXAMINATION

18 BY MR. SENN:

19 Q Special Investigator Grubbs, where are you currently
20 employed?

21 A I'm employed with the South Carolina Attorney
22 General's Office.

23 Q What are your current duties?

24 A I perform forensic examinations on items that are
25 submitted to us from local agencies around the state

1 involved with the Internet Crimes Against Children task
2 force as well as items seized by our own agency.

3 Q Okay. How long have you been employed by the South
4 Carolina Attorney General's Office?

5 A Just a little bit over two years.

6 Q Okay. Could you please describe to the jury your
7 general law enforcement training and education.

8 A I have a bachelor's degree in criminal justice from
9 the North Georgia College State University. I've been in
10 law enforcement for ten years. I started in 2008, Aiken
11 County Sheriff's Office as a road patrol officer. After
12 five years I joined SLED's Computer Crime Unit where I was
13 also then a part of the Internet Crimes Against Children
14 task force. After three years with them, I joined the
15 Attorney General's Office.

16 Q Have you received any specialized training associated
17 with the Internet Crimes Against Children task force?

18 A Yes. I've attended a multitude of National White
19 Collar Crime Center training including basic and
20 intermediate data acquisition and analysis, I have had
21 training for cell phone interrogation, I've been to formal
22 training from companies for the programs we use to include
23 EnCase, FTK, there's a program called Griffeye which we
24 have specialized training, AXIOM. I've also been to the
25 Sands Institute training for hacking and intrusion

1 courses. Things like that.

2 Q Were you involved in a sexual exploitation of a minor
3 investigation involving Kevin Willson?

4 A Yes.

5 Q How did you become involved in this investigation?

6 A After I came on, it was very shortly after I started
7 with the Attorney General's Office, it was assigned to me
8 to do the full forensics on the items that were submitted.

9 Q Okay. Did you examine any devices seized from
10 Mr. Wilson's residence?

11 A Yes.

12 Q Okay. Where were these devices located at the time
13 before you accessed them?

14 A They were in our evidence storage areas at the
15 Attorney General's Office.

16 Q So what's the first step you would take when you
17 examine these devices?

18 A The first step I take, I'm going to photograph the
19 items and then I'm going to hook them into a write blocker
20 so that I can't change any of the data that's on the
21 device itself. That's our primary goal. We're doing that
22 to keep it as original and pristine as possible.

23 I hook it into my computer at that point through the
24 write blocker where I would then run a forensic program on
25 it to do a preview, so I'm going to kind of look inside

1 the item. If I see anything that's relevant, then I will
2 do an image or clone of the drive and then work off that
3 image.

4 Q Okay. Were you able to successfully create images of
5 the devices seized from Mr. Willson's home?

6 A Yes.

7 Q Once you image a drive, what do you do then? What
8 are you trying to do?

9 A So after I image a drive, I'm going to run a program
10 that's going to index and go through the file itself. So
11 what the programs do at that point is they search through
12 the data on the hard drive, and it can pick out through
13 that -- try to keep this simple -- through that data it
14 can find log files and archives and a lot of things go on
15 behind the scenes of a program that we don't know about
16 when we're running a program. And it can pick through
17 those and automatically index images, videos, chat logs,
18 emails and parse all that out for me so I can go through
19 it in a much more systematic way.

20 Q Okay. What programs do you use to accomplish that?

21 A We have several that we use. There is EnCase,
22 there's FTK, there's AXIOM, which is the primary one that
23 I used on this case.

24 Q Okay. Are these standard programs in the field of
25 forensics?

1 A Yes.

2 MR. SENN: Judge, permission to approach.

3 THE COURT: Yeah.

4 MR. SENN: Judge, I believe defense counsel would
5 like to review the evidence before we show it to the jury
6 or show it to ---

7 THE COURT: All right. I'll tell you what, ladies
8 and gentlemen, we'll just take a short morning recess.
9 Don't discuss the case. We'll get back with you very
10 shortly.

11 (WHEREUPON, the jury exits the courtroom at 10:52 a.m.)

12 THE COURT: What is it you want to do?

13 MR. BANNISTER: Judge, he's got a disk with a lot of
14 the data that is relevant to the reports. I just want to
15 see which ones he's talking about putting in and we'll
16 just take a minute to go through it. I just don't know
17 what's on it.

18 THE COURT: Okay. All right. We'll be at ease.

19 (WHEREUPON, a recess is taken at 10:53 a.m.)

20 THE COURT: Have you had enough time, Mr. Bannister?

21 MR. BANNISTER: I have, Judge. And I think Mr. Senn
22 and I have come up with a solution that will make things a
23 little bit quicker for everybody. If we can -- through
24 his witness, he's going to be going through some of the
25 reports that are going to be put on the screen relevant to

1 what his forensic interview was. The flash drive has a
2 whole lot of information, though, that -- well, anyway,
3 there's lots of subfolders and other things on it. So
4 what we agreed is if the jury has a question about
5 anything that is displayed or they want to see something
6 else about the report, then if it would be all right with
7 Your Honor, let them ask, then we can put it up so they
8 aren't rummaging through what is subfolders and subfolders
9 of reports on this thing. I mean, there's a lot of
10 information that came with the forensic report. Some of
11 it's relevant, some of it's absolutely not, I think. Some
12 of it's hard to understand and is confusing, so it's just
13 I had to have a hard drive to get this thing.

14 THE COURT: You did what?

15 MR. BANNISTER: I had to have an external hard drive
16 just to be able to download all the information that is
17 now on their flash drive.

18 THE COURT: And you want to put it into evidence? Is
19 that what we're talking about?

20 MR. SENN: Judge, I think what we're saying is we're
21 going to go through the evidence on this flash drive with
22 the witness, and I think Mr. Bannister is going to go
23 through evidence as well. What we discussed is for this
24 and the other two flash drives, if the jury has any
25 questions, if they could just come out here and review out

1 here rather than give them the full amount of information
2 that we may or may not have went through during testimony.

3 THE COURT: Are you talking about during
4 deliberations?

5 MR. BANNISTER: Yes. I think that's what we're
6 talking about. Yeah. In other words, it will be
7 evidence, but we're not going to send it back with them
8 unless they've got a question about it. It would be -- it
9 just solves a lot of -- otherwise, we've got to stop,
10 they're going to have to go redact this flash, which could
11 prolong the delay significantly.

12 THE COURT: Is this a video flash drive or ---

13 MR. BANNISTER: Uh-huh.

14 MR. SENN: This flash drive doesn't contain any video
15 or pictures.

16 THE COURT: Okay.

17 MR. SENN: And this would also solve the editing of
18 the original files as well ---

19 MR. BANNISTER: The videos.

20 MR. SENN: --- because we can just show -- the seven
21 videos that have already been shown, they can be shown the
22 exact same time portion if they had any questions.

23 THE COURT: Well, how are you going to -- you've got
24 a problem with Video Number 4 if you don't put it on a
25 separate flash drive which matches what was shown because

1 otherwise, your co-counsel becomes part of the record.

2 MR. SENN: This is true.

3 THE COURT: We could wrap him up in cellophane maybe
4 and ---

5 MR. COLLIER: That is true, Your Honor. But if I
6 edit -- if I'm the one who -- if I edit the file ---

7 THE COURT: Well, what I'm going to ask is that you
8 edit it, show it to Mr. Bannister to ensure that he and
9 his client are satisfied that what you put on this
10 proposed flash drive is what you showed to the jury. If
11 there's a problem we -- you know, it's -- but in
12 particular, Video Number, 4 there is no reference point on
13 that. And the only person who knows is you, and you
14 cannot be -- so I hope you understand why we do this for
15 the appellate record. It's got to be done.

16 MR. COLLIER: Understood, Your Honor.

17 THE COURT: Okay.

18 MR. COLLIER: Do you want to do it for every video or
19 just Video 4?

20 THE COURT: No. I think you do it for every -- just
21 put all four on there.

22 MR. COLLIER: Okay.

23 THE COURT: That way if the jury wants to see it, we
24 have a computer with the clerk. They can send it back,
25 they can look at it if they want to so we don't have to

1 bring them out, you sit there and go through it.

2 MR. COLLIER: Okay. It may take me an hour or so to
3 edit it.

4 THE COURT: Well, we do it over lunch.

5 MR. COLLIER: Okay. And you want me to do the same
6 for the two videos from Investigator Atkins?

7 THE COURT: Yes, please.

8 MR. COLLIER: So all seven videos. Okay.

9 THE COURT: You can put all seven of them on one
10 flash drive ---

11 MR. COLLIER: No problem.

12 THE COURT: --- just so it's in the evidence and they
13 are somehow identified. I guess play them in order -- or
14 record them in order as they were played.

15 MR. COLLIER: Okay.

16 THE COURT: Okay. We good with that?

17 And you're good with -- y'all are -- whatever you're
18 proposing sounds like an efficient way to handle this.

19 MR. BANNISTER: I think it will be. Yes, Your Honor.

20 THE COURT: All right. Anything else before we get
21 them?

22 MR. BANNISTER: No, sir.

23 THE COURT: Apparently not. All right. Let's go.

24 (WHEREUPON, the jury entered the courtroom at 11:20 a.m.)

25 THE COURT: All right. You may resume.

1 MR. SENN: Thank you, Judge. Permission to approach.

2 THE COURT: Yep.

3 BY MR. SENN:

4 Q I'm showing you what has been premarked for the
5 purposes of identification as State's Exhibit 3. Do you
6 recognize this?

7 A Yes.

8 Q Okay. What is this?

9 A It contains information that I pulled out for reports
10 from my forensic exam on this case.

11 Q Okay. Is this the first time you had forensically
12 examined these items?

13 A No.

14 Q Okay. Why did you examine the items again?

15 A When I first examined these items, I just started
16 with the Attorney General's Office and we didn't have some
17 of the programs that we have now, so I ran a program on it
18 that I had at the time that I was pretty proficient with.
19 Later on I received some training, went down and got real
20 formal training with this program AXIOM where I ran the
21 program again on this evidence to gather more, see what
22 else it could find that the other program couldn't.

23 Q So is this an accurate representation to your
24 findings from your 2018 forensic examination of the
25 devices seized from Mr. Willson's residence?

1 A Yes.

2 MR. SENN: Okay. Your Honor, the State would like to
3 offer State's Exhibit 3 for admission as evidence.

4 THE COURT: Okay.

5 MR. BANNISTER: No objection.

6 (WHEREUPON, State's Exhibit Number was 3 admitted into
7 evidence.)

8 MR. SENN: Permission to publish to the jury.

9 THE COURT: Yes.

10 BY MR. SENN:

11 Q Special Investigator Grubbs, were you the first
12 person to examine the digital evidence in this case?

13 A No.

14 Q Okay. Are you aware that Special Investigator Chris
15 Bomar also reviewed this evidence prior?

16 A Yes.

17 Q Okay. Did you review his forensic report?

18 A Yes.

19 Q Okay. Did you examine that same external hard
20 drive ---

21 A I did.

22 Q --- from special Investigator Bomar?

23 Okay. Were you able to find the same files that
24 special Investigator Bomar located in his report?

25 A Yes.

1 Q It might be easier for you to step down to be able to
2 see this.

3 What is this document?

4 A This document contains the files -- look at -- this
5 document contains the files that I was able to obtain
6 through my own personal keyword search through the
7 evidence.

8 Q Okay. Let me direct you to what appears to be --
9 sorry. This is a little off -- Record 163. I'll move it
10 down a little bit.

11 A Yes. That is "sdpa compilato babyj - nena de 5 a_os
12 cojida por enorme pija cbaby ptsc pthc nablots frifam.avi."

13 Q Are you familiar with that file?

14 A I am.

15 Q How are you familiar with that?

16 A It's one of the files that Investigator Bomar found
17 during his examination.

18 Q Okay. Let me direct you to Record 315.

19 A That is "Kinderkutje Pthc Hc-c4G - Compile 4 Girls -
20 All Small and Loving it - 9.08 9Yo Mpg 7Yo Girl Try to
21 Fuck Ptsc Hussyfan Kingpass Kleuterkutje."

22 Q Are you familiar with that file?

23 A I am.

24 Q How are you familiar with it?

25 A It's another one of files that Investigator Bomar

1 found.

2 Q Let me direct you to record 342.

3 A It says "pedo_family Pthc - Two Young Boys 12-13Yo &
4 Two Young Girls 12-13Yo Suck & Fuck 23min.avi"

5 Q Are you familiar with that?

6 A Yes.

7 Q How are you familiar with it?

8 A It's one of the files that Investigator Bomar found.

9 Q Let me direct you to Record 515.

10 A It's "Pthc Pedo 5Yo Vaginal Penetration - Rca
11 5Y.mpg."

12 Q Are you familiar with that file?

13 A Yes.

14 Q How are you familiar?

15 A It's another one of the files Investigator Bomar
16 found.

17 Q Okay. Let me direct you to Record 1156.

18 A It's "Pthc 2013 - 7Yo Gina Mvi 1858 04m32s.mp4."

19 Q Are you familiar with that file?

20 A I am.

21 Q How are you ---

22 A It's another file found by Investigator Bomar.

23 Q Okay. Where were these files located on that
24 external hard drive?

25 A In the root directory.

1 Q What is the root directory?

2 A The root directory is like the base of the directory.
3 You just open the device and it's what's there. If you
4 create any other folders or subsets, you go down, but the
5 root's always kind of at the top. It's the base area.

6 Q Okay. So these weren't in folders.

7 A No.

8 Q Okay. Were these the only files relevant to this
9 investigation found in this hard drive?

10 A No.

11 Q What else did you find?

12 A I also found -- I ran a keyword search of my own,
13 which I typed in "PTHC," "pedo" and "hussyfan," which had
14 multiple hits. I also found documents in Excel
15 spreadsheets, emails, Skype accounts linking back to the
16 suspect.

17 Q Okay. Were these the only videos or picture files
18 relevant to this investigation?

19 A No.

20 Q What other kind of those types of files did you find?

21 A Multiple other containing children in sexual --
22 engaged in sexual activity.

23 Q And you viewed these files?

24 A Yes.

25 Q Okay. When you say "multiple," do you have any

1 ballpark of ---

2 A Thousands.

3 Q Okay. And do these files have file titles with
4 similar types of terminology?

5 A Yes.

6 Q Did you examine any other items other than the
7 external hard drive?

8 A Yes.

9 Q Okay. Did you find any other of those types of
10 relevant files in any other items you examined?

11 A Yes.

12 Q Okay. What items did you find those kind of files
13 in?

14 A Two Mac or Apple laptops, the hard drive in question
15 here, and then a DVD.

16 Q Okay. Did you find any information tying those files
17 to Kevin Mark Willson?

18 A Yes. They were underneath his username, which was
19 Kevin Willson, on the computer in a download folder under
20 his username as well as I stated before all the
21 information with his work, Excel documents, his emails,
22 his Skype account, chatting.

23 Q Okay. When you look through these exams, can you
24 tell when files have been downloaded?

25 A Yes. There's a creation date.

1 Q Okay. When you were going through the exam, what was
2 the most recent creation date?

3 A I believe the most recent one was August 17, 2015.

4 Q Okay. Is that date relevant to this case?

5 A Yes.

6 Q How is it relevant?

7 A It's the day before the search warrant.

8 Q So that would mean that file was downloaded the day
9 before the search warrant?

10 A Correct.

11 Q Are you familiar with this document?

12 A Yes.

13 Q What is this document?

14 A So this is the program can parse through and go
15 through log files of programs that have been run. And it
16 went to the log file of Shareaza, which is the
17 peer-to-peer file sharing network, and it found a search
18 term that had been typed in manually by the user on the
19 keyboard which reads "PTHC WebCam."

20 Q Okay. What is Shareaza?

21 A Shareaza is a peer-to-peer file sharing network. It
22 utilizes several different known peer-to-peer networks.

23 Q Okay. How is it relevant to this investigation?

24 A It does include BitTorrent, which is what
25 Investigator Atkins had found with his investigation.

1 Q Okay. And what is this search term?

2 A "PTHC," which means "preteen hard-core," "WebCam."

3 Q Okay. So a user utilizing Shareaza would have to
4 type that search term in?

5 A Correct.

6 Q Why would they type that in?

7 A Because they're looking for preteen hard-core WebCam
8 files.

9 Q Files related to that?

10 A Yes.

11 Q Okay. In your review of all the evidence, did you
12 find any information that anyone else other than Kevin
13 Mark Willson was using any of the devices?

14 A I didn't see any information at all that anyone other
15 than Kevin Willson was using the computer.

16 MR. SENN: Beg the Court's indulgence.

17 Special Investigator Grubbs, please answer any
18 questions from the defense.

19 THE WITNESS: Yes, sir.

20 CROSS EXAMINATION

21 BY MR. BANNISTER:

22 Q Investigator Grubbs, when Mr. Senn was asking you a
23 question about some of the devices, you used the words
24 that they were located at the defendant's residence. And
25 that was a statement that he made as part of the question.

1 Other than Mr. Willson was at 105 Watkins Circle, do you
2 have any other evidence that that was his residence?

3 A I was not there or employed with the Attorney
4 General's Office when the seizure was made, so I don't
5 have any evidence towards that other than the evidence I
6 examined in the case.

7 Q So let me look at just for a second how things work
8 in the AG's office, if I could just kind of move to that
9 for a minute.

10 A Yes, sir.

11 Q Your office is actually separate and apart from the
12 Attorney General's, the other lawyers that do other things
13 other than child pornography.

14 A Yes, sir.

15 Q And as I understand it, there's a security reason for
16 that; is that correct?

17 A In part. Also for space. We were expanding as a
18 unit at the time.

19 Q And the facility itself is -- it's only secure
20 access, your offices ---

21 A Correct, correct.

22 Q --- where your computers are kept and where all this
23 information is kept.

24 A Yes, sir.

25 Q And are there security measures that are in place to

1 prohibit individuals from the outside coming through on an
2 Internet connection or some other connection and getting
3 into the computers at the Attorney General's Office?

4 A We have our network set up with precautions for
5 intrusion through our IT department.

6 Q Okay. And so there's some security there, both
7 external, that is to the facility itself, and internal,
8 that is to access the computers, correct?

9 A Yes, sir.

10 Q All right. So when we were talking about when
11 Investigator Atkins discussed downloading directly the
12 first two files of investigatory interest, that download
13 was coming at least initially from the IP address that was
14 a target of the download at that moment.

15 A According to him, yes.

16 Q Is there something internal to the Attorney General's
17 computer, their software that makes sure that you don't,
18 as part of the investigation, unintentionally download
19 malware along with the file you've got an interest in?

20 A He's on an undercover network. I don't have access
21 to that, so I can't testify to what software or things are
22 in place with that.

23 Q Okay. I should have asked him this when he was up
24 there, but would it be unusual for there not to be some
25 protection in place to make sure that a download doesn't

1 suddenly affect the AG's office?

2 A I -- I don't have access to it. I -- I can't say yes
3 or no.

4 Q Okay. Does your computer have a passcode?

5 A Yes, sir.

6 Q Do you have dual authentication?

7 A Regarding to into my forensic machine?

8 Q Your business computer there at the office.

9 A I have just a passcode to log in.

10 Q What is dual -- do you know what dual authentication
11 is?

12 A Yes, sir. It's a way of making a machine more secure
13 in order to have two ways to verify that you are the
14 authorized user in order to access that data.

15 Q And how about firewalls between computers and the
16 Internet, do y'all have that at the Attorney General's
17 Office?

18 A Yes, sir. Yes, sir.

19 Q And I think you said before intrusion prevention
20 systems which are yet an additional security measure.

21 A Whatever IT has set up for us regarding their
22 network.

23 Q All right. Do we know what kind of router was at the
24 [REDACTED] Watkins Circle that created the Wi-Fi network?

25 A I do not.

1 Q Do we know what kind of operating system was on the
2 Mac Pro and the Mac Air?

3 A It's going to be the basic Apple operating software
4 that were on those.

5 Q So it's just the Mac software.

6 A It's their -- it's kind of like Windows but for --
7 it's an Apple IOS software.

8 Q All right. And did you also find, at least on the
9 items that came from [REDACTED] Watkins Circle, there was no
10 passcode, no security that prohibited entry into the file?

11 A Well, I don't boot up the computer the typical way
12 that you would. A passcode is not stored on the hard
13 drive to keep me from getting in. It's stored on a
14 separate area. So for a PC, it's called a CMOS chip where
15 the password is stored. So if I remove the hard drive, I
16 don't have to deal with the password. I can get directly
17 into it.

18 Q So if, based on what we heard from the other
19 investigators that there wasn't a passcode, you don't have
20 any evidence to show that there was.

21 A No, sir.

22 Q Did -- was any scan performed on the computer, the
23 devices themselves after the data was imaged, if I
24 understand correctly?

25 A Yes. I would image the devices and then I would run

1 AXIOM, the program which would forensically analyze and
2 parse out the information for me.

3 Q All right. But you said you don't actually access
4 the computer, so in -- I'm sorry. Maybe I'm using the
5 wrong terminology here, but when I say "access the
6 computer," you didn't take the MacBook Pro, plug it in,
7 cut it on and look to see what was on the screen.

8 A Correct, correct.

9 Q All right. And so we've heard that these files were
10 located in the root directory.

11 A That is of the hard drive, not of the laptops
12 themselves. They were located in the file system.

13 Q Okay. So if I cut on -- this is what I'm getting at.
14 If I cut the computer on these particular devices, then
15 what I picture in my mind is you've got a screen with a
16 couple of icons on it, and then you can, you know, hook up
17 to Internet Explorer, go over into Microsoft Word ---

18 A Yes, sir. The desktop.

19 Q --- and do whatever. Just desktop kind of stuff.
20 But this display that we had back here from your report,
21 that's not popping up on somebody's screen. It's not
22 popping up on these devices when you open the computer,
23 correct?

24 A Correct. That is my forensic report from the
25 program.

1 Q Right. I mean, that information, the file names that
2 have got the PTSC and the hussyfan and all that stuff in
3 it, that's -- that's not showing up when you just open up
4 the MacBook Pro or the MacBook Air. When you cut on the
5 hard drive, it's just not sitting there on your computer
6 screen.

7 A It would with the hard drive. The MacBook Pro and
8 the MacBook Air would not. However, typically, when you
9 plug in a USB device to a computer, it will auto populate
10 and show what's in that folder.

11 Q Okay. So it gives you a file directory that pops up
12 on your screen.

13 A For the external hard drive, it typically would.

14 Q For the external hard drive.

15 A Yes.

16 Q And then what I understand is usually you see like,
17 okay, maybe whatever the initial is that represents that
18 hard drive, like sometimes it's a J or an H or a C or
19 something of that nature.

20 A It can if you go to, you know, My PC, This PC to open
21 up and see what's plugged in. However, typically, when
22 you plug a USB device into your machine, it goes directly
23 to the root folder.

24 Q All right. So let's talk about these two devices,
25 the MacBook Pro, the MacBook Air or any of the other

1 devices that were located at 105 Watkins Circle. Did
2 anybody plug in the device and see what comes up on the
3 computer screen? Did anybody take the hard drive, plug it
4 into one of the devices at [REDACTED] Watkins Circle and then see
5 what pops up on the screen?

6 A I was not employed with the Attorney General's Office
7 at the search warrant. I wasn't there.

8 Q Are you aware of anybody doing that?

9 A No.

10 Q Okay. All right. And I want to say at some point in
11 your testimony you referenced back over to BitTorrent and
12 to the Shareaza file sharing software.

13 A Yes, sir.

14 Q So we kind of went through a lot of this yesterday so
15 I don't want to duplicate this, but I do want to ask you
16 -- let me ask you this. Are you aware that at least there
17 is the -- well, let me ask this. Do you know what malware
18 is?

19 A Yes.

20 Q What is malware?

21 A Malicious software that -- if it gets onto your
22 computer.

23 Q And that malicious software can do hosts of things
24 that are -- that you wouldn't want them doing on your
25 computer, including basically take it over.

1 A Yes, sir.

2 Q All right. So are you aware that one of the concerns
3 with BitTorrent is that a -- let's just say a video that
4 would not be illegal is made available and then a user of
5 BitTorrent downloads that video thinking they're getting
6 just the video and that malware comes with it that then
7 gives the individual who put it in there whatever access
8 they wanted? I mean, isn't that a -- isn't that a known
9 security issue with BitTorrent?

10 A In my training and experience, I have never come
11 across malware that purposely installs malicious video or
12 picture software on someone's computer.

13 Q No. I'm not talking about maliciously installing
14 videos. I'm talking about a video that has with a tag
15 with it one of these -- a port or a -- I'm sorry -- a
16 software program that's malware that then gives a person
17 who caused the malware to be attached to the video access
18 to the computer that now has it?

19 A I don't understand the question.

20 Q All right. Sometimes I talk better when I can just
21 draw. So forgive me for sort of this old-school way of
22 doing it.

23 But okay. So what I'm asking you is, isn't one of
24 the known problems with BitTorrent is that it opens you up
25 to malware in BitTorrent world? And here's what I -- so

1 do you know that or not?

2 A Yes, sir. It can.

3 Q Okay. And one of the ways that that occurs, if I
4 understand this correctly, is there will be a name of a
5 file, let's just say Star Wars, that will show up when you
6 go into BitTorrent, you enter the keyword, hey, let me
7 find Star Wars movies. Well, since the way the file
8 system works is you've got your computer is sharing or
9 gathering information from all the other computers in
10 BitTorrent network. If somebody puts the name "Star Wars"
11 and says, okay, here's the file, you can download it, and
12 they have attached -- they're a hacker, they're a
13 black-hat hacker, they have attached malware to the file
14 that says Star Wars, then when it comes into your computer
15 to watch Star Wars, now you've also got this malware that
16 is in your computer.

17 A That could happen, but typically, it would not. The
18 way it's searching out is it's looking for things called
19 packets, and it's going to -- if it's looking for Star
20 Wars, it's going to go, okay, I want this chunk from this
21 chunk to Star Wars, and then at the end of the code, it's
22 going to say you want to get directed to this area of code
23 next. And so say it's going to go to another computer.
24 Okay. It's going to grab that code. The malware is not
25 going to match the packet that the software is looking

1 for. You can get malware, yes, through BitTorrent, but
2 typically, that's not how it works.

3 Q Okay. Well, so then let me just say it's a known
4 problem with BitTorrent that you're opening yourself up to
5 malware.

6 A File sharing, you always have a risk of . . .

7 Q Okay. And -- all right. So let me talk just a
8 second about AXIOM.

9 A Yes, sir.

10 Q Well, actually, one more question about BitTorrent.
11 Are you aware that BitTorrent uploads and downloads can be
12 done through remote torrent management? Have you ever
13 heard that term?

14 A I have not.

15 Q Okay. Are you aware that remote torrent management
16 maybe could be done through a virtual private server,
17 sometimes called a seed box, located in the cloud? Have
18 you ever heard anything like that?

19 A I'm not familiar with that.

20 Q All right. So AXIOM is, in essence, a particular
21 sophisticated kind of search software.

22 A Yes, sir.

23 Q And it's a search software that gives you the ability
24 to dig into all the small places and hidden places in a
25 device like a computer or hardware?

1 A It can go very behind the scenes of programs, yes,
2 sir.

3 Q If I understand correctly, it also has the ability to
4 crack passwords, unencrypt encrypted files. I mean, it's
5 apparently a pretty robust program for digging out data
6 from a device.

7 A It's a very good forensic software.

8 Q Right. But the AXIOM software, now, y'all use it to
9 go find child pornography through filtered words that you
10 talked about?

11 A Yes, sir.

12 Q Through the info hash values that we've talked about
13 of known child pornography.

14 A Yes, sir.

15 Q And that known child pornography comes from the
16 database that we talk about that you can download into the
17 AXIOM search.

18 A Some of it, yes. Some of it we categorize and build
19 ourselves.

20 Q Okay. But AXIOM, doesn't AXIOM specifically, one of
21 the things that makes it so good for this kind of stuff is
22 it's particularly good at being able to import a database
23 of hash values?

24 A I would not say that's the primary reason that we use
25 AXIOM. It's -- the primary reason I like to use AXIOM is

1 it's very good at going and getting artifacts related to
2 peer-to-peer file sharing and Internet searches, things of
3 that. The categorization of pictures for the info hash
4 values you're referring to, I use a different program.

5 Q Is that the EnCase program?

6 A That's Griffeye.

7 Q All right. But you didn't use Griffeye on this -- in
8 this ---

9 A No, sir. That's another one I got after I started.

10 Q All right. Well, let me ask you a couple of quick
11 questions about some of the other features that might be
12 available in AXIOM.

13 A Yes, sir.

14 Q And I'll just tell you I was looking through one of
15 the user guides, so if there's something I say that
16 doesn't sound right, then I've got it, I can pull it up
17 and let you take a look at it and see if that ---

18 A Okay.

19 Q --- correlates with anything you might have learned
20 in some of your training on this thing.

21 A Yes, sir.

22 Q All right. So one of the things that interested me
23 was that there was a -- there's a child rescue coalition
24 child protection system that collects online data to track
25 person-to-person activity such as IP address, file hashes,

1 person-to-person user GUIDs and more. Does any of that
2 sound familiar to you?

3 A I haven't received any training on that.

4 Q Okay. All right. If there was a database, though,
5 that was out there that allowed you to download that and
6 see, okay, do particular people who are engaged in this
7 illegal pornography, are they connected with your
8 investigation, would that be of investigatory value to
9 you?

10 A I don't think for me. I'm doing the examination of
11 the machine so I'm only interested in the data that's
12 currently on that case.

13 Q Okay. And so I guess the point being here that if --
14 well, if you don't use it, you don't use it. Do you
15 believe, though, that AXIOM has that capability? Put it
16 that way.

17 A I believe it could.

18 Q How about when it comes to -- are you familiar with
19 the national registry database of malware?

20 A No.

21 Q Are you familiar with the fact that AXIOM can import
22 malware hash values and run the same kind of search you're
23 running for child pornography hash values?

24 A Yes.

25 Q Okay. So was a report run on any of the devices at

1 issue in this case to do a report on any malware that
2 might be present?

3 A No.

4 Q Would you agree with me that all the devices we're
5 talking about are very portable? You've got the --
6 they're both -- the items with pornography on them were
7 the detachable hard drive, MacBook Pro and MacBook Air,
8 which are all kind of self-contained.

9 A And a DVD.

10 Q And a DVD, all of which are self-contained, you can
11 take them with you wherever you want to.

12 A Yes, yes.

13 Q Okay. And when you said that the downloads were
14 associated with the username of Kevin Mark Willson, is
15 there any other username that was on the device?

16 A No.

17 Q Is there anything that prevents some person other
18 than Kevin Mark Willson from opening up the computer and
19 going into it and doing work under that user ID?

20 A Unless it was password protected, which I said I
21 bypassed.

22 Q So all we can say is that the computer was set up to
23 say that it's got a user ID under Kevin Mark Willson.

24 A It was just Kevin Willson was the username.

25 Q I'm sorry. Kevin Willson.

1 A Yes, sir.

2 Q But who out there may have used that computer we
3 don't have any other information about?

4 A I did not see any evidence of any other user activity
5 on that.

6 Q Okay. In terms of looking for other user activity,
7 did you put any other emails in? I mean, were there other
8 keyword searches or things that you were looking for that
9 were indicated?

10 A I went through the documents and the email, all of
11 which were outgoing and in-going to Kevin Willson, and the
12 documents were related to his realty business.

13 Q All right. And we'll talk about that in just a
14 second. But, I mean, if you're looking for things that
15 are associated with him, that's one thing. But if you're
16 looking for things that aren't associated with him, in
17 other words, you've got a lot of filters in this AXIOM
18 software, can you run a search that excludes all emails or
19 Kevin Willson associated name?

20 A You could.

21 Q Did you?

22 A No. I went through manually.

23 Q Okay.

24 A I did not use his name for search terms when I was
25 going through things not related to the pictures and the

1 videos. I just went through everything together.

2 Q All right. And so when you say you go through it
3 manually, I'm picturing you've got up on your computer
4 screen what's created by the duplicate image.

5 A Yes.

6 Q And then you're using it like you would just a normal
7 computer?

8 A No.

9 Q Okay.

10 A So it actually parses out all the different
11 information for me so that I can go I want to look at
12 emails, and I'll click that, and all the emails that are
13 stored in the system will pop up and I can manually browse
14 through, read their contents. I want to go through
15 account information, Skype account or something, it will
16 show me the account usernames. I can go through manually,
17 look through things like that. Let me see Excel
18 spreadsheets or Word documents, manually click through
19 those, read the contents.

20 Q All right. And so once you see things that are
21 relevant to Kevin Willson, can you exclude those and then
22 look at the other data that's out there to see if it has
23 any relevance to any other individual?

24 A Yes.

25 Q Okay. And so how do you do that?

1 A Well, you could exclude by doing a search that way.

2 Q Okay.

3 A Like I said, I just went manually through everything
4 and just kind of . . .

5 Q All right. And that's what I'm getting at. So
6 everything to me is like, okay, every file, every subfile,
7 every literal ---

8 A Everything that the program parses out for me when
9 I'm going through artifact by artifact.

10 Q But isn't the program parsing it out artifact by
11 artifact based on some search parameter?

12 A So when the program goes through the code of the hard
13 drive, it's finding and recognizing the file types. So
14 it's going to say all the pictures are here, all the
15 emails are here, all this is here. If I want to look at
16 it like you referred to through a computer system, I have
17 the ability to do that, but that just takes so much more
18 time that I go through how it's parsed it out for me so
19 that I can just single down an artifact that I want to
20 look at.

21 Q So if I didn't do an email on this device, if I
22 didn't do -- you said there was a Skype account.

23 A Yes, sir.

24 Q And then there were some Excel documents and some
25 Word documents.

1 A Yes, sir.

2 Q And we're just talking about now one of the three
3 devices, correct? I don't think you ran that report on
4 all three devices.

5 A I believe I have on one.

6 Q On one.

7 A Yes, sir.

8 Q Okay. And then that's generating this entire list
9 for you that you can then look at, right?

10 A Yes.

11 Q Okay. So Item 1 -- let me put it this way. If I got
12 on this -- let's just talk specifically about Item 1,
13 which I think is the MacBook -- MacBook Pro, okay? If I
14 got on this device and I didn't do an email and I didn't
15 create a Skype account and I didn't do a Word document,
16 then I've been on the computer but I haven't left any
17 information that identifies it with Jim Bannister.

18 A Correct. Other than the username.

19 MR. BANNISTER: Okay. Let me get this marked as a
20 defendant's exhibit, please.

21 (WHEREUPON, Defendant's Exhibit Number 2 was marked for
22 identification.)

23 BY MR. BANNISTER:

24 Q All right. So when you set up email, there are ways
25 for emails to register with a MacBook Pro without you

1 actually doing the work on that particular device,
2 correct? Or let me back up and say it this way. If
3 you're in Apple world, you can text people back and forth,
4 and it may show up on all three of your devices or two of
5 your devices, your iPad, your MacBook Pro and your iPhone,
6 correct?

7 A Correct.

8 Q All right. And if it's -- if I'm working on my phone
9 and my phone is hooked up to my MacBook Pro and I text
10 somebody or I email somebody and it's set up so that it
11 will show up on both, then when it shows up on the MacBook
12 Pro, it's creating that record over on the MacBook Pro
13 when I actually did it on my phone.

14 A Yes. That could happen.

15 Q Okay. And so when I -- let me show you this. Let me
16 see if I got this right. Okay. So I just want to show
17 you kind of a copy of one of the searches that I saw in
18 the forensic report. And it's got this little thing up
19 here that says "iChat messages."

20 A Yes, sir.

21 Q And that's where I see all ten of the emails that are
22 the result of the search for Kevin Willson's email.

23 A Yes, sir.

24 Q Okay. So is there -- do we know whether these are
25 actually -- these emails are being created on the devices

1 that you're examining or whether they've been created on
2 another device that he actually works on?

3 A So you want me to distinguish which it originally
4 started on? Because it's being created on both ---

5 Q Yes.

6 A --- if you're referring to it as a cloud.

7 Q I'm sorry? Say again?

8 A If you're referring to it as like a remote, you know,
9 you've got your phone synced up to your computer, it's
10 going to be created on both.

11 Q Right.

12 A I can't tell which one it originated from.

13 Q That's what I'm getting at.

14 A Okay.

15 Q So when you say I've got ten -- well, in this case,
16 it was ten emails on Device Number 1, correct?

17 A Yes, sir.

18 Q Those are the ten emails that you're referring to
19 that identify that MacBook Pro with Kevin Willson.

20 A Yes.

21 Q And this was the total list of the emails.

22 A No, sir. I just -- I just went in and grabbed a few
23 to show use. So it's the same with the documents and the
24 accounts just to show active usage from user Kevin Willson
25 with accounts and files related to Kevin Willson.

1 Q Okay. So -- but in terms of the report, all I've got
2 is ten.

3 A Yes, sir. That's all I bookmarked. I felt ten was
4 sufficient.

5 Q And of those ten, they all fall under this category
6 that seems to say "iChat messages."

7 A Yes, sir.

8 Q All right. So back to my original question, which is
9 the emails that you've brought to court, the ones you
10 thought were relevant to show that Kevin Willson accessed
11 the MacBook Pro, this Device Number 1 that has all the
12 child pornography on it -- or some of it, these messages
13 could very well have been created from an iPhone that he
14 has, and it just happens this Mac Pro was still connected
15 in Apple world to his user account ID.

16 A It could have come from a mobile device.

17 Q And I guess while I'm talking about it, so is this a
18 picture of the MacBook Pro? And I'll tell you, y'all
19 provided that to me.

20 A Yes, sir.

21 MR. BANNISTER: All right. Can I introduce that as
22 Defendant's Exhibit Number 2?

23 THE COURT: Any objection?

24 MR. SENN: I haven't seen it, Judge.

25 MR. BANNISTER: I'm sorry.

1 THE COURT: Any objection?

2 MR. SENN: No, Judge.

3 THE COURT: Okay.

4 (WHEREUPON, Defendant's Exhibit Number 2 was admitted into
5 evidence.)

6 BY MR. BANNISTER:

7 Q All right. So then let's just turn for a second to
8 the Skype accounts -- or Skype account. A Skype account
9 can be accessible from multiple devices.

10 A Correct.

11 Q Correct?

12 All right. And it looks like the -- well, I don't
13 know if you'll remember this or not, but so what I'm
14 showing on this is this is the report from Device 1, I
15 believe, on the Skype account, and it's got a date created
16 of 9/23/2008. Does that look correct?

17 A Yes.

18 Q All right. And then it's got last modified 3/9/2014?

19 A Yes, sir.

20 Q Okay. Was there any other -- other than those two
21 entries -- and by the way, do we know what was happening
22 on this moment, I mean, other than it was the connection
23 to the Skype account was created on September 23, 2008,
24 but would there be any other activity that would have been
25 produced by this report?

1 A I wasn't going into chats at this point with that.
2 That's just the account information for Skype.

3 Q Okay. So how often or if ever he used it is not part
4 of this report ---

5 A Correct.

6 Q --- for Skype.

7 All right. And then the -- let's see. You talked
8 about some real estate files in one of the reports. It
9 looks like there's one, two, three, four that are in this
10 particular report. And I've got the Excel and the Writer
11 too just in case.

12 A Yes, sir.

13 Q All right. So those were the only four files that
14 you found that were relevant?

15 A No. Again, I just grabbed -- I just grabbed a few.

16 Q Okay. But they all deal with realty.

17 A I believe so.

18 Q All right. And then same with the Excel documents.
19 I've got three here.

20 A Yes. I believe so.

21 Q And the Excel documents, would you disagree that they
22 were created 2005, 2008 and one in 2013?

23 A Yes, sir.

24 Q And then on the Writer documents, 2011, all
25 apparently October 21st.

1 A Yes, sir.

2 Q Actually, isn't that -- aren't the Writer documents
3 some sort of notice that's coming in because a listing has
4 expired out in the Internet world for real estate,
5 presumably?

6 A I'm not sure. It does say listing/expired in the
7 source.

8 MR. BANNISTER: Okay. Your Honor, just a moment.
9 I'm checking through to make sure I've caught up with
10 myself.

11 BY MR. BANNISTER:

12 Q All right. In Item 2, that would be the MacBook Air,
13 get that marked as Defendant's Exhibit -- I'm on 3.

14 (WHEREUPON, Defendant's Exhibit Number 3 was marked for
15 identification.)

16 BY MR. BANNISTER:

17 Q Just to speed this up a little bit, can you see that
18 from here?

19 A Yes, sir.

20 Q All right. Defendant's Exhibit 3, if I got that
21 picture from y'all, is that Item Number 2?

22 A Yes, sir.

23 MR. BANNISTER: Any objection?

24 MR. SENN: Not from the State.

25 MR. BANNISTER: We move that into evidence, Your

1 Honor.

2 THE COURT: Without objection.

3 (WHEREUPON, Defendant's Exhibit Number 3 was admitted into
4 evidence.)

5 BY MR. BANNISTER:

6 Q All right. Item Number 2, there was -- as I
7 understand it, there was no computer activity report on
8 Item Number 2.

9 A Correct.

10 Q There was no Internet item report run on Item
11 Number 2.

12 A Correct.

13 Q There was no chat report run on Item Number 2.

14 A Correct.

15 Q There was no keyword report run on Item Number 2.

16 A Correct.

17 Q And there was no report like we did to show the
18 connection with some emails or real estate stuff or things
19 of that nature, correct?

20 A That's correct.

21 Q And on Item Number 3, which was the external hard
22 drive, there was a media report run, but it didn't produce
23 anything associated of relevance with this case.

24 A No, sir. It was pretty much -- it had a multitude of
25 files in it, but nothing relating to what we're talking

1 about right now.

2 Q All right. And then there was also a chat report run
3 there, and that didn't produce any results either ---

4 A No.

5 Q --- on Item Number 3. You need to look at the ---

6 A Yes, sir. Please.

7 Q Okay. I was asking you about the chat report. Is
8 that the one you needed to refresh your recollection on?

9 A Yes, sir.

10 Q I think I'm handing you what's contained in the disk
11 that's got . . .

12 A Yes, sir. Nothing relevant.

13 Q Okay. Thank you. I'll come back and get it in a
14 minute.

15 Do you know if the MacBook Air and MacBook Pro had
16 the ability to write to a CD or DVD?

17 A I don't believe they had a disk drive.

18 Q Okay. And there were two devices that were taken
19 from 105 Watkins Circle: a Dell tower and a Dell tower
20 Dimension that when you examined them did not have any
21 relevant information on them.

22 A No files of interest. No, sir.

23 Q Would it be fair to say that there were videos
24 associated with some of the devices at least that were not
25 illegal?

1 A Yes, sir. Plenty.

2 Q Okay. Like maybe copyrighted material, but non-child
3 pornography stuff.

4 A Yes, sir.

5 Q Does AXIOM, doesn't AXIOM have the ability to, when
6 it searches and finds files of interest, to just create a
7 thumbnail, that is, a smaller picture of some portion of
8 the video?

9 A Yes, sir.

10 Q And is there a reason that y'all chose not to do that
11 versus ---

12 A I don't like doing it that way. I can't grasp the
13 full scope of a thumbnail. Sometimes I'll come across
14 child pornography videos that are embedded in other
15 videos. So you can take something like Star Wars and the
16 person has custom edited it, and so if you look at the
17 thumbnail, it's going to look like Star Wars, but if you
18 actually open the video, there's contraband in it.

19 Q Once you know the video from start to finish and it's
20 all or significantly child pornography ---

21 A Yes, sir.

22 Q --- AXIOM can create a thumbnail, right?

23 A Yes.

24 MR. BANNISTER: Your Honor, just give me one
25 moment.

1 BY MR. BANNISTER:

2 Q Are you familiar with what netstat does?

3 A No, sir.

4 MR. BANNISTER: Then I won't ask you that question.
5 Let me take one last look and then I think I'm done.

6 I don't have any further questions. Thank you, Your
7 Honor.

8 THE COURT: Redirect?

9 REDIRECT EXAMINATION

10 BY MR. SENN:

11 Q Special Investigator Grubbs, does an Apple account
12 have to be actually connected to a computer? Does a user
13 have to connect an Apple account to a computer before it
14 can be connected with the Apple ecosystem?

15 A Yes.

16 Q So there's like an Apple -- is there an Apple ID for
17 a specific user?

18 A Yes.

19 Q Okay. And for each individual user, is there a
20 password ---

21 A Yes.

22 Q --- connected with that?

23 So a user would need to type in a password to tie a
24 device to the Apple account?

25 A Correct.

1 Q Okay. So a device, like if I was to buy a phone from
2 the store, would it automatically be connected to any
3 other Apple devices I have?

4 A No.

5 Q Okay. I would have to put in a password?

6 A Yes.

7 Q Okay. If Kevin Willson's account was connected, if
8 his device was connected to an Apple ID, a password would
9 have been used to connect it?

10 A Yes.

11 Q And the user would have had to have actually put in
12 that password, correct?

13 A Yes.

14 Q You mentioned you found a DVD that contained sexual
15 files of children; is that correct?

16 A Correct.

17 Q Okay. Are you aware of any malware that physically
18 inserts a DVD in a computer and then writes child
19 pornography on it?

20 A No.

21 Q Okay. This would require a person to physically put
22 this disk in a computer?

23 A Yes. Somebody would have had to actually burn the
24 disk.

25 MR. SENN: Nothing further from the State.

1 THE COURT: All right.

2 MR. BANNISTER: Judge, let me just -- I'm sorry. No.
3 I don't have anything further. Thank you.

4 THE COURT: All right. Thanks, sir. You can step
5 down.

6 All right. Next witness.

7 MR. COLLIER: Your Honor, the State rests.

8 THE COURT: Okay. Let me see the lead lawyers up
9 here real quick.

10 (WHEREUPON, a bench conference was held off the record.)

11 THE COURT: All right. Ladies and gentlemen, if
12 you'll remember, I told you that occasionally we had to
13 discuss legal issues out of your presence. This is one of
14 those occasions. This will take a very short time, but
15 I'm going to excuse you to your jury room. We'll get
16 right back with you.

17 Thank you.

18 (WHEREUPON, the jury exits the courtroom at 12:10 p.m.)

19 THE COURT: All right. You got any motions?

20 MR. BANNISTER: Well, first of all, I want to renew
21 my motions pretrial for the motion to suppress,
22 particularly as it ---

23 THE COURT: I don't think that's necessary, but
24 you've done it and the rulings remain the same.

25 MR. BANNISTER: Okay. And then just for the record,

1 let me say there was other information that was relevant
2 to that determination, so I renew the motion, understand
3 it's denied.

4 THE COURT: Okay.

5 MR. BANNISTER: So I would move for a directed
6 verdict based on the lack of proof that this individual,
7 Kevin Willson, was at the computer, at the keyboard when
8 and at the times that the downloads occurred or that he
9 had knowledge of the character and content of what was on
10 the devices, which would be an element of both statutes
11 that he's been charged with.

12 THE COURT: Do you feel a need to respond?

13 MR. COLLIER: Your Honor, just to say that I think
14 there is sufficient evidence to show that he controlled,
15 that this was -- these files belonged to him.

16 THE COURT: Yeah. I think a reasonable inference to
17 be drawn from the evidence presented defeats your motion
18 for a directed verdict.

19 All right. Mr. Willson, if you would, please stand,
20 raise your right hand.

21 (WHEREUPON, KEVIN MARK WILSON was duly sworn.)

22 THE COURT: I want you to understand that you have an
23 absolute constitutional right to testify in your own
24 defense. You have an equal absolute constitutional right
25 not to testify and it cannot be held against you. Whether

1 or not you decide to testify oftentimes requires a
2 strategic decision with respect to trial strategy. I
3 would -- I'm going to presume at this time, based on the
4 comprehensive presentation by your counsel, that you have
5 already discussed that; is that correct?

6 DEFENDANT WILLSON: That's correct.

7 THE COURT: All right. He will, I'm sure, have made
8 recommendations to you. I always urge clients to pay very
9 careful attention to the recommendations of their
10 attorney, but the decision to testify or not testify is
11 your constitutional right and can only be accepted or
12 waived by you. Have you made that decision?

13 MR. BANNISTER: Judge, I've kind of told him what the
14 scheduling is going to be. I think we've made the
15 decision, but I'd like to have just another ---

16 THE COURT: You want to talk to him? Take him back
17 in there and let him talk to his client.

18 MR. BANNISTER: Well ---

19 THE COURT: What?

20 MR. BANNISTER: I'm saying I know we've got one
21 witness. I'd like to put that witness up, then I suspect
22 it will be the lunch break. That will give me a more
23 robust moment to speak with him about this issue. And
24 then ---

25 THE COURT: No. You go ahead and take a few minutes.

1 We're going to get that decided now.

2 All right. Just be at ease.

3 (Pause in proceedings.)

4 THE COURT: Okay. Mr. Willson, have you made a
5 decision?

6 DEFENDANT WILLSON: I have.

7 THE COURT: All right. Do you need to ask me any
8 questions before you announce that decision? Are you
9 satisfied that you've got all the information you need?

10 DEFENDANT WILLSON: I am.

11 THE COURT: All right. What's your decision?

12 DEFENDANT WILLSON: I agree not to testify.

13 THE COURT: Okay. All right. Are y'all ready?

14 MR. COLLIER: Yes, Your Honor.

15 THE COURT: Okay. Let's bring them back.

16 (WHEREUPON, the jury entered the courtroom at 12:19 p.m.)

17 THE COURT: All right. Welcome back.

18 All right. Mr. Bannister.

19 MR. BANNISTER: Thank you, Your Honor. I call a
20 brief witness, Lynda Sams.

21 THE CLERK: Please come to the Bible, place your left
22 hand on the Bible and raise your right hand, please.

23 WHEREUPON,

24 LYNDASAMS

25 After having been duly sworn, testified as follows:

1 THE CLERK: Please take a seat, and please state your
2 name for the record and please spell your last name.

3 THE WITNESS: It's Lynda, L-Y-N-D-A, Sams, S-A-M-S.

4 DIRECT EXAMINATION

5 BY MR. BANNISTER:

6 Q Ms. Sams, if you will, who are you employed with?

7 A I'm the broker in charge at Keller Williams
8 Greenville Upstate.

9 Q Okay. And at my request, were you directed to go
10 review some documents relating to Kevin Mark Willson?

11 A Yes.

12 Q And am I correct in saying that Kevin Mark Willson,
13 for a period of time, was an independent agent with Keller
14 Williams?

15 A Correct, yes.

16 Q What period of time was that?

17 A From 2008 until August 2018.

18 Q Were you actually the individual that had to
19 terminate the relationship?

20 A Yes, yes.

21 Q As an independent agent with Keller Williams, was he
22 engaged in real estate activity?

23 A Yes.

24 Q As an independent agent with Keller Williams, and I'm
25 going to ask you this as it relates to all independent

1 agents, do they have access, those independent agents, to
2 the Keller Williams building -- business building?

3 A Yes.

4 Q Does Keller Williams provide these independent agents
5 with computer equipment or other things of that nature?

6 A No.

7 Q And is that access your normal business hours?
8 Sorry. Is the access to the business, that is the
9 building itself, during normal business hours of the week
10 or do they have access at any time?

11 A Anytime.

12 Q They actually get a key or a passcode or something of
13 that nature?

14 A A passcode.

15 MR. BANNISTER: Thank you. I don't have any further
16 questions, Your Honor.

17 THE COURT: All right. Any cross-examination?

18 CROSS EXAMINATION

19 BY MR. COLLIER:

20 Q Just one question, Ms. Sams. Two questions maybe.
21 Why was -- the defendant was terminated in August of
22 2018?

23 A Yes.

24 Q Why was he terminated?

25 A I mean, it was -- did I say 2018? August 2015.

1 Sorry.

2 MR. COLLIER: No further questions, Your Honor.

3 THE COURT: Okay. All right. Thank you, ma'am. You
4 may step down.

5 All right. Next witness.

6 MR. BANNISTER: Judge, I don't have any further
7 witnesses. The defense will rest.

8 THE COURT: Okay. Do you anticipate anything in
9 reply?

10 MR. COLLIER: No, Your Honor.

11 THE COURT: All right. Thank you.

12 All right. Ladies and gentlemen of the jury, if you
13 remember my procedural road map that I gave you yesterday
14 in my opening comments to you, the five parts of the
15 trial, we have now completed the first two parts. So the
16 opening statements are done, and all of the evidence, all
17 of the testimony that is going to be presented in this
18 case has been presented. The next part of the trial will
19 be the closing arguments of the attorneys. So it's now
20 12:25. I would ask y'all to be back at 2:15. Does that
21 give you enough time? That's a little bit longer than
22 usual. We've got a couple things we've got to do.

23 Don't discuss the case. Don't go on -- do any
24 research, go on social media or anything like that. This
25 case is going to be yours today. So y'all have a pleasant

1 lunch and we'll see you back at 2:15.

2 Thank you.

3 (WHEREUPON, the jury exits the courtroom at 12:23 p.m.)

4 THE COURT: All right. Any motions?

5 MR. BANNISTER: Just to renew all my previous
6 motions, Judge.

7 THE COURT: Okay. Same ruling.

8 JURY CHARGE CONFERENCE

9 THE COURT: All right. Do you all have any request
10 to charge that you want to talk about?

11 MR. COLLIER: Yes, Your Honor. We have two requests,
12 one regarding the third degree sexual exploitation of a
13 minor charge and then another regarding the second degree
14 sexual exploitation of a minor charge. I can hand them up
15 to the Court.

16 THE COURT: Yeah. Have you given them to
17 Mr. Bannister?

18 MR. COLLIER: I've given a copy to Mr. Bannister.

19 MR. BANNISTER: Judge, I think first I would request
20 that the -- and this is just generally speaking with the
21 indictment with your own jury charges and with these
22 proposed ones that we go ahead and get rid of some of the
23 verbs that are obviously not applicable in the case:
24 transports, exhibits, sells, purchases. I don't believe
25 -- I think, in fact, Investigator Atkins testified there

1 was no evidence relating to some of those. So just at the
2 outset I'd say let's knock those out.

3 Number two, do we really have to define what sexual
4 activity is? I mean, we're talking about done alone or
5 with an animal? I mean, I don't -- I wasn't watching the
6 videos, but I don't think there were any animals involved
7 in this particular case.

8 MR. COLLIER: Well, sexual activity is statutorily
9 defined, and that's incorporating that definition.

10 MR. BANNISTER: Yeah. But we don't need to --
11 well . . .

12 MR. COLLIER: As far as the verbs, Your Honor,
13 Mr. Bannister's first concern, we find if on the sexual
14 exploitation second degree ---

15 THE COURT: Yeah.

16 MR. COLLIER: -- to just include the verbs
17 "distributes" ---

18 THE COURT: Wait a minute. You say to not use?

19 MR. COLLIER: No. We can use -- if we just include
20 "distributes, receives and solicits," we can leave the
21 other verbs out.

22 THE COURT: So eliminate "transports" ---

23 MR. COLLIER: Yes.

24 THE COURT: --- "exhibits" ---

25 MR. COLLIER: Yes.

1 THE COURT: --- "sells" ---

2 MR. COLLIER: Yep.

3 THE COURT: --- "purchases" ---

4 MR. COLLIER: Yep.

5 THE COURT: --- and "exchanges."

6 MR. COLLIER: Yes.

7 THE COURT: All right. Is that satisfactory to you,
8 Mr. Bannister?

9 MR. BANNISTER: Yes. I agree to that.

10 THE COURT: All right. Anything else? Any other
11 language that -- is this just the statute -- language in
12 the statute?

13 MR. COLLIER: A lot of it, Judge, is the language in
14 the statute.

15 THE COURT: Okay.

16 MR. COLLIER: I can show you the statute, if you ---

17 THE COURT: Well, I can -- all right. Any other
18 language that is . . .

19 MR. BANNISTER: So, Judge, not having -- I don't know
20 if you've got a standard charge in this case. If you do,
21 I'd probably like a chance to review it before we can have
22 a ---

23 THE COURT: No. Let's use -- we'll go with this.

24 MR. BANNISTER: --- before we have a final version.

25 But knowledge or intent, so one of the issues in the

1 case that I think needs to be covered by the jury charge
2 sufficiently and with enough specificity making clear what
3 the jury is doing has to do with this idea that if you
4 have a file in the BitTorrent software, that then it is
5 offered up to the public for sharing. There's been no
6 information that there was an affirmative act that needed
7 to occur on behalf of the defendant ---

8 THE COURT: That's a jury argument.

9 MR. BANNISTER: --- to affirmatively put that out
10 there.

11 THE COURT: We're talking about the jury charge.

12 MR. BANNISTER: I don't disagree with that, but I
13 think there needs to be some discussion about intent.

14 THE COURT: Well, do you have a proposed charge?

15 MR. BANNISTER: Well, that's why -- not at this
16 moment. I'm a little bit -- I was expecting we'd go a
17 little bit further today. In fact, I was planning on
18 lunch to kind of go back and look. I've got some research
19 that I need to ---

20 MR. COLLIER: Your Honor, regarding the second degree
21 statute ---

22 THE COURT: Yeah.

23 MR. COLLIER: --- it's almost like strict liability.
24 The only requirement is that the defendant, knowing the
25 character and content of the material, distributes it.

1 MR. BANNISTER: Yeah. I think that's where I -- I
2 know this is an issue that's currently up on appeal, which
3 is sort of what I wanted to look at, but the idea of the
4 strict liability, I think, doesn't purport with our
5 standard ways we handle criminal statutes, especially ones
6 that are this serious. There's got to be some intent.

7 THE COURT: So you want me at the circuit level to
8 rewrite the statute.

9 MR. BANNISTER: No, no. Not rewrite the statute.
10 I'm just requesting that you include in there there's got
11 to be some intent associated with the distribution. I
12 mean, you can talk about intent generally. I mean, you're
13 pushing me to give you a specific answer at the moment.

14 THE COURT: Yeah.

15 MR. BANNISTER: I'm just not ready for that. I've
16 got to have a little bit of time to look at this.

17 THE COURT: Well, this case was -- he was indicted --
18 I mean, this is from 2015.

19 All right. Well, if you want to come back and have
20 something ---

21 MR. BANNISTER: Right. Just give me till -- what
22 time do you want us back here?

23 THE COURT: 2:07. How about that?

24 MR. BANNISTER: All right. Understood. Yeah. Just
25 give me till then and I'll put something together.

1 THE COURT: Okay. Did you have any -- with respect
2 to third degree sexual exploitation, anything in his
3 proposed -- Mr. Collier's proposed charge that you find --
4 or you just want to do it all when you get back here?

5 MR. BANNISTER: Yeah. Let me -- let me just do it
6 all when I get back here, if I could.

7 THE COURT: Well, let me ask, he has asked for a
8 general charge on intent. Do y'all have a position on
9 that? Do y'all want to think about that over lunch?

10 MR. COLLIER: Yes, Your Honor. Thank you.

11 THE COURT: Okay. All right. See y'all back at
12 2:07.

13 Wait. Before you go, let's just quick, I presume you
14 want a circumstantial evidence charge? Anybody? No?

15 MR. BANNISTER: Yeah.

16 THE COURT: It saves me time.

17 MR. BANNISTER: I do.

18 THE COURT: Okay. I think there's -- here's what --
19 I've got general duties of the judge and jury, the rest --
20 indictment not evidence, multiple charges, they all have
21 to be decided on their own, credibility of the witnesses.

22 Do you want a failure of the defendant to testify?

23 MR. BANNISTER: Yes, I do.

24 THE COURT: Okay. Presumption of innocence,
25 reasonable doubt, circumstantial evidence and the two

1 offenses and potentially the intent, depending on what
2 y'all come up with. Anything else?

3 MR. BANNISTER: All right. So this is the one I
4 hadn't thought about. But -- well, I'll come back and ---

5 THE COURT: No, no. I need to think about. I've
6 only given myself eight minutes to think about it.

7 MR. BANNISTER: So, you know, the position that we've
8 taken is that the download initially of the videos was
9 initiated by the investigator, it was done through a
10 sole-source download, which is not normal for BitTorrent
11 clients. So I would request a charge that -- especially
12 as to the distribution, that is, of entrapment, in other
13 words, the officer is the one that's created the
14 distribution that is now the subject of the second-degree
15 offenses.

16 THE COURT: I thought I saw that coming in your
17 motion.

18 MR. BANNISTER: Yeah. And so what does Judge Miller
19 say?

20 THE COURT: That you don't have entrapment in this
21 case.

22 MR. BANNISTER: Okay. Well, then we'll note for the
23 record that I've made the request.

24 THE COURT: Okay. Do y'all want to respond to
25 anything? I mean, I don't want to ---

1 MR. COLLIER: No, Your Honor, not since you've
2 already ruled.

3 THE COURT: Okay. All right. Let me -- can I talk
4 to the two lead lawyers real quickly up here yet again?

5 (WHEREUPON, a bench conference was held off the record,
6 and a recess was taken.)

7 THE COURT: Mr. Willson, you're fine right there.

8 DEFENDANT WILLSON: Okay.

9 THE COURT: I just want to make sure you understand
10 where we're going with this. And you are -- I've been
11 informed that there is a potential offer on the table for
12 a nine-year sentence to a nonviolent offense. I want you
13 to understand the benefits of that. One, you won't be in
14 a violent -- if affects where you are incarcerated, it
15 affects the length before parole eligibility, it would
16 eliminate, I presume -- I don't know the specifics of what
17 might happen, but I'm just telling you that it is, based
18 on -- well, there are two reasons an old trial lawyer told
19 me when I was a young lawyer, two reasons to go to trial:
20 one, you have a dead-sure winner; two, you've got nothing
21 to lose. And you need to think long and hard about which
22 one of those two categories you fit into. And if you
23 don't fit into one of those, going to trial can be very
24 perilous. And now is the time to make this decision,
25 because it will not be there later.

1 And I understand it's an extraordinarily difficult
2 decision to make, but it's the one you make for yourself
3 as opposed to having a jury decide the facts, and if they
4 say you're not guilty, you're done. But this is your
5 opportunity. It's a bird in the hand as opposed to two in
6 the bush, and I would like you to take another two or
7 three minutes to think about it, talk with your attorney
8 about it. Because I want you to understand what's coming.
9 It's not going away and it's happening today.

10 So would you talk to him a little bit, Mr. Bannister?

11 MR. BANNISTER: I will.

12 (WHEREUPON, a recess is taken at 12:40 p.m.)

13 GUILTY PLEA

14 THE CLERK: Your Honor, in the case of
15 2017-GS-23-7094, the State vs. Kevin Mark Willson,
16 indicted for sexual exploitation of a minor, third degree,
17 pleading to the same, this is a true bill; in the case of
18 2017-GS-23-7095, he's indicted for sexual exploitation of
19 a minor, third degree, pleading to the same.

20 Please raise your right hand.

21 WHEREUPON,

22 KEVIN MARK WILLSON

23 After having been duly sworn, testified as follows:

24 THE COURT: All right. Mr. Willson, in the last
25 24 hours, have you had any drugs, alcohol or medication?

1 DEFENDANT WILLSON: No, sir.

2 THE COURT: Have you ever been treated for substance
3 abuse or mental illness?

4 DEFENDANT WILLSON: No, Your Honor.

5 THE COURT: You're up here on these two indictments.
6 I'm not going to review them with you because we have just
7 finished trying the case. It is my understanding that
8 you, at this time, wish to enter a guilty plea to these
9 two indictments; is that correct?

10 DEFENDANT WILLSON: That is correct.

11 THE COURT: All right. And you understand all your
12 rights at a trial since you have now been through one, but
13 you understand that by entering this plea, you are taking
14 the case, all seven cases out of the hands of the jury and
15 resolving the entire issue with these two cases; you
16 understand that?

17 DEFENDANT WILLSON: Yes, Your Honor.

18 THE COURT: And is that your free and voluntary
19 decision?

20 DEFENDANT WILLSON: It is.

21 THE COURT: Do you have any questions that you need
22 to ask the Court or your attorney with respect to this
23 decision?

24 DEFENDANT WILLSON: I do not.

25 THE COURT: All right. And I understand that the --

1 this is a negotiated sentence, what's going to be
2 explained to me, which is a contract between you, your
3 attorney and the State, which I cannot alter or interfere
4 with, and that if I accept this plea, that that will be
5 what you get; you understand that?

6 DEFENDANT WILLSON: I do.

7 THE COURT: And you want to proceed with this.

8 DEFENDANT WILLSON: Yes, Your Honor.

9 THE COURT: Okay. All right. And I will just say
10 for the purposes of the plea, I take into account all of
11 the facts that I have heard throughout the course of these
12 -- the last day and a half.

13 All right. Yes, sir, Mr. Collier.

14 MR. COLLIER: Your Honor, Dave Collier with the
15 Attorney General's Office.

16 I just want to put on the record that Mr. Willson is
17 pleading guilty to two counts of sexual exploitation of a
18 minor in the third degree. These are mandatory sex
19 offender registry offenses. Those indictment numbers are
20 2017-GS-23-07094 and 07095.

21 Pursuant to the plea agreement, we're going to
22 dismiss two counts of sexual exploitation of a minor in
23 the second degree and three counts of sexual exploitation
24 of a minor in the third degree. Those indictment numbers
25 are 2017-GS-23-07089 through 07093.

1 Your Honor, we've agreed to a negotiated sentence of
2 20 years suspended to eight years incarceration and five
3 years probation with conditions of probation to include no
4 unsupervised contact with minors and no Internet access.
5 Also, the defendant is going to waive any rights to appeal
6 that he might have.

7 THE COURT: All right. Is that your full and
8 complete understanding of the negotiations, Mr. Willson?

9 DEFENDANT WILLSON: It is, Your Honor.

10 THE COURT: Okay. The only correction I would make
11 is that there is no offense here which I can give him
12 20 years, so in order to effect that agreement, I will
13 give you eight years on one account and ten years
14 consecutive on the other suspended with probation; do you
15 understand that? You have to speak.

16 DEFENDANT WILLSON: Yes, Your Honor.

17 THE COURT: All right. And does that comply, that
18 technical alteration comply with the agreement that the
19 parties have come to from the State?

20 MR. COLLIER: Your Honor, it's eight years on one
21 count and then ten ---

22 THE COURT: Ten suspended to five years probation,
23 consecutive -- ten years consecutive to the eight years
24 suspended to five years probation, okay? And now the
25 State is having some question about it.

1 MR. SENN: Just to clarify, Judge, the ten years
2 suspended to eight years, serves the time on one charge,
3 and ten years suspended to five years probation.

4 THE COURT: It will be ten years consecutive.

5 MR. SENN: That's correct. I just want to make sure
6 the charge that had the eight years ---

7 MR. COLLIER: It's a ten years suspended ---

8 THE COURT: To eight. Yeah.

9 MR. SENN: Just clarifying.

10 THE COURT: I'm sorry I didn't -- okay.

11 All right. Is that your understanding as well,
12 Mr. Willson?

13 MR. BANNISTER: That's correct.

14 DEFENDANT WILLSON: That's correct, Your Honor.

15 THE COURT: All right. Is there anything you all
16 want to tell me?

17 MR. BANNISTER: No, Judge. It's a negotiated plea,
18 and you've heard the trial and I don't think there's
19 anything to add to it.

20 SENTENCING

21 THE COURT: I'm understanding the probation is to be
22 for five years. He will be on the sex offender caseload.
23 All right. Ten years provided on the service of eight,
24 the balance is suspended with probation for five years,
25 correct? All right. The condition of the probation is no

1 Internet access, sex offender caseload ---

2 MR. COLLIER: By sex offender caseload, do you mean
3 the sex offender registry?

4 THE COURT: Well, no. There's a specific caseload in
5 the probation office that is a sex ---

6 MR. COLLIER: Oh, oh, okay.

7 THE COURT: He is automatically on the sex offender
8 registry.

9 MR. COLLIER: Thank you, Judge.

10 THE COURT: I'll note that on there as well.

11 Random drug and alcohol testing. But is there --
12 what other conditions of the probation are there? No
13 unsupervised contact with minors.

14 All right. Make sure I get this right, so please
15 correct me if I misstate something. Sentenced to ten
16 years in the Department of Corrections provided upon the
17 service of eight years, the balance is suspended with
18 probation for five years, random drug and alcohol testing,
19 no Internet access, sex offender caseload, no unsupervised
20 contact with minors, placed on the sex offender registry.
21 Is there any other -- is that fully -- and then on the
22 other indictment, ten years consecutive suspended during
23 probation. Does that comply with all of the terms of the
24 negotiated agreement?

25 MR. COLLIER: Yes, Your Honor.

1 MR. BANNISTER: Yes, Your Honor.

2 THE COURT: Okay.

3 DEFENDANT WILLSON: Yes, Your Honor.

4 THE COURT: All right. And you are waiving your
5 rights to appeal.

6 DEFENDANT WILLSON: Yes, Your Honor.

7 THE COURT: Okay. Best of luck.

8 MR. BANNISTER: Thank you, Judge.

9 MR. COLLIER: Thank you, Your Honor.

10 (Pause in proceedings.)

11 THE COURT: Since we can't give the exhibits back
12 because the trial started, this is a Clerk of Court thing,
13 so we are going to seal, unless there's an objection, seal
14 the three computer flash drives, okay? Any objection from
15 anybody?

16 MR. COLLIER: No objection.

17 THE COURT: Bannister, you got an objection?

18 MR. BANNISTER: No.

19 THE COURT: That's a first time.

20 (WHEREUPON, proceedings concluded at 1:32 p.m.)

21

22

23

24

25

1 CERTIFICATE OF REPORTER

2
3 STATE OF SOUTH CAROLINA)

4 COUNTY OF GREENVILLE)

5
6
7 I, CHERYL A. SMITH, Official Court Reporter for the
8 Thirteenth Judicial Circuit of the State of South
9 Carolina, do hereby certify that the foregoing is a true,
10 accurate and complete Transcript of Record of the
11 proceedings had and evidence introduced in the trial of
12 the captioned case, relative to appeal, in the Court of
13 General Sessions for Greenville County, South Carolina, on
14 the 3rd and 4th day of December, 2018.

15 I do further certify that I am neither of kin,
16 counsel, nor interest to any party hereto.

17
18 March 6, 2020

19
20
21 *Cheryl A. Smith*

22 Cheryl A. Smith, CVR-M

23 Court Reporter
24
25

STATE OF SOUTH CAROLINA)

In the Court of Common Pleas

County of GREENVILLE)KEVIN MARK WILLSON)

Full name and prison number, if any, of applicant.)

v.)

SOUTH CAROLINA)

Name of Respondent)

2019-CP-23- 07167

APPLICATION FOR

POST-CONVICTION RELIEF

ENTERED COMPUTER

FILED-CLERK OF COURT
PAUL H. WILSON, JR.
CLERK

2019 DEC 11 PM 2:51

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly, handwritten, or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicant should, therefore, exercise care to assure that all answers are true and correct.

If the applicant is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention Allendale CI, Fairfax, SC 29827
2. Name and location of Court which imposed sentence GREENVILLE COUNTY COURTHOUSE
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 2017 GS2307095
 - (b) 2017 GS230794
 - (c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 12-4-18 10yrs suspended to 8 + 5 years
 - (b) probation.
 - (c) _____

5. Check whether a finding of guilty was made
- (a) after a plea of guilty _____
 - (b) after a plea of not guilty _____
 - (c) after a plea of nolo contendere _____
6. Did you appeal from the judgment of conviction or the imposition of sentence? no
7. If you answered "yes" to (6), list
- (a) the name of each Court to which you appealed:
 - i. _____
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. _____
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. _____
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. _____
 - ii. _____
 - iii. _____
8. If you answered "no" to (6), state your reasons for not so appealing:
- (a) n/a
 - (b) _____
 - (c) _____
9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) the plea my attorney told me about was 8 years.
 - (b) there was NO mention from anyone regarding a ~~sent~~ suspended
 - (c) Sentence or probation. ~~The~~ The sentencing sheet displays
a plea I DID NOT agree to.

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

(a) ~~plea I did not agree to~~. There was No evidence any file sharing software was ever present on my electronics.

(b) The sex offender registry for life that is being imposed is a punitive restraint. *Piosecki v. Court of Common Pleas*

(c) The terms of the probation are also unconstitutional as they forbid internet access. *Jones v. Cunningham, U.S. v. Miller*

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law ?

no

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief?

no

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7) no

(d) any other petitions, motions or applications in this or any other Court?

no

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i.

ii.

iii.

iv.

(b) the name and location of the Court in which each was filed:

i.

ii.

iii.

iv.

(c) the disposition thereof:

i.

ii.

iii.

iv.

probated
U.S. v. Holm, U.S. v. Albertson, U.S. v. Holm, U.S. v. Scott
U.S. vs. White

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? no

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) _____
- (b) _____
- (c) _____

16. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? yes
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence?

(e) preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? yes

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

i. Jim Bannister

ii. Greenville, SC 29601

iii. _____

(b) the proceedings at which each such attorney represented you:

i. probable cause

ii. trial

iii. plea/sentencing

18. State clearly the relief you seek in filing this application.

case overturned or shorter sentence. no registry.

no probation or modification of said terms.

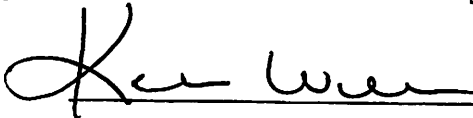
19. Are you now under sentence from any other court that you have not challenged?

no

STATE OF SOUTH CAROLINA)
COUNTY OF Allendale)

VERIFICATION

I, Kevin Mark Willson, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.



Sworn to and subscribed before me

This 02 day of Dec., 2019

Linda Green L.S.

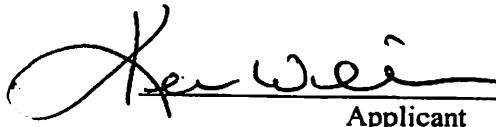
Notary Public for South Carolina

My Commission Expires 10/28/29

**APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Kevin Mark Willson, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty or perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of proceeding or give security therefor.



Applicant

Sworn to and subscribed before me

This 02 day of Dec, 2019

Linda Green L.S.

Notary Public for South Carolina

My Commission Expires: 10/28/29

Kevin Willson 378378
 ACI
 PO Box 1151 F4A248
 Fairfax, SC 29827



UNITED STATES POSTAGE
 PITNEY BOWES

02 1P \$ 006.80
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 MAILED FROM ZIP CODE 29827

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
 OF THE RETURN ADDRESS, FOLD HERE

CERTIFIED MAIL™



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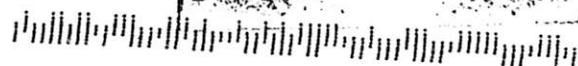
Greenville County Courthouse
 Clerk of Court
 305 E. North St.
 Greenville, SC 29601
2019-CP-23-07167

RECEIVED

DEC 02 2019

MAILROOM
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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	FOR THE THIRTEENTH JUDICIAL CIRCUIT
	)	
Kevin Mark Willson, #378378,	)	Case No.: 2019-CP-23-7167
	)	
Applicant,	)	
	)	
v.	)	RETURN AND MOTION TO DISMISS
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

The State of South Carolina (Respondent), making its return to the application for post-conviction relief filed by Kevin Mark Willson (Applicant) on December 11, 2019, would respectfully show this Court:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenville County Clerk of Court. During its August of 2017 term, the Greenville County Clerk of Court indicted Applicant for two counts of third-degree sexual exploitation of a minor (2017-GS-23-7094; -7095). Applicant was represented by James Wofford Bannister, Esquire, and Marcelo Torricos, III, Esquire. Assistant Attorneys General David T. Collier and R. Kyle Senn, both of the South Carolina Attorney General's Office, prosecuted the case. On December 3, 2018, through December 4, 2018, Applicant proceeded to a jury trial with the Honorable Edward W. Miller presiding. On the second day of trial, Applicant pleaded entered into a negotiated plea agreement with the State and pleaded guilty to two counts of third-degree sexual exploitation of a minor (2017-GS-23-7094; -7095). In accordance with the negotiated agreement, Judge Miller sentenced Applicant as follows for each indictment: to imprisonment for ten years,

suspended upon the service of imprisonment for eight years; with probation for five years, and with conditions of probation that Applicant could have no unsupervised contact with minors and no Internet access; ordered that Applicant be placed upon the sex offender caseload at the South Carolina Department of Probation, Pardon, and Parole; ordered that Applicant undergo random drug and alcohol testing while on probation; ordered that Applicant be placed upon the sex offender registry. As a part of the negotiated agreement, Applicant waived his right to direct appellate review of his convictions and sentences, and the State dismissed two counts of second-degree sexual exploitation with a minor and three counts of third-degree sexual exploitation of a minor (2017-GS-23-7089 through -7093).

Applicant did not appeal his convictions or sentences.

II. Current Application

In his application for post-conviction relief, Applicant alleges he is entitled to relief because:

- 1) “the plea my attorney told me about was eight years”;
- 2) “there was NO mentioned from anyone regarding a suspended sentence or probation”;
- 3) “The sentencing sheet displays a plea I DID NOT agree to”;
- 4) “There was No evidence any file sharing software was ever present on my electronics”;
- 5) “The sex offender registry for life that is being imposed is a putative restraint”; and
- 6) “The terms of the probation are also unconstitutionally as they forbid internet access.”

Applicant prays that the Court would grant him post-conviction relief by overturning his convictions or imposing a shorter sentence, removing him from the sex offender registry, removing the requirement that he be on probation, or modifying the terms of his sentence.

Attached to this return and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding Applicant’s convictions, Applicant’s records from the South

Carolina Department of Corrections, and Applicant's application for post-conviction relief. Respondent reserves the right to amend this return upon receipt of any relevant materials.

III. Motion for Summary Dismissal

This present application for post-conviction relief should be should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160 (the Act).

Pursuant to S.C. Code Ann. § 17-27-70(c), the Court may summarily dispose of an application if there is no genuine issue of material fact in the "pleadings, depositions and admissions and agreements of fact" and the movant is entitled to judgment as a matter of law. The summary dismissal of an application for post-conviction relief without a hearing is appropriate only when it is apparent on the fact of the application that a hearing is not needed for the development of a factual record and the applicant is not entitled to relief. Mose v. State, 420 S.C. 500, 505, 803 S.E.2d 718, 720 (2017) (citing Leamon v. State, 363 S.C. 432, 611 S.E.2d 494 (2005)). The Court, in considering the motion for summary dismissal without the holding of an evidentiary hearing, must assume the facts presented by Applicant as true and view then in the light most favorable to Applicant. Robertson v. State, 418 S.C. 505, 519, 795 S.E.2d 29, 36 (2016) (citing McCoy v. State, 401 S.C. 363, 737 S.E.2d 623 (2013)).

First, this Court should dismiss the application summarily in its entirety because it was not properly filed in accordance with the statute of limitations. A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994).

The Act requires as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of offense or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision on appeal, whichever is later.

S.C. Code Ann. § 17-27-45(A). The South Carolina Supreme Court has held the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). Applicant was convicted and sentenced on December 4, 2018, and he did not appeal his convictions or sentences. The application was, therefore, due on or before December 5, 2019. This application was not filed until December 11, 2019. Therefore, the application should be summarily dismissed because it was not filed within the time mandated by Uniform Post-Conviction Procedure Act.

Second, Applicant alleges in his Application that Judge Miller's including Applicant on the sex offender registry is a putative restraint and that the terms of probation imposed by Judge Miller are unconstitutional, and Respondent interprets these allegations as claims of trial court error. Respondent submits that these claims should be summarily dismissed for failing to state a cognizable claim upon which relief can be based. An applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
 2. That the court was without jurisdiction to impose sentence;
 3. That the sentence exceeds the maximum authorized by law;
 4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
 5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint;
- or

6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20(A). Post-conviction relief is not a substitute for remedies incident to the proceedings in the trial court or on direct appeal. S.C. Code Ann. § 17-27-20(B). Because an application for post-conviction relief is not a substitute for a direct appeal of trial court error, and because of the modern simplification of criminal jurisdiction jurisprudence in South Carolina, the overwhelming majority of cognizable claims fall under the broad umbrella of “ineffective assistance of counsel,” a contention under the Sixth Amendment to the Constitution of the United States. See Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (“Allegations of trial court error are not cognizable on PCR.”) (citing Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (1997); State v. Johnston, 333 S.C. 459, 510 S.E.2d 423 (1999)); but see Fortune v. State, 428 S.C. 545, 837 S.E.2d 37, 44 (2019) (instructing that, in some circumstances, an applicant may argue a claim for post-conviction relief based on constitutional violations other than a violation of his Sixth Amendment right to counsel due to the ineffective assistance of counsel. The Supreme Court found Fortune’s was “one of those cases” because the State argued in closing that, among other things, a solicitor’s job is to find the truth, unlike the job of a normal lawyer, and that a defense attorney’s job is to manipulate the truth, shroud the truth, and confuse jurors). Errors that could have been reviewed on direct appeal cannot be asserted for the first time in a post-conviction relief proceeding. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 519 (1993) (citing Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1975)). These claims do not support a cognizable claim for post-conviction relief under any of the statutory grounds and should be dismissed summarily.

Third, the Court should summarily dismiss three of Applicant’s claims, which are: 1) “the

plea my attorney told me about was eight years”, 2) “there was NO mentioned from anyone regarding a suspended sentence or probation”, and 3) “[t]he sentencing sheet displays a plea I DID NOT agree to.” These three allegations are flatly refuted by the transcript from Applicant’s plea hearing and the sentencing sheets or either do not create any genuine issue of material fact. When Applicant decided to plead guilty, the State, Applicant’s defense attorney, and the trial court stated on the record the details surrounding the negotiated sentence to which Applicant was pleading guilty. Transcript 245-47. In fact, Applicant affirmed to the trial court that he understood the specifics of the negotiated sentence. Transcript 247. As part of those discussions, Applicant was informed of the effect of sentence suspension in his case. Transcript 247. The State put on the record that Applicant would be pleading guilty to two counts of sexual exploitation of a minor in the third degree and that multiple other offenses would be dismissed. Transcript 245-46. Applicant affirmed that he agreed with the State’s explanation of the negotiated agreement. Transcript 246, 249. So these allegations are either blatantly false in light of the transcript or else they are of no matter, since if Applicant’s attorney misinformed Applicant regarding any aspect of the aforementioned details, the clarifications during the plea hearing would have cured them. And the indictments to which Applicant was pleading guilty were clearly stated multiple times during the hearing, and are identically noted on the sentencing sheets.

Fourth, the Court should summarily dismiss the claim that Applicant’s computers did not have file sharing software on them because Applicant’s guilty pleas foreclosed his ability to challenge the present of file sharing software on his computer in a collateral action. Applicant was present at trial when the trial court read the allegations found in the indictments. Transcript 8-11. Applicant was present through a significant amount of trial proceedings during which the State

introduced its evidence. Applicant affirmed to the trial court that he wished to plead guilty, waive his trial rights, and take the decision of his guilty out of the hands of the jury. Transcript 245-47. A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing: (1) counsel was deficient and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pleaded guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). "A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed." Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 74 (1977)). "Indeed, where a thorough colloquy is conducted, courts must exercise caution in setting aside the guilty plea." Garren v. State, 423 S.C. 1, 12, 813 S.E.2d 704, 712 (2018); see Jamison v. State, 410 S.C. 456, 469-71, 765 S.E.2d 123, 129-30 (2014) (observing that "guilty plea[s] must be treated as final in the vast majority of cases" and instructing that caution must be exercised so as not to "undermine the solemn nature of a guilty plea and the finality that generally attaches to a guilty plea"). The South Carolina Supreme Court has instructed that:

The longstanding test for determining the validity of a guilty plea is whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him.

State v. Inman, 395 S.C. 539, 556, 720 S.E.2d 31, 40 (2011) (internal quotations and citations omitted). "[A] guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights." Jamison, at 468, 765 S.E.2d at 129 (citations omitted). Applicant simply has waived his right to challenge the sufficiency of the State's evidence by pleading guilty and by

waiving his right to direct appellate review of his convictions and sentences, and should not be allowed to do so here.

IV. Denial of All Other Claims

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

V. Conclusion

WHEREFORE, Respondent moves to summarily dismiss the application as being barred by the statute of limitations, because some of the claims do not have a cognizable basis for relief, because some of Applicant's claims are flatly contradicted by the record and do not present a genuine issue of material fact, and because Applicant waived the right to challenge the sufficiency of the State's evidence by pleading guilty.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

TAYLOR ZANE SMITH
Assistant Attorney General

By: s/Taylor Zane Smith
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

June 18, 2020

STATE OF SOUTH CAROLINA	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS
	)	
KEVIN WILLSON, #378378	)	2019-CP-23-7167
	)	
Applicant,	)	
	)	
vs	)	CERTIFICATE OF SERVICE
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent,	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Motion to Dismiss** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Kevin Willson, #378378 (BBA-0048-A)
Allendale Correctional Institution
Post Office Box 1151
Fairfax, SC 29827

DATED this 22nd day of July 2020.



Jennifer Jennison, Administrative Coordinator
 For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
KEVIN MARK WILLSON,	)	ORDER DENYING THE STATE'S
APPLICANT.	)	MOTION TO DISMISS
v.	)	
	)	
THE STATE OF SOUTH CAROLINA,	)	CASE # 2019-CP-23-7167
RESPONDENT.	)	
_____	)	

 72 APR 13 PM 3:56
 Paul Hickenheimer CDC GUL SC

BEFORE THE COURT is the State's Motion to Dismiss the Applicant's Post-Conviction Relief (PCR) matter which was filed December 11, 2019, by the Greenville County Clerk of Court nine days beyond the one-year statute of limitations period allowed by law per the Uniform Post Conviction Relief Act, SC Code Section 17-27-45(a). A hearing was held on the State's motion March 21, 2022, via the WebEx platform. Representing the State was Taylor Z. Smith, Esq., of the South Carolina Attorney General's Office. The Applicant was present and represented by Susannah Ross, Esq.

At the commencement of the hearing Counsel for the State argued that the Application was filed outside of the one-year statute of limitations and dismissal was appropriate. Citing Mose v. State, Counsel for the Applicant argued that equitable tolling was justified in this matter because the application was notarized and postmarked as certified mail on December 2, 2019, within one year of his December 4, 2018, guilty plea. Mose v. State, 803 S.E.2d 718, 420 S.C. 500 (S.C. 2017). This was evidenced by a copy of the Application's verification page and the envelope stamped and mailed from the Allendale Correctional Facility on December 2, 2019, attached to the Applicant's Reply to the Conditional Order of Dismissal.

It is the finding of the Court that the Applicant should be given the benefit of equitable tolling because he relinquished control of his PCR Application within the one-year statute of

limitations period. Therefore, he should be allowed to pursue his action for PCR.

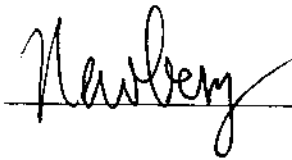
IT IS THEREFORE ORDERED that Applicant shall be allowed to pursue his action for PCR and a date be scheduled for a full hearing on claims available to him under the Uniform Post Conviction Relief Act, SC Code Section 17-27-20.

IT IS FURTHER ORDERED that this is final Order of the Court on this issue.

AND IT IS SO ORDERED this 8th day of April, 2022.



The Honorable Eugene C. Griffith
Presiding Judge
Thirteenth Judicial Circuit



, South Carolina

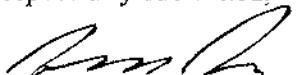
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Attorney General <u>TS/S. Ross</u>
on <u>4</u> / <u>13</u> / <u>22</u>

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
KEVIN M. WILLSON,	)	AMENDED APPLICATION
APPLICANT.	)	
v.	)	ENTERED COMPUTER
	)	
THE STATE OF SOUTH CAROLINA,	)	CASE # 2019-CP-23-7167
RESPONDENT.	)	

 23 JUL 10 PM 12:54
 Brice Garrett COC GUL SC

This matter comes before the Court by way of application of post conviction relief filed December 11, 2019, alleging his conviction and sentence were in violation of the Constitution of the United States and the Constitution of the laws of South Carolina due the failure to adhere to his plea negotiation, ineffective assistance of trial counsel, and imposition of conditions including the sex offender caseload and no internet access or use that are punitive and overbroad infringing on his right to free speech. See Packingham v. North Carolina, 137 S.Ct. 1730, 198 L.Ed.2d 273 (2017) & United States v. Holena, 906 F.3d 288 (3rd Cir. 2018). Additionally, the record of his guilty plea shows that the Applicant was not made aware of the nature and crucial elements of the charge against him to his right to appeal violating due process guarantees of the State and U.S. Constitutions in that the plea was not knowingly, voluntarily, and intelligently made. See Pittman v. State, 337 S.C. 597, 524 S.E.2d 623 (SC 1999).

Respectfully submitted,



 Susannah Ross #11205
 Attorney for the Applicant
 330 E. Coffee St,
 Greenville, SC 29601
 (864) 242-0029

Greenville, South Carolina
 This 10 day of July, 2023

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

KEVIN M. WILLSON,)

Applicant,)

vs.)

THE STATE OF SOUTH CAROLINA,)

Respondent.)
_____)

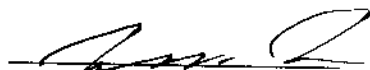
IN THE COURT OF COMMON PLEAS

2019-CP-23-7167

AFFIDAVIT OF SERVICE
BY MAIL23 JUL 10 PM 12:54
Brice Garrett CDC GUL SC

1. I am the attorney for the Applicant in the above-captioned matter.
2. Regular communication by mail exists throughout the state of South Carolina and this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Supplemental Application** on the above-captioned matter on the following person by depositing the same in the United States mail with proper postage affixed thereto:

Office of the Attorney General
PCR Division
P.O. Box 11549
Columbia, SC 29211
 Attn: Lillian Meadows


 Attorney for Defendant

This 10 day of July, 2023

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
Plaintiff

v.

Kevin Mark Wilson,
Defendant

IN THE GENERAL SESSIONS COURT
THIRTEENTH JUDICIAL CIRCUIT

Case # 2019-cp-23-7167

23 JUL 20 AM 9:05
Brice Garrett CJC SC

AFFIDAVIT

Pursuant to 28 U.S.C. Section 1746, I, Bonnie Burkhardt, I declare under penalty of perjury that the foregoing is true and correct.

1. Introduction

This is my analysis of the law-enforcement-only tools that are used to identify and investigate those suspected of downloading child pornography using BitTorrent peer-to-peer products. This toolset has been used for years in numerous cases across the country.

I was unable to view or inspect these tools directly. So, I reverse engineered them. In order to identify the data extracted and used by the tools, I scoured court transcripts and other court documents where law enforcement officers describe these tools and what they do, including *U.S. v. Rees*, No. 19-2230 (7th Cir. 2020) and *U.S. v. Owens*, No. 20-3189 (7th Cir. 2021). A more detailed description was given in sworn testimony by Officer Rodney Brisentine in the Feb 17, 2016 trial transcript of *Virginia v. Xavier Lopez*, County of Amelia case # CR15000100-00. The testimony in Wilson's case mirrors these cases.

I then analyzed the BitTorrent design documents to see where this data was stored or utilized in the original design. Online user's manuals for Shareaza, E-mule, and similar publicly available BitTorrent products were also analyzed. As a software engineer specializing in network

protocols, I used my 35+ years of experience to reverse engineer these law enforcement tools and explain how they work. This affidavit details what I have found.

There appear to be two primary law-enforcement-only tools used. The first tool is Torrential Downpour or a similar software tool (hereafter referred to as Torrential Downpour). {Transcript Dec. 3-4, 2018 at 34:13-17}. It is used to detect that someone has downloaded content “of interest”. It then generates an alert to notify officers of IP addresses involved. {Transcript at 34:19-21}. The second tool is Shareaza-LE or a similar software tool (hereafter referred to as Shareaza-LE). The “-LE” stands for Law Enforcement only. This tool allows officers to connect to a single IP address and remotely access the suspect’s computer, then download filenames and file content from that a device at that one specific IP address, called a single source download. {Transcript at 35:6-12; 39:1-8}. The single-source download capability from one IP address is not how normal Shareaza works. {Transcript at 35:20 to 36:13; 36:15-22}.

2. Applicable Law

The Electronic Communications and Privacy Act of 1986 (ECPA) expanded Fourth Amendment privacy protections so oral, wire, and electronic communications are protected equally. South Carolina interception law mirror this federal law. Yet, no warrant or authorization to intercept electronic communications pursuant to any ECPA law was obtained by any law enforcement officer prior to using these tools {Transcript at 34:11-12}. Use of the BitTorrent tool suite in this case violates all three provisions of ECPA: 18 U.S. Code § 2511 - Interception law; 18 U.S. Code § 2701 - Stored communications law; and 18 U.S. Code § 3121 - Pen register law; and equivalent South Carolina laws. Third party doctrine from the 1970’s claiming a person has no legitimate expectation of privacy (such as *Smith v. Maryland*, 442 U.S. 735 (1979)), has been superseded by the 1986 ECPA pen register laws.

3. Background

Peer-to-peer products such as Shareaza are a publicly available products that provide private electronic file transfer service to its anonymous users. The service protects the privacy of its users by hiding their identity. The products are free to users, but the companies that build them earn income through advertising revenue. These products are layered on top of the BitTorrent protocol for transferring data files across the internet. By default, Windows 10 delivers its software updates using a peer-to-peer product layered on top of the BitTorrent protocol.

BitTorrent-based products are built by software engineers, installed on computers, and serve a particular purpose – to transfer files. This meets Webster’s Dictionary¹ definition of a *“facility: something that is built, installed, or established to serve a particular purpose.”* As such, it is protected by 18 U.S. Code § 2701.

The user installs a commercial product on their computer, like Shareaza, and thereby enters into a contract with the company producing Shareaza. All interactions are between the user and the product, just like someone using Windows enters into a contract with Microsoft. Unlike email or text messaging, there is no direct interaction between a user and other users. Also, Wilson was using his password-protected computer in his home, so he had a reasonable expectation of privacy.

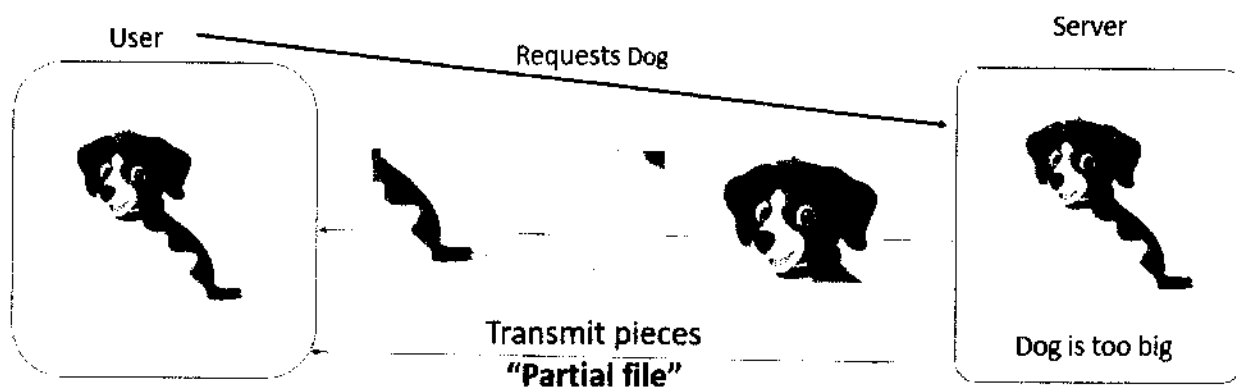
4. Explanation of Peer-to-Peer Network Systems

Large files must be split up into smaller pieces for transmission, about a quarter megabyte in size. Law enforcement sometimes refer to these pieces as “partial files.” Once all pieces have been transmitted and received, the file is reassembled. {Transcript at 37:11-25}. BitTorrent / Shareaza manages these file pieces. Once a file has been transmitted and reassembled, the file

¹ Webster’s Dictionary 2018 ed. <https://www.merriam-webster.com/dictionary/facility>

pieces are deleted or left stored on the user's computer for future use by Shareaza. Peer-to-peer file transfer systems are stored communications systems, since the file pieces are stored to satisfy future file requests of others.

This example shows a simple request for a picture of a dog. The dog is too big, so it is chopped into three pieces for transmission. Once all three pieces have been received successfully, the file is reassembled and provided to the requestor.



Each piece is checked for transmission errors by calculating its hash code. Each byte in a piece is crunched through a hash code calculator to obtain a hash code value. After transmission, the same calculation is applied. If the hash codes match, the transmission was successful. If they do not match, an error occurred and the piece must be retransmitted. Hash code calculators and resulting hash codes can be unique per product. Two totally different file pieces can theoretically generate the same hash code value, just like "5" can be calculated from $2+3=5$ and $1+4=5$. However, the probability of this happening is very small with modern hash code calculators. Use of these hash codes for any other purpose exceeds the authority to access the facility (a stored communication system) violating 18 U.S. Code § 2701. Law enforcement uses hash codes to fingerprint exactly what content was downloaded {Transcript at 34:17-19}, thus violating 18 U.S. Code § 2701. Here, some sample hash codes are assigned to the three pieces of the dog file. The

hash code “98765” can easily be used to identify that the tail piece of the DOG file was downloaded.

Hash Codes Example

Detect transmission errors



Piece #1

Hash code = **12345**



Piece #2

Hash code = **67890**



Piece #3

Hash code = **98765**

Peer-to-peer systems were designed to transmit large files to numerous users without bogging down the communications wires. For example, if User-A in Charleston wanted to update their Windows operating system, electronic communications containing the update would be sent across the wires from Microsoft in Washington state, to Charleston. If User-B in Charleston also wanted that update, by default Microsoft's distribution software would select a nearby computer (like User-A in Charleston), then manage the copy from User-A's computer to User-B's computer. The network traffic over the wires is significantly less than transmitting another full copy from Washington state. Neither User-A nor User-B are aware that their copy of Windows went to / came from their next-door neighbor. User-A and User-B only communicate with Microsoft and are unaware their neighbor even has the product Windows. Other peer-to-peer products are similar.

There are two main bookkeeping files used by BitTorrent products: a Torrent file and a Tracker file. The Torrent File is like a table of contents. It contains the file name, a list of all the pieces, a hash code associated with each piece, and the web address of the Tracker file. The web

address of the Tracker file identifies which computer in the world wide web, WWW.somecomputer.com, holds the Tracker file. The Tracker file keeps track of hash codes and which IP addresses have downloaded each piece {Transcript at 35:3-6}.

These two files are written by BitTorrent tools in a cryptic format that is understood only by BitTorrent tools, like Shareaza. The information contained within them is only accessible and decoded by BitTorrent tools. Publicly available tools like Shareaza keep this internal data hidden from general users. When a user requests a file, some tools will display the IP address selected to send each file piece to the requestor, but general users cannot see every IP address that has downloaded that piece. Hash codes are typically not displayed to general users and remain hidden. However, Shareaza-LE extracts the hidden information and provides it to law enforcement. General users are unable to read or extract the content of these files with publicly available tools. {Transcript at 21-25}. Since Torrential Downpour decodes the bytes contained within the Torrent and Tracker files and extracts their information, it qualifies as a pen register device, 18 U.S. Code § 3127(3). The Torrent file contains the name and location of the Tracker file. General users cannot even find the Tracker file, let alone use special law-enforcement tools to decode the Tracker file content and extract IP addresses contained within it.

Subscriber information and the date and time of each download are not listed in the BitTorrent design documentation, yet they are included in the ICAC Cops database, discussed later. Subscriber information is unique to each application layered on top of BitTorrent. Since the database contains this subscriber information, Torrential Downpour must obtain this data from undocumented locations in the BitTorrent files or from other accounting files of the application which contain user information and usage.

The combination of hash code, IP address, subscriber information, date and time of download is a record of what transacted, i.e., it is a transactional record. Transactional records are protected by 18 U.S. Code § 2703. Yet SI Atkins had no Court authorization to obtain transactional records, thus violating 18 U.S. Code § 2703.

5. Torrential Downpour Wiretapping Software

Special Investigator Atkins did not use BitTorrent tools designed for the general public. Instead, he used law enforcement only tools like Torrential Downpour. This customized software allows law enforcement to tap into the internals of the BitTorrent file transfer system and monitor network traffic. Since this modified software program can tap into information transmitted over wire and extract it for logging and generating alerts, Torrential Downpour fits the definition of a *wiretap*. This information was not voluntarily provided by Wilson to SI Atkins, but rather private information extracted by SI Atkins using wiretap software. But SI Atkins did not obtain any Court authorization to install or operate this *wiretap* pursuant to 18 U.S. Code § 2516 or SC Code § 17-30-70, thereby SI Atkins violated 18 U.S. Code § 2511. An old-fashioned wiretap is a tap on a phone line where a third party would listen and record what transpired in the conversation. That's exactly what this software does. It breaks into the bookkeeping files, examining them for private files transfers "of interest," then records this information to generates alerts.

In order for something to be considered "publicly available" or in the "public domain," the information must be available to any member of the general public.² Here, a general user cannot even extract the name and location of the Tracker file because it is contained within the cryptic Torrent file. A law-enforcement-only tool like Torrential Downpour must be used to extract the

² Office of Director of National Intelligence (DNI), *Civil Liberties and Privacy Guidance for Intelligence Community Professionals: Properly Obtaining and Using Publicly Available Information* (July 2011), at 3 #1.

Tracker file name. Then Torrential Downpour locates the Tracker file, opens it, decodes it, and extracts the IP addresses contained within. These tools are not publicly available, so it requires a warrant to use them. No warrant was obtained prior to use, so these tools were used in violation of ECPA laws.

5.1. Violations of Interception Law

Law enforcement uses hash codes to “fingerprint” what data has been downloaded {Transcript at 34:17-19}. Hash codes give the purported meaning of what was downloaded (such as child pornography), so it is content:

18 U.S. Code § 2510(8) and SC Code § 17-30-15(7).

"Contents" when used with respect to any wire, electronic or oral communication, includes any information concerning the substance, purport or meaning of that communication;" (emphasis added).

Atkins used Torrential Downpour to obtain content (hash codes) of private electronic communications without any court authorization under 18 U.S. Code § 2516 or SC Code § 17-30-70. “Intercept” simply means to acquire the content of an electronic communication through the use of any electronic, mechanical or other device. 18 U.S. Code § 2510(4) and SC Code § 17-30-15(3). Torrential Downpour used on the officer’s computer qualifies an electronic or other device. Therefore, Atkins intercepted content of private communications, violating 18 U.S. Code § 2511(1)(a) and SC Code § 17-30-20(1).

The intercepted hash codes were used to obtain indictments from the grand jury and to prosecute Wilson, in violation of 18 U.S. Code § 2511(1)(c,d) and SC Code § 17-30-20(3,4). Any intercepted communications and evidence received in violation of the chapter may not be received in evidence and cannot be used in any trial, hearing or other proceeding before any court. 18 U.S. Code § 2515 and SC Code § 17-30-110.

Atkins was not having a conversation with Wilson, so Atkins was not party to a conversation. Therefore, Atkins does not qualify for any of the exceptions listed in 18 U.S. Code § 2511(2)(c,d) or SC Code § 17-30-30(B,C). Instead, SI Atkins was just reading the alerts generated by his customized wiretap program, Torrential Downpour.

SI Atkins was not party to the conversation, but rather he was using the software to conduct electronic surveillance of BitTorrent communications. EO-12333 (Executive Order 12333, *United States Intelligence Activities* (1981) at 15, sec. 3.5(c)) defines:

***Electronic Surveillance** means acquisition of a nonpublic communication by electronic means without the consent of a person who is a party to an electronic communication or, in the case of a nonelectronic communication, without the consent of a person who is visibly present at the place of communication, but not including the use of radio direction-finding equipment solely to determine the location of a transmitter.*

The meaning of *person* means “every infant member of the species *homo sapiens* who is born alive and at any state of development,” 1 U.S. Code § 8. SI Atkins had a software program monitoring the communications. Software, like Torrential Downpour or Shareaza-LE, is not a human being, so it does not qualify as a *person who can be party to a conversation*. As such, this software program is not a *person* but a *thing*. Therefore, SI Atkins was conducting Electronic Surveillance using a *thing* (wiretap software) to monitor private communications, **without a warrant**. Since software programs are not people, they cannot grant permission for someone else to record (or log) what is being communicated. EO-12333 was codified into law in the 1986 Electronic Communications and Privacy Act, which prohibits wiretapping without a warrant, 18 U.S. Code § 2511, 18 U.S. Code § 2701, and 18 U.S. Code § 3121.

Torrential Downpour is run periodically and loads IP addresses, hash codes, and other information into the ICAC Cops Database. Any new IP addresses for hash codes identified as “of

interest” generates a notification. {Transcript at 34:5-17; 35:1-3}. The ICAC Cops Database is a database inventorying content downloaded to people’s private computers. It contains filenames, IP addresses, dates and times of file transfers, subscriber information, and hash codes. Law enforcement uses hash codes to “fingerprint” what content was downloaded to people’s computers {Transcript at 34:17-19}. So, this database inventories content on people’s private computers – all obtained without a warrant.

BitTorrent products like Shareaza provide private electronic (wire) file transfer service to the public. No one, including the provider of a communication service, can monitor network traffic or content transmitted through the network. The exception for monitoring is quite strict:

18 U.S. Code § 2511(2)(a)(i)

*“... a provider of wire communication service to the public **shall not utilize service observing or random monitoring** except for mechanical or service quality control checks.” (Emphasis added)*

Telephone companies cannot monitor phone calls. Shareaza administrators cannot monitor file transfers. Law enforcement cannot monitor private electronic communications WITHOUT A WARRANT. Law enforcement had no warrant when they monitored private electronic communications transmitted in the BitTorrent network. {Transcript at 34:11-17}.

SI Atkins was not using BitTorrent in the ordinary course of business because he was not using it as designed, to send and receive files. Instead, he used Torrential Downpour to monitor and intercept other people’s private communications transmitted through the network. As such, SI Atkins was using the modified Torrential Downpour software installed on a police computer as an interception device. SI Atkins’s use of Torrential Downpour does not qualify for the exceptions listed 18 U.S. Code § 2510 and SC Code § 17-30-15, for they are contingent on two criteria which SI Atkins does not meet:

a. SI Atkins did not use a version of BitTorrent products “*furnished to the subscriber or user by a provider of wire or electronic communication service*”. 18 U.S. Code § 2510(5)(a)(i) and SC Code § 17-30-15(4)(a)(i). Instead, SI Atkins used customized Torrential Downpour, available only to sworn law enforcement officers, which was not publicly available.

b. SI Atkins was not using BitTorrent in the ordinary course of business. Ordinary Course of business would require the product to be used as designed and as delivered by the service provider. Instead, SI Atkins used a modified version, built and provided by law enforcement, with extra capabilities to monitor network traffic and intercept private communications. 18 U.S. Code § 2510(5)(a)(i) and SC Code § 17-30-15(4)(a)(ii).

Even if such a warrant to monitor BitTorrent communications was requested in Court, it would be challenged as unconstitutional for it violates Fourth Amendment rights. Similar monitoring using a broad geofence warrant was declared unconstitutional, *United States v. Chatrle*, No. 3:19-cr-130 (E.D. Va.). A Geofence tool scooped up the ID numbers of all cell phones within the area of a crime, around the time the crime was committed. This geofence warrant was ruled unconstitutional because it violated the Fourth Amendment rights of average citizens who happened to be in the area. Similarly, this modified version of Shareaza scoops up IP addresses of average citizens who happen to be transmitting or receiving communications on BitTorrent, but only select those with a hash code “of interest.” Given the same standard of law, use of Torrential Downpour is unconstitutional.

5.2. Violations of the Stored Communication Law

Torrential Downpour breaks into the bookkeeping files and extracts information details on what transacted, i.e., it is a transactional record. Yet SI Atkins had no Court authorization to obtain

transactional records of a private, file transfer facility, 18 U.S. Code § 2703. The ability to extract transactional records and generate alerts is not available to typical users. This additional capability exceeded what is granted to general public users and thus exceeded the authorization to access the facility (BitTorrent products) which provide private electronic communications services. Intentionally exceeding the authorization to access a facility violates 18 U.S. Code § 2701(a)(2) and is subject to punishment. SI Atkins did not request these files nor did he post the initial copy. Instead, SI Atkins monitored the internet traffic flowing the network, therefore, he did not qualify for the exception given in 18 U.S. Code § 2701(c)(2).

5.3. Violations of Pen Register Law

Torrential Downpour is a pen register device {18 U.S. Code § 3127(3)} that decodes the bytes contained within the bookkeeping files, thereby extracting specific bytes as IP addresses, hash codes, etc. A pen register is not just a device, but also a “*process which records or decodes dialing, routing, addressing, or signaling information transmitted by an instrument or facility from which a wire or electronic communication is transmitted.*” (emphasis added). Use of a pen register device or process requires a warrant, 18 U.S. Code § 3121.

An IP address is an Internet Protocol Address, which qualifies as an *address*, 18 U.S. Code § 3127(3). Just as a phone number (703-555-1212) is used for one phone to dial another so the users can communicate, an IP address (12.345.678.1234) is a number computers use to “dial” each other and communicate. If someone contacts a foreigner, a FISA warrant must be obtained to unmask their identity from a phone number or an IP address. Identifying the owner of an email address requires a warrant, *McVeigh v. Cohen*, 983 F. Supp. 215 (D.D.C. 1998). An IP address is an “address” also protected by Fourth Amendment Law. A warrant was required, not just an administrative subpoena, 18 U.S. Code § 3121. So, the resulting name and address was unlawfully

obtained and should be not be used in any court proceeding. 18 U.S. Code § 2515 and SC Code § 17-30-110.

BitTorrent products preserve the anonymity of its users. SI Atkins submitted administrative subpoenas to obtain the identity of the owner for the IP address. The name returned from these subpoenas was written on the request for an arrest warrant, and the resulting address was written on the request for a search warrant. However, SI Atkins did not obtain a warrant before beginning the process of unmasking the identity of the end user, violating 18 U.S. Code § 3121. The requirement for a warrant is explicitly stated in 18 U.S. Code § 2703(c)(1)(A):

(1) A governmental entity may require a provider of electronic communication service or remote computing service to disclose a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications) only when the governmental entity—

(A) obtains a warrant issued using the procedures described in the Federal Rules of Criminal Procedure ... (emphasis added)

The section of this statute allowing administrative subpoenas explicitly states that the government may require disclosure of a record pertaining to a subscriber or customer. This disclosure may include instrument number, other subscriber number, other identity, or network addresses, 18 U.S. Code § 2703(c)(2)(E). It does NOT state the reverse: that the government may require the disclosure of a subscriber pertaining to an instrument number, subscriber number, or network address. Disclosing / unmasking the identity of the subscriber is covered in the Pen Register law which protects routing, addresses, and decoding the meaning and identity of the routing and addressing information, 18 U.S. Code § 3121.

Courts have broadly upheld a person's right to remain anonymous such as in a public blog or when posting a simple textbook, *Signature Mgmt. Team, LLC v. Doe*, 323 F. Supp. 3d 954 (E.D. Mich. 2018). Law enforcement must obtain a warrant to electronically track one's geographic

location, *U.S. v. Jones*, 565 U.S. 400 (2012), but Wilson's home address was identified from addresses associated with electronic communications, without any warrant. The DNI's federal policy document, *Civil Liberties and Privacy Guidance for Intelligence Community Professionals: Properly Obtaining and Using Publicly Available Information*³, states:

"Special authorization is required to obtain information protected by the Fourth Amendment."

"If the technique or method being considered seems to require specialized tradecraft or skills, or is typically used in clandestine ways, then that is an indicator that legal counsel should be consulted."

No such Court review or authorization was obtained prior to using the Torrential Downpour software to obtain IP address information.

6. Shareaza-LE Wiretapping Software

Shareaza-LE is a law-enforcement-only tool that allows an officer to access data stored in a suspect's computer at a particular IP address. The suspect's computer is password protected and stored within his home behind a locked door. The location of the data determines whether or not a warrant is required {DOJ, National Institute of Justice. *Report on Investigations Involving the Internet and Computer Networks* (January 2007) at 52 bottom, 75-76}. Examining the interior of a home from the outside requires a warrant, *Kyllo v. United States*, 533 U.S. 27 (2001). Shareaza-LE is used without a warrant and without permission from the computer's owner. This software does not access the computer through the front door with a username and password. Rather, it accesses the computer through the back door using a port reserved for BitTorrent software. It mimics the electronic client/server handshake of the real Shareaza server with a BitTorrent client.

³ Office of Director of National Intelligence (DNI), *Civil Liberties and Privacy Guidance for Intelligence Community Professionals: Properly Obtaining and Using Publicly Available Information* (July 2011), at 6-7

This tricks the computer into allowing Shareaza-LE access into the computer. This trickery is a defined in SC Code § 16-16-10(k)(4):

(k) "Computer contaminant" means a computer program designed to modify, damage, destroy, disable, deny or degrade access to, allow unauthorized access to, functionally impair, record, or transmit information within a computer, computer system, or computer network without the express or implied consent of the owner. Computer contaminant includes, but is not limited to: (emphasis added)

(4) a group of computer programs commonly known as "trap doors", "back doors", or "root kits" that are designed to bypass standard authentication software, and that are designed to allow access to or use of a computer without the knowledge or consent of the appropriate principal.

The crime for introducing and using a computer contaminant in a peer-to-peer network system is defined in SC Code § 16-16-20(1)(a)(iii) and SC Code § 16-16-20(1)(b). This contaminant was introduced into the network in order to illegally intercept content, without a warrant or court authorization.

(1) It is unlawful for a person to wilfully, knowingly, maliciously, and without authorization or for an unauthorized purpose to: (a) directly or indirectly access or cause to be accessed a computer, computer system, or computer network for the purpose of: (iii) committing any other crime.

(b) ... introduce a computer contaminant into that computer, computer system, computer program, or computer network.

Since Mr. Wilson was prosecuted and incarcerated for years causing him to lose income totaling more than \$10,000, this violates SC Code § 16-16-20(2).

(2) A person is guilty of computer crime in the first degree if the amount of gain directly or indirectly derived from the offense made unlawful by subsection (1) or the loss directly or indirectly suffered by the victim exceeds ten thousand dollars. Computer crime in the first degree is a felony and, upon conviction, a person must be fined not more than fifty thousand dollars or imprisoned not more than five years, or both.

The name of the tool is Shareaza-LE. This implies law enforcement contracted with Shareaza to create a law enforcement only version of Shareaza. The engineers and programmers

who built Shareaza-LE would have full knowledge of the Shareaza design and electronic client/server handshake needed to access a computer and perform a single source download.

Shareaza-LE was not built for free. Contracts imply payment for services. Law enforcement procured a company and paid them to intercept, or endeavor to intercept, private communications transmitted on peer-to-peer network systems, which violates 18 U.S. Code § 2511(1)(a) and SC Code § 17-30-20(1).

When Shareaza-LE remotely accesses a suspect's computer, it opens a two-way portal into the computer. Just like Shareaza, Shareaza-LE can read and write files on the remote computer. This allows law enforcement to not only retrieve files, but also allows law enforcement to plant evidence on the defendant's computer, reasonably undetected. Mr. Wilson stated that his computer was seized on August 15, 2015, but files were found on it that were dated December 7, 2016. It was over a year since Mr. Wilson accessed his computer when these suspicious files were time-tagged, and the only people having access to his computer in December 2016 were law enforcement. I cannot say with certainty why these files were dated a year after Mr. Wilson accessed his computer; I can only alert the court to reasonable possibilities of what might have occurred.

Mr. Wilson claims Shareaza was not installed on his computer and there was no evidence it was installed on his computer. This brings into question how his computer would be flagged by these law-enforcement tools as having child pornography. Older Torrent products such as Napster evolved into the new generation of peer-to-peer BitTorrent products. Shareaza is compatible with many other products Torrent products such as E-mule, E-Donkey, etc. It is reasonable to assume that it is also compatibility with older Torrent products that Mr. Wilson used in years past. In addition, other peer-to-peer products may also be compatible with the old Torrent systems like

Napster, and claim Napster subscribers as their own resource. This is a possibility given how these peer-to-peer products evolved and that they had some level of open-source development.

A two-way portal is created when connecting to a peer-to-peer network, meaning that computers can both read and write files with the other computer. Several peer-to-peer products like Freenet blatantly state in their user's manual that the user has no control over what the product will store on their computer. Even though a user may only request and download innocent files, the product may store pieces of files the user did not request in order to have the pieces handy for other customers.

Many of these tools calculate hash codes for EVERYTHING on a computer, not just what is shared on the peer-to-peer network. Since BitTorrent products manage the calculations, it is logical to assume that Law Enforcement version has access to the hash codes of the entire computer, not just what is transmitted over BitTorrent. These tools calculate hash codes for family photos, tax records, love letters, and private business papers that are NOT shared on the peer-to-peer network.

It is important to note that the hash code calculation is applied only to the data; it is not applied to the table of contents, Torrent file. This is a major shortcoming of the BitTorrent protocol, calling into question the integrity of the files transferred. This implies that the table of contents can easily be changed with file pieces replaced with pornography pieces, or pieces of pornography added at the end of the file at quarter megabyte boundary. The user may not even notice.

A user may download an innocent Disney film, but not know that file pieces of child pornography were attached to the end of the file. The hash code calculator computes hash codes at specific boundaries, like a quarter megabyte. The hash code values would be identical to those

computed if the child pornography was requested and downloaded. Torrential Downpour would register the IP address of the Disney person as having downloaded child pornography. Since general users cannot access the Tracker file to correct it, their IP address is permanently logged as having downloaded child pornography. In addition, if a user makes a typo and accidentally downloads a file they did not want, there is no way for them to correct the Tracker file. Even if the user totally erases their computer or replace it with another, their IP address is permanently logged at WWW.somecomputer.com as having downloaded child pornography. This calls into question the criminal intent to download child pornography.

7. Misprision of Felony – Reporting Crimes

18 U.S. Code § 4 – Misprision of felony, allows a person to report felony crimes to a judge. Therefore, I do hereby report the crimes described in this affidavit I believe were committed against Mr. Kevin Wilson, to any judge that may read this. They are summarized as follows:

7.1. Crimes I believe Were Committed by Special Investigator Atkins Against Mr. Kevin Wilson:

Interception Law:

1. 18 U.S. Code § 2511(1)(a) Endeavoring to intercept private communications (hash codes) by using the Torrential Downpour software to generate alerts and notifications
2. 18 U.S. Code § 2511(1)(a) Illegal interception of message content (hash codes) using the Torrential Downpour software
3. 18 U.S. Code § 2511(1)(c) Disclosing purported meaning of intercepted hash codes as child pornography
4. 18 U.S. Code § 2511(1)(d) Using purported meaning of intercepted hash codes as child pornography
5. SC Code § 17-30-20(1) Endeavoring to intercept private communications (hash codes) by using the Torrential Downpour software to generate alerts and notifications
6. SC Code § 17-30-20(1) Illegal interception of message content (hash codes) using the Torrential Downpour software
7. SC Code § 17-30-20(3) Disclosing purported meaning of intercepted hash codes as child pornography

8. SC Code § 17-30-20(4) Using purported meaning of intercepted hash codes as child pornography

Pen Register / Trap and Trace:

9. 18 U.S. Code § 3121 Decoding the format of the Torrent file to extracting hash codes
10. 18 U.S. Code § 3121 Decoding the format of the Tracker file to extracting IP addresses
11. 18 U.S. Code § 3121 Unmasking / decoding identity and address of Kevin Wilson from the IP address, without a pen register warrant or any other warrant

Stored Communication Law:

12. 18 U.S. Code § 2701(a)(2) Using a hash code calculator for purposes other than validating transmission of file pieces
13. 18 U.S. Code § 2701(a)(2) Extracting transactional records from the internal bookkeeping files of BitTorrent without a warrant, then depositing this information into the ICAC Cops Database or using it to generate alerts
14. 18 U.S. Code § 2701(a)(2) Remotely breaking into (accessing) Mr. Wilson's computer and downloading file pieces, which are stored communications.

South Carolina Computer Crime Law:

15. SC Code § 16-16-20(1)(b) and SC Code § 16-16-20(2) installing and using a "computer contaminant," Torrential Downpour, into the BitTorrent network to gain access to the information contained in the Torrent and Tracker files, without a warrant
16. SC Code § 16-16-20(1)(b) and SC Code § 16-16-20(2) installing and using a "computer contaminant," Shareaza-LE, into the BitTorrent network to remotely gain access into Kevin Wilson's personal computer, without a warrant or permission from Kevin Wilson.

7.2. Crimes I believe Were Committed by the Prosecutor Against Mr. Kevin Wilson:

17. 18 U.S. Code § 2511(1)(c) Disclosing intercepted hash codes and/or their meaning to the grand jury to obtain an indictment
18. 18 U.S. Code § 2511(1)(d) Using intercepted hash codes and/or their meaning to the grand jury to obtain an indictment
19. 18 U.S. Code § 2511(1)(c) Disclosing intercepted hash codes and/or their meaning to the court to prosecute and coerce Mr. Wilson to sign a plea deal
20. 18 U.S. Code § 2511(1)(d) Using intercepted hash codes and/or their meaning to the court to prosecute Mr. Wilson and coerce him to sign a plea deal
21. SC Code § 17-30-20(3) Disclosing intercepted hash codes and/or their meaning to the grand jury to obtain an indictment
22. SC Code § 17-30-20(4) Using intercepted hash codes and/or their meaning to the grand jury to obtain an indictment

- 23. SC Code § 17-30-20(3) Disclosing intercepted hash codes and/or their meaning to the grand jury to obtain an indictment
- 24. SC Code § 17-30-20(4) Using intercepted hash codes and/or their meaning to the grand jury to obtain an indictment

8. Misconduct Before the Grand Jury

Evidence obtained in violation of ECPA state and federal law was disclosed to the grand jury and used to obtain an indictment against Mr. Wilson. Disclosing and using illegally obtain information is a felony and a federal crime, 18 U.S. Code § 2511(2)(c,d) or SC Code § 17-30-30(B,C). Committing felonies and federal crimes before the grand jury qualifies a misconduct before the grand jury. Although a judge has no judicial authority over a grand jury or whether it issues an indictment, a judge does have authority “to dismiss an indictment because of misconduct before the grand jury,” *United States v. Williams*, 504 U.S. 36, 112 S. Ct. 1735 (1992), para. 16.

9. Summary

I cannot obtain the information these officers extract from peer-to-peer network system. This information is not in the public domain and is not publicly available. Even if I installed a publicly available peer-to-peer product, I do not have the tools to decode the content of a Torrent file, which would give me the name an online address of the Tracker file. I do not have the tools to decode the Tracker file either, to extract the set of IP addresses and hash codes law enforcement claims are publicly available.

As a certified system administrator for highly classified government computers, I cannot “connect” someone else’s computer on the internet and download files from it without their username and password {Transcript at 39:1-4}. I do not have the tools nor the specialized electronic client/server handshake protocol needed to access someone’s private computer through the backdoor using the BitTorrent protocol.

I have written a hash code calculator and am capable of building such tools, but it would take months or years of work to write such software. It also requires proprietary knowledge of the client/server handshake protocol and a copy of their specific variation of a hash code calculator, or significant analysis to figure it out and duplicate it. Developing such a tool costs hundreds of thousands or even millions of dollars to develop. The general population does not have that kind of money. Neither do they have a M.S. degree in software engineering and decades of software development experience. So, this capability is not publicly available either.

BitTorrent products provide private electronic communication service to the public, just like phone companies. As a public communication service, its communications are protected by Fourth Amendment privacy laws, just like telephone companies, 18 U.S. Code § 2511(2)(a)(i). Phone companies manage a network of telephones with switchboards and routing software to properly route the communications to the intended recipient. Today's telephone communications not only include land lines and cell phones, but also include VoIP, Voice over IP (Internet Protocol). These VoIP phones calls allow people to make phone calls using their computer and the internet. These VoIP phone calls are also packed into small blocks to be transmitted over the same internet (IP) wires and pathways as BitTorrent products. So how is a private VoIP phone call different than private file transfer using BitTorrent? The Fourth Amendment laws protecting phone calls also protect private file transfers.

This case is no different from SI Atkins installed specialized monitoring software into a telephone switchboard in order to log who is talking to whom, how long they talk, and how many times a week they communicate - all without a warrant. Would there be any doubt that this is a blatant invasion of people's Fourth Amendment rights? Using a customized software tools

available only to law enforcement without a warrant is no different, and is a blatant violation of state and federal criminal ECPA law.

Executed on July 16, 2023



Bonnie Burkhardt

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Springfield, VA 22153

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(703)505-2793

8402 Gambrill Ln
Springfield, VA 22153
July 17, 2023

Dear Sir or Madam,

Pursuant to 18 U.S. Code § 4 – Misprision of felony, I am reporting crimes I believe were committed against Mr. Kevin Wilson, to the judge(s) presiding over Mr. Wilson's case. The crimes involve illegal interception of private communications and computer crimes committed against Mr. Wilson. These communications and derived evidence cannot be used in any hearing or court proceeding.

Mr. Wilson has two court hearings, one on July 24th, 2023 and another on July 26th, 2023. Please deliver the attached affidavit to the presiding judge(s) before Mr. Wilson's upcoming hearings. This illegally obtained evidence is the core reason for his initial arrest, prosecution, and these subsequent hearings.

I just became aware of the details of Mr. Wilson's case over the last few months. I offered to write an affidavit for Mr. Wilson. On Friday, July 14th, I spoke with Mr. Wilson's attorney, Susannah Ross, and she was interested in having me write an affidavit. However, I could not reach her today, July 17th, to see how to deliver it. Time is short, so I am mailing it so it will reach the courthouse before the hearings.

Sincerely,



Bonnie Burkhardt

Bonnie.burkhardt@blueridge-sw.com

(703)505-2793

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	2019-CP-23-07167
COUNTY OF GREENVILLE	)	
	)	
	)	
	)	
KEVIN M. WILLSON,	)	
APPLICANT,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
THE STATE OF SOUTH CAROLINA,	)	
RESPONDENT.	)	
_____	)	

July 24, 2023
Greenville, South Carolina

B E F O R E:

THE HONORABLE J. DERHAM COLE, JUDGE

A P P E A R A N C E S:

SUSANNAH CONYERS ROSS, ESQ.
Attorney for the Applicant

MELODY JANE BROWN, ESQ.
Attorney for the Respondent

CHERYL A. SMITH
Circuit Court Reporter

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(RW) - Respondent's Witness

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EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVD</u>

There were no exhibits introduced.

P R O C E E D I N G S

(WHEREUPON, proceedings commenced at 11:11 AM.)

THE COURT: All right. Are y'all ready?

MS. BROWN: Yes, sir, Your Honor.

THE COURT: All right. Ms. Ross?

MS. ROSS: Thank you, Your Honor. May it please the Court. This is Kevin Willson. He's filed for postconviction relief alleging ineffective assistance of counsel for failing to assure the adherence to his plea negotiation. And for that I'd refer you to page 242, line 12 where Judge Miller states that the negotiation would be ---

THE COURT: Ms. Brown, I need my packet.

MS. BROWN: Yes, sir, Your Honor. If I may, I'll hand up the judge's packet real quick.

This is the application dated December the 11th. I returned a motion to dismiss, Your Honor. There is already an order filed denying the State's motion to dismiss, so we are going forward on the merits of the application.

The amended application was filed July 10th and is also included in the packet here along with the transcript, sentencing sheets, indictments and warrants.

And, Your Honor, Mr. Willson pled guilty after nearly completing a trial on the charges, so I have split off the

1 portions of the transcript for you to trial and guilty
2 plea. That's why it's presented in that measure.

3 And if I could just briefly introduce the case a
4 little bit. Mr. Willson was originally indicted, and he
5 went to trial in December of 2018 on seven separate
6 indictments: five counts of sexual exploitation of a
7 minor third degree, and two counts of sexual exploitation
8 of a minor second degree.

9 Both parties had actually completed the case, Your
10 Honor. And their attorneys were talking about the
11 instructions to go to the jury, and a plea agreement was
12 reached. And Mr. Willson pled guilty to two of the counts
13 of third degree, three third-degree counts were dismissed,
14 two second-degree counts were dismissed.

15 There was a negotiated term of 20 years on service of
16 eight. He would have probation for five years.

17 He waived his right to an appeal.

18 He agreed to no Internet access.

19 The judge directed that he be placed on the sex
20 offender caseload and probation, that he would have random
21 drug and alcohol tests, he was to register on the sex
22 offender registry, and, of course, have no unsupervised
23 contact with any minor.

24 Your Honor, before I would hand the case over to
25 applicant's attorney, I do have one motion. I'd move to

1 strike an affidavit and letter that was filed in the
2 clerk's office by a third party. That affidavit has not
3 been provided in the judge's packet because we are moving
4 to strike. For purposes of this hearing, however, Your
5 Honor, I'd like to hand up -- or this motion, I'd like to
6 hand up a copy of the affidavit, if I might.

7 This is an affidavit by an individual by the name of
8 Bonnie Burkardt. And you'll see the clerk's stamp, Your
9 Honor, on that copy.

10 Ms. Burkardt is not a party to this action. She has
11 no standing to file anything in the clerk of court's
12 office in this particular case. She has no reference to
13 facts. She asserts legal conclusions which are
14 inappropriate and irrelevant under Green vs. State, and
15 also, at the very end, Your Honor, attaches a letter that
16 makes spurious allegations against the investigators in
17 the Internet Crimes Against Children Unit of the attorney
18 general's office.

19 So none of this is appropriate to be in the clerk's
20 office whatsoever. None. And, Your Honor, we move to
21 strike that from the record. It is grossly inappropriate.
22 You cannot force a document into the record by having
23 someone who lacks standing or connection with the case to
24 merely file it in the clerk's office.

25 Your Honor, I do recognize that the Postconviction

1 Relief Statute does allow for the Court to accept
2 affidavits, and I have arguments on that separately, but
3 this is a standing in an inappropriate filing motion.

4 THE COURT: Ms. Ross?

5 MS. ROSS: Judge, Bonnie Burkardt contacted me a
6 couple weeks ago, just very recently, and prepared this
7 affidavit. She's done amicus briefs in a few cases that
8 are presently under consideration in different federal
9 circuits. It's a fascinating issue. And she just sent
10 this affidavit on her own accord to the clerk's office.
11 So I don't object to it not coming in that way. I'll put
12 it in through Mr. Willson for your consideration.

13 THE COURT: So you agree to the motion to strike it?

14 MS. ROSS: Yes. Though I will ---

15 THE COURT: All right. Motion's granted.

16 All right. Now you were citing something. I've got
17 the packet now. Tell me what you wanted me to look at.

18 MS. ROSS: Failure to assure adherence to the plea
19 negotiation on page 242, line 12.

20 THE COURT: All right. 242, line 12.

21 MS. ROSS: Ineffective assistance for allowing the
22 imposition of a condition of no Internet use that is
23 punitive and overbroad, infringing on applicant's
24 free-speech rights, and it's not proportional to the
25 intent or the State's intent in keeping Mr. Willson from

1 having inappropriate material on his computer. And for
2 that I'm citing Packingham v. North Carolina, which I
3 passed up to you, and United States vs. Holena, which is
4 906 F.3d 288, 2018 case.

5 Number three, applicant was not made aware of the
6 nature and crucial elements of the charges against him,
7 violating due process guarantees in that the plea was not
8 knowingly and voluntarily and intelligently made.

9 Four, advising Mr. Willson to plea, thereby waiving
10 his right to -- and waiving his right to appeal and his
11 appellate arguments regarding the whole suppression motion
12 that was done at the beginning of the trial.

13 And if you find that that was in error at that point,
14 this affidavit comes into effect for failing to
15 effectively argue the suppression motion and preserve the
16 record for appeal. And that motion is on page 36 through
17 79 of the transcript, the suppression motion. Failing to
18 retain an expert on that. And that's the affidavit I have
19 that that's where that becomes pertinent.

20 And then failing to argue South Carolina Article 1,
21 Section 10 along with the U.S. Constitution in the
22 suppression motion.

23 And we'd also argue due process violation in that the
24 plea -- I think he'll get into that -- in that the plea
25 was somewhat coerced by the way it came about during

1 trial.

2 And finally, we'd move to conform the pleadings to
3 the evidence pursuant to Love v. State.

4 And at this point, I call Mr. Willson.

5 THE COURT: Did you say page 36 and 37 is where the
6 motion is?

7 MS. ROSS: The motion is on page 36 through -- I've
8 lost it. 36 through 79. It begins on page 36 and, I
9 guess, the judge rules on page 79.

10 THE CLERK: Please place your left hand on the Bible
11 and raise your right hand.

12 WHEREUPON,

13 KEVIN MARK WILLSON

14 After having been duly sworn, testified as follows:

15 THE CLERK: Thank you. You may be seated. And
16 please state your full name for the record.

17 THE WITNESS: My name is Kevin Mark Willson.

18 DIRECT EXAMINATION

19 BY MS. ROSS:

20 Q Okay. Mr. Willson, first, do you have a copy of that
21 affidavit I just handed you?

22 A I do somewhere here. I'm not sure what I did with
23 it. Here it is. Yes.

24 Q Would you like to make it a court exhibit at this
25 time?

1 A I would.

2 THE COURT: That affidavit has been stricken by
3 consent.

4 MS. ROSS: No. She wanted to strike it initially
5 because it was sent to the clerk of court by the expert
6 directly. So my understanding was the basis of her moving
7 to strike was that it was improperly introduced by ---

8 THE COURT: Okay. So it's been stricken.

9 MS. ROSS: Well, I'd at this point move to make it
10 Applicant's Exhibit 1.

11 MS. BROWN: Your Honor, it's irrelevant. There's
12 been no foundation. It's hearsay. It is inappropriate.

13 THE COURT: Sustained. Or any other ground you want
14 to make?

15 MS. BROWN: Not at the moment, Your Honor.

16 THE COURT: Okay. It's sustained. She can testify,
17 perhaps, if she has some relevant information, but she
18 doesn't get to -- the State doesn't get to examine her on
19 something that's just been introduced.

20 MS. ROSS: Well, it's her affidavit on her opinion
21 about the way this search was conducted. And it
22 supports ---

23 THE COURT: I get that. But doesn't the State -- I
24 mean, doesn't due process allow them an opportunity to
25 cross-examine her on her testimony?

1 MS. ROSS: Yes. But I think for this PCR action,
2 this isn't the jury trial itself, but for the PCR action,
3 this affidavit is just coming in for the pure allegation
4 that counsel was ineffective for failing to retain an
5 expert who would present testimony such as what's in this
6 affidavit at Mr. Willson's trial.

7 THE COURT: Okay. Well, doesn't the State get to
8 examine her on her opinions?

9 MS. ROSS: Well, I would think at the trial level
10 they would, but at this level, at the PCR level, it's just
11 coming in for the assertion that an expert could be
12 retained who would say something like this and that it
13 would be cross-examined ---

14 THE COURT: So you're saying the State is not
15 entitled to cross-examine her on information she's
16 provided by way of that affidavit?

17 MS. ROSS: I believe I'm just ---

18 THE COURT: I assume that you're using that as a
19 basis for your client to get postconviction relief, but
20 you're not permitting the State an opportunity to examine
21 the witness on the information.

22 MS. ROSS: I understand. I think the way I'm using
23 it, and I would have had her here if I thought it was a
24 different part of the proceeding, but the allegation that
25 Mr. Bannister was ineffective for failing to retain an

1 expert who could provide information such as what is
2 contained in this affidavit, that's the only allegation to
3 be here. It really isn't for necessarily whether it would
4 prevail or not or anything like that. It's just that
5 there is expert opinion out there that says something such
6 as what is in this affidavit.

7 THE COURT: Okay. Well, I haven't changed my mind
8 about that.

9 MS. ROSS: Okay.

10 BY MS. ROSS:

11 Q Now, Mr. Willson, do you understand you'll be back in
12 the position you were in prior to your plea?

13 A I do.

14 Q And how do you want to proceed?

15 A With continuing here.

16 Q Okay. What should your lawyer have done?

17 A Well, I believe my lawyer should have negotiated for
18 me for the plea that I was told by him that I was going to
19 get. The judge, in his -- in the transcript here on
20 page 242 -- excuse me -- yeah. On page 242, he states
21 that there is an offer on the table for a nine years
22 sentence to a nonviolent offense. He says it affects
23 where you're incarcerated, one, I won't be a violent since
24 I'm pleading to a nonviolent offense; it will affect my
25 parole eligibility, the basis of my parole eligibility.

1 That point in time I was already in trial. I had already
2 expressed my wishes to go to trial to begin with. I had
3 been offered plea offers prior to trial which I had turned
4 down.

5 The second day of trial, I believe it was,
6 Mr. Bannister came to me and told me that the judge told
7 him he was going to throw the book at me should I be
8 convicted, but I still wanted to go to trial at that point
9 in time up until page 242 when the judge starts making
10 statements: I want you to understand where you're going
11 with this. There's only two reasons to go to trial, one
12 is you have a dead-sure winner, and two, you have nothing
13 to lose. He uses phrases like "going to trial can be very
14 perilous." He used also another phrase "it's a bird in
15 the hand opposed to two -- two in the bush." And then he
16 uses in closing, "Because I want you to understand what's
17 coming, and it's not going away, and it's happening
18 today." Then he told Mr. Bannister to speak with me for
19 just a few minutes, a life-changing decision that I felt
20 very time pressured to make at that point in time.

21 At that point in time, based on the statement that
22 Mr. Bannister told the judge made to him about me getting
23 put away for a very long time should the jury find me
24 guilty, should he run all charges consecutively, I thought
25 I was going away for seven years at that point in time.

1 Also, the first day of trial my bond got revoked,
2 which ---

3 Q Is that seven years or 70?

4 A 70. Excuse me.

5 The first day of trial the judge revoked my bond with
6 no -- you know, no -- the State didn't ask for the bond to
7 be revoked, but I had been out on bond at that point in
8 time for three and a half years with no bond violations,
9 no nothing. So I thought that was quite unusual. Just
10 leading up to this point here where I thought I had no
11 other decision but to plead if I -- if I wanted to avoid
12 the potential whatever the jury may have decided against
13 me.

14 But -- so I'm basing this information back in the
15 holding cell there based on what the judge told me:
16 nonviolent, nine years, no mention of probation, no
17 mention of any time hanging over my head while I'm on that
18 probation that I could be sent back to prison for. Just
19 the nine years and the parole eligibility.

20 So when we go back out in the holding cell, I'm
21 asking Mr. Bannister, well, how much time does this
22 actually mean in prison should I agree to plea to this
23 charge? He said about four years or so.

24 I asked him about parole eligibility. He said --
25 based on this sentence, he said about two years,

1 nonviolent offense.

2 I was telling him at that time my mother and father,
3 who are here today, you know, they're up in age. I was
4 really concerned about, you know, being -- being able to
5 see them again one day if -- before -- before they passed,
6 because you never know what's going to happen to you day
7 after day. Nobody does.

8 But anyway, so I wanted to make it -- even though
9 Mr. Bannister did tell me parole is not guaranteed, I
10 still was basing my decision partly on that, partly on --
11 well, I was basing it a lot on what the judge said.

12 But then I asked him, okay, you know, nine years, the
13 time you give me, four years, is still a long time, still
14 a long time to be away for. Do you think the State will
15 do even better than that? Before trial I believe he had
16 came to me with a six-year plea, which I had turned down.

17 Mr. Bannister said, okay, that's fine if you want to
18 proceed with that, because I don't think the State can
19 prove their case by putting you in front of their computer
20 anyway. So if you go to trial, I don't actually think
21 you're going to get even more than that even if you don't
22 prevail.

23 So I asked him to go back out there and speak with
24 the State. I can't remember how much time passed between
25 the time he did that and the time he came back in.

1 Actually, I'm not sure if it's Mr. Bannister that did it
2 or if it was Mr. Torisolis [phonetic], I believe his name
3 was, came back to the holding cell and said eight years.
4 I said -- I'm thinking in my mind, well, eight sounds
5 shorter than nine, not knowing how SCDC calculated
6 sentences at that time, because with the nine-year
7 sentence without probation to follow, you get supervised
8 entry under the -- I can't remember what the statute is.
9 But you're out -- SCDC cuts you out six months early from
10 your max-out date and you're released, not knowing that at
11 the time. But anyway, I asked him about the timeframe for
12 the max out on the eight-year sentence or time to be
13 released on the eight-year sentence, and he said it's
14 about three and a half -- three and a half years or
15 something like that.

16 Then I -- once again, I asked him about parole
17 eligibility. He gave me the same answer, around two
18 years.

19 So that's the sentence I -- that's the last sentence
20 I was aware of that I told him, the eight years. No
21 mention of probation still. No mention of the Internet
22 ban. The Internet ban is not mentioned in the nine-year
23 sentence. The probation is not mentioned in the nine-year
24 sentence. I have -- the nine-year sentence, there is no
25 time hanging over my head should I violate probation that

1 could send me back to prison for, you know, additional
2 12 years should I not complete the five-year sentence.

3 And on that I actually believe my sentence that I
4 received that I ultimately got sentenced for is in excess
5 of the sentence allowed by law. Because if you add up the
6 eight years incarcerated portion, the 12 years that's
7 suspended hanging over my head until I complete that five
8 years probation, so theoretically speaking I could get
9 today four years and 365 -- 364 days and violate my
10 probation and still potentially be sent back to prison for
11 12 years because that 12 years never goes away until that
12 time is completed. And I've got some case law to support
13 that which states a trial judge may impose a term of ---

14 MS. BROWN: Objection, Your Honor.

15 THE COURT: We'll let your lawyer argue any law.

16 THE WITNESS: Okay.

17 But that's the last sentence that I -- also, State
18 vs. Ellis.

19 BY MS. ROSS:

20 Q So you were about to testify about State v. Ellis?

21 A Correct.

22 Q 726 S.C. -- S.E.2d at page 5. (As read) "Probation,
23 and a suspension of the period of incarceration, is
24 clearly part of a criminal defendant's 'term of
25 imprisonment,' as it is actual -- as is actual

1 incarceration, parole, and suspension of the sentence."

2 So based on that, you're feeling like ---

3 A I feel like my sentence is ---

4 Q -- of the sentencing.

5 A I feel like my sentence is 25 years where the statute
6 for 16-15-410 ---

7 MS. BROWN: Objection, Your Honor. It's a legal
8 conclusion. I'm not hearing anything about facts going to
9 his decision-making.

10 THE COURT: Sustained.

11 BY MS. ROSS:

12 Q Now, I have on here Hardy v. State. That is the case
13 that goes to undue pressure that you testified about ---

14 A That's correct.

15 Q --- a bit earlier. Did you feel that you were
16 getting undue pressure to plead guilty?

17 A I did. As I stated, I was already in trial at that
18 point in time. I'd expressed my rights throughout this
19 entire process up until that point in time to continue
20 within the trial process.

21 Q And that was from the judge.

22 A That was correct. That's correct.

23 Q And he -- clearly, it had been indicated to you that
24 because you asserted your right to a trial, you were going
25 to be penalized severely.

1 A That's what I believed, yes.

2 Q Okay. Now -- and you're saying the negotiated plea
3 was not what you understood it to be.

4 A Once we stepped back out of that holding cell there,
5 all I thought was I was pleading to eight -- eight years,
6 and that was it.

7 Q Now, had you understood the 20-year exposure?

8 A I was never mentioned the 20-year exposure before. I
9 was -- nothing was ever said about 20 years before I
10 stepped back in this courtroom.

11 Q And had you understood that 20-year exposure, would
12 you have pleaded guilty or would you have insisted on
13 going to trial?

14 A I would have insisted on going to trial.

15 Q Okay. Now let's talk about the imposition of the
16 condition of no Internet use. How has that affected you?

17 A That has greatly affected my daily life trying to
18 find jobs. I think you have some information about that
19 as well for the jobs that I haven't been able to find
20 because of that Internet ban, because most employers --
21 and I think she had some testimony on that. Most
22 employers require you to apply online, and I have no way
23 to even look up these employers because I don't have
24 Internet access. The conditions of probation are such
25 that they won't even allow me to use an Internet connected

1 time clock at a workspace because most employers today now
2 have computerized systems that they use, and probation has
3 prohibited me from using those as well.

4 They're also not allowing me to attend any vocational
5 schools as well, so I can't get any training of any sort
6 because probation -- I've got that here as well as
7 evidence that probation has prohibited me from attending
8 classes at Greenville Tech, for instance, because of that
9 Internet issue. Because they basically determined that,
10 you know, if I'm going to Greenville Tech, I'll have to
11 use the Internet to attend classes there.

12 Q Okay. I'm going to hand you some emails. Can you
13 testify to what these are about?

14 A Let's see here. Roy Metal Finishing, the -- this is
15 from my probation officer to -- it looks like to my
16 attorney.

17 Q Chris Scalzo?

18 A Chris Scalzo.

19 MS. BROWN: Objection, Your Honor, on hearsay. Lack
20 of personal knowledge.

21 MS. ROSS: He's looking at it and has lived it, has
22 personal knowledge. It's about what he's ---

23 THE COURT: Well, due to the nature of it, what is
24 it?

25 MS. ROSS: These are attorney Chris Scalzo and his

1 probation agent going back and forth to what places he can
2 apply to ---

3 THE COURT: Sustained.

4 MS. ROSS: --- with Internet access.

5 THE COURT: I sustain the objection. Somebody can
6 come testify about it.

7 MS. ROSS: I understand.

8 BY MS. ROSS:

9 Q Okay. Why don't you testify about it? What's been
10 your experience about applying for jobs?

11 A I've not been able to apply for hardly any jobs
12 because most places today, places I've been able to get
13 addresses through for very few other means or phone
14 numbers because I have no way to look up phone numbers
15 myself without the Internet. Most employers require you
16 to go online to apply, or most employers have computerized
17 systems, and probation is not allowing me to participate
18 in those type of workplaces.

19 Q Now, did you retain Chris Scalzo to assist you with
20 this Internet access issue?

21 A I did.

22 Q And how is that going?

23 A At this point in time, nothing has -- nothing has
24 been done there. It's in a holding pattern, basically.

25 Q Now, did -- who is Alvetia Williams?

1 A Alvetia Williams is a representative at Alston Wilkes
2 Society. I believe they have some affiliation with
3 probation. I'm not exactly -- where that relationship
4 starts and ends.

5 But she was appointed, basically, as the only person
6 that probation will allow to apply for jobs on my behalf
7 because probation is not even allowing anybody else to
8 apply in my jobs -- excuse me -- jobs on my behalf. But
9 she is not even willing to go forward with doing that
10 until probation gives her an all-clear on whether or not
11 the businesses that she can apply to don't have some type
12 of computer access or Internet connected time clock, and
13 she hasn't been able to find any at this point in time
14 that don't have that requirement.

15 Q So even with her assistance, you've been unable to
16 apply for the job because of this no Internet use
17 condition of this plea.

18 A That is correct.

19 Q And you did not realize that condition would exist
20 when you were pleading guilty.

21 A I did not.

22 Q Would you have pled guilty or gone forward with the
23 trial if you had known?

24 A Yes. Oh, excuse me. No -- yes. I would have gone
25 through the trial. No. Excuse me. No. I wouldn't have

1 gone through with the plea had I known that.

2 Q All right.

3 A I'm getting mixed up here.

4 Q Now, how about let's talk about the home
5 incarceration issue with the anklet.

6 A Uh-huh.

7 Q What's happened with that?

8 A As far as how I became put on it?

9 Q Well, never mind. I'm not going to go into that
10 because that was a violation.

11 Any other ways this no Internet order has affected
12 you and made your life difficult?

13 A Yes. It affected my life just to do anything,
14 really. I mean, ordering stuff, comparison-shopping,
15 communicating with others to a large extent is quite
16 limited. I'm unable to find out much news, much
17 information about what's going on in today's society,
18 stuff to better myself.

19 Q TV?

20 A TV, Yeah. Absolutely, TV. I just have an antennae
21 TV. That's all I can use. Just get very few channels.
22 Aren't able to watch any, you know, new movies. They come
23 out streaming for the most part nowadays. Just really
24 can't do anything, I mean, like somebody in normal society
25 can do today.

1 Q And I guess going back to the plea itself, do you
2 think that your plea was knowingly and voluntarily and
3 intelligently made?

4 A I do not.

5 Q Did you understand the full extent of what you were
6 getting into when you pled guilty?

7 A I did not.

8 Q Why did you plead guilty?

9 A Well, I pled guilty because of the judge's
10 statements, pretty much. And ---

11 Q Did your lawyer advise you to plead guilty?

12 A Yeah. I mean, he advised me to plea. But once
13 again, that plea that I received was not the plea I was
14 told about.

15 Q And finally, did you understand you were waiving your
16 right to appeal and any appellate argument regarding the
17 suppression hearing that you had?

18 A I don't believe that was mentioned before stepping
19 back into the courtroom.

20 Q So that was not discussed at all?

21 A Correct.

22 Q Did you feel you had a strong argument on appeal?

23 A I did because I was -- once again, I was in trial.

24 MS. BROWN: Objection. Irrelevant. Calls for a
25 legal conclusion.

1 THE COURT: Ask the question again.

2 BY MS. ROSS:

3 Q Did you think you had a strong argument for appeal?

4 A I did.

5 THE COURT: You can ask him what his appeal would be
6 based on.

7 BY MS. ROSS:

8 Q What would that appeal have been based on?

9 A Some of the evidence that we discussed.

10 Q Was there a suppression motion made?

11 A There was.

12 Q And what did you see were the strengths of that
13 suppression motion?

14 MS. BROWN: Objection, Your Honor. Calls for a legal
15 conclusion.

16 THE COURT: Just ask him the basis of it.

17 BY MS. ROSS:

18 Q Did you release any child pornography into the
19 public?

20 A No. Not to my knowledge.

21 Q How -- what were they saying that you had done?

22 A They said I had some file-sharing software on my
23 computer called Shareaza that was never discovered on any
24 of my computers to what discovery I've seen.

25 Q And so did you ever release any child pornography

1 into the public or into the community?

2 A No, I did not.

3 Q And did you think that was part -- something that was
4 private ---

5 A Yes.

6 Q --- what was on your computer was private?

7 A Yes. Absolutely.

8 Q And you did not share it with others.

9 A No.

10 Q And for that reason you thought you had a decent
11 argument for suppression?

12 A Yes. Absolutely.

13 Q Also, let's talk about the search warrant. Were
14 there problems -- did you think there were problems with
15 the search warrants?

16 A I did.

17 MS. BROWN: Objection, Your Honor. Goes into legal
18 conclusion again or opinion on the validity of a search
19 warrant which was already litigated.

20 MS. ROSS: He knows this better than anyone, Judge,
21 because he's lived it. And this would go to whether his
22 lawyer was, in his opinion, effective for having him waive
23 his appellate rights which happened during that guilty
24 plea. So I think it is relevant to whether his lawyer was
25 effective for telling him to waive his appellate rights.

1 THE COURT: All right. Overruled. Go ahead.

2 THE WITNESS: What was the question again?

3 BY MS. ROSS:

4 Q Your lawyer failed to challenge the search warrant in
5 your case?

6 A Correct.

7 Q Why did you think the search warrant was problematic?

8 A The search warrant I think you're referring to is a
9 search warrant for the search of the devices once they
10 took those devices back to Columbia. The return of the
11 search warrant says that the warrant wasn't supposed to be
12 valid past ten days, although they didn't return the
13 warrant till the 11th day. And some of the subsequent
14 searches they did on those devices, a lot of those
15 searches, the forensic examinations came up as dates that
16 were well after the date the law enforcement had seized
17 devices, and also the searches were done well after the --
18 I think it was October 23, 2015, if memory serves me
19 correct, search. So I'm not even sure if those searches
20 were valid that were done after that date. And those are
21 the searches they used against me at trial, searches that
22 were conducted after that date.

23 Q And you believe had your lawyer argued that search
24 warrant, you would have had a good chance to have some of
25 these evidentiary items suppressed?

1 A Correct.

2 Q Now, did your lawyer argue South Carolina privacy law
3 as well as US constitutional law; do you recall?

4 A I can't recall on that one.

5 Q And did your lawyer retain an expert to support a
6 suppression motion?

7 A He did not.

8 MS. ROSS: And, Judge, I'd just add that's where that
9 affidavit could come to play given the opinion of this
10 expert that we contacted that you are correct, it was not
11 enough time. I didn't have a funding order to get her
12 here. If you feel that this would help you in the
13 decision-making, I will request a funding order and ask
14 for the record to remain open so that I can bring her down
15 here to have her testify. Again, it's sort of a but-for
16 situation with her because ---

17 THE COURT: I mean, I can't tell you if it's going to
18 help me or not. But you have the burden to present the
19 evidence. But you can't just present it by hearsay or
20 affidavits or otherwise. Nobody's asked me to allow it,
21 and the State's not had a chance to depose the expert or
22 to ask her questions.

23 MS. ROSS: I understand, Your Honor.

24 THE COURT: Well, then why do we keep talking about
25 it?

1 MS. ROSS: Well, that was just the end of the
2 argument that goes towards that.

3 THE COURT: Okay.

4 BY MS. ROSS:

5 Q Is there anything else that you'd like the Court to
6 hear about?

7 A Just going back to the plea here, it doesn't make --
8 even logically looking at it, and you can see through the
9 transcript here that even the State was having questions
10 about what was going on here in the plea agreement.
11 Line 25 of page 246, they just go back and forth over this
12 plea. And I'm saying that I understand it. I concur with
13 that. But I clearly didn't. Mr. Bannister is not -- if
14 you'll notice through the transcript, the Court and the
15 AG's office is having a long discussion about what the
16 plea actually is and why are you still hashing out what
17 the plea actually is. I was told this was negotiated.
18 Why are you going back and forth with the specifics of it,
19 seemingly changing it many times? And Mr. Bannister
20 doesn't really even speak up here at all. But the State
21 and the Court are going back and forth. The State's
22 having questions about it.

23 The plea agreement that was supposedly negotiated,
24 unbeknownst to me at the time, I would assume an
25 experienced prosecutor and experienced defense attorney

1 would know what the judge would know here that said, you
2 know, there's no offense I can give you 20 years for, and
3 then they continue changing it. They actually change it
4 from the plea portion to the sentencing portion. It
5 changes again.

6 As far as sentencing is concerned, the judge is the
7 only one mentioning consecutive sentences instead of
8 concurrent sentences, which I believe affected my parole
9 eligibility. Because my parole eligibility then,
10 unbeknownst to me at the time but I know now, is based on
11 my total sentence, which effectively made me not eligible
12 for parole at all or my parole eligibility didn't come up
13 until like three months before I maxed out when I was told
14 by Mr. Bannister back in the holding cell I'd be eligible
15 for parole in two years.

16 Was never advised that this sentence here was going
17 to be what it was. Was never advised that this
18 consecutive suspended sentences were going to affect my
19 parole eligibility. It just doesn't make any logical
20 sense for me to accept this sentence here, the eight
21 years, 12 years suspended, five years probation.

22 And even on the State's motion to return and dismiss,
23 they get the sentence wrong as well. They say each
24 indictment is for ten years suspended to eight with five
25 years probation on each indictment, which would mean like

1 16 years incarcerated, ten years of probation, which is
2 not even permissible because probation and suspension of
3 sentence is limited to five years each. It just doesn't
4 make any sense that I would have taken this sentence
5 instead of this nine-year sentence here that would have
6 maxed me out, as I think I stated before, under the
7 supervised reentry program almost the exact same date as I
8 maxed out on this sentence here. Because with the five
9 years probation, I was denied supervised reentry. It just
10 doesn't make -- you know, at the very least, it doesn't
11 make logical sense.

12 Q And finally, did your lawyer ever argue that the no
13 Internet condition was violative of your rights of free
14 speech or not crafted to control the State intent?

15 A No.

16 Q Did he ever argue that Internet use has become so
17 pervasive in daily life now that that was an undue burden
18 on you?

19 A No.

20 MS. ROSS: All right. I have no further questions.

21 CROSS EXAMINATION

22 BY MS. BROWN:

23 Q Mr. Willson ---

24 A Yes.

25 Q --- I'm Melody Brown. I'm with the attorney

1 general's office. I've got a few questions to ask you on
2 some of the things that you mentioned in your testimony.

3 Now, as I understood your testimony, you said that
4 you had plea offers before you went to trial.

5 A Correct.

6 Q And you turned them down.

7 A Correct.

8 Q And how many indictments did you have against you?

9 A Seven.

10 Q Seven?

11 A Uh-huh.

12 Q And how many years were you facing?

13 A Up to 70 should he run them consecutively.

14 Q Okay. So you had an offer for nine years nonviolent,
15 and you said no, I'm going to go to trial.

16 A I said go back. I'll negotiate something --
17 something.

18 Q And you ended up going to trial, didn't you?

19 A No. After that I pled to the sentence that's on
20 here. The nine year was what the judge mentioned just,
21 you know, a few minutes before we got back in the
22 courtroom.

23 Q Now, Mr. Willson, you've already told us that you
24 turned down plea offers.

25 A Nine years wasn't one that was presented before this

1 one.

2 Q Oh. Were they better plea offers that you turned
3 down?

4 A Six years, yeah.

5 Q Six years. But you wanted to go to trial ---

6 A Correct.

7 Q --- knowing that you could get 70.

8 A Correct.

9 Q And you did go to trial.

10 A Correct.

11 Q On multiple indictments.

12 A Correct.

13 Q How many charges did you end up pleading to?

14 A Two.

15 Q So you had a good many dismissed, didn't you?

16 A Yeah. But I didn't realize -- I thought I was going
17 to have only one count. I was never advised of anything
18 more than -- more than one before stepping back in the
19 courtroom as you'll see in the transcript on page 242,
20 page -- or page 242 there was no mention of any
21 additional. There was just a mention of the one count
22 there. And no other counts were discussed before stepping
23 back in front of the judge.

24 Q Let me ask you, Mr. Willson, did you understand that,
25 at that point in the trial that you're talking about, you

1 have two options: one is to let that jury go to
2 deliberation and make their verdict known or to plead
3 guilty?

4 A To plead guilty to something that I agreed to, yes.

5 Q So what you wanted to plead guilty to.

6 A A sentence based on what the judge said in his
7 transcript and the plea that I was told once again that
8 Mr. Bannister told me that I was getting before stepping
9 back in the courtroom was eight years. There was no other
10 -- no other -- there was no 20 years discussed, there was
11 no Internet ban discussed prior to stepping back in front
12 of the judge.

13 Q Let's look a little bit about that. I think you've
14 got your transcript in front of you, correct?

15 A I do. Uh-huh.

16 Q And you sat through the entire trial, correct?

17 A I did. Uh-huh.

18 Q Back in December 2018.

19 A Correct.

20 Q Okay. And you sat through the pretrial motions,
21 correct?

22 A I did. They were that same day.

23 Q And Mr. Bannister argued two grounds on a motion to
24 suppress. Do you remember that?

25 A I remember two, yes.

1 Q And I'm not asking you about a legal opinion on this,
2 but I'm asking you factually two grounds. Do you remember
3 he said something about the IP address and getting the IP
4 address information?

5 A Yes.

6 Q That was in there. And that's going to the searches
7 that you're expressing some concern about now, correct?

8 A Right.

9 Q All right. And then Mr. Bannister also argued about
10 downloading particular images, correct?

11 A Correct.

12 Q So the way that the investigation was conducted,
13 correct?

14 A Uh-huh.

15 Q And you knew that was there.

16 A Correct. And I still proceeded to trial.

17 Q And you knew those arguments would be gone if you
18 pled, correct?

19 A Not when I -- not when I told him -- not when we met
20 back in that courtroom -- I mean the holding cell there.
21 I wasn't advised of that until the plea proceedings.

22 Q So your testimony is that Mr. Bannister told you you
23 could have an issue you could raise on appeal and still
24 plead guilty?

25 A He didn't tell me either way.

1 Q But you knew going into trial in that pretrial
2 hearing that you had issues that you possibly could bring
3 up to another court later.

4 A Correct. But once again, I'll go back to the judge's
5 statements on 242 which caused me to plead guilty.

6 Q Well, let's look a little bit more about what you
7 heard, the facts that you heard in this trial.
8 Investigator Atkins testified in pretrial, correct?

9 A Yes.

10 Q Do you remember him?

11 A I do.

12 Q And he testified that you were making the files
13 available to the public, correct?

14 A That was his testimony, I believe. Uh-huh.

15 Q And he said that a couple of times, didn't he?

16 A I don't know how many times he said it.

17 Q Well, page 44, 49, 50, 51, does that sound correct?

18 A I guess. I don't have the entire transcript in front
19 of me. I just have the guilty plea proceedings.

20 Q Well, you might want to turn to page 55 on the
21 pretrial transcript portion. There's some information
22 there about the IP address. And the IP address is just
23 like a house number, correct? Remember all that
24 testimony?

25 A I remember.

1 Q And then they went to search warrants after that.

2 A Uh-huh.

3 Q So you were aware during trial that Mr. Bannister was
4 sort of setting this out to the trial judge on how the
5 investigation went, correct?

6 A Sure.

7 Q Okay. And then after getting your address, there
8 were at least two other warrants that were applied for and
9 obtained, correct?

10 A Only aware of one, the search warrant issued on
11 October the 12th.

12 Q Search warrant after the address, search warrant to
13 actually go through the contents of the computer after the
14 computer was seized?

15 A Okay.

16 Q Do you remember that?

17 A If you say it's in there, I mean, it's in there.

18 Q Okay. Well, the point is that that was before the
19 Court.

20 A Correct.

21 Q And you knew that.

22 A Yes.

23 Q Okay. By the way, nobody lived in that house but
24 you, right?

25 A There were other individuals that came through, but I

1 was the resident.

2 Q That's your house.

3 A Yes.

4 Q And your computer seized, right?

5 A (No verbal answer.)

6 Q Okay. And remember, you had the opportunity to
7 testify, correct?

8 A I did.

9 Q And the judge told you you could testify, right?

10 A Correct.

11 Q And you told Judge Miller what?

12 A I wasn't going to testify.

13 Q You didn't have any facts that you wanted to present
14 in court.

15 A I left this all up to my attorney.

16 Q Okay.

17 A I trusted him for -- for everything.

18 Q Okay.

19 A Obviously, I shouldn't have.

20 Q Well ---

21 MS. ROSS: I'm going to object -- it's obviously his
22 right not to testify -- just to the line of questioning.
23 He asserted his right not to testify.

24 THE COURT: Overruled.

25 Go ahead.

1 BY MS. BROWN:

2 Q And your attorney called Lynda Sams, right?

3 A Yes.

4 Q Do you member Ms. Sams?

5 A I do.

6 Q Broker in charge of Keller-Williams, I recall; is
7 that right?

8 A Yes.

9 Q All right. And you were an independent real estate
10 agent?

11 A That's correct.

12 Q For how many years?

13 A On and off for the better part of 14 at that point in
14 time.

15 Q 14. Okay.

16 So by necessity, you're pretty familiar with
17 contracts, aren't you?

18 A Yeah.

19 Q Okay. Now, you recall Judge Miller telling you that
20 this plea is a contract between you and the State of South
21 Carolina, right?

22 A I do, uh-huh.

23 Q Page 245.

24 And you need to be pretty careful with what you say
25 and what you understand, correct?

1 A Correct.

2 Q I believe Judge Miller said, "I cannot alter or
3 interfere with that, so you need to understand it," right?

4 A Uh-huh. Although, I do believe he did actually alter
5 the plea.

6 Q Okay. Well, we'll get to that in just a second.

7 Were you aware, and you were present during the
8 conference, about what the judge was going to tell the
9 jurors on the elements of the charge? Do you remember
10 that?

11 A Yes.

12 Q You remember that. Okay.

13 And you remember there was actually an agreement
14 where the attorney general's office said, well, we'll take
15 out some of the modifiers, some of the ways that the crime
16 could be committed, get it down to three things:
17 distributes, receives and solicits, correct?

18 A Correct.

19 Q So you knew that was the nub of what the jury was
20 going to determine, right?

21 A I vaguely understood it. I mean, I did, but at that
22 point in time I wasn't as schooled as I am now as far as
23 the law is concerned.

24 Q Well, I mean, it's pretty logical that it was narrow
25 at that point, correct?

1 A Yeah.

2 Q And can you tell the Court how many of these files
3 were on your computer?

4 A I cannot. There's differing opinions, depending on
5 which search was conducted.

6 And once again, I'll point back that information is
7 -- once again, there's files in there that say they were
8 accessed in late 2016, well after the attorney general's
9 office seized those devices.

10 Q Would you agree with me that the investigator said
11 there were hundreds, if not thousands of images?

12 A If that's what he says, that's what he -- if that's
13 what's in the record.

14 Q Page 57. Do you remember that?

15 A I believe that's in the record.

16 Q And you remember that there was testimony that you
17 were the one who downloaded and installed BitTorrent on
18 your computer. Do you remember there was testimony to
19 that?

20 A I don't.

21 Q You don't remember that.

22 Let's talk about the plea that you said that you
23 didn't understand. I think that's what was said a minute
24 ago we were going to go back to.

25 A Correct.

1 Q Right?

2 Eight years probation. Let's see. That's on -- that
3 is on page 245, is it not? Let's go to 246. And that's
4 the correction. I believe that's where you were going in
5 your direct testimony. "The only correction I would make
6 is that there is no offense which I can give him 20 years,
7 so to effect that agreement, I will give you eight years
8 on one count and ten years consecutive suspended with
9 probation; do you understand that?" What was your
10 response, sir?

11 A My response was "yes." But once again, I'll go back
12 to the judge's statements, and that I was too afraid to
13 say anything. And apparently, Mr. Bannister was as well
14 because he's not saying anything to correct the record,
15 although the State is.

16 Q Did you ask him to?

17 A Once again, I was too afraid to say anything at that
18 point in time. And I thought if he thought something was
19 wrong with it that he would be saying something.

20 Q Did you talk to him after the plea, say, hey, this is
21 not what I understood it was going to be?

22 A What do you mean after the plea? After ---

23 Q Right after the sentence is imposed.

24 A Oh, right after sentence was imposed, the judge
25 brought me out there -- or I was brought straight to the

1 holding cell. Mr. Bannister never came with me. And they
2 had me sign a whole bunch of paperwork.

3 Q Did you try to contact him?

4 A My parents tried to contact him several times after I
5 was incarcerated. Yes, ma'am.

6 Q What were you asking?

7 A What's going on here, basically. Why -- why did you
8 get this sentence. I mean, it took me a while to even get
9 in contact with my parents after I arrived at Kirkland.

10 Q And Mr. Willson, it's pretty clear in the record that
11 you got eight years suspended to probation, or a 20-year
12 sentence, you serve eight, suspended, and then probation,
13 no unsupervised contact with minors, right?

14 A That's what the record says here.

15 Q And no Internet access, right?

16 A That's what the record says.

17 Q You're going to waive your right to appeal. That's
18 in there, too, isn't it?

19 A It is.

20 Q So you knew all those motions that Mr. Bannister had
21 argued were gone.

22 A Correct. I'll just continue to direct you back to
23 page 242 and to page -- page -- yeah, page 242, actually,
24 when the judge is making these statements to me and I
25 thought I had no other choice but to plead guilty at that

1 point in time. It was only a matter of what the sentence
2 -- matter of what the sentence was going to be.

3 Q Well, that's interesting that you say that because
4 you did have a choice to go through and let the jury make
5 its determination, didn't you?

6 A Once again, the judge's statement. I was so overcome
7 with fear at the judge's statement at that point in time.

8 Q Well, did you fear that you couldn't go to conclusion
9 on your trial or ---

10 A I felt that any -- I felt that any challenge with the
11 judge would be met with extreme prejudice at that point in
12 time.

13 Q Mr. Willson, let me ask my question, please.

14 A Okay.

15 Q Were you afraid that you wouldn't be able to go
16 forward with your trial to completion, or were you afraid
17 of getting 70 years on every one of those indictments that
18 you would have been found guilty to because of all the
19 evidence against you?

20 A I don't know if I would have been found guilty based
21 on the evidence or not.

22 Q So you don't think you would have been found guilty.

23 A I do not.

24 Q Why didn't you proceed to trial?

25 A Page 242. At that point in time -- I had known all

1 the evidence prior to that point in time, yet I'm still
2 not pleading throughout despite the evidence, despite the
3 judge's comments the first day that my attorney told me
4 about, despite my bond revocation. But after this third
5 try here from the judge, I pled guilty.

6 Q Yeah. You were very strong. I agree that you have
7 conceded that you have been very strong throughout the
8 testimony that you've given here that you wanted to go to
9 trial. But after hearing all the evidence and at the
10 close of the case both for the State and for the defense,
11 you want to plead guilty.

12 A That's not why I pled guilty.

13 Q You're currently on probation, right?

14 A That is correct.

15 Q And you went back to Judge Miller on April 6th of
16 this year, didn't you?

17 A I did.

18 Q Why?

19 A Because I had an Internet connected TV device.

20 Q An Internet connected TV. Apple TV?

21 A That's correct.

22 Q Okay. Is that the only thing?

23 A That is the only thing.

24 Q That's the only thing.

25 What is Kev1970 as an address? What is that?

1 A That is an old address that's been on that device.
2 And I think I've actually got evidence about that as far
3 as that's concerned.

4 Q That's yours, isn't it?

5 A From a long time ago. I've never used it.

6 Q And it's on a type of service where it can't be
7 detected, information is not compiled, right?

8 A I'm not familiar with their capabilities.

9 Q You were using it, though.

10 A Not at that point in time I wasn't. That's not how
11 that is used.

12 Q Not at that point in time. Which point in time are
13 you talking about?

14 A Before I was incarcerated.

15 Q But you were using it after.

16 A Not using an email address. That's not what that is.
17 It's an Apple ID. That's not an email address. There's
18 no way to access email on Apple, on an Apple TV. I've got
19 -- I have evidence to support that as well.

20 Q You agree that probation did not think that that was
21 a good thing for you to be doing.

22 A Well, probation also mentions that they did a cell
23 phone search in their warrant, and there was no cell phone
24 search performed. My cell phone, the only cell phone that
25 I have, is incapable of accessing the Internet, and so

1 actually, their warrant is wrong.

2 Q Did you tell Judge Miller that?

3 A I'm not -- I don't think my attorney mentioned that.

4 Q And who was your attorney for that?

5 A Demi Messer.

6 Q And Judge Miller found that you have violated
7 probation or parole, correct?

8 A He did. Uh-huh.

9 Q And Judge Miller, again, imposed the sex offender
10 probation restrictions.

11 A He imposed a year ankle monitor.

12 Q And those special restrictions, correct?

13 A I believe so. I can't recall.

14 Q Would you want to see the order? If that would
15 refresh your recollection, I've got a copy of it.

16 A Yeah. Let me get a copy, if you would, please.

17 MS. BROWN: Your Honor, may I approach the witness?

18 THE COURT: Yes, ma'am.

19 BY MS. BROWN:

20 Q Show a copy to opposing counsel and see if this
21 refreshes your recollection, Mr. Willson.

22 A I see it says, "Therefore, the above-named defendant
23 is continued on probation provided in the original
24 sentence," and then, "additional one-year detention."

25 Q And you see in the top third of that order it

1 actually is the word "order." And there at the end,
2 what's that last condition?

3 A That's what he found me in violation of.

4 Q And that's what you were continued on, correct?

5 A Correct, yeah. Uh-huh.

6 Q So once again, you have those separate conditions.

7 A Correct.

8 Q Now, what I want to say or what I want to ask you
9 about is you actually have two sources of authority that
10 prevent you from accessing the Internet, correct?

11 A I'm not sure how to take that.

12 Q Okay. Well, let's break it down a little bit. Do
13 you remember at the time of the plea, because I know
14 you've gone over it several times, that Judge Miller
15 wanted the sex offender probation conditions in addition
16 to what the AG's office had said?

17 A Now you're going back to December 2018, right?

18 Q Well, maybe I can direct your attention to page 248
19 in the transcript. And there was a question, "By sex
20 offender caseload, do you mean the sex offender registry?"

21 And the Court said, "No. There's a specific caseload
22 in the probation office."

23 There are different ways to restrict Internet access.
24 Here you agreed to it in your contract. And you're
25 familiar with contracts being a real estate agent for so

1 long, over a decade. You had that in your contract with
2 the State. You agreed to that. And then the judge
3 separately said, "And you're going to have the sex
4 offender caseload restrictions." Two sources.

5 A Correct. Everybody that comes out of custody on
6 probation that's a sex offender is placed on the caseload.
7 Everybody on supervision is placed on a caseload for a sex
8 offense. It's not something that's necessarily required
9 that the judge stated. I believe it's just in the
10 statute.

11 Q And you actually signed in receipt of those
12 conditions, didn't you?

13 A Are you talking about in the order?

14 Q When you went on probation.

15 A Yes.

16 Q November 2nd of 2022, you had standard conditions?

17 A Yeah. There was no --- correct.

18 Q And you agreed to those?

19 A Correct.

20 Q And then you had standard sex offender conditions,
21 and you agreed to those, right?

22 A Correct. Uh-huh.

23 Q Separate and apart from the plea.

24 A Correct.

25 Q And Mr. Willson, you told us you don't have any

1 access to the Internet, right?

2 A Correct.

3 Q But then you've also told us that you are given
4 permission to seek help to apply online.

5 A From one specific person, correct.

6 Q So it's not correct that you don't have any access
7 to ---

8 A I don't have Internet access.

9 Q But you can use the Internet.

10 A I can't use the Internet. No, ma'am.

11 Q With supervision.

12 A No. That's not supervision. She's got to do it all
13 herself.

14 Q Well, let's be clear. You would rather not have any
15 restrictions whatsoever, would you?

16 A I wouldn't -- I mean, of course. I mean, who wants
17 to have restrictions.

18 Q And your crime was only accomplished by using the
19 Internet, wasn't it?

20 A The crime I was convicted of, yes.

21 Q In fact, how many charges for that?

22 A Seven originally.

23 Q How many images on your computer?

24 A I think he said ---

25 Q Your computer. Nobody else's.

1 A I think he said thousands.

2 MS. BROWN: Court's indulgence.

3 No further questions, Your Honor.

4 MS. ROSS: Just a few.

5 REDIRECT EXAMINATION

6 BY MS. ROSS:

7 Q So what did -- Alvetia Williams, was she the woman at
8 the Alston Wilkes Society who was helping you with the
9 Internet stuff?

10 A She is.

11 Q And what did she say about her ability to help you
12 get a job?

13 MS. BROWN: Objection, Your Honor. Hearsay.

14 THE COURT: Well, what's your understanding as to
15 what you need to do?

16 BY MS. ROSS:

17 Q Yeah. What's your understanding?

18 A My understanding is she's unable to really help me
19 because of the probation restrictions that are placed upon
20 me for no Internet, because, once again, she cannot find
21 an employment place that doesn't require some use of a
22 computer or Internet connected time clock to work there.
23 So she's not even -- she hasn't even started with the
24 process. I've met with her twice, and she is, you know,
25 unable to go forward at this point in time with looking

1 for work for me.

2 Q And just an aside, were your computers, the original
3 basis of this charge, password protected?

4 A I think two were lightly password protected.

5 Q Okay. And then I'd just refer you back to page 246,
6 line 15. After you were saying sort of the conditions of
7 your plea start to change and Judge Miller's questioning
8 you, what does he say on line 15?

9 A "You have to speak."

10 Q How did that make you feel at that point?

11 A Like, I mean, it was still very -- was still very
12 impressionable on me that -- what he left on page 242 as
13 far as, you know, you've got to talk, you've got to do
14 something, you've got to continue with this. At that
15 point in time, I thought if I didn't continue with that
16 plea, if I had questions about it, any further questions
17 about it, you know, that was it. We're -- you know.

18 MS. ROSS: Okay. Nothing further.

19 THE COURT: You may step down.

20 I need to take five minutes, and I'll be right back.

21 (WHEREUPON, a recess is taken at 12:17 PM.)

22 THE COURT: All right.

23 MS. ROSS: We rest at this time.

24 THE COURT: Okay.

25 MS. BROWN: Your Honor, the State would call

1 Mr. James Bannister, please.

2 THE COURT: Place him under oath.

3 THE CLERK: Mr. Bannister, please place your left
4 hand on the Bible and raise your right hand.

5 WHEREUPON,

6 JAMES BANNISTER

7 After having been duly sworn, testified as follows:

8 THE CLERK: Thank you. Please state your full name
9 for the record.

10 THE WITNESS: James Wofford Bannister.

11 DIRECT EXAMINATION

12 BY MS. BROWN:

13 Q Mr. Bannister, just as a very brief introduction and
14 to make the record complete, would you tell us a little
15 bit about your legal education and experience?

16 A Sure. I was -- I graduated from Honors College at
17 South Carolina 1992. I graduated from law school in 1995.
18 I clerked for two years with Judge Herlong in Federal
19 Court, and then I started practicing with what was then
20 Hill, White and Bannister. My father was in the firm and
21 my mentor. I became a partner about a year or two later
22 and have been managing partner ever since then, really.

23 Q And you represented Mr. Kevin Willson on the charges
24 we've been discussing today?

25 A Yes, ma'am.

1 Q And you've been in the courtroom today to hear the
2 testimony, correct?

3 A Yes, ma'am.

4 Q Let me ask you a little bit, how many felony cases
5 had you tried at the time that you had represented
6 Mr. Willson at trial in December 2018, just approximately?

7 A This is 2023. I would say probably somewhere between
8 30 and 50, maybe.

9 Q And you've had clients who've pled guilty before,
10 correct?

11 A Yes.

12 Q Can you tell us a little bit about what your general
13 practice is to ensure that your clients have a full and
14 fair understanding of any kind of plea negotiations?

15 A So anytime I get a -- or we have plea negotiations
16 between myself and a prosecutor, then I'm always pretty
17 quick to convey that to the client. I usually ask them to
18 come in, and then we talk about it. In every case I'm
19 looking at what does a trial look like, and in particular
20 preparing for trial. I like to be able to tell clients,
21 look, this is -- you know, this is what the risks are
22 going to be if you go to trial, this is why this plea may
23 or may not be a good idea for you given your situation,
24 what the evidence is going to be for you. And I know that
25 we had at least one occasion where we had some

1 conversations about that with Mr. Willson when we had the
2 initial offer that was prior to being put on the trial
3 docket.

4 Q Okay. That's really great. Let's divide that a
5 little bit. Let's talk about before trial. You mentioned
6 that you had a plea offer before trial.

7 A I do. My recollection is we had some discussions, I
8 would say it may have been even like -- it was more than a
9 year prior to us being in trial. Whether it was two or
10 18 months, I don't remember, but somewhere in that time
11 frame I had some conversations with the attorney from the
12 attorney general's office. And at that point, I want to
13 say that the offer we had initially was around six years.
14 That's my memory. I probably would have expected I might
15 could have knocked off a little from that. But I got
16 Mr. Willson in, and we went through the evidence, talked
17 to him about that as a plea. And he was not -- he was not
18 interested in the plea.

19 Q And why was he not interested? What did he tell you
20 about ---

21 A I -- so he's always been a little bit of a mystery to
22 me in terms of his perception of the reality of the
23 situation he was facing. I think part of that was also --
24 and I even sort of hear it today is that he doesn't really
25 see that what the crime was was all that bad. I think for

1 him it was I'm in my home, I'm on my computer, I'm looking
2 at child pornography, that's my business and it shouldn't
3 be anybody else's business. You know, he had -- clearly
4 had an addiction to some pretty sadomasochistic child
5 pornography.

6 And, you know, I would dispute the idea that I told
7 him we didn't have any risk at trial because I don't think
8 I've ever told any client that we don't have any risk at
9 trial. And there certainly are some cases that I am
10 adamant that we should go to trial, but this was not one
11 of them.

12 When we talked about it, one of the things I pointed
13 out was that I wanted -- if we had an opportunity to have
14 some defense at trial aside from legal issues, we're going
15 to have to show somebody else had access to the house. So
16 I was mainly, at that first meeting about the initial
17 plea, looking to see do we have anybody else that we could
18 put inside your residence potentially that might have been
19 the person who is, you know, downloading this stuff. And
20 about the best we could do is that he had a place where he
21 could hook his computer up at Keller-Williams when he was
22 a real estate agent, which was not in my view an optimal
23 defense at all. But that was where we were. And he just
24 wasn't interested in a plea. I mean, he wanted his day in
25 court.

1 Q Now, before that plea offer was extended, you
2 received discovery from the attorney general's office?

3 A Correct.

4 Q Okay. And there were seven indictments at issue to
5 begin with?

6 A Correct.

7 Q Did you explain each of those charges to Mr. Willson?

8 A I did. We had two second-degree sex exploitations,
9 which were violent, 85 percent. I think they carried a
10 maximum of ten years. And then we had five that were the
11 third degree nonviolent but all carried I want to say ten
12 years, too.

13 Q And you explained some of the discovery to him?

14 A We went through that in as much detail as I was able
15 to do. I mean, it was a lot of -- there were a lot of
16 child pornographic files that were on his computers he had
17 downloaded. He had downloaded some to DVDs which is --
18 you know, that's even -- like I said, even a little more
19 difficult for defense. But yes.

20 Q Now, let's go to the trial itself.

21 A Okay.

22 Q You made a motion to suppress evidence based on two
23 grounds, essentially, you recall?

24 A Yes.

25 Q Okay. And did you have anybody sitting with you at

1 trial, cocounsel or an expert to make those motions?

2 A I did not have an expert. I did have an associate at
3 that time, Marcelo Torricos, who's still with my firm, and
4 I had my paralegal, Cherie Aiken.

5 Q Okay. And you were prepared to make those motions.

6 A We did and then argued them. I mean, we spent some
7 significant time, I think, on a couple of them.

8 Q Okay. And then if you'll recall in this case, you
9 had presented your defense and rested, and you were
10 talking about instructions to the jury ---

11 A We had.

12 Q --- when something occurred. Can you tell us a
13 little bit about that? You walk us through it.

14 A Sure. So we were done with our case, the State was
15 done with their case. We had -- I had attempted to
16 stipulate to the fact that the files that were coming into
17 evidence as proof of the seven counts of -- child
18 pornography counts was, in fact, child pornography,
19 because I did not want those to get played to the jury.
20 But -- and the judge ruled against me on that, and I think
21 that was appropriate. I mean, there's not much you can do
22 about it.

23 But some of those were so bad that -- and I couldn't
24 even watch them. I mean, I had to take a look at them
25 early in the case to verify that it was child pornography.

1 But, you know, to say it was sadomasochistic child
2 pornography is an understatement.

3 So when we got done with that, I mean, it was like
4 there was no breath in the room. I mean, it was just --
5 and we didn't have a really solid defense that somebody
6 else could have done that other than it was some
7 mysterious third party that, you know, we couldn't
8 identify or show how they had access.

9 So to everybody in the courtroom, me included, it was
10 clear that we were getting ready to get probably a guilty
11 verdict on all counts. I mean, this was not a close case
12 at the end of the day for us from an evidentiary
13 standpoint.

14 However, the motion that I had made on the front end
15 I felt like, well, one, it was novel, but, two, it was
16 pretty solidly supported by the statutes that existed at
17 that point, and that was that law enforcement -- I didn't
18 believe law enforcement was allowed to duplicate a child
19 pornography video. They have the authority to do that
20 under the picture section of child pornography, but they
21 didn't have that authority under the video section. And
22 while the judge ruled against me on that issue, I think it
23 did create some angst a little bit about, well, if this
24 potentially were to go up on appeal, then this might be an
25 issue that could come back.

1 So we began at that point having some plea
2 negotiations. And Judge Miller got involved a little bit
3 in that and was encouraging the State to make me some kind
4 of offer so I could talk to Mr. Willson about it. Because
5 at that point we had no offer. And he had turned down a
6 previous offer of six years, and they weren't going to do
7 any better than that. So, you know, we are -- we're
8 trying to figure out is there a number that would
9 potentially work.

10 So I think he's right that it was -- started out as
11 nine. And all this was happening pretty fast because the
12 jury is out, we're looking at doing jury charges, and so I
13 think it's accurate to say there was a lot of pressure.
14 But the pressure was the fact that we were about to be
15 convicted and he was going to be facing probably all seven
16 counts, two of them being violent ten-year counts, and I
17 had been estimating from the beginning that if we went to
18 trial and lost, we were looking at -- anything under
19 15 years would be in my view a mitigated sentence based on
20 what we had.

21 So -- but we were -- I felt pretty good about
22 convincing the State's attorneys that we needed to go to a
23 nonviolent statute which was a huge benefit to
24 Mr. Willson. And I think I talked to them about nine
25 years. Then we came back out. We had another discussion.

1 I got them down to -- or in the negotiations, we got down
2 to eight years. And I think it was at that point that
3 probation became part of the deal. If they were going to
4 reduce it a little bit, then that might be -- I'm a little
5 fuzzy on that.

6 But I do remember this. Kevin's brother was in the
7 courtroom. And I asked Judge Miller if he would give me
8 permission to take his brother back there because his
9 brother had seen all the evidence. And his brother had
10 the same impression that I did, which was Kevin was about
11 to go away for some really serious violent crime time.
12 And so they actually talked a little bit back in the
13 holding cell.

14 And then I went back in there, and I think that was
15 the moment where Kevin finally realized that this was
16 actually going to happen, that he was getting ready to be
17 convicted, that this was serious, that he was going to go
18 to jail for a long time, and that mitigating that sentence
19 was necessary or was the right move to make at that point
20 and would be in his best interest.

21 So that's when we came back out, entered the plea,
22 and that ended the case.

23 Q Do you recall how your client informed you he was
24 going to accept the plea, what terms he used, any context?

25 A So I can't remember exactly what words he said. But,

1 you know, I walk everybody through it. And I said, look,
2 you understand you're pleading guilty because you are
3 guilty, because that's what the judge is going to ask you.

4 And he's like yes. I get it.

5 You know, I mean, he knew what he had done. He knew
6 the problem that he had. And I think at some point he
7 recognized that he needed some help. So . . .

8 Q And did you explain to him separate and apart from
9 the judge that all of the issues that you had raised
10 during the trial would be waived, forfeited?

11 A You know, I can't say I have a specific memory of
12 going through that. But, I mean, I know that's part of
13 the judge's colloquy, and I know we were going to go
14 through that out here. This was more of a how much time
15 have I got to do in jail. That was where the focus was.
16 And so there was some discussion about being parole
17 eligible and being -- you know, what it meant to have a
18 nonviolent crime and therefore in a position where you
19 could potentially mitigate what sentence you ended up
20 having to do or what the actual time is you served.

21 Q And you were here for the testimony earlier. We've
22 gone over some of the back-and-forth and the plea itself
23 to make sure that the terms were set out and everybody
24 understood that. Based on any interaction you would have
25 had with your client, was there some misunderstanding of

1 the terms of the plea as they are set out in the
2 transcript?

3 A No. In fact, I don't think I heard from Mr. Willson
4 until, I don't know, it might have been almost two years
5 after he had been sentenced. I think it was at that point
6 that he started having buyer's remorse.

7 MS. BROWN: The Court's indulgence.

8 No further questions.

9 CROSS EXAMINATION

10 BY MS. ROSS:

11 Q Okay. I'm assuming you were retained in the case?

12 A I was.

13 Q Now, you were talking about that at some point the
14 nine turned into 20 suspended to eight. Did you ever
15 explain that that would actually mean in reality because
16 of the suspended sentence more time in SCDC?

17 A So I tell -- I'd like to think I tell everybody the
18 same thing. I don't have a specific memory of what Kevin
19 and I talked about relevant to any suspended sentence and
20 how that might impact him. I think that as far as I can
21 remember, we got that he would be parole eligible which
22 gave him some benefits to the time that he was serving.
23 It impacted where he was going to be and what custody
24 level he would be at. But by my way of thinking, we were
25 -- whatever the results were going to be, the results were

1 going to be the -- it wasn't a deal killer. The judge
2 could have put 70 years on him. It wouldn't have
3 mattered. We were talking about how much time is he going
4 to serve.

5 Q All right. But the reality with the 20 suspended to
6 eight, with that sentence, there's more active SCDC time
7 than a straight nine.

8 A Well, I think the assumption is that you would make
9 parole when you first become eligible. But I can't -- I
10 mean, SCDC changes the way they do things, and this is
11 however many years ago, so I don't know.

12 Q I'll move on. Are you familiar with Packingham v.
13 North Carolina Supreme Court case?

14 A Not off the top of my head, no.

15 Q And you didn't argue against the condition of no
16 Internet access that was part of that guilty plea.

17 A No. I mean, the transcript will speak for itself.
18 But I don't recall -- I don't recall that being an issue.

19 Q All right. And you heard Mr. Willson's testimony
20 about his difficulties with TV, job search, just getting
21 along in modern life without any access to the Internet,
22 correct?

23 A I heard it, yes.

24 Q Now, yet you didn't ask for any -- the Internet
25 access to be created in a way that it would just prevent

1 downloading illegal content.

2 A I did not ask for that, no. And candidly, it was at
3 that point the fact that we had some offer on the table
4 that was going to reduce the amount of time he was about
5 to get, that was the focus.

6 Q All right. And so did you discuss that he was
7 waiving his right to appeal as part of that?

8 A Yes. I believe so, yes.

9 Q Okay. And I believe you testified earlier that you
10 thought that your suppression argument had some teeth, and
11 that was the basis of getting the plea offer.

12 A I think so, yes. I mean, the problem it had, and I
13 told Kevin this, because I spent several months trying to
14 figure this out, is even if the officers had downloaded it
15 illegally, I couldn't find any solid case law to indicate
16 that that was a suppressible event. So while I felt
17 strong that they had committed an illegal act, the remedy
18 was what was creating a problem. So we had some exposure
19 there, but -- let's put it this way. I think we made
20 everybody uncomfortable enough to where they were willing
21 to negotiate.

22 Q All right. And have you read the plea transcript?

23 A No.

24 Q Well, from your recollection, would you agree that
25 it's sort of a moving target of what this agreement is

1 through the plea where it starts with nine years and then
2 20 suspended and then how do we do -- how do we actuate 20
3 out of ten year maximums? Do you recall any of that?

4 A No. Whatever the transcript says is what happened.

5 MS. ROSS: Okay. No further questions.

6 MS. BROWN: No further questions. We ask for
7 Mr. Bannister be excused, please.

8 THE COURT: Thank you. You may be excused.

9 THE WITNESS: Thank you, Judge.

10 MS. BROWN: Your Honor, the State rests. We have
11 argument we would like to present, though.

12 THE COURT: Any reply?

13 MS. ROSS: No, Your Honor.

14 THE COURT: All right. Argument.

15 MS. BROWN: Your Honor, would you like for us to go
16 first or for Mr. Willson? And would you like a
17 comprehensive ---

18 THE COURT: Mr. Willson can go first.

19 MS. BROWN: Okay.

20 MS. ROSS: Judge, I stand by my presentation in the
21 outset of the hearing. I do certainly think that this
22 plea was fast. During the plea colloquy, many aspects of
23 the client's rights and what he's giving up during a plea
24 were overlooked. That was just not done, and that we'd
25 argue for that reason the plea wasn't knowingly and

1 voluntarily made pursuant to Pittman v. State.

2 Certainly, this Packingham case that I keep referring
3 to came out in 2017, I believe a year before this trial.
4 In that case it found that the sweeping condition of no
5 Internet access violates constitutional rights of free
6 speech. That was out there at the time, and Mr. Bannister
7 made no objection to that no Internet access condition,
8 and that certainly prejudiced Mr. Willson as you can see
9 him being even on -- already has violated his probation
10 for use of this Apple TV. Because in this modern world,
11 it is very difficult to exist using no Internet access and
12 not violate that condition of probation. And there's
13 certainly more arguments on that, sort of a changing
14 argument where, as the Internet becomes more pervasive
15 everywhere, there are more and more jurisdictions that are
16 finding that just banning Internet access completely is
17 overly punitive and almost impossible to comply with.

18 So that would be our argument.

19 THE COURT: Ms. Brown?

20 MS. BROWN: Your Honor, I have two sections of the
21 argument. The first argument has to do with the
22 voluntariness of the plea. And I think that Your Honor
23 can review the transcript, which is very comprehensive, to
24 make sure everybody knew everything that would be placed
25 in for the terms of the plea, and Mr. Willson knew what to

1 expect. And he accepted that. And he accepted that
2 because he only had two choices at that time, and that was
3 to continue with that trial with all seven counts or to
4 reduce his sentence exposure. He chose to reduce the
5 sentence exposure. Is that a difficult choice? I imagine
6 it would be. But there was no undue influence. There was
7 no coercion. Nothing has been shown to support the
8 allegations of an involuntary plea.

9 The second part of my argument goes to the Packingham
10 case that you heard about today, Your Honor. I would like
11 to pass up, if I may, a copy of Packingham in a slightly
12 different format since I prepared a little argument based
13 on the Westlaw page numbers at the bottom of the page.

14 I'd also like to hand up United States vs. Carson,
15 Eighth Circuit federal case, 2019, United States vs.
16 Bobal, that's 11th circuit, 2020, and the Fourth Circuit
17 is United States vs. Arce, A-R-C-E, September of 2022
18 case.

19 Your Honor, to really understand the impact of
20 Packingham, we have to look at the issue that was before
21 our United States Supreme Court. And it was a separate
22 North Carolina statute that made a sweeping prohibition
23 against all sex offenders. You couldn't access any type
24 of media such as Facebook and social networking. That's
25 what they were looking at. It was a separate statute. It

1 was not a condition of any kind of particular plea.

2 And what's very important, if you would turn to
3 Westlaw page 6, the small number in the bottom corner, on
4 that page you see the Supreme Court referencing again and
5 again the broad reach of this standalone North Carolina
6 statute. And the restrictions that they're talking about
7 actually extended past any kind of sentencing, past any
8 kind of supervision that the state had over these
9 individuals. So this was very, very broad.

10 On page 7, Westlaw page 7, the North Carolina statute
11 was described as a sweeping measure, sweeping law,
12 unnecessary to serve the purpose that the state had
13 offered in an intent for the statute itself to keep sex
14 offenders away from vulnerable victims. And even the
15 concurrence echoes that breadth of restriction. In fact,
16 they term it as it has staggering reach, again, after
17 completion of the sentence. Standalone statute. It's not
18 applicable here. What we have here is someone who used
19 the Internet to accomplish his crime. That sets it far
20 apart from Packingham.

21 And we see other circuits, federal circuits, looking
22 at this and looking at Packingham and said, yes, that's a
23 little bit different. And the Eighth Circuit case that I
24 handed up to you I thought was very good because it says
25 Packingham invalidated only a post-custodial restriction.

1 They're recognizing that right off the bat. That's that
2 broad statute that says if you're in this group, none of
3 this. That is not the same thing as restricting somebody
4 from the Internet during the period of probation when he
5 used the Internet for his crime. Totally different
6 factual scenario.

7 The 11th circuit similarly says Packingham does not
8 undermine the subtle principle that a district court may
9 impose reasonable conditions that deprive the offender of
10 some freedoms during supervised release. That's exactly
11 what we have here. In fact, we have two streams of
12 authority to restrict him from the Internet. One is his
13 own agreement as part of the plea negotiations, and the
14 other is the probationary limitation through the sex
15 offender observation in probation itself. Two streams of
16 authority.

17 I understand that the inmate does not want to be
18 restricted, but in this case under these circumstances,
19 for the limited time that the State has him under
20 supervision, he cannot go to the medium that he used to
21 commit his crime. That's very reasonable. But it is not
22 absolute either. Because he has admitted that probation
23 does give him the opportunity to go to someone and have
24 that person feed his information in to request a job, or a
25 job application even. Any kind of information he needs to

1 get on that Internet to try to find a job, that person
2 can help with the permission of Probation, Pardon and
3 Parole.

4 Now, is it open? Probably not. I would be very
5 surprised. I think that you would have to ask the
6 probation officer each time that you wanted to do that.
7 But that ability is still there. And again, these
8 limitations last as long as probation lasts. If he
9 continues to violate probation, that's different. That's
10 separate and apart of whether the restriction itself is
11 too broad.

12 The case that I handed up, Bobal's condition did not
13 extend beyond the sentence. And interestingly enough,
14 that defendant, very similarly as to what we have here,
15 had used the electronic device to accomplish his crime.
16 So we have the nexus, and we have the limitation, and we
17 have the exception here. Anything that a court has said,
18 oh, this is not -- Packingham actually appears in this
19 case. There's no problem with that limitation
20 whatsoever.

21 So based on the totality of the record and what Your
22 Honor has heard today from the stand and these cases, we
23 ask the Court to deny relief.

24 MS. ROSS: Judge, just briefly, I'd cite United
25 States v. Holm, which is 326 F.3d 872, page 878. It's a

1 Seventh Circuit case where the decision of our sister
2 circuits have also declined to uphold a total ban on
3 Internet access. That's one case.

4 Under South Carolina law, the Court may impose any
5 other condition not prohibited in Section 24-21-430.
6 However, quote, the conditions of probation must be
7 reasonable and must be struck down if greatly
8 disproportionate to any rehabilitative function. In
9 considering whether conditions are reasonable, courts must
10 look at today's society to evaluate the practical effect
11 of the challenging condition.

12 Then there's United States v. Crume, 422 F.3d 728 at
13 page 733, that rejects a complete ban on Internet access
14 even in a case involving child pornography.

15 Simply, this is -- this condition is overbroad and
16 violates his First Amendment rights, and it's not
17 proportional to the intent it's designed to serve for
18 him.

19 Also, I believe Mr. Willson's testimony was that the
20 woman from Alston Wilkes could not let him type stuff into
21 the Internet. She told him she was unable to assist him
22 because of the condition of no Internet on probation in
23 getting a job. So the Internet -- no Internet is making
24 him incapable of completing the probation and is
25 unreasonable in this case.

1 THE COURT: All right. I'll review it and issue an
2 order.

3 MS. ROSS: Thank you, Judge.

4 MS. BROWN: Thank you, Your Honor.

5 (WHEREUPON, proceedings concluded at 1:05 PM.)
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1 CERTIFICATE OF REPORTER

2
3 STATE OF SOUTH CAROLINA)

4 COUNTY OF GREENVILLE)

5
6
7 I, CHERYL A. SMITH, Official Court Reporter for the
8 Thirteenth Judicial Circuit of the State of South
9 Carolina, do hereby certify that the foregoing is a true,
10 accurate and complete Transcript of Record of the
11 proceedings had and evidence introduced in the trial of
12 the captioned case, relative to appeal, in the Court of
13 Common Pleas for Greenville County, South Carolina, on the
14 24th day of July, 2023.

15 I do further certify that I am neither of kin,
16 counsel, nor interest to any party hereto.

17
18 September 7, 2023
19

20
21 *Cheryl A. Smith*

22 Cheryl A. Smith, CVR-M

23 Court Reporter
24
25

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	
Kevin Mark Willson, #378378,	)	Case No.: 2019-CP-23-7167
	)	
Applicant,	)	
v.	)	
	)	ORDER STRIKING AFFIDAVIT
State of South Carolina,	)	FROM THE RECORD
	)	
Respondent.	)	
	)	ENTERED COMPLETE

24 JAN 31 PM 2:37
 Shira Barrett CDD SCL SC

This matter comes before the Court by way of an application for post-conviction relief filed by Applicant Kevin Mark Willson on December 11, 2019. An evidentiary hearing was set for July 24, 2023, in the Greenville County Courthouse. Applicant was present and represented by counsel, Susannah C. Ross, Esq. Senior Assistant Deputy Attorney General Melody J. Brown represented Respondent, the State. The State advised that it had a motion to strike and requested to be heard on the motion prior to the beginning of the evidentiary hearing.

The State explained that in advance of the hearing, an affidavit that appeared to be from an individual named "Bonnie Burkhardt" was filed in this PCR action with the Clerk of Court on July 20, 2023. The State moved to strike the affidavit, arguing that the affidavit had been submitted by a non-party with no connection to the case; that the affidavit contained irrelevant hearsay assertions and inappropriate legal conclusions; and, also contained spurious allegations of crimes in the investigation. The State argued that the affidavit was grossly inappropriate and should not be forced into the record by the filing of the document by a non-party.

Applicant's counsel confirmed to the Court that the affidavit was not filed by Applicant but by a potential witness for Applicant's case.

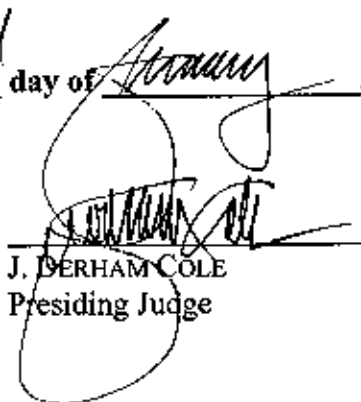
This Court agrees with the State. This Court finds that the affidavit was submitted by a

non-party with no connection to the case; that the affidavit contained irrelevant hearsay assertions and inappropriate legal conclusions; and, also contained spurious allegations of crimes in the investigation. The affidavit was inappropriate and not properly filed. It is a nullity, and it shall be stricken from the record.

IT IS THEREFORE ORDERED:

1. This Court GRANTS the State's MOTION TO STRIKE;
and,
2. The Clerk of Court shall remove the affidavit from the record and the original of this Order shall be filed in the record in place of the improperly filed affidavit.

AND IT IS SO ORDERED this 22nd day of January, 2024.


J. DERHAM COLE
Presiding Judge

, South Carolina.

Copy mailed to
Attorney general / Susannah Ross
on 1 / 31 / 2024.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	
Kevin Mark Willson, #378378,	)	Case No.: 2019-CP-23-7167
	)	
Applicant,	)	
v.	)	
	)	ORDER OF DISMISSAL
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

24 JUN 21 PM 2:07
 2024 JUN 21 PM 2:07

This matter comes before the Court by way of an application for post-conviction relief filed by Applicant Kevin Mark Willson on December 11, 2019. An evidentiary hearing was held on July 24, 2023, in the Greenville County Courthouse. Applicant was present and represented by counsel, Susannah C. Ross, Esq. Senior Assistant Deputy Attorney General Melody J. Brown represented Respondent, the State.¹ At the close of the hearing, the undersigned took the matter under advisement. By a conditional Form 4 order issued on July 28, 2023, and filed August 8, 2023, this Court indicated it would deny relief and directed Respondent's counsel to prepare and submit a proposed order.² After consideration of the testimony received, and after reviewing and considering the record, arguments presented by counsel, and the controlling case law, this Court finds that Applicant has failed to carry his burden of proof. Consequently, this Court DENIES relief for the specific reasons set out in this order.

¹ The State advised that it had a motion to strike and requested to be heard on the motion prior to the beginning of the evidentiary hearing. This Court granted the State's motion to strike from the record a non-party filing submitted directly to the Clerk of Court. That matter is addressed by separate Order.

² The proposed order was circulated among counsel prior to this Court's acceptance. See *Fishburne v. State*, 427 S.C. 505, 516, 832 S.E.2d 584, 589 (2019) (providing a "proposed order should be transmitted to opposing counsel" for review and that counsel "should ... alert preparing counsel and the PCR court as to any deficiencies in the proposed order.").

General Procedural History

Applicant is no longer incarcerated, but filed while still serving an active sentence. The records before this Court show that Applicant was indicted in August 2017 for five counts of sexual exploitation of a minor, third degree, and two counts of sexual exploitation of a minor, second degree. (Return Attachment, Tr. 8-11). James W. Bannister, Esq., and Marcelo Torricos, III, Esq., represented Applicant on the charges. The charges were prosecuted by attorneys with the Internet Crimes Against Children (ICAC) Section of the South Carolina Attorney General's Office.

A jury was impaneled on December 3, 2018, and the trial on all seven charges began and continued into December 4, 2018. The Honorable Edward W. Miller presided. On the second day of trial, after both the State and Defense rested, but prior to charging the jury, Judge Miller was informed that there was an "offer on the table for a nine-year sentence to a nonviolent offense," and ordered a break in the proceedings for Applicant to consult with counsel. (Return Attachment, Tr. 242-243). Applicant opted to change his plea and accepted a negotiated agreement with the State to plead guilty to two counts of sexual exploitation of a minor, third degree, (2017-GS-23-7094 and 7095). The State placed on the record the following specifics of their negotiations:

... Mr. Willson is pleading guilty to two counts of sexual exploitation of minor in the third degree. These are mandatory sex offender registry offenses. Those indictment numbers are 2017-GS-23-07094-07095.

Pursuant to the plea agreement, we're going to dismiss two counts of sexual exploitation of a minor in the second degree and three counts of sexual exploitation of a minor in the third degree. Those indictment numbers are 2017-GS-23-07089-07093.

... we've agreed to a negotiated sentence of 20 years suspended to eight years incarceration and five years probation with conditions of probation to include no unsupervised contact with minors and no Internet access. Also, the defendant is going to waive any rights to appeal that he might have.

(Return Attachment, Tr. 245-246).

Judge Miller asked Applicant if the State's presentation constituted a "full and complete understanding of the negotiations" from his view, and Applicant responded, "It is, Your Honor."

(Return Attachment, Tr. 246).

Judge Miller also advised Applicant, for clarity, that "there is no offense here which I can give ... 20 years [on], so in order to effect that agreement, I will give you eight years on one []count and ten years consecutive on the other suspended with probation," and asked if Applicant understood. (Return Attachment, Tr. 246). Applicant responded, "Yes, Your Honor." (Return Attachment, Tr. 246). In other words, one of the sentences would have to be ten years suspended to eight years, and ten on the other. Applicant, and his counsel, agreed. (Return Attachment, Tr. 247). As negotiated, Judge Miller sentenced Applicant to ten years, on service of eight, the balance suspended in favor of five years on probation, (2017-GS-23-0795), and ten years, consecutive, suspended during probation, (2017-GS-23-07094). (Return Attachment, Tr. 247-248 and sentencing sheets). Applicant did not appeal, as he agreed.

Post Conviction Relief Allegations and Relevant History

In his initial application, Applicant raised several claims as follows:

- 1) "the plea my attorney told me about was 8 years";
- 2) "there was NO mentioned from anyone regarding a suspended sentence or probation";
- 3) "The sentencing sheet displays a plea I DID NOT agree to";
- 4) "There was No evidence any file sharing software was ever present on my electronics as alleged";
- 5) "The sex offender registry for life that is being imposed is a putative restraint..."; and
- 6) "The terms of the probation are also unconstitutionally as they

forbid internet access ...”

(Application at 2-3).

The State initially moved to dismiss the application as untimely filed. By Order dated April 8, 2022, the Honorable Eugene C. Griffith resolved that Applicant was entitled to equitable tolling pursuant to *Mose v. State*, 420 S.C. 500, 803 S.E.2d 718 (2017), and ordered a full hearing on the claims be allowed. (Order, dated April 8, 2022, filed April 13, 2022).

By amendment dated and filed July 10, 2023, PCR counsel clarified the allegations as follows:

This matter comes before the Court by way of application of post conviction relief filed December 11, 2019, alleging his conviction and sentence were in violation of the Constitution of the United States and the Constitution of the laws of South Carolina due the failure to adhere to his plea negotiation, ineffective assistance of trial counsel, and imposition of conditions including the sex offender caseload and no internet access or use that are punitive and overbroad infringing on his right to free speech. See Packingham v. North Carolina, 137 S.Ct. 1 730, 198 L.Ed.2d 273 (2017) & United States v. Holena, 906 F.3d 288 (3rd Cir. 2018). Additionally, the record of his guilty plea shows that the Applicant was not made aware of the nature and crucial elements of the charge against him to his right to appeal violating due process guarantees of the State and U.S. Constitutions in that the plea was not knowingly, voluntarily, and intelligently made. See Pittman v. State, 337 S.C. 597, 524 S.E.2d 623 (SC 1999).

GENERAL STATEMENT OF FACTS OF THE CRIMES

As noted, Applicant ultimately pled guilty to two of the seven charges subject to trial; however, the trial transcript sets out the evidence offered in support of Applicant's guilt. This summary is taken from the testimony at trial. Judge Miller, at the plea, advised that he would consider the facts as presented during the trial proceedings for purposes of the guilty plea. (Return Attachment, Tr. 245).

Investigator Kevin Atkins with the South Carolina Attorney General's Office, Internet Crimes Against Children Section, testified that during a file-sharing investigation in June of 2015, he identified hash values which identified values in a data base known to be child pornography. (Return Attachment, Tr. 91-94 and 97). Investigator Atkins used a software program designed for law enforcement to connect to a single computer that connects to a downloaded video and further shows a view of that the video to confirm that it violates the statute. (Return Attachment, Tr. 94-95). After identifying the video as illegal and containing child pornography, Investigator Atkins identified the IP address and submitted a court order to the service provider to obtain subscriber information including a name and physical address. (Return Attachment, Tr. 94-97). During this investigation, Investigator Atkins generated downloads for five files that were labeled consistent with child pornography and received information from Charter that the IP address was associated with the account of Kevin Willson at his Watkins Circle address in Taylors, SC. (Return Attachment, Tr. 97-106). After corroborating that Willson lived at the residence, Investigator Atkins obtained and served a search warrant on August 18, 2015. (Return Attachment, Tr. 106).

Forensic Investigators Hal Harris and Chris Bomar assisted with the execution of the search warrant. (Return Attachment, Tr. 149, 151 and 157-159). They informed Investigator Atkins that there were "hundreds, if not thousands" of files containing child pornography on Willson's electronic devices. (Return Attachment, Tr. 107 and 151). Investigator Grubbs was then assigned to conduct the full forensic exam on the items seized from Willson's residence which consisted of two MacBook laptops, an external hard drive, and a DVD. (Return Attachment, Tr. 158 and 184). Investigator Grubbs confirmed Investigator Bromar's findings of video and picture files containing children engaged in sexual activity, but also confirmed information found that tied the devices to Willson including the username "Kevin Willson," work-related emails sent to and from Willson,

and a Skype account. (Return Attachment, Tr. 191-198). Investigator Grubbs also reported that the most recent creation date (the day the file was downloaded) was just *one* day before the search warrant was served. (Return Attachment, Tr. 197).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In addition to carefully considering the record and the arguments presented by counsel, this Court has also had the opportunity to consider the testimony presented at the PCR evidentiary hearings and has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. §17-27-80 (2003).

Allegation of Failure to Adhere to Plea Negotiations

Applicant contends his plea was for eight years; that he was not informed of a suspended sentence or probation; and that the sentencing sheet reflected terms he did not agree to during his plea. Applicant's allegations lack merit. The record fully and fairly sets out the terms of the plea; and, for that matter, Applicant's response confirming that he understood the terms. (*See* Return Attachment, Tr. 246-247). Further, the record shows that Judge Miller accepted and adhered to the negotiated terms in sentencing. (Return Attachment, Tr. 247-249). *See generally State v. Thrift*, 312 S.C. 282, 292, 440 S.E.2d 341, 347 (1994) ("The United States Supreme Court in *Santobello v. New York*, 404 U.S. 257, 92 S.Ct. 495, 30 L.Ed.2d 427 (1971), held that where a guilty plea rests on a promise or agreement which can be said to be a part of the inducement or consideration, then the agreement must be fulfilled."). Moreover, the sentencing sheet reflects the terms as set out on the record during the plea. (Return Attachment, Sentencing Sheets for 2017-GS-23-0794 and 07095). There is no factual basis to support a failure to adhere to the negotiations.

Allegation of Ineffective Assistance of Counsel

Applicant contends that the evidence would not support the charges, specifically that

“[t]here was No evidence any file sharing software was ever present on my electronics as alleged” by the State. (Application at 2). As alleged, the claim is not cognizable.

Applicant began a trial to contest his guilt, but opted to plead guilty before the case went to the jury. “Few principles of South Carolina criminal law are as ingrained as the notion that a knowing, voluntary, and intelligent guilty plea ‘constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights.’” *State v. Sims*, 423 S.C. 397, 400, 814 S.E.2d 632, 633 (2018) (quoting *State v. Rice*, 401 S.C. 330, 331-32, 737 S.E.2d 485, 485 (2013)). “[A] guilty plea represents a break in the chain of events which has preceded it in the criminal process. When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea. He may only attack the voluntary and intelligent character of the plea” *Rice*, at 332, 737 S.E.2d at 486 (brackets in original) (quoting *Tollett v. Henderson*, 411 U.S. 258 (1973)). This claim is waived by entry of the plea. Further it is not cognizable in post-conviction relief. S.C. Code Ann. § 17-27-20 (A)(6) (“this section shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction”).

However, at the PCR hearing, Applicant offered testimony indicating that he was also alleging ineffective assistance related to investigation and presentation of a defense. To the extent he intended to raise the instant ground as a claim of ineffective assistance, that claim would be cognizable, but it is without merit. *See Hill v. Lockhart*, 474 U.S. 52, 56 (1985) (“Where, as here, a defendant is represented by counsel during the plea process and enters [the] plea upon the advice of counsel, the voluntariness of the plea depends on whether counsel’s advice ‘was within the range of competence demanded of attorneys in criminal cases.’”) (quoting *McMann v. Richardson*,

397 U.S. 759, 771 (1970)); *Al-Shabazz v. State*, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (2000) (“In PCR, the focus usually is upon alleged errors made by trial or plea counsel. Therefore, when asserting the erroneous admission of evidence, a violation of a constitutional right, or other errors in a proceeding, the applicant generally must frame the issue as one of ineffective assistance of counsel.”).

Ineffective Assistance Claims Following A Guilty Plea

This Court is guided by the familiar test: To show a violation of the Sixth Amendment, an applicant must show that counsel’s representation fell below an objective standard of reasonableness, and but for counsel’s error, there is a reasonable probability that the outcome of the trial would have been different. *Strickland v. Washington*, 466 U.S. 668, 694 (1984); *Simpson v. Moore*, 367 S.C. 587, 595–96, 627 S.E.2d 701, 706 (2006). “A reasonable probability is a probability sufficient to undermine confidence in the outcome” of the trial. *Strickland*, at 694. The evaluation of an ineffective assistance of counsel claim after a guilty plea varies slightly.

“A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel’s representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel’s errors, the defendant would not have pled guilty, but would have insisted on going to trial.” *Kolle v. State*, 386 S.C. 578, 588, 690 S.E.2d 73, 78 (2010) (quoting *Rolen v. State*, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009)); *Burket v. Angelone*, 208 F.3d 172, 189 (4th Cir. 2000) (same). This is the *Strickland* test as applied in the guilty plea context.

Ineffective Assistance Claim: Investigation and Necessity of an Expert

Applicant’s testimony at the hearing indicated his belief that counsel should have retained an expert for trial. Applicant offered a document purporting to be an affidavit from “Bonnie

Burkhardt,” but did not call the purported expert for qualification *voir dire*, and cross-examination. He testified that he thought the search and/or investigative techniques could be challenged. Applicant also testified that though he had turned down a pre-trial plea offer, he had asked his counsel to negotiate a reduced sentence for the plea during the trial; however, he testified that he took the plea under pressure from the trial judge. Applicant also testified that his bond had been revoked the first day of trial, and that he was already in custody at that time. He testified that he did not understand the terms of the agreement, did not understand the twenty-year sentence, did not understand the infringement on his rights that the “no-internet access” imposed, and thought he would receive an eight-year sentence. On cross-examination, Applicant admitted that he had been present throughout the trial and heard the testimony and also recalled that his attorney had made two motions to suppress evidence (related to his IP address and the copied images/files). Further, Applicant admitted that he had been an independent real estate agent for years and understood the contract concept. Applicant also admitted that he was then currently on probation and had a probation violation hearing on April 6, 2023. Part of the violation was having used a “Kev1970” address for internet access through an Apple app. He admitted being continued on “sex offender conditions” as part of his parole.

In contrast to Applicant’s testimony, counsel testified Applicant made the decision to plead himself. Counsel testified he had discussed the charges and elements with Applicant. Counsel testified at the PCR hearing that he had investigated possible defenses, though they were limited, and was prepared for trial. Counsel testified that the defense focused in large part on challenging the investigative techniques. Notably, the Court has the benefit of the entire trial transcript prior to the any jury instruction. The record supports that counsel thoroughly cross-examined the State’s expert witnesses, and specifically examined and challenged the State’s forensic team about the

investigation and file sharing. (See Return Attachment, Tr. 93, 98, 110-143, 174-180 and 198-226).

“Counsel has a duty to undertake reasonable investigations or to make a decision that renders a particular investigation unnecessary.” *Taylor v. State*, 404 S.C. 350, 363, 745 S.E.2d 97, 104 (2013) (citing *Strickland*, at 691). However, as our Supreme Court has resolved before, an applicant’s “belief that counsel was unprepared for trial ... is not evidence that counsel was, in fact, not prepared.” *Satterwhite v. State*, 325 S.C. 254, 259, 481 S.E.2d 709, 712 (1997). Additionally, “[i]n the context of a guilty plea,” it remains that “the deficiency prong inquiry turns on whether the plea was voluntarily, knowingly, and intelligently entered.” *Taylor v. State*, 404 S.C. 350, 360, 745 S.E.2d 97, 102 (2013). It is an applicant’s burden to prove, by a preponderance of the evidence, an entitlement to relief. Rule 71.1 (e), SCRPC. See also *Speaks v. State*, 377 S.C. 396, 399, 660 S.E.2d 512, 514 (2008) (“the burden of proof is on the applicant to prove the allegations in his application”). Applicant has failed in his burden of proof.

First, this Court finds that counsel was prepared to cross-examine the forensic experts regarding the evidence obtained from Applicant’s electronic devices. The record supports a robust cross-examination that challenged the investigation. (See Return Attachment, Tr. 93, 98, 110-143, 174-180 and 198-226).

Second, counsel is not required to hire an expert to avoid a finding of deficient performance. As the Supreme Court has noted, “*Strickland* does not enact Newton’s third law for the presentation of evidence, requiring for every prosecution expert an equal and opposite expert from the defense.” *Harrington v. Richter*, 562 U.S. 86, 111 (2011). Further, Applicant failed to present any basis for finding the cross-examination conducted was infirm in any way. Showing the possibility of a “fancier” case does not show deficient performance. See generally *Jones v.*

State, 332 S.C. 329, 339, 504 S.E.2d 822, 827 (1998) (where there was no detectable change in the evidence, the possibility of a “fancier” presentation does not allow for a “second chance” in new proceedings). *See also Strickland*, at 689 (“There are countless ways to provide effective assistance in any given case. Even the best criminal defense attorneys would not defend a particular client in the same way.”).

Third, Applicant has not shown an expert would have made any difference in his decision to plead guilty. To the extent he would contend that having an expert would have changed his decision not to accept the negotiated plea, he failed to produce any acceptable evidence to show such an expert was available, could be qualified, and would testify favorably. Our Supreme Court has “repeatedly held a PCR applicant *must produce the testimony* of a favorable witness *or otherwise offer the testimony in accordance with the rules of evidence* at the PCR hearing in order to establish prejudice from the witness’ failure to testify at trial.” *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (emphasis in original).

The Court rejected the document Applicant referenced as an “affidavit” from Bonnie Burkhardt. The document was not notarized and did not appear sufficient on its face to qualify as an actual affidavit. “An affidavit is a voluntary *ex parte* statement reduced to writing and sworn to or affirmed before some person legally authorized to administer an oath or affirmation.” *State v. McKnight*, 291 S.C. 110, 113, 352 S.E.2d 471, 472 (1987) (citing 3 Am.Jur.2d, *Affidavits*, Section 1). The document offered simply shows a signature on July 16, 2023. Even so, our Supreme Court has vested the decision whether to admit affidavits or other evidence to the sound discretion of the PCR judge. *Simpson v. Moore*, 367 S.C. 587, 607, 627 S.E.2d 701, 712 (2006) (citing *Beckett v. State*, 278 S.C. 223, 224, 294 S.E.2d 46, 47 (1982)). *See also* S.C. Code Ann. § S.C. Code Ann. § 17-27-80 (“The court *may* receive proof by affidavits, depositions, oral

testimony or other evidence and may order the applicant brought before it for hearing.”) (emphasis added). *Simpson* is instructive.

In *Simpson*, while apparently finding no abuse of discretion (or perhaps no reversible abuse of discretion) in allowing multiple affidavits in *Simpson*, our Supreme Court further resolved, in part, that there was “no prejudice to the State” given that “most of the relevant witnesses testified at the PCR hearing and were cross-examined by the State.” *Id.*, at 608, 627 S.E.2d at 712. That was not possible here. The State could not cross-examine a witness that Applicant failed to call. The statement also had additional infirmities.

The statement veered into a general disagreement with law enforcement (or the law itself) regarding computer searches, and contained legal opinions and conclusions that are wholly inappropriate. Rule 702, SCRE, limits an expert’s opinion to that which will assist the fact-finder. Nothing in the opinion expounded on fact but was apparently crafted to support a legal argument to undermine the criminal statute and investigatory techniques. This is improper. *See Green v. State*, 351 S.C. 184, 198, 569 S.E.2d 318, 325 (2002) (finding offered opinion not admissible under rule 702 when the testimony centered on legal argument).

Therefore, under the guidance of *Simpson*, this Court exercised its discretion to reject the submission. Thus, Applicant failed to show by acceptable offer of proof *any* evidence from a purported expert that would show a deficiency in counsel’s preparation, or, for that matter, the way in which he presented the defense. Moreover, Applicant failed to show prejudice.

The “prejudice prong ordinarily requires more than simply a defendant’s assertion that but for counsel’s deficient performance he would not have pled but would have gone to trial.” *Stalk v. State*, 383 S.C. 559, 563, 681 S.E.2d 592, 595 (2009). Notably, the Supreme Court has instructed: “Courts should not upset a plea solely because of *post hoc* assertions from a defendant

about how he would have pleaded but for his attorney's deficiencies. Judges should instead look to contemporaneous evidence to substantiate a defendant's expressed preferences." *Lee v. United States*, 582 U.S. 357, 369 (2017). Our Supreme Court has similarly found that "*Hill* makes clear that th[e] prejudice prong ordinarily requires more than simply a defendant's assertion that but for counsel's deficient performance he would not have pled but would have gone to trial." *Stalk*, at 563, 681 S.E.2d at 595; *see also Taylor v. State*, 404 S.C. 350, 362, 745 S.E.2d 97, 103 (2013) ("Despite Petitioner's assertions to the contrary, there is probative evidence in the Record before us that he would not have chosen to proceed to trial"); *Goins v. State*, 397 S.C. 568, 575, 726 S.E.2d 1, 4 (2012) ("Although Goins testified at the PCR hearing that he accepted the plea because of the erroneous advice on the suppression of the evidence, his testimony specifically was found not to be credible. We therefore find evidence to support the PCR court's finding that Goins failed to prove he was prejudiced by counsel's ineffective assistance because he has not demonstrated he would have gone to trial absent the erroneous advice."). This Court finds that Applicant's claim he would not have accepted the plea but for counsel's failure to retain an expert is not credible. Applicant's trial was nearly completed, and the State's evidence thoroughly challenged; Applicant, though, chose to waive his opportunity to have the jury consider the case as presented. There was nothing presented that demonstrates to this Court that critical evidence was omitted that affected Applicant's decision to plead guilty rather than to complete his trial. Applicant has failed in his burden of proof.

Further, despite Applicant's testimony challenging his plea, the record here supports that the plea was a voluntary choice among alternatives and that choice was guided by counsel.

"[T]he voluntariness of a guilty plea is not determined by an examination of a specific inquiry made by the sentencing judge alone, but is determined from both the record made at the

time of the entry of the guilty plea, and also from the record of the PCR hearing.” *Roddy v. State*, 339 S.C. 29, 33, 528 S.E.2d 418, 420 (2000). “All that is required to knowingly and voluntarily enter a plea of guilty is that a defendant have a full understanding of the consequences of his plea and of the charges against him.” *Gustine v. State*, 325 S.C. 123, 128, 480 S.E.2d 444, 446 (1997).

This Court finds Applicant’s testimony that he did not understand the terms of the agreement is not credible. The recommendation was plainly placed on the record, specifically discussed as to the way the sentence would have to be shaped to adhere to the agreement, and there was no objection or challenge to the terms of the agreement at the time of the plea. Further, Applicant has shown no deficiency in counsel’s investigation or advice, and certainly none that would support a finding that but for the advice, Applicant would not have pled guilty. This Court credits counsel’s testimony that he had explained the charges and counseled Applicant on the defense(s). *See Dalton v. State*, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (“A defendant’s knowing and voluntary waiver of the constitutional rights which accompany a guilty plea may be accomplished by colloquy between the Court and the defendant, between the Court and defendant’s counsel, or both.”) (quoting *Pittman v. State*, 337 S.C. 597, 600, 524 S.E.2d 623, 625 (1999)). Simply, Applicant “received the benefit of the agreement for which he bargained and cannot now complain.” *Rollison v. State*, 346 S.C. 506, 511–12, 552 S.E.2d 290, 293 (2001). The Court rejects Applicant’s testimony that he did not understand the benefits for which he bargained.

Finally, this Court finds Applicant fails to show he was “pushed” into pleading guilty by the trial judge. This Court finds Applicant’s testimony regarding general “pressure” to make his decision to plead guilty is credible, but not sufficient to show a cognizable error at the plea proceedings. Applicant was at a critical point in the proceedings – the jury was going to receive the judge’s instructions then go into deliberations on seven charges. He had heard the evidence

presented, and he could weigh his options accordingly. But that is not the type of pressure that supports an involuntary plea. *See, e.g., Brady v. United States*, 397 U.S. 742, 751 (1970) (“We decline to hold, however, that a guilty plea is compelled and invalid under the Fifth Amendment whenever motivated by the defendant’s desire to accept the certainty or probability of a lesser penalty rather than face a wider range of possibilities extending from acquittal to conviction and a higher penalty authorized by law for the crime charged.”). Even accepting a plea to avoid the death penalty is not alone sufficient to render the plea “defective” constitutionally. *Wicker v. State*, 310 S.C. 8, 12, 425 S.E.2d 25, 27 (1992) (citing *North Carolina v. Alford*, 400 U.S. 25 (1970)); *see also Satterwhite v. State*, 325 S.C. 254, 259, 481 S.E.2d 709, 712 (1997) (“fact that respondent may have entered a guilty plea in order to obtain his release from lock-up does not render the plea involuntary”).

In sum, Applicant has failed to show ineffective assistance, and his plea stands as a valid knowing and intelligent plea. He has failed in his burden of proof.

Objection to Conditions: Sex Offender Caseload and Prohibition on Internet Access

It has long been established that “a plea bargain rests on contractual principles, and that each party should receive the benefit of the bargain.” *State v. Thrift*, 312 S.C. 282, 292, 440 S.E.2d 341, 347 (1994) (citing with favor Fourth Circuit precedent). It is uncontested that the “no access to the internet” provision was included in the negotiations. Applicant testified, however, that he later found out the restriction infringed upon his rights under the First Amendment, and was, therefore, an unconstitutional provision that should not be enforced. Further, the testimony at the PCR hearing established there were two lines of authority that led to Applicant’s restriction from the internet – from the plea agreement, and as a condition for probation. Consequently, Applicant has not shown that but for the terms of the sentencing order, that he would not have the restriction.

The evidence before the Court indicates that probation has independent requirements that would be enforced separate and apart from the sentencing provision. Even so, there is authority that allows such restriction. Consequently, Applicant has not shown that the provision is unenforceable.

Applicant's reliance on *Packingham v. North Carolina*, 582 U.S. 98 (2017), is misplaced. In *Packingham*, the Supreme Court considered the constitutionality of a state statute that broadly prohibited access and applied after completion of a sex offender sentence.³ *Packingham* did not address restrictions as part of sentencing, particularly for sentencing resulting from crimes where the internet was used. See *United States v. Carson*, 924 F.3d 467, 473 (8th Cir. 2019) (collecting cases supporting that “*Packingham* invalidated only a *post*-custodial restriction and expressed concern that the statute applied even” post-sentencing, concluding “*Packingham* does not render a district court’s restriction on access to the internet during a term of supervised release plain error”); see also *United States v. Bobal*, 981 F.3d 971, 977 (11th Cir. 2020) (distinguishing *Packingham* as not only post-sentence but also because it “applied to all registered sex offenders, not only those who had used a computer or some other means of electronic communication to commit their offenses”). The Fourth Circuit has also considered a similar “ban on internet and computer use” while on *lifetime supervision* in *United States v. Arce*, 49 F.4th 382 (4th Cir. 2022). Though the Fourth Circuit considered restrictions imposed under the federal statute regarding supervised release,⁴ its logic is informative. Initially, the Court of Appeals noted that “a complete internet ban is almost always excessive for ‘non-contact child pornography activity, or similar

³ Of course, “[s]pecific criminal acts are not protected speech even if speech is the means for their commission.” *Packingham*, at 107.

⁴ That particular statute *requires* courts to consider “the least restrictive alternative” for the purpose. *United States v. Ellis*, 984 F.3d 1092, 1104 (4th Cir. 2021) (citing 18 U.S.C. § 3583 (d)(2)).

conduct' where there was no actual contact with the victim." *Id.*, at 396. The Court, however, still allowed "computer restrictions," though it cautioned a federal district court "cannot impose a total ban absent exceptional circumstances the district court must explain in detail." *Id.*, at 397. In other words, the Court of Appeals did not rule out, under the federal statute, imposition of a total ban for life under certain circumstances. *See also Bobal*, at 977 ("Nothing in *Packingham* undermines the settled principle that a district court may 'impose reasonable conditions that deprive the offender of some freedoms enjoyed by law-abiding citizens' during supervised release."). In sum, this Court rejects Applicant's argument that *Packingham* compels a finding that the restriction here is unconstitutional.

Applicant also relies upon the Third Circuit's treatment of the issue in *United States v. Holena*, 906 F.3d 288 (3d Cir. 2018). *Holena* does not fully address the First Amendment argument that Applicant makes; rather, like the Fourth Circuit case cited above, the Third Circuit considered the restrictions in light of the federal statute providing that the district court "may not deprive the defendant of more liberty 'than is reasonably necessary' to deter crime, protect the public, and rehabilitate the defendant." *Id.*, at 291. That statute, of course, is not applicable here. But the conclusion of the analysis in *Holena* is telling. Though the Third Circuit found a "lifetime ... blanket ban is presumptively excessive," it still cautioned: "None of this is to say that the District Court may not impose sweeping restrictions. In appropriate cases, it may. We hold only that, on this record, the scope of the restrictions is too broad." *Id.*, at 292-293.⁵ To the extent the

⁵ The district court in *Holena* also banned "other electronic communications ... devices" which apparently included use of a cellphone or other device even if not connected to the internet, which the Third Circuit considered "particularly draconian." *Id.*, at 292. The Third Circuit recognized, however, a modification to the restriction that allowed Holena to "use the internet with his probation officer's prior approval," which it reasoned "move[d] the internet ban closer to the 'comprehensive, reasonably tailored scheme' that [it] require[s]." *Id.*, at 293.

Third Circuit referenced the First Amendment argument, it did so only generally and found that “blanket internet restrictions will rarely be tailored enough to pass constitutional muster.” *Id.*, at 295. Essentially, the Third Circuit found that even after *Packingham*, “[t]he District Court can limit [a convicted defendant’s] First Amendment rights with appropriately tailored conditions of supervised release. Defendants on supervised release enjoy less freedom than those who have finished serving their sentences.” *Id.*, at 294-295. It instead focused on “shaping” the restrictions for the most part, not forgoing the restrictions. *Id.* Even so, it does not appear that many circuits agree with the Third Circuit’s more favorable analysis of *Packingham*’s reach in *Holena*:

Holena read the opinions in *Packingham* too broadly. Both the majority opinion and the concurring opinion in *Packingham* agreed that the North Carolina law infringed the First Amendment rights of registered sex offenders, who would be committing an entirely new felony if they accessed certain websites. But neither opinion addressed whether the First Amendment is violated by a special condition of supervised release for a sex offender who is serving a sentence for an offense involving electronic communications sent to a minor.

Bobal, 981 F.3d at 978.

But for this Court’s purpose, it is clear that Applicant’s First Amendment argument must be rejected. The parties contracted to the provision, and the provision was prompted specifically because Applicant’s crimes were committed by using the internet. Further, factually, the ban does not reach the lifetime ban that causes ultimate concern in the above cited cases. Moreover, the restriction here is not complete. Testimony at the PCR hearing established that Applicant was allowed assistance to access the internet, but he could not personally touch the keyboard. And critically, the restriction falls when the sentence is complete.

For all these reasons, nothing prevents the imposition and application of the restriction in this case. Applicant has failed in his burden of proof.

*Involuntary Plea: Failure to Advise of Nature and Elements
of the Charges and Right to Appeal*

“It is beyond dispute that a guilty plea must be both knowing and voluntary.” *Parke v. Raley*, 506 U.S. 20, 29 (1992). It is also clear the record should reflect that voluntary choice. *Boykin v. Alabama*, 395 U.S. 238 (1969) (“a guilty plea should only be accepted where the record evidences ‘an affirmative showing that it was intelligent and voluntary.’”). Notably, statements made during a guilty plea should be considered true: “... accuracy and truth of an accused’s statements at ... his guilty plea ... are ‘conclusively’ established by that proceeding unless and until he makes some reasonable allegation why this should not be so.” *Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975), *overruled on other grounds by United States v. Whitley*, 759 F.2d 327 (4th Cir. 1985); *Dalton v. State*, 376 S.C. 130, 137–38, 654 S.E.2d 870, 874 (Ct. App. 2007) (same).

This Court finds that Applicant’s claims that he was not advised of the “nature and crucial elements of the charge” elevates form over substance. His argument, apparently, is that the judge did not recite the elements, but that simply is not required. Again, a voluntariness determination is not conditioned only upon the plea colloquy between the plea court and the defendant. *Roddy, supra*. Additionally, Applicant, expressed no misunderstanding or confusion at the time of the plea. Rather, Judge Miller referenced the two charges and stated, “I’m not going to review them with you because we have just finished trying the case. It is my understanding that you, at this time, wish to enter a guilty plea to these two indictments,” and Applicant responded, “That is correct.” (Return Attachment, Tr. 244). Further, Judge Miller asked if Applicant had any questions, either for the court or counsel, and Applicant responded, “I do not.” (Return Attachment, Tr. 244). His response should be afforded the presumption of truthfulness which Applicant has failed to undermine. *Crawford, supra*. And, in further support of this finding,

counsel indicated at the PCR hearing that he had reviewed the offenses with Applicant. This Court finds counsel's testimony credible, especially in light of the discussions on the record about specific points on the elements as reflected in the directed verdict motion, and in the charge conference. (*See Return Attachment*, Tr. 229 and 235-241). It is not logical that Applicant – an educated and intelligent defendant – did not understand the basis for the charges, and, for that matter, the defense.

Lastly, as to being advised about direct appeal, the record shows that he voluntarily waived that right to obtain the favorable plea agreement. Consequently, he had to be aware of the right.⁶ Moreover, that particular term in the negotiation⁷ was reviewed by the State in placing the negotiations on the record, and Applicant personally consented to the waiver of the right to appeal upon questioning by Judge Miller. (*Return Attachment*, Tr. 246 and 249). Further, counsel testified at PCR hearing that he also reviewed with Applicant, at least to some extent, waiving the right to a direct appeal. This Court credits counsel's testimony on this issue, especially when the appeal provision was referenced on the record expressly; the record shows a break in the proceedings specifically for consultation; and counsel added nothing in a separate request or separate presentation during the plea proceeding because, as counsel stated on the record, the terms were negotiated in full. (*See Return Attachment*, Tr. 243 and 247). Applicant has failed to show a factual basis for his claim.

⁶ *But see Weathers v. State*, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995) (“absent extraordinary circumstances, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea”).

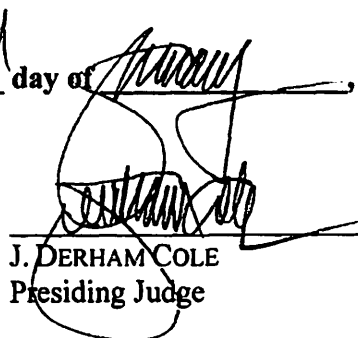
⁷ Waivers of the right to a direct appeal are not prohibited. “[N]umerous state jurisdictions have upheld waivers of appellate rights” including ours. *Spoone v. State*, 379 S.C. 138, 143, 665 S.E.2d 605, 607 (2008).

CONCLUSION

For the above stated reasons, this Court finds that Applicant failed to carry his burden of proof. Therefore, the application for post-conviction relief is DENIED and will be DISMISSED WITH PREJUDICE.

IT IS THEREFORE ORDERED that the application for post-conviction relief is DENIED and is DISMISS WITH PREJUDICE.

AND IT IS SO ORDERED this 22nd day of February, 2024.


J. DERHAM COLE
Presiding Judge

 South Carolina.

Copy mailed to Attorney general / <u>Susannah Ross</u> on <u>1</u> / <u>31</u> / <u>2024</u> .

STATE OF SOUTH CAROLINA)
)
)
 COUNTY OF GREENVILLE)

INDICTMENT

**SEXUAL EXPLOITATION OF A MINOR,
 THIRD DEGREE**

At a Court of General Sessions, convened on AUG 29 2017, 2017, the
 Grand Jurors of Greenville County present upon their oath:

That Kevin Mark Willson, on or about August 18, 2015, did willfully and knowingly commit the crime of Sexual Exploitation of a Minor, Third Degree. To wit: Kevin Mark Willson, while knowing the character or content of the material, did possess material that contains a visual representation of a minor engaging in sexual activity or a minor appearing in a state of sexually explicit nudity when a reasonable person would infer the purpose is sexual stimulation in the file titled "(Kinderkutje) (Pthc) Hc-c4G—Compile 4 Girls—All Small And Loving It—9.08 9Yo Mpg 7Yo Girl Try To Fuck Ptsc Hussyfan Kingpass Kleuterkutje.mpg" at his residence located in the County of Greenville, as defined by South Carolina Code Sections 16-15-375(5) and 16-15-375(6), in direct violation of Section 16-15-410(A) of the South Carolina Code of Laws (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

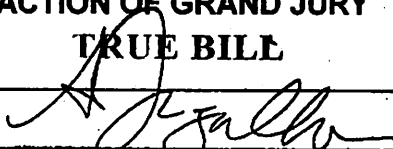
OFFICE OF THE ATTORNEY GENERAL



ALAN WILSON (SMS)
 ATTORNEY GENERAL

WITNESSESInvestigator Kevin Atkins – SC Attorney General's
Office**ARREST WARRANT NUMBER**

2015A2330207260

**ACTION OF GRAND JURY
TRUE BILL**

FOREMAN GRAND JURY

Foreperson of Grand Jury
Date:**VERDICT**Foreperson of Petit Jury
Date:

DOCKET NO. 2017-GS-23-✓

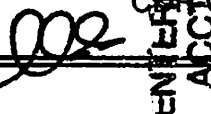
007094

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONSAugust 2017 TERM**THE STATE**

vs.

KEVIN MARK WILLSON
D.O.B. [REDACTED]/1970**Indictment for
SEXUAL EXPLOITATION OF A MINOR,
THIRD DEGREE**SC Code: 16-15-410(A)
CJA Code: 0381After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
)
)
COUNTY OF GREENVILLE)

INDICTMENT

**SEXUAL EXPLOITATION OF A MINOR,
THIRD DEGREE**

At a Court of General Sessions, convened on AUG 29 2017, 2017, the
Grand Jurors of Greenville County present upon their oath:

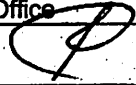
That Kevin Mark Willson, on or about August 18, 2015, did willfully and knowingly commit the crime of Sexual Exploitation of a Minor, Third Degree. To wit: Kevin Mark Willson, while knowing the character or content of the material, did possess material that contains a visual representation of a minor engaging in sexual activity or a minor appearing in a state of sexually explicit nudity when a reasonable person would infer the purpose is sexual stimulation in the file titled "(Pthc) Pedo 5Yo Vaginal Penetration - Rca 5Y.mpg" at his residence located in the County of Greenville, as defined by South Carolina Code Sections 16-15-375(5) and 16-15-375(6), in direct violation of Section 16-15-410(A) of the South Carolina Code of Laws (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

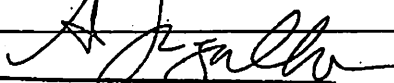
OFFICE OF THE ATTORNEY GENERAL



ALAN WILSON (SMS)
ATTORNEY GENERAL

WITNESSESInvestigator Kevin Atkins – SC Attorney General's
Office**ARREST WARRANT NUMBER**

2015A2330207262

**ACTION OF GRAND JURY
TRUE BILL**
FOREMAN GRAND JURY

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2017-GS-23- ✓

007095

The State of South Carolina
County of Greenville**COURT OF GENERAL SESSIONS**
August
2017 TERM**THE STATE****vs.****KEVIN MARK WILLSON**
D.O.B. [REDACTED]/1970**Indictment for**
SEXUAL EXPLOITATION OF A MINOR,
THIRD DEGREESC Code: 16-15-410(A)
CDR Code: 0381INTERVIEW
ACCT.After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

✓

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

Greenville

STATE

VS.

INDICTMENT/CASE#: 2017-GS-23 - 07094

Kevin Mark Willson

A/W#: 2015A2330207260

AKA:

Date of Offense: August 18, 2015

Race: W

Sex: M

Age: 48

S.C. Code §: 16-15-0410(A)

DOB: [REDACTED]/1970

SS#: [REDACTED]

CDR Code #: 0381

Address: [REDACTED] Watkins Circle

City, State, Zip: Taylors, SC 29687

DL# [REDACTED]

SID# [REDACTED]

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☐ CONVICTED OF or ☒ PLEADS

TO: Sexual Exploitation of a Minor, Third Degree

In violation of § 16-15-0410(A) of the S.C. Code of Laws, bearing CDR Code # 0381

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Assistant Attorney General

68556

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections ☐ County Detention Center, for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms:

Obtain GED ☐

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ Beginning

\$ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, \$47.12 requires \$500 be paid to Clerk during probation.

*Fine:

§14-1-206 (Assessments 107.5%)

§14-1-211 (A)(1)(Conv. Surcharge)

§14-1-211 (A)(2)(DUI Surcharge)

§56-5-2995 (DUI Assessment)

§56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§14-1-212 (Law Enforce. Funding)

§14-1-213 (Drug Court Surcharge)

§50-21-114 (BUI Breath Test Fee)

§56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

Clerk of Court/Deputy Clerk

Court Reporter:

Priscilla B. Wickenizer

Cheryl Smith

Presiding Judge

Judge Code: 2130

Sentence Date

12/4/18

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

Greenville

STATE

VS.

INDICTMENT/CASE#: 2017 -GS- 23 - 07095

Kevin Mark Willson

AW#: 2015A2330207262

AKA:

Date of Offense: August 18, 2015

Race: W Sex: M Age: 48

S.C. Code §: 16-15-0410(A)

DOB: [REDACTED] 970 SS#: [REDACTED]

CDR Code #: 0381

Address: [REDACTED] Watkins Circle

City, State, Zip: Taylors, SC 29687

DL# [REDACTED] * SID# [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was

☐ CONVICTED OF or ☒ PLEADS

TO: Sexual Exploitation of a Minor, Third Degree

In violation of § 16-15-0410(A) of the S.C. Code of Laws, bearing CDR Code # 0381

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

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68556

Assistant Attorney General

SC Bar #

Defendant

Attorney for Defendant

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☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms:

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. _____

Recipient:

May serve W/E beginning _____

Substance Abuse Counseling ☐

*Fine:

\$14-1-206 (Assessments 107.5%)	\$	
\$14-1-211 (A)(1)(Conv. Surcharge)	\$	100.00
\$14-1-211 (A)(2)(DUI Surcharge)	\$	
\$56-5-2995 (DUI Assessment)	\$	12
\$56-1-286 (DUI Breath Test)	\$	25
Proviso 47.9 (Public Def/Prob)	\$	500
\$14-1-212 (Law Enforce. Funding)	\$	25
\$14-1-213 (Drug Court Surcharge)	\$	150
\$50-21-114 (BUI Breath Test Fee)	\$	50
\$56-5-2942(J) (Vehicle Assessment)	\$	40/ea
Proviso 90.5 (SCJA Surcharge)	\$	5
3% to County (if paid in installments)	\$	
TOTAL	\$	375
	\$	120.15

Random Drug/Alcohol Testing ☒

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ Beginning

\$ Paid to Public Defender Fund

NO INTERNET ACCESS

SEX OFFENDER CASELOAD

NO UNSUPERVISED CONTACT

WITH MINORS

☐ Appointed PD or appointed other counsel, \$47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/Deputy Clerk

Court Reporter:

Paul B. Wickman

Cheryl Smith

Presiding Judge

Judge Code: 2130

Sentence Date 12/4/18

SCCA/217 (03/2011)

pid. begins upon comp of any early rel prog