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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Beaufort County

Honorable Carmen T. Mullen, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TIMOTHY LAMAR HERNDON,

APPELLANT

APPELLATE CASE NO. 2023-001834

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STATE OF SOUTH CAROLINA,)
)
 Plaintiff,)
)
 -vs-) TRANSCRIPT OF RECORD
)
 TIMOTHY HERNDON,)
)
 Defendant.)
)

November 14, 15, 2022
Beaufort, South Carolina

B E F O R E:

Honorable Carmen Mullen, Judge.

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1 THE COURT: And so who was the one that originally
2 called and said something was happening and --

3 MR. BROWN: Ms. Olivetti. Actually, that's not true.
4 Ms. Withrow made the call.

5 THE COURT: And who is that?

6 MR. BROWN: That's Ms. Olivetti's law partner.

7 THE COURT: Okay.

8 MR. BROWN: Daphne Withrow.

9 THE COURT: Okay. So she called and she said something
10 about---

11 MR. BROWN: Somebody --

12 THE COURT: ---the defendant in this or --

13 MR. BROWN: No. Well, she says a client --

14 MR. LEWIS: It gets odd, Your Honor. Both of the
15 attorneys in conjunction would appear to represent the
16 complainant himself and they were the ones to contact law
17 enforcement on his behalf and inform law enforcement that
18 they had come across a video brought to them by their client
19 and that -- it's their understanding what was on the video
20 and so at that point in time 911 got --

21 THE COURT: And their client was the cousin of--

22 MS. SWANSON: Cousin.

23 THE COURT: ---of this defendant?

24 MR. LEWIS: Correct, Your Honor.

25 MS. SWANSON: Correct.

1 THE COURT: And then I've seen in your post-trial -- or
2 your pretrial motions it looks like that subsequently he was
3 arrested as well?

4 MR. BROWN: He's being investigated.

5 MS. SWANSON: He's being investigated.

6 THE COURT: Being investigated. So he hasn't been
7 arrested, but he's being investigated.

8 MR. BROWN: And I haven't seen any of that and if
9 you'll recall--

10 THE COURT: Okay.

11 MR. BROWN: ---on October 14th we had a status
12 conference---

13 MS. SWANSON: Right.

14 MR. BROWN: ---and I filed a motion to compel them to
15 provide us exculpatory information or impeaching information
16 found on the devices taken from the cousin's house, not the
17 defendant.

18 THE COURT: And which one does he live at? Which one
19 does --

20 MR. BROWN: He lives at 26.

21 MS. SWANSON: Six.

22 THE COURT: Okay. And the defendant is -- pronounce
23 his last name for me.

24 MR. BROWN: Herndon is my client.

25 THE COURT: Herndon. Okay. I just wanted to make sure

1 I said --

2 MR. BROWN: And Heisler is the cousin.

3 MS. SWANSON: Heisler--

4 THE COURT: Heisler.

5 MS. SWANSON: ---is the other one.

6 THE COURT: Okay; okay.

7 MR. BROWN: But --

8 THE COURT: Okay.

9 MR. BROWN: And I asked for the information, it hadn't
10 been analyzed, if Your Honor will recall,---

11 MS. SWANSON: Yeah.

12 THE COURT: Okay.

13 MR. BROWN: ---on the electronics devices.

14 THE COURT: Okay; okay. Yeah.

15 MR. BROWN: But the police reports and that 911 call,
16 Judge, which came from one of these witnesses,---

17 THE COURT: Uh-huh.

18 MR. BROWN: ---that's on her list, I understand, I have
19 subpoenaed those and I have not gotten those. That's one of
20 the things we're trying to -- and we have spoken to Dan
21 Gourley this morning.

22 MS. SWANSON: I haven't gotten anything either.

23 MR. BROWN: 'Cause, actually, and Ms. Swanson had
24 indicated when she got it she would give me a copy of the
25 police report, but she hasn't gotten it either. I did

1 subpoena it. I think I'm entitled to something even though
2 it's an ongoing investigation, because they take all of his
3 electronic devices, I'm assuming on probable cause.

4 THE COURT: Who is Chris Neville? Am I --

5 MR. BROWN: Homeland Security.

6 MS. SWANSON: Oh. Yeah. He is--

7 THE COURT: Oh, okay.

8 MS. SWANSON: ---not going to be called as a witness,
9 but --

10 THE COURT: But he is Homeland Security?

11 MS. SWANSON: He is. Uh-huh.

12 THE COURT: I think I'm thinking of a Charleston
13 attorney's last name as Neville, but okay.

14 MR. BROWN: Yes, ma'am.

15 THE COURT: But you don't think he'll be -- okay. He
16 won't be there either. I'm just trying to look to see.

17 MS. SWANSON: Sure.

18 THE COURT: Okay. Jan Pelleteri? Pelletier?

19 MS. SWANSON: I don't know.

20 MR. LEWIS: Pelletier, Your Honor.

21 THE COURT: And who is that?

22 MR. LEWIS: This came up in their total statements,
23 Your Honor. This -- we're preserving the right just to call
24 these individuals based on what comes out in the --

25 MR. BROWN: And, honestly, we're really putting them in

1 MR. BROWN: And, Judge, I haven't finished reading it
2 myself.

3 THE COURT: And so what are you asking for?

4 MR. BROWN: Well, I'm just letting you know we did get
5 that. I will also let you know, and I don't know -- I don't
6 have but one copy, but I was also provided one, two, three,
7 four, five, six, seven, eight, nine, ten CDs and, obviously,
8 I haven't done anything with these CDs. They appear to all
9 be --

10 THE COURT: Okay. Just so you -- you need to give me
11 some context for this.

12 MR. BROWN: Yes, ma'am. Yes, ma'am.

13 THE COURT: This new report, is this for an additional
14 warrant that was executed?

15 MR. BROWN: Ma'am, it reads to me like this: one of
16 the young ladies who's the alleged victim in this case,---

17 THE COURT: Yes.

18 MR. BROWN: ---calls her mother, Ms. Parada,---

19 THE COURT: Okay.

20 MR. BROWN: ---who calls Zach Cushman, the investigator
21 in this case,---

22 THE COURT: Okay.

23 MR. BROWN: ---and this is me reading it and says,
24 Logan's been videotaping us in the shower.

25 THE COURT: Okay.

1 MR. BROWN: And they're still --

2 THE COURT: And that's the defendant's cousin who lives

3 ---

4 MR. BROWN: That's the complainant in our case.

5 THE COURT: ---next door?

6 MR. BROWN: Yes, ma'am.

7 THE COURT: Not the complainant. Okay.

8 MR. BROWN: Yes, ma'am. He was the complainant.

9 THE COURT: He's the complainant, but I understand, but
10 again, he's the cousin of the defendant? Okay.

11 MR. BROWN: That's correct.

12 THE COURT: Okay. Okay. So you just had this turned
13 over to you?

14 MR. BROWN: Yes, ma'am, and there's an argument the
15 State -- there's a motion the State's made in limine to
16 preclude me from offering third-party guilt evidence,
17 ostensibly, regarding Logan Heisler as, and I'm
18 paraphrasing, but as the perpetrator of the crimes for which
19 Mr. Herndon is charged.

20 THE COURT: Okay. So just so I'm clear, Ms. Swanson,
21 there are -- looking at the various charges, do you have --
22 I'm sorry. I am trying to get my summary; I apologize. Can
23 you find it (addressing law clerk)? Can you find out where
24 your summary and your charges you gave me?

25 And what I'm going to ask you to do, Ms. Swanson, is

1 tell me what evidence you are going to show for each of the
2 counts and I don't necessarily -- I need to know, number 1,
3 are we talking about video images or are we talking about
4 still images and is just of the children or is it in -- or
5 with adults and if any of those adults are depicted in those
6 pictures and, if so, if you know those adults and who they
7 are. Does that make sense? I know it's pretty convoluted,
8 but I want to know if the defendant was in any of these
9 photographs with the kids, 'cause that was my understanding--
10 --

11 MS. SWANSON: Yes.

12 THE COURT: ---that some of the charges are. Does that
13 make sense? Okay.

14 MS. SWANSON: Yes. So --

15 THE COURT: So give me a second. She's just trying to
16 find -- he's just trying to find --

17 MS. SWANSON: I mean, we can view the images.

18 THE COURT: I mean, do we need to do that? Do we need
19 to go through so we are all aware?

20 MS. SWANSON: I mean, I sat down with Mr. Brown and
21 reviewed the images.

22 MR. BROWN: It took about an hour and fifteen minutes,
23 hour and a half.

24 MS. SWANSON: Yeah. It would not take that long for
25 you to see the --

1 THE COURT: Right.

2 MR. BROWN: And I will say this: I agree that there's
3 -- my motions probably revolve around some of the same facts
4 and I think it almost behooves us to have, like, some
5 factual testimony, then argue the motions or argue the
6 motions and then put up factual testimony instead of putting
7 the witnesses back and forth on the stand.

8 THE COURT: That's fine.

9 MR. BROWN: Yes, ma'am, and so --

10 MS. SWANSON: What I will say, Judge, is that the
11 evidence that I'm presenting to the jury all comes from a
12 hard drive called My Passport, which was seized from the
13 defendant's bedroom during the search warrant from behind a
14 picture.

15 THE COURT: Okay.

16 MS. SWANSON: Those images and videos do not contain
17 any adult besides Timothy Herndon. They -- he does appear
18 in still shots and videos with the two girls. I did not see
19 Logan Heisler in any of those, so.

20 THE COURT: Okay. Can I ask you a question, though?
21 Are all of the shots, do all of them contain also the
22 defendant in this case?

23 MS. SWANSON: No.

24 THE COURT: Okay. Some of them are just --

25 MS. SWANSON: Are just his penis entering --

1 THE COURT: Okay. And child? You can see that. Okay;
2 okay.

3 MR. BROWN: And, Judge, not having access that the
4 State does, we believe there's also some images that have
5 the children -- display of the children without a male with
6 them at all and I don't know --

7 THE COURT: Okay.

8 MR. BROWN: -- what I'm getting at is, well, there's a
9 charge that my client made those.

10 THE COURT: Right.

11 MR. BROWN: Right. But he's not in them and that goes
12 -- well, there's a third-party guilt argument and I know I'm
13 not trying to get -- argue --

14 THE COURT: Can I just understand something really
15 quickly, Ms. Swanson? So the -- so the four counts of
16 criminal sexual conduct with a minor in the second degree,
17 there are four counts that you are presenting, do all of
18 those depict a picture of an adult in some form or fashion
19 with a child?

20 MS. SWANSON: Yes.

21 THE COURT: Okay. And then the criminal sexual conduct
22 with a minor in the first degree, again, one count, that
23 does depict an actual sex act with a child and an adult.
24 Correct?

25 MS. SWANSON: Yes.

1 too, just because we need to sequester him, but Mr. Heisler,
2 I want to make sure I know where you are, okay, because
3 you're under subpoena and I appreciate you being here.
4 Okay?

5 MR. HEISLER: Thank you.

6 THE COURT: So thank you. Okay. So don't go anywhere.

7 (ERIC CALLENDINE, being first duly sworn, was examined
8 and testified as follows):

9 DIRECT EXAMINATION

10 ERIC CALLENDINE BY MR. BROWN:

11 Q. Detective Callendine, I'm going to maybe be quick. Do
12 you have a copy of the March 28th, 2019 search warrant that
13 I believe I marked as Defendant's Exhibit, I'm going to say
14 2, 3?

15 THE COURT: Is that the one (indicating)?

16 MR. BROWN: It's got --

17 Q. It's the one that you're the affiant on.

18 THE COURT: Yes.

19 A. Yes.

20 Q. And I'm going to ask you one big, bold, hard question,
21 what was orally supplemented in this affidavit? I mean,
22 what's -- what did you tell the judge that's not here,
23 that's not typed in here on page -- well, it's not
24 paginated, but on exhibit --

25 A. You're asking what my conversation with the judge --

1 Judge Fuentes when I presented this search warrant?

2 Q. What facts did you present under oath that are not
3 contained in here? Yes, sir.

4 A. I don't remember that part. I would have gone over the
5 search warrant with him and the facts we had and the
6 narrative. I can't recall what exactly else I may have told
7 the judge at the time.

8 Q. Okay. Are you aware of whether you told him anything
9 else?

10 A. I don't -- I don't remember what the conversation was
11 other than the facts and what we had in the narrative of
12 this warrant and the basis of why we were there.

13 Q. Right. And I am going to ask the same question, like,
14 another way. Do you have any evidence that there was any
15 information presented that's not included in exhibit A?

16 A. I don't recall.

17 Q. Okay. So you don't have any other evidence to offer
18 the Court to show there was parol or oral supplementation of
19 this?

20 A. I don't.

21 Q. Okay. Would you have a report or some notes somewhere
22 that would help clarify that?

23 A. No. Just on my supplemental that I met with the judge,
24
25 presented the search warrant, sorted facts of the affidavit,

1 but as far as what we discussed, I -- you know, other than
2 what's in the narrative here and, you know, the house and
3 everything else, I couldn't tell -- I don't remember what we
4 had conversation wise.

5 Q. Okay. And you don't recall there being any other oral
6 supplementation?

7 A. With the judge?

8 Q. Yes.

9 A. I don't.

10 Q. Okay; all right. And besides you and Judge Fuentes,
11 who else was in the room?

12 A. I don't know if there was anybody else in the room. I
13 don't think so.

14 Q. You got it. No other law enforcement officers helping
15 you---

16 A. No.

17 Q. ---present this? Okay; right.

18 MR. BROWN: I don't have any other questions, then,
19 Officer Callendine and I can actually excuse Judge Fuentes.

20 THE COURT: Okay. Nothing further with him. What
21 about any other pretrial issues with Callendine?

22 MS. SWANSON: May I?

23 THE COURT: Of course you can.

24 MR. BROWN: Oh. I'm sorry. I will back up on my --

25 THE COURT: Of course you can.

1 MR. BROWN: -- on my releasing them until I hear her
2 questions.

3 MS. SWANSON: Okay.

4 CROSS-EXAMINATION

5 ERIC CALLENDINE BY MS. SWANSON:

6 Q. Investigator Callendine, you wrote a supplement
7 regarding this search warrant. Correct?

8 A. Yes.

9 Q. Okay. And in it you noted that you met with Sergeant
10 -- Master Sergeant Crumpton and Sergeant Reynells to
11 complete a search warrant for the residence and then met
12 with Judge Fuentes and presented that search warrant. Is
13 that right?

14 A. Correct.

15 Q. Okay. Thank you.

16 MR. BROWN: No follow-up, Judge.

17 THE COURT: All right. Thank you. You can stand down.

18 MR. BROWN: Thank you.

19 THE WITNESS: Judge, do I give you this back?

20 THE COURT: Actually, yeah, please. I appreciate it.
21 Thank you.

22 THE WITNESS: Thank you, Judge.

23 THE COURT: Okay. Okay.

24 MR. BROWN: Yes, ma'am, and -- I apologize. And,
25 Judge, we would continue with our second challenge on this

1 warrant. This is what I'd actually like to present and
2 that's a Franks challenge, and I don't know if you want to
3 continue this way while we're dealing with the one warrant.
4 That's the way I did my outline,---

5 THE COURT: Okay.

6 MR. BROWN: ---Judge, and what we'd like to do now is
7 to present -- I'd like to call, actually, Officer --
8 Investigator Cushman, if I could.

9 MS. SWANSON: Now, Mr. Brown, this is dealing with a
10 different search warrant. Correct?

11 MR. BROWN: Same search warrant.

12 MS. SWANSON: Okay.

13 MR. BROWN: Yes, ma'am. That's why I --

14 (ZACH CUSHMAN, being first duly sworn, was examined and
15 testified as follows):

16 THE COURT: And we're still talking about the March
17 28th, 2019 search warrant. Is that correct?

18 MR. BROWN: That's correct, Your Honor.

19 THE COURT: Do you have a copy of that, sir?

20 THE WITNESS: I do. Yes, ma'am. Let me --

21 THE COURT: I can give you mine, too, if you want it,
22 if that's easier. Okay? Sure.

23 MR. BROWN: May it please the Court.

24 THE COURT: Please.

25 MR. BROWN: Yes, ma'am.

DIRECT EXAMINATION

ZACH CUSHMAN BY MR. BROWN:

Q. And so, Investigator Cushman, --

MR. BROWN: I apologize. I took my glasses off to read and I can't see, Your Honor, without them back on.

Q. Let me ask you this: you responded on March 28, 2019 to a law office on Hilton Head Island?

A. Yes, sir. Correct.

Q. Okay; okay. And did y'all record that interview?

A. No, sir.

Q. You did not record the meeting with Ms. Olivetti and Ms. Withrow?

A. I apologize. We did record it. I turned it into audio CDs---

Q. Right.

A. ---with the audio recording of the interview.

Q. Okay. Do you recall that interview?

A. I do.

Q. Okay. And let me ask you to take a look at -- let me ask you to take a look at what I'm going to mark as Defendant's 5 and --

(Whereupon, the court reporter marked the referenced document as Defendant's Exhibit Number 5 for identification.)

Q. And I'm going to ask you to take a look at Defendant's

1 5 and -- and, kind of as we go through, do you recall
2 looking at two thumb drives?

3 A. Yes.

4 Q. Okay. And what's your recollection about where those
5 thumb drives came from?

6 A. From Ms. Olivetti. She turned it over to us while we
7 were at her law office.

8 Q. Okay. And I'm going to ask that you take a look at the
9 search warrant that's marked a Defendant's--

10 THE COURT: Three. He's got it in his hand.

11 Q. ---3. And do you see in there under exhibit A,
12 anywhere that it indicates that y'all were provided the
13 thumb drives by the two lawyers?

14 A. On the second page of exhibit A it states that Sergeant
15 Reynells was given a copy of the contents and in the
16 paragraph before that it explains that the contents came
17 from Mr. Heisler.

18 Q. Right. And you indicated that y'all had gotten -- that
19 y'all were given the contents by Ms. Olivetti or Ms. Withrow
20 or both?

21 A. By Ms. Olivetti.

22 Q. Okay. And correct me if I'm wrong, and the transcript
23 might help refresh your recollection, doesn't it go almost
24 the entirety of that interview without Mr. Heisler there?

25 A. Very long transcript. I believe he wasn't there at the

1 beginning and did arrive later on. I don't remember the
2 exact time.

3 Q. And y'all interviewed him later on. Is that right?

4 A. That's correct.

5 Q. Okay. But is there a chance that y'all went through
6 this entire 55-page transcription inter- -- interview as
7 transcribed on 55 pages without, actually, Mr. Heisler ever
8 being there at all?

9 A. I'd have to review the whole transcription or listen to
10 the audio recording in order to be able to tell you that for
11 sure.

12 Q. Okay. Do you have any recollection that he was there
13 during this part of it?

14 A. Again, I don't remember without the audio -- I may if I
15 review my report.

16 (Whereupon, the witness reviewed a document in his
17 possession.)

18 A. So I indicated in my report that, I don't know if the
19 transcription shows this, but the audio -- first audio
20 recording on CD is the review of Olivetti and the second
21 recording is the interview with Heisler. Is there a break
22 in the transcription where the audio recording?

23 Q. Let me -- let me do this and hand you what I'm marking
24 as Defendant's 6.

25 (Whereupon, the court reporter marked the referenced

1 document as Defendant's Exhibit Number 6 for
2 identification.)

3 MR. BROWN: And I'm offering that as a transcript of
4 the interview of Logan Heisler from that day.

5 Q. And if you could just read the first page or two to see
6 if that refreshes your recollection about the two different
7 parts or the two different interviews that you conducted.

8 (Whereupon, the witness reviewed the referenced
9 document.)

10 A. Yes. It -- the first transcription appears to be from
11 the interview with Ms. Olivetti and the second with Mr.
12 Heisler.

13 Q. Okay.

14 A. That's transcription number 6.

15 Q. Okay. And did you go through the photos on the thumb
16 drive?

17 A. We went through it on a computer at the office. Yes.

18 Q. Okay. And I am going to ask this question. Is it
19 generally protocol to access storage devices even though --
20 I mean, would that have some potential effect on the
21 metadata?

22 A. I couldn't answer that technically speaking right now
23 from my experience on that -- at that time, I don't know.

24 Q. Okay. You think it's better practice to forensically
25 review those items?

1 A. I think it would be. Yes.

2 Q. Okay. But nonetheless, they were just reviewed on the
3 law firm's computer?

4 A. It's my recollection. Yes.

5 Q. Okay. And I'm not -- and I'm guessing this not to kind
6 of impune anyone, but these were literally thumb drives that
7 were purported to have child pornography stuck into a
8 computer at a lawyer's office?

9 A. Yes.

10 Q. All right. And did y'all take those computers into
11 evidence?

12 A. No, we did not.

13 Q. All right. Did anybody sterilize them or -- I don't
14 know the right word.

15 A. At the end of the meeting, we ensured everything was
16 deleted off the computers the best we could, but I do not --
17 we did not take them into evidence?

18 Q. So you're not aware of any type of reformatting or --

19 A. Not that I'm aware of.

20 Q. Okay; all right. And did anybody tell you which was
21 the original source device that generated those photos?
22 That generated the copy on the thumb drives.

23 A. The thumb drives we were provided, I -- to clarify, the
24 thumb drive --

25 Q. The thumb drive, that you -- that's right, that you

1 were provided at the lawyer's office.

2 A. (Reviewing document) Ms. Olivetti advised that Mr.
3 Heisler turned over the flash drives to her and advised us
4 of what it -- what they contained.

5 Q. Okay. And did -- did she tell you they had already
6 viewed them before?

7 A. They -- yes. They mentioned that they had briefly
8 looked at them, her and her partner.

9 Q. And did they say when they looked at them Mr. Heisler
10 wasn't there? Do you recall that?

11 A. (Reviewing document) She advised that Mr. Heisler had
12 left to go get the children and she and her partner briefly
13 looked over some of the images.

14 Q. Okay. And then y'all looked over some of the images?

15 A. Correct.

16 Q. And did those images purport to have child pornography
17 in them?

18 A. Yes.

19 Q. All right. Did you ever review those images with the
20 child pornography with Logan Heisler?

21 A. Not in their entirety, but some of the pictures were
22 zoomed in. Sergeant Reynells zoomed in to show some of the
23 furniture in the background to identify points of furniture
24 in the residence.

25 Q. And let me make sure I understand. The pornographic

1 part was never shown to Mr. Heisler at all before you got
2 the search warrants, were they?

3 A. To my recollection, no. Sergeant Reynells was showing
4 him the photos with the laptop. He would zoom in the frame
5 to show a piece of furniture he was highlighting.

6 Q. Okay. And did anybody else view the pornographic part
7 of the thumb drives before you got the search warrant?

8 A. Yes. Master Sergeant Crumpton produced sanitized
9 images in order for us to show them to Hannah Parada in
10 order to identify the children and the furniture in the
11 residence.

12 Q. And did --

13 MR. BROWN: Thank you, Your Honor.

14 THE COURT: Don't --

15 Q. And those did not have pornographic portions on them
16 either, did they?

17 A. No. They were sanitized so that they would not have
18 the pornographic images, they would have the background,
19 furniture and the children's faces so we could identify
20 them.

21 Q. And so the only people that you discussed the
22 pornographic parts with were actually the two lawyers.
23 Right?

24 A. I believe -- let me refer to my report.

25 (Whereupon, the witness reviewed the referenced

1 document.)

2 A. Mr. Heisler did not want to view the children's nudity
3 is part of the reason why we zoomed in the photos, because
4 he'd already seen them when he recovered the pictures
5 earlier. That was the specific reason why he didn't
6 initially want to look at the photos and then Sergeant
7 Reynells zoomed in to show him just the furniture so he
8 could identify the furniture. So he told us he didn't want
9 to look at it and then Sergeant Reynells basically said if
10 we just show you, not the children's nudity, but this part,
11 would you be okay with that and he agreed.

12 Q. Right. And he didn't give you a description of the sex
13 acts?

14 A. Not that I recall.

15 Q. Okay. And that's a discussion you had with the two
16 attorneys?

17 A. I believe so.

18 Q. Okay. And, obviously, Ms. Parada never viewed the
19 images, either before or after you contacted her on March
20 28th?

21 A. No. We showed her sanitized images.

22 Q. And when you say sanitized, she didn't see any sex acts
23 either?

24 A. Correct.

25 Q. All right. So you're showing Mr. Heisler and Ms.

1 Parada faces?

2 A. And furniture to---

3 Q. And furniture.

4 A. ---confirm what we're looking at and where it occurred
5 at---

6 Q. Okay.

7 A. ---and who was involved.

8 Q. All right. And who was it that said that those -- that
9 those items came from Mr. Herndon's house?

10 A. Mr. Heisler stated the background in several of the
11 pictures was the second floor of 24 Blue Bell Lane, which is
12 Mr. Herndon's residence and he described it as the room over
13 the garage with a satellite, the treadmill, a tan couch
14 and a coffee table. He advised that Mr. Herndon lived at
15 the residence. He also described the furniture from his
16 residence, which is 26 Blue Bell Lane as being the older
17 style bamboo type furniture that was in some of the other
18 images.

19 Q. Okay. So he said, look, I can show you that this
20 furniture matches furniture out of Mr. Herndon's house or
21 this furniture matches furniture out of my house?

22 A. Correct.

23 Q. Okay. And y'all did another interview with him, didn't
24 you, like, three days after the search?

25 A. Yes, we did.

1 Q. Okay; all right. And do you recall that interview
2 going in depth about his recovery of the images?

3 A. I believe so. Yes.

4 Q. Okay. But y'all didn't talk about his recovery of the
5 images from Mr. Herndon's house on March 28th, did you?

6 A. He mentioned it. I can go over that if you'd like.

7 Q. Sure.

8 A. He advised he had obtained the images from a phone SIM
9 card upstairs in Mr. Herndon's house out of an older Sony
10 Ericsson silver phone and he stated there was a second
11 memory card from a black digital camera that was in the
12 phone in a box and the camera in a table --

13 Q. Let me ask you, you're looking at which page, so I can
14 sync up with you.

15 A. I was reading that from my supplemental report that was
16 submitted on---

17 MS. SWANSON: Page ten of --

18 A. ---April 4th, 2019. It's the second page of that
19 report. I don't know if the printing of it is --

20 MS. SWANSON: Last paragraph.

21 Q. And did he tell you about the recovery of the images
22 onto the thumb drive and placed them on the thumb drive?

23 A. (Reviewing document) In that interview, I don't think
24 -- I don't recall him indicating -- mentioning that.

25 Q. Okay. So help me with this: how did he say that he

1 took SD cards, but gave you thumb drives?

2 A. I believe that's on that's clarified in that later
3 interview.

4 Q. The interview three days after the search warrant?

5 A. I believe so. I'd have to go to that one.

6 Q. Okay. We'll do that in a second, but I don't want to
7 bounce around too much. But the lawyers gave you a lot of
8 information about what they were told from Logan, didn't
9 they?

10 A. Yes, sir.

11 Q. All right. And isn't it, in fact, true that the
12 lawyers said that Logan said he had to go in and use some
13 software or that they were looking to recover a data folder?
14 Does that sound familiar? And I'm paraphrasing. I'm not
15 trying to get you to --

16 A. He disclosed to them that he had recovered a memory
17 card from the camera and saved the file from the memory card
18 onto two flash drives and went back and put the memory card
19 back where he'd found it.

20 Q. Okay. And that information was not told you by Logan
21 Heisler, was it?

22 A. Not that I recall at that time during that interview.

23 Q. Okay. Make sure, I want to recap 'cause I know -- we
24 kind of covered a lot of facts. But show up in a law
25 office. That's correct?

- 1 A. That's correct.
- 2 Q. And then you speak to two lawyers?
- 3 A. That's correct.
- 4 Q. And Mr. Heisler's not there?
- 5 A. That's correct.
- 6 Q. And you're given two thumb drives?
- 7 A. That's correct.
- 8 Q. And y'all are told that these thumb drives came from
- 9 Mr. Heisler?
- 10 A. That's correct.
- 11 Q. And that the thumb drives were copies of items copied
- 12 from an SD card?
- 13 A. That's correct.
- 14 Q. And that the SD card was at Mr. Herndon's house?
- 15 A. That's correct.
- 16 Q. Okay. And Logan Heisler never told y'all -- he wasn't
- 17 the one who told y'all that initial bit?
- 18 A. Correct.
- 19 Q. And later on he tells you he goes -- Mr. Heisler tells
- 20 you, still on March 28, that he goes in the house and
- 21 retrieves SD cards?
- 22 A. Correct.
- 23 Q. And he doesn't tell you about how thumb drives came to
- 24 be at the lawyers' office, did he?
- 25 A. Not -- not to my recollection.

1 Q. Okay. So, in fact, the information about the files
2 that y'all knew being on the thumb drive was not information
3 presented by Logan Heisler, but information presented by two
4 lawyers. Right?

5 A. That would be correct.

6 Q. Okay; all right. And then me ask you a little bit
7 further about some of that stuff and I believe it's you and
8 you're welcome to look on page 34 of what I'm going to call
9 the Olivetti transcript, which is Defendant's 5.

10 (Whereupon, the witness reviewed the referenced
11 document.)

12 Q. And, specifically, -- I'll wait 'til you look at it. I
13 apologize.

14 A. Okay.

15 Q. Okay. And when y'all had this discussion, and the
16 transcript speaks for itself, but the lawyers tell you they
17 went into a -- and it's in quotes -- "recover data folder"?

18 A. Uh-huh. Yes, sir.

19 Q. Okay. And then the question, is that you doing the
20 questioning or is that Investigator Reynells?

21 A. I don't know.

22 Q. Okay. And is there any other investigator there?

23 A. No.

24 Q. All right. So one of the two of you say, Created
25 Thursday, January 10th. Right?

1 A. I say that in the transcript. Yes, sir.

2 Q. Okay. And just to make sure I get this right, and I
3 don't know if you know about any terms of art in the
4 forensic world, but created is the date that the image was
5 created on the storage device. Is that right?

6 A. I couldn't tell you, sir.

7 Q. Okay. As opposed to the modified date, which is the
8 date the image was originally created on the source device?

9 A. Again, I'm not sure, sir.

10 Q. Okay; all right. Regardless, you've got a thumb drive
11 and you've been told that Logan Heisler, that he made that
12 thumb drive? The lawyers told you he made that thumb drive?

13 A. Yes, sir, that he provided it to them. Yes, sir.

14 Q. Okay. And they told you that he called the week of
15 March 28th and said, Hey, I've got this stuff. I need to
16 come to your office and show it to you?

17 A. Yes, sir.

18 Q. All right. And it's presented in the search warrant
19 that he got upset and drove to his lawyers office?

20 A. That is (reviewing document) -- yes, sir. That's what
21 the search warrant says.

22 Q. I'm sorry?

23 A. Yes, sir. That appears to be what the search warrant
24 says.

25 Q. You got it. And it's approximately ten weeks between

1 January 10th, 2019 and March 28th, 2019, isn't it?

2 A. Yes, sir. I believe so.

3 Q. All right. And I'm going to be a little facetious, but
4 it doesn't take ten weeks to drive to a lawyer's office from
5 Hilton Head on Hilton Head, does it?

6 A. I would not think so. No, sir.

7 Q. Okay. And either you or Investigator Reynells noted
8 that date, didn't you? And, again, if you'll look at line
9 twelve on page 34 of, again, Defendant's 5, the Olivetti
10 transcript.

11 A. In the response to what the lawyer said, yes.

12 Q. Right. Right. They don't say January 10th; you say
13 Jan- -- you or Seth Reynells say January 10th?

14 A. Yes, sir.

15 Q. Okay. And I do want to - before I skip this, did
16 anybody else give information to Officer Callendine besides
17 you, Seth Reynells and Investigator Crumpton?

18 A. Not to my knowledge.

19 Q. Okay. And let me ask you, isn't it true y'all talked
20 about Photoshop'ing?

21 A. Yes.

22 Q. How about page 38 of that same transcript, lines eleven
23 to twelve.

24 (Whereupon, the witness reviewed the referenced
25 document.)

1 A. It appears I used that phrase.

2 Q. Okay. And they're saying it just might, and you finish
3 the sentence by saying Photoshop'd?

4 A. Yes, sir, whatever image they were -- we were looking
5 at at that moment.

6 Q. Could there have been a image, you recall, of three
7 girls, and one girl, like, three, two girls and another
8 child?

9 A. Yes.

10 Q. And is that the image you believe y'all were talking
11 about?

12 A. Most likely.

13 Q. Okay; okay. Okay. And you're saying one of these
14 images looks Photoshop'd?

15 A. Yes, sir.

16 Q. Okay. On the thumb drive that Logan Heisler told
17 lawyers he made? He made the thumb drives. I didn't say he
18 made the images.

19 A. Yes, sir.

20 Q. Okay. So he told he made the thumb drives and you say
21 at one point, Gosh, that says January 10th and then in
22 another part you say, One of these photos looks Photoshop'd.
23 Does that sound right?

24 A. Yes, sir.

25 Q. All right. And to kind of move it along here, and does

1 one of the lawyers agree with you on that about ten lines
2 down? Right? Let's say approximately twenty-one through
3 twenty-two?

4 A. (Reviewing document) Yes, sir.

5 Q. Okay. And then if I can ask you to look on page 45
6 where you discuss your opinion about the recovered folders
7 or Mr. Heisler's recovery of the folders and, again, page 45
8 of Defendant's 5, line fourteen to seventeen.

9 A. (Reviewing document) It looks like I was talking about
10 the January date again and I'm not sure when the file was
11 taken versus when it was transferred versus when it was
12 created.

13 Q. Okay. And, specifically, -- and you're the one
14 speaking in this one, there's no question?

15 A. It says, Beyond transcript.

16 Q. Okay. Fair enough; fair enough. All right. But the
17 questioner, 'cause this is a statement by Q., said, But
18 based on the -- it looks like he recovered all these files
19 in January of this year and, see, this one is tough, because
20 it says, created, modified and accessed. So that does not
21 necessarily mean it happened in March.

22 A. I don't know without reviewing -- I don't know without
23 reviewing the specific file.

24 Q. But that's what the transcript says you said?

25 A. Yes. That's what, yes, the transcript says I said.

1 Q. Okay. Fair enough. All right. And when you say,
2 "He", you're talking about he being Mr. Heisler, not Mr.
3 Herndon?

4 A. It would appear that, yes, that I was referring to
5 Heisler.

6 Q. And you confirmed that Mr. Heisler meant the whole time
7 that he got these things following a spaghetti conversation
8 about getting some candy the week that he went to his
9 lawyer's office?

10 A. That's what I was told.

11 Q. Not January 10th?

12 A. Not as far as I was advised.

13 Q. Okay. And what did you recall about the recovery
14 process?

15 A. I just remember the flash drives being inserted into
16 the USB drive on the computer and us looking at files. I
17 don't -- we did not recover anything as far as I remember or
18 manipulate it.

19 Q. What do you recall about Mr. Heisler recovering the
20 data that's listed in the folder that says, recover data,
21 January 10th?

22 A. Oh. I'm sorry. (Reviewing document) That it was the
23 digital record, the one -- I'm sorry. What's your --

24 Q. Yeah. My question was just what did Mr. Heisler tell
25 you about how he got those images? How was he able to get

1 the images off the SD card? Do you recall him mentioning a
2 recovery software?

3 A. In this initial interview or later on in subsequent
4 interviews?

5 Q. He never tells you anything in the initial interview,
6 does he?

7 A. He -- we spoke about him recovering the (reviewing
8 document) -- I don't have anything about the recovery in the
9 initial interview.

10 Q. Okay. Again, he just says, I took some SD cards?

11 A. Yes, sir.

12 Q. Isn't that right?

13 A. Yes, sir.

14 Q. And he's not referring to those two thumb drives?

15 A. Correct.

16 Q. And then the last thing I'm going to ask you and I
17 believe this is also in your supplement and I think it's on
18 page 11 with the interview with Hannah Parada. Okay?

19 A. Uh-huh.

20 Q. And y'all interviewed Hannah Parada on March 28th also,
21 before the search warrant?

22 A. Correct.

23 Q. All right. And does she say some of the images looked
24 Photoshop'd?

25 A. Yes. She identified a picture with a white female as

1 having MINOR 1's face, but not her hair or shoulders and she
2 thought this picture might have been altered.

3 Q. Okay. And did it have a paragraph earlier, about
4 midway in the paragraph above that, says, quote,
5 "Photoshop'd"?

6 A. She identified MINOR 2 in an image that appeared to be
7 Photoshop'd with a third unknown child in it.

8 Q. All right. And those two different images?

9 A. Correct.

10 Q. Now, I know Ms. Crumpton had, and I'm going to use your
11 phrase, sanitized some images to show Ms. Parada.

12 A. Correct.

13 Q. All right. But the Photoshop'ing and altering she's
14 talking about, that's not the Photoshop'ing or altering that
15 the detective did, is it?

16 A. No.

17 Q. All right. And I'm going to ask you just to take a
18 look at this and I don't have it to enter right now, it's on
19 a thumb drive, but --

20 MR. BROWN: And, Judge, I understand the electronics
21 are down some in here and I want to use the ELMO at some
22 point, but I do want to show this on a larger screen and I
23 don't know - I mean, I've got an HDMI plug, but --

24 Q. All right. And does that look like the image with the
25 three girls?

1 A. I'm not sure if we ever determined if the third
2 individual on the left was a female or a male.

3 Q. You got it.

4 MR. BROWN: And I am going to go ahead and say, Judge,
5 I received this -- I hope it's not pornographic, illegal
6 pornographic material. It did come through the evidence
7 link and I wish I could get it to rotate,---

8 Q. But I'm just trying to find out, do you believe --
9 well, I was hoping I can make it larger. Does that look
10 like it's Photoshop'd, that the child on the left of the
11 photo has been Photoshop'd in?

12 A. Based on what Hannah told me---

13 Q. Okay.

14 A. ---and based on looking it, it appeared to me that it
15 had been -- that the third person on the left had been
16 added, but I don't know for sure.

17 Q. All right. And is that the same photo and the lawyers
18 talked about the being Photoshop'd?

19 A. It's the one I think we were talking about, but I'm not
20 a hundred percent sure.

21 Q. You got it. Okay. And if you look below the child's
22 left ear, do you see what looks like skin -- skin tone,
23 flesh?

24 A. I don't --

25 Q. And I can -- I can't -- it's not on ELMO so I can't

1 really point at it.

2 A. I mean, below the neck line?

3 Q. Somewhere around there --

4 A. Below the neck line where the shoulders start?

5 Q. Below the ear, above the shoulder, do you see some
6 flesh color behind it?

7 A. Yes.

8 Q. Okay. And there's no person that appears to be behind
9 that part of that third child?

10 A. It's really hard to tell from this image.

11 Q. But that's one of the things -- now, this isn't a photo
12 where they talk about it being the face, but not the hair?

13 A. No.

14 Q. That's even another one?

15 A. That's another one.

16 Q. All right.

17 MR. BROWN: And I beg the Court's indulgence. And,
18 Judge, I am, at this moment, going to ask for my expert to
19 be able to access that -- the write block copy to see if
20 that recovered data date that we've got on our copy is the
21 date he's referred to in that transcript off of the black
22 thumb drive. I had referenced it as a, quote, "recovered
23 data," and then with the date January 10th to see if he
24 recalls that's what it looked like when he was scrolling
25 through the contents of the thumb drive. And I can ask the

1 Homeland Security the same question.

2 MS. SWANSON: I guess so, I just didn't -- I mean, are
3 you going to be putting him up, because --

4 MR. BROWN: No. I was going to ask him if that's what
5 the contents of the thumb drive looked like.

6 MS. SWANSON: However Judge Mullen would like to --

7 MR. BROWN: Well, however she wants to do it. We don't
8 have the actual black thumb drive. It's over in that box,
9 Judge.

10 THE COURT: Okay.

11 MR. BROWN: Nonetheless, I need to show you -- well, I
12 wanted to examine a witness about what it -- and, Judge,
13 most of us who've used computers for some time know how to
14 right click and go to properties and you can see that and
15 that's what it appears from the transcript they did was--

16 THE COURT: Okay.

17 MR. BROWN: ---go to this folder, and I just wanted to
18 ask him if that's what it looked like.

19 THE COURT: You're going to ask Cushman?

20 MR. BROWN: Yes, ma'am, 'cause he---

21 THE COURT: Yes. Okay.

22 MR. BROWN: ---went through it with the lawyers.

23 THE COURT: Okay. And if he can answer it, then he can
24 answer.

25 MR. BROWN: That's right. Yes, ma'am. Yes, ma'am.

1 THE COURT: Okay; okay.

2 MR. BROWN: And that would probably be all I'm going to
3 have for Investigator Cushman.

4 THE COURT: Okay.

5 MR. BROWN: And, now, if we can go to the folder on the
6 black thumb drive.

7 (Whereupon, the referenced folder was displayed for the
8 witness.)

9 Q. Okay. And the folder there, is that similar to the
10 recovered data --

11 MR. BROWN: And, Mr. Watkins, if you can get it to show
12 the rest of that, I don't know what you call it, the by-line
13 or the rest of the folder name.

14 Q. Okay. And, again, I want to just briefly ask you back
15 when you were -- you and the attorney were talking about it
16 being a recovered data folder with a created date and
17 remember, I directed you to page 34 of the Olivetti
18 interview, which is Defendant's 5, lines seven to twelve,
19 and page 37, two to four, does that appear to look similar
20 to the same folder header or title folder name?

21 A. Thirty-eight, line --

22 Q. Whoops. Sorry. Yes, sir. Thirty-four, lines seven to
23 twelve. Do you see that on there? And I believe that's --
24 that's one of the two lawyers answering and she says, So
25 this is where we went, so we went to, quote, "recover data,"

1 then we clicked on that and then it goes to, like, these
2 other folders. I see you know what you're doing. We don't
3 know what we're doing and then the question, which is either
4 you or Reynells, says, Created Thursday, January 10th;
5 right? And the answer is, Right. Does that look familiar
6 to what y'all were looking at?

7 A. It looks consistent with the transcript, but I don't
8 remember making the statement about the date or the folder
9 being named that.

10 Q. Okay.

11 A. And I'm not sure if I asked the -- if I made the
12 statement or Sergeant Reynells did, without listening to the
13 audio recording.

14 Q. Okay. But the questions would have all been asked by
15 either you or Investigator Reynells?

16 A. Correct.

17 Q. And there is a recording of that?

18 A. Correct.

19 Q. Okay; all right. And that's a recording that y'all
20 have submitted into evidence. Is that correct?

21 A. Yes, sir.

22 Q. That I could provide Her Honor later in case there
23 were questions about the authenticity of the transcript?

24

25 A. Correct. It's property number 115111.

1 MR. BROWN: And we'll link that up later, Judge, with
2 an exhibit. I've got a thumb drive that's got too much
3 material on it, but I'll get that. Beg the Court's
4 indulgence.

5 Okay. Judge, I don't have any other questions of
6 Investigator Cushman.

7 THE COURT: Ms. Swanson?

8 MR. BROWN: Yes, ma'am.

9 MS. SWANSON: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 ZACH CUSHMAN BY MS. SWANSON:

12 Q. Investigator Cushman, you don't have any sort of
13 background in computer forensics or analysis, do you?

14 A. Not with computers. No, ma'am.

15 Q. Okay. And you don't know what computer program Mr.
16 Brown's forensic computer expert used to get that data from
17 the thumb drives. Correct?

18 A. No. Correct.

19 Q. All right. And so had you used something called
20 Forensic Explorer, it would not have necessarily been in the
21 format that we were just seeing? Are you aware of that?

22 A. Yes, ma'am.

23 Q. Okay. Let's go back to where the thumb drives came
24 from. So in the search warrant it says that deputies were
25 called to Daphne Withrow's office. Daphne and Cathy

1 Olivetti are law partners. Right?

2 A. Correct.

3 Q. Okay. And so you and Seth Reynells went there and you
4 speak to them. They have these thumb drives that they have
5 been given to by Logan Heisler. Correct?

6 A. Yes, ma'am.

7 Q. All right. And so you and Reynells speak to the
8 lawyers for a while. Mr. Heisler has meanwhile gone to get
9 his girls, or Hannah's girls, and you view the thumb drives
10 to confirm what they are telling you Logan Heisler said?

11 A. Yes, ma'am.

12 Q. All right. And did you see child pornography?

13 A. Yes, ma'am.

14 Q. Okay. And did you later confirm the location of those
15 sex acts with Hannah Parada and Logan Heisler?

16 A. Yes, ma'am.

17 Q. All right. Did you confirm the identity of Tim Herndon
18 who is featured in those sex acts?

19 A. Yes, ma'am.

20 Q. Did you, in fact, get an SC DMV photo that day?

21 A. I believe it was Sergeant Reynells got --

22 Q. Okay.

23 A. -- got that from -- oh, you know, I'm not exactly sure,
24 but yes.

25 Q. Sure. But you-all retrieved an SC DMV photo?

1 A. Yes, ma'am.

2 Q. Did -- do you recall that Ms. Olivetti actually
3 recognized Tim Herndon as well?

4 A. Yes, ma'am. I noted that.

5 Q. Okay. So you didn't only discuss the pornographic
6 images with the attorneys, you also discussed it with Hannah
7 and Logan and Angie Crumpton and Seth Reynells and Eric
8 Callendine. Right?

9 A. Yes, ma'am.

10 Q. All right. And that was based on your observations and
11 your confirmation of Mr. Herndon's identity, the location
12 and the identity of the two girls who you actually met in
13 person and confirmed with Hannah. Right?

14 A. Yes, ma'am.

15 Q. Okay. The images that were Photoshop'd, were those
16 child pornography or were those simply to confirm the
17 identity of the girls?

18 A. The images that were sanitized to show to the girls
19 were done so to confirm the furniture from the two
20 residences and to confirm the identity of the people
21 involved.

22 Q. Right. And because there's one older girl and one
23 younger girl. Right?

24 A. Correct. Yes.

25 Q. So MINOR 1, the older girl, has freckles and the younger

1 girl, MINOR 2, does not?

2 A. Yes. That's correct.

3 Q. All right. And you needed to show a picture of both of
4 those so that you and Angie and mom and everyone were on the
5 same page about who was who?

6 A. Correct.

7 Q. Okay. Thank you.

8 MS. SWANSON: That's all I have at this time.

9 MR. BROWN: Very briefly.

10 THE COURT: Certainly.

11 REDIRECT EXAMINATION

12 ZACH CUSHMAN BY MR. BROWN:

13 Q. And the Photoshop that we were talking about you and
14 the attorney talking about, that's before Ms. -- or
15 Investigator Crumpton does any sanitizing?

16 A. Correct.

17 Q. All right. And so when you're talking about Photoshop,
18 have you ever said that Investigator Crumpton Photoshop'd
19 anything?

20 A. I don't believe I've used that term for her work.

21 Q. Okay. So you only use three terms in your report,
22 Photoshop'd?

23 A. (Nods head affirmatively.)

24 Q. Is that yes?

25 A. Yes.

1 Q. Altered?

2 A. Yes.

3 Q. And sanitized?

4 A. Correct.

5 Q. Never did y'all use Photoshop to describe
6 what Investigator Crumpton did, did you?

7 A. I did not.

8 Q. Okay. So when you're using the words Photoshop'd,
9 you're saying somebody else Photoshop'd those?

10 A. That would be the implication. Yes, sir.

11 Q. Okay. Not law enforcement?

12 A. No, sir. That would --

13 Q. Hang on. And just to help Her Honor understand this,
14 Investigator Crumpton, and I'm using the phrase sanitized
15 images as in she took out the pornographic parts.

16 A. Yes. She would either crop around it or block it out
17 very clearly to make it clear that it was not pornographic
18 for the viewing of the victims' mother.

19 Q. Yep. And to make clear, when we talk or we review and
20 I can go back through it, but I don't want to beat a dead
21 horse, but on Olivetti -- the Olivetti transcript,
22 Defendant's 5, page 38, eleven and twelve, when it says that
23 an image might be Photoshop'd, y'all are not -- that's
24 before Investigator Crumpton ever--

25 A. That's before---

1 Q. ---did any sanitizing?

2 A. ---Investigator Crumpton had access to that or had
3 anything to do with it.

4 Q. And when a lawyer says -- confirms ten lines down on
5 that same page, Photoshop'd, "these might be Photoshop'd,"
6 quote, that's, again, before Angie Crumpton has done any
7 sanitizing?

8 A. That's correct. And that was referring to still
9 images, not the videos.

10 Q. Okay. Fair enough. All right.

11 THE COURT: Sir, can I ask you a question. How many
12 still videos or, I'm sorry, still photographs were on each
13 of these thumb drives?

14 THE WITNESS: I don't have the exact number, Your
15 Honor. It was multiple, multiple. I don't know the exact
16 number that were recovered.

17 THE COURT: Could it have been that some of them
18 appeared to be Photoshop'd and some of them didn't?

19 THE WITNESS: Yes, ma'am.

20 THE COURT: Okay.

21 Q. And then the last question I was going to ask you, you
22 were asked whether you confirmed with Hannah Parada and
23 Logan Heisler the sex acts. They didn't see any sex photos,
24 did they, when y'all interviewed them?

25 A. No. We didn't show them any.

1 Q. And Mr. Heisler never discussed any sex acts?

2 A. Without reviewing the entire transcript, not that I
3 recall. No, sir.

4 Q. So they only time y'all look at sex acts or talk about
5 the sex act videos or photos are with the two lawyers?

6 A. Yes, sir.

7 Q. Okay; all right. Anything that we need to add
8 regarding the completion of exhibit A, the affidavit
9 portion, probable cause portion of Defendant's 3, the March
10 28, 2019 search warrant?

11 A. About how it was -- how it was --

12 Q. Yeah. Anything else -- I mean, it's a softball
13 question. What else -- what else should this Court or any
14 of the parties know about the creation of that affidavit? I
15 mean, it's a -- broad as I can, what am I not -- I don't
16 want it to be a trick. I'm trying to trick you to into --

17 A. After we identified where the photographs were taken of
18 the live victims that we had identified as being under-age
19 girls and the part where we knew some of the videos and
20 photos were taken and we knew who the suspect was based on
21 the video and photograph of the evidence, Master Sergeant
22 Callendine at the time retrieved the search warrant from a
23 judge and after he had retrieved the search warrant and it
24 was signed, we executed the search warrant at the residence
25 inside Beaufort County.

1 Q. Where did Mr. Heisler tell y'all his computer was?

2 A. I don't --

3 THE COURT: Tell you where Mr. Herndon's computer was?

4 MR. BROWN: Mr. Heisler's

5 Q. Where did he say that laptop that he used to recover
6 this data was?

7 A. I don't believe that was mentioned in this interview.
8 I believe that was later when they had to look.

9 Q. He said it was at his house?

10 A. I'd have to review. I believe that was not asked of
11 him until later on in a separate interview after the search
12 warrant.

13 Q. Okay. You mean, like, the April 1st interview, 2019?

14 A. I had a couple more with him. I don't know which one
15 exactly. I can look if you would like. It would have been
16 after the search warrant.

17 Q. Okay. Well, let me ask you, did y'all talk to him
18 about the child pornography that was on it?

19 A. On the thumb drives?

20 Q. No. On his -- well, he says he transferred data onto
21 his laptop. Right?

22 A. Well, we didn't go over how he recovered the stuff off
23 the SIM cards, so I don't believe he said that in that
24 interview unless you can point me to what --

25 Q. No; no; no, not on the March 28th. I'm just asking

1 you. He used a laptop, he says?

2 A. I believe that was something he told us about in a
3 later interview.

4 Q. Right. Okay. All right. And y'all did search his
5 house?

6 A. Mr. Herndon's house?

7 Q. Heisler's.

8 A. I went to his residence and we looked at his residence
9 and took photographs of some of the furniture and stuff the
10 following days after this initial report. We didn't search
11 his house.

12 Q. Did y'all tell him to save those items so y'all could
13 go there and look at everything?

14 A. I don't recall doing that. No.

15 THE COURT: You said those items. What items?

16 Q. Well, for instance, the bamboo furniture that was
17 supposed to be --

18 A. He invited us. The bamboo furniture was still being
19 store on the second story of his house even though it was
20 originally on the first floor, I believe, and that's why I
21 went over there to take photographs of it before they got,
22 you know, rid of it so we could document what the furniture
23 looked like.

24 Q. Okay. And at some point in time y'all were aware of
25 the laptop?

1 A. Yes. What we -- and I'd have to go over -- refer back
2 to that, but that was after the search warrant was obtained.

3 Q. Right. After the search warrant was obtained. And
4 there's some evidence you evaluated on the laptop?

5 A. If we could have -- if we could have it, then, yes, I
6 would say -- say so. Yes, sir.

7 Q. Okay. Fair enough.

8 MR. BROWN: No other questions, Judge.

9 THE COURT: Anything further?

10 MS. SWANSON: Just briefly.

11 RECROSS EXAMINATION

12 ZACH CUSHMAN BY MS. SWANSON:

13 Q. When Mr. Brown keeps asking, oh, you and me discussed
14 the pornography with the lawyers, well, that is everyone
15 knew what they were there for. Right? That there was an
16 allegation that Logan Heisler believed Tim Herndon was
17 molesting his girlfriend's children. Correct?

18 A. Correct.

19 Q. And when y'all go to Red fish to tell Hannah, Hey, you
20 need to come to the LEC, she asked what is this about, and
21 you tell her a sexual assault investigation regarding your
22 girls. Right?

23 A. Yes. A deputy told her that. I don't remember which
24 investigator went and got her.

25 Q. That's fine. But do you typically show the victims'

1 mother child pornography that would have---

2 A. Absolutely not.

3 Q. ---depicted them?

4 A. No.

5 Q. And the videos of the sex acts with the girls where Tim
6 Herndon is featured, do they appear to be Photoshop'd?

7 A. Not to my opinion at all. No.

8 Q. Okay. And, in fact, was child pornography featuring
9 Tim Herndon found as a result of the search warrant served
10 on 24 Blue Bell Road?

11 A. Blue Bell Lane. Yes, ma'am.

12 Q. Lane.

13 A. Yes, ma'am.

14 Q. Involving the two girls, MINOR 2 and MINOR 1?

15 A. Yes, ma'am.

16 Q. Hundreds of images?

17 A. Yes, ma'am.

18 MS. SWANSON: Thank you.

19 THE COURT: Yes.

20 MR. BROWN: While we got him up.

21 REDIRECT EXAMINATION

22 ZACH CUSHMAN BY MR. BROWN:

23 Q. And those -- in fact, a review of all of that evidence
24 showed that the data, the metadata, on the thumb drives was
25 never matched anything at Mr. Herndon's house, was it?

1 A. I'd have to refer that to the Homeland Security. I'm
2 not -- I believe that's in the report, but that is my
3 understanding.

4 Q. That's your understanding that the thumb drive images
5 were not copies of anything that was at Mr. Herndon's house?

6 A. As far as I was advised by Homeland Security.

7 Q. That's right. That you were advised by Homeland
8 Security that those photos, there were not copies at Mr.
9 Herndon's house, the thumb drive photos?

10 A. That's -- yes. That's my understanding. Yes, sir.

11 THE COURT: I don't understand.

12 Q. Okay. Y'all found photos that you went over at the
13 lawyer's house on a black thumb drive and a red thumb drive
14 and a red thumb drive.

15 THE COURT: Right.

16 Q. That's also referred to as pink or red. Y'all go back
17 and forth.

18 A. Yeah. The two thumb drives were given to us by the
19 attorneys.

20 THE COURT: I understand all that.

21 THE WITNESS: When Homeland Security went through all
22 the stuff we brought to them that we had recovered during
23 the search warrant,---

24 THE COURT: Uh-huh.

25 THE WITNESS: ---they -- they advised that they had not

1 found the same items that were found on those flash drives,
2 those same exact items.

3 THE COURT: So in other words, those SIM cards could
4 have been removed and done -- but they did find additional
5 ones showing child pornography, either videos and stills.
6 Is that correct?

7 THE WITNESS: Yes, ma'am.

8 THE COURT: You're just saying there was no duplicate
9 images?

10 MS. SWANSON: Correct.

11 THE COURT: Okay. So in other words, the SIM cards
12 can still sit there in the camera, is that correct, and the
13 one didn't just still sit there, it wasn't still in the
14 phone?

15 MS. SWANSON: Right. Once they completed their
16 analysis, which was not until like 2020 --

17 THE COURT: Okay.

18 MR. BROWN: I would object to her testifying.

19 THE COURT: No. I'm asking a question.

20 MR. BROWN: Yes, ma'am.

21 MS. SWANSON: Well, we can ask Homeland Security when
22 they --

23 MR. BROWN: I'd actually planned on calling --

24 THE COURT: Actually, that might just be easier. Let
25 me just ask --

1 MR. BROWN: That's who I plan on calling next.

2 THE COURT: Let' just -- we'll bring the guy who knows
3 what he's talking about completely and explain to me.

4 MR. BROWN: Thank you.

5 THE COURT: Okay?

6 MR. BROWN: Yes, ma'am. And I would say this, too, --

7 THE COURT: Anything Further with this --

8 MR. BROWN: No, ma'am.

9 THE COURT: Okay. You may step down. Thank you.

10 MR. BROWN: Thank you.

11 THE COURT: We're going to take a quick five minutes
12 and you're going to call the Homeland Security expert next?

13 MR. BROWN: Yes. Yes, ma'am.

14 THE COURT: Okay. So let's just take five minutes.
15 Okay? You're welcome to step down.

16 (Whereupon, the hearing was recessed at 4:21 P.M. and
17 reconvened at 4:27 P.M.)

18 THE COURT: We have the players we need? All right.
19 Let's go ahead and call the next witness.

20 MR. BROWN: I would call Homeland Security Investigator
21 Henry Cook.

22 THE COURT: Come on up, sir.

23 (HENRY COOK, being first duly sworn, was examined and
24 testified as follows):

25 DIRECT EXAMINATION

1 HENRY COOK BY MR. BROWN:

2 Q. Investiga- -- is it Investigator Cook?

3 A. That's fine. Yes.

4 Q. I'd like to get it right.

5 A. Well, I'm a criminal investigator or special agent. I
6 got by both.

7 Q. Special Agent. Right.

8 THE COURT: Special Agent.

9 Q. Special Agent Cook. There you go. Could you just give
10 the Court a little background for the record of your
11 involvement in this case?

12 A. Yeah. I worked for Homeland Security Investigations at
13 the time in Charleston, South Carolina. As part of my
14 duties, conduct computer forensics and one of the agents in
15 the office asked me to assist on one of his investigations.

16 Q. Okay. And let me get a little background information
17 so we don't get too heavy, 'cause the jargon's hard for me
18 to pick up, too. Tell me what a hash value is related to an
19 image.

20 A. The best way -- the best way to look at it it's almost
21 like a fingerprint---

22 THE COURT: Uh-huh.

23 A. ---for an image,---

24 THE COURT: Okay.

25 A. ---a digital fingerprint, just so you can tell if the

1 image is the same as a -- as a different --

2 Q. And, essentially, if the hash value is different, it's
3 going to be a different image?

4 A. Correct.

5 Q. All right. Now, and this is just me reading, you, in
6 theory, could have two different images with the same hash
7 value, in theory?

8 A. In theory, yes.

9 Q. Two different pictures. But you can't have different
10 hash values for the same image?

11 A. Correct.

12 Q. Okay. And I don't mind restating it.

13 THE COURT: I understand it.

14 MR. BROWN: Yes, ma'am. Yes, ma'am.

15 Q. Okay. And then you can manipulate the metadata?

16 A. Correct.

17 Q. All right. And that manipulation changes what the
18 image looks like?

19 A. The metadata?

20 Q. If you change the hash value, you can change that---

21 A. Oh. Right; yes.

22 Q. -- the hash value and it would alter the image?

23 A. Correct.

24 Q. Okay. And tell me what an original source device is.

25 A. Original source device?

- 1 Q. Uh-huh.
- 2 A. I'm not sure.
- 3 Q. Okay.
- 4 A. Unless --
- 5 Q. How would you check to see whether the hash
- 6 value on a storage -- an item on a storage device is
- 7 different than the original image? How do you check to see
- 8 whether something has been Photoshop'd?
- 9 A. Oh. I don't know.
- 10 Q. Is there a way for you to prove that something has not
- 11 been Photoshop'd?
- 12 A. Me personally? No. I do not have that skill.
- 13 Q. Okay. And does anyone have that skill?
- 14 A. I'm sure somebody does. Sure.
- 15 Q. Okay. 'Cause you've heard of deepfakes?
- 16 A. Of course. Yes.
- 17 Q. All right. And, essentially, a deepfake is changing
- 18 the underlying hash value?
- 19 A. A deepfake? You mean like the, I guess the famous one
- 20 would be Tom Cruise?
- 21 Q. Tom Cruise? Yeah.
- 22 A. Yeah. I'm not super familiar with deepfakes and as far
- 23 as how they relate to hash values or how they -- what is
- 24 done to create those. I'm not familiar.
- 25 Q. Okay. And why would you want to look at an original --

1 a device that was originally used as the source that
2 produced the image or produced that copy? 'Cause you did
3 that in this case, didn't you?

4 A. I guess I'm -- I'm just not quite understanding --

5 Q. And let me get the phrase original source device.

6 A. You mean, like, the evidence?

7 Q. Well, like in this case you called Logan Heisler and
8 asked for his computer, didn't you?

9 A. Did I?

10 Q. Yes, sir. Zach Cushman and you wanted to know the
11 recovery data used.

12 A. Oh. The software he used?

13 Q. And where his computer was.

14 A. I don't recall that part, but yeah, we did -- we did
15 talk with him.

16 Q. Okay. And what was the reason you wanted to talk to
17 Mr. Heisler about his involvement in those thumb drives?

18 A. Me personally?

19 Q. Well, I mean, I --

20 A. Homeland -- okay. So I think -- I think I understand
21 the question. The -- the solicitor's office asked if any of
22 the devices -- of the images that were found on the thumb
23 drives were also found in the items seized from the house.
24 Correct? Yes.

25 Q. Yes.

1 A. And so when we checked our hash -- we did our hash
2 values for images and videos we found, compared that to
3 images and videos from the thumb drives,---

4 THE COURT: Okay.

5 A. ---we did not find matches.

6 THE COURT: Okay.

7 A. And so the solicitor was curious on why that could be
8 and so we were sort of investigating that to see which
9 recovery device he used, because sometimes different
10 algorithm will recover different files from deleted files.

11 Q. And it's your understanding that Logan Heisler says he
12 took some SD cards and you couldn't see anything on it until
13 he ran a program?

14 A. That's my understanding. Yes. To my recollection,
15 yes.

16 Q. So he says I took some SD cards, that's your
17 recollection, I plugged them in, I couldn't see anything on
18 it?

19 A. Yes.

20 Q. And then I ran some software?

21 A. Correct.

22 Q. And then I did have some stuff and I put it on thumb
23 drives?

24 A. Correct.

25 Q. And so would you call those, the different files, an

1 active file versus a deleted file? Is that fair?

2 A. It's fair. Yes.

3 Q. Okay. So Logan Heisler says when I took the SD cards,
4 there no active files on them? I'm paraphrasing a bit. He
5 says I couldn't see anything.

6 A. Okay. So, yes. Yes.

7 Q. So there's no active files?

8 A. Correct.

9 Q. All right. Did you find any SD cards, did you -- your
10 analysis show any SD cards in Mr. Herndon's home that had no
11 active files on them?

12 A. I don't recall.

13 Q. You don't recall if all of them had active files on
14 them?

15 A. I don't recall. No.

16 Q. Okay. Do you have a report or some data to show which
17 SD cards had no active files?

18 A. I do not.

19 Q. Okay. Did you analyze all those items?

20 A. I did not analyze all the items. No.

21 Q. Okay. And how do you know whether they had hash value
22 matches?

23 A. I analyzed, I'm sorry, the -- there was a number of
24 items. I looked at some, examined some and another CFA
25 examined some. At the end we combined all those hashes to

1 compare to the thumb drives and there was no matches.

2 THE COURT: Okay.

3 Q. Okay. So you're saying you didn't analyze all the SD
4 cards?

5 A. Personally, no.

6 Q. Okay. Who compiled the report or summary report?

7 A. CFA Brennan and myself.

8 Q. Okay. He's here, too?

9 A. Yes.

10 Q. Okay; all right. And so for any of the items examined,
11 did they have no active files on them?

12 A. I don't recall that being the case. No.

13 Q. Okay. Everything you examined had some active file?

14 A. Best of my recollection, I believe so. Yes.

15 Q. All right. And if, in fact, it was true that Logan
16 Heisler took SD cards with no active files on them and y'all
17 analyzed them and they all had active files, does that
18 suggest he put files back on those things?

19 A. If -- or -- yes. I would -- ask it again. I think I
20 know what the question is.

21 Q. Sure; sure. All right. Number 1, Logan Heisler says
22 there's no active files on the SD cards. All right. Number
23 2, when you go through there, every SD card has an active
24 file that you analyzed?

25 A. Correct.

1 Q. So to get active files on something that didn't have
2 active files, somebody had to put them there. Right?

3 A. If it's the same card, of course.

4 Q. Right.

5 A. Right.

6 Q. And the only thing that you can't testify to is all the
7 cards that Brennan did?

8 A. Yes or the -- yes.

9 Q. 'Cause collectively y'all went through all of them?

10 A. All the cards that were provided; yes.

11 Q. Right. All the cards provided by the sheriff's
12 department.

13 A. Correct. Yes.

14 THE COURT: Just so I understand, what is an active
15 file versus an inactive file?

16 THE WITNESS: For instance, if you have a thumb drive,
17 you put a thumb drive in---

18 THE COURT: Uh-huh.

19 THE WITNESS: ---and you can see it and look at it,---

20 THE COURT: Okay.

21 THE WITNESS: ---copy it, save it, share it.

22 THE COURT: Is there any significance to him saying
23 that he took these SIM cards and when he downloaded, he had
24 to use some kind of software to be able to download it? Is
25 that what I heard?

1 MR. BROWN: No, ma'am. He had to recover.

2 THE COURT: He had to recover that.

3 MR. BROWN: They had been deleted.

4 THE COURT: Okay.

5 THE WITNESS: Yes, Your Honor. So, basically, you plug
6 it in, you don't see any files.

7 THE COURT: Okay.

8 THE WITNESS: It doesn't mean the files aren't there,--

9 -

10 THE COURT: So that just --

11 THE WITNESS: ---they've been deleted.

12 THE COURT: Right. And then so he went in, he said he
13 personally, this is the --

14 MR. BROWN: Mr. Heisler.

15 THE COURT: Right. -- went in, recovered them?

16 THE WITNESS: Yes, ma'am.

17 THE COURT: Okay. I understand.

18 Q. But then y'all didn't have to recover files -- let me
19 rephrase it. But, again, y'all found active files on all
20 the SD cards?

21 A. To the best of my recollection, anything I dealt with
22 did have active files. Correct.

23 THE COURT: That came from Mr. Herndon's house?

24 THE WITNESS: Correct.

25 THE COURT: As a result of the search warrant?

1 THE WITNESS: Yes.

2 THE COURT: Okay.

3 Q. And it's your understanding that Mr. Heisler put back
4 the SD cards he says he took?

5 A. Hearsay, yes. That's---

6 Q. Yeah; yeah.

7 A. ---my understanding. Yes.

8 Q. Yeah. Okay.

9 MR. BROWN: I'm going to go ahead and beg the Court's
10 indulgence. All right. Judge, at this point in time I do
11 want to -- well, I'm going to just do it this way.

12 Q. So Special Agent Cook, do you recall that you did the
13 analysis of the black thumb drive? Start with that.

14 A. The black thumb drive that -- from the --

15 Q. Yes. From Logan Heisler's?

16 A. No. A forensics analysis? No. We reviewed them.

17 Q. You did review it?

18 A. Correct.

19 Q. Do you recall a folder that said, Recover data,
20 1/10/19?

21 A. What was shown on the screen earlier?

22 THE COURT: Uh-huh.

23 A. Yeah.

24 THE COURT: What he was showing before?

25 MR. BROWN: Yeah. That's what I was --

1 THE COURT: Uh-huh.

2 A. I have no reason to doubt that he said that. Yes.

3 Q. Okay; okay. Well, and --

4 THE BROWN: And, Judge, this isn't a question, but it's
5 a dilemma I've had. My understanding is that we can't plug
6 the black thumb drive in a computer without potentially
7 changing the evidence, 'cause every time you plug it in, it
8 might modify it and Special Agent Cook could help explain
9 why it's not the best practice, because he's not in --

10 THE WITNESS: Right.

11 MR. BROWN: -- with me, but I'm doing a bad job
12 explaining it.

13 A. One possible work around, if you took -- do you have
14 forensics images of the thumb drives? Do you have, like,
15 FTK where you can mount those images? Then it would
16 present it in a -- in the same way that -- as if he was
17 plugging it in.

18 MR. BROWN: And, Judge, the point I'm trying to make is
19 that that folder is there when you go into the thumb drive.
20 It says, Recover data, 1/10/19.

21 THE COURT: Uh-huh; uh-huh. Just so I understand,
22 that's just the title it was given, correct, of the folder?

23 MR. BROWN: It's the title of the folder.

24 THE COURT: The title of the folder.

25 MR. BROWN: That's correct.

1 THE WITNESS: On the thumb drive.

2 THE COURT: Right.

3 MR. BROWN: That's correct.

4 THE COURT: Because then after that it has a date of
5 modified and then the date created and I understand the
6 difference.

7 THE WITNESS: Yeah.

8 MR. BROWN: And then I would like to try to show that
9 to you, Judge.

10 THE COURT: I under- -- and I understand.

11 MR. BROWN: With the understanding this is not the
12 black thumb drive 'cause it's actually locked in the
13 evidence.

14 MR. WATKINS: Don't know if they have a mount -- a way
15 to mount it.

16 THE WITNESS: Oh. What kind -- do you have, like, a
17 E01 image of the thumb drives or what do you have?

18 MR. WATKINS: Yeah, it would be one, but I'm using
19 Forensic Explorer.

20 THE WITNESS: Oh, okay. If you have FTK Imager, you
21 can mount the image.

22 MR. WATKINS: I do have that, but not on this computer.

23 THE WITNESS: Got you.

24 MR. WATKINS: I don't think that's a mount tool. This
25 is a folder hierarchy here that's a -- where you're seeing

1 on the -- I'll magnify this.

2 MS. SWANSON: Judge, why the expert is trying to figure
3 this out, I just want to bring up the fact that Daphne
4 Withrow and Cathy Olivetti are still outside under subpoena
5 and I just worry about keeping them too late. I'm not sure
6 what their schedules are.

7 MR. BROWN: And I can interject. If I can establish
8 this point and, not only the folder name, but that when you
9 -- and I'm using my paraphrasing -- when you right click on
10 it also has the January 10th date on some of the stuff. If
11 I can establish that, I think I'm done with this part of the
12 motion. That's obviously subject to what she --

13 MS. SWANSON: So --

14 MR. BROWN: Then I can release them.

15 MS. SWANSON: Okay.

16 MR. WATKINS: We get to proceed to this? This is a
17 file hierarchy of that EO1, which I've got highlighted here.

18 THE COURT: Okay.

19 A. I guess I --

20 THE WITNESS: Your Honor, I guess I can say I have no
21 reason to doubt what I'm seeing, I just don't personally
22 recall it without looking at the -- if that makes sense. I
23 don't --

24 THE COURT: Yes.

25 THE WITNESS: -- have no reason to doubt.

1 Q. You got it. And if need be, we could take that out and
2
3 you could confirm it. And out of curiosity, do you have a
4 way to do that?

5 A. No. I do not.

6 Q. Okay. So we are not going to be able to display that
7 to a jury with your technology here?

8 A. Correct. I brought just myself.

9 Q. And do we know who did the analysis of the black -- or
10 y'all said you didn't do it or neither of y'all did it?

11 A. Of those thumb drives?

12 Q. Yes, sir.

13 A. We did not do an analysis on them.

14 Q. Did y'all look at them at all?

15 A. We looked at them. Yes.

16 Q. Okay. Did you look at the actual modified and created
17 date?

18 A. No.

19 Q. Okay. When you put them in y'all didn't see the
20 modified date it was created then?

21 A. Well, I guess I shouldn't say no. It didn't -- it
22 wasn't our purview or it didn't register as important to us
23 or needed, if that makes sense.

24 Q. Sure. But let me ask you this: and I'm going to
25 simplify it, but if you just plug that thumb drive in a

1 computer, then you can find that modified and created date
2 that easily?

3 A. Yes.

4 Q. Okay. And y'all did plug them into some computer?

5 A. Yeah, via write block, yes.

6 Q. Right. And do you have anything that disputes the
7 created or modified date?

8 A. Disputes it?

9 Q. Uh-huh.

10 A. No.

11 Q. Okay. And help the judge and I understand modified is
12 the date the image is actually generated?

13 A. Could be.

14 Q. Could be. And created is not the date it's created.
15 Created's the day it's created on the storage device?

16 A. Could be; yes.

17 Q. Okay. But generally speaking, ---

18 THE COURT: So what other things could it be? Help me
19 out.

20 MR. BROWN: Yeah.

21 THE WITNESS: Your Honor, I -- I have found, and I'm
22 sure Mr. Watkins would agree that Windows times -- date and
23 time stamps are highly unreliable.

24 THE COURT: Okay.

25 THE WITNESS: So I never like to be one hundred percent

1 this is the date and time, but when you move files from
2 different -- from a computer to a thumb drive, back to the
3 computer, move files around,---

4 THE COURT: Uh-huh.

5 THE WITNESS: ---it can alter those -- those dates.

6 THE COURT: Okay. So my question is the date that it
7 says modified, and let's just say we're looking at the
8 what's -- could -- file named -- entitled, Recover Data, the
9 date that it's modified of 1/10/2019, that is not the date
10 the actual image was taken and is on the SIM card. Correct?
11 It is the date that it was downloaded to the thumb drive.
12 Is that correct?

13 THE WITNESS: I believe so. Yes, Your Honor.

14 THE COURT: Okay.

15 THE WITNESS: It could also be the day, but yeah, I --
16 yes.

17 THE COURT: You see what I'm saying?

18 THE WITNESS: (Nods head affirmatively)

19 THE COURT: Okay.

20 THE WITNESS: And it matches the folder name.
21 Typically, on a recovery software like that it will go ahead
22 and name--

23 THE COURT: Call it -- okay.

24 THE WITNESS: ---is the day you did the recovery.

25 THE COURT: Okay; okay.

1 Q. And I'm going to ask you that question. And usually
2 when it's got a recovery name with a date, does it do the
3 date where it's got a dash on one and a space on the other
4 or -- you'd want to see that?

5 A. Quite often. Yes; yeah.

6 Q. And you wanted to see that program to see --

7 A. I'm sorry.

8 Q. And did you want to see that program to see whether
9 that did that?

10 A. No.

11 Q. You asked the Mr. Heisler what programs he used.
12 Right?

13 A. Right. 'Cause we were going to use it to see if we
14 found the same --

15 Q. To see if you could recreate this?

16 A. To see if we could find those same files. Yes.

17 Q. Okay.

18 A. Because the tools that we used did not find those
19 apparently.

20 Q. Because you couldn't find those images matched to
21 anything in Mr. Herndon's house?

22 A. Correct.

23 Q. And that's why you wanted to see if y'all could
24 replicate---

25 A. What he did.

1 Q. ---what he did?

2 A. Sure.

3 Q. Okay; all right. And did he tell you he created that
4 date on there or that it had already populated?

5 A. I don't recall that.

6 Q. Okay. Did y'all ask him that?

7 A. I don't recall that.

8 Q. Did y'all have any information that those dates were
9 not accurate?

10 A. No.

11 Q. Okay.

12 MR. BROWN: And, Judge, I do need to beg the Court's
13 indulgence so I can get my question right here.

14 THE COURT: Sure.

15 Q. And just to ask you this: FAT32 is a type of computer
16 operating system and -- excuse me -- file system?

17 A. File system; yes.

18 Q. Okay. And how does the date generate on a FAT32 file
19 system?

20 A. I don't recall off the top of my head.

21 Q. Okay. It's not generated by the computer itself?

22 A. The FAT32?

23 Q. Uh-huh.

24 A. Yes. If you put a file onto the computer, it would be
25 done by the filing system, I think.

1 Q. Okay. And do you recall that the other thumb drive had
2 the March 23rd date instead of the January 10th date, the
3 pink or red thumb drive?

4 MR. BROWN: Judge, it's referred to alternately as pink
5 or red.

6 A. I do not recall that.

7 Q. You don't recall that date? Do you recall anything
8 about the January 10th date?

9 A. No.

10 Q. Okay; all right.

11 MR. BROWN: Judge, I don't have any other questions of
12 this witness, I mean, aside from -- well, I was going to put
13 the black thumb drive and show you, but he didn't bring any
14 equipment and --

15 THE COURT: Ms. Swanson, what questions do you have?

16 CROSS-EXAMINATION

17 HENRY COOK BY MS. SWANSON:

18 Q. All right. So when you examined the thumb drive, it
19 was after your analysis of all of the devices that BCSO
20 transferred over to HSI for review. Correct?

21 A. Correct.

22 Q. Okay. And so you had a lot of different devices, I
23 think, approximately nine different devices that contained
24 images of child porn?

25 A. That sounds correct. Yes.

1 Q. Okay. Let's see. And line item 40, the My Passport
2 hard drive was the one that we most focused on. Right?

3 A. Correct.

4 Q. Okay. Because they contained, actually, about
5 approximately 1,200 images of victims one and two and two-
6 hundred-some-odd videos of victims one and two. Correct?

7 A. I haven't -- I haven't reviewed that report, but---

8 Q. Okay.

9 A. ---that sounds correct.

10 Q. Does that sound right?

11 A. (Nods head affirmatively)

12 Q. The black thumb drive, you don't know what was active
13 or deleted when Logan had it. Right? You don't have any
14 personal knowledge of what was going on when Logan did it
15 other than what he told you?

16 A. Correct.

17 Q. Okay.

18 MS. SWANSON: I think that's all I have.

19 Are you going to need Mr. Cook for other motions?

20 MR. BROWN: No.

21 MS. SWANSON: Okay. Well, I might. Yeah. If you can
22 stick around for me.

23 THE COURT: Can I ask you, Ms. Swanson, are you going
24 to offer as a computer forensic expert anyone in this case?

25 MS. SWANSON: Well, I mean, they're the ones that did

1 the analysis, but I mean, I wasn't going to qualify them.

2 THE COURT: Okay. Have either one of them been
3 qualified in courts before as a computer forensic
4 expert?

5 THE WITNESS: No, Your Honor.

6 THE COURT: Okay; okay. Just --

7 MR. BROWN: And, Judge, that is an interesting question
8 about the items taken from Mr. Herndon's house are in one
9 box and I'm assuming that's not exactly what they're
10 playing. It's not like they're playing a record they found
11 in his record collection. That's a path we have to cross
12 down the road, but not too far. I'm assuming the ones
13 they're going to play are the ones on a thumb drive that had
14 been made from copies of copies, but that's not part of my
15 motion, but while he's here.

16 Q. It's their digital forensic report of what is on the My
17 Passport hard drive and so it is what is contained on that
18 drive. Correct?

19 A. Correct. Yeah.

20 THE COURT: Okay.

21 MS. SWANSON: And that's what we're playing.

22 MR. BROWN: Right. And I think that might be a best
23 evidence objection. Okay.

24 THE COURT: Make it when it's appropriate.

25 MR. BROWN: You're right. We're not --

1 THE COURT: So let's move on. What are we doing?
2 Anything more?

3 MS. SWANSON: No.

4 THE COURT: Special Agent Cook, you may step down. I
5 heard Ms. Swanson say she kind of wants you to stay around
6 and she may have further questions,---

7 THE WITNESS: Yes, Your Honor.

8 THE COURT: ---if that's okay with you, sir. All
9 right. I appreciate it. All right. What else?

10 MR. BROWN: I would call the other Homeland Security
11 officer to see if he has any information about the thumb
12 drive, the black thumb drive. If he doesn't, I don't need
13 to call him.

14 (FRANK BRENNAN, being first duly sworn, was examined
15 and testified as follows):

16 THE COURT: Sir, give us your name for the
17 record.

18 THE WITNESS: Sure. My name's Frank Brennan.

19 THE COURT: Special agent as well or something
20 different?

21 THE WITNESS: No. I'm a special investigator.

22 THE COURT: Thank you.

23 THE WITNESS: You're welcome.

24 THE COURT: Okay.

25 DIRECT EXAMINATION

1 FRANK BRENNAN BY MR. BROWN:

2 Q. Special Investigator Brennan, are you with Homeland
3 Security?

4 A. Not currently. I was at the time of this
5 investigation.

6 Q. So you're a special investigator with?

7 A. The Internet Crimes Against Children Task Force with
8 the Attorney General's Office of South Carolina.

9 Q. Okay. Fair enough. Well, out of curiosity, have you
10 got information about computer devices sent from Logan
11 Heisler's house last month?

12 A. Right now I'm here to discuss this investigation, sir.
13 I have no other investigation knowledge of anything else
14 besides this case.

15 Q. Okay. That's a no?

16 A. Yes. That's a no.

17 Q. All right. I just thought I'd ask while you were
18 there.

19 A. That's fair.

20 Q. I'm learning about that as we go. Well, let me ask you
21 this: what would an original source device have to do with
22 a hash value between an image on a storage device and its
23 creation or modification?

24 A. I think I understand the context of your question.

25 Q. Yes, sir.

1 A. An original source device is normally is the original
2 evidence item that's being examined or analyzed and then the
3 hash values are really indifferent to that and the other
4 hash values assigned to a specific file that you're looking
5 at on that device.

6 Q. Okay. And how would you determine whether the hash
7 value had been changed?

8 A. The hash value would change any time that file itself
9 is changed, so you don't change a hash value, you change the
10 file itself.

11 Q. Fair enough. But the values would change?

12 A. If a file is modified, then the hash value would
13 change. Yes.

14 Q. There you go. And how do you tell whether, when you
15 look at an image and get a hash value, the data has been
16 changed from the way it was originally created?

17 A. You don't by the hash value.

18 Q. Okay. How would you?

19 A. So you have hash values and then you have visually
20 similar images and so visually similar images would be
21 something called fuzzy hashing. What fuzzy hashing is is it
22 takes a graphical representation of the image and compares
23 it to the other one to show whether it's visually similar or
24 not.

25 Q. What other one?

1 A. The comparison image, so to speak. So if I believe two
2 images are the same image visually, they may be considered a
3 visual hash, so a photo DNA or some type of fuzzy hash,
4 we'll match those together. However, a rythmatic hash MB5
5 SHA-256 would be different if one pixel in that image was
6 changed obviously.

7 Q. Fair enough. So --

8 MR. BROWN: I'm sorry. Go ahead, Judge.

9 THE COURT: So what constitutes a modification and what
10 can a modification be?

11 THE WITNESS: If I have file A--

12 THE COURT: Right.

13 THE WITNESS: ---on the left and I make any changes to
14 it, if you open that in paint (ph) and put a dot on that
15 image, it will now have a completely different --

16 THE COURT: So just downloading it, is that considered
17 a modification?

18 THE WITNESS: No.

19 THE COURT: Okay. Okay.

20 Q. Okay. And not to beat a dead horse, but---

21 A. It's okay.

22 Q. ---you've got different hash values, they're not the
23 same image?

24 A. They're not the same image. No.

25 Q. Okay. Fair enough. And so let me ask you briefly

1 about the black thumb drive.

2 A. Okay.

3 Q. Do you recall looking at any of the information on the
4 black thumb drive?

5 A. I remember looking at the images on the thumb drive.

6 Yes, sir.

7 Q. Okay. You got it. And for purposes of rehashing, you
8 didn't find any hash matches between the items on the black
9 thumb drive and any of the items from Mr. Herndon's house?

10 A. No, we did not.

11 Q. Okay. And the other SD cards or storage devices -- or
12 let me rephrase it. Those SD cards found at Mr. Herndon's,
13 did any of them -- were any of them devoid of active files?

14 A. I don't recall one way or the other on that.

15 Q. Okay.

16 A. We searched a mountain of items.

17 Q. Right.

18 A. Whether we're looking at the directory or not, that
19 wasn't the main focus of our examination. We were looking
20 for the files contained within them whether they're
21 recovered via carving or it was an active directory file
22 itself.

23 Q. And that's a great use of that word. Carving is a
24 fancy word for bringing the deleted images back, at least,
25 the best you can?

1 A. Fair.

2 Q. Is that fair enough?

3 A. Yes.

4 Q. Okay; all right. And how would, for purposes of later
5 on talking about this, how would you or Special Agent Cook,
6 how would -- how would we get the information to the jury
7 about the active files on the SD cards or the lack of active
8 files on the SD cards? 'Cause y'all have been through it
9 all. Right?

10 A. We have. So we would have to, one, be referencing a
11 specific SD card and then, 2, we would have to review the
12 physical image or examination notes in our forensic tools
13 report on those to be able to determine whether there was or
14 was not active files on them.

15 Q. Did y'all do a forensic tools report in this case?

16 A. We did numerous --

17 Q. I'm sorry?

18 A. Maybe I don't understand the question.

19 Q. You just referenced a report I've never seen. What's a
20 forensic tools report?

21 A. AXIOM, Gripfire, those are various forensic tools we
22 used to examine the data.

23 Q. Okay. Did y'all generate a report?

24 A. Yes.

25 MR. BROWN: Judge, I don't have it. And my expert's

1 like \$10,000 in.

2 MS. SWANSON: Are you talking about -- oh, sorry -- a
3 report or, like, your notes?

4 THE WITNESS: The report. So the AXIOM, it would
5 titled AXIOM report, Gripfire report, FTK report contained
6 on the external hard drive.

7 MS. SWANSON: Oh. It's the -- okay. On this one--

8 THE WITNESS: Yes, ma'am.

9 MS. SWANSON: ---that y'all looked at?

10 THE WITNESS: Yes, ma'am.

11 MS. SWANSON: Okay. Yeah.

12 MR. BROWN: Your Honor, --

13 MS. SWANSON: Y'all had access to this. This is their
14 forensic report.

15 A. Back in December, earlier on, your forensic expert had
16 requested that those -- the sanitized images provided to
17 you.

18 Q. Right. That's correct. And he emailed Henry Cook.
19 Right? Or I emailed Henry Cook and they talked on the
20 phone? You don't recall that?

21 A. I recall hearing about those conversations. Yes.

22 Q. Right.

23 THE COURT: So ask your expert if he got it.

24 MR. BROWN: He didn't. He told me. That's what I just
25 walked over there and asked him. We've never seen it. I've

1 got the entire thing right here.

2 MS. SWANSON: It's contained on a device that he had
3 clear access to.

4 MR. BROWN: Judge, we asked -- I have a plethora of
5 emails asking for this. I have motions filed going back --

6 MS. SWANSON: And that's why we sent him all the
7 evidence, because it has child porn on it as well.

8 MR. BROWN: Judge, there are nine bankers boxes of
9 evidence. I mean, --

10 THE COURT: My question is did he have access to that
11 that you're saying this AXIOM report or whatever reports are
12 in there? Yes?

13 MS. SWANSON: Yes.

14 MR. BROWN: Judge, we asked about it and we were told
15 there -- well, and like I said, I'll bring -- well, first I
16 want to introduce or mark this as Defendant's 7 and just
17 show the Court, this is everything I got.

18 (Whereupon, the court reporter marked the referenced
19 document as Defendant's Exhibit Number 7 for
20 identification.)

21 MR. BROWN: That's it. And, ironically, that was given
22 in response to our repeated request for the reports and that
23 was given and not just other stuff.

24 MS. SWANSON: The report has child pornography on it.
25 He was given access to all of this (indicating) is what

1 Homeland Security created. This is their entire report.
2 All of that information is on there. If he didn't look at
3 all of it, I don't know what to tell him.

4 THE COURT: But he had access to it?

5 MS. SWANSON: Yes; yes.

6 MR. BROWN: Judge, how would we have access to that
7 report?

8 MS. SWANSON: It's on the hard drive.

9 MR. BROWN: Where does it -- where was I ever told it's
10 on the hard drive?

11 MS. SWANSON: I don't know what you want on the hard
12 drive. There are several things on this hard drive.

13 MR. BROWN: Judge, I was never told there was a report
14 on the hard drive for my expert. I did, however, ask for --

15 MS. SWANSON: Then why did you look at it?

16 MR. BROWN: I'm sorry Judge, I'm speaking to you, not
17 her. I have fifteen months of emails, motions and requests,
18 some of them Your Honor heard. One of them --

19 THE COURT: I want to know what he had access to, not
20 your requests and what you think you have or you think you
21 don't have. I want to know what he had access to and was
22 given access to.

23 MR. BROWN: Well, we went to the evidence room, but,
24 Judge, if we don't know there's something on there -- I
25 mean, for the record and just I'm going to mark for

1 Defendant's Number 8 property item number 143690, please.

2 THE COURT: Okay.

3 MR. BROWN: And let the appeals court see whether or
4 not they can tell if that's a report.

5 (Whereupon, the court reporter marked the referenced
6 document as Defendant's Exhibit Number 8 for
7 identification.)

8 THE COURT: Well, your expert hasn't testified yet.
9 He's still just a consulting expert. Until and unless he
10 becomes --

11 MR. BROWN: No; no. I'm the lawyer. I didn't get it.

12 THE COURT: You didn't get it?

13 MR. BROWN: I didn't get it. I filed a rule 5 and I've
14 asked for--

15 THE COURT: All right.

16 MR. BROWN: ---it and rule 5 says --

17 THE COURT: You made the record. Go. Keep moving on.

18 MR. BROWN: Yes, ma'am, but I'd like that marked as an
19 exhibit.

20 THE COURT: Go ahead. Anymore questions?

21 Q. Did you check the date on the black thumb drive on a
22 folder that said, Recover Data?

23 A. Did I check the dates? No, sir.

24 Q. Okay; all right. And did you see the screen so we
25 don't have to redo that?

1 A. Yes. I've seen the screen.

2 Q. Okay; all right. And that modified date -- how would
3 that modified date not be the date that the image was
4 created?

5 A. Would be determined by the program in which that file
6 was created on the type of machine it was created.

7 Q. All right. And the type of the machine would be like
8 an original source device?

9 A. Yes, sir.

10 Q. All right. So that phrase does mean something. All
11 right. And so you got a date, the date purports to be the
12 date the image was created?

13 A. Yes.

14 Q. I'm sorry?

15 A. Yes.

16 Q. Okay. And then you've got a created date and that's
17 the date that the image was purportedly put on that storage
18 device?

19 A. Yes.

20 Q. And that can be modified?

21 A. Yes.

22 Q. Okay. But that is another step. That's not the way,
23 generally, a computer is set up. You would be looking at
24 looking at --

25 A. Generally speaking, yes.

1 Q. Okay. Fair enough. And y'all never were able to
2 review Mr. Heisler's computer?

3 A. No, sir.

4 Q. All right. And out of curiosity, did Mr. Heisler tell
5 y'all that his computer was a silver MacBook laptop?

6 A. I don't recall if we got into specifics on his
7 computer.

8 Q. How about an Acer laptop?

9 A. Again, I don't remember the type of laptop. He said he
10 had a laptop and he ran a recovery program.

11 Q. Okay. Easeus? E-a-s- --

12 A. The type of computer; yes, sir.

13 Q. E-a-s-e-u-s, Easeus recovery program?

14 A. I don't believe that was the name of it. I seem to
15 remember the term Recuva, R-e-c-u-v-a, that got discussed
16 during the process of that conversation.

17 Q. Okay. And if we look at -- well, and I'll do that
18 later, but do you recall having notes or a report regarding
19 what programs Mr. Heisler purported to have used?

20 A. No.

21 Q. Okay. And so how did you get the Recuva, if I'm
22 pronouncing that correctly? How did you get that one?

23 A. I believe it was during the conversation with Mr.
24 Heisler.

25 Q. During the conversation with Mr. Heisler---

1 A. On the phone.

2 Q. ---that you had? That was the one you had with him?

3 A. Might have been with one of the deputies. I don't
4 remember the exact participants of the phone call,---

5 Q. Right.

6 A. ---but Special Agent cook and myself were on a phone
7 call. I do believe one of the deputies from Beaufort County
8 was on there. I don't remember if Mr. Heisler was on or
9 not, but there was the discussion of what was used. This
10 was after we had conducted the examination of all devices
11 and they were asking us if we'd found the same files from
12 the thumb drives during our investigation of all the other
13 devices and at that point we started discussing why we would
14 have different results or had not found those results and
15 the conversation then began, well, what was used to create
16 this and Recuva seems to stick in my mind at that point.

17 Q. Okay. But that's not something you believe Mr. Heisler
18 told you?

19 A. I don't remember who told me he used Recova.

20 Q. Okay. And I'm going to mark Defendant 8 -- 9 and ask
21 you to look at page 39 of 86.

22 (Whereupon, the court reporter marked the referenced
23 document as Defendant's Exhibit Number 9 for identification
24 and the exhibit was handed to the witness for review.)

25 THE COURT: Is there a question?

1 MR. BROWN: Oh. I didn't know he's done reading.

2 Q. What's the program that he told the Beaufort Sheriff's
3 Department, according to that report, he used?

4 A. According to this report, he used Easeus.

5 Q. Easeus?

6 A. Yes.

7 Q. Okay. You see Recuva anywhere in there?

8 A. No, I do not.

9 Q. All right. You got any other information besides
10 what's listed in that that might help Her Honor understand
11 that concern?

12 A. No.

13 MR. BROWN: I don't have any other questions of this
14 witness.

15 THE COURT: Solicitor, anything of this witness?

16 MS. SWANSON: No, Your Honor.

17 THE COURT: Okay. Sir, you may step down. Thank you.

18 THE WITNESS: Thank you, Your Honor.

19 MS. SWANSON: I'm still a little confused. Did you --
20 are you saying, Mr. Brown, that your expert did not look at
21 this Homeland Security hard drive labeled Forensic Reports?
22 Like, any of it? 'Cause he got the sanitized copy of the
23 forensic report, so he had access to this and then y'all
24 went to evidence twice more in September.

25 MR. BROWN: Where's the others?

1 THE COURT: She's on call.

2 MR. BROWN: And, Judge, I'm not -- it's a question, I'm
3 not trying impute anyone, because there's a April 30th date
4 and, Judge, that makes some difference, because by statute
5 there's only ten days, by statute.

6 THE COURT: Except in may cases and forensic dumps are
7 typically one of them. It is impossible to have the
8 evidence analyzed within the ten-day period.

9 MR. BROWN: Well, this is --

10 THE COURT: And, typically, you ask for an extension,
11 so --

12 MR. BROWN: I understand that, but on the face of it,
13 Judge, when I got this originally,---

14 THE COURT: Uh-huh.

15 MR. BROWN: ---it did not have the corrections and
16 that's conflict. So when I originally went through this, it
17 appeared that the search warrant was issued April 30th and
18 that the search was done subsequent to June 1st, I believe,
19 June 7th is the date. It has now been changed and I will
20 just say it has the initials of Zach Cushman, but for what
21 it's worth, it does not have a different affirmation at the
22 bottom of it. There's no --

23 THE COURT: Just so I understand, are you talking about
24 on the return page?

25 MR. BROWN: Yes, ma'am.

1 THE COURT: Okay. Let me look.

2 MR. BROWN: And that's what Judge Vaux was under
3 subpoena for, potentially, should there be a question, that
4 she would be the only one that could answer it.

5 THE COURT: Okay.

6 MR. BROWN: Judge, I'm going to mark this as
7 Defendant's 12 and it's the same search warrant return
8 before the alterations.

9 THE COURT: Right. Does it have a different date?

10 MR. BROWN: It has the dates that have been struck --

11 THE COURT: Okay. I understand that.

12 (Whereupon, the court reporter marked the referenced
13 document as Defendant's Exhibit Number 12 for
14 identification.)

15 THE COURT: All right. Your point?

16 MR. BROWN: Yes, ma'am. And so I guess I'm just trying
17 to confirm what date's what. I know a return is
18 ministerial, but I'm not going to leave -- I mean, this is a
19 life without parole case and I'm not going to leave any
20 stone unturned on this 'cause this is where the rubber meets
21 the road.

22 THE COURT: Oh. I see what you're saying. So I
23 understand your concern is is that he struck out when he
24 received the search warrant and they searched the premises
25 and then you're concerned about on the bottom that I am

1 looking at where it's his affidavit or his signature and he
2 has struck out 2019 and placed in 2020, March 11th of 2020.
3 Is that correct?

4 MR. BROWN: Well, yes, ma'am. He actually -- that's
5 not -- he struck out when it was executed.

6 THE COURT: Well, I understand that.

7 MR. BROWN: Which makes a difference because the
8 execution, pursuant to a search warrant, has to be during
9 the time the search warrant's valid.

10 THE COURT: Right.

11 MR. BROWN: And so we've got different dates. I will
12 tell you the search warrant itself appears to grant an
13 extension from the ten days, but the statute doesn't say you
14 can do that and the legislature gave powers, but they didn't
15 give unlimited powers and the power they gave was for ten
16 days.

17 THE COURT: It's a simple practicality being able to
18 download forensic evidence; it cannot be done.

19 MR. BROWN: Well, Judge, but a piece of paper that
20 becomes a search warrant also just becomes a piece of paper
21 in some circumstances, like I like to say, like Cinderella's
22 carriage becomes a pumpkin at midnight.

23 And, Judge, while we're on it, the other challenge to
24 this--

25 THE COURT: What's the other challenge?

1 MR. BROWN: ---is that it doesn't have any extra cause,
2 so the cause they got to search the house on March 28th, so
3 the challenge would be the same. So, in other words, they
4 didn't put in that the lawyers told us the information, et
5 cetera.

6 THE COURT: Oh. I see what you're saying.

7 MR. BROWN: They haven't searched the devices yet.

8 THE COURT: Okay. I see what you're saying.

9 MR. BROWN: And then the third one, on April 30th, and
10 this is, my understanding, uncontested because Homeland
11 Security Investigator Nevel has been excused with my
12 permission, but he said he drove the devices to Charleston
13 on April 30th and they were not property within the
14 jurisdiction of the magistrate who issued the search warrant
15 because Judge Vaux is a magistrate for Beaufort County and
16 when she signed the search warrant on May 30th, the property
17 is not within her jurisdiction to search and that's my
18 argument for territorial jurisdiction. And, Judge, you
19 can't issue a search warrant for Atlanta, Georgia. And I
20 will tell you there's a case that came out, it's not on all
21 fours, it's called Warner and Warner says you can send a
22 subpoena for electronic data to a cell service provider and
23 I'm going to just paraphrase, using the International Shoe
24 long-arm reach personal jurisdictional type rules. That is
25 not territorial jurisdiction. I would agree that that case

1 seems to present a territorial jurisdiction question, but it
2 reads like even though technically the information's in New
3 Jersey, that the entity was both in New Jersey and in
4 Pickens County, I believe, at the same time, because he had
5 sufficient contacts, meaning --

6 THE COURT: It's long-arm jurisdiction.

7 MR. BROWN: That's right.

8 THE COURT: Okay.

9 MR. BROWN: But, territorially, Judge, -- and, Judge,
10 I've had cases where you signed the search warrant. You
11 have authority over the State of South Carolina. I've been
12 involved in State court cases where a Federal judge signed a
13 search warrant. I've been involved in Federal case where
14 the State magistrate signed the search warrant, but there is
15 limited power. I mean, we all know that. In fact, I think
16 that's how Dobbs struck down Roe v. Wade. And --

17 THE COURT: Do you want to answer Ms. Swanson?

18 MS. SWANSON: Yes, ma'am. Okay. So this second search
19 warrant is for HSI's examination of the forensic digital
20 evidence that was seized in Beaufort County--

21 THE COURT: Right.

22 MS. SWANSON: ---at Tim Herndon's house. So the key is
23 where the items were located. It as seized by BCSO. The
24 magistrate court had jurisdiction as long as the items were
25 in Beaufort County. It's just transferred pending analysis.

1 THE COURT: I've had cases where you would even have a
2 circuit court judge, who only has state jurisdiction, that
3 has sent evidence to the FBI in Quantico—

4 MS. SWANSON: Right.

5 THE COURT: ---and been analyzed and forensic computer
6 evidence.

7 MS. SWANSON: Correct. And I'm still arguing. So
8 State v. Warner, which Mr. Brown brings up, came out after
9 this procedure was done. I just want to point that out.
10 This search warrant and the dates that are corrected by Zach
11 Cushman are confirmed by his supplementals that were -- it
12 shows when they were authored, so he has on 5/30/2019, I met
13 with Magistrate Judge Vaux in reference to this case. That
14 was authored on June 3rd of 2019, and then he sends a copy
15 of this search warrant to Agent Nevel in order for the items
16 to be analyzed.

17 Now, HSI Agent Cook begins reviewing those items on
18 June 7th of 2019, within that ten-day period. I will say
19 that HSI did receive the items from Beaufort County on April
20 30th, but did not begin examination until after getting the
21 search warrant and then beginning review seven days later.

22 THE COURT: Okay.

23 MS. SWANSON: So that's the time line on that.

24 THE COURT: Wouldn't that also beget the question if
25 any evidence that's ever seized and pursuant to a search

1 warrant by a county magistrate and then sent to SLED's lab
2 in Columbia—

3 MS. SWANSON: Right.

4 THE COURT: ---was the other question, would that --

5 MR. BROWN: It happens all the time and everyone I've
6 ever had has a Richland County magistrate sign it; every
7 one. I have several right now.

8 THE COURT: Okay. That's just you as one lawyer, but
9 --

10 MR. BROWN: That's fair practice. Well, I mean,
11 because I can ask the investigator.

12 THE COURT: No. We're not going to put anyone else up.
13 We're good.

14 MR. BROWN: Judge, it's never done the other way. But
15 if I just may, they drove it out of the county months before
16 the search warrant. They drove it out of the jurisdiction.

17 Judge, it's no different than if a defendant you have
18 to serve is not -- can't be served. I mean, the fact they
19 left and you could have gotten them, I mean, it has to be
20 done with a judge who has authority. And, Judge, again,
21 they haven't cracked into these devices.

22 So I've got your two rulings. One is I'm assuming
23 you're going to reaffirm the Franks, 'cause I think Franks
24 spills to this.

25 THE COURT: Yeah. I'm going to reaffirm based on my

1 earlier grounds and deny your motion based on Franks.

2 Your second one is based on --

3 MR. BROWN: Territorial -- lack of territorial
4 jurisdiction under the statute and, Judge, I've also been
5 paper fumbling, but I've cited the actual language of the
6 statute in here and it says that -- and this is a quote,
7 "That any magistrate or reporter or city judge having the
8 power of a magistrate or any judge of any court of record of
9 the State, having jurisdiction over the area where the
10 property sought is located." Judge, that area is not the
11 device.

12 THE COURT: It's talking about its original location,
13 though. It's talking about where it was seized. So, again,
14 based on territorial jurisdiction, I'm going to deny your
15 motion. I'll also tell you that the Warren case created a
16 huge question and confusion amongst magistrates and whether
17 or not they could sign certain search warrants--

18 MR. BROWN: Yes, ma'am.

19 THE COURT: ---and I will go ahead and tell you right
20 now that while that hasn't been, I think, fully straightened
21 out yet, I'm pretty comfortable that when there's an
22 appropriate case, it will be. It's why circuit court judges
23 now sign an awful lot of search warrants.

24 MR. BROWN: And, Judge, that on cert in the U.S.
25 Supreme Court right now. I've checked.

1 THE COURT: I understand. All right.

2 MR. BROWN: And that -- but that -- the confirmation
3 that the date was, in fact, May 30th on the actual execution
4 for June 7th is what I needed to --

5 THE COURT: I don't think there's any dispute on that,
6 is there, Ms. Swanson?

7 MS. SWANSON: No. I can get Zach Cushman and ask if --

8 THE COURT: I don't think you need to, though. I can
9 see his --

10 MR. BROWN: I think it even better that way.

11 THE COURT: I can see his initials on the return.

12 MR. BROWN: And I'm not arguing that it wasn't
13 reaffirmed. It think it was, but I think that's an -- that
14 actually is a technicality, but, Judge, that -- because the
15 date being April -- or May 30th, but the items were not in
16 Beaufort after April 30th, helps my argument. I had to
17 confirm it. Now I release Judge Vaux, because until then,
18 Judge, I didn't know. I will tell you it looks like
19 somebody -- I don't think that's the best practice is to
20 strike through an affidavit and just put new dates on it,
21 but I don't think that was Judge Vaux. I don't know how
22 that happened.

23 THE COURT: Okay. Well, I'm denying your motion. What
24 next?

25 MR. BROWN: I appreciate you entertaining the argument,

1 Judge.

2 And to follow up, the March 28th search warrant, should
3 the May search warrant not have had jurisdiction or witness,
4 should the May search warrant not have jurisdiction, they
5 can't say they searched it pursuant to the March 28th search
6 warrant, because not only under the statute but on the face
7 of that warrant it said it expired in ten days.

8 THE COURT: Okay. Well, I do think there's exceptions
9 to the ten-day rule that is acknowledged, although I don't
10 think it was searched pursuant to -- I don't think the
11 devices were searched pursuant to the 28th. I think it was
12 the 30th.

13 MR. BROWN: And this is to all that motion.

14 THE COURT: I appreciate that.

15 MR. BROWN: That's right. You grab territorial
16 jurisdiction I think they were going to argue they had
17 authority in the March 28th.

18 THE COURT: Okay.

19 MR. BROWN: Yes, ma'am. And so I'm assuming that
20 should you have reached that, you would have denied it or I
21 don't know.

22 THE COURT: Okay. Let's go to the next one.

23 MR. BROWN: Okay. And, Judge, I just want to make sure
24 I preserve that issue.

25 THE COURT: You have.

1 MR. BROWN: I don't want the appeals court to later say
2 that --

3 THE COURT: Okay. The next one I've got--

4 MR. BROWN: And your ruling is that --

5 THE COURT: --is the dismissal of charges for your
6 Brady violation.

7 MR. BROWN: Yes, ma'am. And if I can just quickly, I
8 got to get a ruling.

9 THE COURT: I said I denied your motion based on you
10 saying there was no territorial jurisdiction.

11 MR. BROWN: And then the one about the March 28th, the
12 search of the devices that Homeland Security is outside the
13 ten days of the March 28th.

14 THE COURT: Again, I think they have the ability to go
15 outside the ten days when they do forensic investigations or
16 dumps. Okay?

17 MR. BROWN: Okay. Thank you, Judge. I just needed a
18 ruling. I apologize.

19 THE COURT: Let's go.

20 MR. BROWN: Yes, ma'am. Judge, succinctly, I handed up
21 a report -- let me hand -- just to make sure we understand
22 this, that when asked if Logan was curious about how blacked
23 out looked and how she looked in the bathroom, Logan
24 responded yes. I would suggest that Logan looking at the
25 girls in the bathroom.

1 THE COURT: What are you talking about?

2 MR. BROWN: The information for the Brady material.

3 THE COURT: Okay.

4 MR. BROWN: It says Logan --

5 THE COURT: The new report that was turned over that
6 was the subject of our October 14th hearing?

7 MR. BROWN: That was turned over--

8 THE COURT: Today.

9 MR. BROWN: ---at two --

10 THE COURT: Again, you just have to identify what
11 you're talking about.

12 MR. BROWN: Yes, ma'am.

13 THE COURT: That's all you got to do.

14 MR. BROWN: We'll actually mark, Judge, -- and I
15 appreciate your patience with me. My client's life at stake
16 and this has been forty-four months just about.

17 Now, -- and I believe that I entered that new report
18 and, again, I don't know what I did with mine.

19 Judge, I hate to approach. If I can look at those
20 items. Thank you very much.

21 (Whereupon, Mr. Brown reviewed documents.)

22 MR. BROWN: Thank you.

23 THE COURT: All right. What next?

24 MR. BROWN: Well, Judge, I was going to hand up the
25 report I just got. And --

1 MS. SWANSON: Mr. Brown, do we need Homeland Security
2 anymore?

3 MR. BROWN: Hmm. I don't believe so.

4 THE COURT: Ms. Swanson, I anticipate us starting early
5 tomorrow. I don't know don't what time you need anyone
6 else, but I'm going to guess we're all going to be here by
7 about 8:30 tomorrow morning, just -- and I have no idea what
8 role you are in the beginning of the case, but again, I just
9 -- before you walk out the door, I wanted you to know.
10 Thank you. Okay.

11 MR. BROWN: Well, Judge, I'm just going to mark this
12 other copy, I guess, as number 12? Oh. It's number 2. All
13 right. I'm looking for item number 2. All right. That is
14 --

15 (Whereupon, Mr. Brown reviewed documents.)

16 THE COURT: So what portion are we on now for your
17 pretrial motions?

18 MR. BROWN: Well, Judge, I'm missing -- I'm missing
19 exhibit number 2.

20 THE COURT: It's right here.

21 MR. BROWN: Okay. Well, actually, that's what I would
22 argue. And so number 2, Judge, would go along with the
23 dismissal for the Brady violation and all I can say is this:
24 that report documents the devices found at Logan's house
25 this year.

1 THE COURT: Okay.

2 MR. BROWN: And it includes a silver MacBook, this is
3 on page 13 of 13 of Defendant's 2, silver MacBook laptop,
4 Acer laptop, Apple iPad, et cetera,---

5 THE COURT: Okay.

6 MR. BROWN: ---and we believe that we're entitled to
7 any impeachment or exculpatory information on those devices,
8 which somebody would have to look at them and, I mean, look
9 in them or, at a minimum, that we be - that's the Brady
10 part, but we were also, if Your Honor will recall,
11 disallowed from looking at them. When I mentioned that at
12 that hearing and Your Honor said you would not sign an order
13 allowing me to look at them and, thirdly, I subpoenaed them
14 -- SLED to bring them here.

15 THE COURT: So explain to me, there's an ongoing
16 investigation--

17 MR. BROWN: Uh-huh.

18 THE COURT: ---against Logan Heisler?

19 MR. BROWN: Yes, ma'am.

20 THE COURT: Is that correct?

21 MS. SWANSON: Correct.

22 THE COURT: For? Tell me exactly what this report that
23 is his Court's Exhibit Number 2 for defense and it is
24 looking into images that were taken when of the same
25 children?

1 MS. SWANSON: Okay. So it was reported on the day it
2 happened, September 21st, 2022. I notified Mr. Brown
3 because I heard from one of the deputies involved, so I made
4 a phone call to him about it. The allegation is is that
5 **MINOR 2**, who I believe is about eleven right now, was in the
6 shower, saw Logan's phone recording her while she was in the
7 bathroom. She called her mother who called police.

8 THE COURT: Okay.

9 MS. SWANSON: I believe she actually called
10 Investigator Cushman because she still had his number from
11 --

12 THE COURT: When you say she, this is the child's --

13 MS. SWANSON: The child's mother.

14 THE COURT: Oh. The child's mother calls Investigator
15 Cushman. Okay.

16 MS. SWANSON: And then interviews ensued and his
17 electronics were taken to be analyzed.

18 THE COURT: Okay. And that was September what of 2022?

19 MS. SWANSON: Twenty-first of this year.

20 THE COURT: And to date, those have not been analyzed,
21 his -- the forensic -- or I'm sorry, any of the devices that
22 were seized at his home?

23 MS. SWANSON: Mr. Brown has been provided with some
24 disks. I'm not sure what's on those disks. That's what
25 BCSO turned over today. Again, this is an ongoing

1 investigation. We have just a redacted copy of the report.
2 I do know that several items were taken to SLED to be
3 analyzed, which are not going to be ready tomorrow.

4 THE COURT: Okay. Yes, sir.

5 MR. BROWN: Well, Judge, many of the charges, fifteen
6 of these charges are making child porn.

7 THE COURT: Right.

8 MR. BROWN: And we know already that something and this
9 is the word used by the State at the October 14th hearing,
10 something's hinky and I think what's hinky, because Homeland
11 Security says, Hey, what program did he use. They've got
12 photos that are unique that Logan has and we've got SD cards
13 that Logan's told the police had no -- had no active files
14 on them.

15 THE COURT: Uh-huh.

16 MR. BROWN: Nobody saw anything with no active files.
17 Everybody recalls there being an active file and everything
18 and, Judge, that's enough smoke to say it's time to look to
19 see whether any of those were created on Logan's devices.
20 'Cause he did say he destroyed his laptop. We don't know.
21 I haven't looked at this laptop and, Judge, we were given
22 some CD -- CD -- we were given ten DVDs of videos. I mean,
23 Judge, I cannot go through that. It's six o'clock.

24 THE COURT: So are you asking for a continuance?

25 MR. BROWN: Well, if we can get -- yes, so we can get

1 the data off of those devices. And, actually, Judge, I
2 think that was part of my October 14th motion, wasn't for
3 the continuance, it's for the information, but it was kind
4 of unwritten in there that it would probably be continued.
5 I didn't want the guy asking for a continuance, 'cause
6 that's not my style, Judge.

7 THE COURT: Well, you've already said, additionally,
8 that your client's been waiting forty-four months.

9 MR. BROWN: Oh. Yes, he has, but Judge, they could
10 have had this analyzed between September 21st and now. They
11 could. Your Honor said that at the October 14th hearing.
12 You didn't order it, but you --

13 THE COURT: I didn't say they could have it analyzed.
14 There is no way I would have said that, because I've never
15 seen anything come back that fast, either at BCOS or SLED
16 for that matter.

17 MR. BROWN: I understand that. And, Judge, I will tell
18 you I'm not saying it's the State's fault that all of a
19 sudden there's Brady material at the last minute.

20 THE COURT: Right.

21 MR. BROWN: And I will say it is very fortuitous from
22 my position and I will tell you, I wouldn't have known about
23 it but for the State.

24 THE COURT: If she hadn't called you and told you.

25 MR. BROWN: Yeah. No question. And so I'm not trying

1 to case aspersions on that, but Judge, when somebody looks
2 at this in six months and finds something that helps, then
3 we are back here and that -- it's almost like a phone
4 extraction in a murder case I got, where we even --

5 THE COURT: Can I ask you a question?

6 MR. BROWN: Yes, ma'am.

7 THE COURT: Is it possible -- is it possible that there
8 could be a video or an image of your client, Mr. Herndon,
9 having sex with one of these minors and him not having
10 manufactured or been the maker of that image? Let me -- and
11 the reason why I ask it is this,---

12 MR. BROWN: Yes, ma'am.

13 THE COURT: ---let's say even if someone else, let's
14 say, was behind the camera,---

15 MR. BROWN: Yes, ma'am.

16 THE COURT: ---how is he not also a maker of it as well
17 if--

18 MR. BROWN: Because someone --

19 THE COURT: ---he is actually -- go ahead.

20 MR. BROWN: Yes, ma'am. Well, there's two things.

21 THE COURT: Okay.

22 MR. BROWN: A, the impeachment value is not just
23 impeachment of a witness and I cited the Kyles case, which
24 explicitly, and it's a quote, Judge, --

25 THE COURT: Answer my -- answer my question, Mr. Brown.

1 MR. BROWN: Yes. All right. A, it could impeach the
2 investigation of the evidence.

3 THE COURT: Okay. No, but listen. Answer my question.
4 Under the elements of sexual exploitation of a minor, is it
5 possible that he could be having sex with one of the childs
6 -- children and let's just -- if we assume in all worlds--

7 MR. BROWN: Uh-huh. Yes, ma'am.

8 THE COURT: ---that nothing has been changed,
9 manufactured,---

10 MR. BROWN: Yes, ma'am.

11 THE COURT: ---Photoshop'd, how can he -- can he not
12 still be convicted and -- of a person who violates this
13 provision. I mean, I'm looking at the elements of it.

14 MR. BROWN: Judge, there are four -- three times more
15 counts of sexual exploitation and the State has been honest
16 that there are sexual exploitation counts based on sexually
17 explicit photos of the minors without an adult.

18 THE COURT: Without an adult.

19 MR. BROWN: Uh-huh.

20 THE COURT: I understand that, but I'm talking about
21 the ones with Mr. Herndon in them.

22 MR. BROWN: Well, let's choose one.

23 THE COURT: So let's just -- again, if we just assume
24 in all ways that nothing was Photoshop'd and nothing, it
25 still is possible that he can be convicted of sexual

1 exploitation---

2 MR. BROWN: Yes; yes.

3 THE COURT: ---of a minor if a jury were to believe.

4 MR. BROWN: Yes, but that's not the standard for
5 Franks.

6 THE COURT: Okay.

7 MR. BROWN: I would agree with that statement.

8 THE COURT: Okay. I just wanted to know for --

9 MR. BROWN: Yes.

10 THE COURT: Okay.

11 MR. BROWN: He could be convicted -- let me--

12 THE COURT: Yes.

13 MR. BROWN: ---follow that. If it turns out that Logan
14 Heisler was videoing this the entire time,---

15 THE COURT: Right.

16 MR. BROWN: ---my client could be convicted under there
17 being two perpetrators.

18 THE COURT: Okay.

19 MR. BROWN: Which believe it or not, I think is going
20 to be her argument ultimately of third-party guilt and that
21 I can't say that Logan -- she's argued that I cannot argue
22 third-party guilt and the third-party guilt -- I'm way over-
23 simplifying, but--

24 THE COURT: I understand.

25 MR. BROWN: ---they'd have to show that some other dude

1 did it, and not just conjecture and that—

2 THE COURT: I understand. It has to be a named person.
3 Yes.

4 MR. BROWN: ---didn't do it.

5 THE COURT: Right.

6 MR. BROWN: I got a named person.

7 THE COURT: Right.

8 MR. BROWN: All right. But it would have to exclude my
9 client. But, Judge, there's nowhere that it says it has to
10 be as to every count.

11 THE COURT: Right.

12 MR. BROWN: And we're back to the -- I mean, she's
13 dropping the ones that only has his face on. I mean, if
14 we're just talking about manufacturing pornography with
15 these children, this is sitting right there at it. Logan,
16 -- Judge, Logan had these thumb drives for ten weeks before
17 he called the police, wherever he got the material from.

18 THE COURT: Okay.

19 MR. BROWN: I mean, I know there's way that that could
20 have been changed. The fact is he had those thumb drives
21 for ten weeks. That's true. He had -- he had a camera in
22 the bathroom with the girl because he wanted to see why she
23 was spending so much time in the bathroom, not that he
24 wanted to see her naked. That's what he says in the report.
25 I mean, that's BS and I -- and for what it's worth, he's

1 still living with the girls, on and off at least. We don't
2 have any -- 'cause if there's a DSS report, I'd like that.
3 That's Franks. We understand DSS has never been called out
4 to that house. I mean, this is bazaar. This is absolutely
5 head in the sand and I figure they're going to arrest Logan
6 after this trial is over, because his arrest actually would
7 complicate their conviction against my client. I mean, it's
8 -- Judge, they have to seek it out. They cannot ignore it
9 and for what it's worth, --

10 THE COURT: So are you alleging, though, that law
11 enforcement is dragging their feet--

12 MR. BROWN: Yes.

13 THE COURT: ---on Heisler's case to get your case tried
14 first?

15 MR. BROWN: Yes.

16 THE COURT: Okay.

17 MR. BROWN: And they've refuse to bring stuff and they
18 even, after I contacted their lawyer this morning and said,
19 What's going on, Dan, and he writes back and says, It's not
20 going to be today, it'll be tomorrow to give me a police
21 report that Your Honor may hit print on. And the prosecutor
22 said when she got the report, she'd give it to me. She
23 didn't have it. I'm not saying that, but October 14th, I
24 couldn't get the devices, but she gave me the report and for
25 what it's worth, still don't even have the complainant's

1 call to say -- she's calling saying Logan's in the house,
2 taping my daughter. I mean, that helps me, too,
3 potentially. And, remember and this is -- this is
4 absolutely Kyles and, Judge, I hate to just read this, but
5 Kyles says that when you analyze a Brady claim, a common --
6 it's a quote, "common trial tactic of defense lawyers is to
7 discredit the caliber of the investigation or the decision
8 to charge the defendant and we may consider this in
9 assessing a Brady violation," quote.

10 THE COURT: Okay.

11 MR. BROWN: That's Justice Souter. He's a republican.
12 And, Judge, I mean, I think -- and I said it last time,---

13 THE COURT: Uh-huh.

14 MR. BROWN: ---I don't want to postpone a forty-four --
15 I've got so many pandemic cases out there.

16 THE COURT: And your client's in jail.

17 MR. BROWN: I understand that, but I got to be honest
18 with you, I don't think that he's telling me not to get the
19 material first and if you want me to ask him, I will, but we
20 talked and that's real. And, Judge, they have information
21 that it would be impeaching of the government, because I've
22 already laid out the stuff that smells funny from the March
23 28th,---

24 THE COURT: Uh-huh.

25 MR. BROWN: ---except January 10th he told them he

1 drove straight over there. Some of the stuff was
2 Photoshop'd and none of those things are found in his house
3 and that's true. Those are true statements, Judge. And
4 we've got that, that puts them on some notice and then we've
5 got this. I mean, how can we ignore this? I mean, this is
6 screaming -- Kyles speaks to this.

7 THE COURT: The question that they haven't even
8 subpoenaed him either tells you that something --

9 MR. BROWN: Oh, yes. Yes, ma'am. In fact, I will
10 venture to say they would have put Logan up and not have
11 this gap and now he got this, they're probably not and I
12 don't blame them. I'd do the same thing. And, Judge, it
13 may turn out there's nothing on there or something even more
14 damming and I'll be honest with you, in the last two years
15 I've been involved in a case where co-counsel, very serious
16 case, and dadgummit, we didn't push and push and push to
17 some bad evidence that the State would have never had if we
18 didn't push them to go get it and, yes, I did that. Of
19 course, we thought it would be good evidence when we pushed
20 and pushed. We made a similar claim for those to explore
21 some electronic devices in other cases.

22 THE COURT: Okay. Let me do this: let me -- give me
23 that -- let me -- let me look at that investigation report.
24 I know you provided it today.

25 MR. BROWN: It's number 2.

1 MS. SWANSON: Yes, ma'am.

2 THE COURT: ---what your intention is?

3 MS. SWANSON: Yes, ma'am.

4 THE COURT: Okay. And have you talked to your other
5 testifying deputies that will understand and know let's not
6 refer to them, if we can, and not beleaguer the word victim.

7 MS. SWANSON: I will notify investigators Tuesday.

8 THE COURT: Okay. Thank you.

9 MR. BROWN: Now, Judge, I have Mr. Heisler here and I
10 think it's relevant to the Brady motion. I did bring him
11 because I thought it might be relevant to the search,---

12 THE COURT: Okay.

13 MR. BROWN: ---but I didn't need him for that.

14 THE COURT: Okay.

15 MR. BROWN: But now I've got some stuff and, Judge,
16 what better person to inquire to see whether there's Brady
17 material, besides the forensic analyst, than the guy that
18 says he does put cameras in the bathrooms with juveniles. I
19 mean, how can I not examine him about that?

20 THE COURT: Ms. Swanson, --

21 MR. BROWN: You know, that goes back to the stuff, the
22 devices and -- because that doesn't cure it. I mean, if he
23 takes the stand and says, yes, I made all the videos and
24 they are Photoshop'd in Mr. Herndon's head, I mean, if he
25 makes that statement, then maybe I don't need anything else,

1 but short of that, I still need the device stuff, but,
2 Judge, we're like dancing around questioning him and there's
3 a lot of smoke. I mean, he's being investigated. They've
4 said that. And, Judge, he's around and according to your
5 ruling on the Brady motion, I think he needs to still be
6 subject to examination is what I'm saying.

7 THE COURT: What part of the Brady motion are you
8 talking about? The videos or I'm sorry, the disks that you
9 have not reviewed? I think --

10 MR. BROWN: And the devices.

11 THE COURT: Okay. I think we've -- I understand that,
12 but I think we've already talked about part of your, I want
13 to say, criticism was that and in reading what your motion
14 actually said, it was he was entrusted with these devices.
15 Well, what wasn't the case. They were his devices and the
16 police did not seize them and so I think you can cross-
17 examine all day long the officers not seizing them and why
18 they didn't seize them.

19 MR. BROWN: That's B.

20 THE COURT: Pardon?

21 MR. BROWN: The A one is for the materials that are at
22 SLED.

23 THE COURT: And, Again, we don't even know what they
24 are because --

25 MR. BROWN: Well, that's -- that's why we have to seek

1 them out.

2 THE COURT: Okay. So you want to go ahead and cross-
3 examine Mr. Heisler?

4 MR. BROWN: About what's on those devices, his laptop,
5 these laptops, the ones he said he destroyed.

6 MS. SWANSON: I mean, --

7 MR. BROWN: And I do think he needs to be advised of
8 his Fifth Amendment Rights.

9 MS. SWANSON: Yeah. I would agree. I mean, he's under
10 investigation. I don't really know how that's going to help
11 unless he just flat out confesses to it. I think Your Honor
12 probably just needs to decide whether we're going to have to
13 delay this because of this issue or not.

14 MR. BROWN: I do agree with that.

15 THE COURT: Okay.

16 MR. BROWN: But I will say this: I don't want to
17 release him and give up the chance to examine him about that
18 issue.

19 Now, if Your Honor says we need to see what's on those
20 devices, I don't think I need to examine him today and I
21 would agree to that. And I don't know what's on the ten
22 disks, but I will say this: there is a pornographic video
23 that they would not provide because it was unclear whether
24 it was a juvenile. It said sex acts not produced -- not
25 released due to sexual content and they told me they

1 couldn't tell whether it was a minor or not. So I don't
2 have that video in these ten disks. I mean, I don't know
3 how Mr. Heisler's -- well, I don't know how he's still
4 around those girls without a DSS investigation.

5 THE COURT: But that's something completely--

6 MR. BROWN: I know that's none of my business.

7 THE COURT: ---separate from what we're talking about
8 here.

9 MR. BROWN: That's none of my --

10 MS. SWANSON: And Hannah has maintained that they have
11 not been together.

12 THE COURT: Okay.

13 MR. BROWN: Yeah. I don't think that's true. I think
14 they live near a family member and not the one in the
15 courtroom.

16 THE COURT: Okay. My question is this: does it help
17 anyone to break for the evening, not release Mr. Heisler,
18 tell him he needs to be back at whatever time tomorrow
19 morning, giving you an opportunity to look at those videos
20 to see -- not videos -- those -- I keep calling them videos
21 -- disks -- to see or determine whether or not you believe
22 there is anything that is duplicative or could in some way
23 -- I don't know --

24 MR. BROWN: Yes, ma'am.

25 THE COURT: -- be exculpatory for your client.

1 MR. BROWN: Yes, ma'am. I mean, I think -- well, I'll
2 put it differently. If I don't prevail in this case, I
3 would assume that would be a PCR issue A and then make
4 this theory (ph).

5 THE COURT: And you haven't seen them either. Correct?

6 MS. SWANSON: I don't even have copies of those.

7 THE COURT: Okay. Only he does. Okay.

8 Well, then, why don't we do this: it's 6:25. Let's go
9 ahead and break for the evening. Let's return tomorrow
10 morning at 8:30 at the latest. Okay? And that will give
11 you, hopefully, Mr. Brown an opportunity to look at what you
12 have.

13 Just so I'm clear,---

14 MR. BROWN: Judge, --

15 THE COURT: ---I just want to understand, Mr. Brown,
16 just so I'm clear, you did, as Mr. Herndon's lawyer, have an
17 opportunity while at the evidence lab to review in full
18 unsanitized versions of what the State intends to present
19 against your client? Am I correct on that?

20 MR. BROWN: Not only did I have that opportunity, they
21 drove the actual exhibits to my office.

22 THE COURT: Okay.

23 MR. BROWN: I'll admit that. And went over them in a
24 structured, safe way,---

25 THE COURT: Okay.

1 MR. BROWN: ---the twenty-nine exhibits.

2 THE COURT: The twenty-nine exhibits.

3 MR. BROWN: Yes, ma'am.

4 THE COURT: Some videos, some still photographs?

5 MR. BROWN: Yes, ma'am. But I've got to be honest with
6 you, if we're starting a trial and I'm examining their
7 witnesses tomorrow, there's no way I can get through these
8 ten disks and do that tonight.

9 THE COURT: Well, you need to start looking at those
10 disks to see if there's anything that's--

11 MR. BROWN: There's not going to be enough time.

12 THE COURT: ---potential overlap.

13 MR. BROWN: I mean, I would be falling down on my job
14 as his -- I'll just put it this way: if my choice is
15 preparing for the examination or going through the
16 discovery, it's not going to be going through that discovery
17 and I'll put it on the record. I can't do it. I'm a human
18 being.

19 THE COURT: And if you make that choice, you make that
20 choice and I assume that you --

21 MR. BROWN: It's not just --

22 THE COURT: -- I assume you've been preparing for
23 questioning of the witnesses that State's going to put up
24 prior to tonight, so --

25 MR. BROWN: That's true, but that still doesn't mean

1 THE COURT: Good evening, everyone.

2 (Whereupon, the proceeding was adjourned for the day at
3 6:32 P.M. and reconvened on November 15, 2022 at 8:30 A.M.)

4 THE COURT: All right. We are on the record.

5 MR. BROWN: My client's not here, Judge.

6 THE COURT: Oh. Sorry. Is he in lockup right there?
7 Oh. Perfect. Thank you. Okay.

8 (Whereupon, the defendant entered the courtroom.)

9 THE COURT: Mr. Brown, is it still your intent this
10 morning that you want to Mr. Heisler?

11 MR. BROWN: I'm sorry, Judge.

12 THE COURT: Is it still your intent this morning that
13 you want to call Mr. Heisler?

14 MR. BROWN: Well, I had, like, a two-minute visit with
15 my client this morning and the question about continuance
16 came up, but I'd love to speak with him and I don't know
17 which order that you'd like to take that.

18 THE COURT: Pardon?

19 MR. BROWN: We had spoken about a continuance request
20 yesterday where the State indicated they might consent and I
21 don't know where that -- that was -- I thought that was -- I
22 got to speak to client for about five minutes this morning
23 and --

24 THE COURT: Are you joining in the request for a
25 continuance?

1 MS. SWANSON: Well, Your Honor, I mean, I feel like if
2 Mr. Brown is saying he cannot effectively represent his
3 client without digging into the Logan Heisler investigation,
4 I think my hands are tied, too.

5 THE COURT: I will tell you I read through this entire
6 report and combed it and, of course, I don't have the
7 benefit of whatever are on those disks, but in this case the
8 counts that we have that are against Mr. Herndon, it's the
9 State's burden of proving each one of those counts. It's
10 their burden of proving each of the CSCs, which I understand
11 are either all on photo or video. Correct?

12 MS. SWANSON: (Nods head affirmatively)

13 THE COURT: Now, then also the solicitation or I'm not
14 -- sorry -- what's the other one? Sexual exploitation of a
15 minor. The burden is on the State to prove that this
16 defendant is the one that made those and if you're telling
17 me that you can't prove that or -- and I guess I understand
18 what his defense is. I understand it's third-party guilt.
19 I understand he's trying to say that, you know, someone else
20 created them, but I don't see where they overlap--

21 MS. SWANSON: Okay. I --

22 THE COURT: ---unless you tell me -- and this is the
23 only concern I have. Unless you tell me that in reviewing
24 the evidence that's been turned over in Mr. Heisler's case,
25 if we're looking at identical images that you are -- or that

1 the State or the police believe are potentially attributed
2 to Mr. Heisler, that's the only concern I would have, but if
3 we're talking about wholly different videos and we're
4 talking about wholly separate incidents. Do you understand
5 what I'm saying?

6 MS. SWANSON: Yes, I do. I believe I can prove my
7 case. I'm just worried about protecting everything. I'm
8 ready to go forward. I don't know what's in that
9 investigation.

10 THE COURT: Okay.

11 MS. SWANSON: I just don't.

12 THE COURT: Did you have an opportunity to look at the
13 DVDs?

14 MR. BROWN: Mr. Lewis dutifully--

15 THE COURT: Good.

16 MR. BROWN: ---listened to two of the three CDs or two
17 of the ten --

18 THE COURT: Are they just audio?

19 MR. BROWN: -- two of the ten.

20 MR. LEWIS: Thank you, Your Honor. May it please the
21 Court.

22 THE COURT: Yes, sir.

23 MR. LEWIS: I made it through two of the DVDs last
24 night before it reached 12:30, 1:00 A.M. and I just couldn't
25 go any further.

1 THE COURT: Are they audio, video or what are they?

2 MR. LEWIS: Well, ma'am, it's a combination thereof.
3 So on the first DVD, there's a hundred and fifty pictures
4 inside the residence.

5 THE COURT: Of who?

6 MR. LEWIS: Well, of nothing of the scene, but
7 concerningly, there is -- my -- in my opinion as a former
8 solicitor and also as a member of the Bar, there was more
9 than sufficient evidence to arrest Mr. Heisler for unlawful
10 conduct toward a child as well as drug crimes that evening--

11 THE COURT: Okay.

12 MR. LEWIS: ---based on the evidence that is on disk
13 one.

14 THE COURT: Okay. You said drug crimes. So you're
15 talking about drugs that were found in the home?

16 MR. LEWIS: That's correct.

17 THE COURT: Okay.

18 MR. LEWIS: There are images from the deputies of
19 holding up bags of marijuana as well as opening loose
20 marijuana within range and reach of the children as well as
21 --

22 THE COURT: How does that have anything to do, though,
23 with this case against your client?

24 MR. BROWN: There's some intent of the State this call
25 -- and I haven't heard -- he says we need to hear what they

1 discussed, this is the same thing that happened four years
2 ago.

3 THE COURT: Who's "they" discussed?

4 MR. LEWIS: That would be Detective Cushman,
5 Investigator Cushman and Hannah Parada at -- it appears Ms.
6 Parada, when her daughter, MINOR 2, called her to inform her
7 that she was being filmed in the shower by Mr. Heisler, that
8 she immediately called 911. 911 contacted investigators who
9 recognized Ms. Parada from a previous case, so they called
10 her immediately.

11 THE COURT: Right.

12 MR. LEWIS: Mr. Cushman -- I should say Investigator
13 Cushman begins to record Ms. Parada and himself on the
14 record while he's racing to get to her house and asking him
15 to meet him there so that they can get there before any
16 evidence is destroyed and collect it and seal the scene and
17 we do have that audio recording if the Court would like to
18 hear that, Your Honor.

19 THE COURT: Okay. My question, though, how does any of
20 that have to do specifically -- it could be -- and I don't
21 know, because I haven't seen it all -- it very could be that
22 both of them have done things and are guilty of certain
23 crimes against these one or two children. It's very
24 possible, but I can tell you this: they don't have to be
25 tried together. That would be the State's choice and I just

1 want to make sure that there is nothing that is duplicative.
2 In other words, I want to make sure that there is nothing
3 that is being presented as evidence in Mr. -- the case
4 before us versus what they found with Mr. Heisler. I
5 understand it's the same home. I understand that there are
6 pictures and photographs, but truthfully, finding drugs at
7 his home has nothing to do with what was found here. I
8 mean, my understanding is this man is not charged with
9 anything as far as drugs are concerned other than I know the
10 State is alleging that the girls appear to be somehow
11 drugged in some way in some of the videos or in some of the
12 photos. Again, I haven't seen it, I don't know, but my
13 point is is that I don't -- unless someone can tell me a
14 specific reason--

15 MR. BROWN: Yes, ma'am. If I may, --

16 THE COURT: ---how the over- --

17 MR. BROWN: If I may.

18 THE COURT: -- overlap as far as the evidence.

19 MR. BROWN: If I may.

20 THE COURT: Sure.

21 MR. BROWN: Yes, ma'am. Thank you. I would reassert
22 our Brady motion, because we don't have the data, the
23 underlying Brady information. It doesn't have to be in
24 writing. It can be a recording. It can be hieroglyphics,
25 it's information.

1 THE COURT: Okay.

2 MR. BROWN: There's information that's on the data at
3 SLED. We don't know what it is.

4 THE COURT: Okay. The data taken where?

5 MR. BROWN: From Mr. Heisler.

6 THE COURT: Okay. And you believe that there's data
7 that has to do with your client on what has been taken by
8 Mr. Heisler?

9 MR. BROWN: Well, let me suggest this: I believe
10 there's enough smoke that triggers the due process
11 obligation for the State to seek it out and give it to me.

12 Now, I'm not saying that they tarried on this. Judge,
13 September 21st,---

14 THE COURT: Right.

15 MR. BROWN: ---2022 is not too long ago and I told you
16 it's somewhat---

17 THE COURT: I agree. You're right.

18 MR. BROWN: ---maybe fortuitous for my client.
19 However, and I haven't been through it, but I've been told
20 that the investigator and Hannah Parada talk about this
21 being the same thing that happened four years ago. That's a
22 suggestion there's something.

23 THE COURT: Okay. But when you say the same thing,
24 we're talking about a lay person's saying the same thing.

25 MR. BROWN: Judge, you're the evidence---

1 THE COURT: Listen to me.

2 MR. BROWN: ---in the light---

3 THE COURT: Listen to me.

4 MR. BROWN: ---most favorable to them.

5 THE COURT: Listen to me.

6 MR. BROWN: I know, but I can't get my argument out. I
7 mean, I get, like, one sentence and it's rebutted by the
8 State -- I mean, you. I mean, it's not the light most
9 favorable to them. It's whether the likelihood is what
10 Brady says, a likelihood there would be information. It's
11 not whether it is admissible; Brady says that. The
12 information doesn't have to be admissible.

13 THE COURT: Solicitor, do you want a continuance or
14 join in a continuance?

15 MS. SWANSON: The State's ready to go forward, however,
16 I understand if it needs to be continued to further
17 investigate.

18 THE COURT: Has anyone from your office, and I guess,
19 specifically, I'm asking have your investigators been
20 involved in any way in this brand new investigation against
21 Mr. Heisler?

22 MS. SWANSON: No, Your Honor.

23 THE COURT: Okay.

24 MR. BROWN: And, Judge, we only have one copy of the
25 disk 'cause I'd like to enter them into evidence for the

1 purposes of your review or listen -- at least listen --
2 we've already talked about having you listen to that two-
3 minute phone call, because I think that that will -- I
4 haven't heard it because it's logistically not possible for
5 him to take home and me get to them. I mean, it's just not
6 practical, considering, especially, I did subpoena them ten
7 days before they delivered them and we had a hearing three
8 weeks before that where these same reports were discussed
9 and, Judge, it's a 13-page police report they could have --
10 I mean, they could have done that. There's nothing super
11 secret national security in that report. And I tell you
12 that, Judge, because I do think it needs to be made a part
13 of the record. I think it can be -- if a continuance is
14 granted, we can make that a part later. I only have one
15 copy. If I enter it here, I can't even go back and listen
16 to them. And I don't even have a disk -- my disk drive is
17 on a desk top at the office. Nobody uses compact disks
18 anymore.

19 MS. SWANSON: Judge, however, if a continuance were
20 granted, I would ask that all the pretrial rulings made so
21 far be preserved, the rulings, and ask that you retain
22 jurisdiction so that we don't have to litigate everything
23 all over again if we are faced with having to do this at a
24 later date. I'm also prepared to continue to litigate the
25 jail phone calls, but I'm also prepared to go forward, I

1 just -- you know, it is a serious case and I do have
2 concerns, not concerns about myself proving it, but of
3 course, --

4 THE COURT: For any post-conviction relief issues.

5 MS. SWANSON: Correct.

6 THE COURT: Okay. I understand.

7 MS. SWANSON: Because the last thing that we want to do
8 is--

9 THE COURT: Try this twice.

10 MS. SWANSON: ---do it all over again when the girls
11 are older and the victims' mother's been put through even
12 more. She doesn't want a continuance. In fact, she would
13 rather, you know, me plead the case, but I'm not sure that's
14 the right thing to do and I'm not sure the defendant's on
15 board with that. So, unfortunately, it's just -- it's just
16 not an easy decision to make.

17 THE COURT: Okay. I understand.

18 MR. BROWN: Nor for me, Judge. And I got to be honest,
19 I mean, there's -- I get no gain out of this thing being
20 postponed for three and a half months. I mean, there's no
21 personal gain to Jim Brown on this. I mean, it's more work
22 and if -- and as I mentioned yesterday, if it turns up to
23 backfire, it wouldn't be the first time that I nibbled like
24 a mouse at cheese until it came back and bit my client, but
25 I'm doing my job and I think that -- and I haven't heard the

1 recording, but the little parts I've read and talked to my
2 co-counsel is a discussion about this happening again. My
3 client's in jail. If it's happening again -- and she's
4 right. If I take it in the light most favorable to the
5 other side, she may be saying that they're being victimized
6 twice or she's saying that Logan Heisler was guilty then and
7 then the question might become whether he's guilty alone,
8 excluding my client, or guilty with my client. Those are
9 all things that we could examine in due time, which again,
10 you know, I don't have to rustle through that part of it.
11 We've got that issue about whether I get to go see Mr.
12 Watkins examine it before they examine it. But, Judge, I do
13 think -- and I mentioned on October 14th, I think for
14 posterity's sake that this is the safer course and a lot
15 more burdensome for me and for Mr. Lewis, who came in at the
16 last minute.

17 MR. LEWIS: And, Your Honor, I do apologize. I went
18 through as much as I could last night to try and provide the
19 Court as much information as I could. There's just -- it's
20 volumes, ma'am.

21 THE COURT: Do you believe your client -- or I'm sorry
22 -- do you believe your co-counsel's had enough time to talk,
23 because apparently he says I cut him off often. I'm not
24 real concerned about that because I think --

25 MR. BROWN: Oh. Yes, ma'am.

1 THE COURT: -- I think the record will bear---

2 MR. BROWN: Okay.

3 THE COURT: ---itself out, so I'm not too concerned,
4 but has he had enough time?

5 MR. LEWIS: With all due respect to the Court, ma'am, I
6 don't believe it's my place as a member of the Bar to opine
7 on co-counsel and Your Honor's interaction before the Court,
8 ma'am.

9 THE COURT: All Right. I am going to go ahead and
10 continue the case, I think. Mr. Brown needs an opportunity
11 to do more work and to be able to flesh out everything. We
12 certainly don't want this to come back on a post-conviction
13 relief. I think it's unfair for both the defendant and for
14 the alleged victims in this case. So we'll continue this.
15 I'm not retaining jurisdiction. I think whoever the trial
16 just is is going to have to make their own pretrial rulings.

17 You need to talk to Judge Bonds, both of you, when you
18 believe you've had an adequate opportunity to go through all
19 the evidence, certainly in Mr. Heisler's case, and see where
20 that goes and develops and you can talk to him about
21 resetting it. Okay?

22 MS. SWANSON: Yes, Your Honor. And I'll have my
23 investigator reach out to SLED and see if we can expedited
24 the analysis of his digital items in Logan Heisler's case.

25 THE COURT: Okay.

1 MR. BROWN: And, Judge, that was my next point, because
2 I'm going to assume that -- I still don't have the ability
3 to actually examine it prior to them and I'm not saying that
4 that's wrong. I just want to make sure that it's not
5 something that I'm not doing and so we'll wait their
6 examination, Judge.

7 THE COURT: Okay.

8 MR. LEWIS: Thank you, Your Honor.

9 THE COURT: All right. You-all are excused.

10 MR. BROWN: Yes, ma'am, and can we -- because of the --
11 there is a record, leave these items here with the -- the
12 marked items for I.D.?

13 THE COURT: Well, the jury's not been sworn and we
14 haven't gone forward, so I think you can take all your
15 exhibits back, because nothing is set, so --

16 MR. BROWN: Right, Judge, but I would like for the --
17 because there was hearing testimony, that the exhibits be
18 there to provide the context. I understand they're going to
19 get revisited, but the testimony is still there related to
20 the exhibits.

21 THE COURT: I see what you're saying. Because you're
22 going to order a transcript,---

23 MR. BROWN: That's correct.

24 THE COURT: --and --

25 MR. BROWN: And it, actually would, like, shorten it.

1 I'm sorry, Judge, but it might shorten the next judge's
2 task.

3 THE COURT: Shannon, I guess we would take this -- I
4 don't think you keep them, but I believe that we would keep
5 them in evidence here.

6 COURT REPORTER: Right.

7 THE COURT: And then he could -- because he's referred
8 to them in his transcript, it would be referred to in the
9 transcript. Would that be appropriate? But I think that
10 they should be made exhibits to the transcript if you're
11 required to. Do you see what I'm saying? I mean, they
12 should be official exhibits just like if it were a
13 deposition.

14 COURT REPORTER: Judge, I've never had this come up.

15 THE COURT: Pardon?

16 COURT REPORTER: I've never had this come up before,
17 this situation, so --

18 THE COURT: I haven't either.

19 COURT REPORTER: -- I mean, I'll defer to the Court.

20 THE COURT: I actually think, Mr. Brown, I think the
21 best way to go about this is to make those items that were
22 marked exhibits to any transcript, because I think, then,
23 that is the official record--

24 MR. BROWN: Yes, ma'am.

25 THE COURT: ---and I think you need them to be a part

1 of the record.

2 MR. BROWN: Yes, ma'am. I agree with that.

3 THE COURT: So that's how we're going to, I think, do
4 it. So I think she needs to make them -- I think you need
5 to retain them and attach them to any transcript you do. Do
6 you understand?

7 COURT REPORTER: Yes, ma'am.

8 THE COURT: Okay.

9 MR. BROWN: Thank you, Your Honor.

10 THE COURT: Okay.

11 MR. LEWIS: Thank you, Your Honor.

12 THE COURT: Thank you.

13 COURT REPORTER: With one exception,---

14 THE COURT: Yes, ma'am.

15 COURT REPORTER: ---number 8?

16 THE COURT: Yes. Number 8 is not a part of it, because
17 just for the record, number 8 was the actual evidence.
18 Correct? Okay.

19 (Whereupon, court was adjourned at 9:36 A.M.)

20 * * * * *

21

22

23

24

25

STATE OF SOUTH CAROLINA

County of Beaufort

SEARCH WARRANT

Date: March 28th 2019

Investigator SSgt Eric Calendine

Case Number: 19S079358

Search warrant of residence 24 Blue Bell Lane, HHI

SCCA 513
(3-1978)

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

)
)
)

AFFIDAVIT

Personally appeared before me, one SSgt Eric Calendine, who being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of S.C. Code Ann. § 17-13-140, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

SEE EXHIBIT "B" ATTACHED HERETO AND MADE A PART HEREOF

DESCRIPTION OF PREMISES (PERSON OR THING)

SEE EXHIBIT "C" ATTACHED HERETO AND MADE A PART HEREOF

REASON FOR AFFIANT'S BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

Sworn to and Subscribed before me
 28 day of May, 2019.

Signature of Judge

)

)

)

)

)

)

)

)

Address

Phone

Affiant

70 Shelter Cove Lane,
 Hilton Head Island, SC 29928
 843-255-3415



P.J. Tanner
Sheriff

**OFFICE OF SHERIFF
BEAUFORT COUNTY
POST OFFICE BOX 1758
BEAUFORT, SOUTH CAROLINA 29901**

AREA CODE (843)

SHERIFF	255-3200
CHIEF DEPUTY	255-3192
CRIMINAL RECORDS	255-3232
CRIMINAL WARRANTS	255-3228
CIVIL PROCESS	255-3188
JUDGMENTS	255-3189
FAX#	255-9405
WEB SITE	www.bcsa.net

**STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT**

EXHIBIT C

**DESCRIPTION OF PREMISES (PERSON, PLACE, OR THING) TO
BE SEARCHED**

24 Bluebell Lane, Hilton Head Island South Carolina is a two-story residence with light brown paint, cream color trim, and black shutters. The numeric 24 is location front right fascia board. The garage is attached to the right side of the house. The front landscaping is well maintained. The front porch has cream in color pillars. There is a pergola on the back left side of the residence. A private property sign is also located next to numeric 24. In the driveway is a 1983 Land Rover tan in color with South Carolina registration of QBF-441. Which is registered to Timothy Herndon at 24 Bluebell Lane, Hilton Head Island South Carolina (Beaufort County). An on-site preview of any device or digital media is requested to confirm the presence of known files or to assist in identifying additional files involving Sexual Exploitation of a Minor.

Affiant

Signature of Judge

(L.S.)



Beaufort County...

Certified to be a true and correct
copy of the original document on file with
the Office of Sheriff for Beaufort County.

Michael M. Hatfield
Chief Deputy, Beaufort County Sheriff's Office

STATE OF SOUTH CAROLINA)

SEARCH WARRANT

Form Approved by

COUNTY OF BEAUFORT)

SC Attorney General

Section 19-13-160

March 15, 1978

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE
MUNICIPALITY OF BEAUFORT COUNTY:

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON OR THING)

TO BE SEARCHED

SEE EXHIBIT "C" ATTACHED HERETO AND MADE A PART HEREOF

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found:

DESCRIPTION OF PROPERTY SOUGHT

SEE EXHIBIT "B" ATTACHED HERETO AND MADE A PART HEREOF

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to the Beaufort County Magistrate Court within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

Beaufort County, South Carolina


Signature of Judge
Dated: March 28, 2019

SCCA 513

(3-1978)

Certified to be a true and correct
copy of the original document on file with
the Office of Sheriff for Beaufort County.

Michael M. Hatfield
Chief Deputy, Beaufort County Sheriff's Office

RETURN

I received the attached Search Warrant on March 28th, 2019 at 2045, and have executed it as follows:

On March 28th, 2019 at 2214 o'clock P.M, I searched the premises described in the warrant.

I left a copy of the search warrant with In Kitchen

(name of person searched or "at the place of search" with), together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

SEE ATTACHED INVENTORY.

This inventory was made in the presence of Sgt Adams and Sgt Caberlin

I swear that the inventory is a true and detailed account of all the property taken by me on the warrant.

Sworn to and Subscribed before me
this 4 day of April, 2019 .)

Signature of Judge)

(Signature of Officer Executing Warrant)



P.J. Tanner
Sheriff

OFFICE OF SHERIFF
BEAUFORT COUNTY
POST OFFICE BOX 1758
BEAUFORT, SOUTH CAROLINA 29901

AREA CODE (843)

SHERIFF	255-3200
CHIEF DEPUTY	255-3192
CRIMINAL RECORDS	255-3232
CRIMINAL WARRANTS	255-3228
CIVIL PROCESS	255-3188
JUDGMENTS	255-3189
FAX#	255-9405
WEB SITE	www.bcsa.net

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

EXHIBIT A

SEARCH WARRANT AFFIDAVIT:

Personally appeared before me, one SSgt Eric Calendine, who being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of S.C. Code Ann. § 17-13-140, as amended, is located on the following premises in this County:

I have been employed as a certified South Carolina Police Officer since 2000. I have participated in and conducted numerous criminal investigations. These investigations resulted in numerous arrests and seizures which were related to criminal activity. I am currently assigned as a Staff Sergeant with the Beaufort County Sheriff's Office Criminal Investigations Section. I have attended several law enforcement schools related to the enforcement of criminal activity. The information provided herein is based upon my own investigations, as well as the investigations of the Beaufort County Sheriff's Office Deputies whose results have been provided to me.

Reason for Affiant's Belief That The
Property Sought Is On the Subject Premises

On 03-28-19, Deputies were called to the law office of Daphne Withrow at 2 Corpus Christi Suite 105, Hilton Head Island, Beaufort County, South Carolina 29928. Sgt. Reynells and LCpl Cushman responded and met with attorney, Daphne Withrow, and the complainant Logan Heisler.

Logan Heisler advised he believed his girlfriend's two juvenile daughters were being sexually assaulted by the next door neighbor, Timothy Herndon (age 42), who is a cousin of Logan Heisler. Logan Heisler stated his girlfriend, Hannah Parada, has two daughters ages 8 and 11 years old. He stated he recently started to notice a change in their behaviors when they were around the neighbor (cousin) identified as Timothy Herndon. Logan Heisler advised there have been numerous times when children were left in the care of Timothy Herndon. Logan Heisler, his girlfriend Hannah Parada, and her two daughters live at 26 Bluebell Lane, Hilton Head Island South Carolina 29926 (Beaufort County). Timothy Herndon lives next door at 24 Blue Bell Lane, Hilton Head Island, South Carolina 29926 (Beaufort County). Logan Heisler advised that he went into Timothy Herndon's residence and pulled an SD card from a camera he found in the room above the garage. The rooms above the garage consist of a game room with a pool table and a bedroom used by Timothy Herndon. Logan Heisler subsequently made a copy of the SD card. He then opened the material obtained using his computer and observed what he perceived as child pornography. Logan Heisler became upset and scared of the ramifications of his actions. He then drove to Daphne Withrow's law office to seek legal advice.

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Michael M. Hallfield
Chief Deputy, Beaufort County Sheriff's Office

Sgt. Reynells was given the copy of the contents obtained by Logan Heisler and observed numerous images and videos containing material constituting child pornography, including multiple "selfie style" photos taken by Timothy Herndon with naked prepubescent female children. Timothy Herndon includes his readily identifiable face in many of the photos and videos. Sgt. Reynells also observed homemade videos of Timothy Herndon engaged in sexual acts with a young female, who was later identified as the eight year old daughter of Hannah Parada.

The video shows Timothy Herndon in a room that was confirmed by Logan Heisler and Hannah Parada (furnishings and layout) as being in the residence of 24 Bluebell Lane. One of the images contains the 11 year old daughter squatting nude facing the camera exposing her genitalia. The victim is poised on a brown topped pool table, identified by Logan Heisler as the game room above the garage at Timothy Herndon's residence.

Investigators are seeking a search warrant for the residence 24 Bluebell Lane, Hilton Head Island, South Carolina 29926 (Beaufort County) to search and collect items used in the crimes of Criminal Sexual Conduct with a Minor 1st and/or Sexual Exploitation of a Minor. This includes but is not limited to; cellular phones, cameras, lap top computers, any photo documentation or ledgers, and any and all electronic media storage equipment used to make and store these photographs and videos. Additionally, this search warrant may assist in the identification of additional suspects or victims.

Affiant



Signature of Judge



(L.S.)



Beaufort County...

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Michael M. Hattfield
Chief Deputy, Beaufort County Sheriff's Office



P.J. Tanner
Sheriff

OFFICE OF SHERIFF
BEAUFORT COUNTY
POST OFFICE BOX 1758
BEAUFORT, SOUTH CAROLINA 29901

AREA CODE (843)

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DESCRIPTION OF PROPERTY SOUGHT

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

EXHIBIT B

Any and all computers including but not limited to; laptops, desktops, tablets, smart phones, modems. Also to be included are any electronic media, storage devices, including password protected or encrypted data, photographs, videos, paperwork, ledgers, or other contraband associated with the crime of Criminal Sexual Conduct of a Minor and/or Sexual Exploitation of a Minor.

Any and all information on cell phones, including but not limited to, all contacts, emails, text messages, notes, instant messaging, call logs and photographs, including any password protected or encrypted information contained within the cell phone. Also to be searched are any possible hidden files or folders within the device. Any and all information, including but not limited to, any computer systems, including any electronic, magnetic, optical, or other high speed data processing device performing logical, arithmetic, or storage functions; data storage facilities or electronic storage devices or media devices such as magnetic tape, flash memory cards, external hard drives, USB storage devices, hard disks, floppy disks, compact disks, DVD disks, or scanner; modems or communications facilities directly relating to or operating in conjunction with such device; devices for printing records of data; such records or data produced in various forms; manuals, software, documents, logs and system documentation or instructional material including passwords, passphrases or other material whether handwritten, printed, or in book form, relating to such devices and printers; any and all saved, archived, encrypted, or deleted data including but not limited to email, ledgers, lists, records, documents or photographs taken from, derived from or contained in the computer components and storage media described in the above listed systems or devices seized pertaining to this investigation. Also to include any password protected or



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Michael M. Hatfield
Chief Deputy, Beaufort County Sheriff's Office



P.J. Tanner
Sheriff

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encrypted information contained within the computers/laptops or tablet devices. Also to be searched are any possible hidden files or folders within the device. To be included is any and all electronic media and/or data located within the device, to include possible inserted SIM or additional memory storage cards.

Any and all evidence to include but limited to DNA, latents, blood, and trace evidence. Any and all writings, letters, or documents. Also included in the search is the surrounding curtilage of property.

Affiant

E. Calhoun

Signature of Judge

[Signature]

(L.S.)



Beaufort County...

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the Office of Sheriff for Beaufort County.

Michael M. Hatfield
Chief Deputy, Beaufort County Sheriff's Office

SEARCH WARRANT INVENTORY

CASE NO.: 195079358 PAGE: 2 OF 3
 LOCATION: 24 Blue Bell Lane DATE: 3-28-19
Hilton Head, South Carolina. 29926 BEGIN: 0021 END: 0231

ITEM NO.	DESCRIPTION	LOCATION	LOCATED BY	TIME
28	Dell Tower (NBTKH) (with card)	Upstairs Bedroom	Cushman	0023
29	8 Thumb Drives	Behind Mirror " "	Cushman	0035
30	3 Sandisk Memory Cards	Vase on Dresser Upstairs Bedroom	WEICH	0037
31	4 Memory sticks	Brown Jewelry Box Upstairs Bedroom	WEICH	0042
32	My Passport Ultra Hard Drive	Behind Picture Upstairs Bedroom	Cushman	0045
33	Apple I Pad	Under Bed - Upstairs Bedroom	Cushman	0050
34	Black & Blue Action Figure Thumbdrive	On Dresser Upstairs Bedroom	WEICH	0053
35	H? Laptop (Black) with	Under Nightstand Upstairs Bedroom	WEICH	0057
36	Flppy Discs & Cassetts	Inside oak Wardrobe Upstairs Bedroom	Seibert	0058
37	Two Sony Cameras	Behind Night Stand Upstairs Bedroom	WEICH	0103
38	Black Wood chest & Contents	Upstairs Bedroom	Cushman	0104
39	Shoe Box containing Photos, Flppy Discs, video cassetts	Upstairs Hall closet	Seibert	0108
40	2 UHS Tapes	Behind shower of Dresser, Pool Room	Cushman	0108
41	Avertec Laptop with Power Cord	Upstairs Hall closet	Albartin	0114
42	Sony Digital Camera, one Sandisk S.D. card	Behind lamp on night stand Upstairs Bedroom	WEICH	0116
43	Plastic Bag of Flppy Discs	Upstairs Hall closet	Albartin	0117
44	(1) Maxtor Hard Drive	By Computer Desk Upstairs Bedroom	Crumpton	0120
45	Blue Girls Dress	Attick	Albartin	0121
46	Black Lace Bra	Pool Room Armour closet	Crumpton	0123
47	Pink Choker	Computer Desk Collector Room	Crumpton	0125
48	TicTak Box containing 625 orange pills	Dresser Upstairs Bedroom	WEICH	0126
49	2 S.D. Cards, 1 Thumb Drive	Night Stand Upstairs Bedroom	WEICH	0132
50	Box containing Multiple Cameras, 2 video Cassetts	Dresser Upstairs Bedroom	WEICH	0133
51	One Flash Drive labeled Spinnaker Resorts	2nd Bedroom on left side	Calendine	0034
52	Sandisk Memory Disk PRO	" " " " drawers	Calendine	0035
53	S.D. card from Olympos Camera	Master Bedroom closet	Calendine	0052
54	One Apple I pad, one apple I phone	Master bedroom	Calendine	0037
55	Apple I Pad s/n C1M5QY1BH30F	Master Bedroom under Nightstand	Calendine	0040
56	Dell laptop Inspiron	Under Bed in Master Bedroom	Calendine	0043
57	Sony Vaio laptop Model PCG3ER	In Family Room	Calendine	0045
58	Black small cloth purse with 3 S.D. cards	Dresser Drawer Master Bedroom		

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 Michael M. Hatfield
 Chief Deputy, Beaufort County Sheriff's Office

SEARCH WARRANT INVENTORY

CASE NO.: 195079358

PAGE: 1 OF 3

LOCATION: 24 Blue Bell Lane

DATE: 3-28-2019

Hilton Head South Carolina 29926

BEGIN: 2214 END: 0231

ITEM NO.	DESCRIPTION	LOCATION	LOCATED BY	TIME
1	Sony Digital Camera 3403146 Model SELP1650 containing sim card	Front left Bedroom Downstairs	Calendine	2220
2	Green Pillow - Striped	Collectors Room	Seifert	2234
3	Purple Bed Sheet	Collectors Room	Seifert	2234
4	Tan Sofa Cover	Collectors Room	Seifert	2235
5	Tan Recliner Slip Cover	" "	Seifert	2238
6	Box containing video cassettes Photographs	" "	Crumpton	2245
7	Black Fabric Bag containing Film, cassettes Camcorder, container of DVD's	" "	Seifert	2247
8	Tan Zippered Cover	Desk Area - Collectors Room	Crumpton	2257
9	4 Computer Hard Drives, 1 Floppy Disk	Desk " " "	Crumpton	2253
10	1 pair black high heel shoes, Red ball gag, pink dildo, pink night gown, black net top black net stocking Gutter 2,	" " " "	Crumpton	2300
11	H.P. Tower with Power Card (A000)	under Desk - Collectors Room	Crumpton	2305
12	Tan Mattress Cover "Outer Shell"	A Hick	Seifert	2307
13	Black Sony Cyber Shot Camera	Desk - Collector Room	Crumpton	2309
14	H.P. Pavilion 700 Tower	Desk Area " "	Crumpton	2316
15	One VHS Tape Vivid	T.V. Stand " "	Seifert	2319
16	One DVD	T.V. Stand on top of X-Box	Seifert	2322
17	Broken USB with clear cover	Under T.V. stand ^{color} room	Seifert	2323
18	Silver Apple I PAD	White Counter area Pool Room	Seifert	2340
19	Gray Samsung Galaxy S9 Phone	Pool Room on white cushion	Seifert	2343
20	Tan and Brown Blanket	Pool Room on floor	Seifert	2354
21	Shoe Box of childrens Underwear	Dresser Pool Room	Albertin	2334
22	Green Box of Under garments	" " "	Albertin	2337
23	Wonder Woman Costume	Dresser Next to Couch	Albertin	2341
24	1 Red Thumb Drive, 1 Pink Thumb Drive	X-Box in Pool Room	Reich	2348
25	White Bag containing sex paraphernalia	White Cabinet Pool Room	Albertin	2354
26	White Apple Apple I phone	Dresser upstairs Bed	1.10.11 11	2021
27	Cannon S.D. Card "Blue"	Dresser upstairs Bed		

STATE OF SOUTH CAROLINA

County of Beaufort

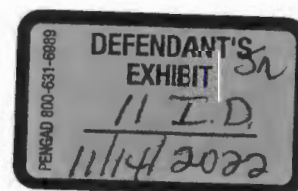
SEARCH WARRANT

Date: May 30th, 2019.

Investigator LCpl Zachariah Cushman

Case Number: 19S079358

Search warrant for digital and analog media items.



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the Office of Sheriff for Beaufort County.

Michael M. Hatfield
Chief Deputy, Beaufort County Sheriff's Office

5/30/19

SCCA 513
(3-1978)

10/11/19
EW

STATE OF SOUTH CAROLINA)

SEARCH WARRANT

Form Approved by

SC Attorney General

Section 19-13-160

March 15, 1978

COUNTY OF BEAUFORT)

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE
MUNICIPALITY OF BEAUFORT COUNTY:

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property
subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is
located on the following premises:

DESCRIPTION OF PREMISES (PERSON OR THING)
TO BE SEARCHED

SEE EXHIBIT "C" ATTACHED HERETO AND MADE A PART HEREOF

Now, therefore, you are hereby authorized to search the subject premises for the property described
below, and to seize such property if found:

DESCRIPTION OF PROPERTY SOUGHT

SEE EXHIBIT "B" ATTACHED HERETO AND MADE A PART HEREOF

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to the Beaufort
County Magistrate Court within ten days from the date of this warrant, such inventory to be signed by the officer
executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are
searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the
time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the
identity of the person in charge is not known or if such person cannot be found after reasonable diligence in
attempting to locate the person, a copy shall be attached to a prominent place on such premises.

Beaufort County, South Carolina

E. J. Gray
Signature of Judge

Dated: May 30, 2019

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(3-1978)

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the Office of Sheriff for Beaufort County.

Michael M. Hatfield
Chief Deputy, Beaufort County Sheriff's Office

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STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

AFFIDAVIT

Personally appeared before me, one LCpl Zachariah Cushman, who being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of S.C. Code Ann. § 17-13-140, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

SEE EXHIBIT "B" ATTACHED HERETO AND MADE A PART HEREOF

DESCRIPTION OF PREMISES (PERSON OR THING)

SEE EXHIBIT "C" ATTACHED HERETO AND MADE A PART HEREOF

REASON FOR AFFIANT'S BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

Sworn to and Subscribed before me
30th day of May, 2019.

E. J. Hump
Signature of Judge

Zachariah John Cushman
Affiant

) Address 70 Shelter Cove Lane,
) Hilton Head Island, SC 29928
) Phone 843-255-3722

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(3-1978)

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Michael M. Hatfield
Chief Deputy, Beaufort County Sheriff's Office

30th
EW

**STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT**

EXHIBIT A

SEARCH WARRANT AFFIDAVIT:

Personally appeared before, Lance Corporal Cushman, who being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of section 17-13-140, 1976 Code of Law of South Carolina, as amended, is located on the following premises in this county.

I have been employed as a certified South Carolina Police Officer since 2015. I have participated in and conducted numerous criminal investigations for the past three (3) years. These investigations resulted in arrests and seizures of evidence, of which were related to criminal activities. I am currently assigned as a Criminal Investigator with the Beaufort County Sheriff's Office Southern Investigations Section.

I have worked numerous hours with more tenured Criminal Investigators and participated in the preparation and execution of several search warrants in Beaufort County in the State of South Carolina in the past.

The information provided herein is based upon my own investigation along with the Beaufort County Sheriff's Office, whose results have been provided to me.

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(3-1978)

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Michael M. Hatfield
Chief Deputy, Beaufort County Sheriff's Office

4 of 11
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**Reason for Affiant's Belief That The
Property Sought Is On the Subject Premises**

On 03/28/2019 Investigators with the Beaufort County Sheriff's Office were notified of a case involving the sexual assault of two juveniles (ages 8 and 11 years old). The complainant, Logan Heisler, provided his attorney with two flash drives containing images and videos of victims, appearing to be of juveniles, nude, and in some cases being sexually assaulted by an adult male. Deputies reviewed the pictures and videos and were advised the files had been obtained from 24 Bluebell Lane by the Complainant. The two flash drives were collected as evidence and are known to contain images and videos of sexual assaults (collected at 2 Corpus Christi from complainant's attorney).

The victims, suspect, location, furnishings and décor, depicted in above mentioned images/videos were identified by the victim's parents, confirming the location of 24 Bluebell Lane.

The search warrant was served and conducted on the evening of 03/28/2019 into the early morning of 03/29/2019. During the course of the search warrant several pairs of children's costumes and lingerie were located. The suspect's computer showed numerous desktop folders with children's names, including that of one of the known victim's along with the file names of known child pornography collections. A camera was located on a tripod that appeared to be configured to transfer video directly to a computer. Numerous items of bedding were located as well as a couch which was visible in the images and videos. Multiple digital and analog cameras were located, numerous analog tapes and photographs were located. Several computer hard drives and flash drives were located. Several computers, cellphones and tablet devices were located. These items were collected for evidence and forensic review.

On 04/01/2019 three iPads, two iPhones, and one HP laptop were collected from the victim's parents at 26 Bluebell Lane. These devices were gifts from the suspect to the victims. These items are believed to contain communications from the suspect to both victims.

The following items were taken into evidence during the investigation of this case, correct scandisk & (1) Black flash drive (Property #114856). Apple iPad on file with copy of the original document on file with the Office of Sheriff for Beaufort County.

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(3-1978)

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Michael M. Hatfield
Chief Deputy, Beaufort County Sheriff's Office

(Property #114938), Apple iPad & Apple iPhone (Property #114937), SD Card from Olympus Camera (Property #114936), Memory Stick Pro 512 MB (Property #114935), (1) Flash drive labeled Spinnaker Resorts (Property #114934), Box Containing Multiple Cameras (2) Video Cassettes (Property #114933), (2) SD Cards, (1) Thumb drive (Property #114932), (1) Maxtor Hard Drive (Property #114927), Plastic Bag of Floppy Discs (Property #114926), Sony Digital Camera (1) Sandisk SD Card (Property #114925), Avertec Laptop with Power Cord (Property #114924), (2) VHS tapes (Property #114923), Shoe box containing photos, floppy discs, and video cassettes (Property #114922), Black chest with contents; tapes, DVDs, photographs (Property #114921), (2) Sony Cameras (Property #114920), Floppy discs and cassettes (Property #114919), HP Laptop with Power cord (Property #114918), Black and blue action figure thumb drive (Property #114917), Apple iPad (Property #114916), My passport ultra hard drive (Property #114915), (4) Memory Sticks (Property #114914), (3) Scan disk memory cards (Property #114913), (8) Thumb drives (Property #114912), Dell Tower 6NBTKH1 with power cable (Property #114911), Cannon SD card (blue) (Property #114910), White Apple iPhone (Property #114909), (1) Red thumb drive, (1) Pink Thumb Drive (Property #114906), Gray Samsung Galaxy S9 Cellphone (Property #114901), Silver Apple iPad (Property #114900), Broken USB drive with clear cover (Property #114899), One DVD (Property #114898), (1) VHS tape (Property #114897), HP Pavilion 700 Tower (Property #114896), (2) Floppy Discs (Property #116964), Black Sony Cybershot Camera (Property #114895), HP tower with power cord (Property #114893), (4) Computer Hard Drives, (1) Floppy Disk (Property #114891), Black bag containing film cassettes & camcorder & container of DVDs (Property #114889), Box containing video cassettes, photographs (Property #114888), One Sony Digital Camera Serial #3403146 (Property #114879), Dell Laptop Inspirion (Property #114939), Laptop Sony Vaio (Property #114940), Black cloth purse with (3) thumb drives and (3) SD cards (Property #114941), (1) HP Laptop Computer Serial #5CD8367FW7 (Property #115099), (1) Orange iPhone Serial #013836001645995 (Property #115101), Silver iPhone Serial #355786074013694 (Property #115102), Silver iPad Serial #F4KNC3BLGVI (Property #115105), Silver iPad Serial #F9GQK4S3FCM5 (Property #115106), Silver iPad Serial #DMPQR4E4F4YH (Property #115108).

Certified to be a true and correct
 The basis of this search warrant is to examine each device on file with
 copy of the original document to locate any and
 all information including but not limited to the contents of the hard drive contents, memory

SCCA 513
 (3-1978)

Michael M. Hatfield
 Chief Deputy, Beaufort County Sheriff's Office

60711
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data, contacts, emails, text messages, mixed media messages, notes, instant messaging, call logs, videos, photographs, any password protected or encrypted information contained within the devices/property, hidden files or folders, saved, archived, encrypted, or deleted data including but not limited to email, ledgers, lists, records, documents or photographs taken from, derived from or contained in the computer components and storage media described in the above listed systems or devices, any password protected or encrypted information contained, any and all electronic media and/or data located within the devices/property, to include possible inserted SIM or additional memory storage cards devices. All computer hardware/software internal storage device including, but not limited to pictures, jpegs, bitmaps, video files, mpegs, binary text, files, programs, software, audio files, film clips, movies, documents, and any other archived files on the hard drive.

Based upon this affiant's experience and training involving the possession and distribution of child pornography, it is believed that images or video will be present within this electronic and analog media seized during the investigation. Individuals who possess or distribute child pornography, tend to cherish those images/videos are known to keep them for an indefinite length of time, and consider them to be very valuable. The images/videos are often stored on portable media devices and transported by the owner.

Based on the above statement of facts collected by various officers including the affiant, it is the affiant's belief that the aforementioned electronic items have established a probability of containing evidence involving the Sexual Exploitation of a Minor and Criminal Sexual Conduct with a minor, and a search warrant is requested for the electronic items listed above and seized from 24 Bluebell Lane and received from 2 Corpus Christi and 26 Bluebell Lane, Hilton Head Island, SC 29926.

Due to the technical nature of the search it is expected to exceed the ten days for return to the Bluffton Magistrate Court. Some, if not all, of these items may be turned over to federal law enforcement agencies for forensic examination.

Affiant

Zachary John Cochran

Signature of Judge

E. J. ... (L.S.)

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Michael M. Hatfield
Chief Deputy, Beaufort County Sheriff's Office

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(3-1978)

7-11
EJ

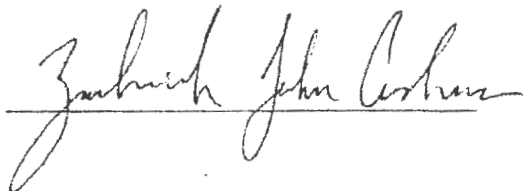
STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

EXHIBIT B

DESCRIPTION OF PROPERTY SOUGHT

The basis of this search warrant is to examine each device or item in order to locate any and all information including but not limited to, all startup data, hard drive contents, memory data, contacts, emails, text messages, mixed media messages, notes, instant messaging, call logs, videos, photographs, any password protected or encrypted information contained within the devices/property, hidden files or folders, saved, archived, encrypted, or deleted data including but not limited to email, ledgers, lists, records, documents or photographs taken from, derived from or contained in the computer components and storage media described in the above listed systems or devices, any password protected or encrypted information contained, any and all electronic media and/or data located within the devices/property, to include possible inserted SIM or additional memory storage cards devices. All computer hardware/software internal storage device including, but not limited to pictures, jpegs, bitmaps, video files, mpegs, binary text, files, programs, software, audio files, film clips, movies, documents, and any other archived files on the hard drive.

Affiant

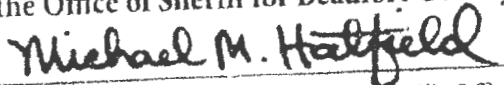


Signature of Judge



(L.S.)

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the Office of Sheriff for Beaufort County.



Chief Deputy, Beaufort County Sheriff's Office

SCCA 513
(3-1978)

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EW

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

EXHIBIT C

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

(1) Red scandisk & (1) Black flash drive (Property #114856), Apple iPad Serial #C1M5QY1BH30F (Property #114938), Apple iPad & Apple iPhone (Property #114937), SD Card from Olympus Camera (Property #114936), Memory Stick Pro 512 MB (Property #114935), (1) Flash drive labeled Spinnaker Resorts (Property #114934), Box Containing Multiple Cameras (2) Video Cassettes (Property #114933), (2) SD Cards, (1) Thumb drive (Property #114932), (1) Maxtor Hard Drive (Property #114927), Plastic Bag of Floppy Discs (Property #114926), Sony Digital Camera (1) Sandisk SD Card (Property #114925), Avertec Laptop with Power Cord (Property #114924), (2) VHS tapes (Property #114923), Shoe box containing photos, floppy discs, and video cassettes (Property #114922), Black chest with contents; tapes, DVDs, photographs (Property #114921), (2) Sony Cameras (Property #114920), Floppy discs and cassettes (Property #114919), HP Laptop with Power cord (Property #114918), Black and blue action figure thumb drive (Property #114917), Apple iPad (Property #114916), My passport ultra hard drive (Property #114915), (4) Memory Sticks (Property #114914), (3) Scan disk memory cards (Property #114913), (8) Thumb drives (Property #114912), and 1 document on BIK with the Office of Sheriff for Beaufort County.

SCCA 513
(3-1978)

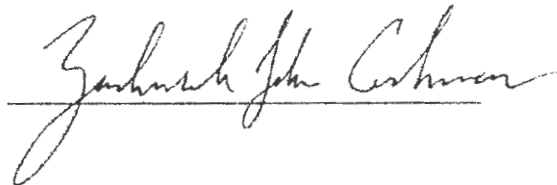
Certified to be a true and correct
copy of the original document on file with
the Office of Sheriff for Beaufort County.

Michael M. Hatfield
Chief Deputy, Beaufort County Sheriff's Office

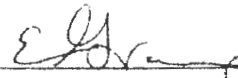
9 of 11
EW

with power cable (Property #114911), Cannon SD card (blue) (Property #114910), White Apple iPhone (Property #114909), (1) Red thumb drive, (1) Pink Thumb Drive (Property #114906), Gray Samsung Galaxy S9 Cellphone (Property #114901), Silver Apple iPad (Property #114900), Broken USB drive with clear cover (Property #114899), One DVD (Property #114898), (1) VHS tape (Property #114897), HP Pavilion 700 Tower (Property #114896), (2) Floppy Discs (Property #116964), Black Sony Cybershot Camera (Property #114895), HP tower with power cord (Property #114893), (4) Computer Hard Drives, (1) Floppy Disk (Property #114891), Black bag containing film cassettes & camcorder & container of DVDs (Property #114889), Box containing video cassettes, photographs (Property #114888), One Sony Digital Camera Serial #3403146 (Property #114879), Dell Laptop Inspiron (Property #114939), Laptop Sony Vaio (Property #114940), Black cloth purse with (3) thumb drives and (3) SD cards (Property #114941), (1) HP Laptop Computer Serial #5CD8367FW7 (Property #115099), (1) Orange iPhone Serial #013836001645995 (Property #115101), Silver iPhone Serial #355786074013694 (Property #115102), Silver iPad Serial #F4KNC3BLGV1 (Property #115105), Silver iPad Serial #F9GQK4S3FCM5 (Property #115106), Silver iPad Serial #DMPQR4E4F4YH (Property #115108).

Affiant



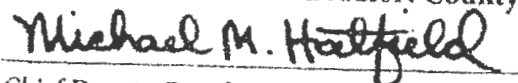
Signature of Judge



(L.S.)

SCCA 513
(3-1978)

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Chief Deputy, Beaufort County Sheriff's Office

10 of 11
EW

RETURN

I received the attached Search Warrant on MAY 30th, 2019 at

, and have executed it as follows:

On 05/04/30, 2019 at 1808 o'clock P.M., I searched the premises described in the warrant.

I left a copy of the search warrant with HOMELAND SECURITY INVESTIGATIONS
(name of person searched or "at the place of search" with), together with a receipt for the items seized.
The following is an inventory of property taken pursuant to the warrant:

SEE ATTACHED INVENTORY.

This inventory was made in the presence of LCPL Z. CUSHMAN and

I swear that the inventory is a true and detailed account of all the property taken by me on the warrant.

Sworn to and Subscribed before me
this 11th day of March, 2029.

Signature of Judge

Signature of Officer Executing Warrant)

1- HARD DRIVE FROM HOMELAND SECURITY CONTAINING
EVIDENCE EXTRACTION & REPORTS (PROPERTY # 143690)

Certified to be a true and correct
copy of the original document on file with
the Office of Sheriff for Beaufort County.

Michael M. Hatfield
Chief Deputy, Beaufort County Sheriff's Office

SCCA 513
(3-1978)

11 of 11
EW

STATE OF SOUTH CAROLINA	IN THE GENERAL SESSIONS COURT
	2021-GS-07-00664
COUNTY OF BEAUFORT	
-----)	
State of South Carolina)	
)	
Plaintiff,)	
vs.)	TRANSCRIPT OF JURY TRIAL
)	VOLUME I
TIMOTHY HERNDON,)	(PAGES 1 - 248)
)	
<u>Defendant.</u>)	

November 13, 2023
Beaufort, South Carolina

B E F O R E:

The Honorable CARMEN T. MULLEN, Judge Presiding

Kymberlee M. Williams, CSR/RPR
Official Circuit Court Reporter III
Post Office Box 8091
Beaufort, South Carolina 29903

A P P E A R A N C E S

Appearing for The State of South Carolina:

DUFFIE STONE, ESQ.
SOLICITOR
SEAN THORNTON, ESQ.
DEPUTY SOLICITOR
14th Circuit Solicitor's Office
P.O. Box 1880
Bluffton, South Carolina 29910

Appearing For the Defendant:

JAMES BROWN, ESQ.
Law OFFICES OF Jim Brown
1600 Burnside Street
#100
Beaufort, South Carolina 29902

1 try this case, do you think we would be finished
2 by Friday?

3 MS. SWANSON: Yes, ma'am.

4 THE COURT: Okay. Did you already print it
5 out?

6 MR. BROWN: I do, and I will tell you why.
7 There's some witnesses I've subpoenaed, and they
8 -- actually, when I got their witness list, they
9 have several of them on there already, so I
10 think that will shorten mine.

11 I predict my presentation will take a half-
12 day or less, and -- but I do have witnesses.
13 One witness said she wouldn't be here after
14 Thursday morning, or something to that effect,
15 but under what they said that they had a day, or
16 a day-and-a-half, yes, ma'am.

17 THE COURT: Can you tell me what the
18 rulings are I had made back on November 14 and
19 15 of 2023 that you're seeking Judge Hughston to
20 adopt?

21 MR. BROWN: Yes, ma'am. The primary issues
22 were related to searches. There was a search of
23 my client's house, and we raised several
24 challenges. One was a lack of probable cause,
25 one was a Frank's issue, Judge.

1 And then we also raised a reasonableness
2 issue related to the search of the devices and a
3 challenge to that search warrant as well,
4 because there was a different search warrant
5 issued to search the actual contents of the
6 device.

7 THE COURT: All right.

8 MR. BROWN: There was a challenge to some
9 jail phone calls, and that would come back up.

10 We had asked that there not be a reference
11 to the young women as victims. That was one of
12 the motions we had, and, Judge, quite frankly, I
13 have got in in a folder over here, but I think
14 there's one more I think I'm forgetting, but I
15 apologize, off the top of my head. As soon as I
16 get this folder out --

17 THE COURT: So did I actually make rulings
18 on all of that?

19 MR. BROWN: You did. You denied those.

20 THE COURT: Okay.

21 MS. SWANSON: Just on the two search
22 warrant issues.

23 MR. BROWN: That's correct.

24 MS. SWANSON: The motion to exclude jail
25 phone calls was still outstanding.

1 THE COURT: I thought so.

2 MS. SWANSON: We had some argument but did
3 not finish it.

4 THE COURT: And you recently -- I know that
5 Kylyn had read that at some point, and then she
6 forwarded them to me and then I read them as
7 well, so I believe that was our last status
8 conference that we had by Webex, and --

9 MR. BROWN: Yes, ma'am.

10 THE COURT: I remember reading it before
11 that.

12 MR. BROWN: Yes, ma'am.

13 THE COURT: So I've read this, so I can
14 rule on those.

15 What else would be outstanding?

16 MR. BROWN: And we would like to reargue,
17 not to go through testimony, but highlight it,
18 because there are evidence suppression issues.
19 When the evidence comes back up, I've got to
20 renew them, and there could be some change
21 related to it.

22 The other one I noticed, Judge, was that we
23 did make a motion, excuse me, to exclude a
24 reference or evidence of drugging. And if
25 you'll recall, there was a hair sample taken

1 from the young ladies to test to see if they had
2 been drugged.

3 THE COURT: Uh-huh.

4 MR. BROWN: And we never got a result, and
5 I'm still not absolutely clear whether it was
6 not tested, but we don't have anything that
7 shows that the girls were drugged. And they do
8 have a Tic Tac container in evidence --

9 THE COURT: I know.

10 MR. BROWN: -- that has a controlled
11 substance in it.

12 THE COURT: Okay, correct.

13 MR. BROWN: But otherwise there's no link
14 because it's my understanding there were other
15 prescriptions in the house, people lived in that
16 house.

17 So there's -- that would be speculation or
18 suspicion, and we believe --

19 THE COURT: Well, did the girls appear
20 drugged in the videos?

21 MS. SWANSON: They do, Your Honor, and
22 while I agree that there is no direct evidence,
23 it is something that the jury can reach a
24 logical conclusion about and can be argued in
25 closing.

1 We do have evidence that there is Ambien in
2 a Tic Tac container --

3 THE COURT: I remember that.

4 MS. SWANSON: -- and that the girls appear
5 to be drugged while they're being anally
6 penetrated. They're not waking up, there's a
7 video of that.

8 THE COURT: Did the police take hair
9 samples from the girls, and were they tested,
10 and did they come back?

11 MS. SWANSON: They did not come back as
12 anything, as far as what Renita Berry has told
13 us, but there was not enough root, we're not
14 using any evidence of hair follicle testing, so
15 that's where we stand.

16 MR. BROWN: We don't have any response, so
17 we don't know what it shows; but I would say
18 this, Judge, a pharmacologist could testify as
19 to the effect of drugs, et cetera. They don't
20 have that.

21 I mean they don't have evidence that a
22 person would be in a hypnotic state with their
23 eyes open, things like that.

24 So they can say they appeared to be
25 drugged, I think what they're saying is, there

1 appears to be no reaction that they would expect
2 to see, but we're starting to get into what
3 would be expert testimony. We see this in DUIs
4 all the time, and if the behavior matches the
5 drugs that were found in their blood. I mean,
6 pharmacologists all the time testify to that.
7 Dr. Ballentyne I think is the expert for DUIs.

8 THE COURT: Well, we'll get to that when we
9 do, so we'll hear that in all the pretrial
10 motions that we need to.

11 MR. BROWN: Yes, ma'am.

12 THE COURT: All right, other than that what
13 else? You said not referring to the girls as
14 victims, that was on there --

15 MR. BROWN: Yes, ma'am.

16 THE COURT: -- is that correct?

17 MR. BROWN: There is another new motion. I
18 do plan to move to -- well, I'll move to
19 dismiss, but we'll see where it goes related to
20 what I'm gonna call a deal cut with Logan
21 Heisler.

22 Logan was the third-party complainant, he's
23 not the direct complainant with law enforcement.
24 He's also a neighbor and my client's cousin and
25 father figure for the two young ladies. He

1 admits video recording or attempting at least to
2 video record the girl that was at the time 11 in
3 the bathroom. He gives a litany of things. He
4 wanted to video himself in the bathroom.

5 THE COURT: I remember all of that.

6 MR. BROWN: But he also says he wanted to
7 video her to see what she looked like changing
8 clothes because she's a lesbian. I know none of
9 this makes any logical sense, but he's trying to
10 commit the act of voyeurism and that's a crime,
11 regardless of whether they're nude.

12 Voyeurism doesn't require nudity. If
13 they're nude --

14 THE COURT: So what was the deal that you
15 believe was --

16 MR. BROWN: He hasn't been prosecuted.
17 There are now DSS records that says he was
18 referred to the Sex Trafficking Unit. It also
19 says there was a restraining order issued
20 against him that I didn't know about.

21 And the fact he wasn't -- the Corey Brown
22 case says even if there's a deal that's not
23 struck, and that came out September 22nd of this
24 year, and it says, "Negotiations are
25 discoverable."

1 So case law -- deals with the Corey Brown
2 case. That case actually struck a deal that got
3 broken, and they didn't turn it over, and they
4 reversed that.

5 THE COURT: Who's gonna be able to testify
6 that there was a negotiation? I mean it's gonna
7 be the truth that he was not prosecuted, that's
8 it.

9 MR. BROWN: And why not, because DSS says
10 they referred him to the Sex Trafficking Unit.

11 THE COURT: Well, they just referred him,
12 it doesn't mean anything. People can get
13 referred to a lot of things when they are
14 prosecuted, so I think that while maybe you can
15 ask him about it, and he testifies --

16 MR. BROWN: Well, I'd like to call him at
17 pre-trial, and he's under subpoena, and if you
18 recall, last year he did not come until -- you
19 didn't actually send out a posse, but we did not
20 commit the same error this year.

21 We subpoenaed everybody to be here at 9
22 o'clock this morning in Courtroom 1. There's
23 nobody under telephone standby. Subsequent to
24 trial in December last year, Judge Bond told me
25 he didn't recognize telephone standby. I don't

1 recognize it either anymore. And, I'm sorry you
2 have to come and sit at the bench, but I don't
3 see him. He's on their list though, and I'd
4 like to call him and ask him. Because I think
5 that's also subject -- and we cited in Kyle v.
6 Whitley, which is where the complainant that the
7 U.S. Supreme Court says probably could have been
8 Fuller, his name is Beanie, says Curtis Kyles
9 did it, and the Court, Justice Suiter
10 (phonetic), says, you know one classic defense,
11 and I think he calls it the oldest defense to
12 impugn the investigation.

13 And I think it would be subject to
14 impugning somebody that he was referred to the
15 Sex Trafficking Unit and they refused to
16 investigate that part of it. That actually is a
17 persistent theme from the time they meet Logan
18 on the day of my client's search all --

19 THE COURT: Okay, well, that's --

20 MR. BROWN: -- all the way --

21 THE COURT: -- obviously something you
22 could ask the officers about, and why it was
23 referred, and that they didn't prosecute him, so
24 I mean I think that's just something we can get
25 into.

1 All right, let me do this, I'm going to go
2 talk to Judge Hughston --

3 MR. BROWN: Yes, ma'am.

4 THE COURT: -- and see exactly what we're
5 doing, where we're going from here. Correct me
6 if I'm wrong, the two young girls, or the two
7 girls at this point, I don't know what age they
8 are.

9 What age are they now Ms. Swanson?

10 MS. SWANSON: About to be 13 and 15.

11 THE COURT: Okay, and my question, they're
12 not testifying, correct?

13 MS. SWANSON: Correct.

14 THE COURT: Okay. And correct me if I'm
15 wrong, where are they in school now? I know
16 they were at Hilton Head High School and Hilton
17 Head Middle School at the time, but that they
18 moved.

19 MS. SWANSON: One is still at Hilton Head
20 Middle School, obviously, the younger, and the
21 other is at Hilton Head High.

22 THE COURT: Okay.

23 MR. BROWN: But we have not subpoenaed
24 them.

25 THE COURT: Okay.

1 Calendine.

2 MR. BROWN: And they know in Jones and
3 Robinson now. But that's not what was presented
4 to the Magistrate at the time. And to end the
5 argument, I put up Officer Calendine, and he
6 said there was no supplementation, no oral
7 supplementation, so what he gave them is what he
8 gave him --

9 THE COURT: Okay.

10 MR. BROWN: -- Judge, to finish that, and
11 that's all in the record, so I'm not gonna
12 belabor --

13 THE COURT: Right.

14 MR. BROWN: I know you finished your ruling
15 on that.

16 Now, Judge, let me move into the actual
17 search. And I've got a distinct motion, again -
18 - I've got a distinct motion regarding the
19 eventual search, and this is a motion under U.S.
20 v. Pratt. And in Pratt, they found that there
21 was an unreasonable delay in the execution of a
22 search of some devices that were taken, and this
23 is a federal case, Judge.

24 THE COURT: I've read it.

25 MR. BROWN: Okay, and --

1 THE COURT: And what is in Pratt is, that
2 the officers in that case confronted the alleged
3 defendant, took his phone, and waited 31 days
4 until they got a search warrant from a Judge.

5 It's different from our case, because in
6 our case they got the warrant and then they went
7 ahead and issued it and did the search.

8 So those are two different things
9 completely.

10 MR. BROWN: Judge, it's my understanding in
11 Pratt that it was the search of the device that
12 was too late.

13 THE COURT: Right.

14 MR. BROWN: That they did not immediately
15 search these devices.

16 THE COURT: They couldn't because they
17 didn't have a search warrant. They were saying
18 they waited too long between when they actually
19 seized the phone --

20 MR. BROWN: Right.

21 THE COURT: -- because it wasn't a seizure,
22 pursuant to a search warrant, it was -- they
23 were going to destroy the evidence allegedly, so
24 they took the phone, and they waited 31 days
25 until they went to a Judge to issue a search

1 warrant. That's the difference from this case.

2 In this case that's not what happened.

3 We're talking about in this case them going,
4 getting the search warrant, and then executing
5 it on the same night.

6 Now, you go on to have another argument
7 later where you said they took 12 months, or it
8 was ten months, one of the two, for them to be
9 able to extract what was ever on there, and you
10 said they had ten days to deliver it and show
11 what had happened.

12 They're technically two different things.
13 I can tell you that they can always get an
14 extension for more than ten days on a search
15 warrant with the issuing Judge. I don't know if
16 they did in this case, because I could not tell,
17 but I can tell you that that's standard, because
18 I never get phone records back when I've issued
19 a search warrant then they come back and they
20 usually take months, if not, weeks, but that's
21 the difference with the Pratt case. The Pratt
22 case is not the same as this one.

23 MR. BROWN: Well, if I may, Judge in Pratt
24 on page 271 on the federal third reporter, it's
25 clear Pratt does not contend that the seizure

1 was unconstitutional.

2 It's not the seizure.

3 THE COURT: I understand that it's not the
4 seizure, but it's waiting 31 days before they
5 actually go to a Magistrate --

6 MR. BROWN: Well --

7 THE COURT: -- and say, "I need you to sign
8 it, so we can get into it."

9 MR. BROWN: That's what they did here.
10 That's not the same search warrant you're
11 looking at.

12 THE COURT: It's not?

13 MR. BROWN: Well, Judge, the time of the --

14 THE COURT: What is the second date of the
15 second search warrant.

16 MR. BROWN: April 30th, which is, excuse
17 me, hold on, Judge, and I've got another copy of
18 it. I don't want to object because I've already
19 got all this stuff in the record.

20 That search warrant was obtained May 30th,
21 which is 62 days after the seizure.

22 THE COURT: For his phone? For Mr.
23 Herndon's phone?

24 MR. BROWN: And his devices, yes, ma'am.
25 63 days.

1 THE COURT: All devices?

2 MS. SWANSON: That was all the devices.

3 That was the search warrant that was signed for
4 Homeland Security to start to forensically
5 analyze all of those devices. As you are aware,
6 it was a lot of digital material that they had
7 to go through.

8 THE COURT: Okay. Somebody needs to
9 separate out for me in this case, we're talking
10 about images on these cards, and it might be
11 your expert that better needs to explain this to
12 me; but whatever was found on allegedly a card
13 versus -- are we talking about a cell phone as
14 well?

15 MR. BROWN: They had only looked at the two
16 thumb drives before they got the search warrant
17 on May 30th.

18 THE COURT: Okay.

19 MR. BROWN: And those two thumb drives were
20 from -- Logan told them on April 1st. And they
21 hadn't duplicated anything until this May 30th
22 search warrant.

23 THE COURT: All right.

24 MR. BROWN: And that's twice as long as
25 Pratt's.

1 THE COURT: So what happens when they take
2 those images, Homeland Security, where do they
3 send them to, to be able to access them, I
4 guess?

5 MR. BROWN: My understanding, Judge, is
6 they make a copy.

7 THE COURT: Okay.

8 MR. BROWN: And so they don't actually ever
9 use that again, and they use their copy just
10 like my expert made a copy too.

11 THE COURT: So you can't write over them,
12 and you can't --

13 MR. BROWN: That's correct, that's correct.

14 THE COURT: Okay.

15 MR. BROWN: That's correct.

16 THE COURT: Okay.

17 MR. BROWN: But they don't do that until
18 after the May 30th search warrant.

19 THE COURT: Okay.

20 MR. BROWN: And that is 60 -- I mean I've
21 got 63 days between the 30th or 31st of March,
22 30 days in April, 30 days in May, on May 30th,
23 63 days.

24 THE COURT: But they had a search warrant,
25 correct, to do that?

1 MR. BROWN: On May 30th.

2 THE COURT: On May 30th, okay.

3 MS. SWANSON: Yes, Your Honor.

4 As far as timeline goes in April of 2019,
5 that's when BCSO asked Homeland Security to
6 assist on April 30th of 2019.

7 Homeland Security took custody of the
8 actual items. They did not make copies, they
9 took custody of the actual items but did not go
10 into those items for any sort of forensic
11 analysis until they got the search warrant on
12 May 30th of 2019.

13 THE COURT: Do we need to verify whether or
14 not there is something specific on those before
15 they can actually go in and look? Does that
16 make sense how that works?

17 MR. BRENNAN: Typically, Your Honor --

18 MS. SWANSON: He can stand up. This is
19 Frank Brennan, he did the forensic analysis of
20 all of the exhibits that we're going to be
21 entering.

22 THE COURT: Okay. So, I'm sorry, what do
23 they have to do to be able to -- I hear all the
24 time where people say something to me like, we
25 don't have the type of equipment --

1 MR. BRENNAN: Yeah.

2 THE COURT: -- to be able to download
3 something, whether it be, say, a black box on a
4 car, or a card player or something along those
5 lines. So explain to me how this works.

6 MR. BRENNAN: So in incidents like this,
7 where there's been a search warrant, items have
8 been seized from a search warrant before, we
9 utilize the same probable cause that was used
10 from that search warrant, in order for Homeland
11 Security to then acquire their search warrant to
12 search the devices. We cannot interact with the
13 devices at all until we have the search warrant
14 in these cases.

15 THE COURT: And then what would the
16 interplay be between Homeland Security and the
17 lead investigating officer on this case locally,
18 would that be BCSO?

19 MR. BRENNAN: Yes, ma'am.

20 THE COURT: And was that through Angie
21 Crumpton, or was that through another officer,
22 whoever the officer was on it?

23 MR. BRENNAN: I know Angie Crumpton was
24 involved for the most of it, between Angie
25 Crumpton and at the time Special Agent Calore.

1 MS. SWANSON: And that was just to
2 physically get the items that Mr. Brennan
3 analyzed that we're using in this trial.

4 THE COURT: Okay, okay.

5 So, again, how about you just go ahead and
6 respond. So as far as my understanding is, no
7 one went into whatever they had gone to to
8 search the place on April 28th, 2019?

9 Nothing was gone into on either one of
10 these. Tell me the actual verbiage? What are
11 we going to call them? Are they cards? What
12 are they called?

13 MS. SWANSON: The only piece --

14 THE COURT: A thumb drive?

15 MS. SWANSON: The My Passport hard drive is
16 where all of our exhibits are coming from. That
17 is line item 40 in HSI's forensic reports. That
18 is what Frank Brennan analyzed. He did not go
19 into that until he had a valid search warrant,
20 which was done on May 30th.

21 HSI did not get that item until April 30th.

22 THE COURT: All right, okay.

23 MR. BROWN: And, Judge, I believe that has
24 a BCSO number on it, which my understanding is
25 this BCSO number 114915.

1 MS. SWANSON: Well, it would have that
2 number, and it would also have the number
3 associated with Homeland Securities' forensic
4 analysis, which is line item 40.

5 It also has a BCSO number, because it was
6 originally logged into BCSO Evidence and taken
7 back to BCSO Evidence.

8 THE COURT: Okay, so that also establishes
9 the chain as well, correct?

10 MS. SWANSON: Correct.

11 THE COURT: Okay.

12 MR. BROWN: Well, I've also tried to show
13 that that's in the search warrant affidavit.

14 THE COURT: Okay.

15 MR. BROWN: And so you have which number it
16 is, Judge, that's why -- because they do not
17 have the Homeland Security number in that.

18 THE COURT: Okay, well, I don't think based
19 on the time, again, I don't think the Pratt case
20 is clearly on all fours, so I'm going to deny
21 your motion based on that issue.

22 MR. BROWN: Okay, and, Judge, I won't
23 argue, but I can't see how 63 days is less than
24 30.

25 THE COURT: I understand that, but --

1 MR. BROWN: Yes, ma'am.

2 THE COURT: I have ruled.

3 MR. BROWN: I know you have, yes, ma'am, I
4 respect that. Then we've got the extra
5 territorial search.

6 THE COURT: I saw that argument, it looks
7 like, obviously, the Beaufort County Magistrate
8 was the one who signed the May 30th warrant to
9 be able to search the cards, or for lack of a
10 better word, whatever we're going to say. And
11 they had to be taken to Charleston County,
12 because no one had the ability to do it, is my
13 understanding.

14 MR. BROWN: Well, I mean I think it could
15 be done, because my expert copied it sitting at
16 a tiny little table with me for three days.

17 I would suggest that I'm assuming that
18 their getup in Charleston is more comfortable
19 than the tiny round table in the lobby of the
20 evidence room, and I don't fault them for that.

21 THE COURT: So --

22 MR. BROWN: But --

23 THE COURT: -- why does it go to
24 Charleston, Ms. Swanson, as opposed to being
25 done locally?

1 MS. SWANSON: Okay, because of the amount
2 of material, BCSO has one person at the time
3 that can work on forensic analysis. It's just
4 like having --

5 THE COURT: Is Homeland Security based out
6 of Charleston?

7 MS. SWANSON: It's at -- well, they have an
8 office in Charleston. This actually ended up in
9 Columbia, which is where Mr. Brennan was
10 working, but it's not unlike taking any
11 forensics for analysis to SLED in Columbia, and
12 so --

13 THE COURT: We know that.

14 MS. SWANSON: Yeah, if the agency has a
15 whole lot of forensics to do, to try and get
16 them done quicker they employ the use of HSI.
17 They also were concerned at the time that there
18 may have been some international sharing of the
19 files, and so they were not sure at the time if
20 there was gonna be any federal involvement, so
21 that's why it also made sense for HSI to be
22 involved.

23 MR. BROWN: I think that raises another
24 question, but we're -- it's just an elephant in
25 the room for why it rolled back downhill.

1 But, Judge, I would point out that I do
2 cases, and I pled a fella last month,
3 unfortunately, in a child porn case here, and it
4 was a case done with the Attorney General's
5 Office ICAC, and the searches were all done
6 pursuant to search warrants from, in part,
7 Richland County Magistrate and then Circuit
8 Judge Deandra Benjamin.

9 And so they absolutely know that there's a
10 limit on the territorial jurisdiction of a
11 Magistrate Judge, and I mean they didn't get a
12 Circuit Judge, it wasn't countersigned. I mean
13 it's null and void. Like I say, it's like the
14 cherry that turns into a pumpkin at midnight,
15 when it hits the County line it's just some
16 paper.

17 MS. SWANSON: Your Honor, I believe the
18 line of cases that he is referencing came out
19 after 2019, and they are not retroactive, and it
20 was in reference to cell phone location data and
21 how a Circuit Court Jude needs to sign off on
22 those now; but regardless this was back in 2019
23 before that line of cases came out, and there
24 was nothing inappropriate done with the search
25 warrants in this case.

1 THE COURT: Okay.

2 MR. BROWN: The Warner case is the one that
3 deals with out-of-state information, but, Judge,
4 territorial jurisdiction has been one of the
5 cornerstones of jurisdictions since the
6 beginning of Jurisprudence in the United States.

7 THE COURT: I don't think that them looking
8 at this information and materials in Columbia or
9 Charleston for that matter -- I don't see how
10 it's any different than taking something that's
11 issued here, gathered here, and taken up to SLED
12 for testing for drugs or for anything else for
13 that matter.

14 Just because it started here, it came from
15 Beaufort County, was signed by a Beaufort County
16 Judge, and if it had to be analyzed somewhere
17 else, they certainly can analyze that and bring
18 it back. And, historically, we've been doing
19 that for at least the last 30 years that I have
20 been around.

21 MR. BROWN: And, Judge, if I may? Drugs
22 and ballistics are not on a search, because
23 they're --

24 THE COURT: Some of them are the result of
25 a search.

1 MR. BROWN: Right, but they were seized as
2 a result of a search, but --

3 THE COURT: Uh-huh.

4 MR. BROWN: -- the examination doesn't
5 require a search. In other words, it's not
6 searching the items seizure from his house and
7 it's not driving it out of County, but to look
8 in his items, which is like looking into a
9 briefcase.

10 THE COURT: That were found in Beaufort
11 County.

12 MR. BROWN: That's correct, they would have
13 to have authority to look inside the items,
14 which actually the marked warrant originally did
15 give them that authority interestingly enough,
16 but it's only good for 10 days.

17 And so then 62 days, 63 days later, they've
18 already driven it out of the County and didn't
19 get permission to go in and look. It's
20 different than drugs that they can look at
21 without having to open anything up.

22 THE COURT: It's also different then Pratt,
23 when you're talking about they seized an item
24 and they got -- waited 30 days to be able to
25 actually get a search warrant, so I think it's

1 different.

2 So respectfully, I'm going to deny your
3 motion as to that.

4 Your next motion had to do with the jail
5 phone calls. Did we reach that last time or
6 not?

7 MR. BROWN: Only briefly.

8 THE COURT: Okay.

9 MR. BROWN: Yes, ma'am.

10 THE COURT: Okay.

11 MR. BROWN: And I'm going to stand down on
12 that, because I'm gonna let Mr. Lewis address
13 the jail phone calls.

14 THE COURT: Uh-huh.

15 MR. BROWN: But, Judge, I do have an issue,
16 again, about the drug testing part of this,
17 because there was some discussion earlier about
18 whether they could draw some inference or not,
19 et cetera.

20 THE COURT: Which motion? Are you talking
21 about --

22 MR. BROWN: Well, my motion to exclude
23 reference, but for the first time today it
24 sounds like --

25 THE COURT: You are talking about the hair

STATE OF SOUTH CAROLINA	IN THE GENERAL SESSIONS COURT
	2021-GS-07-00664
COUNTY OF BEAUFORT	
-----)	
State of South Carolina)	
	)
Plaintiff,	)
vs.	)
	)
TIMOTHY HERNDON,	)
	)
Defendant.	)

TRANSCRIPT OF JURY TRIAL
VOLUME II
(PAGES 249 - 488)

November 14, 2023
Beaufort, South Carolina

B E F O R E:

The Honorable CARMEN T. MULLEN, Judge Presiding

Kymerlee M. Williams, CSR/RPR
Official Circuit Court Reporter III
Post Office Box 8091
Beaufort, South Carolina 29903

Ladies and gentlemen, we will now begin the trial of this case. Solicitor?

MR. STONE: May it please the Court, Your Honor?

THE COURT: Yes, sir.

OPENING STATEMENT BY MR. STONE

MR. STONE: When the Beaufort County Sheriff's Office stopped him, Timothy Herndon, MINOR 1 was 11-years-old, and her younger sister was 8. And as children, they trusted the man that they called Uncle Timmy, he was fun. In fact, the whole second floor of his house was a big funhouse for them. It had comic book stuff, it had all kind of fun children things, Lego tables, that type of thing.

He let them play dress-up. He even helped them play dress-up. He gave them candy. He let them play with unusual toys and games. They played lots and lots of games. But see Uncle Timmy was not somebody that these children should have trusted. He wasn't fun Uncle Timmy, this wasn't a funhouse, it was more like a house of horrors.

The dress-up was him putting the girls in
risqué clothes. The candy, those are sleeping

1 pills in a Tic Tac box. The unusual toys, which
2 included a dildo and a ball gag.

3 MR. BROWN: Objection.

4 THE COURT: Noted for the record, thank
5 you.

6 MR. BROWN: Thank you.

7 MR. STONE: And the games, all the games
8 they played, those were sexual assaults, and
9 that's just what he did to them when they were
10 awake.

11 Now, ladies and gentlemen, what you're
12 going to see is disturbing. It's something that
13 you should never have to see, but it's also
14 something that these girls should never had to
15 experience.

16 And I'm going to ask you to pay very close
17 attention to what you see, as disturbing as it
18 is. See that Timothy Herndon wasn't fun Uncle
19 Timmy, he was in his own words, words that you
20 will hear come from his mouth, a horrible
21 person.

22 My job is to prove this case to you beyond
23 a reasonable doubt. We're gonna put evidence up
24 on this witness stand to prove everything that
25 I've said today. And if I don't do that, your

1 job is to come back and tell me I didn't do my
2 job and find him not guilty; but at the end of
3 all the testimony, when you've seen the
4 disturbing stuff that you see, when you hear it,
5 even hear what he had to say about it, I'm gonna
6 come back here and ask you to give us a verdict
7 that speaks the truth. Thank you.

8 THE COURT: Mr. Brown.

9 MR. BROWN: May it please the Court?

10 THE COURT: Yes, sir.

11 **

12 **OPENING STATEMENT BY MR. STONE**

13 MR. BROWN: There's gonna be a disconnect
14 in this case, and they're gonna put up some
15 images, potentially, and they're gonna ask you
16 to believe, but what we know is there's a
17 disconnect between what they're gonna present to
18 you, and the other information you would expect
19 to find. And I'm gonna tell you this. With
20 sexual molestation, you're gonna look for things
21 like trauma, or disclosure, or examination,
22 things like DNA, fingerprints, what you have
23 when producing images. And you're gonna look
24 for something that shows that those images were
25 created by Mr. Herndon, such as fingerprints or

1 DNA from electronic devices, they'll bring those
2 in.

3 You're also gonna look for any indications
4 on the images brought to them by another
5 individual named Logan Heisler. Logan Heisler
6 is Tim's first cousin, and Logan Heisler lives
7 next door, which you're gonna find out is Logan
8 Heisler produces thumb drives to law
9 enforcement, where he sent them to his lawyer's
10 office.

11 You're gonna find out through examination
12 there's only one person who can attribute those
13 thumb drives images to, and that's Logan
14 Heisler. And there's an examination, we have
15 involvement of potentially the Sheriff's
16 Department Extraction Unit.

17 We have the Department of Homeland Security
18 involved. We have an examiner who now works for
19 the South Carolina Attorney General's Internet
20 Crimes unit.

21 And, again, there are images on thumb
22 drives brought to the police by Logan Heisler,
23 and only attributable to Logan Heisler.

24 Now, how can you have images that
25 purportedly depict Mr. Herndon and then not be

1 Mr. Herndon? I would suggest to you that Logan
2 Heisler is that kind of person, computer savvy,
3 that he's able to take carved artifacts and put
4 them together, or take images and make them
5 disappear off of the box, he's that
6 sophisticated.

7 So when they find out that there's no other
8 way to attribute those phone drive images,
9 they're gonna ask Logan Heisler, "How did you
10 create these images?" And he tells them on the
11 computer that he destroyed them, after law
12 enforcement took the thumb drive.

13 And this is 2019, what's interesting is,
14 they actually find Logan Heisler with a 2012
15 laptop in 2022. And that laptop still was never
16 examined.

17 You'll hear things like source device, and
18 source device will be something that he used to
19 create an image, and then you'll see things or
20 hear things about storage devices.

21 And you may hear the storage device plugged
22 into another source device, created a log, so
23 they could go back and compare the log the last
24 time that was done, to find out the digital
25 imaging had some different dates on there.

1 And these dates would include what are
2 called modified date, and there's also a created
3 date.

4 Now, sort of counter-intuitive. You're
5 gonna find out a modified date is the actual
6 date that the image was created. And the
7 created date would be the date that the image
8 was placed on that storage device.

9 Now, there's a disconnect with what Logan
10 Heisler tells them, that all of a sudden in
11 March of 2019 he discovers information hidden in
12 a certain part of Mr. Herndon's house. "You
13 knew where it was?"

14 Logan Heisler, and he tells them that he
15 became troubled by what he was able to carve
16 from artifacts on deleted files. But that's
17 what he did, and that he brought this to his
18 lawyer's office. The thumb drives tell a
19 different story. And the thumb drives indicate
20 March 23rd, Saturday, and March 24th, Sunday, or
21 March 25th that Monday, when he did the story of
22 what he does, but on March 28th when he tells
23 his lawyer he needs to come talk to him, but on
24 January 10th is the date that law enforcement
25 even noticed on the file name as being the date

1 that those images were placed on that.

2 You're gonna find out they cannot -- they
3 did not produce any type of evidence showing any
4 other source of those images. This is somebody
5 who knows how to do things like that. And we
6 know this much, Homeland Security, State Law
7 Enforcement, Attorney General Internet Crimes
8 Against Children Taskforce, Beaufort Sheriff's
9 Department, not one agency analyzed the process,
10 to see whether or not there were defects.

11 Now, why is that important? Because law
12 enforcement and the two young ladies' mother,
13 they could agree, that the items that they'd
14 seen on these thumb drives were photoshopped.

15 So you have the series of events, and you
16 have collection of DNA, you have processing of
17 DNA, but you're not gonna hear Tim Herndon's DNA
18 on any single item that they attribute to.
19 You're not gonna hear that they take any item
20 and link it to a source device at all. You're
21 not gonna that they take any single electronic
22 item and try to find out whether it was produced
23 by Mr. Heisler's computer.

24 They don't even go get his computer, and
25 they don't ask him about it for nine to ten

1 months, and he tells them he destroyed it, but
2 yet in 2022 he still had the 2012 computer, and
3 they take it, and they still don't do a thing.

4 Yeah, we understand from the evidence how
5 law enforcement became blinded to any other
6 possibility. That doesn't mean that you swallow
7 it hook, line and sinker today. Because they
8 made decision, just like they did in this case,
9 and then they made investigative follow-ups, and
10 that's when they refused to take the blinders
11 off. They know this is out there. You'll see
12 depictions of activities at his house. Logan
13 Heisler has a motive.

14 This allegation presented the opportunity
15 for him to corroborate and receive a five-
16 million-dollar judgment.

17 Now, that's the motive, a profit motive,
18 and there's a misery loves company motive. An
19 opportunity was unique to Logan, because he is
20 the one who possesses the hard drive, but that's
21 the disconnect. And what the Judge will charge
22 you at the end of this case is, to the extent
23 this case relies on circumstantial evidence,
24 those circumstances must point wholly and
25 conclusively to Mr. Herndon's guilt, or it

1 fails.

2 Now, when you go through this case,
3 remember just as much as you want to believe
4 something you see on TV, you also want all of
5 the circumstances to be consistent. Where is
6 Mr. Herndon's DNA? Where is his fingerprints?
7 Where does the source match? And why is there a
8 dissimilarity on some images of the thumb drive,
9 that can't be attributed to anybody except the
10 man who brought them to the attention of law
11 enforcement, and that's Logan Heisler, who's
12 never even been charged, despite the fact that
13 he was walking around with two thumb drives that
14 had child porn in them.

15 Not one thing happens to him and he's still
16 sitting in the back of this courtroom. At the
17 end of the case I'm gonna ask you to consider
18 they don't have any more evidence against Mr.
19 Herndon, probative value that points
20 conclusively to his guilt, but they do against
21 Mr. Heisler.

22 I've already told you about reasonable
23 doubt, and I'm gonna ask you to consider that
24 doubt when you find Mr. Herndon not guilty.

25 Thank you.

1 THE COURT: Thank you.

2 Call your first witness.

3 MR. STONE: The State calls Angie Crumpton
4 to the stand.

5 ANGELA CRUMPTON,

6 BEING DULY SWORN TESTIFIED AS FOLLOWS:

7 ***

8 DIRECT EXAMINATION

9 BY MR. STONE:

10 Q Okay, let me get you to pull that
11 microphone a little bit closer to you. Thank
12 you. Ms. Crumpton, what do you do, ma'am.

13 A I'm a Lieutenant with the Beaufort County
14 Sheriff's Office. I'm currently assigned as a
15 Lieutenant over the Northern division office.

16 Q And how long have you been with the
17 Beaufort County Sheriff's Office?

18 A I've been in law enforcement for 26 years.
19 I've been with the Beaufort County Sheriff's
20 Office since 2009.

21 Q And in your capacity as a Lieutenant with
22 the Sheriff's Office, what all do you do?
23 You're an investigator with the Norther Division
24 right now currently?

25 A Correct. I'm over Northern Patrol Sex

1 Offender Registry, Northern Investigations. I
2 currently work active cases, and I work ICAC.

3 Q All right, what is IPAC?

4 A ICAC is the Attorney General's Internet
5 Crimes Against Children Taskforce, and I've been
6 on that Taskforce since 2007.

7 Q How does that work here, you're assigned to
8 the Attorney General's Office from the Sheriff's
9 Office; is that how that works?

10 A In a sense, yes. We receive specialized
11 training, and we have certain rules and
12 procedures we have to follow when investigating
13 these types of cases. They will assign them out
14 to us, or they're generated through the public.

15 Q All right, and so you've been with this
16 particular department, or this section, this
17 Internet Crimes Against Children for over six
18 years.

19 So in March of 2019 you were with that as
20 well?

21 A Yes, I've been since '07.

22 Q Okay. In the capacity as -- let me talk
23 specifically about March 28th, 2019, you were
24 -- at that point, what is your position with the
25 Sheriff's Office?

1 A At that point, I was the Master Sergeant in
2 Southern Investigations, and I was still a
3 member of the ICAC Taskforce.

4 Q So you're sort of wearing two hats I guess
5 is the way to put that?

6 A Correct.

7 Q Were you involved with the search warrant
8 on 24 Bluebell Lane?

9 A I was.

10 Q And could you tell us who lives there?

11 A At that time it was Mr. Herndon and his
12 spouse, who was Miss Geanina.

13 Q Okay, and Mr. Herndon, are you familiar
14 with his first name?

15 A Timothy.

16 Q All right, and do you see Mr. Herndon in
17 the courtroom today?

18 A I do. He's sitting over there on the table
19 with the glasses in the middle.

20 MR. STONE: And, Your Honor, may the record
21 reflect that she has identified the Defendant.

22 THE COURT: Yes. So noted for the record.

23 BY MR. STONE:

24 Q Now, was Timothy Herndon at 24 Bluebell
25 Lane when you -- you were part of a search

1 warrant team I'm assuming; is that correct?

2 A Correct, I was --

3 Q How does that work? When you execute a
4 search warrant, or when you executed a search
5 warrant on this house, how did that work?

6 A We had an entry team that would go in, make
7 contact, make sure we had nobody on, nothing
8 like that in the house, and then the search team
9 would go in and begin the search

10 Q And you were there in the middle of all
11 that, when it was --

12 MR. BROWN: Objection, preserved for my
13 previous objection.

14 THE COURT: Hold on a second, Solicitor.
15 Overruled.

16 MR. BROWN: Yes, ma'am.

17 THE COURT: Thank you. I apologize.

18 BY MR. STONE:

19 Q I'm sorry, and you were a part of all of
20 that; is that correct?

21 A Correct. I was the supervisor for the
22 Investigation Section, so I was there as a part
23 of the team, but also to supervise the
24 investigators that were there to search.

25 Q Were there any children in the house at

1 that time?

2 A No.

3 Q Do you know if Timothy Herndon had any
4 children?

5 A He did not.

6 Q So when you arrived at the house, it was
7 just Timothy Herndon and his wife, is that
8 correct?

9 A Correct.

10 Q Now, had you -- at some point, did you meet
11 MINOR 1 and MINOR 2?

12 A I did.

13 Q And how many time have you done that?

14 A Prior to the search or total?

15 Q Total.

16 A Two to three times total. Prior to
17 searching the residence, I had met the girls one
18 time.

19 Q And did you also meet her younger sister,
20 MINOR 2?

21 A Yes.

22 Q All right, and how old were the girls when
23 you met them?

24 A They were 8 and 11.

25 Q Okay, which one was which?

1 A I'm sorry, MINOR 2 was 8; MINOR 1, or sometimes
2 they call her [REDACTED], is -- was 11.

3 Q Okay. Let me first show you what's been
4 marked as State's Exhibit 26, and ask if you can
5 identify the person in that photograph?

6 A That's Mr. Timothy Herndon.

7 Q Okay. And let me show you what's been
8 marked as State's Exhibit 27, and I'd ask you if
9 you can identify who that is?

10 A That is MINOR 1, and she was younger there.

11 MR. BROWN: Your Honor, we raise the same
12 preservation issue.

13 THE COURT: Where did this come from?

14 MR. STONE: These are just photographs, I
15 can ask her that.

16 BY MR. STONE:

17 Q Do you recognize where these came from?

18 A If you're referencing if they came from the
19 video. They were taken within the house. I'm
20 not sure what you're asking me. They were taken
21 from within a room at the Herndon residence that
22 I recognize from being there, and these are part
23 of a video.

24 Q Okay, but the people depicted in there is
25 Timothy Herndon and MINOR 1, correct?

1 A Yes.

2 MR. STONE: Your Honor, at this time we'd
3 move those into evidence.

4 MR. BROWN: With the preservation we
5 previously presented to Your Honor.

6 THE COURT: Yes. And, again, under
7 801(d)(2) and Subsection 6, overruled.

8 MR. STONE: Thank you, Your Honor.

9 MR. BROWN: And the same grounds we had
10 raised at pretrial.

11 THE COURT: Yes, sir.

12 MR. STONE: Mr. Hightower, if you would
13 publish --

14 MR. STONE: Your Honor, permission to
15 publish State's Exhibits 26 and 27.

16 THE COURT: You may, and also for the
17 record under Rule 901(b)(8).

18 (State's Exhibit 26 - 27 were admitted into
19 evidence.)

20 MR. STONE: Thank you, Your Honor.

21 THE COURT: Thank you.

22 BY MR. STONE:

23 Q And what is shown on the screen is State's
24 Exhibit 26. Could you again tell the jury who
25 this is, please?

1 A That's Mr. Herndon and the background was
2 from the residence -- one of the rooms in his
3 residence.

4 Q Okay. State's Exhibit 27?

5 A Again, from one of those rooms in the
6 residence and I recognize the background, and
7 that is MINOR 1 .

8 Q Okay.

9 A Yes.

10 Q Okay. Let me show you what's been marked
11 as Exhibit 29.

12 Can you identify the people in that
13 photograph there?

14 A Yes, this is MINOR 1 and MINOR 2 .

15 MR. BROWN: Same preservation issue, Judge.

16 THE COURT: Yes, sir.

17 MR. STONE: Your Honor, at this time State
18 moves to admit Exhibit 29.

19 MR. BROWN: Objection on the same grounds.

20 THE COURT: And I'm gonna note it for all
21 these photographs going forward for the record.

22 MR. BROWN: Okay.

23 THE COURT: And I'm going to preserve it --

24 MR. BROWN: Okay, thank you.

25 THE COURT: -- for appellate purposes, yes.

1 MR. STONE: Thank you, Your Honor.

2 THE COURT: Thank you.

3 MR. STONE: Your Honor, at this time we'd
4 move State's Exhibit 29 into evidence and ask to
5 publish.

6 THE COURT: You may publish.

7 (State's Exhibit 29 was admitted into
8 evidence.)

9 BY MR. STONE:

10 Q All right, now tell us which one is which?

11 A MINOR 1 has the blue, and MINOR 2's the other
12 one.

13 Q Okay, so MINOR 2 was the one -- is -- okay.

14 And then behind them what is that?

15 A That is the -- for lack of a better word,
16 the wallpaper, the posters and the items that
17 are in a specific room, that was similar when we
18 searched the Herndon residence.

19 MR. BROWN: Judge, same preservation issue.

20 THE COURT: Absolutely.

21 MR. BROWN: Yes, ma'am.

22 BY MR. STONE:

23 Q Let me show you -- I'm sorry, Your Honor, I
24 didn't want to interrupt you.

25 THE COURT: No, that's okay.

1 BY MR. STONE:

2 Q Let me show you what's been marked as
3 State's Exhibit 30, 33, 45 and 47. Who are
4 depicted in those photographs?

5 A 30 is gonna be Mr. Herndon; 33 is gonna be
6 MINOR 1; 45 is gonna be MINOR 1; and 47 is gonna
7 be MINOR 2.

8 Q Okay.

9 MR. STONE: At this time, Your Honor, we
10 move State's Exhibits 30, 33, 45 and 47 into
11 evidence.

12 THE COURT: Subject to your prior
13 objection?

14 MR. BROWN: Yes, ma'am.

15 (State's Exhibits 30, 33, 45, and 47 were
16 admitted into evidence.)

17 MR. STONE: Okay, let me first -- Mr.
18 Hightower, if you could publish State's Exhibit
19 30.

20 BY MR. STONE:

21 Q And could you identify that person for us,
22 please?

23 A Mr. Herndon.

24 Q State's Exhibit 33?

25 A That is MINOR 1.

1 Q State's Exhibit 45?

2 A That is Mr. Herndon and MINOR 1 .

3 Q And State's Exhibit 47?

4 A That's Mr. Herndon and MINOR 2 .

5 Q All right, let me show you what's been
6 marked as Exhibit 51, 52, 53, 54 and 55, and ask
7 if you could identify these for the jury.

8 A 51 is going to be MINOR 1 .

9 Q Make sure you speak into the microphone, so
10 the jury can hear you.

11 A I'm sorry. 51's gonna be MINOR 1 and Mr.
12 Herndon, 52 is Mr. Herndon, 53 is gonna be --
13 that one's MINOR 2 .

14 Q Okay.

15 A 54 is going to be Mr. Herndon, and 55 is
16 MINOR 1 .

17 Q Okay.

18 MR. STONE: Your Honor, at this time we
19 move State's Exhibit 51, 52, 53, 54 and 55 into
20 evidence.

21 THE COURT: Subject to your prior
22 objection?

23 MR. BROWN: Subject to prior objection,
24 yes.

25 (State's Exhibits 51, 52, 53, 54, and 55

1 were admitted into evidence.)

2 MR. STONE: If you could publish State's
3 Exhibit 51, please?

4 BY MR. STONE:

5 Q And who is that now?

6 A That is MINOR 1 and Mr. Herndon.

7 Q Okay, can you tell where this picture is
8 taken?

9 A That's gonna be in one of the rooms at Mr.
10 Herndon's house.

11 Q Okay. State's Exhibit 52?

12 A That's Mr. Herndon in the same room and
13 within his residence.

14 Q State's Exhibit 53?

15 A That is in the same room at Mr. Herndon's
16 residence, and that is MINOR 2.

17 Q 54?

18 A That is Mr. Herndon, and that is upstairs
19 in his residence.

20 Q Okay, and State's Exhibit 55?

21 A And that is gonna be MINOR 1.

22 MR. BROWN: Judge, I have a matter of law
23 that we need to take up.

24 THE COURT: Go ahead.

25 (Bench conference)

1 BY MR. STONE:

2 Q Do you have a cold by chance?

3 A I do.

4 Q Okay, well, it's okay, if you just clear
5 your throat, and make sure we can understand
6 you, okay?

7 A I apologize.

8 Q Okay, that's perfectly fine. Let me ask
9 you to take a look at State's Exhibit 28, 29 and
10 31.

11 Are these also photographs that came from
12 the videos that you had reviewed?

13 MR. BROWN: I would object, that calls for
14 hearsay.

15 THE COURT: Okay, no, that would be her own
16 personal knowledge, so you can go ahead and --

17 MR. BROWN: Whether they came from the --

18 THE COURT: Yup, he can go that far.

19 MR. BROWN: Okay.

20 THE COURT: So I think he needs to say,
21 where did these photographs come from?

22 MR. STONE: That'd be fine.

23 THE COURT: Okay.

24 BY MR. STONE:

25 Q Lieutenant?

1 A These photographs are Chrome videos that I
2 reviewed.

3 MR. BROWN: Object to hearsay.

4 THE COURT: Okay, she reviewed them, and,
5 again, can she identify the place, and where
6 they are taken?

7 BY MR. STONE:

8 Q Can you identify the place and where those
9 were taken?

10 A Yes, this is, again, based upon the unique
11 background, it is in the upstairs residence of
12 the Herndon residence. This is with two people,

13 MINOR 1 --

14 Q And that was State's Exhibit --

15 A I'm not sure.

16 Q -- 32?

17 A Yes, 32. State's Exhibit 31 is gonna be
18 the same background, Herndon residence, and this
19 is gonna be MINOR 1. 29 is gonna be the Herndon
20 residence, and this is going to be MINOR 1 and
21 MINOR 2. 28 is gonna be the Herndon residence, and
22 this is gonna be MINOR 1.

23 MR. BROWN: Judge, I don't want to speak
24 disrespectfully, but I still have the same
25 objection about --

1 THE COURT: Okay.

2 MR. BROWN: -- where that was taken.

3 MR. STONE: I can make it simpler, Your
4 Honor.

5 At this time we would move State's Exhibit
6 29 into evidence.

7 MR. BROWN: Same preservation issue. Judge.

8 THE COURT: I will note it for all of these
9 photographs going forward for the record to be
10 preserved for appellate purposes.

11 MR. STONE: This would be the same as the
12 previous photographs, Your Honor. And I'll hold
13 the other ones until the next witness.

14 (State's Exhibit 29 was admitted into
15 evidence.)

16 BY MR. STONE:

17 Q Is that just a closer-up?

18 A Yes, it's a picture of the two girls.

19 THE COURT: Okay, but it's a closer-up of
20 the earlier one that was entered?

21 MR. STONE: It might -- yeah, I think it's
22 -- yes, ma'am, I think so.

23 THE COURT: Okay.

24 MR. BROWN: I think it's a different image.

25 MR. STONE: It's got a different -- it's

1 different, but I will -- it is associated at a
2 different time period.

3 MR. BROWN: Matter of law, Your Honor.

4 THE COURT: Come up.

5 (Bench conference.)

6 THE COURT: All right.

7 Ladies and gentlemen of the jury, I will
8 send you back to your jury room very briefly.
9 Do not discuss this case. I would like it if --
10 if you would like, when you come back, you may
11 bring water with you. I'm telling you that you
12 can.

13 (Jury exits courtroom.)

14 MR. STONE: So 29 had already been put into
15 evidence. What I was going to do is hold these
16 other ones for my next witness to identify where
17 it came from. That is perfectly fine. That is
18 what I was trying to do. I didn't realize 29
19 had been put into evidence. This would not be
20 as objectionable as this one.

21 THE COURT: Let's be clear about this for
22 the record. This was a search. Tell me what it
23 was that these came off of.

24 THE WITNESS: Those came off of a My
25 Passport hard drive.

1 THE COURT: Where was it recovered?

2 THE WITNESS: In the Herndon's residence.

3 THE COURT: It was my understanding it was
4 behind something, correct?

5 THE WITNESS: There was a photograph
6 leaning up above a window, and the Passport was
7 slid behind that, and that's where it was
8 recovered.

9 THE COURT: You keep calling it a Passport.
10 What exactly do you call that?

11 THE WITNESS: It's an external hard drive.

12 THE COURT: Thank you.

13 So I'm not an expert on hard drives. So
14 that was recovered during the search warrant; is
15 that correct?

16 THE WITNESS: That is correct.

17 THE COURT: At any times after that, did
18 you look at those images? Have you seen the
19 images?

20 THE WITNESS: Yes, after a forensic
21 analysis was done.

22 THE COURT: Oh, and what you're looking at
23 right now that are being shown here in the
24 courtroom, are they an exact replication of what
25 you saw the first time you got --

1 THE WITNESS: Yes.

2 THE COURT: -- them?

3 THE WITNESS: Yes.

4 THE COURT: Okay, I just want to make sure
5 we're clear as far as for the record, who are
6 you gonna try to get these in through now?

7 MR. STONE: I'm gonna put our -- Frank
8 Brennan from Homeland Security because he
9 actually goes through the video itself. And
10 these are -- many of these are associated with
11 the actual still-shots of the video that we're
12 gonna put into evidence.

13 MR. BROWN: Judge, I would like to have
14 this marked as Defense Exhibit 1, and it is the
15 extraction report.

16 I only put that out there because it says
17 extracted by Henry Cook. Like I said --

18 THE COURT: Are you moving to admit it?

19 MR. BROWN: No, I just want to mark it now,
20 but just -- yeah, well -- and that's the basis
21 of my objection. Thank you.

22 THE COURT: Okay.

23 MR. BROWN: Well, because it says the My
24 Passport --

25 MR. STONE: Right.

1 MR. BROWN: -- was extracted by Henry Cook.

2 THE COURT: Okay, and --

3 MR. BROWN: So just to put that in context,
4 Investigator Crumpton did not actually -- she
5 didn't click on and look at the photos, like
6 when you get something in discovery, and they
7 have photos of somebody with like drugs, or
8 somebody with a black eye from a fight, you
9 click on the file and open it up and see it.

10 Investigator Crumpton did not do that.

11 THE COURT: Okay.

12 MR. BROWN: And that's why -- that's the
13 basis of the objection.

14 THE COURT: Okay, I see that portion of it.
15 I can tell you though that she's been to the
16 residence, and she knows that all these were
17 taken there, and so she knows that is
18 photographs taken of the residence that she
19 actually saw during the search warrant.

20 THE WITNESS: Yes.

21 THE COURT: It sounds to me like we can get
22 it in or potentially, but someone has to lay
23 down the foundation.

24 MR. BROWN: Yes, ma'am, and
25 that's my point, in addition to the

1 previous grounds. Thank you, Your Honor.

2 THE COURT: Okay.

3 MR. BROWN: And I apologize, I didn't want
4 to try to argue that.

5 THE COURT: Yeah, and I wanted to hear just
6 so we're all kind of on the same page.

7 MR. BROWN: Yes, ma'am.

8 THE COURT: Okay.

9 MR. STONE: Thank you, Your Honor.

10 THE COURT: I think we've gone through the
11 identification process with these. So, clearly,
12 they are relevant, they've been authenticated.
13 You know, the jury can decide, you know, what
14 they believe them to be, and for them to give
15 them the weight that they feel is pertinent.

16 So we'll just go from there and then
17 continue with the gentleman from Homeland
18 Security.

19 MR. STONE: That'll be fine.

20 THE COURT: So, okay.

21 Does anyone need two minutes? Obviously,
22 the jury probably needs another five just to
23 refresh themselves, so let's just take five
24 minutes.

25 MR. STONE: Yes, ma'am.

1 THE COURT: And then we'll come back and
2 let's be really quick about it, and we'll go
3 from there.

4 MR. STONE: Okay.

5 THE COURT: Okay.

6 (Recess)

7 BAILIFF: The jury's entering the
8 courtroom, Your Honor.

9 (Jury enters the courtroom.)

10 **

11 **PROCEEDINGS CONTINUED**

12 THE COURT: Welcome back, ladies and gentlemen.
13 Solicitor, you can continue, sir.

14 MR. STONE: Thank you.

15 BY MR. STONE:

16 Q Lieutenant, let me show you what we have
17 called State's Exhibit 1.

18 MR. STONE: Your Honor, this is demonstrative,
19 this will not be placed into evidence, but we'll
20 use it for testimony.

21 THE COURT: Okay.

22 MR. STONE: And it's State's Exhibit 1.

23 BY MR. STONE:

24 Q Are you familiar with this file that's
25 called State's Exhibit 1?

1 A I am.

2 Q And have you looked through it, and would
3 it assist you in your testimony about what you
4 found during the search of the Herndon house?

5 A Yes.

6 Q All right. I'm going to ask you to come
7 off the stand, but I'd like to have you keep
8 your voice up. I know you've got a cold, but
9 let's see if you can keep your voice up, to make
10 sure that the jury, as well as the Court
11 Reporter can hear it.

12 A Yes.

13 Q All right, if I could get you to come over
14 here. And walk us through this, if you could.
15 This is the -- I want to make sure I'm facing it
16 the right way. This would be the front of the
17 house here, correct?

18 A Correct.

19 Q And this is the layout of the second floor
20 of this house; is that correct?

21 A That is correct.

22 Q All right, tell me what we're finding here,
23 please. And we may have to make sure that
24 everybody on the jury can see it, because it's
25 kind of tough to do so.

1 If you'll start with this first, please.

2 What is the first one?

3 A This is an upstairs bedroom. There's a
4 hallway, bathroom. This is one of the rooms,
5 there was a pool table some other items were at,
6 and this is the room that has the majority of
7 the posters and things I was talking about, and
8 specific furniture that was seen in the video,
9 in the photographs that you showed me.

10 Q Okay, and this item here, which is --

11 A Yeah.

12 Q -- against the wall, what is that?

13 A That was a large Ironman cutout, and it was
14 substantially large. It was covering a door
15 that wasn't readily visible, until that cutout
16 was moved.

17 Q And this is the other room on the other
18 side of that?

19 A This is another room that had some computer
20 towers, a couple other items, and a mattress
21 with no sheets.

22 Q Okay, all right. Let me show you what's
23 been marked as State's Exhibit -- and you can
24 stay right where you are.

25 State's Exhibits 14, 15 and 16, can you

1 identify those, please, ma'am?

2 A 14, 15 and 16 are all photographs from the
3 search warrant of this room here, which has --

4 Q All right, let me stop you there.

5 Are these fair and accurate depictions of
6 both of those rooms as you saw in executing the
7 search warrant?

8 MR. BROWN: Same objection, Judge.

9 MR. STONE: Your Honor, this --

10 THE COURT: Overruled.

11 MR. BROWN: Yes, ma'am, thank you.

12 MR. STONE: -- this is State's Exhibit 14,
13 15 and 16 we'd move into evidence.

14 THE COURT: Admitted and subject to prior
15 objection.

16 MR. BROWN: Thank you.

17 (State's Exhibits 14 - 16 were admitted
18 into evidence.)

19 MR. STONE: And, if you could, Mr.
20 Hightower, would you publish State's Exhibit 14?

21 BY MR. STONE:

22 Q Okay, tell us, again, what that is now.
23 Now you can go into it.

24 A Okay, this is -- this portion of the
25 upstairs house has a couch, the Lego tables, all

1 the posters and collectibles throughout the
2 house. And that's also the same room where that
3 Ironman cutout is at by the window.

4 Q Okay, State's Exhibit 15?

5 A This is the same, a different angle, it's
6 got the Lego tables. At the end of the couch
7 you can see the Ironman printing, that's the
8 large cutout, you just see the bottom of it.

9 Q All right, and then State's Exhibit 16?

10 A And there you see the actual cutout, the
11 remainder of the room, the exercise equipment to
12 one side.

13 Q All right, let me turn --

14 A Yeah.

15 Q If I can, let me turn this, so this is the
16 room that you're talking about? This is the
17 cutout; is that correct?

18 A Correct. So here's the cutout, exercise
19 equipment is over in here, there's a desk right
20 here that --

21 Q Go ahead and point to it, if you need to
22 walk over there, that's fine.

23 A Okay. Thank you. Right here there's a
24 desk back here, you can see the top of the
25 monitor. Just with the collectibles you don't

1 see it from this angle. This is the Ironman cut
2 out, stuff on the couch.

3 Q All right, okay. Let me first show you
4 what's been marked as State's Exhibit 17.
5 Do you recognize that, please?

6 A I do. This is in a dresser that's in a
7 different room, and there's a Wonder Woman
8 lingerie or outfit.

9 Q And what room was this recovered in?

10 A It was in the room where the pool table was
11 located, there's a dresser.

12 MR. BROWN: Same objection, Your Honor.

13 THE COURT: Overruled.

14 BY MR. STONE:

15 Q All right, and is this a fair and accurate
16 depiction the same as you saw it during the
17 execution of the search warrant?

18 A Yes.

19 MR. STONE: And, Your Honor, we'd move in
20 at this time State's Exhibit 17 into evidence.

21 THE COURT: Subject to your prior
22 objection.

23 MR. BROWN: Same objection to prior
24 rulings.

25 THE COURT: Yes, same rulings.

1 (State's Exhibit 17 was admitted into evidence.)

2 MR. STONE: I'd if we could publish that,
3 please.

4 BY MR. STONE:

5 Q Where did the search team locate this item?

6 A So right through here is a doorway, which
7 is right here between the room we just looked
8 at, and the room that contained the pool table,
9 that's a dresser that's right next to the door
10 there --

11 Q Okay.

12 A -- which is right here.

13 MR. STONE: Your Honor, may we approach
14 just briefly?

15 (Bench conference.)

16 THE COURT: Ladies and gentlemen, I know some of
17 you in the first row were kind of up in your
18 seats looking over at the demonstrative exhibit.
19 You're going to be invited, if necessary, if you
20 need to stand at to better be able to see, okay?

21 BY MR. STONE:

22 Q Let me show you what's been marked as
23 State's Exhibit 2.

24 Was this an item recovered during the
25 search warrant?

1 A It was.

2 Q Okay, and this is listed as --

3 A It's the Wonder Woman costume.

4 Q Which is what is depicted in State's
5 Exhibit 17; is that correct?

6 A Correct.

7 MR. STONE: Your Honor, at this time I'm
8 going to open this. This is State's Exhibit 2
9 and move this into evidence.

10 MR. BROWN: Same objection.

11 THE COURT: Admitted once she's authenticated
12 it.

13 MR. BROWN: Oh, okay.

14 THE COURT: Yeah.

15 BY MR. STONE:

16 Q All right, and where did you locate that?

17 A It was located in the dresser, which is
18 right here next to the doorway in the room with
19 the pool table.

20 Q Okay.

21 THE COURT: I need you, again, when she's
22 pointing to something, you need to get up to
23 look to understand where she's pointing to,
24 okay?

25 MR. BROWN: Okay.

1 BY MR. STONE:

2 Q Also in State's Exhibit 2 tell me what that
3 is, please.

4 A This is a garter set with red stockings.

5 Q And where was that located in the house?

6 A That was also located here in this dresser.

7 MR. STONE: And this wall in State's 2,
8 Your Honor, we'd move those into evidence.

9 MR. BROWN: Same objection.

10 THE COURT: Prior objection, same ruling.

11 MR. BROWN: Thank you, Your Honor.

12 (State's Exhibit 2 was admitted into
13 evidence.)

14 BY MR. STONE:

15 Q And let me show you what's been marked as
16 State's Exhibit 18. Can you identify that?

17 A That's the red garter and stockings being
18 taken out of that same dresser I had identified.

19 Q Is that a fair and accurate depiction of
20 the scene as you saw it that day?

21 A It is.

22 MR. STONE: State's Exhibit 18 into
23 evidence, Your Honor.

24 MR. BROWN: Judge, if I may?

25 MR. STONE: I'm sorry. I apologize.

1 MR. BROWN: And, Judge, again, subject to
2 the same objection.

3 THE COURT: Yes.

4 (State's Exhibit 18 was admitted into
5 evidence.)

6 MR. STONE: If I could, publish State's 18.

7 BY MR. STONE:

8 Q All right, this is the red garter, and you
9 found that where? That was found where in this
10 residence?

11 A It was in the dresser drawer with the
12 Wonder Woman costume in the room with a pool
13 table.

14 Q Okay. I'm gonna show you what's been
15 marked as State's Exhibit 19. Can you tell the
16 jury what that is, please?

17 A This is a pair of children's underwear, and
18 it was in a box located within this dresser.

19 Q Is this a fair and accurate depiction of
20 the scene as you saw it that day during the
21 search warrant?

22 A It is.

23 MR. STONE: Your Honor, at this time we
24 move State's Exhibit 19 into evidence.

25 MR. BROWN: Same objection.

1 THE COURT: Same objection, yes.

2 MR. STONE: Publish State's Exhibit 19.

3 BY MR. STONE:

4 Q All right, and where was -- that was inside
5 the box? And, in fact, is that the box over to
6 the left?

7 A That's correct. The box here. These are
8 underwear that was in that box in this dresser
9 that was in the poolroom.

10 Q I'm gonna hand you State's Exhibit 3, and
11 ask if you can identify that, please?

12 A This is the shoebox of children's underwear
13 and outfits.

14 Q And this was located during the search
15 warrant as well?

16 A Correct, and it was located in that
17 dresser.

18 Q That's on Exhibit 19; is that correct?

19 A Correct.

20 MR. STONE: Your Honor, at this time we'd
21 move State's Exhibit 3 into evidence. I'm gonna
22 cut open the bag on that as well.

23 MR. BROWN: Same objection.

24 THE COURT: With the same objection.

25 (State's Exhibit 3 was admitted into

1 evidence.)

2 BY MR. STONE:

3 Q Now, I'm handing you State's Exhibit 3.

4 Show that to the jury, please, ma'am.

5 A So this is the box that you see in the
6 corner of the picture. I'm gonna have --

7 Q Yeah, I'm sorry.

8 A Yes.

9 Q All right.

10 A Now, this has -- the photograph shows the
11 one picture, which is right here of the child's
12 underwear, and there's other underwear.

13 Q All children's underwear?

14 A A very small size.

15 Q Or children's size?

16 A Yes.

17 Q And I believe you testified earlier that
18 Mr. Herndon doesn't have any children; is that
19 correct?

20 A That's correct.

21 Q Now, let me show you what's been marked as
22 State's Exhibit 20, and ask if you can identify
23 that, please?

24 A These are items that were located under the
25 desk. This is where we talked about with the

1 Ironman poster, that stuff right here, that's
2 why it was difficult to see. It was in a box
3 like under where you sit at the desk.

4 Q Is that a fair and accurate depiction of
5 how those items looked the day when you executed
6 the search warrant?

7 A Yes.

8 MR. STONE: Your Honor, at this time we'd
9 move State's Exhibit 20 into evidence.

10 THE COURT: Subject to prior ruling.

11 MR. BROWN: Thank you.

12 THE COURT: Yes, sir.

13 (State's Exhibit 20 was admitted into
14 evidence.)

15 BY MR. STONE:

16 Q These items, where were those located
17 during the search?

18 A They were located in the room with the Lego
19 tables and the couch, and the box underneath,
20 the matching lingerie, garters, a ball gag,
21 dildo, and a pair of high heels.

22 Q Let me show you what's been marked as
23 State's Exhibit 6. Could you identify the items
24 in that bag?

25 A This is a pair of black high-heeled shoes,

1 the red ball gag, the dildo, the nightgown,
2 garter, the mesh top and stockings.

3 Q And this was recovered at Timothy Herndon's
4 house that day as well?

5 A Right, right here in this room with the
6 Lego tables and the Ironman cutout --

7 Q Under the desk or behind the desk?

8 A Correct.

9 MR. STONE: At this time, Your Honor, we'd
10 move State's Exhibit 6 into evidence.

11 MR. BROWN: Same objection.

12 THE COURT: Admitted over objection.

13 (State's Exhibit 6 was admitted into
14 evidence.)

15 MR. STONE: And I'm going to cut this as
16 well.

17 BY MR. STONE:

18 Q Tell us what this is, please.

19 A And this is the nightie that's pictured.

20 This is the mesh -- the little mesh nightie
21 lingerie, the garters that are pictured, and
22 this is mesh stockings. Those are the high-
23 heeled shoes, the ball gag, and the pink dildo.

24 Q I'll show you what's been marked as State's
25 Exhibit 21. Can you identify the items in that?

1 A This is a dog collar and leash, two pairs
2 of handcuffs. These are --

3 Q Well, let me first ask you, can you identify
4 those?

5 A Yes.

6 Q Okay. Are these fair and accurate
7 depictions of items taken from the house during
8 the search?

9 A They are.

10 MR. STONE: Your Honor, at this time we'd
11 move State's Exhibit 21 into evidence.

12 THE COURT: Subject to your prior
13 objection, correct?

14 MR. BROWN: That's correct, Judge.

15 (State's Exhibit 21 was admitted into
16 evidence.)

17 MR. STONE: Okay, and publish State's 21,
18 please.

19 BY MR. STONE:

20 Q These are the items -- where were these
21 items recovered?

22 A These items were located in this room,
23 which has a bed, this is the table, this is the
24 desk, and there's -- were some other evidentiary
25 items collected out of here.

1 They were in a plastic trash bin that were
2 located in this first room here. And that's the
3 dog's collar and leash, the handcuffs, two old
4 floppy disks, and another sex toy.

5 Q Let me hand you what's been marked as
6 State's Exhibit 7, and ask if you can identify
7 what's in that bag, please?

8 A Okay, these are the items that were seized
9 in the Herndon's residence.

10 Q Okay, these were the items seized during
11 the search of Tim Herndon's house?

12 A Correct.

13 MR. STONE: At this time, Your Honor, we'd
14 move State's Exhibit 7 into evidence.

15 THE COURT: Over objection.

16 MR. BROWN: Thank you.

17 (State's Exhibit 7 was admitted into
18 evidence.)

19 MR. STONE: And I'm putting it back in the
20 bag.

21 BY MR. STONE:

22 Q I'm gonna hand these to you. I'll tell you
23 what, let's do it this way. What is this?

24 A Okay. This is a dog collar and leash, it's
25 another sex toy.

1 Q And those were located in the bedroom or
2 the room over the attic?

3 A In this bedroom over here in a plastic
4 trash bin.

5 Q Okay.

6 A I apologize.

7 Q No, you're fine, take your time. You good?
8 Okay, let me ask you -- I'm gonna show you
9 what's been marked as State's Exhibit 22 and 23,
10 and ask if you can identify those photographs?

11 A I can. These were taken in the same room.

12 Q Okay, and is this a fair and accurate
13 depiction of the items depicted in these?

14 A They are.

15 Q Okay.

16 MR. STONE: Your Honor, at this time we'd
17 move State's Exhibit 22 and 23 into evidence.

18 THE COURT: You already did.

19 MR. STONE: I'm sorry, I'm gonna show them
20 again though.

21 BY MR. STONE:

22 Q All right, first of all, let's go to
23 State's Exhibit 22. All right, now, tell us
24 what that is, where that's located on the model,
25 please.

1 A What has been pointed to is an external
2 hard drive, we refer to as My Passport, because
3 that was the brand name of it. That's being
4 shown where it was located, and it was located
5 in the same room that we just discussed, the dog
6 leash and sex toy and handcuffs were located.
7 And it's depicted on the model, there was a
8 large picture, what you see right there, that
9 was leaned up against the wall above these
10 windows, and the My Passport was slid behind
11 there.

12 Q Before I go into the My Passport, the
13 windows here, tell me about those, please.

14 A The windows are on both sides of the upper
15 story, and this bedroom as well as this bedroom
16 or room have plywood covering them.

17 Q And the picture itself, and I think you can
18 tell from the photograph on this, and I'll see
19 if I can turn this, where exactly is the picture
20 located, as far as the room itself?

21 A The desk, there's a desk right here, it's
22 where the desk is, the bed, the table. The
23 windows that are plywood, the picture was leaned
24 up against the wall above the windows, and My
25 Passport was slid behind that.

1 Q Okay. And State's Exhibit 23?

2 A And that's just an individual picture of
3 the My Passport external hard drive.

4 Q Okay, go back to State's Exhibit 22, okay?
5 Let me show you what's been marked as State's
6 Exhibit 8, and ask you if you can identify that,
7 please?

8 A This was the hard drive, the My Passport
9 hard drive that was collected during the search
10 warrant.

11 Q Okay.

12 MR. STONE: Okay, at this time, Your Honor,
13 we'd move State's Exhibit 8 into evidence.

14 MR. BROWN: Same objection.

15 THE COURT: Same objection, overruled.

16 (State's Exhibit 8 was admitted into
17 evidence.)

18 BY MR. STONE:

19 Q I'm going to open this as well.

20 A And this is the Passport hard drive.

21 Q I know it's shown here, but it wasn't
22 actually located right there when you'all found
23 it?

24 A No, it was slid behind the picture. It had
25 to be pulled out a little bit, so you could

1 capture it.

2 Q Uh-huh.

3 A We couldn't get up behind the picture with
4 the camera.

5 Q Okay. Let me show you what's been marked
6 as State's Exhibit 25 and 26.

7 Can you tell me what those are, please?

8 A These are photographs. When we did the
9 search warrant the computer that's located right
10 here, the screen had the display on, and we just
11 photographed what was visible on the screen.

12 Q All right, and so there was an actual
13 computer here in this --

14 A Yes, there was a computer monitor right on
15 this desk.

16 Q Okay, all right.

17 MR. STONE: Your Honor, at this time --

18 BY MR. STONE:

19 Q And this is a fair and accurate depiction
20 of what you saw on the screen when you walked
21 in, or when you executed the search warrant?

22 A Yes.

23 MR. STONE: At this time, Your Honor, we'd
24 move State's Exhibit 24 and 25 into evidence.

25 THE COURT: Subject to your prior

1 objections?

2 MR. BROWN: Yes, ma'am.

3 THE COURT: Thank you, sir.

4 (State's Exhibits 24 - 25 were admitted into
5 evidence.)

6 MR. STONE: and I'm going to ask to publish
7 that to the jury.

8 BY MR. STONE:

9 Q We don't have that up on the monitor, but
10 can you --

11 A Okay. They're the same pictures, but just
12 closer than the other one.

13 Q Again, if you can walk down, so they can
14 see.

15 A (Witness complies).

16 Q All right, and specifically what I want to
17 do is ask you, referring to State's Exhibit 24,
18 if you could read the last -- the incident
19 report, and it will be the third and fifth from
20 the bottom. What does it say?

21 A Third, fourth and five?

22 Q Yeah.

23 A One says, MINOR 1, right there, and then the
24 folder named MINOR 1, and one is a folder name
25 MINOR 1 folder, MINOR 1.

1 Q Okay. And those were in the computer in
2 the seizure, correct?

3 A That is correct.

4 Q Okay.

5 A The computer monitor.

6 Q Right.

7 MR. STONE: Give me just a moment.

8 BY MR. STONE:

9 Q Let me show you what's been marked as
10 State's Exhibit 24, and ask you if you can
11 identify that?

12 A Yes, this is a child's dress, blue in
13 color, that was located during the search
14 warrant.

15 Q And where was it located?

16 A It was located in this room, where the
17 computer monitors -- or not monitors, I
18 apologize, the computer towers were located in
19 this room.

20 Q This was seized during the search warrant
21 as well?

22 A Correct.

23 MR. STONE: Your Honor, at this time we'd
24 move State's Exhibit 24 into evidence.

25 THE COURT: Over objection?

1 MR. BROWN: Yes, ma'am.

2 THE COURT: Thank you.

3 MR. BROWN: Thank you.

4 (State's Exhibit 24 was admitted into
5 evidence.)

6 BY MR. STONE:

7 Q What is that?

8 A And this is the child's dress that was
9 located right here in this room with the
10 computer monitor or towers.

11 Q And by the way, is this how the room looked
12 when you went in? There's nothing else in
13 there, other than what has been described?

14 A Correct, there's a mattress with no sheets
15 or blankets, a computer tower, this and the
16 lamp, and a light with no cover.

17 Q A lightbulb?

18 A Yes, lightbulb.

19 Q You can return to your seat.

20 Thank you, Lieutenant, if you'll answer any
21 questions from Mr. Brown.

22 THE COURT: Mr. Brown?

23 MR. BROWN: May it please the Court?

24 THE COURT: Yes, sir
25

CROSS-EXAMINATION

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BY MR. BROWN:

Q Investigator Crumpton, let me first ask you this, did you say you were the lead detective on this case

A I am not.

Q Who is the lead -- or investigator, who's the lead investigator?

A Sergeant Cushman.

Q Okay, and Sergeant Cushman's the gentleman in the front row of the gallery in the gray suit, with the darker colored tie?

A He is.

Q Okay. And how familiar are you with the various parts of this case, beyond this?

A I'm not as familiar after the search warrant was done, but I have a general overview afterwards.

Q Okay. Let me ask you then to begin with, did you ever meet with anybody from Homeland Security?

A I have.

Q All right, and was it the other gentleman in the front row of the gallery with the red tie?

1 A Yes, sir.

2 Q Okay, and when did you first meet with him?

3 A In regards to this case --

4 Q Yes, ma'am.

5 A -- it was when we were preparing to have
6 them do the forensic examination on items --

7 Q Okay.

8 A -- seized.

9 Q Okay. And so you went through some items
10 seized in the home, one of which was this
11 storage device; is that correct?

12 A Correct.

13 Q Okay. You didn't just pop that storage
14 device in and click on and look through it, did
15 you?

16 A No, we don't do that.

17 Q Okay, and there's a policy about how to
18 handle that?

19 A That is correct. We don't do that until --
20 we don't look at the things until forensics
21 analysis are done. They have -- the forensic
22 individuals have means to assure that no data is
23 changed or compromised, so we don't look at it
24 at the time.

25 Q Okay, and did you talk to them later on, if

1 they need to follow-up with questions; is that
2 fair?

3 A Yes.

4 Q Okay, and beyond that part of the case,
5 when you arrived, was Mr. Herndon there?

6 A Yes, Mr. Herndon was present at the search
7 warrant.

8 Q Okay, and then was Ms. Herndon present?

9 A She was.

10 Q Okay. And curiosity, did you get a chance
11 to speak with her?

12 A I did. Investigator Cushman and I spoke
13 with her.

14 Q Okay, and is it fair to say that she's
15 about 90 pounds?

16 A She is.

17 Q Okay.

18 A I don't know her exact weight, but she's --

19 Q That's pretty close?

20 A I would say maybe 100, but, yes --

21 Q Okay.

22 A -- she's petite.

23 Q Okay. Potentially a 00 dress size?

24 A As a woman, I'm not gonna guess her dress
25 size.

1 Q Fair enough.

2 A She is petite.

3 Q How about the shoes? How about the shoe
4 size? Those shoes right there.

5 A It's possible, I did not get her shoe size.

6 Q But you don't question that she could fit
7 in those?

8 A No.

9 Q Fair enough. Did you'all ever ask her?

10 A No, I don't believe I specifically asked
11 her about the shoes.

12 Q Okay, all right. And then let me ask you
13 about any forensic examinations of MINOR 1 and
14 MINOR 2.

15 Are you familiar with the process of having
16 a forensic interview?

17 A Yes, that's standard practice.

18 Q It's standard practice. And so that was
19 done in this case?

20 A Yeah.

21 Q Okay. And did you go with them?

22 A I did not.

23 Q Okay. And then are you familiar with a
24 sexual trauma examination? Like the SANE
25 examination?

1 A If you're talking about a forensic medical
2 examination?

3 Q Uh-huh, yes, ma'am.

4 A I'm familiar with what it is, but I'm not
5 trained to perform one.

6 Q Okay, fair enough. Are you aware if one
7 was done in this case?

8 A I believe it was.

9 Q Okay, fair enough. And then how about any
10 submission of items for DNA testing?

11 Are you familiar with whether any items
12 were taken for DNA testing?

13 A Yes, I believe that we submitted items for
14 DNA testing.

15 Q Okay, and were you involved with that?

16 A In that process?

17 Q Yes, ma'am.

18 A As the supervisor and overview and know,
19 yes, but not intimately --

20 Q Okay.

21 A -- knowledgeable in that.

22 Q Okay. Do you have any firsthand knowledge
23 of any disclosure by MINOR 1 or MINOR 2?

24 MR. STONE: Objection. She can't answer
25 that question without speculating.

1 MR. BROWN: Well, I don't know whether
2 she's aware of it, that's what I'm trying to
3 find out.

4 THE COURT: Okay, you can ask the question.
5 If she knows, she can answer.

6 BY WITNESS: I'm not aware of any
7 disclosure, but that's not unusual.

8 BY MR. BROWN:

9 Q Okay, and how about any trauma findings?

10 A No, but, again, that's not unusual.

11 Q And how about any DNA match to my client?

12 A I'm sorry, DNA matches on what?

13 Q To my client on any of these items.

14 A I know that there was some DNA matches, but
15 I believe those may have been to the girls.

16 Q And not aware of any DNA match to my
17 client, okay.

18 A Not that I'm aware, but I'd have to review
19 it, that wasn't my --

20 Q Fair enough. Do you have a report marked
21 -- this is Defendant's 2 for ID.

22 MR. BROWN: May I approach the witness?

23 THE COURT: Yes.

24 BY MR. BROWN:

25 Q What's been marked as Defendant's 2 for ID

1 at this time, and ask if you can take a look at
2 that?

3 A Yes.

4 Q Okay.

5 A This is -- without the time to read
6 everything --

7 Q Sure, sure, yes, ma'am.

8 A Our Beaufort County Sheriff's Office
9 report.

10 Q Okay. All right, did you compile parts of
11 it?

12 A A small portion of it, yeah.

13 Q Okay. I am going to ask you, at this time,
14 are you aware of any law enforcement officers
15 that would have made a report in there, that
16 were not making that report in their official
17 capacity on behalf of the Sheriff's Department?

18 A I don't believe I understand your question.

19 Q Okay, sure, let me make sure I get this
20 right. Are the statements in here made as a
21 representative capacity at the Sheriff's
22 Department?

23 Are you aware of any of these that were
24 not?

25 A Do you mean did we make a -- did anybody

1 besides the Sheriff's Office Deputy make a
2 report --

3 Q That's --

4 A -- in this?

5 Q Yes.

6 A Again, I haven't read through what you've
7 presented me --

8 Q Okay.

9 A -- but I -- there may have been reports
10 associated with this case, that would have been
11 from laboratory personnel, but --

12 Q But that would be marked in the Spellman
13 report, would it?

14 A Or it may have been an attachment, I'm not
15 sure without looking through, but I don't --

16 Q Sure.

17 A -- know of anybody that's not BCSO that
18 wouldn't have -- or Beaufort County Sheriff's
19 Office that wouldn't have a Beaufort County --
20 that did the supplement or the reports.

21 Q Okay, all right.

22 A I believe that's what you're trying to ask
23 me.

24 Q Well, that is, that is in part.

25 A Okay.

1 Q And do you believe any of those people
2 don't tell the truth?

3 A I don't know.

4 MR. STONE: Objection.

5 THE COURT: Well, then that calls for
6 speculation.

7 MR. BROWN: Okay.

8 BY MR. BROWN:

9 Q Are you aware of any of them that have had
10 occasions to present false information or false
11 reports? And there's some officers, in fact,
12 your name appears on the front page?

13 A Correct, I did the original report.

14 Q Yes, ma'am. And then Investigator
15 Reynolds?

16 A Correct, I'm trying to look through to see
17 the Deputies that you have reports from, but I
18 don't know of any firsthand knowledge of false
19 information --

20 Q Okay.

21 A -- presented by the Deputies.

22 Q On any of those, okay. And we mentioned
23 DNA, DNA generally. Did you collect any DNA for
24 submission?

25 A Did I personally?

1 Q Yes, ma'am.

2 A No. No.

3 Q Yes, ma'am. Okay, fair enough. Did you
4 ever interview Mr. Heisler?

5 A I did not.

6 Q Did you ever interview Hannah Parada?

7 A I did speak with Hannah, and initially
8 before the search warrant, had to advise her
9 what was found and the allegations made.

10 Q Okay, and you told her what had been found,
11 you're not talking about items reportedly taken
12 from Mr. Herndon's house?

13 A That's correct.

14 Q Okay. So you're talking about items that
15 Mr. Heisler located and removed from the house?

16 A Correct.

17 Q All right, and those were pornographic in
18 nature?

19 A Yes.

20 Q Okay. Did you advise her of the nature of
21 them?

22 A I did.

23 Q Okay. And tell me about cropping photos,
24 were you involved in that?

25 A About what?

1 Q Cropping photos.

2 A Cropping, yes. Based upon my training, I'm
3 very cautious and limited on sharing any type of
4 child sexual assault material, or which is
5 sometimes referred to as CP or child
6 pornography, so we want to be very cognizant of
7 that.

8 And I specifically wanted to be mindful of
9 the mother of the children's feelings, and did
10 not wish to show that, if possible. So some of
11 the items that were presented to me, I'd cropped
12 out the sexual acts, or perceived sexual act to
13 show just facial, or furniture, or locations for
14 identification purposes, to try to minimize the
15 amount of trauma.

16 I did not wish to cause the mother to have
17 to view the images of the children, and never be
18 able to forget.

19 Q Did, in fact, you see images that you
20 believed had been photoshopped?

21 A There was a combination on that thumb
22 drive, there were some images that I believed to
23 be photoshopped. Those were easily identifiable
24 as being photoshopped, they were poor quality --

25 Q Okay.

1 A -- in my opinion.

2 Q Okay, and these are not the ones you
3 cropped?

4 A That's correct.

5 Q Okay. So those were also presented to Ms.
6 Parada?

7 A The photoshopped?

8 Q Yes, ma'am.

9 A The only one that was, was I had cropped
10 one that I believe was photoshopped, because it
11 had a third child in it, that I was trying to
12 get the identification of, and I didn't know at
13 the time.

14 Q Okay. And did Ms. Parada identify that
15 third child?

16 A Did not.

17 Q All right. And you believe that that third
18 child had been photoshopped into that image?

19 A I'm not sure if it had been photoshopped
20 into that image, it was a little wonky, but I
21 didn't evaluate it.

22 Q Okay.

23 A At that point in time, my purpose was to
24 obtain the information, identify the location
25 this happened, identify the individual in the

1 photograph.

2 Q Right, fair enough. But it wasn't just you
3 that said that that 3-person photo was
4 photoshopped?

5 A You would have to ask the other
6 investigators, but yes.

7 Q How about Ms. Parada? Did she say that --

8 A But she did not see the entirety of the
9 photo.

10 Q She didn't know the child?

11 A Correct.

12 Q And could she place that unknown child with
13 her children at any point in time?

14 A Not that she was aware of, no, she did not
15 know that child.

16 Q Okay. Did you'all ever find out who that
17 child --

18 A We did not.

19 Q Okay, all right. Did you ask Mr. Heisler
20 where did that photo of the third child came
21 from?

22 A I did not interview Mr. Heisler.

23 Q Okay. Are you aware of anybody asking him
24 that question?

25 A I am not. I don't know that.

1 Q Fair enough. Are you aware of anybody
2 coming back to Mr. Heisler and asking him about
3 any photographs?

4 A I know that there was additional interviews
5 with Mr. Heisler, but I do not know about that.
6 I was not involved in that process.

7 Q Okay, and that would have been -- you're
8 talking about an interview within days? How
9 about this, was it before any discussions with
10 Homeland Security?

11 A I'm sorry?

12 Q Was that follow-up interview with Mr.
13 Heisler prior to your discussion with Homeland
14 Security?

15 A It may have been. It was very fluid, and
16 we each had -- each investigator or supervisor
17 or individual had different things that they
18 were doing.

19 Some simultaneous, some others -- I don't
20 want to say -- I don't want to give a definitive
21 without looking at everything, because I didn't
22 do some of those actions.

23 Q Did you drive any of the devices to
24 Homeland Security?

25 A I did assist with that.

1 Q Okay, and so with the approximate date of
2 April --

3 A I'm sorry?

4 Q -- 30th, would that be about the date?

5 A Approximately, yes.

6 Q Okay, and so I want to make sure I
7 understand this, you'all were involved at Mr.
8 Herndon's house on March 28th?

9 A Correct.

10 Q All right. And then we're talking about,
11 approximately, a month later that you helped
12 assist Homeland Security detectives, and shared
13 some items?

14 A Correct.

15 Q Okay, and you were involved in that
16 exchange?

17 A In some of it, yes.

18 Q In some of it, okay, fair enough.
19 Including with the item, and I apologize, let me
20 try to get the number, I didn't see it over
21 there.

22 Let's see, potentially number eight, let's
23 see if I can find it. This item right here, the
24 My Passport.

25 A I believe so, yes.

1 Q You think you took that to them?

2 A It's possible. There was a large amount of
3 evidence that was taken.

4 Q Okay, and let me ask you, would that be
5 marked somewhere on here?

6 A It would be on forms that evidence has, it
7 wouldn't be on the bag.

8 Q Okay, so --

9 A When they're transferred to another agency
10 our Evidence section does an internal transfer
11 sheet that we then sign, and it indicates
12 through them. That would be an evidence
13 question.

14 Q Okay, fair enough, but I'm gonna ask to
15 approach, if I may, and present that packaging.
16 I'm going to put the drive with it, but if you'd
17 look at the packaging, how would Homeland
18 Security had gotten that device in that bag?
19 Because it's sealed, isn't it?

20 A It is, but it looks like it may have been
21 sealed over again, because you see another set
22 of initials underneath.

23 And our policy is that we -- when we seal
24 in evidence, we use our initials and things
25 across the top, and if you look at this, you

1 would see underneath that there's some
2 additional initials. So they probably opened at
3 the seal and it got resealed over it, and I only
4 know that because I can look at the initials and
5 say that's what happened, but I can't say by
6 whom.

7 Q Okay, do you recognize those initials?

8 A It looks like John Adams' initials
9 underneath.

10 Q Okay, and he actually doesn't work for
11 Homeland Security, does he?

12 A Not this -- because this packaging is from
13 the search warrant, what we collected and sealed
14 at the search warrant that we did.

15 Q Right, and what I'm trying to find out is,
16 assuming that Homeland Security had to open the
17 bag, where does it indicate that it was sealed
18 back? Where's the --

19 A There's a HSI and some initials up here,
20 but you're gonna have to ask Homeland Security.

21 Q You got it. Does it have a date?

22 A It looks like it's 11/7/19.

23 Q Okay. And that would be substantially
24 later than the follow-up interview with Mr.
25 Heisler?

1 A I -- yes, I believe so.

2 Q Fair enough.

3 MR. BROWN: I beg the Court's indulgence.

4 THE COURT: Yes, sir.

5 BY MR. BROWN:

6 Q And just one brief follow-up, any other
7 involvement with Mr. Heisler after the 2019-2020
8 time period?

9 Did you have any involvement?

10 A I did not have any other involvement.

11 Q Okay.

12 MR. BROWN: I don't have any other
13 questions, Your Honor. Thank you.

14 MR. STONE: Just briefly.

15 **

16 **REDIRECT EXAMINATION**

17 BY MR. STONE:

18 Q John Adams, he's with the Sheriff's Office
19 as well; is that correct?

20 A That is correct.

21 Q What is his role in the search warrant
22 team?

23 A He was assisting with ascribing and
24 collection of --

25 Q I'm sorry, back up. I know what that

1 means, what do you mean by ascribing?

2 A So ascribe -- we have to list all items
3 that are taken during a search warrant. We have
4 an inventory of items.

5 Our scribe is the individual that logs
6 those items. It gives them a description, where
7 they were located, who located them. And then
8 he assisted with placing into the bag and we
9 seal the bags, so --

10 Q Do you change or alter those in any way,
11 when you hand those to John Adam?

12 A No.

13 Q Anyone else on the -- I know that the
14 Herndons were there. Anyone other than Beaufort
15 County Sheriff's Office at the house during the
16 search warrant?

17 A No.

18 Q Okay.

19 MR. STONE: Thank you, Your Honor, I don't
20 have any further questions.

21 THE COURT: Anything further?

22 MR. BROWN: Nothing further, Your Honor.

23 THE COURT: All right.

24 MR. BROWN: Thank you.

25 THE COURT: You may step down.

1 MR. STONE: Your Honor, the State calls
2 Frank Brennan to the stand.

3 THE COURT: Come on forward, sir.

4 FRANK BRENNAN,
5 BEING DULY SWORN TESTIFIED AS FOLLOWS:

6 ***

7 DIRECT EXAMINATION

8 BY MR. STONE:

9 Q Frank, would you tell the Court who are,
10 please, sir?

11 A Sure, I'm Frank Brennan, B-R-E-N-N-A-N.

12 Q All right, I'm gonna let you pull the
13 microphone a little bit closer to you as well.
14 What do you do, sir?

15 A Currently, I'm a Cyber Security
16 Investigator for a company called Redpoint Cyber
17 Security.

18 Q How long have you been with Redpoint
19 Security?

20 A About five months, I began in May.

21 Q Prior to that, what did you do?

22 A I was a Special Investigator for the
23 State's Attorney General's Internet Crimes
24 Against Children Taskforce.

25 Q That's the ICAC that we referred to

1 earlier?

2 A Yes, sir.

3 Q What is a Special Investigator with ICAC?
4 What were your job duties?

5 A My job duties were to deduct digital
6 forensic examinations for crimes internet-
7 related sex crimes to children.

8 Q And in the world of forensic interview or
9 examination, what does that entail?

10 A It is documenting and recovering the
11 digital evidence related to child sex crimes
12 that revolve around electronic devices, mobile
13 devices, computers, external hard drives and
14 digital media.

15 Q At some point is it -- I guess during this
16 time at ICAC are you also with Homeland
17 Security? Are you associated with them?

18 A Prior to moving to the Internet Crimes
19 Against Children Taskforce, I was working for
20 Homeland Security.

21 Q All right, and how long had you worked for
22 Homeland Security?

23 A Approximately four-and-a-half years, with a
24 one-year internship prior to that.

25 Q And in your work with Homeland Security,

1 what was your job?

2 A My job there was a Computer Forensics
3 Analyst, or CFA, and it was very similar to that
4 job with the State ICAC. And that was
5 conducting digital forensic examinations in
6 support of federal investigations.

7 Q So altogether how long have you been doing
8 forensic examinations of items like hard drives,
9 computers, that type of thing?

10 A Since 2016.

11 Q And in this field, and I guess in 2019 you
12 were with Homeland Security, or with the
13 Attorney General's Office?

14 A I was with Homeland Security.

15 Q Okay, all right. Now, did you -- and at
16 Homeland Security -- first of all, where was
17 that located?

18 A So the office I was assigned to the
19 Charleston office.

20 Q Okay. All right, what has been moved into
21 evidence is State's Exhibit 8. Could you tell
22 us first of all, what that is, and how Homeland
23 Security came about that?

24 A It's a My Passport external hard drive.
25 That was seized during a search warrant by

1 Beaufort County Sheriff's Office, and then we
2 requested to do a digital forensic examination
3 on all digital devices that were collected.

4 Q And that included that item as well?

5 A Yes, sir, it did.

6 Q All right. All right, when Homeland
7 Security receives an item like that, how do you
8 go about doing -- and understand I'm not an
9 expert in this field, so I'm not talking about
10 the forensics that go into it, but physically
11 what do you do? How do you prepare for your
12 forensic examination?

13 A So typically we'll be given a case
14 background. It comes by -- when I was working
15 for Homeland Security it came to us by two ways,
16 one, for Homeland Security investigations, and,
17 secondly, for affiliated investigations.

18 As a member of the Internet Crimes Against
19 Children Taskforce, the Homeland Security team
20 in Charleston would assist local and state
21 agencies throughout the State of South Carolina,
22 in order to assist in processing the digital
23 evidence, and review that evidence for child
24 pornography, or child sexual assault material.

25 Q Okay, and when that item is received into

1 Homeland Security, do you do anything to that
2 item? What exactly do you do?

3 A Yes, so initially we'll either travel to,
4 or the investigative agency will travel to our
5 location and present the evidence. At that time
6 we will take the evidence into our custody
7 utilizing an internal Homeland Security chain of
8 custody form, as well as sign off on the
9 evidentiary items received from the local
10 affiliate.

11 Q And that's that sticker I'm assuming on
12 there that we talked about earlier?

13 A Yes, sir.

14 Q Okay.

15 A This sticker would have gone on after we
16 had completed our examination, and we returned
17 the evidence back to the agency.

18 Q Okay. Now, once you retrieved the item out
19 of that evidence bag, do you change or alter it
20 in any way, or what do you do with it?

21 A Once the evidence is removed from the bag
22 it was submitted in, we will typically take a
23 picture of the item, we will assign it an
24 investigative number, in this instance it was
25 HSI line item 40, and at that point we will

1 connect it to a replica device, and create a
2 forensic image or a working copy of the digital
3 evidence for us to conduct our examinations on
4 it.

5 Q So why do you create a copy of the item
6 itself? Why not just use the item?

7 A Well, for two reasons, sir. One reason, we
8 do not want to alter the evidence, two, we want
9 to preserve the evidence in its entirety moving
10 forward. So we will create a forensic image, a
11 duplicate bit-by-bit copy of the material saved
12 on the device, in order for us to create our
13 forensic analysis of using their program.

14 Typically, in the Homeland Security
15 Charleston office we'll create two images. One
16 image is a pure image that we just document, and
17 retain in perpetuity, and then a second image is
18 used as a working image, and that's the one
19 we'll conduct our examinations on.

20 The reason we do this is, in the event the
21 image becomes corrupt during the examinations,
22 we still have a pure image, that's a clean image
23 for us to go back to and then duplicate for
24 further analysis.

25 Q Okay. Let me show you what's been marked

1 as State's Exhibit 9. I'll ask if you can
2 identify that, please? And I think it's already
3 open, but if it's not, you're welcome -- and
4 I've got scissors.

5 A This is an external hard drive containing
6 the reports generated from Homeland Security's
7 investigation That was provided to the Beaufort
8 County Sheriff's Office, Officer Cushman.

9 Q All right, so that is actually what you
10 sent back to the Sheriff's Office. Is that your
11 copy version, or what exactly is that?

12 A So it's gonna change from case-to-case, but
13 typically what we'll put on there is evidence
14 items that were created during the process of
15 our examination, are locally sourced reports,
16 and then any other information we feel we need
17 to provide back to the investigative agency to
18 further their investigation.

19 Q Okay. Now, during the process of you
20 reviewing this forensically, do you also view
21 the images and things like that?

22 A Yes.

23 Q Okay, and how does that work?

24 A Once the examination has started, we then
25 will recreate a forensic image for analysis,

1 specifically in this case we used Maggot Axiom
2 (phonetic), we used Grafi and arsenal image
3 program. What that allows us to do is turn that
4 forensic data into image that's we can view and
5 examine.

6 Specifically in this instance because we
7 are dealing with the child sexual assault
8 material, Grifi allows us to do a lot of file
9 analysis in a quick periods of time. That
10 allows us to go image-by-image, frame-by-frame
11 in various videos to examine and ascertain
12 whether or not the content within those files is
13 child sexual abuse.

14 Q All right. According to your report how
15 many items did you locate that would have fallen
16 into that category?

17 MR. BROWN: Your Honor, I object. He
18 hasn't tied in that box to this.

19 MR. STONE: We're not talking about the
20 box, Your Honor, I'm simply asking him to just
21 go through the items, and he is saying the first
22 thing he does is try to identify child sexual
23 images. I can't remember exactly how he put it,
24 and I asked him did he find any on this, and how
25 many he found.

1 MR. BROWN: That's a generic question. I'm
2 trying not to get into speaking an objection,
3 but --

4 THE COURT: Okay, but I think he can answer
5 the question, if he --

6 MR. STONE: Yes, ma'am.

7 THE WITNESS: Are you talking specifically
8 on line item 40 or across all the line items?

9 MR. BROWN: Either way. He can generically
10 say what they do.

11 THE COURT: I think he can do that.

12 MR. STONE: Yeah.

13 THE COURT: I think he has to ask specific
14 questions as to what he did in this case.

15 MR. STONE: Yes, ma'am, thank you.

16 THE COURT: Okay, I guess he wants you to
17 back up and ask, did you do like you normally do
18 in cases with this case, and then you can ask
19 him specific questions.

20 MR. STONE: Sure.

21 THE WITNESS: Yes, sir.

22 BY MR. STONE:

23 Q And tell me exactly what you did.

24 MR. BROWN: Your Honor, now we would object
25 under the previous objections.

1 THE COURT: Overruled.

2 MR. STONE: Thank you, Your Honor.

3 BY MR. STONE:

4 Q Tell us what you did, please, sir.

5 A I created a digital copy of the evidence --
6 well, I didn't create a digital copy of the
7 evidence, but I loaded a copy of the digital
8 evidence into an examination tool, in this case
9 and then conducted a review of the images and
10 videos contained within that digital item and
11 classified those according to standards, as
12 either child sexual assault material or not
13 child sexual assault material.

14 MR. BROWN: Judge, it's still not an
15 authentication. He says he didn't do it. He
16 just said that, he said, "I created it --

17 THE COURT: I heard.

18 MR. BROWN: Yeah.

19 THE COURT: Do you need to expound on that?

20 BY WITNESS: Yes, please, Your Honor.

21 Typically, when we're dealing with a case
22 the size we have here, we have a large amount of
23 evidence. I believe we examined approximately
24 144 pieces of digital evidence in this
25 examination. We had a team of three individuals

1 in our team, and typically what we do, we go
2 through steps. So we'll do an acquisition
3 phase, where we'll acquire the digital evidence,
4 those copies that we create, in order to conduct
5 our examinations.

6 Once we have created the imaging phase, or
7 the acquisition phase of our examination, we
8 will then begin to divide up the work for the
9 examinations, because it's very time consuming.
10 So just because one examiner may have created
11 the digital copy of that working image, does not
12 necessarily mean that investigator will be the
13 one who was examining that specific image.

14 And in this instance, I do not believe I
15 created the digital image of the My Passport,
16 however, I conducted the examination of the
17 working copy of that image for the purposes of
18 the examination.

19 Q And are you working as a team when you're
20 doing this?

21 A Yes, sir.

22 Q And, again, this is all in the Charleston
23 office?

24 A Yes, sir.

25 Q And the item that is there, that is the

1 report then that you created and sent back to
2 the Sheriff's Office; is that correct?

3 A Yes.

4 Q And that is marked State's Exhibit -- let
5 me make sure I refer to that --

6 A I believe it's 9.

7 Q Yes, that's correct, State's Exhibit 9.
8 And so this is actually the report you sent back
9 to the Sheriff's Office; is that correct?

10 A Yes, sir.

11 Q All right. How many items did you --

12 MR. BROWN: Your Honor, I'll still object.
13 He didn't create the copy that he examined --

14 THE COURT: Overruled.

15 MR. BROWN: -- so there's a gap between --

16 THE COURT: Okay, overruled, we're not
17 going to do speaking objections.

18 MR. BROWN: Yes, ma'am.

19 THE COURT: Thank you.

20 MR. BROWN: Well, then I would ask the jury
21 to leave, because this is different than it
22 appears.

23 THE COURT: We already covered this on
24 pretrial motions, so --

25 MR. BROWN: Your Honor, we'd ask -- this is

1 different, and I apologize.

2 THE COURT: Okay.

3 MR. BROWN: I mean I haven't asked this one
4 time; this is important.

5 THE COURT: Okay. Yes?

6 MR. STONE: Your Honor, we have covered
7 this.

8 THE COURT: This was covered in pretrial.

9 MR. STONE: Yes.

10 THE COURT: I'm just gonna note it for the
11 record, and I'm gonna renew your objection to
12 it, and I'm ruling based on the rulings before,
13 so --

14 MR. STONE: Thank you.

15 THE COURT: -- I appreciate it.

16 MR. STONE: At this time, Your Honor, we'd
17 move State's Exhibit 9 into evidence.

18 THE COURT: Subject to your objection, it's
19 overruled --

20 MR. BROWN: Yes, ma'am.

21 THE COURT: -- based on previous rulings.

22 MR. BROWN: And the authentication
23 objection.

24 THE COURT: Yes.

25 MR. BROWN: Yes.

1 THE COURT: Overruled.

2 (State's Exhibit 9 was admitted into
3 evidence.)

4 BY MR. STONE:

5 Q Let me show you what's been marked as
6 State's Exhibit 63. Can you tell me what that
7 is, please, sir?

8 A It's a black USB thumb drive.

9 Q Okay. And do you recognize -- I think
10 there are -- are there initials on this?

11 A There are, yes, sir. This is a thumb drive
12 I reviewed yesterday in preparing for my
13 testimony, and that was sealed with one of the
14 investigators from your office, and initialed by
15 me.

16 Q The items that are on this thumb drive
17 here, that is marked State's Exhibit 63, where
18 are those found in the other items of evidence?

19 A Those were derived from our reports disk
20 that was provided to the Beaufort County
21 Sheriff's Office, and those reports were --

22 MR. BROWN: Objection.

23 A -- generated after examination of line item
24 four.

25 THE COURT: Overruled.

1 BY MR. STONE:

2 Q And so you're referring to State's Exhibit
3 9, this is where it's coming from, correct?

4 A That's correct.

5 Q All right, and these items here,
6 specifically, I want to make sure, you looked at
7 a number of computer items; did you not?

8 A Yes, sir, I did.

9 Q All right. Those photos and those videos
10 that are in State's Exhibit 9 that came
11 specifically I think from State's Exhibit 8; is
12 that correct?

13 A State's Exhibit 8, yes, sir, commonly
14 referred to in my reports as line item 40.

15 Q Okay.

16 MR. STONE: At this time, Your Honor, we
17 move State's Exhibit 63 into evidence.

18 MR. BROWN: Subject to prior objection.

19 THE COURT: Subject to prior objection?

20 MR. BROWN: Yes, ma'am, and hearsay.

21 THE COURT: Yes, sir.

22 MR. BROWN: Thank you.

23 THE COURT: Admitted.

24 (State's Exhibit 63 was admitted into
25 evidence.)

1 BY MR. STONE:

2 Q Now, in State's Exhibit 8, which I know you
3 did a report on, if you have any idea how many
4 items that you saw in this particular Passport?
5 I call it a Passport, I guess that's a hard
6 drive; is that correct?

7 A It is a hard drive, yes, sir, and there was
8 a large number of files located on that. The
9 exact number I won't be able to --

10 Q Okay.

11 A -- tell you without looking at the report.

12 MR. STONE: You've got this already. And
13 we'd move State's Exhibit 63. And, Your Honor,
14 at this time I'm gonna go through those.

15 We have numbered the files, in accordance
16 with the indictments, so that's the number I'll
17 be referring to.

18 THE COURT: Thank you.

19 BY MR. STONE:

20 Q All right, on State's Exhibit 63 --

21 MR. STONE: And we have moved this in
22 evidence.

23 BY MR. STONE:

24 Q On State's Exhibit 63, I'm gonna hand you
25 some still photographs, two that have already

1 been entered into evidence as 26 and 27. And
2 referring back, was there a video associated
3 with those still photographs?

4 A Yes, sir, there was.

5 Q Okay, and that is encompassed in State's
6 Exhibit 63, correct?

7 A Yes, sir, it is.

8 Q So I'm asking now specifically to -- was
9 this referred to as Indictment 1842 in the file
10 summary here?

11 A I believe it was, yes.

12 Q I'm sorry, I'll show you these in just a
13 second.

14 A Okay.

15 MR. STONE: At this time, Your Honor, we'll
16 publish a file, which is coming from State's
17 Exhibit 63, file on Indictment Number 1842.

18 THE COURT: All right.

19 MR. BROWN: Well, I've already objected to
20 63.

21 THE COURT: I understand.

22 MR. BROWN: Just to make the record clear,
23 this is part of 63.

24 THE COURT: I understand that.

25 MR. BROWN: So --

1 THE COURT: It's overruled again.

2 MR. BROWN: Yes, I want to waive the
3 objection on 63.

4 BY MR. STONE:

5 Q And by the way, does this video have audio
6 as well?

7 A Yes, sir, it does.

8 Q Okay.

9 (Video being played for the jury.)

10 BY MR. STONE:

11 Q Let me show you what's been marked as
12 State's -- this has already been placed into
13 evidence, 27 and 26.

14 Are those still photographs of the video
15 that we just saw?

16 A Yes, sir, they are.

17 Q Let me show you what's been marked as
18 State's Exhibit 28, and ask if that is also a
19 still photo of the video we just saw?

20 A Yes, sir, they are.

21 MR. STONE: Your Honor, at this time, 26
22 and 27 are already moved into evidence. Moving
23 28 into evidence at this time.

24 THE COURT: All right, subject to your
25 prior objection.

1 MR. BROWN: Thank you, Your Honor.

2 THE COURT: Overruled.

3 MR. BROWN: Yes, ma'am.

4 (State's Exhibit 28 was admitted into
5 evidence.)

6 MR. STONE: All right, first of all, that
7 is 27 that's published on the screen now,
8 publish 26, and then 28. Okay, thank you.

9 I'm gonna now refer to file number 1839
10 also captured on State's Exhibit 63. I'll hand
11 these to you to let you know which ones we're
12 talking about.

13 At this time, Your Honor, I'd like to
14 publish from item 63, Indictment Number 1839 and
15 1832, those are the two items.

16 Do you have them?

17 MR. BROWN: Yeah.

18 BY MR. STONE:

19 Q And this is a video as well; is that
20 correct?

21 A Yes, sir, it is.

22 MR. BROWN: And I'll object.

23 THE COURT: Thank you, subject to your --

24 MR. BROWN: Yes, ma'am.

25 THE COURT: -- prior objections.

1 MR. BROWN: Thank you.

2 (Video being played for the jury.)

3 BY MR. STONE:

4 Q Okay, I've already shown you State's
5 Exhibit 29 that has already been put into
6 evidence --

7 MR. BROWN: And Judge, just out of --

8 BY MR. STONE:

9 Q -- as well --

10 MR. BROWN: -- an abundance of caution 29
11 has not been objected to or entered, but I would
12 object.

13 THE COURT: 29.

14 MR. STONE: 29 is already entered into
15 evidence, Judge.

16 THE COURT: Okay.

17 BY MR. STONE:

18 Q State's Exhibit 30 is already into
19 evidence, I showed you that as well. I'll show
20 you what's marked -- first of all it's going to
21 be 29 and 30. Are those still-photos from the
22 video that you saw?

23 A Yes, those are both still-photos from the
24 video that was just shown.

25 Q Okay, and let me show you what's marked as

1 State's Exhibit 31 and 32, are those as well?

2 A Yes, they are.

3 Q Okay.

4 MR. STONE: Your Honor, at this time we'd
5 move State's Exhibit 31 and 32 into evidence.

6 THE COURT: Subject to your prior
7 objection.

8 MR. BROWN: Thank you, yes, ma'am.

9 THE COURT: Okay.

10 (State's Exhibits 31 and 32 were admitted
11 into evidence.)

12 BY MR. STONE:

13 Q Okay, let's start with --

14 MR. BROWN: And just to be clear, those are
15 items off of 63 also?

16 MR. STONE: That's correct.

17 BY MR. STONE:

18 Q State's Exhibit 29 is shown here, what we
19 showed you earlier; is that correct?

20 A Yes, sir.

21 Q And then State's Exhibit, published to the
22 jury, State's Exhibit 30?

23 A Yes, sir.

24 Q 31 and --

25 A Yes, sir.

1 Q -- 32? Okay, thank you.

2 I'm gonna go now to State's Exhibit -- it's
3 State's Exhibit 54, but inside of the file
4 there's a file Indictment Number 1841 and 1834,
5 two of those. Are those still photographs of
6 the video depicted in our file number 1841 and
7 134?

8 A Yes, sir, they are.

9 Q Okay. All right.

10 MR. STONE: At this time, Your Honor, we'd move
11 -- oh, excuse me, let me go ahead and publish
12 the video from file 1841.

13 (Video being played for the jury.)

14 BY MR. STONE:

15 Q This has already been entered into evidence
16 as State's 33. I'm gonna show you now State's
17 Exhibit 34, 35, 36, 37, 38, 39 and 40. And
18 specifically I want to ask you a question before
19 I get to those photographs.

20 In State's Exhibit 63 that came from the
21 Passport here, those included both still photos
22 and videos as well; is that correct?

23 A Yes, sir.

24 Q And some of the photographs -- is there a
25 sequence of sorts?

1 A Yes, it's like a series of photographs that
2 were taken in succession.

3 Q So not only can you tell if it's still-
4 shot, but there are also still-shots that have
5 been -- for instance, my question I guess, if we
6 had seen him taking photographs on the video, is
7 there a way to tell whether some of those
8 photographs are actually in that same timeframe?

9 A Yes, you can --

10 Q Okay.

11 A -- just glance at the background, and the
12 series that's going on at the same time, the
13 outfits, the sheeting, and the event itself, and
14 then you can piece that from the different look
15 and angles that you're seeing from one to the
16 other.

17 MR. BROWN: Your Honor, I object, this is
18 opinion testimony. He has not been qualified as
19 an expert.

20 MR. STONE: He's talking about what he saw
21 with the clip, so there's a sequence --

22 MR. BROWN: He's talking about --

23 MR. STONE: Well --

24 MR. BROWN: -- whether they were done.

25 MR. STONE: Excuse me, let me finish.

1 THE COURT: Okay.

2 MR. STONE: We're referring to there's a
3 sequence of photographs, and these are in a
4 sequence, and that's what I was getting to on
5 this.

6 THE COURT: He can ask him.

7 MR. STONE: Thank you.

8 BY MR. STONE:

9 Q So are these photographs that I have shown
10 you, 35, 36, 37, 38, 39 and 40, are they all on
11 that same sequence?

12 A Yes.

13 Q And it's in sequence with the video; is
14 that correct?

15 A Yes, sir, it is.

16 MR. STONE: Your Honor, at this time move
17 to admit --

18 MR. BROWN: I object.

19 THE COURT: So with your prior objection?

20 MR. BROWN: Yes, ma'am, thank you.

21 MR. STONE: We enter these, Your Honor,
22 into evidence as 35, 36, 37, 38, 39 and 40.

23 MR. BROWN: And I would object to those on
24 the previous basis.

25 THE COURT: Okay, overruled.

1 MR. BROWN: And it's my understanding this
2 came off 63, for the record.

3 THE COURT: Okay.

4 MR. STONE: And I'm sorry, also State's
5 Exhibit 34, I'm not sure I said that, that as
6 well.

7 THE COURT: Okay, and he's asking if these
8 came off of State's 63?

9 MR. BROWN: 63.

10 MR. STONE: Yes.

11 THE COURT: Thank you. Overruled.

12 MR. BROWN: Yes ma'am.

13 MR. STONE: Okay.

14 (State's Exhibits 34 - 40 were admitted into
15 evidence.)

16 BY MR. STONE:

17 Q Let me start with State's Exhibit 33.

18 State's Exhibit 34 this is one that you just
19 testified to; is that correct?

20 A Yes, it is.

21 Q 35, 36, 37, 38, 39 and 40. These are all
22 in that sequence of the video, meaning they
23 would be taken at the same time?

24 A Yes, sir.

25 Q While I'm going to the next one, some of

1 these see to be from different angles. Can you
2 explain that?

3 A It's because the camera is at a different
4 location as to other cameras taking the image.

5 Q All right, so multiple cameras?

6 A Yes, sir.

7 Q Let me show you what's been marked as
8 State's Exhibit 41 and State's Exhibit 42, are
9 these still photos that came from State's
10 Exhibit 63?

11 A Yes, they are.

12 MR. STONE: Your Honor, at this time we
13 move State's Exhibit 41 and 42 into evidence.

14 MR. BROWN: Subject to the same objections.

15 THE COURT: Thank you.

16 (State's Exhibits 41 - 42 were admitted
17 into evidence.)

18 MR. STONE: I'm going to ask to publish
19 State's Exhibit 41.

20 BY MR. STONE:

21 Q Now, this is another video section; is that
22 correct?

23 A That's correct.

24 Q These are still footage. And State's
25 Exhibit 42. Excuse me, would you go down to

1 State's Exhibit -- again, we're still in State's
2 Exhibit 63, but Indictment 1827, file number
3 1827, let me show you that, if you can remember
4 at this point, and then those are associated
5 with a video; is that correct?

6 A They are associated with it.

7 Q And those are stills of the video?

8 A Yes.

9 Q Okay.

10 MR. STONE: Your Honor, at this time we
11 publish video from the Indictment and file
12 number 1827.

13 (Video being played for the jury.)

14 MR. STONE: Your Honor, at this time we'd
15 move State's Exhibit 43 and 44 into evidence.

16 THE COURT: Subject to your prior
17 objection?

18 MR. BROWN: Yes, ma'am.

19 (State's Exhibits 43 - 44 were admitted
20 into evidence.)

21 MR. STONE: Go to State's Exhibit 43,
22 please.

23 BY MR. STONE:

24 Q That's a still photo from the video we just
25 saw; is that correct?

1 A Yes, it is.

2 MR. STONE: And State's Exhibit 44.

3 THE COURT: Lawyers approach.

4 (Bench conference.)

5 THE COURT: Thank you, I appreciate it.

6 Ladies and gentlemen of the jury, I was
7 just talking to the lawyers about scheduling and
8 lunch. I think now is a good time to go ahead
9 and take a break. I'm going to need to remind
10 you, ladies and gentlemen, you are not to
11 discuss this case in any way, and that includes
12 with each other.

13 You're not allowed to do any independent
14 research. I'm just gonna ask, ladies and
15 gentlemen, go outside, get a bite to eat. I'm
16 gonna ask that you be back in your jury room by
17 2 o'clock, and then we're going to go ahead and
18 continue.

19 You are excused until 2:00, we will see you
20 then, all right? Thank you.

21 (Jury exits the courtroom.)

22 BAILIFF: The jury's cleared, Your Honor.

23 THE COURT: Thank you. All right, we're
24 gonna go ahead and break until lunch. I'll ask
25 you to be here about five minutes before the

1 jury's back.

2 And, Mr. Brennan, I need to remind you,
3 you're on the stand still, and you're not to
4 discuss your testimony.

5 WITNESS: Yes, ma'am, appreciate it.

6 THE COURT: Thank you, you may step down,
7 sir.

8 WITNESS: Thank you.

9 THE COURT: Anything else we need to put on
10 the record before we come back from lunch?

11 MR. STONE: No, Your Honor, not from the
12 State.

13 THE COURT: Defense?

14 MR. BROWN: Nothing from the defense at
15 this time.

16 THE COURT: Sir, I appreciate it.

17 MR. LEWIS: Your Honor, I apologize, I'm
18 not quite sure I heard, you want us back when?

19 THE COURT: About five minutes before 2:00,
20 if you would, just if there's anything we need
21 to put on the record before the jury comes back.

22 MR. LEWIS: All right, thank you.

23 THE COURT: Thank you.

24 (Luncheon recess)

25 **PROCEEDINGS CONTINUED**

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(Jury enters the courtroom.)

THE COURT: All right, welcome back, ladies and gentlemen. At this time we will continue with Mr. Brennan's testimony.

Solicitor?

MR. STONE: Thank you, Your Honor.

BY MR. STONE:

Q All right, before we went to lunch, I'm gonna go to specifically file 1841. This is -- I'll hand you what's been marked as State's Exhibit 64.

Is that a still-shot of the video we watched prior to going to lunch?

A Yes, sir, it is.

Q Okay, and I'm gonna hand you what's marked as State's Exhibit 65 from another video.

Do you recognize that as the video that's also associated in the same timeframe?

A Yes, it is.

MR. STONE: At this time, Your Honor, just -- we're gonna offer State's Exhibit 64 into evidence, which I showed Mr. Brown.

MR. BROWN: He did, and the same objections.

1 THE COURT: Subject to prior objection.

2 MR. BROWN: Thank you.

3 MR. STONE: Your Honor, if I could publish
4 State's Exhibit 64.

5 MR. STONE: All right, if we could go now
6 to -- this is also part of State's Exhibit 63, a
7 file under 1841 video.

8 (Video being played for the jury.)

9 BY MR. STONE:

10 Q I'm gonna show you what's been marked
11 State's Exhibit 65, is this a still-shot of the
12 video we just saw?

13 A Yes, it is.

14 Q Okay.

15 MR. STONE: Your Honor, at this time we'd
16 move State's Exhibit 65 into evidence.

17 THE COURT: Subject to prior objection.

18 MR. BROWN: Same objections, Judge.

19 THE COURT: Admitted.

20 (State's Exhibit 65 was admitted into
21 evidence.)

22 BY MR. STONE:

23 Q I'll show you what's already been put into
24 evidence as State's Exhibit 45 and associated
25 with a video at File 1845. Are you familiar

1 with those?

2 A Yes, I am, yes.

3 Q That also comes from State's Exhibit 63,
4 correct?

5 A Yes, it does.

6 MR. STONE: At this time, Your Honor, I'll
7 publish file 1845 and 1830.

8 (Video being played for the jury.)

9 BY MR. STONE:

10 Q I'll show you what's been marked as State's
11 Exhibit 46, and that is a still photograph from
12 the video we just saw?

13 A Yes, it is.

14 MR. STONE: Your Honor, at this time we'd
15 move State's Exhibit 46 into evidence.

16 MR. BROWN: Same objection.

17 THE COURT: Subject to prior objection.

18 MR. BROWN: Okay.

19 (State's Exhibit 46 was admitted into evidence.)

20 MR. STONE: And ask to publish State's
21 Exhibit 46. Thank you.

22 BY MR. STONE:

23 Q I'll show you what's been put into evidence
24 as State's Exhibit 47. This is associated with
25 Indictment file number 1835, and the video

1 section related to that. Are you familiar with
2 that?

3 A I am, yes, sir.

4 Q And that is the exhibit, obviously, on that
5 screen there; is that correct?

6 A That is correct.

7 MR. STONE: At this time, Your Honor, we'd
8 ask to publish.

9 THE COURT: You may publish.

10 (Video being played for the jury.)

11 BY MR. STONE:

12 Q And all of that, again, came from State's
13 Exhibit 63?

14 A It did.

15 Q I'll show you what's been marked as State's
16 Exhibit 48, 49 and 50. Are those in the same
17 sequence with that video?

18 A Yes, sir, they are.

19 MR. STONE: At this time, Your Honor, we'd
20 move State's Exhibit 48, 49 and 50 into
21 evidence.

22 THE COURT: Subject to prior objections?

23 MR. BROWN: Same objection. Just
24 housekeeping, that last video 47, the Solicitor
25 mentioned it was from item 63.

1 MR. STONE: That's correct.

2 MR. BROWN: And just tie to the objection
3 back up.

4 THE COURT: Okay.

5 MR. BROWN: Yes, ma'am.

6 MR. STONE: I'm sorry.

7 THE COURT: Thank you.

8 (State's Exhibits 48 - 50 were admitted into
9 evidence.)

10 MR. STONE: Okay, State's Exhibit 48,
11 State's Exhibit 50, and State's Exhibit 49.
12 Thank you.

13 BY MR. STONE:

14 Q Let me show you what's already been
15 admitted into evidence. I just want to make
16 sure of that. 51, 52 and 53, do you recognize
17 -- there is a video associated with that as
18 well; is that correct?

19 A There is, yes, sir.

20 Q And that is part of State's Exhibit 63?

21 A The video is.

22 Q Okay.

23 MR. STONE: At this time, Your Honor, we'd
24 publish. This is under our file number 1824.

25 MR. BROWN: And same objection.

1 THE COURT: Subject to your prior
2 objection?

3 MR. BROWN: Yes, ma'am.

4 (Video being played for the jury.)

5 BY MR. STONE:

6 Q I'll show you what's been marked as State's
7 Exhibit 56, is that also from item 63?

8 A Yes, it is.

9 Q And that is an associated video as well,
10 and are you familiar with that?

11 A Yes, sir.

12 MR. STONE: Number 1837.

13 (Video being played for the jury.)

14 BY MR. STONE:

15 Q I'll show you what's been marked State's
16 Exhibit 56; is that a still from that video that
17 we showed?

18 A Yes, it is.

19 MR. STONE: At this time, Your Honor, we
20 move State's Exhibit 56 into evidence.

21 MR. BROWN: Same objection.

22 THE COURT: Subject to your prior
23 objection.

24 MR. BROWN: Yes, ma'am, thank you.

25 THE COURT: Admitted.

1 (State's Exhibit 56 was admitted into
2 evidence.)

3 MR. STONE: And publish that, that is
4 State's Exhibit 56.

5 BY MR. STONE:

6 Q I'll show you what's already been entered
7 into evidence as State's Exhibit 54 and 55, also
8 from State's items 63.

9 Are you familiar with the video associated
10 with that?

11 A I am.

12 MR. STONE: That is video at 1836.

13 BY MR. STONE:

14 Q I'll ask if you can identify that, please?

15 A Yes, sir.

16 Q And is that one of the still photos from
17 State's Exhibit 63?

18 A It is.

19 MR. STONE: At this time, Your Honor, we'll
20 move State's Exhibit 57 into evidence.

21 MR. BROWN: Same objection.

22 THE COURT: Subject to your prior
23 objection.

24 MR. STONE: Thank you.

25 BY MR. STONE:

1 Q I'll show you what's been marked as State's
2 Exhibit 58, 59 and 60. Can you identify those?

3 A I can.

4 Q Can you tell where these were taken?

5 A Yes, sir, these were taken at the girls'
6 house.

7 Q This is also part of State's Exhibit 63?

8 MR. BROWN: Objection, speculation. He's
9 never been to the house.

10 MR. STONE: That's fine, Your Honor.

11 BY MR. STONE:

12 Q These photos are also still photos out of
13 State's Exhibit 63?

14 A They are.

15 Q Okay.

16 MR. BROWN: A different objection.

17 THE COURT: All right.

18 MR. STONE: And that, Your Honor, we'd move
19 State's Exhibit 58, 59 and 60 into evidence.

20 THE COURT: Subject to your prior
21 objection?

22 MR. BROWN: Yes, ma'am.

23 THE COURT: Okay.

24 (State's Exhibits 58 - 60 admitted into
25 evidence.)

1 MR. STONE: State's Exhibit 58, State's
2 Exhibit 59 and State's 60. Excuse me just a
3 moment, Your Honor.

4 THE COURT: Yes.

5 MR. STONE: I don't have any further
6 questions at this time, Your Honor.

7 MR. STONE: Please answer any questions Mr.
8 Brown has.

9 MR. BROWN: May it please the Court, Your
10 Honor.

11 THE COURT: Yes, sir.

12 **

13 **CROSS-EXAMINATION**

14 BY MR. BROWN:

15 Q Is it Special Investigator Brennan; is
16 that right?

17 A It was, it's Mr. Brennan now.

18 Q Just Mr. Brennan. Okay, fair enough.
19 Let me ask you to take a look at what's been
20 marked as Defendant's Exhibit 1 for ID only.

21 A Sure.

22 Q Tell me if you recognize that.

23 A Yes, it's a text document that is completed
24 when a device is imaged.

25 Q Does that relate to a specific item that

1 Solicitor Stone questioned you about?

2 A It does. It references the My Passport,
3 which is HSI line item 40.

4 Q Okay, and let me ask you this, so that was
5 item 63, I believe, the way he entered it, was
6 the copy of it?

7 A Yes.

8 Q Let me back up, let me back up.

9 The My Passport that was Number 8, is that
10 the same thing as the item before you?

11 A Got it right here, sorry, sir, I apologize.

12 Q Yes, sir. There you go.

13 A Yeah, line item -- or I'm sorry, the
14 evidence number 8.

15 Q Evidence number 8 is line item 40 for
16 you'all?

17 A True.

18 Q Okay, and then the copy of it, the right
19 block copy is listed as item what; is that 63?

20 A No, 63 is a portion of the files that were
21 derived from the examination of this device.

22 Q Okay, fair enough.

23 Now, you didn't actually extract that?

24 A Extract, no. The image was created by
25 Henry Cook.

1 Q Okay, all right.

2 So all the images that we've got here that
3 we looked at -- all of those images purportedly
4 come from number 8 as it's copied over to line
5 item 40 and then examined by you, and that is
6 put into item 63?

7 A Item 63 --

8 Q Yes, sir.

9 A -- was created --

10 Q Yes, sir.

11 A -- from files from our reports --

12 Q Right.

13 A -- that were created after the examination
14 of the image of this device.

15 Q Okay, and let's put some numbers with it.

16 A Sure.

17 Q So 63 came from the reports that are marked
18 as what?

19 A 63 is 63.

20 Q And then it came from which?

21 A And then it came from the reports, which
22 are -- I'm sorry, State's Exhibit 9, sir.

23 Q Okay. So 63 comes from 9, and 9 was
24 extracted from 8?

25 A 9 is not an exact copy of 8.

1 Q All right, tell me about --

2 A 9 are the reports generated from the
3 examination of --

4 Q Okay.

5 A -- line item 8.

6 Q Well, tell me about the images themselves.
7 Because when you're talking about a report,
8 you're talking about like a sheet of paper --
9 you're talking about a report.

10 A Not necessarily by a sheet of paper, I'm
11 talking about a forensic report created by the
12 tools used during the examination of items.

13 Q But it's not the image itself?

14 A No.

15 Q It has images embedded in it?

16 A It has images embedded in it. That is a
17 fair statement, yes.

18 Q Okay.

19 A Yes.

20 Q Right, okay. So the images we see today
21 are derived from one item that is the result of
22 an examination of another item, that then in
23 turn was extracted from a different item?

24 A The images we're seeing today --

25 Q Yes.

1 A -- originated on line item 40. They went
2 through different devices until they resided on
3 line item 63.

4 Q And line item 40 though that is not an item
5 purported to have come from Mr. Herndon's house,
6 is it?

7 A Line item 40 is an evidence item reported
8 from Mr. Herndon's house, and it was DCSO's
9 number -- you'll have to excuse me, it's not my
10 agency, so I'm not familiar with where they put
11 the specific numbers on there.

12 Q So tell me what was extracted by Mr. Cook
13 or Special Investigator Cook?

14 A Well, I wouldn't say anything was
15 extracted. You don't conduct extractions on
16 hard drives.

17 Q Okay.

18 A We would conduct an image, which is a bit-
19 by-bit copy of the digital media stored on the
20 device.

21 Q Okay, and where did that end up? What was
22 bit-by-bit copied? Where's that one?

23 A That would be at the Homeland Security Lab
24 in Charleston, South Carolina.

25 Q Okay. So what we've got here today -- we

1 don't even have the full step.

2 A I'm not sure I understand your question.

3 Q All right, but what we've watched was not
4 directly taken from Number 8.

5 A That is not a true statement.

6 Q Well, explain to me how Mr. Cook did a bit-
7 by-bit copy that's sitting in Charleston --

8 A Okay, the bit-by-bit copy --

9 Q Okay.

10 A -- is an entire copy -- Your Honor?

11 THE COURT: I apologize. Let him keep
12 going.

13 MR. BROWN: Oh, I'm not stopping him.

14 THE COURT: I know, but you keep saying yes
15 and yes, but just let him go ahead and finish.

16 Ask the question again.

17 MR. BROWN: You got it.

18 BY MR. BROWN:

19 Q All right, the report that's listed as
20 Defendant's Exhibit 1?

21 A Yes, sir.

22 Q All right, and this report is the line-by-
23 line copy, is a report regarding the copy that
24 was generated?

25 A No. This is a report that's generated when

1 you create an image. And what this report tells
2 you --

3 Q Okay.

4 A -- is that there is an acquisition hash,
5 which is a mathematical computation of the data
6 contained on the drive.

7 Q Okay, well -- and the drive being what
8 number?

9 A The drive being HSI, line item 40 --

10 Q Which is 8.

11 A -- which is State's Exhibit 8.

12 Q So State's 8 you take and make a report
13 that's like this?

14 A That's one of the many items we do while
15 examining the device, yes.

16 Q Okay. And then the images obviously, just
17 to make clear, there's no photos or anything in
18 here, is there?

19 A No, all this is the textual representation
20 of the data that was made.

21 Q All right, so this is more or less a report
22 of the images you're telling me.

23 A No.

24 Q Okay, it's not?

25 A This has nothing to do with images and

1 videos, I apologize.

2 Q Okay.

3 A So what this does is when a forensic image
4 is created of a mobile media --

5 Q Right.

6 A -- in this case an external hard drive --

7 Q Okay.

8 A -- it will break that file into multiple
9 subfiles.

10 Q Okay.

11 A This is telling you each one of those
12 subfiles that is created when it does that.

13 It has nothing to do with the individual
14 files within the image itself.

15 Q Okay, and did you ever look at State's 8?

16 A Yes. State's 8 image working --

17 Q No, not an image, did you look at State's
18 8?

19 A I didn't need to. We never --

20 Q No, no, is that a no?

21 A No.

22 Q All right, thank you.

23 A Yes, sir.

24 Q All right, there we go.

25 And the one that was imaged from State's 8 was

1 not done by you, was it?

2 A The image was not created by me, no.

3 Q Thank you, and that was done by who?

4 A Henry Cook.

5 Q All right, now, while we're on that, and

6 I'm gonna show you what's been marked as

7 Defendant's -- all right, I'm gonna ask you to

8 take a look at what I have marked as --

9 MR. BROWN: Your Honor, may I approach the
10 witness?

11 THE COURT: Yes.

12 BY MR. BROWN:

13 Q -- Defendant's 3 through 7.

14 A Yes.

15 Q Have you had a chance to look at all of
16 those?

17 A Yes.

18 Q Okay, fair enough. And do they all have
19 Department of Homeland Security listed at the
20 top with the little emblem?

21 A That's correct, yes.

22 Q All right, and would you say they're all
23 related to the same case number?

24 A Yes, sir.

25 Q Okay, and just succinctly, that's the case

1 number that is referencing this case?

2 A Yes, sir.

3 Q Okay, all right.

4 And the names of the people who issued the
5 reports, they're not all you, are they?

6 A No, they're not.

7 Q All right. And so we've got Christopher
8 Nevell, does that sound right?

9 A Yes, sir.

10 Q All right, and then we have, let's see,
11 we've got Henry Cook, Henry Cook and --

12 A Yes.

13 Q -- and one more copy, and I think you may
14 have gotten one of my --

15 A I did. I believe you gave me two copies of
16 number 4.

17 A That's correct.

18 Q All right. And this one was also done by
19 Amber Smith.

20 A That's correct.

21 Q All right. Now, which of these things can
22 you not testify to today because you don't have
23 enough knowledge, before we go down that road?

24 A I can testify to my part on it.

25 Q Okay, and that's just which one?

1 A So that would be Defendant's Exhibit 5.

2 Q Okay. And so 3, 4, 6 and 7 deal with this
3 case and deal with Homeland Security
4 examinations, but you can't testify about it?

5 A No, not without reviewing each individual
6 ROI, I can't answer that. That's right.

7 Q Okay. When you say ROI, you mean this
8 report?

9 A ROI is the reported investigation, yes.

10 Q Okay, so if you examined these, then you
11 could testify to it?

12 A That would be correct.

13 Q Oh, okay, fair enough then on that.

14 So let's go back. The extraction -- well,
15 excuse me, the bit-by-bit copy --

16 A Yes, sir.

17 Q -- of the Number 40, State's 8, was done by
18 Henry Cook?

19 A That's correct.

20 Q All right, but you did an item that was
21 listed as 24C; does that sound fair enough?

22 A I did a lot of items in this case.

23 Q Sure.

24 A So I have to review the ROI to be sure.

25 Q Sure, and if you'll take a look at it, I

1 think it's paginated item 3 of 5.

2 A Yes. You're asking about line item 24C?

3 Q 24C, yes, sir.

4 A Yes. I have that.

5 Q Okay, and that's an SD card that purported
6 to have come from a Sony Erickson camera?

7 A That's correct, yes.

8 Q Okay, and you did find some items on that
9 that you believe were related to an
10 investigation of child pornography?

11 A Yes.

12 Q Now, when you looked and did the
13 examination of line item 40, did you look for
14 only deleted files or did you look for what is
15 referred to as active files?

16 A That would be both.

17 Q Okay, and would that also apply on 24C?

18 A Yes, sir.

19 Q Okay, do you recall finding active files on
20 24C?

21 A I don't recall one way or the other.

22 Q Okay, but it would be significant, if, in
23 fact, Logan Heisler told law enforcement that
24 when he took the SD card from the phone, there
25 were no active files on it; it would be

1 important whether he found any, wouldn't it?

2 A I'm not sure I understand what you're
3 asking me.

4 Q All right, 24C is an SD card purporting to
5 be from a Sony Erickson phone.

6 A True.

7 Q All right, and if Logan Heisler shows up
8 and talks to Cushman and Reynells --

9 A Okay.

10 Q -- and tells them that he had to use some
11 software because he couldn't see the files, they
12 were hidden.

13 A Yeah.

14 Q All right, but if you find active files,
15 that would be inconsistent with each other;
16 would it not?

17 A To some degree.

18 Q If you find active files and he says you
19 can't find the files, those are inconsistent.

20 A I never spoke with Mr. Iersham (phonetic).

21 Q I understand. If that is the case.

22 MR. BROWN: Relevance to be linked up
23 later.

24 MR. STONE: If it is linked up later, then
25 it would be relevant at that time. He said he

1 never spoke to Mr. --

2 MR. BROWN: But I get to ask the question.
3 That's why they have a linked-up rule.

4 So I said if I link it up. Otherwise, it
5 could be struck later. It can be conditionally
6 admitted. That's in rule, like, 104.

7 THE COURT: Just move on.

8 MR. BROWN: I could be safe and recall him.

9 THE COURT: You can. You always can --

10 MR. BROWN: And he is under my subpoena.

11 THE COURT: If you can link him up, then,
12 yes, you can recall him.

13 BY MR. BROWN:

14 Q Okay, fair enough, but you did a report,
15 and then it's in there about what you found on
16 that?

17 A That's correct, yes.

18 Q All right. Thank you.

19 And then where is the actual right-block
20 copy that you examined of that?

21 A The Homeland Security lab in Charleston,
22 South Carolina.

23 Q Okay, so if your report only looked for
24 carved files and I want to know what active
25 files are on there, you'd have to actually drive

1 to Charleston to get it?

2 A Yes.

3 Q All right, you could do that tonight?

4 A No.

5 Q Why?

6 A I don't know.

7 Q I'm sorry?

8 A Counsel, I'm not understanding what you're
9 asking me to do. I said I can't testify --

10 Q No, I said if --

11 A and --

12 Q -- you only looked for carved files, and I
13 want to ask you about the active files in 24C --

14 A Yes, sir.

15 Q -- you'd go look at the right-block copy?

16 A I would have to coordinate with Homeland
17 Security, which I no longer work for, to gain
18 access to those images and then get the State's
19 cooperation to be able to do that. I have no
20 legal authority to go there and conduct that
21 analysis.

22 Q All right, what would the legal authority
23 for me or Mr. Lewis or Mr. Herndon to go there
24 and look at that?

25 If you can't do it, how can I do it?

1 A I seem to specifically remember early in
2 this investigation an invitation being solicited
3 to your defense expert to come to Charleston to
4 have access to those devices, and the response
5 was that he only needed to have sanitized
6 reports for his examination, and those were
7 provided to him.

8 Q That was from me?

9 A I don't recall.

10 Q Have you ever correspond with me?

11 A No, not until you subpoenaed me, sir.

12 Q Okay. Oh and you -- I actually don't know
13 if I talked to you. My office called --

14 A That's fair, your office sent me an email.

15 Q Fair enough. But I don't think we've ever
16 actually talked, except when --

17 A Last year.

18 Q -- I examined you last year under oath.

19 A That would be correct, sir.

20 Q Okay, fair enough.

21 Now, and you did say that you were privy to
22 the background information of this case, didn't
23 you?

24 A That's correct, yes, sir.

25 Q All right, and that background information

1 brought up a question from you and Henry Cook
2 and the rest of Homeland Security regarding the
3 recovery of files by Logan Heisler, didn't it?

4 A Yes, sir.

5 Q All right, so there was a question, and
6 that question did not come up in March or April
7 or May of 2019, did it?

8 A I don't remember when it came up, to be
9 quite honest with you.

10 Q All right. About January of 2020; does
11 that sound about right?

12 A I know it was after we had already begun
13 our examination of the devices.

14 Is that fair?

15 Q Fair enough. And the question you asked
16 was, "What kind of software did you use to get
17 these files from the devices you found at Mr.
18 Herndon's house?"

19 A Yes, sir.

20 Q All right. And so why did you have that
21 question?

22 A We had some questions regarding that
23 because we were not finding exact matches of
24 files we were asked to look for during our
25 examination. We found visually similar, being

1 pictures that to the naked eye look exactly the
2 same and appear to be taken at the same time,
3 but they were not in an exact hash-mash of the
4 files on the sample drive.

5 Q Now, does that appear in any of those ROIs
6 I gave you? Specifically the one with Henry
7 Cook.

8 A Would you like me to read it, sir?

9 Q Sure, please.

10 A So Special Agent Cook's ROI does reference
11 those two thumb drives and the questions I
12 believe you are asking.

13 Q Okay, and specifically there's a concern
14 because the items you know were given to the
15 police by Mr. Heisler are not ever found in
16 Mr. Herndon's material?

17 A That's correct.

18 Q But you understood that Mr. Heisler went in
19 and that's where he got it from.

20 That's what really the question is for,
21 that's where it came from.

22 A That was the question that we received from
23 the Solicitor's office to answer post-
24 investigation of the digital media.

25 Q All right, and let's talk a little bit

1 about the hash value.

2 A Sure.

3 Q A hash value is unique to a unique photo?

4 A Hash value is unique to files in general on
5 a computer.

6 Q Okay.

7 A And then digital photos and videos, there
8 are mathematical algorithms that constitute a
9 digital fingerprint, for lack of a better term,
10 of a file. It's a big math problem that goes
11 through the bits and bytes of the folder, and
12 then if one pixel is changed, one pixel -- one
13 dot within a picture is changed, that will
14 affect and changed that will affect and change
15 the entire hash of an image itself, even though
16 to the naked eye it would appear to be an exact
17 same photo, mathematically it's a different
18 photo because one pixel has been changed in the
19 viewing area.

20 Q Now, is that something that you like
21 physically take the thumb drive and screwdriver
22 and change it, or -- tell me how you change the
23 hash value on something.

24 A There's numerous ways. Any modification of
25 the file image itself will change the hash of

1 the file.

2 Q A modification of the image?

3 A A modification of the image, yes, sir.

4 That's correct.

5 Q Fair enough, and that includes
6 photoshopping?

7 A Yes, sir.

8 Q And that includes deep vein (phonetic)
9 manufacturing?

10 Does that not also change the hash value?

11 A Well, that is a specific different question
12 that you are asking because that wouldn't be
13 changing a file. That would be changing a file
14 if it were deep vein.

15 Q And would the hash value be different?

16 MR. STONE: Your Honor, I hate to
17 interrupt.

18 THE COURT: Yes.

19 MR. STONE: Irrelevant. This is not --
20 he's not asking him about the items that we put
21 into evidence. He's asking about a totally
22 different item that has not been offered by the
23 State and it has not been testified by this
24 witness.

25 Everything he's asking is irrelevant unless

1 he has direct questions about item number 8,
2 which I think he had covered earlier.

3 MR. BROWN: I did. I asked him if he found
4 any of the thumb drive items on Item number 8 or
5 anywhere else.

6 MR. STONE: We haven't offered any of the
7 thumb drives, Your Honor. We offered that one
8 hard drive which came out of the house with no
9 reference at all to Logan whatever his name is
10 that he's talking about.

11 THE COURT: So what's the relevance?

12 MR. BROWN: That Mr. Heisler generated this
13 complaint. He knows that.

14 THE COURT: Okay. And we're not going to
15 argue in front of the jury, first.

16 MR. BROWN: Okay.

17 THE COURT: He can ask him questions. He
18 doesn't have to be narrowed to just what you
19 asked him specifically. This is cross-
20 examination; however, you need to be careful.
21 If your objection is mischaracterizing the
22 evidence of where it comes from, that could be
23 an objection.

24 But, again -- I understood what your
25 objection is. You need to make sure that

1 whatever item you are talking about relating to
2 is related to the proper --

3 MR. BROWN: Fair enough.

4 THE COURT: Thing that is in evidence.
5 Okay?

6 MR. BROWN: Yes, ma'am. Bear with me on
7 that note then.

8 BY MR. BROWN:

9 Q Did you examine other items than line item
10 40?

11 A Yes.

12 Q And that includes line item 24C?

13 A That did include line item 24C, yes, sir.

14 Q Okay. And then if you'll look at Henry
15 Cook's report -- you said you can testify about
16 it after you've read it -- if you'll look at the
17 second Henry Cook report, it talks about the
18 hash to similarity during the investigation of
19 this same case, okay? Right?

20 And look at Defendant's Exhibit 7, it's got
21 the same case number right at the top.

22 A Yes, sir.

23 Q All right, and it lists -- it indicates
24 that there are CFAs, with an S plural; is that
25 correct?

1 A That's correct.

2 Q Okay, and you indicated that you were one
3 of those CFAs?

4 A Yes.

5 Q All right. You testified last year in a
6 pre -- in a hearing in this matter that one of
7 the things that you examined was the black thumb
8 drive.

9 A That's correct.

10 Q Thank you. And in Defendant's Exhibit 7
11 you indicate that the CFAs, meaning you and
12 others, compared the file hashes with the seized
13 devices, and they did not locate a match, didn't
14 you?

15 A Yes, sir.

16 Q All right. And you testified under oath
17 the same way last year as well?

18 A I believe I did, yes, sir.

19 Q Okay, I mean if you have any question about
20 it, I can show you that transcript.

21 A I believe you.

22 Q Okay, fair enough. All right, now -- and
23 in the 360 -- I think 365 days to the nose, has
24 there been any follow-up to figure out how that
25 could have happened?

1 A No, sir, not by me.

2 Q Not by you? And out of curiosity, now that
3 you bring that up, the dissimilarity wasn't a
4 question that I posed to you originally or
5 Homeland Security originally, was it?

6 A No, sir.

7 Q In fact, is it not true that that was a
8 follow-up from a request, "from the Solicitor's
9 Office?"

10 A Yes, sir.

11 Q That's a quote from Homeland Security.

12 A Yes.

13 MR. BROWN: And, Judge, I believe that ties
14 it up.

15 MR. STONE: I don't think that's anywhere
16 close to tying it up, Your Honor.

17 THE COURT: You're going to allow him --
18 you will be able to redirect.

19 MR. BROWN: Thank you.

20 BY MR. BROWN:

21 Q Now, we're -- we went through some file
22 numbers and they were related on some cases here
23 on the indictment numbers, and one indictment
24 number was 1823, and there was a file labeled as
25 DSC01680, and that they tied in the photographs

1 related to it by indictment number.

2 Okay, have you ever heard of those names,
3 that file name?

4 A Yes.

5 Q That's like a photograph name created by a
6 source device, isn't it?

7 A I understand. Yes.

8 Q Yeah, fair enough, and I'm not trying to --
9 you know more than I do on this, so I'm not
10 trying to tangle with you where I don't know,
11 but that's a photo number when it comes up on
12 the device.

13 A It is a photo number. Without seeing the
14 file in question and the indictment in question
15 to match the two together after reviewing
16 millions of files in this case --

17 Q Yes, sir.

18 A -- I don't feel comfortable saying one way
19 or the other.

20 Q Fair enough. And generally speaking, a DSC
21 number is a digital Sony camera?

22 A Yes, sir.

23 Q Okay, that way it shortens it, and then it
24 just creates a number. And so if I buy a
25 digital Sony camera and I take 1,680 photos, and

1 that last one may be photo 1,680?

2 A That could be, yes.

3 Q Okay, and then if somebody else goes and
4 buys one and they take the same 1,680 photos,
5 their file name may also be DSC 1680?

6 A That's correct.

7 Q All right, and did you not find a DSC 1680
8 on file 24C during your examination of 24C?

9 A It doesn't mention one way or another in my
10 report, sir.

11 Q Okay, and you're talking about on that
12 five-page report?

13 A I'm talking about defense exhibit 5.

14 Q And now that report is your report of your
15 investigation, isn't it?

16 A Yes, it is.

17 Q Okay, but you actually have a report that
18 you talked about being generated -- as I got
19 bogged down in the weeds there -- a report that
20 was generated by your software.

21 A That's correct.

22 Q Okay, and out of curiosity, if I pull up
23 that report, a copy that was given to me, could
24 you peruse and see whether or not you found a
25 file with the number DSC1680?

1 A It would depend which tools record.

2 Q Axiom.

3 A Whether or not I specifically tagged that
4 as something relevant to the investigation.

5 Q Well, if I bring you a copy of that report
6 on the computer like we have in a digital format
7 like you've got it, you'd be able to breeze
8 through it?

9 A Yes, sir.

10 Q Fair enough.

11 MR. BROWN: I have a thumb drive that I
12 have marked as Defendant's Exhibit 9.

13 If I may approach the witness to let him
14 see if this looks like something he recognizes,
15 Judge?

16 THE COURT: You may.

17 MR. BROWN: Thank you.

18 For the record, it's not the laptop that I
19 am working, it's the exhibit.

20 BY MR. BROWN:

21 Q If you'll take a look at that and see if
22 that looks like a report that I'm going to try
23 to ask you to find that.

24 A Are we still talking about line item 24C,
25 sir?

1 Q Yes, sir. It's specifically the file name
2 DSC01680, and there's two variants of it that
3 I'm gonna ask you about.

4 A Okay. Can you please give me the numbers
5 to that file again, sir?

6 Q Yes, sir, and I'm gonna show you for
7 exhibit purposes so you can look at the long
8 number.

9 And it's marked as Defendant's Exhibit 8,
10 and if you will look at the last two items.
11 That is what I'm talking about. This one and
12 this one.

13 THE COURT: Ladies and gentlemen, while he
14 is doing this, you are welcome to stand up and
15 take a stretch if you would like to.

16 A Counsel?

17 Q Yes, sir.

18 A Are these dashes substituting numbers
19 within the file?

20 Q Well, out of curiosity, do you have it in
21 there by the hash value? That's why I gave you
22 the sheet.

23 A You didn't ask me to search for the hash,
24 you asked me to search for --

25 Q Okay, fair --

1 A -- yes.

2 Q -- enough, fair enough. But you have both
3 24C and 40 in there, don't you in that report?

4 A Which report?

5 Q In the Axiom report.

6 A In the Axiom report right now I'm looking
7 at 24C.

8 Q All right, well, let's go to the hash value
9 and see if that matches the same file name
10 that's listed in 40.

11 A Sure. That file was present on 24C, yes,
12 sir.

13 Q Okay. So the charge that Mr. Herndon
14 committed sexual exploitation of a minor
15 involving a file with a name DSC01680, that
16 actual image with the identical hash value
17 appears on a different device that you put as
18 line item 24C, isn't it? That same file is both
19 on the My Passport and on 24C.

20 A You're confusing me a little bit.

21 Q Okay.

22 A It's just as you mentioned. You can have
23 two files with the Sony camera with the same
24 file name.

25 Q Yes, sir.

1 A Now you're asking me the hash value, and
2 now you are also asking me about a file name.

3 Which one do you want to talk about?

4 Q Well, let's talk about the hash value on
5 that. But let's start with this, the file name
6 on line item 40, the one that you've already
7 talked about, that relates to Indictment 1823.

8 A You don't do a lot of math. I can tell.

9 Q Thank you, thank you. I'm a lawyer, not a
10 mathematician.

11 Fair enough, but that has value image also
12 appears on 24C, doesn't it?

13 A Yes.

14 Q All right. And at 24C, again, since you
15 did the examination of 24C, 24C is a Sony
16 Erickson SIMS card, that's your description of
17 it, correct?

18 A Line item 24C is a Sony Erickson camera
19 that contained a 4 gigabyte SD card.

20 Q SD card, I apologize.

21 Q That's the Sony Erickson SD card?

22 A Yes, sir, it is.

23 Q Okay, all right. And that's not an image
24 that they asked you to authenticate, and then
25 subsequently publish, was it?

1 A Which image, sir?

2 Q The image on 24C was not what was
3 published, even though it's the same image?

4 A We didn't discuss anything from line item
5 24C.

6 Q That's correct.

7 A Until you started cross-examination.

8 Q All right, but that image is identical to
9 one that you'all did talk about?

10 A I am not sure.

11 Q Also, excuse me, they listed it as a
12 different number too. That would be item 58.

13 A Yes.

14 Q We know that image that you testified to
15 was derived from line item 40 to My Passport.

16 A Yes, sir.

17 Q Okay, but the hash value appears to be
18 identical to a photograph that that is found on
19 a Sony Erickson SD card?

20 A Yes, sir.

21 Q Okay, fair enough. And then the importance
22 of the Sony Erickson SD card to the rest of the
23 investigation you don't know, or do you?

24 I'm simply asking whether you know what the
25 significance of that SD card is?

1 A The significance of that SD card is that it
2 contained pictures and images of our victims.

3 Q And do you know whether or not Mr. Heisler
4 says that he put that SD card into that home
5 after he made some thumb drives?

6 A I don't know one way or the other.

7 Q You've got it, fair enough, but it was
8 assigned a BCSO property number for this case,
9 wasn't it?

10 A I --.

11 Q Item 24.

12 A Line item 24C?

13 Q Yes, sir.

14 A Yes, everything we received from BCSO had a
15 BCSO case number.

16 Q Okay, and that also includes the two thumb
17 drives that have BCSO numbers?

18 A Yes.

19 Q Let me refer you to page two of two of
20 Henry Cook's report, dated June 1, 2022.

21 This is Defendant's Exhibit Number 7.

22 A I believe on item number for both thumb
23 drives.

24 Q Okay, and that is for this case?

25 A Yes, sir.

1 Q Okay, so the thumb drives have been entered
2 into the Sheriff's Department Evidence Room,
3 with the evidence number in this case?

4 A I don't know about in this case because I'm
5 not with BCSO.

6 Q Fair enough. Did you ever --

7 A So all I can tell you is that the BCSO
8 evidence number from this is entered into report
9 of investigation for our case number regarding
10 the digital forensics for the Herndon matter.

11 Q Well, do this then, let's flip to page one
12 of that very same report, and does it not say
13 that this report relates to two USB thumb drives
14 received along with item BCSOC seized during a
15 search warrant at 24 Bluebell Lane?

16 A Yes.

17 Q All right. That's the same report
18 regarding the same two thumb drives?

19 A Yes.

20 Q Okay. And I'm gonna take that indictment
21 and those photos back as a matter of
22 housekeeping so I can give them back to Mr.
23 Solicitor.

24 Now, tell me about a source device. What
25 does that word/phrase mean?

1 A It could mean a few things to be quite
2 honest with you, sir.

3 Q Okay, sure, fair enough. Let me ask you,
4 let me see if I can get this straight. Is a
5 source device normally the original evidence
6 item that's being examined or analyzed?

7 A It could be, if used in that context, yes.

8 Q Okay. I'm gonna ask you to take a look at
9 what's been marked as Court's -- I believe this
10 is, oh, excuse me, Court's Exhibit Number 1, and
11 I'm gonna take you right to page 143.

12 And just to keep it straight, the very
13 first page shows that this is a transcript of
14 some prior testimony in this same proceeding,
15 correct?

16 A Yes, sir.

17 Q All right, and it purports that your
18 testimony -- the index says that your testimony
19 begins roughly on page 120, or excuse me,
20 roughly page 130 -- or I guess 142. I think at
21 the very bottom of 141.

22 A Yes, sir.

23 Q Okay, and didn't you testify regarding what
24 an original source device 365 days ago?

25 A I did.

1 Q All right, and can you tell the jury what
2 an original source device is?

3 A Yes. In this context the original source
4 device is the device in which an image might
5 have been generated, or the device in which a
6 forensic image was created.

7 Q Okay, and while we're talking about created
8 on a device like a thumb drive, there's some
9 dates, like if you right click it, and this is
10 getting a little bit closer to what I know how
11 to do, but if you right click it, you can
12 actually go down to properties, and pull up some
13 items?

14 A Yes, sir.

15 Q Can you explain the difference between a
16 modified date and a created date and an access
17 date?

18 A Sure. So a modified date is typically just
19 that; when a file is modified. So the initial
20 modified date will initially be done when you
21 create the file for the first time.

22 That's going to be your modified date. The
23 create date, even though it sounds like when the
24 file would be made, it's actually when that file
25 was created on the file system in which you're

1 referencing.

2 Case in point, on line item 40 for this
3 hard drive, if a file was created on it, meaning
4 that I added a file to it for the first time,
5 it's create date would be the date that request
6 then happened.

7 Now, if that file existed prior to that
8 date on another device, it's modified date would
9 actually be before it's created date; is that
10 what you're looking for?

11 Q That was. So would -- the modified date is
12 really the earlier date or the same date?

13 A It can be, yes, sir.

14 Q Okay, there you go, all right. And so if
15 it's got a modified date of January 10th and
16 then it's supposedly put onto a thumb drive on
17 March 28th, that modified date would not say
18 March 28th, it would say January 10th?

19 If the picture was taken on January 10th,
20 let's say on a camera --

21 A Okay.

22 Q -- and then it was copied on March 28th to
23 a thumb drive, the modified date would be
24 January 10th and then the create date would be
25 March 28th?

1 A Yes, it would be without any altering of
2 the file, yes, sir.

3 Q Fair enough, and that's assuming there's no
4 playing with the computer system.

5 Now, I did want to ask you that, what would
6 it take -- I mean because I have no clue, but
7 what would it take to have a computer operating
8 system to change the dates that end up on these
9 devices, when items are copied over?

10 A It's really on a case-by-case basis --

11 Q Okay.

12 A -- because of how we're talking about
13 things. It could be things as in offset time on
14 the bios of the operating system. It could be
15 modified using a software program after the
16 files have been created.

17 So without a specific instance to speak off
18 of, I wouldn't feel comfortable giving an answer
19 one way or the other.

20 Q Fair enough, but these are things like
21 altering the computer's bios?

22 A Yes, sir.

23 Q Yeah. Can you explain what the computer's
24 bios is?

25 A The bios is the base operating system of

1 the computer. It's the booting system and what
2 the computer then wakes up from.

3 So when you go on and turn your computer
4 on, you'll see a black screen that you normally
5 just ignore and tell it to hurry up in the back
6 of your head, because you just want to get to
7 look at what's the new thing on Facebook, that's
8 the bios; that little black screen. There's
9 other things you can do on there, with button
10 sequences that will allow you to change settings
11 that most people never even do, but it's the
12 base operating system the computer Windows or
13 Apple lives on and moves from.

14 Q Now, do you recall a modified date on the
15 black thumb drive of January 10th, 2019?

16 A I don't recall one way or the other.

17 Q Okay. And that Axiom program you have
18 there, or that report, excuse me, does that
19 contain the black thumb drive, because I don't
20 have a line item number for it?

21 A No.

22 Q Okay. So the black thumb drive, you'all
23 did examine it; is that correct?

24 A No.

25 Q Well, let me ask you to take a look at

1 Number 6 again with Homeland Security, and maybe
2 we're using apples and oranges here, but --

3 A I think that may be it, sir.

4 Q And it says -- let me make sure I get this
5 right, that at the conclusion of the computer
6 forensic examinations, pursuant to request
7 you'all compared the hash values between the
8 thumb drives and the other devices.

9 A That's correct.

10 Q But you didn't actually examine those thumb
11 drives?

12 A No, sir.

13 Q All right.

14 A We did what we would consider a preview, or
15 a review of the data, because we were utilizing
16 those two thumb drives on the front-end of the
17 investigation as information.

18 Being unfamiliar with the children and
19 unfamiliar with the suspect, we needed to gain
20 those representative images for us to use as
21 comparison images as we move through the rest of
22 our examination on the items seized from that
23 house.

24 Q All right. Do you remember how the
25 Solicitor's Office asked you to look at those

1 thumb drives? Like how they communicated that
2 to you?

3 A No, sir, I don't, it's been many years.

4 Q Okay, would it have been a phone call only?

5 A It could have been a phone call; it could
6 have been an email; it could have been an in-
7 person meeting, but I actually don't recall.

8 Q Okay, and before the thumb drive question
9 came up, had you ever heard of Logan Heisler?

10 A Yes, sir.

11 Q You had heard of him?

12 A Yes, sir.

13 Q Okay, fair enough. Now, the last thing I
14 want to ask you a little bit about, and I've got
15 a few questions I want to ask about metadata
16 analysis, and things of that nature.

17 And we've got still images that you took
18 out of the video; is that fair enough?

19 A Yes.

20 Q All right, and one of the things when you
21 examine -- look at a video, you can do a frame-
22 by-frame examination?

23 A You can, yes.

24 Q All right, and the metadata analysis we
25 talked a little bit about looking at the hash

1 values?

2 A Yes, sir.

3 Q Okay. And then how about a compression
4 artifact analysis?

5 A We haven't discussed that at all.

6 Q All right, how about an interframe
7 analysis?

8 A It's the first you mentioned it to me.

9 Q Okay, and that's not something that came up
10 during your examination here?

11 A No.

12 Q All right. How about format and CODEC
13 consistency analysis?

14 A Some of the tools will do that generically
15 as part of the default processing. Others you
16 can do a more intensive review on it, or an
17 examiner can manually do that if they see a need
18 to during the examination.

19 Q All right, source matching?

20 A Yes, sir.

21 Q All right, and I'm gonna stop there and ask
22 you about this. We talked about the original
23 source for a second.

24 A Yes, sir.

25 Q Yes, all right.

1 Now, can you go back and tell whether a
2 thumb drive has been put into a machine if you
3 look at the USB log?

4 A On some machines, yes, depending on the
5 operating system and depending on what's been
6 done to the operating system.

7 Q Okay.

8 A And in some cases depending on the thumb
9 drive itself.

10 Q Okay, and can you do the same thing with a
11 SD card?

12 A Again, that's depending on how you're
13 getting the thumb drive into the computer.

14 Q Is that a process to eliminate some of the
15 ways that a file could have been created, or how
16 it got onto a device?

17 Can you not take a device and in theory
18 show the log that matches that device being put
19 into that computer?

20 A In many cases you can, yes.

21 Q All right. And did you have a computer
22 from Logan Heisler to do that with?

23 A No.

24 Q But you did ask where it was, didn't you?

25 A Yes.

1 Q All right, do you recall what you
2 determined on that investigation?

3 A Yes, he said he didn't have the computer
4 anymore; that it was thrown out.

5 Q He had thrown it away, okay, all right.
6 And so other analysis we could look at would be
7 like an audio analysis, error level analysis,
8 biometric analysis?

9 A Yes.

10 Q All right. Did any of these things help
11 you determine whether items had been
12 manipulated?

13 A Some of them can.

14 Q Okay, all right.

15 Was there any effort to see whether any of
16 these videos were defective?

17 A No.

18 MR. BROWN: I beg the Court's indulgence.

19 THE COURT: Yes, sir.

20 MR. BROWN: I don't have any more questions
21 at this time.

22 THE COURT: All right, Solicitor?

23 MR. STONE: Just a few.

24

25

REDIRECT EXAMINATION

1 BY MR. STONE:

2 Q Mr. Brennan, do you have your report up
3 there?

4 A I do.

5 Q Let me talk specifically about the report
6 that you did, and go to page two of that report,
7 let me make sure I'm on the same page. This
8 one?

9 A No, I don't have that one.

10 Q This one? All right. What I showed you,
11 that's your report?

12 A Yes.

13 Q Concerning victims one and two, and that
14 would be MINOR 1 and MINOR 2 --

15 A MINOR 2.

16 Q -- correct?

17 A Yes, sir.

18 Q How many photographs did you uncover in all
19 of the items that you searched concerning those
20 victims?

21 A Approximately, 1,296 pictures and 235
22 videos.

23 Q Okay, now, obviously, we haven't put in
24 1,200 and how many?

25 A 1,296.

1 Q Okay, and we haven't put in how many
2 videos?

3 A 235.

4 Q Okay, just the videos that we showed.

5 Now, the videos that we showed, do you want
6 me to hand that back to you?

7 A Yes, sir.

8 Q In order to get onto a hard drive,
9 obviously, you have to take photographs and
10 videos; is that correct?

11 A Yes, sir.

12 Q And, in fact, I think we actually showed --
13 we actually could see Mr. Herndon take
14 photographs in those videos --

15 A He did --

16 Q -- is that correct?

17 A -- yes, sir.

18 Q And the videos themselves, obviously, they
19 had to be produced by a camera as well?

20 A Yes, sir.

21 Q So they're gonna be in one place, but
22 they're also gonna be copied to the hard drive;
23 is that correct?

24 A Yes.

25 Q Now, from the hard drive itself, did you

1 see any evidence of any of those -- first of
2 all, just from the still photographs, and those
3 all came from your item 40 and State's item 8;
4 is that correct?

5 A That's correct, yes, sir.

6 Q All right. And, again, although you didn't
7 -- you basically made a copy of this and stored
8 a second copy; is that right?

9 A That's correct.

10 Q All right. And that is your number -- I
11 think we put that in another item as well.

12 A See what that one is. This one here?

13 Q Yes, that one, that would be State's
14 Exhibit 9, so that's where that was, correct?

15 A Yes.

16 Q All right. So out of the copy of all that,
17 that is coming from what was found in this
18 house; is that correct?

19 A That's correct.

20 Q The search that came from the officers from
21 Beaufort County and then Homeland Security?

22 A Yes.

23 Q Did it go through Logan Heisler's hands?

24 A No, it didn't.

25 Q Of those still shots, just talking about

1 the still shots, the ones that we have offered
2 into evidence, are any of those photoshopped?

3 A No, they're not.

4 Q From a video standpoint, talk to me about
5 the videos. Any of the videos faked?

6 A There's nothing that --

7 MR. BROWN: I would object. Judge, he
8 hasn't been qualified as an expert.

9 MR. STONE: He's asked a question, Your
10 Honor, that --

11 MR. BROWN: No, I didn't ask -- I asked
12 whether he did the analysis. He said no.

13 MR. STONE: Not true, he asked all about
14 being represented.

15 MR. BROWN: I did.

16 MR. STONE: -- misrepresented --

17 THE COURT: I'm gonna let him go ahead and
18 answer.

19 MR. STONE: Thank you, Your Honor.

20 THE COURT: Go ahead.

21 MR. BROWN: Is he qualified as an expert
22 for me to follow his opinions on defects?

23 MR. STONE: He's talking about the videos.

24 MR. BROWN: Well, then I'm gonna have to
25 make sure I get a ruling on that.

1 THE COURT: Overruled.

2 MR. BROWN: Thank you.

3 MR. STONE: Thank you, Your Honor.

4 BY MR. STONE:

5 Q Talk to me about the videos.

6 A The videos all appear to have been
7 generated from devices within the Herndon
8 household that were seized at the time of the
9 search warrant and then backed up and copied to
10 this My Passport.

11 Q And then -- and that's just how that backs
12 up. The videos that also had audios, what
13 issues does that present?

14 A Well, the audio helps in validating, that's
15 it a known, true video, when you start seeing
16 that the video and the audio links up together.

17 MR. STONE: I don't have anything else,
18 Your Honor, thank you.

19 MR. BROWN: I would like to follow-up
20 regarding --

21 THE COURT: Go ahead.

22 MR. BROWN: -- defect.

23 **

24 **RECROSS-EXAMINATION**

25 BY MR. BROWN:

1 Q So you've given an opinion about whether or
2 not there was a defect, and I want to go back
3 and ask you about these types of analysis that
4 we talked about.

5 Now, this metadata analysis, frame-by-frame
6 examination, compression artifact analysis,
7 interframe analysis, machine-learning and AI
8 detection, format and CODAC consistency, source
9 matching, audio analysis, error level analysis,
10 physical inconsistencies, biometric analysis,
11 digital noise analysis, motion analysis, file
12 hash verification and chain of custody
13 verification, pixel level analysis.

14 Where in your report did you mention that
15 you did those for the purposes of opining about
16 whether they were defect?

17 A I didn't.

18 Q Thank you. And you did hear that issue
19 brought up 365 days ago, didn't you?

20 A Which issue?

21 Q About defect?

22 A Yeah.

23 Q Last year.

24 A Yes.

25 Q All right, and nobody said go back and do

1 these?

2 A No, sir.

3 Q All right.

4 MR. BROWN: I don't have anything else.

5 MR. STONE: No, ma'am, there's nothing
6 else, thank you.

7 THE COURT: All right. Any objection to
8 this witness stepping down?

9 MR. BROWN: Not stepping down, but he is
10 under my subpoena.

11 THE COURT: Well, he can step down --

12 MR. BROWN: Yes, ma'am.

13 THE COURT: -- not be excused is what you
14 mean?

15 MR. BROWN: Yes, ma'am, and I just --

16 THE COURT: Okay.

17 MR. BROWN: -- didn't want him to get in
18 the car and drive off.

19 THE COURT: Sir, you can step down if you
20 want. Obviously, stay here. I'm gonna send the
21 jury on a break.

22 Ladies and gentlemen, keep your pads either
23 in your seats or right in front of you. Don't
24 discuss this case, it would be inappropriate to
25 do so.

1 (The following proceedings were held in
2 open court. All parties were present.)

3 THE COURT: Is everybody ready?

4 MS. SWANSON: Yes, Your Honor.

5 MR. BROWN: Yes.

6 THE COURT: Okay. Let's go ahead and bring
7 the jury in.

8 (Jury enters courtroom.)

9 THE BAILIFF: The jury is seated, Your
10 Honor.

11 THE COURT: All right. If the State will
12 call the next witness.

13 MS. SWANSON: The State calls Hannah
14 Parada.

15 **HANNAH PARADA,**

16 **Being duly sworn testified as follows:**

17 ******

18 **DIRECT EXAMINATION**

19 BY MS. SWANSON:

20 Q Hey, Hannah, thanks for being here today.

21 Please tell the jury, do you have any children?

22 A I have two daughters, **MINOR 1** and **MINOR 2**.

23 Q And how old were they in March of 2019?

24 A Eleven and 8-year-old.

25 Q All right, now, who was 11 and who was 8?

1 A MINOR 1 is my oldest. MINOR 1 was 11, and
2 MINOR 2 was 8.

3 Q All right, I'm gonna show you what's been
4 marked as State's Exhibit 62, and ask if you
5 recognize what's in this photo?

6 A That is MINOR 1's birth certificate.

7 Q All right, and is that a fair and accurate
8 depiction of her birth certificate?

9 A Yes, ma'am.

10 MS. SWANSON: The State would enter 62 into
11 evidence at this time.

12 MR. BROWN: Without objection.

13 THE COURT: Without objection, it's in
14 evidence.

15 (State's Exhibit 62 was admitted into
16 evidence.)

17 BY MS. SWANSON:

18 Q I'm also gonna show you what's been marked
19 as State's Exhibit 61, and ask if you can
20 identify what's in this picture?

21 A That is MINOR 2's birth certificate.

22 Q All right, and is that a fair and accurate
23 copy of her birth certificate?

24 A Yes, ma'am.

25 MS. SWANSON: The State would enter 61 at

1 this time.

2 MR. BROWN: Without objection.

3 THE COURT: Without objection it's in
4 evidence.

5 (State's Exhibit 61 was admitted into
6 evidence.)

7 BY MS. SWANSON:

8 Q Hannah, I want to show you some pictures
9 and ask if you recognize the people within these
10 pictures.

11 First, I'm gonna show you State's Exhibit
12 51. This has been entered as evidence. If you
13 can tell me who that is?

14 A That's my daughter MINOR 1 .

15 Q All right. And I'm also gonna show you
16 State's Exhibit 27 and ask if you recognize who
17 this is?

18 A That's my daughter MINOR 1 .

19 Q Was she older or younger in this picture
20 here?

21 A She was younger.

22 Q Okay. I'm gonna show you State's Exhibit
23 29, and ask who is in this picture?

24 A That is MINOR 1 and MINOR 2 .

25 Q All right, and just the way it appears

1 before you, who's on the left?

2 A MINOR 1 .

3 Q Who's on the right?

4 A MINOR 2 .

5 Q I'm gonna show you State's Exhibit 53.

6 A That's my daughter MINOR 2 .

7 Q Thank you. Now, on March 28th of 2019,
8 where were you living?

9 A 26 Bluebell Lane.

10 Q All right, and who did you live in that
11 household with?

12 A My ex-boyfriend, Logan Heisler.

13 Q And who else?

14 A My two daughters, MINOR 1 and MINOR 2 .

15 Q Who lived next to you?

16 A His cousin, Timothy Herndon.

17 Q Did he live at 24 Bluebell?

18 A Yes, ma'am.

19 Q So is that to the left or to the right of
20 your home?

21 A If I'm standing in front of it?

22 Q Yes.

23 A If I'm looking at the road, it's to the
24 left.

25 Q Okay. Oh, I'm sorry, if you're looking at

1 the front of the house.

2 A If I'm standing in front of my old house,
3 and I'm looking towards the road in front, it's
4 to the left.

5 Q Okay. How long had you lived at that
6 residence?

7 A Total? I believe I lived there in 2013,
8 2014.

9 Q And your girls were there the whole time?

10 A Not long after that, yes.

11 Q So several years?

12 A Yes.

13 Q All right. And you stated Logan's cousin,
14 Timothy Herndon, lived next door?

15 A Yes, ma'am.

16 Q You were familiar with him?

17 A Yes, he was, I thought he was a part of the
18 family.

19 Q Okay.

20 A My daughter's looked at him like my brother
21 -- I would look at my brother as MINOR 2's uncle,
22 their uncle, my daughters did.

23 Q What did they call him?

24 A Uncle Timmy.

25 Q Do you see who your girls referred to as

1 Uncle Timmy in the court room today?

2 A Yes, ma'am.

3 Q Can you point him out for me please? Okay.
4 I'm gonna show you a few pictures and ask if you
5 can recognize the person within these pictures.
6 First, is State's Exhibit 26.

7 A That is Tim Herndon.

8 Q State's Exhibit 54.

9 A That's him, as well, Timothy Herndon.

10 Q Okay. State's Exhibit 52.

11 A That is Tim Herndon.

12 Q Now, did you and Logan work at the time
13 that you'all were living next to Timothy
14 Herndon?

15 A Yes, ma'am. I worked as a waitress.

16 Q All right, and would he sometimes help you
17 with childcare?

18 A Yes, he was like family. He would take
19 care of my daughters, just like any family
20 member would.

21 Q When would he take care of your daughters?

22 A He would pick them up from the bus stop
23 sometimes. He would take them to dinner
24 occasionally. Like if they wanted to go play
25 over there, I would allow that.

1 Q Did he have access to the girls when his
2 wife was at work?

3 A Yes, he - yes, ma'am.

4 Q Now, let me ask you about some furniture
5 that was in the downstairs of 26 Bluebell, your
6 residence.

7 A Yes, ma'am.

8 Q I believe you had a sunroom.

9 A Yes, ma'am.

10 Q Can you describe the furniture that was in
11 that sunroom?

12 A It was light, wicker almost, with green
13 cushions.

14 Q Okay, thank you.

15 A Yes, ma'am.

16 MS. SWANSON: I beg the Court's indulgence.

17 THE COURT: Yes, ma'am.

18 BY SWANSON:

19 Q Hannah, did Timothy Herndon and his wife
20 have any children?

21 A No, ma'am.

22 Q Any grandchildren?

23 A No, ma'am.

24 Q Any other children that would be over at
25 his house playing with toys?

1 A No, ma'am.

2 Q Okay, thank you. Please answer any
3 questions that the defense may have.

4 A Yes, ma'am.

5 MR. BROWN: May it please the Court?

6 THE COURT: Yes, sir.

7 **

8 **CROSS EXAMINATION**

9 BY MR. BROWN:

10 Q Ms. Parada, when did Logan Heisler become
11 your ex-boyfriend?

12 A August of last year.

13 Q August?

14 A Yes, sir.

15 Q Do you recall speaking to Investigator
16 Cushman on September 22nd of 2022?

17 A Yes, sir.

18 Q Okay, and do you recall talking to him, and
19 mentioning --

20 MS. SWANSON: Your Honor, may we approach?
21 I have an objection.

22 THE COURT: You may.

23 MS. SWANSON: Thank you.

24 (Bench conference).

25 THE COURT: Ladies and gentlemen of the

1 Herndon is not in.

2 MS. SWANSON: Oh, okay, but, Your Honor,
3 what he's seeking to get out is actions by Logan
4 and his relationship with Hannah.

5 That has nothing to do with manipulation of
6 videos, and it is not inconsistent with Timothy
7 Herndon's guilt. That has nothing to do with
8 Timothy Herndon and his guilt.

9 THE COURT: I understand his story that he
10 is trying to paint, and you have to remember
11 that the whole case started by these thumb
12 drives, supposedly, and that's what started the
13 whole ball rolling for the search warrant in the
14 investigation.

15 MS. SWANSON: Which we have not entered
16 into evidence and are not relying on in our
17 presentation of evidence.

18 THE COURT: We've already brought it all
19 in. It's in.

20 MR. BROWN: They were examined by Homeland
21 Security at their request.

22 THE COURT: Okay, well I'm gonna let in a
23 narrow portion of it. Clearly, he's trying to
24 use it to confuse issues for the Jury, but
25 that's the defense's job.

1 MR. BROWN: Judge, I'm gonna have to object
2 now, because that can't be the statement of an
3 unbiased person.

4 THE COURT: Sir, I'm not determining the
5 facts of this case. All I can say is, is that
6 I'm having a hard time following you.

7 I don't know if this jury is following you,
8 but, again, now I understand you're not talking
9 about a subsequent incident, you're talking
10 about something this witness said, and while I
11 feel like it's a little bit tenuous, I'm gonna
12 allow it, so we'll go from there.

13 MR. BROWN: Thank you.

14 THE COURT: You ready to bring the jury
15 back in?

16 MR. BROWN: Yes, ma'am.

17 THE COURT: Let's bring them back in.

18 (Jury enters the courtroom.)

19 **

20 **PROCEEDINGS CONTINUED**

21 THE COURT: All right, you may be seated.
22 Mr. Brown, you can continue, sir.

23 MR. BROWN: Thank you. May it please the
24 Court?

25 THE COURT: Yes, sir.

1 BY MR. BROWN:

2 Q And do you recall speaking to Investigator
3 Cushman on September 22nd of 2022?

4 A When you first said that I thought you were
5 referring to August when I had called the
6 police. I spoke to Cushman numerous times in
7 the last 5 years. I used to call him on a
8 regular basis.

9 Q Okay.

10 A So, September 22nd, I'm not positive, but
11 I'm sure I did.

12 Q Do you recall telling him when he was
13 interviewing you that you believe Logan Heisler
14 raped you and drugged you when you lived on
15 Bluebell Lane?

16 A I said that. I've also said that I believe
17 Timmy was drugging me, so he was able to do that
18 to my children.

19 Q But no question that you told Investigator
20 Cushman --

21 A Yes, I've told Cushman that, I've --

22 Q -- that Logan did that?

23 A I said I was being drugged; I don't
24 remember specifically if I said Logan.

25 Q You don't believe you said Logan?

1 A I might have said Logan, I -- it was one of
2 them.

3 Q Okay, and out of curiosity, was Mr. Herndon
4 there in September of 2022, when you made that
5 statement?

6 A Was he there?

7 Q Was he there beside you when you made that
8 statement?

9 A In 2022?

10 Q Uh-huh, was he standing beside you?

11 A No, he was here.

12 Q Okay, was I there when you made that
13 statement?

14 A No. No, sir.

15 Q Okay, did anybody from Mr. Herndon's family
16 or friends coerce you into saying that Logan
17 Heisler had raped you, drugged you, at Bluebell
18 Lane?

19 A Well, like I said, I don't remember
20 specifically saying Logan. I was saying, in
21 general, I believed I was being drugged. I
22 might have said Logan, but I know I have told
23 Cushman I believed Timmy was drugging me, so he
24 could do that to my children while I was
25 sleeping, so, yes, I guess both. Yes, sir.

1 Q Do you recall telling Mr. Heisler to delete
2 the child pornography off of his phone?

3 A No, I do not.

4 Q You don't recall texting him that December
5 31st, of 2021?

6 A I do not, sir.

7 Q You don't?

8 A To delete child pornography off his phone
9 that I knew about, is that what you're saying?
10 No, I do not remember saying that.

11 Q You didn't say, "I hope you deleted all
12 that child pornography off your phone"?

13 A No, I don't believe I said that.

14 Q Okay.

15 A No.

16 Q And you don't recall saying --

17 A Were they snarky messages, because I mean
18 were we not together anymore.

19 Q Well, I did ask if that's when you broke
20 up.

21 A So this was after August?

22 Q Well --

23 A Then, yes, I probably did say that very
24 meanly.

25 Q Okay.

1 A And making it like he was just like his
2 cousin.

3 Q Okay, you were trying to say he's like his
4 cousin?

5 A Yes, who was the one who raped my
6 daughters.

7 Q And then let me ask you about a lawsuit you
8 filed.

9 Did you sue Tim Herndon by a lawsuit in
10 2019?

11 A I got a lawyer, yes. When this all came
12 about, I did get a lawyer to represent me and my
13 daughters.

14 Q And did you receive a 5-million-dollar
15 judgement from Mr. Herndon?

16 A I have not gotten a penny, and so if I did,
17 I have no idea about that. That would be great
18 to know.

19 Q Your lawyer didn't tell you that?

20 A Not that I -- no, 5 million dollars?
21 No, no, he did not.

22 Q Okay.

23 A It's news to me, 5 million dollars.

24 MR. BROWN: Thank you, Judge.

25 **

REDIRECT EXAMINATION

BY MS. SWANSON:

Q Hannah, where are you living right now?

A Like my actual address?

Q Uh-huh.

A Oh, I live on Hilton Head.

Q Okay. Apartment or house?

A An apartment.

Q Is it a 5-million-dollar apartment?

A I live in Section 8 --

Q Thank you.

A -- with my 2 daughters.

Q Thank you.

THE COURT: Anything else?

MR. BROWN: Very briefly.

**

RECROSS-EXAMINATION

BY MR. BROWN:

Q Was there a time that Logan Heisler moved out of Bluebell Lane into an RV?

A Yes.

Q And that was before September of 2022?

MS. SWANSON: Objection, relevance.

THE COURT: It wasn't also a part of your redirect, but --

1 MS. SWANSON: I'm sorry?

2 THE COURT: It wasn't part of your redirect
3 either.

4 MS. SWANSON: No.

5 THE COURT: And you just need to be narrow.

6 BY MR. BROWN:

7 Q Did you live in the RV with him?

8 A Yes.

9 Q Thank you.

10 A We were together.

11 Q Thank you.

12 THE COURT: Anything further?

13 MS. SWANSON: No.

14 THE COURT: Okay. You may step down,

15 Ms. Parada.

16 MS. PARADA: Thank you so much.

17 THE COURT: Does the State want to call
18 their next witness?

19 MS. SWANSON: The State calls William
20 Weich.

21 THE COURT: Ms. Swanson, if there's a
22 natural break time anywhere around 5:00ish,
23 please let me know, okay?

24 MS. SWANSON: Yes.

25 THE COURT: Thank you.

1 MS. SWANSON: Officer Weich will be quick,
2 and then we have Renita Berry.

3 THE COURT: Okay.

4 MS. SWANSON: We can probably pause after
5 that.

6 THE COURT: Okay, let's go ahead and swear
7 him in.

8 **

9 WILLIAM WEICH,

10 BEING DULY SWORN TESTIFIED AS FOLLOWS

11 **

12 DIRECT EXAMINATION

13 BY MS. SWANSON:

14 Q All right, Mr. Weich, who do you work for?

15 A I work for the Beaufort County Sherriff's
16 Office.

17 Q Were you a part of the search warrant that
18 was executed at 24 Bluebell on March 28th of
19 2019?

20 A Yes, ma'am.

21 Q All right, I'm gonna hand you what has been
22 marked as State's Exhibit 10, and I'm gonna ask
23 if you collected this item?

24 A Yes, I did.

25 Q What is it?

1 A It is a Tic Tac box that contains several
2 orangey-colored pills.

3 Q All right.

4 A Tablets.

5 Q From where did you collect the Tic Tac box
6 with orange tablets?

7 MR. BROWN: All right, at this point I
8 would renew my objections.

9 THE COURT: Noted for the record.

10 MR. BROWN: Thank you.

11 THE COURT: Overruled.

12 MR. BROWN: Thank you.

13 BY WITNESS:

14 A It was on the dresser in the upstairs
15 bedroom, what we would call the upstairs
16 bedroom.

17 Q All right, I'm gonna show you what's been
18 marked as, well hang on.

19 I'm gonna hand you what's been marked as State's
20 Exhibit 66, and ask if this is the bedroom that
21 you discovered the Tic Tac box in?

22 A Yes, it is.

23 Q All right, and where specifically in the
24 bedroom?

25 A I mistakenly called it a dresser, but it is

1 -- I'm trying to figure out how to show you, on
2 this table back here. I believe it was inside
3 of the drawer.

4 Q Okay, is this a fair and accurate depiction
5 of how the bedroom looked when you collected
6 that Tic Tac box?

7 A Yes, it is.

8 MS. SWANSON: The State would enter 66 into
9 evidence at this time.

10 MR. BROWN: Subject to the same objection.

11 THE COURT: Subject to your prior
12 objection.

13 (State's Exhibit 66 was admitted into
14 evidence.)

15 MS. SWANSON: All right and move to publish
16 to the Jury.

17 THE COURT: You may publish it.

18 BY MS. SWANSON:

19 Q And, Officer Weich, if you can just please
20 come down so that you can point to where you
21 found this Tic Tac box, just while slowly
22 walking it in front of the jury.

23 MS. SWANSON: Unfortunately, we do not have
24 these put up for you, but we will have this back
25 in the jury room.

1 A So back here on this dresser.

2 Q And you say that it was contained within
3 something?

4 A I seem to recall it wasn't out just in
5 plain view laying on this surface here.

6 Q Okay, thank you. You can retake the stand.
7 I have nothing further for you.
8 Please answer any questions from Mr. Brown.

9 THE COURT: Mr. Brown?

10 MR. BROWN: May it please the Court?

11 THE COURT: Yes, sir.

12 **

13 **CROSS-EXAMINATION**

14 BY MR. BROWN:

15 Q I'm gonna ask you, did you enter that into
16 evidence, to the evidence room not into evidence
17 here? Did you submit that to the evidence
18 custodian?

19 A I would have to see that item again.

20 Q Okay, sure.

21 A No, sir. I did not enter this into
22 evidence.

23 Q Okay, and then I'm gonna ask you to take a
24 look at what's listed as State's 10, and just
25 see.

1 A No.

2 Q I'm sorry?

3 A No, sir, I did not enter this into
4 evidence.

5 Q Okay. And then I'm gonna ask you to take a
6 look at what's listed as Defense 10, and just
7 see --

8 MR. BROWN: And if I may approach with
9 Defense Exhibit 10 for ID only.

10 BY MR. BROWN:

11 Q And I'll ask you to take a look at that
12 real fast.

13 A Yes, sir.

14 Q Okay, did you submit a request for DNA
15 examination of the container of the Tic Tacs
16 were found in?

17 A I don't recall if I submitted the request
18 or not.

19 Q Okay, do you know whether one was done?

20 A According to this report, yes.

21 Q Okay.

22 A There was an examination completed on the
23 evidence.

24 Q Generically speaking, for there to be an
25 exam, some officer has to submit a request for

1 it to be examined?

2 A Generically speaking?

3 Q Yes.

4 A Yes.

5 Q Okay, the DNA lab just doesn't drive over
6 to the evidence room, and just dig through stuff
7 and start testing it, do they?

8 A I don't believe it was the DNA Lab that
9 analyzed this item.

10 Q The Biology Section of the Forensic
11 Services Laboratory?

12 A That is correct.

13 Q Okay, so --

14 A According to this report.

15 Q Okay, now that I got my nomenclature
16 straight, the Biology Section of the Beaufort
17 Sherriff's Office Forensic Services Laboratory,
18 they don't just drive over and pick items to do
19 DNA testing on do they, unless there is a
20 request?

21 A That would be my understanding, yes, sir.

22 Q Fair enough, thank you.

23 THE COURT: Anything further?

24 MS. SWANSON: No, Your Honor.

25 MR. BROWN: No.

1 THE COURT: All right, you may step down.
2 May this witness be excused? Any
3 objection?

4 MR. BROWN: No objection.

5 MS. SWANSON: No objection from the State,
6 as well.

7 THE COURT: You're excused, sir, thank you.

8 WITNESS: Thank you, Your Honor.

9 THE COURT: All right.

10 MS. SWANSON: I beg the Court's indulgence.
11 The State Calls Renita Berry.

12 THE COURT: Yes.

13 **

14 **RENITA BERRY**

15 **BEING DULY SWORN TESTIFIED AS FOLLOWS:**

16 **

17 **DIRECT EXAMINATION**

18 BY MS. SWANSON:

19 Q Please tell the jury who you work for.

20 A Beaufort County Sheriff's Office.

21 Q And in what capacity?

22 A I am the Director of the Forensic Services
23 Laboratory.

24 Q All right, and so do you have a -- is
25 Director your rank, or what am I supposed to

1 call you?

2 A Ms. Berry.

3 Q Ms. Berry, okay, or Renita?

4 A Yes.

5 Q All right, tell us a little bit about your
6 history as a chemist.

7 A Okay, and do you want me to start with the
8 education first?

9 Q Education, training, have you ever
10 testified as an expert, and at what capacity?

11 A Okay, so I have a degree. I earned a
12 degree in chemistry from the University of South
13 Carolina, I also have a Master's in management
14 from Webster University.

15 Before coming to Beaufort County Sheriff's
16 Office to work in the Forensics lab, I first
17 worked with South Carolina Law Enforcement
18 Division, commonly known as SLED, and it was at
19 SLED where I received my training, my core
20 trainings as a forensic drug chemist.

21 Throughout the years, I had extended that
22 to training through various workshops, and
23 training opportunity. It's a requirement that
24 we continue with our education throughout the
25 years, almost every year. I have also been

1 certified by Drug Enforcement Administration,
2 commonly known as DEA. I have testified over 95
3 times, as a drug chemist.

4 A Okay, thank you.

5 MS. SWANSON: The State at this time would
6 offer Ms. Berry as a Forensic Drug Chemist.

7 MR. BROWN: Absolutely no objection to her
8 esteemed credentials.

9 THE COURT: Ladies and gentlemen, in this
10 case Ms. Berry is going to qualify as an expert
11 in the area of forensic drug analysis as a
12 chemist. That allows her to give her opinion
13 and the reasons for her opinion, and that's for
14 you to use as you see appropriate as compared to
15 other evidence in the case.

16 MS. SWANSON: Thank you, Your Honor.

17 BY MS. SWANSON:

18 Q I'm gonna hand you what has been marked and
19 identified as State's Exhibit 10.

20 Do you recognize what's contained within
21 this bag?

22 A Yes, I do.

23 Q Okay, what is it?

24 A Inside of the bag, there is a plastic
25 container. It's a Tic Tac container, and it

1 contains one, or, initially, it contained one
2 and a half tablets.

3 Q All right, was this an item that you
4 tested?

5 A Yes.

6 MS. SWANSON: The State at this time --

7 BY MS. SWANSON:

8 Q Oh and I'm sorry, Ms. Berry, did this come
9 to you sealed?

10 A It did.

11 Q All right, and what sort of bag is that?
12 Is that a self-sealing bag?

13 A So the inner bag is an evidence bag that
14 was submitted to the lab, and, yes, it is a
15 self-sealing bag. You can see where I've opened
16 it, where you see the additional evidence tape.

17 Q Okay, thank you.

18 MS. SWANSON: The State would enter 10 into
19 evidence at this time.

20 MR. BROWN: The same objection, Your Honor.

21 THE COURT: Thank you, subject to your
22 prior objection.

23 MR. BROWN: Yes, ma'am.

24 THE COURT: Thank you.

25 (State's Exhibit 10 was admitted into

1 evidence.)

2 BY MS. SWANSON:

3 Q Did you determine what substance was
4 contained in that Tic Tac container?

5 A I did.

6 Q What was it?

7 A So based on the analysis that was completed
8 on that particular tablet, it was found that it
9 contained Zolpidem -- I hate that word -- that
10 Zolpidem was found.

11 Q Okay, is there a common brand name that
12 that corresponds to?

13 A It is Ambien; I think it is.

14 Q All right, and do you have general
15 knowledge of what Ambien is used for?

16 A It's a sleep aid. It helps with insomnia.

17 Q All right, and is that a controlled
18 substance? Do you have to have a prescription
19 for it?

20 A Yes, it's a controlled substance, it's a
21 schedule 4, and you have to have a prescription
22 for it.

23 MS. SWANSON: I beg the Court's indulgence.

24 THE COURT: Yes, ma'am.

25 MS. SWANSON: Please answer any questions

1 Mr. Brown might have for you.

2 MR. BROWN: Very briefly, may it please the
3 Court?

4 THE COURT: Yes.

5 **

6 **CROSS-EXAMINATION**

7 BY MR. BROWN:

8 Q How are you, Ms. Berry?

9 A I'm well, thank you.

10 Q Thank you. Do you still have that
11 packaging up there in front of you?

12 A No, I don't.

13 Q Okay, let me see if I can reach over and
14 find it.

15 MR. BROWN: If I may approach the witness?

16 BY MR. BROWN:

17 Q And I'm gonna hand you -- this is -- well,
18 and I think this is it, and I'm gonna ask you to
19 look at State's 10, and Defendant's 10 for ID
20 only, and are there markings where that item was
21 sent to the DNA portion of the forensic
22 laboratory? I want to get this right. The
23 Forensic Services Laboratory Biology Section?

24 A Yes.

25 Q Okay, and those markings appear on that

1 actual packaging?

2 A Yes.

3 Q Okay, thank you.

4 THE COURT: Anything further?

5 MR. BROWN: Oh, nothing from the defense,
6 I'm sorry.

7 THE COURT: Thank you. Yes.

8 MS. SWANSON: Nothing from the State, thank
9 you, and I would ask that Ms. Berry be released
10 from her subpoena.

11 THE COURT: Is that --

12 MR. BROWN: And she's not under mine
13 either, so, yes.

14 THE COURT: You are excused, thank you.

15 WITNESS: Thank you, Your Honor.

16 THE COURT: Solicitor, is now a good time
17 to break, or do you have another short witness?

18 MS. BERRY: No, that would be great, thank
19 you.

20 THE COURT: All right, thank you.

21 Ladies and gentlemen of the Jury, we are
22 gonna go ahead and break for the evening. I
23 need to remind you, again, do not discuss this
24 case. It wouldn't be appropriate to do so.
25 Don't do any independent research.

STATE OF SOUTH CAROLINA	IN THE GENERAL SESSIONS COURT
	2021-GS-07-00664
COUNTY OF BEAUFORT	
-----)	
State of South Carolina)	
	)
Plaintiff,	)
vs.	)
	)
TIMOTHY HERNDON,	)
	)
Defendant.	)

TRANSCRIPT OF JURY TRIAL
VOLUME III
(PAGES 489 - 731)

November 15, 2023
Beaufort, South Carolina

B E F O R E:

The Honorable CARMEN T. MULLEN, Judge Presiding

Kymberlee M. Williams, CSR/RPR
Official Circuit Court Reporter III
Post Office Box 8091
Beaufort, South Carolina 29903

PROCEEDINGS

WEDNESDAY, NOVEMBER 15, 2023

BEAUFORT, SOUTH CAROLINA

(The following proceedings were held in open court. All parties were present.)

**

BAILIFF: The jury's entering the courtroom, Your Honor.

THE COURT: Thank you.

(Jury enters the courtroom.)

THE COURT: Good morning, ladies and gentlemen.

JURORS: Good morning, Your Honor.

THE COURT: Thank you for being here. At this time we're going to continue with the State's case.

If you'll call your first witness for this morning.

MR. STONE: Your Honor, at this time we'd move State's Exhibit -- this is from Item 63 that is already into evidence, State's Exhibit 67, 68 and 69 into evidence. I've shown that to the defense.

MR. BROWN: And subject to the prior

1 objections --

2 THE COURT: Yes, sir.

3 MR. BROWN: -- that we've raised. I'm
4 assuming the same ruling.

5 MR. STONE: And --

6 THE COURT: Yes.

7 (State's Exhibits 67 - 69 were admitted
8 into evidence.)

9 MR. STONE: And also as a part of State's
10 Exhibit 3 I'd like Mr. Hightower to publish part
11 of 1827.

12 (Video being played for the jury.)

13 MR. STONE: The State calls Zach Cushman to
14 the stand.

15 **ZACHARIAH CUSHMAN,**

16 **BEING DULY SWORN TESTIFIED AS FOLLOWS:**

17 *******

18 **DIRECT EXAMINATION**

19 BY MR. STONE:

20 Q Mr. Cushman, what do you do, sir?

21 A I'm an Investigator for the Beaufort County
22 Sheriff's Office.

23 Q At some point, I believe in March of 2019,
24 specifically, March -- excuse me, at some point
25 in 2019, did you take the buccal swabs of the

1 two girls in this case, MINOR 1 and MINOR 2

2 [REDACTED]?

3 A I did.

4 Q You collected them at their home?

5 A Yes, I did.

6 Q Okay. When did you do that?

7 A I collected them at their residence at 26
8 Bluebell Lane on Hilton Head.

9 Q Okay, and this is the house located next to
10 the house that we talked about all day
11 yesterday?

12 A Correct, it was next door to 22 Bluebell
13 Lane.

14 Q Okay, is that on Hilton Head?

15 A It is on Hilton Head Island.

16 Q And that's in Beaufort County?

17 A That's correct.

18 Q Let me show you what's been marked as State's
19 Exhibit 11 and 12. Can you tell us what is in
20 those envelopes, please.

21 A State's Exhibit 11 is a buccal swab from

22 MINOR 1 [REDACTED].

23 State's Exhibit 12 is a buccal swab from

24 MINOR 2 [REDACTED].

25 Q Did you take those swabs and then place those

1 in those evidence bags there?

2 A Yes, I did.

3 Q Is there a ceiling process that goes along
4 with that?

5 A Yes, after the swabs are placed in the
6 envelopes, I sealed it with this red tape and
7 then I initialed, and marked the date and time
8 that I did so with my badge number.

9 Q And then there's a tape at the very bottom,
10 that is not you, that is something else,
11 correct?

12 A That's correct, that's something that's done
13 at the lab.

14 Q All right. Tell the ladies and gentlemen of
15 the jury exactly what is a buccal swab?

16 A It's -- essentially looks like a Q-tip. It's
17 a swab that goes on the inside of the mouth, so
18 that we can get a DNA standard from a person for
19 testing.

20 Q And other than putting it in and the fact of
21 sealing it, did you change or alter it in any
22 way?

23 A I did not.

24 Q Okay.

25 MR. STONE: I don't have any further

1 questions at this time, Your Honor.

2 MR. BROWN: May it please the Court?

3 THE COURT: Yes, sir.

4 **

5 **CROSS-EXAMINATION**

6 BY MR. BROWN:

7 Q Investigator Cushman, let me ask you the
8 first day that you became involved in this
9 matter?

10 A March 28th, 2019.

11 Q Okay, and did you travel to a law office on
12 Hilton Head?

13 A I did.

14 Q All right, and initially did you ever meet
15 Mr. Heisler at that first meeting?

16 A I did meet Mr. Heisler at the law office,
17 yes.

18 Q Okay, and the first time that you conducted
19 an interview, do you recall whether Mr. Heisler
20 was there?

21 A The first time I interviewed Mr. Heisler,
22 he was there.

23 Q No, the first time you did an interview
24 regarding this case at that law office was he
25 there?

1 A I spoke with Mr. Heisler's attorney
2 briefly, and Mr. Heisler then came to the law
3 office while we were still there, and I talked
4 to him.

5 Q Okay. So you recorded those?

6 A I did.

7 Q All right, and I'm gonna ask you to take a
8 look at what's been marked as Defendant's --
9 well excuse me, what is the 5th exhibit in
10 what's marked as Court's ID Number 2.

11 See if you'll familiarize yourself with
12 that.

13 A It appears to be a transcript of the
14 interview at the attorney's office with Mr.
15 Heisler's attorney.

16 Q Okay, and is Mr. Heisler there?

17 A I don't know. From this one I believe it
18 was the second recording that Mr. Heisler was
19 on.

20 Q Okay, so the first time you meet with them
21 -- and are you presented any forensic electronic
22 items?

23 A At that time the attorney wished to turn
24 over 2 flash drives, and they were turned over
25 to myself and Sergeant Reynells.

1 Q Now, flash drives, are these SD cards, or
2 are these thumb drives?

3 A These are flash drives. They are USB flash
4 drives, not SD cards.

5 Q Not SD cards?

6 A No, they're not.

7 Q Now, you keep using flash drives, but have
8 you ever heard of them referred to as thumb
9 drives?

10 A I have heard them referred to as thumb
11 drives.

12 Q Okay, and just to make clear, I want to
13 take a look at -- and I'll refer to the report
14 here.

15 Okay, and do you have your file with you?

16 A Which one?

17 Q Well, let's back up. Are you the lead
18 investigator?

19 A I am.

20 Q All right. Do you have your file for this
21 case?

22 A I do have my file. I have a portion of it
23 with me here on the stand, and I have more out
24 in the gallery.

25 Q In the gallery, okay, fair enough.

1 Would you agree that those thumb drives are
2 listed or entered into the evidence room as
3 Beaufort County Sheriff's Office number 60934?

4 A They're entered under BCSO property number
5 114856. There is an evidence ID number you
6 might be referring to. I don't know what that
7 is.

8 Q You don't have that number?

9 A I don't have it with me.

10 Q Where would you have that?

11 A When the evidence division checks in a
12 piece of property, they assign it a separate
13 number. I have one number that I assign it; and
14 they have another.

15 MR. BROWN: May I approach, Judge?

16 THE COURT: You may.

17 BY MR. BROWN:

18 Q And ask if this will help you. I'm not
19 sure whether it will or not but take a look at
20 Defendant's ID 2.

21 A The only numbers I see listed here for the
22 evidence are the property numbers, not the
23 evidence property numbers, which are a different
24 set.

25 Q Okay, and do you know which thumb drives

1 were sent to Homeland Security for their
2 examination?

3 A Yes, the property number 114856, which
4 contained 2 flash drives. A black flash drive,
5 and then a red, sometimes referred to as a pink
6 flash drive.

7 Q And how would you be able to verify whether
8 that's listed in the Homeland Security report
9 60934?

10 A I could look at the evidence bag and refer
11 to the evidence number that's on the bag.

12 Q Okay. Would you do that?

13 A I will.

14 Q Yes, I will actually mark this, and I'm
15 gonna put Defendant's Exhibit 12 for ID only on
16 this.

17 MS. SWANSON: Okay.

18 MR. BROWN: And I know I have 11 marked,
19 but I haven't done anything with it, yes, ma'am.
20 And if I may approach the witness?

21 THE COURT: Please.

22 BY MR. BROWN:

23 Q Let's see if this simplifies it, and we're
24 talking about the same thumb drives.

25 A Okay, this is property number 114856.

1 This is the ID number from the evidence
2 division, 60934.

3 Q Okay, so we're talking about the same two
4 thumb drives?

5 A Correct.

6 Q All right, and I apologize for having to
7 clear all that up, and we've got a lot of
8 different numbers attached to the same items; is
9 that correct?

10 A That's correct.

11 Q Were those found at Mr. Herndon's house?

12 A Those were collected from the attorney's
13 office.

14 Q Okay. Before anybody had been to Mr.
15 Herndon's house related to law enforcement?

16 A Correct.

17 Q All right. Now, what led you to believe
18 that those were related to anything at Mr.
19 Herndon's house?

20 A The information that was provided by the
21 attorney followed by the follow-up interview
22 with Mr. Heisler.

23 Q Okay, so you get information that leads you
24 to want to search Mr. Herndon's house?

25 A Correct.

1 Q And the genesis of that information was Mr.
2 Heisler?

3 A Correct.

4 Q All right, and you subsequently interviewed
5 him?

6 A Correct.

7 Q All right. Before you interviewed Mr.
8 Heisler and before you searched that house, did
9 you have a chance to preview the thumb drives?

10 A Yes.

11 Q And tell me how you did that?

12 A They were -- we were at the attorney's
13 office. We'd learned that the attorneys had
14 already plugged one of the thumb drives into a
15 computer they had there.

16 So we, myself and Sergeant Reynells,
17 reviewed some of the contents of the thumb
18 drives with the attorneys at the office on that
19 laptop.

20 Q Okay. All right, and just to get setting
21 straight, who was there when you'll did that
22 brief?

23 A Myself, Sergeant Reynells, Ms. Olivetti,
24 and I believe her legal partner --

25 Q Okay.

1 A Ms. Withrow, I think.

2 Q Okay, Ms. Withrow.

3 So two attorneys and then yourself and
4 Investigator Reynells?

5 A That's correct.

6 Q And Investigator Reynells is in the front
7 row behind the Solicitor's table?

8 A Correct?

9 Q Hidden by the monitor?

10 A He's wearing a gray suit, gray tie.

11 Q Fair enough, okay. And do you recall
12 having to go through the thumb drives and access
13 a folder to see any of the images?

14 A Yes.

15 Q Okay, and do you recall a folder that says
16 recovered data?

17 A After reviewing the audio recording of the
18 interview, I remember us saying that, yes.

19 Q Okay, and Mr. Herndon's not there at that
20 time?

21 A No, I hadn't met Mr. Herndon yet.

22 Q Okay, and so there's a folder you'all go
23 into that says recovered data?

24 A I believe that's correct.

25 Q Okay, and does that folder have a date that

1 says created Thursday January 10th?

2 A I'd have to refer to the transcript.

3 Q Fair enough. Let me show you -- I would
4 make reference to the Court's 2, the 5th exhibit
5 in there, page 34, approximately lines 12
6 through 15.

7 A Thursday, January 10th.

8 Q Okay, and that's in reference to the folder
9 that you'all viewed images on?

10 A That was one of the folders on the flash
11 drive.

12 Q All right, fair enough. And was it your
13 understanding that those thumb drives had been
14 taken to the lawyer's office contemporaneous
15 with your meeting with them on March 28th of
16 2019?

17 A I'm sorry, contemporaneous, can you explain
18 that word?

19 Q Sure, absolutely. You understood that
20 these thumb drives had just been done that week,
21 didn't you?

22 A That was my understanding.

23 Q All right, and you'all swore to that in a
24 search warrant, your agency?

25 A I'd have to review the search warrant.

1 Q Sure, and I'm going to ask you to take a
2 look at what's been marked as Defendant's --
3 well, it's Court's Exhibit 2, Defendant's third
4 exhibit in there, and that is that same book
5 that has the transcripts.

6 A You said 2 or 3?

7 Q 3, excuse me. It's Court's 2, but it's the
8 third Exhibit within that.

9 And if you'll look specifically at Exhibit
10 A, and it's got a series of paragraphs.

11 A I don't see any reference to the dates for
12 Mr. Heisler in here.

13 Q Let me ask you this. Does it start with on
14 3/28/19?

15 A Yes. It says the deputies were called to
16 the law office on 3/28/19.

17 Q Fair enough, and then it describes what Mr.
18 Heisler told you'all about how he procured the
19 images on the thumb drives, doesn't it?

20 A It does.

21 Q All right. And then does it not say after
22 he describes how he procured them, that he
23 became upset and scared, and drove to the
24 lawyer's office?

25 A It does say that, but I don't see a

1 reference to a passage of time or a date.

2 Q You've got it. And so the only day in here
3 is March 28th of 2019?

4 A On this page, yes.

5 Q How about on the next page?

6 How about anywhere in this search warrant,
7 does it reference anything about the creation of
8 those thumb drives, other than the date of March
9 28th of 2019?

10 A No, it just states that that's the date we
11 met with the lawyer's office.

12 Q Okay. And are you ever told that Mr.
13 Heisler possessed those thumb drives that
14 you'all believed had child pornography for 10
15 weeks before you met with him?

16 A That is not what I was advised.

17 Q Okay, and you didn't believe that that was
18 the case when you got this search warrant on
19 March 29th, 2019, did you?

20 A No.

21 Q All right, but you did see the folder that
22 said that on there?

23 A We noted the folder, but I did not think
24 about the ramifications of that.

25 Q All right, now, let's fast forward. And

1 after Homeland Security gets these items, excuse
2 me, the items from Mr. Herndon's house, do you
3 recall discussing with them the relationship
4 between those items and the images on the thumb
5 drive --

6 A Yes.

7 Q -- or thumb drives?

8 A Yes.

9 Q Okay. And what actions did you'all take
10 after your discussions with Homeland Security
11 regarding the interplay between the hash values
12 of the thumb drives and the hash values on the
13 items from Tim's house?

14 A We conducted a follow-up interview with Mr.
15 Heisler about how he recovered or how he
16 obtained the items that he had turned over to us
17 on the 28th.

18 Q Okay. Did you'all ever ask him to explain
19 why it had a created date, in other words the
20 date placed on the thumb drive, of January 10th
21 if he got this on March 28th?

22 A I do not recall asking him that.

23 Q All right, but you'all did ask him how he
24 created those thumb drives, didn't you?

25 A Yes.

1 Q All right, and what was the reason you
2 needed to know that answer?

3 A We were trying to find out if the data on
4 the thumb drives was consistent, or matched the
5 data that was found in the subsequent search
6 warrant.

7 Q All right, and it didn't, did it?

8 A I was advised that there weren't exact
9 matches to the exact files.

10 Q So the hash values did not match?

11 A I believe so.

12 Q And you heard the testimony from the
13 Homeland Security Officer yesterday that they
14 did not match?

15 A That was my understanding.

16 Q Okay, fair enough, and that was your
17 understanding at the time that you made the
18 follow-up phone call to Mr. Heisler?

19 A It was an in-person interview.

20 Q In-person? Okay. Was Homeland Security
21 with you?

22 A No.

23 Q Okay. Was there a telephonic part of that
24 interview?

25 A Correct. They were on the phone.

1 Q Who's they?

2 A Homeland Security.

3 Q All right. Homeland Security asked you to
4 set up a phone call with Mr. Heisler and you?

5 A That's correct.

6 Q All right, now, we have a recording of an
7 interview on March 28th with the two lawyers,
8 right?

9 A Correct.

10 Q And then we have a recording of the
11 interview with you and Mr. Heisler on March
12 28th?

13 A Correct.

14 Q And then we have an interview of you and
15 Mr. Heisler and Hannah Parada on April 1st of
16 2019?

17 A Correct.

18 Q All right. Do we have a recording of that
19 follow-up conversation where you asked Mr.
20 Heisler to explain this discrepancy?

21 A I don't believe so.

22 Q All right, but you could have?

23 A Yes.

24 Q Okay, so it's not like there was any type
25 of wiretapping of Homeland Security or anybody

1 else?

2 A No. I asked Mr. Heisler to come into the
3 office. I set up the phone so that we could
4 talk to Homeland Security. I didn't really know
5 the technical nature of the questions they were
6 going to be asking him.

7 I documented it in my report. That's why
8 you're aware of it.

9 Q Okay. And let me go back and say at the
10 April 1st, 2019, meeting where you had already
11 searched Mr. Herndon's house, did you'all
12 discuss with Mr. Heisler the creation of thumb
13 drives then?

14 A Yes.

15 Q All right, and did he explain that the
16 thumb drives were things that he created?

17 A Yes.

18 Q And did he say he used his computer?

19 A Yes.

20 Q And that's on April 1st, he told you that?

21 A Yes.

22 Q All right, and did you go get the computer?

23 A I did not.

24 Q All right. Did he tell you the computer
25 was destroyed on April 1st?

1 A I don't believe he did. I don't believe I
2 asked.

3 Q All right, and then after this, was that
4 other phone call in January 2020?

5 A I believe so, but I'd like to double-check.

6 Q Sure, absolutely, please.

7 MR. STONE: While he's looking at that, can
8 we approach briefly?

9 THE COURT: Yes, sir.

10 (Bench conference.)

11 BY MR. BROWN:

12 Q Okay, did you refresh your recollection
13 about that?

14 A That meeting with Mr. Heisler at the office
15 and Homeland Security on the phone was on
16 January 22nd, 2020.

17 Q All right. Did he ever hide where he
18 lived?

19 A No.

20 Q And you believed he still lived on Hilton
21 Head?

22 A At that time.

23 Q Okay.

24 A Yes.

25 Q In 2020?

1 A Yes.

2 Q All right. What property number is his
3 computer with the recovery software?

4 A I did not collect that laptop to my
5 knowledge. I have collected a few other laptops
6 from him.

7 Q Would you need -- and you said to your
8 knowledge?

9 A Yes, sir.

10 Q Is there anything you need to look at that
11 would clear up that qualification of whether you
12 took that laptop of Mr. Heisler's in evidence?

13 A Mr. Heisler told me that that laptop was
14 destroyed, so I did not collect it.

15 Q Okay, and he didn't tell you that before,
16 did he? Well it's already in now. I didn't ask
17 that question.

18 A End of January.

19 Q In January you learned that it was
20 destroyed?

21 A That's correct.

22 Q Now, what did you find out about the
23 January 10th date then?

24 A What did I find out about the date?

25 Q Uh-huh.

1 A I'm sorry. Can you re-phrase the question?

2 Q Yeah. What did you find out about that
3 January 10th, 2019, date during the January 2020
4 discussion?

5 A I learned that Mr. Heisler said that he --

6 MR. STONE: Your Honor, if I may, if he's
7 gonna ask him something he knows from personal
8 knowledge from the investigation, that's one
9 thing but asking him what he's -- he's basically
10 rephrasing it and saying "Tell me what he said."

11 That's hearsay, it's just standard.

12 MR. BROWN: Well, that's not what I'm
13 trying to elicit from him, but I agree that his
14 responses are including hearsay information, but
15 he's volunteering that. It's not exactly the
16 question that I asked.

17 THE COURT: The Solicitor objected to it,
18 so I'm going to sustain it as hearsay.

19 MR. BROWN: Sure, no problem.

20 BY MR. BROWN:

21 Q Okay, all right. And the analysis
22 regarding a discrepancy between March 28, 2019,
23 or the week of that, and January 10th, 2019,
24 what follow-up investigation did you do
25 regarding that discrepancy?

1 A We submitted the flash drives to Homeland
2 Security along with the other evidence.

3 Q Okay.

4 A We conducted a follow-up interview with Mr.
5 Heisler with Homeland Security on the phone so
6 that they could ask him questions.

7 Q Why didn't you charge him with possession
8 of child pornography for the 10 weeks before he
9 says he reported it to you.

10 A I did not have a reason to believe that he
11 was in possession of it for that long. At the
12 time I investigated the incident, it was never
13 confirmed to me that he was in possession of it
14 for that long.

15 Q Okay, so bear with me. I didn't ask that
16 question, but you never confirmed whether the
17 January 10th, 2019, date was actually accurate
18 on the black thumb drive?

19 A I did not conduct an examination of it, and
20 that question was not answered for me.

21 Q It was not answered?

22 A I don't know.

23 Q You don't know why you'all didn't do it?

24 A I did not do it.

25 Q Okay. All right.

1 Are you aware as the chief investigator why
2 any steps weren't made to confirm or deny Mr.
3 Heisler's possession of child pornography for 10
4 weeks before he purportedly took it to the
5 lawyer's office?

6 A I don't know why that date was on the thumb
7 drive. I don't know how long he had the items
8 in his possession.

9 Q Okay, and one thing we did talk about is
10 what led you to conduct further investigation.

11 Now, did Homeland Security call you about
12 setting up that January 2020 meeting?

13 A I'd have to refer to my report.

14 Q Okay. While you're doing that --

15 MR. BROWN: I beg the Court's indulgence.

16 THE COURT: Yes, sir.

17 BY MR. BROWN:

18 Q Okay, all right.

19 A I cannot tell you if they called me
20 directly, but I know that they wished to have
21 that meeting set up.

22 Q Okay, and I asked that, were you here
23 yesterday when you heard testimony from the
24 State's witness, Frank Brennan?

25 Were you here?

1 A I was, yes.

2 Q Okay, all right, and Mr. Brennan now, then
3 Investigator Brennan; does that sound right?

4 A Yes.

5 Q All right, and he testified that the
6 Solicitor's Office actually made that request,
7 and I just want to ask you, do you have
8 information that that's not true?

9 A Not to my knowledge. I just know that it
10 came down the line that they wanted to speak
11 with them, and they asked me, because I was the
12 case officer to make that happen.

13 Q Okay. I want to make sure I understand
14 this, so we don't know exactly who made the
15 phone call, but now you do recall the prosecutor
16 actually asked you to set up the meeting?

17 A I don't recall that. I just recall that I
18 spoke with Homeland Security, and they wanted to
19 meet, or speak with them, and I set up the
20 meeting.

21 Q All right, so let's go back to my original
22 question. You don't have any information
23 contradicting Mr. Brennan's testimony, do you?

24 A Not that I'm aware.

25 Q Any evidence? Okay.

1 A Not that I'm aware.

2 Q All right, and do you have any reason to
3 believe that he testified falsely yesterday?

4 A No, sir.

5 Q Okay, all right. Now, I want to ask you
6 about hair collection.

7 Was there a hair sample collected from
8 MINOR 1 and MINOR 2?

9 A Yes.

10 Q All right, and can you tell me the
11 circumstances of that collection?

12 Do you need any of these items to take a
13 look at?

14 A I'd just reference my report.

15 Q Sure, and, again, is the report that you're
16 referencing the same as Defendant's ID 2?

17 A It is in -- contained within, yes.

18 Q Okay.

19 A The Sherriff's Office report for this case,
20 19S079358.

21 Q Okay, Defendant's Exhibit 2 is actually 86
22 pages?

23 A I believe mine is 94 pages.

24 Q Okay, fair enough. While we're here, do
25 you know what's different between the 86-page

1 one and the 94-page one?

2 A In your copy I see a few things that have
3 been added since it was provided. There was a
4 supplement by Sergeant Levan (phonetic)
5 referencing evidence that was located by the
6 defense and turned into evidence at the main
7 evidence division. That could be one of the
8 items.

9 Q Okay. How long is that report, that
10 supplemental part?

11 A Sorry. I apologize, it's 3 different
12 pages. It's approximately 2 pages, also on the
13 report when you enter more evidence, it's going
14 to add more pages on the backend, for those
15 pieces of evidence. So those pages are also --
16 would be off.

17 Q Okay, all right. Now, to go back to the
18 hair collection, what can you tell me about the
19 hair collection?

20 A On 6/25/2019, I met with Hannah Parada and
21 the girls, MINOR 2 and MINOR 1 [REDACTED] and the
22 samples of their hair were collected and
23 packaged and sent to the lab.

24 Q Okay, all right, and was there a forensic
25 request made?

1 A It wasn't handled through the BCSO
2 laboratory. It was handled -- it was sent to
3 another company.

4 Q Okay, was there a forensic examination
5 request made regarding that?

6 A There was.

7 Q Okay, who made that request?

8 A As far as I know, the Evidence Division --
9 it was turned over to the Evidence Division to
10 be sent to an MNS Laboratory for testing.

11 Q What kind of testing?

12 A Searching for chemical compounds, I
13 believe.

14 Q Say that again, I'm sorry?

15 A Chemical compounds or drug testing.

16 Q Drug testing of the girls' hair samples?

17 A That was my understanding.

18 Q Okay, and were you aware of it?

19 A I was.

20 Q Okay. Do you think that's improper to do?

21 A No, sir.

22 Q Okay. Do you think that evidence that you
23 had -- your investigation to that point
24 suggested that that was a proper course?

25 A Yes, sir.

1 Q Okay, was that a decision you made?

2 A It was -- I was made aware that it was
3 something that would be beneficial to the case.
4 The Sherriff's Office, my supervisors, advised
5 that we were going to move forward, but it was
6 quite expensive to send the hair samples off.
7 It was something that was decided outside of my
8 control whether or not we want to do that.

9 Q They told you to do it, but it wasn't
10 something optional for you to do?

11 A I was told we were doing it.

12 Q Fair enough. By your command?

13 A Yes.

14 Q All right, and did Ms. Parada pay money for
15 that in part?

16 A Not that I'm aware.

17 Q Okay, they didn't collect like 90 dollars
18 from her?

19 A Not that I'm aware.

20 Q Okay, how about for the collection for the
21 lab from the collection site?

22 A I don't believe that she was billed for
23 anything.

24 Q Okay, fair enough. All right, and did you
25 receive results from those?

1 A I do not have a copy of any results. I was
2 advised that the results were negative.

3 Q Okay. Can you show me in the report, the
4 86- or 90-page one, where it documents that?

5 A I'm not aware of it being in my report.

6 Q Okay. Can you give us a timeframe between
7 -- and you said the hair was collected, you said
8 in --

9 A 6/25/2019.

10 Q All right, so in the approximate four-and-
11 a-half years that have passed, can you give me
12 some timeframe of when you got the negative
13 result?

14 A I don't recall.

15 Q All right, how about years? Was it 2019?

16 A I believe it was sometime in 2020.

17 Q 2020, okay. Do you have supplements to the
18 86-page police report or the other one that are
19 after 2020?

20 Have you updated that report after 2020?

21 A Yes.

22 Q But you did not include that in there?

23 A I don't believe I did.

24 Q All right, and you mentioned an evidence
25 collection log. Is there a section of the

1 report that list items of evidence that was
2 collected?

3 A Yes.

4 Q All right, and on the one that's marked as
5 Defendant's ID 2, now, just a ballpark, are we
6 talking about like 35 pages on the list of
7 evidence?

8 A For all the evidence, yes, it's quite
9 extensive.

10 Q In fact, 40 pages. More than 40 pages.

11 A That sounds correct.

12 Q All right, and is the hair samples listed
13 in there?

14 A The samples?

15 Q Yes, sir.

16 A Yes.

17 Q Okay, and there's no explanation in the
18 body of the report how those collected items
19 were put in there?

20 A Put into the report, or put into --

21 Q Well, give me the page and evidence number
22 that you see those hair items put in.

23 A It's listed on page 5; it says hair
24 collection box.

25 Q Page 5 of?

1 A State's Exhibit, or Defendant's Exhibit 2.

2 Q Okay, and then what's the evidence ID
3 number on it?

4 A I'll have to try to find it on the other
5 side. The property number should be 121710.
6 The hair collection box is 121710, the signed
7 affidavit from Hannah Parada is 121786, and the
8 three pages of medical paperwork was 121711.

9 Q Okay, and, again, where does it -- tell me
10 about the -- you said the medical collection
11 box?

12 A Correct.

13 Q All right, and what did Ms. Parada provide
14 for that?

15 A I believe it was an affidavit stating she
16 was giving permission for her children's hair to
17 be tested.

18 Q Okay, all right, and yet there's no report
19 discussing the results?

20 A No, I do not have one discussing the
21 results.

22 Q All right, so help me with this. If you go
23 down and look through your little box or bag
24 over here, do you believe it's in there, or is
25 this just something in your memory?

1 A I remember asking for it to be -- to get a
2 copy. I did not receive a copy of the lab who
3 was working with the evidence directly.

4 I have copies of the stuff that was turned
5 over, but not the results.

6 Q Okay, now, is it normal that you get
7 testing results and don't put them in your
8 report?

9 A No, sir. It's normally attached to the
10 report by the DNA lab directly.

11 Q All right. Oh, the DNA lab attaches it?

12 A Normally, but in this case, it wasn't
13 tested by our DNA lab.

14 Q Okay. Now, correct me if I'm wrong,
15 Homeland's Security's testing results are at
16 least referenced in your report, aren't they?

17 A Yes.

18 Q And did they attach those directly to your
19 report?

20 A No, they turned those over to me, and I
21 turned them in to evidence so I could reference
22 them in my report.

23 Q Okay, so to make sure I understand the
24 difference about the hair testing not being
25 reported in your report, is nobody actually

1 directly gave it to you?

2 A I did not receive it, or as far as I know I
3 did not receive it.

4 Q All right, let's just go back to the
5 question, who actually is the chief investigator
6 if somebody is calling the shots and it's not
7 you?

8 A I was the chief investigator in this case.

9 Q Okay, but who called the shots about not
10 giving you those results?

11 A I couldn't answer that.

12 Q Because you weren't given them, so you
13 don't know who hid them from you.

14 A I don't know at what point they didn't make
15 it to me. I know I asked for them.

16 Q You asked for the test?

17 A Yes.

18 Q Okay, well, who'd you ask for the results?

19 A I asked my Master Sergeant at the time,
20 Master Sergeant Crumpton.

21 Q Okay, and Master Sergeant Crumpton is
22 actually the first witness in this trial?

23 A Correct.

24 Q All right. The blonde-haired lady with the
25 coat?

1 A Yes, I know she wasn't receiving them
2 directly, and she had to ask someone else if
3 they had come back yet -- the results.

4 Q Okay.

5 A Or if we had actually gotten the report.

6 Q Okay, you asked her, she asks somebody.

7 A And I didn't hear about it again.

8 Q Okay, and let me ask you, any officers in
9 this case, do you believe were not truthful?

10 A No.

11 Q All right, have you uncovered any falsities
12 committed by law enforcement in these
13 investigations?

14 A No, sir.

15 Q All right, is there anybody who was
16 involved in this investigation that was not
17 authorized to make the statements they may have
18 made about this case?

19 Like did you have somebody submit a police
20 report that wasn't authorized to do it?

21 A No.

22 Q Any of these supplements?

23 A No, sir.

24 Q All right, any of the items such as search
25 warrants?

1 A No, sir.

2 Q All right, all those people were authorized
3 to make those statements?

4 A Yes, sir.

5 Q All right. Now, let me ask you about
6 receiving interview reports from Hope Haven or
7 Hopeful Horizons.

8 A I received them.

9 Q You did receive them?

10 A Yes.

11 Q Tell me about receiving records or reports
12 regarding a physical examination of MINOR 2 and
13 MINOR 1 .

14 A I received them.

15 Q You did?

16 A Yes.

17 Q And are those noted in here?

18 A Yes, sir.

19 Q All right, and tell me about receiving the
20 DNA report, and actually two of them, and this
21 is where I'm going to mark for ID Defendant's
22 11.

23 MR. BROWN: If I may approach the witness?

24 THE COURT: Yes.

25 BY MR. BROWN:

1 Q I'm gonna show you what's been marked as
2 Defendant's Exhibit 11 for ID. I'm also going
3 to find and show you Defendant's Exhibit 10 for
4 ID. Okay, and does that look like a report
5 regarding the DNA submissions?

6 A Yes, sir.

7 Q All right.

8 Now did you'all take Mr. Herndon upon his
9 arrest to the booking part of the jail?

10 A Yes, a deputy transported him.

11 Q All right, and was there a buccal swab
12 collected to enter in CODIS?

13 A I am not aware if the jail's procedure was
14 to do that at the time. I don't know.

15 Q You don't know?

16 A No.

17 Q All right, and you don't know whether
18 that's standard procedure when somebody is
19 arrested for a crime like this?

20 A I don't know what the jail's procedure is
21 right now, and I don't know what their procedure
22 was back when this happened.

23 Q All right, and beyond that, what do you
24 know about the collection of DNA from my client,
25 if anything?

1 A As far as I'm aware, we didn't collect any
2 DNA from your client.

3 Q How about the CODIS submission?

4 A As far as I'm aware, I don't know of any
5 entry into CODIS.

6 Q You don't know of that, and did you check
7 to see if that relevant evidence was submitted
8 to the DNA lab?

9 A Whether or not we had a sample from your
10 client?

11 Q Submitted to CODIS.

12 A I did not check. It would be because I did
13 not have anything to compare it to.

14 Q You didn't have anything to compare it to?

15 A To my knowledge.

16 Q Okay, all right, did you collect a DNA
17 sample from Logan Heisler?

18 A I did not.

19 Q All right, were there any DNA samples taken
20 from any of the electronic items taken out of
21 Mr. Herndon's house?

22 A Not that I'm aware of.

23 Q All right. Did Mr. Heisler -- did you have
24 knowledge that Mr. Heisler had touched items
25 that were in his house?

1 A Yes.

2 Q All right, but you didn't take his DNA?

3 A I did not.

4 Q All right, and some of these items are
5 items that you believed contained child
6 pornography?

7 A Yes.

8 Q Because you'all actually swore in front of
9 a Judge to get the warrant?

10 A Yes.

11 Q Okay, that you believed items that had been
12 viewed by Mr. Heisler would be located in that
13 house?

14 A Correct.

15 Q All right, but you didn't take his DNA?

16 A I did not.

17 Q Or didn't do any DNA on any of the
18 electronics?

19 A Correct.

20 Q And you even knew that those items had been
21 removed and put in there?

22 A That's what Mr. Heisler told us.

23 Q Okay.

24 MR. BROWN: I beg the Court's indulgence.

25 THE COURT: Yes.

1 BY MR. BROWN:

2 Q Now, let me ask you, when you went to the
3 lawyer's office and you'all reviewed, or you
4 reviewed the items that were presented by the
5 lawyers, did you make a statement that some of
6 the items appeared to be photoshopped?

7 A I don't recall who made that statement. I
8 recall it from the recording.

9 Q You've heard it on the recording?

10 A Yes.

11 Q All right, and that's a law enforcement
12 statement then?

13 A I'd have to listen to the recording to tell
14 you if it was myself or Sergeant Reynells, but
15 that statement was made.

16 Q That statement was made?

17 A Yes.

18 Q And we're talking about by one of the two
19 law enforcement officers?

20 A Correct.

21 Q And those are statements that you'all are
22 authorized to make pursuant to your call for
23 service?

24 A I believe so. I don't understand the
25 question.

1 Q Sure. When you'all went there, you'all
2 were there in your official capacity, correct?

3 A Correct.

4 Q All right, and you'all showed up and said
5 "We're here --

6 A Yes.

7 Q --in response to a phone call."

8 A Correct.

9 Q All right. Did you ask Mr. Heisler about
10 the photoshopping? Was that apparent on those
11 thumb drives?

12 A Not to my knowledge.

13 Q Did that come up during the January 2020
14 discussion?

15 A I don't believe so.

16 Q Okay, or in the April 1st discussion then?

17 A Not that I recall.

18 Q Now, do you recall interviewing Ms. Parada
19 in September of 2022?

20 A Yes.

21 Q All right. Do you recall her providing a
22 statement regarding drugging at Bluebell Lane?

23 A I do.

24 Q Is that recorded?

25 A Yes.

1 MR. BROWN: And, Judge, at this point I do
2 have a matter of law that I think needs to be
3 taken up.

4 THE COURT: Outside the presence of the
5 jury?

6 MR. BROWN: Yes ma'am, please.

7 THE COURT: Okay. Members of the jury, I'm
8 going to send you back for a quick moment. Do
9 not discuss the case. It wouldn't be
10 appropriate to do so. We will have you right
11 back when we're ready. Thank you.

12 (Jury exits the courtroom.)

13 BAILIFF: The jury's cleared, Your Honor.

14 THE COURT: Thank you, I appreciate it.
15 Mr. Brown.

16 MR. BROWN: Yes, ma'am. At this point in
17 time, there's two things that have been brought
18 up before, and I think that I, at a minimum,
19 need to proffer my request that I be allowed to
20 question him about some of the facts that came
21 out during the 2022 investigation of the
22 complaint that was made by Ms. Parada on behalf
23 of her daughter, MINOR 2, against Mr. Heisler.

24 THE COURT: And just so I understand, this
25 is the one where allegedly he had left a phone

1 that he was curious about videoing a minor in
2 the bathroom?

3 THE COURT: Well -- that's just --

4 MR. BROWN: It is their choice, and I'm
5 just trying to bring out that they knew that
6 information.

7 THE COURT: Okay, you can do it to a
8 limited point about asking if he is being
9 charged.

10 MR. BROWN: Yes, ma'am.

11 THE COURT: Thank you.

12 MR. BROWN: Yes, ma'am.

13 THE COURT: All right, let's bring the jury
14 back in.

15 MR. BROWN: Yes, ma'am, okay.

16 THE COURT: Bring the jury back in.

17 MR. BROWN: Hey, Judge, we do want to put
18 that thumb drive -- I'm going to eject it, and
19 we've marked it as an ID.

20 THE COURT: Thank you.

21 BAILIFF: The jury's entering the
22 courtroom, Your Honor.

23 THE COURT: Thank you.

24 (Jury enters the courtroom.)

25 BAILIFF: The jury's seated, your Honor.

1 MR. BROWN: May it please the Court?

2 THE COURT: Yes, sir.

3 BY MR. BROWN:

4 Q Investigator Cushman, when we broke, we
5 were talking about your involvement in response
6 to a complaint of September 21st, 2022.

7 Do you recall that?

8 A I do.

9 Q Okay, and do you have a copy of what's been
10 marked for ID as Defendant's Exhibit 14?

11 A I don't believe I have one.

12 Q Okay, and I believe that copy may have been
13 handed up to the bench.

14 A Would it be the incident report for this?

15 Q It is a 22S146329 incident report, ballpark
16 25 pages.

17 A I have my copy.

18 Q You have your copy. And let me just for
19 the record -- I need to locate my copy down the
20 line.

21 COURT REPORTER: I'm sorry, sir, what
22 number is it?

23 MR. BROWN: It's Defendant's Exhibit 14 for
24 ID.

25 COURT REPORTER: Oh, okay.

1 MR. BROWN: Thank you.

2 COURT REPORTER: Is it missing?

3 MR. BROWN: No, ma'am, that's 13.

4 COURT REPORTER: Okay.

5 MR. BROWN: Yes, ma'am, I think you got my
6 copy, if I could just make sure. And I don't
7 mind marking this one as 14. Yes, ma'am. I
8 think you have got a copy.

9 BY MR. BROWN:

10 Q Okay, and if you could take a look at that
11 and tell me if that relates to a complaint that
12 you received on September 21st, 2022?

13 A It does.

14 Q All right, and was that complaint in part
15 about pornography?

16 A Yes.

17 Q All right, and the subject of the
18 complaint, not the suspect, was who?

19 A The person who made the complaint was
20 Hannah Parada.

21 Q Okay, but the subject of the complaint?

22 A Logan Heisler.

23 Q Not the suspect, the subject.

24 Who was the alleged victim in that
25 complaint?

1 A MINOR 2 .

2 Q All right, and on September 21, 2022, how
3 old was MINOR 2 ?

4 A Approximately 11-years-old.

5 Q Okay, and did you have a chance to
6 interview Mr. Heisler?

7 A I did.

8 Q Okay, and did you ask him about the subject
9 of the pornographic complaint involving MINOR 2 ?

10 A I did.

11 Q Okay, and did he make a statement regarding
12 that?

13 A Yes.

14 Q And --

15 MR. STONE: Objection, this is all hearsay,
16 number one. Number two, it's third-party guilt.
17 It's everything we just got through discussing.

18 THE COURT: Overruled.

19 MR. BROWN: Thank you.

20 BY MR. BROWN

21 Q And as a result of that complaint, did you
22 seize items from Mr. Heisler?

23 A I did.

24 Q And did one of those items include his cell
25 phone?

1 A Yes.

2 Q And did you submit that cell phone for an
3 extraction?

4 A I did.

5 Q Okay, and I'm gonna ask you to take a look
6 at what's been marked as Defendant's Exhibit 17
7 for ID. I apologize.

8 A Yes.

9 Q All right, and you have seen that image
10 produced as a result of that extraction --

11 A Yes.

12 Q -- from Mr. Heisler's phone.

13 Did you determine who the object of that
14 image was?

15 A I did not.

16 Q Did you ask?

17 A I did not ask who. I'm sorry, who was I --

18 Q Did you ask anyone if they were the person
19 in that photo?

20 A Not to my recollection.

21 Q All right. Neither MINOR 2 nor Hannah Parada?

22 A No.

23 Q Okay, and were the occupants of that home
24 Logan Heisler, and Hannah Parada, and MINOR 2?

25 A At that time, yes.

1 Q Okay, did you subsequently interview Ms.
2 Parada?

3 A I interviewed her before I got this.

4 Q Okay, subsequent to the complaint that was
5 made?

6 A Correct, yes, sir.

7 Q All right, so the complaint of pornography
8 comes in, and you come and investigate, and you
9 learn that the subject of the complaint -- the
10 suspect was Logan Heisler and the subject was
11 MINOR 2?

12 A That's correct.

13 Q And you interviewed Ms. Parada?

14 A Yes.

15 Q And did she provide you information
16 regarding her victimization at the hands of Mr.
17 Heisler?

18 A Yes.

19 Q Okay, and did you also obtain information
20 that MINOR 2 had been the subject of victimization
21 by Mr. Heisler?

22 A I was advised of the complaint that I was
23 investigating, which she was the victim.

24 Q And you found information consistent with
25 that complaint? At least enough that you sent

1 the phone for analysis, didn't you?

2 A Yes, correct.

3 Q All right, because you had to get a search
4 warrant to search that phone, didn't you?

5 A Correct.

6 Q Swearing under oath that there was cause to
7 believe evidence of a crime would be found on
8 that phone?

9 A Correct.

10 Q All right, and did you tell a Judge that
11 you believed that evidence would include the
12 production of images of a minor child?

13 A I believe I -- I'd have to reproduce the
14 search warrant, but I believe I said it could
15 contain such images.

16 Q More likely than not, isn't that the
17 standard to get a search warrant? More likely
18 than not it contains images of a child, is
19 that correct?

20 A Yes, sir.

21 Q All right, and if you'll take a look at
22 Defendant's Exhibit 17 for ID.

23 Does that appear to have marijuana in that
24 photo?

25 A Without being able to test the substance,

1 yes, I believe so.

2 Q All right, and did you, in fact, find
3 marijuana in a state consistent with that in the
4 photograph at the house when you investigated
5 that September complaint?

6 A I found a green substance that was
7 consistent with marijuana.

8 Q Did you log it into your report as being
9 suspected marijuana?

10 A Yes.

11 Q All right, and you already had discussed
12 with Mr. Heisler his possession of thumb drives
13 that we talked about at length before the break?

14 A In relation to the previous case, yes.

15 Q Okay, and we discussed before the break
16 that there is a January 10th date, and then
17 there is this 2019, and there is this March 2019
18 revelation by Mr. Heisler, right?

19 A Correct.

20 Q All right, and was Mr. Heisler ever
21 referred for an investigation to a Sex
22 Trafficking Unit?

23 A Not that I'm aware of.

24 Q Okay, how about a restraining order issued
25 against him?

1 A Not that I was advised.

2 Q Okay, and when did you arrest Mr. Heisler
3 for possessing the child porn between January
4 10th of 2019 and March 28th of 2019?

5 A I did not arrest him.

6 Q All right, when was he arrested for lying
7 to you regarding the date that he came into
8 possession of this item?

9 A I have never arrested Mr. Heisler.

10 Q When was he arrested and charged with any
11 acts involving Hannah Parada and her non-
12 consensual sex and videotaping?

13 A I did not arrest him.

14 Q But you had information that that had
15 occurred?

16 A I had investigation, and I had evidence
17 from that investigation that I was looking at at
18 the time.

19 Q Including her statement to you that she was
20 raped by Logan Heisler on video?

21 A That she had seen a video that appeared
22 that way.

23 Q She saw a video. You learned that she saw
24 a video in which she believed she was drugged
25 and raped, and that that video was recorded by

1 Mr. Heisler?

2 A That's what she told me.

3 Q And when did you arrest him for that?

4 A I did not.

5 Q All right.

6 So when did you arrest him for the child
7 pornography issue for which you arrived at the
8 house on September 21st, 2022?

9 A I did not arrest him.

10 Q So what is the deal you cut with him?

11 A I did not cut a deal with him.

12 Q He just has immunity?

13 A I did not cut a deal with him. I
14 investigated the incident, and I did not have
15 evidence of the complaint that I was given, and
16 there wasn't any evidence of a drugging or a
17 raping that I observed.

18 Q Because you didn't believe Ms. Parada?

19 A I did not have evidence to support what she
20 was telling me in this case.

21 Q You didn't have evidence that she said she
22 was drugged and raped?

23 A I didn't have evidence to support what she
24 told me in this case.

25 Q Because you didn't believe it without

1 supporting evidence?

2 A In this case.

3 Q In this case, all right. And how about the
4 statement made by MINOR 2, or the statement made by
5 Mr. Heisler himself, not only for the truth of
6 the matter asserted but offered to show that you
7 had evidence that he had placed a phone in a
8 bathroom --

9 MR. STONE: Objection, Your Honor.

10 BY MR. BROWN:

11 Q -- with a minor.

12 MR. BROWN: He says he doesn't have
13 evidence of it. He opened that door.

14 MR. STONE: I don't know that any of the
15 rulings matter if Mr. Brown is just going to ask
16 the questions, then it doesn't matter what your
17 rulings are. I object, but --

18 THE COURT: Okay, I understand.

19 MR. STONE: -- I don't know that I can
20 stop.

21 THE COURT: Proceed.

22 MR. BROWN: Yes, ma'am.

23 BY MR. BROWN:

24 Q And so you didn't have evidence from Logan
25 Heisler himself that after 2019 he was curious

1 to see what MINOR 2 looked like in the bathroom.
2 You didn't have that evidence?

3 A He made a statement to that effect.

4 Q And you did not arrest him?

5 A I did not.

6 Q And that's not cutting a deal?

7 A No, sir.

8 MR. BROWN: I beg the Court's indulgence.
9 I don't have any other questions at this time,
10 Judge.

11 **

12 **REDIRECT EXAMINATION**

13 BY MR. STONE:

14 Q I just want to make sure that we're talking
15 about the investigation that he's talking about
16 that is two-and-a-half years after all of this
17 stuff was found at Timothy Herndon's house; is
18 that correct?

19 A That's correct.

20 Q And the phone extraction that he talks
21 about, that phone extraction is that the same
22 phone extraction that said that there were no
23 videos of a child in this investigation for
24 pornography?

25 Did the phone extraction not show that

1 there were no child pornographic photographs?

2 A That's correct, none were found.

3 Q And, in fact, the pornography so to speak,
4 was found on Logan Heisler's phone three-and-a-
5 half years after all this stuff was seized out
6 of Timothy Herndon's house and was of him and
7 Hannah having consensual sex; is that not what
8 the phone extraction showed you?

9 A That's what I was told.

10 MR. STONE: No further questions.

11 MR. BROWN: Very briefly on that.

12 **

13 **RECROSS-EXAMINATION**

14 BY MR. BROWN:

15 Q Were you told there was video involving

16 MINOR 2 that had been deleted --

17 MR. STONE: Your Honor --

18 MR. BROWN: He's saying there's nothing on
19 the phone, and there's a point I'm making, it's
20 not whether or not it was on it.

21 THE COURT: Go ahead.

22 MR. BROWN: Yes, ma'am.

23 BY MR. BROWN:

24 Q Were you told that there was a video that
25 had been deleted between the time the call was

1 made for you'all to respond and the time you
2 showed up?

3 A That's what MINOR 2 said, and that's what Mr.
4 Heisler said.

5 Q And yet, this same Investigator Brennan
6 could not find the deleted artifacts on Mr.
7 Heisler's phone that they said were there?

8 A That's correct.

9 Q So they deleted it. He deleted it so well
10 that he hid it from Homeland Security?

11 A That is correct.

12 MR. BROWN: Thank you.

13 MR. STONE: Nothing further.

14 THE COURT: You can step down.

15 MR. STONE: The State call's Timothy French
16 to the stand.

17 **TIMOTHY FRENCH,**

18 **BEING DULY SWORN TESTIFIED AS FOLLOWS:**

19 ***

20 **DIRECT EXAMINATION**

21 BY MR. STONE:

22 Q What do you do, Mr. French?

23 A I work for the Beaufort County Sherriff's
24 Office in the Forensic Services Laboratory.

25 Q And specifically in the Forensics

1 Laboratory, what do you do in that laboratory?

2 A I analyze the DNA evidence.

3 Q Now, what type of background do you have in
4 DNA evidence in order to do that type of
5 testing?

6 A I have a Bachelor of Science degree from
7 the State University of New York at Portland. I
8 have a major in biology, minors in math and
9 chemistry.

10 Since being employed in Forensics, I've
11 worked for 9 years at the Syracuse Police
12 Department, 10 years at the Charlotte-
13 Mecklenburg Police Department Crime Lab, and
14 then I've been here for 16 years.

15 Q When were you in Syracuse?

16 A When was I in Syracuse?

17 Q Yeah.

18 A I grew up there.

19 Q Pardon me?

20 A I grew up there.

21 Q Oh, did you? So when were you in Syracuse
22 with their Crime Lab?

23 A I left there in '98.

24 Q Was District Attorney William Fitzpatrick
25 there then?

1 A He still is.

2 Q Okay, in your capacity with Beaufort County
3 Sherriff's Office, and as a DNA analyst, what
4 are your day-to-day duties? What do you do?

5 A As far as DNA is concerned, I receive
6 evidence from criminal activity, and I look for
7 stains, if that pertains to what I'm looking
8 for, or maybe just a swab of a surface that
9 someone's collected in the field, and I look for
10 the presence of DNA, and then if there is
11 something I try to analyze it and compare it to
12 an individual.

13 Q How do -- where does DNA come from?

14 A It comes from bodily fluids such as semen,
15 blood, and saliva, or it can also come from
16 sluffed off skin cells.

17 When someone touches a surface, they may
18 leave enough skin cells there that I can see
19 their DNA.

20 Q The skin cell part of it, is this something
21 that's happening, like for instance right now,
22 am I leaving my skin cells around this area
23 here?

24 A Yes.

25 Q Is that what's referred to as touch DNA?

1 A Yes, it is.

2 Q Okay, and so how do you -- what is the
3 science that makes this particularly relevant?
4 In the context of DNA, what exactly -- how is
5 this DNA that you find here relevant to solving
6 crimes?

7 A It helps link a particular individual to an
8 item or a location.

9 Q Is someone else's -- is my DNA the same as
10 your DNA, in other words?

11 A No, they're all different except for
12 identical twins.

13 Q Is the DNA testing itself, is it something
14 that is peer reviewed? Is this something that's
15 done in labs all around the country?

16 A Yeah, peer review is required in our lab,
17 we actually peer review every report that goes
18 out.

19 Q Okay, and you, yourself, have actually been
20 qualified as an expert in the field of DNA and
21 DNA analysis, have you not?

22 A Yes, I have.

23 Q In what courts?

24 A Multiple courts, 29 times in DNA.

25 Q Okay.

1 MR. STONE: At this time Your Honor, we
2 offer Mr. French as an expert in DNA analysis,
3 for the purpose of giving his opinion on
4 testing.

5 MR. BROWN: No objection.

6 THE COURT: Ladies and gentlemen, in this
7 case Mr. French is being qualified as an expert
8 in the area of DNA analysis. That allows his
9 opinion and the reasons for his opinion.

10 And, again, that's for you to use as you
11 see appropriate and as compared with other
12 evidence in this case.

13 BY MR. BROWN:

14 Q Let me first show you what's been marked as
15 State's Exhibit 11 and 12. Will you tell me
16 what those two items are, please, sir?

17 A These are what's called buccal standards
18 from MINOR 2 and MINOR 1 [REDACTED].

19 Q And which one is which?

20 A 11 is from MINOR 1, and 12 is from MINOR 2.

21 Q Now, did you receive those 2 envelopes?

22 A I did, correct.

23 Q And in what condition were they when you
24 received them?

25 A The envelopes were sealed.

1 Q Now, there's a stamp up here, the red, I
2 guess it's the red evidence tape, is that the
3 seal you're referring to?

4 A Yes.

5 Q Okay. And then what's -- there is a glue
6 tape at the very bottom, what is that?

7 A I cut the bottom of the envelope to open it
8 to access the items inside, and when I finish, I
9 put evidence tape on it with my initials and my
10 badge number and date.

11 Q Okay. And you did that on both of these?

12 A Yes, I did.

13 MR. STONE: At this time, Your Honor, we'd
14 move State's Exhibits 11 and 12 into
15 evidence.

16 THE COURT: Any objection?

17 MR. BROWN: Just subject to prior
18 objection. 11 and 12 are hair samples?

19 THE COURT: Over prior objection.

20 MR. STONE: These are buccal swabs.

21 THE COURT: These are buccal swabs.

22 MR. BROWN: Buccal swabs.

23 Well, again, from the two girls, we have no
24 objection to the buccal swabs.

25 THE COURT: They're in evidence.

1 (State's Exhibits 11-12 were admitted into
2 evidence.)

3 BY MR. STONE:

4 Q Let me hand you what's marked State's
5 Exhibit 6. Could you tell me about that,
6 please.

7 A Number 6 is multiple items that I tested in
8 this case.

9 Q And where did those items come from?

10 Does the bag indicate where those items
11 came from?

12 MR. BROWN: We would object. Pursuant to
13 the previous objections regarding the materials,
14 these three items that they allege came from my
15 client.

16 THE COURT: Okay.

17 MR. BROWN: Yes, ma'am, previous objection.

18 THE COURT: Okay. Yes.

19 MR. BROWN: Thank you.

20 THE COURT: Denied based on the same
21 grounds.

22 Q All right, so let me show you the bag
23 itself. This is a case number. Are these items
24 that you received?

25 A Yes.

1 Q So this is from the desk area, this
2 collection. Okay, and it's already been
3 testified specifically where it came from.

4 A Yeah.

5 Q Okay, how do you receive these items when
6 it's in an evidence bag like that?

7 A Just like the other items, they're -- it's
8 sealed in a bag.

9 Q Okay, and then do you go into that same bag
10 and get it yourself?

11 A Yes.

12 Q And how do you do that?

13 A Cut the bottom of the bag, and then when
14 I'm finished, I seal it like I just did there.

15 Q All right, so the red tape itself, this
16 here, this is the initial seal as you found it?

17 A That is the original seal, yes.

18 Q And then this blue tape, this is what you
19 do?

20 A Yes.

21 Q So specifically I want to talk about these
22 items.

23 The first item I'm gonna show you is what I
24 believe they refer to it as a ball gag, and you
25 have it I believe in your reports as item 3.1.

1 Let me check and make sure that's correct.

2 Tell me first, when you get items like
3 this, do you take a swab of them? Do you take
4 the individual, how -- what do you do with the
5 item when you get it?

6 A If there's no stains that I'm looking for,
7 what I'll do is, I'll just swab it looking for
8 some type of contact with someone. Sort of like
9 someone touching it.

10 Q So we were looking at an item number.
11 You've got an item number for the item that you
12 received, and then an item number for the swab
13 that you took; is that correct?

14 A Yes.

15 Q Do you do anything to put your initials or
16 anything like that on the item to show that
17 you've done the testing?

18 A Yes, I put my initials, and my badge number
19 on there.

20 Q Are your initials on that item there?

21 A Well, actually it's the initials and the
22 case number and item number.

23 Q The results of your testing of that item
24 there, what were the end of your results?

25 A 3.1, there was a DNA mixture obtained.

1 That is the swab of the ball itself, and on
2 3.2 that's the swab of the rest of it, the
3 buckles and the straps, and a DNA mixture
4 was also obtained from that.

5 Q Okay, on the strap itself, which is I guess
6 is this area somewhere along here --

7 A Everything but the ball.

8 Q -- these straps?

9 A Uh-huh.

10 Q Okay. What were the results that you found
11 on the straps?

12 A On the straps I got a match to MINOR 2
13 ██████████, is 246 billion times more likely than
14 a coincidental match to an unrelated individual.

15 Q Let me ask you go to item 5.1 now.

16 A Yes.

17 Q I'll show you what's been -- internally, I
18 think this -- is this a number and your initials
19 on this?

20 A That is my initials, our lab case number,
21 and the item number. That's item number 5.

22 Q This is item number 5, and this is
23 described as a -- kind of a fishnet top.

24 A I listed it as a top, net, and black.

25 Q Okay, all right. Did you test this item?

1 A I did.

2 Q And that is reflected in, I believe 5.1; is
3 that correct?

4 A Yeah, 5.1 is the swab of the top and the
5 neck area.

6 Q And what were the results of that testing?

7 A 5.1, there was a match to MINOR 2 [REDACTED] is
8 14.3 million times more likely than a
9 coincidental match to an unrelated individual.

10 Q Okay, so --

11 A And comparisons to MINOR 1 [REDACTED] were
12 inconclusive.

13 Q Okay. So as far as these two items, the
14 ball gag and the black net, MINOR 2 [REDACTED] tested positive
15 on both of those --

16 A That's correct.

17 Q -- is that correct? I'll show you what's
18 also in this collection. I believe these have
19 initials and item numbers as well --

20 A Yes.

21 Q -- is that correct?

22 A Yes.

23 Q And are those your initials and your item
24 numbers?

25 A Yes.

1 Q What item number do you have those listed
2 as?

3 A This is item number 4.

4 Q Item number what? I'm sorry.

5 A 4.

6 Q Okay, and you did the testing, I guess,
7 inside and outside on this?

8 A I swabbed them each individually, yes. I
9 swabbed the inside separate from the outside.

10 Q We now proceed to item 4.1, which I think,
11 is that the inside, inside of the shoes; is that
12 correct?

13 A Yes. 4.1 is a swab of the inside of the
14 shoes.

15 Q What were your findings concerning the
16 inside of these shoes?

17 A A match to MINOR 2 [REDACTED] is 1.7 million
18 times more likely than a coincidental match to
19 an unrelated individual; and then a match to
20 MINOR 1 [REDACTED] is 331 times more likely than a
21 coincidental match to an unrelated individual.

22 Q Okay. Now if the number comes in under a
23 million, do you do a check for false-positives?

24 A Yes, anything between 100 and a million, we
25 run a statistical calculation that evaluates the

1 odds of a false positive. By false-positive I
2 mean somebody that would have that likelihood
3 ratio or higher that is not in that mixture.

4 Q And did you do a false-positive check on
5 that item, as to MINOR 1, I think the other one
6 was not necessary; is that correct?

7 A That's correct. Yes, the chance of a
8 false-positive for MINOR 1 with the inside of the
9 shoes is 1 in 28,200.

10 Q Okay, all right. This is a fishnet
11 stocking. This is item -- I believe this is
12 your item 6. I'll hand that to you and make
13 sure that's correct.

14 A That's correct. This is item 6.

15 Q Okay, all right. You tested -- this is the
16 item you referred to I believe as a black
17 stocking-type thing?

18 A Black net stockings.

19 Q Okay, and what were your results, and I
20 think this would have been item 6.1; is that
21 correct?

22 A 6.1, yes.

23 Q And what was your finding on that?

24 A A match to MINOR 1 is 5,400 times
25 more likely than a coincidental match to an

1 unrelated individual. Comparisons to MINOR 2
2 [REDACTED] were inconclusive.

3 Q Okay, so as to MINOR 1, did you do a false-
4 positive analysis on that?

5 A I did.

6 Q And what was your result?

7 A The chance of a false-positive for this
8 comparison is 1 in 240,000.

9 Q Okay. This item here I think is referred
10 to as a dildo. That was also -- I don't know if
11 that has an individual number, that's also in
12 there. Did you test that as well?

13 A I did.

14 Q And what item do you have that listed
15 under?

16 A That's item number 2.

17 Q Specifically, you swabbed the tip end of
18 the dildo, is that correct?

19 A I actually swabbed the tip and the butt
20 end. Two different swabs.

21 Q And the 2.1 is the tip of the dildo, is
22 that correct?

23 A That's correct.

24 Q What were your findings on that?

25 A A match to MINOR 2 [REDACTED] is 661 times more

1 BY MR. BROWN:

2 Q Do you have a title within the department
3 besides Mr. French?

4 A Deputy.

5 Q Deputy, okay, fair enough. Do you actually
6 carry a gun? You're commissioned law
7 enforcement.

8 A I am commissioned. I do not carry.

9 Q Okay, fair enough. You're from Syracuse?

10 A Yes.

11 Q So you know the real Jim Brown?

12 A Yes.

13 Q The best college athlete of all time.

14 A Yes.

15 Q All right, now we got past those niceties.
16 Tell me what CODIS is.

17 A It's a DNA index system that is used for
18 comparing items of evidence to convicted
19 offenders or arrested.

20 Q Not just convicted, but arrestees?

21 A That's correct.

22 Q All right.

23 A In this state, yes.

24 Q In this state they test arrestees.

25 A Felony arrestees.

1 Q Felony arrestees, such as Mr. Herndon?

2 A That's correct.

3 Q All right, and so what do they do? I mean,
4 how does there get to be a database that's
5 related to a person like Mr. Herndon's DNA?

6 A The arrest sites are supposed to take a
7 buccal standard for anyone arrested for those
8 crimes, or anyone convicted of those crimes, and
9 put into a state database.

10 Q All right, and the Beaufort County
11 Detention Center, that's not directly a
12 Sheriff's run agency, is it?

13 A I don't have anything to do with them.

14 Q Fair enough, all right, but are you aware
15 of the Detention Center following the CODIS
16 rules for this state?

17 A I'm not aware of whether they follow it or
18 not, to tell you the truth.

19 Q You've never had CODIS matches from
20 somebody -- submitted sampled from the Beaufort
21 County Detention Center?

22 A I don't know where they come from.

23 Q You have never had a CODIS match on a case
24 involving a person arrested and booked at the
25 Beaufort County Jail?

1 A I can't answer that because I don't know
2 where the arrestee's sample came from. It
3 could've been --

4 Q Have you ever had a CODIS match in a
5 Beaufort County case?

6 A Yes.

7 Q All right, and is there one jail, or more
8 than one jail in Beaufort County?

9 A One.

10 Q Is there one detention center or more?

11 A There's one.

12 Q Thank you. And you've had a match from
13 something submitted to your lab with a CODIS
14 database for a person in a Beaufort County case,
15 correct?

16 A I answered that already. I don't know
17 where the sample came from.

18 Q That's not what I asked you.

19 Have you had a match? I understand you're
20 fighting me on this, but I'm asking you, have
21 you had a match?

22 THE COURT: Okay. No commentary.

23 MR. STONE: Your Honor, I don't think he is
24 fighting. I think he's trying to answer the
25 question, but Mr. Brown keeps interrupting.

1 MR. BROWN: Well, he's not being
2 responsive, is my response to that objection.

3 THE COURT: Ask him the question but ask it
4 once.

5 BY MR. BROWN:

6 Q Have you ever worked a case with a CODIS
7 match?

8 A Yes, several.

9 Q All right, and did any of those cases
10 involve Beaufort County charges?

11 A Yes.

12 Q All right, and there's just one detention
13 center in Beaufort County?

14 A Yes.

15 Q All right. Now, did you make the match or
16 does the CODIS match come from somewhere else?
17 You said it's a database. It's not your
18 database, is it?

19 A No. It's from out-of-state.

20 Q All right, so you enter information here?

21 A Yes.

22 Q All right, and then where does -- where's
23 the machine that pops up with a match?

24 A At the State Lab.

25 Q What State Lab?

1 A SLED.

2 Q State Law Enforcement Division on Broad
3 River Road?

4 A That's correct.

5 Q All right, and is in fact the CODIS
6 database not also maintained in part, or at
7 least accessible to the FBI?

8 A Yes, sir.

9 Q All right, and they actually created that
10 database, didn't they?

11 A That's correct.

12 Q All right, so they call you and tell you,
13 and I'm using call, but they communicate with
14 you and tell you when CODIS has had a hit?

15 A That's correct.

16 Q All right. Now, I want to go through your
17 reports, and I want to ask you first, did you do
18 an analysis on the Tic Tac container?

19 A Yes, I did.

20 Q All right, and did you develop a male
21 contributor off of that?

22 A Yes.

23 Q All right, fair enough, and no CODIS match?

24 A It was not put in CODIS.

25 Q You didn't even enter it?

1 A That's correct.

2 Q All right, and when you got that
3 information, you asked this Officer for his
4 command or Investigator Crumpton or any of these
5 other people to get what sample from what person
6 to compare to that male contributor?

7 A On that report, it says that further
8 analysis is required, buccal standards should be
9 obtained from the suspect and anyone who might
10 have come in contact with the evidence.

11 Q All right, so no question at all, this
12 report wasn't just kept in your drawer?

13 A No.

14 Q Did you hide it from Investigator Cushman?

15 A No, I did not.

16 Q All right, would it have been put somewhere
17 in the Sherriff's Department file that
18 Investigator Cushman could've seen?

19 A It would have gone to evidence, who puts it
20 in our information system, and it also gets sent
21 to the requesting officer, which was Angela
22 Crumpton on that.

23 Q Okay. Angela Crumpton is above the chain
24 of command, above Cushman?

25 A Yes.

1 Q All right. She testified, but you weren't
2 here.

3 You don't know whether she testified here
4 in this case.

5 A No, sir.

6 Q All right, so no question that Investigator
7 Crumpton knew about this Tic Tac DNA result?

8 A I would assume so, yes.

9 Q All right, and then let's go back to the
10 report that you got, and just for the record, do
11 you see that marked as Defendant's 10 for ID in
12 front of you? The Tic Tac, just to keep us all
13 clear. I mean --

14 MR. BROWN: May I approach, Judge?

15 THE COURT: Yes.

16 BY MR. BROWN:

17 Q All right.

18 A Yes, 10 is that first report pertaining to
19 the Tic Tac container.

20 Q All right, now let's go back to the report
21 that I'm assuming you consulted, but I'll make
22 it easier, what's been marked, if I may
23 approach, Defendant's Exhibit 11, thank you, and
24 ask if that's similar to the report that Mr.
25 Stone reviewed with you?

1 A Yes, it is.

2 Q All right, and you went over some item
3 numbers, and I've got them here, a 3.1, a 3.2, a
4 5.1, a 4.1, a 4.2, a 6.1, and a 2.1.
5 Does that sound about right?

6 A It does.

7 Q All right, and just to make clear, you also
8 have some items listed as 2.2; does that sound
9 right? All right, then you got an item listed
10 as, and I apologize, a 7.1, an 8.1, a 9.1, a
11 10.1, an 11.1, and an 11.2; does that sound
12 about right?

13 A Yes.

14 Q All right, and you weren't questioned about
15 those on direct, were you?

16 A No, I was not.

17 Q All right, did you obtain a DNA mixture
18 from those items?

19 A Yes.

20 Q All right, and they were excluded -- MINOR 2
21 and MINOR 1 were excluded from those items?

22 A 7.1, they were -- the comparison was
23 inconclusive. The rest of them they were
24 excluded from.

25 Q All right, and just to make clear, I

1 understand this, let's see, if I may, I do not
2 want to try to contaminate anything, tell me
3 which item was the ball, or the ball gag.

4 A That is item 3.

5 Q All right, the ball itself.

6 A The whole item, yes.

7 Q That's correct, and the ball itself is
8 referred to as which item?

9 How about this, 3.1?

10 A 3.1 is the swab of the ball.

11 Q You got it. All right, and that had a DNA
12 mixture?

13 A Yes, it did.

14 Q And that was not MINOR 2 or MINOR 1 ?

15 A That's correct.

16 Q All right, and what does your report say
17 about whether it was male or female?

18 A It does not.

19 Q All right, now how about the item listed as
20 7.1? Does that list whether the mixture
21 includes also a male contributor?

22 A It does not.

23 Q Okay, and that's -- your report doesn't
24 indicate that?

25 A That's correct.

1 Q All right, and how about item 8.1, that's a
2 mixture.

3 A Yes, it is.

4 Q All right, and how about item 9.1?

5 That's also a mixture, isn't it?

6 A Yes, it is.

7 Q All right, and just to make clear the jury
8 understands, 8 and 9 are pairs of handcuffs.

9 A That's correct.

10 Q All right, and so the mixture 8.1 would be
11 the swab of the handcuffs that produced a
12 mixture, and 9.1 is a swab of the handcuffs that
13 produces a mixture.

14 A That's correct.

15 Q All right, and then item 11 is a leash, and
16 you take 2 samples from that?

17 A Correct.

18 Q All right, and you take sample 11.1, and a
19 sample 11.2.

20 A That's correct.

21 Q All right, and those have a DNA mixture on
22 them?

23 A Yes, they do.

24 Q Nothing related to MINOR 2 or MINOR 1?

25 A No.

1 Q All right, and then you also test some bed
2 sheets; does that sound correct?

3 A Correct.

4 Q And how about, it says purple bed sheets?

5 A Item 12?

6 Q Item 12, is that right?

7 A Yeah.

8 Q All right, and item 13 is a tan sofa cover.

9 A Correct.

10 Q And you tested that?

11 A Yes, I did.

12 Q And item 14 is a mattress cover.

13 A Correct.

14 Q Also tan, all right, and now unlike the
15 other items, what is the result that you list
16 for the bed sheet, sofa cover, and mattress
17 cover?

18 A On those items because they're large, we
19 can't really look for touch DNA, so what you're
20 looking for on those is the presence of any kind
21 of biological stains, so in this case blood or
22 semen.

23 Q All right, and for items 12, 13, and 14, it
24 was negative for the presence of semen, wasn't
25 it?

1 A Yes, it was.

2 Q And for item 14, it was not only negative
3 for semen, it was also negative for the presence
4 of blood.

5 A Yes.

6 Q All right. Now, you mentioned touch DNA.
7 The other items that we talked about, whether
8 Mr. Stone elicited that there was a match or the
9 ones that I discussed that did not have a match
10 to MINOR 2 or MINOR 1, those potential matches to
11 touch DNA?

12 A That's correct.

13 Q All right, now those are skin cells that
14 fluff off?

15 A Yes.

16 Q All right, and so can those ever be
17 transferred?

18 A Yes, they can.

19 Q All right, and how much contact is required
20 for a person's DNA skin cells to go onto an
21 item?

22 A It depends.

23 Q How little can it be?

24 A It could actually fall onto a surface
25 without touching it.

1 Q Fair enough, so it is so sensitive that a
2 skin cell can actually go on an item that has
3 never been touched?

4 A Yes.

5 Q All right.

6 A If you can even find one skin cell, but,
7 yes, it can.

8 Q Okay, now let me ask you about CODIS and
9 those items.

10 Tell me what happened with the results from
11 those items in CODIS.

12 A None of the mixtures in this case went to
13 CODIS.

14 Q All right. Did somebody tell you not to
15 send those to CODIS?

16 A Federal regulations.

17 Q All right, what does that regulation say?

18 A If you recover something from a suspect's
19 house or a suspect's person, it cannot go into
20 CODIS. Victims cannot go into CODIS.

21 Q Did you put that victims cannot go into
22 CODIS?

23 A Correct.

24 Q Okay, all right, now did you put that the
25 profile was not eligible for a database on the

1 Tic Tac?

2 A Yes.

3 Q All right. Did you put that on the other
4 items' report?

5 A No, I did not.

6 Q All right, so to make sure I understand
7 this, one of them you say that the sample itself
8 or the results is not efficient for CODIS entry.

9 A It's not eligible.

10 Q And why is it not eligible?

11 A Federal regulations.

12 Q All right, but you didn't put that in the
13 other ones?

14 A No.

15 Q All right, and that's just an oversight, or
16 you didn't need to put it in one but you put it
17 in the other?

18 A They're items from the suspect's house.
19 I'm looking for the victim's DNA.

20 Q Let me ask you this, how do you find out
21 where they came from?

22 A On the request for examination form.

23 Q Okay, but how do you find out where they
24 were obtained from?

25 A The narrative on that form, and if that's

1 not informative enough, I ask.

2 Q You got it, fair enough. Now, if the
3 suspected house is not 24 Bluebell Lane, but 26
4 Bluebell Lane, then why doesn't it go into
5 CODIS?

6 A I don't know the difference between those
7 two houses.

8 Q They didn't tell you that some photos here
9 were taken at a different location, did they?

10 A No.

11 Q Did you ever explicitly ask whether there
12 was any restriction regarding CODIS entry that
13 you needed to be aware of?

14 A No.

15 Q All right, now all the results that you
16 came up with are subject to MINOR 2 or MINOR 1 not
17 being related to another contributor?

18 A That's correct.

19 Q And how are MINOR 2 and MINOR 1 related to
20 Hannah Parada?

21 A I believe they're her daughters.

22 Q So they are related?

23 A Yes.

24 Q Did she give you a buccal swab?

25 A No.

1 MR. BROWN: I beg the Court's indulgence.

2 I do have another question.

3 BY MR. BROWN:

4 Q You work for the Beaufort County, I want to
5 get the name of the lab right, because I got in
6 trouble yesterday calling it the DNA lab, the
7 Forensic Services Laboratory Biology Section, is
8 that fair?

9 A That's correct.

10 Q Is Renita Berry in charge of that,
11 generally speaking?

12 A Yes, she is.

13 Q All right, fair enough, and 111 Industrial
14 Village Road is where?

15 A In Beaufort.

16 Q In the City of Beaufort, or Beaufort
17 County?

18 A In the City of Beaufort.

19 Q Got it. About how far is the drive from
20 that courthouse to here?

21 A I'm sorry?

22 Q How far is the drive from there to here?

23 A From there to here, 5 to 10 minutes.

24 Q Okay, I don't have any other questions,
25 thank you.

1 MR STONE: Thank you. No further
2 questions. The State calls --

3 THE COURT: Thank you, sir, you may step
4 down, sir, thank you.

5 MR. STONE: -- Jeff Maxwell.

6 THE COURT: Can Mr. French be excused?

7 MR. STONE: Yes.

8 MR. BROWN: Without objection.

9 THE COURT: Without objection, You are
10 excused.

11 **

12 JEFFREY MAXWELL,

13 BEING DULY SWORN TESTIFIED AS FOLLOWS:

14 ***

15 DIRECT EXAMINATION

16 BY MR. STONE:

17 Q Obviously, you're Officer Maxwell, is that
18 correct? What's your rank sir?

19 A Lance Corporal.

20 Q And where do you work?

21 A At the Beaufort County Detention Center.

22 Q All right, and what do you do there?

23 A I'm a Correctional Officer, and I also
24 assist with the intel with the phones and
25 videos, and stuff like that.

1 Q Now, tell me about the telephone setup that
2 you have for inmates in the Beaufort County
3 Detention Center. How is that done?

4 A When an inmate is booked into the facility,
5 we have a company we use called IC Solutions.
6 Once the inmate gets their number, they'll be
7 issued a 4-digit PIN number, and they use that
8 to enroll in the phone system, and they use a
9 voice verification process for that.

10 Q To make sure that whoever is using the
11 phone is using their number and their voice and
12 all that; is that correct?

13 A Yes.

14 Q And then, are those calls monitored?

15 A Yes.

16 Q Which calls are monitored?

17 A Just a variety of them. Like with all
18 calls made, you can't monitor like each one of
19 them, so --

20 Q Are they recorded?

21 A Yes.

22 Q And are all of them recorded?

23 A Yes.

24 Q And when an inmate picks up and puts in
25 their 4-digit code and there's a voice

1 identification and all that to make sure it's
2 them, is there any warning on the other side
3 that the calls could be monitored?

4 A Yes.

5 Q And do you remember what that says, or
6 something similar to it?

7 A These -- the phone call will be monitored,
8 I believe it's also in their handbook that
9 they're given, that calls are monitored.

10 Q Are these recordings kept in the ordinary
11 course of business in the Detention Center?

12 A Yes, sir.

13 Q Why do you guys record all of the calls
14 from the Detention Center?

15 A Public safety. It also could be due to
16 somebody calling from the State Prison from a
17 cell phone or something like that, so it's
18 security for the facility.

19 Q What about for the inmates themselves?

20 A Yeah.

21 Q Same thing?

22 A Uh-huh.

23 Q Okay.

24 THE COURT: Is that a yes for the record?

25 WITNESS: Yes.

1 THE COURT: Okay.

2 BY MR. STONE:

3 Q All right, let me show you what's been
4 marked as State's Exhibit 13, and ask if you
5 could identify that.

6 A This is a CD of phone calls for Mr.
7 Herndon.

8 Q And this on the back, is also, which I'm
9 not entering into evidence, is a CD of the
10 transcript. Have you reviewed the transcript
11 and the audio?

12 A Yes.

13 Q Is the transcript accurate to the audio?

14 A Yes.

15 Q And this is the recording, what we are
16 going to offer into State's Exhibit 13, this is
17 the recording from Mr. Herndon that are kept in
18 the ordinary course of business at the Beaufort
19 County Detention Center?

20 A Yes, sir.

21 MR. STONE: Your Honor, at this time we
22 move State's Exhibit 13. This is, obviously, the
23 transcript is not part of the evidence, but the
24 recording itself is.

25 However, we have that all available to be

1 played for the Jury, and that's State's Exhibit 13.

2 THE COURT: Subject to prior objection?

3 MR. BROWN: Subject to prior legal

4 preservations, thank you.

5 (State's Exhibit 13 was admitted into evidence.)

6 MR. STONE: Mr. Hightower?

7 (Audio being played for the jury.)

8 MR. STONE: Nothing further, Your Honor.

9 MR. BROWN: May it please the Court?

10 THE COURT: Yes, sir.

11 MR. BROWN: Thank you.

12 **

13 **CROSS-EXAMINATION**

14 BY MR. BROWN:

15 Q Lieutenant Maxwell?

16 A Lance Corporal.

17 Q Lance Corporal Maxwell. Let me ask you a
18 little bit, who has live access to the phone
19 calls? How about the Solicitor's Office?

20 A Yes.

21 Q I'm sorry?

22 A Yes.

23 Q All right, so to make sure I understand
24 this, they actually can put somebody in jail,
25 and then turn around and live listen to them?

1 A They have access to listen to the phone
2 calls.

3 Q All right, so what does that have to do
4 with the integrity of the jail, having the
5 Solicitor have access to recordings?

6 A It's been our policy ever since I've been
7 in this position, that the investigators and the
8 Solicitor's Office have access to the phone
9 calls.

10 Q Okay, not law enforcement investigators.
11 I'm talking about the Solicitor's Office.

12 A Uh-huh. Yes, sir.

13 Q All right, and so what does that promote
14 the jail's safety? How does that work?

15 A I can't hear every call, so if they hear
16 something, they call and let me know.

17 Q Okay, so let me make sure I understand
18 this, they help you listen in?

19 A If they call and say inmate Smith is about
20 to kill himself, then that would be, it's for
21 safety, sir.

22 Q Oh, okay, so if somebody kills themselves,
23 and they talked about it in the jail, the
24 Solicitor's Office would know about these
25 previous discussions about suicide?

1 A Yes, when somebody listens to a phone call,
2 the system notates who was logged in, and
3 listened to the phone call each time it's
4 listened to.

5 Q Right, but -- so you'll are responsible for
6 folks, if they are a suicide threat, and then
7 they eventually commit suicide, and you'all
8 hadn't noticed something?

9 A I'm not understanding your question.

10 Q Do you'all have protocols if you believe
11 somebody is suicidal?

12 A Yes.

13 Q All right, so when you get put on notice of
14 that, you have things that you have to do?

15 A Yes, sir.

16 Q Are they bound by those obligations? Are
17 they bound by the same jail rules regarding
18 notice that say if somebody is going to commit
19 suicide?

20 A If they hear that, then they give us a
21 call.

22 Q All right, so they do take on some
23 responsibility for the safety of inmates when
24 they decide to listen in, then they take on
25 you'all's responsibilities, too.

1 A Okay. Yes, sir.

2 Q That's a yes, okay, fair enough. Now, the
3 jail phone calls themselves, are there some
4 calls you take and some calls you don't take?

5 A If there is anything with an attorney,
6 they're not recorded.

7 Q Okay, now, let's talk for a second about
8 that. Where is the inmate sitting when the call
9 is made?

10 A So in the housing unit or in our booking
11 area.

12 Q All right, and haven't you testified
13 previously under oath, in this courtroom, as a
14 matter of fact, that there is no place for a
15 private call from the inmate side?

16 A No, it's a dayroom setting, sir.

17 Q So that's not correct. There's no private
18 place for the inmate to talk privately on the
19 jail telephones?

20 A It's a dayroom setting.

21 Q So that's correct. There's no --

22 A Yes.

23 Q -- private place is there?

24 A No.

25 Q All right, and you testified to that more

1 than a year ago?

2 A Okay.

3 Q Does that sound right, in front of Judge
4 Bonds? It was in a murder trial.

5 A Which trial was it; do you know?

6 Q In June of 2022.

7 A Okay.

8 Q Do you recall being on the stand in this
9 courtroom, being asked whether there was any
10 place an inmate can sit and make a private phone
11 call where his side of the call is private, is
12 there anywhere in that jail that does that?

13 A At that time, no.

14 Q How about now?

15 A No.

16 Q So there's not one of my clients that can
17 be at that jail and talk to me in a setting that
18 would not be available to be heard by another
19 inmate?

20 A If there's no one around them then they can
21 talk to you, but it's an open area, sir.

22 Q Okay, all right, and so the jail phone
23 calls that go to a lawyer, how is it that the
24 prosecutor doesn't monitor those communications
25 between the inmate and his lawyer?

1 A When the attorneys set up their accounts,
2 it would like -- if it'd be for you, they'd put
3 your number in the system, and then anyone that
4 calls that number, there's no access to it.

5 Q Okay, so if there's a phone call that an
6 inmate makes to a lawyer that's never been
7 involved in a matter with the Beaufort County
8 Jail --

9 A Uh-huh.

10 Q -- you would record it?

11 A It would be recorded initially, and then I
12 would call the company if it was discovered. I
13 would call the company and have it blocked.

14 Q But how did you not listen to that call?

15 A I don't listen to all the calls.

16 Q I'm sorry?

17 A I don't listen to all the calls.

18 Q But then how would that call then be
19 privileged?

20 A It wouldn't be until it was taken care of
21 in the system.

22 Q And I want to make sure I understand this,
23 this is a standard procedure that you listen to
24 calls until you find out from the lawyer that
25 that's his number?

1 A If it appears it's an attorney, we stop
2 listening to the call.

3 Q That's your policy?

4 A Yes, sir.

5 Q All right, and then what's the policy with
6 the prosecutor?

7 A If they call, if they think they're talking
8 to a lawyer, they'll call and let me know, "Hey,
9 this might be a privileged call", and I'll have
10 it blocked with the company.

11 Q Okay. So there have been times when you
12 have been notified by a Prosecutor's Office that
13 you'all were listening in on a lawyer call that
14 you'all hadn't even dropped?

15 A No.

16 Q That's never happened?

17 A Not that I recall.

18 Q Okay, so you're just speculating that if
19 they found out about a lawyer cal, and you
20 didn't know it, that they might call you and
21 tell you?

22 A Okay.

23 Q I mean, I'm asking.

24 A Yeah. If they hear it then they give me a
25 call.

1 Q All right. Has that happened?

2 A Not that I recall.

3 Q Ever? Okay, all right. Now you mentioned
4 that it's not recorded, if the number is in
5 there, right?

6 A Yes, sir.

7 Q All right. How does that affect the
8 Prosecutor's direct line to the call?

9 A I don't understand the question.

10 Q Let's walk through the process about calls
11 that are to a lawyer.

12 A Okay.

13 Q You put a number in the system.

14 THE COURT: Mr. Brown just very quickly, it
15 is 1:22, and it's past lunchtime.

16 MR. BROWN: 2 minutes.

17 THE COURT: Okay, 2 minutes.

18 MR. BROWN: Yes, ma'am, thank you.

19 BY MR. BROWN:

20 Q There's a phone call --

21 A Uh-huh.

22 Q -- that you believe is made to the lawyer's
23 number, and the system then stops recording?

24 A If there's a -- if I listen to a call --

25 Q Yeah.

1 A -- and I go oh, this sounds like an
2 attorney --

3 Q Right.

4 A Then I'm gonna stop the call.

5 Q You're gonna stop the call or the
6 recording?

7 A I'm going to stop the call. I'm going to
8 stop listening to the call.

9 Q Okay.

10 A I then call the company.

11 Q Okay.

12 A Tell them -- I give them the call sequence
13 number of the phone call --

14 Q Yeah.

15 A -- with the phone number, and they then
16 block the entire call.

17 Q They block the call?

18 A They block the call just like it would be
19 if somebody had already had it set up --

20 Q Okay.

21 A -- to where they don't want you to listen
22 to it.

23 Q But then how does the client call the
24 lawyer if it's blocked?

25 A For us to listen to it.

1 Q It's blocked for you to listen to?

2 A Yes. Yes sir.

3 Q Okay, and does it still go through the IC
4 Solutions phone system?

5 A It shows the call was made, but it shows
6 there's no recording available.

7 Q Okay, so it doesn't block the call, it just
8 stops recording it?

9 A Yes.

10 Q All right, and does it actually block you
11 from listening to it?

12 A Yes, sir.

13 Q So your extension then is cut off?

14 A Once I've advised them, it's cut off. Once
15 I put a number in, it's cut off.

16 Q All right.

17 How about calls to Prosecutors?

18 A To everybody.

19 Q You know it blocks their access to it?

20 A It blocks it to everybody, yes, sir.

21 Q How do you know that?

22 A That's what the system shows me, sir.

23 Q It tells you. So you can tell when they're
24 actually listening to a call?

25 A I can tell when somebody has listened to a

1 call.

2 Q You can tell when the Prosecutor's Office
3 is live listening?

4 A I can tell when somebody has listened to a
5 call once the call is over.

6 Q Okay, how about when the call is being
7 made? Let's say, for instance, Mr. Herndon
8 makes a phone call to Miles Smith on his cell
9 phone. All right?

10 A Okay.

11 Q If the Prosecutor is listening in to that
12 call live, and you're listening live, how do you
13 know whether they're listening or not?

14 A I do not know. The system does not show me
15 that until afterwards.

16 Q And you'all don't have a tank team that is
17 blocked from talking to law enforcement, do you?

18 A A what?

19 Q A tank team, like some type of team that is
20 separate, that's not allowed to talk about what
21 they hear?

22 A No, sir.

23 Q Fair enough.

24 THE COURT: Anything further?

25 MR. STONE: Oh, I'm sorry. No, Your Honor.

1 BAILIFF: The jury's seated, Your Honor.

2 THE COURT: Ladies and gentlemen, you have
3 heard all the evidence in this case. What we
4 have left to do is for you to hear the closing
5 arguments from the attorneys, and then I'm going
6 to charge you on the law that's applicable to
7 this case, all right?

8 MR. STONE: May it please the Court, Your
9 Honor?

10 THE COURT: Yes, sir.

11 **

12 CLOSING ARGUMENT BY MR. STONE

13 **

14 MR. STONE: I talked to you yesterday, and
15 I told you what you would hear, the evidence
16 that you would hear Would show you that when
17 Timony Herndon was stopped in 2019, MINOR 1 was
18 11, MINOR 2 was 8.

19 I told you that they trusted their Uncle
20 Timmy, he was their fun uncle, or at least
21 that's what they thought. And part of his whole
22 being a fun uncle was his funhouse and part of
23 his funhouse. This was Timothy Herndon's
24 funhouse, but I also told you something else,
25 Timothy Herndon's funhouse was not a funhouse,

1 it was a house of horrors.

2 I told you that the girls thought it was
3 fun, because of what he would let them do.
4 Number one, he let them dress up. This is what
5 he let MINOR 2 wear, this is what he helped put
6 MINOR 1 in, and this is what he put both of them
7 in. And you don't just need the items and the
8 DNA that matches to tell you that, because you
9 also saw it.

10 You saw it on the video, and you saw it on
11 the still photo. This is Timothy Herndon's idea
12 of playing dress-up, and helping these children
13 play dress-up. I told you that he was fun,
14 because he gave them candy, he gave them stuff
15 to eat. You heard a video this morning.

16 (Video being played for the jury.)

17 MR. STONE: That was his idea of candy, a
18 Tic Tac. It comes in a Tic Tac box is what he
19 told the child when they were taking it. It's
20 not a Tic Tak, it was a prescription sleeping
21 medicine. The same type of sleeping medicine
22 that causes what was in State's Exhibit 65. 65?
23 I'm not showing it. There it is. You saw in
24 this video format, and I'm not going to make you
25 relive that. That's the physical photograph of

1 it.

2 He prodded her, he moved her around, and
3 not once did she wake up, not once. Why?
4 Because she had gotten some candy from Uncle
5 Timmy. I told you he let them play with toys,
6 unusual toys, like a Ball Gag. A gag which DNA
7 proved was on MINOR 2, the 8-year-old. And another
8 unusual toy, a dildo, the same of which had
9 MINOR 2's DNA, the 8-year-old. This was Uncle
10 Timmy's funhouse.

11 You can dress up, you can take candy, you
12 can play with toys, all the time he was
13 attacking them. And I told you he did one more
14 thing, the fourth thing, that made Uncle Timmy
15 the fun guy, he let them play games. And I told
16 you those games were not games; they were sexual
17 assaults. This is in many ways the complicated
18 part of your decision.

19 There are a number of indictments in this
20 case. The Judge is going to charge you the law
21 in each one of these offenses. There are 17
22 total offenses, and so what I'm gonna ask you to
23 do is, pay close attention to this, because it's
24 gonna be difficult once you get in your jury
25 room to keep all of this together, but I'm gonna

1 try my best to clarify it, and let you know what
2 charges go with what particular evidence.

3 The first three charges, and I don't know
4 that this will be in any particular order when
5 you get in your jury room, but the first three
6 charges are criminal sexual conduct in the
7 second degree.

8 Criminal sexual conduct in the second
9 degree involves sexual conduct with a minor, and
10 sexual battery. Now, what's important about
11 criminal sexual conduct in the second degree is,
12 what is the definition of sexual battery?

13 Sexual battery could be sexual intercourse,
14 cunnilingus, fellatio, or any intrusion however
15 slight into any part of a child's body, an entry
16 however slight. Criminal sexual conduct in the
17 second degree requires a child under the age of
18 14, and there is some type of sexual battery.

19 The second charge that goes along with
20 these particular instances is sexual
21 exploitation of a minor in the first degree.
22 This is basically the photography or the video
23 of him doing the sexual acts, and each one of
24 those separate times that he takes these
25 pictures of these particular instances, and we

1 didn't charge him ever time he took a picture,
2 we charged him for every instance.

3 So on each one of the sexual conduct second
4 degrees, the video and the photographs, those
5 depictions are the exploitation of a child, the
6 sexual exploitation of a child. Indictment 1832
7 and Indictment 1839, sorry, go back please.
8 State's Exhibit Number 31 are those two
9 indictments.

10 Number one, the intrusion, however slight
11 into this child's mouth, and, number two, the
12 photography of it. That is criminal sexual
13 conduct in the second degree, and that's a
14 photograph of it, the sexual exploitation of a
15 child. Two indictments, one instance.

16 State's Exhibit 28, a separate instance,
17 and on this indictment, you'll actually see the
18 letters YLW glass, yellow glasses, that would be
19 a way to keep those apart.

20 These indictments, Indictment 1842 and 1838
21 are depicted in State's Exhibit 28. Number one,
22 sexual conduct, second degree, intrusion however
23 slight, including both either vaginal or anal
24 intrusion into a person's body, however slight.
25 There it is. You saw the video, that's the

1 still photo of it. And the photography of it
2 itself is the sexual exploitation of a minor.

3 Two more indictments, same second instance.
4 The third instance of criminal sexual conduct in
5 the second degree is depicted in State's Exhibit
6 65, 34 and 36, a photo that you actually saw him
7 take. If you remember seeing the video, you
8 actually see him taking these photographs of
9 himself with MINOR 1. these are Indictments 1841
10 and 1834.

11 A third instance of criminal sexual
12 conduct, second, intrusion into her body however
13 slight, and that's not slight, but that's an
14 intrusion into that child's body, and the
15 photography of it is the sexual exploitation of
16 a minor. There are two counts, or two instances
17 of criminal sexual conduct with a third degree.
18 What the Judge will charge you, and, again, I'm
19 saying I'm reading these charges off. The Judge
20 will tell you, when the Judge tells you, and you
21 are to take what she tells you the law is.

22 Criminal sexual conduct with a minor in the
23 third degree, someone who lewdly commits or
24 attempts to commit a lewd or lascivious act upon
25 a body of another. And the bottom of this is

1 relatively important in this, arousing or
2 appealing to gratifying the lust, passions or
3 sexual desires of the actor.

4 Now, what separates criminal sexual
5 conduct, third degree, with criminal sexual
6 conduct, second, is the sexual battery. This
7 does not require that battery, this does not
8 require that Timothy Herndon actually intruded
9 into those children's bodies, it requires a lewd
10 act, and that lewd act as she will define to
11 you, appeals to his gratification.

12 Indictments 1845 and 1830 are indictments
13 for criminal sexual conduct in the third degree,
14 and the criminal sexual exploitation of a minor,
15 and those are depicted on State's Number 45 and
16 46.

17 This is the video, and I show these to say
18 that these are displayed on there, taking all of
19 this together, that proves right there the
20 sexual nature and intent of what he's doing.
21 He's jumping up -- he's having her jumping up
22 and down on his lap, while he is naked with an
23 erect penis. This is both the criminal sexual
24 conduct, the lewd act, third, as well as the
25 sexual exploitation of a child.

1 Again, in every one of these, and you've
2 seen it throughout all the videos, you saw him
3 moving the cameras, you saw him putting it at a
4 better angle, you saw him taking handheld
5 pictures with the other cameras, all of this are
6 exploitations of that child, and of those
7 children, some of MINOR 1 and some of MINOR 2. This
8 would be Indictments 1845 and 1830.

9 Indictment 1843 and 1825, we charge this as
10 one instance. We're going to State's Exhibit
11 41, this is MINOR 2, this is her with her hand,
12 while she's asleep, with her hand on his penis,
13 same thing, and that's State's Exhibit 42.

14 That is -- both of those are criminal
15 sexual conduct in the third degree, as well as
16 sexual exploitation of minors.

17 The remaining counts are sexual
18 exploitation of a minor counts. We start with
19 Indictment Number 1823, and this is from State's
20 Exhibit 58 and State's Exhibit 59. The first
21 one she's wearing underwear, the second one he's
22 pulling her underwear down and he's taking a
23 picture of himself with her.

24 Indictment 1835, we see this in State's
25 Exhibit 49. You recall seeing the video that

1 was associated with this as well. This MINOR 2 in
2 the red outfit, this is sexual exploitation of a
3 minor, and that is Indictment 1835.

4 Indictment 1827, you'll remember this
5 video, because you heard MINOR 1 say, "It hurts."
6 Now, the video doesn't depict, nor does the
7 photograph he's actually entering that child,
8 that's why it's the exploitation of a minor
9 charge, it doesn't require it.

10 That is the sexual exploitation of a minor,
11 that is Indictment 1827, and that is State's
12 Exhibit 44.

13 Indictment 1826, again, the sexual
14 exploitation of a child, this one is MINOR 1 in
15 the game room, again, satisfying his sexual
16 desires, that is State's Exhibit 57 and
17 Indictment 1826.

18 Indictment 1837, this one was the video.
19 You saw her jumping up and down on the exercise
20 bench without any underwear on, again, the
21 sexual exploitation of a minor, that is State's
22 Exhibit 56 and Indictment Number 1837.

23 Indictment 1836, we go first to State's
24 Exhibit 55, this is another of the tasting games
25 that he did with her. And in this one, while

1 she is not naked, he is, again, appealing to his
2 sexual gratification, putting her in a position
3 to look like she is performing fellatio on him,
4 this is State's Exhibit 69, showing exactly
5 that.

6 And, finally, Indictment 1824, this was
7 depicted in one of the videos that we showed,
8 this is State's Exhibit 67. Again, he's placed
9 the camera so that he could get -- he could
10 capture the image. He then pulls up MINOR 2's
11 dress.

12 Again, she's not wearing underwear. And in
13 case you were wondering whether or not he was
14 doing that for his own sexual gratification, you
15 can go to State's Exhibit 68, when the girls had
16 stepped out of the room, and he's masturbating
17 on film, this is State's Exhibit 67 and 68, and
18 that is Indictment Number 1824.

19 Now, that is what I told you you would see.
20 I told you it was disturbing, and I told you you
21 shouldn't -- and no one should ever have to see
22 that. I also told you that those children
23 shouldn't have had to endure what you've heard
24 from this witness stand is that evidence.

25 All of the evidence points to exactly what

1 I told you, and this case boils down to that,
2 what did you see, what did you know happened?
3 Two other things, though, that are important.

4 The first thing that's important is, what
5 did Timothy Herndon say about it?

6 (Video being played for the jury.)

7 MR. STONE: That is Timothy Herndon talking
8 to the two people in the world that know him the
9 best, his wife -- ex-wife and his mother. What
10 did they say in reaction to what he told them?

11 What does his wife say? "I'm not gonna say
12 I told you so from the past." What did his mom
13 say? The one woman who's trying her best to
14 find something good to say, "It's a sickness."
15 And what does he say? "I've had it my whole
16 life. I'm a horrible person, I did this. I
17 caused it, it's my fault, I'm sorry." He even
18 says he feels sorry for the girls, well, quite
19 frankly, you know why? Because he's being
20 accused of molesting MINOR 1 and MINOR 2.

21 What's important, not only what you saw,
22 what you heard, what you felt, but also what he
23 had to say to the two people that knew him the
24 best, "I'm a horrible person." Yes, absolutely,
25 he is absolutely a horrible person.

1 This case comes down to what you saw, what
2 you know happened, what you heard happened, and
3 how you felt about it. It comes down to what he
4 had to say about it. It comes down to one other
5 thing too, what didn't he say? What he didn't
6 say is, Logan set me up, those are fakes,
7 everything's fake, it's not real. And, sure,
8 what he didn't say is everything that Mr. Brown
9 is about to walk up here and tell you. He
10 speaks for him in the courtroom. Timony
11 Herndon's already spoken for himself, and he did
12 it to the two people that he knew the best.

13 I told you at the beginning of this that I
14 was gonna ask you to come back and give us a
15 verdict, and in this case many verdicts that
16 speak the truth. From the evidence that you
17 heard, not from my argument, not from Mr.
18 Brown's argument, but the evidence of what you
19 saw, what you heard, how you felt, what he had
20 to say about his own self, which I will submit
21 to you is a long series of confessions.

22 And if you've got any question about
23 whether or not this man right here on his jail
24 call admitted that he's a horrible person, if
25 you've got any questions about that, because

that's what your verdict needs to say, yes, you are a horrible person, that's exactly where you need to be, you deserve it.

And if you've got any questions about that, take a strong look at his face, and you tell me is Timothy Herndon a horrible person?

Thank you, Your Honor.

THE COURT: Thank you. Mr. Brown.

MR. BROWN: May it please the Court?

THE COURT: Yes, sir.

CLOSING ARGUMENT BY MR. BROWN

MR. BROWN: The suspicion of belief, in the 1890s the bill was in its beginning to showing inside of a theater screen that people walked into, they played a movie of a train trying to come towards the crowd, remember it's a silent movie, a 50-second clip.

People in that theater stampede, hurting each other as they exit to avoid getting hit by that train, because that's what they believed was happening. Just like that day they walked into that building they saw the screen. In 1938 the radio broadcast, Orson Wells, War of the Worlds.. During that radio show they had

1 repeated breaks, where they explained that this
2 was a fictional show, they had commercials,
3 where Orson Wells plugged different ideas,
4 different products. People still batten down
5 the hatches, stole stuff from other stores, and
6 looted places, because our world was being
7 invaded by aliens. So people do believe what
8 they see and what they hear, whether it's real
9 or not, because we do know some things that
10 create, what I referred to in the beginning that
11 was connected to this case. Because remember
12 they're gonna bring in the FBI that's gonna see
13 stuff, and this is not Homeland Security sitting
14 at my desk, now that I moved this out of the
15 way.

16 And so what we do know is this, we have
17 agencies including the FBI, Homeland Security,
18 State Law Enforcement, the Attorney General's
19 office, they are Beaufort County's law
20 enforcement and we certainly understand.
21 There's not a person in this courtroom that
22 didn't viscerally react to the viewing of the
23 videos or pictures, and we certainly understand
24 exactly how the beginning reaction of this case
25 looks like.

1 How one person says, "Well, I thought Mr.
2 Heisler said it's March 28th," but it says
3 January 10th, and we understand why, but there
4 is a disconnect. Because for all the photos
5 that some show a child that's reportedly taken a
6 sleep aid, we also see clips that are very clear
7 that there is no sleeping, drugged or
8 hallucinating child.

9 This is not a hallucinating driver showing
10 up in the parking lot.

11 We know there's no evidence they want you
12 to hear, because they didn't bring it in. How
13 about the drugging itself? We know that they
14 collected hair samples. We know that the hair
15 sample testing was so expensive, that there had
16 to be an up-the-chain-of-command discussion
17 about it. We know they took the hairs. Now,
18 they didn't even put that in the police report
19 that results came back. They certainly didn't
20 tell any of you'all any of that. And all of us
21 work somewhere, we live in the world, we know
22 there's different types of drug testing. You
23 can test somebody with a urine sample. You can
24 test somebody with a blood sample. You can
25 collect a hair sample. We know that there's

1 some differences in those.

2 Where's the hair sample showing that these
3 girls were drugged? There's a disconnect.
4 Let's talk about the DNA. We have an analyst,
5 and he analyzes a whole bunch of materials.
6 They don't test the mother, which skews some of
7 the exclusion, when we have numbers like 300.
8 What we also know is this, an item like the Ball
9 Gag, Mr. Stone showed you it had someone else's
10 DNA on the ball, and it's not either of the
11 children.

12 Now, funny we don't see one single thing of
13 DNA on any of those items. We do know all of
14 those items were accessible to a child in that
15 house, whether or not Mr. Herndon did it. I
16 don't think that Mr. Herndon is some kind of
17 super criminal, where he can write his skin
18 cells off of these items, and yet their DNA
19 isn't there. That is just not possible, so how
20 do you explain that? If you remember, the Judge
21 is going to charge you, to the extent you rely
22 upon circumstantial evidence, all the
23 circumstances have to point conclusively to
24 guilt.

25 Third party guilt says, if the evidence

1 points equally to a third party, as it does to
2 the accused, then it fails. And that's
3 important, because all the conclusions have to
4 -- or all of the circumstances have to point
5 conclusively to Mr. Herndon's guilt. And we
6 have this nondisclosure, and we have this lack
7 of DNA, and we have this drug testing annulled,
8 because we don't understand how somebody could
9 be slipped drugs, and I do want to mention
10 something that's just common sense.

11 That type of drug is a drug that an adult
12 takes. The girls on these videos, are you
13 telling me that somebody has pharmacological
14 knowledge to administer sleep drug, such that
15 nobody knows that they've been drugged? Their
16 parents don't see it? They're not overdosed?

17 I mean how little would it take, if it is a
18 drug made for a 180-pound man, what's the dose
19 for a 45-pound 8-year-old, because if they had
20 overdosed, we would have known about that. But
21 we do know who knows how to drug people, Logan
22 Heisler, who drugged and raped their mother, her
23 words not mine. And recorded it, drugged her
24 and raped her at Bluebell Lane, moved into an
25 RV. That doesn't have anything to do with Mr.

1 Herndon, that has to do with his cousin, Mr.
2 Heisler, losing his home.

3 They subsequently filed suit; Mr. Herndon
4 loses his home. Misery loves company. Motive
5 and opportunity. We have Mr. Heisler talking
6 about those videos. We have Ms. Parada
7 admitting and making the videos, we have an
8 opportunity. He's with the girls more than Mr.
9 Herndon was. We've had marijuana at the house.
10 We've had marijuana photo of a butt, where
11 somebody's rolling a joint on the butt of a
12 human.

13 And how that can happen without somebody
14 being drugged out I don't know. What else does
15 Mr. Heisler do? He's the guy with the thumb
16 drive that he tells the police March the 28th
17 that he found this stuff. He made this thumb
18 drive, he admits it, "I made these thumb drives
19 on my computer."

20 And then he got upset and went to his
21 lawyer's office, and the officers -- there's no
22 sworn statement that he went to his lawyer's
23 office the very minute on March 28th, before he
24 shows up for a phone call talking to the police
25 -- and it sure stretches the imagination to

1 believe that he became upset on February 10th of
2 2019, and then raced to his lawyer's office ten
3 weeks later.

4 Those are Logan's photos, because they
5 can't match them at all to anything they claimed
6 that happened at Tim's house. And how could
7 they disprove what I'm telling you?

8 Take the storage device. You take the
9 storage device. You find out whether the USB
10 log from the SD card log matches. Not anybody I
11 put up, this is Homeland Security that says
12 this. Did they take it? No. And let's start
13 with this, and I'm gonna tell you, when you show
14 up, and there's the dead body, the first thing
15 you might do is, to bend over and try to help
16 save the person, if you think they might still
17 be alive.

18 They've got photos, a thumb drive, which
19 everybody says is clearly photoshopped photos.
20 They said, "Mr. Heisler, these things don't
21 match, they don't link up to what we're looking
22 at." And he said, "Well, I used a computer of
23 my own," and they said, "Well, what software
24 program do you use?" Because they cannot
25 explain it. That is an internal disconnect.

1 Not just a disconnect between the evidence
2 against Mr. Herndon, this is an internal
3 disconnect to Mr. Heisler, and so he says he
4 destroyed that, but they collect it, and make
5 sure we understand this. There's a report up
6 her of collecting a 2012 Pacer laptop in 2022.
7 Now, am I supposed to believe that a person with
8 some serious computer skills, destroyed his
9 computer in 2019, and then by 2022 he goes and
10 buys a 2012 Pacer? Really? That's the same
11 computer.

12 If they would have gone and searched his
13 house instead of calling him in January of 2020,
14 they might could have checked that USB log.
15 What else do we know? Mr. Heisler readily
16 admits he went into Mr. Herndon's house, not one
17 time. Because in his statement he says he went
18 into the house and took some stuff out, and then
19 he makes these thumb drives, it's his version.
20 Then he goes back in to place the stuff back in
21 there. That's the story he tells the police,
22 that he put stuff in there. By the way, if we
23 would have done some DNA or fingerprinting on
24 those items, and remember they don't test items
25 that are in your own home.

1 Mr. Heisler said he put items in Mr.
2 Herndon's home. Did they check to see which
3 items Mr. Heisler had ever touched? And, of
4 course, at some point, it's too late to turn
5 back.

6 Who in the world would want to know that
7 law enforcement interviewed their girlfriend,
8 and she said that she had been drugged and raped
9 and video-recorded for a long time, at least
10 back to living on Bluebell Lane? No one,
11 because that's how the police arrest you for
12 rape, for voyeurism. Who in the world would
13 want to have the police called, about a video
14 taping an 11-year-old in the bath? No one,
15 because that's how you get arrested by the
16 police. And forget about the marijuana itself,
17 I mean I guess in some ways marijuana is okay
18 for some people sometime.

19 Why isn't he arrested? They are doing
20 everything they can to give credence to this.
21 Logan Heisler, his prints are all over this.
22 That jail phone call, you hear everybody talking
23 about Logan breaking in, and how it -- Logan
24 says he did all these things. Mr. Herndon says,
25 "It's bad, it's not gonna be good for me."

1 And, ladies and gentlemen, where he's
2 standing right now, it's bad, and there's
3 nothing good for him, except that we have jurors
4 here, and I have been allowed by Her Honor, the
5 Courts, the laws and the protections of this
6 State and this country to tell you his defense,
7 because that's what's standing between him going
8 to prison wrongfully, or the protection of his
9 rights and the statement made to law
10 enforcement, that if you've got a guy that's
11 guilty, you charge that man. Innocent people to
12 find stuff like that. Why would a victim lie?

13 And that's not me, that's just my computer
14 doing it. Now, Logan Heisler has real computer
15 skills. He video-recorded MINOR 2 and MINOR 1 on
16 September 21st, 2022 with his iPhone. He told
17 the police that. They searched and could not
18 find evidence of that video. They couldn't find
19 it in the active files, they didn't find it in
20 the deleted files. They drove over and
21 interviewed everybody on camera.

22 And in that amount of time he hid that
23 information from a Homeland Security Analyst,
24 and we're supposed to believe that he can't do
25 this?

1 Now, remember, we don't have the burden.
2 If it was an equal burden, when somebody was
3 charged, you would not have law enforcement come
4 in and collect evidence. You know, they don't
5 hold it for the defendant, for the defendant to
6 get a lawyer, to come look through the house
7 with the police. That's only like a month,
8 okay?

9 The police searched the house, the police
10 examined the evidence, thinking for a minute, I
11 can wrestle evidence out of the Evidence Room to
12 have all this stuff examined, but they had to
13 look at it first. It's not an equal playing
14 field.

15 So let's think about what we do know. This
16 case went to Homeland Security because it was
17 serious. The serious part with the allegation,
18 they want to know is there some type of
19 international child exploitation ring.

20 And the best we got was, I looked at it and
21 it doesn't look defect to me, and he gave an
22 opinion, but that didn't qualify as an expert.
23 That he didn't believe there was anything.
24 Unequivocally he agreed, he did not do one bit
25 of analysis. That's not the kind of evidence

1 you rely on to decide, if you want to convict
2 someone of these types of charges.

3 We expect more from our law enforcement
4 than that. There's not one of you that would
5 get on a plane that said I didn't see a
6 terrorist, you expect them to do a background
7 check. You expect that if somebody comes
8 through, that airport's got facial recognition,
9 and it sends that face back to find out if that
10 guy's a terrorist to get on that airplane with
11 you. You demand it, that's what your tax
12 dollars go for.

13 Your verdict is also the polling of whether
14 they did what they should have done, because for
15 the guy who gets away with a slack performance,
16 that's the person that suffers. There's not one
17 of us that wants to be there, and you set the
18 precedent with your verdict on that.

19 And how about the DNA? And, you know, I thought
20 it'd be nice if French -- he's got some
21 animosity, you saw it, but let's get real, isn't
22 that about a mile from here? He can go to SLED,
23 he can call the FBI, Lord have mercy, all these
24 agencies were on this case. He can take a DNA
25 sample that he's already analyzed, and he can