

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM OCONEE COUNTY
Court of General Sessions

R. Lawton McIntosh, Circuit Court Judge

Indictment No. 2010-GS-37-364A

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S.C. Supreme Court

The State.....Respondent,

v.

Anthony Clark Odom.....Appellant,

Volume II

RECORD ON APPEAL

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1 **THE COURT:** I understand that. What I'm saying so
2 we're not uncertain --

3 **MS. WINES:** Yes, sir.

4 **THE COURT:** -- is that if we have a case right
5 now -- let me say it this way. When it's necessary to
6 raise an issue, when it's specifically regarding a
7 particular witness's testimony, it needs to be raised
8 right then.

9 **MS. WINES:** Yes, sir.

10 **THE COURT:** The more Constitutional issues, the
11 germaneness issues, those things that don't go to a
12 specific witness's testimony can be argued after I've
13 excused the jury today. If I kick the case and grant
14 the motion, it's over, but I don't want to do that while
15 the jury is still out there waiting. Okay?

16 **MS. WINES:** Yes, sir. I understand.

17 **THE COURT:** Mr. Huff, are you ready to proceed from
18 the Defense?

19 **MR. HUFF:** Yes, Your Honor, we are.

20 **THE COURT:** Okay. Would you bring the jury in,
21 please.

22 (Whereupon, the Jury entered the courtroom at
23 approximately 3:20 p.m.)

24 **THE COURT:** Mr. Stanley [sic], ladies and gentlemen
25 of the jury, did you have a nice lunch?

1 important for you to watch as well.

2 Again, the Defendant has been indicted for two
3 charging counts of criminal solicitation of a minor.
4 Again, that is in no sense of the word evidence of the
5 allegations, it doesn't raise a conclusion or
6 presumption of his guilt. In fact, he has pled not
7 guilty to this charge. Therefore, the State of South
8 Carolina has the burden of proving beyond a reasonable
9 doubt each and every element of the charge of criminal
10 solicitation of a minor. At the end of this case it
11 will be your duty to decide whether or not the State of
12 South Carolina has, in fact, met that burden of proof.

13 Now, your purposes as jurors are to find facts. In
14 the vernacular of the law we simply say that the jury
15 are the finders of the facts. Therefore, if at any time
16 I do anything whatsoever that indicates to you that I
17 have a preference of how you are to find the facts, I'm
18 gonna ask you and I'm also going to instruct you to
19 disregard that. I can assure you I have no preference
20 one way or the other.

21 Our South Carolina Constitution doesn't allow me to
22 have an opinion as to the facts in the case. That is
23 solely your function. My job is more akin to a referee
24 to make sure that the process is followed, that the
25 State and the Defense each have a fair and impartial

1 **THE COURT:** Is the State ready to call their first
2 witness?

3 **MS. WINES:** Yes, Your Honor. The State calls Mark
4 Patterson.

5 **THE CLERK:** If you'll place your left hand on the
6 Bible and raise your right hand. (Complies.)

7 Do you solemnly swear or affirm that the testimony
8 you give the Court be the truth, the whole truth, and
9 nothing but the truth?

10 **THE WITNESS:** I do, ma'am.

11 **THE CLERK:** Please be seated.

12 **OFFICER MARK PATTERSON,**
13 having been duly sworn, testified as follows:

14 **DIRECT EXAMINATION**

15 By Ms. Wines:

16 **MS. WINES:** Good afternoon Officer.

17 **THE WITNESS:** Good afternoon.

18 **MS. WINES:** May it please the Court?

19 **THE COURT:** Yes, ma'am.

20 By Ms. Wines:

21 Q. If you would please tell the jury your name and
22 where you're presently employed.

23 A. My name is Mark Patterson. I'm presently employed
24 with the Richland County Sheriff's Department.

25 Q. And what's your title and duties with Richland

1 County Sheriff's Department?

2 A. I'm a Deputy Sheriff. I supervise crimes in
3 Richland.

4 Q. Okay. And how long have you been with the Richland
5 County Sheriff's Department?

6 A. About a year-and-a-half.

7 THE COURT: Wait just a second. Are you telling me
8 Mr. Bibb the microphone is not on?

9 MR. BIBB: Yes, sir.

10 MS. WINES: I thought it was just me having fluid
11 in my ears. Let's see if we can fix that.

12 (Whereupon, a discussion was held off the record.)

13 MS. WINES: Let's try that.

14 THE COURT: Excuse me. Thank you, Mr. Bibb.

15 MS. WINES: Thank you, Judge.

16 By Ms. Wines:

17 Q. If you would just tell us again, about how long
18 have you been with Richland County?

19 A. About a year-and-a-half.

20 Q. All right. And give the jury a brief idea of your
21 background and training in law enforcement, if you
22 would.

23 A. I came in to law enforcement with the Westminster
24 Police Department in Oconee County. I started there on
25 road patrol and then I started doing investigations of

1 both narcotics investigations until I was assigned to
2 the Internet Crimes Against Children Task Force with the
3 Attorney General's Office.

4 I then left Westminster to take a position with the
5 Aiken County Sheriff's Office where I continued to be
6 active with the Internet Crimes Against Children Task
7 Force until such time I went to Richland County.

8 Q. Okay. And you said back when you were in
9 Westminster you were assigned to the Internet Crimes
10 Against Children Task Force. About when did you become
11 affiliated with the task force?

12 A. In, I believe, it was about 2005.

13 Q. Okay. And if you would tell the jury a little bit
14 about the task force, what its purpose is, what it does.

15 A. The Internet, the Internet Against Crimes Task
16 Force -- Internet -- I'm sorry. The Internet Crimes
17 Against Children Task Force, basically is a network of
18 law enforcement agencies not only throughout the country
19 but the world. We conduct both proactive and reactive
20 investigations to protect children throughout the world
21 from people wanting to harm them in various different
22 ways, and that we work together to accomplish that
23 mission.

24 Q. Okay. And did you or have you received any
25 specialized training with the task force?

1 A. Yes, I did.

2 Q. Okay. And, as of 2006, what training would you
3 have had?

4 A. In 2006 I received the initial training, the actual
5 basis or foundation of a proactive and reactive
6 investigation of Internet Crimes Against Children, and
7 then I went into an advanced class called undercover
8 training which went even further into conducting the
9 proactive aspect of the investigations.

10 Q. Okay. And you are using the term proactive
11 investigations. Could you tell us what that means?

12 A. Proactive investigations is where we, we put
13 ourself in a position to catch these people that are
14 doing these crimes proactively. Instead of waiting for
15 a crime to happen and then investigating it, we are
16 already starting investigating crimes and try to catch
17 them as they happen.

18 Q. Okay. And were you conducting proactive
19 investigations in 2006?

20 A. Yes, ma'am.

21 Q. And that's when you were with Westminster?

22 A. Yes, ma'am.

23 Q. Okay. So these investigations, are they on the
24 internet now?

25 A. Yes.

1 Q. Okay. And if you could give us a very basic
2 definition of the internet, how it works.

3 A. The internet is a network or networks of computers.
4 You can do a numerous bit of things on the internet:
5 communicate, shop, look up information.

6 Q. Okay. And are you familiar with the term internet
7 service provider?

8 A. Yes.

9 Q. Could you tell us what that is?

10 A. Internet service provider is going to be the
11 company or the entity that provides you with the ability
12 to connect to the internet.

13 Q. Okay. And are you familiar with Yahoo!?

14 A. Yes.

15 Q. Could you tell us about Yahoo!?

16 A. Yahoo! would be one of the internet service
17 providers that are available to people. Yahoo!, they
18 offer a variety of services through the internet such as
19 email, chat communications, information, search engines.

20 Q. Okay. You said chat communications. What does
21 that mean?

22 A. Chatting, where people communicate through the
23 internet with each other via their computer or the
24 internet.

25 Q. Okay. And so that can be conducted in Yahoo!; is

1 that correct?

2 A. Yes, ma'am.

3 Q. Okay. So, within Yahoo! how would you conduct a
4 chat, what would you do?

5 A. I basically would log in. I have to download their
6 software to be able to access their instant messenger
7 chat room, you can use that, or you can go log into
8 their actual internet website and you access chat rooms,
9 talk to other people in an open forum or with instant
10 messaging.

11 Q. Okay. Do you have to have an account with Yahoo!?

12 A. Yes, you have to sign up.

13 Q. And back in 2006, if you remember, how would, how
14 would you create an account with Yahoo!?

15 A. I'd log on to their website. It gives you the
16 option to either log on as an existing user or as a new
17 user. Log in as a new user, provide the information
18 that it asks for, and then it creates you an account.

19 Q. Does it matter how old you are?

20 A. Yes and no.

21 Q. Okay. Explain that to us.

22 A. Yahoo! requires through their guidelines that you
23 are eighteen to use their services. But anybody, even
24 people under the age of eighteen, can access ---

25 MR. HUFF: Objection to speculation, Your Honor.

1 **THE COURT:** Mr. Bibb, would you take the jury out
2 for a second, please, sir.

3 (Whereupon, the Jury left the courtroom at
4 approximately 4:05 p.m.)

5 **THE COURT:** All right. Mr. Huff, what's your
6 objection?

7 **MR. HUFF:** Your Honor, I believe the witness was
8 just saying that you have to be eighteen years of age to
9 have the account with Yahoo! but then said that anybody
10 can. And he doesn't know that. That's speculative on
11 where he was going with that response. I felt it was
12 appropriate to object at that time.

13 **THE COURT:** Okay, sir. I'm gonna overrule the
14 objection.

15 Bring the jury back out. Let them take a break if
16 they need to. If not, come back in.

17 **MS. WINES:** Your Honor, I'm sorry. We're getting
18 close to when I'll need the projector. It may be a good
19 time to address that. It may be a good time to make
20 sure that equipment works.

21 **THE COURT:** You want to do that? Okay. Let's take
22 about a ten-minute break.

23 **MS. WINES:** That sounds good, Your Honor.

24 **THE COURT:** Do you think that will give you
25 sufficient time?

1 MS. WINES: I hope so. We'll do our best.

2 THE COURT: Okay. Send word back if it's not,
3 okay?

4 MS. WINES: Absolutely.

5 THE COURT: Mr. Patterson, you are not to discuss
6 your testimony with anyone. Okay, sir?

7 THE WITNESS: Yes, sir.

8 (Whereupon, Witness leaves stand.)

9 (Whereupon, a recess was taken.)

10 THE COURT: Ms. Wines, are you all ready to go?

11 MS. WINES: We are. Thank you, Your Honor. I'm
12 sorry we had such difficulties with that.

13 THE COURT: Mr. Huff, is the Defense ready?

14 MR. HUFF: Your Honor, we are ready. I believe the
15 State just indicated they intend to show some of what's
16 called a Camtasia. I don't know how much they're going
17 to show. It may entail communications by somebody else,
18 but we'll let them play what they feel they need to
19 play. We do have, I believe, some motions may be
20 getting very close to be taken up regarding
21 Mr. Patterson. I don't know when the Court wants to do
22 that.

23 But, of course, you know, we've got the issue of an
24 audio CD that we're not gonna have till tomorrow. We
25 don't need to take that up right now, I believe, but we

1 may ask for some consideration as far as when I do
2 Cross-Examination in full on him.

3 THE COURT: Well, let me say one thing. It's not
4 my intent to go over that CD at this point. And, as I
5 told you both, all of you, this morning that that CD
6 comes in, I'm gonna not excuse Officer Patterson and he
7 will be subject to being re-called based on what that
8 evidence is. That's not the perfect way Mr. Huff, but
9 under the circumstances I don't really know how else to
10 do it.

11 My concern is both of you told me this case is
12 likely to get into about the fifth day. This is a date
13 certain. We have a state holiday coming up for Friday.
14 And I am concerned we move this along without
15 jeopardizing the State's case or the Defense's case
16 without delay as much as we can.

17 That being said, at the appropriate time, Mr. Huff,
18 if you'll just stand up, I will probably send the jury
19 home for the day and we can take up all the motions at
20 that point in time and get started. Okay?

21 MS. WINES: Yes, Your Honor. I was anticipating
22 making my motion *in limine* in between direct and cross.
23 That seemed like the most appropriate time. But, of
24 course, if it comes up somehow sooner...

25 THE COURT: Your motion is under advisement and it

1 is noted as having been made --

2 MS. WINES: Right.

3 THE COURT: -- so we'll do it at the appropriate
4 time.

5 MR. HUFF: I'm sorry, Judge, I apologize. I was
6 talking to my client and I did not hear that
7 conversation.

8 THE COURT: She said she also had her motion *in*
9 *limine* as to Officer Patterson's documents and anything
10 related to any of those documents. I said it's been
11 noted that motion has been made, and we'll take it up at
12 the appropriate time.

13 MR. HUFF: Yes, sir.

14 THE COURT: All right. Anything further from the
15 State at this stage?

16 MS. WINES: We're ready to proceed.

17 THE COURT: From the Defense?

18 MR. HUFF: No, Your Honor.

19 THE COURT: All right. Now, let me, before we go
20 any further, to the extent this will be ongoing
21 technical presentation, I'm gonna ask counsel or their
22 associates, whoever, to try to go ahead and review that
23 matter ahead of time, that motion *in limine*. I know you
24 are coming from out of town, but let's try to get the
25 technical snafus out of the way before we crank up court

1 tomorrow, please. Okay?

2 MS. WINES: Absolutely, Your Honor.

3 THE COURT: All right. Would you bring the jury
4 in, please.

5 (Whereupon, the Jury entered the courtroom at
6 approximately 4:25 p.m.)

7 THE COURT: All right. Officer Patterson, would
8 you come around, please, sir. I remind you that you are
9 still under oath.

10 THE WITNESS: Yes, Your Honor.

11 (Whereupon, witness resumes stand.)

12 MS. WINES: May it please the Court?

13 THE COURT: Yes, ma'am.

14 MS. WINES: Thank you, Your Honor.

15 By Ms. Wines:

16 Q. All right. Officer, let's pick back up. And could
17 you start back by telling the jury what instant
18 messaging is in your experience?

19 A. Instant messaging is where two people communicate
20 between each other like in a private setting, it's just
21 between them two people. Nobody else outside of that
22 conversation can see what's being said.

23 Q. Okay. And what is a screen name?

24 A. A screen name is an alias. It would be like for
25 what you would create for your persona or your user

- 1 name. You would create that yourself.
- 2 Q. Okay. So, what purpose does it serve?
- 3 A. It's to identify you to other users.
- 4 Q. On the Internet?
- 5 A. Yes, ma'am.
- 6 Q. Okay. What is a profile page on Yahoo!?
- 7 A. A profile page on Yahoo! is something that the
- 8 other users when you are inside a chat room they can
- 9 click on your name and select an option of either a
- 10 profile and give them whatever information that you put
- 11 on that profile for them to see.
- 12 Q. Okay. And is it different than what would be
- 13 called -- or are you familiar with the term account
- 14 information?
- 15 A. Yes, ma'am.
- 16 Q. Okay. Is it different from that?
- 17 A. Yes, it is.
- 18 Q. How so?
- 19 A. Your account information is the actual information
- 20 that you need or have to have to create your account, to
- 21 be able to log on. The profile information is that
- 22 information that you may want to provide to other users
- 23 such as your screen name, your location, and so forth.
- 24 Q. Okay. So who sees the profile page?
- 25 A. Anybody that tries to view it.

1 Q. And who sees the account information?

2 A. That would be just the user and Yahoo!

3 Q. Okay. Now, we talked a little bit about the
4 undercover proactive investigation, and you've mentioned
5 the term persona. Could you tell us what that means,
6 what persona is?

7 A. A persona in our use for the Internet Crimes
8 Against Children, a persona is something that we would
9 create as the person that we're gonna be on the
10 internet, such as, you know, Jennifer a_upstategurl93,
11 her persona is that of a thirteen-year-old female from
12 Oconee County.

13 Q. Okay. And so when you -- back in 2006 were you
14 conducting these types of investigations?

15 A. Yes, ma'am.

16 Q. Did you have a persona in 2006?

17 A. Yes, ma'am.

18 Q. Okay. And could you tell the jury about the
19 persona you were using in 2006?

20 A. The persona I was using was a_upstategurl93 which
21 is, like I said, a thirteen-year-old female living in
22 Oconee County.

23 Q. Okay. And did you, using this persona, did you
24 create an account with Yahoo!?

25 A. Yes, I did.

1 Q. Okay. And did you create a profile page?

2 A. Yes.

3 Q. Okay. And do you recall what was on your profile
4 page?

5 A. On that profile page I believe it was the user
6 name, her, her actual name and location.

7 Q. Okay.

8 MR. HUFF: Your Honor, we would object to that
9 answer as being speculative. If the officer does not
10 remember, then he can't guess at his testimony.

11 THE COURT: Would you repeat what you just -- let
12 me ask Counsel. Was he speculative with his answer? I
13 did not catch that he did or didn't.

14 MS. WINES: I don't believe he did, Your Honor. I
15 believe he was going from his memory.

16 THE COURT: All right. I'll tell you what,
17 Mr. Stanley [sic], if you would take your jury out. And
18 I think we are at a stage where I may be excusing you
19 for the rest of the afternoon, but if you would go back
20 to your jury room, I need to hear this a little bit
21 further, please.

22 (Whereupon, the Jury left the courtroom at
23 approximately 4:30 p.m.)

24 THE COURT: My notes reflect the following: was
25 that they created -- he created a profile and a persona.

1 In the profile he had the user name and her actual name
2 and location is my understanding. And then there was an
3 objection to speculation. Is that the nature of the
4 testimony?

5 MS. WINES: Yes, Your Honor.

6 THE COURT: Okay.

7 MR. HUFF: Judge, and if I could, we certainly are
8 ready to respond to the basis for our objection. We
9 would simply ask in the future that if there is -- if
10 our objections to Mr. Patterson's testimony as to
11 memory, we would ask that he be excused so that by way
12 of our arguments we don't give him the answers that he
13 can come back and give if that were to occur.

14 THE COURT: All right. Well, let me tell you this.
15 I didn't hear anything about memory. That's the point
16 I'm trying to make. What I heard was I created a
17 profile for a_upstategurl93 thirteen-year-old female and
18 in using the persona I created a profile page that had a
19 user name or actual name and location.

20 That's my understanding of the testimony.

21 MR. HUFF: And, Judge, I believe the way he segued
22 into those three items of information was "I believe it
23 had so and so." The reason that I object to it is there
24 is no profile page that has been preserved, and that's
25 part of one of our motions that this Court is gonna hear

1 for delaying the prosecution. They didn't preserve this
2 stuff, and it prejudices Mr. Odom's in his inability to
3 effectively Cross-Examination and disprove this
4 testimony. An officer, if you're gonna do one of these
5 investigations, you ought to hold on to a profile page.

6 THE COURT: I understand.

7 MR. HUFF: But what we heard the phrase "I
8 believe."

9 THE COURT: And I'm not disagreeing with you. You
10 may very well have heard that. I overrule your
11 objection at this stage. And if that comes up again, if
12 you would bring the matter to my attention, Mr. Huff,
13 I'll ask the officer to step out of the courtroom if
14 it's appropriate at that stage so he's not tipped off as
15 to the answer in the testimony. All right.

16 What is your idea, Ms. Wines ---

17 MS. WINES: My --

18 THE COURT: -- this is sort of disjointed but I'll,
19 you know ---

20 MS. WINES: Yes, sir. My intention at this point
21 was just get a little bit more foundational background,
22 show him the chats and the disk, show a little bit of
23 the Camtasia, read out the chats ---

24 THE COURT: Camtasia. I'm not quite sure. What is
25 that again? Camtasia?

1 **MS. WINES:** He'll tell you. It's a software that
2 does a realtime capture of the video where the
3 undercover chatting occurs. So just to give the jury an
4 idea of how it works and they have an understanding of
5 how it's captured, and they can actually see the log-in,
6 the chat room, the format of the chatting. So like just
7 a very few minutes of that, Judge, and then the two
8 chats, get the two chats in. And that's about the
9 extent of his testimony.

10 **THE COURT:** Although I know you don't agree with
11 it, is there any reason why that's not a reasonable
12 approach at this stage?

13 **MR. HUFF:** I don't think it's unreasonable, Judge.
14 It's just in laymen's terms, the Camtasia is the actual
15 computer screen where the words come, that's what the
16 video shows.

17 **MS. WINES:** Right.

18 **MR. HUFF:** I was -- I will say nothing else. I've
19 had to learn a lot myself, Your Honor.

20 **THE COURT:** All right.
21 Would you bring the jury back in, please, sir?
22 Are you ready to proceed?

23 **MS. WINES:** I am, Your Honor, thank you.

24 (The Jury entered the courtroom at approximately
25 4:45 p.m.)

1 THE COURT: Ms. Wines, Mr. Huff, would y'all come
2 around, please?

3 MS. WINES: Yes, sir.

4 (Whereupon, a discussion at sidebar was held off
5 the record.)

6 MS. WINES: Beg the Court's indulgence just one
7 minute again.

8 May it please the Court?

9 THE COURT: Ms. Wines.

10 MS. WINES: Thank you.

11 By Ms. Wines:

12 Q. Okay. Officer, we were talking about your persona.
13 In 2006 with your persona, could you give us her screen
14 name again?

15 A. A_upstategurl93.

16 Q. Okay. And did you create a Yahoo! account for her?

17 A. Yes, I did.

18 Q. Okay. Prior to 2000 -- prior to May of 2006, had
19 you been conducting investigations?

20 A. Yes.

21 Q. Okay. And let me back up.
22 How old did you say Jennifer is?

23 A. Thirteen.

24 Q. Okay. And, to your recollection, was that viewable
25 on your profile page?

- 1 A. No.
- 2 Q. So how would you -- well, let me back up.
- 3 Were you working undercover May 4th, 2006?
- 4 A. Yes.
- 5 Q. Okay. And were you in Yahoo!?
- 6 A. Yes.
- 7 Q. Were you in a chat room?
- 8 A. Yes, I was.
- 9 Q. What chat room were you in?
- 10 A. A South Carolina chat room.
- 11 Q. Okay. Do you remember what South Carolina chat
- 12 room?
- 13 A. I don't remember exactly what number it was.
- 14 There's a number of South Carolina that have numbers
- 15 because there's so many users. I don't remember the
- 16 exact number it was, though.
- 17 Q. Okay. And did you have any contact with the screen
- 18 name danger6552000?
- 19 A. Yes.
- 20 Q. Okay. And by you, I'm talking about your persona,
- 21 your Jennifer persona.
- 22 A. Yes.
- 23 Q. Okay. And danger6552000, at any point did that
- 24 screen name become a suspect?
- 25 A. Yes.

1 Q. And at what point?

2 A. At the point after they had, after I had identified
3 myself as a thirteen-year-old, he identified himself as
4 a forty-year-old and he began asking questions of a
5 sexual nature.

6 Q. Okay. And in your experience do you ever have
7 people stop chatting after they learn they're thirteen
8 years old?

9 A. Yes.

10 Q. Did you ever identify danger6552000?

11 A. Yes, I did.

12 MR. HUFF: Objection, Your Honor.

13 THE COURT: Yes, sir.

14 MR. HUFF: We have a matter to take up, Your Honor.

15 THE COURT: Okay, sir. Mr. Stanley [sic], ladies
16 and gentlemen, as I told you in the beginning of this
17 case, sometimes you'll feel like cattle being herded in
18 and out. That's a necessary function we follow in trial
19 courts. The fact an attorney makes an objection and I
20 rule on it is not for your consideration at this point.
21 So, Mr. Stanley, I'll ask you to take your jury back out
22 at this point.

23 (Whereupon, the Jury left the courtroom at
24 approximately 4:40 p.m.)

25 THE COURT: State your objection, please, sir.

1 **MR. HUFF:** Judge, foundation. I think the State
2 knows very well they can't get this witness to identify
3 who was on the other side of the computer without other
4 witnesses laying a foundation. I think it's highly
5 improper to squeeze it in through this witness.

6 **THE COURT:** I sustain that objection unless you
7 convince me otherwise, Ms. Wines.

8 **MS. WINES:** Your Honor, twofold. Of course, we are
9 going to have other witnesses. And two, and I would
10 agree on some level with Mr. Huff. However, Officer
11 Patterson did identify him, identify danger6552000. And
12 I understand Your Honor's ruling about not mentioning
13 Mr. Odom's employment, we don't intend to do that.

14 However, Officer Patterson's testimony is going to
15 be in further pursuit of identifying him. He called the
16 Attorney General's Office and was told the screen name
17 was already identified as the Defendant. We wanted to
18 explain because we believe it's important for this jury
19 to understand why Officer Patterson didn't conduct
20 further steps on that himself.

21 **THE COURT:** Let me ask you this. Why would that
22 not be hearsay and why would that not run the risk of
23 making the Solicitor's -- I mean the AG's office a
24 witness in this case?

25 **MS. WINES:** I have that AG person on the witness

1 list, Your Honor. But we're not saying it is for its
2 truth. We are saying in this particular instance it's
3 the officer's state of mind and why he did not conduct
4 further steps in the investigation.

5 THE COURT: I sustain the objection.

6 MS. WINES: Yes, Your Honor.

7 THE COURT: Bring the jury back.

8 Is there anything further from you, Ms. Wines?

9 MS. WINES: On this issue, no, sir. Just continue
10 with my questioning.

11 THE COURT: Anything further Mr. Huff?

12 MR. HUFF: Judge, I don't think I need to. I've
13 heard your ruling.

14 THE COURT: Okay. Would you bring the jury back
15 in, please.

16 (The Jury entered the courtroom at approximately
17 4:42 p.m.)

18 THE COURT: Ms. Wines?

19 MS. WINES: Thank you, Your Honor.

20 By Ms. Wines:

21 Q. Okay. Officer, I believe you indicated that your
22 persona had contact with the screen name danger6552000;
23 is that correct?

24 A. Yes, ma'am.

25 Q. Okay. What, what types of communication occurred?

1 A. The communication was all sexual in nature.

2 Q. I'm sorry. I mean something more basic. Was it
3 email? Chat? How did they talk?

4 A. Through instant messaging.

5 Q. Okay. And how many times?

6 A. Twice.

7 Q. Okay. And I believe you have already stated, but
8 what was the nature of the communication?

9 A. A sexual nature.

10 Q. Okay. And in the course of those communications I
11 believe you -- well, was Jennifer's age specifically
12 mentioned?

13 MR. HUFF: Your honor ---

14 A. Yes.

15 MR. HUFF: --- this is the fourth time the AG has
16 asked that question. We would object.

17 THE COURT: Overruled.

18 Go ahead.

19 By Ms. Wines:

20 Q. Okay. Was age mentioned?

21 A. Yes, numerous times.

22 Q. Okay. Were you using -- did you have pictures of
23 Jennifer that you were using at the time?

24 A. Yes, I did.

25 Q. Okay. Do you recall showing those or sending those

1 pictures to danger6552000?

2 A. Yes.

3 Q. Do you recall when?

4 A. During the second chat.

5 Q. Okay. While you were conducting this chatting,
6 where were you physically located?

7 A. At the Westminster Police Department in my office.

8 Q. Is that in Oconee County?

9 A. Yes, it is.

10 Q. And what type of computer were you using?

11 A. I had a Dell laptop that was issued to me by the
12 Attorney General's Office Internet Crimes Against
13 Children Task Force.

14 Q. Okay. Were you on duty at the time ---

15 MR. HUFF: Objection, Your Honor. Withdrawn.
16 Withdraw the objection at this time.

17 THE COURT: Overruled. Okay, go ahead.

18 By Ms. Wines:

19 Q. Were you on duty while you were conducting the
20 chat?

21 A. Yes, ma'am, I was.

22 Q. Were you acting in your official capacity?

23 A. Yes, ma'am, I was.

24 Q. And what, what does that mean to you?

25 A. My official capacity I was on duty available to ---

1 MR. HUFF: Your Honor, objection. Evidently it
2 calls for a legal conclusion.

3 THE COURT: Overruled.

4 Go forward please.

5 By Ms. Wines:

6 Q. What does that mean to you?

7 A. I was on duty available to assist in the City of
8 Westminster as a police officer conducting
9 investigations as directed by my supervisor for the
10 Internet Crimes Against Children Task Force.

11 Q. Okay. And the communications that Jennifer had
12 with danger6552000, were those communications preserved?

13 A. Yes.

14 Q. How so?

15 A. They were preserved both in what we call
16 cut-and-paste style. It was cut and pasted into a Word
17 document for preservation. It was also preserved
18 through Camtasia recordings.

19 Q. Okay. And let's go back to the cut-and-paste.
20 When you did the cut-and-paste, does that capture the
21 entire communication?

22 A. Yes, it does.

23 Q. Okay. And tell us what Camtasia is.

24 A. Camtasia is software that we use from Tech Smith.
25 It records, captures the screen in realtime as we're

1 doing our investigation, and we're able to save that as
2 a recording. It's just as if you are looking at the
3 screen during the communications.

4 Q. Okay. And are both the Camtasia and the cut/paste
5 copies, are they both in existence at this time?

6 A. The cut-and-paste both are in existence and one
7 Camtasia is.

8 Q. Okay. Were both Camtasia ---

9 MR. HUFF: I'm sorry, Your Honor, I could not hear
10 his answer. I apologize.

11 THE COURT: Would you repeat your last answer,
12 please, sir.

13 THE WITNESS: Both of the cut-and-paste documents
14 are in existence and one Camtasia recording.

15 By Ms. Wines:

16 Q. Okay. Were there two Camtasia recordings
17 previously?

18 A. There were, yes.

19 Q. Okay. Do you know why we don't have one now?

20 A. I'm not really sure what happened to the other one
21 after I left Westminster.

22 Q. Okay. But you left -- is it your testimony you
23 left them with Westminster?

24 A. Yes, ma'am. It was their case and the cases stay
25 with the agency.

1 Q. Okay. And when did you leave Westminster?

2 A. I left Westminster in 2006.

3 Q. Okay.

4 A. August.

5 Q. All right.

6 MS. WINES: Beg the Court's indulgence. If I may
7 approach the witness, Your Honor?

8 THE COURT: Yes, ma'am.

9 By Ms. Wines:

10 Q. I'm gonna show you what's been marked State's
11 Exhibit Number 1 to you. Do you recognize that?

12 A. Yes, ma'am.

13 Q. And what is that?

14 A. That's the actual Camtasia disk.

15 Q. Okay. And have you actually reviewed this disk?

16 A. Yes, ma'am.

17 Q. Okay. And for the one Camtasia that it captures,
18 is it full, accurate, and complete?

19 A. Yes, ma'am.

20 MS. WINES: Your Honor, at this time I would admit
21 or move to admit State's 1 into evidence.

22 THE COURT: Any objection?

23 MR. HUFF: An objection, Your Honor.

24 THE COURT: Did you say an objection or no
25 objection?

1 MR. HUFF: "An objection."

2 THE COURT: Okay, sir.

3 Go back to your jury room please, Mr. Stanley [sic]
4 and your jury.

5 (Whereupon, the Jury left the courtroom at
6 approximately 4:48 p.m.)

7 THE COURT: State your objection for the record,
8 please.

9 MR. HUFF: Your Honor, it's my understanding that
10 this Camtasia does not include every bit of typing
11 conducted on that date regarding Mr. Odom's alleged
12 communication. I would just ask the State to confirm if
13 they are saying every bit of it is on that Camtasia
14 because they are asserting it's accurate and complete.

15 THE COURT: That was the testimony.

16 MS. WINES: That's my understanding, Your Honor.
17 Of course, I personally wasn't the investigator.

18 THE COURT: All right. Well, that doesn't answer
19 the question.

20 Mr. Huff, would you like to Voir Dire this witness
21 just as to that issue alone?

22 MR. HUFF: Your Honor, I would, just as to that
23 issue.

24 VOIR DIRE EXAMINATION

25 By Mr. Huff:

1 Q. Mr. Patterson, as to this State's Exhibit Number 1,
2 an exhibit called Camtasia, is it your sworn testimony
3 that every bit of any communication between yourself and
4 your alleged communication with Mr. Odom is captured on
5 that disk that you provided to the Attorney General's
6 Office?

7 A. Everything that was done on that computer on that
8 screen at that time was captured by Camtasia.

9 Q. All right. At what time are you talking about,
10 sir?

11 A. The Camtasias?

12 Q. Yes, sir.

13 A. That would have been from the first chats that we
14 had.

15 Q. All right. So, and would you define what the first
16 chat is?

17 A. That's when, the chat of May the 4th.

18 Q. So on May the 4th of 2006, that's what you're
19 talking about?

20 A. Yes, sir. The first chat that I had with Danger.

21 Q. All right. So it's your testimony under oath that
22 every bit of the communication you claim between
23 yourself and danger652000 [sic] is captured on that
24 Camtasia and nothing, sir, is missing?

25 A. Everything that is on the screen, sir, that is

1 being recorded by Camtasia is on that disk during that
2 communication with him.

3 Q. All right. I just want to make clear, sir. As to
4 this May 4, 2006, communication, every bit of it is on
5 that Camtasia?

6 A. Yes, sir. It records everything that's happening
7 on the screen at that time.

8 Q. I understand what it records.

9 A. Sir, I don't understand your question.

10 Q. My question is as clear as it can be.

11 THE COURT: Just one second. Let me interject
12 here. Does the proposed Exhibit Number 1 capture the
13 entire screen conversation that took place between you
14 and the alleged recipient of that communication on May
15 4th?

16 THE WITNESS: Yes.

17 THE COURT: Is there anything that's not included
18 on that Camtasia?

19 THE WITNESS: No, sir. And that's where I'm not
20 understanding -- I don't ---

21 THE COURT: I think he's answered your question two
22 or three times.

23 THE WITNESS: I'm not sure what he's trying to get
24 at, Your Honor.

25 MR. HUFF: Thank you, Your Honor.

1 **THE COURT:** All right. Anything further as to this
2 witness right now, Ms. Wines, as a result of Mr. Huff's
3 and my questions?

4 **MS. WINES:** No, Your Honor. I still seek to admit
5 it.

6 **THE COURT:** Okay. I'm gonna overrule the
7 objection.

8 Would you bring the jury back, please.

9 (The Jury entered the courtroom at approximately
10 4:50 p.m.)

11 **THE COURT:** Ms. Wines?

12 **MS. WINES:** Thank you, Your Honor. At this time
13 the State is moving Exhibit 1 into evidence.

14 **THE COURT:** Admitted into evidence.

15 (Whereupon, State's Exhibit Number 1, Camtasia
16 capture disk, Westminster, was received in
17 evidence.)

18 **MS. WINES:** Thank you, Your Honor. And if I could
19 have the Court's permission for the witness to come down
20 so that he can direct the mouse onto the, on the
21 computer?

22 **THE COURT:** Mr. Patterson, you may come around,
23 please, sir.

24 Just one second.

25 (Whereupon, a juror entered courtroom.)

1 THE COURT: We had a juror missing. It didn't
2 catch my attention.

3 A JUROR: I'm sorry, sir.

4 THE COURT: That's all right, sir.

5 (Whereupon, witness leaves stand.)

6 MS. WINES: Your Honor, if I may have permission to
7 have the officer publish the very beginning of this
8 Camtasia capture to the jury.

9 THE COURT: Yes, sir -- yes, ma'am.

10 MS. WINES: All right. Thank you. Let me get it
11 loaded up here. It'll take just a minute to fire up for
12 us. It is slow to initialize. If you will just bear
13 with me for one minute. All right.

14 Sorry, Judge. This is not the computer I'm used
15 to.

16 By Ms. Wines:

17 Q. Officer Patterson, as soon as that finishes loading
18 up, and I believe we're there now, if I could have you
19 get it to approximately 11:19 p.m. on the time. Oh.

20 All right, great. Is it ready? Are you sure?

21 A. Uh-huh. It's playing.

22 Q. All right. Okay. All right. If you would jump to
23 11:19 and tell us what we've got.

24 A. That's the actual where I start recording. I
25 always start recording my ---

1 THE COURT: Can the jury hear this witnesses'
2 testimony? Can they hear?

3 THE FOREMAN: Speak up a little bit.

4 THE COURT: You need to make sure they can hear
5 you.

6 THE WITNESS: This is the actual screen from my
7 computer. I, I start my Camtasia before I even log in
8 to the internet. I believe -- every investigation I do
9 I always start with this screen to let me know that this
10 is the beginning of my Camtasia recording for that
11 particular day that I'm doing my investigation.

12 MR. HUFF: Your Honor, I object.

13 THE COURT: I'll sustain that objection.

14 The jury is to disregard that exhibit as not being
15 part of this case, not relevant to this case whatsoever.

16 Move to the next screen.

17 MS. WINES: Yes, sir. We're moving to 11:19,
18 please.

19 THE WITNESS: I -- we're at 11:19.

20 MS. WINES: Your Honor, I'll get the screen off so
21 we can make sure we get to the right place.

22 Okay. We need to get to 11:19 p.m.

23 THE WITNESS: Yeah. It said 11:19. Right there.

24 By Ms. Wines:

25 Q. Here?

1 A. Yes. It just popped up.

2 Q. Okay. If you would tell the jury what we've got
3 going on.

4 A. This is the actual screen where I'm actually logged
5 into the Yahoo! chat room. The screen you see in front
6 of you where it says danger6552000 is the actual instant
7 messenger screen where my persona was contacted by this
8 danger6552000 for an instant message or a private
9 message between himself and myself.

10 The screen is showing that, just shown just now is
11 the profile screen for danger6552000, which just had his
12 screen name on it. When he first started chatting with
13 me, he asked: Hi, would you like to chat?

14 Q. Okay. So would this entire chat session be
15 captured like this?

16 A. Yes, ma'am.

17 Q. Okay. And the same format throughout?

18 A. Yes, ma'am.

19 Q. And was this the first or second communication?

20 A. This was the first communication.

21 Q. Okay.

22 MS. WINES: Beg the Court's indulgence. I believe
23 that will do. You can just shut this off and I ask you
24 to take your seat.

25 (Whereupon, witness resumed stand.)

1 By Ms. Wines:

2 Q. Okay. And let's see, I'm going to go ahead and get
3 this disk back out. Officer, I believe you said there
4 was also the copy/paste method of preserving?

5 A. Yes, ma'am.

6 Q. Okay. Were both chats preserved?

7 MR. HUFF: Your Honor, we would object at this
8 time.

9 THE COURT: All right. Mr. Stanley [sic], would
10 you and your jury go back to the jury room, please.

11 (Whereupon, the Jury left the courtroom at
12 approximately 5:00 p.m.)

13 THE COURT: State your objection, please, Mr. Huff.

14 MR. HUFF: Your Honor, it is my understanding that
15 I would have to Voir Dire this witness and possibly show
16 some of the Camtasia video for my objection, if I could
17 Voir Dire the witness?

18 THE COURT: No, sir. You need to state your
19 objection for the record, please, sir.

20 MR. HUFF: All right. Your Honor, my objection is
21 that the testimony is this is a copy-and-paste process
22 and that what is -- that it is my understanding that the
23 screen shown on this Camtasia will not show what is
24 being written or said between Mr. Patterson and whoever
25 else he's talking to and that there's no way to then

1 copy and paste that because it's not visually on the
2 screen. They are unreliable.

3 THE COURT: Educate me on that again, please, sir.
4 Go ahead. Now that you stated your objection, I have no
5 problem with you showing me the video part of it.

6 MR. HUFF: Thank you. Judge, we're gonna have to
7 put the CD rom back in.

8 THE COURT: Okay. But am I correct and my
9 understanding of your objection is that the actual
10 cut-and-paste version is not what you see on the
11 Camtasia version, which is marked as State's Exhibit
12 Number 1?

13 MR. HUFF: Yes, sir. It also violates the best
14 evidence rule. And I believe Mr. Johnston may be able
15 to help address that in a moment as well. I'm loading
16 it back up.

17 Judge, I've got nothing to show up.

18 THE COURT: It took a minute for it to come up a
19 minute ago, so...

20 MS. WINES: It did. Judge, normally on my own
21 computer it has a box come up and it's easier. We're
22 working off the Solicitor's Office computer so I'm a
23 little handicapped here.

24 (Whereupon, a discussion was held off the record.)

25 MR. HUFF: Well, Judge, I can see it here, but I'm

1 not able to get it up on the screen.

2 THE COURT: Would you mind helping him, please?

3 MS. WINES: I think we're all learning this stuff
4 today, Judge. There it goes. (Appears on screen.)

5 MR. HUFF: Judge, I believe this is gonna be toward
6 the beginning of the conversations that Mr. Patterson
7 just spoke about.

8 Judge, this is, I believe, the beginning of the
9 chat that he had just testified about.

10 THE COURT: So what are we looking at?

11 MR. HUFF: Judge, what we're looking -- I believe
12 what we're looking at is two persons connected to
13 Mr. Patterson. I believe in just a minute we'll begin
14 where the process of covering up and blocking what
15 danger6552000 is talking about with Mr. Patterson. And
16 that will go on routinely and persistently, I believe,
17 throughout the Camtasia. And that would be three
18 people.

19 There at that moment, Judge, is some of the
20 blocking out, but it will continue.

21 At this point you've got no screen capture
22 whatsoever.

23 THE COURT: You've got what, please?

24 MR. HUFF: No screen capture of the communication
25 at that moment, but it will continue.

1 **THE COURT:** What do you mean by screen capture,
2 please, sir?

3 **MR. HUFF:** Mr. Patterson's testimony was that the
4 Camtasia is going to capture in realtime all of the
5 communication between danger6552000 and Mr. Patterson.
6 And my objection, part of the objection was that that is
7 not correct. And the cut-and-paste or copy and paste,
8 you can't cut-and-paste what you can't see. And that's
9 gonna become more visible as this Camtasia rolls on and
10 on and on. But there's just no way to speed it up,
11 Judge, I apologize.

12 **THE COURT:** I'm just trying to wrap my arms around
13 it, so go ahead.

14 (Continues playing Camtasia.)

15 **MR. HUFF:** I think you can see, I'm sorry, where
16 some is already being covered up. It consistently gets
17 covered up, uncovered, covered up and uncovered, and you
18 can't cut-and-paste what you can't see. I was going to
19 try to speed it up, if I could, to show you more.

20 **THE COURT:** Are you referring to the continuing
21 conversation coming up over the prior conversation? Is
22 that what you are saying?

23 **MR. HUFF:** Yes, sir. Yes, sir, that's what I'm
24 saying.

25 Judge, this is the one that we're talking about

1 that continues to get covered up by this, some comes
2 down here and covers it up. That's what we're talking
3 about. This is the danger6552000 Mr. Patterson was
4 talking about.

5 THE COURT: So, if I understand the basis of your
6 objection, number one, you said that Exhibit Number 2,
7 proposed Exhibit Number 2 by the State, the
8 cut-and-paste version of the chat is not the same as the
9 Camtasia?

10 MR. HUFF: That's correct.

11 THE COURT: Also barred by the best evidence rule.

12 MR. HUFF: Yes, sir.

13 THE COURT: What rules of evidence would you give
14 that requires it to be the same as the Camtasia, because
15 he testified that it was the same?

16 MR. HUFF: Well, he's testifying he cut and pasted,
17 but you can't cut-and-paste what you can't see. You
18 can't cut-and-paste from it. I believe Mr. Anderson --
19 excuse me -- Mr. Johnston has some case law on that
20 issue.

21 MR. JOHNSTON: With the Court's permission?

22 THE COURT: Yes, sir.

23 MR. JOHNSTON: Your Honor, I would like to hand up
24 to you a case which I think is on point. It's not a
25 South Carolina case, but it deals with the precise

1 issues that you're dealing with in this situation. It
2 is a Federal District Court case from the District of
3 Nebraska.

4 I apologize to the Court, but I apparently only
5 have two copies of it. After I finish arguing it, I'm
6 gonna hand my copy to the Court. I'll give a copy now
7 to the Attorney General so that she will have it. I'll
8 just briefly argue from this and then I'm going to hand
9 you my copy, if I may.

10 Your Honor, in this U.S. versus Jackson case,
11 again, it's a 2007 District Court case, the Court was
12 dealing with the admission of cut-and-paste evidence as
13 opposed to what would be on a Camtasia. Cut-and-paste,
14 if the Court does any word processing, I don't know if
15 you do or not, but essentially it involves taking it
16 from one source, copy, highlight, paste into another
17 document. And that's basically what the State's
18 proposed exhibits are, are taking purportedly copying
19 from one source and placing it into a word processing
20 program.

21 The Court in the Jackson case, Your Honor, found
22 that that specific type of activity is not sufficient.
23 The court said -- the court finds the cut-and-paste
24 document is not admissible at trial. This is the
25 reasons. First, the burden is on the government to show

1 that the document is authentic, citing some other
2 federal cases.

3 Second, the government must make a foundational
4 showing that the transcript is trustworthy. In this
5 situation they are basically attempting to offer their
6 own potentially editorialized version of what's in the
7 cut-and-paste document.

8 Your Honor, in this situation I'm gonna guess
9 probably 70 percent of the conversation between Officer
10 Patterson and danger6552000 isn't recorded on the
11 Camtasia. The Camtasia would be similar if someone took
12 a video camera and put it over the shoulder of the
13 officer while he was on the computer. It would provide
14 an exact representation of what's happening on the
15 screen. But in this particular case he's doing so many
16 other things that the actual communications are blocked
17 much of the time.

18 The other thing is the Camtasia from the second
19 chat, that's been completely lost to us. It doesn't
20 exist anymore.

21 **THE COURT:** Well, that's not before us right this
22 second. I want to hear about this Exhibit Number 2,
23 proposed Exhibit Number 2, cut-and-paste, please, sir.

24 **MR. JOHNSTON:** Yes, sir, Your Honor. The other
25 argument we would have is that the Camtasia is the best

1 evidence of the communication. The editorialized
2 cutting and pasting, cut-and-paste document that they
3 are purporting to rely on in this situation is not the
4 original copy. It is something that they have created.
5 We would argue that they should be restricted to this
6 and whatever it shows or doesn't show. So if I ---

7 THE COURT: I overrule your objection on that
8 basis.

9 MR. JOHNSTON: Yes, sir. Yes, sir.

10 THE COURT: Okay. So go on to the best evidence
11 rule basis, okay, sir?

12 MR. JOHNSTON: All right, sir. Your Honor, I'd
13 like to just hand up to you a copy of the Jackson case
14 if I may? (Handing document to the Court.)

15 THE COURT: Let me ask you this.

16 MR. JOHNSTON: Yes, sir.

17 THE COURT: At the time that this case was argued
18 before the District Court, what type of showing was made
19 by the Defense or proponent of the objection that the
20 Camtasia did not accurately transfer into a
21 cut-and-paste? And the reason I ask the question is
22 this.

23 MR. JOHNSTON: Yes, sir.

24 THE COURT: The officer testified that the Camtasia
25 was a full, complete, and accurate copy of what was done

1 on screen. The cut-and-paste was a true and accurate
2 copy, if I understand the testimony, of the Camtasia.
3 Now, that's my understanding.

4 MR. JOHNSTON: Yes, sir.

5 THE COURT: So, if that's the preliminary burden of
6 the State, then don't you have -- then doesn't that
7 shift the burden over to you to show that it's not a
8 true and accurate reflection of the Camtasia because it
9 didn't equate -- in other words, when you -- that what
10 was shown on the Camtasia did not equate into what
11 actually ended up being the cut-and-paste?

12 MR. JOHNSTON: Yes, sir. And that was an issue
13 that was dealt with in the Jackson case. And in the
14 Jackson case the defense called an expert, which we are
15 not prepared to do in this particular situation, at
16 least not at this time.

17 May I have just one moment?

18 THE COURT: Yes, sir.

19 (Whereupon, the Defendant conferred with counsel
20 off the record.)

21 MR. JOHNSTON: We don't have anything additional on
22 that point, Your Honor.

23 THE COURT: I'm gonna overrule your objection at
24 this time with the right to renew your objection. Okay?
25 Are you ready to continue?

1 MS. WINES: Yes, Your Honor.

2 THE COURT: Is the Defense ready to continue,
3 Mr. Huff?

4 MR. HUFF: Yes, Your Honor.

5 THE COURT: Would you bring the jury back, please.

6 MS. WINES: Should we get this off the screen
7 first, Judge?

8 THE COURT: Yeah.

9 Just one second. Thank you.

10 MS. WINES: I don't think we'll need it anymore.
11 Well, he may need it again so...

12 THE COURT: Okay. Are we ready to proceed now?

13 MS. WINES: Yes, sir.

14 THE COURT: Okay. Would you bring the jury in,
15 please, sir?

16 (The Jury entered the courtroom at approximately
17 5:21 p.m.)

18 THE COURT: Just one second, Counsel.

19 I've been calling you "Mr. Stanley" through this
20 case and I apologize.

21 THE FOREMAN: That's okay. You didn't hurt my
22 feelings.

23 THE COURT: Would you poll your jury? I anticipate
24 going a little further with you today, not much. I know
25 it's 5:20 now. The clock is accurate. If you would

1 check with your jury and see if there is anybody who
2 can't stay a little later today if that doesn't suit?
3 If it doesn't, we'll stop and let you all go home.
4 Would you check with your jury and just kind of poll
5 everybody about what they'd like. Or is there anybody
6 on the jury who right now has to leave?

7 (There was no response.)

8 THE COURT: You okay, everyone?

9 THE FOREMAN: We're good.

10 THE COURT: Thank you very much. Go ahead.

11 MS. WINES: Thank you, Your Honor. Beg the Court's
12 indulgence one minute.

13 By Ms. Wines:

14 Q. Okay. Officer, the two communications you've
15 mentioned between your persona and danger6552000, did
16 you preserve these by a copy/paste method?

17 A. Yeah, cut-and-paste, yes, ma'am.

18 Q. Cut-and-paste. How exactly did you do that?

19 A. At the end of my chats, I take the chat box and
20 highlight everything that's inside that instant message
21 box with that other person. I copy it, paste it into a
22 Word document and save it.

23 Q. Okay. Is there anything added or deleted?

24 A. No, ma'am.

25 MS. WINES: All right. Permission to approach,

1 Your Honor?

2 THE COURT: Yes, ma'am.

3 By Ms. Wines:

4 Q. I'm showing you what's been marked as State's
5 Number 2. Do you recognize that?

6 A. Yes, ma'am.

7 Q. And what is that?

8 A. That's the cut-and-paste.

9 Q. Okay. And from which communication is that one?

10 A. It's from May the 4th, the first communication.

11 Q. Okay. Have you had a chance to review it?

12 A. Yes, ma'am.

13 Q. And is it fair, accurate, and complete?

14 A. Yes, ma'am.

15 Q. With that communication on that date?

16 A. Yes, ma'am.

17 Q. And I'm gonna show you what's been marked State's

18 3. And do you recognize that?

19 A. Yes, ma'am.

20 Q. And what is it?

21 A. That's the chats from May 6th, the second chat with
22 Danger.

23 THE COURT: Just one second.

24 For the record, I assume the same objection to May
25 6th?

1 **MR. HUFF:** Yes, sir. Yes, sir.

2 By Ms. Wines:

3 Q. How was this printed?

4 A. It was also a cut-and-paste, ma'am.

5 Q. Okay. And is it also fair and accurate?

6 A. Yes, ma'am.

7 **MS. WINES:** Your Honor, at this time the State
8 would move numbers 2 and 3 into evidence.

9 **THE COURT:** Admitted subject to objection.
10 (Whereupon, State's Exhibit 2, printout of chat
11 dated 5-4-06, having been previously marked for
12 identification, was received in evidence subject to
13 objection.)

14 (Whereupon, States Exhibit 3, printout of chat
15 dated 5-6-06, having been previously marked for
16 identification, was admitted into the record
17 subject to objection.)

18 **MS. WINES:** And, if we could have permission to
19 publish, Your Honor?

20 **THE COURT:** Yes, ma'am.

21 **MS. WINES:** Thank you. Bear with me one second,
22 Judge. I want to make sure I don't bring that computer
23 screen back up. Okay. I just wanted to make sure we
24 didn't have any boo boos.

25

1 By Ms. Wines:

2 Q. Officer, can you see that from where you are
3 sitting?

4 A. Yes, ma'am.

5 Q. Okay. Could you explain to the jury what they are
6 seeing?

7 A. It's the actual chat between a_upstategurl93 and
8 danger6552000, the cut-and-paste from the actual chat.

9 Q. Okay. And if you would, just start at the
10 beginning so we can help the jury read because the
11 screen may be a little small back there. If you could
12 just read the chat out to the jury.

13 Or if it helps you to come down, I could ask the
14 Judge for permission for you to come down?

15 A. I can see from here.

16 Q. Okay.

17 A. It starts out with danger making a first
18 communication with: Hi would you like to chat?

19 a_upstategurl93: Hi.

20 Danger6552000: -- how do you want me to address?
21 Do you want me to keep saying the names over and over
22 again?

23 Q. I think that would be proper and accurate, yes.

24 A. Can I call them danger and a_upstate or do you want
25 me to go with the whole thing?

1 as in Odom as to the ICAC policies or the memorandum of
2 understanding. We're relying on the statute of official
3 capacity. And there's no way I believe that Your Honor
4 can assume that the Legislature would put such specific
5 language in this statute and just say that just because
6 you are an officer, you are, quote, always on duty
7 protecting the State. You punch a clock, you get paid
8 for your time, and that's when you are acting in your
9 official capacity. Thank you.

10 THE COURT: All right. Ladies and gentlemen, let
11 me -- I think one last thing before we go. And let me
12 say something to the Court staff, the court reporters,
13 and the officers here. I appreciate your patience. I'm
14 trying to run this a little bit longer, take the pain
15 the first part of the week so we don't have to go into
16 the weekend or into the holiday.

17 That being said, Ms. Wines you mentioned you had a
18 motion *in limine*. Would you tell me what that is,
19 please.

20 MS. WINES: Thank you, Your Honor, I'll be brief.
21 With regard to Mark Patterson ---

22 THE COURT: Go ahead.

23 MS. WINES: Yes, sir. With regard to Mark
24 Patterson, we've had an issue relating to his, he had an
25 arrest in Burnettown and records of that arrest, and we,

1 it's my understanding both sides now have all those
2 records except for a CD.

3 THE COURT: Correct.

4 MS. WINES: And I would prefer not to get into
5 specifics unless we absolutely need to, but it's my
6 opinion that, and I would request of the Court, that
7 none of those records be addressed at all in any manner
8 whatsoever, including questioning on Cross-Examination.
9 I do not believe they are relevant, and I do not believe
10 they are proper impeachment evidence, Your Honor. And I
11 would ask the Court to exclude any reference at all to
12 the arrest of Mr. Patterson.

13 And in support of that, Your Honor, if you'll give
14 me just a minute to find my folder, I will pass up a
15 case that supports that proposition, and it is the case
16 of State v. Grace, Your Honor. And I'll give a copy to
17 defense counsel as well.

18 MR. HUFF: Thank you, ma'am.

19 MS. WINES: In short, I believe this case supports
20 my argument that a prior bad act, as we have already
21 been discussing in other matters related to this case,
22 the prior bad act needs to be relevant, first of all,
23 but we know that or it seems to me that in this case it
24 would be used as impeachment evidence, and impeachment
25 evidence in order for that to be developed or

1 questioned, it must actually relate to the character for
2 truthfulness or untruthfulness, Your Honor.

3 And that's what the rule itself states and that's
4 what this case states. And I don't believe there's
5 anything at all in these records that would go to
6 truthfulness or untruthfulness, Your Honor. And I would
7 just invite you to read this case.

8 **THE COURT:** All right. Mr. Huff, do you have
9 anything that would demonstrate that the documents would
10 go to the truthfulness or untruthfulness of this
11 officer? Let me rephrase that. Do you agree that -- we
12 brought this up at pretrial -- that your use of any
13 information gleaned from these documents at this point
14 would be to impeach the testimony of Officer Patterson?

15 **MR. HUFF:** Yes, Your Honor. That the purpose in
16 conducting a preparation of Mr. Odom's defense is to
17 look at all evidence and determine whether or not, and
18 in this case specifically, I believe it would be as to
19 an issue as to whether or not it would be proper
20 impeachment testimony growing out of this incident.

21 **THE COURT:** Okay.

22 **MR. HUFF:** And, of course, Your Honor, it could be
23 that the document itself is not something that could be
24 admitted for impeachment, but the answers to questions
25 might be something that might be impeachable. So we

1 just have to wait and see.

2 THE COURT: What was that last thing you said?

3 MR. HUFF: The document itself might not be such
4 that the Court would deem it to be the document being
5 admissible evidence.

6 THE COURT: Well, the rule specifically
7 provides ---

8 MR. HUFF: Right.

9 THE COURT: --- specific instances may not be
10 included, so that's not whether I have discretion. The
11 rule says it will not, correct?

12 MR. HUFF: Correct. And what, what Ms. Wines'
13 motion is that the Court exclude any statement that he
14 was arrested. And at this point I do not intend to ask
15 Mr. Patterson if he was arrested. I don't have that
16 intent.

17 THE COURT: Well, okay. Do you agree with me that
18 under Rule 608 of the South Carolina Rules of Evidence
19 it has to do with opinion or reputation, evidence or
20 character or specific instances of conduct of a witness
21 that that rule, especially Section (b) goes to the
22 truthfulness or untruthfulness of the witness?

23 MR. HUFF: Judge, I don't have the rule in front of
24 me, but I believe my last recollection of reading that,
25 that would be a correct statement.

1 **THE COURT:** Okay. All right. And let me do this.
2 I'm gonna let you do the in camera proffer if you want
3 to, but in the testimony I have to tell you that
4 certainly the rule would prohibit any extrinsic evidence
5 to impeach Mr. Patterson. I believe that unless you can
6 demonstrate that the charges go to the character for
7 truthfulness or untruthfulness you can't get into those
8 either. But I'll let you have a little leeway with that
9 regard and then I'll make a ruling. My preliminary
10 ruling without prejudice to the State or the Defense is
11 you cannot use it to attack his credibility at all.
12 Okay?

13 With that being said, is there anything further
14 from the State?

15 **MS. WINES:** No, Your Honor, not on that issue.

16 **THE COURT:** From the Defense?

17 **MR. HUFF:** Not on that issue.

18 **THE COURT:** Okay. Now, y'all can't keep telling me
19 not on that issue. What I'm trying to do is to narrow
20 it down as much as I can. I'm not going to make you try
21 your case in advance, but any other issues we can deal
22 with today right now from the State's perspective?

23 **MS. WINES:** Your Honor, I understood that defense
24 counsel wanted to go into motions to dismiss based on
25 First Amendment and equal protection. And I wanted to

1 object to even making argument on that, Your Honor,
2 based on Judge Macaulay's Order and Rule 4 of the
3 criminal procedure rules, Your Honor.

4 In this particular matter we have raised that Judge
5 Macaulay had already ruled on certain issues, one of
6 which was not referring to Mr. Odom's profession. They
7 agreed that we would abide by Judge Macaulay's ruling.
8 We do not think it's appropriate to reargue and take up
9 more time on the issues that have already been argued
10 and the orders have been issued. And I have a copy of
11 the Order signed by Judge Macaulay.

12 And I believe, Your Honor, with regard to equal
13 protection and First Amendment there was another written
14 order submitted by email. I don't have a signed copy of
15 that. We need to locate that. But there is an order
16 here that I know the parties received explaining -- this
17 is when the case was continued when he recused himself.
18 He just explains that, what has already been heard.

19 And it just says motion to dismiss based upon the
20 First Amendment was denied and Defendant's motion to
21 dismiss based on the 14th Amendment was denied. The
22 motion to dismiss based on estoppel by contract was
23 denied. I just -- and the 14th Amendment as I
24 understand it would be the equal protection. So I
25 object to any rehearing of those issues, Your Honor.

1 **THE COURT:** Okay. Did you brief those matters,
2 Mr. Huff, for the Court?

3 **MR. HUFF:** Judge, I believe, I believe we had filed
4 briefs on them. I'm not sure. We have amended briefs
5 with us. But I don't think Ms. Wines is saying that a
6 pretrial ruling of the Court ---

7 **THE COURT:** Let me tell you this. This gentleman
8 is on trial for his liberties. I'm gonna err on the
9 side of being cautious and grant him due process and I'm
10 gonna let him brief them. And if you would, if you have
11 those amended briefs, to the extent those were argued
12 before should help preserve the issue for you on appeal
13 if necessary. But I'll let you submit amended briefs on
14 those issues.

15 I thought, quite frankly, those issues had been
16 ruled on in prior cases, not this case but under this
17 statute it doesn't. There's not a First Amendment
18 right. I don't know about the due process argument.
19 But I thought that the State v. Dane (phonetic) ruled on
20 that, but I may be wrong.

21 **MR. HUFF:** Judge, I'm not sure. We can, and I
22 believe Mr. McDaniel is gonna argue that for Mr. Odom.
23 Bryan McDaniel is a member of the South Carolina Bar and
24 is involved in the civil matter in this case. We would
25 be more than happy to provide those briefs to you at

1 this time ---

2 THE COURT: Okay, sir.

3 MR. HUFF: --- to expedite any type of review or
4 consideration of the Court and to be very brief in any
5 oral presentation.

6 THE COURT: All right, sir. Come around, please,
7 sir.

8 Have you provided Ms. Wines and the Attorney
9 General's Office a copy of your briefs?

10 MR. McDANIEL: Yes, sir. If I may present one to
11 the Court, Your Honor. (Handing document to Court.)

12 THE COURT: Please, sir. Thank you, sir.

13 All right. Would you state your name for the
14 record.

15 MR. McDANIEL: Yes, Your Honor, Brian McDaniel.

16 THE COURT: Okay, sir. Mr. McDaniel, I've got your
17 brief that declares that Code Section 16-15-342
18 unconstitutional on equal protection grounds; is that
19 correct?

20 MR. McDANIEL: That's correct.

21 THE COURT: Other than as outlined -- and if you
22 would make your brief a part of the record in this
23 matter, the Court's record, not the trial record, but if
24 you would add to that any additional arguments you may
25 make, please, sir.

1 **MR. McDANIEL:** Yes, Your Honor, I would. Just to
2 point out briefly, Your Honor, there exists a violation
3 of equal protection when there are similarly situated
4 individuals that are treated disparately. There's a
5 disparate treatment under that law. And in this case
6 16-15-342 does that.

7 The underlying statute, as you are well aware, Your
8 Honor, is one that makes it a criminal offense to
9 criminal solicitation of a minor you knowingly contact
10 or communicate or attempt to contact or communicate with
11 a person under eighteen or believed to be under eighteen
12 for the purpose or intent of persuading, inducing,
13 enticing, or coercing the person to engage or
14 participate in sexual activity or violent crime or an
15 intent to perform a sexual activity in the presence of a
16 person. The ---

17 **THE COURT:** What are the disparate classes?

18 **MR. McDANIEL:** The disparate classes are created,
19 Your Honor, by the two subsections, (b) and (d). And
20 what those do, in Section (b) it says, if you happen to
21 be communicating with someone over the age of sixteen
22 and you are, say, twenty or over eighteen and you are
23 communicating with someone sixteen or older, even if you
24 fit within the statute by intent and you believe that
25 person is underage, you have a complete defense.

1 **THE COURT:** If there's consent.

2 **MR. McDANIEL:** If there's consent. Yes, Your
3 Honor. That there is a presumed consent if the person
4 is sixteen or over. That creates a class as to the
5 people communicating, that would be your first class,
6 that you have your age. You are say twenty years old,
7 you've communicated with someone who is over age,
8 sixteen or over, and you have a defense to this crime of
9 solicitation.

10 The second class would be created by Subsection (d)
11 in which that defense is then taken away if that person
12 happens to be a police officer acting in their official
13 capacity.

14 At that point you have two persons and as far as
15 they can tell, as far as their knowledge and their
16 intent, their application to this particular crime,
17 they're identical. Only ---

18 **THE COURT:** Hold on for a second. Is that, in
19 fact, the case under the statute wouldn't it more go to
20 the fact that the officer would, in fact, be older than
21 sixteen and, therefore, that's not a defense if he's
22 working in his official capacity as opposed to doing
23 this on his own or on the side or for their own personal
24 gratification?

25 **MR. McDANIEL:** It is. But the perspective of the

1 equal protection violation comes from the class of the
2 person created. To them there's no way they can know
3 whether this is a police -- it can either be a police
4 officer off duty or a police officer on duty or just
5 some other adult.

6 THE COURT: Take your, take your argument. Say
7 there's a police officer in Section (d) in his official
8 capacity ---

9 MR. McDANIEL: Yes, sir.

10 THE COURT: --- but he says I'm sixteen and I'm,
11 you know, consenting to this dialogue and then they get
12 into the same type of things what you saw and listened
13 to today. Wouldn't that be a defense under this code
14 section?

15 MR. McDANIEL: It would be a defense for the person
16 being accused of the crime?

17 THE COURT: Yes, sir.

18 MR. McDANIEL: That they are ---

19 THE COURT: That if the officer, although he may be
20 fifty --

21 MR. McDANIEL: Right.

22 THE COURT: -- but he says I'm sixteen and,
23 therefore, he's working in his official capacity and
24 consenting, wouldn't that fall in the same category of
25 somebody actually over age sixteen?

1 **MR. McDANIEL:** I don't believe so, Your Honor.
2 Because the statute says the person you attempt to
3 contact is eighteen or you believe that they are under
4 the age of eighteen. So the statute makes it a crime if
5 you are contacting anybody that you believe is under the
6 age of eighteen. Even -- unless it happens to turn out
7 that person is sixteen or seventeen or older and happens
8 to be not a police officer in their official capacity,
9 then no matter what you believe, you have a defense to
10 it.

11 Again, unless that person happens to be a police
12 officer acting in their official capacity. I mean, you
13 could have an unlimited number of persons making the
14 exact same communication, the exact same intent, the
15 exact same age in their belief, and if one of them
16 happens to be talking to a police officer, only that one
17 is committing a crime. If it's not considered a crime
18 to be a complete defense as to all the others, then
19 there's not a crime committed.

20 **THE COURT:** So under your evaluation of the
21 statute, if I talk to an officer posing as somebody who
22 is sixteen, and they are working in their official
23 capacity, I could be found guilty?

24 **MR. McDANIEL:** I believe that's what the statute
25 says, Your Honor.

1 **THE COURT:** Okay. Again, I was construing it
2 another way, quite frankly. What would be the standard
3 for creating the disparate classes under the
4 Constitution and due process clause?

5 **MR. McDANIEL:** I believe the burden would be on the
6 State to prove that they have a legitimate interest in
7 creating the different -- the situated person and a
8 rational basis for doing so.

9 **THE COURT:** Oh. So It's a rational basis analysis?

10 **MR. McDANIEL:** A rational basis. Your Honor, I
11 don't believe they can meet that standard. They may be
12 able to justify the underlying crime of criminal
13 solicitation, but when you take it as a whole with these
14 subparts, it becomes no real explanation of why one is
15 considered criminal and another is not, particularly
16 from the standpoint that has the equal protection has to
17 be viewed from the individual making the communication.

18 **THE COURT:** What is the age of consent in South
19 Carolina?

20 **MR. McDANIEL:** I'm not completely sure. I believe
21 it's ---

22 **THE COURT:** Isn't it sixteen?

23 **MR. McDANIEL:** Yes.

24 **THE COURT:** I mean, do you disagree with me? Or
25 does anybody in here disagree with me?

1 MR. HUFF: Judge, I can only represent there's
2 probably eight to fifteen different statutes, and it
3 runs the gamut from fourteen, sixteen, eighteen,
4 twenty-one depending on what the ---

5 THE COURT: Charges?

6 MR. HUFF: --- statute is.

7 THE COURT: Oh, all right. But for alleged sexual
8 activity?

9 MR. HUFF: Yes, sir. Like CSC with a minor I
10 believe is going to be ---

11 THE COURT: If you are sixteen years old, would
12 that constitute a CSC with a minor?

13 MR. HUFF: No, sir. I believe you've got to
14 have -- I believe sixteen and above is not, I believe.

15 THE COURT: Okay. All right. Thank you, sir.

16 MR. McDANIEL: Thank you, Your Honor.

17 THE COURT: Anything further on that? Did I cut
18 you off?

19 MR. McDANIEL: You did not, Your Honor.

20 THE COURT: Okay. Thank you, sir.

21 All right. Ms. Wines, did you want to add to that?

22 MS. WINES: Yes, Your Honor. First, if I could
23 just pass up the State's memos. First we have a
24 memorandum of law in support of the State's opposition
25 to the Defendant's motion to declare unconstitutional

1 under equal protection and then a supplemental. And
2 then I will have the same with regard to the First
3 Amendment, so I'll go ahead and pass the whole packet up
4 to you.

5 THE COURT: Okay.

6 MS. WINES: They had been filed in the Ocone
7 Clerk's Office back in June, Your Honor. I'm giving you
8 copies that are signed but they are not clocked in, but
9 that they are filed.

10 I primarily rest on these memos. But in short let
11 me say it is the State's position that there is no
12 protected class. And in light of that, I would like to
13 just expand and say that as long as the Defendant
14 believes that he is talking to a minor, we are going to
15 charge him. It doesn't have anything to do with whether
16 the officer is undercover or what. As long as the
17 Defendant believes he's talking to a minor, we believe
18 that you can charge that.

19 And, yes, of course there is a potential defense,
20 but it does not mean that you can't charge and go to
21 court and have the jury decide what the Defendant
22 believed. The language says it is no defense if it is
23 an undercover officer in official capacity. We believe
24 the Legislature's intent was just to assist officers in
25 saying if you're an officer, there's no defense, it's

1 just taken away. And we acknowledge there may be a
2 defense.

3 Otherwise, but we believe the intent was when you
4 have an actual minor and the actual sixteen-year-old is
5 saying okay. Not when you have a situation, for
6 example, of a parent finding out that there's some
7 inappropriate chatting going on with their child and
8 they didn't take over the account. That parent has
9 the ---

10 THE COURT: Well, how about what counsel said a
11 second ago, you have an officer who is fifty years old
12 who represents themselves to be sixteen or seventeen ---

13 MS. WINES: Yes, sir.

14 THE COURT: --- would that constitute a defense
15 instead of participating in it and thereby consenting to
16 it? I mean, and that's what I'm trying to ferret out in
17 my mind.

18 MS. WINES: Right. You have an officer
19 representing themselves to be as ---

20 THE COURT: Sixteen or seventeen years old and
21 participating in the same type of conversation ---

22 MS. WINES: Right.

23 THE COURT: --- we saw today with somebody who's
24 over eighteen.

25 MS. WINES: I believe because they're an officer,

1 we then do have that official capacity question as to
2 whether ---

3 THE COURT: Because I was thinking, I'm not as
4 worried about the official capacity ---

5 MS. WINES: Okay.

6 THE COURT: --- so much as the, whether or not that
7 would be a defense to the charge because the person is
8 representing themselves to be sixteen, he's actually
9 fifty ---

10 MS. WINES: Right, okay.

11 THE COURT: --- in his official capacity and
12 therefore ---

13 MS. WINES: I understand. If they're not in
14 official capacity, I believe it is a defense, Your
15 Honor. That's what we had in Spartanburg. But, of
16 course, if they are in official capacity, it's not. And
17 my point being you can't just separate out based on
18 official capacity non official capacity or officer or
19 not an officer.

20 THE COURT: Well, let me go back and ask you this.

21 MS. WINES: Okay.

22 THE COURT: Do you agree or disagree? I know that
23 there's other -- I mean, you have contributing and
24 different things to somebody who I guess is eighteen
25 years old. But in this matter does the State agree or

1 do you agree that the sexual activity between someone
2 who's sixteen years or older would not lead to a
3 criminal sexual conduct case with a minor? I mean, in
4 other words, can a minor, can a person who's sixteen
5 years old consent?

6 MS. WINES: I would want to look at the CSC statute
7 in particular again, but I want to say, yes, if you're
8 sixteen you can consent to sexual acts.

9 THE COURT: And that's what I think, but I'm not
10 positive that's the case. I think that is the case.

11 MS. WINES: Yes, sir.

12 THE COURT: And the reason being, it would seem to
13 me that if they can consent to actual sexual activity
14 they should be able to consent to talking about it as
15 well.

16 MS. WINES: Yes, Your Honor. That's my impression
17 as well.

18 THE COURT: Okay.

19 MS. WINES: I believe that the Legislature was just
20 trying to assist and in so doing -- you know, assist in
21 undercover operations, and in so doing made the statute
22 somewhat convoluted. But that would be my argument with
23 respect to separate classes. Irrespective of that, we
24 believe we meet the burden, the rational basis standard,
25 and all of that is detailed in the memos, Your Honor.

1 **THE COURT:** All right. Thank you, Counsel. Thank
2 you everyone.

3 Yes, sir.

4 **MR. McDANIEL:** May I reply?

5 **THE COURT:** Yes, sir, you may. Thank you. Again,
6 Can you identify yourself for the record just so we can
7 keep it straight?

8 **MR. McDANIEL:** It's Brian McDaniel, Your Honor.

9 I just wanted to just reply to just a couple things
10 that were said there. If the statute -- the
11 Legislature's intent was to assist the officer, that
12 could have been done without inserting the consent, the
13 B statute. But it wasn't. They did that.

14 Now, as Counsel pointed out, it's convoluted, and
15 that creates, whether the Legislature intended to do it
16 or not, an equal protection violation. And we admit
17 it's poorly constructed. That's one of the arguments in
18 our brief, is that there's no other state that has this
19 and the only state that did had to change it because of
20 these same arguments in Louisiana. So I rest on that.
21 Thank you.

22 **THE COURT:** All right. Well, let me say this: As
23 we all know, statutory enactments are presumed to be
24 Constitutional. And my first blush looking at it, I'm
25 not ruling that there is disparate classes, that there's

1 a rational basis for Section (b) and (d), and that is
2 that sixteen year olds consent and, therefore, an
3 officer engaged in his actual duties, if he said he was
4 sixteen years old, that would provide a defense to the
5 Defendant. If he says he's thirteen, then he goes into
6 what the Defendant believes. That's my initial
7 impression. I'm not ruling that. I'll read these
8 briefs and I'll give you my ruling in the morning.

9 That being said, we are in recess until 9:00 in the
10 morning. Thank you everybody for participating. I know
11 it was a long day. Hopefully tomorrow we won't keep you
12 so long. We're dismissed.

13 MS. WINES: 9:00, Your Honor?

14 THE COURT: Yes, ma'am.

15 (Whereupon, a discussion was held off the record.)

16 (Whereupon, court adjourned at 7:15 p.m.)

17 (Court's Exhibit # 3, Lyle evidence charge, was
18 marked for identification and received in Court's
19 evidence.)

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24

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1 November 8, 2011

2 9:02 a.m.

3 THE COURT: Before we get started let me go over
4 what I have marked down as the motions that were before
5 me. First is, I have essentially five defense motions.
6 One was a motion to dismiss based on First Amendment
7 grounds. Second, is a motion to dismiss on equal
8 protection grounds. Third, is a motion to dismiss for
9 failure to timely indict. Fourth, is a motion to
10 dismiss for prosecutorial vindictiveness. And the fifth
11 motion, which I characterize, Mr. Huff, is a motion to
12 dismiss based on Brady and Rule 5 violations and based
13 on the failure of the State to produce the May 6, 2006,
14 Camtasia chat. Also failure to produce the profile page
15 from Officer Patterson's online persona and the time
16 sheets for Officer Patterson; is that correct?

17 MR. HUFF: Your Honor, I believe that's correct.

18 THE COURT: Is there any other motions and matters
19 before me that you're aware of?

20 MR. HUFF: Judge, none other before you right now.
21 And I believe as to the vindictive prosecution,
22 Mr. McDaniel, I believe, has supplemental matters to
23 place on the record at some point before you have all of
24 the argument of Mr. Odom. But I believe those are the
25 only matters that are currently pending before the

1 Court.

2 THE COURT: All right. And then there's a motion
3 *in limine* from the State for me in reference to any
4 alleged prior bad acts on behalf of Officer Patterson;
5 is that correct?

6 MS. WINES: Yes, Your Honor, that's correct.

7 THE COURT: Any other motions from the State?

8 MS. WINES: No, Your Honor.

9 THE COURT: Okay. I want to take up first, let me
10 do this in reverse order based on probably the more
11 immediate need, and that is the motion *in limine*.
12 Mr. Huff, my inclination would be to grant that motion
13 subject to listening to the video or the audiotape that
14 hopefully comes in today.

15 And my basis for that is: One, unless you show me
16 something otherwise, those documents and the information
17 doesn't go to the trait of Officer Patterson being
18 truthful or untruthful, which I believe under Rule 608
19 is what you need to establish in the prior bad acts.
20 Therefore, I don't think it would be relevant to any
21 inquiry of this matter. But I'd be glad to hear from
22 you in that regard.

23 MR. HUFF: Judge, at this time you would like to
24 hear argument?

25 THE COURT: Well, I mean, I think, I assume, that

1 we're gonna continue with Officer Patterson at this
2 stage, and it might be a good time to go ahead and cross
3 that bridge instead of delaying later. But if you want
4 to think about it and before you do Cross-Examination,
5 that's fine with me, too.

6 MR. HUFF: Thank you, Your Honor, I appreciate
7 that.

8 THE COURT: Okay. I'm going to find also, I think
9 I ruled this last night, that there's no Brady violation
10 on the failure to produce the May 6th Camtasia and that
11 was not exculpatory.

12 What would be your position, Mr. Huff, as far as
13 Rule 5 goes? Don't you have to establish prejudice on
14 the part of the failure to produce that at this stage?

15 MR. HUFF: Your Honor, I believe the prejudice is
16 that by not complying with the rule and turning these
17 matters over, it removes a defense that Mr. Odom is
18 entitled to under the statute. And our position
19 would -- it's not more than a defense. If there's
20 consent to the conversation, then there is no violation
21 of the statute. So that's the prejudice to it. It's
22 very clear.

23 THE COURT: Expound on that a little bit further,
24 please. I'm not quite putting my arms around it.

25 MR. HUFF: Your Honor, the State has not turned --

1 contradict, expand upon, specify actual hours worked.
2 It's an empty well. And so we don't believe that any
3 delay would be productive in any manner.

4 THE COURT: Okay, sir. And just so I'm clear,
5 based on my notes the only documents that are not
6 available and have not been produced is the Camtasia
7 that are dated May 6, 2006, reflecting a chat between
8 Officer Patterson and the alleged Defendant or the
9 alleged chat. Also, the persona profile page. Is that
10 correct, Mr. Huff?

11 MR. HUFF: That's correct, Your Honor.

12 THE COURT: Okay.

13 MR. HUFF: Plus the time sheets. If there's
14 anything else that the State has not turned over in
15 response to our discovery request, I hope not to be
16 surprised by anything else.

17 THE COURT: Well, I certainly do too. Now, the
18 time sheets, as we stated, have been -- and what I'm
19 trying to do is give you an opportunity, and I will
20 continue to give you that opportunity if you think of
21 something that may assist you in going over those time
22 sheets. I'm not gonna dismiss the case based on the
23 failure to produce those, however.

24 That leaves us going back on the motion to dismiss
25 on the First Amendment grounds. I go with Judge

1 Macaulay's rule on that. I think that -- at the
2 pretrial. I think I can and should rule on that again.
3 I'm gonna deny that motion. I don't believe you have a
4 Constitutional right to engage in sexual adult oriented
5 language or chat with minors. I deny it on equal
6 protection grounds.

7 Based on my review of the statutory scheme, there's
8 a rational basis between the treatment of
9 sixteen-year-olds versus other age based on the
10 statutory scheme allowed me to refer to. And I looked
11 up this morning the elements of CSC with a minor is for
12 somebody under sixteen, so it seems to tie in together
13 with that statutory scheme.

14 The motion to dismiss for untimely indictment is
15 denied. And the basis for that is what was argued by
16 Ms. Wines, and that is there was an appeal based on a
17 ruling that came out of Spartanburg that delayed things.
18 It delayed prosecution not only on this case, but other
19 cases. In addition, there was change of counsel and so
20 that delay is understandable.

21 The motion to dismiss for prosecutorial
22 vindictiveness I am not ruling at this stage. I will
23 hear from counsel on that before I make my ruling. I
24 know that I made an oral ruling through my law clerk
25 when I was out in school that I was denying the motion

1 because of the failure on the part of the defense to
2 meet their burden of proof to establish actual malice or
3 implied malice, if I'm not mistaken, as to the
4 standards. But that being said, I'm gonna revisit that
5 issue to make a ruling on that.

6 So with that being done, is there anything else I
7 need to rule on at this stage for the State, or I should
8 say from the State or from the Defense?

9 MS. WINES: Not from the State, Your Honor.
10 However, I would remind the Court there's been mention
11 of a log-rolling issue and I don't know if the Court ---

12 THE COURT: There's what now?

13 MS. WINES: There is mention of a motion from the
14 defense concerning a log-rolling issue. I believe
15 that's what we're calling it. I don't know if you want
16 to entertain that now, but I just recall that is an
17 issue that's been put out there.

18 MR. HUFF: Your Honor, that's correct. That is one
19 of the motions that we intend to make, you know, I was
20 going to take up with the Court this morning. Whenever
21 the Court would like to entertain that motion. A
22 thought was that at the lunch break if the jury were
23 given a little bit more time and that we were able to
24 begin right as the jury leaves or right before they come
25 back, that it might be more fluid to do it that way and

1 Q. And based on your training and experience as of
2 2006 are minors in chat rooms?

3 A. Yes.

4 MS. WINES: Nothing further from this witness on
5 direct, Your Honor.

6 THE COURT: All right. Cross-Examination?

7 MR. HUFF: Judge, could we have about a
8 three-minute recess? I've got to get something set up.

9 THE COURT: Yes, sir.

10 MR. HUFF: Thank you, Your Honor.

11 THE COURT: Mr. Gibson, take the jury back. Ladies
12 and gentlemen, we'll take our early morning break. Be
13 back in about ten minutes.

14 (Whereupon, the Jury left the courtroom at
15 approximately 10:12 a.m.)

16 THE COURT: All right, Mr. Patterson, don't speak
17 to anybody about your testimony during the break. We'll
18 be in recess for ten minutes.

19 MS. WINES: Thank you.

20 (A recess was taken.)

21 THE COURT: Please be seated. Mr. Huff, are you
22 ready to proceed?

23 MR. HUFF: Your Honor, we are. We've got, I
24 believe my understanding is we've had a CD that has just
25 arrived and my co-counsel told me that you were gonna

1 review it in chambers and then ---

2 THE COURT: Yeah. Well, I tell you, let's do this.
3 Bring counsel back. I'm gonna let you listen to it.

4 MR. HUFF: Yes, sir.

5 THE COURT: Okay.

6 (Whereupon, the Court and counsel held a discussion
7 in chambers from approximately 10:38 a.m. to
8 approximately 10:57 a.m.)

9 THE COURT: All right. For the record, we had a in
10 camera conference back in my chambers to review a CD
11 that was sent to us -- that I ordered to be sent to us
12 by Officer Patterson's attorney. And with regard to
13 that CD or our meeting in chambers, does the State
14 desire to place anything on the record?

15 MS. WINES: Yes, Your Honor. Just in furtherance
16 of what was placed on the record last night, I would
17 renew that we do not believe there is anything proper
18 that could be used for impeachment purposes in the form
19 of extrinsic evidence certainly or by question, Your
20 Honor. We do not believe that there should be any
21 mention of this incident whatsoever. Not merely
22 dismissing the arrest, but anything stemming from the
23 incident at all.

24 THE COURT: All right. Mr. Huff, does the Defense
25 wish to place anything on the record in regard to what

1 we listened to or our conference in my chambers?

2 MR. HUFF: Your Honor, I don't think I've got to
3 place anything on the record. I think Your Honor has
4 made a ruling. We would simply state that this is
5 Cross-Examination. Many things are fair game, but I
6 understand your prior ruling and I believe I will be
7 able to comply with that.

8 THE COURT: Okay. And just to make sure the record
9 is clear, my ruling previously was that these documents
10 related to the incident of Officer Patterson are not
11 relevant and that they don't go to the issue of
12 truthfulness or non-truthfulness; therefore, they
13 can't -- under 608, they can't come in because they are
14 extrinsic evidence and the information contained in
15 those documents doesn't necessarily go to the issue of
16 truthfulness or non-truthfulness.

17 And to update my ruling on the CD, there's nothing
18 whatsoever on the CD that goes to any issue of
19 truthfulness or not on the part of Officer Patterson;
20 therefore, I rule it's not admissible. And I agree with
21 Mr. Huff, Cross-Examination is wide open. But that
22 being what it is, we'll cross that bridge when we get
23 there.

24 Now, finally, do I need, Mr. Huff, I think probably
25 from your perspective first, to make a Court exhibit out

1 MS. WINES: Thank you, Your Honor. The State calls
2 Detective Lindsey McGraw.

3 THE CLERK: Please place your left hand on the Bible
4 and raise your right hand. (Complies.)

5 Do you solemnly swear or affirm the testimony you
6 give the Court will be the truth, the whole truth, and
7 nothing but the truth?

8 THE WITNESS: I do.

9 THE CLERK: Thank you. Please be seated.

10 MS. WINES: May it please the Court?

11 THE COURT: Yes, ma'am.

12 DETECTIVE LINDSEY McGRAW,
13 having been sworn in, testified as follows:

14 DIRECT EXAMINATION

15 By Ms. Wines:

16 Q. Good afternoon, almost evening, Detective. If you
17 would, please tell the jury your name.

18 A. Lindsey McGraw.

19 Q. And with whom are you currently employed?

20 A. Spartanburg County Sheriff's Office.

21 Q. How long have you been with Spartanburg?

22 A. I've been employed there since August of 2005.

23 Q. Okay. And back in 2006 what would your title have
24 been?

25 A. Computer Forensics Investigator and member of the

1 Internet Crimes Against Children Task Force.

2 Q. Okay. And in 2006 did you have a reason to create
3 an undercover persona?

4 A. I did.

5 Q. And were you using that persona in the spring of
6 2006?

7 A. Yes, ma'am.

8 Q. Okay. And during the spring of 2006 did you have
9 any communications or contact with a screen name
10 danger6552000?

11 A. I did.

12 Q. Okay. And what was the nature of those
13 communications with them?

14 A. You mean the format?

15 Q. However you would like to answer that.

16 A. They were instant message, chat room, chat
17 messages --

18 Q. Okay.

19 A. -- using the Yahoo! instant messaging program.

20 Q. All right. And in terms of the content or the --
21 well, the content, what would you describe the content
22 as?

23 A. I would describe the content of the communication
24 from the individual using the screen name danger6552000
25 as very sexually graphic.

1 Q. Okay. And the persona you were using, was it a boy
2 or a girl?

3 A. It was a girl. It was a thirteen-year-old girl.
4 Her name was Melanie Stafford, she lived in Boiling
5 Springs, which is near Spartanburg, South Carolina.

6 Q. Okay. And throughout the course of the
7 communications that your persona had with danger6552000
8 was there mention of Melanie's age?

9 A. Yes, ma'am.

10 Q. Could you give the jury an idea of how that was
11 done?

12 MR. HUFF: Your Honor, I -- no objection.

13 By Ms. Wines:

14 Q. Just in a summary format, could you tell us how age
15 was mentioned?

16 A. Typically we -- well, I would get the age as
17 thirteen. That was the age of the girl. I also used
18 references to her being in the seventh grade, references
19 to her living with her mother, that type of thing.

20 Q. Okay. And did danger6552000 ever indicate his or
21 her age?

22 A. Yes. Danger6552000 indicated he was a
23 forty-year-old male.

24 Q. Okay. And did he provide a name in the chat?

25 A. As far as -- his screen name changed from

1 danger6552000 to RogeWilson.

2 Q. Okay. And in terms of anything that would have
3 been typed in the communication, would there have been a
4 different name?

5 A. Carson.

6 Q. Okay. And the --

7 MS. WINES: Beg the Court's indulgence just one
8 moment.

9 By Ms. Wines:

10 Q. And the communications that your persona had with
11 danger6552000, were they preserved?

12 A. Yes, ma'am.

13 Q. How so?

14 A. There are three ways that we preserve the
15 communications in a chat. The first way is by
16 configuring the instant message chat program, the Yahoo!
17 Instant messenger program, to preserve the chats in
18 what's called a dat file, which is a compressed file
19 which is done automatically by the program. That is
20 stored on the computer.

21 The second method is the Camtasia recordings, which
22 is essentially a video recording of the activity on the
23 screen, monitor screen. And then the third method is
24 the cut-and-paste version when the content is cut from
25 the screen on to a word processing program and that is

1 saved as well.

2 Q. Okay. And if I may -- well, first let me show
3 defense counsel, Your Honor.

4 (Whereupon, counsel confer off the record.)

5 MS. WINES: If I may approach the witness, Your
6 Honor?

7 THE COURT: Yes, ma'am.

8 By Ms. Wines:

9 Q. Detective, I'm showing you what's been marked
10 State's 6. And take a minute to look at it and tell us
11 if you recognize what that is.

12 A. Is it all right if I take it apart?

13 Q. Sure. Just be sure we put it back together.

14 A. Yes, ma'am. Yes, ma'am, I do recognize it.

15 Q. And what is that you have in your hands?

16 A. These are printouts of basically the copy-and-paste
17 portion of the chats, the communication between myself
18 and the user, Yahoo! user using the screen name
19 danger6552000.

20 Q. Okay. And what is the date range that we have?

21 A. The first one here is from March 21st, 2006. The
22 last one is May 11th, 2006.

23 Q. Okay. And when would the -- let me back up.

24 These communications are -- let me rephrase that.

25 The exhibits you have in your hand, is that a fair,

1 accurate, and complete copy of what you said was
2 preserved?

3 A. Yes, ma'am.

4 Q. Okay.

5 MS. WINES: Your Honor, at this time the State
6 offers Number 6 into evidence.

7 THE COURT: All right. It's admitted.

8 (State's Exhibit Number 6 was received in
9 evidence.)

10 Let me say this to the jury, please, before we go
11 any further. Ladies and gentlemen of the jury, you
12 are about to hear testimony concerning other
13 alleged chats which is on the State's Exhibit
14 Number 6, which was conducted allegedly by the
15 Defendant in this matter. Under our law, the law
16 of this state, evidence of other crimes or wrongs
17 or other crimes or wrongs or acts is never, and I
18 emphasize never, admissible to prove that the
19 Defendant acted in accordance with those acts in
20 the present case.

21 In other words, evidence of prior propensity cannot
22 be used to establish the Defendant acted in the same way
23 on this occasion. Further, you cannot and you shall not
24 consider this evidence of prior chats to prove the
25 Defendant is guilty of prior charges. However, this

1 evidence is admissible and shall only be considered by
2 you as evidence of the Defendant's intent, his identity,
3 or whether the Defendant had a common scheme or plan.
4 If you find it is relevant to those issues and those
5 issues alone, you shall not consider this evidence for
6 any other purposes.

7 Thank you, ma'am.

8 MS. WINES: Thank you, Your Honor.

9 With that, Your Honor, I would ask for permission
10 to publish to the jury.

11 THE COURT: Yes, ma'am.

12 MS. WINES: However, if counsel and I could
13 approach the bench for just a moment.

14 THE COURT: Yes, ma'am.

15 (Whereupon, a discussion was had at sidebar off the
16 record.)

17 MS. WINES: Thank you, Your Honor. And with
18 permission of the Court, I'll publish to the jury at
19 this time.

20 THE COURT: Yes, ma'am.

21 MS. WINES: Okay. And I also request permission
22 from the Court to hopefully present a more fluid
23 presentation here, Your Honor. I ask that I read the
24 portions of the chats that are typed from RogeWilson or
25 danger6552000 and that Detective McGraw be allowed to

1 to being re-called depending on what else.

2 THE COURT: All right. I'm gonna let you go, but
3 you are still under subpoena subject to being re-called.
4 Thank you.

5 THE WITNESS: Yes, sir.

6 THE COURT: All right. Thank you.

7 (Whereupon, the Witness was excused, subject to
8 re-call.)

9 THE COURT: All right. Mr. Gibson, ladies and
10 gentlemen of the jury, thank you for your willingness to
11 be able to work a little bit later. We're making good
12 progress on this, but I know sometimes you wonder, but
13 we are. I'm going to go ahead and call the testimony
14 part of this trial and excuse you for the night. I will
15 remind each and every one of you you are not to hear,
16 read or see anything about this case nor speak about
17 this case with anyone else. You are excused.

18 THE FOREMAN: What time tomorrow?

19 THE COURT: Thank you. 9:00.

20 (Whereupon, the Jury was excused for the day at
21 approximately 6:42 p.m.)

22 Motion to Dismiss Based on Vindictive Prosecution:

23 THE COURT: All right. Counsel, I know you have
24 been waiting patiently all day. If you would identify
25 yourself for the record. This is additional argument on

1 the motion to dismiss for vindictive prosecution; is
2 that correct?

3 MR. McDANIEL: Yes, Your Honor, and I'm Brian
4 McDaniel.

5 THE COURT: Thank you, sir.

6 MR. McDANIEL: I'm going to pass up the briefs. If
7 I may, Your Honor? I appreciate the opportunity to make
8 this argument. I understand it was made pretrial. The
9 information was submitted previously in front of Judge
10 Macaulay in which we proffered Mr. Huff, and I
11 understand that Your Honor has that information.

12 THE COURT: Yeah. And I'm going to request, I do
13 not want to retrace new ground.

14 MR. McDANIEL: That's fine. I don't want to go
15 back through all of that. I just wanted to put on the
16 record our belief as to the, I believe, most fundamental
17 grounds for this motion.

18 Your Honor, the indictment in this case under the
19 United States v. Johnson case must be dismissed if there
20 is actual vindictiveness or the presumption of
21 vindictiveness has not been rebutted.

22 In this case, in any of these cases, by punishing
23 the Defendant for doing what the law plainly entitles
24 him to do, the Court has found that to be indicative of
25 creating that presumption of vindictiveness.

1 **THE COURT:** Isn't the argument, Mr. McDaniel, that
2 because the Defendant required the State to go through
3 evidentiary foundation hoops, that they decided the week
4 before the trial in Spartanburg to indict him on two
5 counts in Spartanburg; the fact they had a lot more
6 counts in Spartanburg is indicative of their
7 vindictiveness. Is that your argument?

8 **MR. MCDANIEL:** That is the essential. What's
9 unique about this case is that we can demonstrate the
10 actual decision, when it was made. A lot of cases you
11 can't tell. In this case there was a phone conversation
12 Mr. Huff testified to in which the prosecution said
13 essentially, and they've admitted, if you're gonna ask
14 for this, if you're going to require this, then we're
15 gonna indict in Oconee County.

16 **THE COURT:** At the prior argument I had with
17 counsel, she denied that.

18 **MR. MCDANIEL:** Well, I'll refer you to the record,
19 meaning to the arguments made in the prior hearing. And
20 that is the denial is simply, no, we changed our
21 strategy during that conversation, and trying to
22 characterize the decision as they're changing strategy,
23 but clearly the decision was made at that time under
24 those circumstances. And I would ask you to review that
25 and review Mr. Huff's testimony on that.

1 **THE COURT:** I will.

2 **MR. MCDANIEL:** Again, if that is the case that
3 there was evidence that the action occurred, we believe
4 that that would create the presumption of an improper
5 vindictive motive in which they would then have to rebut
6 that there is some evidence to show that there wasn't an
7 improper and vindictive motive.

8 **THE COURT:** So let me make sure I understand.
9 Again, that you have actual or implied. If you have the
10 implied based on the circumstantial evidence surrounding
11 the charges, then you present that, then they have to
12 come back with a rebuttal based on the circumstantial
13 evidence or the implied vindictiveness?

14 **MR. MCDANIEL:** That's right.

15 **THE COURT:** Is there a requirement to rebut on
16 actual vindictiveness?

17 **MR. MCDANIEL:** If there's an actual vindictiveness
18 done, I don't think then the case should be dismissed.
19 I think it's only when the presumption exists, then it's
20 incumbent upon the prosecution then to rebut that
21 presumption.

22 **THE COURT:** Okay.

23 **MR. MCDANIEL:** We believe we've met that
24 presumption. I would ask the Court maybe after argument
25 to rule whether we met that presumption or whether we

1 failed to meet that burden. The decision is not the
2 only aspect, though, that we believe showed
3 vindictiveness.

4 As an idea, and I won't go into all the details of
5 what you already heard, but we did enter evidence from
6 back in December of 2006, a letter from the prosecutor
7 at that time saying they weren't gonna do any further
8 studies on Mr. Odom's computer, and as well as the fact
9 that they didn't intend to prosecute in Oconee County.

10 We entered into evidence and referenced to it the
11 notes from Mr. Huff in which he indicated that, the
12 phone call and his shock at this phone call in which he
13 had with the prosecution. And, in fact, his quote was,
14 "You know that's wrong," when he was talking to her, and
15 that's what he testified to.

16 In addition, we have two other things I think that
17 go towards this vindictiveness. We put into evidence
18 newspaper articles in which the Attorney General is
19 going around to newspapers saying he is guilty. That on
20 these chats, this former prosecutor is guilty and he's
21 publishing that in the paper telling that to the
22 interviewer. We argued and introduced how that was
23 violative of the Rules of Evidence and the rules of
24 professionalism, which we again believe tend to show
25 animus towards this particular Defendant.

1 In addition, there's the -- I just referenced the
2 letters from earlier in this year. They were put in
3 March 25th, 2011, February 24th, 2011, that were when
4 the State indicated and represented this case to Judge
5 Macaulay was a state wide grand jury case and
6 misrepresented that there was an Oconee term of court
7 April 11th here, and essentially used that as leverage
8 to push for motions to be heard at that time when the
9 Court has acknowledged the evidence is clear there
10 wasn't a term of court. And this is not a state
11 wide ---

12 **THE COURT:** Isn't that information equally
13 accessible to all who go on the South Carolina Judicial
14 Website and everybody can look at it and see what the
15 terms of court are? I do it all the time.

16 **MR. MCDANIEL:** And that's how it was discovered.
17 Eventually it was revealed. But that wasn't known. It
18 was misrepresented, is the point, that this was not a
19 state wide grand jury case and this was used to put
20 pressure on Mr. Odom and on his defense in a particular
21 case.

22 The other aspect of the decision that was made to
23 prosecute was also based upon the Patterson evidence
24 that you heard this great dispute about, the criminal
25 record, the arrest, those issues that that has been

1 since it's occurred has been something that Mr. Odom's
2 counsel has been fighting to obtain. And that was one
3 of the other big issues that Mr. Huff testified
4 regarding that was contentious between the two. And
5 Ms. Wines acknowledges that was the contentious part of
6 that phone conversation of February 2010 when ---

7 **THE COURT:** The existence or discoverability of
8 Mr. Patterson's records and the audio?

9 **MR. McDANIEL:** Yeah. Whether or not they were
10 gonna turn it over and whether or not Mr. -- the
11 conversation was Mr. Huff said he had a right to get it.
12 They said, Well, if you're gonna ask for it, then we're
13 just gonna indict in Ocone. That's clearly punishing
14 Mr. Odom for doing something he had a right to obtain.
15 Not to mention instructing people not to comply with
16 subpoenas for that information, which was also testified
17 to. They attempted to get that information through
18 subpoenas and were instructed by the Attorney General's
19 Office, those people getting those subpoenas not to
20 respond to them.

21 We believe that there has been a pattern. And,
22 again, I reference you to that transcript of this
23 animus, of this vindictiveness, at least as to the
24 Ocone prosecution, Your Honor. And I believe that, as
25 I said, the indictment must be dismissed if there's a

1 finding of actual vindictiveness or the presumption of
2 vindictiveness has not been rebutted. There's been no
3 evidence presented to rebut that vindictiveness, and we
4 would ask for you to dismiss on that grounds.

5 THE COURT: Thank you. I have ruled on this
6 matter. I'm going to delay ruling again. I know that
7 that was preliminary and I probably need to do it again.
8 I'm gonna consider this motion. Quite frankly, I think
9 the question is a lot closer on prosecutorial
10 vindictiveness.

11 But go ahead, Ms. Wines, and respond.

12 MS. WINES: Yes, Your Honor. I believe I do need
13 to respond. Previously I relied on memos and whatnot,
14 but I do feel at this point I do need to respond.

15 THE COURT: Sure. And I feel that you should.

16 MS. WINES: Okay. I'm gonna try to take it in the
17 order we've got it. But, first of all, there was
18 reference to -- I think there's some confusion about
19 what I was upset about with the Defendant requiring
20 procedures and requiring things be turned over.

21 And let's be clear. In this conversation and
22 throughout the course my frustration, which I did make
23 clear, was very specific to Mark Patterson's records and
24 that we were going to have to have on a Monday morning
25 that we were supposed to start the Spartanburg trial.

1 Judge Hayes told us over the phone, I believe it
2 was over the phone, that we were going to have to have a
3 hearing with Andy Anderson, Mark Patterson's attorney,
4 to have an attorney/client privilege hearing because at
5 that time it was represented by Mr. Huff that Andy
6 Anderson was the only person who had the documents that
7 he needed. The State never had them, so I could not
8 turn them over and I still stand by the fact that I
9 should not have had them.

10 That being said, we were going to have to have a
11 hearing on attorney/client privilege related to Mark
12 Patterson that was potential bad act evidence that
13 hadn't even been ruled whether it was gonna come in or
14 not. And so I decided that that was too collateral and
15 that we didn't need to be wasting everyone's time with
16 attorney/client privilege hearings and that it was
17 prudent for the State to just deal with that Mark
18 Patterson issue in Oconee County and just treat them as
19 a separate indictment or seek the indictment and treat
20 them separately for that.

21 **THE COURT:** I'm not following that train of
22 thought. Explain that again for me, please. In other
23 words, instead of having an attorney/client hearing ---

24 **MS. WINES:** Uh-huh.

25 **THE COURT:** --- in Spartanburg ---

1 MS. WINES: Yes, sir.

2 THE COURT: --- we're gonna deal with them in
3 Ocone. And I'm not quite sure how we make that leap of
4 faith, please.

5 MS. WINES: Okay. My point was the issue was
6 dealing with Mark Patterson's records.

7 THE COURT: Right.

8 MS. WINES: And because we were to the point of
9 nobody had copies, much like the situation we've had
10 here in Ocone County. We were to the point of seeking
11 them from Andy Anderson. And so that was going to take
12 place at the beginning of the Spartanburg trial. Where
13 we should have been doing pretrial and selecting a jury
14 and that sort of thing in Spartanburg, we were going to
15 be having an attorney/client privilege hearing on Mark
16 Patterson's records.

17 And I felt like that was just becoming too
18 cumbersome. It wasn't prudent to proceed with trying to
19 admit bad act evidence if we were going to have to have
20 hearings about attorney/client privilege. It just
21 didn't ---

22 THE COURT: Well, let me ask you this: Am I
23 correct in understanding that what you are saying then
24 is we chose to indict him in Ocone on these two charges
25 because I did not want to have an attorney/client

1 hearing in Spartanburg prior to trial?

2 MS. WINES: It's not just because of that issue,
3 Your Honor. It had always been considered and we never
4 said -- well, I don't know what my predecessor said. My
5 understanding was that it was always stated at that time
6 we did not intend to seek prosecution in Oconee County.
7 And so in consultation with co-counsel and other folks
8 in my office we decided, because we were having all
9 sorts of collateral fallout, it just wasn't prudent to
10 seek -- we were -- the bottom line is, Judge, is we were
11 trying not to pile on charges in the first place.

12 THE COURT: Well, I understand ---

13 MS. WINES: And no good deed ---

14 THE COURT: Hold on. I have a question ---

15 MS. WINES: --- goes unpunished apparently.

16 THE COURT: --- because I'm curious.

17 I mean, we have Lyle hearings, we have *Jackson v.*
18 *Denno* hearings all the time. That's what we normally do
19 first day of trial if we can't get them done pretrial.

20 MS. WINES: Absolutely.

21 THE COURT: So I don't necessarily know that
22 avoiding a similar type of trial on bad act evidence or
23 Lyle type of evidence for Mr. Jackson would warrant a
24 re-indictment ---

25 MS. WINES: Okay. Let me ---

1 THE COURT: --- or another indictment, and
2 particularly since there was two indictments.

3 MS. WINES: Sure. Let me expand on that, Judge.

4 THE COURT: Please.

5 MS. WINES: It's not just that we were going to
6 have a Lyle hearing. That's my point. We were more
7 than prepared to have a Lyle hearing.

8 THE COURT: Okay.

9 MS. WINES: We expected to have a Lyle hearing.

10 THE COURT: Okay.

11 MS. WINES: We were fully ready for that.

12 My concern was bringing up Andy Anderson from Aiken
13 to Spartanburg and taking additional time to have an
14 attorney/client privilege hearing before we even got to
15 the Lyle or in addition to the Lyle issues. I'm not
16 saying it was a Lyle problem, Your Honor. We were
17 prepared on that.

18 I'm saying the hearing on having attorney/client
19 privilege and whether we were gonna get Mark Patterson's
20 records, because it was my understanding that should the
21 Lyle stuff be admitted, it would be similar to the case
22 here, counsel would want time to review the records,
23 would want to potentially use impeachment evidence. I
24 have no idea what the records were.

25 THE COURT: How long did the trial take in

1 Spartanburg?

2 MS. WINES: From the beginning of jury selection
3 and pretrial, we started on Monday and we went through,
4 I believe we had a mistrial declared the following
5 Tuesday, Your Honor. I believe that's correct.

6 THE COURT: The following Tuesday?

7 MS. WINES: Yes, sir. Yes, sir. And so the point
8 being, as Your Honor knows, we already had a lot of
9 Spartanburg chats and it was just becoming too much, and
10 we felt that the Defendant did commit a crime in Oconee
11 County, we always felt that, but we were trying to do it
12 in one proceeding.

13 But because it was just getting to be this massive
14 thing, we felt that it was more prudent to seek
15 indictment in Oconee County, knowing that we would have
16 to deal with the Mark Patterson records then, but it
17 would be more appropriate in dealing with that case
18 where he was the lead investigator, Your Honor.

19 Does that make more sense?

20 THE COURT: Let me ask you to explain to me this.
21 What was -- articulate to me, if you can, the reasons
22 for indicting the Defendant here in Oconee County. I
23 know that you wanted to avoid having an attorney/client
24 hearing ---

25 MS. WINES: Uh-huh.

1 THE COURT: --- as well as having a Lyle hearing
2 with regard to Mr. Patterson's records.

3 MS. WINES: Yes, sir.

4 THE COURT: And what are the other reasons, if
5 there are any?

6 MS. WINES: Well, the other reasons are we had
7 probable cause to believe he committed a crime in Oconee
8 County ---

9 THE COURT: Right.

10 MS. WINES: --- and we always did.

11 THE COURT: Right. So the underlying thing. In
12 other words ---

13 MS. WINES: Maybe I'm not understanding. I'm
14 sorry.

15 THE COURT: No. It was a poorly worded question.
16 Clearly it wasn't the intention of the Attorney General
17 at some point to indict on the Oconee County chats.

18 MS. WINES: Yes, sir.

19 THE COURT: All right. And I guess my question is
20 geared towards why did that change in mentality occur?
21 In other words, why did you all of a sudden decide,
22 okay, now it's appropriate to indict for these Oconee
23 County charges?

24 And I know you explained to me the Mark Patterson
25 attorney/client and Lyle, okay?

1 MS. WINES: Uh-huh.

2 THE COURT: Any reasons other than that?

3 MS. WINES: We felt that the two chats were more
4 aggressive, Your Honor. They were stronger. And quite
5 frankly, had I been lead counsel in the first place, I
6 might have done it in reverse order because of the
7 problems that we ended up having in Spartanburg. But we
8 already had it scheduled for trial, and I felt stuck to
9 proceed with Spartanburg, Your Honor.

10 THE COURT: Were you lead counsel in the first
11 case?

12 MS. WINES: No, sir.

13 THE COURT: Were you lead counsel in this case?

14 MS. WINES: Yes, sir.

15 THE COURT: Was it your decision to decide to
16 indict in this case?

17 MS. WINES: You mean the two indictments in Oconee
18 County?

19 THE COURT: Yes, ma'am.

20 MS. WINES: With advice and consent of my
21 supervisors, yes.

22 THE COURT: Okay. And you adopted the role in the
23 interim as being the lead counsel?

24 MS. WINES: I took over as lead counsel after the
25 case went up on appeal in Spartanburg.

1 THE COURT: Okay.

2 MS. WINES: But it had already been indicted and
3 was underway, and once the appeal was finished and we
4 were ready to proceed, Jack Swerling and I then began
5 scheduling trial. And we had, I thought, come up with a
6 date, and that was when Mr. Huff took over and I agreed
7 to wait. And he and I worked out the times.

8 THE COURT: All right. Under whose administration
9 was the decision to indict these Oconee County cases
10 made?

11 MS. WINES: Meaning who was the Attorney General?

12 THE COURT: (Nodded head.)

13 MS. WINES: Henry McMaster.

14 THE COURT: There wasn't a change in
15 administration?

16 MS. WINES: No, sir.

17 THE COURT: All right. Anything further?

18 MS. WINES: You had a question. I believe your
19 question, you also asked why we had two indictments?

20 THE COURT: Yes, ma'am, I did.

21 MS. WINES: Okay. That was because we ended up
22 with some what I'm gonna call confusion in Spartanburg.
23 We had lumped all the chats into one indictment. And
24 even going into the beginning of the trial, it just
25 seemed very confusing. But I was stuck with the

1 indictment at that point, Your Honor. And it just seems
2 cleaner and we have done most of our cases like that
3 since then. We'll select the chatter to indict on, and
4 then we'll do them separately, because it's just neater
5 to say where we think there was a day that there was a
6 crime, we do that as an indictment rather than lump them
7 all together.

8 I won't say we do that in all cases, Your Honor. I
9 would say where we feel like there are chats, that you
10 need more of a cumulative view of it or -- yeah,
11 cumulative -- we would still do one indictment
12 encompassing all the chats. However, the Ocone chats
13 we felt on both chats they could stand on their own.

14 THE COURT: All right. If I recall what you
15 testified to last week, I guess, when asked, I think
16 that the representation was made that you made the
17 comment that "I'll just indict him in Ocone" when
18 Mr. Huff proceeded to demand release of Mr. Patterson's
19 records. And, if I recall what you told me -- and you
20 correct me --

21 MS. WINES: Okay.

22 THE COURT: -- as an officer of the court that you
23 deny making that comment at that point in time. Is that
24 correct?

25 MS. WINES: I don't remember the exact language

1 that I used, Your Honor, but it was in the conversation.
2 Ultimately I told Mr. Huff we will deal with the Mark
3 Patterson issue in Oconee. We'll just indict him in
4 Oconee County. But, and obviously that's subject to the
5 grand jury actually issuing a true bill. That was just
6 a ---

7 THE COURT: Which is not very hard.

8 MS. WINES: I've actually had a no bill before, but
9 yes, sir, not in these cases.

10 THE COURT: I've never seen one.

11 MS. WINES: I have. I have had a no bill, but it
12 was when I was in Richland County.

13 THE COURT: Okay.

14 MS. WINES: But I understand Your Honor's point.
15 To answer your question, I think, I hope, it was in that
16 phone call that I communicated to Mr. Huff. And the
17 primary reason for that is I wanted to tell him that
18 before the trial because I didn't want allegations of
19 misconduct coming up after the trial. That was why I
20 made such a point of saying it on the phone to him right
21 then and there so that it was out in the open.

22 And I think I just need to finish one thought --

23 THE COURT: Okay.

24 MS. WINES: -- to clarify.

25 THE COURT: Okay.

1 MS. WINES: There was reference to getting upset to
2 the Defendant asking for things and subpoenas and that
3 sort of stuff. So I wanted to clarify that the
4 attorney/client privilege hearing and all that becoming
5 so large and that becoming such a collateral issue, I
6 think I've clarified that. However, what I took
7 specific issue to was the inference that I was upset
8 about the Defendant not -- requiring authentication of
9 documents and evidentiary procedures and that sort of
10 thing.

11 That is in no way true at all. I believe that
12 relates to the State trying to admit records from Yahoo!
13 and it's again very similar to this case. I have been
14 inquiring as to whether we needed to bring in someone
15 from California, and Mr. Huff had been waiting to let me
16 know. And ultimately the attorney for Yahoo! called
17 Mr. Huff and talked about what the testimony was going
18 to be. We were prepared to fly someone in from Yahoo!.

19 It was after that that the defense stipulated and
20 we did not have to bring in the witness. And I was just
21 trying to be cautious for the State, much as I have done
22 here. It was never a problem, Your Honor. We just
23 needed an answer. So I took issue with giving the
24 appearance that I had a problem with that.

25 And I feel like I'm forgetting something.

1 Oh, the subpoenas. I wanted to clarify that. My
2 recollection on the subpoenas is there was an
3 administrative subpoena sent to Spartanburg for, I want
4 to say, time sheets. And I was upset because my
5 understanding about discovery is it should come through
6 me. And I offered to get them. I basically said, if
7 you just ask me, and I'll get the stuff if it's there,
8 and there is no administrative subpoena power, so I
9 thought it was improper to do it that way. That's my
10 recollection on that, Your Honor.

11 It wasn't that we were trying to avoid anything. I
12 was more than willing and happy to participate in
13 providing anything that may be out there. But there is
14 no administrative subpoena power.

15 **THE COURT:** I'm not sure what the rule has to do
16 with vindictiveness either, but...

17 **MS. WINES:** Okay. I just wanted to -- just in case
18 that concerns Your Honor, I thought of something that I,
19 I did not agree with the presentation of that. But
20 beyond that, if you don't mind if I could just check my
21 notes for one second and make sure I've hit everything.

22 **THE COURT:** Okay.

23 **MS. WINES:** Oh, Okay. Briefly, the
24 misrepresentation of the State Grand Jury. First of
25 all, I'm not clear if the Defendant is saying I

1 misrepresented the State Grand Jury term of court to the
2 Defendant or to Judge Macaulay. But be it clear, I
3 never represented it was a State Grand Jury term of
4 court to anyone.

5 THE COURT: I don't put any ohmage on that. That's
6 information that anybody can click on and look up and
7 find out for their own selves.

8 MS. WINES: Okay. Bear with me one second, Judge.
9 Your Honor, I believe that's all. Of course, I stand on
10 previous arguments and memorandum.

11 THE COURT: Sure.

12 MR. MCDANIEL: And just to respond as to the issue
13 that seems to be most important to the case, when this
14 decision was made, my understanding Ms. Wines came into
15 the case in 2007 and relieved counsel three years before
16 the Spartanburg trial occurred, and she was assistant
17 counsel from the very beginning, so she was familiar
18 with the case and the chats from the beginning.

19 As far as ---

20 THE COURT: She just represented to the Court she
21 became lead counsel when the Spartanburg case was up on
22 appeal.

23 MR. MCDANIEL: That's 2007, I believe, Your Honor.

24 THE COURT: Isn't that correct? Isn't that what
25 you just said?

1 MS. WINES: Your Honor, I became lead counsel once
2 the case went up on appeal, that's correct.

3 THE COURT: Okay.

4 MR. MCDANIEL: And, again, I think that's 2007. It
5 didn't come up for trial again until 2010.

6 THE COURT: Sit down, please.

7 MS. WINES: Yes, sir.

8 MR. MCDANIEL: If I'm wrong, I apologize.

9 Again, I think this just goes to when this decision
10 was made. The only evidence that we put up has been
11 what was made during this phone call that I would again
12 ask you to look at that record and look at the responses
13 that were given at that time by Ms. Wines as to her
14 explanation when she admitted that was a contentious
15 phone call. And I believe it will show up in the
16 previous transcript and the hearing. Thank you, sir.

17 THE COURT: All right, thank you, sir.

18 Ms. Wines.

19 MS. WINES: Just briefly. I think there's
20 confusion because I was involved in the Spartanburg case
21 being called initially, but an indictment had already
22 happened. I got called in at the last minute because
23 David Stumbo ---

24 THE COURT: Just, the question was whether that was
25 2007 when you became lead counsel --

1 MS. WINES: That ---

2 THE COURT: --- three years prior to the trial.

3 MS. WINES: That is correct. And I've already
4 explained to Your Honor, I guess it was yesterday, that
5 the delay from 2007 to 2010 was the appeal and the
6 change in counsel and I don't need to belabor that
7 point.

8 THE COURT: I got you. Okay.

9 MS. WINES: In summary, I don't believe frustration
10 amounts to vindictive prosecution, Your Honor.

11 THE COURT: All right, you guys. Thank you very
12 much for your argument. I'll take it under advisement.
13 I'll make a decision in the morning. I'll look at it
14 and think about it a little bit more.

15 Thank you again. I know that these cases are
16 heated. I know sometimes exchanges occur in the
17 courtroom, and with me, too, and to the extent I have, I
18 apologize to counsel. But everybody has been prepared
19 and everybody has been very aggressive, and that is how
20 you have been representing your clients' interests on a
21 very good basis.

22 9:00 in the morning, gentlemen and ladies.

23 MS. WINES: Thank you, Your Honor.

24 THE COURT: All right.

25 (Whereupon, Court adjourned at 7:09 p.m.)

1 November 9, 2011

2 9:00 a.m.

3 THE COURT: Is there anything from the State before
4 we begin?

5 Motions:

6 MS. WINES: Two very brief matters. I would love
7 to put something on the record I neglected to state last
8 night in reference to the motion to quash. It will be
9 very brief, Your Honor. And secondly ---

10 THE COURT: Motion to dismiss?

11 MS. WINES: Yes, sir. Motion to quash the
12 indictment, motion to dismiss, yes, sir.

13 THE COURT: All right.

14 MS. WINES: I recognized I just had one brief
15 comment I wanted to add to the record, not of a
16 substantive argument, Your Honor.

17 THE COURT: All right. We'll do that later.

18 MS. WINES: Yes, sir.

19 THE COURT: Anything else?

20 MS. WINES: The second issue, Your Honor, we have a
21 certified copy of the Defendant's DMV records I'll show
22 counsel at this time. And we are going to ask if Your
23 Honor could take judicial notice, and of course I'll
24 provide Your Honor with a copy here in just a second.
25 We're going to ask Your Honor to take judicial notice

1 pursuant to Rule of Evidence 201 under (b)(2) and (d).
2 We would ask for a judicial notice of the Defendant's
3 date of birth and an instruction to the jury as such.

4 THE COURT: His date of birth?

5 MS. WINES: His date of birth, Your Honor. Yes,
6 sir.

7 MR. HUFF: Your Honor, we would object to the
8 document. One, it's not been provided to us pursuant to
9 our discovery request. Secondly, it doesn't speak for
10 itself. You would need the record custodian to begin
11 with, and they can't assert the truthfulness of this
12 document.

13 THE COURT: Well, let me ask you this, Mr. Huff:
14 Would the defense be willing to stipulate as to the
15 Defendant's age?

16 MR. HUFF: No, sir, we would not.

17 THE COURT: Would not?

18 MR. HUFF: No, sir.

19 THE COURT: Okay. Let me see the document, please.

20 MR. HUFF: And, Judge, if we could for the record
21 note no different than the W-4 that Mr. Patterson, you
22 can't, not gonna stipulate to the honesty or integrity
23 or truthfulness of that document. You can't prove it by
24 the document.

25 THE COURT: Well, is the standard the same for the

1 accused as it is for a witness?

2 MR. HUFF: Yes, sir, I think it would be. I'm
3 trying to look at the rule now, Your Honor.

4 MS. WINES: Your Honor, we're not asking that the
5 document itself be introduced. We believe that it does
6 speak for itself under(b)2, Rule 201(b)2 (reading):

7 Capable of accurate and ready determination by
8 sources whose accuracy cannot reasonably be questioned.

9 As it is certified from the DMV, we believe you
10 cannot question it, and we would just ask that Your
11 Honor take judicial notice and instruct the jury, but
12 not to have the document itself be entered.

13 MR. HUFF: Judge, this is an element of the crime.
14 I don't think you can take judicial notice of an element
15 of a crime.

16 THE COURT: I disagree with that. Why would this
17 not be admissible since it's been certified under the
18 statutory scheme that allows these types of documents to
19 be used in court?

20 MR. HUFF: Judge, I've got to look. There are
21 different statutes that apply to DMV, and again, I think
22 that the State has not raised those.

23 THE COURT: Okay. I'm not aware of those statutes,
24 Mr. Huff.

25 When are you planning to have this?

1 **MS. WINES:** Your Honor, we would just ask that
2 judicial notice be given prior to the closing of the
3 State's case.

4 **THE COURT:** Okay. Let's take this up later. I'm
5 gonna give you all a chance to review it, please.

6 **MS. WINES:** Yes, sir. That's all we have this
7 morning. Otherwise we are ready to proceed.

8 **THE COURT:** All right. Mr. Huff, is the Defense
9 ready to proceed?

10 **MR. HUFF:** Yes, Your Honor, we are.

11 **THE COURT:** Okay. Bring the jury back in.

12 (Whereupon, a discussion was held off the record
13 between the Court and court reporter.)

14 (Whereupon, a short break was had.)

15 (Whereupon, the Jury entered the courtroom at
16 approximately 9:21 a.m.)

17 **THE COURT:** Good morning, Mr. Gibson, ladies and
18 gentlemen of the jury. As I do every morning, I'm gonna
19 ask if anyone read, seen, or heard anything about this
20 case. Have you?

21 **THE FOREMAN:** No, sir.

22 **THE COURT:** Very well. Are you ready to proceed?

23 **THE FOREMAN:** Yes.

24 **THE COURT:** Thank you very much.

25 Ms. Wines, you may call your next witness.

1 THE WITNESS: Yes, ma'am.

2 THE CLERK: Thank you. Please have a seat.

3 LUCINDA MCKELLAR,

4 having been duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 By Mr. Anders:

7 Q. State your name for the record, please.

8 A. Lucinda Hefner McKellar.

9 Q. Okay. Would you tell the jury about yourself, what
10 you do?

11 A. I'm currently employed with the South Carolina
12 Attorney General's Office. I'm a special investigator
13 assigned to the Internet Crimes Against Children Task
14 Force.

15 Q. And what are some of your duties in that position?

16 A. Some of my duties are to investigate, obviously,
17 internet crimes against children that relate to
18 solicitation, child pornography, child sex trade.

19 Q. Okay. And how long have you been there?

20 A. I've been with the Attorney General's Office for a
21 year and in law enforcement for 13.

22 Q. Okay. Let's go back to 2006-2007. Where were you
23 employed?

24 A. I was a Special Agent with the South Carolina
25 Attorney General's Office. I was assigned to the

1 computer crimes unit.

2 Q. And what were your duties at that time?

3 A. Investigating crimes related to Internet Crimes
4 Against Children and also any other cases that were
5 submitted to SLED for forensic examination. So as a
6 forensic examiner we were investigating numerous types
7 of crimes.

8 Q. So you performed forensic examinations?

9 A. Yes, sir, I did.

10 Q. Okay. What kind of training have you had in that
11 area?

12 A. I've had 36 hours of basic data recovery and
13 analysis in Columbia, South Carolina; 36 hours of
14 internet -- excuse me, intermediate data recovery and
15 analysis in Columbia, South Carolina; 32 hours, I
16 believe, of EnCase training, which is the forensic
17 software that we use. That training occurred in
18 Decatur, Georgia.

19 Q. Did you examine Mr. Odom's computer hard drive in
20 2010?

21 A. Yes, I did.

22 Q. Okay. If you would, just tell the jury the
23 process, how you performed that examination?

24 A. When the actual evidence, the computers are
25 submitted to the -- at this time I was with the South

1 Carolina Law Enforcement Division. When those computers
2 are submitted to our lab, they are stored in evidence
3 storage. Those items are removed by, at the time which
4 was our IRC, they removed that hard drive disk, CD,
5 whatever that item is, and image that drive, which is
6 making a bit-by-bit copy of that drive or that piece of
7 media.

8 That image of that piece of evidence is placed out
9 on the server that I would have access to, and I work
10 off of that imaged copy, because I never touch the
11 actual evidence.

12 Q. Why is that?

13 A. Just to maintain the safety of the evidence. When
14 we image, a write blocker is used to image that piece of
15 media so that nothing is written to or taken away from
16 that item. It's just another safety precaution.

17 Q. Are there any other safeguards towards that
18 original piece of evidence?

19 A. Yes, sir. When it's not being imaged in the lab,
20 it is returned to the evidence storage and stays there
21 until it's released back to the originating agency.

22 Q. All right. And with respect to the hard drive of
23 Mr. Odom's computer, did you look at the time settings?
24 Do you recall?

25 A. I -- it would have been on the forensic imaging

1 sheet and I could not tell you that exact time.

2 Q. All right. So that would have been done before it
3 got to you?

4 A. Yes, sir.

5 Q. Okay. And what are you looking for when you
6 perform these examinations?

7 A. It depends on the type of case that we are working
8 on. In this particular case we were looking for screen
9 names.

10 Q. And you said you use EnCase software?

11 A. Yes, sir.

12 Q. Is that a software that's normally used for these
13 type of examinations?

14 A. Yes, sir. EnCase or FTK, which is short for
15 Forensic Tool Kit, is also a software that's primarily
16 used by forensic examiners.

17 MR. ANDERS: May I approach the witness, Your
18 Honor?

19 THE COURT: Yes, sir.

20 By Mr. Anders:

21 Q. I'm gonna hand you what's been previously marked
22 State's Exhibit 8. Could you tell the jury what this
23 is?

24 A. This is a copy of the forensic examination report
25 from my examination of the hard drive.

1 Q. Did you generate that report?

2 A. Yes, sir, I did.

3 Q. Okay. And that was in 2010, correct?

4 A. Yes, sir.

5 Q. Okay. And from whose hard drive did that report
6 come from?

7 A. From the hard drive submitted for Anthony Odom.

8 Q. And when you performed that examination and
9 generated that report, were the safeguards that you
10 described earlier for the jury in place?

11 A. Yes, sir.

12 Q. Okay. Would you tell the jury what you found?

13 A. Well, to further show that the safeguards were
14 taken, one of the first things we do with an initialized
15 case, which is an end script that EnCase uses, and it
16 gives an acquisition hash and a verification hash.
17 Those are really long, almost like your VIN that's
18 associated with your car.

19 It tells us that there's a bit-by-bit copy of that
20 acquisition hash that needs to match the verification
21 hash to show that we have, in fact, a bit-by-bit copy.
22 If during the copy process one piece of data was
23 changed, one pixel on a picture, those two numbers would
24 not match, but these two numbers matched in this case.

25 Q. Okay. Any items of interest found?

1 A. Yes, sir. I conducted a keyword search for the
2 screen names and I did find the screen names
3 danger6552000 and also the screen name a_upstategurl93.

4 MR. ANDERS: Your Honor, at this time I would ask
5 that this be entered into evidence.

6 THE COURT: Any objection?

7 MR. HUFF: No, sir.

8 THE COURT: All right. It's admitted without
9 objection.

10 (Whereupon, State's Exhibit Number 8, Forensic
11 Report 2010 (Item 1), having been previously marked
12 for identification, was admitted into evidence.)

13 By Mr. Anders:

14 Q. All right. Investigator McKellar, in your
15 experience as an investigator, a forensic examiner, what
16 do the findings tell you?

17 A. That the computer that I was conducting the
18 forensic examination on had -- there had been
19 communication between the screen name danger6552000 and
20 aupstategurl93 -- excuse me, a_upstategurl93.

21 Q. Okay. Thank you. Investigator McKellar, in May of
22 2006 did you go to 325 East Hedge Road in Aiken, South
23 Carolina?

24 A. Yes, sir, I did.

25 Q. Okay. What was there? What was at that address?

1 A. The computer that we conducted the forensic
2 examination on.

3 Q. Okay. Was it a home?

4 A. Yes, sir. It's the residence of Anthony Odom. At
5 the time Anthony Odom and Barbara Odom were at the
6 location.

7 Q. Okay. And did you have an opportunity to speak
8 with Mr. Odom?

9 A. Yes, sir, I did.

10 Q. Okay. Did he tell you anything concerning the
11 screen name danger6552000?

12 A. He said that that screen, we would find that screen
13 name associated with the search warrant.

14 Q. Okay. And do you recall what Mr. Odom may have
15 told you concerning profile pages?

16 A. That he never looks at profile pages unless
17 afterwards.

18 Q. Okay. Is the man who told you that he was
19 danger6552000 in the courtroom today?

20 A. Yes, sir, he is.

21 Q. Could you point him out for the Judge, please.

22 A. Yes, sir. He's sitting between Mr. Huff and
23 Mr. Anderson.

24 MR. ANDERS: I would just have the record reflect
25 that.

1 THE COURT: It so reflects.

2 MR. ANDERS: Thank you, Investigator. Please
3 answer any questions Mr. Huff may have.

4 THE WITNESS: Yes, sir.

5 THE COURT: Cross-examine?

6 MR. HUFF: Thank you very much, Your Honor.

7 CROSS-EXAMINATION

8 By Mr. Huff:

9 Q. Ms. McKellar, you say you went to the home of
10 Anthony and Barbara Odom?

11 A. Yes, sir, I did.

12 Q. And is this Barbara Odom seated right here?
13 You can stand up, ma'am.

14 Is this Barbara Odom?

15 A. Yes, sir, it is.

16 Q. All right. Thank you.

17 And is it your understanding she is the wife of
18 Anthony?

19 A. Yes, sir.

20 Q. Okay. Now, you had a conversation with Mr. Odom
21 that day; is that correct?

22 A. Yes, sir, I did.

23 Q. All right. And let me discuss with you a little
24 bit some of the things that occurred during your-all's
25 conversation. Didn't Mr. Odom tell you that, he stated

1 **THE COURT:** What that means, ma'am, is that you are
2 free right now but you are still under subpoena and they
3 can call you back.

4 **THE WITNESS:** Yes, sir.

5 **THE COURT:** Thank you.

6 (Whereupon, the Witness was excused, subject to
7 re-call.)

8 **THE COURT:** Would you call your next witness,
9 please.

10 **MS. WINES:** Your Honor, if I could have just a
11 minute to confer with co-counsel, please?

12 **THE COURT:** Yes, ma'am.

13 (Whereupon, a discussion was had off the record.)

14 (Whereupon, a discussion was had at sidebar off the
15 record.)

16 **THE COURT:** All right. Mr. Gibson, ladies and
17 gentlemen of the jury, I have taken judicial notice of a
18 fact. That means that you are not allowed to debate
19 whether or not it's true or accurate. I charge you that
20 you must find as conclusive the fact that the
21 Defendant's date of birth is June 22nd, 1973. That's
22 June 22nd, 1973, and you shall not and you are not
23 allowed to debate that. You must accept that as a
24 conclusive fact.

25 Now, would you call your next witness, please,

1 November 10, 2011

2 9:05 a.m.

3 The Court's Ruling on Prior Motions:

4 THE COURT: All right. As to a couple matters of
5 housekeeping. Under the motion for log-rolling, I'm
6 gonna deny that motion. I feel like after looking at
7 the statute it needs the necessity of germaneness.
8 Therefore, I'm denying that motion.

9 The motion to suppress the search warrants and the
10 fruits of those search warrants based on Franks is also
11 denied. I don't find that that there was any deliberate
12 falsification or misleading, any reckless disregard of
13 fact or truth, nor was there an omission including
14 exculpatory information.

15 That being said, there still remains a directed
16 verdict motion to be made. Would you like to do that
17 now?

18 MR. HUFF: Your Honor, I believe what is still
19 before the Court, if I am correct, is a motion that a
20 decision has not been made yet on vindictive
21 prosecution --

22 THE COURT: It has not, you are correct.

23 MR. HUFF: -- and the issue of estoppel by
24 contract, and that we had presented to the Court a new
25 brief on the First Amendment objection to this

1 prosecution.

2 **THE COURT:** That's denied. Estoppel by contract is
3 denied. I don't recall that motion being made, but to
4 the extent it was, there's no conduct on the part of the
5 State that would reasonably lead the Defendant to act on
6 adverse prejudice or to change his position
7 prejudicially so I'm gonna deny that.

8 I'm gonna remain with my ruling on the
9 prosecutorial vindictiveness. Quite frankly, it was a
10 close call, but I don't find that there was established
11 any actual malice or evidence that would rise to an
12 implied malice or vindictiveness. I think under the
13 circumstances the explanation given by the State was
14 reasonable, and given the wide discretion given to
15 prosecutors, the evidence doesn't amount to the level
16 that would give rise to the draconian remedy of
17 dismissing the warrants. So, therefore, I'm denying
18 that motion.

19 Anything further?

20 **MR. HUFF:** Judge, I believe there was a motion made
21 by co-counsel under Russell which was -- it has not been
22 made yet. The basis of the Russell motion ---

23 Further Motions:

24 **MR. JOHNSTON:** It will take less than a minute to
25 do it, Your Honor. First of all, if I could, I would

1 like to just put our written motion on estoppel by
2 contract on the record.

3 THE COURT: Okay. And I'm going to render
4 counsel -- you know, there's been a flood of paperwork
5 in this case, so I want to make sure that everyone views
6 what we have in the record as far as Court's exhibits
7 and make sure that you have them complete for the record
8 in this matter.

9 MR. JOHNSTON: Your Honor, I'm now handing up our
10 motion to dismiss under a theory announced in United
11 States versus Russell. Also with that is just a
12 supplementary affidavit from one Luis Navaro (phonetic),
13 just basically describes some things he encountered when
14 trying to serve some documents on the Attorney General's
15 Office. I would like to make those a part of the
16 record.

17 THE COURT: Which motion does your affidavit go
18 towards?

19 MR. JOHNSTON: This is a motion to dismiss under
20 U.S. v. Russell. Basically I'll shorten it, it's a
21 shock the conscience motion.

22 THE COURT: Okay.

23 MR. JOHNSTON: Sort of a kitchen sink type of
24 argument that based on the entirety of the record what's
25 occurred in this case, that the actions of the State

1 have shocked or would shock the conscience of the
2 judicial system and that those, their actions have
3 violated Mr. Odom's right to due process and that was
4 the theory articulated in that federal case of U.S.
5 versus Russell.

6 **THE COURT:** Thank you, sir. I am denying that
7 motion.

8 Now, do we have anything further before we go to
9 the directed verdict motion?

10 **MR. HUFF:** Judge, there is. There is a motion. In
11 conducting our research last night, that the officer in
12 this case, Mr. Patterson, we would contend, is not a law
13 enforcement officer pursuant to the evidence presented
14 to the Court in the record.

15 **THE COURT:** Because he wasn't bonded?

16 **MR. HUFF:** He was not bonded. I would like to
17 present the Court the case State v. Boswell. And I'll
18 hand up some statutes as well throughout our code, if I
19 could provide those to the Court.

20 (Whereupon, Mr. Huff hands documents to counsel and
21 Court.)

22 **MR. HUFF:** Your Honor, if I could, the...

23 Your Honor, in the State of South Carolina a
24 municipal police officer must take an oath of office and
25 must be bonded in order to fulfill the office and uphold

1 the office of a law enforcement officer with the
2 authority to arrest and carry forth his duties.

3 Your Honor, in the -- I may have handed Your Honor
4 both copies of my case. If I did, apologies.

5 THE COURT: That's quite all right.

6 MR. HUFF: Judge, do you have a copy of State v.
7 Boswell in front of you?

8 THE COURT: Yes, sir.

9 MR. HUFF: That's all right. Then I gave you my
10 copy.

11 Your Honor, this was a case decided April 8, 2011,
12 of this year. It involves law enforcement activity of a
13 municipal police officer. The Court took up the issue
14 of a multi-jurisdictional agreement, and in that case
15 the Court even noted that a municipal police officer
16 must have a bond and that travels forth with him into
17 any adjoining county that he may go into in fulfillment
18 of that mutual aid agreement.

19 Your Honor, that's gonna be footnote 7, which cites
20 to Section 23-1-210. Your Honor, it's gonna state that,
21 I believe, in subsection ---

22 THE COURT: Hang on for a second, please.

23 MR. HUFF: Yes, Your Honor.

24 THE COURT: Okay, sir.

25 MR. HUFF: Your Honor, a municipal -- and I would

1 provide you with a copy of that statute as well.

2 (Whereupon, counsel hands document to counsel and
3 Court.)

4 That also requires that a municipal police officer
5 have a bond.

6 I have also provided the Court with a copy of
7 Section 22-9-30 dealing with oaths -- excuse me, with an
8 oath that's required of a police officer.

9 Your Honor, I would also provide you with a -- or
10 would cite to you Section 61-6-4510, 61-6-4510 that
11 states that (reading):

12 Municipal police officers have the power of
13 constables to enforce the provisions of this article in
14 cases arising within the municipal limits and, in
15 addition, have all the powers to enforce these
16 provisions as they have to enforce municipal ordinances.

17 And then it talks about fresh pursuit. That's
18 61-6-4510.

19 Under our codes of laws and statutory provisions,
20 Your Honor, municipal police officers basically are
21 governed by the statutory obligations imposed upon state
22 constables.

23 I would also present to the Court a copy of what I
24 believe is cited in the Boswell case I provided to the
25 Court, Section 5-7-110. It will address municipal

1 police officers. It will state, Your Honor, that
2 (reading):

3 Any municipality may appoint or elect as many
4 police officers as necessary for the proper law
5 enforcement in such municipality. Police officers shall
6 be vested with all the powers and duties conferred upon
7 constables, which require -- and constables are required
8 to have the bond, which we've also provided to the
9 Court.

10 Your Honor, even a Deputy Sheriff under 23-13-230
11 states that (reading):

12 Before entering upon the duties of his office, any
13 such duty shall take the oath prescribed by the
14 constitution and the statutes of this state. Any person
15 so appointed a Deputy Sheriff under the provisions of
16 this article shall execute the bond required of
17 constables. 22-9-20.

18 **THE COURT:** Let me ask you this, Mr. Huff. Is your
19 motion based on the failure of the employment file to
20 contain a copy or evidence of the bond?

21 **MR. HUFF:** No, sir. It's based on the fact that
22 the statute requires that in order to be a law
23 enforcement officer ---

24 **THE COURT:** I mean, I understand what you are
25 saying about the statute. Let me ask you this. I mean,

1 the only evidence that I recall during this trial that
2 concerns the bond is when you had the Clerk from
3 Westminster yesterday who brought Officer Patterson's
4 employment file, and the bond, proof of the bond was not
5 contained in that file.

6 MR. HUFF: Your Honor, we would cite you back to
7 Chief Bannister, Chief Scott Bannister, who testified.

8 THE COURT: Okay, sir.

9 MR. HUFF: And on Cross-Examination, besides
10 stating that there was no supervision of Mr. Patterson,
11 I specifically asked, and is a police officer with the
12 municipality required to have an oath and bond? He said
13 yes. So the ---

14 THE COURT: I guess my question goes to proof that
15 there is, in fact, no bond in existence or was no bond
16 in existence for Officer Patterson during the time frame
17 that's in question for this case.

18 MR. HUFF: Judge, that is, if you recall, the
19 statutory scheme of this statute. It says that
20 (reading):

21 A person over sixteen that engages in this type of
22 conduct, there is an absolute defense of consent.

23 Which as Officer Patterson admitted on Direct --
24 excuse me, on Cross would not be a crime. But for if
25 I'm a law enforcement officer, number one, and acting in

1 my official capacity, it would be a crime.

2 So that is an element of the offense in this case
3 that the State bears the burden of proving that he is a
4 proper law enforcement officer. Otherwise, he is
5 nothing more than an over-sixteen person consenting to
6 this conversation like me or you. That's the only thing
7 that would allow the State to go forward with this
8 prosecution. Because clearly he is over sixteen years
9 of age, as he admitted, and he consented to the
10 conversations.

11 So the only way the State can maintain this
12 prosecution is to prove as an element of this case that
13 Officer Patterson lawfully held the office of a law
14 enforcement officer.

15 What is in evidence and in the record is that the
16 statute requires that he have an oath and bond. The
17 Chief has said to be an officer with Westminster Police
18 Department he has to have an oath and bond. The Clerk
19 has said, I cannot find any bond in the file. We don't
20 have to prove that he didn't have it, the State has to
21 prove that he was a law enforcement officer.

22 And what is in the record is there is no such
23 proof, and proof, at least through the records clerk, is
24 there is no bond there. We don't bear the burden. The
25 State always bears the burden of proof on every issue of

1 the charge. And in this you do have the record.
2 There's no bond, even though it's required by law and
3 even the Chief knew that.

4 THE COURT: Yes, sir. I'll deny your motion.

5 Do you want to go ahead with your directed verdict
6 motion now? (No response.) Mr. Huff?

7 MR. HUFF: Yes, sir?

8 THE COURT: Are you ready to go with your directed
9 verdict?

10 MR. HUFF: Okay. I'm sorry, Your Honor. I
11 thought ---

12 THE COURT: That's okay.

13 MR. HUFF: Yes, Your Honor, I am.

14 Defendant's Motion for Directed Verdict:

15 MR. HUFF: Your Honor, in this case there are
16 several issues that must be proven in order for this
17 case to be submitted to the jury. It is readily
18 apparent that there are, in my opinion, four issues.
19 One, the intent of the person in the communication; two,
20 he has reason to believe; three, being a law enforcement
21 officer not, or acting in official capacity.

22 Your Honor, as to the reasonable belief in this
23 case that the person being spoken to was under eighteen,
24 the evidence you have in this case is a photograph that
25 was submitted to Danger. That is a photograph of a

1 twenty-eight-year-old female. There is no reasonable
2 belief that anyone can hold that that photograph would
3 allow someone to believe it is a thirteen-year-old
4 female. Quite honestly, the testimony is preposterous.

5 Also, Your Honor, the chat room that was entered
6 into is a chat room that requires people to be over
7 eighteen years of age. What has been testified to is
8 that people lie in these chat rooms as to their intent
9 or who they are, and there is no admission by the
10 Defendant as to any reasonable belief he had, other than
11 through the testimony of Officer McKellar that Mr. Odom
12 never believed he was talking to a child, that he role
13 plays and fantasizes in these chat rooms. So it would
14 be speculative to submit this case to the jury on that
15 seminal issue that the State must prove as to reasonable
16 belief.

17 Additionally, the issue as to identification, Your
18 Honor. What is in testimony is there is a computer at
19 the Odom home. It was, the account was listed in the
20 name of Barbara Odom. BellSouth testified as to a
21 connection between Mr. McGraw and the computer at the
22 Odom residence that occurred on March 2006. This case
23 is only about what may have happened in May of 2006.

24 Judge, it is similar to a breach of trust case at a
25 grocery store when money is taken out of the till and

1 there's more than one person that has access to that
2 cash register. The State has to prove who actually took
3 it. There is no evidence in this case that Mr. Anthony
4 Odom communicated with Officer Patterson in May of 2006.

5 The statements that Mr. Odom made to Ms. McKellar
6 involved another county, nothing charged with Ocone
7 County. So there is no evidence that proves that
8 Mr. Anthony Odom ever sat at a computer in his home and
9 communicated with Mr. Patterson. There is no such
10 evidence.

11 So for those reasons and for the bases of the
12 motions we have made in totality, we believe that the
13 proper result is for the Court to grant a motion for
14 directed verdict.

15 **THE COURT:** Thank you, sir.

16 Ms. Wines?

17 **MS. WINES:** Yes, Your Honor. Briefly in response,
18 as Your Honor is aware at this stage in the proceedings
19 the Court is concerned with the existence of evidence,
20 not its weight. And it is the State's position that
21 much of what Mr. Huff is pointing to does, in fact, go
22 to the weight, not the existence of evidence. And the
23 evidence must also be viewed in the light most favorable
24 to the State at this point.

25 With regard specifically to the picture, again that

1 argument goes to the weight, and in companion with all
2 the other evidence presented as to the undercover
3 persona age throughout the chat consisting of references
4 to mother, specifically the age, et cetera, Your Honor,
5 we believe there's more than sufficient evidence within
6 the chat that a jury could determine that the Defendant
7 could have thought he was talking to a thirteen-year-old
8 regardless of whether someone were to, or irrespective
9 of that picture, Your Honor.

10 We believe the picture is only an element of it.
11 Certainly we concede that the picture could have been
12 better, but it does go to the weight, not the existence
13 of evidence, Your Honor. The chats themselves are more
14 than sufficient to meet that element.

15 As to identity, just to clear that up we had Yahoo!
16 and BellSouth speak about the screen name leading to the
17 IP address, which leads to the home, which leads to the
18 statement of Mr. Odom. And taken in the entirety of the
19 statement, its contents would lead one to believe
20 reasonably that it was, in fact, Anthony Odom, not
21 Barbara Odom.

22 And, lastly, the forensic report coming from that
23 hard drive we believe taken in totality, that the jury
24 could or should believe that it was the Defendant and
25 not his wife, Your Honor.

1 I believe that was all the specifics that counsel
2 pointed out. I would just reiterate at this point it is
3 to be taken in the light most favorable to the State.

4 THE COURT: I understand, Ms. Wines.

5 Let me just say this. I agree with Mr. Huff that
6 it is extremely troubling to sit here and listen to this
7 case when law enforcement, who has a very tough job to
8 begin with, but they use a picture of a known
9 twenty-seven or twenty-eight-year-old person that they
10 would submit over to the, whoever the recipient of that
11 picture was, to try to catch somebody who is supposedly
12 a child sex abuser. And I think that's extremely
13 troubling.

14 However, with that being said, the evidence in this
15 case -- I agree with Ms. Wines -- is capable of more
16 than one inference. I'm not gonna weigh the evidence.
17 In viewed in the light most favorable to the State, it
18 is a question of fact for the jury to make a
19 determination of.

20 With that being said, are you ready to proceed with
21 your first witness, Mr. Huff?

22 MR. HUFF: We are, Your Honor.

23 THE COURT: Ms. Wines, is the State ready to
24 proceed?

25 MS. WINES: Yes, Your Honor. Thank you.

1 The first part will be on the rules that define and
2 control their duties as jurors. The second would be on
3 the substantive law in this case. And the third would
4 be some thoughts and the rules concerning their
5 deliberations.

6 In the general rules aspect, I tell them that they
7 have to make their findings from the evidence that's
8 presented here in the courtroom in this case and they
9 must apply the law as I give it to them. They shall not
10 be concerned with what they think the law should be.
11 They have to accept it as it is.

12 I tell them that they shall not be influenced by
13 any personal likes, dislikes, or opinions, prejudice or
14 any sympathy they may have from one side of the case to
15 the other. And that means they must decided this case
16 solely from the facts and evidence presented here in
17 this courtroom and no other, and that's what their oath
18 requires them to do.

19 I tell them they have to abide by all my
20 instructions, not just part of them. However, if I have
21 done anything during this trial to indicate how they're
22 supposed to be -- how they're supposed to find facts,
23 then they are to disregard that because under our state
24 Constitution I am not allowed to have an opinion as to
25 the facts in this case; that they alone are the judges

1 THE COURT: Okay. And separate indictment is
2 already a part of my charge.

3 MS. WINES: Yes, Your Honor, thank you. And I
4 believe we've covered Lyle as well, Your Honor.

5 THE COURT: Okay. Here's my question. It's 12:10.
6 I can let this jury go, bring them back say at 1:30, let
7 them go to lunch, or we can bring them in and do the
8 charge now. What would be your preference?

9 MR. HUFF: So the option, Your Honor, was to send
10 them to lunch and bring them back at 1?

11 THE COURT: Or 1:30. One or 1:30.

12 MR. HUFF: I won't speak for Ms. Wines, but ---

13 THE COURT: I don't think you can if you wanted to.

14 MR. HUFF: But knowing her the way I do through
15 these years, I have a feeling she is hungry and I would
16 be as well, and so I'll bite the bullet and request that
17 we adjourn for lunch.

18 THE COURT: That was going to be my preference,
19 too.

20 MS. WINES: I wholeheartedly agree.

21 THE COURT: All right. Would you-all bring the
22 jury in here?

23 MR. HUFF: Judge, if we keep ---

24 THE COURT: I know you're not gonna get to the
25 point where you all agree. I can tell you that right

1 no picture in Spartanburg. Danger6552000 was danger.
2 The time for justice is here. We ask of you to do
3 justice. Convict Anthony Odom for criminal solicitation
4 of a minor because he did so.

5 I stand before you proud to represent the
6 government, the State of South Carolina, and with my
7 co-counsel we thank you for your time and your service.
8 Thank you.

9 THE COURT: Mr. Gibson, ladies and gentlemen of the
10 jury, you can stand up and stretch or you can take
11 another break. My charge I anticipate will be in the
12 neighborhood of about 25 minutes. Poll your jury and
13 see what you want to do.

14 (Whereupon, the jury conferred in the jury-box.)

15 THE FOREMAN: We're good to go.

16 THE COURT: Good to go? I tell you what. Let's do
17 this. Stand up and stretch for a minute to get your
18 blood running, and that way I don't put you to sleep.
19 Okay?

20 (Whereupon, the jury and the court reporter stood
21 up and stretched for a few minutes, after which the
22 following occurred.)

23 The Court's Charge to the Jury:

24 THE COURT: Ladies and gentlemen of the jury, now
25 that you have heard all the evidence in this case, you

1 have heard the arguments from these lawyers, it is my
2 duty to instruct you on the law which applies to this
3 case.

4 Now, my instructions to you will be in three parts.
5 The first part will be the rules that define and control
6 your job or your duties as jurors.

7 The next part -- and I'll let you know when we're
8 getting into each phase. The second part will be the
9 substantive law, in other words, the law that, what the
10 State must prove in order to make its case.

11 The third will be some considerations and
12 instructions about your deliberations themselves.

13 Now, the first part is the rules that control and
14 define your duties. As I told you at the beginning of
15 this case, that it is your job to find the facts from
16 the evidence that's presented here in this courtroom and
17 from no other place, from the witness stand, the sworn
18 testimony, and the exhibits that have been admitted into
19 evidence. To that you must apply the law as I give it
20 to you. You must follow the law and only the law that I
21 give to you and it is the only law that is applicable to
22 this case.

23 Further, you shall not be concerned about what you
24 feel like the law should be. You must accept it as I
25 give it to you, and this is not the place to try to

1 correct it.

2 You should not further be influenced by any
3 personal likes or dislikes, opinions, prejudice or undue
4 sympathy that you may have for one side or the other in
5 this case. Boiled down to is our most common form, what
6 that simply means is this, that you are to decide this
7 case solely from the evidence presented here in this
8 courtroom and in accordance to the law as I give it to
9 you right now. That is the oath that you took at the
10 beginning of this case.

11 Now, in following my instructions you are required
12 to follow all of it. You may not single out the ones
13 that you like and follow those and ignore the ones that
14 you don't like. I will tell you and charge you that
15 they are all equally important. And as I told you at
16 the beginning of this case, you should not and you shall
17 not read into anything I may have done, said, any
18 gestures I may have made throughout this case that
19 suggest to you one way or the other how you should find
20 the facts. And I tell you that I have no opinion on the
21 facts, our Constitution does not allow me to have an
22 opinion on the facts. I'm merely here as a referee to
23 make sure the process is followed and to instruct you on
24 the law as I'm doing now.

25 You and you alone are the judges of the facts in

1 this case and you decide what these facts are by
2 evaluating and weighing the evidence that you heard
3 during this case. There is no way for you to do that in
4 a literal sense. I can't give you a set of scales to go
5 stack things up on. It is entirely a mental process
6 where you weigh and you evaluate and discuss all of the
7 evidence and you use your good common sense and sound
8 judgment when you make your findings of fact.

9 Now, what is evidence and what is not evidence?
10 First, obviously the sworn testimony both on Direct,
11 Cross-Examination or Redirect, regardless of whoever
12 called them, is evidence in this case.

13 In addition, the exhibits that were received into
14 evidence in this case is also evidence. Normally that
15 is all that's before you. However, in this case, but
16 due to the facts in this case I took judicial notice of
17 the Defendant's date of birth, and you must accept as a
18 conclusive fact the date of birth that I took judicial
19 notice of and that date of birth is June 22nd, 1973.
20 And by accepting that as a conclusive fact you may not
21 debate it, you shall not debate it, that is his
22 birthday.

23 Now, what is not evidence? I think I told you at
24 the beginning of this case but I'll tell you again.
25 Arguments, statements by these fine lawyers is not

1 evidence. They are not witnesses. . They have not been
2 sworn in this case. What they've said in their opening,
3 what they said in their closings or at any other time
4 during this trial is designed to help you interpret the
5 evidence, designed to help you understand what the
6 evidence is and what this case is about. It is not
7 evidence.

8 If in your deliberations you remember things
9 differently than you are told by any of these lawyers,
10 your memory of the facts will control. Again, questions
11 and objections of the lawyers again is not evidence. As
12 I told you at the beginning of this case, lawyers have a
13 sworn duty and an ethical duty to object when they feel
14 like anything is happening in the courtroom that is
15 improper. The fact that any of these lawyers may have
16 raised objections, or to the extent I allowed you to see
17 my rulings on those objections, shall not even be
18 discussed by you in your deliberations, that is not
19 proper. That is just part of the process that each and
20 every trial goes through.

21 Now, there has been some testimony that I ordered
22 stricken from the record. To the extent I ordered it
23 stricken, you shall not consider it and you shall not
24 even discuss it in your deliberations. Also there was a
25 bit of evidence that was received for a very limited

1 purpose. If you recall, the Spartanburg chat was
2 admitted for the limited purpose of establishing the
3 intent, the identity, or whether there was a common
4 scheme or plan on behalf of the Defendant.

5 So let me tell you this. You may only consider the
6 evidence of the Spartanburg County chat for the purposes
7 of considering the Defendant's identity, his intent, and
8 whether he had a common scheme or plan. However, it
9 would be improper and you shall not consider this
10 evidence as proof that the Defendant acted in accordance
11 on the occasions giving rise to these present charges
12 the same as he did in the Spartanburg chats. In other
13 words, it shall not be used by you as proof of the
14 Defendant's guilt on the present charges.

15 Also, ladies and gentlemen, I questioned you daily,
16 I don't think there's been a problem, but to the extent
17 you may have seen or heard anything while we were not in
18 court, you were back in your jury room, on lunch breaks
19 or overnight, that is not evidence and you shall not
20 consider it or even discuss it in your deliberations.

21 South Carolina follows and accepts two types of
22 evidence. We have direct evidence and we have
23 circumstantial evidence. Direct evidence is basically
24 what it sounds like. It's evidence of a person who
25 claims to have actual direct knowledge of a fact such as

1 an eyewitness.

2 Circumstantial is a little more tricky but it's put
3 this way. It is proof of a chain of facts and
4 circumstances from which you may infer or find that
5 another fact exists, although that fact has not been
6 proven directly.

7 To give you an example of circumstantial evidence,
8 if you went to bed and you had snow in your front yard
9 and you woke up in the morning and there were tracks in
10 your front yard, you may infer from the fact or the
11 existence of those tracks that someone or some thing
12 walked through your yard during the night even though
13 you did not actually see anyone or anything walk through
14 your yard during the night. That is circumstantial
15 evidence.

16 And I'll tell you that the law makes absolutely no
17 distinction between the weight nor the value to be given
18 either direct evidence or circumstantial evidence. You
19 as a jury are entitled to consider both kinds. And nor
20 is there a greater degree of certainty required for
21 circumstantial evidence to be admitted or considered by
22 you in this case.

23 But I'll tell you that you, after you have
24 considered all the evidence, direct or circumstantial,
25 that you think is appropriate, if you are not convinced

1 of the guilt of this Defendant beyond a reasonable
2 doubt, then you must find the Defendant not guilty.

3 Now, in performing your duties as finders of fact
4 it is imperative and necessary that you determine
5 credibility of the witnesses. In doing this you have to
6 consider all the evidence that's been placed into this
7 case. You can consider -- you may consider which
8 testimony which you are going to believe and which
9 testimony you are not going to believe. You may
10 disbelieve all or part of any witness's testimony. You
11 may believe all of a witness's testimony. But in making
12 this decision of credibility, you may but you are not
13 required to take into consideration a number of factors
14 and let me give these factors to you.

15 One, was the witness able to see or hear or know
16 the things about which that witness testified? How well
17 was the witness able to recall and to describe those
18 things? What was the witness's manner while testifying,
19 what we in our everyday lives call our demeanor? Is
20 there some reason that a witness would want to give
21 testimony that would help or would hurt one side or the
22 other? Did that witness have an interest in the outcome
23 of the case or any bias or prejudice concerning any
24 party or any matter or issue involved in the case? You
25 may consider how reasonable the witness's testimony was

1 considered in light of all the evidence that's presented
2 and whether the witness's testimony was contradicted by
3 what that witness had said or done at another time or by
4 the testimony of other witnesses or by other evidence
5 that has been introduced in this case.

6 Now, ladies and gentlemen, those are some, as I
7 told you, but not all of the factors that you may
8 consider when you perform your duties and make a
9 determination of credibility of the witnesses. Of
10 course, you did not or should not check your common
11 sense at the door when you are sworn in as jurors. So
12 in your deliberations when you seek this credibility of
13 witnesses, you should use your sound judgment and logic
14 and those things that make you believe, that are
15 indicators to you of truthfulness or lack of
16 truthfulness.

17 One last thing about credibility. In making this
18 determination on credibility or believability, you can
19 believe as much or as little of any witnesses as you
20 want to. You may believe all or part of one witness's
21 testimony, you may believe one witness over several or
22 several over one. However, what you do not do is add up
23 the number of witnesses that testified for one side or
24 the other in making this determination because your sole
25 objective is to find the truth, and it doesn't matter

1 whether it comes from a witness for the State, a witness
2 for the Defense or through a combination of both of
3 those.

4 Now, also, you have heard persons that have been
5 qualified as experts in this case. As I told you,
6 persons by their education or their experience have
7 become expert in their particular field are allowed to
8 give their opinions in that particular field. Now,
9 expert testimony, as I told you, should be judged just
10 as any other testimony in this case. You may accept it,
11 you may reject it, or you may give it as much weight as
12 you think it deserves considering the witnesses'
13 education, their experience, the reasons given for their
14 opinion, as well as all the other evidence that was
15 produced in this case.

16 Now, as I've told you, ladies and gentlemen, there
17 are two indictments in this case. The fact that the
18 Defendant was indicted shall not and may not be
19 considered by you as any evidence of his guilt. It does
20 not lie as a conclusion, inference, or any manner of the
21 Defendant's guilt. It is simply the mechanism by which
22 the State of South Carolina brings charges against
23 various Defendants and brings those before juries such
24 as yourselves for a determination whether they are
25 guilty or not.

1 Now, there are two indictments, as I've said. Each
2 indictment is a distinct offense. That means that you
3 must decide each indictment separately based on the
4 evidence and the law applicable to that indictment and
5 uninfluenced by your decision on the other indictment.
6 That means the Defendant may be convicted or acquitted
7 on any or all of the offenses charged, and Mr. Foreman,
8 Mr. Gibson, you will be asked to write a separate
9 verdict for each indictment and I'll go over that with
10 you in a minute.

11 Now, the Defendant in this case has pled not guilty
12 to both of these indictments and therefore that puts the
13 burden of proof on the State of South Carolina to prove
14 the Defendant's guilt beyond a reasonable doubt. A
15 person charged with committing a crime in this state is
16 never required to prove himself innocent, and I charge
17 you that it is an important rule of law that a Defendant
18 in a criminal trial, no matter what the seriousness of
19 the charge may be, will always be presumed to be
20 innocent of the crime for which he was indicted and his
21 guilt has been proven by evidence which satisfies you,
22 the jury, of guilt beyond a reasonable doubt. Now, that
23 presumption does not end when you begin your
24 deliberations in just a few minutes but it accompanies
25 this Defendant throughout the trial until you, the jury,

1 reach a verdict of guilt based on evidence satisfying
2 you of guilt beyond a reasonable doubt.

3 The presumption of innocence has been described as
4 a robe of righteousness that's placed about the
5 shoulders of the Defendant which remains with the
6 Defendant until it has been stripped from his shoulders
7 by evidence presented satisfying you of his guilt
8 satisfying you beyond a reasonable doubt. And the
9 presumption of innocence is not a mere legal theory, it
10 is not a mere legal phrase. It is a substantial right
11 to which every Defendant is entitled unless you, the
12 jury, are satisfied of his guilt beyond a reasonable
13 doubt.

14 So that leads us to the question what is guilt
15 beyond a reasonable doubt?

16 Ladies and gentlemen, I am close to the end of my
17 first aspect of my charge and then I'll give you another
18 quick break.

19 But this is the law on reasonable doubt. A
20 reasonable doubt is the kind of doubt that would cause a
21 reasonable, sincere, honest and conscientious person to
22 hesitate to act in an important matter in their own
23 affairs. It is the kind of doubt that would cause a
24 reasonable, sincere, honest and conscientious person to
25 hesitate to act in an important matter in their own

1 affairs. And proof beyond a reasonable doubt is proof
2 that leaves you firmly convinced of the Defendant's
3 guilt.

4 Now, there are very few things in this life, ladies
5 and gentlemen, that you know with absolute certainty,
6 and absolute certainty in criminal cases is not
7 required. In other words, the law does not require
8 proof that overcomes every possible doubt. If, based
9 on your consideration of the evidence, you are firmly
10 convinced that the Defendant is guilty of the charges,
11 you must find the Defendant guilty.

12 Now, on the other hand, if you think that there is
13 a real possibility that the Defendant is not guilty, you
14 must give the Defendant the benefit of the doubt and
15 find him not guilty. Now, a reasonable doubt may arise
16 from the evidence or from the lack of the evidence.

17 I further instruct you, ladies and gentlemen, that
18 the Defendant is entitled to every reasonable doubt that
19 may arise in the case. Now, what that simply means is
20 this. That if upon a fact essential to a conviction and
21 a verdict of guilty of the offenses charged, if you have
22 any reasonable doubt as to how that issue should be
23 resolved, it is your duty to resolve that doubt in favor
24 of this Defendant.

25 Also, in order to establish criminal liability,

1 criminal intent is required. For example, the mental
2 state required to be proven by the State for a
3 particular crime may be purpose, it may be intent,
4 knowledge, recklessness or criminal negligence.

5 Criminal intent must be proven by the State beyond
6 a reasonable doubt. Criminal intent is always a matter
7 that must be determined from the circumstances
8 surrounding the situation shown to have existed during
9 this trial. Because there is no way that we can prove
10 to a mathematical certainty what intent is or was at the
11 time, there is no way that medical science can dissect a
12 person's brain and determine what they had in mind or
13 what they wanted to do, so the law says that in criminal
14 cases intent may be inferred from the circumstances
15 shown to have existed, and that is how you make the
16 determination of whether or not the necessary element of
17 intent was present. It is not necessary to establish
18 intent by direct or positive evidence, but it may be
19 established by inference in the same way as any other
20 fact by taking into consideration the acts of the
21 parties and all the facts and circumstances of the case.

22 Criminal intent is a mental state, it is a
23 conscious wrongdoing. Now, it is up to you, ladies and
24 gentlemen, to determine what the Defendant intended to
25 do based on the circumstances shown to have existed in

1 this case.

2 Now, ladies and gentlemen, the Defendant in this
3 case, the fact that he did not testify shall not and may
4 not be considered by you in any form or fashion. Our
5 Constitution does not require the Defendant to prove
6 himself innocent ever. So it would be improper and you
7 shall not even discuss the Defendant's failure to
8 testify whatsoever in your deliberations. The burden
9 remains always on the State of South Carolina to prove
10 guilt beyond a reasonable doubt.

11 Now, an issue in this case is identification of the
12 Defendant as the person who committed the crime charged
13 or the charges. The Defendant [sic] also has the burden
14 of proving identity beyond a reasonable doubt. You must
15 be satisfied beyond a reasonable doubt of the accuracy
16 of the identification of the Defendant before you may
17 convict the Defendant.

18 Identification testimony is an expression of belief
19 or impression by a witness. You must determine the
20 accuracy of the identification of the Defendant. In
21 doing so you must consider the believability of each
22 identification witness in the same way as any other
23 witness in this matter.

24 I'm going to end up on the first phase. I'm gonna
25 give you a charge on knowing. An act is done knowingly

1 if the Defendant was consciously aware of what he or she
2 was doing.

3 There is a charge on suspicion. Suspicion, however
4 strong, does not suffice to sustain a conviction.
5 Suspicion implies a belief or opinion as to guilt based
6 upon the facts or circumstances which do not amount to
7 proof. The guilt of the accused, of course, must be
8 proven beyond a reasonable doubt.

9 And lastly, ladies and gentlemen, this is on loss
10 or destruction of evidence. If you find that the State
11 has lost, destroyed or failed to preserve evidence whose
12 contents or quality are important to the issues in this
13 case, then you should weigh the explanation, if any,
14 given for the loss or the unavailability of that
15 evidence. If you find that any such explanation is
16 inadequate, then you may infer that the evidence is
17 against the State's interests which may create a
18 reasonable doubt about the Defendant's guilt.

19 All right. Ladies and gentlemen, that is the first
20 phase of my charge. That is the law aspect of that
21 charge. So you may stand up for a minute and we're on
22 the downhill side of this.

23 (Whereupon, the jury and court reporter stood up
24 and stretched for a minute.)

25 **THE COURT:** Does anybody need any water? Does

1 anybody need a break?

2 (Jury confer in jury-box.)

3 **THE FOREMAN:** No.

4 **THE COURT:** All right. Ladies and gentlemen, this
5 is the substantive law that you must apply in this case.
6 And this is the law of criminal solicitation of a minor
7 as set forth in our Code Section 16-15-342, and sexual
8 activity as defined by our Code Section 16-15-365. The
9 Defendant is charged with solicitation of a minor.
10 (Reading):

11 The State must prove beyond a reasonable doubt that
12 the Defendant contacted or communicated with or
13 attempted to contact or communicate with a person who
14 was under the age of eighteen or a person the Defendant
15 reasonably believed to be under the age of eighteen, for
16 the purpose of or with the intent of persuading,
17 inducing, enticing or coercing the person to engage or
18 to participate in a sexual activity or a violent crime
19 or with the intent to perform a sexual activity in the
20 presence of a person under the age of eighteen, or a
21 person that the Defendant reasonably believed to be
22 under the age of eighteen.

23 "Sexual activity" is defined in South Carolina Code
24 Annotated 16-15-375, Subsection 5, as any of the
25 following acts or simulations thereof;

1 masturbation, whether done alone or with a human or
2 animal;

3 vaginal, anal or oral intercourse, whether done
4 with another human or an animal;

5 touching, in an act of apparent sexual stimulation
6 or sexual abuse, of the clothed or unclothed genitals,
7 pubic area or buttocks of another person, or the clothed
8 or unclothed breasts of a human female;

9 an act or condition that depicts bestiality,
10 sado-masochistic abuse, meaning flagellation or torture
11 by or upon a person who is nude or clad in undergarments
12 or in a costume which reveals the pubic hair, anus,
13 vulva, genitals, or female breast nipples, or the
14 condition of being fettered, bound, or otherwise
15 physically restrained on the part of the one so clothed;

16 excretory functions;

17 the insertion of any part of a person's body, other
18 than the male sexual organ, or of any object into
19 another person's anus or vagina, except when done as
20 part of a recognized medical procedure.

21 Ladies and gentlemen, I further charge you that
22 consent is a defense to a prosecution pursuant to this
23 section if a person under the age of eighteen or a
24 person reasonably believed to be under the age of
25 eighteen is at least sixteen years old.

1 Consent is not a defense to a prosecution pursuant
2 to this section if the person under the age of eighteen
3 or the person reasonably believed to be under the age of
4 eighteen is under the age of sixteen.

5 It is further not a defense to a prosecution
6 pursuant to this section on the basis of consent or
7 otherwise that the person reasonably believed to be
8 under the age of eighteen is a law enforcement agent or
9 officer acting in official capacity. However, if you
10 find that the law enforcement officer was not acting in
11 his official capacity at the time of the communication,
12 it would be a defense to the communications occurring
13 during that period.

14 Now, that is the substantive law that you must
15 apply, ladies and gentlemen, during your deliberations.

16 I would like to end by going over a few aspects
17 about your deliberations. And again, do not begin your
18 deliberations until we send word back to you very
19 shortly that it is appropriate. But I want to say that
20 you don't serve as jurors because you are partisans or
21 you are advocates for one side or the other. You were
22 chosen by both the State and the Defense because
23 everyone believed that you could be fair and impartial
24 and decide this case solely on the evidence without bias
25 or prejudice to one side or the other. In doing so you

1 should bring your experiences of life to the jury room,
2 you should use your good common sense, and you should
3 bring your sense of logic and reason.

4 But deliberations are not made in a hurry.
5 Deliberation is defined as this. It is a careful
6 consideration weighed up with a view to a decision. And
7 I'll tell you it's one of the geniuses about our jury
8 system, regardless of what you may think about it. It
9 allows 12 men and women from different backgrounds, from
10 different life experiences and perspectives to consider
11 evidence, to talk about it, and to ultimately hopefully
12 reach a unanimous verdict.

13 We call them deliberations for a reason. You are
14 to discuss this case in a thorough manner, you are to
15 consider the evidence in a thorough manner, and you are
16 to debate the evidence amongst yourselves in a courteous
17 manner.

18 Remember again, you are not partisans, you are not
19 advocates, you are judges of the facts. Your sole
20 interest in this case is, based on your oath, is to find
21 the truth from the evidence that has been presented here
22 in this courtroom.

23 I would ask you and charge you that you listen to
24 the views of your fellow jurors, you consider everyone's
25 points of view, and talk through all the evidence. And

1 again, remember, if you are doing something
2 deliberately, you are not in a big hurry and you should
3 not be in a hurry in this case. This is both sides'
4 only day in court and this is a very important case for
5 both sides in this matter.

6 Now, when you return to your jury room and you
7 deliberate this case, in order to be valid your verdict
8 must be unanimous. Now, that being said, each of you
9 must decide this case by yourself, and you should only
10 do so after you have impartially considered all the
11 evidence, you have fully discussed it with your fellow
12 jurors, you've listened to your fellow jurors' views,
13 and you've come to your own conclusion. Don't be afraid
14 to change your opinion if discussion persuades you that
15 you should do so. But do not come to a decision simply
16 because your fellow jurors think it is the right thing
17 to do.

18 Now, again, it is important for you to attempt to
19 reach a unanimous verdict, but, of course, you can only
20 do so after you have made up your own mind. Do not
21 change an honest belief about the weight and the effect
22 of the evidence simply to reach a verdict in this
23 matter.

24 With that being said, Mr. Foreperson, Mr. Gibson,
25 if at any time it becomes necessary for you to

1 communicate with the Court, you do the same thing that I
2 told you to do earlier. You make a note, you sign it,
3 you knock on the door and you give it to Mr. Bibb, our
4 bailiff, and he will bring it to me and we'll receive it
5 here in open court and we will act accordingly.

6 One thing I do not want you to do is ever let me
7 know or anyone know numerically where the jury stands.
8 Okay, sir? That is solely within your province until
9 the verdict is reached in this matter, or not reached.

10 Also, I'm gonna send you back the verdict form.
11 But you will need to fill out two different verdict
12 forms. They are stapled together and they are right
13 straightforward. And let me just tell you, I have to
14 put them in some order. The order means nothing in this
15 case because they just have to come in some order or the
16 other. But this is the option you will have.

17 Under indictment 2010-GS-37-363 A, we, the jury,
18 unanimously find that the Defendant, Anthony C. Odom,
19 is, the first option is not guilty of criminal
20 solicitation of a minor, or, guilty of criminal
21 solicitation of a minor. You would check the
22 appropriate unanimous decision as to that indictment.
23 You would sign it and date it, today is the 10th, and
24 then you would go to the next verdict.

25 And the next verdict is exactly the same as that

1 one except there is a different indictment number on
2 that. If you have any questions as to how you would
3 fill it out, write your question out, give it to the
4 bailiff, and we will explain that to you. Okay, sir?

5 One last thing. You are bound by the record; ie,
6 the evidence that has been presented here in this
7 courtroom and your consideration should not reflect
8 anything outside of that other than your good common
9 sense and good judgment.

10 Mr. Gibson, I'm gonna ask that you take the jury
11 back to the jury room. I will check with these lawyers
12 to see if I have misstated the law or have forgotten to
13 give you an important provision of the law. If so, I
14 will bring you back out. If not, I will send that
15 evidence in there as well as the verdict form and you
16 will receive unequivocal word that you may begin your
17 deliberations. But until such time, please do not begin
18 to discuss this case.

19 **THE BAILIFF:** The alternates?

20 **THE COURT:** The alternates will not go yet. I'm
21 gonna let them go out and then I'll bring them back out
22 in just a second. Thank you, Mr. Bibb.

23 (Whereupon, the Jury left the courtroom at
24 approximately 4:23 p.m.)

25 **THE COURT:** Any additions or objections from the

1 State?

2 MS. WINES: No, Your Honor. The only thing I
3 noticed is nothing that needs to be corrected. I
4 believe at one point you said 365 instead of 375. But
5 it's nothing of substance.

6 THE COURT: I did?

7 MS. WINES: Yes, Your Honor.

8 THE COURT: That doesn't surprise me. I apologize.

9 MS. WINES: It is no problem, Your Honor.

10 THE COURT: Mr. Huff, is there an objection from
11 the Defense?

12 MR. HUFF: Your Honor, I would just state for the
13 record that in your charge on identification, you stated
14 that the Defendant has the burden of proving
15 identification.

16 THE COURT: I did?

17 MR. HUFF: You did.

18 THE COURT: Okay. Well, that is something that
19 needs to be corrected.

20 MR. HUFF: Very well, Your Honor.

21 THE COURT: Okay. The Defendant never has the
22 burden of proof. And I apologize. That is a silly
23 mistake on my part.

24 Would you ask the jury to come back.

25 Any other...

1 **MR. HUFF:** Judge, I did not find anything else. I
2 just needed to state that. If you feel that needs to be
3 corrected, that's fine.

4 **THE COURT:** Yes, I think that should be. And I
5 don't want to -- this is a critical case. I don't want
6 to do anything that would...

7 Bring the jury back in.

8 **MR. HUFF:** And, Judge, I don't know if you need to
9 give the whole charge.

10 **THE COURT:** I'm not. As I said, I'm not.

11 **MR. HUFF:** Yes, sir. I found that with no
12 disrespect. I'm not ---

13 **THE COURT:** It was not a mistake of substance at
14 all. I appreciate it. I try not to make a mistake and,
15 unfortunately, as my wife tells me daily, I do.

16 (The Jury entered the courtroom at approximately
17 4:24 p.m.)

18 **THE COURT:** Mr. Gibson, ladies and gentlemen, let
19 me correct one thing I said. I inadvertently, when I
20 was giving you the law on identification, I apparently
21 stated that the Defendant has the burden in that matter.
22 The Defendant never has the burden. The State has the
23 burden of proof and I give it to you beyond a reasonable
24 doubt.

25 Now, with that being said, I'm gonna ask you to go

1 back to your jury room, we'll have a quick conference,
2 and then we'll send in the evidence and the verdict
3 form. Thank you very much.

4 (Whereupon, the Jury left the courtroom at
5 approximately 4:25 p.m.)

6 THE COURT: Any additions or exceptions from the
7 State?

8 MS. WINES: No, Your Honor.

9 THE COURT: From the Defense?

10 MR. HUFF: No, sir.

11 THE COURT: Let me say this before we send the
12 evidence back. I want to say it to the witnesses in
13 this case. It's a hard-fought case, it's a very
14 emotional case. Everyone involved in this case by way
15 of witnesses were very civil, they followed the process.
16 I can't commend these lawyers any stronger than what
17 I've done. You've been very prepared, you've been very
18 professional, you've about worked me to death. But I'll
19 tell you that you have been a pleasure regardless of
20 what the outcome is, these are always tough cases, and
21 you have done yourselves and your respective sides and
22 your agencies, you've served them well by good service,
23 and I appreciate it.

24 Now, that being said we are at recess. If you
25 would go through the evidence, and here is the verdict

1 form.

2 MS. WINES: Thank you.

3 (Whereupon, there was a discussion off the record
4 among counsel and the court reporter.)

5 (The Jury started deliberations at approximately
6 4:28 p.m.)

7 (There was a question from the Jury at
8 approximately 4:56 p.m.)

9 (Court's Ex. # 10, jury note, was marked for
10 identification and received in Court's evidence.)

11 THE COURT: There is a question. This is the
12 question: If an officer is not bonded, are they
13 considered an official police officer? Signed the
14 Foreperson.

15 I was thinking about that on the way up. Now, what
16 I intend to charge the jury, or at least my proposed
17 charge to the jury is that I did not charge them on the
18 law of bonding. They are only to apply the law that was
19 charged to them in this matter and that's not an issue
20 for them to consider.

21 Ms. Wines, what would be your position?

22 MS. WINES: I believe that sounds good to the
23 State, Your Honor.

24 THE COURT: And I know your objection to me not
25 letting that be an issue to be considered, but as to the

1 proposed, what would be your...

2 MR. HUFF: Judge, if you would let me confer with
3 co-counsel for a second, please?

4 THE COURT: Yes, sir.

5 (Counsel confer.)

6 MR. HUFF: Your Honor, may it please the Court, we
7 believe that although we have raised that as an issue,
8 you have charged the jury. A suggestion only, Your
9 Honor, would be that you might instruct the jury that,
10 You have heard all the evidence. I have given you my
11 charge, and I would ask that you continue with your
12 deliberations.

13 THE COURT: Okay. I note that request. I believe
14 that it would be more directional for the Jury that I
15 charge them that they are only to consider the law that
16 I charge them. That was not a proposition of law that
17 was given them. They are not to consider that
18 proposition for their deliberations, okay, sir? And
19 that's why I'm throwing it back and forth to you before
20 we bring them out and do any damage. But, I mean, that
21 certainly wasn't a charge, for them to consider that is
22 to consider matters beyond the law that was charged in
23 my view.

24 MR. HUFF: Judge, if you would note our objection,
25 I know we have made our objection as to this is an

1 element, and we had asked for the charge, and we know
2 that and we know the record is preserved.

3 THE COURT: Right. And you may be right and I
4 certainly may be wrong. But I feel like that would be
5 the proper response. But I do note your objection and I
6 think you preserved that issue certainly for review.

7 All right. With that being said, would you bring
8 the jury in, please.

9 (The Jury entered the courtroom at approximately
10 5:00 p.m.)

11 THE COURT: All right. Mr. Gibson, I have what is
12 a question from the jury, I believe, and this is the
13 question: If an officer is not bonded, are they
14 considered an official police officer? Signed you, the
15 Foreperson.

16 Is that the jury's question?

17 THE FOREMAN: Yes, sir.

18 THE COURT: All right. Ladies and gentlemen of the
19 jury, to answer your question, if you recall at the
20 beginning of my charge I told you that the only law that
21 you may consider is the law that I charge you that is
22 applicable to this case. Now, I have not charged you on
23 any proposition of bonding of an official police
24 officer, so therefore that is not a proposition of law
25 that you may consider in your deliberations. Okay, sir?

1 **THE FOREMAN:** All right.

2 **THE COURT:** Now I'm gonna ask the jury to go back
3 to the jury room and resume their deliberations, okay?

4 **THE FOREMAN:** Okay, thank you.

5 **THE COURT:** And actually wait for a minute before
6 you begin. We are going to have a small conference.
7 You may go back, but don't begin until I send word back,
8 please.

9 **THE FOREMAN:** All right.

10 (Whereupon, the Jury left the courtroom at
11 approximately 5:02 p.m.)

12 **THE COURT:** Other than your stated objection,
13 Mr. Huff, do you have any additional objection?

14 **MR. HUFF:** Other than just to flesh out more
15 specifically, Your Honor. The Chief of Police, as you
16 recall, the testimony was that his officer to be an
17 officer would have to have an oath and bond, and that's
18 why we believe it was proper to charge the jury with
19 that and it was for their consideration as a matter of
20 fact. Thank you. Nothing further.

21 **THE COURT:** Thank you, sir.

22 Ms. Wines?

23 **MS. WINES:** Nothing from the State, Your Honor.

24 **THE COURT:** Thank you very much. We are in recess
25 again.

1 MS. WINES: Thank you, Judge.

2 (Whereupon, the Jury resumed their deliberations at
3 approximately 5:03 p.m.)

4 (Whereupon, there was another question from the
5 Jury at approximately 7:07 p.m.)

6 (Court's Ex. # 11, jury note, was marked for
7 identification and received in court's evidence.)

8 THE COURT: This is the newest question. It says:
9 Can we review the Cross-Examination of Mr. Patterson on
10 11-8-11? Also the Cross-Examination of Chief Bannister
11 on 11-8.

12 Gentlemen, we don't have realtime here, as you very
13 well may know, so it's impossible to download it.
14 Another big consideration is the fact that we had a
15 significant number of objections throughout this case.
16 I'm not saying that's a problem, but that's just a fact.
17 And we have to be extremely careful about them hearing
18 it.

19 My suggestion -- and I'll be glad to hear from both
20 sides. Bring the jury in. I think you cross-examined
21 Mr. Patterson for hours. It was at least three.

22 MR. HUFF: Yes, sir.

23 THE COURT: And I want them to narrow down what
24 they're looking for ---

25 MR. HUFF: Yes, sir.

1 transcript of record.)

2 Then they just wanted the cross of Chief Bannister.

3 MR. HUFF: I'm sorry, Your Honor?

4 THE COURT: They just wanted the Cross of Chief
5 Bannister. What I'm gonna do, because there are so many
6 objections, I'm gonna have my law clerk go down there
7 and read it to the jury, editing out the objection,
8 editing out my response, and just going through like
9 that. It shouldn't be more than a few pages.

10 Any objection to that approach from the State?

11 MS. WINES: No objection to that, Your Honor.
12 However, I renew the request that they be instructed
13 again as to bond ---

14 THE COURT: I'm not doing that, I don't think
15 that's appropriate.

16 MS. WINES: Yes, sir.

17 THE COURT: I'll note your request a minute ago
18 about some type of judicial notice of bond. I'm not
19 gonna do anything of that sort, okay?

20 MS. WINES: Yes, sir, I understand. If I may just
21 add, can we somehow make your instruction to the jury
22 more specific such as ---

23 THE COURT: I'm gonna charge them like I charged
24 them a minute ago.

25 MS. WINES: Okay, thank you.

1 **THE COURT:** All right, Mr. Huff?

2 **MR. HUFF:** And, Judge, we would state for the
3 record that the jury has not asked for a charge on the
4 law, they've asked just to hear testimony.

5 **THE COURT:** They were instructed to follow the law.
6 If they're talking about bond, they're not following the
7 law. Okay, sir? I understand your, I'll note your
8 objection. But I feel like based on the questions it is
9 appropriate to remind them that that is not a proper
10 proposition of law that they have been charged on and
11 they are not to consider that during deliberations.

12 Other than I note your objection.

13 Would you bring the jury in, please.

14 (Whereupon, the jury entered the courtroom at
15 approximately 8:15 p.m.)

16 **THE COURT:** Okay. Mr. Gibson, first let me tell
17 you we did a word search, and in the Cross-Examination
18 of Mr. Patterson there was no, on 11-8-11 there was no
19 reference to bond.

20 We have all the references to official capacity.
21 My law clerk is gonna read that to you. Because there's
22 objections we're gonna edit any objections and my
23 response to that that y'all were sent out of the
24 courtroom to hear, okay?

25 Then we're gonna have the Cross-Examination of

1 Chief Bannister read to you as well. Okay?

2 THE FOREMAN: Okay.

3 THE COURT: Okay. Let me remind you again, based
4 on your question, that I want to remind you that I
5 instruct you on the law. That's my job. You are the
6 finders of the fact. I can't intervene when your
7 function is fact-finders, nor can you intervene on my
8 job to instruct you on the law.

9 And I remind you again that the legal proposition
10 of a bond requirement was not charged to you in my legal
11 charge on the law, and it is not proper for you to
12 discuss the legal requirement for a bond because that's
13 not the law I charged to you, okay?

14 That being said, Mr. Sams (phonetic), my law clerk,
15 will read those passages to you now.

16 THE LAW CLERK: This is Mr. Huff's Cross of Officer
17 Patterson (reading):

18 Q. If, and let's bring it to this factual scenario, if
19 Danger intends to have sex with someone less than
20 eighteen but he is talking and reasonably believes that
21 he is talking to somebody who is less than eighteen,
22 but, in fact, he was talking to a
23 thirty-something-year-old police officer who is at home,
24 not acting in his official capacity, he has not violated
25 the statute, has he?

1 If you want me to do that, we'll send that back.

2 THE FOREMAN: That would be great.

3 THE COURT: Any objection from the State to me
4 sending my entire charge back?

5 MS. WINES: No, Your Honor, that will be fine.

6 THE COURT: From the Defense?

7 MR. HUFF: No, sir.

8 THE COURT: All right. I'm going to put that
9 together. I want you to go back and to begin your
10 deliberations. Somehow or another there was a mix-up in
11 the communications. I'm gonna double-check on my charge
12 to you guys. But be on standby and I'll send word with
13 Mr. Bibb for you to start, okay? But don't wait for my
14 charge to begin your deliberations.

15 THE FOREMAN: Okay.

16 THE COURT: Thank you very much.

17 (Whereupon, the Jury left the courtroom at
18 approximately 8:24 p.m.)

19 THE COURT: All right. Other than your previously
20 stated objection to my giving the charge again on the
21 bond, Mr. Huff, any objections to my directions or
22 questions to the jury?

23 MR. HUFF: No, sir.

24 THE COURT: Thank you very much.

25 Ms. Wines?

1 **MS. WINES:** No objection.

2 **THE COURT:** Very good. I'm going to put together
3 my charge and send a clean copy back to them and then
4 I'm gonna tell them to start deliberating right now,
5 okay?

6 **MS. WINES:** Yes, thank you, Judge.

7 **THE COURT:** Thank you very much.

8 **MR. HUFF:** Judge, that's going to be the entire
9 charge on every issue?

10 **THE COURT:** Everything I have in there.

11 **MR. HUFF:** Okay.

12 **THE COURT:** I think I read, and the reason I say
13 that it's improper just to focus on a statute is because
14 it takes them away from the rest, so I have to send back
15 my entire charge.

16 **MR. HUFF:** It's inappropriate, Judge. Thank you.

17 **MS. WINES:** Thank you, sir.

18 **THE COURT:** Thank you.

19 (Whereupon, the Jury continued their deliberations
20 at approximately 8:25 p.m.)

21 (Whereupon, there was another question from the
22 Jury at approximately 9:34 p.m.)

23 (Court's Exhibit # 13, jury note, was marked for
24 identification and received in Court's Evidence.)

25 **THE COURT:** Okay. I'll just go ahead and -- we

1 (Whereupon, the jury resumed their deliberations at
2 approximately 9:38 p.m.)

3 Verdict of the Jury:

4 (Whereupon, there was a verdict of the Jury at
5 approximately 9:53 p.m.)

6 (The Jury entered the courtroom at approximately
7 9:57 p.m.)

8 THE COURT: Mr. Gibson, I'm informed the Jury has
9 reached a verdict; is that correct?

10 THE FOREMAN: Yes, sir.

11 THE COURT: Is it unanimous?

12 THE FOREMAN: Yes, sir.

13 THE COURT: Would you pass the verdict form to the
14 bailiff, please, sir.

15 THE FOREMAN: (Complies.)

16 THE COURT: Would you like to publish this, please,
17 ma'am.

18 THE CLERK: State of South Carolina versus Anthony
19 C. Odom, Indictment Number 2010-GS-37-363 A. We, the
20 Jury, unanimously find that the Defendant, Anthony C.
21 Odom, is not guilty of criminal solicitation of a minor.

22 State of South Carolina versus Anthony Odom,
23 2010-GS-37-364 A, We, the Jury, unanimously find that
24 the Defendant, Anthony C. Odom, is guilty of criminal
25 sexual conduct [sic] with a minor.

1 Ladies and gentlemen of the Jury, if this was your
2 verdict and is still your verdict, please signify by
3 raising your right hand.

4 The record will show that all 12 raised their
5 right hand.

6 **THE COURT:** Mr. Gibson, ladies and gentlemen of the
7 jury, it's been a long week, a long day. I want to
8 thank you for your service to the County of Oconee, the
9 State of South Carolina. I was commenting to the
10 bailiff today that I don't think I've ever had a jury
11 that is as prompt as you have been on all occasions and
12 I appreciate it. I've watched you all during this long
13 trial and you stayed engaged.

14 From the Court's perspective we are never concerned
15 about the verdict, we are just concerned that the
16 process was followed. So we want to thank you for your
17 service. The good thing is you are done for the week.
18 The better thing is you can't do it for three years
19 unless you, if you don't want to.

20 I would like to speak with you for a quick minute
21 back in your jury room, and then we'll come back out and
22 we'll pass sentence. You are more than welcome to come
23 back in the courtroom and see me impose sentence, but
24 you are certainly not required in any fashion to do so.

25 If you would step back to your jury room, please.

1 chats. But we believe the sex offender registry is the
2 most important issue here, yes, sir.

3 THE COURT: All right. Thank you for your candor.
4 If you would bear with me one moment, please, sir.
5 (Whereupon, there was a pause in the proceedings.)

6 THE COURT: Was there ever a history of substance
7 abuse?

8 MR. HUFF: No, sir. I think Dr. Schwartz-Watts
9 said the same. No, sir.
10 Sentence of the Court:

11 THE COURT: All right. This will be the sentence
12 of the Court. I'm gonna sentence you to seven years.
13 I'm gonna suspend that on probation for five years. And
14 the reason I'm giving you probation is, number one, that
15 the State is seeking to have you put on the sex offender
16 registry so you can be checked and followed, and I
17 listened to that. I also gave credence to the fact that
18 you do have a significant medical condition. And
19 although you obviously didn't do the right thing in this
20 matter, you have given some service to the State from
21 your prior job. Otherwise, I'd put you in jail. But
22 I've given enough time over your head that if you do not
23 adhere strictly to what I tell you to, you will likely
24 be incarcerated.

25 Now, there will be conditions of that probation.

1 November 10, 2011

2 9:05 a.m.

3 The Court's Ruling on Prior Motions:

4 THE COURT: All right. As to a couple matters of
5 housekeeping. Under the motion for log-rolling, I'm
6 gonna deny that motion. I feel like after looking at
7 the statute it needs the necessity of germaneness.
8 Therefore, I'm denying that motion.

9 The motion to suppress the search warrants and the
10 fruits of those search warrants based on Franks is also
11 denied. I don't find that that there was any deliberate
12 falsification or misleading, any reckless disregard of
13 fact or truth, nor was there and omission including
14 exculpatory information.

15 That being said, there still remains a directed
16 verdict motion to be made. Would you like to do that
17 now?

18 MR. HUFF: Your Honor, I believe what is still
19 before the Court, if I am correct, is a motion that a
20 decision has not been made yet on vindictive
21 prosecution --

22 THE COURT: It has not, you are correct.

23 MR. HUFF: -- and the issue of estoppel by
24 contract, and that we had presented to the Court a new
25 brief on the First Amendment objection to this

1 prosecution.

2 **THE COURT:** That's denied. Estoppel by contract is
3 denied. I don't recall that motion being made, but to
4 the extent it was, there's no conduct on the part of the
5 State that would reasonably lead the Defendant to act on
6 adverse prejudice or to change his position
7 prejudicially so I'm gonna deny that.

8 I'm gonna remain with my ruling on the
9 prosecutorial vindictiveness. Quite frankly, it was a
10 close call, but I don't find that there was established
11 any actual malice or evidence that would rise to an
12 implied malice or vindictiveness. I think under the
13 circumstances the explanation given by the State was
14 reasonable, and given the wide discretion given to
15 prosecutors, the evidence doesn't amount to the level
16 that would give rise to the draconian remedy of
17 dismissing the warrants. So, therefore, I'm denying
18 that motion.

19 Anything further?

20 **MR. HUFF:** Judge, I believe there was a motion made
21 by co-counsel under Russell which was -- it has not been
22 made yet. The basis of the Russell motion ---

23 Further Motions:

24 **MR. JOHNSTON:** It will take less than a minute to
25 do it, Your Honor. First of all, if I could, I would

1 like to just put our written motion on estoppel by
2 contract on the record.

3 THE COURT: Okay. And I'm going to render
4 counsel -- you know, there's been a flood of paperwork
5 in this case, so I want to make sure that everyone views
6 what we have in the record as far as Court's exhibits
7 and make sure that you have them complete for the record
8 in this matter.

9 MR. JOHNSTON: Your Honor, I'm now handing up our
10 motion to dismiss under a theory announced in United
11 States versus Russell. Also with that is just a
12 supplementary affidavit from one Luis Navaro (phonetic),
13 just basically describes some things he encountered when
14 trying to serve some documents on the Attorney General's
15 Office. I would like to make those a part of the
16 record.

17 THE COURT: Which motion does your affidavit go
18 towards?

19 MR. JOHNSTON: This is a motion to dismiss under
20 U.S. v. Russell. Basically I'll shorten it, it's a
21 shock the conscience motion.

22 THE COURT: Okay.

23 MR. JOHNSTON: Sort of a kitchen sink type of
24 argument that based on the entirety of the record what's
25 occurred in this case, that the actions of the State

1 have shocked or would shock the conscience of the
2 judicial system and that those, their actions have
3 violated Mr. Odom's right to due process and that was
4 the theory articulated in that federal case of U.S.
5 versus Russell.

6 THE COURT: Thank you, sir. I am denying that
7 motion.

8 Now, do we have anything further before we go to
9 the directed verdict motion?

10 MR. HUFF: Judge, there is. There is a motion. In
11 conducting our research last night, that the officer in
12 this case, Mr. Patterson, we would contend, is not a law
13 enforcement officer pursuant to the evidence presented
14 to the Court in the record.

15 THE COURT: Because he wasn't bonded?

16 MR. HUFF: He was not bonded. I would like to
17 present the Court the case State v. Boswell. And I'll
18 hand up some statutes as well throughout our code, if I
19 could provide those to the Court.

20 (Whereupon, Mr. Huff hands documents to counsel and
21 Court.)

22 MR. HUFF: Your Honor, if I could, the...

23 Your Honor, in the State of South Carolina a
24 municipal police officer must take an oath of office and
25 must be bonded in order to fulfill the office and uphold

1 the office of a law enforcement officer with the
2 authority to arrest and carry forth his duties.

3 Your Honor, in the -- I may have handed Your Honor
4 both copies of my case. If I did, apologies.

5 THE COURT: That's quite all right.

6 MR. HUFF: Judge, do you have a copy of State v.
7 Boswell in front of you?

8 THE COURT: Yes, sir.

9 MR. HUFF: That's all right. Then I gave you my
10 copy.

11 Your Honor, this was a case decided April 8, 2011,
12 of this year. It involves law enforcement activity of a
13 municipal police officer. The Court took up the issue
14 of a multi-jurisdictional agreement, and in that case
15 the Court even noted that a municipal police officer
16 must have a bond and that travels forth with him into
17 any adjoining county that he may go into in fulfillment
18 of that mutual aid agreement.

19 Your Honor, that's gonna be footnote 7, which cites
20 to Section 23-1-210. Your Honor, it's gonna state that,
21 I believe, in subsection ---

22 THE COURT: Hang on for a second, please.

23 MR. HUFF: Yes, Your Honor.

24 THE COURT: Okay, sir.

25 MR. HUFF: Your Honor, a municipal -- and I would

1 provide you with a copy of that statute as well.

2 (Whereupon, counsel hands document to counsel and
3 Court.)

4 That also requires that a municipal police officer
5 have a bond.

6 I have also provided the Court with a copy of
7 Section 22-9-30 dealing with oaths -- excuse me, with an
8 oath that's required of a police officer.

9 Your Honor, I would also provide you with a -- or
10 would cite to you Section 61-6-4510, 61-6-4510 that
11 states that (reading):

12 Municipal police officers have the power of
13 constables to enforce the provisions of this article in
14 cases arising within the municipal limits and, in
15 addition, have all the powers to enforce these
16 provisions as they have to enforce municipal ordinances.

17 And then it talks about fresh pursuit. That's
18 61-6-4510.

19 Under our codes of laws and statutory provisions,
20 Your Honor, municipal police officers basically are
21 governed by the statutory obligations imposed upon state
22 constables.

23 I would also present to the Court a copy of what I
24 believe is cited in the Boswell case I provided to the
25 Court, Section 5-7-110. It will address municipal

1 police officers. It will state, Your Honor, that
2 (reading):

3 Any municipality may appoint or elect as many
4 police officers as necessary for the proper law
5 enforcement in such municipality. Police officers shall
6 be vested with all the powers and duties conferred upon
7 constables, which require -- and constables are required
8 to have the bond, which we've also provided to the
9 Court.

10 Your Honor, even a Deputy Sheriff under 23-13-230
11 states that (reading):

12 Before entering upon the duties of his office, any
13 such duty shall take the oath prescribed by the
14 constitution and the statutes of this state. Any person
15 so appointed a Deputy Sheriff under the provisions of
16 this article shall execute the bond required of
17 constables. 22-9-20.

18 **THE COURT:** Let me ask you this, Mr. Huff. Is your
19 motion based on the failure of the employment file to
20 contain a copy or evidence of the bond?

21 **MR. HUFF:** No, sir. It's based on the fact that
22 the statute requires that in order to be a law
23 enforcement officer ---

24 **THE COURT:** I mean, I understand what you are
25 saying about the statute. Let me ask you this. I mean,

1 the only evidence that I recall during this trial that
2 concerns the bond is when you had the Clerk from
3 Westminster yesterday who brought Officer Patterson's
4 employment file, and the bond, proof of the bond was not
5 contained in that file.

6 MR. HUFF: Your Honor, we would cite you back to
7 Chief Bannister, Chief Scott Bannister, who testified.

8 THE COURT: Okay, sir.

9 MR. HUFF: And on Cross-Examination, besides
10 stating that there was no supervision of Mr. Patterson,
11 I specifically asked, and is a police officer with the
12 municipality required to have an oath and bond? He said
13 yes. So the ---

14 THE COURT: I guess my question goes to proof that
15 there is, in fact, no bond in existence or was no bond
16 in existence for Officer Patterson during the time frame
17 that's in question for this case.

18 MR. HUFF: Judge, that is, if you recall, the
19 statutory scheme of this statute. It says that
20 (reading):

21 A person over sixteen that engages in this type of
22 conduct, there is an absolute defense of consent.

23 Which as Officer Patterson admitted on Direct --
24 excuse me, on Cross would not be a crime. But for if
25 I'm a law enforcement officer, number one, and acting in

1 my official capacity, it would be a crime.

2 So that is an element of the offense in this case
3 that the State bears the burden of proving that he is a
4 proper law enforcement officer. Otherwise, he is
5 nothing more than an over-sixteen person consenting to
6 this conversation like me or you. That's the only thing
7 that would allow the State to go forward with this
8 prosecution. Because clearly he is over sixteen years
9 of age, as he admitted, and he consented to the
10 conversations.

11 So the only way the State can maintain this
12 prosecution is to prove as an element of this case that
13 Officer Patterson lawfully held the office of a law
14 enforcement officer.

15 What is in evidence and in the record is that the
16 statute requires that he have an oath and bond. The
17 Chief has said to be an officer with Westminster Police
18 Department he has to have an oath and bond. The Clerk
19 has said, I cannot find any bond in the file. We don't
20 have to prove that he didn't have it, the State has to
21 prove that he was a law enforcement officer.

22 And what is in the record is there is no such
23 proof, and proof, at least through the records clerk, is
24 there is no bond there. We don't bear the burden. The
25 State always bears the burden of proof on every issue of

1 the charge. And in this you do have the record.
2 There's no bond, even though it's required by law and
3 even the Chief knew that.

4 THE COURT: Yes, sir. I'll deny your motion.

5 Do you want to go ahead with your directed verdict
6 motion now? (No response.) Mr. Huff?

7 MR. HUFF: Yes, sir?

8 THE COURT: Are you ready to go with your directed
9 verdict?

10 MR. HUFF: Okay. I'm sorry, Your Honor. I
11 thought ---

12 THE COURT: That's okay.

13 MR. HUFF: Yes, Your Honor, I am.

14 Defendant's Motion for Directed Verdict:

15 MR. HUFF: Your Honor, in this case there are
16 several issues that must be proven in order for this
17 case to be submitted to the jury. It is readily
18 apparent that there are, in my opinion, four issues.
19 One, the intent of the person in the communication; two,
20 he has reason to believe; three, being a law enforcement
21 officer not, or acting in official capacity.

22 Your Honor, as to the reasonable belief in this
23 case that the person being spoken to was under eighteen,
24 the evidence you have in this case is a photograph that
25 was submitted to Danger. That is a photograph of a

1 twenty-eight-year-old female. There is no reasonable
2 belief that anyone can hold that that photograph would
3 allow someone to believe it is a thirteen-year-old
4 female. Quite honestly, the testimony is preposterous.

5 Also, Your Honor, the chat room that was entered
6 into is a chat room that requires people to be over
7 eighteen years of age. What has been testified to is
8 that people lie in these chat rooms as to their intent
9 or who they are, and there is no admission by the
10 Defendant as to any reasonable belief he had, other than
11 through the testimony of Officer McKellar that Mr. Odom
12 never believed he was talking to a child, that he role
13 plays and fantasizes in these chat rooms. So it would
14 be speculative to submit this case to the jury on that
15 seminal issue that the State must prove as to reasonable
16 belief.

17 Additionally, the issue as to identification, Your
18 Honor. What is in testimony is there is a computer at
19 the Odom home. It was, the account was listed in the
20 name of Barbara Odom. BellSouth testified as to a
21 connection between Mr. McGraw and the computer at the
22 Odom residence that occurred on March 2006. This case
23 is only about what may have happened in May of 2006.

24 Judge, it is similar to a breach of trust case at a
25 grocery store when money is taken out of the till and

1 there's more than one person that has access to that
2 cash register. The State has to prove who actually took
3 it. There is no evidence in this case that Mr. Anthony
4 Odom communicated with Officer Patterson in May of 2006.

5 The statements that Mr. Odom made to Ms. McKellar
6 involved another county, nothing charged with Ocone
7 County. So there is no evidence that proves that
8 Mr. Anthony Odom ever sat at a computer in his home and
9 communicated with Mr. Patterson. There is no such
10 evidence.

11 So for those reasons and for the bases of the
12 motions we have made in totality, we believe that the
13 proper result is for the Court to grant a motion for
14 directed verdict.

15 **THE COURT:** Thank you, sir.

16 Ms. Wines?

17 **MS. WINES:** Yes, Your Honor. Briefly in response,
18 as Your Honor is aware at this stage in the proceedings
19 the Court is concerned with the existence of evidence,
20 not its weight. And it is the State's position that
21 much of what Mr. Huff is pointing to does, in fact, go
22 to the weight, not the existence of evidence. And the
23 evidence must also be viewed in the light most favorable
24 to the State at this point.

25 With regard specifically to the picture, again that

1 argument goes to the weight, and in companion with all
2 the other evidence presented as to the undercover
3 persona age throughout the chat consisting of references
4 to mother, specifically the age, et cetera, Your Honor,
5 we believe there's more than sufficient evidence within
6 the chat that a jury could determine that the Defendant
7 could have thought he was talking to a thirteen-year-old
8 regardless of whether someone were to, or irrespective
9 of that picture, Your Honor.

10 We believe the picture is only an element of it.
11 Certainly we concede that the picture could have been
12 better, but it does go to the weight, not the existence
13 of evidence, Your Honor. The chats themselves are more
14 than sufficient to meet that element.

15 As to identity, just to clear that up we had Yahoo!
16 and BellSouth speak about the screen name leading to the
17 IP address, which leads to the home, which leads to the
18 statement of Mr. Odom. And taken in the entirety of the
19 statement, its contents would lead one to believe
20 reasonably that it was, in fact, Anthony Odom, not
21 Barbara Odom.

22 And, lastly, the forensic report coming from that
23 hard drive we believe taken in totality, that the jury
24 could or should believe that it was the Defendant and
25 not his wife, Your Honor.

1 I believe that was all the specifics that counsel
2 pointed out. I would just reiterate at this point it is
3 to be taken in the light most favorable to the State.

4 THE COURT: I understand, Ms. Wines.

5 Let me just say this. I agree with Mr. Huff that
6 it is extremely troubling to sit here and listen to this
7 case when law enforcement, who has a very tough job to
8 begin with, but they use a picture of a known
9 twenty-seven or twenty-eight-year-old person that they
10 would submit over to the, whoever the recipient of that
11 picture was, to try to catch somebody who is supposedly
12 a child sex abuser. And I think that's extremely
13 troubling.

14 However, with that being said, the evidence in this
15 case -- I agree with Ms. Wines -- is capable of more
16 than one inference. I'm not gonna weigh the evidence.
17 In viewed in the light most favorable to the State, it
18 is a question of fact for the jury to make a
19 determination of.

20 With that being said, are you ready to proceed with
21 your first witness, Mr. Huff?

22 MR. HUFF: We are, Your Honor.

23 THE COURT: Ms. Wines, is the State ready to
24 proceed?

25 MS. WINES: Yes, Your Honor. Thank you.

1 The first part will be on the rules that define and
2 control their duties as jurors. The second would be on
3 the substantive law in this case. And the third would
4 be some thoughts and the rules concerning their
5 deliberations.

6 In the general rules aspect, I tell them that they
7 have to make their findings from the evidence that's
8 presented here in the courtroom in this case and they
9 must apply the law as I give it to them. They shall not
10 be concerned with what they think the law should be.
11 They have to accept it as it is.

12 I tell them that they shall not be influenced by
13 any personal likes, dislikes, or opinions, prejudice or
14 any sympathy they may have from one side of the case to
15 the other. And that means they must decided this case
16 solely from the facts and evidence presented here in
17 this courtroom and no other, and that's what their oath
18 requires them to do.

19 I tell them they have to abide by all my
20 instructions, not just part of them. However, if I have
21 done anything during this trial to indicate how they're
22 supposed to be -- how they're supposed to find facts,
23 then they are to disregard that because under our state
24 Constitution I am not allowed to have an opinion as to
25 the facts in this case; that they alone are the judges

1 of what those facts are and they determine what those
2 facts are by evaluating and weighing the evidence. And
3 that is a mental process. I can't give them a set of
4 scales to put the evidence on. But they weigh and
5 evaluate the evidence by using their good common sense
6 and sound judgment.

7 I go through what is and what is not evidence in
8 the case. I tell them the sworn testimony and exhibits,
9 any stipulations.

10 What stipulations have there been in this case?

11 MR. HUFF: I think to the chain of custody may have
12 been the only -- Well, no, I don't -- it wasn't
13 stipulation, we just didn't object. I don't think
14 there's been any ---

15 THE COURT: I was thinking about that because I
16 noticed you had a request on stipulations. I don't
17 believe there has been. Anyway, I don't think it would
18 be proper for me to charge them on chain of custody
19 anyway.

20 MR. HUFF: No. I would withdraw the stipulation. I
21 think we -- in Spartanburg we had a stipulation and so
22 that may have just been left in the packet. If you
23 would disregard that. We would not -- just ---

24 THE COURT: Okay. Now, I tell them what is not in
25 evidence and arguments, the lawyers' questions and I go

1 back again and tell them about the objections and things
2 of that nature. They need that in this case. We've had
3 some aggressive lawyering here, which is very proper.

4 Now, I also would tell them that what is not
5 evidence or what is limited evidence is evidence that is
6 received for a limited purpose. Okay? And I know that
7 the State has proposed a prior bad act charge. I would
8 give a modified version of that at this point, and I'm
9 gonna read it what I propose and see if anybody would
10 have an objection to this.

11 This is basically along the lines that I charged
12 the jury earlier. But there's been certain evidence
13 that's been received in this case for a limited purpose
14 only, and you may only consider the evidence of the
15 Spartanburg chat for purposes of considering the
16 Defendant's identity, his intent, or whether he had a
17 common scheme or plan. However, it would be improper
18 and you shall not consider this evidence as truth that
19 the Defendant acted in accordance on the occasions
20 giving rise in this case as he did there. In other
21 words, it shall not be used by you as proof of the
22 Defendant's guilt of the present charges.

23 Any problems with me reciting that charge? I know
24 you would rather not have any prior chat conversations
25 at all.

1 **MR. HUFF:** Judge, I think that was part of the
2 prior charge we handed up to you. It cannot be used to
3 prove an element of the crime in this case other than
4 what you've just said, intent. That's it. My fear is,
5 I would just simply ask the Court, it's more than
6 just -- because the fear that we have is it was
7 introduced, as you state, for identification, intent, or
8 common scheme. The fear is that if the State pounds on
9 the Spartanburg chats in this jury, as if it occurred
10 here in Oconee, that they consider that as evidence that
11 he did something wrong here in Oconee.

12 **THE COURT:** Well, let me just say this. I would
13 suspect that if the argument is made such that he did it
14 then, he did it now, there would be an objection. I
15 would instruct the jury that they can only -- they
16 cannot consider that evidence for that whatsoever. It
17 cannot be used for proof of his guilt, only for proof of
18 his intent, whether he was engaged in a common scheme or
19 plan. Okay?

20 And I'm not gonna try to hamstring the State in
21 their arguments, but I would let you know that I would
22 sustain that objection and give a curative charge then,
23 okay? We don't need that.

24 **MR. HUFF:** If that were to occur, we don't think a
25 curative, I'll tell you now, I don't think the curative

1 would meet the test here. But out of an abundance of
2 caution, that's what we would present to the Court.

3 THE COURT: Okay, sir. Thank you.

4 MR. HUFF: Thank you.

5 THE COURT: Then I'll tell them anything else they
6 may have heard or haven't heard in this case is not
7 evidence and outside of this courtroom is not evidence.
8 I go ahead and I describe to them what is direct
9 evidence and what is circumstantial evidence. The fact
10 that one degree of proof is higher than the other and
11 both of them are perfectly valid.

12 I get through the fact that they have to make a
13 determination of the credibility of the witnesses in
14 order to make findings of fact. And I go through the
15 list of several factors that they can consider, but I
16 also tell them you don't check your common sense at the
17 door, and that you don't add up one side or the number
18 of witnesses appearing from one side or the other. The
19 standard charge in that regard.

20 I give them the same charge I basically have given
21 throughout this trial on the expert testimony.
22 Basically they can give their opinion, but it's like any
23 other evidence, that they can do with it what they want.

24 I will, again, charge them and remind them that the
25 fact that the Defendant was arrested and charged and

1 indicted is not evidence of guilt. It does not raise an
2 inference nor a presumption of guilt. That also, there
3 are multiple indictments in this case ---

4 MR. HUFF: Judge, did you say his arrest and
5 indictment?

6 THE COURT: Yes, sir.

7 MR. HUFF: There was no arrest in this case.

8 THE COURT: No arrest?

9 MR. HUFF: I'm sorry. No, sir. There was no
10 arrest warrant for this case.

11 THE COURT: Okay. So we just say the fact that he
12 was indicted.

13 Do we have a sticky note to put over this.

14 THE CLERK: (Handing sticky note to Court.)

15 THE COURT: So I'm gonna just say charged and
16 indicted.

17 MR. HUFF: Just indicted.

18 THE COURT: If you want indicted, I think that's
19 fine.

20 MS. WINES: I believe we can agree on that, Your
21 Honor. Just say indicted.

22 THE COURT: Okay. That's fine.

23 Then I go into the fact that there are multiple
24 indictments, each one of them is separate and distinct
25 and they have to be decided separately and uninfluenced

1 by their decision on the other indictment. And I tell
2 them that the Defendant may be convicted or acquitted on
3 any and all of the offenses charged and they will be
4 required to have a separate verdict on each indictment.

5 I go on to describe the presumption of innocence.
6 I describe reasonable doubt. I charge them on the law
7 of intent. Also in this case the failure of the
8 Defendant to testify.

9 Now, I had some issue as to identification charge.
10 It doesn't seem to me that I need to do that charge, but
11 I'll be glad to hear from either side on that. Here.
12 This is my identification charge. It's generally out of
13 the charge book. It says, "an issue in the case is the
14 identification of the Defendant as the person who
15 committed the crime charged. The State has the burden
16 of proving identity beyond a reasonable doubt. You must
17 be satisfied beyond a reasonable doubt of the accuracy
18 of the identification of the Defendant before you may
19 convict the Defendant. Identification testimony is an
20 expression of belief or impression by a witness. You
21 must determine the accuracy of the identification of the
22 Defendant.

23 You must consider the believability of each
24 identification witness in the same weight as any other
25 witness. You may consider whether the witness had an

1 adequate opportunity to observe the offender at the time
2 of the offense. This will be affected by things like
3 how long or short of a time was available or how far or
4 close the Defendant was, the lighting."

5 I mean, some of that goes to eyewitness. I think
6 what we could do here is just stop it.

7 MR. HUFF: I think we could stop it at Your Honor's
8 suggestion -- excuse me, your honor.

9 THE COURT: No, please.

10 MR. HUFF: -- respectfully, stopping where you get
11 into the area where it indicates that a physical
12 presence --

13 THE COURT: So if we go, if we go to that charge
14 and you may consider the believability of each
15 identification witness in the same way as any other
16 witness and stop. And I think that part I find, I think
17 would be appropriate. How do you feel about that?

18 MS. WINES: No objection to that, Your Honor.

19 THE COURT: Okay. I've made my cheat notes.

20 MR. HUFF: Judge, I know that you've already gone
21 by reasonable doubt and I certainly like to hear what
22 that is and look at it.

23 THE COURT: I'll be glad to give it to you.

24 MR. HUFF: I certainly don't want to get you out of
25 order.

1 THE COURT: No. No. Listen, I can turn the page
2 one way or the other.

3 This is reasonable doubt. "What is a reasonable
4 doubt in the law? A reasonable doubt is the kind of
5 doubt that would cause a reasonable, sincere, honest and
6 conscientious person to hesitate to act in an important
7 matter in their own affairs. Proof beyond a reasonable
8 doubt is proof that leaves you firmly convinced of the
9 Defendant's guilt.

10 There are very few things in this world that we
11 know with absolute certainty, and in criminal cases the
12 law does not require proof that overcomes every possible
13 doubt. If, based on your consideration of the evidence,
14 you are firmly convinced that the Defendant is guilty of
15 the crime charged, you must find the Defendant guilty.

16 On the other hand, if you think there is a real
17 possibility that the Defendant is not guilty, you must
18 give the Defendant the benefit of the doubt and find him
19 not guilty. A reasonable doubt may arise from the
20 evidence or it may arise from the lack of the evidence.
21 I further instruct you that a Defendant is entitled to
22 every reasonable doubt that may arise in the case.

23 And what that simply means is this. That if upon
24 any issue of fact essential to a conviction and a
25 verdict of guilty of an offense charged, if you have any

1 reasonable doubt as to how that issue should be
2 resolved, it is your duty to resolve that doubt in favor
3 of the Defendant."

4 That's my reasonable doubt charge.

5 MR. HUFF: Judge, for the record, the phrase that
6 they "must find the Defendant guilty" we would take
7 exception to. I don't think Constitutionally that is
8 correct. It is their decision to make. Absent that one
9 phrase, we would have no objection to the Court's
10 charge. I tried to write what you wrote ---

11 THE COURT: My phrase, if based on your
12 consideration of the evidence you are firmly convinced
13 that the Defendant is guilty of the crime charged, then
14 you must find the Defendant guilty?

15 MR. HUFF: Yes, sir. I think that ---

16 THE COURT: I should say "should"?

17 MR. HUFF: No, sir. It is our position that under
18 our Constitution the jury has the absolute choice to
19 return the verdict that they believe is appropriate in
20 deciding this case.

21 THE COURT: All right. I note your objection.
22 I've given that charge umpteen times and I think it is
23 appropriate under the law, but it is so noted. Okay?

24 Another one, since this is a big part of this case,
25 is intent. And the law of intent is this. "That in

1 order to establish criminal liability, criminal intent
2 is required. For example, the mental state required to
3 be proven by the State for a particular crime might be
4 purpose, intent, knowledge, recklessness or criminal
5 negligence. Criminal intent must be proven by the State
6 beyond a reasonable doubt. Criminal intent is always a
7 matter that must be determined by the jury from the
8 circumstances surrounding the situation.

9 There is no way to prove intent to a mathematical
10 certainty. There is no way medical science can dissect
11 a person's brain to determine what that person had in
12 mind. So the law says that criminal intent may be
13 inferred from the circumstances shown to have existed.
14 This is how you make a determination of whether or not
15 the necessary element requiring intent was present. It
16 is not necessary to establish intent by direct and
17 positive evidence, but intent may be established by
18 inference the same way as any other fact, by taking into
19 consideration the acts of the parties and the facts and
20 circumstances of the case.

21 Criminal intent is a mental state. It is a
22 conscious wrongdoing. It is up to you to determine what
23 the Defendant intended to do based on the circumstances
24 shown to have existed. Criminal intent may arise from
25 action or a failure to act. It may arise from

1 negligence, recklessness, or an indifference to duty or
2 to consequences that is considered by law to be the
3 equivalent of criminal intent."

4 MR. HUFF: Judge, I don't think there's any issue
5 as to a duty here. I don't know if that would apply.

6 THE COURT: Okay.

7 MR. HUFF: I neglected to write that part down.

8 THE COURT: Was that the last paragraph?

9 MR. HUFF: Could you express that again, Your
10 Honor?

11 THE COURT: The last paragraph, I believe is what
12 you're, criminal intent can arise from an action or a
13 failure to act. That's what you are talking about as
14 far as duty?

15 MR. HUFF: Yes, sir.

16 THE COURT: Okay. I agree with you and I'll take
17 that out. How about the rest of the charge?

18 MR. HUFF: Judge, I believe that the rest is
19 appropriate. Although, we would submit this is really
20 akin to a specific intent crime here and I do not ---

21 THE COURT: I don't know how I could do anything
22 much more specific than that without getting close to
23 commenting on the facts in this case. That's my
24 concern.

25 MR. HUFF: Yes, sir.

1 THE COURT: Okay?

2 MR. HUFF: Thank you.

3 THE COURT: Thank you. Now, we have the
4 identification. There's no character put into evidence
5 in this matter at all?

6 MR. HUFF: No, sir.

7 THE COURT: So have you-all had, the attorneys had
8 a chance to review my proposed charge on criminal
9 solicitation of a minor?

10 MS. WINES: Yes, Your Honor. The State has no
11 objection.

12 THE COURT: Do you have an objection?

13 MR. HUFF: Your Honor, we do.

14 THE COURT: That's a surprise. I say that in jest.
15 You're doing your job fine. I'm just giving you a hard
16 time.

17 MR. HUFF: Thank you. Judge, we believe that the
18 Court proposed charge takes out the defense that is in
19 the evidence of this case. I know that the State
20 proffered a proposed charge Number 1, which I believe
21 tracks the statute and would probably be a more
22 appropriate charge.

23 THE COURT: Okay.

24 MR. HUFF: In that ---

25 THE COURT: I will do -- if you want me to do the

1 State's charges, then I will definitely do it. That way
2 we don't have the problem. Okay?

3 Now, let me ask along these lines, Mr. Huff.

4 And I guess I ask this more to the State. The
5 proposed charge under 16-15-342(d), officer not acting
6 in official capacity, I'm inclined to charge ---

7 MR. HUFF: Judge, is that one of the charges we ---

8 THE COURT: Yes, sir.

9 MR. HUFF: Yes, sir.

10 THE COURT: I was really asking this to Ms. Wines
11 since she proposed it. This is the one that says,
12 "according to the statute it is a defense to a
13 prosecution in this case if any police officer age
14 sixteen or older consenting to the communication was
15 acting beyond his official capacity during any of the
16 communications. If you find the police officer was
17 acting outside of his official capacity during any of
18 the communication, Mr. Odom is entitled to this defense
19 and cannot be convicted as to that particular crime and
20 cannot be convicted based on that communication."

21 What is your position?

22 MS. WINES: I strongly object to that, Your Honor.
23 I believe that is a misinterpretation of the law. The
24 State's position is, first of all, that is not what the
25 statute says. The statute, as you read it in whole, B

1 says if the defense is you're sixteen; D says it's no
2 defense if you're an undercover officer in an official
3 capacity.

4 THE COURT: It also says official capacity is
5 placed there for a purpose.

6 MS. WINES: I completely agree, but ---

7 THE COURT: So let me ask you this: If the officer
8 was at his house not on duty ---

9 MS. WINES: Right.

10 THE COURT: --- engaged in this conversation, that
11 would raise a defense, correct?

12 MS. WINES: I believe it would raise a defense to
13 be weighed by the jury, but they still could find
14 guilty. It's a defense. Not an affirmative defense.
15 Something to be weighed in determining -- I don't know
16 how to say it any more clearly.

17 THE COURT: Well, I think ---

18 MS. WINES: And I also don't think ---

19 THE COURT: It's not a plea at bar is what you are
20 saying?

21 MS. WINES: Yes. And I also don't believe there is
22 evidence that he was not in his official capacity. All
23 the testimony has been that he was on duty.

24 THE COURT: You know, there is some inference you
25 can raise by the time cards and those things and the

1 dates and times on these chats that were late at night.
2 He testified clearly that he was at Westminster on his
3 computer when this occurred, but through the Clerk,
4 through the time sheets and the jury may infer that and
5 it may be a stretch.

6 MS. WINES: Okay. And, Your Honor, if I may just
7 add to my previous thought as it became more clear in my
8 head what I was trying to say. The point being it is
9 the State's position that it is always a matter of what
10 the Defendant believed. That is the beginning of the
11 elements of the crime.

12 And then you get into the defenses. It is the
13 belief that he was talking to a thirteen-year-old girl.
14 It's the State's position that if the Defendant does not
15 know he is talking to someone over thirteen, he's not
16 entitled to that defense. It doesn't matter that that
17 person is over sixteen. If the Defendant doesn't know
18 it, he's not entitled to that defense unless you have
19 some sort of inference.

20 My position, as I believe I've stated before, is
21 we've had cases, for example, where you have a minor
22 who, a live minor, who is chatting with a person over
23 eighteen, and a parent finds out, a parent, not an
24 officer, but a parent finds out, the parent can ---

25 THE COURT: Well, you are going awry from my

1 question of official capacity. I just want to tell
2 you ---

3 MS. WINES: Well, let me be more clear, Your Honor.

4 THE COURT: Okay.

5 MS. WINES: The State, the State would still charge
6 if it was an adult in the role of a minor.

7 THE COURT: Whether you charge a minor is not the
8 law.

9 MS. WINES: Okay.

10 THE COURT: I mean, I understand that's what your
11 position is when I say "you."

12 MS. WINES: Yes.

13 THE COURT: But would you not as part of your
14 burden of proof ---

15 MS. WINES: Yes, sir.

16 THE COURT: --- in order to apply this statute ---

17 MS. WINES: Yes, sir.

18 THE COURT: --- have to establish, because that's
19 what you attempted to do ---

20 MS. WINES: Yes, sir.

21 THE COURT: --- to show that Officer Patterson was
22 acting in his official capacity during the times of
23 these chats?

24 MS. WINES: That is not what I believe, Your Honor.
25 I believe we have to show the Defendant believed he was

1 chatting with a thirteen-year-old girl, period. It
2 would be on the Defense to show he was not in his
3 official capacity.

4 **THE COURT:** So, what you're saying is what Mr. Huff
5 has been saying in the whole case and that is if this
6 Defendant says "I didn't believe anything else but
7 this," then he can't be found guilty?

8 **MS. WINES:** I agree with that. I believe it's a
9 matter of intent, but we don't need to be getting all
10 confused about official capacity or not.

11 **MR. HUFF:** Judge, the Legislature put this in for a
12 reason and that is it is when you have a
13 sixteen-year-old person, whether you catch them -- I
14 know they say the word it is a defense. It's an
15 absolute defense.

16 The way the statute reads, if the person is
17 actually sixteen but consents to the communications,
18 there is no crime under this. Because if the defense is
19 believed by the jury, then what are they to do with it?
20 They have to return a verdict of not guilty. It's an
21 absolute. That's why when it is a sixteen-year-old
22 who -- you're not gonna -- you can't have a law
23 enforcement officer who is less than eighteen years of
24 age. You can't do that.

25 So what the Legislature put in there was, well,

1 what are we going to do, since we are already saying
2 we're providing a defense to someone if they're already
3 eighteen or above that's doing the conversations, how do
4 we allow officers to continue to engage in this
5 investigation without the case being dismissed? We've
6 proved ---

7 THE COURT: Let me stop you. Stop, stop, stop. I
8 hear you. I'm not dismissing or disagreeing with you,
9 but that gets us nowhere towards getting this issue
10 resolved.

11 MR. HUFF: Right.

12 THE COURT: My concern is how do we deal with the
13 issue of official capacity? I have to say I don't
14 necessarily agree with you. You may very well be right.
15 I am wrong more often than I care to be.

16 But I think that when the Legislature puts terms in
17 the statutes there for that purpose -- I had my law
18 clerk look up the definition of official capacity the
19 other day because it's not defined in the statute and
20 that's where you go under statutory construction. In
21 looking at that, official is an adjective and it says,
22 "of or related to an office, position, or trust, holding
23 an office, authoritative, authorized, benefiting or
24 characteristic of a person in office." Capacity means
25 duty, position, role.

1 If you look at those in that ordinary sense, it
2 clearly means while he's working and not while he's out
3 there playing on his computer at his house in my
4 opinion.

5 **MS. WINES:** Your Honor, I don't disagree with that
6 in particular. A move to this disagreement would be the
7 defense is created when the person is sixteen and
8 consenting, and then the State's position is it's
9 withdrawn back again when it's an officer in an official
10 capacity, if that makes any sense.

11 **THE COURT:** Say that again, please.

12 **MS. WINES:** So let's say basically just tracking
13 the statute, we've got the elements and then the
14 Legislature provides for a defense by saying if it's
15 actually sixteen or older, we're gonna try to be
16 consistent with the other sex crimes laws, which we all
17 know they're really not all that consistent, but the age
18 of consent is sixteen, so I believe the defense was put
19 in to try to be consistent with other sex crimes laws to
20 say sixteen or older, you get that defense, but it is
21 then removed again if the officer is in official
22 capacity. Saying there is no defense if that sixteen
23 year or older ---

24 **THE COURT:** I agree with that. And I'm saying what
25 the difference is and you and I are at a diversion in

1 our opinion.

2 MS. WINES: Okay.

3 THE COURT: And I think that assuming ---

4 MS. WINES: Right.

5 THE COURT: --- that the Defendant thought he was
6 talking to a thirteen-year-old, which in fact in reality
7 he was talking to an officer who was off-duty at his
8 home playing on his computer acting like a
9 thirteen-year-old, I still think that is a defense under
10 the statute. I mean, that's what's been argued by the
11 Defense, and I agree with that.

12 MS. WINES: Okay. I think ---

13 THE COURT: I think the officer has to be clothed
14 in his official duties to get the defense.

15 MS. WINES: I don't disagree with that. I think
16 what I'm not being clear on to the Court is that not
17 only does the -- okay. Let me think how to say this. I
18 apologize, Judge.

19 THE COURT: I know. We've gone a little too far.

20 MS. WINES: And I don't mean to be playing
21 semantics. But the Defendant needs to believe that he
22 is talking to a sixteen-year-old consenting. Okay. I
23 just don't believe I can articulate it any better than I
24 already have.

25 THE COURT: I don't think you can, and it is a

1 little semantics. But let me ask you this. I'm
2 willing, whether I'm right or wrong, to give the charge
3 that the State has the burden of proving that the
4 officer was acting in his official capacity at the time
5 of the communications as a part of its burden of proof.
6 I think you do have that, okay? And I'll note your
7 objection to that.

8 MS. WINES: Yes, sir.

9 THE COURT: But I'm not going anywhere beyond that.
10 I think just a simple statement.

11 MR. HUFF: Judge, and I did not number my charges
12 but the header references is 342(D).

13 THE COURT: Yeah, I'm not gonna charge that.

14 MR. HUFF: You're not gonna charge it.

15 THE COURT: What I'm gonna do, since you have
16 agreed to State's proposed Jury Charge Number 1, what I
17 would propose to do is insert at the end of the first
18 paragraph, after under the age of eighteen, that the
19 State has the burden of proving beyond a reasonable
20 doubt that the officer was acting in his official
21 capacity at the time.

22 MR. HUFF: Well...

23 THE COURT: As I go through that and I start
24 articulating, Ms. Wines may be correct.

25 MS. WINES: Your Honor, I don't, I just don't

1 believe it's an element of the crime.

2 THE COURT: It's not an element of the crime, it
3 would be an element of intent.

4 MS. WINES: Right. Exactly, Your Honor.

5 THE COURT: Well, would it be improper then to say
6 that it would be a defense if you find that the officer
7 was not acting in his official capacity at the time of
8 these communications?

9 MS. WINES: That would certainly be better, Your
10 Honor, and I don't know that I would object to that.

11 THE COURT: I agree with you, Ms. Wines. I was
12 incorrect. You were right. What I'm saying is, like
13 you said, it's an absolute defense. So instead of
14 putting it as an element, which it's not, put it as a
15 defense, say it would be a defense if you find that the
16 officer was not acting in his official capacity at the
17 time of the communications.

18 MR. HUFF: Judge, it's an absolute defense. If
19 they find that, then it's an absolute defense which
20 means there can be no conviction.

21 THE COURT: I understand that.

22 MR. HUFF: Yes, sir.

23 THE COURT: I understand that. But just you want
24 me not to instruct the jury they must find the Defendant
25 guilty if they are firmly convinced of being guilty. I

1 can add in there, if you find that the officer was not
2 acting in his official capacity at the time of the
3 communications, you must find him not guilty?

4 MR. HUFF: Yes. I think, I think everything --
5 yes, sir.

6 THE COURT: I know you don't, but I just -- here's
7 what I'm gonna do. I'm gonna make a second decision.
8 If I'm wrong, it comes back to me. I'm just gonna put
9 that if you find that the officer was not acting in his
10 official capacity, it is a defense to the charges, or
11 something along those lines.

12 And I note the State's objection and the Defense's
13 objection for the record.

14 All right. Now, my final part of my charge, I'm
15 going to go over your requests, but we have to do fair
16 deliberations and that they're not partisans and they're
17 not advocates; that they, their verdict is to speak the
18 truth, and that deliberations means careful
19 consideration and it allows people from different
20 backgrounds and life experiences to come together and
21 ultimately and hopefully reach a verdict.

22 We call it deliberations for a reason. They are to
23 discuss all the evidence in a thorough, calm, and
24 courteous manner and that they are not partisans or
25 advocates for one side or the other, but they are judges

1 of the facts, and their sole interest is to find the
2 truth from the evidence they heard in the courtroom.
3 That they listen to each other and consider everybody's
4 opinions, they are not to be in a big hurry. But in
5 order to be valid, the verdict must be unanimous.

6 That being said, each of them must decide the case
7 on their own after they have impartially considered all
8 the evidence and listened to their fellow jurors and not
9 be afraid to change their opinion if the discussion
10 persuades you that you should, but do not come to a
11 decision simply because the other jurors think you
12 should come to a decision.

13 It's important to attempt to reach a unanimous
14 verdict, but only you do so after you have made your own
15 decision. Do not change your honest belief about the
16 weight with the effect of the evidence simply to reach a
17 verdict. In other words, do not change your opinion
18 solely for the sake of being, having a unanimous
19 verdict.

20 Then I go over filling out the verdict form, how to
21 have communications with the Court. Then I send them
22 back to the jury room to go over with you whether I've
23 omitted or misstated something or to clarify something.

24 Okay. Now, that being said, I've made a
25 modification of the Defense's request under 16-15-342,

1 as I said I would, and that's what I will charge. Just
2 for the record, here's the change I made. However, at
3 the end of the State's request to charge Number 1, I've
4 added this paragraph.

5 "However, if you find that the law enforcement
6 officer was not acting in his official capacity at the
7 time of the communications, it would be a defense to the
8 charge for those communications occurring during that
9 period. Okay?

10 If I bring up your charge, that means I'm
11 considering charging it. If I do not bring it up, that
12 means it's in my standard charge or I'm not going to
13 charge it. I think that would be the easier way to do
14 it.

15 One is the spoliation charge. I have considered
16 that and I would consider charging that "If you find the
17 Plaintiff or the State has lost, destroyed, or failed to
18 preserve evidence, and these contents or quality are
19 important to the issues in the case and you should weigh
20 the explanation, if any, given for the loss or
21 unavailability of the evidence. If you find that any
22 such explanation is inadequate, then you may infer that
23 the evidence is against the State's interests, which may
24 create reasonable doubt of the Defendant's guilt."

25 What is your position on that, besides "no"?

1 **MS. WINES:** You got that part right, of course,
2 Your Honor. Your Honor, first let me say I did
3 anticipate this. I had prepared case law to hand up to
4 Your Honor; however, I have lost it and I cannot
5 remember the name of the case.

6 But my understanding of the law is that in order
7 to receive -- and I understand why you would consider it
8 in this case, Your Honor -- but my understanding of the
9 law is that in order to properly charge on spoliation
10 there needs to be bad faith established as to the loss
11 of the evidence, Your Honor. And I apologize I can't
12 cite a case for you, but I do believe there has to be a
13 showing of bad faith.

14 And the testimony in this case is, I had it, I left
15 the department, I don't know where it went. There is no
16 allegation of intentional destruction or loss, Your
17 Honor.

18 **MR. HUFF:** Judge, and I would be glad to open the
19 computer back up. Spoliation does not require bad
20 faith. It is for the jury to consider whatever reason
21 has been presented by the State. It may be credible or
22 not credible. They don't have to accept or infer
23 anything. It is a proper charge and properly drafted.

24 **THE COURT:** I'm gonna, subject to your objection,
25 Ms. Wines, I am gonna read that charge. I think that

1 the evidence is such that it would be appropriate under
2 the circumstances of this case.

3 Now, the other charge that you had was an inference
4 from failure to record evidence. It's the same thing.
5 I'm not gonna be charging that.

6 MR. HUFF: Judge, that's different. I think the
7 evidence in this case that can be considered by the jury
8 is, one, the lost evidence could apply to the Camtasia
9 that Mr. Patterson said he made on the second chat that
10 he's testified is gone.

11 THE COURT: Okay.

12 MR. HUFF: He's also stated that he did not record
13 an incident report or record what he did, whether it be
14 an incident report or whatever. That's a totally
15 different issue.

16 THE COURT: Well, let me tell you this. I'm not
17 gonna give you that charge for two reasons. Number one,
18 it's so close to the first charge, it's redundant. I
19 know the nuances are in there that you are pointing out.
20 But at the same time I restricted the State by my
21 rulings of explaining what the officer would have
22 testified was a reason for not having his incident
23 report and that is there is another charge investigation
24 in Spartanburg. So I'm not gonna, based on my ruling,
25 not gonna let you get a charge that is more adverse than

1 that.

2 MR. HUFF: We understand your ruling, Your Honor.

3 THE COURT: Yes, sir. Thank you.

4 And what I would suggest to the State and the
5 Defense is to make your requests for charge part of the
6 Court's exhibits for the record and that way if I'm
7 mistaken, somebody can correct me.

8 All right. That would, as far as I'm concerned at
9 this point, Mr. Huff, that would be all of your charges
10 I would consider charging.

11 MR. HUFF: You're gonna charge all the others?

12 THE COURT: I'm not going to.

13 MR. HUFF: You're not going to charge.

14 THE COURT: I think they're included. That would
15 be criminal intent. I don't think intentional is really
16 a concept in this case. Intentional.

17 MR. HUFF: Well, Judge, the intent is the crux of
18 the whole ---

19 THE COURT: Intent -- it's two different charges.
20 You've got an intent charge, which I've gotten, and I've
21 changed it to take out the duty part. But your
22 intentional charge, I don't see that concept being
23 involved in this case unless I'm just overlooking
24 something.

25 MR. HUFF: Well, what's being -- I understand what

1 the intent is, but then you've got to have the
2 intentional act. That's one of the things of this
3 statute whether you intend to act on some sexual, in
4 some sexual way.

5 THE COURT: Intended -- no. I think the intent,
6 you know, it certainly doesn't require overt act. I
7 think we all agree on that. I think the intent charge
8 would be sufficient to cover both of those concepts.

9 Your charge on knowledge of a fact, I mean, I
10 wasn't inclined to charge that, but I'll hear from you
11 on it.

12 MR. HUFF: Judge, the charge states a Defendant who
13 is not conscious of a fact doesn't act with knowledge of
14 that fact, even though a reasonable person with the same
15 conduct -- what this statute brings in is two malleable
16 items that must be proven and determined by the jury,
17 intent and reasonable belief. Reasonable belief deals
18 with knowledge that the person has, and that's why I
19 believe this is an issue.

20 One of the things Ms. Wines just stated to the
21 Court is their position was you've got to know that it's
22 a person under thirteen. You gotta know that it's
23 somebody over sixteen. If you don't, you've already
24 committed a crime. That addresses the issue. And I
25 think knowledge goes to reasonable belief and I believe

1 it is an appropriate charge with this statute. It might
2 not be with others. But this statute really has that
3 mental intent and knowledge issue that would make this
4 an appropriate request.

5 THE COURT: Okay. I'm gonna deny that request.

6 Something I neglected earlier, and I was just
7 looking at it, when I charge the jury what the evidence
8 is, they have to conclude or make a finding that the
9 Defendant's date of birth is like 6-22 something. What
10 is his date of birth, Mr. Huff?

11 MR. HUFF: '73, Your Honor.

12 THE COURT: That's a conclusive fact. Okay? All
13 right.

14 What about the -- Ms. Wines, I'll be glad to hear
15 you about the knowing charge request. It says,
16 (Reading):

17 If an act is done knowingly if the Defendant was
18 consciously aware of what he or she was doing. If the
19 act was a result of ignorance, mistake or an accident,
20 it's not done knowingly or by mistake or accident, it
21 was done reckless...

22 I'm inclined to read the first sentence of that. I
23 think the other part has the duty concept to it that's
24 not part of this case.

25 MR. HUFF: Judge, and I believe -- I know you had

1 read something similar --

2 May I be seated or do you want me to stand?

3 THE COURT: No, sir. We're informal here right
4 now.

5 MR. HUFF: Thank you. I believe you made some
6 comment earlier, some kind along the lines in the second
7 sentence, and I think you took that out of your charge
8 and I think that you would be correct. I believe that's
9 what you did, Your Honor, so we would be certainly
10 satisfied with that.

11 THE COURT: I'm inclined to read it, especially in
12 listening to your arguments in this case, I think it's
13 appropriate.

14 MS. WINES: Yes, Your Honor. The only thing I
15 would -- well, no, I really can't except to that, Your
16 Honor. I'm sorry to say no, it's not in the statute,
17 but it is.

18 THE COURT: Okay. I'm gonna take out the second
19 sentence, the first sentence will be charged.

20 MS. WINES: I have no objection to that, Your
21 Honor. Thank you.

22 THE COURT: Okay. I am not gonna charge the
23 construction. That is a matter for lawyers, it's not a
24 matter for juries.

25 I have a charge on the presumption of innocence, so

1 I think that the request on that is included.

2 I'm not gonna charge the consent request on
3 16-15-342(b).

4 What about expert fees? I typically do not charge
5 anything about their fees. I think that's a matter for
6 the jury to consider one way or the other. I normally
7 don't, but I'll be glad to hear before I decide about
8 whether I should or not in this case.

9 MR. HUFF: Judge, I normally don't either, but the
10 Attorney General's Office's impugned the integrity of
11 both of the expert witnesses and asked them about fees.

12 THE COURT: And as in every case they're in, they
13 always ask about fees.

14 MR. HUFF: And when they do, that raised the
15 spectre that results in a charge that the jury is not to
16 consider it. They go there.

17 THE COURT: Well, I don't think that I can tell
18 them not to consider it. I think they could. I mean,
19 if somebody is getting paid, then I think that's a
20 question to the totality of their testimony they can
21 consider.

22 MR. HUFF: Judge, I think the caution in the charge
23 offered is unless there is some evidence or
24 circumstances appearing from the evidence which would
25 fully and reasonably convince you that the testimony was

1 influenced. It's just not you got to disregard it, but
2 you got to disregard it unless there's evidence that has
3 been presented that you ought to consider it.

4 **THE COURT:** All right. I'll note your request.
5 I'm gonna deny that. I think it's getting too close to
6 these questions charging on the facts.

7 I have my standard charge on expert testimony so
8 that request is included.

9 I don't believe it would be proper, Mr. Huff, and I
10 want to hear from you why I would single out testimony
11 from the police officer. Why would I do that?

12 **MR. HUFF:** Judge, because I know that I've had many
13 cases where jurors consider that an officer's testimony
14 is more credible and believable than that of any other
15 witness.

16 **THE COURT:** Has that charge in any case been made
17 in any case that's been reported that you are aware of?

18 **MR. HUFF:** This charge that I have just proffered?
19 Judge, I wouldn't know because most cases, unless there
20 is a charge given and an objection made and then an
21 appeal, I mean, there's no way to answer that. I've had
22 this type of charge read in cases. And I believe it was
23 charged in Spartanburg with Mr. Odom. I believe we did
24 do that. It just says you consider everybody the same.

25 **THE COURT:** All right. Ms. Wines?

1 **MS. WINES:** Your Honor, I honestly do not remember
2 if that was done in Spartanburg. I actually believe if
3 it was, it was with my objection. I don't believe it's
4 necessary. I believe the weight of the evidence,
5 considering the evidence, your standard charge already
6 covers that, Your Honor.

7 **THE COURT:** I'm gonna decline to charge that. I
8 understand your argument. I'm not gonna charge that.

9 Circumstantial evidence, it is already in my
10 standard charge.

11 Reasonable doubt is in my standard charge.

12 Resolution in favor of the Defendant is in my
13 standard charge.

14 Now, getting to speculation. I would, Mr. Huff, be
15 inclined to charge that through the guilt of the
16 accused, of course, must be proven beyond a reasonable
17 doubt, and stopping right there.

18 **MR. HUFF:** Stop at the end of "beyond a reasonable
19 doubt"?

20 **THE COURT:** Yes, sir.

21 **MR. HUFF:** All right. The last sentence of that
22 first paragraph?

23 **THE COURT:** And the second paragraph would come
24 out.

25 First, presumptions, I have the presumed innocent

1 in my regular.

2 MR. HUFF: That's correct, Your Honor, and I
3 believe ---

4 THE COURT: And, as you can tell, I get real wary
5 of getting close to commenting on the facts, and I think
6 we're getting close to that on the second charge -- or
7 second paragraph. And I don't think that's a correct
8 statement of reasonable doubt, either.

9 So, Ms. Wines -- I don't know why I'm saying
10 "Wines" so badly.

11 MS. WINES: It's okay, Your Honor.

12 THE COURT: Ms. Wines, to the point where I say I
13 would be willing to charge that charge, what is your
14 position?

15 MS. WINES: My position, Your Honor, is it's not
16 needed, it's superfluous, it's misleading, it would be
17 improper pursuant to State v. Leonard. It's confusing.
18 Reasonable doubt is more than sufficient, and Your Honor
19 does a quite thorough charge as to what reasonable doubt
20 is and that's the standard.

21 THE COURT: I'm gonna make that charge, but I'm
22 gonna have the limitations that I've placed on it. I
23 think that's appropriate.

24 MS. WINES: Yes, Your Honor. Thank you.

25 THE COURT: And there's no stipulations.

1 Looking at the State's charges. We are already
2 doing State's Number 1?

3 MS. WINES: Yes, Your Honor.

4 MR. HUFF: And, Judge, the reason I had no
5 objection to that, I believe that charge is just a
6 cut-and-paste and convert that up-to-date with the
7 statute, and I believe Ms. Wines agrees with that.

8 THE COURT: Hey, if you guys are happy, then that
9 makes me happy. That's why I'm here.

10 MS. WINES: Yes. We can agree on the statute, Your
11 Honor.

12 THE COURT: Listen to what the Legislature states.
13 Ms. Wines, I'm concerned about your Request Number
14 2.

15 MS. WINES: Okay.

16 THE COURT: I think that if we read the statute --
17 I mean, there's cases, if I recall, and I can't put my
18 finger on them, that says it's not proper for me to
19 charge the negative ---

20 MS. WINES: Okay.

21 THE COURT: --- but the elements of the crime and
22 what they don't have to prove but what you do have to
23 prove.

24 MS. WINES: That's fine, Your Honor. I won't offer
25 any additional argument.

1 THE COURT: Okay. And separate indictment is
2 already a part of my charge.

3 MS. WINES: Yes, Your Honor, thank you. And I
4 believe we've covered Lyle as well, Your Honor.

5 THE COURT: Okay. Here's my question. It's 12:10.
6 I can let this jury go, bring them back say at 1:30, let
7 them go to lunch, or we can bring them in and do the
8 charge now. What would be your preference?

9 MR. HUFF: So the option, Your Honor, was to send
10 them to lunch and bring them back at 1?

11 THE COURT: Or 1:30. One or 1:30.

12 MR. HUFF: I won't speak for Ms. Wines, but ---

13 THE COURT: I don't think you can if you wanted to.

14 MR. HUFF: But knowing her the way I do through
15 these years, I have a feeling she is hungry and I would
16 be as well, and so I'll bite the bullet and request that
17 we adjourn for lunch.

18 THE COURT: That was going to be my preference,
19 too.

20 MS. WINES: I wholeheartedly agree.

21 THE COURT: All right. Would you-all bring the
22 jury in here?

23 MR. HUFF: Judge, if we keep ---

24 THE COURT: I know you're not gonna get to the
25 point where you all agree. I can tell you that right

1 no picture in Spartanburg. Danger6552000 was danger.
2 The time for justice is here. We ask of you to do
3 justice. Convict Anthony Odom for criminal solicitation
4 of a minor because he did so.

5 I stand before you proud to represent the
6 government, the State of South Carolina, and with my
7 co-counsel we thank you for your time and your service.
8 Thank you.

9 THE COURT: Mr. Gibson, ladies and gentlemen of the
10 jury, you can stand up and stretch or you can take
11 another break. My charge I anticipate will be in the
12 neighborhood of about 25 minutes. Poll your jury and
13 see what you want to do.

14 (Whereupon, the jury conferred in the jury-box.)

15 THE FOREMAN: We're good to go.

16 THE COURT: Good to go? I tell you what. Let's do
17 this. Stand up and stretch for a minute to get your
18 blood running, and that way I don't put you to sleep.
19 Okay?

20 (Whereupon, the jury and the court reporter stood
21 up and stretched for a few minutes, after which the
22 following occurred.)

23 The Court's Charge to the Jury:

24 THE COURT: Ladies and gentlemen of the jury, now
25 that you have heard all the evidence in this case, you

1 have heard the arguments from these lawyers, it is my
2 duty to instruct you on the law which applies to this
3 case.

4 Now, my instructions to you will be in three parts.
5 The first part will be the rules that define and control
6 your job or your duties as jurors.

7 The next part -- and I'll let you know when we're
8 getting into each phase. The second part will be the
9 substantive law, in other words, the law that, what the
10 State must prove in order to make its case.

11 The third will be some considerations and
12 instructions about your deliberations themselves.

13 Now, the first part is the rules that control and
14 define your duties. As I told you at the beginning of
15 this case, that it is your job to find the facts from
16 the evidence that's presented here in this courtroom and
17 from no other place, from the witness stand, the sworn
18 testimony, and the exhibits that have been admitted into
19 evidence. To that you must apply the law as I give it
20 to you. You must follow the law and only the law that I
21 give to you and it is the only law that is applicable to
22 this case.

23 Further, you shall not be concerned about what you
24 feel like the law should be. You must accept it as I
25 give it to you, and this is not the place to try to

1 correct it.

2 You should not further be influenced by any
3 personal likes or dislikes, opinions, prejudice or undue
4 sympathy that you may have for one side or the other in
5 this case. Boiled down to is our most common form, what
6 that simply means is this, that you are to decide this
7 case solely from the evidence presented here in this
8 courtroom and in accordance to the law as I give it to
9 you right now. That is the oath that you took at the
10 beginning of this case.

11 Now, in following my instructions you are required
12 to follow all of it. You may not single out the ones
13 that you like and follow those and ignore the ones that
14 you don't like. I will tell you and charge you that
15 they are all equally important. And as I told you at
16 the beginning of this case, you should not and you shall
17 not read into anything I may have done, said, any
18 gestures I may have made throughout this case that
19 suggest to you one way or the other how you should find
20 the facts. And I tell you that I have no opinion on the
21 facts, our Constitution does not allow me to have an
22 opinion on the facts. I'm merely here as a referee to
23 make sure the process is followed and to instruct you on
24 the law as I'm doing now.

25 You and you alone are the judges of the facts in

1 this case and you decide what these facts are by
2 evaluating and weighing the evidence that you heard
3 during this case. There is no way for you to do that in
4 a literal sense. I can't give you a set of scales to go
5 stack things up on. It is entirely a mental process
6 where you weigh and you evaluate and discuss all of the
7 evidence and you use your good common sense and sound
8 judgment when you make your findings of fact.

9 Now, what is evidence and what is not evidence?
10 First, obviously the sworn testimony both on Direct,
11 Cross-Examination or Redirect, regardless of whoever
12 called them, is evidence in this case.

13 In addition, the exhibits that were received into
14 evidence in this case is also evidence. Normally that
15 is all that's before you. However, in this case, but
16 due to the facts in this case I took judicial notice of
17 the Defendant's date of birth, and you must accept as a
18 conclusive fact the date of birth that I took judicial
19 notice of and that date of birth is June 22nd, 1973.
20 And by accepting that as a conclusive fact you may not
21 debate it, you shall not debate it, that is his
22 birthday.

23 Now, what is not evidence? I think I told you at
24 the beginning of this case but I'll tell you again.
25 Arguments, statements by these fine lawyers is not

1 evidence. They are not witnesses. They have not been
2 sworn in this case. What they've said in their opening,
3 what they said in their closings or at any other time
4 during this trial is designed to help you interpret the
5 evidence, designed to help you understand what the
6 evidence is and what this case is about. It is not
7 evidence.

8 If in your deliberations you remember things
9 differently than you are told by any of these lawyers,
10 your memory of the facts will control. Again, questions
11 and objections of the lawyers again is not evidence. As
12 I told you at the beginning of this case, lawyers have a
13 sworn duty and an ethical duty to object when they feel
14 like anything is happening in the courtroom that is
15 improper. The fact that any of these lawyers may have
16 raised objections, or to the extent I allowed you to see
17 my rulings on those objections, shall not even be
18 discussed by you in your deliberations, that is not
19 proper. That is just part of the process that each and
20 every trial goes through.

21 Now, there has been some testimony that I ordered
22 stricken from the record. To the extent I ordered it
23 stricken, you shall not consider it and you shall not
24 even discuss it in your deliberations. Also there was a
25 bit of evidence that was received for a very limited

1 purpose. If you recall, the Spartanburg chat was
2 admitted for the limited purpose of establishing the
3 intent, the identity, or whether there was a common
4 scheme or plan on behalf of the Defendant.

5 So let me tell you this. You may only consider the
6 evidence of the Spartanburg County chat for the purposes
7 of considering the Defendant's identity, his intent, and
8 whether he had a common scheme or plan. However, it
9 would be improper and you shall not consider this
10 evidence as proof that the Defendant acted in accordance
11 on the occasions giving rise to these present charges
12 the same as he did in the Spartanburg chats. In other
13 words, it shall not be used by you as proof of the
14 Defendant's guilt on the present charges.

15 Also, ladies and gentlemen, I questioned you daily,
16 I don't think there's been a problem, but to the extent
17 you may have seen or heard anything while we were not in
18 court, you were back in your jury room, on lunch breaks
19 or overnight, that is not evidence and you shall not
20 consider it or even discuss it in your deliberations.

21 South Carolina follows and accepts two types of
22 evidence. We have direct evidence and we have
23 circumstantial evidence. Direct evidence is basically
24 what it sounds like. It's evidence of a person who
25 claims to have actual direct knowledge of a fact such as

1 an eyewitness.

2 Circumstantial is a little more tricky but it's put
3 this way. It is proof of a chain of facts and
4 circumstances from which you may infer or find that
5 another fact exists, although that fact has not been
6 proven directly.

7 To give you an example of circumstantial evidence,
8 if you went to bed and you had snow in your front yard
9 and you woke up in the morning and there were tracks in
10 your front yard, you may infer from the fact or the
11 existence of those tracks that someone or some thing
12 walked through your yard during the night even though
13 you did not actually see anyone or anything walk through
14 your yard during the night. That is circumstantial
15 evidence.

16 And I'll tell you that the law makes absolutely no
17 distinction between the weight nor the value to be given
18 either direct evidence or circumstantial evidence. You
19 as a jury are entitled to consider both kinds. And nor
20 is there a greater degree of certainty required for
21 circumstantial evidence to be admitted or considered by
22 you in this case.

23 But I'll tell you that you, after you have
24 considered all the evidence, direct or circumstantial,
25 that you think is appropriate, if you are not convinced

1 of the guilt of this Defendant beyond a reasonable
2 doubt, then you must find the Defendant not guilty.

3 Now, in performing your duties as finders of fact
4 it is imperative and necessary that you determine
5 credibility of the witnesses. In doing this you have to
6 consider all the evidence that's been placed into this
7 case. You can consider -- you may consider which
8 testimony which you are going to believe and which
9 testimony you are not going to believe. You may
10 disbelieve all or part of any witness's testimony. You
11 may believe all of a witness's testimony. But in making
12 this decision of credibility, you may but you are not
13 required to take into consideration a number of factors
14 and let me give these factors to you.

15 One, was the witness able to see or hear or know
16 the things about which that witness testified? How well
17 was the witness able to recall and to describe those
18 things? What was the witness's manner while testifying,
19 what we in our everyday lives call our demeanor? Is
20 there some reason that a witness would want to give
21 testimony that would help or would hurt one side or the
22 other? Did that witness have an interest in the outcome
23 of the case or any bias or prejudice concerning any
24 party or any matter or issue involved in the case? You
25 may consider how reasonable the witness's testimony was

1 considered in light of all the evidence that's presented
2 and whether the witness's testimony was contradicted by
3 what that witness had said or done at another time or by
4 the testimony of other witnesses or by other evidence
5 that has been introduced in this case.

6 Now, ladies and gentlemen, those are some, as I
7 told you, but not all of the factors that you may
8 consider when you perform your duties and make a
9 determination of credibility of the witnesses. Of
10 course, you did not or should not check your common
11 sense at the door when you are sworn in as jurors. So
12 in your deliberations when you seek this credibility of
13 witnesses, you should use your sound judgment and logic
14 and those things that make you believe, that are
15 indicators to you of truthfulness or lack of
16 truthfulness.

17 One last thing about credibility. In making this
18 determination on credibility or believability, you can
19 believe as much or as little of any witnesses as you
20 want to. You may believe all or part of one witness's
21 testimony, you may believe one witness over several or
22 several over one. However, what you do not do is add up
23 the number of witnesses that testified for one side or
24 the other in making this determination because your sole
25 objective is to find the truth, and it doesn't matter

1 whether it comes from a witness for the State, a witness
2 for the Defense or through a combination of both of
3 those.

4 Now, also, you have heard persons that have been
5 qualified as experts in this case. As I told you,
6 persons by their education or their experience have
7 become expert in their particular field are allowed to
8 give their opinions in that particular field. Now,
9 expert testimony, as I told you, should be judged just
10 as any other testimony in this case. You may accept it,
11 you may reject it, or you may give it as much weight as
12 you think it deserves considering the witnesses'
13 education, their experience, the reasons given for their
14 opinion, as well as all the other evidence that was
15 produced in this case.

16 Now, as I've told you, ladies and gentlemen, there
17 are two indictments in this case. The fact that the
18 Defendant was indicted shall not and may not be
19 considered by you as any evidence of his guilt. It does
20 not lie as a conclusion, inference, or any manner of the
21 Defendant's guilt. It is simply the mechanism by which
22 the State of South Carolina brings charges against
23 various Defendants and brings those before juries such
24 as yourselves for a determination whether they are
25 guilty or not.

1 Now, there are two indictments, as I've said. Each
2 indictment is a distinct offense. That means that you
3 must decide each indictment separately based on the
4 evidence and the law applicable to that indictment and
5 uninfluenced by your decision on the other indictment.
6 That means the Defendant may be convicted or acquitted
7 on any or all of the offenses charged, and Mr. Foreman,
8 Mr. Gibson, you will be asked to write a separate
9 verdict for each indictment and I'll go over that with
10 you in a minute.

11 Now, the Defendant in this case has pled not guilty
12 to both of these indictments and therefore that puts the
13 burden of proof on the State of South Carolina to prove
14 the Defendant's guilt beyond a reasonable doubt. A
15 person charged with committing a crime in this state is
16 never required to prove himself innocent, and I charge
17 you that it is an important rule of law that a Defendant
18 in a criminal trial, no matter what the seriousness of
19 the charge may be, will always be presumed to be
20 innocent of the crime for which he was indicted and his
21 guilt has been proven by evidence which satisfies you,
22 the jury, of guilt beyond a reasonable doubt. Now, that
23 presumption does not end when you begin your
24 deliberations in just a few minutes but it accompanies
25 this Defendant throughout the trial until you, the jury,

1 reach a verdict of guilt based on evidence satisfying
2 you of guilt beyond a reasonable doubt.

3 The presumption of innocence has been described as
4 a robe of righteousness that's placed about the
5 shoulders of the Defendant which remains with the
6 Defendant until it has been stripped from his shoulders
7 by evidence presented satisfying you of his guilt
8 satisfying you beyond a reasonable doubt. And the
9 presumption of innocence is not a mere legal theory, it
10 is not a mere legal phrase. It is a substantial right
11 to which every Defendant is entitled unless you, the
12 jury, are satisfied of his guilt beyond a reasonable
13 doubt.

14 So that leads us to the question what is guilt
15 beyond a reasonable doubt?

16 Ladies and gentlemen, I am close to the end of my
17 first aspect of my charge and then I'll give you another
18 quick break.

19 But this is the law on reasonable doubt. A
20 reasonable doubt is the kind of doubt that would cause a
21 reasonable, sincere, honest and conscientious person to
22 hesitate to act in an important matter in their own
23 affairs. It is the kind of doubt that would cause a
24 reasonable, sincere, honest and conscientious person to
25 hesitate to act in an important matter in their own

1 affairs. And proof beyond a reasonable doubt is proof
2 that leaves you firmly convinced of the Defendant's
3 guilt.

4 Now, there are very few things in this life, ladies
5 and gentlemen, that you know with absolute certainty,
6 and absolute certainty in criminal cases is not
7 required. In other words, the law does not require
8 proof that overcomes every possible doubt. If, based
9 on your consideration of the evidence, you are firmly
10 convinced that the Defendant is guilty of the charges,
11 you must find the Defendant guilty.

12 Now, on the other hand, if you think that there is
13 a real possibility that the Defendant is not guilty, you
14 must give the Defendant the benefit of the doubt and
15 find him not guilty. Now, a reasonable doubt may arise
16 from the evidence or from the lack of the evidence.

17 I further instruct you, ladies and gentlemen, that
18 the Defendant is entitled to every reasonable doubt that
19 may arise in the case. Now, what that simply means is
20 this. That if upon a fact essential to a conviction and
21 a verdict of guilty of the offenses charged, if you have
22 any reasonable doubt as to how that issue should be
23 resolved, it is your duty to resolve that doubt in favor
24 of this Defendant.

25 Also, in order to establish criminal liability,

1 criminal intent is required. For example, the mental
2 state required to be proven by the State for a
3 particular crime may be purpose, it may be intent,
4 knowledge, recklessness or criminal negligence.

5 Criminal intent must be proven by the State beyond
6 a reasonable doubt. Criminal intent is always a matter
7 that must be determined from the circumstances
8 surrounding the situation shown to have existed during
9 this trial. Because there is no way that we can prove
10 to a mathematical certainty what intent is or was at the
11 time, there is no way that medical science can dissect a
12 person's brain and determine what they had in mind or
13 what they wanted to do, so the law says that in criminal
14 cases intent may be inferred from the circumstances
15 shown to have existed, and that is how you make the
16 determination of whether or not the necessary element of
17 intent was present. It is not necessary to establish
18 intent by direct or positive evidence, but it may be
19 established by inference in the same way as any other
20 fact by taking into consideration the acts of the
21 parties and all the facts and circumstances of the case.

22 Criminal intent is a mental state, it is a
23 conscious wrongdoing. Now, it is up to you, ladies and
24 gentlemen, to determine what the Defendant intended to
25 do based on the circumstances shown to have existed in

1 this case.

2 Now, ladies and gentlemen, the Defendant in this
3 case, the fact that he did not testify shall not and may
4 not be considered by you in any form or fashion. Our
5 Constitution does not require the Defendant to prove
6 himself innocent ever. So it would be improper and you
7 shall not even discuss the Defendant's failure to
8 testify whatsoever in your deliberations. The burden
9 remains always on the State of South Carolina to prove
10 guilt beyond a reasonable doubt.

11 Now, an issue in this case is identification of the
12 Defendant as the person who committed the crime charged
13 or the charges. The Defendant [sic] also has the burden
14 of proving identity beyond a reasonable doubt. You must
15 be satisfied beyond a reasonable doubt of the accuracy
16 of the identification of the Defendant before you may
17 convict the Defendant.

18 Identification testimony is an expression of belief
19 or impression by a witness. You must determine the
20 accuracy of the identification of the Defendant. In
21 doing so you must consider the believability of each
22 identification witness in the same way as any other
23 witness in this matter.

24 I'm going to end up on the first phase. I'm gonna
25 give you a charge on knowing. An act is done knowingly

1 if the Defendant was consciously aware of what he or she
2 was doing.

3 There is a charge on suspicion. Suspicion, however
4 strong, does not suffice to sustain a conviction.
5 Suspicion implies a belief or opinion as to guilt based
6 upon the facts or circumstances which do not amount to
7 proof. The guilt of the accused, of course, must be
8 proven beyond a reasonable doubt.

9 And lastly, ladies and gentlemen, this is on loss
10 or destruction of evidence. If you find that the State
11 has lost, destroyed or failed to preserve evidence whose
12 contents or quality are important to the issues in this
13 case, then you should weigh the explanation, if any,
14 given for the loss or the unavailability of that
15 evidence. If you find that any such explanation is
16 inadequate, then you may infer that the evidence is
17 against the State's interests which may create a
18 reasonable doubt about the Defendant's guilt.

19 All right. Ladies and gentlemen, that is the first
20 phase of my charge. That is the law aspect of that
21 charge. So you may stand up for a minute and we're on
22 the downhill side of this.

23 (Whereupon, the jury and court reporter stood up
24 and stretched for a minute.)

25 **THE COURT:** Does anybody need any water? Does

1 anybody need a break?

2 (Jury confer in jury-box.)

3 **THE FOREMAN:** No.

4 **THE COURT:** All right. Ladies and gentlemen, this
5 is the substantive law that you must apply in this case.
6 And this is the law of criminal solicitation of a minor
7 as set forth in our Code Section 16-15-342, and sexual
8 activity as defined by our Code Section 16-15-365. The
9 Defendant is charged with solicitation of a minor.

10 (Reading):

11 The State must prove beyond a reasonable doubt that
12 the Defendant contacted or communicated with or
13 attempted to contact or communicate with a person who
14 was under the age of eighteen or a person the Defendant
15 reasonably believed to be under the age of eighteen, for
16 the purpose of or with the intent of persuading,
17 inducing, enticing or coercing the person to engage or
18 to participate in a sexual activity or a violent crime
19 or with the intent to perform a sexual activity in the
20 presence of a person under the age of eighteen, or a
21 person that the Defendant reasonably believed to be
22 under the age of eighteen.

23 "Sexual activity" is defined in South Carolina Code
24 Annotated 16-15-375, Subsection 5, as any of the
25 following acts or simulations thereof;

1 masturbation, whether done alone or with a human or
2 animal;

3 vaginal, anal or oral intercourse, whether done
4 with another human or an animal;

5 touching, in an act of apparent sexual stimulation
6 or sexual abuse, of the clothed or unclothed genitals,
7 pubic area or buttocks of another person, or the clothed
8 or unclothed breasts of a human female;

9 an act or condition that depicts bestiality,
10 sado-masochistic abuse, meaning flagellation or torture
11 by or upon a person who is nude or clad in undergarments
12 or in a costume which reveals the pubic hair, anus,
13 vulva, genitals, or female breast nipples, or the
14 condition of being fettered, bound, or otherwise
15 physically restrained on the part of the one so clothed;

16 excretory functions;

17 the insertion of any part of a person's body, other
18 than the male sexual organ, or of any object into
19 another person's anus or vagina, except when done as
20 part of a recognized medical procedure.

21 Ladies and gentlemen, I further charge you that
22 consent is a defense to a prosecution pursuant to this
23 section if a person under the age of eighteen or a
24 person reasonably believed to be under the age of
25 eighteen is at least sixteen years old.

1 Consent is not a defense to a prosecution pursuant
2 to this section if the person under the age of eighteen
3 or the person reasonably believed to be under the age of
4 eighteen is under the age of sixteen.

5 It is further not a defense to a prosecution
6 pursuant to this section on the basis of consent or
7 otherwise that the person reasonably believed to be
8 under the age of eighteen is a law enforcement agent or
9 officer acting in official capacity. However, if you
10 find that the law enforcement officer was not acting in
11 his official capacity at the time of the communication,
12 it would be a defense to the communications occurring
13 during that period.

14 Now, that is the substantive law that you must
15 apply, ladies and gentlemen, during your deliberations.

16 I would like to end by going over a few aspects
17 about your deliberations. And again, do not begin your
18 deliberations until we send word back to you very
19 shortly that it is appropriate. But I want to say that
20 you don't serve as jurors because you are partisans or
21 you are advocates for one side or the other. You were
22 chosen by both the State and the Defense because
23 everyone believed that you could be fair and impartial
24 and decide this case solely on the evidence without bias
25 or prejudice to one side or the other. In doing so you

1 should bring your experiences of life to the jury room,
2 you should use your good common sense, and you should
3 bring your sense of logic and reason.

4 But deliberations are not made in a hurry.
5 Deliberation is defined as this. It is a careful
6 consideration weighed up with a view to a decision. And
7 I'll tell you it's one of the geniuses about our jury
8 system, regardless of what you may think about it. It
9 allows 12 men and women from different backgrounds, from
10 different life experiences and perspectives to consider
11 evidence, to talk about it, and to ultimately hopefully
12 reach a unanimous verdict.

13 We call them deliberations for a reason. You are
14 to discuss this case in a thorough manner, you are to
15 consider the evidence in a thorough manner, and you are
16 to debate the evidence amongst yourselves in a courteous
17 manner.

18 Remember again, you are not partisans, you are not
19 advocates, you are judges of the facts. Your sole
20 interest in this case is, based on your oath, is to find
21 the truth from the evidence that has been presented here
22 in this courtroom.

23 I would ask you and charge you that you listen to
24 the views of your fellow jurors, you consider everyone's
25 points of view, and talk through all the evidence. And

1 again, remember, if you are doing something
2 deliberately, you are not in a big hurry and you should
3 not be in a hurry in this case. This is both sides'
4 only day in court and this is a very important case for
5 both sides in this matter.

6 Now, when you return to your jury room and you
7 deliberate this case, in order to be valid your verdict
8 must be unanimous. Now, that being said, each of you
9 must decide this case by yourself, and you should only
10 do so after you have impartially considered all the
11 evidence, you have fully discussed it with your fellow
12 jurors, you've listened to your fellow jurors' views,
13 and you've come to your own conclusion. Don't be afraid
14 to change your opinion if discussion persuades you that
15 you should do so. But do not come to a decision simply
16 because your fellow jurors think it is the right thing
17 to do.

18 Now, again, it is important for you to attempt to
19 reach a unanimous verdict, but, of course, you can only
20 do so after you have made up your own mind. Do not
21 change an honest belief about the weight and the effect
22 of the evidence simply to reach a verdict in this
23 matter.

24 With that being said, Mr. Foreperson, Mr. Gibson,
25 if at any time it becomes necessary for you to

1 communicate with the Court, you do the same thing that I
2 told you to do earlier. You make a note, you sign it,
3 you knock on the door and you give it to Mr. Bibb, our
4 bailiff, and he will bring it to me and we'll receive it
5 here in open court and we will act accordingly.

6 One thing I do not want you to do is ever let me
7 know or anyone know numerically where the jury stands.
8 Okay, sir? That is solely within your province until
9 the verdict is reached in this matter, or not reached.

10 Also, I'm gonna send you back the verdict form.
11 But you will need to fill out two different verdict
12 forms. They are stapled together and they are right
13 straightforward. And let me just tell you, I have to
14 put them in some order. The order means nothing in this
15 case because they just have to come in some order or the
16 other. But this is the option you will have.

17 Under indictment 2010-GS-37-363 A, we, the jury,
18 unanimously find that the Defendant, Anthony C. Odom,
19 is, the first option is not guilty of criminal
20 solicitation of a minor, or, guilty of criminal
21 solicitation of a minor. You would check the
22 appropriate unanimous decision as to that indictment.
23 You would sign it and date it, today is the 10th, and
24 then you would go to the next verdict.

25 And the next verdict is exactly the same as that

1 one except there is a different indictment number on
2 that. If you have any questions as to how you would
3 fill it out, write your question out, give it to the
4 bailiff, and we will explain that to you. Okay, sir?

5 One last thing. You are bound by the record; ie,
6 the evidence that has been presented here in this
7 courtroom and your consideration should not reflect
8 anything outside of that other than your good common
9 sense and good judgment.

10 Mr. Gibson, I'm gonna ask that you take the jury
11 back to the jury room. I will check with these lawyers
12 to see if I have misstated the law or have forgotten to
13 give you an important provision of the law. If so, I
14 will bring you back out. If not, I will send that
15 evidence in there as well as the verdict form and you
16 will receive unequivocal word that you may begin your
17 deliberations. But until such time, please do not begin
18 to discuss this case.

19 THE BAILIFF: The alternates?

20 THE COURT: The alternates will not go yet. I'm
21 gonna let them go out and then I'll bring them back out
22 in just a second. Thank you, Mr. Bibb.

23 (Whereupon, the Jury left the courtroom at
24 approximately 4:23 p.m.)

25 THE COURT: Any additions or objections from the

1 State?

2 MS. WINES: No, Your Honor. The only thing I
3 noticed is nothing that needs to be corrected. I
4 believe at one point you said 365 instead of 375. But
5 it's nothing of substance.

6 THE COURT: I did?

7 MS. WINES: Yes, Your Honor.

8 THE COURT: That doesn't surprise me. I apologize.

9 MS. WINES: It is no problem, Your Honor.

10 THE COURT: Mr. Huff, is there an objection from
11 the Defense?

12 MR. HUFF: Your Honor, I would just state for the
13 record that in your charge on identification, you stated
14 that the Defendant has the burden of proving
15 identification.

16 THE COURT: I did?

17 MR. HUFF: You did.

18 THE COURT: Okay. Well, that is something that
19 needs to be corrected.

20 MR. HUFF: Very well, Your Honor.

21 THE COURT: Okay. The Defendant never has the
22 burden of proof. And I apologize. That is a silly
23 mistake on my part.

24 Would you ask the jury to come back.

25 Any other...

1 MR. HUFF: Judge, I did not find anything else. I
2 just needed to state that. If you feel that needs to be
3 corrected, that's fine.

4 THE COURT: Yes, I think that should be. And I
5 don't want to -- this is a critical case. I don't want
6 to do anything that would...

7 Bring the jury back in.

8 MR. HUFF: And, Judge, I don't know if you need to
9 give the whole charge.

10 THE COURT: I'm not. As I said, I'm not.

11 MR. HUFF: Yes, sir. I found that with no
12 disrespect. I'm not ---

13 THE COURT: It was not a mistake of substance at
14 all. I appreciate it. I try not to make a mistake and,
15 unfortunately, as my wife tells me daily, I do.

16 (The Jury entered the courtroom at approximately
17 4:24 p.m.)

18 THE COURT: Mr. Gibson, ladies and gentlemen, let
19 me correct one thing I said. I inadvertently, when I
20 was giving you the law on identification, I apparently
21 stated that the Defendant has the burden in that matter.
22 The Defendant never has the burden. The State has the
23 burden of proof and I give it to you beyond a reasonable
24 doubt.

25 Now, with that being said, I'm gonna ask you to go

1 back to your jury room, we'll have a quick conference,
2 and then we'll send in the evidence and the verdict
3 form. Thank you very much.

4 (Whereupon, the Jury left the courtroom at
5 approximately 4:25 p.m.)

6 THE COURT: Any additions or exceptions from the
7 State?

8 MS. WINES: No, Your Honor.

9 THE COURT: From the Defense?

10 MR. HUFF: No, sir.

11 THE COURT: Let me say this before we send the
12 evidence back. I want to say it to the witnesses in
13 this case. It's a hard-fought case, it's a very
14 emotional case. Everyone involved in this case by way
15 of witnesses were very civil, they followed the process.
16 I can't commend these lawyers any stronger than what
17 I've done. You've been very prepared, you've been very
18 professional, you've about worked me to death. But I'll
19 tell you that you have been a pleasure regardless of
20 what the outcome is, these are always tough cases, and
21 you have done yourselves and your respective sides and
22 your agencies, you've served them well by good service,
23 and I appreciate it.

24 Now, that being said we are at recess. If you
25 would go through the evidence, and here is the verdict

1 form.

2 MS. WINES: Thank you.

3 (Whereupon, there was a discussion off the record
4 among counsel and the court reporter.)

5 (The Jury started deliberations at approximately
6 4:28 p.m.)

7 (There was a question from the Jury at
8 approximately 4:56 p.m.)

9 (Court's Ex. # 10, jury note, was marked for
10 identification and received in Court's evidence.)

11 THE COURT: There is a question. This is the
12 question: If an officer is not bonded, are they
13 considered an official police officer? Signed the
14 Foreperson.

15 I was thinking about that on the way up. Now, what
16 I intend to charge the jury, or at least my proposed
17 charge to the jury is that I did not charge them on the
18 law of bonding. They are only to apply the law that was
19 charged to them in this matter and that's not an issue
20 for them to consider.

21 Ms. Wines, what would be your position?

22 MS. WINES: I believe that sounds good to the
23 State, Your Honor.

24 THE COURT: And I know your objection to me not
25 letting that be an issue to be considered, but as to the

1 proposed, what would be your...

2 MR. HUFF: Judge, if you would let me confer with
3 co-counsel for a second, please?

4 THE COURT: Yes, sir.

5 (Counsel confer.)

6 MR. HUFF: Your Honor, may it please the Court, we
7 believe that although we have raised that as an issue,
8 you have charged the jury. A suggestion only, Your
9 Honor, would be that you might instruct the jury that,
10 You have heard all the evidence. I have given you my
11 charge, and I would ask that you continue with your
12 deliberations.

13 THE COURT: Okay. I note that request. I believe
14 that it would be more directional for the Jury that I
15 charge them that they are only to consider the law that
16 I charge them. That was not a proposition of law that
17 was given them. They are not to consider that
18 proposition for their deliberations, okay, sir? And
19 that's why I'm throwing it back and forth to you before
20 we bring them out and do any damage. But, I mean, that
21 certainly wasn't a charge, for them to consider that is
22 to consider matters beyond the law that was charged in
23 my view.

24 MR. HUFF: Judge, if you would note our objection,
25 I know we have made our objection as to this is an

1 element, and we had asked for the charge, and we know
2 that and we know the record is preserved.

3 THE COURT: Right. And you may be right and I
4 certainly may be wrong. But I feel like that would be
5 the proper response. But I do note your objection and I
6 think you preserved that issue certainly for review.

7 All right. With that being said, would you bring
8 the jury in, please.

9 (The Jury entered the courtroom at approximately
10 5:00 p.m.)

11 THE COURT: All right. Mr. Gibson, I have what is
12 a question from the jury, I believe, and this is the
13 question: If an officer is not bonded, are they
14 considered an official police officer? Signed you, the
15 Foreperson.

16 Is that the jury's question?

17 THE FOREMAN: Yes, sir.

18 THE COURT: All right. Ladies and gentlemen of the
19 jury, to answer your question, if you recall at the
20 beginning of my charge I told you that the only law that
21 you may consider is the law that I charge you that is
22 applicable to this case. Now, I have not charged you on
23 any proposition of bonding of an official police
24 officer, so therefore that is not a proposition of law
25 that you may consider in your deliberations. Okay, sir?

1 THE FOREMAN: All right.

2 THE COURT: Now I'm gonna ask the jury to go back
3 to the jury room and resume their deliberations, okay?

4 THE FOREMAN: Okay, thank you.

5 THE COURT: And actually wait for a minute before
6 you begin. We are going to have a small conference.
7 You may go back, but don't begin until I send word back,
8 please.

9 THE FOREMAN: All right.

10 (Whereupon, the Jury left the courtroom at
11 approximately 5:02 p.m.)

12 THE COURT: Other than your stated objection,
13 Mr. Huff, do you have any additional objection?

14 MR. HUFF: Other than just to flesh out more
15 specifically, Your Honor. The Chief of Police, as you
16 recall, the testimony was that his officer to be an
17 officer would have to have an oath and bond, and that's
18 why we believe it was proper to charge the jury with
19 that and it was for their consideration as a matter of
20 fact. Thank you. Nothing further.

21 THE COURT: Thank you, sir.

22 Ms. Wines?

23 MS. WINES: Nothing from the State, Your Honor.

24 THE COURT: Thank you very much. We are in recess
25 again.

1 MS. WINES: Thank you, Judge.

2 (Whereupon, the Jury resumed their deliberations at
3 approximately 5:03 p.m.)

4 (Whereupon, there was another question from the
5 Jury at approximately 7:07 p.m.)

6 (Court's Ex. # 11, jury note, was marked for
7 identification and received in court's evidence.)

8 THE COURT: This is the newest question. It says:
9 Can we review the Cross-Examination of Mr. Patterson on
10 11-8-11? Also the Cross-Examination of Chief Bannister
11 on 11-8.

12 Gentlemen, we don't have realtime here, as you very
13 well may know, so it's impossible to download it.
14 Another big consideration is the fact that we had a
15 significant number of objections throughout this case.
16 I'm not saying that's a problem, but that's just a fact.
17 And we have to be extremely careful about them hearing
18 it.

19 My suggestion -- and I'll be glad to hear from both
20 sides. Bring the jury in. I think you cross-examined
21 Mr. Patterson for hours. It was at least three.

22 MR. HUFF: Yes, sir.

23 THE COURT: And I want them to narrow down what
24 they're looking for ---

25 MR. HUFF: Yes, sir.

1 transcript of record.)

2 Then they just wanted the cross of Chief Bannister.

3 MR. HUFF: I'm sorry, Your Honor?

4 THE COURT: They just wanted the Cross of Chief
5 Bannister. What I'm gonna do, because there are so many
6 objections, I'm gonna have my law clerk go down there
7 and read it to the jury, editing out the objection,
8 editing out my response, and just going through like
9 that. It shouldn't be more than a few pages.

10 Any objection to that approach from the State?

11 MS. WINES: No objection to that, Your Honor.
12 However, I renew the request that they be instructed
13 again as to bond ---

14 THE COURT: I'm not doing that, I don't think
15 that's appropriate.

16 MS. WINES: Yes, sir.

17 THE COURT: I'll note your request a minute ago
18 about some type of judicial notice of bond. I'm not
19 gonna do anything of that sort, okay?

20 MS. WINES: Yes, sir, I understand. If I may just
21 add, can we somehow make your instruction to the jury
22 more specific such as ---

23 THE COURT: I'm gonna charge them like I charged
24 them a minute ago.

25 MS. WINES: Okay, thank you.

1 **THE COURT:** All right, Mr. Huff?

2 **MR. HUFF:** And, Judge, we would state for the
3 record that the jury has not asked for a charge on the
4 law, they've asked just to hear testimony.

5 **THE COURT:** They were instructed to follow the law.
6 If they're talking about bond, they're not following the
7 law. Okay, sir? I understand your, I'll note your
8 objection. But I feel like based on the questions it is
9 appropriate to remind them that that is not a proper
10 proposition of law that they have been charged on and
11 they are not to consider that during deliberations.

12 Other than I note your objection.

13 Would you bring the jury in, please.

14 (Whereupon, the jury entered the courtroom at
15 approximately 8:15 p.m.)

16 **THE COURT:** Okay. Mr. Gibson, first let me tell
17 you we did a word search, and in the Cross-Examination
18 of Mr. Patterson there was no, on 11-8-11 there was no
19 reference to bond.

20 We have all the references to official capacity.
21 My law clerk is gonna read that to you. Because there's
22 objections we're gonna edit any objections and my
23 response to that that y'all were sent out of the
24 courtroom to hear, okay?

25 Then we're gonna have the Cross-Examination of

1 Chief Bannister read to you as well. Okay?

2 THE FOREMAN: Okay.

3 THE COURT: Okay. Let me remind you again, based
4 on your question, that I want to remind you that I
5 instruct you on the law. That's my job. You are the
6 finders of the fact. I can't intervene when your
7 function is fact-finders, nor can you intervene on my
8 job to instruct you on the law.

9 And I remind you again that the legal proposition
10 of a bond requirement was not charged to you in my legal
11 charge on the law, and it is not proper for you to
12 discuss the legal requirement for a bond because that's
13 not the law I charged to you, okay?

14 That being said, Mr. Sams (phonetic), my law clerk,
15 will read those passages to you now.

16 THE LAW CLERK: This is Mr. Huff's Cross of Officer
17 Patterson (reading):

18 Q. If, and let's bring it to this factual scenario, if
19 Danger intends to have sex with someone less than
20 eighteen but he is talking and reasonably believes that
21 he is talking to somebody who is less than eighteen,
22 but, in fact, he was talking to a
23 thirty-something-year-old police officer who is at home,
24 not acting in his official capacity, he has not violated
25 the statute, has he?

1 If you want me to do that, we'll send that back.

2 THE FOREMAN: That would be great.

3 THE COURT: Any objection from the State to me
4 sending my entire charge back?

5 MS. WINES: No, Your Honor, that will be fine.

6 THE COURT: From the Defense?

7 MR. HUFF: No, sir.

8 THE COURT: All right. I'm going to put that
9 together. I want you to go back and to begin your
10 deliberations. Somehow or another there was a mix-up in
11 the communications. I'm gonna double-check on my charge
12 to you guys. But be on standby and I'll send word with
13 Mr. Bibb for you to start, okay? But don't wait for my
14 charge to begin your deliberations.

15 THE FOREMAN: Okay.

16 THE COURT: Thank you very much.

17 (Whereupon, the Jury left the courtroom at
18 approximately 8:24 p.m.)

19 THE COURT: All right. Other than your previously
20 stated objection to my giving the charge again on the
21 bond, Mr. Huff, any objections to my directions or
22 questions to the jury?

23 MR. HUFF: No, sir.

24 THE COURT: Thank you very much.

25 Ms. Wines?

1 MS. WINES: No objection.

2 THE COURT: Very good. I'm going to put together
3 my charge and send a clean copy back to them and then
4 I'm gonna tell them to start deliberating right now,
5 okay?

6 MS. WINES: Yes, thank you, Judge.

7 THE COURT: Thank you very much.

8 MR. HUFF: Judge, that's going to be the entire
9 charge on every issue?

10 THE COURT: Everything I have in there.

11 MR. HUFF: Okay.

12 THE COURT: I think I read, and the reason I say
13 that it's improper just to focus on a statute is because
14 it takes them away from the rest, so I have to send back
15 my entire charge.

16 MR. HUFF: It's inappropriate, Judge. Thank you.

17 MS. WINES: Thank you, sir.

18 THE COURT: Thank you.

19 (Whereupon, the Jury continued their deliberations
20 at approximately 8:25 p.m.)

21 (Whereupon, there was another question from the
22 Jury at approximately 9:34 p.m.)

23 (Court's Exhibit # 13, jury note, was marked for
24 identification and received in Court's Evidence.)

25 THE COURT: Okay. I'll just go ahead and -- we

1 (Whereupon, the jury resumed their deliberations at
2 approximately 9:38 p.m.)

3 Verdict of the Jury:

4 (Whereupon, there was a verdict of the Jury at
5 approximately 9:53 p.m.)

6 (The Jury entered the courtroom at approximately
7 9:57 p.m.)

8 THE COURT: Mr. Gibson, I'm informed the Jury has
9 reached a verdict; is that correct?

10 THE FOREMAN: Yes, sir.

11 THE COURT: Is it unanimous?

12 THE FOREMAN: Yes, sir.

13 THE COURT: Would you pass the verdict form to the
14 bailiff, please, sir.

15 THE FOREMAN: (Complies.)

16 THE COURT: Would you like to publish this, please,
17 ma'am.

18 THE CLERK: State of South Carolina versus Anthony
19 C. Odom, Indictment Number 2010-GS-37-363 A. We, the
20 Jury, unanimously find that the Defendant, Anthony C.
21 Odom, is not guilty of criminal solicitation of a minor.

22 State of South Carolina versus Anthony Odom,
23 2010-GS-37-364 A, We, the Jury, unanimously find that
24 the Defendant, Anthony C. Odom, is guilty of criminal
25 sexual conduct [sic] with a minor.

1 Ladies and gentlemen of the Jury, if this was your
2 verdict and is still your verdict, please signify by
3 raising your right hand.

4 The record will show that all 12 raised their
5 right hand.

6 **THE COURT:** Mr. Gibson, ladies and gentlemen of the
7 jury, it's been a long week, a long day. I want to
8 thank you for your service to the County of Oconee, the
9 State of South Carolina. I was commenting to the
10 bailiff today that I don't think I've ever had a jury
11 that is as prompt as you have been on all occasions and
12 I appreciate it. I've watched you all during this long
13 trial and you stayed engaged.

14 From the Court's perspective we are never concerned
15 about the verdict, we are just concerned that the
16 process was followed. So we want to thank you for your
17 service. The good thing is you are done for the week.
18 The better thing is you can't do it for three years
19 unless you, if you don't want to.

20 I would like to speak with you for a quick minute
21 back in your jury room, and then we'll come back out and
22 we'll pass sentence. You are more than welcome to come
23 back in the courtroom and see me impose sentence, but
24 you are certainly not required in any fashion to do so.

25 If you would step back to your jury room, please.

1 chats. But we believe the sex offender registry is the
2 most important issue here, yes, sir.

3 THE COURT: All right. Thank you for your candor.
4 If you would bear with me one moment, please, sir.
5 (Whereupon, there was a pause in the proceedings.)

6 THE COURT: Was there ever a history of substance
7 abuse?

8 MR. HUFF: No, sir. I think Dr. Schwartz-Watts
9 said the same. No, sir.

10 Sentence of the Court:

11 THE COURT: All right. This will be the sentence
12 of the Court. I'm gonna sentence you to seven years.
13 I'm gonna suspend that on probation for five years. And
14 the reason I'm giving you probation is, number one, that
15 the State is seeking to have you put on the sex offender
16 registry so you can be checked and followed, and I
17 listened to that. I also gave credence to the fact that
18 you do have a significant medical condition. And
19 although you obviously didn't do the right thing in this
20 matter, you have given some service to the State from
21 your prior job. Otherwise, I'd put you in jail. But
22 I've given enough time over your head that if you do not
23 adhere strictly to what I tell you to, you will likely
24 be incarcerated.

25 Now, there will be conditions of that probation.

1 404(B) EXCEPTIONS THAT WE THINK APPLY HERE. FIRST AND
2 FOREMOST, IT'S OUR BURDEN AT TRIAL ON THE SPARTANBURG CHARGE
3 TO PROVE INTENT TO SET TO INDUCE AND INTENT AS FAR AS THE
4 KNOWLEDGE OR HIS REASONABLE BELIEF THAT HE'S CHATTING WITH A
5 CHILD.

6 YOUR HONOR, IF YOU READ THESE CHATS AND YOU READ THE
7 SPARTANBURG CHATS, WE THINK IT GOES TO BOTH HIS INTENT, HIS
8 IDENTITY AS THE SCREEN NAME, IS THE SCREEN NAME THE SAME,
9 THE CHATS ARE VERY SIMILAR FASHION. IT GOES TO LACK OF
10 MISTAKE, YOUR HONOR, BECAUSE ---

11 THE COURT: ALL RIGHT. I JUST -- OBVIOUSLY YOU HAVE A
12 REASON WHY YOU WANT TO USE THEM.

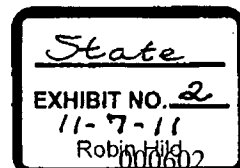
13 MR. STUMBO: UNDER 404(B), YOUR HONOR, WE BELIEVE
14 SEVERAL OF THE EXCEPTIONS APPLY.

15 THE COURT: ALL RIGHT. DO YOU HAVE ANY INFORMATION TO
16 SUPPLEMENT, I MEAN, MR. SWERLING SAYS HE DOESN'T HAVE
17 ANYTHING TO BACK UP THESE STATEMENTS. DO YOU HAVE ANYTHING
18 THAT YOU CAN GIVE HIM?

19 MR. STUMBO: WE DON'T, YOUR HONOR. I ASKED THE
20 INVESTIGATOR. HE NEVER DID AN INCIDENT REPORT BECAUSE HE
21 NEVER -- WE NEVER INTENDED TO CHARGE, YOU KNOW, AT THAT TIME
22 IN OCONEE COUNTY. SO HE'S PROVIDED US WITH THE CHAT LOGS
23 AND CAMTASIA, WHICH IS THE LIVE CAPTURE OF WHAT'S GOING ON
24 ON THE COMPUTER SCREEN.

25 THE COURT: ALL RIGHT.

danger6552000 (5/4/2006 11:20:16 PM): Hi would you like to chat?
a_upstategurl93 (5/4/2006 11:20:34 PM): hi
danger6552000 (5/4/2006 11:20:40 PM): how r u
a_upstategurl93 (5/4/2006 11:20:45 PM): bored u
danger6552000 (5/4/2006 11:21:28 PM): same lol
a_upstategurl93 (5/4/2006 11:21:41 PM): lol
danger6552000 (5/4/2006 11:21:53 PM): asl
a_upstategurl93 (5/4/2006 11:21:59 PM): 13 f oconee u?
danger6552000 (5/4/2006 11:22:07 PM): wow
danger6552000 (5/4/2006 11:22:19 PM): 40 m Columbia lol
a_upstategurl93 (5/4/2006 11:22:37 PM): wow u r far away huh
danger6552000 (5/4/2006 11:23:09 PM): lol what about my age
a_upstategurl93 (5/4/2006 11:23:27 PM): i dont kno what bout it.lol
danger6552000 (5/4/2006 11:23:35 PM): is it ok
a_upstategurl93 (5/4/2006 11:23:53 PM): if its ok wit you. your the one that is
40 not me!! lol
danger6552000 (5/4/2006 11:24:15 PM): lol
danger6552000 (5/4/2006 11:24:19 PM): what ya lok like
a_upstategurl93 (5/4/2006 11:24:33 PM): a girl wit brown hair kina skinny u?
danger6552000 (5/4/2006 11:24:49 PM): body?
a_upstategurl93 (5/4/2006 11:24:58 PM): yes i have one
danger6552000 (5/4/2006 11:25:04 PM): ass bra?
a_upstategurl93 (5/4/2006 11:25:35 PM): oh..lol 36b and some.lol
danger6552000 (5/4/2006 11:25:56 PM): sounds nice
danger6552000 (5/4/2006 11:25:58 PM): bf
a_upstategurl93 (5/4/2006 11:26:06 PM): naww jus norm i guess.lol
a_upstategurl93 (5/4/2006 11:26:20 PM): no my mom say i cant date til im 16 and
my last one was a jerk
danger6552000 (5/4/2006 11:26:42 PM): ask me anything
a_upstategurl93 (5/4/2006 11:27:15 PM): like?
a_upstategurl93 (5/4/2006 11:27:21 PM): what u look like
danger6552000 (5/4/2006 11:27:38 PM): 5.11 green eyes brown hair 180 in very
good shape
a_upstategurl93 (5/4/2006 11:27:55 PM): nice
danger6552000 (5/4/2006 11:28:02 PM): ty
danger6552000 (5/4/2006 11:28:10 PM): whatya like in a guy
a_upstategurl93 (5/4/2006 11:28:58 PM): they hav to be nice
danger6552000 (5/4/2006 11:29:08 PM): ok and
a_upstategurl93 (5/4/2006 11:29:50 PM): hmm i dont kno kewl.lol
a_upstategurl93 (5/4/2006 11:29:54 PM):
danger6552000 (5/4/2006 11:30:07 PM): like older guys
a_upstategurl93 (5/4/2006 11:30:31 PM): i like everyl
danger6552000 (5/4/2006 11:30:44 PM): ok
danger6552000 (5/4/2006 11:30:48 PM): so what ya have on
a_upstategurl93 (5/4/2006 11:31:02 PM): clothes silly
danger6552000 (5/4/2006 11:31:13 PM): like
a_upstategurl93 (5/4/2006 11:31:18 PM): shirt and pants.lol
danger6552000 (5/4/2006 11:31:26 PM): under
a_upstategurl93 (5/4/2006 11:31:54 PM): yea
danger6552000 (5/4/2006 11:32:06 PM): like
a_upstategurl93 (5/4/2006 11:32:18 PM): underwear.lol
danger6552000 (5/4/2006 11:32:35 PM): what ya thinking
a_upstategurl93 (5/4/2006 11:32:46 PM): i dont kno. jus bored
a_upstategurl93 (5/4/2006 11:33:02 PM): brb
danger6552000 (5/4/2006 11:33:04 PM): what ya like to do
danger6552000 (5/4/2006 11:33:08 PM): k



danger6552000 (5/4/2006 11:40:13 PM): hello
a_upstategurl93 (5/5/2006 12:02:05 AM): hello
danger6552000 (5/5/2006 12:02:10 AM): hey
a_upstategurl93 (5/5/2006 12:03:02 AM): sry was lookn at sumthin on tv.lol
danger6552000 (5/5/2006 12:03:22 AM): np
danger6552000 (5/5/2006 12:03:24 AM): missed ua
a_upstategurl93 (5/5/2006 12:03:57 AM): sry
danger6552000 (5/5/2006 12:04:31 AM): so virgin
a_upstategurl93 (5/5/2006 12:05:17 AM): lol iv done stuf
danger6552000 (5/5/2006 12:05:47 AM): like
a_upstategurl93 (5/5/2006 12:05:57 AM): stuf.lol
a_upstategurl93 (5/5/2006 12:06:06 AM): i promise not to talk bout it
danger6552000 (5/5/2006 12:06:34 AM): tell me
a_upstategurl93 (5/5/2006 12:06:43 AM): i dont brake promises
danger6552000 (5/5/2006 12:07:02 AM): u can tell me
danger6552000 (5/5/2006 12:07:05 AM): please
a_upstategurl93 (5/5/2006 12:08:03 AM): no u woudnt want me to tell if i promise
u i woudnt
danger6552000 (5/5/2006 12:08:27 AM): well I want to know what u did not who
with
a_upstategurl93 (5/5/2006 12:09:42 AM): well i had to promise not to say
anything bout it
danger6552000 (5/5/2006 12:10:12 AM): u can tell me what
a_upstategurl93 (5/5/2006 12:10:22 AM): jus norm stuf
danger6552000 (5/5/2006 12:10:33 AM): like
a_upstategurl93 (5/5/2006 12:10:40 AM): jus stuf.lol
a_upstategurl93 (5/5/2006 12:10:52 AM): im very good at keepn secrets and
promises tyvm.lol
danger6552000 (5/5/2006 12:11:11 AM): lol well that is good
danger6552000 (5/5/2006 12:11:16 AM): but u can say what u ddi
a_upstategurl93 (5/5/2006 12:12:09 AM): nope.lol
danger6552000 (5/5/2006 12:12:43 AM): suck cock?
a_upstategurl93 (5/5/2006 12:12:57 AM): no that seems gross
danger6552000 (5/5/2006 12:13:11 AM): been eatten
a_upstategurl93 (5/5/2006 12:13:20 AM): no that seems gross 2.lol
danger6552000 (5/5/2006 12:13:48 AM): ok jacked a guy off
a_upstategurl93 (5/5/2006 12:13:54 AM):
danger6552000 (5/5/2006 12:14:07 AM): u have
a_upstategurl93 (5/5/2006 12:14:16 AM):
danger6552000 (5/5/2006 12:14:31 AM): luck guy
danger6552000 (5/5/2006 12:14:40 AM): like it
a_upstategurl93 (5/5/2006 12:14:50 AM): ok i gues
danger6552000 (5/5/2006 12:15:19 AM): kiss
a_upstategurl93 (5/5/2006 12:15:38 AM): well duh.lol
danger6552000 (5/5/2006 12:15:44 AM): lol
danger6552000 (5/5/2006 12:15:50 AM): be fingered?
a_upstategurl93 (5/5/2006 12:15:59 AM):
danger6552000 (5/5/2006 12:16:21 AM): did u like it
a_upstategurl93 (5/5/2006 12:16:54 AM):
danger6552000 (5/5/2006 12:17:26 AM): nice
danger6552000 (5/5/2006 12:17:31 AM): have u had sex
a_upstategurl93 (5/5/2006 12:17:42 AM):
danger6552000 (5/5/2006 12:17:56 AM): that a yes
a_upstategurl93 (5/5/2006 12:18:19 AM): lol
a_upstategurl93 (5/5/2006 12:18:34 AM): u pretty good
danger6552000 (5/5/2006 12:18:47 AM): what ya mean
a_upstategurl93 (5/5/2006 12:19:30 AM): ur a good guesser

danger6552000 (5/5/2006 12:20:28 AM): want to feel me inside u thrusting deep ur
 legs tight together and tight to my chest as I move ur body my head running
 along the walls of ur pussy as I move ur legs left and right making u twsits
 around me as we fuck
 a_upstategurl93 (5/5/2006 12:21:07 AM): wow
 danger6552000 (5/5/2006 12:21:17 AM): u like
 a_upstategurl93 (5/5/2006 12:21:24 AM): lol
 a_upstategurl93 (5/5/2006 12:21:29 AM):
 danger6552000 (5/5/2006 12:21:43 AM): I take that as yes
 a_upstategurl93 (5/5/2006 12:22:06 AM): lol
 danger6552000 (5/5/2006 12:22:13 AM): what ya thinking
 a_upstategurl93 (5/5/2006 12:22:21 AM): nuthin
 danger6552000 (5/5/2006 12:22:35 AM): did that turn u on any
 a_upstategurl93 (5/5/2006 12:22:45 AM): jus words.lol
 danger6552000 (5/5/2006 12:22:55 AM): i see
 danger6552000 (5/5/2006 12:23:00 AM): so any questions for me
 a_upstategurl93 (5/5/2006 12:23:34 AM): i dont kno. u drive a fast car?
 danger6552000 (5/5/2006 12:23:40 AM): yes
 a_upstategurl93 (5/5/2006 12:24:09 AM): kewl. i like fast cars like mustangs and
 stuff
 danger6552000 (5/5/2006 12:24:37 AM): have a mustang
 a_upstategurl93 (5/5/2006 12:24:58 AM): really?
 danger6552000 (5/5/2006 12:25:11 AM): yes
 a_upstategurl93 (5/5/2006 12:25:15 AM): is it red?
 danger6552000 (5/5/2006 12:25:15 AM): 2006
 danger6552000 (5/5/2006 12:25:18 AM): no
 danger6552000 (5/5/2006 12:25:23 AM): black
 a_upstategurl93 (5/5/2006 12:25:35 AM): oh wow. them r sooo kewl
 a_upstategurl93 (5/5/2006 12:25:45 AM): i want one when i can drive
 danger6552000 (5/5/2006 12:26:08 AM): cool
 a_upstategurl93 (5/5/2006 12:26:23 AM): drivin fast is fun
 danger6552000 (5/5/2006 12:27:11 AM): can be
 danger6552000 (5/5/2006 12:27:14 AM): so what else ya like
 a_upstategurl93 (5/5/2006 12:27:30 AM): i dont kno. nuthin else round here to
 try.lol
 danger6552000 (5/5/2006 12:28:01 AM): u can try me hehe
 a_upstategurl93 (5/5/2006 12:28:11 AM): lol u far away.lol
 danger6552000 (5/5/2006 12:28:27 AM): lol well would u want to
 a_upstategurl93 (5/5/2006 12:28:37 AM): i dont kno. r u a cereal killer
 danger6552000 (5/5/2006 12:28:54 AM): well I do eat corn flakes lol
 a_upstategurl93 (5/5/2006 12:29:00 AM): oh.lol ur silly
 a_upstategurl93 (5/5/2006 12:29:11 AM): my mom say ppl on here try to hurt you
 danger6552000 (5/5/2006 12:29:18 AM): some do
 a_upstategurl93 (5/5/2006 12:29:37 AM): u?
 danger6552000 (5/5/2006 12:29:55 AM): no I would not
 a_upstategurl93 (5/5/2006 12:30:21 AM): thats good. i dont wana b hurt
 danger6552000 (5/5/2006 12:30:40 AM): but I am alot older lol I doubt ur parnets
 woudl approve
 a_upstategurl93 (5/5/2006 12:30:52 AM): lol no my mom prob not.
 danger6552000 (5/5/2006 12:31:23 AM): oh well
 a_upstategurl93 (5/5/2006 12:31:58 AM): lol that why my last bf left. he got mad
 caus i had to keep snekn out and one time i couldnt get out so he start bein a
 jerk
 danger6552000 (5/5/2006 12:32:35 AM): well that is wrong
 a_upstategurl93 (5/5/2006 12:32:48 AM): wrong?
 danger6552000 (5/5/2006 12:33:13 AM): he should understand
 a_upstategurl93 (5/5/2006 12:33:26 AM): yea i thoght he did but not

danger6552000 (5/5/2006 12:33:37 AM): how old was he
a_upstategurl93 (5/5/2006 12:33:45 AM): i cant say
a_upstategurl93 (5/5/2006 12:34:16 AM):
danger6552000 (5/5/2006 12:34:19 AM): y
a_upstategurl93 (5/5/2006 12:34:34 AM): caus he said i coudnt
danger6552000 (5/5/2006 12:34:52 AM): lol over 18
a_upstategurl93 (5/5/2006 12:34:59 AM): lol
danger6552000 (5/5/2006 12:35:48 AM): well would u want another
a_upstategurl93 (5/5/2006 12:36:08 AM): i dont kno prob b nervos
danger6552000 (5/5/2006 12:36:17 AM): y
a_upstategurl93 (5/5/2006 12:36:40 AM): i dont kno. jus caus.lol
danger6552000 (5/5/2006 12:37:16 AM): so what do u want to know about me
a_upstategurl93 (5/5/2006 12:37:38 AM): hmmm i dont kno. lol
danger6552000 (5/5/2006 12:37:50 AM): u intrested in me
a_upstategurl93 (5/5/2006 12:38:02 AM): yea
danger6552000 (5/5/2006 12:38:22 AM): as
a_upstategurl93 (5/5/2006 12:38:38 AM): as?
danger6552000 (5/5/2006 12:38:47 AM): as a bf?
a_upstategurl93 (5/5/2006 12:39:03 AM): hmmm that mite b kewl. as long as u not
a jerk
danger6552000 (5/5/2006 12:39:29 AM): well I am not
a_upstategurl93 (5/5/2006 12:39:45 AM): u dont seem like one
danger6552000 (5/5/2006 12:39:50 AM): but we have to be very careful lol
a_upstategurl93 (5/5/2006 12:39:59 AM): ?
danger6552000 (5/5/2006 12:40:31 AM): I could get in trubble lol
a_upstategurl93 (5/5/2006 12:40:42 AM): oh. i dont want u get in troble
danger6552000 (5/5/2006 12:40:58 AM): nor do I lol
a_upstategurl93 (5/5/2006 12:41:01 AM): lol
a_upstategurl93 (5/5/2006 12:41:09 AM): u so far away
danger6552000 (5/5/2006 12:41:19 AM): so lol
a_upstategurl93 (5/5/2006 12:41:53 AM): lol
danger6552000 (5/5/2006 12:42:26 AM): what ya thinking
a_upstategurl93 (5/5/2006 12:42:53 AM): i dont kno. how borin it is round
here.lol
danger6552000 (5/5/2006 12:43:07 AM): well fuck me lol
a_upstategurl93 (5/5/2006 12:43:27 AM): lol how
danger6552000 (5/5/2006 12:43:45 AM): do u want to
a_upstategurl93 (5/5/2006 12:44:12 AM): i dont kno kina nervos
danger6552000 (5/5/2006 12:44:20 AM): y
a_upstategurl93 (5/5/2006 12:44:47 AM): caus i jus get buterflies meetn new
ppl.lol
danger6552000 (5/5/2006 12:45:14 AM): ok well are u thinking u might want to
a_upstategurl93 (5/5/2006 12:45:25 AM): hmm u do seem nice
danger6552000 (5/5/2006 12:45:43 AM): so do u
a_upstategurl93 (5/5/2006 12:45:56 AM): ok
danger6552000 (5/5/2006 12:46:18 AM): are u sexually intrested in me
a_upstategurl93 (5/5/2006 12:46:27 AM):
danger6552000 (5/5/2006 12:47:03 AM): that yes
a_upstategurl93 (5/5/2006 12:47:17 AM): yea
danger6552000 (5/5/2006 12:48:04 AM): want to feel me inside u from behind my
hands on ur hips pulling u back on me hard as I slap into ur ass my coc in u
deep as I reach under ur and tease ur clit with my fingers
a_upstategurl93 (5/5/2006 12:48:22 AM): wow
danger6552000 (5/5/2006 12:48:33 AM): what is it honey
a_upstategurl93 (5/5/2006 12:48:47 AM): sounds kewl
danger6552000 (5/5/2006 12:48:59 AM): want to do it
a_upstategurl93 (5/5/2006 12:49:02 AM): ok

danger6552000 (5/5/2006 12:49:34 AM): so u want to
a_upstategurl93 (5/5/2006 12:49:48 AM): if u want to. i try but i kno i b
nervos.lol
danger6552000 (5/5/2006 12:50:15 AM): its up to u
a_upstategurl93 (5/5/2006 12:51:11 AM): hmmm. i jus dont wana get hurt or in
trouble
danger6552000 (5/5/2006 12:51:28 AM): me neither
danger6552000 (5/5/2006 12:51:38 AM): but u do think u want to
a_upstategurl93 (5/5/2006 12:52:07 AM): yea
danger6552000 (5/5/2006 12:52:21 AM): cum in u?
a_upstategurl93 (5/5/2006 12:52:34 AM): i dont wana be pg
danger6552000 (5/5/2006 12:52:46 AM): ok
danger6552000 (5/5/2006 12:53:06 AM): condom
a_upstategurl93 (5/5/2006 12:53:19 AM): yea
danger6552000 (5/5/2006 12:53:58 AM): ok
danger6552000 (5/5/2006 12:54:03 AM): anal?
a_upstategurl93 (5/5/2006 12:54:22 AM): that mite hurt
danger6552000 (5/5/2006 12:54:37 AM): try and see
a_upstategurl93 (5/5/2006 12:55:05 AM): hmm i think it woud hurt
danger6552000 (5/5/2006 12:55:21 AM): depends on how relaxed and turned on u are
a_upstategurl93 (5/5/2006 12:55:43 AM): oh
danger6552000 (5/5/2006 12:57:08 AM): what ya think of me
a_upstategurl93 (5/5/2006 12:57:27 AM): i think ur real nice and kewl
danger6552000 (5/5/2006 12:57:48 AM): ty
danger6552000 (5/5/2006 12:57:54 AM): so want to fuck me hehe
a_upstategurl93 (5/5/2006 12:57:59 AM):
danger6552000 (5/5/2006 12:59:16 AM): would u ride me
a_upstategurl93 (5/5/2006 12:59:25 AM): ride u?
danger6552000 (5/5/2006 12:59:52 AM): yes stradel me as u took me iinside u and
move back and forth
a_upstategurl93 (5/5/2006 1:00:05 AM): oh
danger6552000 (5/5/2006 1:00:23 AM): would u
a_upstategurl93 (5/5/2006 1:00:37 AM): ok
danger6552000 (5/5/2006 1:00:57 AM): what would u want to do the most
a_upstategurl93 (5/5/2006 1:01:10 AM): i dont kno. i like to try new stuf
danger6552000 (5/5/2006 1:01:21 AM): ok
Roge Wilson (5/5/2006 1:02:09 AM): what ya thinking about
a_upstategurl93 (5/5/2006 1:02:30 AM): nuthin what i can do round here.lol
Roge Wilson (5/5/2006 1:02:53 AM): well fuck me hehe
a_upstategurl93 (5/5/2006 1:03:06 AM): lol that a long walk.
Roge Wilson (5/5/2006 1:03:37 AM): I am sure we could work it out lol
a_upstategurl93 (5/5/2006 1:04:05 AM): lol. it woud take like 100 days to walk
from here to columbia.lol
Roge Wilson (5/5/2006 1:04:31 AM): well start now when u get here u will ne
legal lol
a_upstategurl93 (5/5/2006 1:04:41 AM): lol
Roge Wilson (5/5/2006 1:05:10 AM): what do u want to do with me
a_upstategurl93 (5/5/2006 1:05:36 AM): i dont kno w/e u want
Roge Wilson (5/5/2006 1:05:50 AM): well that is up to u
a_upstategurl93 (5/5/2006 1:06:02 AM): well i gues have to c if the time
comes.lol
Roge Wilson (5/5/2006 1:06:30 AM): well I hope so u r turning me on
a_upstategurl93 (5/5/2006 1:06:52 AM):
Roge Wilson (5/5/2006 1:07:08 AM): u should cum for me
a_upstategurl93 (5/5/2006 1:07:15 AM): huh?
Roge Wilson (5/5/2006 1:07:25 AM): do u masturbate
a_upstategurl93 (5/5/2006 1:07:32 AM):

Roge Wilson (5/5/2006 1:07:48 AM): u should right now as we talk
a_upstategurl93 (5/5/2006 1:08:06 AM): i dont do that its gross
Roge Wilson (5/5/2006 1:08:17 AM): have u tired
a_upstategurl93 (5/5/2006 1:08:26 AM): yea and i didnt like it
Roge Wilson (5/5/2006 1:08:36 AM): how did u do it
a_upstategurl93 (5/5/2006 1:08:47 AM): huh?
Roge Wilson (5/5/2006 1:08:56 AM): when u tried it what did u do
a_upstategurl93 (5/5/2006 1:09:01 AM): jus norm
Roge Wilson (5/5/2006 1:09:27 AM): try once more
Roge Wilson (5/5/2006 1:09:31 AM): let me help u hehe
a_upstategurl93 (5/5/2006 1:09:42 AM): no im not doin that
Roge Wilson (5/5/2006 1:10:04 AM): ok want me to hhe
a_upstategurl93 (5/5/2006 1:10:19 AM): lol im more real.
Roge Wilson (5/5/2006 1:10:40 AM): well is that an invite
a_upstategurl93 (5/5/2006 1:10:49 AM):
a_upstategurl93 (5/5/2006 1:10:53 AM): lol
Roge Wilson (5/5/2006 1:11:14 AM): I would lov being inside u
a_upstategurl93 (5/5/2006 1:11:27 AM): reaky
a_upstategurl93 (5/5/2006 1:11:29 AM): realy
Roge Wilson (5/5/2006 1:11:46 AM): oh god yes
Roge Wilson (5/5/2006 1:11:53 AM): I am thinking how good it would feel now
a_upstategurl93 (5/5/2006 1:12:09 AM):
Roge Wilson (5/5/2006 1:12:27 AM): kissing u as we fucked
a_upstategurl93 (5/5/2006 1:12:53 AM):
Roge Wilson (5/5/2006 1:13:08 AM): what ya think of it
a_upstategurl93 (5/5/2006 1:13:22 AM): sounds kewl
Roge Wilson (5/5/2006 1:13:56 AM): ok what else ya want to know
a_upstategurl93 (5/5/2006 1:14:24 AM): hmm. when ur birthday?
Roge Wilson (5/5/2006 1:14:42 AM): august 18 y
a_upstategurl93 (5/5/2006 1:15:14 AM): kewl
a_upstategurl93 (5/5/2006 1:15:18 AM): i jus wondern
a_upstategurl93 (5/5/2006 1:15:19 AM): lol
Roge Wilson (5/5/2006 1:15:28 AM): yours
a_upstategurl93 (5/5/2006 1:15:31 AM): i couldnt think nuthin else to ask.lol
a_upstategurl93 (5/5/2006 1:15:43 AM): mine is feb 15
Roge Wilson (5/5/2006 1:16:01 AM): col
Roge Wilson (5/5/2006 1:16:23 AM): what do u want us to do
a_upstategurl93 (5/5/2006 1:16:42 AM): i dont kno w/e u want
Roge Wilson (5/5/2006 1:16:54 AM): u sure
a_upstategurl93 (5/5/2006 1:17:29 AM): yea
Roge Wilson (5/5/2006 1:17:38 AM): ok
Roge Wilson (5/5/2006 1:17:50 AM): well I am going to bed talk agian soon kiss
night for now
a_upstategurl93 (5/5/2006 1:17:59 AM): ok nitenite.
a_upstategurl93 (5/5/2006 1:18:03 AM):



ALAN WILSON
ATTORNEY GENERAL

April 28, 2011

The Honorable Alexander S. Macaulay
P.O. Drawer 428
Walhalla, SC 29691

VIA FACSIMILE AND U.S. MAIL

Re: State v. Anthony C. Odom
(Indictment No(s): 2010-GS 37-363, -364)

Dear Judge Macaulay:

As you are aware from discussion with counsel and the pre-trial hearing on April 12, 2011, a significant issue exists in this case concerning the release of records relating to the arrest of Mark Patterson, the main witness in the State's case. While in chambers on that date, the State expressed concern about the retention of the arrest records and informed the court and defense counsel we may look further into the issue.

During the pre-trial hearing, the State expressed concern that a hearing resulting in the stay of destruction of Mark Patterson's arrest records was held at Mr. Huff's request, and we took the position no one is entitled to these documents because they should not exist. You requested defense counsel provide a proposed order for release of the arrest records. To date, we have not received a proposed order from Mr. Huff.

At the pre-trial hearing, the State understood the charge against Officer Patterson was nolle prossed, and all records regarding his arrest had been expunged and destroyed. The State investigated the matter, and this letter is to inform the Court of the following findings.

- On June 5, 2009, Officer Patterson was arrested by the Burnetown Police Department and charged, by Ticket No.: 94300ED, with Unlawful Communication, a 30-day Misdemeanor. This charge was nolle prossed on November 4, 2009.
- Pursuant to SC Code Sections 17-22-950 and 17-1-40, the summary court judge found Officer Patterson was entitled to have all records relating to

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The Honorable Alexander S. Macaulay

April 28, 2011

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his arrest expunged and immediately destroyed. The summary court issued an Order for the Destruction of Arrest Records on December 8, 2009, a copy of which is attached for your review.

- According to Chief David Paul Smith, Burnetttown Police Department, shortly after December 8, 2009, he attended a "hearing" in front of the Honorable Rodger Edmonds, the summary court judge who issued the December 8, 2009 destruction order. At that time, Judge Edwards verbally directed Chief Smith to retain Mark Patterson's arrest records until Mr. Huff could obtain an order from a Circuit Court Judge. The Chief's letter to Judge Edmonds, dated December 14, 2009, confirms retention of the records per Judge Edmonds' verbal order. Mr. Huff provided a copy of this letter to you at the April 12 hearing, and another copy is attached.
- Officer Patterson had no knowledge of a hearing staying destruction of his arrest records and did not know the records remain in the possession of the Burnetttown Police Department. Furthermore, he informs the State he is instructing his attorney, Andrew "Andy" Anderson, to seek a Writ of Mandamus directing the Burnetttown Police Department to comply with the Order for Destruction.
- Andy Anderson, counsel for Mark Patterson, does not recall being made aware of, and did not attend, a "hearing" staying the destruction of Mark Patterson's arrest records, and he did not know the records remain in the possession of the Burnetttown Police Department.
- The State is informed no written motion was filed to request a "hearing" concerning Mark Patterson's arrest records, the hearing was not memorialized in writing, and the records were retained based solely on a verbal order to the Chief, with no notice to Officer Patterson or his attorney. The State found no evidence Mr. Huff ever petitioned the Aiken County Court of General Sessions for an order regarding retention of the records, and no indication such an order exists.

Under applicable South Carolina law, the records at issue should have been destroyed. South Carolina Code §17-1-40 provides in pertinent part:

A person who after being charged with a criminal offense and the charge is discharged, proceedings against the person are dismissed, or the person

The Honorable Alexander S. Macaulay

April 28, 2011

Page Three

is found not guilty of the charge, **the arrest and booking record, files, mug shots, and fingerprints of the person must be destroyed and no evidence of the record pertaining to the charge may be retained** by any municipal, county, or state law enforcement agency. (emphasis added)

Moreover, anyone who intentionally retains the arrest records is guilty of contempt of court. Id.

Pursuant to SC Code §17-22-950, only the prosecuting agency or law enforcement agency may object to expungement, and if an objection is made, expungement **must** be heard by a general sessions court judge. Further, under this section, the accused person **must be notified of the objection in writing** (at the address listed on the accused person's bond form, or through his attorney), **no later than thirty days after the finding of not guilty, or the charge being dismissed or nolle prossed.**¹ Id.

At the April 12 pre-trial hearing, Mr. Huff represented to the Court he requested retention of Mark Patterson's arrest records, and a "hearing" was held resulting in an order staying the destruction of the arrest records. It appears no one who may legally object to expungement or destruction did so, or had reason to do so. It is clear, however, that neither Mr. Huff nor Mr. Odom had standing to object to expungement and/or destruction of the arrest records. It further appears the hearing at which Chief Smith was ordered to maintain Officer Patterson's arrest records was conducted ex parte, without notice to Mark Patterson or his attorney, and there is no valid superseding order justly or legally requiring retention of the arrest records.

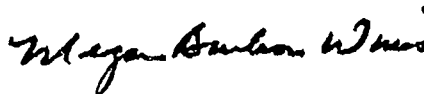
Finally, this issue also arose prior to calling the trial of Mr. Odom in Spartanburg in February 2010. At that time, Mr. Huff advised counsel for the State and the Honorable J. Mark Hayes that he could not obtain these records from the town of Burnetown, and he requested a court order to obtain the documents from Officer Patterson's attorney, Andy Anderson. After Judge Hayes indicated a hearing concerning attorney-client privilege was necessary, the State informed Mr. Huff the matter of Office Patterson's arrest was becoming a burdensome and unnecessary collateral issue to the Spartanburg trial, and the issue could be addressed after submitting indictments to an Oconee County Grand Jury. According to information we now have, the ex parte hearing conducted at Mr. Huff's request, and the verbal order for retention of the records, occurred prior to Mr. Huff's representation that he could not obtain the records from Burnetown.

¹ The only valid reasons for objecting are the accused has other charges pending; the prosecuting agency or the appropriate law enforcement agency believes the evidence needs to be preserved; or the accused person's charges were dismissed as a part of a plea agreement. Id.

The Honorable Alexander S. Macaulay.
April 28, 2011
Page Four

Based on the information obtained by the State, the relevant statutory law, and the Order of Destruction issued December 8, 2009, the State respectfully renews its objection to any person or agency involved in the pending criminal case against Mr. Odom having possession of records relating to the arrest of Officer Patterson. The State reiterates its position these records are not Rule 5 material, not only because they are irrelevant to Mr. Odom's pending criminal case, but also because they should not even exist in light of the December 8, 2009 Order of Destruction.

Respectfully,



Megan Burleson Wines
Assistant Attorney General

MBW/

Enclosures

cc: The Honorable Beverly Whitfield, Oconee County Clerk of Court
The Honorable Rodger Edmonds
Chief David Paul Smith, Burnetown Police Department
James B. Huff, Esquire
Andrew J. Johnston, Esquire
J. Andrew Anderson, Esquire
Mark Patterson
Paul K. Simons, Jr., Esquire
John W. McIntosh, Chief Deputy Attorney General

000611



INTERNET CRIMES AGAINST CHILDREN TASK FORCE

FAX TRANSMITTAL



Jim Huff, Esq.	Megan B. Wines
To: James B. Huff Law Firm, P.C.	From: Assistant Attorney General
Fax: 803.442.4422	Fax: 803.734.0917
Date: April 28, 2011	Phone: 803.734.3724
Re: State v. Anthony Clark Odom	Pages: 5 (Including Cover)

VIA FACSIMILE AND U.S. MAIL

Please see attached letter.

NOTICE OF CONFIDENTIALITY: The information contained in this facsimile message is legally privileged and confidential information intended only for the use of the individual(s) or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this telecopy is strictly prohibited. If you have received this telecopy in error, please notify us immediately by telephone at (803) 734-4878 and return the original message to us at the address below via the United States Postal Service. Thank you.

Post Office Box 11549
Columbia, SC 29211-1549

000612

Can we review the

cross-examination of Mr

Defferson on 11-8-11.

Also the cross-examination

of Clint Bennett on 11-8

[Signature]

EXHIBIT NO. 11
11-10-11
Robin Hild

If an officer is not
banded are they considered
an official police officer.

[Signature]

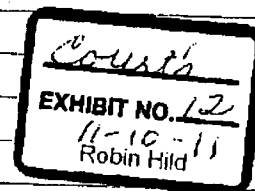
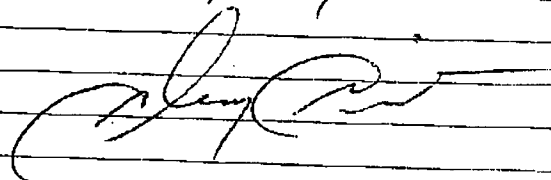
EXHIBIT NO. 10
11-8-10-11
Robin Hild

Mr. Patterson's cross

"Requirement of an officer to
be bonded"

"Was he bonded"

and "official capacity"





HENRY McMASTER
SECURITIES COMMISSIONER

December 5, 2006

Jack B. Swerling, Esquire
1720 Main Street, Suite 301
Columbia, SC 29601

Re: State v. Anthony C. Odom (2006-GS-42-2289)

Dear Mr. Swerling:

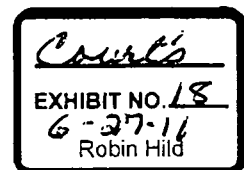
Thank you for your letter of November 30, 2006 inquiring about the forensic exam of Mr. Odom's computer. I received new some information from SLED last week regarding the progress of the exam, and can confirm that no further exam work has been done on the computer at the Computer Crimes Center. SLED does not intend to conduct a full forensics exam on Mr. Odom's computer. I will contact you this week and discuss the reason for this decision. The preview examination conducted on site at Mr. Odom's residence by SLED produced results that were disclosed in the "Preliminary Report" disc that I gave to you on June 30 in Spartanburg. The results of this preview exam will be the only evidence preserved from the computer for purposes of the prosecution of this case.

Thank you and I look forward to discussing these matters with you by phone this week.

RECEIVED DEC 9 6 2006

With best wishes, I remain
Sincerely,

David M. Stumbo
Assistant Attorney General



Tuesday
May 11, 2010

2A

Aiken Standard

LOCAL NEWS



To report a news tip or story idea:
Call Michael Gibbons, Managing Editor,
at 644-2381 or e-mail to [mkgibbons@
aikenstandard.com](mailto:mkgibbons@aikenstandard.com)

Page edited by:
Holly Ellington

McMaster: Former prosecutor is guilty

By MIKE GELLATLY
Staff writer

South Carolina's top attorney, Attorney General Henry McMaster, said he "knows" that a former Aiken County prosecutor is guilty of trying to solicit an underage girl for sex.

After a Spartanburg jury did not convict Anthony Odom of attempting to solicit a minor for sex via an online chat room, remaining allegations stemming from a

similar incident at the same time were presented to an Oconee County grand jury. That panel found enough evidence to bring charges forward against Odom.

While on the campaign trail in his run for governor, McMaster told the *Aiken Standard* last week that he thinks Odom will be found guilty.

"We believe he did it in Oconee, and we will try him in Oconee," McMaster said. "We don't charge somebody



McMaster



Odom

unless we know that they're guilty, and we know we have the evidence to prove they're guilty — this case is one that needs to be charged and tried."

The charges against Odom surround alleged attempts to set up a sexual rendezvous with an undercover police officer posing as a teen girl. The attorney general's office said it happened in an adult chat room in May 2006. Odom had previously been tried on a separate 2006 charge, and the case ended in a mistrial in March of this year.

"These kind of cases — these predators on the Internet — are dangerous,"

McMaster said of Odom.

Odom has denied the charges against him and has now taken his own legal shot back at the attorney general and all of the solicitors of South Carolina. In April, he filed a civil lawsuit in U.S. District Court in Charleston against McMaster's office, claiming he is being vindictively prosecuted.

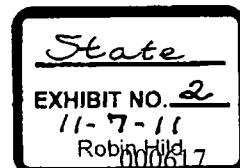
Now, McMaster's office has responded to the suit demanding it be dismissed.

The less-than-two-page response states that U.S. Supreme Court precedent specifically prohibits a federal court from hearing civil rights claims made against the prosecutor by the defendant while they are being prosecuted.

Odom has been arrested, booked and released on bond for the Oconee County charges.

Contact Mike Gellatly at mkgellatly@aikenstandard.com.

danger6552000 (5/4/2006 11:20:16 PM): Hi would you like to chat?
a_upstategurl93 (5/4/2006 11:20:34 PM): hi
danger6552000 (5/4/2006 11:20:40 PM): how r u
a_upstategurl93 (5/4/2006 11:20:45 PM): bored u
danger6552000 (5/4/2006 11:21:28 PM): same lol
a_upstategurl93 (5/4/2006 11:21:41 PM): lol
danger6552000 (5/4/2006 11:21:53 PM): asl
a_upstategurl93 (5/4/2006 11:21:59 PM): 13 f ocone u?
danger6552000 (5/4/2006 11:22:07 PM): wow
danger6552000 (5/4/2006 11:22:19 PM): 40 m Columbia lol
a_upstategurl93 (5/4/2006 11:22:37 PM): wow u r far away huh
danger6552000 (5/4/2006 11:23:09 PM): lol what about my age
a_upstategurl93 (5/4/2006 11:23:27 PM): i dont kno what bout it.lol
danger6552000 (5/4/2006 11:23:35 PM): is it ok
a_upstategurl93 (5/4/2006 11:23:53 PM): if its ok wit you. your the one that is
40 not me!! lol
danger6552000 (5/4/2006 11:24:15 PM): lol
danger6552000 (5/4/2006 11:24:19 PM): what ya lok like
a_upstategurl93 (5/4/2006 11:24:33 PM): a girl wit brown hair kina skinny u?
danger6552000 (5/4/2006 11:24:49 PM): body?
a_upstategurl93 (5/4/2006 11:24:58 PM): yes i have one
danger6552000 (5/4/2006 11:25:04 PM): ass bra?
a_upstategurl93 (5/4/2006 11:25:35 PM): oh..lol 36b and some.lol
danger6552000 (5/4/2006 11:25:56 PM): sounds nice
danger6552000 (5/4/2006 11:25:58 PM): bf
a_upstategurl93 (5/4/2006 11:26:06 PM): naww jus norm i guess.lol
a_upstategurl93 (5/4/2006 11:26:20 PM): no my mom say i cant date til im 16 and
my last one was a jerk
danger6552000 (5/4/2006 11:26:42 PM): ask me anything
a_upstategurl93 (5/4/2006 11:27:15 PM): like?
a_upstategurl93 (5/4/2006 11:27:21 PM): what u look like
danger6552000 (5/4/2006 11:27:38 PM): 5.11 green eyes brown hair 180 in very
good shape
a_upstategurl93 (5/4/2006 11:27:55 PM): nice
danger6552000 (5/4/2006 11:28:02 PM): ty
danger6552000 (5/4/2006 11:28:10 PM): whatya like in a guy
a_upstategurl93 (5/4/2006 11:28:58 PM): they hav to be nice
danger6552000 (5/4/2006 11:29:08 PM): ok and
a_upstategurl93 (5/4/2006 11:29:50 PM): hmm i dont kno kewl.lol
a_upstategurl93 (5/4/2006 11:29:54 PM):
danger6552000 (5/4/2006 11:30:07 PM): like older guys
a_upstategurl93 (5/4/2006 11:30:31 PM): i like everyl
danger6552000 (5/4/2006 11:30:44 PM): ok
danger6552000 (5/4/2006 11:30:48 PM): so what ya have on
a_upstategurl93 (5/4/2006 11:31:02 PM): clothes silly
danger6552000 (5/4/2006 11:31:13 PM): like
a_upstategurl93 (5/4/2006 11:31:18 PM): shirt and pants.lol
danger6552000 (5/4/2006 11:31:26 PM): under
a_upstategurl93 (5/4/2006 11:31:54 PM): yea
danger6552000 (5/4/2006 11:32:06 PM): like
a_upstategurl93 (5/4/2006 11:32:18 PM): underwear.lol
danger6552000 (5/4/2006 11:32:35 PM): what ya thinking
a_upstategurl93 (5/4/2006 11:32:46 PM): i dont kno. jus bored
a_upstategurl93 (5/4/2006 11:33:02 PM): brb
danger6552000 (5/4/2006 11:33:04 PM): what ya like to do
danger6552000 (5/4/2006 11:33:08 PM): k



danger6552000 (5/4/2006 11:40:13 PM): hello
a_upstategur193 (5/5/2006 12:02:05 AM): hello
danger6552000 (5/5/2006 12:02:10 AM): hey
a_upstategur193 (5/5/2006 12:03:02 AM): sry was lookn at sumthin on tv.lol
danger6552000 (5/5/2006 12:03:22 AM): np
danger6552000 (5/5/2006 12:03:24 AM): missed ua
a_upstategur193 (5/5/2006 12:03:57 AM): sry
danger6552000 (5/5/2006 12:04:31 AM): so virgin
a_upstategur193 (5/5/2006 12:05:17 AM): lol iv done stuf
danger6552000 (5/5/2006 12:05:47 AM): like
a_upstategur193 (5/5/2006 12:05:57 AM): stuf.lol
a_upstategur193 (5/5/2006 12:06:06 AM): i promise not to talk bout it
danger6552000 (5/5/2006 12:06:34 AM): tell me
a_upstategur193 (5/5/2006 12:06:43 AM): i dont brake promises
danger6552000 (5/5/2006 12:07:02 AM): u can tell me
danger6552000 (5/5/2006 12:07:05 AM): please
a_upstategur193 (5/5/2006 12:08:03 AM): no u woudnt want me to tell if i promise
u i woudnt
danger6552000 (5/5/2006 12:08:27 AM): well I want to know what u did not who
with
a_upstategur193 (5/5/2006 12:09:42 AM): well i had to promise not to say
anything bout it
danger6552000 (5/5/2006 12:10:12 AM): u can tell me what
a_upstategur193 (5/5/2006 12:10:22 AM): jus norm stuf
danger6552000 (5/5/2006 12:10:33 AM): like
a_upstategur193 (5/5/2006 12:10:40 AM): jus stuf.lol
a_upstategur193 (5/5/2006 12:10:52 AM): im very good at keepn secrets and
promises tyvm.lol
danger6552000 (5/5/2006 12:11:11 AM): lol well that is good
danger6552000 (5/5/2006 12:11:16 AM): but u can say what u ddi
a_upstategur193 (5/5/2006 12:12:09 AM): nope.lol
danger6552000 (5/5/2006 12:12:43 AM): suck cock?
a_upstategur193 (5/5/2006 12:12:57 AM): no that seems gross
danger6552000 (5/5/2006 12:13:11 AM): been eatten
a_upstategur193 (5/5/2006 12:13:20 AM): no that seems gross 2.lol
danger6552000 (5/5/2006 12:13:48 AM): ok jacked a guy off
a_upstategur193 (5/5/2006 12:13:54 AM):
danger6552000 (5/5/2006 12:14:07 AM): u have
a_upstategur193 (5/5/2006 12:14:16 AM):
danger6552000 (5/5/2006 12:14:31 AM): luck guy
danger6552000 (5/5/2006 12:14:40 AM): like it
a_upstategur193 (5/5/2006 12:14:50 AM): ok i gues
danger6552000 (5/5/2006 12:15:19 AM): kiss
a_upstategur193 (5/5/2006 12:15:38 AM): well duh.lol
danger6552000 (5/5/2006 12:15:44 AM): lol
danger6552000 (5/5/2006 12:15:50 AM): be fingered?
a_upstategur193 (5/5/2006 12:15:59 AM):
danger6552000 (5/5/2006 12:16:21 AM): did u like it
a_upstategur193 (5/5/2006 12:16:54 AM):
danger6552000 (5/5/2006 12:17:26 AM): nice
danger6552000 (5/5/2006 12:17:31 AM): have u had sex
a_upstategur193 (5/5/2006 12:17:42 AM):
danger6552000 (5/5/2006 12:17:56 AM): that a yes
a_upstategur193 (5/5/2006 12:18:19 AM): lol
a_upstategur193 (5/5/2006 12:18:34 AM): u pretty good
danger6552000 (5/5/2006 12:18:47 AM): what ya mean
a_upstategur193 (5/5/2006 12:19:30 AM): ur a good guesser

danger6552000 (5/5/2006 12:20:28 AM): want to feel me inside u thrusting deep ur legs tight together and tight to my chest as I move ur body my head running along the walls of ur pussy as I move ur legs left and right making u twsits around me as we fuck
a_upstategurl93 (5/5/2006 12:21:07 AM): wow
danger6552000 (5/5/2006 12:21:17 AM): u like
a_upstategurl93 (5/5/2006 12:21:24 AM): lol
a_upstategurl93 (5/5/2006 12:21:29 AM):
danger6552000 (5/5/2006 12:21:43 AM): I take that as yes
a_upstategurl93 (5/5/2006 12:22:06 AM): lol
danger6552000 (5/5/2006 12:22:13 AM): what ya thinking
a_upstategurl93 (5/5/2006 12:22:21 AM): nuthin
danger6552000 (5/5/2006 12:22:35 AM): did that turn u on any
a_upstategurl93 (5/5/2006 12:22:45 AM): jus words.lol
danger6552000 (5/5/2006 12:22:55 AM): i see
danger6552000 (5/5/2006 12:23:00 AM): so any questions for me
a_upstategurl93 (5/5/2006 12:23:34 AM): i dont kno. u drive a fast car?
danger6552000 (5/5/2006 12:23:40 AM): yes
a_upstategurl93 (5/5/2006 12:24:09 AM): kewl. i like fast cars like mustangs and stuff
danger6552000 (5/5/2006 12:24:37 AM): have a mustang
a_upstategurl93 (5/5/2006 12:24:58 AM): really?
danger6552000 (5/5/2006 12:25:11 AM): yes
a_upstategurl93 (5/5/2006 12:25:15 AM): is it red?
danger6552000 (5/5/2006 12:25:15 AM): 2006
danger6552000 (5/5/2006 12:25:18 AM): no
danger6552000 (5/5/2006 12:25:23 AM): black
a_upstategurl93 (5/5/2006 12:25:35 AM): oh wow. them r sooo kewl
a_upstategurl93 (5/5/2006 12:25:45 AM): i want one when i can drive
danger6552000 (5/5/2006 12:26:08 AM): cool
a_upstategurl93 (5/5/2006 12:26:23 AM): drivin fast is fun
danger6552000 (5/5/2006 12:27:11 AM): can be
danger6552000 (5/5/2006 12:27:14 AM): so what else ya like
a_upstategurl93 (5/5/2006 12:27:30 AM): i dont kno. nuthin else round here to try.lol
danger6552000 (5/5/2006 12:28:01 AM): u can try me hehe
a_upstategurl93 (5/5/2006 12:28:11 AM): lol u far away.lol
danger6552000 (5/5/2006 12:28:27 AM): lol well would u want to
a_upstategurl93 (5/5/2006 12:28:37 AM): i dont kno. r u a cereal killer
danger6552000 (5/5/2006 12:28:54 AM): well I do eat corn flakes lol
a_upstategurl93 (5/5/2006 12:29:00 AM): oh.lol ur silly
a_upstategurl93 (5/5/2006 12:29:11 AM): my mom say ppl on here try to hurt you
danger6552000 (5/5/2006 12:29:18 AM): some do
a_upstategurl93 (5/5/2006 12:29:37 AM): u?
danger6552000 (5/5/2006 12:29:55 AM): no I would not
a_upstategurl93 (5/5/2006 12:30:21 AM): thats good. i dont wana b hurt
danger6552000 (5/5/2006 12:30:40 AM): but I am alot older lol I doubt ur parnets woudl approve
a_upstategurl93 (5/5/2006 12:30:52 AM): lol no my mom prob not.
danger6552000 (5/5/2006 12:31:23 AM): oh well
a_upstategurl93 (5/5/2006 12:31:58 AM): lol that why my last bf left. he got mad caus i had to keep snekn out and one time i couldnt get out so he start bein a jerk
danger6552000 (5/5/2006 12:32:35 AM): well that is wrong
a_upstategurl93 (5/5/2006 12:32:48 AM): wrong?
danger6552000 (5/5/2006 12:33:13 AM): he should understand
a_upstategurl93 (5/5/2006 12:33:26 AM): yea i thoght he did but not

danger6552000 (5/5/2006 12:33:37 AM): how old was he
a_upstategurl93 (5/5/2006 12:33:45 AM): i cant say
a_upstategurl93 (5/5/2006 12:34:16 AM):
danger6552000 (5/5/2006 12:34:19 AM): y
a_upstategurl93 (5/5/2006 12:34:34 AM): caus he said i couldnt
danger6552000 (5/5/2006 12:34:52 AM): lol over 18
a_upstategurl93 (5/5/2006 12:34:59 AM): lol
danger6552000 (5/5/2006 12:35:48 AM): well would u want another
a_upstategurl93 (5/5/2006 12:36:08 AM): i dont kno prob b nervos
danger6552000 (5/5/2006 12:36:17 AM): y
a_upstategurl93 (5/5/2006 12:36:40 AM): i dont kno. jus caus.lol
danger6552000 (5/5/2006 12:37:16 AM): so what do u want to know about me
a_upstategurl93 (5/5/2006 12:37:38 AM): hmmm i dont kno. lol
danger6552000 (5/5/2006 12:37:50 AM): u intrested in me
a_upstategurl93 (5/5/2006 12:38:02 AM): yea
danger6552000 (5/5/2006 12:38:22 AM): as
a_upstategurl93 (5/5/2006 12:38:38 AM): as?
danger6552000 (5/5/2006 12:38:47 AM): as a bf?
a_upstategurl93 (5/5/2006 12:39:03 AM): hmmm that mite b kewl. as long as u not
a jerk
danger6552000 (5/5/2006 12:39:29 AM): well I am not
a_upstategurl93 (5/5/2006 12:39:45 AM): u dont seem like one
danger6552000 (5/5/2006 12:39:50 AM): but we have to be very careful lol
a_upstategurl93 (5/5/2006 12:39:59 AM): ?
danger6552000 (5/5/2006 12:40:31 AM): I could get in trubble lol
a_upstategurl93 (5/5/2006 12:40:42 AM): oh. i dont want u get in troble
danger6552000 (5/5/2006 12:40:58 AM): nor do I lol
a_upstategurl93 (5/5/2006 12:41:01 AM): lol
a_upstategurl93 (5/5/2006 12:41:09 AM): u so far away
danger6552000 (5/5/2006 12:41:19 AM): so lol
a_upstategurl93 (5/5/2006 12:41:53 AM): lol
danger6552000 (5/5/2006 12:42:26 AM): what ya thinking
a_upstategurl93 (5/5/2006 12:42:53 AM): i dont kno. how borin it is round
here.lol
danger6552000 (5/5/2006 12:43:07 AM): well fuck me lol
a_upstategurl93 (5/5/2006 12:43:27 AM): lol how
danger6552000 (5/5/2006 12:43:45 AM): do u want to
a_upstategurl93 (5/5/2006 12:44:12 AM): i dont kno kina nervos
danger6552000 (5/5/2006 12:44:20 AM): y
a_upstategurl93 (5/5/2006 12:44:47 AM): caus i jus get buterflies meetn new
ppl.lol
danger6552000 (5/5/2006 12:45:14 AM): ok well are u thinking u might want to
a_upstategurl93 (5/5/2006 12:45:25 AM): hmmm u do seem nice
danger6552000 (5/5/2006 12:45:43 AM): so do u
a_upstategurl93 (5/5/2006 12:45:56 AM): ok
danger6552000 (5/5/2006 12:46:18 AM): are u sexually intrested in me
a_upstategurl93 (5/5/2006 12:46:27 AM):
danger6552000 (5/5/2006 12:47:03 AM): that yes
a_upstategurl93 (5/5/2006 12:47:17 AM): yea
danger6552000 (5/5/2006 12:48:04 AM): want to feel me inside u from behind my
hands on ur hips pulling u back on me hard as I slap into ur ass my coc in u
deep as I reach under ur and tease ur clit with my fingers
a_upstategurl93 (5/5/2006 12:48:22 AM): wow
danger6552000 (5/5/2006 12:48:33 AM): what is it honey
a_upstategurl93 (5/5/2006 12:48:47 AM): sounds kewl
danger6552000 (5/5/2006 12:48:59 AM): want to do it
a_upstategurl93 (5/5/2006 12:49:02 AM): ok

danger6552000 (5/5/2006 12:49:34 AM): so u want to
a_upstategurl93 (5/5/2006 12:49:48 AM): if u want to. i try but i kno i b
nervos.lol
danger6552000 (5/5/2006 12:50:15 AM): its up to u
a_upstategurl93 (5/5/2006 12:51:11 AM): hmmm. i jus dont wana get hurt or in
troble
danger6552000 (5/5/2006 12:51:28 AM): me neither
danger6552000 (5/5/2006 12:51:38 AM): but u do think u want to
a_upstategurl93 (5/5/2006 12:52:07 AM): yea
danger6552000 (5/5/2006 12:52:21 AM): cum in u?
a_upstategurl93 (5/5/2006 12:52:34 AM): i dont wana be pg
danger6552000 (5/5/2006 12:52:46 AM): ok
danger6552000 (5/5/2006 12:53:06 AM): condom
a_upstategurl93 (5/5/2006 12:53:19 AM): yea
danger6552000 (5/5/2006 12:53:58 AM): ok
danger6552000 (5/5/2006 12:54:03 AM): anal?
a_upstategurl93 (5/5/2006 12:54:22 AM): that mite hurt
danger6552000 (5/5/2006 12:54:37 AM): try and see
a_upstategurl93 (5/5/2006 12:55:05 AM): hmm i think it woud hurt
danger6552000 (5/5/2006 12:55:21 AM): depends on how relaxed and turned on u are
a_upstategurl93 (5/5/2006 12:55:43 AM): oh
danger6552000 (5/5/2006 12:57:08 AM): what ya think of me
a_upstategurl93 (5/5/2006 12:57:27 AM): i think ur real nice and kewl
danger6552000 (5/5/2006 12:57:48 AM): ty
danger6552000 (5/5/2006 12:57:54 AM): so want to fuck me hehe
a_upstategurl93 (5/5/2006 12:57:59 AM):
danger6552000 (5/5/2006 12:59:16 AM): would u ride me
a_upstategurl93 (5/5/2006 12:59:25 AM): ride u?
danger6552000 (5/5/2006 12:59:52 AM): yes stradel me as u took me iinside u and
move back and forth
a_upstategurl93 (5/5/2006 1:00:05 AM): oh
danger6552000 (5/5/2006 1:00:23 AM): would u
a_upstategurl93 (5/5/2006 1:00:37 AM): ok
danger6552000 (5/5/2006 1:00:57 AM): what would u want to do the most
a_upstategurl93 (5/5/2006 1:01:10 AM): i dont kno. i like to try new stuf
danger6552000 (5/5/2006 1:01:21 AM): ok
Roge Wilson (5/5/2006 1:02:09 AM): what ya thinking about
a_upstategurl93 (5/5/2006 1:02:30 AM): nuthin what i can do round here.lol
Roge Wilson (5/5/2006 1:02:53 AM): well fuck me hehe
a_upstategurl93 (5/5/2006 1:03:06 AM): lol that a long walk.
Roge Wilson (5/5/2006 1:03:37 AM): I am sure we could work it out lol
a_upstategurl93 (5/5/2006 1:04:05 AM): lol. it woud take like 100 days to walk
from here to, columbia.lol
Roge Wilson (5/5/2006 1:04:31 AM): well start now when u get here u will ne
legal lol
a_upstategurl93 (5/5/2006 1:04:41 AM): lol
Roge Wilson (5/5/2006 1:05:10 AM): what do u want to do with me
a_upstategurl93 (5/5/2006 1:05:36 AM): i dont kno w/e u want
Roge Wilson (5/5/2006 1:05:50 AM): well that is up to u
a_upstategurl93 (5/5/2006 1:06:02 AM): well i gues have to c if the time
comes.lol
Roge Wilson (5/5/2006 1:06:30 AM): well I hope so u r turning me on
a_upstategurl93 (5/5/2006 1:06:52 AM):
Roge Wilson (5/5/2006 1:07:08 AM): u should cum for me
a_upstategurl93 (5/5/2006 1:07:15 AM): huh?
Roge Wilson (5/5/2006 1:07:25 AM): do u masturbate
a_upstategurl93 (5/5/2006 1:07:32 AM):

Roge Wilson (5/5/2006 1:07:48 AM): u should right now as we talk
a_upstategurl93 (5/5/2006 1:08:06 AM): i dont do that its gross
Roge Wilson (5/5/2006 1:08:17 AM): have u tired
a_upstategurl93 (5/5/2006 1:08:26 AM): yea and i didnt like it
Roge Wilson (5/5/2006 1:08:36 AM): how did u do it
a_upstategurl93 (5/5/2006 1:08:47 AM): huh?
Roge Wilson (5/5/2006 1:08:56 AM): when u tried it what did u do
a_upstategurl93 (5/5/2006 1:09:01 AM): jus norm
Roge Wilson (5/5/2006 1:09:27 AM): try once more
Roge Wilson (5/5/2006 1:09:31 AM): let me help u hehe
a_upstategurl93 (5/5/2006 1:09:42 AM): no im not doin that
Roge Wilson (5/5/2006 1:10:04 AM): ok want me to hhe
a_upstategurl93 (5/5/2006 1:10:19 AM): lol im more real.
Roge Wilson (5/5/2006 1:10:40 AM): well is that an invite
a_upstategurl93 (5/5/2006 1:10:49 AM):
a_upstategurl93 (5/5/2006 1:10:53 AM): lol
Roge Wilson (5/5/2006 1:11:14 AM): I would lov being inside u
a_upstategurl93 (5/5/2006 1:11:27 AM): reaky
a_upstategurl93 (5/5/2006 1:11:29 AM): realy
Roge Wilson (5/5/2006 1:11:46 AM): oh god yes
Roge Wilson (5/5/2006 1:11:53 AM): I am thinking how good it would feel now
a_upstategurl93 (5/5/2006 1:12:09 AM):
Roge Wilson (5/5/2006 1:12:27 AM): kissing u as we fucked
a_upstategurl93 (5/5/2006 1:12:53 AM):
Roge Wilson (5/5/2006 1:13:08 AM): what ya think of it
a_upstategurl93 (5/5/2006 1:13:22 AM): sounds kewl
Roge Wilson (5/5/2006 1:13:56 AM): ok what else ya want to know
a_upstategurl93 (5/5/2006 1:14:24 AM): hmm. when ur birthday?
Roge Wilson (5/5/2006 1:14:42 AM): august 18 y
a_upstategurl93 (5/5/2006 1:15:14 AM): kewl
a_upstategurl93 (5/5/2006 1:15:18 AM): i jus wondern
a_upstategurl93 (5/5/2006 1:15:19 AM): lol
Roge Wilson (5/5/2006 1:15:28 AM): yours
a_upstategurl93 (5/5/2006 1:15:31 AM): i coudnt think nuthin else to ask.lol
a_upstategurl93 (5/5/2006 1:15:43 AM): mine is feb 15
Roge Wilson (5/5/2006 1:16:01 AM): col
Roge Wilson (5/5/2006 1:16:23 AM): what do u want us to do
a_upstategurl93 (5/5/2006 1:16:42 AM): i dont kno w/e u want
Roge Wilson (5/5/2006 1:16:54 AM): u sure
a_upstategurl93 (5/5/2006 1:17:29 AM): yea
Roge Wilson (5/5/2006 1:17:38 AM): ok
Roge Wilson (5/5/2006 1:17:50 AM): well I am going to bed talk agian soon kiss
night for now
a_upstategurl93 (5/5/2006 1:17:59 AM): ok nitenite.
a_upstategurl93 (5/5/2006 1:18:03 AM):

Show Recent Messages (F3)

Roge Wilson (5/6/2006 12:03:30 AM): hey
a_upstategurl93 (5/6/2006 12:03:34 AM): hiya
Roge Wilson (5/6/2006 12:03:39 AM): how r u
a_upstategurl93 (5/6/2006 12:03:46 AM): ok i gues jus bored u?
Roge Wilson (5/6/2006 12:03:55 AM): good
Roge Wilson (5/6/2006 12:03:58 AM): I missed u
a_upstategurl93 (5/6/2006 12:04:14 AM): aww ur sweet. miss ya 2
Roge Wilson (5/6/2006 12:04:29 AM): think of me any
a_upstategurl93 (5/6/2006 12:04:39 AM): was wondern if ya was on
Roge Wilson (5/6/2006 12:04:55 AM): why is that
a_upstategurl93 (5/6/2006 12:05:19 AM): jus wondern.lol
Roge Wilson (5/6/2006 12:05:40 AM): what ya have on
a_upstategurl93 (5/6/2006 12:06:17 AM): clothes
a_upstategurl93 (5/6/2006 12:06:25 AM): brb
Roge Wilson (5/6/2006 12:06:42 AM): k
a_upstategurl93 (5/6/2006 12:09:58 AM): back
Roge Wilson (5/6/2006 12:10:05 AM): wb
a_upstategurl93 (5/6/2006 12:10:13 AM): ty
Roge Wilson (5/6/2006 12:10:15 AM): so what ya have on
a_upstategurl93 (5/6/2006 12:10:29 AM): shirt and pants
Roge Wilson (5/6/2006 12:10:48 AM): under
a_upstategurl93 (5/6/2006 12:11:05 AM): underwear
Roge Wilson (5/6/2006 12:11:30 AM): so any questions for me
a_upstategurl93 (5/6/2006 12:11:50 AM): idk. hmmm u work? lol
Roge Wilson (5/6/2006 12:11:56 AM): yes
a_upstategurl93 (5/6/2006 12:12:03 AM): kewl u prob rich.lol
Roge Wilson (5/6/2006 12:12:10 AM): i DO OK
a_upstategurl93 (5/6/2006 12:12:27 AM): lol i wish i work
Roge Wilson (5/6/2006 12:12:31 AM): y
a_upstategurl93 (5/6/2006 12:12:38 AM): so i can have money.lol
Roge Wilson (5/6/2006 12:13:03 AM): lol
Roge Wilson (5/6/2006 12:13:09 AM): so think anything sexual about me
a_upstategurl93 (5/6/2006 12:13:11 AM): so i can my mustang.lol
a_upstategurl93 (5/6/2006 12:13:43 AM): idk. never met u.lol
Roge Wilson (5/6/2006 12:14:03 AM): want to
a_upstategurl93 (5/6/2006 12:14:11 AM): that mite b kewl
Roge Wilson (5/6/2006 12:14:34 AM): when
a_upstategurl93 (5/6/2006 12:14:50 AM): idk when u want 2
Roge Wilson (5/6/2006 12:15:02 AM): ur in greenville
a_upstategurl93 (5/6/2006 12:15:06 AM): oconee
a_upstategurl93 (5/6/2006 12:15:15 AM): i live in a litle town westminster
Roge Wilson (5/6/2006 12:15:32 AM): ok
Roge Wilson (5/6/2006 12:15:38 AM): so do u want me to
a_upstategurl93 (5/6/2006 12:15:46 AM): i think it b kewl
a_upstategurl93 (5/6/2006 12:15:54 AM): u seem sooo nice
a_upstategurl93 (5/6/2006 12:16:14 AM): and u have a mustang which is even more
kewl!
Roge Wilson (5/6/2006 12:16:22 AM): want to fuck in it hehe
a_upstategurl93 (5/6/2006 12:16:38 AM): hmm. u let me drive it in the parkin
lot?
Roge Wilson (5/6/2006 12:17:03 AM): yes
a_upstategurl93 (5/6/2006 12:17:06 AM): ok deal
Roge Wilson (5/6/2006 12:17:26 AM): u can dirve sitting in my lap with my cock
deep inside u

a_upstategurl93 (5/6/2006 12:17:45 AM): wow. that sounds weird.lol
Roge Wilson (5/6/2006 12:17:59 AM): want to do it
a_upstategurl93 (5/6/2006 12:18:10 AM): hmm. u promise u not hurt me
Roge Wilson (5/6/2006 12:18:19 AM): yes
a_upstategurl93 (5/6/2006 12:18:30 AM): my mom say that ppl on here just try to hurt u
Roge Wilson (5/6/2006 12:18:45 AM): some do
Roge Wilson (5/6/2006 12:18:47 AM): I wont
a_upstategurl93 (5/6/2006 12:18:52 AM): u promise
Roge Wilson (5/6/2006 12:19:07 AM): yes I do
a_upstategurl93 (5/6/2006 12:19:13 AM): ok
Roge Wilson (5/6/2006 12:19:29 AM): do u want to fuck me
a_upstategurl93 (5/6/2006 12:19:44 AM): told u if u let me drive ur car in the parkin lot!
a_upstategurl93 (5/6/2006 12:19:45 AM): lol
Roge Wilson (5/6/2006 12:19:59 AM): lol well would u if I id dnnot
a_upstategurl93 (5/6/2006 12:20:21 AM): hmm. well i still think it b fun to drive.lol
a_upstategurl93 (5/6/2006 12:20:39 AM): my mom lets me drive in the parkin lot at the old winn dixie
Roge Wilson (5/6/2006 12:20:58 AM): I will let u drive down the road ehe
a_upstategurl93 (5/6/2006 12:21:10 AM): that woud b SO kewl
a_upstategurl93 (5/6/2006 12:21:23 AM): i can drive good
Roge Wilson (5/6/2006 12:21:30 AM): as u did u could jack me off hehe
a_upstategurl93 (5/6/2006 12:21:37 AM): lol ok
Roge Wilson (5/6/2006 12:22:01 AM): have me cum all over ur hand
a_upstategurl93 (5/6/2006 12:22:08 AM): ewww. lol
Roge Wilson (5/6/2006 12:22:20 AM): u lik eit
a_upstategurl93 (5/6/2006 12:22:26 AM): realy
Roge Wilson (5/6/2006 12:22:42 AM): u will like turing me on
a_upstategurl93 (5/6/2006 12:22:57 AM): oh ok. u prob kno beter than me..lol
Roge Wilson (5/6/2006 12:23:25 AM): what do u want to do
a_upstategurl93 (5/6/2006 12:23:32 AM): anything fun
a_upstategurl93 (5/6/2006 12:23:37 AM): im sooo bored here
Roge Wilson (5/6/2006 12:24:05 AM): I want to cum inside u
a_upstategurl93 (5/6/2006 12:24:13 AM): i dont wana b pg
a_upstategurl93 (5/6/2006 12:24:35 AM): i was pose to snek out wit my frend tonite but she change her mind.
Roge Wilson (5/6/2006 12:24:50 AM): u like to
a_upstategurl93 (5/6/2006 12:24:58 AM): like to?
Roge Wilson (5/6/2006 12:25:15 AM): snake out
Roge Wilson (5/6/2006 12:25:18 AM): sneak
a_upstategurl93 (5/6/2006 12:25:38 AM): yea i like it.lol do it lots.lol
Roge Wilson (5/6/2006 12:25:51 AM): want to tomarrow
a_upstategurl93 (5/6/2006 12:25:59 AM): when?
Roge Wilson (5/6/2006 12:26:06 AM): when is good
a_upstategurl93 (5/6/2006 12:26:20 AM): hmm. norm i have to wait to my mom go to sleep
Roge Wilson (5/6/2006 12:26:36 AM): ok well want to meet at like 12
a_upstategurl93 (5/6/2006 12:26:52 AM): hmmm. u really woud come?
Roge Wilson (5/6/2006 12:27:10 AM): if u want
a_upstategurl93 (5/6/2006 12:27:18 AM): i can
Roge Wilson (5/6/2006 12:27:29 AM): that a yes
a_upstategurl93 (5/6/2006 12:27:32 AM): yes
Roge Wilson (5/6/2006 12:27:48 AM): ok so are u ready to
a_upstategurl93 (5/6/2006 12:27:54 AM): yea

a_upstategurl93 (5/6/2006 12:28:19 AM): i dont think u will realy come tho. i prob snek out and u not come.lol
Roge Wilson (5/6/2006 12:28:31 AM): y would I not
a_upstategurl93 (5/6/2006 12:28:43 AM): idk. caus u so far away
Roge Wilson (5/6/2006 12:29:02 AM): I will do alot for a sexy woman
a_upstategurl93 (5/6/2006 12:29:09 AM): awww. ur so nice.
a_upstategurl93 (5/6/2006 12:29:22 AM): u not even ask me my name tho.lol
Roge Wilson (5/6/2006 12:29:31 AM): Jennifer
a_upstategurl93 (5/6/2006 12:29:35 AM): how u kno that?
Roge Wilson (5/6/2006 12:29:42 AM): its on ur im
a_upstategurl93 (5/6/2006 12:29:53 AM): oh. duh. i shoud be a blond.lol
a_upstategurl93 (5/6/2006 12:30:01 AM): what is ur name?
Roge Wilson (5/6/2006 12:30:09 AM): Casron
a_upstategurl93 (5/6/2006 12:30:19 AM): carson?
a_upstategurl93 (5/6/2006 12:30:34 AM): or casron?
Roge Wilson (5/6/2006 12:30:49 AM): Carson lol
Roge Wilson (5/6/2006 12:30:51 AM): its late
a_upstategurl93 (5/6/2006 12:31:05 AM): kewl. nice to meet u! i think ur super nice, carson!
Roge Wilson (5/6/2006 12:31:11 AM): really
a_upstategurl93 (5/6/2006 12:31:14 AM): yea
a_upstategurl93 (5/6/2006 12:31:20 AM): u make me smile
a_upstategurl93 (5/6/2006 12:31:26 AM):
Roge Wilson (5/6/2006 12:31:32 AM): I will make u do even more hehe
a_upstategurl93 (5/6/2006 12:31:37 AM): lol
a_upstategurl93 (5/6/2006 12:31:50 AM): so u bring ur mustang when u come?
Roge Wilson (5/6/2006 12:31:56 AM): sure
a_upstategurl93 (5/6/2006 12:32:01 AM): kewl
Roge Wilson (5/6/2006 12:32:35 AM): but I am serious I want to cum in u
a_upstategurl93 (5/6/2006 12:32:45 AM): i jus dont wana b pg
Roge Wilson (5/6/2006 12:33:05 AM): u want
a_upstategurl93 (5/6/2006 12:33:11 AM): u sure
a_upstategurl93 (5/6/2006 12:33:25 AM): my mom say u get pg doin it
Roge Wilson (5/6/2006 12:33:46 AM): u can but only about a 20 percent chance
a_upstategurl93 (5/6/2006 12:33:54 AM): oh thats not alot
Roge Wilson (5/6/2006 12:34:11 AM): nope
a_upstategurl93 (5/6/2006 12:34:18 AM): ok
Roge Wilson (5/6/2006 12:34:41 AM): what ya thinking
a_upstategurl93 (5/6/2006 12:35:03 AM): how kewl it b if u did come
Roge Wilson (5/6/2006 12:35:19 AM): why is that
a_upstategurl93 (5/6/2006 12:35:32 AM): caus u seem so nice and like u kno how to hav fun
Roge Wilson (5/6/2006 12:35:45 AM): ty
a_upstategurl93 (5/6/2006 12:35:49 AM): yw
Roge Wilson (5/6/2006 12:35:54 AM): well r u sure u want to fuck a 40 year old lol
a_upstategurl93 (5/6/2006 12:36:03 AM): do u look 40?
a_upstategurl93 (5/6/2006 12:36:05 AM): lol
a_upstategurl93 (5/6/2006 12:36:16 AM): and u sure u want to with a 13 year old! lol
Roge Wilson (5/6/2006 12:36:29 AM): no i dont
Roge Wilson (5/6/2006 12:36:38 AM): I asked 1st
a_upstategurl93 (5/6/2006 12:36:46 AM): well thats kewl. wish u had a pic or cam so i coud c u!
a_upstategurl93 (5/6/2006 12:36:55 AM): im ok wit it
Roge Wilson (5/6/2006 12:37:04 AM): wow
Roge Wilson (5/6/2006 12:37:10 AM): wish u did to

a_upstategurl93 (5/6/2006 12:37:20 AM): i showed u my pic.lol
Roge Wilson (5/6/2006 12:37:34 AM): dont rememeber
Roge Wilson (5/6/2006 12:37:41 AM): show me again
a_upstategurl93 (5/6/2006 12:38:27 AM): remember?
Roge Wilson (5/6/2006 12:38:44 AM): u never did show me
Roge Wilson (5/6/2006 12:38:48 AM): god ur hot as hell
a_upstategurl93 (5/6/2006 12:38:55 AM): lol naww jus norm
Roge Wilson (5/6/2006 12:39:05 AM): hell no hot
Roge Wilson (5/6/2006 12:39:08 AM): more?
a_upstategurl93 (5/6/2006 12:39:36 AM): no i jus have that one. i had to snek it.lol my frend say she try to get her mom cam again sumtime
Roge Wilson (5/6/2006 12:39:55 AM): well i am hard
a_upstategurl93 (5/6/2006 12:40:05 AM): lol. im not that pretty
Roge Wilson (5/6/2006 12:40:10 AM): yes u r
a_upstategurl93 (5/6/2006 12:40:20 AM): aww u prob tell all tha girls that
Roge Wilson (5/6/2006 12:40:28 AM): no i dont
a_upstategurl93 (5/6/2006 12:40:38 AM): u ever meet any1 on here b4?
Roge Wilson (5/6/2006 12:40:45 AM): to be honest no
a_upstategurl93 (5/6/2006 12:41:00 AM): oh. u talk to lot of other girls?
Roge Wilson (5/6/2006 12:41:12 AM): not really
a_upstategurl93 (5/6/2006 12:41:31 AM): thats kewl. i dont realy talk many ppl either. most guys on here jerks
Roge Wilson (5/6/2006 12:42:18 AM): so why are u intrested in me...I was worried u would look too young hehe but wow u are so sexy
a_upstategurl93 (5/6/2006 12:42:36 AM): lol. well tyvm
a_upstategurl93 (5/6/2006 12:42:40 AM): u have a pic?
Roge Wilson (5/6/2006 12:42:52 AM): welcome
Roge Wilson (5/6/2006 12:42:54 AM): no I dont
a_upstategurl93 (5/6/2006 12:43:02 AM):
Roge Wilson (5/6/2006 12:43:06 AM): 5.11 green eyes graish hair 180 in very good shape
a_upstategurl93 (5/6/2006 12:43:16 AM): nice
a_upstategurl93 (5/6/2006 12:43:22 AM): u taller than me.lol
Roge Wilson (5/6/2006 12:43:34 AM): how tall
a_upstategurl93 (5/6/2006 12:43:46 AM): 5 feet and 3 inches
Roge Wilson (5/6/2006 12:43:53 AM): nice
a_upstategurl93 (5/6/2006 12:44:15 AM): ty
Roge Wilson (5/6/2006 12:44:25 AM): I wish I was with u now
a_upstategurl93 (5/6/2006 12:44:32 AM): lol sry.
Roge Wilson (5/6/2006 12:45:01 AM): so why are u willing to do all this with me
a_upstategurl93 (5/6/2006 12:45:06 AM): idk
a_upstategurl93 (5/6/2006 12:45:15 AM): i was wonderen the same thing.lol
a_upstategurl93 (5/6/2006 12:45:46 AM): i think caus u jus seem so nice and fun and talk to me like im a person not like the other guys on here.
Roge Wilson (5/6/2006 12:46:06 AM): well u are a perosn
Roge Wilson (5/6/2006 12:46:09 AM): and I like u alot
a_upstategurl93 (5/6/2006 12:46:17 AM): aww ty and i like u alot 2
Roge Wilson (5/6/2006 12:46:18 AM): and I am suprised I am so intrested in u
a_upstategurl93 (5/6/2006 12:46:25 AM): realy
Roge Wilson (5/6/2006 12:46:36 AM): yes
Roge Wilson (5/6/2006 12:46:47 AM): there is alot of age difference lol
a_upstategurl93 (5/6/2006 12:47:02 AM): lol yea like 27 years.lol
Roge Wilson (5/6/2006 12:47:16 AM): and I am sure ur mom would not like it
a_upstategurl93 (5/6/2006 12:47:47 AM): no i woudnt b able tell her.lol
Roge Wilson (5/6/2006 12:48:03 AM): u know I could go to jail lol
a_upstategurl93 (5/6/2006 12:48:09 AM): oh?
a_upstategurl93 (5/6/2006 12:48:14 AM): i dont want u go2 jail!

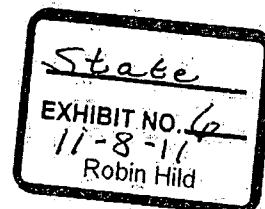
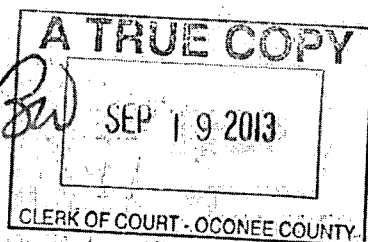
a_upstategurl93 (5/6/2006 12:48:21 AM):
Roge Wilson (5/6/2006 12:48:36 AM): why sad
a_upstategurl93 (5/6/2006 12:48:52 AM): caus i dont want u get in troble
Roge Wilson (5/6/2006 12:49:02 AM): me neither lol
a_upstategurl93 (5/6/2006 12:49:17 AM): hmmm.
Roge Wilson (5/6/2006 12:49:29 AM): what ya thinkg
a_upstategurl93 (5/6/2006 12:49:53 AM): thinkin i dont want u b in troble
Roge Wilson (5/6/2006 12:50:27 AM): what ya want to do
a_upstategurl93 (5/6/2006 12:50:45 AM): idk..
a_upstategurl93 (5/6/2006 12:50:48 AM): its up to u
Roge Wilson (5/6/2006 12:51:31 AM): what do u want to do tell me
a_upstategurl93 (5/6/2006 12:51:56 AM): idk what 2 say.lol idk what 2 do.lol
Roge Wilson (5/6/2006 12:52:18 AM): how do u feel.
a_upstategurl93 (5/6/2006 12:52:40 AM): i feel sad and happy at same time.lol
Roge Wilson (5/6/2006 12:52:53 AM): why
a_upstategurl93 (5/6/2006 12:53:55 AM): well happy u make me smile but sad caus
i dont want u in troble or to go 2 jail
Roge Wilson (5/6/2006 12:54:19 AM): well do u want to see me
a_upstategurl93 (5/6/2006 12:54:43 AM): yea but i dont want u in troble
Roge Wilson (5/6/2006 12:55:16 AM): u telling
a_upstategurl93 (5/6/2006 12:55:23 AM): telling who?
Roge Wilson (5/6/2006 12:55:35 AM): anyone about me
a_upstategurl93 (5/6/2006 12:55:39 AM): no
a_upstategurl93 (5/6/2006 12:55:44 AM): u telling?
Roge Wilson (5/6/2006 12:55:49 AM): lol what ya think
a_upstategurl93 (5/6/2006 12:55:56 AM): no
a_upstategurl93 (5/6/2006 12:55:57 AM): lol
Roge Wilson (5/6/2006 12:56:13 AM): well if no one knows no one cares hehe
a_upstategurl93 (5/6/2006 12:56:24 AM): lol that make sense.lol
Roge Wilson (5/6/2006 12:56:51 AM): I can not believe I am have this converstion
lol
a_upstategurl93 (5/6/2006 12:57:03 AM): lol me either
Roge Wilson (5/6/2006 12:57:28 AM): we should nto be doing this
a_upstategurl93 (5/6/2006 12:57:39 AM): ok. we dont have to.
Roge Wilson (5/6/2006 12:58:04 AM): how do u feel about it
a_upstategurl93 (5/6/2006 12:58:28 AM): hmm well i think ur realy nice and i
dont want u in troble
Roge Wilson (5/6/2006 12:58:46 AM): ok
Roge Wilson (5/6/2006 12:58:58 AM): well what do u want to dowith me
a_upstategurl93 (5/6/2006 12:59:16 AM): idk. w/e is fun.lol
Roge Wilson (5/6/2006 12:59:29 AM): ok lol
Roge Wilson (5/6/2006 12:59:37 AM): so do u think we should be bad
a_upstategurl93 (5/6/2006 12:59:37 AM): u say i can drive.lol
a_upstategurl93 (5/6/2006 12:59:45 AM): be bad?
Roge Wilson (5/6/2006 1:00:02 AM): yes what we are doing is very naughty
a_upstategurl93 (5/6/2006 1:00:16 AM): oh. lol kewl tho?
Roge Wilson (5/6/2006 1:00:47 AM): well I am rock hard, whats does that tell u
a_upstategurl93 (5/6/2006 1:00:54 AM): lol
a_upstategurl93 (5/6/2006 1:01:25 AM): u sure u wana drive here
a_upstategurl93 (5/6/2006 1:01:30 AM): seems far to me
Roge Wilson (5/6/2006 1:01:40 AM): not to far to have u
a_upstategurl93 (5/6/2006 1:01:50 AM): u so sweet
a_upstategurl93 (5/6/2006 1:01:57 AM): how long it take u
Roge Wilson (5/6/2006 1:02:11 AM): 3/4 hours
a_upstategurl93 (5/6/2006 1:02:23 AM): 3 or 4 hours?
Roge Wilson (5/6/2006 1:02:42 AM): yes
a_upstategurl93 (5/6/2006 1:02:45 AM):

a_upstategurl93 (5/6/2006 1:02:47 AM): WOW
a_upstategurl93 (5/6/2006 1:03:21 AM): it only take me and my mom like alittle of 2 hours to goto columbia
Roge Wilson (5/6/2006 1:03:37 AM): I am on he far side
a_upstategurl93 (5/6/2006 1:03:42 AM): oh
a_upstategurl93 (5/6/2006 1:04:01 AM): i dont kno nuthin down there. we jus went to c my moms frend
a_upstategurl93 (5/6/2006 1:04:15 AM): she lives by a mall
Roge Wilson (5/6/2006 1:04:20 AM): cool
Roge Wilson (5/6/2006 1:04:22 AM): which one
a_upstategurl93 (5/6/2006 1:04:50 AM): idk. it was kina big. it was near a toysrus
Roge Wilson (5/6/2006 1:05:02 AM): ok columbia
a_upstategurl93 (5/6/2006 1:05:11 AM): yea it was in colubia
a_upstategurl93 (5/6/2006 1:05:20 AM): idk how many malls r there.lol
Roge Wilson (5/6/2006 1:05:24 AM): 4
a_upstategurl93 (5/6/2006 1:05:30 AM): WOW
a_upstategurl93 (5/6/2006 1:05:34 AM): i love 2 shop.lol
Roge Wilson (5/6/2006 1:05:41 AM): haha
a_upstategurl93 (5/6/2006 1:05:49 AM): well look neways caus i dont never have \$\$
a_upstategurl93 (5/6/2006 1:05:50 AM): lol
Roge Wilson (5/6/2006 1:06:00 AM): lol
Roge Wilson (5/6/2006 1:06:18 AM): how long would we have together
a_upstategurl93 (5/6/2006 1:06:33 AM): hmm. u say u come sat nite?
Roge Wilson (5/6/2006 1:06:47 AM): that is the idea
a_upstategurl93 (5/6/2006 1:07:18 AM): hmm i prob have to b home by like 7 in the mornin less i tell my mom i stayn over amys
Roge Wilson (5/6/2006 1:07:48 AM): lol we could get in alot of trubble in the time
a_upstategurl93 (5/6/2006 1:07:56 AM): lol
a_upstategurl93 (5/6/2006 1:08:22 AM): b like a adventre
Roge Wilson (5/6/2006 1:08:50 AM): wel hangin out with someone my age would be one lol
a_upstategurl93 (5/6/2006 1:09:16 AM): lol
Roge Wilson (5/6/2006 1:09:39 AM): what ya thinking
a_upstategurl93 (5/6/2006 1:09:55 AM): if u really goin to come.lol
Roge Wilson (5/6/2006 1:10:30 AM): oh I will cum more then once hehe
a_upstategurl93 (5/6/2006 1:10:40 AM): lol i hear u talkn:lol
Roge Wilson (5/6/2006 1:11:19 AM): be honset so u want me to, if I do what do u want to do and why
a_upstategurl93 (5/6/2006 1:12:13 AM): hmmm honest yea if u want to, w/e u think is fun, and cause ur so super nice! now u?
a_upstategurl93 (5/6/2006 1:12:14 AM): lol
Roge Wilson (5/6/2006 1:12:32 AM): now me what
a_upstategurl93 (5/6/2006 1:13:13 AM): i was wondern what if u want to, what u wana do and why.lol
Roge Wilson (5/6/2006 1:14:22 AM): i want to, I think your nice sweet and very sexy, I want to kiss u hold u be inside u make u cum,,,b/c I am very attractied to u want u to feel good and I really like u, but the age scares me and how fast we are moving lol
a_upstategurl93 (5/6/2006 1:15:04 AM): ur soooooooooo sweet!! and im sry we can slow down.
Roge Wilson (5/6/2006 1:15:33 AM): we dont have to that is up to u
a_upstategurl93 (5/6/2006 1:15:54 AM): hmmm i am siked!! but only if u want to
Roge Wilson (5/6/2006 1:16:05 AM): lol why
a_upstategurl93 (5/6/2006 1:16:14 AM): caus ur so kewl! lol

Roge Wilson (5/6/2006 1:16:26 AM): how so
a_upstategurl93 (5/6/2006 1:16:49 AM): caus u jus talk so kewl and ur so nice and sweet
Roge Wilson (5/6/2006 1:17:03 AM): ty
Roge Wilson (5/6/2006 1:17:07 AM): so how do u feel about me
a_upstategurl93 (5/6/2006 1:17:09 AM): its true
a_upstategurl93 (5/6/2006 1:17:18 AM): i like u alot
Roge Wilson (5/6/2006 1:17:48 AM): so u know I am married lol that ok?
a_upstategurl93 (5/6/2006 1:18:00 AM): ur married?
Roge Wilson (5/6/2006 1:18:17 AM): yes
a_upstategurl93 (5/6/2006 1:18:27 AM): u not happy wit her?
Roge Wilson (5/6/2006 1:18:54 AM): yes I am, but I like u and wont say no hehe
a_upstategurl93 (5/6/2006 1:19:28 AM): lol. well i dont want u mess up wit ur wife, she woud b mad at u and me
Roge Wilson (5/6/2006 1:19:44 AM): she wont know lol
a_upstategurl93 (5/6/2006 1:20:12 AM): oh that true.lol i woud hope not she mite tell my mom and i woud b sooo in troble
Roge Wilson (5/6/2006 1:20:25 AM): so would I LOL
a_upstategurl93 (5/6/2006 1:20:30 AM): lol
Roge Wilson (5/6/2006 1:20:45 AM): so do u want to stop or keep going
a_upstategurl93 (5/6/2006 1:21:27 AM): hmmm..
a_upstategurl93 (5/6/2006 1:21:32 AM): what u think
Roge Wilson (5/6/2006 1:21:50 AM): u have the facts lol it is up to u honey
a_upstategurl93 (5/6/2006 1:21:55 AM): im ok
a_upstategurl93 (5/6/2006 1:22:05 AM):
a_upstategurl93 (5/6/2006 1:22:20 AM): idk why but im ok. lol
Roge Wilson (5/6/2006 1:22:33 AM): wow
Roge Wilson (5/6/2006 1:22:36 AM): ok
a_upstategurl93 (5/6/2006 1:22:44 AM): ?
Roge Wilson (5/6/2006 1:22:52 AM): so u want to keep going
a_upstategurl93 (5/6/2006 1:23:16 AM): if u want. i jus dont want nobody in troble
Roge Wilson (5/6/2006 1:23:25 AM): well nor do I
Roge Wilson (5/6/2006 1:23:33 AM): I want u to do it bc u want to
Roge Wilson (5/6/2006 1:23:36 AM): so do u want to
a_upstategurl93 (5/6/2006 1:23:45 AM): ok yea
Roge Wilson (5/6/2006 1:23:59 AM): wow
Roge Wilson (5/6/2006 1:24:04 AM): so hot
a_upstategurl93 (5/6/2006 1:24:25 AM):
Roge Wilson (5/6/2006 1:24:33 AM): will u be my gf?
a_upstategurl93 (5/6/2006 1:24:43 AM): how u have a gf if u married
Roge Wilson (5/6/2006 1:25:05 AM): you say yes lol
a_upstategurl93 (5/6/2006 1:25:26 AM): lol ok yes
a_upstategurl93 (5/6/2006 1:25:48 AM): ur like the nicest person here!
Roge Wilson (5/6/2006 1:25:54 AM): aww ty
Roge Wilson (5/6/2006 1:26:04 AM): ur not so bad urself
a_upstategurl93 (5/6/2006 1:26:10 AM): aww ty..
Roge Wilson (5/6/2006 1:26:42 AM): anything u want to ask me
a_upstategurl93 (5/6/2006 1:27:22 AM): hmmm.. u ever ben wit sumone my age b4?
Roge Wilson (5/6/2006 1:27:34 AM): no I have not
a_upstategurl93 (5/6/2006 1:27:41 AM): why now?
a_upstategurl93 (5/6/2006 1:27:42 AM): lol
Roge Wilson (5/6/2006 1:27:52 AM): good question
Roge Wilson (5/6/2006 1:28:01 AM): I am asking it to myseld
Roge Wilson (5/6/2006 1:28:04 AM): self
a_upstategurl93 (5/6/2006 1:28:12 AM): lol
a_upstategurl93 (5/6/2006 1:28:23 AM): sry i shoudnt ask u that

a_upstategurl93 (5/6/2006 1:28:27 AM): im so nosey sumtimes
Roge Wilson (5/6/2006 1:28:32 AM): ask me anyting
Roge Wilson (5/6/2006 1:28:35 AM): its fine
Roge Wilson (5/6/2006 1:28:56 AM): it b/c ur hot and are so nice and sweet
a_upstategurl93 (5/6/2006 1:28:57 AM): i get bein nosey from my mom.lol
a_upstategurl93 (5/6/2006 1:29:06 AM): aww ty..
Roge Wilson (5/6/2006 1:29:11 AM): I have never been attracted to someone ur age before
a_upstategurl93 (5/6/2006 1:29:32 AM): awww.
Roge Wilson (5/6/2006 1:30:00 AM): its scary lol
Roge Wilson (5/6/2006 1:30:09 AM): but its also exciting and taboo
a_upstategurl93 (5/6/2006 1:30:15 AM): taboo?
Roge Wilson (5/6/2006 1:30:32 AM): not socially acceptable lol
a_upstategurl93 (5/6/2006 1:30:43 AM): oh. lol
Roge Wilson (5/6/2006 1:31:00 AM): people in general would not like the idea of us fucking lol
a_upstategurl93 (5/6/2006 1:31:08 AM): oh realy.lol
Roge Wilson (5/6/2006 1:31:24 AM): lol u think they would
a_upstategurl93 (5/6/2006 1:31:36 AM): no prob not.lol
Roge Wilson (5/6/2006 1:32:02 AM): have u with someone m y age
a_upstategurl93 (5/6/2006 1:32:27 AM): well..... not xactly ur age.....
Roge Wilson (5/6/2006 1:32:36 AM): how old
a_upstategurl93 (5/6/2006 1:32:59 AM): lol i promise not talk bout it.. sry
Roge Wilson (5/6/2006 1:33:12 AM): well over 20
a_upstategurl93 (5/6/2006 1:33:22 AM):
a_upstategurl93 (5/6/2006 1:33:24 AM): lol
Roge Wilson (5/6/2006 1:33:30 AM): over 30
a_upstategurl93 (5/6/2006 1:33:35 AM):
a_upstategurl93 (5/6/2006 1:33:39 AM): lol
a_upstategurl93 (5/6/2006 1:33:46 AM): i dont want u think bad of me
Roge Wilson (5/6/2006 1:33:53 AM): u been fucking a teacher or neighbor lol
Roge Wilson (5/6/2006 1:33:55 AM): I dont
a_upstategurl93 (5/6/2006 1:34:09 AM): lol i cant talk bout it, i promised.lol
Roge Wilson (5/6/2006 1:34:23 AM): well I think u can be open with me
Roge Wilson (5/6/2006 1:34:27 AM): lol
Roge Wilson (5/6/2006 1:34:40 AM): is it still going on?
a_upstategurl93 (5/6/2006 1:34:40 AM): lol yea but i woud never brake a promise
a_upstategurl93 (5/6/2006 1:34:46 AM): and no
Roge Wilson (5/6/2006 1:35:00 AM): ok
Roge Wilson (5/6/2006 1:35:12 AM): did u met online
a_upstategurl93 (5/6/2006 1:35:33 AM):
a_upstategurl93 (5/6/2006 1:35:38 AM): lol
Roge Wilson (5/6/2006 1:35:49 AM): so u have done this before
a_upstategurl93 (5/6/2006 1:36:11 AM): well.....
a_upstategurl93 (5/6/2006 1:36:15 AM): sry
Roge Wilson (5/6/2006 1:36:26 AM): sorry what
a_upstategurl93 (5/6/2006 1:36:35 AM): i dont want u think bad of me
Roge Wilson (5/6/2006 1:36:42 AM): honey i dont
Roge Wilson (5/6/2006 1:37:03 AM): lol I am married and I have asked u to be my gf and to fuck me lol I am no saint
a_upstategurl93 (5/6/2006 1:37:13 AM): lol well true
Roge Wilson (5/6/2006 1:37:53 AM): so why me?
a_upstategurl93 (5/6/2006 1:38:26 AM): idk. i was wondern the same thing.
a_upstategurl93 (5/6/2006 1:38:36 AM): lol. gues caus u so nice
Roge Wilson (5/6/2006 1:38:49 AM): lol

a_upstategurl93 (5/6/2006 1:39:07 AM): and u dont try make me do that stooped
cyber sex stuff like all the other guys
Roge Wilson (5/6/2006 1:39:28 AM): i want u to do what u awant
a_upstategurl93 (5/6/2006 1:39:52 AM): i kno and thats prob why u so nice
Roge Wilson (5/6/2006 1:40:23 AM): what ya thnking about now
a_upstategurl93 (5/6/2006 1:40:48 AM): idk jus sittin here smiling.lol
Roge Wilson (5/6/2006 1:41:06 AM): why are u happy
a_upstategurl93 (5/6/2006 1:41:17 AM): caus u make me happy!! lol
Roge Wilson (5/6/2006 1:41:37 AM): well i am glad u mean alot to me
Roge Wilson (5/6/2006 1:41:45 AM): and I want to help make u feel good
a_upstategurl93 (5/6/2006 1:41:56 AM): awww..
a_upstategurl93 (5/6/2006 1:42:08 AM): brb gota potty
Roge Wilson (5/6/2006 1:42:19 AM): k
a_upstategurl93 (5/6/2006 1:46:03 AM): back.
a_upstategurl93 (5/6/2006 1:46:21 AM): i beter be gettn to bed tho. i like talkn
u so much i didnt kno it was almost 2
Roge Wilson (5/6/2006 1:46:38 AM): ok
Roge Wilson (5/6/2006 1:46:40 AM): I missed u
Roge Wilson (5/6/2006 1:46:43 AM): thinking of me
a_upstategurl93 (5/6/2006 1:46:47 AM): of corse
a_upstategurl93 (5/6/2006 1:46:55 AM): u still wantn to come
Roge Wilson (5/6/2006 1:47:03 AM): can u make me hehe
a_upstategurl93 (5/6/2006 1:47:09 AM): lol idk
Roge Wilson (5/6/2006 1:47:28 AM): yes but tomarrow to too fast
a_upstategurl93 (5/6/2006 1:47:38 AM): ok. well i ttyl then.
Roge Wilson (5/6/2006 1:47:59 AM): kiss and hug sleep well and think of me i
will of u
a_upstategurl93 (5/6/2006 1:48:08 AM): ok.. nitenite
Roge Wilson (5/6/2006 1:48:14 AM): can u stay till 2
a_upstategurl93 (5/6/2006 1:48:38 AM): i beter be off im kina tired and my mom
getn me up at like 6.lol
Roge Wilson (5/6/2006 1:48:46 AM): lol ok
Roge Wilson (5/6/2006 1:48:51 AM): kiss night
a_upstategurl93 (5/6/2006 1:48:54 AM):
a_upstategurl93 (5/6/2006 1:48:55 AM): nite



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danger6552000 (03:50:26 PM): hey

melanie_s998 (03:51:06 PM): im still mad at u ☹

danger6552000 (03:51:13 PM): why honey

melanie_s998 (03:51:57 PM):

cuz u were sposed to email me so i knew you dot my msg bout goin to my grandmas house

danger6552000 (03:52:12 PM): I did get it and I sent an email honey

danger6552000 (03:52:15 PM): did u not get it

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melanie_s998 (03:52:51 PM):
 nope and i worried all weekend cuz she only has dialup and my uncle wont let us put messenger on it
 danger6552000 (03:53:00 PM): aww I am so sorry
 danger6552000 (03:53:04 PM): I left u an im to
 danger6552000 (03:53:09 PM): I missed u
 melanie_s998 (03:53:39 PM): well i didn't get nuthing until Monday nite when my mom let me get back on
 danger6552000 (03:53:51 PM): honey i am sorry
 danger6552000 (03:53:58 PM): can u forgive me
 melanie_s998 (03:54:28 PM):
 i treied to im u yesterday day and u didn't anser so i was worried-u didnt want to talk ne more
 danger6552000 (03:54:42 PM): I never got it
 danger6552000 (03:54:47 PM): no I am here
 melanie_s998 (03:55:28 PM): i was worried all weekeend - walterboro sux - ther was nothing to do
 danger6552000 (03:56:15 PM): well now u can do me hehe
 melanie_s998 (03:56:24 PM): ?
 danger6552000 (03:56:41 PM): I really missed u
 danger6552000 (03:56:48 PM): so what ya do today
 melanie_s998 (03:57:12 PM): well i dont knoe if i wnat to tlak to u ne more - that was mean to let me worry
 danger6552000 (03:57:26 PM): honey I did email u
 danger6552000 (03:57:32 PM): please dont go
 melanie_s998 (03:57:58 PM): i'll think about it 😊
 danger6552000 (03:58:15 PM): well how can I make it up to u
 melanie_s998 (03:58:28 PM): i dunno
 danger6552000 (03:58:38 PM): well I really like u alot
 danger6552000 (03:58:43 PM): and enjoy talking to u
 melanie_s998 (03:58:50 PM): me 2
 danger6552000 (03:59:05 PM): well dont end it with me then
 melanie_s998 (03:59:18 PM): K
 danger6552000 (03:59:38 PM): would u like to be my gf
 melanie_s998 (04:00:04 PM): waht does a gf do?
 danger6552000 (04:00:11 PM): girlfriend
 melanie_s998 (04:00:34 PM): yah - what would a girlfried do
 danger6552000 (04:00:52 PM): well like me
 melanie_s998 (04:01:14 PM): k- i do that already 😊
 danger6552000 (04:01:33 PM): ok
 danger6552000 (04:01:39 PM): what all do u want to do with me
 melanie_s998 (04:02:03 PM): i dont know what
 danger6552000 (04:02:14 PM): what r u thinking
 danger6552000 (04:02:22 PM): have an sexual thoughts about us?
 melanie_s998 (04:02:41 PM): maybe - what bout u?
 danger6552000 (04:02:55 PM): oh yes alot
 melanie_s998 (04:03:17 PM): ic
 melanie_s998 (04:04:15 PM): oh yea - I can't stay on 2 long - me and mom got a meeting with my student advisor -
 all the 7th graders gotta go
 danger6552000 (04:04:25 PM): ok
 danger6552000 (04:04:29 PM): so did u think of me
 melanie_s998 (04:04:43 PM): soon as she gets home ill have to get off
 melanie_s998 (04:05:04 PM): course i did else i woulnt have been mad at u
 danger6552000 (04:05:12 PM): anything sexual hehe
 melanie_s998 (04:05:36 PM): jus bout the stuff u said last time
 danger6552000 (04:05:48 PM): have u cum thinking of me
 melanie_s998 (04:06:28 PM): gurls aint sposed to say - hee hee 😊">
 danger6552000 (04:06:40 PM): tell me please
 melanie_s998 (04:06:49 PM): nope - 2 embarrassing
 danger6552000 (04:06:55 PM): I have for u
 melanie_s998 (04:07:09 PM): really?
 danger6552000 (04:07:12 PM): yes
 melanie_s998 (04:07:43 PM): i feel wierd talkin bout this again
 danger6552000 (04:07:52 PM): want me to stop
 melanie_s998 (04:08:17 PM): i dunno - it jsut makes me feel funny
 danger6552000 (04:08:28 PM): in a good way

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melanie_s998 (04:08:32 PM): yah
 danger6552000 (04:08:39 PM): ok
 danger6552000 (04:08:43 PM): so did u
 danger6552000 (04:08:46 PM): I hope u have
 melanie_s998 (04:09:01 PM): you'll just have to guess hee hee
 danger6552000 (04:09:15 PM): ok I guess yes
 danger6552000 (04:09:18 PM): am I right
 melanie_s998 (04:09:31 PM): ☺">
 danger6552000 (04:09:36 PM): that a yes
 melanie_s998 (04:09:48 PM): what u think?
 danger6552000 (04:09:56 PM): um I am so hard right now
 melanie_s998 (04:10:31 PM): i guess that's good - maybe?
 danger6552000 (04:10:42 PM): very good
 danger6552000 (04:10:45 PM): I am so turned on
 danger6552000 (04:10:48 PM): are u wet
 melanie_s998 (04:11:07 PM): what do u mean wet?
 melanie_s998 (04:12:03 PM): ?
 danger6552000 (04:12:37 PM): ur pussy
 melanie_s998 (04:12:45 PM): ohhhh -
 melanie_s998 (04:12:51 PM): duh!
 danger6552000 (04:12:58 PM): so is it
 melanie_s998 (04:13:16 PM): I think maybe
 danger6552000 (04:13:54 PM):
 think of me licking u my tounge runnign uop and down between ur lips slowly ast 1st then getting fastrt as the tip lifts ur clit
 and rolls it side to side
 melanie_s998 (04:14:55 PM): its hard for me 2 think that
 danger6552000 (04:15:03 PM): y
 melanie_s998 (04:15:31 PM): cuz its hard to imagine
 danger6552000 (04:15:55 PM): move u hand down to u pussy for now right now
 melanie_s998 (04:16:25 PM): with my clothes on?
 danger6552000 (04:16:37 PM): yes under ur pants and panties
 melanie_s998 (04:16:48 PM): i can't mom might catch me
 danger6552000 (04:16:56 PM): where is she
 melanie_s998 (04:17:21 PM): shes not home yet but sometimes i don't heere her come in
 danger6552000 (04:18:18 PM): lwts try it
 danger6552000 (04:18:21 PM): lets try it
 melanie_s998 (04:18:38 PM): im scared to get caught
 danger6552000 (04:18:51 PM): trut me
 danger6552000 (04:18:56 PM): open ur legs slwoly
 danger6552000 (04:18:59 PM): move u hand down
 danger6552000 (04:19:07 PM): part ur lips with ur finger for me
 melanie_s998 (04:19:33 PM): i cant i got pants on - dont wanna get coutgt
 danger6552000 (04:19:48 PM): u wont honey
 danger6552000 (04:19:49 PM): please
 danger6552000 (04:19:55 PM): we will only do it for a min
 melanie_s998 (04:20:16 PM): why cant u just imagaine me doin it
 danger6552000 (04:20:24 PM): I want u to feel it
 melanie_s998 (04:20:59 PM): but waht are u doin
 danger6552000 (04:21:58 PM): I will jack off my cock if u want me to
 melanie_s998 (04:22:33 PM): whats that ???
 danger6552000 (04:22:50 PM): I will run my hand up and down my cock till I cum
 melanie_s998 (04:22:55 PM): OK
 danger6552000 (04:23:01 PM): u like
 melanie_s998 (04:23:06 PM): yah
 danger6552000 (04:23:16 PM): will u finger u pussy for me
 melanie_s998 (04:23:20 PM): ok
 danger6552000 (04:23:34 PM): think of me hard
 danger6552000 (04:23:40 PM): as I slip it out of my pants
 danger6552000 (04:23:48 PM): my hand running up and odwn
 danger6552000 (04:23:51 PM): I am thinking about u
 melanie_s998 (04:23:59 PM): me 2
 danger6552000 (04:24:09 PM): can u feel my tounge on u

danger6552000 (04:24:14 PM): my fingers inside u
melanie_s998 (04:24:22 PM): yah
danger6552000 (04:24:38 PM): my tounge hot and wet
danger6552000 (04:24:44 PM): running up and down over u
danger6552000 (04:24:46 PM): slowly
melanie_s998 (04:25:22 PM): did i do ok
danger6552000 (04:25:31 PM): what r u doing
melanie_s998 (04:25:40 PM): what u said
danger6552000 (04:25:51 PM): how does it feel
melanie_s998 (04:26:02 PM): kinda hard to breath
danger6552000 (04:26:06 PM): dont stop
danger6552000 (04:26:13 PM): tease inside ur pussy
danger6552000 (04:26:19 PM): then run along the sids of ur clit
danger6552000 (04:26:56 PM): move it side to side
danger6552000 (04:27:04 PM): then slip ur finger down inside u thrusting
danger6552000 (04:28:12 PM): how do u feel
melanie_s998 (04:28:29 PM): ok i guess - good
danger6552000 (04:28:46 PM): let the feeling run over u
danger6552000 (04:28:50 PM): dont figer it
danger6552000 (04:28:53 PM): fight
danger6552000 (04:29:46 PM): nipples hard?
melanie_s998 (04:30:10 PM): its hard ti think - i guess
melanie_s998 (04:30:21 PM): that was wiered
danger6552000 (04:30:31 PM): what was
melanie_s998 (04:30:40 PM): THAT!
danger6552000 (04:31:06 PM): did u cum
melanie_s998 (04:31:34 PM): i dont know - maybe i dont know
danger6552000 (04:31:42 PM): if u did u would know
danger6552000 (04:31:51 PM): dont stop
danger6552000 (04:32:08 PM): move ur clit side to side really fast and up and down
melanie_s998 (04:32:19 PM): i cnat ne more
danger6552000 (04:32:52 PM): y
melanie_s998 (04:33:20 PM): i just cant i dont kn ow y - just have to
melanie_s998 (04:33:51 PM): how come u like to do this?
danger6552000 (04:34:20 PM): turns me on
danger6552000 (04:34:31 PM): do it a little more
danger6552000 (04:34:38 PM): u almost have cum
melanie_s998 (04:34:41 PM): why does it turn u on tho
danger6552000 (04:34:50 PM): well its sexual
danger6552000 (04:34:52 PM): and I like u
melanie_s998 (04:35:49 PM): but u never seen me
danger6552000 (04:36:02 PM): do u like me
melanie_s998 (04:36:08 PM): yah of course
danger6552000 (04:36:16 PM): u have never seen me lol
melanie_s998 (04:36:33 PM): i know
danger6552000 (04:36:53 PM): but u like me still
danger6552000 (04:36:57 PM): wel same goes for me
melanie_s998 (04:37:01 PM): ok
danger6552000 (04:37:08 PM): do u like this
melanie_s998 (04:37:21 PM): its ok i guess
danger6552000 (04:37:33 PM): why just ok
melanie_s998 (04:38:02 PM): cuz it's just on a computer
danger6552000 (04:38:15 PM): what do u want
melanie_s998 (04:38:27 PM): i dunno
danger6552000 (04:38:43 PM): wish is was real
melanie_s998 (04:39:00 PM): why?
danger6552000 (04:39:17 PM): do u
melanie_s998 (04:39:42 PM): can't say 😊">
danger6552000 (04:40:04 PM): yes u can
melanie_s998 (04:40:17 PM): nope - gurls aren't sposed to say
danger6552000 (04:40:29 PM): u can tel ur bf
melanie_s998 (04:41:00 PM): nope

danger6552000 (04:41:17 PM): please
melanie_s998 (04:41:44 PM): nope - boys r sposed to say all that stuff
danger6552000 (04:42:31 PM): want me
melanie_s998 (04:42:44 PM): want u waht?
danger6552000 (04:43:38 PM): want to have sex
melanie_s998 (04:44:07 PM): im scared to say and my mom would kill me if she caught us
danger6552000 (04:44:24 PM): say
melanie_s998 (04:44:50 PM): i cant say - y dont u say
danger6552000 (04:45:02 PM): I asked
danger6552000 (04:45:03 PM): lol
danger6552000 (04:45:11 PM): I cant put words in ur mouth
melanie_s998 (04:45:39 PM): but Ill get in SOOOOO much trouble
danger6552000 (04:45:54 PM): not if u just tell me lol
danger6552000 (04:45:59 PM): I am not goint to tell
melanie_s998 (04:46:14 PM): me either 😊
danger6552000 (04:46:34 PM): so be open with me and tell me what ya want lol
melanie_s998 (04:46:46 PM): how could we though?
danger6552000 (04:46:54 PM): do u want to
melanie_s998 (04:47:15 PM): ive thought bout what it would be like
danger6552000 (04:47:28 PM): lol that is not yes or no lol
melanie_s998 (04:47:59 PM): yes-i guess but how?
danger6552000 (04:48:09 PM): i guess lol
danger6552000 (04:48:12 PM): yes or no
melanie_s998 (04:48:21 PM): your mean!
danger6552000 (04:48:25 PM): why
melanie_s998 (04:48:34 PM): cuz u already know
danger6552000 (04:48:49 PM): I want u to be open with me lol
danger6552000 (04:48:52 PM): dont hide
danger6552000 (04:48:56 PM): just say what u want
melanie_s998 (04:49:10 PM): i said b4 i dont want to get pg
danger6552000 (04:49:19 PM): u would not
melanie_s998 (04:49:49 PM): we learned u can even if u do it juts 1 time
danger6552000 (04:50:15 PM): not if u r carfeul
melanie_s998 (04:50:31 PM): would it hurt?
danger6552000 (04:50:53 PM): at 1st
danger6552000 (04:50:55 PM): some
melanie_s998 (04:51:06 PM): then i dont wanna do that
danger6552000 (04:51:20 PM): ok what do u
melanie_s998 (04:51:32 PM): what else can we do
danger6552000 (04:51:43 PM): omfg
danger6552000 (04:51:56 PM): lol
melanie_s998 (04:52:00 PM): wh
danger6552000 (04:52:06 PM): well eat u u suck me hand job
danger6552000 (04:52:08 PM): lots
danger6552000 (04:52:18 PM): beisdes it does not hurt that much lol
melanie_s998 (04:52:29 PM): what?
danger6552000 (04:52:35 PM): going all the way
melanie_s998 (04:52:57 PM): but we dont have 2 go all the way at first?
danger6552000 (04:53:02 PM): no
melanie_s998 (04:53:07 PM): ok
danger6552000 (04:53:24 PM): so how much have u thought about doing this and when did u start
melanie_s998 (04:53:44 PM): just since u started talking bout it last week
danger6552000 (04:54:11 PM): really
melanie_s998 (04:54:17 PM): yah
danger6552000 (04:54:29 PM): why do u
melanie_s998 (04:54:45 PM): why do i waht
danger6552000 (04:54:52 PM): want to have sex
melanie_s998 (04:55:13 PM): cuz u asked me an i never done it b4
danger6552000 (04:55:42 PM): well i am sure ur mom would not lke it
melanie_s998 (04:56:01 PM): OMG no! she would kill me
danger6552000 (04:56:28 PM): lol
danger6552000 (04:56:38 PM): how do u feel about me

melanie_s998 (04:56:49 PM): i like u silly
danger6552000 (04:57:24 PM): how much
melanie_s998 (04:57:33 PM): a LOT!
melanie_s998 (04:58:04 PM): i gotta go - mom just got home an i gotta go 2 that stupind meeting
melanie_s998 (04:58:35 PM): i'll try to get on agin l8r tonight
danger6552000 (04:58:40 PM): ok
danger6552000 (04:58:51 PM): well dont get up hopes up lol
danger6552000 (04:58:58 PM): we can not meet now anyway lol
melanie_s998 (04:59:16 PM): not while mom's here hee hee
danger6552000 (04:59:40 PM): ur very nauguthy
melanie_s998 (04:59:51 PM): gtg - bye!
danger6552000 (04:59:57 PM): I will miss u
danger6552000 (05:00:01 PM): tlk sooon I hope
melanie_s998 (09:31:45 PM): r u there? 🙄
danger6552000 [melanie_s998 offline] (11:44:51 PM): u on
danger6552000 [melanie_s998 offline] (11:46:04 PM): hate I missed u
danger6552000 [melanie_s998 offline] (11:46:13 PM): hope to talk tomarrow

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melanie_s998 (04:28:37 PM): r u there?
danger6552000 (04:31:27 PM): hey
melanie_s998 (04:31:51 PM): hiya!
danger6552000 (04:31:59 PM): how ru
melanie_s998 (04:32:06 PM): pretty good
danger6552000 (04:32:12 PM): miss me
melanie_s998 (04:32:25 PM): yah - tried to im u last nite
danger6552000 (04:32:43 PM): I know
danger6552000 (04:32:47 PM): I got ono latte
melanie_s998 (04:34:16 PM): i tried 2 stay up
danger6552000 (04:35:22 PM): I hate we miss one another
danger6552000 (04:35:24 PM): so think of me any
melanie_s998 (04:35:38 PM): of course
melanie_s998 (04:35:52 PM): i cant be on 2 much - moms in the other room
danger6552000 (04:36:20 PM): ok
danger6552000 (04:36:25 PM): so what ya think of
melanie_s998 (04:37:01 PM): not muhc - i'm just eating icecream r/n - my fav
danger6552000 (04:37:35 PM): would eat it off hehe
melanie_s998 (04:38:11 PM): nope - that would waste it - it's 2 good 2 waste
danger6552000 (04:38:40 PM): lol
danger6552000 (04:38:48 PM): what ya have on
melanie_s998 (04:39:15 PM): jeans ana sweater
melanie_s998 (04:39:44 PM): the ice cream made me cold
melanie_s998 (04:40:07 PM): u ever had white choc and rasberry?
danger6552000 (04:40:25 PM): no
melanie_s998 (04:41:06 PM): its my fav - its made by dove - its expensive tho and mom only gets it once in an while
danger6552000 (04:41:38 PM): nice
melanie_s998 (04:42:12 PM): yah - i think she feels gulty 4 making me goto walterbora to see grandma
danger6552000 (04:42:35 PM): lol
danger6552000 (04:42:41 PM): so any questions for me
melanie_s998 (04:43:06 PM): what u want me 2 ask?
danger6552000 (04:43:55 PM): anything u want
melanie_s998 (04:44:29 PM): i dunno i guess we can jus chat
danger6552000 (04:45:06 PM): did u hehe
melanie_s998 (04:45:18 PM): ?
danger6552000 (04:45:39 PM): cum
melanie_s998 (04:46:13 PM): i dont know - really
danger6552000 (04:46:37 PM): try
melanie_s998 (04:46:50 PM): try what?
danger6552000 (04:47:22 PM): to
melanie_s998 (04:47:31 PM): u mean now?

danger6552000 (04:47:39 PM): last night
melanie_s998 (04:48:34 PM): i dont know - it felt good
danger6552000 (04:48:48 PM): did u after we talked
melanie_s998 (04:49:15 PM): no - i had to go to bed
danger6552000 (04:49:58 PM): ok
danger6552000 (04:50:01 PM): I have to run for now
danger6552000 (04:50:08 PM): I will think of u and miss u
melanie_s998 (04:50:26 PM): k - me 2 - tlak 2 u l8r?
melanie_s998 (07:22:38 PM): r u on?

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melanie_s998 (03:51:41 PM): r u online yet?8->
melanie_s998 (04:46:33 PM): brb
melanie_s998 (04:51:47 PM): im back
danger6552000 (05:15:25 PM): hey
melanie_s998 (05:15:38 PM): hi ya
danger6552000 (05:15:50 PM): how r u
melanie_s998 (05:16:03 PM): fine - u better 2day?
danger6552000 (05:16:12 PM): what ya mean
melanie_s998 (05:16:36 PM): u sounded diffrent yesterday
danger6552000 (05:17:04 PM): I am fine
danger6552000 (05:17:07 PM): so think about me
melanie_s998 (05:17:23 PM): yah - i thout u didn't want to talk yesterday
danger6552000 (05:17:42 PM): I was busy not that I did nto wan to talk
danger6552000 (05:17:45 PM): i love talking to u
melanie_s998 (05:17:59 PM): me 2
danger6552000 (05:18:49 PM): so what ya have on
melanie_s998 (05:19:07 PM): jeans and a sweter - its cold out again 2day
danger6552000 (05:19:35 PM): nice
danger6552000 (05:19:38 PM): are they tight
melanie_s998 (05:19:54 PM): no i like loosw stuff today
danger6552000 (05:20:22 PM): and under
melanie_s998 (05:20:37 PM): pnaites and sports bra - comfy
danger6552000 (05:21:18 PM): color
melanie_s998 (05:21:44 PM): white - both - what color r yours hee hee 😊
danger6552000 (05:22:13 PM): green boxer birefs
melanie_s998 (05:22:43 PM): i was waitin 4 u to aks so i could say that 😊
danger6552000 (05:23:08 PM): really
melanie_s998 (05:23:24 PM): yah - didnt u think it was funny?
danger6552000 (05:23:56 PM): I liked it
danger6552000 (05:24:01 PM): I think it was sexy
melanie_s998 (05:24:15 PM): im in a silly mood today
danger6552000 (05:24:39 PM): so what ya thinking
melanie_s998 (05:24:54 PM): not much - what u thinkin?
danger6552000 (05:25:57 PM): about being inside u
melanie_s998 (05:26:11 PM): u think that a LOT!
melanie_s998 (05:26:41 PM): i told u im afraid to get pg
danger6552000 (05:26:50 PM): u wont
melanie_s998 (05:27:07 PM): in skool they said we could even if we done it once
danger6552000 (05:28:28 PM): we would be careful
melanie_s998 (05:29:19 PM): how though?
danger6552000 (05:30:00 PM): protection
melanie_s998 (05:30:10 PM): ?
danger6552000 (05:30:40 PM): condom
melanie_s998 (05:31:08 PM): oh - but u said it would hurt - member?
danger6552000 (05:31:36 PM): for a few secs
melanie_s998 (05:32:11 PM): my friend said it hurt a ot
melanie_s998 (05:32:13 PM): lot
danger6552000 (05:32:45 PM): nope
melanie_s998 (05:33:16 PM): well thats what she said

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danger6552000 (05:33:33 PM): well it wold no
danger6552000 (05:33:34 PM): not
melanie_s998 (05:34:02 PM): i don't know
danger6552000 (05:35:22 PM):
I want to feel u on top of me grding ur pussy up and down as u lean forward so ur breasts and nipples are over my mouth
and u move up and down watching me slip in u thru the morrors we set up hehe
melanie_s998 (05:35:45 PM): whts a morror?
danger6552000 (05:35:58 PM): mirror
melanie_s998 (05:36:10 PM): oh - whats the mirror 4?
danger6552000 (05:36:18 PM): so u can see hehe
melanie_s998 (05:36:30 PM): i can see already silly
danger6552000 (05:37:03 PM):
u feel me in u as u just lift and dip ur ass moving ur pussy slowly up and down my whole cock as I take ur nipples in my m
outh sucking llicking my tounge swrilling around u
melanie_s998 (05:38:01 PM): i thot we didn't have to do everything
danger6552000 (05:38:10 PM): we dont
melanie_s998 (05:38:47 PM): ok
danger6552000 (05:39:08 PM): how do u feel
melanie_s998 (05:39:47 PM): like b4 but kinda nervous 2
danger6552000 (05:40:14 PM): how o
danger6552000 (05:40:15 PM): so
melanie_s998 (05:40:39 PM): i dunno - u like 2 talk bout sex stuff alot
danger6552000 (05:40:47 PM): well want me to stol
danger6552000 (05:40:49 PM): stop
melanie_s998 (05:41:15 PM): i dunno what i want sometimes
danger6552000 (05:41:53 PM): well right now lol
melanie_s998 (05:42:12 PM): i dunno it gets confusing
danger6552000 (05:43:06 PM): well what r u thinkin
melanie_s998 (05:44:17 PM): bout what all the stuff you say
danger6552000 (05:44:25 PM): well do u like it
melanie_s998 (05:44:31 PM): yah
danger6552000 (05:44:41 PM): turns u on
melanie_s998 (05:44:48 PM): yah
danger6552000 (05:45:05 PM): ask me anything
melanie_s998 (05:45:22 PM): i don't like asking stuff its too embarasign
danger6552000 (05:45:39 PM): dotn be
danger6552000 (05:45:42 PM): its al
danger6552000 (05:45:42 PM): ok
danger6552000 (05:45:44 PM): ask me
danger6552000 (05:45:46 PM): I want u to
melanie_s998 (05:46:27 PM): i dont like to say - id rather you say stuff - im afraid i wont say stuff right
danger6552000 (05:46:41 PM): u will be fine
danger6552000 (05:46:43 PM): ask me
danger6552000 (05:46:45 PM): its ok
melanie_s998 (05:47:37 PM): its' 2 enbarrasign u know more than me
danger6552000 (05:47:53 PM): honey its ok lol
danger6552000 (05:47:56 PM): ask me anything u want
melanie_s998 (05:48:26 PM): im afraid to after what Jen tol me
danger6552000 (05:48:42 PM): what was that
melanie_s998 (05:49:13 PM): bout how it hurt the first time
danger6552000 (05:49:26 PM): its ok
danger6552000 (05:49:30 PM): we dont have to do that
danger6552000 (05:49:37 PM): but it is not that bad
melanie_s998 (05:50:06 PM): ok - im just afradi of stuff like that
danger6552000 (05:50:13 PM): its ok
danger6552000 (05:50:17 PM): nothing to worry about
melanie_s998 (05:50:37 PM): yah - but u wanna do that
danger6552000 (05:50:49 PM): if u eat the pussy well before and go slow it wont hurt much
danger6552000 (05:50:51 PM): do what
melanie_s998 (05:51:05 PM): go all the way?
danger6552000 (05:51:20 PM): do u
melanie_s998 (05:51:39 PM): i told u im afraid to get pg and it will hurt 2 bad

danger6552000 (05:52:00 PM): ok well assuming that wont happen
danger6552000 (05:52:02 PM): do u
melanie_s998 (05:52:29 PM): but we don't ahve todo that - theres other stuff?
danger6552000 (05:52:44 PM): yes
melanie_s998 (05:52:58 PM): good
danger6552000 (05:53:08 PM): what would u want o do
melanie_s998 (05:53:25 PM): yah - but how can we ?
danger6552000 (05:54:01 PM): what do u want to do
melanie_s998 (05:54:16 PM): not all the way
danger6552000 (05:54:24 PM): ok eat u ?
melanie_s998 (05:54:34 PM): if that won't hurt
danger6552000 (05:54:47 PM): nope not at all
danger6552000 (05:55:01 PM): would u suck me
melanie_s998 (05:55:24 PM): i dunno i nver done that b4
danger6552000 (05:55:32 PM): hand job?
melanie_s998 (05:55:46 PM): i dont know if i could do it right
danger6552000 (05:56:00 PM): yes u could
danger6552000 (05:56:10 PM): no way to do it wrong lol
danger6552000 (05:56:12 PM): trsut me
danger6552000 (05:56:15 PM): trust
melanie_s998 (05:56:24 PM): but what if i mess up
danger6552000 (05:56:40 PM): lol I will help ya
melanie_s998 (05:56:54 PM): OK
danger6552000 (05:57:12 PM): what ya thinking
melanie_s998 (05:57:25 PM): im scared and nervous
danger6552000 (05:57:30 PM): y
melanie_s998 (05:57:50 PM): i scared i might get in trouble
danger6552000 (05:58:05 PM): how
melanie_s998 (05:58:25 PM): we might get caught
danger6552000 (05:58:36 PM): u telling
melanie_s998 (05:58:59 PM): no but i'm still scared
danger6552000 (05:59:19 PM): well we cant till ur 16 anyway lol
melanie_s998 (05:59:37 PM): ok
danger6552000 (05:59:54 PM): I would go to jail now lol
melanie_s998 (06:00:03 PM): that would suck
danger6552000 (06:00:10 PM): yes
danger6552000 (06:00:12 PM): it would
danger6552000 (06:00:16 PM): lol
danger6552000 (06:00:26 PM): do u like me enough to wait?
melanie_s998 (06:00:37 PM): thats 3 years away
danger6552000 (06:00:43 PM): yes
danger6552000 (06:00:45 PM): I know
danger6552000 (06:01:45 PM): ok
melanie_s998 (06:02:16 PM): ok what?
danger6552000 (06:02:23 PM): to wait till then
melanie_s998 (06:02:32 PM): yah - i guess
danger6552000 (06:02:45 PM): what u dont want to
melanie_s998 (06:03:13 PM): i dont know - it just makes me scared to think bout it
danger6552000 (06:03:26 PM): anything u want to ask me now
melanie_s998 (06:03:56 PM): what do you want me to do?
danger6552000 (06:04:23 PM): what do u want
melanie_s998 (06:04:58 PM): i don't know - i dont understand what u want
danger6552000 (06:05:13 PM): why do u want to with me
melanie_s998 (06:05:35 PM): cuz u asked me 2
danger6552000 (06:07:07 PM): why do u want to
danger6552000 (06:07:27 PM): with me
danger6552000 (06:07:29 PM): u there
melanie_s998 (06:07:59 PM): yah - i just was thinkin bout what Jen said it was like thats all
melanie_s998 (06:08:10 PM): im sorry - if u dont wnat to talk to me ne more its ok
melanie_s998 (06:08:16 PM): im sorry im messing stuff up
danger6552000 (06:08:26 PM): what do u mean
melanie_s998 (06:08:52 PM): i keep not understanding what u want

danger6552000 (06:08:55 PM): its ok
danger6552000 (06:09:05 PM): why do u want to do this stuff with me
melanie_s998 (06:09:21 PM): but i'm not doing stuff
melanie_s998 (06:09:32 PM): u said u wanted to do it
melanie_s998 (06:09:40 PM): but now ur asking me y i want to
danger6552000 (06:09:53 PM): well i dont want to if u dont
melanie_s998 (06:10:09 PM): i didnt say i dont
danger6552000 (06:10:15 PM): ok
danger6552000 (06:10:20 PM): so u do
melanie_s998 (06:10:51 PM): yah - but i just dont want to mess stuff up cuz i don't know how to do stuff
danger6552000 (06:11:01 PM): u wont
danger6552000 (06:11:06 PM): ok why do u with me then
melanie_s998 (06:11:29 PM): i dont know - cuz ur the first person to ask me
danger6552000 (06:12:03 PM): i need to run for now we will talk soon
danger6552000 (06:12:05 PM): bye
melanie_s998 (06:12:28 PM): im sorry - i dont mean to mess stuff up 🙄
danger6552000 (06:12:40 PM): u hav not messed anything up
danger6552000 (06:12:43 PM): i still like u
melanie_s998 (06:12:50 PM): i feel like i did
danger6552000 (06:12:58 PM): well u did not lol
danger6552000 (06:13:01 PM): dont worry about it
melanie_s998 (06:13:24 PM): k - sorry - i'll tlak to u l8r
melanie_s998 (08:25:40 PM): r u on?
danger6552000 [melanie_s998 offline] (10:46:41 PM): hey
danger6552000 [melanie_s998 offline] (10:46:43 PM): u there

20060325

melanie_s998 (12:09:05 AM): hi - u on this late???

melanie_s998 (12:48:45 AM): guess not - will try agin tomorrow nite 😊

melanie_s998 (06:32:42 PM): hey - u on?

melanie_s998 (11:13:29 PM): u gonna be on tonite?

20060326

melanie_s998 (04:41:04 PM): u there?

danger6552000 [melanie_s998 offline] (05:11:04 PM): i miss u

danger6552000 [melanie_s998 offline] (05:11:07 PM): sorry i have not been on

20060327

danger6552000 (05:07:11 PM): hey

danger6552000 (05:17:18 PM): haqte l'missed u

melanie_s998 (05:21:17 PM): hy - u still on?

melanie_s998 (06:29:36 PM): i cant beleve i missed u again!!!!X-(

melanie_s998 (08:35:15 PM): r u bak online yet?

20060328

melanie_s998 (04:45:13 PM): hey - u on yet?

danger6552000 (05:30:11 PM): hey u there

melanie_s998 (05:33:53 PM): hi ya

danger6552000 (05:33:58 PM): how r u

danger6552000 (05:34:02 PM): i have so mised u

melanie_s998 (05:34:27 PM): pretty good - was wonderin if u were ever gonna talk 2 me

danger6552000 (05:34:43 PM): well its not be choice that we have not

danger6552000 (05:34:48 PM): i really like talking with u

danger6552000 (05:34:59 PM): we just have missed one another

melanie_s998 (05:35:01 PM): me 2 - u been busy

danger6552000 (05:35:06 PM): yes
 danger6552000 (05:35:10 PM): no on as much
 danger6552000 (05:35:19 PM): but it is tempoary
 danger6552000 (05:35:28 PM): so think of me any
 melanie_s998 (05:35:39 PM): lotsa sick pets?
 melanie_s998 (05:35:41 PM): yah
 danger6552000 (05:35:47 PM): what ya think about
 danger6552000 (05:35:57 PM): and yes lots lo
 melanie_s998 (05:36:17 PM): jus about chattin
 danger6552000 (05:36:27 PM): so what ya have on
 melanie_s998 (05:36:48 PM): jeans an a sweater - it got cold again
 melanie_s998 (05:36:53 PM): cant wait for spring
 danger6552000 (05:37:05 PM): tight?
 melanie_s998 (05:37:23 PM): kinda
 danger6552000 (05:38:35 PM): nice
 danger6552000 (05:38:35 PM): under
 melanie_s998 (05:39:01 PM): same as usul - panties and sports bra
 danger6552000 (05:39:10 PM): I bet u look so yummy hehe
 melanie_s998 (05:39:22 PM): i lo
 melanie_s998 (05:39:32 PM): i feel like a eskimo
 danger6552000 (05:40:04 PM): lol
 danger6552000 (05:40:06 PM): well i like
 danger6552000 (05:40:13 PM): any questions for me
 melanie_s998 (05:40:46 PM): not reely - u no i dont like 2-ask stuff ☺">
 danger6552000 (05:41:26 PM): lol
 danger6552000 (05:41:36 PM): so think about any sexual
 melanie_s998 (05:41:47 PM): maybe!
 danger6552000 (05:41:54 PM): yes or no
 danger6552000 (05:41:55 PM): lol
 melanie_s998 (05:42:08 PM): no - hee hee
 melanie_s998 (05:42:33 PM): j/k
 danger6552000 (05:42:42 PM): so yes
 melanie_s998 (05:43:09 PM): ☺">
 danger6552000 (05:43:25 PM): nice
 danger6552000 (05:43:29 PM): what ya think of
 melanie_s998 (05:44:04 PM): well rt now im thinkin bout springbreak!!!!!!!!!!!!!!!!!!!!!!
 danger6552000 (05:44:35 PM): lol
 danger6552000 (05:44:44 PM): well when u thought about sex with me lol
 melanie_s998 (05:45:00 PM): waht u think?
 danger6552000 (05:45:15 PM): dont know u tell me hehe
 melanie_s998 (05:45:50 PM): nope an u cant make me ☺
 danger6552000 (05:46:07 PM): come on ☺ hehe
 melanie_s998 (05:46:43 PM): nope - im an angel an we don't do that ☺
 danger6552000 (05:47:04 PM): sure u r lol
 danger6552000 (05:47:09 PM): come on tell me
 melanie_s998 (05:47:31 PM): that wasnt very nice ☺
 danger6552000 (05:47:49 PM): I mean it in a nice way
 danger6552000 (05:47:52 PM): ur very sexy
 melanie_s998 (05:48:05 PM): can i be a sexy angel?
 danger6552000 (05:48:59 PM): yes but then u should tell me anyway
 melanie_s998 (05:49:37 PM): maybe u should tell me
 melanie_s998 (05:49:41 PM): ur better at it
 danger6552000 (05:50:30 PM): well I dont know what u woudl think of give me a hit
 danger6552000 (05:50:32 PM): hint
 melanie_s998 (05:50:49 PM): yes u do
 danger6552000 (05:51:01 PM): me inside u?
 melanie_s998 (05:51:14 PM): ?
 danger6552000 (05:51:52 PM): me thrusting my cock inside ur pussy
 melanie_s998 (05:52:03 PM): ohh - duh!
 melanie_s998 (05:52:14 PM): thats what U think of

danger6552000 (05:52:30 PM): did u think of it
 melanie_s998 (05:52:41 PM): yah
 danger6552000 (05:53:27 PM): have u fingered ur pussy thinking of me any
 melanie_s998 (05:53:38 PM): maybe
 danger6552000 (05:54:03 PM): yes or no honey heh
 melanie_s998 (05:54:16 PM): yah
 danger6552000 (05:54:28 PM): umm god that is so sexy
 danger6552000 (05:54:59 PM):
 I was thinking about pinning u on the shower wall ur legs around me and arms around my neck my hands on ur ass water
 r running over us as I lifted you up and down on me while we kissed
 melanie_s998 (05:56:23 PM): wow - i cant think up stuff like that
 danger6552000 (05:57:12 PM): did u like
 melanie_s998 (05:57:23 PM): yah
 danger6552000 (05:57:38 PM): how do u feel
 melanie_s998 (05:57:59 PM): can i ask u a question
 danger6552000 (05:58:09 PM): sure ask me anything u want
 melanie_s998 (05:58:36 PM): y do u want to do this with ME
 melanie_s998 (05:59:09 PM): u never seen me b4 an i jus confused
 melanie_s998 (05:59:25 PM): confused about y u picked me
 danger6552000 (05:59:52 PM):
 I like u,, i likj ho u say u look, your very smart and sweet and easy to talk to I think ur fun and open
 melanie_s998 (06:00:14 PM): well i never tlaked to ne body bout this b4
 danger6552000 (06:00:46 PM): do u like it?
 danger6552000 (06:00:53 PM): do u want me to stop?
 melanie_s998 (06:01:02 PM): its kinda scary
 danger6552000 (06:01:11 PM): ok
 melanie_s998 (06:01:17 PM): scary like different
 danger6552000 (06:01:29 PM): ok
 danger6552000 (06:01:34 PM): well a good scary?
 melanie_s998 (06:01:56 PM): yah i guess not really scary but nervous like i guess
 danger6552000 (06:02:23 PM): I got u
 danger6552000 (06:02:26 PM): so do u like it?
 melanie_s998 (06:02:40 PM): what u mean u got me?
 danger6552000 (06:02:52 PM): do u like talking to me about this
 melanie_s998 (06:03:13 PM): yah - its something i never done b4
 danger6552000 (06:03:17 PM): ok
 danger6552000 (06:03:20 PM): do u like me?
 melanie_s998 (06:03:31 PM): yah of course
 danger6552000 (06:03:34 PM): good
 danger6552000 (06:03:39 PM): I like u to
 danger6552000 (06:03:45 PM): so u dont want to stop
 melanie_s998 (06:03:48 PM): no
 danger6552000 (06:03:53 PM): ok
 danger6552000 (06:03:58 PM): anything else baby
 melanie_s998 (06:04:11 PM): dont know what to ask now
 danger6552000 (06:04:31 PM): well what do u want me to do
 melanie_s998 (06:04:49 PM): i dunno - what do U want 2 do
 danger6552000 (06:04:59 PM): be inside u hehe
 melanie_s998 (06:05:16 PM): thats kinda hard 2 do
 danger6552000 (06:05:28 PM): I have to run for now
 danger6552000 (06:05:35 PM): I will be on tonight 11:30
 melanie_s998 (06:05:46 PM): K - whats the best time 2 be on?
 danger6552000 (06:05:52 PM): 11:30
 melanie_s998 (06:06:12 PM): i'll try if i can sneak past mom tonite
 danger6552000 (06:06:28 PM): ok
 danger6552000 (06:06:31 PM): hope to talk then
 danger6552000 (06:06:35 PM): bye for now kiss
 melanie_s998 (06:06:45 PM): hee hee - bye!
 danger6552000 [melanie_s998 offline] (07:28:56 PM): u on
 danger6552000 [melanie_s998 offline] (11:15:55 PM): hey u on
 melanie_s998 (11:51:06 PM): hey u still there?
 danger6552000 (11:51:11 PM): yes

danger6552000 (11:51:13 PM): how r u
melanie_s998 (11:51:37 PM): kinda sleepy - i was waitin 4 mom to go to bed
danger6552000 (11:51:50 PM): well ty for coming on
melanie_s998 (11:52:10 PM): i can only stay a min hto
danger6552000 (11:52:17 PM): ok
danger6552000 (11:52:19 PM): I missed u
melanie_s998 (11:52:24 PM): me 2
danger6552000 (11:52:28 PM): think of me
melanie_s998 (11:52:52 PM): yah - i saw where u tried to get me earlier
melanie_s998 (11:53:26 PM): sry i missed u
danger6552000 (11:53:31 PM): its ok
danger6552000 (11:53:35 PM): what ya have on
melanie_s998 (11:53:58 PM): jus my nightgown
danger6552000 (11:54:17 PM): nothing under
melanie_s998 (11:54:53 PM): jus pantieesssss
danger6552000 (11:55:00 PM): omg
danger6552000 (11:55:04 PM): I so wish I was with u
melanie_s998 (11:55:15 PM): hee hee
danger6552000 (11:55:36 PM): think of anything u want to ask me
melanie_s998 (11:55:55 PM): not rly
melanie_s998 (11:56:22 PM): i akesd u stuff earlier
danger6552000 (11:56:31 PM): i know
danger6552000 (11:56:44 PM): are u stastfied with my anwers
melanie_s998 (11:57:18 PM): yah i jus wanted to no y u picked me
danger6552000 (11:57:28 PM): well now u do
danger6552000 (11:57:37 PM): why are u intrested in me
melanie_s998 (11:57:58 PM): i dunno ur diffnet
danger6552000 (11:58:06 PM): how so
melanie_s998 (11:58:33 PM): i tol u - no one ever said stuff like u b4
danger6552000 (11:58:59 PM): well how do u feel abot me
melanie_s998 (11:59:08 PM): i like u
danger6552000 (11:59:17 PM): how do u like me
danger6552000 (11:59:23 PM): like a friend or bf
melanie_s998 (11:59:44 PM): u no i dont have a bf hhe hee
danger6552000 (11:59:58 PM): want one

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melanie_s998 (12:00:25 AM): maybe ☺">
danger6552000 (12:00:32 AM): be my gf
melanie_s998 (12:00:38 AM): ok
melanie_s998 (12:01:07 AM): what do i hafta do
danger6552000 (12:01:22 AM): that is up to u
danger6552000 (12:01:27 AM): what do u want to do
melanie_s998 (12:01:54 AM): i dunno
danger6552000 (12:02:06 AM): well what do u want to do with me
melanie_s998 (12:02:32 AM): be ur gf
danger6552000 (12:02:50 AM): ok
danger6552000 (12:02:54 AM): I want that
melanie_s998 (12:03:40 AM): ok ☺
danger6552000 (12:03:50 AM): what are u thinking
melanie_s998 (12:04:44 AM): i duuno - jus feels like im all grown up now
danger6552000 (12:04:59 AM): well that is good
danger6552000 (12:06:12 AM): do u want to feel me inside u
melanie_s998 (12:06:48 AM): well u cant do that ona computer
danger6552000 (12:07:12 AM): but do u
melanie_s998 (12:07:15 AM): an my mom would catch us
danger6552000 (12:07:26 AM): u telling lol
melanie_s998 (12:07:52 AM): NOOOO! im not telling ne one
danger6552000 (12:08:01 AM): ok
danger6552000 (12:08:34 AM): so do u want to

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melanie_s998 (12:08:53 AM): to what?
danger6552000 (12:09:12 AM): have me inside u
melanie_s998 (12:09:37 AM): i tilu b4 i dont wanto get pg
danger6552000 (12:10:02 AM): u wont
melanie_s998 (12:10:28 AM): im still scared and screared it wuld hurt
danger6552000 (12:10:58 AM): it wont very much I promise or long only like a min
melanie_s998 (12:11:22 AM): yah but im still scared
melanie_s998 (12:11:41 AM): an how can we ne way
danger6552000 (12:12:37 AM): well cant unill ur 1 but then u snaek out
melanie_s998 (12:12:59 AM): unill im 1?
danger6552000 (12:13:06 AM): 16
melanie_s998 (12:13:27 AM): well tahts 3 years away can u wait
danger6552000 (12:13:38 AM): yes if uwant me to
melanie_s998 (12:13:59 AM): i bet u wont
danger6552000 (12:14:11 AM): yes I will
melanie_s998 (12:14:42 AM): nuh uh - u will have a new gf by then
danger6552000 (12:14:55 AM): I promise I wont
melanie_s998 (12:15:31 AM): what if i get a bf
danger6552000 (12:15:44 AM): think u will
melanie_s998 (12:15:55 AM): i dunno
danger6552000 (12:16:19 AM): can u wait
melanie_s998 (12:16:46 AM): i duuno - what if a boy asks me
danger6552000 (12:17:32 AM): well u can say yes if u want to
melanie_s998 (12:17:47 AM): ok
danger6552000 (12:18:07 AM): do u want to sooner
melanie_s998 (12:18:23 AM): get a bf?
danger6552000 (12:18:32 AM): have sex
melanie_s998 (12:18:53 AM): i thot thats what u wanted
danger6552000 (12:19:09 AM): well do u want it
melanie_s998 (12:19:32 AM): yah
danger6552000 (12:19:46 AM): sooner
melanie_s998 (12:19:53 AM): yah
danger6552000 (12:20:25 AM): why
melanie_s998 (12:20:58 AM): hard 2 say
danger6552000 (12:21:06 AM): try
melanie_s998 (12:21:40 AM): i dunno - part cuz u want me 2
danger6552000 (12:21:56 AM): well I want u to do what u want
melanie_s998 (12:22:30 AM): ok - im jus scared ill do it wrong
danger6552000 (12:22:53 AM): u will be great
melanie_s998 (12:22:59 AM): maybe
danger6552000 (12:23:07 AM): u wold be
danger6552000 (12:24:16 AM): what ya thinking
melanie_s998 (12:24:52 AM): lotsa stuff - its hard 2 think
danger6552000 (12:25:06 AM): anything about me
melanie_s998 (12:25:16 AM): yah of course
danger6552000 (12:25:25 AM): ok what of me
melanie_s998 (12:25:47 AM): jus thninkin
danger6552000 (12:25:59 AM): of
melanie_s998 (12:26:24 AM): stuff we been tlaklin bout
danger6552000 (12:26:36 AM): how it may feel
melanie_s998 (12:26:42 AM): yah
danger6552000 (12:26:56 AM): I so want to eat ur pussy
melanie_s998 (12:27:35 AM): but u cant on a puter
danger6552000 (12:27:46 AM): I want to really taste u
melanie_s998 (12:28:00 AM): k
danger6552000 (12:28:18 AM): have my tounge inside u
melanie_s998 (12:28:45 AM): yah
danger6552000 (12:29:05 AM): feel it thruting in u
danger6552000 (12:29:29 AM): my hands run up to ur breasts and tease ur nipples as my tounge runs over ur clit
danger6552000 (12:32:06 AM): hon
melanie_s998 (12:32:23 AM): hey
danger6552000 (12:32:32 AM): like

melanie_s998 (12:32:38 AM): yah
melanie_s998 (12:32:55 AM): what u doin?
danger6552000 (12:33:05 AM): rubbing my cock
danger6552000 (12:33:07 AM): and u
danger6552000 (12:34:55 AM): what ya doing
melanie_s998 (12:35:29 AM): nothing just thinking
danger6552000 (12:35:37 AM): about
melanie_s998 (12:36:14 AM): just thinking
danger6552000 (12:36:27 AM): about me
melanie_s998 (12:36:32 AM): yah
danger6552000 (12:36:48 AM): what of me
melanie_s998 (12:37:11 AM): jus kinda sad a little
danger6552000 (12:37:18 AM): y
melanie_s998 (12:37:27 AM): i just am
danger6552000 (12:37:55 AM): about
melanie_s998 (12:38:25 AM): imnot sure
danger6552000 (12:38:40 AM): any idea
melanie_s998 (12:39:15 AM): jus about us
danger6552000 (12:39:25 AM): what about us
melanie_s998 (12:40:11 AM): its ahrd to talk about
danger6552000 (12:40:51 AM): u can with me
danger6552000 (12:40:55 AM): tell me
melanie_s998 (12:41:35 AM): afraid that ill get caught doin stuff
danger6552000 (12:41:45 AM): how
melanie_s998 (12:41:53 AM): i dunnos
danger6552000 (12:42:21 AM): do u want to do it
melanie_s998 (12:42:31 AM): ?
danger6552000 (12:43:05 AM): have sex
melanie_s998 (12:43:26 AM): yah - i tol u already - but how
danger6552000 (12:43:46 AM): well when
danger6552000 (12:43:50 AM): soon
melanie_s998 (12:44:04 AM): yah
danger6552000 (12:44:31 AM): wit me
melanie_s998 (12:44:35 AM): yah
danger6552000 (12:45:02 AM): y
melanie_s998 (12:45:29 AM): cuz u asked me
danger6552000 (12:45:41 AM): not a very good reason
melanie_s998 (12:45:46 AM): and cuz i dont know waht its like
danger6552000 (12:46:38 AM): well that all
melanie_s998 (12:47:02 AM): what u mean?
danger6552000 (12:47:17 AM): well u dont want to bc u like me
melanie_s998 (12:47:31 AM): yah of couse that 2
danger6552000 (12:48:00 AM): why so soon
melanie_s998 (12:49:06 AM): i dont know - cuz u want me too and all the stiff u done b4 wit me
danger6552000 (12:49:31 AM): well can u wait till ur 16
melanie_s998 (12:49:47 AM): i dunno
danger6552000 (12:49:57 AM): y
melanie_s998 (12:51:12 AM): dont know how to anser
danger6552000 (12:51:27 AM): try
melanie_s998 (12:51:57 AM): jus confused
melanie_s998 (12:52:06 AM): i better go to sleep now
danger6552000 (12:52:18 AM): ok think of me
danger6552000 (12:52:20 AM): I will miss u
melanie_s998 (12:52:25 AM): k
danger6552000 (12:52:31 AM): kiss

20060401

danger6552000 (12:17:07 AM): hey
melanie_s998 (12:17:21 AM): hey - u on?
danger6552000 (12:18:13 AM): yes hey
melanie_s998 (12:18:51 AM): cant stay on 2 long - got in trouble this week an got grounded X-(

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danger6552000 (12:19:19 AM): how
melanie_s998 (12:19:41 AM): me an Jen snuck out 2 go 2 the movies an got caught
danger6552000 (12:20:23 AM): lol
danger6552000 (12:20:24 AM): why
melanie_s998 (12:20:33 AM): why what?
danger6552000 (12:20:42 AM): did u sneak out
danger6552000 (12:20:51 AM): I have missed u
melanie_s998 (12:21:13 AM): so we could go to the movies - we never even made it there
danger6552000 (12:21:28 AM): lol
danger6552000 (12:21:36 AM): so think of me any
melanie_s998 (12:22:02 AM): yah of courese but im not allowed on the computer for the rest of the week
melanie_s998 (12:22:19 AM): if mom chathes me agin ill be gorounded for life
danger6552000 (12:22:37 AM): do u need to go
melanie_s998 (12:23:02 AM): if i get off real qucik its cause moms coming
danger6552000 (12:23:10 AM): ok
danger6552000 (12:23:16 AM): I want to have sex with u
melanie_s998 (12:23:30 AM): how?
danger6552000 (12:24:42 AM): hwo ya want it
melanie_s998 (12:24:54 AM): how can we?
danger6552000 (12:25:08 AM): my cock in ur pussy heehe
melanie_s998 (12:25:40 AM): ur 2 far away
danger6552000 (12:25:53 AM): distance not a prob
melanie_s998 (12:25:59 AM): huh?
danger6552000 (12:26:24 AM): what ya thinking
melanie_s998 (12:26:34 AM): bout waht u jus said
danger6552000 (12:26:56 AM): can u feel me inside u
melanie_s998 (12:27:19 AM): no not rly
danger6552000 (12:27:36 AM): are u thinking of it
melanie_s998 (12:27:48 AM): yah
danger6552000 (12:28:46 AM): feel me inside u thursting
danger6552000 (12:28:48 AM): in an dout
danger6552000 (12:28:50 AM): as we kiss
danger6552000 (12:28:56 AM): and my fingers tease ur clit
melanie_s998 (12:29:13 AM): ur doin cyber again
danger6552000 (12:29:21 AM): want me to stop
melanie_s998 (12:29:27 AM): its ok
melanie_s998 (12:29:55 AM): u said u wanted 2 have sex with me
danger6552000 (12:30:29 AM): I do
melanie_s998 (12:30:41 AM): ok
danger6552000 (12:30:50 AM): do u
melanie_s998 (12:31:17 AM): if i dont get pg and it dont hurt
danger6552000 (12:31:27 AM): ok
danger6552000 (12:32:04 AM): what ya thinking
melanie_s998 (12:32:15 AM): bout that
danger6552000 (12:32:32 AM): haveing sex with me
melanie_s998 (12:32:36 AM): yah
danger6552000 (12:33:01 AM): I so want u
melanie_s998 (12:33:18 AM): heer i am hee hee
danger6552000 (12:33:36 AM): that an invitation
melanie_s998 (12:33:58 AM): what u think?
danger6552000 (12:34:11 AM): you tell me
melanie_s998 (12:34:17 AM): ok
danger6552000 (12:35:45 AM): that yes
melanie_s998 (12:36:08 AM): if u rly want to
danger6552000 (12:37:04 AM): do u
melanie_s998 (12:37:13 AM): yah
danger6552000 (12:37:22 AM): k
melanie_s998 (12:37:46 AM): then how can we
danger6552000 (12:38:00 AM): I will come see u
melanie_s998 (12:38:12 AM): not to my house tho
danger6552000 (12:38:19 AM): ok
melanie_s998 (12:39:15 AM): when could we

danger6552000 (12:39:47 AM): tonight
melanie_s998 (12:40:12 AM): i cant tonite - im grounded an moms home
danger6552000 (12:40:24 AM): when r u thinking
melanie_s998 (12:40:46 AM): i dunno
danger6552000 (12:41:28 AM): we cant till ur 16 anyway
melanie_s998 (12:41:47 AM): but thats 3 yeras!!!!!!!!!!!!!!
melanie_s998 (12:42:08 AM): well 2 an a half
danger6552000 (12:42:16 AM): problem?
melanie_s998 (12:42:26 AM): ur mean
danger6552000 (12:42:34 AM): why
melanie_s998 (12:42:46 AM): cuz ur teasing me
danger6552000 (12:42:56 AM): how am I
melanie_s998 (12:43:35 AM): cuz u make me th glg
danger6552000 [melanie_s998 offline] (12:44:13 AM): I hate u had to go
danger6552000 [melanie_s998 offline] (12:44:19 AM): hope we talk soon I miss u

20060402

melanie_s998 (12:29:00 AM): ru on?

20060404

melanie_s998 (04:15:19 PM): hi - ru on? 😊
melanie_s998 (04:44:23 PM): i ges not 😊
danger6552000 [melanie_s998 offline] (05:01:06 PM): miss u

20060405

melanie_s998 (05:22:34 PM): ru on? Im stil n truble so cant chat much

20060406

melanie_s998 (04:15:51 PM): ru on?
melanie_s998 (04:17:01 PM): 😊
danger6552000 [melanie_s998 offline] (05:21:48 PM): Hey I miss u
danger6552000 [melanie_s998 offline] (05:48:41 PM): when will u be on

20060412

danger6552000 [melanie_s998 offline] (06:16:08 PM): miss ya

20060413

danger6552000 (05:28:50 PM): hey
melanie_s998 (05:28:59 PM): sup
danger6552000 (05:29:07 PM): nm how r u
melanie_s998 (05:29:15 PM): fine u?
danger6552000 (05:29:52 PM): good
danger6552000 (05:29:56 PM): what ya been up to
melanie_s998 (05:30:07 PM): jus school
danger6552000 (05:30:48 PM): think of me any
melanie_s998 (05:31:21 PM): yah - of course
danger6552000 (05:31:29 PM): what ya think about
melanie_s998 (05:31:46 PM): jus stuff - u aint been on in a while
danger6552000 (05:31:55 PM): I know sorry
danger6552000 (05:32:00 PM): I have been thinking of u to
melanie_s998 (05:32:25 PM): like what
danger6552000 (05:32:56 PM): bad stuff 😊

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melanie_s998 (05:33:05 PM): oh
danger6552000 (05:33:09 PM): u
melanie_s998 (05:33:39 PM): nope good stuff 😊
danger6552000 (05:34:12 PM): so nothing sexual lol
melanie_s998 (05:34:23 PM): hee ehe
danger6552000 (05:34:46 PM): yes no?
melanie_s998 (05:34:52 PM): yes no
danger6552000 (05:35:36 PM): which is it
melanie_s998 (05:35:44 PM): both hee hee
danger6552000 (05:36:16 PM): so some bad
melanie_s998 (05:36:22 PM): never bad
danger6552000 (05:36:34 PM): it was good
melanie_s998 (05:37:33 PM): ok
danger6552000 (05:38:18 PM): what ya have on
melanie_s998 (05:38:33 PM): same stuff - jeans an a tshirt
danger6552000 (05:38:58 PM): tight
melanie_s998 (05:39:16 PM): yah - jeans r
danger6552000 (05:39:32 PM): nice
danger6552000 (05:39:34 PM): and under
melanie_s998 (05:39:55 PM): panties ana training bra
danger6552000 (05:40:07 PM): cool
danger6552000 (05:40:11 PM): so any questions for me
melanie_s998 (05:40:40 PM): not really i dont guess
danger6552000 (05:40:58 PM): what ya thinking
melanie_s998 (05:41:13 PM): not much just chattin with ppl
danger6552000 (05:41:30 PM): will u be on tonight
melanie_s998 (05:43:17 PM): yah a little bit unless mom makes me go 2 bed urly
danger6552000 (05:43:38 PM): ok well I will be back around 11
danger6552000 (05:43:42 PM): hope to see u
danger6552000 (05:43:46 PM): we have alot to talk about
danger6552000 (05:43:49 PM): been to long
melanie_s998 (05:44:03 PM): like waht tell me!!!!!!!
danger6552000 (05:44:13 PM): hee u will see
melanie_s998 (05:44:19 PM): k
danger6552000 (05:44:24 PM): ok bye

20060421

danger6552000 (04:59:47 PM): hey
melanie_s998 (05:00:02 PM): wow - i havnt tlake 2 u in 4evah
danger6552000 (05:00:12 PM): I know
danger6552000 (05:00:13 PM): sorry
danger6552000 (05:00:15 PM): how r u
melanie_s998 (05:00:23 PM): fine - where u been?
danger6552000 (05:00:37 PM): working been very busy
danger6552000 (05:00:45 PM): but have not had a day I did not think about u
melanie_s998 (05:01:00 PM): i treid to im u b4
danger6552000 (05:01:11 PM): well I am here now
danger6552000 (05:01:13 PM): so miss me
danger6552000 (05:01:15 PM): I missed u
melanie_s998 (05:01:19 PM): yah 4 sure
danger6552000 (05:01:32 PM): aww
danger6552000 (05:01:37 PM): think of me any
melanie_s998 (05:02:06 PM): yah - an i member u said u was gonna tell me somethin special last time but u 4got
danger6552000 (05:02:23 PM): I never got back on lol
melanie_s998 (05:02:48 PM): i no - wat was u gonna say
danger6552000 (05:02:59 PM): I want to fuck u 😊
melanie_s998 (05:03:18 PM): i said i dont like that word member
danger6552000 (05:03:36 PM): well I want to be inside u
danger6552000 (05:03:38 PM): how is that
melanie_s998 (05:03:52 PM): thas better i guess

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danger6552000 (05:04:21 PM): what would u like me to say
 melanie_s998 (05:04:29 PM): i dunno
 danger6552000 (05:04:51 PM): so what ya think of me
 melanie_s998 (05:05:27 PM): yah - but i thout u was comin to see me or somethin
 danger6552000 (05:05:39 PM): why ya think that
 melanie_s998 (05:05:59 PM): i jus thout u was
 danger6552000 (05:06:24 PM): I could get in so much trubble honey
 melanie_s998 (05:06:58 PM): why
 danger6552000 (05:07:08 PM): age
 melanie_s998 (05:07:18 PM): ok
 danger6552000 (05:07:46 PM): could be a problem
 melanie_s998 (05:07:55 PM): i guess
 danger6552000 (05:08:12 PM): what r u thinking
 melanie_s998 (05:08:26 PM): bout bein disappointed
 danger6552000 (05:08:53 PM): why
 melanie_s998 (05:09:03 PM): nvr mind
 danger6552000 (05:09:23 PM): tell me
 melanie_s998 (05:09:46 PM): it dosnt matter
 danger6552000 (05:09:54 PM): yes it does
 danger6552000 (05:09:57 PM): I dont want u sad
 danger6552000 (05:10:00 PM): please tell me
 melanie_s998 (05:10:32 PM): thas ok i better go anyway
 danger6552000 (05:10:46 PM): why
 melanie_s998 (05:10:57 PM): nothing
 danger6552000 (05:11:09 PM): come on please talk yto mër abouty it
 danger6552000 (05:11:12 PM): I really like u
 danger6552000 (05:11:16 PM): why are u upset
 melanie_s998 (05:11:27 PM): i alrdy tol u
 danger6552000 (05:11:42 PM): u said u were disapinted
 danger6552000 (05:11:45 PM): what about
 melanie_s998 (05:12:34 PM): i said i thot u saud u was gonna come see me
 danger6552000 (05:12:48 PM): u are disapointed I am not
 melanie_s998 (05:12:53 PM): yah
 danger6552000 (05:13:07 PM): why is that
 melanie_s998 (05:13:29 PM): i thot that was gonna be ur surprise u was gonna tell me bout
 danger6552000 (05:13:40 PM): I see
 danger6552000 (05:13:44 PM): maybe it is
 melanie_s998 (05:13:56 PM): dont tease me
 danger6552000 (05:14:13 PM): I am not
 danger6552000 (05:14:30 PM): I really like u or I would nto still be talking to u
 melanie_s998 (05:14:55 PM): yah but us keep sayin u cant see me caus im jus 13
 danger6552000 (05:15:34 PM): well are u really 16
 melanie_s998 (05:15:44 PM): ?
 danger6552000 (05:15:55 PM): if u are I can see u
 melanie_s998 (05:16:15 PM): i tol u im 13
 danger6552000 (05:16:31 PM): ur 16 lol
 melanie_s998 (05:16:49 PM): no im 13
 melanie_s998 (05:16:52 PM): ?????
 danger6552000 (05:17:22 PM): well if ur 16 I could see u so are u
 melanie_s998 (05:17:36 PM): no i tol u im 13
 melanie_s998 (05:18:03 PM): why do u keep sayin im 16?
 danger6552000 (05:18:16 PM): ok well then for now seeing could put me in jail
 melanie_s998 (05:18:55 PM): ok - ur teasing me so im gonna go
 danger6552000 (05:19:03 PM): no I am not
 danger6552000 (05:19:11 PM): I am worried u would tell ect
 melanie_s998 (05:19:19 PM): tell what?
 danger6552000 (05:19:26 PM): about me
 melanie_s998 (05:19:46 PM): i wouldn't tell anyone - my mom would kill me
 danger6552000 (05:20:22 PM): why do u want to see me?
 melanie_s998 (05:20:58 PM): i dont know - i thot u wanted to see me
 danger6552000 (05:21:08 PM): I do I like u alto
 melanie_s998 (05:21:09 PM): but i dont know what u look like

danger6552000 (05:21:11 PM): I really do
melanie_s998 (05:21:12 PM): and im scared
danger6552000 (05:21:40 PM): what of?
melanie_s998 (05:22:03 PM): juseeverything - i dont know
danger6552000 (05:22:18 PM): wel i want u to feel safe and cortable with me
melanie_s998 (05:22:54 PM): i gtg
danger6552000 (05:23:00 PM): why
melanie_s998 (05:23:07 PM): help mom fix dinner
danger6552000 (05:23:14 PM): will u be on latter
melanie_s998 (05:23:26 PM): sry - jus found out dad got a new g/f and im still upset
melanie_s998 (05:23:29 PM): maybe
danger6552000 (05:23:35 PM): aww I understand that
danger6552000 (05:23:42 PM): u cant talk to me about anything ok
danger6552000 (05:23:46 PM): do u have to go
melanie_s998 (05:24:05 PM): yah rely hafta help mom fix dinner
danger6552000 (05:24:16 PM): 10 mins more?
melanie_s998 (05:24:54 PM): cant sry - mayb l8r 2nite
danger6552000 (05:25:09 PM): ok wel I will look for u
danger6552000 (05:25:11 PM): kiss

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danger6552000 [melanie_s998 offline] (05:23:01 PM): hey

20060427

danger6552000 (06:51:12 PM): hey
melanie_s998 (06:51:20 PM): where u been
danger6552000 (06:51:32 PM): working and u
melanie_s998 (06:51:42 PM): skoo; - duh
danger6552000 (06:52:12 PM): think of me any
melanie_s998 (06:52:29 PM): yah - been wonderin where u been
danger6552000 (06:52:41 PM): anything else
melanie_s998 (06:53:09 PM): like when u said u was comin to see me
danger6552000 (06:53:26 PM): what ya have on
melanie_s998 (06:53:36 PM): same stuff
danger6552000 (06:54:03 PM): like
melanie_s998 (06:54:10 PM): jeans an a tshirt - duh
danger6552000 (06:54:16 PM): under
melanie_s998 (06:54:31 PM): panties and a traning bra
melanie_s998 (06:54:38 PM): sports bra duh
danger6552000 (06:54:49 PM): sexy
danger6552000 (06:54:55 PM): what ya thinking about
melanie_s998 (06:55:08 PM): i tol u already
danger6552000 (06:55:22 PM): do u want that
melanie_s998 (06:55:33 PM): sure
danger6552000 (06:55:40 PM): why
melanie_s998 (06:55:54 PM): why u keep askin the same questions
danger6552000 (06:56:30 PM): well I cant b/c of ur age right now but would after
melanie_s998 (06:56:47 PM): so u was jus teasin
danger6552000 (06:57:04 PM): no I really like u
melanie_s998 (06:57:35 PM): i dunno anymore
danger6552000 (06:57:49 PM): what ya mean
melanie_s998 (06:58:20 PM): cuz u keep sayin differnt stuff all the time
danger6552000 (06:58:39 PM): well I want to but I cant
danger6552000 (06:58:47 PM): but when ur 16 I can
melanie_s998 (06:59:03 PM): thats 3 years away
danger6552000 (06:59:44 PM): I know but it woudl be worht wating
melanie_s998 (06:59:55 PM): i dunno
danger6552000 (07:00:15 PM): I think so
danger6552000 (07:00:17 PM): I am willing

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melanie_s998 (07:00:38 PM): i might find a bf b4 then
 danger6552000 (07:00:57 PM): well if u do I understand but I want u very much
 melanie_s998 (07:01:20 PM): i dont believe u
 danger6552000 (07:01:41 PM): why not
 melanie_s998 (07:01:57 PM): cuz u jus wanna cyber
 danger6552000 (07:02:15 PM): not I want it all
 melanie_s998 (07:02:34 PM): well u jus cyber
 danger6552000 (07:02:50 PM): I can go to jail if we did ti for real
 melanie_s998 (07:03:30 PM): maybe we shouldnt chat them
 danger6552000 (07:04:00 PM): that is up to u I am ok witht hat
 melanie_s998 (07:04:15 PM): dont want u to get in truble
 danger6552000 (07:04:30 PM): I dont see how I can
 melanie_s998 (07:04:44 PM): huh?
 danger6552000 (07:05:17 PM): I think it is fine if we talk
 danger6552000 (07:05:21 PM): just cant meet
 danger6552000 (07:05:23 PM): right now
 melanie_s998 (07:05:50 PM): but why not
 danger6552000 (07:06:17 PM): it could put me in jail if we did now b/c if anyone found out I would go to jail
 melanie_s998 (07:06:27 PM): this sux
 melanie_s998 (07:06:46 PM): first dad gets new g/f now this
 danger6552000 (07:07:05 PM): dont be mad at me
 danger6552000 (07:07:09 PM): how can I make it up to u
 melanie_s998 (07:07:19 PM): i dont know
 melanie_s998 (07:07:24 PM): life just sux now
 danger6552000 (07:07:50 PM): y
 melanie_s998 (07:08:00 PM): 2 much bad stuff
 danger6552000 (07:08:07 PM): what is wrong
 melanie_s998 (07:08:14 PM): i tol u already
 danger6552000 (07:08:27 PM): so are u really upset about us
 melanie_s998 (07:08:37 PM): that 2
 danger6552000 (07:09:03 PM): why are u upset about it honey
 melanie_s998 (07:09:17 PM): cuz i miss my dad
 danger6552000 (07:09:23 PM): aww
 danger6552000 (07:09:26 PM): I am sorry
 melanie_s998 (07:09:45 PM): i wanna run away ffrom home
 danger6552000 (07:10:02 PM): dont do that
 danger6552000 (07:10:06 PM): wont make anything better
 melanie_s998 (07:10:41 PM): im jus sick of my life
 danger6552000 (07:11:15 PM): well it will get better and u have me
 melanie_s998 (07:11:24 PM): no i dont have u
 danger6552000 (07:11:30 PM): yes u do
 melanie_s998 (07:11:38 PM): not really
 danger6552000 (07:11:45 PM): why ya say that
 melanie_s998 (07:11:57 PM): cuz yur not here
 danger6552000 (07:12:22 PM): do u want me to be
 melanie_s998 (07:12:35 PM): yes
 danger6552000 (07:12:58 PM): how do u feel about me
 melanie_s998 (07:13:07 PM): i like u a LOT
 danger6552000 (07:13:37 PM): well I like u alot to honey I really do
 melanie_s998 (07:13:47 PM): ur sweet
 danger6552000 (07:14:22 PM): ty so r u
 danger6552000 (07:14:25 PM): I do baby
 danger6552000 (07:14:33 PM): I like u and I am very attracted to u
 melanie_s998 (07:14:43 PM): but what?
 danger6552000 (07:14:53 PM): no but
 melanie_s998 (07:15:38 PM): i hate this palce
 danger6552000 (07:15:56 PM): why
 melanie_s998 (07:16:29 PM): i tol u i wanna run away
 danger6552000 (07:16:40 PM): dont
 danger6552000 (07:17:23 PM): ok?
 melanie_s998 (07:17:55 PM): i jus wanna go somewhere
 danger6552000 (07:18:29 PM): well u dont need to just take some time for yourself alone and relax

melanie_s998 (07:18:57 PM): u jus dont understand
danger6552000 (07:19:16 PM): well I am here talk to me
melanie_s998 (07:19:34 PM): i dont wanna talk i wann leave
danger6552000 (07:19:45 PM): well it wont make it better
danger6552000 (07:19:54 PM): u need to just try to work thru it
melanie_s998 (07:20:07 PM): easy for u to say
danger6552000 (07:20:11 PM): I know
danger6552000 (07:20:15 PM): but I care about u
danger6552000 (07:20:28 PM): and even if it bad running form it wont help
danger6552000 (07:20:39 PM): besides u will just get taken back at some point
melanie_s998 (07:21:32 PM): i dont wanna go 4evah - i jus need to go somewhere
danger6552000 (07:21:52 PM): well ake to stay with a frind for a few days
danger6552000 (07:22:28 PM): have to run kiss bye
melanie_s998 (07:22:28 PM): ?

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danger6552000 (11:02:42 PM): hey
melanie_s998 (11:02:49 PM): hi
danger6552000 (11:02:55 PM): how r u
melanie_s998 (11:02:59 PM): ok
danger6552000 (11:03:10 PM): I have missed u
melanie_s998 (11:03:15 PM): ty
danger6552000 (11:03:24 PM): how r u feeling
melanie_s998 (11:03:32 PM): ok gues
danger6552000 (11:03:43 PM): think of me any
melanie_s998 (11:03:50 PM): yah
danger6552000 (11:03:57 PM): what ya think
melanie_s998 (11:04:11 PM): jus stuff
danger6552000 (11:04:19 PM): like
melanie_s998 (11:04:29 PM): jus stuff
melanie_s998 (11:04:35 PM): not in good mood - sry
danger6552000 (11:04:47 PM): aww why
melanie_s998 (11:04:58 PM): got in fight with mom
danger6552000 (11:05:05 PM): over
melanie_s998 (11:05:15 PM): dad an his new gf
danger6552000 (11:05:31 PM): what happened
melanie_s998 (11:05:52 PM): we jus got ina fight an was yellin
danger6552000 (11:06:06 PM): I am sorry
melanie_s998 (11:06:32 PM): i said i wanted to live with my dad an she got mad
danger6552000 (11:06:59 PM): I see
danger6552000 (11:07:02 PM): why do u
melanie_s998 (11:07:22 PM): dont rly not while his gf is ther
melanie_s998 (11:07:43 PM): mom said im tyrin to make his gf mad
danger6552000 (11:07:56 PM): r u
melanie_s998 (11:07:59 PM): yah
danger6552000 (11:08:12 PM): well u should not do that
melanie_s998 (11:08:28 PM): i don wanna loose my dad tho
danger6552000 (11:08:36 PM): u wont
danger6552000 (11:08:44 PM): just be there for him
melanie_s998 (11:08:58 PM): i gues so
melanie_s998 (11:09:05 PM): now stuff is worse at home tho
danger6552000 (11:09:19 PM): it will all work out
melanie_s998 (11:09:37 PM): i think mom is upset bout dads gf 2
danger6552000 (11:09:52 PM): she is prop takes time
melanie_s998 (11:10:29 PM): thot bout goin 2 sty with jen
danger6552000 (11:11:22 PM): well u can for a few days if they say ok
melanie_s998 (11:11:37 PM): i mean like running away
danger6552000 (11:11:51 PM): u should not
melanie_s998 (11:12:01 PM): i no
danger6552000 (11:12:13 PM): just ask and explain why
melanie_s998 (11:12:33 PM): mom would say no

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melanie_s998 (11:12:48 PM): sides i don wanna talk 2 her
danger6552000 (11:13:07 PM): well ask ur dad then
melanie_s998 (11:13:15 PM): cant dads in DS
melanie_s998 (11:13:17 PM): DC
danger6552000 (11:13:33 PM): well give it some time to settle down
melanie_s998 (11:13:40 PM): ez to say
danger6552000 (11:13:52 PM): try for me ok
melanie_s998 (11:14:19 PM): why dont thnk u rly care either
danger6552000 (11:15:14 PM): I do
danger6552000 (11:15:21 PM): I care alot about u baby
melanie_s998 (11:15:44 PM): nvr mind - ges im just mad at everone
danger6552000 (11:15:58 PM): its ok
danger6552000 (11:16:06 PM): so lets talk about us
melanie_s998 (11:16:15 PM): like what
danger6552000 (11:16:34 PM): what do u want to see with us
melanie_s998 (11:17:04 PM): i dunno u keep sayin wait til im 16
melanie_s998 (11:17:11 PM): but thats 3 yrs awya
danger6552000 (11:17:25 PM): what do u want to do
melanie_s998 (11:17:46 PM): i jus dont wanna be here
danger6552000 (11:17:55 PM): well with me
melanie_s998 (11:18:12 PM): u mean be with u
danger6552000 (11:18:21 PM): yes
melanie_s998 (11:18:33 PM): i think so
melanie_s998 (11:18:38 PM): yah - but still scared
danger6552000 (11:18:58 PM): what do u want us to do?
melanie_s998 (11:20:29 PM): i dunno - its hard 2 say since we nver rly met
melanie_s998 (11:20:35 PM): we just tlak on the puter
danger6552000 (11:21:01 PM): well what would u like
melanie_s998 (11:21:34 PM): im afraid somtims u might be lyin to me
melanie_s998 (11:21:58 PM): like u might be one of thos old guys that tyr to get kids
danger6552000 (11:22:12 PM): well i am not
melanie_s998 (11:22:37 PM): ur not like 60 r u?
danger6552000 (11:22:54 PM): no lol
melanie_s998 (11:23:20 PM): i cant member how old u said u was tho
melanie_s998 (11:23:39 PM): it wasnt that old but i dont rly know
danger6552000 (11:23:47 PM): 40
melanie_s998 (11:23:54 PM): k
danger6552000 (11:24:09 PM): thatok
melanie_s998 (11:24:20 PM): yah thas ok
melanie_s998 (11:24:32 PM): i wish i could see u tho
danger6552000 (11:24:44 PM): why
melanie_s998 (11:24:50 PM): jus a pic
danger6552000 (11:25:00 PM): do u have one
melanie_s998 (11:25:13 PM): no i tol u mom dleted all - member
melanie_s998 (11:25:30 PM): i dont have one on the puter jus reglar ones
danger6552000 (11:25:50 PM): well 5.11 green eyes brown hair 180 in very good shape
melanie_s998 (11:26:06 PM): i like green eyes
danger6552000 (11:26:13 PM): ty
melanie_s998 (11:26:34 PM): brb - k - i gotta get a coke
danger6552000 (11:26:55 PM): ok
melanie_s998 (11:29:39 PM): im back
danger6552000 (11:29:45 PM): missed u
melanie_s998 (11:29:49 PM): ty
danger6552000 (11:30:30 PM): so what do uhav on
melanie_s998 (11:30:43 PM): pjs now
danger6552000 (11:30:47 PM): under
melanie_s998 (11:30:55 PM): jus panties
danger6552000 (11:31:19 PM): god i wish i was with u
melanie_s998 (11:31:24 PM): why
danger6552000 (11:31:55 PM): I want to kiss u and more 🐱
melanie_s998 (11:32:06 PM): more waht
danger6552000 (11:32:26 PM): eat u, make love to u

melanie_s998 (11:32:41 PM): yah - u always say taht
 melanie_s998 (11:32:50 PM): dont think u mean it tho
 danger6552000 (11:32:59 PM): y dont u
 melanie_s998 (11:33:15 PM): ?
 danger6552000 (11:33:26 PM): what dont u think I mean it
 melanie_s998 (11:33:52 PM): i think u jus like to cyber with me
 danger6552000 (11:34:11 PM): I do but I want it to be real to
 melanie_s998 (11:34:32 PM): i thin ur jus teasin me
 danger6552000 (11:34:51 PM): nope
 melanie_s998 (11:35:05 PM): hmmm
 danger6552000 (11:36:45 PM): are u me
 melanie_s998 (11:36:52 PM): ?
 danger6552000 (11:37:02 PM): are u teaseing me
 melanie_s998 (11:37:14 PM): no
 danger6552000 (11:38:16 PM): what ya thinkin
 melanie_s998 (11:38:39 PM): stuf
 danger6552000 (11:39:03 PM): like
 melanie_s998 (11:39:17 PM): jus stuff silly
 danger6552000 (11:39:25 PM): like
 melanie_s998 (11:39:32 PM): not sayin
 melanie_s998 (11:40:07 PM): brb mom wants me
 danger6552000 (11:40:09 PM): please
 danger6552000 (11:47:05 PM): back?

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melanie_s998 (12:03:14 AM): im bak
 danger6552000 (12:03:26 AM): missed u
 melanie_s998 (12:03:36 AM): mom was tryin to make up
 danger6552000 (12:03:43 AM): good
 melanie_s998 (12:03:55 AM): ges so but im stil mad
 danger6552000 (12:04:09 AM): oh well
 danger6552000 (12:04:15 AM): so what do u want to do with me
 melanie_s998 (12:04:29 AM): u keep askin that
 danger6552000 (12:04:52 AM): well I want to know
 melanie_s998 (12:05:03 AM): ur sposed to say
 melanie_s998 (12:05:15 AM): i dont no all this stuff
 danger6552000 (12:05:32 AM): well how far ya want to go
 melanie_s998 (12:05:44 AM): i don wanna get pg
 danger6552000 (12:06:07 AM): u wont
 melanie_s998 (12:06:18 AM): but ppl do
 danger6552000 (12:07:18 AM): u wont
 melanie_s998 (12:07:34 AM): how u no 4 sure
 danger6552000 (12:08:01 AM): I will make sure u dont pull out condom ect
 melanie_s998 (12:08:19 AM): but it might hurt 2
 danger6552000 (12:08:32 AM): it wont very much
 melanie_s998 (12:08:45 AM): jen said it did 4 her first tim
 danger6552000 (12:08:59 AM): I know what I am doing
 melanie_s998 (12:09:25 AM): if we do u promise it wont hurt
 danger6552000 (12:09:40 AM): if it starts to we will stop
 melanie_s998 (12:10:01 AM): k
 danger6552000 (12:10:29 AM): so is that what ya want
 melanie_s998 (12:10:34 AM): yes
 danger6552000 (12:10:48 AM): how do u feel about me
 melanie_s998 (12:11:10 AM): i think ur sweet an nice
 melanie_s998 (12:11:16 AM): but still kina nervous
 danger6552000 (12:11:23 AM): about
 melanie_s998 (12:11:29 AM): bout doin it
 danger6552000 (12:11:42 AM): why is that
 melanie_s998 (12:11:53 AM): jus stuff that jen said
 melanie_s998 (12:12:12 AM): she says it feels good now but not first time
 danger6552000 (12:12:37 AM): it will be ok

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melanie_s998 (12:12:43 AM): ok
danger6552000 (12:12:56 AM): do u turst me
melanie_s998 (12:13:18 AM): yah but jus dont let mymom fin out
danger6552000 (12:13:28 AM): lol no shit
melanie_s998 (12:13:43 AM): pls dont say that
danger6552000 (12:13:59 AM): y
melanie_s998 (12:14:03 AM): that word
danger6552000 (12:14:18 AM): ok
danger6552000 (12:14:23 AM): what ya thinking
melanie_s998 (12:14:50 AM): jus if its relly gonna happne
danger6552000 (12:15:06 AM): do u really want it to
melanie_s998 (12:15:27 AM): yah - i tol u already
danger6552000 (12:15:34 AM): ok
danger6552000 (12:15:39 AM): then it will
melanie_s998 (12:15:44 AM): when
danger6552000 (12:15:59 AM): u tell me
melanie_s998 (12:16:16 AM): where could we do it
danger6552000 (12:16:42 AM): rom
danger6552000 (12:16:44 AM): room
melanie_s998 (12:16:55 AM): u mean a hotel
danger6552000 (12:17:01 AM): yes
melanie_s998 (12:17:13 AM): i dont drive member?
danger6552000 (12:17:47 AM): i know
danger6552000 (12:18:23 AM): pick ya up
melanie_s998 (12:18:29 AM): not at my house
danger6552000 (12:18:42 AM): no
danger6552000 (12:18:49 AM): mall store ect
melanie_s998 (12:19:01 AM): we got a mall in spartanburg
danger6552000 (12:19:18 AM): ok
melanie_s998 (12:19:34 AM): it would have to be a Sat
danger6552000 (12:19:45 AM): k
danger6552000 (12:21:10 AM): what ya thinking
melanie_s998 (12:22:42 AM): tryin to think bout how to get to the mall
danger6552000 (12:23:27 AM): so when do u want to
melanie_s998 (12:24:15 AM): any sat is ok - i jus gotta get jen's brohter to drive me
melanie_s998 (12:24:22 AM): cant stay all day tho
danger6552000 (12:24:43 AM): ok how long
melanie_s998 (12:25:06 AM): be home by 8?
danger6552000 (12:25:14 AM): pm
melanie_s998 (12:25:28 AM): yah - i can say i went to movies
danger6552000 (12:25:42 AM): when would u start
melanie_s998 (12:26:12 AM): mall opens at 9, but prolly get there bout 11
danger6552000 (12:26:20 AM): ok
melanie_s998 (12:26:44 AM): so ur really not teasin me
danger6552000 (12:27:00 AM): do u want to wait
melanie_s998 (12:27:07 AM): 4 waht
danger6552000 (12:27:20 AM): till ur 16
melanie_s998 (12:27:28 AM): no
danger6552000 (12:27:46 AM): why not
melanie_s998 (12:28:06 AM): ur jus teasin again
danger6552000 (12:28:23 AM): no i want to know
melanie_s998 (12:28:38 AM): i dont know why - i just want to
danger6552000 (12:28:44 AM): ok
danger6552000 (12:28:59 AM): and u r sure u want to with me
melanie_s998 (12:29:11 AM): yes
danger6552000 (12:29:20 AM): ok
danger6552000 (12:30:14 AM): what ya thinking
melanie_s998 (12:30:23 AM): bout when
danger6552000 (12:30:34 AM): when what
melanie_s998 (12:30:49 AM): u ARE jus teasing
danger6552000 (12:30:56 AM): no i am not
melanie_s998 (12:30:57 AM): im not tlakin ne more

melanie_s998 (12:31:00 AM): bye
danger6552000 (12:31:02 AM): I want to make love to u
melanie_s998 (12:31:33 AM): no u dont
danger6552000 (12:31:38 AM): yes it do
danger6552000 (12:31:46 AM): I am hard right now thinking about it
melanie_s998 (12:32:04 AM): then when
danger6552000 (12:32:21 AM): when is good for u
melanie_s998 (12:32:44 AM): u not workin at the vet office on sat
danger6552000 (12:33:05 AM): i can be off when i want
melanie_s998 (12:33:19 AM): ok then sat
danger6552000 (12:33:31 AM): k
melanie_s998 (12:34:04 AM): ill ask jens brohter if he will take me
danger6552000 (12:34:15 AM): k
danger6552000 (12:34:32 AM): will u suck me
melanie_s998 (12:35:10 AM): i nvr done that
danger6552000 (12:35:29 AM): well I assume alot of this will be new 🐾
melanie_s998 (12:35:38 AM): ill try
danger6552000 (12:36:01 AM): cant wait to be in ur hand
melanie_s998 (12:36:48 AM): will u really come this sat
danger6552000 (12:36:54 AM): yes
melanie_s998 (12:37:20 AM): how will i know u - what kina car
danger6552000 (12:37:51 AM): black ford mustang 2006
melanie_s998 (12:38:12 AM): ok
melanie_s998 (12:38:26 AM): ill chat more l8r when i talk to jen
danger6552000 (12:38:35 AM): u going
melanie_s998 (12:38:41 AM): yah mom said to get off
danger6552000 (12:38:52 AM): dont go
melanie_s998 (12:39:03 AM): i have to shes already mad at me
danger6552000 (12:39:22 AM): sneak back on hhe
melanie_s998 (12:39:28 AM): btr not
melanie_s998 (12:39:40 AM): u not gonna forget bout sat right
danger6552000 (12:39:57 AM): why would I
danger6552000 (12:40:03 AM): u have me hot as hell
melanie_s998 (12:40:19 AM): promise you come here cross ur heart
danger6552000 (12:40:29 AM): i want to make u happy
melanie_s998 (12:40:37 AM): k - i glg
danger6552000 (12:40:43 AM): kiss
melanie_s998 (12:40:51 AM): 🐾
danger6552000 (12:41:01 AM): 🐾

20060501

danger6552000 (06:49:23 PM): hey
melanie_s998 (06:49:33 PM): hlo
danger6552000 (06:49:52 PM): how ru
melanie_s998 (06:49:56 PM): ok i ges
danger6552000 (06:50:09 PM): why ok
melanie_s998 (06:50:18 PM): stil mad at mom
danger6552000 (06:50:21 PM): ok
danger6552000 (06:50:25 PM): so think of me any
melanie_s998 (06:50:40 PM): well yah think of u alot
danger6552000 (06:50:55 PM): really
danger6552000 (06:50:56 PM): what
melanie_s998 (06:51:20 PM): bout waht u said this weekend
danger6552000 (06:51:33 PM): really what did u think of it
melanie_s998 (06:51:45 PM): still dont think ur comin
danger6552000 (06:51:59 PM): ok
danger6552000 (06:52:12 PM): so have u been thinking of kissing me
danger6552000 (06:52:15 PM): me licking u
melanie_s998 (06:52:46 PM): yah some

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danger6552000 (06:53:18 PM):
feel ur legs over my sholder my tounge deep inside u as I move up under ur clit lifting it while lookint into ur eyes
melanie_s998 (06:53:42 PM): ur jus playin again
danger6552000 (06:53:59 PM): nope
melanie_s998 (06:54:28 PM): think u r
danger6552000 (06:54:52 PM): well I am not
melanie_s998 (06:55:32 PM): u realy got a mustang
danger6552000 (06:55:47 PM): yes
melanie_s998 (06:55:59 PM): awesome
danger6552000 (06:56:30 PM): cool
melanie_s998 (06:56:35 PM): when u get it
danger6552000 (06:56:43 PM): had it about 6 months
melanie_s998 (06:57:21 PM): u rely gonna drive it here
danger6552000 (06:57:54 PM): yes
melanie_s998 (06:58:09 PM): u still comin this sat?
danger6552000 (06:58:19 PM): yes so far looks good
melanie_s998 (06:58:50 PM): k where we gonna go
melanie_s998 (07:00:22 PM): u there?
danger6552000 (07:00:41 PM): yes
danger6552000 (07:00:44 PM): up to u
melanie_s998 (07:01:01 PM): nope ur drivin
danger6552000 (07:01:57 PM): well back to the room for one lol
melanie_s998 (07:02:11 PM): u got a room already
danger6552000 (07:02:34 PM): I am booking it tommorrow
melanie_s998 (07:02:59 PM): where
danger6552000 (07:03:11 PM): close to t he mall
melanie_s998 (07:03:16 PM): k
melanie_s998 (07:03:25 PM): i gotta be home by 8 tho
danger6552000 (07:03:28 PM): ok
danger6552000 (07:03:34 PM): what do u want to do
melanie_s998 (07:03:45 PM): stuff u said b4
danger6552000 (07:04:21 PM): u want it all
melanie_s998 (07:04:26 PM): all waht
danger6552000 (07:04:34 PM): go all the way
melanie_s998 (07:04:43 PM): i tol u if it dont hurt
danger6552000 (07:04:51 PM): ok
danger6552000 (07:04:55 PM): I so want to kiss u
melanie_s998 (07:04:59 PM): me 2
danger6552000 (07:05:11 PM): so what do u want to do most
melanie_s998 (07:05:18 PM): see you
danger6552000 (07:05:40 PM): then
melanie_s998 (07:05:57 PM): up 2 u
danger6552000 (07:06:20 PM): I so want to be deep inside u
melanie_s998 (07:06:41 PM): jus dont wanna get pg
danger6552000 (07:07:08 PM): u wont
melanie_s998 (07:07:12 PM): promise
danger6552000 (07:07:21 PM): yes
danger6552000 (07:07:40 PM): what ya have on
melanie_s998 (07:08:04 PM): jeans an a tshirt
danger6552000 (07:08:10 PM): under?
melanie_s998 (07:08:20 PM): u alrady no
danger6552000 (07:08:33 PM): color
melanie_s998 (07:08:43 PM): what
danger6552000 (07:09:37 PM): what color bra and panrites
melanie_s998 (07:09:44 PM): white of cours
danger6552000 (07:10:06 PM): nice
danger6552000 (07:10:12 PM): so what will u have on sat
melanie_s998 (07:10:25 PM): what u want me 2 wear
danger6552000 (07:10:36 PM): up to u
melanie_s998 (07:10:41 PM): what u like
danger6552000 (07:10:49 PM): anything on u is nice
melanie_s998 (07:11:00 PM): u dont no that

danger6552000 (07:11:51 PM): well I think so
 melanie_s998 (07:12:10 PM): ty
 danger6552000 (07:12:19 PM): welcome
 danger6552000 (07:12:33 PM): what ya thinkinhg
 melanie_s998 (07:12:38 PM): bout waht
 danger6552000 (07:12:44 PM): me
 melanie_s998 (07:12:55 PM): what its gonna be like
 danger6552000 (07:13:18 PM): it will feel very wonderful
 melanie_s998 (07:13:23 PM): hope so
 danger6552000 (07:13:41 PM): it will
 melanie_s998 (07:13:53 PM): good
 danger6552000 (07:15:03 PM): so how much do u want it
 melanie_s998 (07:15:42 PM): i want to see u
 danger6552000 (07:15:49 PM): how much
 melanie_s998 (07:15:57 PM): lots
 danger6552000 (07:16:06 PM): I want to feel u suck me
 melanie_s998 (07:16:20 PM): k
 danger6552000 (07:16:37 PM): do u want to
 melanie_s998 (07:16:44 PM): i can try
 danger6552000 (07:17:29 PM): would feel so good
 danger6552000 (07:17:34 PM): and have u jack me off
 melanie_s998 (07:17:56 PM): ok
 danger6552000 (07:18:28 PM): make me cum for u
 melanie_s998 (07:18:34 PM): k
 danger6552000 (07:18:54 PM): what ya thnking
 melanie_s998 (07:19:02 PM): bout what 2 do
 melanie_s998 (07:19:08 PM): im scare i wont do it rite
 danger6552000 (07:19:20 PM): u will do fine
 melanie_s998 (07:19:27 PM): k
 melanie_s998 (07:19:31 PM): hope so
 danger6552000 (07:20:24 PM): u will be good
 danger6552000 (07:20:32 PM): just do what feels good to u
 melanie_s998 (07:20:36 PM): k
 danger6552000 (07:20:48 PM): I hate to but I have to run I will talk to u soon and will be thing about you
 melanie_s998 (07:20:56 PM): k

20060503

melanie_s998 (01:02:33 PM): r u on?
 melanie_s998 (04:36:03 PM): r u on yet?
 danger6552000 [melanie_s998 offline] (05:05:07 PM): mis u

20060504

danger6552000 (05:51:12 PM): hey
 melanie_s998 (05:51:22 PM): hi wher u bin
 danger6552000 (05:51:30 PM): good u
 melanie_s998 (05:51:38 PM): no - where u been
 danger6552000 (05:52:02 PM): working
 melanie_s998 (05:52:14 PM): i tried to pm u ysterdy
 danger6552000 (05:52:25 PM): I was not on
 melanie_s998 (05:52:29 PM): i hadda go to a church thing with mom
 danger6552000 (05:52:37 PM): o ok
 melanie_s998 (05:52:50 PM): r u still comin on sat?
 danger6552000 (05:53:10 PM): yes
 melanie_s998 (05:53:20 PM): got a prblm tho
 danger6552000 (05:53:37 PM): what
 melanie_s998 (05:53:40 PM): jen and family goin to carowinds so I cant meet u at the mall
 danger6552000 (05:54:11 PM): ok well we can do it some other time
 melanie_s998 (05:54:47 PM): i culd meet u smwhere else if its smwher i culd walk too
 danger6552000 (05:55:13 PM): no we should wait till it all is working

melanie_s998 (05:55:25 PM): 😊
danger6552000 (05:55:39 PM): its ok we can next week
melanie_s998 (05:56:07 PM): i could meet u at the elem school nr my hous
danger6552000 (05:56:23 PM): we cant wait it will be col
danger6552000 (05:56:25 PM): cool
danger6552000 (05:56:27 PM): can
melanie_s998 (05:56:44 PM): im SOOOOOOOOOOOO disappointed
melanie_s998 (05:56:49 PM): 😞
danger6552000 (05:56:55 PM): aww why baby
melanie_s998 (05:57:10 PM): cos i wnted 2 c u!!!!!!!!!!!!!!!!!!!!
danger6552000 (05:57:23 PM): u will
melanie_s998 (05:57:32 PM): u promis?
danger6552000 (05:57:43 PM): yes
melanie_s998 (05:58:05 PM): i was looking forward to it tho
danger6552000 (05:58:19 PM): me to
melanie_s998 (05:58:32 PM): did u already get the room?
danger6552000 (05:58:41 PM): no prob
danger6552000 (05:58:47 PM): cancelling it easy
melanie_s998 (05:59:17 PM): now im sad 😞
danger6552000 (05:59:21 PM): dotn be
danger6552000 (05:59:31 PM): just will be even better hehe
melanie_s998 (05:59:54 PM): dunno what im goona do this wknd now
melanie_s998 (06:00:03 PM): cant hang out with jen
danger6552000 (06:00:12 PM): we will talk
danger6552000 (06:00:14 PM): I am sure
melanie_s998 (06:00:28 PM): hope so
danger6552000 (06:00:29 PM): so have u been thinking about it
melanie_s998 (06:00:40 PM): well yah
melanie_s998 (06:00:46 PM): its all i bn thkn bout
danger6552000 (06:00:52 PM): really
danger6552000 (06:00:56 PM): what have you thought
melanie_s998 (06:01:09 PM): bout really seein you
melanie_s998 (06:01:17 PM): FINALLY!!!!!!!!!!!!!!!!!!!!
danger6552000 (06:01:31 PM): lol what ya mean
melanie_s998 (06:01:43 PM): i only seen u in my mind
melanie_s998 (06:01:50 PM): how cum u nvr sent me a pic
danger6552000 (06:02:22 PM): I dont have one of u
melanie_s998 (06:02:45 PM): i no - but mom took all mine off
danger6552000 (06:02:50 PM): ok
danger6552000 (06:03:01 PM): so what else ya think of
melanie_s998 (06:03:17 PM): u culd send me one?
danger6552000 (06:03:38 PM): I dont have one
melanie_s998 (06:03:41 PM): k
danger6552000 (06:04:02 PM): so what ya have on
melanie_s998 (06:04:41 PM): got my pjs on rite now
danger6552000 (06:04:50 PM): under
melanie_s998 (06:05:01 PM): nuthin - hee hee
danger6552000 (06:05:15 PM): omfg
danger6552000 (06:05:35 PM): wish I was there
melanie_s998 (06:05:37 PM): ?
danger6552000 (06:05:42 PM): so have u cum thinking of me
melanie_s998 (06:06:00 PM): hang on 4 a sec
danger6552000 (06:06:25 PM): I need to run for now anyway I will be on tonight
danger6552000 (06:06:28 PM): kis bye for now
melanie_s998 (06:06:34 PM): k - bye

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melanie_s998 (12:26:55 PM): sry - i msd u las nite - 2 much homework
melanie_s998 (12:27:28 PM): im stil sad bout this wknd 😞

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danger6552000 (05:34:41 PM): miss ya

20060510

melanie_s998 (08:47:55 AM): hey -

u gonna be on thursday? Jen's bro got a new web cam an gave her the old one. i'm gonna try to hook it up on my puter

- u thnk u cn help me make it wrk? cant do it tonite cuz we got church 😊

20060511

melanie_s998 (09:28:15 AM): u not gonna talk to me en more? 😊

melanie_s998 (05:07:59 PM): hey - i got the web cam - can u help me hook it up

melanie_s998 (05:38:45 PM): /goto shy_n_sc

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

State of South Carolina,

vs.

John Doe,
(a.k.a. User Name "danger6552000"),
Defendant.

IN THE CIRCUIT COURT
FIFTH JUDICIAL CIRCUIT

CASE NO: 7006-2000

BARBARA A. SCOTT
C.C.C. & G.S.

2006 MAY -8 PM 4:50

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ORDER

This matter having come before the court pursuant to an application under Title 18, United States Code, Section 2703(e), which application requests the issuance of an order under Title 18, United States Code, Section 2703(d), directing Yahoo, Inc. an electronic communications service provider and a remote computing service, located at 701 First Avenue, Sunnyvale, CA 94089, to disclose certain records and other information, as set forth in Attachment 1, the court finds that the applicant has offered specific and articulable facts showing that there are reasonable grounds to believe that the records or other information sought are relevant and material to an ongoing criminal investigation.

IT APPEARING that the information sought is relevant and material to an ongoing criminal investigation, and that prior notice of this Order to any person of this investigation, or this application and order, by Yahoo, Inc. would seriously jeopardize the investigation of criminal solicitation of a minor.

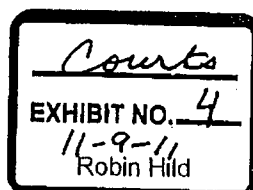
IT IS ORDERED pursuant to Title 18, United States Code, Section 2703(d) that Yahoo, Inc. will, within three (3) days of the date of this Order, turn over to agents of the Spartanburg County (S.C.) Sheriff's Office the records and other information as set forth in Attachment 1 to this Order.

IT IS FURTHER ORDERED that the application and this Order are sealed until otherwise ordered by the Court, and that Yahoo, Inc. shall not disclose the existence of the Application or this Order of the Court, or the existence of the investigation, to the listed subscriber or to any other person unless and until authorized to do so by the Court.


The Honorable G. Thomas Cooper, Jr.
Chief Administrative Judge
Fifth Judicial Circuit

5.8.06

Date



000662

ATTACHMENT 1

You are to provide the following information:

A. All customer or subscriber information for the Yahoo, Inc. account associated with the screen names, or user names, "danger6552000" or a Roge Wilson.

B. User connection logs and related IP address information for:

- (1) All accounts identified in Part A, from March 23, 2006, through the date of this Order; and
- (2) Yahoo Instant Messenger (IM) user connection logs for the following dates and times:

(a) May 4, 2006 between 5:51 PM EST and 6:06 PM EST.

User connection logs should contain the following:

1. Connection time and date;
2. Disconnect time and date;
3. Method of connection to system (e.g., SLIP, PPP, Shell);
4. Data transfer volume (e.g., bytes);
5. Connection information for other systems to which user connected, including:
 - a. Connection destination;
 - b. Connection time and date;
 - c. Disconnect time and date;
 - d. Method of connection to system (e.g., telnet, ftp, http);
 - e. Data transfer volume (e.g., bytes); and
6. any other relevant routing information

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE CIRCUIT COURT
FIFTH JUDICIAL CIRCUIT

State of South Carolina,

CASE NO: 7005-2000

vs.

John Doe,
(a.k.a. User Name "danger6552000")
Defendant.

FILED
2006 APR 26 PM 4:11
BARBARA A. SUGG
C.C.C. & G.S.

ORDER

This matter having come before the court pursuant to an application under Title 18, United States Code, Section 2703(c), which application requests the issuance of an order under Title 18, United States Code, Section 2703(d), directing BellSouth Internet Service an electronic communications service provider and a remote computing service, located at 575 Morosgo Drive NE, Room 5D42, Atlanta, GA 30324, to disclose certain records and other information, as set forth in Attachment 1, the court finds that the applicant has offered specific and articulable facts showing that there are reasonable grounds to believe that the records or other information sought are relevant and material to an ongoing criminal investigation.

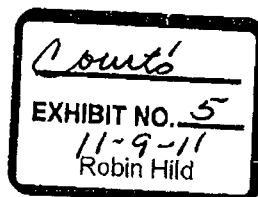
IT APPEARING that the information sought is relevant and material to an ongoing criminal investigation, and that prior notice of this Order to any person of this investigation, or this application and order, by BellSouth Internet Service would seriously jeopardize the investigation of criminal solicitation of a minor.

IT IS ORDERED pursuant to Title 18, United States Code, Section 2703(d) that BellSouth Internet Service will, within three (3) days of the date of this Order, turn over to agents of the Spartanburg County Sheriff's Office the records and other information as set forth in Attachment 1 to this Order.

IT IS FURTHER ORDERED that the application and this Order are sealed until otherwise ordered by the Court, and that BellSouth Internet Service shall not disclose the existence of the Application or this Order of the Court, or the existence of the investigation, to the listed subscriber or to any other person unless and until authorized to do so by the Court.

[Signature]
The Honorable James W. Johnson, Jr.
Chief Administrative Judge
State Grand Jury

#1
4/26/06
Date



000664

ATTACHMENT 1

You are to provide the following information:

- A. All customer or subscriber information for the BellSouth Internet Service account associated with the Internet Protocol (IP) address 68.220.79.51 on March 21, 2006 from 3:50 PM EST through 4:59 PM EST.

For each such account, the information shall include:

1. The subscriber's account and login name(s);
 2. The subscriber's current and previous address, if any;
 3. The subscriber's telephone number or numbers;
 4. The subscriber's registration IP (and time/date of registration);
 5. The subscriber's related BellSouth Internet Service accounts, including but not limited to Yahoo Instant Messenger (IM) accounts;
 6. Any other information pertaining to the identity of the subscriber, including, but not limited to billing information (including type and number of credit cards, student identification number, or other identifying information).
- B. User connection logs and related IP address information for all accounts identified in Part A, above, from March 12, 2006, through the date of this Order.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

State of South Carolina,

vs.

John Doe,
(a.k.a. User Name "danger6552000"),
Defendant.

IN THE CIRCUIT COURT
FIFTH JUDICIAL CIRCUIT

CASE NO: 7006-2000

BARBARA A. SCOTT
C.C.C. & G.S.

2006 MAY -8 PM 4:50

FILED

ORDER

This matter having come before the court pursuant to an application under Title 18, United States Code, Section 2703(c), which application requests the issuance of an order under Title 18, United States Code, Section 2703(d), directing Yahoo, Inc. an electronic communications service provider and a remote computing service, located at 701 First Avenue, Sunnyvale, CA 94089, to disclose certain records and other information, as set forth in Attachment 1, the court finds that the applicant has offered specific and articulable facts showing that there are reasonable grounds to believe that the records or other information sought are relevant and material to an ongoing criminal investigation.

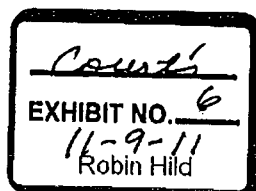
IT APPEARING that the information sought is relevant and material to an ongoing criminal investigation, and that prior notice of this Order to any person of this investigation, or this application and order, by Yahoo, Inc. would seriously jeopardize the investigation of criminal solicitation of a minor.

IT IS ORDERED pursuant to Title 18, United States Code, Section 2703(d) that Yahoo, Inc. will, within three (3) days of the date of this Order, turn over to agents of the Spartanburg County (S.C.) Sheriff's Office the records and other information as set forth in Attachment 1 to this Order.

IT IS FURTHER ORDERED that the application and this Order are sealed until otherwise ordered by the Court, and that Yahoo, Inc. shall not disclose the existence of the Application or this Order of the Court, or the existence of the investigation, to the listed subscriber or to any other person unless and until authorized to do so by the Court.


The Honorable G. Thomas Cooper, Jr.
Chief Administrative Judge
Fifth Judicial Circuit

5-8-06
Date



000666

ATTACHMENT 1

You are to provide the following information:

- A. All customer or subscriber information for the Yahoo, Inc. account associated with the screen names, or user names, "danger6552000" or a Roge Wilson.
- B. User connection logs and related IP address information for:
 - (1) All accounts identified in Part A, from March 23, 2006, through the date of this Order; and
 - (2) Yahoo Instant Messenger (IM) user connection logs for the following dates and times:
 - (a) May 4, 2006 between 5:51 PM EST and 6:06 PM EST.

User connection logs should contain the following:

- 1. Connection time and date;
- 2. Disconnect time and date;
- 3. Method of connection to system (e.g., SLIP, PPP, Shell);
- 4. Data transfer volume (e.g., bytes);
- 5. Connection information for other systems to which user connected, including:
 - a. Connection destination;
 - b. Connection time and date;
 - c. Disconnect time and date;
 - d. Method of connection to system (e.g., telnet, ftp, http);
 - e. Data transfer volume (e.g., bytes); and
- 6. any other relevant routing information

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE CIRCUIT COURT
FIFTH JUDICIAL CIRCUIT

State of South Carolina,

CASE NO: 7005-2000

vs.

John Doe,
(a.k.a. User Name "danger6552000")
Defendant.

2006 MAR 24 AM 9:10
BARBARA A. SCOTT
C.C. & G.S.
RICHLAND COUNTY

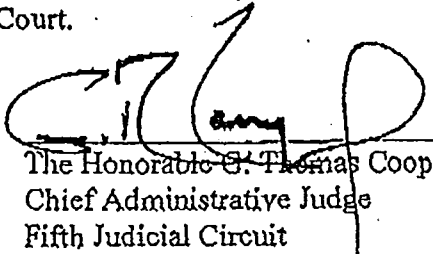
ORDER

This matter having come before the court pursuant to an application under Title 18, United States Code, Section 2703(c), which application requests the issuance of an order under Title 18, United States Code, Section 2703(d), directing Yahoo, Inc. an electronic communications service provider and a remote computing service, located at 701 First Avenue, Sunnyvale, CA 94089, to disclose certain records and other information, as set forth in Attachment 1, the court finds that the applicant has offered specific and articulable facts showing that there are reasonable grounds to believe that the records or other information sought are relevant and material to an ongoing criminal investigation.

IT APPEARING that the information sought is relevant and material to an ongoing criminal investigation, and that prior notice of this Order to any person of this investigation, or this application and order, by Yahoo, Inc. would seriously jeopardize the investigation of criminal solicitation of a minor.

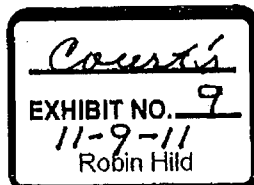
IT IS ORDERED pursuant to Title 18, United States Code, Section 2703(d) that Yahoo, Inc. will, within three (3) days of the date of this Order, turn over to agents of the State Law Enforcement Division the records and other information as set forth in Attachment 1 to this Order.

IT IS FURTHER ORDERED that the application and this Order are sealed until otherwise ordered by the Court, and that Yahoo, Inc. shall not disclose the existence of the Application or this Order of the Court, or the existence of the investigation, to the listed subscriber or to any other person unless and until authorized to do so by the Court.


The Honorable G. Thomas Cooper, Jr.
Chief Administrative Judge
Fifth Judicial Circuit

3-24-06

Date



000668

ATTACHMENT 1

You are to provide the following information:

- A. All customer or subscriber information for the Yahoo, Inc. account associated with the screen names, or user names, "danger6552000" or a Roge Wilson.

For each such account, the information shall include:

1. The subscriber's account and login name(s);
2. The subscriber's current and previous address, if any;
3. The subscriber's telephone number or numbers;
4. The subscriber's registration IP (and time/date of registration);
5. The subscriber's related Yahoo, Inc. accounts, including but not limited to Yahoo Instant Messenger (IM) accounts;
6. Any other information pertaining to the identity of the subscriber, including, but not limited to billing information (including type and number of credit cards, student identification number, or other identifying information).

- B. User connection logs and related IP address information for:

- (1) All accounts identified in Part A, from March 12, 2006, through the date of this Order; and
- (2) Yahoo Instant Messenger (IM) user connection logs for the following dates and times:

- (a) March 21, 2006 between 3:50 PM EST and 5:00 PM EST.

User connection logs should contain the following:

1. Connection time and date;
2. Disconnect time and date;
3. Method of connection to system (e.g., SLIP, PPP, Shell);
4. Data transfer volume (e.g., bytes);
5. Connection information for other systems to which user connected, including:
 - a. Connection destination;
 - b. Connection time and date;
 - c. Disconnect time and date;
 - d. Method of connection to system (e.g., telnet, ftp, http);
 - e. Data transfer volume (e.g., bytes); and
6. any other relevant routing information

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE CIRCUIT COURT
FIFTH JUDICIAL CIRCUIT

State of South Carolina,

CASE NO: 7005-2000

vs.

John Doe,
(a.k.a. User Name "danger6552000"),
Defendant.

(Filed Under Seal)

APPLICATION

COMES NOW the State of SOUTH CAROLINA, by and through the undersigned Assistant Attorney General, and hereby files, under seal, this *ex parte* application for an order pursuant to 18 U.S.C. §2703(d) to require Yahoo, Inc., located at 701 First Avenue, Sunnyvale, CA 94089, to provide records and other information pertaining to the subscriber as outlined in Attachment 1.

FACTUAL BACKGROUND

On March 12, 2006, Investigator Lindsey McGraw of the Spartanburg County Sheriff's Office logged onto Yahoo! utilizing an undercover persona of a thirteen year-old girl with the screen name "Melanie_s998", for the purpose of working an online proactive investigation. Melanie_s998 has a profile page on Yahoo that indicates that she is a thirteen year old female from Boiling Springs, South Carolina. After entering into a Yahoo South Carolina chat room at approximately 12:50 AM EST, an individual using the screen name "danger6552000" made contact with Melanie_s998 and entered into a private chat with her. When asked his age by Melanie_s998, danger6552000 responded, "well if ur 13 I am alot older lol." danger6552000 identified himself as a veterinarian from the Aiken area named "Carson." When Melanie_s998 described her size, hair and eye color, danger6552000 asked "ass? bra size?" Melanie_s998 described her mother and father and what her mother was doing in the house at the time. Within 27 minutes of the beginning of the chat session, danger6552000 initiated an explicit, sexually-oriented conversation with Melanie_s998, graphically describing performing oral sex on Melanie_s998 while fondling her breasts. danger6552000 sent a similar message a few lines later in the chat, even after Melanie_s998 stated that she "felt weird" talking about those things and that, "that stuff sounds too grownup." When Melanie_s998 stated that she feared that her mother would catch her chatting with danger6552000, he responded, "if she comes by just x out the im." Later in the chat on March 12, 2006, danger6552000 asked in explicit language what sexual experiences that Melanie_s998 had taken part in, and if she knew how to "masturbate." On March 13 - 15, 2006, danger6552000 reached out via Yahoo Instant Messenger (IM) to chat. These subsequent chats contained sexually explicit communication similar to what is described above at various points, with danger6552000 asking Melanie_s998 several times to digitally penetrate herself while they chatted. During the March 15 chat, danger6552000 asked Melanie_s998, "how bad do you want me to have sex with you?" On March 21, 2006,

danger6552000 again contacted Melanie_s998 via Yahoo! IM and engaged in sexually explicit conversation. danger6552000 asked Melanie_s998, "have u cum thinking of me" and "are u wet?" danger6552000 again graphically coached Melanie_s998 on how to masturbate herself while he talked about performing sex acts on her, and later asked "want to have sex[?]" All of the sexually explicit chat took place shortly after Melanie_s998 talked about having to go to a parent teacher conference that all of the 7th graders had to attend.

Based on his training and experience, Inv. McGraw believes that the individual associated with the screen name danger6552000 intends to travel to Spartanburg County to engage in sexual activity with whom he believes to be a thirteen year-old girl named "Melanie." Accordingly, subscriber and account log information is therefore being sought from Yahoo, Inc. for this ongoing investigation of criminal solicitation of a minor.

LEGAL BACKGROUND

18 U.S.C. § 2703 sets out particular requirements that the State must meet in order to obtain access to the records and other information in the possession of providers of "electronic communications services" and/or "remote computing services." Yahoo, Inc. functions both as an electronic communications service provider -- that is, it provides its subscribers access to electronic communication services, including e-mail and the Internet -- and as a remote computing service provider -- it provides computer facilities for the storage and processing of electronic communications -- as those terms are used in 18 U.S.C. § 2703.

1. Here, the State seeks to obtain two categories of records: (1) basic subscriber information; and (2) records and other information, including connection logs, pertaining to a certain subscriber.¹

2. To obtain basic subscriber information, such as the subscriber's name, address, billing information, and other identifying records, the State needs only a subpoena; however, the State may also compel such information through an order issued pursuant to section 2703(d). See 18 U.S.C. § 2703(c)(1)(B). To obtain other types of records and information pertaining to the subscribers or customers of service providers, including connection logs and other audit information, the State must comply with the dictates of sections 2703(c)(1)(B) and 2703(d). Section 2703(c)(1)(B) provides, in pertinent part:

A governmental entity may require a provider of electronic communication service or remote computing service to disclose a record or other information pertaining to a

¹ The State does not seek the contents of any electronic communications, whether or not in electronic storage. "Electronic Storage" is a term of art, specifically defined in 18 U.S.C. § 2510(17) as "(A) any temporary, intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof; and any storage of such communication by an electronic communication service for purposes of backup protection of such communication." Communications not in "electronic storage" include any e-mail communications received by the specified accounts that the owner or user of the account has already accessed, viewed, or downloaded.

subscriber to or customer of such service (not including the contents of communications) only when the governmental entity . . . obtains a court order for such disclosure under subsection (d) of this section.

3. All of the information the State seeks from Yahoo, Inc. through this application may be compelled through an order that complies with section 2703(d). Section 2703(d) provides as follows:

A court order for disclosure under subsection (b) or (c) may be issued by any court that is a court of competent jurisdiction² and shall issue only if the governmental entity offers specific and articulable facts showing that there are reasonable grounds to believe that the contents of a wire or electronic communication, or the records or other information sought, are relevant and material to an ongoing criminal investigation. In the case of a State governmental authority, such a court order shall not issue if prohibited by the law of such State. A court issuing an order pursuant to this section, on a motion made promptly by the service provider, may quash or modify such order, if the information or records requested are unusually voluminous in nature or compliance with such order otherwise would cause an undue burden on such provider.

4. Thus, the burden on the State to obtain such an order is to present specific facts showing reasonable grounds to believe that the material sought is relevant to an ongoing criminal investigation. In the instant case, the materials sought will provide more conclusive information as to the actual identity of the individual associated with the Yahoo screen name danger6552000, and from what particular location that individual transmitted sexually explicit online messages for the purpose of meeting for sexual activity a person whom he reasonably believed to be a thirteen year-old girl. Accordingly, this application sets forth facts showing there are reasonable grounds to believe that the materials sought are relevant and material to the ongoing criminal investigation of criminal solicitation of a minor.

REQUESTED INFORMATION

The State requests that Yahoo, Inc. be directed to produce all records described in Attachment 1 to this Application. This information is directly relevant to identifying the individual(s) responsible for the crime under investigation. The information requested should be readily accessible to Yahoo, Inc. by computer search, and its production should not prove to be unduly burdensome.

1. The State of South Carolina requests that the Court seal this Application and Order until such

² The term "court of competent jurisdiction" includes "a court of general criminal jurisdiction of a State authorized by the law of that State to enter orders authorizing the use of a pen register or a trap and trace device." 18 U.S.C. § 3127(2)(B); see 18 U.S.C. § 2711(3) (stating that "court of competent jurisdiction" has the meaning assigned by § 3127); S.C. Code Ann. §§ 17-30-10 *et seq.* & §§ 17-29-10 *et seq.* (South Carolina statutes governing pen registers, trap and trace devices, and the interception of wire, electronic, or oral communications). Because 18 U.S.C. § 2703(d) expressly permits "any" such court to issue an order, this Court may enter an order directing the disclosure of such information even if the information is stored outside of this judicial circuit.

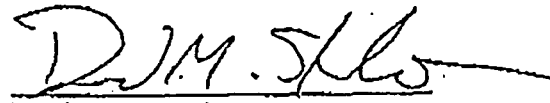
time as the court directs otherwise.

2. Pursuant to the preclusion of notice provisions of 18 U.S.C. § 2705(b), the State of South Carolina further requests that the Court order Yahoo, Inc. not to notify any person (including the subscriber or customer to which the materials relate) of the existence of this order for such period as the court deems appropriate. The State of South Carolina submits that such an order is justified because notification of the existence of this order could seriously jeopardize the ongoing investigation. Such a disclosure could give the subscriber an opportunity to conceal or destroy evidence, notify confederates, or flee or continue his flight from prosecution. None of the information sought in Attachment 1 requires notification of the subscriber. See 18 U.S.C. § 2703.

WHEREFORE, it is respectfully requested that the Court grant the attached Order, directing:

- (1) Yahoo, Inc. to provide the State of South Carolina with the records and information described in Attachment 1;
- (2) that the Application and Order be sealed; and
- (3) Yahoo, Inc. not to disclose the existence or content of the Order, except to the extent necessary to carry out the Order.

Respectfully Submitted,



David M. Stumbo
Assistant Attorney General

March 23, 2006
Columbia, South Carolina

ATTACHMENT 1

You are to provide the following information:

- A. All customer or subscriber information for the Yahoo, Inc. account associated with the screen names, or user names, "danger6552000" or a Roge Wilson.

For each such account, the information shall include:

1. The subscriber's account and login name(s);
2. The subscriber's current and previous address, if any;
3. The subscriber's telephone number or numbers;
4. The subscriber's registration IP (and time/date of registration);
5. The subscriber's related Yahoo, Inc. accounts, including but not limited to Yahoo Instant Messenger (IM) accounts;
6. Any other information pertaining to the identity of the subscriber, including, but not limited to billing information (including type and number of credit cards, student identification number, or other identifying information).

- B. User connection logs and related IP address information for:

- (1) All accounts identified in Part A, from March 12, 2006, through the date of this Order; and
- (2) Yahoo Instant Messenger (IM) user connection logs for the following dates and times:

- (a) March 21, 2006 between 3:50 PM EST and 5:00 PM EST.

User connection logs should contain the following:

1. Connection time and date;
2. Disconnect time and date;
3. Method of connection to system (e.g., SLIP, PPP, Shell);
4. Data transfer volume (e.g., bytes);
5. Connection information for other systems to which user connected, including:
 - a. Connection destination;
 - b. Connection time and date;
 - c. Disconnect time and date;
 - d. Method of connection to system (e.g., telnet, ftp, http);
 - e. Data transfer volume (e.g., bytes); and
6. any other relevant routing information.

EXHIBIT B

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE CIRCUIT COURT
FIFTH JUDICIAL CIRCUIT

State of South Carolina,

CASE NO: 7005-2000

vs,

John Doe,
(a.k.a. User Name "danger6552000")
Defendant.

2006 APR 26 PM 4:17
BARBARA A. STEVENS
C.C.C. & G.S.

FILED

ORDER

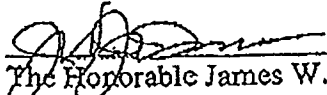
This matter having come before the court pursuant to an application under Title 18, United States Code, Section 2703(c), which application requests the issuance of an order under Title 18, United States Code, Section 2703(d), directing BellSouth Internet Service an electronic communications service provider and a remote computing service, located at 575 Morosgo Drive NE, Room 5D42, Atlanta, GA 30324, to disclose certain records and other information, as set forth in Attachment 1, the court finds that the applicant has offered specific and articulable facts showing that there are reasonable grounds to believe that the records or other information sought are relevant and material to an ongoing criminal investigation.

IT APPEARING that the information sought is relevant and material to an ongoing criminal investigation, and that prior notice of this Order to any person of this investigation, or this application and order, by BellSouth Internet Service would seriously jeopardize the investigation of criminal solicitation of a minor.

IT IS ORDERED pursuant to Title 18, United States Code, Section 2703(d) that BellSouth Internet Service will, within three (3) days of the date of this Order, turn over to agents of the Spartanburg County Sheriff's Office the records and other information as set forth in Attachment 1 to this Order.

IT IS FURTHER ORDERED that the application and this Order are sealed until otherwise ordered by the Court, and that BellSouth Internet Service shall not disclose the existence of the Application or this Order of the Court, or the existence of the investigation, to the listed subscriber or to any other person unless and until authorized to do so by the Court.

#1


The Honorable James W. Johnson, Jr.
Chief Administrative Judge
State Grand Jury

4/26/06
Date

ATTACHMENT 1

You are to provide the following information:

- A. All customer or subscriber information for the BellSouth Internet Service account associated with the Internet Protocol (IP) address 68.220.79.51 on March 21, 2006 from 3:50 PM EST through 4:59 PM EST.

For each such account, the information shall include:

1. The subscriber's account and login name(s);
 2. The subscriber's current and previous address, if any;
 3. The subscriber's telephone number or numbers;
 4. The subscriber's registration IP (and time/date of registration);
 5. The subscriber's related BellSouth Internet Service accounts;
 6. Any other information pertaining to the identity of the subscriber, including, but not limited to billing information (including type and number of credit cards, student identification number, or other identifying information).
- B. User connection logs and related IP address information for all accounts identified in Part A, from March 12, 2006, through the date of this Order.

ED
#2

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE CIRCUIT COURT
FIFTH JUDICIAL CIRCUIT

State of South Carolina,

CASE NO: 7005-2000

vs.

John Doe,
(a.k.a. User Name "danger6552000"),
Defendant.

(Filed Under Seal)

BAIRBURN A. SCOTT
C.C.C. & G.S.

2006 APR 26 PM 4:15

FILED

APPLICATION

COMES NOW the State of SOUTH CAROLINA, by and through the undersigned Assistant Attorney General, and hereby files, under seal, this *ex parte* application for an order pursuant to 18 U.S.C. §2703(d) to require BellSouth Internet Service, located at 575 Morosgo Drive NE, Room 5D42, Atlanta, GA 30324, to provide records and other information pertaining to the subscriber as outlined in Attachment 1.

FACTUAL BACKGROUND

On March 12, 2006, Investigator Lindsey McGraw of the Spartanburg County Sheriff's Office logged onto Yahoo! utilizing an undercover persona of a thirteen year-old girl with the screen name "Melanie_s998", for the purpose of working an online proactive investigation. Melanie_s998 has a profile page on Yahoo that indicates that she is a thirteen year old female from Boiling Springs, South Carolina. After entering into a Yahoo South Carolina chat room at approximately 12:50 AM EST, an individual using the screen name "danger6552000" made contact with Melanie_s998 and entered into a private chat with her. When asked his age by Melanie_s998, danger6552000 responded, "well if ur 13 I am alot older lol." danger6552000 identified himself as a veterinarian from the Aiken area named "Carson." When Melanie_s998 described her size, hair and eye color, danger6552000 asked "ass? bra size?" Melanie_s998 described her mother and father and what her mother was doing in the house at the time. Within 27 minutes of the beginning of the chat session, danger6552000 initiated an explicit, sexually-oriented conversation with Melanie_s998, graphically describing performing oral sex on Melanie_s998 while fondling her breasts. danger6552000 sent a similar message a few lines later in the chat, even after Melanie_s998 stated that she "felt weird" talking about those things and that, "that stuff sounds too grownup." When Melanie_s998 stated that she feared that her mother would catch her chatting with danger6552000, he responded, "if she comes by just x out the im." Later in the chat on March 12, 2006, danger6552000 asked in explicit language what sexual experiences that Melanie_s998 had taken part in, and if she knew how to "masturbate." On March 13 - 15, 2006, danger6552000 reached out via Yahoo Instant Messenger (IM) to chat. These subsequent chats contained sexually explicit communication similar to what is described above at various points, with danger6552000 asking Melanie_s998 several times to digitally penetrate herself while they chatted. During the March 15 chat, danger6552000 asked

Melanie_s998, "how bad do you want me to have sex with you?" On March 21, 2006, danger6552000 again contacted Melanie_s998 via Yahoo! IM and engaged in sexually explicit conversation. danger6552000 asked Melanie_s998, "have u cum thinking of me" and "are u wet?" danger6552000 again graphically coached Melanie_s998 on how to masturbate herself while he talked about performing sex acts on her, and later asked "want to have sex[?]" All of the sexually explicit chat took place shortly after Melanie_s998 talked about having to go to a parent teacher conference that all of the 7th graders had to attend. On April 21, 2006, danger6552000 again contacted Melanie_s998 via Yahoo! IM and engaged in sexually explicit conversation. danger6552000 said, "I want to f_k u", and then discussed why she needed to say in the chats that that she was "16" and not "13" (as to not be "put in jail").

On March 23, 2006, a signed §2703(d) order was sent to Yahoo Inc. In compliance with that order, Yahoo disclosed that danger6552000 was logged into Yahoo! IM utilizing the IP address 68.220.79.51 on March 21, 2006, 3:50pm EST through 4:59pm EST. An online search revealed that this IP address belongs in the netrange of BellSouth Internet Service. Based on his training and experience, Inv. McGraw believes that the individual associated with the screen name danger6552000 intends to travel to Spartanburg County to engage in sexual activity with whom he believes to be a thirteen year-old girl named "Melanie." Accordingly, subscriber and account log information is therefore being sought from BellSouth Internet Service for this ongoing investigation of criminal solicitation of a minor.

LEGAL BACKGROUND

18 U.S.C. § 2703 sets out particular requirements that the State must meet in order to obtain access to the records and other information in the possession of providers of "electronic communications services" and/or "remote computing services." BellSouth Internet Service functions both as an electronic communications service provider -- that is, it provides its subscribers access to electronic communication services, including e-mail and the Internet -- and as a remote computing service provider -- it provides computer facilities for the storage and processing of electronic communications -- as those terms are used in 18 U.S.C. § 2703.

1. Here, the State seeks to obtain two categories of records: (1) basic subscriber information; and (2) records and other information, including connection logs, pertaining to a certain subscriber.¹

2. To obtain basic subscriber information, such as the subscriber's name, address, billing information, and other identifying records, the State needs only a subpoena; however, the State may also compel such information through an order issued pursuant to section 2703(d). See 18 U.S.C.

¹ The State does not seek the contents of any electronic communications, whether or not in electronic storage. "Electronic Storage" is a term of art, specifically defined in 18 U.S.C. § 2510(17) as "(A) any temporary, intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof; and any storage of such communication by an electronic communication service for purposes of backup protection of such communication." Communications not in "electronic storage" include any e-mail communications received by the specified accounts that the owner or user of the account has already accessed, viewed, or downloaded.

§ 2703(c)(1)(B). To obtain other types of records and information pertaining to the subscribers or customers of service providers, including connection logs and other audit information, the State must comply with the dictates of sections 2703(c)(1)(B) and 2703(d). Section 2703(c)(1)(B) provides, in pertinent part:

A governmental entity may require a provider of electronic communication service or remote computing service to disclose a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications) only when the governmental entity . . . obtains a court order for such disclosure under subsection (d) of this section.

3. All of the information the State seeks from BellSouth Internet Service through this application may be compelled through an order that complies with section 2703(d). Section 2703(d) provides as follows:

A court order for disclosure under subsection (b) or (c) may be issued by any court that is a court of competent jurisdiction² and shall issue only if the governmental entity offers specific and articulable facts showing that there are reasonable grounds to believe that the contents of a wire or electronic communication, or the records or other information sought, are relevant and material to an ongoing criminal investigation. In the case of a State governmental authority, such a court order shall not issue if prohibited by the law of such State. A court issuing an order pursuant to this section, on a motion made promptly by the service provider, may quash or modify such order, if the information or records requested are unusually voluminous in nature or compliance with such order otherwise would cause an undue burden on such provider.

4. Thus, the burden on the State to obtain such an order is to present specific facts showing reasonable grounds to believe that the material sought is relevant to an ongoing criminal investigation. In the instant case, the materials sought will provide more conclusive information as to the actual identity of the individual associated with the Yahoo screen name danger6552000, and from what particular location that individual transmitted sexually explicit online messages for the purpose of meeting for sexual activity a person whom he reasonably believed to be a thirteen year-old girl. Accordingly, this application sets forth facts showing there are reasonable grounds to believe that the materials sought are relevant and material to the ongoing criminal investigation of criminal solicitation of a minor.

REQUESTED INFORMATION

The State requests that BellSouth Internet Service be directed to produce all records

 ² The term "court of competent jurisdiction" includes "a court of general criminal jurisdiction of a State authorized by the law of that State to enter orders authorizing the use of a pen register or a trap and trace device," 18 U.S.C. § 3127(2)(B); see 18 U.S.C. § 2711(3) (stating that "court of competent jurisdiction" has the meaning assigned by § 3127); S.C. Code Ann. §§ 17-30-10 *et seq.* & §§ 17-29-10 *et seq.* (South Carolina statutes governing pen registers, trap and trace devices, and the interception of wire, electronic, or oral communications). Because 18 U.S.C. § 2703(d) expressly permits "any" such court to issue an order, this Court may enter an order directing the disclosure of such information even if the information is stored outside of this judicial circuit.

described in Attachment 1 to this Application. This information is directly relevant to identifying the individual(s) responsible for the crime under investigation. The information requested should be readily accessible to BellSouth Internet Service by computer search, and its production should not prove to be unduly burdensome.

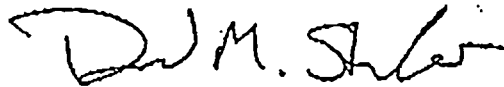
1. The State of South Carolina requests that the Court seal this Application and Order until such time as the court directs otherwise.

2. Pursuant to the preclusion of notice provisions of 18 U.S.C. § 2705(b), the State of South Carolina further requests that the Court order BellSouth Internet Service not to notify any person (including the subscriber or customer to which the materials relate) of the existence of this order for such period as the court deems appropriate. The State of South Carolina submits that such an order is justified because notification of the existence of this order could seriously jeopardize the ongoing investigation. Such a disclosure could give the subscriber an opportunity to conceal or destroy evidence, notify confederates, or flee or continue his flight from prosecution. None of the information sought in Attachment 1 requires notification of the subscriber. See 18 U.S.C. § 2703.

WHEREFORE, it is respectfully requested that the Court grant the attached Order, directing:

- (1) BellSouth Internet Service to provide the State of South Carolina with the records and information described in Attachment 1;
- (2) that the Application and Order be sealed; and
- (3) BellSouth Internet Service not to disclose the existence or content of the Order, except to the extent necessary to carry out the Order.

Respectfully Submitted,



David M. Stumbo
Assistant Attorney General

April 24, 2006
Columbia, South Carolina

ATTACHMENT 1

You are to provide the following information:

- A. All customer or subscriber information for the BellSouth Internet Service account associated with the Internet Protocol (IP) address 68.220.79.51 on March 21, 2006 from 3:50 PM EST through 4:59 PM EST.

For each such account, the information shall include:

1. The subscriber's account and login name(s);
 2. The subscriber's current and previous address, if any;
 3. The subscriber's telephone number or numbers;
 4. The subscriber's registration IP (and time/date of registration);
 5. The subscriber's related BellSouth Internet Service accounts, including but not limited to Yahoo Instant Messenger (IM) accounts;
 6. Any other information pertaining to the identity of the subscriber, including, but not limited to billing information (including type and number of credit cards, student identification number, or other identifying information).
- B. User connection logs and related IP address information for all accounts identified in Part A, above, from March 12, 2006, through the date of this Order.

EXHIBIT C

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE CIRCUIT COURT
FIFTH JUDICIAL CIRCUIT

State of South Carolina,

CASE NO: 7006-2000

vs.

John Doe,
(a.k.a. User Name "danger6552000"),
Defendant.

FILED
2006 MAY -8 PM 4:50
BARBARA A. SCOTT
C.C.C. & G.S.

ORDER

This matter having come before the court pursuant to an application under Title 18, United States Code, Section 2703(c), which application requests the issuance of an order under Title 18, United States Code, Section 2703(d), directing Yahoo, Inc. an electronic communications service provider and a remote computing service, located at 701 First Avenue, Sunnyvale, CA 94089, to disclose certain records and other information, as set forth in Attachment 1, the court finds that the applicant has offered specific and articulable facts showing that there are reasonable grounds to believe that the records or other information sought are relevant and material to an ongoing criminal investigation.

IT APPEARING that the information sought is relevant and material to an ongoing criminal investigation, and that prior notice of this Order to any person of this investigation, or this application and order, by Yahoo, Inc. would seriously jeopardize the investigation of criminal solicitation of a minor.

IT IS ORDERED pursuant to Title 18, United States Code, Section 2703(d) that Yahoo, Inc. will, within three (3) days of the date of this Order, turn over to agents of the Spartanburg County (S.C.) Sheriff's Office the records and other information as set forth in Attachment 1 to this Order.

IT IS FURTHER ORDERED that the application and this Order are sealed until otherwise ordered by the Court, and that Yahoo, Inc. shall not disclose the existence of the Application or this Order of the Court, or the existence of the investigation, to the listed subscriber or to any other person unless and until authorized to do so by the Court.


The Honorable G. Thomas Cooper, Jr.
Chief Administrative Judge
Fifth Judicial Circuit

5.8.06

Date

000684

ATTACHMENT 1

You are to provide the following information:

- A. All customer or subscriber information for the Yahoo, Inc. account associated with the screen names, or user names, "danger6552000" or a Roge Wilson.
- B. User connection logs and related IP address information for:
 - (1) All accounts identified in Part A, from March 23, 2006, through the date of this Order; and
 - (2) Yahoo Instant Messenger (IM) user connection logs for the following dates and times:

(a) May 4, 2006 between 5:51 PM EST and 6:06 PM EST.

User connection logs should contain the following:

- 1. Connection time and date;
- 2. Disconnect time and date;
- 3. Method of connection to system (e.g., SLIP, PPP, Shell);
- 4. Data transfer volume (e.g., bytes);
- 5. Connection information for other systems to which user connected, including:
 - a. Connection destination;
 - b. Connection time and date;
 - c. Disconnect time and date;
 - d. Method of connection to system (e.g., telnet, ftp, http);
 - e. Data transfer volume (e.g., bytes); and
- 6. any other relevant routing information

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE CIRCUIT COURT
FIFTH JUDICIAL CIRCUIT

State of South Carolina,

CASE NO: 7006-2000

vs.

John Doe,
(a.k.a. User Name "danger6552000"),
Defendant.

(Filed Under Seal)

FILED
2006 MAY -8 PM 4:50
BARBARA A. JOHNS
C.C.C. & G.S.

APPLICATION

COMES NOW the State of SOUTH CAROLINA, by and through the undersigned Assistant Attorney General, and hereby files, under seal, this *ex parte* application for an order pursuant to 18 U.S.C. §2703(d) to require Yahoo, Inc., located at 701 First Avenue, Sunnyvale, CA 94089, to provide records and other information pertaining to the subscriber as outlined in Attachment 1.

FACTUAL BACKGROUND

On March 12, 2006, Investigator Lindsey McGraw of the Spartanburg County Sheriff's Office logged onto Yahoo! utilizing an undercover persona of a thirteen year-old girl with the screen name "Melanie_s998", for the purpose of working an online proactive investigation. Melanie_s998 has a profile page on Yahoo that indicates that she is a thirteen year old female from Boiling Springs, South Carolina. After entering into a Yahoo South Carolina chat room at approximately 12:50 AM EST, an individual using the screen name "danger6552000" made contact with Melanie_s998 and entered into a private chat with her. When asked his age by Melanie_s998, danger6552000 responded, "well if ur 13 I am alot older lol." danger6552000 identified himself as a veterinarian from the Aiken area named "Carson." When Melanie_s998 described her size, hair and eye color, danger6552000 asked "ass? bra size?" Melanie_s998 described her mother and father and what her mother was doing in the house at the time. Within 27 minutes of the beginning of the chat session, danger6552000 initiated an explicit, sexually-oriented conversation with Melanie_s998, graphically describing performing oral sex on Melanie_s998 while fondling her breasts. danger6552000 sent a similar message a few lines later in the chat, even after Melanie_s998 stated that she "felt weird" talking about those things and that, "that stuff sounds too grownup." When Melanie_s998 stated that she feared that her mother would catch her chatting with danger6552000, he responded, "if she comes by just x out the im." Later in the chat on March 12, 2006, danger6552000 asked in explicit language what sexual experiences that Melanie_s998 had taken part in, and if she knew how to "masturbate." On March 13 - 15, 2006, danger6552000 reached out via Yahoo Instant Messenger (IM) to chat. These subsequent chats contained sexually explicit communication similar to what is described above at various points, with danger6552000 asking Melanie_s998 several times to digitally penetrate herself while they chatted. During the March 15 chat, danger6552000 asked Melanie_s998, "how bad do you want me to have sex with you?" On March 21, 2006,

danger6552000 again contacted Melanie_s998 via Yahoo! IM and engaged in sexually explicit conversation. danger6552000 asked Melanie_s998, "have u cum thinking of me" and "are u wet?" danger6552000 again graphically coached Melanie_s998 on how to masturbate herself while he talked about performing sex acts on her, and later asked "want to have sex[?]" All of the sexually explicit chat took place shortly after. Melanie_s998 talked about having to go to a parent teacher conference that "all of the 7th graders" had to attend. On April 21, 2006, danger6552000 again contacted Melanie_s998 via Yahoo! IM and engaged in sexually explicit conversation. danger6552000 said, "I want to f__k u", and then discussed why she needed to say the chats that that she was "16" and not "13" (as to not be "put in jail"). danger6552000 again contacted Melanie_s998 via Yahoo! IM on April 27, April 29, May 1, and May 4, 2006 and engaged in sexually explicit conversation.

On March 23, 2006, a signed §2703(d) order was sent to Yahoo Inc. In compliance with that order, Yahoo disclosed that danger6552000 was logged into Yahoo! IM utilizing the IP address 68.220.79.51 on March 21, 2006, 3:50pm EST through 4:59pm EST. An online search revealed that this IP address belongs in the netrange of BellSouth Internet Service. On April 27, 2006 a signed §2703(d) order was sent to BellSouth Internet Service. In compliance with that order, BellSouth disclosed that the user of the IP address 68.220.79.51 on March 21, 2006, 3:50pm EST through 4:59pm EST was a subscriber by the name of Anthony Odom, 325 Hedge Road, Aiken South Carolina. Based on his training and experience, Inv. McGraw believes that the individual associated with the screen name danger6552000 intends to travel to Spartanburg County to engage in sexual activity with whom he believes to be a thirteen year-old girl named "Melanie." Accordingly, more recent account log information is therefore being sought from Yahoo, Inc. for this ongoing investigation of criminal solicitation of a minor.

LEGAL BACKGROUND

18 U.S.C. § 2703 sets out particular requirements that the State must meet in order to obtain access to the records and other information in the possession of providers of "electronic communications services" and/or "remote computing services." Yahoo, Inc. functions both as an electronic communications service provider -- that is, it provides its subscribers access to electronic communication services, including e-mail and the Internet -- and as a remote computing service provider -- it provides computer facilities for the storage and processing of electronic communications -- as those terms are used in 18 U.S.C. § 2703.

1. Here, the State seeks to obtain two categories of records: (1) basic subscriber information; and (2) records and other information, including connection logs, pertaining to a certain subscriber.¹

¹ The State does not seek the contents of any electronic communications, whether or not in electronic storage. "Electronic Storage" is a term of art, specifically defined in 18 U.S.C. § 2510(17) as "(A) any temporary, intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof; and any storage of such communication by an electronic communication service for purposes of backup protection of such communication." Communications not in "electronic storage" include any e-mail communications received by the specified accounts that the owner or user of the account has already accessed, viewed, or downloaded.

2. To obtain basic subscriber information, such as the subscriber's name, address, billing information, and other identifying records, the State needs only a subpoena; however, the State may also compel such information through an order issued pursuant to section 2703(d). See 18 U.S.C. § 2703(c)(1)(B). To obtain other types of records and information pertaining to the subscribers or customers of service providers, including connection logs and other audit information, the State must comply with the dictates of sections 2703(c)(1)(B) and 2703(d). Section 2703(c)(1)(B) provides, in pertinent part:

A governmental entity may require a provider of electronic communication service or remote computing service to disclose a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications) only when the governmental entity . . . obtains a court order for such disclosure under subsection (d) of this section.

3. All of the information the State seeks from Yahoo, Inc. through this application may be compelled through an order that complies with section 2703(d). Section 2703(d) provides as follows:

A court order for disclosure under subsection (b) or (c) may be issued by any court that is a court of competent jurisdiction² and shall issue only if the governmental entity offers specific and articulable facts showing that there are reasonable grounds to believe that the contents of a wire or electronic communication, or the records or other information sought, are relevant and material to an ongoing criminal investigation. In the case of a State governmental authority, such a court order shall not issue if prohibited by the law of such State. A court issuing an order pursuant to this section, on a motion made promptly by the service provider, may quash or modify such order, if the information or records requested are unusually voluminous in nature or compliance with such order otherwise would cause an undue burden on such provider.

4. Thus, the burden on the State to obtain such an order is to present specific facts showing reasonable grounds to believe that the material sought is relevant to an ongoing criminal investigation. In the instant case, the materials sought will provide more conclusive information as to the actual identity of the individual associated with the Yahoo screen name danger6552000, and from what particular location that individual has transmitted sexually explicit online messages for the purpose of meeting for sexual activity a person whom he reasonably believed to be a thirteen year-old girl. Accordingly, this application sets forth facts showing there are reasonable grounds to believe that the materials sought are relevant and material to the ongoing criminal investigation of

² The term "court of competent jurisdiction" includes "a court of general criminal jurisdiction of a State authorized by the law of that State to enter orders authorizing the use of a pen register or a trap and trace device." 18 U.S.C. § 3127(2)(B); see 18 U.S.C. § 2711(3) (stating that "court of competent jurisdiction" has the meaning assigned by § 3127); S.C. Code Ann. §§ 17-30-10 *et seq.* & §§ 17-29-10 *et seq.* (South Carolina statutes governing pen registers, trap and trace devices, and the interception of wire, electronic, or oral communications). Because 18 U.S.C. § 2703(d) expressly permits "any" such court to issue an order, this Court may enter an order directing the disclosure of such information even if the information is stored outside of this judicial circuit.

222

criminal solicitation of a minor.

REQUESTED INFORMATION

The State requests that Yahoo, Inc. be directed to produce all records described in Attachment 1 to this Application. This information is directly relevant to identifying the individual(s) responsible for the crime under investigation. The information requested should be readily accessible to Yahoo, Inc. by computer search, and its production should not prove to be unduly burdensome.

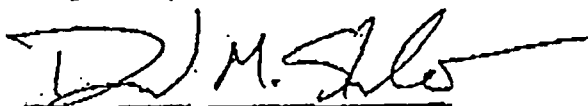
1. The State of South Carolina requests that the Court seal this Application and Order until such time as the court directs otherwise.

2. Pursuant to the preclusion of notice provisions of 18 U.S.C. § 2705(b), the State of South Carolina further requests that the Court order Yahoo, Inc. not to notify any person (including the subscriber or customer to which the materials relate) of the existence of this order for such period as the court deems appropriate. The State of South Carolina submits that such an order is justified because notification of the existence of this order could seriously jeopardize the ongoing investigation. Such a disclosure could give the subscriber an opportunity to conceal or destroy evidence, notify confederates, or flee or continue his flight from prosecution. None of the information sought in Attachment 1 requires notification of the subscriber. See 18 U.S.C. § 2703.

WHEREFORE, it is respectfully requested that the Court grant the attached Order, directing:

- (1) Yahoo, Inc. to provide the State of South Carolina with the records and information described in Attachment 1;
- (2) that the Application and Order be sealed; and
- (3) Yahoo, Inc. not to disclose the existence or content of the Order, except to the extent necessary to carry out the Order.

Respectfully Submitted,



David M. Stumbo
Assistant Attorney General

May 8, 2006
Columbia, South Carolina

ATTACHMENT 1

You are to provide the following information:

- A. All customer or subscriber information for the Yahoo, Inc. account associated with the screen names, or user names, "danger6552000" or a Roge Wilson.
- B. User connection logs and related IP address information for:
 - (1) All accounts identified in Part A, from March 23, 2006, through the date of this Order; and
 - (2) Yahoo Instant Messenger (IM) user connection logs for the following dates and times:
 - (a) May 4, 2006 between 5:51 PM EST and 6:06 PM EST.

User connection logs should contain the following:

- 1. Connection time and date;
- 2. Disconnect time and date;
- 3. Method of connection to system (e.g., SLIP, PPP, Shell);
- 4. Data transfer volume (e.g., bytes);
- 5. Connection information for other systems to which user connected, including:
 - a. Connection destination;
 - b. Connection time and date;
 - c. Disconnect time and date;
 - d. Method of connection to system (e.g., telnet, ftp, http);
 - e. Data transfer volume (e.g., bytes); and
- 6. any other relevant routing information.

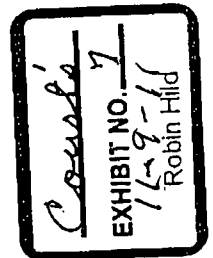
STATE OF SOUTH CAROLINA

County of Aiken

000691

SEARCH WARRANT

Date May 11, 2006
Officer Any Lawful Officer



STATE OF SOUTH CAROLINA
COUNTY OF Aiken

AFFIDAVIT

Personally appeared before me, one Special Agent Lucinda Hefner McKellar
 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 Laws of South Carolina, as amended, is located on the following premises
 in this County:

DESCRIPTION OF PROPERTY SOUGHT

Computer systems, including any electronic, magnetic, optical, or other high speed data processing device performing logical, arithmetic, or storage functions; data storage facilities such as magnetic tape, hard disk, floppy disk or drum, or CD Rom or scanner; DVD or USB devices; communications facilities directly related to or in conjunction with such device; cellular wireless telephones, devices for printing records of data; and such records or data produced in various forms; manuals documents or instructional material relating to such device printers.

As a result of the execution of this search warrant, a search for any and all saved, archived or deleted data including but not limited to chat logs, and or records whether in printed or electronic form that relate to the screen name of "danger6552000". Any and all communications, email, ledgers, diaries, notes, documents, photographs and or other items, whether printed or in electronic form that reflect an interest in sexual activity between adults and minors. Any and all address books, lists of names and/or addresses of minors, maps, records, and or items whether printed or in electronic form, that indicate travel, or plans to travel, for the purpose of engaging in sexual activity with a minor, 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 Criminal Solicitation of a Minor

**DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
 TO BE SEARCHED**

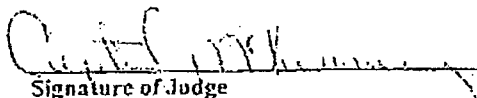
The residence of Anthony Clark Odom located at 3258 East Hedge Road, Aiken, South Carolina. The residence is described as a light blue in color two story, single family, residence with an attached garage. Items to be seized and searched are computer systems, including any electronic, magnetic, optical, or other high speed data processing device performing logical, arithmetic, or storage functions; data storage facilities such as magnetic tape, hard disk, floppy disk or drum, or CD Rom or scanner; DVD or USB devices; communications facilities directly related to or in conjunction with such device; cellular wireless telephones; devices for printing records of data; and such records or data produced in various forms; manuals documents or instructional material relating to such device printers.

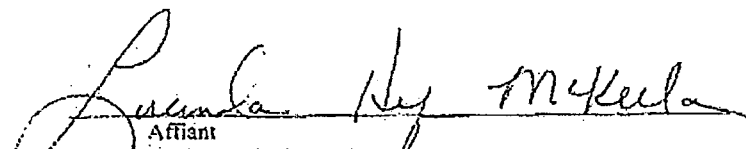
As a result of the execution of this search warrant, a search for any and all saved, archived or deleted data including but not limited to chat logs, and or records whether in printed or electronic form that relate to the screen name of "danger6552000". Any and all communications, email, ledgers, diaries, notes, documents, photographs and or other items, whether printed or in electronic form that reflect an interest in sexual activity between adults and minors. Any and all address books, lists of names and/or addresses of minors, maps, records, and or items whether printed or in electronic form, that indicate travel, or plans to travel, for the purpose of engaging in sexual activity with a minor, 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 Criminal Solicitation of a Minor

**REASON FOR AFFIANT'S BELIEF THAT THE
 PROPERTY SOUGHT IS ON THE SUBJECT PREMISES**

See attached affidavit.

Sworn to and Subscribed before me
 This 11th day of May, 2006.


 Signature of Judge


 Affiant
 4400 Broad River Rd.
 Columbia, South Carolina 29210
 803.896-7250

(L.S.)

STATE OF SOUTH CAROLINA

Search Warrant

Form approved by
S.C. Attorney General
Section 17-13-160
March 15, 1978

COUNTY OF Aiken

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY OF

COUNTY OF AIKEN

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, PLACE OR THING)
TO BE SEARCHED

The residence of Anthony Clark Odom located at 3258 East Hedge Road, Aiken, South Carolina. The residence is described as a light blue in color two story, single family, residence with an attached garage. Items to be seized and searched are computer systems, including any electronic, magnetic, optical, or other high speed data processing device performing logical, arithmetic, or storage functions; data storage facilities such as magnetic tape, hard disk, floppy disk or drum, or CD Rom or scanner; DVD or USB devices; communications facilities directly related to or in conjunction with such device; cellular wireless telephones, devices for printing records of data; and such records or data produced in various forms; manuals documents or instructional material relating to such device printers.

As a result of the execution of this search warrant, a search for any and all saved, archived or deleted data including but not limited to chat logs, and or records whether in printed or electronic form that relate to the screen name of "danger6552000". Any and all communications, email, ledgers, diaries, notes, documents, photographs and or other items, whether printed or in electronic form that reflect an interest in sexual activity between adults and minors. Any and all address books, lists of names and/or addresses of minors, maps, records, and or items whether printed or in electronic form, that indicate travel, or plans to travel, for the purpose of engaging in sexual activity with a minor, 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 Criminal Solicitation of a Minor

Now, therefore, you are hereby authorized to search the subject premises described below, and to seize such property if found:

DESCRIPTION OF PROPERTY

Computer systems, including any electronic, magnetic, optical, or other high speed data processing device performing logical, arithmetic, or storage functions; data storage facilities such as magnetic tape, hard disk, floppy disk or drum, or CD Rom or scanner; DVD or USB devices; communications facilities directly related to or in conjunction with such device; cellular wireless telephones, devices for printing records of data; and such records or data produced in various forms; manuals documents or instructional material relating to such device printers.

As a result of the execution of this search warrant, a search for any and all saved, archived or deleted data including but not limited to chat logs, and or records whether in printed or electronic form that relate to the screen name of "danger6552000". Any and all communications, email, ledgers, diaries, notes, documents, photographs and or other items, whether printed or in electronic form that reflect an interest in sexual activity between adults and minors. Any and all address books, lists of names and/or addresses of minors, maps, records, and or items whether printed or in electronic form, that indicate travel, or plans to travel, for the purpose of engaging in sexual activity with a minor, 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 Criminal Solicitation of a Minor

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 Honorable

Crystal McKinnon
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.

Aiken, S.C.
May 11, 2006

SCCA/513 (3-78)

Crystal McKinnon
Signature of Judge

(L.S.)

000693

AFFIDAVIT IN SUPPORT OF APPLICATION FOR SEARCH WARRANT

I, Special Agent Lucinda Hefner McKellar, being duly sworn state the following:

1. Your affiant is a Special Agent with the South Carolina Law Enforcement Division, assigned to the South Carolina Computer Crime Center. Your affiant has worked in law enforcement for eight years. Your affiant has been employed by the South Carolina Law Enforcement Division since 2003. Your affiant is currently assigned to the Computer Crime Center with responsibilities to investigate Internet Crimes against Children (ICAC). Your affiant has been investigating crimes against children for six years and is familiar with the manner in which these crimes are committed. Your affiant has received training pertaining to behavior associated with offenders who commit crimes against children. Your affiant has received training in the investigation of child sexual assaults, and has attended the Dallas Crimes against Children Conference as well as the ICAC Investigative Techniques training and ICAC Undercover Chat Investigations. Your affiant has also attended training such as Basic Data Recovery and Analysis (BDRA), Intermediate Data Recovery and Analysis (IDRA) and also EnCase, all of which deal with computer forensic examination.
2. While assigned to the South Carolina Computer Crime Center your affiant worked as part of the Internet Crimes against Children Task Force (ICAC). The task force is sponsored by the South Carolina Office of the Attorney General. In an effort to increase the number of investigators working in a proactive capacity to investigate internet crimes against children the Attorney General's office has entered into a Memorandum of Understanding with various local agencies. One of the agencies working as part of the task force is Spartanburg County Sheriff's Office. One of the investigators assigned to the ICAC Task force is Detective Lindsey H. McGraw II. McGraw is a Detective with the County of Spartanburg Sheriff's Office, assigned to the Internet Crimes against Children task force. Detective McGraw has worked with the Spartanburg County Sheriff's Office since August 2005, as an investigator with the Solicitor's Office, Seventh Judicial Circuit from 1998 through 2000, and as an investigator with the Air Force Office of Special Investigations from 1986 through 1996. Detective McGraw has received training through the South Carolina Criminal Justice Academy, the US Air Force Special Investigations Academy, and the Internet Crimes against Children Task Force Program.
3. On May 2, 2006 Detective McGraw II contacted the South Carolina Computer Crime Center requesting assistance with an ongoing undercover proactive investigation. On May 8, 2006 McGraw provided copies of chat logs, legal compliance, and intelligence information as well as an affidavit to your affiant for review. Based on information within this affidavit, there is probable cause to believe evidence of the crimes in violation of South Carolina code of Laws, Chapter 15, Title 16 Section 16-16-342, the offense of Criminal Solicitation of a Minor, will be found through search of the computers and computer related media of computers owned by, used by or currently in the residence of the suspect Anthony Clark Odom.

4. According to an affidavit provided to your affiant by Detective Lindsey McGraw, on March 12, 2006, at approximately 12:54 AM, Detective McGraw was operating in an undercover capacity within the Yahoo Chat Room "Romance-South Carolina" utilizing the female persona of "melanie_s998" (also displayed as "felony_melanie"), who is a 13 year old female living in Boiling Springs, South Carolina, and is the seventh grade at Spartanburg Day School. During the undercover operation, "melanie_s998" was contacted by a subject utilizing the screen name "danger6552000" (also appearing as "Roge Wilson"). The subject "danger6552000" entered into a private chat with "melanie_s998". When asked his age by "melanie_s998", "danger6552000" responded, "well if ur 13 I am a lot older lol". "danger6552000" described himself as a veterinarian from the Aiken area named "Carson". When "melanie_s998" described her size, hair, and eye color, "danger6552000" asked "ass? Bra size?". "melanie_s998" described her mother and father and what her mother was doing in the house at the time. At approximately 1:21AM, "danger6552000" initiated an explicit sexually-oriented conversation with "melanie_s998", graphically describing performing oral sex on "melanie_s998" while fondling her breasts. "danger6552000" sent "melanie_s998" a similar message later in the chat, even after "melanie_s998" stated that she "felt weird" talking about those things and that "that stuff sounds too grownup". When "melanie_s998" stated she feared her mother would catch her chatting with "danger6552000", he responded, "if she comes by just x out the im". At approximately 1:27AM, "danger6552000" again described performing oral sex on "melanie_s998". At the end of the chat, "danger6552000" added "melanie_s998" to his "Friends List" which subsequently changed his screen name to read "Roge Wilson".
5. On March 13, 2006, at approximately 5:59PM, "danger6552000" attempted to initiate a private message (PM) chat with "melanie_s998", but "melanie_s998" was off-line at the time.
6. On March 14, 2006, at approximately 5:38PM, "danger6552000" initiated a PM chat with "melanie_s998". At approximately 5:48PM, "danger6552000" asked "melanie_s998", "did u cum?". Later in the chat, "danger6552000" told "melanie_s998" he wanted to have intercourse and oral sex with her stating "have u bend over as u feel me slip inside u from behind my hands on ur hips pulling u back on me hard as u feel the head of my cock inside u runing along the walls of ur pussy as I pull ur arms form under ur making u dive into th ebod my hand rakes down ur back and pulls u to my chest by ur hair I nibble te back of ur neck as u bounce up and down on me one hand fondles ur clit the other ur nipples". "danger6552000" later told "melanie_s998" "but I would love to have my cock deep inside ur pussy" and "I want u to stradle my face as u ruun ur pussy and clit over my mouth and tounge".
7. On March 15, 2006, at approximately 5:06PM, "danger6552000" initiated a PM chat with "melanie_s998". At approximately 5:45PM, "danger6552000" asked "melanie_s998" "how much do u want me to have sex with u". "melanie_s998" responded "its hard to say the right thing - I dont wanna get pg" (meaning pregnant). "danger6552000" replied, "assumeing u would not".

8. On March 17, 2006, Detective McGraw briefed Assistant Attorney General (AAG) David Stumbo regarding this case and e-mailed transcripts of the chats sessions with "danger6552000" to that point. AAG Stumbo agreed there was sufficient information to serve legal process on Yahoo, Inc. On March 17, 2006, Detective McGraw sent a letter via facsimile to Yahoo, Inc. requesting information regarding "danger6552000"'s account be preserved.
9. On March 21, 2006, at approximately 3:50PM, "danger6552000" initiated a PM chat with "melanie_s998" and engaged in sexually explicit conversation. "danger6552000" asked "melanie_s998" "have u cum thinking of me" and "are u wet?" "danger6552000" graphically coached "melanie_s998" on how to masturbate herself while he talked about performing sex acts on her; both oral sex and digital penetration. "danger6552000" asked "melanie_s998" why did she "want to have sex[?]". When "melanie_s998" expressed concern that she would get pregnant, "danger6552000" told "melanie_s998" "u would not", "not if u r carfeul (sic)." All of the sexually explicit chat took place shortly after "melanie_s998" talked about having to go to a parent-teacher conference in which all of the 7th graders had to attend.
10. Between March 23, 2006 and May 4, 2006, "danger6552000" initiated several chats with "melanie_s998" in which "danger6552000" referred to explicit sexual activity. On March 23, 2006, "danger6552000" indicated he wanted to engage in sexual intercourse and oral sex with "melanie_s998". On March 28, 2006, "danger6552000" indicated he wanted to engage in sexual intercourse with "melanie_s998". On March 29, 2006, "danger6552000" indicated he wanted to engage in sexual intercourse and oral sex with "melanie_s998" and told "melanie_s998" that he was masturbating. On April 1, 2006, "danger6552000" indicated he wanted to engage in sexual intercourse and digital penetration with "melanie_s998". On April 21, 2006, "danger6552000" told "melanie_s998" "I want to fuck u". On April 29, 2006, "danger6552000" indicated he wanted to engage in sexual intercourse and oral sex with "melanie_s998". On April 30, 2006, "danger6552000" told "melanie_s998" he would rent a hotel room near the mall in Spartanburg so "danger6552000" could have sex with "melanie_s998". On May 4, 2006, "danger6552000" subsequently cancelled plans to meet "melanie_s998".
11. On March 24, 2006, AAG Stumbo served legal process to Yahoo, Inc for subscriber information, user connection logs, and Internet Protocol (IP) address information relating to the screen name "danger6552000" and requested that information be transmitted to Detective McGraw via facsimile.
12. On April 21, 2006, Detective McGraw received via facsimile, subscriber information and connection logs from Yahoo, Inc. that indicated "danger6552000" had been logged on to Yahoo servers on March 21, 2006 using the IP address of 68.220.79.51. An IP address is a unique identifier assigned to a computer network device (such as a personal computer) when that device is logged on to a network at any given time. No IP address can be assigned to more than one computer at a time. An on-line search of the IP address 68.220.79.51 revealed the owner of this IP address was the Internet service provider (ISP) BellSouth Telecommunications. This information reveals that BellSouth Telecommunications, Inc. provides internet service to "danger6552000".

13. On April 24, 2006, Detective McGraw sent a letter via facsimile to BellSouth Telecommunications, Inc; requesting information regarding the account associated with the IP address 68.220.79.51 assigned on March 21, 2006 be preserved. On April 24, 2006, Detective McGraw requested AAG Stumbo serve legal process on BellSouth Telecommunications, Inc for subscriber information regarding the account associated with the IP address 68.220.79.51 assigned on March 21, 2006.
14. On April 26, 2006, AAG Stumbo served legal process to BellSouth Telecommunications, Inc for subscriber information, user connection logs, and Internet Protocol (IP) address information relating to the account associated with the IP address 68.220.79.51 assigned on March 21, 2006 and requested that information be transmitted to Detective McGraw via facsimile.
15. On April 27, 2006, Detective McGraw received via facsimile, subscriber information and connection logs from BellSouth Telecommunications, Inc, that indicated on March 21, 2006 the IP address of 68.220.79.51 was a residential fast access digital subscriber line (DSL) internet account assigned to Barbara Odom, residing at 325 East Hedge Road, Aiken, South Carolina 29801, assigned to telephone number 803-644-2272.
16. Detective McGraw verified through the Aiken Public Safety Department, Criminal History Check, and Regional Organized Crime Information Center that Anthony Clark Odom resides at the residence located at 325 East Hedge Road, Aiken, South Carolina 29801. Returns to legal process provided by Yahoo and BellSouth Telecommunications Inc, confirmed that the IP address that was used by "danger6552000" on March 21, 2006 was also assigned to the address at 325 East Hedge Road, Aiken, South Carolina 29801 on March 21, 2006. Your affiant has reviewed the aforementioned items and Special Agent Lucinda Hefner McKellar respectfully requests a search warrant for the address of 325 East Hedge Road, Aiken, South Carolina 29801 and for any computers within that residence that are associated with any and all chats exchanged between the undercover officer and "danger6552000" and "Roge Wilson".

Specifics of Search and Seizure of Computer Systems

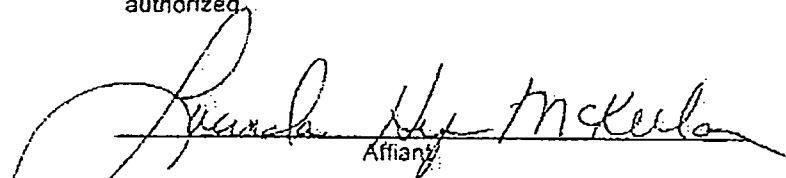
- a. Based upon your Affiant knowledge, training, and experience, and the experience of other law enforcement personnel, your Affiant knows that searches and seizures of evidence from computers commonly require law enforcement officers to seize most or all computer items (hardware, software, and instructions) to be processed later by a qualified computer forensic expert in a controlled laboratory environment.
- b. Computer storage devices (hard disks, diskettes, tape, removable drives) can store the equivalent of thousands of pages of information. When users desire to conceal criminal evidence, they often store the information in random order with deceptive file names. Directories and subdirectories that contain these files can be hidden from normal view.
- c. Special forensic software is required to detect these hidden directories. This requires that searching authorities examine all the stored data to determine whether it is included in the search warrant.
- d. This sorting process can take weeks or months, depending on the volume of data stored. This would make it impractical to attempt this kind of forensic analysis on site at the time of search warrant execution.
- e. Searching computer systems for criminal evidence is a highly technical process requiring expert skill in a properly controlled environment. The vast array of computer hardware and software available requires even computer experts to specialize in some systems and applications. It is difficult to predict before a search which expert should analyze the system and its data. The search of a computer is an exacting scientific procedure which is designed to protect the integrity of the evidence and to recover even hidden, erased, compressed, password protected, and/or encrypted files.
- f. Since computer evidence is extremely vulnerable to tampering or destruction from both external sources or from destructive code imbedded in the system in the form of a "booby trap", the controlled environment of a forensic laboratory is essential to its complete and accurate analysis.
- g. In order to fully retrieve data from a computer system, the forensic analyst needs all magnetic storage devices, as well as the central processing unit (CPU). In some cases, where the evidence may consist of graphic files, the monitor and printer are also

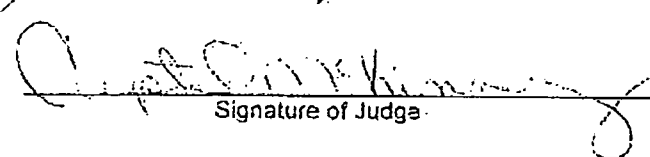
essential to show the nature and quality of any graphic images, which the system could produce. In addition, the forensic analyst needs all the system software (operating system, applications, and hardware drivers), which may have been used to retrieve, store, create, or transmit the data.

In addition, there is probable cause to believe that the computer and its storage devices, the monitor, keyboard, modem, printer, as well as all internal and external storage devices are all instrumentalities of this crime of Second Degree Sexual Exploitation of a Minor.

- n. Computer evidence is extremely vulnerable to tampering or to destruction through error, electrical outages and other causes; and that removal of the systems(s) will assist in retrieving the records authorized to be seized, while avoiding accidental destruction or deliberate alteration of the records. It would be extremely difficult to secure the system on the premises during the entire period of the search. A precise examination of the computer system requires the seizure of related peripheral equipment, including but not limited to printers, external memory storage devices; modems; etc.

- i. In order to conduct a forensic analysis of the computer system, the seizure of software documentation, diskettes, manuals, and any related materials, whether paper or other forms of record must also be seized to accurately obtain and copy the records authorized.


Affiant


Signature of Judge

Return

I received the attached Search Warrant S111, 20 06, And have executed it as follows:
 On S111, 20 06 at 7:11 o'clock P M, I searched
 (the person) described in the warrant and (the premises)

I left a copy of the warrant with Anthony & Barbara Odom

Name of the person searched or "at the place of search" with. 325 E. Hedge Aiken SC

Together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

Due to the intense nature and exhaustive amount of information that may be stored in the device(s) seized and the necessary amount of time required to complete the search of these device(s), the results of the forensic analysis will be forwarded to the originating agency after the analysis has been completed.

1) HP MEDIA CENTER PC S/N MXK539046J

Found By S/A WAGNER IN COMPUTER CABINET AND RECEIVED BY CAPTAIN BURGESS

2) COMPAG PRESARIO COMPUTER S/N - 1X08FPML44K9

Found By OFFICER MORRIS AT FOOT OF BED IN COMPUTER ROOM AND RECEIVED BY CAPTAIN BURGESS

3) GATEWAY 450 COMPUTER S/N - 0011683045

Found By S/A MCKELLER IN COMPUTER ROOM CLOSET AND RECEIVED BY CAPTAIN BURGESS

4) SANDEK CEURER 128 MB THUMB DRIVE

Found By S/A WAGNER ON COMPUTER DESK AND RECEIVED BY CAPTAIN BURGESS

5) DELL SOUTH BELL FDD BY LT. CRAWFORD AND RECEIVED BY CAPT. BURGESS

This inventory was made in the presence of S/A FC WAGNER, LT. Billy CRAWFORD, S/A L. MCKELLER
 AND DET. McGRAW, DET. C. GUNNELL, CAPT. BURGESS, OFFICER SHULTZ, OFFICER MORRIS
BARBARA AND ANTHONY ODOM

I swear that this inventory is a true and detailed account of all property taken by me on the warrant.

SWORN to before me this 12th

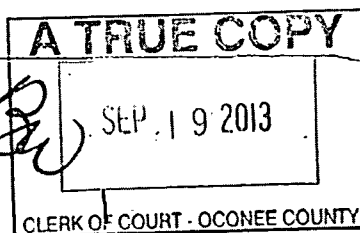
day of JULY, 2006

[Signature] (L.S.)
 Signature of Judge

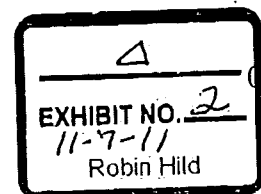
[Signature]
 (Signature of Officer Executing Warrant)

**ICAC PROGRAM
OPERATIONAL
AND
INVESTIGATIVE STANDARDS**

SC ICAC MOU



p. 6 of 18



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Effective Date: 3/08/02		
Subject		Page 1 of 1
Definitions		

As used herein, the following definition shall apply:

"OJJDP" is the Office of Juvenile Justice and Delinquency Prevention.

"NCMEC" is the National Center for Missing and Exploited Children.

"CEOS" is the Child Exploitation and Obscenity Section of the United States Attorney's Office, of the Department of Justice.

"ICAC" is the Internet Crimes Against Children program composed of Regional Task Forces and Satellites.

"REGIONAL TASK FORCE" is defined as an ICAC law enforcement agency designated by OJJDP to act as a Regional Task Force.

"SATELLITE" is defined as a law enforcement agency that was selected to receive an OJJDP grant to establish a satellite program.

For the purposes of this program, *crime* is defined as any offense that involves the exploitation of children facilitated by technology.

Investigative interest is established when there is reasonable suspicion that a screen name or other potentially identifiable entity has committed a crime or that entity is engaged in a sequence of activities that is likely to result in the commission of a crime.

A *proactive investigation* is designed to identify, investigate and prosecute offenders, which may or may not involve a specific target, and requires online interaction and a significant degree of pre-operative planning.

A *reactive investigation* involves the investigation of a complaint of a crime.

Reasonable suspicion is established when sufficient facts exist to lead a law enforcement officer to believe that an individual or organization is involved in a definable criminal activity.

Effective Date: 3/08/02		
Subject:	Workspace and Equipment	Page 1 of 1
Case Management		

A. WORKSPACE AND EQUIPMENT

1. ICAC computers and software shall be reserved for the exclusive use by agency designated ICAC personnel. When possible, undercover computers, software, and online accounts shall be purchased covertly. No personally owned equipment shall be used in ICAC investigations and all software shall be properly acquired and licensed.
2. ICAC personnel shall not use ICAC computers, software or online accounts for personal use.
3. Absent exigent or unforeseen circumstances, all ICAC online investigations shall be conducted in government workspace as designated by the agency. Exceptions must be approved in advance by an ICAC supervisor.

Effective Date: 3/08/02		
Subject:	Case Predication and Prioritization	Page 1 of 1
Case Management		

B. CASE PREDICATION AND PRIORITIZATION

1. Cases may be initiated by referrals from the CyberTipline, Internet service providers, or other law enforcement agencies, and by information gathered through subject interviews, documented public sources, direct observations of suspicious behavior, public complaints, or by any other source acceptable under agency policies.
2. ICAC supervisors are responsible for determining investigative priorities and selecting cases for investigation. Assuming the information is deemed credible, that determination should begin with an assessment of victim risk and then consider other factors such as jurisdiction and known offender behavioral characteristics. The following prioritization scale shall be considered:
 - a) A child is at immediate risk of victimization
 - b) A child is vulnerable to victimization by a known offender
 - c) A known suspect is aggressively soliciting a child(ren)
 - d) Manufacturers, distributors or possessors of images that appear to be home photography with domiciled children
 - e) Aggressive, high-volume child pornography manufacturers or distributors who either are commercial distributors, repeat offenders, or specialize in sadistic images
 - f) Manufacturers, distributors and solicitors involved in high-volume trafficking or belong to an organized child pornography ring that operates as a criminal conspiracy
 - g) Distributors, solicitors and possessors of images of child pornography
 - h) Any other form of child victimization.

Effective Date: 3/08/02		
Subject:	Record Keeping	Page 1 of 1
Case Management		

C. Record Keeping

1. ICAC units shall be subject to existing agency incident reporting procedures and case supervision systems. At a minimum, a unique identifier shall be assigned to each ICAC case.
2. Participating agencies will report program accomplishments using the ICAC *Monthly Performance Measures Report*. This report is due to the ICAC Coordinator on the 10th of every month and does not replace the semi-annual progress report required by the Office of Justice Program's Financial Guide.

Effective Date:		
3/08/02		
Subject:	Undercover Investigations	Page 1 of 1
Case Management		

D. Undercover Investigations

1. Carefully managed undercover operations conducted by well-trained officers are among the most effective techniques available to law enforcement for addressing ICAC offenses. Undercover operations, when executed and documented properly, collect virtually unassailable evidence regarding a suspect's predilection to exploit children.
2. Investigators will be supplied with appropriate training and receive a copy of the ICAC Operational and Investigative Standards.
3. ICAC investigations shall be conducted in a manner consistent with the principles of law and due process. See, for example, *Jacobson v. U.S.*, 503 U.S. 540 (1992); *U.S. v. Archer*, 486 F.2d (2nd Cir.1973); *U.S. v. Gamache* 156 F. 3d 1 (1st Cir. 1998); *U.S. v. Pochlman* 217 F. 3d 692 (9th Cir. 2000). ICAC investigators are encouraged to work in conjunction with their local prosecutors.
4. The following *minimum* standards apply to ICAC investigations:
 - a) Only sworn, on-duty ICAC personnel shall conduct ICAC investigations in an undercover capacity. Private citizens shall not be asked to seek out investigative targets, nor shall they be authorized to act as police agents in an online undercover capacity.
 - b) ICAC personnel shall not, electronically upload, transmit, or forward pornographic or sexually explicit images.
 - c) Other than photographs of law enforcement officers who have provided their informed written consent, no actual human images shall be uploaded, transmitted, or forwarded by ICAC personnel.
 - d) During online dialogue, undercover officers should allow the investigative target to set the tone, pace, and subject matter of the online conversation. Image transfer shall be initiated by the target.
 - e) Undercover online activity shall be recorded and documented. Any departures from this policy due to unusual circumstances shall be documented in the relevant case file and reviewed by an ICAC supervisor.

Effective Date: 3/08/02		
Subject:	Evidence Procedures	Page 1 of 1
Case Management		

E. Evidence Procedures

1. The storage, security, and destruction of investigative information shall be consistent with agency policy. Access to these files should be restricted to authorized personnel.
2. ICAC supervisors should ensure that qualified personnel conduct forensic examinations of computers and related evidence.
 - a. Child pornography is contraband and should be maintained pursuant to each agency's policies regarding such. Absent a court order specifically ordering otherwise, evidence containing child pornography shall not be released to any defendant or representative thereof.
 - b. When providing evidence containing child pornography to another law enforcement agency, such evidence must be hand-delivered, digitally protected or sent via a delivery service which tracks the shipment.

Effective Date: 3/08/02		
Subject:		Page 1 of 1
Information Sharing		

1. Conventional boundaries are virtually meaningless in the electronic world of the Internet and the usual constraints of time, place, and distance lose their relevance. These factors increase the possibility of ICAC agencies targeting one another, investigating the same subject, or inadvertently disrupting an ongoing investigation. To foster coordination, collaboration, and communication, each ICAC agency must contribute basic case information to a common database.
2. Each ICAC agency shall contribute case information on all active investigations (local, interstate, reactive and proactive) to a common database as designated by the ICAC Board of Directors. This information should be submitted at the earliest practical opportunity.
3. If any common target is identified, the initiating ICAC agency is responsible for contacting the other law enforcement agency targeting the suspect.
4. Initiating ICAC agencies should also consider contacting other local, state, and federal agencies which may be involved in similar investigations.

Effective Date: 3/08/02		
Subject:		Page 1 of 1
Supervision		

1. Each ICAC agency shall have supervisory systems and procedures, which shall provide for observation, documentation, and periodic review of ICAC activity. Such system should comply with the principles of quality case management and ensure that ICAC activities comply with both agency and ICAC Standards.
2. ICAC agencies may submit any proposed operations to the Board for review. To assist the Board in its review, the proposals shall be submitted to the Board Coordinator at least 21 days in advance of the next regularly scheduled meeting. Proposals should be submitted using the following format and include the following information:
 - a) goals and objectives of the operation;
 - b) personnel assigned and/or responsible for investigation;
 - c) duration of operation, i.e., projected start and stop dates;
 - d) offenses targeted for investigation;
 - e) investigative targets and limitation on government contact;
 - f) operation scenario and techniques (language for contact letters and advertisements must be included with proposal);
 - g) liaison and/or case referral procedures with Federal law enforcement agencies (include the names of Federal agents when known) and;
 - h) other relevant information
3. The Board, at its discretion, may suggest amendments to the original proposal following consultation with the presenting agency. Notice of the results of the review of investigative proposals from satellites will be communicated to the satellite representatives by the Board Chair.
4. The ICAC submitting the proposal for review may seek the support of the Board.

Effective Date:		
3/08/02		
Subject:		Page 1 of 1
Selection of ICAC Task Force Personnel		

Managers and supervisors should evaluate prospective ICAC candidates for work history that indicates prior investigative experience; court testimony skills; ability to handle sensitive information prudently, and a genuine interest in the protection of children.

Effective Date: 9/27/02		
Subject:		Page 1 of 1
Community Education and Crime Prevention Activities		

1. Prevention education activities are a critical component of the OJJDP ICAC Program. ICAC agencies should foster awareness and provide practical, relevant guidance to children, parents, educators, librarians, and other individuals concerned about child safety issues.
2. Presentations to school staff, parents, and community groups are excellent ways to promote awareness. These presentations shall not depict identifiable victims, not otherwise in the public domain; nor shall they use pornographic or sexually explicit images. Presenters shall not discuss confidential investigative techniques.
3. No member of an ICAC Task Force may endorse any product or service without the express consent of an OJJDP Program Manager. While appearing at public presentations, ICAC members may indicate a preference for a product or service, but to avoid an implicit endorsement, such ICAC members should indicate adequate alternatives.

Effective Date:		
3/08/02		
Subject:		Page 1 of 1
Media Relations and Releases		

Media releases relating to prosecutions, crime alerts or other matters concerning ICAC operations shall not include information regarding confidential investigative techniques and should be coordinated (when applicable) with other Task Force participants, Federal law enforcement agencies, and State and local agencies involved in the investigation consistent with sound information management and media relations practices.



HENRY McMASTER
ATTORNEY GENERAL

March 16, 2010

James B. Huff, Esquire
James B. Huff Law Firm, P.C.
P.O. Box 6488
1417 Georgia Avenue
North Augusta, SC 29841

Re: State v. Anthony C. Odom
Direct Presentment

Dear Mr. Huff,

Please be advised, as we discussed during our telephone conversation on Thursday, February 18, 2010, the State is submitting indictments to the Oconee County Grand Jury in April for communications your client had with undercover Investigator Mark Patterson, formerly of the Westminster Police Department. You have copies of these chats, which occurred between May 4, and 6, 2006.

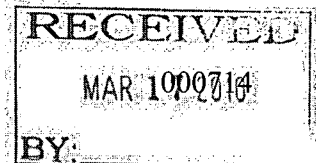
Should the Oconee County Grand Jury return true bill indictments, the State intends to call the case for trial June 28, 2010, in front of the Honorable Alexander S. Macaulay.

As always, feel free to contact me. You may reach me by email at mwines@scag.gov, or at (803) 734-3724.

Sincerely,

Megan B. Wines
Megan B. Wines
Assistant Attorney General

MBW/lg
cc: Andrew Johnston, Esquire



13

1 404(B) EXCEPTIONS THAT WE THINK APPLY HERE. FIRST AND
2 FOREMOST, IT'S OUR BURDEN AT TRIAL ON THE SPARTANBURG CHARGE
3 TO PROVE INTENT TO SET TO INDUCE AND INTENT AS FAR AS THE
4 KNOWLEDGE OR HIS REASONABLE BELIEF THAT HE'S CHATTING WITH A
5 CHILD.

6 YOUR HONOR, IF YOU READ THESE CHATS AND YOU READ THE
7 SPARTANBURG CHATS, WE THINK IT GOES TO BOTH HIS INTENT, HIS
8 IDENTITY AS THE SCREEN NAME, IS THE SCREEN NAME THE SAME,
9 THE CHATS ARE VERY SIMILAR FASHION. IT GOES TO LACK OF
10 MISTAKE, YOUR HONOR, BECAUSE ---

11 THE COURT: ALL RIGHT. I JUST -- OBVIOUSLY YOU HAVE A
12 REASON WHY YOU WANT TO USE THEM.

13 MR. STUMBO: UNDER 404(B), YOUR HONOR, WE BELIEVE
14 SEVERAL OF THE EXCEPTIONS APPLY.

15 THE COURT: ALL RIGHT. DO YOU HAVE ANY INFORMATION TO
16 SUPPLEMENT, I MEAN, MR. SWERLING SAYS HE DOESN'T HAVE
17 ANYTHING TO BACK UP THESE STATEMENTS. DO YOU HAVE ANYTHING
18 THAT YOU CAN GIVE HIM?

19 MR. STUMBO: WE DON'T, YOUR HONOR. I ASKED THE
20 INVESTIGATOR. HE NEVER DID AN INCIDENT REPORT BECAUSE HE
21 NEVER -- WE NEVER INTENDED TO CHARGE, YOU KNOW, AT THAT TIME
22 IN OCONEE COUNTY. SO HE'S PROVIDED US WITH THE CHAT LOGS
23 AND CAMTASIA, WHICH IS THE LIVE CAPTURE OF WHAT'S GOING ON
24 ON THE COMPUTER SCREEN.

25 THE COURT: ALL RIGHT.

000715

12/14/2009 15:21 FAX

0001/0001



TOWN OF BURNETTOWN

HOME OF THE SASSAFRAS FESTIVAL

Burnettown Police Department

3144 Augusta Road
Burnettown, SC 29851

Post Office Box 994
Bath, SC 29816

14 December 2009

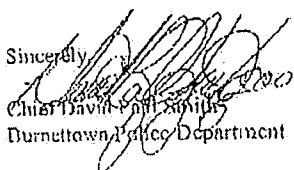
Burnettown Municipal Court
ATT: Honorable Redger Edmonds
P.O. Box 994
Bath, SC 29816

Reference: Investigative Case File Mark Patterson Case 2009-01092

This is to serve as official notice of retention of above listed case file and in list a table of content thereof. The case file is to be secured by the court until a resolution of this matter per your order.

Incident report of Chief Smith reference above case number.
6 copies of photographs of texts on Ellen Patterson's cell phone
1 cd containing voicemails left on Ellen Patterson's cell phone
3 page written statement of Ellen Patterson
1 Page written statement of Calvin McCravy
1 letter from DR. Dewitt
Crime victim intake forms

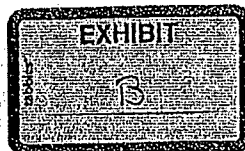
Sincerely,


Chief David Paul Smith
Burnettown Police Department

Town Hall
803-593-2676

Burnettown Police Department
David Paul Smith
Chief of Police
Office: 803-593-2100
Fax: 803-593-6275
ChiefDP@burnettown.com

Police Department
803-593-2100



M. HOPE BLACKLEY

2011 JAN - 6 AM 10:49

2011 JAN - 6 AM 10:49

000716

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

SOUTH CAROLINA
Plaintiff

VS

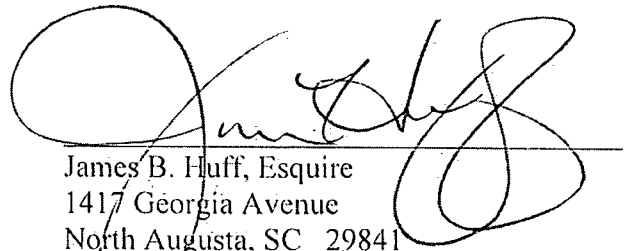
ANTHONY C. ODOM
Defendant

IN THE GENERAL SESSIONS COURT
TENTH JUDICIAL CIRCUIT

**NOTICE OF MOTION &
MOTION FOR NEW TRIAL**

CASE NO: 2010-GS-3700-364A

PLEASE TAKE NOTICE that the Defendant, does hereby move before the Honorable R. Lawton McIntosh, for an Order granting a New Trial in the above listed case which was heard November 7 through November 10, 2011. A verdict and sentence in the matter was imposed on November 10, 2011. The basis for Defendant's motion is set forth in the attached Memorandum of Law.



James B. Huff, Esquire
1417 Georgia Avenue
North Augusta, SC 29841
803-278-2889
803-442-4422 (FAX)
Email: jhuff@hufflaw.org

November 17, 2011

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

SOUTH CAROLINA
Plaintiff

VS

ANTHONY C. ODOM
Defendant

IN THE GENERAL SESSIONS COURT

TENTH JUDICIAL CIRCUIT

**MEMORANDUM IN SUPPORT OF
MOTION FOR NEW TRIAL**

CASE NO: 2010-GS-3700-364A

The Defendant is entitled to a new trial on the following basis:

A. Prosecutorial Vindictiveness

The Court erred in denying Defendant's Motion to Dismiss based upon Prosecutorial Vindictiveness.

At a pre-trial hearing held in Walhalla on June 27, 2011, the Court received evidence by way of sworn testimony and evidentiary documents from attorney James B. Huff indicating the indictment of the Defendant in Oconee County was based upon Prosecutorial Vindictiveness. The Attorney General offered no cross examination of witness Huff, nor entered any evidence in the record to contradict the testimony and exhibits regarding Prosecutorial Vindictiveness. Additionally, in comments made to the Court immediately after the testimony was closed, the Attorney General admitted she called attorney Huff, that she was angry when she spoke to Mr. Huff, and that she stated that she would indict in Oconee County.

In renewing the Motion during the November trial, Mr. Odom presented additional evidence of prosecutorial vindictiveness by way of the Attorney General's office threatening the process server Mr. Odom used in serving subpoenas upon the Assistant Attorney Generals in this case for a related civil case. Further, when queried by this Court on November 10, 2011, as to the issue of Prosecutorial Vindictiveness, the Attorney General made further statements which supported Defendant's claim.

B. Admission of 404(B) "Lyle" Evidence

The Court erred in allowing the State to admit evidence of the Spartanburg chats under the theory of *State v. Lyle* and SCRCrimP 404(B) and 403.

The potential prejudice of the Spartanburg chats clearly outweighed any probative value. The differences in the chats, the lack of a photo, the sheer number of the Spartanburg chats, their duration over time, the specific nature of the "masturbation" chat and of discussions of "meetings" should have required exclusion from trial evidence in this case.

C. Official Capacity

The Court erred in limiting Defendant's right to present a defense regarding "official capacity".

The Court refused to allow the defense to cross-examine Officer McGraw (Lyle Evidence) regarding his time sheets and whether or not he was "off duty" and not acting in his "official capacity".

On Monday, November 7, 2011, the Court inquired of the Attorney General if the officer is not acting in his official capacity, is that a defense to this case? The Attorney General stated that if the officer was not acting in his official capacity it is a defense. The Court then inquired that if the topic of conversations regarded sex and the conversation was with a 16 year old, can a person 16 years of age or older consent to the conversation without it being a crime. The Attorney General stated, "Yes". On Tuesday, November 8, during the cross-examination of Officer Patterson, the witness admitted that if he was not on duty and acting in his "official capacity", that there would be no crime.

The State then called Officer McGraw regarding the "Spartanburg chats". The Court asked the State whether or not Officer McGraw was "on duty" acting in his "official capacity" during the first four Spartanburg chats. The State responded by stating that during the first four chats "we freely admit he was not on duty". Based upon the officer not being on duty, the Court

ruled that the first four chats between Officer McGraw and the Defendant would be excluded from evidence. The Court then ruled that the remaining chats were relevant, admissible and did not violate Rule 403. The Court further ruled that it was not going to allow the State to go through each line of each chat during its examination of Investigator McGraw.

The Defendant informed the Court that as to the remaining Spartanburg chats, the Defendant had Officer McGraw's time sheets, which would reflect that many of the other chats were conducted when Officer McGraw was also off duty and not acting in his official capacity. The Court stated that the defense would not be allowed to cross-examine Officer McGraw regarding this issue as to the remaining chats.

Further, the Defendant had under subpoena and listed on its Witness List Mr. Dan Johnson, who was a major with the Spartanburg Sheriff's Department at the time of the chats. Mr. Johnson had appeared at the prior Spartanburg trial and through his statements the State and the Defense reached a stipulation that the normal working hours of a criminal investigation division investigator with the Spartanburg County Sheriff's Department was 8:30 a.m. to 5:00 p.m. In the case at bar, the Defendant proffered the time records of Officer McGraw as a court exhibit.

The Court allowed the State to introduce all of the remaining Spartanburg chats dated March 21 through May 4, 2006. McGraw specifically testified regarding chats dated March 21 and 23, April 1, 21 and 29, and May 1 and 4. If the Defendant would have been allowed to cross-examine Officer McGraw, he would have elicited that McGraw was off duty on ten of the remaining chats.

Further, the State elicited oral testimony from Officer McGraw as to the contents of chats where Officer McGraw was clearly off duty or on weekends when he did not request to get paid

for the time of these alleged chats, in particular those chats occurring on March 23, April 1, April 29, May 1 and May 4. Out of a total of seven chats where the State elicited testimony from Officer McGraw, over half occurred beyond his scheduled work hours. Further, his pay records reflect that he did not work on any weekends and that the chats on April 1 and April 29 were Saturdays.

As admitted by the State and testified to by the State's witness, if the officer was not on duty he could not be acting in his official capacity. As such, the Court erred in denying the Defendant an opportunity to cross-examine the State's witness, Officer McGraw, as to official capacity or being off duty and in not excluding the other "Lyle" admitted chats on the same basis that the Court excluded the first four chats.

D. Bond and Oath

The Court erred in not charging the jury on the requirement that a municipal officer have a bond and oath in order to be a licensed law enforcement officer and by specifically instructing the jury not to discuss this issue in its deliberations.

During the course of the trial, a State's witness, Chief Scott Bannister testified that in order to be a law enforcement officer Mr. Patterson would have to have a bond and oath. Additionally, Mr. Patterson admitted the same. On Wednesday, November 9, the Westminster Municipal Clerk, Jennifer Adams, testified that there was no bond for Mr. Patterson found in his file that was kept at the Westminster's Clerk's office. On Thursday, November 10, *in sur reply*, the Defendant informed the Court it was calling the Oconee County Clerk of Court, the Honorable Beverly Whitfield, as to the issue of whether or not Officer Patterson had a bond on file with the county Clerk of Court's office. The Court refused to allow the Defendant to call this witness and present her testimony, but allowed the Defendant to proffer in the record what her testimony would be, that being that Officer Patterson had no bond on file in her office.

The jury began their deliberations on Thursday, November 10, at approximately 4:25 p.m. At approximately 4:50 p.m. the jury returned with a question and asked the Court, "If an officer is not bonded are they considered a police officer?" The Defendant requested the Court inform the jury that it had given the jury all the law in its charge and to continue its deliberations. Over Defendant's objection the Court stated to the jury that it did not charge the jury regarding bond and that bond was not a proposition that the jury may consider in their deliberations. At approximately 7:05 p.m. the jury again sent the Court a question, stating that they wished to review the cross-examination of Patterson and Chief of Police Bannister regarding the requirement to be bonded and the officer acting in official capacity. The Court, again over Defendant's objection, reprimanded the jury as to discussing the topic of having a bond as it relates to an officer's official capacity. The Defendant is informed and believes that the issue of bond and oath were properly before the jury, having received evidence of the same from witnesses called by both the State and Defense. The Court erred in failing to charge the jury on this issue, and by specifically instructing them that they could not discuss it in their deliberations.

The Defendant had provided to the Court authority on this issue as reflected in *State v. Boswell*, 707 S.E.2d 265 (2011) where the State Supreme Court referenced the requirements of a municipal police officer of having a bond. In footnote 7, the Court discussed that a municipal police officer transferred to another jurisdiction under a mutual aid agreement pursuant to §23-20-50. The Court stated "the bond for any police officer transferred shall include coverage for his activity in the municipality or county to which he is transferred in the same manner and to the same extent *provided by bonds of regularly employed officers of that municipality or county*". (Emphasis added) The Defendant also cited to the court §61-6-4510, §22-9-20 and §22-9-30.

As the jury had received evidence regarding this issue from both State and Defense witnesses and the court overruled the State's objection to Defense Counsel's closing argument discussing this matter, it was a violation of Due Process and an improper comment on the facts for the court to instruct the jury to, in essence, disregard the testimony and not discuss it in their deliberations.

E. Defendant's Age

The Court erred in taking judicial notice of the Defendant's age pursuant to SCRE 201.

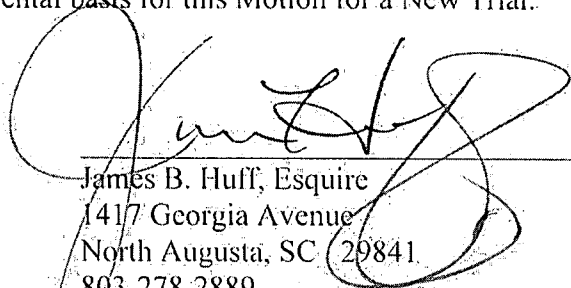
One element of the statutory offense of criminal solicitation of a minor requires that the State prove beyond a reasonable doubt that the accused is over the age of 18. The Defendant objected to the court taking Judicial Notice and contends that although the court has the power in appropriate circumstances to take judicial notice of some facts, it may not take judicial notice of an actual element of the criminal offense which the State is required to prove beyond a reasonable doubt. In this case, the court received a reported copy of the South Carolina Department of Motor Vehicles driving record to prove that the Defendant was over the age 18. The records of this agency are often times incorrect and inaccurate. See *Rakestraw v. South Carolina Dept of Highway and Public Transportation*, 473 SE2d 890 (Ct.App)(1996), *Jones v. City of Columbia*, 389 SE2d 662 (1990). As such, the records are subject to dispute. Further, taking Judicial Notice of an element of a criminal charge removes the State's burden of proof in the matter.

Additionally, the court stated that it took judicial notice of the document pursuant to §19-5-40. This was error. Section 19-5-40 pertains only to documents which reflect a certification from a records custodian that the "original of such instrument or record has been lost or destroyed". No such records custodian appeared at the trial nor was any representation made to

the Court that the original had been lost or destroyed. The State was required pursuant to a Motion for Discovery under SCRCrimP 5 to have provided the Defendant with a copy of this proposed document within 30 days of the filing of his Rule 5 Motion on April 29, 2010.

CONCLUSION

The Defendant incorporates herein by reference thereto all motions and objections made by the Defendant during the trial as a supplemental basis for this Motion for a New Trial.



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STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

SOUTH CAROLINA
Plaintiff

VS

ANTHONY C. ODOM
Defendant

IN THE GENERAL SESSIONS COURT

TENTH JUDICIAL CIRCUIT

**DEFENDANT'S MOTION TO DISMISS
FIRST AMENDMENT**

CASE NO: 2010-GS-3700-363A and
2010-GS-3700-364A

In this matter before the court the Defendant asserts that his rights to Free Speech under both the First Amendment of the United States Constitution and Article I, Section 2 of the State of South Carolina Constitution has been infringed upon. Additionally, under the case law of the United States Supreme Court the Defendant asserts the doctrine of chilled speech to additionally show violations of the Free Speech rights guaranteed him under both the State and US Constitutions.

The court in determining if free speech rights have been infringed must first determine if the speech in question is protected. The issue of whether or not the court is dealing with speech is not in question. The speech in question is alleged to have occurred over the internet first beginning in a Yahoo internet adult sex chat room and then over Yahoo Instant Messenger. The "chats" are of a sexual nature and allegedly occur between an undercover officer and the Defendant over the course of about two (2) days.

The State has proposed that the speech is obscene under *Miller v. California*, 413 U.S. 15, 93 S.Ct. 2607 (1973), and as such is not protected speech. It is unquestioned that obscenity in general is not protected speech, unless not public and in a private home, *Stanley v. Georgia*, 394 U.S. 577, 89 S.Ct. 1243 (1969). However, in this case obscenity is not at issue at all. As such the argument is off point, the statute in question S.C. Code §16-15-342 makes no reference to obscenity nor does it have a standard to which apply to determine if the speech is obscene. If

S.C. Code §16-15-342 were an obscenity statute the lack of such a standard would violate the very case cited by the State, *Miller v. California*, 413 U.S. 15, 93 S.Ct. 2607 (1973). Under *Vernon Beigay Inc. v. Traxler*, 790 F.2d 1088 (4th Cir. 1986) it would be declared unconstitutional for the lack of a proper obscenity standard. In *Traxler* a South Carolina obscenity statute was found unconstitutional for lack of a proper standard in the statute. This was because it required the finder of fact to look to a subgroup of individuals and not the society as a whole. Luckily, for the State S.C. Code §16-15-342 is a criminal solicitation statute and not one of obscenity.

However, the speech would not be protected if it were a call for immediate criminal conduct *Brandenburg v. Ohio*, 395 U.S. 444, 89 S.Ct. 1827 (1969). This would include solicitation to commit a crime which is what is prohibited by S.C. Code §16-15-342. It is that connection between the words and the action incited thereby which would not be protected. In order to fully enlighten the issues as to what speech would not be protected the statute in question must be construed to determine what conduct is prohibited.

The elements of proof required by S.C. Code §16-15-342 must be ascertained. Since this statute is criminal in nature specific construction rules apply to determine the meaning. There are no reported cases in South Carolina fully construing this statute, so the only guidance of any binding authority is the rules of statutory construction.

The cardinal rule of statutory construction is to ascertain and effectuate the intention of the legislature, *Howell v. U.S. Fidelity and Guar. Ins. Co.* 370 S.C. 505, 636 S.E.2d 626 (2006). However, statutes must be read as a whole, and sections which are part of the same general statutory scheme must be construed together and each one given effect, if reasonable, *Higgins v. State*, 307 S.C. 446, 415 S.E.2d 799 (1992). Criminal statutes are to be construed strictly against

the State and in favor of the defendant, *State v. Muldrow*, 348 S.C. 264, 559 S.E.2d 847 (2002).

The words in a statute must be given their plain and ordinary meaning.

The text of S.C. Code §16-15-342 in pertinent part to this section is as follows:

A person eighteen years of age or older commits the offense of criminal solicitation of a minor if he knowingly contacts or communicates with, or attempts to contact or communicate with, a person who is under the age of eighteen, or a person reasonably believed to be under the age of eighteen, for the purpose of or with the intent of persuading, inducing, enticing, or coercing the person to engage or participate in a sexual activity as defined in Section 16-15-375(5) or a violent crime as defined in Section 16-1-60, or with the intent to perform a sexual activity in the presence of the person under the age of eighteen, or person reasonably believed to be under the age of eighteen.

Under S.C. §16-15-342 the actor must first be over the age of eighteen years as stated by the language "A person eighteen years of age or older". The second element in the offense would be to contact or communicate with while doing so knowingly. Knowingly has been defined as a person acting while aware of the result that is practically certain to follow from his conduct, whatever his desire may be as to that result, *State v. Jeffries*, 316 S.C. 13, 446 S.E.2d 427 (1994). In other words you must know you are contacting or communicating.

The third element of S.C. Code §16-15-342 deals with age of the person being communicated with. It states that the knowing communication or contact must be with a person who is under the age of eighteen, or a person reasonably believed to be under the age of eighteen. Black's Law Dictionary 6th Edition defines a reasonable belief as a belief based upon reasoned facts. It is interesting to note that in an internet chat room it would be impossible to have any reasoned facts. As often quoted by the State in such stings there is no way to know who you are talking to.

The fourth and final element of S.C. Code §16-15-342 is separate from the communication itself and goes to the intent behind it as it states the communication must be for

the purpose of or with the intent of persuading, inducing, enticing, or coercing the person to engage or participate in a sexual activity. The term sexual activity is defined by statute and will be discussed in detail shortly.

In order to fully understand the meaning of this element each term must be defined and given its plain meaning. "Persuade" means to cause somebody to adopt a certain position primarily through the uses of reason. "Induce" means to cause something to arise. "Entice" is to offer some reward in order to get someone to stop resisting and do as you wish. And "coerce" is to cause someone to do something through pressure or necessity, by physical, moral or intellectual means. These terms in their collective would be used to describe the act of solicitation which is defined as asking with the desire to receive, (Black's Law Dictionary, Sixth Edition).

The second part of this element of S.C. Code §16-15-342 deals with the goal of these tactics used to solicit. It tells you what the intent or purpose of the communication must be. This purpose must be to get the object, namely the under the age of eighteen receiver of the communication to engage or participate in a sexual activity. The term "engage" means to prosecute: carry out or participate in an activity; be involved in. While the term "participate" means to enter; become a participant; be involved in, (Black's Law Dictionary, Sixth Edition).

In essence the words are synonyms describing the same concept of doing, while the terms intent and purpose are also words describing the same concept of goal. In all, the final element of S.C. Code § 16-15-342 is the use of solicitation tactics to get someone to do a specific goal. This is not a deviation from common law solicitation of a crime, which requires the use of the same tactics to get someone to commit a crime.

Solicitation at common law is an offense whereby "it is only necessary that the actor, with **intent** that another person commit a crime, have enticed, advised, invited, ordered, or otherwise encouraged that person to commit a crime, *State v. Bowers*, 35 S.C. 262, 14 S.E. 488 (1892).

As to the Type of Intent Required for Criminal Liability in S.C. Code §16-15-342

This crime requires the actor to use the tactics prohibited under the statute with the purpose to get the receiver to engage or participate in a sexual activity or violent crime. This is a specific goal and is separate from the act of using the prohibited tactics. The intent required is specific. Black's Law Dictionary, Sixth Edition defines specific intent as the mental purpose to accomplish a specific act prohibited by law. The most common usage of "specific intent" is to designate a special mental element which is required above and beyond any mental state required with respect to the actus reus of the crime.

Common law larceny, for example, requires the taking and carrying away of the property of another, and the defendant's mental state as to this act must be established, but in addition it must be shown that there was an "intent to steal" the property. Similarly, common law burglary requires a breaking and entry into the dwelling of another, but in addition to the mental state connected with these acts it must also be established that the defendant acted "with intent to commit a felony therein." A specific intent crime is a crime where a particular intent is a necessary element of the crime itself, *Russell v. State*, Fla.App., 373 So.2d 97, 98. In our case the act as in the communication must be knowingly done, while the specific intent is to solicit the receiver to engage in sexual activity or violent crime.

As to What Constitutes Sexual Activity

The term sexual activity as used by S.C. Code §16-15-342 is defined by reference to S.C. Code §16-15-375(5). This section is a list in a much longer statutory scheme and is taken out of context. In order to determine what the legislature means by the defined terms one must look to the whole statute and not take one section out of context.

The cardinal rule of statutory construction is to ascertain and effectuate the intention of the legislature, *Howell v. U.S. Fidelity and Guar. Ins. Co.* 370 S.C. 505, 636 S.E.2d 626 (2006). However, statutes must be read as a whole, and sections which are part of the same general statutory scheme must be construed together and each one given effect, if reasonable, *Higgins v. State*, 307 S.C. 446, 415 S.E.2d 799 (1992). Criminal statutes are to be construed strictly against the State and in favor of the defendant. *State v. Muldrow*, 348 S.C. 264, 559 S.E.2d 847 (2002). The words in a statute must be given their plain and ordinary meaning.

There appear to be no South Carolina cases construing this statute in whole or part. The relevant part of S.C. Code §16-15-375(5) is as follows:

"Sexual activity" includes any of the following acts or simulations thereof:

- (a) masturbation, whether done alone or with another human or animal;
- (b) vaginal, anal, or oral intercourse, whether done with another human or an animal;
- (c) touching, in an act of apparent sexual stimulation or sexual abuse, of the clothed or unclothed genitals, pubic area, or buttocks of another person or the clothed or unclothed breasts of a human female;
- (d) an act or condition that depicts bestiality, sado-masochistic abuse, meaning flagellation or torture by or upon a person who is nude or clad in undergarments or in a costume which reveals the pubic hair, anus, vulva, genitals, or female breast nipples, or the condition of being fettered, bound, or otherwise physically restrained on the part of the one so clothed;
- (e) excretory functions;
- (f) the insertion of any part of a person's body, other than the male sexual organ, or of any object into another person's anus or vagina, except when done as part of a recognized medical procedure.

When this statute is viewed in light of the entire statutory scheme it becomes clear that the definition of sexual activity concerned what could be seen or physically accomplished, since the definitions apply to §16-15-385, disseminating or exhibiting to minors harmful material or performances; to §16-15-387, employing a person under the age of eighteen years to appear in a state of sexually explicit nudity in a public place; to §16-15-395, first degree sexual exploitation of a minor; to §16-15-405, second degree sexual exploitation of a minor; to §16-15-410, third degree sexual exploitation of a minor; to §16-15-415, promoting prostitution of a minor; and to §16-15-425, participating in prostitution of a minor.

Also when looking at the referenced section in S.C. Code §16-15-375(5) it refers to the terms act or simulation. An act is to perform an action, while a simulation creates the appearance of being real, giving the experience of a real situation without risks. Both these terms refer to things that are real or at a minimum appear to be real. This implies visual representations not written ones. (Black's Law Dictionary, Sixth Edition)

Besides the definitions of act and simulation this section contains a definition of what material is, which further illustrates what types of acts and simulations the legislators were defining. This definition is found at S.C. Code §16-15-375(2), and in relevant part listed below.

"Material" means pictures, drawings, video recordings, films, digital electronic files, or other visual depictions or representations, but not material consisting entirely of written words.

Additionally, under S.C. Code §16-15-385 and §16-15-395 (1) materials consisting only of words cannot even be harmful to individuals under age eighteen. This sets a clear policy that words describing even the acts and simulations defined in §16-15-375(5) cannot be unlawful.

In order to have criminal liability under S.C. Code §16-15-342 one must be over the age of eighteen, knowingly communicate or contact someone under the age of eighteen or reasonably

believed to be under that age, must specifically use the tactics of persuading, inducing, enticing, or coercing with the specific purpose to get the receiver to engage in a sexual activity for which the Defendant must have the intent to see. This could easily be accomplished by the use of a webcam or pictures of the activity. No such items are alleged to be used in this case, it is entirely words.

In addition should the legislature had wanted to include material entirely of words they could have made reference to S.C. Code §16-15-305(4)(C)(1) to define the sexual conduct prohibited to be solicited. In S.C. Code §16-15-305(A)(1) a writing is expressly included in the definitions. Since the legislature did not reference this statute and instead one in which writing is excluded as material, it makes the intent of legislature very clear it was criminalizing items which were more than just written words. It was criminalizing those activities which could be seen.

Now having construed the statute it is clear that words alone were not what the legislature wanted to criminalize unless the words lead to action. If this was the case of how S.C. Code §16-15-342 were being enforced the free speech rights of the Defendant under both the State and US Constitutions would not be implicated. There also clearly would be no crime in this matter since specific intent does not exist to solicit a crime.

In this case the State has chosen to conduct its investigations in adult chat rooms and has declared that any discussion of sex is a crime regardless of the intent to carry out such act. This position ignores the intent required behind the words. Cyber sex is not a crime under S.C. Code §16-15-342 since it is fantasy and not a request to engage in sexual activity, which can be real or seen. It is also not listed as a specific act under S.C. Code §16-15-375(5) which defines the acts for which solicitation is a crime.

One argument of the State could use to avoid the speech being protected would be the virtual discussion of masturbation in the chat. This is assuming of course the court finds a defendant does not have to have the intent to see or show the act for it to be a crime. In which case the court would be construing the statute to forbid the mere asking with intent that the other masturbate is a crime. However, this would also be protected under the first amendment since the underlying act itself is fully legal for anyone of any age to engage in. In *Wood v. United States*, 498 A.2D 1140 (D.C. 1985) the defendant asserted their First Amendment right by saying that the act prohibited was "entirely lawful conduct". In *Wood* it is stated that the First Amendment does not protect Solicitation to commit an unlawful act. This same proposition is affirmed in *Ashcroft v. Free Speech Coalition*, 535 U.S. 234, 122 S.Ct. 1389 (2002).

Upon review of South Carolina law masturbation at any age is an entirely lawful act. Since this is so the speech to this effect is entitled to protection since it does not request illegal conduct, even assuming intent existed on the Defendant's part for the person to so engage. In fact under *Wood* the only way to proscribe its solicitation would be for the State to show a substantial government interest and that it is narrowly tailored to serve that interest. The blank prohibition on masturbation would prohibit health professions from discussion of the act as well as sex education providers. In fact any discussion of masturbation with a minor even by a parent would be actionable under the State's interpretation of the statute regardless of the sexual intent behind the discussion. Since there is no language stating that such discussion be for a person's sexual gratification, but only that it persuades, induces, entices, or coerces the act. Also any books promoting its use or that it was a healthy part of life, or web site saying the same would be prohibited if directed to those under eighteen (18). This chills huge swaths of legitimate speech

and would make the statute unconstitutional under the law. It is not narrowly tailored to serve a legitimate state interest and fails this test as well.

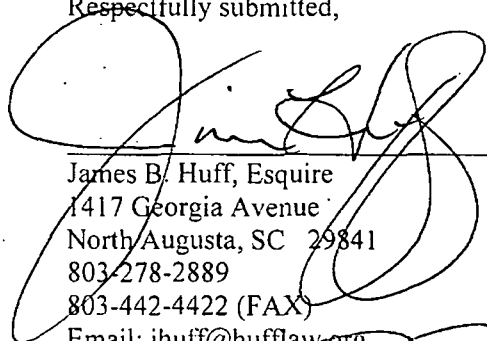
As to conducting such an investigation in an Adult Chat Room

It is uncontested that at all times the Yahoo chat room required individuals to represent themselves as an adult to gain access. In fact the State has testified that one could assume this is the case due to this requirement, (July 9, 2007, Transcript Pages 76 & 77 Lines 21-5). As per the State the target of these investigations are individuals looking to solicit underage persons for sexual activity or to commit another enumerated crime under the statute. The State has testified that many underage persons use Yahoo Chat rooms yet this cannot be verified due to the representation required. It is not possible for any participant to know anything other than the chat rooms are for adults and that everyone in the chat room has so claimed. Any sexual speech between consenting adults that is not in public is protected speech, obscene or not, *Stanley v. Georgia*, 394 U.S. 577, 89 S.Ct. 1243 (1969). The State by going into a known adult chat room for such investigation chills lawful speech under threat of prosecution, such as role play, age play, or cyber sex. Adults have the right to pretend to be any age and engage in any such chat as they wish so long as not public and no illegal activities are acted upon. The conducting of such investigations in Adult sex oriented chat rooms chills protected speech and makes such activity much less likely even though perfectly lawful. There exist millions of teen rooms to conduct such investigations, yet the State still chose an adult room for this purpose, (Google Search "Teen Chat Room"). As such in this case the use of an Adult room to conduct the investigation is unconstitutional.

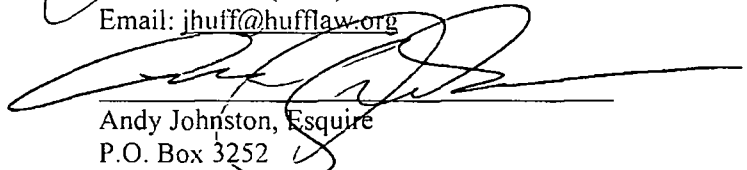
Conclusion

The statute as construed above would not violate the Free Speech Rights as guaranteed under both the State and US Constitutions and when so construed it is clear there is no crime. However, even when the statute is not so construed, due to the enforcement in an Adult chat room it is unconstitutional. Since this type of enforcement is chilling lawful speech. Additionally, the state has millions of alternatives available as venues for such investigations which would not do so. As such the case should be dismissed against the Defendant as its enforcement in this specific matter is unconstitutional or should the court construe the statute as above there is no crime.

Respectfully submitted,



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STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

The SATE of SOUTH CAROLINA

Plaintiff,

vs.

ANTHONY C. ODOM

Defendant.

)
) IN THE COURT OF GENERAL SESSIONS
) TENTH JUDICIAL CIRCUIT
)

) INDICTMENT(S) 2010- GS-37-363, 364
)
)

)
) **DEFENDANT'S MOTION TO**
) **DISMISS DUE TO PROSECUTORIAL**
) **VINDICTIVENESS**
)
)

FILED OCONEE, SC
BEVERLY H. WHITEFIELD
CLERK OF COURT
2011 JUN 27 P 4:56

Plaintiff Anthony C. Odom ("Odom") requests that the Court, dismiss the pending indictments against him due to Prosecutorial Vindictiveness.

Odom asserts that the acts of the prosecutor in this action constitute a violation of Odom's Fifth Amendment Due Process Clause rights as well as his United States Constitutions rights afforded him by the Fourteenth Amendment and present a case of vindictive prosecution. U.S. v. Wilson, 262 F.3d 305 (4th Cir. 2001). This motion and the testimony and evidence sought to be presented in support thereof will demonstrate that the indictments against Mr. Odom are being unlawfully and vindictively pursued by the State in order to penalize Odom for seeking information needed for his defense and to penalize him for his resistance to consenting to the State's request to bypass evidentiary requirements in the 2010 Spartanburg trial. In further support of this motion the evidence will demonstrate that the State did not intend to prosecute the current matter at the time of its alleged occurrence (2006), and took no action do so, for nearly four years until frustration and anger at the Defendant for exercising a clearly established right and what the law plainly entitles him to do resulted in the State pursuing the current indictments in Oconee.



LEGAL STANDARD TO ESTABLISH VINDICTIVE PROSECUTION

It is well established that a prosecutor violates the Due Process Clause of the Fifth Amendment by exacting a price for a defendant's exercise of a clearly established right or by punishing the defendant for doing what the law plainly entitles him to do. See United States v. Goodwin, 457 U.S. 368, 372, 102 S.Ct. 2485, 73 L.Ed.2d 74 (1982); (North Carolina v. Pearce, 395 U.S. 711, 724, 89 S.Ct. 2072, 23 L.Ed.2d 656 (1969) (penalizing those who choose to exercise' constitutional rights, 'would be patently unconstitutional.'")) (overruled on other grounds). Because the prohibition on vindictive prosecution is intended not only to prevent against prosecutions actually motivated by animus, but also to prevent the chilling of the exercise of constitutional rights by defendants, *no evidence of actual bad faith* is necessary to establish a claim. Blackledge v. Perry, 417 U.S. 21, 28 (1974) (emphasis added); In cases in which action detrimental to a defendant has been taken after the exercise of a legal right, the presumption of an improper vindictive motive has been applied only where a reasonable likelihood of vindictiveness existed United States v. Goodwin, 457 U.S. 368 (1982). However, once a presumption of vindictiveness has arisen, the burden shifts to the prosecution to show that "independent reasons or intervening circumstances dispel the appearance of vindictiveness and justify its decisions." United States v. Montoya, 45 F.3d 1286 (9th Cir. 1995) (citing United States v. Hooten 662 F.2d 628 (9th Cir. 1981).

Under U.S. v. Wilson, 262 F.3d 305 (4th Cir. 2001) for a claimant to be successful under a vindictive prosecution claim they must be able to show through objective evidence, that (1) the prosecutor acted with genuine animus toward the defendant and (2) the defendant would not have been prosecuted but for that animus. See Goodwin, 457 U.S. at 380 n. 12, 102 S.Ct. 2485. If the defendant is unable to prove an improper motive with direct evidence, he

may still present evidence of circumstances from which an improper vindictive motive *may be presumed*. (Wilson 262 F.3d at 314 (4th Cir. 2001))(emphasis added).

“[A]n indictment *must be dismissed* if there is a finding of actual vindictiveness, or if there is a presumption of vindictiveness that has not been rebutted by objective evidence justifying the prosecutor’s action” the indictment must be dismissed. United States v. Johnson, 171 F.3d 139; 140 (2d Cir. 1999) (per curiam).

ARGUMENT

In the current matter the actions, inaction and direct statements of the State evidence that the decision to prosecute Mr. Odom in Oconee is based upon animus, vindictiveness and improper motives or at a minimum create a presumption of vindictiveness which makes it incumbent upon the prosecution to rebut.

LENGTH OF TIME

The length of time from the alleged criminal conduct until the charge in this case (nearly 4 years) is highly unusual, and upon information and belief such delay has never occurred for a charge under S.C. Code §16-15-342.

Odom’s involvement in criminal litigation with the South Carolina Attorney General (AG) began on May 12, 2006 with his arrest for allegedly violating S.C. Code § 16-15-342, also known as Criminal Solicitation of a Minor, which alleged Odom had communicated with and undercover officer in an Adult chat room called “South Carolina Romance” in May 2006. At Mr. Odom’s bond hearing in 2006 the prosecutor, David Stumbo, stated that they were aware of Spartanburg chats as well as chats in Oconee County. Efforts by Odom’s attorney to obtain

additional information about the alleged Oconee chats from Mr. Stumbo was initially denied, then just prior to the scheduled 2007 trial of Mr. Odom in Spartanburg the prosecution stated that they intended to introduce the Oconee chats as evidence of "other bad acts". At a hearing on this potential "bad acts" evidence in July 2007 the state's attorney stated that he sought to use the Oconee chats as 404(b) evidence. When subsequently asked by the Judge for supporting documentation of the chats to provide the defendant the State's attorney acknowledged that the investigator never did an incident report and justified his lack of supporting documentation by stating that "We never intended to charge, you know at that time in Oconee County..." (See attached Complaint at page 4).

It is not until February 2010 in which the State first evidences a decision to move forward with any prosecution of Mr. Odom related to the Oconee charges in a conversation between State's attorney Megan Wines¹ and Defendant's attorney James Huff.

In U.S. v. Wilson the defendant put forth that a delay of "more than a year" was circumstantial evidence supporting a retaliatory motive. (Id. at 317). In this case the charges against the defendant come nearly four years after the alleged events.

STATEMENT OF THE STATE'S ATTORNEY AS TO THE REASON FOR PROSECUTION

However, the most direct evidence of an improper motive in this matter comes directly from conversations with the Prosecutor.

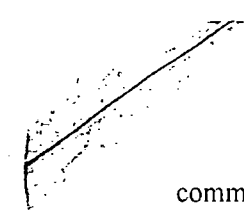
By way of background, on or about June 5, 2009 Mark Patterson was arrested and

¹Attorney Stumbo at the time of the first trial had left the AG's office and was an Assistant Solicitor with the County of Lexington, South Carolina but had obtained special permission to continue with the prosecution. Megan Wines, Esq. had at the time already taken over Stumbo's ICAC duties at the AG's office and was a participant at the first trial on the Spartanburg Trial.

subsequently fired from the Aiken County Sheriff's Office due to an alleged dispute with his wife. The charges on Patterson were eventually dropped, however, Odom wished to obtain copies of the evidence from Patterson's arrest. Said evidence allegedly includes voice communications of Patterson, pictures of text messages to his wife, and several statements by witnesses. (attached to Complaint 2011-CP-42-2032 as Exhibit B) Up to, and through, the time of Mr. Patterson's arrest (2009) the State continued to indicate that the alleged Oconee communications would be used only as bad act evidence.

Odom, through his counsel James B. Huff, Esq., made several attempts to obtain the Patterson arrest documentation. It was subpoenaed and is considered Brady material. The material has not been produced, but due to an order of the City Judge for the City of Burnetown, County of Aiken, State of South Carolina it is not to be destroyed (attached to Complaint 2011-CP-42-2032 as Exhibit B).

On or about February 18, 2010 Assistant Attorney General Megan Wines conducted a phone call with Mr. Odom's attorney, James Huff. In that conversation, Ms. Wines stated to Odom's counsel that Patterson had become upset due to the efforts by Odom's counsel to obtain the information regarding Patterson's arrest. In that call Ms. Wines also requested that Mr. Huff consent to allowing certain evidence the State intended to use in their case against Mr. Odom into the record at trial without the usual and required authentication of those documents. During the course of the conversation Mr. Huff showed some resistance to consenting to the State's request to bypass evidentiary procedure and continued to press for the Brady material evidence at which point Ms. Wines grew angry and indicated to Mr. Huff that given his position then she (Wines) would just direct indict the Oconee Communications. This is the first indication, nearly 4 years after the alleged incident, that the State would seek criminal charges on these



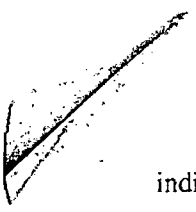
communications.

OTHER INDICATIONS OF VINDICTIVE PROSECUTION

It is believed that the State did not intend to prosecute the Oconee communications until animus toward the Defendant in 2010 led to the discussion and decision as set forth above. In support of that belief please note that in July 2007 the AG had only the Spartanburg Charge reviewed by the S.C. US Attorney's Office but not the Oconee information, (no federal charges have ever been brought) again evidencing that at that time they did not intend to pursue charges related to the Oconee chats.

In December 5, 2006 the state sent to Mr. Odom's attorney a letter stating that no further exam of Odom's computer would be performed (attached to Complaint 2011-CP-42-2032 as Exhibit D) with the previous warrant only referencing the Spartanburg chats again indicating no intent to prosecute with regard to the Oconee chats. However, after the current indictment of the Oconee Communications in 2010, the State obtained a new search warrant to conduct further exam on Odom's computer in relation to the Oconee chat. This new warrant was sought in 2010, more than 4 years after the alleged chats took place (attached to Complaint 2011-CP-42-2032 as Exhibit C).

In addition, at a point after the jury in the Spartanburg trial in February 2010 the State has pursued two indictments in the current action, where they sought a single indictment in Spartanburg. A fact which implies vindictiveness both as a result of the Spartanburg trial and because the indictment in Spartanburg covered chats of an alleged 17 communications over an approximately 2 week period where the Oconee Indictment covers only a 2 day period of chats. There exists no apparent explanation in review of the chats to justify such an increase in the



indictments sought. And, it is important to note that the only changes that have occurred concerning the Oconee Communications is that Patterson was fired and arrested, and that the Defense resisted efforts by the State to bypass evidentiary requirements. No other relevant facts or evidence have emerged since May of 2006.

CONCLUSIONS

Odom asserts that the acts of the prosecutor in this action constitute a violation of Odom's Fifth Amendment Due Process Clause rights as well as his United States Constitutional rights afforded him by the Fourteenth Amendment. These facts present a case of vindictive prosecution. U.S. v. Wilson, 262 F.3d 305 (4th Cir. 2001). The charges are being sought to penalize Odom for seeking information needed for his defense and for refusing to consent to allow the State to bypass evidentiary requirements. Additionally, the failure of the State to obtain conviction on the Spartanburg Charge has also resulted in more charges being prosecuted by the State in the pending Oconee matter.

In the event that the Court feels the above facts do not show **direct evidence** of vindictive prosecution, Odom may still show an improper motive by presenting evidence of circumstances from which an improper vindictive motive may be presumed. In such case Odom must show that the circumstances "pose a realistic likelihood of vindictiveness." Blackledge, 417 U.S. at 27, 94 S.Ct. 2098. By recognizing the possibility of creating a presumption that shifts the burden to the government to justify its conduct, not only is vindictive prosecution deterred, but also defendants are "freed of [the] apprehension of such a retaliatory motivation." Goodwin, 457 U.S. at 376, 102 S.Ct. 2485.

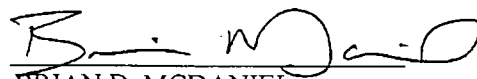
When a presumption of vindictiveness is warranted, the burden shifts to the government to present objective evidence justifying its conduct. See *id.* at 374, 376 n. 8, 102 S.Ct. 2485. This is direct language from U.S. v. Wilson, 262 F.3d 305 (4th Cir. 2001). Odom shows that circumstances "pose a realistic likelihood of 'vindictiveness.'"

The sought prosecution on the Oconee Communications is vindictive. The facts also show circumstances which "pose a realistic likelihood of 'vindictiveness.'". As such Odom would be entitled to the presumption under U.S. v. Wilson, 262 F.3d 305 (4th Cir. 2001).

For the foregoing reasons, Odom respectfully requests that its motion for dismissal be granted.

LAW OFFICE OF BRIAN MCDANIEL, LLC

BY:



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ATTORNEY FOR THE DEFENDANT

Beaufort, South Carolina
June 27, 2011

FILED OCONEE, SC
DEVERLY H. WHITEFIELD
CLERK OF COURT
STATE OF SOUTH CAROLINA } IN THE COURT OF GENERAL SESSIONS
COUNTY OF OCONEE 2011 JUN 23 A 11: 36 TENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA,
vs.
ANTHONY C. ODOM,
Defendant

**STATE'S SUPPLEMENTAL
MEMORANDUM OF LAW IN
OPPOSITION TO THE DEFENDANT'S
MOTION TO DECLARE S.C. CODE § 16-
15-342 UNCONSTITUTIONAL
(EQUAL PROTECTION)**

2010-GS-37-363
2010-GS-37-364

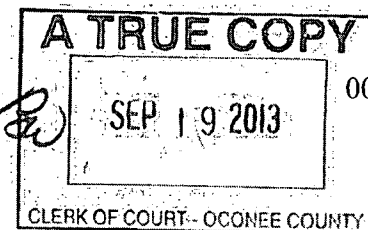
NOW COMES the State of South Carolina by and through the undersigned Assistant Attorney General further opposing the Defendant's Motion to Declare S.C. Code 16-15-342 unconstitutional under the Equal Protection clauses of the Fourteenth Amendment of the United States Constitution and Article I, Section 3 of the State of South Carolina Constitution.

LEGAL ARGUMENT

The State reiterates and relies upon argument presented to the Court in its' previously submitted Legal Memorandum in opposition to the Defendant's Motion and further submits as follows.

I. The Defendant does not have standing to challenge S.C. Code §16-15-342 under Equal Protection.

It is the State's position S.C. Code §16-15-342 does not create separate classes, and therefore, the Defendant is not within a class to have standing to challenge the statute as violating Equal Protection. Assuming arguendo S.C. Code §16-15-342 creates classes as the Defendant asserts, he does not fall within the class he alleges and still lacks standing to claim the statute unconstitutional under Equal Protection.



II. The Defendant's claim no other state has a similar provision is not relevant to Equal Protection analysis and is also in error

The State asserts whether other States have similar provisions as in Section 16-15-342 is not relevant to a constitutional challenge and does not impact the constitutionality of South Carolina's law. Our legislature enacted Section 16-15-342 as it deemed necessary and its' constitutionality under Equal Protection has nothing to do with whether sister states have enacted identical laws or similar provisions, and should be evaluated independently.

Further, assuming *arguendo* laws of sister states are of significance, the Defendant incorrectly asserts no other states have a similar provision. For example, Florida and Tennessee both have similar clauses. Florida's Computer Pornography and Child Exploitation Prevention Act, applicable to acts committed by the perpetrator against victims younger than 16 years of age, provides "an undercover operative or law enforcement officer involved in the detection and investigation of an offense under this subsection shall not constitute a defense to a prosecution under this subsection." Fla. Stat. Ann. § 847.0135 (West 2011). No consent exception is given in Florida's statute because the statute covers only those minors who are younger than the age of consent.

Tennessee's equivalent statute, "Solicitation of a person under 18 years of age" provides:

- (a) It is an offense for a person eighteen (18) years of age or older . . . to intentionally command, request, hire, persuade, invite or attempt to induce a person whom the person making the solicitation knows, or should know, is less than eighteen (18) years of age, *or solicits a law enforcement officer posing as a minor, and whom the person making the solicitation reasonably believes to be less than eighteen (18) years of age.* Tenn. Code Ann. § 39-13-528 (West 2011) (emphasis added)

See Tenn. Code Ann. § 39-13-506) (age of consent in Tennessee is eighteen, with

certain exceptions for statutory rape based on age difference). Tennessee does not provide a consent exception because the age of consent is eighteen.

The age of consent in South Carolina is sixteen. As such, it is consistent with South Carolina law to specifically designate the defense of consent for minors over the age of sixteen in Section 16-15-342.

III. The Defendant's reliance on Louisiana's revision of its' statute is in error.

The Defendant refers to the revision of Louisiana's similar statute to remove provisions regarding the defense of consent following a state supreme court case involving the statute. In that case, the Louisiana Supreme Court did not decide the validity of the provisions, but decided the case on other grounds, and noted that

had this Court reached the constitutional issue and determined the trial court was correct in declaring La. R.S. 14:81.3(C)(3) [the provision making the defense unavailable] unconstitutional, the defendant could still be charged under La. R.S. 14:81.3 in the absence of La. R.S. 14:81.3(C)(3). *Once that section is severed, the statute can still be used to charge the offense, however the defendant would now be entitled to assert the consent defense.*

State v. Hatton, 985 So.2d 709, 718 (La. 2008) (emphasis added).

Even if the removal of the consent defense within the SC statute when law enforcement agents are solicited is invalid, the Defendant's motion should be denied because invalidity of one provision does not render the rest of the statute invalid. See Curtis v. State, 345 S.C. at 571, 549 S.E.2d at 598 ("[A] statute may be constitutional and valid in part and unconstitutional and invalid in part.").

In deciding whether an invalid provision is severable from the remainder of the statute, the test is "whether the constitutional portion of the statute remains complete in itself, wholly independent of that which is rejected, and is of such a character that it may fairly be presumed the legislature would have passed it independent of that which conflicts with the

constitution.” Id. Here, the statute is not so dependent on the provision removing the consent defense that it cannot be severed.

CONCLUSION

WHEREFORE, the State respectfully requests for the reasons above set-forth, as well as the State’s initial Memorandum of Law in Support of the State’s Opposition to Dismiss, the Defendant’s Motion to Dismiss and declare the Criminal Solicitation of a Minor statute unconstitutional under equal protection be denied.

Respectfully submitted,

ALAN WILSON
ATTORNEY GENERAL

By:


Megan Burleson Wines
Assistant Attorney General

Columbia, South Carolina

June 17, 2011



FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT

2011 JUN 23 A 11: 37

ALAN WILSON
ATTORNEY GENERAL

June 21, 2011

The Honorable Beverly Whitfield
Oconee County Clerk of Court
P.O. Box 678
Walhalla, SC 29691

Re: State v. Anthony C. Odom
Indictment No(s): 2010-GS-37-363, 2010-GS-37-364

Dear Ms. Whitfield:

Please find enclosed an original and one copy of the following in the above-captioned case:

- Memorandum of Law in Support of the State's Opposition to the Defendant's Motion to Declare S.C. Code § 16-15-342 Unconstitutional Due to Equal Protection Under the Law
- Memorandum of Law in Support of the State's Opposition to Dismiss Pursuant to the First Amendment
- State's Supplemental Memorandum of Law in Opposition to the Defendant's Motion to Declare S.C. Code § 16-15-342 Unconstitutional (Equal Protection)
- State's Supplemental Memorandum of Law in Opposition to the Defendant's Motion to Dismiss (1st Amendment Etc.)

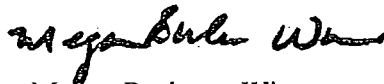
Please file the original and return the clocked copy to me in the envelope provided.

ENTERED
COMPUTER
000748

The Honorable Beverly Whitfield
June 21, 2011
Page Two

The Honorable Alexander S. Macaulay and defense counsel have previously received copies via hand-delivery or email.

Sincerely,

A handwritten signature in black ink, appearing to read "Megan Burleson Wines".

Megan Burleson Wines
Assistant Attorney General

MBW/lg
Enclosures
cc w/out enclosures: The Honorable Alexander S. Macaulay
James B. Huff, Esq.
Andrew J. Johnston, Esq.

000749

STATE OF SOUTH CAROLINA)
)
COUNTY OF OCONEE)
)

IN THE COURT OF GENERAL SESSIONS

TENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA,

vs.
ANTHONY C. ODOM,

Defendant

**STATE'S OBJECTION TO THE
DEFENDANT'S MOTION FOR NEW
TRIAL**

2010-GS-37-363
2010-GS-37-364

NOW COMES the State of South Carolina by and through the undersigned Assistant Attorney General objecting to the motion by the defendant for new trial and in support thereof states as follows.

A. Prosecutorial Vindictiveness

The defendant is not entitled to a new trial based upon prosecutorial vindictiveness. As the court noted, prosecutors are afforded much discretion. The State had probable cause to believe the defendant committed the crimes charged in Oconee County and had a need to protect the public. Even if the defendant's assertion is accurate it does not rise to prosecutorial vindictiveness.¹ See State v. Fletcher 322 S.C. 256, 261-2, 471 S.E.2d 702, 705 (South Carolina recognizes "[i]n our system, so long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in his discretion.") (citation omitted); see also United States v. Wilson 262 F.3d 305 (4TH Cir 1981) ("[a] prosecutor

¹ A hearing on this matter was held on June 27, 2011 in front of the Honorable Alexander Macaulay (the hearing at which counsel for the defendant, James B. Huff, Esquire, testified). The Court reviewed the legal memoranda submitted by the parties and the transcript of the June 27 hearing, and also heard brief oral argument in September. Argument was heard again during the course of the trial. The State presented oral argument, as well as a legal memorandum and did not believe it proper or necessary to cross examine defense counsel or to repeat full argument. The State disputes additional evidence was presented relevant to the motion and, further, maintains the defendant's presentation of the facts is incomplete and/or out of context. Prior counsel for the State did not indicate charges would *never* be brought in Oconee County, and present counsel for the State never commented on the issue, and even if such statements were made the prosecution is entitled to change strategy.

should remain free before trial to exercise that broad discretion entrusted to him to determine the extent of the societal interest in prosecution,” while decisions to prosecute must not be made in retaliation against defendants for exercising their legal rights, “courts must nonetheless be cautious not to intrude unduly in the broad discretion given to prosecutors in making charging decisions. A prosecutor’s charging decision is presumptively lawful.”)(citations omitted)²

B. Admission of 404(B) “Lyle” Evidence

The Court properly admitted the Spartanburg chats under Rule 404(B), SCRE, and State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1925) as evidence of common scheme or plan, identity, or intent. By its nature such evidence is highly probative and was not unduly prejudicial. As in State v. Gaines 380 S.C. 23, 29, 667 S.E.2d 728, 731 (2008), the prior bad act evidence was properly admitted.

C. Official Capacity

The Court did not err regarding the “official capacity defense.” The defendant was afforded every opportunity to explore and present such a defense as it related to the Oconee charges and Mark Patterson’s investigation. The State was prohibited from presenting any information concerning the Spartanburg investigation. As such, it is implicit the defendant not be permitted to inquire of Detective McGraw, or present evidence, relating to his being on duty or official capacity as that relates to the investigation. To do so, would invite the trial with in a trial the court sought to avoid. The time to address such issues was during the Lyle hearing.

D. Bond and Oath

The Court was correct in not charging to the jury that a bond is required for a municipal officer to be a licensed law enforcement officer. Bond is not an element of the crime and

² “[A] change in the charging decision made after an initial trial is completed is much more likely to be improperly motivated than a pre-trial decision.” Id. at 316 (quoting Godwin at 381, 102 S. Ct. 2485).

whether Mark Patterson was a bonded law enforcement officer at the time is a question of law. This issue was presented by the defendant as a basis for dismissal and properly denied by the court. The State does not recall the defendant requesting a jury charge prior to deliberation concerning bond. As such, it was improper for the jury to consider bond in determining guilt and the court did not err by instructing the jury not to consider the issue.³

Chief Scott Bannister testified Westminster Police Department officers must be bonded and under oath, and Mark Patterson was acting in his official capacity when conducting investigations and testimony was presented that bond would not be in the individual name of the officer. Accordingly, the testimony offered and/or elicited by the defendant is not dispositive of whether Officer Paterson was bonded as no testimony was offered or presented concerning the bond of the municipality or department. It was not error to disallow testimony from the Clerk of Court that a bond is not on file. Further, the defendant's reliance on State v. Boswell, 707 S.E.2d 265 (2011) is misplaced.

E. Defendant's Age

The Court was correct in taking Judicial Notice of the defendant's age pursuant to SCRE, Rule 201. The State submitted a certified copy of the defendant's DMV record, which is accurate and not reasonably disputed. That the defendant's age is an element of the crime is of no consequence, and under Rule 201, judicial notice may be taken at any time during the trial.

³ Upon receiving questions from the jury on bond, the court conducted research and determined its instruction to the jury proper.

CONCLUSION

The State renews and incorporated all prior motions, objections, and arguments and submits the defendant's arguments for new trial are without merit. As such, the defendant's Motion for New Trial should be denied.

Respectfully submitted,

ALAN WILSON
ATTORNEY GENERAL

By: Megan Burleson Wines
Megan Burleson Wines
Assistant Attorney General

Columbia, South Carolina

November 23, 2011

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

FILED OCONEE, SC
DEAN W. VAIL WHITEFIELD
CLERK OF COURT
IN THE COURT OF GENERAL SESSIONS
TENTH JUDICIAL CIRCUIT 2011 JUN 23 A 11:36

STATE OF SOUTH CAROLINA,
vs.
ANTHONY C. ODOM,
Defendant

MEMORANDUM OF LAW IN SUPPORT
OF THE STATE'S OPPOSITION TO
DISMISS PURSUANT TO THE FIRST
AMENDMENT

2010-GS-37-363
2010-GS-37-364

NOW COMES the State of South Carolina by and through the undersigned Assistant Attorney General opposing the anticipated Motion by the defendant to Dismiss the charges against him as violating his Rights to Free Speech under the First Amendment of the United States Constitution and Article I, Section 2 of the State of South Carolina Constitution.

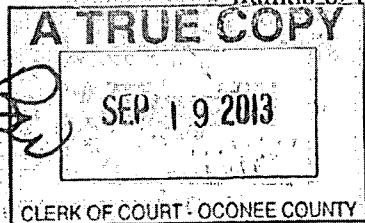
LEGAL ARGUMENT

The criminal solicitation of a minor statute provides:

A) A person eighteen years of age or older commits the offense of criminal solicitation of a minor if he knowingly contacts or communicates with, or attempts to contact or communicate with, a person who is under the age of eighteen, or a person reasonably believed to be under the age of eighteen, for the purpose of or with the intent of persuading, inducing, enticing, or coercing the person to engage or participate in a sexual activity as defined in Section 16-15-375(5) or a violent crime as defined in Section 16-1-60, or with the intent to perform a sexual activity in the presence of the person under the age of eighteen, or person reasonably believed to be under the age of eighteen.

S.C. Code Ann. § 16-15-342(A) (Supp. 2010). Sexual activity is defined in section 16-15-375:

- 5) "Sexual activity" includes any of the following acts or simulations thereof:
- (a) masturbation, whether done alone or with another human or animal;
 - (b) vaginal, anal, or oral intercourse, whether done with another human or an animal;



(c) touching, in an act of apparent sexual stimulation or sexual abuse, of the clothed or unclothed genitals, pubic area, or buttocks of another person or the clothed or unclothed breasts of a human female;

(d) an act or condition that depicts bestiality, sado-masochistic abuse, meaning flagellation or torture by or upon a person who is nude or clad in undergarments or in a costume which reveals the pubic hair, anus, vulva, genitals, or female breast nipples, or the condition of being fettered, bound, or otherwise physically restrained on the part of the one so clothed;

(e) excretory functions;

(f) the insertion of any part of a person's body, other than the male sexual organ, or of any object into another person's anus or vagina, except when done as part of a recognized medical procedure.

S.C. Code Ann. § 16-15-375 (Supp. 2010).

I. S.C. Code § 16-15-342 Regulates Conduct and Not Speech.

The government is permitted to regulate conduct with content neutral time, place, and manner regulations. Where the conduct is in a non-public forum¹, the regulation must be view point neutral and have a reasonable relationship to a legitimate state purpose; meaning rationally related to a legitimate government objective.² See Ward v. Rock Against Racism 491 U.S. 781 (1989); Perry Educ. Ass'n. v. Perry Local Educator's Ass'n. 460 U.S. 37 (1983); Board of Airport Com'rs of City of Los Angeles v. Jews for Jesus, Inc. 482 U.S. 569 (1987); U.S. v. Kokinda 497 U.S. 720 (1990).

South Carolina Code § 16-15-342, regulates conduct because it makes illegal an adult communicating with a minor with the intent to persuade, induce, entice or coerce a minor to engage in sexual activity or with intent to perform sexual act in presence.³ To convict an individual of Criminal Solicitation of a Minor (hereinafter "CSM"), the State must prove conduct

¹ The conduct in question here occurred in a non-public forum, because it took place in a Yahoo chat room.

² The standard of review depends on whether the regulated conduct occurs in a public or a non-public forum. If the statute regulates conduct in a public forum, it must be content neutral and narrowly tailored to achieve or serve a substantial government interest.

³ The State recognizes the CSM statute also criminalizes an adult persuading, inducing, enticing, or coercing a child to engage in a violent crime. However, the facts at hand relate to sexual activity and the State's legal analysis would be the same or similar.

with a specific intent. It follows that the CSM statute regulates conduct, not speech, and thus does not violate the First Amendment.

The CSM statute's regulation of conduct is view point neutral and is tied to a legitimate State interest of protecting children from potentially harmful communication from adults. Children are especially vulnerable due to their age, inexperience, and susceptibility to persuasion and the State legitimately seeks to protect children from adult sexual predators.

The crime of Criminal Solicitation of a Minor is committed only where there is the act of communicating with a specific intent. For example, the CSM statute does not prohibit a medical provider or a teacher from communicating with a minor about various health issues related to sexual activity; the adult in such a situation would lack the intent required by the statute for it to be illegal.

II. If S.C. Code § 16-15-342 regulates speech, it regulates obscene speech, which is not protected under the First Amendment.

Assuming arguendo S.C. Code § 16-15-342 regulates speech rather than conduct, the State submits the regulated speech is obscene speech and is not protected. It has long been held that obscene speech is not protected by the First Amendment. See Roth v. United States, 354 U.S. 476, 484, 77 S.Ct. 1304, 1309 (1957).

Obscene speech, taken as a whole, appeals to a prurient interest in sex, portrays sex in a patently offensive way, and lacks serious literary, artistic, political or scientific value. See Miller v. California, 413 U.S. 15, 24, 93 S.Ct. 2607, 2615 (1973) (citations omitted). A prurient interest in sex is "a shameful or morbid interest in nudity, sex, or excretion." Roth, 354 U.S. at 488 n.20, 77 S.Ct. at 1310 n.20.

The CSM statute is regulating obscene speech by an adult with the intent of persuading, inducing, enticing or coercing a minor to engage in sexual activity. Such communication appeals

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to a prurient interest in sex, is patently offensive to the community standards of South Carolina citizens, and contributes nothing of literary, artistic, political, or scientific value. Consequently, the speech regulated by the statute is obscene and is not protected by the First Amendment.

III. Even if S.C. Code § 16-15-342 regulates speech which is not obscene the statute meets a Strict Scrutiny Test.

Even if the statute is found to regulate protected speech, the Criminal Solicitation of a Minor Statute meets a strict scrutiny test. Under strict scrutiny, a statute regulating speech must serve a compelling state interest and be narrowly tailored to achieve that interest. See Turner Broadcasting System v. Federal Communications Commission, 512 U.S. 622, 653, 114 S.Ct. 2445, 2464 (1994). To be narrowly tailored, a statute must not be vague or overly broad, and must employ the least restrictive means necessary to achieve the state interest. Id.

Due process requires that a person of ordinary intelligence receive fair notice of the regulated conduct and proper standards for adjudication and the statute must give sufficiently definite warning of what conduct it regulates. See Curtis v. State, 345 S.C. 557, 571-72, 549 S.E.2d 591, 598-99 (2001), cert. denied, 535 U.S. 926, 122 S.Ct. 1295, 152 L.Ed.2d 208 (2002).

A statute is unconstitutionally vague if persons of common intelligence must guess at the meaning and may differ as to its application and a person whose conduct clearly falls within the statute's language lacks standing to challenge it for vagueness. See Toussaint v. State Bd. of Med. Exam'rs, 303 S.C. 316, 320, 400 S.E.2d 488, 491 (1991).

The State asserts the CSM statute serves a compelling state interest and is also narrowly tailored to achieve the interest. First, the CSM statute serves the compelling interest of protecting children. By virtue of their age and inexperience, children are more vulnerable and more easily persuaded than are adults.

Secondly, the statute is not vague or overly broad, and uses the least restrictive means necessary to achieve the state interest. S.C. Code § 16-15-342 satisfies due process in that it defines the proscribed illegal conduct with sufficient clarity so as not to be vague to put a person on notice of what behavior is criminal. One of ordinary intelligence is on notice as to the proscribed criminal conduct and does not have to guess at its meaning. As such, the statute is clear on its' the face.

A. The Statute is Not Overbroad.

The over breadth doctrine applies to First Amendment cases only where the statute would have a chilling effect; it is considered a last resort, which should be used sparingly. A statute does not have an unconstitutional chilling effect if the regulated speech is obscene or if there is a nexus between the state interest furthered by the statute and the restriction chosen, and the statute uses the least restrictive means necessary to achieve its purpose. See State v. Bouye, 325 S.C. 260, 484 S.E.2d 461(1997).

The First Amendment commands, "Congress shall make no law ... abridging the freedom of speech." "The Constitution gives significant protection from overbroad laws that chill speech within the First Amendment's vast and privileged sphere. Under this principle, [a statute] is unconstitutional on its face if it prohibits a substantial amount of protected expression." Ashcroft v. Free Speech Coal., 535 U.S. 234, 244 (2002) (citing Broadrick v. Oklahoma, 413 U.S. 601, 612 (1973)). "The overbreadth doctrine prohibits the Government from banning unprotected speech if a substantial amount of protected speech is prohibited or chilled in the process." Ashcroft, 535 U.S. at 255. "Because of the wide-reaching effects of striking down a statute on its face at the request of one whose own conduct may be punished despite the First Amendment, we have recognized that the overbreadth doctrine is 'strong medicine' and have employed it with

hesitation, and then ‘only as a last resort.’” New York v. Ferber, 458 U.S. 747, 769 (1982) (citing Broadrick, 413 U.S. at 613).

“There is no First Amendment right to persuade minors to engage in illegal sex acts.” United States v. Tykarsky, 446 F.3d 458, 473 (3d Cir. 2006) (citing United States v. Bailey, 228 F.3d 637, 639 (6th Cir.2000); United States v. Hornaday, 392 F.3d 1306, 1311 (11th Cir.2004) (“Speech attempting to arrange the sexual abuse of children is no more constitutionally protected than speech attempting to arrange any other type of crime.”)). Additionally, there is no protection for soliciting any type of violent crime listed in section 16-1-60. As a result, section 16-15-342 cannot be overbroad because it has no impact on protected speech, and it certainly does not result in a substantial amount of protected speech being prohibited or chilled. See In re Amir X.S., 371 S.C. 380, 384, 639 S.E.2d 144, 146 (2006) (noting a person raising a First Amendment overbreadth doctrine challenge to a statute must demonstrate that the statute could cause someone to refrain from constitutionally-protected expression); State v. Bouye, 325 S.C. 260, 265, 484 S.E.2d 461, 464 (1997) (“The overbreadth doctrine applies only to First Amendment cases where the challenged law would have a ‘chilling effect’ on constitutionally protected forms of speech.”).

Further, section 16-15-342 only applies to a person who “knowingly contacts or communicates with, or attempts to contact or communicate with” a minor. The statute, therefore, does not apply to a situation in which the person is not intending the communication to result in the minor engaging in sexual activity or some other criminal act. “The scienter and intent requirements of the [federal version of our solicitation statute] sufficiently limit criminal culpability to reach only conduct outside the protection of the First Amendment.” United States v. Dhingra, 371 F.3d 557, 561-562 (9th Cir.2004) (observing that a family planning provider

could not be prosecuted under 18 U.S.C.A. §2422(b) unless it knew that it was persuading minors to engage in illicit sexual conduct).

The statute also employs the least restrictive means of achieving the State interest. It does not bar all communication between adults and children, or all communication regarding sexual matters. Rather, it only regulates communication by an adult with the required intent of persuading, enticing, inducing, or coercing a minor to engage in sexual activity.

Numerous states have considered the issue and found similar solicitation statutes are not overbroad. See e.g., State v. Rung, 774 N.W.2d 621, 632 (Neb. 2009); Maloney v. State, 294 S.W.3d 613, 628 (Tex. App. 2009); State v. Pribble, 285 S.W.3d 310, 316 (Mo. 2009); State v. Penton, 998 So. 2d 184, 187 (La. Ct. App. 2008); LaRose v. State, 820 N.E.2d 727, 733 (Ind. Ct. App. 2005); Rutti v. State, 100 P.3d 394, 404 (Wyo. 2004); People v. Smith, 806 N.E.2d 1262, 1265 (Ill. Ct. App. 2004); State v. Snyder, 155 Ohio App.3d 453, 466, 801 N.E.2d 876, 886 (2003); People v. Hsu, 82 Cal.App.4th 976, 989, 99 Cal.Rptr.2d 184, 194 (2000). South Carolina should join the many courts and the federal circuits finding the solicitation statute is not overbroad.

The State maintains the CSM statute does not have an unconstitutional chilling effect because the regulated speech is obscene, and even if it is protected speech, there is a nexus between the State's interest furthered and the restriction chosen, and the statute uses the least restrictive means necessary to achieve its purpose. See Bouye, 325 S.C. 260, 484 S.E.2d 461(1997).

B. The Statute is Not Vague.

Statutes are to be construed in favor of constitutionality; the Court will presume a legislative act is constitutionally valid unless a clear showing to the contrary is made. State v.

Brown, 317 S.C. 55, 451 S.E.2d 888 (1994). "The concept of vagueness or indefiniteness rests on the constitutional principle that procedural due process requires fair notice and proper standards for adjudication." Curtis v. State, 345 S.C. 557, 571, 549 S.E.2d 591, 598 (2001), *cert. denied* 77 535 U.S. 926 (2002). "A law is unconstitutionally vague if it forbids or requires the doing of an act in terms so vague that a person of common intelligence must necessarily guess as to its meaning and differ as to its application." State v. Michau, 355 S.C. 73, 77, 583 S.E.2d 756, 758 (2003).

Section 16-15-342 is not vague. It provides exactly what actions by Appellant are prohibited and what solicitations the statute criminalizes. The statute is written sufficiently precise to give a person of ordinary intelligence fair notice as to what is permitted and what is prohibited and to prevent arbitrary and discriminatory enforcement. See Grayned v. City of Rockford, 408 U.S. 104, 108 (1972) (observing that fair warning and the prevention of arbitrary enforcement are two of the most important values offended by vague laws).

While every term of the statute is not specifically defined, the terms which are not defined have common every day meanings and are easily understood by a person of ordinary intelligence. The statute makes it clear a communication or contact with a minor for the specific purposes listed in the statute subject the person to criminal penalties. There is no basis for a person to guess regarding whether his actions would constitute a crime under the statute; the statute specifically sets out what actions are required (a communication, contact, or attempted communication or contact) with a minor, for the purpose of or with the intent of persuading, inducing, enticing, or coercing the person to engage or participate in a sexual activity as defined in Section 16-15-375(5) or a violent crime as defined in Section 16-1-60. The activities or crimes are sufficiently described and defined in their respective statutes. A person of ordinary

intelligence seeking to obey the law will know, and is sufficiently warned of, the conduct the statute makes criminal. See Curtis, 345 S.C. at 572, 549 S.E.2d at 598. As a result, the statute is not unconstitutionally vague.

The legislature defined what activity constitutes sexual activity for the purposes of the statute. While excretory functions and masturbation are included in the definition of sexual activity per S.C. Code § 16-15-375(5), the purpose must be discerned from the legislative intent to protect children from adult sexual predators.

Additionally, the Defendant lacks standing to challenge the statute for vagueness as his conduct clearly falls within the statute's prohibition.

III. If S.C. Code § 16-15-342 regulates both speech and conduct, it is still valid.

When a regulation affects both conduct and speech, a state may regulate the conduct without violating the First Amendment if a sufficiently important governmental interest in regulating the nonspeech element can justify incidental limitations on First Amendment freedoms. See U.S. v. O'Brien, 391 U.S. 367, 376, 88 S.Ct. 1673, 1678-79 (1968). A regulation is valid if it furthers a substantial governmental interest unrelated to the suppression of free expression and the incidental restriction on alleged First Amendment freedoms is no greater than necessary to further the interest. Id. at 377, 88 S.Ct. at 1679.

As above-discussed, the CSM statute furthers the State's substantial interest in protecting children from adult sexual predators. Due to their youth, inexperience, and susceptibility to persuasion, children are particularly vulnerable and the State has a substantial interest in preventing sexual predators from taking advantage of their vulnerability.

IV. Statutory Construction.

Laws are presumed to be constitutional absent a clear showing to the contrary. State v. Brown, 317 S.C. 55, 59, 451 S.E.2d 888, 891 (1994). The Court will construe a statute to be valid, if at all possible. See Hendrix v. Taylor, 353 S.C. 1, 19, 577 S.E.2d 190, 199 (2003). Further, an act will be declared unconstitutional only when there is “no doubt that it conflicts with the constitution” and the defendant bears the burden of proving the statute’s invalidity. See State v. Bouye, 325 S.C. 260, 265, 484 S.E.2d 461, 464(1997).

The rules of statutory construction are not needed when a statute is plain and unambiguous. See State v. Leopard, 349 S.C. 467, 471, 563 S.E.2d 342, 344 (Ct. App. 2002) (quoting State v. Baucom, 340 S.C. 339, 342, 531 S.E.2d 922, 923 (2000)). Rather, the court must apply the literal meaning of the statute’s words. Id. at 470-71, 563 S.E.2d at 344. When the statute’s language leaves ambiguity, the rules of statutory construction are used to ascertain the proper meaning and a court’s primary function is to determine the legislative intent. Id. at 471, 563 S.E.2d at 344. To that end, a statute should be construed so that no part is rendered superfluous. State v. Jihad, 347 S.C. 12, 15, 553 S.E.2d 249, 251 (2001).

The State submits statutory construction is not needed in this instance because the CSM statute is plain and unambiguous. To the extent the statute raises question, the legislative intent of protecting minors is evident. The statute must be read in context, and without a clear showing otherwise, is presumed constitutional.

CONCLUSION

S.C. Code, 16-15-342, regulates conduct and not speech. Assuming arguendo the statute is regulating speech, it is obscene speech, which is not protected by the First Amendment. Should the statute be found to regulate protected speech, it meets the test of strict scrutiny. Lastly, statutes are presumed constitutional and there is no clear showing to the contrary.

As such, the State prays the Defendant's Motion to Dismiss pursuant to the First Amendment be denied.

Respectfully submitted,

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ATTORNEY GENERAL

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Columbia, South Carolina

June 1, 2011

000764

STATE OF SOUTH CAROLINA }
COUNTY OF OCONEE }

IN THE COURT OF GENERAL SESSIONS
TENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA,
vs.
ANTHONY C. ODOM,
Defendant

**MEMORANDUM OF LAW IN SUPPORT
OF THE STATE'S OPPOSITION TO THE
DEFENDANT'S MOTION TO DECLARE
S.C. CODE § 16-15-342
UNCONSTITUTIONAL DUE TO EQUAL
PROTECTION UNDER THE LAW**

2010-GS-37-363
2010-GS-37-364

Now Comes the State of South Carolina by and through the undersigned Assistant Attorney General and submits this Memorandum of Law in support of opposition to the Defendant's Motion to declare S.C. Code § 16-15-342 unconstitutional under Federal and State Equal Protection Clauses.

LEGAL ARGUMENT

The criminal solicitation of a minor statute provides:

A) A person eighteen years of age or older commits the offense of criminal solicitation of a minor if he knowingly contacts or communicates with, or attempts to contact or communicate with, a person who is under the age of eighteen, or a person reasonably believed to be under the age of eighteen, for the purpose of or with the intent of persuading, inducing, enticing, or coercing the person to engage or participate in a sexual activity as defined in Section 16-15-375(5) or a violent crime as defined in Section 16-1-60, or with the intent to perform a sexual activity in the presence of the person under the age of eighteen, or person reasonably believed to be under the age of eighteen.

S.C. Code Ann. § 16-15-342(A) (Supp. 2010).

Sexual activity is defined in section 16-15-375:

- 5) "Sexual activity" includes any of the following acts or simulations thereof:
- (a) masturbation, whether done alone or with another human or animal;
 - (b) vaginal, anal, or oral intercourse, whether done with another human or an animal;
 - (c) touching, in an act of apparent sexual stimulation or sexual abuse, of the clothed or unclothed genitals, pubic area, or buttocks of another person or the clothed or unclothed breasts of a human female;
 - (d) an act or condition that depicts bestiality, sado-masochistic abuse, meaning flagellation or torture by or upon a person who is nude or clad in undergarments or in a costume which reveals the pubic hair, anus, vulva, genitals, or female breast nipples, or the condition of being fettered, bound, or otherwise physically restrained on the part of the one so clothed;
 - (e) excretory functions;
 - (f) the insertion of any part of a person's body, other than the male sexual organ, or of any object into another person's anus or vagina, except when done as part of a recognized medical procedure.

S.C. Code Ann. § 16-15-375 (Supp. 2010).

I. Laws are presumed constitutional absent a clear showing to the contrary.

Laws are presumed constitutional absent a clear showing to the contrary. See State v. Brown, 317 S.C. 55, 59, 451 S.E.2d 888, 891 (1994). The Court will construe a statute to be valid, if it is possible to do so. See Hendrix v. Taylor, 353 S.C. 1, 19, 577 S.E.2d 190, 199 (2003). Further, an act will be declared unconstitutional only when there is "no room for reasonable doubt" that it is unconstitutional. See Westvaco Corp. v. S.C. Dept. of Revenue, 321 S.C. 59, 62-63, 467 S.E.2d 739, 741 (1995).

As such, the State asserts the Criminal Solicitation of a Minor statute is deemed constitutional and further, it passes a constitutional challenge under Equal Protection as there is no clear showing to the contrary.

II. S.C. Code § 16-15-342 does not violate the Equal Protection Clause because the Defendant is not a member of a protected class and it meets a rational basis standard.

Under the Equal Protection Clauses of the federal and state constitutions, the State may not deny equal protection of the law to any person. See U.S. Const. amend XIV, § 1. Which means “no person, or class of persons, shall be denied the same protection of the laws which is enjoyed by other persons or other classes in the same place and under like circumstances.” City of Beaufort v. Holcombe, 369 S.C. 643, 648, 632 S.E.2d 894, 897 (S.C. Ct. App. 2006) (citation omitted).

When determining whether a statute affords equal protection, the court must first decide the level of scrutiny to apply. See id. (citing In re Luckabaugh, 351 S.C. 122, 147, 568 S.E. 2d 338, 351 (2002)). “Courts generally analyze equal protection challenges under one of three standards: (1) rational basis; (2) intermediate scrutiny; or, (3) strict scrutiny.” Id. (quoting Denene Inc. v. City of Charleston, 359 S.C. 85, 91, 596 S.E. 2d 917, 920 (2004) (additional citations omitted)).

If the statute does not “implicate a suspect class or abridge a fundamental right, the rational basis test is used.” Id. Inherently suspect classes include “those based on factors ‘such as race, religion, or alienage.’” Id. (quoting Sunset Cay, LLC v. City of Folly Beach, 357 S.C. 414, 429, 593 S.E.2d 462, 469 (2004)).

Under rational basis, “to satisfy the equal protection clause, a classification must (1) bear a reasonable relation to the legislative purpose sought to be achieved, (2) members of the same class must be treated alike under similar circumstances, and (3) the classification must rest on some rational basis.” Id. See also See McKnight v. State, 378

S.C. 33, 52 661 S.E.2d 354, 364 (2008)¹

A Court conducting an Equal Protection analysis “accords ‘great deference to a legislatively created classification and the classification will be sustained if it is not plainly arbitrary and there is any reasonable hypothesis to support it.’” State v. Brown 317 S.C. at 59, 451 S.E.2d at 891-92. The party challenging the statute under Equal Protection has the burden of proving a lack of rational basis for the classification. Id., 451 S.E.2d at 892.

Accordingly, unless a statute classifies persons as a suspect class (or quasi-suspect class), or based on the exercise of a fundamental right, only the rational basis standard must be met. The Defendant bears the burden of showing the legislation lacks a rational basis. Id.

The State submits the statute in question, S.C. Code § 16-15-342, does not regulate based on a suspect or quasi-suspect classification, nor does it abridge a fundamental right. The State further submits the rational basis test is met and the Defendant cannot show why it is not.

First, the statute has a reasonable relation to the legislative purpose. The defining characteristic of the class at issue is adult persons who have acted by communicating with a minor with the specific intent to persuade, induce, entice or coerce the minor to engage

¹ Stating when the government groups individuals differently, it must treat similarly situated members in a class alike, the classification must be made on a reasonable basis, and the classification must bear a reasonable relationship to a legitimate legislative purpose.

in sexual activity². The class, in essence, consists of adults preying and targeting minors and bears a reasonable relation to the purpose of protecting minors.

Secondly, S.C. Code § 16-15-342 treats alike all similarly situated individuals within a class because it has created one category of person choosing to communicate with minors with a specific intent of persuading, inducing, enticing, or coercing the minor to engage in sexual activity. Within this category, individuals are charged with the same offense, subject to the same penalties, and treated alike under similar factual circumstances including the ability to raise a defense of consent if the targeted minor is at least sixteen years of old.

S.C. Code § 16-15-342 provides a defense to individuals who had the consent of the minor, if the minor is over the age of sixteen, but the defense of consent is withdrawn in instances where the targeted minor recipient of the communications was actually an undercover law enforcement officer or agent acting in his official capacity. Where the defendant has received consent from a minor legally capable of consenting, he may use that consent as a defense to prosecution. Withdrawing the defense where the targeted minor is a law enforcement officer does not change the nature of the proscribed conduct or the categorization.

Similarly, the Criminal Sexual Conduct with a Minor statute, S.C. Code § 16-3-355, allows a defense of mistake of age for the second degree offense but not for the first degree offense. In both statutes, the State affords a limited defense to defendants, a defense which only certain defendants will be able to raise. That the circumstances of individual cases means that certain defendants, but not others, may raise a particular

² The State recognizes the CSM statute also criminalizes an adult persuading, inducing, enticing, or coercing a child to engage in a violent crime. However, the facts at hand relate to sexual activity and the State's legal analysis would be the same or similar.

defense does not make the statutory provision, or denial, of the defense a violation of Equal Protection.

S.C. Code § 16-15-342 satisfies the third requirement that the classification rest on some rational basis as it is designed to protect children from exposure to harmful sexual communication. The statute separates adults who engage in sexual conversation with minors from those who do so with other adults, as well as from those who engage in conversation of a sexual nature with children for educational, medical, or other beneficial purposes.

Perhaps most importantly, the statute encourages early intervention by law enforcement to apprehend child predators by conducting undercover operations in which they portray themselves as minors. This allows the State to charge an adult who chooses to target a person he believes to be a minor, without requiring a child to be exposed to the harmful communications or physical harm to a child. Early intervention is appropriate in light of the serious nature of the crime and the potential harm to children. See State v. Reid, 383 S.C. 285, 300 n.6, 679 S.E.2d 194, 201 n.6 (Ct. App. 2009).

The statute puts a potential offender on notice that the person he targets may be a law enforcement officer and not a minor. Similar to the deterrent effect that neighborhood crime watch signs have on crime in residential neighborhoods, sexual predators may be deterred by not knowing for certain if their target is a child or a law enforcement officer.

Finally, the Defendant may allege that the statute affords the consent defense to an adult who solicits a minor to commit a violent crime. This argument fails at least in part because a statute's provisions are to be construed within the context of the statutory scheme. Koenig v. South Carolina Dept. of Public Safety, 325 S.C. 400, 480 S.E.2d 98

(Ct. App. 1996). The context of this statute indicates that the consent defense is applicable to the offense of solicitation for sexual purposes, not to the solicitation for a violent crime.

Conclusion

S.C. Code § 16-15-342 is deemed constitutional and the Defendant has failed to show under an Equal Protection analysis how the statute fails to meet a rational basis standard. Therefore, the State respectfully requests this Honorable Court deny the Defendant's Motion to Declare S.C. Code § 16-15-342 unconstitutional under Equal Protection.

Respectfully submitted,

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By: Megan Burleson Wines
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Columbia, South Carolina

June 1, 2011

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

December 27, 2013

A handwritten signature in black ink, appearing to read "Brian McDaniel". The signature is stylized with a large, looped "B" and "M".

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