

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM LEXINGTON COUNTY
Court of General Sessions

The Honorable Donald B. Hocker, Circuit Court Judge

RECEIVED

FEB 10 2016

SC Court of Appeals

Appellate Case No. 2014-002423

The State , ... Respondent,

vs.

David A. Land Appellant.

RECORD ON APPEAL

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INDEX

Indictment #2014-GS-32-06004	1
Indictment #2014-GS-32-06005	3
Indictment #2014-GS-32-06006	5
Transcript of Record (pages 122-412)	7

WITNESSES

Special Investigator Lucinda McKellar

ARREST WARRANT NUMBER

M-300201

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: 2/10/14

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2014-GS-32- 06004

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

February 2014 TERM

THE STATE

vs.

DAVID AUSTIN LAND

D.O.B. 11/22/1989

Indictment for

**SEXUAL EXPLOITATION OF A MINOR,
SECOND DEGREE**

SC Code: 16-15-405(A)

CDR Code: 0380

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
)
)
COUNTY OF LEXINGTON)

INDICTMENT

SEXUAL EXPLOITATION OF A MINOR,
SECOND DEGREE

At a Court of General Sessions, convened on February, 2014, the
Grand Jurors of Lexington County present upon their oath:

That, David Austin Land, on or about December 4, 2009, did willfully and knowingly commit the crime of sexual exploitation of a minor, second degree in Lexington County. To wit: David Austin Land did knowingly distribute, transport, exhibit, receive, sell, purchase, exchange, and/or solicit material in the file titled "zooskool-Pthc((LELIA))11y.o with dad teach to fuck with sound.mpg" that contains a visual representation of a minor engaged in sexual activity, as defined by Section 16-15-375(5) of the South Carolina Code of Laws. This incident occurred within the County of Lexington, State of South Carolina, and is in direct violation of Section 16-15-405(A) of the South Carolina Code of Laws (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided

OFFICE OF THE ATTORNEY GENERAL

Alan Wilson
ALAN WILSON (RKS)
ATTORNEY GENERAL

WITNESSES

Special Investigator Lucinda McKellar

ARREST WARRANT NUMBER

M-300202

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: 2/10/14

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2014-GS-32- 06005

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

February 2014 TERM

THE STATE

vs.

DAVID AUSTIN LAND

D.O.B. 11/22/1989

Indictment for

**SEXUAL EXPLOITATION OF A MINOR,
SECOND DEGREE**

SC Code: 16-15-405(A)

CDR Code: 0380

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
)
)
COUNTY OF LEXINGTON)

INDICTMENT

SEXUAL EXPLOITATION OF A MINOR,
SECOND DEGREE

At a Court of General Sessions, convened on February, 2014, the
Grand Jurors of Lexington County present upon their oath:

That, David Austin Land, on or about December 7, 2009, did willfully and knowingly, commit the crime of sexual exploitation of a minor, second degree in Lexington County. To wit: David Austin Land did knowingly distribute, transport, exhibit, receive, sell, purchase, exchange, and/or solicit material in the file titled "MafiaSexRu_Children_Kids_Hard_000300_ChildPorn_Collection_10_Pussy_Illegal_Pretteen_Underage_Lolita_Kiddy_Child_Incest_XXX_Porno_Gay_Fuck_Young_Naked_Nude_Little_Girl(1).jpg" that contains a visual representation of a minor engaged in sexual activity, as defined by Section 16-15-375(5) of the South Carolina Code of Laws. This incident occurred within the County of Lexington, State of South Carolina, and is in direct violation of Section 16-15-405(A) of the South Carolina Code of Laws (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided

OFFICE OF THE ATTORNEY GENERAL

Alan Wilson
ALAN WILSON (RKS)
ATTORNEY GENERAL

WITNESSES

Special Investigator Lucinda McKellar

ARREST WARRANT NUMBER

M-300203

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: 2/10/18

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2014-GS-32- 06006

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

February 2014 TERM

THE STATE

vs.

DAVID AUSTIN LAND

D.O.B. 11/22/1989

Indictment for

**SEXUAL EXPLOITATION OF A MINOR,
SECOND DEGREE**

SC Code: 16-15-405(A)

CDR Code: 0380

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF LEXINGTON)

SEXUAL EXPLOITATION OF A MINOR,
SECOND DEGREE

At a Court of General Sessions, convened on February, 2014, the
Grand Jurors of Lexington County present upon their oath:

That, David Austin Land, on or about January 27, 2010, did willfully and knowingly commit the crime of sexual exploitation of a minor, second degree in Lexington County. To wit: David Austin Land did knowingly distribute, transport, exhibit, receive, sell, purchase, exchange, and/or solicit material in the file titled "8yr girl and 12yr boy are fucking lolitas lolita preteen sex child underage Pedo Kiddy Lolita Child Porno.avi.mpg" that contains a visual representation of a minor engaged in sexual activity, as defined by Section 16-15-375(5) of the South Carolina Code of Laws. This incident occurred within the County of Lexington, State of South Carolina and is in direct violation of Section 16-15-405(A) of the South Carolina Code of Laws (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided

OFFICE OF THE ATTORNEY GENERAL

Alan Wilson
ALAN WILSON (RKS)
ATTORNEY GENERAL

1 been sitting in the jury room for about twenty-five,
2 thirty minutes. Anytime you're sitting back there, I
3 don't want any of you to think that we're not doing
4 anything. Now, we do take breaks, naturally, but
5 there's a lot of -- there has been a lot of pre-trial --
6 we started at nine o'clock this morning dealing with
7 pre-trial issues that I had to rule on and it always
8 goes where you have excellent lawyers that we have here
9 on both sides, they're going to work the Judge pretty
10 good and they've already started working the Judge
11 pretty good. So we've been working and we just finished
12 up doing our pre-trial stuff. We're going to do the
13 Court's preliminary charge to you, the opening arguments
14 and then we're going to take a good morning break
15 because I know the lawyers need a break and I do too.
16 But anytime you're back in the jury room, understand
17 we're generally working; okay?

18 Now, Madam Clerk, would you go ahead and swear the
19 trial jury in, please?

20 THE CLERK: Please raise your right hand.

21 You shall well and truly try and true deliverance
22 make between the State and the Defendant at the bar,
23 whom you shall have in charge, and render a true verdict
24 according to the laws and evidence, so help you God?

25 Please respond by I do or I affirm.

1 (WHEREUPON, the jury was duly sworn.)

2 THE CLERK: Be seated, please.

3 THE COURT: One important housekeeping matter
4 that we need to tend to is I need to appoint a
5 foreperson of the jury. Now, a foreperson, if it's a
6 man, we call them foreman. If it's a lady, forelady.
7 And I can't emphasize enough that their vote carries no
8 greater weight than the other votes of the trial jury.
9 But I just need someone to wear several hats. One, I
10 need someone to serve as go-between between the jury and
11 the Court. If there's an issue or concern, something
12 that comes up, then I need a spokesperson for you, the
13 jury.

14 Secondly, I will be giving some instructions to
15 you. I told you yesterday about not talking about this
16 case among yourselves or with anybody else. There'll be
17 some other instructions I give you. I need someone to
18 make sure that those instructions are being followed by
19 the jury.

20 And thirdly, when you begin your deliberations at
21 the end of the case, and I need someone to head that up,
22 to organize those deliberations. But the foreperson's
23 vote is equal to everybody else's vote on the jury. And
24 I know all thirteen of you would make excellent
25 forepersons, but I can't have thirteen quarterbacks. I

1 can only have one. So the forelady that I'm appointing
2 is Geralyn Long. Raise your hand, please.

3 THE JUROR: (Complied)

4 THE COURT: Ms. Long, I'm appointing you as
5 forelady of this jury. Now, when you come out after our
6 next break and for the entire trial, you will maintain a
7 seat in the front right there. Now, Ms. Hill, you are
8 the alternate. You will always maintain a seat right
9 there. Everybody else can sit where you like. And I
10 tell this to juries because I find it interesting. More
11 times than not people like to sit in the same seat.
12 It's kind of like a church, you sit in the same pew. So
13 if you want to sit in that same seat and it's okay with
14 somebody else, then you can maintain the same seats. If
15 you don't want to, that's perfectly fine. It's all up
16 to you, okay? And let me explain to Ms. Hill, the
17 alternate. Your role is very important. The last trial
18 we had someone on the jury had a sick child and it was
19 not a real serious situation, but one that would not
20 allow the juror -- I think it was a man -- to come back
21 for the next day, so the alternate had to take their
22 place. So you're going to sit with this jury. You're
23 going to listen to everything everybody else, the other
24 twelve hears, and you may need to be put in if
25 necessary. So your role is very important; okay? If

1 not, if we don't have to excuse anybody on the twelve,
2 then, of course, you would not participate in the
3 deliberations. But your role is very, very important;
4 okay? All right. Okay. Give me one minute to pull up
5 on my computer here.

6 Madam Forelady and ladies and gentlemen of the
7 jury, we now are starting the case of the State versus
8 David A. Land, who's already been presented to you when
9 you were in the jury panel. Before we begin this trial,
10 I want to tell you that this trial probably will be
11 different from what you might expect. Many people do
12 not have the chance to attend actual court sessions as
13 you are doing now, and may think from watching
14 television or movies or reading books that trials are
15 always full of high drama, intense action, and riveting
16 circumstances. While all of these things may be true at
17 times, this trial is not for entertainment. It is a
18 fundamental part of our democracy, a search for the
19 truth in an effort to make sure that justice is done
20 between the parties before the Court. The parties being
21 the State of South Carolina and Mr. Land. Searching for
22 the truth and making sure that justice is done is often
23 slow, deliberate and repetitive, the opposite of what
24 you may have seen on television or seen in movies or
25 read in books.

1 This courtroom is a place of honor, dedicated to
2 the protection and preservation of citizens' rights
3 through what many have called the greatest justice
4 system ever created. The attorneys appearing before you
5 are advocates for the parties they represent, but first
6 and foremost they are officers of the Court, sworn to
7 uphold the integrity and fairness of our judicial system
8 and to help you in the search for the truth. You should
9 expect them to be professional, competent and ethical in
10 the representation of their client's interests and I'm
11 confident that they will be. But you also, as members
12 of this trial jury, are expected to be professional,
13 reasonable and ethical as well.

14 I want to thank you for accepting this important
15 responsibility of jury service and for your contribution
16 today to our justice system.

17 Now, what I will now say is intended to serve as an
18 introduction to the trial of this case. These remarks
19 are not a charge on the law in this case. I will
20 instruct you on the law applicable to this case at the
21 end of the trial before you retire to consider your
22 verdict. This is merely an explanation of the procedure
23 that we will follow in the trial of this case so that
24 you may better understand what may be happening.

25 Now, you're not permitted to take notes.

1 Therefore, that requires each and every one of you, all
2 thirteen of you to pay very close attention to
3 everything that is done and said during this trial.
4 Because when you go back to deliberate your verdict, you
5 must have a good memory of what was done and what was
6 said.

7 Now, as I told you when you were in the jury panel
8 yesterday, the Defendant is charged by three indictments
9 filed with this Court. And I further explain to you and
10 emphasize today that the indictments are simply the
11 charges by which the case is brought into court. And
12 these indictments are not in any sense evidence of any
13 of the allegations they contain. The Defendant has
14 exercised his Constitutional right and has pled not
15 guilty to these three indictments. Therefore, the State
16 has the burden of proving each of the elements of these
17 three indictments beyond a reasonable doubt. And it
18 will be your duty, Madam Forelady, and ladies and
19 gentlemen of the jury, to decide whether the State has
20 met that burden of proof. Your purpose as jurors is to
21 find and determine the facts. You are the sole judge of
22 the facts. If, at any time, I make a comment regarding
23 the facts, you must disregard it. You are to determine
24 the facts from the testimony you hear and the other
25 evidence introduced in court. It is up to you to

1 determine the inferences, which you feel may properly be
2 drawn from the evidence. It is especially important
3 that you perform your duty of determining the facts
4 diligently and conscientiously because ordinarily there
5 is no way to correct an erroneous determination of the
6 facts by a jury.

7 Now, on the other hand and with equal emphasis, the
8 same law that makes you the judges of the facts, makes
9 me the judge of the law. The law as given by the Court
10 is the only law that you may consider. You must accept
11 and follow it even though you might disagree with it. I
12 cannot tell you what the facts are and you cannot
13 disagree with me about what the law is or what the law
14 should be. Your job is to take the law as I give it to
15 you and apply it to the facts as you find them from the
16 testimony of the witnesses and any other evidence that
17 is introduced in this trial. After doing that, you will
18 render your verdict, a verdict under the solemn oath
19 that you just took as jurors.

20 And, again, as you've already heard me tell you
21 this, until I tell you that you may begin to deliberate
22 you cannot discuss this case, any aspect about this
23 case, with anyone, including your fellow jurors,
24 friends, family members, anyone involved in this case,
25 anyone that you may come into contact with.

1 During your deliberations at the end of this case,
2 you may only discuss the case in the jury room with your
3 fellow jurors. The reason for that is because they have
4 seen and heard the same evidence you have. However, you
5 must not discuss this case, again, with anyone until you
6 have returned a verdict and the case is at an end. And
7 you must decide this case based solely on the evidence
8 presented here in this courtroom. This means that
9 during this trial you cannot conduct any independent
10 research about this case, about the facts of the case,
11 any evidence presented in this case or the people
12 involved in this case. Do not try to find out
13 information from any source outside of this courtroom.
14 Therefore, you must not look at any reference materials,
15 anything on the internet, websites, any media that may
16 provide some information about this case. I don't know
17 if they will or not, but you cannot consider any
18 newspapers, radio, television, internet media coverage,
19 anything of that nature. Again, your verdict has to be
20 based upon what you hear in this courtroom during this
21 trial.

22 It is very important, not only just the forelady of
23 this jury, but any of you, if you become aware that a
24 juror has not followed that instruction and has violated
25 these instructions by doing independent research, I must

1 be informed of that immediately. It's very important,
2 Madam Forelady and ladies and gentlemen of this jury, to
3 keep an open mind and not decide any issue in this case
4 until all of the evidence has been presented, the
5 parties have made their closing arguments, and I have
6 instructed you on the law in this case. It is your
7 solemn responsibility to determine the guilt or
8 innocence of the Defendant. And your verdict must be
9 based solely on the evidence as it is presented to you
10 in this trial and on the law as I instruct you during
11 and at the close of this trial.

12 Now, there may be times during this trial that you
13 may hear one of the lawyers say objection, Your Honor,
14 or Judge, I've got a matter of law to take up with the
15 Court. And, therefore, it may require me to excuse you
16 to your jury room. And one of the reasons for that is
17 in deciding a legal issue that one of the lawyers has
18 raised, may require me to discuss the facts. And I
19 don't want to discuss the facts in your presence because
20 you, and you alone, are the sole judge of the facts in
21 this case. So if we have to do that, a lot of times
22 what we try to do is just have what we call a sidebar
23 conference and I'll talk with the lawyers at the bench
24 or even go out in the hallway sometimes and not have to
25 actually excuse you to your jury room. It all depends.

1 Now, at this time, the lawyers will make their
2 opening arguments to you. They're not evidence. It's
3 only their statement as to what they believe this case
4 is about and what they believe that the evidence will
5 show and what they believe their respective positions
6 are. But before I ask them to make their opening
7 arguments, any objections or exceptions from the State
8 as to the Court's preliminary charge?

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

10 THE COURT: And from the Defense?

11 MS. FULLWOOD: No, Your Honor.

12 THE COURT: Thank you very much.

13 Okay. Mr. Senn, are you ready to give your opening
14 argument?

15 MR. SENN: Yes, Judge.

16 THE COURT: Thank you.

17 MR. SENN: May it please the Court, counsel,
18 and members of the jury.

19 **OPENING STATEMENT**

20 **BY MR. SENN:**

21 This case is about children. Children who had
22 horrible sexual acts done to them, had these moments
23 filmed and then these moments were uploaded to the
24 internet where anyone could view them and download them.
25 This case is not about the people that actually

1 physically assault these children, but this case is
2 about a man who sought out these type of files,
3 downloaded these type of files, and then made these
4 files available for others to download from the
5 internet.

6 We're here today because on December 4th, 2009, a
7 person did make these files available on the internet.
8 And Special Agent Lucinda McKellar, with the South
9 Carolina Law Enforcement Division or SLED, as it's
10 known, did download some of these files. At a time she
11 was conducting a proactive investigation into the use of
12 file sharing networks to download and trade child
13 pornography on the internet.

14 On December 7th, 2009, Special Agent Rick Dove,
15 also with SLED, also downloaded some of these files. It
16 wasn't until they were about to execute search warrants
17 at two different apartments, one right above the other,
18 that they realized they were probably looking for the
19 same person. However, before they could execute any of
20 the search warrants, Special Agent McKellar again
21 downloaded on January 27th, 2010, additional files from
22 this person. And after executing search warrants at
23 both of these locations, they realized the person they
24 were looking for didn't live at either apartment.
25 However, they did find information leading them to the

1 man responsible.

2 That man, David Austin Land, was confronted by
3 officers and spoke with them and admitted to both
4 searching for and downloading these types of files.

5 My name is Kyle Senn, and I'm here today with
6 Bethany Miles. We work for the South Carolina Attorney
7 General's Office, and we represent the State of South
8 Carolina in cases involving internet crimes against
9 children. David Austin Land has been charged with three
10 counts of sexual exploitation of a minor second degree..
11 This week you're going to get to hear testimony from
12 both Special Agent Britt Dove and now current Special
13 Investigator, Lucinda McKellar. You get to hear how
14 they conducted their investigations. You're going to
15 get to hear what they found and what they downloaded.
16 Unfortunately, you also have the duty to review the
17 files and determine whether they depict minors engaged
18 in sexual activity as defined by the State of South
19 Carolina.

20 We encourage you to be open to all evidence and
21 testimony this week and not just what the Attorney
22 General's Office will be presenting before you. The
23 State is confident that after reviewing all the evidence
24 and hearing all the testimony, you'll determine that
25 David Austin Land solicited, received and distributed

1 and disseminated files of minors engaged in sexual
2 activity.

3 At the end of this trial, the State will ask you to
4 render the only verdict that the evidence and testimony
5 supports, that David Austin Land is guilty of three
6 counts of sexual exploitation of a minor second degree.

7 THE COURT: Thank you, Mr. Senn.

8 Ms. Fullwood.

9 MS. FULLWOOD: If it please the Court, Your
10 Honor.

11 **OPENING STATEMENT**

12 **BY MS. FULLWOOD:**

13 Madam Forelady, ladies and gentlemen of the jury,
14 of course, I'm Beth Fullwood. I introduced myself
15 yesterday. And I represent Austin Land. Austin is
16 twenty-four years old. He's a combat veteran of the
17 Army. He served for a year in Afghanistan. He now
18 lives in Greenwood. When he had -- was only a couple of
19 months into the twentieth year, the police came and
20 arrested him. And now we're here today to resolve these
21 charges.

22 Now, unfortunately, as part of this case, you're
23 just going to have to look at some videos and some
24 images that are going to be really disturbing. I mean,
25 it's hardwired into us as human beings; we don't like to

1 see bad things about children. That's just the way we
2 are as people. But it's your responsibility as jurors
3 in this case to look at all of the evidence, including
4 the emotional evidence, in an impartial manner because
5 it's your job to review the evidence rationally and
6 clear-headedly and without emotions like anger or just
7 bad feelings about something you see, and look at
8 everything objectively.

9 In this case, the State of South Carolina seized
10 Austin's mother's computer. They seized his brother's
11 computer. They seized his granddaddy's computer. And
12 they seized his computer. Forensic tests were done or
13 tried to be done on all of these machines. And here's
14 the thing; these SLED Agents were looking at one
15 computer that they were able to download from. None of
16 the computers associated with Austin Land are that
17 computer.

18 Now, Mr. Senn says, well, he admitted to it. Well,
19 you know what, that's for you to decide. If they say he
20 said something, well, it's up to you to look at all the
21 evidence of what he allegedly said, when he allegedly
22 said it and the circumstances under which he had said
23 it. And it's finally up to you to determine whether or
24 not what he said is credible, how much weight to give to
25 it or whether you need to disregard it entirely in your

1 deliberations.

2 I think once all the evidence is in in this case
3 and you look at it objectively -- that's what you've to
4 do under your oath as jurors -- and I feel confident
5 that each and everyone of you will do it like that, I
6 think that what you're going to find is that the only
7 verdict you can bring back is a verdict of not guilty on
8 each indictment. Thank you very much.

9 THE COURT: Thank you, Ms. Fullwood.

10 Madam Forelady, ladies and gentlemen of the jury,
11 as I indicated earlier, we're going to take a morning
12 break at this time. And we'll probably take about maybe
13 ten, fifteen minutes, and then get you back out. We'll
14 start with the State's case.

15 And, again, I remind you, don't discuss this case
16 among yourselves or anything related to this case.
17 We'll get you back out soon.

18 (WHEREUPON, the jury exited the open court at
19 approximately 10:49 a.m.)

20 THE COURT: Okay. We'll be in recess about
21 ten, fifteen minutes.

22 (WHEREUPON, the court stood at recess for a short
23 break.)

24 THE COURT: Are you ready for the jury to come
25 out?

1 MS. FULLWOOD: Yes, sir.

2 MR. SENN: Yes, Judge.

3 (WHEREUPON, the jury entered the open court at
4 approximately 11:19 a.m.)

5 THE COURT: All right. Let the record reflect
6 the jury is back in.

7 Mr. Senn, you ready to proceed, sir?

8 MR. SENN: Yes, Judge.

9 THE COURT: You may proceed.

10 MR. SENN: The State calls Britt Dove.

11 THE CLERK: Do you solemnly swear or affirm
12 the testimony you're about to give shall be the truth,
13 the whole truth and nothing but the truth, so help you
14 God?

15 THE WITNESS: I do.

16 THE CLERK: Have a seat, please. Once you're
17 seated, state your full name, spelling your last on the
18 record, please.

19 THE WITNESS: My name is David Britton Dove.
20 D-O-V-E is the spelling of my last name.

21 **DAVID BRITTON DOVE,**

22 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

23 **DIRECT EXAMINATION**

24 **BY MR. SENN:**

25 Q. All right. You go by Britt?

1 A. Yes, sir.

2 Q. With whom are you currently employed?

3 A. I'm currently employed with the South Carolina Law
4 Enforcement Division, otherwise known as SLED.

5 Q. Okay. What are your current duties?

6 A. Currently, I'm assigned to the computer crime unit
7 at SLED. I handle investigations. I also handle
8 forensic examinations of electronic items that are
9 submitted to us. In my capacity I also do
10 investigations in the proactive online chats. Proactive
11 investigations in the peer to peer sharing of illegal
12 contraband on the internet, such as child pornography,
13 other things. And do forensic examinations and fraud
14 investigations.

15 Q. How long have you been employed by SLED?

16 A. I began my employment with SLED June 2008.

17 Q. Okay. So you were employed by SLED in 2009?

18 A. Yes, sir, I was.

19 Q. What were your duties at that time?

20 A. Originally, when I started with SLED, I was hired
21 to do proactive online chat investigations, the
22 solicitation of minors. During that same time from 2008
23 to 2009, I was also trained to do the online proactive
24 investigations regarding peer-to-peer and file sharing
25 networks dealing with child pornography.

1 Q. Okay. Could you please describe for the jury your
2 general law enforcement training and education?

3 A. Yes, sir. I received a bachelor's degree in
4 criminal justice from the University of South Carolina.
5 I also finished the South Carolina Criminal Justice
6 Academy. In the course of my law enforcement career, I
7 started out with the West Columbia Police Department as
8 a patrol officer, moved to the position of school
9 resource officer, went to Richland County Sheriff's
10 Department as a school resource officer, and then became
11 a criminal investigator with the West Columbia Police
12 Department dealing with family violence, elder abuse,
13 sexual assault, child abuse, homicide investigations,
14 pretty much any kind -- type of investigation there.
15 And then once I went to SLED, I began my investigative
16 career doing the online investigations and doing
17 computer forensics.

18 Q. Okay. Are you familiar with the South Carolina
19 Internet Crimes against Children Task Force?

20 A. Yes, sir, I am. When I was with West Columbia as a
21 criminal investigator, I was the agency rep for the
22 Internet Crimes against Children Task Force for West
23 Columbia Police Department. Then when I came to SLED, I
24 was a member of the task force. And through them is
25 where I received most of my training to do the online

1 investigations regarding peer to peer networks or online
2 chat.

3 Q. Okay. So you were affiliated with the task force
4 in 2009?

5 A. Yes, sir, I was.

6 Q. Okay. Have you received any specialized training
7 associated with the task force?

8 A. Yes, sir, I have. I received the internet crimes
9 against task force, or ICAC is its name, training in
10 technical investigations, also online solicitation,
11 online chat investigations. I've been to several of
12 their safe children conferences that they have sponsored
13 where they've had presenters there dealing with the file
14 sharing and also the online enticement.

15 Q. Okay. Did you conduct any investigations with the
16 task force in 2009?

17 A. Yes, sir, I did.

18 Q. What types of investigation?

19 A. At that time, I was doing the online chat
20 investigations and also the peer to peer file sharing
21 system investigations.

22 Q. When you say peer to peer file sharing, what
23 exactly do you mean?

24 A. What I mean by that is you can log onto the
25 computer. You can download free software that's out

1 there. That software will allow me to go out over the
2 internet, connect directly with another computer or
3 multiple computers that are on a network. At that time
4 once I connect with them, if they make files available
5 for sharing, whether it's just music, whether it's
6 movies, pictures, sometimes they even put on software
7 like Word and stuff. You can go connect with them. You
8 can download that for free to your computer. At that
9 time, you can use it on your computer. You can make it
10 available on your computer to share back out to the
11 internet to other people that are on the network.

12 Q. So anyone can download this type of software?

13 A. Yes, sir, it's free to download.

14 Q. Okay. How would someone start accessing it, just
15 via this program?

16 A. There are several different programs out there.
17 Probably the one that people still remember that was out
18 there originally was Napster. It's a lot like that.
19 But they've evolved and changed since Napster was taken
20 down. There are other ones out there. There's
21 LimeWire, BearShare, FrostWire. There's Pirate Bay.
22 And there's new ones coming out all the time that you
23 can find and download things.
24 Q. So how do you begin an investigation into a file
25 sharing network?

1 A. When we initiate an investigation into this, we'll
2 go in -- we have a program that we were using at the
3 time called -- it was an ICAC program, I'm sorry, at the
4 time. And what it would do is it would go online. It
5 would search the file sharing systems, whether it be
6 Limewire, Phex was another one. FrostWire was starting
7 to come out at the time. It would search it for hash
8 values. Now, everything on the internet can be given a
9 hash value. That's going to be basically a mathematical
10 formula that's done to everything -- it gives this
11 independent number. Almost like a DNA for a person, but
12 it's for a file. The only way that changes is if
13 something inside that file changes. So the program
14 would go through and it would look and see for that hash
15 value, that DNA match, basically. It would go through
16 and anything it found that it was known that it was
17 related to child pornography or contraband, it would log
18 that this hash value was seen at this time, in this
19 state, and eventually return a list that I could go and
20 look at and use GEO location stuff to find out if it was
21 in South Carolina, and was inside my jurisdiction to
22 begin an investigation.

23 Q: Okay. When you say the hash value, was the hash
24 value for the individual files or the program itself?

25 A. It was for the individual files. It would look and

1 -- it would continuously and automatically go through
2 the different softwares and look for the individual
3 files that match that hash number.

4 Q. What types of files would that be?

5 A. It was using -- at the time it was using hash
6 values of files that were known child pornography files
7 that had been previously looked at and documented and
8 decisions made on, that these met child pornography
9 statutes.

10 MS. FULLWOOD: Your Honor, I'm going to object
11 to that. That's him giving some sort of testimony about
12 a matter of law.

13 THE COURT: And what witness -- I'm a little
14 confused where you're ---

15 MS. FULLWOOD: Well, he's saying these files
16 have legally been determined to be. That's -- I think
17 he's invading the providence of the jury with the
18 testimony of that nature.

19 THE COURT: Maybe get him to, subject to the
20 objection and you can renew that, get him to explain
21 exactly what he meant by that last answer, Mr. Senn.

22 MR. SENN: Okay.

23 Q. Would you ever -- how would you obtain these files?

24 A. Well, what I would do is once it returned a list, I
25 would initiate my investigation. I would download the

1 files. I would view the files myself and see if they
2 met the South Carolina definition at the time for ---

3 MS. FULLWOOD: Objection. Objection.

4 A. --- sexual exploitation.

5 THE COURT: All right. I think what he is
6 saying is that it has not been determined by a court but
7 his own determination as a law enforcement officer for
8 purposes of his investigation. It doesn't mean that
9 this has been legally determined judicially that they
10 are child pornography files. It's just his own
11 determination in the course of his investigation, the
12 way I understand his testimony?

13 THE WITNESS: Yes, sir.

14 MS. FULLWOOD: Well, he said, meets the legal
15 definition in South Carolina.

16 THE COURT: Right. Well, but in his own
17 determination.

18 MS. FULLWOOD: Yes, sir. He didn't say that,
19 though.

20 THE COURT: Okay. Is that what you meant?

21 THE WITNESS: Yes, sir. Once I viewed them.

22 THE COURT: Okay. All right. Overrule.

23 Q. Special Agent Dove, can you also see the file names
24 of the files being shared?

25 A. Yes, sir. One of things we can see is the file

1 names. When we download the file -- you can take a file
2 on the computer, you can name it anything you want. You
3 can call it flowers, for example, and it could have
4 pictures of cars on it. So a title can represent what
5 may be inside of it, but it's not a guarantee. So for
6 that reason, once I downloaded the files, I would
7 actually view the files themselves to see if they
8 represented what the title was representing.

9 Q. Okay. And so once you saw these files and you
10 downloaded them, is anyone else able to download these
11 files from you?

12 A. No, sir. What we do is when we set up the program
13 on our computers -- let me back up one step. When this
14 system -- when you download the system, if you went to
15 your computer you downloaded one of these file sharing
16 systems, and just go through and click next and take the
17 default settings, there's going to be a folder that's
18 going to be set up on there called share on most of
19 them. Sometimes they call them different things, but on
20 LimeWire it would be called a share folder. That share
21 folder is set automatically that anything inside there
22 can be shared back out and sent back out to the network
23 by anybody who wants to access it or gain it from me.
24 When I would set my programs up, just like with any of
25 our investigators that would do this, we would take that

1 share folder and anything that downloaded we would not
2 put in that share folder. It remained empty or it
3 remained with generic pictures of things like buildings.
4 Our files, once we download them, would go to another
5 folder. That way we could make sure we were not sharing
6 anything back out to the network or back out through the
7 internet, sharing any contraband.

8 Q. Okay. And the way you would adjust your settings,
9 can anyone do that using these programs?

10 A. Yes, sir, you can. Once you get through the
11 initial setup on it -- like I said, if you go through
12 and just do default like when you sign up for something
13 that are updates and you just click next, next, next,
14 next, next, take the defaults, it would automatically do
15 that. But what we would do, and just like anybody else
16 can do, is when you get to that point where it asks
17 about the share folder, you can change where it's
18 sending the stuff once it downloads and also take that
19 folder and disable it so it's not sharing back out.

20 Q. All right. So once you've downloaded and viewed
21 these files, what do you do to identify where that files
22 are coming from?

23 A. What I would do is once I download the files, I
24 would look and it would return an IP address to me,
25 which is an internet protocol address. About the best

1 way I can think to explain it would be almost like a
2 phone number. It's like somebody's phone number on the
3 computer. I would take that IP address, and it would
4 also give me -- along with that, it would give me what's
5 called a GUID, a G-U-I-D. That's a global unique
6 identifying number. That GUID number, when you download
7 the software, it automatically gives you -- it's a
8 thirty-two alphanumeric character number that gets
9 downloaded as part of the software. The best way I can
10 explain that is if you think about the VIN on a car, the
11 VIN on your car is a long number. You have a South
12 Carolina tag on it. If you took your car and went to,
13 say, Tennessee and registered the car there, you're
14 going to have a Tennessee tag, but the VIN is still
15 going to stay the same. The GUID stays the same no
16 matter if the IP address changes or if the computer
17 moves around and hits different networks. That GUID
18 number will remain the same as long as that software's
19 there because it's a unique number to that software on
20 that computer at the time. I would look at the IP
21 address. It also gives me the GUID number. I would
22 take that IP address -- on file sharing systems, you can
23 go in and you can put in somebody's IP number and go
24 directly to their computer and connect with their
25 computer to see what's in their share folder. At that

1 time, you can look and see what they have available and
2 what -- if they have something that you're interested
3 in, you can download it directly from them. And that's
4 what I would do. Is once I had an IP address with
5 titles that would meet what could possibly be the
6 statute for South Carolina exploitation, I would
7 download an image from that IP address directly, view
8 the file to see that it did meet the legal -- what I
9 interpreted to be the legal statute for sexual
10 exploitation.

11 Q. So the IP address leads more to a location?

12 A. The IP address can lead to a location. When an
13 internet service provider, whether it be Time Warner,
14 AT&T U-verse, Comcast, one of the other ones, they're
15 going to sign -- every time you log onto the computer,
16 they're going to assign you that IP address. You can do
17 legal compliance and look at that IP address and find
18 out who's paying for the service at that time and date.

19 Q. Okay. And how do you determine which internet
20 service provider actually has that IP address?

21 A. Many times you can go online. There are several
22 different free things out there. The one I use the
23 majority of the time is the American Registry of
24 Internet Numbers, ARIN, for short. You put in the IP
25 address. It's going to return and tell you who that IP

1 address, who it falls in to belonging to as far as the
2 company. That way it lets me know if it's Time Warner
3 or BellSouth or if it's Comcast or who it may be.

4 Q. Okay. Once you determine which internet service
5 provider actually has that IP address, what do you do?

6 A. Once we do determine who has it, whether it be one
7 of, like I said, BellSouth, Time Warner, Comcast, then
8 we'll send legal compliance to them to obtain who is
9 paying for that service, who the subscriber is at that
10 time and date that that download occurred.

11 Q. Okay. When you say legal compliance, what does
12 exactly do you mean?

13 A. Legal compliance can be several things. It could
14 be a subpoena from a federal partner that we partner
15 with, a federal subpoena for information. It could be a
16 search warrant that we write to the service provider to
17 obtain the subscriber information.

18 Q. Okay. Were you involved in a sexual exploitation
19 of a minor investigation on December 7th, 2009?

20 A. Yes, sir, I was.

21 Q. How did you become involved in this investigation?

22 A. I was working doing online proactive
23 investigations, logged onto our system, the undercover
24 computer that we have we do this with. It returned a
25 list of possible candidates that GEO located using

1 MaxMind, which is another one you can find to locate IP
2 addresses, gives you the general area. We used it to
3 basically find out if they were in South Carolina. If
4 they came back and they were in Tennessee, that's
5 outside of our jurisdiction, for example. So we might
6 refer that on to Tennessee. But if they were in South
7 Carolina, we would take those and begin to see if we
8 could connect with that peer and initiate a download to
9 start the investigation.

10 Q. And did you find any users sharing files with terms
11 related to child pornography?

12 A. Yes, sir, we did.

13 Q. Okay. Where did the programs tell you this was
14 generally located?

15 A. Generally, it was located in South Carolina in the
16 Lexington County area.

17 Q. All right. Were you able to download --
18 successfully download any files from that user?

19 A. Yes, sir, I was.

20 Q. How many files did you download?

21 A. I would have to look at the report. Let's see. I
22 believe it was three or possibly four, on that date.

23 Q. Okay.

24 MR. SENN: Can I get this marked as an
25 exhibit, Judge?

1 THE COURT: Sure.

2 MR. SENN: May I approach.

3 (WHEREUPON, State's Exhibit Number 2 was marked for
4 identification.)

5 MR. SENN: Permission to approach the witness?

6 THE COURT: Certainly.

7 Q. I'm showing you what's been pre-marked as State's
8 Exhibit 2. Can you please examine that disk? Are you
9 familiar with that disk?

10 A. Yes, I've seen it before.

11 Q. Okay. What does that disk contain?

12 A. The disk should contain things that I download on
13 that date in 2009 regarding the images I got from the
14 file sharing system, along with a Camtasia, which is the
15 software I use that records my desktop, that as I'm
16 doing it that -- that way if another investigator looks
17 at it, something happens to me and they have to pick up
18 my case, they can look and see what I was actually doing
19 on there. Or if anybody else wanted to, they could see,
20 based off that video capture of my desktop, what the
21 desktop was showing at the time and date. Also, I
22 believe it contains a list, too, showing my connection
23 to that peer at the time, the status of it.
24 Q. Okay. Did you generate any of this information
25 yourself or is this automatically done?

1 A. It's automatically done in the sense that I did
2 initiate, like Camtasia, I started that running. But
3 once I started that running it's a video recorder that's
4 recording. The status log is something -- a part of our
5 program we use downloads automatically and connects.
6 And the videos are what I downloaded. Once I connected,
7 it initiated the download.

8 Q. Okay. And so does this disk contain an accurate
9 representations as to the information generated when you
10 download files from a user on December 7th, 2009?

11 A. Yes, sir, it does.

12 MR. SENN: Your Honor, the State would like to
13 offer State's Exhibit 2 for admission as evidence.

14 THE COURT: Okay. And what says the Defense?

15 MS. FULLWOOD: Your Honor, I would object and
16 I would like to be heard on this.

17 THE COURT: Okay. All right.

18 Madam Forelady, and ladies and gentlemen, I've got
19 an objection that we're going to have to place on the
20 record. Consequently, I'm going to have to ask you to
21 go back to your jury room, hopefully not long. And
22 we'll get you back out just as soon as we can. Again,
23 don't start talking about this case or anything about
24 the case. Thank you.

25 (WHEREUPON, the jury exited the open court at

1 approximately 11:39 p.m.)

2 THE COURT: Okay. Ms. Fullwood, I'll be glad
3 to hear your objection.

4 MS. FULLWOOD: If I understood Mr. Dove's
5 testimony correctly, that disk contains a great deal of
6 computer generated information, the kind of things that
7 the computer spits out. Is this -- again, not being
8 sure, I could show Your Honor some examples of what I
9 think it is. And it's confusing. It's the type of
10 material that I don't want the jury to have because they
11 don't have the background to know how to interpret this
12 material. It's voluminous. And I think it just
13 confuses the issues in this case.

14 THE COURT: All right. Well, let me just put
15 you on hold for just a second ---

16 MS. FULLWOOD: Yes, sir.

17 THE COURT: --- and maybe, Mr. Senn can clear
18 it up. I mean, I don't know what's on this disk. But
19 maybe Mr. Senn can clear things up for us a little bit.

20 MR. SENN: Judge, the objects on this disk,
21 there is a Camtasia, as Special Agent Dove mentioned.
22 And what that is, basically, as he's doing an
23 investigation, it's a recording of his screen showing
24 exactly what's on his screen. So he basically is
25 operating the computer as normal, it's just there's a

1 computer, as they're in the program recording what's
2 going on the screen as he's doing things.

3 THE COURT: All right.

4 MR. SENN: And additionally there is a -- it's
5 part of that -- that file it's recording, it shows that
6 the files were downloaded and the downloads were
7 completed. And it shows a portion of the browse list,
8 which would be the files that were available from the
9 user he downloaded from. So it will show the times of
10 the files he downloaded. And then shortly thereafter --
11 I think it's less than seven minutes, I believe, Judge,
12 and the rest of it would show the browse listing. I
13 think there's over a couple of thousand files that were
14 available, including the files in this case.

15 In addition, Judge, there's also a -- what did you
16 call it -- a connection log on there, Judge. And what
17 that would show is the connection to the user in this
18 case. And it will show the IP address's information and
19 it also shows the GUID, as we're saying. So it'll give
20 you that specific number. And finally there is the file
21 itself, Judge. And then the names of the files that we
22 are not going to show. It does not actually have those
23 files on there.

24 THE COURT: All right.

25 MR. SENN: And, Judge, Special Agent Dove will

1 even be able to explain to the jury -- I mean, that's
2 the purpose of it is to be able to explain to the jury
3 what the purpose -- what the relevance of all this
4 information is.

5 THE COURT: Okay. And he would need to do
6 that as this disk is being played to explain the
7 relevancy?

8 MR. SENN: Yes, Judge. The Camtasia files and
9 video file, we can stop it and he can point out things
10 as we go with that. The connection log is a text file
11 that he can explain what the terms mean. And then
12 obviously the downloaded files.

13 THE COURT: Well, it looks like I'm just going
14 to -- we're going to have to have an in-camera playing
15 of that and allow Agent Dove to go through it so I can
16 determine how I need to rule on Ms. Fullwood's
17 objection.

18 I think where you're coming from, and this contains
19 a whole lot of stuff that would not be directly relevant
20 to this case, other than it's showing, as a part of his
21 computer investigation, what he did to ultimately arrive
22 at whatever he has ultimately arrived at.

23 MS. FULLWOOD: Yes, sir. In this case I got
24 -- in discovery there are just hundreds of pages of
25 computer generated material. And if that's what this

1 is, it's not going to make any sense to this jury. It's
2 just going to confuse them. And being computer
3 generated, it gives the impression that it's official
4 and it means something because a machine did it when ---

5 THE COURT: Well, let's play it and allow
6 Agent Dove to explain what we're seeing and go from
7 there.

8 MS. FULLWOOD: Yes, sir.

9 MR. SENN: We can just kind of go through it
10 as if we would with the jury right now.

11 THE COURT: Yeah, let's do it in-camera,
12 outside the presence of the jury.

13 Now, if you need Agent Dove to come down? Do you
14 need a laser pointer?

15 THE WITNESS: It might be easier.

16 MR. SENN: Yeah, it would probably be easier
17 for him to come down.

18 THE WITNESS: (Steps down)

19 THE COURT: Okay. So let the record reflect
20 that we are having an in-camera hearing for State's
21 Exhibit Number 2, that's been marked for ID only at this
22 point but offered into evidence, to be viewed by the
23 Court with this witness going through and offering
24 testimony to explain what we're seeing on this disk.
25 And you say it's about seven minutes?

1 MR. SENN: Judge, that video file is. A
2 couple of other things, just as long as we need to see
3 it.

4 MS. FULLWOOD: And this is the video we just
5 saw that Court viewed in-camera?

6 MR. SENN: No, this is the Camtasia file that
7 shows his investigation.

8 MS. FULLWOOD: Okay.

9 **IN-CAMERA DIRECT EXAMINATION**

10 **BY MR SENN:**

11 Q. Special Agent Dove, what is this file?

12 A. This file is a Camtasia capture of my investigation
13 of the file sharing system.. What you're seeing is
14 actually what's going on on my desktop at that
15 particular moment. At the time, you can see -- it's
16 going to have a time up there that's going to pop up
17 there with the current time and date that I'm doing it.
18 This is what I am seeing actually on my desktop as I am
19 doing the investigation.

20 Q. Okay. Can you kind of explain what is going on in
21 this -- at the beginning of this before we start playing
22 it?

23 A. Yes, sir. The software that I am using -- as I
24 mentioned there are other softwares out there like
25 LimeWire or FrostWire, that's just one of the ones that

1 I am using at the time to do these investigations. What
2 you see are files that I am currently or have completed,
3 because it says one hundred percent over here,
4 downloaded. And you can also see in the status it says
5 completed. What I have downloaded with the titles to me
6 from my experience of working these cases that indicate
7 potential child pornography. That's what you see up at
8 the top are the download files. At the bottom down
9 here, what you see are the download candidates. The one
10 that's highlighted in blue, this is the IP address that
11 it is connected to, that I actually downloaded that file
12 from. It's 98.121.204.235. The person is using
13 LimeWire version 5.2.13 is what was on their computer.
14 And then showing size that it's in a waiting status
15 right now because I completed the download of it.

16 Q. So are all of these files just from the same user?

17 A. Yes, sir.

18 Q. Were you able to completely download any of these
19 files?

20 A. Yes, sir. All the ones that are showing at the
21 top, the four that say one hundred percent are the four
22 that I was able to completely download one hundred
23 percent from the user.

24 Q. Okay.

25 MR. SENN: I'll play it a little bit, Judge.

1 Q. As it goes, just explain what you're doing?

2 A. Yes, sir. What I'm doing now is I'm going through.
3 I always do this. It is a habit I started when I was
4 doing investigations, doing online chats. I pull up the
5 official time so that you can see the time and the date
6 from the internet that I'm doing these downloads
7 actually doing this investigation to verify that my
8 software is reflecting the proper time and date. And
9 that's what this window is showing, where I pulled it up
10 on the internet and logged into government.org or
11 time.gov to do that.

12 Q. And so these downloads would have been completed by
13 Monday the December 7th, 2009 at thirteen twenty?

14 A. Yes, sir, it would. Within point one second
15 accuracy. Like I said, and I pulled that up and
16 verified it, and then I went through and highlighted
17 each one to reflect down here that I did receive from
18 the same IP address. This one you're seeing -- I'm
19 sorry ---

20 Q. I'll back up a little bit.

21 A. You just ran past it real quick. This is one
22 showing there were other hosts that were available at
23 the time, that had that same file available. And it
24 gives the status of them. And at that time, I hadn't
25 downloaded anything on that file because some hosts were

1 busy, some were waiting, some connections failed. But
2 it does show the different ones that are available at
3 the time of that file.

4 Q. But you didn't download that file?

5 A. No, sir, that file was not downloaded.

6 Q. What are we seeing here in this portion?

7 A. Right here what I've done, the system allows me to
8 go in -- I talked about connecting with a peer through
9 the IP address. If you look at the top of this column
10 here, you see the 98.121.204.235. That's the IP address
11 that I am connected with, that I downloaded images to
12 the videos from. This is what's called a browse folder,
13 where I could look inside whatever folder they had, that
14 I mentioned was available to share to anybody. These
15 are everything that's in there that allows me being on
16 the network to go out and look at their files. This is
17 not filed -- these files were not ones -- program files
18 where I'm getting into their Word documents or anything.
19 This is just out of their share folder that they allow
20 the software to share out to the internet.

21 Q. Where it says connecting, what does that -- and
22 fetching, what does that mean?

23 A. What it is doing -- at different times I will go
24 back through to establish my connection to make sure
25 that it's still an active connection and they have not

1 logged off the internet. And then it's going through
2 and it's fetching. It's going through and actually
3 pulling out a list of all the files that are available
4 in their share folder.

5 Q. What does the green writing indicate?

6 A. The green writing indicates ones that I was able to
7 successfully download from this shared folder of this IP
8 address.

9 Q. This results, what is that -- those numbers ---

10 A. The results is totaling up ones that it's able to
11 look at the shared folder and pull that would be
12 available for me to download. As this continues, the
13 status goes across and reaches a hundred percent, would
14 be the total number. And it'll continuously count up as
15 it's able to retrieve more of that information from the
16 computer.

17 Q. So the number that's now six hundred and eight, are
18 these all files -- different files that available for
19 you to download?

20 A. Yes. So they could be anything that's in that
21 folder, whether it be a picture, music, videos,
22 programs, whatever they put in that folder that allows
23 to be shared with the internet.

24 MR. SENN: Judge, just to make you aware, this
25 is a seven minute file. We can kind of skip ahead

1 because it just does this for a large portion of it.

2 THE COURT: Okay.

3 Q. And so now it says it's finished. Is that all the
4 files that were available from this user at that time?

5 A. Yes, sir. That's all the ones that it was able to
6 retrieve for me at that time and date from that user.

7 Q. And how many files is that?

8 A. It's two thousand eighty-nine.

9 MR. SENN: All right. That's the end of the
10 video, Judge.

11 THE COURT: Let me ask you one question.
12 Agent Dove, when you refer to user -- I think you said
13 all files from that user.

14 THE WITNESS: Yes, sir.

15 THE COURT: Who is the user?

16 THE WITNESS: I cannot tell who the actual
17 user is at that point. I know it's coming from a
18 computer at that IP address with a 98. But I cannot
19 tell at that point who is actually sitting behind the
20 keyboard or who actually set it up.

21 THE COURT: Okay.

22 THE WITNESS: Until we go and further
23 investigate.

24 THE COURT: All right. But that process you
25 just went through is necessary in your investigation to

1 ultimately bring the charges against the Defendant;

2 correct?

3 THE WITNESS: Yes, sir. One of the things
4 we'll look at, if we -- say we downloaded one or two
5 images or videos and we deem them to be child
6 pornography, if we go in and look at the browse list and
7 there's only those two in there and everything else is
8 just videos like movie videos, like Captain America, for
9 example, or music, that will lend us to thinking more
10 maybe of an accidental kind of download versus if we go
11 through and we see five or six or a thousand of all of
12 them in there, then we know that they're actually in the
13 process of collecting and they have it and they know
14 what they have.

15 THE COURT: All right. Okay. Ms. Fullwood
16 anything else you want put on the record and then I'll
17 ---

18 MS. FULLWOOD: Well, if I may, I'd like to ask
19 him a couple of questions to ---

20 THE COURT: Well, let me just stop you. Do
21 you need to examine him a little further, Mr. Senn,
22 concerning this before I allow Ms. Fullwood to examine
23 him and then hear argument and make a ruling on this.

24 MR. SENN: Yes, Judge. There's two other --
25 we have the file that was downloaded, as well, on this

1 disk. And the connection log is a separate document.

2 THE COURT: Okay. So we're not finished with
3 the disk yet?

4 MR. SENN: Correct.

5 THE COURT: Got you. Keep going.

6 Q. Special Agent Dove, are these four titles, are
7 these complete titles?

8 A. I'd say they're not. The ones you see with the
9 dots at the end are not complete. There's more past
10 that as far as the title goes. The third one down, the
11 pretty baby underscore Lolita twelve y-a -- or y-r, I'm
12 sorry -- old teen sex kiddy porn underage incest, that
13 ends with a dot j-p-g. That would be included in the
14 title as I've shown you the file extension at the end of
15 it. The one below that is not a full title because it
16 continues to run on past what I've expanded the columns
17 out.

18 Q. Is that what the three periods indicate?

19 A. Yes, sir.

20 Q. Are these the names of three files you downloaded?

21 A. Yes, sir, they are.

22 Q. Okay. Is there any terminology in this first file
23 name that you're familiar with through investigations
24 into child pornography?

25 A. Yes, sir. One of the first things I have seen in

1 my experience, the Carl David Hyman, Jr. being in
2 reference to child pornography files. But also, too, I
3 looking where it's got kiddy porn. Then I go down and
4 look where it has pre-teen seven y-o, as being seven
5 years old. And then it goes to describe seven y-o,
6 pussy, child, panties, husky fan -- which I know from
7 experience to be associated with child pornography --
8 eighty y-r, Lolita guy -- which I do know Lolita to be
9 associated with child pornography -- six y-r, gay,
10 penis, coming, religion, psalms, and then a number and
11 then the point jpg.

12 Q. Okay. And then do you recognize any terms and the
13 image two in the title?

14 A. Yes, I do. In image two, the mafia sex r-u has
15 been associated with child pornography I've seen in
16 other cases I've worked. Then it goes on to talk about
17 the children, kids. It talks about child porn in the
18 title on the underscore collection. And then it goes
19 through and also talks about pre-teen underage Lolita --
20 which I know to be associated with that -- incest,
21 triple x, porn, and it goes on to describe the age,
22 approximate age, of the individual as far as being young
23 or little.

24 Q. Okay. And then this final file you downloaded is
25 there any terms in that one, as well?

1 A. Yes, sir. And item three where it has pretty baby
2 underscore Lolita. I do know Lolita to be associated
3 with child pornography cases I've worked. Twelve y-r,
4 old teen, sex, kiddy porn, underage, incest, t-t-s-c to
5 be associated with little girls. I know those to be
6 associated with previous child pornography cases I've
7 worked.

8 Q. Okay.

9 MR. SENN: And Judge, this is the image you
10 saw earlier. It's image number two.

11 THE COURT: Okay.

12 MR. SENN: This is for the indictment for
13 December 7th, 2009.

14 THE COURT: Okay. If I've already seen it,
15 that's fine. You can don't need ...

16 MR. SENN: Okay.

17 Q. Now, is this also a file that you downloaded on
18 that date?

19 A. Yes, sir. This is a movie file that I loaded and
20 it's daddy gets a hand job from the daughter and her
21 friend. Preteen, kiddy, kiddy, incest, rape, porno,
22 porn, sex, eight seconds, one and then dot mpg I know to
23 be a file extension for a video. And I also looked at
24 that as part of my investigation.

25 Q. Okay. And so you've reviewed all four of these

1 files?

2 A. Yes, sir, I did. As part of my investigation to
3 make sure they met the statute for South Carolina.

4 Q. Did any of those files meet that definition?

5 A. Yes, sir, they did.

6 Q. Okay.

7 MR. SENN: Judge, we've gone through those
8 files ---

9 THE COURT: Okay. All right. Ms. Fullwood,
10 do you still want to ask in-camera ---

11 MR. SENN: We have one more thing. I'm sorry,
12 Judge. One more document.

13 THE COURT: All right.

14 MR. SENN: I apologize.

15 Q. Special Agent Dove, what is this document?

16 A. This is a status message that is generated when I
17 connect with a peer and download through our system.
18 What you're seeing is, you're seeing where it says peer
19 browse last attempt. Then it has the date and the time.
20 Based on my computer system that I'm attempting to
21 browse and to connect with an individual computer on the
22 internet to download these movies from. What this shows
23 is basically -- like I said, you can see the time, the
24 date, the time that it's attempting -- take this bottom
25 one, for example, it's attempting to connect to

1 98.121.204.235, which is the same IP address on my
2 Camtasia, that's showing that I'm actually downloading
3 the videos from them, from that computer. And it shows
4 that I do have -- after the attempt to connect it shows
5 that I did connect actually to that peer so that I know,
6 based off of that, that I am connected to that
7 individual computer and that IP address on that date and
8 time.

9 Q. Okay. And does this show your connection with the
10 user in the Camtasia video and the one that you
11 downloaded the files from?

12 A. Yes, sir, it does. Where you can see the
13 98.121.204.235, that's the IP address in the Camtasia
14 video that I downloaded the stuff. You can also see a
15 couple of the lines down it shows and there's this peer
16 running LimeWire 5.2.13. It also is the same as what's
17 on the Camtasia video. And it also returns the GUID
18 number past that, which is the thirty-two character --
19 alphanumeric number that we spoke about. Where it's
20 basically like the VIN on a car. The IP address can
21 change over the course of time, but that GUID number
22 will remain constant. And that way the system is able
23 to direct and know how to organize and who has what on
24 the system.

25 Q. Okay. And so what is the GUID for this users, this

1 stream?

2 A. It's 4B8B13F8EP9P74D741748778231A8900.

3 Q. And so that will tell you the -- that was assigned
4 to a specific program?

5 A. Yes, sir, a specific program. It was assigned to a
6 program on a certain computer. Even if that computer
7 moves and changes IP addresses, much as you register
8 your car in another state, this remains constant like
9 your VIN number remains constant.

10 Q. Okay. So would your software have a different GUID
11 than a different user's software?

12 A. No, sir. Oh, mine would, yes, sir. Mine on my
13 computer would because it's individual to the program on
14 that computer at the time. It's unique.

15 MR. SENN: I think that's it, Judge, for this
16 issue.

17 THE COURT: Ms. Fullwood, have you got any
18 questions of Agent Dove?

19 MS. FULLWOOD: Just a couple, Your Honor.

20 THE COURT: Okay. That's fine. Do you want
21 him at the screen or do you want him back on the witness
22 stand.

23 MS. FULLWOOD: He can stay there if he wants
24 to or whatever he wants to do. This will be quick.

25

IN-CAMERA CROSS EXAMINATION

1 **BY MS. FULLWOOD:**

2 Q. Really, my questions are about the Camtasia stuff?

3 A. Yes, ma'am.

4 Q. When you were talking about the things in the other
5 computer's browse folder ...

6 A. Yes, ma'am.

7 Q. Okay. Is what you're talking about in this
8 particular case the LimeWire share folder on that other
9 computer's LimeWire ---

10 A. Yes, ma'am.

11 Q. Okay. I just wanted to clarify that?

12 A. Yes, ma'am. It is. I'm sorry. I should have been
13 better about that. But it is this LimeWire, this
14 version for this IP address, it's their share folder ---

15 Q. It's going to be A, B, C ---

16 A. I'm sorry.

17 Q. And at some point when you were running the
18 Camtasia item, there was sort of a bar towards the
19 middle of the screen. And the name of the thing I'm
20 talking about is search filter options. And it had
21 different options, the last one being high dirty files
22 or something. What is that?

23 A. The way the program is built ---

24 Q. And by the program are you talking about Camtasia?

25 A. No, ma'am, the program we're using. Camtasia is

1 just a video capture of what I'm doing on the screen.

2 Q. Oh, the LimeWire?

3 A. Well, actually it's the one with fetch. You can go
4 in and check -- if you want to filter, if I go in, say
5 -- say I go into a shared folder on somebody's computer
6 and I'm looking for just music because that's all I'm
7 interested in. I can go in and filter and pull up just
8 that information out of the share folder. When I'm
9 going in and wanting to look for something, say,
10 regarding pornography, I can go -- have filters for
11 that. If it was for movies, I could do filter's for
12 that. And a lot of times what you can do -- that's why,
13 if you look at the end of the Camtasia, you'll see I
14 unchecked everything so that it would show everything
15 that's in that folder. And part of the Camtasia, if you
16 look at it, is where I'm just scrolling down the list
17 itself of that whole shared folder.

18 Q. So what software are you using when you're doing
19 that?

20 A. It's phex, is what we would be using.

21 Q. Called phex?

22 A. Yes, ma'am.

23 Q. F-e-x?

24 A. No, it's P-h-e-x.

25 Q. P-h-e-x. Is that up on the screen there?

1 A. Not now. It was in the Camtasia video.

2 Q. Okay.

3 MS. FULLWOOD: That's all I would ask. I was
4 just confused what he was talking about.

5 THE COURT: Okay. All right. And, again,
6 Agent Dove, what you've just gone through and explained,
7 that was part of your investigation in this case;
8 correct?

9 THE WITNESS: Yes, sir. Once I download the
10 movies and I view them, and in my opinion they meet the
11 statute for the State, that's when I'll open a case
12 number and do the legal process to further go into a
13 location.

14 THE COURT: But still at this point, you have
15 not identified the user?

16 THE WITNESS: No, sir. Just the IP address.

17 THE COURT: And this LimeWire, this is
18 software that is required to do this file sharing
19 business?

20 THE WITNESS: It's one of the softwares that's
21 out there.

22 THE COURT: One of the softwares. You have to
23 have the software and it just happens to be the one in
24 this case?

25 THE WITNESS: Yes, sir.

1 THE COURT: In order to share these files or
2 whatever?

3 THE WITNESS: Yes, sir.

4 THE COURT: Okay. All right. Okay. All
5 right. You can come back to the stand.

6 A. (Takes stand)

7 THE COURT: Ms. Fullwood, I'm going to
8 overrule your objection and allow the disk to come in.

9 MS. FULLWOOD: Yes, sir. This wasn't what I
10 was afraid it would be and I apologize.

11 THE COURT: That's okay.

12 MS. FULLWOOD: There was so much discovery
13 material.

14 THE COURT: I understand.

15 MS. FULLWOOD: And it was sort of overwhelming
16 to somebody who's not that versed in it.

17 THE COURT: Right.

18 MS. FULLWOOD: I would move in limine to bar
19 this witness from giving any sort of anecdotal type of
20 testimony as to what an accidental download of a shared
21 folder as opposed to intentional downloads.

22 THE COURT: Okay. Mr. Senn, you want to
23 comment on that?

24 MR. SENN: I'm not entirely sure what exactly
25 she means with that statement.

1 THE COURT: Well, I think, you know, for
2 anyone to commit a crime they have to have the intent to
3 commit it. And in this particular situation, you know,
4 an accidental download or anything accidental may not be
5 criminal. So, I mean, I don't really have a problem
6 with him explaining that.

7 MS. FULLWOOD: Well, that's not what he said.
8 What I'm talking about -- what I think he said was if he
9 went into people's shared folders, other users' shared
10 folders, and he just saw a few bad videos but the rest
11 was something else, then he just figured that was an
12 accident.

13 THE COURT: Okay.

14 MS. FULLWOOD: And I would object to his
15 personal opinion about what looks like an accidental
16 download of something in a shared file and what looks
17 like an intentional download.

18 THE COURT: Well, I see where you're coming
19 from.

20 MS. FULLWOOD: He's not charged with
21 downloading them on his machine. He's charged with ---

22 THE COURT: Sharing them?

23 MS. FULLWOOD: --- sharing them.

24 THE COURT: Well, I understand. And I see
25 your point, and I'm going to go along with it. It's

1 more -- and this certainly is no commentary on his
2 expertise and experience, but I guess it would require
3 some speculation. You could, I guess, intentionally
4 download just a couple of little things and it be
5 criminal and not necessarily accidental, so ...

6 MR. SENN: Well, Judge, and I would disagree
7 with Defense counsel that whether the files were
8 received intentionally is also part of the statute, as
9 well. It's whether they were intentionally downloaded
10 is also part of what we're trying to prove. It also
11 goes to Special Agent Dove, the way he conducted the
12 investigation and why he proceeded forward.

13 THE COURT: I'm still going to go and sustain
14 the objection and not allow Agent Dove to testify
15 whether he believes that this could be accidental or
16 not.

17 All right. Let's try to go to about one before we
18 break for lunch, if that works for everybody?

19 MR. SENN: Yes, Judge.

20 MS. FULLWOOD: Yes, sir.

21 THE COURT: Okay. All right. Mr. Knight, if
22 you'll bring the jury back out?

23 THE BAILIFF: Yes, sir.

24 THE COURT: State's 2 is in evidence. It's
25 what's in the computer, but they're going to have to

1 leave it in the computer.

2 MR. SENN: Judge, I don't know if we
3 officially moved it into evidence just yet.

4 THE COURT: I thought you did. I thought
5 that's ---

6 MR. SENN: That's when the objection came up.

7 THE COURT: Yeah.

8 MR. SENN: This will be entered?

9 THE COURT: Right. It's into evidence as
10 State's 2.

11 (WHEREUPON, State's Exhibit Number 2 was admitted
12 into evidence.)

13 (WHEREUPON, the jury entered the open court at
14 approximately 12:12 p.m.)

15 THE COURT: All right. Let the record reflect
16 the jury's back in.

17 Mr. Senn, you may proceed.

18 MR. SENN: Judge, permission to publish
19 State's Evidence 1 to the jury.

20 THE COURT: State's 1? I thought it was
21 State's 2. Is it State's 1?

22 MR. SENN: State's evidence 1. I apologize,
23 yes. State's Evidence 1.

24 THE COURT: Okay. All right. Yes.

25 MR. SENN: Can Special Dove step around here

1 to ...

2 THE COURT: He can. It's State's 2.

3 MR. SENN: State's 2?

4 THE COURT: Uh-huh (affirmative). Into
5 evidence. If the lawyers will come up here and I'll
6 explain it.

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

9 **DIRECT EXAMINATION CONTINUED**

10 **BY MR. SENN:**

11 (WHEREUPON, State's Exhibit Number 2 was published
12 to the jury.)

13 Q. Special Agent Dove, what is this file?

14 A. The file we're viewing right now, this is a
15 Camtasia capture, what I referred to a little bit ago.
16 Where what you're seeing is a video capture of actually
17 what is occurring on my desktop at the time, at this
18 particular time and date. Just like if you were sitting
19 behind my keyboard and my computer, this is what I am
20 doing and you're seeing that. It's just a video capture
21 of that with Camtasia software.

22 Q. Camtasia is a program that records this?

23 A. Yes, sir. It's a program that I had on my
24 undercover machine that I would use to record what I was
25 actually doing on there. Like I explained, if something

1 were to happen to me and another investigator or agent
2 has to pick up my case, they would be able to go back
3 and look at exactly what I did and see exactly what I
4 was seeing at the time and date.

5 Q. So this program we're seeing right now is not
6 Camtasia, but Camtasia recorded this?

7 A. Yes, sir. Camtasia recorded this. This is
8 actually the phex, the p-h-e-x file sharing software
9 that I was using at the time to download from peers on
10 the internet. It was the one I used.

11 Q. All right. Can you kind of explain to the jury
12 what exactly is going on?

13 A. Yes, sir. What you're seeing -- I will start at
14 the top. You're seeing a list that says downloaded
15 files. You're seeing a list of files. The first one
16 being Carl David Hyman, Jr. dash kiddy porn 968 dash
17 nude, wicca w-I-c-c-a pre-teen sex, seven y-o -- I'm
18 sorry. I'm quoting this. Pussy, child, panties, husky
19 fan, the number eight and three dots. That represents
20 the title continuing on. I just don't have the column's
21 expanding wide enough to get all of that title in. The
22 next category you see where it says one hundred percent
23 in blue, that means that I downloaded a hundred percent
24 of that file. A complete file that has the size and a
25 little bit of other information. The last category you

1 see where it says, status, it says completed; that I
2 completed the download. Down here what you're seeing is
3 download candidates. This is the IP address on the
4 internet that I was able to download the video or image
5 from. It shows their IP address as 98.121.204.235. The
6 other sixteen six nine six, is just a port number. The
7 main number we look at, is the IP address. It shows the
8 vendor, which is LimeWire 5.2.13 was the program they
9 were running on their computer at the time of the
10 download, the file sharing system. And it gives you
11 other information about the download.

12 Q. So are all of those files, file names above, are
13 those files that you were trying to download?

14 A. Yes, sir. The first four files where you see it
15 says one hundred percent in the second category and the
16 last category completed, those are four files that I was
17 able to download. The other three I was attempting
18 downloads and for various reasons, they were waiting.
19 Either the host was busy, dropped the connection or it
20 was just not happening at the time. But the other four
21 are the ones I was able to download.

22 Q. So all these files were available to download, but
23 you were only able to download the top ones with the
24 hundred percent?

25 A. Yes, sir.

1 Q. Okay. All right. So how many files did you
2 download from the user?

3 A. Four of them.

4 Q. Okay. And did you view all these files?

5 A. Yes, sir, I did. Once I download a file, I go
6 through, I view all the files that I've downloaded, see
7 if they meet what I believe to be the definition in the
8 state statute for sexual exploitation of a minor.

9 Q. Okay. I'm going to let that continue playing. Can
10 you explain to the jury what happens as it goes. I'll
11 pause it when necessary.

12 A. Right. What I do is from back when I was doing
13 undercover chat cases, I'll pull up while this is up and
14 my download has been complete the time.gov website,
15 which gives me the accurate time and date to reflect
16 that the time and date on my computer is actually
17 accurate and current. Whereas there's no discrepancy on
18 mine. So that's what you're seeing in this window here
19 is the 13:20:39, Monday, December 7th, 2009, is the time
20 I pulled up to actually show that when I'm downloading
21 these and when my downloads are complete and I'm doing
22 my investigation.

23 Q. This time at 13:20:39 on Monday, December 7th,
24 2009, would those four downloads have been completed at
25 that time?

1 A. Yes, sir.

2 Q Please tell the jury what you're doing.

3 A. I'm highlighting -- and I'll go through and I'm
4 highlighting each video or image that downloaded. When
5 I highlight it, you can look down here in the download
6 candidates field, and you can see the IP address. This
7 one shows another IP address but it's waiting. Or you
8 can see the size, zero bytes. Nothing was downloaded or
9 uploaded from there. It shows the IP address on this
10 one, the 98.121.204.235, LimeWire 5.2.13, a download --
11 that it was available, downloaded and I'd already
12 downloaded it. Up top you can see where it's a hundred
13 percent downloaded. It's showing the IP address.
14 That's from the same thing where you see the IP address
15 of the images that I downloaded. These are the ones
16 that were not completed download. You can see from
17 this, the top ones, 98.121.204.235 which did have it
18 available. But at the time it says the host was busy.
19 And the same with the rest of the IP. So I was not able
20 to get a download from that host at the time, which is
21 the computer that it's on on the internet.

22 Q. What exactly is happening here?

23 A. Right here, what I've done is I've gone in, and you
24 can see up at the top of this column, you can see the
25 98.121.204.235. That's the IP address that I downloaded

1 the images from and the movies from. I went through and
2 did what's called a browse host. What that is, is like
3 I explained, when you download LimeWire in particular,
4 it will default and give you a shared folder on your
5 computer. And when you download something, it puts it
6 in that shared folder. If you want to move it somewhere
7 else you can. But anything in that shared folder when
8 you're online and on LimeWire, it's allowing it to be
9 shared out with the rest of the internet. It's kind of
10 how the system works, is that if I share with you, you
11 share with me, you share with somebody else and
12 everybody's sharing. So what this does, it allows me to
13 go through and browse at that IP address every folder
14 that is available to be shared out. That's everything
15 here that's listed in this category here is everything
16 that they have available for me, whether it's a movie,
17 music, song, pictures, anything that they put in that
18 folder to share. Over here in this box is information
19 status box, which says finished, one hundred percent.
20 That means that it went through and browsed their
21 complete shared folder on there. And it returned the
22 total, it says it has two thousand eighty-nine things in
23 that folder that are available to download. And they
24 could be a range of anything that you put in that
25 folder.

1 Q. So could you have downloaded any of these files?

2 A. Yes, sir. I could have gone in and downloaded just
3 random things, music files or the Nickelback Animals
4 prints. It's an mp3. I could have downloaded that if I
5 chose to from that user at that time of day.

6 Q. What exactly does the select rules to activate,
7 what does that mean? What are those -- default, what
8 does that mean?

9 A. What you do, it adds default filters. If I wanted
10 to go through, and say I wanted to look for just music,
11 that's all I was interested in, was just downloading
12 music. At the top over here you can see where it says,
13 hide adult content. It's a filter that when you check
14 it, it's going to go in and remove that so you're not
15 seeing that. It just makes it -- like for example, two
16 thousand eighty-nine. That's a lot to go through if I
17 wanted to look for just music. So what it'll do is it
18 allows me to hide those contents when I look through
19 their browse folder, their folder here that's available,
20 it allows me to look for just what I want. It just
21 hides that. I don't check these -- sometimes I go
22 through and check them just to see if it gives you a
23 different result, to verify the results. But when
24 they're not checked, it shows me everything that's
25 available in that shared folder at that time and day on

1 that LimeWire on the computer.

2 Q. Continue with the Camtasia. Where it says
3 connecting, what does that mean? What are you doing
4 here?

5 A. I went back through. We go to the IP address to
6 browse it again to see if it would give me a different
7 total, if it would give me different results. That way
8 you can kind of verify that I'm still seeing the same
9 number, same things, that there's not been a problem.

10 Q. This number decreasing over the file level. What
11 is that?

12 A. This is where it's going through the folder as it's
13 looking in their shared folder. It's continued to
14 increase because it's returning more and more results
15 because it takes it a little bit of time to actually go
16 through their folder if there's a lot of files to see
17 what they have in there and then return the results to
18 me that are available.

19 Q. What does this green text indicate?

20 A. This green text here, which starts off with daddy
21 gets a hand job from daughter and her friend. That
22 indicates one of the movies that I was able to download
23 from him a little bit earlier in the day.

24 Q. Is there a remaining portion of this Camtasia --
25 does it just generate this list?

1 A. Yes, sir. It generates this list up to two
2 thousand eighty-nine of them. And I believe it goes
3 back to showing the downloaded file where it has the
4 titles that I had downloaded.

5 Q. I'm going to skip ahead. This, where it says
6 finished, does that mean that this is all the files that
7 were available at that time?

8 A. Yes, sir. Where it completed and finished, it
9 returned the same results of two thousand eighty-nine.
10 And this is just me scrolling through the list itself to
11 kind of look and see what's in the list.

12 Q. Let's pause for a second. This file right here,
13 the Sivila (phonics), was this one that you downloaded?

14 A. No, sir. That is one I did not download, but that
15 is one that was available in that shared folder on that
16 date.

17 Q. Do you recognize any terms in that title to be
18 consistent with child pornography?

19 A. Yes, sir, I do. The first one I would see, Sivila
20 four thirteen y-r -- for thirteen years old is what I
21 would interpret that to be -- pedo, I know from
22 experience in working child pornography cases, that
23 that's a term associated with that. And it has child
24 porn, sex, Lolita -- which is a known term for child
25 pornography cases. Then it goes on and talks about a

1 nude Lolita -- again, knowing that term -- pedophilia,
2 Ultra nine y-o -- for nine years old -- pre-teen and
3 little Lolita. And then it shows you there's a picture,
4 it indicates it's a picture based off the jpg extension
5 at the end.

6 Q. But you didn't download this file?

7 A. No, sir, I did not.

8 Q. But this was a file that was available?

9 A. Yes, sir, it was.

10 Q. Would you know what the content was before you
11 downloaded?

12 A. No, sir. The only thing I can do is read the title
13 and know those terms are associated with that. Until I
14 would do anything with that, I would download it and
15 actually view it myself to make sure that the title
16 represented what the image was.

17 Q. So there were other files available from this user
18 that you didn't download that had the file names
19 contained terms related to child pornography?

20 A. Yes, sir.

21 Q. Are these file names for files you downloaded?

22 A. Yes, sir, they are.

23 Q. Just looking at the image one file name. Are there
24 any terms in there that you would know from your
25 experience be related to child pornography?

1 A. Yes, sir. The Carl David Hyman, Jr., I've seen
2 associated with other child pornography cases I've
3 worked. It also has kiddie porn in there. Also, pre-
4 teen sex, seven y-o. Knowing that it would possibly
5 seven years old. Pussy, child, panties, husky fan I've
6 seen associated with other child porn cases that I've
7 worked. Eight y-r Lolita guy six y-r, gay, penis,
8 coming, religious, psalms, and then the number 51F24325
9 and the dot jpg indicates to me that that's a photo.
10 And those terms that I've mentioned, Lolita, husky fan,
11 along with seven y-o, I've seen in other child
12 pornography cases I've worked.

13 Q. Okay. And downloaded image two, are there any
14 terms in that title that you're familiar with?

15 A. Yes, sir. In image two the mafia sex r-u, I've
16 seen associated with other child pornography cases that
17 I've been involved with and worked. Also, too it says
18 in there, it says child porn, illegal, pre-teen,
19 underage, Lolita -- which I know to be associated with
20 it -- kiddy, child, incest, triple x, porn, gay, fuck,
21 young, nude -- or naked, nude, and a little girl. And
22 it also shows me that that's possibly a picture based
23 off the file extension.

24 Q. Okay. And then finally download image three, are
25 there any terms in that file title related to child

1 pornography?

2 A. Yes, sir. Pretty baby, underscore Lolita, twelve
3 y-r, then old teen, sex, kiddy, porn, the underage,
4 incest. The pre-teen, little girls, the PTSC. Those
5 are the ones I've seen in other cases that I've worked.

6 Q. And so this download image two is one of the ones
7 that you downloaded; correct?

8 A. Yes, sir, it is.

9 Q. This is what would have been displayed to the user,
10 as well?

11 A. Yes, sir. This would have been in the user share
12 folder that they could access, along with being the
13 share folder that I was able to download from that
14 computer on that date and time.

15 Q. Are all of these pictures part of one file?

16 A. Yes, sir. They're part of one file. And in the
17 title it talks about a collection. And all of these are
18 that one file, one jpg.

19 Q. Is this another file that you downloaded?

20 A. Yes, sir. This is the movie file that I
21 downloaded. Daddy gets a hand job from his daughter and
22 her friend, pre-teen, kiddy, incest, rape, porno, porn,
23 sex, eight seconds, porn, mpg -- mpeg. Sorry.

24 Q. And all of these file names, this would have been
25 displayed on the user's computer, as well?

1 A. Yes, sir, it was. And I believe this also shows in
2 the Camtasia video parts of that title because I didn't
3 expand the columns out as far.

4 Q. What exactly is this document?

5 A. This is the status message that was generated when
6 I was doing the downloads. What it displays -- and I'll
7 start at the bottom since that's just easiest for me to
8 reach. It shows that peer browse lasted -- it shows the
9 date and the time that I last attempted to browse or to
10 connect to this individual IP address. You can see the
11 date and the time that I attempted connection to
12 98.121.204.235. It was attempting the connection at
13 12:25:37 p.m. Then at 12:25:39 p.m., I actually
14 connected again with the 98.121.204.235, which is the
15 same IP address on Camtasia that I got the movies and
16 the images from in the download. It continues down but
17 it's sending a message asking it to browse the host,
18 which -- what it means is it's sending a message saying,
19 hey, this user, which it was myself, wants to look at
20 your shared folder, what you have available to download
21 at this time and date. It's sending a request to them.
22 It's responding back to them. You can see right here it
23 said, okay. It's logging -- that set log all it is is a
24 command that basically goes in there and just does the
25 same thing. It tells me I'm connected to that IP

1 address. It says that the peer running, which is the
2 computer that I'm connecting to at the time, is LimeWire
3 5.2.13 software with a GUID, a G-U-I-D, which is
4 4D8P13FAEBD974D741748778231A8900. Like I explained, the
5 GUID there is the global unique identifier. When you
6 download a software, in this case LimeWire, when you
7 download LimeWire to your system, it gives it that
8 thirty-two character alphanumeric number that's unique
9 to that software on that computer at that time. It
10 doesn't change if you move the computer around to
11 different IP addresses. It stays the same. Much like
12 the VIN on a car like I explained. You can register a
13 car in Tennessee or South Carolina, the VIN remains the
14 same, just like the GUID does here. That remains the
15 same. And that way, the system knows who has what
16 available. It can use it for management purposes, even
17 if the IP address changes. Then it talks about the
18 files that it received in the list. There from that IP
19 address and it shows that I disconnected at 12:29:53
20 p.m.

21 MR. SENN: I beg the Court's indulgence?

22 THE COURT: Sure.

23 Q. That's all for this disk. You can return to your
24 seat.

25 A. (Complied)

1 Q. Special Agent Dove, once you downloaded and viewed
2 these files, did you determine where the files were
3 being sent?

4 A. Yes, sir, we did. I took the IP address that was
5 returned from the software, the 98 one I discussed and
6 showed, took that information and did a federal file for
7 legal compliance through that. Got returned the
8 information who the subscriber was at that time and date
9 that that was downloaded.

10 Q. Okay. What internet service provider was assigned
11 this IP address?

12 A. At the time it returned to Time Warner Cable.

13 Q. Did you request information from Time Warner?

14 A. Yes, we did, of the subscriber.

15 MS. FULLWOOD: Your Honor, may we approach?

16 THE COURT: Certainly.

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

19 Q. Special Agent Dove, once you communicated with Time
20 Warner Cable, what did you do next in your
21 investigation?

22 MS. FULLWOOD: Objection based on hearsay.

23 THE COURT: Certainly. So noted for the
24 record. Overruled.

25 A. Once we received information, it gave us additional

1 investigative leads to attempt to locate where the
2 possible computer was that may have been downloading or
3 making available for me to download images and movies
4 from the file sharing system at that time and date.

5 Q. Okay. Did that information provide you -- lead to
6 any address?

7 A. Yes, sir, it did. One inside Lexington County.

8 MR. SENN: Beg the Court's indulgence.

9 THE COURT: Sure.

10 Q. So you said the address was located in Lexington
11 County?

12 A. Yes, sir, it was.

13 Q. Before visiting this address, did you do any other
14 investigation?

15 A. Yes, sir, we did. Myself, and at the time Special
16 Agent McKellar was my partner. Her and I actually
17 worked inside the same office, shared space at SLED. We
18 had conducted -- had surveillance on the residence, took
19 photographs of it, also checked for open WiFi, open
20 internet connections there. Also, when we were doing
21 that she advised that she needed to do surveillance
22 also. So we met with the apartment manager to gain
23 access behind the fence and took photos and then walked
24 the hallways checking for open WiFi.

25 Q. Did you find any open wireless networks?

1 A. Yes, I did find one. The open wireless network
2 that I found I believe was admin, A-D-I-M, number one,
3 was the only open WiFi I found at that time.

4 Q. Would admin be A-D-M-I-N?

5 A. Yes, I'm sorry.

6 Q. That's all right. Special Agent Dove, did you
7 notice any information concerning the GUID at this
8 point?

9 A. Yes. One of the things I did when I started
10 looking, going back reviewing the files and reviewing
11 the status reports and the other information I obtained
12 during my downloads and after that, I noticed that that
13 same GUID had been seen at Ft. Campbell previously. And
14 based off of that, that just kind of gave me a little
15 background information that whoever or wherever this
16 computer was at one time might have been in the Ft.
17 Campbell area. And that now it was in Lexington County.

18 Q. Did you know of this GUID being connected with any
19 other investigation pending at that point?

20 A. Yes. One of the things I found out was that same
21 GUID was tied to an investigation that was being
22 conducted by Special Agent McKellar at the time.

23 Q. Once you finished your preliminary investigation,
24 what did you do next?

25 A. Once we did surveillance and the information led to

1 the apartment in Lexington County, I got a search
2 warrant signed by a magistrate, executed the search
3 warrant at the residence and spoke to the individual
4 that was at the residence at the time.

5 Q. Who was at that residence at the time?

6 A. It was Christy Land, was the female that was there
7 at the time of the execution of the search warrant.

8 Q. Was Christy Land the only person living there?

9 A. No. She was not the only person living there. She
10 was the only person at the residence at the time. She
11 also, I believe, had a daughter and another son that
12 were living at that residence at the time.

13 Q. Okay. Did you seize any items at that point?

14 A. Yes. There was a laptop item and I believe it was
15 two towers, two computer towers, that we seized at that
16 point.

17 Q. Did you submit these items for forensic
18 examination?

19 A. Yes, I did. I submitted them with SLED's Computer
20 Crime Unit for an examiner to do the examination on
21 them.

22 Q. What would this forensic examination be looking
23 for?

24 A. The examination would be looking for, one, any
25 images, videos that would match the ones that I

1 downloaded. Also, they'd be looking for the file
2 sharing system to see if the GUID on that file sharing
3 system was the same as the one I'd seen when I'd
4 downloaded. And to see if there was any additional
5 videos or images that may have been on the computer.

6 Q. Were you aware if they found any of these files on
7 these computers?

8 A. No, they were not. The examiner examined the
9 computers in this case and did not find any of the
10 information.

11 Q. Without saying the other information, did you
12 receive any other information providing any
13 investigative lead for the user you downloaded the files
14 from?

15 A. Yes. Once we conducted the initial search warrant
16 in Lexington and spoke to Ms. Land, I developed other
17 leads from that that led me to Greenwood. At what time
18 we were in the process of preparing a search warrant to
19 go to that residence to try to obtain the computer and
20 speak to individuals when I had a death in the family.
21 And Special Agent McKellar, being involved in the case
22 and being my partner and working the same GUID, took
23 over and went on with the search warrant.

24 Q. And so you were not present at a search warrant in
25 Greenwood?

1 A. No, sir, I was not.

2 MR. SENN: Nothing further from the State,
3 Judge.

4 THE COURT: Okay.

5 Is there any cross examination of this witness?

6 MS. FULLWOOD: Yes, sir.

7 **CROSS EXAMINATION**

8 **BY MS. FULLWOOD:**

9 Q. Agent Dove, in this case we're talking about
10 basically the computer program LimeWire; right?

11 A. Yes, ma'am, we are.

12 Q. And that was one of the peer to peer networks that
13 you were just talking about?

14 A. Yes, ma'am.

15 Q. Right. And I don't think you can get that anymore;
16 can you?

17 A. I'm not sure at this particular moment if you can.
18 I know it went through and was shut down. I have read
19 some blogs where they're attempting to bring it back in
20 a different format. Right now I don't think you can
21 download it, but I'm not one hundred percent sure on it.

22 Q. And with LimeWire, if a person wanted to use it,
23 they could go online and get that software for free;
24 right?

25 A. Yes, ma'am, they could.

1 MS. FULLWOOD: Beg the Court's indulgence.

2 THE COURT: Sure.

3 MS. FULLWOOD: This machine is making a lot of
4 noise. May I try to turn it off because I could hardly
5 hear the witness, it's so much noise.

6 MR. SENN: It's the projector, Judge.

7 THE COURT: Right. Maybe can you assist Ms.
8 Fullwood in turning it off.

9 Q. Okay. So you could get the software for free?

10 A. Yes, ma'am.

11 Q. And you were talking about people downloading it
12 and just clicking next, next, next?

13 A. Yes, ma'am. When you initially download a software
14 and run it, execute it, a lot of times it's going to
15 have pop-ups and I would say the majority of people just
16 click next, next, next to go through the basic default
17 setups.

18 Q. And the way LimeWire worked that the default was
19 they set you up a shared file where any file that --
20 that those files -- when you downloaded a file, it would
21 automatically go into the share folder; right?

22 A. Yes, ma'am, if you took the defaults it would have.

23 Q. Yeah. And when something was in the share folder,
24 that meant other LimeWire users could download the same
25 thing from you?

1 A. Well, other users on the peer to peer network could
2 do it, and not necessarily LimeWire, but other users
3 could download that information from your share folder.

4 Q. Well, that's how it worked on LimeWire too; right?

5 A. Yes, ma'am. But along with other file sharing
6 systems, it's the same concept whether it's LimeWire or
7 another one.

8 Q. But here we're only talking about LimeWire; right?

9 A. On the computer I downloaded from, yes, ma'am.

10 Q. All right. Now, if a person was a LimeWire user
11 and they had their computer on and had their LimeWire
12 program open, other people could download files in their
13 shared folder; right?

14 A. I'm not sure exactly -- are you -- I'm not sure
15 exactly what you're asking. If you're asking if
16 somebody could put something in your shared folder or I
17 could download from their shared folder?

18 Q. No. No, not put something in your folder. You
19 couldn't do that; could you?

20 A. No, ma'am. I can't put anything in somebody else's
21 shared folder. I can just download from their share
22 folder.

23 Q. But I'm saying if I had LimeWire and I had my
24 computer on and I was -- you know, had the LimeWire open
25 ---

1 A. Yes, ma'am.

2 Q. --- other people who had LimeWire could download
3 from my share folder; right?

4 A. Yes, ma'am, that's correct.

5 Q. All right. And as long as your computer was on and
6 your LimeWire was open, people could download from you
7 regardless of whether you were present at your computer
8 or not; correct?

9 A. As long as you had an internet connection. If you
10 were not at your computer but you did have the internet
11 connection, that is correct. But if you were not -- you
12 did not have internet connection, it would not work.

13 Q. Okay. Now, I'm going to talk a little bit about IP
14 addresses. Those are identification numbers that are
15 assigned by internet service providers; is that right?

16 A. Yes, ma'am, that is.

17 Q. All right. And like you told the jury, they're
18 dynamic, they can change from time to time, every time
19 you go on the computer; right?

20 A. Yes, ma'am. They can change unless you're in a
21 business setting where you have a static one. Other
22 than that, the IP addresses can change, either your home
23 network or if you change networks.

24 Q. Okay. And you have to pay for that, don't you, if
25 you want a static one?

1 A. Yes, ma'am.

2 Q. Yeah. Now, in this case, the IP address is the
3 identification that's assigned to the device that is
4 hooked up to the internet; right?

5 A. Yes, ma'am. At that particular time and date.

6 Q. Okay. And in this case we're talking about
7 routers; right?

8 A. Yes, ma'am. There are wireless routers or could be
9 run through a cable router or -- yes, ma'am.

10 Q. Well, in this case we're talking about wireless
11 routers; aren't we?

12 A. In this one, when I initiated this investigation, I
13 could not tell you if it was wireless or if it was hard-
14 lined. We did check for wireless when we did the
15 surveillance. That's standard procedure. But until we
16 actually execute a search warrant, I don't know if it's
17 going to be wireless or if it's going to be hard-lined.

18 Q. Right. I know you didn't know it at first. But
19 isn't it correct that once you went to Ms. Land's
20 apartment in Lexington, she had a couple of wireless
21 routers there; right?

22 A. Yes, ma'am. She did have a wireless connection in
23 the apartment.

24 Q. And according to the information you had developed,
25 the IP address you were seeing was the number assigned

1 to one of those routers in that house; right?

2 A. That IP address came back as Ms. Land being the one
3 paying for the subscription on that time and date
4 through Time Warner.

5 Q. Right. And she was using wireless internet access;
6 correct?

7 A. There was a wireless routed in the residence. But
8 what happens is, that wireless router is hard-lined in
9 so that that IP address is able to be tracked to that
10 location so that they can charge you and find out who's
11 using the internet and charge you for it.

12 Q. Right. Right. The IP is for that location?

13 A. Yes, ma'am.

14 Q. I'm simply trying to establish the IP address is
15 the IP address of one of those routers in that house at
16 that time?

17 A. Yes, ma'am. It's ---

18 Q. That's all I'm trying to establish.

19 A. It goes to that residence at that particular time
20 and date that she's paying a subscription on that.

21 Q. Okay. So it's not an address of the computer; is
22 it?

23 A. No, ma'am. That's why we looked at the GUID number
24 because that stays consistent versus the IP address that
25 can change.

1 Q. Okay. And when you went in Ms. Land's house, you
2 found two open wireless connection points; right?

3 A. Yes, ma'am, I believe so.

4 Q. Okay. And one was called Netgear and the other was
5 called Admin; correct?

6 A. Yes, ma'am.

7 Q. All right. Now routers contain electronic logs;
8 don't they?

9 A. Yes, ma'am.

10 Q. Did you look at Ms. Land's router logs?

11 A. I did not. I did not conduct any of the forensic
12 examinations on that. Many times with home networks,
13 unless you have a more advanced router or you turn the
14 log-in feature on or enable it, you will not get those
15 logs all the time.

16 Q. Did you seize Ms. Land's logs?

17 A. No, ma'am, we did not.

18 Q. So you made no attempt to try to look in her
19 router's logs?

20 A. No, ma'am.

21 Q. All right. For that reason you don't know which or
22 how many computers were using that router at the time
23 and day that you made those downloads; right?

24 A. No, ma'am.

25 Q. That's not right?

1 A. No, I don't know.

2 Q. Okay.

3 A. I don't know how many computers were logged in
4 using that IP address at that particular time and date.

5 Q. Now, if your wireless network isn't secured by a
6 password, other people, if they're close enough to you
7 physically, can log onto your network; right?

8 A. Yes, ma'am, if you're close enough. It depends on
9 how strong your wireless connection is. If you're at a
10 home and your neighbor may be able to log on. It would
11 be a weak signal. Or they may not. It just depends on
12 how strong your signal is and how close they are to it.

13 Q. Did you investigate whether or not any of Ms.
14 Land's neighbors might have piggybacked onto her network
15 on December 7th?

16 A. No, ma'am, I did not.

17 Q. You conducted some sort of pre-investigation before
18 you went in and got a search warrant?

19 A. I did surveillance on the residence, checking for
20 open wireless, photographing the residence to articulate
21 the search warrant to the magistrate?

22 Q. Okay. Now, when you talk about the residence, this
23 is an apartment complex; correct?

24 A. Yes, ma'am.

25 Q. And there were a number of apartments in the

1 building Ms. Land lived in?

2 A. Yes, ma'am.

3 Q. Did you make any attempt to find out who the other
4 -- the tenants of the other apartments were?

5 A. I did not. Special Agent McKellar was also
6 investigating a residence in that same apartment
7 building, actually I believe above Ms. Land, at the same
8 time.

9 Q. Well, did you know that two of those units had been
10 rented out by a school to be dormitory for their
11 students?

12 A. No, ma'am. I don't believe the apartment manager
13 relayed that to us.

14 Q. Did you know that the tenant in unit 1112 was a
15 Drill Sergeant at Ft. Jackson?

16 A. No, ma'am, I did not. I know the IP came back to
17 Ms. Land's apartment and that was our starting point.

18 Q. But depending on the strength of her signal and if
19 her network wasn't secure, one of her neighbors could
20 have gotten on the internet using her router; right?

21 A. Yes, ma'am. That is correct. That's a
22 possibility.

23 Q. And it would show up as coming from her IP address?

24 A. Yes, ma'am.

25 Q. Now, I want to talk a little bit about the GUID

1 now. Am I right in believing that that's the number
2 assigned -- a unique number assigned to a program on a
3 computer?

4 A. When the program is downloaded on the computer it
5 assigns that unique number. Because that's what the
6 program on peer to peer networks use for management.

7 Q. Okay. And it's going to stay the same on that
8 machine; right?

9 A. Unless you change the program. If you go in and
10 delete, wipe out a program, and then go reinstall, it's
11 going to add another unique number to it.

12 Q. Okay. But the GUID identifies the computer or
13 device?

14 A. It identifies that software on a particular
15 computer or device.

16 Q. Well, you couldn't transfer it to another device
17 ---

18 A. It's a unique number that when you download from
19 the internet onto another device it's going to that --
20 now, with that said, if you removed hard drives, I
21 believe it may be possible when you put a hard drive
22 into another computer, that it may transfer that way.
23 I've not tested that, though.

24 Q. Okay. So you don't know about that?

25 A. No, ma'am.

1 Q. So if you looked at the hard drive of a computer
2 that has Limeware (verbatim) downloaded on it, you're
3 going to find that GUID number assigned to ---

4 A. Yes, ma'am. You should be able to find the GUID
5 number on there.

6 Q. Okay. And you seized how many computers at Ms.
7 Land's house?

8 A. I believe it was three computers. It could be two.
9 I'm not positive without looking at the report of the
10 evidence sheet on it.

11 Q. Oh, okay. And these two or three computers have
12 been examined forensically?

13 A. Yes, ma'am.

14 Q. Okay. And none of those computers had that GUID
15 number; did they?

16 A. I don't know about that. I did not conduct the
17 forensic examination. The report I received on it was
18 that no items of interests were found, but I do not know
19 what was seen or not seen by the examiner on it.

20 Q. Well, now, don't you imagine that if the examiner
21 had seen the GUID number that's so important to your
22 case, he or she would have told you that?

23 A. I don't know. I don't know what the examiner was
24 thinking, looking at or anything else, at the time.

25 Q. So you think, you think one of your fellow agents

1 wouldn't convey that type of crucial information to you?

2 A. I don't know. I don't know how to answer that for
3 you because I don't know what they would have wanted to
4 have or would have not done at the time.

5 Q. Okay. Well, maybe you can answer this. Can you
6 produce a computer that has that GUID number on it?

7 A. No, ma'am, I cannot.

8 Q. You downloaded files from that computer; right?

9 A. From a computer on the file sharing system; yes,
10 ma'am.

11 Q. Those files, the movie and the images were on the
12 hard drive of the computer you downloaded from; right?

13 A. Yes, ma'am, at that particular time and date, it
14 was.

15 Q. Okay. And those images are going to stay on that
16 screen -- on that hard drive, I mean?

17 A. Unless an individual goes in and wipes their hard
18 drive or deletes the images and runs an eraser software
19 over there to remove stuff or adds a new hard drive in
20 the computer, they would remain there. Like I said,
21 unless somebody removes them.

22 Q. Well, even if a person tries to just delete files,
23 there's forensic software that's going to pull them back
24 up; right?

25 A. If it's just delete. If you reformat a hard drive,

1 if you use a wiping like eraser kind of software on
2 there, you can remove them and not be able to find that.
3 Or if you wiped it, such as a DoD wipe.

4 Q. Right. But now if you use a wiper, that's another
5 program; right?

6 A. Yes, ma'am, that would be another program.

7 Q. So you wouldn't find the stuff that was wiped, but
8 you'd find the wiper file; wouldn't you?

9 A. Yes, ma'am. That would still be on there.

10 Q. And, in fact, wiper programs, wiper software, get
11 embedded in the registry of a machine; right?

12 A. Yes, ma'am. Anything you do like that if it's
13 still there can be embedded in the registry, that'll
14 also show.

15 Q. That means you would know if somebody had wiped the
16 machine; right?

17 A. If I was the one examining it, yes, ma'am, I can
18 tell that.

19 Q. Okay. You can't show that any of the computers you
20 seized on December 7 have on their hard drives the
21 images you downloaded -- well, you seized the computers
22 in February. None of the computers you seized had on
23 their hard drive the images that you downloaded on the
24 7th of December; did they?

25 A. No. Nothing was found on there to reflect the

1 images that I downloaded.

2 Q. And you don't have anything to show that the hard
3 drive of those computers had been either replaced or had
4 them wipe program used on them; can you?

5 A. I did not examine them, so I have nothing to show
6 that. I can't talk about that because I didn't look at
7 it.

8 Q. Okay. You don't have a computer here today that
9 has on it the images you downloaded on December 7;
10 right?

11 A. No, ma'am, I do not.

12 MS. FULLWOOD: Nothing further.

13 THE COURT: Redirect?

14 MR. SENN: Yes, Judge, briefly.

15 **REDIRECT EXAMINATION**

16 **BY MR. SENN:**

17 Q. You were saying that you weren't aware whether
18 LimeWire was available currently. Was it available in
19 2009?

20 A. Yes, sir. It was available then.

21 Q. Okay. Would you be able to connect to a user using
22 LimeWire from the program Phex?

23 A. Yes, sir. That's exactly what I did in this case.

24 Q. Okay. How would a file get placed in the share
25 folder you mentioned?

1 A. The way to explain, if you take the default
2 settings, once you download something, it's
3 automatically going to place it in the share folder
4 until you either move it out of that folder or you
5 delete it. It's going to remain in that share folder
6 and be available for others.

7 Q. So if someone downloaded files they could appear in
8 the share folder?

9 A. Yes, sir.

10 Q. Okay. Just going back a little bit. I just want
11 to -- all of this technical information can get
12 confusing. How exactly would someone get internet in
13 their house? Can you be just kind of as basic as
14 possible and explain how that goes?

15 A. To get internet in your house basically you would
16 call and decide if you want to use a cable provider like
17 Time Warner, for instance. U-verse, if you want to use
18 them if they were available in your area. If you wanted
19 to share off somebody else's WiFi you could do that if
20 you had wireless connection on your device, whether a
21 laptop or a computer. Once you call them, they come
22 out, they hook up the system and set in place the
23 routers on the inside of the house. You can either then
24 plug your computer directly into that or if it's a
25 wireless router, you can run wirelessly off of that and

1 serve from sitting in your living room on a laptop or an
2 iPad or something.

3 Q. So a router would get the internet connection from
4 Time Warner?

5 A. Yes, sir. Time Warner would establish that
6 connection on that router and that's what would be
7 assigned the IP address, is that router. On the back
8 side of that they do have a different setup, is the way
9 they do the IP addresses.

10 Q. Okay. So if you have a router in your house, you
11 can connect to this via a wire?

12 A. Yes, sir, if you chose to, you could plug it
13 directly into your computer. If you had like a desktop
14 computer, you could plug it in versus going wirelessly.

15 Q. But it could also send out wirelessly?

16 A. Yes, sir. It could do both.

17 Q. But the IP address would only lead just to that
18 router; right?

19 A. Yes, sir. And it would lead to the router of who's
20 actually paying for that service at that time and date.

21 Q. So somebody could be using the wireless outside of
22 that residence?

23 A. Yes, sir.

24 Q. They just have to be somewhat in proximity to be
25 able to use that wireless network?

1 A. Yes, sir. They have to be close enough. One,
2 you'd have to have it unsecured, you don't have a
3 password on it or something. But then you have to be
4 close enough. If you're in certain buildings that are
5 real heavy in concrete and steel, that'll cut down on
6 the signal because it's hard for it to penetrate that,
7 such as like in this case, an apartment building, or a
8 hospital. Anything that's real heavy in construction,
9 it'll cut down on the length of the signal.

10 Q. If someone were to do a system restore of a
11 computer, would that possibly get rid of information
12 such as images or videos or if it's GUID information?

13 A. Yes, sir, it could. And then also, too, if you
14 went back and did that and then reinstalled your
15 operating system, it would go back through and can go
16 back and change what was previously there and make it
17 hard to find or almost impossible in some cases.

18 MR. SENN: Nothing further from the State.

19 THE COURT: Any recross?

20 MS. FULLWOOD: Just briefly.

21 **RECCROSS EXAMINATION**

22 **BY MS. FULLWOOD:**

23 Q. But you do have forensic tools that can help
24 forensic examiners find that kind of thing, like system
25 restores; right?

1 A. If you restore and reinstall the operating system
2 and begin to use it, then it's going to start going over
3 the deleted portion. So some tools will retrieve that,
4 some will not retrieve that. Sometimes it's based on
5 the examiner's ability as in what they're looking for
6 and where to look for it.

7 Q. Okay. You have those tools at SLED; right?

8 A. We have forensic software; yes, ma'am.

9 Q. Okay. And you don't have any report from whoever
10 examined these machines you seized that said it looked
11 like there was any reinstallation or a system restore;
12 do you?

13 A. No, ma'am. The report just stated that no items of
14 interest were found on the devices.

15 MS. FULLWOOD: Nothing further.

16 THE COURT: Thank you for your testimony, sir.
17 You can step down.

18 Ladies and gentlemen of the jury, we're going to
19 take a lunch break at this time. So I'm going to ask
20 that you be back in the jury room at two fifteen. I
21 remind you again not to start discussing this case among
22 yourselves or anyone that you may come into contact with
23 over your lunch break. And we'll see you back at two
24 fifteen. Have a good lunch.

25 (WHEREUPON, the jury exited the open court at

1 approximately 1:09 p.m.)

2 THE COURT: Let me see the lawyers in chambers
3 for just a second.

4 Solicitor Bell, can you come up here just a minute,
5 please?

6 MR. BELL: Yes, sir.

7 THE COURT: I'll just see the lawyers back in
8 chambers.

9 (WHEREUPON, the court stood at recess for a lunch
10 break.)

11 THE COURT: Okay. We're back on the record.
12 Are we ready to bring the jury out?

13 MR. SENN: Yes, sir.

14 THE COURT: Okay.

15 MS. FULLWOOD: Yes, Your Honor.

16 THE COURT: Okay.

17 All right. Mr. Knight, bring the jury out, please.

18 THE BAILIFF: Yes, sir, Your Honor.

19 (WHEREUPON, the jury entered the open court at
20 approximately 2:30 p.m.)

21 THE COURT: Let the record reflect the jury's
22 back in.

23 Mr. Senn, you may proceed, sir.

24 MR. SENN: The State calls Lucinda McKellar.

25 THE CLERK: Do you solemnly swear or affirm

1 the testimony you're about to give shall be the truth,
2 the whole truth and nothing but the truth, so help you
3 God?

4 THE WITNESS: Yes, ma'am.

5 THE CLERK: Have a seat, please. Once you're
6 seated, state your full name, spelling your last on the
7 record, please.

8 THE WITNESS: I'm Special Investigator Lucinda
9 McKellar, M-C-K-E-L-L-A-R.

10 LUCINDA MCKELLAR,

11 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

12 DIRECT EXAMINATION

13 BY MR. SENN:

14 Q. Special Investigator McKellar, with whom are you
15 currently employed?

16 A. The South Carolina Attorney General's Office. I'm
17 assigned to the Internet Crimes Against Children
18 section.

19 Q. Okay. What are your current duties?

20 A. I currently investigate reports that we receive
21 from the National Center for Missing and Exploited
22 Children that are associated with solicitation of
23 children or exploitation of children. And I also
24 conduct undercover proactive investigations that are
25 associated with solicitation of children via the

1 internet or the downloading and dissemination of child
2 pornography files.

3 Q. How long have you been employed by the South
4 Carolina Attorney General's Office?

5 A. Four years.

6 Q. Okay. Can you please describe your law enforcement
7 background prior to working in the Attorney General's
8 Office?

9 A. After graduating from USC with my bachelor's degree
10 in Criminal Justice, I was employed with the Chester
11 County Sheriff's Office. There I started out as a law
12 enforcement victim advocate. I was in that role for
13 about a year and then moved to criminal investigations.
14 I am a certified law enforcement officer. As a criminal
15 investigator in such a small town, we were pretty much
16 cross trained to work everything. So we could work a
17 bicycle theft one minute and a murder the next. And I
18 was the only female investigator so I also worked a lot
19 of child sexual assault cases, child physical abuse
20 cases, and also criminal sexual conduct cases.

21 Q. Okay. So were you employed by SLED in 2009?

22 A. Yes. I left the Chester County Sheriff's Office in
23 2003 and went to the South Carolina Law Enforcement
24 Division and was assigned to the South Carolina Computer
25 Crimes Center with them until I left SLED to work for

1 the Attorney General's Office.

2 Q. Okay. What were your duties when you were working
3 at SLED?

4 A. At SLED I was assigned to the computer crimes
5 center. I conducted forensic examinations of computers
6 and also worked any kind of computer related case that
7 came in. It may have been a regional agent that needed
8 assistance in writing search warrants or other material
9 that had a technical component in their investigations.
10 And I also worked with the internet crimes against
11 children task force. So I predominately worked ICAC-
12 related cases for about ten years.

13 Q. Can you please describe to the jury your general
14 law enforcement training and education?

15 A. Oh, my goodness. Basic academy, basic
16 investigations. I've had training in interviewing
17 sexual predators, forensic interviewing of child victims
18 for physical and sexual abuse. Training to conduct
19 forensic examinations of basic data recovery and
20 analysis, intermediate recovery and analysis. EnCase,
21 FTK. And I've also been trained on every peer to peer
22 file sharing program that we work in ICAC, from roundup
23 to -- well, it started out peer precision and then
24 roundup and now we're focusing with Aries and BitTorrent
25 investigations.

1 Q. Okay. So you are familiar with the ICAC task force
2 then?

3 A. Yes, sir. I've been a part of it for ten years,
4 either at SLED or currently at the AG's office.

5 Q. Okay. So you would have been affiliated in 2009?

6 A. Yes, sir.

7 Q. Okay. You say you received some specialized
8 training associated with the task force?

9 A. Yes, sir. I've received a lot of training through
10 the internet crimes against children task force.

11 Related to this particular investigation, I've been
12 trained on, I think, five different types of peer to
13 peer file sharing, undercover operations. I've also
14 been trained to conduct undercover investigations that
15 focus on the solicitation of children via the internet.

16 Q. Okay. Did you conduct any investigation with the
17 task force in 2009?

18 A. Yes, I did.

19 Q. Okay. What types of investigation did you do?

20 A. Both undercover proactive investigations where we
21 focused on the solicitation of children. And also
22 investigations focused on the download, dissemination
23 and solicitation of child pornography via the internet.

24 Q. Okay. I guess we can go to this a little bit.

25 What is ...

1 MR. SENN: Beg the Court's indulgence.

2 THE COURT: Sure.

3 Q. Okay. Did you investigate -- did you begin any
4 investigations in a file sharing network?

5 A. Yes, I did, sir.

6 Q. Okay. Can you generally explain how you conduct
7 that investigation?

8 A. We use a -- there's a lot of different types of
9 file sharing programs, LimeWire, BearShare, Phex. All
10 of those persons using that type of software were
11 considered peers. My computer would be a peer because I
12 have that software. Somebody else using that type of
13 software is considered a peer. I can have LimeWire on
14 my computer, another person can have BearShare, but
15 because they are similar networks, we're both peers
16 within that same network. So we would log in on my
17 undercover computer. And focusing just particularly on
18 this investigation, I would log in using Phex, which was
19 what we use. I would put in search terms that I knew
20 were associated with child pornography through my
21 training and experience. And that program would
22 actually go out across the network and look for anybody
23 that had files with those particular search terms. And
24 there are also SHA values, which is basically DNA for a
25 file. So when we're doing these undercover operations,

1 we're looking for search terms that are in those titles
2 and also SHA values that are associated with images that
3 we know have been associated with child pornography in
4 the past.

5 Q. Okay. And once you see file names that have terms
6 associated with child pornography, what do you do?

7 A. In the very basic, if you're looking at the screen,
8 if you're using the software, if I saw a title that came
9 across the bottom, it would tell me the title and IP
10 address, a general region of where that IP address may
11 be located. It would give me the SHA value for that
12 file, a GUID number, which is associated with the peers
13 program that he or she is using. And I would double-
14 click on it and it would begin to download to my
15 computer so that I could view it.

16 Q. Okay. And once you completed download, would you
17 view the file?

18 A. Yes, I would view the file to make sure that there
19 was content that depicted minors engaged in sexual
20 activity. At the time, that's what our statute covered.
21 The minor had to be engaged in sexual activity.

22 Q. To your belief; right?

23 A. Yes.

24 Q. Okay. Is anyone able to download these files from
25 you?

1. A. No. No, sir.

2 Q. Okay. All right. And once you've downloaded and
3 viewed these files, what do you do to identify the
4 person sharing the files?

5 A. We have that file title. We have that file, which
6 I -- actually I look at before I determine if I'm going
7 to even open an investigation to make sure that it does
8 depict minors engaged in sexual activity. I will use
9 that IP address. And there's a program that we use,
10 it's ARIN, the American Registry of Internet Numbers. A
11 lot of investigators use that. And we're trained as
12 that being one of our primary ways of identifying IP
13 addresses through our ICAC investigations. But we enter
14 that IP address in a little search bar at the top and it
15 brings back a list that shows me what company actually
16 owns that IP address. So one internet service provider
17 could have a block of a thousand numbers and it happens
18 to be within that -- my IP address would be within that
19 number. In this particular case, that IP address was
20 identified to Time Warner.

21 Q. Okay. And can anyone else have this IP address at
22 the same time?

23 A. No.

24 Q. It's just tied to this one specific location?

25 A. Yes, sir.

1 Q. Okay. And once you've determined what internet
2 service provider is assigned that IP address, what do
3 you do?

4 A. We would either obtain a search warrant to get
5 subscriber information, a federal subpoena to get
6 subscriber information or a 2703(d) order, which is part
7 of the electronic communications privacy act. And we
8 just call it a (d) order because it's a subsection of
9 that title. In this particular case, I obtained a --
10 contacted the AUSA, who was Dean Eichelberger at the
11 time, provided him information and requested a federal
12 subpoena to get IP subscriber information from Time
13 Warner.

14 Q. Okay. Let's see. Does that subscriber information
15 lead you to a physical location?

16 A. Yes, sir, it does.

17 Q. All right. Were you involved in a sexual
18 exploitation of a minor investigation on December 4th,
19 2009?

20 A. Yes, sir.

21 Q. Okay. How did you become involved in this
22 investigation?

23 A. I was working an undercover operation using the
24 Phex system. I logged in, entered search terms that I
25 knew related to child pornography. And I ended up

1 getting a list of files available. I started to
2 download those files connected to one particular peer
3 and obtained files from one particular peer. I
4 downloaded those files, reviewed those files, determined
5 that they did contain images of children depicted in
6 sexual activity, or some of those files could be
7 children that are displayed in a sexual explicit manner.
8 So I downloaded those files, reviewed them, and decided
9 that they did violate, so I would move forward ---

10 MS. FULLWOOD: Objection, Your Honor. She
11 can't give an opinion as to whether or not it violates
12 the law.

13 THE COURT: Okay. Well, I think this issue
14 came up with the -- Agent Dove. I mean, it's not a
15 judicial determination. In part of their investigation,
16 they have to make a law enforcement decision whether or
17 not something violates the law or not. And I think
18 that's what she did. So I'm going to overrule the
19 objection.

20 MS. FULLWOOD: The wording was a little
21 different.

22 THE COURT: Ma'am?

23 MS. FULLWOOD: It was worded in a different
24 way. That's all I was attempting to ...

25 THE COURT: Overrule.

1 MR. SENN: Permission to approach, Judge?

2 THE COURT: Sure.

3 MR. SENN: Can I get this marked as a State's
4 Exhibit.

5 (WHEREUPON, State's Exhibit Number 3 was marked for
6 identification.)

7 MR. SENN: Permission to approach the witness,
8 Judge?

9 THE COURT: Certainly.

10 Q. I'm showing you what's been premarked for the
11 purpose of identification as State's Exhibit 3. Please
12 examine it. Do you recognize that?

13 A. Yes, sir, I do.

14 Q. Okay. Do you know what that disk contains?

15 A. Information associated with my investigation from
16 December the 4th, 2009?

17 Q. What all information is that?

18 A. My files that were downloaded and also it's a
19 single-source download notes that is created with our
20 software that's -- tells us information about that file,
21 a title, the IP address, if it was a single-source
22 download, which means I got that entire file from one
23 particular peer. And the GUID number associated with
24 that. And also my name being the investigator
25 conducting that investigation.

1 Q. Is there any other documents on that disk?

2 A. A browse list. Whenever we're conducting
3 investigations, we can actually -- it's called a browse
4 host. We can actually browse, once we're connected to
5 that particular peer, I can browse what is in their
6 shared folder and see what other types of files that
7 they have available so I can determine if there are
8 other terms that are associated with child pornography.
9 And if there's other images or movie files that would be
10 of investigative interests.

11 Q Did you generate any of this information yourself?

12 A. I conducted -- the browse -- I go through the
13 software and I tell it to browse. So I would initiate a
14 browse host for the computer to go out here and search
15 that network for me, to make this browse list.

16 Q. So this information is generated by the computer?

17 A. Yes. It's nothing that I manipulate. I initiate
18 it, but I don't manipulate it.

19 Q. I understand. And so does this disk contain
20 accurate representations as to information that was
21 generated by the computer when you browsed the user and
22 download files on December 4, 2009?

23 A. Yes.

24 Q. Okay.

25 MR. SENN: Your Honor, the State would like to

1 offer State's Exhibit 3 for admission as evidence.

2 THE COURT: Okay. And what says the Defense?

3 MS. FULLWOOD: If I can maybe ask ...

4 (WHEREUPON, Ms. Fullwood and Mr. Senn confer off
5 the record.)

6 MS. FULLWOOD: I have no objection.

7 THE COURT: Okay. Without objection, it'll be
8 State's Number 3 into evidence.

9 (WHEREUPON, State's Exhibit Number 3 was admitted
10 into evidence.)

11 MR. SENN: Permission to publish it to the
12 jury?

13 THE COURT: Certainly.

14 Mr. Senn, are you going to have this witness come
15 down as your first witness? I'm not trying to tell you
16 how to conduct direct examination. I'm just wondering
17 ---

18 MR. SENN: Judge, if she could step down here
19 to ...

20 THE COURT: Sure.

21 A. (Steps down)

22 Q. Special Agent McKellar, what is this document?

23 A. This is what I was discussing with the browse host.

24 This is the list of files that comes back once I

25 initiate a browse host. It's a list of files that are

1 available in that peer's share folder. So the person
2 I'm connected with, it's a copy of the files in that
3 folder.

4 Q. Okay. So all the files in this document would have
5 been available for download?

6 A. Yes, by anyone using the peer network..

7 Q. And did they all contain the same IP address? Is
8 that the IP address?

9 A. Yes, sir, it is.

10 Q. Did they all contain the same IP address?

11 A. Yes, sir.

12 Q. Okay. Did they all have the same vendor?

13 A. Yes. That's the -- the peer that I'm actually
14 connected to, that's the version -- that's the program
15 they're using, which is LimeWire. I was using Phex.
16 They were using LimeWire. And it's version 5.2.13 of
17 that LimeWire.

18 Q. What is this country, region and city?

19 A. When we are conducting our investigations I'm
20 focused mainly on what's within my jurisdiction. So I
21 go in and have it regionalize the information that I'm
22 actually seeing. So I could either leave it with United
23 States and see everybody across the United States
24 looking at this or I can narrow my searches to things
25 that are just in South Carolina, and that's what I've

1 done. It's United States, the region of South Carolina,
2 and the city that is associated with this particular IP
3 address is Lexington, South Carolina.

4 Q. Okay. What is this called, this QUID?

5 A. That's a GUID, it's a globally unique identifier.

6 The peer to peer program like I mentioned earlier,
7 LimeWire and Phex, it creates a GUID number that it
8 actually helps on the peer to peer networks, the
9 programmers, it's something that the programmers
10 included in that program. And it makes it easier on a
11 file streaming network so that people sharing files know
12 how to direct it to and from. So it's kind of -- it's a
13 VIN number. I can't -- like a VIN number, I can't
14 change it. It stays with that program. I would have
15 the exact same GUID on my -- I would have a GUID on my
16 computer. The peer would have a GUID on their computer
17 so that the network knows how to route files.

18 Q. So if someone else downloaded this program, would
19 they have the same GUID?

20 A. No. It's unique to that individual peer.

21 Q. Okay. Let me direct you to a specific line. This
22 line six twenty-five, are you familiar with that file?

23 A. Yes, sir.

24 Q. Can you read -- do you recognize any of these terms
25 as being associated with child pornography?

1 A. Yes, sir. Carl David Hyman is one that we've seen
2 associated with child pornography. Child sex.
3 Obviously child and sex, we're looking for images of
4 children engaged in sexual activity. Pre-teen is a term
5 that we often see in -- as I mentioned earlier when I'm
6 doing a search and using search terms, I would use terms
7 like pre-teen so that I could locate people with files
8 like this. So if I had typed in the word pre-teen, I
9 would have found -- that file would have showed up in my
10 search because I was searching for pre-teen. Little
11 girls is another one that I key in on. Seven year,
12 which means -- excuse me -- six year, which means six
13 year old. Panties, gay, husky fan you see associated
14 with child pornography. Seven y-o, is seven years of
15 age. Lolita guy, Lolita is a term that we see
16 associated with it. Eight year old, pussy, pedo, eight
17 year and pedo and kiddy porn are all terms that I would
18 associate with child pornography.

19 Q. Does it appear the title is longer that this even
20 shows us here?

21 A. It is.

22 Q. All right. Let me direct you to this, line one
23 thousand seven hundred forty-one? Are you familiar with
24 that?

25 A. Yes. Kids, teen, women, porno, Lolitas, pre-teen,

1 real kiddy move, way gold (phonics), husky fan, underage
2 girls, children, pedophilia, pths, ptsc, triple x, sexy,
3 forty- seven one dot jp. So that would be an image
4 file. A lot of these would just be a picture. And
5 kids, porno, Lolitas, pre-teens, real kiddy move is one
6 that we see associated with it. Way gold, husky fan,
7 underage, pedophilia, pthd, ptsc are terms that I know
8 are associated with child pornography.

9 Q. Does the term pthd stand for anything?

10 A. Yes, that is actually for pre-teen hard core.

11 Q. I want to direct you to -- can you read that title,
12 please?

13 A. Zoos school, pthd, Lelia, eleven y-o with dad teach
14 fuck with sound dot mpg.

15 Q. Okay. That is the pthd that you just describing?

16 A. Yes, eleven y-o would be something else I would key
17 in on.

18 Q. Okay. Are you familiar with that file?

19 A. Yes, sir. Dad gets a hand job from his daughter
20 and her friend, pre-teen, kiddy, kiddy incest, rape,
21 porno, porn, sex, eight seconds one dot mpg, which means
22 that's a movie file. And pre-teen, kiddy, kiddy,
23 incest, porno, and rape, those together, I would
24 consider are terms that are associated with child
25 pornography.

1 Q. What is this document?

2 A. This is the single-source download note. This is
3 whenever I conduct a single-source download from a
4 person, which means me as a peer is connected to another
5 peer and I download my entire file from that person,
6 that's a single-source download. A program that we use
7 helps document what we're doing. And this is a note
8 that is created with the program that we use that
9 documents that we did a single-source download. It
10 actually tells you the start time. So I started this
11 particular download on December 4th, 2009 at 13:18:11.
12 Roundup version, that's the version of the software that
13 I was using. It is 1.20. It tags me with me being my
14 investigator. When we go through this training, we
15 receive a license for this training. Unless we go
16 through the training, we don't receive a license to even
17 operate this program and the software. My license is
18 particular just -- is assigned just to me. So I'm the
19 one using this licensed software, that I had to go
20 through the training to get it. That's why it's tagging
21 me as the investigator. Remote peer directly connected,
22 that's the IP address of the peer that I'm connected to.
23 Country is United States; region, South Carolina; city
24 is Lexington. And it gives me the original file name.
25 In this particular case, it's Carl David Hyman, Jr.,

1 child sex, ninety-six, witch, nudist, naked, penis, pre-
2 teen, vagina, little girl's ass, six year, panties, gay,
3 husky fan, seven y-o, Lolita, eight year, pussy, pedo,
4 kiddy porn, ray gold dot jpg. And the SHA Value, which
5 is the DNA for that file. And the GUID number, which is
6 the program associated to that computer attached to that
7 IP address sending me that file.

8 Q. All right. Let me ask you about the GUID. I see
9 there's some dashes in that there -- but that wasn't on
10 the browse list. Do you know why that would be the
11 case?

12 A. It's just the way this source document captures it.

13 Q. Is that the same GUID that was on your browse list
14 previously?

15 A. Yes, it is.

16 Q. Okay. And when it says new file name, do you know
17 what exactly that means?

18 A. The program when it's actually saving it to my
19 computer, it's saving it by its SHA value. If I were to
20 go in and change on pixel of that image or one pixel of
21 that movie, it completely changes that SHA value.

22 That's how -- it's actually more precise than DNA. So
23 if a person were to -- if I save this to my computer and
24 I decided I don't want it to be Carl David Hyman
25 anymore, and I want to change it to the word shoes, and

1 I just put shoes dot jp, that file, that SHA value is
2 still going to be the same. So that's an additional way
3 for us to identify that file on scene.

4 Q. Okay. But the user you were downloading from, the
5 original file name is what they would have seen?

6 A. Yes. That's what they would have seen.

7 Q. And when was this download completed?

8 A. The single-source download was completed at 2009 --
9 December 4th, 2009 at 13:31:28, which in military time
10 is one thirty-one.

11 Q. Okay. Is this a similar document?

12 A. Yes, this is another single-source download
13 associated with a different file. This particular
14 download started on December the 4th, 2009 at 13:23:53,
15 which is one twenty-three fifty-three. Again, it's got
16 the Roundup version that I was using is 1.20. Again,
17 I'm titled, tagged as the investigator because it's my
18 license generating that.

19 Q. Is the information for the IP address, the
20 location, and the GUID, is that the same as the previous
21 document?

22 A. Yes, it is.

23 Q. Okay. Could you read that file name?

24 A. The original file name is kids, teens, women,
25 porno, Lolita, pre-teens, real kiddy move, ray gold,

1 husky fan, underage, girls, children, pedophilia, pthc,

2 ptsc, triple x, sexy, 47 1 dot jpg.

3 Q. Is this information the same -- is the information
4 for the Roundup version investigator, IP address,
5 location, and GUID the same as the previous two?

6 A. Yes, it is. This is just for a different file. So
7 the original file name is different and the SHA values
8 associated with that particular file.

9 Q. Was this file downloaded the same day?

10 A. The download started on December 4th, 2009 at 13:38
11 and it ended, which means I actually got a complete
12 download on December 4th, 2009 at 14:04:06.

13 Q. Okay. And can you read that file name?

14 A. The original file name is dad gets a hand job from
15 his daughter and her friend, pre-teen, kiddy, kiddy,
16 incest, rape, porno, porn, sex, eight sex, 1 dot mpg.

17 Q. Okay. You said the Roundup version, investigator,
18 IP address, location information, and GUID, is this the
19 same as the previous three documents?

20 A. Yes. This would have had to come from the same
21 person, same computer, at the same location, using the
22 same IP address as the previous three files.

23 Q. Okay. This one does not have the completion
24 information that the other ones did. Do you know why
25 that would be?

1 A. This is an incomplete download. An incomplete
2 download means that that person may have logged off.
3 They may have decided they were going to turn their
4 computer off. So I didn't get all of the file, but I
5 did get enough of the file that it played, that I could
6 watch it and determine if it -- if it contained the
7 files that depicted minors engaged in sexual activity.

8 Q. So you were able to download a portion of this
9 file?

10 A. Yes, I was.

11 Q. Is this the files you downloaded?

12 A. Yes, sir.

13 Q. Can you read the name of that file?

14 A. Incomplete, Zoos school, pthc, Lelia, eleven y-o,
15 with dad teach to love with sound. And the program that
16 we use if it's not a complete download, we won't have
17 that last line that says your completed date and time.
18 And it also tags it in the front as it being an
19 incomplete. So it put incomplete in front of that
20 title.

21 Q. Okay. But the file name for the other user would
22 have not -- it would have been the same except for the
23 word incomplete?

24 A. Exactly. That's just on my end to show that it's
25 not a full download.

1 Q. Okay. Is this the video that you downloaded?

2 A. Yes, sir, it is.

3 Q. Were the GUIDS that we saw in the text documents,
4 were those the same as the browse list from earlier?

5 A. Yes.

6 Q. Okay. Did you ever download from this same GUID
7 again?

8 A. Yes, sir, on January 2010. I believe it was
9 January 27th of 2010.

10 Q. And how were you able to determine this was the
11 same user?

12 A. The GUID number. The GUID was the exact same as my
13 investigation on December the 4th, my downloads on
14 December the 4th.

15 Q. Was the user using the same IP address?

16 A. No, the IP address had changed.

17 Q. Do you know why that would have been?

18 A. Internet service providers. Some of them can
19 change their IP addresses very often. Some of them you
20 may have a static IP address that you can keep for
21 several months. Some of them -- there's one ISP in
22 particular I know that changes theirs weekly. So it
23 would -- so within that time frame that IP address could
24 have changed.

25 Q. Okay. But you don't know for sure?

1 A. No. I don't know what caused it to change but it
2 is different. The GUID remains the same but the IP
3 address is different.

4 Q. Okay.

5 MR. SENN: Permission to approach, Judge?

6 THE COURT: Sure.

7 MR. SENN: Could I have this marked as a
8 State's Exhibit?

9 (WHEREUPON, State's Exhibit Number 4 was marked for
10 identification.)

11 MR. SENN: Permission to approach the witness?

12 THE COURT: Certainly.

13 Q. I'm showing you what has been pre-marked for the
14 purpose of identification as State's Exhibit 4. Please
15 examine the disk. Do you recognize that disk?

16 A. Yes, I do.

17 Q. What does that disk contain?

18 A. The same information from my December 4th -- it's
19 for the January -- I think it's January 27th, 2010,
20 investigation. So it would have my browse list, my
21 single-source notes, and also the files that I
22 downloaded.

23 Q. Okay. And did you generate any of that information
24 yourself?

25 A. The same -- I conducted the same operation. And as

1 I'm doing the single-source downloads, the program
2 actually creates that single-source document for us.
3 And I initiated the browse host which causes the
4 computer to start looking and document that person's
5 file list.

6 Q. Okay. So does that disk contain accurate
7 representation as to the information generated when you
8 browsed the user and downloaded files on January 27th,
9 2010?

10 A. Yes, sir.

11 MR. SENN: Your Honor, the State would like to
12 offer State's Exhibit 4, as mentioned -- that I
13 mentioned, as evidence.

14 THE COURT: Okay. And what says the Defense?

15 MS. FULLWOOD: May we have a side bar for a
16 minute, Judge?

17 THE COURT: Sure.

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

20 MS. FULLWOOD: No objection, Your Honor.

21 THE COURT: Okay. Without objection it'll be
22 Number 4 for the State, into evidence.

23 (WHEREUPON, State's Exhibit Number 4 was admitted
24 into evidence.)

25 MR. SENN: Permission to publish to the jury,

1 Judge?

2 THE COURT: Yes.

3 (WHEREUPON, State's Exhibit Number 4 was published
4 in open court.)

5 Q. Okay. What is this document?

6 A. This is a browse post. This is the browse that I
7 initiated of the peer that I was connected to on January
8 27th, 2010. That peer had an IP address of
9 98.121.202.152.

10 Q. Okay. And like the previous browse were all of
11 these files available from the same user?

12 A. Yes, they're available from that user to anyone
13 that's using the peer network.

14 Q. Okay. And what was the IP address?

15 A. 98.121.202.152.

16 Q. And what was the -- what appeared to be the
17 location?

18 A. Again, it's the United States; region, South
19 Carolina, so I can focus just on offenses in South
20 Carolina. And the city is in Lexington.

21 Q. Okay. And is this the same GUID as the previous
22 date?

23 A. That's the same GUID from my investigation on
24 December the 4th.

25 Q. Okay. Were all these files throughout this entire

1 document from this same region and with this same GUID?

2 A. Yes, sir.

3 Q. And even the same IP address?

4 A. Yes, sir.

5 Q. Is this the same type of document as previous?

6 A. Yes. This is a single-source download for my
7 undercover operation on January 27th, 2010.

8 Q. Okay. Can you just state when the download
9 started, from ---

10 A. Yeah. The single-source download started on
11 January 27th, 2010 at 14:07:08. Again, it's the Roundup
12 version 1.2.0, which is the version that I was using and
13 that I'm licensed to use through training. The
14 investigator, again, is tagged as me because I'm using
15 my license to access this. The remote peer, which is
16 the person that I'm directly connected to, their IP
17 address was 98.121.202.152. The country is the United
18 States; the region, again, is in South Carolina; the
19 city, again, is associated with the location of that IP
20 address is Lexington. And the original file name
21 associated with this one is Mafia r-u -- Mafia sex r-u,
22 children, kids, hard, 000293, child porn, collection,
23 one, pussy, illegal, pre-teen, underage, Lolita, kiddy
24 and child, incest, triple x, porno, gay, fuck, young,
25 naked, nude, little, edited dot jpg.

1 Q. And what is the GUID for that?

2 A. The GUID is, again, the same one that we've seen
3 previously 4D8B13F8EB9D74D741748778231A8900.

4 Q. And was this download completed?

5 A. Yes, it was completed because we have that single-
6 source completed time of January 27th, 2010 at 15:39:18.

7 Q. And one clarification, what does single source
8 mean?

9 A. Single source means that I am getting this file
10 from one person using the software with that QUID from
11 that IP address, the 98.121.202.152, which is located in
12 Lexington, South Carolina.

13 Q. Okay. Does this appear to have the same
14 information for the Roundup version, investigator, IP
15 address, location and GUID, as the previous documents?

16 A. Yes, it does.

17 Q. Okay. Can you read that file name?

18 A. This original file name is eight year girl and
19 twelve year boy are fucking, Lolitas, Lolita, pre-teen,
20 sex, child, underage, pedo, kiddy, Lolita, child, porno
21 dot a-b dod dot mpg.

22 Q. Okay. Was this download completed?

23 A. Yes, it was completed. It began on 1/27/2010 at
24 14:07 and it was a complete download that ended at
25 1/27/2010 at 22:49:32

1 Q. And does this appear to have -- is this document
2 the same as the previous two, the type of information?

3 A. Yes. Same Roundup version, investigator, same IP
4 address, same country, region, city, the same GUID
5 number, yes.

6 Q. Okay. And would you read this file name?

7 A. This original file name is fourteen y-o, ptch,
8 young, innocent, blonde, underage, girl, ptch, topless,
9 p-o, pre-teen, eleven y-o, twelve y-o, thirteen y-o,
10 fourteen y-o, fifteen y-o, sixteen y-o -- y-o is short
11 for years old -- virgin, teen, pedophilia, rape, child,
12 kid, kiddy, pussy, nude, naked, sex dot jpg, one dot
13 jpg.

14 Q. Okay. Is this the file for this -- this would be
15 the second file text document that you saw. Is this the
16 new file name?

17 A. Yes. It's got the SHA value, that UG3X63. So when
18 it saves it out to our computer, it tags it with the
19 name being the SHA value. So we've got the single
20 source that tells us what file name we saw, what the
21 file name appears on. But when it tags it on our
22 computer it tags it by that SHA value.

23 Q. Okay. So this file was originally was eight y-o?

24 A. Yeah. It was originally the eight year girl,
25 twelve year old boy are fucking.

1 Q. Okay. This is the file that you downloaded?

2 A. Yes, it is.

3 Q. Special Investigator McKellar, was that the file
4 that you downloaded on January 27, 2010?

5 A. Yes, sir, it is.

6 Q. And that was from that same GUID, both dates and
7 times?

8 A. Yes, sir, it's from those same GUIDS, dates and
9 times of the previous two associated with January 27th,
10 2010.

11 Q. And was that same GUID associated with December
12 4th, 2009?

13 A. Yes, it was.

14 Q. All right. You may take your seat?

15 A. (Takes stand)

16 Q. Once you downloaded and viewed the files on both
17 dates, did you determine from where those files were
18 being sent?

19 A. Yes, sir, through legal -- through the federal
20 subpoena that I obtained from Dean Eichelberger, we sent
21 those federal subpoenas to Time Warner and we received
22 subscriber information associated with both IP
23 addresses.

24 MS. FULLWOOD: And, again, I'd renew my
25 objection to that being hearsay.

1 THE COURT: Okay. So noted.

2 Q. Did your communication with Time Warner lead you to
3 any location?

4 A. Yes. On December the 4th, 2009, the subscriber
5 information led us to an apartment at 101 Saluda Point.
6 It was apartment 1128.

7 Q. Okay. Is that address in Lexington County?

8 A. That's in Lexington County, yes, sir.

9 Q. And before visiting that address, did you do any
10 other investigation?

11 A. Yes. Myself and Britt Dove, Special Agent Britt
12 Dove, with SLED, we shared the same office. And we were
13 talking about going and doing intel information. And
14 when we gather intel information, we're doing further
15 investigation, preparing for a search warrant. We'll go
16 out and photograph the location, try to photograph
17 vehicles at the residence to see -- get tag numbers so
18 we can run the MV information and try to help us
19 determine who else may be visiting or living at that
20 location. We also check for wireless access points to
21 see if they're secured or unsecured access points at the
22 locations.

23 Q. Did you check for access points at that location?

24 A. Yes. When I mentioned that I had a -- that I
25 needed to go to 101 Saluda Point, apartment 128, Special

1 Agent Britt Dove realized that he had an investigation
2 at the same location. And his was at 101 Saluda Point,
3 Apartment 1138. So they were right above each other.

4 Q. Okay. Did you notice any connection with the GUID
5 in any other investigation?

6 A. Yes, we actually had -- we had different IP
7 addresses, but it was the exact same GUID associated
8 with my investigation on December the 9th. His
9 investigation on, I think, December the 7th, and my
10 investigation on January 27th of 2010. It was the same
11 GUID for each case.

12 Q. Once you finished your preliminary investigation,
13 what did you do next?

14 A. We decided that we had -- when we went to the
15 location, we checked for wifeless access points. We
16 found five access points. Four were secure and there
17 was one unsecure access point titled Admin one, A-D-M-I-
18 N one. And with the locations sitting right on top of
19 each other with the same GUID, we were concerned that
20 there may be an issue with a wireless access point being
21 basically piggybacked. So we decided that we were going
22 to execute our search warrants. He had his search
23 warrant for his case, I had my search warrant for my
24 case and we executed those search warrants
25 simultaneously.

1 Q. Okay. What day did you execute your search
2 warrant?

3 A. Oh, gosh, I can't remember. It's the exact same
4 day he did his.

5 Q. Okay. Who was at the location you searched?

6 A. At the location I had Special Agent Farand Wasiak
7 with me and also Special Agent Colin Duncan with SLED.

8 Q. Who was living at that location?

9 A. David Turner was the name on the subscriber
10 information. When we executed the search warrant at the
11 home, his wife was at the home by herself.

12 Q. Okay. Was Mr. Turner and his wife the only people
13 living at that location?

14 A. They were the only people living there, yes, sir.

15 Q. Did you seize any items?

16 A. We did. We actually did an on-site forensic
17 preview for their computer. We did not -- for the
18 laptop in the home.

19 Q. What is an on-site forensic preview?

20 A. Special Agent Colin Duncan was actually the one
21 that conducted the forensic -- we actually -- when we go
22 out, we're actually -- we're using a write-protected
23 software of a forensic tool that we would use back at
24 the office. I mentioned earlier that I'm trained on
25 forensic tools like EnCase and FTK, which means forensic

1 tool kit. We actually take that out in the field with
2 us and we connect to their computer, but it's write
3 blocked. Which means I'm connecting and I can look at
4 the stuff on their computer, but I'm not doing anything
5 to change any information or any data. It's write-
6 blocked, can't write to it. Writing is blocked. That
7 is what basically that means. But he was looking to see
8 what kind of programs, if LimeWire was on this computer
9 and also if there was any child pornography or what we
10 -- child pornography is movies or files that depict
11 minors engaged in sexual activity. So that's to help us
12 narrow our search as far as the items that we're seizing
13 from the house and to also see if that's possibly where
14 our suspect would reside.

15 Q. Are you aware if any of those files or file sharing
16 programs were found?

17 A. There was no file sharing programs on the computer
18 at the residence and there was very few images. And
19 none of those images were children engaged in sexual
20 activity. I learned that the wife in the residence, and
21 I cannot recall her name now, she advised that they did
22 have internet, it was wireless, but she didn't know the
23 name of it. She knew it was unprotected. So her
24 husband was contacted and advised me that they did have
25 wireless at the house and it was unprotected. And he

1 told me the name of the wireless program was Admin, A-D-
2 M-I-N. And we knew -- in talking with him, we found out
3 that he actually brings his work laptop home from time
4 to time, so we made arrangements for him to bring that
5 laptop to our office where we would do an onsite
6 preview, just like we would in their home, but it was
7 going to be at our office with those computers to check
8 for LimeWire and also files depicting minors engaged in
9 sexual activity.

10 Q. Without saying what the information was, did you
11 receive any other information providing any
12 investigative lead from the user you downloaded the
13 files from at both dates?

14 A. Yes.

15 Q. Okay. Where did that information lead you?

16 A. That information actually ended up leading us to
17 103 Twisted Oak Drive in Greenwood, South Carolina.

18 Q. Okay. And what did you do next?

19 A. Once we obtained that information we contacted
20 locals because we always have local law enforcement go
21 with us. It's just policy with SLED. We contacted the
22 locals and asked them about helping us, assisting us
23 with a search warrant on February the 11th. And we were
24 in preparation of writing those search warrants and
25 Special Agent Dove received information that a family

1 member passed away. So instead of changing everything
2 -- and at this point we believed that our suspect was
3 mobile with the child pornography. So we didn't want to
4 have to change anything. We wanted to move forward with
5 the investigation. So he proceeded to write an
6 affidavit and provided a sworn notarized affidavit about
7 his investigation so that I could move forward with
8 getting a search warrant.

9 Q. Okay. And did you execute a search warrant at that
10 location?

11 A. Yes. A search warrant was executed at 103 Twisted
12 Oak, Greenwood, South Carolina -- Twisted Oak Drive on
13 February 11th, 2010.

14 Q. Okay. Can you please describe what you did and
15 what you observed during the search of that residence?

16 A. When we first went to the residence David Ray Land
17 and his wife were at the residence. We advised that we
18 had a search warrant for the residence. Mr. Land was
19 not happy that we were at his home. He was very
20 belligerent, called us idiots, gestapos. We were trying
21 to tell him what we had, that we had an investigation
22 that led us back to his home. We believed that someone
23 was there that was actually downloading -- soliciting,
24 downloading and getting child pornography from the
25 internet. We asked if his grandson was at the location.

1 He advised that he was not. And I asked him if he could
2 have his grandson come to the location. He contacted
3 his grandson and he also advised -- I told him that if
4 his grandson had a laptop, he needed to bring it with
5 him, as well. And David Austin Land later showed up at
6 the residence.

7 Q. Is David Austin Land his grandson?

8 A. Yes.

9 Q. Is David Austin Land in the courtroom today?

10 A. Yes. He's at the Defendant table. White sweater.

11 MR. SENN: Permission to approach.

12 THE COURT: Sure.

13 Q. I'm showing you what has been pre-marked for the
14 purpose of identification as State's Exhibit 1. Do you
15 recognize that?

16 MS. FULLWOOD: Your Honor, I think at this
17 time I have a matter of law I need to take up.

18 THE COURT: Okay. Just come up here just a
19 minute and let me just kind of get an idea of where
20 you're coming from.

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

23 THE COURT: Madam Forelady, and ladies and
24 gentlemen of the jury, it would probably be a good time
25 to take an afternoon break. I've got to deal with a

1 matter of law with the lawyers, so if you'll go to your
2 jury room. Again, don't start discussing this case
3 among yourselves. And we'll get you back out shortly.
4 Thank you.

5 (WHEREUPON, the jury exited the open court at
6 approximately 3:29 p.m.)

7 THE COURT: Okay. State the nature of your
8 objection, please, ma'am.

9 MS. FULLWOOD: Your Honor, I object to
10 admission of the statement into evidence because at this
11 point the State hasn't produced sufficient proof aliunde
12 of the corpus delicti of the crime he's been indicted
13 for to justify admission of the statement. I rely on
14 the case of State v. Johnson, 291 SC 127. There just
15 isn't, at this point, sufficient independent evidence
16 that would go to corroborate what we've been led to
17 believe is going to be testified to at this point in the
18 at the Jackson v. Denno hearing. So I think that at
19 this point they're not entitled to put it in.

20 THE COURT: Okay. Well, let me take a look at
21 this case you've cited. And while I'm looking for it,
22 does it offer the proposition that proof of the corpus
23 delicti is a prerequisite before a confession can come
24 in. I guess that's question one.

25 And, two, the corpus delicti is it of a crime or

1 that corpus delicti of the Defendant committing the
2 crime?

3 MS. FULLWOOD: Well, Your Honor, I will tell
4 you it is a directed verdict case. And that was the
5 sufficiency of the evidence.

6 THE COURT: Okay. Well, let me look; okay.
7 Everybody be at ease for just a moment and let me
8 take a look.

9 (WHEREUPON, the court stood at ease.)

10 THE COURT: All right. We're back on the
11 record.

12 Ms. Fullwood, it doesn't look this is a directed
13 verdict case. A confession or a statement did come into
14 evidence. I don't think there is necessarily a
15 prerequisite for something else to come in, such as
16 corpus delicti of a crime for a confession to come in.
17 I think where it's important is that there must be
18 corpus delicti of a crime, not just a confession. So I
19 think the confession would come in, but it may,
20 depending upon whether they put forth, my consideration
21 of the State's case, a confession may not be enough to
22 sustain the case. So I'm going to overrule your
23 objection.

24 Let's take about ten minutes. And let me see the
25 lawyers for just one quick second.

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

3 (WHEREUPON, the court stood at recess for a short
4 break.)

5 THE COURT: Okay. I'm not sure if I put it on
6 the record, but the objection to the admission of the
7 confession is overruled and the confession will be
8 admitted so long as there's proper foundation laid with
9 this witness. Anything further?

10 Bring the jury out.

11 MS. FULLWOOD: Uh ---

12 THE COURT: Oh, I'm sorry. Wait a minute.

13 MS. FULLWOOD: Just briefly, Your Honor, to
14 put on the record that during bench conferences this
15 morning I object to testimony about Time Warner being
16 the service provider on the grounds of hearsay. And
17 objected to Mr. Dove testifying as to evidence gathered
18 during the course of his investigation as being based on
19 hearsay.

20 THE COURT: Right. And I had overruled your
21 objection and would not allow the witness to quote what
22 was said. But as a result of the communication with the
23 various person, he then testified as to what he did as a
24 result of that. But it's so noted for the record.
25 You're protect.

1 MS. FULLWOOD: Thank you, Your Honor.

2 THE COURT: Anything else? Okay.

3 Bring the jury out, please, Mr. Knight.

4 THE BAILIFF: Yes, sir, Your Honor.

5 (WHEREUPON, the jury entered the open court at
6 approximately 3:51 p.m.)

7 THE COURT: All right. Let the record reflect
8 the jury's back in.

9 Mr. Senn, we're still in direct examination of this
10 witness.

11 MR. SENN: Okay.

12 **DIRECT EXAMINATION CONTINUED**

13 **BY MR. SENN:**

14 Q. I think before the break I was saying -- I was
15 showing you what's been premarked as State's Exhibit 1.
16 Do you recognize that?

17 A. Yes, sir. This is a Miranda Rights form.

18 Q. Okay. Can you please describe the document to the
19 jury, just general?

20 A. It's on South Carolina Law Enforcement Division
21 letterhead and it's the Miranda Rights that asks for
22 place, date and time that the Miranda Rights are being
23 administered. And then it goes through each individual
24 rights and lists them individually. And there's a blank
25 beside each right for the individual that the rights are

1 being administered to, to initial that they understand
2 their rights. It also goes into a question, do you
3 understand these rights? Where they initial beside
4 that. If they wish to talk to us at this time and they
5 initial beside that. And then there's a waiver of
6 rights, where they signify by their signature that they
7 are giving this information to law enforcement freely,
8 without coercion.

9 Q. Did you witness the Defendant initial each -- the
10 blank next to each item?

11 A. Yes, I did.

12 Q. Okay. Did you witness the Defendant sign the
13 waiver of rights statement at the bottom?

14 A. Yes, I did.

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

17 THE COURT: Okay.

18 MS. FULLWOOD: Subject to my previous motion,
19 Your Honor.

20 THE COURT: Okay. All right. So noted. It
21 will be admitted as State's 1.

22 (WHEREUPON, State's Exhibit Number 1 was admitted
23 into evidence.)

24 MR. SENN: Okay. Permission to publish,
25 Judge?

1 THE COURT: Certainly.

2 MR. SENN: Judge, I'm not exactly sure what's
3 going on with the projector. We have to use the same
4 plug we have for the laptop.

5 THE COURT: Okay.

6 MR. SENN: I thought maybe I could put in one
7 of these plugs at the bottom and the projector just
8 keeps saying searching.

9 THE COURT: Okay.

10 MR. SENN: I don't know if somebody can come
11 up really quick and ---

12 THE COURT: Well, why don't -- if you want to
13 just -- since it's already into evidence just hand it to
14 the jury and they can look at it, if you'd like to do it
15 that way.

16 MR. SENN: Yes, sir.

17 (WHEREUPON, State's Exhibit Number 1 was published
18 to the jury.)

19 Q. Special Investigator McKellar, did the Defendant
20 agree to speak to you without a lawyer present?

21 A. Yes, he did.

22 Q. Did you ask the Defendant about file sharing?

23 A. Yes, sir, I did.

24 Q. What did he say?

25 A. He was familiar with file sharing. And I think he

1 was familiar with file sharing and discussed using
2 LimeWire as far back as his time at Ft. Campbell when he
3 was in the military. It was actually some other people
4 that he served with that introduced him to LimeWire. So
5 he'd been familiar with the use of LimeWire for several
6 years prior to our investigation.

7 Q. Okay. Before we go into more of his statement, are
8 you familiar -- does Ft. Campbell have any connection
9 with your investigation?

10 A. Yes. When we are conducting these investigations
11 -- we discussed before the GUID, which is that number
12 that's associated with that program, that software.
13 When we're doing these investigations, we can -- just
14 much like I initiate a browse search, I can initiate a
15 search of the GUID. And it actually maps any other time
16 that that GUID has been seen by investigators around the
17 nation. It's a GUID report. And that GUID had been ---

18 MS. FULLWOOD: Your Honor, objection. May we
19 come up?

20 THE COURT: Sure.

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

23 THE COURT: Okay. Ladies and gentlemen, I'm
24 sorry, but it's just absolutely necessary that I send
25 you out again. We need to take up something on the

1 record. And I appreciate your patience very, very much.
2 I really do. But I have to send you out. Hopefully, we
3 won't be long. Again, I remind you, don't start talking
4 about this case.

5 (WHEREUPON, the jury exited the open court at
6 approximately 4:04 p.m.)

7 THE COURT: Okay. We've got an objection to
8 this witness discussing this GUID report based upon
9 hearsay. And then back in the hallway when we were
10 discussing this off the record, Ms. Fullwood also
11 mentioned a potential prior bad act issue.

12 What we're going to do, Mr. Senn, is examine this
13 witness concerning this GUID report and this area of
14 testimony. And try to conduct your examination to where
15 and maybe have -- get a little bit better handle on what
16 you've got here; okay?

17 MR. SENN: Yes, sir. Thank you, Judge.

18 **IN-CAMERA DIRECT EXAMINATION**

19 **BY MR. SENN:**

20 Q. The GUID report with the program, how is it
21 generated? How is that information generated?

22 A. Anytime that an investigator, the licensed software
23 that I went through training for, this is the way we
24 would have that report. Other investigators that have
25 gone through that training that are licensed to use that

1 software as well, when we log-on and are doing these
2 searches, much like I had the regionalized, US, South
3 Carolina, Lexington, in the background I'm only seeing
4 stuff and getting information associated with things in
5 Lexington, but my computer is still generating
6 information for databases, for other things -- for all
7 across the nation. I'm only seeing the regionalized
8 information. So in the background, this report is
9 collecting this information. So, while I'm on here if
10 there's another person while I'm online, and there's a
11 person in New York that is generating software -- or
12 generating child pornography, their GUID is going to be
13 shown up in this report. And it could show up as me
14 being the investigator that saw it or generated it
15 because I happen to be the person online at that time.

16 Q. Are you actually doing something for it to do that
17 or is it automatically doing that?

18 A. The software automatically does that because that's
19 the way programs communicate with each other. Peer to
20 peer programs are communicating with each other by that
21 GUID number so that they know how to route information.

22 Q. Okay. So is a GUID, is it showing it's in that
23 location -- does that information have to be put in by
24 an investigator at all or is it just basically just
25 generated by the program?

1 A. It is generated by the program because the GUID is
2 used in those programs to traffic that information. So
3 it's not anything that I manipulate. And just because
4 my name shows up on that list does not mean that I
5 opened an investigation on anybody in New York. It
6 doesn't mean that in this particular case, the name,
7 this particular GUID showed up in Ft. Campbell. And an
8 investigator in that area may have seen that GUID but
9 did not opened an investigation on it. It doesn't
10 necessarily mean that an investigation occurred or a
11 crime occurred. That GUID was seen at that point in
12 time.

13 Q. So it may note that there had been no investigation
14 at all when that GUID was seen in Ft. Campbell?

15 A. Exactly.

16 Q. And no investigation has to even be started to even
17 -- to track -- to have this program track the GUID?

18 A. No, it does not.

19 Q. Okay.

20 THE COURT: All right. Ms. Fullwood, any
21 examination of this witness on this limited area?

22 MS. FULLWOOD: None, sir. I would have some
23 argument, though.

24 THE COURT: Okay. And I'll be glad to hear
25 your argument.

1 MS..FULLWOOD: Well, I would object to her
2 testifying to what she just said. It violates Rule 404.
3 To say some other investigator or an investigator
4 somewhere else in the United States saw this GUID online
5 going to improper sites. And so this GUID was behaving
6 so improperly that it automatically got routed into a
7 database of GUIDs suspected of having child pornography.

8 THE COURT: Well, if I understood this
9 witness, and let me just clear it up before I continue
10 with your argument.

11 Madam Witness, just because this same GUID number
12 showed up in the Ft. Campbell area doesn't necessarily
13 mean that child pornography was involved; does it?

14 THE WITNESS: It means that a file that
15 potentially could be child pornography showed up because
16 of the GUID and the SHA values, but I have no way --
17 that investigator -- I don't know that that investigator
18 looked at it. I don't know that they verified that it
19 would violate their laws. I can't testify to anything
20 other than that GUID was seen in Ft. Campbell by another
21 investigator. I have no idea what happened with that
22 portion of it, other than that.

23 THE COURT: Okay.

24 THE WITNESS: Basically, I'm mapping the GUID
25 and looking at the location as to how that GUID and that

1 computer with that particular GUID on it has traveled.

2 THE COURT: Right. I understand. All right.

3 And Mr. Senn, you were not planning to elicit any
4 testimony from this witness as far as potential child
5 pornography with this GUID in Ft. Campbell or anything
6 like that; correct?

7 MR. SENN: That's correct. Judge, it's just
8 to show that that GUID was seen in that location.

9 THE COURT: Okay. So a prior bad act argument
10 would not apply because they're not bring out that
11 there's a prior bad act.

12 MS. FULLWOOD: Well, Your Honor, I would
13 respectfully disagree because what they're bringing out
14 is that GUID got into a national database by virtue of
15 the SHA values of the files that were coming off of that
16 GUID, is my understanding of it. And in any event, Your
17 Honor, the witness has already testified that she ran it
18 on a program that looked at GUIDs that had been looked
19 at by investigators all over the country, raising that
20 very inference that it had been associated with files
21 that had SHA values that indicated that they contained
22 child pornography. I think that was inadmissible under
23 Rule 404. And at this point I'd ask for a mistrial.

24 THE COURT: How far did she get in her -- she
25 talked about a GUID Report. She didn't even get so far

1 as to talk about Ft. Campbell; did she, if I remember
2 correctly?

3 MR. SENN: Judge, I'm not aware that she did.
4 I believe she said that this had been seen by
5 investigators, but didn't say in relation to Sha values
6 or anything. Just said that this GUID had shown up.
7 That is how far we got into it.

8 THE COURT: Okay.

9 MR. SENN: And, Judge, we would ask that even
10 if we, you know, limit it just to say this GUID had been
11 seen in this location, would not have to get into SHA
12 values and child pornography or anything like that.

13 THE COURT: Well, I've got two issues now I've
14 got to deal with. I've got Defense counsel moving for a
15 mistrial.

16 Madam Court Reporter, how long would it take to run
17 this thing back and let me hear exactly the last part of
18 the testimony. I mean, whatever time you need to take
19 to do it, but I'm going to need to hear it.

20 MADAM COURT REPORTER: Are you talking about
21 the proffer that she just made?

22 THE COURT: Just right -- and then Defense
23 counsel objected and then we went out in the hallway.

24 MADAM COURT REPORTER: Okay. Give me about
25 ten minutes.

1 THE COURT: That's fine. That's fine. Do
2 whatever you need to do.

3 (WHEREUPON, testimony was replayed for the court,
4 which appears on page 255 line 20 through page 256
5 line 18 of this transcript.)

6 THE COURT: Okay. We're back on the record.
7 I had an opportunity to listen to this witness's very
8 last bit of testimony concerning the GUID report leading
9 up to Defense counsel's objection. And the objection,
10 initial objection was, it was this GUID report being
11 hearsay. And the hearsay rule prevents hearsay as it
12 relates to persons, people, and not a computer. Based
13 upon the in-camera testimony from this witness that this
14 GUID report is based totally by a computer into a
15 national database. Consequently, I do not find it is
16 hearsay. And I will allow the testimony limited to what
17 we discussed. I'll allow that to be presented to the
18 jury.

19 Now, with respect to the mistrial motion. Ms.
20 Fullwood, I don't find anything that this witness
21 testified to in the presence of the jury that would rise
22 to the level of granting a mistrial, so I'm going to
23 deny the same.

24 So we're going to bring the jury back out and you
25 can question her about it being computer generated. We

1 don't want it to get in -- I don't think it creates any
2 inference necessarily that there's been some crime
3 committed, just the fact that this number has shown up
4 elsewhere through this GUID report.

5 Anything further on the record outside the presence
6 of the jury before we bring the jury in?

7 MS. FULLWOOD: I would ask if the State is
8 planning on putting in this report. Because if so,
9 maybe we ought to take a look at it now and get that out
10 of the way?

11 MR. SENN: The GUID Report?

12 MS. FULLWOOD: Yeah.

13 MR. SENN: No, Judge. We're just going to
14 elicit testimony. That's the only ---

15 MS. FULLWOOD: Okay.

16 THE COURT: Okay. All right. Okay. Very
17 Good.

18 Let's bring the jury out?

19 THE BAILIFF: Yes, sir, Your Honor.

20 (WHEREUPON, the jury entered the open court at
21 approximately 4:31 p.m.)

22 THE COURT: Okay. Let the record reflect the
23 jury's back in.

24 Mr. Senn, you may proceed.

25 MR. SENN: Thank you, Judge.

DIRECT EXAMINATION CONTINUED

1

2 **BY MR. SENN:**

3 Q. Special Investigator McKellar, did you see the GUID
4 -- on December 4, 2009 and January 27, 2010, did you
5 ever see it in connection with Ft. Campbell?

6 A. Yes, I did.

7 Q. Okay. Would that have meant that the person using
8 that program was located in Ft. Campbell at some point?

9 A. Yes.

10 Q. Did you ask the Defendant about which devices he
11 would use when he was using LimeWire?

12 A. Yes. He indicated that he would travel every
13 couple of weeks to visit his mother in Lexington County.
14 She was located at 101 Saluda Point, Apartment 1138,
15 Christy Land. When he would go to the VA Hospital, he
16 would visit her and use her laptop at her residence in
17 Lexington County.

18 Q. Okay. Let's see. Did he mention about which
19 wireless networks he would use to access the internet?

20 A. Yes. He would -- the laptop that was at Christy's
21 house, he would use it to -- he would either access the
22 wireless at Christy Land's residence or he would access
23 a open wireless that he himself said that was named
24 Admin, A-D-M-I-N. That was not associated with the
25 house. It was someone's open wireless.

1 Q. Okay. Did you ask him about what types of files he
2 would use LimeWire to obtain?

3 A. Yes. He said that he would use it for music and he
4 would also download images of child pornography.

5 Q. Did he mention whether he would use it to download
6 videos of child pornography, as well?

7 A. Yes. At one point in time he said that he had
8 downloaded six hundred files while at his mother's
9 house, looked at them and then deleted those files.

10 Q. Okay. Did you ask him about did he ever
11 accidentally download any files?

12 A. Yes. I asked him if he had ever gotten any files
13 that he didn't intentionally mean to get. And he said
14 that all the files that he got were -- that he received
15 were intentional.

16 Q. Okay. Did he say how often he downloaded files?

17 A. Every couple of weeks when he would go to his
18 mother's, he would open some of the files up, look at
19 them and then do a mass download. That's how he was
20 able to download six hundred files at one time. Looking
21 at what we saw earlier, you could highlight one file,
22 highlight another file at the bottom, and it would
23 highlight all of that bracket so you could
24 simultaneously, instead of individually clicking six
25 hundred files, you could do a mass download that way.

1 Q. Okay. Did he say when he last downloaded files?

2 A. We interviewed him on February the 11th and he had
3 just come back from his mother's. And that's when he
4 said that he'd just done -- he said, I did six hundred
5 files that week.

6 Q. Okay.

7 MR. SENN: Permission to approach, Judge.

8 THE COURT: Yes, sir.

9 (WHEREUPON, State's Exhibit Number 5 was marked for
10 identification.)

11 MS. FULLWOOD: May we approach?

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

14 THE COURT: You may proceed.

15 MR. SENN: Permission to approach the witness,
16 Judge?

17 THE COURT: Sure.

18 Q. I'm showing you what had been pre-marked for
19 purposes of identification as State's Exhibit 5. Please
20 examine that. Do you recognize that?

21 A. Yes, sir, this is ---

22 Q. Wait, wait, wait.

23 A. Yes, sir, I do.

24 Q. Very generally, can you describe what the document
25 is without specifically listing any of the information

1 on it. Just generally what is the document?

2 A. It is a printed copy of the titles of the browse
3 list that we saw earlier from the disk for the
4 investigation that occurred on January 27th, 2010.

5 Q. Okay. So that would be a copy -- would that have
6 the titles on that browse list from January 27th, 2010,
7 those titles of files that were available?

8 A. Yes, sir.

9 Q. Okay. Does that list contain the files that you
10 downloaded on January 27th, 2010? It would be three
11 files?

12 A. Yes, sir.

13 Q. Did you show that list to the Defendant?

14 A. Yes, I did.

15 Q. Did he recognize the three files that you
16 downloaded on January 27th, 2010?

17 A. Yes, sir.

18 Q. Did he say -- did he admit to downloading those
19 files?

20 A. Yes, he did.

21 Q. Did he give any information about how he would
22 search for those files?

23 A. He's underlined a couple of words and indicated
24 that they were search terms by writing on that word
25 search term.

1 Q. Without specifically talking about that, that file
2 title in any way or anything like that ---

3 A. Uh-huh (affirmative).

4 Q. --- could you say the search terms he used to
5 search for these type of files?

6 A. The two words that he's indicated with search term
7 are pre-teen and Lolita.

8 Q. Okay. Are you familiar with those terms in your
9 child pornography investigations?

10 A. Yes, sir.

11 Q. Did the Defendant ever talk about deleting any of
12 these files of child pornography?

13 A. Yes, he did.

14 Q. Did he say how he would delete these files?

15 A. On one instance he said that he had -- he would
16 download what he wanted and then do a system restore.

17 Q. Okay. What exactly is a system restore?

18 A. A system restore, it -- the computer -- a system
19 restore basically takes the computer back to a time
20 before there was a significant incident like downloading
21 software. So if he downloaded information that day and
22 then deleted -- made a system restore happen, it's going
23 to take it back prior to when those files actually
24 occurred, so it was like it never happened.

25 Q. Would those files be found on a computer after

1 that?

2 A. No.

3 MR. SENN: Nothing further from the State.

4 THE COURT: Thank you. Cross examination?

5 MS. FULLWOOD: Thank you. Beg the Court's

6 indulgence.

7 **CROSS EXAMINATION**

8 **BY MS. FULLWOOD:**

9 Q. Agent McKellar, you went to Austin's grandfather's
10 house with a search warrant; correct?

11 A. Yes, ma'am.

12 Q. And there were, what, three or four other SLED
13 Agents with you.

14 A. There were three SLED Agents with me and I believe
15 three county investigators with us.

16 Q. Okay. And you were all armed?

17 A. Yes, ma'am.

18 Q. You were all wearing bullet vests; right?

19 A. Yes, ma'am, for safety concerns.

20 Q. Okay. Now, before that day you had gotten a
21 subpoena through the U.S. Attorney's office and got the
22 location, which was the apartment below Ms. Land's;
23 right?

24 A. Below Ms. Land's.

25 Q. Below Ms. Land's?

- 1 A. Yes, ma'am.
- 2 Q. And you went to that apartment the same day Agent
- 3 Dove went to Ms. Land's apartment?
- 4 A. Yes, ma'am.
- 5 Q. All right. And that was the Turner's house?
- 6 A. Yes, ma'am.
- 7 Q. All right. And the Turners were using a router;
- 8 right?
- 9 A. Yes, ma'am.
- 10 Q. And that was basically the IP address that you got?
- 11 A. Yes, ma'am. That's how that IP address got me into
- 12 that house.
- 13 Q. Did you take their router?
- 14 A. No, ma'am.
- 15 Q. Did you examine that router's logs?
- 16 A. No, ma'am.
- 17 Q. All right. So you don't know which computer or how
- 18 many computers were using the Turner's router on
- 19 December 4; do you?
- 20 A. No, ma'am.
- 21 Q. Now, when you went to Mr. Land's house, you did
- 22 seize some devices; correct?
- 23 A. Yes, ma'am.
- 24 Q. And that would be the grandfather's desk computer,
- 25 whatever you call them, tower computer; right?

- 1 A. Yes, ma'am. I would have to look at the search
2 warrant return, but I believe you're correct.
- 3 Q. Okay. And I believe the grandfather had told
4 Austin to bring what computer he had?
- 5 A. Yes, ma'am.
- 6 Q. And he brought you a computer?
- 7 A. Yes, ma'am.
- 8 Q. All right. And a forensic examiner at SLED
9 examined those computers; right?
- 10 A. Yes, ma'am.
- 11 Q. But you can't say that either of those computers
12 had that G-U-I-D number that's associated with the
13 LimeWire account that you were downloading from; can
14 you?
- 15 A. No, ma'am.
- 16 Q. All right. And whatever device or computer that
17 you downloaded those images from, they should have in
18 their hard drives the same images or videos that you
19 downloaded; right?
- 20 A. Not if they were wiped to where there would be no
21 artifacts.
- 22 Q. Okay. Well, a wiper gets imbedded in the registry;
23 doesn't it?
- 24 A. No, ma'am. You can wipe without actually using a
25 -- you don't have to have a separate software. That is

1 one way to delete files or to get rid of files. But you
2 can do a system restore, you can take out the hard
3 drive, put in another hard drive. There's numerous
4 reasons that those files wouldn't be there.

5 Q. Okay. Well, your forensic examiner didn't find any
6 of those images on the machine she submitted after you
7 went to Greenville that day; did they?

8 A. Greenwood, no, ma'am.

9 Q. Okay. And you don't have any indication that the
10 hard drive on one or more of those machines was recently
11 replaced; do you?

12 A. I don't, no, ma'am. I personally do not, no.

13 Q. And they didn't give you any information that it
14 looked as if some wipe program had been used; correct?

15 A. No, ma'am.

16 Q. And your examiners didn't tell you that it looked
17 as if a system restore might have been executed;
18 correct?

19 A. No, ma'am, they didn't.

20 Q. And you got to Austin's house about ten fifteen
21 that day; right?

22 A. Yes, ma'am, I believe so.

23 Q. Okay. And his grandparents were there; correct?

24 A. Yes, ma'am.

25 Q. And I believe his granddad wasn't that delighted to

1 see you folks?

2 A. No, ma'am.

3 Q. All right. But he did call his grandson?

4 A. Yes, ma'am.

5 Q. And he did ask his grandson to bring the computer?

6 A. Yes, ma'am.

7 Q. And the older Mr. Land, the granddad, didn't he

8 tell you that Austin had recently gotten off the psych

9 ward at the VA Hospital?

10 A. No, ma'am, he did not.

11 Q. Didn't his granddad tell you that the night before

12 he was up almost all night with Austin because he was so

13 upset?

14 A. No, ma'am. He was just yelling at me about this

15 being Russia and SLED needs to be dissolved and I was an

16 idiot.

17 Q. Okay. Austin got to his granddad's house about ten

18 thirty; right?

19 A. Yes, ma'am.

20 Q. And you say Agent Wasiak was with you?

21 A. Yes, ma'am. Farand Wasiak.

22 Q. Okay. Is that a man or a woman?

23 A. It's a man.

24 Q. All right. And are you sure that you two were the

25 only people in that room when you were interrogating

1 him?

2 A. Yes, ma'am. It was myself, Farand Wasiak and David
3 Land. There were other agents and investigators in the
4 house because we were searching. The person that was
5 doing the forensic preview was actually in a separate
6 dining room. And right off from where we were at in the
7 kitchen, Ms. Land was sitting watching gospel -- it's a
8 channel on your cable where the -- it's gospel music.
9 It just plays music but the title floats up the screen.
10 And that's where she was sitting, right outside the
11 kitchen.

12 Q. With a TV, radio or something?

13 A. Yes, ma'am.

14 Q. Okay. And Agent Wasiak, kept a time log for you;
15 right?

16 A. Yes, ma'am.

17 Q. All right. And his time line shows that you two
18 started interrogating Austin at ten forty-eight; right?

19 A. Yes, ma'am. I think that's correct.. I think
20 Miranda was read at ten forty-two, so that would be
21 about right.

22 Q. And Austin himself explained to you that he'd just
23 gotten out of the VA Hospital two days before?

24 A. Yes, ma'am. He told me that. Yes, ma'am.

25 Q. He told you he'd been treated for post-traumatic

1 stress disorder?

2 A. Yes, ma'am.

3 Q. And your report mentions that he told you also that
4 recently he had been up and not sleeping; is that right?

5 A. I'd have to look at the report. If I can look at
6 it, I can try to find it for you.

7 Q. And this is your report; right?

8 A. Yes, ma'am, it is.

9 Q This sentence that started at the bottom of this
10 page, onto the next?

11 A. Yes, ma'am. Land, recalled recently being awake
12 until two a.m. talking with his grandfather.

13 Q. Okay. And he told you he was on some medication?

14 A. Yes, ma'am, prescribed Tramadol, Methocarbamol for
15 muscle spasms, Etodolac for pain, Trazodone for sleep,
16 and also Zoloft for irritability and anxiety.

17 Q. Okay. Thank you, ma'am. And he told you that he
18 was in Afghanistan for a year?

19 A. Yes, ma'am.

20 Q. Now, you started talking to him at ten forty-eight?

21 A. Yes, ma'am.

22 Q. And it wasn't until twelve thirty-nine that he
23 admitted to doing anything wrong; is that right?

24 A. Yes, ma'am. That's when he admitted to using
25 LimeWire for child pornography downloads.

1 Q. Okay. So you interrogated him for an hour and a
2 half before he made any type of criminal admissions;
3 right?

4 A. Yes, ma'am. We were sitting at the kitchen table
5 talking about this.

6 Q. Uh-huh (affirmative). And the way your report
7 seems to read, you started accusing him of sitting in
8 the parking lot, parking lot of his mom's apartment
9 using a laptop; right?

10 A. I think I said, I bet you sat outside in the
11 parking lot using the laptop. And I believe he said,
12 yes.

13 Q. Well, ---

14 A. Yes, and so I guess I did this.

15 Q. --- wasn't his response. Yes. So I'm responsible
16 for all of this?

17 A. Yes, ma'am.

18 Q. And after that you say he started making
19 incriminating statements?

20 A. Yes, ma'am.

21 Q. Now, somebody from SLED brought a camera out to the
22 Land's house to document execution of that search
23 warrant; right?

24 A. Yes, ma'am.

25 Q. All right. And have you seen the pictures they've

1 taken?

2 A. It's been quite some time since I looked at them,

3 yes, ma'am.

4 Q. Well, there aren't any pictures of the room you and

5 Agent Wasiak interrogated Austin; are there?

6 A. I don't know, ma'am. I haven't -- it's been years

7 since I've look at those photographs.

8 Q. Okay. Now, SLED has video recorders and audio

9 recorders; doesn't it?

10 A. Yes, ma'am.

11 Q. But you decided to neither videotape nor audiotape

12 your interrogation of Austin; correct?

13 A. No, ma'am, I didn't.

14 Q. You didn't decide that?

15 A. No, ma'am. I did not record it.

16 Q. Okay.

17 A. I took notes during our interview.

18 Q. So you decided not to record it?

19 A. Yes, ma'am.

20 Q. Okay. And then you searched the house on February

21 11; right?

22 A. Yes, ma'am. Same day as the interview.

23 Q. And you wrote your report March 15; right?

24 A. Yes, ma'am, from my notes.

25 Q. Okay. Well, don't you agree that if you had

1 recorded that entire interrogation that day, the jury
2 would have a chance to know exactly what you and your
3 fellow Agents said and exactly what Austin said on that
4 day?

5 A. Yes, ma'am.

6 Q. All right.

7 MS. FULLWOOD: No further questions.

8 THE COURT: Anything in redirect?

9 MR. SENN: Just briefly, Judge.

10 **REDIRECT EXAMINATION**

11 **BY MR. SENN:**

12 Q. Special Investigator McKellar, is it standard to
13 wear bullet proof vests when you're executing a search
14 warrant?

15 A. Yes, sir.

16 Q. And why do you do that?

17 A. For officer safety.

18 Q. Okay. How many investigators did you say were on
19 scene?

20 A. I think there were four from SLED and I believe
21 three from Greenwood County.

22 Q. Is that a standard amount of investigators to come
23 on scene for ---

24 A. It depends on the size of the location that we're
25 going to and also if there had been previous criminal

1 histories or anything that would suggest that there's
2 danger or drug activity or something in the house that
3 could cause physical harm to us.

4 Q. Was the -- the duration of interview, was that a
5 standard length of time for investigation in your
6 experience with other investigations?

7 A. Yes, sir.

8 Q. Was it unduly long?

9 A. No, sir.

10 Q. What was the standard practice for SLED in 2009
11 regarding suspect interviews?

12 A. We would take notes and go back and write a
13 memorandum of interview. And we also offer the person
14 being interviewed if they want to write a written
15 statement. And he did not want to write a written
16 statement.

17 Q. Okay. So are all of the interviews audio or video
18 recorded?

19 A. No, sir.

20 Q. So there's interviews -- you've done an interview
21 where you haven't audio or video recorded before?

22 A. Yes, sir.

23 Q. And other investigators -- are you aware of other
24 investigators doing the same?

25 A. Yes, sir.

1 Q. Okay. This medication you mentioned earlier that
2 Mr. Land told you he was using, did they appear to cause
3 any physical or mental impairment to the Defendant where
4 he wouldn't be able to understand his rights?

5 A. No, sir. He was actually the calmest person in the
6 house.

7 Q. Okay. Did he appear to have any other physical or
8 mental disability that would interfere with his ability
9 to understand his rights?

10 A. No, sir. He appeared to understand everything we
11 were talking about.

12 MR. SENN: Nothing further from the State.

13 THE COURT: Okay. Anything in recross?

14 MS. FULLWOOD: Just briefly.

15 **RECROSS EXAMINATION**

16 **BY MS. FULLWOOD:**

17 Q. You're not trying to tell us that SLED has a policy
18 to never record the interrogation of an individual?

19 A. No, ma'am.

20 Q. So it can and has been done?

21 A. Yes, ma'am.

22 Q. By you too?

23 A. No.

24 Q. Never by you?

25 A. I have -- when we have taken a subject to a law

1 enforcement center where the interview room has been
2 recorded, we've done it in there.

3 Q. Uh-huh (affirmative).

4 A. But I cannot recall a time that I've been on scene
5 and recorded one.

6 Q. Okay. Thank you, ma'am.

7 THE COURT: Okay. Thank you for your
8 testimony, ma'am. You can step down.

9 Anything further from the State?

10 MR. SENN: Nothing further from the State,
11 Your Honor. The State would now rest.

12 THE COURT: Okay. Thank you very much.

13 Madam Forelady and ladies and gentlemen of the
14 jury, that closes the State's case. It's five o'clock.
15 I think it's a good time to go ahead and take a break
16 for today. So I'm going to go ahead and release you for
17 the day. I ask you to be back here tomorrow at ten
18 o'clock. And remind you once again don't discuss this
19 with anybody you come into contact with, any of your
20 fellow juror members, and we'll see you back here
21 promptly at ten o'clock. Have a good evening.

22 (WHEREUPON, the jury exited the open courtroom at
23 approximately 5:04 p.m.)

24 THE COURT: Okay. What I'd like to do is go
25 ahead and, Ms. Fullwood, get your motion for directed

1 verdict on the record, the grounds for the motion and
2 get the State's position. And then I'll -- as I
3 indicated to the lawyers earlier, I'm going to take that
4 under advisement. So ...

5 MS. FULLWOOD: Yes, sir. If I could grab a
6 file, please.

7 THE COURT: Yes, ma'am.

8 MS. FULLWOOD: Your Honor, at this time I
9 would move for a directed verdict. There's several
10 grounds for this motion.

11 First of all, Your Honor, the State hasn't shown
12 any intent on the part of Mr. Land to violate the
13 statute in 16-15-405. This statute requires proof of
14 criminal intent. And the evidence in this case simply
15 doesn't show criminal intent. The evidence shows that
16 the files in question were in a default shared setting
17 on that program. In other words, when the user
18 installed it, if they just clicked through to get
19 through the installation, it would automatically be set
20 for all the files they downloaded to be in a place where
21 they would be shared with other users of the program.
22 They haven't presented any proof that he had anything
23 other than a casual user's knowledge of LimeWire.
24 They've simply proved that he knew how to download
25 things, looking at the evidence in the light most

1 favorable to the State. But they certainly haven't
2 shown that he had the sophistication to know that he
3 could change the settings and make his files not be
4 available for other users to obtain. The only thing I
5 think this proves, if you believe everything the State's
6 put up, is he has admitted that he possessed sexually
7 explicit material, but it doesn't tend to prove that he
8 had any criminal intent to distribute, transport,
9 exhibit, receive, sell, purchase, exchange or solicit.

10 And I direct the Court's attention to a Florida
11 case that has an almost identical fact situation. And
12 that is the case of the State -- of *Biller v. Florida*.
13 Well, *Biller v. Florida*.

14 THE COURT: Would you spell that for me.

15 MS. FULLWOOD: B-I-L-L-E-R.

16 THE COURT: *Biller versus Florida*?

17 MS. FULLWOOD: Yes, sir, or State.

18 THE COURT: Okay. The cite?

19 MS. FULLWOOD: Citation 109 So.3d 1240.

20 THE COURT: Give that to me again, please.

21 MS. FULLWOOD: I'm sorry, 109 Southern

22 Reporter 1240, 1-2-4-0.

23 THE COURT: All right.

24 MS. FULLWOOD: It's a 2013 case. And in that

25 case the District Court of Appeals for Florida, Fifth

1 District, reversed Mr. Biller's conviction for
2 transmission of pornography by electronic device in a
3 case where basically -- in this case, I think they
4 actually have the computer. But it was where law
5 enforcement downloaded files from the Defendant's
6 computer using LimeWire, and the Court basically said
7 there's no proof that this Defendant affirmatively sent
8 these images out. That there was nothing that's in --
9 that caused the files to be taken away. And at best
10 proves possession not transmission.

11 Apart from the statement that Mr. Land allegedly
12 made, there's simply insufficient evidence that
13 corroborates -- his statement doesn't sufficient
14 corroborate this evidence so they don't have enough
15 evidence corroborating this statement to let this case
16 go to the jury. All they've shown is a computer with a
17 particular identifying number using one of two unsecured
18 routers and while they were online somebody was able to
19 download child pornography. Four computers were seized,
20 examined by SLED technicians, and there's nothing to
21 show that these computers, any of these computers, had
22 the G-U-I-D number that's associated with a machine that
23 they downloaded from, or contained the files that SLED
24 downloaded. With this huge dearth of proof, when you
25 set his statement aside, they haven't proved that this

1 man committed these offenses. I'd also point out that
2 the State's proof -- well, another ground for my motion
3 is that the State's proof didn't show that these were
4 images of actual children. In *Ashcroft v. Free Speech*
5 *Coalition*, the Supreme Court -- the U.S. Supreme Court
6 held that you couldn't be criminally responsible for
7 images of virtual children or actors pretending to be
8 children. That being the case, I think that means at
9 this point in time the State is required as part of its
10 proof in a child pornography case to put forth some
11 affirmative evidence that, in fact, these are images of
12 actual children, rather than facsimiles of actual
13 children. And that's our motion.

14 THE COURT: Okay. Thank you very much.

15 Mr. Senn?

16 MR. SENN: Yes, Judge. Judge, I believe we
17 have the IP address that links the files specifically to
18 a location, two different residences in Lexington. We
19 have a global unique identifier or a GUID linking to a
20 specific use of the program. That program was used to
21 disseminate child pornography, presumably also to
22 download child pornography. We have testimony from
23 Special Investigator McKellar that that GUID was seen in
24 Ft. Campbell and Lexington. And we also have the
25 Defendant stating, corroborating that statement that he

1 was also in Ft. Campbell.

2 Judge, as it goes to intent, this statute -- I
3 believe Ms. Fullwood only really addressed the
4 distributing portion of the indictment. And the State
5 would argue that this was a knowing dissemination. This
6 situation is very much like a self-service gas station.
7 You may never see the owner of the gas station. You may
8 not have to conduct any transactions with the owner of
9 the gas station. You can basically just go to the pump
10 and, you know, get your gas and then leave, as long as
11 you pay for it. The way LimeWire seems to work, it
12 seems like someone can just say, hey, I want this. And
13 get what they want. Ms. Fullwood talked about the
14 default setting on the LimeWire being one that where
15 these files are automatically put in a shared folder
16 where they can be distributed. But she's also
17 acknowledging that there is a setting when the program
18 is first starting up where the user could change that
19 thing, the setting. And when she talks about the
20 Defendant's casual knowledge of LimeWire, the Defendant
21 clearly downloaded many, many different files. It
22 sounds like on multiple occasions from using this
23 program, he understood how to use search terms. And he
24 couldn't actually share any of these files -- these
25 files could not be shared if they hadn't been downloaded

1 previously. And he admitted to downloading these files
2 and soliciting these files as laid out in the indictment
3 by putting the search terms in.

4 So the Defendant -- we would argue the Defendant
5 did knowingly distribute, as he definitely knowingly
6 downloaded and solicited material by his own admission.
7 I believe the Defendant corroborated the IP address
8 location information in Lexington as he admitted using,
9 both his mother's internet and another wireless internet
10 with the name of Admin, which we have testimony stating
11 that there was an account that investigators saw named
12 Admin. And, additionally, he spoke to traveling from
13 Lexington to Ft. Campbell, which corroborates the GUID
14 information, as well.

15 And, Judge, as it goes to the individuals in the
16 files being real children or whether or not -- Judge,
17 that question is one for the jury not -- it's a question
18 of fact. And, in fact, the statute actually provides
19 that the trier of fact may infer that a participant in
20 sexual activity depicting material is a minor through
21 its title, text, the visual representations or otherwise
22 that they believe it's a minor. And that's in the
23 statute, Judge.

24 THE COURT: Where in the statute says the jury
25 can infer ---

1 MR. SENN: It says the trier of fact. I

2 apologize.

3 THE COURT: Which section are you in?

4 MR. SENN: The section is 16-15-405.

5 THE COURT: All right. I'm in 405.

6 MR. SENN: I think it's (b) or (c), Judge, I
7 believe. (B).

8 THE COURT: (B)?

9 MR. SENN: I believe it's (b), Judge.

10 THE COURT: Okay. I've got you. Yeah. Okay.
11 All right.

12 MR. SENN: Judge, I believe the State has
13 brought enough circumstantial evidence to create an
14 issue of fact for the jury, and the State would like to
15 bring a couple of cases to your information about corpus
16 delicti.

17 THE COURT: Okay.

18 MR. SENN: All right. One case is State v.
19 Williams and the cite is 321 S.C. 381. And in this case
20 the court said that -- that a trial judge should deny a
21 motion for directed verdict and submit the case to the
22 jury if there's any evidence tending to establish the
23 corpus delicti. Additionally, another case, as well,
24 Judge.

25 THE COURT: Well, I think the fact that

1 someone put nude photos of minors and minors engaged in
2 sexual activity in a file that can be accessed by
3 anybody who had this software, I think that in and of
4 itself, probably would be proof of corpus delicti.
5 Again, I think what I've got -- the hurdle I've got to
6 jump over or the higher hurdle that I've got to jump
7 over is there sufficient -- or is there any direct
8 evidence or substantial circumstantial evidence pointing
9 to this Defendant. So I don't think that's a great big
10 hurdle about this corpus delicti. I thought maybe
11 earlier there might be. But I think more is the
12 sufficient evidence by the directed verdict as to this
13 Defendant, so ...

14 MS. FULLWOOD: May I reply to his argument?

15 THE COURT: Well, I don't know if Mr. Senn is
16 finished.

17 MS. FULLWOOD: Oh, okay.

18 MR. SENN: And, Judge, just to reiterate that
19 -- we do believe that the GUID corroborates what the
20 Defendant stated, along with the IP address information
21 that the Defendant stated. I believe that's the direct
22 evidence the State would have.

23 THE COURT: Okay. All right.

24 MR. SENN: And then the last case I was just
25 going to tell, Judge, just so you're aware, it's State

1 v. Dodd.

2 THE COURT: State v. who?

3 MR. SENN: Dodd, D-O-D-D.

4 THE COURT: Okay.

5 MR. SENN: And the cite is 352 S.C. 13.

6 THE COURT: Okay.

7 MR. SENN: And I believe that one, Judge,
8 states that when there's any evidence tending to
9 establish the corpus delicti of a crime, it's the
10 judge's duty to pass that question onto the jury.

11 THE COURT: Okay. All right. Thank you very
12 much, Mr. Senn.

13 Anything briefly in response?

14 MS. FULLWOOD: Just briefly.

15 THE COURT: Okay.

16 MS. FULLWOOD: Your Honor, in this case the
17 evidence only raises a suspicion of guilt. Mr. Senn
18 relied on that GUID number being in both Ft. Campbell
19 and down here in Lexington. And says, well, the GUID
20 was at Ft. Campbell and so was the Defendant.
21 Therefore, he's the one in Lexington. Here's the
22 problem with that. I don't think there's any evidence
23 in the residence in the record that shows when that GUID
24 was in Ft. Campbell and when this man was in Ft.
25 Campbell. So I think the proof fails there, especially

1 when you keep in mind that this material was downloaded
2 from a computer that was more than likely in a multi-
3 unit apartment building that contained at least two open
4 un-passworded wireless systems. It could be any one of
5 a number of people. There's only enough to raise a
6 suspicion, but there's not substantial -- enough
7 substantial evidence to allow this case to go to the
8 jury.

9 THE COURT: All right. Let me ask you this
10 very briefly, and then we're going to conclude for the
11 day. Would a -- and I'm asking. Would a confession or
12 admission be direct evidence or circumstantial evidence?
13 I'll ask Mr. Senn first and then I'll ask Ms. Fullwood.
14 How should the confession or the admission, this
15 statement, how should that be treated for purposes of
16 the directed verdict insofar -- because the direct
17 evidence does not have to be substantial in order to
18 survive a directed verdict. Circumstantial does. So
19 how should the confession, or again, statement,
20 admission made by the Defendant, be treated?

21 MR. SENN: Judge, we would say it is direct
22 evidence. The Defendant's knowledge of what he did and
23 how he did it is the best evidence of how this occurred.

24 THE COURT: Okay. All right. Ms. Fullwood?

25 MS. FULLWOOD: You know, I would think it fits

1 the side of circumstantial.

2 THE COURT: Okay.

3 MS. FULLWOOD: Especially a confession of this
4 nature that just generally addresses what they're
5 claiming he did. Rather than, you know, for instance a
6 specific description of what they did in a robbery or
7 something like that.

8 THE COURT: All right. Well, thank you very
9 much. I appreciate y'all's hard work.

10 Ms. Fullwood, if I deny your motion, and quite
11 frankly, I don't know what I'm going to do at this
12 point. But if I deny your motion, I know you've got
13 some witnesses.

14 MS. FULLWOOD: Yes, sir.

15 THE COURT: About how long would anticipate
16 your case taking? I know that's all subject to what
17 kind of cross examination would take place. But just
18 kind of give me a feel.

19 MS. FULLWOOD: I think no more than three
20 hours.

21 THE COURT: Okay. All right. Because what
22 I'm --if I deny your motion for directed verdict, then
23 I've got to have time to put together a jury charge. So
24 I'm just trying to figure out.

25 Okay. All right. All right. Well, thank you very

1 much. I'm going to take this motion under advisement.

2 Let's get together at nine-thirty in the morning; okay?

3 MS. FULLWOOD: Yes, sir.

4 MR. SENN: Thank you, Judge.

5 THE COURT: Thank you. Y'all have a good

6 evening.

7 (WHEREUPON, the court stood at recess for the day
8 at approximately 5:26 p.m.)

9 **November 7, 2014**

10 (WHEREUPON, the Court convened with all parties
11 present and the following proceedings were had.)

12 THE COURT: All right. We concluded yesterday
13 where the motion for directed verdict was made by the
14 Defense, and I took arguments from both sides. Viewing
15 the evidence, both direct and circumstantial evidence
16 and all the inferences that can be derived therefrom, in
17 viewing that evidence in the light most favorable to the
18 State, I'm going to deny the motion for a directed
19 verdict.

20 So the record is clear, I'm going to go through the
21 evidence that I considered in determining to deny the
22 motion for a directed verdict. And it's interesting.
23 You know, I posed the question to the attorneys is a
24 confession or admission, is it direct or circumstantial?
25 And it can be both, depending on what is actually said.

1 And that's under State vs. Rodgers, a 2013 case, just to
2 provide that for your information.

3 But we have a confession where the Defendant
4 allegedly said that he solicited and downloaded multiple
5 child pornography files, admitted to using the software
6 LimeWire, admitted to using both the WiFis at the
7 apartment complex. And one of those being the unsecured
8 WiFi Admin, which did come about in the investigators'
9 investigation of this case. In the confession he was
10 familiar with file sharing. His confession as to his
11 use of particular search terms that are associated with
12 child pornography. He admitted to downloading the
13 January 27, 2014 [sic] files. His admission to doing
14 some of this activity while at Ft. Campbell. And, of
15 course, that's showing up in the investigation. And
16 considering the evidence as to the GUID numbers,
17 evidence as to the IP addresses, evidence as to the use
18 of the unsecured Admin WiFi, it appear that -- and
19 again, as you folks know, I'm not concerned with the
20 weight of the evidence. I'm just concerned with the
21 existence of the evidence. And I believe that there is
22 sufficient evidence to send this case to the jury.

23 I think we've got the jury coming in at ten. Are
24 they all here, Mr. Knight?

25 THE BAILIFF: Let me check, Your Honor.

1 THE COURT: Okay. Anything else on the record
2 before we start into the Defense case?

3 Ms. Fullwood, I don't know if you've explained to
4 your client that the Court is required to instruct him
5 on whether or not to testify. And while I'm pulling
6 that script up, if you'll just explain -- if you haven't
7 already explained what I'll be doing with him in just a
8 moment.

9 MS. FULLWOOD: Your Honor, we've gone over
10 that.

11 THE COURT: I have to do it anyway so it's on
12 the record.

13 MS. FULLWOOD: I understand. But he knows
14 that that's something the Court's going to do.

15 THE COURT: Okay. Very good. Very good.

16 THE BAILIFF: Your Honor, we have all the
17 jurors.

18 THE COURT: Very good. Thank you, sir.

19 Madam Clerk, would you swear the Defendant in,
20 please.

21 Would you stand, sir?

22 THE DEFENDANT: (Complied)

23 THE CLERK: Raise your right hand.

24 Do you solemnly swear or affirm the testimony
25 you're about to give shall be the truth, the whole truth

1 and nothing but the truth, so help you God?

2 THE WITNESS: I do.

3 (WHEREUPON, the defendant was duly sworn.)

4 THE COURT: Mr. Land, just remain standing,
5 please, sir. At this time I'm going to explain to you
6 certain of your rights. If you do not understand
7 anything that I say, please let me know. If you want me
8 to explain anything in more detail, please let me know
9 that, as well. Do you understand, sir?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: We have now reached a stage in the
12 trial where you may present your defense. You have the
13 right to claim the protections given to you by the Fifth
14 Amendment to the Constitution of the United States.
15 This Amendment states in part, no person shall be
16 compelled in any criminal case to be a witness against
17 himself. This means that you cannot be required to
18 testify in this case. You have the right to testify in
19 your own behalf; however, no one can make you testify.
20 This is a personal right and no one can waive this
21 right, except you, sir.

22 If you decide to testify, you'll be subject to the
23 same rules that govern other witnesses and you may be
24 examined and cross examined on any relevant issue in
25 this case. In addition, if you have any convictions

1 involving dishonesty or false statement or for crimes
2 punishable by imprisonment for more than one year, and
3 this Court determines that the probative value of this --
4 the probative value of admitting this evidence outweighs
5 its prejudicial effect to you, the Attorney General
6 will be able to introduce your record to attack your
7 credibility. If you decide to testify, this decision on
8 your part must be freely, voluntarily and intelligently
9 made, with knowledge of the protections given to you by
10 the Fifth Amendment. And the consequences of your
11 decision to testify. If you decide not to testify, I
12 will instruct the jurors that they cannot give the fact
13 that you did not testify any consideration whatsoever.
14 And that there is to be absolutely no prejudice to you
15 because you did not testify. It is left entirely up to
16 you whether or not you testify. And I'm sure you have
17 already had a talk with your attorney. You can talk
18 with family, friends, anyone, but the final decision
19 will be left entirely up to you.

20 Have you understood what I've explained to you,
21 sir?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: And do you have any questions
24 whatsoever about what I have explained to you?

25 THE DEFENDANT: No, Your Honor.

1 THE COURT: And have you had ample opportunity
2 to discuss this issue with your attorney?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: And have you made a decision
5 whether or not you will testify?

6 THE DEFENDANT: I have come to the conclusion
7 that I will not testify.

8 THE COURT: That you will not testify. Very
9 good, sir. You may have a seat.

10 THE DEFENDANT: (Complied)

11 THE COURT: Let the record reflect that the
12 Defendant, with able assistance of counsel, has freely,
13 voluntarily, and intelligently made the decision not to
14 testify in this case.

15 Anything further on the record before we start into
16 the Defense case?

17 MS. FULLWOOD: No, Your Honor.

18 MR. SENN: Nothing from the State.

19 THE COURT: All right. Thank you very much.
20 Bring the jury out, please, Mr. Knight.

21 THE BAILIFF: Yes, sir, Your Honor.

22 (WHEREUPON, the jury entered the open court at
23 approximately 10:01 a.m.)

24 THE COURT: Let the record reflect the jury is
25 back in.

1 Good morning, ladies and gentlemen.

2 THE JURY: Good morning.

3 THE COURT: I hope you had a good evening and
4 you're ready to get back to work today. We're now at
5 the stage where the Defense will be putting up a case
6 and calling witnesses and that sort of thing. So we're
7 get started.

8 Ms. Fullwood.

9 MS. FULLWOOD: Thank you, Your Honor.

10 THE COURT: Thank you, ma'am.

11 MS. FULLWOOD: Your Honor, the Defense calls
12 Naomi Mead.

13 THE COURT: Okay.

14 THE CLERK: Raise your right hand.

15 Do you solemnly swear or affirm the testimony
16 you're about to give shall be the truth, the whole truth
17 and nothing but the truth, so help you God?

18 THE WITNESS: I do.

19 THE CLERK: Have a seat, please, ma'am. Once
20 you're seated, state your full name, spelling your last
21 on the record, please.

22 THE WITNESS: My name is Naomi Mead. Mead is
23 M-E-A-D.

24 **NAOMI MEAD,**

25 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

1 **DIRECT EXAMINATION**

2 **BY MS. FULLWOOD:**

3 Q. Ms. Mead, where do you work?

4 A. I work at Lullwater at Saluda Pointe.

5 Q. And what is your job there?

6 A. I am the property manager.

7 Q. Have I subpoenaed you to bring to the jury certain
8 information about the units at 101 Saluda Point Drive?

9 A. Yes, ma'am.

10 Q. Are these records that you and your company keep in
11 the course of your regularly conducted business?

12 A. Yes, ma'am.

13 Q. And is it your regular practice to prepare and
14 gather these records?

15 A. Yes, ma'am.

16 Q. And do they consist of the leases and lease
17 applications for the tenants of that building between
18 December 2009 and January 2010?

19 A. Yes, ma'am.

20 Q. Can you tell the jury was suite 1138 was rented to?

21 A. It was Christy Land.

22 Q. All right. Can you tell the jury who suite 1112
23 was rented to?

24 A. Robert and Carmella Castillo.

25 Q. And what ---

1 THE COURT: Could you spell that last name,
2 please, ma'am?

3 THE WITNESS: C-A-S-T-I-L-L-O.

4 THE COURT: Thank you.

5 Q. And concerning the Castillos, what does their lease
6 application indicate Mr. Castillo did for a living?

7 A. He worked for the U.S. Army.

8 Q. At what location?

9 A. Ft. Jackson?

10 Q. And his job description or job title?

11 A. It says drill sergeant.

12 Q. Who rented suites 1132 and 1136?

13 A. It was South Carolina Master's Commission.

14 Q. And you can tell the jury what those leases were
15 about?

16 A. It was like a student housing. A Christian college
17 rented those units for students.

18 Q. All right. And how many bedrooms were in unit
19 number 1132?

20 A. 1132 was a three-bedroom.

21 Q. How about 1136?

22 A. That was a two-bedroom.

23 Q. And do you know how many students that school
24 housed per bedroom or was there some sort of rule about?

25 A. The fire marshal has a rule that you can only have

1 two heartbeats to each bedroom.

2 Q. Okay. And do you know how it actually ---

3 A. We don't know exactly if that was followed. We do
4 our best to make sure those records and that is
5 followed, but we can't always monitor that.

6 Q. That's all the questions I have. If you could
7 answer any that Mr. Senn has for you.

8 A. Okay.

9 THE COURT: Any cross examine of this witness,
10 Mr. Senn?

11 MR. SENN: Nothing from the State.

12 THE COURT: Okay. Thank you, ma'am, for your
13 testimony.

14 Any objections to this witness being excused from
15 the courthouse?

16 MS. FULLWOOD: I have no objection.

17 THE COURT: Mr. Senn?

18 MR. SENN: No objection.

19 THE COURT: Ma'am, you're free to leave.

20 THE WITNESS: Thank you.

21 THE COURT: Thank you. You may proceed.

22 MS. FULLWOOD: Your Honor, the State [sic]
23 calls David Ray Land.

24 THE CLERK: Raise your right hand, please,
25 sir.

1 Do you solemnly swear or affirm the testimony
2 you're about to give shall be the truth, the whole truth
3 and nothing but the truth, so help you God?

4 THE WITNESS: I do.

5 THE CLERK: Have a seat, please, sir. Once
6 you're seated, state your full name, spelling your last,
7 please.

8 THE WITNESS: My name is David Ray Land,
9 L-A-N-D.

10 **DAVID RAY LAND,**

11 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

12 **DIRECT EXAMINATION**

13 **BY MS. FULLWOOD:**

14 Q. Mr. Land, are you related to Austin Land?

15 A. Yes, ma'am.

16 Q. How so?

17 A. He's my grandson.

18 Q. Do you love him?

19 A. Yes, ma'am.

20 Q. Would you come to court to swear on a Bible and lie
21 for him?

22 A. No, ma'am.

23 Q. Do you remember what happened at your house on
24 February the 11th, 2010?

25 A. Yes, ma'am.

1 Q. What did happen?

2 A. Well, I was up that morning getting ready to go to
3 work and the doorbell rang. So I went to the door.
4 Officer McKellar was standing at the door, said she had
5 a search warrant to search the house. So I told them to
6 come on in. Well, they come in and one of the fellows
7 with them, he started reading the warrant off and
8 reading all this pornography stuff and I told him I
9 didn't want to hear all that. I said, go ahead and
10 search the house, do what you want to do. I don't need
11 to listen to that. And I asked him two or three times,
12 you know, for them not to read it. But they kept right
13 on reading it.

14 Q. How were they dressed?

15 A. Oh, they was full body armor and guns and
16 everything else when they come in.

17 Q. Okay. And how did that make you feel?

18 A. It didn't make me feel good at all.

19 Q. Did it get you kind of angry?

20 A. Yes, ma'am.

21 Q. Okay. And so they read or tried to read you the
22 warrant?

23 A. Yes, ma'am.

24 Q. And did you come to understand from them that they
25 were looking for somebody in particular?

1 A. No, ma'am. They just said they were looking for
2 our computers and files and records and stuff like that.
3 They didn't say they were looking for anybody in
4 particular at that time.

5 Q. Okay. Well, did Austin's name ever come up?

6 A. It came up a little after that.

7 Q. Okay. Can you explain to us how that happened?

8 A. Yeah. She asked me, says, is Austin Land here? I
9 said, no, ma'am. I said, he don't live here. She said,
10 he don't live there? And I said, no. She said, well, I
11 need to talk to him. I said, well, there's no good
12 talking to him. I said because I was up with him last
13 night up until about three or four o'clock in the
14 morning talking to him because he was all messed up
15 because he had had so many flashbacks from the war and
16 stuff like that. He was all upset about it. And I was
17 trying to calm him down and talk to him about it and
18 everything. It took me a long time to just to get him
19 down enough to where he was okay to go home.

20 Q. Okay. And had he just come back from the VA
21 Hospital?

22 A. Yes, ma'am. He'd been down there for about two
23 weeks in the mental hospital down there.

24 Q. Okay. And did you tell Agent McKellar that?

25 A. Yes, ma'am.

1 Q. And you were up with home how late the night

2 before?

3 A. It was about three or four o'clock in the morning
4 because I was looking at my watch because I had to go to
5 work the next day, but I wasn't going nowhere as long as
6 he was in the shape he was in. That was the reason I
7 stayed right there with him, talking with him.

8 Q. Did he spend the night at your house that night?

9 A. No, ma'am.

10 Q. So eventually did you get in touch with Austin?

11 A. Yes, ma'am. I reached and got my cell phone to
12 call him. And she jumped when I done that, reaching for
13 her gun. Had her hand on her gun while I was doing
14 that. And I called and told him to come on over.

15 Q. Okay. And did you tell him to bring anything with
16 him?

17 A. I didn't tell him to bring anything with him. I
18 just told him to come on over.

19 Q. Okay. Now, were you still at your house when he
20 got there?

21 A. Yes, ma'am.

22 Q. Okay. And about how long were you at the house
23 while he was there?

24 A. I was probably there, probably another hour.

25 Q. Okay. And were you there when the SLED Agents

1 questioned him?

2 A. No, ma'am. They didn't do anything while I was
3 there. After I left, that's when they questioned him.

4 Q. Okay. But you don't have any personal knowledge of
5 that?

6 A. No, ma'am.

7 Q. Okay. Now, why did you leave the house?

8 A. I had to go to work.

9 Q. Okay. And where were you working then?

10 A. I was working at Eaton Hydraulic.

11 Q. Okay. Now, if the SLED Agents were at your house
12 and it was so upsetting, why did you just go ahead and
13 leave?

14 A. Well, I had to go to work. And I figured after I
15 told her what kind of shape he was in, they wouldn't be
16 trying to talk to him. But they went ahead and done it
17 anyway after I left.

18 Q. Okay. Thank you, Mr. Land. Answer any questions
19 Mr. Senn has for you?

20 THE COURT: Any cross examination?

21 MS. MILES: Just briefly, Your Honor.

22 THE COURT: Sure.

23 **CROSS EXAMINATION**

24 **BY MS. MILES:**

25 Q. Good morning, Mr. Land. So you were present

1 originally when law enforcement came to your house with
2 a search warrant; correct?

3 A. Yeah.

4 Q. Okay. And you indicated to law enforcement that
5 you weren't aware of anything involving any computers?

6 A. I told them, I said, come on in and look. I didn't
7 have nothing to hide.

8 Q. Okay. So you weren't aware of any charges or any
9 crimes that were committed using a computer?

10 A. No, I wasn't.

11 Q. And you're the one who called your grandson;
12 correct?

13 A. Yeah. I called him and told him to come over
14 because they wanted to talk to him.

15 Q. Okay. Did you ---

16 A. I didn't have nothing to hide, no.

17 Q. Okay. And you asked him to return to your home?

18 A. Ma'am?

19 Q. You asked him to return to your home?

20 A. Yeah. I asked him to come over because they wanted
21 to talk to him.

22 Q. Okay. But you weren't present when they actually
23 talked to him?

24 A. No, ma'am. I figured they'd talk to him while I
25 was there. When they didn't talk, I said, well, they

1 aren't going to talk to him. Because I could have told
2 him and watched how they were doing, because I knew what
3 kind of shape he was in.

4 Q. Okay. And that's because you had stayed up with
5 him all night?

6 A. Yeah. I stayed up with him pretty much half the
7 night, yeah.

8 Q. Okay. But he didn't stay the night at your house;
9 correct?

10 A. No, ma'am. He went on back to his daddy's house.

11 Q. Okay. And how did he get back to his daddy's
12 house?

13 A. He drove back home.

14 Q. He drove back home. Okay. And you were preparing
15 to go to work that day?

16 A. Yes, ma'am.

17 Q. Okay. And you did, in fact, go to work?

18 A. Yeah.

19 Q. Okay. Mr. Land, you weren't happy about law
20 enforcement being at your house; is that correct?

21 A. No, ma'am.

22 Q. In fact, I guess you referenced them being the
23 gestapo; is that correct?

24 A. I told them, I said, this seems like something you
25 see out of Russia or Germany. People just come in your

1 house for no reason. I said that's like the Nazi's
2 gestapo did. You know, they just come in people's house
3 for no reason, search the houses and things, throwing
4 their weight around. And that's what they were doing.

5 Q. Okay. They had a search warrant; correct?

6 A. Yes, ma'am.

7 Q. So you weren't happy about them being there. You
8 were angry?

9 A. You would be too if you -- I had to go to the
10 bathroom to get ready to work. They followed me to the
11 bathroom and stood there while I was using -- done
12 everything in there. And when I come back out of there,
13 then when I got ready to leave, I said, I've got to get
14 my hat. They said, where's it at? I said, in my
15 bedroom. They went and got it. They wouldn't even let
16 me go in my bedroom to get my hat.

17 Q. Are you aware ---

18 A. I mean, you'd be angry too if you was treated like
19 that.

20 Q. Are you aware of anything in your home that they
21 would have viewed as a safety concern, such as guns or
22 anything?

23 A. No. I got guns in the house. But like I say, I
24 ain't going -- I'm a law abiding citizen. They had
25 nothing on -- have a threat from me.

1 Q. Okay. But law enforcement could have viewed that
2 as a safety concern; is that correct?

3 A. I wouldn't think they'd have any concerned because
4 if they looked at the record they'll see. I'm on the
5 SLED books. I'm a concealed weapons carrier.

6 Q. Yes, sir. Is it fair to say that you don't
7 necessarily like law enforcement?

8 A. I have nothing against them. My son was a
9 policeman for years over there and was also a deputy
10 sheriff.

11 Q. Okay. Do you find that they're trustworthy?

12 A. Some of them, yes. But there's a lot of them
13 that's not.

14 Q. Okay. In general ---

15 A. There's a lot of good police ---

16 MS. FULLWOOD: Objection, Your Honor. This is
17 irrelevant. She's trying to ---

18 THE COURT: It's cross examination. I'll
19 allow a wide latitude in that. You may proceed.

20 MS. MILES: Thank you, Your Honor.

21 Q. You love your grandson, I believe, Defense counsel
22 asked you about that?

23 A. Ma'am, I do what?

24 Q. You love your grandson?

25 A. Yes, ma'am.

1 did.

2 Q. Okay. So he used his own computer at your house?

3 A. Well, he didn't use it there, no. But I was
4 talking about he had one, he used his own because he
5 didn't use mind much.

6 Q. Okay. And he didn't talk to you about any file
7 sharing or anything like that?

8 A. No.

9 Q. Okay.

10 MS. MILES: I believe that's all, Your Honor.

11 Thank you.

12 THE COURT: Anything in redirect.

13 MS. FULLWOOD: Yes. Yes, sir, briefly.

14 **REDIRECT EXAMINATION**

15 **BY MS. FULLWOOD:**

16 Q. How far away from your house did Austin's dad live?

17 A. Probably about two, three miles.

18 Q. Okay. So you weren't concerned that he drove back?

19 A. No, ma'am. He was calm enough then that I felt
20 like he was okay.

21 Q. And did the SLED Agents take from your house
22 something that belonged to you?

23 A. Yes, ma'am.

24 Q. What was that?

25 A. They took my computer.

1 Q. You want to protect him?

2 A. I wouldn't protect him if he was doing something
3 wrong, no. And he knows that.

4 Q. So it's your opinion that he didn't do this ---

5 A. No.

6 MS. FULLWOOD: Your Honor, I'm going to object
7 to her asking him for an opinion that invades the
8 province of the jury. I mean, this is just improper.

9 THE COURT: Right. I got you. I got you.
10 That's the ultimate decision for the jury. I'll sustain
11 the objection and instruct the jury to disregard that
12 last answer.

13 MS. MILES: Yes, sir, Your Honor. Just one
14 minute, Your Honor.

15 THE COURT: Sure.

16 Q. Did your grandson ever talk to you about using your
17 computer or anything of that nature?

18 A. No, ma'am. He has a computer, but he played games
19 on it all the time. That's what he does with it.

20 Q. Okay. And you had a computer at your house;
21 correct?

22 A. I got one at my house. Yes, ma'am.

23 Q. Okay. But you didn't use any file sharing network
24 or anything on there?

25 A. No. He don't get on mine. He had his own when he

1 Q. Have you seen it since?

2 A. Haven't seen it since.

3 MS. FULLWOOD: No further questions.

4 THE COURT: Any recross?

5 MS. MILES: None from the State, Your Honor.

6 Thank you.

7 THE COURT: Thank you, sir, for your
8 testimony. You can step down.

9 You may call your next witness.

10 MS. FULLWOOD: Yes, sir. Your Honor, the
11 Defense calls Wanda Land.

12 THE CLERK: Do you solemnly swear or affirm
13 the testimony you're about to give shall be the truth,
14 the whole truth and nothing but the truth, so help you
15 God?

16 THE WITNESS: I affirm.

17 THE CLERK: Have a seat, please, ma'am. Once
18 you're seated, state your full name, spelling your last,
19 please.

20 THE WITNESS: Wanda Land, L-A-N-D.

21 **WANDA LAND,**

22 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

23 **DIRECT EXAMINATION**

24 **BY MS. FULLWOOD:**

25 Q. Ms. Land, are you Austin's grandmother?

1 A. Yes.

2 Q. You love him?

3 A. Yes, very much.

4 Q. Would you come into court and lie for him?

5 A. No.

6 Q. All right. Do you remember the day that SLED came
7 to search your house?

8 A. Oh, yes.

9 Q. Okay. And can -- what happened that day?

10 A. Well, it happened all fast. They come rushing in
11 and said they had a warrant to search our house. And
12 they started going all through my house and tearing up
13 -- tearing things out of my drawers and looking all in
14 my drawers. And they just -- then they talked to --
15 took Austin into the kitchen and talked with him.

16 Q. Okay. Now, Austin came to your house a little bit
17 later; right?

18 A. Yes.

19 Q. All right. And how were they dressed?

20 A. They had on their law enforcement clothes and their
21 guns and things like that. I don't know exactly.

22 Q. Okay. Were you scared?

23 A. Oh, yes.

24 Q. All right. Were you free to move around your
25 house?

1 A. No.

2 Q. Did that cause some difficulty for you?

3 A. Yes.

4 Q. What was that?

5 A. Because I'm a diabetic and I sat there waiting on
6 them and they kept going over and telling Austin what he
7 did. She kept -- Ms. McKellar told him what you did.
8 And everything that they're saying, she told him what to
9 say.

10 Q. Okay. Well, let's kind of back up a little bit.

11 Austin eventually got to your house; right?

12 A. Yes.

13 Q. And at some point did law enforcement talk to him?

14 A. Yes.

15 Q. Okay. And where in your house did they talk to
16 him?

17 A. In the kitchen.

18 Q. All right. And what part of the kitchen?

19 A. In the -- where the refrigerator and stove and all
20 that is. We have a dining room when you come out the
21 door, it's like connected, but it's got a wall between
22 it. And so it's just a small kitchen.

23 Q. Okay. But were they in the kitchen or the dining
24 room?

25 A. At one time I seen them in the dining room after

1 they talked with Austin a while.

2 Q. No, I mean, when they were talking with him?

3 A. When they were talking with him, they had him in
4 the kitchen.

5 Q. Okay. And were they seated around a table there?

6 A. They said they were, but I don't remember a table
7 being in there.

8 Q. Are you sure about the table?

9 A. I'm not really sure. But, you know, I change a
10 lot. So it's been four years, I think, or five. I
11 don't know.

12 Q. Okay. Now, where were you when they were talking
13 to him?

14 A. Right around the -- there's a wall in between the
15 kitchen and I was around the wall, right next -- sitting
16 in a recliner.

17 Q. Okay. What room of the house was that?

18 A. I guess you'd call it a den.

19 Q. Okay. And could you see them from where you were
20 sitting?

21 A. I couldn't see them. I heard them.

22 Q. Okay. And what -- how long do you think they
23 talked to Austin?

24 A. Over an hour and something.

25 Q. Okay. And how long -- well, what did you overhear?

1 A. I just heard her tell him they'd followed him from
2 -- something about a QUID number, and they'd followed
3 him from -- was it from Kentucky to Lexington or either
4 Lexington to Greenwood. Not Greenwood. Lexington to
5 ---

6 Q. It was something about a QUID number following him?

7 A. Yeah. It followed him, she said to him, Ms.
8 McKellar told him.

9 Q. What other kind of stuff did you hear?

10 A. I can't remember exactly.

11 Q. Were you able to hear every word?

12 A. Oh, I could hear them. But it's been a long time
13 and I can't remember now. But I heard them, yes.

14 Q. And do you remember who was ---

15 A. Because I was sitting there about crying because
16 they had him crying. She was -- he was really upset.

17 Q. Was he crying from the start or ---

18 A. No.

19 Q. But later on he started crying?

20 A. Yeah.

21 Q. Who was doing most of the talking during that
22 interrogation?

23 A. Ms. McKellar.

24 Q. Ms. McKellar. Was she telling him, you did this,
25 you did that?

1 A. Yes...

2 Q. All right. And did he -- did you hear what he was
3 saying?

4 A. He was crying and I think I heard him say, yes,
5 ma'am, one time. But I don't know about what.

6 Q. Okay. Once they finished talking to Austin, what
7 happened?

8 A. She went out the door and called somebody to see if
9 she could get a warrant on him or something to lock him
10 up.

11 Q. So he left with them?

12 A. And then she took him.

13 Q. All right. Ms. Land, that's all the questions I
14 have for you. Please answer any the Attorney General's
15 Office has.

16 THE COURT: Cross examination?

17 MS. MILES: Just briefly, Your Honor.

18 **CROSS EXAMINATION**

19 **BY MS. MILES:**

20 Q. Good morning, Ms. Land.

21 A. Good morning.

22 Q. You just said you were present in the home when law
23 enforcement arrived initially?

24 A. Yes. I was in bed.

25 Q. Okay. And you were present in the home when law

1 enforcement questioned your grandson?

2 A. Yes.

3 Q. But not in the exact room?

4 A. No, just around the wall, the next wall around.

5 Q. Okay. You just said that law enforcement, that you
6 weren't -- when they were there you weren't free, I
7 guess, to go around your home?

8 A. They were in there where my diabetic medicine and
9 all my food. I couldn't get to eat or nothing because I
10 had to sit there until they got through doing what they
11 were doing.

12 Q. Yes, ma'am. Did they prevent you from going into
13 that room?

14 A. Well, I didn't feel free to do it because they had
15 my grandson in there questioning him because I guess
16 they didn't want me in there.

17 Q. Okay. But they didn't prevent you from actually
18 going in there and getting your medicine?

19 A. Well, that prevented me. They didn't say and I
20 didn't say, but I just sat there. But they didn't ask
21 me whether I was a diabetic or nothing, so ...

22 Q. Okay. Did you ask them whether or not you could go
23 into the kitchen to get your medicine?

24 A. I had no reason to ask them. I meant, they ought
25 to ask me. Say, I'm in your kitchen and it's early in

1 the morning and I just had got out the bed, so they knew
2 that, so ...

3 Q. And to your knowledge they weren't aware that you
4 were a diabetic or anything?

5 A. No.

6 Q. You testified that you heard Special Agent McKellar
7 tell your grandson what he did; is that correct?

8 A. Yes.

9 Q. What was that?

10 A. She said it followed you. The QUID number, it
11 followed you from Lexington to Kentucky or either
12 Kentucky to Lexington, I'm not sure. It was those
13 words.

14 Q. And your grandson has a connection with Kentucky;
15 right?

16 A. Yes.

17 Q. He lived there previously?

18 A. When he was in the service.

19 Q. Okay. He lived there at Ft. Campbell; correct?

20 A. He was stationed there.

21 Q. He was stationed there. Okay. And so you
22 testified that you heard them tell your grandson, you
23 know, what they thought he did to commit this crime.

24 That you heard him say, yes; is that correct?

25 A. I think I heard him say yes one time. I'm not sure

1 about that.

2 Q. Okay. What day of the week was this?

3 A. I don't know.

4 Q. Okay. Do you remember what you had done the day
5 before?

6 A. No.

7 Q. But you remember exactly what Special Agent
8 McKellar said to your grandson?

9 A. Oh, yes. I was listening very closely. That's my
10 grandson. So I knew -- and if she had have told me that
11 he could have had a lawyer, she wouldn't have been in
12 there questioning him. I would have got a lawyer.

13 Q. Okay. But did you -- did you hear everything that
14 they were conversating about?

15 A. Oh, I heard it all, yeah.

16 Q. Okay. Did you hear --

17 A. Of course, that's been four or five years ago so I
18 don't know exactly what all was said.

19 Q. Okay. Did you hear him being read his Miranda
20 Rights that involved ---

21 A. No, I didn't hear that.

22 Q. Okay. So you didn't hear that portion, you just
23 heard the other portions?

24 A. No, I didn't hear them read -- if they had read
25 them to him and told him he could get a lawyer, I would

1 have gotten him a lawyer.

2 Q. Okay.

3 A. I just don't think they read them to him.

4 Q. So you didn't hear that portion of it?

5 A. I don't believe it happened.

6 Q. Okay. And you testified you love your grandson?

7 A. Yes.

8 Q. You want to protect him?

9 A. Of course.

10 Q. Thank you.

11 MS. MILES: Nothing further from the State.

12 THE WITNESS: But not from that.

13 MS. FULLWOOD: I have one follow-up question,

14 Ms. Land.

15 THE COURT: Ma'am, sit back down, please.

16 **REDIRECT EXAMINATION**

17 **BY MS. FULLWOOD:**

18 Q. The Attorney General was asking you if you
19 remembered what you did the day before and this and
20 that. Have you ever in your life, either before that
21 day or after that day, had seven or eight law
22 enforcement officers dressed like a SWAT team come to
23 your house with a search warrant?

24 A. No.

25 Q. All right.

1 MS. FULLWOOD: Thank you. That's all I have.

2 THE COURT: Thank you, ma'am, for your
3 testimony. You can step down.

4 THE WITNESS: All right.

5 THE COURT: You may call your next witness.

6 MS. FULLWOOD: Your Honor, the Defense calls
7 Thomas Martin.

8 THE COURT: Okay.

9 THE CLERK: Do you solemnly swear or affirm
10 the testimony you're about to give shall be the truth,
11 the whole truth and nothing but the truth, so help you
12 God?

13 THE WITNESS: I do.

14 THE CLERK: Have a seat, please, sir. Once
15 you're seated, state your full name, spelling your last,
16 please.

17 THE WITNESS: Thank you. My name is Thomas
18 Victor Martin, M-A-R-T-I-N.

19 **THOMAS VICTOR MARTIN,**

20 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

21 **DIRECT EXAMINATION**

22 **BY MS. FULLWOOD:**

23 Q. Dr. Martin, what is your profession?

24 A. I'm a general and forensic psychiatrist.

25 Q. And can you give the jury a description of your

1 education and experience in the field of general and
2 forensic psychiatry?

3 A. Certainly. I received a Bachelor of Science in
4 Clinical Psychology from the University of Maryland in
5 1979. I completed a Master's of Science and Biomedical
6 Science from Hood College in Maryland in 1984. I
7 received my Medical Doctor degree from the Uniform
8 Services University School of Medicine in Maryland in
9 1988. I completed a Residency in Psychiatry in 1992.
10 And then I practiced for a number of years. And then I
11 came to South Carolina and completed a Forensic
12 Psychiatry Fellowship at the University of South
13 Carolina in 2000. I am Board Certified by the American
14 Board of Psychiatry and Neurology in both General and
15 Forensic Psychiatry. I've practiced such for about
16 twenty-five years. I am currently in private practice,
17 home-based in Columbia. And I belong to a number of
18 professional organizations, to include the American
19 Psychiatric Association, as well as the American Academy
20 of Psychiatry and the Law.

21 Q. Dr. Martin, what is forensic psychiatry?

22 A. Well, basically a psychiatrist and psychiatry is a
23 medical science. I'm a physician. Psychiatry is the
24 medical model of behavior, mental disorders, personality
25 and so forth, where we study assessment and treatment.

1 Forensic psychiatry is even a sub-speciality of that
2 whereby we practice the assessment and treatment of
3 those folks whose thoughts, feelings and behaviors may
4 interface with the legal system. So essentially, my
5 practice, which is at least fifty percent forensic
6 psychiatry, fifty percent general psychiatry, deals with
7 collaborating with state and federal agencies; to
8 include probation office, Family Court, criminal court,
9 juvenile court, civil court, as well as practicing more
10 traditional psychiatry which would include therapy and
11 medication management. And so I do a little bit of both
12 forensic and general practice.

13 Q. Dr. Martin, have you been qualified to testify as
14 an expert before in the Courts of the State of South
15 Carolina?

16 A. Yes, I've been in over two hundred and fifty
17 trials.

18 Q. All right.

19 MS. FULLWOOD: Your Honor, at this point, I
20 would move to qualify Dr. Martin as an expert in the
21 field of Forensic Psychiatry.

22 THE COURT: Okay. Does the AG have any
23 questions concerning the qualifications of Dr. Martin?

24 MR. SENN: Nothing from the State.

25 THE COURT: All right. The Court will find

1 for the record that Dr. Tom Martin is an expert in the
2 field of forensic psychiatry.

3 Let me explain to the jury that normally a person
4 cannot give opinion testimony. Normally, when a person
5 testifies they must testify as to what they either saw,
6 heard, sensed by smell or something of that nature.
7 However, there is an exception when someone is qualified
8 because of education or experience. They are permitted
9 to give their opinion in certain areas if the Court
10 qualifies them that way. This witness has been
11 qualified by the Court as an expert in the field of
12 Forensic Psychiatry. And, therefore, as an expert can
13 give opinion testimony in that area. That does not mean
14 that you must accept whatever opinion that he may give
15 in this case. It's simply evidence for you to use in
16 any way you see fit and give it the weight and
17 credibility that you believe is appropriate.

18 You may proceed, counsel.

19 Q. Dr. Martin, have you testified in criminal trials
20 as an expert for the defense?

21 A. Yes, ma'am, and the prosecution.

22 Q. And the prosecution?

23 A. And I've been court appointed by judges, as well.

24 Q. And you have your own business; correct?

25 A. That's correct. I'm in private practice.

1 Q. And you're paid for your services?

2 A. That's correct.

3 Q. And when you testify for the defense are you paid
4 for your services?

5 A. I'm paid for my service, I believe, just about
6 every time I testify.

7 Q. Okay. So when you testify for the State you're
8 paid for your services too?

9 A. Correct.

10 Q. Okay. Did I ask you to examine Austin Land in
11 connection with this case?

12 A. Yes, ma'am, you did.

13 Q. Okay. And can you explain to the jury what you
14 did, who you talked to, and what, if any, records you
15 reviewed in connection with examining Austin?

16 A. Certainly. Ms. Fullwood originally contacted my
17 office in probably the spring of 2013, told me about
18 David Austin Land, that he'd been charged with
19 possession of child pornography. About a third of my
20 practice in forensic psychiatry is the assessment and
21 treatment of those folks who have committed
22 inappropriate sexual behaviors or sexual offenses. And
23 so that's one reason why Ms. Fullwood may be familiar
24 with some of my experience in that field. She was
25 asking me if I could provide a psychiatric examination

1 to offer an opinion on whether or not Mr. Land suffered
2 from any particular psychiatric illnesses. And also
3 whether or not he would be competent to stand trial
4 and/or criminally responsible. And, furthermore, she
5 had some specific questions about whether or not, you
6 know, his state of mind was in some sort of shape to be
7 interviewed by law enforcement, which you've just heard
8 testimony about. And so actually, I wound up seeing Mr.
9 Land on three occasions; June 25th of last, March 24th
10 of this year and then most recently, October 29th of
11 this year, for a total of over -- about six hours total.
12 The records I've reviewed are these right here. And
13 they include a great deal of Veterans Administration
14 outpatient and inpatient records. They also involve the
15 discovery of the investigation and the charges levied
16 against Mr. Land, that Ms. Fullwood provided to me. And
17 I believe there may have been a competency evaluation in
18 there, as well, by the Department of Mental Health. And
19 I also reviewed that.

20 Q. Based on your examinations of Austin Land, as well
21 as the records you reviewed in connection with examining
22 him, do you have an opinion to a reasonable degree of
23 medical certainty whether or not he suffers from a
24 mental illness?

25 A. Yes, I do.

1 Q. What is that opinion?

2 A. To a reasonable degree of medical certainty, I
3 believe that Austin Land suffers from a significant or
4 severe anxiety disorder, most likely post-traumatic
5 stress disorder. That is what was also recognized by
6 the VA and that's also part of his disability that he's
7 been on. I also believe that he has a history of
8 substance abuse in the past. He also has what I believe
9 to be an intermittent explosive disorder where he has
10 outbursts in rage, usually fueled by anxiety and stress.
11 And also -- he also suffers from a pain disorder that's
12 also part of his disability where he had actually hurt
13 himself while on active duty. He has lower back pain
14 and chronic back pain, which needs to be treated, as
15 well. And so I believe he suffers from all of those.

16 Q. When you said that he had post-traumatic stress
17 disorder, is that connected to his military service?

18 A. Yes. This is a service-connected injury,
19 essentially a mental injury. He did a tour in
20 Afghanistan and he saw a lot of carnage and was a part
21 of creating some of that in the late 2000s, before 2009.
22 And of what I've gone over with him now on three
23 occasions, it's very difficult for him to address it.
24 It's part of the reason why he has a substance abuse
25 problem. And I've treated a lot of people in the

1 service who've been in the war theater and they self-
2 medicate with drugs. And with a pain injury, he was
3 also abusive of pain medications, as well. He has a
4 very difficult time self-disclosing, which is consistent
5 with somebody who has PTSD. But he has struggled on and
6 off for several years prior to this incident with the
7 investigation about the part he played in the Afghani
8 war. And you heard testimony earlier today by his
9 grandfather, who I've spoken to about this as well, that
10 the night before the law enforcement officers came to
11 the grandparents' home, he was still struggling with
12 that issue of guilt and so forth, that he had killed
13 tens, twenties, a number of people. In fact, about a
14 week prior to even this, he was admitted to the
15 Veteran's Hospital Psychiatric Ward wanting to commit
16 suicide, and had substance problems and so forth. And
17 so he was essentially emotionally decompensating. And
18 then when he was released, he had not yet stabilized on
19 any mental health medicines and he was over at his
20 grandfather's, still struggling with this, as you heard
21 earlier.

22 Q. So do you have an opinion to a reasonable degree of
23 medical certainty as to the state of his mental health
24 on February the 11th, 2010?

25 A. Yes. I'm at a little bit of a disadvantage because

1 Mr. Land himself has a very sketchy recollection of that
2 day. From his grandparents, and you've already heard
3 this testimony, he was very distraught. It's very
4 consistent with what they said, with what the VA records
5 said in terms of his ability to manage these issues that
6 I just described. And so he apparently was calmed down
7 by his grandfather enough to where he could home and
8 then perhaps get some sleep. Because he essentially had
9 been sleep deprived too. And so I would say that he was
10 emotionally somewhat decompensated, but he wouldn't be
11 somebody that I would think needed to be in the hospital
12 at that moment. It didn't sound like it.

13 Q. While he was treated at the VA did they have him on
14 medication?

15 A. Yes. He was on an antidepressant and anti-anxiety
16 agent.

17 Q. And was he stabilized on that medication two days
18 later on February the 11th, in your opinion?

19 A. No, he was not.

20 Q. And why wouldn't he be stabilize on the medication?

21 A. Well, it seemed like, first of all, he wasn't
22 getting any sleep. He was anxious; he was obsessive and
23 ruminative. And medication for mental health does not
24 cure anything, but it should help take the edge off some
25 uncomfortable feelings and symptoms. While he wasn't

1 getting any sleep, he didn't have any sleeping aid
2 medication. And it takes a number of weeks for these
3 medications to really take effect. And so this was a
4 little bit soon into the course of medication treatment
5 for him.

6 Q. Dr. Martin, do you have an opinion to a reasonable
7 degree of medical certainty whether people with the type
8 -- whether people with type of mental illness Austin
9 has, whether or not there would be concerns about the
10 veracity of the statements they would make under police
11 interrogation?

12 A. Yes, I do. Individuals in general -- I've treated
13 a number that have post-traumatic stress disorder. And
14 it is an anxiety disorder. And as anyone who's
15 experienced any level of anxiety, it will confuse one if
16 the anxiety goes up. If you can imagine some -- you're
17 driving down the road and all of a sudden you think a
18 child jumps out in front of your car, you have
19 practically a heart attack. Well, those kind of
20 experiences is what folks with PTSD have. They also
21 have a level of psychic numbing, which is what I've
22 gathered from Mr. Land. And that's only from
23 experiencing him with it. I've seen him with that.
24 Since he can't give me any direct data, I'm going to
25 speak in generalities. I would have some concern that

1 if someone is this numb, psychically numb or disoriented
2 -- not disoriented, I'm sorry -- but emotionally down
3 and anxious and yet might look kind of like a statute,
4 they could not perhaps give the most accurate response
5 to legitimate questions, in this case, proposed by law
6 enforcement. I'm not going to propose that law
7 enforcement was cruel to him, tortured him or anything
8 of that nature. But what concerns me in Mr. Land case,
9 which is one reason why Ms. Fullwood asked me to take a
10 look at it, is that while under duress of this kind --
11 and a healthy person is going to probably be under
12 duress at this time. We've seen both grandparents up
13 here. And they were under a lot of duress. And they
14 don't have any major mental illness. But under that,
15 plus already carrying a baseline of tortuous anxiety and
16 feelings of guilt, I would be very wary of the accuracy
17 of responses. I've seen it in other cases where people
18 are even interviewed by doctors, by me, where they'll
19 say, no, I didn't take my medicine today, and I do a
20 blood level and their medicine is actually very high in
21 their system. And so I would suggest that we be careful
22 when someone -- if it's known that someone's under this
23 kind of duress. So that created some concern for me. I
24 can't tell you first-hand whether or not that's what
25 happened for Mr. Land, but it would be one thing that I

1 would be very -- I would question.

2 Q. You've treated service members in the past who came
3 home with PTSD; is that correct?

4 A. Yes.

5 Q. And would people who have served in our armed
6 forces, is there a tendency to be obedient to authority?

7 A. Well, that's sort of the main theme of being a
8 military service person to begin with. But ---

9 Q. Well, having learned -- having had that type of
10 military training, with a person with his personality
11 traits, would that factor into how they would respond to
12 an interrogation?

13 A. Yes. In Mr. Land's case, he's a rather avoidant
14 individual, meaning he avoids confrontation. He would
15 rather not challenge someone. I mean, I've actually
16 confronted him as part of my assessment on issues. And,
17 you know, he's in a much, much better state today than
18 he was, it seems like, back in 2009 or '10. And I could
19 get him riled up enough and him trying to remain
20 respectful to me where I'd actually tell him things
21 about his own service record or his ability and what
22 he's done in Afghanistan and he actually agreed with me.
23 When a healthier person would not -- they would have
24 said, no, that's not correct. And I didn't do it in a
25 manner that was really cruel to him. But Mr. Land's

1 perception of the charge against him, the theme of
2 possessing child pornography, is just totally
3 unacceptable in his mind. And so to me I challenged him
4 about some of that and got him riled up. And I guess I
5 was somewhat accusatory at the same time. But I could
6 see where he would actually falter. And this is when
7 he's feeling better. So I would be concerned that
8 perhaps he may not give an answer or give one that he
9 thinks is pleasing to people that is asking him. Or it
10 could be related to the fact that he's already feeling
11 guilty, like he was the night before the interviews,
12 when he was talking with his grandfather and essentially
13 throws himself under the bus on stuff that he doesn't
14 do. And sometimes folks will do that if they're feeling
15 that bad about themselves.

16 Q. Are you trying to say then that he had previously
17 been feeling guilty about the things that had happened
18 in Afghanistan and that feeling sort of transferred
19 around when people started making accusations about
20 something equally heinous in the law?

21 A. Yes. Well, definitely the guilty part about the
22 Afghani war and his participation. Because he took
23 lives in that war, a lot of them. And what he witnessed
24 and how he was responsible for that, it actually
25 resulted in drug addiction while he was over there and

1 he got in trouble for that and eventually left the
2 service. And still has periodic relapses. It's not --
3 I won't say definitely for Mr. Austin Land, but I will
4 tell you that I would be concerned about that in his
5 case because a very similar scenario that when someone
6 is feeling very, very guilty about something they have
7 done that is legitimate, but may not be exactly the same
8 as what they're accused of, they still may throw
9 themselves under a bus.

10 Q. So that would be sort of similar to people who call
11 in and confess they've done something when they haven't,
12 they just feel guilt otherwise about things in their
13 lives?

14 A. Yes. And I've seen that in therapy sometimes on
15 lesser issues. For example, making friends. And they
16 actually say that I was actually attracted to this
17 person. And actually they weren't attracted to that
18 particular person. They were actually having an affair
19 with someone else that the wife would have known. I
20 mean, these kind of things. They still want to get
21 themselves in trouble, but it may not be for the exact
22 same thing that they actually confess to.

23 Q. So you say that somebody like Austin who was
24 feeling guilty about what had happened during the war
25 might just go ahead and because of that guilt say he was

1 guilty of doing something else that he hadn't done?

2 A. That would be something I would have to consider.

3 Q. So that would be a concern?

4 A. Yeah. That would be a concern of mine.

5 Q. Okay. Dr. Martin, would the extent of Austin's

6 mental condition on that day be obvious to somebody

7 that's not trained in mental health? Could he pass off

8 as a fairly regular person?

9 A. Well, I couldn't get anything directly from Mr.
10 Land from that, Austin Land. From his grandfather, it

11 seemed like he finally calmed down and was -- what I

12 have seen Austin Land do is become psychically numb.

13 I've seen that personally when I would challenge him on

14 certain issues in my office. And it actually is a

15 calming, but he's not necessarily okay. That may have

16 been what happened on the 11th of February.

17 Q. And can you explain to the jury what you mean by

18 psychically numb?

19 A. Actually, that's part of Austin Land's term, which

20 is actually accurate. It's where essentially you become

21 almost -- it's almost a dissociation where you try to

22 just back burner your feelings. It's like if you can

23 remember going to a funeral and it's just a horrible

24 loss and then you just need to keep it together. And so

25 you just all of a sudden pull those feelings out. It's

1 like you're out of -- you're not connected to your
2 feelings. And so, you remain numb until maybe a later
3 time. It's something similar to that.

4 Q. Okay. And it's your opinion that you would have
5 concerns about the veracity of statements given during
6 an interrogation made by a person with a mental illness
7 like Austin's; is that correct?

8 A. I would. And I've participated in probably
9 hundreds of child pornography cases. And this one is
10 unique because Austin Land is so vehemently against the
11 whole concept of this. I mean, pretty convincingly.
12 I'm not an investigator or a lie detector, but in all
13 the other ones I've seen, they are a little reluctant.
14 They'll say a little bit of the story, but they'll
15 eventually come around. That's not the case in Austin
16 Land's case. So, again, I'm not here saying he did it
17 or he didn't do it. It's unusual in this case, and so I
18 would say that in the face of the fact that he is
19 totally adamant that he had nothing to do with it, and
20 plus he had just gotten out psychiatric hospital for a
21 week, and plus he was up the whole night before, I would
22 say maybe we should back up and take a look at him again
23 and then re-interview him at maybe a coherent time. I
24 would say that would be something to consider. That's
25 all I'm saying.

1 Q. Dr. Martin, that's all the questions I have.

2 Please answer any the AG's office has for you.

3 A. Yes, ma'am.

4 THE COURT: Cross Examination?

5 MR. SENN: Yes, Judge.

6 **CROSS EXAMINATION**

7 **BY MR. SENN:**

8 Q. Dr. Martin, do you have any specializations in your
9 testimony to the kind of cases you testify about?

10 A. Well, beginning at like false confessions and that
11 sort of thing, I'm a general psychiatrist and a forensic
12 psychiatrist, which means as a forensic psychiatrist I
13 expect a great number of my folks to come to my office
14 and not tell me the truth, like I was alluding to a few
15 minutes ago. I didn't do it, etcetera, etcetera. And
16 so do I wonder about lying, malingering, and so forth
17 and so on, yes. That is a part of my regular practice.

18 Q. Okay. And you said you first interviewed the
19 Defendant on June 25th, 2013?

20 A. Yes, sir.

21 Q. And that would be over three years after he was
22 arrested?

23 A. Yes, that's correct.

24 Q. Didn't mean to make you do so much math?

25 A. That's okay. I've got it written down too.

1 Q. You said all of your exams in total took around six
2 hours, total?

3 A. Yes, sir.

4 Q. Okay. What kind of independent investigation,
5 apart from talking to the Defendant, have you done?
6 Have you spoken with his friends, family or neighbors?

7 A. I'm just familiar with his grandparents. That's
8 the only other folks, plus the records that I have in
9 here.

10 Q. Okay. So you didn't speak with his mother?

11 A. No, I actually did not.

12 Q. Did you speak with his father?

13 A. No, I did not.

14 Q. Did you speak to any other brothers or sisters?

15 A. No. No one else except for the ones I just told
16 you.

17 Q. Okay. Did you speak to any of the law enforcement
18 involved in this case?

19 A. Absolutely not. Just the folks I just talked to
20 you about.

21 Q. Did you speak with any military members that he may
22 have served with?

23 A. No.

24 Q. Okay. So what kind of tests and examinations did
25 you make with the Defendant?

1 A. I did not do any other like paper and pencil type
2 tests. Essentially, mine was an interactive,
3 confrontative, challenging, as well as history
4 gathering. It turns out, since I saw him three times, I
5 look for consistencies, stability. What I didn't go
6 into in earlier testimony was, you know, I was also
7 asked to see if he was competent to stand trial, which
8 means was he able to work with his attorney and so
9 forth, and so I collaborated with his attorney about
10 that. And I also looked whether or not he would have
11 been criminally responsible, which means was he
12 suffering from a major mental illness or insane on or
13 about the time this crime was allegedly committed, and I
14 felt that he was sane. He has major mental illness, but
15 he was able to know moral legal right from moral legal
16 wrong. So I did a lot of those types of assessments as
17 well, in addition to doing a traditional psychiatric
18 history.

19 Q. Okay. So basically you're relying -- apart from
20 the documents, you're relying entirely on what he told
21 you and what you observed?

22 A. And some from his grandparents, yes.

23 Q. Okay. All right. Would this opinion be entirely
24 subjective; your opinion?

25 A. Well, It's -- I'll just say that that's my

1 professional opinion, having done this for about twenty-
2 five years.

3 Q. Absolutely. So did you examine the Defendant about
4 the offenses he'd been charged with?

5 A. Yes.

6 Q. What, exactly, did you talk about?

7 A. Well, it's my practice to actually ask them whether
8 or not they did what they've been accused of doing. My
9 philosophy is, I need to know the entire story as they
10 know it. I never pretend to be able to make rational
11 sense of most of these crimes, but I try to make some
12 emotional sense. And so I approach it on that somewhat
13 empathic level. And I'm not an investigator in this nor
14 am I a lie detector. No attorney or law enforcement
15 ever asked me to do so. But I do try to find out where
16 they're coming from with this. And what I do is I go
17 about what the offense criteria may have been stated in
18 a warrant, for example, and what part he played, where
19 he was, what he did. A lot of this was sketchy memory
20 for him in terms of the interview, which is what's been
21 talked about a lot today. But also the period while he
22 was over in Afghanistan, I talked to him a lot about
23 that, which has nothing to do with this occurring
24 directly. But it does have to do with his major mental
25 illness. And then I told him the different ideas of

1 what I've read. And that would include that it looks
2 like they've got a computer or at least an IP address
3 that has gone from one part of the country in Kentucky,
4 into the Lexington area and what part he'd played in
5 that. And I got no -- he totally denied the whole
6 thing, if you want to know what the answer was for me.
7 And so I said, all right. Fine. I'm not here to tell
8 them you did do it, you know. But I did later on
9 challenge him as part of my assessment. And he was very
10 consistent with what he said and what his beliefs were,
11 which makes me at least think twice. I wonder if
12 there's more to the story. Perhaps we should have
13 looked at him when he was a little bit -- in a better
14 mental health state. That's what my conclusion was from
15 all those interviews.

16 Q. Thank you. Did you ask him how he felt about the
17 nature of the offense?

18 A. Yes, sir.

19 Q. About child pornography?

20 A. Yes, sir, I did.

21 Q. What was his reaction?

22 A. He was horrified. He was actually quite angry that
23 anyone would ever even believe or consider that that is
24 what he's been doing.

25 Q. Okay. Are you aware that he told law enforcement

1 he would use a system restore and deleted these type of
2 files?

3 A. I believe I read that somewhere. I don't remember
4 him saying that to me.

5 Q. Would that be consistent with someone that found
6 what they had done to be morally repugnant?

7 A. If I understand the computer language that you're
8 using, a number of my folks have got special programs
9 that can erase or try to delete ---

10 MS. FULLWOOD: Your Honor, I'm going to object
11 to him getting some -- this is far outside his field of
12 expertise. I object to him asking the doctor how
13 computer programs work.

14 MR. SENN: I'm not asking about the program or
15 how it works, Judge. I'm just asking his opinion of a
16 Defendant potentially getting rid of evidence.

17 THE COURT: I'll overrule the objection. I'll
18 allow it. Go ahead.

19 A. Well, if that's all the question is then if
20 somebody's trying to cover up or self-protect, that's
21 something I think is important to consider on whether or
22 not he had a part in the crime charged.

23 Q. So the Defendant didn't come to you before he was
24 charged; correct?

25 A. Correct.

1 Q. Okay. He only came after he was retained by
2 defense counsel -- after he retained defense counsel?

3 A. Yes, sir.

4 Q. Isn't it kind of naturally difficult to make a
5 retrospective statement about his state of mind at a
6 specific time in the past?

7 A. I will not say it's a piece of cake, but I do that
8 for a living. It's what was considered a criminal
9 responsibility assessment and that's about what I do in
10 half my practice and have done so for over decades.

11 Q. But isn't it also especially true when the only
12 source of information you have is the patient,
13 especially when this outcome is so important to their
14 future?

15 A. Well, it's his input, too. And actually, as you
16 probably can tell, his input about the interview time is
17 pretty skimpy. What I'm looking at when I look at
18 criminal responsibility is how he was doing back during
19 the time that the crime was supposed to have taken
20 place. That's sort of what they used to call a
21 psychology autopsy. But we do go back in time, review,
22 and I look at his records. I look at where he's been,
23 mental health centers in Kentucky, here, and how he's
24 had problems with drug abuse in Afghanistan, that sort
25 of thing. So it's more than just his word for it. I

1 did look at the records that also corroborated a lot of
2 that.

3 Q. Sure. And the Defendant realized you would testify
4 today; right?

5 A. I told him on the first meeting that that could
6 happen.

7 Q. Is it possible that the Defendant would exaggerate
8 symptoms when he was in front of you?

9 A. That's always possible. That's why I look for
10 consistency. And I didn't notice any exaggerations.
11 Actually, this is the best I've seen him, is now.

12 Q. You said he had trouble, I think, with self-
13 disclosing; is that right?

14 A. Yes.

15 Q. Okay. Do people that have trouble self-disclosing
16 typically confess to things?

17 A. I'm sorry. I don't think I understand.

18 Q. Are they completely forthright and open and just
19 want to tell every bit of the information?

20 A. No. When I actually used the self-disclosing
21 phrase, I was referring to the trauma that they may have
22 endured that would be consistent with PTSD. I think
23 what you're asking is whether or not they did it or not.
24 That kind of self-disclosing or admission to guilt, that
25 could be different too. But it might be for different

1 reasons. I mean they're two different things. One's

2 PTSD and the other one's I committed a crime.

3 Q. Sure. I think you also said that he had -- he was
4 prone to outbursts and rage; is that correct?

5 A. Yes.

6 Q. Okay. But he would also be numb at times?

7 A. Yes. In fact, I believe the primary coping style
8 is one of avoidance coping strategy where he would
9 essentially try to just sit there and seethe. And I
10 would see him do this. And then I would later see him,
11 when I would push him a little bit too much and then he
12 would get angry and I would have to really redirect him
13 to get him to sit back down. That was an initial
14 concern of mine with him being competent to stand trial
15 because we can't have that in here. And he seems to
16 have gotten it after several sessions of meeting with
17 him and meeting with his attorney. But that was
18 definitely part of the reason why I thought he had an
19 anger problem.

20 Q. Okay. Are you aware if he was found competent to
21 stand trial?

22 A. Was ---

23 Q. Are you aware if he had -- in the evaluation done
24 by ...

25 A. Dr. Hanson.

1 Q. Dr. Hanson, yes. Are you aware if he was found
2 competent to ---

3 A. He was.

4 Q. All right. Dr. Martin, are there multiple reasons
5 that a person could confess, other than what you
6 previously stated?

7 A. (No verbal response.)

8 Q. Are there many different reasons a person could
9 confess to a crime?

10 A. You mean even incorrectly confess?

11 Q. Correct?

12 A. Okay. Well, one reason they confess is because
13 they did it. Another one was because that's what they
14 think that the person who's asking them wants them to
15 hear. I've been in cases where folks were under duress
16 and they felt like, you know, that this is going to come
17 to a close if I just say what they want to say. End of
18 story. I can go home. People confess sometimes or
19 admit to something they didn't do and even exaggerate
20 their confession a little bit to punish themselves, like
21 I stated earlier, because they're actually guilty about
22 something else that may have nothing to do with what
23 they're confessing to. So there's multiple themes that
24 folks will give up information that's incorrect. And
25 sometimes they feel that maybe it's not so bad. I've

1 seen some, and I've done this, too, with folks. I'll
2 minimize some information and then hear what they say,
3 because it sounds like it's okay to talk about. And
4 then I learn a little bit more about it, and then we get
5 it straight, what it really was. And I'm not going to
6 pretend to say I'm a law enforcement officer. But, you
7 know, I have to gather information, too. And so there's
8 a lot of different ways to approach someone. And I
9 believe that Mr. Land was perhaps not in the best state
10 of mind to give the most accurate information for the
11 law enforcement to go on, that they desperately needed.
12 Q. Well, let's just go back to that very first thing
13 you said, and those reasons.

14 A. Sure.

15 Q. So the very first thing you said is a person could
16 confess because they are, in fact, guilty; correct?

17 A. Well, that's always a possibility, sure.

18 MR. SENN: Nothing further from the State.

19 THE COURT: Anything in redirect?

20 MS. FULLWOOD: Just a couple of things, Judge.

21 THE COURT: Sure.

22 **REDIRECT EXAMINATION**

23 **BY MS. FULLWOOD:**

24 Q. Dr. Martin, Mr. Senn asked whether or not Austin
25 was your patient before he was charged. He had received

1 psychiatric treatment before he came to see you;

2 correct?

3 A. Oh, yeah. For years.

4 Q. Okay. And he also asked whether or not Austin knew
5 that you might testify at your [sic] trial. Did you
6 ever specifically tell him that you might testify about
7 this statement that he made to police?

8 A. Well, actually, what I perhaps should have said is
9 that whenever I start seeing someone, and I saw him
10 under your request, and so there was an element of
11 attorney/client privilege. But that I would be
12 discussing every single detail with Ms. Fullwood. And
13 so he was aware of that. And I said, it may go to court
14 after that. But that's up to the two of them; not me.

15 Q. So you never told him the topic ---

16 A. Oh, no. Well, I wouldn't know what the topic would
17 be necessarily.

18 Q. Right. Okay.

19 MS. FULLWOOD: No further questions.

20 THE COURT: Recross?

21 MR. SENN: Just very briefly.

22 **RECROSS EXAMINATION**

23 **BY MR. SENN:**

24 Q. So he was aware that your testimony could be used
25 in support of his defense, possibly?

1 A. Well, it's a possibility. But he didn't -- I
2 didn't even guarantee it. Sometimes I refuse to testify
3 if I think I'm going to, you know, do damage to a case.

4 Q. But you did tell him it was possible?

5 A. Well, yeah.

6 MR. SENN: Nothing further from the State.

7 THE COURT: Okay. Thank you for your
8 testimony, Doctor. You can step down.

9 MS. FULLWOOD: May he be excused?

10 THE COURT: And without objection you're
11 excused from the courthouse.

12 MS. FULLWOOD: Thank you.

13 THE WITNESS: Thank you, Your Honor.

14 MS. FULLWOOD: Your Honor, the Defense rests.

15 THE COURT: Okay. Does the State have any
16 rebuttal case?

17 MR. SENN: No, Your Honor.

18 THE COURT: Okay. Thank you very much.

19 Madam forelady, ladies and gentlemen of the jury,
20 that concludes the evidentiary record in this case.
21 What we have left to do is closing arguments by the
22 lawyers and also the Court's final charge. I'm going to
23 ask that we take a morning break for ten or fifteen
24 minutes. And ask that you retire to your jury room.
25 Again, don't start any deliberations yet. Don't discuss

1 anything about this case among yourselves. And we'll
2 get you back out shortly. Thank you.

3 (WHEREUPON, the jury exits the open court at
4 approximately 11:05 a.m.)

5 THE COURT: Any motions that need to be made
6 at this time?

7 MS. FULLWOOD: Yes, sir, at this time I would
8 renew my motions for directed verdicts and the grounds
9 are the same as those argued yesterday in support of the
10 same motion again.

11 THE COURT: Okay. Thank you very much. And
12 your motion is denied.

13 What we need to do is -- I need to print out the
14 draft of my final charge so you folks can look at what
15 I've got. And certainly we can discuss it and make any
16 changes that we might need to make. So we'll just take
17 a little break and try to get that accomplished and
18 we'll regroup.

19 (WHEREUPON, the court stood at recess for a short
20 break.)

21 THE COURT: Okay. We're back on the record
22 and I understand that both sides have had an opportunity
23 to review the draft of the Court's charge. And from the
24 State, I understand, Mr. Senn, that you have presented a
25 two-page, which looks like to me -- let me make sure I'm

1 correct in saying this; maybe not. It's somewhat, to
2 some extent a duplication of what I have on page twelve.
3 So I think if I charge -- any objections, Ms. Fullwood,
4 I'll be glad to hear from you. But if I charge yours
5 and then charge (b) and (c) of mine, and I'm briefly
6 just looking at this. I may not be correct. Or can I
7 just charge yours and not charge the first half of page
8 twelve?

9 MR. SENN: Judge, mine basically should
10 incorporate everything that you had. In addition, it
11 also adds the definition of a minor as in 16-15-325?

12 THE COURT: Right.

13 MR. SENN: The definition of material and
14 definition of sexual activity.

15 THE COURT: Okay. Ms. Fullwood, any objecting
16 to my charging the State's proposed charge in place of
17 the first half -- the top half of page twelve of my
18 draft.

19 MS. FULLWOOD: I would simply request that the
20 Court add this language. And I've given that language
21 in an email to your clerk.

22 THE COURT: Okay.

23 MS. FULLWOOD: After -- in the second
24 paragraph after the first sentence add: However, this
25 is simply an evidentiary fact that may be considered by

1 you along with all of the evidence and given such weight
2 as you see fit. Since we're talking about evidentiary
3 inferences, I think the jury needs to hear that
4 language, that it's simply -- it's like with, say, some
5 of the -- it's in line with the charges that are now
6 approved for evidentiary emphasis on say, malice.

7 THE COURT: Okay. All right.

8 MS. FULLWOOD: It prevents a charge like this
9 from becoming a burden-shifting presumption.

10 THE COURT: Okay. Well, let's -- can you
11 email that to Hope and print that out so I can look at
12 it?

13 LAW CLERK: Yeah. She didn't email me that.
14 She emailed me the lesser included.

15 MS. FULLWOOD: Did what?

16 THE COURT: He says you only emailed the -- a
17 lesser included. You didn't ---

18 MS. FULLWOOD: That's correct. But the lesser
19 included contains that language in that.

20 THE COURT: Yeah. Well, I've got concerns
21 about charging third degree lesser included. I mean,
22 we'll talk about it, but I've got some concerns about
23 charging third degree.

24 MS. FULLWOOD: Yes, sir.

25 THE COURT: Apart from charging lesser

1 included or what you claim to be a lesser included, you
2 still want that language that you just put on the
3 record?

4 MS. FULLWOOD: Yes, sir.

5 THE COURT: Okay.

6 MS. FULLWOOD: Yes, sir.

7 THE COURT: All right.

8 Okay. All right. Mr. Senn, do you have any
9 objection to me inserting in your proposed charge,
10 second paragraph, after the second sentence, minor, and
11 include this language. However, this is simply an
12 evidentiary fact that may be considered by you, along
13 with all of the evidence in this case and given such
14 weight as you see fit?

15 MR. SENN: Judge, the State doesn't have an
16 issue but we do believe that it is -- at the point where
17 it says the trier of fact may infer, as opposed to must
18 infer.

19 THE COURT: Tell me that again.

20 MR. SENN: The State wouldn't have any
21 objection, Judge. The State does believe that where the
22 sentence starts the trier of fact may infer. That it
23 implies that they do not have to infer, instead of must.

24 THE COURT: Well, it just gives, I guess,
25 maybe some further explanation. I'm going to go ahead

1 and charge it. All right. So I'm going to take out the
2 top half of my draft on page twelve. And charge yours.

3 And I think you also wanted, Mr. Senn, some
4 explanation as to paragraph one that one or more of
5 these -- if they find one or more; correct?

6 MR. SENN: That's correct, Judge.

7 THE COURT: Okay.

8 Now, do you have any objection to that, Ms.
9 Fullwood, as to paragraph one of their proposed charge,
10 that I explain that it's one or more distributes,
11 transports, exhibits. They don't have to find all of
12 those, just one or more. Do you have any problem with
13 that?

14 MS. FULLWOOD: No, sir.

15 THE COURT: Okay. All right. All right. And
16 then now, Ms. Fullwood, you are wanting me to charge
17 third degree sexual exploitation?

18 MS. FULLWOOD: Yes, sir.

19 THE COURT: Okay.

20 MS. FULLWOOD: And it's my position is that
21 it's a lesser included offense because when we're
22 talking about second degree sexual exploitation of a
23 minor, that possession would be subsumed within the
24 distribution, transportation, exhibition, receipt, sell,
25 sale, purchase or an exchange or solicitation of

1 material, by the fact that the person possessed it in
2 the first place. So third degree does not contain an
3 element that second degree does not, so I think they're
4 lesser included offenses.

5 THE COURT: All right. What says the State as
6 to the request to charge third degree?

7 MR. SENN: Judge, the State would oppose. I
8 believe for a lesser included charge to be charged it
9 has to have the exact language in the statute. I don't
10 believe that that's found in third degree and second
11 degree. That's the State's position.

12 THE COURT: To be a lesser included, it
13 doesn't necessarily have to have the exact language
14 because if it has to have the exact language then it
15 wouldn't be separate offenses. But a lesser included
16 offense would be one that all of the elements of the
17 lesser included are within the one prior to it. In
18 other words, all of the elements of third degree would
19 be encompassed within the second degree to make it a
20 lesser included.

21 MR. SENN: Judge, but -- just looking at the
22 statute, one of the elements for second degree is
23 knowing solicitation. It doesn't necessarily have to be
24 they're receiving, just that they solicited it. And I
25 don't believe that you even have to possess it in that

1 case.

2 THE COURT: All right. Third degree is just
3 basically possessing it; okay?

4 MR. SENN: Right.

5 THE COURT: And so -- but to be guilty of
6 second degree, you don't necessarily have to solicit it.
7 You can say, received it. So if you receive it you are
8 possessing it, since you only have to find one of those
9 methods of second degree. Because the greater offense
10 always includes more elements than the lesser included.
11 So I think that maybe Ms. Fullwood has a valid argument.
12 And I'll hear more from either side.

13 Anything further, Mr. Senn, on opposition to
14 charging the lesser included third degree, if it is, in
15 fact, lesser included.

16 MR. SENN: No further argument from the State,
17 Judge.

18 THE COURT: All right. I think I am going to
19 charge it. What we're going to need to do, we're going
20 to need to amend our charge a little bit because we have
21 to include the language. You know, if they find that
22 the State failed on any indictment, failed to prove
23 beyond a reasonable doubt the elements of second degree,
24 then you have the right to consider whether or not blah,
25 blah, blah, third degree. So give us a chance to work

1 that up and we'll need to change our verdict form, too.

2 All right. So everybody be at -- is there anything else
3 related to the charge?

4 MS. FULLWOOD: Yes.

5 THE COURT: Okay. What else, Ms. Fullwood?

6 MS. FULLWOOD: Your Honor on page eleven.

7 THE COURT: Okay.

8 MS. FULLWOOD: Concerning intent, I would take
9 exception to including the language in the -- the
10 language of reckless or criminal negligence in the first
11 sentence, and ask that the Court delete the last
12 paragraph on that page. This isn't a strict liability
13 offense. And it's not the type of offense where I think
14 one could be culpable by mere recklessness or criminal
15 negligence. I think it requires a specific intent to do
16 the act prohibited. And I think that problem with the
17 charge could just be addressed by taking out that
18 language.

19 THE COURT: Okay. Mr. Senn, Ms. Fullwood's
20 arguing that this is not a -- it's a specific intent
21 crime. Therefore, there should not be the standard
22 language of recklessness or criminal type negligence.
23 Any position on that?

24 MR. SENN: None from the State, Judge.

25 THE COURT: Okay. Since there's no opposition

1 to that from the State, in the one, two, three -- fourth
2 line, I'm going to take out recklessness or criminal
3 negligence. And then on the end of page eleven, take
4 out that last paragraph.

5 MS. FULLWOOD: Thank you, Your Honor.

6 THE COURT: Anything else with respect to the
7 charges?

8 MS. FULLWOOD: No, Your Honor.

9 THE COURT: Okay. All right. From the State?

10 MR. SENN: Nothing from the State.

11 THE COURT: Okay. All right. Well, let's
12 everybody be at ease and let me go ...

13 (WHEREUPON, the court stood at recess for a short
14 break.)

15 MS. FULLWOOD: May we take a quick look at the
16 evidence before they come in? Are they coming in now?

17 THE COURT: No, we've got to finish getting
18 the charge ... Yeah.

19 MS. FULLWOOD: Is it okay if I come up and
20 look at the evidence?

21 THE COURT: Sure. The only evidence that
22 we've got is the Miranda form and the three disks.

23 MS. FULLWOOD: That's it.

24 THE COURT: And the disks are not going to go
25 back. I'll explain to the jury that if they do want to

1 view any portions that were put in at trial, then
2 certainly we can handle that for them.

3 MS. FULLWOOD: Oh, so the list wasn't even put
4 in evidence?

5 THE COURT: Right. The list was marked for ID
6 but did not come in.

7 MS. FULLWOOD: Yes, sir. Well, I guess
8 there's nothing to look at then.

9 THE COURT: Yeah.

10 (WHEREUPON, the court stood at recess for a short
11 break.)

12 THE COURT: I want y'all to look at that and
13 make sure you're good with it. Have y'all looked at the
14 charge?

15 MS. FULLWOOD: Yes, Your Honor.

16 MR. SENN: Yes, Your Honor.

17 THE COURT: Everything's good. We'll go on
18 the record when you get back. Okay. Thank you.

19 (WHEREUPON, the Court stood at recess for a lunch
20 break.)

21 THE COURT: Okay.. We're back on the record.
22 And both sides have had a chance to review the last
23 draft of the charge.

24 Any exceptions from the State?

25 MR. SENN: Nothing from the State, Your Honor.

1 THE COURT: Okay. And from the Defense?

2 MS. FULLWOOD: No, Your Honor.

3 THE COURT: Okay. Thank you. And the verdict
4 form? I think we may have put it on your table when you
5 left. Is everything okay there?

6 MS. FULLWOOD: Yes, Your Honor.

7 MR. SENN: Yes, Judge.

8 THE COURT: Okay. Very good.

9 All right. Mr. Senn, are you going to open on the
10 law or are you going to close in full?

11 MR. SENN: We're going to close in full.

12 THE COURT: Okay. Very good.

13 All right. Mr. Knight, if you'll bring the jury
14 out?

15 THE BAILIFF: Yes, sir, Your Honor.

16 (WHEREUPON, the jury entered the open court at
17 approximately 1:54 p.m.)

18 THE COURT: All right. Let the record reflect
19 the jury's back in. I hope you had a good lunch. And
20 what we are doing now is having closing arguments. The
21 Defense will start first and then the State will follow.
22 After that is done, depending upon how long they are,
23 we'll either go straight into the Court's final charge
24 or maybe take a real short break in between. Again,
25 just depending upon how lengthy the closing arguments

1 are.

2 So with that said, Defense ready for closing?

3 MS. FULLWOOD: We're ready, Your Honor.

4 THE COURT: Okay. Thank you very much. You
5 may proceed.

6 MS. FULLWOOD: May it please the Court.

7 **CLOSING STATEMENT**

8 **BY MS. FULLWOOD:**

9 Madam Forelady, ladies and gentlemen of the jury,
10 we appreciate you being here and we appreciate how
11 attentive you've been to this testimony. This hasn't
12 really been a very long trial, but it's been a kind of
13 rough one because of the nature of the evidence that you
14 simply had to see to carry out your duties as jurors.
15 And like I told you yesterday, we ask that you put aside
16 any emotions you felt in seeing that evidence, and
17 instead concentrate rationally, objectively, and in a
18 reasonable manner, focusing on whether this evidence
19 proves that Austin Land committed the crimes he's
20 charged with.

21 I think I'd like to start off with what we know are
22 the objective facts in this case. And those are that on
23 December 4, 2009, December 7, 2009, and January 27,
24 2010, a computer or other device accessed the internet
25 through unsecured routers located at 101 Saluda Drive.

1 On one occasion that was a router of a family named the
2 Turners. On two occasions, that was the router that
3 belonged to Christy Land. Both of those routers weren't
4 secured. Anyone could have used them to get on the
5 internet. On those days, SLED Agents downloaded
6 pornography from that computer. Again, that's an
7 objective fact.

8 Today, today, on November 7th, 2014, SLED cannot
9 produce for you the computer or device from which that
10 pornography was downloaded. SLED initially got search
11 warrants to search the residences of Christy Land and
12 her neighbors, the Turners. From there, talking to
13 Christy, they found out she had a son named Austin who
14 lived elsewhere, but who sometimes visited her at her
15 house. And at that point, their investigation
16 exclusively focused on Austin, without trying to look
17 any further. So what did they do? Well, that computer
18 device was piggybacking; in other words, using somebody
19 else's internet services. That was an apartment
20 building. Anyone in that building who had a computer
21 device that could pick up wireless internet service
22 could get on those routers and go on the internet. But
23 did they look at who else lived in the building?
24 Apparently not. Because if they had, they would have
25 learned that one of the residents of that building was a

1 Drill Sergeant at Ft. Jackson. Did they check to see if
2 he had ever been stationed at Ft. Campbell? No, because
3 they didn't even bother to find out that he existed.
4 They would have learned that ten or more students lived
5 in that building. Did they look into them? No.
6 Because they didn't follow through and they didn't even
7 know they existed.

8 In fact, their investigation completely stopped
9 when they went to Greenwood on February the 11th and got
10 Austin Land to make a statement. Did they follow
11 through with him? There was nothing in his
12 grandfather's house that corroborated that he'd done
13 what he said. They took his granddad's computer. If
14 that had been the computer that they downloaded that
15 pornography on, they would have been in here to tell you
16 that. They got a laptop computer from him. Was that
17 the computer they downloaded pornography from? No. No
18 and no, because if it was, they would be in here to show
19 you that that was the computer. They took his mom's
20 computers, his brother's computer. They examined them.
21 There was no one in here to say that those computers
22 were the computers that they downloaded the pornography
23 from. None of the computers they seized had the GUID
24 number, that ID number, that was associated with the
25 computer that downloaded -- from which they downloaded

1 the pornography.

2 Now, they didn't even follow through with
3 investigating Austin by searching his belongings or his
4 father's house to see if there was another device, if
5 somewhere there were stashes of pornography. Nothing.
6 It just ended right there.

7 I anticipate that Mr. Senn is going to get up here
8 and try to claim that certain facts do constitute
9 corroboration. And I can't anticipate exactly what he's
10 going to say. But I'm going to try to anticipate and
11 tell you here, he's wrong. He's going to, I imagine,
12 try to say, well, that G-U-I-D number was in Lexington,
13 around that building his mother lived in, and at Ft.
14 Campbell at some point in time.

15 But concerning Ft. Campbell, here is what they
16 haven't established. They haven't told you when that
17 computer was in Ft. Campbell, nor have they told you
18 when Austin was in Ft. Campbell. Why not? Why didn't
19 they prove that to you unless they don't match up.
20 Because if they don't match up, that evidence is
21 worthless. They'll try to say that things he said in
22 his statement corroborate that he used the machine.
23 They testified that he knew -- he said that he knew how
24 to use LimeWire. Well, I don't know if y'all remember
25 LimeWire or if you ever used it, but I'd submit to you

1 at that point in time in the United States, more than
2 half of the people between the ages of thirteen and
3 thirty could download that LimeWire and get songs off of
4 it. I mean, it was sort of a craze or a fad back then.
5 And the only thing they presented evidence of was that
6 he said he downloaded it. Well, you heard Agent Dove
7 say, yeah, you can just go to the site and click
8 through, and if you just click continue, continue,
9 continue, continue, then it's on your machine.
10 Apparently there was nothing to it, nothing
11 sophisticated. I mean, so what? A lot of people knew
12 how to download the LimeWire and get music. There's no
13 evidence that he had any sophisticated knowledge of that
14 program. And there's certainly no evidence that tells
15 you that he had any knowledge that if he just used the
16 default settings that anything downloaded would
17 automatically be shared with any other user of LimeWire.
18 They might try to say, well, he told Agent McKellar
19 that he accessed the internet that had the name Admin
20 and that was the Turners. That proves it. I'd submit
21 to you, no, it doesn't. Because remember, Austin's
22 mom's network had almost the exact same name. One was
23 named Admin, one was named Admin with the number one.
24 That he said the name of a wireless network that was
25 virtually the same as his mom's, I don't think that's

1 corroborative.

2 And really most crucially they did not bring in the
3 person or persons who examined those machines at SLED.
4 All they want to say is, well, nothing of interest was
5 found. And then they wanted to dance around, well, he
6 did a system restore. Well, you usually can't recover
7 from that. Or he used a wipe program. Well, yeah,
8 maybe you could examine to see if a wipe program had
9 been used. But where are the persons who examined it?
10 Where are the people who said could say, yeah, this was
11 wiped, or yeah I saw that the system was restored on
12 such and such a time. Yeah, I see this GUID number.
13 Yeah, I see these files that you downloaded. There's
14 not a machine that has those G-U-I-D numbers. And
15 there's not a machine that they produced that has those
16 images in its hard rive. Because the machine they
17 downloaded from has to have those images in it hard
18 drive. They don't have that.

19 And remember this, the prosecution has the burden
20 of proof in this case. And I think you can infer from
21 their failure to call the person who examined the
22 machines is that they didn't call them because what that
23 person would say would be detrimental to their case and
24 would contradict what Agents Dove and McKellar were
25 trying to explain to you in general terms why they might

1 not have found the images.

2 Really, what this case boils down to is that
3 statement made out in Greenwood that day. And, you
4 know, the SLED Agents have one account of how all of
5 this occurred. And Mr. and Mrs. Land have another. And
6 they're pretty far apart. But don't you think that what
7 happened is probably somewhere right in the middle of
8 what both of them had to say. Because, I mean, think
9 about it from each side's perspective. The people at
10 SLED, they were just using their standard operating
11 procedures. They go to these things in bullet proof
12 vests and guns and they're in charge because they have a
13 search warrant. And here the two law abiding people,
14 minding their own business in their own home one
15 morning, and armed officers come in and they're scared
16 and they're mad. You've got two groups of witnesses
17 just seeing what happened just from two -- with two
18 completely different pairs of eyes.

19 I mean, think of this. Have any of y'all ever been
20 stopped when you're in the car by a police officer. And
21 you think, oh, my gosh, you know, why are they doing
22 that to me? I didn't do anything wrong. Even though
23 you know you haven't done anything wrong, you get
24 scared. You know, your voice starts quivering, and how
25 much shaken you are getting the license and registration

1 out. I mean, that's just kind of how sometimes you
2 react to a sudden display of authority. Think of how
3 that affected them. And think about how that affected
4 Austin, with the disabilities that he has.

5 Now, Dr. Martin came up and testified to you this
6 morning. And I don't know, maybe Mr. Senn wants you to
7 think, well, they paid him to say it. But what did he
8 tell you? First of all, he has testified for the
9 prosecution and the defense in criminal cases and when
10 he testifies for the prosecution they pay him. When he
11 testifies for the defense, they pay him. I mean, that's
12 the way it works. He's a professional man. But what
13 did he also say? There have been cases like this,
14 sexual exploitation cases, that he's worked on where
15 he's refused to testify. He's also told you that this
16 is a unique case in his professional opinion. He also
17 testified to you that he's confronted Austin in his
18 dealings with him.

19 Austin suffers from a major mental illness. He has
20 service-connected post-traumatic stress disorder. He
21 has extreme anxiety and he's prone to outbursts. At the
22 time that these SLED agents came to his house, he was
23 sleep-deprived. He had just been released from the
24 psychiatric ward and his medications had not been
25 stabilized. Dr. Martin testified that somebody with

1 Austin's problems would be vulnerable to giving a false
2 statement. And why? You can't look at it from your
3 perspective as a person who doesn't have these problems.
4 You've got to think of a person who has the problems
5 that Austin does. And Dr. Martin told you -- gave you
6 several reasons why he might just tell the SLED Agents
7 things that aren't true, to punish himself for the
8 actions he had to take under orders in Afghanistan by
9 confessing to something he didn't actually do. He might
10 have seen the SLED Agents as authority figures that he
11 needed to please. And so he told them what they wanted
12 to hear. And as Dr. Martin also said, well, part of his
13 problem is he's adverse to confrontation. You know, we
14 talked about his psychic numbing where he just sort of
15 goes blank and withdraws. He said, he gets so numb,
16 he's so adverse to having a disagreement or a
17 confrontation with someone, that he just tells them what
18 they want to hear, just to get out of the situation and
19 get rid of them. And remember this, they came out there
20 and started talking to Austin, and for almost two hours,
21 he adamantly denied that he'd done anything. It wasn't
22 until Agent McKellar sort of asked him a leading
23 question, I bet you just sit in that parking lot outside
24 your mama's house downloading stuff? And his answer
25 was, yes, so I'm responsible for all of this? And then

1 all of a sudden supposedly -- well, he did. He made a
2 statement. I'm not going to try to say he didn't say
3 it, but I do think that we have presented testimony to
4 show you why that they're probably not worthy of belief,
5 probably were false and probably should be disregarded
6 by this jury.

7 And remember this, we don't have the burden of
8 proof here. We don't have to put up any evidence. It's
9 up to the State of South Carolina to prove that Austin
10 is guilty. But, we wanted to give you the benefit of
11 Dr. Martin's testimony because I think it does help you
12 evaluate what happened in this case.

13 And think about this now, they have the burden of
14 proof, but they didn't put up any witness to rebut Dr.
15 Martin's opinions. Dr. Martin's testimony, combined
16 with a lack of corroboration of any other evidence in
17 this case, gives you multiple reasons to doubt that he's
18 guilty of these charges. And under the evidence in this
19 case, the facts that you've heard, I think the only
20 reasoned and objective verdict here is not guilty.
21 Thank you.

22 THE COURT: Thank you, Ms. Fullwood.

23 Mr. Senn, are you ready, sir?

24 MR. SENN: Yes, Judge.

25 **CLOSING STATEMENT**

1 **BY MR. SENN:**

2 Ladies and gentlemen, the sexual abuse of a child
3 is one of the most terrible crimes ---

4 MS. FULLWOOD: Objection. Inflammatory,
5 outside the evidence.

6 MR. SENN: Judge, the evidence, what we would
7 argue showed sexual abuse of children.

8 THE COURT: I'll allow him to continue.

9 **CLOSING STATEMENT CONTINUED**

10 **BY MR. SENN:**

11 You saw the videos. You saw the picture. You saw
12 everything in the picture. Imagine how that child
13 feels. Imagine ---

14 MS. FULLWOOD: Objection. Golden Rule.

15 THE COURT: Golden Rule would apply to this
16 jury. He's referring to a child. Overruled. You may
17 continue.

18 **CLOSING STATEMENT CONTINUED**

19 **BY MR. SENN:**

20 Ladies and gentlemen, the sexual abuse is clearly a
21 terrible thing. Let's -- I think we can all agree. And
22 when that abuse is filmed and then shared, that's re-
23 victimizing that child every single time. Every single
24 person that sees that video, that child has to know that
25 this video's out there and people can see this. People

1 like Mr. Land who admitted to officers that he wanted to
2 see these files, he sought these files out; he typed in
3 the search terms. He said he downloaded these files.
4 Then these files were callously disseminated to everyone
5 else. We don't know who else actually downloaded these,
6 but there could have been people we don't know. We do
7 know that from Special Agent Britt Dove and Special
8 Investigator McKellar, that they both downloaded files
9 on three different days. You see that there were other
10 files available, but we do know that they downloaded
11 three or four files each, on each day, three different
12 days. You heard how there's a GUID matching those files
13 for each day, too. Every single file was associated
14 with this GUID. The IP addresses that led to where
15 those downloads were from, Lexington County, two houses
16 right next to each other. You heard the Defendant
17 admit, yes, he used the internet. It was Admin, A-D-M-
18 I-N. I don't even know the wireless -- every time I use
19 a wireless, but that's pretty clear that he remembered
20 the wireless network he used. You heard how that GUID
21 followed, not only just from Lexington, but it was all
22 the way in Ft. Campbell. Ft. Campbell is in Kentucky.
23 That's not very close, ladies and gentlemen. That's,
24 what, two, three states away? That's not something that
25 just happens.

1 Once the SLED Agents left that residence where they
2 conducted the search warrants, they went and they looked
3 for Mr. Land, Mr. David Austin Land. They went to
4 Greenwood. That what they were looking for. As soon as
5 they found him, he gave them everything they wanted to
6 know. He gave -- he admitted to using the file sharing
7 software LimeWire. He specifically said LimeWire. He
8 admitted to using the wireless internet both at his
9 mother's house and to the Admin account that was also
10 accessible at his mother's house. He admitted to search
11 terms, looking for these files. He admitted downloading
12 these types of files. He got a -- he admitted to
13 downloading these files -- many, many files. It was
14 something like -- I believe six hundred files was
15 mentioned. And he also said that he never downloaded
16 files unintentionally. He only got what he wanted. He
17 even recognized the names of the files. It was Special
18 Agent McKellar who downloaded January 27th, 2010.

19 Now, the State did not produce a computer with any
20 evidence on it. We did not do that. And we didn't
21 bring any SLED Agents, you know, that had -- that
22 conducted any forensic exams on any computers. Ladies
23 and gentlemen, we don't want to waste your time. We
24 didn't find anything. That is what it is. But we also
25 have Mr. Land admitting that he used a system restore to

1 delete files. His story backs us up, ladies and
2 gentlemen. The files weren't there and he said he
3 deleted the files. Why would they be there. Why would
4 we waste your time bringing people in? The Defense
5 could have brought those experts in.

6 MS. FULLWOOD: Objection, burden shifting.

7 THE COURT: Okay. Right. Probably improper.
8 Move on to something else. Disregard that, ladies and
9 gentlemen.

10 **CLOSING STATEMENT CONTINUED**

11 **BY MR. SENN:**

12 Ladies and gentlemen, Mr. and Mrs. Land, the
13 grandparents of David Austin Land, they love their
14 grandson, but they weren't in the room when he was
15 giving this statement. They may have had an account of
16 how things happened, but they weren't there. He said
17 these things. He said these things to Special Agent
18 McKellar.

19 And while Dr. Martin may have given an opinion on
20 what he believes David Austin Land said, it is just an
21 opinion. He did testify that Mr. Land could have been
22 telling the truth. That's what he said when questioned.
23 He did say that David Austin Land was adverse to
24 confrontation. Mr. Land wasn't at the residence when
25 officers arrived. He came on his own. He waived his

1 rights and then he spoke with police for an hour and a
2 half. And he said a lot of things.

3 Ladies and gentlemen, I'm going to ask you to look
4 at what he said and what's the most logical reason he
5 would have said these things. He said he sought the
6 files out. He said he solicited these files. He
7 received these files when he downloaded these files and
8 then these files were disseminated.

9 Ladies and gentlemen, I believe Ms. Fullwood
10 mentioned that he'd made a click through the LimeWire
11 and I guess what she's trying to get at is that maybe he
12 didn't knowingly send these files out. I would disagree
13 with that. The way LimeWire works is it reminds me of a
14 self-service gas station. You know, you go to the gas
15 station, you know, gas is available, you can go get it,
16 you put your card in. You choose what kind of gas you
17 want. You fill your car up and leave. You don't
18 actually have to interact with anyone when you're
19 getting your gas. You just pay for the gas and leave.
20 That's exactly how this file sharing network is. I
21 mean, you don't have to pay anything. You can get
22 whatever you want however you want it. And while many,
23 many people may have been using LimeWire back in 2009, I
24 don't think everyone was looking for child pornography
25 when they were using LimeWire. I believe you heard

1 Special Agent McKellar mention the term pthc, and she
2 said this stands for pre-teen hard core. I didn't know
3 what that term meant. I would guess that that is a term
4 specialized to people looking for this kind of
5 information.

6 In summary, ladies and gentlemen, I think it's
7 clear if you just look at the statements made to police,
8 look at the IP information, look at the GUID, look how
9 that tracked, and just look at the most logical reason
10 things went down the way they did. Austin Land admitted
11 to searching for these files. He admitted to using
12 search terms to find these files. He admitted to
13 downloading these files and receiving these files. And
14 these files were disseminated both to Special Agent
15 Britt Dove and Special Agent McKellar on three different
16 days. This isn't an accident. You saw the file names.
17 You know what the content was. You saw what you had to
18 see.

19 David Austin Land solicited, received and then
20 disseminated these files on December 4th, 2009, December
21 7th, 2009, and January 27th, 2010. When you go back to
22 the jury room, please consider everything you've heard
23 this week and review all the evidence. When you reach
24 your conclusion, the State's confident the only verdict
25 the evidence supports is that Austin Land is guilty of

1 three counts of sexual exploitation of a minor second
2 degree. Thank you.

3 THE COURT: Thank you, Mr. Senn.

4 **CHARGE**

5 **BY THE COURT:**

6 Madam Forelady, ladies and gentlemen of the jury, I
7 will now charge you on the law applicable to this case.
8 You must consider the charge as a whole and not focus on
9 some portions to the exclusion of other portions.

10 The indictments, the three indictments, charge the
11 Defendant with sexual exploitation of a minor in the
12 second degree. And I remind you, once again, that the
13 fact the Defendant was arrested, charged and indicted in
14 this case is not evidence in this case and cannot be
15 considered by you as evidence of guilt in this case.
16 Nor does it create any presumption or inference of
17 guilt. These indictments are simply the formal written
18 instruments which contain the charges made against the
19 Defendant. They are the formal documents by which this
20 case is brought into this Court. The indictments in
21 this case allege the same offenses, but on different
22 dates.

23 Madam Clerk, could I hold just for a second the
24 indictments, please?

25 THE CLERK: I apologize. I thought these ---

1 If there was any testimony ordered stricken from the
2 record in this case during this trial, then you must
3 disregard that testimony. You are to consider only the
4 testimony which has been presented from this witness
5 stand, any exhibits which have been made a part of the
6 record in this case, and any stipulations of counsel.

7 I have the additional duty to charge you the law
8 applicable to this case. As the presiding judge, I am
9 the sole judge of the law of this case. And as I told
10 you at the outset, it's your duty as jurors to accept
11 and apply the law as I now state it to you. Again, if
12 you already have any ideas what the law is or what the
13 law ought to be and it does not agree with what I now
14 tell you what the law is, you must abandon your idea
15 because you are sworn to accept the law and apply the
16 law exactly as I state it to you.

17 In every case tried in this court before a jury,
18 the jury becomes the sole and exclusive judge of the
19 facts of the case. A trial judge cannot intimate,
20 state, comment on or make any statement to a trial jury
21 about the facts in this case. Since you, the jury, are
22 the sole judge of the facts in the case, you are not to
23 infer from what I have said during the progress of this
24 trial in ruling upon the admissibility of evidence or
25 otherwise, or anything that I say now during the course

1 of this instruction to you, that I have any opinion
2 about the facts in this case. I do not have an opinion
3 about the facts in this case. The law does not allow me
4 to have an opinion about the facts in this case. This
5 is a matter solely for you, the jury, to determine. As
6 jurors, it is your duty to determine the effect, value,
7 weight, and truth of the evidence presented during this
8 trial.

9 Now, Madam Forelady and ladies and gentlemen of the
10 jury, this Defendant has pled not guilty to these three
11 indictments. And that plea of not guilty puts the
12 burden on the State to prove the Defendant guilty. A
13 person charged with committing a criminal offense in
14 South Carolina is never required to prove himself
15 innocent. I charge you that it is an important rule of
16 the law that the Defendant in a criminal trial, no
17 matter what the seriousness of the charge may be, will
18 always be presumed to be innocent of the crime for which
19 the indictment was issued, unless guilt has been proven
20 by evidence satisfying you of that guilt beyond a
21 reasonable doubt. This presumption of innocence does
22 not end when you begin your deliberations but it
23 accompanies the Defendant throughout the trial until you
24 reach a verdict of guilt based on evidence satisfying
25 you of that guilt beyond a reasonable doubt.

Charge

1 This presumption of innocence is like a robe
2 righteousness placed about the shoulders of the
3 Defendant, which remains with the Defendant until it has
4 been stripped from the Defendant by evidence satisfying
5 you of the Defendant's guilt beyond a reasonable doubt.
6 This presumption of innocence is not a mere legal
7 theory. It is not just a legal phrase. It is a
8 substantial right to which ever defendant is entitled
9 unless you, the jury, are satisfied from the evidence of
10 the Defendant's guilt beyond a reasonable doubt.

11 What is reasonable doubt? The State has the burden
12 of proving the Defendant guilty beyond a reasonable
13 doubt. Some of you may have served as jurors in civil
14 cases where you were told that it is only necessary to
15 prove a fact is more likely true than not true, such as
16 by the greater weight or the preponderance of the
17 evidence. In criminal cases, the State's proof must be
18 more powerful than that. It must be beyond a reasonable
19 doubt. Proof beyond a reasonable doubt is proof that
20 leaves you firmly convinced of the Defendant's guilt.

21 Now, there are very few things in this world that
22 we know with absolute certainty. And in criminal cases
23 the law does not require proof that overcomes every
24 possible doubt. If, based on your consideration of the
25 evidence you are firmly convinced that the Defendant is

1 guilty of the crimes charged, you must find the
2 Defendant guilty. If, on the other hand, you think
3 there is a real possibility the Defendant is not guilty,
4 you must give the Defendant the benefit of the doubt and
5 find him not guilty.

6 Now, Madam Forelady, and ladies and gentlemen of
7 the jury, there are two types of evidence which are
8 generally presented during a trial; that being direct
9 evidence and circumstantial evidence. Direct evidence
10 directly proves the existence of a fact that does not
11 require deduction. Circumstantial evidence is proof of
12 a chain of facts and circumstances indicating the
13 existence of a fact. Crimes may be proven by
14 circumstantial evidence. The law makes no distinction
15 between the weight or value to be given to either direct
16 or circumstantial evidence. However, to the extent the
17 State relies on circumstantial evidence, all of the
18 circumstances must be consistent with each other, and
19 when taken together, point conclusively to the guilt of
20 the accused beyond a reasonable doubt. If these
21 circumstances merely portray the Defendant's behavior as
22 suspicious, the proof has failed. The State has the
23 burden of proving the Defendant guilty beyond a
24 reasonable doubt. This burden rests with the State
25 regardless of whether the State relies on direct

1 evidence, circumstantial evidence, or a combination of
2 the two.

3 Necessarily, you must determine the credibility of
4 witnesses who have testified in this case. Credibility
5 simply means believability. It becomes your duty as
6 jurors to analyze and to evaluate the evidence and
7 determine which evidence convinces you of its truth. In
8 determining the believability of witnesses who have
9 testified in this case, you may believe one witness over
10 several witnesses, or several witnesses over one
11 witness. You may believe a part of the testimony of a
12 witness and reject the remaining part of the testimony
13 of that same witness. You may believe the testimony of
14 a witness in its entirety or reject the testimony of a
15 witness in its entirety. You may consider whether any
16 witness has exhibited to you any interest, bias,
17 prejudice, or other motive in this case. You may also
18 consider the appearance and manner of a witness while on
19 the witness stand.

20 Now, I explained to you earlier the rules of
21 evidence ordinarily do not permit witnesses to testify
22 to opinions or conclusions. An exception to this rule
23 exists for witnesses we call expert witnesses. A
24 witness who, by education and experience, has become an
25 expert in some art, science, profession or calling may

1 state an opinion as to relevant and material matter in
2 which the witness claims to be an expert and may also
3 state the reasons for that opinion. You should consider
4 any expert opinion received in evidence in this case,
5 and like any other evidence, give it whatever weight you
6 think it deserves. If you decide that the opinion of an
7 expert witness is not based on sufficient education and
8 experience or if you conclude that the reasons given in
9 support of the opinion are not sound or that the opinion
10 is outweighed by other evidence, you may disregard the
11 opinion entirely. An expert witness's testimony is to
12 be given no greater weight than that of other witnesses
13 simply because the witness is an expert. Further,
14 you're not required to accept an expert's opinion, even
15 though it is not contradicted.

16 Now, a statement alleged to have been made by the
17 Defendant has been admitted into evidence in this case.
18 While the Court has determined that this statement is
19 admissible, I instruct you, Madam Forelady, and ladies
20 and gentlemen of this jury, that you make the ultimate
21 decision of whether or not the Defendant made the
22 statement. If the Defendant did make the statement you
23 must determine whether the statement was made by the
24 Defendant voluntarily and of his own freewill. This
25 means that the statement was not cause by pressure,

1 force, fear, threats, coercion or intimidation or by
2 hope or a promise of leniency or a reward of any kind.
3 In determining whether the statement was voluntary, you
4 may consider both the characteristics of the Defendant
5 and the details of the questioning. Some of the factors
6 that you must consider or can consider are the age of
7 the Defendant, the Defendant's education or lack of
8 education, the Defendant's mental ability or capacity.
9 The Defendant's IQ or intelligence. The Defendant's
10 background and environment, place and length of
11 detention, the nature of the questioning, and the advice
12 or lack therefore to the Defendant of his constitutional
13 rights, including but not limited to, the right to
14 remain silent, that any statement could be used against
15 him in a court of law. The right to have a lawyer
16 present, and that if he could not afford a lawyer, a
17 lawyer would be appointed to represent him without any
18 cost. And that he could stop making a statement at any
19 time. You must carefully consider all of the
20 surrounding circumstances before you give any weight to
21 an alleged statement. The State has the burden of
22 proving beyond a reasonable doubt that the alleged
23 statement was voluntary. If you determine it was, you
24 may give the statement any further consideration that
25 you deem proper. You must decide what weight, if any,

1 should be given to the alleged statement. If you
2 determine the alleged statement was not the free and
3 voluntary statement of the Defendant, you should not
4 consider the statement at all. I instruct you and
5 emphasize that the fact that the Defendant did not
6 testify is not a factor to be considered by you in any
7 way in your deliberations and in your consideration on
8 the question of the guilt or innocence of the Defendant.
9 It must not be considered by you in any manner
10 whatsoever.

11 A defendant has the constitutional right to remain
12 silent and the assertion of this right must not be
13 considered by you in your deliberations. I repeat,
14 under the oath you took yesterday, you are to draw no
15 conclusion whatsoever from the fact that the Defendant
16 in this case did not testify. The fact that this
17 Defendant did not testify should not even be discussed
18 in the jury room. The burden of proof, as I have stated
19 to you several times, is on the State. The Defendant is
20 not required to prove his innocence. The burden of
21 proof remains on the State to prove guilt beyond a
22 reasonable doubt.

23 In order to establish criminal liability, criminal
24 intent is required. For example, the mental state
25 required to be proven by the State for a particular

1 crime might be purpose, intent or knowledge. Criminal
2 intent must be proven by the State beyond a reasonable
3 doubt. Criminal intent is always a matter that must be
4 determined by the jury from the circumstances
5 surrounding the situation. Now, there's no way to prove
6 intent to a mathematical certainty. There's no way
7 medical science can dissect a person's brain and
8 determine what the person had in mind. So the law says
9 that criminal intent may be inferred from the
10 circumstances shown to have existed. This is how you
11 make a determination of whether or not the element
12 requiring intent was present. It is not necessary to
13 establish intent by direct and positive evidence, but
14 intent may be established by inference in the same way
15 as any other fact by taking into consideration the acts
16 of the parties and all the facts and circumstances of
17 the case. Criminal intent is a mental state, a
18 conscious wrongdoing. It is up to you to determine what
19 the Defendant intended to do based on the circumstances
20 shown to have existed.

21 Now, the Defendant has been charged with three
22 counts of second degree sexual exploitation of a minor.
23 That's found in the South Carolina Code Section 16-15-
24 405. The State must prove beyond a reasonable doubt
25 that the Defendant, knowing the character or content of

1 the material, distributes, transports, exhibits,
2 receives, sells, purchases, exchanges or solicits
3 material that contains a visual representation of a
4 minor engaged in sexual activity. That would be one or
5 more of those, distributes, transports, exhibits,
6 receives, sells, purchases, exchanges or solicits
7 material.. A minor means an individual who is less than
8 eighteen years old. The trier of fact, which is you,
9 the jury, may infer that a participant in sexual
10 activity depicted in material through its title, text,
11 visual representations or otherwise is a minor.
12 However, this is simply an evidentiary fact that may be
13 considered by you along with all the evidence presented
14 and given such weight as you see fit. Mistake of age is
15 not a defense to a prosecution under this section.
16 Material means pictures, drawings, video recordings,
17 films, digital electronic files or other visual
18 depictions or representations, but not material
19 consisting entirely of written words.

20 Now, the law defines sexual activity in several
21 forms and I'm going to charge you on all the definitions
22 of sexual activity as defined by our Legislature.
23 Sexual activity includes any of the following acts or
24 simulations thereof. Masturbation, whether done alone
25 or with another human or animal, vaginal, anal or oral

1 intercourse, touching in an act of apparent sexual
2 stimulation or sexual use of the clothed or unclothed
3 genitals, pubic area or buttocks of another person or
4 the clothed or unclothed breast of a human female. An
5 act of condition that depicts bestiality,
6 sadomasochistic abuse, meaning flagellation or torture
7 by or upon a person who is nude or clad in undergarments
8 or in a costume which reveals the pubic hair, anus,
9 vulva, genitals, or female breast nipples or the
10 condition of being fettered, bound or otherwise
11 physically restrained on the part of one so clothed,
12 excretory functions, or the insertion of any part of a
13 person's body, other than the male sexual organ, or of
14 any object into another person's anus or vagina, except
15 when done as part of a recognized medical procedure.
16 Now, Madam Forelady, and ladies and gentlemen of the
17 jury, if you determine the State has not proven sexual
18 exploitation of a minor in the second degree beyond a
19 reasonable doubt, you may then consider whether the
20 State has proven beyond a reasonable doubt that the
21 Defendant is guilty of sexual exploitation of a minor in
22 the third degree. An individual commits the offense of
23 a third degree sexual exploitation of a minor if,
24 knowing the character or content of the material, he
25 possesses material that contains a visual representation

Charge

1 of a minor engaging in sexual activity, when a
2 reasonable person would infer the purpose is sexual
3 stimulation. The trier of fact, meaning you, the jury,
4 may infer that a participant in sexual activity depicted
5 as a minor through its title, text, visual
6 representation or otherwise, is a minor. However, this
7 is simply an evidentiary fact that may be considered by
8 you along with all of the evidence in this case and
9 given such weight as you see fit.

10 Now, Madam Forelady, and ladies and gentlemen of
11 the jury, your verdict as to each indictment must be
12 unanimous. Now, I'm going to come down. I have what we
13 call a verdict form. And I can explain it better if I
14 come down and show it to you closer up.

15 This is what we call a verdict form. And it has
16 the caption of the case and three indictment numbers.
17 And as to each indictment -- it says as to indictment,
18 and it gives the number, which charges the Defendant
19 with sexual exploitation of a minor in the second
20 degree, we, the jury, find the Defendant -- you either
21 check guilty or not guilty.

22 Now, the order of guilty being ahead of not guilty
23 is of no significance. One has to go before the other;
24 okay? But now, as I told you, if you believe that the
25 State failed to meet its burden of proof by proving each

1 and every element of second degree sexual exploitation
2 beyond a reasonable doubt, then you can consider the
3 lesser included offense of third degree. And you can
4 check guilty or not guilty. All right? Now, that's in
5 subsection 1. That's to this indictment here. And you
6 cannot check guilty for both. You can check not guilty
7 for both, but you can't check guilty for both. You can
8 have not guilty or guilty or not guilty, not guilty, or
9 just guilty; okay? If that makes any sense. And I can
10 go back over that again.

11 And then you go to the second indictment and the
12 same thing. Again, you determine as to this indictment,
13 did the State meet its burden of proof by proving this
14 charge to you beyond a reasonable doubt? If you
15 determine guilty, then you'll mark that. If you
16 determine not guilty mark guilty, you would mark that.
17 And if you determine not guilty, then you would go down
18 and see if they proved the third degree sexual
19 exploitation of a minor. So that's as to the second
20 indictment. And then the third indictment is handled in
21 the same way.

22 Is that clear, Madam Forelady?

23 MADAM FORELADY: Yes.

24 THE COURT: Okay.

25 All right. Now, what I want you to do, I want you

1 to go back to your jury room. Don't start your
2 deliberations yet. I'm going to check with the lawyers
3 to make sure that my jury charge was proper and that
4 there are no objections or exceptions to what I charged
5 you. And either two things will happen, either I would
6 need to recharge you on something, and I'll bring you
7 back out, or the bailiff will bring to you the exhibits
8 and the verdict forms. When that is done, then that is
9 your cue to start your deliberations; okay? And also at
10 that time, Ms. Hill, then you would come out and then I
11 will give you further instructions.

12 Now, the three disks that were played yesterday to
13 you, the jury, they're in evidence. But since you have
14 no way of playing these disks back in the jury room,
15 these are not going to go back with you. If you were to
16 decide that you wanted to view any of these disks again,
17 all you would have to do is let the bailiff know and we
18 would bring you out and play whatever you wanted us to
19 play. So these will just remain here in the courtroom.
20 Okay.

21 Once you have reached a verdict as to each
22 indictment, you just let the bailiffs know and then
23 they'll notify the court. Go back to your jury room.
24 Do not start your deliberations until either you are
25 brought back out or the verdict form and this one

1 exhibit is brought to you; okay? Thank you very much.

2 (WHEREUPON, the jury exited the open court at
3 approximately 2:47 p.m.)

4 THE COURT: Okay. Any exceptions or
5 objections from the State?

6 MR. SENN: None from the State.

7 THE COURT: Defense?

8 MS. FULLWOOD: Judge, my attention may have
9 lapsed, but I don't remember hearing you tell them that
10 the verdict should be unanimous.

11 THE COURT: Yes, I did.

12 MS. FULLWOOD: You did, okay.

13 THE COURT: I told them that right before I
14 went down to explain the verdict form to them.

15 MS. FULLWOOD: Okay. Thank you.

16 THE COURT: All right. Okay. All right.
17 Then we've got the verdict form and the one exhibit that
18 will be going back. And I'm going to give that to Mr.
19 Knight.

20 Take that back to the jury and then have the
21 alternate, Ms. Hill, she can just come through this door
22 right here.

23 THE BAILIFF: Okay.

24 (WHEREUPON, the verdict forms and exhibit were
25 delivered to the jury at 2:48 p.m., at which time

1 deliberations were begun.)

2 THE COURT: Ms. Hill, thank you so much for
3 your service.

4 THE JUROR: You're welcome.

5 THE COURT: You're welcome to stay.

6 (WHEREUPON, the alternate juror was excused.)

7 THE COURT: All right. Everybody be at ease.

8 (WHEREUPON, the court stood in recess awaiting the
9 verdict of the jury.)

10 THE COURT: All right. Go ahead, Mr. Senn.

11 MR. SENN: Judge, I was just going to say, I
12 don't know that we said that they went to the residence,
13 but I'm not sure what that question's asking either.

14 THE COURT: All right. Let me just put on the
15 record that the jury has submitted two questions.

16 The first question, what date was the Defendant in
17 the mental facility? And in talking with the three
18 lawyers, I think it is agreed that the specific date or
19 dates was never put into evidence. I think maybe a time
20 frame of a week, two weeks, that kind of thing was
21 mentioned. But specific date or dates was not and it
22 has been agreed that I will so instruct the jury as to
23 that.

24 The second question is, what date did SLED go to
25 Defendant mom's apartment. And I think that date was

1 testified to by one of the Agents.

2 MS. FULLWOOD: At this point we're not sure
3 that that date was put into evidence.

4 MR. SENN: Judge, I'm not sure what that --
5 exactly what they're asking either because they
6 conducted surveillance before they went there in
7 addition to executing the search warrant. So they went
8 there two different dates.

9 THE COURT: Well, we can give them both dates.

10 MR. SENN: Okay.

11 THE COURT: Not knowing what -- where they're
12 coming from.

13 MR. SENN: I'm not sure if they testified to
14 those very specific days, though, Judge.

15 THE COURT: On neither one, they did not
16 testify as to a date?

17 You agree with that, Ms. Fullwood?

18 MS. FULLWOOD: I don't think so. I don't have
19 anything that would show they did.

20 THE COURT: Okay. All right. All right. So,
21 is there any objection to my responding to both
22 questions that the specific date or dates was not put
23 into evidence for either question.

24 MS. FULLWOOD: Yes, sir.

25 THE COURT: No objection?

1 MR. SENN: No objection.

2 THE COURT: Okay.

3 MS. FULLWOOD: No objection from us.

4 THE COURT: Okay. Very good.

5 All right. Mr. Knight, would you bring the jury
6 out?

7 THE BAILIFF: Yes, sir, Your Honor.

8 (WHEREUPON, the jury entered the open court at
9 approximately 3:16 p.m.)

10 THE COURT: Okay. Let the record reflect the
11 jury is back in.

12 Madam Forelady, I have before me two questions that
13 you have submitted. The first question being what date
14 was the Defendant in the mental facility? The second
15 question being what date did SLED go to Defendant mom's
16 apartment?

17 The specific date or dates for both questions was
18 never put into evidence. So with that said, I would ask
19 that you go back to your jury room and continue your
20 deliberations. Thank you very much.

21 (WHEREUPON, the jury exited the open court at
22 approximately 3:20 p.m.)

23 (WHEREUPON, Court's Exhibit Number 3 was marked for
24 identification.)

25 THE COURT: Okay. Everybody be at ease.

1 (WHEREUPON, the court stood at recess awaiting the
2 verdict of the jury.)

3 THE COURT: Okay. Anything we need to take up
4 before we bring the jury out? I understand we do have a
5 verdict. At least that's what I've been informed.
6 Okay. All right. Madam Clerk, I'll get the verdict
7 form from the bailiff. I will not publish it. I'll
8 just inspect it and hand it over to you to publish;
9 okay?

10 THE CLERK: Yes, sir.

11 THE COURT: Thank you very much.

12 Mr. Knight, bring the jury out, please.

13 THE BAILIFF: Yes, sir, Your Honor.

14 (WHEREUPON, the jury entered the open court at
15 approximately 3:34 p.m.)

16 THE COURT: Okay. Madam Forelady, I
17 understand that you have reached a verdict?

18 MADAM FORELADY: Yes, Your Honor.

19 THE COURT: Without telling me what the
20 verdict is, was that verdict unanimous as to each
21 indictment?

22 MADAM FORELADY: Yes, sir.

23 THE COURT: The verdict form, would you hand
24 it to the bailiff, please?

25 THE BAILIFF: Have a seat, ma'am.

1 THE COURT: And hand it to me please, first.

2 THE BAILIFF: All right.

3 THE COURT: Thank you, sir.

4 Madam Clerk, would you publish the verdict, please?

5 THE CLERK: Indictment 2014-GS-32-6004, as to
6 indictment number 2014-GS-32-6004, the State versus
7 David A. Land, which charges the Defendant with sexual
8 exploitation of a minor in the second degree, we, the
9 jury, find the Defendant guilty.

10 As to indictment number 2014-GS-32-6005, State
11 versus David A. Land, which charges the Defendant with
12 sexual exploitation of a minor in the second degree, we,
13 the jury, find the Defendant guilty.

14 As to indictment number 2014-GS-32-6006, State
15 versus David A. Land, which charges the Defendant with
16 sexual exploitation of a minor in the second degree, we,
17 the jury, find the Defendant guilty.

18 They're all signed by the Madam Forelady, November
19 7th, 2014.

20 Madam Forelady, ladies and gentlemen of the jury,
21 if these are your verdicts please indicate, each of you,
22 by raising your right hand.

23 (WHEREUPON, all jurors' right hands were raised.)

24 THE CLERK: All hands raised, Your Honor.

25 THE COURT: Thank you, Madam Clerk. Does the

1 Defense wish for an individual polling of the jury?

2 MS. FULLWOOD: We'd ask for that, Your Honor.

3 THE COURT: Okay. Madam Clerk, would you
4 handle that, please?

5 THE CLERK: Okay. As I call your juror
6 number, if you'll hold your hand up where I can
7 recognize you. I will say as to the verdicts were these
8 your verdicts and are they still your verdicts. At that
9 time then please respond yes or no.

10 Number 44, as to the verdicts, were these your
11 verdicts and are they still your verdicts?

12 THE JUROR: Yes.

13 THE CLERK: 263, as to the verdicts, were
14 these your verdicts and are they still your verdicts?

15 THE JUROR: Yes.

16 THE CLERK: 109, as to the verdicts, were
17 these your verdicts and are they still your verdicts?

18 THE JUROR: Yes.

19 THE CLERK: Number 50, as to the verdicts,
20 were these your verdicts and are they still your
21 verdicts?

22 THE JUROR: Yes, ma'am.

23 THE CLERK: 159, as to the verdicts, were
24 these your verdicts and are they still your verdicts?

25 THE JUROR: Yes, ma'am.

1 THE CLERK: 36, as to the verdicts, were these
2 your verdicts and are they still your verdicts?

3 THE JUROR: Yes, ma'am.

4 THE CLERK: 224, as to the verdicts, were
5 these your verdicts and are they still your verdicts?

6 THE JUROR: Yes, ma'am.

7 THE CLERK: 47, as to the verdicts, were these
8 your verdicts and are they still your verdicts?

9 THE JUROR: Yes.

10 THE CLERK: 230, as to the verdicts, were
11 these your verdicts and are they still your verdicts?

12 THE JUROR: Yes, ma'am.

13 THE CLERK: 285, as to the verdicts, were
14 these your verdicts and are they still your verdicts?

15 THE JUROR: Yes.

16 THE CLERK: 81, as to the verdicts, were these
17 your verdicts and are they still your verdicts?

18 THE JUROR: Yes, ma'am.

19 THE CLERK: Number 275, as to the verdicts,
20 were these your verdicts and are they still your
21 verdicts?

22 THE JUROR: Yes.

23 THE CLERK: All jurors polled, Your Honor.

24 THE COURT: Okay. Thank you very much.

25 Madam Forelady, and ladies and gentlemen of the

1 jury, the Court sincerely appreciates your jury service.
2 I realize that this was a difficult case. But, you
3 know, at the very beginning when I gave you that kind of
4 opening charge, you know, I said you had to be
5 professional and conscientious, and you were. And so we
6 appreciate your jury service. Even though this was a
7 very difficult case in many respects, I hope that your
8 service on this trial jury was an educational experience
9 for you and that maybe sometime in the future you'll
10 have an opportunity to serve on another jury, whether
11 it's in General Sessions Court, which is criminal court,
12 or a Common Pleas Court, which is civil court.

13 But this is Friday afternoon. The week is ended.
14 Certainly no further jury service. So I just hope that
15 you have a good evening, relax and enjoy your weekend.
16 And I hope to see you soon sometime.

17 Madam Forelady, you will need to sign -- if you
18 will remain with us for just a second, the indictments
19 need to be signed by you.

20 Let me explain one other thing to you too. You are
21 free now to discuss this case if you choose to with
22 anyone. Sometimes lawyers like to discuss with jurors
23 about, well, how do you think I did. Do you see any way
24 I can improve or whatever. You're free to discuss this
25 case.

1 Now, if someone wants to talk to you about this
2 case and you don't want to talk with them, then you
3 certainly don't have to. And I'm not suggesting that
4 this will happen. But if someone persists in wanting to
5 talk with you and you don't want to, you need to notify
6 the Court because I will deal with that and take care of
7 you; okay? All right. Thank you very much.

8 (WHEREUPON, the jury exited the open court at
9 approximately 3:43 p.m.)

10 THE COURT: We'll take about ten minutes
11 before we move into the sentencing phase.

12 (WHEREUPON, the court stood at recess for a short
13 break.)

14 THE COURT: All right. We are back on the
15 record in the sentencing phase of State of South
16 Carolina versus David Austin Land. Mr. Land, having
17 been found guilty by a jury on all three indictments of
18 sexual exploitation of a minor in the second degree.
19 I'll hear from the State first as to sentencing if
20 there's any comments the State wants to make. And then
21 I'll hear from the Defense.

22 So, Mr. Senn, I'll be glad to hear from you.

23 MR. SENN: Judge, very briefly. Due to the
24 nature of the charges and the fact that these files were
25 available over a two-month time period, the State would

1 request an active sentence.

2 THE COURT: Okay. All right.

3 And Ms. Fullwood.

4 MS. FULLWOOD: Thank you. Your Honor, I don't
5 think Your Honor has any choice as to an active sentence
6 because I believe the sentencing range is from two to
7 ten years.

8 THE COURT: Right.

9 MS. FULLWOOD: And I urge Your Honor to
10 consider giving him the mandatory minimum as a sentence.
11 I believe the facts justify it in this case. You've
12 seen his grandparents. They testified. And I hope you
13 saw what nice people they really are. They're sort of
14 salt of the earth people. And they have really watched
15 after Austin, have really been a huge help to him
16 through this ordeal of being charged with such bad
17 crimes. His mother has been here during the trial.
18 She's always sat outside. I think that she believes she
19 just can't trust her emotions. And she's afraid she
20 just might have some sort of outburst if she were in
21 here and had to hear some of this stuff. But she is
22 supportive too.

23 He is twenty-four years old. When he was seventeen
24 years old, his mom let him join the Army. She signed
25 the slip and he left high school to serve in the armed

1 forces. I believe he, nevertheless, got a GED somewhere
2 along the way. He served in the Army from 2007 to 2009.
3 He was deployed to Afghanistan for a year. You heard
4 Dr. Martin's testimony, and I think he was spot on in
5 describing the problems that Austin has, probably as a
6 result of a lot of things, but at least some of it is
7 attributable to the PTSD due to his military service.
8 I've got to say, though, in all these months that I've
9 been representing him, I have seen him really striving
10 to get his emotions under control. He's the type of
11 person who seems to really, really want to do the right
12 thing. To really, really want to do the acceptable
13 thing. When I first met him -- I've never seen him act
14 really bad, like have some kind of explosion. But I've
15 seen him in the past get close to that point. I've seen
16 him struggle with himself, with his emotions to the
17 point where you would see him take deep breaths, go out
18 of the room, go outside. And that's how he'd cope with
19 it. But as time went on, I've seen him mature into the
20 type of person where he doesn't need to do that anymore.
21 He's really worked hard to get his emotions under
22 control. And I think he's succeeded in doing so.

23 You know, one of Dr. Martin's and my concerns at
24 first was that he might not be competent simply because
25 he couldn't control his emotions. You've seen him in

1 court this week and despite terrible things being said
2 about him, terrible downloads being attributed to him,
3 he's kept his demeanor neutral and he's behaved very
4 appropriately. He's been a very nice client to work
5 with. He has always been respectful. He has always
6 done what I asked him to do. He has never missed an
7 appointment. He's never even been late for an
8 appointment.

9 Of course, he, like Dr. Martin said, he has always
10 vehemently denied that he did this. He does not have a
11 prior criminal record. Now, on his rap sheet there is a
12 notation that he was brought up, I think it's worded,
13 for internal discipline in the Army for failing a drug
14 screen, but it's not -- it explicitly says, it's not a
15 criminal conviction. But other than that, he's never
16 had any prior difficulty with the law.

17 You know, the nature of these charges is just such
18 an emotional topic. And like I say, he has denied it.
19 I would point out that at this period of time, he was
20 just barely out of his teens. So he was really, really
21 young. And, of course, I don't know what to attribute
22 it to, although a lot of times youth, especially I
23 suppose in circumstances like this, men have certain
24 curiosities and nowadays that's just an outlet for
25 people to explore to satisfy curiosity. If I understood

1 Agent McKellar's testimony correctly, she says he told
2 her that he did mass downloads and then deleted them,
3 which sort of makes me believe that if this happened, if
4 he did it, he got it but then probably felt ashamed and
5 bad that he had it and got rid of it.

6 I think he's the type of person who really wants to
7 do the right thing. And it's a shame, you know. He got
8 out of the service. He does get a disability check.
9 It's for the PTSD, for musculoskeletal injuries and a
10 hearing loss. Through the GI Bill he's been able to buy
11 himself a home over in Greenwood and he's so proud of
12 that. And he's going to lose all of that now. So he's
13 losing a whole lot with this conviction.

14 Due to his youth at the time these crimes occurred,
15 due to the fact that he has no prior record, due to the
16 fact that he voluntarily enlisted and served our country
17 in combat in Afghanistan, I'd ask you to just impose the
18 minimum sentences in this case.

19 THE COURT: Okay. All right. Thank you very
20 much, Ms. Fullwood. Does your client wish to speak? If
21 so, I'll need to swear him in.

22 MS. FULLWOOD: Do you want to talk to the
23 Judge?

24 THE DEFENDANT: I don't have anything to say.
25 I'm sorry. I'm sorry, Your Honor, nothing I can say

1 will change anything at this point.

2 THE COURT: Okay. All right. Thank you very
3 much.

4 Everybody be at ease for just a moment.

5 (WHEREUPON, the court stood at recess for a short
6 break.)

7 THE COURT: Ms. Fullwood, does he have any
8 time that he spent before being released on bond?

9 MS. FULLWOOD: No, sir. He got out the same
10 day.

11 THE COURT: Got out the same day? Okay.

12 Okay. Mr. Land, this, of course, has been a pretty
13 difficult case, I think for everybody, in certain
14 respects. I need to first make a finding on the record
15 that pursuant to Section 16-23-500 this offense of
16 second degree sexual exploitation of a minor is a
17 violent offense as it relates to future ownership and
18 possession of firearms.

19 Certainly, I have taken into account that you do
20 not have a prior record, which is very important to this
21 Court. I've taken into account your age at the time of
22 the offense. But I am faced with a minimum, so I'm
23 going to stick close to that. I'm not going to hit the
24 minimum, but I'm going to stick close to the minimum.

25 The sentence of the Court is, and this is

1 concurrent, as to all three indictments, the sentence of
2 the Court is you be committed to the State Department of
3 Corrections for a period of seven years, provided upon
4 service of thirty months, which is two and a half years,
5 the balance is suspended, two years probation. A
6 condition of probation, random drug and alcohol testing.
7 Those sentences to run concurrent.

8 In addition, as to each indictment, I have provided
9 that you be placed on the Central Registry of Child
10 Abuse and Neglect pursuant to Section 17-25-135. In
11 addition, the law automatically requires, I believe, Mr.
12 Senn, the requirement of sexual registry upon release.
13 That's just automatically provided by law.

14 So good luck to you, sir.

15 That concludes this matter.

16 MR. SENN: Thank you, Your Honor.

17 MS. FULLWOOD: Thank you, Your Honor.

18 MS. MILES: Thank you, Your Honor.

19

20 [END OF REQUESTED TRANSCRIPT OF RECORD]

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM LEXINGTON COUNTY
Court of General Sessions

The Honorable Donald B. Hocker, Circuit Court Judge

Appellate Case No. 2014-002423

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SC Court of Appeals

The State , ... Respondent,

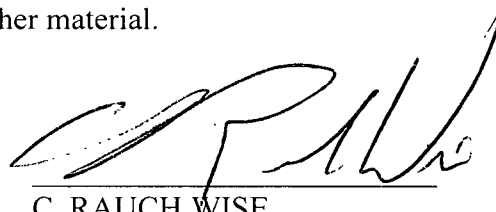
vs.

David A. Land Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

February 8th, 2016



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